

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity for Aiken County

Case Number 2011-CP-02-00548

Three Runs Plantation Homeowners Association, Inc.,

Respondent,

vs.

Jay J. Jacobs and Judith B. Jacobs,

Appellants,

vs.

T.R. Sales Plantation, LLC and J. Wayne Raiford,

Respondents.

RECORD ON APPEAL
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SC Court of Appeals

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1 a little more than 10 acres in their property. So --

2 Q. I think they got 14.

3 A. Well, anyway, I've got to divide it out.
4 Wait a minute, here it is. They have 14.02 acres;
5 that's correct. If you multiply that by 20,000 an
6 acre, that's 280, so it is 20.

7 Q. You're currently selling land in Three Runs
8 Plantation for roughly 20, 21,000 dollars an acre?

9 A. That's correct.

10 Q. While the economy may be bad, the lot sales
11 in Three Runs have held up, or they're back at what it
12 was prior to --

13 A. Actually, I sell more lots now than I sold
14 back then.

15 Q. I'm going to hand you a stack of photographs.
16 I think these were taken by you. Some of them are
17 labeled Jacobs lot, and some of them are labeled
18 adjacent properties.

19 MR. WARLICK: Your Honor, I made a list for
20 the court reporter and for the Court. These are
21 numbered Plaintiff's Exhibits 1 through 86, and on
22 the list they're broken down by the dates they
23 were taken on.

24 Q. [Mr. Warlick] I'm going to hand you this and
25 just ask you to go through them one through --

1 THE COURT: Marking those all as one, or are
2 you -- obviously, you've already got Plaintiff's 1
3 through --

4 MR. WARLICK: This is Defendants' 13, but
5 here is a guide to them. Each photograph has on
6 the back side a individual number and a date.

7 THE COURT: All right.

8 Q. [Mr. Warlick] Now, the first ones, I
9 believe, are dated December the 28th, 2010?

10 A. That's correct. The scrubs and the grass
11 were standing waist high, above waist high, all over
12 this property, except right around the immediate house
13 where they were at, and they were just --

14 Q. That's this first stack?

15 A. That's correct.

16 Q. So, what you're saying is, photographs one
17 through 15 is the Jacobs' property?

18 A. That's correct.

19 Q. As it appeared on December 28, 2010. Now,
20 the second set of photographs you've got, which would
21 be 16 through 34, those are dated January 13, 2011?

22 A. Yes.

23 Q. What do those photographs show?

24 A. They show a variety on the lot as can be seen
25 here. It's just way high. Some areas, like this,

1 where you can -- this is the lot next door. But
2 looking through the lot next door to seeing the
3 Jacobs' property here, you can see that the property
4 -- which is lot nine next door to them -- is cut low.
5 But if you'll look and see the Jacobs' property you're
6 looking at taller than the property --

7 Q. Which photograph is that? Can you give us a
8 number?

9 A. Yeah, I can give you a number off the back of
10 it.

11 Q. I think I've got them in order.

12 A. It says lot P-16.

13 Q. The typed numbers?

14 A. Is that not P-16?

15 Q. P-16. Well, some of them had handwritten
16 numbers. I renumbered all of them with a P and a
17 number and separated them by the dates they were
18 taken.

19 A. It's all -- I mean, that's -- looking at a
20 different numbers on these lots, like this is P-40, I
21 mean, it's not nothing like anybody else's property in
22 Three Runs Plantation is left like that.

23 Q. Which one are we talking about now?

24 A. That one right there, P-40.

25 Q. P-40 is the Jacobs' property?

1 A. Yes.

2 Q. That's not consistent with anybody else's in
3 Three Runs?

4 A. No.

5 Q. I think the next ones are taken in May of
6 2011?

7 A. That's correct.

8 Q. What do those show?

9 A. Let me just take a look at them.

10 Q. Take your time.

11 THE COURT: Those are 35 through which
12 number?

13 MR. WARLICK: The ones on May the 12th, 2011
14 were 35 through 44.

15 Q. [Mr. Warlick] You're going to identify that
16 last batch that was taken in May of 2011. What do
17 those show?

18 A. All right. You're through with January 13,
19 2011; is that correct? You're through with those.

20 Q. These are January 2011; yeah. What have you
21 got there?

22 A. I've got December 5, 2011 here. This is the
23 Jacobs' property. This is way after the suit, and
24 they have gone in and cut between a lot of these
25 scrubs that they got out there. Got little pink flags

1 all over them. They have cut a lot -- they've cut a
2 lot of the high stuff that was in those other pictures
3 there that were taken.

4 Q. So, it changes over time? Depends on when
5 you look?

6 A. It has. In fact -- but it does not change to
7 look like -- these are other homeowners in Three Runs.
8 I just looked through them. They're neat, they're
9 cut, they look like Three Runs Plantation. They don't
10 look like -- even after they cut around those scrubs,
11 they had a little pink flower sticking all over. I
12 tried to get them to go ahead and cut these little --
13 they're scrub oaks, and they're saying that they're
14 going to grow up to be beautiful trees. But I've been
15 in this locality for a lot of years, and I spent
16 \$300,000 cleaning all those lots over there so that
17 they were smooth and clean when they bought that
18 property.

19 Q. Let's talk about that. You clear cut, or
20 cleared, the Jacobs' property before they bought it?

21 A. I cleared all those lots. Yes, I did. I
22 cleaned it off, I left the bigger trees, and I have
23 the option to where the homeowners -- where they're
24 going to build their home, and where they're going to
25 put their paddocks, they have an option to take some.

1 They mark them, I come in and say, okay, and I'm very
2 lenient on it. I try to work with the homeowners.

3 Q. But you have a restriction against cutting
4 trees?

5 A. I do.

6 Q. What size is that?

7 A. We usually try eight inches or above. You
8 know, we try to leave those there. But, if it
9 interferes with their pasture, or interferes with
10 their barn or whatever, then we're lenient on it. But
11 as you can see with these things, that's what's there
12 right now.

13 Q. That's what you call a scrub oak?

14 A. Gums. Some of them are just plain gums, you
15 know. Gum trees and scrub oaks. I spray my property
16 at my home with a special chemical. It's a big thing
17 I got that'll go on the back of my tractor just to
18 keep that kind of stuff down.

19 Q. Tell me about what you do with the owners who
20 have bought lots that have not built houses -- not
21 installed houses. When you say that all lot owners
22 have to keep it clean in a first class condition, what
23 do you do to work with those property owners?

24 A. Okay. First of all, we try to work where we
25 don't cut the properties but twice a year. Reason why

1 is -- you know, if you live in California and have a
2 lot here in Aiken, South Carolina, and you're required
3 to cut it three or four times a year like some
4 subdivisions would, then it's rather expensive. So, I
5 try to work it out where if these lots are cut in June
6 of every year, then that will carry them through July,
7 August, into September, sometimes the first or a
8 little bit of October, and then they're cut again.
9 That will carry them all the way to June again. So,
10 it only requires two cuttings. So, we worked it out
11 where the homeowners association ended up buying a
12 tractor and bush hogs and all. We worked it out where
13 the homeowners association, if the people out of town
14 can't get their properties cut, then the homeowners
15 association, for \$35 per acre, will come in and cut
16 these properties for them, and will bill them for the
17 cutting. That's what a lot of them do. Some of them
18 have their own people they want to cut it, but most of
19 them will call and have the homeowners' tractor cut it
20 for them. If there's any profit involved in that
21 cutting, it all goes right into the homeowners
22 association.

23 Q. Doesn't go to Wayne Raiford or --

24 A. No, it doesn't go to Wayne Raiford.

25 Q. -- Three Runs or T.R. Sales?

1 A. In fact, I send my tractor up there at those
2 times, from my farm, and we cut all of my properties
3 with my tractor and all, so that we're not wearing out
4 homeowners' tractor cutting my properties.

5 Q. What about the common areas? When do you cut
6 those?

7 A. We cut them whenever they need cutting.
8 Common areas, the roads, the horse trails, and
9 dragging the horse trails, they might need it four or
10 five times a year or more. But we keep those neat and
11 pristine. We try to keep them in good shape.

12 Q. Now, it was my understanding at Mr. Jacobs'
13 deposition -- you were there; were you not?

14 A. I was.

15 Q. That there were a number of photographs that
16 he had that showed bushes that were head high; do you
17 remember seeing those?

18 A. I do.

19 Q. Do you remember when those photographs were
20 taken?

21 A. They were taken in August before our cutting
22 in September.

23 Q. So, you would've -- the lot, if it was not
24 property owned by Three Runs, it would've been cut --
25 this is the fall cutting you're talking about, end of

1 September, October?

2 A. That's correct.

3 Q. It takes you back to the next June?

4 A. Yes.

5 Q. That's because during the winter months the
6 stuff doesn't grow, does it?

7 A. In the winter months you have a good six
8 months or longer that your property stays in good
9 shape, unless you plant winter rye for your horses and
10 all. If that's the case, you've got horses, they keep
11 it down anyway.

12 Q. Let's go back to when the suit was filed.
13 When the suit was filed, which I think we said it was
14 February of '11, had the Jacobs cut any of their
15 property?

16 A. They had not.

17 Q. At some point after the suit was filed, had
18 they cut some of their property?

19 A. I think when we looked at those pictures just
20 a moment ago, come January of '11 and all, they had
21 started cutting in between those lots -- between those
22 trees, excuse me. Now, they had not cut -- they have
23 two lots. They have lot 10 and 11. Lot 10 is
24 adjacent to the vacant lot next to them and I think
25 their home is sitting on lot 11. They had cut the

1 front around their house and all, put the little pink
2 flags on there. But on the lot 10, at the far
3 right-hand corner back in there, there was an area
4 that they had not cut it, even at that time. They
5 have now. It looked pretty good yesterday.

6 Q. Were you at the first hearing of this case;
7 do you remember that?

8 A. Yes.

9 Q. You remember Mr. Jacobs testifying that he
10 had as much right to determine what was going to be
11 cut on his property as anybody?

12 A. Very much I remember that.

13 Q. You disagree with that?

14 A. I do disagree with that.

15 Q. Why?

16 A. Because he signed covenants to abide by the
17 covenants in Three Runs Plantation to keep his
18 property to where it's not an embarrassment to his
19 neighbors and to other people coming through there.
20 You know, it's just as easy for him to cut his
21 property, or easier, than it is for a man that lives
22 in Washington State or California, that owns a piece
23 of property at Three Runs and has their property cut
24 as it should be. Here he is, living in the
25 neighborhood, with people across the street, down the

1 street, and he leaves his deplorable looking as it is,
2 and as it has been.

3 Q. On March the 13th, when your deposition was
4 taken, on that day you thought it looked acceptable?

5 A. I said that day, and that got brought out to
6 every client up here, that Wayne says that, you know,
7 this is meeting the standards. I said had it looked
8 all the time, or when our suit was taken out, as it
9 looked then, because it was dead winter, all the
10 leaves were off of those scrub oaks, and they had cut
11 all between those scrub oaks, then I probably would
12 not have taken out the suit, to keep from wasting the
13 homeowners money, as has been done.

14 Q. I refer you to the covenants, article five,
15 which is capital V, subparagraph four, duties of the
16 association. That's not what I want to refer to.
17 Give me just a second. I'm sorry.

18 I'm referring you to article five,
19 subparagraph four, captioned duties of the
20 association, and ask you to read the last sentence in
21 that paragraph.

22 A. The association also has the additional duty
23 of requiring all lot owners to maintain their property
24 in accordance with the standard set forth herein.

25 Q. You heard Mary Guynn's testimony?

1 A. Yes, I did.

2 Q. Is it also your opinion that if you don't
3 enforce these covenants, any other property owner
4 could?

5 A. Yes.

6 Q. You take your duties as the association, or
7 until the association is activated when you've sold 95
8 percent of the lots, that it's your responsibility to
9 see that these covenants are enforced?

10 A. Yes. I feel like that the people that have
11 bought in Three Runs Plantation expect them to be
12 done, and they look to me to make sure it's done. If
13 not, I don't know that they couldn't even take action
14 against me for not doing it, or whatever. But they
15 expect me to do it.

16 Q. Do you agree with Mary Guynn that happy
17 residents are the best sales tool you can have?

18 A. I do, yes.

19 Q. Did you do everything that you could to avoid
20 this litigation?

21 A. The last thing that I want in my life is to
22 waste my time sitting here, having to explain all
23 this. I'm a busy person. I have a lot of things to
24 do, a lot of things I'd like to do. But I have an
25 obligation to the homeowners to be here and try to get

1 this straightened out.

2 Q. My partner has suggested that you identify in
3 this last batch of photographs, by number, some of the
4 other lots that belong to people other than the Jacobs
5 that have what you called an acceptable fashion.

6 A. The very first one in here, which is P-57, is
7 coming into Three Runs Plantation. On the right-hand
8 side is lot number 22, and it is on the right-hand
9 side as you come in the entrance of Three Runs
10 Plantation. As you can see, it's a vacant lot, but
11 it's well-maintained and taken care of. This is lot
12 39, phase two, which we just closed out about a month
13 ago. We have sold that lot now. This was one of my
14 lots, but this was taken --

15 Q. Number of the photograph?

16 A. Sir?

17 Q. The number of the photograph?

18 A. Oh, the number is number 58, P-58; I'm sorry.
19 The next one is lot eight, and the number on this is
20 P-59. Lot eight is two lots prior to getting to the
21 Jacobs' lot on the right-hand side. It is right next
22 to Mark and Angela, who are neighbors of the Jacobs.
23 This is number P-60, which is lot 28, phase one. This
24 is Gina Grier's property. She lives at the bottom of
25 the hill there. This is also Gina Grier's property

1 right here, this P-61. As you can see, these are all
2 cut and manicured. This is lot 58, 59, phase two, and
3 there on the left-hand side when you're on Three Runs
4 Plantation Drive, just before you get to where we just
5 cut in and put phase 3A, which we've already completed
6 in January of this year, and we've sold all three of
7 those lots already. This is lot 58, 59, also. This
8 is the same one. This is lot 38, phase two, P-64.
9 This is a lot across the street from the Jacobs. It
10 belongs to Judy Chung. As you can see, it's well-
11 maintained. This is lot 20, phase one, P-65. This is
12 just the barn of the Dorners, who live in phase one.
13 They have a home next to it. This is lot seven, phase
14 one, P-66, and this is in phase one. This is also lot
15 seven, which is P-67, phase one. Do you want to go
16 through all these?

17 Q. Yeah, go on down to 86.

18 A. All right. This is number 68, lot 14, phase
19 one. This lot is -- this is also coming up on Three
20 Runs Plantation -- lot 14, phase one, P-69 --

21 Q. My young partner's helping me. Just look
22 through all of them and say -- are all the rest of
23 them maintained and they're lots other than the
24 Jacobs, and just give us the beginning number and the
25 ending number, speed this up.

1 A. Beginning number of this one right here is P-
2 70, very well taken care of. This is lot -- this is
3 P-71, very clean. P-72, in good shape. Do I need to
4 name each one or just go through them and tell you --

5 Q. Just go through and say numbers --

6 A. That was P-71 there -- 72, excuse me. It
7 ends up with P-86, and all these lots are pristine.
8 You know, I'm very proud of the way that people in
9 Three Runs Plantation have responded so well and kept
10 their properties in such good shape, except for a
11 couple of them. I have had other -- a couple other
12 properties, but we've been able to resolve it on all
13 the rest of them.

14 Q. I believe that there may be a couple of lots
15 that need cutting now, other than the Jacobs, and
16 there's an ongoing discussion with them?

17 A. As of yesterday, there were three lots that
18 had not been cut. One of them got cut yesterday,
19 because I saw it. The other two were being cut this
20 morning. We finally got a hold of the people that
21 were out of town and they gave us permission for the
22 homeowner's tractor to go in there and cut them. So,
23 they're -- if they aren't cut now, they're in the
24 process of being cut. If there's any more that's not
25 cut, I don't know. Those are the only ones I had

1 seen. There was three, and then one cut yesterday,
2 and then the two that were being taken care of today.

3 Q. Wayne, tell me this. At Jacobs' deposition
4 there was some suggestion that the high standards that
5 were required under the covenants were not being
6 enforced against all of the owners. I don't know
7 specifically, because he said the standards had been
8 relaxed. Is there a requirement in the covenants that
9 talk about the size of the home that people have to
10 build, in terms of square footage or what it looks
11 like, or its general appearance? Tell me about those
12 --

13 A. General appearance. When I started -- I
14 developed Cedar Meadows Equestrian and I realized
15 there was a lot of single people that are moving to
16 Aiken, South Carolina, that don't want to come in and
17 build a three, four, 5,000 square foot home. They're
18 retiring. It's their last place they're going to
19 live. They don't want five bedrooms sticking in there
20 they don't have to use. So, we did not set a square
21 footage at all in the covenants. It is approved by
22 the ACC, and at this time I am the ACC. I approve
23 them. I do get other people to look at them with me,
24 but we approve them. When the Jacobs came in and
25 build their home, there had been a house built on lot

1 number four, which belonged to Julie Thompson, and it
2 was only 800 square feet. But she was a single lady
3 and she came in and she wanted just a small place for
4 her. She had an adjoining barn for her horses. But
5 the Jacobs drove by this house every day when they
6 were building that big home they built down there, so
7 they knew that there was no size of homes. The same
8 builder that built their home, Mike Johnson, built
9 Julie Thompson's home.

10 MR. MCCANTS: Your Honor, I move to strike
11 any reference to what my clients knew or thought.
12 He's not in a position --

13 THE COURT: I'll sustain that objection.

14 MR. WARLICK: He's in a position to say they
15 rode by the house every day.

16 MR. MCCANTS: How does he know what my
17 clients thought? That's improper.

18 THE COURT: He can say it's on the direction
19 to their house; I accept that. But he can't say
20 what they know or don't know.

21 Q. [Mr. Warlick] Tell me what Julie Thompson's
22 house is called. There's a word for it and I can't --

23 A. It's called a hunt box.

24 Q. What's a hunt box?

25 A. It is when somebody comes in and they want to

1 build a small house, and it joins in with the barn. I
2 guess they want to smell the horses while they're
3 sleeping. But no, a lot of people have got these, and
4 we've got several in Three Runs. Most of them are
5 above the horse barn. But they're called hunt boxes.

6 Q. Are any of the people that buy in Three Runs,
7 is this a second home for some of them? Or most of
8 them is a retirement home?

9 A. Most of them, I would say, is a retirement
10 home. It is a second home to some people, but most --
11 majority of the people that build in Three Runs are
12 residents --

13 Q. Where do they come from?

14 A. Goodness. They come from Hawaii, California,
15 Washington State, Oregon, Kansas, Pennsylvania,
16 Florida, Texas. We just have those -- we just had a
17 young man from Australia this weekend looking in Three
18 Runs, about buying a retirement home for he and his
19 wife.

20 Q. How did he hear about you, or Three Runs?

21 A. I have no idea. All I know is my sales
22 agents were telling me.

23 Q. But you've got a website?

24 A. I do. I do have a website. We have mail-
25 outs. We're in all the national magazines, the big

1 ones, with horse equestrian stuff. We advertise in
2 all of them.

3 Q. You've heard the contention, and seen the
4 counterclaim of the Jacobs, that they maintain the
5 value of their property has gone down because of
6 something you've done, or Three Runs has done. Tell
7 me, do you agree with that, and if not, why not?

8 A. I don't agree with that. I feel like if the
9 Jacobs had built their home somewhere else in one of
10 these other horse subdivisions, they would really know
11 what devaluation of their property was. Values in
12 Three Runs Plantation has held up. You sell 21
13 properties in 2011, you sell 19 in 2010, and we've
14 sold already 12 in 2012, it doesn't seem like it's
15 going down to me. It seems like that's a -- if he had
16 been in one of these other horse subdivisions, they're
17 way down. I mean, they can't hardly sell them.

18 Q. You were here when Dan Willis testified and
19 came up with his brochure, which I think was P-14,
20 where he had listed the sales in some of your
21 competition?

22 A. Yes.

23 Q. Were you familiar -- did you hear that
24 testimony? Are you familiar with these sales? In the
25 sales in Three Runs, is what I'm asking you. Take a

1 minute and look at that.

2 A. I see them.

3 Q. Are those accurate, so far as you know?

4 A. As far as I know. Of course, it's changed.
5 I mean, like in 2010, 2011, he's got a different
6 figures than I've got. I've got -- he's got 18 and
7 I've got 20. Of course, this year he's got 18, which
8 was about right at the time this was done. But we're
9 at 25 now. Of course, if you look at the competition,
10 Bridle Creek, where we've sold 25 this year, they sold
11 two. In Fox Hollow, they've sold none this year.
12 Cedar Meadows over there, I developed earlier, which
13 is almost all completely sold out, they've sold none.
14 Steeplechase sold none. Hatchaway Bridge sold one in
15 2012.

16 Q. Wayne, I'm about to conclude. Is there
17 anything you'd like to say that I haven't asked you
18 about?

19 A. The only thing I can say is, and that I've
20 had confirmation from so many of the homeowners is, I
21 do everything I can to make it a nice community for
22 people to retire in and to ride their horses in. I do
23 everything I can think of to keep down any dissension,
24 to make it the nicest place you can live and retire
25 with your horses. My intention are to continue to do

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PAMELA N. POPE, CCR, CVR-M

1 that, and to continue to prove it over the next few
2 years, ever how long it takes to sell out Three Runs.

3 Q. I think I've asked you this, but this
4 marketing material that the Garners did, has that
5 always promoted Three Runs as over a 2,000 acre
6 development with 30 miles of trails?

7 A. It has.

8 Q. From day one?

9 A. Yes.

10 Q. While Courtney Conger may have changed
11 something, this goes back to the original?

12 A. You know, I don't -- I never did those. I
13 never seen those. I don't --

14 THE COURT: Counsel, we're going back over
15 it. You've already been down this road.

16 MR. WARLICK: I'm through.

17 THE COURT: Okay. Thank you. Cross-examine?

18 MR. MCCANTS: Your Honor, I hope understand I
19 won't be able to complete with him by 4:30.

20 THE COURT: I assumed that. Y'all eat a good
21 breakfast, pack your lunch, because we're
22 finishing tomorrow.

23 MR. MCCANTS: I understand.

24 //

25 //

CROSS-EXAMINATION

BY MR. MCCANTS:

Q. Mr. Raiford, in addition to, as you indicate, marketing properties being 2,400 square acres, you've also marketed Three Runs as a non-equestrian community, as well as an equestrian community; is that fair?

A. I don't think I've ever put out any paperwork that says non-equestrian area.

Q. Look at Exhibit Number 2, if you would. Would you identify it for the Court?

THE COURT: Plaintiff's or Defendants' Number 2?

MR. MCCANTS: That's Defendants' Number 2.

Q. [Mr. McCants] Now, just a second ago you also seemed to distance yourself from your marketing material. You're not telling Judge Griffith that this is not your marketing material, are you?

A. Which is not my marketing material?

Q. The marketing stuff we've got, this is all product of people you've hired to do work for you; right?

A. That one right there apparently was taken care -- done by the sales agent at the time, who was Courtney Conger. She apparently had taken some of our

1 stuff, put it all together, and sent it out.

2 Q. She's your agent, isn't she?

3 A. She was, yes.

4 Q. She was acting on behalf of you, isn't she?

5 A. Yes.

6 Q. So, this is yours; correct?

7 A. Right.

8 Q. All right. Let's look at this advertising
9 that you put in Aiken Horse, October 2009. It says
10 right there in the middle, it's a special place that
11 provides an opportunity for equestrian and non-
12 equestrian families alike.

13 A. Yes. As I said earlier, yes, it is. As I
14 said earlier, a lot of people want to live in an
15 equestrian area, be out in the wide open and see
16 horses and so forth. Basically, it's an equestrian
17 area.

18 Q. I appreciate that you want to try and
19 understand what people want. But you printed words
20 there for everybody to see, in its basic form, you
21 don't doubt my clients could have read and understood
22 what was there, do you?

23 A. I have no idea what they could understand.

24 Q. I mean, you know about their background;
25 correct?

1 A. I really don't know about their background.

2 Q. Do you know how much money they've invested
3 in your property?

4 A. No, I don't. I know how much they paid for
5 the property, which was 280,000.

6 Q. If I told you it was over a million dollars,
7 would you have any reason to doubt that?

8 A. I didn't build a house for them.

9 Q. With that being said, do you have any reason
10 to doubt they have invested over a million dollars in
11 your development?

12 A. No comment. I have no idea.

13 Q. Well, I guess people with that kind of
14 resources, you would expect them to be educated,
15 businessmen, professionals, and they can read plain
16 language, understand what it means?

17 A. You know, you can and you can't, but whether
18 you did or not is a different thing.

19 Q. You held it out to the world, didn't you, as
20 an equestrian and a non --

21 A. That don't mean --

22 Q. Let me finish my question, please.

23 A. I'm sorry. Excuse me.

24 Q. It's not because of me. It's because of this
25 court reporter here.

1 A. Okay.

2 Q. You held out to the world, through various
3 marketing techniques and advertisements and
4 newspapers, that this was an equestrian community, as
5 well as a non-equestrian community?

6 A. Yes.

7 Q. I want to talk about this later. That's why
8 we've got tennis courts and fitness centers, for the
9 non-equestrians; right? I'll strike that. We'll come
10 back to it.

11 All right. In any event, we've got a number
12 of issues to talk about. You've looked at the
13 protective covenants and looked at the by-laws. At
14 the present time, how many lot owners are there at
15 Three Runs? How many people own -- let me make it
16 undeveloped lots?

17 A. You know, I would probably have to say half
18 or 55 percent, something in that area.

19 Q. What is the head count on the number of
20 homeowners, people that have built residences and
21 homes in Three Runs?

22 A. I really don't know the exact number. We've
23 got going in right now more, so I don't know exactly.

24 Q. Have you got a rough idea?

25 A. Close to 50, I'd say.

1 Q. Not only the homeowners, folks who own
2 houses, but everybody that owns a lot has to pay dues
3 to the homeowners association; is that correct?

4 A. Correct. Yes.

5 Q. At the present time, how much does each lot
6 owner have to pay?

7 A. \$1,500 per year.

8 Q. Per year. That's also the same amount for
9 folks who actually have homes; is that correct?

10 A. Yes.

11 Q. You've been in court with us. You understand
12 that there's a portion of the protective covenants
13 that envisions some point where these folks who are
14 paying \$1,500 a year, own homes, who have made
15 significant investments, have a say in how the
16 development is operated? There's a provision in the
17 protective covenants which envisions that; right?

18 A. I don't --

19 Q. You don't follow me?

20 A. I don't --

21 Q. It's getting late. I may not --

22 A. -- it's up to the developer, I think, at this
23 time.

24 Q. Well, protective covenants say when 95
25 percent of the lots are sold -- and you were in court

1 when I was discussing this with Mary, your attorney,
2 when 95 percent of the lots are sold, what's
3 characterized as class B members shall have voting
4 rights in the homeowners association; is that correct?

5 A. After 95 percent are sold, is that what
6 you're saying?

7 Q. That's right.

8 A. Yes, after 95 percent.

9 Q. Ninety-five percent of the lots as depicted
10 on this plat, Exhibit --

11 A. No depicted on Three Runs Plantation.

12 Q. You remember we talked about this at your
13 deposition back earlier this year? Let me ask you
14 this question, because it's late and I don't want to
15 get into too much of an argument over this. Have 95
16 percent of the lots depicted on this plat, which is
17 marked as Exhibit Number 5 -- have 95 percent of the
18 lots on this plat been sold?

19 A. Yes, they have.

20 Q. Fair enough. I understand your position,
21 under the protective covenants it wasn't 95 percent of
22 the lots on this plat, it was 95 percent of lots in
23 Three Runs; is that correct?

24 A. Of the 2,400 acres.

25 Q. Total plan development; is that correct?

1 A. Yes.

2 Q. When is that going to occur? When is 95
3 percent of 2,400 acres going to occur?

4 A. Whenever all the lots are developed and you
5 divide it by 95 percent, see how many's left, see if
6 it's 95 percent sold. That's when it'll happen.

7 Q. Can you give the Court a time frame?

8 A. No, I can't.

9 Q. Did you plan a time frame when you began this
10 development?

11 A. I did not.

12 Q. Nobody asked you when maybe 95 percent is
13 going to be sold and they may have a vote?

14 A. Nobody would've thought about asking when
15 2,400 acres would be developed, when you're just
16 starting out with the first lots. There's no idea of
17 how long. Don't know what the economy's going to do.
18 Don't know what the sales are going to do. There's no
19 way of figuring that.

20 Q. You think someone who's invested a million
21 dollars in a piece of property would have a right to
22 know that information?

23 A. I have no idea if they have a right. I mean,
24 it wasn't part of something they put on the contract
25 before they bought.

1 Q. You don't think they have a right to know?

2 A. I don't know how they would know. Can you
3 tell me?

4 Q. I've read the materials. I read them to say
5 when 95 percent of the lots set forth --

6 A. Right.

7 Q. Let me finish. On this plat are sold --

8 A. That's not what that says.

9 Q. Let's read the covenants then.

10 A. You have your interpretation, I have mine.

11 Q. I'm going to ask you to read it, if you don't
12 mind. I get to ask the questions at this point,
13 respectfully. I'll read it for you if you want me to,
14 Mr. Raiford. If not, if you could read them? Page
15 2172, where it says class B members, down at the
16 bottom there.

17 A. Yes.

18 Q. Read that.

19 A. The whole thing?

20 Q. Just that paragraph, if you would, please?

21 A. Class B members shall not have voting
22 privileges until the developer shall have conveyed 95
23 percent of the residential lots as shown on the
24 aforementioned plat, or such earlier time as may be
25 determined by the developer, at which time class B

1 members shall automatically become class A members.

2 Q. All right. Will you agree with me that the
3 aforementioned plat is this plat that is marked as
4 Exhibit Number 5?

5 A. Yes.

6 Q. Until that time, that is people have voting
7 rights, property owners, you have basically sole
8 control over what happens at Three Runs; is that
9 correct?

10 A. That's correct.

11 Q. For example, you have sole control over how
12 much in homeowners dues is paid?

13 A. I do have, yes.

14 Q. When meetings are held, homeowners meetings?

15 A. No.

16 Q. You don't have sole discretion of scheduling
17 meetings?

18 A. I do.

19 Q. You have sole control over when homeowners
20 meetings are held?

21 A. Yes.

22 Q. You have sole control over the agenda for
23 those meetings; is that fair?

24 A. Yes.

25 Q. You have sole control over what financial

1 records are kept and where they're kept; is that true?

2 A. Yes.

3 Q. You have sole control over how the money that
4 is taken in with dues, \$1,500 per lot owner at Three
5 Runs, how that money is spent; is that fair?

