THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal No. 2013000714

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

CASE NUMBER 2009-CP-26-3596
Consolidated with
CASE NUMBER 2010-CP-26-11320

Ronald Jarmuth Appellant,

v.

The International Club Homeowners Association, Inc., Rosemary Toth, and K. A. Diehl & Associates Respondents.

CORRECTED RECORD ON APPEAL

VOLUME 3

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Poster A Plat 158 at 155 4413
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Poster D Plat 169 at 115 4416
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Poster I International Club Tax Map....4421
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61. August 20, 2012 Plaintiff's Post Trial Brief Supporting Proposed Order 4425

62. Certificate of Appellant....4649
63. Proof of Service 4650

and conclusions of law the judicial officer must give the other party a chance to respond.

f. The Special Referee adopted in his order a finding of fact which also ignores the defamatory additions to the "List of Lawsuits" which were separately authored from any court decision. On the same page of the Order the Special Referee wrote:

> "The Defendant HOA notified its members regarding Plaintiffs lawsuit and his history of filing litigation pro se. The Defendant HOA had a duty to inform its members that Plaintiff has filed several other cases and to inform the members' of the status of this lawsuit. The Board did not exceed the scope of the privilege nor provide an opinion as to the motives of Plaintiffs litigation.:

This finding ignored that the IHOA went beyond just recounting or citing cases, and went beyond distributing material written by a court. The "List of Lawsuits" lied about key elements in many of the lawsuits, but one need only look to the citation with the defamatory statement about termiantion of employment to find defamation per se beyond the litigation privilege.

g. The publication of what was purportedly decisions of courts – findings of fact and conclusions of law – is actually the domain of the "Fair Reporting Privilege". For the "Fair Report Privilege" to apply the publication must be made without editorial comment, embellisment, and must be absolutely trusthful. Anything less losses the privilege. Clearly the claim of Maureen Sullivan at trial that all they were doing was republishing court documents does not apply when one looks at the actual "List of Lawsuits" and it's editorial comments and inventions.

> In order for the fair report privilege to apply the report of a public proceeding must be a fair and accurate recount of the public proceeding. *Rosenberg v. Helsinki* 328 Md. 680664 (Md. 1992).
>
> The fair report is a conditional privilege that can be waived if not exercised "with good faith, without malice and absent any knowledge of falsity or desire to cause harm." Gilliland v. St. Joseph's at Providence Creek, C.A. No. 04C-09-042, 18 (DE 1/27/2006)(DE 2006)
>
> It applies equally to media and non-media parties. *Rosenberg* at 680.

h. The US Mail publication was to 627 homeowners, one at an international address, per the IHOA's document titled "#4458-4464 6-1-09 Mailhouse Invoice - Jarmuth Mailing" in discovery, which adds one to the 626 Count Plaintiff obtained from the US

Postal Service and provided at trial, Pl #522. The Email Publication was sent to 577 email addresses by Julie Case, per the IHOA's document titled "#4405-4430 5-28-09 Intl Club Email - Jarmuth litigation deta" (but reaching 354 "live" addresses) -- Pl #521 at trial. The IHOA admitted 354 delivered email copies.

i. Decision by this Court.

(1) The Court should rule that the grant of litigation privilege to the IHOA for republishing to the public the fraudulent / false / editorial comments about Plaintiff's work experience with the FBI was not covered by Litigation or other privilege – that portion of the republication being the defamatory element.

(2) The Court should impose both a direct and punitive judgment against the Defendants for the false statement about Plaintiff's employment, which is defamatory per se and which implies direct damages. The Complaint asked for damages in the amount of $1000 per addressee which is not unusual. The Court is asked to use it's own discretion in determining damages.

(3) The Court is asked to impose a permanent injunction barring the IHOA from publishing any material about Plaintiff without his consent.

---

22. KA Diehl invaded Plaintiff's Privacy by Providing Financial Information about Plaintiff's Account to ARB members.

a. Facts.

(1) K.A. Diehl has access to the details of Plaintiff's IHOA financial account and other documents relating to Plantiff by virtue of the records it keeps on behalf of the IHOA, as a contractor. No employee of KA Diehl is an employee of the IHOA.

(2) Plaintiff has refused to sign or agree to any statement of privacy rights or agreement regarding use of private information, either with the IHOA or with KA Diehl.

(3) At trial both William Freiboth, IHOA President, and Beckie Abel, KA Diehl employee, testified that the Architectural Review Board (ARB) is not part of the IHOA but is a completely separate, stand-alone entity. Whether or not the ARB is an entity of the IHOA is irrelevant to invasion of privacy because the scope of duties of the ARB does not require access to Plaintiff's IHOA financial information or to any material in the custody of KA Diehl regarding Plaintiff.

(4) The supposed task of the ARB is to look to the Covenants, the ARB Guidelines, Horry County zoning regulations, and the contents of a homeowner application to modify his property and, using these sources, to decide whether or not a propsed change should be allowed. At Pl #646 is the "Modification Request Application" document that the November 2011 ARB Guidelines prescribes for use. This is the complete set of information which the ARB supposedly is to base it's decision on. The document asks for the location of the house, the house plat or sketch of the lot, plans or pictures of the project, and other information at the owner's discretion to describe the project. The document states that "if enough information is not included in this application ... it may be returned to me for more information". This states that additional information, if required, must be requested from the homeowner, not KA Diehl.

(5) The area for the entry of ARB action provides four alternatives: "Approved" "Disapproved" "Conditional Approval" "Withdrawn" (by owner). The form provides a place for the ARB members who made the decision to date and sign their names. This form was never provided Plaintiff in discovery by the IHOA or KA Diehl.

(6) At Pl #644 was the March 16, 2012 "non-decision" by the ARB. Like the documents related to the Swing Set and Fence, the leterhead was the "International Club HOA, Inc". All were signed by a K.A. Diehl employee (this one by Vanessa Fattoross) as "Managing Agent for International Club HOA, Inc". Over her signature she wrote "For The Architectural Review Board" with whom Diehl and Fattoross had no legal connection, except through the IHOA if the ARB is a creature of the IHOA. The letter stated:

> "The ARB has deferred consideration until your present ARB violation is remedied by removing the brick work along the property line and restoring the sod. *Your HOA account also needs to be brought current. As of today your account balance is $1,735.00.*"

At trial Beckie Abel admitted that the ARB got the information relating to Plaintiff's account from KA Diehl. There is no other way for the ARB to have received this information and it is more likely than not that Diehl provided ARB members information relating to Plaintiff's "HOA Account" – which includes assessments..

(6) The procedures stated in the ARB Guidelines have no provision for consideration of prior ARB applications or violations nor considerations about Plaintiff's finalcial account. As has been pointed out earlier, the IHOA per it's Procedures Section

13.3 can not suspend any rights or take any action against a member unless the IHOA Board has held a hearing, which it did not. Using an ARB application to sidestep this requirement so as to collect some alleged IHOA account is not an option available to the IHOA. Per William Freiboth, the ARB does not act for the IHOA. The Articles of Incorporation do not provide that any committee of the IHOA has any delegated or inherent power, nor do the IHOA's Bylaws. The Covenants Section 7.3 Objectives of ARB Page 17 Plaintiff # 547 do not include collecting account deficiencies of the IHOA. No such objective or procedure is included in the IHOA Bylaws either. No where in the ARB Guidelines is there a mention of status of other projects or status of an IHOA account.

(7) The information which the ARB legitimately would use in making a decision are Covenants, current ARB Guidelines, and the Homeowner Application.

(8) ARB members, ARB applicants, and IHOA homeowners are not given a statement of privacy rights and (except for optionally joining the Diehl website) are not asked to sign or given an opportunity to "opt out". Plaintiff has repeatedly informed the IHOA in writing that he refuses to agree to any privacy waiver of the IHOA, this being in conjunction with the IHOA's statements that he is excluded from email communication by the IHOA unless and until he signs such a waiver.

(9) The ARB at the time included certain homeowners who by words had stated that they were hostile to Plaintiff and whom Plaintiff would never have consented to allow access to his IHOA information at all.

(10) Plaintiff had a reasonable expectation of privacy that his financial information with the IHOA, in the possession of KA Diehl, would remain private and would not be disclosed to the ARB.

(11) No explanation has been given by Diehl or IHOA representatives at trial as to why the information was provided. There is no record in discovery of a request from the ARB for information about the status of Plaintiff's accounts or prior ARB applications. No ARB member would know if a prior disagreement about an ARB application had been resolved between the IHOA Board and Plaintiff because hearings on such matters, per Bylaws Section 13.3, are in "executive session". It is more likely than not that Diehl's intent in passing this material to the ARB (which was irrelevant to the decision on hand) was to harm Plaintiff. Diehl was a co-defendant in this litigation at the time.

(12). It is more likely than not that co-defendant KA Diehl violated Plaintiff's Privacy relating to his financial information and that Diehl did so intentionally.

b. The Court Should Enter Findings and Conclusion that --

(1) Plaintiff had a reasonable expectation that the ARB would not be provided his financial information.

(2) KA Diehl violated Plaintiff's reasonable expectation of privacy.

(3) KA Diehl did so intentionally.

(4) The Court should enter an award of punitive damages against KA Diehl in an amount of the Court's discretion.

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23. The IHOA unlawfully and in bad faith refused to approve Plaintiff's Swing Set Application.

The refusal violated the implied covenant of good faith and fair dealing; it was selective and capricious enforcement; it enforced non-existent restrictions; it was a "family status civil rights violation; another homeowner was approved for a larger swing set in the identical lot location adjacent to the same model home.

The assertion that no application to the ARB need be made because Covenant Section 7.2 was waived has been addressed already, as has the contention that the IHOA lacks authority as does it's ARB (not the HOA in the Covenants).

a. Case Law (recited at trial).

ARCADIAN SHORES HOMEOWNERS v. Cromer 644 SE 2d 778, 373 SC 292 - SC: Court of Appeals, 2007:

> "... nor will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms, even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written."
>
> "if the grantor had wanted to restrict mobile homes, he could have done so."
>
> "However, extensive omissions or variations tend to show that no scheme exists, and that the restrictions are only personal contracts."
>
> "Association inconsistently enforced this requirement. Moreover, pictures of property throughout the neighborhood show the absence of any scheme with respect to fencing or other structures."
>
> "Restrictions on the use of property will be strictly construed with all doubts

resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). Cited in 4575 - Santoro v. Schulthess, SCCA # 4575 Filed July 1, 2009

"A restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.". Hamilton v. C.M., Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980):

b. Restrictions of Record.

(1) Covenants. There are no restrictions on Plzy Sets. The following are applicable to structures in general.

Section 7.1. Conformity and Approval of Structures. No building, structure, fence, sidewalk, wall, drive, exterior lighting, painting, landscaping or other improvement shall be placed or altered on any Unit except in accordance with the provisions of this Declaration.

Section 7.10. Use and Height Restrictions. Except in Multi-Family Areas no structure shall be erected, placed or permitted to remain on any Unit in excess of three (3) stories in height, and in no instance shall any residence exceed thirty-five (35') feet in height above existing grade. For purposes of this section, the first parking level or deck underneath a building built at or above grade shall not be considered a story.

Section 7.11. Setbacks and Building Lines. No Unit or structure of any kind ... shall be erected on any Unit nearer than the building setback lines established by the Murrells Inlet Golf Plantation Planned Unit Development approved by Horry County which is incorporated herein by reference.

(2) Setback Lines approved by Planning Commission:

From the Planning Commission Approval of the Murrells Inlet Golf Plantation PUD:

For Single Family Homes –
Front Setback 15 feet
Rear Setback 10 feet
Side Setback 5 feet
Corner Lot Side 10 feet
Maximum Height 50 feet

Single Family Home Accessory Structures
Minimum Separation 6 feet behind principal structure
Side Yard 10 feet
Corner Lot Side 15 feet

Rear Yard 15 feet
Maximum Height 15 feet

Plaintiff's proposed playset (application at Pl# 601 conforms to the setback and height restrictoins.

(3) ARB Guidelines. ARB Guidelines DO address swing sets. Since the subject was specifically addressed, these are the exclusive and complete restrictions and no others are implied or enforceable. See case law:

> "L. Recreational Equipment. ... 2. Swing Sets must be approved by the ARB and if approved must be securely anchored per hurricane specifications".

c. The denial was bogus and was not based upon covenants or rules.

(1) The IHOA denied Plaintiff's application to place a swing set on the right side of his house, which is the only area that it could safely be placed, by letter dated August 5, 2009 "NOTICE OF DISAPPROVED REQUEST" signed by "Julie Case, Assistant Manager; KA Diehl & Associates, Inc; Managing Agent for International Club HOA, Inc " It read:

> "The installation of a swing set on the side of a home which is visible to the street and infringes on other homeowner's enjoyment of their property is prohibited."
> "This application must be denied based on the location of the swingset."

(2) There is no restriction in the covenants or ARB rules restricting a swing set to the rear of a house and prohibiting it from a side yard if the set backs are honored. There is nothing in the letter or the evidence or testimony at trial showing how the swingset "infringes on other homeowenr's enjoyment of their property" and how this is a criteria in the rules or convenants – which it is not (and it would be a very subjective one).

(3) There is likewise no requirement that a swing set not be visible from the street.

(4) In his deposition and at trial Pete Pizzi testified that his daughter owns an identical model house and that the IHOA had approved a similar, but larger, swing set on the corresponding right side of his daughter's house. This was never controverted. The same testimony was offered in a deposition of Pete Pizzi and was likewise not controverted.

(5) At trial Plaintiff offered photos of the house where the identical proposal had

been approved: The house is at 1212 Harrogate Court and belongs to Robert & Carolyn Sobczyk.[30] At Pl #611 is the color picture of the front of the Harrogate house showing that one can see the swing set (at the right of the house) from on the pavement. At Pl #612 is a color picture of the side yard showing the much larger swingset in the exact corresponding location that Plaintiff propsoed to place Plaintiff's Swingset.

(6) The language of the denial is telling: "infringes on other homeowner's enjoyment of their property". The record of the case and the testimony of Plaintiff at trial was that Cartman, an ARB member, stated that the ARB would never approve a swingset on the side of Plaintiff's house near Cartman's house because Cartman "hates kids" and considers them "too noisy". Cartman was in the courtroom and was never called to deny making this statement and the IHOA never denied that the statement was made. A denial of the swingset on the basis that it would be used by children is also a Human Rights Violation – act of a corporation depending on family status – and is against public policy.

d. The denial was Selective and Capricious. At trial Plaintiff introduced Defendant's March 17, 2011 responses to an interrogatory (Pl #604):

> 15. Identify the owners by name and address of any lot which now has, or ever has had, children's playground equipment on said lot.
>
> ANSWER: Listed below are the names and addresses where swings / play sets have been permitted:
>
> 1. Fleishman, 408 Adare Court
> 2. Bailey, 512 Turret Court
> 3. Bernstein - 245 Pickering Drive
> 4. Parr - 239 Pickering Drive
> 5. Llewellyn - 229 Pickering Drive
> 6. Vargo - 100 Pickering Drive
> 7. Vietri - 600 Bristol Place
> 8. Jordan - 873 Castlebridge Court
> 9. Anderson - 116 Keswick Court
> 10. Boudreau - 105 Keswick Court
> 11. Knaffle -101 Keswick Court
> 12. Sobczyk - 1212 Harrogate Court
> 13. Mahnke - 216 Whitchurch Street
> 14. Magnetico - 267 Whitchurch Street
> 15. O'Harra - 223 Whitchurch Street
> 16. Mitchell - 400 Kinsale Court
> 17. Mullins - 314 Conchal Court

[30] The daughter and son-in-law of Mr. Pizzi.

At trial Plaintiff testified that the Parr swingset (#4 in the interrogatory answer) was across the street from Plaintiff and plainly visible from Plaintiff's doorstep with no obscuring vegetation at all. The entire Parr playset was thus plainly visible from Pickering Drive, the main road through Pebble Creek.

e. Findings of Fact and Conclusions of Law sought:

(1) The refusal by the IHOA to allow Plaintiff to erect a swingset as he requested was not based upon any explicit or enforceable covenant provision or published rule of the IHOA.

(2) It was more likely than not that the refusal was based on the discriminatory beliefs of Jay Cartman a member of the IHOA's ARB. There is no location restriction on the placement of swing sets. The decision was based on hostility to family status (presence of children).

(3) The refusal was selective and capricious and was made in bad faith and was a violation of the implied covenant of good faith and fair dealing.

(4) Through the approval of a similar (or larger) swing set in a correspondeing location at 1212 Harrogate Court, the IHOA waived it's right to assert location as a reason for it's denial.

(5) Plaintiff has a right to and is granted permission to erect a swing set as requested in his ARB Application dated July 21, 2009 (Pl #601).

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24. Defendant Rosemary Toth made an illegal distribution of IHOA Funds and As a Matter of Law Must Return $ 50,250.00 she chose to distribute to homeowenrs.

a. ByLaws

1. CONDEMNATION

11.1 Whenever all or any part of the Common Areas or Recreational Amenities of the Subdivision shall be taken by condemnation or eminent domain, or is conveyed in lieu thereof by the Board ... then the award or the proceeds collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

11.1.1 If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, ... the Association shall restore or replace such improvements ... If such improvements are not to be repaired or restored, the award or proceeds shall

be retained by and for the benefit of the Association.
11.1.2 If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are funds remaining after any such restoration or replacement of such improvements is completed, then the award, proceeds or net funds shall be retained by and for the benefit of the Association

There is no provision for a distribution of any part of the proceeds to members.

1. INTRODUCTION
(f) There shall be no dividends or profits paid to any members nor shall any part of the income of the Association be distributed to its Board of Directors or officers. In the event there are any excess receipts over disbursements, such excess shall be applied against future expenses, etc..

Excess revenues are not to be rebated to homeowners as refund of excess assessments BUT said excess receipts must be retained in the treasury for future expenses.

b. Statute.

SC 33-31-140. Definitions.
(11) "Distribution" means the direct or indirect transfer of assets or any part of the income or profit of a corporation to its members, directors, or officers. The term does not include:
(a) the payment of compensation in a reasonable amount to its members, directors, or officers for services rendered;
(b) conferring benefits on its members in conformity with its purposes; or
(c) repayment of debt obligations in the normal and ordinary course of conducting activities.

The testimony of Maureen Sullivan at trial and Rosemary Toth at her deposition was that the IHOA had excess income and the homeowners had been assessed more than was needed for the year, so they elected to distribute it to the members.

SC 33-31-1301. Prohibited distributions.
Except as authorized by Section 33-31-1302, a corporation may not make any distributions.

"SC33-31-1302. Authorized distributions.
(a) A mutual benefit corporation may purchase its memberships ...
(b) Corporations may make distributions upon dissolution ...
(c) The board of directors may base a determination that a distribution is not prohibited under subsection (a)" [relating to purchase of memberships. No applicable].

SC 33-31-833. Liability for unlawful distributions.

> (a) Unless a director complies with the applicable standards for conduct described in Section 33-31-830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

As a matter of law, no distribution could be made without violating this chapter.

c. Facts.

(1) On April 19, 2010 the IHOA called a Special Meeting of the Members per the Board Minutes of the event (Pl # 369). At a cost of $ 3,000 for the meeting. The meeting was chaired by Defendant Rosemary Toth. Per paragraph V of the minutes the purpose was to tell the members that the Board had unilaterally, without a vote, decided to sell Central Electric an easement in the front entrance which involved the destruction of landscaping and the restoration of the landscaping. Paragraph IV 1 stated that Central Electric would provide the materials and labor to restore the area at no cost to the IHOA. Subparagraph 2 stated that the IHOA was receiving additional "compensation" in the amount of $ 80,000.00. $3,000 of this would go to repaying the expense of the Special Meeting. Beneath that was the following text:

> "Breakdown of the remaining funds $ 80,000.00.
> $50,000.00 funds to be distributed to 670 homeowners at the rate of $ 75.00 per unit owner".

This computes out as $75.00 times 670 equals $ 50,250.00. Section X was the "Motion to Grant the Easement". The section stated that William Freiboth, board member, made a motion to grant the easement and that the "vote" of the board was that it "passed unanimously with a roll call" of the board. The minutes was signed by Defendant Rosemary Toth, Board President, as Board "President".

(2) The April 6, 2010 letter to the homeowners from the IHOA Board signed by Defendant Rosemary Toth stated that "this is not a voting meeting of the membership" but that this was a Special Meeting of the Board of Directors. At the Special Meeting Rosemary Toth refused the request of members for a vote by the members on the decision.

(3) Subsequently, as was confirmed by Mr. Freiboth at trial, the checks were issued to the homeowners from the proceeds of the Central Electric sale of the easement.

(4) This is a distribution as defined by the South Carolina Non-Profit Corporation Act. This distribution also violated the Bylaws of the IHOA.

(5) Per the statute, Rosemary Toth is individually liable for the full $50,250 distributed to the 670 homeowners.

d. Special Referee's / Defense Counsel's Explanation.

(1) On page 8 of the Order they wrote:

> 24. Part of the consideration that the Defendant HOA received from Central Electric was distributed to the members, for each member received $75.00. The Defendant HOA shared the proceeds with its members to refund the assessments that the members annually paid because the Defendant received unbudgeted revenue for 2010.

The Finding of fact that the IHOA received consideration from Central Electric for the granting of an easement and destruction of landscaping is correct. So is the finding of fact that the IHOA distributed $75.00 to each member. So is the finding that the "HOA shared the proceeds" – that the money that went to the members was directly descended from the Central Electric money. The Special Referee made an incorrect Conclusion of Law that this could be distributed under any circumstance (save dissolution of the corporation or repurchase of non-existent memberships).

(2) On Page 27 the Special Referee made additional findings related to this distribution. The court related what William Freiboth testified to at trial relating to this:

> "Mr. Freiboth, the Defendant HOA's President, testified that this was not a profit distribution but rather for the purpose of passing a benefit to the members. "

This was clearly a reference to one exception of the statute: SC 33-31-140.

> "Definitions. (11) Distribution ... does nor include (b) conferring benefits on its members in conformity with its purposes".

(3) This is still a violation of the IHOA's Bylaws and there is no "purpose" within the Articles of Incororation which can be cited AND a benefit is never a cash distribution but goods or services within the purposes of the Corporation – for example mats to lie on at the swimming pool. The provisions of SC 33-31-1301. Prohibited distributions make a cash distribution illegal because it is not one of the exceptions stated in SC 33-31-1302. The statute would otherwise be meaningless because any money in the "till" of a non-profit corporation could be considered "excess assessments" through this bogus theory that repayment of cash on hand is a "benefit".

e. Findings of Fact and Conclusions of Law which should follow:

(1) The distribution of $ 50,250 to homeowners was an illegal distribution.

(2) Rosemary Toth, as President of the IHOA at the time, voted for this illegal distribution.

(3) Rosemary Toth is personally liable as a matter of law for the full amount.

(4) Rosemary Toth shall repay the $ 50,000 to the IHOA from her personal funds. She may not be indemnified by the IHOA's insurance company for an illegal act which was ultra-vires.

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25. Horry County owns the Roads in Pebble Creek.

a. Newly Disovered Evidence. On November 14, 2012 the Horry County Council, at a public meeting of the board, at Plaintiff's request discussed the question of why taxes are not levied on the roads in Pebble Creek and elsewhere in the International Club PUD. The County Council recognized that on October 15, 2002, by Resolution R 155-02, the County had accepted the dedication of the roads in Pebble Creek to Horry County. The discussion on the record was that in all circumstances other than outright ownership the County collects taxes on roads per the requirements of state law. The County Council directed Assistant County Administrator Steven S Gosnell, who is also the County Engineer and Director of the Infrastructure & Regulatory Division, to confirm the ownership of these roads by the County. This request by Plaintiff to the County Counsel was in response to the dependence by the Special Referee to a letter from Janet Carter [31] which was misquoted by the Special Referee as saying that the position of the County was that it held only an easement on the roads.

b. On page 25 of the Special Referee's Order Defense Counsel Golding wrote the following which the Special Referee adopted – and which refers to a document never in evidence:

> "Additionally, the Horry County Zoning Department has confirmed that the Declaration roads are enforceable against the owners of a subdivision or PUD. Pursuant to Janet Carter's letter, the Horry County Planning Director and I&R counsel for the Planning & Zoning Department, Horry County does not enforce the covenants governing dedicated roads, but the County does its best not to issue permits that would be in conflict with

[31] County Attorney.

covenants."

(1) No such letter was in the IHOA's Rule 16 list of Exhibits presented to the Court at the beginning of trial (or earlier) and no such exhibit was in either Party's Exhibit Books.

(2) The name "Carter" does not appear in the Transcript nor does the phrase "April 16). Clearly the assertion that the letter of Janet Carter was introduced is a fraudulent one.

(3) Such a letter exists and it is from Janet L. Carter as Planning Director / I&R Counsel and was written on April 16, 2009 to Rosemary Toth as President of the IHOA. The letter is not on Plaintiff's Rule 16 list of exhibits and was not in Plaintiff's exhibit books at trial nor introduced by Plaintiff. The letter is NOT in Defense Counsel's last Rule 16 list of Exhibits dated August 8, 2012 handed to Plaintiff in the courtroom as the trial began. Clearly Defense Counsel inserted this into the draft order as evidence she wished she had introduced. However, at the conclusion of Plaintiff's presentation about the roads Defense did not challenge anything stated or introduced by Plaintiff nor did it introduce evidence of it's own. Janet Carter was not listed as a witness and did not testify. A finding of fact which explicitly depends on a document not introduced in evidence, or which could not have been introduced because it was available and not so listed for trial, is a finding of fact which is not supported by the evidence. As impeachment, Plaintiff quotes the following very important text which Defense Counsel omitted:

> "I have not reviewed the covenants and restrictions for your subdivision and express no opinion as to what rights, if any, the HOA may have in this regard.

In addition, Janet Carter's letter said nothing about "permits" [32]. There are three fraudulent fabrications of evidence by Defense Counsel here: (1) that the letter was introduced or reference was made to Janet Carter at all at trial; (2) that she said the PUD covenants specifically are enforceable, and (3) the reference to permits.

c. Controlling evidence omitted by the Special Referee. In evidence and discussed at trial was the August 24, 2009 letter from Andrew J Markunas, Deputy County

[32] There is nothing in Janet Carter's letter that even hints at the following statement by Defense Counsel adopted by the Special Referee: "the County does its best not to issue permits that would be in conflict with covenants."

Engineer for Horry County, to Mike Butryn, Pl # 61 – introduced at trial and authenticated by Butryn. The letter included the following text of the second paragraph:

> "Pickering Drive and International Club Drive are both owned and maintained by the county. ... The Internatonal Club HOA owns (and is responsible for paying taxes on) the parcel at the southwest corner of Pickering Drive and International Club Boulevard. The parcel is shown on the attached lat as a 6,534 square foot "common area"."

Mr. Butryn testified that he collected this information as part of his official duties as Chairman of the Buildings and Grounds Committee and provided this information to Rosemary Toth in her capacity as IHOA President. The context was that the IHOA was spending most of it's grounds maintenance budget maintaining land it did not own. Defense Counsel received this letter in discovery in 2009. The correspondence in evidence supports a conclusion of law that the County owns Pebble Creek roads – not the IHOA!

d. Ownership and Covenant History of Pebble Creek. There were no covenants of record when through a Plat submitted to and recorded by the Horry County Planning Commission, Dedication was agreed upon. At the time of actual dedication [33] the roads in Pebble Creek belonged to Sunbelt Developers – not DR Horton. Dr Horton had an inherited dominant easement of use over the Pebble Creek roads for access to Horton's property but Horton could not convey an easment of use over roads he did not own to anyone except a purchaser of a Horton house, which includes the county years later in 2006. [34] Dedication and transfer of ownership of the road had already occurred in 2002:

(1) On January 15, 1997 the Horry County Planning Commission approved the submission of the Murrells Inlet Golf Plantation, LLC (MIGP) to develop the "Murrells Inlet Golf Plantation" Pl # 450.. The documents explicitly stated that the roads shall be dedicated to Horry County. On the approval dated February 4, 1997 which is in the files of the Planning Commission the document stated that there would be "easements" – but that these applied to "Utilities". Roads were considered separate from easements under the section which followed titled "ROW Maintenance".

(2) In February 1997 there were NO COVENANTS applicable to any land in the PUD (MIGP) and no easements other than the ones mentioned in the MIGP Plat..

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[33] October 15, 2002, R155-02, Pl# 413.

(3) On December 5, 1997 MIGP sold the property to Plantation AD. There were still no covenants.

(4) On January 29, 1999 Plantation sold the portion of the Murrells Inlet Golf Plantation property called "Pebble Creek" where Plaintiff lives to Sunbelt – Pl #545. There were no covenants of record with the Horry County Recorder of Deeds. The deed referred to Plat Book 160 Page 79 Pl #454 which is the same plat which was later refereed to in the Covenants. Parcel 1 in the Plat is what Plantation AD conveyed to Sunbelt. The Plat did not depict or set out any roads or easements within Parcel 1 – Pebble Creek. Paragraph 2 of Exhibit A of the Deed (the description of what is conveyed) gave SUNBELT, not Plantation AD, "a non-exclusive easement of ingress and egress" over roads in the remainder of MIGP and over any road ultimately built connecting MIGP with Tournament Drive. The Deed also gave SUNBELT, not Plantation AD, an easement to run utilities under roads in the remainder of MIGP. In paragraph 3 Plantation AD reserved to itself a 20 foot wide golf cart easement to be used to cross what is now Pickering Drive. That same paragraph reserved for Plantation AD "a non-exclusive easement of ingress and egress" over what is now Pickering Drive so that the remaining property in MIGP could get to McDowell Shortcut Road and would not be "landlocked".

(5) Since the only interest Plantation AD retained in Pebble Creek was a "non-exclusive" easement of use and Plantation AD had no equitable interest in Pickering Drive, which did not exist and was part of the total parcel conveyed (without reservation), the only thing that Plantation AD or it's successors could convey relative to Pebble Creek Roads was Plantation's own non-exclusive easement – but only to it's vertical successors in the remaining property of MIGP. It could not grant an easement to others who were not successor owners of Plantation's property – such as the public at large.

(6) On February 8, 1999 Plantation recorded covenants Pl # 547. As a matter of law (horizontal equity / privity) these could apply only to property Plantation owned when recorded – which does not include Pebble Creek. The Covenants were a unilateral document not signed by or otherwise subscribed to by Sunbelt and did not constitute a modification of the earlier deed. The Covenants could not create easements which did not

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[34] The February 22, 2006 dedication R018-06 Pl# 405 was for a section of Pickering Drive outside of Pebble Creek in front of the Amenity Center.

exist in the earlier deeds. The Covenants could not return to Plantation AD that any part of Parcel – 1 (Pebble Creek) which ultimately became Pickering Drive (and other streets in Pebble Creek).

(7) On October 15, 2002 (Pl # 413) Sunbelt (not Plantation LLV) and County Council through Resolution R155-02 documented the county's acceptance of the dedication without any conditions of Pickering Drive and other major roads in Pebble Creek. There wasn't a single word in any of the documents stating that the transfer was subject to any restrictions. The document begins: "Whereas the Developers of Pebble Creek" which was Sunbelt, not Plantation AD or it's successor Horton. It goes on to say "request the roads and drainage be dedicated to Horry County". It then says that Sunbelt has provided Horry County with "fully executed dedication documents". It says that "it is the intent of Horry County Council to accept the roads and drainage at Pebble Creek into the County System." It does not say that the intent is to accept an "easement" but the roads themselves. And it does not say that there is any reservation of rights by Sunbelt. It is noted that a dedication of the roads to Horry County does not diminish the easement of Plantation for interior landlocked property to exit over the roads, because this right became enlarged, not diminished with public ownership and Plantation's right was "non-exclusive". Horry County then resolved to accept the dedication into the County System. IF the covenants applied, Plantation AD would have had to sign off on the dedication because, among other things, the Covenants forbid the dedication of any roads subject to the Covenants to the public (Pl # 547, Covenants,

> Section 8.7. No Dedication of Streets or Common Areas, Etc.
> Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, ... and neither the Developer's recording or any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any of said streets, ...

(8) On April 29, 2003 Pl # 556 Plantation LLC sold the remainder of the PUD to Horton. Page 2 of the Deed conveyed, in addition to the remaining land in MIGP, "*an easement and right of way for ingress and egress for vehicular and pedestrian traffic*" over all the property described in Plat Book 160 Page 79, which is the same non-exclusive easement that Plantation had granted to Sunbelt over the land that Plantation now sold to Horton

and which also is the same non-exclusive easement that Plantation retained for itself when it sold Pebble Creek to Sunbelt. Prior to April 29, 2003 there had been no dedication of any roads in the remainder of MIGP to Horry County but there had been a second dedication by Sunbelt to Horry County (January 21, 2003 R008-03 Pl #401) of additional roads Sunbelt had constructed in Pebble Creek after the initial dedication previously. The deed to Horton thus conveyed the roads in the remainder of MIGP subject to the non-exclusive easement previously conveyed to Sunbelt for Pebble Creek. The deed also reserved a non-exclusive easement of ingress and egress for what is now called The Fairways, The Enclave, The Grand Vistas, and the property now comprising the front entrance of the community from Tournament Drive.

(9) On May 18, 2004 Pl # 408 Sunbelt, not Horton or Plantation LLC, and County Council through R73-04, completed the dedication of the remaining roads in Pebble Creek to the county without reservation. Again, if there were covenants affecting these roads, Horton as the successor to Plantation LLC would have had to sign off on it because the dedication is not permitted under the covenants Plantation declared.

(10) The Special Referee and Defense Council point to the dedication from Horton to Horry County which occurred on February 21, 2006, Resolution R18-06 (Pl #405). The Special Referee refers to the title "Dedication of the Roads and Drainage at International Club Drive and Pickering Drive into the County Road System". The Special Referee clearly depended on the text suggested by Defense Counsel and never bothered to read the exhibit because on Page 2 of the Exhibit is a map of what was dedicated and it includes that limited portion of Pickering Drive outside of Pebble Creek which is in the Plantation (now Horton) area of MIGP and that limited portion of International Club Drive which goes from in front of The Villas condominiums north to the intersection of Pickering Drive in the MIGP area owned by Horton. The dedication omits that portion of International Drive south of The Villas ("the Front Entrance") and that portion of Pickering Drive which goes past The Glens condominium and up to and through The Enclaves / Fairways area. On February 21, 2006 Horton was not the owner of the underlying property for Pickering Drive in Pebble Creek. If that area of Pickering Drive in Pebble Creek was subject to easements, Sunbelt the Pebble Creek Developer was the owner who would have to grant it, and Horton was NOT the property owner and could not

convey an easement to Horry County in Pebble Creek.

(11) Horry County has been maintaining the sewers under Pickering Drive and cleaning the roads. After a storm September 22, 2011 Horry County sent a crew to unclog a storm sewer on Pebble Creek which was caused by a blockage at a retention pond (downstream) owned by the Golf Course. Horry County also sent a street sweeping machine to clean the dirt that had washed onto the roads Pl #18, 20, 29, 30 – photos). It is my belief that when there is an easement the owner ("Servient") of the property, not the beneficiary who uses the easement ("Dominant") is responsible to maintain the easement area and to bear the cost of maintaining the easement area. Horry County bore the entire cost of cleaning the sewer and the road.

(12) The Special Referee's Order. On page 23 of the Order the Special Referee wrote:

> Plat Book 181, Page 89, one of the referenced plats, shows the portions of International Club Drive. The plat specifically states that the property on the plat, including International Club Boulevard "are subject to all rights and restrictions of record", which include the covenants contained in the Declaration.

Plat Book 181 Page 89 was filed on June 19, 2003, approximately two years after Sunbelt bought Pebble Creek. This Plat is titled "Plat of ... International Club Golf Course". It was submitted by the owner of the Golf Course, International Club LLC, which is neither Sunbelt, Plantation AD, nor DR Horton. The references to International Club BOULEVARD are informational – the land was never owned by the entity that filed the Plat [35] and International Club LLC had not delegated authority over the roads. The plat strictly and exclusively concerned Golf Course Parcel Tracts 1 through 6 and the statement in the notes that "Parcels are subject to all rights or restrictions of record" does not apply to any streets but to the Golf Course parcels. Any finding of fact or conclusion of law based on this Plat is erroneous and not supported by the evidentiary record.

(13) The Special Referee cited case law which was not offered at trial by Defense Counsel but which supports Plaintiff's position on this matter:

> "Dedication is the giving of land or an easement for the use of the public by the owner." *Sloan v. City of Greenville,* 111 235 S.C. 277, 111 S.E.2d 573 (1959).

[35] The Golf Course.

Thus the case law on which the Special Referee depended recognizes that a Dediction can be a transfer of title, not just a right of use. The facts support these Dedications as a transfer of title and not an easement. On Page 25 the Special Referee found and cited an additional case which favors Plaintiff's interpretation:

> "The party dedicating land.. .may impose certain restrictions or reservations." 77 Am. Jur. Proof of Facts 3d 1.

This must be read in conjunction with the next citation which the Special Referee cited:

> "In order to create conditions or reservations, appropriate and specific language must be used." 77 Am. Jur. Proof of Facts 3d 1

The dedication documents contained NO language stating any conditions or reservations.

e. Law.

(1) Horry County Ordinance 18 / 4 / 2-1 requires the dedication of roads in subdivisions to either the county, the state, or to an HOA which will maintain same. No HOA in the International Club has ever owned any roads in the PUD and no roads in the PUD have ever been "dedicated" to any such HOA.

(2) SC Code 12-37-220 has no provision to exempt the roads owned by a Homeowner Association from taxation, and if it did, no HOA owns the roads anyway. Pickering Drive in Pebble Creek either is owned by the County (thus not taxed) or is owned by Sunbelt and must be taxed. There is no TNS assigned to Pickering Drive and according to County Council this is because Horry County owns the roads.

f. Findings of Fact and Conclusions of Law sought:

(1) The roads in Pebble Creek are owned by Horry County.

(2) The roads in Pebble Creek are not subject to any covenants of record.

(3) DR Horton never had an ownership interest in the roads in Pebble Creek such as to entitle Horton to convey an easement to the public for use of those roads; the easement held by Horton was a non-exclusive easement for the use of the Pebble Creek roads by purchasers of property in MIGP from Horton.

26. KA Diehl is responsible for Capital Contributions Which Developer DR Horton told the Court was paid to KA Diehl for the IHOA and which KA Diehl is unable to account for.

a. On April 18, 2012 DR Horton provided financial information first subpoenaed from Horton in 2009, Pl #701 which related to Capital Contributions given KA Diehl in trust for the IHOA On June 1, 2012 the IHOA provided financial data likewise requested in discovery in 2009, relating to capital contributions "booked" into the IHOA accounts, Pl #703. Extensive testimony was offered about this at trial by Plaintiff and no effort was made to controvert this, to offer alternative explanations or other evidence. The only contrary testimony on the matter was a statement at trial by William Freiboth (Transcript Page 913 through Pg 914 Line 18) that it was his personal belief "no" that KA Diehl did not take the missing money.

18 Q: Have you looked into that issue?
19 A: Yes, I have.
20 Q: And tell us about your conclusions as to the monies collected from D.R. Horton from 2004 to 2007.
23 A: The monies collected from D.R. Horton, the report that D.R. Horton gave us indicating what they thought they had collected, it does match what - - the report that we get from our management company about what we had reported, about what we have on-hand, what we had collected.
4 Q: Did you find any evidence of any kind that K.A. Diehl took a hundred and sixteen thousand dollars [36] of these capital contributions?
7 A: No.

b. The "report that D.R. Horton gave us" is Pl# 701. The "report that we get from our management company" is Pl# 703. The comparison of the two was Plaintiff's spreadsheet Pl# 704. There was no other evidence before the Court. The evidence from Horton provided over affidavit by Order of the Court and Defendant's own records as compared with Plaintiff's spreadsheet shows a $116,000 discrepancy. Mr. Freiboth never actually addressed Plaintiff's calculations – he ignored the actual evidence. His statement that "it does match" is contrary to the evidence. The allegation was not that KA Diehl "took" the money. The allegation is that it went missing on Diehl's watch and that it doesn't matter what happened, KA Diehl as a fiduciary is responsible to replace the

[36] **The allegation was that $16,063.00 is unaccounted for, not $116,000. Freiboth clearly had not looked into this or he would immediately have picked up this discrepancy.**

missing money. Freiboth's unsupported statement that KA Diehl properly accounted for all money is neither evidence nor based on any investigation that Freiboth cared to explain. At Pl #704 a spreadsheet was prepared and offered into evidence which summarized the data contained in the Horton and the Diehl / IHOA financial documents relating to capital contributions.

c. The limited financial ledgers provided by Horton concerned capital contributions passed to Diehl for the period January 7, 2004 through April 30, 2006. The IHOA / Diehl data covered the period January 13, 2005 through December 22, 2005 and from January 3, 2006 through April 30, 2006. The only audit available was for the common period which meant removing Horton data through (and prior to) January 12, 2005 which left a remaining common period January 13, 2005 through April 30, 2006. Plaintiff believes that financial discrepancies are large in other financial periods but due to Horton's destruction of records this can not be proved.

d. The data shows that during the common period Horton gave KA Diehl, in trust for the IHOA, $ 46,834.00 to be applied to the Capital Contributions account. Pl #704. The KA Diehl data shows that KA Diehl "booked" $ 30,771.00 during that same period. This leaves an unaccounted discrepancy of $16,063.00.

e, The issue was addressed by the Special Referee in the order beginning at page 49 in a section marked "*23. The Defendant K.A. Diehl Properly Performed its Duties as the Community's Manager.*" The order stated that

> "The Plaintiff attacked the Defendant K.A. Diehl on a number of fronts. First he testified that K.A. Diehl obtained monies from capital contributions and these monies are missing. He testified that there were no checks and balances in place to prevent any fraud and it was "more likely than not that K.A. Diehl is responsible . . . ." "

The Order was then silent on the matter of the Horton ledgers which showed a deficiency in the IHOA / Diehl Accounts. THE SPECIAL REFEREE MADE NO FINDING OF FACT OR CONCLUSION OF LAW REGARDING THE MISSING MONEY. The evidence was sufficient to meet a higher standard than "more likely than not". The Order is strangely about conclusions – there simply is no way to spin Freiboth's simplistic opinion into something with more weight than sworn ledgers.

f. As a matter of constitutional right and law, the Court had an obligation to rule on the matter presented to it and the evidence. The section postured with text

addressing everything but the central issue in hand – missing money on "Diehl's Watch". The evidence is that Defendant Diehl, as fiduicary for the IHOA, is liable and responsible to replace money missing under it's care. Earlier, after Plaintiff made his presentation on the matter, Defense Counsel had been silent. No opposing witness (other than Freiboth's opinion nothing was wrong) or evidence was offered. It is more likely than not that the money was misappropriated. The Court need find nothing more than that the money was entrusted to Diehl and that it is missing from the accounts. Horton's records were produced subject to an Order of this Court and under affidavit of authenticity. Defense Counsel was present when the hearing on the Motion to Compel was heard and reheard (reconsideration). Defense Counsel promptly received a copy of the Horton documents and had ample time to come up with an explanation. The Court is asked to note that common defense counsel represents Diehl who is a co-defendant. Under common law a fiduciary is responsible to make up an unexplained shortage in the accounts of a client.

e. Findings of Fact and Conclusions of Law.

(1) DR Horton provided KA Diehl, as fiduciary for the IHOA, $46,834.00 to be applied to the Capital Contributions Account of the IHOA during the period January 13, 2005 through April 30, 2006.

(2) KA Diehl as community manager for the IHOA, was a fiduciary for the HOA.

(3) KA Diehl can account for only $ 30, 771.00 during that same period of time.

(4) There is a deficiency in the IHOA Capital Contributions Account of $16,063.00 for that period of time.

(5) As fiduciary for the IHOA, KA Diehl is responsible to make up the shortage in that account.

(6) Defendant KA Diehl is ordered to pay the sum of $16,063.00 to the IHOA for use in the IHOA's Capital Contributions Account.

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27. Pebble Creek Homeowners have no obligation to the Highway 17 Connector Association to be members of that Association or to pay Assessments to it.

a. The principles of horizontal privity and equitable interest in the formation of covenants discussed supra apply here, as well as the prohibition on involuntary

membership in a non-profit corporation.

(1) On Page 942 of Black's Law Dictionary, First Edition, privity is defined Pl# 89 as being an equitable interest in property simultaneous to the exercise of some property right in that same property. There must be a "mutual interest in the same property" for two parties to be bound by a property related agreement.

		Action or Restraint	
		Do Something	Refrain from Doing Something
Where the Action or Restraint Takes Pl	On One's Own Land or in Relation to One's Own Land	A promise to do something on one's own land: Typically a covenant or equitable servitude: e.g., (i) A promises to maintain a drainage ditch on A's land to keep water from draining onto B's land, or (ii) A, living in a private subdivision, promises to make monthly homeowners' association payments	A promise to refrain from doing something on one's own land Typically a negative easement (some states limit the types) or restrictive covenant (real covenant or equitable servitude): e.g., A promises not to build anything on A's lot that would block the view to the lake for B, who owns an adjacent parcel.
	On Another's Land	A right to do something on another's land: Typically an easement: e.g., A grants to B (who lives across the street from A) the right to cross A's ocean front property to get to the beach.	*An obligation to refrain from doing something on another's Land: [no easement or covenant running with the land; this is just the owner's right to exclude]*

Legal Provisions of a Proper Covenant as to Obligations and Restrictions

(2) The Highway 17 Covenants impose an obligation for Pebble Creek homeowners to do something – pay money – on Horry County property, the International Club Drive, which was dedicated to Horry County on June 5, 2001 R076-01 Pl# 409. An argument that Horry County only got an easement over Tournament Drive, as the road is now called, makes no difference to the issue of proper covenants vs personal service contracts. Parenthetically, Horry County has repaved the road, torn out all landscaping, rearranged the road, and put new landscaping and traffic control signs in. On another's property the only legitimate obligation that a covenant can impose is an obligation NOT to do something. An obligation to DO something on another's property or for another's property is a personal services contract. The Highway 17 Covenant fails as a contract because it was not signed by anyone with a capacity to permanently bind owners in Pebble Creek, it does not state that it "is a contract for services", and does not state with absolute certainty all the essential terms of the agreement – it lacks exactly how much someone has to pay. This last flaw causes the Highway 17 covenant to fail the statute of frauds. The obligation does not survive a change in ownership, thus any obligation that Plantation AD

may have committed to did not transfer to Sunbelt and Pebble Creek. The Highway 17 Covenants were not covenants of record as to the MIGP tract when Sunbelt bought Pebble Creek. They were covenants of record only for the Tournament Drive tract itself.

(3) At no time prior to the sale of Pebble Creek to Sunbelt did a property owner of what became Pebble Creek have an ownership interest either in the land that became Tournament Drive aka Highway 17 Connector, nor in the land immediately adjacent. No property owner in Pebble Creek signed the Highway 17 Connector Covenants such as to bind vertical successors. The Highway 17 Connector Covenants do not impose a restriction as to what a property owner in Pebble Creek can not do on his Pebble Creek property nor an obligation to do anything on that same Pebble Creek Property. There was no exchange of consideration by any owner of property in Pebble Creek. The Highway 17 Connector covenants do not grant Pebble Creek property owners any rights as to the Highway 17 Connector property, not even a right of ingress or egress, and such a right was never connected with deeds descending from any deed to the Pebble Creek property. The issue is a supposed covenant obligation of Pebble Creek homeowners to pay a sum of money to a non-profit to use to maintain[37] a non-contiguous, distant property which Highway 17 does not even own – which is owned by and maintained by Horry County.

b. The Special Referee wrote on page 44 of his order that

> Pursuant to the Connector Road Declaration, the developers of property between Highway 707 and Bypass 17 agreed to contribute property to build a connector road between these two roads.

No evidence was presented that showed that any veritcal predecessor / owner of Pebble Creek property was ever a "developer of property between Highway 707 and Bypass 17" during the relevant period.

c. The payment of money for goods or services used off-property is a "Personal Services Contract" which is not enforceable as a covenant and which expires, if it exists at all, at the transfer of property of any signatory to the property for which the personal services contract is related to. The Highway 17 covenant does not satisfy the Statute of Frauds as a contract because it lacks such important details as to what exact services will be performed, what the exact financial obligations of the contracting parties are, and

[37] This is legally no different than homeowner lawn maintenance contracts.

suffers from the additional issue that the purpose is moot since Horry County has the obligatoin which it frequently performs of landscaping, maintaining the road it owns, and maintaining the adjacent berms. In point of fact Horry County totally destroyed all landscaping in 2011 when it reconfigured and repaved Tournament Drive.

d. The Special Referee also determined that the IHOA or HOA for the PUD is contractually bound by the Highway 17 Covenants even though it has not entered into a contract of it's own and no act of the board of directors of the IHOA has ratified or "signed up" to this obligation as an official act of the IHOA. The IHOA could not be so bound because the Covenant came into existence prior to the incorporation of the IHOA and no third parties, under any circumstances, can bind a non-profit corporation which does not exist to acts it does not agree to. The Special Referee wrote:

> "In the Connector Road Declaration, Article V, Section 1, Creation of Lien and Personal Obligation for Assessments, sets forth: "In the event any sub-association is formed which affects all or any portion of the Property, such sub-association shall have the obligation to collect any assessment hereunder." Therefore, the Defendant HOA has the obligation to collect assessments from individual homeowners and pay the assessment to the Highway 17 Connector Association.

e. Case Law.

Queen's Grant II Horizontal Property Regime v Greenwood Development Corporation, d/b/a Palmetto Dunes Resort, Inc; 2006 S.C. App. LEXIS 79,;368 S.C. 342; 628 S.E.2d 902

Epting v. Lexington Water Power Co., 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. Covenants §§ 18 and 19.

Hardy v. Aiken 631 SE 2d 539, 369 SC 160 - SC: Supreme Court, 2006

ARCADIAN SHORES HOMEOWNERS v. Cromer 644 SE 2d 778, 373 SC 292 - SC: Court of Appeals, 2007 –

Clear Lake City Water Authority

Dryden v. Calk, 771 F. Supp. 181 (S.D. Tex. 1991).

Frey v. De Cordova Ben Estate Owners' Ass'n., 632 S.W.2d 877, 880 (Tex.App.—Fort Worth, aff'd 647 S.W.2d 246) (Tex. 1982) ;

Holleman v. Mission Trace Homeowners' Ass'n., 556 S.W.2d 632, 635 (Tex.Civ.App.—San Antonio 1977,

f.. Facts.

(1) On December 29, 1998 a group of developers recorded a document titled the

"Declaration of Special Covenants for the Highway 17 Connector Road Maintenance District Association Inc. Pl # 547. Deed Book 2105 at 607. There is no such thing, in South Carolina or Horry County, as a "Road Maintenance District". There are special purpose districts which have been created by ordinance of Horry County for special purposes, for example, the Murrells Inlet Fire Department, whose source of revenue is a portion of taxes collected by the county assessor, as part of property taxes, from residents in that district. There are similar special purpose districts in Myrtle Beach, similarly created by ordinance whose revenues are taxes.

(2) The Covenant on it's page 3, Deed Book 2105 page 609 Pl #541 says that

> "an owner shall mean and refer to the record owner (including the Declarant) as shown by the real estate records ... situated within the "Property" .

The Highway 17 Covenant on it's page 4, Deed Book 2105 page 610, says that "Property" shall mean and refer to all the Property which is subject to this Declaration. It says that the Plantation Tract is at Exhibit F. The actual property subject to the Covenants, called "The Connector" is where the PUD homeowners have a putative duty to do something, is described on Book 2105 page 608 page 2 as stated at Exhibit C to that document.

(3) On Page 7 Article 5 Section 1 of the Highway 17 covenants it is asserted that non-owners of The Connector property have an obligation to pay for the purposes described in Section 2. The purposes are stated in Section 2, Page 8, Book Page 614, that being "the improvement, maintenance, enhancement, enlargement, and operation of ... the Connector." The Connector Property, Exhibit C, Deed Book page 651, page 45 of the Covenant, excludes the actual road from the property, but it includes the rest of the right of way for what is now known at some of Tournament Drive.

(4) On June 5, 2001 the entire Connector, including roadway and shoulders, was conveyed to Horry County and accepted by Horry County Council Resolution R076-01, Pl # 409. As such the entire area which to be benefited by the Covenants do not belong to any of the original parties to the Covenants. The dedication was made without any reference to the Highway 17 Covenants and thus they are not preserved.

(5) The Tournament Drive Dedication documents describes the dedication as being Tournament Boulevard, and the owners of The Connector as being "Kaminski, owner and developer of Prince Creek", ETS, and Bill Hatoway. Plantation AD is not

listed as an owner. All owners have to be listed on dedication documents to assure that everyone with an interest in the property has surrendered it to the County.

(6) Exhibit F is the property belonging to Plantation AD which is related to the Highway 17Covenants and it is described as the "Murrells Inlet Golf Plantation" property. This property is not contiguous with The Connector and shares no common point. It is separated from The Connector by the southern end of Tournament Drive which was not and is not a part of the PUD. There is no horizontal privity between the Plantation property and the Connector. The southern end of International Club Drive is on Plat Book 160 at 79, Pl #454, which plat also describes 9.79 acres which is Cypress Keyes. Cypress Keys is not contiguous with the Murrells Inlet Golf Plantation. Cypress Keyes is contiguous with The Connector. The owner of the Plantation property did not have horizontal privity to The Connector – he never owned any of the Highway 17 property no did he own adjacent property. The owners in the PUD do not have vertical privity to an original owner with horizontal privity to The Connector.

(7) The IHOA can not be bound by the Highway17 Covenants because it's property is not subject to those Covenants. On page 11 of the Highway 17 Covenants, Deed Book 2105 page 617, it exempts from any obligation under the Highway 17 Covenants Section 11 (c) any property owned by a non-profit organization – which includes the HOA. Thus the HOA being exempt has no vertical or horizontal privity with Highway 17 through property it owns and thus has no obligations under the Highway 17 Covenants.

g. Findings of Fact and Conclusions of Law.

The following relief is, however requested:

(1) No horizontal privity or common equitable interest in land existed when the Highway 17 Covenants were filed such as to obligate any owner of Pebble Creek property at the time to be subjected to the Highway 17 Covenants as covenants. To the extent that the Highway 17 document bound Plantation AD, who owned what became Pebble Creek, and obligation was a personal services contract and was extinguished when Plantation AD sold Pebble Creek to Sunbelt.

(2) No HOA for the International Club PUD is subject to the Highway 17 Covenants because any property such an HOA owns is exempt from the terms of that covenant.

(3) Homeowners in Pebble Creek in particular and in the International Club in general have no obligation to make any payments to the Highway 17 Association through their HOA.

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28. The Obligation to Join the Amenity Center is a Personal Services Contract and not a proper Covenant touching and running with the Land.

a. The Order. On Page 18 of the Special Referee's Order the Special Referee addressed this issue in a section titled "5. Plaintiff is Obligated to Pay Assessments Relating to the Amenity Center." In the order the Special Referee's analysis is as follows:

> The Plaintiff contends that he is not obligated to pay the assessments for the Amenity Center. This contention is without merit because, as a member of the Community, he is subject to the Declaration. *Whether he uses or does not use* the Amenity Center is not a factor in determining his obligation to pay for the assessments. Restatement (Third) of Property (Servitudes) § 6.5 (T.D. No. 7, 1998) (setting forth that homeowner's obligation to pay assessments is unconditional).

This was not Plaintiff's argument. It is a strawman created by Defense Counsel to avoid confronting the issue posed by Plaintiff: that a requirement to utilize services is not a proper covenant "touching and running with the land" even if the obligation is written into a covenant – that it is actually a Personal Services Contract subject to the limitations of the Statute of Frauds. The Obligation which the Restatement refers to is the obligation for the maintenance of common property. This, however, is subject to pre-emptive law: The South Carolina Non-Profit Corporation Act.

The Special Referee next relied on a statute which applies to apartment and condominiums as discussed supra:

> "S.C. Code Ann. § 27-31-190 ("no co-owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him.")"

This statute is inapplicable. The IHOA was organized under SC 33-31 et seq. The Special Referee finally found that

> ... the Plaintiff agreed to Section 6.5 by accepting the Deed to his property and that he is obligated to pay assessments for the Amenity Center.

At trial it was pointed out that only some homeowners are required to pay

assessments for and join the Amenity Center. This is not a general obligation. The Covenants do not even require the IHOA to actually have an Amenity Center. It is in the covenants that, if the HOA chooses to build one, some but not all homeowners are required to join under unspecified conditions of use and to pay an unspecified amount for it's use. This is a personal services contract whose terms – ambiguity – violate the Statute of Frauds.

All homeowners pay general assessments which are computed, accounted for, and sometimes billed separately. The Special Referee completely ignored the actual argument posed at trial: That the obligation to join and pay separate assesments for the Amenity Center is not a proper covenant touching and running with the land.

b. The Requirement to Join the Amenity Center is a Personal Services Contract. This argument and all citations to cases was made by Plaintiff at trial and was ignored by the Special Referee in his Order.

(1) There is no case law to support the notion that homeowners can be forced to join amenity centers in their developments but there is case law to the contrary, albeit not in South Carolina where this has never been challenged before. South Carolina has adopted the doctrine that where a case presents a "novel" situation, South Carolina trial courts should look to the decisions of appellate courts in other states for guidance.

(2) South Carolina courts have freely drawn upon other states' decisions, treatises and the Restatement of Property in fashioning the law of restrictive covenants -- Lynch, 159 SE at 30, Marathon Finance Co v HHC Liquidation Corp, 483 SE 2d 757, 764 (SC Ct App 1997) MidSouth Golf v. Fairfield Harbourside Condominium Assn., 187 N.C. App 22, 31, 652 S.E.2d 378, 384 (2007),

(3) In MidSouth, the declaration of restrictive covenants provided that the homeowners be assessed a license fee for maintenance of recreational amenities owned by the Declarant, regardless of whether or not they used the amenities. MidSouth, 33,. The homeowners had no equitable rights in the amenities. *Id.* at 35.

(4) The court in MidSouth relied heavily upon the precedent set by the court in Raintree Corp. v. Rowe, 38 N.C. App, 664, 248 S.E.2d 904 (1978) and in MidSouth voided the homeowner obligation, finding in MidSouth that it did not run with the land.

(5) In Raintree, a developer created a covenant requiring all lot owners to be

members of a country club and pay dues. The court found that the covenant did not run with the land and voided that aspect of the covenants.

