

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Honorable Michael J. Jordan, Master in Equity

Case No. 2026-000451

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Lakewood Links Property Owners Association, Inc.,

Respondent,

v.

Jason M. Josey and April W. Josey,

Appellants.

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RECORD ON APPEAL  
VOLUME II OF III

Pages 345-694

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1 MR. JONES: Okay.

2 THE COURT: Okay.

3 MR. JONES: I'll move on, Judge.

4 THE COURT: Okay.

5 REDIRECT EXAMINATION OF DAVID JOHNSTON BY MR. JONES  
6 CONTINUED:

7 Q. There were some questions asked to you about how  
8 members could be added to the Homeowners Association;  
9 do you remember that?

10 A. Uh-huh (affirmative response).

11 Q. Okay.

12 A. Yes.

13 Q. I want you to look down at Page Eight of that --  
14 of the Covenants, look at Page Eight; I'm looking  
15 at Article Two-A.

16 A. Yes, sir.

17 Q. All right. And see if -- and I'm looking at  
18 Subparagraph A on the bottom of the page, Section  
19 Two, Article Two, Section Two. It says -- and  
20 read with me and tell me if I'm getting it right  
21 -- it says in the last ending sentence, "The  
22 additions authorized under this and succeeding  
23 subsections shall be made by either such  
24 additional properties such as these  
25 Declarations," ---

1 A. Page Eight?

2 Q. Page Eight.

3 A. The bottom, Section Two?

4 Q. Yes, sir. Subparagraph A. Do you see the last  
5 beginning sentence, it says, "These additions" ---

6 A. Okay. I've got you.

7 Q. I'm sorry. I should have started at the first of  
8 the paragraph. It says, "The additions  
9 authorized under this and then succeeding  
10 subsection shall be made by either deeding such  
11 additional properties subject to this Declaration  
12 by specific reference and individual Deeds or by  
13 prior and supplementary Declaration of  
14 Covenants." And so, people can be added to  
15 Lakewood Links by a Deed; correct?

16 A. That's what it says.

17 Q. All right. I want you to look at Page Thirty-  
18 six (36), Part Five.

19 THE COURT: Would that be "Marriage"  
20 since the other one says "divorce"? "Be  
21 added by Deed via married and the other  
22 one being divorced?"

23 MR. JONES: Judge, thank you for the  
24 levity you inject into this. Thank you.

25 Q. I'm looking at Page Thirty-six (36); do you see that?

1 A. Uh-huh (affirmative response).

2 Q. It says, "Section One," at the top, "Article One,  
3 Section One," do you see that?

4 A. Uh-huh (affirmative response).

5 Q. Okay. I want to read -- see if I'm reading this  
6 right: "The Covenants and Restrictions of this  
7 Declaration shall run with the land and bind the  
8 land;" correct?

9 A. That's what it says.

10 Q. So, these Covenants, they are put on by the Deed;  
11 correct?

12 A. Uh-huh (affirmative response).

13 Q. Okay.

14 A. Yes.

15 Q. And then they run with the land; correct?

16 A. Yes, sir.

17 Q. Okay. And these Covenants shall then be -- I read on,  
18 it says, "Shall inure to the benefit and be enforced  
19 by the Association, the owner or heirs to it."  
20 Correct?

21 A. Correct.

22 Q. And is that what's happened since you have known  
23 about this subdivision since 1993?

24 A. Correct.

25 Q. There has been enforcement ---



1 A. Yeah.

2 Q. -- since that time?

3 A. Been enforced?

4 Q. Yes.

5 A. Probably. When I bought my property, I knew of these  
6 Covenants.

7 Q. Yes, sir. Okay.

8 MR. JONES: I have no further  
9 questions of this witness, Your Honor.

10 THE COURT: Mr. McCabe, on Redirect.

11 MR. McCABE: Just briefly.

12 REDIRECT EXAMINATION OF MR. JOHNSTON BY MR. McCABE:

13 Q. Mr. Jones read this to you on Page Thirty-six (36).  
14 You understand there's a distinction between whether  
15 the Covenants apply and there's also one as to whether  
16 the Association is the protector for a time; do you  
17 understand the difference?

18 A. Not really. Explain that to me.

19 MR. JONES: Your Honor, I ---

20 THE COURT: Go ahead.

21 MR. JONES: The objection is that  
22 assumes facts not in evidence; he's  
23 stating that the law is just not the  
24 successor; that's not the case at all.  
25 We have given them ---

1 THE COURT: Mr. McCabe.

2 MR. McCABE: Well, he just read this  
3 and I thought if he was going to ask the  
4 gentleman to read this in and agree with  
5 it, but I would ask him if he was the  
6 protector and signed it and if he has any  
7 evidence that the Association had been the  
8 successor throughout the time because  
9 there's none in the record.

10 THE COURT: And, of course, he's not  
11 asking -- not asking -- he's just asking  
12 him to his knowledge, not as an expert and  
13 not as to the issue of whether -- whether  
14 this is a proper extension of authority  
15 to -- to renew it, to obtain an ARB or  
16 things like that. Okay. And so, I'm  
17 going to allow him to ask, and the  
18 witness can just say, you know, what he  
19 believes as a layperson but certainly  
20 not a legal opinion and wouldn't have  
21 -- wouldn't carry the weight of a legal  
22 opinion as to whether this Homeowners  
23 Association is a proper extension of a  
24 re-creation or a successor assign of the  
25 prior. So, you can ask him.

1 MR. McCABE: He did it again so that

2 I would forget my question.

3 A. Yeah, I've forgot your question.

4 THE COURT: As long as -- as long as

5 it's fair and balanced.

6 Q. Okay. What evidence or information do you have to  
7 show that Lakewood Links Property Owners Association,  
8 Inc. is a successor to Lakewood Links Property  
9 Owners', apostrophe, Associatiion, Inc.?

10 A. You want to know what records I have?

11 Q. Yes.

12 A. None.

13 Q. What information do you have on that?

14 A. None.

15 Q. Okay. Are you aware of any instruments from the  
16 original developers, the Declarant, ---

17 A. No.

18 Q. -- assigning any rights to Lakewood Links Property  
19 Owners Association, Inc., the Plaintiff in this case?

20 A. No.

21 Q. Okay.

22 MR. McCABE: Thank you.

23 MR. JONES: I have no further questions,

24 Your Honor.

25 THE COURT: Thank you, Mr. Johnston. I

1 believe that covers just about everything.

2 MR. JOHNSTON: Thank you.

3 MR. JONES: Thank you.

4 THE COURT: Let me ask ya'll something.  
5 Considering all this technology, I've been  
6 up here and the audio from the courtroom if  
7 the sound system is turned on is fed into  
8 those rooms.

9 MR. JONES: Yes.

10 THE COURT: So, you know, I don't --  
11 I mean, we've got sequestration in effect,  
12 but I don't know whether or not the audio  
13 is being piped into those rooms. And so,  
14 we ---

15 MR. JONES: I don't know that either.

16 MS. BURRESS: (Assistant to Mr. Jones).  
17 Do you want me to check?

18 MR. JONES: Yes, that's fine.

19 THE COURT: All right. I'm just letting  
20 ya'll know that ---

21 MR. McCABE: The key witness -- the key  
22 witness hasn't testified yet.

23 THE COURT: I haven't asked the Clerk the  
24 question, but I believe we'll be back in 1-A  
25 tomorrow and Wednesday, but I don't know yet.

1 MR. JONES: Judge, can I leave my stuff  
2 in here?

3 THE COURT: Ya'll want to continue in  
4 here? I like 1-A better; it seems like ya'll  
5 are way out there. But we can certainly continue  
6 here and may have to; I'm just waiting to hear  
7 what the Court says.

8 MS. BURRESS: No, there's no sound.

9 THE COURT: Okay. Good enough. Yeah,  
10 you can certainly leave your stuff in here,  
11 and then if Jamie tells me we're still here  
12 again, then that's fine.

13 MR. JONES: Are you ready for us, Judge?

14 THE COURT: Yeah, we're ready.

15 MR. JONES: (To Mr. McCabe). Are you  
16 ready?

17 MR. McCABE: Yes.

18 MR. JONES: We will call Ms. April Josey  
19 to the stand, please.

20 THE COURT: All right. Ms. Josey, if you  
21 will come around and be sworn. Would you raise  
22 your right hand and stand right here? Do you  
23 swear or affirm that everything you tell me  
24 today will be the truth, the whole truth and  
25 nothing but the truth under penalty of perjury?

1 MRS. JOSEY: Yes, sir, I do.

2 THE COURT: Please answer the questions  
3 coming from Mr. Jones.

4 MR. JONES: Your Honor, I am asking that  
5 I be allowed to lead Mrs. April Josey; she is an  
6 adverse party. Pursuant to the South Carolina  
7 Rules of Evidence, 611-C, when a party calls  
8 a witness, an adverse party -- a witness  
9 identified as an adverse party, on that occasion,  
10 they can be asked leading questions. I am asking  
11 that I be allowed to lead Mrs. Josey since she  
12 is a party in this action and pursuant to Rule  
13 611.

14 THE COURT: Mr. McCabe.

15 MR. McCABE: That's the Rule.

16 THE COURT: All right. Mr. Jones, you  
17 may ask leading questions.

18 MR. JONES: Thank you, Your Honor.

19 (April Josey, having been duly sworn, testifies as  
20 follows):

21 EXAMINATION BY MR. JONES:

22 Q. I would like for you to look at I think it is maybe  
23 Exhibit Number Two.

24 MR. JONES: The Court might have  
25 it.

1 Q. This is Plaintiff's Exhibit Number Two. I am handing  
2 it up to you, Mrs. Josey.

3 MR. JONES: Exhibit Two, Your Honor.

4 THE COURT: Yes, sir.

5 Q. Mrs. Josey, look at ---

6 MR. JONES: Your Honor, does the Court  
7 have a copy of the Exhibit in front of you?  
8 I want to make sure the Court sees what I  
9 -- what I'm going over. I'll get another one.

10 THE COURT: I don't think so.

11 MR. JONES: I will hand one to the  
12 witness then. Let me -- and I have that  
13 marked as Exhibit Two. I'm sorry, Judge.  
14 I should have had my wits about me there.  
15 (Mr. Jones provides copy to Court.

16 MR. JONES: Thank you.

17 Q. Mrs. Josey, I am handing you what we have marked as a  
18 chart of Josey Chain of Title, and it is marked  
19 Plaintiff's Exhibit Number Two. Let me put that in  
20 front of you. All right. I want you to look at Tab  
21 Two; do you see it -- it says "Tab Two" there?

22 A. Yes, sir.

23 Q. And it says -- there's a Deed there. Do you see  
24 it?

25 A. I believe that's it.

1 Q. It says, "Paula McCormick." See at the top?

2 A. On the front of the first page?

3 Q. Yeah, on the first page. It says "Title to Real  
4 Estate at the top." Do you see it?

5 A. Not -- I can ---

6 Q. Can you see it?

7 A. Now I do.

8 Q. All right. Good. I want you to look at -- now, that  
9 Deed is from Paula McCormick to you, April Josey;  
10 correct?

11 A. Correct.

12 Q. All right. And Mrs. Josey, that Deed provides down  
13 just before "Together," -- do you see the word  
14 "Together"?

15 A. Yes.

16 Q. It says, "This conveyance is subject to any  
17 restrictions, reservations, zoning ordinances or  
18 easements that may appear of record on the recorded  
19 plat or on the premises." Correct?

20 A. Yes.

21 Q. And you saw that when you signed this Deed, didn't  
22 you?

23 A. I did.

24 Q. Or when you received it; correct?

25 A. Yes, sir. I saw it this up here.



1 Q. Okay. All right. I see it -- back on the 7th day of  
2 January, 2021?

3 A. That's about right, yes, sir.

4 Q. Okay. And so, the property was conveyed into your  
5 name on January 7th, 2021?

6 A. That sounds right.

7 Q. And then it was recorded on January 11th, 2021;  
8 correct?

9 A. Yes, sir.

10 Q. All right. Now, let's go to Page One or Tab One;  
11 okay?

12 A. Yes, sir.

13 Q. Now, what happened is this Deed, if you go to the  
14 second page, this Deed of January 8th -- go to  
15 the second page of the Deed?

16 A. Yes, sir.

17 Q. It has the 8th written on it; do you see it?

18 A. Yes, sir.

19 Q. And that Deed was on January 8th, and what you did is  
20 you conveyed this property to yourself and Jason  
21 Josey; correct?

22 A. I believe so. I'm not good at timing of events.

23 So, I think the Mortgage was going to be in my  
24 name, but the Deed was going to be both of us, if  
25 that makes sense.

1 Q. Well, okay. So, what you did, the day after you got  
2 the Deed in your name, you conveyed it into your name  
3 and your husband's name; correct?

4 A. Well, it was a lot of paperwork at the time. I don't  
5 know.

6 Q. The reason I ask is, January 13th is when last  
7 recorded?

8 A. Yes, sir. Recorded -- as far as me signing paperwork,  
9 I did that I think it was all on the same day.

10 Q. Okay. So, this Deed likewise, right above  
11 "Together," it says, "this conveyance is made  
12 subject to any restrictions, reservations, zoning  
13 ordinances or easements that may appear of record  
14 in recording the plat for the premises;" correct?

15 A. That's what it says.

16 Q. Okay. And you knew that when you received the  
17 property; correct?

18 A. Yes, sir.

19 Q. And you knew that when you conveyed it to your husband  
20 and you; correct

21 A. Uh-huh (affirmative response). Yes, sir.

22 Q. All right. Hand me that back. Thank you. Now,  
23 you went to a closing when you purchased this  
24 property; correct?

25 A. Yes, sir.

1 Q. All right. And Curtis and Croft is where you went;  
2 correct?

3 A. Yes, sir.

4 Q. All right. I hand you a copy of that. I want to  
5 hand you this document and look at the signature  
6 on this document, the initials and the signature  
7 too. On the "Buyer" on the second page, do you  
8 see that?

9 A. I see that.

10 Q. That is your signature?

11 A. Uh-huh (affirmative response). That's my name.

12 Q. Okay. And that's your signature on the bottom  
13 there; correct?

14 A. There it is at the bottom, yes, sir. The bottom.

15 Q. And so, that is a document you signed?

16 A. Yes, sir.

17 Q. Okay.

18 MR. JONES: Your Honor, I would  
19 like to mark this as Plaintiff's Exhibit  
20 Number -- I guess Nine.

21 THE COURT: Eight.

22 MR. JONES: Okay. Eight.

23 COURT REPORTER: That last one I believe  
24 was marked as Number Nine.

25 MS. BURRESS: I think it is Number Ten

1 (10) .

2 MR. JONES: It is Number Ten (10). My  
3 apologies, Judge.

4 (DOCUMENT ENTITLED SURVEY, RESTRICTIVE  
5 COVENANT, AND TAX AFFIDAVIT MARKED AS  
6 PLAINTIFF'S EXHIBIT NUMBER TEN (10))

7 THE COURT: So, this is Number Ten (10)?

8 MR. JONES: Yes, Number Ten (10).

9 Q. Okay. I want to ask you some more questions about  
10 that; okay?

11 A. Okay.

12 MR. JONES: Thank you, Your Honor.  
13 This is Number Ten (10), and we move that  
14 into evidence, Your Honor, please.

15 THE COURT: Marked into evidence, Number  
16 Ten (10).

17 MR. McCABE: Number Ten (10)?

18 MR. JONES: Yes.

19 Q. April, let me talk to you a little bit about this.

20 A. Okay.

21 Q. Look on the second page. Do you see at the top  
22 it says, "Restrictive Covenants"?

23 A. Yes, sir.

24 Q. All right. Let me see if I'm reading this right.

25 "That the buyer acknowledges that there are

1 Restrictive Covenants related to the property  
2 purchased and acknowledges receipt of a copy --  
3 and acknowledges receipt of a copy." Am I  
4 reading right?

5 A. Yes, sir.

6 Q. Okay. "Of those Covenants recorded in the Office  
7 of the Resister of Mesne Conveyance recorded at  
8 Book 481, Page 1879." Correct?

9 A. Yes, sir.

10 Q. Okay. Book 481, Page 1879 and Book 696 at Page 1917,  
11 Book 511, Page 241, Book 785, Page 471, Book 849, Page  
12 833, and Book 1054, Page 1032 and Book 1265, Page  
13 5784; did I read that correctly?

14 A. That's what it says, yes, sir.

15 Q. Okay. And it says, "Buyers acknowledge having  
16 the opportunity to comply with the terms of the  
17 Covenant or face potential legal action from  
18 other property owners or Property Association."  
19 Do you remember reading that?

20 A. Yes, sir.

21 Q. All right. "Closing attorney has not provided any  
22 advice to the buyers regarding use of the property.  
23 The buyer has no questions of the closing attorney in  
24 this regard." You initialed that paragraph, didn't  
25 you?

1 A. I did.

2 Q. And you signed it too; correct?

3 A. I did.

4 Q. All right.

5 MR. JONES: Your Honor, there is  
6 an exhibit that I marked for I.D. purposes  
7 only. Number Six. Exhibit Number Six.

8 Q. April, I want to hand you a copy of what is marked for  
9 I.D. purposes as Exhibit Number 6-A, B, C, D, E and F;  
10 do you see that?

11 A. Yes, sir.

12 Q. Okay. This fence is the fence in your backyard, isn't  
13 it?

14 A. It's the side-yard.

15 Q. Side-yard?

16 A. Yes, sir.

17 Q. Okay. All right. So, this is the side-yard of your  
18 house; correct?

19 A. Yes, sir.

20 Q. All right. Now, this fence is an eight foot fence,  
21 isn't it?

22 A. Yes, sir.

23 Q. Okay. And this picture was taken many months  
24 ago, wasn't it?

25 A. Probably, because we don't have the golf cart any

1 more. That's not there.

2 Q. Okay. You wouldn't dispute that it was taken in  
3 January of '23, would you?

4 A. No, sir.

5 Q. All right. Now, this fence was constructed by  
6 you guys after you moved into the house?

7 A. Yes, sir.

8 Q. Okay. Now, let's go -- that is Exhibit A; I'm looking  
9 at 6-A. All right?

10 A. All right.

11 Q. All right. I want you to look at Exhibit B --  
12 Exhibit Six-B; do you see that?

13 A. Yes, sir.

14 Q. Okay. That's how that fence looked in mid  
15 September of this year, didn't it?

16 A. That's probably true.

17 Q. Okay. Now, that fence, no paint on it?

18 A. Well, it could have been off the fence due to the  
19 lumber we used, and once we got to the place  
20 where we were able to do and wanted a new fence,  
21 we had already received notice that they wanted  
22 us to stop, and so, we stopped working on it at  
23 all. So, there is -- it has aged and we were not  
24 doing any more work on it at that time.

25 Q. You began constructing this fence in June of '21,

1           didn't you?

2       A.    Yes, probably in that -- around then.

3       Q.    Okay. You began constructing it in June of 2021?

4       A.    Yes, sir, and it took several months to complete  
5           the work done on it.

6       Q.    Okay. You say "several months." Are you talking  
7           four months, five months?

8       A.    I don't recall exactly. I believe that it  
9           probably took at least three to four months.

10      Q.    All right.

11      A.    We couldn't purchase all the lumber at once because it  
12           wasn't available; my husband had to get what he could,  
13           what was available at the time.

14      Q.    And so, you completed the construction some time in  
15           September or October of 2021?

16      A.    Right. It was several months.

17      Q.    Yeah.

18      A.    It was over the course of several months.

19      Q.    All right. Now, I want you to go to 6-C. Is this how  
20           this fence looked in mid September of this year?

21      A.    Yes, because we hadn't a chance to work on it at  
22           that time.

23      Q.    So, this fence, I'm looking at 6-A, when you say this  
24           fence is "side-yard," that's one part of it, but it  
25           runs along ---



1 A. It runs by ---

2 Q. -- it runs by a boundary too, doesn't it?

3 A. Yeah, it runs into that white picket fence right  
4 there; it runs along there on the side (witness  
5 indicates).

6 Q. Yeah. So, ---

7 A. And then it stops because there's a fence --  
8 like, she has a painted fence; so, it runs up to  
9 her painted fence and stops on that side.

10 Q. Okay. So, this eight foot fence continues from your  
11 backyard around to your neighbor's side-yard; correct?

12 A. Well, it's her -- the Christmas' side-yard is  
13 here with that in the back.

14 Q. Yeah.

15 A. And then it starts on the other side where they  
16 already had a fence eight foot tall; so, we just  
17 continued with the eight foot one.

18 Q. All right. Let's talk about -- let's go to Six-B.

19 A. Okay.

20 A. That's the front of your house, isn't it?

21 A. Yes. Part of that is our fence and part of that  
22 is the previous owner's.

23 Q. All right. Let's talk about that a little bit; let's  
24 look at Exhibit Three, Exhibit Number Three.

25 MR. JONES: Your Honor, I'm handing

1                   this up and I want to get a copy to hand  
2                   her. Excuse me, please, Judge.

3                   THE COURT: Yes, sir.

4       Q.    Okay. I am going to hand you what is marked as  
5           Exhibit Number -- Plaintiff's Exhibit Three; do you  
6           see that?

7       A.    Yes.

8       Q.    Okay. I'm handing it to you. All right. Now, your  
9           lot is the Highlighted one that is 3020; correct?

10      A.    That's correct.

11      Q.    Now, your house actually faces Tidewater Drive,  
12           doesn't it?

13      A.    Yes, sir.

14      Q.    It does not face the cul-de-sac, does it?

15      A.    No, sir.

16      Q.    Okay. And so, when we look at 6-D, Exhibit 6-D,  
17           what happened is that fence -- you have got that  
18           there in front of you?

19      A.    Yes. I've just got to find it.

20      Q.    As you face the house with Tidewater at your back,  
21           you guys also added a wooden fence to the left of your  
22           house too, didn't you?

23      A.    If you're facing the house?

24      Q.    If you're facing your house -- we looked at 6-D?

25      A.    That portion of it, yes, sir.

1 Q. And so, you added on the left side of your house and  
2 you added on the right side of your house?

3 A. Well, we continued what was already there on the left  
4 side. As you can see, it runs into an older fence  
5 that was there from the Lakewood Drive property. And  
6 so, that was already started by them. So, then he  
7 just took it across the rest of the front.

8 Q. So, the idea is you added a wooden fence on the left  
9 of the house and on the right of the house; correct?

10 A. Yes, sir.

11 Q. And along the property line on the right side of the  
12 house; correct?

13 A. Yes, sir, I believe so.

14 Q. All right. Now, this ---

15 A. But only -- on the left side, only up to the point  
16 where there's a picket fence and a chain-link fence I  
17 think is where that one stops.

18 Q. So, these blue lots represent lots that are in  
19 Lakewood Estates; correct?

20 A. Correct -- well, I say that, but that's what I'm being  
21 told.

22 Q. And so, the fence to which you connected was a  
23 Lakewood Estates' fence; correct?

24 A. It looks like it on that side but not on the  
25 other side; the other side I'm assuming is where

1 the 3000 would be, and our Association issued  
2 that out.

3 Q. And so, the idea is that these lots are in front of  
4 you in Lakewood Estates, and you know that?

5 A. The lots in front of me, are they ---

6 Q. No, I'm talking about these blue lots on Exhibit  
7 3-D; those are Lakewood Estates?

8 A. Yes, if that's what this map represents, yes,  
9 sir, then that would be true.

10 Q. Okay.

11 MR. JONES: (To Court Reporter) You  
12 can have that back. Thank you.

13 Q. All right. Go to Six-E.

14 A. All right.

15 Q. Okay. You wouldn't dispute me if I told you that's  
16 how that eight foot wooden fence looked on October the  
17 2nd, 2024, would you?

18 A. No, sir. That's kind of how it looked, you know,  
19 yes, sir.

20 Q. I'm just interested; I see that trailer on the  
21 right-hand side?

22 A. Yes, sir.

23 Q. That is not on your property, is it?

24 A. Yes, it is.

25 Q. That's Christmas' property at 3000, isn't it?

1 A. No, sir. Our property is at an angle, and he and Ms.  
2 Christmas' grandson got out and measured it all out to  
3 see where the property lines were, and our property  
4 actually runs across very near to where her light-pole  
5 is. So, we actually, the part that looks like it is  
6 part of her yard is actually a part of our yard.

7 Q. All right. Beyond that, as far as the Covenants go,  
8 ---

9 A. The work trailer?

10 Q. -- does it allow for the work trailer there on your  
11 property?

12 A. I don't think it says anything about a work  
13 trailer; I'm not sure. I don't recall.

14 Q. You don't know?

15 A. I don't recall there being anything about a work  
16 trailer.

17 Q. Okay.

18 A. I believe there's something about recreational  
19 vehicles, but I don't recall anything about work  
20 trailers.

21 Q. Let's go to -- let's go to Exhibit Six-F; is that  
22 a fair and accurate representation of what your  
23 fence looked like on October 2nd, 2024?

24 A. Yes, sir, probably.

25 Q. Okay.

1 MR. JONES: Your Honor, I would like  
2 to move Exhibit Six, which is -- it's  
3 Plaintiff's Exhibit Number Six that has  
4 been marked for identification purposes  
5 only -- I would like to move that into  
6 evidence as testified to by Mrs. Josey,  
7 please.

8 THE COURT: Mr. McCabe, any objection?

9 MR. McCABE: No objection.

10 THE COURT: Okay. Without objection,  
11 Plaintiff's Six?

12 MR. JONES: Yes, sir.

13 THE COURT: A through F.

14 MR. JONES: Excuse me, please, Judge.

15 (PLAINTIFF'S EXHIBIT SIX, PHOTOGRAPHS,  
16 PREVIOUSLY MARKED FOR I.D. ONLY, IS NOW  
17 MOVED INTO EVIDENCE).

18 Q. Mrs. Josey, I think you applied for the in-ground  
19 swimming pool?

20 A. I did.

21 Q. And you did that on July the 2nd, 2021; correct?

22 A. Probably.

23 Q. All right. I want to hand you a copy of an ARB,  
24 Architectural Review Board form, and I'm going to hand  
25 that over to Mr. McCabe as well. Okay. Let me ask

1           you about that. That document I just handed you, is  
2           that the document you filled out to ask for an in-  
3           ground pool?

4       A.    Yes, sir.

5       Q.    That was on July the 2nd, 2021?

6       A.    Yes, sir.

7       Q.    And that is your document; correct?

8       A.    Yes, sir.

9       Q.    All right.

10                       MR. JONES: Your Honor, I would like  
11                       to move that into evidence as Plaintiff's  
12                       Exhibit Number, I guess, Eleven (11)?

13                       THE COURT: Mr. McCabe, any objection  
14                       to Exhibit Eleven (11)?

15                       MR. McCABE: Is there another version  
16                       of this statement?

17                       MR. JONES: I'm sorry?

18                       MR. McCABE: Is there another version  
19                       of this application for her?

20                       MR. JONES: No, I don't think so unless  
21                       it's in my file that I haven't seen.

22                       MR. McCABE: All right. No objection.

23                       THE COURT: Plaintiff's Exhibit Eleven  
24                       (11) is in evidence.

25                       MR. JONES: Okay.

1 Q. All right. Let me ask you some questions about  
2 this in-ground pool.

3 A. Yes, sir.

4 Q. Okay. Now, this is dated September -- July the  
5 2nd, 2021?

6 A. Yes, sir.

7 Q. And you say "In-ground concrete pool"?

8 A. Yes, sir.

9 Q. This was approved promptly, wasn't it?

10 A. I believe so.

11 Q. Yes; the answer is yes?

12 A. Well, I'm not sure of the time line on this, but  
13 we did receive a response.

14 Q. Okay. Now, the fence that we talked about in  
15 Exhibit Six, the fence in Exhibit Six was already  
16 in place at that time?

17 A. Um -- I -- I don't recall exactly which day we  
18 began construction on that fence.

19 Q. The reason I asked is, you said you were still  
20 building on the fence as late as October of '21?

21 A. Well, possibly as late as October. I don't -- I don't  
22 know exactly which day we started and I don't know  
23 exactly which day it was completed. I just know it  
24 took a while longer than it would have normally due to  
25 the construction and the delays in materials that we



1           were experiencing in 2021.

2       Q.    Okay.

3       A.    Actually, my husband even used wood -- I don't know --  
4           I'm not sure. But we couldn't get enough at one time  
5           to do the project; we had to get a little bit along  
6           and along.

7       Q.    Okay. So, this fence, you have never installed  
8           this fence, have you -- I mean, excuse me -- this  
9           in-ground swimming pool?

10      A.    No, sir. And there was again, the products to be  
11           used and a lot of high demand at the time; it was  
12           the summer months and they weren't going to be  
13           able to get it done until the following year.  
14           And so, we halted our plans on the pool  
15           altogether.

16      Q.    The process you followed was, you got in touch with  
17           Rory Hair?

18      A.    I did.

19      Q.    And you asked Rory Hair about putting an in-  
20           ground pool in; correct?

21      A.    I did. Yes, sir.

22      Q.    And this was in May of 2021; correct?

23      A.    I don't think I asked him about that in May.

24      Q.    All right. Well, let me proceed a little bit.

25      A.    Okay.

1 Q. You asked him about that, and then at that time, he  
2 wrote you back saying you had to fill out this form,  
3 didn't he?

4 A. I'm not sure; I don't recall that. But that may  
5 be true; I just don't remember. It's been three  
6 or four years.

7 Q. Okay.

8 MR. JONES: Excuse me, please, Your  
9 Honor.

10 THE COURT: Sure.

11 Q. I'm handing you a copy of this, Mrs. Josey, and I want  
12 to go through this with you.

13 MR. JONES: And I'm handing a copy  
14 to Mr. McCabe as well. Judge, I'm handing  
15 a copy up to Ms. Brown just to mark for  
16 I.D. purposes only, I guess, so that we can  
17 discuss it.

18 THE COURT: That will be Twelve (12)  
19 for I.D.

20 MR. JONES: Okay.

21 EMAILS CONCERNING POOL WITH ARB  
22 MARKED FOR I.D. AS PLAINTIFF'S EXHIBIT  
23 NUMBER TWELVE (12)

24 Q. Okay. I want to talk to you about this. Okay?

25 A. Okay.

1 Q. You remember sending letters to Mr. Rory Hair  
2 about this fence, don't you?

3 A. Well, I can't -- I don't recall specifically a  
4 letter, but I do remember the general email  
5 account and that being established.

6 Q. To Nelle Tomlinson?

7 A. Well, I guess she was the one who responded, but I do  
8 remember this one in particular.

9 Q. Okay. Well, I'm looking at this Exhibit, which  
10 is exhibit Twelve (12), and it says at 3:00 P.M.  
11 or 3:09 P.M., it says, "Hello, my husband and I  
12 are new in the neighborhood and interested in  
13 having an in-ground pool installed. We are not  
14 located on or a view of the golf course. Do we  
15 need approval for this? Please advise." You  
16 sent that to the LLC, Lakewood Links' address;  
17 correct?

18 A. I did because I was confused about the paperwork  
19 we had gotten from the attorney's office.

20 Q. Okay. And so, what happened was, you knew to ask  
21 Lakewood Links about it?

22 A. I did, but I still was concerned when they  
23 responded because our neighbors told us they  
24 weren't in the HOA.

25 Q. You ---

1 MR. JONES: Your Honor, ---

2 A. I'm sorry; I'm getting ahead of you. I'm sorry.

3 MR. McCABE: I object to her testimony  
4 about what the neighbors said.

5 THE COURT: Don't tell us ---

6 MRS. JOSEY: Well, I ---

7 THE COURT: Hang on just a second. We  
8 don't want to have hearsay that a witness  
9 is not here to respond to whether that was  
10 said, whether it was said differently. And  
11 so, I guess communications with outside  
12 neighbors and parties, we shouldn't -- we  
13 can't repeat here because we are not able  
14 to test the veracity of that.

15 MRS. JOSEY: Yes, sir.

16 THE COURT: So, Mr. Jones objected  
17 while the witness was answering, and, Mr.  
18 McCabe, I'm not sure exactly what your  
19 objection was.

20 MR. McCABE: Well, I didn't hear  
21 what she was saying, etcetera.

22 THE COURT: She was saying what she  
23 had learned from a neighbor relative to  
24 this email that was sent, and Mr. Jones  
25 objected to it being hearsay.

1 MR. McCABE: She's already admitted  
2 that these lots are not LLP, but I understand.

3 THE COURT: So, Mr. Jones, if you will  
4 continue, then I'll sustain that. And so,  
5 avoid, I guess. telling what you have heard  
6 from other folks not being consistent with  
7 the Rules of Evidence.

8 MR. McCABE: Okay.

9 THE COURT: Go ahead, Mr. Jones.

10 Q. So, what happened is you wrote the Lakewood  
11 Links' email address and they wrote back and said  
12 you have to apply for that; correct?

13 A. Yes.

14 Q. And they referred to the By-laws; correct?

15 A. Ah ----

16 Q. Look at the top of the page.

17 A. Are we still on the first page?

18 Q. Yes.

19 A. Oh, yes. And she asked me for my address.

20 Q. Okay. That was on May the 21st; correct?

21 A. That's right.

22 Q. And so, you were making inquiry as early as May 21st;  
23 correct?

24 A. Yes, sir.

25 Q. That was before the fence was begun in June; correct?

1 A. Probably.

2 Q. All right.

3 A. Again, I don't know exactly the time I was there.

4 Q. All right. Let's go to the next page, May the 22nd.

5 And this is a -- this is what you wrote. You said,

6 "Ms. Tomlinson, my apologies. I should have

7 anticipated you need our address. We purchased the

8 property located at 3020. We have no idea what the

9 POA requires as we were not provided with that

10 information." All right. Let's look at ---

11 MR. JONES: Let's look at an exhibit

12 here, Judge. It's Exhibit -- it may be

13 Eleven.

14 THE COURT: Yes, sir.

15 MR. McCABE: I understand he can ask

16 leading questions, but he's cut her off

17 again what she was trying to answer. I do

18 think she's entitled to provide an answer,

19 and she was going to answer something.

20 MR. JONES: And I don't mind her

21 answering. I just need to get my document

22 in front of me if I can. It's Twelve (12)?

23 MS. BURRESS: Are you talking about

24 this one?

25 MR. JONES: Yes.

1 MS. BURRESS: That one is not marked.

2 MR. JONES: Okay. It's Exhibit Ten (10).

3 Exhibit Ten (10).

4 Q. Okay. Now, I'm sorry; I can't remember the  
5 question I was asking. Let me go back to where  
6 we were which was October or May the 22nd. "Ms.  
7 Tomlinson, my apologies. I should have  
8 anticipated you would need our address. We  
9 purchased the property located at 3020 Tidewater  
10 Drive. We have no idea which POA applies to us  
11 as we were not provided that information." Now,  
12 in this document, which is Number Ten (10),  
13 Plaintiff's Exhibit Number Ten (10), ---

14 A. Yes, sir.

15 Q. -- you signed the document, you initialed and signed  
16 the foot saying that the buyer acknowledges that there  
17 are Restrictive Covenants related to the property  
18 purchased and acknowledged receipt of a copy of the  
19 Covenant recorded in the Office of the Register of  
20 Mesne Conveyances, and it goes on and gives the book  
21 and page of it too.

22 A. Yes, sir. I see that on that paper.

23 Q. Okay. That's what you said? You said ---

24 A. I did, yes, sir.

25 Q. All right. And so, let's go to the next entry which

1 is May 22nd, and it says, "Mrs. Josey," and this is  
2 from Rory Hair; do you see that?

3 A. I do. Yes, sir.

4 Q. And so, Roy Hair started corresponding with you  
5 about this in-ground pool request as early as May  
6 22nd; correct?

7 A. Yes, sir.

8 Q. All right. And it says, "Welcome to the neighborhood.  
9 You are a part of the Lakewood Links HOA." So, as  
10 early as May 22nd, you knew. In another way he told  
11 you that you were a part of the HOA; correct?

12 A. Yes, he said a HOA, but I don't think there is a  
13 HOA.

14 Q. Okay. Property Owners Association?

15 A. Well, he said we were a part of the Lakewood  
16 Links HOA, but there isn't a LLHOA.

17 Q. Okay. And so, your point is that the HOA is  
18 different between -- the HOA and the POA is ---

19 A. Yes, sir. One of them is homeowners and one is  
20 property owners, and one of them has an understanding  
21 if these are correct entities.

22 Q. Okay. Now, he told you that and he said you were  
23 in Lakewood Links; correct?

24 A. HOA.

25 Q. All right. And you also signed this document?



1 A. I signed the document, yes, sir.

2 Q. All right. Now, this says, "Thank you for reaching  
3 out to us concerning the addition of the pool. I have  
4 attached the ARV Request Form -- request. Please fill  
5 it out and return it to me and I will present it to  
6 the ARB Board to be voted on. We request the form to  
7 be submitted before any significant changes are made  
8 to the property. These changes include but not  
9 limited to tree removal, landscaping, pools and  
10 fences." Do you see that?

11 A. Yes, sir.

12 Q. And so, you knew as early as May the 22nd of 2021 that  
13 you had to make a request on this form that he sent  
14 you; correct?

15 A. (Witness shakes head affirmatively).

16 Q. Correct?

17 A. Yes, sir.

18 Q. And that's the form that we just talked to you about,  
19 that ARB Request Form; correct?

20 A. Yes.

21 MR. JONES: Your Honor, I believe  
22 that ARB Request Form has been moved  
23 into evidence. I just want to be sure.

24 THE COURT: Plaintiff's Twelve (12)  
25 is I.D. only.

1 MR. JONES: Okay. I would like to move  
2 that ARB Request Form into evidence, please,  
3 for an in-ground pool.

4 THE COURT: Mr. McCabe, have you seen  
5 Twelve (12) for I.D.?

6 MR. McCABE: It's already in.

7 MR. JONES: Number Eleven (11) is  
8 already in, Judge. It's already into  
9 evidence. That's the ARB.

10 THE COURT: That's for the in-ground  
11 swimming pool?

12 MR. JONES: Yes, sir. That's correct.

13 THE COURT: Okay.

14 Q. And so, what happened is Mr. Rory -- you got in  
15 touch with Ms. Tomlinson; correct?

16 A. Yes. She replied to the first email.

17 Q. And then what happened is Mr. Roy Hair, who is the  
18 Architectural Review Board, the Chairman, got in touch  
19 with you on May 22nd; correct?

20 A. Yes, sir. He replied back.

21 Q. And then he not only replied but he also told you  
22 you were in Lakewood Links Property Owners  
23 Association; correct?

24 A. We were in the Homeowners Association, yes.

25 Q. Yes, and in addition to that, he actually sent

1           you an Architectural Review Request Form;  
2           correct?

3     A.   He did.

4     Q.   And he said that you had to fill out these and  
5           make a request of the ARB dealing with tree  
6           removals, landscaping, pools and fences; correct?

7     A.   Yes, sir.

8     Q.   You knew that on May 22nd?

9     A.   Yes, sir, I did.

10    Q.   And at this time, the property was titled in both  
11          your husband's name and your name?

12    A.   Well, I think so.

13    Q.   Well, in January of ---

14    A.   Well, the Deed was signed in January, yes, sir.

15    Q.   Okay. So, let's go to the -- let's go to the top  
16          of the page and it says, "Hello, please see the  
17          attached Request Form -- a request for an in-  
18          ground pool at 3020 Tidewater Drive. We are  
19          still deciding the time line due to installer's  
20          availability." And so, what happened is, on July  
21          the 2nd, you followed the instruction of Mr. Roy  
22          Hair, didn't you?

23    A.   Yes, I did.

24    Q.   You submitted an ARB Form; correct?

25    A.   Submitted it for a pool, yes, sir.

1 Q. Yes, and gave it to Mr. Rory Hair as he  
2 instructed; correct?

3 A. Yes. Well, not him specifically; I just sent it  
4 back to the email address.

5 Q. All right. Well, then -- in fact, that's  
6 attached, that form is attached to the back of  
7 this exhibit that you have in your hand, isn't  
8 it?

9 A. Yes, sir, it is.

10 Q. And then go to the next page, and you will see the  
11 next page, it says, it is dated July 3, 2021; do you  
12 see that?

13 A. Yes, sir.

14 Q. And so, on July the 3rd, 2021, you got a response from  
15 Rory Hair, didn't you?

16 A. Yes, sir, I did.

17 Q. In fact, he said, "Thank you for submitting the  
18 ARB Request Form; correct?

19 A. Yes, sir.

20 Q. And so, he acknowledged that that ARB Request  
21 Form was something he needed; correct?

22 A. I'm sorry; can you repeat that question?

23 Q. Well, he sent you -- he said, "Thank you for  
24 submitting your ARB Request;" correct?

25 A. Yes, sir, he did.

1 Q. And so, he was telling you that that Request Form was  
2 considered by them; correct?

3 A. Yes, sir. The next day, he did respond.

4 Q. Okay. And so, he says, "I am pleased to inform you  
5 that you have been approved;" correct?

6 A. Yes, sir. That was a very timely response.

7 Q. All right. And so, he did answer promptly,  
8 didn't he?

9 A. Very, very timely. Yes, sir.

10 Q. He answered promptly because you followed the  
11 rules; correct?

12 A. Well, I'm not sure that's why. I think he might  
13 just not have anything else to develop that day.  
14 I couldn't speak to why he responded so promptly.  
15 But he did respond promptly.

16 Q. Well, you did -- you followed his instructions, didn't  
17 you?

18 A. Yes.

19 Q. And he answered promptly; correct?

20 A. Yes.

21 Q. All right. "And we would like to wish you good  
22 luck with your pool installation." And then  
23 after all that, you haven't even put a pool in?

24 A. Well, as I stated, the time line was to be determined  
25 because of the issues with the installation, and then

1 we got tied up in this fence mess and we just have  
2 avoided doing any improvements as it were for cosmetic  
3 or whatever ever since.

4 Q. Okay. Now, I want to ask you about a dormer repair  
5 that you had to do on that house; do you remember  
6 that?

7 A. I do. I do recall that, yes.

8 Q. All right. And what happened is you got in touch  
9 -- flip over one page; okay?

10 A. I'm on that page.

11 Q. Okay. And that was on -- that was on July the  
12 21st, you sent a letter asking about repairing  
13 dormers; right?

14 A. Yes, because we had a leak; that's right.

15 Q. You knew to go to Roy Hair when you were going to  
16 do some sort of construction on your house,  
17 didn't you?

18 A. Well, in this instance, we were contesting the  
19 validity of the HOA's Covenants and Restrictions, but  
20 I did this in good faith because I didn't want to  
21 create a whole other issue with them. And so, I was  
22 trying to refute them by sending those other  
23 referenced in that email.

24 Q. You followed the rules when it came to the dormer  
25 repair; correct?

1 A. With the caveat that we had other matters  
2 pending.

3 Q. But you followed the rule when it came to dormer  
4 repairs; correct?

5 A. Yes.

6 Q. Okay.

7 A. And in the -- in good faith, yes, sir.

8 Q. And you submitted an ARB Form to do that, didn't  
9 you?

10 A. Yes, I did.

11 Q. Okay. And you submitted it on July 21st, 2022;  
12 correct?

13 A. (Witness pauses).

14 Q. Let me hand you a copy of it.

15 A. I'm not sure.

16 Q. Is that a copy of your ARB Form where you  
17 requested it?

18 A. Yes. Yes, sir, I do.

19 Q. Okay. And I want you to look at this and see if  
20 I'm reading it right.

21 MR. JONES: And by the way, Judge,  
22 I would move this into evidence as Plaintiff's  
23 Exhibit Number ---

24 MS. BURRESS: Thirteen (13).

25 MR. JONES: -- Thirteen (13), please.

1 MR. McCABE: No objection.

2 THE COURT: Plaintiff's Exhibit Number  
3 Thirteen (13) without objection.

4 A. What is this ---

5 MR. JONES: That is Exhibit Number  
6 Thirteen (13), Your Honor, that I hand up.

7 Q. Okay. Let me talk about the dormer repair some more.

8 A. Okay.

9 Q. It says, "Tear down and rebuild dormer;" correct?

10 A. Yes, sir.

11 Q. And by the way, this is approved. It says, "ARB  
12 approved." Do you see that checkmark on there?

13 A. Yes, sir. I didn't get -- I don't know if he emailed  
14 this back to me checked or not, but he told me I  
15 didn't even need an approval for that.

16 Q. All right. But you guys put the dormer -- put a  
17 dormer on the house, but you enlarged it, didn't you?

18 A. I'm not sure. I didn't do the work.

19 Q. You don't know?

20 A. I don't know the measurements or anything.

21 Q. You can't deny that it was enlarged?

22 A. There were three windows that were taken down and  
23 three windows that were put back up.

24 Q. Okay. What you were talking about here, there  
25 was a leak and it was urgent?



1 A. It was.

2 Q. And you replaced the window and used vinyl siding to  
3 match the rest of the house. "We urgently scheduled  
4 the repair on July 25?"

5 A. Yes, and I believe he responded to me that he  
6 built it back similar to what it was, which is  
7 what we did, we put it back the white vinyl with  
8 three windows.