6 A. Yes.

7 Q. You have sole control, discretion, basically,
8 over the types of homes that are built in Three Runs,
9 including what type of materials are going to be used;
10 is that correct?

11 A. Yes.

12 Q. You have since the start, and have today,
13 sole and exclusive control and decision making
14 authority over those areas; is that fair?

15 A. Yes.

16 Q. You first started this development in 2004,
17 2005. It's almost eight years old; isn't that
18 correct?

19 A. Yeah, next year it will be. Actually, seven
20 years in December.

21 Q. One of the areas that you developed, as
22 you've testified, is Cedar Meadows. Cedar Meadows, if
23 I understand the covenants correct, have an 85 percent
24 trigger, as they call it? In other words, 85 percent
25 of the lots have to be sold before homeowners have a

1 vote?

2 A. I don't remember exactly, but that sounds
3 right.

4 Q. I've got it. You don't disagree with that?

5 A. Yeah.

6 Q. Why did you increase it to 95 percent for
7 Three Runs?

8 A. There was only 265 acres in Cedar Meadows
9 Equestrian. There's 2,400 acres in Three Runs
10 Plantation.

11 Q. If someone comes in court and testifies that
12 you told them that you increased it to 95 percent
13 because you didn't want to go through what you went
14 through at Cedar Meadows, would they be telling a lie?

15 A. What did I go through at Cedar Meadows?

16 Q. I don't know. I'm just telling you what --

17 A. They'd be lying, but I didn't go through
18 anything.

19 Q. Didn't have any problems at Cedar Meadows?

20 A. I had a few little complaints, but nothing
21 like -- nothing at all like this.

22 Q. When you say nothing like this, what do you
23 mean?

24 A. Nothing like being in court with you and the
25 Jacobs, going through all this, not cutting the grass.

1 You know, making everybody unhappy.

2 Q. Who brought this lawsuit?

3 A. I brought the lawsuit for the homeowners
4 association.

5 Q. You issued the invitation for us to come
6 here.

7 A. Yes, I did.

8 Q. All right. I can't say my clients are glad
9 to be here anyway, but you issued the invitation.

10 A. Yes.

11 Q. All right. I just want to make sure. You
12 sued us.

13 A. Exactly.

14 Q. Okay. Let's talk about the amenities, if I
15 can. I do need to walk through some of the marketing
16 materials. We've already looked at --

17 MR. MCCANTS: Judge, I've got some of these
18 if you want.

19 Q. [Mr. McCants] Identify that again for Judge
20 Griffith? What is this?

21 A. It's Aiken Horse.

22 Q. That is a publication that we're all familiar
23 with. In 2009 in Aiken Horse, you advertised the
24 various equestrian amenities. You also advertised,
25 quote, additional equestrian training areas and a

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1 recreation complex with swimming pool, tennis, and
2 fitness courts -- tennis courts; is that correct?

3 A. Yes.

4 Q. That was 2009. That's that cool periodical
5 that you pick up around town. Let me go ahead. I
6 brought this one. This is November of 2012. This
7 appears to be the most recent one, October, November.
8 There's not a bit of reference to any amenities in
9 that one, is there?

10 A. We don't put them in every one. We've got
11 advertisements all over. Some of them do, some of
12 them just have pictures of a horse at Three Runs
13 Plantation.

14 Q. Why has the tennis courts and the fitness
15 center been taken out of the periodicals?

16 A. It's nothing of priority that I put in there
17 at this time.

18 Q. You've still got plans to build?

19 A. It depends. I've definitely set aside
20 another acre for the fitness center. Deeded it
21 already. As far as tennis courts go, we'll see what
22 the residents want in the years to come.

23 Q. Why have the signs been taken down with
24 regard to where --

25 A. We've got all new signs up at Three Runs.

1 But we have taken some of those down already because
2 of just not advertising tennis courts.

3 Q. The signs pointing to where the tennis
4 courts, where the fitness center is going to be, have
5 been taken down; is that correct? There's no
6 advertising in Aiken Horse at this point for tennis
7 courts or the fitness center?

8 A. No, I don't think we're advertising at all,
9 tennis courts.

10 Q. You don't dispute that this is Exhibit 4, the
11 marketing brochure that was given to my clients by
12 your agent before they purchased the property at Three
13 Runs? You don't dispute that, do you?

14 A. You know, I don't, but I have no idea whether
15 she gave it to them or not, because we had brochures
16 all over our place to give out.

17 Q. That's fair. What I can tell you is they
18 will testify to that. You don't have any reason to
19 doubt them, do you?

20 A. Well, I've heard a few things to make me
21 doubt a few things they say.

22 Q. Seriously, though. Come on, seriously? Do
23 you have any reason to doubt that your agent gave them
24 that?

25 A. I really don't. She possibly gave it to

1 them.

2 Q. You can read along with me there, but when it
3 says -- and we've read this already today. Amenities
4 will include over 30 miles of riding trails,
5 accessible to only horses, pedestrians, and horse-
6 drawn carriages. A clubhouse and fitness center will
7 overlook three riding arenas, tennis courts, and
8 swimming pool. There's nothing conditional about
9 that, is there?

10 A. No.

11 Q. Nothing optional about that, is there?

12 A. No, I don't think there is.

13 Q. I mean, that says they're going to be built.
14 I think your marketing people are trying to be kind of
15 funny by saying horses optional on that one; right?

16 A. Yeah, we don't furnish the horses.

17 Q. But there wasn't anything optional about the
18 fitness center or the tennis courts?

19 A. No, sir. I have an option in my covenants
20 that everybody has a right to read. It must have been
21 in there four times or five times that I have an
22 option to change any amenities which makes it better
23 for Three Runs Plantation. I've added things that
24 were never put in there, and in the future I may end
25 up putting them in there. But at this time they're

1 nothing I'm fixing to do in the next week or two.

2 Q. Is that inconsistent with what you just said,
3 with an affirmative statement in marketing materials
4 that there will be a tennis center and will be a
5 fitness center?

6 A. Well, it says --

7 Q. Feel free to read it.

8 A. I've read it.

9 Q. Tennis courts and fitness center is what I'm
10 saying.

11 MR. MCCANTS: Mark this one for me, please.

12 [Defendants' Exhibit Number 14 was marked for
13 identification by the court reporter.]

14 A. Yes, it does say that. Yes.

15 Q. [Mr. McCants] All right. My Exhibit 14 --

16 MR. MCCANTS: Y'all have seen this.

17 MR. WARLICK: I don't know that I have or
18 haven't.

19 MR. MCCANTS: Well, he testified about his
20 big billboard. I've just got a picture of it.

21 All right?

22 MR. WARLICK: Sure.

23 Q. [Mr. McCants] Is that the big billboard you
24 talked about earlier?

25 A. It is. That's the billboard I had up.

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1 Q. Okay

2 THE COURT: What number is that?

3 MR. MCCANTS: That's going to be 14, Judge.

4 Hand that to the Judge when you're through with
5 it.

6 Q. [Mr. McCants] Looking at this, that's got
7 these big, beautiful tennis courts on here. Where was
8 the fitness center depicted on the billboard? Point
9 it out for me.

10 A. It was not. There wasn't even enough room
11 for tennis courts on there after we put the swimming
12 pool in.

13 Q. You mean on the billboard or in the land?

14 A. What?

15 Q. Wasn't enough room for the tennis courts
16 where?

17 A. Wasn't enough room on the billboard.

18 Q. On the billboard?

19 A. Or the land right there.

20 Q. On 2,400 acres there wasn't enough room for
21 tennis courts?

22 A. On this section where our clubhouse is, there
23 was not enough room for tennis courts there. This
24 swimming pool you see here --

25 Q. Yeah.

1 A. -- it got a big cabana and all added to it.
2 It's much larger than that, so it took up a lot of
3 acreage there.

4 Q. Ain't there room for tennis courts --

5 A. No.

6 Q. -- somewhere?

7 A. Oh, yeah, back in the back of the property.

8 Q. What's wrong with that?

9 A. There's nothing wrong with it if I decide to
10 put them in.

11 Q. You decide?

12 A. That's right.

13 Q. Is a fitness center on this big billboard?

14 A. No. If it is, I don't see it.

15 Q. Okay. All right. Then, this is another one
16 -- let me go back to this one, if I might. You said
17 that, you know, you've got disclaimers and everything.
18 I think you're aware of this. On the one that Ms.
19 Conger, your agent, gave to my clients, the disclaimer
20 was blocked out for some reason. You see that?

21 A. Yeah, I do.

22 Q. Do you know if she did that intentionally, or
23 what?

24 A. I have no idea. I didn't even realize she
25 had sent them one of these.

1 Q. Nobody was trying to hide anything, were
2 they?

3 A. I wasn't.

4 Q. I mean, there's not much question that you've
5 certainly marketed these amenities over the years for
6 purposes of attracting purchasers?

7 A. Yes.

8 Q. There's no issue about that?

9 A. No.

10 Q. In fact, when you talk about only a few
11 people want these amenities, at homeowners meetings
12 there have been several individuals that have asked
13 about the status, wanted to know when these
14 recreational facilities and amenities are going to be
15 built, and have inquired; isn't that fair?

16 A. You said they have made these statements and
17 so forth. They have inquired.

18 Q. Besides the Jacobs. I know they've inquired.
19 But there have been others?

20 A. Yes, there have.

21 Q. Sure there have. Has your response to them
22 been the same in court, under oath?

23 A. My response has basically always been the
24 same. The main thing everybody wanted was the
25 swimming pool, and we worked diligently to get a

1 swimming pool in, and we got it. Then the first time
2 I started hearing about tennis courts and fitness
3 center is coming through you.

4 Q. That's not true --

5 A. I had a couple people ask, but I also have
6 them ask, are we going to put up mirrors at the end of
7 the dressage arena where we can see how our horses
8 were looking when we're working with them. Yes, maybe
9 one day we're going to put those in. But, I mean,
10 they inquire about all those type things.

11 Q. This doesn't say anything about mirrors in
12 the dressage arena, does it?

13 A. Uh-uh.

14 Q. I mean, this isn't the first you've heard
15 about tennis courts --

16 A. No, but it's --

17 Q. -- and the fitness center, is it?

18 A. No, not at all.

19 Q. Me, that's not fair. I mean, you promised
20 these things as far as your advertisements; right?

21 A. That is part of the brochures, and if you
22 read the covenants it says I have a right to make
23 changes any time to add to the amenities or take away
24 from amenities, to make the equestrian area a more
25 suitable place for the homeowners. What we're trying

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1 to do is get the homeowners to be happy with where
2 they live, and to bring in new sales to new people
3 coming in to that subdivision.

4 Q. Was that a promise in Exhibit --

5 A. I didn't put promises in there.

6 Q. Hold on. Let me finish. Exhibit Number 4,
7 was that a promise?

8 A. No, I didn't put any promises on there.

9 Q. Did your agent put a promise on there?

10 A. I didn't ask her.

11 Q. I didn't say that. Did your agent put a
12 promise on there?

13 A. I don't know. I don't know.

14 Q. Read it one more time.

15 A. I read it.

16 Q. Would you take that, as a businessman --

17 A. No.

18 Q. -- as some assurance?

19 A. I would say that any time you buy into a
20 subdivision, you have in there disclaimers that you
21 can change it at any time.

22 Q. The disclaimer on this one is blocked out.

23 A. Apparently, they lost a big one. Every one
24 of them we've got has got it on there. But the main
25 thing in the disclaimer is the five days they had

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1 after they bought the property to read the covenants,
2 and read in there that any of those things can be
3 changed as necessary by the developer.

4 Q. Where is the five day cooling off period?

5 A. It's in the covenants.

6 MR. WARLICK: The contract.

7 Q. [Mr. McCants] That's in the sales contract?

8 A. In the contract.

9 Q. Is that in this Exhibit Number 4?

10 A. I don't know. There's not a contract in
11 there.

12 Q. Cooling off period is not in there. But, you
13 know, cooling off periods are great for people who've
14 bought on impulse; okay? In a tent sale or something
15 like that. You know, you've had something laying
16 there and you throw, you go home and cool off, I don't
17 want it. You're not looking for a cooling off period
18 for folks that have come to you, and done research and
19 invested and looked at your internet site and
20 everything, are you?

21 A. No. You know, most people, just like the
22 Jacobs, they buy in 2007, and they build a house at
23 the latter part of 2009. Did they not have time to
24 look at things within that two and a half year period,
25 to kind of look at things?

1 Q. My point is this. If it's clear,
2 understandable, you shouldn't need a cooling off
3 period; right?

4 A. I don't really get into this cooling off
5 period. I don't know exactly --

6 Q. You brought it up.

7 A. I did? I said cooling off period?

8 Q. You've got cooling off period. That suggests
9 that someone needs to go home and settle down, think
10 about what they're doing. Why do you need that if all
11 this information is clear?

12 A. Because that gives them the right to go in
13 there at any time and call back and say, we have
14 changed our minds, send our money back, we're not
15 going with this subdivision.

16 Q. All right. The tennis courts haven't been
17 built. The fitness center has not been built. Eight
18 years have passed --

19 A. How many?

20 Q. Beg your pardon?

21 A. How many years?

22 Q. Eight.

23 A. I think seven.

24 Q. I'll give you four months from now. I mean,
25 that's two presidential terms. That's the entire life

1 of Bill Clinton and these things haven't been built.

2 That's a long time, isn't it?

3 A. Well --

4 Q. You remember the Clinton years?

5 A. The last four years have been long.

6 Q. All right. I don't want to go there. I
7 mean, that's a long time. Do you know how much a
8 child grows up in seven years? You've had a lot of
9 time to make this happen.

10 A. That's my point.

11 Q. You've got the money to do it, too, don't
12 you?

13 A. You know what? You keep bringing up that.
14 Have you checked my accounts, because the money I may
15 have did not come from Three Runs. I spend most of my
16 money --

17 Q. I asked for your records. I'm not sure I got
18 them all. But I asked in your deposition whether you
19 had the money, and you told me you had?

20 A. And I did tell you I had it.

21 Q. All right.

22 A. Because, you know, I have Three Runs
23 Plantation paid for and at any time I could go borrow
24 on it, but I don't think that would be fair to the
25 residents. I could end up like the rest of the horse

1 subdivisions in Aiken.

2 Q. Fair enough. I asked you in your deposition
3 if you had the resources to build and fund and manage
4 these amenities, and you told me, under oath, back the
5 first of this year, that you did.

6 A. I do.

7 Q. All right. You still do?

8 A. That's right.

9 Q. Okay. Listen, I commend you.

10 A. I've still got it.

11 Q. I'm envious. I mean, in this economy that's
12 impressive. I am going to ask you briefly, because we
13 talked about this with all the attorneys and
14 everything, lawyers, I want you to look at the
15 protective covenants with me. Have you got a copy in
16 front of you?

17 A. [Indicates Affirmatively]

18 Q. We're going to go to that section that deals
19 with -- let me give you this. Look at that one right
20 there.

21 A. Okay.

22 Q. Developers right with respect to amenities.
23 It's going to be in article three, and it's paragraph
24 five, but I don't know if you've got your book and
25 page -- yeah, you do. Look at 2174, is the page

1 number, down at the bottom there.

2 A. On 2174?

3 Q. 2174.

4 A. Okay.

5 Q. I'm going to read this. Developer reserves
6 the right for so long as developer owns the common
7 areas and green space in Three Runs to make such
8 changes, additions, or deletions to the amenities
9 within Three Runs as developer deems prudent, in
10 developer's sole discretion. All right. My question
11 is this. Do you think it's a reasonable
12 interpretation of that sentence, that that gives you
13 the right to make changes to existing amenities, as
14 opposed to making decisions with regard to the
15 construction of amenities?

16 A. You know, I don't know the answer to that.
17 I'm not a lawyer. But I know what it was put in there
18 for the purpose of, and that was the purpose of being
19 able to change amenities, add things that the people
20 might want in the subdivision, or take things out that
21 not really nobody cares about. It also does give me
22 the right, if I do make a change to the clubhouse, to
23 make -- put another room into it, or change -- so, it
24 gives me those rights to do. That's my thinking on
25 it.

1 Q. Then the next sentence. Developer makes no
2 representations of any kind as to the kind or type of
3 amenities to be constructed within Three Runs, nor as
4 to the completion date of such amenities. I'll grant
5 you that. I think that's a little bit clearer than
6 that first sentence. But my question is this. Do you
7 believe that what I just read is inconsistent with the
8 marketing materials we've got here with regard to --

9 A. Yeah, and the marketing materials has got
10 nothing to do with the covenants. They're a whole
11 different situation.

12 Q. Okay. You don't disown the marketing
13 material, though? This is advertising material, sales
14 material, generated by the Garners, who you paid
15 thousands of dollars to, to attract purchasers;
16 correct?

17 A. Yes.

18 Q. I mean, they're valid? I mean, they're out
19 there. They're what you're using to attract people;
20 is that correct?

21 A. That's correct.

22 Q. You're not denying this, are you? Denying
23 the validity of this marketing material, are you?

24 A. No, it's out there.

25 Q. I mean, you heard Mary Guynn earlier say this

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1 doesn't have any legal effect. You don't -- weren't
2 legal documents?

3 A. Yeah, I'm going to go by her saying so.

4 Q. You are? Sure it's legal. I mean, that's --
5 you don't put your protective covenants on a billboard
6 to attract people to Three Runs, do you? No, you put
7 this attractive young lady on the brochure with a
8 horse, and inside you tell everybody what they're
9 going to have; right?

10 A. Basically what they're going to have.
11 They're going to end up having more than that.

12 Q. Reasonable people are allowed to rely on
13 these things to decide to invest in your property; you
14 agree with me?

15 A. I do.

16 Q. Will you agree if you guaranteed that certain
17 amenities would be built -- if you guaranteed them, if
18 you promised them -- and you're not going to do it,
19 then you've broken that promise?

20 A. If you say I guaranteed?

21 Q. If you guaranteed them?

22 A. If I guaranteed them?

23 Q. Yeah.

24 A. But I'm not going to do anything like that.
25 I'm not going to guarantee them.

1 Q. But if you were, if you were to --

2 A. I mean, what's it all about? I'm not going
3 to guarantee them. I mean, that's like a guarantee I
4 might go to the moon one day. But I'm not going to do
5 it.

6 Q. My point is, if a prospective purchaser has
7 reasonably relied on marketing materials or other
8 information, and reasonably believes amenities are
9 going to be constructed -- these amenities, tennis
10 courts and fitness center -- and you never had, one,
11 any intent to do it, or if you did intend to do it,
12 have shelved those plans, do you believe that they
13 have suffered a loss as a result of that?

14 A. I do not.

15 Q. Not at all?

16 A. Not if their values have gone up, and not if
17 everything has stayed the same. Not if I've added
18 even more. No, I don't. If you'll look at every
19 subdivision in Aiken, South Carolina, and look at what
20 they've advertised for the last two years they're
21 going to do, and seen that they closed the doors,
22 don't even cut the grass, don't even keep it clean,
23 their lots look like the Jacobs' lots look like in
24 there, then you'll realize how much effort has been
25 put forward to keep Three Runs a growing community

1 which is being added to, taking care of people, making
2 sure that everything stays neat and clean just like
3 it's supposed to be. I strive to do that. I get out
4 there, if I have to, and run tractors myself. I walk
5 trails, I do whatever's necessary.

6 Q. Is the Jacobs' property -- is it your
7 testimony today that it's in deplorable condition?

8 A. Yes.

9 Q. Okay. I'm just asking. That's your sworn
10 testimony?

11 MR. MCCANTS: Judge, I'm getting to the
12 breaking point.

13 THE COURT: All right.

14 [Defendants' Exhibit Number 15 was marked for
15 identification by the court reporter.]

16 Q. [Mr. McCants] Let me show you this document,
17 if I might. We discussed this at your deposition.
18 Would you look at that, please, while we're getting
19 together.

20 MR. MCCANTS: Have you put that in as an
21 exhibit?

22 MR. WARLICK: Yeah. It's my Exhibit 12.
23 You've got it marked as your 9 and 10, and I've
24 got it --

25 THE COURT: Is this the same one that's

1 Plaintiff's Exhibit 12?

2 MR. WARLICK: You know, I think it is, except
3 I don't see the dates on it.

4 MR. MCCANTS: I'm going by the date at the
5 bottom, and that's going to be one of the
6 questions I've got for Mr. Raiford.

7 THE COURT: I've got a date of Monday, May
8 16, 2011 on Plaintiff's Exhibit 12.

9 MR. WARLICK: That's my 12.

10 MR. MCCANTS: It starts here, dear property
11 owner, I was born and raised?

12 THE COURT: Same as that one.

13 MR. MCCANTS: Very good.

14 Q. [Mr. McCants] The exhibit sticker you've got
15 on that one, Mr. Raiford, is what, on the front?

16 A. It's number 15.

17 Q. Exhibit Number 15, have you had a chance to
18 look at it?

19 A. I'm trying to get through with it. It's
20 several pages.

21 Q. All right. You just tell us when you're
22 ready, please.

23 A. I think I've gone through it.

24 Q. Very good. This is a document which you
25 produced, you typed; is that correct?

1 A. Yes, it is.

2 Q. What's the date of this document? When did
3 you do this?

4 A. It is, looks like, 6/27/2011. June 27, 2011.

5 Q. That date's down in the lower right-hand
6 corner?

7 A. Yes.

8 Q. Now, I'm going to just ask you a couple
9 questions about some of the things you wrote. You
10 wrote this to all the folks at Three Runs; is that
11 correct?

12 A. I did.

13 Q. Third paragraph says, in hindsight, my timing
14 to begin development wasn't great. But in spite of
15 the collapse of the real estate market, I did not
16 abandon Three Runs for our earliest buyers. I
17 believed that Three Runs had much to offer and that it
18 was a great place to live and enjoy. This is what I
19 want you to listen to. Quote, I decided to stay the
20 course, and without borrowing any funds to burden the
21 community, I've continued to develop on schedule all
22 the planned and promised amenities, end quote. Okay?

23 A. Right.

24 Q. What were the promised amenities that you
25 were referring to? Keep in mind, this is June of

1 2011.

2 A. I guess the -- I have to go back and look,
3 but I guess it's all --

4 Q. I don't want you to guess.

5 A. -- what you pointed out to me awhile ago in
6 there. Fitness center, tennis courts, swimming pool,
7 riding arenas, you know, so forth. Yes.

8 Q. All right. It says there that you have
9 continued to develop on schedule all the planned and
10 promised amenities; is that your testimony?

11 A. Yes.

12 Q. This is about three months after you filed
13 this lawsuit; okay? The lawsuit was filed in March
14 and you've testified to this is June. Down below that
15 it says, unfortunately, it's a fact of life that most
16 master plan communities end up with a few residents
17 who never stop complaining and seem to enjoy stirring
18 up trouble by spreading misinformation about the
19 community and/or the developer. Three Runs is no
20 exception. Okay?

21 A. Okay.

22 Q. Below that it says, the silent majority can
23 oftentimes be overshadowed by malcontents and bullies.

24 A. Yes.

25 Q. Are my clients malcontents and bullies?

1 A. I've never heard your client be mal -- a
2 bully. I mean, malcontent. I might -- I've never
3 been around him, hardly.

4 Q. Is she a malcontent?

5 A. I don't know. I haven't --

6 Q. Is he a malcontent?

7 A. I have no idea.

8 Q. Is she a bully?

9 A. Do you think this is written to them?

10 Q. It's written to the property owners.

11 A. It's written to all the property owners. But
12 there are malcontents and bullies in that
13 neighborhood.

14 THE COURT: He asked a question. He asked
15 you about the writing. He asked if you consider
16 her a bully or him a bully.

17 A. No, I don't. I consider he is partially one,
18 but not her.

19 Q. [Mr. McCants] He's a partial bully?

20 A. Yes, he is. When I went to his house the
21 last time, he got loud and boisterous, very loud and
22 boisterous. That's the reason I got up and walked
23 out.

24 Q. Okay. Do you think that they are determined
25 to attack and undermine your community in any way?

1 The Jacobs?

2 A. No, I really don't.

3 Q. Are they people that are seriously --
4 distributing seriously misleading and negative
5 information?

6 A. I've not heard anything they have done.

7 Q. Have they ever accosted and discouraged
8 anybody from buying property in Three Runs?

9 A. Not as I know of.

10 Q. Have they confronted and challenged anyone
11 with a belligerent and angry attitude?

12 A. No, they have not.

13 Q. The Jacobs haven't done any of this?

14 A. If they have, I don't know of it.

15 Q. Well, you've described a very peaceful and
16 civil community, but for my two clients.

17 A. I did not --

18 Q. Who are all these people out here that are
19 causing all these problems?

20 A. I did not name your clients in this.

21 Q. Have you sued anybody besides my clients?

22 A. I didn't -- this is not talking about who I
23 sued. This is talking about bullies and people that
24 malcontent. This has nothing to do with them.

25 Q. Well, it says malcontents and bullies,

1 plural, not one person.

2 A. There's more than one person --

3 Q. Who are all these people that --

4 A. -- there's more than one.

5 Q. You know, you've got a whole community
6 ganging up on my folks. Where are all these people
7 that are malcontents? I haven't heard that word in
8 years. I mean, that's serious business there.

9 A. We've got a couple.

10 Q. Couple of them?

11 A. Yes, we do.

12 Q. All right. But not my clients?

13 A. No. No, it's not.

14 Q. Look with me real quick, and I know the Judge
15 has got to go. Page two down at the bottom. I'll
16 take that back. We've got to move on. Let's go to
17 page three, three quarters of the way down. It's got
18 landscape maintenance.

19 A. Yes.

20 Q. I think you're talking about my folks here.
21 With one obvious exception, our residents take great
22 care of the maintenance of your homes, barns, and
23 pasture areas, and the community has a great curb
24 appeal. Is that reference to the Jacobs?

25 A. Yes, it is.

1 Q. But you've testified that there are other
2 problems with other homeowners and how they maintain
3 their property? You have to give them a little nudge
4 every now and then; right?

5 A. I have to give them a little nudge, but they
6 take care of it.

7 MR. MCCANTS: Judge, I'm going to quit here,
8 if that's all right. Tomorrow we'll talk about
9 just what it means to maintain property; okay?

10 THE COURT: All right.

11 MR. WARLICK: Can I ask one question?

12 THE COURT: Ask who? Me?

13 MR. WARLICK: No, I want to ask him who he
14 contended was the malcontents.

15 THE COURT: Y'all can ask that tomorrow. All
16 right, gentlemen, I think we said 10 o'clock. We
17 can have a brief meeting as we had the other two
18 days, about quarter 'til, 10 'til.

19 [Hearing adjourned at 4:45 p.m.]

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THE COURT: There are no preliminary matters and issues we need to take up. I think we've addressed those. Mr. Raiford, I believe you were on the stand when we concluded yesterday. You're still under oath, sir.

J. WAYNE RAIFORD,

Having been previously sworn, was examined and testified, as follows:

CONT'D CROSS-EXAMINATION

BY MR. MCCANTS:

Q. Good morning.

A. Good morning.

Q. When we last were speaking yesterday, we were talking a little bit about the amenities and whatnot of Three Runs?

A. Yes.

[Defendants' Exhibit Numbers 16 through 20 were marked for identification by the court reporter.]

Q. I'm ready to shift gears a little bit. What I'd like you to do if you could, just for the sake of clarity and the record, would you look at these exhibits for me. I'm going to ask that those be introduced.

1 MR. WARLICK: Have you got copies of those?

2 MR. MCCANTS: I've given those to you, but
3 let me show you what I've got.

4 Q. [Mr. McCants] Have you had a chance to look
5 at those?

6 A. I did.

7 THE COURT: Everybody make sure you've got
8 your cell phones turned off, please.

9 MR. WARLICK: I don't have all those, but
10 that's fine.

11 MR. MCCANTS: For the record, Your Honor, at
12 this time I'm going to move to introduce Exhibits
13 -- Defendants' Exhibits 16 through 20.

14 Q. [Mr. McCants] Mr. Raiford, you, again, had a
15 chance to look at these?

16 A. I did.

17 Q. You don't disagree that 16 and 17 are
18 promotional marketing type brochures that were
19 produced for you by the Garners; is that correct?

20 A. Yes.

21 Q. You don't disagree that they represent true
22 and accurate information about Three Runs and set
23 forth truthful information about the nature of the
24 development; is that correct?

25 A. Yes.

1 Q. Then Exhibits -- actually, number 2 was
2 already marked, but Exhibit 2, 18, and 3 -- jump
3 around a little bit. Defendants' Exhibits 2, 18, 3,
4 and 19 are excerpts from the Aiken Horse periodical
5 that's distributed in this area. It sets forth
6 advertising information for Three Runs; is that
7 correct?

8 A. Yes.

9 Q. Finally, I have marked as Exhibit 20 -- and I
10 believe this was already made an exhibit. This is the
11 site plan for Three Runs; is that correct?

12 A. That's the first initial site plan, yes.

13 Q. This was distributed as part of the marketing
14 material; is that correct?

15 A. Yes.

16 Q. Very good.

17 MR. MCCANTS: I understand these are
18 introduced without objection, Your Honor.

19 THE COURT: Correct. Y'all had an agreement,
20 I think on --

21 MR. WARLICK: We do.

22 THE COURT: So admitted.

23 MR. MCCANTS: Should I just leave these here,
24 or do you want me to hand these to you?

25 THE COURT: If you want me to look at it, you

1 can hand them up.

2 MR. MCCANTS: I'll hand them to you.

3 Q. [Mr. McCants] If I could, Wayne, I want to
4 shift to the issue of the maintenance of the Jacobs'
5 property. As you know, the testimony so far in
6 evidence suggests that this issue kind of arose in the
7 summer of 2010; is that fair?

8 A. I think that's correct.

9 Q. In fact, during this period of time you sent
10 an email to the Jacobs. Actually, it was through
11 Tonya, your secretary?

12 A. Yes.

13 Q. What I've got is July 6th of 2010.

14 MR. MCCANTS: I believe I'm up to 21.

15 [Defendants' Exhibit Number 21 is marked for
16 identification by the court reporter.]

17 Q. [Mr. McCants] The first email, Mr. and Mrs.
18 Jacobs -- and this is from Tonya, your assistant. Mr.
19 Raiford asked me to remind you guys to mow your lots.
20 He said that he remembered that you guys were having
21 tractor problems about a month or so ago, but noticed
22 that some of your property has been mowed since, but
23 not all of it. If you haven't completed the
24 maintenance, please do so. All of the other lots at
25 Three runs have been maintained. If you would like

1 the HOA to mow it for you, please let us know. And
2 set forth the costs. Mr. Raiford would like for you
3 guys to email us back with your plans.

