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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

MAR 23 2016

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2010-CP-10-10490

Brad J. Walbeck and Lea Ann Adkins, Both Individually and Derivatively on Behalf of
The I'On Assembly, Inc.; I'On Assembly, Inc.

Respondents,

v.

The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC,
and I'On Realty, LLC,

Appellants.

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Brian C. Duffy
Seth W. Whitaker
Julie L. Moore
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044
Attorneys for Appellants

Justin O. Lucey, Esq.
Joshua F. Evans, Esq.
415 Mill Street
PO Box 806
Mount Pleasant, SC 29465
Phone: 843-849-8400
*Attorneys for Respondents Brad J.
Walbeck, and Lea Ann Adkins,
individually and derivatively on
behalf of I'On Assembly, Inc.*

Timothy W. Bouch, Esq.
Yancey A. McLeod, III, Esq.
Leath Bouch & Seekings
92 Broad Street
Charleston, SC 29401
Phone: 843-937-8811
*Attorneys for Respondent I'On
Assembly, Inc.*

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1 one?

2 MR. DUFFY: I don't, but as long as they have
3 stipulated to the exhibits, I certainly don't have a
4 problem with that. That's what I intend to do, is to
5 use stipulated exhibits it opening.

6 THE COURT: Well, I will be watching it as it
7 goes, so you all don't need -- y'all don't need to
8 e-mail me. Our computers have a little bit of trouble
9 with big PDF'S. We consistently get messages from
10 Court Administration that our e-mail is almost full.
11 So hard copies or I'll just watch it on the screen if
12 there is no objection. Yes, sir. All right. What's
13 next? Anything else we need to do before voir dire?

14 MR. DUFFY: Nothing that I can think of.

15 THE COURT: All right. Then we'll just be at ease
16 until about -- until the jury panel comes -- Don said
17 30 minutes, you know. Knowing how things are going
18 with the Solicitor's Office and whoever the Defendants
19 are next door, I'm -- that's optimistic. But we'll be
20 back at 12:15 to pick the jury.

21 MR. BOUCH: I've got four votes, Your Honor.

22 THE COURT: You got -- so we're good?

23 MR. BOUCH: I got four.

24 THE COURT: All right. Great. Then do we want to
25 put that on the record, Mr. Bouch has the votes from

1 the Board to -- to consent to the settlement?

2 MR. BOUCH: Yes, ma'am.

3 THE COURT: All right. Great. All right. We'll
4 be at ease for about 30 minutes, so y'all get ready to
5 work. Thanks.

6 (WHEREUPON, a brief recess was taken.)

7 THE COURT: I think that we are going to have to
8 go to lunch and come back and strike the jury at 2:00.
9 They're still in voir dire and there are two
10 defendants. So assuming there's no Batson motion, it
11 will be 1:00 probably before we can get started and
12 that's on the optimistic side. So why don't y'all be
13 back at 2:00. And I certainly apologize for keeping
14 everybody waiting, but we'll see you at 2:00. Sorry.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Are they ready?

17 THE CLERK: Yes.

18 THE COURT: All right. Everybody ready?

19 MR. LUCEY: Yes, ma'am.

20 MR. DUFFY: Yes, ma'am.

21 MR. BOUCH: Yes, Your Honor.

22 (WHEREUPON, the jury panel entered the courtroom
23 at approximately 2:10 p.m.)

24 THE COURT: All right. Thank you for your
25 patience, ladies and gentlemen, and welcome back.

* * * P R O C E E D I N G S * * *

1
2
3 THE COURT: Thank you very much. All right. We
4 are missing one juror. And juror number 322, Ms.
5 Shuler, I shared with y'all yesterday, that she
6 recognized Mr. Hamilton's son -- has another issue that
7 she just wants to talk to me about. And I've told her
8 I'm not allowed to talk with you, please write it on a
9 piece of paper and I will share it with everyone, so
10 she is doing that right now. But because she seems
11 disturbed, I will bring her out shortly when we find
12 out what the other issue is and just ask her, as we
13 discussed yesterday, if she could be fair and impartial
14 now that she realizes that she recognized Mr.
15 Hamilton's son.

16 Any objection to handling it that way or do we
17 want to wait and see what the other concern is first?

18 MR. DUFFY: What number, 322?

19 THE COURT: Three twenty-two, I believe.

20 THE CLERK: That's correct, Your Honor.

21 THE COURT: Ms. Shuler. Okay. And we're still
22 waiting on one juror, so...

23 MR. DUFFY: There was one other thing, Your Honor,
24 that I neglected to remember yesterday that we needed
25 to address before the trial. And that was one pretrial

1 motion that was still outstanding.

2 THE COURT: Okay.

3 MR. DUFFY: And that was a request that the court
4 take judicial notice of the representations of the
5 Assembly to the court and representations by 148
6 Civitas, Mr. Russo, to the court.

7 And just for further -- a couple of further
8 points on that, Your Honor, the -- the need for the
9 judicial notice is even more clear because the
10 Assembly, in response to our claims about the easement,
11 denied representing that. And Mr. Russo, I have an
12 affidavit of non service, where he specifically
13 declared he was avoiding service of process.

14 THE COURT: Okay. For a subpoena or...?

15 MR. DUFFY: Yeah, for a subpoena so far.

16 THE COURT: I would suggest that somebody get in
17 touch with his attorney and let them know that he needs
18 to stop avoiding service of process, or Mr. Altman will
19 have to come explain to me why that is happening.
20 Okay. But we'll make this a court's exhibit.

21 (WHEREUPON, Court's Exhibit No. 1 was marked and
22 made a part of the record.)

23 THE COURT: Y'all might just want to send a
24 courtesy e-mail to Charlie Altman and whoever might be
25 affiliated with the Russos and Civitas.

1 MR. DUFFY: I certainly will start with him, and
2 we -- we directed to Mr. Russo, who obviously --

3 THE COURT: Start with him and let him know if he
4 has any confusion, he can be here at noon today to
5 explain what his confusion is. Okay. All right.

6 And on that note, I know there's a lot of
7 interest in this case. We had problems with it last
8 time. I'm not going to have folks coming in and out
9 from the gallery the whole time during the trial. I'm
10 very laid back about that with the attorneys, and folks
11 working on the case need to do that, but not so with
12 the gallery.

13 We're in a small courtroom. So somebody either
14 needs to take it upon themselves to be the
15 representative for the I'On citizenship and sit outside
16 the door and keep them from coming in and out, or make
17 sure they get here and are seated before we even get
18 started with anything. Okay. That's not the
19 plaintiff's attorney's fault. It's certainly not
20 Yancy's fault, but the disruption in and out, I'm not
21 going to have. Okay.

22 All right. We're still down a juror. I'm still
23 waiting for the note from Ms. Shuler about what her
24 current concern is. I think y'all are letting Altman
25 -- Charlie Altman know what the issue is. This might

1 be what we need right now. Have we got her note yet?

2 THE BAILIFF: Yes.

3 THE COURT: Oh, we got them all?

4 THE BAILIFF: Yes, ma'am.

5 THE COURT: What about the note Ms. Shuler was
6 writing; do we know if she's finished with that yet or
7 not?

8 THE BAILIFF: I'll check.

9 THE COURT: Thank you, Mr. Pryor. I appreciate
10 that. We are still waiting, but if you have something
11 go ahead.

12 MR. LUCEY: Yes, ma'am. First, I did hand up to
13 the Clerk, that's the stipulation that we filed on
14 Saturday night --

15 THE COURT: Great.

16 MR. LUCEY: -- relating to the exhibit.

17 (WHEREUPON, Court's Exhibit No. 2 was marked and
18 made a part of the record.)

19 MR. LUCEY: And, secondly, Your Honor, as
20 previously discussed or argued, plaintiffs opposed a
21 motion to take judicial notice of those facts. They
22 are disputed facts. And I do believe we did argue it
23 during pretrial motions. I think this is being
24 reargued as some other motions that happened several
25 times --

1 THE COURT: Well, I think I asked Mr. Duffy to
2 send me the pertinent excerpt from the transcript and
3 that I would deal with it when it became an issue.
4 Okay.

5 MR. LUCEY: And just to remind the court what we
6 previous -- part of what we previously argued -- is
7 that -- for instance, with Mr. Russo, he was given the
8 opportunity in his deposition to affirm that, in fact,
9 it was perpetual; he did not do so. The --

10 THE COURT: Why are we rearguing it now if you
11 don't want to reargue it?

12 MR. LUCEY: Thank you, ma'am.

13 THE COURT: Okay. I appreciate it. I'm aware and
14 when it becomes an issue, we will address it. What
15 else can we take up before we open? And thank y'all
16 for your tolerance yesterday, we never got any storm
17 out at Folly, but apparently it was bad enough in North
18 Charleston that it knocked Comcast out in certain parts
19 of the Tricounty for hours, so...

20 (PAUSE.)

21 THE COURT: Let me check on that note. Counsel,
22 I'm not going to read this whole thing for the record,
23 but we'll make it an exhibit.

24 (WHEREUPON, a bench conference was had.)

25 MR. DUFFY: My only concern is to find out if she

1 was talking to the other jurors.

2 (PAUSE.)

3 THE COURT: Okay. She has not discussed it with
4 any fellow jurors. I also went the extra step and
5 asked her, how did you figure this out? Did you go
6 home and talk to him? She said, no, ma'am, he's out of
7 town. But when I heard your presentation, I realized I
8 had heard information, so I am going to excuse her and
9 substitute in the first alternate. And we will make
10 this a court's exhibit. I don't know that it really
11 needs to be, but just out of an abundance of caution.
12 Okay.

13 (WHEREUPON, Court's Exhibit No. 3 was marked and
14 made a part of the record.)

15 THE COURT: Okay. Anything else we need to take
16 up? Everybody is here now.

17 MR. LUCEY: No, Your Honor.

18 (Juror Number 322 was excused.)

19 (PAUSE.)

20 THE COURT: All right. Okay. I think we are
21 ready for the actual trial part. Y'all ready for
22 opening statements?

23 MR. LUCEY: Yes, ma'am.

24 THE COURT: Just let everybody know, I'm sorry to
25 be tough about this, but it became a problem last time.

1 I'm intent that it not become a problem this time, so
2 if anybody is loud or bothersome or shaking their head
3 a lot and being animated, you will be asked to excuse
4 themselves and not come back. Okay.

5 One more thing, juror number 367, her husband is
6 having surgery on Monday, is concerned about the trial
7 going into next week. Please reassure her. I will do
8 that. We'll work late and go into Saturday before we
9 go into next week, but I trust that these attorneys can
10 move this along in a streamlined fashion. So let me do
11 that really quickly before we get started so that she
12 can give her full attention to y'all.

13 (WHEREUPON, Court's Exhibit Number 4 was marked
14 and made a part of the record.)

15 (PAUSE.)

16 THE BAILIFF: Ready, Your Honor?

17 THE COURT: Yes, ma'am. Thank you very much.

18 (WHEREUPON, the jury enters the courtroom at
19 approximately 9:56 a.m.)

20 THE BAILIFF: All jurors are present, Your Honor.

21 THE COURT: Thank you, sir. I appreciate it. All
22 right. Good morning, ladies and gentlemen. Thank you
23 for your patience. We had a few housekeeping matters
24 that we needed to work out this morning. I thank you
25 also for your understanding yesterday in leaving before

1 the flood that did not happen. Apparently parts of the
2 Tricounty got hit pretty hard, but some got no storm at
3 all. So I do appreciate y'all understanding that we
4 needed to err on the side of caution.

5 Trust me, if you haven't been caught downtown in
6 the flood before, it's not somewhere you want to be.
7 So I would ask that you give your -- I would ask that
8 you give your kind attention to the attorneys. I'm
9 having a little bit of a crowd control problem here. I
10 promise that will not continue past today -- probably
11 past this morning. But if at any time you cannot hear,
12 please raise your hand and let us know. There is an
13 echo in this courtroom and it's important that you be
14 able to hear everything the attorneys and the witnesses
15 are saying.

16 So with that being said, I will call on Mr.
17 Lucey for the opening statement of the plaintiff.

18 MR. LUCEY: May we approach, Your Honor?

19 THE COURT: Certainly. Come on up.

20 (The following side bar was reported.)

21 MR. LUCEY: I'm not sure the jury has been sworn.

22 THE COURT: Oh, good point. Thank you very much.

23 (End of side bar.)

24 THE CLERK: If the jurors would all please stand
25 and raise their right hands.

1 (WHEREUPON, the jury was given their oath.)

2 THE COURT: All right. Thank you very much. And
3 thank you, Mr. Lucey. I appreciate that. Yes, sir.

4 MR. LUCEY: May it please the court. I'On is a
5 new neighborhood in a larger scheme. It was founded
6 during the years 1995 through 1997. The first house
7 was sold first -- the first lot was sold probably in
8 1998. And by the early 2000's, it actually grew into a
9 neighborhood of people, a community of houses.

10 And for the succeeding years, those people -- as
11 the neighborhood continued to grow, they enjoyed their
12 amenities -- the community amenities -- the benefits
13 that came with the community. And these amenities
14 included -- what was known as the community dock. The
15 community dock that was located in the only -- on the
16 only -- in the only deep water in I'On, with 300 feet
17 of deep water, 300 feet of I'On land that sits on deep
18 water on Hobcaw Creek.

19 Now, there is some other waterfront in I'On,
20 it's on what you will see in evidence, it's referred to
21 as a Hobcaw Creek tributary -- a tributary, a tidal
22 creek. And you will be shown pictures of this tidal
23 creek at high tide by the defendants and at low tide by
24 the plaintiffs.

25 And so when we refer to the 300 feet of deep

1 water on Hobcaw Creek, I want to be clear that I'm
2 referring to, not the marsh water on there on the
3 side -- that was -- that tributary was later renamed
4 Shelmore Creek. A long time ago, they called it the
5 marshes of Hobcaw Creek and got it renamed Shelmore
6 Creek.

7 So the residents enjoyed the community dock on
8 Hobcaw Creek. And that was a fixed pier, a nice fixed
9 pier. At the end of the fixed pier, there was a
10 beautiful little pavilion, a gazebo, and a ramp down to
11 a floating dock where maybe you could tie up four or
12 five boats or you can lay out sunbathing, whatever
13 suited your fancy.

14 And a little ways over from the community dock
15 was the launch, the ramp. The place where you put the
16 boat in so you can go then tie up on the dock. It was
17 a community launch.

18 And next to this community launch, is what's
19 called a staging dock. It's a much smaller dock just
20 meant for you to tie up your boat for a few minutes.
21 while you go park the car, come back, get the boat and
22 move it out of everybody else's way.

23 And all this -- all these facilities -- these
24 amenities that these residents were enjoying were
25 located on a piece of real estate, a single piece of

1 real estate. And that piece of real estate was called
2 C V as in Charlie/Victor -- C V for civic, civic use,
3 civic lot number number six, CV-6.

4 And between the ramp and the access to the pier
5 was a path. It was like a park. You could walk from
6 the parking area that was behind the ramp, where you
7 put the boats in, to the ramp or along the front of the
8 property, enjoy the view or go on down to the dock.
9 And this path didn't stop when you could turn right to
10 go to the community dock, the path actually went on to
11 the left.

12 And when you get to the end of this open area,
13 this green area on the left hand corner of CV-6, this
14 path connected on to something called the Marshwalk
15 Path. And the Marshwalk Path would continue on, in
16 front of the remaining residential properties for a
17 distance of a half mile, as the crow flies, or two and
18 a half miles if you weave in and out with the path and
19 all the inlets. So the residents enjoyed this amenity,
20 an amenity they understood had come with their
21 neighborhood, until the Fall of 2008.

22 In the Fall of 2008, the residents learned that
23 this set of amenities was being sold. It was being
24 sold to a private entity, a profit making private
25 entity. On the back of the CV-6, there had been built

1 a Creek Club, a venue. And the developer was selling
2 the venue, which from time to time had been used for
3 weddings or meetings or whatever else, they were
4 selling the venue, the Creek Club, and they were
5 selling the docks and the ramp and the parking and
6 everything else with it.

7 Needless to say, that caused quite a bit of
8 consternation in the neighborhood and you'll hear about
9 some of it, and it took a variety of different forms.
10 Some of it was Assembly meetings -- Assembly is what
11 the I'On residents call their homeowners association,
12 the I'On Assembly. So there were Assembly meetings,
13 homeowner meetings and there was various town issues
14 and what have you. There was quite a bit of dispute.

15 But six months later on March 25, 2009, the deal
16 was terminated and the developer -- and you see it on
17 the screen, Exhibit 58 -- wrote the I'On assembly, gave
18 them an update for their meeting that was going to take
19 place on that day. They said, "the deal is off". Mike
20 Russo and partners had withdrawn their proposal for the
21 Creek Club. The homeowners were obviously relieved.

22 They didn't just say that. They said the I'On
23 Company is preparing to deed the community dock to the
24 Assembly, same exact e-mail, same day March 25, 2009.
25 The Assembly is going to get the recreational

1 facilities.

2 Unbeknownst to the Assembly at the time, though,
3 as seen by this March 25th e-mail from Tom Graham, who
4 you will learn is the majority owner of the I'On
5 Club -- excuse me -- of the I'On Company that owned the
6 I'On Club -- okay -- the majority owner. He's writing
7 that he's received a certain clarification from his
8 attorneys that day and he doesn't see any reason to
9 transfer the dock to the homeowners again. But this
10 e-mail is not shared with the homeowners, it is shared
11 with who else? Russo, the buyer who has allegedly just
12 cancelled his contact hours earlier. Negotiations
13 start the same day. They tell the Association they're
14 transferring them the docks.

15 They go on and continue to negotiate the next
16 day, March 26th, as will be shown by the e-mails, one
17 of which is on the screen. And by -- there's several
18 on the screen. And by April 8, 2009, as seen in this
19 e-mail, employee Chad Besenfelder, the manager of the
20 I'On Company -- and we'll get into the -- the
21 entities -- I don't want to throw too much at you right
22 in the first couple paragraphs here, we'll get into the
23 entities in more detail in a minute. But Chad
24 Besenfelder is their manager.

25 He writes to the Grahams on April 8, 2009, that

1 the deal is back on. Nobody tells the homeowners.
2 During this period of time, the homeowners association
3 and the homeowners and the developers continue dialogue
4 about this park issue, the transfer, the Creekside Park
5 that some of the homeowners asked about, the dialogue
6 continues. At no time, the evidence will show, did the
7 developer ever tell the Assembly or the homeowners that
8 the deal was back on.

9 And it wasn't, until as evidenced by this August
10 1, 2009 e-mail on your screen now, that the Assembly
11 learned that the deal was back on. And they just
12 happened to learn it because the closing attorneys, the
13 evidence will show, called the management company to
14 ask if any liens were owed or assessments were owed for
15 the closing. And the management company called the
16 Assembly and said, by the way, you might want to know,
17 we just got this call. We don't know what it's all
18 about. And the evidence will show that Mr. Kinney flew
19 into town to meet with the developer, to try to do
20 something about this and was unsuccessful.

21 And, in fact, four days after that August 1,
22 2009 e-mail -- and we'll show you the Assembly was
23 still trying to negotiate this at the time not knowing
24 this was going to happen -- four days after the August
25 1, 2009 e-mail, on August 5th, 2009, that parcel of

1 land and the docks and the boat ramp and the parking
2 were sold by the developer for \$1.4 million dollars.

3 And what I haven't mentioned to you yet was that
4 the overflow parking for this recreational facility was
5 located up the road, because there wasn't enough
6 parking on this parcel. The overflow parking was sold
7 the same day, the same time, the same transaction for,
8 I believe, it was approximately \$275,000.

9 To understand how all this happened, and what --
10 what does it say here -- and for the community
11 expectations, one must go back in time. One must go
12 back to the founding of I'On. Before we do that, let
13 me just show you a couple of pictures of the
14 facility -- the recreation facility that I was
15 describing to you.

16 This is what the residents called the community
17 dock. And you see the architectural feature at the end
18 of that community dock. And the evidence will show
19 that a picture similar to that is what was put in the
20 Impact Assessment, the 1997 Impact Assessment, that was
21 filed with the Town of Mt. Pleasant to get the
22 ordinance permitting this subdivision to proceed.
23 Almost identical to what you're seeing right there.

24 There is the -- that arrow there is showing you
25 the ramp down to the floating dock, behind here is the

1 overflow parking -- excuse me -- the main parking. And
2 the boat ramp -- we'll see that in another picture -- I
3 apologize for the darkness of this picture -- but this
4 is the other side of the property showing you the boat
5 ramp. We will get you a better picture later in the
6 day -- here's a better picture now -- showing you the
7 left hand side. And you see on the back part of the
8 parcel is the Creek Club wedding venue that I mentioned
9 to you previously.

10 This is located -- I'm on is essentially a
11 rectangular piece of property -- and on the screen --
12 that sits between Mathis Ferry Road and Hobcaw Creek.
13 And on the screen -- and the tributary, Shelmore Creek.
14 You see Hobcaw Creek at the top right, the tributary
15 Shelmore Creek comes in up to the left. This is the
16 top half of that rectangle if you were looking from
17 Mathis Ferry. And at the very far end, is where you'll
18 find CV-6.

19 And this is an early drawing of what that parcel
20 was to look like with its dock. And you can see -- if
21 my laser will work here -- you can see off to the left
22 here, the Marshwalk path that I previously described to
23 you. It runs all the way around the tributary, that's
24 the path that CV-6 connects to.

25 And here's the overflow from the air -- excuse

1 me -- an overshoot from the air. There's your main
2 community dock, your floating dock, the boat ramp and
3 staging dock, your tributary, Shelmore Creek here.
4 And, too, what we'll see in various publications I
5 refer to as crabbing docks that are on Marshwalk. And
6 we'll be coming back to those crabbing docks.

7 So to go back in time, on the screen now is a
8 1998 document, November 1998, it's called a HUD
9 Property Report. It's Plaintiff's Exhibit No. 1. It's
10 dated November 3rd, I believe. And that document was
11 filed -- we'll show that in evidence -- was filed with
12 the United States Government as a disclosure by the
13 developer, as to what they were going to do with the
14 I'On subdivision. It was filed so that they could then
15 hand that document out to prospective purchasers, and
16 tell the purchasers what they were going to do in the
17 subdivision.

18 In fact, the document itself, you'll see, was
19 signed by the developer. It reads "Federal Law
20 requires that we give you this report prior to you
21 signing a contract to purchase this property". And we
22 see here, this is signed by Vince Graham. Vince Graham
23 is Tom Graham's son. I mentioned Tom Graham earlier.
24 Vince Graham owns about a quarter or 30 percent of a
25 number of the entities -- the I'On entities that we are

1 going to discuss today. He's also the complete owner,
2 the 100 hundred percent owner of a company called the
3 I'On Group.

4 The I'On Group is a management company that
5 manages and acts for the other I'On entities. In other
6 words, the I'On company, T.I.C, the parent company
7 doesn't really have employees or people -- employees or
8 people, it has a management company owned by Vince
9 Graham that carries out all of their work. That
10 management company employs Chad Besenfelder. And we
11 will show you some e-mails where it is the I'On Group
12 and Chad Besenfelder writing on behalf of the I'On
13 company and they are the management company.

14 But getting back in time of Vince Graham's
15 signature on the Property Report, this report as is
16 apparently required, has a list of amenities. That's
17 one of the purposes of the report, is to tell people
18 what the recreational facilities will be. And we'll
19 see in phase II, there is a list of amenities. Phase
20 II is where CV-6 is, or it's the portion of the
21 property that was the second phase in I'On.

22 And in this list of amenities, there was a park,
23 Creekside Park. The second one was community dock.
24 The third one has the sidewalks, paths, such as the
25 Marshwalk Path and trails, and that was what was

1 given -- that was what was put in this Property Report
2 that was handed to plaintiff, Brad Walbeck, sitting
3 here in the white shirt. He's my client, as is Lea Ann
4 Adkins next to him, she's my client. They are
5 homeowners in I'On. They both received this Property
6 Report.

7 Mr. Walbeck received it when he looked at
8 purchasing a property in November of 1999. Ms. Adkins
9 received it, I believe, in early 2003. They are my
10 plaintiffs here, not just individually, but
11 derivatively.

12 The judge will instruct you on the law at the
13 close of the case, but a derivative action, just
14 generally speaking, is that when a corporation or
15 association doesn't take some act or action to enforce
16 rights that it has, a member or a shareholder can make
17 a demand on that corporation, you do this. And if the
18 corporation doesn't do it, then the member or
19 shareholder can act in that entity's behalf, which is
20 what Mr. Walbeck and Ms. Adkins have done in this
21 matter. They have brought suit, not only in their own
22 behalf, but on behalf of the neighborhood association
23 that didn't receive the amenities that they claimed
24 that they were supposed to get.

25 And we'll see here that the developer in this

1 Property Report, Plaintiff's Exhibit No. 1, set forth
2 "we are responsible for the construction of these
3 recreational facilities. The recreational facilities
4 listed in the above chart" -- the quote on the screen
5 -- "shall upon completion be conveyed" -- conveyed as
6 in deed -- "to the I'On Assembly, Inc. by Quit Claim
7 Deed free and clear of all monetary liens and
8 encumbrances at no cost to the I'On Assembly or its
9 members". That's what their report sets forth.

10 It went on to say "the recreational facilities
11 listed in the chart above will be available for use by
12 lot owners and other members of the Assembly, Inc.,
13 including the developer, and their respective guests".
14 All right. That's who's going to be able to use these
15 amenities, the Assembly members, the developer and
16 their guests. Not the public, not other neighborhoods.

17 It goes on to say there may be additional
18 facilities which will be in this neighborhood, which
19 are not on this chart, that might be tied into some
20 private or member entity that you got to join, but the
21 amenities in the chart are getting conveyed to your
22 Assembly and you don't need to join anything else to
23 enjoy that. And, again, this was signed by Mr. Graham.

24 And at the back of this report, there was a
25 receipt, a blank page. And every prospective purchaser

1 of I'On in this timeframe who was given this report,
2 was required to sign this receipt so that everybody
3 would know they had properly gotten the report. And
4 the receipt itself said, we must give you a copy of
5 this Property Report prior to you signing any contract.

6 And we will show -- on the screen now is
7 Plaintiff's Exhibit 115-a, which is in evidence, is a
8 list of people whole received the very Property Report
9 we're talking about.

10 Well, the developer didn't just make this
11 representation to the perspective purchasers and to the
12 Federal Government in the HUD registration, the
13 developer made the same representations to DHEC and to
14 the Army Corps of Engineers, which I'll sometimes refer
15 to as COE, Corps of Engineers.

16 This, on the screen, was a dock application
17 cover letter and here's is the Army Corps of Engineer
18 application to both the State and the Federal
19 Government, they made an application to construct six
20 community docks and these docks would be for the
21 purpose and for the use of the I'On Assembly members.
22 And you see here, it's for the private -- all the
23 docks. All the docks are for the private recreational
24 use of the residents within the I'On community.

25 They went on to represent that one significant

1 feature of the plan preserves the entire approximately
2 one half mile of waterfront for community access, again
3 representing the purpose of the proposed structure was
4 for the common recreational use of the residents within
5 the I'On community.

6 With this application were 14 sheets of
7 drawings, a drawing of everything they wanted to do.
8 Every sheet at the bottom right hand corner, where you
9 see the L, said Proposed Activity Community waterfront
10 Recreation.

11 On the screen now is Plaintiff's Exhibit No. 5,
12 which is a sheet I believe four of 14 in those 14
13 sheets I just showed you. This is the Plan View of
14 Dock Number One. And you will see that this resembles
15 the parcel we've been talking about, CV-6. We're going
16 to highlight some components so you can see them.
17 We've just highlighted for you in red, the area of the
18 pavilion, the gazebo, and the floating dock.

19 Dock one also -- the plan for dock one also
20 included the ramp over here to the right, which had to
21 be permitted. It also included up here on the right is
22 an arrow here showing the staging dock, which would be
23 next to this ramp. And again, it was all referred to
24 when talking with the State and Federal Governments as
25 the plan for dock number one.

1 In the center of this plan that was submitted to
2 the State and Federal Governments for permitting, to
3 get these docks that you might not have otherwise been
4 able to get, there was a representation as to CV-6.
5 And you see it on your screen now, HOA, homeowners
6 association. You'll see that same HOA on other
7 amenities on their plans such as the Marshwalk. And
8 there can't be no dispute about the Marshwalk being HOA
9 property.

10 Well, the COE actually received a few
11 neighborhood objections from other neighborhoods to the
12 proposed dock plan, so they wrote the developer. They
13 wrote our developer. They said we have these
14 objections, what is your response. And to be more
15 accurate, they wrote our developer's agent, Newkirk
16 Environmental, the engineers handling the dock matters.

17 And they said what is your response to these
18 objections? And, again, the developer wrote back,
19 repeated his representation, that it is important to
20 note that the I'On's master plan does not provide for
21 individual docks. The six docks requested by the I'On
22 company are for the use and enjoyment of the I'On
23 community and are proposed in lieu of private docks
24 along approximately 2600 linear feet of waterfront.
25 That representation was then repeated by the COE to the

1 public when the COE issued its decision document on
2 February 28, 2000.

3 The COE's decision itself says it's important to
4 note -- and it quoted the representation I just read to
5 you -- and it's up on the screen in red again. That's
6 straight out of the Newkirk Environmental letter.

7 In fact, you've heard me reference the HUD
8 ordinance a few minutes ago, the 1997 -- excuse me --
9 it says HUD ordinance -- that's a mistake. It should
10 say Town of Mount Pleasant Ordinance. You heard me
11 reference the 1997 ordinance previously, the Town of
12 Mount Pleasant received similar representations from
13 the developer as to the docks and the parks.

14 And here is an excerpt on the screen now from
15 the Impact Assessment that was filed by the developer
16 with the town to get that ordinance passed, and notably
17 this Impact Assessment was incorporated by reference
18 into the ordinance, giving the authority. So the terms
19 of the Impact Assessment are part of the ordinance now.

20 And, again, it represents that the entire
21 waterfront is going to have -- the entire community is
22 going to have access to the entire waterfront and that
23 residents will have access to the waterfront at road
24 endings and in established parks, similar to -- and it
25 gave several examples, the Old Village in a development

1 called New Point, down in Beaufort, that the developers
2 had previously developed.

3 We've already discussed that Mr. Walbeck went to
4 contract on November 27, 1999. He had a copy of this
5 1998 HUD Property Report before he went to contract.
6 And his contract actually had a list in it, a list of
7 amenities. And you will see on the screen now the
8 paragraph in front of those amenities, it says you
9 cannot rely on anything except for the below chart and
10 the Property Report in your purchase of this property.

11 Well, what happens to be in the below chart is
12 identical to what we saw in the HUD Property Report.
13 It has the Creekside Park, that would be down there to
14 get access to those docks. The community dock, then
15 separately the sidewalk paths and trails in phase II.

16 Notably, when it is an amenity, it's going to be
17 in two phases, such as the Marshwalk Path, it's listed
18 in two phases, whereas the community dock is only
19 listed in phase II. And that will become more relevant
20 at the case proceeds.

21 This contract with Mr. Walbeck and the I'On
22 Company was signed by another I'On manager that you'll
23 hear lots about this week, a gentleman named Joe
24 Barnes; and you see his signature on the contract,
25 December 7, 1999. Well, obviously unknown to Mr.

1 Walbeck at the time, December 7, 1999 -- remember
2 that's his contract date -- the evidence will show that
3 prior to that, the developer had been negotiating with
4 the neighborhood next door, Olde Park, to sell Olde
5 Park access to the I'On waterfront. And that that --
6 the evidence will show, that negotiation had been
7 taking place for a full year while the November '98
8 Property Report was in existence, and will show that it
9 actually -- it actually came to fruition before the
10 signed agreement.

11 It came -- there was a signed agreement, an
12 informal signed agreement in March of 1999, seven
13 months before my client got a contract. This is just
14 the formalization of the March 1999 agreement. But at
15 any rate using this date, obviously unbeknownst to my
16 client, the Olde Park agreement -- the selling access
17 to the community dock and to the ramp, which has been
18 represented to State and Federal governments as I've
19 just shown you as being for the I'On residents, they
20 sold it for \$450,000, and they got an acre of land with
21 it, and they made five more lots between Olde Park and
22 I'On.

23 They don't -- don't let me mislead you, they
24 didn't just sell the amenities for \$450,000 or access
25 to the amenities, they also sold some utilities

1 hook-ups and a few other things, so the two
2 neighborhood developers could cooperate. And I
3 mentioned to you that this deal was in place prior to
4 that December contract that I've shown you.

5 I'm showing you now an October 6, 1999,
6 memorandum whereby Vince Graham -- excuse me Tom
7 Graham, the father, is directing his accountant that
8 \$100,000 of the \$450,000 will be used -- but that
9 they're getting access to I'On amenities -- will be
10 used to construct this Creek Creek Club venue on the
11 back half of CV-6..

12 On January 10, 2000, the I'On Company wrote Mr.
13 Walbeck a congratulations letter. No mention that the
14 deal was different with the community docks and the
15 boat ramp, or that an Olde Park deal even existed or
16 that the Property Report was no longer accurate. No
17 disclosure.

18 July 25, 2000, another letter from I'On to Mr.
19 Walbeck; no disclosure of any of the changes that have
20 taken place. Mr. Walbeck goes to closing -- actually
21 buys the property on March 31, 2000. And we can see
22 here his contract on his deed, on March 31, 2000, was
23 signed by the same Joseph Barnes who signed the Olde
24 Park deed deal on December 22, 1999. So Mr. Barnes is
25 at this closing, signing this deed, still no disclosure

1 to Mr. Walbeck that there has been a change in the
2 docks, boat ramp or the Creekside Park.

3 Ms. Adkins went to contract on February 1, 2003.
4 She also received the Property Report that we discussed
5 earlier. And at this point, I want to go back and I
6 want to fill -- flush out the Olde Park changes just a
7 little bit.

8 And so to do that, I'm going to discuss a
9 recreational easement. And the Olde Park deal was
10 going to be that the Olde Park residents could access
11 the -- what was supposed to be the I'On Assembly
12 amenities through the Creek Club. They would have to
13 buy an ownership in the Creek Club. That would be
14 revenue for the I'On Company and the Creek Club. So
15 obviously the amenities would have to be in the Creek
16 Club, not in the Assembly's name, for the developer to
17 make this deal work.

18 So -- again, unbeknownst to the homeowners at
19 the time or the purchasers, the I'On Company created
20 something called a recreational easement. I think that
21 it's also called an agreement to share costs. Now,
22 they did that on February 9, 2000. Again, this is
23 while Mr. Walbeck is under contract and before he
24 actually buys the property.

25 In this agreement, they have the club owner

1 getting an easement -- the Club, you have to keep in
2 mind -- is owned by the developer through the I'On
3 Company. So the developer is going to get -- through
4 the Club -- is going to get an easement to the
5 Assembly. They're no longer going to get a deed to
6 those amenities, but -- no longer going to be
7 "conveyed" as the word was used in the Property Report.

8 And the -- if you actually read this easement on
9 page three, and you got as far as page three, you would
10 see the word "perpetual" -- be a perpetual easement.
11 So even if the owners aren't getting title, they'll
12 have access forever, right? Who cares.

13 Well, if you got far enough into this
14 complicated legal document to get to page eight, you'd
15 find a paragraph called "term". That's on the screen.
16 And the term says it's for 30 years. And it can be
17 cancelled by either side after 30 years.

18 Well, this easement became an issue when it was
19 learned that the docks and ramps, et cetera, were being
20 sold to a third party -- a private money making entity.
21 At the point this easement became an issue, it was nine
22 years old. It only had 21 years left to go. That's
23 college age for many of the resident's kids in I'On.

24 We'll see this easement, as signed by the same
25 Joe Barnes that we saw as signing all the other legal

1 documents, so we know he knows all these documents
2 exist. And it happens to be Mr. Barnes signs not only
3 on behalf of the club owner, the I'On Club, he also
4 signs this easement on behalf of the developer, the
5 I'On Company, which you'll occasionally hear me refer
6 to as TIC, The I'On Company, TIC, the parent company.

7 And Mr. Barnes goes on to sign, as you see in
8 the bottom right hand corner, on behalf of the
9 Assembly. Okay. He is signing that for all three
10 parties for this easement.

11 As you can tell at this point in time -- if
12 you'll pause for a second on a side for a different
13 issue -- Assembly, homeowners association, the evidence
14 will show, are typically controlled by the developer
15 for a certain period of time. And actually, usually
16 it's through a master deed provision, what have you.
17 And our master deed is in evidence. And it reads --
18 I'm going to summarize -- but it basically reads that
19 the developer has a veto power over this association
20 until he sells his last lot, or the year 2018, or
21 something to that extent.

22 Now -- actually by about 2005, transitioning to
23 2006, there were a lot more homeowners on the Board
24 and -- and -- but the developer retained his control
25 through this process. And that will become more

1 relevant to you as the evidence progresses.

2 But on the screen now is just a comparison
3 showing you Mr. Barnes signing both the easement on
4 February 9th and the Walbeck deed on March 31st, and
5 the order of those documents.

6 Well, on the screen now is Plaintiff's Exhibit
7 No. 11. It's a deed. And y'all know a deed transfers
8 property from one entity or person to another. This is
9 a deed. This is a deed for CV-6. This is a deed
10 whereby the I'On Company now, instead of putting these
11 amenities in the Assembly with the word "convey" that
12 we saw on the Property Report, is conveying instead to
13 the I'On Club which it owns, a private profit making
14 entity. And you can see the deed is again signed by
15 Joe Barnes, the same gentleman who signed all the other
16 documents on the 15th day of August, 2000.

17 Well, that presents a problem. Why? Because
18 the easement that the Club gave to the Assembly was
19 signed on February 1, 2000. The Club didn't own the
20 property when they gave the easement. It's out of
21 chain of title.

22 June 2005, I mentioned to you that the
23 homeowners started participating more in the Board of
24 Directors for the Assembly, and the parties executed
25 what's on the screen now as a handover agreement to

1 provide for the orderly transition of the amenities
2 from the developer to the association. And basically
3 the agreement provides that whenever the developer is
4 ready to transfer an amenity, it will notify the
5 association. They'll inspect it together. They'll
6 give them information. They'll inspect it together.
7 And the representatives of I'On Assembly will tell the
8 developer whether the asset -- the amenity is ready to
9 be received, whether it's ready to transfer, whether
10 it's in good shape or not, whether it's in good repair.
11 And if there's repairs needed, that the developer would
12 make those repairs.

13 I believe on the screen now is Plaintiff's
14 Exhibit 46, I'On facts sheet. They would revise this
15 fact sheet over time. It provided -- it disclosed the
16 then prospective purchasers and then homeowners that
17 already owned in the community, that the boat landing
18 and community docks on Hobcaw Creek and Shelmore Creek
19 are available to all I'On residents.

20 You repeatedly will see, in all of this
21 documentation by the developer through this time
22 period, there is no mention of an easement. There is
23 no mention of an Olde Park deal and there's no mention
24 of the property going to the Club instead of the
25 Assembly. The evidence will show as far as the

1 Assembly knew, those amenities were still being held by
2 the developer until they were ready to transfer them to
3 the homeowners association, which is why it was such a
4 surprise in the Fall of 2008 when the developer instead
5 contracted to sell these amenities to a third party. A
6 2006 fact sheet, the same representation.

7 In fact, on the screen now is Plaintiff's
8 Exhibit 201, it's an e-mail where the -- Mr.
9 Besenfelder, who you've seen before, the I'On Company
10 manager, is writing I believe it's the management
11 company regarding the status of the amenity turnovers.
12 And as of 2006, they are still saying -- they are still
13 not saying we're not going to turn over the dock or the
14 ramp for the Creekside Park, they are saying a few
15 areas within these phases, including the boat ramp and
16 amphitheater, may be kept in the I'On Company's
17 ownership until easements of use can be determined and
18 documented -- can be determined and documented. That's
19 future tense. That's not past tense. That's not
20 saying, hey, by the way, there's an easement back in
21 2000, you are not getting it.

22 Fall of 2007, there's an Assembly meeting that
23 the I'On Company manager attends on behalf of the
24 developer, wherein the transfer of the docks and the
25 boat ramp, et cetera, comes up. And they say they are

1 ready to transfer them. No mention of the easement.

2 No mention of the prior deed.

3 They are told by the Assembly Board that we need
4 to see what condition the docks are in. Please get
5 with Ward Mundy, and you two work through it and let us
6 know when you're ready. We'll show that nothing
7 further happened with Mr. Besenfelder at that time.
8 But here we have an e-mail on the screen, Plaintiff's
9 Exhibit 85, an April 2008 e-mail where Mr. Besenfelder,
10 the developer/manager, is writing the State of South
11 Carolina, and he says we are ready to deed this
12 community dock and boat ramp to the homeowners. And
13 that is in the second e-mail that is written to
14 S.C.D.N.R, the Department of National Resources, to
15 solicit their advice on whether or not they've properly
16 set up the docks with rules and regulations.

17 I mentioned we would come back to the
18 relationships of the companies before and I've already
19 revisited that issue once briefly. I'm just going to
20 use this April 2008 e-mail to illustrate the
21 relationship of the company. You see that this -- we
22 are looking at blow-ups from the bottom e-mail on
23 Plaintiff's Exhibit 85. It is from Chad Besenfelder,
24 and you can see his e-mail is at the I'On Group.com.
25 He is working for the management company.

1 He is writing his e-mail on behalf of the I'On
2 Company -- so on behalf of I'On Group and behalf of
3 I'On Company. Well, obviously, since we know that
4 that's now owned by the Club, not the I'On Company,
5 he's also writing on behalf of the I'On Club, so we see
6 how he is writing on behalf of all three entities at
7 the same time.

8 And that's important for a reason we'll discuss
9 after we finish the background of this current dispute
10 in more detail. But it's important because it's one of
11 the plaintiff's allegations that the entities are
12 essentially inseparable. They act as one. They don't
13 maintain legal distinctions and they should be treated
14 by you as one, but we will return to that issue later.

15 And, again, here we see a representation by the
16 I'On Company to Russo that even when this September --
17 this Fall 2008 deal first comes up, he says that the
18 boat ramp and dock are to remain I'On Company property
19 and that the I'On Company plans to convey the docks and
20 boat ramp to the HOA. And, again, this is important
21 not just -- not just -- this is their intent right now.
22 We are still supposed to get our docks, even while this
23 third party sale is materializing.

24 But look at Mr. Chad Besenfelder's use of the
25 words "HOA", the same HOA that you saw on Plaintiff's

1 Exhibit Number 5, which was the representation to the
2 COE and DHEC as to the ownership of CV-6 when they
3 applied for those dock permits. September 9, 2008, Mr.
4 Besenfelder again writes to the potential buyer,
5 telling him he's not going to sell the docks, saying
6 the docks were promised handovers to the homeowners and
7 Vince would like to honor that some day. It can't get
8 much more clearer than that we would submit to the
9 jury.

10 Well, it's still didn't happen. And as the
11 evidence will show, the docks eventually became part of
12 that deal in the Fall of 2008, Spring of 2009, that --
13 on March 25, 2009, the docks and ramp became part of
14 that. The evidence will show you that, so they weren't
15 transferred yet.

16 And so what you have on the screen now is
17 Plaintiff's Exhibit 53, which is a February 2009
18 homeowner demand by a homeowner named Catherine
19 Templeton; a homeowner demand on the Board of
20 Directors, the recipient up there is Bruce Kinney.
21 He's the chairman on the I'On Assembly, the homeowners
22 association board, saying you have -- here is a copy of
23 of the Property Report, Plaintiff's Exhibit No. 1,
24 where they promised us the Creekside Park and the
25 community dock. You have a duty -- you are on notice,

1 we want you to go take steps and procure these
2 properties for us. And she specifically references the
3 community dock.

4 And this eventually results in a March 11, 2009
5 letter from the Board of Directors of the Assembly to
6 the developer as Plaintiff's Exhibit 56, wherein the
7 Board of Directors -- and keep in mind, some second
8 owners -- some people bought in later, didn't see the
9 '98 Property Report. Some people bought through
10 builders and never got a copy of the report, so some
11 people in I'On haven't even seen it. And Mr. Kinney is
12 writing to the developer. He's saying we've just
13 gotten a copy of this '98 HUD Property Report and the
14 Impact Statement. And, again, the Impact Statement was
15 incorporated into the Mount Pleasant ordinance. That's
16 part of the Mt. Pleasant's ordinance.

17 And saying we want you to transfer these
18 amenities and please include the Creek Club Dock and
19 access to the dock in that documentation of this
20 transfer, making a demand now on the developer. He
21 went on further to say, the HUD report lists a
22 Creekside Park as part of the recreational facilities
23 that were going to be started and completed at the same
24 time as the docks. Would you please let us know if
25 this park was ever built. And if so, where is it

1 located and whether it has been conveyed to the
2 Assembly; so there is a demand on the developer.

3 We already saw Exhibit 58 on the screen.
4 Apparently, the evidence will suggest that that demand
5 played some role in the termination of that 2008 sale
6 on March 25, 2009. But as we saw at the beginning of
7 my opening statement to you, that was a very temporary
8 collapse. It resumed within hours. And, again,
9 Exhibit 58 that you saw earlier, a representation on
10 March 25, 2009, that the dock is being transferred to
11 the Assembly.

12 During this, Mr. Graham, Tom Graham, wrote to
13 their HUD attorney -- their HUD report attorney --
14 Ms. -- I believe it's Ms. Stubblefield. And he asked
15 about the reference to the community dock and the
16 Creekside Park in the Property Report. And she wrote
17 back to him, that the original Property Report did
18 reference the community dock to be located in phase II;
19 that was to be conveyed to the Assembly. It was there.

20 But in early 2000, "the decision was made" --
21 and those were her words, not mine -- "the decision was
22 made" to have the I'On Club owned and grant an
23 easement.

24 Well, Mr. Graham apparently thought that that
25 was a beneficial explanation because he circulated that

1 e-mail to many people, including Ms. Adkins and the
2 Board of Directors. But he went on -- once he got that
3 clarification, as we saw earlier, he decided it was so
4 benign that he resumed negotiations with Mr. Russo as
5 seen by this 8:10 p.m. e-mail that night, the same day
6 they told the Assembly that they were about to transfer
7 the docks, and that the deal was off. And you've
8 already seen a bit of that.

9 Again, the August 1 is when the Board of
10 Directors learned this was taking place. And
11 eventually they would learn that there had been a
12 contract executed by the parties, the developer, and
13 the third party purchaser. It was a man named Russo
14 and his partner, that owned a company called 148
15 Civitas. So if you hear that entity, those were the
16 respective buyers.

17 They entered this contract -- did not -- on June
18 28th, did not disclose it to -- June 18th. Did not
19 disclose it to the homeowners or the Assembly. And
20 within the contract, the seller specifically referenced
21 the claims of homeowners that are being made in
22 connection with the HUD Property Report that I've been
23 talking to you about for the last 30 minutes. So there
24 can be no doubt that the developer was fully aware of
25 the base -- those claims and the basis for those claims

1 at the time they signed the contract to sell to a third
2 party, because they included it in the contract to sell
3 to a third party.

4 And on the screen now is Plaintiff's Exhibit
5 143, which is the December 15, 2009, letter from the
6 developer to HUD withdrawing the Property Report,
7 withdrawing themselves from the Federal registration.
8 Now, I will tell you there have two two amendments to
9 the Property Report, which we will talk about in a
10 moment, but it wasn't until 2009 that they withdrew
11 their registration completely, and that was done by Mr.
12 Vince Graham.

13 And to this day -- or at least as of the end of
14 last year, the last time we downloaded Plaintiff's
15 Exhibit -- or slide 94 from the internet -- if you go
16 to the I'On developer website, you will see the
17 homeowner's access -- the Assembly's access --
18 unfettered access, unfettered use of the docks and the
19 boating facilities without any mention of an easement,
20 without any mention that in 2000 they were conveyed to
21 the I'On Club instead of the Assembly.

22 The homeowners have brought a number of claims
23 related to this transaction, for lack of a better word,
24 the series of transactions. They brought them to court
25 and they're bringing them to you to resolve. And when

1 I say "the homeowners", it's my two clients and then
2 derivatively on behalf of the Assembly, a homeowner
3 membership.

4 The claims include a claim under the Interstate
5 Land Sales Act, which is the Federal statute that that
6 Property Report was filed under, Plaintiff's Exhibit
7 No. 1. And that Act, the judge will be the one to
8 instruct you on the law at the end of the case, I'm not
9 doing that. I'm just giving you an overview. That Act
10 provides certain remedies. And the homeowners are
11 bringing a claim under that Act.

12 They are also bringing a claim for breach of
13 contract. The Walbeck contract specifically referenced
14 the HUD report in those amendments and they were not
15 provided. People who weren't a party to the Walbeck
16 contract, such as the Assembly, plaintiffs assert were
17 a third party beneficiary of that contract. They were
18 supposed to receive those amenities, they didn't. So
19 it's a breach of contract both as to the contracting
20 party and the Assembly, who was to benefit from it.

21 They've brought claims for breach of fiduciary
22 duty. It's Plaintiff's allegation that a developer
23 owes a fiduciary duty, the -- one of the highest duties
24 we believe known to the development that he creates, a
25 duty to act fairly, truthfully, with full disclosure,

1 and have an arms length transaction the entire way.

2 And an example that will give rise to that
3 fiduciary duty might be that easement you saw, where
4 the same person signed on behalf of all three entities,
5 including the Assembly, Mr. Barnes. We believe that
6 when somebody acts on behalf of more than one entity,
7 he owes a duty in fairness and full disclosure to all
8 the entities, just as the developer owes a duty to the
9 development, to deliver the amenities that he promised.

10 We've brought a cause of action for negligent
11 misrepresentation that you've represented something to
12 us that wasn't true. And you may not have done it
13 purposely, but you did it all the same. It was a
14 material representation. It was wrong. We relied upon
15 it and we've been damaged by it.

16 We've also brought a cause of action for fraud,
17 which says you knew -- you knew it was wrong at the
18 time you made it. And as you can see from the Olde
19 Park transaction, at the time the representations were
20 being made to Mr. Walbeck, they were no longer true.
21 And Mr. Barnes, who was signing every contract, knew
22 they were no longer true.

23 And we've brought a claim, as I referenced
24 briefly earlier, that these entities, these
25 corporations and LLCs, should be amalgamated; that

1 they, in fact, act as one. They don't deserve
2 formalities. They are interchangeable. They represent
3 themselves essentially as the I'On Company to the
4 public or I'On, and that the jury should treat them as
5 one.

6 We've also brought a claim whereby we are
7 requesting that the jury make a finding -- make a
8 finding that the plaintiffs have proved, with clear and
9 convincing evidence, that the defendants acted with
10 gross negligence or gross disregard for the rights of
11 others, and that their conduct was willful and wanton,
12 and that is just a claim for a finding that that is
13 what we have proven.

14 And we've brought several other claims, but that
15 that will overlap, and the judge will instruct the jury
16 as to the law governing those claims at the end of the
17 case.

18 And before we came to you today, the case has
19 been pending for a few years or more, we conducted
20 something called discovery and -- where each side asks
21 the other side some questions, and you ask them to
22 produce documents and we produce documents. And
23 through discovery, we were able to learn what the
24 defendant's defenses are to the case. I just want to
25 spend a quick moment addressing several of those

1 defenses.

2 The first and primary defense is we gave you a
3 dock. See those crab docks -- in fact, we gave you
4 two. There you have it. You got two crab docks. All
5 the Property Report says is community dock. This
6 satisfies their obligation. We'll show you, through
7 the evidence, that the reference to community dock was
8 always to the main dock in all the documents, and that
9 this just is not what was represented.

10 We'll also show you that the exact time that the
11 defendants were representing in the Property Report
12 that the community dock would be conveyed to the
13 Assembly, that they were representing to Olde Park
14 exactly what the community dock was. And this is in a
15 December 1998 letter, Plaintiff's Exhibit 189, where
16 they're negotiating the use of the community dock and
17 the boat ramp, and they told Olde Park exactly where
18 the dock is.

19 And they indicated that the Creek Club, that
20 venue, would be located on our waterfront park,
21 fronting Hobcaw Creek. And there -- right there is
22 your Creekside Park. The same time period as the
23 representation in the statement. And this
24 representation is confirmed back by Olde Park in
25 February of 1999.

1 It goes on to say, they are about to apply for
2 the permits for the community dock facility and the
3 renovation of the boat ramp along Hobcaw Creek. It
4 doesn't say tributary. It doesn't say Shelmore Creek.
5 It says Hobcaw Creek. These facilities will belong to
6 the I'On Assembly.

7 Another defense that the defendants have is that
8 something that -- something that lawyers call the
9 statute of limitations. In layperson's terms,
10 basically they are saying you waited too long to bring
11 a suit. You should have known when we recorded that
12 easement, that we weren't going to do what we said we
13 did. You should have sued us back then.

14 Well, first of all, the plaintiffs will show
15 through evidence and testimony that the recreational
16 facilities had all appearances of being community
17 facilities until they learned of the sale in 2009 --
18 excuse me -- late 2008. So there was no reason for
19 them to be concerned, no reason for them to go looking
20 in courthouse records to see if somebody had deeded
21 something to somebody else that they weren't aware of.

22 So they're -- we're going to show you that the
23 true dispute actually -- truly arose in late 2008. And
24 then by March 2009, when they said they are going to
25 transfer the amenities to us anyway, why would you sue?

1 There's no purpose in suing. And plaintiffs brought
2 the suit in late 2010, so we're within what some might
3 suggest is the usual statute of limitation, which would
4 be three years.

5 But plaintiffs will also show you that these
6 documents, many of the documents that we are taking
7 about, that we are here about, these documents are
8 sealed instruments. And on the screen now is the last
9 page of the Walbeck contract. And blown up is the
10 yellow portion of the Walbeck contract. And it says in
11 witness whereof, the parties have set their hands in
12 seals. There's the word "seals" -- to be effective the
13 date of execution by seller below.

14 And you go down that contract again, next to the
15 purchaser's signature, it again says "signed, sealed
16 and delivered" in the presence of -- so you see the
17 second sealing.

18 And the third sealing is next to the I'On
19 Company, where it says "signed, sealed". And the
20 plaintiffs believe that the appropriate statute of
21 limitations that the judge will charge at the close of
22 the case, if she so chooses, for a sealed instrument is
23 20 years, so it is not a defense.

24 Would you take me back to the damage slide
25 please.

1 THE COURT: Let me pull y'all up real quick.

2 (The following side bar was reported.)

3 THE COURT: We are way into the argument. We are
4 outside of an opening statement at this point, so just
5 keep it within those parameters. And I'm going to give
6 you fair leeway, but --

7 MR. LUCEY: I'm going to close up.

8 THE COURT: Okay.

9 (End of side bar.)

10 MR. LUCEY: The damage slide, please. The
11 Assembly and my clients, the plaintiffs, have taken
12 steps to minimize their damage, to reclaim the asset
13 for their community. They have now purchased the Creek
14 Club back from that third party. They've purchased the
15 docks. They purchased back the Creekside Park, the
16 ramp, parking and the overflow parking. They paid a
17 half million dollars in cash.

18 They gave the seller a 20 year free lease to run
19 his wedding venue. They gave the seller two five year
20 options to extend that lease into 30 years. And for
21 the homeowners Assembly to buy that option out from the
22 tenant will cost them a half million dollars each --
23 each of the options. It will cost them a \$1 million
24 dollars to keep this lease to only 20 years. They
25 also, as part of this deal, they get the overflow

1 parking back in 20 years.

2 There's various other terms in there, you'll
3 hear evidence there has been a conflict between the
4 community and the operator of the venue regarding
5 weddings and disturbances and parties and what have
6 you. There's other provisions in here to limit that,
7 but that the venue operator can actually block the
8 homeowners from the docks for a certain fee for 30
9 minutes during weddings, so kind of a quid pro quo on
10 -- if you force us off our docks, they simply pay us
11 the money.

12 And this is -- this is what the Assembly and my
13 clients have had to do to recoupe this asset, these
14 amenities that were transferred to a third party. And
15 we are going to put evidence on during the case as to
16 what the value of that 20 year free lease is, and what
17 the value is of that deed -- the homeowners need to be
18 awarded to make them whole from this transaction. And
19 I can tell you the value of just those damages is more
20 than several million dollars.

21 At the close of the case, if the plaintiffs have
22 proven their case, if my homeowners have proven their
23 case, they are going to ask you for two things: They
24 are going to ask you to award them the full amount of
25 their damage, every penny. And you'll hear -- I'm

1 running out of time, you'll hear more about plaintiff's
2 damages during the case, but that's what they are going
3 to ask you for, the very full amount of the damage they
4 present you with.

5 And they are going to ask you for a second
6 thing. They are going to ask you for a finding that
7 the developer acted with wanton disregard of their
8 rights, with gross negligence, that their conduct was
9 willful and wanton. Thank you.

10 THE COURT: Thank you, sir. Okay. Ladies and
11 gentlemen, we're going to take about a 10 minute break
12 so we can get this slide show set up for the next one,
13 before you hear the opening statement of the
14 defendants. So I'm going to ask you to return to your
15 jury room. Please don't discuss anything about the
16 case yet as you have not heard all of the evidence.
17 Thank you.

18 And if anybody needs to take a break, a stretch
19 break, we'll take about a 10 minute break. Okay.
20 Thank you.

21 (WHEREUPON, the jury leaves the courtroom at
22 11:00 a.m, and a brief recess was taken.)

23 THE COURT: All right. I think jurors are about
24 ready. We have everybody back in place that needs to
25 be here. All right. Whenever they are ready. Thank

1 you.

2 (WHEREUPON, the jury enters the courtroom at
3 approximately 11:14 a.m.)

4 THE COURT: All right, sir. Ladies and gentlemen,
5 thank you for your patience. And we are ready for the
6 closing argument of the defendant -- I'm sorry -- the
7 opening statement. I had to bring the lawyers up to
8 remind them that they weren't allowed to argue. They
9 should save that for closing, so that's still on my
10 mind. I apologize.

11 And folks, just by order of the chief justice,
12 unless you are working on the case, cell devices are
13 not permitted in courtrooms. And I don't even know
14 that y'all are really allowed to have them, but they
15 don't bother me when you use them for your own work on
16 the case. But if you're here in the gallery, you need
17 to put it away. Okay. Thank you. Mr. Duffy, I
18 apologize.

19 MR. DUFFY: Thank you, Your Honor. May it please
20 the court?

21 THE COURT: Yes, sir.

22 MR. DUFFY: Ladies and gentlemen, you are going to
23 have a tough duty this week, but it's going to boil
24 down to some pretty simple questions. It's going to be
25 a tough duty because you are going to listen to

1 evidence be presented over a period that, as you heard
2 at the start, from the mid 90s all the way through the
3 recent events.

4 It is going to be a tough duty because you're
5 going to have to listen to this evidence and unpack
6 what is being woven together. I think when you do
7 that, the evidence is going to show you that most of
8 the claims here aren't even worthy of your
9 consideration. They are not.

10 There's one claim that we would tell you is
11 worthy of your conversation, and we intend to show you
12 the evidence of why you should tell the plaintiffs "no"
13 on that claim, too. I think what you'll see, when all
14 the evidence is in from both the plaintiff's side and
15 the defendant's side, is they are using the one claim
16 to get their foot in the door, then they try to grab
17 everything they see.

18 Let me -- in the opening, of course, I want to
19 give you an outline of this evidence, but first since
20 we're sitting so far away, let me introduce who is on
21 our side of the case here. You heard a lot about Mr.
22 Tom Graham, who is sitting right here. Please stand
23 up, Tom, so they can see you.

24 Tom Graham is involved in the I'On development.
25 He and his son, Vince, are the main players. Tom was

1 more in the background helping get things going, and
2 then took over basically running the I'On Club, which
3 you'll hear a lot about.

4 Then we have Vince Graham. You can have a seat,
5 Tom. Vince. Vince is, for all intensive purposes, the
6 man behind I'On. I'On is unique. It is different. It
7 is Vince's vision. It's a product of Vince's vision.
8 And -- you can sit down.

9 Vince's first sale was on his father, that this
10 -- what's called more of a traditional walking
11 neighborhood is what it's referred to, and it's since
12 become known as new urbanism, and Vince was really one
13 of the forefront of that and has been recognized for
14 that. And you'll learn more about the concept of I'On
15 and why things were a little bit different and are
16 different there, and intentionally so.

17 The companies you heard about from opposing
18 counsel, the I'On Company, it is the developer. It is
19 -- it bought the property. It developed the property
20 and it sold the property. And the I'On Club is also a
21 defendant.

22 The I'On Club is, as you'll learn, a separate
23 entity, running a private business, including the swim
24 and tennis facility and the clubhouse event facility,
25 and the boating facilities that were associated with

1 it, owned by the I'On Club from the start and run as a
2 private entity from the start.

3 Now, talking a little bit more about what is
4 I'On and what is -- I think you need a little bit -- it
5 helps to have a little bit of context to figure out
6 what they -- we're talking about what the plans were
7 and what they ultimately delivered.

8 Now, the -- I mentioned to you that -- well,
9 first of all, let me make sure everybody understands
10 where it is. It's -- I think many people have been
11 there, but it's over the Ravenel Bridge, and off to the
12 left at -- in Mount Pleasant off of Mathis Ferry Road.

13 And it was developed at the beginning, as you
14 heard opposing counsel say, it started in 1995 with the
15 idea of trying to get this new concept -- it's really
16 not new. They will tell you it was sort of a pre World
17 War II type of development where this concept of a
18 traditional walking neighborhood means -- it's not what
19 certainly I've been more familiar with as a -- as a
20 suburban development where you have houses, maybe you
21 have one community pool or something, this was designed
22 to create a community.

23 You have -- you can walk to parks from every --
24 every house is a few minutes from the park. There are,
25 you know, smaller streets and bigger sidewalks. The

1 houses are closer together. It encourages -- it's
2 designed about people being social animals and being
3 together and it encourages that activity.

4 Now, another thing is different when you're
5 creating this sort of a community, as you set up spots
6 for commercial spaces. You design -- you reserve spots
7 for commercial enterprises. You have the restaurants
8 out there, there's shops out there. And you have
9 what's called -- what is pretty unique -- called civic
10 lots, designed for civic uses.

11 Now, civic lots, very important, does not mean
12 owned by the homeowners association. You'll learn more
13 -- you'll see more about civic lots. But examples of
14 the civic lots are the swim and tennis facility; the
15 Creek Club Clubhouse, civic lot 6 that you're going to
16 be hearing a lot about.

17 Churches on civic lots, a school on the civic
18 lot. And then you sort of get the concept of, okay, we
19 are building really a little town to be here. A civic
20 lot is not designed to be owned by the homeowners
21 association, and everybody out there knows that.

22 So the I'On Club develops its club with the swim
23 and tennis facility and the boating facilities. And
24 you'll hear -- you saw pictures of those. You have
25 at -- at the Creek Club, where they run the clubhouse,

1 had an event facility from the start. You have
2 meetings there. You have Mt. Pleasant Cotillion hosted
3 out there and you have wedding events out there. It's
4 been that way from the start. 2001 is when they got a
5 certificate of occupancy and started using it, so
6 that's the way the club has been operated.

7 Now, they built -- they -- they developed that
8 civic lot to enhance the club value as well, and to
9 have it more of an amenity for the neighborhood, so
10 that you have parking down there for the boat use. You
11 have -- it's a parking lot. There's a staging dock.
12 There's a boat ramp. All of these things became part
13 of the club, developed by the club, as part of CV-6.

14 Now, just because it's an amenity, again,
15 doesn't mean it's owned by the homeowners association.
16 It's there, like a golf club -- a golf course, you
17 know, neighborhood -- people like to live in golf
18 course neighborhoods, it's valuable. It -- but that
19 doesn't mean everybody is a member of the club and they
20 certainly don't own the 19th hole. But in any event,
21 that's -- that's sort of giving you some background of
22 the club.

23 And there's another concept that is at play in
24 I'On that was a little forward thinking as well, it's
25 called linear parks. Now, you are going to hear a lot

1 about the Marshwalk, which is a linear park. And it's
2 designed that way from the start, which the evidence
3 will show you. But people don't like the idea of
4 calling that a park now because they want civic lot 6
5 to be the Creekside Park. So, the linear park is
6 another concept. It's a little unique, where you will
7 see it was designed that way from the beginning. Okay.