9 Q. All right. And let's look ---

10 MR. JONES: Your Honor, I think  
11 that's in evidence, that document is.

12 THE COURT: I looked; it is.

13 MR. JONES: Yes. Okay.

14 Q. I want to hand you this. Okay. I'm going back  
15 to your email and I see -- I see an email here  
16 that says July the 21st on it?

17 A. Yes, sir.

18 Q. And it says on the bottom is where you make an urgent  
19 request to begin the repairs on the dormer on the  
20 front of the house as it's leaking and the wood is  
21 rotten; correct?

22 A. Yes, sir, that's correct.

23 Q. And so, that's what you're talking about; correct?

24 A. Correct. The rotten vinyl and the shingles and  
25 the wood right up there, which was actually a

1 negotiation when we bought our house.

2 Q. Okay.

3 A. We knew that it was damaged when we bought the house.

4 Q. Okay. Now, I notice this is dated July the 21st  
5 of 2022; do you see that?

6 A. Yes, sir.

7 Q. Okay. Now, you had asked for an in-ground pool,  
8 and that was approved on July 2nd; correct?

9 A. The prior year.

10 Q. Okay. I understand that.

11 A. Yes, sir.

12 Q. But what you did is you came a year later and asked  
13 this; correct?

14 A. I think we asked this after they had already sent  
15 us a letter to tear down our fence because while  
16 that was pending and I was waiting for a response  
17 from that, I submitted this just because I didn't  
18 want to create a whole other set of issues.

19 Q. All right. Now, let's go to -- let's go to the page  
20 before that, which is 9-6-21; do you see it? Flip  
21 back one page.

22 A. I do see that.

23 Q. All right. In this email -- this is from Mr. Rory  
24 Hair; right?

25 A. I don't recall this email, but he signed it.

1 Q. And it is to April Josey, isn't it?

2 A. Yes, sir. It's to one of my older email  
3 addresses that I rarely utilize because I had a  
4 lot of issues with it being hacked out, and so,  
5 I stopped using that one. This could either have  
6 been during that time or it's possible I never  
7 saw it. But I don't recall this one.

8 Q. Okay. Well, let's read what he says.

9 A. Yes, sir.

10 Q. "We have noticed," -- this is dated September the 6th  
11 of 2021; correct?

12 A. Yes, sir.

13 Q. So, as I understand you, the time line you put on  
14 this, this fence was being constructed between June  
15 and as late as the end of October of 2021; correct?

16 A. Well, yes, sir. I told you I wasn't clear on the  
17 time line. It's been a few years; I don't  
18 recall. I just know that it took longer than it  
19 normally should have, and it seems like it was a  
20 couple of months.

21 Q. You didn't say "a couple months"?

22 A. Well, a couple to a few; honestly, I couldn't  
23 tell you for sure.

24 Q. Now, you said "several months" before, and you  
25 said September ---

1 A. There were a few -- a couple -- I don't know how  
2 to qualify it or quantify it; I don't have a  
3 recollection of when it was done or when it was  
4 completed.

5 Q. Okay.

6 A. From the looks of this, it must have been completed by  
7 this early September. So, it was probably taking  
8 approximately three months.

9 Q. Okay. So, are you changing your answer?

10 A. No, sir, I'm not; I'm clarifying it.

11 Q. All right. Let's talk about -- let's talk about  
12 what is written. "We have noticed that you have  
13 installed a privacy fence around your backyard;  
14 we have looked back and there was an ARB  
15 submission for a pool, but there was no mention  
16 of a fence." You agree that there was never any  
17 mention of a fence; correct?

18 A. I did not include that in my initial request.

19 Q. Okay. It says, "New privacy fences of wood or  
20 vinyl are not allowed in Lakewood Links HOA. We  
21 realize that there are several yards with wood  
22 privacy fences around you, but they are not a  
23 part of the HOA and therefore we cannot regulate  
24 what they install. There are also a few fences  
25 around that are in the yards of HOA properties,

1 but they were installed years ago when the HOA  
2 Association was not very active in the community.  
3 These have been grandfathered in. If ever  
4 replaced, they will choose a different fencing.  
5 During the purchase of your home, the realtor  
6 should have given you a copy of the Covenants. I  
7 will attach a copy of the Covenants and paste the  
8 section where it addresses the fences." You got  
9 yet another copy of the Covenants then, didn't  
10 you?

11 A. I don't recall receiving anything. When I saw  
12 this during some Discovery that Mr. McCabe gave  
13 us, but I do not recall those being in there.

14 Q. Oh, you don't?

15 A. I do not recall this one specifically, no, sir.

16 Q. But you don't deny that this email address is yours?

17 A. I do admit that that is an email address I've  
18 used in the past, but I don't frequently use it  
19 any more; I've switched to a different one. It's  
20 possible that I overlooked it, that I never saw  
21 it or it was emailed to another mail. I do not --  
22 I have no recollection of this email.

23 Q. And I'll read on. It says, "We respectfully  
24 request that you take down the privacy fence  
25 within sixty (60) days."

1 A. Yes, sir. That's what this email says.

2 Q. Look at the bottom of that email. It says, "Two  
3 attachments." Do you see that?

4 A. I see that, yes, sir.

5 Q. It says, "Lakewood Covenants, pdf. Lakewood Links  
6 Property Owners Association." Do you see those?

7 A. Yes, sir, I do; it would have been attachments.

8 Q. Okay. And so, what's happening is, it says,  
9 "Only if fencing is rezoned is what's allowed."  
10 This email was sent -- at least on -- it was sent  
11 on the 6th of September?

12 A. Yes, sir. They sent it to that email address on  
13 that day, yes, sir.

14 Q. Okay.

15 MR. JONES: Your Honor, I would  
16 like to move that into evidence as  
17 Plaintiff's Exhibit Number ---

18 MS. BURRESS: Twelve (12)?

19 MR. JONES: Is it Twelve (12)?

20 THE COURT: No. Fourteen (14).

21 Twelve (12) was I.D. only.

22 MR. JONES: Okay.

23 THE COURT: So, I'm not sure. Twelve  
24 (12) appears to be a string of emails  
25 starting May, 2021?

1 MR. JONES: Yes. Yes. I would like  
2 to move that into evidence at this time.

3 THE COURT: Mr. McCabe, any objection  
4 to Plaintiff's Twelve?

5 MR. McCABE: No objection.

6 THE COURT: Plaintiff's Twelve is in.

7 MR. JONES: Excuse me, please, Your  
8 Honor.

9 THE COURT: Yes, sir.

10 MR. JONES: Your Honor, I'm handing  
11 you a copy of ---

12 THE COURT: Hang on just a second.  
13 We've got court reporter work going on for  
14 Dickie.

15 (EMAILS ABOUT POOL ENTERED INTO  
16 EVIDENCE AND MARKED AS PLAINTIFF'S EXHIBIT  
17 NUMBER TWELVE (PREVIOUSLY MARKED FOR I.D.  
18 ONLY).

19 THE COURT: All right, Mr. Jones

20 MR. JONES:

21 Q. I'm handing you a copy of a document, Mrs. Josey,  
22 and I want to talk to you a little about that.

23 MR. JONES: I'm sorry, Doris.

24 COURT REPORTER: That's okay.

25 MR. JONES: I should be more sensitive.

1 I would like to mark this for I.D. purposes.

2 THE COURT: That will be Thirteen (13)?

3 MR. JONES: It will be Number Thirteen  
4 (13); it consists of two pages, Your Honor.  
5 Thank you.

6 (ARCHITECTURAL REVIEW BOARD REQUEST  
7 FOR DORMERS MARKED AS PLAINTIFF'S EXHIBIT  
8 NUMBER THIRTEEN).

9 Q. Mrs. Josey, I have got in front of you what is marked  
10 as Exhibit Number Thirteen (13); do you recognize this  
11 exhibit?

12 A. I do not recognize the signatures or this; no, I  
13 don't. I don't recognize this entire document;  
14 I recognize parts of it.

15 Q. All right. Well, let's talk about what you recognize,  
16 the parts that you do. All right. You see at the top  
17 it says, "6-13-22." You recognize that, don't you?

18 A. I see the date, yes, sir.

19 Q. Okay. And actually, you filled out this document,  
20 didn't you?

21 A. Yes, sir. I believe that this was the document  
22 that I filled out in my response to Mr. Jason  
23 Reddick, the attorney that was representing the  
24 POA at the time.

25 Q. All right. Now, what you have is -- you're right



1           here -- it says you asked and you checked  
2           "Addition." Do you see that in that box? It  
3           says ---

4   A.   Yeah, because there was already a fence erected. So,  
5           ---

6   Q.   I'm asking you a question here.

7   A.   Yes, sir.

8   Q.   That checked box says "Addition." Correct?

9   A.   Yes, sir.

10   Q.   Now, ---

11                   MR. McCABE: Objection; it says  
12           "Fence." I think that's the -- are  
13           we looking at the second page?

14                   MR. JONES: No, we're not. I'm  
15           on the front page of the ---

16                   MR. McCABE: Oh.

17                   MR. JONES: Yeah, two pages.

18                   MR. McCABE: Is it just one exhibit?

19                   MR. JONES: It should be one exhibit.

20   A.   I think that's two.

21                   MR. JONES: Hold on a second.

22                   THE COURT: Hold on just a second.  
23           There March 13th?

24                   MS. BURRESS:       The dormer request was  
25           Thirteen (13).

1 MR. JONES: Okay.

2 MS. BURRESS: Whatever you have in your  
3 hand right there is Fourteen (14).

4 MR. McCABE: Okay. So, that should be  
5 Thirteen (13)?

6 MR. JONES: Yes.

7 THE COURT: And this is Fourteen (14)?

8 MR. JONES: Yes.

9 THE COURT: And Thirteen (13) related  
10 to the dormers?

11 MR. JONES: Yes.

12 THE COURT: Okay. Thank you. Just put  
13 it on top.

14 MR. JONES: I'm putting it on top.

15 THE COURT: Remember all those are over  
16 there because there's only piecemeal ones  
17 over here.

18 COURT REPORTER: And I've got two over  
19 here.

20 MR. JONES: All right.

21 Q. All right. We're looking at Plaintiff's Exhibit  
22 Fourteen (14); do you see it?

23 A. I am. It's not marked; it's two pages.

24 Q. Okay. At the top it says, "ARB Request Form"?

25 A. Yes, sir.

1 Q. All right. Let me see if I can get on track.

2 A. Okay.

3 Q. So, in May of 2021, when you wanted an in-ground  
4 pool, you filled out an ARB Form and submitted to  
5 Rory Hair; correct?

6 A. Correct. Well, emailed it.

7 Q. And he approved it?

8 A. I believe that's correct.

9 Q. Okay. Promptly?

10 A. Yes.

11 Q. Okay. And then after that, you also submitted a  
12 request for a dormer repair; correct?

13 A. Yes, and we verified it by email as well.

14 Q. And he responded; correct?

15 A. Yes.

16 Q. Okay. Now, on 6-13-2022, you submitted this ARB  
17 Request Form; correct?

18 A. Yes, sir. Yes, sir.

19 Q. Okay. And as I go down this, I see your email  
20 address, it says "April" -- is that your -- is  
21 that what was your email address was?

22 A. That was what I had listed as an email, yes, sir,  
23 because the other one gave me issues of getting my  
24 password locked out and spam and everything, and so,  
25 I switched to a different one.

1 Q. All right. And then you have down here, "The  
2 completion date to be determined for pending  
3 approval from the LLPOA;" correct?

4 A. Yes, sir.

5 Q. All right. And then you had the builder was  
6 going to be your husband, Jason Josey?

7 A. Correct. Yes, sir.

8 Q. All right. And it was for the construction of a  
9 two car garage workshop?

10 A. Correct.

11 Q. And then it says "Addition." That is checked,  
12 "Addition"; correct?

13 A. Yes, sir.

14 Q. All right. Then underneath that, you filled out where  
15 it says "Project description"?

16 A. Yes, sir.

17 Q. It says, "Two car garage, with workshop, pool-  
18 house in the back," ---

19 A. Yes, sir.

20 Q. -- brick to match the house, vinyl to match the house,  
21 approximately thirty (30) by fifty-six (56)?

22 A. Yes, sir.

23 Q. "And removal of trees from backyard, approximately  
24 six, total"?

25 A. Yes, sir.

1 Q. All right. Then go to the second page. Okay?

2 A. Okay.

3 Q. On the second page is an ARB Request Form;  
4 correct?

5 A. Yes, sir.

6 Q. It is dated the same date, 6-13-2022?

7 A. Yes, sir.

8 Q. This 3020 Tidewater is the address; correct?

9 A. Yes, sir.

10 Q. All right. And you have down here, "To be  
11 determined, pending approval from the LLPOA";  
12 correct?

13 A. That's correct.

14 Q. And so, you were waiting to get approval from the  
15 LLPOA to do it?

16 A. That is correct. Yes, sir.

17 Q. All right. Well, let me just ask; to this day, you  
18 guys have not put a two car garage, workshop, pool-  
19 house, brick to match the house, vinyl to match the  
20 house and approximately thirty (30) by fifty-six (56),  
21 removal of trees from the backyard and fence  
22 alteration," you haven't done any of that, have you?

23 A. That is correct because we have not to this day  
24 received any response from the LLPOA except for  
25 a lawsuit.

1 Q. Okay.

2 A. That was their response.

3 Q. All right. Actually, the LLPOA gave you this  
4 response, didn't they?

5 A. No, sir, they did not. I do not have a copy of  
6 that in any email; I checked both email  
7 addresses. I don't have a copy of that; I don't  
8 have a certified letter. I don't have an old  
9 email. I never got a thumb-drive. They do not  
10 have any -- there is no communication or we would  
11 have worked through this at that time or we would  
12 have never let it go this far.

13 Q. You know what's interesting is, you say you didn't get  
14 the September 6th notice either, did you?

15 A. Because that was a different email address.

16 Q. Okay. And now, you say you didn't get this  
17 response?

18 A. I do not; I do not have an email with that  
19 response.

20 Q. Are you denying any response whatsoever?

21 A. If you could show me a response from ---

22 Q. No, I'm asking you a question.

23 A. No, sir, I did not get this response. They did  
24 not approve this and they did not provide this to  
25 us.

1 Q. All right. Well, let me ask you some more  
2 questions here. Okay. Looking at Exhibit, the  
3 second page of the Exhibit, it says -- at the top  
4 it says, "Reasons for changes to address. Fence  
5 alteration;" do you see that?

6 A. Yes, sir. I do.

7 Q. And then it says underneath that, it says,  
8 "Description," it says, "Five foot brick fencing, six  
9 foot pillars along and between the house and the  
10 proposed garage addition"?

11 A. Yes, sir.

12 Q. There was going to be a fence alteration;  
13 correct?

14 A. That was the plan. That was what we had hoped would  
15 be amenable to the POA as a means of a compromise.

16 Q. Okay.

17 MR. JONES: Excuse me, please, Your  
18 Honor.

19 THE COURT: Yes, sir.

20 MR. JONES: Bear with me, please, Your  
21 Honor.

22 THE COURT: Yes, sir.

23 Q. Mrs. Josey, I want to hand you a copy of this document  
24 and ask if that is what you submitted to the Property  
25 Owners Association.

1 A. (Witness reviews document). Okay. It looks like it.

2 Q. Okay. That is it?

3 A. Yes, sir. It would have been attached to the  
4 letter that I sent in response to Mr. Reddick's  
5 letter and I sent them a letter.

6 Q. Okay. All right.

7 MR. JONES: I'm going to share this with  
8 Mr. McCabe.

9 THE COURT: Okay.

10 MR. McCABE: Your Honor, my objection to  
11 this is that that was a document, it was sent  
12 with an email that explained and had some  
13 additional requests, and so, I would invoke  
14 the rule of completeness if he's going -- those  
15 weren't separate documents; it was one document:  
16 a letter, an email containing those two. And  
17 so, ---

18 THE COURT: I mean, do we have the full --  
19 are you saying that it is being submitted  
20 partially for strategy or we don't have the  
21 entire ---

22 MR. JONES: No, what I'm saying is --  
23 what I'm saying is ---

24 THE COURT: Wait just a ---

25 MR. JONES: -- what I'm saying is ---



1 THE COURT: -- just a minute.

2 MR. McCABE: I've got ---

3 MR. JONES: I'm sorry, Judge.

4 THE COURT: And so, you want to admit it  
5 and it's what she has testified to; she  
6 testified that she has seen parts of it but  
7 not the whole thing. And you want to admit  
8 it, and your objection is the Rule of  
9 Completeness; but where's -- where -- okay,  
10 do we have the rest of it?

11 MR. McCABE: I do. This is the letter.

12 MR. JONES: Of course, we object to that.

13 THE COURT: Okay.

14 MR. JONES: So, you've got to ask questions  
15 about that; we've got objections to that letter  
16 and its admissibility and relevance. But  
17 admissibility beyond relevance. I've got other  
18 arguments, but she -- for the record, I asked her  
19 were these what she submitted, and she said,  
20 "Yes." And so, she has identified them; she has  
21 authenticated them, and I want to put those into  
22 evidence as our Exhibit, which I think would be  
23 Fifteen (15), Your Honor.

24 THE COURT: Fourteen (14) is already in with  
25 the ARB Request.

1 MR. JONES: Yes.

2 THE COURT: And then, Mr. McCabe, your  
3 objection is -- so, let me ask you this. If  
4 he puts those in and then you, I mean, we'll  
5 just try to get it all in the case, I mean, under  
6 the Rule of Completeness as you say. Did that  
7 come with this and you offer that in your case,  
8 do we not get to the same point?

9 MR. McCABE: Well, the problem is, this  
10 letter specifically says ---

11 MR. JONES: Your Honor, please note my  
12 objection.

13 THE COURT: Is this that Reddick letter?

14 MR. McCABE: Right. It says, "Here are all  
15 permanent options," and it explains those  
16 particularly about revisions to the fence.  
17 And so, that -- our reason that that's not  
18 complete, you can't -- I don't know why you ---

19 THE COURT: Wait a minute; wait a minute.  
20 Those emails were sent separately from that;  
21 correct?

22 MRS. JOSEY: No, sir.

23 MR. McCABE: No. This was a letter enclosing  
24 those two exhibits. It's our position that this  
25 letter is inadmissible for a number of reasons.

1 THE COURT: Offer of compromise?

2 MR. McCABE: It's an offer of compromise.

3 THE COURT: And ya'll both know, well, you  
4 weren't here last time, but, you know, there's  
5 no jury here. It's me.

6 MR. JONES: Yeah.

7 MR. McCABE: Right.

8 THE COURT: So, I mean, if they change the  
9 letter from completeness, I agree with you, but  
10 we get to the same place if he puts in these  
11 emails, and you say -- ah, ha, didn't it come  
12 along -- didn't it come along with this. Don't  
13 we end up at, you know, at the same end spot if  
14 they're all included. I agree with you on the  
15 Rule of Completeness, but, you know, it's not  
16 like that is -- he's trying to get that in and  
17 you don't have a full opportunity to say --  
18 didn't this come along with that?

19 MR. McCABE: Only, you know, the questions  
20 are, you submitted this; this is what you  
21 submitted and ---

22 THE COURT: Which she said I recognize part  
23 of it.

24 MR. McCABE: And so, if he objects, you  
25 know, this somehow constitutes a settlement

1 offer, but it conveys those two pieces of  
2 paper right there, those two Architectural  
3 things. And it provides an explanation. If  
4 Your Honor reads it, you know, I think it will  
5 make perfect sense.

6 THE COURT: But what I'm saying is, if I  
7 agreed to put those in now and not the letter  
8 and then you put in the letter as part -- in  
9 response to that, do we get -- do we not get  
10 to the same ---

11 MR. McCABE: Your ---

12 THE COURT: Because I'll tell you right now;  
13 I'm going to let both of them be admitted. It  
14 doesn't matter if they go in right here right  
15 now or if they, you know, come in later, and then  
16 I'm certainly going to recognize the Rule about  
17 offer of compromise, which to me, means it  
18 doesn't undermine the burden of proof required.  
19 So, you know, lots of times, it deals with  
20 insurance or settlement. But if his objection  
21 to that letter is, you know, it is in essence  
22 an offer of compromise, not admissible, then  
23 I'm going to probably allow it into evidence  
24 but recognize that that's what the Rules of  
25 Evidence say about, you know, an offer of

1           compromise doesn't, you know, -- and we haven't  
2           gotten to your case yet. But I assume you're  
3           going to say that this letter, you know, under-  
4           mines this whole process and you're going to  
5           say due process, and this letter undermines  
6           that all this relates to the Covenants. So,  
7           but I mean, I get all that. So, tell me where  
8           I'm missing something at.

9           MR. McCABE: Well, if you're letting it  
10          in, you know, ---

11          THE COURT: I'm going to let those emails  
12          in and I'm going to let your letter in.

13          MR. McCABE: Okay.

14          THE COURT: But possibly not at the same,  
15          you know, possibly not right here at the same  
16          juncture because he's objected, but I'm saying,  
17          I mean, you know, that's going to come in, and  
18          I understand our Rule of Completeness but I  
19          don't see it as, you know, part of the document  
20          has been redacted and I want you to look a

21               t

22          this. But I would like all this ---

23          MR. McCABE: Right. It's very misleading  
24          to submit those without this because it says,  
25          "Enclosed" and explains it. But I understand.

1 MR. JONES: Judge, I think an offer of  
2 compromise under I think Rule 408, I think.  
3 An offer of compromise is not ---

4 THE COURT: Don't you agree with me though  
5 that the purpose of that Rule is so that the  
6 fact-finder is not misled or said -- well, you  
7 know, if you offer here and they offer there,  
8 I really don't have to decide whether there's  
9 ultimate liability or not, I've just got to  
10 ping it between there and there. Well, I mean,  
11 I just see that Rule differently when there's  
12 a separation between the Judge and the fact-  
13 finder here. I mean, I'm in both positions.  
14 But let me ask you this. Do you disagree that  
15 that letter puts all -- puts those in context  
16 and that the Rule of Completeness applies in  
17 regards to ---

18 MR. JONES: I don't -- I think that letter  
19 is -- it's -- it's negotiation and compromise  
20 and let me go further. What happens is, they --  
21 she sent this and at best it's compromising  
22 they said; we think the whole letter should be  
23 kept out, and if not, the whole letter redacted.  
24 But she sent this and they countered with this.  
25 They came back to her and said -- this is it.

1 So, she may choose negotiating and they came  
2 back with this, and she never raised an  
3 objection. What happened is, they -- just  
4 to go -- because this is a Judge without a  
5 jury -- what happened, there was a demand,  
6 like an insurance case; you're right. It  
7 was a demand. You've got to move the fence.  
8 She writes back and says -- sends this (counsel  
9 indicates), and then we say "Sign it," in two  
10 days -- merger; that's the deal. The deal is  
11 done. And then, if that's not enough, she  
12 didn't do anything with it for six months.  
13 So, what happened is, they gave her a chance  
14 to do, among other things, fence alteration,  
15 and she didn't do it in six months, and the  
16 Covenants preclude her from doing any changes  
17 after six months passed. So, what happens is,  
18 she -- she makes this offer after putting it  
19 on the form like she knew to do and says -- here  
20 it is, and then they say -- okay, we'll accept;  
21 she takes it back and then doesn't build it,  
22 doesn't build it until -- what happens is,  
23 this lady or these people have, they made an  
24 offer, a resolution, they accepted the  
25 offer of resolution, and then they didn't

1 build it. So, it's compromise; it's  
2 negotiations in a demand letter.

3 THE COURT: So, how does that include  
4 admission of the letter that delivered those  
5 under the Rule of Completeness and to put context  
6 on -- under that? I mean, you know, to me, it  
7 sounds like the purpose of this or, you know,  
8 to glean from this evidence, here's the process,  
9 you knew the process, you knew what you were  
10 supposed to do because you did it, and here we  
11 are. And if the letter says -- if the letter  
12 from Mr. Reddick puts that in context and says,  
13 you know, -- here's where we are from our side,  
14 how is that inadmissible other than an offer  
15 of compromise? If it places all of this in  
16 context, I mean, tell me how that is improper  
17 under the Rules of Evidence or prejudicial or  
18 not admissible?

19 MR. JONES: Because what's happening is  
20 they're trying to establish liability; that's  
21 what the Rule says. They're trying to establish  
22 liability for this fence that they left in saying  
23 -- they're trying to put a deadline of thirty  
24 (30) days by establishing liability in terms of  
25 trying to convert negotiations into the



1 formalities that they observed before. And so,  
2 they are trying to establish liability through  
3 that letter, which is what Rule 608 precludes.

4 THE COURT: Mr. McCabe, do you want to  
5 respond to the -- so, earlier your argument  
6 was -- we sent this in, you didn't respond in  
7 thirty (30) days, therefore, it is a waiver;  
8 correct?

9 MR. McCABE: Yes, this letter and, you  
10 know, again, if this is a settlement offer,  
11 which it isn't, and so, if it were, he wants  
12 to take two out of the eight points and say --  
13 I'll do these two, but I don't want to -- I  
14 don't want to offer the other sticking points.  
15 And this letter very ---

16 THE COURT: But I mean -- I mean, what  
17 we have to, you know, if he offers those and  
18 let's say I rule those are in and that's out,  
19 at least for now, under the Rule of Completeness,  
20 what's the difference in submitting that during  
21 your case or in your Cross of your witness? I  
22 guess I'm just thinking it's all coming in.

23 MR. McCABE: Well, if that's what -- if  
24 it's all coming in, you know, I'm fine with  
25 putting it in and I'll put this in on the --

1 on the -- on the ---

2 THE COURT: Well, you'll have -- you will  
3 have both the opportunity if you want to, you  
4 know, to examine your own witness on Cross and to  
5 reserve the right to put the witness up again  
6 in reply. And I certainly, you know, in fact-  
7 finder and in Judge, I mean, I get it and I,  
8 you know, see, you know, -- ya'll are both  
9 great -- I wish we had a jury here because a  
10 lot of these nuances are just lost on me and  
11 I've been doing this thirty (30) years. So,  
12 but -- so, they're both going to come in, but  
13 I'm going to accept Mr. -- because it was  
14 authenticated, I'm going to accept that over  
15 your objection that it is -- that it violates  
16 the Rule of Completeness, but that will be  
17 continuing and I'm going to look at it again  
18 when we get to that part when you will have  
19 the ah-hah moment, you know, to -- you know,  
20 here's what you didn't want to say, and then,  
21 unless, you know, and I say that unless it is  
22 just glaringly obvious that it is completely  
23 nothing more than an offer. I mean, I'm not  
24 trying to undermine the Rule of Evidence that  
25 says "Offers of compromise aren't permitted."

1 But, you know, again, you've got one person being  
2 the fact-finder and Judge. So, I don't know  
3 that the offers of compromise when you've  
4 got a bench trial is as nefarious or being  
5 avoided as when you've got a jury who might  
6 say -- well, since you offered to do something,  
7 that's it; I'm just going to decide between  
8 -- you know, you're -- your floor and your  
9 ceiling is here and here; it's not going to be,  
10 you know, zero. You know, how can I try a case  
11 with David Holler and come out with zero when  
12 he offered me Twenty-five Grand.

13 MR. JONES: Well, Judge, there is a  
14 distinction. There is a distinction between  
15 an auto crash case. I understand the parallel  
16 you're drawing, but there is a distinction.  
17 And the distinction is liability; they're trying  
18 to establish liability, which is what is  
19 precluded by the Statute specifically; they're  
20 trying to establish liability using this  
21 letter that we think is compromise, and it  
22 should be taken into consideration. It should  
23 be precluded from coming into evidence.

24 THE COURT: Do you want to let -- do you  
25 want me to read the letter and let's do it now

1 or do you want to do it when it comes up? I'm  
2 already saying your part is in.

3 MR. JONES: And that's really what I want  
4 to do is put it in right now.

5 THE COURT: And so, do you want me to  
6 review the letter and decide if it comes in  
7 now or do you want to carry on and put those  
8 in over his objection, and Mr. McCabe gets  
9 to offer that either on his examination of  
10 this witness or in any part of his case under  
11 the Rule of Completeness and we can go -- go  
12 through it in detail at that point; we can do  
13 it now or we can do it later. All I know is,  
14 although he says that it puts those in context,  
15 it is completeness -- do you agree that all  
16 four came together? I mean, I thought you  
17 were putting these in as -- this is the process,  
18 that is what you said, this is what we will  
19 do.

20 MR. JONES: Yes. What I'm ---

21 THE COURT: Did it come with this letter?

22 MR. JONES: It did. So far as I know, it  
23 did come with the letter, but it could have  
24 been a cover letter that said -- please try  
25 to contact so and so too. And so, the fact

1           that that letter -- that they sent the letter  
2           and buried this negotiation in the middle,  
3           camouflaged with a form they had followed in  
4           three prior incidences and the Court needs to  
5           weigh that, that they followed the rules on  
6           doing these things and then actually attached  
7           these like they had done before, this being  
8           the third time.

9           THE COURT: But those -- and so, those  
10          were submitted -- those were submitted by the  
11          Josey's and then returned them in Mr. Reddick's  
12          compromise letter; is that what you're -- I  
13          mean, you know, obviously, we haven't got  
14          through all the evidence. And so, for right  
15          now, you're offering documents that have been  
16          authenticated partially; she recognizes parts.  
17          There is enough of a foundation to let those  
18          in.

19          MR. JONES: Yes.

20          THE COURT: He has argued that the Rule  
21          of Completeness requires another document  
22          which you are objecting to saying -- saying  
23          it is an offer of compromise. And so, I'm  
24          holding ruling on that allowing you to put  
25          those in but asking you, I guess -- you know,

1           you have said they all came together. So,  
2           I mean, I just see it -- I see it as coming  
3           in and I see it as, you know, it's far safer  
4           to let stuff in than to exclude, but I see  
5           it as coming in and then you each can argue  
6           as to whether it's relative and part should  
7           be redacted or stricken. I mean, I've not  
8           read it. And maybe I'm -- you know, the  
9           other one was you -- you can't do this because  
10          of what, these 2019 or 2020, and the argument  
11          is -- well, if you say the wrong thing, it is --  
12          it undermines when you try to say you're in  
13          violation of the Covenants for the right one;  
14          that was the whole other thing. I just assume  
15          this had something to do with -- you can't do  
16          that. Ya'll indicated in this case that those  
17          2020 Covenants again are a fraud, that they  
18          weren't -- I guess they weren't recorded in  
19          the context or of the time frames of that  
20          Statute. But I haven't seen Mr. Reddick's  
21          letter; maybe it's best that I just read  
22          it and we argue that now. If we don't,  
23          it's going to come up anyway.

24                   MR. JONES: Judge, what I want to do is  
25                   put this evidence in.

1 THE COURT: Okay.

2 MR. JONES: If I understand his position,  
3 he may want to do that, but I want to raise  
4 an objection at the time that he attempts that  
5 to argue my objection in full. And if that  
6 is something on Cross-examination that he wants  
7 to try to put in, I'm going to object then.

8 THE COURT: Well, since we are already  
9 there, let me read the letter; let's just go  
10 ahead and do it. I mean, I'll even -- there's no  
11 -- there's no possibility where I just don't even  
12 look at the letter unless ya'll agree.

13 MR. JONES: Well, Judge, can we go ahead  
14 and mark this before I forget to mark it?

15 THE COURT: Yes.

16 MR. JONES: And ---

17 THE COURT: And that is -- that is either  
18 Fourteen (14) or Fifteen (15). That is Fourteen  
19 (14); right?

20 MR. JONES: It's Fifteen (15).

21 THE COURT: Okay. Fourteen (14), she said  
22 she recognized parts of the document. Is there  
23 already a sticker for Fourteen (14)?

24 MR. JONES: There is. We have already got  
25 Fourteen (14).

1 THE COURT: This will be ---

2 MR. JONES: This will be Fifteen (15), these  
3 two Exhibits.

4 THE COURT: Let's mark those as Fifteen (15)  
5 and put a paper-clip on them.

6 MR. JONES: Yes, sir.

7 THE COURT: Have you got a copy of this?

8 MR. McCABE: I do. I do.

9 THE COURT: And Mr. McCabe provided me with  
10 a copy, and the argument is that this needs to  
11 come in at this time under the Rules of  
12 Completeness.

13 (ARB REQUEST FORM, TWO PAGES, MARKED AS  
14 PLAINTIFF'S EXHIBIT NUMBER FIFTEEN (15) DATED  
15 6/13/22).

16 THE COURT: This isn't Mr. Reddick's  
17 letter; this is the Josey letter.

18 MR. McCABE: I can give you the Reddick  
19 letter. The Josey letter ---

20 THE COURT: Wasn't this part of one in  
21 previous Hearings?

22 MR. McCABE: Yes, sir. Probably. And so  
23 was the Reddick letter.

24 THE COURT: Okay.

25 MR. McCABE: I'm just saying that that



1 letter enclosed these two Architectural  
2 permissions and here's the Reddick letter.

3 MR. JONES: I've not -- I've not put  
4 that in. So, ---

5 MR. McCABE: Do you want the Reddick  
6 letter?

7 THE COURT: Well, -- I can get it now.  
8 So, it's not the Reddick letter; this is  
9 the letter in response to the Reddick letter.

10 MR. JONES: That's correct.

11 MR. McCABE: Which enclosed these two ---

12 THE COURT: Which enclosed the two forms.

13 MR. McCABE: The Architectural forms and  
14 here is the Reddick letter if you want it.  
15 Judge, I'm not arguing for the Reddick letter;  
16 I'm just saying the letter that conveyed these  
17 two Architectural requests.

18 THE COURT: Okay. Mr. McCabe, do you  
19 agree that this letter part -- in part is an  
20 offer of compromise?

21 MR. McCABE: I do not. I think if it  
22 is, any -- any dispute or any disagreement  
23 with the Architectural Review Board would  
24 be an offer of compromise, and nothing is  
25 admissible in this file and there's quite

1 a few of these things. But he wants to  
2 submit the two attachments because he  
3 wants to present those -- that they were  
4 -- that they were applying to do something  
5 which clearly contradicts the letter that  
6 conveys the ---

7 THE COURT: So, it is ---

8 MR. McCABE: I just think ---

9 THE COURT: And so, it is in my note-  
10 book; the cat is already out the bag. I've  
11 already seen that. So, I'm going to let  
12 it all in. I'm going to reserve Mr. Jones'  
13 objection that it is an offer of compromise.  
14 Under the Rules of Evidence, it is inadmissible.  
15 And so, I'm going to attach that to Plaintiff's  
16 Exhibit Fifteen (15) and I will -- when it  
17 gets that time -- we've still got a long way  
18 to go in this trial, but when it gets that  
19 time, I will consider it as a piece of  
20 evidence that came in under the Rules of  
21 Completeness as the transmission vehicle for  
22 Exhibit Fifteen (15), but Mr. Jones, you  
23 will be protected on the record and then  
24 when I get to, you know, that part  
25 where I charge myself with law and go through

1 all the exhibits, then I will determine  
2 what, if any, effect it has; I'm going to  
3 consider it all. If it is -- if I view  
4 it as nothing more than an offer of  
5 compromise, but clearly, it was the  
6 vehicle that delivered these ARV requests.  
7 So, I misunderstood, and I thought this  
8 was Mr. Reddick's letter in return, but  
9 this was in response to Mr. Reddick's  
10 letter and this enclosed the forms that  
11 Mr. Jones is putting into evidence that  
12 say -- this is the procedure that we've  
13 got. So, you can both put your objections  
14 on the record; you will be protected. But  
15 I think everybody is protected in this.

16 MR. JONES: You note my objection.

17 THE COURT: I know ---

18 MR. JONES: I think the letter should  
19 not be allowed because it's an offer of  
20 compromise; there's merger involved and  
21 they offer and it goes back -- it goes  
22 back and then they didn't build within the  
23 six months. And so, it's -- our position  
24 is that that shouldn't come before the  
25 Court; it's irrelevant.

1 THE COURT: And I would rule differently  
2 if we had a jury.

3 MR. JONES: Yes. Judge, also, we offer  
4 ---

5 THE COURT: Why ---

6 MR. JONES: -- and we say this.

7 THE COURT: Okay.

8 MR. JONES: That the Court accept a  
9 redacted copy instead of the whole letter,  
10 that a redacted copy be accepted. I have  
11 a proposed redacted copy to hand up. And  
12 I ---

13 THE COURT: So, here's what we're going  
14 to do. Again, you know, that was included  
15 in my packet. So, you can't really un-ring  
16 the bell. But this is what we're going to  
17 do; I'm going to make this a Court's Exhibit  
18 of both the whole thing and the one that you  
19 propose which is redacted so that the record  
20 is clear, you know, and then I'm going to  
21 note that the record is clear that you  
22 have objected and what you believe was --  
23 or did you redact the entire letter?

24 MR. JONES: I didn't respond -- I'm  
25 my motion is that this letter should not

1                   come in at all.

2                   THE COURT:   Okay.

3                   MR. JONES:   But beyond that, I have a  
4                   redacted that I would like to hand up by  
5                   way of a proffer for the Court to consider.

6                   THE COURT:   Okay.

7                   MR. JONES:   I will hand a copy to ---

8                   THE COURT:   And so, I'm going to put  
9                   these two in as Court's Exhibit One and note  
10                  that they refer to Plaintiff's Fifteen (15),  
11                  and then Plaintiff's Fifteen (15) which are  
12                  two which I don't have -- I'm hoping they're  
13                  here somewhere.   So, this will be Court's  
14                  Exhibit One, and it will be attached together  
15                  with the unredacted plus the redacted. And  
16                  everybody is protected.   Fair enough?

17                  MR. McCABE:   I object.   If it's a  
18                  settlement offer -- it's none; it's ---

19                  THE COURT:   I'm sorry?

20                  MR. McCABE:   If it's a settlement offer,  
21                  -- you can't pick what you want out of -- it's  
22                  not a settlement offer; it's an Architectural  
23                  request.   Now, if there's some element of  
24                  compromise in there, yes, but every offer of  
25                  compromise in the context of a HOA and an

1 Architectural request isn't an offer of --  
2 some group of settlement offer under the  
3 Rules. If that's the case, these two Exhibits  
4 were part of the settlement offer if that's  
5 what it is. We obviously deny that. But  
6 what they want to do is take out this part  
7 that says, "Will you please reconsider and  
8 approve my fence"? And they didn't respond;  
9 they still haven't responded, and so, they  
10 want that out. And so, the Rules of Evidence,  
11 I think it's stretching the limits of futility  
12 on that. I mean, just to say that it's an offer  
13 of settlement to keep an Architectural  
14 request, you know, as denied.

15 THE COURT: Okay. And so, again, both  
16 positions will be protected on the record.  
17 The full letter plus the redacted letter  
18 will be Court's Exhibit One. Do we have --  
19 we don't have a colored sticker for that?  
20 Do you have any green?

21 COURT REPORTER: No, but I've got a  
22 plain yellow.

23 THE COURT: Plain yellow. That will  
24 work.

25 COURT REPORTER: I will just write

1 "Court" on it." What about that?

2 THE COURT: I'm sorry -- Court?

3 COURT REPORTER: Yes, sir.

4 THE COURT: That's fine. Mr. Jones,  
5 is that the redacted one or have you got ---

6 MR. JONES: That's the redacted copy  
7 and I would like to make a statement on  
8 that.

9 THE COURT: Okay. Absolutely.

10 MR. JONES: So, you have got the Court's  
11 Exhibit. This is the redacted copy I hand  
12 up by way of a proffer because a redacted  
13 copy needs to complete this argument.

14 THE COURT: Okay.

15 MR. JONES: And the redacted copy takes  
16 out what I think is the offer of compromise.

17 THE COURT: Okay.

18 MR. JONES: And it accomplishes what they  
19 -- that it was a cover letter that came with  
20 it, but it takes out the offer of compromise  
21 language that ---

22 THE COURT: All right.

23 MR. JONES: It's objectionable. We think  
24 the whole letter should come out, but short  
25 of that, that if the Court -- we've got

1 redacted copies for the completeness argument  
2 and is certainly mitigated if not completely  
3 defeated, which we think it is.

4 THE COURT: Okay.

5 MR. JONES: Now, I don't know what number  
6 that is.

7 THE COURT: That is Court's One. I guess  
8 we can just clip them together. (To Court  
9 Reporter) Have you got a paper-clip?

10 COURT REPORTER: Sure.

11 THE COURT: Okay. Now, Plaintiff's  
12 Fifteen (15) is -- where is it?

13 MR. JONES: There they are, Your Honor.

14 THE COURT: I'm just going to put in my  
15 notes that Court's One goes with Plaintiff's  
16 Fifteen (15). All right. And everybody is  
17 protected on the record, and we were in  
18 examination about the ARB and I am admitting --  
19 we have now covered the Rule of Completeness,  
20 and I am admitting Plaintiff's Exhibit Number  
21 Fifteen (15).

22 MR. JONES: Okay. And let me see if I --  
23 Judge, I know -- if Mr. McCabe on Cross-  
24 examination brings up this letter in any  
25 form, I'm going to object to it, of course.



1 THE COURT: Yes, sir.

2 MR. JONES: And the Court, I understand  
3 the Court is likely to rule against it. So,  
4 and the Court -- I mean, the Court is going  
5 to let it in, and so, I will have a chance  
6 to Redirect when he gets through when that's  
7 done.

8 THE COURT: Mr. McCabe, are you good  
9 with that procedure?

10 MR. McCABE: I don't -- I mean, this  
11 is like Bonfonte or whatever the other  
12 Sumter County case was -- in that case, there  
13 was already litigation pending when they  
14 asked to reconsider, and the Court said  
15 that was an Architectural request.

16 MR. JONES: And, Judge, I've got that  
17 Bonfonte case Briefed and I will hand that up to  
18 the Court before I leave today if you would  
19 like.

20 THE COURT: Who -- is it Bonte?

21 MR. McCABE: I'm going to ---

22 MR. JONES: I'm going to move this up.  
23 I think it is clear and distinguishable.

24 THE COURT: All right. And so, we are  
25 under examination on Page Two of these forms;

1                   that's where I think that's where we kind of  
2                   pick it up. Let's see. It's 5:38. (To Court  
3                   Reporter). Are you tired?

4                   COURT REPORTER: I'm fine.

5                   THE COURT: Mr. Jones, how much do you  
6                   think you will take with this witness? I'm  
7                   not trying to cut you off, but I'm trying  
8                   to figure out -- I mean, I'll go all night  
9                   but that's not fair to the people that have  
10                  got to drive back to take a very important  
11                  check to your partner.

12                 MR. JONES: Judge, we been talking here.  
13                 I've got some more questions I need to ask  
14                 and I'll do the best I can to parse it down  
15                 -- pare it down.

16                 THE COURT: You know, I don't want to  
17                 cut you off, but if you tell me you're only  
18                 halfway through your list, we might -- we  
19                 might break for the evening.

20                 MR. JONES: I would like to take a break.

21                 THE COURT: And break for the evening?

22                 MR. JONES: Yes, sir.

23                 THE COURT: Mr. McCabe, you have got to  
24                 drive back -- you have got to drive back and  
25                 show your wife you do come home at night

1 before you get up at 4:00 A.M. and crank up  
2 the next day. And so, are you okay with  
3 breaking now, and then when Mr. Jones completes  
4 his Cross, your witness or his witness is  
5 still under oath and you can't discuss the  
6 case with her.

7 MR. McCABE: That's ---

8 THE COURT: And we will start again at  
9 10:00 tomorrow?

10 MR. McCABE: Judge, here's my -- I mean,  
11 I hate to object to this. But my client just  
12 got back from vacation, a cruise.

13 THE COURT: A cruise?

14 MR. McCABE: I told her -- we had an  
15 agreement that she wouldn't take the stand  
16 today, but ---

17 THE COURT: You're in violation. You  
18 had better ---

19 MR. McCABE: I mean, to me that was  
20 probably if she didn't make it in or something  
21 like that. So, I thought we had an agreement,  
22 and so, I haven't had a chance to talk to  
23 her. So, you know, I understood ---

24 THE COURT: Mr. Jones, any problems with  
25 laxing the rule against ---

1 MR. JONES: I don't want to cause a  
2 problem with her.

3 THE COURT: Let's see.

4 MR. McCABE: Since the nice guys finish  
5 last, I didn't object ---

6 THE COURT: Well, is not talking to the  
7 husband talking to the wife?

8 MR. McCABE: I don't know. She handled  
9 all the -- she is the key witness on this,  
10 and if my case in chief starts tomorrow, I  
11 don't have another opportunity to meet with  
12 her.

13 THE COURT: Of course, you invoke the  
14 Rule of Sequestration.

15 MR. McCABE: I don't know of any -- he  
16 might still be ---

17 THE COURT: The Rules say "A fair trial,"  
18 not a perfect trial. So, tell me again -- and  
19 so, your obstacle is -- well, I mean,---

20 MR. McCABE: I do need prepping for her.

21 THE COURT: If Mr. Jones, I don't know  
22 if he will or not, but if he completes his  
23 case, we've got all day Wednesday. If he  
24 completed his case and she's -- well, she  
25 is I guess technically still under oath, but

1 if he completed his case tomorrow and you  
2 didn't start your case until Wednesday, I  
3 mean, would that give you -- I mean, you're  
4 looking for time -- you're looking for blocks  
5 of time here to talk?