4 Of course, the Raifords responded -- excuse
5 me, the Jacobs responded. Then you responded again.
6 I'm going to hand this to you to verify all this.

7 Then the Jacobs responded again. Would you look at
8 that, just make sure that's an accurate chain of email
9 traffic in July 2010 regarding maintenance of the
10 lots?

11 THE COURT: While he's looking at that,
12 what's the time frame on those emails?

13 MR. MCCANTS: July 2010. I'm going to hand
14 that up to you in just a second, Judge.

15 THE COURT: While he's looking at that, Mr.
16 McCants, if any of your witnesses come in who
17 would be called later -- once we start on your
18 testimony, of course, we'd need to have those
19 sequestered. So, I'll make that short
20 announcement. So, you can let me know who's here
21 when we get to that stage.

22 MR. MCCANTS: If y'all see some of them come
23 in, alert us, please.

24 Q. [Mr. McCants] Have you had a chance to look
25 at this particular exhibit, number 21?

1 A. I did.

2 Q. Is that an accurate trail of the email
3 traffic regarding --

4 A. Yes, it is.

5 Q. -- the issue that arose?

6 A. Yes, sir.

7 Q. Hand that to the Judge, if you would, Mr.
8 Raiford. You've looked at it, and I think you're very
9 familiar with this conversation that took place
10 electronically. But you basically went to my client
11 and said, mow the grass. They came back and said,
12 well, we want to keep the lot -- principally, the back
13 side of their lot where the house is, and also the
14 adjacent lot, in what they were calling a natural
15 state; is that correct?

16 A. Yes.

17 Q. In response to that, to use your words, you
18 said, no, that's just an excuse for not wanting to mow
19 their lots; is that correct?

20 A. That's correct.

21 Q. Of course, discussions eventually ensued with
22 regard to that. We've, of course, developed a lot of
23 evidence with regard to that issue in this case,
24 whatnot. But I want to kind of go to now at least the
25 issue of the protective covenants that we've talked

1 about exhaustively in this case. Again, we're
2 focusing on paragraph 12 there; okay? That's page
3 2171.

4 A. Okay.

5 Q. The sentence speaks for itself. Basically it
6 says in the first sentence, all lots, including vacant
7 lots, must be maintained in a clean and first class
8 condition, including mowing all grass, controlling the
9 weeds, and keeping the same free from any trash,
10 debris, or accumulation of other items on said lot.
11 Now, just to describe the Jacobs' property -- we've
12 got some pictures, and of course, they'll describe it.
13 They, again, have two lots. They adjoin each other.
14 There's a house on one lot, and the other lot is not
15 developed; correct?

16 A. That's correct.

17 Q. Will you agree with me that the first
18 sentence in paragraph 12 at page 2171 of the
19 protective covenants says that you're required to mow
20 all grass?

21 A. Yes.

22 Q. It does not say mow the lots; is that
23 correct?

24 A. That's correct, but I don't quite understand
25 what the difference is between mowing the grass and

1 mowing the lot. Some people say cut the grass, some
2 people say cut the lot, you know. So, it's just a
3 wording thing.

4 Q. That's fair. I'm sure the Judge will give
5 you a chance to explain. What I'm focusing on right
6 now is whether or not something is printed here, more
7 than anything else. I think your answer is, I don't
8 disagree with Clarke that it doesn't say mow the lot,
9 it says mow the grass; is that fair?

10 A. That's what it says, yes.

11 Q. Your explanation for that would be you don't
12 see a distinction between mowing grass and mowing the
13 lot; is that correct?

14 A. That's correct.

15 Q. A lot of lots don't have grass on them; do
16 you agree?

17 A. Well, it depends on what you define as grass.

18 Q. That's going to be my next question.

19 A. That's right. It does say controlling weeds
20 on here, also.

21 Q. Fair enough. It does say weeds.

22 A. Controlling weeds, keeping free of trash,
23 debris. Basically, what their property consists of is
24 debris, and it hasn't been mowed.

25 Q. Well, by using the word weeds in this

1 covenant, you necessarily make a distinction between
2 grass and weeds then; is that correct?

3 A. Yeah, I guess you -- that's true.

4 Q. If I were to read that -- and I'm asking if
5 this is correct. When you're talking about grass,
6 you're talking about lawn grass, perhaps grass that's
7 been put down with sod and developed over the years,
8 any variety of grasses that are available around here?

9 A. Sometimes it's sod, sometimes it's just a
10 matter of putting down grass seed that comes up as
11 grass.

12 Q. Fair enough. However, there's a manmade
13 addition, typically, to a lot to be developed, that
14 has been seeded or sodded?

15 A. That's correct.

16 Q. With yard grass?

17 A. Yes.

18 Q. Is that the type of grass you're talking
19 about in this covenant?

20 A. It is not.

21 Q. It is not?

22 A. It's talking about anything that grows up,
23 from sprigs that had already come, you know, from the
24 grass -- seed could've blown next door. It comes up
25 as a grass --

1 Q. Or a weed?

2 A. Or a weed.

3 Q. That's right.

4 A. That's right.

5 Q. I'm going back to my point. Using the word
6 weed in this paragraph means there was a difference
7 between grass and weed; is that fair? You went to the
8 effort to put mow all grass, but control all weeds.

9 A. Use all the different words you like to use,
10 but they're one and the same. It is debris, it is
11 grass, weeds, all combined on that lot. If they rode
12 around and looked at the other 75 lots in the
13 neighborhood, then they would see exactly how
14 everybody else had done the same property that they
15 have. It was cleared the same, done the same, just as
16 theirs was. Every bit of it was cleaned and cleared
17 before it was sold. That's the way it's supposed to
18 be kept up until they did put their sod, or put their
19 seed, and planted that way.

20 Q. Was there a requirement under the covenants,
21 or any marketing brochures, that they ride around the
22 neighborhood and look at the 75 other lots?

23 A. No, we didn't -- we figured that they had a
24 good education, they know to do that.

25 Q. It was sufficient, as long as they had the

1 educational background that you knew they had --

2 A. Yes.

3 Q. -- that they would've known the requirement
4 was to ride around the development, see how everybody
5 else -- let me finish my question. How everybody else
6 was keeping the yards and their lots, and that's what
7 they were required to do; is that your testimony?

8 A. They were required to clean and first class
9 condition. That's what it says, clean and first class
10 condition.

11 Q. That's fair. But you defined that by saying
12 look at the other lots in the development.

13 A. I did, because that's what common sense would
14 tell you to do if you did not have enough knowledge to
15 look at this and know what clean and first class
16 condition is. When you look at the lot that they had
17 and you didn't have any problem figuring out that was
18 not clean and first class.

19 Q. Also, there's nothing in this particular
20 paragraph about how often you should mow your grass;
21 is that fair?

22 A. There is not.

23 Q. I would trust the reason it's not, because
24 you require people to keep their property in clean and
25 first class condition, mow the grass. That means on a

1 regular basis; is that correct?

2 A. That means, yes, when it needs doing.

3 Q. This paragraph also doesn't say anything
4 about what types of trees or bushes or any other
5 vegetation a person is allowed to grow on their lot;
6 is that correct?

7 A. But it does say in there that I have the
8 right to go in and tell them when they can cut trees
9 and all. When we cleared the lot, we left the right
10 trees in it. We left the pines, we left the
11 hardwoods, that were nice trees that would add to the
12 property. We took down all the scrub stuff that
13 looked terrible on there and got it out. That's the
14 only way we could sell the lots, was make it look
15 clean and first class with the right trees on it.

16 Q. Certainly. Presentable?

17 A. Yes.

18 Q. But you're not saying after you close the
19 property and it becomes somebody else's property,
20 they're not allowed to plant bushes and trees, are
21 you?

22 A. Well, actually, they are required to do the
23 shrubbery and all that, and to put a plan in for me to
24 do that.

25 Q. Help me understand. I haven't seen that. Is

1 that in the protective covenants?

2 A. That is -- I think that is in -- I have to
3 approve it on my -- ACC has to approve that, and it
4 has to approve the shrubbery, the layout, the whole --
5 the house, everything about how where the fences are
6 put, everything on the property. That has to go
7 through the ACC.

8 Q. Do we have the ACC guidelines? I don't know
9 if I've seen those.

10 MR. WARLICK: I think it's in these same
11 covenants.

12 MR. MCCANTS: In the original set of
13 protective covenants?

14 MR. WARLICK: No, they're in these.

15 MR. MCCANTS: Why don't I move on, Byrd. You
16 find references in the ACC to have to get approval
17 for purposes -- if I understand correctly,
18 planting vegetation on the property.

19 Q. [Mr. McCants] Now, this paragraph here
20 specifically doesn't say anything about how high or
21 how tall any vegetation can be; is that correct?

22 A. It does not.

23 Q. You've talked a little bit about your
24 experience with trees, vegetation, and horticulture.
25 You don't disagree that every -- whether it be a scrub

1 oak or a nice red oak, it starts from an acorn; is
2 that true? From a seed?

3 A. It starts from a seed. I don't know -- you
4 know, not all of them start from acorns.

5 Q. I mean, that's the way you start a tree,
6 especially an oak tree, unless you've got the
7 resources to, these days, go out and pay 30 40,000
8 dollars for a 30-foot white oak, and have it
9 transplanted on your property; right?

10 A. I left them some like that so they didn't
11 have to go buy them.

12 Q. That's fair. I mean, if you're not going to
13 do that, every tree has to start somewhere, and
14 typically, unless you have the resources, they start
15 with seedlings or sprigs, even sometimes they spring
16 up from an acorn that's fallen; is that fair?

17 A. That's fair.

18 Q. All right. I think you don't disagree, at
19 least in paragraph 12, it doesn't say anything about I
20 want you to keep your lot just like everybody else
21 keeps it; is that true?

22 A. It says clean and pristine condition.

23 Q. Now, there obviously appears to be issues,
24 even with your witnesses, as to what this paragraph
25 means. I'll let the record speak for itself. In

1 conjunction with marketing, given the fact that a lot
2 of money was spent with the Garners putting together
3 nice brochures, did you put together, whether it be
4 photographically or by drawing, what you expected lots
5 to look like? Did you do that?

6 A. I did not.

7 Q. So, there was no visual information that
8 could've been given to my clients to tell them -- at
9 the time of purchase, at the time they spent
10 substantial money on these properties, that these are
11 examples for the way lots should look in Three Runs?
12 That wasn't done; is that fair? Is that true?

13 A. Repeat that, because --

14 Q. I will. At the time my clients closed on the
15 property, invested significant sums, did you come to
16 them in any shape or form, visually, photographically,
17 even a video or something like that, said, you know,
18 Mr. and Mrs. Jacobs, this is the way I think you need
19 to keep your lots?

20 A. No, I did not.

21 Q. Have you seen brochures or plans or
22 protective covenants in other developments -- not
23 yours -- which do have photographs telling people this
24 is the way we want things done?

25 A. I have not. No, I have not.

1 Q. Ever been to Woodside and seen --

2 A. I don't spend a lot of time at Woodside, no.

3 Q. Did you know there's a brochure that says
4 this is how you keep your mailbox?

5 A. You know, I didn't copy everything at
6 Woodside, so I didn't realize they had that.

7 Q. Fair enough. You don't want your place to be
8 run in a manner where everybody's told what to do, A,
9 B, and C; is that fair?

10 A. You know, I try to be just as fair as I can
11 be all the way around, and not make it complicated,
12 not make it hard to do, but yet keep it nice to where
13 everybody appreciates the property when they come in.

14 Q. Do you think paragraph 12 is just as clear as
15 it can be with regard --

16 A. It is very --

17 Q. Mr. Raiford?

18 A. I'm sorry.

19 Q. Again, it's not for me. You can talk over me
20 all you want. But the court reporter needs to put us
21 both down, because we're going to make a record here
22 today; okay?

23 A. Okay.

24 Q. Do you think paragraph 12 is just clear on
25 its face, with no need for an explanation?

1 A. I certainly do.

2 Q. You believe that all the witnesses that
3 you've brought into court have provided completely
4 consistent testimony as to their interpretation of
5 paragraph 12?

6 A. I don't know that you quizzed all of them on
7 paragraph 12. You may have. I don't remember you
8 quizzing them all on paragraph 12.

9 Q. If I didn't quiz them on paragraph 12,
10 certainly I asked what their understanding of what the
11 covenants were; correct?

12 A. Yes.

13 Q. All right. Do you agree with me that the
14 testimony's very inconsistent, and sometimes
15 contradictory, with regard to the homeowners
16 understanding of what is required with regard to the
17 maintenance of their lots?

18 A. I do not agree.

19 Q. You disagree with that?

20 A. I do.

21 Q. Did you hear Ms. Laverghetta yesterday? Her
22 understanding with regard to maintenance of the lots
23 is I get to keep it, or should keep it, in the
24 condition it was delivered to me at closing? Did you
25 hear that?

1 A. I did.

2 Q. Do you agree with that?

3 A. I do.

4 Q. You agree?

5 A. I agree that she keeps it in that condition
6 and does nothing but improve it. But she don't have
7 to leave it with no grass on it, the way it was when I
8 put it there, and I cleared it, and all that was
9 growing was the grass that come up voluntarily.

10 Q. All right. I want to make sure I understand
11 your testimony. You agree with what she said, that
12 she -- you're allowed to keep your property in the
13 condition it was in at the time the deal was closed,
14 at the time the property was delivered? I've got to
15 tell you before you answer, I've got pictures, the
16 pictures in this case of Jacobs' property at the time
17 it was closed. Is that the way they were allowed to
18 keep it?

19 A. That is the way they bought it. That was
20 with the trees, with the property cleared. We
21 actually took tractors in and harrowed it, smoothed it
22 out. It was laid out, ready to have their grasses or
23 their fields -- the Jacobs do have horses, and their
24 intentions when they bought at Three Runs -- the
25 reason they bought two lots instead of one, was to

1 keep their horses on their property. Apparently, they
2 got where they couldn't ride, or either they just
3 decided they'd rather have somebody else take care of
4 the problem taking care of the horses. That's the
5 reason the horses aren't on it. But they did buy two
6 lots in order to have pastures and to put horses on
7 that property.

8 Q. Do I understand then, that you expect them to
9 pasture the property? That is, put --

10 A. That's what everybody does. Yes, they do.
11 Pasturing their property is a part of a equestrian
12 area, or even for a resident that moves in, they're
13 going to grass their property, not going to leave it
14 just sitting there.

15 Q. That's fair. So, everybody's pasturing
16 property at Three Runs, except the Jacobs? What
17 you're telling the Court is the standard out there is
18 properties have to be pastured; is that fair?

19 A. I did not say the properties had to be
20 pastured. They don't have to put their fences in.
21 They do need to keep it up and keep it cut. It will
22 grow up with natural grass on it. It may not be
23 coastal or common Bermuda as what most people have out
24 there, but it will grow in grasses. If it's
25 continually cut, twice a year or more, then it will be

1 a pasture looking property, as it was bought to be.

2 Q. Fair. Then the standard is pasture-like
3 property?

4 A. Yes.

5 Q. That is your standard?

6 A. My standard?

7 Q. Yeah, how they're supposed to maintain it, in
8 a pasture-like policy?

9 A. Clean and first class condition. You keep
10 trying to put other things that I'm saying in there,
11 but clean and first class is what I'm telling you is
12 what we lined up to do in the beginning, and have been
13 doing since day one, since December of '05.

14 Q. I understand. But does clean and first class
15 condition, according to your definition, mean
16 pasture-like?

17 MR. WARLICK: Your Honor, I don't want to
18 necessarily interrupt, but Clarke asked the
19 witness if plans for landscaping had to be
20 submitted to the architectural control commission
21 because he didn't believe it was in the covenants?

22 MR. MCCANTS: I didn't say that. I --

23 THE COURT: I think he just asked if you had
24 something on that.

25 MR. WARLICK: It's in the covenants, like I

1 said, and it's article two, paragraph one, that
2 reads as follows --

3 MR. MCCANTS: Judge, I've got the witness
4 under cross.

5 THE COURT: Right.

6 MR. MCCANTS: If you'd just point --

7 MR. WARLICK: It's 2165, paragraph one, and
8 it goes over to the next page that talks about
9 plans being submitted to the architectural control
10 committee as to vegetation, cutting of trees,
11 shrubbery, all those things.

12 MR. MCCANTS: Thank you.

13 Q. [Mr. McCants] Now, let me go back to the
14 question I had. Does first class and clean in your
15 opinion mean pasture-like settings?

16 A. Yes.

17 Q. Thank you. Do you agree with me that you can
18 have property in clean and first class condition
19 that's not pasture-like? Do you agree?

20 A. What would it be like? I don't know how to
21 say yes, because I don't -- what would it be like if
22 it was --

23 Q. I like to think -- I don't have a pasture in
24 my yard, but I like to think that it's clean, and I
25 like to think it's in first class condition.

1 A. Well, if you bought a piece of property that
2 has been cleared and cleaned, you know, you -- it's
3 pasture, or either it's grown up in shrubs and junk,
4 like the one that we're talking about on the Jacobs,
5 one or the other.

6 Q. That's not necessarily true. You could have
7 a nice wooded, clean lot that is not a pasture.
8 You're saying that doesn't pass your definition at
9 Three Runs?

10 A. Their lot -- their property has nice, big
11 trees that I left on it. They were beautiful when
12 they bought it. It has a -- in fact, it has more than
13 a lot of lots. I figured they'd take some of them off
14 of it when they put their paddocks and all in there,
15 but -- I don't know how to answer some of the
16 questions that you're --

17 Q. Well, the question's actually pretty simple.
18 It's your definition --

19 A. I'm simple minded, so I just don't --

20 Q. Well, I'm not a bright bulb either. I'm just
21 -- I'm reading plain language. Let's go back to it.
22 Clean and first class condition, including mowing all
23 grass, controlling the weeds, and keeping the same
24 free from any trash, debris, or accumulation of other
25 items on said lot. If I understand your sworn

1 testimony today, in your opinion that means a pasture-
2 like condition; is that correct?

3 A. That's correct.

4 Q. Now, let's jump ahead, Wayne, if we can, to
5 about August of 2010. This is when there was a
6 change, where you wanted to make some changes to the
7 lot maintenance guidelines; is that correct?

8 A. All I did was give some guidelines, because
9 the Jacobs didn't seem to understand how you're
10 supposed to keep your lot. So, we sent out a
11 guideline to try to help people to -- them especially
12 -- to try to have an idea of what we were talking
13 about in the covenants.

14 Q. I'm going to call --

15 A. Not because it needed it, but because some
16 people don't seem to understand.

17 Q. Who didn't understand?

18 A. Apparently, the Jacobs. The rest of them
19 were keeping it cut.

20 Q. Fair enough. I'm going to call them the
21 Jacob guidelines then; okay? Is that fair?

22 A. Call it whatever you like.

23 Q. We'll call these August 2010 guidelines the
24 Jacob guidelines. Defendants' Exhibit Number 10, I'm
25 going to give you that, the Jacobs guidelines.

1 A. Okay.

2 Q. Of course, this was sent to everybody;
3 correct?

4 A. It was.

5 Q. But the only person that wasn't complying
6 with your rules was my clients; is that correct?

7 A. Basically at that time, that's correct.

8 Q. Let's look at -- there's a cover letter here.

9 MR. MCCANTS: Judge, have you been provided
10 with a copy of that?

11 THE COURT: I don't have the cover letter.
12 I've got the Plaintiff's Exhibit 10 is the
13 guidelines, too.

14 Q. [Mr. McCants] The cover letter references
15 all property owners; is that correct?

16 A. [Indicates Affirmatively]

17 Q. Now, look at page -- if I understand
18 correctly, we've got three pages -- well, I've
19 actually got four pages of guidelines. I'm not going
20 to refer to the page numbers down below, except to say
21 apparently the first two pages appear to be the new
22 guidelines, and then the next two pages are the sample
23 notices that would be sent to the Jacobs in the event
24 that they did not comply; is that correct?

25 A. Yes.

1 Q. All right. First policy, given the fact that
2 the condition of their property today is in deplorable
3 condition, have you emailed them in accordance with
4 your guidelines, that they're not in compliance?

5 A. The last time we emailed them was -- you have
6 the email in your hand that we did that.

7 Q. Back in July 2010?

8 A. It could've been more since then, but that
9 would've been going through the --

10 Q. The question is, since July 2010, have you
11 sent them the email set forth in the Jacobs
12 guidelines, that they're not in compliance?

13 A. Have I sent them another one? Is that what
14 you're saying?

15 Q. Well, look at the exhibit, if you would.
16 There's a sample email attached to that, it says, if
17 you're not in compliance, we're going to send you an
18 email. Have you done that?

19 A. Have no idea.

20 Q. Certainly you know whether --

21 A. I do not. I have an office, it goes through
22 there if things aren't done. It does not --
23 everything does not come right through me.

24 Q. I have a hard time understanding that.
25 You're imposing these guidelines, you're saying this

1 is the way things are going to be run. You can't tell
2 this Court whether or not you've notified my clients
3 whether or not their property is not in compliance
4 with your guidelines?

5 A. I've notified your clients five times in
6 person, and then we sent several emails, ever how
7 many, I don't know, but five times in person I
8 approached them about their property.

9 Q. This says an email.

10 A. Yeah.

11 Q. These are your guidelines that you put
12 together. It says --

13 A. And they got a copy of them. We made sure
14 they got a copy of them.

15 Q. Copy of what?

16 A. Of the guidelines.

17 Q. You're talking about the Jacobs guidelines?

18 A. Yeah. You've named them the Jacobs
19 guidelines.

20 Q. They only apply to them?

21 A. We sent them to all the homeowners. But the
22 other homeowners could see how things were, too,
23 because we sent them to everybody.

24 Q. Well, they didn't need them if my clients are
25 the only ones that --

1 A. Oh, yes.

2 Q. -- wasn't complying.

3 A. Yes, they did. They wanted -- they can look
4 and see how the Jacobs lot is compared to theirs, and
5 they have every -- it's a good guideline to go by. I
6 don't send it to one homeowner, I send it to all of
7 them, unless it's specifically for that one. So, we
8 drew these guidelines out just to send to everybody,
9 not that everybody else needed them because their
10 property was in compliance. The only one that was not
11 in compliance was the Jacobs. They kept saying we
12 don't understand what you mean by first class
13 condition. So, we said okay, let's send out
14 guidelines just to help them to understand, send it to
15 all the homeowners so everybody will have a copy of
16 it. So, everybody got a copy.

17 Q. So, they're not Jacob guidelines; is that
18 correct?

19 A. You named them the Jacob guidelines.

20 Q. You told me they only applied to my clients?

21 A. At that time, that's what they were made up
22 for, was to help them.

23 Q. Nobody else was not in compliance?

24 A. Everybody was in good shape.

25 Q. Let's look, if we can, at the specifics of

1 the new guidelines, we'll call them, in August of
2 2010, and they speak for themselves. It does say
3 regular mowing and weed control of lawn -- of all lawn
4 areas. Now, that uses the word lawn. Is that what
5 you meant when you talked about grass in the
6 protective covenants?

7 A. Yeah, it -- whatever size their lot was,
8 that's what it concerned.

9 Q. I mean, lawn, to me, means, again, the seeded
10 or sod areas producing grass. Is that a fair
11 understanding of what the lawn is?

12 A. I think that is -- it is to you. To me it
13 covers the properties that they own.

14 Q. You mean including areas of the property
15 where there's not a lawn?

16 A. Regular mowing and weed control of all lawn
17 areas. You know, if you live in a subdivision where
18 you've got a quarter of an acre land, it's all
19 considered your lawn. If you live in a subdivision
20 where you've got five acres or ten acres, it covers it
21 all. We didn't intend for it just to mean the front
22 lawn. It covered all the property.

23 Q. Covers every square inch of the property?

24 A. Yes.

25 Q. All right. You would consider every square

1 inch of any property to be a lawn?

2 A. You know, you can call it a lawn, you can
3 call it paddocks area, you can call it a field,
4 whatever.

5 Q. I can call it whatever I want to call it; is
6 that what you're saying?

7 A. You can, yes.

8 Q. All right. So, I may have a different view
9 of what a lawn is as opposed to you, then; is that
10 fair?

11 A. Yeah.

12 Q. All right. Next one talks about weed control
13 and overall maintenance of all the landscaped areas.
14 Help me understand what a landscaped area is. That
15 tells me that men, women, landscapers, have come in
16 and tailored a particular area of the property in some
17 fashion. Is that what you're talking about?

18 A. Yeah, that's basically it. Most of the time
19 the landscape area is right around the house. They
20 may have a little shrubbery area at the entrance
21 coming into their property, where the driveway comes
22 in, or around the gates. That's basically what you
23 consider the maintenance of the landscaped area.

24 Q. That's property that has been landscaped, I'm
25 going to trust, in accordance with the landscaping

1 guidelines that Mr. Warlick just brought to
2 everybody's attention?

3 A. The ACC, yes.

4 MR. WARLICK: It's article two, paragraph
5 one, submission of plans for landscaping to the
6 ACC. The association decides these things. These
7 covenants were never intended to be a road map of
8 everything, Your Honor. All plans for landscaping
9 are submitted to the ACC, and the ACC decides it,
10 just as this witness has said. If anybody has
11 questions, they call the developer and he answers
12 it for them. They were never intended to be A
13 through Z.

14 MR. MCCANTS: Your Honor, I'm going to be
15 asked that the witness be excused if we're going
16 to have arguments of law, things of that nature.

17 THE COURT: Pointed out article two. I think
18 we'll let the cross-examination continue. If you
19 need to bring it up on redirect, you can do it at
20 that time. Thank you.

21 Q. [Mr. McCants] Wayne, if we could go back to
22 the changes. The next one, of course, deals with
23 regular mowing or brush hogging as necessary to keep
24 grasses and additional undergrowth no more than 18
25 inches in height in all pasture and all paddock areas;

1 okay?

2 A. Okay.

3 Q. All right. Is it your testimony that you
4 believe that that language and that change is
5 consistent with the language in the protective
6 covenants with regard to the maintenance of lots?

7 A. This was a guideline. This was a guideline
8 to help people to -- you know, 18 inches is pretty
9 high. That's a foot and a half. You start -- you
10 know, the property that we were -- the main thing was
11 anything getting way above that. When you say 18
12 inches, and you've got an area out there, it's even
13 too high then for almost to cut with your mower. You
14 have to keep it below that. But 18 inches was the
15 maximum.

16 Q. Let me go back to my question. Is that
17 consistent with the terminology of the protective
18 covenants?

19 A. Yes.

20 Q. You don't think that imposing a height
21 restriction is more restrictive than what you've got
22 set forth in your protective covenants; is that your
23 testimony?

24 A. This -- no, I don't, because this is not
25 imposed. All this is is a guideline.

1 Q. All right. So, what you're looking at
2 Exhibit Number 10, if that's the exhibit, those aren't
3 requirements? The property owners do not have to
4 comply with those, those are just guidelines?

5 A. These are guidelines; that's correct.

6 Q. Do they have the force of a protective
7 covenant?

8 A. No, the protective covenants takes care of
9 itself. It says first class condition.

10 Q. Fair enough. Help me understand, so we can
11 --

12 A. I don't think I can.

13 Q. Thank you. I want to try, it'll save a lot
14 of time. What you're holding in your hand has no
15 lawful, legal effect in Three Runs? It's simply
16 guidelines?

17 A. That's correct. It does not.

18 Q. We can throw them out?

19 A. You can use them as guidelines. You can
20 throw them out if you want to.

21 Q. I mean, in terms of this case, you're not --

22 A. Yes; that's correct. In terms of the case,
23 as far as I know.

24 Q. You're not imposing upon my clients any
25 requirements set forth in Exhibit Number 10; is that

1 correct?

2 A. That's correct.

3 Q. But you felt like something was needed to
4 give some guidelines to the Jacobs, in light of the
5 way you saw them maintaining their property; is that
6 correct?

7 A. That's correct.

8 Q. You felt like they were not able to
9 understand what first class and clean meant?

10 A. From all evidence, they did not.

11 Q. All right, sir. Of course, what happened,
12 kind of going back to the sequence of events which
13 began in summer of 2010, when this issue came up you
14 had Mary, Mary Guynn, write a letter to my clients.
15 She's testified about that. They hired counsel,
16 Freeman Belser, who testified yesterday, to represent
17 them; is that correct?

18 A. Yes.

19 Q. Freeman and Mary had some exchanges. He
20 responded that the proposed changes that you
21 implemented in August of 2010 were not legal. But you
22 agree with him; is that correct?

23 A. You're talking about these guidelines?

24 Q. What you've got in your hand.

25 A. Yes..

1 Q. You agree with that?

2 A. I do.

3 Q. Everything Mr. Belser said about his opinion
4 as to the validity of the changes is accurate; is that
5 correct?

6 A. Yes, as far as I know. Yes.

7 Q. Of course, now that you've said that, it's
8 kind of superfluous, but Mr. Warlick and Mr. Murray
9 got involved, and they wrote a letter, and I think
10 they specifically said that your attempt with these
11 additional guidelines was not to amend the covenants.
12 I have the highest regard for Mr. Warlick and Mr.
13 Murray, they're good lawyers. That was them speaking
14 for you; right?

15 A. Yes.

16 Q. All right. Mr. Belser's testified that what
17 happened, is this exchange took place, the lawyers
18 went back and forth, and ultimately, at least
19 according to Mr. Freeman, in order to avoid any
20 litigation, the matter was resolved. It was his
21 understanding that the Jacobs agreed to comply with
22 the covenants. Is that your understanding of his
23 testimony?

24 A. That was his testimony, yes. Mr. Belser's.

25 Q. Do you agree that the result, or the

1 resolution of the issue that erupted in the summer of
2 2010, was that my clients agreed to keep the property
3 in accordance with the protective covenants?

4 A. It did not say that. Mr. Murray told me that
5 Mr. Belser said -- he called me the next day, said Mr.
6 Belser called, said thankfully we have avoided world
7 war three, and the Jacobs are going to cut their
8 property.

9 Q. The term that Jeb used was that the Jacobs
10 have agreed to cut their property; is that correct?

11 A. That is correct.

12 Q. That was a satisfactory resolution for you?

13 A. Yes.

14 Q. All right. Do you agree that that was an
15 agreement that was reached between you and the Jacobs?

16 A. I never talked to the Jacobs. That was
17 between my attorney and his attorney.

18 Q. Fair enough. Let me be clear. Your
19 representatives, it was an agreement reached between
20 your representative attorneys and the attorney for the
21 Jacobs?

22 A. Yes.

23 Q. Given it was an agreement, do you agree with
24 me that you didn't necessarily prevail as part of the
25 resolution of this dispute?

