

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

RECEIVED

APR 14 2014

SC Court of Appeals

R.C. Frederick Hanold, III and Rose F. Hanold; and Carol R. Mitchell and George P. Mitchell, Jr., ... Respondents.
v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, ... Defendants.

Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, ... Appellants.
v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Perlelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.;

Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herman,.....Third Party Defendants.

APPENDIX TO RECORD ON APPEAL

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Respondents

Other counsel of record:
William Herlong
P.O. Box 2003
Greenville, SC 29602
864-382-3800
Attorney for appellants

INDEX

Volume I

Transcript of Record

Hearing date: September 4 & 5, 2012

The Honorable Edward W. Miller.....1-144

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

3 RC Frederick Hanold, et)
4 al.,)

TRANSCRIPT OF RECORD
2009-CP-23-7707

5 Plaintiffs,)

6 -vs-)

7 Watson's Orchard Property)
8 Owners Association, Inc.,)
9 et al.,)

10 -vs-)

11 Property Owners in Watson's)
12 Orchard Subdivision, et al.,)

13 Defendants.)

September 4 and 5, 2012
Greenville, South Carolina

14 B E F O R E:

15 HONORABLE EDWARD W. MILLER, JUDGE

16
17 A P P E A R A N C E S:

18 RANDALL SCOTT HILLER, ESQUIRE
19 Attorney for the Plaintiff

20 WILLIAM D. HERLONG, ESQUIRE
21 Attorney for the Defendant

22
23
24 **COPY**

Margaret A. Woods
Circuit Court Reporter

INDEX

WITNESSES

PAGE

JOHN H. OWINGS

Direct examination by Mr. Hiller	27
Cross-examination by Mr. Herlong	33
Redirect examination by Mr. Hiller	52
Recross-examination by Mr. Herlong	56
Redirect examination by Mr. Hiller	60
Recross-examination by Mr. Herlong	63
Examination by the Court	66
Redirect examination by Mr. Hiller	71
Recross-examination by Mr. Herlong	73
Redirect examination by Mr. Hiller	76

PATRICK H. GRAYSON, JR.

Direct examination by Mr. Herlong	80
Cross-examination by Mr. Hiller	120
Redirect examination by Mr. Herlong	147
Recross-examination by Mr. Hiller	155
Examination by the Court	157

BILL KEHL

Direct examination by Mr. Herlong	161
Cross-examination by Mr. Hiller	171
Examination by the Court	172

INDEX

WITNESSES

PAGE

JAMES COLEMAN. SHOUSE

Direct examination by Mr. Herlong 173

Voir dire examination by Mr. Hiller 182

Direct examination by Mr. Herlong (cont'd) 186

Cross-examination by Mr. Hiller 193

Redirect examination by Mr. Herlong 198

Recross-examination by Mr. Hiller 206

Redirect examination by Mr. Herlong 209

Examination by the Court 213

Redirect examination by Mr. Herlong 219

Recross-examination by Mr. Hiller 220

JAMES M. STEPHENS

Direct examination by Mr. Herlong 223

LARRY ESTRIDGE

Direct examination by Mr. Herlong 227

Examination by the Court 245

Cross-examination by Mr. Hiller 246

Redirect examination by Mr. Herlong 258

Recross-examination by Mr. Hiller 259

Examination by the Court 261

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	P-1	Declaration of Restrictions & Covenants	25	
4	P-2	Agreement to Release Declaration of Restrictions and Protective Covenants	25	
5				
6	P-3	Real property detail information sheets	26	
7	P-4	Current tax map	76	
8	P-5	Index to deeds	134	134
9	P-6	Letter dated December 4, 1980	136	
10	D-1	Notebook	41	41
11	D-2	Blowup of survey/plat	45	
12	D-3	Tax map	73	
13	D-4	D166 and D167	102	112
14	D-5	Tax map	159	159
15	D-6	Letter dated March 11, 1981	161	
16	D-7	Documents/title notes	164	
17	D-8	Mortgage	170	
18	D-9	Deed	188	
19	D-10	Plat	190	
20	D-11	Survey	211	213

MOTIONS AND MATTERS

1 (Proceedings September 4, 2012)

2 THE COURT: Okay.

3 MR. HILLER: Your Honor, on Friday I filed a trial brief
4 and I don't know whether the Court's had an opportunity to
5 review it; however, this case involves the interpretation of
6 covenants and restrictions that were filed in the Greenville
7 County ROD office and as indicated in my trial brief, and I
8 have a number of other cases I'd be happy to hand up in that
9 regard, obviously no extrinsic ---

10 THE COURT: Well before you go any farther, did you file
11 it with the clerk a court's office?

12 MR. HILLER: Yes, sir.

13 THE COURT: Okay, I I haven't received it yet.

14 MR. HILLER: I filed it with the clerk and I left a copy
15 outside the door. There wasn't anybody in your office when I
16 called, ---

17 THE COURT: Okay, well...

18 MR. HILLER: --- I I left you a filed copy.

19 THE COURT: Okay. Well...

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: Okay, alright, go ahead Mr. Hiller. I'm
22 sorry.

23 MR. HILLER: I I I can hand up another copy, Your Honor.

24 Um, ---

25 THE COURT: Well ya have, if you have an extra.

MOTIONS AND MATTERS

1 MR. HILLER: No, sir.

2 THE COURT: Well that's, alright, she'll get it.

3 MR. HILLER: Alright. Your Honor, this is from a factual
4 standpoint the covenants, these covenant restrictions were
5 filed in 1981.

6 THE COURT: Okay.

7 MR. HILLER: In 2009 the defendants filed an amended
8 declaration of covenants alleging that they acquired the
9 proper number of votes pursuant to the terms of the original
10 covenants to effectively remove the covenants from the subject
11 property. Property covered approximately 22 acres a of
12 real -- undeveloped real estate tract, two tracts of land.
13 It's our position that the covenants are unambiguous, that
14 they say what they say in a clear concise manner and as a
15 result they must be construed from the four corners of the
16 document and they must be, it must be determined by the Court
17 from the four corners of the document what the intent of the
18 grantor is. The grantor, the declarant in this particular
19 case, is not a party to this action but the declarant which
20 was Lincoln of South Carolina filed the covenants, the the
21 language we contend is clear, the public records in South
22 Carolina are clear that these tracts of land do not qualify
23 for a vote pursuant to the language of the restricted
24 covenants. I attached to the trial brief copy of the recorded
25 restricted covenants as well as a copy of the amended

MOTIONS AND MATTERS

1 restricted restricted covenants that were filed as well as the
2 tax map or tax identification sheets for the three tracts of
3 land that are involved, so absent a ruling from the Court that
4 the covenants and restrictions are ambiguous, it's my, it's my
5 position and and I have number or any number of cases to hand
6 up but that extrinsic evidence or any evidence is
7 inadmissible, uh, and and not competent evidence at this point
8 so as I indicated to the Court at the roster meeting this
9 mornin' I believe that initial determination needs to be made
10 before either side even attempts to put in into evidence any
11 documents.

12 THE COURT: Okay. Mr. Herlong.

13 MR. HERLONG: Judge, might -- Your Honor, we also
14 presented a a big fat notebook, it was probly Wednesday of
15 last week, you may have it.

16 THE COURT: Got the big fat notebook.

17 MR. HERLONG: The, uh, just kinda cut to the chase on
18 this particular issue, there were cross motions for summary
19 judgment, Judge Welk -- maker denied them for this, said they
20 were a factual issue so to speak with that and I don't know if
21 you wanna hear a whole lot more argument about that. There --
22 the the relevant language in the deed about who gets to vote
23 is the restrict -- not the in the restriction, the
24 restrictions can be changed by a vote of the major -- of a
25 majority of the then owners of the lots into which the

MOTIONS AND MATTERS

1 property described above shall have been developed and in
2 Wash -- Watson Orchards Subdivision maybe I just did this one
3 page.

4 THE COURT: Okay.

5 (Whereupon, counsel handed the document to the Court.)

6 MR. HILLER: The entire paragraph's reproduced in my
7 trial brief, Your Honor.

8 THE COURT: Okay.

9 MR. HERLONG: So it's that, it's that language and and
10 and it's not, it's not underlined and it's not in all caps in
11 the original, Your Honor, I did that, but the all caps
12 language at the end of the, the end a the paragraph is, uh, is
13 what's really at issue here, "A vote of a majority of the then
14 owners of the lots into which the property described above
15 shall have been developed", and a fair reading of that is lots
16 lots into which the property is developed or developed into
17 lots so if if lot -- if the property is developed into lots,
18 those lots get to vote but at any rate Judge Welmaker already
19 looked at all this and and and denied summary judgment for
20 both sides so....

21 THE COURT: Why wouldn't that be dispositive, Mr. Hiller?

22 MR. HILLER: Well, I mean, I I I don't think that his
23 order made a finding with regard as to whether it was
24 ambiguous or not, he just made a finding that was not
25 appropriate to grant summary judgment at that point in time

MOTIONS AND MATTERS

1 from from both sides perspective but and he, I mean, he denied
2 the motion for both sides, motions for summary judgment ---

3 THE COURT: Um-hum.

4 MR. HILLER: --- but but there still has to be and I'll
5 be happy to hand up cases, Your Honor, that, I mean, it says
6 extrinsic evidence is not admissible under any circumstance.
7 unless there's a finding that from the four corners of the
8 entire document the Court is satisfied that there's an
9 ambiguity and and I don't, didn't hear anything from
10 Mr. Herlong that that said it was ambiguous 'cuz I agree with
11 him, it says the lots, I mean, the properties developed into
12 lots are entitled to a vote and if if the Court interprets it
13 that way then that that I believe is exactly what the document
14 says and it is not ambiguous and then then there -- the only
15 issue would be is whether the lot -- whether there has been a
16 development of lots.

17 THE COURT: Okay, well what do you all propose -- what
18 are, what are the -- what evidence is it that you all propose
19 to introduce at this, at ---

20 MR. HILLER: I I I ---

21 THE COURT: --- this time?

22 MR. HILLER: --- intend to to introduce evidence of the,
23 uh, of the designation of the property in the Greenville
24 County tax records as a undeveloped acreage. I intend to
25 present the evidence Mr. Owens who is the head of the

MOTIONS AND MATTERS

1 Greenville County Planning Commission that no application has
2 ever been made, no survey or subdivision plat has ever been
3 tendered, uh, no subdivision plat has ever been approved and
4 that no subdivision plat has ever been recorded as to these
5 two tracts of land. Just as a little bitta ---

6 THE COURT: Is it two or three?

7 MR. HILLER: Well it's three now.

8 THE COURT: Okay.

9 MR. HILLER: Essentially it was two tracts that were
10 subject to the covenants approximately 14 acres on Pelham
11 Road, 8 acres on Haywood Road. The covenants also gave both
12 which is what's somewhat unusual about this situation to the
13 adjoining neighborhood, a subdivision called Watson's Orchard,
14 so there's forty-seven votes there and in theory this property
15 coulda been developed, I guess it mighta varied durin' the
16 course of the thirty years it sat there into -- well the
17 covenants actually set forth minimum lot sizes it coulda been
18 developed into, it was not, and a course that's our
19 contention and and and that would be the extent of the
20 evidence that I think would would be admissible, I mean, if
21 the Court thought agreed that this was unambiguous then the
22 only question to be resolved is whether the property has
23 subsequently had somethin' done to it that would qualify it as
24 lots under this this language.

25 THE COURT: Okay. What kinda evidence?

MOTIONS AND MATTERS

1 MR. HERLONG: Your Honor, we we we we have a affidavit a
2 Pat Grayson which ---

3 MR. HILLER: Well, I mean, ---

4 MR. HERLONG: --- would involve ---

5 THE COURT: Wait a minute.

6 MR. HILLER: --- we aren't doing the affidavits, are we,
7 I mean, this is a trial?

8 THE COURT: Okay.

9 MR. HERLONG: Your Honor, Mr. ---

10 MR. HILLER: Correct.

11 MR. HERLONG: --- Grayson's prepared to testify but
12 there's an affidavit in the record ---

13 THE COURT: Okay.

14 MR. HERLONG: --- and he actually did the restrictions in
15 1981 so he's the voice of the horse's mouth as far as, you
16 know, what they were intendin' to do but putting apart that
17 issue he handled the whole process in 2008, 2009 when they
18 were amended and their determination about who was entitled to
19 vote and we also have the deposition of Claire Manning who is
20 with Chicago Title down in Columbia and she, uh, advise is the
21 wrong word, she reacted to Mr. Grayson and told him what they
22 would require in order to issue title on the property and, you
23 know, what lots would have to be -- would vote, what lots
24 would be entitled to vote and what would not in their reading
25 of the restriction, you know, they read lot restrictions and

MOTIONS AND MATTERS

1 deeds all over the state all the time and and she's not a paid
2 expert, she's just a just fact witness and then we have
3 Coleman Shouse who is somebody who worked in the, uh, I don't
4 know if you know Mr. Shouse but he worked in the Planning
5 Commission for many years, he was the executive director and
6 then in 1979 I think right before this event left and has been
7 a developer of, uh, residential development ever since then
8 and he will testify that the recording or non-recording is
9 just not material with with the subdivision ordinance, it's
10 not material and and so will Ms. Manning by the way, she she
11 will testify, her testimony is that whether it's recorded
12 subdivision plat or not it's just not relevant to whether it
13 is a lot. Um, ---

14 THE COURT: Well let, just so I'm up to speed, you're
15 you're sayin' that the two tracts of land have been surveyed,
16 cut into lots and sold?

17 MR. HERLONG: Let me back up.

18 MR. HILLER: No.

19 MR. HERLONG: There are, there are, well let me, uh,
20 might help if I held this thing up. This is the, this
21 (indicating) is, this is what we're basically talkin' about
22 here, Your Honor.

23 THE COURT: Okay.

24 MR. HERLONG: Uh, can you see this okay from ---

25 THE COURT: Yeah.

MOTIONS AND MATTERS

1 MR. HERLONG: Randy, can you see this? Uh, this is, uh,
2 I-385's down here (indicating), ---

3 THE COURT: Um-hum.

4 MR. HERLONG: --- and this (indicating) is the, uh, ---

5 THE COURT: Cow ---

6 MR. HERLONG: --- what's ---

7 THE COURT: --- pasture.

8 MR. HERLONG: It used to be, ---

9 MR. HILLER: Used ---

10 MR. HERLONG: --- shopping center now with, you know,
11 that, uh, there's LongHorn Steakhouse I think ---

12 THE COURT: Right.

13 MR. HERLONG: --- and somethin' in there and Stax, maybe.
14 Stax Peppermill down in the corner. Anyway, this (indicating)
15 is a strip of land, on the end a that Pelham Road right here
16 (indicating) ---

17 THE COURT: Okay.

18 MR. HERLONG: --- and Haywood Road right here
19 (indicating).

20 THE COURT: Okay.

21 MR. HERLONG: So there's this strip of land right here
22 (indicating) which is I think 14 or so acres and then there's
23 a little 6 or 8 acres right here (indicating) along and so
24 it's these two pie -- this (indicating) piece and this
25 (indicating) piece. This (indicating) piece has this part

MOTIONS AND MATTERS

1 down here (indicating) on the left side which is still owned
2 by Watson's Orchard Property Owner's Association, Inc., ---

3 THE COURT: Okay.

4 MR. HERLONG: --- it's not a homeowners' association,
5 it's literally a corporation that was created back in 1981 and
6 we'll give you some background, you know, we'll explain all
7 that as we go along but anyway it's on ---

8 MR. HILLER: Not if I have my way about it but go go
9 ahead.

10 MR. HERLONG: It's on, I don't know how you're gonna
11 understand it without that but anyway it's -- it owns this
12 (indicating), okay, and this has not been subdivided. We do
13 have a plat that's been surveyed but nothin's ever been done
14 with it, okay. Now this piece right here (indicating), these
15 five lots is what is at issue here. Mr. Hiller's position is
16 that they're not five lots, they're not recorded with the
17 Greenville County Planning ---

18 MR. HILLER: Nor ---

19 MR. HERLONG: --- Commission ---

20 MR. HILLER: --- nor is that survey.

21 MR. HERLONG: Yeah, the survey's ---

22 MR. HILLER: That survey's ---

23 MR. HERLONG: --- not, ---

24 MR. HILLER: --- not recorded.

25 MR. HERLONG: --- survey's not recorded but at any rate

MOTIONS AND MATTERS

1 the deed, well what happened in 1981 was that in order to get
2 Watson's Orchard had control over the restrictions over all
3 this (indicating) property and they wanted to sell it and do
4 subdiy -- a shopping center and so forth down here
5 (indicating), they literally had to get the permission of
6 every single person up in Watson's Orchard and Mr. Grayson was
7 involved in that so anyway they did and in in return for
8 everybody up here (indicating) consenting to change the
9 restrictions down here (indicating), Lincoln, which was
10 Mr. Watson's entity, Lincoln deeded this property right here
11 (indicating) and this little strip up here (indicating) to a
12 corporation that was created and the original shareholders
13 were the people who owned property in Watson's Orchard at that
14 time, okay, so this (indicating) strip a property was given to
15 them in return for them agreeing to release the restrictions
16 or change the restrictions down here (indicating).
17 Mr. Stephens, Jim Stephens, lived right across the street like
18 right here (indicating), ---

19 THE COURT: Um-hum.

20 MR. HERLONG: --- this being Pelham Road which wasn't
21 that big a road back then, but he lives right here
22 (indicating), he sa -- he said, I don't want to participate in
23 the corporation, I don't wanna be a shareholder, I wanna buy
24 the five lots right across the street from my house and he
25 gave an offer to Wilkins Norwood, Charlie Howard, people that

MOTIONS AND MATTERS

1 were doing this. He gave them an offer to buy five lots for I
2 think it was twenty-one thousand five hundred dollars
3 (\$21,500) a lot and Wilkins Norwood wrote a memorandum to
4 everybody in the subdivision, explained it, said it's a fair
5 offer, price is reasonable, da da da, we recommend it so they
6 recommend and they got enough people to agree to it, that
7 actually went to Judge McGowan, the whole package, you can
8 imagine how how convoluted all this was when they had to get
9 every single person to agree to it, so Mr. Grayson filed a
10 quiet title action or quiet whatever you wanna call it action,
11 it all went before Judge McGowan. Judge McGowan approved the
12 whole process, approved the setting up a this corporation,
13 approved the sale of those five lots to Mr. Stephens and and
14 approved the whole thing, that's in the record and that's
15 something we'll need to show you but at any rate these five
16 lots were sold to Mr. Stephens and it's it's they weren't
17 recorded but Mr. Shouse will testify they don't have to
18 be, ---

19 MR. HILLER: Well I ---

20 MR. HERLONG: --- it didn't have to be.

21 MR. HILLER: Wait, wait, wait, what what we're doin' is
22 he's puttin' into evidence or tryin' to argue evidence that's
23 not evidence, it's not competent evidence and and and
24 Ms. Ms. Manning's testimony's not competent, I I have specific
25 case on that, uh, ---

MOTIONS AND MATTERS

1 MR. HERLONG: I don't ---

2 MR. HILLER: --- they're they're ar -- they're -- uh, ---

3 THE COURT: Well he's just givin' me the background.

4 MR. HILLER: Well but the background is is is is not how
5 you, I mean, that's extrinsic evidence when it comes to
6 interpretation of covenants, I mean, it's goin' forward. The
7 covenants were filed by Lincoln of South Carolina and they
8 were filed on 22 acres and then subsequent to that to the
9 imposition of the covenants, the issue in this case, property
10 was transferred from Lincoln to what we all call WOPOA which
11 is the Watson Orchard Property Association, Inc., a for-profit
12 corporation, and and and then what WOPOA did after that it's
13 my position is irrelevant, it cannot in any way affect the
14 interpretation of the covenants because they were just a
15 property owner, they were not the declarant, they were no
16 different, I mean, what Mr. Stephens did or didn't do is only
17 relevant from the standpoint of whether these properties were
18 shall have been developed, had been developed for the purpose
19 of havin' a vote and and a course what the evidence will
20 unquestionably show is that this property is, now and has been
21 for the past 31 years a tract, a 6.5 acre tract, it's never
22 been subdivided, it's never been provided independent TMS
23 numbers, ---

24 THE COURT: Okay, well what -- let me ask ya this: What
25 was the transaction where the property passed into the hands

of Mr. Stephens?