6 MR. McCABE: Well, I had intended to  
7 prep her for her Direct.

8 THE COURT: Okay. But would a long  
9 break between not require you to meet  
10 with starting your case when his case  
11 concludes to answer that?

12 MR. McCABE: I guess so.

13 THE COURT: Mr. Jones, any objection  
14 to that?

15 MR. JONES: Well, ---

16 MR. McCABE: Are we going to drag  
17 this out for four days?

18 THE COURT: No, I'm giving you an  
19 opportunity to have a half time and ---

20 MR. McCABE: I'm just kidding.

21 MR. JONES: Judge, once I get through  
22 with her as a witness, he Crosses and I  
23 Direct, you know, then she becomes his witness  
24 at that point I think. I understand that  
25 she is under oath with my case. When I

1 finish my case, I think he can talk with  
2 his client.

3 THE COURT: So, but you object to  
4 them communicating tonight?

5 MR. JONES: Yes.

6 THE COURT: Even if it's -- don't talk  
7 about your prior testimony which I understand;  
8 I mean, it needs to be as sterile and clean  
9 as possible under the Rules. But, say, you --  
10 what I envision is, when you conclude your  
11 case, we will take a break, even if it is  
12 for the rest of the day tomorrow for Mr.  
13 McCabe to do what he needs to do in  
14 preparation because they just got back  
15 from, you know, I guess Jamaica or wherever all  
16 those fancy places are.

17 MR. McCABE: I've never had a Passport;  
18 I don't know about those.

19 THE COURT: You have never been there?

20 MS. JOSEY: You don't need a Passport  
21 and so, ---

22 THE COURT: So, having said that, that's  
23 what we will do. It is 5:42. Everybody  
24 gets a break until 10:00 A.M. tomorrow,  
25 and I did not hear -- I'm assuming we will be

1 right back here in 3-A instead of -- and so,  
2 you can leave your stuff. Mr. McCabe should  
3 have -- I mean, Mr. McCabe should have his  
4 check back by 6:30.

5 MR. McCABE: Hey, Judge ---

6 THE COURT: I need all the Exhibits. I  
7 have One, Court's One; I have Plaintiff's  
8 Two, Plaintiff's Three, and then I don't  
9 have anything until Plaintiff's Seven,  
10 then Plaintiff's Eight and then Plaintiff's  
11 Thirteen. And I have Defendant's Two and  
12 Three. So, I do not see ---

13 COURT REPORTER: I've got a bunch here,  
14 Judge.

15 THE COURT: Do they line up?

16 MRS. JOSEY: Am I allowed to step down?

17 THE COURT: Yes, you can, but you are  
18 still under oath.

19 MRS. JOSEY: Yes, sir. I understand.  
20 Thank you.

21 MS. BURRESS: Do you need my list?

22 THE COURT: No, I've got my list; I  
23 need the Exhibits. Okay. One, Two, Three,  
24 Four, Five, Seven, Eight, Nine, Ten, Thirteen,  
25 Eleven and Twelve.

1 MS. BURRESS: Six is photos.

2 THE COURT: Six is missing.

3 COURT REPORTER: This is Three.

4 THE COURT: How about a Motion not to  
5 hide the Exhibits from the Court?

6 MR. JONES: Where is Six?

7 THE COURT: Six were those photos.

8 COURT REPORTER: Here's several.

9 THE COURT: Does it have a yellow sticker?

10 COURT REPORTER: Yes, sir.

11 MR. JONES: There they are right there.

12 THE COURT: Okay.

13 (HEARING ADJOURNED AT 5:45 P.M. ON OCTOBER 7, 2024).

14 (HEARING RECONVENES AT 10:01 A.M. ON OCTOBER 8, 2024)

15 THE COURT: So, I think we left off  
16 yesterday with Mrs. Josey on the stand and  
17 under Direct Examination by Mr. Jones.

18 MR. JONES: Your Honor, before we begin,  
19 yesterday, I mistakenly cited numerous times  
20 608 instead of 408, South Carolina Rules of  
21 Evidence.

22 THE COURT: 608?

23 MR. JONES: It's 408. It's Compromise, an  
24 Offer to Compromise.

25 THE COURT: Okay.



1 MR. JONES: And I was citing 408, but I  
2 kept saying 608. I think the first time I  
3 mentioned it I said the right number, and then  
4 after that, I failed and said the wrong thing.  
5 So, just for the record, I want to say 408 is  
6 the provision to which I was referring.

7 THE COURT: Okay. Mr. McCabe, anything  
8 you want to put on the record that 408 is the  
9 Rule on Compromises, Offers of Compromise  
10 so that we will make sure that that is on  
11 the record? The law requires that it be  
12 contemporaneous, but I think -- I think  
13 that is sufficient to be protected on the  
14 record. Mr. McCabe, anything else you  
15 want to put on the record? It doesn't  
16 change my ruling.

17 MR. JONES: And incidentally, Judge,  
18 that's the other thing I wanted to ask. So,  
19 I understand that you are going to allow  
20 the letter in to go with it under the  
21 Completeness Rule over my objection, of  
22 course.

23 THE COURT: Yeah.

24 MR. JONES: I understand. But if  
25 that's your ruling, that also, that Mr.

1 Reddick, his letter, that is allowed in  
2 as well; correct?

3 THE COURT: So, Mr. McCabe I think  
4 submitted Mr. Reddick's letter, and so,  
5 I've got it as underneath Court's Exhibit  
6 One. So, let me be sure. I think -- let  
7 me be sure because I was thinking  
8 the Josey letter. There is a May 31st ---

9 MR. JONES: Of Mr. Reddick?

10 THE COURT: -- letter, and I will note  
11 that this is going to be offered in Mr.  
12 McCabe's case. And I believe I've seen  
13 this before; you know, multitudinous Pleadings  
14 and attachments and exhibits.

15 MR. JONES: Yes.

16 THE COURT: And so, I believe that all of  
17 these are already contained in the records that  
18 have been filed. And so, the overlap is, you get  
19 one Judge and one finder of fact when you have  
20 a Bench Trial or a Master in Equity trial.  
21 And so, I don't know of a way that I could  
22 rule on something without having looked at it,  
23 you know; I guess maybe the bell has rung. But  
24 allowing it as an exhibit does not mean that  
25 there will be favorable or unfavorable factual

1 finding at the end. So, I think -- typically,  
2 the way you handle it I guess is a proffer to  
3 the Court, but since I'm both set of eyes,  
4 when I go through the Exhibits, which are  
5 building in number, when I go through the  
6 Exhibits and my notes will reflect what the  
7 arguments were, and then I will decide what,  
8 if any, weight to give a particular piece of  
9 evidence. Again, I think I told ya'll  
10 yesterday, ordinarily, the Judge charges  
11 the jury and they are free to believe parts  
12 of the witness testimony and disregard parts  
13 of the witness testimony, and I think that  
14 applies to Exhibits as well. Just because  
15 they are admitted into evidence and to  
16 the parties that are in attendance, this  
17 may look like that that is some advancement  
18 in the case and a win or loss, but I promise  
19 you, at the end, submission of evidence,  
20 you know, it can go either way. So, just  
21 because the Court rules one way or the  
22 other doesn't mean all is won or all is  
23 lost. I think the lawyers know that well.  
24 But, you know, for the parties, you know,  
25 just because something comes into evidence

1 doesn't mean that it will be controlling or  
2 have a certain weight added to it. So, anyway,  
3 Mr. McCabe, did you have any -- other than  
4 that, you know, and so, we will correct  
5 -- we will note that that is Rule 408 for  
6 Compromise and Offers of Compromise, and  
7 the Court will consider that at the  
8 appropriate juncture in reviewing the  
9 evidence. Mr. McCabe, anything you want  
10 to put on the record before we get started  
11 with witness testimony?

12 MR. McCABE: No, sir.

13 THE COURT: Mr. Jones, anything else  
14 on that ---

15 MR. JONES: I just want to be sure --  
16 I'm going to proceed -- in light of your  
17 ruling, I just want to be sure that I'm  
18 not waiving my objections for the record.

19 THE COURT: No, sir. You are protected.

20 MR. JONES: Okay. Thank you, Your Honor.  
21 We will call Mrs. April Josey to the stand.

22 THE COURT: Mrs. Josey, you are still  
23 under oath.

24 MRS. JOSEY: Do I need to do anything?

25 THE COURT: You are still under oath

1 from yesterday.

2 MRS. JOSEY: All right. Thank you.

3 THE COURT: Just answer the questions  
4 posed to you by Mr. Jones who has the right  
5 to lead, and Mr. McCabe, that's what the  
6 Rules says. So, ---

7 MR. JONES: Mrs. Josey, -- I'm sorry,  
8 Judge.

9 THE COURT: No, go ahead.

10 (April Josey, having been previously sworn on October 7,  
11 2024, testifies as follows:)

12 EXAMINATION OF MS. APRIL JOSEY BY MR. JONES CONTINUED:

13 Q. How are you today?

14 A. I'm doing well. Thank you. How about yourself?

15 Q. Good. Thank you. Mrs. Josey, I want to hand you a  
16 document there.

17 A. Okay.

18 MR. JONES: And I'm handing a copy  
19 to Mr. McCabe as well.

20 Q. Is that the letter that you received from Mr. Jason  
21 Reddick on May 31, 2022?

22 A. Yes, sir, it looks like it. Yes, sir.

23 Q. Okay.

24 MR. JONES: I want to mark that,  
25 please, as Exhibit -- I guess that

1 would be Exhibit ---

2 MS. BURRESS: Sixteen (16).

3 THE COURT: We were at Plaintiff's  
4 Fifteen (15), and here's the stack. You  
5 can certainly use them but let's try to  
6 keep them -- and then let's try to get  
7 them back to here, and that is Defendant's  
8 Three and that is your stuff.

9 MR. JONES: Okay. And I would like  
10 to move that into evidence at this point.

11 THE COURT: That will be Plaintiff's  
12 -- Mr. McCabe, you submitted it. Any  
13 objection to Plaintiff's Sixteen (16)  
14 being admitted?

15 MR. McCABE: No, sir.

16 THE COURT: Plaintiff's Sixteen (16)  
17 without objection.

18 ("DEMAND LETTER - FENCE REMOVAL AND/OR  
19 ALTERATION" FROM JASON L. REDDICK DATED  
20 MAY 31, 2022 TO MR. JASON JOSEY AND MRS.  
21 APRIL JOSEY MARKED AS PLAINTIFF'S EXHIBIT  
22 NUMBER SIXTEEN (16).

23 MR. JONES: Okay. Thank you.

24 Q. Mrs. Josey, I want you to look at -- I want you to  
25 look at "The Association -- excuse me -- Page One of

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JASON M. JOSEY AND APRIL W. JOSEY**

1 Three, look at the second paragraph; it says, "The  
2 Association demanded your fence be removed by November  
3 of '21." Do you see that?

4 A. I'm sorry. Where is it?

5 Q. It's the second paragraph. It's the second sentence  
6 from the bottom; the second paragraph and it starts  
7 with "The Association," do you see that?

8 A. Yes, sir, I do.

9 Q. "The Association demanded your fence be removed by  
10 November 21st -- November of 2021." Do you see that?

11 A. Yes, sir. That's what that letter said.

12 Q. Okay. Okay. When you say "The letter," are you  
13 talking about the letter, the email from Mr. Rory  
14 Hair?

15 A. No, sir, I'm talking about this letter right here  
16 (witness indicates).

17 Q. Okay. All right. The email from Mr. Rory Hair dated  
18 September 6th, you remember we asked you questions  
19 about that?

20 A. I remember seeing that yesterday, yes, sir.

21 Q. Okay. And that email was sent to your email  
22 address; correct?

23 A. It was sent to an older email address, yes, sir.

24 Q. The same email address though that Rory Hair when you  
25 applied for the in-ground pool; correct?

1 A. I believe, yes, sir, we had previously  
2 corresponded with that one, yes, sir.

3 Q. Okay. All right. Now, let's go to -- let's go to the  
4 bottom of the page, and it says -- it's Page One of  
5 Three and I'm looking at the last paragraph. And it  
6 says, "The Association has been more than patient and  
7 the Association hereby takes the position and hereby  
8 demands the following." Am I reading it right so far?

9 A. Yes, sir.

10 Q. Okay. It says, "Demands that the Josey's must  
11 remove the fence from 3020 Tidewater Drive that  
12 is not in compliance with the Lakewood Links  
13 Covenants, Conditions and Restrictions. Deadline  
14 for this action less unwise agreed by the  
15 Association is June 17 of 2022." Correct?

16 A. Yes, sir.

17 Q. Did I read that correctly?

18 A. I believe you did, yes, sir.

19 Q. Okay. Now, I notice that the language in that  
20 last sentence, the underscored sentence says,  
21 "The deadline for this action unless otherwise  
22 agreed." Do you see that?

23 A. Yes, sir, I do.

24 Q. Okay. And so, the demand was to move the fence  
25 unless it was otherwise agreed; correct?



1 A. Yes, sir.

2 Q. And so, in response to this, you sent -- I know we're  
3 going to talk about the letter a little bit -- but you  
4 sent attached two ARB Request Forms, didn't you?

5 A. Yes, sir.

6 Q. Those ARB Request Forms were the same form used  
7 for the in-ground pool; correct?

8 A. I believe they were the same, yes, sir.

9 Q. Okay. And the ARB Forms you sent were the same  
10 ARB forms -- the form that you used when you  
11 asked for the dormer repair too; correct?

12 A. Yes, sir.

13 Q. Okay. And so, in response to this letter from Mr.  
14 Reddick on May 31, you sent a -- I understand the  
15 letter, ---

16 A. Yes, sir.

17 Q. -- but you sent two ARB forms?

18 A. Yes, sir.

19 Q. And part of that ARB form provided for a fence  
20 alteration, didn't it? Do I need to show it to you?

21 A. My request?

22 Q. Yes.

23 A. I did request some alteration, yes, sir.

24 Q. Okay. And in your ARB form that you submitted, you  
25 said ---

1 A. That was part of it, yes, sir.

2 Q. -- "fence alteration"?

3 A. Yes, sir.

4 Q. Okay. All right. So, let's go to the third  
5 paragraph -- it would be actually the fourth  
6 paragraph on the bottom, and it says -- its here  
7 -- it says, "However," do you see where I'm  
8 starting? The third paragraph down -- one, two,  
9 three, it says ---

10 A. Yes, sir.

11 Q. It says, "However, if the demands are not met,  
12 this letter shall be submitted as evidence at any  
13 Hearing or other necessary legal proceeding to  
14 show attempts were made to resolve without  
15 litigation." Correct?

16 A. Yes, sir.

17 Q. And so, what happens is, they were giving you a  
18 chance to resolve the problem, weren't they?

19 A. Yes, sir.

20 Q. Okay. And as a result of that, you sent two ARB  
21 Request Forms; correct?

22 A. Yes, sir. That was my attempt to try to resolve  
23 the matter in a way that I could appease them,  
24 yes.

25 Q. Okay. And part of that was in the ARB Request

1 Form a fence alteration; correct?

2 A. Yes, sir.

3 Q. Okay. Now, the next paragraph I want to read, it  
4 says, "Please be advised that this letter is not  
5 in denial of your ability to erect a fence." Do  
6 you see that?

7 A. Yes, sir.

8 Q. "On your property. I have been advised by the  
9 Association that there are alternative fencing options  
10 that the Association would accept." Do you see that?

11 A. I do.

12 Q. All right. "And please reference Page Five under  
13 Conditions and Restrictions which have been  
14 included with this letter for your convenience.  
15 The Association would propose that the best  
16 alternative would be to request permission to  
17 build a compliant fence that meets the  
18 requirements of the specifications as outlined in  
19 the Conditions and Restrictions issued by the  
20 Association and the Architectural Review Board."  
21 Did I read that correctly?

22 A. Yes, sir.

23 Q. Okay. Now, in response to that, you sent two ARB  
24 Request Forms; correct?

25 A. Correct.

1 Q. You talked about a two car garage; right?

2 A. Yes, sir. That was what we envisioned.

3 Q. Okay.

4 A. But that went along with a letter which we had some  
5 special circumstances at the time that we were hoping  
6 they would consider as well.

7 Q. All right. And what happened is, you had a brick  
8 fence that was a part of the two car garage;  
9 right?

10 A. That would have been a part of the plan if they  
11 had approved that, yes, sir.

12 Q. All right. And so, then we go down and it says,  
13 "If I have not received compliance information --  
14 confirmation of your compliance with this demand  
15 letter by February -- June 17, 2022, I will  
16 contact the Association about proceeding through  
17 the Court system to secure any legal remedies  
18 they may have against you;" correct?

19 A. Yes, sir. And I responded before that deadline.

20 Q. Okay. And you responded to that with two ARB  
21 Request Forms?

22 A. Yes, sir, as this letter implied I had a right to  
23 do.

24 Q. Okay. In fact, those two ARB Request Forms are  
25 the same -- that's the same procedure and process

1           that you followed involving the in-ground pool?

2       A.    The ARB Form itself, yes, but the response to  
3           this letter was declined.

4       Q.    All right. And in addition to that, you used the same  
5           ARB Request Form you did with the dormer request too?

6       A.    Yes, sir. Some -- a month or so after this, yes.

7       Q.    And when you wanted to do the in-ground pool, you got  
8           in touch with Lakewood Links Property Owners  
9           Association; correct?

10      A.    Yes, sir.

11      Q.    And then, as a result of that, Rory Hair, who was the  
12           Chairman of the ARB Board, got in touch with you;  
13           correct?

14      A.    Yes, sir. I believe he responded to that email,  
15           yes, sir.

16      Q.    And not only did he respond, he sent you a copy of the  
17           ARB Request Form; correct?

18      A.    Yes, sir.

19      Q.    That was on May 22nd, 2022?

20      A.    I think that was how I obtained them to start with.

21      Q.    Yes. Okay.

22      A.    Initially, he gave me that one.

23      Q.    Okay. And you followed those procedures he gave  
24           you?

25      A.    Yes, sir.

1 Q. Okay.

2 MR. JONES: Your Honor, I believe  
3 that has been moved into evidence as  
4 Plaintiff's Number Sixteen (16), I think.

5 THE COURT: Plaintiff's Sixteen (16)  
6 is the demand letter.

7 MR. JONES: Okay.

8 THE COURT: Has it been marked?

9 COURT REPORTER: Yes.

10 THE COURT: Okay.

11 Q. I want to hand you a copy of this document and  
12 tell me if you can identify that as the letter of  
13 June 13, 2022; correct?

14 A. Yes, sir. This appears to be the letter that I  
15 composed.

16 Q. Okay. And ---

17 A. In response to the demand letter.

18 Q. Okay. I'm giving her a copy.

19 MR. JONES: I believe Mr. McCabe has  
20 got one, and I'm going to give a copy --  
21 let me make sure it's got all the pages.  
22 I'm giving a copy to the court reporter  
23 and ask that she mark that as Plaintiff's  
24 Exhibit Number Seventeen (17), Judge.

25 (LETTER DATED JUNE 13, 2022 MARKED AS

1 PLAINIFF'S EXHIBIT NUMBER SEVENTEEN (17).

2 MR. JONES: And, Your Honor, we would  
3 move that into evidence as Plaintiff's  
4 Number Seventeen (17).

5 THE COURT: Okay. Mr. McCabe?

6 MR. McCABE: I thought this was already  
7 in?

8 MR. JONES: You mean like a Court Exhibit?

9 MR. McCABE: Yeah.

10 MR. JONES: Frankly, I didn't remember; of  
11 course, I may have given that.

12 MR. McCABE: I know ---

13 THE COURT: Which one?

14 MR. McCABE: Isn't it the letter?

15 MR. JONES: Yes, I'm doing this letter.

16 MR. McCABE: I thought this was made  
17 a part of -- during the battle of the Rule  
18 of Completeness. I thought it was included  
19 in that.

20 THE COURT: That is the August 24th, 2009,  
21 I believe. Let me see. All right. So, the  
22 Court's Exhibit is 6-13-22. So, Mr. Jones,  
23 are you putting in the one that you have  
24 redacted?

25 MR. JONES: No, sir. It shouldn't be. I

1 mean, I've already raised my redaction objection  
2 but I'm putting in the whole letter.

3 THE COURT: Okay. But -- so, it would  
4 be the same as Court's Exhibit One and it is  
5 without redaction?

6 MR. JONES: Yes. Yes, Your Honor. Subject  
7 to my objection. But if we don't need it to  
8 be Plaintiff's Exhibit Number Seventeen (17),  
9 ---

10 THE COURT: Well, I think if you want to  
11 put it in your case, I guess I'm just curious  
12 if you put it in your case without redacting,  
13 can you still reserve your objection?

14 MR. JONES: Well, I certainly do want to  
15 reserve my objection for sure.

16 THE COURT: I think to do that -- so,  
17 this is what we have as the Court's Exhibit  
18 now.

19 MR. JONES: Okay. Well, I ---

20 THE COURT: The difference in the Court's  
21 exhibit and a Plaintiff's or a Defendant's  
22 Exhibit is, to me, the Court's Exhibit means,  
23 you know, the parties may object and didn't  
24 want it in their case; I think we did a  
25 proffer on that. Certainly, if you want to



1 add it in your case, you can, and that would  
2 be Plaintiff's Seventeen (17). I guess if it  
3 is unredacted, you are preserved on the record;  
4 you can say -- I'm putting this in because the  
5 Court has already ruled. I can't look into  
6 the future and say whether or not a Court of  
7 Appeals or a higher Court would say -- well,  
8 if you later put it into evidence then, you  
9 know, whether or not your earlier objection  
10 would waive that, I guess if you put it in and  
11 say -- you know, I still preserve my objection,  
12 then you should be clear. But I'm not the  
13 Appellate Court. It is in as Court's Exhibit  
14 One which is different from maybe putting it  
15 in your case.

16 MR. JONES: I'll use Court's Exhibit One  
17 because I don't want to waive -- I don't want  
18 to waive my objection to it. So, ---

19 THE COURT: Okay. I'm not here to give  
20 you legal advice; I'm just saying I think if  
21 you put something into evidence, there is the  
22 chance that that would -- that that would  
23 waive the prior objection to the document  
24 unless it was being redacted. But as I  
25 understand it, Court's Exhibit One, you can

1                   certainly question from it, and at the same  
2                   time, reserve your objection with it if it is  
3                   contrary to Rule 408, Offer of Compromise.

4                   Mr. McCabe, do you have any issue with that?

5                   MR. McCABE: I don't have an issue with  
6                   that. That was -- for clarification, I  
7                   thought this was the document yesterday that  
8                   I asked to be included in the two Architectural  
9                   applications.

10                  THE COURT: And I know about the Court's  
11                  Exhibit; correct?

12                  MR. McCABE: And I thought it was entered  
13                  into as an exhibit.

14                  THE COURT: So, I believe his Plaintiff's  
15                  Fourteen (14) was the two ARB Requests, and  
16                  you asked that under the Rule of Completeness  
17                  that it be allowed. He objected and offered  
18                  a redacted, and so, I admitted his as Thirteen  
19                  (13) and Fourteen (14) separately and then as  
20                  Court's Number One, which he is holding is  
21                  the complete packet, it includes the two ARB's,  
22                  Mr. Reddick's letter and the Josey letter,  
23                  which his objection is, it's an offer of  
24                  compromise.

25                  MR. McCABE: Okay.

1 THE COURT: So, now, he's looking at  
2 putting it in his case, but he's going to  
3 question from the Court's Exhibit.

4 MR. JONES: I'll withdraw submitting  
5 Seventeen (17); I'll withdraw that.

6 THE COURT: Okay.

7 MR. JONES: And so, I'm looking at  
8 Court's Exhibit Number One.

9 EXAMINATION OF MS. APRIL JOSEY BY MR. JONES CONTINUED:

10 Q. Mrs. Josey, I'm handing you a copy of Court's Exhibit  
11 Number One; let me hand that to you.

12 A. Okay. This one here?

13 Q. Yes, that's it. That's it. Okay. I want to ask you  
14 and ---

15 MR. JONES: Judge, I want to put  
16 this back so I don't get it confused. Okay.

17 Q. All right. Mrs. Josey, I want to ask you some  
18 questions about this letter.

19 A. Okay.

20 Q. Look at the second paragraph; I'm looking at the  
21 paragraph as far as, it says, "We would like to  
22 take this opportunity to address" -- by the way,  
23 this is signed by both you and Mr. Josey?

24 A. Yes, sir. That's correct.

25 Q. Okay. All right. But actually, did you write

1           this or did Mr. Josey write it?

2       A.    I composed the letter.

3       Q.    Okay.    All right.    And it says, it says,  
4           "Firstly," -- I'm looking at the second  
5           paragraph.

6       A.    Yes, sir.

7       Q.    "Firstly, we did request an approval for an in-ground  
8           pool some time last year which was approved."    We  
9           talked about that?

10      A.    Yes, sir.

11      Q.    Okay.    "However, due to demand and scheduling, we  
12           have not completed the project to date;" correct?

13      A.    Yes, sir.

14      Q.    Now, this letter is written in '22, isn't it?

15      A.    Yes, sir.    Well, a year later.

16      Q.    That's right; a year later.    And you know under the  
17           terms of the 1988 Covenants that if you don't carry  
18           through with a project within six months, then you  
19           lose your right to do it; correct?

20      A.    That is true, but we wanted to do the pool and we  
21           still haven't until this day.    So, I suppose if  
22           we wanted to do it again, we would have to  
23           revisit it in the future.    But I know the pool  
24           installers were not able to do it within the  
25           specified time frame.

1 Q. I just want to be sure; on Page Fourteen (14),  
2 Subparagraph F, I want to be sure of that. I'm  
3 handing you a copy of what is Plaintiff's Exhibit  
4 Number One.

5 A. And I believe they made reference to the 2019 and 2020  
6 Covenants and Restrictions in this letter from Mr.  
7 Reddick.

8 Q. I understand. But the 1988, you have got in front of  
9 you?

10 A. Okay.

11 Q. When you wrote this letter, you were quite aware  
12 of the 1988 Covenants, weren't you?

13 A. Yes, sir, I was.

14 Q. All right. So, let's go to the 1988 Covenants;  
15 they're right there in front of you.

16 A. Right.

17 Q. Do you see the white notebook?

18 A. Yes, sir.

19 Q. Open that white notebook and look at Page Fourteen  
20 (14), please.

21 A. All right.

22 Q. And I want you to look at Subparagraph F. Do you  
23 see parenthetical F there on Page Fourteen (14)?

24 A. Yes, sir, I do.

25 Q. And do you see the sentence that is the second

1 sentence from the bottom, it says, "Starting with  
2 the word "Approval"? Do you see that?

3 A. Yes, sir.

4 Q. "Approval" -- see if I'm reading this right.  
5 "Approval shall be dated and shall not be accepted for  
6 construction commenced more than six months after such  
7 approval." Do you see that?

8 A. Yes, sir.

9 Q. You were aware of that at the time you wrote this  
10 letter, weren't you?

11 A. Yes, sir. And we hadn't done anything on the  
12 pool.

13 Q. Okay. I'm still -- I'm back on the letter which  
14 is Court's Exhibit Number One. I'm looking at  
15 the second paragraph. It says -- I'm starting --  
16 it says, "Secondly." Do you see that word  
17 "Secondly"?

18 A. Yes, sir, I do.

19 Q. It says, "Secondly, there was an existing eight foot  
20 fence adjacent to our property when we moved in."  
21 That is what you wrote; right?

22 A. Yes, sir, that's correct.

23 Q. And you were aware that the adjacent property is  
24 in Lakewood Estates, aren't you?

25 A. I was not at the time, yes, sir.

1 Q. In 2022, you weren't aware of that?

2 A. No, sir, because I didn't see a map of the  
3 neighborhood until some time in 2023.

4 Q. Okay. So, at that time, you built -- you are  
5 saying you built because there was a fence next  
6 to you ---

7 A. Yes, sir.

8 Q. -- that was an eight foot fence too?

9 A. Yes, sir.

10 Q. Okay. You knew to ask for -- with an ARB Form, you  
11 knew to ask for a request about changing the dormer on  
12 your house, didn't you?

13 A. That was after this.

14 Q. Well, you asked -- the dormer you asked in July of  
15 '22; correct?

16 A. Yes, sir. After we -- after we submitted this letter  
17 to Mr. Reddick.

18 Q. Okay. But you knew to ask for it with an ARB  
19 request?

20 A. Yes, sir.

21 Q. After you ---

22 A. Yes, sir. I didn't want to further stir the pot.  
23 Yes, sir. After that.

24 Q. After you wrote this letter on June the 13th?

25 A. That's correct. I did not want to further stir the

1 pot. So, I was awaiting an answer from Mr. Reddick's  
2 office or from the POA. I figured it would be in our  
3 best interests to just go ahead and cover our bases,  
4 and submit an ARB request just in case. We didn't want  
5 to further anger the Association.

6 Q. Okay. And what you have said is that you just  
7 continued the fence along the unprotected barrier --  
8 barriers of the backyard?

9 A. Yes, sir.

10 Q. All right.

11 A. Where there wasn't fencing.

12 Q. You didn't file an ARB form?

13 A. No, sir. But I didn't think there would be a big  
14 deal because there was so many fences along the  
15 road already. There was one on that side and  
16 there were two different types of fences on the  
17 other side. And so, we just kind of enclosed a  
18 portion of our yard.

19 Q. You knew according to the 1988 Covenants, you knew  
20 that you had to apply to the Architectural Review  
21 Board any time you did construction on your  
22 properties, didn't you?

23 A. Well, I didn't refer back to the 1988 Covenants  
24 at that point. I didn't really review them until  
25 once I realized that the most current Covenants



1           were not -- not -- weren't valid.

2       Q.    It's really interesting you would say that. Look  
3           at the second page; I'm looking at Paragraph Nine  
4           on the second page.

5       A.    Yes, sir.

6       Q.    And it says -- I'm going to read it through for  
7           you. And I'm going to ask you to follow me. "The  
8           changes to the original By-laws" okay, now, when  
9           you said original By-laws, you are referring to  
10          the 1988 Covenants, aren't you?

11      A.    Yes, sir.

12      Q.    And you understood those Covenants to not only be  
13          Covenants but also By-laws; correct?

14      A.    By the time I wrote this letter, I was aware  
15          there was a difference, but it's possible that I  
16          may have confused By-laws, Conditions and  
17          Restrictions because, to me, they all kind of  
18          looked to me like the same thing. But yet, I did  
19          write this after all this came up and I had to  
20          start doing some more research.

21      Q.    Well, the reason I say that is, you sent this on  
22          June the 13th, 2022?

23      A.    Yes, sir, I did.

24      Q.    And you were reciting exact verbiage out of the 1988  
25          Covenants, aren't you?

1 A. Yes, sir. Someone -- they were provided to me, and  
2 so, I was able to type it from the document.

3 Q. Okay. And so, that first paragraph is exactly lifted  
4 out of, word for word, the By-laws or the Covenants;  
5 correct?

6 A. Yes, sir. But this was after the fence was done.

7 Q. Okay. I understand. But this was in 2022?

8 A. 2022, a year after the fence was done, yes, sir.

9 Q. Okay. And so, when you responded to Mr.  
10 Reddick's May 31 letter, you responded with the  
11 1988 Covenants, didn't you?

12 A. That's correct. Yes, sir.

13 Q. You did that because you knew the 1988 Covenants were  
14 what controlled?

15 A. That's correct.

16 Q. And you knew in the 1988 Covenants that the  
17 fences around you, that you would have to look at  
18 the Covenants to see whether or not they violated  
19 the Covenants; correct?

20 A. Yes, sir, and they did not, because there wasn't  
21 specifications for the material, building style  
22 or anything, and so, none of those fences in the  
23 neighborhood could have violated the 1988  
24 Covenants.

25 Q. All right. Well, let's talk about that a little bit.

1           You've got the Covenants in front of you; I want to  
2           ask you some questions about them.    You had -- you  
3           quoted them word for word in here, and so, you were  
4           familiar with them; correct?

5    A.    What -- at the time I wrote this letter, I had become  
6           familiar with them, with the 1988, yes, sir.

7    Q.    All right.    Well, let's talk about what those  
8           1988 Covenants say.    All right.    Let's go to Page  
9           Fourteen (14).

10   A.    Yes, sir.    I'm on that page, I think.

11   Q.    All right.    See if I'm reading this right.    You  
12           have said that there is nothing that says fences  
13           have to be approved.    Is that what you said?

14   A.    No, sir.    What I said was that there was nothing  
15           within those Covenants that said they had to  
16           follow these type of specifications.    It didn't  
17           say they had to only be chain-link or they only  
18           had to be wooden or they only had to be vinyl;  
19           there was nothing that said, you know, specified  
20           that you had to follow any sort of guidelines  
21           with that.    So, any fence in our neighborhood  
22           technically would fall within the 1988  
23           Guidelines.

24   Q.    And you did ---

25   A.    All the fences.

1 Q. You did understand that the ARB was to be given  
2 an opportunity to evaluate each request?

3 A. Yes, sir, and that's why I submitted a request at  
4 that time along with the letter.

5 Q. Let's read what it says in Subparagraph E. It  
6 says, "No building, wall, fence, deck, pier,  
7 swimming pool, roof, exterior light or other  
8 structural improvement of any kind shall be  
9 commenced or erected upon any residential lot or  
10 upon the exterior of any family dwelling unit,  
11 upon the common properties nor shall any  
12 landscaping be done or shall any addition to any  
13 existing building or alteration or change therein  
14 be made until the proposed building plans,  
15 specifications including height, materials and  
16 exterior finish, plot plan and construction  
17 schedule shall have been submitted to and  
18 approved by the Review Board; you know about  
19 that, didn't you?

20 A. Yes, sir.

21 Q. And you knew about that when you asked for the  
22 in-ground pool too, didn't you?

23 A. I believe I was told there was a more current  
24 version, but yes.

25 Q. So, your answer is yes?

1 A. Yes.

2 Q. All right. Now, let's go to Page Eleven (11).

3 A. You're going backwards?

4 Q. Yes, ma'am. Going backwards, Page Eleven (11). And  
5 I want to read to you Section One. You were familiar  
6 with Section One; correct?

7 A. At the time I wrote this letter, yes, sir.

8 Q. Yes. And you agree with me that Section One  
9 gives the Architectural Review Board latitude to  
10 consider each lot individually; correct?

11 A. Yes, sir. This is what I learned about individual  
12 circumstances and making known the request,  
13 particularly to appeal to their sense of  
14 neighborliness, I suppose, and considering all  
15 individual circumstances.

16 Q. All right. Let me read what it says and see if  
17 I'm reading it right. "The primary purpose of  
18 these Covenants is of foremost consideration and  
19 the origins of the same have been the creation of  
20 a residential community which is aesthetically  
21 pleasing?

22 A. Yes, sir.

23 Q. And so, you knew that the Architectural Review Board  
24 had to look at aesthetics; correct?

25 A. Yes, sir, and since there was already a fence

1           there matching our aesthetic, I didn't think that  
2           would be an issue for them.

3       Q.     Okay.

4                       MR. JONES: Excuse me, please, Judge.

5                       THE COURT: Yes, sir.

6                       MR. JONES: I believe this is Exhibit Six,  
7           Your Honor, if you would allow me to take a look.

8                       THE COURT: Yes, sir.

9                       MR. JONES: This One. Plaintiff's Exhibit  
10          Six.

11       Q.     I want to hand you a copy of what is Plaintiff's  
12           Exhibit A through F; do you see that?

13       A.     Yes, sir, I do.

14       Q.     That is your fence, isn't it?

15       A.     Yes, sir.

16       Q.     That first picture is of the fence after it has been  
17           there a year and a half; correct?

18       A.     It's not dated; so, I'm not sure how long it had been  
19           there at the time the picture was taken.

20       Q.     Okay. All right. But do you see that little  
21           bush on the lower right-hand side?

22       A.     Yes, sir.

23       Q.     It is a small bush there, isn't it?

24       A.     It is. Yes, sir. I was hoping it would grow.

25       Q.     That same bush is still there, isn't it?

- 1 A. Yes, sir, because I'm letting it grow.
- 2 Q. All right. Do you think that fence is
- 3 aesthetically pleasing?
- 4 A. I believe so. I suspect it's aesthetically
- 5 pleasing if you checked it.
- 6 Q. All right.
- 7 A. Something that I may find aesthetically pleasing, you
- 8 may not.
- 9 Q. You understood that the Board is allowed the
- 10 opportunity to decide what is aesthetically
- 11 pleasing or not, don't you?
- 12 A. Yes, sir, and it appears based on all the other
- 13 houses that are on our street and on the adjacent
- 14 street, that wooden fences have been deemed to be
- 15 aesthetically pleasing by the Board in the past.
- 16 Q. But each lot is to be considered -- even if you
- 17 saw it, each lot is to be considered
- 18 individually; correct?
- 19 A. Yes, sir.
- 20 Q. Because the Board is to be afforded discretion as
- 21 to what to decide; correct?
- 22 A. Yes, sir.
- 23 Q. And aesthetically pleasing is in the opinion of
- 24 the Board; correct?
- 25 A. Yes, sir. It would be a subjective opinion.

1 Q. But it is allowed that; right?

2 A. Yes, sir.

3 Q. In fact, look at Page Fifteen (15) of the Covenants.

4 I'm looking at Page Fifteen (15) of the Covenants, and

5 I'm looking at the top paragraph. It starts with the  
6 word "refusal;" do you see that?

7 A. I'm sorry.

8 Q. Looking at Page Fifteen (15); look at the top.

9 A. Yes, sir. Yes, sir, I do see that.

10 Q. It starts with the word "Refusal"?

11 A. Yes, sir.

12 Q. "Refusal of approval of plans, location and  
13 specification may be based by the Review Board upon  
14 any ground which is consistent with the objectives of  
15 these Covenants including purely aesthetic  
16 consideration." Do you see that?

17 A. Yes, sir.

18 Q. And so, you understood when you reviewed these  
19 Covenants, the ones that you cited word for word  
20 in your June 13th ---

21 A. Well, I don't think I cited -- I'm not sure if I  
22 cited that paragraph or not.

23 Q. But I understand that you cited a section from the  
24 Covenants?

25 A. Yes, sir, I did.



1 Q. Okay. You understood when you wrote that letter that  
2 they were allowed to make purely aesthetic  
3 consideration?

4 A. Yes, sir. I do believe I acknowledged mostly  
5 authority in my letter.

6 Q. All right. So, the answer is yes?

7 A. I'm sorry; repeat that question.

8 Q. So, you understood that the Architectural Review  
9 Board had the authority to make purely aesthetic  
10 considerations; correct?

11 A. Sure. Yes, sir.

12 Q. All right. Now, let's keep talking about Exhibit  
13 Six. Okay?

14 A. Sure.

15 Q. So, you think -- I think you think that Exhibit  
16 A, that that fence is aesthetically pleasing;  
17 right?

18 A. I think so. Our neighbor across the street,  
19 actually redid theirs to model ours; so, they  
20 believed it was aesthetically pleasing as well.

21 Q. All right.

22 MR. JONES: I object, Your Honor, to  
23 what the neighbors thought and ask that  
24 that be excluded.

25 THE COURT: Mr. McCabe, any objection as

1 to hearsay outside the knowledge and obser-  
2 vation of the witness' response?

3 MR. McCABE: I confess that I was reading  
4 the Covenant, and I didn't hear what she  
5 said. What did she say?

6 THE COURT: She just compared -- that  
7 the neighbors copied the fence; therefore,  
8 they thought that it was aesthetically pleasing.  
9 I am inclined to just strike it from the record.

10 MR. JONES: Thank you, Your Honor.

11 Q. Now, this really is an eight foot fence; correct?

12 A. Yes, sir. Similar to the one adjacent to it.

13 Q. And it's not -- well, you've got an eight foot  
14 fence around the side and the front of your  
15 house; correct?

16 A. Yes, sir.

17 Q. And you are on a cul-de-sac?

18 A. We are and there are adjacent fences, eight foot, as  
19 well. My husband matched it whenever he continued it.

20 Q. And you don't deny that that other fence is in  
21 Lakewood Estates; correct?

22 A. No, sir, I don't now. And now that I've seen the  
23 plot, I understand that they're -- the street  
24 right next to us is not included in this Property  
25 Owners Association.

1 Q. What you did is you built the fence and then  
2 asked questions later, didn't you?

3 A. I wouldn't word it like that, sir.

4 Q. Well, you built the fence before ---

5 A. I believe we had a misunderstanding with that type of  
6 remedy with the letter.

7 Q. Okay. Let's talk about that; you knew you were  
8 operating under the Covenants because you made a  
9 submission for an in-ground pool in May of '22 -- May  
10 of '21?

11 A. Well, we did have questions about whether or not  
12 we were in an HOA in the beginning.

13 Q. And so, instead of presenting it to the  
14 Architectural Review Board, you just built the  
15 fence?

16 A. The steps -- we completed the steps, yes, and as part  
17 of the preparation with the Board, yes.

18 Q. And so, the idea was -- and so, the answer is  
19 yes, you built the fence?

20 A. Yes, sir.

21 Q. And asked questions later?

22 A. That's your terms; they're not mine.

23 Q. Well, you built it before you asked the  
24 Architectural Review Board whether or not it was  
25 in the Lakewood Estates Subdivision, didn't you?

1 A. Yes, sir.

2 Q. All right. Let's talk about -- let's go to B.

3 You see that bush there?

4 A. Yes, sir.

5 Q. You wouldn't dispute me if I said this was mid  
6 September of this year, would you?

7 A. No, sir, I have it here on this.

8 Q. Okay.

9 A. My bush has grown.

10 Q. That fence, you see with the tire leaning on it?

11 A. Yes, sir.

12 Q. That fence is not aesthetically pleasing, is it?

13 A. I would say the fence is just fine.

14 Q. Oh, you do?

15 A. In my opinion.

16 Q. Okay. Let's go to the next picture. That is your  
17 fence again, isn't it?

18 A. Yes, sir.

19 Q. And you think that fence is aesthetically pleasing?

20 A. I don't have a problem with the fence.

21 Q. I see also you have some things leaning against the  
22 fence, don't you?

23 A. Yes, sir. My husband's work trailer was broken  
24 down, and he has to take the tires off of it to  
25 weld it back together and he had to take

1 everything out of it. And so, there was a period  
2 of time where he had to pull the things out of  
3 the trailer to lean them up against the fence,  
4 but all of that has been removed now.

5 Q. If there was no fence there, he couldn't lean an  
6 eight foot piece of plywood against it, could he?

7 A. No, sir. He could have laid it in the backyard  
8 though.

9 Q. Okay.

10 A. He would have lay down on the ground.

11 Q. That's right. Instead of being leaning against the  
12 wooden fence?

13 A. Yes, sir. Laying on the ground or leaning  
14 against the fence, it would have had to come out  
15 of the trailer anyway.

16 Q. And then let's go to E.

17 A. Yes, sir.

18 Q. You've got a fence there. Number one, it's a wooden  
19 fence; correct?

20 A. Yes, sir. Part of that fence is the neighbor's fence.

21 Q. Okay. I notice that part of the fence is painted  
22 white and part of it is not?

23 A. It's not painted on either side. The neighbors  
24 haven't painted it nor have we.

25 Q. Okay.

1 A. I think it's just different via aging, I believe.

2 Q. Do you think that is aesthetically pleasing?

3 A. Well, honestly, and ideally, we would have liked  
4 to have completely finished it out and varnished  
5 it and everything, but we have not paid much  
6 attention to that as this matter has been  
7 pending. We have put no more money into that  
8 fence.

9 Q. All right. Now, let's go to E. That is how that  
10 fence looks today, isn't it?

11 A. Yes, sir.

12 Q. Okay. Let's go to F; that is how that fence  
13 looks today; correct?

14 A. Yes, sir. And as you can see, everything has been  
15 cleaned up and moved away; it was only there  
16 temporarily.

17 Q. Yes.

18 A. That has been cleaned up; that was only there  
19 temporarily.

20 Q. And we were coming to trial yesterday; correct?

21 A. Yes, sir. Well, we were out of town since last  
22 week. So, I'm not sure when you took these. But  
23 ---

24 Q. How about this -- your next door neighbor, the  
25 one that lives right next to you, let me look at

1 Exhibit Three, Plaintiff's Exhibit Number Three.

2 THE COURT: It will come up ---

3 MR. JONES: Yeah. Judge, I will do  
4 the best I can to put them right back where  
5 they were.

6 Q. Let's look at Plaintiff's Exhibit Number Three right  
7 now.

8 A. Okay.

9 Q. You are on a cul-de-sac, aren't you?

10 A. Yes, sir. She's right in the middle of it.

11 Q. All right. So, when you are riding, ---

12 A. I assume you are talking Ms. Christmas right  
13 here?

14 Q. Yeah.

15 A. Yes, sir.

16 Q. And so, when Ms. Christmas, with her house, you've got  
17 an eight foot fence now to the right of her house;  
18 right?