1 A. They never cut their grass, if that's what
2 you're asking.

3 Q. No, sir, that's not my question. We had a
4 dispute come up in the summer of 2010. There was a
5 lot of back and forth, emails exchanged, the lawyers
6 talked with each other, and an agreement was struck.
7 You've described the agreement coming from Jeb Murray
8 is that the Jacobs agreed to cut their property?

9 A. Yes.

10 Q. All right. Do you believe that that
11 constitutes you prevailing as a result of that
12 dispute?

13 A. No, I don't think I prevailed.

14 Q. Fair enough. Are you familiar with the
15 attorney's fees that were spent during this -- well, I
16 guess you are, because suit was filed for about
17 \$4,000. You were aware of that amount?

18 A. Yes.

19 Q. Wayne, was all that spent on dealing with the
20 issue in the summer of 2010? That is, the resolution
21 of this issue?

22 A. Before Belser got involved, Mr. Warlick --
23 they were involved in sending numerous things, and
24 working, trying to get this done. This wasn't just
25 for that one thing. That was the bill and, you know,

1 we were willing to let that go if the Jacobs went
2 ahead and done what they were going to do. But they
3 never did anything they said they were going to do.
4 Now, that's my understanding of it, the best I know.

5 Q. All right, sir. I think -- just for your
6 information, I think what the parties agreed to do is
7 submit time records and the Judge is going to look at
8 them, in the event he makes a decision the parties are
9 entitled to recover.

10 A. Yes.

11 Q. You're okay with that, obviously?

12 A. Yes.

13 Q. I've got some photographs that I want to
14 hopefully quickly review with you.

15 MR. MCCANTS: Judge, I apologize. I had it
16 marked. I'm going to scoot through these as quick
17 as I can.

18 THE COURT: All right.

19 Q. [Mr. McCants] Mr. Raiford, I'm going to show
20 you a handful of photographs. For example, --

21 MR. MCCANTS: You okay, Byrd? Can I go
22 forward?

23 MR. WARLICK: You know, we've got so many
24 photographs I don't need to see them or object.
25 As long as we can identify when they were taken, I

1 won't object to any photograph. As long as we say
2 when it was taken and what it purports to show.

3 MR. MCCANTS: What I'd like to do then, is
4 hand them to the witness, see if he can identify
5 them. That is, the location. I may just have to
6 mark them for identification --

7 THE COURT: As far as when they were taken?

8 MR. MCCANTS: When they were taken, if that's
9 going to be --

10 THE COURT: Because he wouldn't have the
11 knowledge of that.

12 MR. MCCANTS: Yeah, but I think you'll see
13 from my line of questioning, I'm not sure that
14 timing is relevant once he identifies the
15 property.

16 THE COURT: Okay. But you're reserving that
17 you just want in the testimony at some point, for
18 these photographs to come in, that the date they
19 were taken be put into evidence?

20 MR. WARLICK: Well, I've got a bunch of
21 photographs, he's got a bunch of photographs. I'm
22 satisfied they're all photographs of Three Runs.

23 THE COURT: I just want to make sure I
24 understand. I mean, either way, he can mark for
25 I.D. and ask the witness does he know what the

1 photographs are. I'm just trying to understand
2 your statement. Are you saying that --

3 MR. WARLICK: I'm saying I don't --

4 THE COURT: -- you object to them unless
5 they're later substantiated on when those were
6 taken and that's put in the record?

7 MR. WARLICK: That's right.

8 THE COURT: All right. So, we're clear on
9 that.

10 MR. MCCANTS: Very good.

11 [Defendants' Exhibit number 22 is marked for
12 identification by the court reporter.]

13 Q. [Mr. McCants] Let me show you Exhibit Number
14 22. Can you identify the property depicted in that
15 photograph?

16 A. This looks like the Kohr's property; yes, it
17 does. It looks like the Kohr's property --

18 THE COURT: I'm sorry, what was the name
19 again?

20 THE WITNESS: Kohr, K-O-H-R.

21 A. I think that is lot number 31 -- 32, lot 32.

22 Q. [Mr. McCants] In Three Runs development?

23 A. Yes, it is.

24 Q. In your opinion, is that lot being maintained
25 -- never mind. Does that picture depict property

1 that's in clean and first class condition?

2 A. It does.

3 Q. Since it does, the date when it was taken
4 doesn't make any difference; is that fair?

5 MR. WARLICK: I still want to get the dates
6 when they were taken.

7 MR. MCCANTS: I mean, I can tell you for the
8 record as an officer of the Court, they were taken
9 shortly before we convened the first time. I'm
10 just trying to get the evidence moving along.

11 MR. WARLICK: I said I've got no objection to
12 any photographs, but I do want them identified as
13 to when they were taken.

14 Q. [Mr. McCants] Given the fact you've said
15 that's in clean and first class condition, does it
16 matter when it was taken?

17 A. I have -- I have an explanation of this lot
18 and the date it was taken. I see the date you've got
19 on there. You've got 10/2/12.

20 Q. That's actually the date of trial.

21 A. Okay. Excuse me.

22 Q. The date's not reflect on there. But given
23 the fact that it depicts property in clean and first
24 class condition, and it is property in Three Runs, the
25 date when it was taken is not particularly relevant;

1 is that fair?

2 A. It is, because we have a schedule to cut
3 property in Three Runs. At the end or beginning --
4 end of May, beginning of June, up to maybe the middle
5 of June, and then it is cut again in August. That is
6 so that the property does not have to have so much
7 money spent on it by out of town people, so that this
8 property can go from -- it'll go from the end of
9 September or middle of October, or whenever, all the
10 way to the next -- end of May or June. Then it would
11 take it all the way to then. So, yes, it does have a
12 time. A lot of our properties, if you go in there at
13 the end of August, you will find out that it's grown
14 up pretty high if we've had a rainy summer. But, we
15 don't require everybody to go in there and cut until
16 September, where it'll carry it through the rest of
17 the year. It has been the same way for the Jacobs,
18 everybody else. They've never cut theirs since the
19 year '10, until recently they've cut a lot of it to
20 try to -- because of this situation.

21 Q. I understand. What you're seeing in that
22 photograph, Exhibit Number 22, is clean and first
23 class condition?

24 A. It is.

25 MR. MCCANTS: Based on that, Your Honor, I'm

1 just going to try to move these into evidence as
2 we go along. I don't think the date is relevant
3 if he's saying that is a representation of clean
4 and first class condition.

5 THE COURT: They're being introduced just for
6 the witness's opinion as to whether what's clean
7 and first class condition?

8 MR. WARLICK: That's fine.

9 THE COURT: All right. So, they're admitted
10 for that purpose.

11 MR. MCCANTS: Very good. I'll hand these up
12 to the Judge as we go.

13 Defendants' Exhibit Number 23 is marked for
14 identification by the court reporter.]

15 Q. [Mr. McCants] I'm going to have you look at
16 number 23. Try to identify the property there, if you
17 would, and I'll kind of ask you the same questions.

18 THE COURT: That last one was 22?

19 MR. MCCANTS: Yes, sir.

20 A. You know, sometimes I have to -- you know,
21 lots are changing over there, they're adding houses,
22 so forth.

23 Q. [Mr. McCants] Did I put a number on that
24 one, lot number?

25 A. I guess is that your number -- no, that's

1 not. That's 22. I don't see a lot number on there,
2 at all.

3 Q. Let's do this. Let's save time here. Look
4 at this one.

5 A. Okay.

6 [Defendants' Exhibit Number 24 is marked for
7 identification by the court reporter.]

8 Q. I'm going to withdraw 23 and let's look at
9 24. That gives you a lot number. That's in Three
10 Runs; right?

11 A. That is in Three Runs.

12 Q. Is that lot being maintained in first class
13 and clean condition?

14 A. Yes, it is.

15 MR. MCCANTS: All right. I move to introduce
16 that one, too, if you'd hand that one to the
17 Judge. Just keep going?

18 THE COURT: Yeah, they've been all entered.

19 [Defendants' Exhibit Number 25 is marked for
20 identification by the court reporter.]

21 Q. [Mr. McCants] All right. 25, what I'll
22 represent -- I don't have a lot number for this one,
23 Wayne, but what I'll represent to you is -- I believe
24 that's taken off of Hiawassee Road. Does that look
25 correct?

1 A. Yes.

2 Q. Is that clean and first class condition?

3 A. No, it's not.

4 Q. Now, I'm sure you want a chance to explain
5 that.

6 A. It was probably somewhere in August, before
7 the cutting time, because it's all cut when the right
8 time comes.

9 Q. Fair enough. What you're telling the Court
10 is that sometimes properties are not in clean and
11 first class condition until the time to cut?

12 A. Until time to cut.

13 Q. That was an example of what is not clean and
14 first class --

15 A. No, it needs cutting.

16 [Defendants' Exhibit Number 26 is marked for
17 identification by the court reporter.]

18 Q. Look at 26, then. Hand that one of the
19 Judge, if you would.

20 MR. MCCANTS: What you've got there, Judge,
21 is not clean and first class condition.

22 Q. [Mr. McCants] Now, that photograph that
23 you've got in your hand, do you recognize the
24 property?

25 A. Yeah, that's lot 19, I think it is. This

1 property here is --

2 Q. Point that up to the Judge so he can see it.

3 A. Okay.

4 Q. I want you to describe to him what's on that
5 photograph.

6 A. This is lot 19.

7 Q. That's on the right side of the photograph?

8 A. That's correct. This lot right here. This
9 is -- a lot of times, Judge, some of the people cut
10 their property earlier than we suggest, and it has a
11 chance to grow up a little bit before the wintertime
12 hits it. You can have a little growth. If you'll
13 notice, that's not all that high. If you'll look at
14 photos of the lot that we had the problems with here,
15 you'll find out that their's is standing this high,
16 where that there just has a -- it's not even -- you
17 can see across the property, you can see from the
18 front to back of it. If you'll look at some of that
19 stuff on there, it's not over 18 inches high.

20 Q. You know where the property is?

21 A. I do.

22 Q. On the right-hand side is an undeveloped lot,
23 on the left-hand side is someone's home?

24 A. It is.

25 Q. Whose home is that?

1 A. That's Carl's.

2 Q. Is that Carl's house?

3 A. Yes, sir.

4 Q. All right. Is the undeveloped lot in clean
5 and first class condition in that photograph?

6 A. It's pretty good shape; yes, sir.

7 Q. You're okay with that?

8 A. I am.

9 Q. Of course, his house on the left is fine?

10 A. His house looks fine.

11 Defendants' Exhibit Number 27 is marked for
12 identification by the court reporter.]

13 Q. Twenty-seven, I'm going to represent to you
14 again that this is a portion of Hiawassee Road. Is
15 that in clean and first class condition?

16 A. I would say that this one is on the verge.
17 This one has either been cut earlier or -- it looks
18 like it's getting close to our cutting time. So, it's
19 not -- it's not what it will be when it is cut.

20 Q. It's toeing the line?

21 A. Yes.

22 Q. Somewhere between?

23 A. Yes.

24 [Defendants' Exhibit Number 28 is marked for
25 identification by the court reporter.]

1 Q. Now, 28 I'm going to show you, that's that
2 area, too. I know you've got to say this is not clean
3 and first class condition because it's got a dead tree
4 in the middle of it. That takes you out of clean and
5 first class; is that correct?

6 A. Well, the dead tree doesn't look good on
7 there; that's correct.

8 Q. That's got to be taken off; right?

9 A. Yeah, we'll get the tree -- they will, the
10 owners will, sooner or later.

11 Q. That's number 28. It is clean and first
12 class, except for that tree?

13 A. I can tell you right now that most of these
14 pictures are being taken before our deadline of
15 cutting. You're showing us pictures of lots before
16 August -- before September, or before June.

17 Q. I understand. That's kind of what I'm asking
18 you.

19 A. Okay.

20 Q. The guidelines say clean and first class
21 condition. It doesn't say until it gets a certain
22 height, or until you've got to mow. I take that to
23 mean at all times it's got to be clean and first
24 class; right?

25 A. That's right.

1 Q. That's the intent?

2 A. But I said that was clean and first class,
3 and I'm, you know, architectural control, and I say
4 it's okay at that time.

5 Q. How about this one? This one's been
6 previously marked as Defendants' Number 6. Is that in
7 clean and first class condition?

8 A. Yeah, that lot's in good shape. You've got a
9 little area up under the tree there where the tractor
10 couldn't get to. But if you look at the rest of that
11 lot, it's probably not 12 inches on that property in
12 there.

13 Q. So, it's within the 18 inches?

14 A. Yeah, it is.

15 Q. The property depicted in number 6 is clean
16 and first class?

17 A. That's lot number six in -- lot number eight
18 in phase one, yes.

19 Q. Very good. Number 7 is the same property,
20 different angle. That's clean and first class?

21 A. It is.

22 [Defendants' Exhibit Number 29 is marked for
23 identification by the court reporter.]

24 Q. Very good. Now, number 29's got another dead
25 tree on it. But for that dead tree, is the property

1 depicted in 29 in clean and first class condition?

2 A. This property is not. It's time for it to be
3 cut. It's getting right into the stages there,
4 apparently before the cut time.

5 Q. For the record, Wayne, which one was that?

6 A. That's Exhibit 29.

7 Q. 29 is not in clean and first class condition?

8 A. No.

9 [Defendants' Exhibit Number 30 is marked for
10 identification by the court reporter.]

11 Q. Here's one that's got a lot number on it,
12 number 30. This is Exhibit 30. How about that, lot
13 32, is that clean and first class?

14 A. That's lot 52.

15 Q. Excuse me; I beg your pardon.

16 A. All these lots that you're showing me, or
17 that you're going to bring up later, they're not in
18 probably pristine condition. This is all prior to our
19 cutting times, and this is just taking one photo after
20 another that was taken in August, or either taken in
21 May, the latter part of May, before the properties
22 were cut. These lots are not in bad shape. These
23 lots have not been let sit there for two years and
24 growing up four foot tall. These lots --

25 Q. Well, I'm trying to --

1 A. -- these lots look good for country lots out
2 in the -- before they're cut. Now, if you let them go
3 another month like that, it will look -- start looking
4 haggard. You know, real bad.

5 Q. That's fair. Let me focus on my question,
6 though. Is the property depicted by that photograph
7 that you looked at --

8 MR. MCCANTS: I'm sorry, Judge, what exhibit?

9 THE COURT: It was number 30.

10 Q. [Mr. McCants] Thirty, is that property in
11 clean and first class condition?

12 A. Yeah.

13 Q. All right, sir. Now, these may be some easy
14 ones, and they've got pictures --

15 THE COURT: Ask you how many more of those
16 photographs you had?

17 MR. MCCANTS: Maybe 10.

18 THE COURT: Okay. When you get through with
19 those, I've got a deficiency sale apparently we've
20 got some people here for. Why don't you finish
21 the photographs, I don't want to rush you on that.
22 They can wait a few minutes on that. But I'll
23 need to take a break then.

24 [Defendants' Exhibit Number 31 is marked for
25 identification by the court reporter.]

1 Q. [Mr. McCants] Number 31, that's got your
2 good friend Jay Jacobs in the picture?

3 A. Good looking guy.

4 Q. Come on, smile. How about that one? First
5 class condition or not?

6 A. That one is not. That's before --

7 Q. Let's assume Mr. Jacobs is out of the
8 picture. Is it otherwise in first class condition?

9 A. Yeah.

10 Q. Does that need mowing?

11 A. Definitely.

12 Q. That one's not in first class condition?

13 A. That's not in first class condition.

14 [Defendants' Exhibit Numbers 32 through 35
15 were marked for identification by the court
16 reporter.]

17 Q. How about this one here? Is this one in
18 clean and first class condition? That's Exhibit 35.

19 A. This is the very front yard of the Jacobs'
20 house. The answer is yes, it is, except for the scrub
21 oaks growing on it. The grass is cut great, the scrub
22 oaks are looking just as bad as they always look. The
23 grass part is cut in clean and first class condition.
24 The scrub oaks are not. They look bad.

25 MR. WARLICK: Clarke, can you tell us when

1. that photograph was taken?

2. MR. MCCANTS: That was taken shortly before
3. we convened the first time, first trial in August.

4. Q. [Mr. McCants] This is another view of the
5. Jacobs' house, Exhibit 32. Is that in clean and first
6. class condition?

7. A. It is.

8. Q. All right. I'm going to show you 33. I'll
9. represent to you, Wayne, that this is a shot from
10. their driveway, looking across at the undeveloped lot.
11. My question to you is whether or not -- what little of
12. their property you can see, whether or not it's
13. maintained in first class condition, and whether or
14. not the lot across the street is maintained in clean
15. and first class condition?

16. A. The lot across the street is in clean and
17. first class condition. It may be getting time for our
18. cuttings, but it's not very high at all.

19. Q. Very good.

20. THE COURT: Let me go back to 32. Is this
21. the defendants' home? Do I understand that?

22. MR. MCCANTS: It is. That's the Jacobs'
23. house.

24. Q. [Mr. McCants] I'm going to show you 34.
25. Take a look at that one, if you would, Mr. Raiford,

1 and try to identify that lot, if you would, first.

2 A. This is lot 25 in phase two, and yes, it is
3 in clean and first class condition.

4 Q. Picture 34, which is lot --

5 A. 25.

6 Q. -- 25 in this picture, is in clean and first
7 class condition; is that correct?

8 A. Yes.

9 [Defendants' Exhibit Number 36 is marked for
10 identification by the court reporter.]

11 Q. Let me show you another perspective of the
12 Jacobs' yard. This, again, would've been photographs
13 in the summer period, right before we convened. Is
14 their property from that perspective being maintained
15 in a clean and first class condition?

16 A. No, it's not. It has these scrub oaks
17 growing all over. If you'll look back in here, it
18 just gets thicker and thicker, and worse and worse.

19 Q. We might want to show the Judge that so he
20 can see what you're talking about.

21 A. I will.

22 Q. Point that out to him.

23 A. This is the very front and side of the
24 property after -- this is not before this lawsuit.
25 This is after this lawsuit was done. You can see all

1 these scrub oaks here, and if you look in the back you
2 see how much thicker and thicker it gets all back in
3 there. It'll also do that on the other side of their
4 home. But this is much, much better than what it was
5 when this lawsuit was taken out. When this lawsuit
6 was taken out, it was all grown up -- it was all grown
7 up to waist high, Judge.

8 THE COURT: That's the defendants' house?

9 THE WITNESS: That is the defendants' house;
10 yes, sir.

11 THE COURT: Anything else on that, Mr.
12 McCants?

13 MR. MCCANTS: No, sir.

14 THE COURT: I'll take that one.

15 Q. [Mr. McCants] What number is that, again?

16 A. That is number 36.

17 Q. I will represent to you -- these are the
18 photographs I recently gave you guys by disk. I'll
19 represent to you that's the Jacobs' property, taken
20 recently. Is that in clean and first class condition?

21 A. Yes, it is. The reason it is, is they just
22 cut it. They know what clean and first class
23 condition is now, don't they? The just learned.
24 Because they just did this in this last past week.

25 [Defendants' Exhibit Number 37 is marked for

1 identification by the court reporter.]

2 Q. So, 37 is clean and first class? That's the
3 Jacobs' property?

4 A. That is. They've almost even taken down most
5 of their scrub oaks in that area.

6 [Defendants' Exhibit Number 38 is marked for
7 identification by the court reporter.]

8 Q. Exhibit Number 38, if you could, identify
9 that property for me, please?

10 A. This is a spec home on lot 24 in phase two.

11 Q. Is it in clean and first class condition?

12 A. It is.

13 Q. Very good.

14 MR. MCCANTS: For the record, Judge, 38 is in
15 clean and first class condition.

16 Q. [Mr. McCants] Let's go back to 22.

17 A. Okay.

18 Q. I think that's before we just kind of agreed
19 to put these in and whatnot. Is the property depicted
20 in 22 in clean and first class condition?

21 A. Yes. This property is right before our
22 cutting time, and it is clean and first class for that
23 time of the year, yes.

24 [Defendants' Exhibit Numbers 39 and 40 were
25 marked for identification by the court reporter.]

1 Q. Getting close here. I'm going to show you a
2 couple of photographs of what would appear to me to be
3 dead trees. Perhaps you can confirm that they're
4 dead. Number 39 is a standing dead tree; you agree?

5 A. I do.

6 Q. Number 40 is a fallen dead tree; is that
7 correct?

8 A. Where is this at?

9 Q. That is -- it's over there --

10 A. That's a tall pine.

11 Q. That's yours.

12 A. Where at? Is it a section that has never
13 been developed yet?

14 Q. I think it's out there on Shell Bluff.

15 A. I don't remember any trees on Shell Bluff
16 being that high.

17 Q. I can tell you, and I think Jay and Judy can
18 testify, that that's --

19 A. Is that tree still there?

20 Q. That was taken back in July or August.

21 A. Well, it's a possibility that tree's not
22 there anymore, because I don't remember seeing it.

23 Q. That's fair. My question would be, that
24 doesn't appear --

25 A. Has nothing to do --

1 Q. -- to be property in clean and first class
2 condition?

3 A. That has nothing to do with the grass cutting
4 in clean and first class. That's a tree that hasn't
5 fell. You'd have to stay out of the way until it does
6 fall and then clean it up.

7 Q. I hear you. But the point is, that dead tree
8 negates clean and first class condition; is that fair?
9 That means it's not in clean and first class
10 condition, kind of like this one here?

11 A. The lot was in clean and first class. The
12 tree is --

13 Q. I'm going to tell you, that's the lot next to
14 the Jacobs; okay?

15 A. Yes, sir.

16 Q. On the right?

17 A. Yes.

18 Q. That tree needs to be removed; right?

19 A. Yes, that tree needs to be moved.

20 Q. Until it's removed, that property is not in
21 clean and first class condition; is that fair?

22 A. It is clean and first class condition, except
23 for the tree on it.

24 MR. MCCANTS: I've got a group of photographs
25 and what I'd like to do, Judge, just mark them as

1 one exhibit and number them, if I could.

2 THE COURT: Okay.

3 Defendants' Exhibit Number 41 is marked for
4 identification by the court reporter.]

5 Q. [Mr. McCants] These are photographs of homes
6 in Three Runs.

7 A. Okay.

8 Q. Beautiful homes and whatnot. I want you to
9 look at these and make sure they are all what they're
10 supposed to be. The question I've got, is that the
11 way you want the homes and the lots maintained?

12 THE COURT: As soon as you get through with
13 this group, I'll have to take a short break.

14 MR. MCCANTS: I understand. I'm through with
15 that part of it.

16 A. Those are beautifully done, yes.

17 Q. [Mr. McCants] All the photographs that are
18 joined together in Exhibit Number 41 --

19 THE COURT: We've already got 41, don't we?

20 MR. MCCANTS: No. I'm going to mark on the
21 back of them, one, two, three, four, and I'm
22 counting, one, two, three, four, five, six, seven,
23 eight, nine, 10, 11 photographs. So, we're going
24 to have 41A, B, C, down the line, if that's all
25 right.

1 Q. [Mr. McCants] The 11 photographs contained
2 in Exhibit 41 are all clean, first class?

3 A. Yes.

4 Q. And, in fact, are exemplars of what you
5 believe -- how you believe property should be
6 maintained in your development?

7 A. It's probably over and above what it has to
8 be.

9 Q. That's fair.

10 A. But they're excellently done. Excellent
11 shape.

12 Q. Do you believe that that's what the covenants
13 provide when you're looking at Exhibit Number 41?

14 A. It does not go into that much detail on the
15 pastures and all. That is the front yards of all
16 those homes, and that's like you or me or anybody else
17 would keep the front of their property. The pastures
18 are going to be a little bit different. That's the
19 reason we gave them 18 inches and below. But I think
20 they're excellent. I'd love to see them all in Three
21 Runs like that, definitely would. Most of them are.

22 Q. Again, the protective covenants, as you just
23 said, just don't go into that detail; is that fair?

24 A. They don't go -- they're not a requirement to
25 do exactly that. I don't expect the Jacobs to do

1 their fields like the front yards of those homes right
2 there.

3 Q. Let me make sure you understand my question.
4 Those details that you just described are not in the
5 covenants; is that correct?

6 A. Those details that I described?

7 Q. You said details of how to do this are not in
8 the covenants; is that fair?

9 A. To that extent, no, it does not. But it
10 would be with the ACC -- if we came in and saw that
11 they let their front yards grow up and so forth, they
12 get a letter or an email saying they need to get it
13 back to pristine --

14 Q. I agree. Before we take a break, I just want
15 to make sure I understand your testimony. Those
16 details of how to do it are not in the covenants; is
17 that fair? Is that a true statement?

18 A. To that detail, no, they're not.

19 Q. The detail depicted in Exhibit Number 41?

20 A. That's correct.

21 MR. MCCANTS: Judge, I understand you may
22 want to take a break?

23 THE COURT: Yeah.

24 MR. MCCANTS: I'll work hard to streamline.

25 THE COURT: That's okay.

1 [Off the record from 11:20 a.m. to 11:34
2 a.m.]

3 THE COURT: The witness is still under oath.
4 Continue with cross-examination.

5 [Defendants' Exhibit Number 42 is marked for
6 identification by the court reporter.]

7 Q. [Mr. McCants] A few more photographs and
8 we'll be done. I hate to jump back a little bit to
9 the amenities, but I do want these in the record. Mr.
10 Raiford, what I'll tell you is, that's a photograph
11 taken some time ago. It speaks for itself. Is that
12 one of your signs?

13 A. It is, yes.

14 Q. It clearly indicates that this is where the
15 fitness center, swimming, tennis center is going to
16 be; is that correct?

17 A. It's one of the advertising signs that was
18 along the road. But I'm not sure as to --

19 Q. Would you hand that up to the Judge, please?

20 A. Yes, sir.

21 [Defendants' Exhibit Number 43 is marked for
22 identification by the court reporter.]

23 Q. Then 43 is a more recent photograph of a
24 sign. Will you agree with me that tennis and fitness
25 center have been obliterated from the sign?

1 A. I will. Yes, it has been.

2 Q. All right. You know, we talked about
3 maintaining the property. I want to talk a little bit
4 more about some of the other covenants, just briefly.
5 We're not going to go into great detail with them. I
6 will tell you that my client showed me recently a
7 portion of the easement behind their neighbor's
8 property. I can testify that there's been manure
9 spread on that, because I couldn't get within about 50
10 yards of it without smelling it. Pretty fresh, I
11 guess. I'm not an expert on that stuff. If Judy has
12 to come up and identify these, that's fine.

13 [Defendants' Exhibit Numbers 44 and 45 were
14 marked for identification by the court reporter.]

15 Q. What I will tell you is these are two
16 photographs of that area. Do you recognize the area?
17 It may be hard to -- as an officer of the court, I
18 will tell you that that's the easement behind their
19 neighbor's house, one of their neighbor's house -- the
20 Traniff's property, to the rear of their property, on
21 the trail.

22 A. This is behind the Douglasses home. Yes, it
23 is.

24 Q. When I talk about an easement, there's an
25 easement that runs past it that's used for trails;

1 right?

2 A. That's correct.

3 Q. In addition to a general easement around all
4 the properties, you've got these easements between
5 adjoining properties; is that correct?

6 A. Yes, that's correct.

7 Q. There's been testimony in this case, for
8 example, that because of the way Jay and Judy maintain
9 their property, no one can access the easement between
10 their two lots. You've heard that testimony?

11 A. I have.

12 Q. They'll talk about that a little bit later.
13 But here's my question. You've identified the
14 property. Can you identify the horse manure?

15 A. I can.

16 Q. Can't smell it in the photographs, but it's
17 clearly --

18 A. No.

19 Q. It's been --

20 A. In fact, I've ridden through there the last
21 two days and I didn't smell it, didn't even see it,
22 really. I guess it's ground in the ground like it
23 does.

24 Q. You might want to take another look, but
25 that's up to you. My question, that's clearly within

1 the trail of the easement for everybody's use; is that
2 correct?

3 A. That is.

4 Q. I appreciate you've got to do something with
5 horse manure. I understand that. Are the residents
6 allowed to use a spreader to just disperse it on an
7 easement out there?

8 A. We haven't ever really got into a lot of
9 discussion about that. I think if it got to being
10 done a lot, then it could end up maybe creating a
11 problem. But so far -- and I ride the trails quite a
12 bit. I've seen very little of that done anywhere.
13 It's not enough to matter. It doesn't hurt. You're
14 in horse territory. It goes in the ground and it
15 actually fertilizes whatever is growing in the horse
16 trail and all. But if it got to be done a lot, it
17 might end up with a problem.

18 Q. I was struck by the amount of it. I wouldn't
19 -- I wasn't talking about maybe a bucket or two. That
20 looks like a significant amount of manure that's been
21 spread in some fashion; do you agree with that?

22 A. No.

23 Q. You don't?

24 A. I don't.

25 Q. Those two photographs, you don't view that as

1 a lot of horse manure?

2 A. No, that's not a lot of manure. That was put
3 out with a manure spreader and it's not that much.

4 Q. All right, sir. If it were being spread by a
5 property owner, is that property owner in violation of
6 the protective covenants?

7 A. We've never discussed that or got into it.
8 But there's nothing -- it's really -- if it got out of
9 hand, I'd confront them about it.

10 Q. The specific question, though, is, spreading
11 manure in a common easement, or common areas, on the
12 trail, is that a violation of the protective covenants
13 at Three Runs?

14 A. No.

15 Q. It is not?

16 A. Not as of yet.

17 Q. What is the rule with regard to parking
18 utility trailers and horse trailers?

19 A. There is not any real set rules. You know,
20 to -- you know, this is a horse community. If you've
21 got horses, you've got a horse trailer. You've got to
22 park the horse trailer on your property. So, it
23 hasn't been a big problem at all at Three Runs. I've
24 heard no complaints about it.

25 Q. Let me ask you --

1 A. I do know that we have some residents -- the
2 very first one that bought into Three Runs, I notice
3 it sits in there all the time. It sits right up in
4 the front of his property all the time.

5 [Defendants' Exhibit Number 46, 47 and 48
6 were marked for identification by the court
7 reporter.]

8 Q. Let me show you Exhibits 47 -- excuse me, 46,
9 47, 48. They're various photographs of properties, I
10 will tell you, in Three Runs depicting trailers.

11 A. Okay.

12 Q. My question's going to be whether or not
13 those property owners are in compliance with the
14 covenants? With the parking of those trailers,
15 whether they be horse trailers or utility trailers?

16 A. Well, those -- the two right here, number 46
17 and number 48, those are in compliance. Number 47,
18 those were in there while they were in construction,
19 and these were the folks that I gave one extra year to
20 finish up because they were traveling out of town and
21 building their home. Those would not be in
22 compliance, but they are not there any longer.