"This covenant creates an affirmative duty, a charge or obligation to pay money, i.e., country club dues, for the services and use of the country club facilities which are not upon, connected with, or attached to the defendants' land in any way. The [lot owners] are required to pay, whether they use the facilities or not. The payment of a collateral sum of money does not concern the land. Nesbit v. Nesbit, 1 N.C. 490,495, 1 Cam. & Nor. 318, Cam. & Nor. 318 (1801) Courts have generally held that covenants to pay money do not touch and concern the land. Neponsit Property Owners' Ass'n v. Emigrant Industrial Sav. Bank, 278 N.Y. 248, 15 N.E.2d 793 (N.Y. 1938)). . . We find that the performance by the defendants of this covenant is not connected with the use of their land and does not touch or concern their land to a substantial degree. [Raintree Corp. v. Rowe, 38 N.C. App, 664, 248 S.E.2d 904 (1978).

(6) In MidSouth the Court concluded that "the recreational amenities are not appurtenant to [the land] and therefore the covenant to pay amenity fees does not touch and concern [the land]." MidSouth at 36, 652 S.E.2d at 388.

(7) This should be the law of the case for both the Amenity Center and Highway 17 dues.

c. At trial Plaintiff informed the Court about the amounts due Plaintiff on acccount of being required to pay additional dues for the Amenity Center. Plaintiff computed this for trial (Pl # 382) for the period 2007 through 2012, ignoring the prior sums. Through August of 2012, from January of 2007, the amounts are computed as follows:

Year	Total Assessment Per Month	Amenity Center Per Month	Amenity Center Per Year
2007	$70	$18	$216
2008	$70	$18	$216
2009	$88	$18	$216
2010	$88	$18	$216
2011	$88	$18	$216
2012	$91	$18	$144
			$1,224

The Amenity Center assessments are taken from IHOA documents:
2007 From the November 2006 Year End document, $ 18 per month for 2007.. Pl # 317.
2008 From the December 2, 2007 IHOA letter, no change in assessments for 2008. Pl # 342.
2009 There was no change in the amount for the amenity center.
2010 From the November 6, 2009 Budget Pl # 364 and the November 20, 2009 Newsletter, Pl # 366.

2011 From the November 16, 2010 Budget Letter, Pl # 387 the amenity center charge is unchanged, although overall assessments rose.
2012 From the October 28, 2011 Budget for 2012, Pl # 388, overall assessments rise but the amenity center charge remains at $ 18.00.

c. Findings of Fact and Conclusions of Law. The Court is asked to find as follows:

(1) The obligation of some homeowners to join and pay additional assessments for the support and use of the Amenity Center is a personal services contract even though it is stated in the Covenants. As a personal services contract it did not survive the sale of units from the developer to any homeowener.

(2) As a personal services contract, the obligatino does not satisfy the Statute of Frauds.

(3) Plaintiff has been involuntarily assessed for the Ameinity Center since his purchase of his home in 2006. He is on record as objecting to the requirement to pay this additional charge as an assessment or otherwise.

(4) Plaintiff is entitled to the return of the sums he has been forced to pay for the Amenity Center.

(5) The measure of damages through the end of 2012 is $ 1,224.00 and judgment is entered against the Defendant IHOA in fovor of Plaintiff in that amount.

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29. The HOA Illegally Failed to Give Plaintiff the Voter List.

a. Law

SC 33-31-720. Members' list for voting.

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting and shall list the members by classification of membership, if any. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for

the purpose of communication with other members concerning the meeting, beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or member's attorney is entitled on written demand to inspect and, subject to the limitations of Sections 33-31-1602(c) and 33-31-1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or member's attorney to inspect the list of members before or at the meeting, or copy the list as permitted by subsection (b), the court of common pleas of the county where a corporation's principal office in this State or, if none in this State, its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) before the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section.

(g) A member may inspect and copy the membership list only if
(i) his demand is made in good faith and for a proper purpose;
(ii) he describes with reasonable particularity his purpose; and
(iii) the list is directly connected with his purpose.

SC 33-31-1602 (c) Good Faith Request for Records
(c) A member may inspect and copy the records identified in subsection (b) only if:
(1) the member's demand is made in good faith and for a proper purpose;
(2) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and
(3) the records are directly connected with this purpose.

(d) This section does not affect:

(1) the right of a member to inspect records under Section 33-31-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

SC SECTION 33-31-1605. Limitations on use of membership list.

Without consent of the board, a membership list or any part of a membership list may not be obtained or used by a person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part of the list may not be:

(1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
(2) used for any commercial purpose; or
(3) sold to or purchased by any person.

b. Bylaws of IHOA. There are no Bylaws regarding inspection or copying of records. There is no statute or case law which makes HOA member names, addresses, phone numbers, and email addresses and number of votes they may cast "privileged". The HOA publishes the above (less number of votes) to anyone who bothers to sign up on the KA Diehl web site – but there is no consistency between this and the "official" list and the web list is incomplete and includes many individuals who are not eligible to vote (such as renters or family members).

c. Interpretation of SC Statutes by South Carolina Attorney General.

On December 21, 2011, only three weeks before the case was originally scheduled to go to trial January 17, 2012, the South Carolina Attorney General responded to a request from SC State Senator Tom Davis to provide an Attorney General's opinion relating to whether there was any statutory impediment or condition diminishing an absolute right of a homeowner to obtain the Members List For Voting per SC 33-31-720. The focus of this is whether an HOA could use an "interprative spin" using the authority of 33-31-1602 (c) *Good Faith Request for Records* to refuse to provide the "Members List". The answer was provided over the signature of Harrison D. Brant, Assistant Attorney General, and it was "no" – because subsection (d)(1) of Section 1602 makes Section 1602 inapplicable to

requests posed under Section 720. Further, the burden under Section 1605 is on the HOA and the homeowner making a request under 720 has no burden of proof to show that he does not intend to use it to solicit money; for any commercial purpose; or to sell it to another person.

d. Facts.

(1) On July 24, 2008 Plaintiff requested the Members List for Voting Pl # 333. In standalone paragraph 4, the request said:

> The list is requested for the purpose of communicating with members eligible to vote, and to verify the validity of votes cast at the general meeting.

The language of SC 33-31-720(b) is "for the purpose of communication with other members concerning the meeting" so the stated purpose is taken word for word from the statute. The letter requested the names and addresses of the persons entitled to vote, plus the phone numbers and email addresses of same – for persons entitled to notice. While the phone numbers and email addresses are not subject to Section 720 they are subject to Section 1602 and the purpose, being as a matter of law (Section 720) a good faith reason, Plaintiff was entitled to have the additional information as well. The request went on to request, as to homeowners not entitled to notice, just the statutory list of those voters which per Section 720 is the names and addresses and numbers of votes they can cast. The letter was sent to Defendant Rosemary Toth in her capacity as HOA President. The HOA / Rosemary Toth ignored the request and instead sent a dump of the name / address list from the HOA web site which reflected what homeowners or non-homeowners chose to post, which is not an official document of the IHOA. Plaintiff's letter states that this request was

> "In conjunction with the forthcoming General Meeting of Members which will address the election of Directors

Section 720(e) implies that the failure to provide the Members List invalidate the action taken at the 2008 Annual Meeting and invalidate the election of any director at the 2008 election, and by "inheritance", the legitimacy of any director appointed to replace a director elected in 2008 who resigned. In 2008 two directors were elected. No Member List was provided to Plaintiff in 2008.

(2) There is no limitation on how often the Member List may be requested. It is in fact a "living document". On April 28, 2009 Plaintiff again requested the Members List

for Voting Pl #358. The letter was titled "Request for Copy of HOA Voter List" and was sent to the IHOA through it's registered agent, Defendant KA Diehl. The letter stated that "*The purpose of this request is to communicate with fellow homeowners*" the purpose stated in the statute. The HOA ignored this request entirely.

(3) On September 3, 2009 as the Annual Meeting where Directors would be elected drew closer, Plaintiff stated a "Request for Copy of HOA Voter List" Pl #361. This was sent to the IHOA c/o it's registered agent, Defendant KA Diehl. Paragraph 4 of the letter stated *"The purpose of this request is to communicate with fellow homeowners."*

(4) The list of members, including email addresses, has been provided to and used by homeowners to sell merchandise (e.g., straw baskets, garage sales, insurance, arts and crafts). This is a particular purpose explicitly forbidden by Statute, but has not been an impediment when the list is used by "friends" of the Board.

e. Trial Testimony.

(1) Defense Witness Abel admitted receiving the requests for the Voting List and that Defendants never provided it – nor any answer. On Page 1008 of the Transcript she was questioned about this by Defense Counsel:

> 13 Q: And what is the date of Mr. Jarmuth's letter?
> 14 A: April 28th, 2009.
> 15 Q: And is this letter requesting a voter list with emails, telephone numbers and addresses?
> 17 A: Yes.
> ...
> 23 Q: And what response, and that's the next letter in Exhibit 53, what response was made and the date and who made that response?
> Page 1009
> 1 A: This came from McNair Law Firm, and it was April the 28th, 2009, and the response was -- I think basically what I said, they could -- we could give him the homeowners list, but no further information.

But Defendants KA Diehl and the IHOA never gave Plaintiff the "homeowner list" which is not the same anyway as the "list of voters". They gave Plaintiff – NOTHING. Abel's testimony continued on Page 1009:

> Q: To your knowledge, have you attempted to provide or K.A. Diehl attempted to provide Mr. Jarmuth all the information he's requested that is permissible to provide a homeowner?
> 14 A: Yes.

In cross examination, it was clarified that no response was made to the latter two requests

and that the response to the first request was not the Member List as described in the law. On Page 1005 of the transcript Ms. Abel testified that she gave Plaintiff, in response to Plaintiff's 2008 request, a telephone listing.

> 20 Q: Could I please see it? Could you please read the title of the attachment?
> 22 A: "Print owner telephone directory."

The statute states that the list shall include the number of votes a member is entitled to cast. On transcript page 1007 lines 1 through 4 Plaintiff walked Abel through Bylaws Section 13.1's provision of denying a member a vote for non-payment of assessments, thus the number of votes such a person could cast would be zero ("0") which is not in a phone list. On Line 18 of Page 1009 Abel testified that no member has a right to see the voter list so as to prevent a person from voting whose voting privileges had been suspended. On page 1010 Abel testified that she knew access to the list is mandated under the law:

> Q: Are you familiar with the South Carolina Non-profit Corporation Act?
> 15 A: Yes.
> 16 Q: Doesn't that act have a provision that says that any member of the non-profit corporation at the time of voting has a right to see the list of voters then or even previously before that to verify the voting status of any particular member of the Association?
> 22 A: It may say that and I think it does say that.

Abel next admitted in testimony (Page 1012-1013) that not only was the first list a telephone list, but that the IHOA and Diehl intentionally declined to provide the much changed list in 2009 and later:

> 17 Q: Is it your statement, your testimony, if I get it in one year, I can't have it in a subsequent year?
> 20 A: Just the voter list you can have.
> 21 Q: I seem to hear you saying that because I got something in 2008, you wouldn't give it to me in 2009.
> 24 A: No, that's not what I said. We gave you – the list you asked for in 2008 was a telephone directory. In 2009, you require a voter list which included mailing addresses, telephone numbers, and also arrears status.

On Pages 1013 through 1015 Abel stated that the number of votes to be cast was one so it was implied – but then admitted that the Golf Course was not in the telephone list and that it was casting somewhere between 50 and a number she did not know of votes which made the telephone list clearly not a voter list since it was missing up to fifty votes. Page 1015:

> 8 Q: How many votes was the golf course being allowed to vote during the period between 2003 and the present, ---

11 A: Well, it depends on ---
12 Q: --- a year?
13 A: It depends on what year.
14 Q: Pick a year.
15 A: I really can't -- couldn't tell you.

And on Page 1018

Q: Isn't it a fact the response to my letter of April 28th, 2009, instead of provide me at least something, which the things you feel I was entitled to, you, in fact, provided me nothing?
14 A: We followed the, the opinion of the Association's attorney.
16 Q: Is that yes or no, that you provided me nothing?
17 A: It's yes, we provided you nothing.

(2) Abel testified that when Plaintiff asked for the members' list the request was not stated exactly as it read in the Statute and that this justified KA Diehl, who also is the registered agent for the IHOA, and the IHOA to give Plaintiff nothing. Upon questioning she admitted that names and addresses and number of eligible votes are not privileged – never citing where this notion of privilege came from.

(3) The phrase "Privacy Act" being applicable to homeowner associations was stated at trial by Board President William Freiboth, board member Maureen Sullivan, and by Diehl employee Abel.

f. Special Referee's Consideration of the Matter.

(1) On page 8 of the Order the Special Referee wrote:

"the Defendant HOA maintains a website for its members, and the members list is readily available to Plaintiff; however, Plaintiff has refused to access the website for he does not want to disclose his email address or to accept the website's privacy policy. Plaintiff has also received the membership list in the past and has accessed the Defendant HOA's website through other Community homeowners."

No evidence or testimony was offered that the website list is equivalent to the "official" list. It does not contain the number of votes an individual is entitled to cast; it does not distinguish those entitled to notice from those not; it contains many individuals who are not members. Plaintiff's uncontroverted testimony is that the list has many errors. The statute does not make enrollment in a website and waiver of privacy rights a condition for access to the list. Further the assertion by the Special Referee that Plaintiff hides his email address is blatantly idiotic on it's face and contradicted by the evidence of numerous emails

back and forth between the IHOA, KA Diehl, and Plaintiff. Making an email address available to the IHOA for private communication with the Plaintiff is unrelated to a refusal to have one's email and other information posted on a quasi-public web site where it could be used for improper purpose. There is NO evidence that Plaintiff ever received the membership list from anyone and in fact the testimony was that the HOA refused to give it to anyone. No witness stated a date, let alone a time and method of transmission, that Plaintiff received a copy of the member list. In addition, the statute does not abolish a right to get the list, the most current list, which changes all the time, directly from the association.

(2) On page 24 of the Order the Special Referee directly addressed the requests with findings of fact which infer that it is almost certain that he never bothered to read the evidence or exhibits or look to notes because his findings are completely at odds with the facts. This is what happens when a judicial officer disregards the Canon against blindly adopting a party's proposed findings of facts and conclusions of law without giving the other side an opportunity to be heard:

> "Immediately after Plaintiff commenced this lawsuit, he emailed a demand for a membership list containing members' email addresses, telephone numbers and delinquency status. "

This ignored the July 24, 2008 request sent a full year before litigation began; the ignoring of same being a major incentive for the lawsuit. The second request was sent over two weeks after litigation began. The Statute explicitly states that litigation does not negate a member's rights to the voter list. The Special Referee's Order continued:

> *"In response, Defendant HOA's attorney sent a letter denying his request."*

implying the letter was sent to Plaintiff. The Special Referee did not cite a date of this letter and no such letter was entered into evidence by the Plaintiff nor by the Defendant. Abel's testimony was that Defense Counsel Golding, who wrote the Special Referee's Order and forgot that she wrote to Diehl and not to Plaintiff, sent the letter related to the 2008 request – TO DIEHL. As far as the Court is concerned, Golding's letter does not exist because it is not in evidence – yet the Court depended on this as a "finding of fact".
The Special Referee went on to discuss compliance with Section 33-31-1602 but the Special Referee was clearly not familiar with and made an error of law because sub-section (d)(1) makes Section 1602 inapplicable to requests for the Voter List under Section 720. Defense

Counsel and the Special Referee also depended on the 1976 version of the statute [38] which is not the current version. The Special Referee / Defense Counsel went on to write:

> Plaintiff failed to state a good faith basis for his request for the voting list as required by the Act. According to his email, he requested the list to "communicate with fellow homeowners" after he filed his complaint in the 2009 Lawsuit. His request was not specific and did not provide the reason for communicating with fellow homeowners; as a result, it was properly denied.

The Statute explicitly states that the pendency of a lawsuit does not diminish a member's rights under the statute. Further, the Special Referee misquoted the request which actually read:

> The list is requested for the purpose of communicating with members eligible to vote, and to verify the validity of votes cast at the general meeting

Per the statute, no further clarification is required and the IHOA had only one legal response: provide the list – which they failed to do. It is more likely than not, the legal standard, that the Defendants simply believed they were above the law and the true reason was that they feared that the list would be use to organize an opposition to their re-election, which is not a legitimate reason to hide the list. The Special Referee closed discussion of this subject by writing:

> Finally, the evidence established that the Plaintiff always had access to the membership list but he did not choose to access the Defendant HOA's website.

This conclusion is not supported by "evidence". The absence of the Golf Course from the "Telephone List" disqualifies that as the Voter List. Abel testified that the web site only has a "telephone list". Access to the "website" does not equate to access to the legal "member list of voters".

g. Findings of Fact and Conclusions of Law.

(1) Plaintiff made three legally sufficient requests for the Members List for Voting.

(2) Defendants KA Diehl and the IHOA had a statutory duty to comply.

(3) In response to Plaintiff's first request Defendants KA Diehl and the HOA provided something which does not satisfy the law – a partial telephone list – and

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[38] The order reads "*See S.C.* Code Ann. Section 33-31-1602 (1976)." The current version begins "ARTICLE 1. GENERAL PROVISIONS SECTION 33-31-101. Short title. *This chapter may be cited as the South Carolina Nonprofit Corporation Act of 1994*." Defense Counsel needs to buy a current version of the statute.

Defendant provided nothing in response to the later two requests.

(4) As a matter of law, the meetings which followed these requests for the Lists of Voters may be declared invalid. As a consequence, the HOA elections and decisions made at the September 2008 and September 2009 Annual Meetings of Members is null and void.

(5) There is no privilege inherent in the names, addresses, phone numbers, and email addresses provided to the IHOA by it's members and the phone numbers and email addresses must be provided unless a particular member has made a request that these not be published.

(6) In accordance with SC 33-31-720(d) the Plaintiff is entitled to recover from Defendants IHOA and Diehl, jointly and individually, the entire cost of this litigation and it is so ordered.

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30. The Golf Course Assessments Must Be In Accord with the Covenants.

The Board of Directors unilaterally modified the Rate of Assessment for the Golf Course disregarding the provisions of the Covenants. This was an ultra-vires act. None the less, the Golf Course has not even paid the substantially reduced rate and is deeply indebted to the Association. This has damaged the homeowners: liquidated direct damages easily caluculable. As a result homeowers have thus illegallly been overcharged to make up the golf course deficieincy.

a. Rate of Golf Course Assessment Established by Covenant.

> Covenants Section 6.5. Rate of Assessment.
> Both annual and special Assessments must be fixed at a uniform rate for all Units (whether improved or unimproved) ... multi-family Unit owners will not be required to pay any portion of any special assessment levied by the Association relating to the costs of construction repairs or maintenance of such recreational amenities.
>
> Also, the owner of the golf course shall pay an assessment which equals fifty (50) times the rate of Unit owners who also pay for the costs of the recreational amenities ... provided further the owner of the golf course shall not be required to pay a one time capital contribution.

The rate of assessment of the Golf Course is not set by rule of the association or by the

Bylaws of the Association but rather is a contractual obligation of the Golf Course established by the Covenants and which affects every homeowner. Given that the HOA has a cost-based budget, the rate of assessment of any individual unit is the budget amount divided by the number of units. If the golf course does not pay what is mandated by the covenants, the burden unlawfully falls on homeowners to pay the deficiency, in effect subsidizing the golf course operation. The assessments are no longer "uniform" per unit as the covenants require. Since assessments are involuntary, a failure of the golf course to pay what it owes under the covenants results in an involuntary gift by homeonwers to the golf course.

b. Covenant provision for amendment of Section 6.5. Since the rate of assessments is set by covenant, a change to the rate of assessments can only be achieved by an amendment of the covenants. The covenants are clear that only an amendment to the covenants can alter any provision of the covenants and the following provision exclusively applies:

> **Section 8.5(b) Amendments by Association. Amendments to this Declaration, other than those authorized by Section 8.5(a) [39] above, shall be proposed and adopted in the following manner:**
>
> **(1) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.**
>
> **(2) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least three-quarters (3/4) of the total votes in the Association *other than the Developer;***
> **...**
>
> **(3) The agreement of the required percentage of the Owners ... to any amendment of this Declaration shall be evidenced by their [40] execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association attached to or incorporated in the amendment executed by**

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[39] **Section 8.5 (a) provides for Amendment of Covenants by Developer. The alteration of the rate of assessment for the golf course was a contract supposedly entered into by the IHOA Board of Directors, not by the Developer.**

[40] **Three quarters of the homeowners must individually sign the Amendment.**

> the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

Thus to alter the provision of the Covenant specifying the rate of assessment of the golf course there must be (1) Notice of a meeting for the purpose of amending the golf course obligation; (2) a resolution adopting the amendment; (3) approval by three-quarters of the voting strength excluding the developer; and (4) execution and recording of evidence of all this happening. The requirement for the golf course to pay at the "50" unit level remains in force and can not be altered until this is all satisfied.

Evidence was presented at trial that NONE of the above occurred.

c. Bylaws provision relating to alteration of rate of assessment of dues. Since the assessments are effectively the dues of the IHOA, the bylaws provision must also be satisfied. The Bylaws of the IHOA #548 are silent as to assessments, dues, or even the term "Golf Course".. The South Carolina Non-Profit Corporation Act applies as to dues (or any subject where the Articles of Incorporation or Bylaws are silent, or when the statute pre-empts anything the Bylaws might say.

The Bylaws do address Amendments:

> Per Section 9(c), "In order for such amendment or amendments to become effective, the same must be approved by Owners holding at least a majority of the total votes in the Association ..."

d. Statutory Provision Regarding Alteration of Dues.

> SC Code 33-31-1021. Amendment of the bylaws by directors and members. (Pl #242) (d) Unless otherwise provided in the articles, an amendment to the bylaws which relates solely to the dues required for membership and which establishes or changes an amount for, or method of computation of, dues, must be approved by the members.
>
> SC Code 33-31-1003. Amendment of articles by directors and members. (Pl # 241)
> (a) If the corporation has members entitled to vote on the amendment ... an amendment to a corporation's articles to be adopted must be approved: (2) ... by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less

The alteration of the golf course's obligation to the HOA was never addressed at a meeting of members and was never put to a vote of the members.

e. Facts. At trial substantial time and evidence was presented that the

President of the HOA, Doug Brown, an employee of D R Horton, which director was never elected by the members, without even an approving resolution of the Board as perpetuated in the minutes, entered into a contract benefiting the Golf Course, DR Horton, and Doug Brown himself at the cost to the HOA and membership. Evidence was presented at trial that it was a conflict of interest. Transcript Pp 257 - 273 Testimony of Plaintiff:.

> Page 272
> 3 Doug Brown got a, got a free golf course membership as a consequence of
> him agreeing to that agreement. Horton got tens of thousands of dollars of
> free golf course memberships. The golf course got a reduction of assessments
> valued at hundreds of thousands of dollars, and the -- and in exchange, the
> IHOA got a piece of property which its declarations to Horry County said it
> was worth five thousand dollars,

DR Horton got free or reduced price golf memberships and free or reduced price use of golf course facilities to sell homes; Doug Brown personally got a free golf course membership. The Golf Course got the HOA to irrigate golf course property at the HOA's expense and received hundreds of thousands of dollars in reduced assessments. At the time the un-controverted evidence from the HOA's own ledgers produced in discovery was that the Golf Course owed thousands of dollars in assessments. To upset this arrangement all that need be proved is to show that the alteration was ultra-vires. To prove direct and liquidated damages, all that need be shown is how much the golf course paid and how much it should have paid, either per the covenants or per the illegal arrangement.

(1) Golf Course Agreement. On November 3, 2003 Pl# 558 Doug Brown, President of the Developer appointed HOA Board of Directors, entered into an unrecorded agreement with the Golf Course which directly contradicts the mandates of the Covenants in that it changed the rate of assessments charged to a particular PUD property owner – the Golf Course. That modification was unilaterally made by Doug Brown, the Horton employee who Horton unilaterally and illegally positioned as HOA president. There is no record that the agreement was approved by the Board. As addressed at trial, the minutes of meetings of the Board of Directors state that the Board wanted a very different resolution of the golf course' very substantial debt through non-payment of assessments.

(2) In 2012 the IHOA sued the golf course in this same courthouse for non-payment of years of assessments. The actual complaint was put into evidence as Pl #396, 2012-CP-26-1740 Complaint IHOA v Golf Course. The benefits to the Golf Course and

the loss to homeowners was put into evidence as the benefit to the Golf Course is at Pl #389 [2012-07 Revised Computation of Golf Course Debt to HOA], #390 [2004 HOA General Ledger – Golf Course]; #391 [2005 HOA General Ledger – Golf Course]; #392 [2009 HOA General Ledger – Golf Course]; #393 [2010 HOA General Ledger – Golf Course]; #394 [2011 HOA General Ledger – Golf Course]; # 705 [2006 HOA General Ledger – Golf Course]; 706 [2007 HOA General Ledger – Golf Course];, and 707 [2008 HOA General Ledger – Golf Course];.Board Minutes September 10, 2002 Pl # 300; Board Minutes September 3, 2003 Pl # 3011; and Board Minutes November 20, 2003 Pl # 303.

(3) The November 3, 2003 "Golf Course Agreement" Pl #357 in the form of a contract between the IHOA and the Golf Course, (which was not authorized by the board or reflected either in the minutes of the Board nor was it recorded with the Recorder of Deeds) forgave all golf course debt and established an alternative and rate of assessment that was not uniform or fixed. For 2004 it reduced the covenant mandated rate from 50 equivalent units to 20. For each year beginning in 2005 the unit rate was to increase by 3 units until by 2014 it would increase by 4 units and be back at the 50 unit rate. This alteration to the rate of assessments is ultra-vires and is not in accord with the covenants and was not reached in a manner allowed by the covenants. This is sufficient to disallow the golf course agreement.

(4) The Golf Course never paid at the new rate. For the benefit of the Court a spreadsheet was prepared (Pl # 389, which showed how much the Golf Course paid every year and how much it should have paid either using the Covenants mandate of 50 or per the void reduced assessment rate contract = as of July 19, 2012. It is now half a year later and the Golf Course is in further arrears as to it's indebtedness under the Covenants.

(5) The Golf Course Contract has a provision that if the Golf Course fails to honor the new assessment schedule, the arrearage is not forgiven and the reduced assessment schedule is revoked. The November 20, 2003 Contract Pl # 558 has a default provision on page 2 Paragraph 2 which reads:

> 2. Future Assessments. Upon the completion by the Golf Course of all the covenants, conditions and promises contained in this Agreement for which Golf Course is responsible, DRH shall cause an amendment to the CCR's to be properly executed and recorded reflecting the above listed schedule of assessments by the Golf Course.

"All ... conditions and promises" includes paying the new schedule, which the Golf Course

has never done. Further, this acknowledges that all parties were aware that the assessment schedule can only be altered by amendment of the Covenants. It also contemplates that such amendment would occur in 2014 when the schedule ends and the Golf Course rate returns to 50 units. Such an amendment could not be made because no amendment of the covenants by the Developer could be made after the schedule ends December 31, 2014.

> **Section 8.5. Amendment. (a) Amendments by Developer. For a period of fifteen (15) years from the date of recording of this Declaration, Developer may amend this Declaration**

The Covenants were recorded February 8, 1999 and fifteen years expires on February 8, 2014. In addition the Developer lost his right to alter the Covenants as a matter of common law when he no longer had an equitable interest in units in the PUD which was expected to occur and which did occur in 2008. None of the subscribing parties had a realistic expectation that Horton would be able to amend the Covenants in 2014.

f. Computation of Arrearage. The following data was presented to the court together with the underlying ledgers and minutes from which the data was taken. No objection was raised to the admissibility or accuracy of the information.

(1) Computation of Golf Course Arrearage Per Ultra-Vires Contract:

PAYMENT SCHEDULE PER 2004 CONTRACT

Year	Golf Course Assessable Units	Assessment for PAEC Homeowners	Actually Paid Per Year	Payable Per Year at Rediced Assm'ts	Loss to HOA Under Contract	Golf Paid Per Contract Unit
Thru 2003	50	$35	$0	-	$116,000	$0
2004	20	$45	$8,400	$10,800	$2,400	$35
2005	23	$65	$9,660	$17,940	$8,280	$35
2006	26	$70	$10,920	$21,840	$10,920	$35
2007	29	$70	$18,878	$24,360	$5,482	$54
2008	32	$70	$13,872	$26,880	$13,008	$36
2009	35	$75	$15,133	$31,500	$16,367	$36
2010	38	$88	$2,597	$40,128	$37,531	$6
2011	41	$88	$0	$43,296	$43,296	$0
2012	44	$91	$0	$48,048	$48,048	$0
2013	47					
2014	50					
Cumulative Assessment Loss to HOA					$301,332	

Note: 2003 Deficit from Board of Directors Minutes

Note: $ 35 from 11/03/2003 Agreement admitting $1,750 debt per mo on 50 units

Note: 2006 through 2008 Actual Full Assessment was $ 70

Note: 2009 Actual Full Assessment was $75

Note: 2010 & 2011 Actual Full Assessment is $ 88 per month

Note: 2012 Actual Full Assessment is $ 91 per month

Note: Actual Amounts from General Ledger, Budget Statements, or HOA Golf Course Suit

Note: In 2003 the golf course owed $3250 per month . Per BoD Minutes

Note 2009 Audit fraudulently claimed $75 X 35 per month actually paid.

If the Golf Course had paid at the agreed contract rate the total of "Payable Per Year at Reduced Assessment would be $ 264,792 from 2004 through 2012.

The arrearage if the ultra-vires contract was valid is $ 301,332 as of July 19, 2012.

(2) Computation of Golf Course Arrearage Per Covenants:

Golf Course Debt Per Covenants

Year	Golf Course Assessable Units	Monthly Assessment Paid By PAEC Homeowners	Golf Course Actually Paid	Payable Per Year at Covenant Rate: 50 Units	Assessment Loss to HOA	Simple non-compounded Interest at 18%
2002	50	$35	$6,500	$21,000		
2003	50	$35	$0	$21,000	$58,000	$83,520
2004	50	$45	$8,400	$27,000	$18,600	$23,436
2005	50	$65	$9,660	$39,000	$29,340	$31,687
2006	50	$70	$16,296	$42,000	$25,704	$23,134
2007	50	$70	$18,876	$42,000	$23,124	$16,649
2008	50	$70	$13,872	$42,000	$28,128	$15,189
2009	50	$75	$15,133	$45,000	$29,867	$10,752
2010	50	$88	$2,597	$52,800	$50,203	$9,037
2011	50	$88	$0	$52,800	$52,800	-
2012	50	$91	$0	$54,600	$54,600	
Cumulative Assessment Loss to HOA					$370,366	$213,404
						$583,770

Note: Per Nov 3, 2003 document Golf Course owed $ 51,000 thru Aug 31 plus $ 7000 thru Dec 31 = $ 58,000 thru end of 2003
Note: 2008 GL is $ 10,404 thru Sep 30; Multiply by 4/3 = $ 13,872
Note: 2009 GL is $ 13,872 thru Nov 30; Multiply by 12/11 = $ 15,133
Note: 2010 amount is from the HOA v Golf Course Complaint

If the Golf Course paid at the Covenant Rate, it would have paid $307,200 from 2004 through 2012 (total of column "Payable Per Year at 50 Units"). The payments under the reduced contract rate for the same period would have been $ 264,792. The difference is $ 42,408. The Court is asked to remember this number for comparison with benefits promised under the contract below..

The arrearage under the Covenants as of July 19, 2012 is $ 370,366. Since the covenants provides for an 18 percent annual rate of interest, this has been computed on a non-compounded basis. A judgment should reflect the interest allowable.

g. Testimony about the Arrearage. Page 402 Line 6:

I've mentioned already. That number is the number of shortfall of a hundred and eighty-three thousand dollars if the golf course had lived up to that agreement. So in no year has the golf course lived up to that agreement, if The Court even finds that the agreement was valid. So in any case if it finds it valid or not. So if that agreement was valid, with the interest, there's a shortfall of a hundred and eighty-five thousand dollars. Now, if the agreement was not valid, the second page of my worksheet shows that, in fact, the loss to the HOA is five hundred and eighty-three thousand,seven

hundred and seventy dollars.

On page 916 William Freiboth under direct questioning from Defense Counsel controverted the ledgers the HOA had provided to Plaintiff by testifying as follows – without pointing to a single document or quoting a single number:

10 Q: Now, have you reviewed the accounting records of the Homeowners Association to determine if the golf course has paid all the assessments due to the Homeowners Association?
14 A: Under the golf course agreement, yes.
15 Q: And has the homeowner, excuse me, has the golf course paid all the assessments that are due to the Association?
18 A: Yes.
19 Q: There was reference to a lawsuit that was brought for collection of assessments. Has that lawsuit been resolved with the golf course?
22 A: Yes.
23 Q: And that was just recently, within the last week?
24 A: Yes.

On Cross Examination Mr. Freiboth testified in part (page 933):

18 Q: Now, is it the Association's business to do what you said to help Horton sell houses?
20 A: It's -- I'm going to answer that and then I'm going to explain. No, it's, it's not the Association's business to sell houses.
... Page 934
7 Q: Is it true or false the memberships, D.R. Horton got seventy-five reduced price golf course memberships, at least a substantially reduced price at seven hundred dollars each?
11 A: I believe so, and I'm not sure what the history was there, but yes.
13 Q: In addition to being president of the HOA, who did Doug Brown work for at the time?
15 A: Oh, he worked for D.R. Horton.
16 Q: Do you see any conflict of interest there?
17 A: I don't see any in what he did, but there's a theoretical one.

h. What the Special Referee said about this in the Order of Defense Counsel which he adopted without checking the facts in the Exhibits:

(1) From Page 5:

14. On October 3, 2003, D.R. Horton entered into a Golf Course Agreement with the parties being D.R. Horton, Plantation Golf A.D., LLC (the owner of the Golf Course at the time) and the Defendant HOA. In this agreement, the Golf Course owner agreed to convey to the Defendant HOA property adjacent to the planned Amenity Center and rights to use its turbine pumps and ponds to irrigate the Community's Common Areas. As consideration, Defendant HOA forgave unpaid assessments before December 31, 2003 from

the Golf Course owner and discounted future HOA assessments due from the Golf Course owner through 2014.

DR Horton's participation represented a conflict of interest for Doug Brown, Horton's employee and Horton's appointee as unelected HOA President. Per documents recorded with the Horry County Recorder of Deeds, the parking lot acreage was worth $ 5,000. Per the Covenants, the HOA owned the riparian rights to the ponds and the main beneficiary of the pumping at HOA expense has been golf course property (non-greens). Extensive testimony and evidence was offered by Pete Pizzi and Mike Butryn. It was not controverted.

(2) From Page 5.

15. In addition to the Defendant HOA owning the Amenity Center property, being around 2 acres, D.R. Horton deeded to the Defendant HOA 5.42 acres to be used as the main entrance way into the Community.

The transcript does not reflect any testimony with the phrase "5.42 acres" in any context. The phrase "around 2 acres" is likewise not in the transcript. It is "telling" that the Order does not cite a witness as having said it or a document that brought this to the court's attention. Clearly if this is a finding of fact any conclusion of law is not supported by the facts because this "fact" was not stated in the trial. The "throw in" of the 5.42 acres was never stated by any Defense Witness as connected in any way to the Golf Course contract – or in any context at all. Defense Counsel fraudulently wrote this "after the fact" and in a manner to deceive and the Special Referee, since he didn't even check the dates of the deeds, fell for it. This statement is contrary to the evidence.

It was not until June 18, 2009, six years after the Golf Course transaction, that Horton deeded the "front entrance" to the HOA: Deed Book 3406 at 1694 – International Club Drive Pl # 564. The front entrance was a major element of the trial since from 2003 through 2009, it was owned by Horton, outside the PUD and not subject to the covenants, not HOA common property, yet maintained by the HOA at HOA expense under the HOA Grounds Maintenance Contract and irrigated by the HOA with Golf Course water at HOA expense. The "front entrance" also has a sign which featured Horton and other developer property which is NOT part of the PUD and does not pay dues to the HOA – yet the HOA paid the electric cost (and still does) to illuminate this sign. There is no contractual obligation for these non-HOA communities to appear on this front entrance sign along

Tournament Drive, illuminated at HOA expense. Thus this statement upon which the Special Referee depends is a lie. It was written by Defense Counsel Henrietta Golding. It is an ethics violation.

(3) From Pages 15 - 18. Quoting only those sections which relate how the contract was entered into and the Golf Course's Putative Compliance with it's Obligation. The Special Referee failed to cite any actual evidence and the only evidence introduced at trial in this matter is that evidence submitted by Plaintiff. Defense Counsel displayed a GIS Aerial view of the area as it is today, but that only showed the relative locations of the different parcels. Nothing from the Plat Book was introduced into evidence by Defense Counsel on this matter.

> 4. The Golf Course is Current in the Payment of its Assessments. On November 20, 2003, the Golf Course entered into an agreement with D.R. Horton, the Declarant/Developer. This Golf Course Agreement provided for a reduction in the actual dollar amount that the Golf Course pays for assessments in exchange for the Defendant HOA receiving certain real properties. One of the properties that the Defendant HOA received was a parking lot for the Amenity Center. The Defendant HOA President testified that this property was needed in order to obtain a permit to construct the swimming pool. In addition, the Defendant HOA received the right to utilize the Golf Course ponds and pumping system for irrigation of the Community's Common Areas. The Defendant HOA's right to use these ponds and the pumping system is a significant consideration; otherwise, the Defendant HOA would have to construct and maintain 2 deep wells. Further, according to Chris Sullivan, an expert irrigation contractor, additional significant costs are likely for the installation of pipes.

The Special Referee totally ignored the general ledgers of the Defendant IHOA which proved it is more likely than not that the Golf Course IS NOT current in the payment of it's assessments. At trial, the testimony of William Freiboth was that the IHOA sued the Golf Course – in this court – for being in arrears. The actual complaint was introduced as evidence (see exhibit numbers below table earlier in this section). These were never controverted.

At trial Plaintiff introduced and testified as to Covenant Section 4.17. Under that section, and the interpretation was not disputed,

> Section 4.17 Wells and Effluent. There is hereby reserved for the benefit of the Developer, the Association, and their respective agents, employees, successors and assigns an alienable, transferable, and perpetual right and

> easement: (i) to pump water from lagoons, ponds, and other bodies of water located within the Subdivision for the purpose of irrigating any portions of the Subdivision, ... (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities...

The HOA did not need to negotiate for the right to use the ponds and to install pumping stations. It already had that right and the golf course was stealing water from the ponds that the HOA owned by this Covenant. That water which the golf course uses to irrigate it's greens could easily have offset much lesser water used to irrigate HOA owned commons. The Special Referee ignored this thought which Plaintiff testified about. Chris Sullivan also testified that he was unaware of Grand Strand Water and Sewage Authority's program to provide free "treated waste water" to irrigate large areas and which the HOA was eligible for.

The Special Referee alleged that this was a valid "business judgment" call. Such an argument was not made at trial. The Business Judgment argument was made for certain acts of the board since 2007 but none for boards prior to that and can not be raised post-trial. Further, the very citation and argument of the Special Referee is defeated by the requirement that any act must be "intra-vires" and because the rate of assessments is set by the covenants, it can not be upset by an ordinary board action:

> The Defendant HOA's decision to accept the parking lot property and obtain its needed water from the Golf Course in exchange for a portion of the assessments is a valid exercise of its powers. The Golf Course owner's payment of this consideration was in lieu of assessments. "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motive and in good faith." *Dockside Assn v. Deyton, 291 S.C. 214,* 217, 352 S.E.2d 714, 716 (Ct. App. 1987).

The phrase "business judgment" was never spoken by anyone at trial. This argument was not specifically made by the IHOA at trial (although it was hinted at). No citation to "Dockside" was recorded in the minutes. Clearly this was a "I wish I had said it" after-thought by Defense Counsel and again, the Special Referee made a conclusion of law based on an argument of law never advanced at trial – which makes the entire decision suspect and has ethical implications.

The minutes of the board entered into evidence at trial confirm that R. Doug Brown

acted without the authority of the board to enter into this agreement and it was a corrupt act made in bad faith which benefited himself financially and his employer financially in a very large measure – the details of which are of record at trial.

The Special Referee found that the transaction was fair and thus not voidable, but ignored the full financial implications which were set before him.

(1) Under the contract the HOA paid for golf course water. It did not get that water free. The Golf Course received even more water from the ponds than the HOA used and paid nothing for it. The transaction failed to even attempt to compute this offset. This is not an offset to the loss of assessments.

(2) The fair market value of the parking lot, per the deed / sale documents filed with the Recorder of Deeds, was $ 5,000, and this is what the parties to the deed signed off on Page 3 by Affidavit in this August 4, 2004 Parking Lot Deed Pl #560, Deed Book 2771 Page 1482.

(3) From the spreadsheets above the loss to the HOA from giving the Golf Course a reduced assessment would be $ 42,408. To this must be added the arrears which the golf course had through 2003: $ 116,000 from the Board of Directors minutes. For the transaction to be "fair" to the IHOA the value must have been worth in the neighborhood of $ 158,408. Neither Defense Counsel at trial nor the Special Referee in his order made any effort to explain how $ 5,000 in benefits plus allowing the HOA to irrigate golf course "non-greens" property equated to $ 158,408. The finding of the Special Referee is not supported by the evidence. In addition, to change the assessments required an amendment to the Covenants and the golf contract was thus ultra-vires, even if it had been "fair".

g. Findings of Fact and Conclusions of Law:

(1) A change to the rate of assessments for the Golf Course requires an amendment to the Covenants. No such amendment was even attempted. An attempt to alter the amount the Golf Course pays in assessments through a contract is an ultra-vires act and unenforceable, even if fair, and thus the Golf Course Contract is void.

(2) The Golf Course never paid as required under the contract. Per the terms of the contract itself, the Golf Course contract is thus void. There are thus two reasons that the Golf Course Contract is void: the Golf Course did not honor it's obligation, and because the contract was ultra-vires. The unpaid assessment arrears of the Golf Course is

thus calculated per the terms of the Covenant.

(3) The obligation of the Golf Course to pay assessments is and always has been the rate and terms stated in the Covenants.

(4) The amount of unpaid arrearage of the Golf Course on it's assessments through July 19, 2012 is $ 370,366.

January 22, 2013
Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

Ronald Jarmuth,

Plaintiff(s),

vs.

CIVIL ACTION NOS.
2009-CP-26-3596 &
2010-CP-26-11320

International Club HOA, Inc., et al.,

Defendant(s).

DEPOSITION OF: JULIE CASE

DATE: Monday, February 13, 2012

TIME: 10:06 a.m. through 11:59 a.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. PERKINS
Registered Professional Reporter
Certified Livenote Reporter

APPEARANCES OF COUNSEL

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ALSO PRESENT: WILLIAM FREIBOTH
ROSEMARY TOTH

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

STIPULATION: It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * * *

JULIE CASE, being first duly sworn, testified as follows:

EXAMINATION

BY MR. JARMUTH:

Q. Please state your name and residential address for the record.

A. Julie Case; 317 73rd Avenue North, Apartment 1, Myrtle Beach, South Carolina 29572.

Q. What were you instructed by Henrietta Golding to do regarding the litigation material she prepared and sent to Diehl?

MS. THOMPSON: Objection.

That's attorney-client privileged information, and I'm instructing my client not to answer that question.

BY MR. JARMUTH:

Q. And at the time that you were provided the material by Diehl, was an attorney-client retention

agreement signed as far as you know?

MS. THOMPSON: Objection to the form.

THE DEPONENT: Excuse me?

MS. GOLDING: Whenever she objects, you're going to have to answer the question.

THE DEPONENT: Okay. You said I do not have to answer?

MS. THOMPSON: You have to answer the question.

THE DEPONENT: Oh, I have to answer.

MS. THOMPSON: The first question he asked you, I instructed you not to answer it, but you have to answer this one, okay?

THE DEPONENT: I don't know.

BY MR. JARMUTH:

Q. Please explain the statement you made to Jane Pizzi that you were instructed to perform certain acts regarding material which Diehl ultimately published.

A. I don't recall having a conversation with a specific Jane Pizzi, is that what you said?

Q. Jane Pizzi.

A. I don't have a clue who she is.

Q. Is it your statement that Jane Pizzi fabricated a conversation between yourself and her

regarding litigation materials?

A. I don't recall.

Q. Who does Diehl have on staff that knows how to do legal research --

A. We --

Q. -- if anyone?

A. We do have a -- oh, what is his name? We do have an attorney on staff that works out of North Carolina, and his name is -- Keith Walters? I mean, I'll have to get to name to you, but there is -- we do have legal support.

Q. What did Diehl do to verify the material provided you by Henrietta Golding prior to its publication by Diehl?

A. Can you repeat the question? What exactly was your question?

Q. What did Diehl do to verify the truth of what you -- what Diehl published by e-mail, letter or web site regarding my litigation history?

A. I don't know.

Q. Did you ever prepare the minutes of any meeting of the board of directors which occurred prior to 2008?

A. No.

Q. Who prepared the minutes of the meetings of

the board of directors prior to 2008?

A. That would have been Becky's previous assistant, and I believe her name was Kathy, and I don't recall what her last name is.

Q. When did you begin attending meetings of the board of directors?

A. It would have been August, 2008.

Q. How long have you worked for K.A. Diehl?

A. Let's see, in August, it will be -- or excuse me, in June, it will be five years.

Q. Can you explain what Diehl did regarding checks provided to Diehl by homeowners made payable to the International Club Property Owners Association?

A. What did K.A. Diehl do with those checks? As far as I know, they were deposited.

Q. To whose account?

A. International Club HOA.

Q. What, if anything, did Diehl do regarding the discrepancy between checks payable to the property owners association and the lack of a client for Diehl under that name?

MS. THOMPSON: Objection to form.

THE DEPONENT: I don't know.

BY MR. JARMUTH:

Q. Do you ever process new homeowners who purchase houses in the HOA?

A. No, I don't.

Q. Who does?

A. Mary Sequeira in our accounting department.

Q. What information does Diehl collect regarding new homeowners?

A. A copy of their settlement statement.

Q. Explain that.

A. Whenever a closing occurs, the closing attorney forwards our office the settlement statement, the HUD.

Q. Isn't it a fact that Diehl requests homeowners to provide the names of everybody living in their house?

A. No.

Q. Who owns the web site that K.A. Diehl provides for the use of the International Club homeowners association?

A. Well, it's Association Voice, but the ownership -- I'm not 100 percent certain if it's International Club HOA or if it's with K.A. Diehl.

Q. Does K.A. Diehl own the machine in which its hosted?

A. In which it's hosted?

Q. Yes.
A. I don't know.
Q. Association Voice's web site is in Denver, Colorado. Does Diehl own that machine out there?
A. No.
Q. What is Diehl's relationship with Association Voice?
A. Web site support.
Q. Does Diehl have a contract with Association Voice?
A. I don't know.
Q. When individual homeowners press the Reply button on e-mail sent to them on behalf of the HOA, do you ever receive responses from those homeowners?
A. If I am the originator of a message sent out, yes.
Q. How about if you're not the originator?
A. Then no.
Q. Can you explain why the automatic response address for e-mail, as sent by Beckie Abel, has your e-mail address on it?
A. If they are any communications sent from our office and if it's from my e-mail address, if I'm the originator of it, then the response will come

to me, whether I'm sending it on behalf of the board or on behalf of Beckie Abel or any other -- anybody else affiliated, the response would come to me since I was the sender.

Q. I'll repeat my question. Can you explain why your e-mail address is automatically used by homeowners when they hit return to sender on e-mail sent them by Beckie Abel?

A. I don't really understand the question. I feel as though I answered it. If it was on behalf of Beckie Abel, then -- and if I was the originator, then it would come back to me.

Q. When Beckie Abel e-mailed the homeowners material about me regarding litigation histories, did you receive any responses to those e-mails?

A. I can't recall.

Q. What information regarding homeowners' accounts can be found on the Diehl web site?

A. What account information?

Q. What information about a homeowner can a homeowner find when they log into the HOA web site run by Diehl on behalf of the HOA?

A. They can find -- relative to other homeowners?

Q. Their own information.

A. Their own information. They can receive their violation -- they can review violation notices, architectural review requests and their personal HOA account information.

Q. What information is in that personal HOA information?

A. I don't understand your question.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. You just said "personal HOA information." Does that include payment information?

A. Yes.

Q. Does it include home address?

A. Yes.

Q. Does it include phone number?

A. That they provide for us on record, yes.

Q. What other information does it include?

A. Their e-mail address, any alternative mailing address, any cell phones or any information that they provide.

Q. How does it get into that on-line database?

A. It is -- they can update it their self, they can put that information in there, or its information that they have provided to our office that comes from our property management system.

Q. And when a new homeowner provides Diehl the information, is it automatically put into the database?

A. In our property management system, yes.

Q. Is that the same database which resides physically in Denver, Colorado on a machine run by Association Voice?

A. Yes, if it's driving the Internationalclubhoa.com, yes.

Q. Is that same information about me out there on the Association Voice database?

A. Concerning litigation updates provided to the community, yes.

Q. Payments, violations --

A. No.

Q. -- addresses?

A. No.

Q. Who makes the changes to the HOA web pages on the HOA web site?

A. That would be the administrator.

Q. And who is that?

A. That would be Bill Freiboth, or I have the capability to do it myself, also as an administrator. Did. I no longer work with International Club.

Q. During the period you did, who added the minutes of the boards of directors as they occurred?

A. That would be me.

Q. What else did you add to those web pages?

A. Any information requested by the board of directors.

Q. Calendars?

A. Events on a calendar.

Q. Who else had the privileges of being able to make changes to that web page?

A. There's -- it's not a straightforward answer because there are different security settings. I, for one, was an administrator; Bill Freiboth was an administrator. So the two of us could make changes all over the site.

However, you have -- you also have the manager who can add documents, things of that nature, but not make any major changes.

Q. In March and April of 2009, who put the material about me on the HOA web site?

A. As directed, I did.

Q. As directed by whom?

A. My manager, Beckie Abel.

Q. And who in the HOA approved payment for the

time and labor of Diehl in doing that?

A. There was no additional time in doing that.

Q. Who in the HOA approved payment to the HOA for the mailing of the physical copies of that material?

A. Who approved the payment for the mailing?

Q. Yes.

A. That would -- I mean, it's in the budget, and that budget is ultimately approved by the board of directors. A mailing such as that needed to be approved by the board of directors.

Q. Who approved that mailing?

A. I don't know. It would have been the board president at the time, which was Rosemary Toth.

Q. At what dollar threshold does the board of directors have to approve reimbursement for expenses?

A. I'm sorry, repeat your question. At what time...

Q. How many homeowners, approximately, were mailed that litigation material?

A. I would have to get you a -- I would have to look at the time that e-mail was sent out.

Q. Approximately how many homes have been members of the HOA in 2005?

A. In total?
Q. Yes.
A. How many are members of the HOA? 700.
MS. GOLDING: If you don't know --
THE DEPONENT: I don't know. I don't have the number; I don't have the exact number.
BY MR. JARMUTH:
Q. Did Diehl attempt to send every one of those homes a physical copy of that litigation material?
A. No.
Q. What criteria was used to decide which ones would not get that?
A. If an e-mail address was not provided on --
Q. I'm talking about the physical copy.
A. Yes. If the physical copy was mailed, it was because they did not have an e-mail address provided on the web site to be e-mailed to.
Q. What financial transactions can homeowners perform on the HOA web site?
A. Payment of their HOA dues, but it's actually just a link; it's a link on the HOA web site that takes them to the bank.
Q. Is that web page located on Association Voice's server?

A. Is what web page?

Q. The one that they use to gain access to the financial transaction page.

A. No, it's a link.

Q. The web page that link appears on, is that on the Association Voice web page?

A. Yes.

Q. Who owns the International Club homeowners association web page name?

A. The International Club HOA.

Q. Can you explain why it's registered to the ownership of K.A. Diehl?

A. Internationalclubhoa.com?

Q. Yes.

A. That would be probably because we purchased the domain --

Q. From whom?

A. -- on behalf of the HOA.

Q. From whom?

A. I don't know.

Q. Can you explain how the name came to K.A. Diehl from Rosemary Toth?

A. How the name came?

Q. How the previous ownership in the name of Rosemary Toth was transferred to K.A. Diehl.

MS. THOMPSON: Objection to form.

THE DEPONENT: I don't know what you're -- I don't know what your question is. What name?

BY MR. JARMUTH:

Q. On August 4, 2011, the ownership of that name was transferred from Rosemary Toth to K.A. Diehl. Can you explain how that transfer of ownership occurred?

A. No, I can't.

Q. How often does Diehl provide homeowners with a written statement of privacy rights?

A. Privacy rights, provided by who?

Q. By K.A. Diehl.

A. I don't know.

Q. Can you recall it ever occurring?

A. Personally? No.

Q. How much does Diehl charge the HOA for the use of the web page?

A. How much does it charge the HOA? I don't have an exact figure. You'd have to --

Q. Does K.A. Diehl charge the HOA for use of the web page?

A. Yes.

Q. Does K.A. Diehl have to pay Association

Voice for the use of that same web page?

A. Yes.

Q. Does K.A. Diehl have a like arrangement for other HOAs with Association Voice?

A. I'm sorry, say it again.

Q. Does K.A. Diehl have a like arrangement with Association Voice for web pages for other HOAs?

A. Do they have a similar?

Q. Yes.

A. Yes.

Q. Approximately how many HOAs have that arrangement?

A. The -- I can't recall a physical number of activated and registered web sites, but the capability is there for all of our HOAs that K.A. Diehl manages, and that's approximately around, I'm going to say 90.

Q. Who on Diehl's staff is a trained web page designer?

A. None.

Q. Who designed the original web page which Diehl provided for the HOA?

A. Association Voice.

Q. Were they paid for that?

A. I don't know.

Q. The Golding letter to the board was dated May 27, 2009. The following day, a printed copy of all the material with custom envelopes was mailed. Can you explain how the custom envelopes and the custom mailing were prepared the same date you received -- that Diehl received it from Henrietta Golding?

MS. THOMPSON: Objection to form.

THE DEPONENT: When you say "objection to form," I don't get it. What's your...

MS. THOMPSON: If I say "objection to the form, you still have to answer the question." If I instruct you to not answer the question, then don't answer it. Okay?

THE DEPONENT: Okay.

MS. THOMPSON: If you don't understand a question, then you can ask for clarification.

THE DEPONENT: Okay. I know that the mailing was sent to a mail house to be mailed.

BY MR. JARMUTH:

Q. What was the name of the mail house?

A. I don't recall what mail house was used at the time.

Q. Did the HOA board approve that physical mailing?

A. Yes.

Q. Who on the HOA board approved the physical mailing?

A. It would have been the entire board.

Q. Was Rosemary Toth one of those?

A. Yes.

Q. Did Diehl subsequently bill the HOA for that physical mailing?

A. Yes. Well, it would have been the mail house, actually.

Q. Who owns the postage meter used to imprint postage on those envelopes?

A. On those particular envelopes?

Q. Yes.

A. That would have been through the mail house.

Q. Was the list of owners used for the addresses of those envelopes also the list of voting owners?

A. No.

Q. What list was it?

A. It was the directory, HOA directory.

Q. Is it your statement that everybody on the directory that didn't have an e-mail address was

sent a copy of the printed material?

A. Yes.

Q. Can you explain why some people received both the e-mail and the printed copy?

A. Possibly if there was one e-mail address registered, and they also have the opportunity to select to receive postal mail on the web site. So when e-mails are sent through the web site, if they request, in their own account when they register, they can select to also receive postal mail.

Q. To your knowledge, am I registered to use that web site?

A. No.

Q. Can you explain why I received both the e-mail and the printed copy?

A. If you had an e-mail address on file with our office, then communication would automatically be sent to you via U.S. Mail -- or I'm sorry -- through the web site. But if you had not registered, then it probably -- and I would have to look. I don't know 100 percent why.

Q. Can you explain why K.A. Diehl does not send any of the material by e-mail which it sends the other homes?

A. No, I can't.

Q. Is there someone who told K.A. Diehl not to send me the material they send other homeowners?

A. Not to my knowledge.

Q. Is there a mechanism in place which is used to determine who gets those e-mails, who doesn't, when K.A. Diehl has e-mail addresses for homeowners?

A. Clarify your question.

Q. Clearly, K.A. Diehl has an e-mail address for me. Can you explain the mechanism used to select particular homeowners not to receive the e-mail notification such as Friday Facts from the HOA, when others do receive it?

A. I can't explain it, no.

Q. Is there a regular mechanism for that in place that you know of?

A. I believe it exists.

Q. What professional licenses issued by the State of South Carolina or its licensing boards do you hold?

A. Do I hold?

Q. Yes.

A. I hold the CMCA through CAI. And I also hold an AMS.

Q. Is CAI a South Carolina licensing board

recognized by the South Carolina Secretary of State?

A. It is not a license; it is a certification.

Q. What licenses do you hold issued by a South Carolina licensing board?

A. None; driver's license.

Q. To the best of your knowledge, do any Diehl employees hold any licenses issued by South Carolina licensing boards?

A. I don't know.

Q. Does K.A. Diehl have a division which provides financial and accounting services?

A. Yes.

Q. Which Diehl employees have been used to inspect for ARB violations or violations of the covenants in the HOA?

A. Physically inspect?

Q. Drive around the neighborhood and spot violations.

A. That would be Beckie Abel.

Q. And no one else?

A. Not to my knowledge.

Q. What training in botany law or contracts has Diehl provided for its inspectors of property?

A. I don't really understand your question.

There's no training. It's run off of the covenants.

Q. When a Diehl inspector makes the neighborhood rounds, how do they -- how are they supposed to know what changes have previously been approved?

A. They would have -- they would have it on record.

Q. Do those records go back to approvals by the developers?

A. I don't know.

Q. Have you ever seen the record of the approvals for the HOA?

A. Yes.

Q. Have you attended any meetings where ARB gave approvals?

A. Yes.

Q. How descriptive are those records of approvals which are maintained by the HOA?

For example, if I request to have a plant bed approved, what would be entered into that record of the approval?

A. The request -- that they requested modifications and any specifications required for that particular modification.

Q. Can you explain why, when I inspected the HOA's records on October 3rd, all I found was one-sentence descriptions of what was approved?

A. If that was what was required, that's what went into the record.

Q. So you're saying that what was in the record is what was available for the inspectors for the future?

MS. THOMPSON: Objection to the form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. What other records would be available for the use of the inspectors beyond what I found, the one-sentence descriptions?

A. The original application filed.

Q. Can you explain why I couldn't find a complete set of application files for anyone but myself in the HOA records?

A. No.

Q. Among the violations which have been reported is grass not cut. How are Diehl inspectors supposed to know when the grass is too long?