MR. HILLER: That was WOPOA's deed to Mr. Stephens but WOPOA's not the declarant. WOPOA -- I mean, it woulda been no different if Lincoln had deeded four tracts to four different people that and what they did with it after that is subject to the declaration, it can't modify the declaration. Uh, um, I use the example in my, in my trial brief is is if you accept the defendants' argument then any homeowner, any lot owner could effectively circumvent the declaration of covenants and restrictions by just sayin' I got five lots or or issuin' a deed that says I, this this is five lots when in reality it's one, uh, uh, but but I would submit to the Court the only factual determination, the only competent evidence that's admissible in this case is evidence as to whether that property has been developed.

MR. HERLONG: That is not the legal question, Your Honor.

THE COURT: Well well wait a minute, let's, uh, that the the Watson Orchard, Inc. is one entity involved, right?

MR. HILLER: They own, they own ---

THE COURT: Okay.

MR. HILLER: --- 14 acres.

THE COURT: Is there a Wats -- Watson's Orchard ---

MR. HILLER: No.

THE COURT: --- Property Owners Association?

MR. HILLER: No.

MOTIONS AND MATTERS

1 THE COURT: Is there any ---

2 MR. HILLER: There's no home owner's association.

3 THE COURT: Okay.

4 MR. HILLER: I mean, there's no traditional homeowner's
5 association.

6 THE COURT: There's just this corporation that's been
7 established, is that ---

8 MR. HILLER: The corporation ---

9 THE COURT: Okay.

10 MR. HILLER: --- was established to accept title to this
11 property and these covenants were filed against this property.
12 These covenants don't even affect Watson Orchard.

13 MR. HERLONG: Your Honor, ---

14 MR. HILLER: These covenants only affect these two tracts
15 of land and and they ---

16 THE COURT: Well just so I get it clear; in other words,
17 in order for, uh, the, Mr. Herlong, for your clients to
18 prevail, I guess the five -- he -- they need five separate
19 votes?

20 MR. HILLER: Yes, sir.

21 THE COURT: Okay, what's the split?

22 MR. HERLONG: Well the vote if if they have five separate
23 votes, it'll be, uh, 27 out of 52.

24 MR. HILLER: And and in fact, even in their recorded
25 amended covenants they calculated it three different ways and

MOTIONS AND MATTERS

1 but they always calculate in such a way that at least five
2 votes was applied to that ---

3 MR. HERLONG: Well we did ---

4 MR. HILLER: --- so ---

5 MR. HERLONG: --- calculate ---

6 MR. HILLER: --- yeah, ---

7 MR. HERLONG: --- a different way, ---

8 MR. HILLER: --- it's our ---

9 MR. HERLONG: --- Your Honor, but they had to vote by
10 January 1, 2010 so we had to get that on the record in case
11 there was any doubt about it but anyway you cut it we have a
12 majority with those five lots.

13 MR. HILLER: Yeah, with those five lots.

14 MR. HERLONG: With those five lots ---

15 MR. HILLER: And ---

16 MR. HERLONG: --- and if we don't have those five lots,
17 we don't have a majority.

18 MR. HILLER: But votes are ---

19 THE COURT: So ya do it for 52 down to 48?

20 MR. HERLONG: Uh, ---

21 MR. HILLER: Forty-seven.

22 MR. HERLONG: --- then you go to 47 and we would have 22
23 outta 47.

24 MR. HILLER: Yeah, they, and they couldn't get the votes
25 without tryin' to come up -- well they wanna turn these into

MOTIONS AND MATTERS

1 lots.

2 THE COURT: Well wait a minute, 50 ---

3 MR. HILLER: There's 47 lots. ---

4 MR. HERLONG: In Watson Orchard ---

5 MR. HILLER: See, ---

6 MR. HERLONG: --- 47 lots.

7 MR. HILLER: --- that's what's so unusual about it and

8 and and and, you know, if you got ---

9 THE COURT: Alright, so the long un ---

10 MR. HILLER: No, Watson Orchard Subdivision's here

11 (indicating) ---

12 THE COURT: Right, I got that.

13 MR. HILLER: --- and they get to vote if these re --

14 covenants get changed.

15 MR. HERLONG: Let let me do it, let me go through ---

16 MR. HILLER: They get to vote for the covenants ---

17 THE COURT: Wait a minute, ---

18 MR. HILLER: --- for that right.

19 THE COURT: --- wait a minute, wait. Is one of the 47

20 votes the long ---

21 MR. HERLONG: No.

22 THE COURT: --- rectangular piece?

23 MR. HERLONG: No.

24 THE COURT: Okay, ---

25 MR. HERLONG: See Watson's ---

MOTIONS AND MATTERS

1 THE COURT: --- so it's only if -- alright.

2 MR. HERLONG: Let, let me -- there there are ---

3 THE COURT: Okay.

4 MR. HERLONG: --- there are various ways to -- so there's
5 47 votes up here (indicating) within Watson's Orchard
6 Property.

7 THE COURT: Okay.

8 MR. HILLER: There's no no issue about that.

9 THE COURT: Okay.

10 MR. HERLONG: Yeah, and and 22 of those voted. Now the
11 p -- there was no, there were no no votes, there was just 22
12 affirmative votes. Uh, ---

13 MR. HILLER: Well ---

14 MR. HERLONG: Well that that's the fact so
15 anyway ---

16 MR. HILLER: Well you ---

17 MR. HERLONG: --- if you got five additional lots and and
18 these and by the restrictions this (indicating) property and
19 this (indicating) property get to vote as well, these
20 (indicating) two strips, but it's that language I just handed
21 you, "lots into which the property shall have been developed",
22 so in response to one thing Mr. Hill has said it's not
23 development, it's development into lots so it's not
24 development in a general sense, it's development into
25 lots ---

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MR. HERLONG: --- so if if if these (indicating) are
3 determined to be lots then you got 47 plus 5 five so you got a
4 total of 52 and we have 22 up here (indicating) plus 5 five
5 here (indicating) so we'd have 27 outta 52 and then counting
6 this (indicating) as a vote and this (indicating) as a vote,
7 these (indicating) don't really matter but that would be two
8 more so then it be 29 outta 54 but any way you cut it with
9 those five lots our side prevails, without those five lots
10 their side prevails ---

11 MR. HILLER: And and ---

12 MR. HERLONG: --- and they've been ---

13 MR. HILLER: --- a course they want ---

14 MR. HERLONG: --- they ca ---

15 MR. HILLER: --- they wanna call 'em lots just long
16 enough to vote to not make 'em lots.

17 MR. HERLONG: They ---

18 MR. HILLER: Uh, ---

19 MR. HERLONG: May I, may I finish, Your Honor?

20 THE COURT: Yeah, go ahead.

21 MR. HERLONG: They were sold as lots in 1981, they've
22 been transferred three or four or five different times all
23 within Mr. Stephens various estate planning and so forth but
24 they have been transferred. They've been listed over there in
25 the RMC office, that the the index says five lots, there's

MOTIONS AND MATTERS

1 been a mortgage taken out on this, there's been property title
2 insurance, there's just no doubt that they're five lots the
3 only argument to the contrary is that the deed this, I'm
4 sorry, the plat was never referenced, it was never recorded
5 but the plat is specifically referenced by name, by date in
6 the deed.

7 MR. HILLER: Mr. Owings will testify that plat could not
8 be recorded, that it didn't comply with county requirements.

9 MR. HERLONG: That's not what Mr. Owings will testify ---

10 MR. HILLER: Yes, yes, he will and and and and ---

11 THE COURT: Okay, well I'll tell you what let's do,
12 subject to your objection, let's go ahead and get the evidence
13 in and then I'll, I mean, I ---

14 MR. HILLER: Well I'm gonna have some objections from a
15 relevance and maybe some other issues as well ---

16 THE COURT: Okay.

17 MR. HILLER: --- to a number of items of evidence in
18 addition to the ambiguity issue but I, ya know, and based on
19 my position, my case in chief is going to consist of
20 submission of the covenants and then calling Mr. Owings and
21 that's all I believe is relevant admissible on that.

22 THE COURT: Okay, well you'll have an opportunity to
23 reply but, ya know, ---

24 MR. HILLER: Yeah, I -- yeah.

25 THE COURT: Okay. Alright, subject to the previously

MOTIONS AND MATTERS

1 stated objections. Mr. Hiller.

2 MR. HILLER: First, Your Honor, Mr. Herlong and I have
3 have an agreement that the documents that we've traded in
4 discovery we would not require authenticative ---

5 THE COURT: Okay.

6 MR. HILLER: --- authentication although we can object on
7 other grounds so all all I'm going to do now is offer the, uh,
8 the original Declaration of Restrictions and protected
9 covenants and then the, uh, the agreement to release
10 Declaration of Covenants and Restrictions. Plaintiffs' 1,
11 there's 2.

12 (Declaration of Restrictions and Covenants marked
13 Plaintiffs' Exhibit No. 1 and Agreement to Release Declaration
14 of Restrictions and Protective Covenants marked Plaintiffs'
15 Exhibit No. 2 for identification.)

16 MR. HERLONG: Your Honor, as a little bitta housekeeping,
17 I've got the big fat notebook, a copy of which I gave to you,
18 I've got a couple a copies and I thought frankly Mr. Hiller
19 will need to go through it but I thought frankly we might just
20 mark it as one big exhibit. I've got the individual things in
21 here as SJ1, SJ2 and so forth for summary judgment but and
22 they will include -- actually, they don't include that
23 agreement but they do include the restrictions.

24 THE COURT: You wanna look at that, Randy, and see ---

25 MR. HILLER: I've looked at it, Your Honor, and, um, um,

MOTIONS AND MATTERS

1 as as I indicated, I'm I'm more than happy to agree that all
2 those documents are, um, can be entered into evidence without
3 further a -- confirmation or authorization or having the
4 actual party here to ---

5 THE COURT: Okay.

6 MR. HILLER: --- testify that that they are what they are
7 but I do want to preserve my specific eje -- objections to
8 each one if and when they're presented.

9 THE COURT: Okay, that's fine.

10 (Whereupon, a discussion was held off the record.)

11 MR. HILLER: Your Honor, I'm also offering into evidence
12 the real property detail information contained on the
13 Greenville County website as to the three tracts in in
14 question.

15 THE COURT: Alright.

16 (Real property detail information sheets marked
17 Plaintiffs' Exhibit No. 3 for identification.)

18 (Whereupon, a discussion was held off the record.)

19 MR. HILLER: I call John Owings, Your Honor.

20 THE COURT: Okay.

21 (Whereupon, the witness came forward.)

22 THE COURT: If you would, place your left hand on the
23 Bible, raise your right hand.

24 (Whereupon, a discussion was held off the record.)

25 JOHN H. OWINGS, JR., having

1 been first duly sworn, testified as follows:

2 THE COURT: Come around, have a seat. Please state your
3 full name into the record.

4 THE WITNESS: Yes, sir. My name is John H. Owings, Jr.,
5 it's O-W-I-N-G-S.

6 DIRECT EXAMINATION BY MR. HILLER:

7 Q. Mr. Owings, where are you employed?

8 A. Greenville County Planning Department.

9 Q. How long have you been employed in that position ---

10 A. For ---

11 Q. --- or at the ---

12 A. --- little over forty years.

13 Q. Okay, and what is your current position with Greenville
14 County Planning Commission?

15 A. Greenville County Planning Department I'm the ---

16 Q. Department.

17 A. --- manager, manager of current planning.

18 Q. Okay, and how long have you held that position?

19 A. Since 'bout 1983.

20 Q. Alright, and prior to that what was your position?

21 A. I was a senior planner in the Long-range Planning

22 Division with what was known at the time the Planning

23 Commission but in the last few months we've changed the title
24 to Planning Department.

25 Q. Okay. Forty years that means you would have started in

1 the late 70's?

2 A. 1971.

3 Q. Nineteen -- early 70s. Uh, so you were of course a an
4 employee of the Greenville County Planning Department at the
5 time of the transactions that were involved in this case 1980
6 and 1981, is that correct?

7 A. Yes, that's correct.

8 Q. And and and of course you've had your deposition taken
9 and you're familiar with the property we're talkin' about,
10 right?

11 A. I am, I am familiar with the property.

12 Q. And both sides have have asked you questions about it and
13 and have asked you to research your department with regards to
14 this property, is that correct?

15 A. That's correct.

16 Q. And and and it is true, is it not, that no application
17 has ever been filed with your department to subdivide any of
18 the property that's involved in this litigation?

19 A. That is correct.

20 Q. Okay. There's never been a submittal of any type to
21 subdivide this property into lots.

22 A. We have no record in in our office of any plats.

23 Q. And at -- during 1980 and 1981 was there a subdivision
24 ordinance in effect for Greenville County?

25 A. Yes, there was.

1 Q. And was it your responsibility or your department's
2 responsibility to enforce that ordinance?

3 A. That is correct.

4 Q. Alright, and in order to comply with that ordinance and
5 then be able to subdivide a piece a property would you have
6 had to have submitted a plat for approval by the department?

7 A. To divide property into more than three lots requires
8 what we call a "summary plat", shows the lots, has a title
9 block, who's dividing it, metes and bounds of the properties
10 and there are letters that accompany that document, uh, one
11 from the water system saying water's available, one from Wade
12 Hampton Sewer saying sewer's available, one from the highway
13 department saying that encroachment permits could be issued,
14 several other letters but that basically the summary plat does
15 not require the developer to go through the full preliminary
16 plat, final plat, much more of a lengthy process, so a summary
17 plat let's the plat be recorded ---

18 Q. If it meets certain criteria.

19 A. If it meets the criteria.

20 Q. Okay, and and and that criteria must be met before those
21 properties can be legally subdivided.

22 A. That's correct.

23 Q. Alright, and absent the submission of a summary plat if
24 that's appropriate or a full-scale plat, it would be unlawful
25 to subdivide that property or convey property that had been or

1 conveyed portions of that property as individual lots, would
2 it not?

3 MR. HERLONG: Object, object to the form of the question.
4 It would be in violation of the ordinance.

5 BY MR. HILLER:

6 Q. Okay, wou -- it would be in violation of the Greenville
7 County Subdivision Ordinance, would it not?

8 A. That's correct.

9 Q. Alright, and and and your job is to require people to
10 comply with that ordinance.

11 A. That's correct.

12 Q. Do you have any authority to waive compliance with the
13 ordinance?

14 A. No, I do not.

15 Q. Alright. That is legislation that was passed by the
16 Greenville County Counsel and you are obligated to follow
17 it, are you not?

18 A. That's correct.

19 MR. HERLONG: Object to form, leading.

20 THE COURT: I'm gonna -- let's dispense with it, go
21 ahead.

22 BY MR. HILLER:

23 Q. And he's not really my witness, Your Honor, but without a
24 recorded, approved recorded subdivision plat, can an
25 individual convey a portion of property without violating the

1 ordinance?

2 A. If the tract is being divided into three, at the time
3 three or more parcels, ---

4 Q. Okay.

5 A. --- it has to be a summary plat.

6 Q. Alright. And and it -- without a summary plat, a
7 recorded summary plat or recorded approved subdivision plat,
8 can you obtain a buildin' permit to build on the property?

9 A. You should not be able to, ---

10 Q. Okay.

11 A. --- that is not not permitted.

12 Q. Uh, so at -- Mr. Herlong while you were sittin' here was
13 showin' Judge Miller this (indicating) survey, you've seen
14 this survey.

15 A. I've seen the survey.

16 Q. And I represented to the Court that this could not be
17 recorded as a subdivision plat.

18 A. The way that plat is drawn it does not comply with the
19 county requirements for a summary plat.

20 Q. Okay, so at no time could this survey have been, at no
21 time been recorded to legally subdivide these lots in
22 accordance with the ordinance.

23 A. Not that plat, it ---

24 Q. Okay.

25 A. --- we could not have stamped it available or approved

1 for recording.

2 Q. And a course it never was submitted for even the
3 opportunity for you to reject it, was it?

4 A. Not to my recollection.

5 Q. Without -- well so -- well no, let me back up. Well this
6 (indicating) plat shows what we, the lawyers in this case,
7 call the Pelham tract and the Stephens tract, you're aware of
8 the distinction between the two?

9 A. I am.

10 Q. Alright, and the Stephens tract as we sit here today
11 would it be possible for the owners of the Stephens tract to
12 convey a a a a a subdivided lot? Co -- would it be possible
13 for them under the Greenville County Zoning Ordinance today to
14 convey anything less than the whole?

15 A. There, without drawing a subdivision plat or drawing a
16 plat of a single piece of that, there has to be a a a recorded
17 plat to convey the property.

18 Q. Okay, so the answer to my question is no, they could not,
19 is that -- they cannot convey a portion of the whole a --
20 because as of today there is no plat, is there?

21 A. I'm aware that there is a a plat of the entire 14 acres I
22 believe, I'm not aware that there are any individual lots
23 within that 14-acre tract. That does not mean that tomorrow
24 an individual could come in with one plat dividing off 1 or 2
25 acres and record that but nothing exists in our records at

1 this point.

2 Q. Oh, and and and we aren't talkin' about tomorrow and and
3 in reality we aren't talkin' about today but as of December
4 31st 2009 this tract was only capable of bein' sold as a
5 single tract of property, correct?

6 A. To my knowledge correct.

7 Q. And and and this tract could have only had one building
8 permit issued for a home on that tract.

9 A. That would be correct.

10 Q. Alright. There's no possible way at the time that this
11 amended declaration was recorded that that tract could have
12 been, based on what actually happened have been sold other
13 than this one piece a property?

14 A. That's correct.

15 Q. That's all the questions I have. Thank you.

16 CROSS-EXAMINATION BY MR. HERLONG:

17 Q. Mr. Owings, in your deposition, when we took your
18 deposition a little while back, what's that date, uh, June 13,
19 you you recall your deposition?

20 A. I do.

21 Q. Okay. In your deposition you said that, uh, let me see,
22 and I can show it to ya if you want to but I -- Question: You
23 were asked a few questions a few minutes ago about a transfer
24 today if somebody tried to sell one of those lots in the
25 Stephens' property today, one of those five lots, and I think

1 that was Mr. Hiller's question, "If they tried to sell one of
2 the five lots today, is there anything that would prevent them
3 from doing it and just not recording the sale," and your
4 answer was, I don't, I don't know anything that would would
5 prevent them from doing that, is that correct? You still
6 agree with what -- that?

7 A. Repeat that one more time, make sure I'm ---

8 Q. Question was: "If they tried to sell one of the five
9 lots today, is there anything that would prevent them from
10 doing it and just not recording the sale?"

11 And your answer was, "I don't know anything that would
12 would prevent them from doing that," is that correct?

13 A. That would, that would be correct in the sense that it's
14 not dependent, if a sale wasn't dependent upon a recorded plat
15 to reference the sale.

16 Q. Okay.

17 A. If they wanna sell approximately 1 acre on that property
18 and record it a transaction without recording and reference a
19 a plat, our office would never see those type documents but if
20 it required a plat, that the deed required a plat to be
21 referenced in the deed then those properties don't exist in
22 the records we have in the Planning Department.

23 Q. Okay, so there'd be nothing to stop someone from doing a
24 metes and bounds description of say the, let's say, let's say
25 Mr. Stephens was sellin' the -- this (indicating) lot on the

1 end to his son or whatever, there would be nothing to stop
2 someone from doing a metes and bounds description and selling
3 that property subject to the metes and bounds description,
4 correct?

5 A. That is correct.

6 Q. And for any one of those lots, is that correct?

7 A. That would be correct also.

8 Q. Alright. Mr. Owings, in your deposition I ask you about
9 the affidavit of Mr. Estridge, remember that?

10 A. I do, sure.

11 Q. And you had, you had read -- I don't, I'm sorry, I didn't
12 mean speak too fast, and you had read his affidavit and I
13 think your testimony and I can pull it ---

14 MR. HILLER: Oh, I I'm gonna object to that, Your Honor.
15 Mr. Edge -- Estridge testimony is not in evidence, it hearsay
16 and he's gonna ask him what ---

17 THE COURT: Ya know, you can't ---

18 MR. HERLONG: What?

19 THE COURT: --- you can ask him the underlying whatever
20 it is subject.

21 MR. HERLONG: Your Honor, let let me ask the question and
22 see ---

23 THE COURT: Alright.

24 MR. HERLONG: --- hold your ruling for just a second if
25 you don't mind.

1 BY MR. HERLONG:

2 Q. You had read his affidavit and I asked you if you
3 agree -- you agreed with his affidavit, do you recall that?

4 A. I do recall your asking that question.

5 Q. And you said you agreed with everything in his affidavit,
6 do you recall that?

7 A. I don't recall the details of the affidavit that I read
8 to confirm that at this point. I don't, I don't deny that I
9 said I agreed with it, I just can't get in the underlying
10 details of of that affidavit.