19 A. Yes, sir.

20 Q. Well, one thing is for sure; she can't see as  
21 well into your backyard with an eight foot fence  
22 as she could when there was not an eight foot  
23 fence; correct?

24 A. Well, she can't from her front yard, but she can from  
25 her backyard because there's a chain-link fence in the

1 back between our two properties.

2 Q. Well, and the chain-link fence that has holes in  
3 it; right?

4 A. Well, by nature, yes, sir. Do you mean like damaged  
5 holes or just holes that are inherent to the chain-  
6 link fence?

7 Q. Inherent.

8 A. Okay. Yes, sir. Yes, sir.

9 Q. You can see through them?

10 A. Yes, sir.

11 Q. Okay.

12 A. So, yes, she can see into our yard.

13 Q. All right. But the scenic part of your neighbor for  
14 sure, she can't see as much of your backyard as she  
15 once could?

16 A. Well, I'm not sure she has a problem with that  
17 because she suggested ---

18 MR. JONES: I object; I object, Your  
19 Honor, to what the neighbor has a problem  
20 with.

21 A. Well, I'm not sure ---

22 THE COURT: Just answer the question.  
23 Don't tell him what the neighbor said or  
24 didn't say.

25 Q. The question was, she can't see into your backyard



1           today, can she?

2       A.    No, sir, she cannot see into our backyard from  
3           that portion of the fence.

4       Q.    Okay.

5       A.    She can from the backyard portion of her fence.

6       Q.    All right. That's the next thing I want to talk  
7           to you about, and I'll move back in just a  
8           minute. I apologize for being so close.

9       A.    No hurry. It's fine.

10      Q.    But when you're on Tidewater, ---

11      A.    Yes, sir.

12      Q.    -- and you're headed -- you're headed beyond your  
13           house towards Lakewood Drive, you can see three-  
14           fourths of your yard, can't you? You can see the  
15           front?

16      A.    You can see the front and the side, yes, sir.

17      Q.    The front and the side?

18      A.    Yes, sir.

19      Q.    And so, now, you can see two hundred and eighty (280)  
20           degrees of your yard because you're on a cul-de-sac;  
21           correct?

22      A.    I'm not sure about two hundred and eighty (280)  
23           degrees. But you can see the front and the side,  
24           yes, sir.

25      Q.    Okay.

1 MR. JONES: Your Honor, I'm going to  
2 put this back before I get messed up. I  
3 think I put it back in the right place.  
4 Thank you. If you could hand me back those  
5 photos.

6 (THE COURT GIVES MR. JONES PHOTOS)

7 MR. JONES: Thank you, Your Honor.

8 Q. You -- you decided not to submit a request to the ARB  
9 Board because you thought you didn't have to?

10 A. I -- I don't think we really thought that that  
11 was a problem. So, you're correct; we didn't  
12 think that that would be an issue with the fence.

13 Q. But you did think it was a problem with the in-  
14 ground pool?

15 A. Well, yes, sir because that was an entirely new  
16 construction and we would have been digging a  
17 hole and, you know, it was a whole nother  
18 process.

19 Q. And you did think it was necessary for revising the  
20 dormer?

21 A. Yes, sir, because we were in a situation where  
22 with the Homeowners Association and Mr. Reddick,  
23 and so, I figured as a part of this, I had better  
24 try to cover all my bases on that.

25 Q. Okay. Now, I want you to look at the last

1 paragraph of that letter which you wrote. Again,  
2 I'm looking at your letter of June 13th; do you  
3 see that?

4 A. Yes, sir.

5 Q. The Court's Exhibit Number One; do you see that? The  
6 last paragraph?

7 A. The one that says "Finally, we aim to maintain" ---

8 Q. No. Look at the one that says -- it's Page One.  
9 I'm sorry.

10 A. Oh, okay.

11 Q. The last paragraph. The last paragraph. I may have  
12 confused you.

13 A. I'm sorry.

14 Q. That's all right.

15 A. Please start over. Which paragraph?

16 Q. The letter of 6-13-22, Court's Exhibit Number One.

17 A. Okay.

18 Q. The last paragraph begins, "Additionally."

19 A. Okay. Okay. Yes, sir. I see it.

20 Q. "Additionally, the original By-laws, Conditions and  
21 Restrictions effective in 1988 did not include  
22 specifications for fences"?

23 A. Yes, sir.

24 Q. And so, your position is that because it didn't have  
25 an absolute prohibition against fencing, that the

1 Architectural Review Board did not have latitude to  
2 decide?

3 A. I believe that what I meant by that fence was because  
4 they did not outlaw any specific type of fence, that  
5 our fence wouldn't be violating their -- their rule,  
6 because they didn't say anywhere in there that your  
7 fence has to be five feet or six feet or ten feet and  
8 your fence has to be this, that or the other; they  
9 didn't have any, you know, specifications as to what  
10 the fence must look like. So, by that logic, I assumed  
11 that our fence would not violate the By-laws and --  
12 because there was no Guidelines.

13 Q. But you have already said you knew that every fence  
14 request had to be submitted to the Architectural  
15 Review Board; correct?

16 A. Well, yes, sir. What I was referring to was the 1988  
17 laws, yes, sir.

18 Q. Well, that is what you are talking about in this  
19 letter of June 13?

20 A. Yes, sir.

21 Q. You came back -- you talked about the By-laws, the  
22 original By-laws, Covenants?

23 A. That is correct, and I was pleading my case to them,  
24 you know, when we were trying to get this retro-  
25 approval and consideration; this is one of the reasons

1        why I was pleading my case, you know.    Our fence  
2        doesn't violate any of the specifications because they  
3        are none.    So, in my mind, they didn't have a reason  
4        to tell us no because of the type of fencing,  
5        especially considering the fact that it was attached  
6        to a fence that matched it on the other side.

7        Q.    It's interesting that you say that you were  
8        pleading your case ---

9        A.    Yes, sir.

10       Q.    -- and you attached two ARB Request Forms that asked  
11       for, among other things, a fence alteration?

12       A.    Yes, sir, because we were trying -- we were trying to  
13       please the Homeowners Association.    We didn't want it  
14       to go any further legally.

15       Q.    And so, you haven't built that fence ---

16       A.    Well, we never received a response; they just left us  
17       in limbo.    Mr. Reddick told me he would reply -- in my  
18       email, he replied to me and said he would respond to  
19       me and let me know what they said, and I never  
20       received a response from him nor did I receive a  
21       letter from the Board.    So, we didn't feel like we  
22       could do anything.

23       Q.    And so, your whole argument in this case is that  
24       you didn't get a response within thirty (30)  
25       days?

1     A.     I didn't receive a response within thirty (30)  
2           days, sixty (60) days, ninety (90) days; the next  
3           response that I received from them, despite what  
4           Mr. Reddick told me, was a lawsuit from ya'll.

5                     MR. JONES: Your Honor, I object  
6                     and ask that it be stricken what Mr.  
7                     Reddick told her; that's all hearsay  
8                     what Mr. Reddick told her.

9                     THE COURT: Mr. McCabe, ---

10                    MR. JONES: She didn't say what he  
11                    told her; she said, "Despite what he  
12                    told her."

13                    THE COURT: So, the Reddick letter  
14                    is in evidence and speaks for itself.  
15                    So, anything beyond that will not be  
16                    thought proper or part of the record.  
17                    I don't think I've heard -- at least,  
18                    I didn't hear any specifics about what  
19                    was said -- what Mr. Reddick said or  
20                    didn't say other than the letter and  
21                    whether or not there was a response.  
22                    So, I sustain the objection because  
23                    I don't think -- I don't think there's  
24                    a part to strike.

25                    MR. JONES: Okay. All right.

1 THE COURT: So, proceed.

2 MR. JONES: Thank you, Your Honor.

3 Excuse me, please, Judge.

4 THE COURT: Yes, sir.

5 Q. I want you to look at the last -- the last page, it's  
6 Page Three of your letter of June 13, Court's Exhibit  
7 Number One.

8 A. Yes, sir.

9 Q. Okay. And I think you set out -- I think you set  
10 out -- as the top paragraph you set out that you  
11 were going to move elderly parents in and that's  
12 why you needed to build this garage ---

13 A. Yes, sir.

14 Q. -- and mother-in-law wing; correct?

15 A. My grandmother, she was going to help us pay for it.

16 Q. Okay. And so, that was the idea as to why you  
17 needed to ---

18 A. Yes, sir, we needed more -- we were going to need  
19 more space, and so, we were going to repave the  
20 whole thing and just try to build a garage that  
21 would accommodate her things and, you know, just  
22 so that she could come and stay with us.

23 Q. Okay. And then I'm reading down, and this would be  
24 the one, two, three, four, five six -- I'm looking at  
25 the sixth line down -- it says, "Additionally." Do

1           you see that?

2       A.    Yes, sir.

3       Q.    It says, "Additioinally, we would revise our fence  
4           along the front of the property, accordingly as such  
5           an addition would require partial fence removal and  
6           replacement." Do you see that?

7       A.    Yes, sir. Had they approved our plans, we would have  
8           had to take down part of it in the front anyway to  
9           make room.

10      Q.    All right. So, at that time, the plan was that  
11           the fence revision would take place, and that's  
12           what you set out to the ARB Board?

13      A.    Yes, sir. That was what we intended at the time,  
14           yes, sir.

15      Q.    And then you recite -- the second line from the  
16           bottom of the first paragraph, it says, "Please  
17           find attached preliminary request for the  
18           proposed garage, workshop, updated fence  
19           replacement and tree removal necessary to begin  
20           construction"?

21      A.    Yes, sir.

22      Q.    Okay. Now, I want you to look at the last  
23           paragraph and this will be the fourth line down,  
24           it says, "As we have been unable to procure any  
25           documentation from our real estate attorney or



1           the Sumter County Courthouse which definitely  
2           states which Association properties belong to, we  
3           would ask that Lakewood Links Property Owners  
4           Association provide copies of such documentation  
5           pertaining to our property located at 3020  
6           Tidewater Drive,"

7       A.    Yes, sir.

8       Q.    That is the first time you asked them to do it?

9       A.    That was the first time I asked the Association  
10          for the information because we were having  
11          trouble finding the information at the  
12          Courthouse.

13      Q.    And what -- you say that you had an attorney that  
14          closed the transaction for you?

15      A.    Yes, sir, we did.

16      Q.    And you signed that statement ---

17      A.    Yes, sir, but he ---

18      Q.    Wait a minute and let me finish. You signed the  
19          statement in your lawyer's office acknowledging  
20          that you actually received a copy of the  
21          Covenants for Lakewood Links Property Owners  
22          Association?

23      A.    Yes, sir.

24      Q.    Okay.

25      A.    But he also -- when we questioned that, about which

1           one we were in or how that works, he said ---

2                       MR. JONES: Your Honor, I object,  
3           Your Honor, to what the lawyer told her.

4                       THE COURT: Tell me -- you can tell  
5           us what your information is, but it can't  
6           come from what another potential witness  
7           said that is not here to say yes or no  
8           or I didn't say that; just tell us the sum  
9           total of your information from investigation,  
10          observation and courthouse research.

11    A.   We received information that the neighborhood is  
12          hodgepodge of Associations, that every one is  
13          different ---

14                      MR. JONES: Your Honor, I object  
15          to what she was told by a third party.  
16          That's exactly what hearsay is to which  
17          I'm objecting.

18                      THE COURT: I didn't hear her say --  
19          I thought she said "Received information."  
20          I think she can -- I think she can give her  
21          assessment, but she can't say what she was  
22          told. I think she can say why she came to  
23          this conclusion or this is what I've learned  
24          or this is what, you know, I've found out.

25          But it can't stem from -- So and So told me

1           this and that's what I'm basing it on.

2           But I didn't understand her answer yet to  
3           say -- the lawyer told me this was a hodgepodge.

4           MR. JONES: She led in by saying, "We  
5           were told." That's why.

6           THE COURT: Okay. I missed that part.

7           MR. JONES: Okay. Okay.

8           THE COURT: So -- so, just please don't  
9           tell us what any particular person told  
10          you that's not here to clarify a question  
11          about whether or not they said it, how they  
12          said it, but you can say -- you know, after  
13          all this, my impressions were -- there were,  
14          you know, multiple, multiple Associations;  
15          you just can't preface it with -- it came  
16          from this particular source if they are  
17          not here to testify and say -- and respond  
18          as to whether they did or didn't say that.

19          MS. JOSEY: Yes, sir, I think I under-  
20          stand.

21   A.    Do you want me to proceed?

22   Q.    Yes. You can't say what somebody told you.

23   A.    Okay. Well, after we attempted to do queries on our  
24          own, the information that we obtained was that the  
25          neighborhood is a hodgepodge of different

1 Associations, some streets are subject to rules, some  
2 streets are not, some properties on certain streets  
3 are subject to the rules; some streets are not. And  
4 so, we were confused how to know for sure whether or  
5 not our property was because none of the properties  
6 around us are.

7 Q. You knew enough to know your property in Lakewood  
8 Links on May 22nd, 2021 required you to apply for  
9 an in-ground pool though, didn't you?

10 A. Well, yes, sir. Well, that was me covering my  
11 bases again; I just wanted to make sure that if  
12 we were in fact in that Association, that I  
13 didn't do anything wrong.

14 Q. Okay. Look at the Covenants, Page Twelve (12) of  
15 the Covenants.

16 A. I'm sorry; which -- the white book?

17 Q. Yes. The white book.

18 A. Okay.

19 Q. Page Twelve (12) of the Covenants. All right. You  
20 are familiar with these Covenants or you certainly  
21 were well familiar with them on June 16th -- June  
22 13th?

23 A. By the time I read the letter, I had tried to  
24 familiarize myself with these older Covenants,  
25 yes, sir.

1 Q. Okay. And I'm looking at Paragraph A; you are  
2 familiar with this. "In order to preserve the  
3 natural beauty of the Resort and its setting and  
4 to maintain the Resort as a pleasant and  
5 desirable environment to establish and preserve  
6 a harmonious design for the community and to  
7 protect the most valued property, no building,  
8 fence or other structure shall be erected, placed  
9 or altered until the proposed building plans,  
10 specifications, exterior color and finish, plot  
11 plan showing the proposed location of such  
12 building or structure, drive or parking area --  
13 to the parking areas. The landscape plans and  
14 construction schedule shall have been approved in  
15 writing herein provided." You knew that when you  
16 sent that request on May the 22nd, 2021 for an  
17 in-ground pool, didn't you?

18 A. I wasn't going off of these back then.

19 Q. You what?

20 A. On May 22nd, I don't believe so.

21 Q. And so, May 22nd, I notice that you got in touch  
22 with the Lakewood Links Property Owners  
23 Association?

24 A. Well, I did reach out to them, but I still didn't  
25 understand how they -- which ones we were a part of or

1 if we even were at all.

2 Q. Well, you knew enough to approach them and they issued  
3 you an approval of the fence -- of the pool; correct?

4 A. Yes, sir. And meanwhile, we did start trying to  
5 figure out on our own, but we were unable to figure it  
6 out on -- based on our research.

7 Q. Well, you had already gotten an answer on the  
8 pool?

9 A. Well, yes, sir. That's true.

10 Q. All right. Paragraph -- on Page Twelve (12),  
11 Paragraph Two -- Page Twelve (12), B2, it starts  
12 with "Insuring". Do you see that?

13 A. Yes, sir.

14 Q. "The objectives for the Resort," it says, "insuring  
15 that the location, configuration or structures are  
16 visually harmonious." Now, when you were deciding to  
17 build that fence, you didn't look over all two hundred  
18 and seventy-three (273) lots to decide what was  
19 harmonious, did you?

20 A. Well, there was no harmony, sir.

21 Q. Did ---

22 A. There's no harmony in that neighborhood.

23 Q. Well, but the whole two hundred and seventy-three  
24 (273) lots and the development of the whole  
25 subdivision, you didn't take that into consideration.

1 did you?

2 A. We were familiar with the neighborhood. We rode a  
3 golf-cart all through it and saw, you know, the  
4 various type things, you know, the various size and  
5 type things, varying in the size of the houses, ages  
6 of homes; I mean, we were familiar, yes, sir.

7 Q. When you rode around, did you see swimming pools  
8 there too?

9 A. There are some swimming pools.

10 Q. Okay. And you submitted a request before you  
11 built your pool, didn't you?

12 A. Yes, sir.

13 Q. Because just because somebody else has got a pool  
14 doesn't mean that you can build a pool without a  
15 request, does it?

16 A. I -- well, I suppose depending on where you are  
17 in the neighborhood, that's true.

18 Q. Okay. I read on in Paragraph Two. "With the  
19 terrain and vegetation of residential lots and  
20 the surrounding residential lots, a structure  
21 does not unnecessarily block scenic views from  
22 existing structures or tend to dominate any  
23 general development of the natural landscape."

24 Do you see that?

25 A. Yes, sir.

1 Q. It does not in any way limit the scenic view to those  
2 lots next to the golf course, does it?

3 A. I'm sorry?

4 Q. The requirement of consideration of a scenic view does  
5 not limit the scenic view consideration to -- next to  
6 the golf course lots, does it?

7 A. I think I'm lost.

8 Q. Okay.

9 A. I'm sorry. What page are we on now?

10 Q. All right. Okay. Page Twelve (12). Okay.

11 A. Okay. I'm on Page Twelve (12); I'm just not following  
12 you.

13 Q. That cliché, "We need to be on the same page," that is  
14 probably my fault.

15 A. Yes, sir. I'm on that page now.

16 Q. "Objectives." Okay. In Paragraph Two. Do you  
17 see Paragraph Two?

18 A. Yes, sir. Okay. Yes, sir.

19 Q. Paragraph Two. Can I proceed with that?

20 A. Yes, sir. I believe I'm with you now.

21 Q. Okay. Good. And I'm going to read down at the  
22 bottom, it says, "Does not," -- do you see "does  
23 not necessarily block scenic views." Do you see  
24 that?

25 A. Yes, sir.



1 Q. "From this construction or tend to dominate any  
2 general development of natural landscapes." Do  
3 you see that?

4 A. I see that.

5 Q. There is no mention of a requirement that is  
6 scenic be taken into consideration only around  
7 the golf course, is there?

8 A. It does not mention the golf course in that  
9 paragraph, no, sir.

10 Q. All right. Now, also, the Procedures -- I want you to  
11 look at Page Thirteen (13) of these Covenants. On  
12 Page Thirteen (13), and I want you to look at  
13 Paragraph C, parenthetic C, and then Parenthetical  
14 Two; do you see that?

15 A. Yes, sir.

16 Q. It starts, "People shall"?

17 A. Yes, sir.

18 Q. All right. Now, I want you to go to the bottom,  
19 the last sentence of that paragraph. It starts  
20 "The Review Board." Do you see that?

21 A. The last paragraph?

22 Q. Yes. "The Review Board"?

23 A. Yes, sir.

24 Q. "The Review Board shall operate in accordance with its  
25 own rules and procedures." Do you see that?

1 A. Yes, sir.

2 Q. And you followed those rules when you filed for  
3 an in-ground pool on May the 22nd, 2021, didn't  
4 you?

5 A. Yes, sir.

6 Q. And you followed those rules when you filed for  
7 the repair on your dormer; correct?

8 A. Yes, sir. After all this, yes, sir; that's  
9 correct.

10 Q. And you used the form, the same form you used for  
11 pool and the dormer, you used that when you  
12 attached the proposal for the two car garage?

13 A. Yes, sir.

14 Q. And the fence alteration in your June 13 letter;  
15 correct?

16 A. Yes, sir.

17 Q. And so, you followed the procedures of the  
18 Architectural Review Board?

19 A. Yes, sir. I submitted this letter at that time;  
20 I believe I was trying to.

21 Q. All right.

22 MR. JONES: Excuse me, please, Your  
23 Honor.

24 THE COURT: Yes, sir.

25 Q. Now, I want you to go to Page Thirty-nine (39) of

1           that. Okay. And I want you to look at -- it  
2           says "Section Seven." Do you see that?

3       A.    I'm not quite there yet, sir.

4       Q.    That's all right.

5       A.    Bear with me one second.

6       Q.    Yes, ma'am.

7       A.    Okay. Yes, sir.

8       Q.    Okay. All right. Section Seven says -- see if  
9           I'm reading it right -- "In all cases, the  
10          provisions of this Declaration shall be given  
11          that interpretation of construction which will  
12          best tend towards the consummation of the general  
13          plan of development of the property." Do you see  
14          that?

15      A.    Yes, sir.

16      Q.    And so, the Architectural Review Board was given the  
17          authority to decide what fit the overall development  
18          plan; correct?

19      A.    Yes, sir.

20      Q.    And what they do is they have to look at the big  
21          picture, not just one lot; correct?

22      A.    Yes, sir.

23      Q.    And these By-laws or these Covenants, provide that  
24          they can consider each lot to see how that component  
25          part, that lot, fits the overall plan; correct?

1 A. I suppose that's what that means.

2 Q. Well, that's -- even though you saw other swimming  
3 pools in the subdivision, you still applied for an in-  
4 ground swimming pool; correct?

5 A. Yes, sir, because it would have been an entirely  
6 new -- new construction, something that had never  
7 been there before.

8 Q. All right. Let's go to Section Eight. "Authorize --  
9 all actions which the Association is allowed to take  
10 under this instrument shall be authorized after the  
11 Association approved by the Board of Directors. The  
12 Association in the manner provided for in the By-laws  
13 of the Association unless the terms of this instrument  
14 provide otherwise." So, these Covenants, those acted  
15 as you said in your letter, these were one and the  
16 same as the By-laws; correct?

17 A. The Covenants and the By-laws are the same --  
18 honestly, I believe it is one and the same, but I'm  
19 not entirely sure.

20 Q. And the reason ---

21 A. I'm not entirely sure how to exactly answer that  
22 question.

23 Q. The reason I say that, in your letter, you call them  
24 the By-laws?

25 A. I did, but I kind of lumped them together in my mind

1           because I'm not exactly sure what the difference is  
2           between all of them. I know one document references  
3           the Covenants and the other one referenced By-laws and  
4           there was another one I think that said Covenants or  
5           Restrictions, and I wasn't exactly sure what the  
6           difference in the nuances definitions are, but I  
7           assume that all kind of mean the same thing.

8       Q.   Until last year -- you moved on that property in 2021;  
9           correct?

10      A.   Yes, sir.

11      Q.   And you paid dues in 2021?

12      A.   I did, because as soon as we moved in, they sent  
13           me a letter or about a week after we moved in  
14           there, they sent me a statement and it was  
15           already overdue with a late fee.

16      Q.   Okay.

17      A.   And I'd only been there a week.

18      Q.   And did ---

19      A.   I just paid it without questioning it because I didn't  
20           want to get any more late fees.

21      Q.   And that was in 2021?

22      A.   That was January of 2021, yes, sir.

23      Q.   And you paid them again in '22, didn't you?

24      A.   Yes, sir, because I didn't want any further  
25           annoying, of course.

1 Q. Okay. And that billing statement is labeled the  
2 "Lakewood Links Property Owners Association, Inc.,"  
3 isn't it?

4 A. Yes, sir.

5 Q. And you paid it in '21; yes?

6 A. I did, yes, sir.

7 Q. And you paid it in '22; yes?

8 A. I did, yes, sir.

9 Q. And it was only in the middle of this case that you  
10 didn't pay them in '23; right?

11 A. Well, we were in a dispute; so, I was advised not  
12 to, just to wait until the dispute is over with,  
13 yes, sir.

14 Q. Okay.

15 A. I haven't been to a meeting or anything since  
16 either. So, ---

17 MR. JONES: Your Honor, I have no  
18 further questions of this witness. Thank  
19 you so much, Ms. Josey.

20 MS. JOSEY: Yes, sir.

21 THE COURT: Cross-examination, Mr. McCabe?

22 MR. McCABE: Could I have three minutes?

23 THE COURT: Yes, sir. Let's take a break

24 MS. JOSEY: Can I ---

25 THE COURT: You can step down. You can't --

1 don't talk with anybody; you are still under  
2 oath. We are going to take ten (10) minutes.

3 MS. JOSEY: Okay.

4 (OFF THE RECORD FROM 11:08 A.M. UNTIL 11:16  
5 A.M.).

6 THE COURT: Ms. Josey, you can come back  
7 around.

8 MS. JOSEY: Yes, sir.

9 THE COURT: Mr. McCabe, you are on.

10 MR. McCABE: Your Honor, I want to confirm  
11 that by asking her some question on Cross, then  
12 my case in chief, I'm not waiving my right to a  
13 full Direct examination on our case in chief?

14 THE COURT: Mr. Jones, you want to -- my  
15 answer is no, but Mr. Jones, do you want to be  
16 heard on that?

17 MR. JONES: Your Honor, I think the Court's  
18 ruling on that is proper. He's entitled to that.  
19 No objection, Your Honor.

20 THE COURT: Mr. McCabe, your Cross-  
21 examination of your witness would not preclude  
22 or prejudice your right to put up this witness  
23 again in your case in chief. So, ---

24 MR. McCABE: Thank you.

25 THE COURT: Certainly, we don't want to

1 be redundant, but you can examine her as you  
2 see fit for this part of the case and then  
3 call her again in your case in chief.

4 MR. McCABE: Thank you, Your Honor. Thank  
5 you, Mr. Jones.

6 CROSS-EXAMINATION OF APRIL JOSEY BY MR. McCABE:

7 Q. How are you doing?

8 A. I'm fine.

9 Q. Have you ever been rude to the Board of Directors  
10 of the Association?

11 A. No, sir.

12 Q. Have you ever been rude to the members of the  
13 ARB?

14 A. No, sir.

15 Q. Do you know Mr. Jones?

16 A. I don't personally know him, no, sir. I believe  
17 I've seen him at one of the meetings we attended,  
18 but I've never personally or formally known him.

19 Q. Did he ever come to your house and talk to you  
20 about a fence?

21 A. No, sir.

22 Q. Do you know Mr. Rory Hair?

23 A. I've not ever personally met him, but I do know  
24 who he is now.

25 Q. Okay. Has he ever come to your house and talked to



1           you about a fence?

2       A.    No, sir.

3       Q.    Does he ever walk by your house?

4       A.    He does, yes, sir.

5       Q.    And how often does he walk by your house?

6       A.    It's not daily, but several days a week. We've  
7           passed by him several times walking our dogs.  
8           And we actually -- we noticed who he was because  
9           his dog is very well trained and he doesn't walk  
10          on a leash, and we have these dogs that we are  
11          trying to leash-train that we were struggling  
12          with. And so, we talked about how nice it was to  
13          have a dog as well trained as his dog on many  
14          occasions.

15      Q.    Did he walk by your fence while it was under  
16          construction?

17      A.    Yes, sir, he did.

18      Q.    Did he wave to you?

19      A.    I don't know if he ever waved, no, sir.

20      Q.    All right. Did he acknowledge you?

21      A.    I'm not sure that he acknowledged us, no.

22      Q.    But you are certain that he passed by, that he  
23          walked by?

24      A.    I'm positive; yes, sir.

25      Q.    Did he ever come and say -- stop, you can't build

1           this fence, you need to get rid of it?

2       A.    No, sir, he never spoke to me.

3       Q.    And I believe it was your testimony that the  
4           fence was built over a period of a couple of  
5           months?

6       A.    It was, yes, sir.

7       Q.    Due to lumber shortages?

8       A.    Yes, sir. It took a while. This was either due to  
9           lumber shortages, and my husband built it in his spare  
10          time; so, it took a while.

11      Q.    And you are right there on a main drive,  
12          Tidewater; correct?

13      A.    Well, it's a side street off of the main road which  
14          the main road that we enter the neighborhood on would  
15          be Lakewood Drive. So, we're -- I believe we are the  
16          first street off of Lakewood Drive.

17      Q.    And during the months of construction of that fence,  
18          did anyone stop by and say -- ma'am, stop, you need to  
19          apply?

20      A.    No, sir. No one said anything about the fence  
21          until after it was finished.

22      Q.    A year later; right?

23      A.    Yes, sir.

24      Q.    Okay. So, the fence, did it take a month to  
25          build or did it take three months to build?

1 A. I don't exactly know the start date; I can  
2 approximate. But I don't exactly know when it  
3 was started and when it was finished, but I do  
4 know it was over the course of months, more than  
5 one month for sure. I don't know if it was two,  
6 three, four even, but it was multiple.

7 Q. And during that -- during the construction, did  
8 anyone ever email, write, call, visit or in any  
9 way communicate to you that the fence needed  
10 approval?

11 A. No, sir, not while that fence was being  
12 completed. No, sir.

13 Q. If you don't mind, do you have Exhibit Number Twelve  
14 (12) in front of you, Plaintiff's Twelve (12)?

15 A. I don't have ---

16 MR. McCABE: (To the Court) May I  
17 approach you for the exhibits?

18 THE COURT: Sure, on both of them.

19 A. I think these are Mr. Jones' copies.

20 THE COURT: They are the bottom up. One  
21 should be on the bottom.

22 MR. McCABE: Okay. And may I approach  
23 the witness?

24 THE COURT: Yes, sir.

25 Q. I am handing you what is marked as Plaintiff's

1 Exhibit Number Twelve (12). I believe you were  
2 asked some questions about these communications?

3 A. Yes, sir.

4 Q. Is it fair to say that during the course of time  
5 that you were involved, that your email address  
6 changed?

7 A. Yes, sir. I still have this email address, but  
8 I don't use it as frequently. I've changed my  
9 primary email. You know you have an email that  
10 you have that you're on every list in the world.  
11 But I try not to use this one at all any more.

12 Q. Okay. But you don't dispute that this September  
13 6th, 2021 email was sent to you?

14 A. The September 6th one?

15 Q. Yes, ma'am. It was the ---

16 A. I ---

17 Q. The fifth page?

18 A. No, sir. I don't -- I could figure that they sent it  
19 to that email address; I just never saw the email.

20 Q. Okay. I just wanted to confirm that while you  
21 testified you didn't see it, you are not disputing  
22 that it was sent?

23 A. No, sir. It does look like they did send it to  
24 me; I just never saw it. I was unaware of it at  
25 the time that Mr. Reddick sent me a letter; I

1 didn't know what it was referencing when he said  
2 they previously sent this. I wasn't aware of it.

3 Q. And so, this email was sent to you, Apriljosey@  
4 Outlook.com?

5 A. Yes, sir.

6 Q. And at some point, the communication you were using  
7 with the Association was Aprilnicole131gmail.com?

8 a. Yes, sir. Yes, sir.

9 Q. So, let's turn our attention to this email for a  
10 moment. So, this email is dated September 20 --  
11 September 6th, 2021; correct?

12 A. Yes, sir.

13 Q. And it was sent from the LPOASumter@gmail.com  
14 email?

15 A. Yes, sir.

16 Q. And have you used or communicated with that email  
17 address before?

18 A. Previously, I had communicated with them I  
19 believe using that old Outlook email address,  
20 yes.

21 Q. Okay. And this -- if you go down to the bottom,  
22 the signature line, it says, ARB Chair, Rory  
23 Hair?

24 A. Yes, sir.

25 Q. Okay. And so, this email says, "We've noticed

1           that you've installed a privacy fence around your  
2           backyard. We have looked back and there was an  
3           ARB submission for a pool; there was no mention  
4           of a fence." Did I read that correctly?

5       A.    Yes, sir.

6       Q.    Okay. Let's go down to the paragraph below that  
7           -- well, actually, it's -- stay in this first  
8           paragraph. It says, "No new privacy fences of  
9           wood or vinyl" -- it says, "new privacy fences of  
10          wood or vinyl are not allowed in the Lakewood  
11          Links Subdivision"?

12      A.    Yes, sir.

13      Q.    Okay. And this is the time you had the  
14           opportunity to become familiar with the Covenants?

15      A.    Yes, sir.

16      Q.    I think they refer to them as the 1988 Covenants,  
17           but we will just refer to them as the original  
18           Declaration; okay?

19      A.    Okay.

20      Q.    Is there any prohibition against privacy fences  
21           in the original Declaration?

22      A.    No, sir.

23      Q.    Is there any prohibition against wood fences in  
24           the original Covenants?

25      A.    No, sir.

1 Q. Is there any prohibition against vinyl fences in  
2 the Declaration?

3 A. No, sir.

4 Q. Do wooden privacy fences exist within Lakewood Links  
5 Subdivision?

6 A. Yes, sir.

7 Q. Do vinyl privacy fences exist within the Lakewood  
8 Links Subdivision?

9 A. Yes, sir.

10 Q. Have these fences existed throughout the entire time  
11 that you have owned property in Lakewood Links  
12 Subdivision?

13 A. Yes, sir.

14 Q. These go on to say that some of these fences I think  
15 were characterized as having been grandfathered in?

16 A. Yes, sir, I see that.

17 Q. Does the word "grandfather" appear in the  
18 Covenants, the original Declaration?

19 A. No, sir, I've never seen that in the original  
20 Declaration nor did I see them in the 2019  
21 version; I never saw that. I don't recall seeing  
22 the word "grandfathered" in our document but  
23 certainly not the original document.

24 Q. Well, what does "grandfathered" mean to you as in  
25 this context?

1 A. Well, in this context, I believe that it would  
2 mean that any existing fences would be permitted  
3 to stay or be allowed.

4 Q. So, does it mean that some people can have wooden  
5 fences and some people cannot?

6 A. That's what it would imply, I believe, yes.

7 Q. Okay. Does that seem arbitrary to you?

8 A. It does. And may I elaborate a little bit?

9 Q. Yes.

10 A. It also says that if ever replaced, they were to  
11 choose different fences and I've seen fences on our  
12 street where they were repaired, and one fence was  
13 taken down and re-erected with new wood. And so, it  
14 wasn't replaced with a different type of anything.

15 Q. And so, if there's no restriction against wooden  
16 fences or vinyl fences or privacy fences in the  
17 original Declaration and there's no -- in the scheme  
18 of development, currently includes wooden fences,  
19 privacy fences and vinyl fences, where would I find  
20 this rule that says no wooden privacy fences?

21 A. I've not seen one in the original Declarations that  
22 wooden fences are not permitted.

23 Q. Well, maybe I can lead you. Go down to the next  
24 paragraph; it says -- the final paragraph, does it say  
25 -- only fencing of the backyard is permitted and then



1 read a section about some description about fencing in  
2 here, the description?

3 A. Yes, sir, and this is from the 2019 document, I  
4 believe, not the original document.

5 Q. Okay. Is this language in the third paragraph  
6 that begins with "Only fencing of the backyard is  
7 permitted," is that language found in the  
8 original Declaration?

9 A. No, sir, not that I'm aware of.

10 Q. Is it found in the 2020 document entitled "Conditions  
11 and Restrictions"?

12 MR. McCABE: May I approach, Your  
13 Honor, for the exhibit for the witness?

14 THE COURT: Yes, sir.

15 Q. Let me show you what is marked as Defendant's  
16 One. If you would turn to Page Five.

17 A. Yes, sir.

18 Q. Can you review that?

19 A. Yes, sir.

20 Q. I'm sorry. Not of the By-laws. There's two  
21 documents.

22 A. Yes, sir, they're different documents. That's  
23 why I couldn't -- that's why I was confused about  
24 which one were Covenants and which one was  
25 Restrictions and which one was By-laws.

1 Q. And so, if you will go to the end of the By-laws, and  
2 the By-laws are the first twelve (12) pages and then  
3 there's an Acknowledgment page. And they're  
4 renumbered and the second ones are recorded  
5 immediately after -- if you will go to that document  
6 that looks like this. It says ---

7 A. Yes, sir.

8 Q. -- "Lakewood Links Property Owners Association  
9 Conditions and Restrictions."

10 A. Yes, sir.

11 Q. It's got "Colon: C and R."

12 A. Yes, sir. I'm there.

13 Q. Was this document ever voted on and approved by the  
14 members?

15 A. Not that I'm aware of.

16 Q. To amend the -- well, the one that's referred to as  
17 the 1988 Covenants, does it require a vote for  
18 membership?

19 A. I believe it referenced that, yes, sir.

20 Q. And so, to amend those, I would need to notify the  
21 members, give them a copy and vote -- and have a vote;  
22 correct?

23 A. Yes, sir. They would have to have a meeting and  
24 address it. They would.

25 Q. Okay. So, go to Page Five of the Conditions and

1 Restrictions. It says, -- it's the language in  
2 this email from Mr. Rory Hair dated September  
3 6th, 2021. "I checked before for the fencing  
4 restrictions" ---

5 A. Yes, sir. I'm sorry.

6 Q. -- "listed in the 2020 Conditions and Restrictions"  
7 under Defendant's Exhibit Number One?

8 A. Yes, sir. It looks like that it's probably changed a  
9 bit, but it is the same and it does match.

10 Q. Okay. And so, this email tells you that you need to  
11 comply not with the 1988 -- not what they call the  
12 1988 Covenants, but you need to comply with these  
13 Conditions and Restrictions?

14 A. That's what this email says.

15 Q. Because this is the only place I'm going to find any  
16 restriction on wooden fences, ---

17 A. Yes, sir.

18 Q. -- vinyl fences or privacy fences; is that correct?

19 A. That's correct, and it looks like he has attached them  
20 to that email as well, but I'm not real sure.

21 Q. Yes. We'll get to that.

22 A. I'm sorry.

23 Q. That's okay. There are two attachments?

24 A. Yes, sir.

25 Q. And one of them is described to us?

1 A. One is the Covenants and the other is the LLPOA  
2 Conditions and Restrictions dated 12-10-2019, and they  
3 are both pdf files.

4 Q. Are you aware anywhere in your research if there is a  
5 provision that allows the Architectural Review Board  
6 to amend the scheme of development?

7 A. No, sir, I've never -- I don't think I've seen  
8 that phrase at all.

9 MR. McCABE: May I approach the Bench ---

10 THE COURT: Yes, sir.

11 MR. McCABE: -- to get an Exhibit, Exhibit  
12 Twelve. I'm going to put this one back. If  
13 anything is misplaced, Dickie did it.

14 THE COURT: Okay.

15 Q. If you go to the last page or the page before the last  
16 page, Number Seven.

17 A. Yes, sir.

18 Q. The same document labeled Conditions and  
19 Restrictions," is your signature on these  
20 Restrictions?

21 A. I'm sorry; I don't think I'm with you. Oh. The  
22 By-laws, the last page, the By-laws?

23 Q. The last page -- well, there are two documents here.

24 A. Yes, sir. The first one is the By-laws and the  
25 second one is the C&R's.

1 Q. All right. Do you see a signature page on the C&R?

2 A. I don't think I did see it on the C&R's.

3 MR. JONES: Your Honor, if I could  
4 interpose an objection here.

5 THE COURT: Yes, sir.

6 MR. JONES: My Motion and opposition to  
7 Motion for Summary Judgment as well. These  
8 C&R's, they were not approved and they are  
9 not a part of this case, and we brought the  
10 suit under the 1988 Restrictive Covenants,  
11 and our position is that they are irrelevant  
12 and the prejudice far outweighs the benefit.  
13 And so, I am renewing my objection to the  
14 admission of and public discussion of these  
15 Restrictive Covenants or these '19 -- 2019  
16 documents.

17 THE COURT: Okay. Mr. McCabe, do you  
18 want to be heard?

19 MR. McCABE: They are already entered  
20 into. I think the testimony is, even by  
21 the letter that is to be submitted and  
22 entered into evidence, is his client demanded  
23 that they comply with those Conditions and  
24 Restrictions.

25 THE COURT: All right. So, the record

1 is protected for Mr. Jones' objection. This  
2 was a part of I guess the earlier issues,  
3 but I'll allow those in, and I think they  
4 belong in. One of the issues in the trial  
5 is, you know, if we deny it on a tentative  
6 basis and later change our -- and I'm not  
7 saying that's right or wrong, but, you know,  
8 I think it is relevant to the Court's  
9 understanding of how we got to where we are,  
10 what the position of the Board was, what  
11 the position of the homeowner was, and so,  
12 I have allowed it in but Mr. Jones will be  
13 protected for the record.

14 MR. JONES: Thank you, Your Honor.

15 THE COURT: You may continue.

16 MR. McCABE: May I approach?

17 THE COURT: Yes, sir.

18 MR. McCABE: You and the witness to  
19 get Exhibit Number Sixteen (16).

20 THE COURT: Sure.

21 COURT REPORTER: This is Sixteen (16).  
22 You said Sixteen (16)?

23 MR. McCABE: Yes, ma'am. Thank you.

24 Q. I am showing you what is marked as Plaintiff's Number  
25 Sixteen (16). Would you look at that?

1 A. Yes, sir.

2 Q. Are you familiar with this document?

3 A. Yes, sir, I am.

4 Q. And what is it?

5 A. It's a letter from Attorney Jason Reddick's  
6 office telling us to remove our fence and just  
7 kind of outlining the options for that.

8 Q. When you received this letter, did you call Mr.  
9 Reddick and explode on him?

10 A. No, sir, I did not call Mr. Reddick.

11 Q. Have you always been polite to Mr. Reddick?

12 A. I've actually never communicated with Mr. Reddick  
13 in person; I've only had email correspondence.

14 Q. And were you polite to him when you communicated?

15 A. I believe so. I tried to be polite, yes, sir.

16 Q. What is the gist of what Mr. Reddick is communicating  
17 in this letter to you?

18 A. He's telling us that they had previously asked us  
19 to remove the fence which I was unaware of any  
20 such communication at that time, and so, he also  
21 said that we had until I believe June 17th to  
22 remove it and I understood the letter to be  
23 remove it or respond because they did explain  
24 that we could still have a fence, etcetera, if  
25 only we had submitted an ARB request. And so, I

1           took it to mean that we had until then to either  
2           take down the fence or to give them a response.  
3           And then I assumed that the Association would  
4           consider our response and then make a reply.

5   Q.    Okay.    Will you turn to Page Two of this  
6           document?

7   A.    Yes, sir.

8   Q.    And go to the second paragraph up from the bottom  
9           that starts with, "Please be advised".

10  A.    Yes, sir.

11  Q.    All right.  And does the second sentence read as  
12           follows: "Please reference Page Five of the  
13           Conditions and Restrictions which has been  
14           included with this letter for your convenience.  
15           The Association would propose that the best  
16           alternative would be to request permission to  
17           build a vinyl fence that meets the requirements  
18           and specifications as outlined by the Conditions  
19           and Restrictions issued by the Association and  
20           the Architectural Review Board." Did I read that  
21           correctly?

22  A.    Yes, sir.

23  Q.    Okay.  Turn back to Page Five of the Conditions  
24           and Restrictions.

25  A.    Okay.



1 Q. And are the ones that we just discussed a moment  
2 ago?

3 A. Yes, sir. The ones in the email?

4 Q. Right. And did Mr. Reddick send you a copy of these  
5 Conditions and Restrictions?

6 A. Yes, sir. I believe they were attached to this  
7 letter.

8 Q. And these are not the 1988 Covenants as they have  
9 been described?

10 A. No, sir. It wasn't.

11 Q. The Conditions and Restrictions?

12 A. Yes, sir, but it was the 2019 ones.

13 Q. Did you respond to this letter from Mr. Reddick?

14 A. Yes, sir, I did.

15 MR. McCABE: May I approach?

16 THE COURT: Yes, sir.

17 MR. McCABE: Your Honor, this is the  
18 same document as Court Exhibit Number One.

19 THE COURT: Okay.

20 MR. McCABE: And I would mark this as  
21 D-4. (To Court Reporter): I believe I am on  
22 D-4, aren't I?

23 COURT REPORTER: Yes, sir, you are.

24 MR. McCABE: Okay. Thank you.

25 Q. If you would look at this D-4.

1 A. Yes, sir.

2 Q. Are you familiar with that document?

3 A. Yes, sir.

4 Q. What is it?

5 A. It's the letter that I wrote to Mr. Reddick and  
6 to the Board members of the LLPOA, and I was  
7 going to go -- going through the letter and  
8 asking them if they would please consider our  
9 request to build a shop and considering that my  
10 grandmother at that time, we were planning to  
11 move her in with us, and so, we were going to  
12 need to make changes to the property anyway.

13 Q. And was she -- if she moved in, was she going to  
14 contribute to some up-fits of the property?

15 A. She was -- yes, sir; she had already met with the  
16 realtors and she was going to build her house and  
17 would use the proceeds to build a shop to hold most of  
18 her things, and she was going to help us pay for all  
19 of the improvements that I had outlined.

20 Q. Okay. If you look at the second paragraph, you seem  
21 to admit that you have addressed some of the existing  
22 conditions related to the fencing on your property?

23 A. Yes, sir. They were fences adjacent to our  
24 property.

25 Q. Tell the Court about the fence -- the fences that

1           bounded your property before you started the fence.