A. By seeing it.

Q. Are you saying there is no objective

statement -- or standard used?

A. I would need to review the document to see if it's specified in there, but typically it's -- if it's noticeable, it needs to be cut.

Q. That is, are you saying that's in the opinion of the observer?

A. Yes.

Q. How is the inspector supposed to determine that a car parked on the street actually belongs to a homeowner?

A. I don't know what's -- I don't know what is in place. If it's in front of the home, and it's known that the vehicle belongs to that particular home.

Q. How is it supposed to be known that it belongs to the particular home?

A. I don't know.

Q. To the best of your knowledge, a homeowner is required to provide Diehl with license plate numbers on a car?

A. No.

Q. What efforts has Diehl made to ask homeowners what the homeowners consider acceptable features and standards and guidelines for the ARB?

A. What have the homeowners been provided?

Q. I'll repeat the question differently.

What efforts has Diehl made to obtain suggested guidelines from the homeowners in general?

A. I don't know.

Q. Are you aware of any such effort?

A. I, I, I -- not particularly, no. I know they're allowed to provide input and make any requests that they would like to, to the Architectural Review Board, to consider and --

Q. Do you recall a single mailing to the homeowners where they were asked to provide ARB input?

A. No.

Q. Prior to 2011 ARB modifications, do you recall a single instance where the 2008 guidelines, as modified, were actually distributed by mail or e-mail to the homeowners?

A. No.

Q. After a Diehl inspector identifies a suspected ARB violation, explain the process in which Diehl then follows to handle that suspected violation.

A. It's recorded in the property management system, and a violation notice is then sent to the

homeowner.

Q. When the violation notice is sent, is a fine imposed?

A. It depends on the violation.

Q. Please repeat that.

A. It depends on the violation. If there are -- if a violation is -- I guess it depends. Do you have a specific violation?

Q. Are fines ever imposed with a first violation letter?

A. Yes.

Q. Upon whose authority?

A. As set of the guidelines by -- approved by the board of directors.

Q. Is it your statement then that before the first violation letter is sent imposing a fine, the board of directors has to approve that first violation fine?

A. It is approved, yes.

Q. By whom?

A. The board of directors.

Q. In 2010, when I received a first violation fine for a plant bed, which members of the board approved that first violation fine?

MS. THOMPSON: Objection to form.

THE DEPONENT: It's already determined by the documents recorded that are approved by the board of directors. So the fine is not necessarily taken to the board to approve on an individual basis.

BY MR. JARMUTH:

Q. Who decides that the fine for that November 2010 violation would be $50?

A. Who determined it?

Q. Yes.

A. Your documents and the guidelines that are in place for architectural review modifications or violations, whichever it may be.

Q. Is it your statement then that Diehl imposes that $50 fine without specific approval on a specification from the board?

A. It is on a case-by-case basis, yes. We impose -- K.A. Diehl imposes the fines.

Q. Does K.A. Diehl receive any money for writing that first violation notice?

A. No. Outside of the management contract, no.

Q. Does the management contract provide a per violation payment to Diehl for writing those letters?

A. No.

Q. What does Diehl get paid for making the inspections of the neighborhoods?

A. Outside of the management contract, nothing.

Q. Does Diehl get a mileage fee?

A. No.

Q. Does Diehl get a per-hour fee for driving around?

A. No.

Q. What options does a homeowner have after receiving a first violation letter?

A. They have the opportunity to contest it to the board of directors or abate the violation and notify the office.

Q. Isn't there a procedure in place which involves the ARB?

A. If it's a violation of the ARB, it's -- yes, it's --

Q. What is that procedure?

A. If it's an ARB violation, is that your question?

Q. After you received the first violation letter --

A. Pertaining to the ARB --

Q. -- is there an ARB procedure?

A. If it's pertaining to the ARB and if it's a

violation of the Architectural Review guidelines, then the same process is in place: They can appeal it to the board of directors. And it can actually be heard by the architectural review board first; they can appeal to Architectural Review Board. And if denied, they can also appeal it to the board of directors.

Q. Did you attend all the ARB meetings while you were working with the HOA?

A. Not every, but most.

Q. Who wrote those minutes of those ARB meetings?

A. I did.

Q. Where are they kept?

A. They are kept in the office in a separate meeting minute book of the Architectural Review Board.

Q. Could you describe what the minutes of one of those meetings would have consisted of?

A. Could I do -- I'm sorry, what?

Q. Describe what the minutes of one of those ARB minutes would have consisted of.

A. It's pretty standard. It would be a record of who all attended, the date that the meeting was held. And it would certainly -- it would provide

all the requests that were being reviewed on that day and any -- and it would also keep a record of the vote of approval and any new business brought to the Architectural Review Board, adjournment and the schedule of the next meeting.

Q. Did you attend the ARB meeting where I addressed them on the subject, in November of 2010, of my plant bed and a fence?

A. Yes.

Q. Did you take notes of that -- did you take notes of what was said?

A. In preparation for the meeting minutes, yes.

Q. What happened to those notes?

A. They're discarded once the meeting minutes are published or created.

Q. Do you take notes of what every other applicant says?

A. Yes.

Q. At that meeting, do you recall a disagreement with Bob German?

A. I do.

Q. Could you please describe that?

A. In detail?

Q. As far as you recall it.

A. I do recall -- I recall an argument, and it

was a heated discussion. I don't really remember exactly what was said. I do remember that there was a heated argument.

Q. Do you recall Bob German standing up during that argument?

A. I don't recall that.

Q. Were you present at the ARB meeting where I applied for a swing set?

A. I was.

Q. Do you recall Jay Cartman being present?

A. Yes.

Q. Was he a member of the ARB at that time?

A. Yes, he was.

Q. What role did he have that day in the ARB proceedings?

A. His role as an active Architectural Review Board member.

Q. If an ARB makes a negative decision on an application, what options do homeowners have?

A. If they are denied?

Q. Yes.

A. Okay. They have the opportunity to re-submit their request based on what would be approved.

Q. Is there some sort of an appeal procedure?

A. There is.

Q. Could you explain that?

A. They can request to -- for the Architectural Review Board to reconsider, and there is a meeting that is set up where the homeowner would then come in and appeal the Architectural Review Board's decision.

Q. Is there an appeal procedure to the board of directors?

A. There is.

Q. Could you explain that?

A. In writing, they can certainly request an appeal of the board of directors' decisions.

Q. Have you attended any of those meetings of the board dealing with an appeal?

A. I have.

Q. Could you explain how those proceedings work at the board of directors?

A. Yeah. Basically the homeowner would bring in their -- all their documentation that would support the reason for their appeal. The board of directors would then, you know, ask any questions that they have. The homeowner's given the opportunity to state their case and provide as much documentation, and the board of directors typically

thanks them for the information and they will be sent a letter of their final decision within 15 days.

Q. What is your role at those meetings?

A. The meetings that I had attended, it was to take meeting minutes or notes for letters to be distributed.

Q. Where are those notes kept?

A. They are executive session. They are not minutes actually kept. Like I said, they are notes that I actually would have kept to generate any letters that were needed based off of the board of directors' decisions.

Q. Do you believe there's any privilege between yourself and the board of directors of those meetings?

A. Any privilege?

Q. Yes.

MS. THOMPSON: Objection to form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. Can you cite any privilege you believe exists which makes -- which keeps you from being required to state what happens at those meetings?

MS. THOMPSON: Objection to the form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. Can you explain why I have been unable to find the minutes of any of these ARB appeals to the board -- at the board?

A. Appeals?

Q. Can you explain why I have never found a single minute of a board of directors where they handled an appeal?

A. Executive session is not -- they're not recorded. If the hearing or appeal is in executive session, then meeting minutes are not recorded.

Q. Didn't you earlier say you took minutes?

A. And then I retracted and said notes for direction.

Q. Were those official meetings of the board?

A. I'm not 100 percent certain.

Q. Does the board conduct official business --

A. Yes.

Q. -- at executive sessions?

A. Yes.

Q. They make decisions on behalf of the board?

A. Yes, yes.

Q. What training does Diehl give new ARB members on the performance of their duties?

A. We provide them with guidelines and go over any -- just basically the process.

Q. When you say "guidelines," are you referring to a copy of the ARB guidelines?

A. Yes.

Q. Are they given any materials to ensure that their decisions are consistent on ones given or made earlier in previous years?

A. Are they given direction?

Q. No, are they given any material to help them be consistent with decisions made in prior years?

A. The ARB guidelines, that's it.

Q. What part did Diehl have in making the 2008 and 2011 ARB guideline changes?

A. We didn't have any part in making changes.

Q. What does Diehl tell the HOA board about the HOA's obligation to pay Highway 17 assessments?

A. I don't know.

Q. Does Diehl provide any independent estimate of what the HOA should be paying Highway 17?

A. I don't know. I can't answer that.

Q. I take that as a no.

MS. THOMPSON: Objection.

She said, "I don't know."

BY MR. JARMUTH:

Q. Have you ever seen any document prepared by Diehl addressed to the board which addresses how much should be paid to the Highway 17 association?

A. I don't recall.

Q. Was Diehl's position as the enforcer of the ARB guidelines and the covenants regarding my responsibility to maintain and/or mow the land between the curb of the street and my property line?

A. I'm sorry, repeat your question.

Q. Diehl inspects for ARB or covenant violations.

A. Uh-huh.

Q. One of the areas they look at is grass mowing. What is Diehl's position regarding my responsibility to maintain or mow grass between the curb and my surveyed property line?

A. Other than inspecting, I don't know. I don't know how to answer that.

Q. Will I get a violation if I don't mow those two yards between the curb and my property line?

A. Yes.

Q. How does Diehl know where my property line actually is?

A. If it's in front of your home -- and you

just described the curb -- from the curb up to your property line, which it would be just by visual.

Q. What is Diehl's understanding as to who owns the streets in the Planned Unit Development?

A. It's my understanding -- if you're asking me, not on behalf of K.A. Diehl, but if you're asking me personally, my understanding is that the county owns it.

Q. What does Diehl charge contractors to be considered as eligible vendors?

A. I don't know what the current price is, but I know that when it was started, it was 150, $150, 200.

Q. What services, other than management, does Diehl provide the HOA?

A. Currently?

Q. Currently.

A. Other than basic management, none.

Q. Do they provide accounting services?

A. Well, yes, but that's part of management.

Q. Do they provide -- does Diehl contract for any services, such as pool maintenance?

A. Do they contract K.A. Diehl?

Q. Does K.A. Diehl have subcontractors to provide any of these services, such as pool

maintenance, grounds maintenance?

A. Yeah.

Q. To your knowledge, has Diehl ever used a Diehl credit card to obtain goods or services on behalf of the HOA, such as from Home Depot?

A. I don't know.

Q. When Diehl obtains goods, paper, whatever, for the HOA, how is the vendor paid?

A. When Diehl obtains...

Q. Goods or services for the HOA, which could be a staple --

A. Right.

Q. -- a paper bag, a wreath, how is the vendor paid?

A. I'm not the one doing the purchasing, so I can't answer that.

Q. What is your understanding of --

A. My understanding, if it were maintenance -- I mean, you know, we'd have to have a specific example. If it were maintenance supplies needed for any common area or whatever, the maintenance guy would purchase that -- would purchase it possibly with a company credit card or -- I don't know -- they might use their own money and then put in for reimbursement, I don't know. I would assume

a company credit card.

Q. For all the transactions where Diehl prepays for services, is a bill issued to the board of directors for approval of reimbursement?

A. I guess it depends. It's up to a certain amount and maybe possibly what the services were for, if it needed approval. And actually all bills need approved by the board of directors. They have an opportunity to look every week.

Q. When Rosemary Toth was president of the HOA, did she see all bills for reimbursement?

A. I don't recall.

Q. Who was sent, on the board, the bills for approval?

A. It was implemented -- I'm not sure exactly the date that it was implemented, but Beckie Abel, the manager, would start -- she had started -- and I can't recall the time that she started doing it, but she would scan all the accounts payable to the entire board.

Q. Are you familiar with the accounts kept for the HOA?

A. Slightly.

Q. Can you explain why the per-house average cable cost for different neighborhoods in any given

year is not the same?

A. I can't, no.

Q. Are you familiar with the cable TV contract with the HOA and HTC?

A. I know one exists.

Q. Are you familiar with the details?

A. No.

Q. Are you aware that HTC increases its costs in April of each year?

A. No. I mean, I was aware that they have the possibility to, yeah.

Q. Were you present at some of the meetings of the members -- the annual meetings where it was discussed that the cable TV rates are increased in April but the members are charged the increase in January?

A. I don't recall, no.

Q. Are there any annual meetings of the members, since 2006, where you were not present?

A. I wasn't present for 2006 -- did you say prior to?

Q. Beginning of 2007.

A. Like I said, I didn't start working with the HOA until 2008, but I believe I attended every one from 2008 to 2011.

Q. Do you have any idea what happens to the money collected between January and April for the cost increases for cable TV which are not being collected by HTC until April?

Let me restate that. Do you know where that money's going?

A. No.

Q. To your knowledge, are there any lots in the PUD deeded to any individual or company for which assessment charges are not paid?

A. To my knowledge, no.

Q. Is it Diehl's job to collect assessments from every owner of any lot in the PUD?

A. Yes.

Q. Can you explain why the -- why Diehl is not collecting assessments from lots owned by Grand Strand Water and Sewer Authority which they own in deed simple in the PUD?

A. I can't explain that, no.

Q. Were you aware that GSWSA owns such lots?

A. Not to my knowledge, no.

Q. Are there any chain link fences in the PUD allowed?

A. No.

Q. Can you explain why the GSWSA lots have

8-foot chain link fences around them and why the golf courses have chain link fences around certain of its areas?

A. I can't answer that.

Q. Would these be ARB violations?

A. I don't really know how to answer that.

Q. Doesn't the ARB covenants prohibit chain link fences?

A. If you're asking if it's against the ARB guidelines, then yes.

Q. Have you ever had the opportunity, ever, to read the covenants which applied to properties in the HOA?

A. Yes.

Q. Does the covenants prohibit such fences?

A. I believe it does.

Q. Has Diehl ever issued ARB violations against such chain link fences?

A. Not since -- not during my employment, no.

Q. Have you ever had an opportunity to review the Planned Unit Development approval documents issued by Horry County?

A. No.

Q. As one of the Diehl managers for the HOA when you were in that capacity, what was your

opinion regarding whether The Glens was a multi-family area?

A. Do I need to give my opinion?

MS. THOMPSON: Objection to the form. You have to answer his question.

THE DEPONENT: Okay. I believe that The Glens HOA has every right to be --

BY MR. JARMUTH:

Q. That's not the question.

A. Okay. Repeat your question.

Q. The question was, in your estimate, in your capacity as one of the Diehl employees dealing with the HOA, was it your opinion -- what was your opinion regarding whether or not The Glens is a multi-family area?

A. My opinion is, yes, they are.

Q. Are you aware of any homeowners who have been offered a reduction in assessments?

A. No.

Q. Have you ever participated in the preparation of voter lists for the annual meetings of the members?

A. Yes.

Q. How many votes was the golf course shown as being eligible to cast?

A. Without that document in front of me, I can't -- I can't --

Q. Were they allowed to cast the 450 votes shown in the covenants?

A. Without the document, I don't know.

Q. To your knowledge, was there a reduced number of votes that they were authorized?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I don't -- I can't recall.

BY MR. JARMUTH:

Q. What guidance were you given in preparing the entry for the golf course on the voter list?

A. What guidance was I given? Whatever the amount of votes that they were provided, that's the amount of votes that were entered in.

Q. Provided in the covenants?

A. Provided to me by the -- Beckie Abel, the manager. I don't know how all that went down. I mean, my specific duty was just administrative.

Q. Did you ever reference the covenants preparing the voter list?

A. Did I?

Q. Yes.

A. No.

Tournament Drive, illuminated at HOA expense. Thus this statement upon which the Special Referee depends is a lie. It was written by Defense Counsel Henrietta Golding. It is an ethics violation.

(3) From Pages 15 - 18. Quoting only those sections which relate how the contract was entered into and the Golf Course's Putative Compliance with it's Obligation. The Special Referee failed to cite any actual evidence and the only evidence introduced at trial in this matter is that evidence submitted by Plaintiff. Defense Counsel displayed a GIS Aerial view of the area as it is today, but that only showed the relative locations of the different parcels. Nothing from the Plat Book was introduced into evidence by Defense Counsel on this matter.

> 4. The Golf Course is Current in the Payment of its Assessments. On November 20, 2003, the Golf Course entered into an agreement with D.R. Horton, the Declarant/Developer. This Golf Course Agreement provided for a reduction in the actual dollar amount that the Golf Course pays for assessments in exchange for the Defendant HOA receiving certain real properties. One of the properties that the Defendant HOA received was a parking lot for the Amenity Center. The Defendant HOA President testified that this property was needed in order to obtain a permit to construct the swimming pool. In addition, the Defendant HOA received the right to utilize the Golf Course ponds and pumping system for irrigation of the Community's Common Areas. The Defendant HOA's right to use these ponds and the pumping system is a significant consideration; otherwise, the Defendant HOA would have to construct and maintain 2 deep wells. Further, according to Chris Sullivan, an expert irrigation contractor, additional significant costs are likely for the installation of pipes.

The Special Referee totally ignored the general ledgers of the Defendant IHOA which proved it is more likely than not that the Golf Course IS NOT current in the payment of it's assessments. At trial, the testimony of William Freiboth was that the IHOA sued the Golf Course – in this court – for being in arrears. The actual complaint was introduced as evidence (see exhibit numbers below table earlier in this section). These were never controverted.

At trial Plaintiff introduced and testified as to Covenant Section 4.17. Under that section, and the interpretation was not disputed,

> Section 4.17 Wells and Effluent. There is hereby reserved for the benefit of the Developer, the Association, and their respective agents, employees, successors and assigns an alienable, transferable, and perpetual right and

> easement: (i) to pump water from lagoons, ponds, and other bodies of water located within the Subdivision for the purpose of irrigating any portions of the Subdivision, ... (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities...

The HOA did not need to negotiate for the right to use the ponds and to install pumping stations. It already had that right and the golf course was stealing water from the ponds that the HOA owned by this Covenant. That water which the golf course uses to irrigate it's greens could easily have offset much lesser water used to irrigate HOA owned commons. The Special Referee ignored this thought which Plaintiff testified about. Chris Sullivan also testified that he was unaware of Grand Strand Water and Sewage Authority's program to provide free "treated waste water" to irrigate large areas and which the HOA was eligible for.

The Special Referee alleged that this was a valid "business judgment" call. Such an argument was not made at trial. The Business Judgment argument was made for certain acts of the board since 2007 but none for boards prior to that and can not be raised post-trial. Further, the very citation and argument of the Special Referee is defeated by the requirement that any act must be "intra-vires" and because the rate of assessments is set by the covenants, it can not be upset by an ordinary board action:

> The Defendant HOA's decision to accept the parking lot property and obtain its needed water from the Golf Course in exchange for a portion of the assessments is a valid exercise of its powers. The Golf Course owner's payment of this consideration was in lieu of assessments. "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motive and in good faith." *Dockside Assn v. Deyton, 291 S.C. 214,* 217, 352 S.E.2d 714, 716 (Ct. App. 1987).

The phrase "business judgment" was never spoken by anyone at trial. This argument was not specifically made by the IHOA at trial (although it was hinted at). No citation to "Dockside" was recorded in the minutes. Clearly this was a "I wish I had said it" after-thought by Defense Counsel and again, the Special Referee made a conclusion of law based on an argument of law never advanced at trial – which makes the entire decision suspect and has ethical implications.

The minutes of the board entered into evidence at trial confirm that R. Doug Brown

acted without the authority of the board to enter into this agreement and it was a corrupt act made in bad faith which benefited himself financially and his employer financially in a very large measure – the details of which are of record at trial.

The Special Referee found that the transaction was fair and thus not voidable, but ignored the full financial implications which were set before him.

(1) Under the contract the HOA paid for golf course water. It did not get that water free. The Golf Course received even more water from the ponds than the HOA used and paid nothing for it. The transaction failed to even attempt to compute this offset. This is not an offset to the loss of assessments.

(2) The fair market value of the parking lot, per the deed / sale documents filed with the Recorder of Deeds, was $ 5,000, and this is what the parties to the deed signed off on Page 3 by Affidavit in this August 4, 2004 Parking Lot Deed Pl #560, Deed Book 2771 Page 1482.

(3) From the spreadsheets above the loss to the HOA from giving the Golf Course a reduced assessment would be $ 42,408. To this must be added the arrears which the golf course had through 2003: $ 116,000 from the Board of Directors minutes. For the transaction to be "fair" to the IHOA the value must have been worth in the neighborhood of $ 158,408. Neither Defense Counsel at trial nor the Special Referee in his order made any effort to explain how $ 5,000 in benefits plus allowing the HOA to irrigate golf course "non-greens" property equated to $ 158,408. The finding of the Special Referee is not supported by the evidence. In addition, to change the assessments required an amendment to the Covenants and the golf contract was thus ultra-vires, even if it had been "fair".

g. Findings of Fact and Conclusions of Law:

(1) A change to the rate of assessments for the Golf Course requires an amendment to the Covenants. No such amendment was even attempted. An attempt to alter the amount the Golf Course pays in assessments through a contract is an ultra-vires act and unenforceable, even if fair, and thus the Golf Course Contract is void.

(2) The Golf Course never paid as required under the contract. Per the terms of the contract itself, the Golf Course contract is thus void. There are thus two reasons that the Golf Course Contract is void: the Golf Course did not honor it's obligation, and because the contract was ultra-vires. The unpaid assessment arrears of the Golf Course is

thus calculated per the terms of the Covenant.

(3) The obligation of the Golf Course to pay assessments is and always has been the rate and terms stated in the Covenants.

(4) The amount of unpaid arrearage of the Golf Course on it's assessments through July 19, 2012 is $ 370,366.

January 22, 2013
Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

Ronald Jarmuth,

Plaintiff(s),

vs.

CIVIL ACTION NOS.
2009-CP-26-3596 &
2010-CP-26-11320

International Club HOA, Inc., et al.,

Defendant(s).

DEPOSITION OF: JULIE CASE

DATE: Monday, February 13, 2012

TIME: 10:06 a.m. through 11:59 a.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. PERKINS
Registered Professional Reporter
Certified Livenote Reporter

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ALSO PRESENT: WILLIAM FREIBOTH
ROSEMARY TOTH

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

STIPULATION: It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * *

JULIE CASE, being first duly sworn, testified as follows:

EXAMINATION

BY MR. JARMUTH:

Q. Please state your name and residential address for the record.

A. Julie Case; 317 73rd Avenue North, Apartment 1, Myrtle Beach, South Carolina 29572.

Q. What were you instructed by Henrietta Golding to do regarding the litigation material she prepared and sent to Diehl?

MS. THOMPSON: Objection.

That's attorney-client privileged information, and I'm instructing my client not to answer that question.

BY MR. JARMUTH:

Q. And at the time that you were provided the material by Diehl, was an attorney-client retention

agreement signed as far as you know?

MS. THOMPSON: Objection to the form.

THE DEPONENT: Excuse me?

MS. GOLDING: Whenever she objects, you're going to have to answer the question.

THE DEPONENT: Okay. You said I do not have to answer?

MS. THOMPSON: You have to answer the question.

THE DEPONENT: Oh, I have to answer.

MS. THOMPSON: The first question he asked you, I instructed you not to answer it, but you have to answer this one, okay?

THE DEPONENT: I don't know.

BY MR. JARMUTH:

Q. Please explain the statement you made to Jane Pizzi that you were instructed to perform certain acts regarding material which Diehl ultimately published.

A. I don't recall having a conversation with a specific Jane Pizzi, is that what you said?

Q. Jane Pizzi.

A. I don't have a clue who she is.

Q. Is it your statement that Jane Pizzi fabricated a conversation between yourself and her

regarding litigation materials?

A. I don't recall.

Q. Who does Diehl have on staff that knows how to do legal research --

A. We --

Q. -- if anyone?

A. We do have a -- oh, what is his name? We do have an attorney on staff that works out of North Carolina, and his name is -- Keith Walters? I mean, I'll have to get to name to you, but there is -- we do have legal support.

Q. What did Diehl do to verify the material provided you by Henrietta Golding prior to its publication by Diehl?

A. Can you repeat the question? What exactly was your question?

Q. What did Diehl do to verify the truth of what you -- what Diehl published by e-mail, letter or web site regarding my litigation history?

A. I don't know.

Q. Did you ever prepare the minutes of any meeting of the board of directors which occurred prior to 2008?

A. No.

Q. Who prepared the minutes of the meetings of

the board of directors prior to 2008?

A. That would have been Becky's previous assistant, and I believe her name was Kathy, and I don't recall what her last name is.

Q. When did you begin attending meetings of the board of directors?

A. It would have been August, 2008.

Q. How long have you worked for K.A. Diehl?

A. Let's see, in August, it will be -- or excuse me, in June, it will be five years.

Q. Can you explain what Diehl did regarding checks provided to Diehl by homeowners made payable to the International Club Property Owners Association?

A. What did K.A. Diehl do with those checks? As far as I know, they were deposited.

Q. To whose account?

A. International Club HOA.

Q. What, if anything, did Diehl do regarding the discrepancy between checks payable to the property owners association and the lack of a client for Diehl under that name?

MS. THOMPSON: Objection to form.

THE DEPONENT: I don't know.

BY MR. JARMUTH:

Q. Do you ever process new homeowners who purchase houses in the HOA?

A. No, I don't.

Q. Who does?

A. Mary Sequeira in our accounting department.

Q. What information does Diehl collect regarding new homeowners?

A. A copy of their settlement statement.

Q. Explain that.

A. Whenever a closing occurs, the closing attorney forwards our office the settlement statement, the HUD.

Q. Isn't it a fact that Diehl requests homeowners to provide the names of everybody living in their house?

A. No.

Q. Who owns the web site that K.A. Diehl provides for the use of the International Club homeowners association?

A. Well, it's Association Voice, but the ownership -- I'm not 100 percent certain if it's International Club HOA or if it's with K.A. Diehl.

Q. Does K.A. Diehl own the machine in which its hosted?

A. In which it's hosted?

Q. Yes.
A. I don't know.
Q. Association Voice's web site is in Denver, Colorado. Does Diehl own that machine out there?
A. No.
Q. What is Diehl's relationship with Association Voice?
A. Web site support.
Q. Does Diehl have a contract with Association Voice?
A. I don't know.
Q. When individual homeowners press the Reply button on e-mail sent to them on behalf of the HOA, do you ever receive responses from those homeowners?
A. If I am the originator of a message sent out, yes.
Q. How about if you're not the originator?
A. Then no.
Q. Can you explain why the automatic response address for e-mail, as sent by Beckie Abel, has your e-mail address on it?
A. If they are any communications sent from our office and if it's from my e-mail address, if I'm the originator of it, then the response will come

to me, whether I'm sending it on behalf of the board or on behalf of Beckie Abel or any other -- anybody else affiliated, the response would come to me since I was the sender.

Q. I'll repeat my question. Can you explain why your e-mail address is automatically used by homeowners when they hit return to sender on e-mail sent them by Beckie Abel?

A. I don't really understand the question. I feel as though I answered it. If it was on behalf of Beckie Abel, then -- and if I was the originator, then it would come back to me.

Q. When Beckie Abel e-mailed the homeowners material about me regarding litigation histories, did you receive any responses to those e-mails?

A. I can't recall.

Q. What information regarding homeowners' accounts can be found on the Diehl web site?

A. What account information?

Q. What information about a homeowner can a homeowner find when they log into the HOA web site run by Diehl on behalf of the HOA?

A. They can find -- relative to other homeowners?

Q. Their own information.

A. Their own information. They can receive their violation -- they can review violation notices, architectural review requests and their personal HOA account information.

Q. What information is in that personal HOA information?

A. I don't understand your question.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. You just said "personal HOA information." Does that include payment information?

A. Yes.

Q. Does it include home address?

A. Yes.

Q. Does it include phone number?

A. That they provide for us on record, yes.

Q. What other information does it include?

A. Their e-mail address, any alternative mailing address, any cell phones or any information that they provide.

Q. How does it get into that on-line database?

A. It is -- they can update it their self, they can put that information in there, or its information that they have provided to our office that comes from our property management system.

Q. And when a new homeowner provides Diehl the information, is it automatically put into the database?

A. In our property management system, yes.

Q. Is that the same database which resides physically in Denver, Colorado on a machine run by Association Voice?

A. Yes, if it's driving the Internationalclubhoa.com, yes.

Q. Is that same information about me out there on the Association Voice database?

A. Concerning litigation updates provided to the community, yes.

Q. Payments, violations --

A. No.

Q. -- addresses?

A. No.

Q. Who makes the changes to the HOA web pages on the HOA web site?

A. That would be the administrator.

Q. And who is that?

A. That would be Bill Freiboth, or I have the capability to do it myself, also as an administrator. Did. I no longer work with International Club.

Q. During the period you did, who added the minutes of the boards of directors as they occurred?

A. That would be me.

Q. What else did you add to those web pages?

A. Any information requested by the board of directors.

Q. Calendars?

A. Events on a calendar.

Q. Who else had the privileges of being able to make changes to that web page?

A. There's -- it's not a straightforward answer because there are different security settings. I, for one, was an administrator; Bill Freiboth was an administrator. So the two of us could make changes all over the site.

However, you have -- you also have the manager who can add documents, things of that nature, but not make any major changes.

Q. In March and April of 2009, who put the material about me on the HOA web site?

A. As directed, I did.

Q. As directed by whom?

A. My manager, Beckie Abel.

Q. And who in the HOA approved payment for the

time and labor of Diehl in doing that?

A. There was no additional time in doing that.

Q. Who in the HOA approved payment to the HOA for the mailing of the physical copies of that material?

A. Who approved the payment for the mailing?

Q. Yes.

A. That would -- I mean, it's in the budget, and that budget is ultimately approved by the board of directors. A mailing such as that needed to be approved by the board of directors.

Q. Who approved that mailing?

A. I don't know. It would have been the board president at the time, which was Rosemary Toth.

Q. At what dollar threshold does the board of directors have to approve reimbursement for expenses?

A. I'm sorry, repeat your question. At what time...

Q. How many homeowners, approximately, were mailed that litigation material?

A. I would have to get you a -- I would have to look at the time that e-mail was sent out.

Q. Approximately how many homes have been members of the HOA in 2005?

A. In total?
Q. Yes.
A. How many are members of the HOA? 700.
MS. GOLDING: If you don't know --
THE DEPONENT: I don't know. I don't have the number; I don't have the exact number.
BY MR. JARMUTH:
Q. Did Diehl attempt to send every one of those homes a physical copy of that litigation material?
A. No.
Q. What criteria was used to decide which ones would not get that?
A. If an e-mail address was not provided on --
Q. I'm talking about the physical copy.
A. Yes. If the physical copy was mailed, it was because they did not have an e-mail address provided on the web site to be e-mailed to.
Q. What financial transactions can homeowners perform on the HOA web site?
A. Payment of their HOA dues, but it's actually just a link; it's a link on the HOA web site that takes them to the bank.
Q. Is that web page located on Association Voice's server?

A. Is what web page?
Q. The one that they use to gain access to the financial transaction page.
A. No, it's a link.
Q. The web page that link appears on, is that on the Association Voice web page?
A. Yes.
Q. Who owns the International Club homeowners association web page name?
A. The International Club HOA.
Q. Can you explain why it's registered to the ownership of K.A. Diehl?
A. Internationalclubhoa.com?
Q. Yes.
A. That would be probably because we purchased the domain --
Q. From whom?
A. -- on behalf of the HOA.
Q. From whom?
A. I don't know.
Q. Can you explain how the name came to K.A. Diehl from Rosemary Toth?
A. How the name came?
Q. How the previous ownership in the name of Rosemary Toth was transferred to K.A. Diehl.

MS. THOMPSON: Objection to form.

THE DEPONENT: I don't know what you're -- I don't know what your question is. What name?

BY MR. JARMUTH:

Q. On August 4, 2011, the ownership of that name was transferred from Rosemary Toth to K.A. Diehl. Can you explain how that transfer of ownership occurred?

A. No, I can't.

Q. How often does Diehl provide homeowners with a written statement of privacy rights?

A. Privacy rights, provided by who?

Q. By K.A. Diehl.

A. I don't know.

Q. Can you recall it ever occurring?

A. Personally? No.

Q. How much does Diehl charge the HOA for the use of the web page?

A. How much does it charge the HOA? I don't have an exact figure. You'd have to --

Q. Does K.A. Diehl charge the HOA for use of the web page?

A. Yes.

Q. Does K.A. Diehl have to pay Association

Voice for the use of that same web page?

A. Yes.

Q. Does K.A. Diehl have a like arrangement for other HOAs with Association Voice?

A. I'm sorry, say it again.

Q. Does K.A. Diehl have a like arrangement with Association Voice for web pages for other HOAs?

A. Do they have a similar?

Q. Yes.

A. Yes.

Q. Approximately how many HOAs have that arrangement?

A. The -- I can't recall a physical number of activated and registered web sites, but the capability is there for all of our HOAs that K.A. Diehl manages, and that's approximately around, I'm going to say 90.

Q. Who on Diehl's staff is a trained web page designer?

A. None.

Q. Who designed the original web page which Diehl provided for the HOA?

A. Association Voice.

Q. Were they paid for that?

A. I don't know.

Q. The Golding letter to the board was dated May 27, 2009. The following day, a printed copy of all the material with custom envelopes was mailed. Can you explain how the custom envelopes and the custom mailing were prepared the same date you received -- that Diehl received it from Henrietta Golding?

MS. THOMPSON: Objection to form.

THE DEPONENT: When you say "objection to form," I don't get it. What's your...

MS. THOMPSON: If I say "objection to the form, you still have to answer the question." If I instruct you to not answer the question, then don't answer it. Okay?

THE DEPONENT: Okay.

MS. THOMPSON: If you don't understand a question, then you can ask for clarification.

THE DEPONENT: Okay. I know that the mailing was sent to a mail house to be mailed.

BY MR. JARMUTH:

Q. What was the name of the mail house?

A. I don't recall what mail house was used at the time.

Q. Did the HOA board approve that physical mailing?
A. Yes.
Q. Who on the HOA board approved the physical mailing?
A. It would have been the entire board.
Q. Was Rosemary Toth one of those?
A. Yes.
Q. Did Diehl subsequently bill the HOA for that physical mailing?
A. Yes. Well, it would have been the mail house, actually.
Q. Who owns the postage meter used to imprint postage on those envelopes?
A. On those particular envelopes?
Q. Yes.
A. That would have been through the mail house.
Q. Was the list of owners used for the addresses of those envelopes also the list of voting owners?
A. No.
Q. What list was it?
A. It was the directory, HOA directory.
Q. Is it your statement that everybody on the directory that didn't have an e-mail address was

sent a copy of the printed material?

A. Yes.

Q. Can you explain why some people received both the e-mail and the printed copy?

A. Possibly if there was one e-mail address registered, and they also have the opportunity to select to receive postal mail on the web site. So when e-mails are sent through the web site, if they request, in their own account when they register, they can select to also receive postal mail.

Q. To your knowledge, am I registered to use that web site?

A. No.

Q. Can you explain why I received both the e-mail and the printed copy?

A. If you had an e-mail address on file with our office, then communication would automatically be sent to you via U.S. Mail -- or I'm sorry -- through the web site. But if you had not registered, then it probably -- and I would have to look. I don't know 100 percent why.

Q. Can you explain why K.A. Diehl does not send any of the material by e-mail which it sends the other homes?

A. No, I can't.

Q. Is there someone who told K.A. Diehl not to send me the material they send other homeowners?

A. Not to my knowledge.

Q. Is there a mechanism in place which is used to determine who gets those e-mails, who doesn't, when K.A. Diehl has e-mail addresses for homeowners?

A. Clarify your question.

Q. Clearly, K.A. Diehl has an e-mail address for me. Can you explain the mechanism used to select particular homeowners not to receive the e-mail notification such as Friday Facts from the HOA, when others do receive it?

A. I can't explain it, no.

Q. Is there a regular mechanism for that in place that you know of?

A. I believe it exists.

Q. What professional licenses issued by the State of South Carolina or its licensing boards do you hold?

A. Do I hold?

Q. Yes.

A. I hold the CMCA through CAI. And I also hold an AMS.

Q. Is CAI a South Carolina licensing board

recognized by the South Carolina Secretary of State?

A. It is not a license; it is a certification.

Q. What licenses do you hold issued by a South Carolina licensing board?

A. None; driver's license.

Q. To the best of your knowledge, do any Diehl employees hold any licenses issued by South Carolina licensing boards?

A. I don't know.

Q. Does K.A. Diehl have a division which provides financial and accounting services?

A. Yes.

Q. Which Diehl employees have been used to inspect for ARB violations or violations of the covenants in the HOA?

A. Physically inspect?

Q. Drive around the neighborhood and spot violations.

A. That would be Beckie Abel.

Q. And no one else?

A. Not to my knowledge.

Q. What training in botany law or contracts has Diehl provided for its inspectors of property?

A. I don't really understand your question.

There's no training. It's run off of the covenants.

Q. When a Diehl inspector makes the neighborhood rounds, how do they -- how are they supposed to know what changes have previously been approved?

A. They would have -- they would have it on record.

Q. Do those records go back to approvals by the developers?

A. I don't know.

Q. Have you ever seen the record of the approvals for the HOA?

A. Yes.

Q. Have you attended any meetings where ARB gave approvals?

A. Yes.

Q. How descriptive are those records of approvals which are maintained by the HOA?

For example, if I request to have a plant bed approved, what would be entered into that record of the approval?

A. The request -- that they requested modifications and any specifications required for that particular modification.

Q. Can you explain why, when I inspected the HOA's records on October 3rd, all I found was one-sentence descriptions of what was approved?

A. If that was what was required, that's what went into the record.

Q. So you're saying that what was in the record is what was available for the inspectors for the future?

MS. THOMPSON: Objection to the form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. What other records would be available for the use of the inspectors beyond what I found, the one-sentence descriptions?

A. The original application filed.

Q. Can you explain why I couldn't find a complete set of application files for anyone but myself in the HOA records?

A. No.

Q. Among the violations which have been reported is grass not cut. How are Diehl inspectors supposed to know when the grass is too long?

A. By seeing it.

Q. Are you saying there is no objective

statement -- or standard used?

A. I would need to review the document to see if it's specified in there, but typically it's -- if it's noticeable, it needs to be cut.

Q. That is, are you saying that's in the opinion of the observer?

A. Yes.

Q. How is the inspector supposed to determine that a car parked on the street actually belongs to a homeowner?

A. I don't know what's -- I don't know what is in place. If it's in front of the home, and it's known that the vehicle belongs to that particular home.

Q. How is it supposed to be known that it belongs to the particular home?

A. I don't know.

Q. To the best of your knowledge, a homeowner is required to provide Diehl with license plate numbers on a car?

A. No.

Q. What efforts has Diehl made to ask homeowners what the homeowners consider acceptable features and standards and guidelines for the ARB?

A. What have the homeowners been provided?

Q. I'll repeat the question differently.

What efforts has Diehl made to obtain suggested guidelines from the homeowners in general?

A. I don't know.

Q. Are you aware of any such effort?

A. I, I, I -- not particularly, no. I know they're allowed to provide input and make any requests that they would like to, to the Architectural Review Board, to consider and --

Q. Do you recall a single mailing to the homeowners where they were asked to provide ARB input?

A. No.

Q. Prior to 2011 ARB modifications, do you recall a single instance where the 2008 guidelines, as modified, were actually distributed by mail or e-mail to the homeowners?

A. No.

Q. After a Diehl inspector identifies a suspected ARB violation, explain the process in which Diehl then follows to handle that suspected violation.

A. It's recorded in the property management system, and a violation notice is then sent to the

homeowner.

Q. When the violation notice is sent, is a fine imposed?

A. It depends on the violation.

Q. Please repeat that.

A. It depends on the violation. If there are -- if a violation is -- I guess it depends. Do you have a specific violation?

Q. Are fines ever imposed with a first violation letter?

A. Yes.

Q. Upon whose authority?

A. As set of the guidelines by -- approved by the board of directors.

Q. Is it your statement then that before the first violation letter is sent imposing a fine, the board of directors has to approve that first violation fine?

A. It is approved, yes.

Q. By whom?

A. The board of directors.

Q. In 2010, when I received a first violation fine for a plant bed, which members of the board approved that first violation fine?

MS. THOMPSON: Objection to form.

THE DEPONENT: It's already determined by the documents recorded that are approved by the board of directors. So the fine is not necessarily taken to the board to approve on an individual basis.

BY MR. JARMUTH:

Q. Who decides that the fine for that November 2010 violation would be $50?

A. Who determined it?

Q. Yes.

A. Your documents and the guidelines that are in place for architectural review modifications or violations, whichever it may be.

Q. Is it your statement then that Diehl imposes that $50 fine without specific approval on a specification from the board?

A. It is on a case-by-case basis, yes. We impose -- K.A. Diehl imposes the fines.

Q. Does K.A. Diehl receive any money for writing that first violation notice?

A. No. Outside of the management contract, no.

Q. Does the management contract provide a per violation payment to Diehl for writing those letters?

A. No.

Q. What does Diehl get paid for making the inspections of the neighborhoods?

A. Outside of the management contract, nothing.

Q. Does Diehl get a mileage fee?

A. No.

Q. Does Diehl get a per-hour fee for driving around?

A. No.

Q. What options does a homeowner have after receiving a first violation letter?

A. They have the opportunity to contest it to the board of directors or abate the violation and notify the office.

Q. Isn't there a procedure in place which involves the ARB?

A. If it's a violation of the ARB, it's -- yes, it's --

Q. What is that procedure?

A. If it's an ARB violation, is that your question?

Q. After you received the first violation letter --

A. Pertaining to the ARB --

Q. -- is there an ARB procedure?

A. If it's pertaining to the ARB and if it's a

violation of the Architectural Review guidelines, then the same process is in place: They can appeal it to the board of directors. And it can actually be heard by the architectural review board first; they can appeal to Architectural Review Board. And if denied, they can also appeal it to the board of directors.

Q. Did you attend all the ARB meetings while you were working with the HOA?

A. Not every, but most.

Q. Who wrote those minutes of those ARB meetings?

A. I did.

Q. Where are they kept?

A. They are kept in the office in a separate meeting minute book of the Architectural Review Board.

Q. Could you describe what the minutes of one of those meetings would have consisted of?

A. Could I do -- I'm sorry, what?

Q. Describe what the minutes of one of those ARB minutes would have consisted of.

A. It's pretty standard. It would be a record of who all attended, the date that the meeting was held. And it would certainly -- it would provide

all the requests that were being reviewed on that day and any -- and it would also keep a record of the vote of approval and any new business brought to the Architectural Review Board, adjournment and the schedule of the next meeting.

Q. Did you attend the ARB meeting where I addressed them on the subject, in November of 2010, of my plant bed and a fence?

A. Yes.

Q. Did you take notes of that -- did you take notes of what was said?

A. In preparation for the meeting minutes, yes.

Q. What happened to those notes?

A. They're discarded once the meeting minutes are published or created.

Q. Do you take notes of what every other applicant says?

A. Yes.

Q. At that meeting, do you recall a disagreement with Bob German?

A. I do.

Q. Could you please describe that?

A. In detail?

Q. As far as you recall it.

A. I do recall -- I recall an argument, and it

was a heated discussion. I don't really remember exactly what was said. I do remember that there was a heated argument.

Q. Do you recall Bob German standing up during that argument?

A. I don't recall that.

Q. Were you present at the ARB meeting where I applied for a swing set?

A. I was.

Q. Do you recall Jay Cartman being present?

A. Yes.

Q. Was he a member of the ARB at that time?

A. Yes, he was.

Q. What role did he have that day in the ARB proceedings?

A. His role as an active Architectural Review Board member.

Q. If an ARB makes a negative decision on an application, what options do homeowners have?

A. If they are denied?

Q. Yes.

A. Okay. They have the opportunity to re-submit their request based on what would be approved.

Q. Is there some sort of an appeal procedure?

A. There is.

Q. Could you explain that?

A. They can request to -- for the Architectural Review Board to reconsider, and there is a meeting that is set up where the homeowner would then come in and appeal the Architectural Review Board's decision.

Q. Is there an appeal procedure to the board of directors?

A. There is.

Q. Could you explain that?

A. In writing, they can certainly request an appeal of the board of directors' decisions.

Q. Have you attended any of those meetings of the board dealing with an appeal?

A. I have.

Q. Could you explain how those proceedings work at the board of directors?

A. Yeah. Basically the homeowner would bring in their -- all their documentation that would support the reason for their appeal. The board of directors would then, you know, ask any questions that they have. The homeowner's given the opportunity to state their case and provide as much documentation, and the board of directors typically

thanks them for the information and they will be sent a letter of their final decision within 15 days.

Q. What is your role at those meetings?

A. The meetings that I had attended, it was to take meeting minutes or notes for letters to be distributed.

Q. Where are those notes kept?

A. They are executive session. They are not minutes actually kept. Like I said, they are notes that I actually would have kept to generate any letters that were needed based off of the board of directors' decisions.

Q. Do you believe there's any privilege between yourself and the board of directors of those meetings?

A. Any privilege?

Q. Yes.

MS. THOMPSON: Objection to form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. Can you cite any privilege you believe exists which makes -- which keeps you from being required to state what happens at those meetings?

MS. THOMPSON: Objection to the form.

THE DEPONENT: No.

BY MR. JARMUTH:

Q. Can you explain why I have been unable to find the minutes of any of these ARB appeals to the board -- at the board?

A. Appeals?

Q. Can you explain why I have never found a single minute of a board of directors where they handled an appeal?

A. Executive session is not -- they're not recorded. If the hearing or appeal is in executive session, then meeting minutes are not recorded.

Q. Didn't you earlier say you took minutes?

A. And then I retracted and said notes for direction.

Q. Were those official meetings of the board?

A. I'm not 100 percent certain.

Q. Does the board conduct official business --

A. Yes.

Q. -- at executive sessions?

A. Yes.

Q. They make decisions on behalf of the board?

A. Yes, yes.

Q. What training does Diehl give new ARB members on the performance of their duties?

A. We provide them with guidelines and go over any -- just basically the process.

Q. When you say "guidelines," are you referring to a copy of the ARB guidelines?

A. Yes.

Q. Are they given any materials to ensure that their decisions are consistent on ones given or made earlier in previous years?

A. Are they given direction?

Q. No, are they given any material to help them be consistent with decisions made in prior years?

A. The ARB guidelines, that's it.

Q. What part did Diehl have in making the 2008 and 2011 ARB guideline changes?

A. We didn't have any part in making changes.

Q. What does Diehl tell the HOA board about the HOA's obligation to pay Highway 17 assessments?

A. I don't know.

Q. Does Diehl provide any independent estimate of what the HOA should be paying Highway 17?

A. I don't know. I can't answer that.

Q. I take that as a no.

MS. THOMPSON: Objection.

She said, "I don't know."

BY MR. JARMUTH:

Q. Have you ever seen any document prepared by Diehl addressed to the board which addresses how much should be paid to the Highway 17 association?

A. I don't recall.

Q. Was Diehl's position as the enforcer of the ARB guidelines and the covenants regarding my responsibility to maintain and/or mow the land between the curb of the street and my property line?

A. I'm sorry, repeat your question.

Q. Diehl inspects for ARB or covenant violations.

A. Uh-huh.

Q. One of the areas they look at is grass mowing. What is Diehl's position regarding my responsibility to maintain or mow grass between the curb and my surveyed property line?

A. Other than inspecting, I don't know. I don't know how to answer that.

Q. Will I get a violation if I don't mow those two yards between the curb and my property line?

A. Yes.

Q. How does Diehl know where my property line actually is?

A. If it's in front of your home -- and you

just described the curb -- from the curb up to your property line, which it would be just by visual.

Q. What is Diehl's understanding as to who owns the streets in the Planned Unit Development?

A. It's my understanding -- if you're asking me, not on behalf of K.A. Diehl, but if you're asking me personally, my understanding is that the county owns it.

Q. What does Diehl charge contractors to be considered as eligible vendors?

A. I don't know what the current price is, but I know that when it was started, it was 150, $150, 200.

Q. What services, other than management, does Diehl provide the HOA?

A. Currently?

Q. Currently.

A. Other than basic management, none.

Q. Do they provide accounting services?

A. Well, yes, but that's part of management.

Q. Do they provide -- does Diehl contract for any services, such as pool maintenance?

A. Do they contract K.A. Diehl?

Q. Does K.A. Diehl have subcontractors to provide any of these services, such as pool

maintenance, grounds maintenance?

A. Yeah.

Q. To your knowledge, has Diehl ever used a Diehl credit card to obtain goods or services on behalf of the HOA, such as from Home Depot?

A. I don't know.

Q. When Diehl obtains goods, paper, whatever, for the HOA, how is the vendor paid?

A. When Diehl obtains...

Q. Goods or services for the HOA, which could be a staple --

A. Right.

Q. -- a paper bag, a wreath, how is the vendor paid?

A. I'm not the one doing the purchasing, so I can't answer that.

Q. What is your understanding of --

A. My understanding, if it were maintenance -- I mean, you know, we'd have to have a specific example. If it were maintenance supplies needed for any common area or whatever, the maintenance guy would purchase that -- would purchase it possibly with a company credit card or -- I don't know -- they might use their own money and then put in for reimbursement, I don't know. I would assume

a company credit card.

Q. For all the transactions where Diehl prepays for services, is a bill issued to the board of directors for approval of reimbursement?

A. I guess it depends. It's up to a certain amount and maybe possibly what the services were for, if it needed approval. And actually all bills need approved by the board of directors. They have an opportunity to look every week.

Q. When Rosemary Toth was president of the HOA, did she see all bills for reimbursement?

A. I don't recall.

Q. Who was sent, on the board, the bills for approval?

A. It was implemented -- I'm not sure exactly the date that it was implemented, but Beckie Abel, the manager, would start -- she had started -- and I can't recall the time that she started doing it, but she would scan all the accounts payable to the entire board.

Q. Are you familiar with the accounts kept for the HOA?

A. Slightly.

Q. Can you explain why the per-house average cable cost for different neighborhoods in any given

year is not the same?

A. I can't, no.

Q. Are you familiar with the cable TV contract with the HOA and HTC?

A. I know one exists.

Q. Are you familiar with the details?

A. No.

Q. Are you aware that HTC increases its costs in April of each year?

A. No. I mean, I was aware that they have the possibility to, yeah.

Q. Were you present at some of the meetings of the members -- the annual meetings where it was discussed that the cable TV rates are increased in April but the members are charged the increase in January?

A. I don't recall, no.

Q. Are there any annual meetings of the members, since 2006, where you were not present?

A. I wasn't present for 2006 -- did you say prior to?

Q. Beginning of 2007.

A. Like I said, I didn't start working with the HOA until 2008, but I believe I attended every one from 2008 to 2011.

Q. Do you have any idea what happens to the money collected between January and April for the cost increases for cable TV which are not being collected by HTC until April?

Let me restate that. Do you know where that money's going?

A. No.

Q. To your knowledge, are there any lots in the PUD deeded to any individual or company for which assessment charges are not paid?

A. To my knowledge, no.

Q. Is it Diehl's job to collect assessments from every owner of any lot in the PUD?

A. Yes.

Q. Can you explain why the -- why Diehl is not collecting assessments from lots owned by Grand Strand Water and Sewer Authority which they own in deed simple in the PUD?

A. I can't explain that, no.

Q. Were you aware that GSWSA owns such lots?

A. Not to my knowledge, no.

Q. Are there any chain link fences in the PUD allowed?

A. No.

Q. Can you explain why the GSWSA lots have

8-foot chain link fences around them and why the golf courses have chain link fences around certain of its areas?

A. I can't answer that.

Q. Would these be ARB violations?

A. I don't really know how to answer that.

Q. Doesn't the ARB covenants prohibit chain link fences?

A. If you're asking if it's against the ARB guidelines, then yes.

Q. Have you ever had the opportunity, ever, to read the covenants which applied to properties in the HOA?

A. Yes.

Q. Does the covenants prohibit such fences?

A. I believe it does.

Q. Has Diehl ever issued ARB violations against such chain link fences?

A. Not since -- not during my employment, no.

Q. Have you ever had an opportunity to review the Planned Unit Development approval documents issued by Horry County?

A. No.

Q. As one of the Diehl managers for the HOA when you were in that capacity, what was your

opinion regarding whether The Glens was a multi-family area?

A. Do I need to give my opinion?

MS. THOMPSON: Objection to the form. You have to answer his question.

THE DEPONENT: Okay. I believe that The Glens HOA has every right to be --

BY MR. JARMUTH:

Q. That's not the question.

A. Okay. Repeat your question.

Q. The question was, in your estimate, in your capacity as one of the Diehl employees dealing with the HOA, was it your opinion -- what was your opinion regarding whether or not The Glens is a multi-family area?

A. My opinion is, yes, they are.

Q. Are you aware of any homeowners who have been offered a reduction in assessments?

A. No.

Q. Have you ever participated in the preparation of voter lists for the annual meetings of the members?

A. Yes.

Q. How many votes was the golf course shown as being eligible to cast?

A. Without that document in front of me, I can't -- I can't --

Q. Were they allowed to cast the 450 votes shown in the covenants?

A. Without the document, I don't know.

Q. To your knowledge, was there a reduced number of votes that they were authorized?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I don't -- I can't recall.

BY MR. JARMUTH:

Q. What guidance were you given in preparing the entry for the golf course on the voter list?

A. What guidance was I given? Whatever the amount of votes that they were provided, that's the amount of votes that were entered in.

Q. Provided in the covenants?

A. Provided to me by the -- Beckie Abel, the manager. I don't know how all that went down. I mean, my specific duty was just administrative.

Q. Did you ever reference the covenants preparing the voter list?

A. Did I?

Q. Yes.

A. No.

Q. Did you ever reference the bylaws of the HOA in preparing the voting list?

A. No.

Q. How did you determine which homeowners were not eligible to vote, for whatever reason?

A. If it were -- if there were restrictions listed in the covenants, then, yes, I applied what was in the covenants.

Q. The covenants say that every homeowner has a vote unless the board has stated some reason why they should not be voting.

Has the board ever told you, in preparing a voter list, that any particular homeowner cannot vote in an election for some reason?

A. If it were anything outside of what is set in the guidelines, then the answer is no.

Q. Can you explain why some homeowners, in 2011, 2010 and 2009, were told they could not vote?

A. Certainly. If they were not the voter of record, then they could not vote.

If they owed the HOA -- well, that was really the only reason we had turned anybody away. If they were not the registered voter, then they could not cast a vote.

Q. And how did you know that they owed

assessments?

A. How do what?

Q. You stated one reason was that they owed assessments. How do you know that a homeowner should not be allowed to vote because they owed assessments?

A. If they were ever not allowed to vote because they owed assessments, it would have been -- we had -- I mean, we have that on record at our property management system if they have an outstanding balance on their account.

Q. Did the board ever tell you that a particular homeowner, because they owed assessments, could not vote?

A. Not any one specific person, no.

MS. THOMPSON: Can we take a break so I can go to the bathroom? Can we take a break, please?

MR. JARMUTH: For who?

MS. THOMPSON: I would like to go to the bathroom. Can we take a break? Five minutes.

(A recess transpired from 11:20 a.m. through 11:27 a.m.)

BY MR. JARMUTH:

Q. Ms. Case, during the break, did counsel have any conversation with you?

A. Yes.

Q. Could you explain what that conversation was about?

A. I asked, in her opinion, if I was answering any questions correctly -- if I was answering your questions correctly.

MS. THOMPSON: Objection.

You can't ask about attorney-client privileged information.

MR. JARMUTH: For the record, I'll recite Rule 30(j) Conduct During Depositions (7) of subparagraph 5, "Counsel and witness shall not engage in private, off-the-record conferences during depositions or during breaks or recesses."

BY MR. JARMUTH:

Q. To your knowledge, did Diehl ever give the HOA board any advice regarding maintaining land, such as mowing it, which was not owned by the HOA; for example, golf course property, homeowner property, Horton property, land which is outside the PUD or not owned by the HOA?

A. I don't know.

Q. Is your statement then that the HOA board considered what should be mowed without any input from Diehl?

A. No. I said I don't know if management or the property manager had given any input or direction to the HOA board. I was not the manager.

Q. While you were the manager --

A. I was never the manager.

Q. While you were the assistant manager, did you ever provide any input to the board regarding maintaining grounds?

A. I did not, no.

Q. Do you know if anyone did?

A. I don't know.

Q. Were you present at a presentation by the Building and Grounds Committee to the HOA board, where Rosemary Toth was the president, where they told the board that they were maintaining -- that most of the land being maintained did not belong to the HOA?

A. I don't recall if I was present at that meeting or not.

Q. What is your knowledge regarding who owns either or both of the two parking lots which serve the amenity center?

A. Repeat your question. What did you say?
Q. What is -- what have you been told by Diehl regarding who owns either or both of the two parking lots which serve the amenity center?
A. I don't know.
Q. What is your knowledge regarding who owns the parking lot serving the amenity center?
A. I don't have any specific knowledge. It's my understanding that it is -- it's my assumption that it's the HOA's, but I do not have any knowledge, no, specific knowledge.
Q. While you were employed to assist with this HOA, do you recall any time where the golf course paid its full 50-unit assessment?
A. I can't answer that question.
Q. Were you present at elections when the golf course representative was handed a ballot to cast votes?
A. I was present, yes.
Q. Were they given a single ballot or multiple ballots?
A. I believe a single.
Q. How were they supposed to cast their multiple votes if they were given a single ballot?
A. Whatever their vote amount -- whatever

amount they were allowed to cast votes for was written on the ballot.

Q. Do you recall whether the ballots collected had the names of the homeowners cast there or were they anonymous ballots?

A. I don't know. I forget.

Q. Who tallied the votes after the -- during the elections in which you attended?

A. It would be the homeowners representatives, so the homeowners of the association, volunteers.

Q. Was a Diehl representative present and participating in tallying votes?

A. I believe on occasion, not every single election.

Q. Who in Diehl collected the proxies for votes or votes cast by mail in advance?

A. I did. I recorded them.

Q. Did you tally what each nominee for office got in the way of those absentee votes?

A. I don't understand your question. Did I tally what?

Q. The votes by mail were for particular board members. You stated that you received those ballots by mail. How did you tally those votes?