11 Q. Okay, and the same with Mr. Shouse's, you had read his
12 affidavit and you testified in your deposition that you agreed
13 with his affidavit.

14 A. That's correct.

15 Q. Okay. Let me -- I'm gonna mark his affidavit, Your
16 Honor, and I'm gonna go through ---

17 MR. HILLER: Oh, ---

18 Q. --- it with him. He's testified that he agreed with it
19 in his deposition and today.

20 THE COURT: Yeah, but that, I mean, if you wanna ask him
21 some specific question outta the affidavit, that's, you know,
22 with respect to a subject matter ---

23 MR. HERLONG: Okay.

24 THE COURT: --- but, you know, we're not gonna pit
25 witnesses and ---

1 MR. HERLONG: His sentence Number 4 was, "It is also ---

2 MR. HILLER: Well ---

3 MR. HERLONG: --- my opinion ---

4 MR. HILLER: --- Your Honor, Your Honor, I I'm I'm not
5 going to consent to Mr. Herlong submitting evidence of
6 somebody else by way of a question, uh, it's hearsay, it
7 it ---

8 THE COURT: Yeah, just ask him, I don't know what the
9 subject of that paragraph you're referencing is, but just ask
10 him do you agree that ---

11 BY MR. HERLONG:

12 Q. Yeah, "Do you agree, Mr. Stephens, that if the Stephen's
13 lots were subject to the Planning Commission regulations the
14 ordinance you were talking about and the plat should -- and if
15 the plat shoulda been submitted to the Planning Commission and
16 approved prior to the transfer that the failure to do so has
17 no bearing on whether the Stephens' lots were in fact lots?"

18 A. Read that one more time, please.

19 Q. If the Stephens' lots were subject to those regulations,
20 the Planning Commission regulations, and if the plats shoulda
21 have been submitted to the Planning Commission and approved
22 prior to the transfer, do you agree that the failure to do
23 that has no bearing on whether they were or were not in fact
24 lots?

25 A. Whether some way or the other those lots got created, I

1 can't testify to how that may or may not have happened but to
2 follow procedure would be to record a summary plat creating
3 the five lots.

4 Q. Okay.

5 A. Now could they have existed some other way, did someone
6 record them by deed one plat at a time, somehow circumvent our
7 regulations, I can't testify to that, I can't tell you that it
8 did or didn't happen.

9 Q. Okay. Mr. Owings, we we talked some about the
10 regulations themselves and in your deposition and let me show
11 you the county has never made, has never sued to enjoin a sale
12 of property based on whether or not the sale complied with the
13 Planning Commission or what do you call, what do you call the
14 regulation, what are they called?

15 A. The Greenville County Subdivision Regulations were the
16 title at the time, they're now ---

17 Q. Um-hum.

18 A. --- called the Land Developer Regulations.

19 Q. Okay, well when I say regulations, that's what I'm
20 talkin' about, okay?

21 A. Yes.

22 Q. The county has never sued or brought an action to enjoin
23 a sale that didn't comply with the land use regulations,
24 right?

25 A. Not to my knowledge.

1 Q. And under the regulations you have the right to do that,
2 isn't ---

3 A. That ---

4 Q. --- that correct?

5 A. --- that is correct.

6 Q. Alright, and under the regulations you also have a right
7 to charge a hundred dollars for every lot that's transferred
8 without complying with the land use regulations, right?

9 A. That is correct.

10 Q. But the county has never ever charged anybody a hundred
11 dollars for transferring lots without complying with the
12 subdivision regulations, is that right?

13 A. Not to my knowledge.

14 Q. Alright, and the county has never ever taken the position
15 that a transfer of property that didn't comply with those
16 regulations in some way, shape or form was not in fact a
17 transfer, has it?

18 A. Not to my knowledge.

19 Q. And you testified in your deposition that today if
20 something came across your desk and it wasn't quite in
21 compliance with the regulations you would call the surveyor or
22 somebody and say, you know, fix it up, right?

23 A. That's correct.

24 Q. That's the way you would handle it.

25 A. That's correct.

1 Q. And we know that this deed was recorded in 1981 and
2 nobody ever told Stephens that anything was wrong with it, you
3 agree with that Mr. Owings?

4 A. I don't have any, I don't have any knowledge that ---

5 Q. Okay, ---

6 A. --- but that is your ---

7 THE COURT: What what deed are you referring to?

8 MR. HERLONG: The transfer from WOPOA to Stephens with
9 the five lots.

10 THE COURT: Do you have a copy a that deed?

11 MR. HERLONG: Yes, sir, we do.

12 THE COURT: Is it, is it in your notebook?

13 MR. HERLONG: It is but I got another set of it but
14 they're under the same numbers so...

15 THE COURT: Well tell me what, uh, ---

16 MR. HILLER: Prior prior to its admission into evidence,
17 Your Honor, ---

18 THE COURT: Well I'm just, it's not in evidence.

19 MR. HILLER: Oh, okay.

20 THE COURT: I've just asked to look at it, I wanna see
21 what the metes and bounds is, where -- what -- where is it
22 now?

23 MR. HERLONG: Your Honor, it is gonna be, let's see, it's
24 SJ9 page D250, page number's in the top right corner.

25 THE COURT: Okay. Alright, I'm sorry to interrupt.

1 MR. HERLONG: That's Alright.

2 (Notebook marked Defendants' Exhibit No. 1 for
3 identification.)

4 MR. HERLONG: Your Honor, I, Your Honor, I would move for
5 the admission of this notebook as Defendants' Exhibit No. 1
6 with the internal exhibits just being SJ whatever. I think
7 Mr. ---

8 THE COURT: And I don't think Mr. Hiller objects to that
9 with res -- for he's gonna have specific objections to
10 particular pieces, correct?

11 MR. HILLER: That's correct.

12 THE COURT: Okay.

13 (Defendants' Exhibit No. 1, notebook, admitted into
14 evidence.)

15 MR. HERLONG: Uh, ---

16 MR. HILLER: Can can can we finish with Mr. Owings before
17 we address those or or what ---

18 THE COURT: Yeah, yeah, let's, yeah, let's ---

19 MR. HERLONG: Yeah, I don't intend to ---

20 BY MR. HERLONG:

21 Q. Mr. Owings, let me show ya a what's been marked as
22 Defendants' Exhibit No. 1, big fat notebook, if you would turn
23 to page D251.

24 MR. HILLER: Wait a minute. Now we we might have some
25 issues with with regard to this, I'll just have to wait and

1 see.

2 THE COURT: Well he's gonna ask him to review this deed I
3 think, right?

4 MR. HERLONG: Yes, sir, uh, it's Exhibit ---

5 THE COURT: So you ---

6 MR. HERLONG: --- S, it's internal Exhibit SJ9 page
7 D251.

8 MR. HILLER: Okay, well then I need to state my
9 objections to the deed.

10 THE COURT: Yeah, go ahead.

11 MR. HILLER: Alright, well as I pointed out in earlier
12 arguments, Your Honor, and then I and and just for -- so we'll
13 have a very clear record, obviously I assume the Court's gonna
14 allow me to have a standing objection as to any and all
15 evidence and testimony that's taken this point forward ---

16 THE COURT: Yes, ---

17 MR. HILLER: --- with regards to ---

18 THE COURT: --- all this is subject to your ---

19 MR. HILLER: --- objection with regards to the
20 determination of the ambiguity or the lack of am -- or or the
21 inam ---

22 THE COURT: Right, ---

23 MR. HILLER: --- whether it's ---

24 THE COURT: --- you have a prophylactic objection
25 which ---

1 MR. HILLER: Okay.

2 THE COURT: --- is standing throughout the course ---

3 MR. HILLER: Now as to the deed itself, Your Honor, my my
4 objection is twofold; ---

5 THE COURT: Okay.

6 MR. HILLER: --- number one, it's not relevant and and
7 and the reason I say it's not relevant is the reasons that I
8 stated earlier in my argument about the ambiguity. WOPOA, the
9 grantor of the deed that you're lookin' at is not a party
10 under any theory of the law to the declaration. The declarant
11 was Lincoln Na -- Lincoln of South Carolina, that is the only
12 determination of the intent or construction of the document
13 that is relevant to the document itself even if you find it
14 ambiguous because as I pointed out WOPOA is just a property
15 owner, they were not the developer, they were not the
16 declarant, they didn't impose the restrictions and anything
17 that they did subsequent to their obtaining title to the
18 property could not in any way be an an evidence of intent or a
19 modification or construction of the original covenants and
20 restrictions, they took the property subject to the covenants
21 and restrictions ---

22 THE COURT: Okay.

23 MR. HILLER: --- and and and so and my my position would
24 be that this is irrelevant in all respects because they have
25 no standing and no legal authority to in any way change the

1 character of the covenants and restrictions ---

2 THE COURT: Okay, ---

3 MR. HILLER: --- and whatever ---

4 THE COURT: --- I got ya.

5 MR. HILLER: Okay, well so that's my objection to the
6 deed.

7 THE COURT: Okay.

8 BY MR. HERLONG:

9 Q. Mr. Owings, SJ, Exhibit SJ9 in in Defendants' Exhibit 1
10 page D251 you see that, uh, it's a deed from Watson's Orchard
11 Property Association, Inc. to Pelham Properties, Inc., you see
12 that?

13 A. I do.

14 Q. Price of a hundred five thousand five hundred dollars
15 (\$105,500), see that?

16 A. I do.

17 Q. And the the first paragraph says, "All that certain
18 piece, parcel or tract of land situate, lying and being in the
19 State of South Carolina, County of Greenville, containing five
20 lots as more fully shown on a plat entitled, quote, Survey For
21 Richard Watson, end of quote, prepared by Carolina Surveying
22 Company dated June 27, 1980, revised August 19, 1980, revised
23 August 27, 1980, revised September 3, 1980 and revised
24 December 1, 2 and 3, 1980 and having according to said plat
25 the following metes and bounds to wit," and then citing 'em,

1 did I read all that correctly, Mr. Owings?

2 A. Yes, you did.

3 Q. Alright. And do ya see at the bottom of that the next to
4 the last paragraph where it says, "Subject however to a sewer
5 easement across the rear, 25 feet of the above lots for the
6 purpose of insulation," and so forth, you see that?

7 A. I do see that.

8 Q. Alright. Now the referenced, the the referenced survey
9 you see, uh, can we mark this as Defendants' Exhibit 2?

10 (Blowup of survey/plat marked Defendants' Exhibit No. 2
11 for identification.)

12 Q. Alright. The record survey, Mr. Owings, do you see this
13 what what's been marked as Defendants' Exhibit 2 survey for
14 Richard Watson and then revised 3, December 1980?

15 A. I do see that, yes.

16 Q. Do you re -- do you recognize this as the survey that's
17 being referenced in that deed?

18 A. I do.

19 Q. Okay. Now under the regulations that existed in 1981,
20 how long had you been in the office at that time,
21 Mr. Owings?

22 A. Ten years.

23 Q. Ten year, okay. This transfer the way the deed does it
24 in referencing the plat, Defendants' Exhibit 2, would not be
25 in strict compliance with the regulations, would it?

1 A. The plat itself, all the property drawn, a accurate plat
2 I'm sure, but the format for recording has to meet the
3 requirements of subdivision regulations would have to be on a
4 summary plat with the accompanying document.

5 A. To create a summary plat, all that is required, if if
6 this were to be cut off right here (indicating), this section
7 right there (indicating) and the surveyor put his name on and
8 so forth, ---

9 MR. HILLER: Your Honor, I'm gonna object ---

10 MR. HERLONG: --- that ---

11 MR. HILLER: --- to this as being irrelevant. You know,
12 what coulda happened or shoulda happened has no relevance to
13 what happened.

14 THE COURT: I think he's just askin' determine what to
15 describe what a summary plat is I think.

16 MR. HILLER: Oh, I I think he said -- I I -- well...

17 THE COURT: Go ahead.

18 MR. HILLER: Excuse me.

19 BY MR. HERLONG:

20 Q. To create a summary plat, Mr. Owings, just let me ask you
21 what you would have to do to this this survey turn it into a
22 summary plat.

23 A. Are you speaking just of these the 8.29 acre of ---

24 Q. Yes.

25 A. --- the -- placing those lots on a summary plat format

1 has to have, you know, certain information on the plat
2 accompanied by the letters from the public utilities, highway
3 department, things like that, it would be a recordable plat if
4 if it was on the right format with the correct accompanying
5 letters.

6 Q. Okay, and there's no reason why that could not have been
7 done in 1981, correct?

8 A. I don't know of any reason that plat could not have been
9 done, all all I've been able to say is we have no record that
10 it was done.

11 Q. And if it is recorded as a summary plat like that, it
12 doesn't go to the Planning Commission, does it, it just ---

13 A. That's correct, ---

14 Q. --- gets stamped approved.

15 A. --- it's it's stamped approved. Upon receipt of the plat
16 with the accompanying letters it's stamped and the the
17 developer, property owners, someone can take the plat and
18 record it.

19 Q. It's a purely administrative act isn't it, Mr. Owings?

20 A. It's an administrative act that's correct.

21 Q. In in your deposition -- well one quick thing. I think
22 the question of you earlier was whether this transfer in 1981
23 that the deed is referencing we just talked about was illegal
24 or unlawful or so and your answers with respect to that when
25 you said -- when you answered you were talking about that it

1 didn't comply with the subdivision ordinance, right?

2 A. Comply with the subdivision regulations, ---

3 Q. Okay.

4 A. --- that's correct.

5 Q. You weren't tryin' to say something bigger and broader
6 than that.

7 A. No.

8 Q. Okay. In your, in your deposition, probly better if I
9 just give it to ya.

10 (Whereupon, a discussion was held off the record.)

11 Q. Probly better if I just show it to you, Mr. Owings. In
12 your deposition page 37 and 38, page 37 line 13 I ask you,
13 "Did you take the position that there was or was not a
14 transfer of five lots there or do you take any position,"
15 would you read your answer to that.

16 A. I said, "I don't, I don't take a position on that at all.
17 All I can tell you is that a summary plat creating those five
18 lots does not exist."

19 Q. Okay. The failure to comply with the subdivision
20 regulations is not a criminal violation, is it?

21 A. No, it's not.

22 Q. And the penalty as we talked about is a hundred dollars
23 per lot.

24 A. That's correct.

25 Q. Penalty ya'll never assessed.

1 A. Never assessed it on this piece a property and not
2 another one to my knowledge.

3 Q. And you do have the right to to sue to enjoin a a
4 transfer like that, don't you?

5 A. The ordinance provides that authority.

6 Q. But you've never done that.

7 A. Not to my knowledge.

8 Q. You've never taken the position that a transfer that
9 happened was void.

10 A. No, we've never taken that position.

11 Q. Turn to page 49. The re -- the ROD did record this deed
12 in 1981, didn't they, one we talked about a few minutes ago?

13 A. Uh, apparently so, yes.

14 Q. Okay. Did the ROD ever stop the process of recording
15 deeds such as that which reference an external unrecorded
16 plat?

17 A. No, to my knowledge the ROD still as did then still will
18 allow a metes and bounds survey to be recorded. We encourage
19 everyone to do plats because it's traceable for buildin'
20 permit issue but eventually whatever's recorded by metes and
21 bounds will appear on the county maps.

22 Q. This this this deed which is Exhibit SJ9 in Defendants' 1
23 page D251 would that be recordable today in the ROD office?

24 A. That would be recordable today.

25 Q. Would you, if that came across your desk would you raise

1 any issues with respect to that deed?

2 A. The deed never comes across our desk, we don't see
3 them.

4 Q. Alright. Would you record that even though it's not
5 strictly or would it be recorded even though it's not strictly
6 speaking in compliance with the subdivision ordinance?

7 A. If they took that document to the Record of Deeds Office,
8 I can't speak for them but ---

9 MR. HILLER: Well I object to any further answer then.

10 Q. To the best of your knowledge.

11 A. To the best of my knowledge, it -- they record deeds with
12 written descriptions, yes.

13 Q. Okay. You talked -- well what about with re --
14 refresh -- what about with the reference to the, to the, to
15 the plat there, it being an unrecorded plat, would that be
16 okay today?

17 A. Yes, they could, speaking for real estate attorneys here
18 not -- as far as I know, to my knowledge, they could reference
19 an unrecorded plat, ---

20 Q. Okay.

21 A. --- it's the question comes in is if it's recorded then
22 it's irrefutable evidence, if it's not recorded the question
23 is which which plat was it, has it been altered, has it been
24 amended, whose whose hands has it been in but, you know,
25 that's that's not a Planning Department issue.

1 Q. Okay. So you see it as an iss -- issue of evidence?

2 A. Beg your pardon? What what ---

3 Q. No, don't worry about it.

4 A. Yes.

5 Q. Would you agree, Mr. Owings, and I'm referencing
6 Mr. Shouse's affidavit that you said you agreed with, but
7 would you agree that, uh, if a summary plat of the five lots
8 at issue had been presented to the Commission in 1980 that ---

9 MR. HILLER: Your Honor, I'm gonna ---

10 Q. --- it woulda been ---

11 MR. HILLER: --- object.

12 Q. --- signed, ---

13 MR. HILLER: I ---

14 Q. --- it it woulda been signed off by the staff ---

15 MR. HILLER: I object to ---

16 Q. --- without Planning ---

17 MR. HILLER: --- the ground of ---

18 Q. --- Commiss ---

19 MR. HILLER: --- relevance.

20 Q. --- without Planning Commission approval?

21 THE COURT: Alright, now what's your objection?

22 MR. HILLER: Uh, it's irrelevant what could have
23 happened.

24 THE COURT: Speculative, I'll sustain it. Go ahead.

25 MR. HERLONG: That's all the questions I have, Your

1 Honor.

2 REDIRECT EXAMINATION BY MR. HILLER:

3 Q. Mr. Owings, the Greenville County Subdivision Ordinance
4 since 1980 does require a subdivision plat be approved, is
5 in --- isn't that true?

6 A. That is correct.

7 Q. And if you don't have an approved subdivision plat, it
8 will not be recorded at the ROD office correct, the plat?

9 A. An unsigned, unstamped properly prepared plat cannot be
10 recorded in ROD office.

11 Q. Has to has a stamp from your office before they'll record
12 it.

13 A. That's correct.

14 Q. Alright, and anything, any of those scenarios Mr. Herlong
15 asked you about would be in violation of the ordinance,
16 correct?

17 MR. HERLONG: Object to the form.

18 A. Recording a a written description has, still is an
19 option.

20 Q. Doesn't the current ordinance actually make that a crime?
21 Recording a metes and bounds description in order to avoid the
22 subdivision ord., isn't it a crime under the current
23 ordinance, criminal ---

24 MR. HERLONG: Object, ---

25 Q. --- offense?

1 MR. HERLONG: --- object to the ---

2 A. I'll have ---

3 MR. HERLONG: --- form of the question.

4 THE COURT: Go ahead.

5 A. I need to open up that section of the ordinance.

6 Q. Do ya have it with you?

7 A. No, I don't have the ordinance with me..

8 Q. Alright. You you have examined and examined at the time
9 a your deposition the survey that Mr. Herlong was showing you
10 again and you agree with me that in that deed the metes and
11 bounds description is a perimeter survey, it's a boundary
12 survey, there are no interconnecting lines bifurcating it into
13 smaller pieces, ---

14 A. That is correct ---

15 Q. --- it is just the boundary, right, ---

16 A. That is correct.

17 Q. --- the actual metes and bounds?

18 A. From my recollection, yes.

19 Q. And and both in 1981 and today an exception to the
20 compliance with the subdivision ordinance is subdividing
21 property into lots greater than five acres, isn't it?