2       A.   Before we started the fence, if you're facing our  
3           house on the right perimeter, there's from probably  
4           the front yard I would say, maybe the front corner, is  
5           a neighbor's fence; it goes all the way back. There's  
6           fences all the way back to the backyard. And it's an  
7           eight foot privacy fence; it's older, and it was  
8           actually damaged. So, we had to ask them to tack up  
9           some boards a couple of times, but then -- but the  
10          people living there were renting. And so, they didn't  
11          feel comfortable maintaining the fence. And my  
12          husband actually put up a border just to keep our dogs  
13          inside. And then on the opposite side, there was --  
14          our neighbor's house sits back from the road a bit,  
15          and so, because of the condition in the cul-de-sac,  
16          and so, her front yard is kind of level with our  
17          backyard is, and she has a white picket fence across  
18          the front and then she has chain-link in her back. So,  
19          following the -- so, he stopped the wooden fence when  
20          we erected it to where her chain-link begins kind of  
21          in the back.

22       Q.   Your property is bordered by an eight foot fence,

23           ---

24       A.   Yes, sir.

25       Q.   -- a wooden privacy fence?

1 A. Yes, sir.

2 Q. A white picket fence?

3 A. A white picket fence.

4 Q. Is it wooden or vinyl?

5 A. Honestly, I'm not sure.

6 Q. And also, by a chain-link fence?

7 A. Yes, sir.

8 Q. And why did you decide to install an eight foot  
9 privacy fence?

10 A. Well, my husband made that decision; he waited a few  
11 months because he said with what was already there, a  
12 white picket fence wouldn't look as nice. And then  
13 the chain-link fence where we could keep our dogs in,  
14 and so, we were trying to keep our -- the goal was to  
15 keep the dogs encased in the yard so that they  
16 wouldn't be a nuisance.

17 Q. Have you received any complaints, demand letters or  
18 anything of that nature from any of your neighbors?

19 A. No, sir.

20 Q. Have you been asked by any of your neighbors to  
21 take the fence down?

22 A. No, sir.

23 Q. Did any of your neighbors object while you were  
24 putting the fence up?

25 A. No, sir.

1 Q. Has anyone told you that your wooden fence doesn't  
2 meet the scheme of development?

3 A. No, sir.

4 Q. Did you ask in this letter for your existing fence to  
5 be improved?

6 A. I asked for the existing fence to remain in part,  
7 that they -- because we were requesting a shop,  
8 that was required; if they approved the shop,  
9 part of the fence would have to come down if they  
10 approved it. So, we had to replace that at some  
11 point.

12 Q. Was that -- would that be the entire wooden fence?

13 A. No, sir.

14 Q. Just a portion?

15 A. Just a portion.

16 Q. Go to the first full paragraph on the second page.

17 A. Okay.

18 Q. It says, "In light of the above outlined concerns with  
19 the current By-laws, we are asking the Association to  
20 retroactively approve our existing fence in good faith  
21 as the fence is in compliance with the previous  
22 Conditions and Restrictions established in 1988." Did  
23 I read that correctly?

24 A. Yes, sir.

25 Q. Did you receive a response to that request?

1 A. No, sir, I did not.

2 Q. Have you received a response to that response at any  
3 time up through today?

4 A. No, sir.

5 Q. Are you certain?

6 A. I am positive I have not received a response to  
7 this. Had we received a response, we would have  
8 done something; we would have performed an  
9 action. We didn't want this lawsuit to go this  
10 far. This was my attempt to prevent the lawsuit  
11 from going further.

12 Q. And in the next paragraph, you say, "And further,  
13 Mr. Reddick's letter indicated we could request  
14 alternative options and as such we would like to  
15 use this opportunity to submit requests for  
16 additional improvements to our property which we  
17 humbly ask to be considered separately from the  
18 current privacy fence at issue." Did I read that  
19 correctly?

20 A. Yes, sir, that's correct.

21 Q. And so, you were asking for them to retroactively  
22 approve the wooden fence?

23 A. Yes, sir.

24 Q. And in addition to that, you were asking them to  
25 approve some additional?

1 A. Yes, sir, some additioinal improvements that we  
2 intended to make with -- considering at that  
3 time, we were considering my grandmother moving  
4 in with us.

5 Q. Did you receive a response from those?

6 A. No, sir.

7 Q. Are you sure?

8 A. I am certain.

9 Q. And so, on the date you submitted this letter,  
10 which includes the ARB Request Forms to today's  
11 date, have you received any response?

12 A. The only response that I received from the LLPOA  
13 regarding this fence matter was the lawsuit that we  
14 were served from Mr. Jones' office I believe in  
15 December of this year, of 2022. We did not receive  
16 any other correspondence regarding this fence by Mr.  
17 Reddick or from any other persons.

18 Q. Is it your position that because you did not  
19 receive a denial as required by the 1988  
20 Covenants, that the Association waived the  
21 Architectural Review provision of the 1988  
22 Covenants?

23 A. Yes, sir, and even further than that, we didn't begin  
24 work on any improvements because we didn't want to  
25 further step on any toes. And so, we just left

1 everything as is. Even though they didn't bother to  
2 respond to us, we just didn't -- we didn't want to do  
3 anything without hearing from them first.

4 Q. Is it your position that this letter contains  
5 three different requests?

6 A. Yes, sir.

7 Q. Okay. And what are they?

8 A. Well, first of all, our request was the retroactive  
9 approval of the existing fence because I didn't  
10 believe that it violated the -- any specifications  
11 that were outlined in the original Guidelines, and so,  
12 I didn't think it was in violation in that regard.  
13 So, I asked them for retroactive permission for us to  
14 keep that fence, but then I also asked them going  
15 forward if they would consider allowing us to build a  
16 shop that would accommodate a pool area for the pool  
17 once we ever got going on that; it would also  
18 accommodate multiple outer space for my grandmother's  
19 vehicle and her belongings.

20 Q. And if I look at the two -- if you would look at the  
21 two attached Architectural Request Forms?

22 A. Yes, sir. I believe -- I had to break these up  
23 into two; I didn't think there was enough space  
24 to type everything on one. So, I think I put the  
25 garage portion of the request on one form and



1           then the fence modifications on the other because  
2           the fence modification would be required if he  
3           built the workshop the way that he wanted to. It  
4           would require naturally to remove part of it.

5       Q.   Because it would be situated in an area where the  
6           car/fence would be?

7       A.   Yes, sir. Yes, sir.

8       Q.   And so, it is your testimony that these are not --  
9           these two forms -- you are saying this is one request?

10      A.   Yes, sir. The two forms go together as one  
11           request. I don't think you could put it all on  
12           one form.

13      Q.   Okay.

14      A.   So, it's all sort of one request there.

15      Q.   Did you receive a response to this one?

16      A.   No, sir.

17      Q.   Are you sure they received this?

18      A.   Yes, sir, I know they received this request.  
19           Well, I take that back; I am certain Mr. Reddick  
20           received it. They were cc'd on emails with Mr.  
21           Reddick. So, I assume that if Mr. Reddick  
22           received it, then the Board did. But nobody from  
23           the Board ever responded. Mr. Reddick responded;  
24           he acknowledged receipt of my email and my  
25           request. But no one from the Board did.

1 MR. McCABE: Your Honor, may I  
2 approach?

3 THE COURT: Yes, sir.

4 MR. McCABE: May I mark this?

5 THE COURT: This will be for I.D.?

6 MR. McCABE: Yes, sir.

7 THE COURT: D ---

8 MR. McCABE: D-5, yes, sir.

9 THE COURT: Mr. Jones, any objection?

10 MR. JONES: I do. Your Honor, I object to  
11 this on hearsay grounds.

12 THE COURT: Okay. Marked now for I.D. I  
13 assume you are going to ---

14 MR. McCABE: Let me back up for a second.  
15 Your Honor, I would like to move Defendant's  
16 Exhibit Number Four into evidence.

17 THE COURT: Defendant's Four, the same as  
18 Court's Exhibit One. Mr. Jones, do you want  
19 to put something on the record about Defendant's  
20 Exhibit Four?

21 MR. JONES: Yes, sir. Your Honor, what I  
22 was just handed was an exchange, an email  
23 exchange, with Mr. Reddick. That's hearsay  
24 from Mr. Reddick. One of the parties would be  
25 actually writing it, and so, he would have to

1           testify -- by way of testimony for this to come  
2           in.

3           THE COURT: Mr. McCabe, do you want to  
4           respond to that?

5           MR. McCABE: I'm sorry. I was reading  
6           this "I need you to respond to the email." I'm  
7           moving this one in. Okay. This is my D-4. I  
8           think he responded to that one.

9           MR. JONES: Yes.

10          MR. McCABE: This is Court's Exhibit One.

11          MR. JONES: Okay. Number Five.

12          THE COURT: Number Four was the offer of  
13          compromise?

14          MR. JONES: Yes, and if you will note what  
15          my objection is to that.

16          THE COURT: You will be protected on the  
17          record. I will admit over objection Defendant's  
18          Exhibit Number Four which is essentially the  
19          same as Court's Exhibit One. And I was just  
20          looking at Number Five for I.D. which appears  
21          to be an email correspondence. Mr. McCabe, so  
22          far, you have just asked that it be I.D.'d and  
23          then I imagine you're going to lay a foundation  
24          for it, and Mr. Jones, you say you object as  
25          it's hearsay communication from Mr. Reddick.

1 And Mr. McCabe, do you want to respond to that  
2 or do you want to lay a foundation and then  
3 argue?

4 MR. McCABE: May I lay a foundation?

5 THE COURT: Yes, sir.

6 Q. April, I'm showing you what is marked as Defendant's  
7 Exhibit Five; do you recognize this document?

8 A. Yes, sir.

9 Q. And where did it come from?

10 A. Well, I believe that it was from me reaching out  
11 to Mr. Reddick and that our POA would not respond  
12 -- the response right there.

13 Q. Okay. And did you -- is this an email that you  
14 printed off, a copy of the email that you  
15 printed?

16 A. It's a copy of an email that I'd sent; I did not -- I  
17 don't know if I printed these or not, but I definitely  
18 forwarded them to your office.

19 Q. And so, actually, this version -- do you recall  
20 receiving this email?

21 A. Yes, sir.

22 Q. Okay. Does this email chain contain emails that  
23 you also sent?

24 A. Yes, sir. I initiated the first email, and I was  
25 apparently having trouble getting my copies

1 attached on my I-phone. Sometimes, I have  
2 trouble doing this on an I-phone. But I did  
3 initiate this email to Mr. Reddick and to the  
4 LLPOA with the attachments which was my letter  
5 with my request.

6 Q. And the letter which we looked at that was ---

7 A. Yes, sir.

8 Q. -- Defendant's Exhibit Four?

9 A. Yes, sir. It was a letter appealing to the HOA  
10 to please retroactively approve our current  
11 request and to consider going forward in my  
12 location.

13 Q. Okay.

14 MR. McCABE: I would move this into  
15 evidence with regards to hearsay; it might  
16 be an offer for what is asserted in the  
17 email. It's being offered to show that she  
18 transmitted Defendant's Exhibit Four and  
19 received some confirmation.

20 THE COURT: Mr. Jones?

21 MR. JONES: Same objection. Rule 802  
22 is related to our objection of hearsay.

23 THE COURT: All right. And it looks  
24 to me like the second page is cut off. But  
25 the purpose of admitting it is not for the email,

1 the contents therein, but just to establish  
2 that there was an exchange and to support  
3 the earlier exhibits of the Defendants that  
4 that letter was sent. I am going to admit it  
5 over the objection, and again, Page Two is  
6 kind of cut off, but I don't guess that's  
7 pertinent to it for the content but just to  
8 establish an email connection and exchange  
9 between Mr. Reddick and -- I guess at the  
10 time attorney for the party or agent for  
11 the parties. And this is in response in  
12 that time frame when he simply writes. So,  
13 that will be Defendant's Exhibit Five.

14 (EMAIL EXCHANGE WITH MR. JASON REDDICK  
15 MARKED AS DEFENDANT'S EXHIBIT NUMBER FIVE)

16 EXAMINATION OF APRIL JOSEY BY MR. McCABE CONTINUED:

17 Q. So, in this exchange of emails, is the POA copied?

18 A. Yes, sir.

19 Q. Do you know where Mr. Roy Hair lives?

20 A. Yes, sir. I do now; I didn't know.

21 Q. Does he have a wooden privacy fence?

22 A. Yes, sir, he does.

23 Q. Does he have his trailer parked in his yard?

24 A. He has a camper, a recreational camper, in the  
25 driveway.

1 Q. Is it larger than your husband's utility trailer?

2 A. Yes, sir. It's very much so.

3 Q. Is Mr. -- is Rory's grandfathered?

4 A. I imagine that but my interpretation was that ---

5 MR. JONES: Your Honor, ---

6 THE COURT: Hold on one second.

7 MR. JONES: Unless she knows. Unless she  
8 knows, I object. You have to lay a foundation  
9 of how she knows.

10 THE COURT: Okay. So, ---

11 MR. McCABE: I'll withdraw the question.

12 THE COURT: So, the question is withdrawn;  
13 any reference to grandfathered is stricken.

14 We will move on.

15 Q. In your opinion, are wooden privacy fences a part of  
16 the scheme of development?

17 A. Yes, sir. There are many in there.

18 Q. Do you believe that your wooden fence impairs or  
19 diminishes the value of any of the other property  
20 around you?

21 A. I don't believe so. We received many compliments  
22 on it.

23 MR. JONES: Your Honor, I object  
24 to that. Hearsay.

25 THE COURT: Mr. McCabe, do you want

1 to be heard on that? Is there an exception?

2 MR. McCABE: Are you referring to the  
3 last sentence or the entire response? The  
4 objection.

5 MR. JONES: She said -- what we have  
6 been told, speaking of ---

7 MR. McCABE: So, I don't think she said  
8 that someone told her; I think she said that  
9 she had received compliments.

10 THE COURT: Okay.

11 MR. JONES: Yes, that's the hearsay.

12 MR. McCABE: I still don't think that's  
13 hearsay in this case just saying that we  
14 received many compliments.

15 THE COURT: Okay. She has already  
16 testified that -- we're splitting hairs on  
17 some of this.

18 MR. McCABE: I'm not sure I ---

19 THE COURT: I understand that, and to  
20 the audience, you know, I know this is a  
21 tense matter, this is an important matter,  
22 and ya'll may not come to Court regularly.  
23 The lawyers and the Court does. I mean,  
24 this is a stressful situation. So, please  
25 do not perceive small instances of humor or



1           jovial response as anything more than just a  
2           small effort in the insurmountable tension  
3           that this case brings to all of ya'll. So,  
4           you know, witnesses testify. Certainly,  
5           a witness qualifies to testify in her  
6           opinion as to her value of the property as  
7           part of the subdivision, and she has done so.  
8           And so, we will strike that last response of  
9           compliments, but certainly, I think the  
10          witness' testimony as to her opinion of  
11          value, devalue, is admissible. So, Mr.  
12          McCabe, next question.

13       Q.    Do you believe requiring you to tear down the fence in  
14              any way enhance other properties in the neighborhood?

15       A.    No, sir.

16                   MR. McCABE: The Court's indulgence.

17                   THE COURT: Yes, sir.

18                   MR. McCABE: Thank you, sir. Judge,  
19              I'll reserve the remainder of my questions  
20              for her Direct.

21                   THE COURT: All right.

22                   MR. McCABE: Thank you.

23                   THE COURT: Mr. Jones, Cross-examine.

24                   MR. JONES: Thank you.

25       CROSS-EXAMINATION OF MS. JOSEY BY MR. JONES:

1 Q. April, how about getting that white notebook out in  
2 front of you; okay?

3 A. This one?

4 Q. Yes, ma'am.

5 A. Yes, sir.

6 Q. April, now you testified that there are no  
7 prohibitions against building a fence or building  
8 a pool in the subdivision?

9 A. No, sir, that's not what I said.

10 Q. All right. Well, tell me what you said.

11 A. I believe that I said per the 1988 Covenants or  
12 whatever they're referenced as, there are no required  
13 specifications that they have to be a certain height,  
14 material or anything like that; that's what I said.

15 Q. Okay. All right. Let's go to Page Fourteen (14),  
16 paragraph E. Okay?

17 A. What ---

18 Q. Fourteen-E (14-E). See it in the middle of the page.  
19 It says, "Review of Approval Plans, Additional  
20 Operation," do you see that?

21 A. Yes, sir.

22 Q. And read with me, "No," -- you see the word "no";  
23 right?

24 A. Yes, sir.

25 Q. "No building, wall, fence, deck, pier, swimming pool,

1 roof, exterior shall be commenced or erected. No  
2 fence, no pool shall be erected from a residential  
3 lot" -- and I'm going down four lines here.

4 A. Okay.

5 Q. It says, "Until the proposed building plans and  
6 specifications, including height, materials and  
7 exterior finish, plot plans, construction schedule  
8 have been submitted to and approved by the Review  
9 Board." Do you see that?

10 A. Yes, sir.

11 Q. "The prohibition is no fence and no pool will be  
12 constructed until it is submitted to and approved by  
13 the Board." Correct?

14 A. That's true. It doesn't say that they will only  
15 approve certain ones, whether it's certain material  
16 outlined. They don't -- they don't go into that level  
17 of ---

18 Q. The prohibition is against building a fence or a pool,  
19 among other things, ---

20 A. Yes, sir.

21 Q. -- without getting it approved by the Architectural  
22 Review Board; correct?

23 A. Yes, sir. And that's why I submitted a letter asking  
24 that they would kindly and retroactively approve our  
25 fence.

1 Q. That is why you submitted a letter for a pool, an in-  
2 ground pool, isn't it?

3 A. I didn't submit a letter at that time.

4 Q. To the Architectural Review Board; correct?

5 A. Yes, sir.

6 Q. Okay. Because you knew the prohibition against  
7 building a pool without the approval; correct?

8 A. Correct.

9 Q. All right. Do you think that there's any  
10 prohibitions in the 1988 Covenants for building  
11 a pool?

12 A. I don't believe that there are.

13 Q. You submitted the Architectural Review Board  
14 request in May of '21?

15 A. I did, because I believed at that time that the most  
16 recent C&R's that they submitted to us were valid; it  
17 was only after I received the letter from Mr. Reddick  
18 that I started digging into things and realized that  
19 those were not valid.

20 Q. Now, you knew when you did the closing back in January  
21 of 2021, only five months before, you knew that you  
22 were under the Lakewood Links Property Owners  
23 Association; correct?

24 A. Well, not exactly; they didn't tell us which one  
25 I don't believe on there, and we did -- we had

1           questions for our attorneys and he can't -- he  
2           told me I can't tell you what that was.

3       Q.   Well, you acknowledge you got the notice that you  
4           were in the Lakewood Links Property Owners  
5           Association; correct?

6       A.   Yes, sir.

7       Q.   Okay. And you acknowledged that you had them and  
8           you understood them; correct?

9       A.   Yes, sir, and I did have questions about them.

10      Q.   Now, let me ask you about -- you talked about Mr. Rory  
11           Hair's lot; you don't know whether that lot has been  
12           approved or not, do you?

13      A.   I do not. No, sir.

14      Q.   Okay. If it has been approved, he had just as much  
15           right to have that fence there as you have to have  
16           your in-ground pool?

17      A.   That's correct; he does.

18      Q.   And so, you don't -- you are not critical of Mr. Rory  
19           Hair's fence, are you?

20      A.   I am not critical of his fence.

21      Q.   Okay. You don't ---

22      A.   I'm not critical of anyone's fence.

23      Q.   If I told you it was approve back in 2000, you  
24           couldn't dispute it?

25      A.   No, sir, I wouldn't be able to dispute that.

1 Q. And if I told you it was approved for not Rory  
2 Hair but the person who owned it before him, you  
3 couldn't dispute that?

4 A. No, sir, I would not be able to dispute that.

5 Q. All right.

6 A. I believe that was probably the ordinary course of  
7 business.

8 Q. This picket fence that is from Ms. Christmas' house to  
9 which you referred, ---

10 A. Yes, sir.

11 Q. -- I believe that picket fence is about knee-high;  
12 correct?

13 A. No, sir, it's taller than that.

14 Q. Okay. And that picket fence, you can see through it?

15 A. Yes, sir.

16 Q. Okay.

17 A. I can see through it, yes, sir.

18 Q. And you can see through the chain-link fence too?

19 A. Yes, sir. Actually, her shed is right on the  
20 other side of it.

21 Q. You have seen -- you have seen swimming pools  
22 throughout Lakewood Links Subdivision, haven't  
23 you?

24 A. Yes, sir. Here and there.

25 Q. Do you think those match the common scheme of

1 development?

2 A. I don't believe there is a common scheme of  
3 development.

4 Q. And so, you don't think that the whole  
5 subdivision -- you just dispute that there is any  
6 common scheme of development?

7 A. Yes, sir, I do. There's -- when I said  
8 hodgepodge earlier, I mean that.

9 Q. Okay. You don't know what lots are in Lakewood  
10 and what lots are in Lakewood Links and what is  
11 in Lakewood Estates, do you?

12 A. I have an idea now because I've seen a map --  
13 sometime last year, I saw a map, but prior to  
14 that, no, you could not tell -- you could not  
15 tell what it was when you drive through that  
16 area.

17 Q. And so, for you to say that Lakewood Links doesn't  
18 have a common scheme of plan, you don't -- you can't  
19 -- you are not here today to say what is in Lakewood  
20 Links and what is Lakewood Estates, can you?

21 A. Well, I can today because I've seen a map since  
22 then. And so, I understand which areas are  
23 allegedly this and that. So, after being here  
24 today, yes, sir, I can tell you that the areas  
25 supposedly in Lakewood Links POA does not have a

1 common scheme; there are all types of different  
2 fences: brick fences, some are see-through, some  
3 are not, and they are different heights. They  
4 are chain-link fences; they're different colors.  
5 The houses are all different sizes. There's  
6 different building materials used on houses. I  
7 mean, I wouldn't call it a common theme.

8 Q. You would agree that the Lakewood Links Property  
9 Owners or the Architectural Review Board has the  
10 latitude to consider each individual lot and  
11 request, don't you?

12 A. Sure. Yes.

13 Q. Okay. And the reason that is is because there is  
14 a requirement that no fence, no pool, no house  
15 will be constructed until it goes to the  
16 Architectural Review Board; correct?

17 A. I believe that's how it was.

18 Q. All right. And that Architectural Review Board  
19 then can evaluate whether or not it fits into  
20 what they believe is the common scheme or plan;  
21 correct?

22 A. I believe that's how it works.

23 MR. JONES: I have no further  
24 questions, Your Honor.

25 THE COURT: All right. Mr. McCabe,



1 any Redirect or Recross -- let's see --  
2 Direct, Cross, Redirect, Recross?

3 MR. McCABE: We reserve -- Your Honor,  
4 I reserve questions for her.

5 THE COURT: Okay. Ma'am, you can step  
6 down.

7 MS. JOSEY: Do ya'll want these?

8 THE COURT: Don't take anything with a  
9 sticker on it.

10 MR. McCABE: May I approach, Judge?

11 THE COURT: Yes, sir.

12 MR. McCABE: Thank you.

13 THE COURT: It's 12:20. I'm inclined to  
14 break until 1:15. If the lawyers have any  
15 preferences not to do it, maybe I'll change  
16 my mind. But scheduling-wise, does anybody  
17 have a problem with breaking until 1:15?

18 MR. JONES: It's fine with me, Judge.

19 THE COURT: All right. Does that give  
20 everybody enough time to get their thoughts  
21 in order and maybe grab a to-go sandwich  
22 or some crackers?

23 MR. McCABE: Yes, sir.

24 THE COURT: All right. We will be  
25 adjourned until 1:15.

1 MR. McCABE: Okay. Thank you.

2 (BREAK FOR LUNCH FROM 12:21 P.M. UNTIL  
3 1:15 P.M.).

4 THE COURT: All right. Are we ready?

5 MR. JONES: Yes, sir.

6 MR. McCABE: Yes, Your Honor.

7 MR. JONES: Your Honor, I would like to  
8 call Glenn Hesselbart, H-E-S-S-E-L-B-A-R-T.  
9 A charming German name.

10 THE COURT: Okay. Sir, if you will raise  
11 your right hand for me. Do you swear or affirm  
12 that everything you tell me today will be the  
13 truth, the whole truth and nothing but the truth  
14 under penalty of perjury?

15 MR. HESSELBART: Yes, I do.

16 THE COURT: Okay. You are sworn. Would  
17 you spell your last name again for the benefit  
18 of the court reporter?

19 MR. HESSELBART: H-E-S-S-E-L-B-A-R-T.

20 THE COURT: All right. And if you would  
21 answer the questions posed to you by Mr. Jones.

22 (Glenn Hesselbart, having been duly sworn, testifies as  
23 follows):

24 EXAMINATION OF GLENN HESSELBART BY MR. JONES:

25 Q. You are Glenn Hesselbart; correct?

1 A. Yes, sir.

2 Q. Okay. Glenn, I think you live at 3125 Green View  
3 Parkway?

4 A. That's correct.

5 Q. And I want to hand you a Deed; I'm just going to  
6 ask you a question about the Deed. It was your  
7 Deed; I will tell you. But I am going to hand  
8 you a copy of it too to Mr. McCabe. Glenn, this  
9 is a Deed that is found in Book 556 at 498, and  
10 it was -- the Deed is dated September of '92?

11 A. Yes, sir.

12 Q. Okay. Is that the Deed to your house?

13 A. It is.

14 Q. Okay. And I notice if you go down that front  
15 page ---

16 A. In '92, this would only be the property?

17 Q. Yes, that's correct.

18 A. Yeah.

19 Q. And if you go down on that page, that front page,  
20 one, two, three, four, five, you see that  
21 paragraph that says, "The above properties  
22 subject to" -- do you see that?

23 A. Yes.

24 Q. "Is subject to all visible and recorded Deeds  
25 with rights of way and restrictions affecting

1       said property including but not limited to  
2       Restrictive Covenants filed for record in said  
3       Register of Deeds Office, Register's Office,  
4       Volume 481 at 1879;" do you see that?

5       A.    Yes, sir, I do.

6       Q.    Okay.    And that is the same Covenants as  
7       Plaintiff's Exhibit Number One which is Lakewood  
8       Links Property Owners Association; correct?

9       A.    Correct.

10      Q.    All good.

11               MR. JONES: Your Honor, I would  
12               like to move that into evidence; I'm  
13               not sure what number it is.

14               THE COURT: You withdrew Seventeen  
15               (17), and so, this would be Seventeen (17).

16               MR. JONES: Yes. Yes. Thank you.

17               THE COURT: Mr. McCabe, any objection?

18               MR. McCABE: No, sir.

19               THE COURT: Plaintiff's Seventeen (17)  
20               is entered into evidence.

21               MR. JONES: Now, I hand this up to the  
22               Court. Thank you so. Thank you, Doris.

23               (TITLE TO REAL ESTATE FROM PLOWDEN  
24               CONSTRUCTION CO., INC. TO GLENN A. HESSELBART  
25               AND KAREN E. HESSELBART DATED SEPTEMBER 14,

1                   1992 AND MARKED AS PLAINTIFF'S EXHIBIT NUMBER  
2                   SEVENTEEN (17)).

3       Q.     Okay. Glenn, December of 2021, you were working at  
4             leading the body of the Association of Lakewood Links;  
5             correct?

6       A.     I -- there was a Steering Committee ---

7       Q.     Yes.

8       A.     -- put together -- we recognized that we were  
9             personally an unincorporated Association.

10      Q.     Yes.

11      A.     And that had some repercussions for individuals  
12             involved in the Association for liability, and we  
13             wanted -- we wanted to do everything to get away from  
14             that.

15      Q.     Okay.

16      A.     All of us.

17      Q.     Okay. And so, as a result of that, did you --  
18             well, let me hand you this document. It is a  
19             letter dated December 17th, 2001, and it says,  
20             "Sincerely, Glenn Hesselbart." It says, "Dear  
21             neighbor." If you would take a look at that.

22      A.     Yeah.

23      Q.     Is that your letter?

24      A.     It is.

25      Q.     Okay.

1 MR. JONES: Your Honor, we would  
2 like to move this into evidence as  
3 Plaintiff's Exhibit Number Eighteen (18).

4 THE COURT: Mr. McCabe, have you had  
5 a chance to review?

6 MR. McCABE: Thank you.

7 (LETTER FROM GLENN AND KAREN HESSELBART  
8 ADDRESSED TO "DEAR NEIGHBOR" DATED DECEMBER 17,  
9 2001 MARKED AS PLAINTIFF'S EXHIBIT NUMBER  
10 EIGHTEEN (18).

11 THE COURT: Eighteen (18) is admitted  
12 without objection.

13 MR. JONES: Thank you.

14 Q. Glenn, I want to ask you. This December -- it says,  
15 "Dear Neighbor," can you tell me what the purpose of  
16 this letter was?

17 A. Yeah. It was to address this unincorporated  
18 Associatiion in an attempt to form a formal  
19 incorporated Association, once again, primarily for  
20 liability concerns for each of the individual members.

21 Q. Okay. Now, as far as -- I'm looking at the next  
22 paragraph, the second paragraph, and it says,  
23 "Increased control of the " -- the middle of that  
24 paragraph, it starts with the word "Increased," it  
25 starts right after "Rt 15"; do you see that?

1 A. Yeah.

2 Q. It says, "Increased control of the Architectural  
3 Review Board governing further construction in  
4 our community, and acting as a common voice."

5 Was one of the reasons you guys wanted to make a  
6 common voice in the form of the Architectural --  
7 in the form of the corporation?

8 A. Yes, and a little more than that; earlier in the  
9 letter in the very first paragraph, late August  
10 of 2001, a notice appeared in the "Item" stating  
11 that CDL Enterprises would discontinue  
12 maintenance and upkeep on the entrances and cul-  
13 de-sacs at the Lakewood and Lakewood Links  
14 Developments as of the end of September; that had  
15 to be addressed.

16 Q. By the way, Glenn, you have an interesting  
17 background; I really haven't introduced you to  
18 the Court much, but I think you were a Plant  
19 Manager in Sumter; what plant did you manage?

20 A. At the time I started, it was Westinghouse; now, it's  
21 Eaton.

22 Q. And you came to Sumter when?

23 A. In July of 1992.

24 Q. Okay. And you were Plant Manager there how long?

25 A. Eight and a half (8 1/2) years.

1 Q. And did you retire from there?

2 A. No, I did not. I kicked around and did some odd  
3 -- some odd jobs and worked on this kind of  
4 stuff; I left there in 2000.

5 Q. Okay.

6 MR. JONES: I'm sorry for the  
7 digression, Judge, but he's an interesting  
8 man and I didn't introduce him before.

9 THE COURT: Okay. That's okay.

10 MR. JONES: Thank you.

11 Q. Now, I want you to look at the third paragraph,  
12 the third paragraph. And it says, "Legal  
13 provisions for the formation of the "Lakewood  
14 Links Property Owners Association are included in  
15 the Restrictive Covenant." And so, let me ask  
16 about this. What was -- what was the document  
17 that regulated and governed Lakewood Links  
18 Property Owners Association?

19 A. The Restrictive Covenants.

20 Q. Okay. So, the Covenants served both as the By-laws  
21 and the Covenants?

22 A. Yes, sir.

23 Q. Okay. All right. I see here, this is a notice of a  
24 first meeting it's in the last paragraph. It says,  
25 January the 20th of 2002; do you see that?



1 A. Yes.

2 Q. Okay. Tell me, what was the purpose of that  
3 meeting?

4 A. Well, I think I pointed out that in the letter.  
5 We needed to get -- we needed to identify all the  
6 members who would belong to the organization,  
7 figure out the economics, the maintenance costs  
8 of the whole development because CDL was no  
9 longer going to do that as of two months. So, it  
10 was -- it was a rush. So, that's what we did.  
11 We put a full foot press on.

12 Q. Okay. And did you then have a meeting on this?

13 A. Yes, there was a meeting.

14 Q. Okay. And at that meeting, did the membership vote to  
15 be a corporation?

16 A. Yes.

17 Q. All right. I want to show you some documents.

18 MR. JONES: If you would bear with  
19 me just a second, Your Honor, while I get  
20 these.

21 THE COURT: Yes, sir.

22 Q. I think you incorporated -- I'm handing you this  
23 document.

24 MR. JONES: And to Mr. McCabe.

25 Q. I want to hand you this document and see if you can

1 identify it, Articles of Incorporation?

2 A. Uh-huh (affirmative response). Yes, sir.

3 MR. JONES: Incidentally, Judge, I  
4 don't remember whether we moved Exhibit  
5 Eighteen (18) into evidence or not.

6 THE COURT: It is.

7 MR. JONES: Okay. Thank you.

8 THE COURT: Without objection

9 Q. This document I've put in your hand, it says at the  
10 top, "Secretary of State Nonprofit Corporation." Do  
11 you see that?

12 A. Yes, sir.

13 Q. Articles of Incorporation?

14 A. Yes, sir.

15 Q. All right. And I see it says the name of the  
16 registered agent is Glenn Hesselbart; correct?

17 A. Yes, sir.

18 Q. That is you?

19 A. That's me.

20 Q. And you were the sole incorporator; is that  
21 right?

22 A. That's right.

23 Q. Okay. And so, this incorporation is January the  
24 7th, 2002; is that correct?

25 A. Yes, sir.

1 Q. Okay. And so, this is when you filed for a  
2 corporation on January the 7th, 2002.

3 MR. JONES: I would like to mark  
4 that, Judge, as Plaintiff's Exhibit  
5 Number Nineteen (19), I think, and ask  
6 that it be put into evidence.

7 THE COURT: Mr. McCabe, Plaintiff's  
8 Nineteen (19). The corporation ---

9 MR. McCABE: No objection.

10 THE COURT: No objection. Plaintiff's  
11 Nineteen (19) is in evidence.

12 Q. And Glenn, I hand you ---

13 MR. JONES: (To Court Reporter). Doris,  
14 I'm sorry.

15 COURT REPORTER: I'm fine.

16 MR. JONES: And Judge, I hand this up to  
17 the Court.

18 Q. Okay. I want to hand you another document, Glenn, and  
19 at the top it says, "Business Entities Online." Do  
20 you see that?

21 A. Yes, sir.

22 Q. It says, "Lakewood Links Property Owners  
23 Association, Inc." Do you see that?

24 A. Yes, sir.

25 Q. And tell me what this is.

1 A. It's the -- it's the corporate information for  
2 Lakewood Links Property Owners Association.

3 Q. And it says it is in good standing, I believe, doesn't  
4 it?

5 A. Yes, it does.

6 Q. Okay.

7 MR. JONES: Your Honor, we would move  
8 this into evidence, please.

9 THE COURT: That will be Plaintiff's  
10 Twenty (20). Mr. McCabe?

11 MR. McCABE: Slight objection.

12 THE COURT: Slight objection. It is  
13 admitted into evidence. Reluctantly so.

14 SOUTH CAROLINA SECRETARY OF STATE BUSINESS  
15 ENTITIES ONLINE FOR LAKEWOOD LINKS PROPERTY  
16 OWNERS ASSOCIATION, INC. MARKED AS PLAINTIFF'S  
17 EXHIBIT NUMBER TWENTY (20).

18 Q. Okay. If you will hand me that, Glenn. Thank you so  
19 much. Thank you.

20 MR. JONES: I hand that up to the Court.

21 Q. Glenn, since that meeting on January 20, 2002, has  
22 Lakewood Links Property Owners Association, that  
23 corporation, has it been the governing body ---

24 A. Yes, sir.

25 Q. -- of the Property Owners Association?

1 A. Yes, sir. I was the president, president of the  
2 Association from its inception through 2005;  
3 there have been a number of subsequent  
4 successors.

5 Q. Yes, sir. And this corporation, is it the  
6 successor of the unincorporated association?

7 A. Yes, sir. That's why we had ---

8 MR. McCABE: Objection.

9 MR. JONES: Okay.

10 MR. McCABE: It calls for him to provide  
11 an opinion on a legal issue.

12 THE COURT: Okay. So, I'm going to --  
13 as to the objection, the witness can testify  
14 as to the common laws; he has not been admitted  
15 as an expert. One of the issues in the case  
16 was the legal determination as successor, but  
17 I'm going to overrule the objection and allow  
18 him to answer but it certainly is not a legal  
19 opinion; it is a lay opinion. Okay.

20 MR. JONES: I think he answered, but I  
21 will ask the same thing.

22 Q. And so, is this corporation that was formed in 2002,  
23 January 7th of 2002, is it a successor to the  
24 unincorporated association?

25 A. Yes, sir.

1 MR. JONES: Your Honor, I have no  
2 further questions. Thank you very much.

3 THE COURT: Mr. McCabe, Cross-  
4 examination.

5 MR. McCABE: Thank you.

6 CROSS-EXAMINATION OF GLENN HESSELBART BY MR. McCABE:

7 Q. Mr. Hesselbart, ---

8 A. Yes, sir.

9 Q. -- when did you build your house?

10 A. We built it -- we moved into it in September of  
11 Two Thousand and -- I'm sorry -- of 1993.

12 Q. And you purchased it in 1990 -- the year you purchased  
13 the lot, '91 or '92?

14 A. '92.

15 Q. '92. Was there a house on the lot at the time?

16 A. No, sir. We built it.

17 Q. And you moved in, you moved onto the lot in 1993;  
18 correct?

19 A. September.

20 Q. Okay. Did you submit your house through an  
21 Architectural approval process?

22 A. Yes, we did.

23 Q. Okay. And who did you submit it to?

24 A. The Architectural Review Board.

25 Q. And who was the Architectural Review Board?

1 A. I can't remember. I can't remember.

2 Q. Was it the unincorporated association?

3 A. No -- yes, it had to have been.

4 Q. Well, maybe it was the developer; maybe you got it  
5 through from an Architectural Review Committee  
6 appointed by the developer; could that have been the  
7 case?

8 A. It could be because that was still Buster Plowden and  
9 -- at the time, and I know that I did consult with him  
10 about some additions that we were making. And so,  
11 that could well have been the situation at the time.

12 Q. And if that were the case, it wouldn't be a  
13 successor corporation, would it?

14 A. I don't know.

15 Q. Okay. Well, do you have a document, P-1, in front of  
16 you, the Covenants?

17 A. I don't know what P-1 is.

18 MR. McCABE: May I approach, Your  
19 Honor?

20 THE COURT: Yes, sir.

21 MR. McCABE: P-1. This right here.

22 (To Mr. Jones): Do you mind if I use those?

23 MR. JONES: No, that's why they're  
24 there.

25 MR. McCABE: Okay.

1 Q. I will represent to you that this is Plaintiff's  
2 Exhibit Number One; this is the Restrictive  
3 Covenants. Can you take a look at those and tell  
4 me if you recognize them?

5 A. Yes.

6 Q. Can you turn to Page Fourteen (14)? Well, before you  
7 do that, let's do this. Will you turn to Page Three?

8 A. Yes, sir.

9 Q. Look at the definition of Associaion; is there a name?

10 A. No. It referred to the Lakewood Links Property  
11 Owners Association, Inc.

12 Q. Okay. And there was a corporation incorporated  
13 by that very name, wasn't it?

14 A. Yes.

15 Q. All right. And so, in 2002 when you restarted the  
16 Association, you didn't -- you weren't acting in  
17 the capacity of the Lakewood Links Property  
18 Owners', apostrophe, Inc. that was originally  
19 created by the developer, were you?

20 A. I don't know; I don't remember.

21 Q. Well, you formed a new Association?

22 A. Yes, sir.

23 Q. And you did that because you didn't control and  
24 have the ability to control the existing  
25 incorporated Association; correct?



1 A. I -- I ---

2 MR. JONES: Your Honor, ---

3 THE COURT: Yes, sir.

4 MR. JONES: -- that assumes facts  
5 not in evidence.

6 THE COURT: Mr. McCabe, do you want  
7 to respond?

8 MR. McCABE: He is -- he knows through  
9 the Covenants. I'm not sure what he assumes;  
10 I mean, he says it's the successor. So, I  
11 am asking him to confirm whether this entity,  
12 he had any involvement with or has any knowledge  
13 of or did he form a new Association.

14 THE COURT: Okay. I'm going to allow  
15 the witness to tell us what he knows about  
16 what happened to the original Home Owners  
17 Association as created by the developer,  
18 and maybe he doesn't know.

19 A. I don't know. My understanding was that we were an  
20 unincorporated Association before -- before we started  
21 this process.

22 Q. Do you acknowledge that this document in front of you,  
23 Plaintiff's Exhibit Number One, these are the  
24 Covenants for your community?

25 A. Yes, sir.

1 Q. And do you acknowledge that the Association is defined  
2 as Lakewood Links Property Owners' with an apostrophe  
3 Association, Inc.; correct?

4 A. Yes.

5 Q. And you acknowledge that the developers actually  
6 created this corporation, and it was in existence  
7 when you purchased your property; correct?

8 A. Yes.

9 Q. And you acknowledge that in 2002, you formed a new  
10 Association; correct?

11 A. Yes.

12 Q. And you formed the Association or the new  
13 corporation in 2002 because you weren't able to  
14 revive or operate or control the existing  
15 corporation that is defined under the Covenants  
16 under the definition of "Association"; correct?

17 A. Yes.

18 Q. And you -- the corporation you formed never  
19 received any type of legal document from the  
20 existing corporation assigning any rights or  
21 assigning any privileges?

22 A. Not to my knowledge.

23 Q. Okay. And the developer never filed or directed  
24 any legal instrument or document that would  
25 assign any rights to the entity that you created

1 in 2002?

2 A. That's correct.

3 Q. Okay. And do you mind turning to Page Fourteen (14)  
4 of that document, and take your time. Excuse me -- to  
5 -- yes, Page Fourteen (14).

6 A. Okay.

7 Q. And listen, if I ask you something and you want to  
8 look back, I'm not rushing you; you take your time.  
9 Okay?

10 A. Okay.

11 Q. But I'm looking at Page Fourteen (14) which is  
12 under Part Two, Article One, Section Two-D. The  
13 lawyer drafted this was really good with outlines  
14 in case you haven't noticed. Did you follow  
15 that?

16 A. Yes, sir.

17 Q. Does it say -- have you read this provision  
18 before, this Subsection D?

19 A. At some point in time, I read the entire thing.

20 Q. Thank you.

21 A. Are you asking me to read it now; is that what you  
22 want?

23 Q. Well, yes, sir. Would you mind reading that?

24 A. "Transfer of Architectural Review Authority."

25 Q. You can read it to yourself. I was just going to ask

1           you some questions about it.

2       A.    Oh, okay.

3       Q.    If you want to read it out loud, that's fine too.

4           But Mr. Jones is reading a lot of this and I'm  
5           trying not to make you read one or two.

6       A.    (Witness reads document). Okay.

7       Q.    All right. Does it say that the developer can assign  
8           the architectural review authority?

9       A.    (Witness pauses).

10      Q.    Do you understand that question; do you want me to ask  
11           it a different way?

12      A.    Yes.

13      Q.    Okay. Did this document reserve a right for the  
14           developer to assign the architectural review  
15           authority?

16      A.    (Witness pauses).

17      Q.    And understand, I am not asking you for a legal  
18           opinion; I'm just trying to ask you if you understand  
19           that to be the subject.

20      A.    (Witness pauses).

21      Q.    Or better yet, let me ask you a different  
22           question. Did you ever receive a document from  
23           the -- from any of the developers assigning the  
24           architectural review authority that was reserved  
25           under this document, Plaintiff's Exhibit One?

1 A. I did submit our plans to the Architectural  
2 Review Board.

3 Q. Okay. But did the developer ever assign the  
4 corporation that you created this -- the  
5 architectural review authority that was reserved  
6 under the Declaration of Covenants, Conditions  
7 and Restrictions?

8 A. I don't -- I don't recall.

9 Q. Did you ever meet with CDL or Plowden Holdings or  
10 Plowden Construction and receive any legal documents  
11 of any type?

12 A. Not that I remember.

13 Q. Okay. If I read this correctly, it says, "The  
14 owner," and if you look at the owner, it's  
15 essentially the developer, paraphrased, it says,  
16 "The owner may by filing a Supplementary  
17 Declaration of Covenants and Conditions with the  
18 Clerk of Court's Office for Sumter County  
19 transfer the above described architectural review  
20 authority to a permanent Review Board which,  
21 subject to the Covenants and Conditions stated  
22 with the aforesaid Supplemental Declaration,  
23 shall be under the control of the Association."  
24 Correct?

25 A. Yes.

1 Q. And that didn't happen, did it?

2 A. Not to my knowlege.

3 Q. Okay. And the Association is defined as the  
4 entity that no longer that exists, correct?

5 A. Yes.

6 Q. Which is Lakewood Links Property Owners', apostrophe,  
7 with an apostrophe, Association, Inc. Can this  
8 document be amended?

9 A. I don't know.

10 Q. Did you ever attempt to amend the document, the  
11 Declarations?

12 A. I did not.

13 Q. Do you mind turning to Page Thirty-seven (37)?

14 A. Okay.

15 Q. I'm not going to ask you to read this but you are  
16 welcome to. I am just asking you to turn to the  
17 page where it has the Amendment provision in  
18 candor so that you know that I'm not trying to  
19 mislead you on the issue of Amendment. Did the  
20 Association ever, and I'm referring to the  
21 Association that you incorporated, the Plaintiff  
22 in this lawsuit, ever seek to amend these  
23 Restrictions to establish that the new  
24 corporation was the successor entity to the  
25 original corporation?