23 Q. All right, sir. At the time, were they in
24 compliance with the covenants?

25 A. Yes, because they were building at the time.

1 Q. I guess my simple question to you, do you see
2 any violations of covenants in these three photographs
3 that I just gave you, 46, 47, and 48?

4 A. No, I don't.

5 Q. You allowed Carl to build a television tower
6 on this property?

7 A. I did.

8 Q. That was not allowed by the covenants; is
9 that correct?

10 A. That's right.

11 Q. Jobridge, is that how you pronounce his last
12 name? Carl?

13 A. I'm going to let you pronounce it for me.

14 Q. I try not to offend people by mispronouncing
15 your name. That's why I called him Carl. That took
16 an exception to the covenants?

17 A. It did.

18 Q. One that you approved?

19 A. I did.

20 Q. Singularly, in your sole discretion; is that
21 correct?

22 A. That's correct.

23 Q. It's kind of like what we were talking about
24 yesterday. You've really got sole decision making
25 authority at Three Runs; is that correct?

1 A. Until 95 percent of the properties in the
2 2,400 acres are sold.

3 Q. You've told the Court you really can't tell
4 anybody when that's going to happen, when there'll be
5 some other input from property owners; is that
6 correct?

7 A. That's correct.

8 Q. Would you understand how somebody who's
9 invested a million dollars in a piece of property, and
10 seeing -- don't misunderstand, I'm not saying they're
11 big, big issues. The horse manure, signage, trailers,
12 a television tower, things like that. But would you
13 understand, at least, how somebody who's invested that
14 amount of money in a piece of property would be
15 concerned about the even, the uniform enforcement of
16 covenants? Would you understand that?

17 A. Yes, I can -- I can understand how they could
18 be concerned. I'm also -- you know, other homeowners
19 are concerned about the condition of their property,
20 which is much more than any of the things you just
21 mentioned, about the horse trailers, a little bit of
22 horse manure in the horse trail. None of that shows
23 up and brings the property down as does the Jacobs'
24 property.

25 Q. Isn't that a matter of opinion, though,

1 Wayne? Really?

2 A. Yes, it is, and it's my opinion as being in
3 charge of the covenant -- I mean, the homeowners
4 association.

5 Q. That's fair. But if I came to you and said
6 it's my opinion that I don't like the tower, or I
7 don't like the fact that someone's putting manure in
8 an area where I'm riding my horse, or I'm concerned
9 about trailers because I don't want to look at them,
10 I'm not an equestrian person, if I told you those
11 things, would you at least respect my opinion?

12 A. I definitely would, yes.

13 Q. All right. Because Ms. Laverghetta testified
14 yesterday -- she's in real estate. When she bought
15 this piece of property, and she deals with property,
16 she wants to see covenants, she wants to see
17 restrictions that are in place, going to be enforced,
18 and are not going to be changed, she can rely on them.
19 That's not unreasonable, is it?

20 A. No, it's not.

21 Q. All right. But the fact is -- you have a
22 beautiful development. You're to be commended for the
23 work you've done. But the fact is, you've got the
24 sole right, the sole discretion, the sole ability to
25 change the rules any time you want to; isn't that

1 true?

2 A. Yes.

3 MR. MCCANTS: Judge, may have I just a
4 second?

5 THE COURT: Sure.

6 Q. [Mr. McCants] Go to 2168 of the covenants,
7 page 2168. If you look at page 2168, would you read
8 that first paragraph, animals?

9 A. Horses, stable --

10 Q. No, you don't have to read it out loud. Just
11 to yourself.

12 A. Okay.

13 Q. What I'm going to ask you is whether or not
14 you think this is the covenant that applies to not
15 dumping manure outside your property and whatnot.

16 A. Okay.

17 Q. Do you agree with me that that says don't
18 dump your manure outside property?

19 A. Yes, sir.

20 Q. That's, for the record, paragraph one,
21 article three, land use restrictions in the protective
22 covenants for Three Runs Plantation. Then the next
23 page, 2169, trucks, trailers, and mobile homes. Can
24 you take a moment to just look at that, please?

25 A. Okay.

1 Q. The last sentence reads, horse trailers,
2 campers, motorcycles, motor bikes, mobile homes, motor
3 homes, vans, travel trailers, panel or service trucks,
4 boats, and boat trailers may be kept on a lot, so long
5 as said vehicles are not displayed in an unsightly
6 manner or spoil the aesthetic beauty of the
7 subdivision, and are stored or parked in the rear
8 yards so that they are not visible from any street.
9 Does that mean that if I'm riding down one of the
10 roads in your subdivision and look, I should not be
11 able to see a horse trailer from the street?

12 A. No, it does not.

13 Q. All right. Help me understand what that
14 means.

15 A. It just says they're not to be unsightly, or
16 they're not to be in an unsightly manner. You know, I
17 haven't seen any in an unsightly manner. On the horse
18 trailers, it's a horse community, there's paddocks and
19 there's fences, and the people have their trailers
20 parked within those areas. So, it's -- in my personal
21 opinion, they're not unsightly at all.

22 Q. It's your personal opinion that in terms of
23 the protective covenants, if I'm driving down the
24 street, take a picture of a horse trailer from the
25 street, whoever owns that horse trailer is not in

1 violation of the protective covenants; is that your
2 testimony?

3 A. Yes.

4 MR. MCCANTS: Those are all the questions
5 I've got. Thank you, Mr. Raiford.

6 THE WITNESS: Thank you.

7 THE COURT: Redirect?

8 **REDIRECT EXAMINATION**

9 **BY MR. WARLICK:**

10 Q. Wayne, earlier you said that the
11 architectural control committee actually determine
12 landscape plans?

13 A. Yes, sir.

14 Q. You didn't know whether or not that was in
15 the protective covenants. But I call your attention
16 to article two, paragraph one.

17 A. What page number?

18 Q. It's the fourth page. No, third page.

19 A. Okay.

20 Q. Submission of plans.

21 A. Yes, sir.

22 Q. Would you just read that for the benefit of
23 the courtroom?

24 A. All of that section?

25 Q. That first paragraph.

1 A. Architectural control committee, hereafter
2 called the ACC, has been duly set up and appointed by
3 the developer to exercise such jurisdiction and
4 function with respect to all lots at Three Runs as may
5 be delegated to it under the charter and by-laws of
6 the association, and as may now or hereafter be
7 amended and be additionally bestowed upon it by terms
8 hereunder. Plans and specifications for all proposed
9 improvements and landscaping upon the lots must be
10 submitted in writing to the ACC, which is hereby
11 vested with the full power and authority to approve or
12 disapprove the same, in whole or in part, or required
13 modification the same as it may in its discretion deem
14 proper. No construction, landscaping, or erection of
15 any improvements of any kind may be undertaken without
16 the prior written approval. The ACC shall have the
17 right to refuse to approve any building plans,
18 specifications, site plans, or grading plans which are
19 not suitable or desirable in its own opinion for any
20 reason, including purely aesthetic reasons. The ACC
21 nor agent thereafter, nor the developer, shall be
22 responsible in any way for any defects in any plans or
23 specifications submitted, revised, or approved.

24 Q. That's good enough. Now, Clarke has examined
25 you at length about what the first sentence in

1 paragraph 12 under article three means.

2 A. What paragraph?

3 Q. Paragraph 12 under article three, roman
4 numeral three.

5 A. The bottom page number, Byrd?

6 Q. This one doesn't have it.

7 THE COURT: 2171 is the page number.

8 THE WITNESS: What, now?

9 THE COURT: 2171.

10 A. What is the question again?

11 Q. [Mr. Warlick] The next sentence, in the
12 event -- that's the second sentence in that paragraph.
13 In the event that an owner does not maintain said
14 owner's lot in such first class condition, the
15 association shall be entitled to perform the necessary
16 work to said lot to bring it up to an acceptable
17 condition in the association's sole discretion, and
18 all costs so incurred by the association be treated as
19 an assessment.

20 Now, the association is the developer as of
21 right now?

22 A. Yes.

23 Q. So, when Clarke says in your sole discretion
24 you make these decisions, is that your understanding?

25 A. Yes.

1 Q. Anybody who's got a question about what's
2 clean and first class condition can ask you?

3 A. That's correct.

4 Q. The purpose that's in here is to avoid
5 lawsuits like this and disputes like this; is it not?

6 A. Yes, it is.

7 Q. All the other residents in Three Runs have
8 accepted your decision on what's clean and first class
9 condition?

10 A. They have.

11 MR. MCCANTS: Object.

12 THE COURT: Sustained.

13 Q. [Mr. Warlick] When we talk about cutting the
14 grass, actually what the covenant says is maintain the
15 lots; does it not?

16 MR. MCCANTS: Object. Speaks for itself

17 A. It does.

18 THE COURT: Hold up. Ask the question again.
19 Let me hear the objection again.

20 MR. WARLICK: What is the difference between
21 maintaining a lot and mowing the grass.

22 THE COURT: Is there still an objection to
23 that question?

24 MR. MCCANTS: No, sir.

25 THE COURT: He's withdrawn it. Go ahead and

1 answer.

2 A. Same -- it's the same thing. You can turn
3 words around, but it's keep it in a clean condition.

4 Q. [Mr. Warlick] What I had in mind is, one
5 cuts the grass and after a period of time it grows
6 back up and you have to cut it again.

7 MR. MCCANTS: Leading.

8 THE COURT: I sustain the leading. Who,
9 what, where, when, how.

10 MR. WARLICK: I'm trying to see if I can get
11 the difference between the language, maintaining
12 and cutting the grass.

13 Q. [Mr. Warlick] To keep a lot in clean, first
14 class condition would require cutting when it is
15 required?

16 A. That's correct. It's common sense.

17 Q. And some of that's dependent on what season
18 of the year it is and what the weather's doing?

19 A. Yes. Rainy season can make it grow even
20 more.

21 Q. Of course, as Clarke says, different people
22 may have a different interpretation of clean and first
23 class condition, what that means; you would agree with
24 that statement, would you not?

25 A. Yes.

1 Q. So, who is the person to decide, is the
2 ultimate arbitrator under these covenants?

3 A. The HOA, which is me.

4 MR. WARLICK: No further questions.

5 THE COURT: Thank you.

6 **RECROSS-EXAMINATION**

7 **BY MR. MCCANTS:**

8 Q. If we could just go back to the language that
9 Mr. Warlick had you read?

10 A. All right.

11 Q. This is on 2165. We got on the subject
12 because I believe I'd asked whether or not you've got
13 to approve planting of trees and whatnot on someone's
14 property. Is it your understanding under this portion
15 of the protective covenants that's true? That you
16 have to approve, or the ACC has to approve, the
17 planting of any shrubs, trees, or anything else on a
18 property owner's property?

19 A. Under the ACC, yes; that's correct.

20 Q. So, if a property owner wanted to plant one
21 tree on their property, they've got to get permission
22 from you?

23 A. They're supposed to have permission; that's
24 correct.

25 Q. Where does it say that?

1 A. I didn't read -- you'll have to --

2 Q. I'll read it. I just don't see it. It says
3 the ACC has been duly set up to exercise such
4 jurisdiction. Now, I will say this. It says, quote,
5 plans and specifications for all proposed improvements
6 and landscaping upon the lots must be submitted in
7 writing to the ACC.

8 A. That's correct.

9 Q. Is that the language you would rely on to say
10 if I wanted -- if I lived in Three Runs, wanted to
11 plant a tree on my property, I'd have to come ask you?

12 A. That's correct.

13 Q. Until you gave me approval as to whether or
14 not the tree was satisfactory, I couldn't do it; is
15 that right? A. That's correct.

16 Q. That's the language you believe covers that?

17 A. It is.

18 Q. Then turn to page, if you would, 2166. I
19 hope you would approve it, because in paragraph two
20 there you said, since living trees, shrubs, and other
21 vegetation contribute to the aesthetic value of the
22 lots in Three Runs, you want some of them preserved;
23 right?

24 A. That's correct.

25 Q. I mean, you, yourself, recognize -- you

1 participated in the drafting of these covenants --
2 that living trees, shrubs, and other vegetation
3 contribute to the aesthetic value of your development.
4 That's common sense. Everybody agrees with that;
5 right?

6 A. Right.

7 MR. MCCANTS: Okay. That's all I've got.

8 Thank you.

9 **REDIRECT EXAMINATION**

10 **BY MR. WARLICK:**

11 Q. Wayne, you've identified a number of
12 photographs of other lots, where at various times of
13 the year the photographs were taken and the grass was
14 too high, and you said they needed to be cut?

15 A. Yes, sir.

16 Q. Are there any other property owners that have
17 chronically refused to cut their grass?

18 A. No, nobody has chronically refused. I mean,
19 there's been some drag arounds that hasn't done it
20 exactly when they're supposed to, but they do it.
21 Just like we had lot three just got cut yesterday in
22 phase one. The owner of the lot apparently had been
23 on vacation for two or three weeks or something. We
24 could not contact them in any way. Finally, we were
25 able to contact them Monday afternoon, and they said

1 yes, cut it. But we -- sometimes it drags around.

2 So, if we could've got in touch with them a month ago,
3 they'd have set to cut it. But it did go that far.

4 Now all properties in Three Runs are cut and cleaned,
5 however he wants to describe it, cleaning or cutting
6 the lots. But anyway, they're all up to standard,
7 except for the Jacobs' property.

8 Q. How often are you physically in Three Runs
9 Plantation?

10 A. I'm there. I'm in trails, I'm here, there.
11 I'm there several times a week, sometimes I'm there
12 basically -- sometimes I'm -- I haven't recently
13 because I've been so busy, but I'm running tractors,
14 or I'm riding the trails, or I'm checking. It's just
15 like the horse manure he's talking on the trail back
16 behind their house. I've ridden through there in the
17 last few days. I didn't see it. If there was a
18 complaint about it, why weren't we notified about it?
19 Just wait until you get into a courtroom and say
20 there's horse manure on a trail? I didn't know it was
21 there. I couldn't see it.

22 MR. WARLICK: No further questions.

23 MR. MCCANTS: Nothing further, Your Honor.

24 THE COURT: All right. You can step down,
25 sir. Any other witnesses from the plaintiff?

1 well put that on the record, that all that is
2 admitted in as exhibits, unless y'all have some
3 specific objection about something.

4 MR. MCCANTS: I have no objection.

5 MR. WARLICK: Your Honor, according to my
6 list I've got 15 exhibits, and again, Mr. Willis
7 has a sixteenth that I may move in when he
8 testifies.

9 THE COURT: Okay. And I think y'all went
10 through them all. I asked you to go through and
11 make sure all of them are here last time, I think
12 y'all did, and we concluded the last day. So,
13 there are no objections, then all of them that
14 have been numbered and admitted are considered
15 admitted for the purposes of this case.

16 Okay. All right. Sir, you're still under
17 oath.

18 THE WITNESS: Okay.

19 **J. WAYNE RAIFORD,**

20 Having been previously sworn, was examined
21 and testified as follows:

22 **REDIRECT EXAMINATION**

23 **BY MR. WARLICK:**

24 Q. Mr. Raiford, do you recall your deposition
25 that was taken in Mr. McCants' office on March the

1 13th, 2012?

2 A. Yes, sir.

3 Q. He just read a portion of your testimony that
4 had to do with the condition of the Jacobs' property,
5 I guess as of that time.

6 A. That's correct.

7 Q. Do you recall what you said on that occasion?

8 A. I basically remember most everything I said
9 on that occasion.

10 Q. And what did you say about the condition of
11 the Jacobs' property?

12 A. Well, I said that due to conditions of the
13 property at that time, which this was March 13, and
14 they had actually gone in and cut all around all the
15 property, which was standing waist high when this
16 lawsuit was taken out. And I had been to their home
17 five times to try to talk them into cutting the grass
18 and cleaning up their property to make it look decent.
19 And so when Mr. McCants asked me, Judge, about that
20 they had gone out and they had cut around -- all
21 around all this shrubbery, it was dead winter time,
22 all the leaves were off of that shrub stuff they had
23 out there, so from the road it didn't look that bad.
24 And as bad as I hate to ever get involved in court
25 cases, if it hadn't looked like that the whole time, I

1 would have not taken out the lawsuit or anything. But
2 I did have homeowners at the time.

3 The grass were standing this high, the weeds
4 were -- nothing in there was cut like it was at that
5 time. And so Mr. McCants took what I said as I
6 thought that everything would have been good, I
7 wouldn't have taken out the lawsuit. But when the
8 lawsuit was taken out, their property looked hideous.
9 It was just -- nobody's property over there looks like
10 that. And, Judge, if you had an opportunity to ride
11 over there and ride through Three Runs Plantation
12 then, or even now, and see their property compared to
13 everybody else's, you will realize why we had no
14 choice but to do something about it. I'm having calls
15 from homeowners saying why are you requiring us to do
16 this and letting them get by, and I did everything I
17 could to get those folks to do that.

18 MR. MCCANTS: Your Honor, I object. This is
19 like objecting to hearsay.

20 THE COURT: Agree. Whatever that -- I'll
21 sustain that objection. Just tell me not what the
22 homeowners told you. We've had plenty of
23 homeowners' testimony. I don't know who you're
24 talking about, so just --

25 THE WITNESS: Okay.

1 THE COURT: -- respond to the question asked.

2 THE WITNESS: Judge, I was just going by
3 emails we had gotten from them and so forth.

4 A. But I saw it myself and I tried to reason
5 with these people every way I could, because the last
6 thing I wanted to do was cause confusion within the
7 neighborhood. I'm trying to sell property, I'm trying
8 to make it look the best of anybody's in town, and
9 that's the reason that even through the years we've
10 been able to still sell properties. It's because I'm a
11 on hands person, I'm there, and I see it, and I saw
12 theirs. And we couldn't get them to go along with
13 anything and it just got -- it just got worse and
14 worse.

15 And until this lawsuit got taken out, until
16 it got -- until that March 13, they had not done one
17 thing to try to up-do their yard, even -- it had
18 little pink flags and all of everything, trying to
19 make it look like that they're -- that these were
20 trees they were saving. And they were not trees, they
21 are little scrub oaks, and they're still little scrub
22 oaks, and ten years from now they won't be nice trees.
23 And they're just using this for an excuse, and why I
24 don't know. We even offered to cut the property with
25 the homeowners' tractor and send them a bill like we

1 do everybody else and that's the homeowner -- it's
2 cheap to do it. But instead, we've spent all this
3 money of the homeowners' money on this case and it's
4 just -- if it gets by, then we have got other home --
5 I mean, we've got people out of state, they keep
6 theirs cut. And if they get by with it, it just sets
7 a precedent for the whole neighborhood.

8 MR. WARLICK: That's it.

9 THE COURT: Hold your seat one second, sir,
10 for cross-examination.

11 THE WITNESS: Oh, yes, sir.

12 **RECROSS-EXAMINATION**

13 **BY MR. MCCANTS:**

14 Q. And I understand your testimony to be as of
15 March of 2012, Mr. and Mrs. Jacobs were keeping their
16 property clean in first class condition in accordance
17 with the covenants; is that correct?

18 A. No, that's not. They had much better than it
19 was before, it was nowhere near in compliance with the
20 covenants.

21 Q. So your testimony as to the time of the
22 deposition, was not in compliance with the covenants;
23 is that correct?

24 A. It was that I would not have taken out the
25 lawsuit had they had it cut as they did at that time.

1 But it still was not on par with everybody else's.

2 Q. My question, as of March of 2012, when you
3 gave sworn testimony in this case, were my clients in
4 compliance with the covenants of Three Runs?

5 A. I don't remember saying it was in compliance
6 with that. I'd have to read it to see it because I do
7 not remember reading it being in compliance.

8 Q. My question to you today, is as of the time
9 -- I'm happy to give you the deposition to look at.
10 My question to you today is whether or not, as of
11 March 2012, Mr. and Mrs. Jacobs were in compliance
12 with the covenants of Three Runs?

13 A. No, they were not.

14 Q. They were not?

15 A. No, they were not.

16 Q. Do you agree with me that you testified as
17 I've read to the Court here today? Now, I'll give you
18 the deposition to make sure, and it's highlighted --

19 MR. MCCANTS: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 A. Is that the yellow mark?

22 Q. [Mr. McCants] Yes, sir.

23 A. I said that lot looks fine the way it is
24 right now. That was with the leaves off of the trees.
25 That was where you could not hardly see it. As soon

1 as spring got there and the leaves came back, it was
2 just back to the same mess again. That was one time,
3 that was dead winter when they had got out and cut
4 between it and they had -- and it -- but that was the
5 only -- it looked okay at that moment. It had nothing
6 to do when this lawsuit was taken out.

7 Q. Now, that's fair. But as of the time you
8 gave sworn testimony, were they in compliance with the
9 covenants?

10 A. No, sir.

11 Q. All right. It looks fine, but it's not in
12 compliance with the covenants --

13 A. No, sir.

14 Q. -- is that your testimony today?

15 A. It looked much better. It looked fine. It
16 looked much better, that's what I basically said.

17 Q. That's fine. It looked fine to you, but you
18 still take the position it was not in compliance with
19 the covenants; is that correct?

20 A. That's correct.

21 Q. All right. Do you think that's entirely
22 clear from your standpoint, it looks okay to you, but
23 it's not in compliance with the covenant?

24 A. I would not have taken out the lawsuit had it
25 stayed like that year-round, but that was just at that

1 time. And that time -- even since that time they have
2 gone in and done much more improvements. Just before
3 this last court hearing, they went in and did a lot
4 more work in there, which they had not done in the
5 previous times. But it's because we were going to a
6 court case, and I don't know if they thought somebody
7 was coming to look at it or what. But they did go in
8 there and do even more than that. But they still --
9 in the winter time, in the dead of winter like we were
10 in March when everything was off of those scrub oaks,
11 it did not look as horrible as it looked all the
12 previous time before then.

13 But at that time, when you asked me that
14 question I had just ridden by and looked, and I
15 thought, you know, if these people had tried to cut
16 between all this, didn't leave it standing this high.
17 But, you know, that was after the fact.

18 Q. If the property had looked back when you
19 brought this lawsuit, the way it looked at the time of
20 sworn testimony, are you telling Judge Griffith you
21 would not have brought this lawsuit?

22 A. Possibly not. That's what I said then and
23 that was at that time of the year. And if they could
24 have held that time of the year year-round, it would
25 have looked okay, but --

1 Q. At the time of that season you wouldn't have
2 brought the lawsuit, then they were in compliance with
3 the covenants; is that correct?

4 A. I didn't say they were in compliance with the
5 covenant. You keep saying that.

6 Q. Any other reason to bring a lawsuit --

7 A. Yes.

8 Q. -- when the --

9 A. When somebody leaves their property in that
10 deplorable condition and they -- that this lawsuit was
11 taken out, that is the reason. And when I'm having
12 all my homeowners come to me saying, let's do
13 something about this, then --

14 MR. MCCANTS: Your Honor, I'm going to move
15 to strike the hearsay.

16 THE COURT: Sustained.

17 MR. MCCANTS: I don't have anything else.

18 MR. WARLICK: I don't either.

19 THE COURT: All right. Thank you, sir.

20 THE WITNESS: Thank you, Judge.

21 MR. WARLICK: All right. As a rebuttal
22 witness I call Dan Willis.

23 **DAN WILLIS,**

24 Having been previously sworn, was examined
25 and testified as follows:

1 MR. WARLICK: Were they? I just wasn't sure.

2 THE COURT: I think by agreement of the
3 parties, as I understand it, all of the exhibits
4 so far have come in with no objections. At this
5 point, all parties are in agreement that all of
6 the exhibits that have come through, and what we
7 discussed at our pre-trial, everything is in
8 evidence and admitted; is that correct?

9 MR. WARLICK: Thank you, Your Honor.

10 THE COURT: Mr. McCants, you agree with that?

11 MR. MCCANTS: Yes, I do.

12 THE COURT: Go ahead and call your witness.

13 MR. MCCANTS: Lanni Brancato, please.

14 **LANNI BRANCATO,**

15 Having been first duly sworn, was examined
16 and testified as follows:

17 THE COURT: Have a seat and give the court
18 reporter your name, and spell your last name for
19 her.

20 THE WITNESS: My name's Lanni Brancato --

21 THE COURT: You need to speak up. She has to
22 get it on the recording. Just talk like you talk
23 in open court.

24 THE WITNESS: L-A-N-N-I, B-R-A-N-C-A-T-O.

25 THE COURT: Ma'am, you're not going to be

1 able to speak that low when he's asking the
2 questions.

3 THE WITNESS: I'll talk louder.

4 **DIRECT EXAMINATION**

5 **BY MR. MCCANTS:**

6 Q. Ms. Brancato, you sound a little soft spoken.
7 We're going to try and get you to project out a little
8 bit. That's why I'm sitting here, so you'll speak so
9 the Judge can hear you; okay?

10 A. Okay.

11 Q. You don't do this every day, and I know you
12 may be a little nervous.

13 A. Yeah.

14 Q. No reason, but thank you for coming here
15 today to testify.

16 A. You're welcome.

17 Q. You reside in Three Runs Plantation with your
18 husband, Dick Brancato; is that correct?

19 A. That's correct.

20 Q. He's also going to testify as part of this
21 case; is that correct?

22 A. That's correct.

23 Q. How long have y'all lived out in the
24 Plantation?

25 A. Excuse me?

1 Q. How long have you lived in Three Runs?

2 A. Six years.

3 Q. Where'd you move from?

4 A. Florida.

5 Q. Do you like living out there?

6 A. I love it.

7 Q. What do you love about it?

8 A. Well, I love the whole atmosphere of it, the
9 trails. You know, the people are nice. I like living
10 there.

11 Q. All right. You know the Jacobs?

12 A. Yes, I do.

13 Q. You may know some of the other people in the
14 courtroom here today?

15 A. Yes, I do.

16 Q. Y'all are all neighbors; is that correct?

17 A. Most of them, yes.

18 Q. Okay. You know, at the time you and your
19 husband -- let me back up. Are you a horse person?
20 Do you ride horses?

21 A. Yes.

22 Q. All right. At the time you and your husband
23 purchased the property that you live in at Three Runs,
24 what was your understanding of whether or not there
25 would be tennis courts and a fitness center

1 constructed?

2 A. Well, there were certainly riding arenas and
3 tennis courts, it said in my covenants. The fitness
4 center came, I think, a couple of years later, after
5 we purchased.

6 Q. Are there tennis courts out there?

7 A. No, there are not.

8 Q. Did you understand there were going to be
9 tennis courts constructed?

10 A. Yes, I did.

11 Q. Do you want the tennis courts?

12 A. Well, personally, I don't play tennis, but it
13 would be a nice amenity to have. There are other
14 people that do play tennis.

15 Q. Why would it be a nice amenity to have for
16 your purposes?

17 A. Well, because it'll just add to the ambiance
18 and the value of the neighborhood.

19 Q. All right. When you say the value, you're
20 talking about the value of your property?

21 A. Yes, I am.

22 Q. Are you planning on -- I'm not trying to
23 think poorly or anything, but when your days are
24 passed on this earth, do you plan to stay where you
25 are? Are you moving somewhere else, maybe a retirement

1 home or something at some point?

2 A. I can't answer that right now. But as long
3 as I'm physically able, I will stay there until they
4 have to feed me pabulum.

5 Q. All right. I'll remember that next time I
6 try to pose that question to somebody. Obviously, you
7 want to pass the value of your home to somebody at
8 some point, whether it be family members, children,
9 something like that?

10 A. Yes.

11 Q. You want it to retain its value?

12 A. Of course I do.

13 Q. Tell the Judge what you believe as to whether
14 or not those amenities that we talked about, the
15 tennis courts, fitness center, things like that, will
16 contribute or add to the value of your property.

17 A. Yes, I firmly believe that. In fact, I've
18 had a telephone call with -- from someone in Kentucky
19 that was interested in buying there. When they found
20 out there was no tennis courts and no fitness center,
21 they were a little upset, because her husband was an
22 avid tennis player and she was a horse person.

23 MR. WARLICK: This is all hearsay.

24 Q. [Mr. McCants] Try to stay away from what
25 other people say. That's fine.

1 A. Right. Well, I was asked.

2 Q. You were. I appreciate that very much. So,
3 you certainly believe that the addition of these
4 amenities would enhance and improve the value of your
5 property?

6 A. Of course. The more -- you know, the more
7 amenities, the better.

8 Q. All right. Now, you understand right now,
9 Ms. Brancato, that you and your husband do not have
10 voting rights in the homeowners association?

11 A. Yes, I do.

12 Q. Do you want those rights?

13 A. I would like to have voting rights. I think,
14 you know, with our investment in the property we
15 should have a say on what goes on.

16 Q. Do you mind sharing publicly how much you've
17 invested in your property at Three Runs?

18 A. No, I do not.

19 Q. How much?

20 A. Probably close to \$800,000.

21 Q. I met your husband.

22 A. Uh-huh.

23 Q. He's got his way of thinking.

24 A. Yes, he does.

25 Q. Like a lot of husbands do. Like a lot of men

1 do; right?

2 A. Uh-huh.

3 Q. Are y'all trying to take over Three Runs or
4 anything like that, or trying to run the operation out
5 there?

6 A. Absolutely not.

7 Q. Why do you want at least a vote, or some kind
8 of say, in what happens there?

9 A. I like to know what's going on. You know, I
10 see, you know, the land being torn up and everything.
11 It would be nice to see a plan, and what it's going to
12 look like.

13 Q. You've gotten along all right with Mr.
14 Raiford and everything? You okay?

15 A. Yeah.

16 Q. You're not trying to push him out of any
17 investment, are you?

18 A. Of course not.

19 Q. You just want to have the opportunity?

20 A. Yes.

21 Q. How much do you guys pay in homeowners dues
22 every month?

23 A. Every month, I don't know.

24 Q. Excuse me, a year?

25 A. \$1,500.

1 Q. That's a lot of money to you, isn't it?

2 A. It's a fair amount, yes.

3 Q. What do you understand are your obligations
4 with regard to maintaining your property, the lot and
5 everything? The yard?

6 A. Well, keep everything in -- well, I, myself,
7 like it neat and clean. But that's the way it should
8 be.

9 Q. All right. Do you have occasion to see the
10 Jacobs' property?

11 A. Yes.

12 Q. Do you think they keep it neat and clean?

13 A. I do.

14 Q. Have you ever heard the term, first class
15 condition?

16 A. Yes.

17 Q. Where have you heard that from?

18 A. I think it's in the covenants. It's maintain
19 property in first class condition.

20 Q. Do you believe that they keep their property,
21 and have kept their property, in first class
22 condition?

23 A. I do.

24 Q. They've got a beautiful home, don't they?

25 A. Yes, they do. It's one of the best looking

1 ones in the neighborhood, I believe.