22 A. That's correct and ---

23 Q. Al ---

24 A. --- the lots have to have frontage on a public road.

25 Q. Right, so this (indicating) lot or this (indicating)

1 tract of land if it contained more than five acres which it
2 does, correct, ---

3 A. That's correct.

4 Q. --- came out of a 14-acre tract, ---

5 A. That's correct.

6 Q. --- required no approval, required no approval to sell
7 this (indicating) 6.4 acres out of a 14-acre tract.

8 A. That would be correct.

9 Q. Alright. So there was no violation of the subdivision
10 ordinance when 6.4 acres was deeded out as 6.4 acres,
11 correct?

12 A. That would be correct.

13 Q. And it's only necessary that someone come and file a
14 subdivision plat and have it approved whether it be summary or
15 any other plat if they wanna subdivide it into less than 5
16 acres.

17 A. That is correct.

18 Q. Alright, so had someone attempted durin' the past thirty
19 years to sell a portion a this and get a buildin' permit for
20 it by using a metes and bounds description, that woulda been a
21 violation of the ordinance, would it not?

22 A. You can, you can bring in but ---

23 Q. You cut it into two pieces maximum by metes and bounds.

24 A. (Nodded in the affirmative.)

25 Q. Alright, so ---

1 A. Or a ---

2 Q. Two pieces maximum.

3 A. Two pay -- two pieces maximum.

4 Q. Alright, but but any other attempt to sell, if somebody
5 had tried to draw -- do five deeds sellin' this property as
6 five separate pieces and simply describin' it by metes and
7 bounds, woulda violated the ordinance, correct?

8 A. The ordinance says dividing it in five or -- three or
9 more lots, at the ---

10 Q. Okay, ---

11 A. --- time two.

12 Q. --- alright, so it woulda been a ---

13 A. Should ---

14 Q. --- violation.

15 A. --- shoulda been a sub -- shoulda be honored.

16 Q. And Mr. Herlong asked you when he was ask you question
17 said if this property was subject to ordinance and if this
18 property was required to have a plat, there's no if about it,
19 is there? It was subject to the ordinance and it is required
20 to have a plat if you wanna subdivide it and build houses on
21 it, right?

22 A. That is correct.

23 Q. And nothin' he asked you about whether you tried to
24 impose a penalty or sued anybody woulda had anything to do
25 with the fact that they still couldn't a built any houses on

1 it until they filed a subdivision but who built more than one
2 house unless they filed a subdivision plat, could they?

3 A. That is correct.

4 Q. It's incapable of havin' more than one house built on it
5 as ---

6 A. That that's correct.

7 Q. --- even today.

8 A. That's correct.

9 Q. Alright. That's all the questions I have, thank you,
10 Mr. Owings.

11 RECROSS-EXAMINATION BY MR. HERLONG:

12 Q. Mr. Owings, you still have the deed in front of you?

13 A. I do.

14 Q. Alright. That language at the top a that deed, Exhibit
15 SJ9 in Defendants' Exhibit 1, "All that certain piece, parcel
16 or tract of land situate, lying and being in the State of
17 South Carolina, County of Greenville containing five," lots
18 that is perfectly standard language, isn't it, Mr. Owings?

19 A. Yes, yes ---

20 Q. Alright.

21 A. --- it would be.

22 Q. Nothing unusual about that.

23 A. In that I don't review any deeds, to my knowledge that's
24 standard language.

25 Q. Fair enough. Your testimony about this not having been

1 recorded, this meaning Defendants' Exhibit 2 the plat, Richard
2 Watson deed December 3rd 1980 plat, not having gone through
3 the Planning Commission process, right, ---

4 A. That's correct.

5 Q. --- if it were a summary plat which it could easily be
6 turned into, correct, ---

7 A. That's correct.

8 MR. HILLER: Well, Your Honor, that ---

9 Q. --- were a summary ---

10 MR. HILLER: --- I don't know if this is goin' over
11 anything I I redirected, ---

12 THE COURT: Well it's alright, it's ---

13 MR. HERLONG: And you al ---

14 MR. HILLER: --- asked and answered already as well.

15 Q. If it were a summary plat, that doesn't have to go
16 through Planning Commission approval, right?

17 A. That is correct.

18 Q. Alright, and you already told me that it -- that was an
19 administrative process, correct?

20 A. That is correct.

21 Q. What Mr. Hiller is asking you about the whole process of
22 recording is basically a technicality isn't it, Mr. Owings?

23 A. I don't -- technicality has a lot of ---

24 Q. Okay, that's ---

25 A. --- maybe ---

1 Q. --- fair. It's an administrative process.

2 A. It's it -- yes, it is an administrative process.

3 Q. And with respect to let's look at the ordinance which is
4 the last document in this notebook, Your Honor, it's behind
5 Tab 17, it's Exhibit SJ17 in Defendants' Exhibit 1.

6 Mr. Owings, with respect to the ordinance itself and I I -- do
7 you recognize this document Exhibit SJ17?

8 A. I do.

9 THE COURT: What what page is it?

10 MR. HERLONG: Uh, 2, D277, ---

11 THE COURT: Okay.

12 MR. HERLONG: --- it's all the way at the back, Your
13 Honor.

14 THE COURT: Okay.

15 MR. HILLER: I actually have no objection to that subject
16 to my complaint.

17 THE COURT: Alright.

18 (Laughter.)

19 BY MR. HERLONG:

20 Q. Then turn to page 5 of the ordinance which is D288, see
21 the bottom of the page violations and penalties?

22 A. Yes, sir, I do.

23 Q. "The owner, the owner or agent of the owner of any land
24 located within the jurisdiction of the Planning Commission as
25 described herein, who transfers or sells or agrees to sell

1 such land by reference to or exhibition of or by other use of
2 a plat or subdivision of such land before such plat has been
3 approved by the Planning Commission and recorded in the office
4 of the county register of mesne conveyance..." am I good so
5 far, Mr. Owings?

6 A. Um-hum, ---

7 Q. "...shall forfeit ---

8 A. --- yes.

9 Q. --- and pay a penalty of one hundred dollars (\$100) for
10 each lot so transferred or sold or agreed or negotiated to be
11 sold," correct?

12 A. That's correct.

13 Q. Alright, that "so transferred" that's the past tense
14 isn't it, Mr. Owings?

15 A. That would be correct, yes.

16 Q. So that's if a lot is actually transferred or sold. If
17 they haven't gone through the Planning Commission process,
18 they're subject to a penalty of a hundred dollars, right?

19 A. That's correct.

20 Q. Okay, it's not saying the the sale or the transfer
21 doesn't happen, correct?

22 A. That would be correct.

23 Q. Okay. It goes on down, "The description by metes and
24 bounds in the instrument of transfer or other document used in
25 the process of selling or transfer land shall not exempt the

1 transaction from such penalties" then it says, "the county may
2 enjoin such transfer or sale or agreement by action for
3 injunction or may recover the penalty by civil action,"
4 correct?

5 A. It does say that, yes.

6 Q. And that's what you testified before, the county has
7 never done either of those things, right?

8 A. We have not to my knowledge.

9 Q. And you've never taken the position that a transfer
10 didn't comply with the conditions or the requirements of the,
11 of the zoning or the, uh, of the ordinance was not valid,
12 never taken that position have you?

13 A. We've never taken that position to my knowledge.

14 Q. And you're not taking that position today, are you?

15 A. No, we're not.

16 Q. Okay. Thank you, Mr. Owings.

17 REDIRECT EXAMINATION BY MR. HILLER:

18 Q. Mr. Owings, I thought we cleared this up. This
19 transaction based on the description in the deed was not a
20 violation of the ordinance, right, ---

21 A. No.

22 Q. --- and so obviously you wouldn't take that position
23 today.

24 A. That's correct.

25 Q. Alright. And and what Mr. Herlong kinda says real quick

1 like a car sales commercial is what the the prefatory language
2 in that deed before it sets forth the the actual property
3 description it says "containing", does it not?

4 A. Yes, it did say containing.

5 Q. Okay, and what would be a normal way and an
6 appropriate way and a way that's in conformance with these
7 Greenville County Development Ordinance would be to say, Lot
8 Number 27, 28, 29, 30, 31 as shown on the plat of so and so
9 acres, prepared by so and so and recorded in the Greenville
10 County ROD office in plat book triple X page 37, that would be
11 normal.

12 A. That's normal.

13 Q. And that would comply with the subdivision ordinance,
14 would it not?

15 A. That is correct.

16 Q. 'Cuz obviously there was a plat recorded in order to be
17 referenced in the, in the survey, I mean, in the deed,
18 correct, an approved ---

19 THE COURT: If he ---

20 Q. --- recorded ---

21 THE COURT: --- he's, what he's sayin' is he -- if you
22 reference specific lot numbers then there's gotta be a a
23 recorded plat to show what the lot is, isn't that what you're
24 sayin'?

25 MR. HILLER: Yes, sir.

1 A. There, and to my knowledge there's no recorded plat.

2 Q. And and there no lot numbers.

3 A. That is correct.

4 Q. Okay, it just says "containing five lots", that's what it
5 says.

6 A. That's what it says.

7 Q. Alright. And are you aware that there's a state statute
8 that requires the recording of a subdivision plat as well?

9 A. Yes, sir, that's that's the authority that Greenville
10 County uses to have ---

11 Q. Just ---

12 A. --- subdivision regulations. ---

13 Q. Right, ---

14 A. --- now Planning De ---

15 Q. --- and and it states that you also specifically requires
16 that in order to subdivide the property you have to record a
17 subdivision plat.

18 A. It does require that.

19 Q. Thank you.

20 MR. HERLONG: What statute are we talkin' about?

21 MR. HILLER: We're talkin' about 30-5-240.

22 MR. HERLONG: Next exhibit, please.

23 THE COURT: You don't have to mark a state statute as an
24 exhibit.

25 MR. HERLONG: Alright.

1 RECROSS-EXAMINATION BY MR. HERLONG:

2 Q. Mr. Owings, let me show you 30-5-240, alright. Is this
3 what you were referring to a moment ago, the statute you were
4 referring to?

5 (Whereupon, the witness examined the document.)

6 A. Uh, yes.

7 Q. Okay. And the plat that we were talking about or not the
8 plat, the deed we were talking about before, exhibit, guess we
9 should go back to it, what was it, 10, SJ10 in defendants' --
10 well that's not it.

11 A. Back one.

12 Q. SJ9.

13 A. It was page 10, I'm sorry.

14 Q. Right, page -- Deed 251. That deed purports to transfer
15 property by reference to the Richard Watson survey of December
16 3, 1980 doesn't it, Mr. Owings?

17 A. It does, yes.

18 Q. And that survey, that plat as we've seen here explicitly
19 references the five lots, you agree with that?

20 A. It says five lots.

21 Q. And you remember in your deposition how we went around
22 the metes and bounds and some a the numbers are from the
23 inside and some a the numbers are from the outside ---

24 A. That is correct we did, I do remember that.

25 Q. --- making very clear that whoever wrote the metes and

1 bounds description wrote it from or appeared to write it from
2 the survey?

3 A. That's -- I agree with that, yes.

4 Q. Okay. Is there any doubt from exhibit -- from the plat
5 from the deed SJ9 that they were transferring, WOPOA was
6 transferring to Stephens five lots?

7 MR. HILLER: Your Honor, I don't believe this witness is
8 is competent attest to that, that that is ---

9 THE COURT: Yeah, ---

10 MR. HILLER: --- kinda what the ---

11 THE COURT: --- the document speaks for itself ---

12 MR. HILLER: Right.

13 THE COURT: --- so...

14 BY MR. HERLONG:

15 Q. Mr. Owings, look at at the, at the Statute 30-5-240,
16 "When real property is subdivided for the purpose of sale and
17 is sold or offered for sale according to a plat or survey
18 thereof, the person first offering such property for sale
19 shall file a plat or brue -- blueprint of such survey in the
20 office of the clerk of court of the county in which such real
21 estate is situated," I read that correctly?

22 A. You read that correct.

23 Q. Okay, so according to that, this survey or would you
24 agree that according to that ---

25 MR. HILLER: Your Honor, ---

1 Q. --- this survey should have been recorded in Greenville
2 County?

3 A. Shoulda been recorded, yes.

4 Q. Okay. And notwithstanding that, you're not taking the
5 position today that five lots were not transferred from WOPOA
6 to Pelham Properties as per that deed we just looked at, are
7 you?

8 A. I I don't think I'm qualified to make that decision. I
9 can tell you whether plats were recorded. Can I read the deed
10 yes, some of those get get to be opinions ---

11 Q. Okay.

12 A. --- that I don't think I'm qualified to give you.

13 Q. Your office, you speaking on behalf of Greenville County,
14 your office you do not take a position as to whether five lots
15 were transferred from WOPOA to Pelham Properties and Jim
16 Stephens's entity, do you?

17 A. No, I I take the position that we did not see or record a
18 plat creating those.

19 Q. And that's the limit of your position, correct?

20 A. That's limit of my position.

21 Q. Alright, now look again at the statute. "In the event
22 that the owner fails to comply with the above provisia --
23 provision, he shall become liable to the purchaser or to any
24 subsequent grantee of the land or of any portion thereof in
25 such sum as shall be found necessary to procure and record

1 such plat," do you see that, Mr. Owings?

2 A. Yes.

3 Q. It doesn't say the transfer doesn't happen, does it?

4 A. It does not say that.

5 Q. Doesn't say the transfer's void, does it?

6 A. No, it does not.

7 Q. It simply says the first person who transfers it can be
8 forced to pay for getting the plat and recording it later,
9 right?

10 A. That's correct.

11 Q. Thank you.

12 EXAMINATION BY THE COURT:

13 Q. Alright, Mr. Owings, your, if I understand correctly,
14 your office becomes involved in the development of real
15 property when there are sales of property, sales of tracts of
16 land out of a contiguous piece a property which are less than
17 five acres, is that right?

18 A. That is correct. We're we are involved in those greater
19 than five acres, also they're technically exempt from our
20 regulations if they have their own road frontage. If ---

21 Q. Okay.

22 A. --- you're cutting five acres back off the backside of a
23 piece a property, we're involved in the sense that we won't
24 record a plat that's not approvable plat ---

25 Q. Okay.

1 A. --- but five acres or less clearly is under the
2 jurisdiction of Planning Commission slash ---

3 Q. Alright, ---

4 A. --- Planning Department.

5 Q. --- let me ask you this: Using the plat that you've been
6 shown which is not in evidence but has been marked as
7 Defendants' No. 2 and you took the 6. whatever acres, okay,
8 and let's say the owner cut off .99, you know, just one of
9 the, what has been referred to as one of the five lots, I
10 don't know how big they are, cuts that off, sells it to
11 someone, is your office involved with that?

12 A. No. When they create one ---

13 Q. Right.

14 A. --- lot no, they do not have to bring that plat ---

15 Q. Okay.

16 A. --- to us to be reviewed.

17 Q. A month later the s -- that sale is consummated, a month
18 later cuts off another piece, is your office involved?

19 A. If the ultimate attempt is to circumvent the regulations
20 by recording one lot and one lot and one lot, yes, we get
21 involved.

22 Q. Okay, how do you make that determination?

23 A. When it's brought to our attention ---

24 Q. Um-hum.

25 A. --- when they get a building permit on the first lot ---

1 Q. Okay.

2 A. --- then another lot surveyed, created, that's when we
3 call the owner, surveyor say, you know, what's going on
4 here.

5 Q. Okay.

6 A. If try to avoid each lot having it's own curb cut on the
7 highway one at a time, one lot being created may not have a
8 disruption on traffic. DOT might've said each lot shares one
9 entrance for example. Uh, try to get cohesive, connected
10 development. Now do ---

11 Q. Okay.

12 A. --- does it get by us? yes, if there's a will ---

13 Q. Yeah, okay.

14 A. --- to circumvent us, yes, it can be done.

15 Q. Okay, but with respect to what constitutes being
16 developed, you're lookin' at building permits, access to the
17 highway, what are the other factors that you would think of?

18 A. The ones that trigger it for us are when they ask for an
19 encroachment permit from Greenville County on a county
20 road ---

21 Q. Okay.

22 A. --- or from DOT on a state road, ask for a water tap,
23 sewer tap or they start disturbin' the land. In our Land
24 Development Division, an individual lot doesn't have to have
25 storm water retention but when you're creating multiple lots

1 you may have to have it so Land Development Division calls us
2 and says, you know, ya'll have a subdivision plat ---

3 Q. Um-hum.

4 A. --- on this and we we'd say no. At that point
5 everybody's gotta back up and stop or stop and back up, get
6 things squared away, ---

7 Q. Okay.

8 A. --- that is, submit your master storm water detention,
9 I'm gettin' far field here but those are the ways that,
10 uh, ---

11 Q. Comes to your attention.

12 A. --- comes to our attention. They ask for street address
13 from the 911 office, uh, those various folks come to us and
14 say it appears that they're dividing this property. Uh, most
15 surveyors in Greenville County know the rules, they're all
16 very familiar with it, doesn't generally happen but I can't
17 say it never happens.

18 Q. Okay. And if, and if you were to do a title search on
19 this -- these properties, uh, I don't guess you would know
20 that, how whether or not there is a previous recorded plat
21 showing the division of the 6-acre tract from the larger
22 tract, do you know if that exists, there's a recorded plat of
23 this property?

24 A. I do not. I've -- we've not found one, I do not know of
25 a recorded plat.

1 Q. Okay, and but it's not necessary for them to get your
2 approval if they're taking a 20-acre tract and cutting it into
3 two pieces of property, ---

4 A. That's ---

5 Q. --- right?

6 A. --- correct.

7 Q. Nothing, nothing happened there that triggered it was --
8 it's undeveloped, wasn't being developed, correct?

9 A. That's -- your your assumption's correct.

10 Q. Alright. Alright, and with respect to the the deed
11 that's been referenced, uh, the sale of the property here
12 while it says containing five lots there is -- South Carolina
13 is a record notice state you're aware a that?

14 A. No, I'm not.

15 Q. Oh, okay. Alright, there's someone who was searching the
16 records would look at this and go, Well it's got five lots and
17 where would they go to find the five lots, it's not recorded
18 anywhere, is that right?

19 A. They would either come to our office, well probly ROD
20 first ---

21 Q. Right.

22 A. --- if they couldn't find one. Every final and summary
23 plat since 1967 is on record in our office, every, every
24 single plat.

25 Q. Okay, so nowhere in the public domain is there a recorded

1 plat, this plat recorded or anything that shows that 6-acre
2 tract cut into five pieces, is that ---

3 A. Not not to my knowledge.

4 Q. Alright, thank you.

5 THE COURT: Anything else of this witness?

6 MR. HERLONG: Well, Your Honor, if I could just ---

7 MR. HILLER: Let me go first.

8 THE COURT: Yeah, you got anything?

9 MR. HILLER: Yeah, I mean, just based on what you asked
10 him.

11 REDIRECT EXAMINATION BY MR. HILLER:

12 Q. I I I -- Mr. Owings, it's true that once a property is
13 subdivided appropriately and even inappropriately a new tax
14 map number's issued, correct?

15 A. That is correct.

16 Q. And that's one a your tip-offs as well, is it not?

17 A. That is correct.

18 Q. Alright, so if I have came as 001 and it's 10 acres and
19 all of a sudden becomes a 10 -- 1.01 and a 1.02 and a 1.03,
20 you know I'm sub -- subdividin' the property?

21 A. That is correct.

22 Q. Alright, and and if ---

23 THE COURT: Well he knows you're sellin' lots, he
24 doesn't ---

25 MR. HILLER: Right, ---

1 THE COURT: --- know if it's bein' ---

2 MR. HILLER: --- he knows ---

3 THE COURT: --- subdivided ---

4 MR. HILLER: --- I'm sellin' lots ---

5 THE COURT: Okay.

6 MR. HILLER: --- but I would be sellin' 'em in violation
7 of the ordinance unless they were over 5 acres, correct?

8 THE WITNESS: That's correct.

9 BY MR. HILLER:

10 Q. Alright, so when you look at this tract, it has this
11 tract, what's called the Stephens' tract, the one that's
12 referenced in the deed, has one subdivi -- I mean, one tax map
13 number ---

14 A. That is correct.

15 Q. --- and it's had one tax map number since the date of
16 that deed through the present.

17 A. That's correct.

18 Q. Alright, and and and if a sub -- or if a a re -- an
19 approved plat was recorded at any time durin' that period, it
20 would have five tax map numbers, correct?

21 A. That is correct.

22 Q. And in fact woulda been taxed differently as a result a
23 that, woulda had five lots instead of just a undeveloped tract
24 of land.