1 A. Not to my knowledge.

2 Q. Did he ever seek to amend the definition of  
3 Association as provided under Part One, Article  
4 One, Section B?

5 A. Not to my knowledge.

6 Q. So, it's fair to say that Lakewood Links Property  
7 Owners Association isn't a successor; it may be  
8 a new corporation that has attempted to assume  
9 some of the responsibilities. Is that a fair  
10 statement?

11 A. I don't know.

12 Q. Okay.

13 MR. McCABE: The Court's indulgence.

14 THE COURT: Yes, sir.

15 Q. Are there wooden fences in Lakewood Links Subdivision?

16 A. Yes, sir.

17 Q. Have there always been fences, wooden fences, in  
18 Lakewood Links?

19 A. I guess, yes.

20 Q. As long as you can recall, there have been wooden  
21 fences?

22 A. (Witness shakes head affirmatively).

23 Q. That is a yes?

24 A. That's correct.

25 Q. I'm not trying to be rude. She can't -- head-

1 nods -- I know what you are saying but she has to  
2 transcribe it.

3 A. I understand. My apologies.

4 Q. Have there always been privacy fences in Lakewood  
5 Links Association?

6 A. Yes.

7 Q. When is the last time you drove through the  
8 neighborhood?

9 A. I drive through the neighborhood every day.

10 Q. Would you agree with me that Lakewood Links and Lake  
11 Estates, the scheme of development is essentially  
12 homogenous?

13 A. The schemes of development?

14 Q. The scheme of development. I mean, if you're driving  
15 through Tidewater, can you drive along and say --  
16 that's definite -- I can look at this house and tell  
17 it is in Lakewood Estates, I can look at this house  
18 and tell it is in Lakewood Links?

19 A. I don't believe so.

20 Q. It's fairly homogenous; correct?

21 A. Okay.

22 Q. Do you agree?

23 A. I can accept that.

24 Q. Would you say that the scheme of development in  
25 Lakewood Subdivision and Estates is inseparable;



1 in fact, Lakewood Subdivision includes wooden  
2 fences?

3 MR. JONES: Your Honor, I believe  
4 he said Lakewood Subdivision. There's  
5 not -- you have got Lakewood Links, you've  
6 got Lakewood Estates, two different sub-  
7 divisions there, and so, it's not just  
8 Lakewood Subdivision.

9 THE COURT: Would you rephrase, Mr.  
10 McCabe?

11 Q. I think the testimony has been you can't tell the  
12 difference between the two. But to the extent you can  
13 tell the difference between Lakewood Estates and  
14 Lakewood Links Subdivision, would you agree that the  
15 scheme of development includes wooden fences?

16 A. There are some examples of wooden fences, yes.

17 Q. In Lakewood Links?

18 A. Yes.

19 Q. And in Lakewood Estates?

20 A. Yes.

21 Q. And there are some vinyl privacy fences in  
22 Lakewood Links, aren't there?

23 A. That, I'm not familiar with.

24 Q. Are there some vinyl privacy fences in Lakewood  
25 Estates?

1 A. I've never known -- I am not familiar with them.

2 Q. Are you aware of any restrictions within Lakewood  
3 Links that prohibits wooden fences?

4 A. No, sir.

5 Q. Are you aware of any restrictions in Lakewood Links  
6 that prohibits privacy fences?

7 A. No, I'm not aware of any.

8 Q. Okay.

9 MR. McCABE: Thank you very much  
10 for coming today. I appreciate your time.  
11 I hope I wasn't too rude to you.

12 MR. HESSELBART: Thank you.

13 THE COURT: Redirect, Mr. Jones.

14 MR. JONES: Thank you, Judge.

15 REDIRECT EXAMINATION OF MR. HESSELBART BY MR. JONES:

16 Q. Glenn, I want to hand you a document and ask if you  
17 can identify this document; take a look at it.

18 MR. JONES: I'm handing a copy to  
19 Mr. McCabe.

20 A. (Witness reviews document).

21 Q. Do you see that?

22 A. Yes.

23 Q. That is from the Department -- the State of South  
24 Carolina; correct?

25 A. Yes.

1 Q. Okay. And the date on it is September 30th,  
2 1991; correct?

3 A. Correct.

4 Q. And is this a Dissolution -- Declaration of  
5 Dissolution by Forfeiture of Lakewood Links  
6 Property Owners Association, Inc.; correct?

7 A. Correct.

8 Q. Okay. So, as of September 30, 1991, the original  
9 corporation was dissolved; correct?

10 A. Correct.

11 Q. Okay.

12 MR. JONES: Your Honor, we would  
13 move to enter this into evidence as  
14 Plaintiff's Exhibit Number ---

15 THE COURT: Twenty-one (21).

16 MR. JONES: Twenty-one (21).

17 THE COURT: Mr. McCabe, Plaintiff's  
18 Exhibit Number Twenty-one (21).

19 MR. McCABE: I reckon so.

20 (SECRETARY OF STATE NONPROFIT  
21 CORPORATION ARTICLES OF INCORPORATION  
22 MARKED AS PLAINTIFF'S EXHIBIT NUMBER  
23 TWENTY-ONE (21).

24 THE COURT: Plaintiff's Twenty-one  
25 (21) is in evidence.

1 MR. JONES: Okay. Thank you.

2 Q. Now, I want you to turn -- take that notebook and if  
3 you will turn to Page Three, I want to talk about the  
4 Association, and I want to read -- I want to read the  
5 whole description and see if I read it right; okay?

6 A. Yes.

7 Q. Page Three, Part One, Article One, do you see it?

8 A. Yes, sir.

9 Q. And it says, Section One, Section B, it says,  
10 "Association." Do you see that?

11 A. Yes, sir.

12 Q. It says, "Association shall mean and refer to  
13 Lakewood Links Property Owners Association, a  
14 South Carolina nonprofit corporation," and read  
15 on, "Its successors" ---

16 A. "Its successors and assigns."

17 Q. "Its successors and assigns"; correct?

18 A. Correct.

19 Q. And so, the Association meant the initial  
20 corporation but also its successors; correct?

21 A. Correct.

22 Q. All right. Now, look at Page Fourteen (14) of  
23 those By-laws again, and Subparagraph D.

24 A. Okay.

25 Q. And it says, "Transfer of Architectural Review

1 Authority;" do you see that?

2 A. Yes.

3 Q. Okay. Let me start with the second -- the first  
4 sentence I guess; it's a long sentence but let me  
5 read it. Okay. It says, "Upon the sale of  
6 greater than Ninety Percent (90%) of the sites  
7 for the permitted family dwelling units, the  
8 Owner may by filing a supplementary declaration,"  
9 and it says "may," -- doesn't it say "may"?

10 A. It says "may."

11 Q. Okay. It says, "By filing a Supplementary  
12 Declaration of Covenants and Conditions with the  
13 Clerk of Court's Office for Sumter County,  
14 transfer the above described architectural review  
15 authority, to a permanent Review Board which,  
16 subject to the Covenants and Conditions stated  
17 with the aforesaid Supplemental Declaration,  
18 shall be under the control of the Association."  
19 Correct?

20 A. That's correct.

21 Q. That's what the owners may do; correct?

22 A. Correct.

23 Q. All right. But let me read on. "This section  
24 does not obligate the Owner to make such  
25 transfer, provided, however, that such transfer

1 must be made no later than December 31, 1993."

2 Correct?

3 A. Correct.

4 Q. So, to your knowledge, since there has been no  
5 transfer and certainly not before December 31,  
6 1993; correct?

7 A. Correct.

8 Q. And it's not required to do that; is that correct?

9 A. Correct.

10 Q. And the ARB has been under the control of the  
11 unincorporated Associatiaon; correct?

12 A. Correct.

13 MR. McCABE: Let me object  
14 to the leading questions.

15 MR. JONES: It is -- it is  
16 leading; I'm sorry.

17 THE COURT: All right. Rephrase.

18 Q. And since -- and since the incorporation in 2002,  
19 who is the Architectural Review Board operated  
20 under?

21 A. The Associatiion.

22 Q. Okay. And that's the existing corporation?

23 A. Yes, sir.

24 Q. Okay.

25 MR. JONES: I have no further

1 questions at this point.

2 THE COURT: Mr. McCabe, Recross?

3 MR. McCABE: No, sir.

4 THE COURT: All right. Thank you,  
5 Mr. Hesselbart; you may step down.

6 MR. JONES: Thank you. Just leave  
7 that notebook up there. Thank you.  
8 Your Honor, with your permission, I will  
9 call the next witness.

10 THE COURT: Okay.

11 MR. JONES: Thank you. We will call  
12 Mr. Glenn Cockerill.

13 THE COURT: If you would raise your  
14 right hand, please. Do you swear or affirm  
15 that everything you tell me today will be the  
16 truth, the whole truth and nothing but the  
17 truth under penalty of perjury?

18 MR. COCKERILL: Yes, sir.

19 THE COURT: Your witness.

20 (Glenn Cockerill, having been duly sworn, testifies as  
21 follows):

22 EXAMINATION OF GLENN COCKERILL BY MR. JONES:

23 Q. You are Glenn Cockerill; correct?

24 A. Correct.

25 Q. Glenn, let me introduce you to the Judge a little bit.

1           You live in Lakewood Links, correct?

2       A.    Yeah.

3       Q.    And now, when you answer, you have to say yes or no  
4           because she has got to record it.

5       A.    Yes.

6       Q.    Okay. And you have lived in Lakewood Links Property  
7           Owners Association how long?

8       A.    Well, we bought the lot in 2002 and continued  
9           building the house and moved into Lakewood Links  
10          in 2003.

11      Q.    Okay. And so, you have presided there since  
12          2003?

13      A.    Yes, we have resided there since 2003.

14      Q.    And before you came to reside there, what did you do  
15          for a living?

16      A.    I was the Information Management Officer for the  
17          Foreign Service, U.S. State and Public Foreign  
18          Service.

19      Q.    And where about where you stationed?

20      A.    Oh. It was a whole list of countries that I --  
21          I probably actually worked in about forty (40)  
22          different countries.

23      Q.    And so -- but I think you were reared in this area?

24      A.    Yeah.

25      Q.    You went to Furman School?



1 A. Yes.

2 Q. Yeah. All right.

3 A. I lived about three miles away from Lakewood Links.

4 Q. That's where you grew up?

5 A. Yeah.

6 MR. JONES: Excuse me, please,  
7 Judge.

8 THE COURT: That's fine.

9 Q. Now, Glenn, when you first moved to this  
10 property, of course, you got the Deed, and I want  
11 to hand you a copy of the Deed into your  
12 property. I'm handing you that now. This Deed is  
13 dated -- it's 2002; correct?

14 A. Yes, sir.

15 Q. And you got -- it is from CDL Enterprises; is that  
16 correct?

17 A. Yes, sir.

18 Q. And then on the second page, it says -- you see  
19 the second page?

20 A. Yeah.

21 Q. It says, "The Grantee by the Acceptance and  
22 Recordation of the Deed agrees to become a member of  
23 the Lakewood Links Property Owners Association;  
24 correct?

25 A. Yes.

1 Q. Which you did?

2 A. Yes.

3 Q. Okay. And I see right above that paragraph it  
4 says, -- it says, "This conveyance is subject to  
5 all visible and recorded easements, restrictions,  
6 rights of way, Covenants affecting the property  
7 but not limited to Residential Restrictive  
8 Covenants filed of record in the Register's  
9 Office in Volume 481 at Page 1879;" correct?

10 A. Yes.

11 Q. So, that was a part of your Deed at the time you  
12 bought the property?

13 A. Yes.

14 Q. Okay.

15 MR. JONES: Your Honor, I would  
16 like to move this into evidence as  
17 Plaintiff's Exhibit Number Twenty-two  
18 (22).

19 MR. McCABE: No objection.

20 (DEED FROM CDL ASSOCIATION TO GLENN  
21 A. COCKERILL AND TANAPORN K. COCKERILL  
22 DATED JANUARY 9TH, 2022 MARKED AS  
23 PLAINTIFF'S EXHIBIT NUMBER TWENTY-TWO (22).

24 THE COURT: Without objection,  
25 Plaintiff's Twenty-two (22).

1 MR. JONES: Thank you. I hand this  
2 up to the Court now.

3 THE COURT: All right.

4 Q. Glenn, when you were cleaning up the lot, what  
5 happened? Tell me what happened when you were  
6 cleaning up the lot.

7 A. We had had the lot cleared and I was out picking up  
8 roots and stuff like that.

9 Q. This was before you built the house?

10 A. Yeah. Yeah.

11 Q. 2002?

12 A. Yeah. 2002.

13 Q. Okay.

14 A. And David Johnston stopped by and introduced himself  
15 and told me about the Association, the Covenants and  
16 all of that, explained that I needed to submit our  
17 house plans to them before starting any construction  
18 and everything, and they would review them and they  
19 would, you know, approve or disapprove.

20 Q. And is that what you did?

21 A. That's what we did.

22 Q. You have lived there since 2003, I believe you said?

23 A. Yes.

24 Q. That is some twenty-one (21) years; correct?

25 A. Roughly that, yes, sir.

1 Q. Okay. And since you have lived there, have you served  
2 in the leadership of the Property Owners Association?

3 A. Yes, sir. I was on the ARB and then I was on the  
4 Association Board for several years, one period as the  
5 secretary and one period as the vice-president.

6 Q. I wanted to -- I want to ask you a little bit  
7 about what -- as far as being vice-president of  
8 the Board, you became vice-president I think in  
9 2018?

10 A. That sounds correct.

11 Q. Okay. Now, while you were there on the Board,  
12 you actually kept -- you kept like a newsletter,  
13 didn't you?

14 A. Yes, sir.

15 Q. And I am going to hand you several copies of these,  
16 and I'm going to hand you a copy of ---

17 MR. JONES: Excuse me, please,  
18 Judge, while I pull these apart.

19 THE COURT: Yes, sir.

20 Q. All right. I want to hand you first a 2015 copy; I  
21 just want to ask you some questions about it.

22 MR. JONES: I am handing a copy of this  
23 to Mr. McCabe, and I am handing one to the  
24 Court. Thank you.

25 Q. Glenn, you prepared ---

1 MR. JONES: Your Honor, I would  
2 move this into evidence as Plaintiff's  
3 Exhibit Number Twenty-three (23).

4 THE COURT: It's not Twenty-two (22);  
5 it's Twenty-three (23)?

6 MR. JONES: Well, it is Twenty-two  
7 (22).

8 COURT REPORTER: I believe it's  
9 Twenty-three (23).

10 THE COURT: Twenty-three (23).

11 MR. JONES: Okay.

12 (COPY OF NEWSLETTER MARKED AS  
13 PLAINTIFF'S EXHIBIT NUMBER TWENTY-THREE  
14 (23)

15 THE COURT: Mr. McCabe, any objection  
16 to Twenty-three (23)?

17 MR. McCABE: I mean, maybe not; I  
18 don't know what he wants to use it for,  
19 just a bunch of hearsay. But I guess it  
20 depends on what he wants to use it for.

21 MR. JONES: Okay.

22 THE COURT: What is Twenty-three (23)?

23 MR. JONES: Judge, Twenty-three (23) is  
24 a newsletter that was put together by Mr.  
25 Cockerill.

1 THE COURT: Okay.

2 MR. JONES: He's the one that penned it.  
3 This newsletter is introduced to show notice  
4 to the members of what was going on in the  
5 subdivision and to show structure and organi-  
6 zation that's going on. It underscores that  
7 indeed there was an entity, and this -- these,  
8 of course, were all written while the 2002  
9 corporations are in place. And so, the  
10 corporation is acting jointly, and this  
11 shows that.

12 THE COURT: So, Mr. McCabe, not to make  
13 Mr. Jones' argument earlier -- for him, but  
14 earlier you said that this document is not  
15 being introduced for the contents therein.  
16 As Mr. Jones just described it, he's just  
17 using it for the context, and this witness  
18 created it and not for the particular  
19 substance therein. So, in fairness, would  
20 that not -- would that be hearsay? For there  
21 to be hearsay, there's got to be a prohibitive  
22 purpose.

23 MR. McCABE: Okay.

24 THE COURT: And so, we are going to  
25 admit Plaintiff's Twenty-three (23) minus

1 the substance of what's in -- of what the  
2 witness did, what he's using it for.

3 Certainly, ---

4 MR. JONES: Judge, I do -- I want to  
5 ask him what the purpose was.

6 THE COURT: Sure.

7 MR. JONES: And I want him to show me  
8 what he was doing.

9 THE COURT: Okay.

10 MR. JONES: Okay.

11 EXAMINATION OF GLENN COCKERILL BY MR. JONES CONTINUED:

12 Q. Okay. Glenn, would you look at that Exhibit, please?

13 MR. JONES: And I believe it is  
14 Exhibit Twenty-three (23), isn't it,  
15 Judge?

16 THE COURT: It is Twenty-three (23).

17 MR. JONES: Okay.

18 Q. Tell what the purpose of this was; why were you  
19 publishing this in 2015?

20 A. We needed to communicate with the membership and  
21 everything, and so, I thought this would be a  
22 good way for members that didn't make it to the  
23 annual meeting to recap the annual meeting and  
24 then to lay out projects that the Association was  
25 doing, sort of recapping the Architectural Review

1 Board procedures to follow what the Architectural  
2 Review Board was doing, recapping the guidelines  
3 and some of the issues, not specifically this  
4 one, but to -- but to cover the budget, all of  
5 these things and to highlight -- the biggest  
6 issue that we have was the Architectural Review  
7 Board and the requests that we were getting and  
8 how to request it and reminding people that they  
9 needed to request things before they started it,  
10 because 2014 and 2015, it was kind of -- people  
11 -- I don't know if people weren't aware but  
12 people weren't following the Guidelines of  
13 submitting beforehand the request to get it  
14 approved by the ARB. So, in conjunction with  
15 this, in 2015, that's when the final version of  
16 the form that members had to submit to the ARB  
17 was also established. So, we were able to  
18 hopefully make it easier, more understandable and  
19 a unified system for requesting modifications to  
20 their homes or property or anything related to  
21 that.

22 Q. Okay. I want to ask you about that; I wanted to  
23 get you to identify the form itself. And I  
24 notice that in the 2018 letter, you wrote -- you  
25 were writing it still it in 2018?



1 A. Right.

2 Q. I hand you a copy of that. This is April of 2018  
3 newsletter. Is that -- is that a copy of the  
4 2018 newsletter?

5 A. Yeah. Yes.

6 Q. Okay. And let me ask about that 2018 newsletter; what  
7 is attached to the back of that?

8 A. Included in it was the form that they were supposed to  
9 use, the one that we established in 2015.

10 Q. And that's the same form that was established in 2015?

11 A. The same one, yes.

12 Q. Okay. And this form, was that a part of the  
13 procedures of the Architectural Review Board?

14 A. Yes. That was instituted as being procedure, to  
15 submit the form; if you needed one, you send an  
16 email and the ARB would email you a form and you  
17 filled it out and you could email it, you could  
18 make a copy of it and drop it in the Association  
19 mailbox which is there on Green View Parkway  
20 within the neighborhood or you could mail it in.  
21 But it needed to be on the form. No more  
22 catching somebody walking down the street, some  
23 of the Board, and say -- I want to do this -- so  
24 that we could more formalize the process of how  
25 we get things done. Before, it was just hit and

1 miss. A lot of it may even be just verbally that  
2 they would ask a Board member -- can I do this or  
3 an ARB member. But this standardized it.

4 Q. Okay.

5 MR. JONES: Your Honor, I would  
6 like to move the April, 2018 Lakewood  
7 Links Property Owners Association news-  
8 letter into evidence, please.

9 THE COURT: Hang on just a second.

10 MR. JONES: Excuse me.

11 THE COURT: Mr. McCabe, this is 2018,  
12 and this is Plaintiff's Twenty-four (24);  
13 is that right?

14 COURT REPORTER: Yes, sir.

15 MR. McCABE: Is this being offered  
16 as some kind of authority or rule? The  
17 explanation I'm hearing is that this  
18 was the -- this is the newsletter and  
19 that is the rule now, here's the new  
20 rule. So, if it is, it doesn't meet  
21 any of the requirements of the Recording  
22 Act, it doesn't meet any requirements of  
23 the governing documents, it doesn't meet  
24 any requirements of the Nonprofit  
25 Corporation Act or either the By-laws

1 or anything in existence. So, I would  
2 object to the extent it is being offered  
3 as some authority of the Architectural  
4 Review Board. If he's just offering it  
5 as a newsletter that was penned by Mr.  
6 Cockerill, then I don't object.

7 (LAKEWOOD LINKS PROPERTY OWNERS  
8 NEWSLETTER MARKED AS PLAINTIFF'S  
9 EXHIBIT NUMBER TWENTY-FOUR (24))

10 THE COURT: Okay. So, I am going to  
11 admit Plaintiff's Twenty-four (24) into  
12 evidence subject to and over the objection  
13 of Mr. McCabe. Your legal points are made  
14 and you can certainly Cross-examine over it.  
15 Obviously, legal effect or lack of legal  
16 effect is ultimately for the Court to decide,  
17 but it is just an exhibit at this point.

18 MR. JONES: I would like to move that  
19 into evidence. I think you have got it there.

20 THE COURT: It already is.

21 MR. JONES: Okay. Thank you.

22 Q. Allow me to follow up on that, Glenn, over counsel's  
23 objection. I want you to take a look at those By-laws  
24 in front of you there.

25 A. In the book?

1 Q. Yes. And I want you to turn to Page -- excuse  
2 me, please. Turn to Page Thirteen (13) if you  
3 would. You served as Chairman of the  
4 Architectural Review Board; correct?

5 A. No, I served on it.

6 Q. Served on it?

7 A. Yeah.

8 Q. But you also served on the Board of Directors,  
9 didn't you?

10 A. Yeah. Yeah.

11 Q. And so, you are familiar with these Restrictive  
12 Covenants; correct?

13 A. Yeah. Yes.

14 Q. By the way, what was the governing -- what is the  
15 governing document of the subdivision, of the Lakewood  
16 Links Subdivision?

17 A. It is the 1988 Covenants.

18 Q. Okay. All right. Now, I want you to look at  
19 Paragraph C, paren Two, and at the bottom of that  
20 paragraph, it starts with "Review Board." Do you see  
21 that?

22 A. Uh-huh (affirmative response).

23 Q. It says, "The Review Board shall operate in  
24 accordance with its own rules and procedures"?

25 A. Yes.

1 Q. And this Architectural Review Board form, is that what  
2 the procedures were?

3 A. That's the procedures.

4 Q. Okay.

5 A. We standardized the procedures.

6 Q. All right.

7 MR. JONES: Excuse me, please,  
8 Your Honor.

9 Q. And I think you did -- you did such a newsletter in  
10 2017 and 2019; right? Actually, you did it in 2015,  
11 '16, '17, '18 and '19; correct?

12 A. Yes.

13 Q. And that was something that was mailed to all of  
14 the people who were in the Lakewood Links  
15 Subdivision?

16 A. It was emailed -- I have a list of eighty-nine  
17 (89), ninety (90) percent of the people who lived  
18 there; the ones I didn't have or did not -- or  
19 they did not have emails, it was mailed.

20 Q. Okay. And this was done during those -- during  
21 that five year span?

22 A. Yeah, after each one was written.

23 Q. Okay. I want to talk to you a little bit about  
24 the fencing, the installation and fencing. What  
25 is the procedure to be followed and that was

1 followed relative to installation of the fence?

2 A. You submit the form to the ARB and they meet and  
3 discuss -- whether it's a fence or whether it's a  
4 pergola or whatever -- and then they vote and  
5 determine whether it's approved or not approved and  
6 pass that information, return the form to the person  
7 that was requesting it and submitted it.

8 Q. Well, I -- I'm sorry.

9 A. Yeah.

10 Q. For lack of a better term, was there was an automatic  
11 turndown for a wooden fence?

12 A. No, sir.

13 Q. It wasn't?

14 A. It wasn't an automatic turndown for anything. I  
15 kind of went through these newsletters, but  
16 multiple people served on the ARB. I think  
17 during the time frame that I did newsletters, it  
18 was like thirteen (13) different people who had  
19 served at some point on the ARB. So, they come  
20 in with different ideas, different views on  
21 things, and so, it's not a small group of people,  
22 you know. We try to get -- we'd like to get more  
23 people to put their names forward to be on any  
24 Board, but we try to get a cross-section of the  
25 neighborhood. And they sit down and they review

1 the form with the information in it and if they  
2 need more information, they will contact the  
3 person that submitted the form, but they sit down  
4 and they discuss it and they vote on that  
5 request.

6 Q. Well, to your own knowledge, have there been times  
7 when -- since -- I'm talking about 2015 now -- have  
8 there been times where a wooden fence has been  
9 approved?

10 A. That have been but not when I was serving on the ARB,  
11 but yes, several examples of fences, wooden fences,  
12 that were approved at some point during -- whenever  
13 they were requested.

14 Q. Okay. Talk to me about picket fences a little bit.  
15 Do you know what I mean by a picket fence?

16 A. Yeah.

17 Q. Okay.

18 A. The little white ---

19 Q. Yeah. Okay. Give -- talk to me about picket fences  
20 and the position of the ARB on picket fences.

21 A. Early on in 2014 when I first went on the ARB, we had  
22 -- I don't know how it came up -- but there was a  
23 discussion about picket fences. And the consensus  
24 was, the determination after, you know, the ARB  
25 discussing it, is that picket fences were low profile

1 and they were not solid; they're open which is pretty  
2 much the same criteria of the four foot chain-link  
3 fence. And so, you know, it was determined then that  
4 that's not something that the ARB was going to pursue  
5 as far as going after people to take down their picket  
6 fences; if they got in disrepair, then, you know, the  
7 ARB would contact them and say that ---

8 Q. And how about chain-link fences, what was the position  
9 of the ARB on chain-link fences and how was that  
10 handled in deliberation; how was it handled through  
11 this?

12 A. Pretty much the same way. It was -- you got the  
13 request, you reviewed the request, the information  
14 that was in it, and then you voted on it. I mean,  
15 when I first moved out there, the standard guidelines  
16 were green and brown and black and just -- but not  
17 galvanized. That evolved into just black; I mean, you  
18 know, the ARB over a period of time, you know, made  
19 the determination of unified black color. But again,  
20 that was -- the form was submitted before the members,  
21 they discussed it, and then they voted. It was not  
22 always, you know, a unanimous vote. There were --  
23 periodically, you had people that would have one  
24 viewpoint on it and then you had people that had  
25 different viewpoints on it. But the majority,



1           whatever the majority was, that was the determining  
2           factor on the approval or not approval.

3       Q.    Okay.  Excuse me, please.  Glenn, I want you to  
4           turn to Page Twelve (12) of the Covenants there  
5           in front of you if you would.  Have you got them  
6           in front of you?

7       A.    Yes, sir.

8       Q.    Part Two, Article One.

9       A.    Starting with "Preventing"?

10      Q.    It's Part Two, Article One, Section Two (A).

11      A.    Oh, yeah.  Okay.  I'm catching up now.  Just bear with  
12           me a second.  Okay.  You are familiar with this  
13           paragraph, aren't you?

14      A.    (Witness reviews document).  Yes.

15      Q.    Okay.  Tell me as far as the Architectural Review  
16           Board -- as far as the consideration of harmonious  
17           design, how does that figure into what was discussed  
18           about a request for a fence or a pool or whatever; how  
19           that did that fit?

20      A.    I think in most cases, again, whether it was an  
21           outbuilding, a pergola or an addition to their  
22           back porch or the Champion Home type back porch  
23           additions and stuff, a lot of it was the  
24           aesthetics of what was being requested.  One of  
25           the -- at least my viewpoint and pretty much the

viewpoint when I was on the Board was that the Association's job, for lack of a better term, was to either maintain or improve the property values of the members who lived in Lakewood Links; we did that. The ARB worked on a plan, worked with an architect to improve the entrance, for example, and that contributes to the property values of the individuals that are in the Association. And we viewed other requests that were made pretty much in that same vein -- is this going to be something that enhances the neighborhood or is it neutral or is it something that may become an eye sore for lack of a better term -- and, you know, that's kind of why they navigated kind of away from the green chain-link fence and the brown chain-link fence and the same thing with this case, I guess; the wooden fences and the same thing with the temporary -- those prefab buildings, they deteriorate, they weather and they become eyesores, basically.

MR. JONES: Excuse me a minute,

Judge.

Q. Now, I'm handing you a copy of what has been marked Exhibit 6-A through F.

A. Okay.

1 Q. And you have lived out there since 2003?

2 A. 2003, yeah.

3 Q. All right. Look through those pictures for me.

4 A. (Witness reviews photographs). Yes, sir.

5 Q. From your experience living out there, is that fence  
6 harmonious with Lakewood Links Subdivision?

7 A. No. These pictures -- they start out again just  
8 like the prefab buildings that they sell along  
9 the streets; they start out looking fine, but  
10 then they become like the second picture; they  
11 become weathered and short of trying to paint  
12 these or something, there's very little you can  
13 do to improve the appearance of these type of  
14 structures once -- once they start aging. And  
15 so, you go on through and these -- they're --  
16 they do not enhance in any way the potential --  
17 they do not in any way enhance the property  
18 values of residents in Lakewood Links. And if  
19 you take something like this and you multiply it  
20 within the neighborhood, then it has a very, very  
21 negative impact on peoples' property values.

22 Q. Now, what you just went through, how, if it does,  
23 does the Architectural Review Board review things  
24 similar or not similar to what you just did?

25 A. When we have instances -- there's a residence

1           that borders another neighborhood, and it happens  
2           to be a neighborhood that receives a lot of  
3           police calls; it's fairly notorious. One  
4           particular residence, his property line ran right  
5           along the property line of that -- of the  
6           adjoining property, and so, he was allowed to put  
7           up I guess we'd call them a stockade-type fence  
8           along his property line, not -- not connected to  
9           his house, not running in the back but as a  
10          barrier along his property line to separate him  
11          and put some -- some barrier between him and that  
12          neighborhood and the neighbors that lived in that  
13          neighborhood. We had an instance and, again, I  
14          wasn't specifically involved in this particular  
15          decision but there was a similar one where a  
16          property abutted a property in Lakewood Links but  
17          not in our Association that was in a pretty rough  
18          looking backyard, you know, kind of the semi-  
19          hoarding type thing. And the homeowner requested  
20          and was given permission.

21        Q.    You said something that was important; you said the  
22               homeowner requested?

23        A.    That's -- that's my understanding.

24        Q.    Okay.

25        A.    Yeah.

1 Q. Okay.

2 A. And we have some -- a builder who built new houses  
3 that back up directly to Highway 15 and the builder  
4 requested permission to put that type of fence as a  
5 barrier between the property and Highway 15 so that  
6 somebody walking along Highway 15 couldn't just walk  
7 into people's backyard.

8 Q. And related to the use of the ARB Form, was that  
9 was ARB Form used?

10 A. These -- I'm not -- I'm not sure; they did not occur  
11 while I was on. So, it was probably prior to this  
12 final form.

13 Q. Okay. All right. Now, let me talk to you about  
14 location and configuration. I want you to look  
15 at Page Twelve (12). Before I do that, look at  
16 Page Fifteen (15).

17 A. Of the Covenants?

18 Q. Yes. The Covenants. I'm sorry. Look at the  
19 last sentence there on Page Fifteen (15). Not the  
20 last sentence -- it's in F at the top of the  
21 page, and it says, "Any ground which is  
22 consistently objective to these Covenants  
23 including purely aesthetic consideration," those  
24 fences in Number Six, would the aesthetics be  
25 considered in the way that those have been

1 presented?

2 A. You mean in these pictures?

3 Q. Yes.

4 A. No, I mean, -- no. The weathered fences, which  
5 is what they're all become, no, it would not be.

6 Q. Okay. Let's go to the -- let's go to the -- I  
7 think I said Page Twelve (12) that I want you to  
8 take a look at.

9 A. (Witness reviews Page Twelve (12)).

10 Q. All right. Part Two, Article One, Section Two. Let me  
11 talk to you a little bit about that. It says,  
12 "Objectives of the Resort," and Number Two says,  
13 "visually harmonious."

14 A. Uh-huh (affirmative response).

15 Q. Was visually harmonious one of the considerations that  
16 needed to be taken into consideration?

17 A. Yes.

18 Q. Okay. Now, that "visually harmonious," is that  
19 limited to only the lots that are around the golf  
20 course?

21 A. That's -- that's I guess I could say limited to  
22 -- for these purposes limited to Lakewood Links  
23 properties. Not -- we have -- we can't determine  
24 what properties that are not in the Association;  
25 the Association doesn't have any authority for

1           that.

2       Q.    Okay. So, if Tidewater, 3020 Tidewater, is in  
3           Lakewood Links, does the visual part and the  
4           scenic view matter in that case too?

5       A.    It does because it -- if you don't have a standard,  
6           then -- if you don't -- if there's not a good reason  
7           to approve something like this, then you will have --  
8           it will be -- well, he got it and so why can't I? And  
9           that's -- so, yes; that's why -- that's why we have  
10          guidelines that were set up to kind of say -- these  
11          are the things that are problematic; if you want  
12          something, you know, that isn't listed as quote  
13          unquote approved or acceptable, submit it, go ahead  
14          and submit it and then it will be reviewed and you can  
15          -- if it's denied and you want to appeal it, you can.  
16          There's been cases, again, not when I was on, but  
17          where somebody was initially denied; they met with the  
18          ARB and laid out their reasonings and the ARB said --  
19          we agree, you have very good reasons, and they  
20          approved what had initially been denied. Now, that's  
21          not to say that that's eighty percent of the time or  
22          anything, but it is -- these things are taken into  
23          consideration. You know, and again, you may have  
24          somebody on the ARB that says -- well, that's fine.  
25          You may have two people on the ARB. But it's a

1 majority vote on the ARB that determines exceptions or  
2 disapproval or approval.

3 Q. What is the only way you are going to know what the  
4 ARB decides about installation of the fence or the  
5 pool?

6 A. Well, you submit the request, the ARB reviews it,  
7 and then they advise you what the determination  
8 was, what decision they made.

9 Q. Okay. And when the determination was being made, what  
10 did the Architectural Review -- what place, if any,  
11 did the Architectural Review Board have on the  
12 objectives of the Covenants?

13 A. In what respect?

14 Q. Well, as far as the Covenants go, did you take into  
15 consideration just one lot or did you look at all two  
16 hundred and seventy-three (273); how did you do it?

17 A. Yeah, you know, you kind of look at it as the -- in  
18 any of these things, it's the impact on the members,  
19 the community.

20 Q. Yeah.

21 A. That -- yeah. It wasn't just -- well, you know this  
22 won't be this bad on this lot, you know; it was --  
23 what impact does it have on the whole community? If  
24 you approve this, are eight more people going to come  
25 up and say -- well, you know, I want that same thing



1 too. That's why we have, I guess, what you would call  
2 standards, to approve that. That's why we put this in  
3 rather than have nothing and just say -- if you want  
4 a fence, submit it to the ARB and then we will go back  
5 to -- no one has any -- no one has any guidelines to  
6 do anything. So, our perspective is, this is  
7 beneficial to the members to know what these  
8 guidelines are as opposed to just having no clue what  
9 is viewed acceptable or what is not viewed acceptable  
10 for the community.

11 Q. Well, as far as the guidelines that you referred to,  
12 I want you to look at Page Fourteen (14) -- pardon me;  
13 let me see if I've got the right page here --  
14 actually, Page Eleven (11). I'm sorry. Page Eleven  
15 (11), Section One. You see there "Purposes"?

16 A. Uh-huh (affirmative response).

17 Q. All right. I want to ask you, if you're talking  
18 about guidelines, I want to ask how that relates  
19 to individual questions. It says, "The  
20 establishment of objective standards related to  
21 design, size and location of dwellings and other  
22 structures make it impossible to take full  
23 advantage of the individual characteristics of  
24 each parcel of property and of technological  
25 advances and environmental values. For this

1 reason, such standards are not established  
2 hereby, but may be suggested by the Owner in  
3 discussions with and materials submitted to the  
4 Property Owners." So, explain to me about -- I  
5 think maybe you have done this, but if something  
6 comes to you, I understand you have some  
7 guidelines. But are those hard and fast, those  
8 guidelines?

9 A. No, not necessarily. And if we've had stuff that  
10 came to us that there were no guidelines for.  
11 There was somebody that wanted to install a Ham  
12 operator tower; we had no clue what a -- nobody  
13 was a Ham operator. We had no idea how to  
14 approach that, but the County has a Code of  
15 Ordinance. And so, we were able to go to the  
16 Code of Ordinance and at least get enough  
17 information to intelligently talk to somebody in  
18 the County to say -- what about these things,  
19 and, you know, they explained to us the  
20 procedures, that that individual actually has to  
21 get a Site Inspection and a Building Permit from  
22 the county. It's not something that the  
23 Association could say yea or nay to. So, we were  
24 able then, you know, to provide this information  
25 to the property owner that has requested it and

1 point them in the right direction to do that, you  
2 know. And so, we approve it contingent upon them  
3 providing a copy of the Building Permit, and we  
4 did that on several different types of projects;  
5 some of them, stand-alone garages and setback  
6 lines and stuff like that. But we couldn't --  
7 you know, we get the requests, but some of them,  
8 we're not even able to make a determination; we  
9 have to get assistance from the County or the  
10 Code of Ordinances or whatever.

11 Q. Okay.

12 MR. JONES: Excuse me, please, Your  
13 Honor.

14 THE COURT: Yes, sir.

15 Q. Again, your opinion, actually, these -- some of these  
16 enforcements by the ARB and by the corporation, that  
17 was done through the Court system, wasn't it?

18 A. Yes.

19 Q. Okay.

20 A. Yes. Several.

21 Q. And I believe that was brought in the name of  
22 Lakewood Links Property Owners Association;  
23 correct?

24 A. That's -- that's my understanding by the answer.

25 Q. And it was after 2002; correct? Let me hand you

1 a copy of this.

2 A. Yeah. Yeah.

3 Q. Okay.

4 A. I'm trying to get my years straight.

5 Q. I just want you to look at it. Look at it and  
6 can you tell the Court what that is; do you  
7 recognize what that is?

8 A. Yes.

9 Q. Okay. It is a Summary and it sets forth -- and  
10 behind that are the actual documents from Court  
11 cases; right?

12 A. Yes.

13 Q. And so, as I understand what has happened is, these  
14 Court cases were for enforcement of the Restrictive  
15 Covenants?

16 A. Correct.

17 Q. And they were brought in the name of and  
18 prosecuted as Lakewood Links Property Owners  
19 Association, Inc. for the 2002 corporation;  
20 correct?

21 A. Yes.

22 Q. Okay.

23 MR. JONES: Your Honor, we would  
24 move these into evidence as Plaintiff's  
25 Exhibit Number Twenty-five (25).

1 THE COURT: Okay. Plaintiff's Twenty-  
2 five (25).

3 (DOCUMENT ENTITLED COURT ENFORCEMENT  
4 OF COVENANTS MARKED AS PLAINTIFF'S EXHIBIT  
5 NUMBER TWENTY-FIVE (25).

6 THE COURT: Mr. McCabe, Plaintiff's  
7 Twenty-five (25)?

8 MR. McCABE: I want to object.

9 THE COURT: Okay.

10 MR. McCABE: Unless he's got personal  
11 knowledge he wants to give -- I'm just, you  
12 know, looking at these. I don't see a  
13 comparable name on any of these. So, if  
14 he's just offering it because it's got  
15 the names on it, then I would object. If  
16 he's got some personal knowledge, if he  
17 participated in these, then, you know, ---

18 THE COURT: How about -- are they of  
19 public record?

20 MR. JONES: Yes, they are.

21 THE COURT: I'm not trying to make Mr.  
22 Jones' argument. I'm just streamlining  
23 this because I'm on Page Twenty-seven (27)  
24 of my notes. I've only got twenty-three (23)  
25 pages left before I have to reload. So, don't

1 take offense. I'm trying to be -- if I speed  
2 ya'll up, I think -- and so, I think that's one  
3 of my -- and so, are they public records  
4 except for the summary on top; are they public  
5 records?

6 MR. McCABE: They are a portion of the  
7 record; they are not the complete record.

8 THE COURT: Well, the objection was they are  
9 a public record?

10 MR. McCABE: For instance, the last one  
11 here is just a copy of the Summons, no Complaint,  
12 no ---

13 THE COURT: Okay. I haven't seen it. Mr.  
14 Jones, do you want to give me a copy?

15 MR. JONES: Oh, yes, I will, Your Honor.

16 MR. McCABE: So, I think we have -- for  
17 about an hour, we've been just in general  
18 theoretical architecture, and I'm trying not  
19 to over object.

20 THE COURT: And I -- and I appreciate  
21 that.

22 MR. McCABE: But the other side is, I'm  
23 getting ready to start sawing my leg off,  
24 and, you know, if we can do it around this,  
25 then I'm ---

1 THE COURT: I understand.

2 MR. McCABE: -- unless he's got some  
3 personal knowledge, I'm speaking very generally.

4 THE COURT: And I ---

5 MR. McCABE: And I'm theoretically  
6 saying ---

7 THE COURT: Let me -- let me just take  
8 a look at them: of course, the top is just ---

9 MR. McCABE: I will stipulate that the  
10 Association is repetitive.

11 THE COURT: And what I'm saying is, in  
12 looking at the -- I mean, it looks to me  
13 like they are recorded decisions and are  
14 thus public records. And that is self-  
15 authenticated. I do see that that last one  
16 is just a summary; I don't know if the rest  
17 of it fell off?

18 MR. McCABE: I understand we don't have  
19 a jury and you're dealing with ambiguities.

20 THE COURT: Thank you for the compliment.  
21 I remember you when you carried those Beau  
22 Bowman's electronics in a seminar.

23 MR. McCABE: Oh. Well, Beau Bowman, he  
24 we found out that ---

25 THE COURT: So, obviously, as public

1 records, I think they are admissible. They're  
2 not binding on the Court. I've seen them before;  
3 I think there was maybe in another Hearing and  
4 part of that -- they're not binding on the Court,  
5 but they are public records. And who knows, it  
6 might enhance your argument about nobody  
7 raised this particular point about successor and  
8 whether this is the right organization. But I --  
9 I don't see that where it's irredeemable hearsay  
10 or inadmissible hearsay, or that they require  
11 authentication by this witness as to having  
12 participated just because it's in the public  
13 record. But on the other hand, I mean, I  
14 don't see them as, you know, binding or  
15 here's the answer right here. You know, part  
16 of this case is -- ya'll are dysfunctional,  
17 ya'll are disorganized, ya'll don't have meeting  
18 Minutes, one is not the same as the other.  
19 And in fairness, doesn't the Plaintiff have  
20 to offer evidence with some continuity and  
21 don't we have to do that to escape, you know,  
22 your greater argument and not the forecast  
23 that it's all arbitrary and capricious. But  
24 you know, they toss a coin in the air and  
25 one gets this and one doesn't get that.



1 So, anyway, I think that it is admissible  
2 because of -- it is public records, but  
3 your objection is noted; you are protected,  
4 and I'll let you, you know, respond to that.

5 MR. McCABE: Well, I'm fine with that.  
6 I don't have a problem necessarily with the  
7 documents. I do object to the witness providing  
8 testimony on these cases if he wasn't personally  
9 involved and had some knowledge.

10 THE COURT: So, Mr. Jones, the Summary  
11 and the -- well, the last one is just a Summary;  
12 he's right on that and maybe that's all it's  
13 intended to be. So the document is admitted  
14 and you can -- and now, they're admitted and  
15 the witness can testify, you know, to what he  
16 sees there, but he didn't participate. And  
17 obviously, you know, I get that he was on the  
18 Board previously. He's not on the Board at  
19 this time. No jury here, and ya'll haven't put  
20 me to sleep yet. In fact, you know, I've  
21 got twenty-seven (27) pages of notes. I know  
22 if I've missed anything, I've got Doris right  
23 here. But anyway, I'm going to allow that  
24 Exhibit because it is a collection of a  
25 recorded public record.

1 MR. JONES: Okay. Well, it's marked as  
2 Exhibit what?

3 THE COURT: Well, his next objection is  
4 you're out of time. You have used more time  
5 on the clock.

6 MR. JONES: Okay. What exhibit number is  
7 it?

8 THE COURT: This is Twenty-five (25).

9 MR. JONES: Okay.

10 EXAMINATION OF GLENN COCKERILL BY MR. JONES CONTINUED:

11 Q. Glenn, I want to ask you, did you have any personal  
12 involvement with any of these people?

13 A. With the Association, I do; with Baum and Ling,  
14 we went to Court I want to say on Baum, and then  
15 I think, based on that, Ling just didn't pursue  
16 any further. But yes, I testified for the  
17 Association in the Baum case and in the Cook  
18 case. I think that's right.

19 Q. Thank you. I want to ask you about grandfathered  
20 fences; it's been discussed about grandfathered  
21 fences, and I want you to explain to the Court the  
22 process and what that involves. Talk to the Court  
23 about grandfathered fences.

