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STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Georgetown County
Honorable John M. Milling, Circuit Judge
Civil Action No. 2006-CP-22-0914
APPEAL NO. 2

AJG Holdings, LLC, Stalvey Holdings, LLC,
David Croyle, Linda Croyle, Jean C. Abbott,
Linda T. Courtney, Sumter L. Langston,
Diane Langston, Carl B. Singleton, Jr.,
Virginia M. Owens, and Stoney Harrelson,

Respondents,

v

Levon Dunn, Pamela S. Dunn, and
Helen Sasser,

Appellants

RECORD ON APPEAL
VOLUME II

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Owens, and Stoney Harrelson*

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

)
IN THE COURT OF COMMON PLEAS
)

AJG HOLDINGS, ET AL,
PLAINTIFFS,

-vs-

LEVON DUNN AND PAMELA SOLICITOR
DUNN,
DEFENDANTS

ORIGINAL

2006-CP-22-0914

NON JURY PROCEEDINGS HELD BEFORE

THE HONORABLE MICHAEL BAXLEY,

COMMENCING AT THE HOUR OF 9 33 AM, ON THE 18TH DAY OF APRIL,
2007, AT THE GEORGETOWN COUNTY COURTHOUSE, 15TH JUDICIAL
DISTRICT, CIRCUIT COURT, GEORGETOWN, SOUTH CAROLINA

REPORTED BY H EUGENE BUCKNER, CVR

H Eugene Buckner
Official Court Reporter at Large
15th Judicial Circuit
PO Box 1462, Conway, SC 29528-1462

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NO EXHIBITS WERE MARKED BY THE COURT REPORTER AND NO
WITNESSES TOOK THE STAND FOR EXAMINATION BY COUNSEL

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1 four lots on which we are engaged -- I'm not suspending --
2 uh -- an on-going operating businesses, which is the purpose
3 of that --

4 MR TISDALE

5 Yes sir

6 THE COURT

7 So the Court will hear from Mr
8 SCOVILLE on what he's obviously trying to do, and then we'll
9 see where it leads us

10 MR TISDALE

11 Thank you

12 THE COURT

13 All right You may go ahead, Mr

14 SCOVILLE

15 MR SCOVILLE

16 Your Honor, Thank Your Honor

17 Uh -- Your Honor, I would point out a
18 couple of points preliminary

19 As you say, you've read the briefs
20 and the affidavits and all that

21 Uh -- In Mr Levon Dunn's affidavit
22 -- he is the principal Defendant Uh -- He filed an
23 affidavit in which he states -- uh -- that he was unaware of
24 the deed restrictions that affects lots 7 through 10

25 Uh -- Page 2 of his affidavit says

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1 Unaware of the deed restrictions
2 affecting lots 7 through 10, my wife and I decided in 2005
3 to investigate whether they can do this commercial activity
4 of bread and breakfasts and a wedding venue

5 And I want to bring to your
6 attention, Your Honor -- uh -- also filed with Mr -- uh --
7 Dunn's Affidavit as an exhibit -- and I think it's a part of
8 Exhibit A -- are two deeds

9 One in them is from Mr Rodney G
10 Causey (phonetic) to Levon Dunn and Pamela Dunn That was
11 recorded back in 2003 And that specifically references the
12 restrictions at issue here

13 Then you have another deed that Mr
14 Dunn himself filed with The Court where a company called
15 Riverside Inc conveyed Lot 9 in the subdivision to Mr
16 Levon Dunn

17 Apparently Riverside Inc is a
18 corporation that is or was owned by Levon Dunn, because he
19 signed as the Corporate Officer of Riverside Inc

20 So that involved a corporation in
21 which Mr Levon Dunn conveys to Mr Levon Dunn individually,
22 Lot 9, and that specifically references the restrictive
23 covenants involved

24 So I think it's disingenuous at best
25 for him to assert that they didn't know that these lots were

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1 restricted -- uh -- in 2005, when obviously he had
2 constructive notice because the restrictions were recorded

3 But also the documents that he has
4 signed himself and in which the property were conveyed to
5 him individually -- uh -- show that he -- you know -- was
6 well aware of the restrictive covenants, so -- so we find
7 that to be -- uh -- disingenuous at best in his affidavit

8 Another issue is whether or not they
9 have conducted commercial activities on the property
10 They're -- you know -- They're -- We know at least one
11 wedding that was conducted right under Judge Abbot's window
12 basically

13 Uh -- I think they are asserting that
14 this was a friend or something and they didn't get paid for
15 it I don't -- We don't know But from our standpoint, it
16 looks like it clearly was commercial activity that was
17 conducted

18 There is no question that -- that in
19 fact a wedding was conducted -- uh -- on -- right there on
20 this property

21 Apparently they assert that the --
22 the weddings that they've held out there were held back on
23 this 8-acre tract which is kind of in the back of the
24 property, and we are not here to enjoin them from doing
25 that

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1 If that's where the property -- where
2 they intend to perform weddings -- those are not restricted
3 lots and we're not here at that point to -- to raise that
4 issue

5 The four lots are clearly restricted

6 Now one of the issues is the question
7 of the -- uh -- damages, Judge

8 I've submitted this morning a copy of
9 the C O (phonetic) case, which -- which was a Georgetown
10 County case in which I was involved in, also the -- uh --
11 Judge Westin Halps (phonetic) case out of Charleston

12 Both of those deal with the question
13 of what you have to show to get an Injunction to enforce
14 restrictive covenants

15 The Dunns cite several cases that
16 talk about irreparable harm and -- and -- uh -- you know --
17 uh -- uh -- inadequate remedies at law

18 Those are irrelevant issues when you
19 deal with restrictive covenant cases

20 THE COURT

21 Well Counsel, how does that impact
22 about whether we are here for a TRO or a Temporary
23 Injunction?

24 MR SCOVILLE

25 It doesn't make any difference,

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1 Judge We -- We are entitled to both of them because they
2 -- if they engaged in commercial activities on these lots,
3 they are in violation of restrictive covenants

4 THE COURT

5 All right

6 MR SCOVILLE

7 And we're entitled to an Injunction
8 to prohibit that, because they -- they are contractually
9 bound under the restrictive covenants not to do that

10 So we don't --

11 THE COURT

12 You're saying that is substantiated
13 by the evidence?

14 MR SCOVILLE

15 I think it is, Judge

16 THE COURT

17 All right Then Counsel, let me ask
18 you, what is your position on the -- uh -- based upon the
19 Heln Sasser, rather than the covenant rights --

20 MR SCOVILLE

21 Okay I don't want to get way ahead
22 of myself, because -- because I can make --

23 THE COURT

24 -- prior conveyance --

25 MR SCOVILLE

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1 I have -- Well, I don't want to
2 anticipate a bunch of his arguments, Judge, but clearly

3 When she did that, she -- back in
4 1991, she conveyed -- if I can find that aff -- that -- uh
5 -- document She conveyed to Mr Coleman and all my
6 clients, either directly or their predecessors in interest,
7 all of the interest in the land out there that she had
8 gotten from Mr Green

9 I don't know if you knew Sonny Green
10 who practiced law in Conway for a long time He and some
11 other people -- and I guess Ms Sasser were all part of the
12 heirs of this plantation

13 There was a partition suit

14 Mr Green and -- and others conveyed
15 a tract of land to Ms Sasser She -- It was part of the
16 subdivision In 1991, they went -- and according to Mr --
17 uh -- Abbott's affidavit -- uh -- she agreed to sell the
18 remaining interest she had

19 There was a big falling out She was
20 very difficult to deal with They ended up having her
21 executed a deed in which she signed -- in which she conveyed
22 all the interest in the property that she had got from Mr
23 Green, okay

24 So clearly from that cause alone,
25 that would include any development rights

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1 I don't think we're dealing here with
2 development rights about the -- uh -- consent to the
3 commercial uses I think that's properly described as a
4 declarant right, but it doesn't make any difference whether
5 it's a development right, declarant right, personal right,
6 personal covenant, whatever

7 By her deed to Mr Coleman, et al, in
8 1991, whatever rights she had, she conveyed at that time

9 There is no reservation in that deed
10 of any kind of any rights whatsoever

11 There is a reservation, however, the
12 right in her -- I don't know if it would be a reservation or
13 a grant -- where they specifically said her son could
14 continue using the boat landing

15 And so clearly they -- they did --
16 they had the right or the ability, or -- or whatever it's
17 been described as, to retain some interest subsequently in
18 the property

19 She didn't do that

20 She specifically said

21 We are conveying all the interest in
22 all the property I got from -- from -- uh -- Sonny Green and
23 those people

24 And all that goes to the grantees of
25 this deed So as of 1991, she ceased to have any interest

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1 whatsoever in any of that property

2 And that would include any subsequent
3 right to consent to anything, amend amendments, or whatever

4 Now, I can get into some of the legal
5 arguments about that, Judge I'd -- Right now, I don't want
6 to anticipate Mr Craig -- Mr Tisdale's position on that
7 other than just say -- point out -- that that deed clearly
8 conveyed -- and if the provision that was typed in there
9 about all interest from the Green deed wasn't enough, it
10 also has the standard language that says

11 This conveyance is also -- uh --
12 involving the -- uh -- what's it -- all appurtenances,
13 rights, incidental or otherwise appertaining thereto -- that
14 standard clause

15 And it clearly says the rights -- all
16 the rights

17 So after 1991, Helen Sasser had no
18 interest that she could assign to the Dunns

19 So her consent to the commercial use
20 is -- is -- is not even worth the paper it's printed on,
21 because they -- they despoiled the paper by printing the
22 assignment on it So -- or something like that That's --
23 one of my law professor's used to always talk about it
24 THE COURT

25 All right Is there anything

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
06-CP-22-0914

AJG Holdings LLC Stalvey)
Holdings LLC et al)

Plaintiffs)

-VS-

Levon Dunn Pamela S Dunn)
and Helen Sasser)

Defendants)

TRANSCRIPT OF RECORD

August 18 2008
Conway South Carolina

B E F O R E

HONORABLE JOHN M MILLING Judge

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I N D E X
(PW) PLAINTIFF WITNESS
(DW) DEFENSE WITNESS

Certificate of Reporter

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E X H I B I T S

(PLAINTIFF=P)
(DEFENSE=D)
(COURT=C)

(NO EXHIBITS MARKED)

1 THE COURT If I remember correctly
2 from the previous case and from looking at the file
3 the defendant had filed its motion for summary
4 judgment and then the plaintiff also had motions for
5 summary judgment as to certain causes of action that
6 were contained in a counterclaim and I think the way
7 it was set up previously we were going to start with
8 the defendant's motion for summary judgment If
9 that's still the way it needs to go we'll do that

10 MR TISDALE Your Honor that's
11 perfectly fine to do that However I think Mr
12 Scoville also made a motion on the same issues He
13 filed his first but if it's all right for me to go
14 first I'm ready to go first

15 THE COURT All right It makes no
16 difference to me Yours were the first memorandums I
17 received so they were the first ones I had read but
18 we can go in either order

19 MR TISDALE And that's perfectly all
20 right I just wanted the Court to understand
21 that ---

22 THE COURT Mr Scoville how would
23 you like to proceed?

24 MR JACK SCOVILLE Well Your Honor I have
25 certain issues that I think if the Court were to rule

1 on that it would certainly shorten the matters and
2 perhaps they should be addressed before we get into
3 Mr ---

4 THE COURT That will be fine We
5 will start with yours

6 MR JACK SCOVILLE If it please the Court
7 Your Honor

8 Your Honor I represent the plaintiffs in this
9 matter I'm sure since you've read all the documents
10 and all that you are probably pretty knowledgeable
11 about the facts but my clients own lots in what we
12 call the Sasser Subdivision up on the Pee Dee River
13 here in Georgetown

14 The defendants Dunn own four lots out there
15 that are subject to restrictions and some additional
16 property behind that Mrs Sasser was the original
17 subdivider of the property

18 Of course I'm Jack Scoville This is my son
19 Sam who is my associate

20 THE COURT If you can help me out
21 I got in the last week or ten days certain -- certain
22 maps the defendant had sent and I remember that
23 there are nine acres I think that the Dunns own
24 that were not a part of the Sasser property and then
25 they must have gotten some property from a prior

1 grantee of Mrs Sasser that gave them the riverfront
2 property but I can't remember who they got the
3 riverfront property ---

4 MR JACK SCOVILLE I think all the property
5 that they own came originally from Mrs Sasser I
6 believe it's Lots 6 7 8 -- 7 8 9 and 10 are the
7 riverfront lots ---

8 THE COURT All right

9 MR JACK SCOVILLE --- and they either got
10 those directly from Mrs Sasser or through some other
11 grantees of Mrs Sasser ---

12 THE COURT Okay

13 MR JACK SCOVILLE --- and the acreage
14 which would be to the west of those lots we don't
15 contend are subject to the restrictions

16 THE COURT Right so if I'm looking
17 at Mrs Sasser's -- if I'm looking at the map that
18 was filed on May 11 of 1983 it has various numbered
19 lots on it It looks like 4 through 10 and then two
20 unnumbered lots What the Dunns own now would be 7
21 8 9 and 10 on that lot?

22 MR JACK SCOVILLE Yes sir I believe
23 that's correct

24 THE COURT I'm just going from my
25 reference I'm going to just mark that as "Dunn "

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1 All right thank you if you'll continue

2 MR JACK SCOVILLE And my associate Sam
3 Scoville will address some of the issues as to the
4 defendants' counterclaims Your Honor as to our tort
5 actions rather

6 MR SCOVILLE Mr Tisdale and Nexsen
7 Pruet represent the Dunns and Mrs Sasser The case
8 involves primarily the issues of the effect and the
9 application of restrictive covenants against
10 commercial uses on the Dunns' property and both
11 sides have filed claims for tort damages that we
12 would hope to address here today

13 Your Honor the undisputed facts are I
14 believe that Mrs Sasser got a tract of land as a
15 result of a partition of the Woodland Plantation
16 She got that property from a gentleman named Sonny
17 Greene D W Greene I think is his official name
18 He was a lawyer in Conway and some other parties
19 that had acquired Woodland Plantation A partition
20 action was brought and her portion that this
21 subdivision came from came as a result of that
22 partition

23 She subsequently subdivided it in the
24 seventies and eighties She sold individual lots
25 with restrictions -- with restrictive covenants The

1 restrictions provided that the developer which she
2 defined in the restrictions to be Helen Sasser her
3 heirs and assigns had the right to waive the
4 prohibition against commercial uses and then in
5 1991 she conveyed all her ownership interest in all
6 the property she had acquired from the Greene
7 partition action to M T Coleman et al and the
8 first issue Your Honor we think the Court has to
9 decide because every argument thereafter kind of is
10 going to be influenced by this is are the
11 restrictions as to who the developer was and are the
12 -- did the conveyance to M T Coleman are those
13 documents ambiguous in any way

14 Now it's important Your Honor because if
15 those documents are construed by the Court to be
16 ambiguous except for the tort claims summary
17 judgment has to be denied today because if those
18 documents are ambiguous then the Court would get
19 into parol evidence to construe those That creates
20 factual disputes which the Court can't grant summary
21 judgment on because of that so we think that is the
22 first issue the Court has to decide today

23 That also goes to the effect of any affidavits
24 that they have submitted which we object to One of
25 them is Mr Wilcox's affidavit and the other is

1 Helen Sasser's affidavit We also object to the
2 admission of any statements by Mrs Sasser or anyone
3 else for that matter dealing with the parties'
4 intent as to those two documents We think the
5 documents are very clear on their face They're not
6 ambiguous and we're entitled to summary judgment by
7 virtue of the Court's construing and applying the
8 clear intent of the parties as revealed by the face
9 of those documents

10 Now the deed from M T Coleman says "It is
11 the intent of the grantor herein to convey to the
12 grantees all of her ownership interest " and then it
13 goes on in another place to say "It is the intent of
14 the grantor herein to convey all remaining property "

15 Now Your Honor I don't know how anything
16 could be more clear and unambiguous You know how
17 can we rely on documents that are of record if we
18 can't ascribe to them the ordinary and typical usual
19 meaning of the language used In this case the
20 document shows on its face that she conveyed all her
21 right title and interest

22 It had the usual provision of rights members
23 hereditaments incidental or otherwise pertaining
24 thereto however that language runs and we think
25 that would be sufficient in and of itself to convey

1 any right she may have had in the property to waiver
2 the restriction but in this case they didn't stop
3 there They went in and added additional language to
4 make sure there wouldn't be any possible confusion
5 and said that she -- that it was her intent to convey
6 all of her ownership interest all of her ownership
7 interest and that would include any declarant
8 rights developer rights or any other kind of
9 interest that she could possibly have had in the
10 property

11 You're looking for a document I take it?

12 THE COURT

13 Yes sir and one of the
14 things that caused me a problem was the deed from
15 Mrs Sasser to M T Coleman and the other grantees
16 and that particular deed was that the page of that
17 deed says "See Attachment A for your property
18 description " and then it says "See Attachment B for
19 restrictions " and I don't actually see something
20 that is identified as Attachment B but I do see --
21 it appears that that document was filed in the Office
22 of the Clerk of Court for Georgetown County in Book
23 441 at Page 14 and then at Page 18 even though it s
24 not labeled "B " there are certain restrictions and
25 it's noted that this conveyance is subject to those
restrictions of record that were in the Holmes'

1 deed ---

2 MR SCOVILLE Yes sir

3 THE COURT --- which if I remember
4 correctly is the pattern of restrictions that have
5 been in all of the deeds

6 MR SCOVILLE That's correct

7 THE COURT All right so there
8 would appear to me to be some question as to whether
9 or not the eighteen acres has got these restrictions
10 that cover that entire piece of property

11 MR SCOVILLE I think the eighteen
12 acres is -- Your Honor ---

13 THE COURT Is the eighteen acres
14 the balance that was conveyed by ---

15 MR SCOVILLE Yes sir Whatever she
16 had left over there was some individual lots that are
17 included in there I think Lot 5W may have been
18 specifically mentioned and clearly the intent was
19 whatever she had they were paying her all this money
20 to get rid of any interest she had in ---

21 THE COURT I see in the Attachment
22 A "It is the intent of the grantor herein to convey
23 to the grantees all of her ownership interest of
24 approximately eighteen acres being the remaining
25 portions of the tracts heretofore conveyed to her by

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1 D W Greene et al " and so she is giving
2 everything to Coleman et al ---

3 MR SCOVILLE Yes sir

4 THE COURT --- that she's got but
5 it appears that it is subject to the right-of-way
6 easements previously conveyed out and it appears it
7 is also subject to certain restrictions ---

8 MR SCOVILLE Yes sir

9 THE COURT --- and I can't tell
10 since it doesn't say Schedule B on that Attachment as
11 to whether or not those restrictions are Schedule B
12 or whether there may be some other restrictions as
13 well I'm assuming that these are the Schedule B
14 restrictions

15 MR SCOVILLE The Holmes restrictions
16 yes sir and Your Honor that's how the deed was
17 recorded I mean that's the document and we're
18 stuck with it and obviously it had a Schedule B
19 attached to it but for whatever reason that wasn't
20 done I ---

21 THE COURT And one thing that I do
22 find which is not favorable to Mrs Sasser and I'm
23 looking to see if I can find the particular case but
24 it's also a case that's cited in Queens Grant Number
25 II Horizontal Property Regime which was the 368 S C

1 342 628 SE2d 902 that 2006 case I'm trying to
2 find the citation but I think it talked about a
3 previous case that relied upon maybe some Georgia
4 cases

5 MR TISDALE Your Honor it's the
6 Armstrong case

7 THE COURT The Armstrong case

8 MR TISDALE Would you like a cite on
9 that?

10 THE COURT I may be able to find
11 it ---

12 MR TISDALE It is the Armstrong case
13 in Georgia

14 THE COURT All right

15 MR TISDALE Sorry for interrupting

16 THE COURT No thank you That was
17 the case that I was looking for It's the Armstrong
18 case but I -- I read the Armstrong case to be one
19 that in essence says that when the grantor divests
20 themselves totally of any property rights in the
21 tract of land that any development interest that
22 they may have or the right to change any subdivision
23 restrictions terminates at that particular point in
24 time

25 The Queens Grant case I find to be

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1 distinguishable from the case that we have here
2 because I think in the Queens Grant case the Court
3 points out that Greenwood Development had other
4 interests in Palmetto Dunes and so when Queens
5 Grant the condominiums had been sold out Greenwood
6 had still the right to make some changes in those
7 subdivision restrictions because they owned the rest
8 of Palmetto Dunes but in this particular case I
9 think there is no further interest that Mrs Sasser
10 had following the deed to Coleman et al because
11 it's my belief at that particular point in time she
12 no longer had further interest in the subdivision of
13 the properties or in the property itself and the
14 reason that you have the right to retain some control
15 over restrictions on the land if you retain
16 additional ownership is you're not going to do
17 anything that's going to affect adversely what you've
18 already developed ---

19 MR SCOVILLE Exactly

20 THE COURT --- so quite frankly I
21 think that when Mrs Sasser deeded her rights to the
22 Dunns in 2004 2005 whenever that deed took place
23 she didn't have anything to deed

24 MR SCOVILLE That's exactly our
25 point Your Honor and we ---

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1 THE COURT But I think that the
2 issue that exists with respect to the property is
3 whether or not when Mrs Sasser was developing this
4 property she created a subdivision restriction in
5 this what is it Woodland ---

6 MR SCOVILLE Woodland Plantation

7 THE COURT Woodland Plantation

8 MR SCOVILLE We call it Sasser

9 Subdivision Your Honor

10 THE COURT As to whether or not she
11 created subdivision restrictions that affected the
12 entire pieces or groups of property and would thus
13 give the other property owners the right to enforce
14 against the Dunns those subdivision restrictions In
15 looking at the Queens Grant about -- I'm looking at
16 Page 15 here and it says "There are several ways in
17 which restrictive covenants may be created The most
18 common means are by a deed by a declaration and by
19 implication from a general plan or scheme of
20 development " and I think that that is going to be a
21 jury issue in this particular case as to whether
22 these deeds with these subdivisions on every piece of
23 property with those restrictive requirements creates
24 a common scheme or plan and by deed that's what she
25 intended to do and I think that that -- since it

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1 wasn't a declaration that was filed as we oftentimes
2 find this property you know -- a uniform parent
3 set of restrictions that applies to all platted
4 pieces of properties in a subdivision that didn't
5 happen here It happened by deed for each individual
6 property and it was also a part of the eighteen
7 acres that went to Coleman et al

8 Now there's certainly strong indications the
9 property owners indicate that by deed and by common
10 scheme and plan these property owners each have the
11 right to enforce against the other the subdivision
12 restrictions ---

13 MR SCOVILLE Yes sir

14 THE COURT --- but I think that's a
15 jury issue

16 MR SCOVILLE Well sir I think you
17 pretty much -- I mean I don't have anything else to
18 say if that's how you feel I think you're dead on
19 about the assignment and the subsequent waiver and
20 stuff

21 The only other thing I would need to address
22 at this point would be their counterclaims for torts
23 if you'd like to hear me on those issues

24 THE COURT Yeah I'm trying --
25 remind me -- I remember they had an emotional

1 distress counterclaim

2 MR SCOVILLE Your Honor they have
3 sued my clients for basically four tort actions
4 tortious interference with business relationships
5 tortious interference with contractual relationships
6 intentional infliction of emotional distress and
7 civil conspiracy and the rule is very clear You
8 can't just allege something and introduce evidence
9 about some of the elements of each cause of action
10 and get past summary judgment I cite that in the
11 brief that the case that holds that

12 You've got to present evidence on every
13 element of each cause of action to survive summary
14 judgment and as to the tortious interference with
15 the business relationships Your Honor a necessary
16 element is the plaintiff have a truly perspective or
17 potential contractual relationship with a third
18 party

19 In this case throughout the depositions
20 throughout the affidavits there's no showing --
21 there's not one scintilla of evidence bit of
22 evidence anywhere that there was a potential person
23 out there that they were in negotiations with that
24 there was some possibility of them getting a contract
25 to rent their -- to rent their place to that my

1 people interfered with

2 In fact I think there was -- we took a
3 deposition the other day that would appear that my
4 people actually encouraged the lady -- or they're
5 going to allege that that they encouraged her to try
6 to contract with them to rent the property so
7 there's just no evidence that we're entitled to
8 summary judgment on that cause of action There is
9 no potential or prospective contract with a third
10 party that's been shown here In fact they've said
11 that you know once the controversy came up they
12 decided not to go forward and do anything until such
13 time as the lawsuit was resolved and the same thing
14 goes to tortious interference with contractual
15 relations

16 That's a little bit different than the
17 prospective contractual relationship For that cause
18 of action you actually have to show the breach of an
19 existing contract and the only contract that they
20 tried to showed that was at issue here was an
21 insurance contract of the homeowners insurance or
22 whatever was on their house