2 MR. MCCANTS: Thank you, Ms. Brancato. The
3 attorneys here may have a question or two for you.

4 **CROSS-EXAMINATION**

5 **BY MR. MURRAY:**

6 Q. Ms. Brancato, I'm Jeb Murray. I represent
7 the homeowners association. Let me show you what's
8 marked as Plaintiff's Exhibit 15. Take a look at
9 those four photographs.

10 A. Yes.

11 Q. Do you see a difference between the first two
12 and the second two?

13 A. Yeah, this one's mowed and this one isn't.

14 Q. Which of those properties would you say was
15 maintained in a neat and first class condition?

16 A. Probably these. These two.

17 Q. The mowed properties?

18 A. The mowed properties.

19 Q. Now, isn't it true that Mr. Raiford has
20 provided more amenities than he advertised?

21 A. No, that's not true.

22 Q. Even if he hasn't provided a tennis court and
23 a fitness center, hasn't he gone above and beyond the
24 horse, the equestrian facilities that he advertised?

25 A. Well, he only just put in some kind of cross

1 country course. But he did advertise a fitness center
2 and tennis courts.

3 MR. MURRAY: That's all I have.

4 MR. MCCANTS: Nothing further. I ask that
5 she be allowed to be excused.

6 THE COURT: All right. Thank you for coming.
7 You're excused, ma'am. Ma'am, let me add one --
8 Mr. McCants, let me just advise her same rules we
9 had with everybody. She's going to stay in the
10 court? Okay.

11 MR. MCCANTS: Call Mr. Brancato to the stand,
12 Your Honor.

13 **RICHARD BRANCATO,**

14 Having been first duly sworn, was examined
15 and testified as follows:

16 THE COURT: State your full name for the
17 court reporter, please.

18 THE WITNESS: Richard Brancato.

19 **DIRECT EXAMINATION**

20 **BY MR. MCCANTS:**

21 Q. Good afternoon, Mr. Brancato. Thank you for
22 your patience today. You're Dick Brancato?

23 A. Yes, sir.

24 Q. Your wife just testified, Lanni; is that
25 correct?

1 A. Yes, sir.

2 Q. You folks reside in Three Runs Plantation; is
3 that correct?

4 A. Yes, sir.

5 Q. You've lived out there about how long?

6 A. A little over six years.

7 Q. Your wife has testified y'all have got about
8 \$800,000 in the property out there. That is, your
9 land and your house; is that correct?

10 A. House and barn and fence, landscape, all
11 that.

12 Q. You like living out there?

13 A. Yes, sir.

14 Q. A lot, or what?

15 A. Out of all the places I've been to in Aiken
16 County, it's one of the nicest.

17 Q. You've been around different places in the
18 country. How many different places have you lived?

19 A. Seven or eight.

20 Q. What line of work were you in?

21 A. Electronics.

22 Q. Got you. All right. Now, I know a little
23 bit about you, a little bit about your involvement in
24 Three Runs. You and I have talked about this case a
25 little bit. When you bought the property out there,

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1 certain amenities were listed, promised, said they
2 were going to come about; is that fair?

3 A. Yes, sir.

4 Q. I want to ask you about tennis courts and
5 fitness center. Has the tennis courts been
6 constructed?

7 A. Not to my knowledge.

8 Q. How about the fitness center?

9 A. No, sir.

10 Q. There's been other amenities constructed; is
11 that correct?

12 A. Yes, there have been.

13 Q. Do you want tennis courts at Three Runs?

14 A. I'd like to see it. I think it would help.
15 Yes, I would.

16 Q. How about fitness center?

17 A. Fitness center would definitely be nice.

18 Q. Everybody needs a little fitness. You're
19 saying you would probably not use the tennis courts,
20 but you'd use the fitness center?

21 A. Yes, I would.

22 Q. But you would want the tennis courts anyway;
23 right?

24 A. That's part of the package. I just think it
25 would add to the value.

1 Q. That was going to be my question. Why do you
2 want the tennis courts? Why is that?

3 A. I think it would add to the total value of
4 the property, my property, Three Runs.

5 Q. Don't think it could hurt anything?

6 A. No, I doubt it.

7 Q. You feel like you were promised tennis courts
8 and a fitness center?

9 A. It was in my contract, yes.

10 Q. All right.

11 A. I figure it should be there.

12 Q. Promised to you?

13 A. Yes, sir.

14 Q. All right. Now, are you going through a --
15 you look great in my mind. Are you going to a fitness
16 center these days?

17 A. I go on and off, yes, sir.

18 Q. Where do you go when you go?

19 A. Gold's.

20 Q. How far is Gold's from Three Runs?

21 A. Six, seven miles.

22 Q. Three Runs is out near New Ellenton?

23 A. Yes, sir.

24 Q. Gold's is -- where is Gold's?

25 A. Pine Log.

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1 Q. On Pine Log; okay. Now, let's talk about the
2 HOA. I asked your wife, I asked her and she confirmed
3 it. You've got your desire of having things done in a
4 particular way; is that a fair statement?

5 A. Yes, sir.

6 Q. You're pretty headstrong in that regard,
7 aren't you?

8 A. I could be.

9 Q. Do you want a vote, a say in the way the
10 homeowners association at Three Runs is operated?

11 A. Yes, sir, I think we all should have one.

12 Q. Tell Judge Griffith why you want a say, or
13 you want a vote.

14 A. I think it would be advantageous so everyone
15 has a say, so we all could reach a mutual agreement,
16 and see that the majority rule worked.

17 Q. I know you and Wayne Raiford have not always
18 seen eye to eye on things; is that fair?

19 A. That's correct.

20 Q. But at the same time, have y'all agreed more
21 than disagreed?

22 A. I agree on most of the things he's done, yes.

23 Q. Just when you disagree, you just let people
24 know that a little more than maybe some other folks;
25 is that right?

1 A. I think it would probably be said that I'm a
2 little more vocal.

3 Q. All right. Are you trying to take over Three
4 Runs Plantation homeowners association?

5 A. I have no intention to, no desire to. I'm
6 retired and I want to stay that way.

7 Q. I was going to ask. You kind of enjoyed your
8 working life; right?

9 A. Yes, sir.

10 Q. You're ready to slow down a little bit?

11 A. I've slowed down since before 2000, when I
12 retired.

13 Q. But you have not lost the desire to be part
14 of a process, have you?

15 A. No, sir.

16 Q. All right. You know Jay and Judy?

17 A. Yes, sir.

18 Q. You know them socially and whatnot?

19 A. Uh-huh.

20 Q. You have visited them at their home?

21 A. Yes, sir.

22 Q. What is your understanding of the
23 requirements for property owners to maintain their
24 property in Three Runs?

25 A. The area should be mowed and kept in nice

1 repair, first class condition. There shouldn't be
2 brush and unsightly things laying around on a
3 property.

4 Q. You use first class condition?

5 A. Yes, sir.

6 Q. Are those the words you understand are in the
7 covenants?

8 A. Uh-huh.

9 Q. You're going to have to say yes for the court
10 reporter.

11 A. Yes, sir.

12 Q. You're fine. In your opinion, based upon
13 what you've seen of the Jacobs' property, have they
14 done that since they've lived in Three Runs?

15 A. Yes, sir, I believe they have.

16 Q. Their property's a little bit different than
17 other homeowners, isn't it?

18 A. It's more wooded, sir.

19 Q. Is it your understanding that that's okay
20 within the covenants? Is that your understanding?

21 A. I would believe it would be.

22 Q. Do you know of any requirement, any rule,
23 regulation, or provision that says each homeowner has
24 to keep their property exactly or similar to what
25 other homeowners do?

1 A. No, I do not.

2 Q. That's certainly not in the covenants, is it?

3 A. No, sir, it is not.

4 Q. Just because folks keep their property a
5 little bit different, don't mean they're outcasts or
6 violating any covenants, does it?

7 A. No, sir, it doesn't.

8 MR. MCCANTS: I think that's all I've got,
9 Mr. Brancato. I appreciate you coming. One of
10 these attorneys will certainly have some questions
11 for you.

12 **CROSS-EXAMINATION**

13 **BY MR. WARLICK:**

14 Q. Mr. Brancato, my name's Byrd Warlick. I
15 represent the homeowners association and Wayne
16 Raiford. Mr. Brancato, I hand you two photographs,
17 show you the first two. Would you say that property's
18 well maintained in accordance with the way most places
19 in Three Runs appear?

20 A. Yes, sir.

21 Q. I hand you what's been marked Plaintiff's
22 Exhibit --

23 MR. WARLICK: Is this 13 or -- it looks like
24 15. It is 15, Your Honor.

25 Q. [Mr. Warlick] Ask you if that looks like

1 that property's being maintained?

2 A. I think it's in good condition. There's no
3 unsightly brush.

4 Q. But it's nowhere close to what this one looks
5 like, is it?

6 A. Well, in my opinion, this could be done the
7 day before it was mowed, and this is taken the day of
8 the mowing.

9 Q. So, this one needs mowing, and this one's
10 been mowed?

11 A. No, I think this is in good condition. It's
12 just that one's shorter.

13 Q. Are there any amenities at Three Runs that
14 were not advertised, that have been put in since you
15 bought?

16 A. I'm sorry, not advertised?

17 Q. Yeah. I know about the tennis courts and
18 swimming pool. I'm talking about the dressage area
19 and the additional jumping rink that's been added at
20 the end of, I think it's called Three Runs Plantation
21 Drive.

22 A. Yes.

23 Q. Was that advertised?

24 A. That was supposed to be another section down
25 in that area. I'm not exactly sure what was going in

1 there.

2 Q. Was it in the brochure?

3 A. In one of the brochures, yes, sir, it was.

4 Q. That there were going to be two dressage
5 areas and two jumping rings?

6 A. There was going to be another ring at that
7 end, and there was going to be some other stuff.

8 Q. What about the cross country jumping area;
9 was that advertised?

10 A. No, I don't believe it was.

11 Q. Has it been installed?

12 A. I believe it has.

13 Q. What about the cabanas and the picnic tables;
14 was that advertised?

15 A. Cabanas and picnic table?

16 Q. Outside the pool area.

17 A. Yes, it was. That whole area was advertised,
18 pool, barbeque section, that whole area.

19 Q. Have there been any amenities added, to your
20 knowledge, that were never advertised?

21 A. I'm not sure if the ones at the far end of
22 Three Runs Plantation were or were not advertised.

23 Q. That's fine. Mr. Brancato, Mr. Raiford has
24 just given me a list of things that he says that he's
25 put in that were never advertised. I'm going to ask

1 you if you're aware of them. Six picnic sheds along
2 the creek.

3 A. They've been there since time zero, so I
4 don't know if they were advertised.

5 Q. That's fair enough. A brand new cross
6 country arena. Have you seen that in any of the
7 advertisements that you saw?

8 A. If that's the one at the far end of Three
9 Runs Plantation Road, no.

10 Q. A new jump area? That's at the end of Three
11 Runs Plantation, too.

12 A. I think A and B are the same place.

13 Q. There's a new dressage area there, too, isn't
14 there? At the end of Three Runs Drive?

15 A. Well, I wouldn't call it a dressage area.
16 It's a cleared area.

17 MR. WARLICK: That's all I've got of this
18 witness.

19 THE COURT: Anything else?

20 MR. MCCANTS: Just very briefly.

21 **REDIRECT EXAMINATION**

22 **BY MR. MCCANTS:**

23 Q. What he just talked about were equestrian
24 facilities; is that correct?

25 A. Yes, sir.

1 Q. Are you an equestrian?

2 A. I was. I don't ride anymore.

3 Q. Have you ridden since you've -- how long have
4 you not ridden? When's the last time?

5 A. Ten years ago.

6 Q. You haven't been an equestrian since you
7 bought your property at Three Runs?

8 A. Right.

9 Q. Your wife is, but you're not?

10 A. She rides just about daily.

11 Q. You'd be interested in non-equestrian type
12 amenities; is that fair?

13 A. Well, yeah, that's why we came here. We had
14 amenities promised for my wife, and amenities promised
15 for myself.

16 MR. MCCANTS: Got you. Thank you.

17 MR. WARLICK: He may be excused.

18 THE COURT: Thank you, sir.

19 MR. MCCANTS: Judge, we've got another lay
20 witness, but we got a message that she's got a
21 family issue. May I have a second just to check
22 on her?

23 THE COURT: Okay.

24 MR. MCCANTS: If I don't call her, then we're
25 down to three witnesses, just for your

1 information. I suspect the three of them are
2 maybe medium to long. Do you want to start them?

3 THE COURT: Well, I mean, if you want to
4 check on that one. But if she's going to be a
5 while, then I would say start one of your other
6 ones.

7 MR. MCCANTS: I'd like to have a chance to
8 check on her. I don't mind carrying people out of
9 order. My next witness would be Mr. Jacobs. If
10 we start him, I know that we'll probably be with
11 him for a while. I'm going to leave it to you to
12 tell me whether or not to proceed.

13 THE COURT: When you say you want to check on
14 her, you're talking about five minutes? Ten
15 minutes? What are we talking about?

16 MR. MCCANTS: Just got to make some phone
17 calls.

18 THE COURT: Well take ten minutes. But yeah,
19 then I'd like you to call the other witness. We
20 can at least start on them.

21 MR. MCCANTS: All right, sir.

22 THE COURT: We're adjourned for ten minutes.

23 [Off the record from 12:58 p.m. to 1:07 p.m.]

24 THE COURT: Mr. McCants, where are we?

25 MR. MCCANTS: We can't find that witness.

1 I'm going to go ahead and call Mr. Jacobs, Your
2 Honor.

3 JAY J. JACOBS,

4 Having been first duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCCANTS:

8 Q. You're Jay Jacobs, one of the defendants in
9 this case?

10 A. I am.

11 Q. Along with your wife?

12 A. Yes.

13 Q. You reside in Three Runs Plantation; correct?

14 A. I do.

15 Q. Where are you from, Mr. Jacobs?

16 A. Originally from Pennsylvania. I've been here
17 ever since December of '09.

18 Q. When you moved down here, it was to Three
19 Runs Plantation; is that correct?

20 A. It was.

21 Q. Where did you live in Pennsylvania?

22 A. In various places, mostly in the Philadelphia
23 area and eastern Pennsylvania.

24 Q. What have you done during your professional
25 working life?

1 A. Well, I was a college teacher for 12 years,
2 then I was in public accounting for about 15 years,
3 and then I worked for a firm that provided continuing
4 education to CPAs.

5 Q. You still do that?

6 A. I still do that on a part-time basis.

7 Q. What brought you to our fair community?

8 A. Well, Judy and I were looking for a place to
9 retire, and we both set out our so-called non-
10 negotiable demands of what we expected in a retirement
11 area. We started looking around and we wanted to be
12 in an area that was not cold in the winter. We wanted
13 to be near a place that is reasonably urban, which I
14 think Augusta would fit it, and Charlotte's not that
15 far. We wanted proximity to cities and cultural
16 things. Of course, Judy is a horse person, so she
17 wanted a lot of equestrian facilities.

18 Q. Are you a horse person?

19 A. I am not.

20 Q. You like horses okay, you just don't ride;
21 correct?

22 A. They're very nice, yes.

23 Q. All right. You are what we refer to as a
24 non-equestrian; is that correct?

25 A. Yes. I'm a horse husband.

1 Q. All right. You listed your non-negotiables,
2 as you call them. I assume you shopped around?

3 A. We did.

4 Q. How did you do that?

5 A. We searched on the internet. We looked at a
6 number of places in Georgia and North and South
7 Carolina. Florida at the time was a little out of our
8 price range because the market hadn't fallen. Also,
9 Judy's mother lives there and said don't come here,
10 it's too hot. So, we looked around, basically in the
11 southeast, and we liked Aiken the most. Both of us
12 did.

13 Q. All right. How did you find Three Runs?

14 A. We used Courtney Conger as a real estate
15 agent. She took us around to a number of places and
16 Three Runs was one of them. We liked Three Runs. We
17 liked it better than the other places that she showed
18 us, and we thought it would be a good place for us to
19 eventually live.

20 Q. Did she give you any written information,
21 marketing information?

22 A. She gave us a brochure, I guess, that's been
23 passed around.

24 Q. May I show you this exhibit here? For the
25 record, it's Defendants' Exhibit Number 4. Is that

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1 the brochure Ms. Conger gave to you?

2 A. I believe it is, yeah.

3 Q. All right. It had several documents inside
4 of it; is that correct?

5 A. Documents inside?

6 Q. Well, several different pieces of material,
7 several different items of information?

8 A. Yeah.

9 Q. Of course, the record shows that you
10 subsequently purchased two lots in Three Runs; is that
11 correct?

12 A. Yes, we did.

13 Q. What road in Three Runs?

14 A. We live on Hiawassee Run.

15 Q. Now, what was the purchase date?

16 A. I don't remember the exact date, but I think
17 it was in --

18 Q. What year?

19 A. -- November or December of '07.

20 Q. '07?

21 A. Yeah.

22 Q. There was a period of time where you didn't
23 develop either of the lots; is that correct?

24 A. That's correct.

25 Q. When did you -- the record shows you built a

1 house on the lot. When did you close on the
2 structure, the house?

3 A. I think it was in December.

4 Q. Of?

5 A. I'm sorry. December of '09.

6 Q. So, about two years?

7 A. Yes.

8 Q. Between date of purchase of the land and when
9 you closed on the home. May I trust that upon closing
10 you moved into the house?

11 A. Yes. My best memory it was a Friday, and we
12 moved into the house on a Tuesday.

13 Q. Very good. We've seen pictures of your home.
14 Seen a lot of pictures of land and things like that.
15 How much did you spend for your two lots?

16 A. For the acreage?

17 Q. Yes, sir.

18 A. \$280,400, some small number of hundreds of
19 dollars.

20 Q. How much did it cost to build your house?

21 A. I think probably -- including the landscaping
22 and the -- probably around 800 or 850,000.

23 Q. All told after you've done all your
24 improvements trying to make yourself a home out there,
25 how much money have you got invested in that real

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1 estate and that house?

2 A. Well over a million dollars.

3 Q. A significant investment --

4 A. It is.

5 Q. -- from any perspective; is that fair?

6 A. And from mine, too. We consider that a very
7 significant expenditure.

8 Q. I understand. Now, I struggled with this
9 question with Ms. Brancato. Let me try to rephrase
10 it. You plan on staying in this house until the end
11 of your time?

12 A. Yes. Our daughter has informed us that we
13 have to be nice to her because she picks our nursing
14 home. Otherwise, we're just staying there until we
15 have to go to one.

16 Q. At some point, you may move to a long term
17 residential care type facility; is that correct?

18 A. It's possible, yes.

19 Q. Certainly, at some point you're going to have
20 to sell your home; is that correct?

21 A. That's correct.

22 Q. So, when we talk about real estate, and we
23 talk about homes and things like that, you're building
24 them for a place to lay your head. What else are you
25 doing?

1 A. Well, I think we're making an investment.
2 We're also creating ties to the community. We want to
3 have a legacy to leave for our daughter. If she ever
4 wanted to live there, or if she wanted to sell it
5 after we leave, she would have a very significant
6 investment.

7 Q. That's one way of just saying you want your
8 property to hold its value and increase in value; is
9 that fair?

10 A. Absolutely.

11 Q. You're an accountant?

12 A. I am.

13 Q. At least at the time you purchased this
14 property in 2007 --

15 MR. WARLICK: Your Honor, if I may, he's
16 asked a whole series of questions where he's made
17 a statement and says correct, or do you agree.
18 I'm trying not to object because I want us to get
19 through as quick as we can, but so many of those
20 are horribly leading questions, when he makes a
21 statement and says correct, or do you agree with
22 me.

23 THE COURT: All right. I think we've
24 probably had it from both sides on there, but
25 let's try and keep it who, what, where, when, how

1 on direct.

2 MR. MCCANTS: I didn't think it was horrible,
3 Judge. I was leading, just trying to move things
4 along.

5 THE COURT: I think it is leading, but it's
6 gone on. I understand the objection. Let's just
7 who, what, where, when, how.

8 Q. [Mr. McCants]. You're a CPA?

9 A. I am.

10 Q. In 2009, what were the relatives merits of
11 investing in real estate?

12 A. In 2009, I think the market was
13 deteriorating, and probably it wasn't a good time.

14 Q. How about today?

15 A. Today, I read in the newspapers that housing
16 is getting better, I still don't think it's a
17 wonderful time. There are so many houses in
18 foreclosure and so forth. Probably not a good time to
19 do it today either.

20 Q. Do you understand that your house has lost
21 value due to the economy alone?

22 A. Yes, I do.

23 Q. Let's talk about the amenities that we've
24 been discussing in this proceeding. You've been here,
25 you've listened to the testimony when we've been

1 talking about the fitness center and tennis courts;
2 correct?

3 A. Yes.

4 Q. Tell the Court what your position is with
5 regard to the tennis courts and the fitness center,
6 whether or not you were promised that, whether or not
7 they've been delivered, things like that.

8 A. We were promised the tennis courts, I think
9 in the literature that we received. Also, Courtney
10 Conger told us the tennis courts would go in. We said
11 how do we know that's going to happen, because so many
12 developments have gone belly up, or maybe there's some
13 way that the developer can avoid it. She said, you
14 don't have to worry with this man. He is making this
15 development as a labor of love for a horse
16 development. He will carry through on everything. He
17 will provide those amenities.

18 Q. This was Ms. Conger talking?

19 A. Yes.

20 Q. That was on behalf of Mr. Raiford; is that
21 correct?

22 A. Yes.

23 MR. WARLICK: I believe the testimony was she
24 was their agent.

25 MR. MCCANTS: No.

1 A. I said she was a real estate agent.

2 THE COURT: Do we have an objection?

3 THE WITNESS: I thought she was your agent?

4 THE COURT: No, sir. I want to know --

5 MR. WARLICK: Did you say earlier that you --

6 THE COURT: I want to know if we've got an
7 objection.

8 MR. WARLICK: How did you find Courtney
9 Conger?

10 THE COURT: Don't --

11 MR. WARLICK: Excuse me. I withdraw, Your
12 Honor.

13 Q. [Mr. McCants] These are words spoken by Ms.
14 Conger; is that correct?

15 A. Yes.

16 Q. Sounds like you were doing some inquiring; is
17 that fair?

18 A. Some.

19 Q. In your asking the question, inquiring --

20 A. We asked.

21 Q. Why?

22 A. Because I knew that some developments had not
23 done well in the past, that there was -- at the time
24 we bought the property, I guess the land boom was sort
25 of just ending. I could see that at some point the

1 bubble might burst. I was concerned that the
2 development may not be completed, as has happened at
3 some of the other developments. Incidentally, some
4 that we looked at. But Ms. Conger was very specific,
5 that not only was this a labor of love for the horse
6 community, and he was dedicated to doing everything.
7 She also said he had no mortgages on anything, that he
8 had sufficient funding to finance everything, and
9 there would be no problems.

10 Q. All right. Well, we're in court, so that --
11 the fact of whether or not there are problems speaks
12 for itself; correct?

13 A. I'm sorry, I didn't hear that?

14 Q. Never mind. Have there been tennis courts
15 constructed?

16 A. The tennis courts have never been
17 constructed.

18 Q. How about the fitness center?

19 A. Not that I've seen.

20 Q. Jay, are you a tennis player?

21 A. Actually, we did play a lot in Pennsylvania,
22 and then both of us had surgeries. I had hip surgery,
23 she had knee surgery, and we couldn't play for a
24 while. But by the time we moved here, I think we
25 could both play doubles. I'm not sure we should be

1 playing singles because of our surgeries, but yes, I
2 was looking forward to playing tennis. In fact, that
3 was one of the selling points to me. The equestrian
4 facilities were a selling point to Judy, but the
5 tennis court was a selling point to me.

6 Q. All right. The fitness center, kind of the
7 same deal?

8 A. Well, yeah, I guess I could use it. I would
9 use it. I know I can't sit here and say I would use
10 it all the time. I think I would use it sporadically.
11 I do have some exercise equipment in my house that I
12 use on an occasional basis. I would certainly be more
13 encouraged to use a fitness facility or a center if
14 there was one.

15 Q. So, you would be a user of these amenities?

16 A. I would.

17 Q. What other reason would you want amenities --

18 A. I think they also contribute to the value of
19 the property. In fact, I don't understand why they
20 never built them, because I think that would help
21 bring in more customers if they actually saw them
22 there in the first place, instead of just advertising
23 them.

24 Q. Well, you know, they haven't been
25 constructed?

1 A. That's correct.

2 Q. We all know that. What is your position
3 again with regard to whether or not you were promised,
4 guaranteed that these amenities would be in place?

5 A. I was told by Ms. Conger in many ways and
6 many times that everything was going to happen as
7 advertised. When we were looking at the property we
8 said, when is it going to happen, and her answer was
9 soon.

10 Q. Who did you understand Courtney Conger was
11 speaking for?

12 A. I thought she was speaking for Three Runs
13 Plantation. It says Carolina Company, and as far as I
14 know, she's the president of it.

15 Q. She was trying to sell this property to you,
16 wasn't she?

17 A. She showed us other properties, too. Yeah,
18 she was trying to sell us a property. But she was
19 pretty forthright when we went around and we discussed
20 other properties, and she told us the benefits and the
21 bad sides of everything.

22 Q. What is your position, Mr. Jacobs? You've
23 got some counterclaims in this case, and you actually
24 filed a third party complaint against Mr. Raiford, and
25 also the sales agent. I think you're aware of that in

1 this case?

2 A. Yes, sir.

3 Q. What is your position with regard to how the
4 lack of these amenities, as you describe, has affected
5 your investment in Three Runs?

6 A. Well, I think it's diminished my investment,
7 and it's also diminished my enjoyment of my property
8 because I haven't been able to use the facilities that
9 were promised to me.

10 Q. You hired, actually, Mr. Girardeau, who's in
11 court, who's an appraiser. He's going to testify
12 regarding that; is that correct?

13 A. Yes.

14 Q. I mean, this just isn't a whim of yours. You
15 work with numbers and everything and you believe this,
16 don't you?

17 A. I do.

18 Q. Let's talk a little bit about the covenants,
19 the protective covenants, and the rules at Three Runs.
20 You believe there has been uneven enforcement?

21 A. I do.

22 Q. Non-uniform regulation of the covenants?

23 A. There are some areas that have been -- well,
24 either there hasn't been a problem, or perhaps been
25 enforced. There are many other areas where basically

1 enforcement is non-existent.

2 Q. Let me stop before we talk about specifics.
3 Why are you concerned about that? Are you a rabble
4 rouser or trying to interfere with anything? Why are
5 you concerned about that?

6 A. I'm concerned about that because we have a
7 set of covenants, which adherence to the covenants
8 provides value to all the homeowners. If certain
9 covenants are not being enforced, or they're being
10 enforced unevenly, that would be a deterrent to a
11 potential purchaser, because they would say, well,
12 gee, they enforce these covenants, they don't enforce
13 those. You know, so how do I know at any particular
14 point in time that it's going to be uncorrected. I'm
15 also concerned about the fact that we seem to be the
16 ones who were sued, when there are many other
17 violations where nothing has happened.

18 Q. All right. Well, whether or not someone's
19 suing who should be sued, perhaps enforcement of a
20 covenant; is that fair?

21 A. Yes, I think it's fair that the covenants
22 should be more uniformly enforced.

23 Q. All right, sir. Let's talk about specifics
24 if we can. If we need to get photographs and things
25 like that, we can. But you've heard us talk about

1 some things. What are your specific concerns, Mr.
2 Jacobs? I want you to talk to Judge Griffith. He's
3 here to hear this. I want you to tell him what your
4 concerns are.

5 A. You mean as far as the unevenness of
6 enforcement?

7 Q. Well, I want you to tell the Court how you
8 believe, based on personal knowledge and evidence that
9 you've got, that there has been uneven, non-uniform
10 enforcement of the protective covenants at Three Runs.

11 A. Okay. I think there are a number of things,
12 some of which are not highly significant, except in
13 the sense that no effort was made to enforce them.
14 For example, there are a number of rules about
15 signage. There's a limitation on the size of signs,
16 the number of signs, how long a sign can remain up
17 after a property has been sold or the construction
18 completed. There seems to be total disregard for
19 that.

20 Q. You've personally observed that in the
21 community?

22 A. Yes, I have, and we have pictures of those
23 signs where there are five or six signs. It's
24 supposed to be limited to two signs and four square
25 feet on the signs. We've had many situations where

1 there are five, six, seven signs. Signs remained up
2 two years after the property -- after the building was
3 completed. Somebody for a while had a political sign
4 up during this coming election. The signs are
5 supposed to be limited to signs relating to
6 construction or for sale.

7 Q. There's a rule against that in the covenants;
8 right?

9 A. There is, and no effort was -- to the best of
10 my knowledge, was ever made to enforce it.

11 Q. You know, signs may be picky to some people,
12 it may not have an effect. But there's a covenant
13 against it; right?

14 A. There is.

15 Q. Why?

16 A. It's non-enforced.

17 Q. Why is there a covenant regarding signage?

18 A. Well, I think at some point they become
19 unsightly, and there's no particular reason why a
20 whole -- five or six people should be getting free
21 advertising at the expense of the general aesthetics
22 of the development.

23 Q. Did you ever visit Myrtle Beach when you came
24 down here during the summer as a boy?

25 A. No.

1 Q. That's what happens when you don't control
2 signs. Anyway, signs is an issue; right?

3 A. Signs are, to me, an issue, yes.

4 Q. What else? We're not here just about signs.
5 What else?

6 A. Okay. There was a house put up by one of our
7 neighbors, the Crumplers, and in the by-laws you're
8 supposed to complete a house within one year after you
9 start it. They didn't complete the house for almost
10 two years, and during that time there were
11 construction vehicles parked there non-stop. There
12 were dirt mounds in front of the house. And towards
13 the end, when the house was mostly finished, but not
14 completely habitable, Mrs. Crumpler was living on the
15 property in a trailer. There's a specific -- not only
16 is there something in the by-laws about finishing the
17 property within a year, there's also something in
18 there that nobody is supposed to live in a trailer.

19 Q. You mention by-laws. Are you talking about -
20 -

21 A. I mean the covenants, yes.

22 Q. All right. I'm with you.

23 A. No effort was ever made to enforce that. I
24 understand from some people that some people contacted
25 Mr. Raiford about it, and he chose not to follow up.