A. I entered them into a spreadsheet.

Q. Did you ever enter such a ballot cast by the golf course?

A. No, not that I recall. Not to my knowledge. I really can't answer that. I don't know.

Q. Can you explain how that can be, as the golf course always casts its votes by mail?

A. Can I explain what?

Q. How that can be if the golf course always casts its votes by mail?

A. Well, no, because I just answered your question with I don't know.

Q. Is the golf course a member of the HOA?

A. I believe. I don't know. I believe so.

Q. On what do you base that belief?

A. Okay. Well, then I rephrase my answer. I don't know.

Q. During the time in which you've been the Diehl person for the HOA, have there been enforcement efforts to require the golf course to obey the ARB guidelines?

A. Not to my knowledge.

Have they been enforced?

Q. Do you recall efforts to require the golf course to modify shrubs because they were in non-conformance with ARB guidelines?

A. I don't know.

Q. Do you recall whether Jack Davis is a member of the HOA?

A. No.

Q. Do you recall any conversations or negotiations with Jack Davis, who owns the golf course, regarding any HOA matter?

A. No, I don't recall.

Q. Is that your statement, you've never been involved in any such negotiations?

A. Yes, that's my statement.

Q. Is it your statement that you've never been present in any meeting with Jack Davis?

A. That is correct.

Q. What do you know regarding the collection of capital contributions when homes are resold?

A. With -- I mean, I know that they are collected upon a resale, but without the documents in front of me, I can't...

Q. What do you recall regarding the requirement to pay a capital contribution when a house is resold?

A. What is the requirement? If a house is resold, that's the requirement.

Q. When someone buys a resale house, how many

months of assessments does Diehl require them to prepay?

A. Without the documents in front of me, I can't answer that question. I don't process new homes.

Q. What are your duties -- what are your duties with K.A. Diehl regarding the homeowners association?

A. With International Club?

Q. Yes.

A. Administrative support, administrative duties, and basically I did all the clerical stuff.

Q. What did you actual do regarding the HOA?

A. I attended all of the board of directors meetings, I attended all the Architectural Review meetings, I took meeting minutes, I fielded phone calls, I processed collections.

Q. Did you ever answer questions from new homeowners regarding assessment obligations?

A. Yes.

Q. Did you ever answer questions from prospective home buyers regarding assessment collections or the obligations?

A. Yes.

Q. What did you tell them regarding their

obligations to pay -- prepay assessments and capital contributions?

A. The only thing that I would answer for them is what their assessment amount is on a monthly basis and what it includes. Very rarely did I ever get a question about capital contributions. That was not my department, and it was not my responsibility.

Q. To your knowledge, did Diehl ever have to compete with any other management company for the annual contract with the HOA?

A. To my knowledge, I believe so, yeah.

Q. When was that?

A. I don't know. The board of directors would go out for bids on new contracts, as management advises that they do.

Q. Well, working for Diehl in 2008, 2009, 2010 or 2011, were you ever informed by any Diehl person that Diehl was being required to compete for the management contract?

A. No.

Q. While you were employed for the HOA, was Horton ever a member of the HOA?

A. No.

Q. Was Sunbelt ever a member of the HOA?

A. I don't know.
Q. What role had Diehl had in arranging the Waste Management contract?
A. I don't know.
Q. Does Diehl arrange for the Waste Management contract with all of the HOAs it manages?
A. I'm sorry, say it again.
Q. Does Diehl arrange for the Waste Management contract with all of the HOAs it manages?
A. I can't answer that.
Q. Does it do that for many of them?
A. I can't answer; I don't know.
Q. Which HOA are you now managing?
A. What HOA am I managing?
Q. Or co-managing?
A. There's 18 -- I think 18 of them now: The Glens at the International Club, Cambridge at the International Club, Grand Vistas, where I am the property manager -- or excuse me, community association manager.
I'm also working with Southbridge Villas I, Southbridge Villas II, Southbridge Villas Master. I started working with all these --
Q. That's enough.
A. -- Ironwood.

Q. Do these entities all use Waste Management?
A. I don't know. I just started working with this portfolio.
Q. How familiar are you with the HOA web site?
A. Mildly.
Q. When did you first look at the HOA web site?
A. I don't have a specific date for you.
Q. Would you have looked at it when you first started working with the HOA?
A. No. It was after.
Q. Approximately how much after did you start -- did you pay attention to the HOA web site?
A. Maybe -- I don't know, maybe a year after, six months to a year.
Q. Can you explain why there was, on that web site, no presence of Amendments II, III, IV or V to the covenants?
A. There was no reference to what?
Q. There was no link or presence of Amendments II, III, IV or V at that time.
A. I can't answer that.
Q. At the meetings of the board of directors which you attended or the annual meetings, do you recall the board ever adopting any bylaws?
A. At the HOA meetings?

Q. At the board of directors meetings or the meetings of the members.

A. Do I recall if they adopted any bylaw changes?

Q. No, bylaws.

A. Did they adopt any bylaws? Not that I recall, no.

Q. What were you told by Diehl regarding whether that portion of International Club Drive, which is between Tournament and the Grand Vistas, the area formerly owned by Horton, whether that's part of the Planned Unit Development?

A. Was I ever told?

Q. What were you told regarding whether that roadway was part of the Planned Unit Development or not?

A. I was never told either way if that roadway -- if that roadway belonged.

Q. Did you ever have occasion to inspect that area?

A. Are you talking just the entrance coming in?

Q. The main entrance area, yes.

A. Did I ever inspect it personally? No.

Q. Did you ever handle any bills for maintenance of that area?

A. I can't recall, no. I mean, not -- I typically don't.

Q. Did you attend the general meeting where Central Electric -- where it was announced that Central Electric was acquiring certain easements or other rights at the front entrance?

A. Yes.

Q. Do you recall being told at that meeting when the HOA acquired that?

MS. THOMPSON: Objection to form.

THE DEPONENT: When the HOA required that?

BY MR. JARMUTH:

Q. Acquired title to that area.

A. I have no idea.

Q. Wasn't there some discussion that Horton had, just months before, sold it to the HOA for a dollar?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I can't answer that.

BY MR. JARMUTH:

Q. Are you aware of any advice or document sent to the board regarding how they should handle monies acquired from Central Electric or the sale of any easements or rights to Central Electric --

said document originated with Diehl?

A. You're going to have to just repeat that whole question.

Q. Did Diehl ever give any advice to the board regarding how to handle the Central Electric matter?

A. I don't know. I wasn't their manager.

Q. You said you were not their manager?

A. I was not their primary manager, giving advice such as that.

Q. Did Beckie Abel make a habit of not showing you what she was doing with the HOA?

A. No. She would --

Q. How often were you copied materials she sent to the board?

A. If she felt it relevant to copy me on the matter, then she would copy me.

Q. How often would you copy those materials?

A. How can I answer that?

Q. Was it half the material that was sent to the board?

A. How do I know if I was only copied on a certain amount of material sent to the board?

Q. Were you copied on any material?

A. Yes.

Q. Were you copied on material concerning the Central Electric purchase?

A. I assume so. Probably, probably. But to be able to reference that, I mean, it's...

Q. Who decided that the brick line between my house and that of Jay Cartman is a wall?

MS. THOMPSON: Object to the form.

THE DEPONENT: Who decided that it was a wall?

BY MR. JARMUTH:

Q. Yes.

A. To my knowledge, it was never decided that it was a wall.

Q. Doesn't the violation letter which was sent to me say I built a wall?

A. I didn't think it referred to it as a wall. You had a brick liner.

Q. Is it your opinion that that brick line is a wall?

A. It is not my opinion that it is, no.

Q. From your observations going around the Planned Unit Development, have you seen many other brick lines used adjacent to garden beds?

A. Because I don't inspect the property, I'm typically not out there, I can't answer it.

Q. Do you drive through the PUD frequently?
A. Not frequently, no.
Q. Do you drive through the PUD ever?
A. Every once in a while.
Q. Do you pay attention --
A. Not through the homes.
Q. Do you pay attention to the properties adjacent to the roads?
A. My responsibility. As far as the International Club is concerned. Is Cambridge --
Q. That wasn't the question.
A. -- Grand Vistas and The Glens. So I never drive through where the single-family homes are. That's not part of my job responsibility. It never was at the time.
Q. When you're driving to meetings at the amenity center, did you ever drive through the PUD?
A. Straight down the main street to the amenity center, that's about as far as I've been.
Q. Had you ever looked to the left or the right while you're driving down the road?
A. Sure, but I never paid attention to a brick liner.
Q. Did you ever drive down Pickering Drive?
A. I suppose I probably have maybe once or

twice. I really can't recall.

Q. Are you familiar with Bill Fletcher?

A. I know who he is, yes.

Q. Do you know where he lives?

A. No, not off the top of my head. I could not drive through the community and point out his home, no.

Q. Did you attend the ARB meeting where he applied for permission to plant two palm trees adjacent to his driveway?

A. I have -- I have no idea. If he applied for it while I was working with the Architectural Review Board, I'm sure I was there.

Q. What is the criteria or the guideline given to the ARB regarding planting palm trees next to the curb?

A. What are the guidelines given for planting palm trees next to the curb?

Q. Yes.

A. There are no specific guidelines about planting palm trees next to the curb.

Q. How far back from the curb are they supposed to be planted?

A. Supposed to be, I believe, 10 feet from the setback. Is that right? Or 10 feet --

Q. Can you explain why Bill Fletcher's palm trees are planted adjacent to the curb with no setback?

A. I can't answer that.

Q. Are gardens permitted in the Planned Unit Development?

A. Gardens?

Q. Gardens.

A. Specify "gardens."

Q. Plot of land, vegetable plants inside it.

A. A vegetable garden?

Q. Vegetable garden.

A. No, not that I'm aware of. They're not permitted.

Q. Did you sit in at any ARB meeting where anyone applied to plant a garden?

A. I don't recall ever -- I don't think so. Or actually, I mean, I guess I have to answer that with I don't know, without looking at the records, going back.

Q. Is it your statement that as a Diehl employee, who is responsible for co-management of International Club, that you never read the covenants?

A. Sure, I did.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. Can you show me in the covenants where gardens or swing sets are not permitted?

MS. THOMPSON: Are you going to mark this as an exhibit, or no?

MR. JARMUTH: I'm not going to mark it as an exhibit.

MS. THOMPSON: Okay. For the record --

MR. JARMUTH: If you find something, I'll mark it as an exhibit.

MS. THOMPSON: For the record, Mr. Jarmuth has appeared to give Ms. Case a document that includes an amendment to the declaration and then portions of the declaration.

MR. JARMUTH: I point to Section 7, Use Restrictions.

MS. THOMPSON: What's the question?

MR. JARMUTH: Can she find or cite any provision in the covenants which prohibits gardens or swing sets, prohibit them?

THE DEPONENT: Is your question specifically to --

BY MR. JARMUTH:

Q. Prohibit a swing set or garden.
A. Specifically prohibiting those two items?
Q. Yes.
A. Okay. Well, they're not specifically prohibited.
Q. Thank you.
MR. FREIBOTH: May I excuse myself for a minute? Mrs. Jarmuth is sitting in the front lobby. I want to make sure she is getting water and she's being taken care of. Is somebody taking --
MS. THOMPSON: Yeah, the receptionist is taking care of her.
MR. FREIBOTH: They are taking care of her? I'm sorry. Go ahead.
BY MR. JARMUTH:
Q. Who scheduled ARB applications to be heard by a particular ARB meeting?
A. Who scheduled them to be reviewed?
Q. When someone submitted an application to the ARB which was sent to Diehl, who scheduled those applications to be heard?
A. Me.
Q. You did?
A. Uh-huh.

Q. Did you ever process an application by a builder or developer for an ARB approval?

A. No.

MR. JARMUTH: We're done.

(The deposition concluded at 11:59 a.m.)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

Ronald Jarmuth,

Plaintiff(s),

vs.

CIVIL ACTION NOS.
2009-CP-26-3596 &
2010-CP-26-11320

International Club HOA, Inc., et al.,

Defendant(s).

DEPOSITION OF: WILLIAM FREIBOTH

DATE: Monday, February 13, 2012

TIME: 1:05 p.m. through 5:30 p.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. PERKINS
Registered Professional Reporter
Certified Livenote Reporter

APPEARANCES OF COUNSEL

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ALSO PRESENT: ROSEMARY TOTH

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

Plaintiff(s) Exhibits

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5	Plat of Phase G-1, Book 160, Page 70	79	23

STIPULATION: It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * * *

(PLF. EXH. 1, Worksheet, was marked for identification.)

WILLIAM FREIBOTH, being first duly sworn, testified as follows:

EXAMINATION

BY MR. JARMUTH:

Q. Will you please state your address for the record.

A. 208 Wicklow Drive, Murrells Inlet, South Carolina, W-i-c-k-l-o-w.

Q. Mr. Freiboth, do you recall recently that the HOA sent me a letter stating that I owed the HOA $1600?

A. Yes.

Q. I provide you a worksheet which I've asked to be marked as Exhibit A.

MS. THOMPSON: Do you have a copy of the exhibit for me?

MR. JARMUTH: That would be your copy.

MS. THOMPSON: This is my copy here? Okay.

MR. JARMUTH: Feel free to look at it --

MS. THOMPSON: Okay. Thank you.

MR. JARMUTH: -- the exhibit.

BY MR. JARMUTH:

Q. The second column from the left has a date of events. The next column to the right shows from the document you guys sent me, offer a statement of account I examined on October 3rd in Henrietta Golding's office, my accounts. The next one over shows the charges to PACS or to the Master's Association, and on the right-hand column shows the fines per your statement.

Per your documents, on January 28, 2010, I had a positive balance in my favor of $15. Per your documents, on June 30, 2010, I paid an extra $40 to the HOA.

Per your documents, on September 27, 2010, instead of paying $154, I made a check for 155. It ends up, I get a total of an extra $56.

Do you dispute my math of these extra payments are correct?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I can't address this. I don't have the official record of payment, nor do I recall some of the payments that you made which were extra. I know what the monthly payments are.

BY MR. JARMUTH:

Q. Do you agree that 40 plus 1 plus 15 is 56?

A. 40 plus 1 --

Q. Plus 15 is 56?

A. Sure.

Q. Now, turning to October 1, 2010 -- actually September 29, 2010, I got a first violation notice which stated there was a fine of $50.

Do you have any knowledge about who imposed or authorized that fine?

A. It would have -- what was the date?

Q. It was September 30th, 2010.

A. Oh, the September 29, 2010 there?

Q. September 29, 2010.

A. And the question is, who --

Q. The first violation letter, who had authority to impose a first violation fine of $50 that day?

A. The violation procedure is in the

Architectural Review guidelines.

Q. Do you have any knowledge of who decided a $50 fine would be imposed?

A. It's in the architectural guidelines, and they should be following the guidelines.

Q. Who is "they"?

A. The Architectural Review Board and K.A. Diehl.

Q. Did the board of directors have a meeting which approved that $50 fine?

A. No, the board of directors approved the architectural guidelines which were used to administered it. It's in the guidelines. And I didn't -- specifically, those were there for some time.

Q. I am showing the deponent the purported bylaws of the HOA, turning to Section 13. Can you point to a particular section which authorizes a contractor to impose an initial fine, Section 13?

MR. JARMUTH: Ms. Thompson, I object to you doing the work of the deponent.

MS. THOMPSON: Mr. Jarmuth, I'm just looking through the documents that you are going to ask him a question about.

For the record, this appears to be part

of the bylaws but not all of the bylaws, and there appears to be a page attached to the end of this document that isn't part of the bylaws.

THE DEPONENT: Excuse me for the delay.

MR. JARMUTH: For the record, that is the affirmation in the record of deeds which filed that as an exhibit to the original covenants.

THE DEPONENT: Excuse me, Mr. Jarmuth, because of the interruption, would you repeat the specific question you have here?

BY MR. JARMUTH:

Q. Looking at Section 13, procedures of the bylaws of the HOA, as you claim them to be, as you advertise them on your web site, could you show me where a contractor or anyone has authority to impose a fine with a first violation letter?

A. No, because you're looking at the wrong part of the governing documents. It's not in the bylaws.

Q. Can you -- can you read for the record Section 13.3?

A. Yeah, sure.

MS. THOMPSON: Mr. Jarmuth, do you want

him to read the entire Section 13.

MR. JARMUTH: No, just 13.3.

THE DEPONENT: Got you. "Except with respect to failure to pay assessments, the board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an owner or other occupant of the regulations for the association unless and until the following procedure is followed."

BY MR. JARMUTH:

Q. Could you read, for the record, Section 13.3.2.23 which I've circled?

A. Sure. "An invitation to attend a hearing and produce any statement evidence and witnesses such owner's behalf and..."

Q. Was the first violation fine imposed before such a hearing had been held?

MS. THOMPSON: Objection to the form.

THE DEPONENT: Sure. But, again, I have to point out you are looking at the wrong part of our governing documents for this discussion.

BY MR. JARMUTH:

Q. Going back to the statement of accounts,

according to the thing you sent me, the first fine was imposed October 25, 2010. Looking at the statement of accounts there, could you please count the number of months between then and January 25, when your letter was issued? I get 16.

A. You're talking the number of lines?

Q. I'm talking about the number of months where a fine was imposed beginning October 25, 2010, the first one showing on your account you sent me within the last two weeks.

A. Yeah, I get 16.

Q. Could you explain why they're billing me for $1600 when I had a credit per your records of $56?

A. I would have to look at the original records and go through them with an adding machine. I can't just add this up and explain that.

Q. Are you aware of any particular month where I failed to pay the assessments to the HOA?

A. I'm not aware, the assessments.

Q. What is your understanding of the difference between covenants and bylaws?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. To whom -- to what do covenants apply?

A. I don't understand the question.

Q. What is your understanding as to what covenants apply?

A. What covenants apply?

Q. What do covenants apply to?

A. Apply to.

MS. THOMPSON: Objection to the form.

THE DEPONENT: Hmm...

BY MR. JARMUTH:

Q. You're still required to answer.

A. I understand. They apply to the operation of the community. They are basically deed restrictions.

Q. What is your understanding as -- how bylaws can be established?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. How do bylaws get established for a nonprofit corporation?

A. I don't really get involved in that. That happened a long time ago. I just understand that they have been.

Q. Let me give you a hypothetical. Can you go out and establish bylaws for a bowling alley or bingo club which does not exist for which you are not a member?

A. I'm not an attorney, and I can't answer a hypothetical question.

Q. Do you think you can?

A. I can't answer a hypothetical question that doesn't relate to our covenants.

Q. Have you read the board of director's minutes for past meetings of the board?

A. Yes.

Q. Was R. Scott Pyle ever a board of directors member?

A. (Pause.)

Q. R. Scott Pyle, by the way, to refresh your memory, was president of Plantation AD.

A. I don't know if he was a board member or not. I know who he was. His name's on the covenants themselves.

Q. Do you recall when the bylaws, which the HOA is using, was created?

A. They were created in -- I'm not sure exactly when, but it was probably like 1999.

Q. Do you recall when the HOA was incorporated?

A. No, I don't. I purchased my home in 2006 -- well, actually I moved in in 2006 and purchased in 2004. That happened a long time before I was here.

MR. JARMUTH: I only have one copy of

this and ask that it be marked as an exhibit.

BY MR. JARMUTH:

Q. This is the records of the South Carolina Secretary of State regarding the incorporation of the International Club homeowners association. I'm asking that it be marked into evidence as Exhibit B.

COURT REPORTER: I did Exhibit 1.

MR. JARMUTH: That's Exhibit 2 then.

(PLF. EXH. 2, Records from Secretary of State, was marked for identification.)

BY MR. JARMUTH:

Q. From the records of the Secretary of State, can you tell me when the International Club HOA was incorporated?

MS. THOMPSON: Just for the record, it appears that there are two articles of incorporation for two separate entities that are in Exhibit 2; one's International Club Homeowners Association, the other is International Club Homeowners Association, Inc.

MR. JARMUTH: For the record, I'll add that this is what was provided to me in

response to my request to the Secretary of State for which the receipt is attached to the first page of the exhibit.

THE DEPONENT: Well, I've never seen this document before, but...

BY MR. JARMUTH:

Q. Would it be fair to say --

A. I'm trying to answer your question. I haven't observed the document yet.

It looks like the date is 2008, September 8th, that's the earliest date I see. But I am not familiar with the filings of the Secretary of State. I'm just taking this from the document you've given me.

Q. On the second page, please read where it says "Original Filing Date."

MS. THOMPSON: Just for the record, Mr. Jarmuth circled on the second page "Original Filing Date" and drew an arrow on the third page.

BY MR. JARMUTH:

Q. On the second page, what does it give as original filing date?

A. Well, from the document you gave me, it says March 1, 2001. But that seems to be inconsistent

with the stamp --

Q. Please just answer the question.

A. No, I can answer as I wish, because I've never seen this before, I don't work at the Secretary of State and all I can do is examine these documents which I am seeing for the first time.

Q. Now, please look at the file stamp where I've arrowed to on Page 3. What's the file stamp date?

A. The one on Page 3 for the Notice of Change of Registered Agent, is January 9, 2003. The one on Page 4 is Articles of Incorporation, September, 2008.

Q. By any of the dates you've recited, were any of these dates close to the date of 1999 when those bylaws were originally recorded?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. Change the question. Were those dates after the incorporation -- were the dates after the filing of the bylaws?

A. Well, first of all, this doesn't say bylaws.

Q. No. I showed you the bylaws earlier, and you recited that they appeared to have been filed

in 1999.

MS. THOMPSON: Objection to the form.

THE DEPONENT: No, I...

BY MR. JARMUTH:

Q. With the covenants.

A. I didn't say filed with the covenants; you said that.

Q. Let me ask you a direct question. Were the bylaws which you're using for your HOA filed as an exhibit to the covenants originally recorded in 1999?

A. I don't know. I didn't do it. I only hear secondhand, and I would not say reliably.

Q. I show you the covenants recorded for the HOA. When were they recorded?

MS. THOMPSON: Again, Mr. Jarmuth has handed Mr. Freiboth a document that has on the first page, Amendment to Declaration of Covenants. And then there is a document that follows entitled Declaration of Covenants, so this appears to incorporate two different documents.

THE DEPONENT: Right. And the amendment -- well, I can't read this clearly, it looks like maybe 2000, in May.

But that's not the covenants themselves.

The covenants --

BY MR. JARMUTH:

Q. Going to the covenants, what is the date the covenants themselves were filed?

A. I can't read the date. I can see February 8th, but I can't see the year.

Q. Could you please read the text on the beginning of that page where it gives a date?

A. Which page? The page in here?

Q. Pass it back. I'll circle it for you.

THE DEPONENT: Well, you've given me two documents.

MR. JARMUTH: For the record, I want to state that this is the form that -- which Mr. Freiboth, HOA has displayed its covenants on its web site.

BY MR. JARMUTH:

Q. Could I please have that back?

A. Sure.

(Tendered Document.)

BY MR. JARMUTH:

Q. I mean, the bylaws.

A. I don't have the bylaws.

Q. Please read for the record the document

which has a book page of 2117 at 1355.

A. Okay. I see the book page of 2117, Book 2117, Page 1355.

Q. Please turn to Page 1381.

A. Page 1,381?

Q. Book 2117, Page 1381.

A. Oh, I see what you're talking about.

Q. What's the date of the document?

A. The date of the document that you provided -- and this is the witness -- is this the witness? Witness the execution of this...

The witness date is January 31, 1999, but that's not necessarily the date this was written. This is the witness date if I read this correctly. "Witnessed the execution hereof." That doesn't -- and Mr. Pyle is the one that you should talk to about this. He's the one who did these documents.

Q. Mr. Freiboth, is it your testimony that the covenants, as I've provided you is or is not displayed that way on your HOA web site?

A. I do believe it is displayed that way on our web site. And for all I know, this is the ones that we have, we put them on our web site for ease of distribution. I hope that this is the same thing that's in the official record at K.A. Diehl.

Q. And is that exhibit which says bylaws also part of the same document you have on your web site showing covenants and bylaws?

A. I didn't take it from the web site, but probably.

Q. Are you the executive officer of Defendant IHOA?

A. I'm the president of the International Club homeowners association.

Q. Have you authorized McNair Law Firm to file documents on your behalf?

MS. THOMPSON: Objection to the form. That goes into attorney-client privileged information.

BY MR. JARMUTH:

Q. Is McNair Law Firm your attorney representative in this litigation? Is it your attorney of record?

MS. THOMPSON: Objection to the form, again.

BY MR. JARMUTH:

Q. Answer it anyway.

A. Yes, for this litigation.

Q. Have you read the pleadings which McNair has filed on each of your behalf within the last six

months?

A. Yes.

Q. Do you dispute that this document I've put in front of you has been filed multiple times by your attorneys as representing -- with them representing that these are the covenants and bylaws of the HOA?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. Answer it anyway.

A. I do recall that some of the exhibits that were filed had the covenants and bylaws. I'd have to assume that these are those, yes.

Q. Do you dispute that your attorney represented in those pleadings that the bylaws and covenants were filed in 1999?

A. I believe that the documents are in the exhibits for the lawsuit, but I don't believe that McNair made any comment other than to file them there. I don't think that they said, in addition, that these were filed on a certain date. I think they're exhibits. I'm not sure what they represent about the dates in the text.

Q. What is your understanding as how the bylaws which you are using for your HOA, how they were

created?

A. My understanding is that they were originally created by Plantation AD, and I can't say exactly when they were written but -- bylaws you're talking about now?

Q. Bylaws.

A. I can't say exactly when they were written, but I believe they were created by Plantation AD.

Q. And are they filed by themselves with the Horry County recorder of deeds?

A. I don't know.

Q. Isn't it your responsibility as executive officer to know the details of a filing of your bylaws?

A. Not something that happened in 1999. I believe they're filed, and I can't say if they were filed independently or together, which is variations, I don't know.

Q. Do you ever read your web site?

A. Sure.

Q. Do you ever download your covenants as they are on the web site?

A. Sure.

Q. Are they on your web site attached to the covenants?

A. It doesn't matter if they are attached to the covenants or not. We label them as Covenants and Bylaws so people can find them.

Q. Looking at your bylaws, can you show me where there are any signatures on it separate from those on the covenants?

A. Any additional or any signatures at all?

Q. Any signatures at all.

A. Sure. There's --

Q. On the bylaws?

MS. THOMPSON: Again, just for the record, the document that was provided to Mr. Freiboth is entitled Bylaws, and they are pages numbered 130 through 46, and then there's a page attached at the end.

MR. JARMUTH: And I said, for the record, that's not part of the bylaws; that's the signature page on the covenants, for identification.

MS. THOMPSON: Okay. So when you're asking if there's any signature attached to the bylaws, it's confusing.

MR. JARMUTH: Independent of the covenants.

MS. THOMPSON: Okay.

THE DEPONENT: I don't know if this signature page is part of this on the web site, I do not know. I can see --

BY MR. JARMUTH:

Q. I've already identified it as being the signature page on the last page of the covenants themselves, which you have. And you already identified the witness statement on that.

A. So what's your question?

Q. Is there any separate signature page for the bylaws which is in Exhibit C to the covenants?

A. Not from what you've showed me. However, I do believe that in some of the exhibits, that there's an Affidavit that states something from Beckie Abel, and I don't have that, but I believe it relates to how these were filed.

Q. Was Beckie Abel employed by the developer when he filed those documents?

A. I don't think so.

Q. Would you agree she has no fact knowledge of those events in 1999?

A. I really don't know how much discussion she had with -- I don't know what she or Vicky Gallagher discussed with the builders or with R. Scott Pyle, I don't know what their relationship

was. Nor do I know who R. Scott Pyle -- is it R. Scott Pyle?

Q. Yes.

A. -- used as an attorney at that time.

Q. From the Secretary of the State documents, do you dispute that Ken Grover was the incorporator of the International Club HOA? That's Exhibit 1.

A. I don't have that now. Is that this one?

Q. Secretary of State documents.

MS. THOMPSON: That's Exhibit 2.

MR. JARMUTH: Exhibit 2.

THE DEPONENT: It looks like Ken Grover filed the original Articles of Incorporations, if this is Exhibit 2. And it looks like -- this is also Exhibit 2. All of this is Exhibit 2, correct?

It looks like that Ken -- that Ken Grover -- I don't see who signed -- oh, I see who signed it. It looks like this is a document that changed the registered agent at the time, K.A. Diehl -- it looks like the registered agent -- the name of the present registered agent at that time was Ken Grover, if the current registered agent is to be changed, looks like the successor is

K.A. Diehl, signed by Kellie Diehl. So it looks like this document, this page represents a change of registered agent.

BY MR. JARMUTH:

Q. And when did that change occur?

A. January 9, 2003.

Q. And would you disagree that K.A. Diehl would have no fact knowledge whether anything occurred before that date?

A. No, I don't have any knowledge of the relationship of the builders with Plantation AD, DR Horton or K.A. Diehl. I don't know who came into the picture and --

Q. Would you dispute that K.A. Diehl did not become the registered agent until 2003?

A. I don't think so, because Ken Grover is listed as the original registered agent, and that looks like a transfer.

Q. Would you, are you stating that Ken -- that K.A. Diehl was the registered agent prior to 2003?

A. I don't know. I see a change in registered agent. And I don't know if a registered agent can act on behalf of a corporation before that's filed or not. All I see is what's on that document.

MR. JARMUTH: For the record, I'd like

to make an assertion that Bill Freiboth is failing to cooperate in discovery and ask for sanctions against him with the court when I see Judge Seals on March 5th.

MS. THOMPSON: Mr. Jarmuth, Mr. Freiboth is answering all of your questions.

MR. JARMUTH: And we'll see whether Judge Seals, when he sees the deposition, feels that Mr. Freiboth is failing to cooperate in discovery, was misbehaving in the deposition. He'll be warned.

MS. THOMPSON: He is fully cooperating.

MR. JARMUTH: That is for the judge to determine.

BY MR. JARMUTH:

Q. Turning back to the covenants, looking at the last pages of the covenants which I've provided you, can you find Ken Grover's name as a witness or a signatory there?

A. Again, I was not present for any of this; I have never worked with the Secretary of State or filed any such document. All I can do is read a document that you put in front of me, not interpret it.

Q. Looking at the covenants which I downloaded from your web site --

A. From the association's web site.

Q. Looking at your document, looking at the last page of the covenants of the signatures, can you find Ken Grover there in any capacity?

A. I see R. Scott Pyle and don't know the relationship between R. Scott Pyle and Ken Grover and who has a right to do what.

Q. Please answer the question. The question is very simple. Can you find Ken Grover there by name in any capacity?

MS. THOMPSON: Mr. Jarmuth, I would request that you not yell at my client.

MR. JARMUTH: And I request is that he answer the question.

MS. THOMPSON: He did answer the question, but he will answer it again. Go ahead.

BY MR. JARMUTH:

Q. That's a yes or no question.

A. No, I'm allowed to answer the question as -- I will answer your question directly, but I'm not allowed to be told yes or no. And I do see on this page for the covenants, that R. Scott Pyle signed

that document. I don't see Ken Grover's name and make no interpretation whatsoever as to what that means.

I'm not an attorney.

Q. Did the board of directors make a decision on the record as reflected in the minutes to pay Highway 17 assessments?

A. I don't know if the Highway 17 assessment payment is in the minutes; I do not recall if it's in the minutes. I do know they paid them.

Q. You agree that the Highway 17 assessment payment is in your budget?

A. Correct.

Q. Have you read the budget for 2012?

A. Yes.

Q. Have you read the budget for 2011?

A. Yes.

Q. Have you read the communications from Highway 17 to your HOA board within the last two months.

A. I saw one communication only.

Q. Do you recall what Highway 17 said regarding whether the assessments were going up or going down?

A. I don't believe I got that communication at

all. I've seen one communication, and I think it was to vote on the board of directors.

Q. Is the HOA board -- is the HOA a member of Highway 17?

A. I believe that the members, the single-family members are members, but their deeds are encumbered, it's not the HOA itself, is my understanding.

Q. How then can you make a statement that you just did that the HOA could be voting in any matter for Highway 17?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I'm not really familiar with how the Highway 17 association works. The first document I saw was when, I believe, was a vote for the directors. And I don't know how they work with all the other associations. But I do know that the Highway 17 sends the bill to the International Club and that Highway 17 has the option of billing the homeowners individually or billing them through their HOA, but that's not our decision.

BY MR. JARMUTH:

Q. Can you cite any contract which makes it the

HOA's obligation to collect that money from the members, the homeowners, members of the HOA, to collect the Highway 17 assessments?

A. I'm not familiar with the detailed bylaws or how we, as a homeowners association, are -- participate in that.

Q. When you send a payment to Highway 17, where does that money come from?

A. It comes from assessments.

Q. Do the homeowners have any discretion whether they will pay those Highway 17 assessments?

A. It's my understanding that the Highway 17 association decides that.

Q. Has any homeowner given you a proxy or other authority to collect the debt they owe on their behalf?

A. Has any homeowner give us a proxy? No, not to my knowledge.

Q. Would you disagree that you're collecting Highway 17 assessments from homeowners without the homeowners' consent?

MS. THOMPSON: Object to the form.

BY MR. JARMUTH:

Q. Is the HOA, in effect, collecting assessments from the homeowners for Highway 17?

A. Well, the HOA is paying assessments to Highway -- or paying the invoice to Highway 17, correct.

Q. Isn't it true that Highway 17 computes what's collectively owed by the PUD based on acreage?

A. I believe that acreage enters into it, but I don't know that PUD enters into it. I would have to examine the documents to understand that part.

Q. Do you pay Highway 17 assessments on behalf of the golf course?

A. No, because we don't receive a bill for the golf course.

Q. Do you receive a bill for -- a separate bill for The Meadows?

A. We only receive one bill.

Q. Isn't the golf course part of the HOA?

A. Not for that purpose.

Q. And where did you read that?

A. Well, the relationship of the golf course is documented in the covenants themselves. It's a commercial contract.

Q. Is the golf course, from your perspective as executive of the HOA, a member of the HOA?

A. No, they have a commercial contract with us.

Q. No, that wasn't my question. Is the golf course a member of your HOA?

A. And I said, no, they're not a member of my -- our HOA.

Q. Do they have a vote in your HOA?

A. They do, because they have been granted such in our covenants.

Q. Am I to conclude that a nonmember of your HOA is voting in your HOA matters?

A. I don't know if the golf course has actually ever voted in the HOA, but I would -- I believe they're not a member, but the covenants themselves give them the voting rights as part of the commercial.

Q. Your bylaws give them voting rights?

A. No, the covenants give them a voting right. I don't believe it's in the bylaws.

Q. Earlier today you heard Julie Case state that the golf course has some number of votes in elections and that they actually cast votes. Do you dispute that statement?

A. I believe they could vote in elections, but I am not aware they, in fact, have.

Q. Was DR Horton ever a member of the HOA?

A. DR Horton was on the board of directors of

the HOA. I don't believe they were a member and that they owned parcels of land that had homes on them. They were, I believe Doug Brown was the president of the HOA.

Q. Did R. Doug Brown ever personally own any home in the HOA -- in the PUD, excuse me?

A. I don't know if he owned any home, but he certainly owned all -- but Horton certainly owned all the property -- well, not all the property but the property that separate from Sunbelt and from the Villas.

Q. When did you say you bought your home?

A. I believe it was in the fall of 2004, but we didn't want to move in until later, and we moved in in July of 2006.

Q. Until 2007, do you recall whether there was ever a meeting of the members of where they were permitted to vote for the board?

A. I'm not sure. I'm not sure. I believe there might have been a meeting at -- I'd have to look back in the records.

Q. Do you recall the year the transition committee was established?

A. No, I don't recall that, actually.

Q. Do you recall the year that Rosemary Toth

was elected to the board?

A. I don't recall the year, but I do recall being at that meeting. That was a transition from the developer to the...

Q. Before Rosemary Toth was elected to the board, were any elections ever held where homeowners got to vote for board members?

A. I don't know. It would have been before I -- well, I don't know about 2007, but it -- otherwise, it would have been before I was here.

Q. Turning to your bylaws, when -- in what month do the bylaws state that the annual meeting of the members is to be held?

A. I'd like to see the bylaws. Let me just take a quick look.

I don't, at this moment, see it in the bylaws, but I do know I've seen it. So I'm not sure if it's in the bylaws or the covenants, but I believe it's in the spring, unless the directors elect otherwise.

Q. Would you disagree it says March, unless they say otherwise?

A. I think that -- they -- I think it says March, or they could do otherwise, yes.

Q. Would that statement in the bylaws that the

elections should be held in March, unless otherwise, was that March established when the term of office for each period begins for the board of directors?

A. It would -- according to my understanding, wherever it is, if it's in the bylaws or covenants, it's my understanding that it would be -- I would have to look through here, but it's my understanding it would be at the annual meeting, whenever that's held.

Q. If --

A. That's an annual members meeting.

Q. If the annual members meeting was held in March, and someone was elected for a term of three years, and in three years a meeting was held in September of the year before, would that terminate the three-year term of office before three years had expired?

A. It's a hypothetical question. I'm not aware, from my frame of reference, that meetings ever happened other than September. I don't know about earlier years. My frame of reference is they happen in September, and they're for three years.

Q. Did you say you've read the board of directors minutes?

A. I have.

Q. Would you disagree that one of such minutes reflects an annual meeting held in August of a year of which new board members were selected by the developer?

A. I don't know. Without having them in front of me -- there's a lot of years there.

Q. If that was the case, which I assert it was, would those terms of office run for three years irrespective of when the next election was held?

A. Again, terms of office, as my understanding would -- elections would occur at the annual meeting when it's held, and it would -- terms are -- well, terms are for three years. But for the initial meeting when homeowners took over, they had no board, so they had to have some for three years, some for two and some for one. So there would be a constant rollover of board members.

Q. Were there board members in place when that first meeting was held?

A. When there was a turnover of association from a developer-run board to homeowner-run board, there were board members in place, and they were the developers.

Q. Didn't they have terms of all this which may

have been running beyond November or September of that year?

A. I'm not aware of whether a developer-run organization has terms of office or when they -- and if they did, when exactly they conducted elections, I don't know.

Again, that was well before my time, and I didn't look through it for these questions.

Q. Have you given the -- K.A. Diehl any guidance regarding what they should or should not be sending me?

A. They are -- I believe at one point, you raised a question that you wanted all correspondence to be sent to our attorney, and that we believed that we needed to treat you just like any other homeowner, and that we had a right to send you the exact correspondence in the exact same way and timing as others.

Q. Why haven't I been receiving any Friday Facts at all since you commenced sending the e-mail?

A. I'm not aware that you weren't. However, let me try to answer your question.

If it was set up on your web site -- on the web site, that you were only to receive paper mail,

then you wouldn't receive e-mail. I do remember a related conversation directly with you at which point you requested that I be sure that your telephone number could not be viewed by others. And I think -- I think you might have also requested that your e-mail address, that we be sure that it not be used, but I'm not sure -- and I'm not sure about that part. I'm sure about the telephone number.

Q. Despite that, would you admit that the HOA has my e-mail address?

A. We do have it for our records, but we do not, it's my understanding, reveal it to others because that's your choice.

Q. Since you have it, why haven't you been using it to send me the same material you've sent every other homeowner for which you have an e-mail address, specifically Friday Facts?

A. I'm not exactly sure how the web site operates in that manner. I believe -- I acknowledge -- I believe we have your e-mail, that others can't see it. And I don't know if that determines whether you will not receive e-mail. I suspect -- I think there's another setting there that says your e-mail preferences, your

communication preference is paper mail only, paper mail and e-mail or e-mail only.

Q. And who sets those preferences?

A. I believe that you do. And I don't recall at that time -- I do recall at an earlier time, that at one time you were receiving e-mail, and I see that you're not now. What I don't recall is if when we discussed it, you also indicated you didn't want any e-mail. That part I don't recall. So I don't know when it changed. And I looked through records to try and find out if there was a log to determine that and I can't -- I couldn't find it.

Q. Do you dispute my statement which I made in my pleadings, I've never signed up for the HOA web site?

A. No, I agree with that, to access the web site and read it, go log on.

Q. And if I can't access the web site, would you be able to explain how I could set any preferences, for example, to say I don't want to receive something?

A. Well, I believe that when the records went in there originally, that preferences were set based on what they were previously.

Q. Are you saying that the web site designed by

Deb Sherman had that functionality?

A. Deb had a web site. And I don't -- it wasn't funded by the HOA. They may have used it at that time. But she also, from my recollection, published a directory that went to everyone in the association, and it was publicly available. I don't know how they seeded the original web site. Deb Sherman had nothing to do with the International Club HOA web site as we see it today. She didn't build it. She had an earlier site and she had an e-mail list. And Diehl had a list, too. I don't know how they seeded it at the beginning.

Q. To your knowledge, is the HOA web site for which you pay K.A. Diehl which is actually run on an Association Voice server, to your knowledge, has it ever been accessible without signing up and agreeing to the privacy terms?

A. You've asked a lot of questions there.

Q. That's right.

A. Let me try and start at the first one. First, I think you've asked three questions. I'm going to definitely remember at least one of them.

I believe that what I heard earlier, that the web site was on Association Voice server is incorrect. I don't believe it ever was housed in

Colorado. I believe there was a private party that was hosting it. And I don't know if it's still hosted by the private party or Diehl. But I believe it was never hosted at -- unless it was the first months and then they changed it to a private post, I don't know. But my recollection -- did you have other questions?

Q. Have you ever looked at the bottom of the web page when you log in to the HOA web page?

A. Yes.

Q. Would you dispute at the bottom it says Association Voice?

A. What else does it say? I don't --

Q. On the top where it has your address, would you dispute that Association Voice is actually up there?

A. I think Association Voice is -- was added to the page, but that is separate from where the data's hosted.

Q. Would you dispute that that's automatically aired by the web server to every web page to show the original URL?

A. I don't -- I don't know without looking at the bottom of the page. All I know is that probably the words "Association Voice" are there.

And there may be terms and conditions. But I don't know that that statement down below binds it to a specific URL or if that's just what's on the page when you log in.

Q. Would you dispute that every e-mail from K.A. Diehl on behalf of your HOA says "Association Voice for K.A. Diehl" or for somebody else?

A. I don't know what the specific language it says.

Q. Do you ever read your e-mail from K.A. Diehl to all the homeowners as an individual homeowner?

A. Sure I do, but I don't look at that bottom section. It's been there for quite a while.

Q. How about from the thing on top?

A. In my e-mail in basket, sure.

Q. Can you explain why the only communications I, as a homeowner, have been getting since 2009 have been the annual announcement of annual membership meetings and no other document?

A. I wasn't aware of what you were getting. I thought you were getting the annual member meeting, plus the Friday Facts. And if you aren't receiving it, it must be in one of the those preferences. And I thought at one time you did receive it. And so I don't know, if you're not receiving it,

exactly when that happened.

Q. To your knowledge, has any board given K.A. Diehl instructions not to send me anything which they send anyone else in the general HOA community?

A. I think the answer to that is that we've never give them instructions to screen you. In fact, I'm surprised to hear that you didn't receive Friday Facts.

Q. What list has the board told K.A. Diehl to use in sending the Friday Facts communications and other announcements?

A. Well, you've got a two-part question. The first part, Friday Facts, would go to the distribution list that is kept in the homeowner directory on the web site. And that, plus your preferences for how you wish to be communicated with, would determine who receives e-mail communication.

What was the second half of your question?

Q. Any other announcements.

A. Other announcements on the web site would be the same thing. Paper mailings would be sent, it's my understanding, to the owners of the site, the owners of the homes.

Q. Since you have become president of the HOA, can you recall any paper mailings other than the announcement of elections?

A. Sure.

Q. Name it.

A. We would have sent -- first of all, we would have sent an earlier notice about inviting people to participate by mail in the elections if they wanted to put their name in as director.

We would have then sent a notice by paper mail of the election itself, the date and the agenda. We would have also sent, every year, a notice by paper mail of the budget that was adopted, any change in assessments. And there would probably be what budgetary -- budget documentary notes that explained changes of assessments. Those would happen every year.

If there were other things that we wanted to communicate, such as a spring newsletter about various things in the community, that could have been sent, I think, some of those. I think there were newsletters sent by paper mail in earlier years.

We also -- I'd have to look at the log. We could have sent other separate communications out

on their own, but in the last couple years, we tried to -- for a saving of money, if we had other communications that needed to go out in paper to everyone else, such as the revision recently of some rules or the revision of the Architectural Review guidelines, we looked to bundle those with that mailing to save costs if the timing is convenient.

Q. How do you communicate with homeowners who do not give you e-mail addresses?

A. By paper mail. We couldn't send them e-mail; nothing would ever go out.

Q. Have you ever sent the Friday Facts, where anything other than the election-related things and the annual budget by paper mail -- while you've been a president?

A. Friday Facts go out by e-mail and are not required to be sent to everyone.

Q. Have you sent -- isn't it true that the budget documents you mentioned are related to the annual meeting?

A. No, the budget is done after the annual meeting, and it has a deadline of -- if there is an assessment change or we -- basically, if we publish the budget, sent it out before the end of the

fiscal year, and it's always been after the -- well, since I've been there, it's always been after the election, which is in September. The budgets typically have gone out like in November-ish time frame.

Q. Does the HOA -- have you ever received a statement of your account from the HOA in writing without specifically asking for it?

A. We don't send out a statement. We are not like a bank and a credit card company. We don't normally send out paper statements. The account balance is maintained at Diehl, and we use the web site as a secondary distribution tool, especially for people who don't live in town to conveniently see information about their accounts.

Q. Does the HOA use electronic methods for the collection of assessments?

A. (Pause.)

Q. Let me clarify that. Do you use electronic methods via your web site for the electronic payment of assessments?

A. We do use electronic methods but not in the way you state.

You can go on our web site, and you can choose to make a payment, and it takes you over to

a link to a payment site that is, I believe, hosted by our bank.

Q. Is that collection on your behalf of the HOA?

A. Well, the collection is on the owner's behalf to pay -- if they wish to pay -- make a payment faster than mailing it in; it's there for a convenience of the homeowner who wants to make a payment.

Q. Is access to that through your password-controlled web site?

A. No. Actually, most people would view it that way, but there is a home page that has it at the bottom; you can click on it without a password.

Q. And can one see that link if you haven't been logged into your web site through your password entrance?

A. Can you see the link to the bank, is that what you're asking?

Q. That's correct.

A. Yes, you can. It's on -- there is a page that shows it, I believe.

Q. And you're saying, well, if someone types www.Internationalclubhoa.com, the page that comes up has a link on it without the necessity of doing

any log in?

A. I'm not sure. Originally there was a page that came up that had that link. It's possible that because we made it easier for people to find their web site that we -- I'm not sure if it's still that way. There was a page that did that. I'd have to actually go to the web site, scroll down and look at it to determine if that link is on the bottom of the current home page.

Q. Are you aware of any instance where your HOA has recorded your bylaws in the name -- with Horry County recorder of deeds in the name of International Club homeowners association?

MS. THOMPSON: Object to the form.

THE DEPONENT: I don't recall, without looking at specific documents, what was recorded.

BY MR. JARMUTH:

Q. In looking through the minutes of the board of directors, plus when you have been on the board, do you recall any recorded meeting where any board has actually adopted the bylaws that you're using?

A. No.

MS. THOMPSON: Object to the form.

Asked and answered. Can we -- go ahead

and answer the question. Can we take a break after that because I have to use the bathroom again, Mr. Jarmuth?

MR. JARMUTH: What?

MS. THOMPSON: After he answers the question, can we take a break?

MR. JARMUTH: So long as you don't talk to him.

MS. THOMPSON: Mr. Jarmuth, I can talk to him. You can ask questions about it if I talk to him, okay?

MR. JARMUTH: Okay. I'd like to recite Rule 30 (j) about attorneys not talking with deponents during breaks or intermissions.

MS. THOMPSON: You can ask questions about our conversations, but go ahead and just finish up the question.

MR. JARMUTH: Go take your break.

THE DEPONENT: If you're going to take a break, I'm going to actually go to the bathroom, too.

MS. THOMPSON: Okay.

THE DEPONENT: But Mr. Jarmuth, I didn't --

MS. THOMPSON: You have to answer that

question.

THE DEPONENT: We are getting distracted here.

BY MR. JARMUTH:

Q. Answer the question.

A. I'm trying to remember it.

Did we approve any bylaws? No, we believed that they were already approved. Okay?

MR. JARMUTH: Take a break.

MS. THOMPSON: Thank you very much.

(A recess transpired from 2:20 p.m. through 2:24 p.m.)

BY MR. JARMUTH:

Q. What is the method which your board used to compute what the golf course is supposed to pay in its assessments today?

A. Well, there are multiple parts. First of all, we look at the number of units the golf course should be paying according to the golf course agreement in the current year.

And then because we have to split the amenities out from those, for people who don't pay, we have the two budgets. We add the number of units that the golf course has to pay into each budget, and we factor that in, and then the golf

course pays the combined amounts that a homeowner would pay, like a P.A.C.E. owner, from those two --

COURT REPORTER: From a what?

THE DEPONENT: Like a P.A.C.E. with a period in between each one, P.A.C.E.

BY MR. JARMUTH:

Q. Do you recall how much you, as a Pebble Creek homeowner, pay per month today?

A. $91.

Q. Is that what you consider one unit of -- for purposes of computing what the golf course owes?

A. Yes.

Q. So if I was to go to the schedule and find what the number would be, I multiply 91 times that and get what they should pay?

A. Correct, the current number of units for the golf course times that number.

Q. Should that number be rising each of the past, say, four years, year by year?

A. Yes.

Q. Why has it gone down in some years instead of up?

A. I'm not aware that it has gone down. I'm not aware it's ever gone down. Are you talking about the dollar amount in the assessment?

Q. The total dollar amount.

A. No, the assessment amount, the $91. I'm not aware that that's ever gone down.

Q. The amount that the HOA shows in its general ledger -- can you explain how the 2008 -- the HOA actually collected less in dollars from the golf course than they did in 2007?

A. I'm not aware that they did. Unless -- a smaller assessment, dollar amount?

Q. Smaller dollar amount.

A. Not total dollar amount.

Q. Total dollar amount?

A. I wasn't calculating -- in 2007, I only know -- since 2009 -- the total dollar amount per unit and the number of units. I wouldn't look at the collections themselves.

Q. To state it a different way, per the golf course agreement, should the total dollar amount increase year by year?

A. No, not -- it may have, but the golf course agreement simply determines that the golf course should pay the current assessment rate dictated in each year's budget, times the number of units they should pay that year.

Q. Doesn't the agreement specify that the

number of units is supposed to increase by four units each year?

A. No, three.

Q. Three? But it should --

A. Except in the last year possibly. No, it's three.

COURT REPORTER: What did you say about the "last year possibly"?

THE DEPONENT: Well, the last might be an odd year, where it's not -- it's actually three.

BY MR. JARMUTH:

Q. So even if the rate of assessment for a unit for regular homeowner doesn't go up, shouldn't the golf course collection go up because there are more units to be paid that year, that second or third or fourth year?

A. Well, that's hypothetical, but because I'm not aware that they haven't gone -- well, I'm not sure. I don't recall the unit rates each year, if they've gone up. I thought they did.

But I think the question you're asking is the number of units the golf course would pay times the assessment rate, the number of units would go up.

Q. Have your personal assessments ever gone down in any year since you bought your house?

A. I don't think they have. I don't recall that they have.

Q. Would you dispute then that if the golf course paid X number of units in one year, ignoring any rise in the rate of assessments, if the next year they had to pay X plus 3 times the rate, the total collection of the golf course should be higher?

A. If the assessments are going up each year, yes.

Q. And if the rate of assessment has gone up per unit, it should be even higher?

A. There would be two factors then, yes.

Q. Has the rate of assessment for your house been going up in prior years since the golf course agreement?

A. I think I answered that already; yes, I think so.

Q. Whose responsibility is it to assure that the golf course honors the collection schedule?

A. I'm not quite sure what the -- I hear the question, but I'm not quite sure what it is that you are asking.

Q. You're the executive officer. You're responsible for the financial well-being of the organization. You have a fiduciary duty responsibility. Before you, it was Rosemary Toth.

A. Right.

Q. The board is responsible, under the covenants, to collect the assessments due. Who is responsible to assure that the golf course honors its assessment obligation?

A. We delegate the actual collection of assessments and monitoring of collection status to K.A. Diehl. And there are written collection policies that would discuss, if payments become delinquent, the communication and steps related to collection in delinquency. And if they become delinquent, then they get referred to our collection agent, who then -- the account just gets transferred over there until it's settled.

Q. To your knowledge, has any board ever granted any homeowner a reduction in assessments due to hardship?

A. No, not to my knowledge.

Q. Did you ever serve in the Army or any Armed Forces?

A. No.

Q. Have you ever taken a course in management?
A. Yeah, lots of them.
Q. Have you ever -- are you familiar with the phrase, "You can delegate jobs, but not responsibility"?
A. No, but I don't think that's in question here. We just said we delegated the collection process. We look at it to make sure it's running correctly.
Q. To paraphrase Harry Truman, where does the buck stop in the HOA regarding collection of assessments due from the golf course?
A. I think my order is not from Harry Truman but from the covenant themselves.
Q. Who is ultimately responsible if the assessments are not collected from the golf course?
A. If they're not collected, I would say the board of directors as a whole.
Q. Has your board or any board you're aware of ever questioned the propriety of that golf course agreement?
MS. THOMPSON: Objection to the form.
THE DEPONENT: We look closely at it, especially any new board member. We discussed it. And so we looked at it, yes.

BY MR. JARMUTH:

Q. Is the requirement for the golf course to pay 50 times the amount paid by a homeowner using the amenity center to be found in the covenants?

A. Sure.

Q. Is the change for the golf course a change in the rate of assessment or the way assessments are calculated?

A. I'm going to answer your question. I don't believe it's a change in the way that the unit assessment is calculated, but it does change the number of units in any given year.

Q. Is it a change in the method of collection of assessments from that specified in the covenants?

A. It differs in that the covenants originally said 50 units, and the golf course agreement reset that and stepped it as a graduated payment up for ten years.

Q. Have you ever received or sought any legal advice regarding whether that issue had to be put to the members?

MS. THOMPSON: Objection to the form. It's seeking attorney-client privileged information.

MR. JARMUTH: Say it again.

MS. THOMPSON: You're asking a question about legal advice that the HOA obtained or sought out, and that is protected by attorney-client privilege.

MR. JARMUTH: The HOA has asserted as a defense business judgment rule and business judgment rule says you have to rely on advice of attorney. What they said may be privileged, but having asserted the business privilege rule, they have to be able to show that the attorney has actually suggested that that is right.

MS. THOMPSON: I think that you need to answer whether you've sought counsel on that particular issue, but not with respect to what the advice is or what your question was. So if you -- you have to answer whether you've actually sought counsel as to that particular issue but not what the discussions were between you and the attorney.

THE DEPONENT: Of course we would, on a matter like that, have sought counsel. Of course.

BY MR. JARMUTH:

Q. And did you?

A. Of course.

Q. And in failing to collect the 50 assessments, were you relying on the advice of counsel?

MS. THOMPSON: Objection to the form.

You can't -- Mr. Jarmuth, you cannot seek information about what any attorney advised the HOA and what the communications were from the HOA with the attorney, okay?

BY MR. JARMUTH:

Q. Okay. Now, we'll go look at the minutes of the board of directors, which obviously are not privileged -- were going to be divulged in the minutes; it's lost its privilege. How do you explain, on these two separate occasions, Willcox Buyck has reflected -- told the HOA board they couldn't do that?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I did not hear the advice that they have. I don't know them. And I actually honestly don't recall, you know, all the tenures -- notes that there was advice given in the meeting -- I don't

recall in all the board of directors meetings notes, that's like 2002, that there was that advice there. I'm not disputing what you're saying. I just don't recall seeing it.

BY MR. JARMUTH:

Q. Turning to those minutes of the earlier board meetings, how do you explain that until 2008, every meeting -- of every meeting -- the minutes of every meeting of the board of directors say International Club Property Owners Association, not International Club Homeowners Association?

A. Hmm...

Q. Every one of them.

A. If they say that, I believe the Nonprofit Corporation Act tells us that what we have to do is register our name properly with the Secretary of State, which we did. If someone sends us a bill with a different name on it or puts something different in there that doesn't get caught, I'm not sure that's a problem.

Q. Given that all those minutes are titled Minutes of the International Club Property Owners Association, what makes you think that they are the minutes of your association?

A. I know who wrote them, I know they are in the record book, and I have nothing to make me believe that, by label alone, that those are not our minutes.

Q. What gave your association the legal right to cash checks made out to the International Club Property Owners Association?

A. You're asking a legal question. If you're asking if we can cash a check that has a slight variation on our name, I really can't give you an opinion about that. Any check that goes to the bank is going to be posted to our account.

Q. Do you dispute that through the 2008 assessment, that checks were made out to the International Club Property Owners Association?

A. I never saw any of those checks.

Q. Did you write checks to the homeowners association through 2008?

A. I never wrote a check to the homeowners association.

Q. How were your assessments made?

A. By the automatic payment mechanism that K.A. Diehl uses, one of the alternative collection methods.

Q. Do you recall getting assessment coupons

from the HOA?

A. I don't get assessment coupons when I do that. Other people do. I've had to look at theirs to see what's on them.

Q. Is it your statement that the HOA, each year, only sends assessment payment books to some of the homeowners?

A. It's my recollection that homeowners who pay assessments, without Diehl collecting the money, don't receive books, but that they do receive an explanation of these assessments and an annual budget. The assessment book is not needed for payment because it's paid automatically, but the communication of the assessment is given to homeowners what the assessment is.

Q. Were you the president of the HOA in December of 2011?

A. Yes.

Q. Did the HOA send an assessment book to all of the homeowners in the HOA?

A. I don't think so. I think they sent it to those that pay manually. But they did tell them what the assessment was and when it would start, gave them advance notice as required.

Q. Who actually owns the golf course?

A. I don't recall the name on the deed. I know who the owner is. But I don't recall the form of name. Obviously Jack Davis is the owner. I'm not sure if it's Davis or Davis Mining.

Q. Didn't Davis Mining and Manufacturing sell or transfer ownership of the golf course to International Club Golf, LLC within the last two years?

A. I'm not sure.

Q. On your records of the HOA, is -- how is the golf course held or titled?

A. I think it's --

MS. THOMPSON: Object to the form.

THE DEPONENT: -- International Club, LLC.

BY MR. JARMUTH:

Q. Isn't it a fact that some time ago, it used to be Davis Mining and Manufacturing?

A. For the golf course, I don't know that to be the case. However, Davis Mining and Manufacturing does own two properties here. And they may -- they may have at one time or another been in a different name.