23 One of the plaintiffs -- well actually I
24 don't think he's a personal plaintiff He's got a
25 company that owns one of the lots out there was

1 their former insurance agent He brought it to the
2 attention of the insurance company that they were
3 changing the use from residential to a commercial
4 use There was some investigation made However
5 that contract was never breached

6 They increased the premium to show the
7 additional coverage and liability but they never
8 breached the contract and even if you could say
9 that you know an agent who had written a contract
10 becoming aware that his customer had changed the use
11 notifying the insurance company was somehow tortious
12 you know I think you'd have to say well that was
13 within his fiduciary duties to the agency to bring
14 that to their attention the contract was never
15 breached in the first place so you'd have to have
16 that as an essential element They don't have that
17 so that cause of action fails

18 The intentional infliction of emotional
19 distress case law is very clear the distress has to
20 be so severe that a reasonable person could not be
21 expected to endure it We've quoted at length in our
22 brief Your Honor from the Dunns' depositions they
23 talk about "Well we've got some high blood
24 pressure We see our neighbors on the road and we're
25 not comfortable because they're suing us " these kind



1 of things Judge At no point do they say anything
2 that rises anywhere near the point of extreme
3 emotional distress It's just not there

4 At most they're complaining of normal aging
5 things They have to take blood pressure medicine
6 you know they feel bad they're you know whatever
7 They haven't been to doctors They've presented no
8 evidence from a psychiatrist or something saying
9 these people are suffering extreme emotional
10 distress That cause of action fails

11 Civil conspiracy you've got to show some
12 special damage intended by the conspirators You
13 have to show -- according to Judge Anderson you've
14 got to show something separate and apart from the
15 damages you are claiming under other causes of
16 action It has to be some specific intent to harm
17 and some harm has to result and in this case I
18 asked the Dunns you know "What about the civil
19 conspiracy? You know what damages have they caused
20 you there?" and he says "Well the neighbors drive
21 by and look and they're no longer friendly " You
22 know that's a summary and I cite in the brief too
23 I believe all the mistakes he makes there It's
24 just not there Judge

25 They've just failed on every -- every cause of

1 action to present any evidence that is essential to
2 maintain each of those causes of action so we think
3 we're entitled to summary judgment on each of
4 defendant's counterclaims for tort and just to
5 summarize Your Honor I think you're dead on with
6 the issue of the Coleman deed Mrs Sasser had
7 nothing to assign to the Dunns and you know I
8 think that the documents on their face clearly show
9 that the restrictions run with the land whether it's
10 a common scheme or plan insofar as the four lots that
11 we are dealing with with the Dunns those
12 restrictions were created by specific deeds The
13 common scheme or plan issue as I understand that is
14 when you have some lots that are not specifically
15 subject to the restrictions covenants was there a
16 common scheme or plan where we would imply that
17 those restrictions apply to those lots In this
18 case we have four deeds that specifically make these
19 restrictions apply so we think the document shows on
20 its face that the restrictions run with the land
21 because she created the developer as a term of art
22 She says the developers Helen Sasser her heirs and
23 assigns If she meant it to be purely personal she
24 would have said Helen Sasser She uses -- what she
25 uses the words of inheritance The restrictive

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1 covenants specifically say they are to run with the
2 land

3 And then finally there are restrictions on --
4 to residential uses and the case law says that
5 usually restrictions on residential uses run with the
6 land so when you look at the face of the change of
7 venue I think you have to -- have to go with that

8 THE COURT Thank you

9 Mr Tisdale I apologize for ruling on that
10 issue without giving you a chance to speak but with
11 each of you having submitted those briefs and having
12 reviewed the case law I just felt like that that was
13 what was going to take place on that particular
14 issue

15 MR TISDALE Your Honor I agree --
16 well I'd better not agree on the record

17 Your analysis of the Armstrong case and the
18 Queens Grant case is correct The question is --
19 because that case said when you amend the covenants
20 restrictions you must have an interest in the
21 property to protect but the fact is Mrs Sasser did
22 not attempt to amend the covenants She assigned her
23 right to do so to the Dunns who do have a
24 substantial interest because they own a substantial
25 amount of the land

1 THE COURT I still find that the --
2 that there's a distinction without a difference

3 MR TISDALE I understand your ruling
4 completely on it I would just simply like to
5 mention for the record a couple of ---

6 THE COURT You put that on the
7 record so that you'll be protected

8 MR TISDALE Well I appreciate it
9 but I don't want to say too much but if you have any
10 question about anything let -- please -- I will do
11 my best to answer it ---

12 THE COURT Yes sir

13 MR TISDALE --- but the overriding
14 -- incidentally on the Armstrong case would you
15 like a cite for that in the record?

16 THE COURT I have -- I have got it
17 in your memorandum

18 MR TISDALE All right sir

19 THE COURT It appears just for the
20 purpose of the record though that it's 254 Ga 15
21 325 SE2d 769

22 MR TISDALE I do not want to burden
23 the Court with too much but just to mention a couple
24 of points the overriding legal principle there of
25 course is that law in South Carolina has confirmed

1 in very recent cases is that restrictions on land are
2 disfavored That's just the law

3 The second point is and I think this would
4 really turn the ruling you've made and that it is
5 very clear in South Carolina law that to establish
6 the intent of the grantor which is exactly what the
7 issue is here what was Mrs Sasser's intent with
8 regard to the enforcement of these restrictions

9 The person attempting to enforce the
10 restrictions clearly has the burden of showing her
11 intent Now we have shown her intent in what we
12 have submitted to the Court After these
13 depositions ---

14 THE COURT I understand I have
15 read her affidavit and deposition portions but I
16 think that there's still an issue for the jury
17 because she said she never had any intention to put a
18 common scheme and plan into effect when she conveyed
19 those development rights but in her conveyance of
20 the development rights she also required an
21 indemnification agreement and that could be some
22 evidence to the jury as to exactly what her intention
23 is when she's saying "I'm giving you something but
24 I'm not going to be responsible" ---

25 MR TISDALE

Right

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1 THE COURT --- "for any adverse
2 consequences You've got to reimburse me should
3 there be any '

4 MR TISDALE That is correct but the
5 Charping case versus J P Scurratt Company clearly
6 stands for the principle that the grantee has to show
7 the acquisition of the right to enforce the
8 restrictions by the intent and my simple argument
9 would be and not to burden it again simply that
10 there's absolutely no showing by the grantees that
11 that was her intent so we would think we're entitled
12 to summary judgment as a matter of law because
13 there's been no common scheme shown at all There's
14 not a shred a scintilla of evidence of it

15 She said "I and only I have the right to
16 enforce these restrictions " and somehow or another
17 there's got to be a bridge from what she said to what
18 they now say they have and the bridge is simply not
19 there so I will just -- unless Your Honor has a
20 question about it will not belabor the point any
21 further because I understand that you have ruled on
22 it

23 THE COURT Thank you sir

24 MR TISDALE Now the other points
25 that Mr Scoville brought up about the counterclaim

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1 -- not the counterclaim but the other causes of
2 action -- well they are in the counterclaim
3 actually there are substantial issues of fact on
4 every one of them as to whether or not the elements
5 have been met based upon the believability and the
6 acceptance of the facts by the jury

7 And the case for example on interfering with
8 prospective contractual relations these people our
9 clients intended to operate this property as a bed
10 and breakfast The defendants -- the plaintiffs
11 imposed an injunction on the property which we
12 contend is illegal and that is on appeal right now
13 and in fact that that injunction should not have
14 been granted it was improperly granted clearly is a
15 cause of action for interfering with prospective
16 business relationships because they've been deprived
17 of the income from the property

18 THE COURT All right Are we not
19 in a situation though that if the Court is the one
20 who makes the determination upon request that an
21 injunction should be granted I don't know how we can
22 make the individual plaintiffs liable for an action
23 that the Court approved It would seem like they
24 would have some judicial immunity or protection from
25 that type of claim

1 MR TISDALE Not the Court but
2 whether the plaintiffs should have ever asked for the
3 injunction because the restrictions can't be enforced
4 by them

5 THE COURT Well it would seem like
6 if the Court agreed with them even if the Court was
7 in error it is not any evidence that the plaintiff
8 didn't have the right to make the request that it
9 was frivolous If I've ruled that it's a jury issue
10 as to whether these matters are enforceable or not
11 enforceable by the plaintiff that in and of itself
12 would indicate that what they did by making the
13 request is not improper

14 MR TISDALE I understand Your
15 Honor's thought We disagree and we do not think
16 that the injunctive facts are present that should
17 have led them to ask for an injunction

18 THE COURT All right

19 MR TISDALE The second point I would
20 make on these particular claims is that with regard
21 to interfering with contractual relationships it's
22 undisputed in the testimony there's ample testimony
23 about it on all sides that one of the plaintiffs
24 went to the insurance company for which he did not
25 work but used to work and effected the

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1 cancellation notice of cancellation of their
2 insurance policy on their property They got a
3 notice of cancellation That is an interference with
4 a contractual relationship It was unfounded and
5 unlawful and we think that's a jury issue ---

6 THE COURT They got a notice that
7 it was going to be canceled but the policy was not
8 in effect -- not in fact canceled was it?

9 MR TISDALE Well it caused a
10 change unnecessary change in the policy from one
11 form of the policy to another the expense which
12 should not have been necessary because they weren't
13 operating a bed and breakfast

14 THE COURT You're saying that after
15 the injunction was issued that the change in the
16 premium reflected a -- reflecting a change in the
17 proposed use by the defendants took place?

18 MR TISDALE Well the insurance
19 company looked into the matter issued a cancellation
20 notice and then reinstated a policy but I think on
21 different terms because of the report

22 THE COURT Well if in fact and I
23 would assume that it is an in fact agreed upon
24 matter that they want to use their four river lots
25 for a bed and breakfast et cetera ---

1 MR TISDALE Yes sir

2 THE COURT --- that's why we've got
3 the lawsuit If the insurance company changes their
4 premium to reflect a proper use and to reflect
5 coverage for these people who are going to be going
6 on the property in a commercial setting why would
7 that be improper regardless of what the source was
8 from which the company found out that information?
9 There could be allegations that the Dunns were trying
10 to create a fraud on their insurance company if they
11 failed to themselves notify the change of use

12 MR TISDALE Well the fact of it is
13 Your Honor a report was made by one of the
14 plaintiffs to the insurance company that was false

15 THE COURT How was it false at the
16 time it was ---

17 MR TISDALE Said it was being
18 operated as a commercial establishment and it wasn't

19 THE COURT It was not -- and that
20 goes back to my question of did that report get made
21 after the injunction was issued or did it get made
22 before the injunction was issued?

23 MR TISDALE Your Honor I can't say
24 with certainty but I believe before

25 THE COURT Well if it was before

1 would the Dunns not in fact have been using it at
2 that time as a commercial enterprise?

3 MR TISDALE Never

4 THE COURT So they never had any
5 contract with anybody and had never used it?

6 MR TISDALE No sir

7 THE COURT It was a matter that
8 they had proposed to use it but did not have a
9 chance because of the injunction?

10 MR TISDALE That's right Now the
11 nine acres Your Honor which also were bought by the
12 Dunns from Mrs Sasser does not contain any
13 restrictions They have used it for commercial
14 purposes but not the buildings that are at issue
15 with the insurance policy

16 Now with regard to the emotional distress we
17 believe that what has happened creates clearly a jury
18 issue on that at least at this stage and there are
19 factual disputes concerning it

20 THE COURT Well am I not to act
21 somewhat as a gatekeeper on those matters and unless
22 it rises to a certain level it's not an intentional
23 infliction of emotional distress?

24 MR TISDALE Well I understand that
25 it has to rise to a certain level but it seems to me

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1 it would be up to a jury based upon the testimony of
2 the Court as to whether it rises to that level

3 THE COURT All right but if we're
4 on a summary judgment motion and we've got the fact
5 that they may have some increase in blood pressure
6 but we've got no medical testimony to attribute it to
7 what's going on with the lawsuit do we?

8 MR TISDALE Well Mr Dunn will
9 certainly testify he had to go to the doctor to treat
10 -- to get his high blood pressure treated He had
11 never had that trouble before this came up

12 THE COURT No disrespect to Mr
13 Dunn but he and I both are in the age where life and
14 high blood pressure seem to go hand in hand with each
15 other

16 MR TISDALE I fall in that category
17 myself

18 THE COURT Do we have anything
19 specifically indicating that other than life itself
20 that blood pressure issues are related to what's
21 going on?

22 MR TISDALE I don't think there's
23 any questions about it yes sir

24 And in addition if I can go back you know
25 there are factual disputes but going back to the

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1 interference of contractual relations if I may ---

2 THE COURT Yes sir

3 MR TISDALE --- just to add to that
4 a bit there is a dispute on this but it is a
5 dispute that one of the defendants it is claimed by
6 the Dunns because they were told this were told that
7 one of the plaintiffs went to the Georgetown Planning
8 Department and as a result of that visit a stop-work
9 order was issued on their property that they had
10 been fully authorized to work on it and were stopped
11 by the unlawful actions of the plaintiffs

12 THE COURT Now what is the -- you
13 say a stop-work order was issued to stop work on
14 what?

15 MR TISDALE On the prospective bed
16 and breakfast building

17 THE COURT All right That would
18 go ---

19 MR TISDALE To the prospective
20 business interference

21 THE COURT All right

22 MR TISDALE I'm not suggesting that
23 once a jury hears all of this it will go one way or
24 another but I am suggesting that there's evidence at
25 this stage

1 THE COURT All right and as to the
2 civil conspiracy

3 MR TISDALE Well Your Honor you
4 know in South Carolina that's a pretty broad brush
5 and all it takes is an agreement between plaintiffs
6 and they're all plaintiffs to cause damage to the
7 defendants and with what we've alleged in other
8 causes of action clearly the elements of that

9 THE COURT But isn't it a
10 requirement also of South Carolina case law that the
11 damages that are related to the conspiracy cause of
12 action have to be of a different nature than your
13 general damages requested against the conspirators
14 in this case your counterclaim against the
15 plaintiffs that if you're just asking for the same
16 relief that you've asked for in your contract actions
17 and in your motion of distress actions that that
18 won't support an independent civil conspiracy action?

19 MR TISDALE I think that's correct
20 that if we can't prove those damages at trial we're
21 not entitled to judgment for the elements of that ---

22 THE COURT Well what elements are
23 there as to damages that are unique and separate from
24 the damages ---

25 MR TISDALE Well I think that

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1 that's something we need -- have to develop but
2 I ---

3 THE COURT But this is the day for
4 the summary judgment motion ---

5 MR TISDALE Right

6 THE COURT --- and so if we don't
7 have any that are different and unique after this
8 case has been lasting as long as it has and the
9 depositions have been taken I think now would be the
10 proper time to make a decision on that issue

11 MR TISDALE Well Your Honor I
12 think perhaps incurring the attorney's fees that have
13 been incurred to defend what we claim to be unlawful
14 claims is sufficient for a civil conspiracy

15 THE COURT But attorney's fees
16 would not be allowable on a conspiracy cause of
17 action anyhow so I don't think the fact that you had
18 to defend it gives rise to a separate and special
19 damage

20 MR TISDALE Well there are damages
21 we claim attorney's fees and costs are damages
22 because of the wrongful and unlawful claims that have
23 been brought in concert by the plaintiffs

24 THE COURT All right sir As to
25 any of those four issues is there anything else

1 you'd like for me to ---

2 MR TISDALE No sir

3 THE COURT All right thank you

4 sir

5 Mr Scoville Jr

6 MR SCOVILLE Yes Your Honor

7 THE COURT I'll be glad to hear a
8 response from the plaintiff

9 MR SCOVILLE Just very briefly Your
10 Honor I mean you know today is the day We've
11 gone through discovery I mean there's no
12 contention that anymore discovery needs to be done
13 so you know the request for further development I
14 think should not be granted at this point

15 Again the breach -- there has to be a breach
16 of a contract to support tortious interference with a
17 contract In this case there was no breach of the
18 contract The fact that they may have sent a letter
19 saying that "We're going to cancel it unless you make
20 some changes or something" is not sufficient There
21 has to be an actual breach that has to occur

22 As to the prospective contractual they've got
23 to show ---

24 THE COURT Let me ask this question
25 about the breach Mr Tisdale has in essence said

1 that one policy was terminated and a new policy
2 thereafter got issued Do you have any evidence one
3 way or the other as to whether it was simply a notice
4 that "We're going to look at canceling the policy" or
5 whether there was an actual cancellation?

6 MR SCOVILLE I don't -- I'm not sure
7 how you would -- whether a cancellation -- what they
8 did is they did a little investigation as I
9 understand it realizing they'd added a bunch of area
10 out there they'd added a new building I think the
11 guest house and it expanded the premises and all
12 that so they upped the coverage to reflect the
13 amount of the money involved

14 THE COURT All right so you're
15 saying that simply the evidence is undisputed that at
16 the time the policy premium was increased that it
17 was increased to cover the fact that the house had
18 been taken out there and work had been done on it
19 and ---

20 MR SCOVILLE I believe that's
21 correct Your Honor

22 THE COURT --- and not simply a
23 commercial change from a residential change?

24 MR SCOVILLE I'm not completely sure
25 Your Honor but I think it's clear in the record from

1 Mr and Mrs Dunn's testimony that the policy was
2 never canceled It was amended it was changed
3 which it should have been done and I think Mrs Dunn
4 admitted this in her deposition that the changes
5 should have been done anyway because of the change in
6 the conditions out there and there clearly was never
7 a cancellation of any policy There was an amendment
8 of the policy and the case law I think is very
9 clear that you have to show that the contract was
10 terminated or breached as a result of the actions on
11 the part of the people you're suing

12 As to the tortious interference with the
13 prospective contractual relations Your Honor they
14 still haven't pointed to any party or individual that
15 they were in negotiations with who backed off from
16 entering into a contract with them because of
17 anything my clients did

18 The stop-work order with the County Judge
19 they didn't have a contract with the County They
20 had a permit from the County that if they you know
21 were building something they'd go out there and they
22 would do the inspections on That's not a contract
23 and anyway the contract wasn't breached What
24 happened was when it became -- the County became
25 aware that they were doing a bed and breakfast they

1 went out and looked at it and then said "Well
2 you're doing stuff beyond the scope of what we
3 thought you were doing " They issued a stop-work
4 order which lasted a half a day and the next day
5 upon further investigation they lifted the stop-work
6 order and they went ahead

7 And then again I mean you're right about the
8 tortious -- I mean the intentional infliction of
9 emotion distress There's nothing here that rises to
10 a severe emotional distress to support a cause of
11 action In the case law there's a plethora of case
12 law -- I love that word -- that says that in these
13 circumstances summary judgment is appropriate
14 You've got to present evidence of severe emotional
15 distress to support the cause of action Thank you

16 THE COURT

As to the cause of
17 action for interference with prospective rights I'm
18 going to grant the motion for summary judgment I
19 think that there were sufficient facts upon which the
20 plaintiffs were entitled to bring an action for the
21 injunction that whether the injunction was proper or
22 improper the Court granted the injunction

23 I have determined that the issue of the effect
24 of the subdivision restrictions on the Dunns as to
25 Lots 7 8 9 and 10 is a jury issue and would thus

1 find that these findings by the Court for issuing an
2 injunction and my finding that the effect of the
3 restrictive covenants is a jury issue would justify
4 the granting of summary judgment on the interference
5 with prospective contracts I've found that there's
6 also no evidence in the record to show that there
7 were any real prospective contracts that were being
8 interfered with

9 As to the emotional distress I do not find
10 that there is evidence that's been submitted in the
11 record deposition-wise that would rise to the level
12 where the defendants would be entitled to prevail on
13 an issue of emotional distress with respect to the
14 lawsuit that has been brought by the plaintiffs
15 against the defendants

16 I likewise find that the plaintiffs are
17 entitled to a summary judgment on the issue of civil
18 conspiracy I do not find that there is any evidence
19 in the record that there are any damages that are
20 asserted by the defendants in their counterclaim as
21 to the civil conspiracy that would be any different
22 than the damages that are being sought in general
23 under the other causes of action

24 I'm going to deny the motion for summary
25 judgment as to the interference with an existing

W

1 contract I'm not sure based upon the evidence that
2 is before me at this time that I can tell clearly
3 what happened with that insurance contract as to
4 whether what took place was just one of those things
5 but I'm going to leave that issue open for further
6 development and presentation to the jury

7 I think clearly if these subdivision
8 restrictions would have prevented the Dunns from
9 operating a bed and breakfast that there's nothing
10 wrong with bringing to the attention of an insurance
11 company whatever source that we've got a bed and
12 breakfast that's going on but nobody seems to be
13 exactly sure about what changes took place in that
14 insurance contract and what precipitated it and
15 whether or not if the Dunns had continued to go
16 forward with what they were doing without a change in
17 the insurance contract as to whether that contract
18 would even have been a valid insurance contract Of
19 course with the changes that the Dunns made or it is
20 alleged the Dunns were making then that contract
21 would no longer have been valid anyhow as a result of
22 what the insurance company did and I don't think that
23 there would be any cause of action against any of the
24 plaintiffs for a contract that the insurance company
25 would have on their own have terminated because of a

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1 change in conditions that they were not advised of by
2 their own policyholder

3 They may have concluded that that was a breach
4 of that contract or that anything that was being done
5 would not have been covered so I'm just not sure of
6 what that contract is so I'm going to leave that
7 cause of action in effect

8 But those are the rulings of the Court
9 Whether they are correct or incorrect is for an
10 appellate court to decide should that become an
11 issue but I would ask Mr Scoville that you
12 prepare me a proposed order for summary judgment
13 along the lines of what I have indicated today
14 submit it to Mr Tisdale for his review and try to
15 keep it simply to what I have found today

16 Sometimes lawyers inadvertently I will say
17 put certain findings into proposed orders on summary
18 judgment that are not necessary simply for what I've
19 ruled for today and I don't want to try to put
20 something into the record as a finding or a ruling
21 that would somehow or another prejudice the trial in
22 this case when it's not really necessary for what
23 I've done today so if Mr Tisdale -- if you have
24 certain objections to what he's proposed make those
25 known to him If y'all can't work it out I'll take

222

1 your order I will take your objections and then
2 I'll fashion something and make a determination as to
3 whether those objections are valid or not and see
4 what we can do from there

5 I do not know when there is another term of
6 court coming up down here Mr Clerk when does it
7 look like this case would probably hop up again?