1 Q. What's the big deal with all that? Tell me
2 how that affects --

3 A. Well, by being unsightly --

4 Q. Hold up. We've got to take care of the court
5 reporter.

6 A. I'm sorry.

7 Q. The Court, too.

8 A. I think it was unsight --

9 Q. Hold on. Let me repeat my question. I never
10 got through it. Ms. Crumpler had some problems, okay,
11 or something was -- what's the issue in your mind with
12 regard to a covenant which sets forth certain rules
13 regarding construction and trailers and construction
14 equipment?

15 A. Well, again, it took too long. It was in
16 violation of the covenant. She was living in the
17 trailer for several months, which is in clear
18 violation of the covenant. There's a total lack of
19 enforcement or disinterest on the part of the
20 homeowners association. They also didn't mow their
21 lawn or lot while this construction was going on.
22 Yet, they come after me for not mowing my lawn.

23 Q. All right. Go back to the core issue. Why
24 is a construction issue a problem in your mind? Tell
25 the Court.

1 A. Why is the construction issue a problem?

2 Q. As it relates to the covenants?

3 A. Because it was a direct violation of the
4 covenants.

5 Q. What happens with that?

6 A. Well, in this case, nothing.

7 Q. How does a direct violation, unattended,
8 affect your property? Explain that --

9 A. Well, I think that it was certainly
10 unsightly; it was a continuing thing, so anybody else
11 who came in to look at Three Runs was going to see it,
12 and they saw it for two years.

13 Q. What else?

14 A. There are some properties that had, for a
15 while, unpainted fences. All fencing was supposed to
16 be painted. After a while, the properties did get --
17 some of the fences were painted, but there are two
18 sets of fences currently that have been painted on the
19 outside, but not on the inside. Obviously, as you
20 drive by you can see the inside from wherever you are.
21 There's going to be some angle that you can see the
22 inside of some other fences. It was several months
23 before either of these properties had their fences
24 painted.

25 Q. What's the big deal with unpainted fences,

1 Jay?

2 A. Well, I think the idea was that there would
3 be some uniformity in what fences would look like, and
4 unpainted fences don't carry the ambiance of a horse
5 develop -- equestrian development.

6 Q. I'm going to jump ahead. Your yard, I know
7 you believe you keep it straight, but it's different
8 from anybody else's. What's the difference between a
9 yard and fences?

10 A. Well, I don't have fences because we don't
11 have an equestrian property.

12 Q. All right.

13 A. Despite what Mr. Raiford said, we never had
14 any plan to build a paddock on the other piece of
15 land. I don't know where he got that idea, because we
16 were buying it so that we would have more room as a
17 cushion, first of all, because we have some dogs and
18 we didn't want to disturb our direct neighbors. Also,
19 in what has now become a vain hope that maybe our
20 daughter would at some point move down to that
21 property, but she's pretty much indicated that's not
22 going to happen. But those were our reasons for
23 buying the other property, and I'm sorry Mr. Raiford
24 did not know that.

25 Q. All right. Therefore, you don't have a

1 pasture?

2 A. No, there was never any intent to have
3 pasture. We always considered it to be a wooded
4 property.

5 Q. What is your position whether or not you were
6 supposed to have a pasture, or you were supposed to
7 turn this into an equestrian home, whatnot?

8 A. Well, there are other people in the
9 development who do not have horses. We did not intend
10 to have horses at our house, and therefore, there was
11 not going to be any horse property, per se. We wanted
12 a lot of acreage, which we got, and we wanted wooded
13 land, which we got, and we intended to keep it as
14 wooded land.

15 Q. Now, I'm going to interrupt here, stop you at
16 this point, because you've got some other issues to
17 talk about, I know, with regard to the uneven, non-
18 uniform enforcement of covenants; okay? Some people
19 say, well, these aren't big things, not to worry about
20 it, get it resolved. You didn't bring this lawsuit,
21 did you?

22 A. I did not.

23 Q. You figure while you're here you might as
24 well bring these up?

25 A. No, I'm not happy about these.

1 Q. Were you planning on bringing a lawsuit,
2 though, at some point to deal with these issues that
3 you're outlining today?

4 A. Probably not, but I may have. It would have
5 depended on how long they went on, how bad they got.
6 At some point, maybe I would've wanted to have the
7 tennis courts enough that I'd bring suit.

8 Q. Sure, and you're here.

9 A. I'm here.

10 Q. We're going to talk about it. What else?

11 A. What else? Well, the mowing and maintenance
12 is applied unevenly. I'm really confused about this,
13 because I keep hearing different stories. So, Rhonda
14 yesterday said that the land should look like it
15 looked when we bought it. Carl said you should be
16 able to see the front of the property from the back of
17 the property. Yet there -- it was a wooded property.
18 You could never see the front from the back. Several
19 people said there were various maintenance guidelines,
20 which we've sort of talked about, which don't appear
21 to really exist in the way that they describe them.
22 Mostly what I heard was our property didn't look like
23 the property of other people. But the other people
24 who were testifying all have horses on their property.
25 We didn't clear land, and we had a lot more trees on

1 our property than anybody else, and we wanted to
2 continue to have trees like that.

3 Q. I'm going to come back to the maintenance
4 issue. We want to talk about what happened in this
5 case. Your position is it's uneven enforcement of
6 covenants with regard to maintenance of lots; is that
7 true?

8 A. Yes, I believe so.

9 Q. Okay. What else?

10 A. I've got more. There's supposed to be ten
11 feet between the edge of anybody's property and the
12 trails that run behind the property. On one of the
13 properties, the Schneiders, the fence runs within
14 about five feet of their property. So, they built
15 right up almost to the property line and didn't leave
16 the appropriate space. We have a picture of me
17 standing like this, where one hand is virtually
18 touching the fence and the other hand is over the
19 trail. My wing span is not ten feet.

20 Q. All right. So, they violated the setback, as
21 least from your perspective?

22 A. From my perspective, and to the best of my
23 knowledge, nothing has ever been done about that.

24 Q. Why is that --

25 A. In fact, when Ms. Schneider testified, you

1 asked her if she was in violation of that covenant,
2 and she said no.

3 Q. But you've measured it, haven't you?

4 A. I'm sorry?

5 Q. You've measured the fence and the property
6 line?

7 A. I just measured it by standing like this,
8 because I know my wing span is less than ten feet.

9 Q. Okay. Why are setbacks important in your
10 mind?

11 A. Well, I think you don't want to have people
12 right -- if you go right up to the property's edge,
13 then that means people who are outside of the property
14 are pushed back that much further. They don't have
15 access to what they should have access, in this case
16 the trail.

17 Q. It's also in the covenants, or set forth what
18 setbacks should be; correct?

19 A. Yes, they do.

20 Q. You've invested over a million dollars in
21 your property?

22 A. I have.

23 Q. You kind of want it done right, don't you?

24 A. I do.

25 Q. What else?

1 A. Okay. Carl erected his radio tower, and the
2 covenants say in no case should there be any towers
3 erected. I can understand where, perhaps, somebody --
4 if somebody's taking two years to build their
5 property, that's something that's cured at the end of
6 two years. So, maybe they're going to delay, although
7 I think it wasn't a good thing. But maybe they're
8 going to delay, and if they live in a trailer for a
9 few months, at the end of the few months the trailer
10 goes away and they move into their house. So, what
11 we're talking about in some cases is waiving something
12 -- and I don't know if they got a waiver. I just know
13 that they -- because waivers are never advertised.
14 But even if they --

15 Q. What do you mean by that? Explain that.

16 A. I would think that the right way to do it, or
17 at least in my experience as a CPA and adviser to
18 non-profit organizations, and a prior officer of a
19 homeowners association, is that if somebody applies
20 for a waiver, you circulate to the people in the
21 community what -- that this person has applied for
22 this wavier, so you can get feedback from the other
23 members of the community and see whether they have any
24 problems with that. This was never done. Everything
25 was presented as a fait accompli.

1 About Carl's tower, when I drove past it --
2 and I never had an opportunity to voice an objection,
3 or make a comment about it. He put up that tower and
4 I know Carl has a potential relationship with Mr.
5 Raiford. He does some work for the homeowners
6 association for which he gets paid. I know there's a
7 vested interest on both sides that Carl be treated
8 well.

9 Q. Well, let's stop. Hold on a minute, Jay.
10 Let's focus on the issue; okay? We've already put in
11 a picture, Exhibit Number 9. Is that the radio tower,
12 television tower?

13 A. Yes, it is.

14 Q. Now, without regard to personalities and
15 things like that, what is your understanding of
16 whether or not that structure is allowed?

17 A. The structure is not allowed.

18 Q. Why does that bother you?

19 A. It bothers me because Mr. Raiford fails to
20 enforce, or gives a waiver, on a particular part of
21 the covenants, where it says absolutely, under no
22 circumstances, should there be such a thing. Then he
23 retracts on it. So, I consider that to be uneven
24 enforcement, aside from the fact that I consider it to
25 be quite unsightly. And in a community that was built

1 as having estate type houses, I did not anticipate
2 having a radio tower.

3 Q. All right. What else, in terms of --

4 A. There are a number of trailers that are kept
5 in plain view, and I know that some people -- some
6 people do the best they can, and they try to put their
7 trailer behind their house. In the case of where
8 their house is, there's almost no place on a road that
9 you can't go that you wouldn't see it. But at least
10 they make an effort to put it behind a structure.
11 There are other people who have built structures to
12 contain their trailers. But there are some people who
13 just park their trailers out in an open field. I
14 believe some of them actually have a place to park a
15 trailer that would not be in the open. Again, there's
16 no effort at enforcement, and although I understand
17 Mr. Raiford says that this is a horse community and
18 that's okay, then why is it in the by-laws? I mean,
19 the covenants.

20 Q. Doesn't sound like there are any complaints
21 about these trailers. Otherwise, it may have been
22 taken care of; is that correct?

23 A. I have no idea. Obviously, he makes no
24 effort at enforcing it, whether there were complaints
25 or not.

1 Q. You heard that we're here today because of
2 complaints of other residents?

3 A. Yes.

4 Q. You've heard that; correct?

5 A. I have.

6 Q. Complaints seem to drive whether or not
7 there's going to be enforcement; does that seem to be
8 the case?

9 A. I don't know.

10 Q. Can't figure that out?

11 A. I'm not sure, because some people have
12 complained about other things and not gotten any
13 results.

14 Q. All right. We've talked about parking of
15 trailers, utility trailers, horse trailers, in
16 violation of the covenants.

17 A. Yes.

18 Q. What else have you observed?

19 A. Okay. There's another issue with a woman
20 named Laura Hall. Laura Hall owns a horse business on
21 a property that is adjacent to Three Runs. I think --
22 although it's not physically inside of Three Runs,
23 Wayne Raiford considers her to be part of Three Runs,
24 and has given -- granted her all the privileges of a
25 landowner within Three Runs. So, she pays dues and

1 she gets the use of the various facilities. However,
2 she's actually running a business. Her business,
3 which includes riding lessons and a day camp for
4 children, uses the Three Runs facilities. She isn't
5 always present with the people who are using those
6 facilities. So her boarders go out on the trails on
7 their own, without her. They use the swimming pool,
8 which I consider to be a potential hazard for the
9 homeowners association, because of potential liability
10 because they're children from the day camp. There are
11 definite insurance issues here. She uses the riding
12 rings, not only a lot more than anybody else, but
13 because a schedule has been set up, she seems to have
14 -- she schedules her lessons and that makes it
15 sometimes difficult or causes a timing conflict with
16 other people.

17 Furthermore, I don't see why the homeowners
18 association should not charge any money to an
19 organization that is a business. So, if I ran my own
20 business out of my house and wanted to use homeowners
21 association facilities for my clients, I don't think
22 that I should be able to march in with 10 or 20 or 30
23 people at any point in time and use all the facilities
24 for free. Indeed, in my experience with other horse
25 facilities, that's not the case. There are charges

1 for things like that. But she pays no charges and she
2 also creates additional wear and tear on the property,
3 and the need to clear the rings more often and set
4 things up and set things down, and Mr. Raiford in his
5 deposition did acknowledge the fact that there was
6 more wear and tear on the homeowners association.

7 Q. All right. Let me stop you. I think I
8 understand where you're coming from. Why is that a
9 problem for you, as --

10 A. Well, I think --

11 Q. Hold on.

12 A. I think it limits the enjoyment of the
13 exclusivity of a development that I thought was just
14 going to be for the homeowners. Here these other
15 people come in, I have no idea who they are, they
16 don't follow the so-called procedures. They're
17 supposed to get some kind of badge. They're supposed
18 to be accompanied by a homeowner at all times. Those
19 procedures are not followed.

20 Q. Let me stop you. Assuming those procedures
21 are followed, you'd be okay with it?

22 A. No, I don't think I'd be okay with it,
23 because I don't like the idea that strangers can come
24 in and use our facilities at any time, and those
25 strangers are selected by somebody who, although she

1 is technically a member of the homeowners association,
2 is not resident within Three Runs, and she's doing it
3 for business purposes.

4 Q. Who's allowing her to do it?

5 A. Mr. Raiford is, because a number of people
6 have --

7 Q. Let me stop you. Hold on.

8 A. -- suggested that there are problems with it.

9 A. Hold on. Listen to my question. The
10 question was, who's allowing them to do it; okay?

11 A. The homeowners association is allowing it.

12 Q. Who runs the homeowners association?

13 A. Mr. Raiford does.

14 Q. It's one and the same; right? In your mind?

15 A. I don't see any difference.

16 Q. All right. Now, there are rules, Mr. Jacobs,
17 as you know about use of amenities by non-property
18 owners; is that correct?

19 A. Yes.

20 Q. Those rules are in place and they exist; is
21 that correct?

22 A. Yes, but they're not enforced.

23 Q. That's my point. Okay. It's not so much --
24 well, I'm getting ready to get an objection.

25 MR. WARLICK: You're making statements again.

1 MR. MCCANTS: I'll back off.

2 Q. [Mr. McCants] There are rules -- are there
3 rules in place with regard to use of amenities by non-
4 property owners?

5 A. Yes.

6 Q. You're not challenging those, are you?

7 A. No.

8 Q. All right. You just want the existing rules
9 to be enforced?

10 A. I do. But I also have issues with the
11 across-the-board granting of use to customers of
12 somebody who is not resident in Three Runs, but has an
13 adjoining property, but has been granted membership in
14 the homeowners association, and she has unlimited use
15 for all of her people.

16 Q. For all the reasons you talked about?

17 A. I think it takes away from our exclusivity,
18 it creates more wear and tear, scheduling problems,
19 and maybe more.

20 Q. What other issues do you have with regard to
21 the protective covenants?

22 A. I have an issue with the manure on the
23 trails. There are at least two homeowners who have
24 put manure on their trails, on the trails that run by
25 their houses. One of them seemed to be using a manure

1 spreader and mixed it in with straw. So, it wasn't
2 quite as bad. The one that was behind Art Strem and
3 Angela Barrow's house, it was several inches deep.
4 There was no straw mixed in with the manure. You
5 could smell it from 50 feet away.

6 Q. Why is that a problem?

7 A. I think -- well, first of all, it's not an
8 indicator of 50 -- 30 miles of well-maintained trails
9 that keeps getting advertised. But I also think there
10 are health and safety issues, because dumping manure
11 on the ground makes the ground softer, which could
12 cause problems to horses when they go by there. Also,
13 because the manure may contain bacteria and microbes
14 and flies and so forth, there could be a health issue,
15 both to the horses and to the riders.

16 Q. All right, sir. Manure on the trail. What
17 else?

18 A. I'm concerned about the dues. Our dues are -
19 - according to the by-laws, are supposed to be \$1,000
20 a year, and they can be raised not more than 25
21 percent in any one year. Mr. Raiford raised the dues
22 by \$500 about two years ago, and that's in excess of
23 the 25 percent. With no explanation, just a note,
24 your dues this year are going to be 1,500 instead of
25 1,000.

1 Q. All right, sir.

2 A. To me, that's a violation of the covenants by
3 the person who's in charge of enforcing them.

4 Q. Is that in the by-laws or the covenants, the
5 dues issue?

6 A. I don't know which, but it's in there, and it
7 specifies \$1,000 a year. Although they can be
8 adjusted from time to time, they're not supposed to be
9 raised in any one year by more than 25 percent.

10 MR. WARLICK: It's Plaintiff's 4.

11 Q. [Mr. McCants] All right. So, the dues
12 issue. Jay, tell the Court what other concerns you've
13 got with regard to the even enforcement or compliance
14 with the protective covenants in your development?

15 A. Well, I have other issues about the way the
16 homeowners association is run. I don't know if that
17 counts as uneven enforcement.

18 Q. Well, let's do this to move things along,
19 because what we're doing is kind of giving him a broad
20 brush. Just generally, what other issues with regard
21 to the operation of the homeowners association,
22 without going into great detail?

23 A. I think that's most of them.

24 Q. All right. Are there other issues with
25 regard to enforcement of covenants or the by-laws at

1 Three Runs that you have of concern?

2 A. Yes.

3 Q. Keep going down your list, then.

4 A. Okay. There's supposed to be an annual
5 meeting, and to the best of my understanding there was
6 no meeting until 2010, which is five years after the
7 development opened up. There was one meeting -- there
8 was one meeting that included all of -- all the
9 homeowners were invited to. Mr. Raiford made some
10 remarks, and then what followed could best be
11 described as tumultuous. People were asking him about
12 the amenities and he refused to set a time horizon,
13 which confuses me because Mr. Raiford said he never
14 knew that anybody wanted the amenities until we filed
15 our suit. Yet people were pressing for the amenities
16 at this meeting.

17 Q. What was the date of the meeting?

18 A. It was, I think, in June? I don't know, June
19 or July, August of 2010. Also, Mr. Garner was there
20 and he testified that he never knew about anybody
21 wanting the amenities.

22 Q. That's Mr. Garner who did the marketing, who
23 testified at this trial?

24 A. Yes. He was -- he also testified he was at
25 that meeting, because he said he was at the homeowners

1 meeting, and that was the only one.

2 Q. All right.

3 A. Then after that, because --

4 Q. Let me stop you real quick. What is your
5 understanding of whether or not homeowners meetings
6 are required, in light of the fact you can't vote?

7 A. Homeowners meetings are required. What has --
8 - we're not allowed to vote, but we get copies of the
9 minutes, although the minutes are sort of not in the
10 form of minutes. They're saying we discussed this, we
11 discussed that, and here are the conclusions that we
12 arrived at. They're sort of an annotated kind of
13 minutes. We got a copy of the financial statements,
14 but they're compiled financial statements, basically
15 without disclosures. So, they're not really what
16 would generally be considered a complete set of
17 financial statements. But they're -- management is
18 allowed to do that.

19 However, we only ever had the one meeting,
20 and subsequent to that, all the member -- all the
21 meetings of the homeowners association were conducted
22 by the board of directors, without mentioning ahead of
23 time to the members of the association, or inviting
24 them to the meeting, and they were held in North
25 Augusta, not on the site of the development.

1 Basically, I don't even know who attended, because we
2 just got a notice in the mail the board of directors
3 met, and here's what we decided.

4 Q. Why is that important to you, that --

5 A. I would like to purchase a bid in the
6 association. I paid a lot of money for my house, I
7 have a lot of experience and expertise with non-profit
8 organizations in general, accounting in general,
9 management and so forth, and I think I could add
10 something positive to the organization. I also think
11 that --

12 Q. You're trying to interfere with the operation
13 of Three Runs?

14 A. No.

15 Q. What are you --

16 A. I don't think I could do anything that would
17 interfere with the operation.

18 Q. What do you want to do? I think you just
19 said it.

20 A. I want a say in what happens as far as my
21 investment is concerned, how the covenants are
22 enforced, and how -- and the by-laws, and how the
23 operations are run. I understand Mr. Raiford is the
24 developer and he gets to do whatever he does as the
25 developer. But then he changes hats and he also is

1 the person in charge of sales, and he's also the
2 person in charge of the homeowners association. He's
3 also the only one who gets to make any decisions about
4 anything, and he never puts anything out for
5 consideration by other people. When he says I never
6 heard about this, he also never solicited any
7 questions or information about it.

8 Q. All right. How does that affect your
9 investment?

10 A. Well, I feel disenfranchised. I put up a lot
11 of money in a development that -- Courtney Conger said
12 don't worry, everything's going to be fine, it's going
13 to be run properly, even though he doesn't have to
14 turn it over to the homeowners until 95 percent is
15 sold, but he's going to do everything in the best
16 interests of the homeowners. I don't know that he is
17 necessarily doing that.

18 Q. All right. So, we're talking about annual
19 meetings of the HOA. What else?

20 A. Well, I've looked at the financial statements
21 and I think there are some expenditures that I don't
22 understand why they've been made or what they're for.

23 Q. Let's don't go into detail. You've just got
24 questions based on your experience; is that correct?

25 A. Yes.

1 Q. What else?

2 A. Oh, the roads. The roads were turned over to
3 the homeowners association by the developer. Of
4 course, the homeowners association can't say no,
5 because he says we own the roads and we have to accept
6 them. This looks to me like a long term problem,
7 because if we own the roads, as opposed to, say, the
8 county owning the roads, then we have all the
9 maintenance issues that go with that. Already in 2011
10 over \$2,000 was spent on road maintenance.

11 Q. That affects your bottom line?

12 A. It does affect my bottom line. It means
13 indirectly we're all paying higher dues.

14 Q. You mentioned that you want to contribute or
15 help the process with your expertise?

16 A. Yes.

17 Q. Explain that.

18 A. Well, I've been on the board of directors of
19 a number of different non-profit organizations. At
20 the development we used to live in in Pennsylvania, I
21 was the treasurer of the homeowners association. I
22 basically was treasurer for life. I got to not be
23 treasurer when I moved. I was also -- since the
24 treasurer was not necessarily a board member, I was
25 also at various times a board member. In fact, Judy

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1 was the president of our homeowners association. I've
2 also been on a number of other boards in various
3 areas, and I have significant expertise in the
4 non-profit area. I've taught a number -- developed
5 and taught a number of courses on non-profits to CPAs.

6 Q. You want to help Three Runs, is what you're
7 saying?

8 A. I want to help, I want to participate, and I
9 think I have a lot to add. But I don't have an
10 opportunity to do so.

11 Q. Let's talk a little bit about the maintenance
12 of your lot, and Judy's lot, on Hiawasse; okay? You
13 don't disagree that certain guidelines with regard to
14 the way you maintain your lot are important, do you?

15 A. I agree that guidelines are important, but
16 I'm very confused about what they are and how they're
17 being enforced.

18 Q. All right. Explain this confusion to Judge
19 Griffith, if you would.

20 A. Well, first, we've asked for permission from
21 Mr. Raiford to let the internal parts of our wooded
22 lot grow up in a more natural way, and he shot back an
23 email that this was just an excuse to avoid mowing. I
24 responded that everybody knows it's harder to mow
25 around the trees than to just mow everything.

1 Aside from that, we have been told that we
2 have these ten -- 18 inches, and there were a whole
3 bunch of other things associated with that. Mary
4 Guynn testified yesterday that they were basically
5 right and lawful and so forth. Freeman testified that
6 they weren't. The attorneys for the other -- the
7 other two attorneys have indicated that they were
8 really an interpretation, as has Mr. Raiford. But
9 then Mr. Raiford admitted earlier today that they're
10 not really a legally enforceable document.

11 So, I'm sort of confused as to what counts
12 and what doesn't count. We all have our different
13 views. I also heard a series of people come in and
14 say our property doesn't look like theirs. Therefore,
15 I'm in violation of the by-laws. But the by-laws say
16 first class condition, it doesn't say look like
17 everybody else. We have bought a wooded property, we
18 intend to keep it as a wooded property. We have let
19 trees grow, we have taken some trees out. We have
20 cactus growing and Judy can talk about -- she
21 identifies all the trees, but we have eight or ten
22 different kinds of trees.

23 MR. MCCANTS: Have you got my photographs,
24 Judge? Can I come up and grab some of them?

25 THE COURT: There may be -- these are

1 Plaintiff's 13 here.

2 MR. MCCANTS: Thank you.

3 Q. [Mr. McCants] Jay, when you talk about
4 natural -- when you're talking about developing a lot
5 with trees, you understand there's got to be some
6 mowing of the area? You've got to control weeds and
7 things like that; is that correct?

8 A. And we have mowed.

9 Q. When you say natural state, describe in more
10 detail what you're talking about. Are you talking
11 about if I want to go ten miles into the woods, the
12 way it looks, or what?

13 A. Well, there are many areas where there are a
14 lot of pine trees and oak trees, where grass just
15 isn't growing because the pine needles sort of stop
16 other growth and there's a lack of sufficient
17 sunlight. Consequently, in those areas we have let
18 trees grow up. There are some other areas where there
19 was some expansive space where trees were growing, and
20 we let them continue to grow. There are also a number
21 of -- we spent a significant amount on landscaping.
22 We spent probably close to \$20,000 on landscaping. We
23 have probably another five to 10,000 to spend,
24 according to our plans, but we've been tied up in the
25 lawsuit and that's eaten into our available funds.

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1 But, we would've spent that also. We planted a number
2 of trees around our house of various types.

3 Q. Let me show you our exhibit number 37. Do
4 you recognize that area?

5 A. Actually, I'm not sure I do.

6 Q. I'll take it back from you, get your wife to
7 talk about it. She's going to talk about the trees a
8 little bit; okay? But you're trying to develop an
9 area that's more natural with trees, is what you're
10 saying?

11 A. Yes.

12 Q. Is it a pasture setting?

13 A. It's not a pasture.

14 Q. What is your position as to whether or not it
15 was imposed upon you to have a pasture on your
16 adjoining lot, or in any part of your developed lot?

17 A. I never saw anything in the by-laws about it,
18 nobody ever said anything to me about it. There was
19 never any indication in any literature or any
20 communication that pastures or paddocks were the way
21 to go, and we never had any intent to have it as a
22 horse property.

23 Q. It was marketed as an equestrian and
24 non-equestrian development?

25 A. It was.

1 Q. All right. You believe you've kept your
2 property in first class and clean condition?

3 A. I believe we have.

4 Q. There are some photographs that have been
5 shown. I'm going to show you specifically --

6 MR. MCCANTS: Are all these exhibits one?

7 THE COURT: Yes, one exhibit, Exhibit Number
8 15.

9 MR. WARLICK: It's 13.

10 THE COURT: Exhibit 15 was the four
11 photographs I believe y'all were showing on that
12 other cross-examination.

13 MR. WARLICK: You said 13, I said 15. It's
14 15.

15 Q. [Mr. McCants] Let me show you Plaintiff's
16 Exhibit Number 15. There are four photographs
17 included in this exhibit, Jay. One with a sticker on
18 it and one -- well, let's look at the one with the
19 sticker on it. Can you identify that property?

20 A. No. I can -- I think this may be the picture
21 that the other attorney had showed me -- that Byrd had
22 showed me a couple times and asked me if I could
23 identify it. Every time I said I can't identify it.

24 Q. How about this one?

25 A. Same thing.

1 Q. Let's assume for the sake of discussion this
2 is your property.

3 A. Okay.

4 Q. What is your position whether or not that's
5 being maintained in first class or clean condition?

6 A. I think it is. I think there's some grass
7 that's growing there, but we have cut it down. You
8 know, we mow four times a year, even though the
9 unexpressed guidelines, because -- they say we're
10 supposed to mow twice a year. It's not really
11 anywhere in writing. But we have been mowing our
12 property four times a year. The bottom line is, we
13 missed one mowing, and we mowed around the trees as
14 much as possible because we wanted the trees to start
15 growing, because they were growing from seed or from
16 acorns. What we're talking about is a couple of
17 months where we were not mowing and the grass got
18 almost as high as the 18 inches. The rest of the
19 time, before and since, we were mowing.

20 Q. All right. Now, with that in mind, based on
21 those pictures, do you see -- first of all, do you see
22 any lawn grass in those photographs that I showed you?

23 A. No, there's no lawn there.

24 Q. Do you see any trash in those pictures?

25 A. No, I don't.

1 Q. Do you see any debris?

2 A. No, I don't.

3 Q. Do you see the accumulation of, quote, other
4 times in those pictures?

5 A. None at all.

6 Q. I mean, that's pretty natural what you're
7 looking at in those photographs; right?

8 A. Yes.

9 Q. That's kind of like what God does; right?

10 A. Yes.

11 Q. That's pretty first class; right?

12 A. Yes.

13 Q. Now, we talked about this a little bit. Have
14 you received compliments about the condition of your
15 house?

16 A. Yes, we have, from many people.

17 Q. We've heard from two today; correct?

18 A. Yes. But other people in the development
19 have commented on our property, and our friends from
20 outside the development. In fact, if we --

21 MR. WARLICK: Your Honor, he can call any
22 witness he wants to, but I'm not going to let him
23 talk about what third parties who have not
24 appeared in court have said.

25 THE COURT: Sustained. It's hearsay.

1 MR. MCCANTS: Can I proffer it, Judge, on the
2 basis that he put the emails in? I'm not going to
3 necessarily offer it for the truth of the matter,
4 just the fact he's received compliments from other
5 people, under the same theory that he wants to
6 introduce his emails.

7 MR. WARLICK: But it's not.

8 THE COURT: Go ahead.

9 MR. WARLICK: I object to him saying what
10 third parties have said. We don't know who they
11 are, when they were said, or what it was about.
12 Those emails were from people that have testified.

13 MR. MCCANTS: That's not true. He's got
14 email from people that have not testified.

15 MR. WARLICK: They're both. They're both.

16 THE COURT: All right. I may can clarify
17 this, because this was an issue that y'all raised
18 the other morning. I've looked at it in regards
19 to the emails. I think -- this is going to cut
20 both ways; okay? I think it was a proper
21 objection on the hearsay. It wasn't raised
22 initially, but it was raised when y'all were
23 asking for some clarification on the emails.

24 If the witnesses were not here on the emails
25 that have been submitted -- and I know they're

1 kind of cross -- commingled, I guess, in there
2 with people who did testify. But the ones who
3 weren't here to testify, even though I understand
4 that the position's been taken that it's not for
5 the truth of the matter asserted, based on what
6 I've heard so far I'm not really sure what else it
7 would be, other than the issues that were raised
8 in the emails themselves on that.

9 I think those would be hearsay, and those
10 would be excluded, except for the people who have
11 testified. Likewise, I think any questions now
12 about what any third party has told this
13 individual, if they have not been here to testify,
14 it's hearsay. That would keep the trustworthiness
15 of all the evidence in play. I'm granting what
16 was -- I was going to bring this up later to you,
17 but now is a good time.

18 I'm granting it in regards to the emails,
19 although there has been testimony that there has
20 been complaints in a general sense, I believe from
21 the gentleman who does their publishing. Just
22 like he says, they've had some compliments. That
23 may be allowed, but you can't go into specifics on
24 what other people who are not here have said.
25 Does that clarify it for everybody?