8 Now, in this nice -- you know -- the way things
9 developed, what caused this great unpleasantness?

10 There was a trigger. And the trigger was the I'On
11 Club, who has owned and run this property as private
12 from the start, was going to sell civic lot 6 to an
13 event facility, event company, that primarily was
14 running weddings. And there had been weddings --
15 rental weddings in the clubhouse all along. And this
16 new owner 148 Civitas, through a man named Mike
17 Russo -- who, by the way, lives in I'On, has other
18 businesses in I'On, was going to be running the event
19 facility on civic lot 6.

20 And what happened was, the start of the
21 unpleasantness here, was a lawyer/neighbor of the Creek
22 Club, who didn't like all of the events going on there,
23 decided with a group of other people, including Ms.
24 Adkins, let's challenge the zoning, the civic use.
25 This is more commercial. Let's go see if this is

1 proper, if we can keep this from happening. Because if
2 we get it called -- if we get the Mount Pleasant Board
3 of Zoning Appeals to say this is -- that this use for
4 weddings is really commercial and not civic, nobody is
5 going to want to buy it. And you'll see -- the
6 evidence will show you, that was the first effort to
7 get civic lot 6 for free, for free, to the homeowners
8 association.

9 Now, that didn't work. They lost. And you'll
10 see how two resident lawyers and two people who have
11 been fighting that concept and idea of I'On before they
12 broke ground -- including Ms. Adkins -- been fighting
13 them throughout, they had to plan to find somebody who
14 got this 1998 Property Report, to try to bring suit.
15 That is the start. That's where we are. It's a
16 manufactured lawsuit.

17 Now, that's -- that's what got us here. And
18 what I want to talk about is the one claim I do tell
19 you that's worth you considering, and that is the
20 reference -- let me step back about the Property Report
21 as well.

22 The Property Report was issued, as you saw, in
23 November of 1998. For a little context, if you will,
24 it applied to civic -- it applied to phase II, which
25 I'On Company didn't even own yet. This -- this 1998

1 Property Report is what they determined needed to do to
2 satisfy this federal law of basic disclosure for the
3 neighborhood at that time.

4 Now, in -- I believe it's April of 2000, they
5 amended the Property Report when their plans developed,
6 when they got things going. They bought the property.
7 They were doing things and so they could put more in
8 this Property Report, which promised what was going to
9 happen.

10 But in 1998, they didn't own the property. They
11 didn't have things permitted and so their
12 representations were a basic outline. That's what the
13 purpose, you'll see, by the Property Report, that's
14 what the purpose is.

15 Now going from there, the one issue that I think
16 is worth you considering is what did the reference to a
17 quote "community dock"; what did that mean in the 1998
18 Property Report. Now, that page 21 of this Property
19 Report was handed to people when they were interested
20 or buying property.

21 The table on page 21 is not the only part that
22 addresses recreational facilities. I encourage you to
23 look at the next two pages. Page 22 says "these
24 recreational facilities we are talking about, are being
25 conveyed to you upon completion of construction" -- so

1 that's key with the timing. It's -- you are supposed
2 to get what we -- what we are telling you, you are
3 going to get, you are going to get when we are finished
4 with it.

5 The next page tells them, by the way, in big
6 capital letters, "there will be private things out
7 here, private clubs and all that, so if you're really
8 worried about any amenities, other than the things
9 listed here, if you are worried about anything having
10 access to, just know you might not". And that's the
11 basic disclosure, the basic outline, consistent with
12 the whole civic idea, the civic lot, civic uses.

13 So the question is, does the 1998 Property
14 Report reference to community dock, does that mean the
15 dock that -- of many -- that was ultimately built in
16 2000, after they got it permitted, after they got it --
17 bought the property, which they didn't have in 1998, or
18 did it mean a general basic outline of you're going to
19 have a community dock. And there were two community
20 docks in phase II built and deeded over to the
21 homeowners association.

22 Now, the other claims are based on the
23 definition of the Creekside Park -- and we touched on
24 this some -- but as I'll show you, it was a reverse
25 engineered manufactured claim to get CV-6 for free.

1 And the evidence will make that clear. And nobody
2 thought this Creekside Park -- nobody who saw this
3 Property Report thought this Creekside Park was civic
4 lot 6, certainly not the plaintiffs.

5 Now, I would like to look through some of the
6 exhibits with you, you'll see this, this is Defendant's
7 Exhibit 22 -- the plaintiffs have it as well -- the
8 developer, I'On Company, date of report, November 3,
9 1998. Here is the chart. Page 21, here are two
10 references. And just for context, I mean, look -- look
11 what's done at this point, as I was telling you. They
12 don't even own the property, no financial assurance of
13 completion. This is a basic outline and basic plan.

14 This will give you -- as I tried to earlier,
15 just to give you some orientation if you're not
16 familiar -- you're at the Ravenel Bridge coming over,
17 left on Mathis Ferry, and then you come in here. When
18 we're looking at things, an easy sort of advantage
19 points or focal points are these two lakes, the east
20 lake and the west lake -- right there -- to help
21 identify things as we are looking through.

22 But this is what it looked like in 1998 when the
23 Property Report was issued. A few houses in phase I
24 are being developed here. Now, the property we are
25 talking about is way over here. It hadn't even been

1 purchased yet, to give you a little context what is
2 promised in the 1998 Property Report. Here is the
3 point that they tell you in the Property Report, we
4 don't own the property yet.

5 Now, here's what ultimately -- this isn't
6 exactly right as mentioned, there are a few things that
7 have been developed differently, but this will give you
8 an idea of how things developed. Again, there are an
9 east lake and west lake. And you'll see these yellow
10 things are the commercial spaces that were planned at
11 the time, civic lot here. This is what they refer to
12 as the overflow parking lot -- which by the way, is
13 another thing I'm telling you they're reaching in to
14 try to grab. I'll be anxious to see the evidence that
15 shows a promise for the civic lot 5. And here is civic
16 lot 6 down here, with a reference to the pre-club.

17 And there's a dock there. This is going out on
18 -- there is a dock there. And there is the other two
19 docks that we were referring to. Now, this dock got
20 built as well -- not in phase II -- and deeded over.

21 Okay. Here are the docks, Shelmore Creek docks.
22 Now, we can argue about if it's high tide or low tide,
23 you see this is mid tide basically. We have a picture
24 of both high tide and low tide, so you have an idea of
25 what's out here. It's about mid tide. There's the

1 water line. This is -- I'll call it Shelmore Creek I.
2 We have a plan where it's shown as dock two and this is
3 dock three. And we have other pictures of them, and
4 you'll see. Here's what they look like. There they
5 are.

6 Okay, now this Defendant's Exhibit 4 is an
7 important one. You'll see the date, this is 1997,
8 before the Property Report. Here's what they are
9 thinking, a lot of docks. They are thinking a lot of
10 docks. Do they promise a lot of docks in the '98
11 report; no. They have plans for things, visions for
12 things, that is distinct from what you put in this
13 outline of a -- a basic outline of the neighborhood
14 that you put in the Property Report. Here is the
15 community dock number one. That is the Creek Club
16 dock.

17 Now, this is a good example of how things
18 change. It didn't get built the way it's designed. It
19 didn't get permitted that way. And you know what else,
20 a whole another one got built when the boating
21 facilities -- when they decided they were going to
22 develop the boating facilities.

23 The staging dock is off here to the side. And
24 the ramp is there and the parking is there. None of
25 that is represented at this point. And it sure isn't

1 talked about in the '98 report. But these are plans at
2 the time, which obviously changed as you buy the
3 property, get things permitted and developed.

4 Here is community dock two. Here is community
5 dock three. I showed you dock four that got conveyed
6 that wasn't part of phase II, but these two got
7 conveyed as part of phase II. And here is five and
8 six, another reason why plans and visions weren't put
9 into a Property Report that promises conveyance.

10 Plans and visions for five and six, guess what,
11 they didn't build them and that's okay. They thought
12 about it in '97, that maybe they would build these, but
13 they decided that wasn't a good use of how they were
14 going -- the development of the property there, the
15 land or of giving notice to the Assembly when they
16 didn't -- they weren't sure it would be given much use.
17 In any event, they changed their plans and that's okay.

18 This is -- this involves what you are thinking,
19 what your plans are, what your vision is, not what
20 you're promising. Now, here is an example -- here is a
21 view of what's there. There are the boating
22 facilities. You see the parking lot here. You see the
23 staging dock. Here is the big Creek Club dock. Here
24 is the Creek Club itself. And you can follow the
25 Marshwalk that you saw earlier. And there are the

1 other two community docks.

2 There's a reference to the easement. There's no
3 hidden easement. It's here, a public record. Here we
4 are. We're getting access by that easement.

5 Now, this is the big Creek Club dock for the
6 boating facilities. It's certainly nice -- you know,
7 they mentioned they were going to have a dock there and
8 they sure did. They did a good job. They didn't
9 mention the dock there in the '98 report, they
10 mentioned it in other things that didn't promise
11 ownership, but they promised -- or represented they
12 were going to have boating facilities once they had
13 made those plans and committed to those plans.

14 Now, here is -- the man -- gentleman here is
15 sitting on the staging dock. Here is the boat ramp,
16 part of the boating facilities. And here is the Creek
17 Club building. None of this, of course, is on the '98
18 Property Report, but as part of CV-6. And here is the
19 staging dock. This is a better picture of it.

20 So, again, the point is having a plan or
21 envisioning something is very different from the key to
22 the plaintiff's case, which is, hey, I got this
23 Property Report in 19 -- or from 1998, and it promised
24 these particular parcels. It didn't.

25 Now, what they're trying to do is weave together

1 plans and visions for these things to say this must
2 have been what you meant. And by the way, they say
3 then that means we relied on it. So this -- as far as
4 what they meant, it is obvious they had more detailed
5 plans, a bigger vision. Did they envision that the
6 homeowners were going to own these things down here?
7 At one point, yes, along with the other docks that they
8 were talking about. Did they envision that the
9 homeowners would own a lot of other things? Yes, an
10 amphitheater. The big Eastlake and the parks around
11 there; sure, they deeded all of that over.

12 And then there are things that they didn't deed
13 over, and that's fine. Those are the plans developing,
14 the vision of what is going to be there. The I'On Club
15 developed to have -- they decided to do more, build the
16 boating facility, not just have one dock down there,
17 they have the boating facility. And what they did was
18 they gave access to the boating facility through the --
19 not just through the club, they gave access to everyone
20 for the boating facilities. And we'll argue about what
21 the access was and how long it was going to be and that
22 type of thing, and you'll hear plenty of argument about
23 that.

24 But here we are again, the '98 Property Report.
25 Here is a reference to Creekside Park that's being

1 challenged. And this, by the way, is the third page
2 here in line where I was telling you that screamed out
3 at everybody, look, there's going to be some stuff in
4 here that's private, so if you are worried about that,
5 you ought to think twice about buying it here.

6 Now, that's -- you know, I wanted to talk with
7 you a little bit more about this claim for reverse
8 engineered in Creekside Park to mean civic lot 6. Here
9 is Marshwalk, that is the Creekside Park.

10 Now, the notion of the Marshwalk is the
11 Creekside Park is challenged for a lot of reasons.
12 They say, oh, no, you just came up with that. This
13 really isn't a park. And that's -- it gets into the
14 linear park discussion. And then they say, you can't
15 call this Creekside because it's not on the deepest
16 water.

17 Well, here is the Creekside Park, the Marshwalk.
18 And it goes along as -- as we saw from the aerial view.
19 And here are the docks that lead out there. But this
20 is -- I think an important picture to get the concept.
21 This part of the park, of the Marshwalk, is owned by
22 the homeowners associations, all the way around.

23 So what that means is these people who buy marsh
24 front and creek front, they can't build docks out here,
25 they can't close this off to people. This is owned by

1 the homeowners. And that's pretty unique in today's
2 development. It is owned by the homeowners. And
3 there, again, you see the trace of it along the tree
4 lines.

5 Now, if that's not enough to show you that
6 that's the Creekside Park -- and that they got
7 Creekside Park -- the only other reference to anything
8 on -- in writing that says Creekside Park, other than
9 the Property Report, is here. Let's look at
10 Defendant's Exhibit 3, it is important. There are
11 several of these in Defendant's Exhibit 3, but these
12 are drawings along -- you know, the development scope
13 has a whole lot of plats and drawings and plans. Well,
14 here it is -- and you'll see various dates for these
15 references in Creekside Park.

16 Well, their argument is, well, that wasn't 1998.
17 Well, there's -- there's nothing saying that Creekside
18 Park is anywhere else at this point. Here it is,
19 Creekside Park.

20 Now, in this -- here we go. This is 1997 --
21 this is the 1997, '98 time frame. I'll give you an
22 idea that linear parks were planned from the beginning.
23 The suggestion by the plaintiffs was this is a -- you
24 know, made up response to try to -- to try to tell us
25 that Creekside Park is already there; it's not really a

1 park, it's a path. It's a trail.

2 Linear parks, from the very beginning of I'On,
3 they were talking about linear parks -- are often
4 thought of as paths and parkways. That's the concept I
5 was telling you. They're a little -- a little in front
6 of, and people don't -- people don't like it now and
7 they want Creekside Park to mean something different.
8 But from the very start, that's what this was. And it,
9 in fact, references the very Marshwalk in the
10 advertisement.

11 Now, as I mentioned, this is an effort -- when
12 the sale was taking place for a group of people who
13 wanted to challenge that, to come up with -- with some
14 claims. Now, you know, the timing of it is key, which
15 you'll see a little bit later. But this is Ms. Adkins'
16 letter in March of 2009 to the lawyer for the
17 homeowners association, to the lawyer for the Assembly.

18 And it says, hey, there's this Property Report I
19 was given, and it mentions Creekside Park and community
20 dock. And if what I just showed you wasn't enough to
21 show you that the Marshwalk is the Creekside Park, this
22 is all you need to know what it's not. That is not
23 civic lot 6 and it's not -- that that is not referenced
24 in the Property Report and that nobody relied on the
25 fact that it was.

1 Ms. Adkins, to define what exactly the community
2 dock and Creekside Park are, requires examining the
3 Impact Assessment. Plain and simple, it's not in the
4 1998 report. I'm digging up other things, which she'll
5 tell you she never saw before she bought her property.
6 Mr. Walbeck didn't see it for another decade after he
7 brought his property. But, hey, if I look in this
8 other stuff, I say community dock and Creekside Park
9 mean what I want it to mean now.

10 In fact, this analysis -- this investigation to
11 try to get the definition of Creekside Park, this --
12 you know, through the other documents and other
13 references, gives reason to believe that the current
14 parcel of land, civic site 6, location of the Creek
15 Club is actually the Creekside Park. These things --
16 these other documents give reason to believe. You know
17 what doesn't, the 1998 Property Report that's the basis
18 of the claim.

19 And just as an aside, here is Ms. Adkins'
20 contract. By the way, you'll see up here, she bought
21 in phase V, which the Property Report doesn't apply to.
22 She bought it in 2003. The Property Report was -- they
23 stopped handing out all Property Reports at the end of
24 2001. Y'all can judge her credibility for yourself
25 whether this was given to Ms. Adkins when she purchased

1 her property.

2 Phase V, by this time here's another point of
3 reason not to rely on it, the Interstate Land Sales Act
4 Property Report. Guess what? This contract says, hey,
5 we're exempt from the Interstate Land Sales Act. We're
6 not giving out the reports anymore, but here are the
7 disclosures we have to make.

8 Well, this list, I submit to you, shows you what
9 the Property Report is designed to inform people about.
10 This is what the Act is trying to offer purchasers as
11 disclosures; to say, hey, this isn't swamp land in
12 Florida. That's the purpose of it, a basic outline.

13 Look, it's located in the town and has minimum
14 standards. It's met the codes and standards. It's met
15 the code by the Town. Hey, it has potable water and
16 sewage. These are the -- these are the outline
17 representations being made in the Property Report.
18 That's its purpose, not disclosing all your plans or
19 promises to get everything you thought of at that time.

20 We are going to give you a deed at the closing,
21 you'll get an insurance binder. And, hey, we're
22 telling you here, this isn't direct mail or offering
23 you a trip or a dinner to come look at it. It's not
24 swamp land in Florida. That's the Interstate Land
25 Sales Act Report.

1 But in any in event, just like everyone has
2 bought real property knows, it's always in writing if
3 you are going to have something that was in every I'On
4 contract that says, look, I'm not relying on what
5 anybody told me, I'm buying what's in the paper.
6 There's Ms. Adkins initialing it. And on the next
7 page, it's even specific as to the subdivision
8 improvements and amenities. Hey, only what's in this
9 agreement, not what anybody told me.

10 Now, Mr. Walbeck has the reference that you saw
11 to the Property Report facility -- the recreational
12 facilities there; Ms. Adkins doesn't. It specifically
13 excludes anything like that. So, in any event, if the
14 idea that Ms. Adkins couldn't tell by looking at the
15 Property Report, whenever she got it, what the
16 Creekside Park was or what the community dock was, the
17 answer comes from the Assembly's own lawyer writing
18 back to Ms. Adkins at the time.

19 There's the letterhead. "I appreciate your
20 interest. I'm giving you the opinions of the Assembly
21 Board. Insofar as a pending sale of the Creek Club,
22 CV-6, it's the understanding of the Board that the sale
23 will not include items which were intended to be or are
24 the property of the Assembly. It's not ours, thank
25 you. It's not ours."

1 Now, what they're going to say is, well, we
2 thought the docks were going to be handed over. And
3 that's fine, we'll argue about the docks. But as far
4 as civic lot 6, right here, the lawyer who looked at
5 it, writes her back says -- that's not ours and wasn't
6 intended to be ours.

7 Now, what I want to do is talk a little bit with
8 you about the civic lots that I have told you about.
9 And these are the things that are for the benefit of
10 the community, because you have these things, but not
11 for the community ownership. This is part of the swim
12 and tennis facility. There are more tennis courts
13 here. Here is swimming pools. And another example of
14 the civic lot is this -- is what was sold to the people
15 who were developing and built the East Cooper
16 Montessori School, civil lot, not owned by the
17 homeowners association, and not intended to be. Here
18 is the school.

19 Here is another example: Property donated to
20 the Holy Ascension Church. Here is the church. Again,
21 a benefit for people in this type of community, but not
22 owned by the people in the community. This is another
23 parcel, where presently being constructed is the
24 church, and the Church of the Holy Cross, right here.
25 And here's the Creek Clubhouse, boating facilities,

1 civic lot 6.

2 Now, what's interesting is despite what is clear
3 of what the purpose of civic lots are, and dispute the
4 attorney for the Assembly telling Ms. Adkins civic
5 lot -- it is not ours and wasn't intended to be ours,
6 they have now jumped on what I call -- they joined the
7 Free Civic Lot Gang, and you'll learn why. I'll tell
8 you why in a minute. So, why are we here? I mentioned
9 the manufactured lawsuit, a couple of lawyers and a
10 couple of people who have been fighting I'On from the
11 start.

12 Now, the sale was announced -- people learned of
13 it in September, October of 2008. And here is the
14 first challenge to it as I mentioned to you. In
15 January 2009, this is a discussion -- you'll see a lot
16 of minutes of the Board of the homeowners association.
17 This is at the Board meeting.

18 Here it is, talking about the sale of the Creek
19 Club, January 2009. And here is Ms. Templeton, who
20 is -- who lives -- her house is right near the Creek
21 Club. She doesn't want more weddings. She's one of
22 the lawyers I mentioned. They challenged the zoning,
23 to try to see this isn't a civic use, this is a
24 commercial use, and here's why.

25 The Assembly can then negotiate with the new

1 purchaser, hey, let's make it commercial then, but
2 let's make money on it. We'll get the profits. That
3 will be the benefit of this zoning challenge. And you
4 know what else, if we don't make it commercial, which I
5 imagine, you know, as a resident right near there
6 wasn't really her intent, here's what will happen.

7 If we find that the use of the Creek Club is --
8 has been commercial, rather than civic, so they can't
9 use it that way anymore, that would lessen the value of
10 the Creek Club for the Graham family, and then the HOA
11 could purchase the Creek Club for a dollar, since it
12 would be of no value. This is the property that's been
13 used by I'On Club as a rental facility from 2001, when
14 it was built. This is the first effort of the Free
15 Civic Lot Gang right here. And Ms. Templeton and Ms.
16 Adkins participated in the Board of Zoning Appeals
17 hearing, and they lost.

18 Now, they lost on February 23rd. Here is an
19 e-mail the next day. February 24, 2009, Creek Club,
20 where are we? Now, here are the members of the gang.
21 Ward Mundy, a lawyer who lives in I'On. He bought much
22 later. He was a member of the Board for a while, but
23 you'll learn he was a troublemaker on the Board. They
24 -- he either resigned under some pressure or he was
25 asked to resign from the Board of the homeowners

1 association. He started his own website to -- to offer
2 different views. He used an underground website in
3 I'On. That's who Ward Mundy is, lawyer number one.

4 There's Catherine Templeton, lawyer number two.
5 Laurie Thornhill, incidentally, was a Realtor for the
6 I'On Realty Company. You'll see here she is no
7 longer -- at this point, she's no longer there.

8 She's the one Ms. Adkins contends gave her the
9 2003 report when she bought her property. Ms.
10 Thornhill is in the gang, too.

11 Steve Brock. Steve Brock was one of the chief,
12 chief critics, and he lived in a neighboring community
13 when I'On was proposed. And he started a group to
14 oppose it. He circulated fliers everywhere.

15 He wrote the people that the Grahams were buying
16 the property from to try to stop it. And he and Ms.
17 Adkins, who signed the petition against I'On to start
18 with, they have fought -- you'll learn -- many
19 different battles through the town zoning and
20 everything else, fought the I'On Company all along the
21 way.

22 So here you have -- now, Mr. Brock, by the way,
23 he couldn't bring this claim himself because at this
24 time he -- he -- he and Ms. Adkins were together and he
25 lived there, but he didn't pay any rent and he didn't

1 buy the property. And he -- they are married now, but
2 he couldn't bring the claim now because he wasn't a
3 purchaser or even a renter, so here we go.

4 Mr. Mundy, what -- "Where are we with the Creek
5 Club? Well, last night was disappointing, but not
6 unexpected. They lost the zoning effort. They are not
7 going to be able to get the Creek Club for a dollar
8 this way. They can't get CV-6 for a buck. They split
9 the cost of that effort to have a lawyer representing
10 them, too". Okay.

11 Now, here -- here is what the discussion was, so
12 where do we go from here? Okay, gang, what's our next
13 stop? The first one, you'll see in this Exhibit 105,
14 which is an important one, Defendant's 105. One
15 approach he says is to lay low and let's just wait
16 around and see if they sell it to somebody who is even
17 more commercial than the other guy, Mike Russo, who is
18 an I'On resident and who we can work with. Let's wait
19 and then challenge it again to see if this works;
20 option one.

21 Another option is for someone or group that
22 purchased lots directly from the I'On Company to go to
23 the feds and raise hell. Okay. Option, number two.
24 Last resort, let's look where it says -- "Last
25 resort" -- in this two page e-mail -- "I'On residents

1 that purchased a lot directly from the I'On Company
2 also might have a civil claim for damages". This is
3 the genesis of this lawsuit, not that there was going
4 to be a sale and everybody jumped up and said, that's
5 ours and it's supposed to be mine. It's we had a
6 zoning battle that didn't work; now, hey, what else can
7 we do? We can find someone. We can find someone who
8 purchased directly and got this '98 report and let's
9 see if we can bring a civil claim for damages.

10 Interestingly enough, Ward Mundy, up here, the
11 reason -- the way he got this '98 Property Report? You
12 know who he got it from? Mr. Critic, Steve Brock, is
13 the one who gave Mr. Mundy the '98 Property Report to
14 look at. He gave it to some other people, too, trying
15 to engineer this lawsuit.

16 Enter Mr. Walbeck. So what I suggest the
17 evidence is going to show you, as we've looked through
18 the Marshwalk, the references to the Creekside Park,
19 and better yet Ms. Adkins' letter saying this Property
20 Report doesn't tell us what these are -- but hey, look
21 at these other things I'm finding now. This must be
22 what it means. That, I suggest to you, is too little
23 for this grab for a free CV-6.

24 And Mr. Lucey mentioned a little while ago,
25 there's an issue about timing too. It's not just too

1 little, it's too late. So what he was suggesting is,
2 hey, nobody knew about this easement, we were just
3 waiting around for the property to be given to us.
4 Okay. Let's look through that a little bit.

5 Knowledge of what was going on: The Property
6 Report was given to a man named Mr. Ed Clem. Ed Clem
7 was a long time Board member. He was on the finance
8 committee. He was the treasurer. He was ultimately
9 the president of the Board. He got the Property
10 Report. He knew whatever anybody else who got a
11 Property Report knew. Here is Mr. Clem, he had it on
12 his mind from the start -- you'll see, this is old
13 business.

14 Mr. Clem updated the Board of Directors
15 regarding the status of the new agreement between the
16 Assembly and the Club. This is a recreational easement
17 and use agreement. Mr. Clem has been looking at it for
18 a while because he didn't like some of the things about
19 it. He got a lawyer.

20 They had a lawyer looking at this agreement in
21 2004, working on drafting a new one. And you know
22 what, Vince Graham said, we'll pay half the fees for
23 that lawyer if we get -- come up with a new agreement.
24 It's Mr. Clem that ultimately said, look, the way this
25 is working out, we can't find a better -- we can't come

1 up with a better arrangement.

2 Andy Gowder, a Board member received a Property
3 Report. Anne Bonk, finance committee member, received
4 a Property Report. John White, Board member, received
5 a Property Report. Gaye Joyner, Board member, received
6 a Property Report. Ms. Eble -- Libby, I believe she
7 goes by -- received a Property Report.

8 Now, what's important about the Board and being
9 on the finance committee, is not only did you know
10 there was an easement that Mr. Clem was talking about
11 periodically, you saw in the old business -- not only
12 did he know about that, but if there's any way for
13 someone to tell you that you don't own something and
14 you are not going to own something, is to charge them
15 for it.

16 October 2004, I'On Assembly budget, Creek Club
17 rental fee, Creek Club dock usage fee. All right.
18 There are references to the -- for the agreement for
19 using the Club, what they are going to pay, rental fees
20 and, hey, here's Bisnet, another group, and the I'On
21 Trust, another group, are paying rental fees for the
22 Creek Club as well.

23 Next years budget, Creek Club rental fee, Creek
24 Club usage fee. The next year, Creek Club rental fee,
25 Creek Club dock usage fee. Here we go, on and on.

1 They are paying for the use of it, every year. Not
2 only does the finance committee know it and the people
3 who you saw got the Property Report, not only does the
4 Board know it -- and they know about the easement --
5 this gets mailed to every homeowner in I'On before the
6 annual meeting every year. Every single person gets
7 this.

8 And you'll see Mr. Walbeck and Ms. Adkins even
9 came to the annual meeting where it's submitted as a
10 budget. Everybody knowing all along, you don't own it,
11 and you're not going to own it. The I'On Club runs it,
12 owns it and is charging you for it. Private, like the
13 Property Report says.

14 I'll run through some minutes with you, just to
15 dispute this suggestion that everybody was waiting
16 around to have it given to them. The agreement between
17 the Club and Assembly, president of the Board at the
18 time, reminded the Board that if Creek Club is sold --
19 now, let's look at this date again, 2005, there are
20 talks about selling the Creek Club. But guess what,
21 the boat ramp agreement still holds. We know about the
22 easement. We have the use. It still holds if they
23 sell it. Okay. The Board knows that then in 2005.

24 Here you go, Ed Clem, again, John White, who
25 also got the Property Report in July of 2005. Finance

1 committee, Ed Clem's finance committee, here are two
2 other members who got the Property Report. They are
3 the ones doing the budget. The Board advises that the
4 Creek Club is the property of the I'On Club, and for
5 anybody who's at the meeting, and the Assembly is not
6 obligated to purchase it when the developer is done.

7 Now, if you're waiting around for it to be given
8 to you, here's another example in April of 2007: Ed
9 Clem, Libby Eble, they are talking -- the I'On Company
10 is working on -- there is some interest by the Assembly
11 to have a community center. So, okay, one solution is
12 we'll sell you the Creek Club and we'll give it -- that
13 sale will include the boat dock, the ramp, parking lot
14 and overflow parking lot. If you're waiting around for
15 it to be given to you, and somebody is asking you for a
16 million and a half for it, you probably have a pretty
17 good idea they're not going to give it to you.

18 Now, I mentioned to you that I tell you why the
19 Assembly now joins the Free Civic Lot 6 Club. The
20 plaintiffs brought this suit on their own,
21 individually, and they included initially Mike Russo
22 and Civitas, who owned CV-6 at the time.

23 Well, they cut a business deal with Mike Russo
24 and Civitas, so they would take ownership -- the
25 Assembly would -- but Russo would still be able to run

1 his business, and he got his money back out of it and
2 he could run his business. And they -- it was a
3 win-win for everybody, the Assembly liked it because it
4 satisfied the plaintiffs that you have this ownership
5 and you don't have to worry about that argument
6 anymore.

7 You satisfy Russo because he's running his
8 business. You satisfy those residents on Saturday Road
9 around there, because you limit the number of events he
10 can have. And that came at a cost of \$495,000. And
11 we're going to have an expert witness in here to show
12 you what they got -- the property rights they got were
13 worth more than three times that.

14 Now, why did the Assembly switch? They cut this
15 business deal that made everybody happy, but it also
16 required -- we are going to jump on Board with the Free
17 CV-6 Gang. We are going to support -- the Assembly's
18 lawyer is going to support the plaintiffs -- the same
19 lawyer who said this doesn't belong to you and it isn't
20 intended for us, is now supporting the Free CV-6 Gang.

21 I'll try not to block this -- Judge, what do you
22 think?

23 THE COURT: As long as plaintiff's counsel can
24 see, I think it's fine right there.

25 MR. DUFFY: Okay. Thank you. So, ladies and

1 gentlemen, I mentioned to you that all of this evidence
2 and your tough duty is going to boil down to some
3 pretty simple questions.

4 Here's what I suggested to you is the issue in
5 the case, is the '98 Property Report detailed and
6 specific, or is it a basic outline?

7 Now, another question is going to be if you
8 think it is detailed and specific, did Ms. Adkins or
9 Ms. Walbeck -- Ms. Adkins or Mr. Walbeck rely on those
10 things that they contend are due, and find detailed and
11 specific when they were buying the property.

12 Now, a third one is, is that effort to reverse
13 engineer, with other documents that had planned vision,
14 not promises, and plug those into the four words in the
15 Property Report, is that effort just too little? Is
16 that effort too late? They've known all along that
17 this has been owned by I'On Club and I'On Club is
18 charging for it.

19 Now, I suggest to you some of the evidence that
20 we just looked over is going to help you answer these
21 questions. There's going to be a whole lot more, but
22 these are the basic ones.

23 Defendant's Exhibit 32, the Property Report is
24 detailed and specific. If so, why in Defendant's 32
25 does Ms. Adkins say, to look and see what these mean,

1 you have to look at these other documents. And those
2 other documents give us reason to believe we get these
3 things for free. Is it detailed and specific, look at
4 Defendant's Exhibit 32.

5 A little background of that is Defendant's
6 Exhibit 25 we looked at, which is Ms. Adkins' contract,
7 it tells you, look, this is what the Property Report is
8 about. Here is the Interstate Land Sales Act
9 representations that we're making, that this isn't
10 swampland in Florida.

11 Did any of the plaintiffs rely on it,
12 Defendant's Exhibit 32, again, I think makes that as
13 clear as can be. They don't know what it means unless
14 you look at something else that they didn't see before
15 they purchased the property. Is the effort to
16 manufacture this claim for CV-6 too little?

17 Now, Defendant's Exhibit 31 is the Assembly
18 lawyer telling them it's too little. Defendant's
19 Exhibit 3 is the reference in plats to the Creekside
20 Park, that's the Marshwalk -- and I'm not going to list
21 them all here, you saw the Marshwalk and Creekside
22 Park.

23 Okay. Now, is it too late? You're going to see
24 a lot more than this, but maybe you don't want to, but
25 is it too late? Did they know all along? The budgets

1 we looked at are Defendant's Exhibits 39 through 42,
2 they were mailed out to every homeowner. The minutes
3 that we looked at, there will be plenty more, from 116,
4 118 and 124.

5 And the final question: Is Free Civic Lot 6
6 Gang effort a proper use of the judicial process? The
7 zoning challenge didn't work to get it for free. The
8 last resort, let's find somebody who got this Property
9 Report and see what we can do with it.

10 Defendant's 132, are those minutes talking about
11 the zoning evidence effort, to drive the value down to
12 a dollar. Defendant's 105 is Mr. Mundy's e-mail to the
13 gang about where to go next.

14 Ladies and gentlemen, if you agree with us on
15 number five, that's our claim. We just want a simple
16 declaration that this effort is an abuse of the
17 judicial process. Thank you very much.

18 THE COURT: Okay. Thank you, sir. Okay. Ladies
19 and gentlemen, thank you for your kind attention. I
20 know everyone appreciates it. We are going to break
21 for lunch now. I will ask you to be back in your jury
22 room -- I would say 1:30, but I know you can't get
23 lunch that fast, but try to err on the side of being a
24 little bit early if you can, but 1:45. Please don't
25 discuss anything about the case and we'll have the

1 first witness ready for you when you return. Thank
2 you.

3 (WHEREUPON, the jury leaves the courtroom at
4 12:10 p.m.)

5 THE COURT: Okay. Thank you everyone. We'll be
6 at ease. Y'all grab something to eat for lunch. I'll
7 be back in my office, so if we need to take anything
8 up, y'all just shoot me an e-mail. But get back a
9 little bit early so we can put anything on the record
10 we need to before. Anything before we break?

11 MR. LUCEY: No, Your Honor.

12 MR. DUFFY: Just what time would you like us here?

13 THE COURT: Well, I mean, they're coming back at
14 1:45. Try to be back at 1:30, but if there's nothing
15 we need to take up, then there's just no way to get
16 lunch anywhere around here that fast. So I know y'all
17 probably brought something to eat or sending somebody
18 to get something. But I'll check back in here at 1:30
19 to see if y'all have anything you need to take up, or
20 y'all just shoot us an e-mail and let us know, but
21 we'll be back there. Okay. Thank very much everybody.
22 And thank you to the gallery, we were able to hear. We
23 appreciate it. All right. We'll be at ease.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: I understand there's nothing we need

1 to take up before -- or is there?

2 MR. DUFFY: I just wanted to raise two things real
3 quickly, Your Honor, just in response to the issue with
4 Mr. Russo. I called and e-mailed Mr. Altman, who
5 responded to me by e-mail, that Mr. Russo has given
6 Josh Evans his contact information, for Josh to contact
7 him about the trial. And that's what Charlie was
8 permitted to tell me, so...

9 THE COURT: Okay. Well, I mean, whenever we need
10 him, if you can't get him, Charlie will be permitted to
11 sit here and explain it to me, so...

12 MR. DUFFY: And that's just part of the reason why
13 I'm trying to avoid all of that. But the other point I
14 just wanted to raise, Your Honor -- it occurred to me I
15 might as well raise it now -- we have two very short
16 witnesses who would only be available sometime through
17 Wednesday, will be gone Thursday and Friday. If it
18 comes a need to call them --

19 THE COURT: If we need to take them out of order,
20 we certainly can do that. I mean, we may -- are they
21 nearby or --

22 MR. DUFFY: They are in town, but going out of
23 town.

24 THE COURT: Okay. But we can get a hold of them
25 if we have some time.

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1 MR. DUFFY: Sure.

2 THE COURT: All right. Great. And what's the
3 lineup for this afternoon, is it kind of the same as
4 before?

5 MR. LUCEY: We have Mr. Eble in the hall, Your
6 Honor, ready to go forward.

7 THE COURT: Okay.

8 MR. LUCEY: And we have several other witnesses,
9 it's a short one and two long ones.

10 THE COURT: Wonderful. Sounds great. All right.
11 Y'all ready for the jury?

12 MR. LUCEY: Yes, ma'am.

13 THE COURT: Thank you, Mr. Pryer.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 1:50 p.m.)

16 THE BAILIFF: All jurors are present and seated,
17 Your Honor.

18 THE COURT: All right. Thank you very much. I
19 appreciate it. Thank you, ladies and gentlemen. I
20 hope you had a nice lunch. Counsel, if you'd call your
21 first witness, please.

22 MR. LUCEY: The Plaintiff calls Mr. Eble to the
23 stand.

24 THE COURT: Mr. Eble, if you'll come on up, we'll
25 swear you in. Thank you. Mr. Tim Eble has been called

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1 as plaintiff's first witness. Thank you, sir.

2 TIMOTHY EUGENE EBLE, after
3 having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat. State your full
5 name for the record, spelling your last.

6 THE WITNESS: Timothy Eugene Eble, E-b-l-e.

7 THE COURT: Yes, ma'am. Thank you.

8 **DIRECT EXAMINATION BY MS. LYNN:**

9 Q. Mr. Eble, let's talk first a little bit about
10 your background. Would you please tell the jury where
11 you live and what you do for a living?

12 A. I live at [REDACTED]
13 [REDACTED]. It's I'On subdivision. And
14 I am retired from my career job I held for 30 years,
15 but I presently am -- trying to become a tree farmer.

16 Q. And how long have you lived in I'On?

17 A. I've lived in I'On from the early years. I
18 think we purchased our house in -- well, we didn't
19 purchase a house. We purchased a lot and we built a
20 house -- and we started prior to 1999, and we actually
21 moved in, in 1999.

22 Q. Let's turn to when you decided to move into
23 I'On. How about did you go about finding information
24 regarding the neighborhood?

25 A. We had a Realtor that was working with us. At

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1 that time, we lived on the Isle of Palms. And the Isle
2 of Palms was becoming difficult to commute to and from
3 work in the summer with the number of tourists coming
4 in. It was becoming difficult to get home. We decided
5 we wanted to move closer in, get away from the shore.
6 And Bill Ripley was a Realtor and a friend of ours, and
7 we asked him to start helping us find a house.

8 He showed us a number of properties in Mount
9 Pleasant, some in the Old Village that were out of my
10 price bracket. He showed some properties to us along
11 Mathis Ferry. And we started discussing I'On, which at
12 that time hadn't really taken off, that it was in the
13 planning stages, and we became interested in that. And
14 he eventually took us over there and we met William
15 Orange, who was a Realtor for the I'On Real Estate
16 Company, and eventually bought property from them to
17 build a house.

18 Q. When you visited I'On with your Realtor and
19 met with Mr. Orange, did you take any guided tours of
20 the property?

21 A. Well, there were several trips to what was
22 I'On. In the early years, before they started
23 construction much, they had what they called annual
24 shindigs when the property was basically forests and
25 fields. And we came down and we met with the

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1 developers and they discussed what they intended to do.

2 We met with Bill Orange and he showed us some
3 diagrams of what different lots would look like and
4 where they were located, and then we talked to somebody
5 else in the real estate office at a different time. We
6 took a walking tour of the property, I think, on one or
7 two occasions. And ultimately negotiated for a lot,
8 which we made a down payment on.

9 And then as the development was proceeding in
10 different stages, a development opened up. Then we
11 ultimately bargained for a lot that was in a different
12 area of the subdivision, which is the lot we ended up
13 with.

14 Q. And regarding the lot that you ended up with,
15 did you negotiate the price for that lot?

16 A. Well, when we had our first purchase, they
17 were somewhat flexible on negotiating a little bit with
18 you. By the time that we bought the lot that we ended
19 up building on, they were less flexible. The
20 subdivision was taking off and was starting to look
21 like they were going to do well. And they weren't
22 quite as willing to be amenable to negotiation, so we
23 pretty much decided to take it at what they were
24 offering to sell it for.

25 Q. And let's go back to the site visit aspect,

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1 what attracted you to I'On when you were visiting the
2 neighborhood?

3 A. Mostly location. It's convenient to downtown
4 Charleston, where I was working. It's convenient to
5 Mount Pleasant schools where my children were going to
6 school at that time. The subdivision was going to be
7 all new and it was a planned subdivision. And I think
8 that the execution of the plan, for the most part, came
9 out quite well and they ended up with a beautiful
10 neighborhood, which is what we were hoping for as far
11 as how the houses are situated and the architectural
12 review committee, and the way the streets are laid out.
13 So I thought it would be a nice piece of property, a
14 nice subdivision. Overall, it was -- it was done
15 pretty well.

16 Q. In addition to location, what else attracted
17 you to the neighborhood?

18 A. Well, the one thing about the I'On subdivision
19 that was going to be unique was it was going to be a
20 community, not just a subdivision where the houses were
21 going to be situated so that neighbors would have more
22 interaction with each other. They would have a chance
23 to talk. There were going to be walking paths that
24 would eliminate people having to get on the street. If
25 they wanted to go from one area to another, there was

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1 going to be paths that went back through the woods --
2 at that time, they were just woods, but they were
3 developing a walk way and path systems with pedestrian
4 bridges.

5 They were going to have a -- what they call a
6 boat house. It's on Eastlake. And the boat house is
7 more of a esthetic amenity, it's not used practically
8 as a boat house, but it's a nice little structure on
9 Eastlake. And then they were planning on putting in an
10 amphitheater.

11 We were told that they were probably going to
12 put in a swimming pool and basketball courts. And we
13 were also told that it was going to be a water access
14 community, that there would be availability for boaters
15 to launch their boats in the Hobcaw Creek, and there
16 would be parking for trailers and such as that, down
17 there at a park that would be on the water.

18 They talked about the fact that within the
19 community there would be mixed commercial properties,
20 where if you wanted to go have dinner, you could walk
21 down to a restaurant and have dinner and walk home.
22 You wouldn't necessarily have to drive. They were
23 planning on putting some churches or allowing some
24 churches potentially to come in if they were interested
25 in it. And there were going to be some shops, so I

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1 thought it just sounded like a nice place to live.

2 Q. When you say "we were talking with
3 individuals", could you elaborate on who the "we" was
4 and who these individuals are, please?

5 A. Well, most of these conversations took place
6 between myself and my wife, and the realtors that were
7 involved, primarily William Orange, Bill Orange, who
8 worked there. Mr. Ripley was familiar with overall
9 what the property was -- what it was going to be, but
10 he didn't have answers to specifics. So if we asked
11 him, he would just have to ask them. So, basically, we
12 spent most of our time talking to the I'On people when
13 we had questions.

14 Q. And was Mr. Orange an I'On person?

15 A. He was. And there was a lady that worked
16 there, too, I think -- and I'm not sure exactly -- I
17 can't remember what her name was, but William Orange is
18 one we actually signed the contract -- the agreement
19 with, I'll put it that way.

20 Q. Did Mr. Orange provide you with any materials
21 that referenced the amenities that you were just
22 discussing?

23 A. He provided us with some materials, which I
24 read before we bought. And then we asked him for some
25 clarification on one or two points, and he told us what

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1 the answers were. I mean, we read the document that
2 was given to us about what would be there. He was
3 indicating that there would be some things that they
4 intended to do, but there were certain things that they
5 had committed to do, and they were given to me in
6 writing.

7 The ones that he said he intended to do, I
8 didn't know whether they would ever come to pass or
9 not, because if it's not in writing, often those sorts
10 of things never happen. And there was a document I
11 remember reviewing, that says basically you've read the
12 document and you understand that this document is --
13 will be done, and that you are not relying on oral
14 representations in order to, you know, to sign what the
15 real estate agent said. So I figured if it was in the
16 written document, you could rely on the writing. And
17 if it wasn't, you know, it might be nice if they
18 actually did it, but you weren't really promised that
19 it would happen.

20 Q. So, based on the information that you were
21 provided and the conversations that you had with the
22 I'On Realty representatives, was it your understanding
23 that the developers were committed to a Creekside Park
24 and community dock?

25 MR. DUFFY: Objection, Your Honor. That's

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1 leading.

2 THE COURT: Sustained. Don't lead the witness
3 please.

4 BY MS. LYNN:

5 Q. Based upon the information provided to you and
6 the conversations that you had during site visits, what
7 was your understanding as to the Creekside Park and
8 community dock?

9 A. Well, there was a disclosure that was given to
10 us. We read the disclosure. And there was a grid on
11 that disclosure. And my understanding was all of the
12 amenities in that grid were separate amenities that
13 would be built by the developer and eventually turned
14 over to the homeowners association for the common use
15 of the homeowners in the property. And anything that
16 was on that grid was a committal for the developer to
17 provide it.

18 Q. And based upon this information and your
19 conversations, what was your understanding as to the
20 use of the Creekside Park and community dock?

21 A. Well, it's my understanding -- and there was a
22 number of things that I saw over the years -- but it
23 was my understanding that the Creekside Park and the
24 ramp -- the boat ramp and the docks were for boaters.
25 You could go down and launch your boat, and you could

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1 go down Hobcaw Creek and get into the Wando River or go
2 into Charleston Harbor, and you could park your car or
3 your trailer down there.

4 And when you finished, you brought your boat
5 back and hauled it out and brought it to your house, so
6 you wouldn't have to go out and pay for storage on your
7 boat if you could put it in your garage, and you
8 wouldn't have to pay for a dry stack if -- if you were
9 going to use the boat and you didn't have room in your
10 house.

11 Q. At this time, were you ever informed by I'On
12 Realty representatives that there were several
13 community docks planned?

14 A. The only docks that we discussed were the
15 large docks down there that was being used -- that were
16 being used by boaters coming in and out of Hobcaw
17 Creek. I don't recall discussions about other docks.
18 We may have had them, but I just don't recall those
19 conversations.

20 Q. Let's turn to the 1998 Property Report
21 disclosure; when did you receive a copy of that report?

22 A. Well, the report is dated, but it would have
23 been in 1998 before we signed the contracts, sometime
24 probably in -- between October and December. I'd have
25 to look at the report to see what the date we signed it

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1 was.

2 Q. Do you recall the execution of a form that
3 acknowledged your receipt of the 1998 Property Report?

4 A. My wife signed a receipt that acknowledged she
5 had the report, yes.

6 Q. And, Mr. Eble, you have two notebooks right
7 there in front of you that has Plaintiff's exhibits.
8 I'd ask that you take the notebook that has Plaintiff's
9 Exhibit 150, which has already been stipulated to, and
10 turn to that exhibit --

11 A. Sorry. Okay. I have that in front of me.

12 Q. Mr. Eble, do you recognize this document?

13 A. I do. It's -- it includes a receipt that was
14 signed -- well, I saw the receipt in here somewhere
15 that my wife signed, with her name on it.

16 Q. It's page 10 in Plaintiff's Exhibit No. 150,
17 if you turn to the 10th page.

18 A. When I thumbed through it, I saw it; now, I
19 can't find it. There's several signatures in here. I
20 see it now, December 21, 1998.

21 Q. And that is your wife's signature on this
22 receipt, correct?

23 A. Right. But we both read the document before
24 she signed it. It says that they've given us a copy.
25 We acknowledge we received a copy, and I don't sign

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1 things without reading them, so we would have read it.

2 Q. And, Mr. Eble, will you now go to the other
3 exhibit notebook and turn to Plaintiff's Exhibit No. 1
4 which has also been stipulated into evidence. This
5 would be the 1998 Property Report.

6 A. Okay. I see that now.

7 Q. And is this 1998 Property Report the same
8 Property Report that you reviewed prior to executing
9 your purchase contract?

10 A. Yes, it seems to be.

11 Q. Let's turn to page 21 of the 1998 Property
12 Report, the recreational facilities chart.

13 A. Okay. I'm there.

14 Q. Would you please elaborate on your
15 understanding as to the recreational facilities listed
16 in this chart?

17 A. Well, it wasn't my understanding -- I relied
18 on this, what's actually written in the document. And
19 it says that the developer was responsible for
20 construction of those amenities. Then the next
21 paragraph says, "Upon completion of the recreational
22 facilities described in the chart above, the I'On
23 Assembly, Inc. will be responsible for their operation
24 and maintenance".

25 Then the next paragraph says 'The recreational

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1 facilities listed in the chart above shall, upon
2 completion of construction, be conveyed to the I'On
3 Assembly, Inc. by Quit Claim Deed and clear of all
4 monetary liens and encumbrances at no cost to the I'On
5 Assembly or its members". So I didn't have an
6 understanding, I read the document and that's what the
7 document said, that's what you are supposed to get.
8 This is how they're going to be transferred to you and
9 there's a list of them. I mean, it's just what the
10 document says. There wasn't ambiguity about it.

11 I asked for clarification on what was meant by
12 the Creekside Park. And I was told that the Creekside
13 Park was that area where the boat ramp and the docks
14 were going to be, and I didn't really go into any more
15 of it than that.

16 I -- he had some pictures. And I don't know at
17 that time if the pictures had that as the location or
18 not, but I had gone down there -- or I had gone down
19 there with him or without him prior to that, and I made
20 it pretty clear what I was asking about. Because I
21 wanted -- I had -- I'm a boater and I had a boat for 20
22 years, you know. It was too big for the creek, but I
23 was going to buy a little power boat -- I bought a used
24 Bay Liner later, and I wanted to be able to use the
25 boat ramp.

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1 And my understanding was, there would be a boat
2 ramp; there would be a Creekside Park and a community
3 dock and all that, and the whole community could use
4 it. That's why they didn't want a bunch of small
5 docks, they just wanted one real big dock so that you
6 wouldn't have a situation where every homeowner felt
7 like he had to build a big, huge dock coming out into
8 the water.

9 Q. Earlier when you said "he" told you about the
10 Creekside Park, who is he?

11 A. Well, I think most of these conversations were
12 with Bill Orange. But like I said, I think there was a
13 lady working there at one time and I may have talked to
14 her, but I'm pretty sure that most -- 99 percent of
15 what we talked about was with Bill.

16 Q. And when you say "docks near the water", are
17 you referring to water on Hobcaw Creek?

18 A. The Hobcaw Creek, where you can navigate a
19 boat. I mean, you're talking about launching a power
20 boat. You wouldn't do anything that didn't, you know,
21 have water to do it.

22 Q. And, Mr. Eble, you believed the language
23 contained in this chart in the paragraphs that you just
24 read to be specific in detail?

25 A. It says what it says. I don't think there's

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1 any ambiguity. The document says this is what we're
2 going to do, and it lists out what the different -- you
3 know, what the different amenities are in phase I and
4 then later in phase II.

5 Q. And, Mr. Eble, did you rely on this chart and
6 those paragraphs in the 1998 Property Report when you
7 entered into your purchase?

8 A. Well, I relied on the whole document. I
9 didn't pick out one specific square and say this is
10 what I'm relying on. I mean, it's a disclosure and
11 there is a disclosure on the very front of it in huge
12 letters. It says, "Read this Property Report before
13 signing anything". I took that pretty seriously,
14 because we were putting a lot of money down on the lot.

15 When you buy a lot, you commit to build and the
16 commission on both the lot and the construction costs,
17 so you're talking about a lot of money. It's a major
18 decision to do something like that.

19 Q. Prior to the initiation of this lawsuit, are
20 you aware of whether the developers ever transferred
21 the Creekside Park and community dock to the Assembly?

22 A. Well, it's my understanding they did not.
23 That was the cause -- that's what caused the lawsuit to
24 be filed. I never knew whether they were going to
25 convey that or not. I presumed they were going to keep

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1 their word at some point. And then when they sold it,
2 it kind of became apparent that they weren't going to
3 convey what they said they would convey to the
4 homeowners association.

5 Q. Do you believe that to be contrary to what was
6 represented to you at the time you purchased your lot?

7 A. Oh, I do.

8 Q. Would you have had negotiated the purchase
9 price of your lot had you realized, in your words, that
10 the developers were not going to fulfill their work?

11 A. That's really a hard question to answer
12 because they were kind of giving lots on a take-it or
13 leave-it basis, and you're talking about a decision
14 that's 15 years old. But, you know, I just -- when
15 somebody gives you something in writing and they say
16 you're going to do it, the thought never occurred to me
17 to question whether they were going to do it or not.
18 It -- I don't know what I would have done back then.

19 Q. How do you believe that the Assembly has been
20 damaged by the developer's failure to keep their word?

21 A. Well, when we -- prior to 2000, I mean -- in
22 the last -- when this was brought up to me the last
23 time I testified, prior to 2000, they were telling
24 people this is what's going to happen, and people paid
25 money for that. And when you pay money for that and

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1 it's incorporated into this document, you shouldn't
2 have to pay for it a second time. If you pay for it
3 with -- basically the cost of that lot was built into
4 what you're paying when you purchase the property the
5 first time, indirectly that goes to the homeowners
6 association -- you know, this doesn't benefit me
7 directly at all. This is -- it benefits the community,
8 you know, having water access or not having it. Me,
9 personally, it doesn't affect that much. But,
10 basically, you pay for it when you buy the lot and pay
11 for the commissions on the house and the lot. And then
12 you should haven't to pay for it a second time to get
13 what somebody promised you.

14 It's the same thing as if you go down and you do
15 a deal at the car dealer, and he says, I'll give you a
16 car. And, you know, you give me the money and this is
17 the car, here's where it is. So you pay for it. But
18 then when you go back, he says, I don't have that car
19 anymore, you know, so I have to buy one. That's not
20 what I expected.

21 Q. Mr. Eble, are you a part of some design or
22 scheme to manufacture a claim against the developers?

23 A. Absolutely not and I'm offended if that's an
24 insinuation that anybody has ever made. I'm testifying
25 to what's in a document that we read and we signed.

T. EBLE -- DIRECT BY MS. LYNN

1 And I'm testifying to what we were told at the time we
2 signed it. That's not manufacturing nothing. I mean,
3 this is in black and white.

4 Q. Mr. Eble, are you a part of what Mr. Duffy
5 refers to as the Free Civic Lot Gang?

6 A. I've never heard of the Free Civic Lot Gang
7 and it couldn't be free if you pay for it when you buy
8 your house the first time. And if you have to pay for
9 it a second time, then it's a very expensive lot. It's
10 far from free. I think the term is insulting and
11 contriving.

12 Q. As a member of the Assembly, you support what
13 Brad and Lea Ann is trying to do?

14 A. I do because I think the community deserves
15 what they were promised is all. And in the early
16 years, it's clear to me that they were promised to have
17 a Creekside Park. Now, they later stuck a house on a
18 Creekside Park. I don't know what you do about
19 somebody that tells you they're giving you a lot and
20 then they stick a house on it after they say they are
21 going to give it to you. You make an assumption that
22 that's part of what they're giving to you.

23 I mean, I don't -- when the house went on it, I
24 was kind of saying, well, I guess that's part of the
25 park. But I didn't -- I wasn't -- I didn't know what

T. EBLE -- CROSS BY MR. DUFFY

1 to make of it until they actually turned around and
2 sold it to someone else.

3 Q. Do you have an impression as to whether the
4 I'On community supports what Brad and Lea Ann are
5 trying to do?

6 MR. DUFFY: Objection, Your Honor.

7 THE COURT: Sustained.

8 MS. LYNN: Mr. Eble, thank you.

9 THE COURT: All right. Cross examination.

10 MR. DUFFY: Thank you, Your Honor.

11 **CROSS EXAMINATION BY MR. DUFFY:**

12 Q. Good afternoon, Mr. Eble.

13 A. Good afternoon.

14 Q. You are a lawyer, correct?

15 A. I am.

16 Q. And for how many years were you practicing?

17 A. Well, I'm not practicing law now. I retired
18 in 2013, but I practiced law from 1981 to 2013.

19 Q. Okay. And you understand, don't you, that
20 when you're conveying real property, that the specifics
21 of the property have to be in writing; is that fair?

22 A. That's the law for a law school axiom, yeah.
23 That's basically -- you can't convey real estate
24 without putting it in writing under the statute of
25 frauds. That's pretty basic law school. I'm not a

T. EBLE -- CROSS BY MR. DUFFY

1 real estate lawyer, so don't start giving me a lot of
2 real estate stuff or -- or I'll lose that probably.

3 Q. Okay. Well, you mentioned that there were a
4 lot of discussions with Mr. Orange; is that right?

5 A. We talked to Mr. Orange and we talked -- I
6 mean, we talked to Mr. Orange. We talked to the
7 developers a couple of times at these shindigs, but I
8 don't remember any specific questions about that
9 building down there -- when I went to buy the property.
10 I don't think the building was necessarily even being
11 talked about.

12 Q. Well, let's start there. When you were
13 buying, was there even anything down on civic lot 6?

14 A. There was Hobcaw Creek and then there was --
15 it was almost wilderness down there.

16 Q. Okay.

17 A. And, I mean, it wasn't developed. There was
18 some trash on the property, I think, they had to clear
19 out. We went back and it was pretty much old wild west
20 back there when we made our first boot trail trip back
21 there.

22 Q. Okay. And isn't it true that you don't -- you
23 don't trust what realtors tell you and you have to have
24 something in writing when you are buying property;
25 isn't that right?

T. EBLE -- CROSS BY MR. DUFFY

1 A. I'm skeptical a lot. I'm told if somebody
2 hands you a document and they tell you one thing, and
3 they hand you a document and it says that you can't
4 rely on anything I tell you, I'm sort of sceptical of
5 that.

6 Q. Okay --

7 A. You ask questions and then they give you a
8 document, it naturally makes you skeptical if the
9 document says don't trust me, so that's where that
10 comes from.

11 Q. All right. Well, you testified before as you
12 mentioned -- you testified that you generally don't
13 trust realtors; is that fair?

14 A. I said something to that effect. I'm always
15 skeptical of any sales person, including realtors, as a
16 generic sort of answer to that.

17 Q. And would you agree with me that at least in
18 every real estate contract you've seen, there's a
19 provision that says, me, as buyer, I'm not relying on
20 anything anyone told me, I'm relying on what's in this
21 writing?

22 A. I think that's pretty much in all the real
23 estate contracts now under the -- the Uniform Contract
24 that the Realtors Association uses.

25 Q. Okay. You're not -- you're not telling us

T. EBLE -- CROSS BY MR. DUFFY

1 today that you wouldn't have bought your lot in I'On if
2 the Creekside Park and community dock that were
3 conveyed, is as the things that were actually conveyed
4 to the homeowners association?

5 A. I'm just saying I don't know. I mean, at the
6 time that I -- at the time that I bought the property,
7 there were so many issues with I'On as to whether it
8 was even going to go forward, that had I known that it
9 wasn't going forward -- it wasn't going to go forward,
10 I might have made a different decision. But now that
11 it's turned out as nice as it has in hindsight, I
12 probably -- you know, in all candor, I probably would
13 have bought the property anyway. But at that time, it
14 might have made a difference to me in buying it because
15 I didn't know if they were going to be successful.

16 Q. Right. And the price you mentioned was take
17 it or leave it essentially?

18 A. Well, at that -- on the first contract, no.
19 By the time we got to the third contract, they were
20 kind of moving to that more rapidly.

21 Q. Well, the one that you signed the property
22 receipt for -- your wife signed the property receipt
23 for, which one was that?

24 A. That was the third.

25 Q. Okay. And that was take it or leave it

T. EBLE -- CROSS BY MR. DUFFY

1 pricing essentially?

2 A. Pretty much. We did finagle a couple of
3 things about construction dates and all because they --
4 they had a situation where you buy a lot, and then you
5 get a contract for a house on it and you had to build a
6 house within a certain period of time, and you had to
7 pay commission on the full thing, the cost of the house
8 and the lot, even though the house didn't exist. And
9 they had some problems getting permits from the city to
10 do sewage and infrastructure over in the area where our
11 lot was, so the lot got delayed so much that after
12 we -- you know -- signed the contract, it put our
13 construction behind. And so we got like an extension
14 from them, you know, saying we are going to need more
15 time to get the house finished, but that's a minor
16 thing.

17 Q. Okay. Did Mr. Walbeck approach you, as a
18 lawyer, about potential claims about the '98 Property
19 Report?

20 A. No.

21 Q. Okay.

22 A. Oh, wait a minute -- Mr. Walbeck?

23 Q. Yeah.

24 A. Not about a 1998 Property Report. And any
25 conversation that we would have had, if he was

T. EBLE -- CROSS BY MR. DUFFY

1 discussing them with me at that time, would have been
2 privileged.

3 Q. Did he approach you about anything related to
4 this lawsuit?

5 A. Again, that would be attorney/client
6 privilege. That goes back at a date that I gave advice
7 that was legal advice, and I can't talk about that
8 today.

9 Q. Well, did you refer him to Mr. Lucey?

10 A. No. I just said, I can't -- I'm not getting
11 involved.

12 Q. Okay. Now, you told us on your direct
13 examination that you just always presume that the I'On
14 Club was going to transfer these things over; is that
15 right?

16 A. No, I didn't assume the I'On Club was going to
17 transfer the things over, I made the assumption that
18 since the Property Report said the Creekside Park would
19 be and the dock would be transferred over, that that
20 land that is there would be transferred over.

21 Q. Right. And you said on direct, I believe,
22 that you always presumed that would happen. Then you
23 found out that it got sold; is that right?

24 A. Well, I got kind of shocked about it being
25 sold because -- there was some discussions with the

T. EBLE -- CROSS BY MR. DUFFY

1 homeowners association about that property, and then it
2 was sold to the -- what I'll call the Russo group.
3 It's called Civitas something or whatever LLC, so I was
4 pretty surprised that they did that.

5 Q. Mr. Eble, in 2007, the I'On Club proposed --
6 the I'On defendants proposed to sell civic lot 6, the
7 Creek Club, to the homeowner association; do you recall
8 that?

9 A. I do.

10 Q. Yeah. And you supported buying that, didn't
11 you?

12 A. I did because it would have avoided what we
13 are doing today.

14 Q. You supported the Assembly buying civic lot 6
15 for \$700,000 when it was offered; didn't you?

16 A. I did.

17 Q. I want to run through some exhibits with you,
18 please. Can we start with Defendant's 76. Well, let's
19 just put that down for just a second. Mr. Eble, do you
20 agree that the Board of Directors and homeowners
21 association, before every annual meeting in I'On, would
22 send out a packet of information to every resident?

23 A. They sent out letters, which for -- I didn't
24 read all of them, I read some, but not others --

25 Q. Did they --

T. EBLE -- CROSS BY MR. DUFFY

1 A. I don't know if they sent them out every year,
2 but I suspect they did. They did communicate.

3 Q. Did they include the budget -- proposed budget
4 for the next year?

5 A. I'm sure they would have.

6 Q. Okay. Did you review any of those?

7 A. Not really.

8 Q. So, did you know that from the very get-go,
9 when the Creek Club was completed in 2001, that the
10 homeowners association was paying for use of the Creek
11 Club and for the use of the Creek Club docks?

12 A. I knew we were paying for the maintenance of
13 the Creekside Park docks -- or whatever you call --
14 what did you call them?

15 Q. Creek Club docks.

16 A. I knew we were paying for the maintenance of
17 those docks, and I knew that it was a building owned by
18 the I'On Company. And we were paying for -- when they
19 had community meetings or something, there was some
20 nominal fee that was being paid of some kind, and then
21 it got larger later.

22 Q. And you knew, in fact, that building was
23 operated for private rental from the start; is that
24 right?

25 A. I did.

T. EBLE -- CROSS BY MR. DUFFY

1 Q. Okay. Let's please look at Defendant's 76.
2 Now, you made some mention of your wife, Ms. Eble --
3 now, Ms. Eble started serving on the Board of Directors
4 for some time; is that right?

5 A. She did.

6 Q. Okay. In fact, she was -- if you look at page
7 2 please -- and highlight that top paragraph and call
8 it up, please. Just make this easy for everyone. Mr.
9 Eble, was Mrs. Eble the chair of the finance committee
10 for the Board of Directors?

11 A. She was for a while. I know that she audited
12 the -- I know that because she audited the bills from
13 the gas, power company. And they found they were
14 charging us for like 25 or 30 poles we didn't have, and
15 it was \$74,000 they were able to get back from South
16 Carolina Gas & Electric for pole rentals for poles that
17 didn't exist, so she was looking at the budget for some
18 years, but I don't remember the exact years.

19 Q. Well, these minutes -- or this letter to the
20 homeowners, at page 1, you'll see it is November 1,
21 2004; you agree with me that at least at that point,
22 Ms. Eble was the chairperson of the finance committee?

23 A. The letter says that, so I have no reason to
24 say she wasn't.

25 Q. I mean, Mr. Eble, wasn't she --

T. EBLE -- CROSS BY MR. DUFFY

1 A. I don't just have -- I don't have independent
2 recollection of what year she was on the finance
3 committee. If the letter says that, then she was.

4 Q. Then, please, let's look at Defendant's
5 Exhibit 108. If you look through a few minutes of the
6 Board -- you'll see this one is dated February 12,
7 2004. You see listed -- do you have it in front of
8 you, Mr. Eble? Maybe I can give you this hard copy.

9 A. I can't see it. This print is too fine.

10 Q. Okay. Let me get the hard copy for you -- if
11 you have any room up there.

12 A. What number are we on?

13 Q. It's 108, please.

14 (PAUSE.)