8 MR SCOVILLE It's up for September
9 Your Honor There's a term of court and it's pretty
10 high on the roster

11 THE CLERK September 4th and 5th
12 is the next non-jury

13 THE COURT Well it would be up
14 for jury as a result of what I'm doing now When is
15 the next jury trial ---

16 THE CLERK September the 8th

17 THE COURT September the 8th All
18 right well if y'all will go ahead and try to get me
19 the order as quickly as you can I have the good
20 fortune of being in Darlington next week and it
21 appears that my docket is falling apart so if you
22 can get it to me next week we ought to be able to
23 resolve it next week Thank y'all very much

24 MR TISDALE Thank you

25 MR SCOVILLE Thank you Your Honor

223

1 THE COURT And thank you for the
2 memorandums et cetera that you provided to me
3 because that made it easier for me to work through
4 this thing and to be better prepared Thank you
5 again for agreeing that the best way to have handled
6 this case was to do it today and not to have tried to
7 have done it back on July 10th because I think that
8 would have been disaster for everybody so I
9 appreciate y'all coming back today to have these
10 arguments

11 MR TISDALE Thank you Your Honor

12 MR SCOVILLE Thank you Your Honor

13 THE COURT Thank you very much

14 (Conclusion of Transcript of Record)
15
16
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25

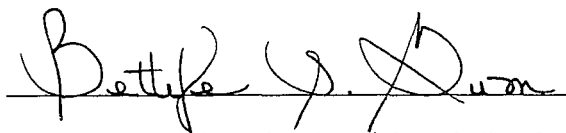
224

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

I the undersigned Bettye S Gum Certified Court Reporter and Notary Public in and for the State of South Carolina do hereby certify that the foregoing is a true accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case as taken by Dixie Cox Eubank Official Reporter and transcribed by me relative to appeal in the Court of Common Pleas for Georgetown County South Carolina

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

October 15 2008


BETTYE S GUM CCR-CVR-CM

Certified Court Reporter and
Notary Public for South Carolina
My Commission Expires 7/13/14

225

ASSIGNMENT AND INDEMNIFICATION AGREEMENT

THIS ASSIGNMENT AND INDEMNIFICATION AGREEMENT (the 'Agreement') dated as of September 6, 2006, is made by and between HELEN SASSER ("Assignor") and LEVON DUNN and PAMELA S DUNN (collectively hereinafter the 'Assignee'),

WHEREAS, Assignor sold to Stoney L Harrelson that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Sasser to Stoney L Harrelson dated June 29, 1988, and recorded in the RMC Office for Georgetown County, South Carolina on June 29, 1988, in Book 292, at Page 240 ('Lot 5-E'),

WHEREAS, Assignor sold M T Coleman, Stoney L Harrelson, Creola L Harrelson, David M Croyle, Linda C Croyle, Thomas C Meyer and Marie D Meyer that certain property lying and being in Georgetown County, South Carolina as more fully described in the deed from Assignor dated September 5, 1991, and recorded in the RMC Office of Georgetown County, South Carolina on September 5, 1991 in Book 441, at Page 14 ('Lot 5-W'),

WHEREAS Assignor sold Joseph A Holmes that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Joseph A Holmes dated March 17, 1983 and recorded in the RMC Office of Georgetown County, South Carolina on March 18 1983 in Book 207, at Page 758 ('Lot 6'),

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 750 ('Lot 7'),

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 754 ('Lot 8')

WHEREAS, Assignor sold to Assignee that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to the Assignee dated March 17, 1983, and recorded in the RMC Office for Georgetown County South Carolina on March 18, 1983, in Book 207 at Page 746 ('Lot 9'),

WHEREAS, Assignor sold to Carl B Singleton, Sr and Eula V Singleton that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Carl B Singleton, Sr and Eula V Singleton dated December 30, 1982, and recorded in the RMC Office for Georgetown County, South Carolina in Book 205 at Page 1567 ('Lot 10')

WHEREAS, the deeds referenced above (collectively hereinafter the Deeds) contain the following restrictions and covenants on the properties more fully described in the Deeds

226

[t]his conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers their heirs and assigns

1 That the expression 'Developer' as used herein shall be construed to mean Helen Sasser, her heirs and assigns,

2 No lot shall be used for commercial purposes without express written consent from Developer,

3 No lot shall be divided or subdivided without written consent from the Developer,

4 No more than one building shall be erected on any one lot,

5 No building shall be erected or altered on any lot until the building plans or alteration plans, and location on the said lot, shall have been approved by the Developer. There will be no size restrictions on the building. The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision,

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months,

7 No person shall maintain on any lot a "mobile home or residential trailer"

8 In the event any of the above covenants shall be deemed invalid, then such invalidity shall in no way affect any of the remaining covenants

WHEREAS, Assignor desires to assign its rights as Developer under the Deeds to Assignee,

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows

1 Assignment Assignor hereby assigns to Assignee, absolutely and not as security for the performance of any obligation, all of Assignor's right and interest as Developer under the Deeds, and hereby delegates to Assignee all of Assignor's duties under the Deeds

2 Acceptance and Assumption Assignee hereby accepts this assignment, and agrees to assume all of the obligations of the Assignor under the Purchase Agreement

3 Consideration Assignee shall pay to Assignor the sum of Fifteen Thousand and 00/100 (\$15,000) Dollars as consideration of this Agreement. Assignee shall pay Ten Thousand and 00/100 (\$10,000) Dollars upon the execution of this Agreement by wire transfer or other certified funds and shall pay the remaining consideration by giving Assignor a Note in the

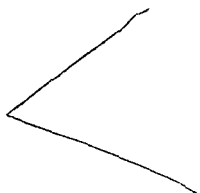
227² -

principal amount of Five Thousand and 00/100 (\$5,000) Dollars. The unpaid principal amount of the Note shall bear interest at the rate of zero percent (0%) per annum and shall be due and payable on January 10, 2007.

4 Indemnification. Assignee hereby agrees to protect, defend, indemnify and hold Assignor harmless from and against any and all causes of action, claims, losses, costs, damages, demands, liabilities and expenses of any nature whatsoever (including without limitation attorneys' fees) which result from or arise by reason of Assignor's assignment hereof and any action taken by Assignee with respect to the Developer rights after closing. Assignor has full power and authority to make this assignment and owns the Developer rights under the Deeds free and clear of the rights of any third party.

5 Miscellaneous. This Agreement and all of the terms, provisions and covenants contained herein shall apply to, be binding upon, and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be varied, amended, or superseded except by written agreement between the parties hereto. This Agreement may be executed in duplicate counterparts (by original or facsimile signature), each of which shall constitute an original and all of which taken together shall constitute a single original agreement. In the event of any dispute hereunder, the prevailing party in any litigation or other proceedings shall be reimbursed by the non-prevailing party, for all costs and expenses, including, without limitation attorneys' fees, whether incurred in connection with trial, administrative, appellate, bankruptcy, or any other form of proceedings. The indemnification obligations set forth herein shall be perpetual and shall survive Closing. The Agreement shall be governed by the laws of the State of South Carolina.

[SEPARATE SIGNATURE PAGE ATTACHED]

A large, stylized handwritten signature, possibly reading '228', is written in black ink.A smaller, stylized handwritten signature, possibly reading '228', is written in black ink.

IN WITNESS WHEREOF, the parties have executed this Assignment under seal as of the date written above

Witnesses

ASSIGNOR

HELEN SASSER

Graig Pancy
Pamela J Verble

Helen Sasser
Date 9/5/06

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 5th day of SEPTEMBER, 2006, by Helen Sasser

Pamela J Verble
Notary Public PAMELA J VERBLE
My Commission Expires 1/28/09

229

Witnesses

ASSIGNEE

LEVON DUNN

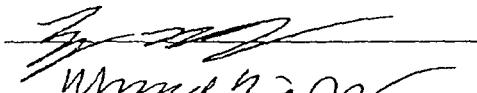


Wm. H. Hylton

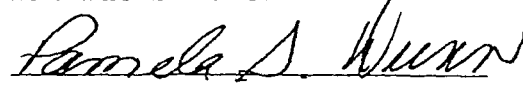


Date September 6, 2006

PAMELA S DUNN



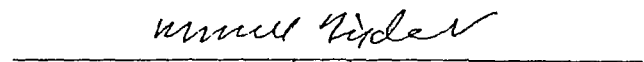
Wm. H. Hylton



Date September 6, 2006

STATE OF South Carolina)
COUNTY OF Charleston)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September, 2006, by Lavon Dunn



Notary Public South Carolina
My Commission Expires 8/16/07

STATE OF South Carolina)
COUNTY OF Charleston)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September, 2006, by Pamela S Dunn



Notary Public South Carolina
My Commission Expires 8/16/07

INSTRUMENT 4001 F098
2006000190178 185 262

DUPLICATE

40450 Nexsen Pruet LLC

2006000190178
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
No-11-2102 At VI SC
At IGMENTID 1, III
STATE TAX " "
COUNTY TAX " "
Paid 155 10-2 262

Wanda Q Overette

231

TS
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

Dunn-0064

Pursuant to that certain ASSIGNMENT AND INDEMNIFICATION AGREEMENT between that Helen Sasser and Declarants dated September 6, 2006 ("Assignment Agreement"), Helen Sasser assigned to Declarants all of her right and interest as Developer under the Deeds

Declarants now wish to consent to the use of the property, more fully described in the Deeds, for all commercial uses, as required by the second restriction in the Deeds and repeated herein by execution of this instrument Further, Declarants now wish to consent to the division and subdivision of the property, more fully described in the Deeds, as required by the third restriction in the Deeds and repeated herein by execution of this instrument Therefore, pursuant to the Assignment Agreement and this Release, restriction two and three of the Deeds are hereby released as to that property, more fully described in the Deeds, and shall no longer have any force or effect on the property, by execution of this instrument

[SIGNATURE PAGE ATTACHED]

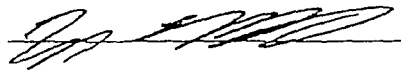
253

IN WITNESS WHEREOF, this Release is duly executed as of the 6th day of September, 2006

DECLARANTS

IN THE PRESENCE OF

Levon Dunn


Munee. Kider

Name Levon Dunn
Date 9/6/2006


Munee. Kider

Pamela S Dunn

Name Pamela S. Dunn
Date 9/6/2006

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas H. Linder, a notary public for South Carolina, do hereby certify that Levon Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September, 2006

Thomas H. Linder (SEAL)

Signature of Notary Public
Notary Public for the State of South Carolina
My commission expires 3/16/09

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas H. Linder, a notary public for South Carolina, do hereby certify that Pamela S. Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September 2006

Thomas H. Linder (SEAL)

Signature of Notary Public
Notary Public for the State of South Carolina
My commission expires 3/16/09

235

752

Dunn 005

75
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

2005 1 3
185 265

Amulip

44450 Nexsen Pruet LLC
2005011917
Filed for record in
GEORGETOWN SC
REGISTER OF DEEDS
ON 11-20-05 at 11:57 AM
WEST COVE 17 000
STATE TAX 00
COUNTY 174
Book 105 Page 1
Wanda J. Overatta

PG 7X 441 PAGE 14

COUNTY OF GEORGETOWN

That I Helen Sasser

to me paid by M T Coleman Stoney L Harrelson and Creola C Harrelson
David M Croyle and Linda C Croyle and Thomas C Meyer
and Marie D Meyer
605 Plantation Circle Conway S C

In the State of receipt (Receipt with receipt) her by acknowledged _____

have granted, bargained, sold, aliened, released and by these presents do grant, bargain, sell and release unto the said

In the following proportions M T Coleman (25%), Stoney L Harrelson (12%) Creola C Harrelson (12%) David M Croyle (12%) Linda C Croyle (12%) Thomas C Meyer (12%) and Marie D Meyer (12%) they heirs and assigns the following described property forever to wit

SEE ATTACHMENT "A for PROPERTY DESCRIPTION AND DERIVATION

SEE ATTACHMENT B for RESTRICTIONS

BETTY I WILLIAMS
CCGUGS

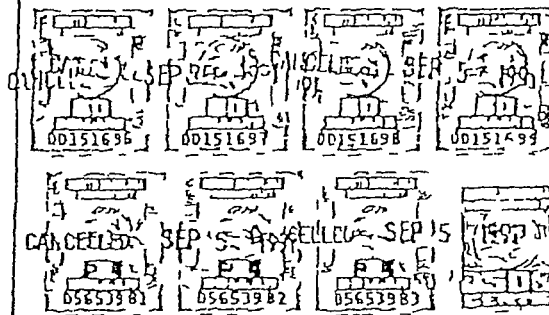
FILED

91 SEP -5 PM 2 04

GEOGRAPHIC UTILITY SC
BOOK PAGE

Lot 5-W

237



PAID
GEORGETOWN
COUNTY
STAMPS
\$101.75

TOGETHER with it and give the Right Member of the Court and Appointees to the said premises below in the year 1891 for the purpose of

TO HAVE AND TO HOLD it and singular the premises to be mentioned unto the said
M T Coleman Stoney L Harrelson Creola C Harrelson David M
Croyle Linda C Croyle Thomas C Meyer and Marie D Meyer their

Heirs and Assigns forever

And I do hereby bind myself and my Heirs and Assigns to the said premises and to ever defend it and give the said premises unto the said

M T Coleman Stoney L Harrelson Creola C Harrelson David M
Croyle Linda C Croyle Thomas C Meyer and Marie D Meyer

their Heirs and Assigns, in
myself and my Heirs and Assigns, in

I wholly of the said premises

the same or any part thereof

Witness the seal on the of by grantor this 5th day of September

In the year of our Lord one thousand and Ninety One
and in the two hundred fifteenth

of the Sovereignty and Independence of the United States of America

Signed, Sealed and Delivered
in the presence of

Philip H. Sasser
Philip H. Sasser

Philip H. Sasser (L. S.)
Helen Sasser (L. S.)
(L. S.)
(L. S.)
(L. S.)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY appeared before me Phillip D Sasser
and in do to th t h s w l h e w n h n med Helen Sasser

Seal and her Act d Deed deliver th w th n w t t n Deed and th t h e w th
Carol P Milligan w t n s d the e scut on th roof

Sworn to before me this 5th
day of September A. D. 19 91

Carol P Milligan (L S)
Notary Public for South Carolina
My Commission expires 8/31/97

Phillip D Sasser

ATTACHMENT A
PROPERTY DESCRIPTION

ALL AND SINGULAR those certain pieces parcels or tracts of land in Georgetown County containing in the aggregate approximately 18 32 acres more or less and being more particularly described as follows

PARCEL 1

ALL AND SINGULAR that certain piece parcel or tract of land in Georgetown County being more particularly described as Lot 5-W containing 1 38 acres as is shown on a plat by Wendell C Powers dated May 10 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 2

ALL AND SINGULAR that certain piece parcel or tract of land lying situate and being in Georgetown County containing 1 66 acres as is more particularly shown on a plat by Terry M Watson R L S dated January 23 1984 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 3

ALL AND SINGULAR those certain pieces parcels or tracts in Georgetown County being designated as Lots 1 2 3 4 5 and 6 as is shown on a plat by Wendell C Powers R L S dated August 3, 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 4

ALL AND SINGULAR that certain piece parcel or tract of land being more commonly referred to as the "Sasser Pond" and is collectively shown on the aforesaid plats

It is the intent of the grantor herein to convey to the grantees all of her ownership interest of approximately 18 32 acres, being the remaining portions of the tracts heretofore conveyed to her by D W Green et al by deed dated July 28, 1978 recorded July 31 1978 in Deed Book 160 at Page 772, Office of Clerk of Court for Georgetown County

This conveyance is subject to those right-of-way easements previously granted by the grantor herein in various deeds of conveyances which are duly recorded in the Office of the Clerk of Court for Georgetown County

240

This conveyance is also subject to the grantor's son, Charles Sasser, retaining the right to use the boat ramp on Lot 5-W and Sasser Pond for and during the period of his natural life

This conveyance is subject to those restrictions of record as contained herein as well as is contained in the deed of Helen Sasser to Joseph Holmes dated March 17 1983 recorded March 18 1983 in Deed Book 207 at Page 758, Office of the Clerk of Court for Georgetown County

It is the intent of the grantor herein to convey all remaining property as contained in the deed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31 1978 in Deed Book 160 at Page 772 Office of the Clerk of Court for Georgetown County

This is a portion of the property conveyed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31 1978 in Deed book 160 at Page 772, Office of the Clerk of Court for Georgetown County

Restriction

1/20
203 50
101 75
314 25

M T HAWK III
PO Box 377
Conway SC
29526

Acres for \$

Township

Purch and

STATE OF SOUTH CAROLINA

GEORGETOWN

COUNTY OF

Helen Sasser

1230
TD 3

TO (Address)

Creola C Harrelson, et al
605 Plantation Circle
Conway South Carolina 29526

TITLE TO REAL ESTATE

(Private Individual to Another)

I hereby certify that the within deed has been this

5th day of September A.D.

1991 Recorded in Book 441 of

deeds, Page 14 at 2:04 o'clock P.M.

Wanda G. Grevette, Deputy

Clerk of Court of Georgetown County

I hereby certify that the within deed has been this

6th day of September A.D. 1991

Transferred on Auditor's Book Page

Doris J. Whitman, Deputy

Auditor of Georgetown County

THES/VE
000-000-000

H.B. 7
T HES/VE PUBLISHING Co.
CONWAY S.C.

COW IT FULL

3-110-13

M.S.

19

BOOK 441 PAGE

242

207 758

THE V. BLANK No. 7 TITLE TO REAL ESTATE
T. H. PULLEN & CO. COUNTY S. C.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN



PAID
GEORGETOWN
COUNTY
STAMPS
\$16.50

FILED
KERRY L. WILLIAMS
CCOP & L
MAR 18 9 53 AM '83
L. I. COUNTY S. C.

Know all Men by these Presents,

That I Helen Sasser

is the State aforesaid for and In consideration of the
sum of Fifteen Thousand and no/100 (\$15,000.00) DOLLARS

to me paid by Joseph A. Holmes
201 Lakeland Drive Conway SC 29526

in the State aforesaid, (Receipt whereof is hereby acknowledged)
have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said
Joseph A. Holmes, his heirs and assigns forever.

All and singular all that certain piece parcel or lot of
land situate lying and being in Georgetown County South
Carolina and shown and designated as Lot No Six (6) on a
map of six (6) acres of land in Georgetown County owned by
Helen Sasser said map having been prepared by Terry M. Watson
R. L. S. dated October 26 1982 and recorded November 19 1982
in Plat Book 2 Page 203 records of Georgetown County reference
to which is craved as forming a part of these presents

Said lot is more particularly bounded as follows On the
North by Lot No 7 on the East by the Pee Dee River on
the South by Lot No 5 and a 30 foot road and on the West
by lands of Helen Sasser

This being a portion of the property heretofore conveyed to
Helen Sasser by D. W. Green et al by deed dated July 28
1978 and recorded July 31 1978 in Deed Book 160 at Page
772 records of Georgetown County

This conveyance also includes an easement over and across the exist-
ing road which runs from South Carolina Highway No 52 to the above
cornered lot as well as an easement over and across the proposed
30 foot road extending across Lot No 5 (all of which is shown on
the above-referred to plat) for the purposes of ingress and egress
to the property conveyed

In addition to the property conveyed herein there is further conveyed
all of the right title and interest of the grantor in the area
between the front lot line and the Pee Dee River

Lot 6

243

Trms # 03-110-8

257, 759

This conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers their heirs and assigns

- 1 That the expression "Developer" as used herein shall be construed to mean Helen Sasser her heirs and assigns
- 2 No lot shall be used for commercial purposes without express written consent from the Developer
- 3 No lot shall be divided or subdivided without written consent of the Developer
- 4 No more than one building shall be erected on any one lot
- 5 No building shall be erected or altered on any lot until the building plans or alteration plans and location on the said lot shall have been approved by the Developer There will be no size restrictions on the building The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision
- 6 The exterior walls of any building on which construction is started must be completed within twelve (12) months
- 7 No person shall maintain on any lot a mobile home or residential trailer
- 8 In the event any of the above covenants shall be deemed invalid then such invalidity shall in no way affect any of the remaining covenants

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said:

Joseph A Holmes his

Holds and Assigns forever

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend it and sing in th said premises unto the said

Joseph A Holmes his

Heirs and Assigns, against

ME and MY Heirs, and all person whatsoever

lawfully claiming or to claim the same or any part thereof

Witness the execution hereof by grantor this 17th day of March

In the year of our Lord one thousand and Eighty-three

and in the Two Hundred and Seventh year

of the Sovereignty and Independence of the United States of America

Helen Sasser (L.S.)
HELEN SASSER

Signed, Sealed and Delivered in the Presence of

William C. Burren-fis
William C. Burren-fis

(L.S.)
(L.S.)
(L.S.)
(L.S.)
(L.S.)

24K

267, 760

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY appeared before me Joanne C. Burroughs
and made oath that she saw the within named Helen Sasser

Sign, Seal and Deliver the within written Deed and that she with
Phillip D. Sasser witnessed the execution thereof

Sworn to before me this 17th

day of March A. D. 1983
Phillip D. Sasser (L.S.)
Notary Public for South Carolina
My Commission expires 1/24/90

Joanne C. Burroughs

RENUNCIATION OF DOWER

STATE OF SOUTH CAROLINA,

NONE REQUIRED - WOMAN GRANTOR

COUNTY OF _____

I _____ do hereby certify
that _____ whom it may concern that _____
the _____ of the within _____ married _____ to _____ day _____ appeared before me _____ upon being privately and separately examined
by me did declare that she does freely voluntarily and without any compulsion and a fear of _____ person or persons
whomsoever renounce and release and forever relinquish _____ within named grantee _____ Helen and Ann
Sasser all her right, interest and also all her right and claim of Dower _____ in or to all and singular the premises
with _____ mentioned and released

Given under my Hand and Seal this _____ day of _____ Anno Domini 19____

Notary Public for South Carolina (L.S.) _____ (L.S.)
My Commission expires _____

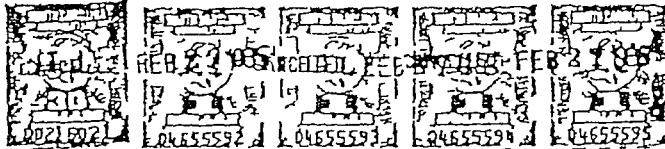
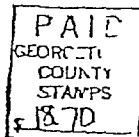
245

BOOK 224 OF GE 581

THEREAVE BLANK No 7 TITLE TO REAL ESTATE
FOR THE PERSONS T FOR THE PERSONS
THEREAFTER PUBLISHED BY CO., CONWAY S. C.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN


 FILED
 HITTLY MILLER
 GEORGETOWN
 FEB 26 1 38 PM '85
 GEORGETOWN
 WYER
 NOTICE


Know all Men by these Protocols,

That we Carl B Singleton Sr and Eula V Singleton

In the State aforesaid for and In consideration of the

sum of EXCHANGE OF PROPERTY HAVING A VALUE OF SEVENTEEN THOUSAND DOLLARS (\$17 000)

to US paid by LEYON DUNN
(604 26th Avenue 5 North Myrtle Beach SC 29582)
 In the State aforesaid, (Receipt whereof is hereby acknowledged)
 have granted, bargained, sold and released and by these presents do I, etc. bargain, sell and release unto the said
 LEYON DUNN, his heirs and assigns, the following described property
 to wit:

ALL AND SINGULAR all that certain piece parcel or lot of land situate lying and being in Georgetown County South Carolina and shown and designated as Lot No Ten (10) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser said map having been prepared by Terry M Watson R L S dated October 26 1982 and recorded November 19 1982 in Plat Book 2 at Page 203 records of Georgetown County reference to which is craved as forming a part of these presents and for a more accurate and complete description of the premises

Said lot is more particularly bounded as follows On the North by a slew (as shown on said map) and other lands of Helen Sasser on the East by the Pee Dee River on the South by Lot No 9 and a proposed thirty (30)-foot road and on the West by the lands of Helen Sasser

This being the same property conveyed to Carl B Singleton Sr and Eula V Singleton by deed of Helen Sasser recorded December 30 1982 in Deed Book 205 at Page 1567 in the Office of the Clerk of Court for Georgetown County

This conveyance also includes an easement over and across the existing road which runs from S C Highway #50 to the above-conveyed lot as well as an easement over and across the proposed thirty (30)-foot road shown on the plat and referred to in the above description for the purposes of ingress and egress.

[continued]

246

B. J. 224 PLCE 582

This conveyance is made subject to the following restrictive covenants which are deemed to be running with the land and are bound on the purchaser his heirs and assigns

1 At the expression Developer as used herein shall be construed to mean Helen Sasser her heirs and assigns

2 No lot shall be used for commercial purposes without express written consent from the Developer

3 No lot shall be divided or subdivided without written consent of the Developer

4 No more than one (1) building shall be erected on any one lot

5 No building shall be erected or altered on any lot until the building plans or alteration plans and location on the said lot shall have been approved by the Developer There will be no size restriction on the building The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months

7 No person shall maintain on any lot a mobile home or residential trailer

8 In the event any of the above covenants shall be deemed invalid then such invalidity shall in no way affect any of the remaining covenants

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said.

Levon Dunn and his

Heirs and Assigns forever

And WE do hereby bind ourselves and our Heirs and Executors and Administrators to warrant and forever defend all and sing for the said premises unto the said

Levon Dunn and his

Heirs and Assigns against

US and OUR Heirs and all persons whomsoever lawfully claiming, or to claim

the same or any part thereof

Witness th execution hereof by grantor th 25th day of February,

In the year of our Lord a thousand nine hundred and eighty-five

nd in the two hundred ninth year

of the Sovereignty and Independence of the United States of Am

Signed, Sealed and Delivered
in the Presence of

John C. Ray
James B. Allen

Carl B. Singleton (L. R.)

Eula V. Singleton (L. R.)

Eula V. Singleton (L. R.)

Eula V. Singleton (L. R.)

247

STATE OF SOUTH CAROLINA ⁹ 224 PAGE 583

COUNTY OF HORRY

PERSONALLY appeared before me JOANN C RAY
and made oath that she saw the within named Carl B Singleton Sr and
Eula V Singleton

Sign, seal and as their Act and Deed deliver the within written Deed and that she with
Demaris M Rabon witnessed the execution thereof.