Q. When Davis Mining and Manufacturing, in 2009, I believe, transferred ownership to

International Club, LLC, did the HOA collect a capital contribution charge from that as required by the covenants?

A. Well, you're asking a question and making an assertion. I don't believe that they collected a capital assessment, but I don't believe that their contract with us required them to.

Q. Doesn't the covenant, as amended in Amendment 3 and 4 of the covenants, state that upon the resale or transfer of ownership of property, a capital contribution will be provided to the HOA in the amount of two months' assessments?

A. I don't know the exact language or if it applies to the golf course at this point.

Q. To what account are those capital contributions applied?

A. If we were to collect a capital contribution, I believe that the actual money paid would go into our operating account, but that a record of it would transfer to our chart of accounts in our bookkeeping system.

Q. Can you explain why I have been unable to find, in examination of your ledgers, any capital contribution at all for the last several years?

A. I'm not aware whether they do collect them

or not at this point.

Q. Can you explain --

A. Or if they are required to.

Q. Is it your position then -- have you read Amendments 3, 4 and 5 to the covenants?

A. At various times, yes.

Q. Is it your responsibility as the executive officer of the HOA to know those?

A. It's my responsibility to read them from time to time. And I have.

Q. Is it your responsibility to know them?

A. I would say to be familiar with them and to know where to look if I have a question.

Q. You haven't answered the question. Please answer the question.

A. That is an answer.

Q. Is it your responsibility to know those covenants?

MS. THOMPSON: Mr. Jarmuth, asked and answered. Objection to the form.

MR. JARMUTH: He said he needed to know where to look for them. He didn't say it was or was not his responsibility to actually know those covenants.

MS. THOMPSON: Mr. Jarmuth, if it's a

distinction about a difference, he said that he has a responsibility to be familiar with them and to know where to look if he has a question.

BY MR. JARMUTH:

Q. Are you familiar with those covenants?

A. I believe so.

Q. Isn't it not a fact that those amendments require the collection of those capital contributions upon the transfer of title of a property?

A. That specific point, as it refers to golf course, I'd have to look back in there to answer that. As I said, some things have to be looked at. Those covenants are very complicated, and they are not the only thing we have to weigh. There's also the Nonprofit Corporation Act, Horizontal Property Act, rules. There's just an encyclopedia of stuff we have to look at.

Q. Have you ever taken any training regarding any of those -- the interpretation of any of those things?

A. Which things?

Q. The South Carolina Nonprofit Corporation Act, the Horizontal Property Act, interpretation of

covenants, interpretation of bylaws?

A. No direct training but extensive commercial experience with contracts.

Q. Can you identify when the Murrells Inlet -- can you identify the International Club Master Homeowners Association was incorporated?

A. Can I identify when or whether?

Q. When or where.

A. I believe they were, and I would have to look at the documents to look at the particulars.

Q. Can you explain why the South Carolina Secretary of State has no record of the incorporation of an entity called International Club Master Homeowners Association?

A. I believe there are several names that have been used by vendors and others. I have seen that we have recorded with the Secretary of State, I think it's International Club Homeowners Association, that we've registered there, I've seen the registration.

Q. Is that the same registration I provided you as an exhibit?

MS. THOMPSON: Exhibit Number 2?

MR. JARMUTH: 2.

THE DEPONENT: I believe the last

time -- I don't -- I didn't look at these documents. I believe the last time I went on the web site I thought it said International Club Homeowners Association, "homeowners," one word.

BY MR. JARMUTH:

Q. I wouldn't disagree.

Can you tell me, from your going on web sites, when International Club Master Homeowners Association was incorporated?

A. I can only tell you what I saw at the Secretary of State, which is the one that I just cited.

Q. Is your HOA enforcing any contract signed by the International Club Master Homeowners Association, Inc.?

A. I'd have to look at the contracts, but I think the HTC contract says the word "master." However, they put that on there, not us. And they know who we are, and we pay the bills.

Q. Now, you said a few minutes ago that you are familiar with contracts. Would you disagree or agree that a contract is unenforceable unless it's signed by the entity or on behalf of the entity for which it's supposed to be enforced?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I believe that's a matter before the court. You're asking me to make a judgment you're requesting the judge to make.

BY MR. JARMUTH:

Q. Can you explain how the International Club HOA is a party to the HTC contract if it's not named in it?

A. I believe that's, again, a matter of interpretation that you dispute and that you want a judgment from the court on.

Q. Are you enforcing that contract?

A. Are we enforcing it? We abide by the terms, yes.

Q. Is your organization named in that contract in its legal name?

A. Again, you're making a legal issue that you're seeking a judgment on. I'm not an attorney, and I would not venture to say whether that point that you are making in your lawsuit has merit or not.

Q. If I -- have you read the HTC contract?

A. Yes.

Q. Have you seen the name of your corporation

on that contract?

A. You keep asking the same question over and over again, and I think I've answered it several times.

Q. So I take it the answer is "no"?

A. No, the answer is what I gave you. Please don't interpret my answers.

Q. I again would cite the rule that says that failure to completely and fully answer a question is a failure to cooperate in discovery.

MS. THOMPSON: Mr. Jarmuth, Mr. Freiboth has answered all of your questions and completely answered them and answered them over and over again. You keep asking the same questions.

MR. JARMUTH: These are yes or no questions.

MS. THOMPSON: He's allowed to say yes or no and explain his answer.

MR. JARMUTH: He never said yes or no.

MS. THOMPSON: He's allowed to answer the question. Okay?

MR. JARMUTH: He's required to answer the question; he's allowed to explain it.

MS. THOMPSON: And he's answering the

question.

BY MR. JARMUTH:

Q. Is Rosemary Toth today a representative of the International Club HOA to the Highway 17 Association?

A. I don't believe it works that way. I don't think that -- I think the Highway 17 Association has its own election of officers and its own covenants and bylaws and processes. We don't, to my knowledge, get to -- they don't call us and ask us who we are going to put up for our representative. I don't believe their covenants and bylaws work that way.

Q. As an individual homeowner in the PUD, have you ever been asked to vote for the Highway 17 Association officers?

A. To my knowledge, no.

Q. As an individual homeowner, do you consider yourself a member of Highway 17 Association?

A. I believe everybody's deed is encumbered. That's the best way I can answer that.

Q. To the best of your knowledge, as an officer of the HOA, does your HOA own any property which is maintained by Highway 17 Association?

A. To my knowledge, no.

Q. To the best of your knowledge, is the Tournament Drive owned by the -- by Horry County?

A. I'm not certain of the answer to that. I don't think it's owned by the county, but I'm not certain of the answer. I think the association's a private association.

Q. Did the International Club HOA ever receive, by deed or other conveyance, ownership of any road in the HOA in the PUD?

MS. THOMPSON: Just for the clarity of the record, what do you mean by "PUD"?

BY MR. JARMUTH:

Q. Does there exist a deed, which says from somebody to International Club Homeowners Association, a legal description of a road?

MS. THOMPSON: Okay. That's a different question. Do you mean International Club Planned Unit Development? Is that --

MR. JARMUTH: The International Club HOA, of which Mr. Freiboth is president of, which they are doing some maintenance on, of which they purport to exercise some dominion over.

BY MR. JARMUTH:

Q. Has the HOA ever owned those roads?
A. We do have a deed to a road.
Q. From whom?
A. I think it's from DR Horton.
Q. Isn't it a fact that DR Horton received its deed from Plantation AD and, in turn, directly to the county, and never deeded to the HOA?
A. I believe that Horry County does not own outright any home or any road in our community. They only have an easement, which is not ownership, full ownership.
Q. In the past, has the HOA applied to Horry County for encroachment permits on any street in the PUD?
A. That would be part of -- if we were to put a permanent structure there because of their right-of-way easement, we would do so if it was a permanent structure.
Q. Do you include trees as permanent structures?
A. I don't know what was done with respect to trees, if that's what you're asking.
Q. How do you explain that Rosemary Toth and the Villas, namely, Charlie Ferrara, applied for encroachment permits to Horry County for that

portion of International Club Drive which is within the PUD --

A. Hmm...

Q. -- for trees?

A. They may have, but I've not seen that encroachment permit, at least not for trees. They might have. I don't know.

Q. Who paid to stripe the median line for International Club Drive?

A. If it was done recently, my understanding is the county paid for it.

Q. During the recent flooding, who came and addressed the flooding on Pickering Drive?

A. I believe it was a department of the county, but that is what they would do with the easement, that they have to maintain the drainage and the blacktop. That's part of their responsibility for that easement.

Q. Why can't the HOA put up a private property, no entrance sign at the intersection of Pickering and McDowell Shortcut?

A. As part of our agreement with the county, once you have what's called a dedicated road, it has -- it cannot be a gated community.

Q. Is there any agreement between the HOA and

the county regarding any road in the PUD?

A. I believe that the agreements for the roads are road dedication documents, and that those were made between the developer and the county.

Q. Does anybody pay taxes on those roads?

A. They wouldn't, but that is the way the county handles road dedication within HOAs for that --

Q. For the period before the dedication of the roads, which was only within the last couple years, did anyone pay taxes on those roads?

A. I don't know how the developer paid their taxes. But if they were taxed on the parcel -- a parcel of land that was used to build the community, then they paid on that land.

Q. Was the developer ever required through the covenants to obey the covenants?

A. Please restate. That sounds --

Q. Did or did not the developer have an exemption from having to comply with the provisions of the covenants as stated in the covenants?

A. I believe the developer could amend the covenants.

Q. Can I please have the covenants?

A. Bylaws and covenants, there you go.

Q. If the county has an easement for the public, isn't the HOA, as the owner of the easement, responsible to maintain the road on which the easement runs?

MS. THOMPSON: Object to the form.

THE DEPONENT: You just contradicted yourself. You said, if the county has an easement, is the HOA responsible for the easement? The county is responsible for the easements it has, not the HOA.

BY MR. JARMUTH:

Q. An easement has an owner of property and the benefit of the easement. The benefit of easement gets the right to use the easement, but the land under which the easement lies is still owned by the grantor of the easement.

A. Correct.

Q. As a person familiar with contracts, are you aware that whoever owns the land, such as a private road, is responsible to maintain that road?

MS. THOMPSON: Objection to the form. That calls for a legal conclusion. You have to answer.

MR. JARMUTH: He said he's familiar with contracts.

MS. THOMPSON: He's not a lawyer, but you have to answer the question.

THE DEPONENT: I believe that the homeowners association can maintain land in the right-of-way.

BY MR. JARMUTH:

Q. Does the Grand Vistas have an easement to use the front entrance?

A. I believe they have to have been granted egress and ingress on International Boulevard.

Q. Why aren't they charged for the wear and tear of the road over which they have an easement?

A. They're not a member of the association.

Q. Irrespective of HOAs, there is a concept called dominant and servient easement holders. The dominant easement holder and the owner of the road is a servient easement holder. The dominant easement owner is responsible to pay wear and tear over the road which is servient owner -- servient owner owns.

Is there any reason why no members of the HOA have not been charged to use the roads for which they have an easement?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I believe you're raising

a legal matter in a subject area of I'm not familiar with the terms of that. And I believe you're asking for a legal conclusion that you would be asking the judge for.

BY MR. JARMUTH:

Q. You are the representative of the HOA which owns the front entrance. There's wear and tear on it. It seems to me that you're responsible to make sure people putting that wear and tear, to pay their fair share.

A. Well, that's --

Q. Is the Grand Vistas putting wear and tear on the road?

A. That's your opinion that we have a right to charge them that. That's just your opinion.

Q. Have you investigated the obligation to pay for wear and tear?

A. It's my understanding that they don't have to pay us. If the county is maintaining the blacktop, that's another matter.

Q. Is the county maintaining that blacktop?

A. Yes, but we don't pay for that directly, or the street drainage along the side. That's what their easements are.

Q. What's your understanding as to what

constitutes the Planned Unit Development as approved by Horry County?

A. A Planned Unit Development is a creature of the zoning commission. And in the Planned Unit Developments they used, it allowed single-family homes, condo and town homes and a commercial golf course to all go through zoning in one bundle for economy of the zoning process.

Q. I'm submitting as Exhibit 3 Lantana PUD as approved by Horry County Planning Commission where the green lines show the PUD limits requested by the developer, Plantation AD, and as approved by the Planning Commission.

A. Sure.

MS. THOMPSON: Are you making that as an exhibit?

MR. JARMUTH: As Exhibit 3.

(PLF. EXH. 3, Lantana PUD, was marked for identification.)

(PLF. EXH. 4, Plat of Exhibits A and B to Covenants, Book 160, Page 79, was marked for identification.)

(PLF. EXH. 5, Plat of Phase G-1, Book 160, Page 70, was marked for identification.)

MS. THOMPSON: Do you have a copy for me? You know you have to provide me with copies of all exhibits under the rules?

MR. JARMUTH: You have actually been provided copies of that.

MS. THOMPSON: Not with the markings that you have on there.

MR. JARMUTH: Show him the exhibit. I'll still ask him to inspect it.

MS. THOMPSON: No, it's fine for you to mark it as an exhibit, Mr. Jarmuth, but it looks look like you have more than one copy. Can I have a copy?

MR. JARMUTH: No, these aren't copies. This is a plat of Exhibits A and B to the covenants, which is one you've been provided before, Book 160, Page 79.

MS. THOMPSON: Okay. That's fine, go ahead and mark it.

THE DEPONENT: Can I take a break? I'll go to the bathroom, I'll be right back.

MR. JARMUTH: Why don't we give her an opportunity to make copies.

(A recess transpired from 3:11 p.m. through 3:16 p.m.)

BY MR. JARMUTH:

Q. Looking at the document labeled Lantana PUD, Exhibit 3 --

A. Right.

Q. -- the green line reflects the minuscule -- it says "Limits of the PUD." Looking at that approval, is The Fairways and The Enclaves within the PUD as approved by the county?

A. Yeah, I believe it is.

Q. Looking at the bottom left, do you see in the minuscule type that says, enlarge the type, "Not part of the PUD" and refers to the area occupied today by The Meadows?

A. I can't read it, but I believe that The Meadows was not in the original PUD.

Q. What responsibilities, from your point of view as executive officer of the HOA, does the HOA have regarding property, common areas, roads, lakes in the PUD?

A. I don't believe the responsibilities of the homeowners association are related at all to the PUD. They're related to the governing documents themselves, which do not refer to the PUD.

Q. Are you familiar in any way with the Horry County design standards for subdivisions?

A. That's part of the zoning process; that's not part of our covenants.

Q. Have you made any attempt to read the design standards or the Horry County ordinances which apply to subdivisions?

A. No, I haven't.

Q. And is the PUD a subdivision?

A. I don't recall if that's the correct nomenclature at all, because the prior answer said I was not familiar with that.

Q. It says "Lantana PUD," Planned Unit Development. What is your understanding of what a subdivision is?

A. My understanding, from the homeowners association perspective, is the subdivision is a marketing name put on monuments for particular parts of subdivision, of the community, but that our obligations are to all of the land registered under the covenants.

Q. Given that a subdivision is the approval by a county body, without having a municipal area, to divide one lot into many lots, do you disagree that the decisions of the Planning Commission intending to giving permission to divide land or subdivide them, can control the use of that land?

A. I have no knowledge of the Planning Commission detailed rules.

Q. Looking at Exhibit 5, do you recognize the area which is now called The Glens, which is Phase G, G-1?

MS. THOMPSON: Exhibit 4, Mr. Jarmuth?

MR. JARMUTH: It's Exhibit 5. It's the Lanata PUD.

MS. THOMPSON: Oh, so Exhibit Number 3?

MR. JARMUTH: 3, yeah.

MS. THOMPSON: Okay.

THE DEPONENT: Okay. I'm looking at the wrong exhibit. Exhibit 3. Oh, you're talking about the Lantana PUD again?

MR. JARMUTH: Yes, still the Lantana PUD.

THE DEPONENT: Phase G, 9.6 areas? Phase whatever.

BY MR. JARMUTH:

Q. Phase G-1, 9.6 acres.

A. Yeah.

Q. How does the Planning Commission identify the approved use of that land?

A. You'd have to ask the Planning Commission.

Q. Could you look to the little table to right?

A. I can't interpret these Planning Commission documents.

Q. Does it use the phrase MF?

A. I can see the table to the right.

Q. Does it use the phrase MF for Phase G-1?

A. Yeah.

Q. Above that, for Phases A through E, does it use, on the right, the phrase single or SF?

A. I can see that on this map, sure.

Q. What do you think the significance of SF is versus MF?

A. With respect to the Planning Commission, I assume that relates to their zoning. It doesn't map to our covenants directly.

Q. Which control, a decision of governed body or private contract?

A. I don't understand your question, and, again --

Q. You have said you are familiar with contracts. If you were in a contract for which the law says something else, which governs, the law or your contract?

MS. THOMPSON: Object to the form.

THE DEPONENT: I've already said I'm not familiar with Planning Commission

processes.

BY MR. JARMUTH:

Q. Talking about your statement, you're familiar with contracts.

A. Well, every contract in the United States, I doubt it. Contracts -- this is a planning and zoning document, and I'm not familiar with planning and zoning processes at all, other than that I know that they occur and there's a PUD and they have to have --

Q. If you own a piece of land and your neighbor builds something which is not approved by Planning Commission, you have a right to object to that construction on the basis they violated the zoning approval.

A. I only know the Planning Commission in terms of hearings that they have before they build things. In Horry County, very limited exposure to that.

Q. Is Phase G blocked single-family or multi-family by the Planning Commission?

A. I assume that it's multi-family.

Q. Now, turning to the area of the series of Enclaves, according to the approval by the Planning Commission, as requested by the developer --

A. Wait a minute, I don't know where you are.
Q. Over here on The Enclaves.
A. I've got four. Which one is it?
Q. It's still the same one. The bump on the top.
MS. THOMPSON: For the record, so it's clear, you're referring to Exhibit Number 3?
MR. JARMUTH: Yes.
MS. THOMPSON: Okay.
BY MR. JARMUTH:
Q. On the top there above The Glens, above Valley Castle --
A. Sure.
Q. -- do you recognize the area currently occupied today by Enclaves and Fairways?
A. Yeah.
Q. Is it within the green line?
A. I believe Enclaves and Fairways are within the zoning PUD, yes.
Q. Can you explain why they are not required to comply with -- to participate in the HOA even if the covenants don't apply?
A. Well, I believe that you simply need to refer to the covenant amendment, which I believe was two, when Plantation AD, the original

developer, sold some of its interests to these developments, to DR Horton, that Plantation AD explicitly forbade the inclusion of these areas to be incorporated as a covenant amendment.

Q. Is the county a party to the covenants?

A. I don't believe that the county can dictate through the zoning process which parcels can become part of the homeowners association. It's quite clear, within our governing documents, the process that allows that to happen and that's the plan of development.

Q. Have you been able to find anyplace in the covenants, any signature from anybody which purports to be from someone in the county?

A. Again, you're asserting that the county has a role that I am not aware of in incorporated properties into our covenants.

Q. It's very simple. Have they signed up for those covenants?

A. I'm not aware that the covenants are signed by the county --

Q. Wouldn't disagree.

A. -- or need to be.

Q. I'm glad you agree with that.

Turning to Exhibits 4 and 5, for the record,

I'm saying that 4 represents Exhibit A on the covenants.

A. Okay.

Q. And 5 represents B on the covenants, which refer specifically to Book 160, Page 79, and those areas, G-1 and Parcel 1.

Is it your understanding that a developer can expand a Planned Unit Development without the permission of the Planning Commission, even after the Planning Commission said these are the limits approved for the PUD?

MS. THOMPSON: Objection to the form.

THE DEPONENT: It's my understanding, from talking to the Planning Commission, that they can expand the property; they can add additional zoning to our association after the PUD was made. And did.

BY MR. JARMUTH:

Q. Exhibit -- is there any area in Exhibits 4 or 5 which is not within the PUD as shown by Exhibit 3?

A. Well, The Meadows is not in the PUD as was shown in Exhibit 3 already.

Q. Have you ever seen any document which was presented to the Planning Commission which asked

permission or granted approval of the expansion of the PUD beyond it's original limits?

A. I object to the form to your question. You're reading --

MS. THOMPSON: You can't object to the form. I object to the form of that question. Yeah, you have to answer it.

THE DEPONENT: I'm sorry, would you restate that?

BY MR. JARMUTH:

Q. Have you ever seen or are you aware of any requests to the Planning Commission or approval by the Planning Commission expanding the PUD beyond limits shown in Exhibit 3?

A. I haven't seen a request to expand it -- beyond Exhibit 3, you say?

Q. Yep.

A. No, I haven't seen a request to expand it beyond that.

MR. JARMUTH: I'm not going to use Exhibit 6.

BY MR. JARMUTH:

Q. What is the position of the HOA regarding whether The Glens is a multi-family development or a single-family home development?

A. Our view is that The Glens is a single-family home development.

Q. How do you reconcile that with Plat Book 197 of 71 from the Horry County Planning Commission approval which says The Glens is a town house development and that every Planning Commission document referring to the approval of The Glens area says it is a multi-family development?

A. I reckon silent, because the covenants themselves discuss what a multi-family development is within the covenants, and I use the covenants and their definitions.

The covenants have their own multi-family definition that refers to -- that's the one we looked at.

Q. Doesn't the covenants say that multi-families, one, that has its own association and has its ownership of its own common areas, apart from the common areas of the master HOA, if I may use that incorrect term?

A. I don't recall the exact wording. There is a section in there related to multi-family, but then there is reference in specific amendments to multi-family with respect to that amendment alone.

Q. Hasn't the argument given by successive

board of directors members been exclusively directed at that portion of the amendments whether town houses or town homes, not whether they are multi-family?

A. I believe it's related to the ownership of the land itself, which is owned by the individual owners and that it's subject to the Nonprofit Corporation Act.

Q. Do the owners of individual units in The Glens also own common property area in common?

A. I believe that they have common areas.

Q. For the areas between The Glens and the curb on International Club Drive and Pickering extension, is the HOA currently maintaining that ground through its grounds contract?

A. We maintain a strip within the right-of-way. Parts of it, within the road right-of-way, and are allowed to do that.

Q. Is the front entrance in the PUD?

A. I believe not.

Q. As a homeowner, were you ever asked to vote on the deal with Central Electric?

A. Homeowners were not asked to vote, nor were they required to vote.

Q. Did you ever receive a distribution from the

board of money which was part of the proceeds of a deal between the HOA and Central Electric?

A. Sure I did.

Q. Did you attend the final meeting where the agreement wasn't asked?

A. Sure, I was on the board at that time.

Q. Did some of the homeowners object to the agreement?

A. Yes, and their objections were noted.

Q. Did some of the homeowners demand a vote?

A. I'm not sure.

Q. Didn't one homeowner begin crying even when the board refused to hold a vote, RoseAnn Gillie?

A. No, I don't think RoseAnn Gillie was crying.

Q. You stated you were on the board at the time the distribution was made?

A. Correct.

Q. Did the board seek legal advice on whether it could distribute any of the proceeds?

MS. THOMPSON: Okay.

MR. JARMUTH: I didn't ask what it was.

MS. THOMPSON: Yes, he has to answer with respect to whether legal counsel was consulted regarding that issue, but none of the communication between the attorneys.

Okay. Just making sure it's clear. Go ahead.

THE DEPONENT: My answer is of course.

BY MR. JARMUTH:

Q. Which legal counsel did you inquire with?

A. I don't -- am I required to --

MS. THOMPSON: Yes, you have to answer that question.

THE DEPONENT: McNair Law Firm then.

BY MR. JARMUTH:

Q. How can you explain that The Cambridge does not provide access to the amenity center like The Glens is?

A. The Cambridge was supposed to have its own pool under, I believe, under contract with the builder. And there was a dispute, it's my understanding, about that between The Cambridge and the builder. They were supposed to have their own facility separate from ours.

Q. Do The Glens and The Cambridge both have common walls between the adjacent home units?

A. I don't know. I don't really know the details of The Glens.

Q. Have you ever physically observed The Cambridge development?

A. I've driven by it.

Q. Could you describe what they look like from the street, The Cambridge?

A. It's a -- one building.

Q. How is that different from The Glens?

A. It isn't the building; it's the ownership of the land and the agreements that were made at the time that the communities were formed, how they were marketed.

Q. Isn't it true that the owner of each house in The Cambridge owns land exactly like the owners of each house in The Glens?

A. I'm not aware that that's the case. I thought it was a condo association or it was commonly owned. The land is not individual.

Q. Are you saying that a Cambridge homeowner does not own the land under his house?

A. I'm not sure. It was my impression no, but I'm not sure.

Q. Okay. If I was to tell you that I found the deeds of several houses in The Glens and The Cambridge and that each home owns its land, would you dispute that they should both be treated as either multi-family or single-family?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I, again, think there are the multiple definitions of multi-family. One for the zoning commission, one in some of the covenant amendments and one in the covenants.

BY MR. JARMUTH:

Q. Please explain the phrase, "Dedicated to Horry County government."

A. I'm not understanding the context in which that's made.

Q. You said that in the easements, which somehow the county has to do something with the streets, it's dedicated to the county. Please explain the meaning of the phrase as you understand it of "Dedicated to Horry County government."

A. Well, the dedication is a dedication program. And the program includes granting of right-of-way easements, determines who maintains the blacktop, determines who maintains the drainage along the road.

Q. How do you reconcile Article 4 of Horry County Land Development Regulations, Section 2.1 which says that "Roads either have to be deeded fee simple to a specific HOA or owned by the county if it's four or more houses"?

A. I'm not familiar with that or the interpretation of it.

Q. Have I heard you correctly when you said you could not identify a single incidence when a road was deeded fee simple to your HOA?

A. I don't know about the fee simple, but I believe that the HOA does have a road deeded to it.

Q. That's the one from Horton on the front entrance outside the PUD?

A. Actually then, yeah, that's -- that was originally private property.

MS. THOMPSON: Mr. Jarmuth, again, just clarifying for the record, when you say "PUD," you're referring to the property that's reflected on Exhibit 3 and outlined in green?

MR. JARMUTH: Yes.

MS. THOMPSON: Okay. Every time you refer to that in this deposition, that's what you're talking about?

MR. JARMUTH: Absolutely.

MS. THOMPSON: Okay. Thank you.

BY MR. JARMUTH:

Q. Who owns the amenity center parking lots?

A. The International Club Homeowners

Association. The two -- there's many parking lots there, so let me be clear. The two parking lots adjacent to it.

Q. Do you -- on what do you base that?

A. On examining the deeds and the plat maps and having found a plat map where the county hadn't connected the records, and I went down and talked to them and made sure they straightened it out.

Q. Are Bernat Golf School customers, B-e-r-n-a-t, and golf course employees allowed to use either of the parking lots?

A. I don't believe there's a formal agreement, but I see some of their cars parked there, sure.

Q. Doesn't that violate the HOA's campaign against unauthorized parking in the PUD?

A. I object to your entire use of the word "PUD."

MS. THOMPSON: You can't --

THE DEPONENT: Well, every question is mixed with PUD, and I think I've told you every which way that PUD is a zoning issue. I answer your questions, but you keep throwing that in. That's why I keep having to explain it.

MS. THOMPSON: You just have to answer

his question. If you want to clarify what he means by "PUD," you can ask for him to clarify the question, but you can't object.

THE DEPONENT: Okay. I won't use the word "object," so sorry.

MS. THOMPSON: That's okay.

BY MR. JARMUTH:

Q. Given your position, why hasn't the HOA restored the private parking lot sign that Rosemary Toth took down while she was president of the HOA?

A. I never saw it. I don't know how long it was there. And I don't know if -- as you report, that it was taken down. I'm really not aware of it.

Q. For the record, I want to state I have a picture of it, and there's minutes of the meeting where Rosemary Toth said she was taking it down because that parking lot belonged to the golf course.

MS. THOMPSON: Is that a question?

MR. JARMUTH: No, it's for the record.

BY MR. JARMUTH:

Q. Can you explain how there are two no parking signs, one at Pickering Drive, one at International Club Drive are allowed, each next to a golf course

lake, the signs being on the road extending the right-of-way?

A. On International Club Drive?

Q. One on International Club Drive between The Villas and The Glens and one on Pickering just as you come into Pebble Creek on the right.

A. Gee, I'm not aware that there are two no parking signs at this time.

Q. Do you know whether the HOA board has ever approved those signs?

A. I'm not aware of the signs or anything related to them, I'm surprised.

Q. Are mailboxes on the individual lots owned by homeowners?

A. They're maintained by homeowners. I would guess if they had to be repaired, that the homeowners would repair them. So I'm inferring from that, that they're owned by them.

Q. If they are physically beyond the survey line established when I had my house surveyed, are they on my lot?

A. They're in the right-of-way, if they're within a certain distance from the center line, depending on the width of the right-of-way, I think most of them are.

Q. Do I have any responsibility to maintain the land beyond my lot line?

A. I believe we would expect you to maintain the land, to mow the grass, to ask -- all the way to the curb. In fact, you probably paid for the grass that's there.

Q. I'm not disputing one's duty. But under the covenants, is there an obligation for me to maintain land I do not own?

A. I'm not sure about that. I know it's practiced. I'm not sure with the question he raised in the covenants themselves.

Q. Can you recite the basis of a rights under the covenants for the HOA to fine someone for failing to maintain land outside of its property?

A. The land is still subject to the covenants.

Q. But would you agree or disagree that the owner of the land is responsible to maintain it as specified in the covenants?

A. (Moves head up and down.)

Q. Is that a "yes"?

A. I'm thinking about it.

I would say that the land is subject to the covenants for maintenance separate from ownership. Somebody has to maintain -- it's part of the

International Club, and it's subject to the covenants.

Q. Is it your position that the HOA owns the land, including the roads, beyond my property line?

A. It's not my position that they do, though it may be in a certain road that that would be the case.

Q. Who owns the land, including the road, beyond my property line?

A. Most likely, it was the developer who brought the entire parcel into the association and made it subject to the covenants, and there was no need for the residual which became the right-of-way to be retitled, though the owners, which were the developers, did enter into right-of-way agreements. And if you look in them, it says the owner's name, is right there, often it's the developer.

Q. Does that mean that Sunbelt or Horton is responsible to maintain the land beyond my property line?

A. Again, I don't believe that -- I believe that the maintenance of it is subject to the covenants themselves, that that land is subject to the covenants.

Q. Under the covenants, isn't it the owner of a

specific land that is responsible for performance of duties on that land?

A. I'd have to look at the specific language in the covenants.

Q. Can you cite any provision of the covenants which require you to maintain the land beyond your property line and going up the street?

A. That's the same question you just asked me, and I answered that I'm not sure where it says that in the covenants. All I know is that that land is subject to the covenants.

Q. When you bought your house, did you obtain title to any land beyond your survey line?

A. I don't think so. That's...

Q. Are you aware of any instance where the HOA has approved a swing set on the side of a house?

A. I believe my views on that matter would be all secondary. I've never sat in on the ARB meetings, nor been a member of the ARB. I would have only have heard that secondarily as part of discussions.

Q. Isn't -- is the ARB a committee of the board?

A. The ARB is a not a committee; it's a separate board vested in the covenants.

Q. Who chooses the members of the ARB?
A. The board of directors does.
Q. Does it exercise any powers or authority which the covenants give to the board?
A. It exercises power and authority that the covenants give to the ARB. It's right there.
Q. I'm a little confused here. You said it doesn't derive its authority from the board, yet the board appoints its members. And you've also said that the board handles ultimate decisions regarding ARB decisions, and the board ultimately gets to choose and decide whether fines are proper.
A. Well --
Q. Is the ARB subject to the board or not?
A. As I said, the members are appointed to the board. The ARB has its own separate powers, I believe in Section 7.2 of the covenants separate from those of the board of directors. When you talk about boards, there are two boards. And when -- and you can appeal to the -- a decision to the Architectural Review Board. The reason you can also appeal it to the board of directors, it's my understanding, is that we are doing due diligence, overlooking the entire association. And before a substantial dispute arises, we will try to

understand and mitigate and make sure we've done right.

Q. Are you saying that Section 8 of the bylaws, procedures, does not govern or control the operation of the ARB, the person applies to the board?

A. I'm saying that what's in Section 7.2 applies to the ARB and that it can make its own rules and enforcement and it's in there.

Q. Is it the board or the ARB which made the modifications to the ARB guidelines in 2008, 2011?

A. It's my understanding it's the ARB. We did due diligence to review it.

Q. Who proposed the modifications in 2008? Was it the ARB or the board?

A. That I don't know.

Q. Who did it in 2011?

A. It was the ARB.

Q. Who approved it?

A. The ARB approved it, and we did due diligence and checked it ourselves to see if it made sense.

Q. Who published it to the homeowners?

A. We felt, the board, that we should distribute it in paper form.

Q. Can you explain why waiver doesn't mean "delete" in Amendment 1, when the other amendment to the covenants --

MS. THOMPSON: Objection to the form.

THE DEPONENT: I believe that you are -- I don't think I -- I believe that's a legal argument that I should not make, and I believe that that's an argument that should be made -- that's already been made as part of this litigation that you're seeking judgment from a judge.

BY MR. JARMUTH:

Q. Are you aware of any instance where any developer ever requested permission to do anything from any ARB?

A. You have to remember, I wasn't in this community or -- well, let me answer that since I've been in this community and on the board, I'm not aware. But that's also past the time that the transition happened from a board-run community to homeowners-run.

Q. When did you say you bought your house?

A. I bought it in -- I bought the lot in late fall 2004, but we requested that development be delayed, and we didn't actually close on it until

July of 2006. And I wasn't on the board anytime until 2009.

Q. True or false: The election occurred in the fall of 2007, the election for the homeowner-controlled board?

A. I know I was there. I'm not sure. That might be right.

Q. When you ultimately built your house, were you required to submit the plans for your house to the ARB which existed prior to transition?

A. I was required to work with the developer, and the developer was a part of the ARB, Charles Flynn, F-l-y-n-n.

Q. Are you saying then that since the -- that the developer actually controlled this independent ARB which was created by virtue of the covenants, not by virtue of a separate deed?

Earlier you cited that the ARB was created by the covenants, period; it does not belong and is not subject to the board specifically.

Are you saying that the developer actually controlled the ARB in spite of the covenants?

MS. THOMPSON: Objection to the form.

THE DEPONENT: No, I'm not saying that.

I know there was an -- I only know that

there was an ARB prior to the homeowner turnover, which I think was 2007, and that a developer was on it. The mechanics of the rest of that, I'm not clear on.

BY MR. JARMUTH:

Q. As a lot owner, did you fill out an ARB application prior to building your house, requesting approval of the features?

A. No, I didn't fill out an ARB application.

Q. Are you aware of any approval by the ARB of a swing set on a right side of a home?

A. Mr. Jarmuth, I would have to say the answer is no, because I never sat on the ARB or participated in its decisions, and I don't look at all of its history.

Q. Can you explain why the HOA board -- not the ARB -- spoke to the Equal Rights Commission on the performance or non-performance of the ARB board relative to my swing set application if they are not part of the ARB board -- I mean, not part of the HOA board?

A. When did that occur?

Q. I believe it was --

A. 2009?

Q. -- 2008 or 2009. Probably 2009.

A. That may have been -- no, the swing set must have been before I was a director or had anything to do directly with the ARB.

Q. Does your web site have material published regarding the Equal Rights Commission complaint about the swing set?

A. I believe it does, the final decision, public knowledge.

Q. And is the respondent of that the ARB or the board of directors?

A. The respondent? I'm not sure I understand.

Q. The person who answered to the Equal Rights Commission or the entity.

A. Again, I'm not sure if I was on the board at that time.

Q. Is it still on the web site?

A. Yes, I think so.

Q. And doesn't that document also say that the HOA board represented to the Equal Rights Commission that it never approves and it's prohibited to have a swing set to the right side of a house?

A. I don't know if the language is specifically the HOA board, but I do believe that once you filed that complaint, that the board was entitled to

consult with legal counsel.

Q. And hasn't the HOA, through some entity, approved a swing set on the right side of a house owned by Robert Sobczyk, S-o-b-c-z-y-k?

A. It's my understanding, because I was then on the board, that a swing set was approved, but it was inspected and judged in that site to be at the rear of the house. Right, left is not -- rear is what we looked at.

Q. Isn't that house the same floor plan as my house?

A. The house doesn't have the same siting at all.

Q. Is it the same floor plan?

A. Don't know.

Q. And isn't that swing set along -- adjacent to the bedrooms, where mine was supposed to be?

A. Again, all I can say is that it was viewed as being in the rear of the property, not easily seen from the street, if at all.

Q. Is it your statement that you can't see that swing set clearly from the street?

A. I would say that the person driving by wouldn't notice it if it was placed where it was supposed to be.

Q. Have you attended hearings in this case in the court since October of 2011?

A. Yes.

Q. Did you see on an easel a picture taken from the street of a big swing set clearly visible at that house from the street?

A. No. You had a bunch of things on an easel, but they were there shortly, and I'm not sure what you presented and what you didn't.

Q. Are chain-link fences allowed within the PUD?

A. Again, chain-link fences are not -- have not been allowed for homeowner property under the covenants. The PUD is not the issue; it's the covenants.

Q. On land subject to the covenants, is chain-link fencing allowed?

A. Not for -- I'm not sure if it's unit or member holders -- certain parties are subject to Section 7.1, which is the -- what is it? The -- it's the land use related to the ARB, certain parties. I'm not aware that we've gotten an application for chain-link fences to look at even.

Q. How do you explain the existence of a chain-link fence around a swing set in plain view

from the road that's the amenity center?

A. If that's a chain-link fence, it's the children's playground. Is that what you're referring to?

Q. There is a children's playground within view of the amenity center parking lot and the amenity center and the golf course unobstructed which has a chain-link fence around it. How do you explain that chain-link fence?

A. I believe the developer put that there before the turnover.

Q. Are you saying the developer was not subject to the covenants and the ARB controls?

A. I believe the developer had rights to make changes.

Q. Thus, as a consequence of that, he would not need to amend his covenants because he already was exempt?

A. I believe he -- again, I believe -- not putting words in my mouth, that he had -- he exercised the right to make decisions related to plans that might not have been consistent with what our homeowner board would have done reading the covenants.

Q. Is that your same explanation for how GSWSA

properties, two of them, have 8-foot chain-link fences around them?

A. I believe that arrangement was made earlier, yes.

Q. And is that your same explanation of how certain maintenance areas of the golf course have high chain-link fences around them?

A. No.

Q. How do they come to have high chain-link fences?

A. They are not subject to Section 7 of covenants.

Q. And where did you read that from?

A. From the covenants.

Q. What portion of the covenants exempt them?

A. That the definition of who is subject to that section and how the golf course is defined to be related to the association. I don't remember the exact language, but it was looked at closely.

Q. I show you Exhibit 4, which is Exhibit A to the covenants.

A. Okay.

Q. Deed Book 160, Page 79, the greened-in area is the area of the golf course.

Isn't it a fact that at least through

Amendment 1, all areas in Exhibit A are subjected to the covenants? And possibly through the original covenants, didn't they say everything in Exhibit A, and that's Exhibit A, is subject to covenants?

A. I have to modify your statement because it's too broad. The golf course is subject to the covenants, but not all parts of them, because of how they are defined. Their relationship is different from single-family homeowners or condo owners. It's a commercial contract. Their definition is different.

Q. Don't the covenants simply say all areas in Exhibit A are subject to the covenants? And enumerates those specific plots in Deed Book 160, Page 79, including G-1, golf course?

A. All areas are subject to the covenants, but the definition of the golf course relationship is also in the covenants, and it defines a specific relationship, which is a subset. It doesn't apply to Section 7.

Q. Can you can point to the covenants where that was stated?

A. I'd have to look at the document, and it might not... let's see.

MS. THOMPSON: Mr. Jarmuth, after he answers this question, can we take a break?

MR. JARMUTH: Pardon me?

MS. THOMPSON: Can we take a break after he answers this question?

MR. JARMUTH: Sure.

MS. THOMPSON: How much longer do you think you're going to be just so -- for planning purposes?

MR. JARMUTH: What time is it?

MS. THOMPSON: It's 4:15 right now.

MR. JARMUTH: I think it's going to take another hour.

MS. THOMPSON: That's fine. And you can -- I mean, you can take past 5:00 if you need to, but I'm just trying to gauge how --

MR. JARMUTH: I'm trying to move on to try and get through this.

MS. THOMPSON: Okay.

MR. JARMUTH: I've chopped off a whole bunch of questions.

MS. THOMPSON: Okay.

THE DEPONENT: At this point, I can't find the specific language. It was looked at before, but it had to be looked at in

great detail, very closely. And it had to do with the definition of an owner and a unit and what applied to Section 7 and how the golf course was defined and when it came into the covenants. I can tell you that's what it was, but I would have to spend some time reconstructing that. It hasn't been done for two years, I would say, with a great deal of effort.

BY MR. JARMUTH:

Q. How do you reconcile the South Carolina Nonprofit Association Act -- the South Carolina Nonprofit Corporation Act, provisions that nobody can be involuntarily required to join a nonprofit corporation with the contrary requirement of the covenants that homeowners join the nonprofit corporation?

A. Well, you've lost me on that one.

Q. The South Carolina Nonprofit Corporation Act says no individual can be required to join a nonprofit corporation, period; it's a very short statute. Yet the covenant says the homeowners have to join the HOA. We have a conflict between a statute and a contract. Which prevails?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. How do you reconcile the contradiction?

A. I don't perceive that there's a contradiction. I haven't looked at that or -- at that matter. And I believe if what you were representing was true, it would affect every association in the state. And that's an argument for court, in my opinion.

Q. I think it's a very interesting one.

How do you reconcile the provision in the same law that only a person can be a member of a nonprofit corporation with the membership of the golf course in the HOA provided for by the covenants --

MS. THOMPSON: Objection.

BY MR. JARMUTH:

Q. -- and by the bylaws?

MS. THOMPSON: Objection to the form.

THE DEPONENT: Again, I think that's something where you're asking me to make a legal judgment that would be appropriate for the judge to make. Was that fair? Sorry.

MS. THOMPSON: Can we take that break now?

MR. JARMUTH: Yeah.

MS. THOMPSON: Okay. Thank you. Just five minutes.

(A recess transpired from 4:15 p.m. through 4:24 p.m.)

BY MR. JARMUTH:

Q. Please explain the difference between a guideline and a rule.

A. Well, I think what you're referring to is with respect to Architectural Review. I think what the Architectural Review Board does are rules, but their job is rather difficult. They have to look at each case and understand it relative to the siting and positioning and various factors that exist on each unique property. And so I think that's where it comes from.

Q. Are you saying that one can never be certain in advance that proposed use will be approved by the ARB because the guidelines are subject to interpretation by the ARB?

A. Well, I would say they would have to supply some judgment because all of the homes are different in their siting. All the applications are different in terms of the size and nature and scope of what they propose. So they can't just say if everything looks green, go ahead. They have to

take factors into consideration using their rules.

Q. Are the guidelines clear and absolute, or are they ambiguous?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. Are the guidelines written in such a way so that in every instance, every applicant knows, by looking at them, whether their proposal will be approved or disapproved?

A. I don't think the applicant would know the range of factors that the ARB needs to use, or appreciate it.

Q. Has the board of directors ever pointed to members of the board to the ARB as members of the ARB at the same time?

A. In my -- I can't speak about the whole history of the association. But in my time at the association, unless it was for an extremely short period, like they were just becoming a board member and they were on the ARB, if that even happened, that they would be separate board members in ARB. The only reason you would see a board member normally at an ARB meeting is simply that we want to be sure that's a liaison. They are not supposed to be the decision makers. We want to make sure

that group is functional, well functioning, and if there's anything going on that might lead us to have due diligence. They make decisions. But if we were to spot a problem, we would discuss it and decide if it was significant. So we are not -- if there's a board member there, normally it's not going to be because they're a voting member of the ARB.

Q. Is the ARB subject to the same open meeting, open records requirements which the South Carolina Nonprofit Corporation imposed on board of directors meetings?

MS. THOMPSON: Object to the form.

THE DEPONENT: The board of directors meetings that are open -- that are required to be open is the annual meeting. The -- ARB is, by nature, discussing applications and concerns of individual homeowners. And I don't believe that they make all of that -- well, I don't think they -- I think those are private meetings involving the ARB and the homeowner.

BY MR. JARMUTH:

Q. Is it your statement then that homeowners, in general, can't attend the consideration of the

ARB of particular applications?

A. They -- I think they can attend if it's their application.

Q. Not their application, just to sit in and see what's going on.

A. I'm not sure, but I -- I'm not sure, but I don't think so.

Q. Is there any contractual arrangement or relationship you're aware of between the ARB and K.A. Diehl?

A. Not directly.

Q. Is Diehl entitled, under its contract, to administer a charge wherein it writes up, in the ARB, violation issues, a fine letter?

A. Not for an ARB application process, no.

Q. When -- let me restate that. When the Diehl person drives around the neighborhood, spots something they consider a violation and issues a violation letter, do they get a separate reimbursement over the per-door charge from the HOA for writing that letter?

MS. THOMPSON: Did you say "per-door charge"?

BY MR. JARMUTH:

Q. Per-door.

A. I think I'm going to have to explain that. You're misinterpreting it. Let me explain.

K.A. Diehl does not -- the Architectural Review process is separate from riding around. Riding around, our contract with K.A. Diehl does not burden individual homeowners with the cost of enforcement of those violations. And so we don't include that in the cost of our contract.

The way Diehl is compensated for that extra cost is to charge that individual homeowner and not all homeowners, to write a letter, that's why.

Q. Does K.A. Diehl have to give that money back if the purported violation's found not to be a violation?

A. I'm not sure. I say that because I don't want to give a definite answer when I'm not definite, not to evade.

Q. For as long as you've been a homeowner or been a member of the board, do you recall ever receiving anything from the HOA soliciting your input specifically for modifications to the ARB guidelines?

A. We -- the board, in two thousand- -- I believe it was in 2010 -- specifically set aside a public forum and invited homeowners through Friday

Facts to talk about all things ARB. We wanted to hear what homeowners had to say. And we would sit in front of them personally.

Q. And if you didn't get Friday Facts, you didn't receive the invitation?

A. That's probably correct. And we weren't obliged to do, either.

Q. Which comes first, the decision about what the HOA budget should be or the computation of the amount the assessments will be?

A. The assessments are always derived after the budget process is complete.

Q. Is the conclusion correct then that when the golf course pays less, everyone else has to pay more because the amount to be collected has already been decided and totaled?

MS. THOMPSON: Objection to the form.

THE DEPONENT: There is no weighing of whether the golf course paying less would cause the homeowners to pay more. They all use the exact same process and formula. And we calculate the budget and everything that goes into it and look at that very closely first. And we use the number of units in the association, including the current units

of the golf course and reserves and all the factors that go into the budget to calculate the assessment. It's neutral. It doesn't relate to which type of membership you have.

BY MR. JARMUTH:

Q. Before calculating an assessment, has the board decided what the total budget will be?

A. We do decide what the budget will be, and we calculate the assessment. It turned out to be $91.02. We would try to adjust it somehow to $91 to simplify it for homeowners but, otherwise, yes, straightforward.

Q. How many times within the last two years has the HOA's insurance policy been cancelled?

A. Well, it's -- within the last two years, it's cancelled -- it was cancelled once. And that's part of a dance, that it then gets redone, and we have gotten another offer later, but it's quite different.

Q. Is it with the same insurance company as before cancellation?

A. In the last case, it was. And we tried to do something different, not only in terms of insurance companies but brokers. But once it's raised related to lawsuits, it's extremely

difficult to get anyone to bid.

Q. Have you personally, within the last month, ever told any homeowner that the HOA's insurance was cancelled more than once in the last two years?

A. If I said the last two years, it was cancelled twice, but I don't think it was in the last two years. It might have been in the last three. I'm not sure about that.

Q. Is your current insurance with the same provider as three years ago?

A. Correct.

Q. Is the HOA reimbursing K.A. Diehl for its legal defense?

A. No, not to my knowledge.

Q. Can you explain why the insurance company did not pay at least part of the settlement with The Villas?

A. They did pay part of the settlement.

Q. Did they pay all of it?

A. No.

Q. What reason was given for not paying the rest of it beyond the deductible?

A. They were not required to pay it. We could have gone to court.

Q. What reason did they give for not being

required to pay the rest?

A. They refused to pay more.

Q. But did they give you a reason for refusing to pay more than they paid?

A. That's all they were willing to pay, and usually they don't pay more. Often they don't pay any. You can go to court.

Q. In what month of the year does HTC increase its cable charges to the HOA for cable TV service?

A. I'll give you an approximate, around April.

Q. And what month of the year do you increase the cable charges for HOA homeowners?

A. I believe your question is structured in a way that cannot be correctly answered. I think what you're missing is that when we make an annual budget, we have a spreadsheet with 12 cells in it. We look at what the bill is going to run through April and put January, February, March as what it presently is. We consult with HTC and apply some judgment as to what allowance we need to make from April to the end of the year because we don't know. That's the budget. So it's not -- they're not being charged extra. We are assuming they are not going to be charged more until April. And we're assuming that they're going to be charged more

after that. And that goes into the budget.

Q. Can you explain why the average per house cable TV charge for the different parts of the HOA, for example, Meadows, Glens, Highlands, Pebble Creek, does not come out to the same number, when you divide from the budget, the cable TV costs by the number of units/houses in that area?

A. Well, do you have a specific reference there, time frame?

Q. In the 2012 budget and the 2011 budget and the 2010 budget, where you divide from the HOA's budgets, the number -- the amount to be charged that neighborhood for cable TV by the number of houses in that neighborhood, the result is never the same neighborhood by neighborhood.

A. We usually use the prior year budget and a factor. It should be the same. What has happened in prior years, the way these contracts evolved, is HTC made a separate budget item for each community. We didn't, they did. And when they made rate increases, they didn't always get them all. So we benefited in some cases because they forgot to adjust some of those accounts.

Q. Don't you get a fixed charge per house from HTC per the contract?

A. We get a fixed adjustment of the rate from the prior year per unit. But, again, they're administered in seven different accounts, and then that's the way HTC does it. We didn't ask it to be that way.

Q. Who charges an individual homeowner for cable services, you or HTC?

A. We include it in the budget.

Q. Is there any direct contractual relationship between an individual homeowner and HTC?

A. No, because that's our authority, under the board, to engage in cable services and charge them for them in assessments.

Q. Do homeowners have any discretion as to who their cable TV provider will be?

A. Well, homeowners can order video content from other providers if they choose and do.

Q. But do they have any discretion as to who they'll get cable TV services from?

A. No.

Q. Can you explain why the covenants explicitly give authority for a homeowner to have a satellite dish for satellite services but don't explicitly say the homeowner must obtain cable services from the HOA?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I don't -- I don't think your statement is correct.

BY MR. JARMUTH:

Q. Doesn't the covenants explicitly say only that the developers may offer cable TV services and isn't it silent about a homeowner having to accept those cable TV services?

A. The covenants allowed the homeowners association to contract for cable services on behalf of homeowners and did not require them to vote.

Q. Doesn't the covenants actually say a developer may contract with a provider to obtain and offer cable services? Isn't it true that the covenants never say the homeowners association can contract and offer cable services?

A. My recollection is that the master contract was probably originally made by the developer, and there's never been another contract.

Q. I'm referring to the covenants. I'll point out for the record that the covenants do not give the homeowners association authority to contract or provide that that authority is given to the developer.

A. I'm not sure what it says in the covenants as it relates to that. It's been there since 2003.

Q. Who was the president of the HOA when the HTC contract was signed? Was it R. Doug Brown?

A. I'm not certain, I think that's the answer.

Q. And wasn't he also an employee of DR Horton?

A. I believe so.

Q. And wasn't it a fact that he was not -- that he did -- personally did not own any lots in the PUD?

A. I don't know what Mr. Brown owned, but he was the president of the association and represented the developer as well. He had authority under both.

Q. How do you explain that the bylaws say that only a homeowner may be an officer of an HOA?

A. I believe the developer has rights in there and...

Q. Isn't it true --

A. That would be like a cart before the horse. You're saying that you can't have a homeowners association until you've sold all the homes.

Q. No, that's not what I said. Isn't it true that the bylaws say that the first year the HOA exists, that the developer can appoint at least

some board members for three, two and one year, that in year two, the term which is expiring, must be filled by election of the members, and that the succeeding years, each expiring term must be filled by election by the members?

Do you recall the developer ever obeying that provision of the bylaws?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. He was an owner.

A. My recollection is I don't remember if the 2007 -- if that's the meeting -- if they were appointed or elected. I think they were appointed. And at that time staggered terms were set up.

Q. If that was created in 2002, by 2003, shouldn't one-third of the board have been elected; by 2004, two-thirds; and in 2005, all of them, per the bylaws which you said you're familiar with?

A. I don't -- I don't believe I can address the issue of how the association was run before there were homeowners and while it was controlled by the developer who had certain rights.

Q. Is there an agreement between the HOA and the developer, any developer, for the provision of cable TV service?

A. The only agreement I'm aware of is the 2003 agreement that is in place and has been since then.

Q. And is that between the HOA putatively and HTC?

A. I'd have to look at the contract.

Q. Didn't Arthur Brown sign as the president of the International Club Master Homeowners Association, and didn't HTC -- a representative sign for HTC?

A. I believe that Mr. Brown was president of the homeowners association at the time.

Q. And isn't it a fact that that the cable TV agreement has no place for the signature of a developer representative?

A. I can't answer your question. I'd have to look at it, and I really don't understand the significance of it.

Q. Wasn't your statement a few minutes ago that there is no separate agreement between the HOA and any developer for cable TV services that you know of?

A. Again, the statement I made is the only agreement I know of, is the 2003 agreement, whatever that is.

Q. Is there any specific section of the

covenants other than Section 7.24 which addresses communication systems which specifically addresses cable TV?

A. I would have to look back at the covenants. I know that there is cable TV in there. And I don't know that I'll just be able to run through it and find it in a second, but I'll look at it. I think that sometimes this is spread in two or three places.

MS. THOMPSON: Again, Mr. Jarmuth just handed the witness a document that is the same document that was referred to as the covenants previously in the deposition. Go ahead.

BY MR. JARMUTH:

Q. I'm referring to Section 7, which refers to a homeowner's obligations regarding 7.24, which is Communication Systems. I'm asking him to look in Section 7 to see if there's any homeowner obligation under Homeowner's Obligation, Section 7, to accept cable TV services.

A. I would have to spend a great deal of time looking at this --

Q. Fine.

A. -- to give you an accurate answer.

Q. Who owns the HOA web site, Internationalclubhoa.com?

A. I'm not sure who's got the link, I don't recall. If you showed it to me, it would be the first time I've seen it, so...

Q. Did the HOA board, insofar as you know, ever give permission for Rosemary Toth to transfer the ownership of that web name to K.A. Diehl?

A. Again, I'm not aware of any history with respect to the web name or that Rosemary had anything to do with it.

MR. JARMUTH: For the record, I'll point out that it's registered with GoDaddy.com, and it shows that the day I specified, Rosemary Toth transferred ownership to K.A. Diehl, and this is the name originally registered by Deb Sherman for the web site she ran until she left the PUD.

THE DEPONENT: Sorry, I don't really have any direct knowledge of that.

BY MR. JARMUTH:

Q. Is it your statement that my failure to find any such approval in the minutes of the board reflects the fact that no such approval is given?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I can't understand that question.

BY MR. JARMUTH:

Q. For the record, I'm stating I read through every board of directors minutes which the HOA has admitted through its attorney to exist, and I have been unable to find any approval by the board for the transfer of the ownership of the web page.

Is it your statement that such approval was given and I made an oversight?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. You personally didn't vote on any such approval?

A. No, no. I don't really know the history, nor did I vote.

Q. Does the HOA have any direct contract with Association Voice?

A. No.

Q. Is the HOA charged for a web page for the use of its members?

A. They weren't charged separate from the standard Diehl contract through the end of 2010. In 2011, Diehl changed the way they charged for the

web site such that it was a separate item. And I protested that we were not charging -- we were not charged a fee before and had the fee reduced from our contract. It's now a separate charge, but I had an offset taken out, and it wasn't charged as an line item before.

Q. But, currently, there is a separate line item in Diehl's contract requiring the HOA to pay for that web site?

A. If they want to use it, offset by the money that I took out of their other side of their other contract. Same amount of money as before.

Q. Is that the same web site that members log into --

A. Yes.

Q. -- to see stuff?

A. Right.

Q. And whose privacy policy is accessible when you click on privacy policy of that web page?

A. I'm not sure. I think I know the answer, but I don't really want to speculate --

Q. If it comes up with Association Voice, did you ever vote in favor of allowing Association Voice's privacy policy to be the privacy policy for the web page for which you're paying?

A. We never specified a privacy policy, nor were we asked when one was put there, if one was.

Q. Do you know of any refunds which the HOA has gotten from Diehl getting rebates on use of its credit card when it bought things for the HOA?

A. I never heard of any of that.

Q. Who pays for the maintenance of the fountain which is between the amenities center and the intersection of International Club Drive, Pickering and the golf course entrance road?

A. We pay for that.

Q. And who owns that land?

A. We own the easement on both of those ponds. That's why we could do it.

Q. When was the easement recorded?

A. The easement was granted with the golf course agreement, both of them, among other things.

Q. So is it your statement that the HOA was given an obligation to pay to maintain that, or was the maintenance of those ponds and the fountain discretionary?

A. We don't maintain the ponds. We put a fountain in there as an aesthetic for homeowners. We own the fountain, we pay for the electric, that's it.

Q. Did the golf course agreement which had to do with the parking lot explicitly require the HOA put that fountain in?

A. No.

Q. Do you know about how much it's costing the HOA?

A. Not offhand, but we paid for the installation of the fountain and the ongoing electrical costs.

Q. Who on the board of directors has decided that the brick line between me and Cartman is a wall?

A. Mr. Jarmuth, your question, I don't believe anybody decided about a wall. I think somebody used that term at one time. Our issue was that you made that an integral part of a project that was rejected.

Q. Is that a wall?

A. I never said that. And I don't know who did.

Q. Is it a fact that the counterclaim against me says it is a wall?

A. I believe there was a statement at one time that it was a wall, and it might have been revised.

Q. Are you saying that if there's a statement

in the counterclaim filed at the end of 2011 alleging that I built a wall, that is incorrect?

A. I remember discussion about that, but I don't know what the -- how the counterclaim reads right now.

Q. If it reads and alleges that I built a wall, is that allegation incorrect?

A. You're asking a hypothetical. I don't really know.

Q. You are the master there; they're your representative. The assertion that I made a violation is made on your behalf. Have I built a wall in the view of the HOA?

A. Again, I think you're asking a question with an answer that the reason that there's an issue here is that you were putting in a fence and made it an integral part of the fence.