15 THE COURT: If you would repeat the question, Mr.
16 Duffy, I would appreciate it and we can get right to
17 the answer.

18 BY MR. DUFFY:

19 Q. Do you -- are you with me on 108, please?

20 A. I see the --

21 Q. And do you see your wife, Mrs. Eble, listed as
22 a member of the Board present in February of 2004?

23 A. I do.

24 Q. Okay. Lea Ann, let's look at Defendant's 39,
25 please. Defendant's 39 is one of the budgets of the

T. EBLE -- CROSS BY MR. DUFFY

1 Assembly -- are you with me yet? Please let me know
2 when you are, Mr. Eble.

3 A. I am.

4 Q. Okay. And on the first page of 39, you'll see
5 there's an entry at 639 -- do you see that entry?
6 Right along the side here. An entry for the Creek Club
7 rental fee; do you see that?

8 A. I do.

9 Q. Okay. And just a few beneath that, you'll see
10 an entry for the Creek Club dock usage fee; do you see
11 that?

12 A. I do.

13 Q. Would you agree with me that Ms. Eble was
14 certainly familiar with the payments being made for the
15 rental fee for the Creek Club and for the usage fees
16 for the docks and the Creek Club?

17 A. I'm sure that she was, yes.

18 Q. Okay. Let's look at 113, please, Lea Ann --
19 113, sorry to keeping jumping around on you, I'm trying
20 to do it quickly, which isn't fair to you -- 113,
21 please, Mr. Eble --

22 A. Okay.

23 Q. -- do you see these are minutes of the Board
24 of Directors from February 9, 2005; is that -- are you
25 with me, Mr. Eble?

T. EBLE -- CROSS BY MR. DUFFY

1 A. I am. I mean, I don't think I've ever seen
2 this before, but...

3 Q. Okay. Do you see --

4 A. That's what it says on it.

5 Q. All right. And is Ms. Eble present at the
6 meeting?

7 A. It says she is -- well, it says she's a guest,
8 yeah, so she's present at the meeting.

9 Q. How to handle the finance committee -- but
10 let's look on the last page, Lea Ann, under old
11 business.

12 A. Okay.

13 Q. Just under old business, Mr. Eble, do you see
14 where it indicates that Mr. Ed Clem is presenting to
15 the Board of Directors documents regarding the legal
16 agreement between the I'On Assembly and the I'On Club
17 pertaining to the usage of the docks at the Creek Club;
18 do you see that?

19 A. I see that paragraph, yes.

20 Q. Okay. Is it fair to suggest that Ms. Eble was
21 aware of that agreement as well?

22 A. I can't speak as to what my wife was aware of.
23 There is a document that says she was at a meeting. I
24 don't really know what she was aware of, I would have
25 to ask her. You're asking me -- I've never seen the

T. EBLE -- CROSS BY MR. DUFFY

1 document, and basically you're just saying what's in
2 the document and asking me if she knew something and --
3 it says she was a guest. I don't know if she was there
4 the whole time. I don't know if she wasn't. I mean, I
5 just don't know. You might be right. I just don't
6 know that you're right.

7 Q. Okay. Thank you. You are aware she was at a
8 meeting where the minutes reflect that was discussed;
9 is that fair?

10 A. There's a document that says that, yes.

11 Q. Okay. Let's look at -- well, we can skip
12 looking at this. When you showed it earlier, it's Ms.
13 Eble who signed the Property Report receipt, right; the
14 1998 Property Report?

15 A. She signed it, but we both read it.

16 Q. I'm going to hand this to you, Mr. Eble. Tell
17 me if you recognize what that is?

18 A. It's a deed.

19 Q. Is that the deed from the I'On Company of the
20 property that you purchased?

21 A. It's the property my wife and I purchased,
22 yes.

23 Q. Right. Well, who is the purchaser listed on
24 the deed?

25 A. It's in my wife's name, but if you're married

T. EBLE -- CROSS BY MR. DUFFY

1 in South Carolina, any property you buy, it belongs to
2 both.

3 Q. She's the purchaser from the I'On Company; is
4 that right, sir?

5 A. She's on the deed, yes.

6 Q. Okay. So, she is the one who would have any
7 claim related to a contract entered into with the I'On
8 Company; isn't she?

9 A. Not necessarily. That's a legal question
10 you'd have to ask the judge, because we both own the
11 property. The deed's in her name.

12 Q. Okay.

13 A. And I'm a third party beneficiary of the
14 contract between I'On -- and my wife owns property that
15 we both purchased, in which I paid for entirely.

16 Q. And she's not here to testify today because
17 she can't deny that she knew about this all along;
18 isn't that right?

19 A. No, that's not true at all. She's in
20 Greenwood today visiting her parents.

21 Q. Was she ever --

22 A. Because her dad had a -- her dad, last week,
23 passed out in the middle of the --

24 Q. I'm sorry to hear that. Did she testify at
25 the last trial?

T. EBLE -- REDIRECT BY MS. LYNN

1 A. No, she didn't.

2 MR. DUFFY: Okay. Thank you.

3 THE COURT: Thank you. Any redirect?

4 MS. LYNN: Yes.

5 **REDIRECT EXAMINATION BY MS. LYNN:**

6 Q. Mr. Eble, what was your understanding as to
7 the amenities the developers promised to build and
8 transfer to the Assembly per the 1998 Property Report

9 --

10 MR. DUFFY: I --

11 THE COURT: Sustained.

12 MR. DUFFY: Thank you, Your Honor.

13 BY MS. LYNN:

14 Q. Mr. Eble, what facts, if any, were you
15 provided that the developers did not intend to abide by
16 the property --

17 THE COURT: Sustained.

18 MR. DUFFY: Objection, Your Honor.

19 BY MS. LYNN:

20 Q. Did the representations made by I'On Realty
21 representatives in any way differ than what you
22 understood and read in the 1998 Property Report?

23 A. Yes, to some extent. But the representations
24 that they made that I felt they needed to be bound to,
25 whether they charged the I'On community or not for

T. EBLE -- REDIRECT BY MS. LYNN

1 using a Creek Club, the representation was the property
2 would be conveyed. What they were charging the Creek
3 Club, that didn't necessarily mean they weren't
4 ultimately going to convey the property. I wasn't
5 aware of that until they sold the property,
6 irrespective of whether they were charging the
7 community -- because the community in the early years
8 used that Creek Club building quite often, and we -- we
9 had access to the docks. They didn't start closing
10 down the docks and denying people access to the water
11 on a real regular basis until it was sold to that
12 business that's running it now.

13 MS. LYNN: Thank you.

14 THE COURT: Okay. Anything further?

15 MR. DUFFY: No, ma'am.

16 THE COURT: All right, sir. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. Call your next witness,
19 please.

20 MR. LUCEY: The plaintiff calls Tom Graham.

21 THE COURT: Yes, sir. Okay. Mr. Graham, come on
22 up and we'll swear you in.

23 THOMAS C. GRAHAM, after having
24 been duly sworn, testified as follows:

25 THE CLERK: Thank you, sir. Please have a seat.

T. GRAHAM -- DIRECT^d BY MR. LUCEY

1 Please state your full name for the record, spelling
2 your last.

3 THE WITNESS: My name is Thomas C. -- Carroll --
4 Graham -- G-r-a-h-a-m.

5 **DIRECT EXAMINATION BY MR. LUCEY:**

6 Q. Mr. Graham, good afternoon. How are you
7 doing?

8 A. I'm doing fine.

9 Q. I'm going to try to keep moving fast so we can
10 get through this trial this week, but if at any time,
11 I'm moving too fast, I want you to tell me to slow
12 down; okay? Is that acceptable, sir?

13 A. That's good.

14 Q. Now, and to move fast, I'm going to try to use
15 some of the exhibits on the screen. Any time I do
16 that, and you prefer a paper copy, tell me. I'll have
17 it to you immediately. Okay. First, let's just
18 briefly cover your background, sir. You're a
19 developer, correct?

20 A. I am with the -- with the -- our company. I
21 developed a company, I'On Company.

22 Q. Yes, sir. And you personally have been in
23 development for a long time, correct?

24 A. I've been in development a fairly long time.
25 I started real estate development in about 1979.

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1 Q. '79. So that would be -- if my math is
2 right -- 30 odd years?

3 A. Something -- I don't know. It's been a long
4 time.

5 Q. And you've been successful, though?

6 A. Well, sometimes I've been successful and
7 sometimes it's been very unpleasant. But overall, I've
8 had a successful career.

9 Q. And you developed in Atlanta?

10 A. I did most of my development in Atlanta.

11 Q. You've also done some development in North
12 Carolina?

13 A. I was in -- I was -- I was involved in
14 developments in North Carolina that -- that were --
15 they were not very pleasant.

16 Q. And obviously we know from today, you
17 developed in South Carolina?

18 A. Well, in South Carolina, I've been involved in
19 development in South Carolina, yes.

20 Q. You don't deny having a very large developer
21 role in the I'On subdivision here in Mount Pleasant, do
22 you?

23 A. No, I was -- no.

24 Q. Now, as part of being a developer with 30 odd
25 years experience, you're fairly familiar with

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1 development type documents such as deeds, correct?

2 A. Yes.

3 Q. And purchase contracts?

4 A. Yes, sir.

5 Q. Leases?

6 A. Yes.

7 Q. Easements?

8 A. Yes.

9 Q. Mortgages?

10 A. Yes.

11 Q. Complex acquisition agreements?

12 A. Well, I try to keep things simple. I don't
13 know about complex, what -- what you mean?

14 Q. And you have a lot of business and financial
15 experience, too, correct?

16 A. Yes.

17 Q. I mean, you run the numbers before you get
18 into a project, correct?

19 A. Well, as much as you can. I try to.

20 Q. And going back to those complicated
21 acquisition contracts, the acquisition contract was, in
22 fact, a complicated acquisition contract, correct?

23 A. Well, it -- we tried to keep it simple, clean.

24 Q. You acquired the property in rolling phases,
25 correct?

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1. A. Yes.

2. Q. And phase I, obviously, would be first, right?

3. A. Well, phase I was first. But the sequence of
4. the numbers, we sometimes acquire them out of sequence.

5. Q. Well, let's address something that we heard
6. earlier this morning that your representative provided
7. information on to the jury in opening. Let's go to the
8. ownership of phase II. Do you recall hearing that --
9. in that Property Report, those recreational amenities
10. that chart -- that your company didn't actually own
11. those -- own that real estate at the time?

12. A. I don't think we did in terms of the -- we had
13. the option to purchase it if we -- and we had an
14. obligation to move fairly quickly.

15. Q. Right. At the time the Property Report was
16. given to my client, Brad Walbeck, in November of 1999,
17. your company owned phase II, correct?

18. A. Correct.

19. Q. All right. So at the time he got the
20. representation, the issue of whether or not you'd ever
21. buy it, that's out the window, right? You own it?

22. A. Well, we owned it then, yes.

23. Q. In fact, you bought it in March of 1999,
24. correct?

25. A. I don't remember the exact date. It was in

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1 1999.

2 Q. Defendant's 3 on the screen, please. March of
3 1999 would be seven months before y'all handed the
4 amenities chart, the recreation chart, to my client,
5 Brad Walbeck, correct?

6 A. Well, I didn't do the math in terms of -- but
7 we did -- we did own the land at the time that -- that
8 we sold the lot to Mr. Walbeck.

9 Q. I want to address another piece of information
10 the jury was provided this morning regarding
11 Defendant's Exhibit No. 3, a set of plats. And you see
12 the ones on the Board behind you, correct?

13 A. Well, they are out of focus for me. I can't
14 read them.

15 Q. Have you reviewed them prior to coming to
16 court today?

17 A. Reviewed what?

18 Q. The plats that show a Creekside Park being
19 where the Marshwalk Park is?

20 A. Oh, yes. I've seen those plats, yes, those
21 engineering plans, yes.

22 Q. You looked at those before coming to court,
23 correct?

24 A. Yes.

25 Q. Because y'all were going to point out to the

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1 jury the Creekside Park reference to the Marshwalk Park
2 that's on those plats, correct?

3 A. I'm sorry, I --

4 Q. Did you hear this morning -- pointed out --
5 that Defendant's Exhibit No. 3 has a reference to
6 Creekside Park where the Marshwalk Park is?

7 A. Well, the Creekside Park and the Marshwalk are
8 the same. It's the same park. It's really a -- it's
9 really the most significant park within I'On, I think.
10 And it's shown on this -- it's demarcated and the
11 engineers showed that they -- they marked on that
12 series of engineering plats the location of the
13 Creekside Park. On -- subsequently, all along -- all
14 along the marsh and the creek and the marshes of I'On.
15 It's a ten acre park.

16 Q. Right.

17 A. It's two -- it's over two miles in length, and
18 it's a marvelous park.

19 Q. When you look at these to point out that
20 reference to Creekside Park to the jury, did you happen
21 to notice that every one of these plats is dated
22 several years after the 1998 Property Report?

23 A. Yes. They continued to, the engineers -- yes,
24 they continued to use that reference all the way
25 through, after the name was changed to the Marshwalk

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1 Park.

2 Q. Y'all don't have a plat from 1998 which calls
3 the Marshwalk plat -- Marshwalk Path a Creekside Park;
4 do you?

5 A. No, sir.

6 Q. You don't have one from 1999 that calls the
7 Marshwalk Path a Creekside Park; do you?

8 A. I don't know when that first one was --

9 Q. The first date I see is May 31, 2000, a month
10 and a half after you all amended the Property Report in
11 April of 2000; are you aware of any older than that,
12 sir?

13 A. Am I aware of what?

14 Q. Any references to a Creekside Park on the
15 tributary prior to May of 2000?

16 A. No.

17 Q. Sir, let's go -- Exhibit 1, please. We have
18 on the screen the 1998 Property Report, correct, sir?

19 A. The first page, yes.

20 Q. And let's go to page 21 with the chart. This
21 is the recreational facilities chart, correct?

22 A. Yes.

23 Q. And in the second half, on phase II, if you'll
24 blow up all of phase II -- I should use the word
25 "enlarge" -- I'm just used to the word "blow up" for

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1 some reason -- we see the Creekside Park is the first
2 item listed, correct?

3 A. Yes.

4 Q. And the second item is the community dock,
5 correct?

6 A. Community dock, yes.

7 Q. And you agree that that reference to a
8 community dock in this report, this 1998 report,
9 probably refers to the dock at the Creek Club, the main
10 dock, correct?

11 A. False.

12 Q. Sir, do you deny previously telling Josh
13 Evans, under oath in a deposition he took several years
14 ago, that the community dock on page 21 of the Property
15 Report, probably refers to the dock at the Creek Club,
16 the main dock?

17 A. I don't remember what I said two years ago.

18 Q. May I have the original deposition, please?

19 MR. LUCEY: Permission to open the deposition,
20 Your Honor?

21 THE COURT: You may.

22 MR. LUCEY: May I ask the court to inform the jury
23 of the nature of the deposition.

24 THE COURT: Certainly. Ladies and gentlemen, a
25 deposition is sworn testimony taken in the presence of

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1 a court reporter with the attorneys and the parties if
2 they so choose. The deposition is taken under oath
3 just as it would be in a courtroom. The difference is
4 the trial judge and the jury are not there, but it is
5 sworn testimony and it is for you to use and evaluate
6 as you see fit, just as you would any other testimony
7 that you hear.

8 BY MR. LUCEY:

9 Q. Sir, let me direct you to -- first of all, on
10 the first page, we see this -- this deposition was
11 taken on May 23, 2012; do you see that?

12 A. Yes.

13 Q. So, that's just over two years ago, correct?

14 A. Yes.

15 Q. And you do recall being sworn to tell the
16 truth at the beginning of the deposition, correct?

17 A. Yes.

18 Q. And you do agree with me that a person's
19 memory generally is better the closer in time to an
20 event, that their memory is tested or the testimony is
21 given, correct?

22 A. Generally.

23 Q. And let's go to page 69, line 25. Would you
24 tell me when you're there. Page 69 at the bottom, line
25 25.

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1 I asked you, "Do you believe the reference" --
2 or Mr. Evans asked you -- "Do you believe the reference
3 there in the chart refers to the dock that's at the
4 Creek Club?"

5 "Certainly, that was one -- one of them. I
6 would think probably, but I would just like -- I would
7 just be guessing. I don't know what's in Joe's mind
8 without asking him".

9 And the next question was, "I should ask Joe as
10 to which docks that includes"?

11 Answer, "What?"

12 Next question, "I should ask Joe Barnes which
13 docks that includes, that reference includes?"

14 Answer, "Well, you can ask him if you want to."

15 Question, "Well, if I wanted a definitive
16 answer, who do I ask?"

17 Answer, "Well, he may -- I don't know. I don't
18 know who you ask. Joe might know, but that's been
19 actually -- it's been 14, 15 years ago. Good luck.
20 He'll remember. But I know that -- that I would say
21 probably they were, I mean, probably they are referring
22 to that dock, the main dock. The Assembly does
23 provide" --

24 MR. YOUNG: Your Honor, I would ask that he read
25 verbatim. I think you are adding something to the

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1 transcript --

2 THE COURT: Okay. Let's make sure it's verbatim.
3 I don't have it in front of me, so --

4 MR. YOUNG: You can start, Justin, at "but".

5 MR. LUCEY: At the word "but"?

6 MR. YOUNG: Yes, sir.

7 BY MR. LUCEY:

8 Q. "But I know that, that I would say probably
9 they were, I mean, probably they are referring to that
10 dock, but that dock is -- that particular dock, the
11 main dock, the Assembly does provide -- pays part of
12 the costs and the Assembly provides all the maintenance
13 and all the rest of the docks, because nobody else uses
14 those or has access to it legally, so the Assembly pays
15 for it, but the Club pays for part of the maintenance
16 of that on the community -- on the main dock". Did I
17 read that correctly, sir?

18 A. Yes.

19 Q. Did you hear yourself use the word two or
20 three times "probably", but that dock is "probably" the
21 one referred to in that chart?

22 A. Well, that's correct. I did say that.

23 Q. Sir, not only did you tell Mr. Evans several
24 times that that community dock in phase II, page 21,
25 Plaintiff's Exhibit 1 probably refers to the dock at

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1 the Creek Club parcel, you actually told him that you
2 believed it refers to the dock at the Creek Club parcel
3 that is adjacent to the boat ramp, correct?

4 A. I don't recall seeing the "believe", I thought
5 it --

6 Q. Let's go to page 75, sir. Line 4.

7 Question, "Do you believe the community dock
8 that is referenced in the chart on page 21, includes
9 the dock at the Creek Club that is adjacent to the boat
10 ramp?"

11 Answer, "yes".

12 Did I read that correctly, sir?

13 A. That is -- you did.

14 Q. And, sir, you agree that the facilities listed
15 in phase I, which we have now identified as including
16 the dock at the Creek Club, were intended to be
17 conveyed to the Assembly, correct?

18 A. Would you repeat that question?

19 Q. The facilities that are listed in that chart
20 on page one, for phase II, were intended to be conveyed
21 to the Assembly, correct?

22 A. That is correct.

23 Q. And we have just identified that that
24 community dock reference, one, you believe is probably
25 the dock at the Creek Club; and two, that you believe

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1 it's the dock at the Creek Club next to the boat ramp,
2 correct?

3 A. Well, I did at that time, but I -- I am -- but
4 it is clearly not now as we go back and review the
5 details of subsequent...

6 Q. You are changing your testimony?

7 A. I was not -- I was not aware of the details
8 about that at that time; that's correct.

9 Q. In 2012, you believed that Plaintiff's Exhibit
10 1 referenced the docks at the Creek Club; and in 2014,
11 once we get to trial, you no longer believe what you
12 told us two years ago?

13 A. I was -- that's correct.

14 Q. Let's go to page 24 of the same exhibit,
15 please. Sir, I just want to cover a couple of other
16 background details for the jury. I told them some of
17 these details in opening, but I'm not testimony. I
18 just want them to see it in the evidence and hear it
19 from us. And on page 24 in the Property Report, there
20 is a description of the general topography, correct; do
21 you see that?

22 A. I can't read well --

23 Q. You see it now? Would you like a paper copy?

24 A. No, do you have it in...

25 Q. Do you see the general topography, sir?

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1 A. Yes, sir.

2 Q. And in the middle of this paragraph, the I'On
3 Company, which prepared this document, correct?

4 A. Yes.

5 Q. And you participated in the preparation of it?
6 You reviewed it prior to it being finalized, correct?

7 A. I surely did.

8 Q. You were the instigator for the filing of the
9 HUD Property Report by the I'On Company, correct?

10 A. Yes.

11 Q. And in this middle -- in this paragraph in the
12 middle line, starts with miles -- it reads -- or
13 actually three sentences -- three lines -- three words
14 further back, "there are over two miles of marsh
15 frontage" -- I'm going to pause there. Are you with
16 me?

17 A. Yes.

18 Q. "And 300 feet of deep water frontage along
19 Hobcaw Creek" -- did I read that correctly?

20 A. Yes.

21 Q. So, there is 300 feet of deep water on the
22 main creek, at the very tip of phase II, correct?

23 A. Yes.

24 Q. And then the two miles of marsh land, that
25 runs along the tributary along the side of I'On,

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1 correct?

2 A. Yes.

3 Q. And that tributary was at one time known as
4 the marshes of Hobcaw Creek, correct?

5 A. Yes.

6 Q. And y'all renamed it to Shelmore Creek?

7 A. I think so. There was a Shelmore Oyster
8 Factory back there on that point sometime in the past.

9 Q. And, sir, further back in this document, on
10 page 31, we'll find it -- the signature page?

11 A. Yes.

12 Q. And this is signed by your son, correct?

13 A. Yes.

14 Q. And there's a line where his signature is,
15 correct?

16 A. Yes.

17 Q. And read to the jury the word at the end of
18 that line where your son signed?

19 A. "Seal".

20 Q. You, as a developer with 30 some years
21 experience, you understand the significance of a sealed
22 instrument, correct?

23 MR. YOUNG: Objection, lacks foundation.

24 THE COURT: Overruled.

25 A. Vaguely.

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1 BY MR. LUCEY:

2 Q. It's just a more formal way of executing
3 something, correct?

4 A. I'm really not familiar with what -- with the
5 legal distinctions of what sealed means.

6 Q. Well, you know back in the day, the king would
7 have his stamp, and he would stamp a document, and that
8 would be the seal, right?

9 A. I really never witnessed that.

10 Q. Okay. And then let's go to page 27 of this
11 document, sir.

12 A. I am old, but not that old.

13 Q. This is a section called Property Owners
14 Association on page 27, correct?

15 A. Yes, sir.

16 Q. And the second paragraph, it says -- about the
17 second sentence -- it says "as the founder member, we
18 have the right to exercise control over the Assembly by
19 appointing, removing and replacing the majority of the
20 members of the Assembly's governing Board, until the
21 earlier of the date, as of which 75 percent of the
22 total acreage of the property planned for inclusion in
23 the subdivision has been conveyed to persons other than
24 builders, or February 9, 2018, unless we voluntarily
25 choose to relinquish such right", correct?

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1 A. Yes.

2 Q. And, in fact, the developer maintained control
3 over the Assembly, the homeowner Board of Directors
4 until late 2005, correct?

5 MR. YOUNG: Objection to the form. It lacks
6 foundation.

7 THE COURT: Sustained.

8 BY MR. LUCEY:

9 Q. Sir, you, as the developer, would appoint
10 Board members to the Assembly's Board of Directors in
11 the early years of I'On, correct?

12 A. No.

13 Q. Y'all had a person named Legrand -- I
14 believe -- Elebash, who you appointed to serve as the
15 president for five years?

16 A. Legrand, I recall, was a -- was a manager for
17 the I'On Company. Vince had selected and appointed
18 him. I was really never involved in appointing members
19 to the Assembly, to the Board. That's --

20 Q. Are you aware that Legrand was on the Assembly
21 Board?

22 A. I understand that Legrand was the president of
23 the Assembly Board, as I recall he was, while he was
24 the manager of I'On Company.

25 Q. And you just told the jury that he worked for

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1 I'On Company, correct?

2 A. Yes.

3 Q. But he was the president of the Assembly,
4 correct?

5 A. Yes.

6 Q. Until late -- approximately late 2005, does
7 that sound approximately right?

8 A. That's what I recall.

9 Q. And -- and the -- even after you all turned
10 over control of the Assembly to the homeowners, you
11 maintained a veto right as long as the declarant, the
12 developer existed, correct?

13 A. The veto rights were very, very limited. And
14 they are spelled out in the -- in the declaration, they
15 are very limited. We never exercised them.

16 Q. Let's cover it one step at a time. Your
17 company retained the veto right, correct?

18 A. The company did -- the founder did contain a
19 limited series of founder rights; that's correct.

20 Q. And the founder is the I'On Company, correct?

21 A. That is correct.

22 Q. Okay. And you still have that right today?

23 A. Yes.

24 Q. And you say it's limited, but you've also
25 previously described it as being like the supreme

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1 court; have you not?

2 A. Well, that was quite an exaggeration in terms
3 of -- the founder rights are quite limited.

4 Q. So, you do not deny telling me previously,
5 under oath, that your company's veto rights were like
6 being the supreme court; is that correct?

7 A. No, I don't deny that. I may have said that,
8 but it was like -- in that we had a veto right to -- in
9 order to hopefully enable us to fulfill our vision of
10 completing the neighborhood, building it out.

11 Q. And, in fact, your company recently
12 reappointed a Board member -- an Assembly Board member,
13 unilaterally by your own company's decision, correct?

14 A. Yes.

15 Q. Without vote of the homeowners?

16 A. Yes.

17 Q. And in or around January of this year, perhaps
18 December of last year, y'all put Chad Besenfelder back
19 on that Assembly Board, correct?

20 A. Yes.

21 Q. And the homeowners had no say in that, did
22 they?

23 A. No.

24 Q. The Board members had no say in that?

25 A. Well, they could have protested.

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1 Q. But it wouldn't do any good because you had
2 that right, correct?

3 A. Well, it could have been contested if they had
4 -- they could have contested their rights, any of them
5 were subject to judicial review.

6 Q. Now, let's go back to 31 -- page 31 -- for one
7 second before we leave this report, sir.

8 A. Back to where?

9 Q. Page 31, the signature page. There's a
10 sentence above that signature that your son affixed to
11 this document, next to the word "seal"; is there not?
12 It begins with "the information" -- "the information
13 contained in this report is an accurate description of
14 our subdivision and development plans", end quote,
15 correct?

16 A. Yes.

17 Q. It didn't say anything about a vision, did it?

18 A. No.

19 Q. Y'all represented to the Brad Walbecks of the
20 world and to the federal government, when you filed
21 this document, that this document was accurate,
22 correct?

23 A. Yes. We intended it to be certainly.

24 Q. And let me have exhibit 102 on the screen,
25 please. Sir, this document is the November 3, 1998

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1 letter from the federal government acknowledging
2 receipt of the Property Report from your company,
3 correct? Would you like a paper copy?

4 A. It appears to be. I can't read this. Yes.

5 Q. And we go to page two of this document, sir,
6 Exhibit 102, to the second from last paragraph, it
7 reads if a change occurs, that your company has an
8 obligation to amend this document within 15 days,
9 correct?

10 A. Yes, that's what it says. I don't see it in
11 here. What page -- oh, the second page. Yes.

12 Q. Okay. And I just want to come back to that
13 when we get to the other part of the exhibits, but
14 we'll move forward for now. 189, please. Sir, I'm
15 showing you Plaintiff's Exhibit 189, which is a 1998 --
16 I'll take that out of your way -- a letter from your
17 company to the Olde Park people next door, Joe Griffith
18 and Louis Griffith, correct?

19 A. Yes.

20 Q. And you're going to show -- can we go to page
21 two. You are shown as a carbon copy on this letter,
22 correct?

23 A. Yes.

24 Q. And it's signed by your son, Vince, again,
25 correct?

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1 A. Yes.

2 Q. And this was a letter that the I'On Company
3 transmitted to Olde Park regarding a sale of some
4 amenity rights and some sewer taps and whatever else
5 from I'On to Olde Park, correct?

6 A. Yes, and primary -- yes.

7 Q. And, sir, if we go to the middle of page one,
8 there's a paragraph that begins "proposal", correct?

9 A. That's correct.

10 Q. And it reads "In response to your request for
11 proposal for access to gravity (ph) sanitary sewer, the
12 I'On Club and the I'On's community dock and boat ramp";
13 did I read that correctly?

14 A. Yes.

15 Q. "We are pleased to submit the following" so --
16 so your company is submitting a proposal to Olde Park,
17 correct?

18 A. Yes.

19 Q. Relating to the community dock and the boat
20 ramp that you and I have been discussing, correct?

21 A. No.

22 Q. Does it say community dock and boat ramp --
23 what we just read?

24 A. We never discussed a boat ramp before.

25 There's boat ramps that have been mentioned in -- to my

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1 knowledge, but the community dock that was referenced
2 here was -- was -- and this was in -- the community
3 dock that was referenced here, was the one that was --
4 that was anticipated to be -- this is still in the
5 future, we are planning. This has not been developed
6 and built yet, designed and permitted, so this is a
7 contemplated proposal.

8 Q. Sure. Well, just share with us which
9 community dock that you think you're contemplating
10 right here in this offer that you're making to Olde
11 Park?

12 A. Well, I think in this case, the community dock
13 anticipated was -- was likely the community dock that
14 would be beside the boat ramp that -- that was the --
15 that we were still trying to get permitted and
16 approved -- permitted and approved.

17 Q. At the Creek Club?

18 A. At the Creek Club, yes. Now, none of this was
19 in existence at the time.

20 Q. The same one you testified in your deposition
21 was probably the one listed in the chart, and that you
22 believed the one that was listed in the chart on page
23 21 of Plaintiff's Exhibit 1, correct?

24 A. That's correct.

25 Q. And the boat ramp is at the same location, the

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1 same CV-6 parcel, correct?

2 A. The boat ramp is on -- is now there on CV-6.

3 Q. Well, it's always been there, right?

4 A. No, I don't know about always. Always -- I
5 know that the one that we built, was built in -- I
6 think 2000 -- somewhere around in the year 2000, 1999.

7 Q. The Jordan tract existed for decades before
8 y'all bought it, right?

9 A. I don't know how many decades back. I think
10 that there was an old -- old remnants of a boat ramp
11 back when we -- when we first saw the property.

12 Q. Thank you. The Jordan tract always had 300
13 feet of deep water access, correct?

14 A. I think more deep water access than that, but
15 at least 300 feet.

16 Q. And it had the old Shelmore Fish Factory on
17 it, correct?

18 A. I understand that's correct.

19 Q. And there was always a dock of some sort, near
20 where the community dock is, and there was always a
21 boat ramp, both in disrepair, but they were always at
22 this location at this one area in the Jordan tract that
23 had 300 feet of deep water, correct?

24 A. Well, they had been there, that's correct.

25 Q. Now, admittedly, you all tore out the few

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1 pilings that were left from the old community dock, and
2 maybe moved it over a few feet or something, and built
3 a much nicer dock, right?

4 A. Yes.

5 Q. But the main dock for this entire tract has
6 always been at that parcel location, that same 300
7 feet, correct?

8 A. The main dock -- the main -- the Creek Club
9 dock was there when we built it. There was -- we built
10 in 2000, 2001, I think we ended up finishing it.

11 Q. And before that, there was still the pilings
12 from the old Shelmore --

13 A. There were remnants of a dock there.

14 Q. And the same thing -- the same thing with the
15 ramp, you all put in a much nicer ramp, but truth be
16 known, that's where the ramp has always been for the
17 Jordan tract, correct?

18 A. I don't know -- close proximity.

19 Q. As far back as you and I know, that's always
20 where the ramps have been?

21 A. They were close to there.

22 Q. At the same 300 feet of deep water, correct?

23 A. Yes. Yes.

24 Q. So, anybody who looked in '99 -- '98, '99 and
25 early 2000, anybody who looked back at that parcel to

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1 see where the future beautiful dock and beautiful boat
2 ramp might be, all they would see is just a couple of
3 old pilings and part of a dock, and a decrepit boat
4 landing, correct?

5 A. Yes.

6 Q. But they would see where they were located,
7 would they not? There's only one place with 300 feet
8 of deep water on Hobcaw?

9 A. On -- on our property, that's correct.

10 Q. And going to page two of Plaintiff's Exhibit
11 189, sir, top paragraph, Mr. Vince Graham, your son, on
12 behalf of the I'On Company, goes on to describe the
13 facilities to Olde Park that you are offering them
14 access to or use of in this transaction, correct? You
15 can see the sentence begins with "facilities" --
16 "Facilities will consist of at least six lighted clay
17 courts, an eight lane by 25 yard swimming pool with a
18 removal bubble for year round swimming; key pool locker
19 and bath facilities, and a 3600 square foot Creek Club
20 located on our waterfront park fronting Hobcaw
21 Creek" -- did I read that correctly, sir?

22 A. Yes.

23 Q. And we saw -- this is December 8, 1998,
24 correct?

25 A. Yes.

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1 Q. This is five weeks after you all filed a
2 report with the federal government saying that there
3 would be a Creekside Park, correct?

4 A. Yes. The Creekside Park is a -- is the --
5 it's the park that we described earlier. It's the two
6 mile park right up there.

7 Q. Well, then, let's come back. First, let's do
8 this -- first, let's make sure we have the dates right.
9 November 3, 1998, you make a representation to the
10 government, correct?

11 A. We filed a Property Report describing the --
12 in 1998, that's right.

13 Q. And it's five -- four and a half weeks later,
14 December 8, 1998, you all are writing Olde Park in
15 Plaintiff's Exhibit 189, correct?

16 A. Yes.

17 Q. Okay. And let's go back to the comment you
18 just made about Creekside Park. This letter reads that
19 the Creek Club will be located on our waterfront park
20 fronting Hobcaw Creek, correct?

21 A. Yes.

22 Q. There's no portion of the Marshwalk, no matter
23 what you call it, linear park, upside down park; there
24 is no portion of the Marshwalk that fronts Hobcaw
25 Creek, is there?

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1 A. No.

2 Q. Thank you. There can be no doubt that the
3 park described in this letter is not what you all
4 eventually named Marshwalk Park, correct, because it's
5 not on Hobcaw Creek?

6 A. I'm sorry. I don't -- would you repeat that
7 question?

8 Q. Sure. There can be no doubt that the
9 waterfront park referred to in the Olde Park letter on
10 December 8, 1998, cannot be, never was, and cannot be
11 the Marshwalk Park?

12 A. Oh, that's certainly correct.

13 Q. Because the Marshwalk Park doesn't border
14 Hobcaw Creek?

15 A. That's correct. That's correct.

16 Q. So, clearly, as of December 1998, your company
17 contemplated that there would be a park which the Creek
18 Club would overlook on CV-6 in phase II, correct?

19 A. Yes.

20 Q. And this park would sit between the Creek Club
21 and up to the left, the community dock, and up to the
22 right, the community boat ramp, correct?

23 A. I don't know.

24 Q. You don't know what the description of that
25 park was?

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1 A. No.

2 Q. You don't know what its dimensions were?

3 A. No.

4 Q. You don't know what was planned?

5 A. No, not back in 1998, when this -- no, I
6 don't.

7 Q. Do you know if it was planned that the Hobcaw
8 Creek front park would connect to the Marshwalk Park?

9 A. I can surmise. I would assume that it would
10 if -- but I don't know.

11 Q. And can you tell the jury when your company
12 cancelled its plans to build that park between the
13 Creek Club, the community dock, and the community boat
14 ramp?

15 A. I don't know that we ever cancelled any plans
16 to landscape and complete a park there on the Creek
17 Club.

18 Q. There can't be a park there, because you sold
19 the whole lot to 148 Civitas in 2009; you can't sell
20 parks?

21 A. Why can't you?

22 Q. You sold a park?

23 A. Well, we developed parks on -- the I'On Club
24 has parks in it, that they are owned by the I'On Club.
25 And it's -- the park is -- I don't know why we couldn't

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1 sell a park area, one for recreational purposes, sure.

2 Q. Well, let me just ask you, when you sold CV-6
3 to 148 Civitas on August 5, 2009, did you sell them the
4 park that was between the Creek Club and the docks and
5 the ramp?

6 A. The yard -- the front yard, the landscaped
7 yard, yes.

8 Q. You sold them the park?

9 A. We sold them the entire lot CV-6.

10 Q. Which included the park that's referenced in
11 the December 8, 1998, letter to Olde Park, correct?

12 A. Yes.

13 Q. And if we move down this letter just a little
14 bit, about two paragraphs, we get to a section called
15 "boat ramp/community dock"; do you see that?

16 A. Yes.

17 Q. It goes on to say, "We will shortly apply for
18 permits for a community dock facility and the
19 renovation of the boat ramp along Hobcaw Creek",
20 correct?

21 A. Yes.

22 Q. And it says in no uncertain terms following
23 that, to Olde Park, that "these facilities will belong
24 to the I'On Assembly", correct?

25 A. Yes.

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1 Q. But you sold those to 148 Civitas on August 5,
2 2009, too, did you not?

3 A. Yes.

4 Q. Exhibit 31, sir, line 31. Sir, you're
5 familiar with a publication by I'On called Civitas,
6 correct?

7 A. Vaguely.

8 Q. It was a newsletter you all used in marketing?

9 A. I think so.

10 Q. And if you're only vaguely familiar with it,
11 I'm just going to skip it.

12 A. Well, I'm vaguely familiar with it, that's the
13 extent.

14 Q. You didn't contribute -- you didn't proof it,
15 edit it, contribute to it, approve it?

16 A. No.

17 Q. The contents. Okay. Let's skip it. Exhibit
18 190, please. This is Mr. Griffith next door, Olde
19 Park. This is their response to the offer y'all made
20 in December of 1998 for access and use of that park in
21 front of the Creek Club and the community dock boat
22 ramp, correct?

23 A. Yes.

24 Q. And if we go on page two of the Joe Griffith
25 response, we again see that the 3600 Creek Club will be

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1 located quote "on the waterfront park on Hobcaw Creek",
2 end quote, correct?

3 A. I'm trying to find where you -- where are you
4 referencing.

5 Q. It is in the middle of the first paragraph,
6 sir, the fourth line.

7 A. Right.

8 Q. So, once again, we confirm that there will be
9 a park in front of the Creek Club, correct?

10 A. That was contemplated in this letter that's in
11 print obviously.

12 Q. And if we go forward to Plaintiff's Exhibit
13 191, we have a letter between Olde Park and I'On, on
14 I'On letter head, signed by your son, Vince, correct?

15 A. Yes.

16 Q. March 24, 1999?

17 A. March, yes.

18 Q. And it's signed at the bottom -- it was
19 originally signed by Vince when he transmitted a
20 clarification, and now it's signed by Mr. Griffith,
21 coming back to him, agreeing to the final details,
22 correct?

23 A. I don't know the context of this. It's --
24 it's -- they appear to be reaching -- reaching terms.

25 Q. Okay. And the terms were -- you heard me tell

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1 the jury I believe this morning -- \$450,000 in cash and
2 an acre, which would be built -- which would be divided
3 up into five buildable lots, correct?

4 A. Well, we got credit for three additional lot
5 entitlements and it was --

6 Q. And of the four fifty, a \$100,000 would be
7 paid when I've completed the Creek Club, the boat ramp,
8 and the community dock, correct?

9 A. Yes.

10 Q. And as a result --

11 A. They were final -- the final deposit payment
12 would be upon the completion of the Creek Club, the
13 boat ramp, and the community dock.

14 Q. And as we saw earlier, the parties had agreed
15 that the Creek Club would overlook the park on the
16 Hobcaw Creek river, correct?

17 A. That was the plan.

18 Q. Let's go to Exhibit 5, please. Sir, this is a
19 plat showing the -- the permitted plat for what they
20 call dock number one in your state and federal dock
21 applications, correct?

22 A. I don't know. It's got stamped, permitted
23 plans and the dates and --

24 Q. If you don't know, let's go to Exhibit 86
25 first, so that we will be sure about this, please.

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1 Exhibit 86 is the August 12, 1999 Newkirk Environmental
2 application for docks to the federal government,
3 correct? COE?

4 A. Yes. I can't read these.

5 Q. Here is a paper copy, sir. If we go to page
6 three of this document, sir, Plaintiff's Exhibit 86, we
7 see that this application is signed by your son,
8 Jeffrey, correct?

9 A. Yes.

10 Q. Now, the jury hasn't heard much about Jeffrey,
11 he's the second son that became involved in your
12 development of I'On, for at least part of the time,
13 correct?

14 A. Yes.

15 Q. And he actually worked up here akin to a
16 project manager for the I'On Company, correct?

17 A. Ultimately, that was his -- he did.

18 Q. And you recognize his signature, correct?

19 A. Yes.

20 Q. And you see that in paragraph 18, where Geoff
21 is authorizing this application, he also authorizes the
22 party in paragraph four to be the agent for your
23 company in the application. If we go back to paragraph
24 four, we see that's Newkirk Environmental, correct?

25 A. Yes.

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1 Q. And you're familiar, at least generally, as a
2 30 some odd year developer with the permitting process,
3 correct? You might hire an expert to do it for you,
4 but you are still the client? You still have to make
5 the decisions, correct?

6 A. Well, it varies, but generally.

7 Q. Okay. And Newkirk Environmental was going to
8 be y'all's consultant to handle the dock permitting,
9 correct?

10 A. Yes.

11 Q. They were going to be your authorized agent,
12 right?

13 A. To my understanding -- to my recollection, I
14 understand that's the case.

15 Q. And if we go back further in this exhibit to
16 the sixth page, we are going to find an affidavit of
17 ownership, control, and it's signed in the bottom right
18 by Joe Barnes; do you see that?

19 A. Yes.

20 Q. And it's -- he's shown by your company as
21 being the general manager of the I'On Company, correct?

22 A. Yes.

23 Q. That was his role, right?

24 A. That was his role, yes.

25 Q. And, in fact, we saw him sign a lot of

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1 documents this morning, during opening, did you see the
2 deeds and what have you he signed, and the disclosures
3 and what have you? Did you see those?

4 A. I saw them, yes.

5 Q. And he had the authority to sign those
6 documents on your company's behalf, correct?

7 A. Yes.

8 Q. He was handling your company's business for
9 your day-to-day operations, assisting your son, Vince
10 Graham, correct?

11 A. Yes. Vince had recruited Joe, and Joe was --
12 he was the manager, so he had the authority to do these
13 things.

14 Q. And if we go to the next page of this exhibit,
15 sir, we get your company's description of this project
16 to the state and federal governments, and the middle
17 sentence reads "one significant feature of this plan
18 preserves the entire approximately one half mile of
19 waterfront for community access", correct?

20 A. Yes.

21 Q. It also references, at the last sentence, the
22 conceptual dock plan that you all had submitted to the
23 state in 1997, correct?

24 A. Yes.

25 Q. In 1997 you had submitted a plan for six

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1 docks, correct, a master plan, Defendant's Exhibit No.
2 4?

3 A. I think that's correct.

4 Q. And now, in 1999, you are again referencing
5 that same dock plan, same six docks and submitting an
6 application to the state and federal governments for
7 six docks in this document, correct?

8 A. We were submitting -- we were submitting our
9 application, yes.

10 Q. And if we go -- if we go to the following
11 page, paragraph five, we see that there's going to be a
12 couple smaller docks in paragraphs five and six,
13 correct?

14 A. Well, that's -- yeah, they were -- these
15 were -- it's a general description of the docks that we
16 were seeking approval to build.

17 Q. And these two smaller docks in paragraphs five
18 and six were going to be on an, as yet, unnamed
19 tributary -- tributary of Hobcaw Creek, using your
20 company's words, correct?

21 A. Yes.

22 Q. An unnamed tributary, correct?

23 A. Yes.

24 Q. And if we go to sheet four of 14 in the
25 drawings that follow the application in the same

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1 Exhibit 86, we'll see the same sheet as Plaintiff's
2 Exhibit No. 5, except that it simply hasn't been
3 approved yet? I'm just going with page four only,
4 please. And there's sheet four; it's called dock
5 number one?

6 A. Yes.

7 Q. And this is what you are asking the state and
8 federal governments to approve, correct?

9 A. Yes.

10 Q. And this -- we saw this on the screen during
11 opening, it has the community dock, over on the left,
12 extending out on a fixed pier, correct?

13 A. Yes.

14 Q. And at the end of it, it says "proposed fixed
15 dock with pavilion", correct?

16 A. Yes.

17 Q. You heard me refer to a gazebo in opening
18 statements, correct?

19 A. A what?

20 Q. You heard me use the word "gazebo"?

21 A. I don't recall, but...

22 Q. Y'all call that structure with a roof on it,
23 the architectural effect, you call that a pavilion?

24 A. Pavilion or gazebo, that's -- yes.

25 Q. This will be the only dock of any dock in I'On

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1 that will have an architectural detail, correct?

2 A. No.

3 Q. What other docks have a gazebo in I'On,
4 please?

5 A. There's a little dock on the Eastlake that has
6 an architectural structure on it.

7 Q. You are right. I stand corrected. This will
8 be the only dock on Hobcaw Creek, or its unnamed
9 tributary, that has an architectural feature such as a
10 gazebo or a pavilion, correct?

11 A. Yes.

12 Q. This is going to be the dock, correct?

13 A. It's one of them. It's the most significant
14 dock.

15 Q. And within y'all's application to the
16 government, you included as part of your description of
17 dock number one, the boat ramp and the staging dock
18 over on the right hand -- this drawing, correct?

19 A. Yes.

20 Q. And in the center of this drawing, next to the
21 words "Creek Club", we see the abbreviation HOA,
22 correct?

23 A. Yes.

24 Q. Tell the jury what HOA stands for?

25 A. HOA generally is an abbreviation for

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1 homeowners association of property owners.

2 Q. And if we go to sheet five, the following
3 sheet, we will see a small portion of the Marshwalk
4 that will border one of the crab docks on the
5 tributary, correct, the unnamed tributary?

6 A. Yes.

7 Q. And that Marshwalk also has the abbreviations
8 in it, HOA, correct?

9 A. Yes.

10 Q. And, also, if we see -- if we look at plan
11 view for dock two and three of the sheet we're on, we
12 also see that the Marshwalk is generally going to
13 follow on the outside edge, the critical line, the DHEC
14 critical line, correct?

15 A. Yes.

16 Q. So, on the one side -- on the marsh side would
17 be the critical line for high tide or flood tides; and
18 on the inside perimeter, the border of the Marshwalk
19 will be the backside of all the residents' lots,
20 correct?

21 A. Yes.

22 Q. And if we go to sheet six we, again, see other
23 portions of the Marshwalk that are labeled HOA parcels
24 just like the CV-6 on dock one, correct?

25 A. Yes.

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1 Q. When we go to the final page, sheet 14 of 14,
2 we can confirm that dock one will be the only dock with
3 an architectural feature in this application to the
4 state and federal governments, correct?

5 A. Yes.

6 Q. And that's in the drawing on the top right on
7 the screen?

8 A. Yes.

9 Q. Exhibit 2, please. Actually, I want to go
10 back to Exhibit 38 -- 38 will be in the bottom binder,
11 I believe. This goes through 28. Here you go, sir, my
12 mistake.

13 A. Are we done with this one?

14 Q. We'll be coming back to it, but I'll take it
15 out of your way. Thirty eight is a draft of the formal
16 Olde Park/I'On agreement that we saw negotiated in the
17 December '98, February '99 letters, correct?

18 A. I don't know. It appears to be.

19 Q. You see the fax date on top, it says
20 "September 13, 1999"?

21 A. Yes.

22 Q. And so you are working on formalizing the Olde
23 Park agreement before the Brad Walbeck contract occurs,
24 correct?

25 A. I don't know.

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1 Q. And let's go to Exhibit 87, please. I'm going
2 to skip 87 -- let's go to Exhibit 108. This is an
3 October memorandum from you to your controller, Mac
4 Martin, at the I'On Company, correct?

5 A. Yes.

6 Q. And you're addressing how the proceeds from
7 the Olde Park deal are going to be utilized, correct?

8 A. Actually not. It's just the...

9 Q. Let me first ask: This is from you? This
10 e-mail is from you?

11 A. This is from me.

12 Q. Okay. And in the fourth paragraph, you state
13 "G.R. will pay an additional \$100,000 upon completion
14 of the Creek Club, dock, and boat ramp, will apply that
15 \$100,000 against the Creek Club costs", correct?

16 A. Correct.

17 Q. This is what you're telling your accountant to
18 do?

19 A. Yes.

20 Q. So, you sold Olde Park, the rights to use the
21 I'On amenities for \$450,000; and then you took a
22 \$100,000 of that four fifty, and you used it to build
23 that venue, that meeting house called the Creek Club on
24 the backside of CV-6, correct?

25 A. Sort of. It was technically not quite, but...

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1 Q. At least that's what your e-mail says,
2 correct?

3 A. No. We applied -- it was an accounting
4 matter. We were allocating costs for -- for tax
5 purposes and for accounting for depreciation and so.

6 Q. You allocated \$100,000 of the money that you
7 got from Olde Park, for selling access to the I'On
8 amenities, to the construction of the Creek Club?

9 A. No, we didn't -- no, it was not -- it was --
10 we sold -- that's not quite right.

11 Q. Well, you sold a sewer tap and some other
12 things, too, correct?

13 A. We sold -- yeah, we sold -- we provided access
14 to them for -- to -- we provided access to the Olde
15 Park developer for that sewer, sanitary sewer, which is
16 a very significant thing. And we -- we provided for
17 them a reservation for 114 memberships in the I'On
18 Club, which was a -- an I'On Club on these -- on -- we
19 are developing these boating -- the Creek Club and
20 enhanced boating facilities and a swim, tennis facility
21 that -- that we thought would be a valuable amenity
22 for -- for -- certainly for the I'On residents, and the
23 value -- would enhance the value of the lots. And it
24 was something that could be of value for -- for -- for
25 the Olde Park developer and -- and enable them to not

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1 have to build their own competing facility. So it's
2 what you say, it's close to being correct. I don't
3 mean to quibble.

4 Q. Sure. And just to address two issues -- two
5 issues that come out of that answer for me any way.
6 First of all, one of the reasons you only allocated a
7 hundred thousand to the Creek Club costs is because
8 some of the other money was allocated to the sewer
9 taps, or the other benefits that Olde Park was going to
10 get under this agreement, correct?

11 A. Yes.

12 Q. And I'm saying "sewer taps", I don't know
13 whether they are water or utilities or whatever, but
14 there was underground access -- underground civil
15 architecture, correct?

16 A. Yes.

17 Q. So, that's why you divided it up, correct?

18 A. We were having to allocate funds, yes.

19 Q. And then you just mentioned something about
20 the club developing facilities, the I'On Club
21 developing facilities, including boating facilities,
22 correct?

23 A. Yes.

24 Q. And you just mentioned that the only way the
25 Olde Park residents would be able to access the I'On

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1 community boating facilities, the ones at the Creek
2 Club -- the ones at CV-6 -- would be to buy a
3 membership in the I'On Club, correct?

4 A. Yes.

5 Q. So, to make the membership in the I'On Club
6 work for people who didn't live in the neighborhood,
7 and who wanted to access those boating facilities and
8 parks, you had to put those amenities into the Club,
9 correct?

10 A. Well, in order to --

11 Q. Streamline it -- streamline it or facilitate
12 it?

13 A. Yes.

14 Q. And that was the deal with Olde Park, you had
15 to buy the club membership and then you got your access
16 to the I'On boating facilities?

17 A. That's not correct. We had -- we were -- we
18 were -- we were planning to develop these -- the club.
19 And these were a lot of moving -- we had a lot of
20 moving parts, but the -- we didn't -- the Olde Park
21 deal was independent of the -- of -- we were -- we were
22 planning to develop the I'On Club and the I'On Creek
23 Club to -- to enhance the overall quality and
24 desirability of our neighborhood. Those were -- we
25 just thought that was the way to do it.

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1 Q. Your deal required Olde Park residents to buy
2 membership in the Club to access the I'On boating
3 facilities, correct?

4 A. That's correct.

5 Q. And for the Club, then, to provide those
6 boating facilities to the I'On -- excuse me -- to the
7 Olde Park owners, it would either have to own them or
8 somehow possess them, correct?

9 A. Yes.

10 Q. And so you put the boating facilities and all
11 of CV-6 into the Club's name -- you deeded it to the
12 Club, correct?

13 A. Well, you're -- that's correct. We did that.
14 But the linkage is not -- you're -- you're shifting
15 around the linkage.

16 Q. Let's go to Exhibit 2, please. This is the
17 Walbeck contract, the purchase contract?

18 A. Yes.

19 Q. And it's dated November 27, 1999, correct?

20 A. Yes.

21 Q. And it has the same facilities chart,
22 amenities chart listed in it that has -- that was in
23 the Property Report, correct?

24 A. I think so.

25 Q. So, that will be on page four?

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1 A. Yes.

2 Q. Well, since we've already established that the
3 Creekside dock in the 1998 Property Report was the one
4 next to the Creek Club and the boat ramp, the Creekside
5 dock referenced in the Walbeck contract would have to
6 be the one next to boat ramp in the Creek Club,
7 correct?

8 A. Well, you're -- you've called it the Creekside
9 Park, so no, that's false. There's no reference to a
10 Creekside dock anywhere in either the contract or the
11 Property Report.

12 Q. In case I misspoke, I'll reask the question.
13 And I do occasionally misspeak, so I don't take offense
14 you correcting me sometimes.

15 A. I'm not -- no, I'm sorry. Proceed.

16 Q. We've already established -- since we've
17 already established that the Creekside -- excuse me --
18 that the community dock -- you almost had me doing it
19 again -- that the community dock in the Property Report
20 is the one next to the Creek Club and the boat ramp, it
21 goes without saying that the community dock in the
22 Walbeck contract is the one next to the Creek Club and
23 the boat ramp, correct?

24 A. False.

25 Q. So, you're telling the jury the community dock

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1 referenced in the Property Report is different from the
2 community dock referenced in the Walbeck contract?

3 A. No. They are the same.

4 Q. They are the same?

5 A. But we never -- that's correct.

6 Q. They are the same. Whatever they are,
7 whatever the jury decides they are, they are the same.
8 And in paragraph 10 of this contract, specifically
9 incorporates the Property Report -- you are right
10 there -- it's right above the chart, sir. It's the
11 same page you're on. The same page. Paragraph ten
12 above that chart expressly incorporates the Property
13 Report by reference, correct?

14 A. Yes.

15 Q. And if we go several pages further back in
16 this contract, we see that this is signed by Joseph
17 Barnes, correct?

18 A. Yes.

19 Q. And at the time this contract was executed,
20 November 27, 1999, the Olde Park deal had already been
21 signed in March of '99, correct?

22 A. I don't remember.

23 Q. You don't remember looking at that exhibit
24 with me a few minutes ago?

25 A. I don't recall the date.

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1 Q. Okay. But we can tell by your finance memo
2 where you just allocated a \$100,000 of the Olde Park
3 money to building the Creek Club, that it -- the deal
4 is substantially in place by October of 1999, correct?

5 A. If we got the money, then it -- yeah, yes.

6 Q. And the Walbeck contract references -- as we
7 said expressly -- Plaintiff's Exhibit No. 1 -- the
8 Property Report, which provided who would be using the
9 facilities, correct?

10 A. Who would be using the facilities enumerated
11 described within the Property Report.

12 Q. The ones conveyed to the Assembly would be
13 used by the members of the Assembly, the declarant, and
14 their guests; do you recall us reading that together?

15 A. Yes, uh-huh.

16 Q. And you didn't amend the other Property Report
17 or the contract on November 27, 1999, to rewrite that
18 the facilities would now be utilized by the I'On
19 Assembly and its members, the declarant, and the Olde
20 Park residents, did you?

21 A. No.

22 Q. And your company didn't make any -- any
23 disclosure to Mr. Walbeck about that change in the
24 Property Report when they signed a contract with him on
25 December 7, 1999, did they?

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1 A. No.

2 Q. And you recall we looked earlier at one of our
3 exhibits in this case, which was the letter of receipt
4 from the federal government, when you all first filed
5 that Property Report on November 3, 1998, correct?

6 A. Yes.

7 Q. And that letter of receipt instructed the I'On
8 Company, that any changes -- any changes that occur, to
9 any information in that Property Report, had to be
10 amended and refiled within 15 days, correct?

11 A. Yes.

12 Q. That didn't happen, did it?

13 A. There was no change.

14 Q. There was no change with the Olde Park deal?

15 A. No.

16 Q. Never any change?

17 A. No change in terms of the impact upon the
18 Property Report, no.

19 Q. No change with the Creekside Park in front of
20 the Creek Club?

21 A. The Creekside Park was the -- is the Marshwalk
22 running along the -- that two mile park that we've seen
23 on many plats, and one of the most significant parks in
24 I'On.

25 Q. And, sir, let me show you the original copy of

T. GRAHAM -- DIRECT BY MR. LUCEY

1 Defendant's Exhibit 92 A, which is placed on the screen
2 this morning, the map of I'On, the colorful map. This
3 was a document that would help prospective purchasers
4 identify which lots were which that they were looking
5 at in part, correct?

6 A. Yes. Convenient maps -- graphic maps -- it's

7 --

8 THE COURT: If y'all could look this way, our
9 court reporter is having a little trouble hearing.

10 A. Sorry. Thanks.

11 BY MR. LUCEY:

12 Q. And, sir, if you look at that map, it shows
13 most of the phases in I'On develop, but not quite all
14 of them, correct?

15 A. That's correct.

16 Q. So, that would place the map somewhere later
17 in time, perhaps 2002, 2005?

18 A. I don't know when it was prepared.

19 Q. Certainly years after Mr. Brad Walbeck
20 contracted for the property, correct?

21 A. Oh, yes.

22 Q. And at the bottom, left hand corner of this
23 marketing brochure and map, it says this is for
24 informational purposes only; the very first sentence,
25 correct?

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1 A. Yes.

2 Q. And then you go to the next paragraph, it says
3 quote "obtain the Property Report required by federal
4 law and read it before signing anything"; did I read
5 that correctly?

6 A. Yes.

7 Q. And you include that on much of your marketing
8 material, correct?

9 A. I don't know. I assume so. I think that's
10 true.

11 Q. You are telling people like Brad Walbeck, that
12 that's -- that's the Bible. The Property Report,
13 that's what you got to read; that's what you can rely
14 on; that's it. It doesn't matter what our marketing
15 brochure say, obtain the Property Report and read it
16 before you buy, correct?

17 A. Yes.

18 Q. Can we go to Exhibit 109, please. Sir, if you
19 could just confirm on the screen behind you, this is
20 the final, formal Olde Park agreement between I'On and
21 Olde Park?

22 A. I can't read that, Mr. Lucey. Yes, I can read
23 that below.

24 Q. And I'm going to the last page, if you'll
25 confirm this is Mr. Barnes' signature on this document

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1 too?

2 A. Yes.

3 Q. Plaintiff's 118, please. This is a letter
4 from January 10, 2000, from your company to Mr.
5 Walbeck, correct?

6 A. It's the only thing I -- yes.

7 Q. It's on your company's letterhead. And,
8 again, Mr. Barnes has signed it, correct?

9 A. Yes.

10 Q. And it's congratulating him on his recent
11 purchase, correct?

12 A. Yes.

13 Q. It doesn't say anything about any change in
14 the plans for the boating facilities or the Olde Park
15 deal, does it?

16 A. No.

17 Q. It doesn't say anything about any change in
18 the Property Report, does it?

19 A. No.

20 Q. Exhibit 42, please. This is the recreational
21 easement, correct?

22 A. Yes.

23 Q. And it's dated February 9, 2000?

24 A. Yes.

25 Q. And, again, it's signed by Joe Barnes?

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1 A. Yes.

2 Q. And this is the document by which your company
3 is going to now provide access to the Assembly members
4 for them to use the docks and the boating ramp,
5 correct?

6 A. Yes.

7 Q. And it's an easement, right?

8 A. Yes.

9 Q. You didn't -- you didn't see the word
10 "easement" anywhere in the Property Report, did you?

11 A. No.

12 Q. And you understand an easement is different
13 than a deed?

14 A. Yes.

15 Q. Okay. If you were conveying something, you'd
16 use a deed, right?

17 A. Generally.

18 Q. And an easement is something less than a deed,
19 correct?

20 A. Generally.

21 Q. And if we go to page three of this document,
22 it's described as a perpetual easement, correct?

23 A. Yes.

24 Q. But if we go further back to page eight of the
25 document, there's a paragraph 4.2, which is a term,

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1 correct?

2 A. Yes.

3 Q. And the term provides that either party can
4 terminate this easement after 30 years, correct?

5 A. Yes.

6 Q. All they have to do is give six months notice,
7 correct?

8 A. That's what this says, yes.

9 Q. They don't need any reason at all, right?

10 A. That's what this says, correct.

11 Q. So, under the terms of this paragraph, as you
12 understand it, if the property -- if CV-6, which is
13 subject to this easement, is in somebody else's hands
14 at the end of 30 years, they could terminate that
15 easement?

16 A. That's what it -- that's what you would
17 conclude. We understood it was perpetual.

18 Q. You understood it was perpetual?

19 A. That was our understanding, yes.

20 Q. Have you ever seen this term before? Have you
21 ever seen paragraph 4.2 term before this litigation
22 began?

23 A. Yes.

24 Q. You saw it before the litigation?

25 A. You know, I don't remember.

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1 Q. Were you aware of this paragraph 4.2, when you
2 sold CV-6 to 148 Civitas on August 5, 2009?

3 A. Yes.

4 Q. You are aware at that time, when you sold it,
5 that Civitas would have the right to terminate the
6 Assembly members' access to those boating facilities
7 after a 30 year term?

8 A. That's what it says.

9 Q. And you were aware it was there?

10 A. I was, yes, I think so.

11 Q. And you sold the property anyway?

12 A. We did.

13 Q. You didn't do anything to fix that 30 year
14 term before you sold the property?

15 A. No.

16 Q. And at the time you sold the property, 2009,
17 nine years had already expired, correct?

18 A. Yes.

19 Q. There is only 21 years left, correct?

20 A. Yes.

21 Q. So in 21 years, your buyer, Civitas, could
22 cancel all the Assembly and homeowner members' rights
23 to use those docks and the boat ramp at their -- at
24 their whim?

25 A. Well, possibly, we -- that's correct.

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1 Q. And you didn't do anything to fix it?

2 A. No, we didn't.

3 Q. That's not the vision you sold the I'On
4 homeowners, is it?

5 A. Well, that is not the vision we sold, we -- we
6 didn't sell the vision to them -- the double negatives
7 are confusing. We -- within the -- in that -- in the
8 promise that we made was -- was we would provide a
9 community dock. It was our intent to provide these
10 facilities and we intended for that to be permanent.
11 But it was -- we made a mistake with that -- with that
12 term in the easement. And it just -- it was -- it was
13 -- we made a mistake with that, I think.

14 Q. You sold a way of life to the I'On homeowners,
15 didn't you?

16 A. Pardon?

17 Q. You sold a way of life to the I'On homeowners,
18 correct?

19 A. Well, we intended for that easement to be
20 permanent. And we really did not -- there are things
21 that can change and you can modify them and enhance and
22 deal with it, so we had a --

23 Q. So, you are the majority owner of TIC, The
24 I'On Company, correct?

25 A. No.

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1 Q. Your company, Graham Development is the
2 majority owner of the I'On Company, correct?

3 A. We were. We're not now, it's different; but I
4 was then, yes.

5 Q. Okay. And you were the controlling owner, the
6 majority owner of the I'On Company when it's
7 subsidiary, the I'On Realty, was active, correct?

8 A. Yes.

9 Q. And you would come to town from Atlanta once a
10 week, once a month, twice a month; and you and Vince
11 and your managers would have meetings? You would
12 operate by consensus, correct?

13 A. To -- to -- to some extent. I would come --
14 generally once a month I would come. And if there were
15 issues that we had to resolve, then we would -- I
16 was -- I was the primary investor. Vince was the
17 manager. He was on site, so generally we would -- we
18 would discuss things.

19 Q. And in the early years, the owners and the
20 managers would participate in marketing discussions,
21 correct? Marketing ideas?

22 A. You know, sometimes -- I'm sure we did,
23 sometimes. It's been a long time ago.

24 Q. And your subsidiary, the I'On Realty, it
25 employed real estate agents, correct?

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1 A. I'On Realty, we're a real estate agency,
2 that's correct.