Sworn to before me this 25th
day of February, A. D. 1985

Joann C Ray (L.S.)
Notary Public for South Carolina
My Commission expires 12/10/90

Joann C Ray

STATE OF SOUTH CAROLINA,

RENUNCIATION OF POWER
Abolished by law

COUNTY OF _____

I _____ do hereby certify
unto all whom it may concern that Mrs. _____
the wife of the within named grantor did this day appear before me and upon being privately and separately examined
by me did declare that she does freely voluntarily and without any compulsion dread or fear of any person or persons
whomsoever renounce release and forever relinquish unto the within named _____ heirs and assigns
all her interest and estate and also all her right and claim of Power of Attorney and singular the premises
within mentioned and released

Given under my Hand and Seal this _____ day of _____ Anno Domini 19____

Notary Public for South Carolina (L.S.) _____ (L.S.)
My Commission expires _____

248

BOOK 224 PAGE 584

4.00 Allen & Ray
34.00 R. B. Boys II
18.70 Conway SC 29526
7140

Acres for \$

Township

Purchased

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Carl B Singleton Sr and
Eula V Singleton

TO (Addressee)

Levon Dunn
604 26th Avenue S
North Myrtle Beach SC 29582

TITLE TO REAL ESTATE

(Private Individual to Another)

I hereby certify that the within deed has been this
10th day of February A. D.
1965 Recorded in Book 224 of
deeds, Page 581 at 1:38 o'clock P. M.
Wanda D. Dwyer
Clerk of Court of Georgetown County

I hereby certify that the within deed has been this
27th day of Feb A. D. 1965

Transferred on Auditor's Book Page 47-1224

Auditor of Georgetown County

THE SAYER
PUBLISHING CO.

No. 7
THE SAYER PUBLISHING CO.
CONWAY S. C.

COUNTY PARCEL # 3-110-17

1965

249

9153

BOOK 594 PAGE 43

FILED
LITTYLL WILLIAMS
CCCP & GS
94 SEP 29 PM 2 49
BOOK 594 PAGE 43

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS That Riverside Inc
in the State aforesaid for and in consideration of the sum of
FIVE AND NO/100 (\$5 00) DOLLARS to me paid by Levon Dunn
(the receipt whereof is hereby acknowledge), has granted,
bargained, sold and released and by these presents does grant
bargain, sell and release unto the said Levon Dunn his heirs and
assigns forever all right, title and interest in and to the
following described property to wit

ALL AND SINGULAR all that certain piece parcel or lot of land
situate, lying and being in Georgetown County South Carolina
and shown and designated as Lot No Nine (9) on a map of six (6)
acres of land in Georgetown County owned by Helen Sasser said
map having been prepared by Terry M Watson, R L S dated October
26, 1982 and recorded November 19 1982 in Plat Book 2 at Page
203, Clerk of Court for Georgetown County reference to which is
craved as forming a part of these presents

Said lot is more particularly bounded as follows on the North
by Lot No 10 on the East by the Pee Dee River on the South
by Lot No 8 and a 30 foot road and on the West by lands now or
formerly of Helen Sasser

This conveyance also includes an easement over and across the
existing road which runs from South Carolina Highway No 52 to
the above conveyed lot as well as an easement over and across
the proposed 30 foot road extended across Lots 5, 6, 7 and 8 (all
of which are shown on the above referenced plat) for the purposes
of ingress and egress to the conveyed property

In addition to the property conveyed herein, there is further
conveyed all of the right, title and interest of the grantor in
the area between the front lot line and the Pee Dee River

This conveyance is subject to the Restrictions set forth in the
deed from Helen Sasser to Levon Dunn recorded in Deed Book 207 at
Page 746 Clerk of Court for Georgetown County, S C

This being the identical property conveyed to Riverside Inc by

252

BOOK 594 PAGE 44

deed of Shirley Long Johnson dated January 3, 1993 recorded February 17 1993 in Deed Book 559 at Page 102, Clerk of Court for Georgetown County, S C

ALSO, ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate lying and being in Georgetown County, South Carolina and shown and designated as Lot No 10 (10) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser said map having been prepared by Terry M Watson R L S dated October 26 1982 and recorded November 19 1982 in Plat Book 2 at Page 203, Clerk of Court for Georgetown County reference to which is craved as forming a part of these presents and for a more accurate and complete description of the premises

Said lot is more particularly bounded as follows on the North by a slew (as shown on said map) and other lands now or formerly of Helen Sasser on the East by the Pee Dee River on the South by Lot No 9 and a proposed 30-foot road and on the West by lands now or formerly of Helen Sasser

This conveyance also includes an easement over and across the existing road which runs from S C Highway No 50 to the above-conveyed lot, as well as an easement over and across the proposed thirty (30) foot road shown on the plat and referred to in the above description for the purposes of ingress and egress

This conveyance is subject to the Restrictions set forth in the deed from Carl B Singleton, Sr and Eula V Singleton to Levon Dunn recorded in Deed Book 244 at Page 581, Clerk of Court for Georgetown County S C

This being the identical property conveyed to Riverside, Inc by deed of Shirley Long Johnson dated January 3, 1993 recorded February 17, 1994 in Deed Book 559 at Page 101, Clerk of Court for Georgetown County, S C

ALSO ALL AND SINGULAR that certain piece parcel or tract of land, situate lying and being in Georgetown County, S C containing eight and fifteen one-hundredths (8 15) acres, as shown on a plat of same prepared for Levon Dunn by Terry M Watson, R L S dated March 2, 1985 recorded in Plat Book 5 at Page 400 Clerk of Court for Georgetown County, S C reference to which is craved as forming a part hereof and for a more complete accurate description

This being the identical property conveyed to Riverside Inc by deed of Shirley Johnson Long dated January 3 1993 recorded February 17 1994 in Deed Book 559 at Page 101, Clerk of Court for Georgetown County, S C

ALSO, ALL AND SINGULAR that certain piece parcel or lot of

251

BOOK 594 PAGE 45

Land lying situate and being in Georgetown County S C containing 0.52 acres as shown on a plat by Terry M. Watson R L S dated June 28 1994 and recorded in P. at Book 51453 at Page 9, Clerk of Court for Georgetown County and by reference thereto is incorporated as forming a part and parcel of this description

This property is more particularly bounded as follows on the North by lands of now or formerly of Riverside Inc in part and lands now or formerly of M T Coleman, et al in part on the East by lands now or formerly of M T Coleman et al on the South by a thirty (30) foot private road in part and the northern margin of Frederick Drive in part and on the West by lands now or formerly of Riverside, Inc

This conveyance is subject to an easement for purposes of drainage for an existing pond commonly referred to as "Sasser Pond"

This is the identical property conveyed to Riverside, Inc by deed of M T Coleman et al dated August 25 1994 recorded September 9 1994 in Deed Book 590 at Page 303, Clerk of Court for Georgetown County, S C

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Levon Dunn, his heirs and assigns forever

And the said Grantor does hereby bind itself its successors and assigns to warrant and forever defend all and singular the said premises unto the said Levon Dunn, his heirs and assigns lawfully claiming or to claim the same or any part thereof

IT WITNESS WHEREOF, the Grantor, Riverside Inc, has caused these presents to be signed and sealed this 9th day of

252

BOOK 594 PAGE 46

September 17 the year of our Lord One Thousand Nine Hundred
Ninety-Four and in the Two Hundred Eighteenth year of the
sovereignty and Independence of the United States of America

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

RIVERSIDE, INC

By

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Personally appeared before me the undersigned witness
and made oath that s/he saw the within named Riverside, Inc by
Levon Dunn as Grantor Sign, Seal and as its Act and Deed deliver
the within written Deed and that s/he with the other
subscribing witness witnessed the execution thereof

SWORN to before me this

7th day of September, 1994Notary Public for South CarolinaMy Commission Expires 10/19/2002

Grantor's address Star Rt 1, Box 676
Georgetown SC 29440

253

1000 H T Abbott, III
PO Box 377
Conway SC
29524

FILED
-IT, L WILLIAMS
CLCP & GS

94 SEP 29 PM 2 48

IL 584 PAGE 43
Wanda J. Pruitt
Deputy assp

BOOK 594 PAGE 47

Riverside Inc

to

Turn Turn

Recorded this 3rd day of
October A.D. 1984

In Book _____ Page _____

Edmund H. Starnes
Auditor Georgetown Co, S.C.

WITNESSES 3-110-11
RWD BY 3-110-13 C

Lot 9 + 10

8.15 acres

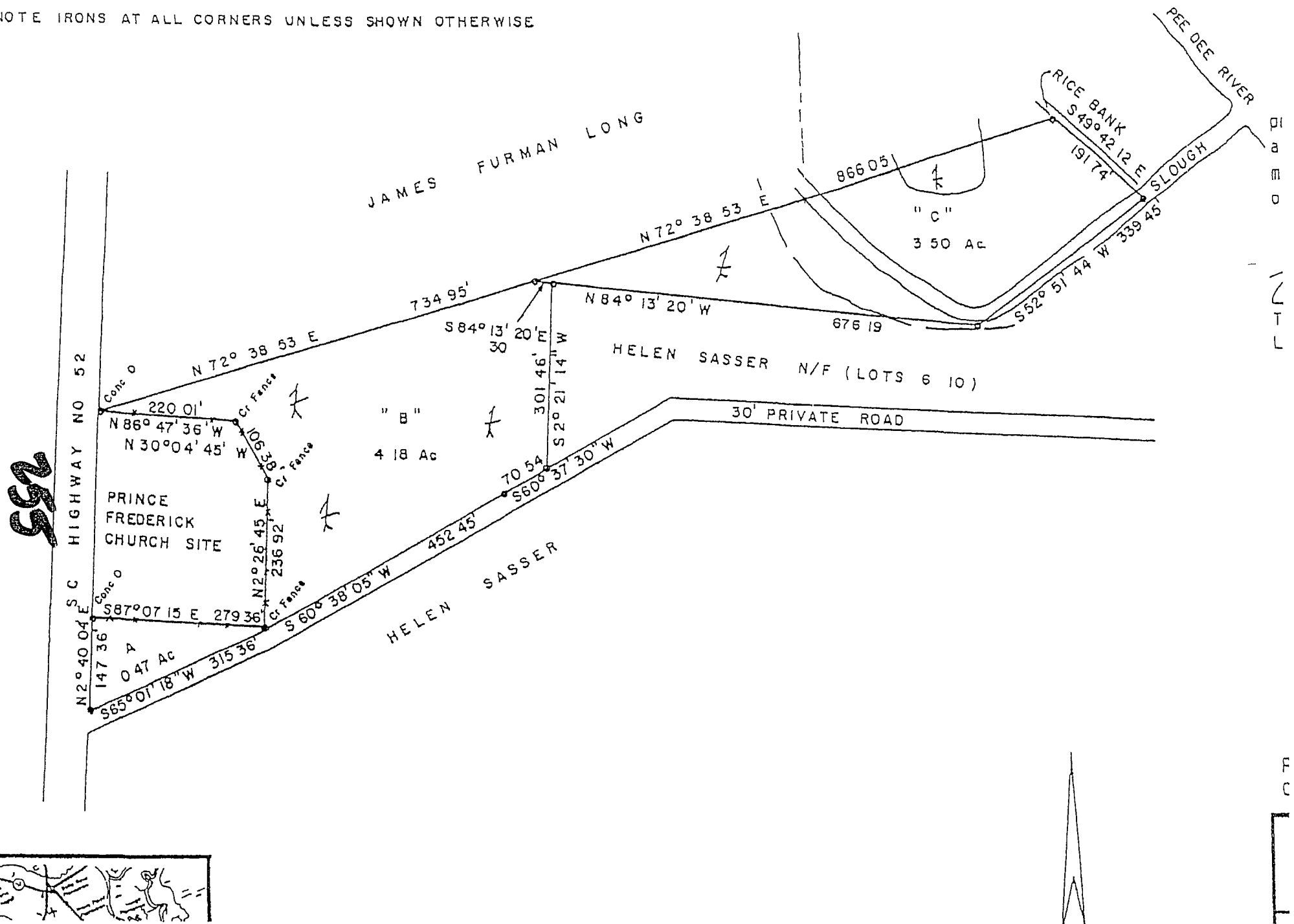
0.52 acre

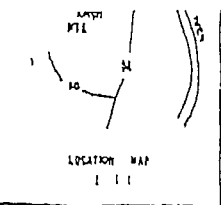
assessments

TD-3

254

NOTE IRONS AT ALL CORNERS UNLESS SHOWN OTHERWISE

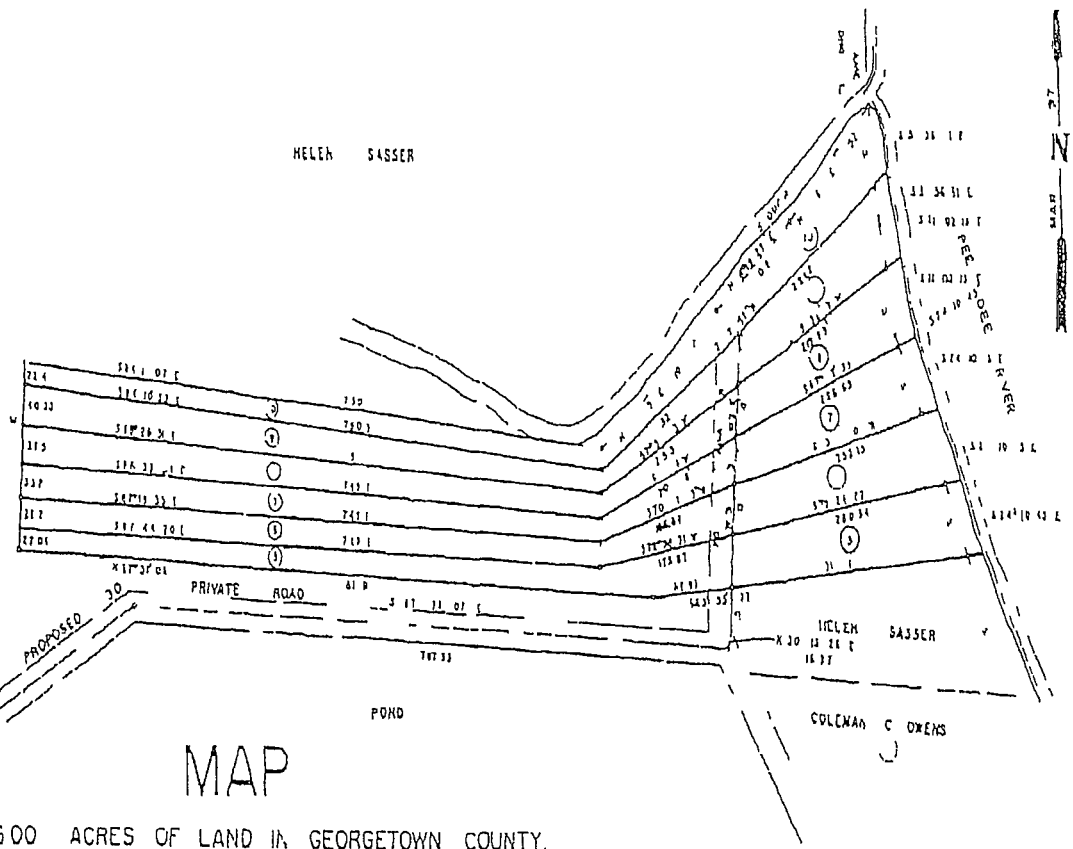




211 201
Elaine M. Robert
Deputy Corp

HELEN SASSER

HELEN SASSER



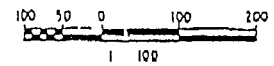
MAP

OF 600 ACRES OF LAND IN GEORGETOWN COUNTY,
S C OWNED BY

HELEN SASSER

RE MAP OF 4 LOTS BY JACK DAVIS FOR HELEN
SASSER AND MAP BY S D COX SURVEYORS, INC DATED
OCTOBER 10, 1978 FOR HELEN SASSER

OCTOBER 26, 1982



TERP H WATSON R L S LAND SURVEYING, INC
1520 4th Avenue Conway S C 29526

plot Book
2 of 203

CERTIFICATE OF ACCURACY

I HEREBY CERTIFY THAT THE PLAN SHOWN
AND DESCRIBED HEREON IS A TRUE AND CORRECT
SURVEY TO THE ACCURACY REQUIRED BY THE SCHEME
TOWN COUNTY PLANNING COMMISSION AND THAT THE
IMPROVEMENTS HAVE BEEN PLACED AS SHOWN HEREON
IN THE INTERESTS OF THE SUBDIVISION RECORD
TOWN

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM (WE ARE)
THE OWNER(S) OF THE PROPERTY DESCRIBED HEREON
AND THAT I (WE) HEREBY ADOPT THE PLAN OF
SUBDIVISION WITH ITS (OUR) FREE CONSENT ESTABLISH
THE NEIGHBORHOOD BUILDING RESTRICTION LINES AND DEC
DATE ALL STREETS ALLEYS WALKS PLACES AND
THE OTHER IMPROVEMENTS HEREON TO BE

CERTIFICATION OF THE APPROVAL OF WATER AND SEWERAGE SYSTEMS

I HEREBY CERTIFY THAT THE PRIVATE WATER
SUPPLY AND/OR SEWERAGE DISPOSAL UTILITY SYSTEM ON
THIS IS INSTALLED OR PROPOSED FOR INSTALLATION
FULLY MEET THE REQUIREMENTS OF THE SOUTH CARO
LINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CON
CE A CERT AS H

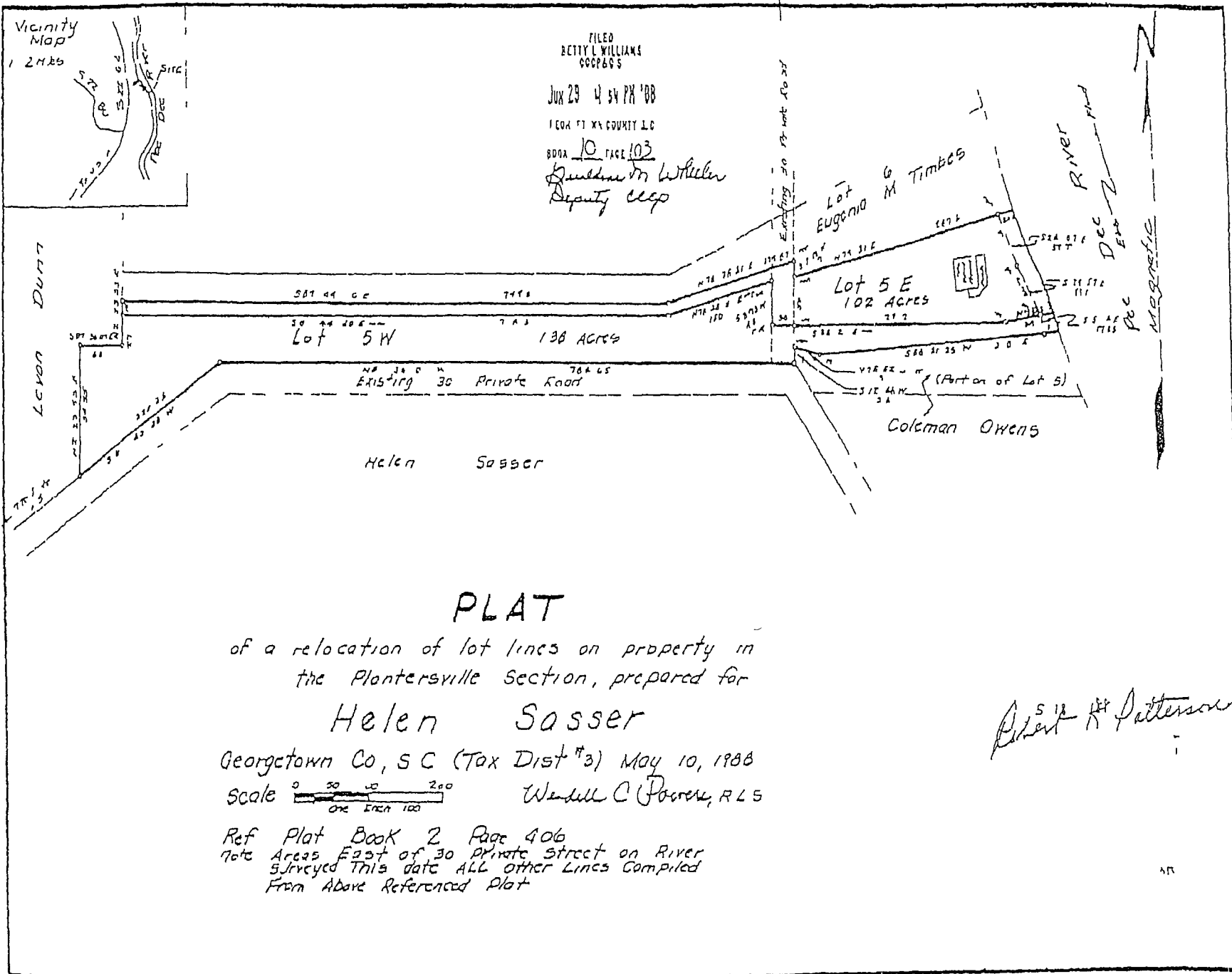
CERTIFICATE OF APPROVAL FOR REZONING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAN
SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE
SUBDIVISION REGULATIONS FOR GEORGETOWN COUNTY SOUTH
CAROLINA WITH THE EXCEPTION OF SUCH VARIANCES IF
ANY AS ARE NOTED IN THE MINUTES OF THE PLANNING
COMMISSION AND THAT IT HAS BEEN APPROVED
BY THE PLANNING COMMISSION

257

MB70

plot 10 at 102



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

AJG HOLDINGS LLC, STALVEY
HOLDINGS LLC, DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON,
CARL B SINGLETON, JR ,
VIRGINIA M OWENS and STONEY
HARRELSON,

Plaintiffs,

vs

CASE NO 2006-CP-22-914

LEVON DUNN, PAMELA S DUNN,
and HELEN SASSER,

Defendants

DEPOSITION OF JUDGE HASKELL THOMAS ABBOTT, III

DATE November 19, 2007

TIME 10 05 a m

LOCATION Law Offices of
Jack M Scoville
1001 Front Street
Georgetown, SC

TAKEN BY Counsel for the Defendants

REPORTED BY Janice N Shepherd,
Registered Professional Reporter

Computer-Aided Transcription By
A WILLIAM ROBERTS, JR , & ASSOCIATES

Charleston, SC
(843) 722-8414

Columbia, SC
(803) 731-5224

Myrtle Beach, SC
(843) 839-3376

Greenville, SC
(864) 234-7030

Charlotte, NC
(704) 573-3919

1 APPEARANCES OF COUNSEL

2 ATTORNEYS FOR THE PLAINTIFFS

3 AJG HOLDINGS LLC, STALVEY HOLDINGS LLC,
4 DAVID CROYLE, LINDA CROYLE, JEAN C
5 ABBOTT, LYNDIA T COURTNEY, SUMTER L
6 LANGSTON, DIANE LANGSTON, CARL B
7 SINGLETON, JR , VIRGINIA M OWENS and
8 STONEY HARRELSON
9 LAW OFFICES OF JACK M SCOVILLE, JR
10 BY JACK M SCOVILLE, JR
11 1001 Front Street
12 Georgetown, SC 29440
13 PHONE (843) 546-1130
14 FAX (843) 546-0726
15 scorac@aol com

16 ATTORNEYS FOR THE DEFENDANTS

17 LEVON DUNN, PAMELA S DUNN,
18 and HELEN SASSER
19 NEXSEN, PRUET
20 BY THOMAS S TISDALE, JR
21 205 King Street, Suite 400
22 Charleston, SC 29401
23 PHONE (843) 577-9440
24 FAX (843) 720-1777
25 ttisdale@nexsenpruet com

ALSO PRESENT

Pamela Dunn
Levon Dunn
Denise LeClerc

(INDEX AT REAR OF TRANSCRIPT)

255

1 JUDGE HASKELL THOMAS ABBOTT, III,
2 being first duly sworn, was examined and testified
3 as follows

4 EXAMINATION

5 BY MR TISDALE

6 Q Judge Abbott, would you state your name
7 for the record, please?

8 A H T or Haskell Thomas Abbott

9 Q And what is your residence address?

10 A 907 Applewhite Lane, Conway, South
11 Carolina, 29526

12 Q I just want to start -- well, I'm
13 obligated, as you know the deposition procedure as
14 well as anybody in the room, probably better But
15 I just want to start a thing I'm obligated to say
16 under the rules If you have any questions about
17 any question that I ask, just ask me

18 A I will do so

19 Q And we'll certainly resolve it And
20 any time you want to take a break, just say so

21 A Okay

22 Q We'll do that

23 And, Jack, we can talk about the
24 schedule and see how things go and what to do about
25 lunch and that kind of thing

1 Judge Abbott, what is your date of
2 birth?

3 A January the 1st, 1943

4 Q And where were you born?

5 A Sumter, South Carolina

6 Q Did you go to school in Sumter?

7 A No, I went to school in Conway

8 Q When did you move to Conway?

9 A Probably when I was in the -- before I
10 started the first grade

11 Q Finish high school in Conway?

12 A Yes, I did

13 Q And went to college where?

14 A Wofford

15 Q What year did you finish that?

16 A 1965

17 Q Go to law school at South Carolina?

18 A Yes, I did

19 Q Finish there in '68?

20 A '72

21 Q What did you do in between?

22 A Taught school, went on active duty for
23 the National Guard

24 Q You said law school --

25 A Finished in '72

1 Q And you began practicing law in Conway?

2 A Yes, I did

3 Q How long did you do that?

4 A I practiced in Conway until I was
5 elected, which was in 1996

6 Q Elected Family Court judge?

7 A Family Court, yes, sir

8 Q 1996?

9 A Right, sir

10 Q And I think I read that you plan to
11 retire?

12 A June of next year

13 Q Of '08?

14 A Yes, sir

15 Q What kind of law did you generally
16 practice up until '96?

17 A I was a sole practitioner, so I had a
18 general practice with an emphasis on domestic
19 relations and real estate

20 Q Have you been a Family Court judge
21 continuously since '96?

22 A Yes, I have

23 Q Now, Judge Abbott, I want to ask you
24 some general questions about the parties to this
25 lawsuit --

1 A Sure

2 Q -- just to kind of get a ground work as
3 to who is who and that sort of thing Just
4 beginning with the case heading -- let's go ahead
5 and make the deposition notice Exhibit 1

6 (DFT EXH 1, Three-page 10-19-07
7 Amended Notice of Taking Depositions,
8 was marked for identification)

9 BY MR TISDALE

10 Q The plaintiffs in the lawsuit, am I
11 correct in understanding that they are owners of
12 property --

13 A Yes, sir

14 Q -- in what we'll call the Sasser
15 Subdivision or Woodland Plantation Subdivision?

16 A Yes, sir

17 Q Both of those names okay?

18 A That's fine I don't think there is
19 any official designation, but that is fine

20 Q Well, I think it would probably be
21 simpler to call it the Sasser Subdivision

22 A Yes, sir

23 Q And AJG Holdings LLC, are you involved
24 in that company?

25 A No, I'm not

1 Q Who is, do you know?

2 A To my knowledge, I think it's Allen Ray
3 and his family

4 Q And Allen is a lawyer in Conway, is he
5 not?

6 A Yes, he is

7 Q Okay Stalvey Holdings LLC?

8 A That's Stalvey

9 Q Stalvey

10 A That's Rupert Stalvey

11 Q As far as you know, he's the owner of
12 that LLC?

13 A I don't have any knowledge either way
14 on that

15 Q Does that company own a lot in the
16 subdivision?

17 A Allen and Rupert own the end lot How
18 they hold title in it, I don't know I've never
19 looked it up

20 Q Do we have that plat of the property?
21 We might as well get straight where the end lot is

22 A It's the furthest south one

23 Q Well, let's just go ahead and take a
24 look at that, Judge Abbott That says a map of 6
25 acres of land in Georgetown County owned by Helen

1 Sasser, and the numbers are kind of cut off at the
2 bottom But it starts, it looks like, at the top
3 going 10, 9, 8, 7, 6?