Q. I'm allowed to pursue the truth or untruth of an allegation in a Complaint. Your Complaint, yours.

MS. THOMPSON: Mr. Jarmuth, please don't point and yell at my client.

MR. JARMUTH: I'm not yelling.

BY MR. JARMUTH:

Q. The HOA's allegation, which it means your

allegation as president, is that I built a wall. Have I built a wall?

A. Again, I don't know what the language is in that filing with the court at present.

Q. If it says that, is that incorrect?

A. I can't really speculate on that, because I don't know what it is, and I don't believe that was ever the issue.

Q. If it says that, is it correct?

A. I can't -- again, I think the issue was not wall; it was fence and integral part of fence. So you're asking a question that...

Q. Are there many other instances, at least one other instance, where the same bricks can be found as landscape edging elsewhere in Pebble Creek?

A. No. What -- you're referring to a -- what you originally called a fence and the base of a fence along a property line, other edgings, I believe, are decorative edgings around planting beds.

Q. Are those same identical bricks used elsewhere in the HOA for edging purposes?

A. Well, there's two different purposes. You're -- the edging around a flower bed, I believe, is still an ARB application. The

edging -- that's not an edging; that's a part of your original fence, was a fence application. And it was on the property line.

Q. You haven't answered the question.

MS. THOMPSON: Yes, he has.

MR. JARMUTH: No, he hasn't. He evaded.

BY MR. JARMUTH:

Q. Are those same bricks found elsewhere within the Pebble Creek area?

MS. THOMPSON: Mr. Jarmuth, I think he conceded they are within the area but not along the property line.

BY MR. JARMUTH:

Q. Has the HOA ever called any of the other uses of the bricks a wall?

A. I've never had any part with calling them a wall.

Q. How is that brick line dividing my property from Cartman different from the same brick line dividing myself from Bernstein?

A. I'm not aware that you have a brick line back there on the property line.

Q. How is the same brick line different from the brick line done by -- to the right of Parr,

dividing Parr's property, from the property to the right on that other cul-de-sac?

A. Mr. Jarmuth, once again, it's probably the fifth time. You applied for a fence, and you claimed that that was an integral part of your fence. And when it was denied, we asked you to -- you could either appeal the decision or remove the project that you had started without an application. That's not the same as somebody else's brick line.

Q. Isn't it true that the ARB application, the diagram, showed a brick line going from the street all the way back to the Bernstein property?

A. No. The application showed a planting bed in the right-of-way easement before the utility box, and it showed a fence with an integral part base, two separate projects.

Q. Isn't it true that the plat illustration showed a separate line for -- marked "fence" and a separate line marked "brick line"?

A. I don't have the application in front of me, but I do know that the brick line that you are referring to along the property line is not -- it's a part of a fence project that was turned down by the ARB, and you maintained that it was an integral

part of that project.

Q. Isn't the ARB guideline you're pointing to labeled "fence"?

A. I'm not sure I understand.

Q. Did I build a fence?

A. Your application said that you were building a fence.

Q. Did I build a fence?

A. You started to. And if you submit an application with various components and start it, either you get it approved, you get it -- you have a hearing to try and reconcile this or you can be asked to remove it.

Q. Did I ever erect a single-fence post?

A. I'm sorry, this was part of a fence application as an integral part. Again, I don't know how many times I can say that.

Q. The question was, did I ever erect a single-fence post?

A. I don't know how else I can answer you. I've answered you several times.

Q. I asked you -- do you know what a fence post looks like?

A. Mr. Jarmuth, I've answered your question.

Q. We'll let the judge decide whether that was

a failure to answer.

In your capacity as a homeowner, were you ever sent an announcement that the developer planned to file Amendments 2, 3, 4 and 5?

A. I -- as a homeowner, I was never sent an announcement, but I believe the developer was acting within his rights to add property to the associations.

Q. After the Amendments 2, 3, 4 and 5 were made, were you ever sent a notice that those amendments had been made?

A. No, I believe not.

Q. Isn't it true that the first time the homeowners found out about it is in 2009 when I told the homeowners I found Amendments 2, 3, 4 and 5 over at the courthouse?

A. I believe that those amendments were on the web site in 2009. And I'm kind of amazed that you say you've never logged into it but you know what's there.

Q. Isn't it true that the web site, prior to turning it over to Diehl, only showed the original covenants Amendment Number 1?

A. I don't know what it looked like prior to turning over to Diehl.

Q. How do you explain that the board of director's minutes of meetings reflect Rosemary Toth saying she had to run over to the courthouse to get a copy of Amendments 2, 3, 4 and 5?

A. I don't know where they were kept or that she did that. I have no knowledge of that.

Q. Do you -- did the amendments which added additional homeowners with access to the amenity center diminish your use of the amenity center?

A. No.

Q. Why?

A. I don't believe it did.

Q. Do homeowners have any rights or ownership equity in the amenity center?

A. The --

MS. THOMPSON: Objection to the form.

THE DEPONENT: The land for the amenity center and the property improvements are deeded to the HOA, not to individual neighbors or homeowners.

BY MR. JARMUTH:

Q. Who sold you your lot?

A. Sunbelt Homes.

Q. Did you deal directly with Charles Flynn?

A. Normally I dealt directly with -- the

Realtor and Linda Kiser.

Q. What did they tell you regarding what the amenities would be for Pebble Creek homeowners?

A. I don't recall what they told me, other than just looking at what was in the covenants we have.

Q. Did they tell you Pebble Creek would have its own amenity center someplace?

A. Not to my knowledge, no.

Q. Were you ever given a copy of the golf course use agreement which provided discount golf course membership rates?

A. I never saw the golf course agreement before I purchased my home. Never was aware of it.

Q. Are you aware that there is such a golf course agreement signed between Sunbelt and Plantation Golf?

A. I believe it's a multi-party contract. Well, wait a minute. The golf course agreement, if that's what we're referring to.

Q. Not the golf course deed.

A. The golf course agreement.

Q. There are two -- are you aware of the agreement between Sunbelt and Plantation providing for Pebble Creek homeowners to have discount use -- discount memberships and use of the golf course?

A. No.

Q. Were you aware of the second agreement which provides for other homeowners in the PUD to have discount access?

A. No.

Q. Were you aware that R. Doug Brown, when signing on the golf course, the parking lot agreement, personally obtained a golf course membership?

A. Mr. Jarmuth, you're asking questions about matters that occurred in 2003 before any of us were here, that nobody on the current HOA board or any HOA board with members, the homeowners had any part or knowledge of.

Q. What year did you install that fountain in the pond next to the amenity center?

A. 2011.

Q. Isn't the easement you're talking about part of that parking lot agreement?

A. It's part of the golf course agreement.

Q. Is that the same agreement which gave the HOA the second parking lot?

A. The HOA was only given one parking lot as part of that agreement, but I think the other one was originally part of the original parcel deed.

Q. Is the agreement you're talking about the same one which provides for reduced golf course assessments?

A. I only know the one agreement, and it did have reduced golf course assessments, yes.

Q. So is it true that you've read that agreement?

A. Yes.

Q. Isn't it true that that agreement gave Arthur Brown, personally, a free golf course membership?

A. It may have. I'm not recalling -- I know there were memberships in there for various parties.

Q. Isn't it true that Arthur Brown worked for Horton?

A. Sure.

Q. Isn't it true that Horton got additional free golf course memberships for resale or gift -- to purchases of some of those houses?

A. I only know what's in the agreement, and it discussed golf course memberships.

Q. Didn't it also give Horton, as a consequence of the forgiveness of money owed to the HOA, free use of facilities at the golf course clubhouse?

A. I think they could use the clubhouse at that time.

Q. Didn't this represent a conflict of interest between Arthur Brown, given he was an employee of Horton?

A. I'm not sure.

Q. Was Arthur Brown an officer of Horton's local branch?

A. I have no idea. That was events, like, in 2003, probably.

Q. Didn't Arthur Brown thus have an indirect interest in the transaction because he was an employee of Horton and Horton received material benefits?

A. Again, I don't know if there was a conflict of interest.

Q. I'm going to cite Section 33-31 -- 831 of the statute directed at conflict of interest which says, "For purposes of this section, a director of a corporation has an indirect interest in a transaction if another entity in which the director is an officer or trustee, is a party of the transaction or another entity in which director has a material interest or its director is an employee, is a party to the transaction."

MS. THOMPSON: Is that a question?

BY MR. JARMUTH:

Q. Do you believe, given this statute, that there is a basis for the HOA to be challenging that agreement?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I do not know that there's a basis for challenging the agreement, but I believe there's a lot of reasons not to.

BY MR. JARMUTH:

Q. Would you be able to give an estimate over the years of approximately how much the golf course has saved by having that assessment reduction?

A. Not offhand. I think it could be calculated.

Q. Would you agree in the order of magnitude at least well over $100,000?

A. I think so.

Q. If, in transferring the parking lot from the golf course to the HOA, the deed filed with the county said the value of the parking lot was $5,000, do you see reason to dispute that official document?

A. I see reason to dispute the dollar amount of

the value of the parking lot, and I see reason to dispute that that was the only thing transferred of value.

Q. What else was transferred of value from the golf course to the HOA?

A. We got --

Q. Beyond the parking lot.

A. Right. We got two pond easements, the right to use two pond easements. We got water rights that were far below market rate. And had we not engaged in those water right agreements far below market rate, the homeowners association would probably have had to drill at least one and probably two wells, probably $25,000 each, and pay the ongoing operation of those. So we saved a lot of infrastructure investment through the watering agreement. And the watering agreement is quite reasonable for the amount of water we use. We saved a lot on it. Always, every year.

Q. Can you explain why Horton was entitled to any benefit from reduction of the assessments from the golf course?

A. I believe that that's a question that would be best answered by Horton as to why that was done.

Q. Before the HOA can grant an assessment

reduction to any property owner, does the HOA board have to vote its approval to make that change?

A. I don't believe the HOA boards that I know has ever granted an assessment.

Q. Do you have authority, as president of the HOA today, to grant an individual homeowner a reduction in their assessment schedule?

A. No, I don't.

Q. Then explain how Arthur Brown had the authority, given the minutes of the board failed to show that the board ever voted to approve that contract.

A. Say the last part of that again.

Q. The minutes of the board show that at the time the board talked about that contract and took it under consideration, but there's no record they ever approved it.

A. I believe there was a conversation earlier than that time that related to board members.

Q. Would such an approval or such a contract agreement require a vote by the board?

THE DEPONENT: I -- go ahead.

MS. THOMPSON: I'm going to object to the form.

THE DEPONENT: I believe that there was

a vote of the controlling interests in the association before DR Horton arrived on the scene, and that it was the same entity that owned both the golf course and the land, and that the reason it was done was that the golf course was struggling, that the sales of golf course memberships and lots were going slow and that the original developer, who controlled both the land for the homes and the land for the golf course, wanted to ensure -- thought that it was in the best interest of all to have homes that had a working golf course next to them and...

BY MR. JARMUTH:

Q. How do you explain the discrepancy between what the board did approve, which was the forgiveness of the November and December assessments of that year, I think it's 2003, versus what Arthur brown actually signed?

A. I think there were a number of discussions over a period of at least a year once there had -- once it was felt that there should be a step reduction for the golf course. And I believe that over that time, that their view of what the agreement should be changed.

Q. Doesn't the law require that all decisions of the board be reflected in the written minutes of the board?

A. I believe there were some written minutes. I don't know if they were board minutes or not. They said International Club Homeowners Association, though, on the top.

Q. Actually, they said International Club Property Owners Association. And for the record, I want to state -- and I've already provided you copies of -- I've provided the attorney for the Defendant a complete set of board minutes as found. And for the record, I will state that the board only approved for the forgiveness of the November and December assessments that year.

MS. THOMPSON: Mr. Jarmuth, is that a question?

MR. JARMUTH: I'm putting it on the record --

MS. THOMPSON: Okay.

MR. JARMUTH: -- since Mr. Freiboth was talking about discussions -- do discussions constitute decisions of the board?

MS. THOMPSON: The purpose of the deposition is for you to ask questions, so

please continue.

BY MR. JARMUTH:

Q. Do these discussions constitute decisions of the board?

A. Discussions of the board?

Q. You said there were discussions.

A. Discussions of the board can go on for some time before decisions are made. And discussion is just that. Until there's an agreement, the discussion and the form of what the agreement can be is still evolving.

Q. Isn't it a fact that the practice of your board is that whenever a decision of the board is made, your minutes shows who voted "aye" and who voted "nay" and what matter was voted on?

A. Of my board?

Q. Your board.

A. You mean the one since 2010?

Q. Any board you've been a member of.

A. This is the board that I've been a member of. And if it's a -- if it's a board meeting, such as a quarterly board meeting or an annual members meeting, we do tally the votes.

If a decision is made between board meetings that could constitute an action equivalent to a

board meeting, it has to be a unanimous vote. There's -- one means the other.

Q. And is such a decision reflected in minutes of that decision?

A. If there is such a decision at a quarterly -- at a board meeting or between meetings with a unanimous vote, it is documented, yes, and reflected, according to the rules, both Corporation and Nonprofit Corporation Act.

Q. And if there is no record, the -- then that -- the board approved that contract, what's the conclusion about the approval of the board on the contract?

MS. THOMPSON: Objection to the form.

THE DEPONENT: I believe --

BY MR. JARMUTH:

Q. I'll post it a different way.

A. Are you talking about the golf course?

Q. I'll rephrase it. Did the HOA board, any HOA board, ever specifically, on the record, in the minutes, approve that golf course agreement/contract?

A. That I don't know. I know that the board agreed to do it.

Q. Can you explain why none of the documents

provided to me by your counsel reflect such a decision?

A. The only agreement I saw that is separate from that, I didn't see until about a -- two months ago. And it was in a stack of papers that was given to me that no one had ever seen before.

Q. Well, do you know which month that was?

A. Charlie gave it to me.

Q. Was that November, December of 2011? Which month?

A. I would have...

Q. January 2012?

A. Well, it was before the January meeting, but it was after -- well, all of your depositions, I'm sure, the ones where you came in and looked at documents here.

Q. So it was after October 3rd?

A. I guess so.

MR. JARMUTH: Is counsel going to provide me those documents?

MS. THOMPSON: Can you please repeat what you're seeking? Because I missed it.

MR. JARMUTH: Mr. Freiboth has just stated that he came into possession of discoverable documents which relate to the

matters at hand after October 3rd. And my question is, is counsel going to provide me copies of those documents?

MS. THOMPSON: I believe that we provided you copies of all the documents. I don't know specifically what he's speaking of, so we need to go back. But based on my memory, I looked at what was provided to me by Mr. Freiboth and we had already given it to you, okay?

MR. JARMUTH: October 3rd. But he stated, just now on the record, he received, since then new relevant documents. I'm asking you, as part of continuing discovery, when are you going to give me copies of those documents?

MS. THOMPSON: I've done supplemental production since your October 3rd review. I have given you what I have. I will go back and make sure that there isn't anything else, okay?

THE DEPONENT: I'm not sure about the date, but what I'm explicitly referring to is a meeting in 2002.

MS. THOMPSON: I gave you those

minutes; you have them.

BY MR. JARMUTH:

Q. Are you talking about the minutes of a meeting?

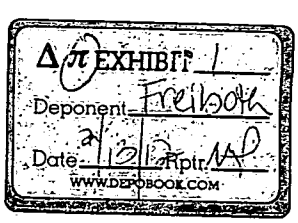
A. Yep.

MR. JARMUTH: We're done.

THE DEPONENT: All right. Thank you.

(The deposition concluded at 5:30 p.m.)

Balance per RJ	Payment		Charges			Balance per HOA
	Date	Amount	PACS	Master	Fine	
$15.00	1/28/2010					$15.00
	1/30/2010	55.00	55.00	0.00		
	2/27/2010	55.00	55.00			
	3/30/2010		55.00			
	3/30/2010			99.00		
	3/30/2010	154.00				
	4/30/2010	55.00	55.00			
	5/30/2010	55.00	55.00			
	6/1/2010			where'd the $15 go?		0
$55.00	6/3/2010	*40.00*		where'd the $40 go?		
	6/28/2010	154.00				
$55.00	6/30/2010		55.00	99.00		
	7/28/2010	55.00				
$55.00	7/30/2010		55.00			
	8/27/2010	55.00				
$55.00	8/30/2010		55.00			
	9/27/2010	155.00				
$55.00	9/30/2010		55.00	99.00		
	9/29/2010	50.00		Entered 10/12		
$56.00	10/1/2010		By whose authority?		50.00	
	10/28/2010	55.00		Entered 11/02		
$56.00	10/30/2010		55.00	Fend Appeal 10/11		
$56.00	10/25/2010				100.00	
$56.00	11/26/2010	55.00				
$56.00	11/30/2010		55.00			
$56.00	11/24/2010				100.00	
	12/28/2010	154.00				
$56.00	12/30/2010		55.00	99.00		
	12/27/2010				100.00	
	1/25/2011				100.00	
	1/27/2011	88.00				
$56.00	1/30/2011		60.00	28.00		
	2/25/2011				100.00	
	2/27/2011	88.00				
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	3/25/2011				100.00	
	3/28/2011	88.00				
$56.00	3/20/2011		60.00	28.00		
	4/29/2011	88.00				
$56.00	4/30/2011		60.00	28.00		
	5/2/2011				100.00	
	5/25/2011				100.00	
	5/28/2011	88.00				
$56.00	5/30/2011		60.00	28.00		
	6/29/2011	88.00				
	6/25/2011				100.00	
	6/30/2011		60.00	28.00		
	7/25/2011				100.00	
	7/28/2011	88.00				



South Carolina Secretary of State
Mark Hammond's Office

Customer Receipt

Receipt Number: 319554
Printed on 9/8/2008 2:46:58 PM
Operator ID: RGAFFNEY
Submitter Name:
PUBLIC

Charges

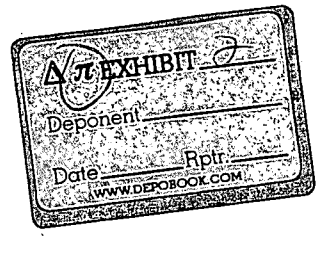
COC-COPIES, CERTIFIED		
Filed Date: 09/08/2008 02:46:57 PM		
Recording Fee		$3.00
No of Pages	3	$1.00
	Subtotal:	$4.00

Payments

Check #2222	$4.00

Totals

Total Charges	$4.00
Total Payments	$4.00
Balance	$0.00



Jim Miles
SECRETARY OF STATE
FILED
MAR 0 1 2001
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Page 1 of 3

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is International Club Home Owners Association

2. The initial registered office of the nonprofit corporation is 11883 Plaza Drive (Street Address)
Murrells Inlet (City) Horry (County) South Carolina (State) 29576 (Zip Code)

The name of the registered agent of the nonprofit corporation at that office is

Ken Grover (Print Name)

I hereby consent to the appointment as registered agent of the corporation.

X _____ (Agent's Signature)

3. Check "a", "b", or "c" whichever is applicable. Check only one box:

a. ☐ The nonprofit corporation is a public benefit corporation.

b. ☐ The nonprofit corporation is a religious corporation.

c. ☒ The nonprofit corporation is a mutual benefit corporation.

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

SEP 0 8 2008

SECRETARY OF STATE OF SOUTH CAROLINA

4. Check "a" or "b", whichever is applicable:

a. ☒ This corporation will have members.

b. ☐ This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

11883 Plaza Drive (Street Address) Murrells Inlet (City) Horry (County) South Carolina (State) 29576 (Zip Code)

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated

FILED

JAN 9 2003

SECRETARY OF STATE $

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OR BOTH OF A SOUTH CAROLINA OR FOREIGN CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following information.

1. The name of the corporation is Hilton National Club Homeowners Association, Inc

2 The corporation is (complete either a or b, whichever is applicable):

a. a domestic corporation incorporated in South Carolina on 3/1/2001; or

b. a foreign corporation incorporated in _____ (State) on _____ (Date), and authorized to do business in South Carolina on _____ (Date).

3 The street address of the present registered office in South Carolina is 11883 Plaza Dr (Street & Number) in the city of Hilton Head Island, South Carolina 29926 (Zip Code).

4 If the current registered office is to be changed, the street address to which its registered office is to be changed is 115 Mount Park #5 (Street Address) in the city of Hilton Head Island South Carolina 29926 (Zip Code)

5 The name of the present registered agent is Ken Glover

6 If the current registered agent is to be changed, the name of the successor registered agent is N/A - Civil Associates.

* I hereby consent to the appointment as registered agent of the corporation:

Phillip A Duke
Signature of New Registered Agent

7. The address of the registered office and the address of the business office of the registered agent, as changed, will be identical.

8. Unless a delayed date is specified, this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended.

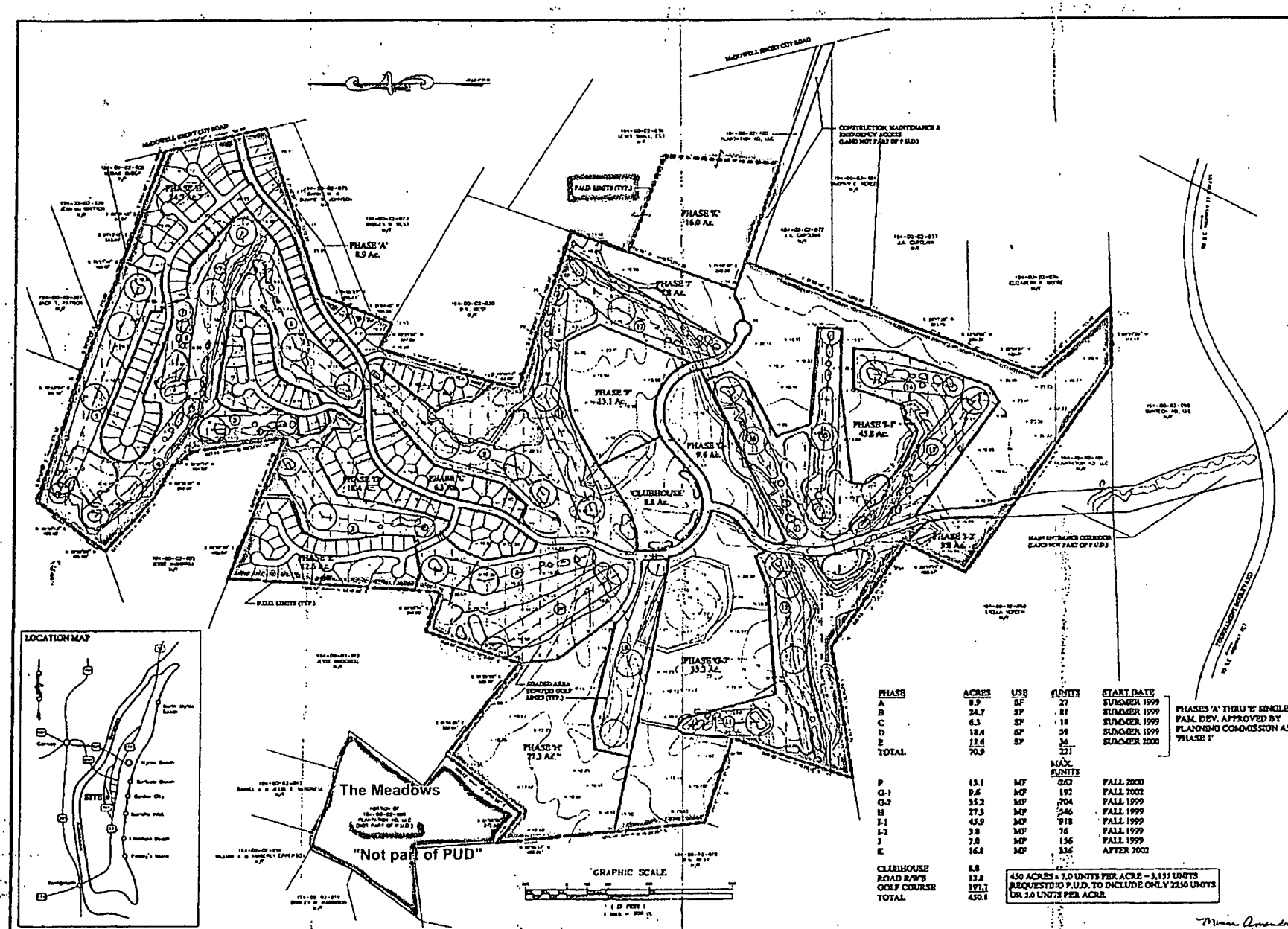
*Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws, as amended, the written consent of the registered agent may be attached to this form.

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

JAN 09 2003

03-003770CC

SECRETARY OF STATE OF SOUTH CAROLINA



PHASE	ACRES	USE	#UNITS	START DATE
A	8.9	SF	27	SUMMER 1999
B	24.7	SF	81	SUMMER 1999
C	6.3	SF	18	SUMMER 1999
D	18.4	SF	59	SUMMER 1999
E	12.6	SF	36	SUMMER 2000
TOTAL	70.9		221	

PHASES 'A' THRU 'E' SINGLE FAM. DEV. APPROVED BY PLANNING COMMISSION AS 'PHASE 1'

			MAX. #UNITS	
F	43.1	MF	280	FALL 2000
G-1	9.6	MF	192	FALL 2002
G-2	35.2	MF	704	FALL 1999
H	77.3	MF	546	FALL 1999
I-1	45.9	MF	918	FALL 1999
I-2	3.8	MF	76	FALL 1999
J	7.8	MF	156	FALL 1999
K	16.8	MF	336	AFTER 2002
CLUBHOUSE	8.8			
ROAD R/W'S	13.8			
GOLF COURSE	197.1			
TOTAL	450.8			

450 ACRES x 7.0 UNITS PER ACRE = 3,153 UNITS
REQUESTED P.U.D. TO INCLUDE ONLY 2250 UNITS OR 5.0 UNITS PER ACRE

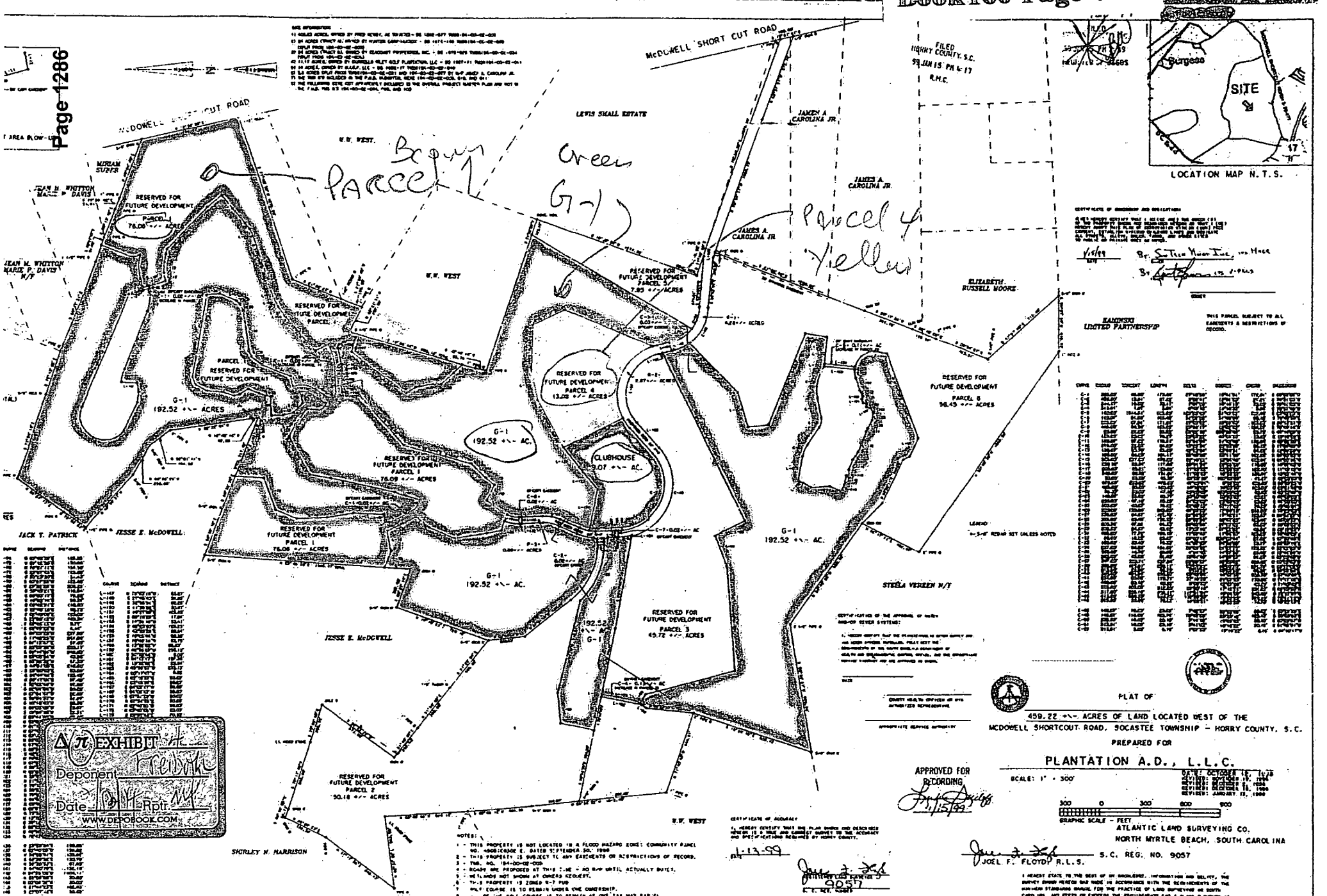
Castles Consulting
Engineers, Inc.
DOZIER / FLOYD LAND SURVEYOR

LANTANA P.U.D.
REVISED MASTER PLAN (PLAT 1)
(formerly known as Murrells Inlet Golf Plantation)
HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR PLANTATION AD, LLC

SHEET NUMBER 1 OF 1

Minor Amendment approved 3-14-99
M. Dill

EXHIBIT 3
Deponent Rebecca
Date 3/13/14 Rptr
www.DEPOBOOK.COM



PLAT OF

459.22 +/- ACRES OF LAND LOCATED WEST OF THE McDOWELL SHORTCOUT ROAD, SOCASTEE TOWNSHIP - HORRY COUNTY, S.C.

PREPARED FOR

PLANTATION A.D., L.L.C.

SCALE: 1" = 300'

DATE: OCTOBER 15, 1998
REVISED: JANUARY 13, 1999

GRAPHIC SCALE - FEET
300 0 300 600 900

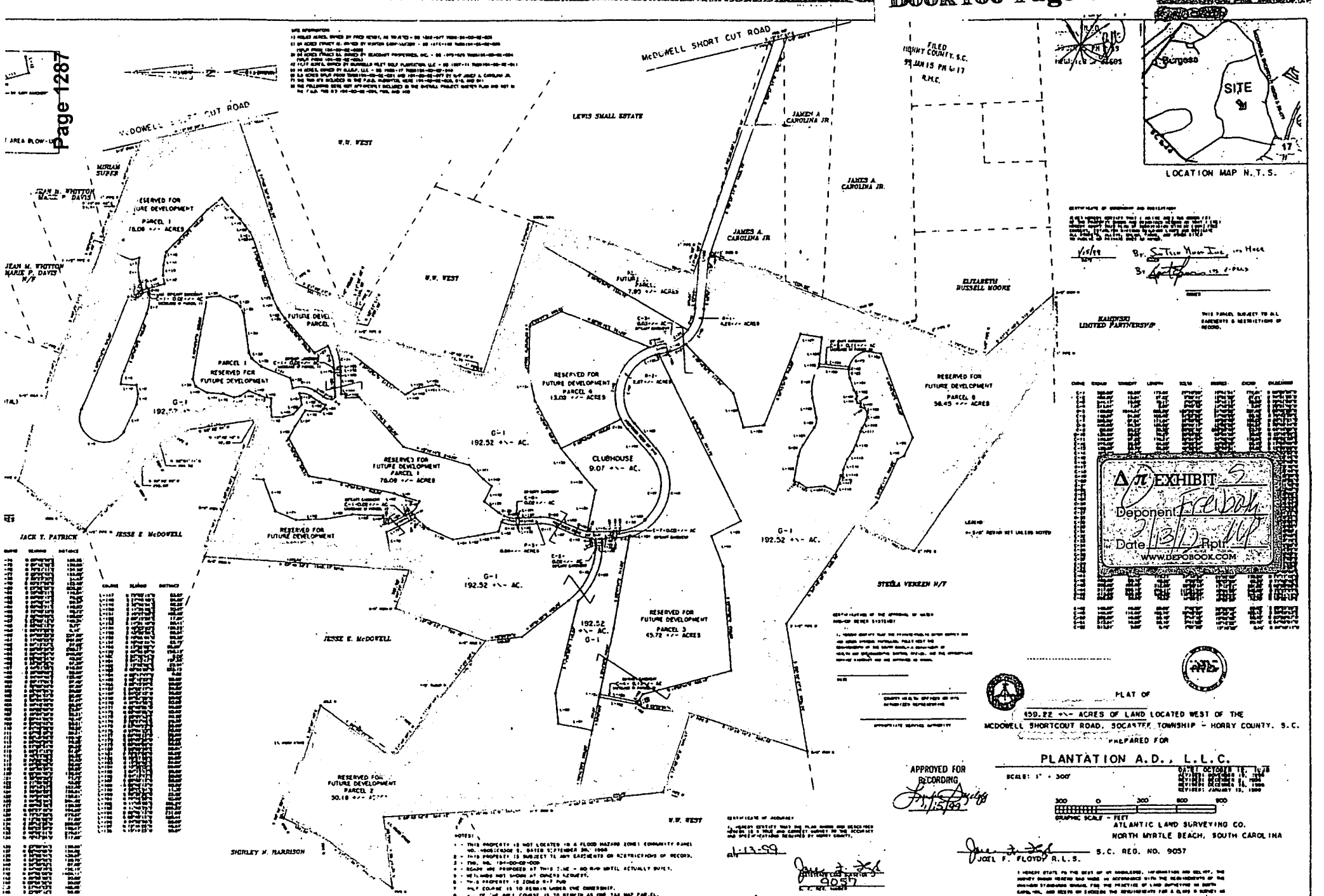
APPROVED FOR RECORDING
1/15/99

ATLANTIC LAND SURVEYING CO.
NORTH MYRTLE BEACH, SOUTH CAROLINA

JOEL F. FLOYD R.L.S. S.C. REG. NO. 9057

1-13-99
JOEL F. FLOYD
9057
S.C. REG. NUMBER

NOTES:
1. THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD ZONE: COMMUNITY PANEL NO. 450018 0005 E, DATED SEPTEMBER 29, 1988
2. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.
3. TMS. NO. 194-00-02-0005
4. ROADS ARE PROPOSED AT THIS TIME - NO R/W UNTIL ACTUALLY BUILT.
5. WETLANDS NOT SHOWN AT OWNERS REQUEST.
6. THIS PROPERTY IS ZONED R-1 PUD
7. GOLF COURSE IS TO REMAIN UNDER ONE OWNERSHIP.
8. ... OF THE GOLF COURSE IS TO REMAIN AS ONE TAX MAP PARCEL.



PLAT OF

450.22 +/- ACRES OF LAND LOCATED WEST OF THE McDOWELL SHORTCOUT ROAD, SOCASTEE TOWNSHIP - HORRY COUNTY, S.C.

PREPARED FOR

PLANTATION A.D., L.L.C.

SCALE: 1" = 300'

DATE: OCTOBER 16, 1998
REVISED: OCTOBER 16, 1998
REVISED: DECEMBER 14, 1998
REVISED: JANUARY 15, 1999

GRAPHIC SCALE - FEET

ATLANTIC LAND SURVEYING CO.
NORTH MYRTLE BEACH, SOUTH CAROLINA

JOEL F. FLOYD R.L.S. S.C. REG. NO. 9057

APPROVED FOR RECORDING
1/5/99

1-13-99

S.C. REG. NO. 9057

NOTES:
1. THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD ZONE (COMMUNITY PANEL NO. 450013 0005 E, DATED SEPTEMBER 29, 1988).
2. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.
3. TAX NO. 191-00-02-009
4. ROADS ARE PROPOSED AT THIS TIME - NO R/W UNTIL ACTUALLY BUILT.
5. WETLANDS NOT SHOWN AT OWNERS REQUEST.
6. THIS PROPERTY IS ZONED G-1 PUD
7. GOLF COURSE IS TO REMAIN UNDER ONE OWNERSHIP.
8. ... OF THE GOLF COURSE IS TO REMAIN AS ONE TAX MAP PARCEL.

1/5/99 By: S. Thomas Hunt, Inc. its Mgr.
By:

THIS PARCEL SUBJECT TO ALL EASEMENTS & RESTRICTIONS OF RECORD.

189-154

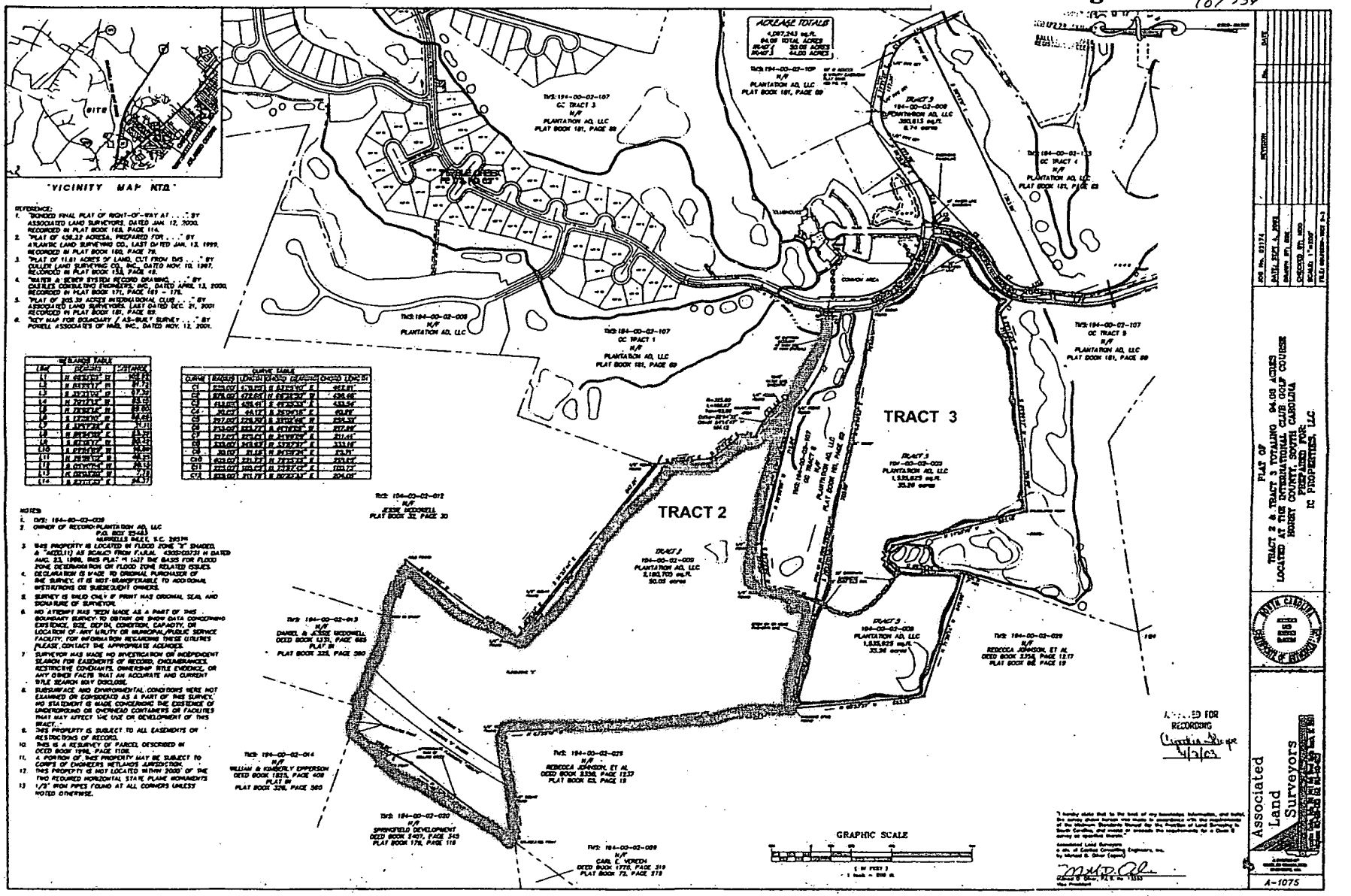


EXHIBIT 6
Deponent
Date Rptr
WWW.DEPOBOOK.COM

INTERNATIONAL Club Homeowners Association

~~K.A. Dichl Assc. Inc~~ Page 1289

Name of Corporation

Date 1/1/12

K.A. Dichl Assc Inc

Name of Corporation

Kellie A Dichl

Signature

Kellie Dichl President

Type or Print Name and Title

FILING INSTRUCTIONS

1 Two copies of this form the original and either a duplicate original or a conformed copy must be filed.

2 Filing Fee (payable to the Secretary of State at the time of filing this document) – $10.00

3 Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of ~~Laws, as amended,~~ the registered agent can file this when the only change is the street address of the registered office. In this situation, the following statement should be typed on the form above the registered agent's signature: "The corporation has been notified of this change." In this case the filing fee is $2.00.

Return to: Secretary of State
P O Box 11350
Columbia, SC 29211

exclusively for such purposes.

b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

_____

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

back to the association

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

This organization is a Homeowners Association.

9. The name and address of each incorporator is as follows (only one is required)

Name	Address	Zip Code
Ken Grover	11883 Plaza Drive Murrells Inlet	SC 29576

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

Name (Only if named in articles)	Signature of director

11. Each incorporator must sign the articles.

X _____
Signature of incorporator

_____
Signature of incorporator

_____
Signature of incorporator

South Carolina Secretary of State
Corporation Details

Corporation Information

Corporation Name: INTERNATIONAL CLUB HOME OWNERS ASSOCIATION

Name Type: ELE **Status:** GDS **Profit/Non-Profit:** N **Domestic/Foreign:** D

Corp EMail:

Agent Name: K A DIEHL & ASSOC

Address1: 9751 MOOSE PARK #8

Address2:

City: MURRELLS INELT **State:** SC

Zip 29576 0000 **Incorporated State:** SOUTH CAROLINA

Agent EMail:

Original Filing 03/01/2001

Effective Date: 03/01/2001

Expiration Date:

Dissolved Date:

Termination Date

LLP Renewal Date:

Tax Year End:

Corporation Comment:

Filing Information

File ID	Filing Date	Filing Type	Description	Comment	Associated Name	Microfilm ID
01-010374CC	03/01/2001			NONPROFIT INCORPORATION		
03-003770CC	01/09/2003			CH AGT/ADD FR-KEN GROVER		

Associated Names Information

Associated Name	Associated Type	Corporation Name	Name Type	Status	Expiration Date
INTERNATIONAL CLUB HOME OWNERS	INC	INTERNATIONAL CLUB HOME OWNERS ASSOCIATION	ELE	GDS	

Effective Date: 09/08/2008 14:46:12

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

RONALD JARMUTH,

Plaintiff,

vs.

CIVIL ACTION NO.
2009-CP-26-3596

THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC., ROSEMARY TOTH AND K.A. DIEHL & ASSOCIATES,

Defendants.

DEPOSITION OF: RONALD SCOTT PYLE

DATE: Friday, February 17, 2012

TIME: 2:38 p.m. through 4:23 p.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina

TAKEN BY: The Plaintiff

COURT REPORTER: TERESA J. F. BAUTZ
Registered Professional Reporter

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF (PRO SE):

RONALD JARMUTH
249 Pickering Drive
Murrells Inlet, South Carolina 29576
(843) 314-4355

REPRESENTING THE DEFENDANT:

McNAIR LAW FIRM, P.A.
BY: ALICIA E. THOMPSON, ESQUIRE
Founders Centre, Suite 206
2411 Oak Street
Myrtle Beach, South Carolina 29577
Office: (843) 443-3058
Fax: (843) 443-9137
E-mail: athompson@mcnair.net

I N D E X

Examination	Page	Line
BY MR. JARMUTH	4	11

E X H I B I T S

Plaintiff Exhibits

Exhibit	Description	Page	Line
Pyle-1	Deed Book 169, page 79	11	23
Pyle-2	Revised Master Plan, Plat 1	13	9
Pyle-3	Horry County Preliminary Submittal	22	23
Pyle-4	Golf Course Membership Rights Agreement	27	12
Pyle-5	Developers Agreement	33	9
Pyle-6	Amendment one to declaration of covenants	43	25
Pyle-7	Letter of intent dated 7/31/98	54	15

STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * *

RONALD SCOTT PYLE, being first duly sworn, testified as follows:

EXAMINATION

BY MR. JARMUTH:

Q. Please state where you live.

A. Myrtle Beach.

Q. Do you have an address?

A. 150 White Dove Lane, Myrtle Beach, South Carolina, 29579.

Q. Were you at one time the president of Plantation or other organizations whose names began with Plantation?

A. I was not.

Q. What was your past relevance to Plantation A.D.?

A. I'm the president of ABD Development, Inc., which was a member of Plantation A.D., LLC at some point.

Q. Can you say where Plantation A.D., LLC got its property from which became the PUD?

A. I'm sorry, can you say that again.

Q. From whom did Plantation buy the property which together became the PUD?

MS. THOMPSON: Mr. Jarmuth, just for the record, Scott has not been involved in this case. He probably doesn't know what you're talking about when you say PUD.

MR. JARMUTH: Planned unit developments.

THE WITNESS: Okay.

MS. THOMPSON: But which one?

BY MR. JARMUTH:

Q. The International -- the Murrells Inlet Golf Plantation.

A. Okay.

Q. Were you involved in any way in negotiations with Horry County to get approval for that as a PUD?

A. No.

Q. What was your involvement with Plantation A.D.?

A. Completely? As stated before, ABD Development was a member Plantation A.D., LLC. ABD

Development acted as a member of Plantation A.D., attended meetings, talked with potential developers who wanted to buy land, talked with potential golf course owners that wanted to buy a golf course, dealt with banks, general issues like that.

Q. Did you sign the covenants for the Murrells Inlet Golf Plantation?

A. Did Scott Pyle sign the covenants or did ABD Development?

Q. Did R. Scott Pyle sign the covenants of the Murrells Inlet Golf Plantation?

A. Can I see the document? Thank you.

MR. JARMUTH: For the record, I'm showing him the contents of the Murrells Inlet Golf Plantation.

THE WITNESS: R. Scott Pyle as president of Suntech Management, Inc. signed Plantation A.D., LLC's document.

BY MR. JARMUTH:

Q. Is that you?

A. Am I R. Scott Pyle?

Q. Yes.

A. Yes. But I did not sign this personally, I signed it as president of Suntech Management.

Q. You are the signatory on the covenants?

A. I am.

Q. What is your knowledge -- what is the extent of your knowledge of those covenants for which you signed?

A. I had general knowledge of the document, designed and put together by our law firm.

Q. Could I have that back.

A. Are you going to keep asking questions? Can I keep this to refer to questions?

Q. Yeah, sure. Did you sign other covenants in that same capacity?

A. I may have. I may have signed it in the capacity of Suntech Management. I may have signed it in the capacity of ABD Development as a member of International Club.

Q. What is the relationship between Plantation A.D., Suntech Management and ABD?

A. As I said before, ABD Development, Inc. was a member of Plantation A.D., LLC of which I am the president of ABD Development. Suntech Management, Inc. for a season was the management company for Plantation A.D., LLC.

Q. Did you also sign the letter of intent between Plantation A.D. and the Highway 17 Road Maintenance Association?

A. Is it Mr. Jarmuth, sir?
Q. Yes.
A. This is 13 years ago. If you have a document, if you could refer to the document would be much easier for me to answer the question.
Q. Did you have a hand in the decision making of agreements of sale of property of Plantation A.D. to subsequent developers?
A. Can you clarify that.
Q. Did you get a vote or did people have to talk to you before property of Plantation got resold?
A. If Plantation A.D., LLC sold a tract of land, there would have been a vote.
Q. And would you have any votes?
A. If I was at the meeting.
Q. And who would have been in the meeting on behalf of AD?
A. If I was not at the meeting and there was a quorum, they could vote without ABD's vote.
Q. Were you entitled to such a vote?
A. Excuse me?
Q. Were you entitled to such a vote?
A. I'm sorry?
Q. Were you entitled to such a vote?

A. Yes, sir.

Q. Were you part of the discussions regarding what the PUD would consist of or its general plan of development?

A. What PUD?

Q. The Murrells Inlet Golf Plantation.

A. Can you restate it again, your question.

Q. The Horry County ordinances regarding development of planned unit developments or subdivisions consisting of more than four houses require that the developer on certain plans which have to be presented before the Planning Commission will approve it.

Did you have a role or were you asked for a voice in what the answers to those questions which features of the PUD might be?

A. Do you have a copy of the PUD agreement?

Q. Here's a copy of the Planning Commission approval documents.

A. Is this on file with the County?

Q. Yes, it is. That's where I got it from, by FOIA, F-O-I-A.

A. Does anyone have a magnifying glass?

MS. TOTH: You can use my glasses, if that will help.

MS. THOMPSON: Let me go see if Donna has one.

THE WITNESS: This document was received in 1997. Is this the document you're referring to?

BY MR. JARMUTH:

Q. That is a collection of all the documents received by the Planning Commission beginning there through the last approval document for the PUD including updates as recently as 2003. When The Glens --

A. My involvement would have been after we purchased the property.

Q. Which would have been when?

A. I don't remember the date.

Q. Do you recall the name Fred Newby?

A. I do.

Q. Who is he?

A. He's an attorney.

Q. And on December 5th, 1997, didn't Plantation A.D. purchase 406.63 acres from Fred Newby?

A. Okay.

Q. Were you involved at that time?

A. What date?

Q. December 5, 1997.

A. Yes.
Q. On that same day, Plantation A.D. purchased four tracts of land in Socastee Township from the Murrells Inlet Golf Plantation, LLC. Who are they?
A. Say the name of that company again.
Q. Murrells Inlet Golf Plantation, LLC.
A. Who are they?
Q. Yes.
A. That is an organization that we bought land from.
Q. On December 22, 1998 were you involved?
A. Yes.
Q. What was the 9.79 acres you purchased that day from Stella Star Vereen?
A. Do you have a map with all the acreage on it of the entire development?
Q. That's the PUD.
A. It's -- I believe it is tax map number 1940002101.

MR. JARMUTH: I'm going to provide the deponent and ask be marked for identification deed book 169, page 79.

(PLF. EXH. Pyle-1, Deed Book 169, page 79, was marked for identification.)

BY MR. JARMUTH:

Q. That is the plat referred to in the covenants declaring the PUD in the covenants.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. Okay. Let me restate it. Book 169, page 79 is referred to in the deed for the property to Plantation A.D. And this plat reflects that it was prepared for Plantation A.D. on January 13, 1999, having been filed that date with the recorder of deeds.

MS. THOMPSON: Is that a question?

MR. JARMUTH: He asked for a plat of the property.

MS. THOMPSON: Okay. So this is what you're saying was objected to, the covenants by Exhibit A, or --

MR. JARMUTH: No, that's not. He asked for what was the property being referred to.

MS. THOMPSON: And?

MR. JARMUTH: According to this, he signed this list on the property.

THE WITNESS: It's not complete.

BY MR. JARMUTH:

Q. What's missing from that plat?

A. Well, that was my question. Because my

memory of 13 years ago, I need a map of all the property in the development.

Q. That is all the property in the development.

A. Okay.

Q. Let me provide you another document.

MR. JARMUTH: I'm going to have marked for identification the next exhibit which is Exhibit B to the covenants.

(PLF. EXH. Pyle-2, Revised Master Plan, Plat 1, was marked for identification.)

BY MR. JARMUTH:

Q. This per the covenants is the out of bounds of what can be incorporated in the PUD and what the planning commissioner said -- that reddish line comprises the PUD. I notice by inspection that excludes a bump-out area in the lower left which is now today referred to as The Meadows, and which per Exhibit B the Planning Commission said is, quote, "not part of PUD," end quote.

MS. THOMPSON: Just for the record, Mr. Jarmuth, that quote on Pyle Exhibit No. 2, "not part of PUD," is that something that you noted on there?

MR. JARMUTH: It's the little type on the last line of that type there.

MS. THOMPSON: You typed that there?

MR. JARMUTH: I retyped that so you could read it.

MS. THOMPSON: Okay. That's what I'm just clarifying.

MR. JARMUTH: And I used the word Meadows Highland so people would see where the --

MS. THOMPSON: I mean, you added the names of the neighborhood as well?

MR. JARMUTH: Yes.

MS. THOMPSON: Okay, thank you. Did you also add the red, yellow and green lines on there?

MR. JARMUTH: Yes, I did.

MS. THOMPSON: Okay, thank you.

MR. JARMUTH: They reflect the dash lines which were put in by the Planning Commission which say, PUD boundary.

MS. THOMPSON: Okay. So what's the question for Mr. Pyle?

MR. JARMUTH: I asked him about the land which was obtained from Stella Star Vereen, is that 9.79 acres part of that PUD?

MS. THOMPSON: Sir, are you asking him

what parcel did they acquire as reflected on the map, being Exhibit 2?

MR. JARMUTH: I have a list from the recorder of deeds of all the land acquired by Plantation A.D. during that time period. And it's very confusing about what was acquired from whom. And as an officer of the entity, I'm asking Mr. Pyle to help us understand those transactions.

MS. THOMPSON: You have to ask him a question, though. I haven't heard a question.

MR. JARMUTH: I asked him if that was part of the PUD.

MS. THOMPSON: If what was part of the PUD?

MR. JARMUTH: The 9.79 acres.

MS. THOMPSON: I'm going to object to the form.

THE WITNESS: I would say you have to ask the County what's part of the PUD. I...

BY MR. JARMUTH:

Q. Now, did you have a role in talking to the Planning Commission in asking that the PUD be the area that he ultimately adopted?

A. No, sir.
Q. Yet you signed the covenants which said, as Exhibit A and B, what was in the development?
A. I signed the covenants.
Q. Did that signature apply also to the Exhibit A and B of which that's part?
A. Can you restate, please, the question.
Q. Did your signature incorporate the Exhibit A and B which was filed as part of that covenant filing?
A. Exhibit A and B is attached to the document.
Q. Exhibit C was the bylaws of the Murrells Inlet Golf Plantation Association. Do you recall those bylaws?
A. I do not see Exhibit C.
Q. To help you, I'm letting you see my copy of Exhibit C.
A. Can I have a copy?
Q. That's the one we've got.
A. Can we take a time out and I go get my reading glasses out of my car?
Q. If that will help you.
A. These are too strong. Thank you, though.
(A recess transpired from 2:59 p.m. through 3:03 p.m.)

(The Court Reporter read back the requested testimony.)

THE WITNESS: I recall bylaws.

BY MR. JARMUTH:

Q. What was the name of the organization for which those are supposed to be the bylaws?

A. All on the top of the document. Do you want me to read the document to you?

Q. Just the name of the document.

A. Exhibit C.

Q. Bylaws of?

A. Do you want me to keep reading?

Q. Yes, please.

A. Bylaws of Murrells Inlet Golf Plantation Association, Inc. Number one, introduction.

Q. Thank you, that's enough. Did you have any hand in the incorporation of that organization?

A. Murrells Inlet Golf Plantation?

Q. Homeowners association. That's a nonprofit corporation bylaws.

A. The legal team we hired put together these documents, yes.

Q. And you signed the whole package which included Exhibit C, and you are the only signatory on the whole package of the covenants?

A. Yes, I signed this document.
Q. What efforts did you take to actually incorporate the Murrells Inlet Golf Plantation Association?
A. My attorneys would have done that.
Q. So that's six years at least, no such organization was incorporated?
MS. THOMPSON: Object to the form.
THE WITNESS: Can you restate the question.
BY MR. JARMUTH:
Q. Can you explain why no such organization was incorporated for at least six years after you signed that document?
A. As a developer, you set up a structure for the development for bylaws and for covenants to protect the value of your property. And then you sell the property to get the value out of it. And then you allow the associations to form their corporations.
Sometimes the developer does, sometimes the homeowner does. I've been involved in many, many developments. I cannot remember the exact details of a transaction 13 years ago.
Q. What, if anything, is your familiarity with

the South Carolina Nonprofit Corporation Act?

A. Nonprofit Corporation Act?

Q. Yes.

A. Other than what you just said, very little.

Q. Were you ever the declarant or incorporator of any nonprofit corporation or HOA for this PUD?

A. You keep speaking you. Scott Pyle, individually, was never on any document personally. I always acted under ABD Development, Inc., which I'm the president of. ABD Development, Inc. acted as a member of Plantation A.D., LLC, and we had management companies and many members and attorneys that were involved in this process.

Q. Can you identify what Suntech Management, Inc. was.

A. I've answered that already.

Q. Can you repeat your answer.

A. Yes. Suntech Management, Inc. was a management company for the International Club and other developments for a season of time.

Q. And what was your relationship to it?

A. I was the president.

Q. And what was Plantation Golf A.D., LLC?

A. An LLC in South Carolina.

Q. What was the relationship between them and

Plantation A.D., LLC?

A. Plantation Golf bought the golf course footprint as in the development known as the International Club.

Q. Was it your intent that they, the golf course, were to be part of that overall development?

A. I mean, I just answered that.

Q. Could you repeat your answer.

A. Plantation Golf A.D., LLC was an LLC in South Carolina that was formed to purchase the footprint of land and build a golf course in the development known as the International Club.

Q. Was it your intent that that golf course was to be a part of and not separate from the PUD?

A. I cannot remember.

Q. In January or February of 1999, did you in fact represent both Plantation A.D., Plantation Golf, in that sale you just mentioned?

A. Did I represent both?

Q. Yeah.

A. No, sir.

Q. Did you have any capacity for Plantation Golf?

A. Scott Pyle, again, no, sir.

Q. Who owned Plantation Golf?
A. It changed ownership over the years.
Q. Immediately after the sale, who owned Plantation Golf?
A. I would have to look at the records, sir. I can't remember what partners owned what when.
Q. Did your A.D. have an ownership interest in it?
A. Oh, yes, sir, ABD Development had an ownership interest in Plantation Golf, A.D., LLC.
Q. Now, looking at the plans for the PUD which is in front of you, I'm unable to find anything other than the clubhouse as location for amenities, yet Horry County ordinances require the developer provide amenities to the PUD.

What was your plan and what did you tell Horry County was to be used to satisfy the requirement to provide amenities to the PUD?

MS. THOMPSON: Object to the form.