3 Q. And you participated in discussions with the
4 managers and the realtors, that prospective buyers
5 would be taken out to the Creek Club, sat in the
6 rocking chairs; sold a way of life; sold a view over
7 the creek, and the dock, and the community dock, and
8 the ramp, and the use of Creek Club, and the park in
9 front of Creek Club?

10 A. Well, I don't know that I did. However, I
11 know that we built the Creek Club and as -- and the
12 swim/tennis club as amenities to serve the
13 neighborhood. We -- and we enabled by -- in terms of
14 either donating the land to get a school up as an
15 amenity within the community, and churches within the
16 community, for amenities that would serve the
17 neighborhood and -- and -- and we helped get the
18 commercial and office buildings built to the provide --
19 to be amenities to serve the community and to enhance
20 the overall value of these lots, and enable us to sell
21 -- to build out this dream and vision. But we didn't
22 see that -- we didn't plan on the Assembly owning all
23 these property/facilities, and didn't see it was
24 necessary for them to own them in order to benefit from
25 them, to use them, to enjoy them.

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1 Q. Sir, do you deny knowing that the I'On Realty
2 agents, working for your subsidiary, sat the
3 prospective purchasers on the porches at the Creek
4 Club, pointed out the community dock, the boat ramp,
5 what you call the green area in front, and said this
6 could be yours; this could be your way of life?

7 MR. YOUNG: Asked and answered, Your Honor.

8 THE COURT: Overruled.

9 A. I know that beginning with the opening of the
10 Creek Club, when it was completed and we had our first
11 event sometime in, I think, 2003, and we had wedding
12 events and we had -- they had receptions and we had
13 parties, and -- and it was a -- it was a significant
14 amenity to the neighborhood. And I am sure that the
15 real estate agents would take people down and -- and
16 sit down there and look out over that marsh. It's
17 gorgeous and beautiful; so I'm sure they would do that.

18 Q. Exhibit 41, please. Let's go forward to
19 Exhibit 11, please. Sir, I've placed on the screen the
20 August 15, 2000 deed from the I'On Company to the I'On
21 Club; do you see that?

22 A. It's the same exhibit?

23 Q. Yes, sir. Exhibit 11?

24 A. Yes.

25 Q. And this is where the I'On Company conveyed

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1 CV-6 to the I'On Club, correct?

2 A. Yes.

3 Q. The CV-6 that had the boating facilities on
4 it, correct?

5 A. Yes.

6 Q. And it didn't -- the I'On Company didn't hold
7 back the docks or boat ramp from that conveyance,
8 correct?

9 A. Correct.

10 Q. They just deeded it off to the Club, correct?

11 A. Yes.

12 Q. And you and I just looked at the easement that
13 the Club had given the Assembly members to use the
14 boating facilities a moment ago, in Plaintiff's Exhibit
15 42; do you recall that?

16 A. Yes.

17 Q. And that easement was dated six months
18 earlier, correct?

19 A. Yes.

20 Q. So, as we can see by this deed, Plaintiff's
21 Exhibit No. 11, the I'On Club didn't own the
22 property -- did not own CV-6; did not own the boat --
23 the community dock or the boat ramp, or the green out
24 front at the time they granted the Assembly the
25 easement, correct?

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1 A. That's correct.

2 Q. And you, sir, as a developer, you're familiar
3 with the concept of a chain of title, correct?

4 A. Yes.

5 Q. And you are certainly familiar with you can't
6 grant what you don't own, correct?

7 A. Well, that's correct.

8 Q. And in February of 2000, the Club had no
9 rights to grant to the Assembly for usage, did they?

10 A. What was the, February -- February -- the --
11 well -- well, they didn't, correct.

12 Q. The February 2000 easement would be a nullity
13 until it got corrected, right?

14 A. It was corrected with this -- when they gained
15 property in the -- on the 15th of August.

16 Q. Do you think a later deed corrects an earlier
17 document?

18 A. It certainly does in a circumstance like this,
19 and it's been -- at the time that -- yes.

20 Q. You know what a corrective deed is, correct?

21 A. A corrective deed is one way to correct it.
22 It's a document called After Acquired Title that
23 clarifies it. And it was -- the issue was never
24 questioned by anyone until you raised it.

25 Q. You didn't know for 13 years that the Club

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1 didn't have rights to grant it to the Assembly,
2 correct?

3 A. That the Club didn't have rights to grant --
4 did not --

5 Q. The Club -- the Club gave the Assembly an
6 easement, correct?

7 A. Yes, they did.

8 Q. And you didn't know for 13 years that the
9 easement was given before the Club owned the property?

10 A. That's correct.

11 Q. And so you certainly can't blame the
12 homeowners for not knowing that for 13 years, can you?

13 A. It was -- it was -- the deed of the -- of this
14 August 15th, essentially ratified and confirmed that
15 prior -- that easement -- that easement was valid.
16 It's been valid. There's -- no one has contested it
17 other than you.

18 Q. Okay. And that easement -- going back to that
19 paragraph 4.2, sir, that we looked at a moment ago, did
20 you first learn of that paragraph's existence -- the
21 4.2 terms, 30 years, did you first learn of that when
22 the conflict arose relating to the 2008 sale to 149
23 Civitas?

24 A. I don't remember when I -- when I became aware
25 of that.

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1 Q. Is that about when?

2 A. I don't remember.

3 Q. Do you believe it was later than 2005?

4 A. I would think so, but I don't recall.

5 Q. Do you believe it was later than 2008?

6 A. I don't remember when I -- when I -- when I
7 found -- realized that.

8 Q. But at any rate, it appears to have been
9 several years or more before you sold the property?

10 A. I don't remember the dates. I'm sorry.

11 THE COURT: Okay. We need to take a break. I
12 think everybody needs to stand up and stretch. I'm
13 sorry to interrupt you, but everybody has been going
14 for a while.

15 Ladies and gentlemen, please return to your jury
16 room. Take about a ten minute break. Please don't
17 discuss anything about the case. I'll probably tell
18 y'all that many more times before you reach the end of
19 the trial. Thank you.

20 (WHEREUPON, the jury leaves the courtroom at
21 4:07 p.m.)

22 THE COURT: And we'll be at ease about 10 minutes.
23 You are welcome to step down and take a break. Just
24 don't discuss your testimony with anybody until you
25 finish.

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1 (WHEREUPON, a brief recess was taken.)

2 THE COURT: Is everybody back? All right. Let's
3 bring in the jury.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 4:18.)

6 THE COURT: Thank you so much.

7 MR. YOUNG: Your Honor, may we approach?

8 THE COURT: You may.

9 (The following side bar was reported.)

10 MR. YOUNG: I think Justin has got a new exhibit,
11 which maybe is fine, but I just need to know where it
12 comes from.

13 MR. LUCEY: Atlanta. If you'll recall at
14 pretrial, they had found six more docs -- cases out of
15 Atlanta. I've got it down to one document, maybe
16 three.

17 MR. YOUNG: What is this?

18 MR. LUCEY: This is the financial statement, the
19 Atlanta documents. It's Bates stamped --

20 MR. YOUNG: I get that it came from us. I just
21 need to know what it is.

22 MR. LUCEY: It's an I'On Pro Forma Summary --

23 MR. YOUNG: I think that's been ruled out.

24 THE COURT: Right. To show what, though?

25 MR. LUCEY: To show that the Creekside Park had

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1 it's own budget in 1998.

2 THE COURT: Okay. That's fine, but we're not
3 going to put any figures in.

4 MR. LUCEY: No, we'll redact all the figures,
5 whatever it takes.

6 THE COURT: I mean, we ruled on that ahead of time
7 that that would have come -- it would come in at the
8 punitive phase. Okay.

9 MR. YOUNG: So, how would I do this, redact this,
10 Justin?

11 MR. LUCEY: Sure.

12 THE COURT: So, it will be admitted as redacted.

13 MR. LUCEY: Yes.

14 MR. YOUNG: And the second page came with
15 redactions. Fair enough.

16 THE COURT: Okay. Great. Thank y'all. I
17 appreciate that.

18 MR. YOUNG: Since he's on the stand, it's begs the
19 odd question, he may not even recognize it.

20 THE COURT: If he doesn't, he doesn't. That's
21 fine.

22 (End of side bar again.)

23 (Plaintiff's Exhibit No. 226 marked for
24 identification.)

25

T. GRAHAM -- DIRECT BY MR. LUCEY

1 BY MR. LUCEY:-

2 Q. Sir, you heard me reference that this
3 litigation has been going on for a while, correct? The
4 suit was filed in 2010?

5 A. It was like --

6 Q. The suit was filed in 2010ish?

7 A. Yes.

8 Q. Close to four years now, if not over four
9 years. And you are aware we have engaged in the
10 discovery process during this suit, where one side asks
11 the other side for documents relating to the case?

12 A. Yes.

13 Q. And do you recall recently finding six cases
14 of documents about a month ago in Atlanta, that you
15 produced to the plaintiffs?

16 A. Yes.

17 Q. You have offices in Atlanta or a home office
18 in Atlanta?

19 A. Well, it was and I was -- I had -- I was -- my
20 residence was in Atlanta and I was -- yes.

21 Q. And you are aware that your attorneys wrote us
22 and produced those documents to us a few weeks back?

23 A. Yes.

24 Q. And those were I'On Company business
25 documents?

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1 A. Yes.

2 Q. Let me show you what's been marked for
3 identification purposes only at this time as
4 Plaintiff's Exhibit 226. And just so we're clear,
5 we're not going to talk about any number on this first
6 page, we're only going to talk about budget type
7 issues. And we are actually going to go to the second
8 page; but only, sir, if you recognize this as an I'On
9 Pro Forma Summary Table, out of that -- well, it's got
10 the Bates stamp -- see the Bates stamp at the bottom
11 corner, it says "I'On Defendant's 9758" on page one.
12 Do you want me to point it out to you? I'On
13 Defendant's 9758?

14 A. Correct.

15 Q. And do you recall your attorney Seth Whitaker
16 explaining in your deposition how Bates stamping
17 worked, and that was your side's Bates stamp -- the
18 defendant's Bates stamp?

19 A. I understand that this is.

20 Q. And this is a business record out of the six
21 boxes that you all just shipped us from Atlanta?

22 A. Well, it's 1998, I don't recall looking at
23 this, but it's been a long time ago, but I know I did
24 this. I prepared it, and we were -- yes.

25 Q. You prepared it?

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1 A. Probably.

2 Q. Okay. And is that typical, you would prepare
3 it -- we talked about it an hour ago -- you do pro
4 formas, you don't get into a project unless you know
5 it's going to work, correct?

6 A. No.

7 Q. You do a financial forecast before you get
8 into a project, correct?

9 A. Yes, but we never know how the future is going
10 to turn out.

11 Q. It might change some, correct?

12 A. It can change completely.

13 Q. And this was a budget that you prepared
14 relating to how you all envisioned, at least at that
15 time -- and it's -- the revision date at the top right,
16 you'll see July 23, 1998; a budget for how you all
17 thought the -- you might be able to develop the I'On
18 neighborhood, correct?

19 A. Well, that's correct.

20 Q. And the budget is set forth by phase, correct?
21 For instance, phase I is separated from phase II,
22 correct?

23 A. Yes.

24 Q. Because the phases have different expenses,
25 correct? Some are larger; some are smaller?

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1 A. Yes.

2 Q. Some have different amenities, correct?

3 A. Yes.

4 Q. And we go to page two, there is an explanation
5 of the major phase differences between the different
6 phases; and it's entitled that, right, quote "Major
7 Phase Differences"; do you see that?

8 A. Yes.

9 Q. And then it lists phase I through VII as the
10 major differences, correct?

11 A. Yes.

12 Q. And then phase II, the very first item, the
13 very first cost difference in your budget for the I'On
14 Development is quote "Creek Front Park" end quote,
15 correct?

16 A. Yes.

17 MR. LUCEY: Plaintiff's move Exhibit 226, redacted
18 on the front page, into evidence.

19 THE COURT: It is so admitted as redacted.

20 (Plaintiff's Exhibit No. 226 admitted into
21 evidence.)

22 BY MR. LUCEY:

23 Q. Sir, we're going to go to Exhibit 142, which
24 is the first amended Property Report -- it's on the
25 screen. I'll give you a paper copy anyway. It's the

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1 first document in this binder. If we go to page 22, I
2 believe, we'll see -- or 23, we'll see that the chart
3 changed -- the recreational facilities chart changed,
4 correct?

5 A. Yes.

6 Q. There is the word "Creek Front Park" or
7 "Creekside Park" is no longer utilized in this chart in
8 April 2000, correct?

9 A. Correct.

10 Q. And the reference to community dock has been
11 changed to community docks, plural, correct?

12 A. Yes.

13 Q. And there's a further change in the
14 description of how the chart would be handled on page
15 24, correct? At the bottom, it says quote "Transfer
16 Facilities" in the subtitle?

17 A. Yes.

18 Q. It reads quote, "The recreational facilities
19 listed in the chart above, other than the sidewalks and
20 community dock" --

21 A. Yes.

22 Q. -- "shall upon completion of construction, be
23 conveyed to the I'On Assembly, Inc. by Quit Claim Deed
24 free and clear of all monetary liens and encumbrances
25 at no cost to the Assembly", correct?

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1 A. Yes.

2 Q. So, for the first time, you put in a Property
3 Report in April of 2000, that the community dock will
4 not be transferred to the Assembly, correct?

5 A. Well, this is dated December 29th, but I think
6 April 10th.

7 Q. The same one. The same change April 10th,
8 correct?

9 A. I think it was essentially the same.

10 Q. So, April 10, 2000, is when that change was
11 implemented in the registered Property Report in
12 Washington DC, correct?

13 A. Yes.

14 Q. And no effort was made by your firm to notify
15 any prior actual or prospective purchasers of the
16 change that had occurred in the Property Report,
17 correct?

18 A. I don't know of any.

19 Q. And that change -- that change of not deeding
20 the community dock to the Assembly, was so that your
21 company could deed it to the Club instead, correct?

22 A. No.

23 Q. That change was made as a result of the Olde
24 Park deal, correct?

25 A. No.

T. GRAHAM -- DIRECT BY MR. LUCEY

1 Q. Exhibit 47, please. Sir, I'm going to forward
2 the time to 2005. I have on the screen Plaintiff's
3 Exhibit 47, which was the handover agreement. And
4 we're not going to spend much time on it. It's a bad
5 copy on the screen anyway. This is just the agreement
6 where the I'On Company and the Assembly agreed how they
7 would handle the transfer of amenities, correct?

8 A. Yes, I think so.

9 Q. You are familiar with that process?

10 A. It was formalized -- they went through -- I'm
11 generally familiar with the transfer, not anything of
12 this scope before.

13 Q. And you heard me describe to the jury during
14 the opening, the agreement was when I'On was ready, it
15 would identify the amenity and the asset to be
16 transferred?

17 A. Yes.

18 Q. One. Two, it would provide the homeowners
19 with the information about the amenity, whatever it
20 happens to be. Three, the parties would inspect it
21 together to see if it was in good condition for
22 transfer. Four, if it wasn't in good condition, the
23 I'On Company would fix it. And if it was, y'all would
24 proceed with the transfer? Just generally speaking,
25 correct?

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1 A. Yes.

2 Q. And that is how the I'On Company began to
3 handle its amenity transfers in the succeeding years,
4 correct?

5 A. I think so, yes.

6 Q. The I'On Company would identify the amenity
7 when it was ready to transfer it, correct?

8 A. Well, when the work was completed, yes.

9 Q. And going forward, Exhibit 201. This is a
10 2006 e-mail from Chad Besenfelder to a variety of
11 people, including the property manager and a couple of
12 Board members, relating to the turnover of the dock; do
13 you recognize Mr. Besenfelder's name?

14 A. Yes.

15 Q. He was a manager of your company?

16 A. He's been in different roles. He probably was
17 at that time.

18 Q. Perhaps --

19 A. He was a manager.

20 Q. Perhaps at some point, he replaced Mr. Barnes?

21 A. Oh, a number of years later, they were.

22 Q. Okay. And he's, on behalf of your company,
23 he's communicating about the turn over of amenities
24 that are in the process and to be done in the future,
25 correct?

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1 A. Yes.

2 Q. And if we go down five lines to a sentence
3 that begins with "a few" -- he says "a few areas within
4 these phases, including the boat ramp and amphitheater,
5 may be kept in the I'On Company's ownership until
6 easements of use can be determined and documented",
7 correct?

8 A. Yes.

9 Q. It doesn't tell the manager, the Assembly, the
10 association manager, or the Board that easements have
11 already been done, does it?

12 A. Well, they all knew that.

13 Q. It speaks to the future in this communication
14 from your manager, correct?

15 A. Yes.

16 Q. And it -- and it still illustrates that your
17 company, as of 2006, intended to turn over the boat
18 ramp, correct?

19 A. Well, that's what this indicates, but it's --
20 that e-mail.

21 Q. And if you go to phase II, there is a list of
22 amenities attached to it that haven't been turned over
23 yet, the second item is "boat ramp and dock", correct?

24 A. It says "boat ramp and dock and boat dock as
25 built", so they have a -- it says "as built", so

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1 surveys --

2 Q. And it then says again, "public use easements
3 will need to be determined to ensure access rights for
4 both I'On Club members and residents", correct?

5 A. Yes. That's what it says. That's he's what
6 this memo says.

7 Q. Exhibit 193, please. This is April 19, 2007,
8 the same notebook.

9 A. April 19th.

10 Q. April 19, 2007 e-mail chain, correct?

11 A. This is Brook Traveno at the top?

12 Q. Yes, sir. You see the "from" is Chad
13 Besenfelder and the "to" is Vince Graham and Tom
14 Graham?

15 A. Yes.

16 Q. In fact, if you go -- if you look at the
17 second one on the first page, that e-mail is actually
18 from you, correct?

19 A. I missed what you said right there. You are
20 asking me -- please -- you are asking me about what?

21 Q. The 3:27 p.m. e-mail on page one is from you
22 to -- excuse me -- from Vince Graham to you and Chad
23 Besenfelder, correct?

24 A. Yes.

25 Q. The lower one is from you at 6:22 a.m.,

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1 correct?

2 A. Yes.

3 Q. You must be an early worker?

4 A. Sometimes.

5 Q. Let's go to the very first e-mail that
6 originates this chain on Wednesday, April 18th, from
7 Chad Besenfelder, on page two, to Vince Graham and
8 others with a copy to you. The reference is Creek Club
9 options, correct?

10 A. Yes.

11 Q. And your manager is communicating with you on
12 what you all can do with the Creek Club, correct?

13 A. Yes.

14 Q. One option was to sell it to the association,
15 correct?

16 A. There's three options. It says to sell them
17 more Creek Club rentals; to sell them a parcel of the
18 overflow parking lot, and then build a small building;
19 or sell them the Creek Club, which they may not --
20 which they may not be able to afford.

21 Q. And at this point, your firm is looking at
22 what it refers to as its "exit strategies" for its I'On
23 assets, correct?

24 A. Yes.

25 Q. And the exit strategy being considered in this

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1 e-mail chain is the exit from the Creek Club, correct?

2 A. Yes.

3 Q. And one of the pros that is discussed, is if
4 you sell the Creek Club to the homeowners, quote "the
5 HOA gets the infamous boat ramp and docks" end quote,
6 correct?

7 A. I don't see that, but...

8 Q. It's the fifth bullet point under beneath
9 pros?

10 A. "HOA gets infamous boat ramps and docks", yes.

11 Q. And your response to this option on the bottom
12 of the first page was to suggest that you tie the sale
13 of the Creek Club and the boat ramps and the docks to
14 the homeowners, to a requirement that the homeowners
15 give you more building permits or support more building
16 permits for the boat ramp overflow parking at CV-5,
17 correct?

18 A. I don't see the boat ramp -- it says parking.

19 Q. The CV-5 is the overflow parking, correct?

20 A. Yes. Yes.

21 Q. And so at this point, you are considering
22 keeping the parking, making five more buildable lots,
23 and selling the Creek Club to the homeowners?

24 A. Yes.

25 Q. And the sale would be conditioned on them

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1 supporting your request for additional buildable lots,
2 correct?

3 A. Yes.

4 Q. Because the I'On Company is running out of
5 legal lot permits from the Town of Mount Pleasant,
6 correct?

7 A. Well, that's correct.

8 Q. It has acreage, but it can't build on it,
9 correct?

10 A. That's correct.

11 Q. That's so on CV-5 and that's also so on lot
12 11 -- phase XI, correct?

13 A. That's correct.

14 Q. All purchased or sale offers of the Creek Club
15 or the community ramp and boat dock -- all purchase or
16 sale offers to the homeowners or to the Assembly, have
17 always been conditioned on them supporting your
18 company's application for additional building permits
19 on the remaining acreage, correct?

20 A. I don't know about always. All the ones that
21 I'm aware of were of that nature.

22 Q. Okay. And that would include this one we are
23 discussing right here in this e-mail --

24 A. Well, this one right here --

25 Q. -- you were going to give them \$60,000 a lot

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1 if they would support the building permits, correct?

2 A. A donation, so that they could use that fund
3 -- that money to acquire this. And we just -- we just
4 essentially -- because we weren't into running -- we
5 weren't in that business of running the Creek Club.
6 And it was -- they could -- if they were interested in
7 doing it, they might be able to do that.

8 Q. So the \$700,000 offer to sell that we heard
9 about this morning, was expressly dependent upon, one,
10 your company keeps the overflow parking; two, the
11 Assembly supporting your application with the Town to
12 get more building permits for CV-5, correct?

13 A. Yes.

14 Q. And there was another offer like that a year
15 or so later -- and I hate to jump out of time, but just
16 to deal with this subject matter all at once and be
17 done with it. There was another offer where your
18 company offered to sell the Creek Club, the docks, the
19 community ramp to the homeowners if they would support
20 approximately 40 more building permits for phase XI,
21 correct?

22 A. I don't remember.

23 Q. Do you recall the offer occurring?

24 A. No.

25 Q. Do you recall that you all tried to get the

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1 homeowners support for 40 or so more building permits
2 for phase XI?

3 A. I do. We did that. I know we went through
4 that.

5 Q. And are you aware of any other offers to sell
6 the Assembly, the community dock and the boat ramp?

7 A. No, I'm not aware of -- to sell the community
8 dock and boat ramp, we -- no.

9 Q. Are you aware of any other offers to sell them
10 CV-6, including the Creek Club, community ramp, and
11 boat ramp?

12 A. No.

13 Q. Did you ever have Chad Besenfelder tell the
14 Board of Directors of the Assembly, when y'all made
15 these offers to sell them, these assets, did you ever
16 have Chad Besenfelder disclose to the Board of
17 Directors that, in fact, under the 1998 Property
18 Report, y'all were supposed to deed the dock and the
19 Creekside Park to the homeowners anyway, for free?

20 A. Well, that's just not correct.

21 Q. So, that would be "no", they were never
22 informed of that?

23 A. They were never informed of it. It was not
24 correct. Why would we inform them something that was
25 false.

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1 Q. And on this proposal about -- the \$700,000
2 proposal that got brought up earlier today, we see
3 later in this e-mail chain that one of the questions
4 raised by you, Vince and Chad at 3:27 p.m, is can the
5 Creek Club -- can the boating facility, can that parcel
6 function without the overflow parking. And Chad
7 Besenfelder responds at 5:14 p.m, "it could not
8 function as it does now" end quote, correct?

9 A. Yes, that's what he says.

10 Q. Exhibit 181, please. Exhibit 181 is an e-mail
11 chain a few months later, discussing an alternate to
12 the sale of the Creek Club to the Assembly, correct?

13 A. That's the subject.

14 Q. And this is, again, between -- mostly between
15 you -- e-mails between you, Tom -- excuse me -- you,
16 Vince and Chad Besenfelder, correct?

17 A. That's the -- from Chad to me, Vince, and
18 Geoff.

19 Q. And at the very first e-mail in this chain, if
20 I'm reading it correctly, is from you to Chad
21 Besenfelder at -- on Wednesday, June 27th at 17:24 --
22 at 5:24 p.m.; do you see that?

23 A. No, I don't see what you are talking about.

24 Q. Page four?

25 A. On the fourth page of this?

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1 Q. The very back.

2 A. It's a long chain. Okay.

3 Q. So here I believe is the beginning of your
4 e-mail, most of which is on the next page.

5 A. All right.

6 Q. And as of that date regarding dock ownership
7 and encumbrances, you asked Chad Besenfelder on page
8 five of this exhibit, in June of 2007 quote, "what
9 rights does Assembly have over the docks and boat
10 ramp", end quote, correct?

11 A. Yes.

12 Q. You didn't know, did you?

13 A. I wasn't clear about it at that time. It's --
14 otherwise, I wouldn't have asked him.

15 Q. And then you sent a follow-up e-mail before
16 you even got a response at 4:25 p.m. to Vince and Chad
17 again, and you said quote "conveyance of Creek Club to
18 Assembly should include the boat ramp, but exclude the
19 dock, which we should keep. We have not offered that
20 dock and gazebo, have we?" -- did I read that
21 correctly?

22 A. That's what it says. It's kind of a weird
23 memo, though. I don't understand it.

24 Q. It was your idea to keep the dock, even if you
25 sold the Creek Club?

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1 A. It seems like a weird idea, but that's what it
2 says. It's been a long time ago, but that's what it
3 says.

4 Q. Which obviously means you believed the dock
5 and the Creek Club could have been separated if you so
6 desired?

7 A. Well, it would indicate that. I don't
8 remember this and it seems odd.

9 Q. And if we go to the top of page three, we get
10 another follow-up e-mail from you, at 6:34 p.m., and it
11 reads quote "Our Creek Club dock is a potentially
12 valuable asset, open access erodes its market value. I
13 can imagine expanding the flow to the southeast,
14 selling three to four slips in condominium form, and
15 reserving one slip for club or resident use. How can
16 we capitalize this potential value?" Correct?

17 A. Yes.

18 Q. That's what you wanted to do, you wanted to
19 minimize the docks instead of giving them to the
20 homeowners, correct?

21 A. Well, we were -- we were evaluating, just
22 brainstorming on options and alternatives. We owned
23 the asset there, and so we were evaluating what to do
24 with it? How to best deal with it.

25 Q. And if we go to page one, at the bottom, we'll

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1 see an e-mail from Chad Besenfelder to you and others,
2 where he says in the first sentence, "I suggest no
3 changes at this time. The docks are too controversial,
4 and taking away even part of this community amenity
5 would cause trouble", correct?

6 A. Yes..

7 Q. "Taking away even part of this community
8 amenity", those are your manager's words?

9 A. Well, that's correct. It was the -- it was --
10 we had the recreational easement in place that
11 guaranteed access to the -- for these facilities, so I
12 don't know how we could -- where the -- this just
13 doesn't make any sense.

14 Q. And you were discussing condo-minimizing the
15 community dock, even though you believed you had an
16 enforceable recreational easement that predated a deed
17 by six months; is that correct?

18 A. Yes.

19 Q. Exhibit 85, please. Sir, Exhibit 85, we are
20 going to focus on the e-mail on the bottom half of this
21 exhibit, is -- do you need help with a copy? 85 is
22 right here, sir. It's an e-mail from your manager,
23 Chad Besenfelder, and the I'On group -- your management
24 group -- to the South Carolina D.N.R, Department of
25 Natural Resources, dated April 23, 2008, correct? Do

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1 you see Chad Besenfelder's name, sir, your manager?

2 A. I see it, yeah. I was --

3 Q. You're focusing on the bottom here?

4 A. Yeah. Chad to McBride. He -- it looks like
5 he needs some advice.

6 Q. He needs some advice. And after he tells them
7 that, he says quote, "we are ready to deed this
8 community dock and ramp to the homeowners and wish to
9 comply with regulations" end quote, correct?

10 A. Yes.

11 Q. And that was your company's intent as of
12 April, 2008; to deed the community dock to the
13 homeowners, correct?

14 A. Yes.

15 Q. It goes on to say, quote "note the attached
16 survey of our community dock" end quote, do you see
17 that?

18 A. Yes.

19 Q. And if we look, we'll see the same exhibit
20 five that we looked at an hour ago, which is the dock
21 number one plan that was sent to the state and federal
22 authorities to permit the community dock, the floating
23 dock, and the ramp, correct?

24 A. Yes.

25 Q. Doesn't seem as though your manager had any

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1 uncertainty about what the community dock was at I'On,
2 does it?

3 A. This is a different time. The community dock
4 is one thing in 2008. It's quite a different thing
5 in -- ten years earlier when we didn't own the land and
6 when we hadn't gotten permit approvals or anything.

7 Q. I thought we already established you all owned
8 the land when you gave the disclosure, Exhibit No. 1,
9 to my client?

10 A. Oh, we did then, that's correct, but we didn't
11 when we -- when we --

12 Q. And you owned the land when you made the
13 application to the South Carolina DHEC and to COE, to
14 build the docks, correct?

15 A. Well, that's correct.

16 Q. One nineteen, please. Sir, this is a July 9,
17 2008 e-mail from Mr. Russo, your eventual buyer, to Mr.
18 Besenfelder, your manager, correct?

19 A. I don't see it. I don't know.

20 Q. It's on the screen right in front of you, too,
21 but I'll find you a paper copy.

22 A. Right.

23 Q. Do you see it?

24 A. I can see the caption on the top that says
25 from Mike Russo to Chad Besenfelder.

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1 Q. And Mr. Russo is responding to an e-mail from
2 Chad, correct?

3 A. I don't know. I can't -- I don't see them. I
4 don't see the chain.

5 Q. From the top, it's Russo?

6 A. Okay.

7 Q. To Besenfelder. If you look down here, it
8 says in the message dated such and such; and there's a
9 message that begins "Chad", right?

10 A. Right.

11 Q. From Mike, right?

12 A. Right.

13 Q. And you know Mike as Mike Russo, right?

14 A. Yes.

15 Q. And this is a precontract outline of the
16 proposal that Mr. Russo is making to buy CV-5, correct?

17 A. Well, he's buying a series of things. I think
18 CV-6 is what he says.

19 Q. CV-6, correct. Thank you, sir.

20 A. And he says CV-6, adjacent parking, and the
21 CV-5 overflow parking, and an addition -- the adjacent
22 residential lot.

23 Q. And item eight in Chad's outline of the sale
24 transaction reads, "boat docks to be deeded to the
25 HOA", correct?

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1 A. Yes.

2 Q. And that was your company's intent now as of
3 July 2008, correct?

4 A. Well, that's -- that's what they were --
5 that's what he said -- that's what Mike Russo had
6 responded, so that's -- they were working on that.

7 Q. Actually, that's what Chad said, your manager?

8 MR. YOUNG: Objection, it misstates the exhibit.

9 THE COURT: Objection sustained.

10 BY MR. LUCEY:

11 Q. Sir, do you see this section, it says "Chad"
12 here?

13 A. Yes.

14 Q. And do you see this section, that's from Mike?

15 A. Yes.

16 Q. And there's a list of items down below it?

17 A. Yes. Those are things that Mike is proposing.

18 Q. Not Chad, who is above it and below it?

19 A. He's writing to Chad. It seems to me that
20 Mike Russo is writing a memo to Chad and it's -- it
21 says -- in the message dated 7/5/2008, at 12:43 -- 24
22 p.m., M. Russo writes "Chad comma" then something, so
23 he's writing the memo -- Mike Russo is writing the memo
24 to Chad.

25 Q. Okay.

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1 A. According to way I'm reading it.

2 Q. And item eight -- are these ten items what
3 they're agreeing on for the transaction?

4 A. That's what -- that's what Mike is proposing
5 as to what he would propose to do.

6 Q. And that is eventually what the original deal
7 was for the 2008 sale, correct?

8 A. I don't recall the details of it, but this is
9 an outline proposal and it appears to be reasonably
10 close to what they came up with or what they -- we all
11 did.

12 Q. Let's go to 122. No, let's speed forward to
13 126. This, again, is an e-mail between Chad and Russo
14 regarding the 2008 proposed sale of CV-6, CV-5, and
15 another lot that we don't need to discuss, 275,
16 correct?

17 A. You combined two phrases, and I don't know
18 what you are asking me.

19 Q. This is an e-mail between Mike and Chad, your
20 manager, outlining the proposed 2008 sale transaction
21 on CV-6 and other real estate, correct?

22 A. Yes. This is, again, from Mike and it
23 references the -- it's saying that -- it looks like
24 this is a -- this is working toward getting an
25 agreement, yes.

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1 Q. And underneath Mike's e-mail, sir, there's a
2 line that reads in a message dated August 11, 2008,
3 Chad, at I'On group, writes --

4 A. Right.

5 Q. And below there is your manager's message,
6 correct?

7 A. Yes.

8 Q. And he writes to Mike, "please, review the
9 latest revisions. I can create an official contract
10 for your review this week", correct?

11 A. Yes.

12 Q. And if we go down to paragraph 7, it reads
13 "Boat ramp and dock to remain I'On Company property and
14 will allow Creek Club buyer access. Subject to HOA
15 approval, the I'On Company plans to convey the docks
16 and boat ramp to the HOA, retaining continued easement
17 along both for I'On Club and Creek Club events", end
18 quote, correct?

19 A. Yes.

20 Q. And that is what Chad, your manager, wrote,
21 correct?

22 A. Yes.

23 Q. And as of August 11, 2008, it was still your
24 company's intent to deed the docks and the ramp to the
25 homeowners association, correct?

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1 A. Yes.

2 Q. Fifteen please. Notebook number one. I've
3 got it right here.

4 A. Do I need to keep all these open?

5 Q. I'll move some of them for you while you take
6 a look at 15. Fifteen is another set of e-mails
7 between your manager, Chad, and the I'On group, and
8 Mike Russo, correct?

9 A. Yes.

10 Q. It's dated September 9th, 2008?

11 A. Yes.

12 Q. And if we go to page two of three, the second
13 paragraph becomes -- it started with "TIC", do you see
14 that?

15 A. Yes.

16 Q. And do you see Chad's name and signature line
17 so-to-speak down below?

18 A. Yes.

19 Q. And Chad writes "TIC maintained a good
20 relationship with the residents, but this took an
21 enormous amount of effort on our part over the years.
22 I understand that keeping the docks, an entity of the
23 Creek Club, may help to find the property a civic.
24 However, I would suggest that we leave our initial idea
25 of subdividing the docks, keeping TIC control. The

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1 docks were a promised hand over to the homeowners, and
2 Vince would like to honor that some day", correct?

3 A. That's what it says.

4 Q. Your manager, correct?

5 A. That is correct. That's what he says in this
6 e-mail. I don't know that -- that is correct, but
7 that's what he says in the e-mail.

8 Q. Did you say you don't know if that's correct?

9 A. I know that he said -- I know that this is
10 what the e-mail says, this is what Chad said; but I
11 don't know that the -- I don't believe that the docks
12 were promised to hand over to the homeowners ever. And
13 so that sentence that Chad wrote, I don't believe is
14 correct.

15 Q. Now, Chad still works for you, correct?

16 A. Yes.

17 Q. And have you chatted with him about that
18 sentence?

19 A. Have I discussed it with him?

20 Q. Yes, sir.

21 A. No.

22 Q. You were asked about it in your deposition,
23 weren't you?

24 A. I don't recall.

25 Q. Exhibit 131, please -- let's skip to 209,

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1 please. Sir, 209 is an October 14, 2008, e-mail from
2 your manager, Chad, to you and to Vince, correct?

3 A. I can't read this. It's blown up in the
4 caption on the top of this e-mail. I can read the
5 caption, but I can't read the rest of the e-mail.

6 MR. YOUNG: Your Honor, excuse me, may we approach
7 for a minute?

8 THE COURT: You may.

9 (WHEREUPON, a side bar was held.)

10 BY MR. LUCEY:

11 Q. Sir, we're going to go to Exhibit 133.

12 A. I thought we were at 209.

13 Q. We are going to move on to save time.

14 A. Do I close this book up?

15 Q. We'll come back to it.

16 A. All right.

17 Q. This is a short e-mail between Mr. Russo and
18 Mr. Besenfelder, again, regarding the 2008 sale
19 transaction on November 24, 2008?

20 A. Yes.

21 Q. And your manager, Chad, writes Mike Russo, the
22 buyer, quote "I have the new agreement" end quote,
23 correct?

24 A. That's what he says, yes.

25 Q. And asked him if he wants to meet tomorrow,

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1 correct?

2 A. Yes.

3 Q. This is November 24, 2008, right?

4 A. Yes.

5 Q. A new agreement, right?

6 A. Yes.

7 Q. Everything we've seen prior to this e-mail
8 says that the docks and the ramp are going to get
9 transferred to the HOA, and all the buyer will get is
10 access, correct? Those last four or five e-mails we
11 looked at?

12 A. That was -- they were proposing that, as I
13 understand them.

14 Q. Between Chad and Russo?

15 A. Uh-huh.

16 Q. Now, in late November 2008, we apparently have
17 a new agreement, correct?

18 A. That's what it indicates, yes.

19 Q. And you're aware the agreement changed, right?

20 A. I was -- no, I wasn't aware of it.

21 Q. You were not -- you are, what, the president
22 of Graham Development or --

23 A. Well, I was the president of Graham
24 Development then, yes.

25 Q. Okay. And I'm just curious, did you hold any

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1 official position for or in the I'On Company?

2 A. I don't think so. I was -- Graham Development
3 is the manager -- is a member of the I'On Company. I
4 was involved in Club -- I got involved with the Club, as
5 a manager at one time. I don't remember when it was.
6 I don't think I was at that time.

7 Q. Other than your management of the Club, have
8 you ever held the manager or officer position for the
9 other I'On companies?

10 A. I don't believe so.

11 Q. You never worked for them?

12 A. No.

13 Q. And going forward from November 24, 2008, when
14 we see that we have a new agreement, are you aware that
15 the new agreement included the transfer of the docks
16 and the ramp?

17 A. I think that was a -- I know that that was
18 final -- what turned out to be a final regulation, yes.

19 Q. And do you recall us discussing this morning
20 that there was a bit of consternation in the
21 neighborhood when the Assembly and the homeowners
22 learned about this proposed transaction?

23 A. Well, I think so. That's -- that's the other
24 exhibit, that's 209, when --

25 Q. We're not going to go into 209 right now. In

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1 fact, I want to go ahead and pull it away from you.
2 Regardless of 209, you're aware that some of the
3 homeowners were upset that this transaction was taking
4 place, correct?

5 A. Yes.

6 Q. There were Assembly meetings about this,
7 correct?

8 A. I believe there were, yes.

9 Q. And there was a request from the Board, the
10 Assembly Board, that the easement get fixed before this
11 transaction occur, correct?

12 A. A fix -- there were proposals to modify the
13 easement, yes.

14 Q. There were proposals to modify the easement,
15 correct, proposals by the Board of Directors?

16 A. Yes.

17 Q. Who, at that time, was led by a gentleman
18 named Kinney, correct?

19 A. Bruce Kinney.

20 Q. Bruce Kinney. And Bruce Kinney personally
21 contacted you regarding modifying the easement,
22 correct?

23 A. Yes.

24 Q. Several times?

25 A. We had conversations about it, yes.

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1 Q. You had in person conversations and you had
2 e-mails, correct?

3 A. I don't know that -- I think we talked on the
4 telephone. And I don't recall the face-to-face
5 meeting, but we did exchange e-mails about it.

6 Q. And one of the modifications that Mr. Kinney
7 was seeking in the easement, prior to the sale, was
8 that it would be perpetual, correct?

9 A. Yes.

10 Q. And that modification never occurred, did it?

11 A. No.

12 Q. The only other party that was needed for the
13 modification, before the sale, was the I'On Company or
14 the I'On Club to agree to it, correct?

15 A. No.

16 Q. Before the sale, who else do you believe had
17 to agree to a modification to the easement?

18 A. The Assembly.

19 Q. The Assembly, who Mr. Kinney was representing,
20 correct?

21 A. That's correct.

22 Q. And he's the one who says, let's make it
23 perpetual, correct?

24 A. With the perpetual aspect, we were -- we were
25 fine with that. But it was the other -- other

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1 provisions restricting -- that they had in their
2 easement proposals that were -- that would have
3 restricted the -- the number of events and other
4 activities, so we couldn't just agree to what we wanted
5 to agree, we had to have -- we had to have a -- we had
6 to have a meeting of the minds, and the Assembly had to
7 go along with that, had to agree to it. We could
8 never -- we could never -- we could get done what we
9 wanted to do, and that's to get that -- to get a
10 workable arrangement to make it perpetual. We always
11 wanted to make it perpetual.

12 Q. So, it's clearly your -- your memory that you
13 knew about the problem with the easement being or not
14 being perpetual right before you deeded it Russo,
15 correct? You discussed it with Kinney?

16 A. It was -- we understood -- I understood it was
17 ambiguous at that time, that we believed it was -- that
18 the intent was to be perpetual; because that's what it
19 said on the first part of that recreational easement.
20 It said it was perpetual and that was our
21 understanding.

22 Q. One thirty-seven, please. Sir, on the bottom
23 half of Exhibit 137 is an e-mail from your manager,
24 Chad Besenfelder, to Mike Russo regarding the Creek
25 Club agreements, correct?

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1 A. Yes.

2 Q. And you recall we just saw a short time ago,
3 that there was a new agreement that's being discussed,
4 correct?

5 A. Well, I saw that other e-mail and these things
6 were all running together, I can't -- I don't recall
7 how they -- how one followed the other.

8 Q. And Mr. Besenfelder is writing to Mike to get
9 his confirmation on the changes prior to meeting with
10 you, correct?

11 A. That's -- yeah. He is attempting -- Chad has
12 attempted to pull together a deal, to get things worked
13 out.

14 Q. And item three is the change in the deal
15 relating to the docks and boat ramp? They will no
16 longer be subdivided, they'll be part of the sale to
17 Russo, correct?

18 A. Yes.

19 Q. That change occurred on Thursday, December 11,
20 2008, correct?

21 A. I don't know when it occurred, but this memo
22 is dated that date, so that's when it's -- that's when
23 it's memorialized.

24 Q. Two ten, please. This is an e-mail dated
25 January 5, 2009, from you to Mr. Besenfelder, your

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1 manager, and to Mr. Russo, the buyer, correct?

2 A. Again, I can't -- that's correct.

3 Q. And this reflects you're communicating to Chad
4 in the first sentence, that you and Mike, the buyer,
5 had spoken and that you, the I'On Club, would not
6 modify the easement while it was under contract to be
7 sold to Mike Russo, correct?

8 A. Yes. It says Mike. It's really not clear
9 whether -- whether in one of these cases, he's talking
10 to -- about Matt -- or Mike at the time, but that's
11 correct. It says that Mike and -- and -- yeah, I wrote
12 the memo. "Mike and I spoke this afternoon and
13 addressed the easement issue, as I confirmed with Mike,
14 the I'On Club will not modify the HOA easement while
15 the Creek Club is under contract for sale to Mike".

16 Q. "The Club would be sold with the ambiguity in
17 the term that we discussed", correct?

18 A. Yes.

19 Q. Paragraph 4.2, correct?

20 A. That's correct.

21 Q. Two twelve, please. We'll skip 212 -- 53,
22 please. Sir, 53 is Catherine Templeton's demand letter
23 to the association to procure the amenities, correct,
24 dated February 26, 2009?

25 A. I can't read these things.

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1 Q. Excuse me, 53 is the demand letter to the
2 Board, that was eventually forwarded to you by the
3 Board for assistance and response, correct?

4 A. I don't recall it being forwarded to me.

5 Q. Do you recall seeing it previously?

6 A. I've seen this before, yes.

7 Q. And it was provided to you by Mr. Kinney?

8 A. I don't remember where I got it. It's been a
9 long time ago. I don't remember when I saw it.

10 Q. One fifty-five. please. This is an e-mail
11 from you to Ms. Templeton, correct?

12 (PAUSE.)

13 Q. Is that correct, sir?

14 A. This is an e-mail by me to Ms. Templeton, but
15 doesn't it reference that.

16 Q. It's an e-mail by you relating to her
17 appeal -- potential appeal of a zoning decision
18 relating to the use of CV-6, correct?

19 A. That is correct.

20 Q. And you threatened her that if she appealed
21 it, you would sue her, correct?

22 A. I just stated that that was appropriate, yeah.

23 Q. And that resulted in her dropping out of the
24 appeal, correct?

25 A. I gather it did. She -- she dropped the

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1 appeal and she didn't pursue appealing the BOZA appeal.

2 Q. So the BOZA decision was never actually
3 appealed -- or if it was, the appeal wasn't prosecuted
4 because she dropped it?

5 A. That's correct. She dropped it.

6 Q. After you threatened her with a lawsuit?

7 A. Yes.

8 Q. And you all signed a settlement agreement,
9 correct?

10 A. Yes.

11 Q. To release all claims, rights, anything else
12 against each other, correct?

13 A. Yes.

14 Q. A walk away, clean separation, correct?

15 A. Yes.

16 Q. And you two have had no contact since that
17 time, have you?

18 A. Not to my -- I don't know of any.

19 Q. And you have no evidence to share with us
20 today that Ms. Templeton is, in any way, involved with
21 my clients bringing this suit to vindicate their rights
22 and the association's rights, do you?

23 A. Well, I'm not sure about that.

24 Q. Well, share it with us.

25 A. I think there's -- she's -- she was on the

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1 e-mail list from -- that Ward Mundy had sent out with
2 -- when -- when Ward Mundy's e-mail -- I think you
3 produced it, so I would say we could just read that
4 e-mail and see the details of it, but she's named on
5 that e-mail.

6 Q. Back in 2009, correct?

7 A. I think it was.

8 Q. Before the sale happened, right?

9 A. I think so.

10 Q. Before you had a settlement agreement with
11 her, right?

12 A. I don't recall. I think it was after the
13 settlement agreement.

14 Q. And this suit was filed by Mr. Brad Walbeck
15 only, and Lea Ann joined it a year or two -- it was
16 filed by him only in December 2010? You understand
17 that, correct? This suit, this lawsuit --

18 A. Was in 2010.

19 Q. Was filed in 2010 by Mr. Brad Walbeck,
20 correct?

21 A. That's what I understand.

22 Q. And share with us the evidence you have that
23 he filed it for Catherine Templeton?

24 A. I don't have any evidence that he filed this
25 lawsuit on behalf of Catherine Templeton. I had --

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1 there was a -- we can reference that -- that e-mail
2 that you produced from -- or Ward Mundy produced that
3 that has a linkage.

4 Q. Share with us any evidence you have that Brad
5 Walbeck filed suit because of that e-mail?

6 A. I don't have any evidence of that nature and I
7 don't know of any.

8 Q. Was he even involved in the BOZA appeal?

9 A. I don't know.

10 Q. Fifty six, please. Do you have 56 in front of
11 you, sir?

12 A. Yes.

13 Q. This is a March letter, 2009 letter from Bruce
14 Kinney to you, relating to the amenities, correct?

15 A. Reference on -- on his e-mail is Creekside
16 Club, which I don't know what that is, but...

17 Q. And if we go to the third paragraph, sir, you
18 will see that the second sentence begins with quote,
19 "while I have not seen the purchase contract with Mike
20 Russo and his partners, I have been told that the
21 proposed sale includes the docks. Following our
22 earlier discussions, the Board expects the docks will
23 now be excluded from the sale, but access will be part
24 of the new easement", end quote, correct?

25 A. Yes, that's what that says.

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1 Q. And it additionally goes on, Mr. Kinney
2 says -- he previously said he had been provided a copy
3 of the HUD report. And in the fourth paragraph he
4 says, "the HUD report lists a Creekside Park as part of
5 the recreational facilities, that was to be started and
6 completed the same time as the docks. Would you please
7 let us know if this park was ever built. And if so,
8 where it is located and whether it has been conveyed to
9 the Assembly"; correct?

10 A. Yes.

11 Q. And so Mr. Kinney, himself, the Board
12 president, put you on notice of the association's
13 claims relating to the dock and the ramp prior to your
14 sale to Mr. Russo, and put you on notice of the
15 association's inquiry about the Creekside Park,
16 correct?

17 A. Yes.

18 Q. Exhibit 183, please. This is an e-mail dated
19 March 13, -- do you need help with it?

20 A. I don't see 183.

21 Q. (Pause.) It's an e-mail from you to your son,
22 Vince Graham, a copy to Chad Besenfelder, regarding the
23 Kinney letter, correct?

24 A. Yes.

25 Q. And you're writing them that you all need to

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1 get together and coordinate on a response to the Kinney
2 letter, correct?

3 A. Yes.

4 Q. You all thereafter did that, correct?

5 A. I didn't understand your question.

6 Q. You did, in fact, coordinate a response to
7 that letter, correct?

8 A. I assume so.

9 Q. Let's go to Exhibit 214, March 14, 2009,
10 e-mail from your son to you and your manager, Chad.
11 This is an e-mail chain relating to quote "the
12 Creekside Park" end quote, correct? Are you there?

13 A. On 214?

14 Q. Yes, sir. Do you see the "Re" at the very top
15 quote "Creekside Park" end quote?

16 A. Yes, uh-huh.

17 Q. If we go to the very first e-mail on the chain
18 on page three, it's your initial response to Bruce
19 after receiving his letter that you'll be back with him
20 with an answer, correct?

21 A. Yes.

22 Q. And the next e-mail in the chain is, again,
23 from you at 7:10 p.m. on page two, to Chad that asks if
24 he had a plan for quote "Saturday Road, Creekside Park.
25 Possibly that is the Creekside Park referenced in the

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1 HUD document"; do you see that?

2 A. Well, the prior memo -- you are jumping around
3 a little fast -- the prior memo that I sent back to
4 Bruce, I said, "Thanks, Bruce, we'll be back to you
5 shortly with a response on the Creek Club dock and
6 cross use easement issue questions. This is a bit
7 complicated and requires some research. In regard to
8 your second question, Vince recalls the Creekside Park
9 is a two and a half mile Marshwalk, which has been
10 built and for the most part conveyed to the Assembly".
11 And we've addressed that issue so many times with --
12 there is so many plats that show the Creekside Park, so
13 that issue is -- I --

14 Q. Well, let's stop there for a second. There's
15 something new in this paragraph you just read to the
16 jury, we've never addressed today. You've told the
17 jury several times today that the Creekside Park in the
18 HUD statement, exhibit one, was actually later renamed
19 to Marshwalk Park, correct?

20 A. That's correct.

21 Q. What you didn't tell the jury earlier today
22 when you told them that several times, is what you
23 wrote in your e-mail, that that information was based
24 upon quote "Vince recalls the Creekside Park as the 2.5
25 mile Marshwalk, which has been built", correct?

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1 A. Well, that's correct.

2 Q. You relied on Vince's memory when you wrote
3 the homeowners in 2009 because you didn't know?

4 A. I didn't remember. I hadn't seen those --
5 that -- all those plats that Seamon Whiteside had done
6 from what -- on through the final --

7 Q. Defendant's Exhibit No. 3, that all posts
8 state the representations to my client in May of 2000?

9 A. Yes, uh-huh.

10 Q. So, your memory has been refreshed with the
11 plats for trial, that now you can say the Creekside
12 Park is the Marshwalk Park, and you no longer rely on
13 Vince's memory; is that correct?

14 A. Well, Vince was there. I'm not -- if I'm
15 relying upon memory, that can be hazardous often. You
16 have to do the best you can.

17 Q. But as of 2009, all you knew was Vince
18 recalled it?

19 A. That's because I had not researched this, no.

20 Q. And then going back to page two, where I had
21 read your e-mail to Chad, asking about the Saturday
22 Road Creekside Park reference, he responds to you --
23 when you ask him, does he have this plan -- he says to
24 you, "Yes, I will put an end to this Creek Park BS",
25 end quote, correct?

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1 A. I've lost you in terms of -- what is that?

2 Q. We're at 7:16 p.m, Chad e-mail.

3 A. Oh, I see that, yes.

4 Q. Did you ever ask him to see those plans?

5 A. I don't recall.

6 Q. Have you ever seen such a plan?

7 A. I don't recall.

8 Q. You made all your responses to the homeowners
9 that there was no Creekside Park without asking to see
10 the plan that Chad said he had?

11 A. I don't remember that.

12 Q. Did y'all hire a company called Design Works
13 to do some planning for you?

14 A. Yes. Design Works, uh-huh.

15 Q. And did you use their plans?

16 A. I think so. I think their plans were -- I saw
17 -- I have seen those plans, they're -- and we have --
18 they are very close to what was built out. I've looked
19 at the plans and looked at the -- on site parks and
20 they seem very close.

21 MR. LUCEY: May I have this marked as Exhibit 227,
22 please.

23 (Plaintiff's Exhibit No. 227 marked for
24 identification.)

25

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1 BY MR. LUCEY:

2 Q. Sir, I'm showing you what's been marked for
3 identification purposes only as Plaintiff's Exhibit
4 227. These are the Design Works plans that were done
5 for I'On, correct?

6 A. Yes.

7 Q. And I see the first page is July 15, 1999; do
8 you see that in the little ledger on the side?

9 A. Yes.

10 Q. And it sets forth -- it's called quote "Parks
11 and Common Area Landscape Enhancement" end quote,
12 correct?

13 A. Yes.

14 Q. For Shelmore, a borough in I'On, correct?

15 A. Yes.

16 Q. And it has, for instance, a lot of the -- if
17 we go to sheet P 4 -- P 4 is at the bottom right hand
18 corner -- it has site plan for Isle of Hope Walk,
19 correct? Do you see that title at the bottom right
20 hand corner?

21 A. Yes.

22 Q. And there is an Isle of Hope Walk of some sort
23 on the Marshwalk Path, correct? (Pause) Do you recall
24 that?

25 A. Yes.

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1 Q. And then if you go to P 5, we see the site
2 plan for Hope Point Park, which is again, I believe,
3 another little area -- a gathering area on the
4 Marshwalk, correct?

5 A. Yes.

6 Q. And I forget your answer, did you tell me you
7 recognize these plans?

8 A. Yes.

9 Q. Thank you.

10 A. I recognize the plans, yeah.

11 Q. Then let's go to -- well -- and portions of
12 these plans were implemented, some might have been
13 modified somewhat, but they were implemented at I'On,
14 correct?

15 A. I think they were all -- as far as I know.

16 MR. LUCEY: Okay. Plaintiff moves Exhibit 227
17 into evidence.

18 MR. YOUNG: No objection.

19 THE COURT: Plaintiff's Exhibit 227 is admitted
20 without objection.

21 (Plaintiff's Exhibit No. 227 admitted into
22 evidence.)

23 BY MR. LUCEY:

24 Q. Let's go to sheet P 1 -- can we get it on the
25 screen -- are you at P 1 with me, sir?

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1 A. Yes.

2 Q. The document -- this sheet is titled "Site
3 Plan Creek Club and Shelmore Point Park", correct?

4 A. Yes.

5 Q. The sheet itself shows CV-6, correct?

6 A. It shows CV-6, I don't see a label on it CV-6.

7 Q. But you recognize it, right?

8 A. I recognize that this is CV-6, and the
9 property lines appear to be there, uh-huh.

10 Q. And you see the community dock that's on this
11 site plan for the Creek Club and Shelmore Point Park?

12 A. I see one of the community docks, yes.

13 Q. And then if you go over to the right, you see
14 the boat ramp from CV-6, correct?

15 A. Yes.

16 Q. And it shows the park on CV-6 connecting up to
17 the Marshwalk, which is over by the residential lot at
18 say 4:00 p.m -- if you use the clock on this drawing --
19 correct?

20 A. You lost me there.

21 Q. It shows that the -- this park on CV-6 is
22 connecting to the Marshwalk that is over behind the
23 residential lot right here, lot 275, correct?

24 A. It doesn't have a lot number on it. I'm not
25 sure which -- what the number is.

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1 Q. And I may be mistaken -- maybe 285 -- but
2 whatever the number is, it shows the park connecting to
3 the Marshwalk, correct?

4 A. There's a -- it shows the property -- a
5 property line marker right at the termination of the
6 Creekside Park or Marshwalk right there. And then you
7 pick up with CV-6 and the landscaping plan for the --
8 for the Creek Club and the -- and all the landscaping
9 around there.

10 Q. Okay.

11 A. So, yes.

12 Q. And it shows the landscaping for the entire
13 park? The entire Creek Club and Shelmore Point Park,
14 correct?

15 A. Yes. The landscape architect planner just
16 made up these names. They were good for planning
17 purposes certainly.

18 Q. And may I have the overlay between Exhibit No.
19 5, the dock application, and P 1 please. Our
20 specialist, Ryan, has overlaid now the drawing that
21 y'all sent to South Carolina DHEC and Army Corps of
22 Engineers and the drawing on the Park Plan for the
23 Creek Club Park on sheet P 1 of Plaintiff's Exhibit
24 227; do you see that? And the blue is the Exhibit 5,
25 the plat that was given to DHEC, and the black is the

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1 the Park Plan. So you see that -- or am I reversed --
2 I'm reversed. The blue is the landscape and the black
3 is the Exhibit 5, it overlays almost perfectly, doesn't
4 it?

5 A. Yes. They used the same base map, sure. And
6 then -- they have a change on that -- the lot -- the
7 lot line on -- the lot 275, as you can see, where
8 the -- where they -- where the -- they had to change
9 the property line right there in order to make it work.

10 Q. Where the Creek Club Park and the Marshwalk
11 connect, the residential property line boundary has
12 been changed; is that correct?

13 A. On lot 275, that's correct.

14 Q. And now we can see it's lot 275, as you just
15 pointed out, with this overlay, correct?

16 A. Yes.

17 Q. And we see that the community dock in the Park
18 Plan and the community dock in the Dock Plan sent to
19 the state, is the exact same location for the fixed
20 spearhead, slightly different for the pavilion, and
21 very similar for the floating dock, correct?

22 A. Well, that's correct.

23 Q. And the ramp location is the same, correct?

24 A. It appears to me to be.

25 Q. Can I have the overlay between the Creek Club

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1 Park P 1 drawing and Defendant's Exhibit No. 2, please.
2 He's going to put it on the screen in one second for
3 us, sir. Sir, while we're waiting for him to get it on
4 the screen if he's able to -- let's go back to Exhibit
5 227. And I just wanted to ask you about one other
6 sheet, sheet P 3, please -- just so to avoid any
7 confusion later in the trial, sheet P 3 is labeled
8 "Site Plan Saturday Point Park and Saturday Road
9 Intersection", correct?

10 A. Yes.

11 Q. And this is on the Marshwalk, correct?

12 A. Yes.

13 Q. We see the Marshwalk coming down from the
14 Hobcaw Creek direction to a point there's a circle and
15 then it continues on down towards say 4:00 on the
16 drawing, correct?

17 A. Must be inverting 4:00 -- because I don't
18 understand that, 4:00 is that way.

19 Q. So, we -- we're holding it a different way.
20 That's -- I apologize. The Marshwalk comes down from
21 the Hobcaw Creek direction, turns the corner, continues
22 down -- continues up the tributary, correct?

23 A. Yes.

24 Q. And Saturday Point Park has a walking circle
25 of some kind or sitting circle in the middle of it,

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1 correct?

2 A. Yes.

3 Q. And do you happen to know whether or not that
4 got built?

5 A. Yes.

6 Q. It's there?

7 A. Yes.

8 Q. Okay. And the reason it's called Saturday
9 Point Park is because there is an access from the
10 Saturday Road, down to that circle that's on the
11 drawing, correct?

12 A. There is an access point right there. That
13 may be the reason they call it Saturday Point Park;
14 that sounds logical.

15 Q. And Saturday Road actually kind of ends almost
16 in a circle, right?

17 A. It does.

18 Q. And this is a park right at the outer most
19 part of the Saturday Road circle, correct?

20 A. That's right. There's a community dock right
21 off of that, right there.

22 Q. Dock number two is there, correct?

23 A. I think so, because there's another dock,
24 number three -- another community dock right across on
25 the -- right across that little that --

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1 Q. So there are two docks shown on here, correct?

2 A. Yes.

3 Q. But these are on the tributary, correct?

4 A. Yes.

5 Q. All right. And just so we are clear, there
6 was -- when I'On was planning its parks in 1999, there
7 was both a Saturday Point Park and there was the Creek
8 Club Park that we saw on sheet P 1, correct?

9 A. Yes.

10 Q. And this would have been the material the
11 design material, the park material that Chad
12 Besenfelder indicated to you in Exhibit 214, that he
13 had and this is how he was going to explain to the
14 homeowners that there never was a park at Creek Club,
15 correct?

16 A. I don't know.

17 Q. Because you never asked him for it?

18 A. I don't know, I may have asked him. I don't
19 know. I don't recall asking him.

20 Q. And then we'll skip his e-mail for a moment,
21 and go to a more recent e-mail on page one from you to
22 Chad and Vince on March 14th. And you wrote to Chad
23 and Vince, "As far as I know, the constructed Marshwalk
24 is completely adequate for the Creekside Park
25 referenced in the HUD report", correct?

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1 A. Well, I don't see your e-mail that you are
2 referencing.

3 Q. It was the one we're in, 214.

4 A. Oh.

5 Q. It's 214, right here.

6 A. Yes. Yes. Uh-huh.

7 Q. Can we have 214 on the screen. You didn't say
8 to your manager and co-owner that the Creekside Park is
9 the Marshwalk Park, you said "it is completely
10 adequate", correct?

11 A. That's correct. That's what I said,
12 certainly.

13 Q. Two sixteen, please.

14 THE COURT: Before we move to that, Mr. Lucey, I
15 need to figure out when we're going to call it a day.
16 How much longer do you have on direct?

17 MR. LUCEY: Ma'am, I think I have about 25
18 minutes.

19 THE COURT: Okay. Try to make it a little less
20 than 25 minutes.

21 MR. LUCEY: Yes, ma'am.

22 THE COURT: Let's try to get the direct in.

23 BY MR. LUCEY:

24 Q. Sir, on the Exhibit 216 that's on the Board,
25 the bottom e-mail from you, correct?

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1 A. Yes.

2 Q. And underneath your name on the e-mail,
3 there's a Latin phrase -- I believe it's Latin -- tell
4 me if I'm wrong ne oublie, correct?

5 A. Ne oublie, yeah, that's the way I pronounce
6 it. I'm not a Latin scholar.

7 Q. Never forget?

8 A. Never forget. I'll aspire to that.

9 Q. That's your motto, correct?

10 A. That's a grand plan motto -- it's a Scottish
11 clan motto.

12 Q. The jury will see that on many of your
13 e-mails, correct?

14 A. That's correct.

15 Q. And let's go to 217, please. This is an
16 e-mail, March 24th, where you personally wrote the I'On
17 Board President, the Assembly President, and said that
18 Chad is working on the turnover details now and expect
19 to have resolution shortly, correct?

20 A. Yes.

21 Q. You represented that to the Assembly, correct?

22 A. Well, I communicated to Bruce, that was what
23 was our plans, what we were working on.

24 Q. You wouldn't expect the Assembly to file suit
25 against somebody saying, hey, I'm giving it to you,

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1 would you?

2 A. Why would they want to file suit against us.

3 Q. Two eighteen, please. Sir, 218, is a March
4 24th e-mail from Chad Besenfelder to you and Vince
5 regarding the turnover of the amenities to the
6 association, correct -- specifically, regarding the
7 docks and the boat ramp?

8 A. His subject is docks. It's Chad sending this
9 letter on March 24, 2009.

10 Q. And he proposes two options to you all.
11 Option one is deed a minimum amount of land to the
12 Assembly; and option two is to deed a linear parcel to
13 the Assembly, correct?

14 A. Uh-huh.

15 Q. And he attaches drawings of what that would
16 look like, correct?

17 A. Yes.

18 Q. Because since the docks and the ramps are on
19 the parcel, if you deed the docks and the ramp, you
20 need to deed some real estate to get there, correct?

21 A. I would think so.

22 Q. And, so, that was implicit in the obligation
23 or the representation of turning over the amenities,
24 was turning over a way to use them, access, correct?

25 A. Well, they had -- they had the access through

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1 the recreational easement for some time.

2 Q. And he gave you the pros and cons of giving
3 them minimum land or giving them what it really needed
4 for the docks and ramps to be accessed, correct?

5 A. He has two options here. I don't know what
6 all he's thinking about with this proposal.

7 Q. And with proposal number one, he's -- he's
8 suggesting you all give them land, and the pro for
9 number one is "Club retains maximum deep water and boat
10 ramp for future opportunities", correct?

11 A. Yes.

12 Q. Item number two is "Assembly receives the
13 community dock listed in the HUD document", paren,
14 "open for interpretation", close paren, correct?

15 A. That's what he says, yes.

16 Q. And then under option two, where it's talking
17 about deeding a linear parcel to the Assembly, the pro
18 that is "one, if needed in negotiation, the Assembly
19 may consider this the Creekside Park", correct?