4 A Yes, sir

5 Q Are those the lots that we're talking
6 about?

7 A Those are part of the lots Those are
8 the northernmost ones

9 Q All right How many lots total are
10 there in the subdivision?

11 A Somewhere in the neighborhood of 11, I
12 believe

13 Q Okay

14 A Plus there are six around the pond
15 MR TISDALE Let's go ahead and mark
16 that as Exhibit 2

17 (DFT EXH 2, One-page 10-10-78 Map
18 of 6 Acres of Land in Georgetown
19 County, SC, Owned by Helen Sasser,
20 was marked for identification)

21 BY MR TISDALE

22 Q Looking at this Exhibit 2, Judge, where
23 would the lots be that you say are not shown on
24 here?

25 A They would be to the south of that,

1 towards the bottom

2 Q Okay And it starts out -- this thing
3 is cut off, and you can't read it But it says
4 C-O-L-E That would be in that direction, one of
5 the lots?

6 A Yes, sir

7 Q All right Now, look at this That's
8 another part of a plat Do you recognize the
9 configuration there?

10 A Yes, sir

11 Q What does it show?

12 A This is the property that is not in the
13 subdivision It is between the road and Mr Dunn's
14 property and Furman Long, as it shows on the plat

15 Q And just for orientation, it shows the
16 Prince Frederick Church sight?

17 A Yes, sir

18 Q On Highway 52, SC Highway 52?

19 A Yes, sir

20 Q Where in relation to this property
21 would be the -- how many lots did you say there
22 were, ten?

23 A I believe there are 11, Mr Tisdale,
24 but I'm not sure on that

25 Q Where is this property in relation to

1 the 11 lots?

2 A What you have as Defendant's Number 2
3 is on this second plat where it says Helen Sasser
4 Now or Formerly Lots 6 through 10

5 Q Right And that's what's on Exhibit 2,
6 lots 6 through 10?

7 A Yes, sir

8 Q All right And the other property
9 you're talking about is property that abuts that,
10 is that correct?

11 A Yes, sir

12 MR TISDALE Let's go ahead and mark
13 that as 3

14 (DFT EXH 3, One-page 10-10-78 Plat,
15 was marked for identification)

16 BY MR TISDALE

17 Q Now, do you know just offhand who owns
18 what lots in that subdivision?

19 A I know the property owners, but I'm not
20 sure as to what particular lots they own

21 Q Okay Well, let's go on down the list
22 a little bit David Croyle, Linda Croyle, are they
23 owners of a lot?

24 A They own a lot, but their property is
25 back and fronts on the pond It is not what you've

1 shown me so far

2 Q Okay And Jean C Abbott, is that your
3 wife?

4 A That is

5 Q What number lot does Jean C Abbott
6 own?

7 A Lot 6

8 Q All right How about Lynda T
9 Courtney, does she own property in the subdivision?

10 A She owns one of the lots, yes, sir

11 Q One of the ones we're talking about on
12 Exhibit 2?

13 A No, sir, it is not shown on these
14 plats

15 Q Where is her lot located?

16 A It is to the south of these

17 Q Okay Sumter Langston and Diane
18 Langston?

19 A They also own a lot, and it is south of
20 what has been shown to me

21 Q All right And how about Carl
22 Singleton, Jr ?

23 A He owns a lot, and it is also south

24 Q Is it one of the ones numbered but not
25 shown?

1 A I am sure they are numbered, but I
2 don't know what the numbers are, sir

3 Q All right And Virginia M Owens and
4 Stoney Harrelson?

5 A Virginia owns a lot, and it is south
6 Stoney owns a lot, and it is next door to ours

7 Q Okay You said yours is number 6?

8 A Yes, sir

9 Q Now, which lots do the Dunns own in
10 this group of lots?

11 A I believe it would be lots 7, 8, 9, and
12 10

13 Q Four lots?

14 A Yes, sir

15 Q And those lots front on the Pee Dee
16 River?

17 A As far as I know, yes, sir

18 Q And does your wife's lot also front on
19 the Pee Dee River?

20 A Yes, it does

21 Q And were these lots, to your knowledge,
22 at one time the property of Helen Sasser?

23 A Yes, sir

24 Q And I think you said in something,
25 perhaps your affidavit in this case, that back in

1 the '70s, you were involved in some transactions
2 concerning the property?

3 A I represented one of the property
4 owners in a partition suit

5 Q To divide up one of the lots?

6 A It was to divide all of the property,
7 and this is a part of that property that was
8 subject to the partition action

9 Q So these lots here that we see on this
10 map, 6 acres owned by Helen Sasser, were part of
11 the partition that you handled in the '70s?

12 A I was one of the attorneys that handled
13 it, yes, sir

14 Q Who were you representing?

15 A I was representing Marshall Sasser

16 Q How is Marshall Sasser related, if at
17 all, to Helen Sasser?

18 A They are cousins

19 Q Did Marshall Sasser own part of the
20 property that was partitioned?

21 A Yes, sir

22 Q And Helen Sasser owns another part of
23 it?

24 A Yes, sir

25 Q Were they the two parties in the

1 partition?

2 A There were five parties in the
3 partition

4 Q Okay But it was all so-called Sasser
5 land?

6 A It was generically referred to at that
7 time as Woodland Plantation

8 Q Right Okay And when did you acquire
9 lot 6, your wife?

10 A I believe in 1986

11 Q Is it true that as of 1986, the Dunns,
12 Mr Dunn, Levon Dunn, owned some of the property in
13 lots 6 through 10, if not all of it, 7 through 10?

14 A I believe at that time he owned two of
15 those lots, 9 and 10

16 Q And is it your information and
17 knowledge that he subsequently acquired 7 and 8?

18 A Yes, sir

19 Q Okay Now, do you yourself have any
20 personal ownership of any of the property?

21 A No, sir

22 Q Your wife owns 100 percent of your lot?

23 A Yes, sir I never have

24 Q Never have?

25 A (Witness moves head from side to side)

1 Q All right Now, you said earlier in
2 talking about Exhibit 3 that there was other
3 property that had been Sasser property shown on
4 this Exhibit 3, is that right?

5 A Yes, sir

6 Q Are you aware that it is owned by Levon
7 Dunn or at least about nine acres of it?

8 A I understand that, yes

9 Q Did you handle the transaction when
10 your wife acquired the property?

11 A No, I did not

12 Q Who handled that, if you know?

13 A I believe Allen Ray did

14 MR TISDALE Let's mark this Number 4
15 (DFT EXH 4, 21-page Document
16 Deeds, Bates Stamp Dunn 0029 Through
17 0049, was marked for identification)

18 BY MR TISDALE

19 Q Now, Judge Abbott, this is a deed that
20 I've shown you, Exhibit 4, which is a deed from
21 Helen Sasser to Colemans, Harrelson, Croyle, and
22 Meyer Do you see that?

23 A I see that, sir But to be technically
24 correct, Mr Tisdale, there are a number of deeds
25 attached to that That is the first deed

1 Q Right, that's correct And then the
2 next deed is from Helen Sasser to Creola Harrelson,
3 right, in this exhibit?

4 A The one that I have is to Joseph
5 Holmes

6 MR SCOVILLE Excuse me Is there a
7 reason these are all attached together, or can we
8 pull them apart and make each deed a separate
9 exhibit?

10 MR TISDALE We can do that if you
11 want to, but my purpose is not to do it in each
12 individual deed I simply want to confirm that the
13 restrictions put on the property by Ms Sasser are
14 contained in each deed in this package That's
15 all

16 MR SCOVILLE Okay

17 MR TISDALE And I'm going to ask
18 him -- and I don't think there is any dispute about
19 it -- that these restrictions shown on book 224,
20 page 582, apply to all the lots in that
21 subdivision, how many ever there are, 11 or so

22 THE WITNESS You're going to need to
23 rephrase the question

24 BY MR TISDALE

25 Q That really wasn't a question I was

1 just making a speech But would you look at these
2 deeds and would you agree that these deeds are
3 deeds to the property in the Sasser Subdivision
4 that we've been talking about?

5 A What have been handed me as Defendant's
6 Number 4 is a copy of a number of plats that
7 include what you've been referring to as her lots,
8 but it also includes a property that is around the
9 pond

10 Q Okay, right Now, if you'll look at
11 the fourth page of Exhibit 4, which is exhibit --
12 excuse me, page -- excuse me, book 441, page 17?

13 A Yes, sir, I'm looking at it

14 Q And it says as to, say, parcel 1 -- and
15 this is a deed from Helen Sasser to Coleman
16 Harrelson and Harrelson and Croyle and Meyer,
17 right?

18 A Yes, sir

19 Q And it says on book 441, page 18, the
20 next page, it says in the second paragraph that
21 someone has circled This conveyance is subject to
22 those restrictions of record as contained herein as
23 well as is contained in the deed of Helen Sasser to
24 Joseph Holmes dated March 17, 1983, recorded March
25 18, 1983, in deed book 207 at page 758, office of

1 the clerk of court of Georgetown County

2 Do you see that?

3 A Yes, sir

4 Q Now, you are familiar with this land
5 And my question to you is, do you agree that all of
6 the conveyances by Helen Sasser in this subdivision
7 that we're talking about are subject or were
8 subject to the restrictions described on this page?

9 A The ones that I am familiar with,
10 Mr Tisdale, yes, I'll agree with that But I have
11 not pulled the deeds for all of the lots in the
12 property in question

13 Q I understand But the ones that you
14 are familiar with are subject to those
15 restrictions?

16 A Yes, sir

17 Q Do you know of any lots in the
18 subdivision that are not subject to those
19 restrictions?

20 A No, sir But once again, I have not
21 looked at all of the deeds in the subdivision

22 Q All right Is the deed that your wife
23 received subject to these restrictions or was
24 subject to them?

25 A Yes, sir, because it refers to the ones

1 of Joseph Holmes, and that's who we purchased the
2 property from

3 Q All right And would you also agree
4 that the lots acquired by Levon Dunn, 7 through 10,
5 were also subject to these restrictions?

6 A Yes, sir

7 Q All right Now, we can -- I don't know
8 that it's important right now, but at some point I
9 would like you to look at those deeds, if you
10 would, and just see if any of them are not subject
11 to the restrictions To be candid, I don't know of
12 any that are not either But at some point I would
13 just like you to do that, if you would

14 A All right, sir

15 Q So you would agree then that when your
16 wife bought your lot, number 6, from Joseph Holmes,
17 that her property was subject to the restrictions
18 described in deed book 207, page 758?

19 A Yes, sir

20 Q Okay Now, if you will turn to your
21 lot, in fact page 207, 758 in this exhibit

22 A Yes, sir

23 Q It says Helen Sasser to Joseph A
24 Holmes

25 Do you agree?

1 A Yes, sir

2 Q And at book 207, 759, the restrictions
3 on the property when this conveyance occurred are
4 cited there, are they not?

5 A Yes, sir

6 Q And as you have already agreed, that
7 would cover your lot, number 6, and then the lots
8 owned by Levon Dunn, 7 through 10 Right?

9 A Yes, sir

10 Q And I think we can agree without having
11 an argument about it now, there are probably other
12 lots in the subdivision covered by the same
13 restrictions?

14 A I don't know

15 Q Okay Well, the plaintiffs in this
16 lawsuit all own property in the subdivision, do
17 they not?

18 A Yes, sir

19 Q Okay You don't have any
20 information -- and I don't want to argue on this
21 point -- but you don't have any information that
22 their property is not covered by the restrictions?

23 A No, sir, I do not

24 Q Okay All right, sir Now, you are
25 aware, are you not, Judge Abbott, that the Dunns in

1 addition to the four lots, which are roughly four
2 acres, I guess, they own other property of about
3 nine acres, do they not?

4 A That's what I understand, yes, sir

5 Q Now, is that nine acres subject to the
6 same restrictions or not?

7 A Not that I'm aware of

8 Q So to your knowledge and belief and
9 information, their nine acres are not restricted in
10 the same way that their lots 7 through 10 are?

11 A To my knowledge

12 Q Okay Have you heard anyone contend
13 otherwise?

14 A No, sir

15 Q Okay Judge Abbott, have you been
16 involved in bringing this lawsuit against the Dunns
17 to enforce the restrictions?

18 A I have discussed it with my wife and
19 others, yes, sir

20 Q Have you been involved in assisting in
21 the drafting of the Pleadings?

22 A The only thing I have done is reviewed
23 a proposed copy of them

24 Q Okay And approved it?

25 A Took a look at it, sent it back to

1 Mr Scoville I also had Mr Wright take a look at
2 it as well

3 Q Were you representing the interest of
4 your wife when you were doing this?

5 A Yes, sir

6 Q Okay Now, is it true, Judge Abbott,
7 that Ms Sasser has sold all the land, to your
8 knowledge, that she owns in the subdivision that
9 we're talking about shown on the exhibits we've
10 been over?

11 A That is my understanding And also
12 Defendant's Number 4 has a paragraph to that
13 effect

14 Q And where is that?

15 A That is on 441, page 18

16 Q Let me find it All right Where is
17 that paragraph?

18 A Next to the last paragraph

19 Q Next to the last? What does that
20 document say in that connection?

21 A It is the intent to convey all
22 remaining property contained in the deed to the
23 grantor by the deed of D W Green, et al , dated
24 July the 28th, 1978, recorded July 31st, 1978, deed
25 book 160, page 772

1 Q All right So far as you know then and
2 based on what you've just read, by this deed
3 Ms Sasser conveyed all of the land she owned in
4 the subdivision?

5 A Yes, sir

6 Q To the grantees in this deed?

7 A Yes, sir

8 Q Coleman, Harrelson, Croyle, and Meyer?

9 A Yes, sir

10 Q All right Now, is it your contention
11 that Ms Sasser by this or any other document, has
12 relinquished, changed or altered in any way,
13 conveyed the restrictions, right of restrictions in
14 deed book 207, 758?

15 A You'll have to rephrase that for me
16 Restate it, please, sir

17 Q Okay Well, if you look just three or
18 four more pages down, it says book 207, page 759

19 A Yes, sir

20 Q These are the restrictions that we've
21 been talking about that you agreed applied to the
22 property, right?

23 A Yes, sir

24 Q All right By the conveyance that you
25 just described, did Ms Sasser, in your opinion,

1 give up any rights as developer of the property?

2 A My opinion, she conveyed all of her
3 interest in the property out

4 Q All of her interest in the property?

5 A Yes, sir

6 Q Well, how about her rights as a
7 developer?

8 A That is included, if any

9 Q If any?

10 A Yes, sir

11 Q What do you mean, if any?

12 A If there were any developmental rights,
13 they'd have been conveyed

14 Q And would that have been as of the date
15 of the deed to Coleman, Harrelson, and so forth?

16 A Yes, sir

17 Q All right And are you saying -- is it
18 your position as a legal matter that when she
19 signed this deed, she conveyed to these people,
20 these grantees, any rights she had as developer?

21 A Number one, it is not my legal opinion
22 I've been out of real estate for 12 years now It
23 is my personal opinion to that effect

24 Q Okay And the basis for your opinion
25 is that she conveyed all her interest in the land,

1 is that correct?

2 A Yes, sir

3 Q All right Now, is there any document
4 that you know of anywhere before the last year or
5 so in which she said, I convey my development
6 rights that are contained in book 207, page 759?

7 A Not that I'm aware of, no, sir

8 Q There is no language anywhere that you
9 are aware of by which she conveyed her rights as
10 developer?

11 A No, sir

12 Q Okay And your contention is, personal
13 opinion, that she did convey her development rights
14 when she conveyed all of the property?

15 A If any

16 Q If any And you said that a couple of
17 times now Do you have a personal opinion that
18 perhaps she did not have any development rights?

19 A That is my personal opinion, yes, sir

20 Q Why would she not have any development
21 rights?

22 A Because there had been no specific
23 retention, nor did she own anything for them to be
24 vested with

25 Q All right Well, the restrictions, as

1 I read them, Judge Abbott, book 207, page 759, say,
2 referring to the conveyance we've just been talking
3 about This conveyance is made subject to the
4 following restrictive covenants which are deemed to
5 run with the land and are bound on the purchasers,
6 their heirs and assigns

7 These are the restrictions you say
8 apply to your wife's lots?

9 A Yes, sir

10 Q To the Dunns' lots?

11 A Yes, sir

12 Q To the Colemans and Harrelson lots and
13 so forth?

14 A Yes, sir

15 Q And it says in paragraph 1 on this
16 page The expression developer as used herein
17 shall be construed to be Helen Sasser, her heirs
18 and assigns

19 Do you agree that she was the developer
20 by this document?

21 A I agree that that's what the
22 restriction number 1 says, yes, sir

23 Q All right Well, are these
24 restrictions effective when she conveyed the lot to
25 Harrelson and Coleman and so forth?

1 A They would have been effective when she
2 conveyed the property to others Now, when she
3 conveyed the property to Harrelson and others, it
4 is also included in there that she was conveying
5 any and all of her interest

6 Q And you say that includes development
7 interest?

8 A If there were any, yes, sir

9 Q But she might not have had any?

10 A But she might not have had any

11 Q Tell me one more time why she may not
12 have had any

13 A As I said, there is no specific
14 retention, and she didn't own anything to vest
15 with

16 Q Is it your position, Judge Abbott, that
17 if she did not own any land in the subdivision, she
18 legally could not be the developer any longer?

19 A That is my opinion, yes, Mr Tisdale

20 Q Okay All right So in the case of
21 Levon Dunn, for example, if she conveyed -- did she
22 convey all of her development rights, if any, to
23 the people who got this property, Coleman,
24 Harrelson, and so forth?

25 A She conveyed all of her interest in the

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1 real estate to them, whatever she retained at that
2 point

3 Q Okay And is it your position then
4 that as far as she was concerned, these
5 restrictions were no longer enforceable by her?

6 A That is my opinion, yes, sir

7 Q All right Well, who under those
8 circumstances, in your opinion, if you have one,
9 would be entitled to enforce the restrictions?

10 A The other property owners

11 Q The Dunns?

12 A They're part of the other property
13 owners, yes, sir

14 Q Ms Abbott?

15 A Yes, sir

16 Q And according to the Sasser
17 restrictions, she was the only person who could
18 change restrictions, wasn't she?

19 A According to those restrictions, yes

20 Q So does that mean then that the
21 Colemans could change their restrictions, the Dunns
22 could change their restrictions, the Abbotts could
23 change their restrictions because she had conveyed
24 everything to each one of them?

25 A My opinion is that when Ms Sasser

1 conveyed her property in the last deed and in it
2 conveyed all of her interest in the property, she
3 no longer retained any type of ownership interest
4 in the property By the deeds that were conveyed
5 to the various property owners, they are general
6 warranty deeds conveying out the property with no
7 specific retention of any type of development
8 rights, therefore, any ownership of the property as
9 well as the enforcement of the restrictions
10 divested to these persons who purchased the
11 property

12 Q All right So would each individual be
13 entitled to enforce the restrictions?

14 A Each individual could enforce the
15 restrictions, yes, sir

16 Q Who could remove restrictions?

17 A I think it would take -- my opinion is
18 it would take a decision by all of the property
19 owners

20 Q Okay To change the restrictions?

21 A Yes, sir

22 Q All right And so are you saying then
23 that when she conveyed the property, that all of
24 the property owners jointly became the, quote,
25 developer, end quote?

1 A You could put it that way, yes, sir

2 Q How else could it be under your theory?

3 A My theory would be that that right
4 divested to them Now, whether they can be
5 described or construed to be the developers I'm not
6 sure on

7 Q To everybody, when you say to them?

8 A Yes, sir

9 Q But, for example, if your theory is
10 correct on this, are you saying that the Dunns
11 could change the restrictions as a developer?

12 A I'm saying the Dunns could change the
13 restrictions with the consent of all of the other
14 property owners, yes, sir

15 Q I see So it would have to be all of
16 the property owners?

17 A Yes, sir

18 Q Okay Now, just while we're on this
19 train, you are aware, of course, that the Dunns
20 acquired an Assignment from Ms Sasser recently?

21 A I'm aware of that, yes, sir

22 Q And you've seen those documents, have
23 you not?

24 A Yes, sir

25 MR TISDALE Mark that as the next

1 exhibit for me, please

2 (DFT EXH 5, Six-page 9-6-06
3 Assignment and Indemnification
4 Agreement, Bates Stamp Dunn 0059
5 Through 0064, was marked for
6 identification)

7 BY MR TISDALE

8 Q Exhibit 5 is an Assignment?

9 A That is what it is captioned, yes, sir

10 Q From Helen Sasser to Levon and Pamela
11 Dunn?

12 A Yes, sir

13 Q And are you saying -- just cutting to
14 the chase a little bit here, Judge Abbott, is it
15 your position and that of the plaintiffs in this
16 lawsuit that this Assignment is ineffective?

17 A Yes, sir

18 Q Because Ms Sasser didn't have anything
19 to assign?

20 A Yes, sir

21 Q Is that what it comes down to?

22 A Yes, sir

23 Q Now, if it's determined, Judge Abbott,
24 that in fact Ms Sasser was still the developer --
25 and I understand you say that that's not -- you

1 don't think that's correct But assuming for this
2 question that Ms Sasser was the developer, is
3 there any reason she couldn't assign her rights as
4 a developer to the Dunns?

5 A No, sir

6 Q Okay So the whole point here that
7 this thing comes down to in terms of the legality
8 of the Assignment is whether Ms Sasser was the
9 developer?

10 A I suppose so, yes, sir

11 Q Otherwise, whether or not she had
12 conveyed her rights as developer already?

13 A Yes, sir

14 Q And I think you testified you're not
15 familiar with any document that says, by Ms Sasser
16 before she assigned it to the Dunns, that I hereby
17 assign my rights as developer And you say as an
18 operation of law, she gave it up when she conveyed
19 all the property?

20 A Yes, sir

21 Q Okay That's your personal, legal
22 opinion?

23 A That's my personal opinion

24 Q Now, Judge Abbott, is it the contention
25 of you and the plaintiffs in the lawsuit -- and I

1 understand you're not really technically a
2 plaintiff?