25 A. That's correct.

1 Q. Thank you.

2 RECROSS-EXAMINATION BY MR. HERLONG:

3 Q. Mr. Owings, uh, if you'd mark this as the next one,
4 please.

5 (Tax map marked Defendants' Exhibit No. 3 for
6 identification.)

7 Q. Mr. Owings, ---

8 MR. HILLER: May may ---

9 Q. --- show you ---

10 MR. HILLER: --- may may may I see it?

11 MR. HERLONG: Yeah, I'm sorry. Don't you have this?

12 MR. HILLER: Well, I mean, I have everything, I don't
13 know what you have in your hand.

14 MR. HERLONG: Thought you knew.

15 (Whereupon, a discussion was held off the record.)

16 MR. HILLER: Okay, and I may need to stay near but I'm
17 likely to object.

18 BY MR. HERLONG:

19 Q. Mr. Owings, Defendants' Exhibit No. 3 do you recognize
20 this as the tax map of the, ---

21 A. I do.

22 Q. --- of the area?

23 A. I do.

24 Q. You do? The the property that we're talking about is
25 about in the middle, a little bit below the middle on the

1 right side, do you see it?

2 A. Yes, I do.

3 Q. Do you see the dotted lines?

4 A. I do.

5 Q. Alright, do you -- can you tell whether those dotted
6 lines correspond with the lots on the Defendants' Exhibit 2
7 and let me, let me, let me, uh, help ya here. Looking at the
8 top of the lot on the left side the number there for the
9 dimension is 200, - isn't it?

10 A. That's correct.

11 Q. That's the number for the dimension on the cross of the,
12 of the left most lot, correct?

13 A. That's correct.

14 Q. On the next lot ---

15 MR. HILLER: Your Honor, I, you know, I I object to all
16 this line of question ---

17 THE COURT: Yeah, I know, I know.

18 MR. HILLER: --- because there there it -- number one,
19 it's irrelevant; number two, we've already established there's
20 no recorded plat and and and ---

21 THE COURT: Well let him -- okay, I got ya, you're
22 covered.

23 MR. HILLER: Okay. Well well number three is is they
24 haven't established the date of this particular, uh, ---

25 THE COURT: Nope, that's alright, let's let him go.

1 MR. HILLER: Alright.

2 MR. HERLONG: Do you dispute that this is the -- this
3 this is from the thing or I'll I'll call ---

4 MR. HILLER: I I ---

5 MR. HERLONG: --- Ms. Adkins.

6 MR. HILLER: --- I don't dispute it's a tax map but
7 they're constantly updated as we know ---

8 MR. HERLONG: Alright.

9 MR. HILLER: --- and I would s -- I would s -- I I I will
10 submit that it is not what is currently shown on the tax maps
11 so I don't know exactly when -- which book you got it out of
12 but it's not current.

13 MR. HERLONG: This is what's currently over there if you
14 go look at the mylars.

15 MR. HILLER: I've got a color picture of it right here.

16 BY MR. HERLONG:

17 Q. Mr. Owings, if you'd look at the the next lot over, can
18 you tell the numbers on -- around it? You can read it, some
19 of it's hard to read. Looks like that one's kinda hard to
20 read so...

21 A. I don't know that it's any clearer on the others but
22 third lot is 100.

23 Q. And 100 is exactly what's on the plat, isn't it?

24 A. And that's yes.

25 Q. And what's the fourth lot? Is it 168.4?

1 A. Uh, yes.

2 Q. Alright.

3 A. So these are written on this one.

4 Q. And the right, and the right most lot is it 170?

5 A. That's correct.

6 Q. Alright. Okay. Mr. Owings, the tax map over there now
7 if you pull it up on the internet, are you familiar with that
8 process?

9 A. I am.

10 Q. Alright, that that the lines and so forth that are shown
11 on it today were they taken from the physical copies, the
12 mylars, that existed prior to their going computer?

13 A. That is correct.

14 Q. Does this appear to be the version the tax map prior to
15 what exists today on computer?

16 A. That's correct.

17 Q. Alright.

18 MR. HERLONG: I think that's all I have, Your Honor.

19 REDIRECT EXAMINATION BY MR. HILLER:

20 Q. Mr. Owings, you don't have anything to do with department
21 that makes the tax maps, right?

22 A. No, that's the Real Property Services Division.

23 MR. HILLER: Mark that please.

24 (Current tax map marked Plaintiffs' Exhibit No. 4 for
25 identification.)

1 BY MR. HILLER:

2 Q. Wanna show you what is a printout of what the tax map
3 shows today as of August 31st 2012, been marked as Plaintiffs'
4 Exhibit 4, that's what it shows today, correct?

5 A. Correct.

6 Q. And it has one less line, dotted line, than what's marked
7 as Defendants' Exhibit 3, does it not? There's one there
8 (indicating), one there (indicating) and one there
9 (indicating), see that?

10 A. Yes, I do.

11 Q. And every time you go to any of the tax books or the
12 online system there's a big disclaimer that you have to click
13 on before you're allowed to go any further and then if you try
14 to print sumtin', they print the disclaimer down here,
15 right?

16 A. That's correct, that's correct.

17 Q. Says not a survey.

18 A. That's correct, it says ---

19 Q. It's not ---

20 A. --- it's not.

21 Q. --- based on any kind of surveying techniques or
22 otherwise, correct?

23 A. That's correct.

24 Q. Just best idea they can get from, uh, matters of public
25 record, right?

1 A. That's correct.

2 MR. HILLER: That's all I have, Your Honor.

3 THE COURT: Alright. We go -- we can go on forever and
4 ever, we gonna cut it off and Mr. Owings is gonna go into
5 early retirement.

6 (Laughter.)

7 THE COURT: I'm gonna cut him lose.

8 MR. HERLONG: Alright.

9 THE COURT: We'll break for lunch, uh, it's I guess be
10 back 2:30, that's an hour and fifteen minutes.

11 THE WITNESS: Is somebody ---

12 THE COURT: Just leave, ---

13 THE WITNESS: --- gonna need it?

14 THE COURT: --- just leave that sittin' up there.

15 THE WITNESS: Okay.

16 MR. HILLER: Anything, yeah, just leave anything up
17 there.

18 THE COURT: Thank you very much, Mr. Owings, I appreciate
19 it. Okay, ---

20 MR. HILLER: Your Honor, I subpoenaed Mr. Owings to be
21 here, he's released?

22 THE COURT: Any objection to that?

23 MR. HERLONG: Uh, no, no, sir.

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: Okay, see ya'll at two fi -- 2:30, 2:30.

MOTIONS AND MATTERS

1 MR. HILLER: 2:30.

2 (Whereupon, a recess was taken.)

3 (Whereupon, a discussion was held off the record.)

4 THE COURT: Okay.

5 MR. HILLER: Your Honor, that's the, uh, that's the
6 plaintiffs' case in chief.

7 THE COURT: Alright.

8 MR. HERLONG: Your Honor, just quickly we'd move for a
9 directed verdict. We don't think they've produced any
10 evidence that the vote was invalid or that those were not
11 lots, produced evidence that they didn't, that the transfer
12 didn't comply with the ordinance but other than that there's
13 no evidence that they were not lots.

14 THE COURT: Alright, ---

15 MR. HERLONG: Uh, ----

16 THE COURT: --- verdict denied. Thank you ---

17 MR. HERLONG: ---- we'll call ---

18 THE COURT: ---- very much.

19 MR. HERLONG: --- Mr. Grayson, ---

20 THE COURT: Okay.

21 MR. HERLONG: --- Pat Grayson.

22 (Whereupon, the witness came forward.)

23 THE COURT: Sir, if you would please put your left hand
24 on the Bible, raise your right hand.

25 PATRICK H. GRAYSON, JR.,

1 having been first duly sworn, testified as follows:

2 THE COURT: Alright, thank you very much. C'mon around
3 have a seat, state your full name.

4 THE WITNESS: My full name is Patrick H. Grayson, Jr.

5 MR. HERLONG: Please the Court.

6 THE COURT: Yeah, please go ahead.

7 DIRECT EXAMINATION BY MR. HERLONG:

8 Q. Mr. Grayson, tell me what your occupation is, what do ya
9 do?

10 A. I'm an attorney.

11 Q. How long you been practicin' law?

12 A. Since 1958.

13 Q. 1958. What kinda law predominantly?

14 A. Real estate, banking.

15 Q. And you you've been involved in hundreds, thousands of
16 real state transactions over the years?

17 A. Well I don't know about thousands, uh, I've been involved
18 over a a period of time on a regular basis.

19 Q. Okay, and you're currently retired or semi-retired or
20 what's what's the status?

21 A. Well I quit working on Friday's.

22 (Laughter.)

23 Q. Okay. And who do you work with today?

24 A. I primarily work with a a fund and, uh, different
25 investors, Dan Bruce is probably the primary one.

1 Q. Is that RealtiCorp.?

2 A. Uh, yes.

3 Q. Okay, and are you on staff, sir, to provide legal advice
4 and so forth to them?

5 A. I'm not on staff, I'm an independent. I have a
6 letterhead with just my name.

7 Q. Okay. Back in 1980, '81 time frame were you involved
8 with the transactions that we've been talkin' about this
9 mornin' the creation of WOPOA and Lincoln transferring that
10 property ---

11 A. Uh, ---

12 Q. --- and so forth?

13 A. --- yes.

14 Q. What was your role?

15 A. I represented a company known as, uh, Lincoln Lincoln of
16 South Carolina that entered into an option contract with
17 Richard Watson, Jr. and, uh, his wife, first wife had died so
18 it was the trust for her estate. The Watson's collectively
19 those two had owned out on Pelham Road a very, very large
20 tract of land that at one time had had a peach orchard and my
21 client wanted to buy the land to the south of Pelham Road
22 bounded by Haywood Road and also I-385.

23 Q. Where those shopping centers are right now, those,
24 uh, ---

25 A. That's correct.

1 Q. Okay. Well tell me what was, what were the issues and
2 what did you have to do to resolve?

3 A. It was a fairly complicated transaction. When Richard
4 Watson and his first wife decided that they wanted a
5 subdivision, they put certain real estate restrictions on
6 record ---

7 Q. You're talkin' about Watson's Orchard?

8 A. Watson's Orchard but the restrictions covered, uh, land
9 on both sides of Pelham Road, was about 232 acres and then the
10 Watsons developed, sold off, developed is a word word we'll
11 get to later I guess, they recorded, they being the Watsons,
12 recorded a subdivision plat that they call Watson's Orchard
13 subdivision and that was to the north of Pelham Road.

14 Q. Okay, and and what and they were try -- and did those
15 folks have what do you call it negative easements or what what
16 over the property that between there and 385?

17 A. That was the interpretation that the 1961 restrictions
18 covered 232 acres which would have included the I think
19 approximately 85 acres on the southern side of Pelham
20 Road ---

21 Q. Okay.

22 A. --- and those restrictions would be deemed negative
23 easements on that land restricting it to, uh, residential
24 use.

25 Q. Okay. And in the process of what ya'll were doing in

1 nin -- was it 1980 I guess, 1980, what did you have to do? I
2 I take it the objective was to release some of those negative
3 ease -- some of those restrictions on the property ---

4 A. Well the ov -- the the overall intent of the client I
5 represented was ---

6 MR. HILLER: Well, I mean, ---

7 A. --- about ---

8 MR. HILLER: --- Your Honor, Your Honor, I'm gonna object
9 to him testifyin' what the intent of his client was, I have a
10 number of grounds for that.

11 THE COURT: Okay.

12 MR. HILLER: Well the first is I'll be happy to hand up
13 the case *Church vs. Moody* makes it irrelevant, immaterial for
14 even the grantor once he's executed a deed or in this case a
15 declaration to testify what his intent was. Um, ---

16 THE COURT: I I believe the case says what you tell me.

17 MR. HILLER: Okay, so so and it it would be inadmissible
18 for the the signatory on any of the documents come in and
19 testify as what the intent of the agreement was is to be
20 derived from the agreement, uh, secondly, a course Mr. Grayson
21 was was not a party to the transaction other than as a
22 preparer of documents and he can't testify what ---

23 THE COURT: He doesn't, he can't read the other man's
24 mind.

25 MR. HILLER: Right, ---

1 THE COURT: Okay.

2 MR. HILLER: --- so so I I don't have any problem with
3 him givin' some background of what goes on but when he tries
4 to declare what or or state what the intent is then and the
5 final argument would be, uh, uh, but that's purely for the
6 Court to determine, that that no testimony or evidence, expert
7 or otherwise, is admissible in that regard, I also have a case
8 on that.

9 THE COURT: Okay.

10 MR. HERLONG: Well, Your Honor, he was, he was counsel
11 involved in the transaction, he not only knows what the intent
12 was, he was the person who was carrying it out so he had
13 instructions and and he was the one involved in in executing
14 what the plan was.

15 THE COURT: I think he can testify to what he was
16 instructed to do and what he did and I don't think there's a
17 problem with that.

18 MR. HERLONG: Okay.

19 THE COURT: Alright.

20 MR. HERLONG: As as far as the bigger, the bigger issue,
21 you know, that we're gonna get to the, you know, what the
22 meaning of these words are in this document, Mr. Grayson's the
23 one who drafted it so ---

24 MR. HILLER: Well I'm I gonna object to that ---

25 (Cell phone rings.)

1 MR HILLER: --- case of *Dawkins vs. Fields* which is 2003
2 Supreme Court case specifically prohibits ---

3 THE COURT: Ya have to turn off your cell phone, if not
4 we have to confiscate it. Okay, go ahead.

5 MR. HILLER: --- specifically prohibits that expert
6 testimony or any testimony related to the legal a a
7 determination's to be made by the Court, be happy to hand that
8 case up as well.

9 THE COURT: No, I -- no, no, you don't have to, you don't
10 have to.

11 MR. HERLONG: Do you wanna hear on that right now, Your
12 Honor? You wanna hear on that right now that issue?

13 THE COURT: Sure, I'd be happy to hear about it.

14 MR. HERLONG: Well I, I mean, I I know where, I I'm
15 familiar with that case, right now he's not testifying as an
16 expert, uh, and it's ri -- strictly factual information right
17 now.

18 THE COURT: Right, so he can just testify to what he was
19 instructed to do, what he did and ---

20 MR. HILLER: Yeah, I I don't have any problem ---

21 THE COURT: As far as the interpretation of the document,
22 that is for the Court to ---

23 MR. HILLER: Right, and his his -- but I I take the
24 position that if he tries to testify as to what words mean
25 within the document, that imposes upon the the the Court's

1 province and and at that point he would in fact be attempting
2 to testify as to either the intent of the declarant or give a
3 legal, I mean, a an expert opinion on what the document or
4 what the words say 'cuz we got the documents, they're in
5 evidence, they say what they say and it's your job to
6 interpret those documents, not Mr. Grayson's.

7 THE COURT: Okay. Alright, go ahead.

8 BY MR. HERLONG:

9 Q. Mr. Grayson, we were, uh, I think I was asking you what
10 the general, what the general purpose was, what you were
11 tryin' to do.

12 A. My client Lincoln wanted to buy the 85 acres more or less
13 land bounded by I-385, Haywood Road and, uh, Pelham Road.

14 Q. And and and was the point to make it so that that that
15 property could be developed: shopping center and so forth?

16 A. Well the again, the purpose the client informed me was
17 to ---

18 MR. HILLER: Um, ---

19 A. --- be able to ---

20 MR. HILLER: --- I object to that as hearsay.

21 THE COURT: That's hearsay.

22 A. Alright. Uh, ---

23 Q. What were your instructions, Mr. Grayson?

24 A. My instructions were to prepare certain contract
25 documents, option to purchase the land, further obtain title

1 insurance for a closing, to prepare restrictive covenants in
2 two parts, one part would be on a parcel of land on Pelham
3 Road, it was thought to be about 15 acres, when it was
4 surveyed it surveyed out at 14.7 more or less, and to further
5 restrict certain property on Haywood Road containing about 6
6 acres, to draft restrictive covenants on the remaining 85
7 acres for commercial and multi-family use and to handle a
8 closing in which the client I represented could buy the land
9 and sell off pieces.

10 Q. Okay. And in the process of doing that did you, your
11 client, did ya'll obtain the consents of all the folks in
12 Watson's Orchard?

13 A. The Watson's Orchard Subdivision was a plat recorded in
14 public records containing 46 acres.

15 Q. Forty-six lots?

16 A. Forty-six lots, that's correct, and in the title
17 examination it was found that there was another piece of land
18 that Richard Watson and his wife had sold off contained about
19 1.6 acres sold to a lady as I recall named Irma Rash and in
20 concluding who had rights under those restrictions, I
21 conferred with a title company and the the conclusion was that
22 those lots, 46 lots plus the Irma Rash piece that we
23 identified as the Watson's Orchard Subdivision collectively,
24 had negative easement rights on the land on the southern side
25 of Pelham Road and those restrictions in those negative

1 easements would not allow commercial or multi-family use, as a
2 result before the -- their closing, those restrictions were --
3 have had to have been released. The client I represented did
4 negotiations with various people in the Watson's Orchard
5 subdivision, one of 'em was Wilkins Norwood who lived there,
6 another was Carter Poe who lived there, another was Lou, L.W.
7 Brummer who lived there, they were the primary parties
8 representing or holding themselves out as representing the
9 subdivision owners. The agreement that was rel -- reached was
10 that the owners would be conveyed a two tracts of land, one
11 was the 14.7 acres, the other was the 8 acres, they would be
12 given \$50,000 and that group in Watson's Orchard concluded
13 that they ---

14 MR. HILLER: I I ---

15 A. --- uh, ---

16 MR. HILLER: --- I I I I I ---

17 A. --- that the Watson's ---

18 THE COURT: Wait a minute, wait, wait, wait.

19 A. Okay.

20 MR. HILLER: I object to him tellin', sayin' what the
21 group concluded to.

22 THE COURT: Alright, you can't ---

23 THE WITNESS: Alright.

24 THE COURT: --- can't speculate.

25 BY MR. HERLONG:

1 Q. Just tell me what they, what they did.

2 A. That group formed a corporation called Watson's Orchard
3 Property Association, Inc., Charlie Howard who's a practicing
4 attorney formed that corporation. The strips of land were
5 conveyed by my client after it acquired title to that
6 corporation. As part a that transaction as I think I stated
7 earlier on, I prepared two sets of restrictions, one was for
8 land that these parties Wilkins Norwood, Carter Poe referred
9 to as buffer strips, a buffer zone rather, I use that term as
10 a defined term in the document that I prepared from a
11 definition standpoint, uh, uppercasse the first letter and put
12 it in quotes to define it as a defined term so I didn't have
13 to repeat the 14 acres every time or or the
14 6 acres every time, those restrictions were recorded. 'Cuz
15 the transaction was rather complicated, the title company
16 requested that we have a a an action that we deemed a
17 declaratory judgment action to declare that conditions and an
18 agreement called an agreement, I forgot the exact title of
19 that agreement, um, agreement to release restrictions had
20 certain conditions precedent. I prepared a summons and
21 complaint which is in the public records, uh, conducted a
22 hearing before Judge Frank McGowan, Jr. and the judge issued a
23 an order which is in the public records. Following the Order
24 the, uh, a a document called "Release of Restrictions" was
25 executed by all of the owners in the Watson's Orchard

1 Subdivision one hundred percent, that was done in two separate
2 release documents, one of the documents had the name of James
3 Stephens and his wife Ann on on that one release by itself,
4 the other release document was executed by all of the owners
5 and was taken to the courthouse for recording and was recorded
6 in the public records of Greenville County to release the
7 negative easements that the Watson's Orchard owners had, that
8 was -- that's the essence of the transaction.

9 Q. That the 1981 transaction?

10 A. 1981, yes.

11 Q. Let me, uh, before we change any position let's look at
12 this the notebook Defendants' Exhibit 1. The Exhibit SJ2,
13 page D11, page D11, Mr. Grayson, it's right here (indicating),
14 I'll find it for ya. Yeah, right here (indicating), page
15 number's right there (indicating). Can you identify that as
16 the restrictions and covenants that ya'll put in place in 1981
17 as a result of the process you just described?

18 A. This is the restriction that covers the 14.7 acres and
19 also the 8 acres, it's signed by Lincoln of South Carolina as
20 the declarant, the title is "Declaration of Restrictions and
21 Protective Covenants", I did prepare that document.