20 A. That's what he says, yes.

21 Q. But he goes on to suggest that you all should
22 still keep the docks, condominimize them, and sell them
23 for \$960,000, correct?

24 A. He says he's also attached a farfetched plan
25 for future opportunities, so it -- he's conjecturing.

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1 Q. And he values the condos at \$960,000, correct?

2 A. Well, that's his -- that's his scheme there.

3 Q. Exhibit 14, please. Sir, this is the
4 Stubblefield e-mail that the jury saw on the screen
5 during my opening, should be that one there. And as we
6 told the jury earlier, she was the I'On Company's
7 attorney for the Interstate Land Sales Act compliance
8 for the HUD Property Report, correct?

9 A. Yes.

10 Q. And on the same day, you all told the
11 association that the deal with Russo was off and that
12 you were going to deed them the docks and the ramp --
13 you wrote her and asked her, hey, what happened with --
14 what was the reference to community dock in our
15 Property Report, correct? Do you see the bottom e-mail
16 is page three? You asked her if she --

17 A. No, I asked her -- I asked her did she author
18 the -- with Joe Barnes -- the I'On recreational
19 easement attached. I'On is simply -- wants I'On to
20 convey the community dock to them. The community dock
21 was listed in the HUD report as an amenity to be
22 conveyed to the HOA. And she wrote back and explained
23 the logic in the program as to -- as to what happened
24 there.

25 Q. She explained that the community dock was in

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1 the original Property Report, but that quote "in early
2 2000, a decision was made to have the I'On Company, the
3 I'On Club, own and maintain a parking area, boat ramp,
4 and dock as part of the club facilities; and grant an
5 easement to the I'On Assembly for the use of these
6 facilities, so that property owners would have the same
7 use rights they would have had in the community dock
8 reference in the original Property Report", end quote,
9 correct?

10 A. Well almost. You know, she said the -- she
11 said the original HUD Property Report, dated November
12 3, 1998, made reference to a community dock to be
13 located in phase II, that would be conveyed to the I'On
14 Assembly, and thereafter maintained by the I'On
15 Assembly as a common expense. So in that 1998 Property
16 Report, this was before we had designed anything -- got
17 anything permitted or approved, even bought the land,
18 the community dock reference was to a generic community
19 dock.

20 We didn't know whether -- at that time, we
21 didn't know whether we were going to get -- we thought
22 sure we'd get one -- at least one community dock, but
23 we didn't know how many, so that was a reference to
24 that community dock.

25 And then she went on to say, I don't recall.

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1 There was more than one dock originally planned. But
2 in early 2000, the decision was made to have the I'On
3 Club own and maintain a parking area, boat ramp, and
4 dock, which these were substantially expanded
5 facilities than those promised as a single community
6 dock. So she -- the decision was made to have I'On
7 Club own and maintain these boating facilities, parking
8 area, boat ramp, and dock as part of the club facility
9 and grant an easement to the I'On Assembly for use of
10 all these facilities, so that property owners would
11 have the same use rights they would have had in the
12 community dock referenced in the original Property
13 Report. So -- but in addition, would have the right to
14 use the parking area and boat ramp, which had not been
15 mentioned in the original Property Report, in which the
16 property owners would otherwise not have the right to
17 use unless they joined the club.

18 Q. Sir, you made that decision, didn't you? The
19 one Ms. Stubblefield references in early 2000, you made
20 that decision, correct?

21 A. No.

22 Q. You and your son, Vince, and Chad made that
23 decision as a group, correct?

24 A. No.

25 Q. A decision was made, correct?

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1 A. Yes.

2 Q. Your attorney says a decision was made,
3 correct?

4 A. Joe Barnes and --

5 Q. You all changed the plan?

6 A. Well, they -- the boating -- the design had
7 for these -- for these facilities had -- and the
8 concept design for the I'On Club had matured and
9 developed, so we had a much greater -- they had been
10 flushed out, so we had a much better idea than we had
11 early on, before we had -- before he had designed
12 these. And our -- our vision was to -- was for the
13 I'On Club to be a strong amenity and the I'On Club --
14 the swim and tennis club, and the Creek Club, to be
15 really valuable amenities and self sustaining viable
16 under themselves, so that they could provide -- so that
17 they would enable us to enhance the value of the entire
18 community. So we were -- our goal was to sell all the
19 lots in the community, to build it all out. That's
20 what we wanted to do.

21 Q. You modified your plans in early 2000,
22 correct?

23 A. Oh, yes, uh-huh.

24 Q. Thank you. Exhibit 58, please. Sir, this is
25 the March 25, 2009 e-mail from -- the 2005 -- excuse me

T. GRAHAM -- DIRECT BY MR. LUCEY.

1 -- the 2009 e-mail the jury saw in opening, whereby
2 Chad, your manager, notified the management company for
3 the Assembly that the Russo deal was off. And that in
4 the second paragraph, "the I'On Company is preparing to
5 deed the community dock to the Assembly. We plan to
6 subdivide a parcel to be recorded and deeded.
7 Inspections and enhancements will be completed prior to
8 turnover", end quote, correct?

9 A. Yes.

10 Q. And that was a representation by your manager
11 to the Assembly, correct?

12 A. That was the plan.

13 Q. As of March 25, 2009, that was the plan,
14 correct?

15 A. As I understand it from his e-mail, yes.

16 Q. Exhibit 26, please. This is the August 1st
17 e-mail wherein the Assembly informs its residents that
18 it's now learned that, in fact, the property is still
19 being sold to Russo, correct?

20 A. Yes.

21 Q. And you are -- you, yourself, are a member of
22 the Assembly, not only as a declarant through a
23 company, but individually as a homeowner, correct?

24 A. Yes.

25 Q. And so you are a part of the Assembly list,

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1 e-mail list, posting list, so you would get Assembly
2 e-mails, correct?

3 A. Generally, I would think.

4 Q. And this was the first that the homeowners or
5 the Assembly knew that the property was being sold
6 since the e-mail we just looked at, Exhibit 58, where
7 Chad told them, we're in the process of subdividing the
8 land and giving it to you, correct?

9 MR. YOUNG: Objection. Calls for speculation.

10 THE COURT: Sustained. Rephrase your question.

11 BY MR. LUCEY:

12 Q. You and your company never disclosed to the
13 homeowners between March 25th, 2009, when you told them
14 you were subdividing and giving it to them, and August
15 1, 2009, when they happen to learn a sale was taking
16 place, you and your companies never disclosed to the
17 homeowners that you all went back to contract with Mike
18 Russo, correct?

19 MR. YOUNG: Objection. States facts not in
20 evidence, about what they happen to learn.

21 THE COURT: Sustained.

22 BY MR. LUCEY:

23 Q. Sir, do you have any information to share with
24 us that you were ever up front with the Assembly or the
25 homeowners that you had gone back to contract with Mr.

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1 Russo?

2 A. No.

3 Q. In fact, you and Russo discussed and -- and
4 the I'On Company discussed keeping that quiet until it
5 was completed, correct?

6 A. I wouldn't doubt that, I don't -- because we
7 had been...

8 Q. In fact, let's go to Plaintiff's Exhibit 195.
9 Page two, the first e-mail -- bottom e-mail. July 27,
10 7:54 p.m., you e-mailed that Bruce Kinney had called
11 you from Chicago to ask about the pending Creekside
12 sale. You received a call from AMCS, the I'On Assembly
13 manager, who fielded the call from an attorney who
14 called AMCS asking for HOA dues, balances for the Creek
15 Club and adjoining lots, in reference to a pending
16 sale. "Bruce called me to find out what's going on",
17 correct?

18 A. That's correct.

19 Q. And you knew from that call, he didn't know
20 until he got a call from the management company,
21 correct?

22 A. That's correct.

23 Q. Even then, you did not disclose to Bruce
24 Kinney that it was being sold, you told Mr. Kinney
25 purely that Russo was taking over management, correct?

1 A. That's correct. I subsequently, in further
2 conversation on that -- that trail clarified it.

3 Q. You clarified it with Geoff Graham, you didn't
4 clarify it with Vince -- excuse me -- with Mr. Kinney,
5 did you?

6 A. No. We wanted to keep the transaction quiet
7 because of all of the brew ha ha and filings. And it
8 was just -- it was just not getting resolved. I --
9 would you like me to read that?

10 Q. No. And Vince -- excuse me -- and Mr. Kinney
11 thereafter flew into town to meet with you, correct?
12 He came to your house?

13 A. I don't remember him coming to my house. I
14 know that -- Bruce came. He -- he didn't fly in
15 directly for that, I don't think.

16 Q. And he met with you regarding getting the
17 easements amended before the sale took place, correct?

18 A. I don't recall that.

19 Q. And on August 5, 2009, you all sold CV-6,
20 including that park area and the front of the Creek
21 Club, the boat ramps, the community dock, the gazebo,
22 the floating dock, and all that park area that we saw
23 on Plaintiff's Exhibit 227, P 1 for the Creek Club
24 Park, correct?

25 A. Yes.

1 MR. LUCEY: Thank you.

2 THE COURT: Okay. Thank you, sir. Sir, you may
3 step down. We will finish your testimony tomorrow.

4 THE WITNESS: All right, great. Thanks.

5 THE COURT: Ladies and gentlemen, we are going to
6 break for the evening. Please be back at 9:30 in the
7 morning. I have some things I need to work with the
8 attorneys on before y'all get here -- go ahead, sir,
9 sorry. You are welcome to step on back. Go ahead.

10 THE WITNESS: Excuse me. I didn't mean to
11 interrupt you.

12 THE COURT: No problem at all. No problem.
13 Please don't discuss anything about the case with
14 anyone, including each other. And don't do any
15 independent research and don't bring your lunch. Julie
16 Armstrong, our Clerk of Court, is going to order lunch
17 for you all tomorrow, so we will have the food order
18 forms when you get here a little before 9:30, so you
19 can pick what you would like. Thank you very much.

20 (WHEREUPON, the jury leaves the courtroom at
21 6:04 p.m.)

22 MR. YOUNG: May he be excused?

23 THE COURT: Yes, sir. You may not discuss your
24 testimony with anyone because you are still technically
25 on the stand. Thank you, sir.

1 I don't know what further discussions there are
2 ongoing, that could possibly wrap this whole thing up
3 or not, but y'all need to be watching these two old
4 guys in the corner. And by y'all, I mean y'all at the
5 defense table. They are -- I don't know. They are
6 clearly following everything. I know they will hear
7 the rest of the story later this week and tomorrow, but
8 I would keep that in mind everyone and continuing to
9 talk. I'm not going to bust heads or -- we already did
10 a little mini mediation and I commend y'all for how far
11 you've come in working this out, but I would strongly
12 encourage y'all to continue to try to work it out. And
13 I'll see everybody tomorrow.

14 Anything we need to take up before we leave
15 today?

16 MR. DUFFY: Your Honor, my only request would be
17 some guidance on how to manager out of order witnesses.
18 They will be -- both be pretty short witnesses, but
19 if -- I don't know if we want to plan at a certain time
20 we would accommodate the plaintiffs certainly --

21 THE COURT: We are going to order lunch for the
22 jurors tomorrow, so I'll probably give y'all an even
23 shorter lunch break than we did, like 45 minutes to an
24 hour, so why don't we try to get your guys in tomorrow
25 starting at 3:00 -- is that too late? Do they have

1 planes to catch?

2 MR. DUFFY: I think that works.

3 THE COURT: I'll just explain to the jury that
4 we're taking some witnesses out of order.

5 MR. LUCEY: If they're being inserted in our case,
6 where we would be normally preparing for our own
7 witnesses, I think we should be told who these out of
8 order witnesses --

9 THE COURT: Yeah. Who are they?

10 MR. YOUNG: Stuart Whiteside is one of them.

11 THE COURT: Stuart Whiteside.

12 MR. DUFFY: Julie O'Connor.

13 THE COURT: Julie O'Connor. Was that Julie Hussey
14 before?

15 MR. DUFFY: No.

16 THE COURT: A different -- okay. I was going to
17 say because we know pretty much what she's going to
18 say, we heard it already once. Okay. So Julie
19 O'Connor and Stuart Whiteside. Anything else before we
20 break for the day?

21 MR. YOUNG: No, Your Honor.

22 THE COURT: All right. Thank you. Good job.

23 (Whereupon, the hearing recessed for the day.)

24

25

* * * P R O C E E D I N G S * * *

1

2

3 THE COURT: All right. Good morning everybody. A
4 couple of things, I received the e-mail last night; is
5 that Mike White that has been working with Tommy
6 Harnett for 20 something years?

7 MR. DUFFY: That's right.

8 THE COURT: Okay. Well, I'll look at that this
9 morning.

10 MR. DUFFY: There's been a follow-up e-mail that I
11 have sent this morning.

12 THE COURT: Oh, I have not seen the follow-up.

13 MR. DUFFY: I have a hard copy of it.

14 THE COURT: Thank you.

15 MR. LUCEY: I think we are going to work out 99
16 percent of it.

17 THE COURT: Great.

18 MR. DUFFY: Assuming the appraisals don't come
19 in -- I said, look, let's work through it, just let the
20 testimony in and not the reports.

21 THE COURT: Okay. Well, it -- wonderful. That's
22 very helpful.

23 MR. LUCEY: We may still end up with one question
24 for the court --

25 THE COURT: Okay.

1 MR. LUCEY: But I think we can work almost all of
2 it out.

3 THE COURT: Well, what I'll do -- just to be ready
4 if that does come up -- is while we are on-going, I
5 will continue to look at the material y'all sent me
6 last night and we'll go from there.

7 MR. LUCEY: And the only thing -- the only -- they
8 have an objection to one part of our designation.

9 THE COURT: Okay.

10 MR. LUCEY: We may want to argue that one part.
11 It's about two pages.

12 THE COURT: Sure.

13 MR. LUCEY: But, so, if you are going to read
14 anything, it will just be that objection, I mean --

15 THE COURT: Okay. And that's all in the e-mail,
16 right? I'll make sure to look at that.

17 MR. LUCEY: It's in his e-mail. And I think in
18 the mid-morning break, we can resolve 99 percent of it.

19 THE COURT: Wonderful.

20 MR. LUCEY: And then address that one question at
21 lunch.

22 THE COURT: Thank y'all. I appreciate it. And
23 then -- just more -- Charleston is an extremely small
24 town category -- I went to a chamber event with my dad
25 last night, and was introduced to Mr. Duffy's witness,

1 one of them -- told him to be here at 3:00 -- told him
2 to be here, that was the extent of our conversation.
3 He looked a little confused. But, anyway, I just
4 wanted to let you all know that.

5 Anything else we need to take up before we bring
6 the jury -- they're all here.

7 MR. LUCEY: No, Your Honor.

8 MR. DUFFY: No, Your Honor.

9 THE COURT: And I am still having whatever ear
10 thing I've got going on, so if I have to ask y'all to
11 speak up even more, I apologize. Maybe some cold
12 medicine will help, but I don't want to fall asleep on
13 the bench, so I'm somewhat limited. All right. If we
14 would bring the jury. Thank you very much.

15 MR. YOUNG: Your Honor, could we get that screen
16 down?

17 THE COURT: Oh, yeah. Thank you.

18 MR. DUFFY: Should I ask Mr. Graham to take the
19 stand?

20 THE COURT: Sure. You can come on up. Thank you.
21 I appreciate that. Good morning.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 9:42 a.m.)

24 THE BAILIFF: All jurors are present and seated,
25 Your Honor.

T. GRAHAM -- CROSS BY MR. YOUNG

1 THE COURT: All right. Thank you, ma'am. And
2 thank you, ladies and gentlemen, good morning. It is
3 nice to see everyone back. I hope you had a nice
4 evening. The attorneys have gotten everything ready
5 for you while you were getting ready to come in,
6 including getting Mr. Graham back on the stand, so we
7 are ready to go forward with Mr. Young's examination of
8 Mr. Graham.

9 CROSS EXAMINATION BY MR. YOUNG:

10 Q. Good morning, Mr. Graham.

11 A. Good morning.

12 Q. Mr. Graham, can you tell us a little bit about
13 your background; that is, where you live?

14 A. Okay. Well, I live in I'On, in the middle of
15 I'On, on [REDACTED].

16 Q. And how long have you lived in I'On? When did
17 you move there?

18 A. Well, we've had a home there since 2007. We
19 built the home there and moved in about 2007.

20 Q. Okay. And are you married?

21 A. Yeah, I'm married. I have -- I'm 73 years
22 old, and I'm married. I have four children and five
23 grandchildren. I was --

24 Q. How long have you been married?

25 A. Oh, 50...

T. GRAHAM -- CROSS BY MR. YOUNG

1 Q. That's all right.

2 A. I was born in Rock Hill in 1941 in the -- in
3 the bedroom of my parents' house, which was kind of a
4 normal way to do it back then. And I was raised in
5 Rock Hill. I went off to school to college and school
6 At Emory University in Atlanta. I met my wife there,
7 and completed school. We started our family there with
8 our first born son, Vince, in Atlanta.

9 Then I went to -- I went to -- went off to work.
10 I had a variety of careers over -- in my lifetime. And
11 with -- with culminating in the most significant and
12 important for me, and that's helping my sons, Vince and
13 Geoff, develop the I'On Village.

14 Q. Is your wife in the courtroom today?

15 A. She is.

16 Q. Okay. She's back there in the gallery right
17 behind our table?

18 A. That's correct.

19 Q. And you were married shortly -- or while you
20 were in school; is that right?

21 A. While I was in school, yes..

22 Q. Okay. And, Mr. Graham, tell us a little bit
23 about what your role was with the I'On Company in the
24 early days?

25 A. Well, Vince -- Vince was the -- initiated our

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1 involvement in the traditional neighborhood design,
2 though I've been in the real estate business for -- in
3 one capacity or another for 20, 30 years. And he was
4 -- so he was -- he had developed -- gone down to New
5 Port and started a community down there. And we and --
6 my wife and I invested in that, helped him get going
7 with that.

8 And then someone introduced us to a property up
9 in -- said that Dupont was such a -- was so well
10 received down there, it would go really well --
11 actually in Charleston. So we came up here and looked
12 around, some brokers showed us different properties;
13 and we spent several years trying to find something.
14 And then we located this property in -- on Mathis Ferry
15 Road that -- and my involvement was I negotiated the
16 purchase contract with the -- through my company --
17 with the landowner.

18 Q. All right. And just roughly, what time period
19 was this, that you were up here in Mount Pleasant
20 looking for this property?

21 A. Well, we started, I guess, in the early '90s,
22 maybe '92. And then we wound up -- we wound up
23 locating the -- or being introduced to this Jordan
24 tract, as it was referred to, probably about '93 maybe.
25 And we --

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1 Q. All right. Do you remember when the I'On
2 Company purchased the Jordan tract just roughly? What
3 year?

4 A. Well, we purchased it -- we contracted to
5 purchase it probably in '93, but didn't close on the
6 purchase until we -- until we could get the zoning
7 ordinance enabled, which was probably '96, '97.

8 Q. Okay. So, you signed the contract roughly
9 1993. And then in 1996, you said there was a zoning
10 permit and that's when you closed on the first phase;
11 is that right?

12 A. That's right. After we got our zoning
13 entitlement, then we could -- then we could go sign to
14 get the loans. And so I negotiated with the -- with
15 the Jordans to buy the land --

16 Q. Okay.

17 A. -- with my company and the Graham Development
18 --

19 Q. And I want to go through those companies in a
20 second. But after the land was purchased, tell us --
21 just summarize for us what your role has been since
22 then; has it changed with the continuing development of
23 I'On between '96 and here we are 2014?

24 A. Well, just before we purchased the land, I was
25 involved with -- with the -- in the design of the

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1 project, with the -- well, really, with -- Vince had
2 engaged these land planners. And we had a 15 day,
3 really intensive design -- they called it a shiret
4 (ph), which is all the architects gathered together,
5 and worked almost around the clock, and putting
6 together plans. And I sat in on that design shiret.

7 Q. Now, I want to look from a high elevation over
8 it, 1996 to 2014, can you just summarize for us how
9 your role has changed during that time period?

10 A. Well, it's --

11 Q. What, you know, what were you most recently
12 doing for the I'On Company, if anything?

13 A. Well, originally my primary role with I'On
14 Company was lining up the money, lining up the
15 financing.

16 Q. Okay.

17 A. And I did an overview seeing how we could get
18 monies to go -- cover these schemes so --

19 Q. And what happened next? What did your role
20 change to next?

21 A. Well, that's been essentially -- that's been
22 my primary role through. Now, currently, I've been --
23 I've taken over as a primary -- as the majority
24 investor in the I'On Club, which --

25 Q. That's what I'm driving at. When did you

T. GRAHAM -- CROSS BY MR. YOUNG

1 start getting involved with the I'On Club?

2 A. Oh, I got involved in it seriously, probably
3 maybe two or three years ago. I've been having some
4 involvement with it --

5 Q. In 2010, roughly, would that be fair?

6 A. No. It's probably 2008, maybe.

7 Q. Okay.

8 A. I had been involved in different capacities
9 with it, but in terms of really over -- directing the
10 general manager, supervising the operations -- and I
11 haven't been that involved, it's been more of an
12 investment overview, policy reviews.

13 Q. Mr. Graham --

14 A. Yes, sir.

15 Q. -- there are a number of different companies
16 that have been named as defendants in this lawsuit.
17 And I want to go through with you some of them, if we
18 could put on the screen -- these have been admitted by
19 stipulation, Defendant's Exhibit No. 143. And I'm
20 going to give you a notebook -- or you could look
21 behind you. Can you tell us, please, what the Graham
22 Development Company is?

23 A. The Graham Development Company is a real
24 estate development company that I formed in 1979, when
25 I really -- as the start of my development in Atlanta.

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1 And I was active in real estate development in Atlanta
2 for about 10 years, through the 1980s to the early --
3 through the 1980s.

4 Q. Okay. And Defendant's Exhibit No. 143, is
5 that a copy of the operating agreement of the Graham
6 Development Company?

7 A. Yes. This is an operating agreement, 2012.

8 Q. All right. And on page eight of Exhibit No.
9 143, is there down at the bottom -- if you could blow
10 that up Lea Ann -- is there a statement of the business
11 of the company; is that a purpose?

12 A. It says "Business, the company shall be to
13 accomplish any lawful business whatsoever, or which
14 shall at any time appear conducive to or expedient for
15 the protection or benefit of the companies and its
16 assets".

17 Q. Okay. And then if you could blow up just
18 above that, Lea Ann, section 2.01 and 2.02 on that same
19 page -- the company was formed in September 1979; is
20 that right?

21 A. Yes.

22 Q. And then changed to a limited liability
23 company in accordance with the Georgia Act in July of
24 2009?

25 A. Yes.

T. GRAHAM -- CROSS BY MR. YOUNG

1 Q. All right. And has that company been in good
2 standing since its been formed?

3 A. Yes.

4 Q. And does it maintain its own books and records
5 and have a distinct identity?

6 A. Yes.

7 Q. All right. And then I want to introduce -- or
8 show Exhibit No. 144, which is also in evidence by
9 stipulation, what is Exhibit No. 144, Mr. Graham; do
10 you recognize that?

11 A. That's -- yes. That's the -- it's a
12 certificate or seal of when it was registered.

13 Q. Okay. And in the bottom right hand corner,
14 Lee Ann, if you blow that up -- is that 1979?

15 A. Yes.

16 Q. Okay. So, in 1979, it's Graham LLC, right?

17 A. Well, it's Graham Development, Inc.
18 originally, and then converted to LLC in 2009.

19 Q. Okay. And, Mr. Graham, I want to put on the
20 screen exhibit -- Defendant's Exhibit No. 153 -- excuse
21 me -- No. 53, also in by stipulation; and ask you if
22 you recognize Exhibit No. 153? You can look behind
23 you, it's probably on the screen, or you can have a
24 hard copy if you want.

25 A. Yeah. I'On Realty, LLC.

T. GRAHAM -- CROSS BY MR. YOUNG

1 Q. Can you tell us, please, what is I'On Realty
2 Company, LLC?

3 A. I'On Realty was a wholly owned subsidiary of
4 the I'On Company, which we formed in -- to acquire the
5 land and develop -- and develop I'On Village.

6 Q. Okay. And as reflected on page one -- which
7 Lea Ann, I think is three pages into that exhibit --
8 can you tell us when the I'On Realty Company was
9 formed? The top -- there we go. Do you see that?

10 A. February 5, 1999.

11 THE COURT: I'm sorry, sir. Could you tell me
12 that date one more time?

13 BY MR. YOUNG:

14 Q. February 5, 1999; is that right?

15 A. Yes.

16 THE COURT: Thank you.

17 BY MR. YOUNG:

18 Q. And then looking to page two of Exhibit 53,
19 down at the bottom, this company was formed as a South
20 Carolina Limited Liability Company; is that right?

21 A. Yes, sir.

22 Q. All right. And also on page two at the top
23 under E -- or under K -- excuse me -- who is the sole
24 member of the I'On Realty?

25 A. The I'On Company.

T. GRAHAM -- CROSS BY MR. YOUNG

1 Q. All right. And just like the other agreement
2 in section 2.6 on the next page, Lea Ann, is there a
3 stated purpose for I'On Realty and tell us, please,
4 what that is?

5 A. "To act as a real estate brokerage company for
6 the property as it's developed and settled, and engage
7 in any lawful business activities related or incidental
8 thereto."

9 Q. And has the I'On Realty Company been a company
10 in good standing in South Carolina since it was formed
11 in 1999?

12 A. I think so, yes.

13 Q. And does it maintain its own separate books
14 and records?

15 A. It did and continued while it was continued in
16 operation --

17 Q. Well, tell us about that, is it still in
18 business today?

19 A. You know, I'm not sure whether it's still in
20 business today or not.

21 Q. Has it been formally shut down or anything of
22 that nature, that you're aware of?

23 A. You know, I'm not sure. I don't know the
24 answer to that.

25 Q. Okay. You're not involved in the realty

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1 aspect of the business; is that accurate and fair?

2 A. That's correct. I'm not there, no.

3 Q. And then let me show you what's been marked as
4 Exhibit No. 57 -- and ask if we could put that on the
5 screen Defendant's 57 -- and ask you, Mr. Graham, if
6 you recognize what that is from the South Carolina
7 Secretary of State?

8 A. Yes. That's the certificate of existence when
9 they formed it.

10 Q. Okay. And the bottom right, it was formed
11 when?

12 A. December of -- December 1998.

13 Q. So, the agreement -- the operating agreement
14 was a little bit after that, it was actually -- it was
15 actually formed before the operating agreement was
16 adopted; is that accurate?

17 A. Yes. Yes.

18 Q. And, Mr. Graham, I want to show you
19 Defendant's Exhibit No. 54 -- if we could -- and ask
20 you to identify for us what that is?

21 A. Well, that's the I'On Group operating
22 agreement.

23 Q. All right. And in the interest of time, if
24 you would just look at it, does it have the same sorts
25 of provisions that the other one did? In other words,

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1 was it formed as a South Carolina Limited Liability
2 Corporation?

3 A. Well, I --

4 Q. You can turn it.

5 A. I was not involved in that.

6 Q. You could turn to page two -- if that's
7 helpful. Page two of Exhibit No. 54 -- do you need the
8 other book -- sorry, we have a lot of exhibits.

9 A. Excuse me.

10 Q. Lea Ann, if you could blow up the bottom
11 right, that formation. All right. Mr. Graham, are you
12 with us there, on two -- formed as a South Carolina
13 Limited Liability Company? And you can look on the
14 screen or on the hard copy, whatever is easier.

15 A. Yes.

16 Q. And it also -- on page three, under section
17 2.6, has a statement -- the next page, Lea Ann, on the
18 purpose of the company, correct?

19 A. "To own and operate a full service real estate
20 development company, offering the continuum of services
21 for the creation of new places, and the improvement of
22 existing towns and cities, and engage in any lawful
23 business activities."

24 Q. Okay. And just like the other company --
25 Exhibit No. 58, if we could put that up Lea Ann --

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1 was -- and the bottom right, when was the I'On Group --
2 I hope I have got them together -- yes, sir -- when was
3 the I'On Group actually formed in South Carolina?

4 A. October 2005 -- October 27th.

5 Q. And did that company remain in good standing
6 since it was formed in 2005?

7 A. I don't know. This is Vince's company.

8 Q. Okay. You're not involved with the I'On
9 Group?

10 A. No.

11 Q. And then let me show you what's been marked as
12 Exhibit number -- preadmitted -- excuse me -- Exhibit
13 55 -- Defendant's 55; can you tell us what this is?

14 A. That's the I'On Company, LLC operating
15 agreement, the fifth, we started in 2005.

16 Q. All right. And on page five, Lea Ann, was
17 this company also formed under section 2.1 as a South
18 Carolina Limited Liability Corporation?

19 A. Yes, sir.

20 Q. All right. And what was the purpose of the
21 company -- I think it is listed on the next page -- in
22 section 2.6 --

23 A. It was to acquire -- well, without reading it,
24 it was to acquire the Jordan tract property, as with
25 the -- the legal definition there, and to develop the

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1 property, the purpose of I'On Company.

2 Q. And then just like the other companies on
3 Defendant's Exhibit No. 60, when was this company
4 incorporated in the state of South Carolina?

5 A. Well, this says the 29th day of July, 2009;
6 but it was actually incorporated way -- I don't know
7 what -- it was incorporated in -- way earlier than
8 that.

9 Q. Okay. Do you know if it was possibly amended
10 and if the company was changed, and maybe given a new
11 name -- I mean, how long has it been in business?
12 Let's say that.

13 A. It's been in business since about 1995, 1996,
14 the I'On Company, it predated -- it was before we
15 bought the land.

16 Q. Okay. The I'On Company was in business back
17 when you purchased the Jordan tract; was that your
18 testimony?

19 A. Yes.

20 Q. Was the company in existence, and what was the
21 purpose of the company?

22 A. Yes. We formed it to develop the I'On Company
23 -- to develop the I'On Village.

24 Q. All right. And then let me get -- if we could
25 put up the exhibit, No. 56 please, Lea Ann. And

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1 regarding the I'On Company -- since the -- since it was
2 formed and purchased the Jordan tract, has it been a
3 company in good standing in South Carolina?

4 A. Yes.

5 Q. Maintained its own books and records?

6 A. Yes.

7 Q. Have a separate and distinct identity?

8 A. Yes.

9 Q. And regarding Defendant's Exhibit No. 56, can
10 you look behind you and tell us what that is?

11 A. I'On Club.

12 Q. All right. What is the I'On Club?

13 A. I'On Club was a -- was formed to develop and
14 manage recreational facilities for -- it was a --
15 intended to be a for profit institution, to provide for
16 a swim/tennis club within the swim/tennis fitness and
17 boating facilities, and a club within -- within the
18 I'On Village.

19 Q. All right. And on page three of -- excuse me
20 -- page three of section 2.6, what is the stated
21 purpose of the I'On Club and its operating agreement?

22 A. The purpose of the company is to own and
23 operate the I'On Club, a proprietary club located
24 within the I'On Development, to develop and engage in
25 any lawful business activities.

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1 Q. Okay. And just like the other agreements, was
2 this one set up to be a South Carolina Limited
3 Liability Corporation?

4 A. Yes, it was.

5 Q. And then let me show you Defendant's Exhibit
6 No. 59, and ask you if you recognize that as a
7 certificate of existence from the Secretary of State
8 for the I'On Club?

9 A. Yes. Well, that's 2009. It was originally
10 formed and -- with this -- it says in 1999, October,
11 1999.

12 Q. Okay. Right. In that -- if you could blow up
13 that first one, Lea Ann, it says the "The I'On Club
14 duly organized in the State of South Carolina"; when?
15 September 10, 1999?

16 A. Right. Right. Right.

17 Q. And, Lea Ann, if you could go back to Exhibit
18 No. 60, just quickly. I don't want to cause any
19 confusion. Is there the same language there regarding
20 the I'On Company, duly formed in South Carolina in
21 1997?

22 A. Yes.

23 Q. Okay. All right. Mr. Graham, I want to go
24 into some of the things that you talked about yesterday
25 and some of the questions that you were asked about

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1 yesterday. Regarding the Olde Park agreement, do you
2 remember a number of questions about that?

3 A. Yes.

4 Q. All right. Did ultimately -- who handled
5 those negotiations or most of those negotiations?

6 A. Either Vince or Joe Barnes. I think Vince did
7 most of them.

8 Q. Were you actively involved in that process?

9 A. No.

10 Q. All right. And, ultimately, was there a final
11 agreement reached with Olde Park?

12 A. Yes.

13 Q. And I believe that the defendant -- the
14 plaintiffs put in part of that agreement yesterday.
15 It's Plaintiff's Exhibit No. 189 -- I'm sorry -- could
16 you put up Plaintiff's Exhibit 189, Lea Ann. These
17 kinds of exhibits you talked about yesterday, the
18 letters back and forth, were those the final agreement?

19 A. No.

20 Q. What were they?

21 A. There was an agreement between the -- the
22 spelled out agreement between GR, LLC, the Olde Park
23 developer, and the I'On Company.

24 Q. Okay. Lea Ann, if you could put up
25 Defendant's Exhibit No. 149. I'm sorry. You got

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1 Plaintiff's there -- Defendant's Exhibit 149. And what
2 I want to try to do, Mr. Graham -- well, Defendant's
3 Exhibit No. 149, does it have a date there on the top?
4 Is that a copy of the final agreement with Olde Park?

5 A. 22 December 1999.

6 Q. All right. So, 12/99, that was the final
7 terms, right?

8 A. That's what I understood.

9 Q. And tell us, please, what all the -- just the
10 best of your memory -- you can look at the agreement if
11 you would like -- what did that agreement require the
12 I'On Company to do for Olde Park?

13 A. It required us to grant them an access
14 easement to go into our -- the main one was to go into
15 our lift station and sanitary sewer structure that we
16 had to build in order to -- in order to lift the
17 sanitary sewer, and pump it two miles over to the -- to
18 the Center Street sewer treatment plant in Mount
19 Pleasant. So they would -- they would get -- by going
20 in and tying into that lift station, it saved them one
21 heck of a lot of money, a lot more than -- it saved
22 them a huge amount, so that was their primary driving
23 force.

24 And the second thing -- the second condition
25 was -- was they had -- they wanted to have a -- as

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1 developers of real estate, they wanted to have the
2 recreational amenities, swim/tennis -- swim/tennis Club
3 that would be a competitive facility in order to sell
4 their building lots and attract residents to move into
5 the community. It was an amenity that they were
6 offering, that they wanted to offer, and it was a whole
7 lot -- a whole lot less expensive to them to get
8 guarantees from us, who were a competitor, that we
9 would let them -- we would give their residents,
10 entitle them to join the Club, the I'On Club, on the
11 same conditions that we made it available to our
12 residents.

13 So they weren't -- they were granted just the
14 right to have a commitment that they had -- that we
15 would save, reserve that many memberships in the I'On
16 Club for them, so they could go ahead and advertise
17 that, and help sell their lots, and they wouldn't have
18 to build their own facility, so that was their
19 primary -- the primary role.

20 Q. And, Lea Ann, if you could get to the third
21 page and blow up the paragraph number two. And, Mr.
22 Graham, you can look on the screen there and hopefully
23 can see it. How many memberships were reserved for
24 Olde Park folks?

25 A. We reserved 114 and we agreed to limit the

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1 number of memberships to 850.

2 Q. All right. And then did that mean that anyone
3 in Olde Park could access the boating facilities?

4 A. No.

5 Q. It was only for people that join the Club,
6 correct?

7 A. Only the people who would join -- who joined
8 the Club would have -- and the boating facilities was a
9 minor component of the Club. We had swim, tennis, and
10 fitness facilities. And it's since been expanded into
11 more, but we -- and we also had the -- we were
12 contemplating building a Creek Club, which would be --
13 which would be a place where they could get favorable
14 rates, like comparable to those offered to the I'On
15 residents.

16 Q. And, Lea Ann, if you could blow up the middle
17 of the next paragraph -- or, really, the bottom half of
18 the next paragraph; is that recited there in the
19 agreement with the sentence beginning "similarly"?

20 A. Yeah, "Similarly, the boat ramp and community
21 dock will be available for use by club members who own
22 property in Olde Park Development -- by Club members
23 who own property in Olde Park Development, subject to
24 the same rules and regulations for use established by
25 the I'On Assembly" -- that applies to Club members who

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1 own property in the I'On --

2 Q. Okay. Importantly, there is a reference there
3 to Exhibit D; do you see that reference to Exhibit D?
4 What -- what would happen if the I'On Company didn't
5 perform on this agreement with Olde Park?

6 A. Well, they had a schedule of -- of values that
7 would be reductions in the payment that they would make
8 to I'On Company for -- if we -- if this was
9 contemplated we were going to build all these things,
10 but we hadn't built them yet. So it -- they weren't
11 going to pay that entire amount if we didn't finish
12 everything that we were contemplating. And they would
13 note penalties, they just deducted this amount.

14 Q. Did you have a refund schedule for things?

15 A. There was a refund schedule, yes.

16 Q. All right. And if certain things weren't
17 done, certain money would go back to Olde Park,
18 correct?

19 A. Well, they just wouldn't pay --

20 Q. Oh, they wouldn't pay. Excuse me.

21 A. I -- I may have been refunded or just a
22 reduction in payment.

23 Q. Lea Ann, can you get through to Exhibit D. I
24 don't know exactly what page it is. Mr. Graham, let me
25 hand you this and ask you, how much of the refund was

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1 tied to the boating facilities as reflected on Exhibit
2 D?

3 A. Well, the boat ramp was \$1,224, and the -- the
4 community boat dock was \$8,566, so it's something less
5 than \$10,000, out of a total of \$350,000 that they
6 would -- that they were -- for all the rest of the
7 facilities.

8 Q. All right. So, of the \$450,000 that Olde Park
9 was paying, if the I'On Company did not construct the
10 Creek Club and the boat ramp, how much would get
11 refunded back roughly?

12 A. Well, now the Creek Club was a different --
13 Creek Club was more.

14 Q. Excuse me.

15 A. That was a whole lot more. It was just --

16 Q. The boat ramp. Excuse me.

17 A. The boat ramp and the community dock were
18 about -- were -- together, were less than \$10,000.

19 Q. Less than \$10,000 out of the four hundred
20 fifty that they were paying?

21 A. Yes, the four hundred fifty -- the hundred
22 thousand that they paid up front, was to get
23 entitlement to that -- to that sanitary sewer, that
24 lift station.

25 Q. Okay. Is that reflected in the refund

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1 schedule?

2 A. That wasn't reflected in the refund schedule
3 because that was -- we were doing that. And as soon as
4 -- that was there -- that was what they were tying
5 into.

6 Q. I see. That was the first payment that came
7 from Olde Park?

8 A. They put that -- they put a \$100,000 down
9 to -- so that they could get -- get guaranteed that
10 they would have that sewer access, then they can
11 proceed with the development and not have to do it
12 themselves.

13 Q. I see. Okay. Yesterday, Mr. Graham, you gave
14 some testimony about the recreational use easement --
15 and if you'll bear with me, I'll get it -- what was --
16 were -- when the recreational use easement was put into
17 place, was it intended to be perpetual?

18 A. We intended -- we intended it to be perpetual.
19 It said right on the front "perpetual", so that was --
20 I understood that it was.

21 Q. Did you ever have -- did you ever prevent
22 people from accessing the docks or -- there were some
23 other terms in the recreational use easement, let's
24 talk about those generally while I find them. What
25 other things were contained in that recreational use

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1 easement, which was Plaintiff's Exhibit No. 42?

2 A. Well, it came out and it spelled out
3 facilities that would be -- that would be amenities
4 that were contem -- probably either to be conveyed to
5 the Assembly, or already conveyed, that would -- where
6 the I'On Club would have -- would have access rights to
7 use those for its members, like it -- there was a ball
8 field and then Eastlake. And if there is any cost
9 associated with it, the I'On Club would pay to the
10 Assembly an appropriate amount -- a reasonable amount
11 that they would charge.

12 Q. All right. And if we could go to page four of
13 that exhibit, Lea Ann. And if you could blow up
14 enjoyment and use -- "easement for use and enjoyment of
15 commons", can you tell the jury what the commons is and
16 it references Eastlake and the amenity area -- that's
17 perfect, Lea Ann. What is the commons over in -- what
18 did this section have to do with it? You can summarize
19 it for us. I think you were just trying to.

20 A. Well, it was the -- this is the land area
21 that's owned by the Assembly for the -- for the benefit
22 of all the residents of -- the resident members in
23 I'On.

24 Q. Did an easement go both ways? In other words,
25 it gave the Assembly some rights; did it also give Club

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1 members some rights?

2 A. Yes. It gave the Club -- the Club rights to
3 allocate to use those.

4 Q. All right. And did it give the Club members
5 the right to use some property described as Eastlake as
6 reflected in the section there behind you?

7 A. Yes, it would. It was subject to the --
8 subject to the Assembly's rules and regulations and how
9 they would manage that. I mean, the Club didn't have
10 any more rights -- the Club members couldn't -- had no
11 more rights than those of the residents.

12 Q. All right. And then there's another section,
13 other than the Eastlake and the boat house there in
14 Section A 1, what is the amenity area for the purpose
15 of engaging in sports and other -- can you just tell us
16 what that is?

17 A. Well, I think it would -- I think this refers
18 to this ball field that's -- that's on -- that's on
19 Eastlake Road, that's next to Mathis Ferry Road, a big
20 field. It's multiple uses.

21 Q. So, under the terms of the easement, the Club
22 members have a right to use the facilities at Eastlake,
23 subject to certain rules; and also to use the
24 facilities, for a ball field, that's called the Commons
25 or the amenity area referenced there?

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1 A. That's right. As -- as the Club would --
2 would -- would permit and allow the members, grant to
3 the members.

4 Q. All right. And if -- Lea Ann, if you could
5 back that out and look below there, in section 1.2 B,
6 it speaks to the rights of the Assembly to do certain
7 things to charge Club members for using those
8 facilities and to manage them, right?

9 A. Yes.

10 Q. And those were the same kinds of things in the
11 same exact agreement -- if you go back a page, Lea Ann
12 -- that the Club had the right to require Assembly
13 members, when they were using the boating facilities
14 and the dock, right?

15 A. Yes.

16 Q. Okay. And, generally, what kinds of
17 management rules were in place while the Club owned the
18 boating facilities, the dock and the ramp?

19 A. While the -- while the Club owned -- while the
20 Club owned the boating facilities and the Creek Club?

21 Q. Yes, sir.

22 A. Well, we had some -- we had rules that where
23 -- that we were obligated to by the -- by DHEC when we
24 got our boating permit. And that's boats -- folks were
25 not supposed to keep their boats overnight, and various

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1 other rules. We had to enforce those. And that's so
2 that people wouldn't dock up -- wouldn't take a slip
3 and keep a boat there forever, to exclude other people.
4 And limit the hours when they could, I think, when -- I
5 really don't know what all these rules were that --
6 that were enforced. I didn't -- I didn't never get
7 involved in the enforcement.

8 Q. Okay. Section 3 on page 6 of the recreational
9 use easement, did it also -- this recreational use
10 easement have a whole section about sharing costs?

11 A. It did. It was fairly complicated. It was
12 complicated and I think archaic, but it went through
13 and allocated the costs based on -- of the -- of the
14 boating facilities based on the number of -- trying to
15 prorate the number of Club members who were not
16 residents of I'On, that -- to the total -- it would be
17 two components, the -- the total residents, the number
18 of residents in I'On, property owners, and the lots.
19 And then the total number of nonresident Club members,
20 and then that would be -- so that each would bear their
21 proportionate share of the boating facility maintenance
22 costs.

23 Q. Okay. So it dealt with a lot of things other
24 than simply just access to the community docks and ramp
25 and staging dock, correct?

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1 A. Yes. It was intended to be just -- just a
2 reasonable work out, as something that would share the
3 cost and provide -- cost use easement. They got to use
4 I'On -- the Assembly were able to use I'On Club
5 facilities, and the Club were able to use Assembly
6 amenities. The intent was for the mutual benefit of
7 both parties.

8 Q. All right. And I want to be clear -- or you
9 to be clear, please -- did you have to be a Club member
10 to access the waterfront under the recreational use
11 easement?

12 A. No, you could be an -- you could be an I'On
13 resident, that way you would -- you would have access
14 rights to the boating facilities.

15 Q. Okay.

16 A. But if you -- but someone from Olde Park,
17 unless they were a member of the Club or anywhere else,
18 they wouldn't have rights to the boating facilities
19 unless they were Club members. So it was the Club
20 members had rights to the boating facilities, the I'On
21 residents, through this recreational easement, had
22 access rights to the boating facilities.

23 Q. Regardless of whether they were in the Club,
24 right?

25 A. Regardless of whether they were in the Club.

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1 We wanted to ensure that all of the residents had
2 access to the -- to those facilities.

3 Q. Okay. And then let me show you what's been
4 preadmitted as Defendant's Exhibit No. 36, and ask
5 you -- you can look at my copy -- oh, you got one up
6 there. Defendant's Exhibit No. 36.

7 A. Okay.

8 Q. Do you see what -- what is Defendant's Exhibit
9 No. 36 please?

10 A. It's a final plat of phase II.

11 Q. Okay. And, Lea Ann, if you could blow up that
12 bottom section there in the corner -- when was it --
13 let's see if this works -- can you blow that up right
14 there, Lea Ann? Okay. When was this recorded at the
15 RMC in Mount Pleasant?

16 A. On January 30, 2001.

17 Q. And if you could flip over to the second page,
18 please, Lea Ann. And then in these bottom two over
19 there, you can blow those up. The same thing recorded
20 January 2001, approve by the Town of Mt. Pleasant.

21 A. Right.

22 Q. And then up in the top right, Lee Ann. Did
23 this -- let me ask you, Mr. Graham, up here in the top
24 right -- if you can blow this section up -- when this
25 document was recorded with the Town of Mt. Pleasant,

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1 what was recorded?

2 A. Would you like me to read that?

3 Q. Excuse me, let me go to the next page. I
4 apologize. The next page, if you would, Mr. Graham,
5 the third page in?

6 A. Okay.

7 Q. Lea Ann, can you get to the next page? There
8 we go. All right. The same thing up here, recorded
9 with the Town of Mount Pleasant in 2001, at the same
10 time?

11 A. Yes.

12 Q. All right.

13 A. Yes. This is all -- these three sheets were
14 recorded at the same time. It's the final plan of
15 phase II.

16 Q. And then, Lea Ann, if you can back out from
17 that. On this document, what's up there -- right
18 there. Blow that up is what I meant to get earlier --
19 what does that say, please?

20 A. That's access to the HOA open space, provides
21 for -- in the recreational easement and agreement to
22 share costs recorded in deed book -- I can't read that
23 number -- but it's a reference to the recreational
24 easement that's recorded and -- the earlier one that we
25 just discussed about.

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1 Q. Plaintiff's -- is it a reference to
2 Plaintiff's Exhibit No. 42?

3 A. Yes, yes, sir.

4 Q. Okay.

5 A. And that's -- it provides linkage to the -- to
6 the -- was originally named the Creekside Park. And we
7 changed the name to Marshwalk, right there, that runs
8 along the entire marsh.

9 Q. All right.

10 A. So it's defined right there, and it's a --
11 civic lot 6.

12 Q. Civic lot 6, this is what we've been talking
13 about CV-6, right here at the end?

14 A. Yes, sir.

15 Q. And this is -- this is where the dock at
16 Hobcaw Creek -- the Creek Club dock is right there,
17 where I'm sort of pointing?

18 A. Yes.

19 Q. And the staging dock and the boat ramp is over
20 here kind of?

21 A. Yes. Not -- toward right in there.

22 Q. All right. And so as of the dates reflected
23 on Exhibit No. 36, the recreational use easement was a
24 matter of public record; is that right?

25 A. Oh, yes.

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1 Q. And, Mr. Graham, yesterday there was some
2 questions that were asked of you about the HOA Board;
3 are you familiar with as the -- as the community
4 developed, when did the developer -- when did there
5 become a majority of homeowners as opposed to developer
6 appointees on the HOA Board; would you be familiar with
7 that roughly?

8 A. Not exactly -- not precise -- I -- we moved as
9 quickly as we could to get the -- to engage the members
10 and -- onto the Board, so that it would provide both --
11 for multiple reasons, but to -- so we accelerated it.
12 We did -- being that we wanted feedback, our -- we
13 wanted to sell our lots. We wanted -- and the way to
14 sell them, is to make -- have our customers happy and
15 tell other people that. So we wanted to know what they
16 wanted. We wanted the Board members to help us
17 formulate policies to -- as far as the affairs of the
18 administration, and also provide feedback to us on how
19 well we were doing.

20 And so, I think, it was -- it might have been
21 even 2003/2004 when they became a majority, but I think
22 it was 2005, Legrand Elebash was the general -- the
23 manager at that time. And I think the -- I think he
24 was -- by that time, we had a full -- the majority.
25 The dates I'm not sure about, when those dates were. I

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1 didn't attend these Board meetings.

2 Q. Okay. But so -- to the best of your memory by
3 2005, the Assembly has a majority of homeowners as
4 opposed to developers appointees on it, correct?

5 A. I think they had -- I think they had all -- I
6 think the majority was before then. They had a
7 majority before then, but I don't know exactly when it
8 was.

9 Q. Okay. And there was some testimony in --
10 recently you all put an appointee, Mr. Besenfelder,
11 back on the Board; is that right?

12 A. That's correct.

13 Q. And that was earlier this year; is that
14 correct -- or when was it?

15 A. Well, I think earlier this year, the
16 communications were not good. We wanted to re -- to
17 establish -- get better communications with the Board.

18 Q. All right. And there was a reference
19 yesterday to a veto power that's never been exercised;
20 is that true?

21 A. It's very limited. It was very, very limited.

22 Q. Has it ever been exercised?

23 A. No.

24 Q. Mr. Graham, let me see if we could put up --
25 excuse me while I get through some of these -- I want

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1 to ask you some questions, Mr. Graham, about the zoning
2 challenge that came from Mrs. Templeton and the group
3 affiliated with her; do you remember some testimony
4 about that yesterday?

5 A. Um --

6 Q. Well, tell us about -- I want to put up
7 Plaintiff's Exhibit -- excuse me -- Defendant's Exhibit
8 No. 33. And if you could enlarge the top date up
9 there, Lea Ann. All right. Mr. Graham, these --
10 Exhibit No. 33 are the minutes -- do you have it in
11 front of you there?

12 A. Yes. This is the post Board of Zoning
13 Appeals.

14 Q. Okay. And where -- where did that meeting
15 take place and did you attend it?

16 A. I attended that meeting of the Board of Zoning
17 Appeals over at the -- it was over at the town -- Town
18 of Mount Pleasant.

19 Q. Okay. And at that meeting, did -- what did
20 the homeowners -- what were their complaints about the
21 use of civic lot number 6?

22 A. Well, they maintained that it was illegal,
23 that it was contrary to the -- to the -- to the -- it's
24 original -- it's zoning, civic use zoning. And that
25 the zoning administrator, when the Club was -- when

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1 they granted that -- the letter of -- confirming the --
2 the zoning for -- that it was -- that the intended use
3 of the I'On Club was legal, and in conformity with the
4 zoning in 2001 when -- or maybe it might have been 2000
5 when we -- when we applied for that letter, so we could
6 get our financing to build the Creek Club. They
7 maintained that that was -- that that was error, and it
8 was false, and so they should take away -- declare that
9 it was illegal and couldn't operate as a club anymore.

10 Q. Mr. Graham, were the opponents to the use of
11 CV-6 complaining that it was being used in a commercial
12 manner?

13 A. Yes.

14 Q. Were they opposed to the amount of activity
15 that was going on at the Creek Club?

16 A. Yes.

17 Q. And were they trying to challenge the existing
18 zoning because they felt like it was too much
19 commercial activity, was that the basis of their
20 complaint?

21 A. I think so. I think they just wanted to kill
22 the sale of our property.

23 Q. All right. At that point, you had a -- you
24 were working on the negotiations with Mr. Russo,
25 correct?

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1 A. I think so.

2 Q. And then what was -- what did the Board of
3 Zoning Appeals ultimately decide?

4 A. They decided that the zoning was -- that the
5 -- the use was in compliance with the zoning code, as
6 it had been since it was -- seven years earlier.

7 Q. Okay. If we could put up Defendant's Exhibit
8 No. 152, and go to the very last page of that, please,
9 Lea Ann. Is this Defendant's 152 a copy of the
10 decision from the Board of Zoning Appeals? And if you
11 could go back one page, please, Lea Ann. There at the
12 bottom, can you blow up that "additionally" -- in that
13 section. Does Exhibit No. 152 list the findings --
14 specific findings and facts and conclusions by the
15 Board of Zoning Appeals?

16 A. Yes. Yes.

17 Q. All right. And if you go to the next page,
18 Lea Ann, it was in April of -- what was the date there,
19 April 7th, 2009?

20 A. April 7, 2009.

21 Q. Okay. Bear with me, Mr. Graham. Mr. Graham,
22 in your dealings with Mr. Russo and the potential --
23 with the sale of the Creek Club, was there any concern
24 about the perpetuity of the easement? Did Mr. Russo
25 ever raise any of those kinds of concerns?

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1 A. You know, I don't recall them being raised.

2 Q. Okay. And since -- you live in I'On now,
3 correct?

4 A. Yes, uh-huh.

5 Q. And since the sale, has there been any
6 material change to the way that the property is used
7 and residents are allowed access to the community dock
8 and the boating facilities?

9 A. Well, I think he is -- that Mike Russo is --
10 was -- wasn't -- he wasn't as friendly to -- or as
11 politic in dealing with the residents. And sometimes,
12 I think, early on when he -- while he was getting --
13 trying to get his hands on the operations, he was
14 trying to get established. And he would -- he would
15 prevent people from getting on to the boat -- the
16 community boat dock during the -- during the wedding
17 ceremonies, and closed the -- closed the docks for
18 limited periods.

19 Q. Let me ask it this way, Mr. Graham: While --
20 while the Club was managing the boating facilities,
21 what were some of the issues that were constantly being
22 dealt with by the Club? What were some of the problems
23 down there at the boating facilities?

24 A. Well, it was a conflict in -- in the dock, in
25 boats in the boating facility -- people had boats with

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1 -- some people would be quite abusive and they would
2 want to just keep two or three boats in there all the
3 time, rather than -- just on the docks, and to the
4 exclusion of other people.

5 Q. Are you allowed to keep boats overnight at the
6 dock at the Creek Club?

7 A. Not that -- our approval, DHEC approval didn't
8 allow us to, so we attempted to while -- there was
9 always an attempt to keep -- to comply with those rules
10 and to not -- not to crowd out other people so -- but
11 there -- but there would be -- the big issue is the
12 I'On Club didn't have any -- didn't have any way to
13 enforce these -- these -- these -- to see that the
14 members, that the residents of I'On would comply with
15 this. And so people were very abusive in terms -- they
16 would park two or three boats down there, and just tell
17 the manager to go to hell, and just -- just wouldn't --
18 so that was quite a pain for us.

19 Q. Difficult -- some difficult management issues;
20 is that fair?

21 A. It was very distracting, something that I just
22 didn't want to have to deal with.

23 Q. At one point in the negotiations for the sale,
24 yesterday there was some testimony about possibly
25 subdividing a parcel of CV-6, and deeding over the

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1 community docks; do you remember that?

2 A. Yes.

3 Q. Can you tell us, please, what -- why the
4 subdivision was not a practical solution for your
5 negotiations with Mr. Russo? What would have been the
6 implications of a subdivision, possibly?

7 A. Well, the possible -- and I think one was the
8 killer, the reason was that -- was that there were --
9 they were -- these -- the -- some of the residents were
10 intent on just shooting down, terminating the ability
11 of the Creek Club to operate as -- as an event venue.
12 And if they -- so they would think, well, they could
13 come through and get their -- and if they were -- and
14 they subsequently got confirmation -- or Russo did --
15 from the Town that that really wasn't -- that if they
16 subdivided the property, then that original zoning
17 entitlement that had been granted in 2000 would go
18 away. It would -- they would resubmit it to see that
19 it was -- to re-examine whether that civic use was
20 valid or not.

21 Q. Okay.

22 A. So there was a real question -- their real
23 concern was subdividing off that parcel to -- and
24 granting the docks and the ramp to the owner -- to the
25 residents and having -- and retain the Club and the

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1 easement, access to it, which would have been great,
2 except for that potential -- just sabotage of the
3 zoning and wiping it out. That was the primary reason.

4 Q. Okay. So if the parcel had been subdivided,
5 it jeopardized the civic zoning; is that right?

6 A. That was -- that was the understanding that we
7 had. There was a great concern about that. The other
8 concern was that -- was that the -- it wasn't just the
9 discussion of the -- they wanted to change the -- to
10 limit -- to severely limit the number of events that
11 could be had, that could be -- could be -- could be
12 entertained there on the Creek Club.

13 Q. Who is the "they" you are taking about?

14 A. They was this group that were -- it was within
15 the Assembly that -- that Mike Russo and Chad were
16 negotiating with, to try and work out a workable deal,
17 and they just couldn't come to terms on -- on the
18 limitations that were -- that were asked -- that were
19 requested, would be rendered -- render the use -- the
20 couldn't continue to operate.

21 Q. Okay. So there were problems with the
22 specifics of the easement, other than just the
23 perpetuity right issue?

24 A. Oh, the perpetuity was not -- that was an
25 issue as far as -- we wanted -- we -- we thought it was

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1 perpetual, intended it to be perpetual, wanted that --
2 that ambiguity off the table so it wasn't a
3 distraction. And we would prefer to not have to deal
4 with the -- with sort of herding cats on managing these
5 boaters, and let the Assembly do that. They had the
6 power to enforce those regulations if they cared to.

7 Q. All right.

8 A. We had none. We couldn't do anything about
9 it.

10 Q. Lea Ann, let me ask you to put up Plaintiff's
11 Exhibit No. 201, something we talked about yesterday.
12 Do you see Plaintiff's Exhibit 201 -- and, Lea Ann,
13 there's a sentence after this -- it says "a few
14 areas" -- could you blow that up -- yes, ma'am, right
15 there. "A few areas within these phases, including the
16 boat ramp and amphitheater, may be kept in I'On
17 Company's ownership"; and it references phases I, II,
18 III, IV, V and VII, correct?

19 A. Yes.

20 Q. Do you see that reference to the boat ramp and
21 amphitheater?

22 A. Yes.

23 Q. All right. And I want to ask, Lea Ann, to put
24 up Defendant's Exhibit No. 165, please. Mr. Graham,
25 other than the boat ramp down at Hobcaw Creek, is there

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1 another boat ramp in I'On?

2 A. Yes. There's one on Westlake.

3 Q. All right. In looking at Defendant's Exhibit
4 No. 165, is that the other boat ramp?

5 A. Yes. And I live -- our house is across the
6 lake, on the other side.

7 Q. And what's that white structure over on the
8 the left?

9 A. That's the -- those are pavilions on either
10 side of this amphitheater, which --

11 Q. All right. That's exhibit -- Plaintiff's No.
12 201, if you could, Lea Ann. And my question, Mr.
13 Graham, is Plaintiff's Exhibit No. 201 -- and if we
14 blow up the same thing -- is that referring to the boat
15 ramp and the amphitheater over on Westlake in context?

16 A. You know, I really don't know.

17 Q. All right.

18 A. About where -- about that.

19 Q. Let me ask you, was the amphitheater deeded
20 over to the HOA; do you know?

21 A. Yes.

22 Q. And was the amphitheater built in phase V; do
23 you know?

24 A. I don't remember the phase, if it says --

25 Q. Was it -- was it after all of the Creek Club

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1 construction?

2 A. Oh, yes, yes. It was way -- it was
3 subsequent, yeah.

4 Q. All right. And the same question with the
5 ramp up on Westlake, was that built in one of the
6 subsequent phases after?

7 A. Yes, uh-huh.

8 Q. And was that deeded over to the HOA?

9 A. I think so.

10 Q. All right.

11 A. I'm pretty sure it was. I don't think there's
12 any reservation about that.

13 Q. Okay.

14 A. We needed access -- the Iron Company needed --
15 hadn't completed the dredging -- finishing the canals,
16 so we needed to be able to get access to that.

17 Q. All right. Mr. Graham, I want to get through
18 a few last things, then I think I'm about finished.
19 Let me ask you, Mr. Graham, I'm going to try to put a
20 few things into context here. When was the -- if you
21 could put up, Lea Ann, Plaintiff's Exhibit No. 2. And
22 if you can go, Lea Ann, to the signature pages. Mr.
23 Graham, what was the date of Mr. Walbeck's contract? I
24 think it's on the signature pages, Lea Ann, on page
25 six. There we go. If you could enlarge purchaser and

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1 the dates there.

2 A. Well, the last signature would be Joe Barnes
3 and December 7, '97, which would be -- that would be
4 the contract date. I think it was.

5 Q. Well, 12/7/97?

6 A. '99 --

7 Q. Excuse me, '99, that is Walbeck's contract,
8 right?

9 A. Yes.

10 Q. Okay. And if we could go, Lea Ann, to
11 Defendant's Exhibit No. 21, please. I'm looking for
12 the dock master plan, Lea Ann, I may have made the
13 wrong reference number -- excuse me. There we go.
14 Defendant's Exhibit No. 4. Do you see that, Mr.
15 Graham?

16 A. Yes.

17 Q. And at the time -- what's the date on
18 Defendant's Exhibit No. 4, the dock master plan -- and
19 it's right up there. She's blowing it up for you.

20 A. '97, September '97.

21 Q. All right. So let's say 9/97. And at that
22 time, did the I'On Company envision building as many as
23 six community docks?

24 A. Well, we had hoped to. That was our -- the --
25 the -- the vision. I think that a required -- we had

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1 to submit that for the -- as I understand, as part of
2 the zoning application.

3 Q. Creek Club dock, it references number one on
4 Defendant's Exhibit No. 4, right?

5 A. There is a dock on number one, on the -- does
6 that say Creek Club? I can't see that.

7 Q. Well, we --

8 A. But there is a dock. There are different
9 docks. That was 200 feet. I mean, it covers almost
10 the entire waterfront, but it's --

11 Q. What you envisioned in 1997 for Exhibit -- for
12 the dock on Hobcaw Creek, what was actually built is
13 quite different; is that accurate?

14 A. Oh yes, yes. These are -- we had to have a
15 plan in order to submit it with our zoning. That was
16 our plan.

17 Q. Okay. And then over here, where it says
18 "waters of Hobcaw Creek", and we saw some pictures
19 yesterday, there were additional community docks,
20 another five that y'all envisioned in 1997; is that
21 right?

22 A. We had contemplated, yes.

23 Q. And in 1997, there was no -- there wasn't a
24 plan for a boat ramp and staging dock, at least
25 reflected on this drawing, right?

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1 A. No.

2 Q. So, in 1997 you had hopes and plans for at
3 least six docks as reflected by Exhibit 4; is that
4 accurate?

5 A. Yes.

6 Q. And those were intended to be community docks?

7 A. Well, we intended them to be, yes.

8 Q. For use of the entire community, correct?

9 A. Yes, uh-huh.

10 Q. And then in -- let's go to Plaintiff's Exhibit
11 No. 1, which is the 1998 Property Report; what's the
12 date on that, Mr. Graham?

13 A. November 3, 1998.

14 Q. All right. And at November 3, 1998, had the
15 I'On Company even applied for a dock permit with the
16 Army Corps of Engineers at that point?

17 A. I don't think so.

18 Q. All right. And as reflected on page 21 of --
19 if you could go to page 21, Lea Ann. In 1998, when you
20 did the -- and if you blow that up, Lea Ann, at the
21 bottom -- phase II -- sorry -- at the bottom, if you
22 will -- at that point, phase II, zero, it hadn't been
23 started, right?

24 A. We hadn't bought the land yet. We hadn't
25 closed on it.

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1 Q. And in 1998, how many docks were promised in
2 the 1998 Property Report, looking at it right there in
3 front of you?

4 A. We promised the single, generic community
5 dock.

6 Q. Does it say in the 1998 Property Report, which
7 specific community dock it refers to?

8 A. No.

9 Q. Did you intend to deliver more than one
10 community dock?

11 A. We still plan -- we hoped to. We hoped to
12 have -- we still were working on plans to get up to
13 six.

14 Q. Okay. And then --

15 A. But we didn't know what we would get approved.

16 Q. All right. And then, Lea Ann, if we could go
17 to Defendant's Exhibit No. 86. I must have had
18 numbers -- Plaintiff's Exhibit No. 86 -- excuse me.
19 All right. Plaintiff's Exhibit No. 86, is that a dock
20 application to the Army Corps of Engineers? We talked
21 about it yesterday.