3 A That is correct, sir

4 Q Your wife is, but you're not?

5 A That's correct

6 Q And you're basically a consultant for
7 her and the others?

8 A Only for her

9 Q Only for her, all right Now, follow
10 this with me a little bit more Assuming again
11 that Ms Sasser did have development rights to
12 convey and she did convey them to the Dunns in this
13 Assignment Okay?

14 A All right, sir

15 Q Just on that assumption, and that in
16 fact Levon and Pamela Dunn did become the
17 developers -- and I understand you disagree with
18 that, but assuming that it was a valid Assignment,
19 okay -- is there anything to prevent them from
20 changing the restrictions on any property in the
21 subdivision if they are the developer under the
22 language in the deeds?

23 A As long as it complies with the
24 language in the deeds, yes

25 Q Okay So if the Assignment to the

1 Dunns is valid -- and I acknowledge you disagree
2 with it -- there would be no reason they could not
3 remove the restrictions on their lots or any other
4 lot in the subdivision if they wanted to, is that
5 right?

6 A As long as the so-called developmental
7 rights had been transferred to them

8 Q Correct, and we agree with that That
9 is what the contention is here You say it wasn't,
10 they say it was Right?

11 A Yes, sir

12 MR SCOVILLE Can we go off the record
13 a second?

14 MR TISDALE Sure

15 (Off-the-record conference)

16 (DFT EXH 6, 29-page Document
17 2-1-07 Affidavit of Levon Dunn and
18 Attachments, was marked for
19 identification)

20 MR TISDALE Jack, I think one thing,
21 just to follow up on what you said, number 2, it
22 says No lot shall be used for commercial purposes
23 without express written consent from the developer
24 MR SCOVILLE Yeah, but that doesn't
25 say that it can be amended

1 MR TISDALE Yeah, I understand it
2 doesn't use that word

3 MR SCOVILLE Your questions were
4 couched in terms of their right to amend My point
5 was I was going to object to your question
6 because --

7 MR TISDALE Well, perhaps the
8 question was inartful on that point But obviously
9 whatever the restrictions say, they say And our
10 position is that the developer has the right to
11 allow commercial use of the property, and the judge
12 has agreed, I think, if the Assignment was valid,
13 that's what they can do But he doesn't agree that
14 it was valid, of course

15 BY MR TISDALE

16 Q Now, Judge Abbott, we marked as Exhibit
17 Number 6 the Affidavit of Levon Dunn Have you
18 seen this document?

19 A Yes, sir

20 Q And you have studied it before some of
21 the hearings we've had in connection with the case?

22 A I have read it I couldn't say that I
23 have studied it

24 Q Okay A lot of this we have already
25 covered, Judge Abbott But I just want to confirm

1 the correctness of Levon Dunn's Affidavit or
2 confirm that it's not correct, based on your
3 knowledge Okay?

4 A All right, sir

5 Q And so he says he's the owner of 13
6 acres of contiguous land And you agree with that,
7 do you not?

8 A I don't have any -- I don't disagree
9 with it, but I don't have any knowledge one way or
10 the other how many acres it all totals

11 Q But you do agree he owns four acres, he
12 and his wife, within the subdivision that was known
13 as Woodland Plantation -- four lots?

14 A He owned four lots, yes, sir

15 Q Lots 7, 8, 9, and 10, right?

16 A Yes, sir

17 Q And you do agree, do you not, that the
18 public records will show that he began acquiring
19 this property in 1983?

20 A Whenever he purchased the first one

21 Q Whatever the deeds say?

22 A Yes, sir

23 Q And he says I acquired the remaining
24 nine acres, abutting Plantersville Road -- that you
25 and I looked on the plat a while ago -- and located

1 to the north and west of the boundary line of the
2 subdivision in the 1980s

3 A I don't disagree with that

4 Q So long as the deed confirms it, you
5 have no reason to doubt it, right?

6 A Yes, sir

7 Q Again, lots 7 and 8 in the subdivision
8 were purchased by me and my wife, Pamela Dunn, from
9 Rodney and Carolyn Causey in 2003

10 Do you have any reason to dispute that?

11 A No, sir

12 Q Lot 9 in the subdivision was conveyed
13 to him on September 9th, 1994, and it's got the
14 deed references there Do you have any dispute
15 with that?

16 A No, sir

17 Q And then lot 10, he says, was conveyed
18 on September the 9th, the same date, 1994, and sets
19 the deed restrictions And it says The four lots
20 comprised approximately four acres and front on the
21 Great Pee Dee River

22 To your knowledge, do you dispute it?

23 A I don't disagree with it, but it looks
24 like to me that that conflicts with what it said in
25 the first paragraph about it in 1983 when he began

1 the acquisition of the lots

2 Q Okay But you would agree that
3 whatever the deeds show --

4 A Whatever the deeds show and the dates I
5 certainly would not disagree with

6 Q All right Mr Dunn says in his
7 Affidavit that Helen Sasser, the developer of
8 Woodland Plantation, placed covenants and
9 restrictions in the deeds of the four lots he had
10 purchased from her Copies of those restrictions
11 are attached Do you have any dispute with that?

12 A If that's what the deed shows,
13 certainly I would not

14 Q All right And he says -- Mr Dunn
15 says that the said restrictions prohibited, among
16 other things, commercial use of the four lots
17 without express written consent of Helen Sasser,
18 her heirs and assigns, is that correct?

19 A I think the restrictions are contained
20 in the deeds, yes, sir

21 Q Mr Scoville and I were just going over
22 this particular provision It says on deed book
23 207, page 751, paragraph 2, quote No lot shall be
24 used for commercial purposes without express
25 written consent from the developer, end quote

1 Do you agree --

2 A Yes, sir

3 Q And that would apply to the lots of the
4 Dunns, wouldn't it?

5 A Yes, sir

6 Q All right Then he says that there are
7 not and never have been any restrictions affecting
8 the use of the nine-acre tract of land that adjoins
9 lot 7 through 10 prohibiting commercial use Do
10 you have any dispute with that?

11 A If that's what the deeds show,
12 certainly I do not

13 Q You don't take the position that the
14 nine acres that are adjacent to their four lots are
15 restricted in any way, do you?

16 A Not that I'm aware of, let me put it
17 that way

18 Q Not restricted against commercial use?

19 A Not that I'm aware of

20 Q And you have no evidence to support
21 such a contention, do you?

22 A I'm not contending it I don't know

23 Q You're not contending it Do the
24 plaintiffs, to your knowledge, have any such
25 contention?

1 A Sir, you'll have to ask them

2 Q Okay We will ask them All right

3 Mr Dunn says Unaware of the deed restrictions
4 affecting lots 7 through 10, my wife and I decided
5 in 2005 to investigate whether it was financially
6 feasible to use a portion of the land for
7 commercial purposes

8 Do you believe that's a true statement?

9 A Sir, I don't have any reason to agree
10 or disagree with it I'm sure they had to have
11 some discussion about it But as to when, I don't
12 know

13 Q All right Are you aware that they
14 planned to use the property for social events such
15 as weddings and wedding receptions?

16 A Not until I found out on a website and
17 an ad in the paper

18 Q When was that?

19 A That would have been in -- sometime in
20 the early part of 2006

21 Q What brought your attention to the
22 website?

23 A I ran into one of my neighbors, and
24 they told me about it

25 Q And do you recall what the website said

1 generally?

2 A It just indicated that there was a
3 wedding venue that included a bed and breakfast
4 facility

5 Q And in your opinion, would the
6 operation of a wedding venue and the operation of a
7 bed and breakfast facility be a commercial use of
8 the property?

9 A Yes, sir, it would

10 Q I gather you discussed it with your
11 wife, did you not?

12 A Yes, sir

13 Q Now, did you also see the ad in the
14 newspaper?

15 A I saw a copy of it, yes, sir

16 Q Who showed you the copy?

17 A I don't remember at this time
18 Somebody -- it was either Linda Croyle, I believe,
19 or Creola Harrelson, but I'm not sure

20 Q Did you and whoever showed it to you,
21 the website reference and the newspaper ad, have
22 discussions about what should be done, if anything,
23 about it?

24 A They just asked me if I was aware of
25 it And I told them, no, I was not

1 Q Okay Now, Mr Dunn says in his
2 Affidavit that the construction activities on his
3 property -- and there were construction activities,
4 were there not?

5 A Yes, sir

6 Q And what generally did you observe was
7 going on?

8 A It was an extensive amount of
9 construction going on

10 Q What were they building?

11 A They were renovating two houses

12 Q The house they lived in being one of
13 them?

14 A Yes, sir

15 Q And another house between their
16 residence and your house?

17 A Yes, sir

18 Q And do you have any knowledge as to
19 where the bed and breakfast was going to be?

20 A The house between ours

21 Q Okay Mr Dunn says that all of his
22 work on the property was approved by the Georgetown
23 County Planning and Zoning or whatever group it was
24 that approves there Are you aware of that?

25 A I have no reason to disagree that it

1 had been approved, no, sir

2 Q So as far as you know, it was approved?

3 A As far as I know, they apparently had
4 the building permits and that sort of thing

5 Q And are you aware that they --
6 Georgetown County made regular inspections of the
7 project?

8 A I'm not aware of that, no, sir

9 Q And are you aware they were granted a
10 Certificate of Occupancy for the structure?

11 A I don't disagree, but I don't have any
12 personal knowledge one way or the other

13 Q You don't?

14 A No, sir

15 Q Now, have you met with various of the
16 property owners, including your wife, to decide to
17 bring this lawsuit?

18 A Understand, Mr Tisdale, most of the
19 people down there are from Conway and are friends
20 of mine To say that I met with them for a
21 specific purpose is difficult because I see them in
22 other social occasions, and we see on each other
23 down there Certainly after we learned of the
24 proposed use as a bed and breakfast, this was
25 discussed with various parties when we would see

1 each other And what to do about it, of course,
2 was one of the topics of conversation

3 Q And what was decided to do about it?

4 A All of them were very surprised that it
5 was going on, because they had no prior
6 information I was very taken aback I've always
7 had a very cordial relationship with the neighbors
8 down there We had a lot of interaction together
9 with various cookouts and that sort of thing I've
10 lived next door to Levon down there since we moved
11 into the area

12 Q When did you do that, by the way?

13 A In 1986 is when we purchased So I've
14 seen him on a frequent and infrequent basis,
15 depending on the season of the year and how much he
16 was down there I've always gotten along very
17 well, very cordially with both he and his wife So
18 I was very taken aback that this was going on
19 because no mention had been made of it So I
20 drafted a letter telling him and her that I was in
21 opposition to it and delivered that to them That
22 was my discussion as far as with the other
23 neighbors about it

24 Q Is this your letter that you just
25 referred to?

1 A Yes, sir, it is

2 MR TISDALE Let's go ahead and mark
3 that as Number 7

4 (DFT EXH 7, Three-page Document
5 2-28-06 Letter to Levon and Pam Dunn
6 From Tommy Abbott and Attachment, was
7 marked for identification)

8 BY MR TISDALE

9 Q This letter, Judge Abbott, is dated
10 February 28th, '06?

11 A Yes, sir

12 Q And it's addressed to Levon and Pam
13 Dunn?

14 A Yes, sir

15 Q And it's on your personal letterhead?

16 A Yes, sir

17 Q And in it you said that this is to let
18 them know of your objection to any commercial
19 activity?

20 A Yes, sir

21 Q And you said that your objections to
22 this commercial activity that was planned was
23 twofold, right?

24 A Yes, sir

25 Q One was that commercial activity would

1 destroy the ambiance of the area, would it not, in
2 general?

3 A Yes, sir

4 Q And the second thing that you said your
5 objection was based on is that Helen Sasser's
6 restrictions prevented it, is that right?

7 A That's correct

8 Q Okay Now, it says, see an attachment
9 And look at the attachment with me, for a minute
10 Do these people who signed this letter, I
11 presume -- and you said in your letter -- that not
12 only you, but the undersigned property owners take
13 the same position Isn't that right?

14 A Yes, sir

15 Q Now, are these people who signed this
16 all of the property owners in the subdivision?

17 A No, sir

18 Q Who is not included?

19 A Let me look just a minute

20 Q Some of them I can't read

21 A Dave and Linda Lungs' name is not
22 there, and I don't see Coleman Owens

23 Q Okay Except for those two property
24 owners, do the people who signed this represent the
25 property of the subdivision?

1 A Essentially There is one name on
2 there under Mary Ann Stalvey, and I believe that's
3 Brad Lineback He owns some property right down
4 the road

5 Q What road?

6 A Down the Plantersville Road

7 Q Is he in the subdivision?

8 A No, sir

9 Q Now, this next third page appears to
10 be --

11 A I think that is a faxed one It
12 includes Sumter and Diane Langston's signature

13 Q To add them in?

14 A Yes, sir

15 Q Okay Now, prior to -- first of all,
16 who went to the property owners and asked them to
17 sign this statement represented by your letter of
18 February 28th, '06?

19 A Part of the discussion with other
20 parties down there related to nobody knowing
21 anything about it and it not being brought to their
22 attention, that is the prospective use of the
23 property as a bed and breakfast I talked to the
24 parties and told them that I was opposed to it and
25 was going to send a letter to that effect and go

1 talk to Pam and Levon about it I talked with the
2 other parties simply to keep them abreast of what
3 was going on Some of them indicated a desire to
4 also sign it as well to show that they were also of
5 that position So I certainly didn't have any
6 objection to them doing so

7 Q Judge Abbott, in order to obtain the
8 signatures on this paper, did you go see each one
9 individually, or was there a meeting of the
10 property owners?

11 A I think I saw most of them down there
12 at Plantersville at one time or another

13 Q To sign this statement?

14 A Just to show them the letter and let
15 them know what was going on so that if they heard
16 about it, then they would have advance knowledge

17 Q Obviously it would have been prior to
18 February 28, '06?

19 A Yes, sir

20 Q That these signatures were gained?

21 A I would think so Certainly it would,
22 yes, sir

23 Q Now, what I was trying to get straight
24 in my mind is did you go to each of their houses
25 and say, this is the letter I'm writing, would you

1 sign this, or did you call a meeting of the group?

2 A I think I went and talked to them
3 individually I did not call any meeting, no And
4 I did not ask them to sign it I just showed it to
5 them and said that I was going to send this or take
6 it and talk to them about it And as I said, some
7 of them expressed a desire to also want to sign it
8 as well

9 Q Right So somebody had to ask them to
10 sign it if they signed it, didn't they?

11 A Some of them told me they wanted to
12 sign it I allowed them to do so And then when
13 they signed it, others wanted to join in as well

14 Q Okay And the purpose, of course, was
15 to discourage the Dunns from operating a commercial
16 activity on the four lots, right?

17 A Yes, sir

18 (DFT EXH 8, 10-page Document
19 Affidavit of H T Abbott, III, and
20 Attachments, was marked for
21 identification)

22 BY MR TISDALE

23 Q This will be Exhibit 8, Judge Abbott's
24 Affidavit Judge Abbott, this is an Affidavit that
25 I think you filed in connection with something in

1 this case, is it not?

2 A Yes, sir, it is

3 Q Probably had to do with the injunction?

4 A I assume so, yes, sir

5 Q I just wanted to go over certain
6 aspects of it with you to be certain I understand
7 the basis of some of the things you said in the
8 Affidavit It says in paragraph 1 I am an
9 attorney and one of the plaintiffs in this action
10 Well, that would be incorrect, wouldn't
11 it?

12 A That would be incorrect, yes, sir

13 Q So, number one, you're not a plaintiff
14 in this action?

15 A No, sir

16 Q Did you personally prepare this
17 Affidavit?

18 A Mr Tisdale, I would assume so And
19 how that got by me, I don't know

20 Q Well, look at the notary public

21 A That's my secretary

22 Q In your judge's office?

23 A Yes, sir

24 Q Judicial office?

25 A Yes, sir

1 Q So she at least signed as a notary
2 public, did she not?

3 A Yes, sir

4 Q Did she type it?

5 A Now, that I don't know I can't say

6 Q Do you recall, Judge Abbott, whether
7 you wrote this out in longhand and asked someone to
8 type it, whether you typed it yourself, or whether
9 someone else prepared the whole thing?

10 A I know this I did not type it

11 Q Personally?

12 A Yes, sir

13 Q Do you think you wrote it out longhand?

14 A I don't know, sir

15 Q Well, let's just look at the Affidavit
16 for a few minutes, if we may It says in paragraph
17 2 -- and we talked about this earlier -- that you
18 represented one of the five owners of Woodland
19 Plantation to seek a partition?

20 A Yes, sir

21 Q And it says that Helen Sasser received
22 a parcel behind Prince Frederick Church which we
23 see on one of the plats that we looked at?

24 A Yes, sir

25 Q And you've talked about, as is stated

1 in paragraph 3, that Helen Sasser owns no property
2 from the original division at this point?

3 A Right

4 Q And then does paragraph 4 accurately
5 set forth the sequence of the sale of the lots?

6 A I think so, yes, sir

7 Q All right And then paragraph 5 says
8 this was sort of a get-away place?

9 A Absolutely

10 Q And that you purchased your property in
11 '86?

12 A Yes, sir

13 Q Now, the plaintiffs to the lawsuit, who
14 are -- let me put it another way -- of the people
15 who signed the letter, statement of agreement to
16 your letter of February 28th, Exhibit 7, who lives
17 permanently in the subdivision?

18 A Dave and Linda Croyle do Dan Drost
19 does And that's all at that time that live there
20 permanently

21 Q So you would refer to the Croyles and
22 Dan Drost as permanent residents of the
23 subdivision?

24 A Yes, sir

25 Q Your wife, you, and the others who own

1 property, except for the Dunns, are part-time
2 residents?

3 A Yes, sir

4 Q Well, the Dunns are full-time
5 residents?

6 A The Dunns are full-time residents And
7 at the present time the Langstons are, because they
8 recently sold their house over at Murrells Inlet

9 Q And the two attachments to your letter
10 that we talked about earlier, it looks like some
11 people signed one page and some the other, is that
12 correct?

13 A I think all of them signed one page,
14 except for the Langstons, and they signed the
15 second page, and it was faxed back to me That's
16 why it was attached

17 Q You see Creola Harrelson's name?

18 A Yes, sir

19 Q Well, on one page there are five
20 signatures below Creola Harrelson And then there
21 are three, including the Langstons, on the next
22 page below Creola Harrelson's, is that right?

23 A Yes, sir, and those were in -- yes,
24 sir, that would be correct

25 Q And so I guess that indicates that the

1 ones at the bottom signed at different times?

2 A Yes, sir

3 Q And I think I asked you this earlier,
4 so not to repeat if I did, but you say that these
5 were based on individual visits, not a meeting,
6 these signatures?

7 A Some of the signatures may have been
8 involving more than one person at that time There
9 was no overall meeting that was called And I
10 circulated, as I recall I think I went around and
11 talked to them individually about it

12 Q Going back to the Affidavit that we
13 were looking at, we were trying to figure out how
14 it was prepared Someone in the subdivision -- and
15 I don't have a name right now, but I can get it --
16 said that you said that your law clerk prepared
17 this Affidavit Could that be correct?

18 A I don't have a law clerk

19 Q Well, could it be someone in your
20 office?

21 A No, sir

22 Q And you don't even have a law clerk?

23 A No, sir

24 Q In '06?

25 A We've never had -- Family Court --

1 Q Family Court judges don't have a law
2 clerk?

3 A No, sir

4 Q All right Could it have been your
5 secretary?

6 A She wouldn't have prepared it, no, sir

7 Q What's her name?

8 A Judy Guyton

9 Q Is she still your secretary?

10 A Yes, sir

11 Q G-U-Y-T-O-N?

12 A Right

13 Q All right Now, go to page 3 of your
14 Affidavit

15 A Yes, sir

16 Q You see near the top, first line at the
17 end In fact, Pam Dunn was asked several times by
18 various neighbors about the property being used as
19 a bed and breakfast, and she denied it each time

20 Who asked Pam Dunn several times?

21 A It's my understanding, I think, my wife
22 did as well as one or two of the other people
23 involved

24 Q Who were they?

25 A One of them, I believe, was Diane

1 Langston I don't know who else

2 Q So at least your wife and Diane
3 Langston?

4 A Yes, sir

5 Q And then you said The internet site
6 continued to contain information as to the
7 commercial use after I talked with the Dunns and
8 was not assured it would stop -- excuse me, and was
9 assured it would stop?

10 A Yes, sir

11 Q When did you talk to the Dunns?

12 A I talked to them sometime around the
13 first of March, maybe March the 1st

14 Q Right after your letter?

15 A Yes, sir

16 Q And who told you what would stop?

17 A Pam and Levon did

18 Q What did they say they were going to
19 stop?

20 A They said they would not use it as a
21 bed and breakfast

22 Q Okay And what you say in here then
23 is The internet site remained even though they
24 told you they weren't going to use it as a bed and
25 breakfast?

1 A Yes, sir

2 Q And then in the next sentence, Judge
3 Abbott, you say The property has been used at
4 least three or four times for weddings/receptions
5 with one taking place on the front yard of the
6 property next door to us approximately 25 to 30
7 feet from our front porch

8 Correct?

9 A Yes, sir

10 Q Contrary to Mr Dunn's Affidavit, this
11 wedding clearly took place on lot 11

12 Now, first of all --

13 MR SCOVILLE Excuse me It reads lot
14 7

15 MR TISDALE Lot 7 What did I say?

16 THE WITNESS 11

17 BY MR TISDALE

18 Q All right Sorry By the way, do you
19 have any notes concerning your involvement in this
20 matter?

21 A Yes, sir

22 Q Do you have them with you?

23 A Yes, sir

24 Q Would you refer to them, if you need
25 to, and then I'm going to ask Mr Scoville to make

304

1 copies for us maybe during the luncheon recess, see
2 if there is anything we might want to ask further
3 about And I would like you to refer to any notes
4 you have if it will help you answer the question

5 MR SCOVILLE I need to review this
6 There may be some attorney/client matters contained
7 herein

8 THE WITNESS Okay

9 MR TISDALE Do you represent Judge
10 Abbott? He said he wasn't a plaintiff

11 MR SCOVILLE I'm not sure I'll have
12 to look at that too

13 MR TISDALE Okay I just bring it up
14 because you said something about attorney/client
15 matters I don't see how that could be an issue if
16 you don't represent him

17 MR SCOVILLE Like I said, I haven't
18 read the thing very carefully

19 BY MR TISDALE

20 Q Okay Judge Abbott, what is it exactly
21 you're looking at now?

22 A I have what is referenced as a
23 memorandum

24 Q This is a memorandum you prepared?

25 A Just my own notes, yes, sir

1 Q And did you type those yourself?

2 A No, sir

3 Q Who typed them?

4 A My secretary

5 Q Okay Does the memorandum have to do
6 with your involvement in the claim against the
7 Dunns?

8 A It involves -- it's just information
9 that I put down I mean, it's no research or
10 anything

11 Q Well, I understand And so we would
12 like a copy of that, and Mr Scoville has told us
13 he will take a look at it and be certain it doesn't
14 contain anything that shouldn't be produced Okay?

15 A All right, sir

16 Q Now, Judge Abbott, going to your
17 Affidavit -- and you can refer to your memo if it
18 will help you -- you say the property -- quote
19 The property -- meaning the Dunns' lot -- has been
20 used on at least three to four times for
21 weddings/receptions, with one taking place in the
22 front yard of the property next door to us

23 Right?

24 A Yes, sir

25 Q Now, you would agree that there would

1 be no prohibition against the Dunns having a
2 wedding on their property unless it was for
3 commercial purposes, assuming the restrictions are
4 valid?

5 A If it were for commercial purposes, it
6 would be prohibited, yes, sir

7 Q What would be your definition of
8 commercial purposes?

9 A Whatever the generic definition of
10 commercial would be, which would be for any
11 business purpose, I would assume

12 Q And so to the contrary then, would you
13 agree that if it was a private wedding that they
14 conducted on their property for friends or family
15 and they weren't operating it for a commercial
16 venture, that there would be no prohibition,
17 assuming the validity of the restrictions?

18 A Assuming the validity of the
19 restrictions, if it were for friends or family, it
20 should be permissible

21 Q It wouldn't be prohibited, would it?

22 A I would not think so

23 Q Now, when you say they've had three or
24 four weddings on the property, do you mean that
25 they've had three or four weddings for commercial

1 purposes?

2 A Mr Tisdale, they've had three or four
3 weddings, to my knowledge You know, I didn't ask
4 them to produce receipts or anything for me I
5 just know that it's been used that many times

6 Q Are you saying that you do not know
7 whether the three or four weddings they've had on
8 the property were commercial in nature?