1 MR. WARLICK: Yes, Your Honor.

2 THE COURT: Thank you.

3 Q. [Mr. McCants] Have you received compliments

4 --

5 A. Yes.

6 Q. -- from other people?

7 A. Yes.

8 Q. Besides the folks who've testified?

9 A. Yes.

10 Q. Now, is it your desire to bring neighbors,
11 witnesses to court, to testify in this case?

12 A. Just as necessary. I didn't see any reason
13 because I felt we were in compliance with the
14 covenants.

15 Q. All right. I mean, there seems to be a lot
16 of complaints, not complaints. You're not trying to
17 create a war --

18 A. I don't consider this a popularity contest.

19 Q. All right. All you're asking for today is
20 the rules to be applied; is that correct?

21 A. Yes.

22 Q. I'm going to have Judy talk about the trees.
23 Jay, you guys moved from Pennsylvania to South
24 Carolina. I can only assume that you did that wanting
25 to -- especially after a successful professional

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1 career, to have a peaceful living environment?

2 A. I did.

3 Q. Did you want to come and sit in court with
4 me?

5 A. Well, as much as I like you, no.

6 Q. I want you to tell the Court how -- you
7 didn't bring this lawsuit; okay?

8 A. I did not bring the lawsuit.

9 Q. Tell the Court how this has affected you, and
10 how you consider yourself a resident of this county.

11 A. I think that it has affected me. I don't
12 sleep well all the time. I worry about it a lot. I
13 have been alienated from my neighbors from some things
14 that Mr. Raiford has said which are not entirely true.
15 They're half truths or partial statements. Our
16 attorney advised us not to respond, so we did not
17 defend ourselves. We have been alienated from many of
18 our neighbors and it really concerns me. I wanted to
19 live in a community where everybody got along well.
20 As a result of this lawsuit, that, at least as far as
21 we're concerned, hasn't always happened.

22 MR. MCCANTS: Mr. Jacobs, those are all the
23 questions I have. Opposing counsel, I feel
24 confident, has some questions.

25 MR. WARLICK: Just a few.

CROSS-EXAMINATION

BY MR. WARLICK:

Q. Mr. Jacobs, describe the house that you built on this property. You said you spent \$800,000 or thereabouts on it. How big is the house?

A. It's about 4,300 square feet.

Q. How many bedrooms?

A. Four.

Q. You testified on direct that you knew that your house had lost value due to the overall economy. What's your understanding of how much value your home has lost because of the overall economy, and what do you mean by that?

A. I'm not really sure how to estimate that. That's not what I do. That's why we have an appraiser. But I do feel that, obviously, in the economy as it has been over the last few years, basically most houses have lost value.

Q. You've heard testimony about the lot sales in Three Runs Plantation?

A. I have.

Q. Are you aware there have been 25 sales in 2012?

A. Okay.

Q. Do you know what the sales price has been on

1 those lots?

2 A. No. Mr. Raiford said it was between this and
3 that.

4 Q. You didn't hear Mr. Willis testify?

5 A. I did, but I don't recall his -- what he
6 said.

7 Q. He also prepared an exhibit that lists the
8 sales, not only in Three Runs, but in the adjacent
9 equestrian centers, that show that the lots are
10 selling in 2011 and '12 for more than they sold for in
11 2007 and '08; did you hear that testimony?

12 A. Yes.

13 Q. You heard that testimony?

14 A. I think I did.

15 Q. Do you have any reason to disagree with that
16 testimony?

17 A. No.

18 Q. You said you thought Mr. Raiford would want
19 to build the tennis courts because it would bring in
20 more customers; was that your testimony?

21 A. Yes.

22 Q. Has he installed equestrian facilities that
23 were not advertised?

24 A. I think he put in this jumping area. But,
25 you know, that only started since the trial started.

1 Q. And you only cut your grass last week; is
2 that right?

3 A. No, sir. I've been cutting my grass
4 regularly.

5 Q. You said something about you were concerned
6 about the uniformity of the painted fences.

7 A. I'm concerned because that's in the covenants
8 and they're not being enforced.

9 Q. Would you not admit that the first two
10 photographs here show a stark difference, these two
11 photographs and these two?

12 A. I wouldn't say a stark difference.

13 Q. You know where they came from, don't you?

14 A. No.

15 Q. They came from your attorney's file, Freeman
16 Belser's file. They came out of his file.

17 A. Okay.

18 THE COURT: Which exhibit are you asking
19 about?

20 MR. WARLICK: This is 15.

21 THE COURT: Okay.

22 MR. WARLICK: Your Honor, I believe his
23 testimony was that these are the photographs that
24 my office sent him, showing what we allege to be
25 the Jacobs' property and other property in Three

1 Runs.

2 MR. MCCANTS: Photographs sent to Mr. Belser,
3 if I understand correctly?

4 MR. WARLICK: Yeah, Mr. Belser.

5 A. Although it came from his files, they're your
6 pictures.

7 Q. [Mr. Warlick] That's correct. You said you
8 couldn't recognize them?

9 A. That's correct.

10 Q. But is there a marked difference in the way
11 they appear and the way they're maintained?

12 A. I think that there's a difference. I don't
13 think it's that great.

14 Q. But if they would be maintained uniformly, as
15 you said the fences should be, then these are not
16 uniform? These two pictures compared to these two
17 pictures?

18 A. I'm not sure I understand what you're saying.

19 Q. They don't look the same, do they?

20 A. No, they don't.

21 Q. One looks mowed and one looks unmowed?

22 A. No. That one doesn't look especially mowed.
23 There's still grass that's growing fairly high. It's
24 just not as high as on that one.

25 Q. Okay.

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1 A. So, there's a degree of difference.

2 Q. A degree; okay. Is your position today the
3 same as it was when we first started this case back on
4 August the 20th, when you stated, I bought a piece of
5 property and I should have the right to maintain it as
6 I choose?

7 A. Yes. With what I didn't -- you're not making
8 the whole statement.

9 Q. I'll continue. And you maintain that's still
10 your position, was my next question. Your next
11 statement was, it is as long as I stay within the
12 guidelines.

13 A. Yes.

14 MR. MCCANTS: May I ask him to read, please,
15 the page number to me.

16 MR. WARLICK: Nineteen.

17 Q. [Mr. Warlick] In your deposition there are
18 many places where you make the same statement? That
19 is --

20 A. Similar statements.

21 Q. Yeah, similar statements, that you ought to
22 be allowed to do what you want to with your own
23 property?

24 A. Yes, I believe that's true, as long as we
25 follow the guidelines.

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1 Q. And that your interpretation of the guideline
2 is equally as valid as the homeowners association or
3 Mr. Raiford's?

4 A. I'm not sure I'm making that determination.
5 I mean, he has the absolute right to make any
6 determination he wants. According to you, that's
7 fine. So, obviously my determination doesn't count as
8 much as his.

9 Q. But you maintain that it should?

10 A. I maintain that I should have a right to make
11 my own decisions, and that -- you know, he -- can I --

12 THE WITNESS: Judge, can I take a step back?

13 THE COURT: You can -- whatever you need to
14 say to respond to his question. Your counsel will
15 have a chance to redirect. I'm not really sure
16 what you're planning there, but --

17 A. Well, for example, he said he tried to
18 negotiate with us. He never did -- he never did any
19 such thing. He came to our house twice with somebody
20 else. My wife said he wasn't there -- that I wasn't
21 home, and he left. Then he came -- then he made an
22 appointment to come see us and didn't show. We got a
23 phone call an hour and a half late saying he's not
24 going to be able to make it. We got a phone call from
25 his office.

1 Then he showed up another time, and that was
2 the time where he said I was a bully. But the bottom
3 line was, I walked out to greet him and he said, if
4 you don't mow your lawn, I'm going to have the sheriff
5 come and mow it, and if you try to stop me, I'm going
6 to have him throw you in jail. At that point, I said,
7 then I would consider that to be trespassing and if
8 you do that, I will attempt to enforce it -- enforce
9 no trespassing against you.

10 So, I think the first thing came from him,
11 not from me. He never, ever made any effort to talk
12 to us, other than that one time. So, he's telling
13 people in the by-laws that he attempted to negotiate -
14 - in the minutes and so forth, he attempted to
15 negotiate with us. That's not true. He's also -- he
16 set his own standard, which he couldn't even agree
17 with at some points.

18 Q. [Mr. Warlick] I understand there's a
19 difference. We've had other witnesses testify as to
20 that. Have you ever seen this brochure?

21 A. I guess. I don't know. I've seen a lot of
22 brochures. This specific one, I don't know.

23 Q. I believe at your deposition you identified
24 this one. You want me to go find it, or do you want
25 to look at this again?

1 A. I've seen a lot of brochures. If I
2 identified that one, then I probably saw it.

3 Q. How big is Three Runs supposed to be?

4 A. 2,500 acres, 2,400 acres, something.

5 Q. That's what you've known from the time you
6 purchased your property in Three Runs; is that not
7 correct?

8 A. Yes.

9 MR. WARLICK: No further questions. Well,
10 give me just a second.

11 Q. [Mr. Warlick] Mr. Jacobs, you've been here
12 and you've heard all the people from Three Runs that
13 have testified. I think there have been eight or nine
14 of them. They described your lot, some of them said a
15 jungle, some of them said scrap trees, some of them
16 said ugly, some of them said not kept. Did you hear
17 all that?

18 A. I did.

19 Q. You disagree with all those people?

20 A. Not only do I disagree with it, most of them
21 sounded like they were reading from a script, because
22 they used the same words.

23 Q. Do you acknowledge that your property is the
24 only one in Three Runs that looks different than the
25 rest of them?

1 A. No, I don't think that's the case at all.

2 MR. WARLICK: I'm through, Your Honor.

3 THE COURT: Redirect?

4 MR. MCCANTS: No further questions.

5 THE COURT: All right. Step down, sir.

6 Gentlemen, I'm looking to go to about 2:45 before
7 we break. Let's call our next witness.

8 MR. MCCANTS: Judy Jacobs, please.

9 JUDITH JACOBS,

10 Having been first duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MCCANTS:

14 Q. You are Judy Jacobs; is that correct?

15 A. Yes, I am.

16 Q. You and your husband are the defendants in
17 this case; is that correct?

18 A. We are.

19 Q. Your husband's told us a little bit, Judy,
20 about from where you came, y'all's background and
21 everything. Tell the Court a little bit about your
22 education and your working life; okay.

23 A. Well, I'm originally from --

24 Q. Don't tell me, tell Judge Griffith.

25 A. I'm originally from New York, but I moved

1 around a lot. When I met my husband, I was living in
2 Connecticut. I have a degree, a bachelor of science,
3 in animal science, and I worked for a while as a sales
4 rep, selling chemicals for biomedical research. Then
5 I married my husband and started in the horse
6 business. I had a barn, I had a small barn, but we
7 had some boarders. I taught lessons on a freelance
8 basis, I gave clinics, and I went through the process
9 to become a licensed judge, and I'm a licensed horse
10 show judge.

11 Q. When were you and Jay married?

12 A. In 1982, January.

13 Q. Y'all have one daughter?

14 A. Yes.

15 Q. Adult daughter?

16 A. Yes.

17 Q. She lives where? In New York?

18 A. In New York, a suburb of New York City.

19 Q. All right. Your husband testified about how
20 y'all, looking to retired, looked around, found Aiken;
21 is that correct?

22 A. Yes. I did an exhaustive, two-year search,
23 looking around at all the equestrian communities. I
24 wanted to be in an equestrian community because, one,
25 it would put me close to other people who owned horses

1 so that I could make friends. Two, so that we could
2 guarantee that we wouldn't be living next to a trailer
3 park.

4 Q. You heard your husband's testimony about how
5 much money y'all have invested in your property?

6 A. Oh, yes.

7 Q. It's not just money that you invest in
8 property, is it, Judy?

9 A. No, building the house took a year of my
10 life. I came down here often. I did a lot of
11 research on the internet to pick the kinds of things
12 in the house. Basically, the house is an expression
13 of my personality.

14 Q. What do you mean by that?

15 A. I made thousands of decisions on what
16 materials to use in the house, in the construction and
17 in the finishing. I picked the floor plan and revised
18 it from what it was originally. Our outdoor space in
19 the backyard is completely my design.

20 Q. So, in addition to money, there's a lot of
21 blood, there's a lot of sweat?

22 A. Absolutely.

23 Q. And tears, too?

24 A. Oh, yeah.

25 Q. So, how would you characterize the level of

1 investment that you and your husband have made in
2 Three Runs Plantation and Aiken County, South
3 Carolina?

4 A. We moved here to live here the rest of our
5 lives, as long as we are upright. I've said that I'm
6 -- the only time I'm moving again is when they take me
7 out on a stretcher. So, we put a lot of -- I spent
8 three years of my life in the search and the building
9 of the house, getting ready to move here. I was
10 looking forward to a community of like-minded people,
11 where I'd make a lot of friends, and be able to do
12 things on horseback with people I met.

13 Q. Okay. You want a tennis court?

14 A. Oh, yes. I was a tennis player from the time
15 I was five until I had knee surgery, and I was ready
16 to play again because my knees are good now.

17 Q. How about the fitness center?

18 A. Oh, yeah. I use exercise equipment.

19 Q. Did you have conversations with Ms. Conger
20 and look at this marketing brochure and everything?

21 A. Well, this is -- I produced this, because I
22 had kept records on everything related to the purchase
23 of our land and the building of our house. I kept
24 everything.

25 Q. Is that what you gave me, all that

1 information?

2 A. Yes. That's the first piece of literature
3 she gave me about Three Runs when we got in the car
4 with her and she showed us the property.

5 Q. That's Exhibit Number 4; is that correct?

6 A. Yes.

7 Q. As far as you know?

8 A. Yes.

9 Q. All right. Now, what is your position as to
10 whether or not you were promised that there were going
11 to be tennis courts and a fitness center?

12 A. Well, we read the brochure, and because we
13 know that things of this nature are stated but not
14 always delivered, we pressed Ms. Conger about whether
15 they were going to be built and when. She said don't
16 worry, he's a man of his word, he loves this
17 community, it's his -- it's his child, and he will
18 deliver on everything that is there. When I asked her
19 when, she said soon.

20 Q. All right. You heard the testimony that the
21 development itself has been in existence for seven,
22 approaching eight, years?

23 A. Right.

24 Q. What do you understand the meaning of soon to
25 be?

1 A. Well, since I asked her in 2007, that's five
2 years for me, and five years is not soon.

3 Q. Do you think the lack of the tennis courts
4 and the fitness center affect the value of your
5 property?

6 A. Yes, I do. I think that the more people who
7 move to the community and build homes of the quality
8 of the house we built, the better it is for the value
9 of our home. Things like tennis courts and fitness
10 centers attract those kind of people. And I think
11 having facilities means that anyone who wants to move
12 to the community will have more amenities available,
13 so more types of people would want to come to the
14 community, which increases the value of my home.

15 Q. Didn't hurt you?

16 A. In no way.

17 Q. Plus, you would be a user of --

18 A. Yes, I would. I've been -- we brought our
19 tennis rackets expecting the tennis courts to be
20 built. They're still in the closet.

21 Q. What's his favorite sport now?

22 A. Bridge, in a chair.

23 Q. In a chair; okay. But you'd be out on the
24 tennis court?

25 A. So would he. He loved to play tennis.

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PAMELA N. POPE, CCR, CVR-M

1 Q. Let me know when that happens. I want to see
2 it.

3 A. I'd love to.

4 Q. Now, moving along. Your husband talked
5 extensively about the covenants.

6 A. Yes.

7 Q. Matters he perceived where there's been
8 uneven or inconsistent --

9 A. Yes.

10 Q. Anything you want to add to what he said?

11 A. I think his -- he was very complete. I think
12 that he covered most of the topics that concern us.
13 The only thing I would like to add is, Mr. Raiford sat
14 up here and said, through all the properties you
15 showed him, that this one was in compliance, and this
16 one the grass was long because it was around the time
17 it was supposed to be cut. So, according to him, even
18 a property where the grass is long, it's in
19 compliance, except for ours.

20 Q. We've got photographs. I'm sure the Judge --

21 A. We have lots of photographs --

22 Q. The Judge will look at those, Judy.

23 A. -- of long grass that Mr. Raiford has excused
24 because it might be August. We mow our property three
25 or four times a year, and we don't always coincide

1 with the September mowing. We mow it when it needs
2 mowing. We asked for permission for a six-month
3 period to not mow the grass because we wanted to grow
4 trees. That -- that was not okay.

5 Q. Hold the thought about the trees. We'll talk
6 about that --

7 A. That is not okay. But people can let their
8 grass grow until it's over so many -- or weeds, until
9 it's over somebody's head, but if it's August, it's
10 okay.

11 Q. All right. Talk about enforcement of the
12 covenants.

13 A. Yes.

14 Q. I came out to visit you recently. Take a
15 look at those photographs and tell the Court for the
16 record -- hold them up and show the Court; okay?

17 A. Sure.

18 Q. Defendants' Exhibits 44 and 45.

19 A. We walked from the trail --

20 Q. Who's we?

21 A. What?

22 Q. Who's we?

23 A. You and I.

24 Q. All right. You wanted to take me out and
25 show me something, didn't you?

1 A. Yes, I wanted to show the manure on the
2 trails, because --

3 Q. I told you I didn't think that was that big a
4 deal, didn't I?

5 A. Yes, you did. But three people told me about
6 it.

7 Q. Let's don't talk about what people said.

8 A. Yes. One was my husband, one was Lanni, so
9 these people are here, that testified. So, I wanted
10 to go out and see what it looked like, so you and I
11 went out.

12 Q. What did I tell you before we even got there?

13 A. Oh, this can't be anything. This is probably
14 no big deal.

15 Q. What happened?

16 A. Well, somewhere between 50 and 100 feet away,
17 the smell hit us. When we got there, we found manure
18 where it was obviously spread by a manure spreader,
19 but it was spread thicker than anything I've ever
20 seen. All the neighbors spread their manure around
21 the outside of their fencing, and they spread it in a
22 thin layer mixed with bedding. Within a day or two,
23 it --

24 Q. What is bedding?

25 A. Usually people are using shavings or sawdust

1 or something of that nature, to absorb the liquid
2 within the -- that gets deposited in the stalls. So,
3 the manure was usually mixed with bedding when it's
4 spread, and it's spread in a thin layer, and within a
5 few days it dissipates. It does not normally smell.

6 Q. All right.

7 A. So, we came upon this and it was spread
8 several inches thick, could be four or five inches
9 thick. Didn't see any bedding it. I just saw lots of
10 manure, and boy, it smelled. Plus, it was on the
11 trail, not around the outside of the fencing on the
12 property.

13 Q. That's the next question. You're an
14 equestrian type?

15 A. Yes.

16 Q. Why is that a problem, what's depicted in
17 those photographs?

18 A. Well, I don't want to be riding through three
19 or four inches of manure. I don't want it on -- in my
20 horse's feet. I don't want to be smelling it. I
21 think it's offensive. Plus, over time, as that much
22 manure mixes with the sand that's in there, it starts
23 to hold water. So, whenever it rains, it will
24 actually become mud, something that sand doesn't. So,
25 it becomes a softer area than the sand footing that we

1 have that is so wonderful. So, it's in the long term
2 detrimental to the footing.

3 [Defendants' Exhibit Number 49 was marked for
4 identification by the court reporter.]

5 Q. Okay. While we're on the subject of riding,
6 49, look at that for a second, Judy. Can you tell the
7 Court what's depicted in that photograph?

8 A. Yes, it's the easement at the -- if you face
9 our property, it's the easement at the far right side,
10 and it's a picture from back near the trail, up to the
11 road.

12 Q. Can you tell me when that was taken?

13 A. Friday.

14 Q. Now, there's been talk about the -- I want
15 you to show the Judge, but explain this easement
16 thing. Again, what you've shown is manure on the
17 trail at the rear of the properties; is that correct?

18 A. Yeah, manure on the trail. An easement, we
19 all have a ten-foot easement on the sides of our
20 property, so there should be a 20 foot space between
21 properties, so that people on horseback and people on
22 foot have access to all the trails.

23 Q. Everybody can kind of go between parties and
24 get around?

25 A. Right, and get to the trails at any point

1 between properties. If you have more than one lot,
2 you are not required to maintain the easement interior
3 between your various lots, only the easements on the
4 exterior sides of your lot.

5 Q. All right. That basically shows the property
6 line between your lots?

7 A. Yes.

8 Q. The interior --

9 A. Between our lot and the lot next door, which
10 is not improved.

11 Q. That would lead to the trail which is
12 depicted on the photographs?

13 A. We're standing at the trail end. It's
14 photographed to the street end.

15 Q. All right. You've heard testimony that y'all
16 don't keep the easement between the lots clear?

17 A. Right. That it's not accessible by horseback
18 from the -- to get to the trail.

19 Q. You ride horses?

20 A. Yes.

21 Q. Do you believe you could maneuver your horse
22 through that area depicted in the photograph the Judge
23 has?

24 A. Of course, because it's in the by-laws that I
25 have to keep the easement open so that it's accessible

1 to the trails, and we do so.

2 MR. MCCANTS: That's Exhibit 49, I believe;
3 isn't that correct, Judge?

4 THE COURT: Correct.

5 Q. [Mr. McCants] Now, do you want voting rights
6 in the homeowners association, Judy?

7 A. Yes, I do.

8 Q. Why?

9 A. Because I feel that I have expertise and
10 information that I can contribute to the ongoing
11 management of the property, and I have concerns that I
12 would also like to be able to direct to the group of
13 homeowners so that we can all discuss them.

14 Q. All right. Like your husband, you want to be
15 part of the process?

16 A. Absolutely.

17 Q. Let's talk about maintenance of the lots a
18 little bit; okay?

19 A. Sure.

20 [Defendants' Exhibit Numbers 50 through 51
21 were marked for identification by the court
22 reporter.]

23 Q. Identify these two photographs. These will
24 be 50, 51 --

25 MR. MCCANTS: Gentlemen, these are the two

1 lots at the time of purchase.

2 MR. WARLICK: This was taken when?

3 MR. MCCANTS: At the time of purchase.

4 THE COURT: Gentlemen, the one that was just
5 introduced, number 49, it's my understanding that
6 there was no objection as long as they provided --

7 MR. WARLICK: I said no objection provided if
8 he said when it was taken. It was taken last
9 Friday?

10 MR. MCCANTS: That's right.

11 THE COURT: So, no objection? It's in; okay.

12 MR. WARLICK: As long as we get the dates.

13 Q. [Mr. McCants] Look at these two, 49 and --
14 excuse me, 50 and 51.

15 A. Yes.

16 Q. What do photographs 50 and 51 show?

17 A. They show the two lots we purchased on the
18 day after we signed the agreement of sale. We signed
19 it on a Saturday, and we went out on Sunday -- or we
20 signed it on a Friday, we went out on Saturday, the
21 day before we went home, and took pictures of the lots
22 as they were the day after we signed the agreement of
23 sale.

24 Q. What was the condition of the property at the
25 time of closing?

1 A. No different, because we didn't do anything
2 to it. We didn't attend the settlement, so I did not
3 see the property. But we did nothing to it from this
4 until settlement. Now, this -- this was either the
5 very of end October or the beginning of November of
6 '07.

7 Q. That's fair. You call it settlement. What
8 do you mean by settlement?

9 A. No, not settlement. When we signed the
10 agreement of sale. Not a closing. It's not a
11 settlement in South Carolina?

12 Q. Hold on. Two different points in time. You
13 signed a contract to buy?

14 A. Right. We signed the contract to buy. This
15 was the next step.

16 Q. All right.

17 A. We did not attend the closing, so I can't
18 testify that it looked exactly like this. But I know
19 we didn't do anything to the property in the time in
20 between.

21 Q. To the best of your knowledge, that's the way
22 the property looked at the time the property was
23 closed?

24 A. Yes.

25 Q. You heard testimony that some people thought

1 you were supposed to keep it the way it was at the
2 time of closing; did you hear that?

3 A. Yes, I did.

4 Q. That's pretty natural looking, isn't it?

5 A. It looks very natural, but it's not the way
6 we wanted to keep it.

7 Q. That's the way it was delivered?

8 A. Right. When it was delivered to us, we had
9 14 acres of -- with a lot of trees, a high level of
10 tree density, especially in some particular areas, and
11 brush and weeds. There wasn't one blade of grass on
12 the property.

13 Q. I'm going to show you 37; okay? Your husband
14 couldn't identify that. Can you identify that?

15 A. Yes. You took that on Friday. It's an
16 expanse of -- well, this is -- it's an expanse of
17 property where -- a section here where it's a little
18 bit open and --

19 Q. How about holding it up so the Judge --

20 A. -- then it's wooded. What?

21 Q. Slow down. Show the Judge.

22 A. I was about to. So, there are -- there's a
23 wooded part and a small open area. That's pretty
24 typical of what the property looked like. There are
25 small open areas where the grass has grown nicely, and

1 then there are some wooded areas where the tree canopy
2 prevents the development of any grass.

3 Q. I don't think y'all deny that maybe the grass
4 gets up a little bit. But you cut it down; right?

5 A. Well, the --

6 Q. Do your best?

7 A. There was a six-month period where we did not
8 cut the grass over a winter, because we couldn't
9 identify the trees that were growing from the tall
10 foliage of other types that was growing around it.
11 So, we agreed to then start mowing it at the end of
12 the winter, when we could find the trees, they would
13 start to leaf out. That was the agreement -- that was
14 what I thought I agreed to.

15 Q. But you've always agreed to keep your
16 property in first class condition?

17 A. From the time I agreed to that, I have
18 maintained the property in what I think is first class
19 condition.

20 Q. Do you see any debris on the photograph I
21 just gave you?

22 A. No.

23 Q. Do you see any trash?

24 A. No.

25 Q. Has there ever been any debris or

1 accumulation of trash on your property?

2 A. Only when people were building on adjacent
3 properties and the wind was blowing. But I went out
4 and got it all.

5 Q. Now, let's talk about the trees; okay?

6 A. Yes.

7 [Defendants' Exhibit Numbers 52 through 59
8 were marked for identification by the court
9 reporter.]

10 Q. I'm going to show you this handful of
11 photographs, 52 -- I'm going to show you what's been
12 marked Exhibits 52 through 59; okay? Ask you to
13 identify those. First, tell the Court when they were
14 taken.

15 A. They were taken on Friday.

16 Q. What I want to talk to you about is what
17 they're pictures of, besides the nice young lady in
18 the photographs.

19 A. Well, I don't know about young lady. But
20 they are pictures of the trees that have grown up
21 since we moved in.

22 Q. Now, let's talk about these trees. I want
23 you to tell Judge Griffith -- you know a little bit
24 about trees, don't you?

25 A. Well, I studied. Since we moved in, I -- we

1 live in a completely different habitat than what we
2 lived in in Pennsylvania. I knew a lot about the
3 ecology of the northeast, but not that much about this
4 area. So, I bought some keys, some identification
5 guides, so that I could go out and look at trees, look
6 at the bark, the acorns on the oak trees, the pine
7 cones on the pine trees, and then identify what kinds
8 of trees we have.

9 Q. All right. I'm not trying to make you a
10 forestry expert or --

11 A. Well, I'm far from that. A lot of trees --

12 Q. Hold on.

13 A. -- I don't know what they are.

14 Q. Judy? Judy? Let me move things along,
15 listen to my question; okay?

16 A. Okay.

17 Q. I'm not trying to make you that expert. But
18 do you feel comfortable telling the Court that you're
19 able to identify some of these trees based upon your
20 research and your investigation?

21 A. Yes.

22 Q. All right. Walking through what kind of
23 trees you believe you have on your property --

24 THE COURT: Just give me the number of the
25 one you're looking at. I've already looked at

1 them.)

2 THE WITNESS: I am actually not looking at --
3 I have a list that Clarke asked me to develop of
4 the trees that I have identified that grow on our
5 property. If it's all right, I'll read you the
6 list, because I can't remember this many trees.

7 Q. [Mr. McCants] Just read it in the record.

8 A. Okay. The trees that we have on our
9 property, first I have a list of oak trees. So, we
10 have white oak, southern red oak, willow oak, water
11 oak, shumard oak, post oak, turkey oak, and blackjack
12 oak. Then other trees. We have American holly,
13 eastern wahoo, bayberry, sassafras, long leaf pine,
14 loblolly pine, stagmore and sumac, and dogwood.

15 In addition, we have other plants growing
16 that are of some interest to us. We have blackberry
17 vines, which we try to eradicate, blueberry bushes,
18 which we like, and we have prickly pear cactus, spread
19 throughout the property.

20 Q. You've been accused of growing scrub oak on
21 your property.

22 A. Well, there --

23 Q. What is this right here, Exhibit Number 59?

24 A. It's hard to tell from here, because I really
25 need to see the leaf to know exactly what oak tree it

1 is.

2 Q. Do you remember which one you were standing
3 by, though?

4 A. I think it's a water oak. From what I can
5 see, it looks to me like it's a water oak.

6 Q. What is this one, 54?

7 A. This, I think, is a willow oak.

8 Q. What is 56?

9 A. Another willow oak.

10 Q. Now, you remember this big one you had me
11 point to, that you wanted to show me? 57, what is
12 that?

13 A. Water oak.

14 Q. Show me again -- that's an older water oak,
15 isn't it?

16 A. Right.

17 Q. Show me the little water oaks.

18 A. Where's the first one you gave me?

19 Q. I'll have to give them all to you. You've
20 got the water oak?

21 A. Uh-huh.

22 Q. Show the Judge. Let me see the water oak
23 picture, the little one?

24 A. This is a mature water oak, and this is one
25 that has grown since we've moved on the property.

1 Q. That little one's right next to a pine tree;
2 right, Judy?

3 A. Yes.

4 Q. Why is it growing next to a pine tree?

5 A. Because the pine trees are mature, and once
6 pine trees are mature, they tend not to live all that
7 long after that. They have a shallow root system and
8 frequently go down in heavy winds. So, we are very
9 happy that a hardwood tree is growing at the base of a
10 pine tree, because when the pine tree goes, whether
11 it's in a month or 10 years, there will be a beautiful
12 oak to replace it.

13 Q. A beautiful oak tree?

14 A. Yes.

15 Q. It sounds like you're kind of proud of your
16 little oaks and --

17 A. I am.

18 Q. -- what they're doing out there?

19 A. It's a lot of work to maintain them the way
20 they are.

21 Q. To you, is 54 just an old weed or scrub oak?

22 A. No, it's a two to three year old oak, willow
23 oak, that's grown to about seven or eight feet.

24 Q. How about 56? Is that a weed or just some
25 old scrub oak to you?