22 A. Yes, uh-huh.

23 Q. And what's the date on that, please?

24 A. August 12, 1999.

25 Q. And when it went to the Army Corps of

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1 Engineers -- if you could go in a few pages, Lee Ann,
2 did you all apply for multiple community docks?

3 A. Yes.

4 Q. All right. And then if we could go to
5 Plaintiff's Exhibit No. 34, Lea Ann. Yeah. Okay. And
6 that is the Army Corps of Engineers permit; is that
7 correct? See at the top there, it says "Department of
8 Army"?

9 A. Right.

10 Q. All right. And that was issued in --

11 A. Yes.

12 Q. -- December of 1999; is that right -- I think
13 it was December 8th, where I don't see the date --
14 unfortunately, I don't think the date is on that one,
15 but it's -- excuse me -- it was issued by the
16 Department of the Army in December of '99; is that --
17 that's your memory?

18 A. That looks good. That looks right. The date
19 should be on that form, but it's -- I think it was at
20 the end of '99, sometime close to that.

21 Q. All right. And then so this is -- and the
22 permit was actually issued, like you mentioned earlier,
23 was a little bit different than what was envisioned
24 back in 1997? For example, the dock on Hobcaw Creek
25 was a single dock, that was 200 feet long, it had to be

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1 adjusted, right?

2 A. Well, it was significantly different.

3 Q. Okay. And it included some additional boating
4 facilities, correct, like the ramp and the staging
5 dock? That was part of the permit that was granted,
6 right?

7 A. I don't remember -- I don't remember what --

8 Q. Well, that was what was built?

9 A. That was what was built, yeah.

10 Q. And you built things in compliance with the
11 permit?

12 A. We were certainly in compliance with the
13 permit.

14 Q. And the easement that we just talked about,
15 the easement was in February of 2000, right? Do you
16 remember the date from the easement, February 2000?

17 A. Yes, February 3rd, 2000.

18 Q. All right. And I want to go to the 1998
19 Property Report, which is Plaintiff's Exhibit No. 1.
20 Do you have that up there with you? Do you have a copy
21 of that in front of you, Mr. Graham? I'm sorry. Let
22 me make sure you got one. Plaintiff's Exhibit No. 1.
23 Here we go.

24 A. Thanks.

25 Q. Yes, sir. And if you would, turn it over to

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1 page 21, the chart.

2 A. Uh-huh.

3 Q. Okay. On page 21, in phase II -- if you'll
4 blow up that chart again, Lea Ann. Now, the -- let me
5 ask you, over in the I'On community, what kind of --
6 can you tell us some of the parks and things that you
7 have over there, that were built and were given -- well
8 first of all, tell us some of the things of the
9 parks -- how many parks do you have in I'On?

10 A. I think there are about 26 parks in I'On
11 from -- they range in -- I think many are not named,
12 many are. I mean, they range from --

13 Q. Give us the names of some of the parks, if you
14 would?

15 A. Eastlake Park is -- is the park surrounding
16 this lake. I think it's a 12 acre lake. And the whole
17 perimeter of that lake is public area, is public
18 access. So that all surrounding area, landscaped and
19 trailed path, where it's --

20 Q. All right.

21 A. -- it's a park. We have the Westlake --
22 there's a Westlake Park that is not named, but there's
23 a similar kind of -- a similar public access around the
24 Westlake Park. We have a soccer field -- we don't call
25 it soccer -- a ball field, and that field area. We

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1 have little playgrounds. There's a ramble.

2 Q. What's a ramble?

3 A. A ramble is a small little playground, a park
4 that's tucked in behind -- I think it's behind Mr.
5 Walbeck's house, that's tucked in. It was -- I don't
6 know that we ever -- we ever promised that, but it's
7 just -- we built these parks and intended to build a
8 little playground within -- I think, within a three
9 minute walk of every -- of every residence in I'On.

10 The main, I think, the major -- the most
11 significant and dramatic park in I'On is the Marshwalk
12 Park; that's -- to me. I mean, different people have
13 their preferences. Of course, that's -- the thing
14 that's significant about that is we took that
15 waterfront, that was running along the entire front, we
16 made that available to the entire community, so people
17 that lived back away from the marsh could go walk or
18 bike along that -- that marsh, and not just exclusive
19 -- it wasn't preserved exclusively for the owners of
20 the property that were on there.

21 That was a big gamble for us to make, to do that
22 because it was -- we did the same thing around with the
23 lakes, that we made -- rather than having those lakes
24 private, we made them available for the entire
25 community to have access to and the view.

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1 Q. Looking at the chart on page 21 where it says
2 "parks and open space", does that refer to any one
3 specific park?

4 A. No, it's a generic term.

5 Q. And where it says "sidewalks, paths, and
6 trails", does that refer to any specific path, or any
7 specific trail, or any specific sidewalk?

8 A. No, that's a generic term.

9 Q. And where it says "Creekside Park", does that
10 refer to any specific park or any specific place?

11 A. Well, I think it referred to the -- reference
12 to Marshwalk.

13 Q. Okay.

14 A. Creekside Park, it was shown on a number of
15 different plats, so -- I didn't ever know it.

16 Q. Let's talk about the Creekside Park, it's
17 Marshwalk, correct?

18 A. Right, Marshwalk.

19 Q. If we could put up Defendant's No. 140. Was
20 the Creekside Park built?

21 A. Yes.

22 Q. Just like reflected on the chart on page 21 of
23 the 1998 Property Report, correct?

24 A. Yes.

25 Q. All right. And was Defendant's Exhibit No.

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1 140, if you could back that up, Lea Ann. Mr. Graham,
2 do you recognize Defendant's Exhibit No. 140 as a
3 public record from Charleston County RMC's Office?

4 A. Yes.

5 Q. And the area that's in red, tell us please
6 what that is.

7 A. That's the Creekside Park -- or now called
8 Marshwalk. We changed the name from Creek -- there's a
9 neighborhood subdivision in Mount Pleasant that we
10 didn't know about at the time, named Creekside Park, so
11 it was confusing to have that name for our park -- for
12 our major park, so we changed the name to Marshwalk.

13 Q. Lea Ann, if you could back that out a little
14 bit and if you could blow up the bottom part, Lea Ann.
15 Thank you, right there. Okay. All right. The total
16 acres of the Creekside Park, see it reflected down
17 there, how big is that, the total legal acres?

18 A. 2.86 acres.

19 Q. And who is the owner of that?

20 A. Well, originally we --

21 Q. No, just turn around on Exhibit 140, who owns
22 it?

23 A. I don't see it on there, but --

24 THE COURT: It's highlighted.

25 Q. It highlighted at the bottom.

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1 A. Oh, the owner is I'On Assembly. Excuse me.

2 Q. And, Lea Ann, if you could go to the next
3 date, please. And the date there up at the top, if you
4 would? And so when was it transferred to the I'On
5 Assembly?

6 A. November 21, 2000.

7 Q. So, back to Exhibit No. 1 chart, page 21 if
8 you would, Lea Ann -- the Creekside Park that's
9 referenced right there, was built and transferred to
10 I'On Assembly; is that correct?

11 A. That's correct.

12 Q. And as we just saw, that was in 2000, right?

13 A. Yes.

14 Q. Okay. And then, Mr. Graham, looking at the
15 reference there, on page 21, the community dock in
16 phase II, were any community docks built in phase II?

17 A. Yes.

18 Q. Can you tell us, please -- Lea Ann, could you
19 put up Plaintiff's Exhibit No. 187. Maybe we can blow
20 up -- or Mr. Graham, here you go, I got a pointer for
21 you -- were there community docks that were built
22 during phase II?

23 A. Well, there -- there -- these two on Shelmore,
24 on this interior tributary, this community dock right
25 here, the main dock. And then there's a staging dock

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1 right to the left, it's -- you can barely see those
2 four.

3 Q. The bottom two docks there, those were built
4 during phase II; is that correct?

5 A. Yes, they are on phase II.

6 Q. Can we go back to the Property Report, page
7 21, please. Were those docks, that were built in phase
8 II, transferred free and clear to the I'On Assembly?

9 A. Those two were, yes.

10 Q. All right. And so isn't it true that you
11 built at least two community docks, and you gave them
12 free and clear to the I'On Assembly?

13 A. Yes, sir.

14 Q. All right. And on page 23 -- excuse me -- Lea
15 Ann, of the Property Report, the next page if you
16 would -- sorry, the previous page. If you could blow
17 up the bottom -- there we go -- the top half of that
18 there, right there. Down a little bit, there we go.
19 As referenced in the Property Report, aren't there
20 additional facilities that may be built that aren't
21 listed on page 21?

22 A. Yes.

23 Q. All right. And you've talked about some of
24 those, correct?

25 A. We did. The creek -- of course, the I'On Club

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1 and the Creek Club and, you know, there were other --

2 Q. Right. The chart on page 21 doesn't say
3 anything about a Creek Club; is that right?

4 A. No.

5 Q. It doesn't say that a Creek Club is going to
6 be built and going to be given free and clear to the
7 I'On Assembly; is that right?

8 A. It certainly is.

9 Q. The chart doesn't say anything about a parking
10 lot or CV-5 -- what is CV-5, tell us, please, so we
11 don't --

12 A. CV-5 is -- it's an overflow parking built back
13 away from the marsh and the waterway from the --

14 Q. Okay. If you could go back to page 21, Lea
15 Ann, the chart on page 21 doesn't say anything about
16 giving over CV-5 or a parking lot, does it?

17 A. No.

18 Q. The chart on page 21 doesn't say anything
19 about giving over CV-6, does it?

20 A. Certainly not.

21 Q. The chart on page 21 doesn't say anything
22 about giving away a boat ramp, does it?

23 A. No.

24 Q. It doesn't say anything about giving away a
25 staging dock, does it?

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1 A. No.

2 Q. And the entire Exhibit No. 1 doesn't have a
3 single picture with it, does it?

4 A. No.

5 Q. Or a single map?

6 A. No.

7 Q. All right. And at least two community docks
8 were built during phase II, correct?

9 A. Yes.

10 Q. And the Marshwalk Park, two acres plus, was
11 built during phase II, correct?

12 A. Yes.

13 Q. And all of those things were transferred free
14 and clear over to the Assembly; is that right?

15 A. Yes, sir.

16 MR. YOUNG: I don't have any further questions.

17 THE COURT: Okay. Thank you, sir. Ladies and
18 gentlemen, let's take about a 10 minute break. We need
19 to switch some technology over. Please don't discuss
20 anything about the case as it has not been given to you
21 for deliberation. Thank you.

22 (WHEREUPON, the jury leaves the courtroom at
23 11:02 a.m.)

24 THE COURT: We'll be at ease for 10 minutes.

25 (WHEREUPON, a brief recess was taken.)

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 THE COURT: All right. Are we ready for redirect?
2 Everybody ready?

3 MR. LUCEY: Yes.

4 THE COURT: We can bring in the jury. Thank you.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 11:18 a.m.)

7 THE BAILIFF: The jurors are all present, Your
8 Honor.

9 THE COURT: Thank you, ma'am. Thank you, ladies
10 and gentlemen. We appreciate your patience. We are
11 ready for redirect. Mr. Lucey.

12 MR. LUCEY: May it please the court.

13 **REDIRECT EXAMINATION BY MR. LUCEY:**

14 Q. Sir, you appear to be doing all right with
15 that exhibit screen in front of you this morning with
16 your attorney. Is it all right if I use that, too, or
17 do we need to use paper?

18 A. Well, it depends on the details of it. Some I
19 can read. I have difficulty reading these screens.

20 Q. I'm going to start with the screen to go as
21 fast as I can, but if you need paper, you stop me.

22 A. Okay.

23 Q. Let's first go back briefly to Defendant's
24 Exhibit 58, please. This is a certificate of existence
25 for the company known as the I'On Group, LLC?

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 A. Yes.

2 Q. I'm not sure the right date was blown up
3 earlier. And I may have missed it, but I just want to
4 be clear. This document in the first sentence, says
5 "This company was created on January 30, 1998",
6 correct.

7 A. That's what this says.

8 Q. So, now all of the I'On defendants, all
9 entities, were created and in existence and active at
10 I'On by January 30, 1998, correct?

11 A. I don't know when the I'On Group was formed.
12 I didn't -- I didn't have anything to do with that, so
13 I didn't know about that.

14 Q. The group is formed on January 30, 1998,
15 correct?

16 A. That's what that certificate of existence
17 says, yes.

18 Q. It's in existence at the time that the
19 Property Report was drafted and filed, correct?

20 A. Well, if this -- if this is correct.

21 THE COURT: Okay. Hold on, one second. Ladies
22 and gentlemen, I'm going to ask you to go back to the
23 hall. Y'all can just wait one minute right out in the
24 hall and we'll get you right back.

25 (WHEREUPON, the jury leaves the courtroom at

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 11:21 a.m.)

2 THE COURT: Okay. We are not going to play this
3 game again today. Don't interrupt me. All right. If
4 these attorneys show you a document, and they don't say
5 this is for identification only or this has not been
6 admitted, it means they stipulated to it, and it's
7 coming in.

8 Mr. Lucey is not going to put a fake document up
9 on the screen to try to trick you and you know that
10 because you have good lawyers, excellent lawyers. And
11 to the extent that you listen to them, they have told
12 you that and worked with you. Okay.

13 I want to move this along. The jury is laughing
14 when that kind of response comes out, these two old
15 guys I referenced yesterday, I'm still watching them
16 today because they are quite entertaining. So, move it
17 along. If you don't know, you don't know. But if you
18 really know, but you think he's trying to trick you,
19 he's not. Okay. Thank you. Yes, ma'am.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 11:22 a.m.)

22 THE COURT: Okay. I apologize, ladies and
23 gentlemen. We are ready to continue. Thank you.

24 BY MR. LUCEY:

25 Q. Mr. Graham, I forget exactly what my last

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 question is, so I'll just ask what I think it was
2 again. The I'On Group, Inc. -- or LLC actually, was in
3 existence at the time the HUD Property Report was filed
4 and distributed, correct?

5 A. It appears to be, yes.

6 Q. It was in existence at the time the Olde Park
7 deal was negotiated, correct?

8 A. I think so, yes.

9 Q. It was in existence at the time you modified
10 your dock plan, correct?

11 A. Yes.

12 Q. Let's go to Plaintiff's Exhibit No. 3, please,
13 the 1997 Impact Assessment. I would like to first go
14 to page one to show the witness, sir. Do you see the
15 Impact Assessment on your screen?

16 A. Yes.

17 Q. The document your company filed to procure
18 approval from the Town of Mt. Pleasant, correct?

19 A. Yes.

20 Q. Let's go to page 6, please. The middle
21 paragraph, blow it up, please. Your company wrote that
22 there will be no private docks in the neighborhood,
23 correct?

24 A. Yes.

25 Q. And instead, "I'On residents will be able to

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 use seven community docks, which will provide access to
2 the I'On marsh and the waters of Hobcaw Creek for
3 fishing and boating", correct?

4 A. Yes.

5 Q. "These docks will range from small crabbing
6 docks to a larger community dock reminiscing of the
7 dock pavilion at New Point or the Sea Island Yacht at
8 Rockville", correct? Blow up the picture below, with
9 the caption, please. And your Impact Assessment that
10 you sent to the Town of Mount Pleasant referenced a
11 community dock for the residents, correct?

12 A. Yes.

13 Q. And below it, it showed a community dock at
14 New Point Point, correct?

15 A. Yes..

16 Q. Tell the jury which dock at I'On in this
17 photograph, in your Impact Assessment looks like?

18 A. It looks like the Creek Club -- the main Creek
19 Club dock, the main community dock in I'On.

20 Q. Now, your Impact Assessment also said that it
21 would range from small crabbing docks, correct?

22 A. Yes.

23 Q. Let me have 187, please, on the screen,
24 please. Sir, are there any crabbing docks in this
25 photograph?

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 A. No.

2 Q. No crabbing docks?

3 A. I don't know what your definition is -- these
4 are docks that are -- I think about a crabbing dock as
5 a fixed dock, it's -- but these have a ramp and
6 floating docks, both those -- all of all -- all four of
7 them do.

8 Q. I'm not really asking about my definition,
9 sir. I'm referring to the Impact Assessment. It says
10 it's going to be crabbing docks. I'm asking you, are
11 any of the crabbing docks referred to in the Impact
12 Assessment, in this photo -- in Plaintiff's Exhibit
13 187?

14 A. I don't think so, no.

15 Q. Let's go to page one of the Impact Assessment,
16 please. I want to follow-up with you, sir, on your
17 attorney's discussion of these corporate entities. At
18 the bottom of page 1 of Plaintiff's Exhibit No. 3, we
19 can see that the Impact Assessment was submitted to the
20 Town of Mount Pleasant by the Graham Company, correct?

21 A. Yes.

22 Q. Tell jury who the Graham Company is?

23 A. The Graham Company is a trade name. It was
24 a -- that Vince formed or used while they were -- while
25 we were going through our zoning approval process. And

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 it's -- represents -- he and I were the Graham Company.
2 And it was a predecessor to the -- when we finally got
3 our zoning approved and were able to close on the
4 property, then we -- we -- this -- we merged it in --
5 we rolled everything from the Graham Company into the
6 I'On Company.

7 Q. Okay. You started to use the word
8 "predecessor", is the Graham Company a predecessor of
9 the I'On Company?

10 A. I would think you can say that, yes.

11 Q. That was yes?

12 A. I would think so.

13 Q. And you rolled it into the I'On Company?

14 A. Well, we conveyed it. It was -- it was -- we
15 didn't own anything, the Graham Company was just doing
16 this work -- it was Vince doing this -- Vince and the
17 people we hired.

18 Q. Do you deny telling me previously, under oath,
19 that you don't know exactly what the Graham Company is?

20 A. Well, I may have -- I may have said that.

21 I -- I don't know exactly what it was. I know that
22 it's a trade name. I don't know exactly what the --
23 how -- what it was -- whether he incorporated it or
24 anything like that.

25 Q. Let's go to page 83 of your deposition, sir,

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 line one. You were asked, "Is the Graham Company in
2 existence?".

3 You responded "Probably not".

4 You were asked, "What was that -- that was the
5 entity that was investigating whether or not it was
6 going to purchase and proceed with the property?".

7 "It was."

8 "It was the vehicle with which you and your son
9 were doing business prior to the I'On Company being
10 formed, is that fair?".

11 Your answer was, "I don't know exactly what the
12 Graham Company is. Vince set this up and he -- it was
13 just a trade. It's essentially a -- what would you
14 call it, it's a -- he was doing business under that. I
15 don't know whether it's any formal entity. He probably
16 signed it, so." Did I read that correctly, sir?

17 A. Yes. An awful lot of rambling, but correct.

18 Q. If you don't know who the Graham Company is,
19 you don't know whether it was just the I'On Company or
20 Graham Development that actually filed the Impact
21 Assessment with the Town of Mount Pleasant; do you?

22 A. The Impact Assessment was filed by -- it was
23 signed by the Graham Company, by -- Vince signed it as
24 I recall. I'm sorry. I don't keep -- I don't hold in
25 memory all of these, who did what, when.

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 Q. Let's go to the last page of Plaintiff's
2 Exhibit 3, please. Sir, I don't see a signature page
3 on this document; am I missing it?

4 A. I don't know.

5 Q. I haven't seen the I'On Company's name on this
6 document anywhere; am I missing it?

7 A. I don't think so. We didn't -- the I'On
8 Company wasn't incorporated -- wasn't formed until
9 after we -- until after we had the property zoned
10 because we didn't have anything to do with -- so we
11 formed the I'On Company in order to develop the
12 property, in order to acquire it, and so we didn't own
13 it at that time. The Graham Company was just -- an
14 informal -- was a trade name that Vince and I were
15 doing business as that.

16 Q. So, the I'On Company, the Graham Development
17 and its developers filed an Impact Assessment with the
18 Town of Mt. Pleasant under a fictitious trade name; is
19 that correct?

20 A. It wasn't fictitious. The I'On Company didn't
21 file that. The I'On Company wasn't in existence then.
22 The Graham Company was Vince was -- what he was just
23 using as a trade name, while he was operating, while we
24 were going through the -- going through this process of
25 zoning the property and going through all this

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 developmental level.

2 Q. Exhibit 30, please, on the screen. So the
3 jury has heard us reference the Impact Assessment being
4 incorporated in the I'On ordinance, but I don't want
5 them to take my word for it. Would you look at Exhibit
6 30 and confirm that fact, in the very first line, the
7 Impact Assessment is incorporated into the I'On
8 ordinance to --

9 A. Yes, it is.

10 Q. And speaking of companies, sir, the companies
11 involved in this case, the October 5th -- excuse me --
12 the August 5th, 2009, real estate transaction with 148
13 Civitas, actually involved five different sellers,
14 correct?

15 A. Five different what?

16 Q. Sellers?

17 A. Spell that last word.

18 Q. S-e-l-l-e-r-s?

19 A. Sellers. Yes, uh-huh.

20 Q. The -- there were three different parcels,
21 correct?

22 A. Yes.

23 Q. Owned by two different companies and three
24 different individuals, correct?

25 A. I think so.

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 Q. And each of the companies made their sale
2 contingent on the other closing occurring at the same
3 time, correct?

4 A. Yes.

5 Q. So, that was TIC selling the I'On Company
6 selling CV-6 -- excuse me -- the I'On Club selling
7 CV-6?

8 A. Yes.

9 Q. The I'On Company selling CV-5, and you and
10 your two sons selling lot 275?

11 A. No.

12 Q. Well, correct me, please.

13 A. The I'On Company sold the lot, 275. The I'On
14 Company owned all the lots. The I'On Club sold the --
15 CV-6 and then I think it was the CV-5 was Vince and
16 Geoff and me, as I recall. And -- and -- yeah, the
17 three.

18 Q. The Club sale was contingent on the I'On
19 Company sale taking place at the same time, correct?

20 A. Yes. All three were -- all three were
21 together, yes.

22 Q. And the I'On Company sale was contingent on
23 the Club sell taking place at the same time?

24 A. Yes.

25 Q. The companies were acting in concert, correct?

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 A. Well, the property -- the parcels were, yes.

2 Q. And let's go to Plaintiff's Exhibit 109,
3 please. This is the December 1999 Olde Park agreement,
4 correct?

5 A. Yes.

6 Q. And it's between the I'On Company and Olde
7 Park GR, LLC, Correct?

8 A. The Olde Park Developer, yes.

9 Q. And the I'On Club is not a party to this
10 agreement, correct?

11 A. No. It doesn't appear to be, no.

12 Q. The I'On Club is allegedly an independent
13 entity, correct?

14 A. Well, it was -- it was a wholly owned
15 subsidiary of the I'On Company. I wouldn't know if you
16 call that independent.

17 Q. It supposedly operated on its own, correct?

18 A. Well, it did operate on its own. It was a
19 totally owned subsidiary of the I'On Company.

20 Q. And in Exhibit 109, we see the I'On Company
21 making a legal commitment for the I'On Club, LLC,
22 without the I'On Club, LLC's consent, correct?

23 A. Well, that's correct.

24 Q. Defendant's 36, please. The third page, at
25 the top of the third page. Now, that note about access

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 that is on CV-6 actually points, over down to the left,
2 to the Marshwalk, correct?

3 A. Yes, Marshwalk, Creekside Park, yes.

4 Q. It's not warning about an easement on CV-6,
5 it's warning about an easement on the Marshwalk as its
6 drawn and recorded in the county RMC office, correct?

7 A. Well, that's where it was located. That's
8 where it was accessing, pointing to.

9 Q. Back to the main diagram, please. And just to
10 be clear -- blow it back like you had it, please --
11 just to be clear, we can see the Marshwalk beginning to
12 the left of what we know to be lot 275, which is to the
13 left of CV-6, correct?

14 A. Yes.

15 Q. And it starts at that property line, and in
16 our picture it goes down, correct?

17 A. Yes.

18 Q. And we know, because it's in that location, it
19 can't be the park that the Creek Club is going to
20 overlook as it looks towards Hobcaw Creek, correct?
21 The one we saw described in the 1998 letter from your
22 son to Olde Park?

23 A. I don't know. I'm not piecing those together.

24 Q. The Creek Club faces Hobcaw Creek, correct?

25 A. Yes, uh-huh.

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 Q. And the 1998 letter refers to a Creek Club
2 that's going to be built, will overlook the park in
3 Hobcaw Creek, correct?

4 A. Yes, that's -- now, I don't have the letter
5 right -- but, yes.

6 Q. This Marshwalk Path is off to the left?

7 A. That is not -- that's correct. That's
8 different from --

9 Q. It's not the park that's referred to in the
10 1998 letter, correct?

11 A. The letter to -- that Vince wrote to Olde Park
12 to Joe Griffith -- the Griffiths, no, he was talking
13 about just conceptional. This is just trying to
14 outline to him what the program was, so...

15 Q. Exhibit -- Plaintiff's Exhibit 34, you all
16 discussed Plaintiff's Exhibit 34 a few minutes ago, the
17 Department of Army permit; do you recall that?

18 A. Yes.

19 Q. Go several pages in. This actually is in the
20 permit, isn't it? This is unsigned -- go back one
21 page. If we want a signed permit, we need to go to
22 Plaintiff's Exhibit 43 -- 43, please. Go to the
23 signature line, please, I think it's three pages in,
24 two or three. Here is the actual permit, correct? It
25 is not in 1999 as was testified, relating to Exhibit

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 34, we see it's on February 28, 2000, correct?

2 A. Yes.

3 Q. That's after your company recorded the
4 easement, correct?

5 A. I don't remember these dates. The February 3,
6 2000, was the recreational easement, I believe, so this
7 would be several weeks after, yes.

8 Q. One eighty-seven, please. Now on -- on the
9 tributary portion of this photograph, we can see docks
10 two and three, correct?

11 A. Yes.

12 Q. And those are in phase II?

13 A. Yes.

14 Q. And those are what you suggest are conveyed to
15 my clients and the Assembly in lieu of the Creek Club
16 dock?

17 A. Pardon?

18 Q. Those are the docks you say were conveyed to
19 my client pursuant to the HUD Property Report?

20 A. Yes.

21 Q. Let's go to -- I'm going to show you a picture
22 of dock number two -- let's go to Plaintiff's Exhibit
23 168. This is a photograph of dock two at low tide; do
24 you see that?

25 A. Yes.

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 Q. Next photograph, please. We can see this boat
2 that's coming in, is barely going to be able to pass
3 this dock, correct?

4 A. Yes, well --

5 Q. The next photograph, please. This is the same
6 dock looking at it from the other side, correct?

7 A. Yes.

8 Q. It looks like about seven or eight feet of
9 clearance between the floating dock and the pluff mud
10 on the left?

11 A. Yes.

12 Q. The fourth photograph, please. And now we see
13 the same dock, the boat is tied up to it, correct?

14 A. Yes.

15 Q. There's no way for a boat that size to pass
16 it, while that boat is tied up, correct?

17 A. Yes.

18 Q. That's a one way creek now, correct?

19 A. At that tide level with those boats, yes.

20 Q. It's not only one way, it's a dead-end creek
21 now if there's a boat tied up to that dock, correct?
22 You can't get by it.

23 A. Well, that's correct, with a big boat. You
24 can with a kayak, of course.

25 Q. Now, you mentioned with regards to the BOZA

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 appeal and the subdivision and the consternation that
2 occurred with the sale -- the proposed sale -- that
3 there was an issue with subdividing land for the docks
4 to give to the Assembly; do you recall that? That
5 subdividing the land might hurt the zoning and use of
6 the parcel?

7 A. Well, that's what I gathered after the fact in
8 terms of that -- of that -- trying to get a resolution
9 to that -- to that conflict. It was residual.

10 Q. So the I'On Club and the I'On Company were
11 attempting to execute their exit strategy on CV-6 at
12 this time, correct?

13 A. Well, we wanted to -- we were, yes.

14 Q. And you wanted to sell the property, you
15 wanted to sell the Creek Club to make money off of it,
16 correct?

17 A. We wanted -- we didn't want to be in that
18 business, that's right. We wanted to sell it and move
19 on.

20 Q. And to get the maximum amount of money out of
21 it, you'd have to sell the Creek Club in a way that
22 continued -- it could continue to be used as a wedding
23 venue, correct?

24 A. Well, yes.

25 Q. And if, in fact, you honored your commitment

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 to the homeowners that we saw in so many e-mails, to
2 convey to them the docks and the boat ramp, and some
3 land to get to it, you could no longer sell the Creek
4 Club for the maximum price, correct?

5 A. Well, you are merging different things. I
6 mean, in terms of -- we were -- we wanted to make an
7 arrangement that would be mutually satisfactory; we
8 were not able to work it out.

9 Q. You were faced with a choice of either deeding
10 the docks and some land to the homeowners and losing
11 the 148 Civitas sale, because of the zoning risk, or
12 just including the docks and the boat ramp in the sale
13 to 148 Civitas, correct?

14 A. Well, that's correct.

15 Q. And we know now -- we know today what your
16 decision was, correct?

17 A. Yes.

18 Q. You all conveyed everything to Civitas?

19 A. Well, yes.

20 Q. And you mentioned that some of the
21 consternation down at the dock and Saturday Road and
22 what have you, relating to the operation of the Creek
23 Club after the sale, was because of Mike -- being Mike
24 Russo --

25 A. Yes.

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 Q. -- was not quite as firmly -- or not quite as
2 accommodating to the residents as you all had
3 previously been, correct?

4 A. Well, probably diplomatic in that, too. He
5 was not -- he was not as diplomatic as -- as prior
6 Creek Club management was.

7 Q. And he started closing the docks a little bit
8 more during wedding ceremonies and people didn't like
9 that, correct?

10 A. That's what I understand. I really didn't
11 have firsthand knowledge of it.

12 Q. If you had conveyed the docks and the
13 Creekside Park to the homeowners and the Assembly, Mike
14 would not have been in a position to have impeded the
15 homeowners access to those amenities, correct?

16 A. Possibly so.

17 Q. I mean, he wouldn't have owed the property?

18 A. Well, it depends on what the easement -- what
19 the -- what the terms of the easement were and how that
20 was negotiated. It's these details that can be really
21 frustrating to work out, so...

22 Q. And you mentioned there were 26 parks or so in
23 I'On, correct?

24 A. There was 26 what?

25 Q. Parks, or so -- 26 parks or so in I'On; do you

T. GRAHAM -- REDIRECT BY MR. LUCEY

1 recall that?

2 A. I think so.

3 Q. And those are parks that were in the grand
4 plan and in the Impact Assessment that was submitted by
5 your company, in order to gain town permission to have
6 roughly 760 residential building permits, correct?

7 A. I doubt we had anything -- any of those park
8 plans -- we didn't -- we developed them way later. I
9 don't know that they were included in all those
10 submissions.

11 Q. It wasn't part of your grand plan?

12 A. We had a number of parks on the grand plan in
13 terms -- we did a lot of plans, and so we had -- we
14 envisioned some -- many different things. It
15 evolved -- it was a growing, living thing, our plan in
16 the development of I'On.

17 Q. Well, whether it was 26 parks or some lesser
18 or greater number, the Town of Mount Pleasant requires
19 a certain amount of open space in I'On, to give you all
20 permission to have 760 residential lot building
21 permits?

22 A. That's correct.

23 Q. And I'On has been very successful, you sold
24 out -- 760 residential building permits, you sold out
25 an area -- I think you told us -- was as large as South

T. GRAHAM -- RECROSS BY MR. YOUNG

1 of Broad; sold out and built out in 10 to 15 years,
2 correct?

3 A. Yes.

4 Q. And I just have one more question, sir, have
5 you sold any of the other 26 parks?

6 A. Any of the other 26 parks?

7 Q. The other 26 parks in the neighborhood, have
8 you sold any of those?

9 A. I don't know whether you would count -- any of
10 these other civic lots as parks or not.

11 Q. I'm just asking about the parks.

12 A. No.

13 Q. Why not?

14 A. Well, we -- they weren't -- they weren't tied
15 to the civic lot and associated with -- we didn't -- I
16 don't know why not. We didn't have any, that I know
17 of, that we -- I can't think of any that we sold.

18 Q. Because they were promised parks, correct?

19 A. No.

20 MR. LUCEY: Thank you, sir.

21 MR. YOUNG: Briefly, Your Honor?

22 THE COURT: Briefly.

23 **RECROSS EXAMINATION BY MR. YOUNG:**

24 Q. Mr. Graham, let's look at the Impact

25 Assessment on Plaintiff's Exhibit No. 3, page 6, if you

T. GRAHAM -- RECROSS BY MR. YOUNG

1 could put that up, Lea Ann. She'll get it on the
2 screen, Plaintiff's Exhibit No. 3. Let me show you,
3 Mr. Graham -- we'll see if we can get it up there
4 though -- the Impact Assessment the jury will have it
5 with us -- okay. If you can go to page 6, please. Two
6 more pages. There we go. Let's blow up that paragraph
7 right in the middle, please. Now, Mr. Graham, the
8 second sentence there, will you read that to the jury,
9 please?

10 A. "Instead I'On residents will be able to use
11 seven community docks, which will provide access to the
12 marsh waters of Hobcaw Creek for fishing and boating."

13 Q. Does that say that the I'On residents will own
14 seven community docks?

15 A. No.

16 Q. And were the community docks -- did you
17 envision seven community docks at the time that you did
18 this '97 property assessment?

19 A. Yes.

20 Q. All right. And were the I'On residents
21 allowed access to all of the community docks just like
22 it is represented?

23 A. Yes.

24 Q. In this exhibit number -- and then there was
25 some questions -- and I stumbled with it myself --

T. GRAHAM -- RECROSS BY MR. YOUNG

1 about the Army Corps permit. Can we put up Plaintiff's
2 Exhibit No. 33, please. There, at the top --
3 there's -- if you can blow that up -- it says the date
4 of the issuance. What's the date that the permit was
5 issued according to Plaintiff's Exhibit No. 33 from the
6 Army Corps of Engineers?

7 A. December 8, 1999.

8 Q. All right. And then if you would -- Lea Ann,
9 roll it through to the third page where the signatures
10 are at the bottom. Blow up the bottom signature if you
11 would, please, where it's underlined. There we go.

12 MR. LUCEY: Objection, Your Honor, may we
13 approach?

14 THE COURT: You may.

15 (WHEREUPON, a side bar was held.)

16 BY MR. YOUNG:

17 Q. All right. Mr. Graham, that -- when does
18 Plaintiff's Exhibit No. 33 become effective according
19 to that bottom statement there?

20 A. "This permit becomes effective when the state
21 official designated at the Office of O.C -- Ocean
22 Coastal Resource Management as signed below", which is
23 12/16/99.

24 Q. All right. And then back to the very first
25 page, does Plaintiff's Exhibit No. 33 have a

1 description of the project being permitted? Back to
2 the very first page, description of the project, the
3 bottom half?

4 A. Yes.

5 Q. Okay. Thank you.

6 MR. YOUNG: I don't have any further questions.

7 THE COURT: Okay.

8 **REDIRECT EXAMINATION BY MR. LUCEY:**

9 Q. Sir, Exhibit 33 -- Plaintiff's 33.
10 Plaintiff's 33, blow up the title, please. Sir, do you
11 see the title of this document, this "Critical Area of
12 Permit Water Quality Certification"?

13 A. Yes.

14 Q. It doesn't say dock building permit, does it?

15 A. No.

16 MR. LUCEY: Thank you, sir..

17 THE COURT: Okay. Thank you. Sir, you may step
18 down. Call your next witness, please.

19 MR. EVANS: The plaintiffs call Lea Ann Adkins.

20 THE COURT: All right. Ms. Adkins, come on up and
21 we'll swear you in. Ladies and gentlemen, we've
22 ordered lunch. It's expected to be here around
23 12:30ish. We're at the mercy of the folks who deliver
24 it, but when it does get here, we'll take a break at an
25 appropriate time. Okay. Yes, ma'am.

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1 LEA ANN ADKINS, after having been
2 duly sworn, testified as follows:

3 THE CLERK: Thank you, ma'am. Please have a seat.
4 State your name for the record, spelling your last.

5 THE WITNESS: My name is Lea Ann Adkins,
6 A-d-k-i-n-s.

7 **DIRECT EXAMINATION BY MR. EVANS:**

8 Q. Good morning, Ms. Adkins.

9 A. Good morning.

10 Q. Let's talk a little bit about yourself
11 individually before we move into I'On and the claims
12 that brought us here; okay?

13 A. Okay.

14 Q. Where are you from originally?

15 A. I'm from Tennessee originally.

16 Q. How long have you lived in Charleston?

17 A. I moved here in 1987.

18 Q. Tell us about yourself, personally, your
19 family situation; are you married?

20 A. I am not married. Despite what Mr. Duffy said
21 yesterday, I am not married. I'm actually widowed. I
22 moved here in 1987 with my husband. We had one child.
23 He worked for Channel 4, which was an NBC affiliate at
24 that time. In 1989, by -- by that time, we had another
25 child, I have two sons. He was on a business trip to

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1 Colorado, and he was in a plane crash on the way home.
2 And I have not remarried since then.

3 I have two sons today, age 27 and 29, and we are
4 doing fine. We are happy. And I work at Crisis
5 Ministries, which is now known as 180 Place. It's the
6 homeless shelter in downtown Charleston. And we help
7 people who are homeless living at the shelter, and also
8 out in the community, people who are literally living
9 on the street.

10 Q. Where did you live prior to I'On?

11 A. Where did I live prior to?

12 Q. Yes, ma'am.

13 A. I lived in a neighborhood down Mathis Ferry
14 Road, as the crow flies, very close to I'On. It's
15 called Wakendaw. And I lived there from 1987 to when I
16 moved to I'On, which would have been in 2004.

17 Q. Let's talk about how you came to I'On, how did
18 you find it? How did you find I'On?

19 A. Well, I'On was in the news when it was being
20 approved and it was a big deal. And I think people
21 throughout the town knew about I'On, but especially
22 along Mathis Ferry Road, people were very interested in
23 it. And so I knew about it initially by attending town
24 meetings. I attended a lot of meetings, I think,
25 pretty much every meeting about the rezoning of the

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1 property that was to become I'On, so that's how I first
2 learned about it.

3 Q. Why were you following the rezoning of the
4 I'On property?

5 A. Well, it was a large development, a lot of
6 homes were planned in it. It was going to mean a lot
7 of houses, a lot of people, a lot of cars, a lot of
8 traffic, so there was great concern about the effect
9 and the impact it would have on particularly the Mathis
10 Ferry Road area.

11 Q. Do you recall how many homes were originally
12 planned for I'On?

13 A. Well over a 1,000, I think, almost 1200.

14 Q. And how many homes are there now today -- or
15 how many lots are in I'On that could have homes on
16 them?

17 A. Well, there were -- well, 760 finally
18 approved.

19 Q. Were you satisfied with the compromise between
20 a 1,000 plus and 760?

21 A. I think so. It was a -- truly a compromise
22 plan between the developer and the town... You know, in
23 a compromise, sometimes at first no one is happy about
24 it, but I think in time, it was a good plan.

25 Q. You liked it enough you moved in, correct?

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1 A. Yes. Yes.

2 Q. When did you buy the property in I'On?

3 A. I bought my lot in 2003.

4 Q. And let's back up a little bit more for just a
5 second -- when you were attending those meetings, did
6 any of the Grahams or the developers speak at those
7 meetings?

8 A. Yes, I think at all of them. In particular,
9 Vince was pretty much the spokesperson. He spoke the
10 most. His brother, Geoff; sometimes his father, Tom.
11 And then sometimes people, the planners, who worked for
12 them spoke.

13 Q. What was it about the idea, the vision of I'On
14 that you liked?

15 A. I liked that it would be open. There would be
16 deep water. There were docks. There was a large
17 parcel in the back, where there was planned to be a
18 neighborhood clubhouse. It was beautiful land and --
19 although the lot that I bought didn't have a dock and
20 it didn't have the creek behind it, I was buying into
21 that because there were going to be all of these
22 properties owned by the neighborhood, that we would
23 have -- it was open to us all the time. It was ours.
24 It was ours through our HOA owning it. But it was
25 ours, and it was open to us to enjoy any time.

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1 Q. All these things you just described, the deep
2 water, the docks, the openness, how did you learn that
3 those were things were going to be in I'On?

4 A. Again, initially, I learned it through hearing
5 the developer, you know, describe his vision and his
6 plan.

7 Q. Let's talk briefly about how you chose your
8 particular lot, how you got -- how you went about
9 actually purchasing it. Tell us how you found that
10 lot?

11 A. Well, at some point, I became interested in
12 possibly building my own home, moving from the one
13 where I had been. And I was interested in I'On because
14 of the reasons I just described. And so, initially, I
15 went to the I'On Realty sales office, which is on the
16 site in I'On, and inquired about there being any lots
17 available for building. And I found out that there was
18 an entire road that was going to open up, lots
19 available on that road, and I was very interested in
20 knowing more about it.

21 Q. And what road is that?

22 A. That's Hopetown Road.

23 Q. Is that where you own a home now?

24 A. Yes.

25 Q. Let's move ahead to the Fall of 2008 when the

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1 proposed sale of the Creek Club and the amenities
2 arose; tell us about that.

3 A. Well, I first heard about this, actually
4 through an online message board that we have in our
5 neighborhood. Anybody can post anything on this
6 message board the way it was set up then, "lost dog".
7 You know, an announcement of some sort, anyone could
8 post their information on there. And I heard -- or I
9 read a posting that someone had heard a rumor that the
10 Creek Club was being sold. And I was surprised, but
11 that's how I first learned about it.

12 Q. What did you think about that rumor?

13 A. Well, I thought it wasn't true. Like I said,
14 anyone could print anything on there they wanted, and
15 I -- I knew that the Creek Club could not be sold, so I
16 just thought it was misinformation.

17 Q. Why did you think the Creek Club couldn't be
18 sold?

19 A. Well, when I purchased my property, I
20 understood, based on what I heard from the developer in
21 the town meetings, the property where the Creek Club
22 was located was to be commonly owned by the HOA. The
23 community dock certainly, which is access from that
24 parcel, would be owned by the HOA.

25 When I purchased my lot, I received a Property

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1 Report, and that also indicated that the parcel of land
2 back there where the community dock was, was going to
3 be owned by the HOA, and it would be open and available
4 to us without any restriction on it.

5 Q. The Property Report that you received, was it
6 the 1998 -- was it the November 1998 Property Report
7 that we've seen up on the screen several times now that
8 has been marked as Plaintiff's Exhibit 1?

9 A. Yes, it was.

10 Q. Who gave you that report?

11 A. I was provided that report by I'On Realty.
12 My -- not my agent, the agent at I'On Realty, who was
13 working with me, was Laurie Thornhill, and she provided
14 me that Property Report, along with other materials.

15 Q. How, if at all, did those statements from the
16 developer that you heard in the town meetings, contrast
17 with what you understood was to happen with the
18 Creekside Park and the community dock, based on the
19 materials you received?

20 A. It was all completely consistent.

21 Q. Let's return in time to the sale of the Creek
22 Club parcel, the docks, and all that entails. After
23 you heard about the rumor, what happened next?

24 A. Well, after that, I should say that -- after
25 the rumor had circulated for a while, there was a lot

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1 of -- there was a flurry of activity and interest about
2 this. And to the point that the President of our HOA
3 also posted a message on the message board, saying that
4 he had checked out this rumor with -- I believe it was
5 Tom Graham, personally, and asked him about it. And
6 that -- and he indicated on the message board that that
7 rumor was not true; that it was not being sold. So, at
8 that point, everyone relaxed and, you know, everything
9 went back to normal.

10 Q. Was that the end of it?

11 A. No, that wasn't the end of it. It became
12 evident that it actually was going to be sold or was --
13 there was a possibility of it being sold. At that
14 point, I started looking around for information that
15 would help me understand if it were being sold, and my
16 clear understanding from what I heard the developer say
17 in person, and from what the Property Report had said,
18 my clear impression is that it could not be sold. And
19 so at that point, I set about just trying to figure out
20 how I could have gotten it so wrong.

21 Q. Prior to any sale occurring, did you share any
22 information that you had with the Board?

23 A. Yes, I did.

24 Q. And tell us about that.

25 A. I went to the Board and I said, look, they

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1 can't sell the Creek Club. This can't be done. I have
2 this document. I have this Property Report, and it's
3 very clear that the HOA is to own this property free
4 and clear of all encumbrances, and they can't sell it.
5 And by that time, too, I might add, that I had -- in
6 doing my own research and investigating, I had seen
7 other documents as well, again, trying to prove myself
8 wrong, that I had somehow misunderstood all of this. I
9 wanted to see what the facts were. I wanted to see
10 what the developer's real intent had been, so I had
11 other information, too, I could provide them.
12 Everything pointed in the same direction.

13 Q. You provided -- did you provide this
14 information to the Board?

15 A. Yes, I did.

16 Q. Did you also provide it to the Board's
17 attorney?

18 A. Yes, I did. I wanted to make sure that the
19 Board's attorney understood the information I had, and
20 I wanted him to be fully informed to work on our
21 behalf, the homeowners.

22 Q. Let me show you some exhibits that have
23 already been stipulated into evidence, Ms. Adkins, I
24 have handed you a binder that's got a number of
25 exhibits, but specifically are Exhibits 53 -- excuse

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1 me -- is Exhibit 54, your letter to the Board's
2 attorney?

3 A. Yes, it is.

4 Q. And what was the purpose of that letter?

5 A. Like I said, it was to inform him of, I
6 guess -- first of all, who I am, that I bought a lot in
7 I'On, and that I received documents that spoke to the
8 properties that were apparently going to be sold. And
9 I wanted him to understand the information I had said
10 they could not be sold. It's a pretty lengthy letter.
11 I gave him everything I had to act on my behalf -- on
12 the behalf of the neighborhood.

13 Q. And the date of the letter?

14 A. March 5, 2009.

15 Q. Additionally, Exhibits 55 and 57 are a
16 continuation of your conversation with Mr. Bouch over a
17 letter; is that correct?

18 A. Right. Mr. Bouch wrote me back and thanked me
19 for my interest. He said that it was his understanding
20 that the sale would not include anything that was to be
21 the property of the I'On Assembly.

22 Q. As a result of your communications with the
23 Board and the Board's representative -- well, after you
24 provided this information to the Board in March of
25 2009, what happened next?

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1 A. Later in March, the -- well, actually I guess
2 it's around that time that we learned that the sale was
3 not going through, that it had been -- the sale had
4 been planned, but it was not going through.

5 And then at the end of March, we learned from
6 Chad Besenfelder, who works for the developer, that the
7 developer was in the process of deeding over properties
8 to the Assembly.

9 Q. At that time, did they deed over the
10 properties to the Assembly?

11 A. No.

12 Q. What happened next?

13 A. Well, I felt better. I wasn't completely at
14 ease about the whole thing. I still had concerns. I
15 wrote a letter to the developer personally, and again
16 just wanted to state everything that I knew and remind
17 him of this. I thought it was a nice letter. It was
18 very civil and cordial, but it was a good reminder
19 letter of what I believe we had been promised, and he
20 had promised to deliver, hoping that it would resolve
21 the situation.

22 Q. I put Exhibit 63 up on the screen; is that the
23 letter you wrote to the developer?

24 A. Yes.

25 Q. And the date of the letter?

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1 A. July 15, 2009. I believe I wrote one before
2 this.

3 Q. As of this date, did you tell Mr. Graham about
4 the basis for your belief that the properties were
5 supposed to be deeded to the Assembly?

6 A. Yes. I gave a very detailed explanation.

7 Q. And in your explanation, specifically, what
8 did you tell Mr. Graham that you believed the Assembly
9 was entitled to?

10 A. Creekside Park and the community dock.

11 Q. Did you tell Mr. Graham where you believed
12 those properties to exist?

13 A. Yes.

14 Q. And where do you believe those properties to
15 be?

16 A. Well, I believe, based on the Property Report,
17 it's very clear that those two features -- and they're
18 very linked in phase II. The Property Report tells us
19 that those are in phase II of the development. As we
20 saw the Property Report lists several features that are
21 to be conveyed to the HOA, some of them are in phase
22 II, some of them are in phase II and meandering out of
23 it, through the rest of the neighborhood. But it's
24 very clear, by the way it's listed there, that the
25 community dock and Creekside Park are wholly contained

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1 within phase II.

2 Q. Do you have a specific belief as to exactly
3 where those are in phase II?

4 A. Yes.

5 Q. And tell the jury, please, where you believe
6 those two features, the community dock and Creekside
7 Park to be located?

8 A. I don't think there is any doubt that
9 Creekside Park is what we have called CV-6, the site of
10 the Creek Club; and the community dock is the large
11 dock that is accessible only through CV-6.

12 Q. What you laid out for Mr. Graham in
13 Plaintiff's Exhibit 63, those are the same claims we
14 are here for today?

15 A. Right. Right.

16 Q. The same basis for those claims, correct?

17 A. Exactly.

18 Q. Did Mr. Graham respond to you?

19 A. He did not. As I said, I believe this be a
20 second letter. I think I wrote one actually in April.

21 Q. Let me actually help you out.

22 A. Okay.

23 Q. Turn to Exhibit 65, please. You might recall
24 that the last letter, the letter that you wrote to Mr.
25 Graham, was July 15, 2009, correct?

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1 A. Right.

2 Q. Here we've got a July 27, 2009, letter to you
3 from Mr. Graham?

4 A. Right. Well, I just wanted to say that I did
5 write to him earlier. He did not respond at all. I
6 wrote again, and he responded in this July 27th letter.

7 Q. And did Mr. Graham agree with your assertions
8 regarding Creekside Park and community dock?

9 A. No. He believed that I did not buy property
10 from the I'On Company.

11 Q. If you will put up Defendant's Exhibit 26,
12 please. Ms. Adkins, on the screen you will see
13 Plaintiff's Exhibit -- or excuse me -- Defendant's
14 Exhibit 26, correct?

15 A. Correct.

16 Q. And what is that?

17 A. That is the deed to my property in I'On.

18 Q. And you are the one receiving the deed,
19 correct?

20 A. Yes.

21 Q. Who's giving the deed to you?

22 A. The I'On Company by its manager, Vince Graham.

23 Q. After you had this e-mail communication --
24 excuse me -- letter communication with Mr. Graham in
25 July of 2009, what happened next?

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1 A. I suppose that the last -- the next thing that
2 happened is that I learned in early August that the
3 property had been sold, the Creek Club property and the
4 dock had been sold.

5 Q. To someone other than the Assembly?

6 A. Yes. Yes.

7 Q. After the sale, what did you do?

8 A. Well, here we are today, this is what
9 happened. I knew that what had happened was wrong, and
10 so here we are.

11 Q. Did you do any research at -- beyond your own
12 documents, but did you do any research with DHEC, for
13 example?

14 A. I did. Again, like I said, I started
15 investigating on my own, this is how I am. If there is
16 a question, I don't just sort of fume about it or, you
17 know, just go ask other people to answer my
18 questions -- for me, I just go to the source. And it's
19 easy to find information, especially nowadays.

20 And so one of the things I did was go to DHEC,
21 and I thought that there could be some information on
22 file with all the permitting that's required with docks
23 and everything, that there could be some information on
24 the file that would help inform me as to what was
25 intended for the docks and the ownership of the docks

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1 in I'On. And so that's what I did, I got information
2 from DHEC.

3 Q. Did your research at DHEC change your view of
4 what you understood happened with regard to the
5 community dock?

6 A. No, it completely supported what I believed to
7 be true, what I knew to be true.

8 Q. Why?

9 A. Well, there was a lot of information, first of
10 all. Many, if not all, of the filings that you've
11 shown today actually were given to me by DHEC. They
12 were part of the file. But, in particular, the one
13 that I think is the most clear cut, is the plat of
14 CV-6, which we've seen many times before, that has in
15 the middle of it "Creek Club HOA". To me, that
16 answered the question.

17 Q. Plaintiff's Exhibit 5?

18 A. Yes.

19 Q. Let's back up for a second. Prior to the
20 sale, did you go to an attorney?

21 A. Yes.

22 Q. And who was that?

23 A. I went to see Tom Tisdale.

24 Q. And what did Mr. Tisdale do for you with
25 regard to these properties?

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1 A. He -- he wrote up a draft complaint in a very
2 rough form, and it was just to give me an idea of
3 something that could be done, if necessary, given the
4 worst case scenario that the properties were sold.

5 Q. Did you transmit or did you have Mr. Tisdale
6 transmit that draft complaint to the developers?

7 A. Yes. And it was sent to him in as much of a
8 courtesy as -- as a threat, because it was just saying,
9 look, these are serious matters. You made promises.
10 There are claims here, so please understand that
11 something needs to be done so that it doesn't come to
12 this.

13 Q. On the screen you'll see Plaintiff's Exhibit
14 61, is that the transmittal letter from Mr. Tisdale to
15 the Grahams?

16 A. Yes, I believe so, yes.

17 Q. And it was June, 2009; is that correct?

18 A. Yes.

19 Q. In response to that letter, did the
20 developers, Mr. Graham, did they respond?

21 A. Yes.

22 Q. Up on the screen, we're putting Plaintiff's
23 Exhibit 62; the July 3rd, 2009, letter, correct?

24 A. Correct.

25 Q. And what is that letter?

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1 A. This is a letter back to Tom Tisdale from
2 Vince Graham.

3 Q. In response to Mr. Tisdale's draft complaint
4 and inquiry?

5 A. Yes. Yes.

6 Q. In response, what did the Grahams tell you --
7 or I should say Mr. Tisdale, what did they tell Mr.
8 Tisdale?

9 A. That our assumptions were incorrect, and that
10 Creekside Park is actually a two and a half -- two to
11 two and a half mile linear park that goes along the
12 marsh. And as far as the docks, that they had already
13 conveyed the docks to the Assembly.

14 Q. Until you began inquiring as to the location
15 of the Creekside Park and making sure that it wasn't
16 sold to any outside party, had you ever heard of
17 Creekside Park being the Marshwalk?

18 A. No.

19 Q. Never in the prior six years you've lived in
20 the property, you never heard that previously?

21 A. No. In fact, I had never heard the term
22 Marshwalk Park. It was the trail, the walking trail.
23 You know, it was referred to informally, but I never
24 knew that it had a name.

25 Q. Jumping again ahead in time, you've told us

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1 that the sale occurred to somebody else -- well, let's
2 stop for a second. Were you part of some scheme to
3 manufacture a claim?

4 A. No, I am not.

5 Q. Are you a member of some Free Civic Lot Gang?

6 A. No, I'm not. I don't -- I don't think even
7 Mr. Duffy believes that. I think he's doing his job,
8 but I am not a member of any sort of gang or scheme to
9 do anything wrong.

10 Q. Are you aware of the existence of any gang or
11 group that's trying to get a free civic lot under this?

12 A. No. No.

13 Q. Has anyone put you up to this?

14 A. No.

15 Q. How much did you pay for your lot?

16 A. \$159,000.

17 Q. What did you expect to receive for the
18 \$159,000 you paid the I'On Company?

19 A. Well, I received my lot where I was going to
20 build my house. And along with that came the things
21 that come with the neighborhood, and that included the
22 open areas, which I really bought into. That was very
23 important to me, that the prettiest parts of I'On, in
24 my opinion, the water, the creek, the views, it wasn't
25 saved just for the people who could afford a lot right

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1 there where it was located, but it was for everyone.
2 And it was ours. It was open. I didn't need my own
3 dock. I didn't need my own creek, I had it. It was
4 just down the street.

5 Q. Was there a separate fee for parks, the dock,
6 the sidewalks, the trails, was there a separate fee you
7 paid for that?

8 A. No. That was built into my purchase price.

9 Q. What amount are you asking the jury to award
10 the Assembly for compensation for its loss?

11 A. I have given a lot of thought to this, and the
12 amount that I believe the Assembly should receive is
13 two and a half million dollars.

14 Q. How did you reach that number?

15 A. Well, first of all, the Assembly had to spend
16 \$495,000 to buy back the property that was ours. We
17 had to buy it back, so that's the first part, roughly
18 half a million. Part of the condition of buying it
19 back, we bought it from the people who bought it from
20 the developer, and they are running a business there.

21 And part of their demand back of us in this
22 deal, is that they could operate their business there
23 for a period of 20 years, and they would pay us in
24 lease payments \$1 a year. At the end of 20 years, they
25 had an option for more years to be added on to that.

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1 Now, the value of that lease for the 20 year
2 period alone, if -- if we were just going out to look
3 for someone to lease our property who wanted to run
4 their business, then we could collect a pretty good
5 monthly rent from them for that. And so figuring
6 conservatively on what we could get from our client
7 over 20 years, that comes to roughly \$2 million
8 dollars. We are getting \$20.

9 At the end of that 20 years, in order to buy
10 them out and have them move their business out of our
11 neighborhood, which is what we would want to do as soon
12 as possible, we would have to pay them a \$1 million
13 dollars. That would buy them out of the extra years,
14 so that brings us to three and a half million dollars.

15 Then the developer has maintained all along that
16 we have no right to the Creek Club. I believe that the
17 Creek Club building is our neighborhood clubhouse. It
18 was always described, that there would be a
19 neighborhood clubhouse on the property in the back
20 where the boat ramp, community dock is located. That
21 is our neighborhood clubhouse, but we haven't used it
22 as such for a lot of years. We haven't been able to.

23 So I thoroughly believe that we are entitled to
24 that building. They do not. They also don't believe
25 that we are entitled to a parking lot that is up the

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1 street, that's absolutely necessary for whoever owns
2 CV-6, the Creek Club site. The Creek Club site cannot
3 function without that parking lot up the street,
4 because there's simply not enough parking to meet the
5 town code, if nothing else on the side. They believe
6 we aren't entitled to that. In all fairness, if you
7 take out the Creek Club building and the overflow
8 parking lot, I think you can come down to a very sound
9 and conservative two and a half million dollars.

10 Q. The latter part you just described for us,
11 about the Creek Club overflow parking lot, which we've
12 also heard as CV-5, correct?

13 A. Yes.

14 Q. That's how you got to three and a half from
15 two and a half?

16 A. Yes.

17 Q. How about you personally?

18 A. Personally, I feel like within my lot purchase
19 price, I paid for the community dock. I paid for the
20 deep water, the views, a park where we could go and
21 spend time, the entire neighborhood could come together
22 and spend time. I would not have paid what I did for
23 my lot had I not been promised those features. And so
24 for my own personal loss, I assign \$50,000 to that. I
25 would have paid less than I did -- approximately that,

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1 much less if those were not features that came with my
2 lot.

3 Q. The jury heard earlier -- maybe it was
4 today -- regarding the case starting with just Mr.
5 Walbeck, and you joining in subsequently?

6 A. Right.

7 Q. Why did you join Mr. Walbeck in this suit?

8 A. I felt like that Brad was good to go on his
9 own. The facts speak for themselves. You know, this
10 case is just facts. But I felt like if I could help
11 him in anyway, I certainly felt strongly about the
12 case, and I felt like I had something to offer.
13 Frankly, I wouldn't want to be sitting there by myself
14 today. It was the right thing to do.

15 MR. EVANS: Thank you, Ms. Adkins.

16 THE COURT: Cross examination. Why don't we check
17 and see if the jury's lunch is here.

18 THE BAILIFF: Lunch is here.

19 THE COURT: Okay. Are you hungry? Okay. Why
20 don't we take about a 40 minute break, 45 minute break
21 for lunch. I need to let the lawyers get something to
22 eat as well. Please don't discuss anything about the
23 case, but do pick a foreperson for your jury. I like
24 for y'all to pick your own foreperson, and they will
25 sit in this seat in the front to your far left for the

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1 remainder of the trial.

2 The foreperson doesn't have any importance more
3 than anybody else on the jury, other than the fact that
4 they write out questions that you might have for us.
5 And at the end of the trial, they actually fill out the
6 verdict form that everybody comes to a unanimous
7 decision on. So if y'all would work on that over
8 lunch, we will see y'all about 1:15. Thank you very
9 much.

10 (WHEREUPON, the jury leaves the courtroom at
11 12:28 p.m.)

12 THE COURT: And, ma'am, you're welcome to step
13 down and have lunch. You may not discuss your
14 testimony with anyone unless your testimony is
15 complete. Okay. Thank you very much.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Anything I can work on
18 over lunch? I have read the Mike White submissions and
19 the objectionable part. I know y'all were going to
20 work on it, too. I can -- we can argue that now or do
21 it after lunch, or after y'all talk. How do you want
22 to do it?

23 MR. LUCEY: Can we talk first and e-mail you, Your
24 Honor?

25 THE COURT: Perfect. No problem. Anything else I

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1 need to be working on over lunch, or y'all need me to
2 look at?

3 MR. LUCEY: No.

4 THE COURT: All right. Then why don't y'all take
5 until 1:15, y'all have been working hard -- I'm sorry
6 for the short lunch. It's not fair, but we are trying
7 to get it in, in a week. Thank you. We'll be at ease.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: I hope you all had a nice, abbreviated
10 somewhat lunch. Okay.

11 MR. YOUNG: We have one brief issue, if you want,
12 Your Honor, regarding Mike White's deposition.

13 THE COURT: Yes.

14 MR. YOUNG: I'll let Mr. Lucey explain it, but we
15 worked out just about everything.

16 THE COURT: Wonderful. Okay. And I have reviewed
17 it and reviewed your designated numbers.

18 MR. LUCEY: Thank you, ma'am.

19 MR. YOUNG: May he explain the only one remaining
20 disagreement?

21 THE COURT: Okay.

22 MR. YOUNG: I objected during the deposition --
23 there was some questions starting around page 18, I
24 think it is. It had to do with -- yeah, page 18 line
25 17. Mr. Lucey was -- Mr. Evans was asking Michael

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1 White if he had spoken to the town planner, Ms.
2 Betelli, or whoever she is, at the Town of Mount
3 Pleasant. And what they are trying to do is link up
4 CV-5 and CV-6 based on what Ms. Betelli told him.

5 And in talking with the opposing counsel, I
6 agree certainly that an expert is entitled to rely on
7 hearsay statements, if it's something they normally
8 rely on. And in the transcript, they went on and asked
9 Mr. White exactly that.

10 They asked Mr. White on page 21 at line 6, "Do
11 you regularly check in with the Town of Mount Pleasant
12 zoning folks when performing appraisals?"

13 And he said "Yes."

14 "Do you check with any zoning folks as part of
15 your protocol when performing an appraisal?"

16 And he said, "Yeah, when there's something in
17 question."

18 So, based on that, I think it's fine for them to
19 offer his testimony all the way up to page 19, line 22,
20 which is where Mr. White says -- and this is after my
21 objection, but he says, "My understanding is that it
22 could be only used -- the lot -- excuse me -- for civic
23 purposes, such as a school, parking lot, or some other
24 acceptable civic use". So I think based on what he
25 testified to, he went -- like he normally would do --

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1 to find out about the appropriate zoning uses for the
2 lot. But where I think he goes too far is, when he
3 says, "she told me parking -- that there are parking
4 restrictions that require lot five to be tied to lot
5 six", and so we would stand by that objection and ask
6 that that not be published to the jury.

7 THE COURT: Okay.

8 MR. LUCEY: Yes, ma'am. The represented purpose
9 for that subject matter is not as stated. Just prior
10 to his objection, he provides his opinion of value as
11 to lot CV-5. And the question posed was, what
12 adjustments did you make in providing that value. He
13 gave one set of adjustments for one reason. He was
14 asked, are there any other adjustments? Yes, I
15 adjusted because of the restrictions on its use. He
16 goes on to say after -- or what those restrictions are.
17 At no point in his publication, is he asked to say what
18 somebody else said, he's asked what his understanding
19 of that restriction is that affects this valuation.

20 The relevance of the CV-5 valuation, Your Honor,
21 is several fold. Primarily for us, as we perceive it,
22 the defendants will be seeking a reduction for the
23 value of that transfer. And the fact that it was
24 restricted and in use affected his valuation of that
25 piece of property, Your Honor.

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1 THE COURT: Okay. And I understand that, but a
2 good portion of what Mr. Young objected to doesn't have
3 anything to do with the valuation of the property, it
4 has to do with showing that, perhaps, the defendants
5 weren't using it correctly, solely just to -- in an
6 attempt to inflame the jury, and I've got a 403 problem
7 with it.

8 I think that he can certainly testify as to the
9 value of CV-5, and that it has certain restrictive
10 uses, but I'm not going to allow him to go into the
11 objectionable areas regarding what Ms. Bettelli told
12 him about that, and any speculation that he may have
13 had about that. So I'm going to grant their motion to
14 exclude that portion from the transcript, except -- and
15 I don't even see the value in that part that's objected
16 to. That's above it, correct?