9 A I do not know

10 Q Do not know All right And then you
11 said Contrary to Mr Dunn's Affidavit, this
12 wedding clearly took place on lot 7

13 Now, when you say this wedding, which
14 one are you referring to?

15 A The one in the front yard

16 Q And when was it?

17 A I don't know, sir

18 Q Were you present?

19 A No, sir

20 Q And who was present that gave you this
21 information to give an Affidavit about it?

22 A Some of the neighbors were present I
23 think Creola and Stoney were there --

24 Q Harrelson?

25 A Harrelson -- also the Langstons And I

1 was not there at the wedding but went down the next
2 day, and some of the tables and so forth, I think,
3 were still set up

4 Q All right Now, again, do you have any
5 knowledge as to whether that wedding was for
6 commercial purposes or was a private affair?

7 A I do not know

8 Q You do not know Okay Now, how about
9 the other -- that's one instance How about the
10 two to three other times that your Affidavit refers
11 to, when were they?

12 A They would have been sometime in the
13 late spring, summer of that same time period

14 Q Were you present for any of them?

15 A I think two of them I was present

16 Q And were the weddings on lot 7, 8, 9,
17 or 10, or were they on the back nine acres?

18 A They were set up on the back, but there
19 are -- I call them pigtails, long, narrow pieces of
20 those property that run through for an extensive
21 period towards the back And it appeared to me
22 that some of the facilities were set up on those
23 properties as well

24 Q All right And did you inspect the
25 property for that purpose?

1 A No, sir

2 Q And how do you know some of the set-up
3 was on the, quote, pigtails?

4 A Because I know approximately how far
5 those pigtails run through

6 Q You're willing to take an oath that
7 they were set up on the pigtails?

8 A I'm willing to take an oath that they
9 were set up in the back part and could have been on
10 the pigtails, Mr Tisdale

11 Q Could have been?

12 A Yes, sir

13 Q But could not have been also, right?

14 A Yes, sir, if they

15 Q Do you agree?

16 A Yes, sir

17 Q Well, doesn't that boil down to you
18 really don't know whether or not they were on the
19 pigtails?

20 A It appeared to me that they were But
21 to take an oath means something I know for sure,
22 and I'm not willing to do that because I don't know
23 for sure

24 Q Okay Well, now, paragraph 8 in your
25 Affidavit, Judge Abbott, talks about difficulties

1 that a number of property owners have had with
2 Helen Sasser, is that correct?

3 A Yes, sir

4 Q And you outlined those difficulties
5 there, right?

6 A Yes, sir

7 Q And you said you at one time as a
8 lawyer had to file a specific performance action to
9 force her to sell the land she agreed to sell, is
10 that right?

11 A Yes, sir

12 Q Who were you representing in that
13 transaction?

14 A The Harrelsons, Ms Creola's father,
15 Mr Coleman, and her sister and her husband, the
16 Croyles

17 Q And that was about 1990?

18 A That sounds about right, yes, sir

19 Q And that's when you said that she
20 agreed to sell most of her remaining property?

21 A That's when she -- as a settlement,
22 they paid her more money She conveyed to them all
23 of her property that she had left

24 Q Well, you said most of her remaining
25 property in this Affidavit, don't you? You don't

1 say all of her property, do you?

2 A She signed a contract for sale for most
3 of her property, that's true And we brought the
4 action for specific performance And as you keep
5 on reading, as a settlement, she conveyed all of
6 her property

7 Q Okay Now, other than the -- let's go
8 back to the three or four weddings You were
9 talking about one of them when you weren't present,
10 and you talked about -- have any others taken place
11 on the front property?

12 A Not that I'm aware of Not up on the
13 front yard area, no, sir

14 Q And you said some of them might have
15 infringed over on the pigtail, and that's when we
16 said you wouldn't take an oath one way or another?

17 A Because I'm not sure where the property
18 lines are over on the Dunns' property

19 Q Well, the Dunns know where the property
20 lines are, wouldn't you say?

21 A Perhaps

22 Q And they would know where they set up
23 their equipment for a wedding, would they not?

24 A Perhaps

25 Q Okay Now, on those two or three

1 occasions that you say were taking place on the
2 back property that may have infringed, was there
3 any improper conduct by anybody?

4 A Improper conduct meaning what, sir?

5 Q Well, what's your definition?

6 A Sir, you're asking the question

7 Q Offensive conduct to you

8 A No more than is normally at any wedding
9 reception where they have music and people are
10 talking and that sort of thing, and it gets a
11 little loud and boisterous at times

12 Q And I can't remember what you said On
13 those two or three occasions, were you present?

14 A I was present for, I believe, two of
15 them

16 Q Okay Did you attend the events --

17 A No

18 Q -- or just observe from across the
19 fence?

20 A I wasn't observing I was in my house
21 or in my yard

22 Q Okay Now, paragraph 11 of your
23 Affidavit, Judge Abbott, says this The narrow
24 road is clogged with wedding guests whose parking
25 interferes with our use of the road

1 When did that occur?

2 A When the wedding receptions were there
3 and they had people parking on the access road

4 Q Did it interfere with your ingress and
5 egress?

6 A It interfered in that you had to slow
7 down You had at times tell a police officer that
8 you lived in there and needed to get on through,
9 yes, sir

10 Q All right And assuming that this
11 wedding was not on any restricted property,
12 assuming that, is there anything wrong with the way
13 the parking and traffic was handled?

14 A Not from -- they weren't parking in my
15 yard They weren't parking in my driveway, if
16 that's what you mean, no, sir But I can't speak
17 for the other property owners, because some of them
18 were in a position that it interfered with their
19 ability to get in and out of their house and also
20 on the access road to their houses

21 Q Do you know who that would be?

22 A I think that would be Mr and
23 Mrs Croyle for one, yes

24 Q You next say, quote The noise from
25 the bands and crowd is very loud and gets worse as

1 the guests get drunk

2 Do you know of anyone who got drunk on
3 the property?

4 A Not personally, but some of the other
5 neighbors have told me about somebody, yes

6 Q Who told you about it?

7 A I think it was -- now, let me be sure
8 I think it may have been Mr -- Dr and Ms
9 Courtney had some conversations with one of the
10 guests down there who appeared to be inebriated

11 Q And did they identify who it was?

12 A No, sir, they did not know him

13 Q And did they tell you --

14 A In the course of a conversation after
15 that sometime, they made mention of it

16 Q Okay So this controversy that you and
17 your wife had with the Dunns and other property
18 owners started in early 2006, 2006?

19 A Yes, sir

20 Q And you say in your Affidavit that,
21 quote The Dunns intend to have a wedding every
22 weekend, if possible

23 Is that right?

24 A If they want to operate it for
25 commercial purposes, I would think you would want

1 to use it as much as possible

2 Q So we know for sure, at least in your
3 opinion, that they've had one wedding, and you
4 don't know whether it was commercial or private, on
5 the lot 7?

6 A That is correct, sir

7 Q All right So you're just assuming
8 that they would want to have one every weekend?

9 A I would assume that they would want to
10 use it as much as possible in the period of time
11 that you can use it, yes, sir

12 Q Okay Now, have they used the property
13 for commercial purposes in any way other than the
14 manner in which you've described and answered in my
15 questions?

16 A Not that I'm aware of, no, sir

17 (Off-the-record conference)

18 (A recess transpired)

19 BY MR TISDALE

20 Q Judge Abbott, back on the record now

21 A All right, sir

22 Q Did you in March 2006 visit the
23 Planning and Zoning Commission in Georgetown
24 concerning the Dunns' construction project?

25 A Without looking -- I stopped by the

1 Planning and Zoning Commission one day, yes

2 Q And would that have been roughly March
3 2006? Go ahead and let's let Jack finish that

4 A It would have been sometime in March,
5 yes, sir, I believe, Mr Tisdale

6 Q Okay And if you need to look at
7 those, we can let you do that What was the
8 purpose of your stopping at the Planning and Zoning
9 Commission?

10 A It was after I found out that Mr and
11 Mrs Dunn wanted to use the property as a bed and
12 breakfast, I stopped by to see what the building
13 permits would have shown as the use of the
14 property

15 Q And did you obtain copies of the
16 various documents that the Dunns had filed with the
17 Planning and Zoning Commission?

18 A Not that day, no, sir

19 Q Did you subsequently?

20 A Yes, sir

21 Q And when subsequently?

22 A I believe it may have been either the
23 next day or a couple of days later

24 Q On your first visit to the Planning and
25 Zoning, did you request copies of the documents?

1 A I asked to see the copy or see the
2 permits that were on record They provided that to
3 me Their computer log showed additional permits
4 that they could not find And then subsequently,
5 they obtained those and, I think, called me on my
6 cell phone and told me they had them ready and I
7 could stop by when I wanted them

8 Q Did the papers you looked at contain
9 copies of the applications made by the Dunns?

10 A It contained, I believe, the
11 application and also a drawing for the sewer tank
12 or sewer septic tank

13 Q All right Do you still have those
14 papers that you got from the Planning and Zoning
15 Commission?

16 A No, sir

17 Q Who has them?

18 A Office of Disciplinary Council

19 Q You didn't keep copies of them?

20 A I thought I did, but I could not -- I
21 have looked through my file I do not have them,
22 no, sir

23 Q And what did you ascertain from looking
24 at the papers at the Planning and Zoning office?

25 A That the septic tank appeared to be in

1 compliance with what would need to be done and that
2 apparently they had the building permits

3 Q Did you determine whether or not there
4 had been any violation of county rules and
5 regulations by the Dunns in the building of the
6 project?

7 A Mr Tisdale, I don't know what the
8 county regulations say that you have and cannot
9 have What I was looking for was to see if there
10 was any specific reference to bed and breakfast
11 There was not

12 Q There was not Who did you talk with
13 at the Planning and Zoning Commission?

14 A I talked to whoever the young lady was
15 at the front desk initially, and then she called --
16 I believe his name is Mr Malloch

17 Q M-A-L-L-O-C-H?

18 A I believe that's right, and I talked
19 with him for a while

20 Q Did you inform Mr Malloch that the
21 Dunns planned to operate a bed and breakfast on the
22 property?

23 A I believe I informed him or told him it
24 was my understanding by a website they were, and I
25 was just looking to see what was included on the

1 building permit

2 Q All right Did you request that they
3 come out and inspect the property?

4 A No, sir

5 Q Did you request that Planning and
6 Zoning stop the work on the project?

7 A Absolutely not

8 Q You did not?

9 A No, sir

10 Q Was anyone with you when you made these
11 inquiries?

12 A No, sir

13 Q And my understanding is they gave you
14 some of the documents the first day and then called
15 you and told you to come back and get others --

16 A Yes, sir

17 Q -- two days later?

18 A A day or two later, as I recall,
19 Mr Tisdale

20 Q Okay Was there any objection to them
21 giving you the documents, did they say?

22 A No, sir, they had no problem at all

23 Q All right Judge Abbott, do you know
24 someone named Yolanda Knox?

25 A Yes, sir

1 Q Who is that?

2 A That is an acquaintance of my son and
3 his wife

4 Q And what is your son's name?

5 A Hyde

6 Q Where does your son live?

7 A Murrells Inlet

8 Q And what is his wife's name?

9 A Karen

10 Q K-A-R-E-N?

11 A Yes, sir

12 Q Are you familiar with e-mail
13 correspondence from Yolanda Knox or someone on
14 behalf to the Dunns requesting that a wedding -- a
15 commercial wedding be set up?

16 A I was provided a copy of it, yes, sir

17 Q Did you know anything about it before
18 you were provided a copy?

19 A I don't believe so, not to my
20 knowledge

21 Q And where does Yolanda Knox live?

22 A Mr Tisdale, she -- I think at one time
23 lived in Florence, but I don't know if she still
24 lives there or not I don't know

25 Q Do you know how Yolanda Knox got the

1 idea of requesting that her wedding be conducted at
2 the Dunns' property?

3 A No, sir

4 Q And were you ever shown the Dunns'
5 response to her concerning her wedding or
6 possibility of her wedding at Dunn Acres?

7 A If you can show it to me, I can tell
8 you if I saw it or not, sir

9 (DFT EXH 9, One-page 4-28-06 E-mail
10 to Yolanda, was marked for
11 identification)

12 BY MR TISDALE

13 Q It doesn't say at the top, but I'm
14 referencing to you this is an e-mail from Pam Dunn
15 to Yolanda Knox --

16 A Yes, sir

17 Q -- dated April 28th, '06 Have you
18 ever seen this?

19 A Mr Tisdale, I've seen one copy of some
20 e-mail correspondence Now, I could have seen this
21 one I just don't know, sir

22 Q Okay Did you have any knowledge of
23 Yolanda Knox's request for a wedding at Dunn Acres
24 before she made the request?

25 A I think I was told that she had done it

1 shortly after she had made the request

2 Q You don't think you knew it before?

3 A I don't believe so, sir

4 Q And you say she is a friend of your
5 daughter-in-law and son?

6 A She's an acquaintance I don't know if
7 I would call her a friend It's just somebody that
8 they know

9 Q Do you know how Yolanda Knox was
10 attracted to the Dunn Acres site for a wedding?

11 A No, sir

12 Q Have you had any conversation with your
13 son and daughter-in-law about Yolanda Knox's
14 request for a wedding there?

15 A They sent me a copy of the e-mail
16 request and the response, and I don't know if I've
17 had any further discussion with him about it since

18 Q You would have opposed Yolanda Knox
19 having the wedding on the property, wouldn't you?

20 A Absolutely

21 Q Did you tell them that?

22 A I don't think I was asked

23 Q Okay And you say Yolanda Knox did
24 live in Florence?

25 A I think so, Mr Tisdale If not in

1 Florence, somewhere close to Florence

2 Q Okay Now, Judge Abbott, are you aware
3 that complaints have been made to the Corps of
4 Engineers concerning a small piece of property that
5 it's claimed was filled in by the Dunns?

6 A I am aware that the Corps came down and
7 investigated it and put wetland delineation flags,
8 yes, sir

9 Q Are you aware that some property owners
10 in the Sasser Subdivision complained to the Corps
11 of Engineers concerning the Dunns' activity on the
12 property?

13 A I understand that some of them have,
14 yes, sir

15 Q Who has complained?

16 A The only one that -- the one that I
17 think is Bud Owens or Coleman Owens

18 Q Is that the same person?

19 A Yes, sir, Bud is his nickname

20 Q Yeah And have you discussed with
21 Mr Owens prior to his making the complaint about
22 the complaint?

23 A It was discussed among -- in several of
24 the conversations as to what was going on over
25 there, and one of the things was the filling in of

1 what appeared to be wetlands Now, that was
2 mentioned in conversations with a number of the
3 neighbors Now, was anybody specifically asked to
4 report it? No

5 Q Did you at any time suggest to
6 Mr Owens that he report it?

7 A No, sir

8 Q Now, have you yourself written the
9 Corps of Engineers recently concerning the filled
10 in wetlands?

11 A I sent to them a picture or a couple of
12 pictures of the area and just told them -- once
13 they posted the signs over there as to wetlands
14 delineation, you know, if it was any use, I had the
15 pictures So I sent that to them

16 Q Did you keep copies of that
17 correspondence?

18 A I don't believe so

19 Q Did you keep copies of photographs?

20 A The photographs were on a digital
21 camera So

22 Q Who took the photographs?

23 A I did

24 Q When did you take them?

25 A Mr Tisdale, I want to think it was

1 probably a year or so ago

2 Q Could it have been longer?

3 A It could have I'm not sure at all

4 But I think the pictures have dates on them

5 Q That you sent to the Corps?

6 A Yes, sir Now, I say that I'm not
7 sure -- normally with a digital camera, it dates
8 it

9 Q You didn't represent to the Corps, did
10 you, Judge Abbott, that the photographs you sent
11 reflected current activity on the property?

12 A No, sir

13 Q You did not?

14 A As I recall, Mr Tisdale, I sent them
15 to them and told them, you know, I saw that they
16 had the flags, if this was any help to them, to
17 please use it

18 Q And you did that as the husband of an
19 interested property owner?

20 A I did that as somebody who did not want
21 wetlands filled in

22 Q Right And there hadn't been any
23 filling of any wetlands in quite a few years, had
24 there?

25 A There have been ongoing activity in

1 that particular area for some period of time

2 Q Filling in of wetlands?

3 A What I would deem to be wetlands, yes,
4 sir

5 Q When is the last time any wetlands
6 filling took place?

7 A As to when the last truckload of dirt
8 or sand was put in there, I do not know

9 Q Okay I might have covered this
10 earlier, but did you talk about the complaint with
11 Bud Owens before he sent it to the Corps?

12 A No, sir

13 Q Did not Judge Abbott, have you had
14 anyone photograph the Dunn property?

15 A No, sir

16 Q All right And I would call your
17 attention to one occasion when someone from your
18 house, a male, on October 29th, 2006, allegedly
19 spent the night at your house and early the next
20 morning took pictures of the Dunn property from a
21 boat in the river Do you recall that?

22 A No, sir

23 Q You don't recall anyone coming to your
24 house in October 2006, spending the night for the
25 purpose of photographing the Dunns' property?

1 A No, sir

2 Q You do not recall that?

3 A There are very few people that I invite
4 to spend the night at the house I don't know of
5 anybody that I've asked to come down there to take
6 pictures, no, sir

7 Q Well, let's take out the part about
8 spending the night at the house Do you know of
9 anyone who, with your knowledge, has taken
10 photographs of the Dunns' property from the river?

11 A Practically every weekend that I'm down
12 there and on the dock, somebody riding by the boat
13 takes pictures

14 Q Well, just let me just be a little more
15 specific Have you requested anyone to take
16 pictures?

17 A No, sir

18 Q None?

19 A No, sir

20 Q All right Do you know whether or not
21 any web cams have been set up anywhere on the
22 property to observe activities on the Dunns'
23 property?

24 A No, sir, I have no knowledge

25 Q How about any audio devices?

1 A No, sir

2 Q You don't know of any?

3 A No, sir

4 Q Now, my understanding is, Mr Abbott --
5 Judge Abbott, and you can correct me if this is
6 wrong -- Jack, are you almost done with the notes?

7 MR SCOVILLE I don't see anything in
8 there

9 MR TISDALE Can you have somebody run
10 off a couple copies for us?

11 MR SCOVILLE Yeah, sure

12 MR TISDALE We'll wait until you get
13 back then

14 (Off-the-record conference)

15 BY MR TISDALE

16 Q Judge Abbott, do you recall that a set
17 of Amendments to Deed and Restrictions have been
18 prepared for this subdivision?

19 A Yes, sir

20 Q And do you recall that your wife and
21 Mr Harrelson, I believe, presented an amendment to
22 the restrictions to the Dunns for their
23 consideration on or about May 20th, 2006?

24 A I think they carried over a set of
25 restrictions to them, yes

1 Q Okay And were you involved in the
2 preparation of those restrictions?

3 A My only involvement is I talked to Jim
4 Young, an attorney in Conway, and asked him to
5 prepare the restrictions And he did so, and I
6 took a look at them He made a couple of
7 modifications or changes

8 Q Did you prepare a set to give to
9 Mr Young?

10 A I did not prepare a set, no, sir

11 Q Who did?

12 A Mr Young prepared them

13 Q He did?

14 A Yes, sir

15 Q What's his first name?

16 A Jim

17 Q Jim Young So the restrictions that
18 were presented to the Dunns in May of 2006 were --

19 A Before -- just a minute Now,
20 Mr Tisdale, I'm somewhat mystified as to the basis
21 for it I'm not a party to the action

22 Q Basis for what?

23 A Providing a copy of these notes I'm
24 not here represented by an attorney I did not
25 prepare these and have not given Mr Scoville a

1 copy of them They're my own personal notes

2 Q Right

3 A Now, what is the basis for wanting a
4 copy of them?

5 Q Well, you know, Judge, any time that a
6 witness has notes in any case, unless they're
7 privileged, the people involved in the litigation
8 are entitled to see them

9 A All right, sir Just wanted the basis
10 for it

11 Q Well, I'm glad we won on that ruling
12 But, Judge Abbott, I want to talk about these
13 amended restrictions You say Attorney Jim Young
14 prepared a set of restrictions?

15 A Yes, sir He's a real estate attorney
16 in Conway

17 Q All right And who gave him the
18 information that he needed to prepare the
19 restrictions?

20 A I talked to him briefly about it

21 Q Did anyone else other than you?

22 A Not that I'm aware of He could have
23 talked to somebody else in his office, but I don't
24 know

25 Q But I mean as far as landowners go?

1 A No, sir

2 Q You're the only one?

3 A Yes, sir

4 Q And did you tell him -- first of all,
5 after he prepared these restrictions, did you
6 review them?

7 A I read over them, yes, sir

8 Q Did you request your wife to present
9 them to the Dunns?

10 A I believe I initially was going to
11 carry them over there She suggested that it may
12 be better that she do so so it wouldn't look like I
13 was trying to force anything on anybody and so that
14 two of them would go Stoney volunteered --
15 Harrelson -- volunteered to go over there with her

16 Q Well, Judge Abbott, did the property
17 owners all agree to these amendments before it was
18 presented to the Dunns?

19 A I had shown them to -- I can't say that
20 all of them had taken a look at them, but a fair
21 number of them had In fact, I think Creola and my
22 wife had both signed on them And the rest of them
23 had indicated their willingness to sign off if the
24 Dunns did

25 Q Creola Harrelson, the wife of Stoney

1 Harrelson?

2 A Yes, sir

3 Q These restrictions, would it be your
4 personal opinion, would require the agreement of
5 all of the landowners in the subdivision for them
6 to be effective?

7 A That's the way it is set up, yes, sir

8 Q And you think that would be a
9 requirement because of your theory expressed
10 earlier that Ms Sasser when she sold all the
11 property made everybody jointly developers?

12 A I think the restrictions that were
13 prepared, for them to be in place and enforceable,
14 everybody would have to sign on them, yes, sir

15 Q Otherwise, they would be of no legal
16 effect, is that right?

17 A As to whoever didn't sign, right

18 Q Certainly Did you instruct Mr Young
19 to include the back nine acres that you say is
20 unrestricted of the Dunns' property in the
21 restricted property?

22 A I think I indicated to him for all of
23 the property down there, yes

24 Q All of the property?

25 A Yes, sir

1 Q Including the Dunns property that had
2 there before been unrestricted?

3 A Yes, sir

4 Q You say that you suggested to your wife
5 that she go and not you?

6 A I did not suggest She suggested

7 Q She suggested?

8 A Yes, sir

9 Q Did you give her any guidance as to
10 what she should say to the Dunns?

11 A No, sir

12 Q Did she come back and tell you that she
13 told the Dunns three times that if they did not
14 sign these restrictions, they would get sued?

15 A She did not tell me that, and that is
16 not her She would not do that

17 Q Is that the first time you've heard
18 that?

19 A I have read it in some correspondence
20 from them

21 Q From the Dunns?

22 A Yes, sir

23 Q Okay But your feeling is that that
24 was not something she would say?

25 A That is not something she would say

1 Q But, of course, you weren't there and
2 can't say --

3 A No, sir

4 Q -- under oath, right?

5 A Right

6 Q Are you aware or were you aware that
7 Mr Langston has photographed some activity he
8 thought maybe to be commercial on the Dunns'
9 property?

10 A He has told me that, yes, sir

11 Q Have you seen the pictures?

12 A I may have, Mr Tisdale I'm just not
13 sure

14 Q And that would be the wedding, I guess,
15 that you don't know whether it was commercial or
16 private?

17 A That's correct, yes, sir

18 Q All right Have you discussed the
19 possibility of a surveillance of the Dunns property
20 with anyone?

21 A No, sir

22 Q You have not?

23 A No, sir

24 Q Now, what relation, Judge Abbott, is
25 Phillip Sasser to Helen Sasser?

1 A Cousin

2 Q And how about Charles Sasser to Helen
3 Sasser?

4 A Cousin -- I'm sorry There is a
5 Charles that's her cousin, and she has a son who is
6 also named --

7 Q Also Charles?

8 A Yes, sir

9 Q Now, do you recall approaching someone,
10 Phillip or Charles or Helen Sasser, about the
11 possibility of assuming her rights as developer of
12 the property?