22 Q. And is this the document that is, uh, that's base -- that
23 the -- is being amended as a result of what happened and or
24 we're attempting to amend as a result of what happened in 2009
25 and '10?

1 A. That is correct.

2 Q. Alright. Toward the bottom of the first page of this
3 document is that where it talks about the restrictions will be
4 in place until January 1, 2010 at which time said covenants,
5 conditions and restrictions shall automatically, be
6 automatically extended for a successive 10-year period, 10
7 years each unless by a vote of a majority of the then owners
8 of the lots into which the property described above shall have
9 been developed and in Watson's Orchard?

10 A. Uh, yes.

11 Q. Okay. And did you draft that language, Mr. ---

12 A. Uh, ---

13 Q. --- Grayson?

14 A. --- yes, yes, I did.

15 Q. Alright. Is a, is "lot" a defined term in this
16 document?

17 A. Lot is not a defined term.

18 Q. Is "developed into" a defined term in the document?

19 A. It is not.

20 Q. What was your intent ---

21 MR. HILLER: I I'm gonna object ---

22 Q. --- on drafting this document with respect to those
23 terms?

24 MR. HILLER: Well I object to that, Your Honor, that's
25 directly violative of the cases I cite. He's not a party in

1 the transaction, he's a scrivener.

2 MR. HERLONG: He drafted the document, Your Honor.

3 THE COURT: So how is his intent relevant?

4 MR. HERLONG: He's the person who drafted the document.

5 I mean, ---

6 THE COURT: Yeah, ---

7 MR. HERLONG: --- he did what ---

8 THE COURT: --- what his intent is is not relevant, he
9 just -- he's ---

10 MR. HILLER: Doin' what he's told.

11 THE COURT: Yeah.

12 MR. HERLONG: Well his intent is to do what he's told and
13 that is clearly relevant..

14 MR. HILLER: Well, Your Honor, ---

15 MR. HERLONG: His intent ---

16 MR. HILLER: --- I'll be happy to hand ---

17 MR. HERLONG: --- with respect to ---

18 MR. HILLER: --- those cases up ---

19 THE COURT: No, ---

20 MR. HILLER: --- it's to be derived from the document ---

21 THE COURT: Right.

22 MR. HERLONG: That's if it's ---

23 MR. HILLER: and not ---

24 MR. HERLONG: --- unambiguous.

25 MR. HILLER: --- not any subsequent declaration even by

1 the declarant, let alone somebody who was just workin' for the
2 declarant.

3 THE COURT: Yeah.

4 MR. HERLONG: Well, Your Honor, that is not correct. If
5 there's any question about the ish -- about what those do --
6 those words mean then Mr. Hiller's whole case calls into
7 question what the term "developed into". The the language
8 there is "developed into lots".

9 MR. HILLER: No, "it shall be developed", ---

10 MR. HERLONG: No.

11 MR. HILLER: --- "shall have been developed into lots"
12 but ---

13 MR. HERLONG: Into which, "lots into which the property
14 shall have been developed", "lots into which the property
15 shall have ---

16 MR. HILLER: Right, ---

17 MR. HERLONG: --- been developed".

18 MR. HILLER: --- and that's what the Court's gotta
19 decide ---

20 THE COURT: Right.

21 MR. HILLER: --- but it's not Mr. Grayson's, I mean, I'm
22 arguin' it it it it's one way, Mr. Herlong's arguin' 'em,
23 that's argument, okay, and Mr. Mr. Grayson's in no better
24 position than we are and that's exactly what, ---

25 MR. HERLONG: He's the pers ---

1 MR. HILLER: --- that's exactly why the Supreme Court
2 said in *Dawkins vs. Fields*, that it's inadmissible, ---

3 MR. HERLONG: *Daw* ---

4 MR. HILLER: --- that that that you can't submit an
5 argument that's just nothin' more than a legal argument,
6 that's all Mr. Grayson's capable testifyin'.

7 MR. HERLONG: That is absolutely not correct. *Dawkins*
8 *vs. Field*, Your Honor, is strictly a case about an expert
9 being able to testify to legal issues. In that case or a
10 subsequent case, the name which I don't remember off the top of
11 my head, that involved Professor Freeman, following case
12 involved Professor Freeman, the Court, the Court of Appeals in
13 the following case said the judge makes the decision as to
14 whether a fiduciary duty exists, the legal issue, and the
15 Professor Fee -- Freeman was entitled to testify, the judge
16 having decided that the fiduciary duty existed, Professor
17 Freeman was entitled to testify whether that duty had been
18 violated, a factual question. Mr. Grayson, and that's a,
19 that's an expert question, I am not asking this question as an
20 expert, I'm asking him as the human being who put pen to paper
21 and drafted this document what was his intent with ---

22 THE COURT: Well ---

23 MR. HERLONG: --- respect to ---

24 THE COURT: --- here here ---

25 MR. HERLONG: --- those words.

1 THE COURT: --- here's the the problem you got you're --
2 it's a, it's a -- where's the ambiguity that requires parole
3 evidence 'cuz that's exactly what you're talkin' about, isn't
4 it?

5 MR. HERLONG: Well if there, if -- the question is is
6 there an ambiguity and that's for Your Honor to decide. I I
7 think that that frankly, I think the language is clear that
8 property into which -- "lots into which the property is
9 developed", that talks about the creation of lots, that's not
10 ambiguous but Mr. Hiller has a completely different
11 interpretation of it so that's that's sort of the definition
12 of an ambiguity.

13 MR. HILLER: No, no, I I don't have ---

14 THE COURT: Well ---

15 MR. HILLER: --- a different interpretation of it.

16 THE COURT: --- that's alright.

17 MR. HILLER: Uh, ---

18 MR. HILLER: Subject to your, I'm gonna let him -- go go
19 ahead and testify, Mr. Grayson, go ahead, subject to your
20 objection.

21 BY MR. HERLONG:

22 Q. Mr. Grayson, what was your intent with respect to the
23 language and I'll just read it, "By a vote of a majority of
24 the then owners of the lots into which the property described
25 above shall have been developed and in Watson's Orchard," what

1 was your intent with respect to that?

2 A. To come into existence. Develop would mean to come into
3 existence, to be created.

4 Q. At the time that, at the time, uh, well let me move
5 forward. The, uh, turn to Exhibit or SJ7 in your notebook
6 which is Tab 7 in the notebook.

7 A. Alright, I have Tab 7, ---

8 Q. Is that a copy ---

9 A. --- complaint?

10 Q. Yes. Is that a copy of the complaint in the declaratory
11 judgment action you referenced a few moments ago?

12 A. Yes.

13 Q. Turn to page of 8 of it which is page D69 in the
14 notebook. Paragraph Roman 14 there, second from the top,
15 "That plaintiff is informed and believes that more than a
16 majority of the defendants listed in Paragraph 2 as
17 stockholders in Watson's Orchard Property Owner's Association,
18 Inc. are willing for said corporation to sell five minimum
19 lots 200 feet frontage and fi -- 55,000 square feet for one
20 hundred five thousand five hundred and no one-hundredths
21 dollars, said lot being part of the buffer zone on Pelham
22 Road...", etc. is that a reference to the Stephens'
23 lots, ---

24 A. Uh, ---

25 Q. --- Mr. Grayson?

1 A. --- it -- well let me, let me make sure I'm looking at
2 the right document. I'm looking at Tab 7 page, uh, ---

3 Q. Page, uh, ---

4 A. --- page 8 which is over where?

5 Q. Right here (indicating), ---

6 A. Okay, page ---

7 Q. --- page D89, it's Roman 14 if you need to read that.

8 A. Page page 6.

9 Q. Question is just was that a reference to the Stephens'
10 lots there in in, uh, ---

11 A. Yes.

12 Q. Okay. The next tab in the notebook S -- Exhibit SJ8, you
13 recognize that as a copy of Judge McGowan's Order in that
14 action?

15 MR. HILLER: Your Honor, of course my standing objection
16 these documents are not in evidence, correct?

17 MR. HERLONG: Well ---

18 THE COURT: Uh, ---

19 MR. HERLONG: --- I move the admission of the complaint
20 and the reason ---

21 MR. HILLER: Oh, I mean, I ---

22 THE COURT: What's your objection ---

23 MR. HILLER: They ---

24 THE COURT: --- to this?

25 MR. HILLER: --- that they predate the declaration.

1 THE COURT: Okay.

2 MR. HILLER: I mean, they predate the covenants. Our our
3 our -- my position is of course, of course again they're
4 they're extrinsic parol evidence but that they predate
5 declaration and therefore, you know, it's it's classic reasons
6 for the par -- parol evidence rule is is obviously things go
7 on before a document is created but once a document's created
8 you aren't allowed to, none a that's relevant anymore that
9 subsequent to the document it is possible that there could be
10 extrinsic evidence that wouldn't be parol that would show some
11 kinda change in position of the respective parties but but all
12 all of this, all of this, Judge McGowan's Order, the lawsuit,
13 all of that in my opinion, it be my position is not only
14 violated the parol evidence rule, it's improper extrinsic
15 evidence but it's irrelevant to any determination of what the
16 covenants say because it was done prior to the covenants,
17 prior to the covenants being prepared and prior to the
18 covenants being recorded and and and that's the issue in this
19 case, covenants and whether these lots been developed, what
20 went on prior to that has nothin' to do with it.

21 MR. HERLONG: The issue is not whether these ---

22 THE COURT: Okay, go ---

23 MR. HERLONG: --- lots have been ---

24 THE COURT: --- ahead, ---

25 MR. HERLONG: --- developed ---

1 THE COURT: --- ask -- shu -- I know where you're goin'
2 but ---

3 BY MR. HERLONG:

4 Q. Alright. Mr. Grayson, turn to page D80 of the
5 notebook, ---

6 A. Alright.

7 Q. --- this is Paragraph 18 of Judge McGowan's Order, do you
8 see that in the middle of the page?

9 A. Uh, yes.

10 Q. That more than a majority of the defendants as charter
11 members and pending stockholders in Watson's Orchard Property
12 Owners Association, Inc. are willing to sell five lots as
13 described in the deed shown in Exhibit 14, do ya see that, ---

14 A. Yes.

15 Q. --- for consideration of one hundred five thousand
16 dollars (\$105,000) pursuant to an off -- the offer in Exhibit
17 15, do ya see that?

18 A. Yes.

19 Q. Now Exhibit 14 to Judge McGowan's Order, let's see that
20 is page, uh, turn to page D161 in the book, actually a better
21 copy is D164, do you see that, Mr. Grayson?

22 A. D161?

23 Q. 164.

24 A. 164. Yes.

25 Q. A deed from Watson's Orchard to Pelham Properties, "All

1 that certain piece, parcel or tract of land situate, lying and
2 being in the State of South Carolina, County of Greenville,
3 containing five lots as more fully shown on the plat entitled
4 'Survey for Richard Watson,'" and so forth, see all that?

5 A. Yes.

6 Q. Did you prepare this deed?

7 A. I prepared that deed, yes.

8 Q. Alright. And does this deed as you prepared it convey
9 five lots from Watson's Orchard Property Owners Association to
10 Pelham Properties?

11 A. Yes.

12 Q. Alright. You heard the testimony of Mr. Owings earlier
13 about the the referenced plat not being, not being recorded,
14 what was, what was the reason for that or or or can you
15 explain how this deed conveys five lots in light of what
16 Mr. Owings said.

17 A. This deed conveys five lots as a metes and bounds legal
18 description. There are three classic ways of conveying
19 property in this country, uh, one does not apply in the
20 eastern United States, that's a government survey, they have
21 'em out West. In those instances you deed according to a
22 government survey which is known survey, uh, lines. This deed
23 was prepared as a metes and bounds survey, it was not done
24 under the subdivision regulations of Greenville County, it was
25 done as a metes and bounds survey which has been a custom in

1 real estate practice for hundreds of years. It was a metes
2 and bounds survey and not a subdivision ---

3 Q. With respect ---

4 A. --- prepared, it was not based on a recorded subdivision
5 plat.

6 Q. With respect to the delineation of the specific lines of
7 those five reference lots, would you look to the survey that's
8 referenced in here, the Richard Watson survey of December 3?

9 A. Is it in the book?

10 Q. No, no, no, I'm just sayin' would you, is that how you
11 would know where the specifics ---

12 A. Yes, yes, ---

13 Q. --- crosslines are?

14 A. --- that that's the, uh, survey that was used, well the
15 the top part is the survey that was used, ---

16 Q. Defendants' Exhibit 2?

17 A. --- uh, for the legal description in this deed that we've
18 just talked about.

19 Q. Okay. Alright. In turning back, before you do that,
20 turn to Defendants' Exhibit, I'm sorry, Exhibit 15 to Judge
21 McGowan's Order which is a couple a pages farther in, D166.

22 A. Alright.

23 MR. HERLONG: Your Honor, the copy of this notebook that
24 you have does not have the two pages that are a whole lot
25 easier to read for these -- this section right here

1 (indicating), maybe I should just mark it as another exhibit.

2 (Whereupon, a discussion was held off the record.)

3 (D166 and D167 marked Defendants' Exhibit No. 4 for
4 identification.)

5 BY MR. HERLONG:

6 Q. Mr. Grayson, Defendants' Exhibit 4 is that a better copy
7 of D166 and D16 ---

8 A. Ye ---

9 Q. --- 7?

10 A. --- yes, yes it is.

11 MR. HERLONG: Okay. Your Honor, I'll hand this up to you
12 'cuz the 'cuz the notebook's almost impossible to read. Do
13 you see -- you might wanna look at those.

14 BY MR. HERLONG:

15 Q. The offer, Exhibit ---

16 THE COURT: There you go.

17 Q. --- 15 ---

18 THE COURT: Can you see it?

19 Q. That's got ---

20 THE WITNESS: I've got a better copy.

21 THE COURT: Okay.

22 Q. Can you read to me, Mr. Grayson, the offer that is
23 Exhibit 15 to Judge McGowan's Order?

24 A. It's at the top it says, "Exhibit B, State of South
25 Carolina, County of Greenville offer the undersigned Pelham

1 Properties, Inc. hereby offers to purchase from Watson's
2 Orchard Homeowner's Association, Inc. five lots as are more
3 fully described in Exhibit A annexed hereto and made a part
4 hereof by reference and known as the property for a purchase
5 price of twenty-one thousand one hundred dollars (\$21,100) per
6 lot, said property will be free and clear of all liens and
7 encumbrances except for utility easements consisting of
8 electricity, telephone, water, sewer and the restrictive and
9 protective covenants set out in the agreement to release the
10 restrictions applicable to the buffer strip ---

11 Q. The agreement to release ---

12 A. --- dated October 6, 1980, signed by, uh, uh, James
13 Stephens ---

14 Q. --- the agree ---

15 A. --- president of Pelham Properties, Inc.

16 Q. --- the agreement to release restrictions applicable to
17 buffer strip is that the document we were talkin' about a few
18 minutes ago that you drafted and which was presented to Judge
19 McGowan for approval?

20 A. Yes.

21 Q. The next page, Mr. Grayson, which is apparently Exhibit A
22 to the auth -- offer we were just reading, would you read the
23 the first paragraph, please.

24 A. "All those certain pieces, parcels or lots of land
25 situlying [sic], being in the State of South Carolina, County

1 of Greenville, being identified as five lots fronting on
2 Pelham Road, more fully shown on a new survey and described in
3 the aggregate according to a survey entitled "Survey for
4 Richard Watson", dated June 27, 1980, revised August 19, 1980
5 and August 27, 1980, prepared by Carolina Surveying Company
6 with the following metes and bounds to
7 wit ---

8 Q. That's that's enough, Mr. Grayson. Turn to the next
9 exhibit, Exhibit 16, Exhibit 16 of Judge McGowan's Order, do
10 you recognize that as a memorandum or a letter from Wilkins
11 Norwood to the Watson's Orchard Property Owners October 14,
12 1980 dated?

13 A. That was an exhibit to the, uh, Order and it is signed by
14 Wilkins Norwood dated October 14, 1980 and it's addressed to
15 Watson's Orchard Property Owners and the subject is "Releasing
16 of Restrictions".

17 Q. Would you read the first paragraph into the record,
18 please.

19 A. "It appears that at long last we, the lot owners in
20 Watson's Orchard, have agreed to release the restrictions on
21 the Watson property and to go forward with the formation of
22 Watson's Orchard Property Owners Association, Inc. and other
23 steps in the agreement to release."

24 Q. Uh, keep going.

25 A. "J.B. Stephens, a homeowner whose lot fronts on Pelham

1 Road, does not want to participate in the corporation, instead
2 he is willing to buy the five lots most directly across from
3 his home. He's made an offer to purchase five minimum lots
4 200 feet frontage, 55 thousand square feet in front of his
5 house for the purchase price of a hundred and five thousand
6 five hundred (105,500) and give up his interest in the
7 corporation, this is a price of twenty-one thousand one
8 hundred dollars (\$21,100) per lot."

9 Q. Keep goin' a little more ---

10 A. "When you consider that the value of a share of stock in
11 the Watson's Orchard Property Owners Association, Inc. should
12 be worth a minimum of seven thousand dollars (\$7,000), the
13 corporation will net around twenty-two thousand five hundred
14 (22,500) per lot. If the lots were sold in the open market
15 for twenty-five thousand dollars (\$25,000) through a realtor,
16 only twenty-two thousand five hundred (22,500) would be netted
17 after commission. It is our opinion that this is a fair price
18 for this purchase, therefore your committee believes the offer
19 is fair and recommends that it be accepted."

20 Q. Now this was presented to Judge McGowan in connection
21 with the property.

22 A. That was introduced at the hearing before Judge
23 McGowan.

24 Q. Turning back to his Order, Mr. Grayson, page D80 in the
25 big notebook, Paragraph 18 there in the middle, I think you

1 already read that where he recognized that, "More than a
2 majority of defendants as charter members and pending
3 stockholders in Watson's Orchard Property Owners Association
4 are willing to sell five lots as described in the deed shown
5 as Exhibit 14 for a hundred and five thousand five hundred
6 dollars (\$105,500), correct?

7 A. Yes.

8 Q. Turn to page D82 the last page of Judge McGowan's Order,
9 would you -- and the next to the last paragraph I'll just read
10 it, "It is further ordered that the officer of Watson's
11 Orchard Property Owners Association, Inc. be authorized to
12 execute and deliver a deed conveying good fee simple title to
13 the property shown on Exhibit 14 upon receipt of the
14 consideration of one hundred five thousand five hundred
15 dollars (\$105,500) less documentary deed stamps." Did -- is
16 that the part of the order, Mr. Grayson, that authorized WOPOA
17 to sell the five lots to Mr. Stephens?

18 A. It, uh, yes.

19 Q. Okay. Page D259 Exhibit SJ11 in the notebook,
20 Mr. Grayson, ---

21 A. Alright.

22 Q. --- you recognize this as a grantee index from Greenville
23 County?

24 A. Is that ---

25 MR. HILLER: I I I ---

1 UNIDENTIFIED WOMAN: Okay.

2 THE COURT: I'm sorry, I didn't hear.

3 MR. HILLER: He ask -- he wants to ask Mr. Grayson about
4 a grantee index. I can't imagine that Mr. Grayson has seen
5 the original or knows of of the document ---

6 THE COURT: Well let's find out. Let him ask and see ---

7 MR. HILLER: Alright.

8 THE COURT: --- if there's sumtin'. Go ahead.

9 BY MR. HERLONG:

10 Q. Mr. Grayson, looking at this, is this -- ha -- are you
11 familiar with a grantee index in the property office.

12 A. Uh, I am familiar with grantee indexes in the courthouse,
13 yes.

14 Q. And have you seen this one before?

15 A. Uh, I may have, I, uh, not sure I've even seen it in the
16 original 'cuz, uh, I've used paralegals who would have looked
17 at these and not indeed myself.

18 Q. Fourth line from the bottom references a transfer June
19 16, 1981 grantee being Pelham and then the grantor is Watson's
20 Orchard Property Owners, do ya see that?

21 A. I see that.

22 Q. Do you see the description on the right side?

23 A. Says, "Five lots Pelham Road".

24 Q. Back to to the restrictions that you drafted,

25 Mr. Grayson, which were Exhibit SJ2, page D11, was it, was it

1 your intention in connection with the drafting of the deed and
2 the restrictions all of which, I believe all of which occurred
3 about the same time, is that correct?