THE WITNESS: I'm not sure I understand your question.

BY MR. JARMUTH:
Q. Horry County, prior to approval of a subdivision, required that the proponent of the plan tell them what the amenities were going to be,

and required them to have amenities. Yet on the plan submitted to and approved by Horry County I don't even see a clubhouse. Was that to be the amenities for the PUD?

A. Sir, I told you, I was not a part of the company that initially submitted this PUD document.

Q. Did you have an ownership interest in it for A.D.?

A. Not at that time, I did not.

Q. When did you?

A. You just read when we bought the land, in December 1997, and this is February 1997.

Q. Let's turn to the last page of that package.

A. Which package?

Q. The Planning Commission documents.

A. Yes.

MS. THOMPSON: Just for the record, we're looking at the Lantana PUD, revised master plan, part one.

MR. JARMUTH: I'm going to have the whole thing marked for identification.

MS. THOMPSON: Can we do that now.

(PLF. EXH. Pyle-3, Horry County Preliminary Submittal, was marked for identification.)

BY MR. JARMUTH:

Q. On the bottom of the document it says, May 14, 1999 approved by Planning Commission?

A. It says -- you didn't read the whole thing. It says, something M-I -- can you read that? You're not reading the whole --

MS. THOMPSON: You have to read it.

THE WITNESS: You have to read -- it says, minor amendment approved 5/14/99, M. Todd.

BY MR. JARMUTH:

Q. Yes. On May 14th, 1999 did ABD have any ownership interest in any part of the PUD or the golf course?

A. Yes. But let me go back to your previous question. This Murrells Inlet Golf Plantation PUD was received at Horry County on February 4th, 1997. If you go back to your previous question, this was before our ownership. Revisions were made after our ownership.

Q. I'm going to repeat what I said for the record. This package is the complete package of PUD approvals which the Planning Commission gave me pursuant to FOIA in -- sometime after 2009. It does not represent the documents filed on the first

day of the first document. Now, please answer the question.

A. What was the question?

Q. On May 14, 1999, did ABD, or you derivatively, have any ownership interest in any of the parts of the land shown on this --

A. I answered that question.

Q. -- plat?

THE WITNESS: Read the answer back, please.

(The Court Reporter read back the requested testimony.)

THE WITNESS: Thank you.

BY MR. JARMUTH:

Q. On May 14th, 1999, this planning commission approved plat shows that the only amenities which had been stated for the PUD was the clubhouse, dead center on that plat.

Was it your plan or your company's plan that this be the amenities for the PUD to satisfy the County's requirement to provide amenities for the PUD?

MS. THOMPSON: Objection to form.

THE WITNESS: Your question is incorrect to the facts of the very document

you've given me. The third document shows an amenity center next to the existing club site. So if you received this from the County, this document shows on the same site where they were approved -- the County was approving The Glens, that there is an amenity center approved next to the existing club site. You can see the outline --

BY MR. JARMUTH:

Q. Who did you form -- please focus only on the document presented to you.

A. You said that --

MS. THOMPSON: Objection. Mr. Jarmuth, Mr. Pyle is trying to answer your question providing you with an answer. You said this whole thing was admitted to PUD.

MR. JARMUTH: That's right.

MS. THOMPSON: He's trying to show you that the amenity center was reflected on the packet that was submitted.

BY MR. JARMUTH:

Q. The page saying The Glens was part of a Planning Commission document approved at least no earlier than 2003. Were you part of the project in 2003?

A. Yes.
Q. Were you part of the package in 2004?
A. I don't believe I was.
Q. Were you related to D.R. Horton?
A. I was not.
Q. This package called Glens was submitted by D.R. Horton after they purchased the land from Plantation A.D. Were you involved in the sale of land to Horton?
A. Yes.
Q. Did your involvement end with the sale of land to Horton?
A. No.
Q. What was your involvement after that?
A. We still had interest in other tracts of land.
Q. Was it only the enclaves and the fairways?
A. What is the enclaves and the fairways?
Q. To the top of Exhibit B.
A. Can I go back to your question?
Q. Yes.
A. Your question was, in this package --
Q. That wasn't my question.
A. Okay. Restate your question.
Q. My question was on May 14th, 1999, very

specific, what amenities were you providing for the PUD, having observed that the only amenities shown on the planning commission approved plat was the clubhouse?

A. In 1999 -- is this an approved PUD document?

Q. It is.

A. Then it must have been satisfied with the County.

Q. Sometime --

MR. JARMUTH: I'm going to mark for identification another document.

(DFT. EXH. Pyle-4, Golf Course Membership Rights Agreement, was marked for identification.)

MS. THOMPSON: Just one second, please.

(Off-the-record conference.)

BY MR. JARMUTH:

Q. For the record, I have marked for identification provided to the deponent --

A. Can I have one second, please. Okay, thank you.

Q. We had marked for identification provided to the deponent a document titled, Golf Course Membership Rights Agreement, dated January 19, 1999, which is prior to the previous document which

was dated May 14, 1999.

A. Is this Pyle-4 you're speaking about? I'm sorry, at the bottom, is this it, sir? Okay.

Q. It's the book 2112, page 0192 of the deed books --

A. Okay.

Q. -- of Horry County.

A. Thank you.

Q. This is from Plantation A.D. by Suntech Management, Inc. At the time were you an officer of Suntech Management, Inc.?

A. I was.

Q. Do you recognize who the vice-president of Suntech was at the time?

A. I do.

Q. Who was that, please?

A. Ken Grover.

Q. What was the purpose of this golf course membership rights agreement?

A. I would have to read the document to tell you that. Do you want me to read the full document?

Q. Not out loud.

A. Does the document not speak for itself?

MS. THOMPSON: You have to answer his

question.

THE WITNESS: So what's the question?

BY MR. JARMUTH:

Q. Why did Suntech on behalf of Plantation A.D. execute this golf course membership agreement with Plantation -- why did they execute this golf course membership agreement on behalf of the various property owners, Exhibit B being the homeowners in the Murrells Inlet Golf Plantation?

MS. THOMPSON: Objection to the form.

THE WITNESS: Do you have the maps that go along with this agreement?

BY MR. JARMUTH:

Q. (Indicating.)

A. Which ones?

Q. It refers to the plats you've been shown, specifically Plantation Exhibit B refers to the land at book 169 page 79.

MS. THOMPSON: 169 at 79. That's Exhibit No. 1.

THE WITNESS: It appears to offer the right to participate in a golf course membership program for people who live on the Kaminski tract.

BY MR. JARMUTH:

Q. Is it also for the people living in Exhibit B in the Murrells Inlet Golf Plantation?

A. I don't know.

Q. Does the "now therefore" paragraph also refer to the fact that homeowners of the Plantation tract golf course property have already been granted those rights?

A. What rights?

Q. To use the golf course facilities which Plantation A.D. owned that day.

A. Where do you see use?

Q. The right to purchase and own golf membership rights or play privileges for the golf course to be built on the Plantation tract golf course property.

A. Where did you read that?

Q. On the now therefore, page one.

A. Right, the right to purchase.

Q. And own.

A. The right to purchase.

Q. How is this different from an optional membership in a country club tied to a PUD in other developments?

A. This was specifically for the people of this tract of land because some golf courses stop

offering memberships when it gets to a certain number. And this gave anyone that ever bought land in this area the right to purchase a golf course membership. They could not be locked out.

If the country club got to, say, 500 members and one of these homeowners came over, they could not keep them from purchasing a membership. That's all this was for.

Q. Wasn't an also identical membership agreement signed with Sunbelt owned by Charles Flynn for Pebble Creek?

MS. THOMPSON: Objection to form.

THE WITNESS: Yes. Do you have that agreement?

BY MR. JARMUTH:

Q. Not with me at the time. Was this used to satisfy the amenity requirement of the Horry County Planning Commission?

MS. THOMPSON: Again, objection to the form.

BY MR. JARMUTH:

Q. I'll rephrase. Was there any other amenities other than this made available to the homeowners in the PUD?

A. Yes.

Q. What?
A. On your piece of paper.
MS. THOMPSON: You're referring to Exhibit No. 3?
THE WITNESS: That says The Glen's 47 town home house units, formerly phase G-1, on file with the County, it shows the amenity center.
BY MR. JARMUTH:
Q. And I'm going to repeat that is not a satisfactory answer, because that was filed by Horton years after this transaction.
A. Do you have the agreement between Charles Flynn and Plantation A.D., LLC? Restate that question, please, the last question.
THE WITNESS: Will you read it back.
(The Court Reporter read back the requested testimony.)
THE WITNESS: Sir, my answer is still yes, and it's referred to right here.
BY MR. JARMUTH:
Q. Did any of your companies deed that property to the HOA?
A. Do you have the history of the land -- the deed history to this tract of land?

Q. Yes, I do. Was deeded by Horton to the -- it was deeded to the HOA.

A. There is your answer.

Q. But not by Plantation.

A. So I answered your question, was there amenities offered, yes.

MR. JARMUTH: I would like to have marked for identification another document.

(DFT. EXH. Pyle-5, Developers Agreement, was marked for identification.)

MS. THOMPSON: Pyle Exhibit 5?

BY MR. JARMUTH:

Q. A document that is marked Pyle-5 for identification is titled, Developers Agreement, between Sunbelt Associates, LLC, and Plantation, LLC. It's dated the 16th of May, 2003. Can you please read the paragraph which is the third whereas on page one.

A. Whereas Sunbelt is a party to a contract with Plantation, wherein they agreed among other things to share in the cost of constructing an amenity center and entrance to the International Club. But no amenity center or entrance has been constructed as contemplated by said contract.

Q. Thank you.

A. I would like to also read page two from your document. That says, Improvements. Paragraph A, amenity center. DRH will construct or cause to be constructed an amenity center on that certain parcel of real property shown as parcel D on a plat of International Club Golf Course prepared by Associated Land Surveyors for Plantation Golf AD dated December 21st, 2002 and recorded June 2nd, 2002 in plat book 189, page 89, in the office of the Horry County ROD, hereafter the amenities site.

Q. Was it the purpose of this agreement to step in because your company Plantation had failed to honor its contractual agreements to build that amenity center?

MS. THOMPSON: Objection to form.

THE WITNESS: I don't remember that to be the cause.

BY MR. JARMUTH:

Q. In 2003 were you the defendant in at least several lawsuits in Horry County?

A. I was not.

Q. Was Plantation A.D. the defendant?

A. It was.

Q. Was Suntech the defendant?

A. Possibly.

Q. Could you explain why when I examined the records of Horry County Court of Common Pleas, I found you as a defendant in a foreclosure and breach of contract regarding this property?

A. Scott Pyle?

Q. Yes. R. Scott Pyle.

A. Say that again.

Q. Isn't it true that you were the defendant in breach of contract and foreclosure proceedings in 2003 related to these properties?

A. From who?

Q. Wasn't McNair Law Firm the plaintiff's counsel in that lawsuit? Was Henrietta Golding the counsel in that lawsuit?

A. She may have named me a defendant, but I was -- there is nothing on record showing that her claim against me was true.

Q. The question was were you named as a defendant in breach of contract and foreclosure proceedings related to this property?

A. If you say so. But I would like to further explain I've been named a defendant in other things, but nowhere on the County records does it show I was guilty of any such act, or my entities.

Q. Doesn't this document relate that Sunbelt and D.R. Horton had canceled the contract dated September 2nd, 1998 about which they were suing you all, so you were then free from your obligations?

A. No, sir.

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. What was the contract dated September 2nd, 1998?

A. Where is the lawsuit by D.R. Horton and Sunbelt?

Q. It's in the Horry County Court of Common Pleas records.

A. Do you have a copy of that?

Q. Didn't think I needed to bring it today.

A. You brought it up.

Q. Besides researching background --

MS. THOMPSON: Mr. Jarmuth, you ask the questions. Mr. Pyle, please answer his questions, okay.

BY MR. JARMUTH:

Q. The question before us right now is what is the real estate contract which involves Plantation A.D. dated September 2nd, 1998?

A. Where is that?

Q. The bottom of page one. One, contract with Plantation A.D.

MS. THOMPSON: Is your question what does that paragraph mean?

MR. JARMUTH: No.

BY MR. JARMUTH:

Q. It was please explain that contract.

A. Do you have a copy of the contract?

Q. I subpoenaed you and Sunbelt and Horton for that contract, and no one seems to have it. So in a deposition we then ask the questions of their signatories to that contract about it. And Plantation was represented by you.

A. I did not sign this. I did not sign this agreement.

Q. No, you didn't. But this was dated in 2003 when you represent you were still involved.

A. I was involved, but I did not sign this agreement. I was -- again, ABD Development, Inc. was a member of Plantation A.D., LLC, in a very active and very large development. I was not a party in my capacity to this agreement.

Q. In 1998 did any of the companies which you were involved have any representation capacity for Plantation on September 2nd, 1998?

A. I cannot remember my capacity for every organization on a date -- on one day in 1998. If you have the document, I would be able to speak to it.

Q. Isn't that contract the one which caused the lawsuit against you to be dropped?

MS. THOMPSON: Objection to the form.

THE WITNESS: I'm sorry, I can't remember -- what was the date?

BY MR. JARMUTH:

Q. This agreement was May 16th, 2003.

A. No.

Q. It's releasing your company from the contract of September 2nd, 1998 for which your companies have been sued for breach of contract.

MS. THOMPSON: Objection to the form.

THE WITNESS: Is that a question?

BY MR. JARMUTH:

Q. My question is what is the nature of the September 2nd, 1998 contract with Plantation A.D. for which you had representative capacity at that date?

A. I cannot remember every agreement from 1998. I need to see the agreement that you're asking me questions about.

Q. Yet somehow you can remember that this amenity center for which Sunbelt and Horton contracted to build for this Plantation, had not built it, was somehow satisfying your obligations of three years earlier?

A. No. Because --

MS. THOMPSON: Objection to the form.

THE WITNESS: Can I -- I can --

MS. THOMPSON: You have to ask questions.

MR. JARMUTH: I am asking questions.

THE WITNESS: No, there's no question.

MS. THOMPSON: You need to ask a question. You can't make statements on the record and expect for Mr. Pyle to respond to your statements.

BY MR. JARMUTH:

Q. On May 14th, 1999, does that plat show the amenity center you're talking about next to The Glens?

MS. THOMPSON: Exhibit No. 2. Exhibit No. 2, Scott; is that what you're looking at? This one.

THE WITNESS: On this plat?

BY MR. JARMUTH:

Q. Yes.
A. What is the question?
Q. Where on that plat is the amenity center that you referred to on the other document which shows The Glens?
A. I think you would have to ask the County. They approved the PUD, they must have had the information for amenities.
Q. So you're saying somehow it's missing from that but should have been there?
A. No. I'm saying it's built exactly where we said it would be built. It's standing there today. We can go out and take pictures of it, and I can point exactly right under clubhouse, 8.8 acres, there's an amenity center there today.
Q. Did your corporation pay a single cent towards its construction?
A. Our company negotiated with D.R. Horton and Charles Flynn to make sure that the obligation to have an amenity center was completed.
Q. Was it the obligation of any of the corporations that you represented, was it those companies' obligation you represented to build amenities?
A. It was our opinion, I don't know if it was

an obligation, that there should be amenities there. And we were a part of seeing the amenities put together and built on the site that you can go out today, swim in the pool and walk in the clubhouse.

Q. Did your company, did any of your companies have any hand in designing that amenity center?

A. Yes.

Q. What was that role?

A. I can't speak specifically to that role.

Q. How would you have knowledge of that?

A. I can remember conversations about how we would have the golf school and how we would have room for the homeowners to come in and use the facility, and also where the parking and how the pool would be situated best with the -- I remember conversations specifically to that type of stuff.

Q. Did you have a hand in laying out the parking for the amenity center then?

A. Our company did.

Q. Can you explain why Horry County, when the amenity center was submitted for a building permit -- an occupancy permit, excuse me, why the County said it was inadequate parking to grab an occupancy permit?

A. I could not. You would have to ask the County.

Q. Was that the error of your designers or the error of Horton's designers?

MS. THOMPSON: Objection to form.

THE WITNESS: Can you ask that again.

BY MR. JARMUTH:

Q. Did Horton use your plans for the amenity center complex? You just testified you had a hand in designing the --

A. I testified that our companies were around in conversations. You said a hand, that's such a vague statement. Be more specific for me, please.

Q. Did your company do anything in establishing the specifications for the amenity center complex?

A. Our company had a hand at drawing the property line.

Q. Did it actually do anything for what was going to happen within those property lines?

A. Other than our opinion about the design, no.

Q. Isn't that contradictory of what you said a few minutes ago regarding the pool and the amenity center building?

A. Speak it.

THE WITNESS: Will you please reread my

answer.

(The Court Reporter read back the requested testimony.)

THE WITNESS: There is your answer.

BY MR. JARMUTH:

Q. In May of 2000, amendment one to those covenants was filed. Did you have any role in drafting up amendment one to the covenants which you previously were the exclusive signatory on?

A. Can I see that document. It was signed by Kenneth Grover, vice-president of Suntech Management.

Q. Did you have any involvement in drafting that amendment?

A. Our attorneys drafted all amendments.

Q. Did you have any role in the approval of a document after it was prepared by your attorneys prior to its submission to the recorder of deeds?

A. I was involved in conversations. I cannot remember specifically which ones.

Q. Which of those changes reflected in this amendment were you involved in making?

MR. JARMUTH: Let's have that marked for identification.

(PLF. EXH. Pyle-6, Amendment One to

Declaration of Covenants, was marked for identification.)

MR. JARMUTH: For the record, this is amendment number one to the covenants for the PUD.

MS. THOMPSON: It's amendment one to the declaration; right, Mr. Jarmuth?

MR. JARMUTH: To the amendments of covenant for the PUD.

THE WITNESS: And your question again, sir?

BY MR. JARMUTH:

Q. Did you have any involvement at all in coming up with or approving any of these --

A. Yes.

Q. -- clauses? What was your involvement?

A. Conversations with the land owner of the multifamily land, conversations with Mr. Grover and Fred Newby, our attorney.

Q. Why was it necessary to make these changes?

A. I think the document speaks for itself. Do you want me to read you the document?

Q. No. Why did you feel it necessary to have an amendment to the covenants?

A. Point one, Murrells Inlet Golf Plantation

changed its name to International Club.

Q. Why was that necessary?

A. Because there was a name change to the International Club. It says: Wherever the name Murrells Inlet Golf Plantation appears on the declarations should now be referred to as International Club. The declarations sheet --

Q. Excuse me. Do I interpret what you said as being the golf course changed the name, so you were following the change of the golf course?

MS. THOMPSON: Objection to the form.

THE WITNESS: No, sir. This is -- this document is about the development.

BY MR. JARMUTH:

Q. You said it was necessary to change the name.

MR. JARMUTH: Could you please read back his answer regarding the name of the development.

(The Court Reporter read back the requested testimony.)

BY MR. JARMUTH:

Q. When you say there was a name change at the International Club, do you mean the International Club Golf Course which was formerly called the

Murrells Inlet Golf Course, which was formally called Plantation Golf?

A. No, sir. When I say International Club, I'm speaking to this document which is the development.

Q. Why was it necessary to change the name?

A. Sir, we bought this company, Murrells Inlet Golf Plantation, from a previous entity and had already been named. And we didn't want to keep that name. At one point the name Lantana even floated around.

Q. That's a good question.

A. That was a statement.

Q. Why when you changed the name to Lantana didn't you follow amendment one saying the name was changed to Lantana?

A. We knew Lantana wasn't going to be the final name. We just didn't want to stay with Murrells Inlet Golf Plantation in our conversations and the community.

Q. What did you mean by the word waive in the various parts of number one?

A. I'm sorry. What parts?

Q. In paragraphs 12, 11, 9, you use the word waives. What did you mean by the word waive?

A. That we waived it.

Q. What do you mean, can you give me a synonym for the word waive, an alternative word with the same meaning and effect?

A. Can you give me one?

Q. Delete.

A. No.

Q. How is that different from deleted?

A. Because I think earlier in the document we actually deleted something, and we used the word delete.

Q. How is --

A. Isn't there a delete somewhere in the document?

Q. Yes, there is, in paragraph four.

A. So in paragraph four of section 3.7 of the declarations hereby deleted in its entirety. So deleted is completely different.

Q. What do you mean when you use the word waived?

A. Waive, to not apply in this situation. How about that, yeah, to not apply in this situation?

Q. That's fine. That's fine.

A. But again, you're asking me about a document that I did not sign, that I was a part of in conversation.

Q. Fine. I'm glad you clarified that.
A. I think the entire document should speak for itself.
Q. Did you have a hand in drafting up amendments two or three to the covenants?
A. Our attorneys would draft documents. Sometimes I was involved, and sometimes I was not.
Q. Would you say that these amendments were boiler plate amendments you used in your other developments?
A. No, sir.
Q. How was the original covenants a custom covenants for the PUD?
A. As I stated earlier, we bought this development from another development company that had done certain documents, had named the development.
And so we made changes not only to the names but to the length of the golf course there was changes that were made. So the attorneys make sure that the homeowners are protected, and they file certain documents.
Q. What professional licenses did you hold since 1998?
A. I have a multitude of licenses, Series 7,

63, 65.

Q. Of what profession?

A. Financial services.

Q. Do you hold any professional licenses in the design of developments?

A. No, sir. That's why we employ engineers, designers and attorneys to do such things, the professionals.

Q. Are you saying that your professional licenses are within the realm of accountancy?

A. No, sir.

Q. Do you hold any professional licenses from the State of South Carolina?

A. Yes, sir.

Q. What are they?

A. Life, health, disability and financial advisory.

Q. What's your educational background?

A. I have a BBA in finance and general business.

Q. Approximately how many homes did any of the companies you are associated with actually build and/or sell in the PUD?

A. Specifically just this one?

Q. In this PUD which started out as the

Murrells Inlet Golf Plantation.

A. I believe the only structure we built was the clubhouse, or had a hand in building was the clubhouse. Our plan was to sell to other builders and developers and for them to build out the development.

Q. When you sold property to Horton, you reserved land at the top of that...

A. What number?

Q. On the top of the document called Lantana PUD.

A. I'm sorry, what number?

MS. THOMPSON: It's two, you're looking at it.

THE WITNESS: I reserved land where?

BY MR. JARMUTH:

Q. In that top pump-out and above the golf course, there across the top?

A. I'm sorry, where?

Q. I'm pointing to the Lantana plat, the area within the boundaries of the PUD but top most.

A. Okay.

Q. When you sold property to D.R. Horton, you excluded from inclusion by what in the covenants, that land, what was your plan for the use of that

land?

A. That land had already been sold to a developer, and that land was not for sale when D.R. Horton -- I believe, what year did we sell D.R. Horton, sir?

Q. 2003.

A. What month?

Q. Can't say.

A. On or about that same time, we had another developer purchasing that other tract of land. That's why D.R. Horton was not negotiating to purchase that land.

Q. Where did Kaminski or Kaminski 17 fit into your development scheme?

A. Scheme?

Q. Well, your activities.

A. Kaminski 17 owned the tract of land that is now the main entrance for the International Club. The entrance prior to us negotiating with Kaminski 17 would have been off McDowell Shortcut, which was a dirt road at the time. So our company bought additional land to make the grand entrance much more appealing.

Q. What is your recollection as to why in the -- excuse me. Did Plantation or ADB or Suntech

ever have a seat on the HOA board of directors for this PUD?

A. I would not know that answer. I personally never attended any HOA meetings.

Q. What is your recollection or knowledge as to Ken Grover's attendance at HOA meetings?

A. You would have to ask Mr. Grover.

Q. What was your theory of how you have the right to prescribe the bylaws for a nonprofit corporation which did not exist and for which you were not the incorporator?

A. I'm sorry, can you say that again.

Q. The South Carolina Nonprofit Corporation Act says that after a nonprofit corporation is incorporated, the declarant or the board of directors at the initial meeting shall adopt bylaws. By what right could you adopt bylaws for the HOA years before the HOA was incorporated?

MS. THOMPSON: Objection to the form.

THE WITNESS: You would have to ask our attorneys that. I do not know.

BY MR. JARMUTH:

Q. Didn't you sign off on the only document which recorded those bylaws, Exhibit C to the covenants?

A. I signed page 27 of the document. A document stated declarations of covenants and restrictions for Murrells Inlet Golf Plantation.

Q. After your company filed amendment one to the covenants, what actions did you take to re-index Exhibit C to any other name since you were the declarant for those Exhibit C bylaws?

A. Can you restate that.

Q. What efforts or actions did you take to re-index Exhibit C, which you are the declarant for, and some other name after amendment one, the name change was filed?

A. Did you say do you take?

Q. Did you take.

A. Did you take, I'm sorry. And after what date are you asking?

Q. Amendment one to the covenants, which you have before you there.

A. Amendment one is what?

MS. THOMPSON: Pyle-6.

THE WITNESS: Pyle-6. Here we go. Are you asking about the name change in number one?

BY MR. JARMUTH:

Q. No. I'm asking, after your company filed

amendment one, Ken Grover signing it, what efforts did your company or you personally take to re-index Exhibit C to another name since you were the one who was the declarant of those bylaws?

MS. THOMPSON: Objection to the form.

THE WITNESS: I can't remember.

BY MR. JARMUTH:

Q. Would the absence of such a re-indexing in the recorder of deeds indicate that no one ever bothered to do that?

MS. THOMPSON: Objection to form.

THE WITNESS: I wouldn't know.

MR. JARMUTH: I'd like to have another document marked for identification.

(PLF. EXH. Pyle-7, Letter of intent dated 7/31/98, was marked for identification.)

MS. THOMPSON: Pyle Exhibit 7.

BY MR. JARMUTH:

Q. I've had marked for identification a letter of intent for proposed Highway 17 Connector, dated July 31, 1998, which was signed on page six by apparently R. Scott Pyle.

Could the deponent look at page six, page number in the upper left-hand corner.

A. Yes, sir.
Q. Is that your signature on that page?
A. Twice.
Q. Who is Shore Road Partners?
A. I cannot make out the signature.
Q. No. What was this entity Shore Road Partners that was a party to that agreement?
A. I do not know at this time.
Q. But you represented Suntech AD and Plantation A.D.?
A. Yes, sir.
Q. Looking at paragraph 14, it says that if Plantation didn't buy certain property prior to the covenants of Highway 17 being signed and land being purchased by Plantation, then Plantation and Suntech are free and clear of this agreement. Is that --
A. Can you -- that's not --
Q. Paragraph 14?
A. Can we read the paragraph?
Q. Read 14.
A. Contingency. Plantation and Suntech's participation in this letter of intent and the agreement is contingent upon the sale to Plantation and Suntech of a three-acre parcel of land by

Kaminski 17 pursuant to terms mutually agreeable to Kaminski 17, Suntech and Plantation.

Should the sale of the three acres referred to herein not close by the date of the agreement, Suntech and Plantation shall have no obligation to participate in the agreement.

Q. What did you mean by that?

A. Plantation and Suntech's participation in this letter of intent and the agreement is contingent upon the sale to Plantation and Suntech of a three-acre parcel of land by Kaminski 17 pursuant to terms mutually agreeable to Kaminski 17. Suntech --

Q. If Plantation had not bought that land by that time, was Plantation any more a part of this Highway 17 project?

A. It says should the sale of the three acres referred to herein not close by the date of the agreement, Suntech and Plantation shall have no obligation to participate in the agreement.

Q. The date of the agreement was July 31st, 19 -- it was December 29th, 1988.

MS. THOMPSON: Is that a question?

MR. JARMUTH: No, I have to correct that.

BY MR. JARMUTH:

Q. The covenants for Highway 17 were filed December 29th, 1998. The land we're talking about was actually sold the following year, January 14th, 1999, months later. Did that free Plantation and Sunbelt from this project?

A. Not Sunbelt.

Q. Suntech.

A. What acreage, where's the --

Q. The acreage referred to by that contingency of paragraph 14.

A. Where is the other document you referred to; can I see that?

Q. Which other document?

A. The sale of the -- you referred to something else.

Q. I'm referring to the deed of sale of the...

MS. THOMPSON: Mr. Jarmuth, Mr. Pyle has to look at the document.

MR. JARMUTH: I'm trying to see if I have those documents with me.

MS. THOMPSON: I'm sorry. I didn't realize that.

MR. JARMUTH: I don't have that deed with me.

MS. THOMPSON: Madam court reporter, would you read back the last question.

(The Court Reporter read back the requested testimony.)

THE WITNESS: No.

BY MR. JARMUTH:

Q. How so?

A. All this is is a letter of intent. This is not the agreement. This is a letter saying eventually we'll agree, and there will be an agreement. It says in the next paragraph this is nonbinding.

So this is a document saying one day there will be a document. This is not even an agreement, it's a letter of intent to have an agreement. It's nonbinding, says it in the document.

Q. Was that your signature on that letter of intent?

A. That was my signature on this letter of intent, but it was a nonbinding -- paragraph 17 says nonbinding. This letter of intent shall not create or constitute legally binding obligations between the parties hereto, and no party shall have liability to the other with respect to this letter of intent.

Q. Looking at the original covenants, could you explain section 2.2.

A. The original covenants?

Q. Yes, the covenants.

MS. THOMPSON: It's not an exhibit.

THE WITNESS: All right, original covenants.

BY MR. JARMUTH:

Q. Can you please read section 2.2 into the record.

A. Section 2.2. The entire section, sir?

Q. Yes.

A. Plan of development of additional property. Developer hereby reserves the option to be exercised in its sole discretion to submit at any time or from time to time the additional property or a portion or portions thereof to the provisions of this declaration, and thereby to cause the additional property or a portion or portions thereof to become part of the property.

Developer reserves the right to plan, design, develop, construct, maintain, manage the common areas, the additional properties, the recreational amenities, the multi-family areas and any unsold units as developer deems necessary or

convenient for its purpose except as otherwise expressed, stated in this declaration including without limitation the right to change the number, shape, size, density of the unsold units, the common areas, the multi-family areas, the recreational amenities and the additional property.

This option to add additional property and/or separate phases thereof may be exercised from time to time from the date of the recordation of this declaration until December 31st, 2010 provided, however, the developer reserves the right to terminate such option at any time prior to the expiration of such period by executing and filing an agreement.

Q. That's sufficient. Looking at the portion you read at the top which said you have the right, does that give you the right as the developer or builder to do anything you wanted?

MS. THOMPSON: Objection to the form.

THE WITNESS: It gives me the right -- it gives the developer the rights stated in the paragraph.

BY MR. JARMUTH:

Q. Do those rights have any requirement that you get permission from anybody else before you

could plan, build, design, change, modify, construct?

A. I believe the paragraph speaks for itself.

Q. You, again, are the, in effect, author of that because you signed it?

A. Am I the author of this, no, sir.

Q. Since you're the signatory, does this reflect your intent?

A. Yes, I signed on behalf of the company, as president of Suntech Management, Inc.

Q. Can you find section 7.3 in the original covenants. Now, looking above that, there's a paragraph above 7.3. Could you read the paragraph above 7.3.

A. Do you mean section 7.29?

Q. Excuse me. I'm pointing to a paragraph that says 7.2 above paragraph 7.3 on page -- excuse me, book 2117, page 1371 of the recorder of deeds marked 17 in the covenants. Could you please read the last paragraph.

A. The Architectural Review Board shall have the right and authority to establish, amend --

Q. Please, the paragraph I pointed to.

A. This is the one you pointed to. Section 7.2 is what you would like for me to read?

Q. That one there where my finger is, the last one above 7.3.

A. Section 7.2 of this declaration shall not apply to the developer or to any designated builder unless specified to the contrary by the developer. But the developer may from time to time impose additional or supplemental use restrictions upon any property in the subdivision now or hereafter conveyed to or owned by a designated builder.

Q. Could you please explain your interpretation of that paragraph.

A. Restate the question.

Q. Why was it necessary or useful for you to have that in the covenants?

A. Because my attorney recommended it.

Q. And what would that do to aid your company?

A. I'd have to seek my counsel to find out that answer.

Q. Did that exclude the developer from having to ask any authorization to do anything?

A. Is that a question?

Q. Yeah, did is a question.

A. I'm sorry.

Q. Did that paragraph exclude the builders and developers from having to ask anyone permission to

do anything?

A. No.

Q. What?

A. You asked me the question, did that exclude them from having to ask anyone permission to do anything. And that's no.

Q. Who did they have to ask under that paragraph?

A. This county is regulated. We have to abide by certain guidelines and regulations as well as our own documents of a subdivision. So that question, the answer is no.

Q. Okay. Other than the Horry County ordinances and the plans you filed with the Planning Commission, were there any other entities you needed permission from before you could do anything per that?

A. Anything?

Q. Any --

A. Anything. I say no. That's too broad. I can't imagine that power would be so broad.

Q. Did that paragraph exclude you from being subject to the covenants for the building restrictions of the covenants?

A. This does not -- we did not build anything

other than the country club clubhouse. And we subcontracted that. Otherwise, we sold land and builders built.

Q. Were you required to get clearance or permission from anyone other than the County when you built the clubhouse?

A. I don't believe so.

Q. Thank you.

A. I'd like to expound on that answer. Plantation AD Golf built the clubhouse, not Plantation A.D., LLC.

Q. When the companies you were involved with sold the land to Horton, did that end your rights as a developer in the PUD?

A. Your question made me realize Plantation Golf actually had to get permission from Plantation A.D., LLC to the type of design they were going to do for the country club.

So back to your question. The golf course developer had to get permission for the clubhouse they were going to design and build within the neighborhood from the developer.

They couldn't just come in and build any type of country club, put up a trailer or build an 18-hole golf course that had windmills and

put-puts. They had to build it at a certain quality. So they -- they had to get permission from the developer on what they built.

Q. Were you involved at all in the deed of sale from Plantation to Plantation Golf?

A. ABD Development was an owner in both entities.

Q. Can you explain the meaning and intent of the 99-year restriction on the golf course property which is part of that deed.

A. Yes, sir. At the time we did our golf courses, there was rumor or word of other neighborhoods that homeowners had built on the golf course. The golf course was taken off line, and condominiums were being built where once was a beautiful fairway view.

And we felt it was imperative to guard the value of the neighborhood and force the owner of the golf course to make it always be a golf course for 99 years. It was to protect the value of the neighborhood.

Q. Under the agreement, could the golf course owner at some time in the future, whoever it was, take some of the golf course property and convert it to use for homes?

A. I would have to see that agreement. I do not remember the specifics.

Q. I don't think I have the deed with me. I don't. What's your explanation of the record of why there are no documents in response to my subpoena duces tecum?

A. This is so old, documents are gone. No one has documents of this. You have more documents than I've seen in six years.

Q. Thank you.

MS. THOMPSON: I have no questions.

(The deposition concluded at approximately 4:23 p.m.)

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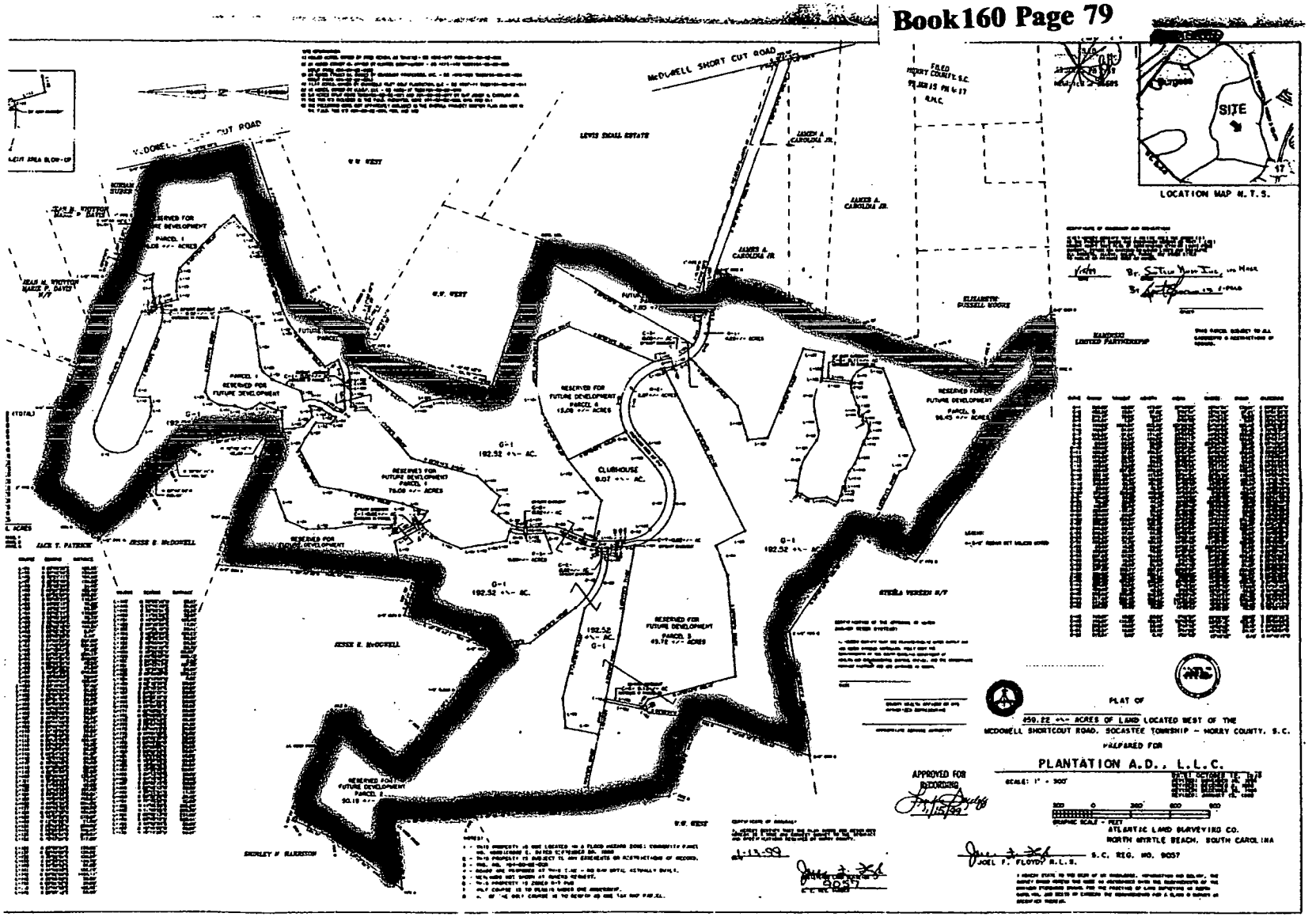
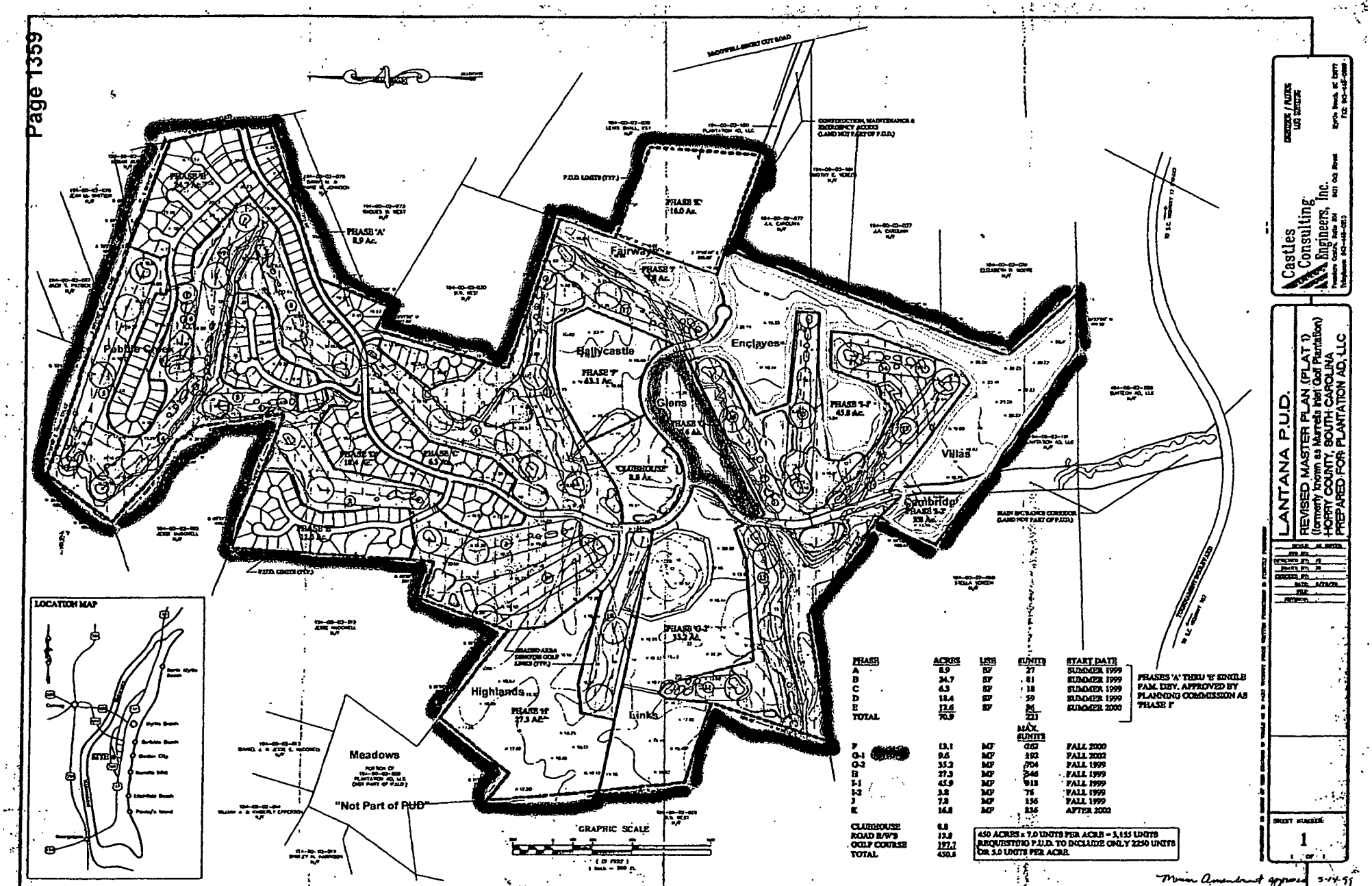


EXHIBIT
Pyle-1
2-17-12tb
ENGAD 800-631-6989



PHASE	ACRES	USE	(UNITS)	START DATE
A	8.9	SF	27	SUMMER 1999
B	24.7	SF	81	SUMMER 1999
C	6.3	SF	18	SUMMER 1999
D	18.4	SF	59	SUMMER 1999
E	12.6	SF	36	SUMMER 2000
TOTAL	70.9		221	

PHASES 'A' THRU 'E' SINGLE FAM. DEV. APPROVED BY PLANNING COMMISSION AS 'PHASE I'

			MAX. (UNITS)	
F	13.1	MF	052	FALL 2000
G-1	9.6	MF	152	FALL 2002
G-2	35.2	MF	704	FALL 1999
H	27.3	MF	546	FALL 1999
I-1	45.9	MF	918	FALL 1999
I-2	3.8	MF	76	FALL 1999
J	7.8	MF	156	FALL 1999
K	16.8	MF	336	AFTER 2002
CLUBHOUSE	8.8			
ROAD R/WS	13.8			
GOLF COURSE	197.1			
TOTAL	450.8			

450 ACRES x 7.0 UNITS PER ACRE = 3,155 UNITS
REQUESTING P.U.D. TO INCLUDE ONLY 2250 UNITS OR 5.0 UNITS PER ACRE.

Castles Consulting
Engineers, Inc.

LANTANA P.U.D.
REVISED MASTER PLAN (PLAT 1)
(formerly known as Marrels Inlet Golf Plantation)
HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR PLANTATION AD, LLC

SHEET NUMBER 1 OF 1

Main Amendment approved 5-14-99
M. Dill

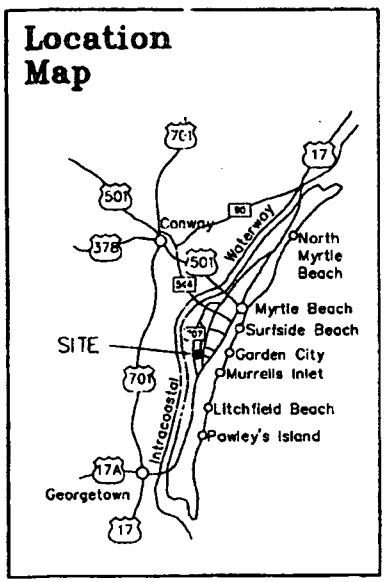
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Pyle-2
2-17-12 th

DIGGERS HOTLINE 800-631-6989

MURRELLS INLET GOLF PLANTATION
HORRY COUNTY, SOUTH CAROLINA

DEVELOPED BY:
MURRELLS INLET GOLF PLANTATION, LLC

HORRY COUNTY PRELIMINARY SUBMITTAL



1 COVER AND INDEX
2 SITE PLAN
3 PHASE 1-A,1-B SITE LAYOUT
4 PHASE 1-A,1-C,1-D SITE LAYOUT
5 PUMP STATION SITE PLAN AND DETAILS
6 STORMWATER DETAILS PLAN AND SECTION
7 SANITARY SEWER AND WATER DETAILS
8 SANITARY SEWER AND WATER DETAILS
9 MISCELLANEOUS DETAILS
10 WATER SHEDS LAYOUT
11 SEWER SHEDS LAYOUT
12 WATER AND GRAVITY SEWER PLAN AND PROFILE
13 WATER AND GRAVITY SEWER PLAN AND PROFILE
14 WATER AND GRAVITY SEWER PLAN AND PROFILE
15 WATER AND GRAVITY SEWER PLAN AND PROFILE
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23 FORCE MAIN PLAN AND PROFILE

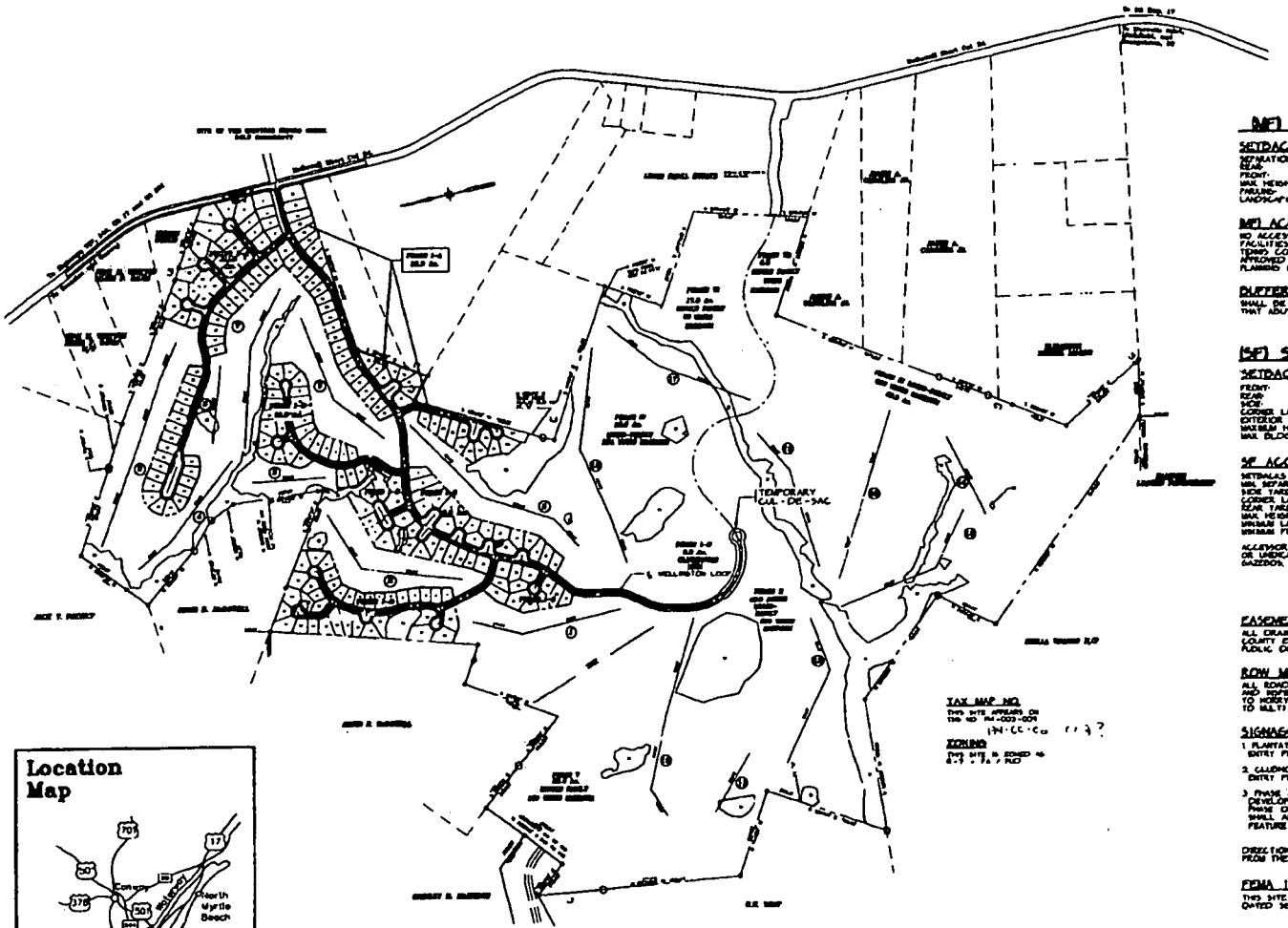
SCANNED
APR 14 2008

HOBBS, UPCHURCH & ASSOCIATES, P.A.
CONSULTING ENGINEERS
MYRTLE BEACH, SOUTH CAROLINA 29577

RECEIVED
FEB - 6 2012
HORRY COUNTY PLANNING

REVISED

PENGAD 800-631-6989
EXHIBIT
Ryle-3
2-17-12 tb



TAX MAP NO.
THIS SITE APPEARS ON TMS NO 141-00-03-004
141-00-03-004

ZONING
THIS SITE IS ZONED AS
R-1, MF-1, & MF-2 PUD

TEMPORARY
CUL-DE-SAC

[MF] MULTI FAMILY

SETBACKS:

SEPARATION:	20 (BTWN BLDG. SEPARATION)
REAR:	25' (EXTERIOR PUD REQUIRES 25')
SIDE:	
FRONT:	
MAX. HEIGHT:	50' (ABOVE FINISHED GRADE)
PARKING:	PER HORRY COUNTY PARKING REGULATIONS
LANDSCAPING:	PER HORRY COUNTY LANDSCAPE ORDINANCE

[MF] ACCESSORY STRUCTURES:

NO ACCESSORY STRUCTURES SHALL BE ALLOWED, EXCEPT FOR MAINTENANCE FACILITIES, OR AS OTHERWISE APPROVED BY DEVELOPER. ALL SWIMMING POOLS, TENNIS COURTS, OWNERS CLUB FACILITIES OR OTHER AMENITIES SHALL BE APPROVED BY THE DEVELOPER PRIOR TO SUBMISSION TO HORRY COUNTY PLANNING COMMISION FOR CONSIDERATION OF FINAL PHASE PUD APPROVAL

BUFFERS/ SCREENING:

SHALL BE A MINIMUM OF 5' NATURAL OR PLANTED VEGETATION ON ALL SIDES THAT ABUT SINGLE FAMILY PROJECTS OR EXTERIOR PROPERTY LINES.

[SF] SINGLE FAMILY PRINCIPLE STRUCTURE

SETBACKS:

FRONT:	25'
REAR:	25' (PUD LOTS REQUIRE A 25' REAR YARD SETBACK)
SIDE:	5'
CORNER LOT SIDE:	15'
EXTERIOR PUD	25'
MAXIMUM HEIGHT:	50' (ABOVE FINISHED GRADE)
MAX BLDG. COVERAGE:	30% LOT

SF ACCESSORY STRUCTURES:

SETBACKS

MIN. SEPARATION	6' (BEHIND PRINCIPLE STRUCTURE)
SIDE YARD:	5'
CORNER LOT SIDE:	15'
REAR YARD:	25' (PUD EXTERIOR LOTS REQUIRE A 25' REAR YARD SETBACK)
MAX. HEIGHT:	15' (ABOVE FINISHED GRADE)
MINIMUM LOT SIZE:	6000 SQ. FT.
MINIMUM FRONTAGE:	50' OR 35' ON CUL-DE-SACS OR CURVES

ACCESSORY USES SHALL INCLUDE COVERED OR UNCOVERED ENCLOSED OR UNENCLOSED ACCESSORY STRUCTURES SUCH AS GARAGES, STORAGE BUILDINGS, GAZEBOS, SPAS, POOLS, ELEVATED DECKS OR PORCHES

EASEMENTS:

ALL DRAINAGE EASEMENTS SHALL MEET THE MINIMUM REQUIREMENTS OF THE HORRY COUNTY ENGINEERING DEPARTMENT SPECIFICATIONS WHERE REQUIRED FOR PUBLIC DEDICATION / MAINTENANCE.

ROW MAINTENANCE:

ALL ROADS AND RIGHTS OF WAY SHALL BE DESIGNED AND BUILT BY THE DEVELOPER AND INSPECTED BY HORRY COUNTY ENGINEERING FOR THE PURPOSES OF DEDICATION TO HORRY COUNTY GOVERNMENT. THE ONLY EXCEPTIONS SHALL BE DRIVEWAYS TO MULTI FAMILY PROJECTS OR SERVICE / MAINTENANCE FACILITIES

SIGNAGE:

1. PLANTATION ENTRANCE(S) - 1000 SQ. FT. PER SIDE OF R/W OR CENTERLINE FOR ENTRY FEATURE AND SIGNAGE.
2. CLUBHOUSE SIGNAGE - 300 SQ FT PER SIDE OF R/W OR CENTERLINE FOR ENTRY FEATURE AND SIGNAGE.
3. PHASE / SUB PHASE SIGNAGE - WHERE A SECTION OF THE OVERALL DEVELOPMENT IS DESIGNED FOR THE INTENT OF CREATING A PHASE OR SUB PHASE OF THE PARENT PROJECT WITH A DIFFERENT NAME THE FOLLOWING SHALL APPLY: 50 SQ. FT PER SIDE OF R/W OR CENTERLINE FOR ENTRY FEATURE AND SIGNAGE.