24 A. I probably can talk more about grandfathered  
25 storage buildings, stand-alone buildings, these

1       prefab buildings; I was directly involved in  
2       that. The principal applies to fences also. But  
3       when we addressed the I'll just say the prefab  
4       buildings, we had a couple of them to come in,  
5       and we made -- they helped me make the decision  
6       that they were going to deteriorate and they were  
7       not going to be acceptable with the -- the truth  
8       being I guess you would say the aesthetics of the  
9       community. We discussed that if have these  
10      people take these buildings down, what about  
11      other people that have buildings that didn't meet  
12      the more permanent type of building plus the fact  
13      that I think it was in 2005 annual meeting -- I  
14      could be a year off on that, I'm not sure -- the  
15      Association had actually voted and had a long  
16      discussion at the meeting regarding outbuildings.  
17      And the decision was made by the members that the  
18      outbuilding, the construction material would have  
19      to match the construction material of your house  
20      and the shingles would have to match the type of  
21      shingles you had on your house; in other words,  
22      if you had a brick home, your outbuilding would  
23      have to be brick. If you had a Hardie board, it  
24      would have to be Hardie board. But you didn't  
25      have red-nail shingles, like, groups and stuff

1       like that. Again, the shingles again would have  
2       to match what's on the house. Now, there was --  
3       there were people who had buildings that did not  
4       meet that criteria, and then we investigated and  
5       buildings that were put there prior to us  
6       demanding that these buildings be taken down  
7       could be -- would be grandfathered; in other  
8       words, we were not going to try to punish people  
9       who had done something before it was not -- not  
10      acceptable type of structure. So, those were  
11      grandfathered. Basically, and I don't remember  
12      the exact terminology, but these people received  
13      letters and stuff that said that the buildings  
14      could remain, that unless they became in  
15      disrepair, that those could not be rebuilt or  
16      have major modifications or improvements made to  
17      them; at that point, the building should come  
18      down, that the approval was for the -- for this  
19      only and that it was not approval that was  
20      transferable to a new owner of the property, that  
21      they would have to submit a request which I took  
22      as a new request for a new structure and the ARB  
23      would determine then whether it was approved or  
24      not approved. But other buildings would have to  
25      come down. So, we had, not just these, but we

1 had other buildings that the property owners were  
2 notified would have to be removed, and so, that  
3 was the process. But what we didn't want to do  
4 is to punish someone who unknowingly did  
5 something, that it wasn't -- that it wasn't that  
6 property owner's fault that he put a building up  
7 before, you know, we instituted this or even  
8 before the 2005 meeting because there were not --  
9 they were not advised that that building would be  
10 unacceptable at a later date. So, that was the  
11 whole premise of grandfathering; the same thing  
12 then the ARB did with the fences. Another member  
13 of the Board and I did a drive-through of the  
14 neighborhood in 2017 I think and made a list of  
15 fences, all fences, you know, whether they were  
16 chain-link or wood or vinyl or picket fences,  
17 whatever, that we could see, but now, we didn't  
18 go into peoples' backyards and we didn't go into  
19 their front yards, just what we could visually  
20 see from driving through the neighborhood. And  
21 there were quite a number, and we submitted that,  
22 provided that to the ARB. I was on the Board at  
23 that time, but I had some pretty bad medical  
24 issues and so, I was -- I attended some meetings,  
25 a lot of meetings I missed and it was serious

1 enough that my mind was not devoted to the  
2 Association at that time but I continued to serve  
3 in that position in 2018 and stuff. But we got  
4 this done. And then this was all discussed and  
5 people had to do -- find out when these fences  
6 were put up and go through the -- we had someone  
7 go through the file cabinet and accumulate all of  
8 the requests and approvals and things like that,  
9 even ones before the 2015 form was instituted and  
10 then we made a spreadsheet of all of these things  
11 and then we started working from there. It  
12 probably carried over into -- from 2017 to 2018.  
13 But kind of at that point, my mind was completely  
14 somewhere else. So, but yeah, that was pretty  
15 much the process and the intent of  
16 grandfathering. We did not want to, for lack of  
17 a better term, punish the homeowner who had  
18 constructed something before the vote was taken  
19 in 2015 as far as buildings. I think there was  
20 a vote taken on fences during that same meeting,  
21 but I had just moved in; it was probably the  
22 first meeting that I had truly attended, and I  
23 knew I wasn't going to put a fence up but I was  
24 considering a building, and so I paid attention  
25 to the building part. But to be honest, I didn't

1 pay attention to the fence part. But -- that's  
2 kind of the grandfathering thing.

3 Q. Okay.

4 A. And for the building, you know, everybody was  
5 notified and we kind of went from there and had  
6 very little push-back from the owners. Most of  
7 the owners understood the reasoning behind this  
8 and other constructive buildings that people had  
9 in their yards and stuff. And we had this group  
10 and that was about it; we gave them opportunity  
11 to bring them up to standard, and some of them  
12 did and others, you know, decided just to take  
13 the building down.

14 Q. Okay.

15 MR. JONES: I have no further  
16 questions. Thank you so much, Glenn.

17 THE COURT: Mr. McCabe, Cross-  
18 examination.

19 CROSS-EXAMINATION OF MR. COCKERILL BY MR. McCABE:

20 Q. Glenn, I am a little unclear. When did you last serve  
21 on the Board of Directors?

22 A. I think it was 2019; I'm not sure -- I'm not sure  
23 whether I completed my 2019 term because I  
24 started radiation treatments and stuff.

25 Q. Did you have any involvement with the Josey's?

1 A. No.

2 Q. Are you offering any testimony today related to  
3 the Josey's?

4 A. Specifically, the Josey's?

5 Q. Yes.

6 A. No.

7 Q. Are you offering any testimony related to the  
8 Josey's property today?

9 A. No, other than commenting on that picture.

10 MR. McCABE: May I approach, Judge?

11 THE COURT: Yes, sir.

12 MR. McCABE: (To Court Reporter) Would  
13 you mark this -- I think this is D-7?

14 COURT REPORTER: Six or Seven?

15 MR. McCABE: D-6. Okay.

16 THE COURT: Is it Six or Seven?

17 COURT REPORTER: I've got -- I've got  
18 your last one as that email exchange with  
19 Mr. Reddick.

20 MR. McCABE: That was D-5?

21 COURT REPORTER: Yes, sir.

22 MR. McCABE: Okay. D-6.

23 THE COURT: Right. Six.

24 MR. McCABE: Thank you.

25 Q. I am showing you what is marked as Defendant's



1 Exhibit Six..

2 THE COURT: I.D. at this point?

3 MR. McCABE: I.D. unless we agree to

4 ---

5 THE COURT: Mr. Jones, D-6?

6 MR. JONES: I'm just reading through  
7 it, Your Honor.

8 THE COURT: Okay.

9 (EMAIL SENT BY GLENN HESSELBART MARKED  
10 AS DEFENDANT'S EXHIBIT NUMBER SIX FOR I.D.)

11 Q. Do you recognize that document?

12 A. Yes.

13 Q. Is that the email that you sent?

14 A. Yes.

15 Q. And does it include an inventory of fences that you  
16 prepared?

17 A. Let's see.

18 Q. Attached ---

19 A. Yeah.

20 Q. Look at that last handwritten page; it's the next  
21 document. I can't tell if it is a part of this.  
22 I'm not sure.

23 A. I don't have any idea what this is.

24 Q. Okay.

25 MR. McCABE: So, can I remove the

1 last page which is that handwritten page,  
2 just remove that from the ---

3 THE COURT: This one right here?

4 MR. McCABE: Yes.

5 THE COURT: Mr. Jones, do you complete  
6 this argument? The witness can't identify  
7 the handwriting. So, the last page ---

8 MR. JONES: And so, if he can't identify  
9 it, I wouldn't want it going in.

10 MR. McCABE: I'm going to take that out;  
11 it was the next document. It was in the  
12 document production.

13 THE COURT: Okay.

14 MR. McCABE: I didn't know if it was a  
15 part of that or not.

16 Q. Do you want to take a moment to familiarize yourself  
17 with these?

18 A. You know, are we going through all of these?

19 Q. Just the top one.

20 A. Oh, okay. Give me a minute or two because I  
21 don't have my glasses.

22 Q. Do you have glasses here?

23 A. No.

24 MR. JONES: You want to use mine?

25 MR. HESSELBART: Are they reading glasses?

1 MR. JONES: They're actually prescription,  
2 but they, you know, ---

3 MR. HESSELBART: Let me see. (Witness  
4 tries on glasses. Yeah, if I don't get dizzy.

5 MR. JONES: I've got some reading glasses  
6 here if you want them.

7 MR. HESSELBART: Yeah, yeah.

8 THE COURT: Mr. Jones, since it is for  
9 I.D., do you have objection to it being --  
10 to it coming into evidence?

11 MR. JONES: I think -- yeah, I think he  
12 is still reviewing it to see if he knows  
13 what it is.

14 THE COURT: Okay.

15 MR. JONES: What exhibit number?

16 THE COURT: It will be Defendant's Six.

17 A. Yeah. Okay. I'm familiar with that document.

18 Q. Okay. Do you recall sending this email?

19 A. Yeah, I do recall the -- you mean like the 2018  
20 one?

21 Q. Sure.

22 A. Yes. And that's a joint email that I sent, yeah.

23 Q. And do you recall -- did you prepare this  
24 inventory of fences?

25 A. On the back?

1 Q. Yes, sir.

2 A. The last part?

3 Q. Yes.

4 A. Yeah, yeah.

5 Q. This says -- this is only -- is it accurate to say  
6 that this list is only the lots that you believe were  
7 subjective to the Lakewood Links' restrictions?

8 A. Only for lots that I was aware of that were in  
9 Lakewood Links.

10 Q. You did not drive through the community and  
11 prepare a list or include on this inventory of  
12 fences lots that were -- that you believe to be  
13 included in Lakewood Estates; correct?

14 A. No, I did not.

15 Q. And so, there ---

16 A. Now, let me clarify that. We're driving from a car,  
17 and so, there are fences, a lot of which might run  
18 parallel down the property line, and that there was no  
19 way to really necessarily distinguish whether that was  
20 a fence of the Lakewood Links Homeowners' or if that  
21 was a fence of the Lakewood Estates' Homeowners  
22 because some of these houses in Lakewood Links and  
23 Lakewood Estates back up to each other or are in  
24 contiguous configurations.

25 Q. And you would agree with me that the Lakewood Links

1 and Lakewood Estates' properties are very homogenous;  
2 you get -- that there is a common scheme of  
3 development for both entities; do you believe that?

4 A. Not necessarily, no. The Lakewood Estates' structures  
5 and lot sizes and pretty much all aspects of those are  
6 different than the Lakewood Links'. Lakewood Links  
7 has far more spec homes, for lack of a better term,  
8 and smaller lots and smaller-sized houses really than  
9 a lot of the house in Lakewood Estates. Those are all  
10 -- not all -- predominantly older houses that were  
11 built on very large lots, different setbacks. No, I  
12 would say there is probably a distinct difference.  
13 You would probably only find maybe a handful of houses  
14 in Lakewood Estates that equate to -- well, let's use  
15 his house, for example, that would equate to the  
16 Josey's house or the houses on the other side of the  
17 street, you know.

18 Q. And so, your testimony is that you can drive through  
19 Lakewood Links and Lakewood Estates and look at the  
20 property and tell which subdivision it is a part of; I  
21 mean, bigger houses?

22 A. You may not can; I can, yes.

23 Q. Okay. And are you -- in that determination, are you  
24 relying on your knowledge of the underlying governing  
25 documents and recorded documents related to the

1 neighborhood?

2 A. I'm not quite following what you're saying.

3 Q. Are you basing that strictly on a visual scheme  
4 of development or are you basing that on what you  
5 know about the documents related to these  
6 Associations, these two communities?

7 A. Well, I've read the Lakewood Estates Covenants,  
8 but I don't see where the Covenants or any other  
9 document comes into play when you're literally  
10 looking at the difference in properties and  
11 houses. But, I mean, I do -- I do have a fairly  
12 good understanding of which houses consist of  
13 Lakewood Links and which houses consist of  
14 Lakewood Estates if that's kind of what you're  
15 asking about. But as far as -- as far as picking  
16 up a copy of the Covenants and saying -- oh, let  
17 me read this and this means that this house is in  
18 Lakewood Links and this house is in Lakewood  
19 Estates, no. I don't -- I may be just completely  
20 missing what you're trying to ask me.

21 Q. Do you know what a scheme of development is?

22 A. No, not necessarily.

23 Q. Let's go back to your email for a moment. It looks  
24 like you were going through, is it fair to say, and  
25 compiling a list or an inventory of fences for the

1 Lakewood Links; correct?

2 A. Yes.

3 Q. Would the fact that some of the fences that we  
4 identified may possibly have been to a house that was  
5 in Lakewood Estates; is that possible?

6 A. Yeah. Yeah. Exactly.

7 Q. Okay. And looking at this list, is it fair to  
8 say that it includes wooden stockade fences,  
9 white chain-link fences, white metal fences,  
10 yellow chain-link fences, low-foot fences, low  
11 brick and metal fences?

12 A. Yeah.

13 Q. Wooden picket fences, green chain-link fences, tall-  
14 like chain-link fences, regular-size black chain-link  
15 fences?

16 A. Yeah.

17 Q. Low brick see-through, white vinyl picket fences,  
18 low brick fences, white wooden stockade fences,  
19 black metal fences; is it fair to say that  
20 there's a lot of different types of fences in  
21 Lakewood Links?

22 A. Yeah. We took these and we determined which ones  
23 had been approved and we took those off of the  
24 list; in other words, we went through that list,  
25 culled it down to the ones that had been

1 approved, the ones that were grandfathered and  
2 worked from that, yes.

3 Q. Okay.

4 A. Well, a number of these fences had been approved; the  
5 number in here that had not been approved was not that  
6 large.

7 Q. But my question is, all types of fences?

8 A. Uh-huh (affirmative response).

9 Q. That is a yes?

10 A. Yes, sir. Probably generally -- I'd say it probably  
11 breaks down to maybe four or five varieties.

12 Q. But there's different styles and heights and colors  
13 within those varieties; correct?

14 A. Yeah. From brick, you've got -- let me use the  
15 term "tall" because I don't know the exact foot  
16 -- tall brick fences, you've got the lower brick  
17 fences; I think you have one that's solid.  
18 Others are see-through; in other words, they have  
19 gaps in them. You have a couple of white vinyl  
20 fences. You have maybe four houses that have  
21 white picket fences, either wood or vinyl. You  
22 have some houses that have wooden stockade fences  
23 and you have the black chain-link fence, you  
24 still have the green, the brown, all of those  
25 were put in the category of being approved.



1 Q. And so, a lot of styles and variations?

2 A. Yeah. Like I say, maybe five.

3 Q. Okay. Now, in this, there's some -- in your email  
4 chain, there's some talk about grandfathering and  
5 drafting some language for the grandfathered, this  
6 grandfathering. What were you drafting the  
7 grandfather language for?

8 A. Well, we had gone through the -- prior to this, we had  
9 gone through the outbuilding situation. There were  
10 Court cases that were on that form, and in that  
11 process of the outbuilding, we did not want to, again,  
12 punish anyone's construction prior to us instituting  
13 the procedures, whatever the correct term is for this;  
14 in other words, we didn't -- people who had  
15 constructed things earlier, that we could not hold  
16 them to the requirement that was established after  
17 they had already -- years after they had constructed  
18 something. That was the purpose of grandfathering.  
19 So, we had done the letters or prepared the letters,  
20 you know, drafted everything for the outbuildings. And  
21 so, I was involved in the outbuildings. And so, the  
22 Board was working on these fences, and so, I was  
23 taking -- taking sentences that were used in the  
24 outbuilding letters and suggesting that they include  
25 those in letters regarding fences. Does that make

1 sense -- I don't know.

2 Q. Maybe. When you use the term "grandfathered," is it  
3 fair to say that it was a change in the rule?

4 A. Somebody -- if somebody had put a fence up in 1998,  
5 they were not going to be held to a vote that was  
6 taken in 2005.

7 Q. Right.

8 A. I mean, that's -- that's completely unfair. The  
9 same thing with a fence that was put up in 1999.

10 Q. Right.

11 A. That would be completely unfair. So, those are  
12 grandfathered, and as in the case of the outbuildings,  
13 unless it -- once it requires major repairs, it has to  
14 come down. When that property is sold, it either has  
15 to come down or they have to submit a new request and  
16 have it reviewed by the ARB and approved or  
17 disapproved. In other words, we were looking to  
18 institute the same procedures for fences that were  
19 instituted earlier for buildings.

20 Q. I see in the Declaration where it allows architectural  
21 review of new improvements. Can you tell me where it  
22 says that the Architectural Review Board has the  
23 authority to require people to make changes if they  
24 sell the property?

25 A. I cannot put my hands on it.

1 Q. Is that ---

2 A. Well, the Covenants -- I can't think of the wording of  
3 it -- the Covenants state in there that the  
4 Architectural Review Board, and I'm paraphrasing  
5 because I can't immediately go to the page and  
6 everything -- the Architectural Review Board can  
7 implement procedures and policies that are above and  
8 beyond -- I think in that example they may have used  
9 -- government procedures or whatever. But it does  
10 give -- to my understanding, it does give the  
11 Architectural Review Board the authority to institute  
12 policies of procedures because they can't cover  
13 everything, and again, this is a 1988 document; they  
14 would have never been able to have anticipated 2024 or  
15 2005 or any subsequent date. So, that -- my  
16 understanding is, that is provided in the Covenants to  
17 the ARB to have the authority to institute policies and  
18 stuff.

19 Q. Right.

20 A. I wish I knew what page it was on because then I  
21 would point it out to you.

22 Q. Is it your opinion that the Architectural Review Board  
23 can make rules related to use of properties?

24 A. You will have to decide -- define what your meaning of  
25 rules are. I'm using terms that I have no idea

1           whether they -- the terms, procedures, policies -- I  
2           have no idea whether they fall into legal terms or  
3           not. I'm just using -- maybe I better use the word  
4           guidelines. But you would have to define what you --  
5           what you are looking for in that word for me to ---

6       Q.   Well, my question was, can the Architectural Review  
7           Board make rules governing these properties?

8       A.   Define what you mean by "rules" so that I will know  
9           that what you're saying of rules is what I'm trying to  
10          refer to as guidelines or not.

11      Q.   Can the Architectural Review Board make a rule  
12          that says -- no wooden fences?

13      A.   The Architectural Review Board can set guidelines on  
14          what type of fences are generally approved in order to  
15          assist the property owners in making decisions on what  
16          they're going to do. If it was just completely blank  
17          and you made no mention of it, then you would have  
18          these people submitting requests for farm-type wire  
19          fences, all of these things. This, from our  
20          perspective, at least from my perspective, this is of  
21          assistance to the property owners to provide them some  
22          guidelines. And yes, I think that the ARB is  
23          authorized to institute guidelines.

24      Q.   Well, my question is, can the ARB make rules governing  
25          the use of property?

1     A.    The ARB makes guidelines telling people and then they  
2           can make the decision on what is approved and not  
3           approved. But they can establish guidelines, sure.  
4           Maybe the proper word is policy or maybe it's some  
5           other word. But yes, they can establish guidelines  
6           for the community on types of shingles, the size, the  
7           minimum size of a house, the type of fences, the --  
8           what types of building materials if it came down to  
9           that; yes, the ARB has the authority to provide these  
10          guidelines from my perspective and my reading of the  
11          Covenant. It's not -- you don't take these Covenants  
12          and say -- oh, well, this doesn't have satellite  
13          antennas in it; they didn't have satellite antennas in  
14          1988. I'm just throwing that out as an example. In  
15          other words, Covenants provide for the ARB to  
16          institute guidelines above and beyond what's in the  
17          Covenants because the Covenants are not able to cover  
18          every individual thing.

19     Q.    Thank you. Did you say that in 2006, there was a vote  
20           to make some rules that you were going to show to  
21           purchasers or to potential buyers?

22                   MR. JONES: Your honor, ---

23                   THE COURT: Yes, sir.

24                   MR. JONES: -- I object. This question  
25                   has been asked four or five times and Mr.

1 Hesselbart has answered it to the best of  
2 his ability four or five times and we are  
3 still going through the same thing again  
4 and again. So, I object to it and ask that  
5 the Court require us to move forward.

6 THE COURT: Well, you know -- you know,  
7 I think it's couched a little bit differently,  
8 and I certainly understand what the witness  
9 is trying to convey. And maybe sometimes,  
10 the answer may seem not responsive to the  
11 questioner, but, basically, it's the best  
12 the witness can do. Sometimes, people worry  
13 about is there a legal implication there  
14 hidden in the question and maybe there is  
15 and maybe there isn't. But I'm going to allow  
16 the question to be rephrased and the witness to  
17 answer, but I would agree we're pretty close to  
18 -- I mean, the witness has answered the best he  
19 can, and it seems like he's leading to  
20 whether or not an ARB can effect a property  
21 restriction and he not be, you know, originally  
22 declared the grantor of the common property.  
23 I'm going to allow them go back at it and  
24 we will see what the answer is. But I, you  
25 know, maybe the witness is doing fine and is

1           trying to communicate, you know, his under-  
2           standing from his time on the Board and of  
3           what it can do and can't do.

4           MR. JONES: Thank you.

5           MR. McCABE: The last question was, I  
6           couldn't get an answer about whether the  
7           rules -- all I was asking him to do was  
8           about a specific document in 2006.

9           THE COURT: Okay. Ask that again.

10       A. Let me say; again, I don't know if it's a rule or a  
11       procedure or a guideline.

12       Q. Okay. You testified a little while ago that I believe  
13       there was a meeting in 2006? Correct me if I'm wrong.

14       A. Yeah, a financial meeting that was called for the  
15       property owners.

16       Q. And a rule was adopted?

17       A. I don't -- I do not know whether you would call  
18       it a rule or a guideline or a procedure; I don't  
19       know.

20       Q. Well, how about this -- why don't you just tell me  
21       whatever you wrote down in a document in 2006. What  
22       was the rule, the guideline or whatever?

23       A. Okay. What I remember from the meeting, I remember  
24       specifically outbuildings, and it was determined and  
25       voted on that the outbuilding material or an

1 outbuilding must match the building materials of the  
2 house. The shingles on the outbuilding must match the  
3 shingles on the house. If you have a brick house, you  
4 have to build a brick outbuilding. If it's a small  
5 outbuilding, if it's a stand-alone garage, if you have  
6 a Hardie board, you build a Hardie board outbuilding;  
7 if you have vinyl siding, you build a vinyl siding  
8 garage or outbuilding. That is what was voted on by  
9 the members.

10 Q. Okay. Prior to that time, was that a  
11 requirement?

12 A. That was the first meeting I ever attended. I moved  
13 in in 2003; I missed that annual meeting and I didn't  
14 attend a meeting in 2004. That was the first  
15 Association meeting that I had attended.

16 Q. Were these guidelines or rules or whatever you want to  
17 call them ever reduced to writing?

18 A. I wasn't on -- I did not start serving on the ARB  
19 or the Board until 2014. This was in '25 --  
20 2005.

21 Q. And so, your period exercising some control in the ARB  
22 would have been from 2014 to 2019?

23 A. No, I was on the ARB from 2014 to 2015, and after  
24 that, I didn't serve on the ARB any more. I  
25 served on the Board.



1 Q. The Board of Directors?

2 A. In 2014, I served both on the Board -- in 2015,  
3 both on the Board and the ARB.

4 Q. Okay. And what years ---

5 A. The best that I can remember.

6 Q. Okay. Well, what year did you serve on the Board  
7 of Directors?

8 A. I think it was '15 to '19.

9 Q. Okay.

10 A. But again, '19 was -- and the end of '18 was kind of  
11 by itself.

12 Q. Okay. Is it accurate to say that the ARB  
13 meetings are held within the Board meetings?

14 A. While I was on the Board, they were all held, yes; in  
15 other words, you would have the Board meeting, and  
16 then the ARB would, you know, review what they had  
17 before them. But the Board members would be there at  
18 the same table.

19 Q. I was reviewing the Minutes and I was a little  
20 confused.

21 A. Yeah. In other words, the Board members weren't  
22 voting or anything on any ARB issues, but it was just  
23 easier to have it at one place and at the same time.

24 Q. Okay.

25 A. And I think they still do that, but I'm not positive.

1 Q. Okay. You said in 2015, there was another  
2 meeting of the members, I think, and there was a  
3 vote?

4 A. There's an annual meeting every year.

5 Q. And did you testify that a rule or a regulation or  
6 whatever you want to call it was adopted at the 2015  
7 annual meeting related to fences?

8 A. Not that I'm aware of.

9 Q. Will you look at -- shed some light for me on  
10 this? It's Exhibit -- Plaintiff's Twenty-four  
11 (24).

12 MR. McCABE: May I approach, Judge?

13 THE COURT: Yes, sir.

14 MR. McCABE: That's it right here.

15 A. Oh, that's the newsletter?

16 Q. Yeah.

17 MR. McCABE: Thank you.

18 A. Okay. I don't remember -- I recapped what happened at  
19 the meeting, but I don't remember ---

20 Q. On here, it says that you served as the vice-  
21 president -- excuse me -- this is the 2018  
22 meeting?

23 A. Okay.

24 Q. Do you recall if there was a vote on fencing  
25 standards adopted at the 2018 meeting?

1 A. Not without reading what's in here, if it's supposed  
2 to be in here. But off the top of my head, no.

3 Q. Okay. Was there a 2015 meeting where some  
4 fencing restrictions were voted on?

5 A. Off the top of my head, I don't know.

6 Q. Okay.

7 A. But you can check this, one of these for 2015, it  
8 might be in there, but I don't -- I don't  
9 remember specifically that.

10 Q. I thought you testified a minute ago, and I'm  
11 trying to understand your testimony, that there  
12 was an annual meeting where people voted on some  
13 fences?

14 A. 2005.

15 Q. That was 2005. I thought you said that was for  
16 the sheds?

17 A. Wait a minute. What I had said was that the 2005  
18 meeting, and I thought they had also voted on fences,  
19 but that was the first meeting that I had attended.

20 Q. Okay.

21 A. That I had no interest in fences but I was considerig  
22 a building, and so, I was paying attention to the vote  
23 on the outbuildings but not to the fences. So, I  
24 cannot say definitively, one, whether there was a vote  
25 on fences or what it was all about because I wasn't

1 interested in fences and I paid no attention to that  
2 aspect if it occurred. I seem to think that it did,  
3 but I can't sit here and swear to that.

4 Q. Now, you offered some testimony; I think you said  
5 you don't like wooden fences because they become  
6 weathered?

7 A. Right. They're just visually not very good.  
8 They make a community look slummy as they  
9 weather; that's my personal opinion.

10 Q. Okay. But you do understand that wood fences  
11 have been in the community at least since the  
12 '90's?

13 A. Yes, a couple -- yeah. Not a proliferation of  
14 them, but there are a couple that have been there  
15 for a long time. There are a couple -- maybe a  
16 handful more -- I don't know -- that were  
17 actually approved because, apparently, earlier,  
18 these wood fences were approved. At some point  
19 prior to my moving into Lakewood, I guess the  
20 determination was made that it would be green,  
21 brown or black chain-link fences, that the wood  
22 fences would not any longer be approved. But I  
23 wasn't living there whenever these wood fences,  
24 the older ones, were approved or not approved.

25 I have no knowledge of when they were built or

1 any history on them.

2 Q. And if I look at the list from your email that was  
3 sent, ---

4 A. Yeah.

5 Q. -- there are seventeen (17) wooden fences on that; did  
6 I count that correctly?

7 A. I have no idea; I would have to sit down and  
8 count.

9 Q. Well, when you leave here and you drive to your  
10 subdivision, do you go down Highway 15?

11 A. Uh-huh (affirmative response).

12 Q. When I hit the first Lakewood entrance, would it  
13 be fair to say that there's about a half a mile  
14 at least of wooden fence, rickety wooden fence  
15 along the road bordering the neighborhood?

16 A. Bordering Lakewood Estates.

17 Q. Okay.

18 A. You've got a section further down as you get  
19 towards the second entrance, the Lakewood Links  
20 entrance, -- the first entrance is Lakewood;  
21 that's Lakewood Estates' entrance. The next  
22 entrance down is Lakewood Links. The corner  
23 house as you turn in has a brick and metal fence,  
24 and before that, you will see a section of wood  
25 fences. Those were the wood fences that were put

1 up by the builder who had asked I guess for  
2 permission so that he would be able to sell those  
3 houses by having a barrier between those new  
4 houses that he built and Highway 15. When you're  
5 coming towards that first entrance, those houses  
6 are Lakewood Estates; they are not Lakewood  
7 Links.

8 Q. And there are wooden fences along that stretch?

9 A. Correct, along that -- you have the older fences  
10 along the Lakewood -- and some new fences that  
11 were just put in along Lakewood Estates, and then  
12 you have a section of wooden fences that run  
13 together that were put up by the builder when he  
14 built those new houses on Sylvan Way.

15 Q. Whether you drive in the first entrance or the second  
16 entrance, all of those houses loop around a giant loop  
17 along Deschamps Pond; is that correct?

18 A. Pretty much. But we have no -- we have no  
19 authority, no enforcement, no ability to make  
20 recommendations to the Lakewood Estates' houses  
21 or those fences or anything else in Lakewood  
22 Estates.

23 Q. Now, there are some wooden fences located along  
24 the golf course too, aren't there?

25 A. There may be. There used to be some; I thought they

1 had all fallen down. As you pass Lakewood Links,  
2 there's a bunch of vines and stuff growing on the  
3 chain-link fence; I don't -- I've never had ---

4 MR. McCABE: May I approach?

5 THE COURT: Yes, sir.

6 MR. McCABE: Thank you.

7 Q. I'm going to show you what is marked as  
8 Plaintiff's Exhibit Three. Take a look at that  
9 and tell me if you recognize the area.

10 A. (Witness reviews document). Yeah. It's Lakewood and  
11 Tidewater and a little bit of Prestwick.

12 Q. Is there a fence, a wooden privacy fence on the back  
13 side of 2985?

14 A. I'd have to -- there are -- the back side of  
15 2985, I've never seen the back side of 2985;  
16 that's on the golf course or in the woods or  
17 something.

18 Q. That's the golf course behind it?

19 A. Yeah. I don't play golf, and so, I've never seen  
20 that.

21 Q. Okay.

22 A. Because you can't get to that from Prestwick;  
23 Prestwick is a cul-de-sac and there's no road behind  
24 2985.

25 Q. Well, there's also one on Three Thousand and --

1           there's also one on 3005, isn't there?

2       A.    You mean in the back?

3       Q.    Yes, sir. Isn't that a stockade fence along the  
4           golf course there?

5       A.    I have no idea; I've never seen the back of those  
6           properties. We didn't get out and go in peoples'  
7           backyards; we did what we could see from the  
8           road. Now, if you're asking if there's a wooden  
9           fence -- if it's a wooden fence that I can see --  
10          that we could see the front of it, then we -- we  
11          put it down. And I think there was a wooden  
12          fence somewhere in that area and there was a tall  
13          chain-link fence.

14      Q.    Uh-huh (affirmative response).

15      A.    But the back side of those, I don't -- I don't have a  
16          clue. We didn't -- we didn't go in peoples' front  
17          yards, backyards or anything else; this was all visual  
18          from the drive-through from the vehicle.

19      Q.    If you were to make the others of 2995 take down  
20          their wooden fence, how would it enhance the  
21          values of the other properties in Lakewood Links?

22      A.    Well, if you don't -- if you don't enforce these  
23          procedures, then what you would end up with is a  
24          case -- well, this person has got it, so, why  
25          can't I do it. And that just proliferates. In



1 other words, it's the -- it would be the same  
2 thing as if you said -- well, that guy's my  
3 buddy, I'm going to let him do that, then you set  
4 a precedent that, you know, everybody should be  
5 able to do it; if one can do it, then everyone  
6 should be able to do it. So, if you -- if you  
7 don't -- I don't know how to phrase it any  
8 better. It's a standard for the -- for everyone  
9 in the neighborhood. Now, again, there are  
10 structures that are -- fences that have been  
11 there for a long time that were grandfathered;  
12 for example, we found something that said that  
13 the white vinyl fences were grandfathered. Those  
14 -- if somebody put in a request or granted to  
15 somebody on the row back in the early 2000's and  
16 walking through the neighborhood and says -- hey,  
17 I want to put up a wood fence, and they said --  
18 yeah, sure, go ahead, we've got no control over  
19 that today. That fence was approved. Whether we  
20 today like that or not, that's irrelevant; it was  
21 approved. So, we're not going to go to people  
22 who had it approved, how ever a previous Board  
23 made their decisions, we have no control over  
24 that. But we do not try to make all of these  
25 uniform so that everybody is treated the same

1 way, then the community will just -- it will  
2 deteriorate from my perspective. And what we try  
3 to do is either stabilize or enhance the property  
4 values. We do not look to approve things that  
5 will potentially reduce the property values of  
6 the properties of our members of the Association.  
7 If we start putting up wooden stockade fences on  
8 the golf course, for example, as opposed to  
9 having a panoramic view, then we lost the benefit  
10 of those houses being on the golf course. You  
11 have -- and you have a lot of people come in that  
12 may have short-term Contracts at the factories  
13 across the street or they may be at Shaw and they  
14 may come in for three or four years and then,  
15 yes, they want a privacy fence, you know, and  
16 they put it up; well, they don't care about the  
17 property values because in four or five years,  
18 they've turned their house over and they're gone  
19 or they rented it. But we have to try to protect  
20 the property values of our members, and putting  
21 these -- again, now, this is my perspective. I'm  
22 not speaking for the current Board or anything  
23 else. But from my perspective, when you start  
24 putting up these wooden fences and have them  
25 start weathering, then you have an unsightly mess

1 on your hands. I don't -- I don't feel any  
2 differently, to be honest, about vinyl fences.  
3 You have green mold growing on those. But that's  
4 my personal opinion. But what was established as  
5 the policy or the guidelines or whatever  
6 incorrect term I use is that the wooden fences  
7 are not generally allowed. There are exceptions;  
8 there are exceptions on six foot chain-link  
9 fences depending on the particular circumstance.  
10 But the guidelines that are written are no,  
11 stockade fences aren't approved.

12 Q. And will never be approved?

13 A. What?

14 Q. They will never be approved?

15 A. Anyone can put in for anything; anyone can appeal  
16 anything. If they have a reason, for example,  
17 the guy that lives next to the derelict  
18 neighborhood, he was allowed a stockade fence to  
19 divide them from that neighborhood. If somebody  
20 needs to keep someone from wandering into their  
21 -- drunk, wandering into their backyard off of  
22 15, then, yes, we'll look at allowing them to put  
23 a wooden stockade fence up because that same  
24 person can jump over a short chain-link fence.

25 I mean, but you have to have, for lack of a

1 better term, a practical approach to it. But,  
2 no, we're not going to, from my perspective,  
3 allow blanket approval of stockade fences. If  
4 the decision is made to allow blanket approval of  
5 stockade fences, then personally, I would  
6 consider getting out of there while the property  
7 values are still good, because we have property  
8 that originally sold for a Hundred and Fifty or  
9 a Hundred and Sixty Thousand selling for Three  
10 Hundred Thousand plus. But we don't have a bunch  
11 of stockade fences.

12 Q. That original question was, how would tearing down  
13 2995 Tidewater enhance the property -- the fence at  
14 2995 Tidewater Drive enhance the property values of  
15 the Association?

16 MR. JONES: Your Honor, I think he  
17 answered that already.

18 THE COURT: Mr. McCabe.

19 MR. McCABE: Judge, he's not answering;  
20 he's just talking. I understand, you know,  
21 this Master in Equity is important, and he's  
22 trying to be polite and that sort of thing,  
23 but the witness is just not answering the  
24 questions he's presented. He's answering  
25 the questions that he wants to be presented.

1 A. Okay. Then back up.

2 THE COURT: Hang on, hang on, hang on  
3 just a second. Okay. So, the answer was long,  
4 but I'm not -- I mean, I understood; so,  
5 you're talking in terms of value. Hang on  
6 just a second.

7 MR. McCABE: I was specifically, going  
8 to balancing the equities.

9 THE COURT: I'm sorry?

10 MR. McCABE: I'm looking at the issue  
11 of balancing the equities.

12 THE COURT: Sure. Sure.

13 MR. McCABE: Just not -- but I can't  
14 seem to get an answer.

15 A. Let me give it another shot. You're talking about the  
16 property values and what taking that fence down would  
17 do. I'm saying leaving that fence up opens the door  
18 for everyone else in the neighborhood to say -- he's  
19 got this fence, I want the same kind of fence, and  
20 that's what we're attempting to preclude. And, yes,  
21 it will have a negative impact on the property values  
22 if you have one person doing one thing but -- and then  
23 the other people in the Association assume everyone  
24 can do that -- should be able to do that same thing.  
25 That affects the property value.

1 THE COURT: Mr. Cockerill, you said  
2 -- are property values increasing? You  
3 said a Hundred Thousand and Three Hundred  
4 Thousand or is that a lot cost or ---

5 MR. COCKERILL: No, no.

6 THE COURT: That is an average home  
7 sale, you've seen it increase from One  
8 Hundred Thousand to Three Hundred Thousand?

9 MR. COCKERILL: I've looked -- yes.

10 THE COURT: Okay.

11 MR. COCKERILL: I've got a spreadsheet  
12 of the properties that I know of that are  
13 in Lakewood Links, and I've got the dates  
14 they were sold, how much the asking price  
15 was, how much they were purchased for, and  
16 yes, I can go through that spreadsheet, and  
17 particularly spec homes, I can find houses  
18 that were originally built by Donald Morris  
19 or whoever built it, for a Hundred and Sixty,  
20 a Hundred and Seventy and I think a couple in  
21 there that were a Hundred and Fifty, and they  
22 are asking and getting now Three, Three Twenty-  
23 five, Two Ninety-five and some of them  
24 are actually getting more.

25 THE COURT: Okay.

1 MR. COCKERILL: Because the original  
2 prices when they came in and added these  
3 streets in Lakewood and Donald Morris and  
4 other spec home builders came in, they  
5 originally -- those houses originally sold  
6 for well under Two Hundred Thousand; they  
7 were in the One Sixty, One Seventy, One  
8 Seventy-eight range; they are now selling  
9 for Two Ninety-five, Three Hundred, Three  
10 Twenty-five. Yes, I just got that infor-  
11 mation. I mean, it's not every house.  
12 Some of them were foreclosed on, you know,  
13 or whatever. But yes, there is demonstrated  
14 property value increases on those houses.

15 THE COURT: Okay. Mr. McCabe, back to  
16 you.

17 MR. McCABE: All right.

18 THE COURT: Why don't we take a recess?  
19 It's 3:50. We've been going at it since I think  
20 I calculated it at 1:15; why don't we take  
21 twenty-five (25) minutes -- yeah, twenty-five  
22 minutes? That will put us back here at 4:15.  
23 Is that good? Stretch your legs. Sir, you  
24 are still under -- Mr. Cockerill, you are  
25 still under oath, and so, you can't discuss

1                   your testimony but you can stretch your legs,  
2                   use the restroom, get some water. Everybody  
3                   can reset.

4                   MR. JONES: Judge, I've got one witness  
5                   that I do need to get up today. I think he  
6                   will be a brief witness.

7                   THE COURT: Mr. McCabe might examine him  
8                   for over an hour and a half. I understand.  
9                   We will make sure.

10                  MR. JONES: Okay.

11                  THE COURT: Yes, we will accommodate.

12                  MR. JONES: What time is it?

13                  THE COURT: It is 3:51 and we are back  
14                  at 4:15. So, everybody be at ease.

15                  MR. JONES: Glenn, I can't talk to you  
16                  right now; you are under oath as you know.

17                  MR. COCKERILL: Yeah.

18                  (OFF THE RECORD FROM 3:51 P.M. UNTIL  
19                  4:14 P.M.).

20                  THE COURT: Are ya'll ready to start?

21                  MR. JONES: Yes, sir.

22                  MR. McCABE: Your Honor, I don't have  
23                  any more questions for this witness.

24                  THE COURT: So, Mr. McCabe said he didn't  
25                  have any more questions on Cross-examination



1 of Mr. Cockerill. So, let's see where we are.  
2 I think we are at witness seven. Witness, Glenn  
3 Cockerill was Plaintiff's Exhibit Six. Do you  
4 want to call your next witness?

5 MR. JONES: We would call Mr. Gene Ducom.

6 THE COURT: Do you swear or affirm that  
7 everything you tell me today will be the truth,  
8 the whole truth and nothing but the truth under  
9 the penalty of perjury?

10 MR. DUCOM: I do.

11 THE COURT: You are sworn. Mr. Jones, your  
12 witness.

13 MR. JONES: Thank you, Your Honor.

14 (Eugene M. Ducom, having been duly sworn, testifies as  
15 follows:)

16 EXAMINATION OF MR. EUGENE M. DUCOM BY MR. JONES:

17 Q. Gene, I need to introduce you to the Judge a little  
18 bit; okay?

19 A. Okay.

20 Q. All right. You live in Sumter, and you have  
21 lived here for quite a while, haven't you?

22 A. I moved back here in 2005, I believe. My family is  
23 all from here, but I was in the Navy.

24 Q. Okay. And you mentioned that; you were a career  
25 person in the Navy?

1 A. I was.

2 Q. How long did you stay in there?

3 A. Thirty-eight (38) years.

4 Q. Okay. And then, after thirty-eight years, you  
5 retired and moved to Sumter?

6 A. I lived in Jacksonville for a couple of years,  
7 about two and a half years, and worked for --  
8 contracted with the Navy during that time.

9 THE COURT: Hold on a second. Did  
10 he give the court reporter his full name  
11 yet?

12 MR. JONES: I'm sorry. I'm sorry.  
13 Mr. Gene Ducom.

14 THE COURT: Okay.

15 Q. Gene, I want to hand you a copy of the Deed where you  
16 bought the property; I'm just handing you a copy.  
17 That is your Deed when you bought it?

18 MR. JONES: I'm handing Mr. McCabe  
19 a copy. Thank you.

20 THE COURT: Twenty-six (26).

21 Q. All right. Is this the Deed when you bought this  
22 property in 2004?

23 A. It is as far as I can tell.

24 Q. Okay.

25 A. It looks the same as the one I saw before.

1 Q. Okay. And this is when you bought the property  
2 out at Lakewood Links?

3 A. Yes, sir.

4 Q. Okay. And do you remember your address when you  
5 lived at Lakewood Links?

6 A. 3480 Green View Parkway.

7 Q. Okay.

8 A. It used to be two lots; they combined both lots  
9 together. It was a 3480 and I think 3470 or 90, one  
10 of the two. But they combined the two lots. There  
11 were two numbers there at the time.

12 Q. Okay.

13 A. But my address was 3480.

14 Q. And this property -- this property, it said "Subject  
15 to" in the third paragraph. "This conveyance is  
16 subject to all visible and recorded easements,  
17 covenants and rights-of-way in the property."  
18 Correct?

19 A. Yes, sir.

20 Q. Okay.

21 MR. JONES: Your Honor, I would  
22 like to move this into evidence as  
23 Plaintiff's Exhibit Number Twenty-six  
24 (26).

25 THE COURT: Mr. McCabe?

1 MR. McCABE: No objection.

2 (DEED TO EUGENE M. DUCOM AND LINDA O.  
3 DUCOM MARKED AS PLAINTIFF'S EXHIBIT NUMBER  
4 TWENTY-SIX (26).

5 THE COURT: Okay. Plaintiff's Exhibit  
6 Twenty-six (26).

7 MR. JONES: Thank you.

8 Q. Gene, I want to ask you a little bit about the  
9 history. So, 2004 when you got the property, was it  
10 a house on the property when you bought it?

11 A. No, sir.

12 Q. Did you guys build a house there?

13 A. Yes, sir.

14 Q. And when you built the house, did you go through the  
15 Architectural Review Board?

16 A. Yes, sir.

17 Q. All right. And did you have to get approval  
18 through the Architectural Review Board?

19 A. Yes, sir.

20 Q. Okay. Now, you moved there in 2004 or '05?

21 A. No. The house was built -- I believe we actually  
22 took possession of the house probably in August  
23 of 2006.

24 Q. Okay. And so, you lived there from August of  
25 2006 until when?

1 A. I moved in 2013.

2 Q. Okay. And so, in 2013, you moved to where?

3 A. I've got brain freeze -- Wise Drive right next to  
4 Wilson Hall School.

5 Q. Okay. And so, you live where now?

6 A. Same place.

7 Q. Same place?

8 A. Okay. Since '22.

9 Q. Okay. Now, I want to talk to you a little bit about  
10 your leadership out there. When you came back or when  
11 you became a part of Lakewood Links Property Owners  
12 Association, did you take on any leadership  
13 responsibilities?

14 A. I put my name in to be on the Board I believe in  
15 2007, at the first meeting in January of 2007.

16 Q. All right. And so, did you actually serve on the  
17 Board?

18 A. I did.

19 Q. And what role at that time -- I know you were on  
20 the Board -- but what role were you in when you  
21 served on the Board?