4 MR. HILLER: I I object, I object ---

5 THE COURT: Same objection?

6 MR. HILLER: Yes, sir.

7 THE COURT: Alright. Go ahead answer it.

8 Q. Was it your intention that the Stephens' lots would be,
9 would qualify under that language "lots into which the
10 property described above shall have been developed" ---

11 A. Yes.

12 Q. --- and your intention that they would have a vote with
13 respect to the amendment of these re ---

14 A. Yes.

15 Q. --- restrictions and covenants? Mr. Grayson, take me
16 forward, look at Exhibit SJ12 in the notebook, SJ12 it's page
17 D262.

18 A. Okay.

19 Q. Can you identify this document, Mr. Grayson?

20 A. I have seen this in the re -- the records, I did not
21 prepare this deed.

22 Q. Is this a deed from Pelham Properties to J.B. Stephens?

23 A. It is.

24 Q. Looks like it's dated August 22, 1986?

25 A. Yes.

1 Q. Is it conveying those same five lots from Pelham
2 Properties to Mr. Stephens individually?

3 A. Has the same legal description as in the deed into Pelham
4 Properties, Inc., yes.

5 Q. Does it say, "All that certain piece, parcel, tract of
6 land situate, lying, being in the County of Greenville, State
7 of South Carolina, containing five lots," ---

8 A. Yes.

9 Q. --- and so forth? Turn to page D264, Exhibit SJ13 in in
10 the notebook. You see in the middle of the page there,
11 Mr. Grayson, on the left side August 25, 1986 Stephens JB
12 grantor Pelham Properties, Inc., over to the right description
13 says five lots, corner of Pelham and proposed ---

14 A. Yes.

15 Q. Okay. Turn to SJ14 the next exhibit in the notebook
16 D266.

17 A. Alright.

18 Q. Is this a deed, Mr. Grayson, from Mr. Stephens
19 individually to a revo -- a trust, revocable trust of his?

20 A. Yes.

21 Q. Alright. Looks like it is dated, uh, the last page July
22 15, 2003?

23 A. Uh, yes.

24 Q. On the bottom of the first page it refers to Parcel 3, do
25 ya see that?

1 A. Yes.

2 Q. "All that certain piece, parcel, tract of land situate,
3 lying and being in Greenville County, State of South Carolina
4 containing five lots as more fully shown on the plat entitled
5 "Survey for which -- Richard Watson, prepared for Carolina
6 Surveying Company, dated June 27, 1980, revised August 19,
7 1980, revised August 27, 1980, revised September 3, 1980 and
8 revised December 1, 2 and 3, 1980, see that?

9 A. Yes.

10 Q. Are these the same five lots where now Mr. Stephens is,
11 Stephens is ---

12 A. Same ---

13 Q. --- the ---

14 A. --- same legal description as in the earlier deeds.

15 Q. Okay. Turn to SJ15, page D272, do you recognize this,
16 Mr. Grayson, as a deed from Mr. Stephens as trustee of his
17 revocable trust to Pelham Farm, LLC, Legacy One, LLC, SCSP,
18 LLC?

19 A. Yes.

20 Q. And is he here transferring those same five lots once
21 again?

22 A. It has the same legal description.

23 Q. Okay. And that is what, August 15, April 2008?

24 A. Yes.

25 Q. Turn to Exhibit SJ16, page D276, do you see the line on

1 the bottom of the grantor index, grantor/grantee index, you
2 see that, Mr. Grayson?

3 A. Yes.

4 Q. You see the line on the bottom of that one?

5 A. Yes, uh, bottom line says, "Interest five lots Pelham
6 Road".

7 Q. Okay, alright. Alright, Mr. Grayson -- Your Honor, we
8 would move to the admission of all those documents, I'm sure
9 Mr. ---

10 THE COURT: Well I don't don't -- you don't know what his
11 intent is.

12 MR. HERLONG: I would move for the admission of those
13 documents.

14 MR. HILLER: Obviously my blanket objection applies and
15 and and and my objection with regards to whether Mr. Stephens'
16 family or his companies or anything else coulda possibly ever,
17 whatever they did with the property other than found a
18 subdivision plat and tryin' to develop it, could not possibly
19 have any legal relevance or significance on the interpretation
20 of covenants were filed twenty-eight years earlier, uh, it it
21 it's just completely irrelevant they -- that what he has done
22 or hasn't done with the property subsequent to his acquisition
23 of title is irrelevant, of course these indexes are are
24 nothing more than a convenience for the clerk at the ROD
25 office to have a description over there and they have no legal

1 significance at all so I, ya know, I object to every single
2 document on ---

3 THE COURT: Okay.

4 MR. HILLER: --- those grounds.

5 THE COURT: I'm gonna let 'em in the record subject to
6 your objection.

7 (Defendants' Exhibit No. 4, D166 and D167, admitted into
8 evidence.)

9 BY MR. HERLONG:

10 Q. Mr. Grayson, let's move forward to to to more recent
11 events. You were, believe you were working with RealtiCorp.
12 in in 2007, 2008 when this issue came to you, correct?

13 A. Well I was still an independent attorney at the time, uh,
14 but that's, uh, primarily where I was working, yes.

15 Q. Okay. Would you tell me what happened, how how they came
16 to you and what they asked you to do.

17 A. One one of the people from the Watson's Orchard Property
18 Owners Association Ralph Aiken, who's present here in the
19 court today, contacted me and we had discussions about a,
20 developing a process to amend the 1980 restrictions if they
21 identified that way.

22 Q. And what was the point of trying to amend the 1980
23 restrictions?

24 A. Those restrictions had a date of, uh, January, um, uh,
25 uh, 19, uh, I I -- let me look at the exact date.

1 Q. Yeah, it's Exhibit, uh, ---

2 A. Um, ---

3 Q. --- Exhibit D2 in the big notebook, SJ2, page D11.

4 MR. HILLER: Your Honor, ---

5 A. It had a date of ---

6 THE COURT: Wait a minute, wait a minute. Yeah, what?

7 MR. HILLER: What possible relevance could this have to
8 any issue that's presented by the pleadings in this case? We
9 all know Mr. Grayson prepared the documents, was paid prepare
10 the documents, filed 'em changing the covenants but whatever
11 they did in doin' that certainly is not enlightening to the
12 Court as to the legal issues the Court has to include to to
13 determine with regards to the the covenants themselves that
14 were filed thirty years earlier.

15 THE COURT: Okay.

16 MR. HILLER: Well, I mean, ---

17 THE COURT: What's the relevance, Mr. Herlong?

18 MR. HERLONG: Your Honor, it's not just thirty years
19 early the issue in this case, the issue in this case is
20 whether the Stephens' lots are in fact lots and that's why all
21 that other stuff, Your Honor. They certainly thought they
22 were buying lots, the deeds show lots, all those references
23 show lots. What's relevant to this right now is to show the
24 whole process how they, how they decided what -- how they
25 evaluated the whole picture, how they figured out who was

1 entitled to vote, what, you know, who qualified under that
 2 language of the deed, they had to make a decision about that,
 3 about who would be entitled to vote for them to know who --
 4 what to do and then the process that they carried out, I've
 5 got the notebook here, I'll show you in a few minutes, with
 6 all the votes, they went through a process where they sent
 7 certified letters to everybody with all the the relevant
 8 documents: we're voting on the new deeds, uh, not new deeds,
 9 the new restrictions and they got the votes back and the vote
 10 process, all that's, I mean, that's that's the the essence of
 11 the case.

12 MR. HILLER: And we we don't challenge 22 of the 27
 13 votes, that that that that's not at issue in this case. What
 14 what what -- who -- what they sent out, what they got signed,
 15 whatever, is irrelevant to any issue in this case. What
 16 they're tryin' to do, what they wanna do is is put up
 17 Mr. Grayson's opinion which you've already testified, I mean,
 18 I believe you've already ruled he's not entitled to give, that
 19 because that's the Court's provence as to what he thought, he
 20 wants to testify here to say other people he talked to or
 21 whatever but that's what Your Your Your Honor is charged
 22 with ---

23 THE COURT: You know if I find that that what was done
 24 back in in '81 resulted in five lots, you don't contest with
 25 what's happened, contest what's happened since that time, is

1 that right?

2 MR. HILLER: I I believe that that even if you construed
3 the covenants as unambiguous then there would be the ability
4 for either side to put up evidence as to what -- whether in
5 fact the lots something's happened to the lots or the
6 property, the tracts, the buffer zone, uh, uh, between the
7 recording of the covenants and the recording of the, uh, the
8 removal of the covenants. I mean, clearly you have to make a
9 decision that whether they had been or, you know, they have
10 been developed ---

11 THE COURT: Well my ---

12 MR. HILLER: --- into homes.

13 THE COURT: --- question is if I rule with Mr. Herlong
14 with respect to what the -- that whether or not they are five
15 lots or one tract ---

16 MR. HILLER: Correct.

17 THE COURT: --- then you don't contest anything that's
18 happened after that, right? I mean, you might not like it but
19 you you would agree that if that was the ---

20 MR. HILLER: If you rule, ---

21 THE COURT: --- law of the case ---

22 MR. HILLER: --- if you rule that those have been
23 developed into five lots based upon your interpretation of the
24 covenants and restrictions, we lose.

25 THE COURT: Okay.

MOTIONS AND MATTERS

1 MR. HILLER: If you rule that it's still a tract of land
2 based upon the terms and provisions in the covenants and
3 restrictions, we win, it's that simple ---

4 THE COURT: Yeah.

5 MR. HILLER: --- but but but Mr. Grayson's opinion or
6 anybody else's ---

7 THE COURT: Okay.

8 MR. HILLER: --- opinion 'bout what anything, what -- how
9 many votes are needed or ---

10 THE COURT: Mr. Hiller, ---

11 MR. HILLER: --- how many votes ---

12 THE COURT: --- I'm tryin' to help ya ---

13 MR. HILLER: Okay.

14 (Laughter.)

15 THE COURT: --- on stuff that's not relevant.

16 MR. HILLER: Okay.

17 THE COURT: So I'm g -- I'm sustaining his objection.
18 Okay, alright.

19 MR. HERLONG: Your Honor, we, uh, I -- let me just make
20 one, uh, and obviously I'll do whatever you say ---

21 THE COURT: Yeah.

22 MR. HERLONG: --- but one quick question. They went
23 through a process of trying to decide what the lots were or
24 not lots but who who is entitled to vote and the process that
25 what what they went through to analyze that and decide that

MOTIONS AND MATTERS

1 seems to me to be relevant. The Court obviously has to make
2 the ultimate decision but the Court makes it based on the
3 facts that are presented to it, those are fact. Now I'm not
4 talking about an expert opinion at least at this point, I'm
5 just talkin' about what the factual opinion was with respect
6 to ---

7 THE COURT: Well Mr. Hiller agrees that the fi -- that
8 that whoever owns those five lots voted in favor of your
9 client against Mr. Hiller. Is that right, Mr. Hiller?

10 MR. HILLER: Well well I wouldn't characterize 'em as
11 five lots, Your Honor, ---

12 THE COURT: I understand.

13 MR. HILLER: --- but whoever owns that property voted
14 five times ---

15 THE COURT: Okay.

16 MR. HILLER: --- and and and and but ---

17 THE COURT: They're entitled to five ----

18 MR. HILLER: --- but the ---

19 THE COURT: --- votes you lose, if they're entitled ---

20 MR. HILLER: Yeah.

21 THE COURT: --- to one, you win.

22 MR. HILLER: I mean, well well well the point I'm tryin'
23 to make is is is if if if if an an attorney's opinion as to
24 what the law is and this is automatically whatever I say is
25 now evidence, well we'd be out of a job, you know, and there'd

MOTIONS AND MATTERS

1 never be two sides to anything, ---

2 THE COURT: Okay, ---

3 MR. HILLER: --- that's ---

4 THE COURT: --- alright.

5 MR. HILLER: --- your job.

6 THE COURT: Alright.

7 MR. HERLONG: That -- Your Hon -- Your Honor, courts take
8 evidence all the time on on issues of where they're complex
9 and it's not clear what the law and the facts are together, I
10 mean, that's what patent law is and real estate's a
11 complicated issue where we've got Mr. Grayson is certainly an
12 expert on it although I haven't offered as one, Mr. Estridge
13 is an expert, will come in and will testify to these exact
14 issues, Ms. Manning, I haven't offered her, don't intend to
15 offer her as an expert 'cuz she's a factual witness, she deals
16 with these kinds of issues around the State of South Carolina
17 as a factual matter as to what Chicago Title requires, what
18 votes they think are necessary, what they think it takes to
19 r -- to create a lot, those are factual questions and these
20 are people that are, I I can understand why, mis ---

21 MR. HILLER: Your Honor, ---

22 MR. HERLONG: --- I can ---

23 MR. HILLER: --- that's not a factual question.

24 MR. HERLONG: --- understand why Mr. Hill -- Hiller wants
25 to keep 'em out 'cuz they're a hundred percent against his

MOTIONS AND MATTERS

1 position but Mr. ---

2 MR. HILLER: No, I got ---

3 MR. HERLONG: --- but thi -- this is critical factual
4 information.

5 MR. HILLER: It -- how is that fact? Is is that based on
6 their own personal knowledge? There's nobody allowed to
7 testify on that stand that doesn't testify of their own
8 personal knowledge. It it it, you know, them tellin' you, I
9 mean, what Mr. Grayson's done is got up there and read stuff
10 for Mr. Herlong, you know, just read what you coulda already
11 read. I'm not, I mean, I've got a blanket objection so I I
12 sat still durin' that but but but if he's gonna get up there
13 and start tellin' you what somethin' means then then that's no
14 different than me arguin' it to ya or Mr. Herlong. Now he's
15 free to argue it to ya but not to testify to it ---

16 THE COURT: Okay.

17 MR. HILLER: --- and and and I ---

18 THE COURT: I fail to see how all this that went on with
19 respect to the vote is relevant to the, to the crux of this
20 case, I don't think it is. It's either -- he's either,
21 they're either entitled to the extra five votes or they're not
22 and that's what would come down to and it's uncontested that
23 those five votes are on with your client.

24 MR. HERLONG: Okay.

25 THE COURT: Okay.

1 MR. HERLONG: Alright, thank Your Honor. Your Honor,
2 actually if I could have a break 'cuz that changes what I'm
3 doing a little ---

4 THE COURT: Okay.

5 MR. HERLONG: --- bit and ---

6 THE COURT: Alright, let's just ta -- it's a good time
7 for a break, been goin' at it. Take about ten, fifteen
8 minutes. Mr Grayson, you can stand down, please don't discuss
9 your testimony with anybody and...

10 (Whereupon, the witness left the stand.)

11 THE COURT: Okay, we'll be at ease.

12 (Whereupon, a recess was taken.)

13 THE COURT: Alright, Mr. Herlong, you ready to go?

14 MR. HERLONG: Yes, sir, just briefly, almost there.

15 BY MR. HERLONG:

16 Q. Mr. Grayson, are you, um, um, are you being compensated
17 for your testimony today?

18 A. Uh, I am not.

19 Q. Okay. You testifying as a factual fact witness?

20 A. Yes.

21 Q. Alright.

22 MR. HERLONG: Um, I think that's all I have, Your Honor.

23 THE COURT: Okay. Cross?

24 CROSS-EXAMINATION BY MR. HILLER:

25 Q. Mr. Grayson, you were in fact compensated for preparin'

1 the document to try to take the residential restrictions off
2 of the buffer zone, weren't you?

3 A. Yes.

4 Q. Alright. You were retained by WOPOA to for the specific
5 purpose of removin' those restrictions, correct?

6 A. Yes.

7 Q. And you have endeavored to do that to the best a your
8 ability since you were retained and paid to do that,
9 correct?

10 A. I did try to do what I was asked to do.

11 Q. Alright. Now you testified in your deposition that you
12 were a document preparer and a closer when the 1980 process
13 was done, ---

14 A. Yes.

15 Q. Alright. You said that all a the negotiating was done by
16 your client Lincoln and all you were was a document preparer
17 and a closer, do you recall that?

18 A. I don't recall the all but if it's in there, it's
19 whatever's in the deposition.

20 Q. You disagree with that?

21 A. Uh, I did not negotiate no, I did -- I was not part of
22 the negotiation.

23 Q. You didn't have any contact with the homeowners in Watson
24 Orchard Subdivision?

25 A. Well I I did with, uh, I think I testified a little

1 earlier today, uh, Carter Poe and perhaps Wilkins Norwood, I
2 think Charlie Howard who drafted the documents for the
3 incorporation, I, uh, possibly Lou Brummer. I I deemed those
4 people to be sort of committed but I I was not negotiating
5 with them ---

6 Q. Okay.

7 A. --- if that's your question.

8 Q. You you knew that there was no traditional non-profit
9 homeowner's association for Watson's Orchard, what I call
10 traditional, a typical homeowner's association?

11 A. Well I think what you're talkin' about is a subdivision
12 where various things in a subdivision would be controlled
13 through an owners association.

14 Q. Right.

15 A. The Rich -- I I assume you're talking about the Richard
16 Watson Subdivision that he developed and is your question was
17 there a traditional corporation for homeowners?

18 Q. Yes.

19 A. To my knowledge I've had no dealings with one, I'm not
20 aware ---

21 Q. Okay.

22 A. --- of one.

23 Q. And and and prior to your institution of the lawsuit that
24 was ultimately filed that you had prepared and had to had
25 executed by what were purported to be the owners of the

1 subdivision at that time an agreement to release the
2 restrictions, is that correct?

3 A. I I prepared that document, yes.

4 Q. And and you read I think some some portions of it, is
5 that correct?

6 A. I think so.

7 Q. Alright, and then you brought the lawsuit and you served
8 all the defendants and essentially all of the individual
9 defendants defaulted, correct?

10 A. No, I don't think so, I think several answered, uh, but,
11 uh, if you say the majority did not file an answer, they were
12 before the Court it -- by having been served by summons and
13 complaint.

14 Q. But they defaulted, they didn't file an answer.

15 A. Some of 'em did.

16 Q. Okay. The majority did not.

17 A. I think that's correct.

18 Q. And the sole purpose of that litigation was to quiet the
19 title to the 85 acres that your client was acquiring south of
20 Pelham Road.

21 A. No, it was to do several things; one, was to, uh, there
22 were certain conditions precedent in the agreement to release
23 and to determine that those would have been done and one of
24 'em was the conveyance of the Stephens' lots, uh, so it it it
25 was not a quiet title in that sense, it was a a du -- a

1 declaratory action to have those things approved so there'd be
2 a public record of it.

3 Q. Well the Order says what it says but, I mean, it it it
4 essentially eliminates the covenants on the 85 acres and
5 inserts new covenants, does it not? Isn't that what the Order
6 part of it actually says?

7 A. The restrictions signed by the owners with the actual
8 release the Court approved that as a condition of the
9 transaction.

10 Q. Okay. Now you would agree with me that the deed
11 description that you read that was attached to the Order is
12 not the description that was actually inserted into the deed
13 that was attached to the Order for the property that was
14 conveyed to Mr. Stephens' corporation.

15 A. Uh, you need to be clear on that question, I'm not sure
16 what legal you're talking about. Uh, ---

17 Q. I'm asking you what Mr. Herlong had you read, had you
18 read the Exhibit A, that was a description, had you read the
19 deed, that was a different description, I'm sayin' they're
20 different, you don't agree with that?

21 A. Uh, let's look at them, uh, they're in here. I will have
22 to look at the wording of the two different legals that you're
23 talkin' about. If you will point those out to me, I'll answer
24 your question.

25 Q. Did -- you would agree with me that the agreement to

1 release covenants and restrictions said nothing about the
2 transfer of any property or any portion of the buffer zone to
3 anybody..

4 A. Well that's in the public records. Uh, if you will ask
5 me questions I can answer as opposed to having to tell you
6 what is in one particular document, I'll be glad ---

7 Q. Well, Mr. ---

8 A. --- to do that.

9 Q. --- Grayson, you sat here and just read stuff for
10 Mr. Mr. Herlong ---

11 A. I read, I read, uh, some some deed descriptions.

12 Q. Right.

13 A. Okay.

14 Q. Alright, and you testified that you prepared the
15 agreement to rele -- release restrictions.

16 A. Yes.

17 Q. And and and but you don't know that it doesn't have
18 anything in there about any kinda sale of any property by
19 WOPOA?