17 MR. LUCEY: It is above it, and it's follow-up on
18 the valuation from page 17, I believe.

19 THE COURT: Okay. All right. I'm going to allow
20 the value, but I'm not going to allow the follow-up
21 portion that starts -- I believe, you said at page 19,
22 line what?

23 MR. YOUNG: Twenty-three, Your Honor.

24 THE COURT: Nineteen, line 23. Y'all numbered the
25 pages different that I would have with the numbers at

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1 the top; 19, line 23 is a little bit different than
2 what was in the e-mail. Okay, so it's just now that
3 you object to 19 line 23 through the original objection
4 line -- that's what I made my notes on.

5 MR. YOUNG: Yes, ma'am. And for the court's
6 benefit, I'll hand up --

7 THE COURT: I have the notes right here. Well, it
8 originally was 18 line 11 to 21 line 14, now we're just
9 talking about 19 line 23?

10 MR. YOUNG: Yes, ma'am.

11 THE COURT: Through 21, line 14?

12 MR. YOUNG: Yes, ma'am.

13 THE COURT: Okay. We will strike that part, 19
14 line 23, through 21 line 14. And, also, are y'all
15 going to read in the deposition or is it a video?

16 MR. LUCEY: It's a video, Your Honor.

17 THE COURT: I would like for you, if possible, to
18 redact -- there's an on-going series of objections all
19 through the -- a good bit of the deposition that I
20 believe y'all indicated y'all have resolved. So if
21 that can't be redacted, we may need to just read this
22 one in.

23 MR. LUCEY: Mr. Koon believes he's redacted all of
24 the objections, Your Honor.

25 THE COURT: Perfect. Okay. Great. All right.

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1 What's next?

2 MR. YOUNG: That's all, Your Honor.

3 MR. LUCEY: That's all, Your Honor.

4 THE COURT: Okay. We'll see if -- if you'll come
5 on back up to the witness stand -- is everybody ready
6 for the jury? We are?

7 MR. LUCEY: Yes, Your Honor.

8 THE COURT: All right. Let's bring them on in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 1:37 p.m.)

11 THE BAILIFF: Your Honor, the foreperson has been
12 selected. This is our foreperson.

13 THE COURT: The foreperson has been selected.
14 What's her juror number, please, ma'am?

15 JUROR: Two sixty.

16 THE COURT: Juror 260. Thank you for serving as
17 our foreperson. I hope y'all had a nice lunch. We are
18 ready to continue with the testimony, so I'll call upon
19 Mr. Duffy for his cross-examination.

20 MR. DUFFY: Thank you, Your Honor.

21 **CROSS EXAMINATION BY MR. DUFFY:**

22 Q. Good afternoon, Ms. Walbeck -- Ms. Adkins --
23 I'm sorry. I'm messing that all up, and I don't want
24 to start with that. I apologize if I suggested a
25 different relationship than exists with you and Mr.

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1 Brock, so I didn't mean to mistake anything in the
2 opening when you corrected me. I thought you had told
3 me otherwise, so I apologize. But let me -- you and
4 Mr. Brock are together; is that fair?

5 A. Together as a couple?

6 Q. Yes.

7 A. Yes. We live together. We are a couple.

8 Q. Okay. Thank you. Now, you -- on your direct
9 examination, you indicated that you never heard
10 Marshwalk described as Creekside Park; is that right?

11 A. No, not until that was used as the explanation
12 by Vince Graham in his letter.

13 Q. Okay. And you never heard of CV-6 called the
14 Creekside Park either, had you?

15 A. No. I had not heard, in practice, anything
16 called Creekside Park.

17 Q. Okay. And you brought up the letter to Mr.
18 Graham and his response, and you indicated with what
19 Mr. Evans was showing you, that you had written a
20 couple of times, and didn't get something back. And
21 all the explanation you got back was that he didn't
22 think you purchased them, so I want to unpack that a
23 little bit. At the time, you and Mr. Matt Walsh were
24 having various communications together about these
25 issues; is that right?

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1 A. We were. Matt Walsh is a member of the I'On
2 Assembly Board and --

3 Q. I'm sorry.

4 A. I'm sorry. In particular, I think his role on
5 the Board was that he was the amenities contact. And
6 so if you had questions about the amenities in I'On, he
7 was your go-to person. You should address it to him.

8 Q. Okay. So, in any event, you and Mr. Walsh
9 were having some back and forth, and he was sharing
10 those concerns with Mr. Vince Graham; is that right?

11 A. Yes.

12 Q. And Vince Graham responded to Mr. Walsh's
13 concerns; is that right?

14 A. Yes.

15 Q. Directly, right?

16 A. Directly to Matt.

17 Q. Right. And didn't wait to respond; is that
18 fair? He responded directly to when Mr. Walsh asked
19 him the questions?

20 A. I don't know the timeframe of how quickly he
21 responded.

22 Q. You don't think he waited months to respond to
23 Matt Walsh; do you?

24 A. No. No.

25 Q. Okay. And eventually it was brought to Mr.

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1 Graham's attention that you had written him and he had
2 not responded; do you recall that?

3 A. Yes.

4 Q. And he wrote and apologized to you, and said I
5 thought my communications with Matt Walsh were getting
6 to you because y'all -- it was the same language that
7 was being sent. And he -- Matt Walsh -- had been
8 telling Mr. Graham "I have a concerned resident", and
9 here is the language; is that fair?

10 A. Right. Matt had communicated my concerns to
11 Vince Graham. As I was communicating to Matt Walsh my
12 concerns, and again trying to be as informative and
13 forthcoming as I could with the information, I have
14 this, there's this, there's this, you know, look at
15 what I'm saying here. It's important. These
16 properties can't be sold. They are trying to sell our
17 property.

18 Matt would take my information, apparently, and
19 just forward it to Vince Graham. He would forward my
20 e-mail to Vince Graham. And I suppose Vince would
21 respond back to Matt. And then Matt would just say,
22 "well, here you go", so Matt was really just passing
23 information back and forth. I wasn't aware of that the
24 whole time, but I became aware of that later on.

25 Q. So, you don't think it would be unreasonable

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1 for Vince Graham to think his messages were getting to
2 you?

3 A. Um, I don't know what Vince thought, but I
4 will say that the purpose of my attorney following up
5 with Vince wasn't because he hadn't used good etiquette
6 in responding, that wasn't the point at all. It's just
7 that, you know, I had personally -- not e-mailed him,
8 not called him on the phone, but I had taken the time
9 to write a letter. It was a very involved letter. It
10 had sort of a personal attachment at the end that said,
11 "look, I hope we can work this out. I don't like
12 fighting about these things. I don't want to be
13 fighting. I want us to resolve these problems and go
14 on, so let's resolve the problem".

15 So I did find it odd that he didn't respond,
16 that he didn't take the time to just write back. That
17 just seemed like what you would do, but it didn't
18 bother me that much. It wasn't an issue for me.

19 Q. To be fair, Vince gave a detailed explanation
20 of the linear park, didn't he?

21 A. To Matt Walsh.

22 Q. Right. Right. And ultimately, the same
23 explanation to you and to Mr. Walbeck later?

24 A. Matt passed that along to me. And then once
25 my attorney, Tom Tisdale, wrote to Vince, Vince wrote

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1 back to him, and he did say that he apologized for not
2 having responded to me.

3 Q. Okay. Now, these inquires of Mr. Graham, are
4 they the first time that you had ever asked anybody
5 associated with the I'On Company what Creekside Park
6 meant?

7 A. I can't recall talking to anybody at the I'On
8 Company about that.

9 Q. Okay. Did you ever ask anyone about -- at the
10 I'On Company, about what the community dock meant in
11 the 1998 report until you wrote, in 2009, to Vince
12 Graham?

13 A. No. Because I had no reason to raise the
14 question.

15 Q. Ms. Adkins, let's look at Defendant's Exhibit
16 32, please. Ms. Adkins, you wrote to Mr. Bouch, who
17 was the attorney for the Assembly, in March of 2009; is
18 that right?

19 A. Yes.

20 Q. And you essentially were giving him what you
21 understood to be the Creekside Park and the community
22 dock in your -- in your understanding at this point; is
23 that right?

24 A. I was describing to him?

25 Q. Right.

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1 A. Yes. Uh-huh.

2 Q. Okay. And let's look at the paragraph -- the
3 next to the last paragraph, please, Lea Ann. Now, you
4 agree with me that you say that -- to define what these
5 things are, you have to look at other documents
6 including the Impact Assessment; isn't that right?

7 A. That's what I said. I think that you brought
8 up a point a while ago, about anyone calling that
9 property where the Creek Club is today, Creekside Park.
10 And as Tom Graham testified, they never actually called
11 anything Creekside Park, although it had been listed in
12 the Property Report that way.

13 In practice, I think for the reasons he stated,
14 I assumed that that's why they decided not to call it
15 that, because it turned out that there was a
16 subdivision in Mount Pleasant by the same name. And as
17 he said it could cause some confusion.

18 So, it's not as if we all could say, oh, there's
19 Creekside Park. The property had never been called
20 that, ever, that I knew of, except in the Property
21 Report.

22 Q. Right, but --

23 A. And so then you've got the community dock and
24 Creekside Park, which are now becoming -- their
25 identity is being questioned. And so the reason I

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1 mentioned the Impact Assessment is that -- as Justin
2 Lucey showed us earlier with the Impact Assessment, it
3 has a photograph. And so, you know, if there are any
4 questions about what the community dock is, it should
5 be resolved by looking at a photograph of the community
6 dock. And I -- I think it's very clear what the
7 community dock is. It's the dock on the Creek Club
8 parcel with the architectural feature of the pavilion.
9 We all know what it is. The community dock in
10 Creekside Park are very tied together in the Property
11 Report. They are listed together and they are --

12 THE COURT: All right, ma'am. I'm going to stop
13 you. I've lost the question. If you'd repeat the
14 question, and please answer the questions that are
15 directed to you. Okay.

16 A. Okay.

17 BY MR. DUFFY:

18 Q. I'm sorry. I've lost the exact question as
19 well, but let's just say this: Is it fair that you
20 didn't know from looking at the 1998 Property Report,
21 what the Creekside Park references?

22 A. No. I understood from looking at the Property
23 Report what it was, but I think --

24 Q. When you bought your property?

25 A. Yes, when I bought my property, but I think we

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1 need to look at a photograph of the dock in the Impact
2 Assessment. It certainly clarifies what the community
3 dock is.

4 Q. Right. I'm asking about the Creekside Park.

5 A. Right. Well, the Creekside Park is listed in
6 the Property Report with the community dock. We know
7 they are both located in phase II. Keeping to your
8 question, I think the Impact Assessment helps clarify,
9 but I don't think it's absolutely necessary. You can
10 determine what it is by looking at the Property Report
11 as well.

12 Q. Do you agree with me that you described it in
13 your deposition as vague?

14 A. I described what?

15 Q. The references to the Community dock in
16 Creekside Park in the '98 Property Report?

17 A. Vague -- well, it doesn't -- it doesn't tell
18 you what the dimensions will be. It doesn't say what
19 the address will be, but it's pretty clear to me, based
20 on what it does say, what it is.

21 Q. Ma'am, do you agree with me that you would
22 describe it as vague?

23 A. It could be described that way.

24 Q. Now, this Impact Assessment and the Army Corps
25 plan that was referenced earlier in your testimony, had

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1 you seen any of that before you purchased your
2 property?

3 A. No. And I explained that a while ago, that is
4 what I found when I went looking for clarification for
5 myself really, to understand how I had been so mistaken
6 in what I believed to be the plan for those properties;
7 so I went looking after the fact and I found those
8 documents.

9 Q. Ms. Adkins, would you agree with me that
10 the -- what you're contending the Creekside Park and
11 community dock are that were supposed to be conveyed to
12 the Assembly, were supposed to be conveyed upon
13 completion of construction; is that right?

14 A. That's what the Property Report says.

15 Q. Okay. And when did you purchase your
16 property?

17 A. In 2003.

18 Q. Okay. And the community dock, as you would
19 call it, and Creekside Park would have already been
20 completed by the time you purchased; is that right?

21 A. Those facilities were completed. I'm not
22 sure, though, Brian, that it's talking about completion
23 of those facilities. It says that after the facilities
24 are built, the HOA is going to be responsible for
25 paying for them. Our dues may be impacted by that, but

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1 it says later that conveyance, which is where they deed
2 them over, will happen after construction is complete.

3 Q. Well, when did that happen; do you know? When
4 construction was completed?

5 A. Well, there's a question as to whether
6 construction is complete yet even today of I'On --

7 Q. So that --

8 A. It could be construction of the neighborhood.

9 Q. So by that interpretation, they wouldn't have
10 breached any duty -- if -- if it's not completion of
11 construction when these happened, and construction
12 isn't otherwise complete, then they haven't breached
13 any duty because they haven't finished construction
14 yet, and they can convey it at any time?

15 A. No, they breached that when they sold it out
16 from under us.

17 Q. Well, they could still get it and sell it back
18 and convey it back -- if the duty hasn't arisen yet; is
19 that right -- is it your contention -- let's look at
20 the Property Report, Lea Ann. That is page 22 of the
21 Property Report, Defendant's 22. Just to give you
22 context of what we're taking about here. The next page
23 please. Transfer of the facilities; is this what we
24 are talking about, Ms. Adkins?

25 A. Yes, I believe so.

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1 Q. Okay. "The recreational facilities listed in
2 the chart above shall, upon completion of construction,
3 be conveyed to the I'On Assembly". Now, are you
4 telling me that it's your understanding that completion
5 of construction means when they are completely finished
6 building every phase of I'On?

7 A. Well, it certainly could be because, you know,
8 they still haven't conveyed a lot of properties that
9 are to be conveyed to the I'On Assembly, so I think
10 that's entirely possible. They could have actually
11 held ownership of these properties until they're ready
12 to -- until they are finished with the neighborhood and
13 then hand them over. It certainly doesn't tell us here
14 that they could sell them to someone else.

15 Q. Okay. Now, completion of construction -- tell
16 me -- you know, you said the facilities that we're
17 talking about as Creekside Park and community dock were
18 complete by the time you purchased in 2003; is that
19 right?

20 A. Yes.

21 Q. When did you understand first -- let's start
22 first with the recreational -- the easement and
23 recreational use agreement, when did you have -- when
24 did you learn about that?

25 A. I can't pinpoint when I learned about that. I

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1 don't know -- to be honest, that's another one of those
2 things that people were saying, I hear there's an
3 easement on the property back there, and I don't know
4 when I first heard of that. I don't know if either --
5 when I first saw the easement, I don't know.

6 Q. Okay. We'll try to be quick about it. If
7 you -- do you dispute that -- you had indicated in your
8 deposition you learned about it when the sale was being
9 rumored?

10 A. Right. I think the first time I actually saw
11 it was whenever -- there was the rumor of the sale
12 happening. And at some point, I saw a paper copy of
13 it.

14 Q. Okay. And is that the same time when you
15 learned that the I'On Company would not be deeding
16 these facilities, that you contend were in here, to the
17 homeowners association?

18 A. Well, I assume if they're going to sell the
19 property to someone else, they are not going to convey
20 it to us.

21 Q. Right. Is that the first time you understood
22 that was what was happening?

23 A. Yes.

24 Q. That they weren't going to convey them to the
25 Assembly, but you found out they were going to sell

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1 them to somebody else?

2 A. Right.

3 Q. For identification, if we could mark this
4 please.

5 (Court's Exhibit No 5 marked for
6 identification.)

7 BY MR. DUFFY:

8 Q. Ms. Adkins, I'm handing you Court's Exhibit 5,
9 I believe. Tell me if you have seen that before and
10 understand what it is?

11 A. This is a verification that says that, "I, Lea
12 Ann Adkins" -- I am verifying that everything in this
13 case -- in the second amended complaint in this case is
14 true.

15 Q. Okay. And that -- you understand that that is
16 a sworn declaration to the court; is that right?

17 A. Yes, it is.

18 Q. And that the purpose of that is for this type
19 of suit when you are trying to bring an action on
20 behalf of an entity, you have to do this type of thing;
21 is that a fair statement?

22 A. That's fair.

23 Q. Now, in the second amended complaint,
24 there's -- you indicate -- and maybe I'll make it
25 easier so we are not -- be easier for you to read along

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1 with me than me to read it to you. You see, Ms.
2 Adkins, I handed you the second amended summons and
3 complaint, it goes with the verification that you are
4 looking at?

5 A. Right.

6 Q. Okay. Turn with me, please, to page five of
7 that.

8 A. Okay.

9 Q. All right. Paragraph 36 states "that the
10 original Property Report" -- referring to the '98
11 Property Report --

12 A. Right.

13 Q. "Continued to be distributed to potential
14 purchasers with the intent that the information
15 contained in said report would be relied upon by
16 potential buyers when making their decision to purchase
17 a lot in I'On"; do you see that?

18 A. Yes.

19 Q. Now, the basis of that -- the background of
20 that, at least, is you are aware that the Property
21 Report had been amended in 2000; is that right?

22 A. I am aware of that now, yes.

23 Q. And you bought in 2003, and contend that you
24 got the 1998 Property Report, right?

25 A. I did receive the '98 report.

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1 Q. Okay. And you contend that other people were
2 like you, who bought later and got the later report?

3 A. I know I got it.

4 Q. Okay. Well, what does it say in the -- in the
5 statement here, "it continued to be distributed to
6 potential purchasers"; is that right?

7 A.. Yes.

8 Q. Okay.

9 A. Well, I don't think I was singled out for any
10 reason that only I received that report. I'm assuming
11 that I received it and others did, too.

12 Q. And you -- but you didn't ask anybody or
13 didn't know -- you didn't know that anyone did when you
14 swore to the complaint; is that fair?

15 A. I -- I believed that that was a routine
16 practice based on the fact that it was handed to me by
17 an I'On real estate agent, and it seemed rather
18 routine.

19 Q. And that was Laurie Thornhill; is that right?

20 A.. Yes.

21 Q. Please put up Defendant's Exhibit 65. Do you
22 see at the bottom, this is Laurie Thornhill's signature
23 on a property report receipt?

24 A. Yes.

25 Q. Okay. And let's look at the top, please, Lea

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1 Ann -- this is Mr. Wilcox, who became the president of
2 the homeowners association, purchasing in mid 2002; do
3 you see that, where he signed for the report?

4 A. I think so. I can't really make out his name,
5 but I'll take your word for it.

6 Q. Okay. Well, do you see -- either way, do you
7 see somebody is getting it in May 24, 2002, is getting
8 a Property Report; is that right?

9 A. Yes.

10 Q. And do you see that the date of the Property
11 Report is December 29, 2000?

12 A. Yes.

13 Q. Which would have been the last Property Report
14 before Mr. Wilcox, or whomever it is, got this report
15 in '02?

16 A. I assume so.

17 Q. And Ms. Laurie Thornhill gave them that
18 report; is that right?

19 A. I believe that her name was down below there,
20 yes.

21 Q. Now, similarly, if we look back -- we can take
22 that down -- if we look back in the complaint,
23 paragraph 38 says, "plaintiffs and other purchasers
24 relied upon representations described in the foregoing
25 paragraphs when they made a decision to purchase their

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1 lots"?

2 A. You are back on...?

3 Q. I'm sorry. Back on the complaint, page five,
4 paragraph 38.

5 A. Okay. Yes.

6 Q. Okay. Now, isn't it true that at least -- as
7 far into the case as when we took your deposition, that
8 you hadn't asked anybody else -- or maybe you had
9 actually asked one or two people, and nobody could
10 remember getting one or relying on one; is that right?

11 A. I had asked -- I know some people down the
12 street, I had asked them because they bought a brand
13 new house, never lived in, in I'On. The Property
14 Report, as I understood it, was only given to people
15 buying lots and building houses; and so original lot
16 owners.

17 I thought that they were original lot owners,
18 but it turned out that the builder had bought their lot
19 and built a spec house on it, that's what they had
20 bought. So I don't know of anyone else -- I can't
21 remember anyone else that I asked.

22 Q. Okay. So at the time here, when you say
23 specifically "plaintiffs", you and Mr. Walbeck, and
24 other purchasers relied on those representations, you
25 had asked some people and nobody could tell you they

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1 relied on it; is that right?

2 A. Brad and I relied on those representations.
3 And like I said, I assume that that was a routine
4 practice. It was given to me. I can't imagine why I
5 would have been treated any differently in buying my
6 lot --

7 Q. Right, but --

8 A. -- or I would have been given different
9 information.

10 Q. I understand that assumption, but we're
11 talking about something different now, not who got the
12 report and when, but who relied on it, right?

13 A. Right.

14 Q. Okay. And you just weren't aware of anyone
15 else at the time, were you?

16 A. No. I relied on it, I knew that.

17 Q. And you brought up a point there, when you
18 were talking, the Property Report distribution is
19 really limited to people who were buying lots directly
20 from the I'On Company; is that right?

21 A. That's right.

22 Q. And, in fact, a whole lot -- and most of the
23 properties that have been sold out there, were first
24 bought by a group of builders or contractors who then
25 resold to people they are going to build a house for;

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1 is that right?

2 A. I believe so.

3 Q. Okay. And you, in fact, had contacted a
4 builder, who was already lined up with your particular
5 lot, when you purchased it; is that right?

6 A. Right.

7 Q. Right.

8 A. That's right.

9 Q. So the fact that Mr. Vince Graham had a record
10 of that lot in particular being connected to Somonini
11 Builders, who you ended up with an arrangement with,
12 would help explain his understanding that he sold that
13 property to -- the I'On Company sold that property to a
14 builder and not to you directly?

15 A. Well, perhaps that could explain some
16 confusion, but it's a pretty big detail and those
17 details matter. I was coming to him, as a lot
18 purchaser in I'On. I had bought a lot from the I'On
19 Company. The fact that he was confused about it, maybe
20 he should have checked into that; maybe he should have
21 said, well, you know, she seems to have some real
22 concerns here, can someone find out for me. Did she
23 actually -- I don't seem to remember buying this. You
24 know, there were lots of things he could have done, but
25 what he did was dismiss everything because he believed

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1 I didn't buy a lot from the I'On Company, which was
2 inaccurate.

3 Q. Ms. Adkins, the contention that the homeowners
4 association was supposed to get deeded to it free and
5 clear, and free of charge, the Creek Club building, the
6 boat ramp, the parking lot by the Creek Club building,
7 the staging dock, what does that come from in the
8 Property Report?

9 A. Well, I believe that's Creekside Park.

10 Q. Okay. But there's no specific representation
11 that any of that stuff is going to be built on
12 Creekside Park, is there?

13 A. It says "Creekside Park". We know it's a
14 park. We know it's at the creek's side. Hobcaw Creek
15 only comes up to the property of I'On at lot CV-6.
16 It's very clear. We know that Creekside Park is
17 located in phase II of the development. But we also
18 know, if you look carefully at that chart of
19 recreational facilities, that it's wholly contained
20 within phase II; and so Creekside Park is clearly that
21 parcel of land.

22 I don't think they needed to say everything that
23 would come on it. Maybe they didn't know for sure at
24 that point. But if you are promising that parcel of
25 land, then you get what comes with it, whatever that

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1 might be. It's that parcel and what comes with it.

2 Q. Right. And so from your perspective of these
3 claims, it is your -- the Assembly -- it would be the
4 Assembly's good fortune that they made all those
5 improvements on the parcel that you contend was to be
6 deeded to the Assembly?

7 A. Well, I don't know that it was unexpected
8 because there were representations that there would be
9 a neighborhood clubhouse, and that it would be on that
10 property. There was a building built. It was referred
11 to as a neighborhood clubhouse and it's on that
12 property. There is a dock there, our community dock.
13 It's accessible across that land. I think it just goes
14 without saying that whatever is on that property is
15 what comes with it.

16 Q. Okay. But there was no specific promise of a
17 building; can we agree on that?

18 A. No. There was just what there was in the
19 Property Report. However, I will add one thing. And
20 it's important -- also, what I was given by Laurie
21 Thornhill from I'On Realty, was a sales brochure, a
22 foldout map of I'On, and I think we've already seen it
23 here. On that map, which gives a representation of the
24 neighborhood, it shows there being a building on CV-6.
25 And I noticed even today on these dock plans -- Corps

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1 of Engineer plans, things of that sort that were being
2 shown, there's a little building on CV-6. It was
3 represented in the town meetings by Vince. It was
4 talked about that there would be a neighborhood
5 clubhouse on that property, and there was a building
6 built on that property, and it's called -- by many
7 people -- our neighborhood clubhouse.

8 So I think it was promised that it would be
9 there. It doesn't have to state it in the Property
10 Report. It's saying there's going to be Creekside
11 Park. There it is, and you get what comes with it.

12 Q. Okay. Well, I want to make sure I'm clear
13 about something, because there's been, I think, a
14 little bit of distinction in how things have been
15 described. Do you contend that the Creekside Park is
16 the area in front or just to -- just to the left of the
17 Creek Club building, that's landscaped; or do you
18 contend it's all of civic lot six?

19 A. I think it's all of civic lot six.

20 Q. Now, you're familiar there are other civic
21 lots in I'On?

22 A. Yes.

23 Q. Okay. And that they are privately owned?

24 A. Yes.

25 Q. By people other than the homeowners

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1 association?

2 A. Right.

3 Q. And, in fact, when something -- the map that
4 you referred to, indicated there was going to be a
5 building there, it was going to a building on civic lot
6 six; is that right?

7 A. That's right.

8 Q. And the building is on civic lot six?

9 A. Yes, it is.

10 Q. Now, I want to touch on a couple of things
11 about the damages that you described, one of them was
12 based on the value of the lease that the Assembly has
13 made -- brokered a deal with 148 Civitas, what the
14 value of that lease is; is that fair?

15 A. That's fair.

16 Q. And the value of that lease, would you agree
17 with me, is based on the operation of the Creek Club
18 building?

19 A. Yes. I -- I would say so.

20 Q. And --

21 A. And can I add one thing -- the operation of
22 the Creek Club building as a wedding venue, it spills
23 to the outside. There is a lawn, I'll call it, next to
24 the building -- and weddings, when we talk about the
25 wedding business at the Creek Club, it's not fully

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1 contained in the building, it spills out on to the
2 lawn, and often weddings are held out there. And they
3 make the reception inside, so it's -- it's beyond the
4 building itself.

5 Q. Is it fair to say that lease value wouldn't be
6 anything close to what it is without the Creek Club
7 building?

8 A. I don't know because they are holding weddings
9 out there on the property, outdoor weddings, so I don't
10 know.

11 Q. Okay. Now, the effort to suggest that your --
12 that the homeowners association was entitled to be
13 given civic lot five down the road for parking, also is
14 based on the idea that you're going to have large
15 events at the Creek Club building; is that right?

16 A. Well, I think the Creek Club building was to
17 be our neighborhood clubhouse. And it would be very
18 easy for people -- if it were functioning as a
19 neighborhood clubhouse, to walk, ride their bikes,
20 do -- there are many ways you could get there,
21 including driving your car. It wouldn't require a
22 whole lot of parking to operate as a neighborhood
23 clubhouse.

24 However, to operate as a wedding business, it
25 does require a lot of parking. And now you have a

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1 situation where there is not enough parking available
2 on the site, and so whoever uses the -- whoever owns
3 the Creek Club parcel, has to own civic site five, the
4 overflow parking lot, or the Creek Club parcel just
5 won't work.

6 Q. And if you are running a wedding business like
7 that, right?

8 A. Actually not. Even if you are using it just
9 as a meeting hall, or something like that, there are
10 parking requirements. This isn't my parking
11 requirement, it's the Town's parking requirements. But
12 certainly if you are going to have a lot of guests
13 coming in from outside of the neighborhood, you are
14 going to need suitable parking. But the -- you know,
15 that's determined by the Town's codes, not by me.

16 Q. And you are not an expert in that, are you?

17 A. I'm not an expert, but I have read the town
18 codes.

19 Q. Well, isn't it true that a 150 person event at
20 the Creek Club, could be accommodated by the parking
21 that is at the Creek Club on CV-6?

22 A. I don't know that at all. But the fact
23 remains whether or not it could be accommodated, it is
24 required that there be more parking than there is
25 available on CV-6.

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1 Q. Before the deal with Russo, to where the
2 Assembly is going to get civic lot five when the lease
3 expires, did you ever contend that you or the Assembly
4 were entitled to civic lot five?

5 A. I don't think that I stood up and contended
6 that, but I'm telling you that the overflow parking lot
7 has to go with the Creek Club parcel.

8 Q. Because the Creek Club building, if you're
9 operating a high density, a high number event business,
10 needs parking, right?

11 A. Even if you are operating it as a neighborhood
12 clubhouse or a meeting hall, you need sufficient
13 parking to meet the Town Code, and there's not
14 sufficient parking on CV-6.

15 Q. Now, we can -- we can differ on that --

16 A. Okay.

17 Q. -- and we can talk about how many spaces there
18 are and how many people it can accommodate, but you
19 just don't know; is that right?

20 A. I think I do know from reading the code.

21 Q. Okay. Well, can you tell me then, can 150
22 people be accommodated by the parking lot at the Creek
23 Club building?

24 A. I don't know if they can, Brian, but I know
25 what the town requires.

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1 Q. As far as the damages you asked for, for
2 yourself individually, based on how much less you would
3 have paid, isn't it true, Ms. Adkins, that -- let's
4 just step back -- when you were purchasing in I'On, you
5 didn't look anywhere else seriously? You wanted to be
6 in I'On?

7 A. I knew that I wanted to be in I'On. I liked
8 the concept of the openness.

9 Q. Okay. You agree with me there was no
10 negotiating price when you bought your lot?

11 A. No. I was happy to pay for what I thought I
12 was getting. It seemed a fair price.

13 Q. I'm sorry. I didn't mean you generally -- but
14 the market was -- in fact, they had lotteries for lots;
15 isn't that right?

16 A. Only my street as far as I know, to that
17 point, had had a lottery.

18 Q. Okay. But you heard it described earlier as
19 take it or leave pricing, would you agree with me that
20 when you were buying your lot, that's what it was?

21 A. When I was buying my lot, that's how it was.
22 You knew what you were buying and -- or I thought I
23 knew what I was buying, and there -- it was like a
24 price tag on it. That was the price.

25 Q. Okay. And would you agree with me that you

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1 have no way of knowing the difference in value of your
2 property by the things that were given verses the
3 things that you think were supposed to be there?

4 A. Well, I think there's many ways to calculate
5 it, so I don't think there's a way to know for sure.
6 But when I gave the figure that I did, of \$50,000, I
7 think that I'm being conservative on that. I'm being
8 immensely fair.

9 Q. So you are saying you wouldn't have bought in
10 I'On if you had known that things were going to be the
11 way they are?

12 A. I don't know, but I can tell you that I'On was
13 unique. I think even you described it yesterday, you
14 said it was new and different, and that's right. And
15 one of the things that was new and different about it,
16 is that -- the water, the creek, the dock, it was open
17 to everyone. It wasn't restrictive. It wasn't gated
18 and closed off with signs saying "do not enter", it was
19 different and that's what I bought.

20 Q. Right. In the Impact Assessment, in fact,
21 that you mentioned, says over 75 percent of the marsh
22 front and waterfront is going to be accessible; is that
23 right?

24 A. It does, and it says there will be no private
25 docks.

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1 Q. Right. They compare them to individual docks;
2 isn't that right? It said we are going to have
3 community docks, not individual docks?

4 A. It says there will be no private docks.

5 Q. We can get into that later, but let me -- I
6 don't want to be on this forever -- but just to make it
7 clear, do you dispute that you have testified that you
8 have no way of knowing the difference in the property
9 vs. -- of what you contend was supposed to be conveyed
10 vs. what was conveyed?

11 A. It's difficult to prove. There are many,
12 many, many properties out there. It's difficult to
13 prove the dollar amount of that. I tried to be very
14 fair; and, in fact, very conservative.

15 Q. Well, it's nearly half the price that you said
16 you would have paid for your lot, right?

17 A. No.

18 Q. I'm sorry. How much did you pay for your lot?

19 A. \$159,000.

20 Q. I'm sorry, you're right. I'm bad at math. I
21 thought it was \$115,000.

22 A. Oh, I'm sorry.

23 Q. \$159,000, so a third less?

24 A. Yes.

25 Q. I'm going through my notes on a different

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1 issue, so I'm going to jump out of order a little bit.
2 But you were talking about your interest in the I'On
3 Community early on; is that right?

4 A. Right.

5 Q. Now you, in fact, did oppose the initial plan
6 for I'On; is that right?

7 A. I did.

8 Q. Okay. And Mr. Brock did?

9 A. He did as well.

10 Q. And, in fact, he was active and organized a
11 group and was passing out fliers and that type of
12 thing?

13 A. There were a lot of people who opposed the
14 original I'On plan, and it did not pass.

15 Q. Right. And Mr. Brock continued to oppose it
16 too, is that right, afterwards?

17 A. No. After -- you mean with the second plan?

18 Q. Yes.

19 A. Eventually there was a second plan brought and

20 --

21 Q. Right.

22 A. -- I think he did. I don't really remember.

23 Q. Put up Defendant's 129. Ms. Adkins, this is
24 the Board of Trustees for the Assembly's minutes of
25 October 24, 2007; do you see those in front of you?

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1 A. Yes.

2 Q. Okay. I want to look at a few things with
3 you. Well, first of all, let's look at page two at the
4 bottom, please. This starts with Ward Mundy. Now,
5 Ward Mundy was worried, if you see here, was he not,
6 about the docks being open to the public?

7 A. Could I read this just for a second --

8 Q. Sure. Please.

9 A. Because I'm not familiar with it.

10 Q. Yeah, please.

11 (Pause.)

12 A. Okay.

13 Q. And my only point is, there are a lot of views
14 in I'On, to open it, close it, make it private -- in
15 fact, there are signs up now blocking people off from
16 the docks and the -- and the Marshwalk and everything
17 else, unless you are an I'On resident; is that right?

18 A. No. There's nothing that blocks you off from
19 the Marshwalk. If you're not an I'On resident, it
20 doesn't matter. You can -- you can walk into the
21 neighborhood, drive your car, park it -- anybody can
22 use the Marshwalk, and a lot of people do.

23 Q. What about the area around Eastlake and the
24 dock, that blocks people off -- or the signs, at least,
25 say not to come on?

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1 A. I don't know of any sign that says don't come
2 on.

3 Q. This is a long version of minutes, but I'd
4 like to turn to page 18, please. Now, what I want to
5 address with you, is you mentioned that you didn't
6 really know anything about the easement until the sale
7 was coming up. Please look at the bottom, highlighted.

8 A. Right. And let me clarify, I didn't say I
9 didn't know anything about the easement, I had heard
10 that there could be one. There is one. I said, I
11 don't think I actually saw it until then.

12 Q. Okay. Well, this is a boating committee that
13 you are on; is that fair?

14 A. Yes.

15 Q. See Ms. Adkins' name -- can you highlight that
16 -- okay. You are on the boating committee for the
17 Board?

18 A. Right.

19 Q. Let's look at the top, please, Lea Ann, where
20 it says "Boating Committee Charter Purposes and
21 Responsibilities", if you can highlight that. Let's
22 look down at this side -- "committee is responsible for
23 advising the Board on voting related matters, including
24 the community boat ramp, the community docks" -- plural
25 -- "boat trailer parking enforcement" et cetera, and

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1 "utilization and interpretation of the easement between
2 the I'On Assembly and the I'On Company and its
3 organizations like I'On; do you see that?

4 A. I do.

5 Q. Is it fair to say you were aware of that
6 agreement -- at least as of October 2007?

7 A. Well, I have to tell you how I came to be a
8 member of the I'On Boating Committee. And at the time
9 I did, I had not seen this charter. As far as I know,
10 I don't know if it has met -- but there were, again,
11 questions surrounding this possible sale of the Creek
12 Club and the boating facilities.

13 And on the message board, online, there were
14 lots of people saying, you know, we are concerned about
15 this, we are boaters -- I didn't own a boat at that
16 time; I still don't. But there were people who did own
17 boats, mostly guys, if you look at that membership, and
18 they said we need to get together. We need to get
19 together and meet, but almost to a person -- their
20 wives wouldn't let the group meet at their house, you
21 know, my wife says the house is a mess. We are
22 undergoing remodeling, what have you.

23 And so I said, look, you can meet at my house.
24 I've got a big house. You are welcome to come here.
25 And so that's what they did. And I think I became a

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1 member of the Boating Committee because I hosted the
2 meeting, which is fine, you know. I'm a member of the
3 committee. There's no question about it. But I didn't
4 even own a boat at the time.

5 As far as looking at the charter, I'm not sure
6 that that was even known at the time we started the
7 meeting. I never attended further meetings. But that
8 said, at some point I did become aware of the easement,
9 and at some point, I saw the easement.

10 Q. I'm just trying to find when, Ms. Adkins --
11 would you agree that by this time, you had become aware
12 of it or not?

13 A. Well, let's say that I had for convenience
14 sake. Okay.

15 Q. You're saying you don't know whether you knew
16 about it?

17 A. I don't, but I can't pinpoint a date.

18 Q. Let's look at Defendant's Exhibit 54, I
19 believe it is please -- I'm sorry. Okay. Ms. Adkins,
20 this is your purchase contract; is that right?

21 A. Yes.

22 Q. Let's look at page five, please, Lee Ann --
23 when I say Lea Ann like that, I mean her.

24 A. I'm getting used to it.

25 Q. Okay. The paragraph here with the long list,

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1 please. Do you see here that this indicates that the
2 property you are buying is exempt from the Interstate
3 Land Sales Act?

4 A. Yes, I do.

5 Q. Okay. And you are telling us that you got
6 this Property Report when you purchased, and it was for
7 the Interstate Land Sales Act; is that right?

8 A. It was. I wasn't aware at the time that I got
9 the Property Report of -- that it had anything to do
10 with the Interstate Land Sales Full Disclosure Act,
11 Title 15. I've learned a lot since this whole thing
12 started. And I've since learned what the Interstate
13 Land Sales Full Disclosure Act is, and that the
14 Property Report is required by that Act. I look at
15 this here, and it says that this transaction is exempt
16 from the Interstate Land Sales Full Disclosure Act, but
17 it doesn't mention that that's really the Property
18 Report.

19 Q. Okay.

20 A. So I didn't understand.

21 Q. Okay. When you were looking at a Property
22 Report, did the fact that it applies to phase II -- you
23 know, it had lots listed, it applied to I, II and a
24 little bit of III?

25 A. Right.

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1 Q. And you were buying in phase V; is that right?

2 A. That's right.

3 Q. Did that cause you any concern when you looked
4 at it, that maybe it shouldn't apply?

5 A. Not really. I -- because there is only one
6 I'on. And so the same representations made about the
7 recreational facilities for the people buying in phase
8 I and phase II, apply to me. I'm buying in the same
9 neighborhood they were. So it looked to me like, well,
10 somebody needs to update this report, but I didn't
11 doubt that the facts in it weren't true and accurate.

12 Q. You didn't ask anybody if there were an
13 updated version?

14 A. No, I didn't.

15 Q. Lea Ann, please look at the bottom paragraph
16 9. Okay. And you are familiar with this now, aren't
17 you, Ms. Adkins, the inspection and no reliance that
18 you initialed at the bottom?

19 A. Right.

20 Q. Okay. And I won't belabor it, but let's look
21 at paragraph 10 that follows it. Similarly, you are
22 aware, at least now, that this says you are not relying
23 on anything other than what's in this document and what
24 you are buying; is that right?

25 A. Well, it goes on to say that you are only

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1 relying on this document -- you can only rely on what's
2 in this except as specifically set forth in this
3 agreement or any addendums, exhibits or attachments.
4 And I had received information from the I'On Realty
5 Agent, which I believed to be like another exhibit --
6 certainly official, it was coming from someone
7 representing the I'On Company, and so I believed the
8 Property Report could certainly be considered a
9 representation.

10 Q. Okay. And without having to go through each
11 page, do you recall that there are an addendum and
12 exhibits to the actual purchase agreement?

13 A. It could be, I don't really recall, but I'll
14 accept that there are.

15 Q. Okay. The jury will have them. Now, I
16 believe you told me -- at least one of those
17 paragraphs, you don't really recall that -- recall
18 reading when you were buying your property?

19 A. Which one is that?

20 Q. Well, I'll go back and look, but the point
21 was, you didn't look through every detail in the
22 contract necessarily? You admitted your attention was
23 called to it by initials, but you are not sure that you
24 read that?

25 A. If I was asked to read and initial something,

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1 I'm sure that I at least read through it. Did I sit
2 down and study and memorize it, no. But I certainly
3 paid attention to the parts I was supposed to initial.

4 Q. Okay. Well, Ms. Adkins, you don't have a
5 receipt -- a report receipt like these others we've
6 seen for the 1998 Property Report, do you?

7 A. I do have -- in the back of my Property Report
8 is a -- it's not -- it's a signed -- I remember Vince
9 Graham's signature is on it, I think it mentions a
10 receipt on it. I don't have a receipt that shows that
11 I got it, because I don't think I would have that
12 receipt.

13 Q. Okay.

14 A. If that's what you are talking about.

15 Q. Well, isn't it true, Ms. Adkins, that you
16 don't recall specifically reading the 1998 Property
17 Report?

18 A. I do remember reading it. I remember looking
19 through it. I'm not going to say that I read about
20 every single part of it where it talks about the
21 utilities and things of that sort, I don't know that I
22 did. But I read the parts that were, I guess,
23 especially interesting to me at the time. And the
24 recreational facilities, I guess, it's human nature,
25 you want to turn to the part -- you want to turn and

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1 read the good part. That's what I was excited about.

2 MR. DUFFY: Bear with me one second, please.

3 (Pause.)

4 MR. DUFFY: Do I have permission to get the
5 transcript -- do I have permission to open, Your Honor?

6 THE COURT: You may.

7 Q. I tell you what, I'll come back to it and
8 we'll be very clear about what the testimony was.

9 A. Okay.

10 Q. Let's look at Defendant's Exhibit 33, please.
11 Ms. Adkins, hopefully, you have a hard copy. These are
12 minutes of the Board of Zoning Appeals meeting February
13 23, 2009; is that right?

14 A. That's right.

15 Q. Okay. At the back of page two, again, your
16 address -- is that right, you were present and made
17 comments?

18 A. Yes, I did.

19 Q. Okay. And you were saying that this facility
20 is not used as a neighborhood clubhouse; is that right?

21 A. That's right. And the background on that is
22 that it references Mr. Ford's letter. Joel Ford was
23 the zoning administrator for the Town of Mount Pleasant
24 and Catherine Templeton is -- a citizen of I'On had
25 asked him for his opinion on whether or not the

L. ADKINS -- CROSS BY MR. DUFFY

1 operation of the Creek Club, at that time, was a
2 commercial use because it was being rented out
3 frequently as a wedding venue. And over time, it's use
4 as our neighborhood clubhouse, had shifted into more of
5 a use as a commercial operation like a wedding
6 business. And we were having very few neighborhood
7 clubhouse type functions there, and so that's what this
8 was about.

9 And when I say that it is not being used as a
10 neighborhood clubhouse, what I mean is it isn't
11 functioning like that anymore.

12 Q. Okay. And, in fact, you had -- you go on to
13 talk about the 2007 HOA minutes, you talk about the
14 lack of a community center -- let's look at the next
15 page -- continue the paragraph. Do you see that
16 reference, beginning in 2007, Chad Besenfelder
17 indicated they would be working on a community center
18 and could purchase the Creek Club for the use of it; is
19 that right?

20 A. Right.

21 Q. Okay. Now, were you aware of that or was that
22 just your review of the minutes?

23 A. Well, that is my review of the minutes, and
24 since I'm the one, you know, presenting this, I'm aware
25 of it.

L. ADKINS -- CROSS BY MR. DUFFY

1 Q. I'm sorry. At the time, in 2007, were you
2 aware of the proposed sale to the homeowners
3 association of the Creek Club?

4 A. I don't know if I was present at that meeting,
5 but I would periodically review minutes of the
6 meetings, so I probably -- at some point, shortly after
7 that, would have learned of it.

8 Q. Okay. Well, sometime in 2007, you were aware
9 that the I'On Club or Group was working towards the
10 neighborhood community center, and one of those options
11 was going to be to sale CV-6 to the Assembly; is that
12 right?

13 A. That's right. I might add no one ever bought
14 the Creek Club from them. There's nothing to prevent
15 anyone from offering up something for sale. No one
16 took them up on their offer.

17 Also, the very issue that we're at this meeting
18 BOZA meeting about, which is the commercial use of
19 Creek Club, it's become a real commercial use at this
20 point. It's a business. I mean, the Creek Club -- the
21 Creek Club is no longer just a building, it's a
22 business.

23 Q. Okay. Well, let's get to the reel point of my
24 question, which is you know they haven't sold it to
25 anyone else, but you know when they're offering to sell.

L. ADKINS -- CROSS BY MR. DUFFY

1 it to you, they're not giving it to you; is that a fair
2 statement?

3 A. Like I said at that point, it wasn't just a
4 building any more. It wasn't just a clubhouse. It was
5 a business, and they were offering to sell that
6 business. But like I said, the HOA never took them up
7 on it. They never --

8 Q. Okay. In 2007, when you learned of this, did
9 it not give you an indication that they weren't going
10 to give it free and clear, free of charge, CV-6 to the
11 Assembly?

12 A. No. I believed that's exactly what they would
13 do, but they were trying to get something for it. They
14 were trying to work a deal. And I think we learned
15 that from Tom Graham's testimony, they were trying to
16 attach something to it. But I believed that eventually
17 they would convey it to us. I did not think we would
18 ever buy it from them. And what I never dreamed was
19 that they would sell it out from under us to someone
20 else.

21 Q. Ms. Adkins, turn to page 25, please, of your
22 deposition. Tell me when you're there, please.

23 A. Okay.

24 Q. Do you recall being deposed at my office on
25 Wednesday, April 11, 2012?

L. ADKINS -- CROSS BY MR. DUFFY

1 A. Yes.

2 Q. And being sworn to tell the truth then?

3 A. Yes.

4 Q. Okay. All right. I'm going look at my
5 question, starting on line 11, and I want you to read
6 your answer when I'm finished, please.

7 "Okay. I want to know, I understand you believe
8 you likely would have reviewed it" -- referring to the
9 '98 Property Report -- "do you specifically recall
10 reviewing this '98 Property Report?" And your answer
11 was?

12 A. "No". And let me explain that answer -- and
13 maybe I misunderstood you today. I do not remember the
14 point in time at which I sat down and opened the
15 Property Report and read it. I do not remember doing
16 that, but I know that I looked through it. I remember
17 what I saw. I remember the representations there. But
18 I don't remember when I sat down and looked at it.

19 Q. Ms. Adkins, you just told me about the
20 recreational facility jumping out at you and being so
21 important.

22 A. Right. That's what I read in it and how I
23 came to understand it, but I don't remember sitting
24 down and reading it. And somehow -- do I specifically
25 recall reviewing this -- no, I don't. I don't know

L. ADKINS -- CROSS BY MR. DUFFY

1 where I was, I don't know when it was, but I do
2 remember that I did it.

3 Q. So you don't know if it was before you
4 purchased the property?

5 A. Yes, it certainly was before I purchased my
6 property, and I'll tell you why: There's huge letters
7 on the front of this thing that says "don't sign
8 anything until you've read this". And I guess that
9 told me it was important that I read it before I signed
10 anything.

11 Q. Right, which -- I would have thought you would
12 have recalled reading it because of those important
13 letters if that's what happened.

14 A. Well, let me be clear: I read the Property
15 Report. I reviewed the Property Report. I may not
16 have read every word about it, but I don't remember
17 when and where I sat down and read the Property Report.
18 Well, in fact, Brian, right here above it, on line
19 three, I said, "I don't recall sitting down and where I
20 was sitting and the time of day and everything, but I
21 know I reviewed it".

22 Q. Right. And that's what I say, I understand
23 you think you would have -- do you recall doing it and
24 your answer was?

25 A. No, I don't recall doing it.

L. ADKINS -- CROSS BY MR. DUFFY

1 Q. Let's look at Defendant's Exhibit -- Ms.
2 Adkins, I'm going to hand you what's been marked as
3 Defendant's Exhibit 174. Do you see at the top that
4 these are minutes of the I'On Assembly meeting, October
5 24, 2007?

6 A. Right.

7 Q. Do you see a few paragraphs down, that it
8 talks about you advising the Board of Trustees of
9 something?

10 A. Yes. Do you want me to read it?

11 Q. No. I just want to be -- I want to understand
12 you -- would it be your understanding that you attended
13 the -- the meeting that's reflected in the minutes,
14 March 27 --

15 A. Yes.

16 MR. DUFFY: Your Honor, I move to enter 174 into
17 evidence.

18 MR. EVANS: No objection, Your Honor.

19 THE COURT: Defendant's 174 is admitted without
20 objection.)

21 (Defendant's Exhibit No. 174 admitted into
22 evidence.)

23 BY MR. DUFFY:

24 Q. Turn to page three, please, and put it up.

25 Okay. Highlight the top portion, please, the top

L. ADKINS -- CROSS BY MR. DUFFY

1 paragraph. The -- March 22, 2007, they are addressing
2 planned development amendment. Now, step back with me
3 for a little bit, this planned development amendment
4 relates to developing phase XI; is that your
5 understanding?

6 A. Well, you might want to give me a second to
7 read this because I don't know -- there have been a lot
8 of potential amendments.

9 Q. Well, my real focus -- I'll let you read it.

10 (Pause.)

11 A. Okay. I see that there is a planned
12 development amendment apparently in the works. I don't
13 know what that amendment is. I don't recall what it
14 was exactly.

15 Q. Okay. But do you see that Ward Mundy had put
16 things up on a suggestion box?

17 A. Yes.

18 Q. Is that something that Ward would do and
19 people would respond by e-mail to his suggestions?

20 A. Yeah. I don't think that he routinely did it,
21 but I do remember he did it on this occasion.

22 Q. Okay. Now, going back to the planned
23 development amendments -- you can put that down --
24 thank you, ma'am. In September 2007, do you recall --
25 I believe we saw a reference to it earlier -- but there

L. ADKINS -- CROSS BY MR. DUFFY

1 was a proposal for phase XI planned unit development,
2 and part of it was going to be solving the community
3 neighborhood clubhouse issue that was going to involve
4 the sale of CV-6 to the Assembly; is that fair?

5 A. I think that was -- yeah, that was the
6 proposal.

7 Q. Okay. And I think that's what we were talking
8 about earlier when you said you weren't sure -- but
9 Ward Mundy, for example, then circulated an e-mail for
10 the suggestion box -- I'll hand you a copy.

11 (Pause.)

12 Q. Ms. Adkins, my question is: Mr. Mundy, at the
13 time this was going on, there was a lot of controversy
14 of, hey, do we want to allow or participate in
15 supporting the new development; do we want to get the
16 Creek Club and docks as a part of it; do we want to
17 purchase the Creek Club and -- do you see here he wrote
18 a series of questions for the suggestion box; is that
19 right?

20 A. I don't -- I don't think you gave me that.

21 Q. I didn't. I gave it to your lawyer. I'm
22 sorry. Okay. Well, we talked about the fact that Mr.
23 Mundy would do this suggestion box, and you recall this
24 neighborhood discussion during this time when there was
25 an offer in, I believe, August to the Assembly to

L. ADKINS -- CROSS BY MR. DUFFY

1 purchase CV-6 as a part of the phase XI proposal; is
2 that right?

3 A. I vaguely remember that, but yeah.

4 Q. Well, do you remember that -- part of that was
5 going to be donations from the I'On Company to certain
6 organizations within the neighbor?

7 A. Right, uh-huh.

8 Q. And that was going to include the I'On
9 Assembly, money was going to come back to the Assembly;
10 isn't that right?

11 A. Right.

12 Q. Okay. And then that would essentially be able
13 to defray the purchase price for CV-6, which was listed
14 as \$700,000; is that a fair representation?

15 A. CV-6 was listed as \$700,000?

16 Q. Was represented as -- a part of the deal was
17 to purchase CV-6 for \$700,000?

18 A. Right. As I remember the deal, they -- the
19 I'On Company was going to -- was asking for the HOA's
20 support in their getting more lots that they could sell
21 in I'On. I think we covered it yesterday, that there's
22 a certain number of lots in I'On that were approved by
23 the town, and they wanted more. And so they wanted the
24 Assembly's support, maybe in as much as applying for
25 it, but I'm not certain of that. But they wanted our

L. ADKINS -- CROSS BY MR. DUFFY

1 affirmative support in their getting these additional
2 lots. And then in exchange for our support, they would
3 give us money. And with that very amount of money, we
4 could turn around and give it to them, and we would get
5 the Creek Club which is kind of like giving us the
6 Creek Club, but tying strings to it.

7 Q. Okay. Ms. Adkins, I'm going to hand you what
8 I handed to your lawyer a second ago, so you'll see the
9 questions Mr. Mundy was raising.

10 A. Okay.

11 Q. Okay. Ms. Adkins, Defendant's Exhibit 180,
12 I'm going to hand you. Now, we talked about Mr.
13 Mundy's questions, going out and what -- the suggestion
14 box, and do you recognize that that's what that is; Mr.
15 Mundy's questions for the suggestion box?

16 A. Right. I think that's what this is.

17 Q. Okay.

18 MR. DUFFY: I would like to move into evidence
19 Defendant's 180.

20 MR. EVANS: No objection, Your Honor.

21 THE COURT: Defendant's 180 is admitted without
22 objection.

23 (Defendant's Exhibit No. 180 admitted into
24 evidence.)

25

L. ADKINS -- CROSS BY MR. DUFFY

1 BY MR. DUFFY:

2 Q. Read for me, please, Ms. Adkins, number five,
3 what's question number five?

4 A. You want me to read it out loud?

5 Q. Please.

6 A. The question is, "If we could purchase the
7 Creek Club, adjacent parking lot, docks, and boat ramp
8 for \$700,000 from the I'On Company, should the Board do
9 it?"

10 Q. Okay. Mr. Mundy circulated this around the
11 neighborhood and collected suggestions?

12 A. Right.

13 Q. I'm going to hand you Defendant's Exhibit 173.
14 Is that an e-mail from you, a response to this
15 suggestion box question?

16 A. It appears to be.

17 Q. I mean, it has your e-mail address, right?

18 A. Yes, it does.

19 MR. DUFFY: I move Defendant's Exhibit 173 into
20 evidence.

21 MR. EVANS: No objection, Your Honor.

22 THE COURT: Defendant's Exhibit 173 is admitted
23 without objection.

24 (Defendant's Exhibit No. 173 admitted into
25 evidence.)

L. ADKINS -- CROSS BY MR. DUFFY

1 BY MR. DUFFY:

2 Q. Ma'am, please highlight paragraph five --
3 answer number five and make that bigger. Okay.
4 "Should we purchase Creek Club for \$700,000?" Your
5 answer, "Not without a lot more information". Now, you
6 don't say, hey, they should be giving it to us, do you?
7 You don't say, they promised to give it to us, that
8 doesn't -- that's not what you said here, is it?

9 A. No. That's not what I say here.

10 Q. Okay. The next sentence, "I heard someone
11 jokingly say once, they should give it to us. I
12 laughed, thinking that wasn't a serious consideration.
13 After thinking about it, it began to sink in that
14 perhaps they should in lieu of other mega donations to
15 various causes -- I'On Company for giving money away.
16 There is, I believe, big opposition to churches
17 receiving such large donations and these comments come
18 from church going individuals. Also, the school has
19 its own fund raising, the I'On Trust. Come on, I'm a
20 member. But I realize Vince gets a tax deduction for
21 all these huge donations as well, and probably takes a
22 loss on the sale of the Creek Club. A proposal more
23 people could get behind would involve mixing the
24 donations to the organizations and no money exchange
25 for the Club. I think more residents would see", et

L. ADKINS -- CROSS BY MR. DUFFY

1 cetera, et cetera; was that your response?

2 A. That's my response.

3 Q. Thank you, Ms. Adkins.

4 A. And if I -- can I explain something about
5 this?

6 Q. Sure.

7 A. It goes back to what I said a few minutes ago,
8 by this point in time, the Creek Club is not just a
9 building anymore. It's not a neighborhood clubhouse on
10 a park. It's a business. It's a wedding business and
11 that business still exists there today. It's worth a
12 lot.

13 At this point in time, I think the developer was
14 making a lot of money on the Creek Club business, and I
15 did not think they were going to hand us a business
16 without strings attached, and that's exactly what they
17 tried to do.

18 Q. Ms. Adkins, you just testified earlier that
19 despite this offer, you still thought they were going
20 to give it to you?

21 A. Oh, I did. I think in the end, once you
22 present them with the information, you say, look, let's
23 review, you said this, you said that; here are the
24 documents. You can't sell it to someone else to
25 operate their business, and that's what they did.

L. ADKINS -- REDIRECT BY MR. EVANS

1 Q. So, it's your testimony that even at this
2 point, you still thought -- had no reason to believe
3 that they weren't giving it to the I'On Assembly?

4 A. You're right. I believed the best of them. I
5 was proved wrong.

6 MR. DUFFY: Thank you, Ms. Adkins.

7 THE WITNESS: You're welcome.

8 THE COURT: Thank you. Redirect.

9 **REDIRECT EXAMINATION BY MR. EVANS:**

10 Q. Ms. Adkins, you've been in the courtroom all
11 week, correct?

12 A. Yes.

13 Q. Were you in the courtroom when Mr. Eble
14 testified?

15 A. Yes.

16 Q. Did you hear Mr. Eble testify that he relied
17 on the Property Report?

18 A. Yes.

19 Q. I apologize -- Ms. Adkins, let me give you a
20 different exhibit here. Let me hand you what's been
21 previously marked, stipulated as Plaintiff's Exhibit
22 150.

23 A. Uh-huh.

24 Q. And 150 is an inch thick, something like that?

25 A. Right. Yes.

L. ADKINS -- REDIRECT BY MR. EVANS.

1 Q. What are those?

2 A. These are purchaser receipts for the I'On
3 subdivision. It's signed receipts where people have
4 received the Property Report.

5 Q. Specifically, which Property Report, if you
6 look at the upper right hand corner.

7 A. Most of them -- all of them are the November
8 3, 1998 Property Report.

9 Q. Would you get Defendant's Exhibit 33 on the
10 screen please -- you discussed Defendant's Exhibit No.
11 33, which was the February 23, 2009, Board of Zoning
12 Appeal minutes with Mr. Duffy, correct?

13 A. Right.

14 Q. I would draw your attention to page 4 of 8,
15 the middle of the page, the larger paragraph there?

16 A. Right.

17 Q. Do you recall Dan Orvin being at the meeting?

18 A. Yes, I do.

19 Q. Who is Dan Orvin?

20 A. Well, Dan Orvin is an attorney. He is
21 actually my closing attorney. And he also, at this
22 time, is representing the I'On Creek Club and Tom
23 Graham. Well -- I'm sorry. It says he's representing
24 the Creek Club, so the developer, the I'On Company.

25 Q. Did Mr. Orvin make any statements about the

L. ADKINS -- REDIRECT BY MR. EVANS

1 purpose of the Creek Club?

2 A. Yes, he did.

3 Q. And what did he say?

4 A. He says -- would you like for me to read this
5 entire thing?

6 Q. No. Thank you. In the interest of moving it
7 along, what specifically did Mr. Orvin say about what
8 the Creek Club was designed as and is at the time of
9 this meeting?

10 A. That it's the neighborhood clubhouse.

11 Q. Lastly, Ms. Adkins, if you could, please grab
12 the deposition transcript in front of you.

13 A. Yes. My deposition.

14 Q. Your deposition transcript, is that it on the
15 rail there? And turn to page 10, please. Are you at
16 page 10?

17 A. Yes, I am.

18 Q. Line five, I'm going to ask you the question,
19 and if you would please tell me your answer. "Well,
20 when did you review this report first?"

21 A. And I said, "before I purchased my lot".

22 Q. What report were you discussing?

23 A. The Property Report.

24 MR. EVANS: I don't have anything further for you,
25 Ms. Adkins. Thank you.

1 MR. DUFFY: Briefly, Your Honor?

2 THE COURT: Sure.

3 **RECROSS EXAMINATION BY MR. DUFFY:**

4 Q. Plaintiff's -- do you have a hard copy of 150
5 in front of you, Ms. Adkins?

6 A. In what -- is that the receipts?

7 Q. Yeah. Do you have that?

8 A. This?

9 Q. Yeah. Could you find yours for me, your
10 receipt of the 1998 Property Report?

11 A. Well, I don't think you want me go through it
12 and find mine. I think you want me to say that it's
13 not in here.

14 Q. I believe that's accurate. If you accept
15 that, then I'll accept your answer.

16 A. I am not responsible for what happened to my
17 receipt after I signed it, but I had a Property Report.
18 It's signed by the developer. That's all I can tell
19 you.

20 Q. Well, you mentioned a receipt earlier, that
21 you saw a receipt was on there. And now you're saying
22 that you did sign the receipt --

23 A. No. In the back, there are -- I think there
24 is an extra receipt back there. I don't have my signed
25 receipt, but I don't think I would. I think it would

1 have gone back to the I'On Company. That's the point.

2 Q. Right. And that's not in Exhibit 150, is it,
3 Ms. Adkins?

4 A. Do you want me to go through it and see if
5 it's here? I'm going to take your word that mine is
6 not in here.

7 Q. I think that's fair.

8 A. Okay.

9 MR. DUFFY: Thank you.

10 THE COURT: Okay. I think Mr. Young was checking
11 on the status --

12 MR. YOUNG: Both ready, Your Honor. And one is
13 going to be very short. The first one, she's got
14 somewhere to be.

15 THE COURT: Okay. Ladies and gentlemen, we have
16 two relatively short witnesses that we need to take out
17 of order. They would normally be presented in the
18 defendant's case, but because of travel and work
19 schedules, everyone has agreed to let them testify now.

20 My question to you, do you want a quick break
21 before we do these, or do you want to hear the one
22 short one, and then take a break. Do that one -- okay.
23 Get the one lady that's got somewhere to be then. Yes,
24 and you may step down. I apologize for leaving you on
25 the stand.

J. O'CONNOR -- DIRECT BY MR. DUFFY

1 MR. DUFFY: Your Honor, the defendant's call Julie
2 O'Connor.

3 JULIE O'CONNOR, after having
4 been duly sworn, testified as follows:

5 THE CLERK: Please have a seat. Please state your
6 full name for the record, spelling your last name.

7 THE WITNESS: Julie O'Connor. O'C-o-n-n-o-r.

8 **DIRECT EXAMINATION BY MR. DUFFY:**

9 Q. Good afternoon, Ms. O'Connor.

10 A. Hello.

11 Q. Would you tell the jury, please, a little
12 bit -- tell us a little bit about your background;
13 where you live; what your occupation is.

14 A. Sure. I live in I'On, Eastlake Road. And I
15 am an architectural designer. I design new homes,
16 historic conservation projects and renovation projects.

17 Q. Okay. Do you do business for the I'On Company
18 or the Grähams?

19 A. No, I do not.

20 Q. Okay. Do you do business with anyone in the
21 neighborhood of I'On?

22 A. Yes, indeed. I've designed more than 20 homes
23 in the neighborhood, including my own, and I have done
24 multiple renovation projects in the neighborhood as
25 well.

J. O'CONNOR -- DIRECT BY MR. DUFFY

1 Q. And when did you buy property to live in I'On?

2 A. We bought our property in '98 or early '99.

3 I'm not exactly sure. We started construction in 1999
4 and moved in, in May of 2000.

5 Q. Do you recall whether you received a Property
6 Report with your purchase?

7 A. No, I don't recall.

8 Q. You don't know one way or the other?

9 A. No, I don't. I'm sorry.

10 Q. All right. Well, what amenities -- when you
11 purchased, what amenities did you understand were going
12 to be in I'On?

13 A. I knew there was going to be a pool and tennis
14 courts that would be a membership type scenario where
15 we would pay for membership. I knew that there would
16 be some parks. I didn't recall where they were
17 supposed to be. I knew there was going to be a soccer
18 field because my husband plays soccer and that was
19 pretty important to us, and I knew that there would
20 be -- yeah, I think that's about it; lakes, of course,
21 there were lakes already there.

22 Q. Okay. And tell me was there -- was there a
23 Realtor working with the I'On Realty that was assigned
24 to your transaction?