22 A. I think initially I was a member at large, and  
23 then the ARB, then president.

24 Q. Okay. And in the course of that, did you have occasion  
25 to deal with fences and approval of fences or denial

1 of fences?

2 A. Yes, sir.

3 Q. Okay. I want to hand you a copy of a letter.

4 MR. JONES: Excuse me, please, Judge.

5 Q. This letter is dated 2009, and I'm handing you a copy  
6 of it and ask if you recognize that letter and is that  
7 your signature on the back?

8 A. Yes, sir.

9 Q. Okay.

10 MR. JONES: Excuse me, please, Judge  
11 and let us talk a minute.

12 MR. McCABE: I don't object to it  
13 coming in. He's familiar with it.

14 THE COURT: Twenty-six (26). This is  
15 Plaintiff's Exhibit Number Twenty-six (26).

16 MR. JONES: Twenty-six (26)?

17 COURT REPORTER: Twenty-seven (27).

18 (LETTER FROM LAKEWOOD LINKS PROPERTY  
19 OWNERS ASSOCIATION DATED 24 AUG. 2009 MARKED  
20 AS PLAINTIFF'S EXHIBIT NUMBER TWENTY-SEVEN  
21 (27))

22 THE COURT: Twenty-six (26) was the  
23 Deed. This is Twenty-seven (27).

24 MR. JONES: Thank you.

25 THE COURT: Yes, sir.

1 MR. JONES: Judge, I put that on your  
2 desk.

3 Q. Okay. Gene, I want to talk to you about this letter  
4 a little bit. Are you familiar with this letter?

5 A. Yes, sir.

6 Q. Okay. Tell me, what was the purpose of this  
7 letter?

8 A. Well, the initial purpose was to get some  
9 information out to everyone about the  
10 organization, Lakewood Links, and some things we  
11 were doing and some things that were going on.  
12 I think we talked about we had a new treasurer,  
13 some new people; we talked about doing some  
14 landscaping and changes and things and about what  
15 that was going to cost. I think there was a  
16 discussion about a Crime Watch organization being  
17 established. Basically, to let people know -- to  
18 give people information prior to the meeting.  
19 And if you don't object, I would mention the one  
20 paragraph on fences.

21 Q. Yes.

22 A. In 2006 -- I believe back in 2005 and 2006, it  
23 was voted on; that was information -- certainly,  
24 I was not there then. That was information that  
25 was provided to me from previous Board members.

1 I just wanted to get that in, but there was  
2 information that we were looking at. There were  
3 some things, some restrictions that we were  
4 looking at, and basically, one of the reasons we  
5 talked about that, there was so many of those  
6 types of fences that we didn't want to approve,  
7 the wooden fences, the vinyl fences because  
8 nobody kept them up. And it was just going to be  
9 a difficult thing plus it also interfered with  
10 the free-flow that we had established in the  
11 beginning of how we wanted the community to look.  
12 So, just to give them some information. We  
13 talked about new construction, that people  
14 basically had a year to finish their  
15 construction, that that year included cleaning  
16 the place up; in some cases, that was needed.  
17 But basically, just to touch on a couple of the  
18 subjects that were of interest to the community  
19 and giving them a heads-up; I think that was in  
20 August of 2009.

21 Q. Okay. I want to hand you, in fact, there might  
22 be a white notebook up there.

23 A. There is.

24 Q. Okay. Do you recognize what that document is?

25 A. It's the Covenants, the 1988 Covenants.



1 Q. Okay. What was the governing document for the  
2 Property Owners Association?

3 A. The 1988 Covenants. That's what I read and went by,  
4 the 1988 Covenants.

5 Q. Okay. Gene, I'm handing you another document and  
6 ask that you review this document, and I'm going  
7 to ask you what it is. Okay?

8 A. Okay.

9 Q. And then ---

10 MR. JONES: Judge, I'm cleaning  
11 up this bar. It's got some stuff.

12 THE COURT: Are there stickers on  
13 there? I see one.

14 MR. JONES: Yes, there are. If it  
15 please the Court, I would like to give  
16 this to the Court before they get confused.  
17 There are -- there's a blue one and then  
18 there's a couple of yellow ones.

19 Q. Do you have that in front of you, Gene?

20 A. Yes, sir.

21 Q. Gene, is this -- is that your signature on the back?

22 A. Yes, sir.

23 Q. All right. I want to ask you a little bit about that.  
24 I see it says that -- it says, "I, Eugene Ducom swear  
25 that the following statements are true and accurate."

1 Do you see that?

2 A. Yes, sir.

3 Q. Okay. What was the reason that you wrote this?

4 A. Well, we had -- it mentions a gentleman's name in  
5 there, concerning a fence and there was some  
6 Interrogatives from his attorney and I was trying  
7 to address some of those.

8 Q. Okay. All right. Now, I see here that you wrote  
9 what happened -- something that says November of  
10 2007. Were you serving on the Board then? The  
11 second paragraph, it begins, "In November of  
12 2007," do you see that?

13 A. I was, in November of 2007.

14 Q. Okay. And then I see in the third paragraph, it  
15 says, "Early 2008;" were you also active at that  
16 time?

17 A. I was.

18 Q. And so, this was dealing with a case that  
19 involved a man named Paris; correct?

20 A. Yes, sir.

21 Q. All right.

22 MR. JONES: Your Honor, I don't  
23 remember if we moved -- I can't remember  
24 if we moved this ---

25 THE COURT: Mr. McCabe, any

1 objection to what he is presenting right  
2 now? That would be Plaintiff's Twenty-eight  
3 (28)?

4 MR. McCABE: Relevance as to what Mr. Paris'  
5 -- what Mr. Paris' fence has to do with  
6 this case?

7 THE COURT: Mr. Jones.

8 MR. JONES: Judge, what this does  
9 is, it shows an explantation of the  
10 deliberative process on different lots.  
11 He makes a comment on several lots that  
12 -- where there were fences or outbuildings;  
13 he makes a comment on those and what the  
14 history of those is.

15 THE COURT: All right. So, I'm going  
16 to allow that over objection, Plaintiff's  
17 Twenty-eight (28).

18 (STATEMENT FROM EUGENE M. DUCOM  
19 MARKED AS PLAINTIFF'S EXHIBIT NUMBER  
20 TWENTY-EIGHT (28).

21 MR. JONES: Thank you, Your Honor.

22 Q. Look at the second to the last paragraph; it  
23 says, "At the annual Property Owners meeting in  
24 January of 2005;" do you see that?

25 A. Yes, sir.

1 Q. It says, "A decision was made to restrict the types of  
2 fences that would be allowed. Six foot privacy fence  
3 would not be allowed. Blanket exception was allowed  
4 for those homeowners whose property backed up to the  
5 Highway 15." Now, tell me why there was a blanket  
6 exception for those homeowners that back up to Highway  
7 15.

8 A. To allow that to give them some privacy from the noise  
9 and access, easy access, to their property from  
10 Highway 15.

11 Q. When you say "easy access," you mean somebody couldn't  
12 get there?

13 A. People -- and it gave them some, I guess, limited  
14 protection from vehicle wrecks and things which have  
15 occurred there, and that's both chain-link fences and  
16 wooden fences. But it gave them added protection from  
17 Highway 15.

18 Q. And so, as far as -- it says, "All fences  
19 constructed prior to this meeting," that is on  
20 the 2005, were grandfathered; do you remember  
21 that?

22 A. Yes, sir.

23 Q. What does that mean?

24 A. Well, one of the questions was -- what about these  
25 other fences?

1 Q. Okay.

2 A. And so I went around and looked at what fences I  
3 could find and the history and the particular  
4 fences that I noted here were grandfathered in  
5 simply because they existed prior to what I  
6 considered our knowledge of what they were really  
7 approving, what the restrictions were on the  
8 fences. And so, it did not make sense or  
9 reasonable to go back and say -- oh, we've  
10 decided we don't like this now and we want you to  
11 adhere to what we don't like now. That just  
12 didn't make sense. So, these particular ones  
13 were grandfathered in. Those were the ones that  
14 I could identify at the time. But at the same  
15 time, any that were there before that 2005 would  
16 have been grandfathered in.

17 Q. Okay. All right. Let's go to the next page. It  
18 says, "The fence at 3460 Green View Parkway was  
19 constructed prior to 2005." Why did you write  
20 that?

21 A. Why did I write that -- because it was. Again,  
22 it was -- I think that was one particular fence  
23 that Mr. Paris raised as a question, that  
24 particular fence at 3460, and that's probably why  
25 I singled that particular one out and then

1 mentioned these others as ones identified by me.

2 But that 3460 I think was a specific one that was  
3 questioned by Mr. Paris.

4 Q. Okay. And then I see -- you talk about the  
5 Highway 15 exceptions; you speak to that issue  
6 and why. Well, you have already spoken to that  
7 as to why 15 had them; correct?

8 A. Yes, sir.

9 Q. And then it says, "Wood fences at rear of property was  
10 approved for 2955 Sylvan Way to block the view of  
11 adjoining property." Do you see that?

12 A. Yes, sir.

13 Q. Is that -- how did you know that that's what happened  
14 on that property, how that fence got there, 2955  
15 Sylvan Way?

16 A. Discussion with previous Board members and the reason  
17 -- the reason being is that the property behind them  
18 was required to be in our HOA, and it was a real, real  
19 mess and spilling over into their yard is why to my  
20 understanding it was approved.

21 Q. Okay. All right. Then 3005 Tidewater Drive, do  
22 you see that?

23 A. Yes, sir.

24 Q. "Verbally requested a six foot wood privacy fence,"  
25 and what -- it says, "the Board discussed the request

1 with the owner and written request was submitted and  
2 approved for black or green vinyl hurricane fence;  
3 correct?

4 A. Yes, sir.

5 Q. All right. Then 765 Lakewood Drive submitted a  
6 request for a six foot black vinyl request. Mr.  
7 Paris had requested, and the request was  
8 disapproved; correct?

9 A. Yes, sir.

10 Q. All right. And then Leval Court was a six foot  
11 vinyl fence. "After being briefed verbally by  
12 the Board members, it was not legal. The owner  
13 was required to move the fence." Is that what  
14 happened?

15 A. Yes, sir.

16 Q. And then 3425 Green View Parkway requested a six foot  
17 vinyl fence and it was disapproved; correct?

18 A. Yes, sir.

19 Q. And so, in this letter, Mr. Paris, in his case, Mr.  
20 Paris had asked you questions about these other  
21 fences, and that was your response; correct?

22 A. I really don't remember whether he asked  
23 specifically about these; I believe he did. No,  
24 no. He could not have asked for these fences  
25 because they didn't exist. So, specifically for

1 me to point out to him, I think that -- how many  
2 requests for fences in the past were not  
3 approved, the height of fences in the past,  
4 basically, we've looked at these fences before,  
5 and those particular fences were not approved;  
6 they didn't have any special circumstances that  
7 would have -- that they were given a waiver.

8 Q. Well, tell me if somebody applied -- has applied  
9 to the Architectural Review Board, what was the  
10 process? Let's say, they asked for a wooden  
11 fence, what was the process of responding?

12 A. Well, they were just reviewed by the ARB as to  
13 why they wanted -- me personally, my involvement,  
14 would be -- why does the person want the fence,  
15 what is the purpose of the fence. If there was  
16 no extreme things, then the Board would vote on  
17 it and approve it or disapprove it.

18 Q. And in the course of the vote, would you consider  
19 visual -- visibility and the scenic view?

20 A. Yes, that's the reason for the fence. The six  
21 foot closed fence was not an approval requirement  
22 because it did restrict the open atmosphere that  
23 we had looked at to have for the whole community.  
24 That's why we didn't allow for the privacy  
25 fences, the six foot privacy fences.



1 Q. How about the aesthetics, was the aesthetics of  
2 the wooden fence, was that considered?

3 A. The aesthetics was one of the -- another reason  
4 -- the size of the fence dictated the open view,  
5 the open community. No one kept up wooden  
6 fences. Any fences, any wooden fences, they just  
7 don't keep them up. So, besides restricting the  
8 view and the open atmosphere that we desired to  
9 have, they just became ugly real fast and they  
10 were difficult; no one could -- you can't keep  
11 them up. I mean, all over town, you can look in  
12 other sections and out at Lakewood, and they're  
13 just not kept up. And the same held true for the  
14 vinyl fences; vinyl fences were pretty. They  
15 still restrict the view, but they also,  
16 aesthetically, they turn green. And yes, they  
17 can be cleaned, but they don't -- they aren't  
18 normally. So, we made that decision.

19 Q. Was there a blanket automatic denial of wooden  
20 fences of any kind; was there a blanket denial?

21 A. I don't -- I never believe in a blanket anything. If  
22 there was a blanket, then there would be no  
23 requirement for that person to put in for a request.  
24 You have some circumstances, you know, I don't know  
25 what it could be, but they may have a reason. Maybe

1           they have a child that is autistic or maybe there's a  
2           special circumstance. That circumstance would be  
3           looked at. I don't -- it's not a law; it's a  
4           guideline. And we don't do it for the particular  
5           reasons that we gave, and I personally would look at  
6           every single one of them separately.

7                       MR. JONES: I have no further questions  
8                       of this witness, Judge.

9                       THE COURT: Mr. McCabe, Cross-examine.

10                      MR. McCABE: Yes, sir.

11           CROSS-EXAMINATION OF EUGENE C. DUCOM BY MR. McCABE:

12           Q.    Good afternoon, Mr. Ducom.

13           A.    Good afternoon. How're you doing?

14           Q.    Thank you for serving our country.

15           A.    My pleasure.

16           Q.    Did you ever have an occasion when you were serving on  
17                   the Architectural Board where an owner started on a  
18                   project before they had approval?

19           A.    Yes, sir.

20           Q.    And what did you do when they happened?

21           A.    Mr. Paris would be an example of that. We saw  
22                   that something was going on; David and I went and  
23                   spoke with him and let him know that he could not  
24                   build it, and he built it. We went to litigation

25                   I guess you would call it on that. We went

1 before a Master of Equity; that was Mr. Richard  
2 Booth. He recused himself. That was the time  
3 frame where the State Supreme Court had made a  
4 lot of decisions on recusing yourself from  
5 potential things because I think he had  
6 represented me in my home purchase, and I think  
7 he indicated he had represented Mr. Paris also.

8 Q. Are you talking about Judge Booth?

9 A. Yes. At the time.

10 Q. Did you ever have someone start on a project and  
11 then send in an Architectural Request after the  
12 work was completed or while the property or while  
13 the improvement was being made?

14 A. Well, Mr. Paris, once he started and couldn't, he came  
15 back with doing different things which were  
16 subsequently disapproved also because they did not  
17 meet the requirements.

18 Q. And so, did he submit an Architectural Request, Mr.  
19 Booth?

20 A. He submitted a request -- I don't remember  
21 whether it was technically to the ARB or through  
22 his lawyer to us, to the ARB, to us as the  
23 Association, which would go to the ARB.

24 Q. Did you consider it?

25 A. Yes, we considered it; we disapproved it.

1 Q. Okay. But you considered it?

2 A. We considered it.

3 Q. And then you responded to him?

4 A. We did.

5 Q. Did you respond in thirty (30) days?

6 A. We did.

7 Q. Were you aware that there's a restriction that  
8 requires that a response be made in thirty (30) days?

9 A. I am.

10 Q. And in the case, this particular case, are you aware  
11 that the Josey's submitted an Architectural Request  
12 and they never received a response?

13 MR. JONES: Your Honor, I ---

14 THE COURT: Hang on. Don't answer. Yes,  
15 sir.

16 MR. JONES: Object. He's got to lay a  
17 foundation for, first of all, how do you  
18 know, and the second thing is, that assumes  
19 facts that's not in evidence; that's not what  
20 happened.

21 THE COURT: All right. I think you can  
22 ask the question. I don't know yet what the  
23 answer is going to be if there is -- I mean,  
24 he might say -- I don't know, and that might  
25 be the end of it. So, Mr. McCabe, if you

1 will ask him a few -- I guess a few questions  
2 I guess leading up to that, I guess he might  
3 know through this litigation or lots of other  
4 witnesses have, I guess, maintained contact.  
5 I think this witness said he moved in '13, 2013?

6 MR. DUCOM: I did.

7 THE COURT: If you will ask him a few more  
8 questions ---

9 MR. McCABE: Sure.

10 THE COURT: -- about the time frame, but I  
11 think you can ask him if he knows specifics of  
12 this and then Mr. Jones on Cross-examination,  
13 I guess, on Redirect ask him specifics, if it's  
14 just one endless litigation. But go ahead.

15 Q. I think my question essentially to you is, if an owner  
16 submitted an Architectural Request after they had  
17 already made the improvement, is it the ARB's  
18 responsibility to respond to that request?

19 A. By improvements -- how do you define  
20 "improvement"?

21 Q. Well, it's a term of art. What one person considers  
22 an improvement, another person may not. I mean, a  
23 modification to real estate, a modification to the  
24 lot.

25 A. I don't have direct knowledge to comment on this case.

1 Q. Okay.

2 A. I was not involved in this case, and so, no, I cannot  
3 comment on this case.

4 Q. I'm not asking you about this case.

5 A. Okay.

6 Q. I'm asking you, if a homeowner put up a fence,  
7 ---

8 A. Right.

9 Q. -- and had -- and did not submit an Architectural --  
10 did not request permission to do so, ---

11 A. Right.

12 Q. -- I think you testified that you went to the person's  
13 house and you talked to them?

14 A. Yes.

15 Q. And you specifically said, "We'll use Mr. Paris as an  
16 example;" is that correct?

17 A. In Mr. Paris' case, Mr. Paris had started to do  
18 this, and he was notified at that time that he  
19 could not do it.

20 Q. Okay.

21 A. He had not built the fence at that time. He was  
22 digging holes.

23 Q. And did you testify that you went and talked to him  
24 about it?

25 A. We did.

1 Q. Who?

2 A. David Johnston and I both talked to him.

3 Q. And that's a good idea, that is a good neighborhood  
4 thing to do; right?

5 A. If you know somebody is doing it, yes.

6 Q. Okay. I'm not talking about Mr. Paris, I'm not  
7 talking about the Josey's; I'm not asking you  
8 about the Paris' or the Josey's.

9 A. Right.

10 Q. If an owner built a fence without receiving  
11 architectural approval and then subsequently  
12 submitted a request to approve the structure, the  
13 fence that they had built, would you consider  
14 that and respond to it when you served on the  
15 ARB?

16 A. Yes, I would consider and respond to it.

17 Q. Okay. And do you believe it is the obligation of the  
18 Association to respond to that type of request within  
19 thirty (30) days?

20 A. I do.

21 Q. Okay. I want to ask you about Exhibit Number  
22 Twenty-seven (27). Do you have that in front of  
23 you? It's your letter.

24 A. Which one is it; is it the 2009?

25 Q. Yes, sir.

1 A. Okay.

2 Q. August 24th, 2009.

3 A. Okay.

4 Q. Do you mind turning to the ---

5 MR. McCABE: Judge, may I approach?

6 THE COURT: Yes, sir.

7 MR. McCABE: There's a couple copies  
8 of this. I want to see if his has got  
9 that annotation on it.

10 THE COURT: Okay.

11 MR. McCABE: Okay, it does.

12 MR. DUCOM: Yeah.

13 MR. McCABE: Okay.

14 Q. All right. This says the fences that the community  
15 voted in 2006 would not allow privacy fences,  
16 specifically, the six foot high wood and vinyl fences?

17 A. Yes, sir.

18 Q. Is it fair to say that in 2006, there was a rule  
19 change of sorts?

20 A. No, sir.

21 Q. There wasn't?

22 A. No, sir, it was not a rule change.

23 Q. Well, what is this?

24 A. This was to provide information about -- about  
25 the policy. It had always been that the ARB had



1        been consistent of the knowledge that I had when  
2        I was involved, and I wasn't involved until 2007,  
3        that they weren't approving those type of fences.  
4        And I wanted to remind people that, and I did it  
5        twice, once they voted in 2005 and 2006 from what  
6        I was told. Okay, and I wanted to get that out  
7        to the people. But of my time on the Board,  
8        which started in 2007, I was told at that time  
9        that the ARB had always voted to not approve  
10       those type fences.

11    Q.   But if I read this correctly, it says "The community  
12        voted in 2006 to not allow privacy fences"?

13    A.   Right.

14    Q.   I know there's a complete sentence there. But is  
15        there any ambiguity in your mind about what to not  
16        allow means?

17    A.   Let me try to read it as someone receiving it  
18        rather than writing it. If I was just moving in  
19        and I saw this and read it, it would not be  
20        confusing to me because those would not be  
21        allowed normally. It was not to allow those.  
22        And I might say myself -- I'm not going to put in  
23        for one, I'm not even going to think about  
24        building one, but if I thought that I had some  
25        special reason that I should have to have one,

1           then I would apply to the ARB to have it.

2       Q.    Okay. And you would expect a response in thirty  
3           (30) days?

4       A.    I would.

5       Q.    Okay. Will you look at Exhibit Twenty-eight  
6           (28), which is your statement here?

7       A.    Yes, sir.

8       Q.    Thank you. And the second paragraph up from the  
9           bottom, it says, and you gave this under oath;  
10          correct? It says that at the top: "I swear that the  
11          following statements are true and accurate."

12      A.    I was swearing that it was. It was never notarized or  
13          sworn before anybody.

14      Q.    And I'm certainly -- I'm not trying to cast  
15          aspersions; I'm just -- this was a statement you  
16          provided to be used in Court. Right?

17      A.    This was a statement that I provided to the lawyer,  
18          yes.

19      Q.    Okay. So, looking at the second paragraph up from the  
20          bottom it says, "At the annual property owners meeting  
21          in January of 2005, the decision was made to restrict  
22          the type of fences that would be allowed. Six foot  
23          privacy fences would not be allowed. A blanket  
24          exception was allowed for those homeowners whose  
25          property backed up to Highway 15. All fences

1           constructed prior to this meeting were grandfathered;  
2           correct?

3       A.    Yes, sir.

4       Q.    And grandfathered means -- I don't think that's  
5           a lawyer word, but ---

6       A.    It's probably not.

7       Q.    -- but I hear a lot of lawyers use or think that  
8           the word "grandfathered" and "certified mail,"  
9           there's something magic about them. I don't know  
10          if you have had this experience but people come  
11          to you and say -- did you send it certified mail.  
12          But anyway, I digress. But does that mean to  
13          you, "grandfathered," that the rule changed and  
14          that there was a new rule but that before that,  
15          before the rule was adopted, folks weren't bound  
16          by it?

17                   MR. JONES: Your Honor, ---

18                   THE COURT: Yes, sir.

19                   MR. JONES: -- objection to the  
20                   characterization that there was a rule  
21                   or not a rule. He has testified that  
22                   it was not a rule, and his question  
23                   contemplates that he answered earlier  
24                   that there was a rule; it's not a rule.

25                   THE COURT: Mr. McCabe responded that

1 it was asked and answered.

2 MR. McCABE: I don't think he asked  
3 about grandfathered.

4 MR. DUCOM: Ask me another question.

5 THE COURT: I think ---

6 MR. DUCOM: Or ask me the same question  
7 again or something.

8 THE COURT: I do recall him saying  
9 that it wasn't a rule, it was a consideration  
10 or something like that. But anyway, I'm going  
11 to allow it; you are asking him about his  
12 interpretation, "grandfathered." And so, I'm  
13 going to allow it. You can ask him a question.

14 Q. What does "grandfathered" mean?

15 A. Grandfathered to me would mean that in the past,  
16 there were fences that maybe did not meet those  
17 requirements and things that we -- that they  
18 desired. It did not mean that we didn't require  
19 -- that we didn't desire those requirements or  
20 have those -- I'm looking for the right word here  
21 -- before that time frame, let's say there was a  
22 -- we all did something a certain way, we looked  
23 at something a certain way, but people didn't  
24 enforce that looking at it a certain way. So,  
25 nobody enforced what their standards were; so,

1           what I'm saying there is, because they did not  
2           enforce the standards that they thought they were  
3           going by, it did not make sense to try to hold  
4           people to those standards because nobody took  
5           into account for that purpose. So, that to me  
6           meant they grandfathered -- those people were  
7           grandfathered in. I don't know whether it's a  
8           legal term or not, but I think I've heard it  
9           referred to in that atmosphere. But regardless,  
10          there were things that were there let's say  
11          before I put my foot to the pedal -- let's put it  
12          that way. Okay. I have other letters where I  
13          said -- look, there's been some lax application  
14          of standards in the past. So, we're going to  
15          start enforcing those standards, but I'm not  
16          going to go back and try to punish you for our  
17          lack of enforcing the standards before that time  
18          frame. So, ---

19       Q.   Why would you need to vote or make a decision to  
20           restrict the types of fences if they -- if it was  
21           already against the standard?

22       A.   Because it gave the people the opportunity at the  
23           meeting to voice -- hey, we don't really like that,  
24           let's not have that standard, we really want six foot  
25           fences, but they didn't do that. They agreed for the

1       six foot fences I think at a particular meeting that  
2       I was told about where there was a lot of discussion  
3       about, not only the fences, but outbuildings, the  
4       requirements for those. So, it gave the people that  
5       were at the meeting an opportunity to reinforce that,  
6       -- yes, building standards that the ARB was going by  
7       were acceptable to them as a community.

8       Q.    Okay. Were these 2005 rules ever recorded?

9               MR. JONES: Your Honor, object.

10              He's saying rules.

11       A.    I could not answer that question. Regardless ---

12              THE COURT: Mr. McCabe, ---

13              MR. McCABE: He doesn't like my word?  
14              What's the objection? What am I responding  
15              to? You make the rule there.

16              THE COURT: So, the witness has said  
17              "standards." I guess you said "rules." I  
18              guess the objection comes in, you know, are  
19              you trying to lead him into saying -- yeah,  
20              we -- we as the Board decided what part  
21              -- the restriction would be and we used  
22              certain authority in original declarant  
23              for property owner, but if you will just  
24              rephrase it; he said "standards,", and so,  
25              if you will just use his word in your

1 question, then I think we're fine. But  
2 in terms of facts not in evidence, the  
3 question was never in evidence. I guess  
4 if it's a leading question and the answer  
5 is yes, then, maybe it does come in as  
6 evidence. But, obviously, the witness  
7 has used the word "standards." So, and  
8 I think he's avoided saying there was a  
9 hard and fast rule; he said, you know,  
10 the sum total of his testimony so far  
11 is, it's case by case and, you know, there  
12 was known that you were going to flatly  
13 deny based on this. And so, if you will  
14 just use his word "standards," I think  
15 we're fine.

16 MR. McCABE: Yes, sir. Except for  
17 these documents. And so, I will ask  
18 him -- I will ask him a different way.

19 THE COURT: Then it would be a matter  
20 of impeachment, right, if he testifies  
21 differently than what his former testimony  
22 is or what the document says, then, I mean,  
23 that would be a matter of impeachment  
24 possibly and ---

25 MR. McCABE: Well, I wasn't attempting

1 to do that in the last question. He says  
2 he didn't mean it to restrict or not allow  
3 the email.

4 THE COURT: Okay. Well, I'll certainly  
5 allow you to hold him to what he said  
6 previously.

7 EXAMINATION OF EUGENE DUCOM BY MR. McCABE CONTINUED:

8 Q. Well, I think what I'm trying to ask here is, we  
9 have Court rules. What do you think they are,  
10 you assume now, restriction guidelines? As a  
11 result of the January of 2005 meeting, was there  
12 any legal document generated?

13 A. Not that I -- I do not know.

14 Q. Was there any legal document recorded?

15 A. Not that I know of.

16 Q. What about 2006?

17 A. Not that I know of.

18 Q. What about 2009 when you sent this letter out,  
19 was there any legal document, standards, rules,  
20 requirements, suggestions; anything that had the  
21 -- that was used to enforce a specification,  
22 guideline, requirement, anything related to a  
23 fence, ever put into a formal rule, regulation or  
24 document?

25 MR. JONES: Your Honor, I object



1 to the question. It's a compound question,  
2 and I'm not sure I can follow it. It's  
3 pretty complicated.

4 THE COURT: Well, we've --not to overrule  
5 it, but Mr. McCabe, do you want to break  
6 that down into -- I mean, maybe he has  
7 answered it the best he could, but it's  
8 standards and you have asked him -- nothing  
9 was recorded and I think we were up to 2006,  
10 2009, and so, I think you can ask him that.  
11 But could you rephrase the last question  
12 and break it down too?

13 MR. McCABE: When I called it a rule,  
14 there was an objection to me calling it a  
15 rule. I can call it anything. Okay. We're  
16 not objecting to something in the Rule Book;  
17 we're objecting to the word, to the terminology  
18 there.

19 THE COURT: Well, I think somewhere in  
20 there, he said "compound question." So,  
21 could we break it into small ---

22 MR. McCABE: That's true.

23 THE COURT: -- break it into small  
24 questions?

25 Q. I'm not speaking as to whether this is a rule; okay.

1 Qualifications. During your tenure on the Board or  
2 the ARB, did you ever receive any requirements related  
3 to fences to writing to publish to the members?

4 A. Other than these particular guidelines that were  
5 talking about six foot fences, those were -- they  
6 were given -- it was given to them when they  
7 voted in '05 and '06, and one of my letters, I  
8 think my 2009 letter probably, would have -- that  
9 would have talked about the fences. That would  
10 be the only writing. There was never, ever  
11 anything recorded as a Bylaw nor as an Addendum  
12 to the Covenants or anything like that. Those  
13 were the guidelines that you -- that we went by  
14 when you submitted a required ARB Request.

15 Q. Okay. Were there wooden stockade fences or wooden  
16 privacy fences, whichever term -- terminology you  
17 prefer to use, listed in the property in Lakewood  
18 Links as 2006?

19 A. Were there in 2006?

20 Q. Yes, sir.

21 A. I would say -- I can't guarantee they were there  
22 in 2006, but when I looked in it in 2007 when I  
23 was on the Board, they were there.

24 Q. Well, were they there in 2013 when you moved?

25 A. Any fence that was grandfathered would be there.

1 Q. Okay.

2 MR. McCABE: Thank you. I appreciate  
3 it.

4 THE COURT: Redirect.

5 MR. JONES: I have no further questions  
6 of this witness, and I thank you, Mr. Ducom.  
7 Thank you, Mr. Ducom. Thank you. You have  
8 patiently waited today.

9 MR. DUCOM: Thank you.

10 THE COURT: I've got a question of Mr.  
11 Ducom.

12 MR. DUCOM: Yes, sir.

13 THE COURT: Is it -- has anybody ever  
14 been shot or injured trying to go down that  
15 past the locks to Charleston where the  
16 secret subs are? You've made that trip  
17 before, haven't you?

18 MR. DUCOM: We ---

19 THE COURT: Those rubber-gun boats ---

20 MR. DUCOM: We've transferred those  
21 submarines to the underwater site that we have  
22 and reactors in the Idaho Falls area, and we  
23 have two -- three nuclear sites that we use  
24 to transfer them. They are not there any more.

25 THE COURT: Okay.

1 MR. DUCOM: In other words, I didn't know.

2 THE COURT: All right. Have you got any  
3 more witnesses? What time is it -- it's 5:02.  
4 Have you got a short one or what is next on  
5 the plan?

6 MR. JONES: Your Honor, I have three more  
7 witnesses total in my case.

8 THE COURT: Okay.

9 MR. JONES: And I think these witnesses --  
10 I can't judge how long ---

11 THE COURT: I understand. How long is it  
12 going to take? We know how long you're going  
13 to take; it's that pesky Cross-exam.

14 MR. JONES: So, I can't say. But I would  
15 think we could ---

16 THE COURT: Well, let's talk schedules.  
17 So, you know, -- I'll tell you, it looks like  
18 Mrs. April Josey was about fourteen (14) pages  
19 of notes and all the rest of them have been  
20 probably, you know, five, six, seven pages.  
21 But assuming three witnesses takes a half day  
22 tomorrow, then that would put Mr. McCabe, you  
23 know, to offer him time -- to give him time to  
24 reset before we started this case. I thought  
25 I could go all week, but it turns out there

1 is a mandatory training session for Masters on  
2 Friday that I've got to be at. So, tomorrow  
3 is Wednesday. So, do you think two or three  
4 or four more hours? Mr. McCabe, I think you  
5 said earlier, and I'm not holding you to it,  
6 but I think you said probably two witnesses.  
7 So, if we had all tomorrow and all Thursday,  
8 is anybody worried that we won't finish? And  
9 if ya'll go too long, I'll just take a break  
10 and know what happens when I come back. But  
11 I want everybody to have a full opportunity.  
12 Now, one thing that we've experienced though is,  
13 Mr. McCabe has had an opportunity to get a  
14 small chunk of his trial in. That's what  
15 happens when you call the other side. So,  
16 he's got a small chunk of his case already  
17 inserted, but I want to give him the  
18 opportunity to have a full day -- that  
19 might be Thursday. But Mr. McCabe, I mean,  
20 are you guys open on Thursday subject to  
21 me saying -- you've got to be here or do  
22 ya'll think we can finish tomorrow? The  
23 Plaintiff's case is still three -- two to  
24 three hours more.

25 MR. McCABE: I don't know who the

1 witnesses are or what they're going to say.  
2 To me, there's three issues in the case.  
3 We could almost stipulate to the facts. I  
4 think we're maybe beyond that -- that point.  
5 But when the witness -- I don't know -- it's  
6 hard to say. I don't know -- I don't know  
7 who the witnesses are or what they're going  
8 to say. I certainly don't want to be here  
9 Thursday. This is officially the longest  
10 defense case I have ever tried, and I've  
11 tried a bunch of them. And it looks like  
12 we're halfway. So, I don't know. I have a  
13 two to three week trial, day certain,  
14 beginning Monday. So, I will be earnestly  
15 praying that we're not here all day  
16 Thursday, not that I don't mind being --  
17 not that I don't want to be here, but I  
18 do have a two to three week day certain  
19 trial starting Monday.

20 THE COURT: Well, all I can say is  
21 then, do ya'll want to try to get to one  
22 more? It's already 5:06. Do you want  
23 to try to get one more witness in or is  
24 that really not going to make a difference  
25 or we can start with Dickie's witnesses

1 at 10:00 in the morning? And then, are  
2 you going to need a break and start your  
3 trial on Thursday or are you going to  
4 start your trial tomorrow afternoon --  
5 your case in chief, not your trial?

6 MR. McCABE: Could I let you know in  
7 the morning?

8 THE COURT: Sure.

9 MR. McCABE: I probably can be ready.  
10 Can you put your shortest witness up?

11 MR. JONES: Well, see, I have to call  
12 this fellow.

13 THE COURT: Oh.

14 MR. JONES: Judge, honestly, I think  
15 all of them are about the same. But I can  
16 -- I will roll them if you want me to. I'm  
17 thinking about Ms. Brown right now. I  
18 mean, ---

19 COURT REPORTER: I'm fine.

20 MR. JONES: Okay.

21 THE COURT: Long ago, she started saying  
22 blah, blah, blah, you're -- or peanuts, peanuts;  
23 I mean, both of you guys are experienced and  
24 four point five out of five trial lawyers, and  
25 you don't need me to tell you that we've rehashed

1 several, several points over and over and over.

2 MR. McCABE: Yes.

3 THE COURT: But I'm not -- you know, what  
4 I don't want anybody to say is -- I didn't  
5 have a full and fair opportunity to due process.

6 MR. McCABE: We will stipulate that there  
7 are Restrictive Covenants. We are not contesting  
8 the validity of the Covenants. We are not  
9 contesting -- they brought up the issue and  
10 said there was a succession issue; we are not  
11 challenging that they've seen a lot of people  
12 who have had architectural control, we're not  
13 challenging that people bought houses that  
14 have been put up there, none of that stuff.  
15 To me, this case is about -- is there a  
16 waiver, did they have the authority and --  
17 and did they follow a rule or a scheme of  
18 development. And so, I probably would stipulate  
19 to a lot of the other stuff. That's the easier  
20 -- I'll just stipulate that the -- I'm not  
21 saying that everything is -- you know, we've  
22 said we think about four issues in this case,  
23 and I think I have presented all but one of  
24 those in our Motion for Summary Judgment.

25 THE COURT: Mr. Jones, do you want to



1 respond to that? Ya'll can -- ya'll can  
2 stipulate as you see fit. I mean, so, your  
3 argument is not this snafu over 2019, 2020  
4 is such a big gaping hole and that it retro-  
5 actively affects anything and everything we've  
6 done all the way back to the institution. I  
7 believe I continue to hear an argument that  
8 this corporation is almost ultra vires as  
9 an extension of the prior corporation,  
10 that it's not the original inception. There-  
11 fore, it can't really do anything. Was it  
12 not part of the argument? If it's not, you  
13 know, we can move along quick.

14 MR. McCABE: I understand that the  
15 Restrictions require that the Architectural  
16 authority be assigned, that that was reserved  
17 to the developer unless the developer decided,  
18 number one, and number two, I'm saying that  
19 this entity -- I'm not saying it's not valid  
20 and hasn't done all the things it says -- I just  
21 stipulated that it's done all the things it says  
22 it's done. I understand -- still has to be a  
23 successor. There's -- the law says very  
24 specifically what a successor corporation  
25 is and what an assign is. And I don't believe

1           there's any case law that says you just declare  
2           yourself a successor and you become one. So,  
3           but really, I think this case comes down to  
4           the approval, really.

5           MR. JONES: Judge, let me state for the  
6           assignment ---

7           THE COURT: Yes, sir.

8           MR. JONES: -- of the Architectural --  
9           actually, the specific sentence that said, "They  
10          may assign," but they don't have to. I read that  
11          into evidence. And that's a part of the  
12          Covenants.

13          THE COURT: You mean you examined your  
14          witness and he put that in?

15          MR. JONES: That's right; that's right. But  
16          they don't have to assign.

17          MR. McCABE: Right.

18          MR. JONES: Right. But they may assign, but  
19          if they are going to assign, it has to be by  
20          1993, ---

21          MR. McCABE: Right.

22          MR. JONES: -- which they didn't do.

23          MR. McCABE: In the Statute of Frauds, it  
24          has -- in the Covenants, it has to be in writing.

25          MR. JONES: Exactly. It does require that,

1 but it says "They may assign." Judge, that's  
2 a part of -- that's written in the Covenant --  
3 in the Covenants. I can point the Court right  
4 to it if you would like.

5 MR. McCABE: Well, we don't need witnesses  
6 for that; it's in the document. So, I mean,  
7 unless there's some testimony that was assigned.

8 THE COURT: So, what the rest of the  
9 witnesses, you know, I don't think we've gotten  
10 to anybody yet that is on the current iteration  
11 of the Board. Those are coming next; right?

12 MR. JONES: Uh-huh (affirmative response).

13 THE COURT: And so, we've got to have that.  
14 Or are you wanting to stipulate to -- I mean,  
15 I guess -- again, ya'll can talk about  
16 stipulations. I'm not going to tell you  
17 probably anything more about the way I'm  
18 thinking. I mean, that's just not what I do.

19 MR. JONES: Judge, I will tell you, my  
20 sense of it is, I've got three witnesses,  
21 and I think I can do Direct in forty (40)  
22 minutes each; that's a rough estimate. That's  
23 an hour and twenty (20) minutes; that's two  
24 hours. If I can get them in in those, then  
25 he will have -- that will put us at 12:00

1 let's say, and then let's say you break for  
2 lunch, that will go to 1:00 and he can put  
3 up a witness. So, he would have from 1:00  
4 to 5:00 which is four hours to put in two  
5 witnesses.

6 MR. JONES: And I know from personal  
7 experience and I'm sure he does too, I used  
8 one of his witnesses in my case in chief,  
9 and he got to do Cross-examination which is  
10 quite a luxury. And so, the issues were  
11 able to be treated, and while I understand,  
12 he can go in full, I can't imagine that his  
13 Direct examination would be as extensive as  
14 it would be. So, that being said, even if  
15 his last two witnesses had two hours apiece,  
16 you still get through at 5:00, and no witnesses  
17 that we have had so far as I recall have taken  
18 more than two hours I don't think.

19 THE COURT: Let me ask it this way about  
20 the stipulations. Could there possibly be  
21 any more exhibits? I mean, do you think --  
22 I'm guessing that this is a hundred and  
23 eighty to two hundred pages that I've got to  
24 go through. So, are there any more exhibits?

25 MR. JONES: That might come in through

1 other witnesses?

2 THE COURT: Yeah. Can ya'll stipulate  
3 to those?

4 MR. McCABE: I mean, they live in the  
5 neighborhood. I'm not going to argue with  
6 them living in the neighborhood and if they  
7 say they moved in 2002, I don't need a Deed  
8 for that.

9 MR. JONES: All right. I mean, that's  
10 all right with me. I'll expedite that part  
11 of it. I did that, frankly, Judge, because  
12 I needed to show that they are members of  
13 the ---

14 THE COURT: I understand.

15 MR. JONES: -- Property Owners Association.  
16 And, thus, this is a joint effort of the Property  
17 Owners Association members in the form of the  
18 corporation.

19 THE COURT: So, it seems to me that I don't  
20 think I can speed it up or streamline it without  
21 injury to the other side. But with Mr. McCabe's  
22 and Mr. Jones' estimate that he will be done by  
23 noon tomorrow unless you have some extended  
24 Cross-examination, he's saying about forty (40)  
25 minutes per witness; those were the quick ones.

1 I'm assuming that Mrs. Josey was the longest  
2 one?

3 MR. JONES: Yes.

4 MR. McCABE: Well, Mr. Jones, my dear  
5 friend, I mean, he gave a 30 (B)(6) deposition,  
6 and we need to -- can I submit the transcript,  
7 the deposition transcript then into the records?

8 MR. JONES: Well, I think you need -- you  
9 need to be talked to about it. And you can --  
10 Judge, what I'm saying is, my Direct ---

11 THE COURT: Campbell Law School must say  
12 -- you don't stipulate and you don't -- waive  
13 nothing; you go to the max. Every piece of  
14 evidence, and if I had Michael Graham here,  
15 I'd settle this.

16 MR. McCABE: Dickie, do you get paid by  
17 the exhibit?

18 THE COURT: So, ---

19 MR. JONES: What I'm saying is this, I think  
20 for me to put on Direct Examination my people,  
21 forty (40) minutes ---

22 THE COURT: Apiece?

23 MR. JONES: -- Direct Examination, yes. How  
24 long he takes on Cross, I can't predict that. But  
25 I will say this, in the normal sequence of

1 events, I would think ---

2 THE COURT: You didn't -- you didn't plan  
3 to go till 4:59 tomorrow and then go -- I rest?

4 MR. JONES: No, that's not my plan at all.

5 THE COURT: Okay. So, forty (40) minutes,  
6 and ya'll agree, we've heard the bulk of it.  
7 I mean, you know, you've got to get to the  
8 current people that are on the Board and what  
9 they did and did not consider. But the bulk  
10 of it is in evidence, document-wise and  
11 testimony-wise?

12 MR. JONES: Yes.

13 THE COURT: And I don't want to hurt any-  
14 body's feelings, but I can speed you up.

15 MR. McCABE: I mean, I'd like to move ahead.

16 MR. JONES: Yeah, I preserve -- I'll conform  
17 to what the Judge wants. I know the Judge is  
18 without a jury, and so, you know what you need  
19 to hear. The same thing with points.

20 THE COURT: All right. So, I don't see  
21 that we can do a whole lot more today. One  
22 witness would put us at 6:00 with Mr. McCabe  
23 having to start his Cross-exam, and so, that  
24 doesn't really seem right. It seems like the  
25 best thing to do is plow toward tomorrow,

1 and we'll agree Thursday would be all for  
2 Mr. McCabe to decide; of course, you've got  
3 the opportunity to put up reply testimony.  
4 Mr. McCabe, you can -- it will be your choice.  
5 You can start tomorrow and you have Thursday  
6 whether you need it or not. But I want to  
7 give you a full opportunity to have -- you know,  
8 the day to do with as you see fit, and then  
9 Mr. Jones could put up rebuttal or reply or not.  
10 But, you know, at least a half a day tomorrow and  
11 Thursday. And if for some reason, something  
12 unforeseen happens, I guess we will just have to  
13 reconvene. I don't want to have to do that,  
14 but we need to try this and get the testimony  
15 done.

16 MR. JONES: Yes.

17 THE COURT: So, meanwhile, ya'll can  
18 consider it and stipulate to the 30 (B) (6)  
19 or something, you know, coming in and I will  
20 read it. You know, some of this is redundant  
21 but, you know, we can add this to it. I know  
22 my other one is in a box now. So, I don't  
23 think there's any -- and you all are  
24 experienced lawyers -- but I don't think  
25 that there's any chance here that a piece of



1 paper has been missed that would have been  
2 critical to the analysis. So, having said  
3 that, anything else we need to do today  
4 or let's just start cracking at 10:00 A.M.  
5 tomorrow and plow through those three and  
6 then if we need a break and then we can  
7 start on the other; fair enough?

8 MR. JONES: That's fair.

9 MR. McCABE: Yes, sir.

10 (THE HEARING WAS ADJOURNED AT 5:17 P.M. ON OCTOBER 8,  
11 2024).