20 A. Mr. Hiller, I'll be glad to go through here and look at
21 this, uh, if you're askin' me to remember everything in a
22 document that was done thirty some years ago, I can answer
23 questions as to what I know but if you'll be clear on what you
24 want me to to answer, I'll be glad to answer that.

25 Q. You you you testified and you've said it several times

1 that Mr. Watson developed Watson Orchard Subdivision, is that
2 that correct?

3 A. That is my understanding, ---

4 Q. Alright.

5 A. --- yes.

6 Q. And in in order to develop that subdivision, he recorded
7 a subdivision plat and that's the plat that you used to
8 identify the properties that you would need to have the
9 consent of to release the restrictions on the remainder,
10 correct?

11 A. He recorded two plats, one was identified as the Watson's
12 Orchard Subdivision, that lot or that plat as I recall had 46
13 lots drawn on it, he also recorded a separate plat for another
14 piece of land that he sold off to a separate party and in the
15 documents that I drafted we used those combined as a
16 definition of the Watson's Orchard Subdivision; ---

17 Q. Alright.

18 A. --- in other words, it's two two separate plats.

19 Q. Lincoln bought the property south Pelham between Pelham
20 and I-385 and bordered on the north by Haywood from Watson.

21 A. And his wife's estate.

22 Q. Okay. Lincoln had to actually go out and buy the Haywood
23 Road tract from a different party.

24 A. When you say "had to", they did do that and they did a
25 transfer of property within some of the commercial property as

1 a I think a 1031 exchange.

2 Q. Okay, but they acquired that property specifically to to
3 comply with this agreement to release covenants.

4 A. That was some land that was part of the, uh, transaction.

5 Q. Alright. And and you testified, Mr. Grayson, that you
6 described it as a buffer zone and that was just your phrase.

7 A. Well I had a letter fr -- Wilkins Norwood had referred to
8 it as a buffer and I heard that term used and it was a a good
9 definition so you didn't have to con -- repeat the legal each
10 time, it was for that purpose, yes.

11 Q. Right, and and it made sense because that was the sole
12 purpose of this property bein' conveyed to the corporation,
13 was it not, to be a buffer zone between the residential and
14 the commercial?

15 A. Well let's listen to your question. The sole purpose was
16 to obtain the release of some restrictions in exchange for
17 some property that was defined as a buffer, it ---

18 Q. That's correct. Do you not agree that it was the intent
19 of that that that that the agreement was to provide a buffer
20 zone between the existing residential ---

21 A. And you're askin' me to get into the minds of the ---

22 Q. Yeah, well you didn't have any problem when Mr. Herlong
23 was askin' ya, did ya?

24 MR. HERLONG: Your Honor, ---

25 A. You're you're askin' me what is ---

1 Q. Well we'll have to let him object.

2 A. --- the forty ---

3 THE COURT: Wait a minute, wait a minute, ---

4 A. --- forty-six different ---

5 THE COURT: --- whoa. Gentlemen, one person speak at a
6 time, she's gotta take everything down, she can't take it when
7 two people are talkin', okay, so ask the question, let him
8 answer, don't interrupt each other, okay? Alright, go ahead,
9 Mr. Hiller.

10 BY MR. HILLER:

11 Q. Mr. Grayson, -- well actually I'll withdraw that
12 question. Mi -- you've been practicin' real estate law for
13 how long, Mr. Grayson?

14 A. I graduated from law school in 1958, I've been in
15 Greenville ever since then practicin' law, some real estate,
16 some banking law, ---

17 Q. Okay, ---

18 A. --- uh, ---

19 Q. --- you ---

20 A. --- that's primarily what my practice has been.

21 Q. Would would -- you would agree with me, would you not,
22 that that a owner of a lot that is subject to recorded
23 covenants and restrictions can't do anything to modify those
24 covenants and restrictions.

25 A. The owner of a lot cannot modify, is that what you're

1 askin' me?

2 Q. Yes.

3 A. Well let's go back to basics of a, uh, restriction and a
4 restriction you have a covenant, it's a contract and the
5 normal is you have a benefited party and a party that's
6 burdened and it's the same in just about every instance but if
7 your restrictions can be removed, they can be modified, they
8 can be amended by the necessary parties.

9 Q. Well let me give you a hypothetical. You develop a
10 subdivision, you record a subdivision plat for 50 acres and
11 then you record a set of covenants and restrictions, you're
12 the declarant, you sell the lots, you would agree with me,
13 would you not, that nothing that any of those purchasers do by
14 way of whatever they put in their deeds is -- affects those
15 covenants and restrictions.

16 A. Well I don't know that I, uh, get the import of your
17 question. The, uh, I think you started off talking about
18 amending 'em ---

19 Q. No, I didn't.

20 A. --- or changing 'em but, uh, I I don't know that I
21 understand the question. If you would phrase it a little bit
22 clearer to ---

23 Q. Alright, ---

24 A. --- me, ---

25 Q. --- well let me phrase it this way, ---

1 A. --- I'll be glad to try to answer it.

2 Q. --- let me phrase it this way: Mr. Herlong took you
3 through a series of related transactions between Pelham
4 Properties, Inc. which I don't believe was mentioned anywhere
5 as the buyer of the property but but they were, they
6 ultimately acquired the property, that where deeds were issued
7 by Pelham Properties to somebody else to somebody, somebody,
8 else, it -- there was no consideration paid for any of those
9 deeds, were there? You can look at 'em, you ---

10 A. I ---

11 Q. --- got 'em in front of ya.

12 A. --- I I I can look at 'em. I think as I generally recall
13 they were done to divide up, uh, Stephens trust or estate,
14 it's within the family if your question is were the
15 grantees, uh, ---

16 Q. The ---

17 A. --- or the grantors paid any money, I I don't know that I
18 know the answer but it's whatever the deed says.

19 Q. Okay, if the deed says five dollars (\$5.00) and no
20 consideration then it was for no consideration, correct?

21 A. Whatever the deed says.

22 Q. Alright, and and these were just purely related
23 transactions, related parties.

24 A. It conveyed the land from one entity to another
25 entity ---

1 Q. Right.

2 A. --- or entities.

3 Q. There's nothing in any of those deeds, no -- nothing in
4 any of those conveyance that varied the property description
5 was used in the original deed that that ---

6 A. They they copied the ---

7 Q. Just copied it verbatim.

8 A. That's correct.

9 Q. Alright, and and but had they changed the five to a ten,
10 had they changed the five to the ten at some point in time,
11 would would that mean somehow that they had ten lots?

12 A. Well the restrictions had certain sizes of square
13 footage, they couldn't have done that and they would been in
14 violation of whatever those restrictions were. You're saying
15 could they have cut those into, uh, those five lots into ten
16 lots they would have had a hundred feet of frontage, they
17 woulda been in violation of the restrictions.

18 Q. But the ROD office woulda put it down as ten lots if they
19 put it in their deed, wouldn't they, on the gra -- on the
20 index?

21 A. Uh, evidently they put down whatever is reflected in the
22 deed and ---

23 Q. They don't care and they don't warrant it, do they?

24 A. "They" being who?

25 Q. "They" being ROD office. The the -- you as a practicing

1 real estate attorney do not rely on the index, do you?

2 A. Well you sure go look at it to see who owns the ---

3 Q. I understand.

4 A. --- and and how title has passed and you look at the
5 deeds.

6 Q. Well, mi -- Mr. Grayson, if you were searchin' the title
7 of a property or you were trainin' a paralegal to search the
8 title of the property, you would tell them to look at every
9 single conveyance, the actual conveyance, not the description
10 in the index, the actual conveyance for every conveyance that
11 was made out by the owner durin' the period of time they owned
12 the property.

13 A. If they did it correctly, that's what they would do.

14 Q. Right, no -- it would be malpractice for an attorney to
15 rely on those indexes, wouldn't it, for a description of the
16 property?

17 A. Ya know, I'm not gonna get off into what's malpractice
18 and what's not malpractice, uh, I can answer your question
19 but...

20 (Whereupon, a discussion was held off the record.)

21 Q. I'm gonna show ya some copies of the grantor index for
22 when Lincoln acquired the property. You recognize that
23 (indicating) to be a grantor index?

24 A. It's in the same form as the others that I looked at.

25 Q. Right, and on the very far right is what they call their

1 description of the property?

2 A. That's correct.

3 Q. Yeah. And if you will look with with me here
4 (indicating) the first grant is January 16th 1981 Lincoln of
5 South Carolina, Inc., Watson Orchard Subdivision Protective
6 Covenants Declaration and Restrictions, is that what it
7 says?

8 A. That's what it says.

9 Q. Alright. Now if you were searchin' the title on this
10 property, you'd read those, you'd you'd look this up and and
11 try to see what what it exact -- what really it was, wouldn't
12 ya?

13 A. Well I would, if I were having a title searched, I'd
14 wanna see everything ---

15 Q. Right.

16 A. --- in the chain of title.

17 Q. On the next page of the very next page of that index it's
18 got Lincoln of South Carolina, Inc. one, two, three, four,
19 five, six easements and that's what it just says, easement,
20 does that help you know anything about that property?

21 A. Yeah, I think you'd have to look at the easement to tell
22 what ---

23 Q. Absolutely. Okay, I mean, it doesn't tell you even what
24 property it is, does it?

25 A. Says easement.

1 Q. Right. And then the the next deed also on January 16
2 that one just says tract, that what it says?

3 A. It says tract.

4 Q. Alright. Now does that tell you anything from a legal
5 standpoint for what conveyed title, tract?

6 A. Tells you to look at the deed.

7 Q. Right.

8 MR. HILLER: We'd offer these into evidence, Your Honor.

9 THE COURT: Any objection?

10 MR. HERLONG: No objection.

11 THE COURT: Staple maybe one.

12 (Whereupon, a discussion was held off the record.)

13 (Index to deeds marked Plaintiffs' Exhibit No. 5 and
14 admitted into evidence.)

15 BY MR. HILLER:

16 Q. Now durin' the course of that litigation as well you
17 named a mortgage company as a defendant on behalf of all the
18 other mortgage companies that owned property or or had a lien
19 on property in Watson Orchards recorded subdivision, ---

20 A. Yes.

21 Q. --- correct?

22 A. Yes.

23 Q. And you did that because what you were attempting to do
24 was gonna potentially diminish the value of their security.

25 A. Uh, uh, we could have, uh, searched the title, found

1 every single mortgage for every single owner and we concluded
2 that a class represented by one bank or one savings and loan
3 would, uh, be adequate to do that and that was to have them
4 before the Court because they would have had liens on the
5 property.

6 Q. I understand that, my question though was the reason you
7 did that is because they could have claimed that the action of
8 removing the covenants and allowing commercial development
9 diminished the value of their security interest in those
10 homes.

11 A. Are ya asking me what the the -- those -- that bank could
12 have claimed, the bank had a lien and we were removing in that
13 action restrictive covenants on lots that several or maybe
14 more than that bank savings and loan had liens and they needed
15 to be before the Court so we did 'em as a class. You'll have
16 to ask the banks what they thought it was gonna do to reduce
17 the value of their ---

18 Q. Well ---

19 A. --- of the lien.

20 Q. --- I I I don't think I do, Mr. Grayson, 'cuz I already
21 asked you this in deposition and that's exactly why you told
22 me that you added them as a party to this action. Now are you
23 denying that that's was the case today?

24 A. No, I'm not denying that, uh, that would be, uh, uh, and
25 and I have not looked at my deposition lately, if I said

1 whatever is in the deposition but the, uh, I thought you asked
2 the sole and there are different reasons, I'm trying to
3 explain the full reason why the banks were before the, uh, the
4 Court.

5 (Letter dated December 4, 1980 marked Plaintiffs' Exhibit
6 No. 6 for identification.

7 Q. Well I'm holding in my hand what's been now marked as
8 Plaintiffs' Exhibit 6 which is a letter to you from James H.
9 Robinson & Associates dated December the 4th 1980 which was
10 made an exhibit by you in that court proceeding and you
11 explained to me in your deposition, Mr. Grayson, that the
12 reason you had this is so that the banks wouldn't have to
13 worry that by allowin' commercial development next to these
14 properties that the value would be diminished, isn't that
15 true?

16 A. Well I don't recall my exact words in in in my deposition
17 but I'm trying to give you what I think is the full
18 picture ---

19 Q. Well ---

20 A. --- of it ---

21 Q. --- don't don't tell me what was in your deposi -- tell
22 me if that's true what I just asked you.

23 THE COURT: Hang on.

24 MR. HERLONG: Your Honor, I I object to this line a
25 questioning unless and and their case is over, there's no

1 testimony in this case that what's being done with these
2 restrictions has anything to do with market value but that
3 seems to be where Mr. Hiller's going.

4 MR. HILLER: Your Your Honor, I objected to the admission
5 of all these documents, I -- but but you allowed 'em in and I
6 think I should be able to cross-examine. This is in the part
7 of that same order, I know he can't cherry pick 'em.

8 THE COURT: Okay, alright. I'm gonna ---

9 MR. HERLONG: The Order's public record, Your Honor.

10 THE COURT: Well ---

11 MR. HILLER: Why's he objectin'?

12 THE COURT: Okay, go ahead, go ahead.

13 BY MR. HILLER:

14 Q. You got this (indicating) letter ---

15 A. Could I see the letter?

16 (Whereupon, the witness examined the document.)

17 And this was attached to to the judge's order and it does
18 say, uh, uh, the the area will more than offset any loss in
19 value which may occur due to the movement of commercial and
20 multi-family residential into the remaining portion. What I
21 think I was trying to tell you earlier was you asked me about
22 naming a bank as a party and I did name a bank as a party
23 defendant in in a class because the banks would, many, I doubt
24 that many people out there own their houses without a mortgage
25 so we didn't want the mortgage companies to be able to come

1 back in and raise any question that they had a prior prior
2 lien, uh, this does deal with value so, ---

3 Q. And ---

4 A. --- uh, ---

5 Q. --- and you engaged Mr. Robinson on behalf of your client
6 to prepare this opinion, correct?

7 A. I think he did it, uh, probly at the request of Lincoln,
8 I don't recall engaging him but ---

9 Q. Well he addressed it to you.

10 A. Well I was sort of the conduit for just about everything
11 that happened.

12 Q. And you don't find it funny that he described it as a
13 buffer zone as well?

14 A. Well I think buffer was used by just about everybody out
15 there.

16 Q. Yeah. Now with regards to the covenants themselves, you
17 would agree with me, would you not, that they specifically set
18 forth the requirements for what are called "minimum lots"?

19 A. They have frontage and acreage.

20 Q. They have to have 200 feet of frontage and 55,000 square
21 feet.

22 A. Right.

23 Q. And and in order to become a lot that is the minimum
24 standard, correct?

25 A. That's correct.

1 Q. And in the covenants they allow larger lots, do they
2 not?

3 A. I think language is broad enough to allow larger, yes.

4 Q. Alright. And and so you have a minimum standard but no
5 maximum within the covenants, agree?

6 A. What do you mean by that?

7 Q. You have a minimum standard for their size but no maximum
8 size.

9 A. The the only, yeah, the minimum is what you just stated.

10 Q. Now you testified and during your testimony you called
11 these parcels of land on Pelham Road, is that correct?

12 A. I'm sorry, I didn't hear the question.

13 Q. You called the buffer zone parcels of land on Pelham
14 Road.

15 A. In which document?

16 Q. In your earlier testimony when you were asked about this
17 by Mr. Herlong, it was one single tract on Pelham Road,
18 correct?

19 A. The 14 acres was a single tract.

20 Q. Alright. It was a single tract and no plat was recorded
21 or submitted to the Court of that tract, correct?

22 A. To the court or to the ---

23 Q. Or or in the Court.

24 A. --- courthouse? Uh, the, uh, single tract was a parcel
25 of land and if you're talkin' about the, uh, five lots being

1 recorded, I think the answer has been clearly given that it
2 was not recorded.

3 Q. Okay. You will agree with me that the property was
4 conveyed by, well well let me back up, that subsequent to the
5 Court decree Lincoln, your client, recorded the covenants and
6 restrictions.

7 A. Yes.

8 Q. They were the declarant under the covenants and
9 restrictions.

10 A. That is correct.

11 Q. And then a deed was executed from Lincoln to WOPOA for
12 the 14.7 whatever it is acres and for the approximately
13 8 acres and they're described in that fashion, Tract A, Tract
14 B, attached to the deed, you agree with that?

15 A. Yes.

16 Q. So when WOPOA acquired the property, it was already
17 subjected to the covenants and restrictions, correct?

18 A. Yes, correct.

19 Q. Alright, and then at that point WOPOA did not need
20 anybody's permission to sell that property, did they?

21 A. Permi -- what do you mean permission?

22 Q. They didn't need anybody's permission to sell the
23 property.

24 A. Well you talkin' in general? People don't have to have
25 permission to sell. If you own something, you can sell it.

1 Q. Right, okay.

2 A. Is that your question?

3 Q. Yes, sir. They didn't need anybody's permission, they
4 could sell the property to anybody they want, right?

5 A. That's basic property rights.

6 Q. Alright. Now in both the dee -- well in the letter from
7 Mr. Brummer that was submitted into evidence in the earlier
8 action he described these as minimum lots and then he actually
9 set forth the requirement for the size lots as the covenants
10 require, correct?

11 A. A letter from Mr. Brummer?

12 Q. Yes.

13 A. Where where is the letter from Mr. Brummer?

14 MR. HILLER: Where's the letter from Mr. Brummer?

15 MR. HERLONG: You mean Norwood?

16 MR. HILLER: Oh, is it Norwood?

17 MR. HERLONG: Yeah.

18 Q. The letter from Norwood, you read it.

19 A. I read it, I read it, yeah.

20 Q. He describes it as minimum lots, enough land for five
21 minimum lots, is that correct?

22 A. Mr. Hiller, I have a reasonably good memory, I'll be glad
23 to look at the document and tell you what I read, uh, I cannot
24 remember, ---

25 Q. Alright.

1 A. --- uh, precisely one word out of that letter.

2 Q. Okay.

3 A. If if ya like, if we can find it, I'll tell you what, uh,
4 you have it.

5 Q. Mr. Grayson, you were aware that there was a subdivision
6 ordinance in effect in Greenville County at the time that you
7 prepared this the deed that transferred the 6 1/2 acres to
8 Mr. Stephens' Corporation yes or no?

9 A. Was I aware of a subdivision ordinance?

10 Q. Yes, sir.

11 A. I was aware that Greenville County had a subdivision
12 ordinance, yes.

13 Q. Okay, and you were aware that in order to subdivide
14 property you had to comply with that subdivision ordinance.

15 A. No, uh, I think you can, uh, sell land without having to
16 go through a subdivision ordinance, I think that's the basic
17 issue in this case and I testified in my deposition to you
18 that you can do this through a metes and bounds plat.

19 Q. And it's your position that that's not a violation of the
20 subdivision ordinance.

21 A. I don't think I said that. Uh, ---

22 Q. Okay, you can do it, it's a way to get around the
23 subdivision ordinance, is that what you're sayin'?

24 A. It has been done for centuries, ---

25 Q. Wow, mis -- Mr. Grayson, ---

1 A. --- it's been done over and over and over for
2 centuries.

3 Q. It -- you, are you telling me as an officer of the Court
4 that you would advise a client to circumvent the Greenville
5 County zoning or subdivision ordinance by describing property
6 by metes and bounds descriptions in order to subdivide it?

7 A. I'm not tellin' you what I would advise a client, I would
8 never advise a client to, uh, ---

9 Q. Break the law.

10 A. --- break the law so to speak but, uh, ---

11 Q. And that's what you'd been doin' though.

12 A. No, you can still have a conveyance by metes and bounds
13 and that's what was done in this instance.

14 Q. And the metes and bounds in this instance was for a
15 boundary survey, a boundary description, you agree with that,
16 don't ya?

17 A. It was for a trac [sic] of land that said all that
18 certain piece, parcel or trac of land containing five lots as
19 shown on a plat that was identified with metes, with the
20 following metes and bounds.

21 Q. And and and and clearly it was deci -- it was determined
22 in advance that there was sufficient frontage and sufficient
23 square footage for somebody to develop it into five lots,
24 wasn't there, ---

25 A. It ---