25 A. Yes. Her name was Peggy Kaskie -- it's Peggy

J. O'CONNOR -- DIRECT BY MR. DUFFY

1 Orange now, but it was Peggy Kaskie at the time.

2 Q. Now, were you aware of any promises of
3 homeowner ownership of the docks at the Creek Club?

4 A. No, I was not aware of anything like that.

5 Q. Were you aware of any promises of homeowner
6 ownership of the Creek Club building?

7 A. No.

8 Q. Were you aware of any promises of homeowner
9 ownership of civic lot six?

10 A. No. I don't even know what civic lot six is.

11 Q. The land -- the land where the Creek Club is.

12 A. Okay. No, I do not.

13 Q. What are your thoughts, generally, about the
14 amenities that have been provided to the homeowners
15 association and homeowners in I'On?

16 A. I think it's a wonderful place to live. When
17 my husband and I built -- designed and built our house,
18 we didn't have any children yet, and now we have four
19 children. And we use everything there is to be used,
20 that the kids have nicknames for all the different
21 parks based on what's in them, and we use the pool and
22 the tennis courts; and, of course, the soccer field.
23 And it's just an amazing place to live. I don't know
24 of any other place in and around Charleston that is
25 like that.

J. O'CONNOR -- CROSS BY MR. LUCEY

1 Q. Have the expectations of any representations
2 that were made to you during your purchase, have those
3 been met?

4 A. Absolutely, and exceeded, far exceeded. When
5 we first built our house and bought the lot, there
6 weren't that many houses there. And it was sort of
7 just a dream on paper. And it has just turned into a
8 beautiful neighborhood, with tree lined streets and a
9 great, great place to raise a family and live and get
10 to know people, and so I would say far exceeded. I
11 really never expected it to be as good as it is.

12 Q. And you understand there's litigation by
13 certain homeowners alleged -- on behalf of the
14 homeowners association against the I'On Company and the
15 I'On Group and those defendants?

16 A. Yes, I do understand that.

17 Q. Do you support the claims against those
18 defendants?

19 A. I do not support the claims.

20 Q. Thank you.

21 THE COURT: Cross-examination.

22 MR. LUCEY: May-it please the court?

23 **CROSS EXAMINATION BY MR. LUCEY:**

24 Q. Is it Ms. O'Connor?

25 A. Yes.

J. O'CONNOR -- CROSS BY MR. LUCEY

1 Q. Justin Lucey, good to meet you.

2 A. Nice to meet you.

3 Q. We'll be quick. As I understand it, both you
4 and Vince Graham have been involved in historic
5 preservation type, renovation type issues on Nantucket
6 Island?

7 A. I did not know that Vince was involved in, but
8 Nantucket is where I moved here from and where I lived
9 right after graduate school, and I worked for the
10 Historic District Commission there, and then worked for
11 an architectural firm for a couple of years.

12 Q. And this is not the first time the Grahams or
13 the I'On Company has asked you to testify on their
14 behalf in a matter, is it?

15 A. Yes, it is.

16 Q. You, in fact, testified on behalf of their
17 application with the Town of Mount Pleasant to get 30
18 more lots in phase XI; did you not?

19 A. You're right. I thought you were talking
20 about court proceedings. That was a Planning
21 Commission meeting at the Town of Mount Pleasant.

22 Q. You supported that expansion, correct?

23 A. Yes.

24 Q. Which is natural, you're more or less in the
25 construction business, right?

1 A. Sure.

2 Q. If there's an expansion, you perhaps might
3 pick up a couple more of the clients in the new 40
4 lots?

5 A. I suppose that's true, but that's not why I
6 testified for them. And I -- "testify" seems like a
7 strong word. I spoke at the meeting.

8 Q. And the majority of the residents, the I'On
9 residents that spoke at the meeting, actually spoke
10 against that expansion, correct?

11 A. Well, I don't know what the percentages were,
12 but there were other people that spoke in favor as
13 well.

14 Q. And that HUD amendment which you spoke in
15 favor of, on behalf of the I'On Company in 2011, was
16 denied by the Town of Mount Pleasant, correct?

17 A. Yes.

18 MR. LUCEY: Thank you.

19 THE COURT: Any redirect?

20 MR. DUFFY: No, ma'am. Thank you, Ms. O'Connor.

21 THE COURT: Ma'am, you may be excused.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Let's take about a 10
24 minute break. Ladies and gentlemen, please don't
25 discuss anything about the case. We'll take about a

1 ten minute break and get set up for the next witness.

2 (WHEREUPON, the jury leaves the courtroom at
3 3:08 p.m.)

4 (WHEREUPON, a brief recess was taken.)

5 THE COURT: All right. Is everybody ready?

6 MR. LUCEY: Yes, Your Honor.

7 THE COURT: All right. Let's bring in the jury.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 3:18 p.m.)

10 THE BAILIFF: The jury is all present and seated,
11 Your Honor.

12 THE COURT: Thank you, ma'am. And thank you,
13 ladies and gentlemen. We are ready for the next
14 witness that will be taken out of order by Mr. Young.

15 MR. YOUNG: Your Honor, the defense calls Stuart
16 Whiteside.

17 THE COURT: All right. Come on up, Mr. Whiteside,
18 and we'll swear you in.

19 STUART WHITESIDE, after having
20 been duly sworn, testified as follows:

21 THE CLERK: Thank you, sir. Please have a seat.
22 Please state your full name for the record, spelling
23 your last.

24 THE WITNESS: Stuart D. Whiteside,
25 W-h-i-t-e-s-i-d-e.

S. WHITESIDE -- DIRECT BY MR. YOUNG

DIRECT EXAMINATION BY MR. YOUNG:

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Q. Good morning -- or afternoon now, Mr. Whiteside. Can you tell us a little bit, please, about your -- what your job is?

A. We have a civil engineering, land planning, landscape architectural firm in Mount Pleasant. We typically design commercial projects, shopping centers, that type of thing and residential subdivisions.

Q. And what's the name of your company?

A. Seamon Whiteside & Associates.

Q. And how long have you been involved with Seamon Whiteside?

A. 1985.

Q. All right. And are you a principal in that company?

A. Yes, I am.

Q. And do you hold any professional licenses or anything like that from the State of South Carolina?

A. I am a licensed, professional engineer in South Carolina.

Q. And how long you been an engineer?

A. Since 1982.

Q. All right. And, generally, tell us a little bit about what type of projects your company works on and what sort of things that Seamon Whiteside does?

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 A. Typically master plan communities in Mount
2 Pleasant. Of course, we did the design for I'On.
3 We've done most of Dunes West, Brick Yard Plantation
4 Hamlin Plantation, and plus a lot of smaller
5 subdivisions as well.

6 Q. Okay. So are you familiar in your business
7 with engineering plans and sort of the planning phases
8 for some of these big communities you just mentioned?

9 A. Yes, I am.

10 Q. And is that something that you normally are
11 involved in as an ordinary part of your business?

12 A. Yes, it is.

13 Q. And I want to show you a document that's been
14 previously admitted as Defendant's Exhibit No. 4 -- if
15 we could put that on the screen -- and ask if you
16 recognize that?

17 A. Yeah. This was some dock applications that
18 were done back when I'On was just getting developed for
19 some residential community docks.

20 Q. Okay. And is that a document that was
21 prepared by your company?

22 A. Yes, it was.

23 Q. And is that the type of thing that you would
24 routinely do in some of these developments, including
25 I'On?

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 A. It would be. If it's got any waterfront type
2 of property and dock access, we would.

3 Q. All right. And were you personally involved
4 in the I'On -- some of these kinds of drawings and
5 things -- or who in your company was, if it wasn't you?

6 A. Different project engineers and actually some
7 of our land planners as well. We would prepare these
8 documents for submittal by NewKirk Environmental for
9 the actual permit.

10 Q. Okay. And so were you all working with
11 NewKirk when it came to getting the permit put before
12 the state and federal authorities?

13 A. Yes, we were.

14 Q. And tell us a little bit about what NewKirk
15 is? Is that a company you've worked with before?

16 A. Yes. Newkirk Environmental Consultants, they
17 do a lot of dock permitting, wetlands permitting and
18 the like. And we've had a relationship with them for
19 20 or so years and we've -- on these types of
20 submittals, we'd prepare the documents and they would
21 make the submittals.

22 Q. Okay. And so would it be routine for your
23 company to be preparing drawings to be submitted along
24 with NewKirk for dock applications?

25 A. Yes, that's correct.

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 Q. And I want to show you Plaintiff's Exhibit No.
2 86, if we could put that on the screen. Do you
3 recognize Plaintiff's Exhibit 86, and take your time to
4 review it if you'd like.

5 A. Yeah, that would have been the application
6 submitted -- or the cover letter to the application
7 submitted by NewKirk.

8 Q. All right. And then down there at the bottom,
9 Lea Ann, if you could blow it up -- is your company
10 shown as a CC copy recipient on that?

11 A. That's correct. Freeman Milligan was a
12 landscape architect working for us at that time.

13 Q. Okay. And then the Plaintiff's Exhibit No.
14 86, it has a number of drawings if you'll flip through
15 a few pages -- you have to kind of turn it in the
16 binder. About 14 pages worth of drawings -- yes, just
17 stop right there for a second, Lea Ann. Mr. Whiteside,
18 do you see a number of drawings there?

19 A. Yes, I do.

20 Q. Okay. And if you'd flip through and
21 briefly -- are these the type of drawings that you were
22 just talking about, that typically are put in with dock
23 applications and so forth like Plaintiff's Exhibit No.
24 86?

25 A. That's correct.

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 Q. All right. And if you would turn specifically
2 to sheet number four of 14 -- there it is right there.
3 That type of drawing there, is this the type of drawing
4 that your company would use in submitting dock
5 applications in sort of the normal planning process
6 that your company was involved in?

7 A. Yes, it is.

8 Q. If we could blow up that middle part of it,
9 Lea Ann. You see there on that drawing where it says
10 "Creek Club HOA"?

11 A. Yes, I do.

12 Q. What does that normally stand for in your
13 experience -- in your business?

14 A. HOA is typically homeowners association.

15 Q. All right. And the fact that it says "HOA" on
16 the drawing like this one, does that have any
17 particular significance?

18 MR. LUCEY: Objection, foundation, Your Honor.
19 The witness has stated that he didn't actually handle
20 this matter.

21 THE COURT: Sustained.

22 BY MR. YOUNG:

23 Q. Mr. Whiteside, your company handled this
24 matter; is that correct?

25 A. That's correct.

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 Q. And is Mr. Milligan still with your company?

2 A. No, he's not.

3 Q. And what was his role at the time that these
4 documents were prepared?

5 A. He was the land planner that was working on
6 the applications for the dock permits.

7 Q. All right. And would he have been preparing
8 documents like this in the ordinary course of his
9 business?

10 A. Yes.

11 Q. And in the ordinary course of business at
12 Seamon Whiteside, is this the type of document that
13 y'all would normally use and normally see when you are
14 making dock applications?

15 A. Yes, it is.

16 Q. And, in fact, is this particular document one
17 that you used and submitted to both the South Carolina
18 appropriate permitting agency and the Army Corps of
19 Engineers?

20 A. Right. We prepared the documents for
21 NewKirk's submittal, that's correct.

22 Q. Okay. And you actually prepared -- or your
23 company prepared this document; is that correct?

24 A. Yes.

25 Q. And I'd ask again, Mr. Whiteside, do you know

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 why -- or the particular significance of that
2 designation "HOA" --

3 MR. LUCEY: Objection. Foundation.

4 THE COURT: Overruled.

5 BY MR. YOUNG:

6 Q. Does that have any particular significance on
7 this document your company prepared?

8 A. You've -- you kind of have to trace it back to
9 the beginning itself. Typically when you do a
10 subdivision development, you start with a sketch plan,
11 and that lays out the lay of the lots to be subdivided,
12 the roads, that type of thing. Then you do the
13 preliminary plat. At that those times, when any
14 properties that we don't have in lots or in roadways,
15 we typically just designate it as HOA, just to have a
16 place order for what that property would be.

17 Q. Okay. And is that, in fact, what happened on
18 this drawing here, that we've blown up as sheet four of
19 14 on the NewKirk submittal?

20 MR. LUCEY: Objection. Foundation.

21 MR. YOUNG: He testified that he prepared it, Your
22 Honor -- his company prepared this document as part of
23 official application.

24 MR. LUCEY: It's --

25 THE COURT: Okay. Sustained. Rephrase the

S. WHITESIDE -- DIRECT BY MR. YOUNG

1 question.

2 BY MR. YOUNG:

3 Q. Mr. Whiteside, your company normally
4 designates HOA and puts a placeholder in the way you
5 described in its normal course of business?

6 A. Yes, we do.

7 Q. Is that, in fact, what happened on this
8 drawing here, that we've blown up sheet four of 14 that
9 your company prepared?

10 MR. LUCEY: Objection, foundation contrary to the
11 court's recent ruling.

12 THE COURT: Overruled. I think I said if he
13 knows.

14 BY MR. YOUNG:

15 Q. Yes, sir.

16 A. That's our typical, normal course of business
17 at that particular time on a project, we designate it
18 as HOA.

19 MR. YOUNG: Thank you. I don't have any further
20 questions.

21 THE COURT: So is the answer "no", he doesn't
22 personally know as to this particular file?

23 BY MR. YOUNG:

24 Q. Mr. Whiteside, do you know, as to this
25 particular drawing, why HOA was put on there?

S. WHITESIDE -- CROSS BY MR. LUCEY

1 A. A particular reason, no.

2 Q. Okay. Thank you.

3 THE COURT: You're welcome. Cross-examination.

4 **CROSS EXAMINATION BY MR. LUCEY:**

5 Q. Let me hand you what has been marked for
6 purposes of identification only as Plaintiff's Exhibit
7 228 -- let me show it to counsel real quick. And I'm
8 going to stand right on your side, because I only have
9 one. It's a huge document, plan, and I only have one
10 to work with. But when we talk, we need to look
11 towards the court reporter and make sure she can hear
12 us. This is a Seamon Whiteside plan prepared by your
13 firm, correct?

14 A. That's correct.

15 Q. And we see here the date of this plan is May
16 5, 1999, correct?

17 A. Correct.

18 Q. And if we look up here at the top, you
19 recognize this portion of the plan to be the same
20 parcel you just looked at, Exhibit 86, the dock permit,
21 correct?

22 A. Correct.

23 Q. And as you said, this is your company's plan,
24 right?

25 A. That's correct.

S. WHITESIDE -- CROSS BY MR. LUCEY

1 MR. LUCEY: I move Plaintiff's Exhibit 228 into
2 evidence.

3 MR. YOUNG: Yeah, I'd just like to get a copy, but
4 I have no objection, just be able to look at it.

5 THE COURT: Show him the copy, please; 228 is
6 admitted without objection.

7 (Plaintiff's Exhibit No. 228 admitted into
8 evidence.)

9 BY MR. LUCEY:

10 Q. Now, let's look at two twenty -- well, let's
11 finish looking at this one first.

12 THE COURT: You all take a minute and look at
13 those if you need to.

14 (Pause.)

15 MR. YOUNG: Thank you.

16 BY MR. LUCEY:

17 Q. Exhibit 228 and -- and I'm going to read some
18 stuff to the jury, because we can't get it up on the
19 screen, I don't think, too easily. But it shows this
20 parcel up here at the end, on Hobcaw Creek, that we
21 were just looking at in Exhibit 86, correct?

22 A. Correct.

23 Q. And it's labeled Creek Club, correct?

24 A. That's correct.

25 Q. And it almost -- it appears as though inside

S. WHITESIDE -- CROSS BY MR. LUCEY

1 of this box is a different label, right?

2 A. Yes. It says "proposed clubhouse".

3 Q. Well, there's a blow up over here, I see you
4 looking at. Thank you. So, the box -- the building
5 your company is calling a proposed clubhouse, correct?

6 A. That's correct.

7 Q. And we see over here, this is a stamped
8 document by your firm, correct?

9 A. That is correct.

10 Q. And you all get final -- you get client
11 approval of plans before you finalize them, correct?

12 A. Typically, we do.

13 Q. That would be the typical practice. So
14 typically the client would have approved this plan and
15 you stamped it, and then you have what's called a
16 stamped plan, correct?

17 A. That's correct.

18 Q. A stamped plan that can be legally used in
19 this state, correct?

20 A. Correct.

21 Q. And in this stamped plan that your client
22 typically would have approved before you sealed it, the
23 building was called a clubhouse and the lot around the
24 building is labeled Creek Club, is that correct?

25 A. That's correct.

S. WHITESIDE -- CROSS BY MR. LUCEY

1 Q. And, actually, it shows a slightly different
2 dock configuration than what we saw in Plaintiff's
3 Exhibit 86, correct?

4 A. I'd have to look -- it may be different.
5 These could be different dates.

6 Q. In fact, the blow up, the enlargement that you
7 were looking at, is called "Alternative Dock
8 Arrangement for Creek Club", right?

9 A. That's correct.

10 Q. And if we study it, we would see that the left
11 hand dock, the bigger dock in the alternate, has two
12 wings so-to-speak, and the main plan has one wing,
13 right?

14 A. Right.

15 Q. So you're presenting alternate plans for the
16 docks, correct?

17 A. That's correct.

18 Q. But the remainder of the drawing of these
19 two -- of the -- of the parcel, the real estate parcel
20 on Hobcaw Creek, is identical, correct?

21 A. They do look the same.

22 Q. And both are labeled, as the proposed
23 structure on that parcel, as the proposed clubhouse,
24 correct?

25 A. Correct.

S. WHITESIDE -- CROSS BY MR. LUCEY

1 Q. And, again, just to put this into our
2 chronology for the jury, this plan is dated 5 May 1999,
3 correct?

4 A. That's correct.

5 Q. And if we look closely on both copies of that
6 parcel, both alternate of that parcel, we'll see HOA
7 area number one, correct?

8 A. Yes, that's correct.

9 Q. That's not like just throwing an HOA on a
10 miscellaneous parcel, this parcel got labeled with its
11 own number, correct?

12 A. It does have a number.

13 Q. And as you mentioned earlier, HOA stands for
14 homeowners association, correct?

15 A. That's correct.

16 Q. And what's been marked for identification
17 purposes only, is Plaintiff's Exhibit 229, now that you
18 you've pointed out that this -- this alternate up here,
19 does this appear to be the same thing as we already
20 have up here?

21 A. It does.

22 Q. I can skip it. Sir, I'm showing you
23 Plaintiff's Exhibit 230, which is another drawing that
24 appears to be prepared by your firm. If you could look
25 at it and confirm that for us.

S. WHITESIDE -- CROSS BY MR. LUCEY

1 A. That is prepared by our company.

2 Q. Seamon Whiteside?

3 A. Yes.

4 Q. And I see some stamps on it, correct?

5 A. Correct.

6 Q. So, again, this is a final document, correct?

7 A. That's correct.

8 Q. Which is your typical practice would have been
9 reviewed by the client before you finalized it,
10 correct?

11 A. That is submitted for their review. I'm not
12 sure how much they would review on it. These are
13 drawings that would be submitted for permitting with
14 the town. And this is actually a sewer plan that would
15 have been going to the Mt. Pleasant Waterworks.

16 Q. A sewer plan, Plaintiff's Exhibit 230 is a
17 sewer plan?

18 A. It's a -- yes, a sewer plan and profile.

19 Q. And do we have a date on here, sir? We have
20 revisions dates, don't we?

21 A. Yes. Revised March 4, 1999.

22 Q. Okay. So several months before the exhibit we
23 just looked at?

24 A. Correct.

25 MR. LUCEY: And plaintiff would move Exhibit 230

S. WHITESIDE -- CROSS BY MR. LUCEY

1 into evidence.

2 MR. YOUNG: No objection.

3 THE COURT: 230 is admitted without objection.

4 (Plaintiff's Exhibit No. 230 admitted into
5 evidence.)

6 BY MR. LUCEY:

7 Q. And if we go to the top left of this plan,
8 sir, we again find the HOA area number one, correct?

9 A. That's correct.

10 Q. So, it's not only on the civil drawings and
11 the boat drawings that we just saw, but it's on the --
12 what did you call it -- the sewer drawing?

13 A. That's correct.

14 Q. So, it doesn't look -- oh, over here, we see
15 HOA number three, correct?

16 A. That's correct.

17 Q. So it doesn't appear as though that's just a
18 random HOA labeling, correct?

19 A. I don't recall where the numbers came from at
20 that time.

21 Q. You typically prepare your plans based on --
22 at least, in part, upon information supplied by your
23 client, correct?

24 A. Correct.

25 Q. And your client was the I'On Company, correct?

S. WHITESIDE -- CROSS BY MR. LUCEY

1 A. That's correct.

2 Q. Now, would your -- you mentioned the revisions
3 here -- either you did or I did -- are you able to tell
4 us what was revised by the number revision?

5 A. Yeah. The original dates on the plans were
6 back in October of '98, and that was the original plan
7 in March '99. We just revised some of the elevations
8 at the top of the manholes.

9 Q. Okay. What month in '98?

10 A. October of '98.

11 Q. So the plans start in October of '98, and in
12 March of '99, you revised some manholes, is that
13 correct?

14 A. That's correct.

15 Q. The elevation of the manholes, correct?

16 A. Correct.

17 Q. And that -- according to your note, that was
18 the only thing your firm revised on this plan,
19 Plaintiff's Exhibit 230, correct?

20 A. That's correct.

21 Q. So we know that both in late 1998 and in March
22 of 1999, the I'On plans reflected that this piece of
23 property, at the very left hand corner of 230, the same
24 piece of property that was in Plaintiff's Exhibit 86,
25 was labeled HOA number one, correct?

1 A. That's correct.

2 Q. For at least a four or five month period while
3 y'all were doing your final plans, correct?

4 A. Correct.

5 MR. LUCEY: That you, sir. Nothing further, Your
6 Honor.

7 THE COURT: Okay. Any redirect?

8 MR. YOUNG: Just briefly.

9 **REDIRECT EXAMINATION BY MR. YOUNG:**

10 Q. Mr. Whiteside, when you're doing up these
11 kinds of plans like you've just been over, would it be
12 normal for them to change over time?

13 A. Yes, they would.

14 Q. Okay. And, for example, would you move things
15 around and adjust things based on what the permitting
16 agencies might require?

17 A. Correct, we would.

18 Q. Or what the owner might have changes to it,
19 correct?

20 A. Yeah. They typically -- they evolve over time
21 and changes are made.

22 Q. And is that typical and common, in your
23 practice and experience, that these types of plans are
24 used for planning?

25 A. Yes.

B. WALBECK -- DIRECT BY MS. LYNN

1 MR. YOUNG: No further questions, Your Honor.

2 THE COURT: Okay. Anything further?

3 MR. LUCEY: Nothing further, Your Honor.

4 THE COURT: All right, sir. You may step down and
5 be excused. Okay. We are back in the regular order of
6 witnesses now. I know there is a deposition that we
7 were going to play, but is there another witness we can
8 call as well?

9 MR. LUCEY: We were going to call a witness first,
10 Your Honor, with the court's permission.

11 THE COURT: Well, call your next witness please.

12 MS. LYNN: The plaintiffs call Brad Walbeck.

13 THE COURT: All right. Mr. Walbeck, if you'll
14 come on up, we'll swear you in.

15 BRADLEY J. WALBECK, after having
16 been duly sworn, testified as follows:

17 THE CLERK: Thank you, sir. Please have a seat.
18 Please state your full name for the record, spelling
19 your last.

20 THE WITNESS: Bradley J. Walbeck, W-a-l-b-e-c-k.

21 **DIRECT EXAMINATION BY MS. LYNN:**

22 Q. Brad, I'm going to ask you a little bit first
23 about your background. Would you please tell the jury
24 a little bit more about yourself, such as where you're
25 from?

B. WALBECK -- DIRECT BY MS. LYNN

1 A. Sure. I grew up in a small town about 50
2 miles east of Pittsburgh. I went to high school,
3 graduated in '89.

4 THE COURT: Stop real quick. I'm going to get you
5 to get a little closer to that microphone. I know you
6 want to talk to the jury. We have trouble hearing when
7 he looks that way, so just don't too much.

8 A. Okay.

9 THE COURT: Thank you.

10 A. I went to a small school, a small college,
11 north of Pittsburgh, City College. I graduated in '93.

12 Q. What made you decide to move to Charleston?

13 A. I worked in that small town that I grew up in
14 for about a year. And I decided -- the Pittsburgh area
15 is very, very cloudy, so I decided that I wanted to see
16 the sun occasionally. So I looked at a map -- I looked
17 at an almanac, just to see where the sun came out even
18 in the winter, and found Charleston.

19 Q. Let's turn to when you moved to Charleston,
20 can you tell the jury more about your transition here,
21 where you moved to?

22 A. Sure.

23 Q. And about the time frame?

24 A. I moved here. I didn't have a job. I had --
25 I didn't know anybody, just my dad and I packed up the

B. WALBECK -- DIRECT BY MS. LYNN

1 UHaul, and he moved me down here. I got a job quickly
2 at Healthsource, later Blackbaud.

3 Q. And where were you living at that time in
4 Charleston?

5 A. Run-A-Way Bay is where I initially started at.
6 But after I was at Blackbaud for a while, and I knew
7 this was the area I wanted to stay in, I decided to
8 build a house, so I built a house in Dunes West.

9 Q. And how long were you in Dunes West?

10 A. Approximately two years.

11 Q. Why did you leave Dunes West?

12 A. The traffic started to get worse. It's on 41,
13 just -- that was basically the reason.

14 Q. Where did you go after Dunes West?

15 A. I'On. I was dog sitting for a friend of mine,
16 a big yellow lab, and they lived in I'On. And so for a
17 couple of weekends, I spent the weekend there and just
18 really fell in love with the idea of the vision of
19 I'On. So from watching their dog is how I was sold.

20 Q. Will you please tell us step by step your
21 efforts in looking further into the I'On neighborhood?

22 A. Sure. I went into the I'On sales office,
23 which had just opened on I'On Square. It's a beautiful
24 office. You walk in, very plush, had a picture of
25 Jacob Bond I'On, an oil painting of him. It had

B. WALBECK -- DIRECT BY MS. LYNN

1 pictures of the builders and the builders guild. And I
2 picked up a brochure. They had a bunch of marketing
3 things. So I picked up a brochure packet and took that
4 home and looked at it. Once I reviewed that, I thought
5 this looks pretty good, so I called the I'On Realty
6 office, made an appointment with a sales person.

7 So I met with Bill Orange, who is a real estate
8 agent with I'On Realty. I'On Realty is owned by the
9 I'On Company. I'On Realty was selling -- I'm sorry --
10 I'On Company was selling the lots through I'On Realty,
11 and Bill Orange was representing I'On Realty.

12 Q. What happened at this appointment with Mr.
13 Orange?

14 A. We went and looked at lots. And at that time,
15 the road -- there was not much infrastructure. And I
16 remember he had a brand new Ford truck and I felt very
17 badly, we were going on dirt roads and was getting his
18 new Ford truck dirty, but he was okay with that.

19 We got to the end of the road -- where the road
20 terminated, so you got out of the truck and just walked
21 around, looking at lots. I don't recall how many were
22 for sale at the time, maybe 10, but we looked at the
23 different lots.

24 There was one in particular that I liked. It
25 caught my attention. Across the street from it was

B. WALBECK -- DIRECT BY MS. LYNN

1 wetlands, so I knew that nobody could build directly
2 across from me. But what really caught my attention
3 was Mr. Orange told me -- or I was under the
4 impression, directly around the corner from my house,
5 there would be deep water access. There would be a
6 boat ramp, a community dock, and what Mr. Orange
7 described as a building with the deepest porches in the
8 lowcountry. And it was very vivid, the deepest porches
9 in the lowcountry. And he said that I could, at any
10 time, go sit on the rocking chairs on these deepest
11 porches in the lowcountry, and overlook the marsh. I
12 could go in the morning, in the evening, but right
13 around the corner -- right around the bend from my
14 house would be these amenities.

15 Q. And where exactly is right around the bend
16 from your house?

17 A. It's where CV-6 is located, Creekside Park
18 community dock.

19 Q. And where is your house located?

20 A. I'm on North Shelmore, which is right around
21 the bend.

22 Q. And what phase of I'On?

23 A. Phase II, as the Creekside Park and community
24 dock.

25 Q. It also referenced marketing materials that

B. WALBECK -- DIRECT BY MS. LYNN

1 you picked up from the sales office, can you please
2 elaborate on the specific marketing materials you
3 received?

4 A. Sure. Besides the neat folder, there was a
5 map and it showed -- it was very colorful. I do
6 remember that. And it showed the lakes and showed, I
7 believe, parts of phase I and phase II. But in the
8 upper right hand corner, it had a representation of a
9 building on that civic lot -- civic lot six, along with
10 the community dock and the boat ramp.

11 Q. And based upon your conversations with I'On
12 Realty representatives and this marketing material,
13 what was your understanding as to the transfer of
14 community amenities?

15 A. That these would be owned by the homeowners.
16 These were homeowners' property, on civic land, would
17 be for the homeowners.

18 Q. And based upon your conversation with I'On
19 Realty representatives and these marketing materials,
20 what was your understanding as to deep water usage?

21 A. That we would have a boat ramp right there,
22 deep water -- you could launch your boat. And deep
23 water is huge. It's important to me to just be able to
24 launch a boat right around the corner from my house.

25 Q. And where was this deep water located?

B. WALBECK -- DIRECT BY MS. LYNN

1 A. On CV-6, near the Creekside Park community
2 dock.

3 Q. And at this time, were you ever informed that
4 there were several community docks planned?

5 A. No, I was not.

6 Q. After deciding to buy a lot in I'On, will you
7 please tell the jury what happened next?

8 A. I met with Mr. Orange. He gave me a copy of
9 the 1998 Property Report. I signed for it and he
10 signed for it. I reviewed the Property Report. I
11 relied on the Property Report. I then executed a
12 purchase contract. I put my -- I think it was five
13 percent down, executed a purchase contract, where I
14 signed and Mr. Orange signed.

15 Q. Let's turn to the purchase contract. When did
16 you enter into your purchase contract?

17 A. It was in November of 1999.

18 Q. And will you describe the purchase contract,
19 generally, for the jury?

20 A. Sure. It was just a standard purchase
21 contract for real estate. However, this purchase
22 contract showed specifically the amenities that were to
23 be in I'On. And it referenced my purchase contract --
24 referenced the 1999 Property Report. And the amenities
25 chart in the purchase contract were very similar to

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1 that of what's -- in the Property Report, and it listed
2 Creekside Park community dock.

3 Q. When you entered into your purchase contract,
4 were you able to negotiate your purchase price?

5 A. No, ma'am.

6 Q. When you entered into your purchase contract,
7 what was your understanding as to the ownership of the
8 Creekside Park and community dock?

9 A. That the homeowners would own the Creekside
10 Park and community dock, as referenced in the Property
11 Report, free and clear of all encumbrances, so it would
12 be owned by the homeowners association.

13 Q. After executing the purchase contract, what
14 happened next?

15 A. We set a closing date.

16 Q. Were you provided any information between the
17 time you executed the purchase contract and the closing
18 date, that changed the way you read and understood the
19 Property Report?

20 A. No. I was relying on that Property Report.

21 Q. Let's turn to after you closed on your lot,
22 can you please tell us a little bit more about
23 transitioning into the neighborhood and moving in?

24 A. Sure. I moved in in -- I believe it was April
25 2001. It took a while to build a house. But I was

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1 able to use the amenities. I like to walk, especially
2 on the weekends when I have more time, so I was able to
3 walk down to the Creek Club, fish off the community
4 dock, just enjoy the amenities.

5 Q. During the first few years you were in the
6 neighborhood, what was your understanding as to the
7 ownership of the Creekside Park and community dock?

8 A. Nothing had changed, that my Property Report
9 was accurate. The homeowners were to own the Creekside
10 Park and community dock just as promised.

11 Q. When, if ever, did your understanding change?

12 A. March 2009.

13 Q. What happened in 2009?

14 A. The homeowners called a -- or the homeowners
15 board called a meeting, because there was a lot of talk
16 about the Creek Club being sold. And I couldn't fathom
17 how can something that we own be sold. The Grahams
18 were selling something that we owned to a third party,
19 and I could not process that. So I went to the meeting
20 to hear what was being said.

21 Q. Do you believe the sale to be contrary to what
22 was represented to you?

23 A. Absolutely. Absolutely.

24 Q. And in your purchase contract and Property
25 Report?

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1 A. Absolutely.

2 Q. How would your decision have changed to
3 purchase your lot had you known that that was going to
4 happen?

5 A. I would have paid a lot less for my lot. I
6 may not have even purchased there.

7 Q. How much less would you have paid for your
8 lot?

9 A. Approximately \$50,000.

10 Q. After learning of the sale, what happened
11 next?

12 A. There were some homeowners that were
13 challenging the use of the Creek Club, whether or not
14 it was civic or commercial. I supported them. But I
15 wrote a letter to Mr. Vince Graham, and told him that
16 he needed to convey what was promised in the 1998
17 Property Report, to give those to the homeowners
18 Assembly as promised free and clear of all
19 encumbrances.

20 Q. Did Mr. Graham respond?

21 A. He did. And I was insulted in his response.
22 He claimed that the community dock was already
23 conveyed. He claim that Creekside Park had already
24 been conveyed. However, what had been conveyed was a
25 crabbing dock on a tidal creek where, at low tide as

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1 you saw in the pictures, you can't access anything. It
2 was a crabbing dock. Mr. Graham thought I would
3 believe that was the community dock. He thought -- or
4 he said that the Creekside Park was actually a linear
5 park, a gravel linear park. And I just thought "does
6 this guy think I'm that stupid".

7 Q. Why is what Mr. Graham was referring to not
8 what you believed to be the Creekside Park and
9 community dock?

10 A. It's not on the creek. The community dock
11 is -- as I mentioned, is on a tidal creek. It's a
12 crabbing dock. It's not what Mr. Orange represented
13 either as being right around the bend from my house.

14 Q. Are you aware of any gang problems in I'On?

15 A. Excuse me?

16 Q. Are you aware of any gang problems in I'On?

17 A. No.

18 Q. Are you a part of what Mr. Duffy refers to the
19 Free Civic Lot Gang?

20 A. No.

21 Q. Have you, in any way, schemed or manufactured
22 the claims that are being asserted today?

23 A. No.

24 Q. Can you get Plaintiff's Exhibit No. 1 on the
25 screen please -- Plaintiff's Exhibit No. 1, the 1998

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1 Property Report, which has already been stipulated into
2 evidence; you recognize this, correct?

3 A. I do.

4 Q. Is this the 1998 Property Report you read
5 prior to entering into your purchase contract?

6 A. Yes. This thing that says in huge letters,
7 "read this Property Report before signing anything".

8 Q. Let's turn to page 21, the recreational
9 facilities chart.

10 A. Okay.

11 Q. And what was your understanding as to the
12 Creekside Park and community dock listed in this chart?

13 A. They were to be conveyed in phase II. My lot
14 was in phase II, and these amenities were also in phase
15 II, Creekside Park community dock.

16 Q. And turning to page 22, the paragraph entitled
17 "Use and Transfer of Facilities"; what was your
18 understanding of those two paragraphs?

19 A. Mind if I read this out loud?

20 Q. Go ahead.

21 A. "The recreational facilities listed in the
22 chart above shall, upon completion of construction, be
23 conveyed to the I'On Assembly by quit claim deed free
24 and clear of all monetary liens and encumbrances at no
25 cost to the I'On Assembly or members."

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1 Q. Do you believe the language used in these two
2 paragraphs to be detailed and specific?

3 A. Absolutely.

4 Q. When you purchased your lot, what facts, if
5 any, were you provided that would have led you to
6 believe that the developers were not going to abide by
7 what's in that Property Report?

8 A. Absolutely none. However, they did write to
9 me several times and never mentioned that anything had
10 changed.

11 Q. And, Brad, we are now going look at
12 Plaintiff's Exhibit 2, which has also been stipulated
13 into evidence; do you recognize this?

14 A. I do.

15 Q. Is this your purchase contract?

16 A. It is.

17 Q. And what's the amount listed in paragraph two
18 for your purchase price?

19 A. \$61,500.

20 Q. And we are going to turn to the signature page
21 on page six, would you elaborate for the jury the
22 execution process involved in this purchase contract?

23 A. Sure. I executed the contract by signing it.
24 Bill Orange signed it. The agent for I'On Realty and
25 Joseph Barnes signed it there at the bottom.

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1 Q. Who is Joseph Barnes?

2 A. He was the general manager of the I'On Company
3 at that time.

4 Q. And let's turn to paragraph 10 on page four,
5 and the chart below it. Is this what you were
6 referring to earlier in connection with the chart that
7 mirrored the chart that you saw in the 1998 Property
8 Report?

9 A. Yes.

10 Q. And what is your understanding of this
11 paragraph and the chart?

12 A. That these are the amenities that were to be
13 built and conveyed to the homeowners Assembly.

14 Q. And what facts, if any, when you entered this
15 purchase contract, were ever provided to you that would
16 have led you to believe that the developers didn't
17 intend to abide by that paragraph and that chart?

18 A. Nothing was ever provided to me that would
19 contradict what was provided to me in those charts.

20 Q. If you could get exhibit 167, this also has
21 been stipulated into evidence, 167. This is a
22 collection of three letters, I believe, that you just
23 referenced that you received between the purchase and
24 after the closing of your lot; do you recognize these?

25 A. I do.

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1 Q. Would you please describe these three letters
2 to the jury?

3 A. This first letter is from a sales assistant
4 and it's stating that enclosed is a copy of my ratified
5 contract, that I'll note that there was no reference of
6 anything being changed in my contract. They were
7 writing to me, but they didn't say anything had
8 changed.

9 Q. What was the date of this letter?

10 A. December 7, 1999.

11 Q. And what was the date of your purchase
12 contract?

13 A. It was November 1999, November 27th, I
14 believe.

15 Q. A month after?

16 A. Yes. It was after, yes.

17 Q. How about this letter, Brad, would you please
18 describe this letter to the jury?

19 A. This letter is dated January 10th of 2000.
20 It's to me from Joseph Barnes, who is the general
21 manager. The second paragraph, he specifically states
22 "I encourage you to rely on the expertise and guidance
23 of Bill". And that would be Bill Orange, the I'On real
24 estate agent, rely on the expertise and guidance of
25 Bill.

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1 Q. And this letter is dated?

2 A. January 10, 2000.

3 Q. And Joe Barnes also signed your purchase
4 contract?

5 A. Purchase contract, correct. And there's no
6 mention of anything changing.

7 Q. We'll go to the next letter. Please describe
8 this letter to the jury, Brad.

9 A. This letter is dated July 25th of 2000. It's
10 to me from Chris Anderson, who I believe was in
11 marketing. And it's -- I believe it's asking me to
12 complete a survey. However, this would be the third
13 time that they wrote to me and never told me that any
14 changes had been made to the Property Report.

15 Q. Brian, can we go to Plaintiff's Exhibit 71,
16 which is also stipulated into evidence, is this the
17 letter that you referenced earlier regarding Mr.
18 Graham?

19 A. Yes. It's dated August 13, 2009, where I told
20 Mr. Graham that I relied on the Property Report and
21 that he needed to convey what was promised.

22 Q. And what was promised?

23 A. Community dock, Creekside Park.

24 Q. Now, go to Plaintiff's Exhibit 72, which has
25 also been stipulated into evidence, is this Mr.

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1 Graham's response back to you?

2 A. It is. It states September 10, 2009, and as I
3 mentioned, he's -- he's telling me that these things
4 have already been conveyed. The crabbing dock is the
5 community dock, and the gravel park way -- gravel
6 pathway is Creekside Park, the linear pathway.

7 Q. And what is your belief as to what the
8 Creekside Park and community dock are?

9 A. They can only be on civic lot six, right
10 around the bend from my house, Creekside Park,
11 community dock, just as Mr. Orange mentioned.

12 Q. Can we have Plaintiff's Exhibit 145 on the
13 screen, please. Can you zoom in on the upper right
14 hand corner. Brad, will you please show the jury where
15 your lot is approximately?

16 A. Right here. Creekside Park community dock is
17 way up at the top.

18 Q. Can you repeat that a little bit louder, Brad?

19 A. Sure. I'm here, right around the bend,
20 Creekside Park community dock down here.

21 Q. And how did the sale of that area affect you?

22 A. I began to be closed off from the boat ramp,
23 community dock, Creekside Park. There were times I
24 would go down and it would be closed. It would just be
25 closed for whatever reason, could be a wedding, some

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1 kind of event, it would be closed. What was promised
2 to me was closed.

3 Q. So you would be familiar with the dock closure
4 signs?

5 A. Yes.

6 Q. At those times?

7 A. Right.

8 Q. Brad, I'm going to hand you what's been marked
9 for identification as Plaintiff's Exhibit 75. This
10 is -- this is a collection of photos; do you recognize
11 these?

12 A. I do.

13 Q. What are they?

14 A. These are photos that -- of some obnoxious
15 signs that were put on the property to keep us
16 homeowners from accessing the property.

17 Q. Did you take these photos?

18 A. I took those photos, yes.

19 Q. Do you recall where and when you took these
20 photos?

21 A. It probably would have been in 2011 after the
22 initial sale to the private, for profit enterprise
23 began to get, as I mentioned, blocked.

24 Q. Does Plaintiff's Exhibit 75 fairly and
25 accurately depict those closure signs on the day you

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1 took those photos?

2 A. Yes. You can see the first one --

3 MS. LYNN: Plaintiffs would like to move exhibit
4 75 into evidence.

5 MR. DUFFY: Without objection.

6 THE COURT: Plaintiff's 75 is admitted without
7 objection.

8 (Plaintiff's Exhibit No. 75 admitted into
9 evidence.)

10 BY MS. LYNN:

11 Q. Okay. Brad, would you please proceed with
12 describing these photos to the jury?

13 A. Sure. This one is quite jarring, saying that
14 the pathways will be closed, no exceptions. These are
15 what I thought were our pathways, and now some third
16 party entity is closing our pathways on the -- on the
17 Hobcaw River -- Hobcaw Creek.

18 Q. And let's look at the third photo in that
19 collection, would you please describe that to the jury?

20 A. Sure. It's a "stay off the grass". And this
21 is supposed to be our park, but don't walk on the
22 grass.

23 Q. And what does the first line say?

24 A. "While this property is privately owned" --
25 and this was, again, something that had been promised

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1 to us.

2 Q. And what about the last photo?

3 A. This photo is right at the beginning of the
4 community dock, so you are stopped from going out on
5 the community dock. This sign -- I've seen this sign
6 have four dates on it, and will show when it's closed.
7 But as I'm walking my dog, Hoggs, down at the dock and
8 get to this sign, and it's telling me it's going to be
9 closed at certain times.

10 Q. Brad, will you elaborate on what you
11 experienced when these closures occur?

12 A. Sure. It's certainly an inconvenience. As I
13 mentioned, I do like to walk my dog, Hoggs. And if we
14 walk down that way, there's a wedding in progress, we
15 can't continue along or through a park that was
16 supposed to be granted to us.

17 Q. Have you observed traffic concerns?

18 A. Absolutely. I live on North Shelmore -- so
19 this has become a premiere wedding event location. I
20 live on North Shelmore as I showed. So if there are
21 three or four weddings in a weekend, that means there
22 are a couple hundred cars per wedding. This is a
23 residential street.

24 I -- my bedroom, my living room are very close
25 to the street on North Shelmore, so I have hundreds of

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1 cars per weekend going back and forth. The -- imagine
2 the Carolina party bus going past your house, a couple
3 of times -- or trolleys, this is a residential street.
4 Trolleys going back and forth on your street.

5 One evening, it was after 11 p.m, I heard a huge
6 noise coming down the road. And I jumped out of bed to
7 see an 18 wheeler Sysco food truck -- 18 wheeler,
8 residential neighborhood, was clipping off branches as
9 he was coming down, to make a delivery to this
10 commercial entity at the end of the street. I've
11 certainly been inconvenienced.

12 Q. Brad, what is the amount of compensation you
13 are seeking on behalf of the Assembly?

14 A. The same amount that Lea Ann mentioned.

15 Q. And how about you individually?

16 A. \$50,000 as is -- an amount I probably would
17 have paid less had I known that I was going to be not
18 granted Creekside Park community dock as promised in my
19 1998 Property Report, and as mentioned in my executed
20 contract.

21 MS. LYNN: Thank you.

22 THE COURT: Cross-examination.

23 MR. DUFFY: Thank you Your Honor.

24 **CROSS EXAMINATION BY MR. DUFFY:**

25 Q. Hello, Mr. Walbeck.

B. WALBECK -- CROSS BY MR. DUFFY

1 A. Good afternoon.

2 Q. All right. Now, you mentioned that the thing
3 that really struck you when you were talking with Mr.
4 Orange is how important it was to have -- to be able to
5 launch your boat down at the ramp, right?

6 A. To launch a boat, yes.

7 Q. Right. Just to be clear, you don't have a
8 boat and you've never done that; is that right?

9 A. I do not own a boat. But it is my intention
10 to have one when I retire. I'm saving for a boat, so I
11 will have a boat.

12 Q. Okay. But --

13 A. And I have launched -- friends have launched
14 from that boat ramp.

15 Q. Well, that would have been recent then, more
16 recent than your deposition that your friends have
17 launched, so that would have been sometime perhaps when
18 Mr. Russo owned CV-6; is that right?

19 A. I can't give you the exact dates of when I
20 went out on the boat.

21 Q. Okay. Now, you are talking about having --
22 you would have paid \$50,0000 less at the time --

23 A. Had I even bought, yes.

24 Q. Had you even bought?

25 A. Correct.

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1 Q. But -- right. And you've told me before,
2 you're not going to swear that you wouldn't have
3 bought?

4 A. Right.

5 Q. Okay. And you purchased your lot for \$61,500;
6 is that right?

7 A. That's correct.

8 Q. And this was at a time when there was no
9 negotiation of price; take it or leave it?

10 A. Correct.

11 Q. And you would have paid \$11,500 and that's it?

12 A. Two years ago, my house at Dunes West, I paid
13 \$10,000. It was appraised at \$10,000 for a lot, at
14 Dunes West with deep water access.

15 Q. Okay. Are you telling me -- just answer the
16 question -- that \$11,500 is all you would have been
17 willing to pay if you knew that you were going to get
18 the Marshwalk instead of the park that you are
19 contending, and that the community dock would have the
20 access that's there, that ownership?

21 A. If I would have even purchased there.

22 Q. Okay. Now, the Property Report, the four
23 words everybody has heard a lot about -- you would
24 concede to me that you looked at other documents to
25 determine what the Creekside Park and community dock

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1 are in the Property Report; is that right?

2 A. You mean after?

3 Q. Well, I asked you -- I've asked you what it
4 means and you've told me. And I asked you, how you
5 found that out. And my point is, you referred to other
6 documents to do that, correct?

7 A. That's correct.

8 Q. Now, that includes the Impact Assessment; is
9 that right?

10 A. That is correct.

11 Q. Which you didn't see until 2009; is that
12 right?

13 A. That's probably about when, yes.

14 Q. Right around the time of the zoning challenge;
15 is that right?

16 A. It could be.

17 Q. February, 2009?

18 A. I can't give the exact month, but...

19 Q. Would you dispute that that's what you told me
20 before?

21 A. No. No. No. Absolutely not.

22 Q. All right. Just to keep it moving.

23 A. Sure.

24 Q. And that permit paid -- for the designation of
25 HOA was even later -- you saw that even later, that --

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1 the Impact Assessment; is that right?

2 A. It could have been around that same time. It
3 was more to prove that I had been hoodwinked.

4 Q. Okay. But when you are defining what it is,
5 that four words, and then you go and look at other
6 documents to describe what they are?

7 A. Right.

8 Q. Okay. Now, you are talking about what Mr.
9 Orange was telling you, and that they were going to be
10 the deepest porches on the clubhouse --

11 A. Those were his exact words, yes.

12 Q. And did they build that building?

13 A. Yes.

14 Q. And was it there, right where Mr. Orange said
15 it was going to be?

16 A. It was.

17 Q. And Mr. Orange never told you, you were going
18 to own it, did he?

19 A. He never said we weren't going to own it. He
20 sure painted a great picture of it and it was built on
21 Creekside Park.

22 Q. Do you contend that there was a promise to
23 build and convey the Creek Club free of charge to the
24 homeowners association?

25 A. There was a promise to build Creekside Park,

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1 the community dock. A building was built upon that
2 land that was promised to us.

3 Q. And, now, that building was in the maps that
4 you said Mr. Orange gave to you; is that right?

5 A. It was depicted.

6 Q. On a civic lot parcel; is that right?

7 A. Correct.

8 Q. So you knew when you bought, that that was a
9 civic parcel?

10 A. Yes.

11 Q. And you understand there are other civic lots
12 in I'On; is that right?

13 A. Sure. I don't believe there were any that
14 were referenced in the Property Report.

15 Q. Was this one referenced in the Property
16 Report?

17 A. This civic lot?

18 Q. Yeah.

19 A. Creekside Park and community dock, yes.

20 Q. Was civic lot, or civic lot six, or a map or
21 anything in your Property Report that shows you
22 Creekside Park as civic lot six?

23 A. No, but it mentions Creekside Park community
24 dock.

25 Q. Right. Okay. Now, what is the -- you don't

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1 know, yourself, whether the staging dock, and the boat
2 ramp, and the parking lot by Creek Club, is part of the
3 community dock promised, or the Creekside Park
4 promised; is that right?

5 A. It's one big parcel.

6 Q. So, really, they are the same things that are
7 being promised, the community dock and the Creekside
8 Park?

9 A. No, there are two separate things listed in
10 the Property Report and my contract.

11 Q. And I'd asked -- I've asked you, do you
12 believe the boat ramp is part of the Creekside Park, or
13 is it part of the community dock; and you told me you
14 don't know.

15 A. I believe it could be either.

16 Q. Okay.

17 A. But it's one big parcel.

18 Q. One big civic lot, right. Now, you mentioned
19 you didn't know until 2009, where you contend the
20 community dock and Creekside Park are; that those
21 weren't going to be conveyed to the homeowners
22 association?

23 A. That is correct.

24 Q. Now, what's your understanding of the
25 obligation in the Property Report, what does the

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1 completion of construction reference mean to you? Is
2 that when -- those facilities are complete, or does it
3 mean when the builders finish building everything in
4 I'On?

5 A. It could be either one.

6 Q. Did you have an understanding of what it was
7 when you bought?

8 A. I can't say what I understood back then.

9 Q. So, you weren't sure whether those were going
10 to be conveyed to you or not?

11 A. Well, it's common for developers to hold on to
12 an amenity, such as that, to use it to sell more lots,
13 so the developer wants to keep that looking nice.

14 Q. Do you agree with me that the homeowners
15 association was paying annually -- or I don't know if
16 they did it more than annually, but it's reflected on a
17 budget that the homeowners association was paying for a
18 Creek Club rental fee and a Creek Club dock usage fee?

19 A. I have since learned that, hence the sale.

20 Q. Right. And do you dispute that those were
21 mailed to you every year before the homeowners annual
22 meeting?

23 A. In a packet with probably about five or six
24 pages of expenses, small lines, Excel spread sheet.
25 No, I would not dispute that.

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1 Q. Now, you were familiar with some of the
2 entries on there, with landscaping and maintenance and
3 that type of thing; you had seen those before, right?

4 A. I would imagine. I didn't question
5 everything.

6 Q. Right. So, you looked at them is my point?

7 A. I glanced at them. I wouldn't say I looked at
8 them or analyzed them --

9 Q. I mean, you certainly could have -- I'm sorry,
10 I didn't mean to interrupt you.

11 A. Go ahead.

12 Q. You certainly could have seen what was right
13 there in front of you, that the homeowners association
14 was paying rent for the Creek Club?

15 A. And read it in a five page document, right,
16 Excel document, I could have -- I could have seen that,
17 yes.

18 Q. Well, you attended the homeowners' annual
19 meetings in 2004, '5, '6 and '7, didn't you?

20 A. Right. And nobody ever mentioned that we
21 didn't own it.

22 Q. Well, was the budget approved at the
23 homeowners' annual meeting?

24 A. I don't believe so.

25 Q. Was it --

B. WALBECK -- CROSS BY MR. DUFFY

1 A. I didn't vote on the budget that's approved.

2 Q. Was it submitted as the budget for the next
3 year?

4 A. I can't say.

5 Q. It's part of the package to be discussed and
6 presented at the homeowners' annual meeting --

7 A. Which we didn't go line by line on a five page
8 document.

9 Q. Please just answer my question. As part of a
10 package of what's going to be presented at the annual
11 meeting; is that fair?

12 A. Yes.

13 Q. Thank you. Now, you saw my discussion with
14 Ms. Adkins about the verification of the complaint?

15 A. Yes.

16 Q. You verified the complaint as well, haven't
17 you?

18 A. Yes.

19 Q. Okay. And you also made the same
20 representations about the original report being
21 provided to people well beyond the 2001 timeframe; is
22 that right?

23 A. There are actually two people on the
24 complaint, me and Lea Ann, so...

25 Q. Well, you verified the complaint; right?

B. WALBECK -- CROSS BY MR. DUFFY

1 A. Well, yes. Yes.

2 Q. And you didn't know anybody other than Ms.
3 Adkins telling you that she had gotten it in 2003; you
4 didn't know anybody else?

5 A. And Tim Eble.

6 Q. Well, when did he buy?

7 A. He bought in -- I don't remember when he
8 bought, but he relied upon that.

9 Q. I know y'all like Mr. Eble, but what I want to
10 talk about is people after -- all right. You
11 understand the Property Report was amended, correct?

12 A. It was -- if I can just answer that. The
13 Property Report was amended less than seven days after
14 I closed. I closed with a '98 Property Report. Less
15 than seven days later, it was amended, stuff was taken
16 out and I was never told. Continue.

17 Q. Why, thank you. The Property Report that you
18 contend took things away -- do you understand --

19 A. I don't contend it. It did.

20 THE COURT: All right, sir. You need to let him
21 finish his question.

22 THE WITNESS: I'm sorry. I apologize.

23 THE COURT: Because she only can only type one
24 person talking at a time.

25

B. WALBECK -- CROSS BY MR. DUFFY

1 THE WITNESS: I apologize. I apologize.

2 BY MR. DUFFY:

3 Q. Mr. Walbeck, you're aware that the Property
4 Report was amended, which was my first question, right?

5 A. Yes.

6 Q. And you're not aware of anyone, other than Ms.
7 Adkins, who will declare that they received the
8 original Property Report after 2000 -- the end of 2001;
9 is that right?

10 A. I can't think of anybody right off the top of
11 my head.

12 Q. Right. And you didn't know anybody at the
13 time that you swore that that was true, did you?

14 A. I can't say that I did or didn't.

15 Q. Okay. Mr. Walbeck, you went to the BOZA,
16 Board of Zoning Appeals appeal related to the use of
17 the Creek Club facility?

18 A. I did.

19 Q. And who did you sit next to?

20 A. Oh, I do not recall who I sat next to.

21 Q. Well, you testified you sat next to Lea Ann
22 Adkins.

23 A. It could very well be, but I didn't -- I
24 didn't go with Ms. Adkins. I drove there myself, I'm
25 sure, and left myself. I didn't go with anyone.

B. WALBECK -- CROSS BY MR. DUFFY

1 THE COURT: All right. The question was, who did
2 you sit next to, correct?

3 MR. DUFFY: And then I said, did you sit next to
4 Ms. Adkins.

5 THE COURT: You need to just answer the question
6 that he asks you. Okay?

7 THE WITNESS: Sorry. I apologize.

8 BY MR. DUFFY:

9 Q. You sat next to Ms. Adkins; is that fair?

10 A. It's possible.

11 Q. I'll leave it at that. Lea Ann, please pull
12 up Defendant's Exhibit 131. Do you prefer the screen
13 or hard copy?

14 A. That is fine.

15 Q. Okay. Do you see at the top there, these are
16 I'On Assembly Board of Trustees Meeting Minutes of
17 October 30, 2008?

18 A. Yes.

19 Q. Okay. Do you recall that is right about the
20 time of the community learning that the Creek Club and
21 CV-6 were going to be sold?

22 A. I don't know. It's -- we heard that it was
23 going to be sold and not going to be sold and --

24 Q. Please look at where it says "Creek Club" and
25 highlight that first paragraph. Okay. Mr. Walbeck, do

1 you see here that they are compiling a community's
2 input on the sale of Creek Club?

3 A. Yes.

4 Q. Okay. Well, if you just look down with me,
5 Mr. Walbeck, a few paragraphs; do you see Catherine
6 Templeton spoke?

7 A. Yes.

8 Q. And below that, you see Lea Ann Adkins spoke?

9 A. Yes.

10 Q. Do you see here that each of them is
11 addressing zoning concerns?

12 A. Yes.

13 Q. Okay. Turn to the next page, please. Do you
14 see the paragraph towards the bottom, where it
15 indicates that you made some comments; do you see that?

16 A. I do.

17 Q. And it has zoning concerns; is that right?

18 A. Yes.

19 Q. So at the time when you testified earlier on
20 direct, that you were so incredulous that they were
21 going to be selling the property that was promised to
22 you, when they're collecting community input at the
23 Assembly, Ms. Templeton, Ms. Adkins and you are just
24 talking about zoning concerns; is that right?

25 A. I'm sorry, would you say that again?

J. HUSSEY -- DIRECT BY MR. EVANS

1 Q. All you mentioned is zoning concerns; is that
2 fair?

3 A. That's what the minutes reflect.

4 MR. DUFFY: Thank you. I don't have anything
5 further, Your Honor.

6 THE COURT: Okay. Redirect?

7 MS. LYNN: No further question.

8 THE COURT: Okay. Thank you. Sir, you may step
9 back to the table. Everybody okay? (No response.)
10 Call your next witness, please. Give us the witness'
11 name for the record. Come on up.

12 MR. EVANS: Julie Hussey.

13 THE COURT: All right. Ms. Hussey, have a seat
14 and we'll swear you in.

15 JULIE HUSSEY, after having
16 been duly sworn, testified as follows:

17 THE CLERK: Please have a seat please. Please
18 state your name for the record, spelling your last.

19 THE WITNESS: All right. My name, for the record,
20 is Julie Cofer Hussey. My last name is H-u-s-s-e-y.

21 **DIRECT EXAMINATION BY MR. EVANS:**

22 Q. Good afternoon, Ms. Hussey.

23 A. Good afternoon.

24 Q. What do you do for a living?

25 A. I'm a mom. I've got two boys, eight and 11.

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1 I'm a wife. And I have a small company called Civic
2 Communications, that connects the public to community
3 projects, providing public information and outreach.

4 Q. Give us some examples of the types of clients
5 you work with?

6 A. Well, I've worked with about 10 different
7 developing projects, working on rezoning and their
8 planning like this project. I've also worked -- I did
9 the public information and outreach for the Cooper
10 River Bridge construction, the demolition of the Ben
11 Sawyer Bridge, the Maybank Bridge; I-26 widening at
12 Remount. And right now, I'm working on the Navy Base
13 Intermodal Facility, working with the neighborhoods
14 here --

15 THE COURT: Ms. Hussey, I'm going to ask you to
16 slow down just a tiny bit. She has to type down
17 everything that everybody says. You said the
18 Intermodal Facility?

19 THE WITNESS: Okay. The Navy Base Intermodal
20 Facility.

21 THE COURT: Okay. Sorry for interrupting.

22 THE WITNESS: That's a tongue twister anyway.

23 BY MR. EVANS:

24 Q. And do you need a drink of water or anything?

25 A. No, I think I'm good, but thank you.

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1 Q. Explain for the jury what type of information
2 or what type of service are you trying to provide to
3 the clients you work with and whomever is on the other
4 side?

5 A. Well, it's usually a variety of things. A lot
6 of it is helping them -- a lot of times people that
7 are -- like engineers or developers or builders are
8 used to speaking in their language, and they -- most of
9 us understand, so part of my job is to help that
10 language, to say, well, you know the public might
11 understand it better if you said it this way.

12 Now, I also keep up with who's paying attention
13 to a project. I've worked with the media before, for
14 the Cooper River Bridge and other bridges. I've --
15 like, with the Navy base, I've got a list of like 662
16 people that were keeping them informed about the
17 projects, that type of stuff.

18 Q. How did you get into that line of work?

19 A. Well, it's kind of interesting to be here
20 today, because actually it was this project that got me
21 into that kind of work. I was -- I was in real estate
22 a while ago, this is like in the early '90s. And I
23 wasn't really very good at real estate, because I
24 didn't really like being between the seller and the
25 buyer. I kind of wanted them just to get together -- I

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1 liked people getting together to solve their problems.
2 And so I became real interested in this community and
3 this idea of this type of development.

4 This development is a little bit interesting, a
5 little different from the other development that we --
6 that I saw as I was growing up in Atlanta, where there
7 is a lot of -- and we all may be familiar with it --
8 it's kind of a hundred -- the \$175,000 in this section;
9 200 to 400 in this section; 500s in this section; a
10 \$1,000,000 here. The -- the big box shops are here,
11 everything is all spread out. This is the idea that
12 everything comes together, and you can walk from place
13 to place, that a small house can be next to a big
14 house. And that there are amenities and parks that
15 people can walk to. It's really based on a five minute
16 walk. And I really believed in that.

17 So I found out about it, and as I learned -- as
18 I learned more, I went to take a course -- I heard
19 about Vince, because he really was -- I mean, like
20 everybody was talking about him, because he had done
21 this development in Florida -- I'm sorry -- in
22 Beaufort, that was really popular.

23 And so I went to take a course from the planner,
24 who later became the planner of I'On. I met Tom Graham
25 there. I got to know them, was able to meet Vince,

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1 learn more about the project. A long story short, was
2 at the Sheret (ph) watching it happen. I'd been to the
3 training, so I kind of knew how the Community was
4 supposed to be involved or had a sense of it, and
5 didn't feel like it was going well. So I said, "I
6 don't think is going very well." And he said, "How do
7 you know". And I said, "I just know, because it's my
8 thing". And so from then on, I started doing Community
9 Outreach and public information.

10 THE COURT: All right, I'm going to interrupt and
11 I'm going to try not to interrupt again. Slow it down
12 just a tiny bit. The typing, I know the jury is
13 getting it all, but --

14 BY MR. EVANS:

15 Q. Let's try to pull out a few things from that.

16 A. Okay.

17 Q. You went to a course that was presented by the
18 person that ultimately did some of the design work?

19 A. Led the design, yeah. He pretty much was the
20 most celebrated figure who understood this project -- I
21 mean, understood this type of development better than
22 anyone else. He started it.

23 Q. Now, he didn't specifically start I'On, he
24 started this type --

25 A. He started this type of development.

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1 Q. And you met Tom Graham?

2 A. I met Tom Graham there.

3 Q. And that's how you met Vince Graham as well?

4 A. Yes. I knew of Vince, but then it gave me an
5 introduction to Vince.

6 Q. And I think you mentioned you knew of Vince?

7 A. Yes.

8 Q. From a successful neighborhood in Beaufort?

9 A. Yes, called New Point.

10 Q. Thank you. What did you start doing for the
11 developers in order to help with the project?

12 A. Well, I followed them around a little bit,
13 like a puppy dog. I just was -- I wanted to know
14 everything you could know about this type of project.
15 And -- and I was so excited to be a part of it, so I --
16 Vince actually -- I went down to go see his project
17 down there and learned about that. And then he came up
18 and invited me to -- we went kayaking, went back on
19 Hobcaw, and saw the property. Then I got invited to
20 the Sheret, so I went to that. And then I just
21 followed around -- followed through it.

22 And then after the planning, it had to go to
23 zoning, and I wanted to learn about that process. And
24 so I followed it, and was their friend, and supported
25 the project, and was excited about it. I spoke out

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1 about it in the -- at the public meetings, signed my
2 name in. I was on the book before. It -- there was --
3 especially at the first one, it was a pretty mixed
4 group. There were a lot of people that were against
5 the project. They didn't like all the density, and so
6 it didn't pass. I was there.

7 Then there was about a year where we helped
8 strategized, I just helped as a friend, being moral
9 support. Then it went through planning and zoning
10 again. This time, again, I stepped up, supported the
11 project, you know -- I was the champion of all my
12 friends. "Oh, this is great." "Oh, this is
13 developer's greed". "No, no, it's not greed. This
14 really is, this is the right thing to do. This is
15 really great."

16 Q. What was so great about the type of
17 development they were trying to do?

18 A. Well, I just felt like it made a -- it makes
19 communities where people can walk around, had a lot of
20 public access, a lot of community access. It's
21 really -- there's more density, but there's more --
22 because of that density, there's more parks. There's
23 more amenities. They're docks. There's this.

24 It doesn't -- one of the promises -- one of the
25 things we talked about was the community -- people were