13 A I think I talked to Phil about it

14 Q All right And when?

15 A I have no idea, sir

16 Q Would it have been in 2005 or 2006?

17 A Mr Tisdale, the only thing I can tell
18 you, it would have been before the lawsuit was
19 filed As to any more definite date, I just cannot
20 give you

21 Q Would it have been after 1991?

22 A It would have been after '91, yes, sir

23 Q After '91 and before the lawsuit was
24 filed?

25 A Yes, sir

1 Q And did you go to see Phil at his
2 office?

3 A I did not go see him in the office I
4 may have seen him somewhere and talked to him about
5 it

6 Q What was your proposal to him?

7 A To the effect of having Helen sign some
8 type of instrument He and I talked briefly about
9 it He told me he did not think she would be
10 willing to sign anything, but he would talk to her
11 and get back in touch with me I never did hear
12 any more from him His health got real bad for a
13 while

14 Q Phil?

15 A Yes, sir

16 Q Did you propose that he see if Helen
17 Sasser would assign her development rights to
18 someone?

19 A He was going to talk to her, but he --
20 as to whether or not he did, I don't know, because
21 I never discussed it with him again

22 Q Was the subject matter, as I asked,
23 whether or not she would assign her development
24 rights?

25 A If any, yes, sir

1 Q And who was it that you were proposing
2 that they be assigned to?

3 A I don't think I said

4 Q Okay And you don't recall when it
5 was?

6 A No, sir

7 Q Was anyone else with you other than you
8 and Phil?

9 A No, sir

10 Q Now, we have some affidavits from Lynda
11 Courtney and David Croyle that have been filed in
12 this case

13 A Yes, sir

14 Q Were you instrumental in the
15 preparation of either of these Affidavits?

16 A Let me take a look at them

17 MR TISDALE Here is David Croyle's
18 We might as well go ahead and mark it

19 (DFT EXH 10, Two-page 3-26-07
20 Affidavit of David Croyle, was marked
21 for identification)

22 THE WITNESS To my knowledge, no, I
23 had nothing to do with the preparation of it
24 BY MR TISDALE

25 Q Do you know who prepared this?

1 A I assume -- no, sir, I don't
2 MR TISDALE And I'll show you --
3 we'll go ahead and mark Lynda Courtney's
4 (DFT EXH 11, Two-page 3-27-07
5 Affidavit of Lynda T Courtney, was
6 marked for identification)

7 BY MR TISDALE

8 Q Are you familiar with the Affidavit of
9 Lynda Courtney?

10 A I've read it, yes, sir

11 Q And did you have anything to do with
12 the preparation of it?

13 A No, sir

14 Q Do you know who did?

15 A No, sir

16 Q Judge Abbott, have you gone to see
17 Furman Long about the activities on the Dunn
18 property?

19 A I've talked to Furman about it He's a
20 longtime friend, and I see him on a regular basis

21 Q I understand he is Ruben's son?

22 A Yes, sir

23 Q I'm old enough to remember Ruben pretty
24 well

25 A And his son is now a lawyer

1 Q Really?

2 A Yes

3 Q Ruben's son?

4 A No, Furman's son, Ruben's grandson

5 Q When did you go see Furman Long about
6 the Dunns' property?

7 A Mr Tisdale, I see them on a very
8 regular basis I have no idea

9 Q When was it that you said something to
10 Furman Long about the Dunns property?

11 A I think when initially we saw they
12 advertised it for a bed and breakfast, I said
13 something to him about it then

14 Q Did you ask him to do something or not
15 do something?

16 A Indicated to him -- in fact, indicated
17 to him I was sending them a letter, showed it to
18 him He was not interested in signing it, which
19 was fine

20 Q What letter was that, was it the same
21 one?

22 A That the other signatures were
23 attached

24 Q The February 28th letter?

25 A Yes, sir

1 Q But he refused to sign it or declined
2 to sign it?

3 A He declined to sign it, yes, sir

4 Q Did he say why?

5 A No, sir

6 Q He did not?

7 A I didn't ask him, no

8 Q He just said, I'd rather not sign it?

9 A Yes, sir

10 Q Did you ask him whether or not he had
11 been upset about anything the Dunns were doing on
12 their property?

13 A Not that I recall

14 Q All right Now, Judge Abbott -- and I
15 haven't had a chance to read your memorandum yet,
16 but have you been present when the meetings of the
17 property owners took place to talk about action
18 against the Dunns?

19 A I have been present on, I know, one
20 occasion It may have been two occasions, yes

21 Q Where did those meetings occur?

22 A One of them occurred at my house in
23 Conway

24 Q Do you recall when that was?

25 A No, sir

1 Q In 2006?

2 A Yes, sir

3 Q And can you tell us who was present at
4 that meeting at your house in Conway?

5 A Rupert and Mary Ann Stalvey, Lynda and
6 Dr Courtney, Carl and Joyce Singleton, and Sumter
7 and Diane Langston And I don't recall if
8 anybody --

9 Q Was Mr Scoville present?

10 A No

11 Q What was the purpose of that meeting?

12 A Just to talk about what had gone on and
13 see what everybody wanted to do

14 Q And what was the decision?

15 A The decision was that all of us enjoyed
16 the way it was down there, did not want any
17 commercial activity, and so we needed to go forward
18 with trying to protect the property

19 Q Did you discuss the possibility of
20 bringing a lawsuit against the Dunns?

21 A I think that was one of the things that
22 was discussed I mean, none of us wanted to do
23 that I mean, as you alluded to earlier, I'm
24 getting ready to retire I don't want to be
25 involved with a lawsuit with my next-door neighbor

1 That's not what I want to go down there for But
2 on the other hand, that's what -- the protection we
3 have is in the deeds, and if to prevent any
4 commercial activity, then that's what we were going
5 to have to do And that seemed to be the consensus
6 of opinion of the other parties

7 Q And did you recommend that action be
8 taken to the group?

9 A I did not recommend that they take it
10 That was their choice to make

11 Q Of course But you didn't make a
12 suggestion one way or the other?

13 A No, sir

14 Q Did you chair the meeting?

15 A I don't think there was a chair We
16 met at my house, had some hors d'oeuvres and
17 probably some wine and then went to one of the
18 restaurants and had dinner So it wasn't a meeting
19 anybody would chair, no, sir

20 Q So it was kind of an informal meeting?

21 A Yes, sir

22 Q And this subject was discussed during
23 the course of the meeting?

24 A Yes, sir, that was discussed

25 Q When was the other meeting that you

1 recall?

2 A That's the only one that I am aware of
3 As I said, we see all of these people on a frequent
4 basis So, you know, a group of them, we play
5 bridge together So all of them talk about it So
6 I can't say there was another meeting or was not
7 another meeting

8 Q Obviously Mr Scoville was hired to
9 bring a lawsuit at some point Did you approach
10 him, or did somebody else?

11 A I approached him and talked to him and
12 indicated -- and sent him some basic information
13 about it He said he would be glad to take a look
14 at it, later got back and said he would be willing
15 to represent the parties So several of them went
16 down and talked to him

17 Q Who went down and talked to him, do you
18 remember?

19 A I don't know, sir

20 Q But you didn't on that second occasion?

21 A I did not, no, sir

22 Q But you initially talked to
23 Mr Scoville and asked him to consider it?

24 A Yes, sir

25 Q Okay When you went to Mr Scoville,

1 who were you representing?

2 A When I went to Mr Scoville, I was
3 talking to him to get some general information for
4 my wife and anybody else who was interested in it

5 Q When you went to the Planning and
6 Zoning people to get the papers about the project,
7 who were you representing?

8 A Myself

9 Q Personally?

10 A Well, Mr Tisdale, I was just trying to
11 obtain information at that point

12 Q Right Representing yourself?

13 A I wasn't representing anybody I went
14 in to a public office to look at some public
15 records

16 Q Well, I guess that's a misnomer what I
17 just said You went there as an individual to get
18 some public records?

19 A Yes, sir

20 Q Okay Did you inform Mr Malloch that
21 you were a judge?

22 A Absolutely not

23 Q You did not?

24 A No, sir

25 Q Now, Rupert Stalvey -- is that the

1 correct pronunciation?

2 A Yes, sir

3 Q I've been having trouble with it
4 Stalvey?

5 A Stalvey

6 Q Stalvey?

7 A Yes, sir

8 Q Stalvey, is he in the insurance
9 business?

10 A He was

11 Q And was he recently in the insurance
12 business, or how long has he been out?

13 A He's been retired for five or six years
14 now

15 Q All right Did you have any
16 conversation with him about looking into having the
17 Dunns' insurance policy canceled?

18 A No, sir

19 Q Did you know anything about it?

20 A After the fact

21 Q How did you find out about it?

22 A When they put it in a letter to the
23 Office of Disciplinary Council and at that time
24 accused me of doing it

25 Q But had you heard of that before then?

1 A I don't believe so

2 Q You don't think you ever talked to
3 Rupert Stalvey about it?

4 A Not specifically, no, sir

5 Q What do you mean, not specifically?

6 A Mr Tisdale, Rupert is one of my
7 closest friends So I see and talk to him probably
8 more than anybody else down there So to say what
9 I did or did not talk to him about, you know, it
10 would be difficult for me to say But I didn't
11 ever request him to cancel their insurance or
12 anything of that nature, no, sir

13 Q Did you ever suggest to him that he
14 investigate it?

15 A No, sir

16 MR TISDALE Mark this as the next
17 exhibit, please

18 (DFT EXH 12, One-page 8-15-06
19 Letter to Levon Dunn From Pearl
20 Anderson, was marked for
21 identification)

22 BY MR TISDALE

23 Q Are you aware of any facts concerning
24 this letter dated August 15th, 2006, Exhibit 12?

25 A No, sir

1 Q And did Rupert Stalvey ever tell you,
2 to your knowledge, that he had inspected the
3 property at the Dunns' --

4 A No, sir

5 Q -- prior to making a request of the
6 insurance being looked at?

7 A No, sir

8 Q Now, going back to something entirely
9 different for a minute, Judge Abbott, in the
10 restrictions on the property that we've all agreed
11 to, book 207, page 759, this language appears in
12 paragraph 5 Paragraph 5 seems to say no
13 building -- does say, quote No building shall be
14 erected or altered on any lot until the building
15 plans or alteration plans or location on said lot
16 shall have been approved by the developer

17 Do you know of any person who owns
18 property who has altered their houses in any way
19 has sought approval from Helen Sasser?

20 A Not that I'm aware of

21 Q So has that paragraph just been
22 ignored?

23 A Mr Tisdale, as I said, I don't know
24 I don't know if anybody else has contacted her or
25 not

1 Q Have you altered your house?

2 A Yes, sir

3 Q And have you sought permission from

4 Ms Sasser?

5 A No, sir

6 Q Have not?

7 A No, sir

8 Q Were you aware that was a requirement?

9 A I was aware of the deed restrictions,
10 yes, sir

11 Q But you decided not to do it?

12 A As I indicated earlier, I don't think
13 she has any ownership interest

14 (Off-the-record conference)

15 (DFT EXH 13, Eight-page Plaintiffs'
16 Answers to Defendants' First Set of
17 Interrogatories and Requests for
18 Production, was marked for
19 identification)

20 BY MR TISDALE

21 Q Judge Abbott, Exhibit 13 are simply the
22 plaintiffs' interrogatory answers?

23 A Yes, sir

24 Q And these are answers, of course, given
25 by Mr Scoville on behalf of the plaintiffs, and I

1 just wanted to review and see if there is anything
2 on there I need to ask you about And if you look
3 at the second page there, list of witnesses, do you
4 see that?

5 A Yes, sir

6 Q We've been over and talked about most
7 of them But have we talked about George and Laura
8 Lindsay?

9 A They are the co-owners on the property
10 with Stoney and Creola

11 Q Okay And we've talked about everybody
12 else, I think, including Yolanda Knox down there at
13 the bottom?

14 A Yes, sir

15 MR TISDALE And Furman Long I don't
16 think I have anything else on that Jack, let's
17 take 30 minutes, if you don't mind Come back as
18 quick as we can

19 (A luncheon recess transpired)

20 BY MR TISDALE

21 Q Judge Abbott, before we broke for
22 lunch, you and Mr Scoville had given us this
23 memorandum here, and I just wanted to ask you, when
24 did you prepare this, if you did prepare it?

25 A I prepared it It was prepared a long,

1 long -- there wasn't a specific date on it

2 Q Is this something you keep on a
3 computer?

4 A Yes, sir

5 Q And it's just a memorandum that you
6 have prepared from time to time or added to?

7 A Yes, sir

8 Q All right And has it been distributed
9 to others?

10 A No, sir

11 Q Okay So you typed this particular
12 thing yourself?

13 A No, sir

14 Q Who did?

15 A My secretary

16 Q Down at your judicial office?

17 A Yes, sir

18 MR TISDALE Okay So let's go ahead
19 and mark this as Exhibit 14

20 (DFT EXH 14, Five-page Memorandum,
21 was marked for identification)

22 BY MR TISDALE

23 Q And Exhibit 14 is labeled Memorandum
24 Riverhouse in caps, is that right?

25 A Yes, sir

1 Q But you say this has not been made
2 available to others?

3 A I have not given it to anybody other
4 than I may have sent a copy to Mr Scoville, but I
5 don't know

6 Q Okay Now, is this document the
7 amended restrictions you said were prepared largely
8 by Jim Long?

9 A Jim Young

10 Q Young, I'm sorry

11 A Yes, sir

12 MR TISDALE Let's mark this as
13 Exhibit 15

14 (DFT EXH 15, Six-page Declaration
15 of Amended Conditions, Reservations,
16 Covenants and Restrictions, was
17 marked for identification)

18 BY MR TISDALE

19 Q This is Mr Young's Declaration of
20 Amended Conditions, Reservations, Covenants, and
21 Restrictions, Exhibit 15

22 What is the purpose of the memo that --
23 the memo, Exhibit 14?

24 A Just for my own notes and use

25 Q Okay When do you think you began

1 keeping it?

2 A Mr Tisdale, I don't know, sir

3 Q Now, Judge Abbott, you have given us a
4 memo Have you maintained any other file in
5 connection with this matter?

6 A No, sir

7 Q When you have gotten documents like the
8 copies of the Planning and Zoning documents, have
9 you given copies to any of the other property
10 owners?

11 A I don't believe so, no, sir

12 Q When you approached other property
13 owners to sign the paper accompanying your February
14 28th letter to the Dunns, what did you tell the
15 property owners?

16 A I told them that there was a proposed
17 use of the property as a bed and breakfast and that
18 I was opposed to it and had prepared a letter to
19 that effect

20 Q And if they were in agreement to sign?

21 A And showed them a copy of the letter
22 I didn't ask them to sign it As I indicated
23 previously, a number of them wanted to, and so that
24 started And then the rest of them more or less
25 joined in

1 Q Did you tell them that the Dunns were
2 conducting commercial activities on their property?

3 A I told them that there was a website
4 and an advertisement in the paper Most of them
5 were already familiar with the website anyhow

6 Q At that point, had this wedding you
7 described already taken place?

8 A Which one is that, sir?

9 Q The one you said was on restricted
10 property?

11 A I don't believe so

12 Q Hadn't taken place?

13 A I don't think at that time the weather
14 would have been conducive to using anything
15 outside

16 Q Due to the heat?

17 A Well, it would have been February or
18 the first of March

19 Q It wouldn't have been the heat?

20 A No, sir

21 Q It would have been the cold?

22 A Yes, sir

23 MR TISDALE Excuse me just one
24 second

25 (Off-the-record conference)

1 MR TISDALE Jack, I don't have any
2 further questions

3 MR SCOVILLE Okay
4 (The following record was made
5 following Ms Abbott's deposition)

6 MR SCOVILLE After Mr Abbott's
7 deposition, Mr Abbott realized that the person who
8 was on the pontoon boat was his cousin from
9 Kentucky who was down on a business trip

10 MR TISDALE Why don't you just let
11 the judge explain it, Jack

12 JUDGE ABBOTT I have a cousin, first
13 cousin, who lives in Bowling Green, Kentucky Her
14 husband was here on a business trip over at the
15 beach, and we met them over there for dinner that
16 night and then came back and spent the night at
17 Plantersville I got up and went to work the next
18 morning He's a big outdoorsman and wanted to ride
19 and take a look So I told him, please use the
20 boat, and he probably took some pictures of where
21 he was so he could show his family back home

22 MS ABBOTT He probably said, this is
23 where I stayed This is my wife's cousin's house

24 MR SCOVILLE Y'all haven't got any
25 pictures from him?

1 JUDGE ABBOTT No

2 MS ABBOTT We don't know that he took
3 any pictures I don't know if he went in the boat

4 JUDGE ABBOTT He went in the boat I
5 remember that

6 (The witness, after having been advised
7 of his right to read and sign this transcript,
8 waives that right)

9 (The deposition was concluded at 1 24
10 p m)

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1 CERTIFICATE OF REPORTER

2
3 I, Janice N Shepherd, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript, pages 1 through 112,
7 is a true, accurate, and complete record

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof

11 Witness my hand, I have hereunto
12 affixed my official seal this 29th day of November,
13 2007, at Charleston, Charleston County, South
14 Carolina

15
16
17
18
19 Janice N Shepherd
20 Registered Professional
21 Reporter, CSR
22 My Commission Expires
23 October 11, 2014
24
25

I N D E X

Page

WITNESS/EXAMINATION

JUDGE HASKELL THOMAS ABBOTT, III	3
EXAMINATION BY MR TISDALE	3
CERTIFICATE OF REPORTER	110

REQUESTED INFORMATION INDEX

(No Information Requested)

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Owned by Helen Sasser		
DFT EXH 3, One-page 10-10-78 Plat	10	14
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Bates Stamp Dunn 0029 Through 0049		
DFT EXH 5, Six-page 9-6-06 Assignment	31	2

1	and Indemnification Agreement, Bates		
2	Stamp Dunn 0059 Through 0064		
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24	Amended Conditions, Reservations,		
25	Covenants and Restrictions		

THIS IS BLANK NO. 7 TITLE TO REAL ESTATE
 FOR FROM TO FROM TO FROM
 TIME BY PUBLISHING CO. CONWAY S. C.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Know all Men by these Presents,

That I Helen Sasser

In the State aforesaid for, and in consideration of the
 sum of Ninety Two Thousand Five Hundred and No/100 ----- DOLLARS

to me paid by M T Coleman Stoney L Harrelson and Creola C Harrelson
David M Croyle and Linda C Croyle and Thomas C Meyer
and Marie D Meyer
605 Plantation Circle Conway S C

In the State aforesaid (Receipt whereof I hereby acknowledge) I

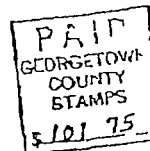
have granted, conveyed, sold and released and by these presents do grant, bargain, sell and release to the said
in the following proportions M T Coleman (25%), Stoney L Harrelson
(12%) Creola C Harrelson (12%) David M Croyle (12%) Linda C
Croyle (12%) Thomas C Meyer (12%) and Marie D Meyer (12%) their
heirs and assigns the following described property forever to wit

SEE ATTACHMENT "A" for PROPERTY DESCRIPTION AND DERIVATION

SEE ATTACHMENT "B" for RESTRICTIONS

Lot 5-W

FILED
 BETTY I WILLIAMS
 COUNTY CLERK
 91 SEP -5 PM 2 04
 GEORGETOWN, SOUTH CAROLINA
 BOOK _____ PAGE _____



TO HAVE AND TO HOLD II nd singular th premises b to e m n l on d unto th said

Heinz and A. goes to eve

M T Coleman Stoney L Harrelson Creolo C Harrelson David M
Croyle Linda L Croyle Thomas C Meyer and Marle D Meyer

the x and y part in col

with sovereignty and independence of the United States of America

Philip H. Brown
JAMES P. MURPHY

Helien Sasser (L 8)

(L 8)

_____ [L. 5.]

_____ (L R)

_____ (28)

STATE OF SOUTH CAROLINA

COUNTY OF HOBBS

PERSONALLY appeared before me Phillip D Sasser
and made oath that he is the wife named Helen Sasser

Carol P Milligan her Act d Deed del th with th n Deed d that he with
Carol P Milligan wt d th e acut n thereof

Sworn to before me this 5th
day of September A. D. 19 91
Carol P Milligan (L. S.)
My Commission expires 8/31/97

Phillip D Sasser

ATTACHMENT A
PROPERTY DESCRIPTION

ALL AND SINGULAR those certain pieces parcels or tracts of land in Georgetown County containing in the aggregate approximately 18 32 acres more or less and being more particularly described as follows

PARCEL 1

ALL AND SINGULAR that certain piece parcel or tract of land in Georgetown County being more particularly described as Lot 5-W containing 1 38 acres as is shown on a plat by Wendell C Powers dated May 10 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 2

ALL AND SINGULAR that certain piece parcel or tract of land lying situate and being in Georgetown County containing 1 66 acres as is more particularly shown on a plat by Terry M Watson R L S dated January 23 1984 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 3

ALL AND SINGULAR those certain pieces parcels or tracts in Georgetown County being designated as Lots 1 2 3, 4 5 and 6 as is shown on a plat by Wendell C Powers R L S dated August 3 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 4

ALL AND SINGULAR that certain piece parcel or tract of land being more commonly referred to as the Sasser Pond and is collectively shown on the aforesaid plats

It is the intent of the grantor herein to convey to the grantees all of her ownership interest of approximately 18 32 acres being the remaining portions of the tracts heretofore conveyed to her by D W Green et al by deed dated July 28, 1978 recorded July 31 1978 in Deed Book 160 at Page 772, Office of Clerk of Court for Georgetown County

This conveyance is subject to those right-of-way easements previously granted by the grantor herein in various deeds of conveyances which are duly recorded in the Office of the Clerk of Court for Georgetown County

375

This conveyance is also subject to the grantor's son, Charles Sasser, retaining the right to use the boat ramp on Lot 5-W and 'Sasser Pond' for and during the period of his natural life

This conveyance is subject to those restrictions of record as contained herein as well as is contained in the deed of Helen Sasser to Joseph Holmes dated March 17 1983 recorded March 18 1983 in Deed Book 207 at Page 758 Office of the Clerk of Court for Georgetown County

It is the intent of the grantor herein to convey all remaining property as contained in the deed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31 1978 in Deed Book 160 at Page 772 Office of the Clerk of Court for Georgetown County

This is a portion of the property conveyed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31 1978 in Deed book 160 at Page 772, Office of the Clerk of Court for Georgetown County

Restriction

BOOK 441 PAGE 19

11 00
203 50
101 75
314 25

W T Abbott III
PO Box 377
Conway SC
29526

Acres for \$

Township

Purch and

STATE OF SOUTH CAROLINA

GEORGETOWN

COUNTY OF

Helen Sasser

1230
TD 3

TO (Address)

Creola C Harrelson, et al
605 Plantation Circle
Conway South Carolina 29526

TITLE TO REAL ESTATE

(Private Individual to Another)

I hereby certify that the within deed has been this

5th day of September A.D.

1991 Recorded in Book 441

of deeds, Page 14 at 2:04 o'clock P.M.

Wm. S. Grevette, Deputy

Clerk of Court of Georgetown County

I hereby certify that the within deed has been this

6th day of September A.D. 1991

presented on Auditor's Book Page

Dora J. Whelan, Deputy

Auditor of Georgetown County

THES/VED
DIA ASS 4

NO. 7
TIMELAYER PUBLISHING Co.
CONWAY S. C.

3-110-13

CONWAY PARCEL

MSA

237

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Georgetown County
Honorable John M. Milling, Circuit Judge
Civil Action No. 2006-CP-22-0914
APPEAL NO. 2

AJG Holdings, LLC, Stalvey Holdings, LLC,
David Croyle, Linda Croyle, Jean C. Abbott,
Linda T. Courtney, Sumter L. Langston,
Diane Langston, Carl B. Singleton, Jr.,
Virginia M. Owens, and Stoney Harrelson,

Respondents,

v

Levon Dunn, Pamela S. Dunn, and
Helen Sasser,

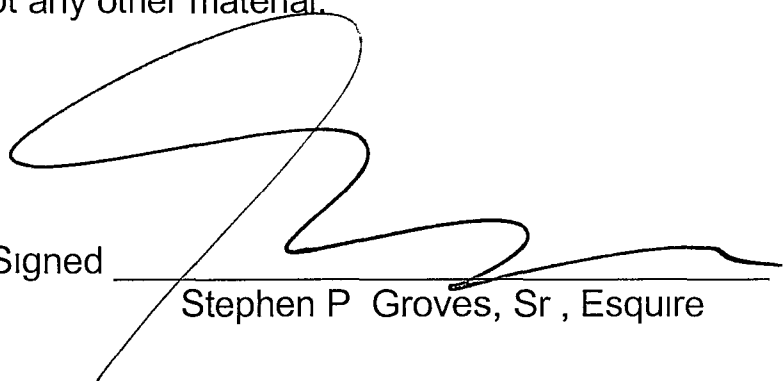
Appellants

**RULE 210(g), SCACR,
CERTIFICATE OF COUNSEL**

377A

I, Stephen P Groves, Sr , Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal (Volumes I, II, and III)** contains all of the material and documentation proposed to be included by any of the parties and not any other material.

Signed



Stephen P Groves, Sr , Esquire

Charleston, South Carolina

June 4, 2009

377B