DIRECTIONAL SIGNAGE OR TRAFFIC CONTROL DEVICES ARE EXCEPT FROM THESE RESTRICTIONS

FEMA INFORMATION

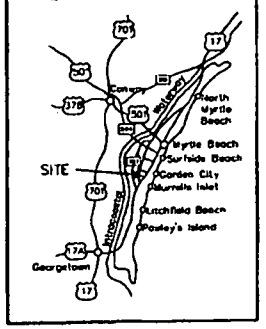
THIS SITE IS LOCATED WITHIN ZONE X AS SHOWN ON FEMA MAP # 450241 0002E DATED SEPTEMBER 30, 1986

PHASE	ACRES	# UNITS	DENSITY	USE	TIME SCHEDULE
I-A	30.0	100	3 UNITS/ACRE	SF	SPRING 1997
I-B	19.6	60	3 UNITS/ACRE	SF	SPRING 1997
I-C	5.9	18	3 UNITS/ACRE	SF	SPRING 1997
I-D	12.5	36	3 UNITS/ACRE	SF	SPRING 1997
I-E	9.3	CLUBHOUSE			SPRING 1997
II	42.8	599	14 UNITS/ACRE	MF	JANUARY 2004
III	56.9	998	17.6 UNITS/ACRE	MF	JANUARY 2007
IV	13.9	231	17.5 UNITS/ACRE	MF	JANUARY 2004
V	33.9	133	4 UNITS/ACRE	SF	JANUARY 2004
VI	17.8	53	3 UNITS/ACRE	SF	JANUARY 2007
VII	4.6	14	3 UNITS/ACRE	SF	JANUARY 2007
TOTAL # UNITS		2,249			

MURRELLS INLET GOLF PLANTATION
MURRELLS INLET, SOUTH CAROLINA
DEVELOPED BY: MURRELLS INLET GOLF PLANTATION, LLC

SITE PLAN
SCALE 1" = 400'
400' 0 200' 400' 800'

Location Map



REVISIONS

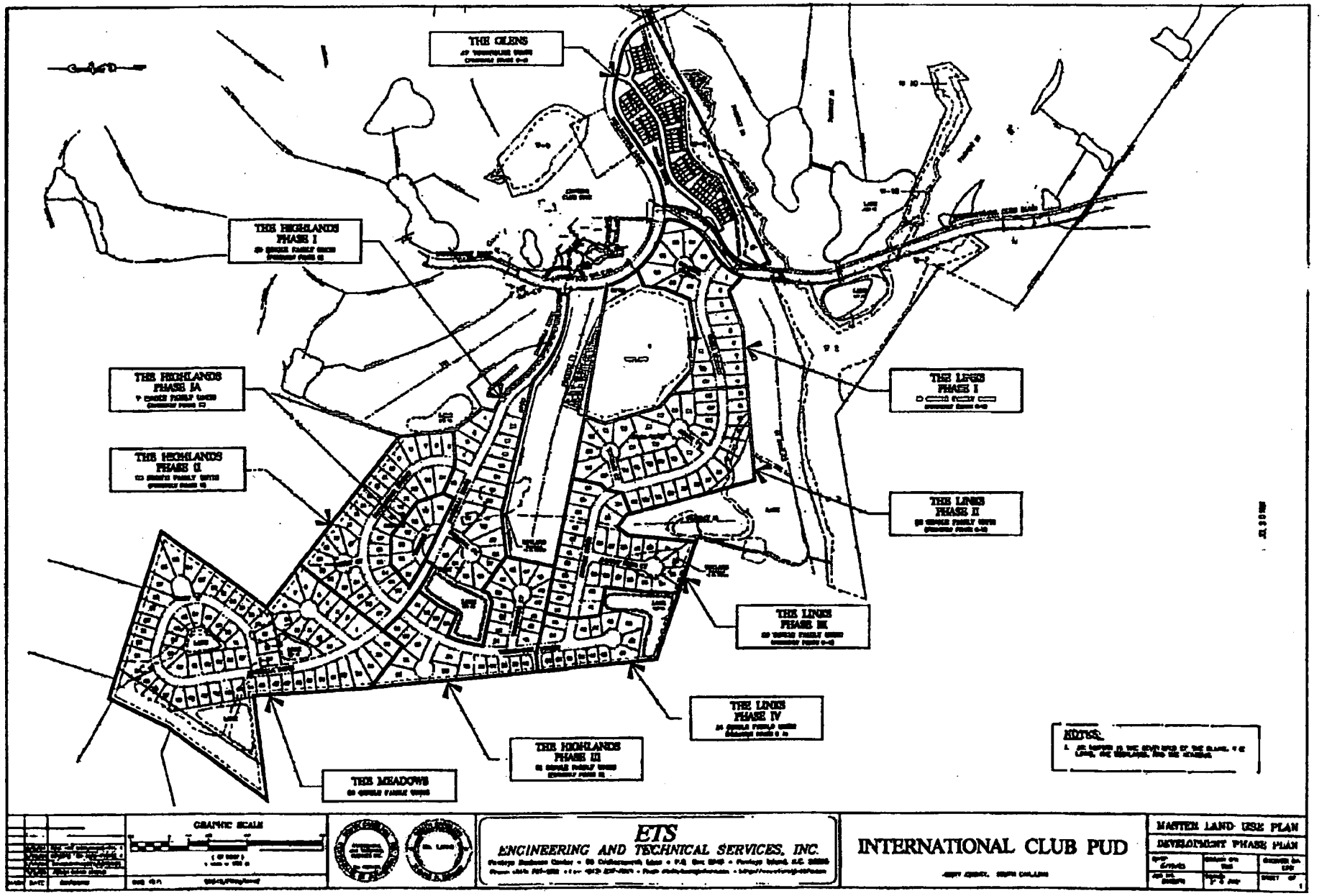
NO.	DESCRIPTION	DATE	BY

HOBER UPCHURCH & ASSOCIATES P.A.
CIVIL ENGINEERS
MYRTLE BEACH, SOUTH CAROLINA 29577

SITE PLAN

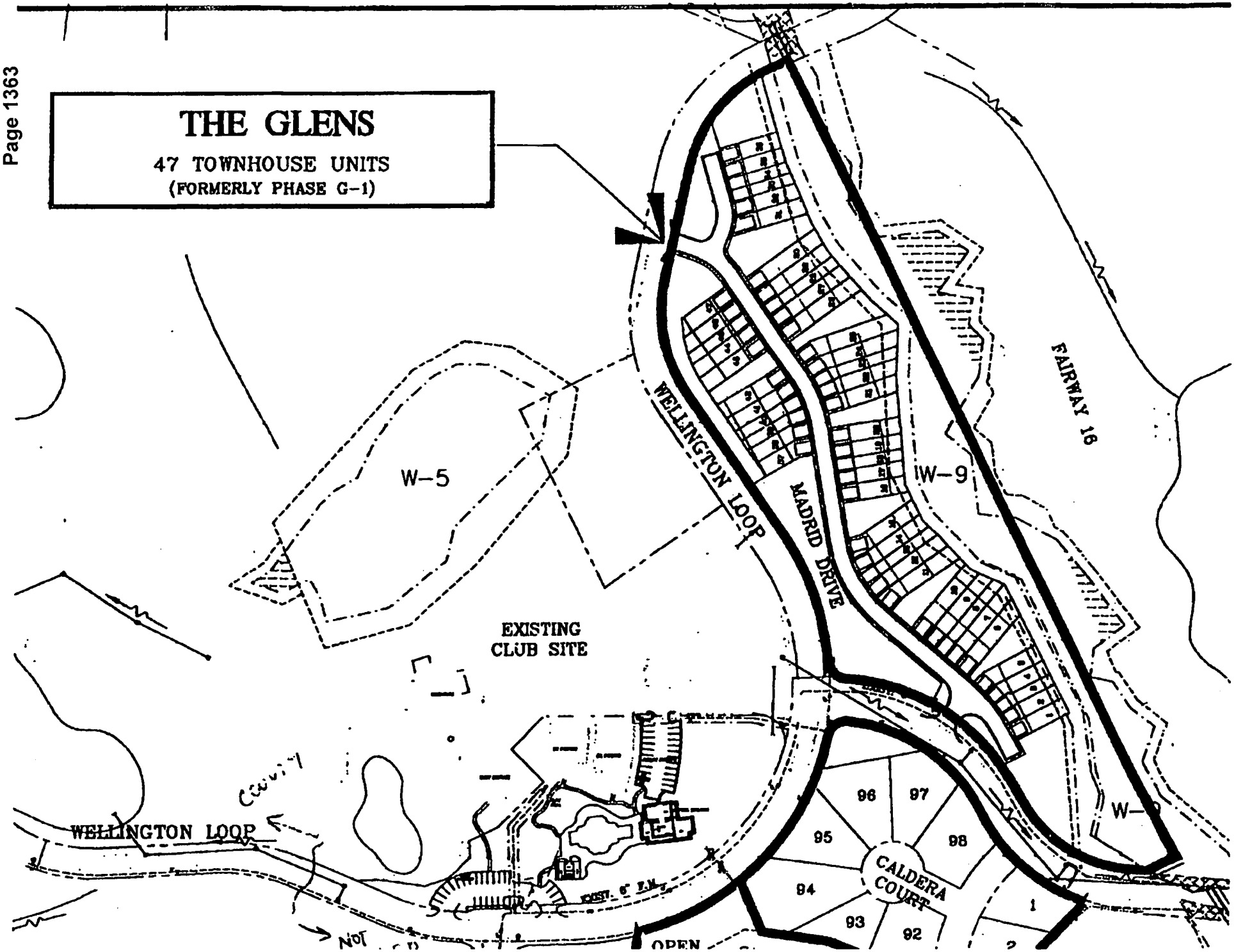
MURRELLS INLET GOLF PLANTATION
MURRELLS INLET
SOUTH CAROLINA

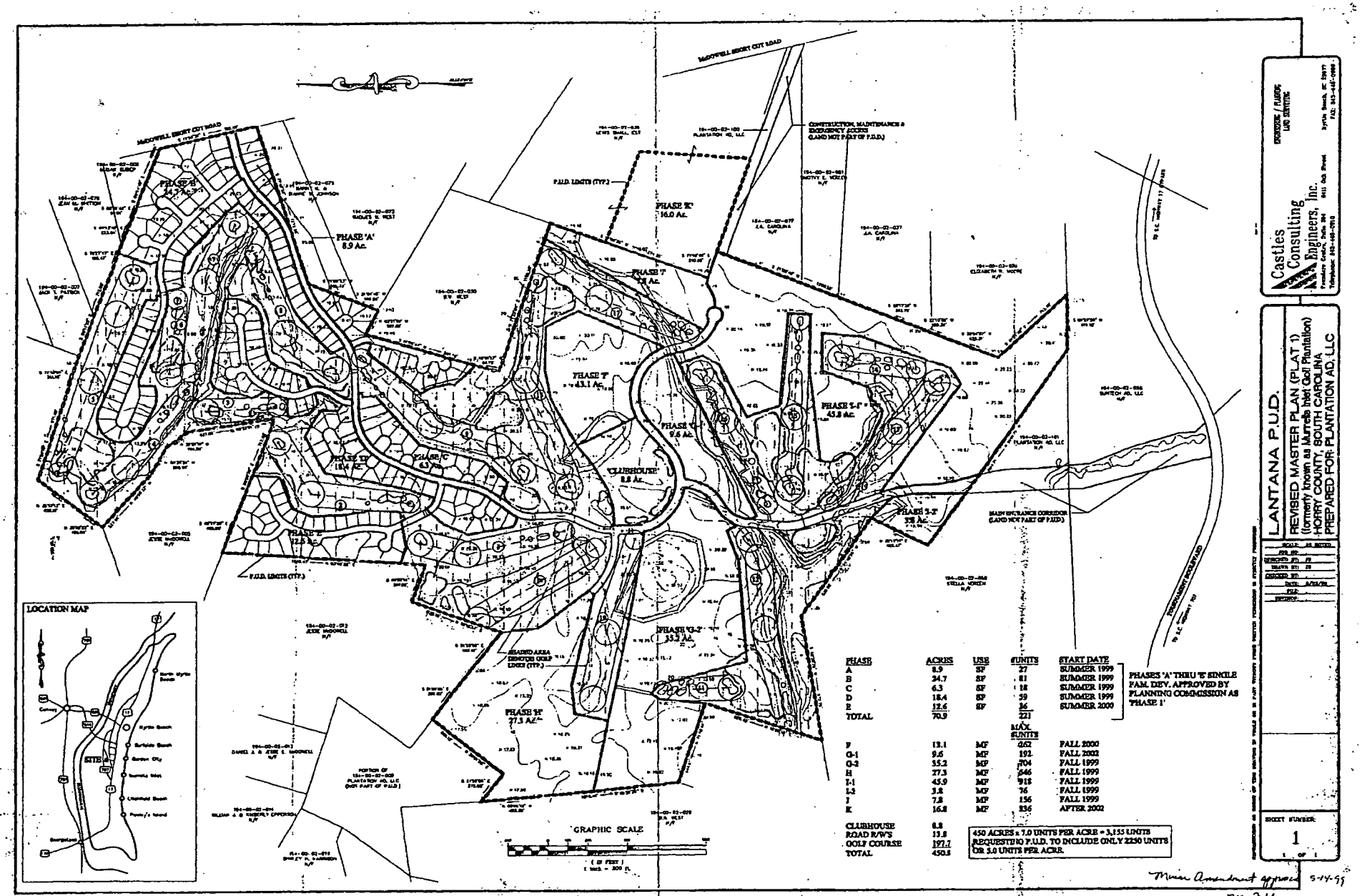
JOB	FEB. 1997
DESIGN	JHB
DRAWN	JHB
CHECKED	JHB
SCALE	AS SHOWN
SHEET NO.	C-2
OF	9


THE GLENS
THE HIGHLANDS PHASE I
THE HIGHLANDS PHASE IA
THE HIGHLANDS PHASE II
THE LINKS PHASE I
THE LINKS PHASE II
THE LINKS PHASE III
THE LINKS PHASE IV
THE HIGHLANDS PHASE III
THE MEADOWS
NOTES:
GRAPHIC SCALE
ETS
ENGINEERING AND TECHNICAL SERVICES, INC.
INTERNATIONAL CLUB PUD
MASTER LAND USE PLAN
DEVELOPMENT PHASE PLAN

THE GLENS

47 TOWNHOUSE UNITS
(FORMERLY PHASE G-1)





PHASE	ACRES	USE	#UNITS	START DATE
A	8.9	SF	27	SUMMER 1999
B	24.7	SF	81	SUMMER 1999
C	6.3	SF	18	SUMMER 1999
D	18.4	SF	59	SUMMER 1999
E	12.6	SF	36	SUMMER 2000
TOTAL	70.9		221	
			MAX. #UNITS	
F	13.1	MF	262	FALL 2000
G-1	9.6	MF	192	FALL 2002
G-2	35.2	MF	704	FALL 1999
H	27.3	MF	546	FALL 1999
I-1	45.9	MF	918	FALL 1999
I-2	3.8	MF	76	FALL 1999
J	7.8	MF	156	FALL 1999
K	16.8	MF	336	AFTER 2002
CLUBHOUSE	8.8			
ROAD R/W'S	13.8			
GOLF COURSE	197.1			
TOTAL	450.8			

PHASES 'A' THRU 'E' SINGLE FAM. DEV. APPROVED BY PLANNING COMMISSION AS 'PHASE 1'

450 ACRES x 7.0 UNITS PER ACRE = 3,155 UNITS
REQUESTING P.U.D. TO INCLUDE ONLY 2250 UNITS OR 5.0 UNITS PER ACRE.

Minor Amendment approved 5-14-99
M. Hill

Castles Consulting
ENGINEERS / PLANNERS
LAND SURVEYING
Engineers, Inc.

LANTANA P.U.D.
REVISED MASTER PLAN (PLAT 1)
(formerly known as Murrells Inlet Golf Plantation)
HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR: PLANTATION AD, LLC

SCALE: AS NOTED
JOB NO.
VERSION 99-78
DRAWN BY: JS
CHECKED BY:
DATE: 5/03/99
FILE:
REVISED:

SHEET NUMBER: 1 OF 1

FILED
HORRY COUNTY, S.C.
99 JAN 19 PM 4:33
R.M.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

GOLF COURSE MEMBERSHIP RIGHTS AGREEMENT

WHEREAS, Plantation A.D., LLC, a South Carolina Limited Liability Company ("Plantation") is the owner of that certain 201.59 acres (+ or -) of property more specifically shown and set forth as in Exhibit C which is attached hereto and made a part hereof upon which a golf course is to be developed (the "Plantation Tract Golf Course Property"); and

WHEREAS, Kaminski 17 Limited Partnership ("K17") is the owner of that certain property more specifically set forth as Exhibit A hereto and made a part hereof (the "Kaminski 17 Tract"); and

WHEREAS, Plantation desires to grant K17 and to subsequent owners of residential dwelling units developed on the Kaminski 17 Tract certain rights to join the golf course to be built on the Plantation Golf Course Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plantation hereby grant to K17 and all future owners of dwelling units developed on the Kaminski 17 Tract, including but not limited to single family homes, condominium units, lots and/or townhouses, the right to purchase and own golf membership rights or playing privileges for the golf course to be built on the Plantation Tract Golf Course Property on the same terms and conditions as are available to owners of similar properties within the Murrells Inlet Golf Plantation Development more particularly shown on and set forth on Exhibit B which is attached hereto and made a part hereof. This golf course membership right is a covenant running with the land and shall be binding upon all future purchasers of the Plantation Tract Golf Course Property.

The rights granted hereby shall run with the Plantation Tract Golf Course Property land and continue as such for twenty (20) years from the date hereof. They shall be extended from that time automatically for successive periods of twenty (20) years, unless the owners of the Kaminski 17 Tract shall covenant to alter, modify or eliminate any or all of these restrictions.

The provisions herein contained shall bind and be to the benefit of, and be enforceable at law and in equity by K17, its successors and assigns, or by the grantee of any part of the Kaminski Tract, its successors and assigns. Failure by K17, its successors and assigns, or any grantee to enforce any of the rights herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not subject K17 to any liability for failure to enforce any of the rights.

PENGAD 800-631-6989
EXHIBIT
Pyk-4
2-17-12 HD

19

WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the 14th day of January, 1999.

Plantation A.D., LLC
by Suntech Management, Inc.
its Manager

By: _____

Its: Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that s/he saw the within named Suntech Management, Inc. as manager of **Plantation AD, LLC**, Sign, Seal and Deliver the within Document, and the s/he with the other subscribing witness whose signature appears above, witnessed the execution thereof.

SWORN to before me this
14th day of January, 1999.

_____
Notary Public for South Carolina
My Commission Expires: 4/25/2003

_____

ljs:\Corel\Bill\Golf-Agr.kam

EXHIBIT "A"

PARCEL I

Tract No. 1: All that certain piece, parcel, or tract of land lying, being and situate in Socastee Township, Horry County, South Carolina, containing 252 acres, more or less, and being the northeasternmost property and being all of the property lying east of S.C. Hwy. 707, as shown on a plat of 2969.834 acres prepared for The Kaminski Company by Moore, Gardner & Associates, Inc., Surfside Beach, South Carolina, dated December, 1982, revised February 4, 1983, and being recorded in Plat Book 78 at page 121, in the office of the Clerk of Court, Horry County, South Carolina.

This is the identical property conveyed to Kaminski 17 Limited Partnership by The Kaminski Company by deed recorded the 30th day of April, 1985, in Deed Book 952 at Page 502, office of the Clerk of Court for Horry County, South Carolina.

LESS AND EXCEPTING:

ALL AND SINGULAR, those certain pieces, parcels or tracts of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 18.57 acres, more or less, and being more particularly shown and described as Tract A composed of 8.47 acres, Tract B composed of 3.37 acres, Tract C composed of .55 acres, Tract D composed of 1.28 acres, Tract E composed of 3.38 acres, and Tract F composed of 1.52 acres, as shown on a plat of Six (6) tracts of land containing 18.57 acres of land in Socastee Township, Horry County, South Carolina, prepared for Shore Road Partnership by Terry M. Watson, R.L.S., #7168 of Land Surveying, Inc. dated May 14, 1987, and recorded May 22, 1987, in Plat Book 96 at page 33, in the Office of the Clerk of Court for Horry County, South Carolina.

The above excepted Tracts A - F were conveyed to Shore Road Partnership, a South Carolina Partnership, by Kaminski 17 Limited Partnership by deed recorded May 22, 1987, in Deed Book 1135 at page 723, office of the R.M.C. for Horry County, South Carolina.

ALSO, LESS AND EXCEPTING:

ALL AND SINGULAR, all that certain piece, parcel, or lot of land situate, lying, and being near Garden City in Horry county, South Carolina, containing 67.75 acres, more or less, and being more fully shown as a parcel entitled "2,951,400 sq. ft., 67.75 acre" on a plat entitled "Boundary Survey of 67.75 Acre Tract for Suntech AD, LLC.", dated December 10, 1996, prepared by ETS Engineering and Technical Services, Inc., recorded December 24, 1996 in Plat Book 145 at page 128, office the RMC for Horry County, South Carolina.

The above excepted parcel was conveyed by Kaminski 17 Limited Partnership to Suntech AD, LLC, by deed recorded December 27, 1996, in Deed Book 1910 at Page 743, Records of Horry County.

EXHIBIT "B"

MURRELLS INLET GOLF PLANTATION

ALL OF THAT certain piece parcel or lot of land containing 449.22 acres of land as more particularly shown and set forth on that certain plat prepared by Atlantic Surveying Company, Inc., for Plantation AD, LLC dated October 14, 1998, and revised through January 13, 1999, and recorded in Plat Book 160 at Page 79 of the Horry County Records.

ALSO, all of those two certain pieces, parcels and lots of land containing 5.42 and 9.79 acres as more particularly shown and set forth on that certain plat prepared by Engineering and Technical Sources, Inc., dated September 15, 1998, and recorded in Plat Book 158 at Page 155 of the Horry County Records.

The total of all three (3) parcels is 464.43 acres.

EXHIBIT C

All of those two pieces, parcels and lots of land located in Socastee Township West of McDowell Shortcut Road containing 192.552 acres identified as "Parcel G-1", and 9.07 acres identified as "Clubhouse" more specifically shown and set forth on that certain Plat prepared by Atlantic Land Surveying Co., dated October 12, 1998, revised through January 13, 1999, and recorded in Plat Book 160 at Page 79, in the office of the Register of Deeds for Horry County which is by reference made a part of this description. The total acreage of the property conveyed hereby is 201.59 acres.

This being a portion property deeded to the grantor by deeds recorded in Deed Book 1996 at Pages 1101, 1104 and 1108, in the office of the Register of Deeds for Horry County.

STATE OF SOUTH CAROLINA)
) **DEVELOPERS AGREEMENT**
COUNTY OF HORRY)

THIS AGREEMENT, dated this the 16th day of May, 2003, by and among **D.R. HORTON, INC.** (hereinafter referred to as "DRH") and **SUNBELT ASSOCIATES, LLC** (hereinafter referred to as "Sunbelt") and **PLANTATION AD, LLC** (hereinafter referred to as "Plantation").

WITNESSETH

WHEREAS, Sunbelt is the owner of certain real property located in Horry County, South Carolina within a planned unit development known as the "International Club"; and,

WHEREAS, Sunbelt has been and is currently constructing, marketing and selling single-family residences within the International Club; and,

WHEREAS, Sunbelt is a party to a contract with Plantation wherein they agreed, among other things, to share in the cost of constructing an amenities center and entrance to the International Club, but no amenities center or entrance has been constructed as contemplated by said contract; and,

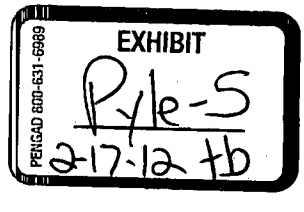
WHEREAS, DRH has contracted to purchase from Plantation certain real property consisting of approximately One Hundred Five (105) acres, more or less, which may be annexed to the International Club as described in the attached Exhibit "A"; and,

WHEREAS, after the closing of the property described in Exhibit "A", DRH intends to construct, market and sell single-family and multi-family residences on that property.

NOW THEREFORE, intending to be legally bound and in consideration of the mutual covenants contained herein the receipt and sufficiency of which both parties hereby acknowledge, DRH, Plantation and Sunbelt agree as follows:

1. **CONTRACT WITH PLANTATION AD,LLC.**

Upon the purchase of the real property described in the attached Exhibit "A" by DRH, Sunbelt and Plantation agree that the Real Estate Contract between themselves dated September 2, 1998, including all amendments thereto, is terminated with regard to any and all real property purchased by DRH from Plantation and that the parties no longer have any rights, obligations, duties or benefits pursuant to said Contract. Further, said parties, their heirs, executors, administrators and successors, mutually remise, release and forever discharge DRH, Sunbelt and Plantation, its or their heirs, executors or administrators or its successors or assigns, as the case may be, of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts,



controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands whatsoever both at law and in equity which against any of the parties hereto the said parties hereto, its, or they the undersigned, ever had, now have, or which it or they, the undersigned or their successors, assigns, heirs, executors or administrators hereafter can, shall or may have, for, upon or by reason of any manner, cause or thing whatsoever from the beginning of the world up to the day, hour and minute of the execution of these presents by reason of or growing out of or arising or existing in connection with that certain document entitled "Real Estate Contract" dated September 2, 1998 and all amendments thereto executed by Sunbelt and Plantation or any matter or thing whatsoever arising out of the same either known or unknown at this time.

2. **IMPROVEMENTS.**

DRH and Sunbelt deem it necessary or desirable to construct all or a portion of the Improvements, as defined herein; therefore, the parties desire a method upon which Sunbelt shall share in the costs of constructing the Improvements as defined in Subparagraphs 2(a) and 2(b) and 2(c).

(a). **Amenities Center.** DRH will construct or cause to be constructed an amenities center on that certain parcel of real property shown as Parcel D on a plat of International Club Golf Course prepared by Associated Land Surveyors for Plantation Golf AD dated December 21, 2002 and recorded June 2, 2002 in Plat Book 189 at Page 89 in the office of the Horry County ROD (hereinafter the "Amenities Site"). The amenities center will be used as a clubhouse with a pool and other recreational facilities for the use and enjoyment of the Class A members of the International Club Homeowners Association or other association to be formed by DRH, and shall include at a minimum the following:

1. 2000 square foot pool with appropriate decking;
2. A clubhouse with 3000 square feet including heated areas and porches to contain the following:
   - A A bath/shower area;
   - B. A workout facility;
   - C. A common room to be used for community functions with a kitchenette.
3. An outdoor children's playground area.

The amenities center shall be for the sole and exclusive use of the owners of Single Family Residences within the Planned Unit Development known as the International Club or any other Planned Unit Development created by DRH located within the property described on Exhibit "A". For purposes of this Agreement, "Single Family Residences" shall be defined as any residence which is not a part of a Horizontal Property Regime as defined in §27-31-10, et seq. of the S.C. Code of Laws, 1976 as amended.

DRH, however, shall have the right, in its sole and exclusive discretion, to determine the particulars of said amenities center within the parameters set forth in this Agreement. Sunbelt

cf BD

shall have the right to review the plans and any revisions thereto. The amenities center shall be substantially completed within fourteen (14) months after the date DRH purchases the property described in the attached Exhibit "A". If, however, DRH has not substantially completed the amenities center within the fourteen (14) months as set forth in this Paragraph, Sunbelt shall have the right to enter onto the amenities site and complete the cabana and pool portion of the amenities center. If, Sunbelt desires to exercise its right to complete the amenities center as provided in this Paragraph, Sunbelt shall give DRH a thirty (30) day written notice of its intention to complete the amenities center according to the parameters set forth in this Agreement. If DRH, does not begin or continue substantial construction of the amenities center within the thirty (30) day period, Sunbelt shall have the right, but not the obligation, to complete the amenities center and reduce any amounts due to DRH under this Agreement by the amount actually spent in Sunbelt's construction of the amenities center.

(b). Entrance. DRH may modify the entrance to the International Club including signage and landscaping in any manner which in DRH's sole and exclusive discretion it determines to be necessary or beneficial.. Sunbelt shall continue to have the right to place signs at the main entrance area; provided however, that DRH shall have the right to approve said signs and their location. The cost of construction of any signs which reflect communities of both DRH and Sunbelt shall be shared prorata based upon the number of lots owned by each party within said communities. Any community reflected on such signs shall be given equal space with any other community reflected on the same sign. Sunbelt shall have the right to review any such signs.

(c). Entrance Road. DRH agrees to make or cause to be made any necessary repairs to the entrance road in order to ensure that the road complies with the current Horry County standards.

(d). Costs of Construction. The Construction Costs shall include all costs, expenses, fees, material and labor related to and to be incurred by DRH in the construction of the Improvements in accordance with this Agreement. DRH shall provide a total Cost of Construction to Sunbelt in writing. DRH and Sunbelt hereby agree to share in all Construction Costs, said amount to be paid by Sunbelt as follows:

(i) Sunbelt shall pay to DRH in cash or via certified funds an amount equal to One Thousand and no/100 ($1000.00) Dollars per lot or home previously sold by Sunbelt to each third-party purchaser in the International Club;

(ii) Sunbelt shall remit to DRH the amount of One Thousand and no/100 ($1000.00) Dollars upon the closing of each lot or home to a third-party purchaser by Sunbelt in the International Club.

(d). Title. DRH's duties and obligations pursuant to Paragraph 2 of this Agreement shall be expressly contingent upon DRH's receipt, review and acceptance of a comprehensive title examination of the Amenities Site and the Entrance Site. If DRH discovers the Amenities Site or Entrance Site is subject to any mortgage, encumbrance or other lien, and DRH is unable to either cure or remove or have said objections cured or removed to the reasonable satisfaction of DRH prior to the commencement of the construction of the Improvements, then DRH and Sunbelt shall have no further rights, obligations or responsibilities under Paragraph 2 of this Agreement.

3. NO COMPETITION.

DRH and Sunbelt hereby acknowledge that both parties will be simultaneously marketing, constructing and selling single-family residences in the International Club. The parties agree that DRH shall not market or sell detached single-family homes which are larger than 1900 heated/cooled square feet, exclusive of any optional rooms. The parties agree that Sunbelt shall not market or sell detached single-family homes which are smaller than 1200 heated/cooled square feet, exclusive of any Optional Rooms. For purposes of the this Agreement "Optional Rooms" shall be defined as any room constructed over a garage or in the eaves of the roof or any sunroom or enclosed porch. This agreement shall remain in full force and effect for a period of thirty (30) months from the date DRH purchases the property described on Exhibit A.

4. MEMORANDUM OF CONTRACT.

Both parties shall execute within thirty (30) days of the execution of this Agreement, a memorandum of this Agreement suitable for filing of record which shall reflect the payments due under this Agreement as a debt of Sunbelt to be collected at the closing of Sunbelt's lots and single-family residences in the International Club upon the sale to any third-party purchaser.

5. DEFAULT.

In the event that either party fails to comply with any term or condition of this Agreement, the other party may exercise any remedy provided by South Carolina law either at law or in equity against the non-defaulting party. If, as a result of a dispute between the parties hereto regarding the terms and conditions of this Agreement, either party employs an attorney to enforce its rights hereunder, the party found in default agrees to pay the other party's reasonable attorneys fees and costs incurred to enforce this Agreement. In no event however shall either party be liable to the other party for consequential damages as a result of a breach or dispute concerning this Agreement; provided, however, that either party shall pay to the other party actual damages as may be ordered by a court of competent jurisdiction in the event of a default. .

6. DISPUTE RESOLUTION.

Sunbelt and DRH shall attempt in good faith to resolve or cure all disputes, defaults and claimed defaults under this Agreement by mutual agreement and/or mediation before initiating litigation to enforce any rights or remedies hereunder, including termination. The resolution or cure or attempted resolution or cure any dispute, default or claimed default pursuant to the procedures set forth in this paragraph shall not delay the constructing party's performance of its obligations under this Agreement nor the other Party's payment to the constructing party for such Improvements.

7. NOTICES.

Any notice authorized, required, or permitted to be given hereunder shall be deemed to have been given when delivered personally, when telefaxed or sent via nationally recognized overnight courier service or upon the depositing of such notice in the United States mail, postage prepaid. certified mail or registered mail, return receipt requested. and properly addressed to the party to be notified at the following address:

CFBO

If to Seller:	Sunbelt Associates, LLC
Attn:	Charles Flynn
	1293 Professional Drive, Suite C
	Myrtle Beach, SC 29577
Telephone	(843) 449-9406
Facsimile	

If to Purchaser: D.R. Horton, Inc.
Attn: Brian Gardner
~~1941 Savage Road, Suite 100-C~~
~~Charleston, SC 29407~~
Telephone: ~~(843) 573-2060~~

503 WANDO PARK BLVD. SUITE 200
MT. PLEASANT, SC 29464
843-284-5000

It is provided, however that the Parties hereto may, from time to time and at any time, change their respective addresses on the giving of ten (10) days' written notice to the other party such change of address in the manner as aforesaid.

8. CONTINGENCIES.
This Agreement is expressly contingent upon DRH's purchase of the property described on the attached Exhibit "A".

9. TERMINATION.
If construction of the Improvements as contemplated in this Agreement has not been commenced within five (5) years of the date hereof, this Agreements shall automatically terminate and the parties hereto shall have no further rights, duties or obligations hereunder.

10. MISCELLANEOUS PROVISIONS.

(a). Date of Agreement. The term "date of this Agreement" or "date hereof" or "effective date of this Agreement" as used herein shall mean the later of the following dates: (i) the date of Sunbelt's signature or (ii) the date of DRH's signature.

(b). Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. The parties have equal bargaining power, and intend the plain meaning of the provisions herein. In the event of an ambiguity in, or dispute regarding, the interpretation of same, the interpretation of this Agreement shall not be resolved by, or, rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman

CFB

(c). Integration. This Agreement contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understandings, representations, or warranties which are not expressly set forth herein.

(d). Binding Effect. This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, representatives, successors, and assigns.

(e). Non-waiver. No delay or failure by either party to exercise any right hereunder and no partial or single exercise of such right will constitute a waiver of that or any other right, except by written agreement executed by the Parties or unless expressly provided otherwise herein.

(f). Governing Law. This Agreement shall be governed and interpreted under the laws of the State of South Carolina.

(g). Paragraph Headings. The paragraph headings used in this Agreement are for convenience purposes only and shall not be used in the interpretation of this Agreement.

(h). Parties. Nothing contained herein is intended to create, nor shall it ever be construed to make, Sunbelt and DRH partners or joint venturers.

(i). Severability. The provisions of this Agreement are severable, and if any provision or part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.

11. CORPORATE APPROVAL OF CONTRACT BY OFFICER OF PURCHASER.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THIS CONTRACT NOR ANY AMENDMENT HERETO SHALL BE A VALID AND ENFORCEABLE OBLIGATION OF PURCHASER UNLESS THE CONTRACT OR AMENDMENT IS EXECUTED BY EITHER ONE OF DONALD R. HORTON, DONALD J. TOMNITZ, or GEORGE W. SEAGRAVES, EACH AN OFFICER OF THE PURCHASER, WITHIN TEN (10) DAYS OF THE EXECUTION OF THIS CONTRACT OR AMENDMENT BY SELLER AND PURCHASER'S REPRESENTATIVES.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in multiple copies, each of which shall be deemed to be an original, on the dates set forth below.

WITNESSES:

SUNBELT ASSOCIATES, LLC
a South Carolina Limited Liability Company

By: Charles Flynn, Manager

5/6/03
DATE OF EXECUTION

D.R. HORTON, INC.
a Delaware Corporation

Brian F. Gardner
Division President

5/23/03
DATE OF EXECUTION

CORPORATE APPROVAL:

BY: _____
George Seagraves
Regional President

DATE OF EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in multiple copies, each of which shall be deemed to be an original, on the dates set forth below.

WITNESSES:

SUNBELT ASSOCIATES, LLC
a South Carolina Limited Liability Company

By: Charles Flynn, Manager

5/16/03
DATE OF EXECUTION

D.R. HORTON, INC.
a Delaware Corporation

Brian F. Gardner
Division President

5/23/03
DATE OF EXECUTION

CORPORATE APPROVAL:

BY: George Seagraves
Regional President

5/31/2003
DATE OF EXECUTION

HORRY COUNTY ASSESSOR
194-00-02-118
Map Blk Parcel 5/10/00 pg

339820

FILED
HORRY COUNTY
2000 MAY -9 PM 4:33
R.M.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR MURRELLS INLET GOLF PLANTATION (NOW INTERNATIONAL CLUB) AND SUBMISSION OF ADDITIONAL PROPERTY THERETO

WHEREAS Plantation A.D., LLC (the "Declarant") recorded the Declaration of Restrictive Covenants for Murrells Inlet Golf Plantation on February 8, 1999, in Deed Book 2117 at Page 1353 Horry County Records (the "Declaration"); and

WHEREAS the Declarant desires to amend the Declaration in certain particulars; and

WHEREAS the Declarant desires to add additional Property owned by it to the Declaration.

NOW THEREFORE the Declarant hereby amends the Declaration as follows:

1. The name "Murrells Inlet Golf Plantation" is hereby changed to International Club. Wherever the name "Murrells Inlet Golf Plantation" appears in the Declaration, it should now be read as "International Club". The Declaration shall now be referred to as the Declaration of Covenants and Restrictions for International Club.

2. The Property set forth and described in Exhibit A, which is attached hereto and incorporated herein by reference, is hereby subjected to the Declaration. Such Property (the "Multifamily Parcel") is being conveyed by the Declarant to International Club Villas, LLC, a South Carolina Limited Liability Company. The Declarant hereby grants to International Club Villas, LLC, all of its rights contained in the Declaration to develop the Multifamily Parcel and create thereon units and recreational amenities and subject such areas to Multifamily Associations.

3. There is no "Common Area" as such term is defined in the Declaration located in or on the Multifamily Parcel.

4. Section 3.7 of the Declaration is hereby deleted in its entirety. There shall be no restrictions on property management firms utilized to operate any Multifamily Association created on the Multifamily Parcel.

5. The owners of Dwelling Units within the Multifamily Parcel shall not have the right to use any Recreational Amenities, if any, owned by the International Club Homeowners Association, Inc. (the "Master Association"), nor will such owners be assessed any of the cost of operating, constructing, repairing, or replacing any such Recreational Amenities.

6. The Multifamily Association(s) created for units built on the Multifamily Parcel will provide that such Multifamily Association(s) collect and pay Master Association assessments from each Unit owner and remit them to the Master Association.

DEED
2258 1453

1453

EXHIBIT
Pyle-6
2-17-12tb
PENGAD 800-631-6989

7. The Declarant hereby designates International Club Villas, LLC, as a Designated Builder as such term is used within the Declaration.

8. The necessary amounts to be assessed for Reserve Funds as set forth in Article III, Section 3.6 of the Declaration will be calculated separately for amounts necessary to maintain and care for the Recreational Common Areas and all other areas that the Association is required to maintain. The owners of property within the Multifamily parcel shall not be assessed for any portion of the Reserve Funds set aside for the maintance, repair or replacement of such Recreational Common Areas.

9. The Declarant hereby waives all easement rights reserved in Article IV, Sections 4.10, Section 4.11, Section 4.12, Section 4.16 and Section 4.17 of the Declaration.

10. The initial assessment required by Article VI, Section 6.7 shall not be due until the conveyance of completed dwelling units in the Multifamily Parcel to third party purchasers of such property.

11. The Declarant hereby waives the Architectural Controls set forth in the two numbered Sections 7.2 in Article VII and of Section 7.4 , Section 7.25 and Section 7.31 of the Declaration.

12. The Developer hereby waives its rights to enter into and /or maintain the Golf Course Easement Area as set forth in Article VII, Section 7.37 (c) of the Declaration.

IN WITNESS whereof Plantation, A.D. LLC has signed this Amendment this 15 day of May, 2000.

Kimi W. Terrell

PLANTATION A.D. LLC
By: Suntech Management, Inc.
Its: Manager

By: [signature], its Vice President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness who after first duly sworn deposes and says that s/he saw the within-name Plantation A.D., LLC, by its manager, sign, seal and as its act and deed, deliver the within-written Amendment to Declaration for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

Kimi W. Terrell
WITNESS

SWORN TO BEFORE ME THIS
15 day of May, 2000.

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

1454

Fs\Elizabeth\BMP\amed-decl-plantADLLC

Post-it® Fax Note 7671	Date 9-16	# of pages ▶ 8
To Karen Campbell	From Debra Page Hall	
Co./Dept.	Co.	
Phone #	Phone # 349-3287	
Fax # 237-1717	Fax #	

July 31, 1998

Suntech AD, LLC
11844 Highway 17 Bypass
Murrells Inlet, SC 29576

Plantation AD, LLC
11844 Highway 17 Bypass
Murrells Inlet, SC 29576

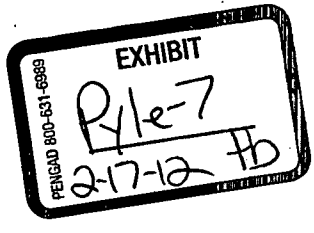
Shore Road Partners
4705-A Oleander Dr.
Myrtle Beach, SC 29577

Kaminski 17 Partnership
4705-A Oleander Dr.
Myrtle Beach, SC 29577

RE: Letter of Intent for proposed Highway 17 Connector (the "Connector") between Kaminski Owners, Kaminski 17 Limited Partnership, Shore Road Partners, Suntech, AD, LLC and Plantation AD, LLC

Gentlemen:

This letter will serve as a letter of intent (the "Letter of Intent") by which Kaminski Owners ("Kaminski"), Kaminski 17 Limited Partnership ("Kaminski 17"), Shore Road Partners ("Shore Road"), Suntech AD, LLC ("Suntech") and Plantation AD, LLC ("Plantation") have indicated their collective interest and intent to negotiate and enter into an agreement whereby Kaminski 17, Shore Road and Suntech will convey the hereinafter described property to Kaminski in order that Kaminski may construct and dedicate the Connector between Highway 707 and the road known as McDowell Shortcut located in Horry County, South Carolina. The purpose of the Connector is to link U.S. Highway 17 Bypass with the Kaminski/TPC Tract adjoining Highway 707, to provide additional access to properties owned by Kaminski 17, Shore Road, Suntech and Plantation, and for the mutual benefit of all of the parties to this Letter of Intent. The terms and conditions generally set forth below will serve as the guidelines for the negotiation of a definitive agreement (the "Agreement") which Agreement shall be executed by August 1, 1998. The Agreement shall include the following terms and conditions:



1. The Property. Kaminski 17, Shore Road and Suntech agree to deed and convey to Kaminski fee simple title to the requisite property necessary for Kaminski to construct a road having a right-of-way width of 100' with respect to that portion of the Connector transversing the property owned by Shore Road (the "Shore Road Property"), and 80' with respect to that portion of the Connector transversing the property owned by Kaminski 17 (the "Kaminski 17 Property") and the property owned by Suntech (the "Suntech Property"), with such right-of-way inclusive of roadway, landscaping, utilities, drainage and directional signage. The Agreement shall provide that all conveyances to Kaminski shall be free and clear of all liens and encumbrances except those agreed to by Kaminski. The conveyance by Kaminski 17, Shore Road and Suntech shall take place within ten (10) days after receipt by Kaminski of the necessary governmental permits and approvals to construct the Connector.

2. Dedication. It is the intent of the parties hereto that the Connector be constructed in accordance with South Carolina Department of Transportation ("DOT") and Horry County Engineering Department ("Horry County") specifications for publicly dedicated roads and that upon completion of the Connector, that Kaminski will take the necessary steps to have the Connector dedicated to and accepted by the DOT or Horry County as a publicly dedicated street. Shore Road, Kaminski 17, Suntech and Plantation shall have a perpetual, non-exclusive easement for ingress and egress over the Connector until the Connector is accepted by the DOT or Horry County as a publicly dedicated road.

3. Engineering and Plans. Kaminski shall be responsible for the engineering and design of the Connector, provided that Kaminski 17, Shore Road, Suntech and Plantation will have the right of approval on any such plans and specifications (the "Plans"). Approval of Kaminski 17, Shore Road, Suntech and Plantation shall not be unreasonably withheld or delayed. Once approval of the Plans has been given by the parties, no additional approvals will be required or requested by Kaminski so long as all construction will take place within the right-of-way. The engineering for the Plans will be coordinated between the parties, especially with respect to off-site drainage, such that the Connector will be constructed in a way that is mutually beneficial to all of the parties involved with this Letter of Intent.

4. Drainage. The parties to this Letter of Intent will cooperate with Kaminski regarding off-site drainage of the Connector, with such cooperation not to be unreasonably withheld. This obligation to cooperate shall include, without limitation, the right of Kaminski to use drainage easements along existing ditches, or natural drainage areas such as wetlands or lowlands along properties adjacent to the Connector.

5. Future Utilities. Open utility cuts of the Connector Road will not be permitted. Future crossings shall be jack and bore. To minimize the need for jack and bore, Kaminski will install reasonably sized conduit at mutually agreeable locations along the Connector.

6. Curb Cuts. The parties will negotiate to reach a mutually agreeable resolution to the number and location of curb cuts (and easements as needed) on the Connector onto the property

12. Construction Schedule. Kaminski will commence construction of the Connector as soon as is practicable based upon approval of the DOT and/or Horry County, as well as Shore Road, Kaminski 17, Suntech and Plantation to the Plans and Specifications. In any event, Kaminski agrees, subject to force majeure, Kaminski obtaining all applicable permits for construction, and agreement of the parties to the Plans, to have the Connector construction completed within twelve (12) months of the date of execution of the Agreement referred to herein.

13. Entry and Inspection. Upon the execution of this Letter of Intent, Kaminski shall have the right to enter upon the property of the parties hereto within the proposed Connector for purposes of preparing the necessary surveys, engineering studies and inspections such that Kaminski can begin construction of the Connector as soon as practicable upon the execution of the Agreement. Kaminski will indemnify and hold harmless the other parties in the event of any loss or damage as a result of such inspections.

14. Contingency. Plantation and Suntech's participation in this Letter of Intent and the Agreement is contingent upon the sale to Plantation and Suntech of a 3 acre parcel of land by Kaminski 17 pursuant to terms mutually agreeable to Kaminski 17, Suntech and Plantation. Should the sale of the 3 acres referred to herein not close by the date of the Agreement, Suntech and Plantation shall have no obligation to participate in the Agreement.

15. Time is of the Essence. Time shall be of the essence as to all matters set forth herein.

16. Formal Agreement. The parties agree to negotiate in good faith and to cooperate with each other to proceed as promptly as is practical to draft and execute the Agreement. This Letter of Intent will terminate on September 1, 1998 unless extended by written agreement of all parties hereto. If the parties hereto fail to complete the Agreement with respect to the transactions contemplated by this Letter of Intent, all rights and obligations set forth in this Letter of Intent shall be null and void. Upon execution of the Agreement, the Letter of Intent shall be null and void.

17. Non-Binding. This Letter of Intent shall not create or constitute legally binding obligations between the parties hereto and no party shall have liability to the other with respect to this Letter of Intent until the Agreement is successfully negotiated, executed and delivered by and between the parties. In the event that the Agreement is not prepared, authorized, or delivered for any reason, no party to this Letter of Intent shall have any liability to any other party to this Letter of Intent.

18. Confidentiality. The parties agree that there shall be no press release or public announcement regarding this Letter of Intent or the Connector without the joint approval of the parties. Except as and to the extent required by law, none of the parties hereto shall disclose or use, and shall cause their respective agents and representatives not to disclose or use, any information furnished to the other with respect to the Connector, the proposed transactions of

this Letter, or the project in general. The terms of this Letter of Intent shall be kept confidential.

19. Multiple Counterparts. This document may be executed in multiple counterparts, the signature pages of which may be compiled to constitute an original document.

Yours very truly,

KAMINSKI OWNERS

By: Canal Land Limited Partnership
By: Canal Land Fund, Inc.
Its: General Partner
By: _____
Sidney Kurch, President

By: Kaminski, L.L.C.
By: _____
Its: Member

By: Ponderosa, Inc.
By: _____
Its: President

Kaminski 17 Limited Partnership accepts this Letter of Intent and the terms and conditions set forth herein this 31 day of July, 1998.

KAMINSKI 17 LIMITED PARTNERSHIP

By: _____
Its: General Partner

Murrell's Inlet
Plantation
Cypress Keys
Proposed
Connector
Highway
707
US Highway
KAMINSKI TRACT
G1
154.36 AC
R3
16.01 AC
EXHIBIT "A"

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

RONALD JARMUTH,

Plaintiff,

vs.

CIVIL ACTION NO.
2009-CP-26-3596

THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC., ROSEMARY TOTH and K.A. DIEHL & ASSOCIATES,

Defendants.

DEPOSITION OF: ROSEMARY H. TOTH

DATE: Friday, February 17, 2012

TIME: 9:59 a.m. through 2:31 p.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 2006
Myrtle Beach, South Carolina

TAKEN BY: The Plaintiff

COURT REPORTER: TERESA J. F. BAUTZ
Registered Professional Reporter

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF (PRO SE):

RONALD JARMUTH
249 Pickering Drive
Murrells Inlet, South Carolina 29576
(843) 314-4355

REPRESENTING THE DEFENDANT:

McNAIR LAW FIRM, P.A.
BY: ALICIA E. THOMPSON, ESQUIRE
Founders Centre, Suite 206
2411 Oak Street
Myrtle Beach, South Carolina 29577
Office: (843) 443-3058
Fax: (843) 443-9137
E-mail: athompson@mcnair.net

I N D E X

Examination	Page	Line
BY MR. JARMUTH	4	11

E X H I B I T S

Plaintiff Exhibits

Exhibit	Description	Page	Line
PLF. EXH. 1	Amendment One to Covenants	26	20
PLF. EXH. 2	Plat Book 197, Page 171	50	2
PLF. EXH. 3	Letter to R. Toth from R. Corfield	110	15

STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * *

ROSEMARY H. TOTH, being first duly sworn, testified as follows:

EXAMINATION

BY MR. JARMUTH:

Q. State your name, for the record.

A. Rosemary Toth.

Q. What's your legal address?

A. 238 Seville Drive, Murrells Inlet, South Carolina, 29576.

Q. Is that the property which entitles you to be a member of HOA?

A. It is.

Q. Who are the co-owners of that property?

A. My husband Charles F. Roche, R-O-C-H-E, and myself.

Q. And how long have you been married to Mr. Roche?

A. It will be nine years this year.

Q. Did you receive a letter from me at any time requesting a copy of a voter list?

A. To the best of my knowledge, I believe I did, quite some time ago.

Q. For the record, I'm showing Ms. Toth a letter dated July 24th, 2008. Is that the letter you received?

A. Date here is July 24th. It looks to be, yes.

MS. THOMPSON: Thank you. Did you want to mark this as an exhibit?

MR. JARMUTH: No.

MS. THOMPSON: Okay.

BY MR. JARMUTH:

Q. Did you ever provide me the voter list?

A. I don't know. It's been so long, been four years ago Mr. Jarmuth, I couldn't tell you.

Q. Can you explain why I was never provided the voter list?

A. No, I cannot at this time.

Q. Was I entitled to the voter list?

A. I don't know.

Q. Did your organization use the voter list to communicate with homeowners?

A. Yes, we did.

Q. How did you come into possession of ownership of the URL website name internationalclubhoa.com?

A. Deb Sherman helped me as the president, not me personally, but we needed to use a credit card, as I recall. And Deb came to my home, sat down with me right next to my computer and helped me, because I am computer illiterate in most cases, especially back at that time. And she helped me get onto whatever site it was that we had to get onto.

She had checked out the different names that were available. IC something or other was one of them. The I and C obviously standing for International Club. But we used my credit card to get that name in our possession.

Q. Wasn't she already using it for the website she maintained?

A. I can't answer that question. If she was, then it was now coming into my name only as the president of the HOA and for the HOA specifically. I don't know cause I'm not that computer literate, in my mind I can't remember. I can just remember Deb sitting next to me and my getting my credit card out.

Q. Explain the circumstances under which that URL was transferred to K.A. Diehl.

A. That, again, was because of the credit card. The HOA did not have a credit card. And in order for it to come out of my name, because I didn't want to keep paying the 895, I think it was, a year, it was transferred over to K. A. Diehl. Rob Barlow helped me do that because that, too, took a lot of computer knowledge to do. I did not have a clue how to do it.

Q. What is your understanding as to who actually is the owner of the website name?

A. My feeling, my knowledge, I don't know at this point. My feeling is that it belongs to the International Club HOA.

Q. Was that the understanding you gave to Diehl when you transferred it to them?

A. Yes.

Q. While you were president of the HOA, what was the policy that your board set for the assessment of first violation fines?

A. First violation fines, we're talking violations...

Q. Of the ARB guidelines or the covenants.

A. Of the ARB. Okay. Well, they are two

different ones. We followed the covenants for those, and I'm not going to remember the amount, because it depended. I would have to look into the covenants to come up with the amounts.

Q. Let me give you, to refresh your memory, an e-mail you sent me on July 17th, 2008 on that topic.

MS. THOMPSON: Thank you.

THE WITNESS: Oh, yeah, I'm remembering this.

BY MR. JARMUTH:

Q. Was that the official policy of the board to assess a $25 fine for first violations of the covenants?

MS. THOMPSON: Objection to the form.

THE WITNESS: At the time we thought we had correct guidance from our management company because the five of us were relatively new to the rules as they stood.

When we found out that it wasn't so, that it was 18 percent a year was all we could charge, we made that change in policy. But at this time, this is what we thought could be charged.

BY MR. JARMUTH:

Q. I'm having a little confusion here. Because 18 percent is a -- is not a fine, that sounds to me like a penalty for not paying the fine on time.

MS. THOMPSON: Objection to the form.

THE WITNESS: You know, again, I'm going to say, this is four years ago. I remember this and I'm trying to give you an answer the best I can. I remember the $10 administrative fee, that still -- you know, that was always an issue. I can't answer any more than what I did. When we knew better, we did better.

BY MR. JARMUTH:

Q. Do you recall ever publishing a change to this policy while you were president?

A. I cannot remember that. If it happened, it happened. I can't remember, no.

Q. If I'm unable to find such a change in the minutes of the board, should that be interpreted as meaning you didn't change this policy?

MS. THOMPSON: Objection to form.

THE WITNESS: No, it should not be interpreted that that was changed.

BY MR. JARMUTH:

Q. If you made such a change, would it have

been reflected in the minutes?

A. Possibly. I really can't go back four years in my mind to remember. Possibly.

Q. Aren't all policy acts of the board supposed to be recorded in the minutes?

MS. THOMPSON: Objection to form.

THE WITNESS: They should be.

BY MR. JARMUTH:

Q. Was it your habit while you were board president to require policy decisions to be reflected in the minutes of the board?

A. Yes.

Q. When you became president of the HOA, what investigation did you do into the agreement between the HOA and the golf course which allowed them to pay less than the 50 units specified in the covenants?

A. As a board, we discussed this. We talked to management because Vicky Gallagher was part of -- she was manager when it was a developer board and could give us some history on it. It was an agreement that was made by the developer and the golf course at a time when the golf course wasn't a viable entity. It was struggling to move along and this gave them a little bit of leeway.

We honored that agreement because we felt it was in the best interest of the community.

Q. What documents did you actually look at during your investigation?

A. I couldn't tell you. I don't know.

Q. Did you actually look at the agreement itself?

A. Yes.

Q. Did you review the board of directors' minutes during the period which that agreement was made?

A. Say that again, please.

Q. Did you review the board of directors meeting minutes for the meetings held during the period --

A. Oh, no.

Q. -- the agreement was made?

A. No, no. I've not seen any minutes from back then. And again, that was a developer board.

Q. What year did you take office as the president?

A. 2007.

Q. Would that be September of 2007?

A. September 17, 2007, yes, sir.

Q. Could you explain, since you were enforcing

the agreement, how the golf course, per the HOA ledgers I obtained during discovery, paid $17,331 in 2007 but only $13,871 in 2008?

A. 2007, 2008, that would have been, I believe -- and I'm -- again, I can't be sure, there was one year where K.A. Diehl had used the wrong figure. Instead of the increasing it by three, it should have been maybe 32 for the count. They used 34. Therefore, one would have been less than the other -- or more than the other. I really don't know.

Q. For 2007, the documents from the HOA say they were charged for 29 units at $17,333.

A. Okay.

Q. How could any number of lots greater than 29 reflect a almost 30 percent reduction in what they paid?

MS. THOMPSON: Objection to form.

THE WITNESS: You know, that was -- you said 2007 to 2008?

BY MR. JARMUTH:

Q. Yes.

A. I couldn't answer really for 2007 because that was --

Q. I'm asking you for 2008.

A. For 2008. And run those numbers by me again.

Q. 2007, 29 units, 17,000 roughly dollars.

A. Okay.

Q. 2008, my notes say it was reported 32 units, $13,871.

A. I can't answer that without going into other accounting. I mean, I don't know, I can't answer that. In my mind I'm not going to remember it.

Q. Whose responsibility on the board would it have been to assure that the golf course met the agreement that was in place?

A. It would have been all of ours. It was never one person who was responsible. We took the responsibility as a group.

Q. How can you explain that in 2009 where there should have been six more units for the agreement than 2007, the golf course paid $15,133 which is still a late date in 2007 before you took office?

MS. THOMPSON: Objection to the form.

THE WITNESS: I can't answer that. I just know that there was one year, and I don't know which year it was, Mr. Jarmuth, that K.A. Diehl used the wrong amount. And not in an increase of three increments, they

increased it by four or five instead. And I'm not going to remember unless I can go back and look through all the accounting.

BY MR. JARMUTH:

Q. What year did you cease being president of the board?

A. That would have been 2010, September 2010.

Q. According to the ledgers of the HOA, in 2010 for the year the golf course paid $15,960. How can you explain, what's your explanation of the fact that in none of the years which you were president of the HOA that the golf course paid what they paid before you took office?

A. I have no explanation. I don't know what you're looking at, and I don't have my figures in front of me. So I can't answer that question.

Q. Were you challenged on the matter of golf course assessments during your presidency by homeowners?

A. Possibly.

Q. Was this an issue during the special election of 2009?

A. Yes.

Q. What was your explanation during that special election as to why the golf course wasn't

paying what it promised to pay?

A. When you say -- expand on that. I'm not sure what they promised to pay. What -- are you talking about the golf --

Q. The schedule which you said that you looked at when you took office.

A. Without going back to meeting notes or reading the minutes of that meeting, I can't tell you.

Q. What is your opinion regarding the fiduciary duty of the president of the HOA to enforce the collection of obligated assessments?

A. I think that that's a number one fiduciary responsibility. You need the money to keep the HOA running in good stead. And I believe that we watched the golf course, we collected from the golf course all the time that I was president. I don't ever recall them not paying. I don't know whether your figures are correct, so I can't answer that question.

Q. What was the involvement of Bill Fletcher in the financial management of the HOA during your presidency?

A. None.

Q. What was the involvement of Bill Fletcher in

looking at the finances of the HOA during the transition committee period?

A. He and Mr. Corfield were the financial committee, shall we say. We broke up -- there were nine of us, and those two took on the finances to look at them.

Q. What were your responsibilities on the transition committee?

A. Common area with two other gentlemen.

MR. JARMUTH: I want to go off the record.

MS. THOMPSON: No. I have to agree to be off the record, and I'm not going to agree to go off the record.

MR. JARMUTH: Yesterday Julie Case was asked on the record for the name of the mailing house.

MS. THOMPSON: You asked Julie Case on Monday, February 13th, 2012 regarding the mailing house.

MR. JARMUTH: Okay. At the deposition of Julie Case, she was asked the name of the mailing house, and she gave an answer. Afterwards I asked the court reporter what she wrote down, and she stated that she was

unable to accurately get the name.

I need you to get the name to fix the court reporter's inability to accurately get the name of that mailing house.

MS. THOMPSON: She said she didn't know the name of the mailing house. If you want to send an interrogatory requesting the name of the mailing house, we will respond to it.

BY MR. JARMUTH:

Q. Ms. Toth?

A. Yes.

Q. What is the name of the mailing house that the HOA used to mail out copies of the material which Henrietta Golding provided you about me?

A. I don't know.

Q. How was that mailing house selected?

A. K.A. Diehl would select them. They are our managing agent. And if they were doing the work, they would take care of it.

Q. Who authorized K.A. Diehl to use a contract mailing house to mail out the Henrietta Golding material about me?

MS. THOMPSON: Objection to form.

THE WITNESS: That would be the board of directors.

BY MR. JARMUTH:

Q. What was your vote on the matter?

A. We all agreed, it was unanimous.

Q. Why is that not in the minutes of any meeting of the board?

A. Because it wasn't a board meeting. It was a -- we made that decision as a board for, we feel, a valid reason. But it was not at a board meeting, per se, it was --

Q. What's your understanding regarding what the bylaws and statutes say about recording decisions of the board held outside of regular meetings?

MS. THOMPSON: Objection to the form.

THE WITNESS: That it should be recorded. But I -- you know, Mr. Jarmuth, I can't answer some of these questions because they were so long ago. I have been out of the loop as far as the HOA board goes for a year and a half now, so...

BY MR. JARMUTH:

Q. What was your policy during your presidency regarding bills that K.A. Diehl had to present you for approval for work that they did not do?

A. I don't understand the question.

Q. When K.A. Diehl had goods and services

provided for the HOA, what was your policy regarding presentment of bills prior to payment?

A. As a board we would look them over. If we -- we normally had workshops because we needed to do the business of the board, and that would be one of the things. If we got bills in, they would be e-mailed to us, we would look at them and weigh in on whether to pay them or not pay them.

Q. Was the board presented a bill for that mailing?

A. I would think so, yes.

Q. Can you explain why I'm unable to find any record of any correspondence of any bills or any approvals related to that mailing or the creation of a website regarding the materials Henrietta Golding wrote about me and its mailing?

A. No, I cannot.

Q. Did you use e-mail to discuss the Henrietta Golding material with any other board member?

A. To the best of my knowledge, no.

Q. How did you communicate with the other board members regarding this Henrietta Golding material?

A. I can't remember.

Q. Did you or any board member receive the Henrietta Golding material prior to the date on the

letter?

A. Not to my knowledge.

Q. How soon after you received the Henrietta Golding material did your board decide to mail that material to the homeowners?

A. I can't remember.

Q. Was it that same day?

A. I can't remember.

Q. I'm showing Ms. Toth the first page of the McNair letter to refresh her recollection. What is the date on that letter?

A. May 27, 2009.

MS. THOMPSON: Just for the record, it appears that there is some notations on this letter that were not --

MR. JARMUTH: It's not being put into evidence. I asked her to look at the date of the letter.

MS. THOMPSON: I know. I'm just saying for the record that there are notations on this letter that were put there by somebody else, that they didn't exist on the letter when it was sent out.

THE WITNESS: Okay. I -- I can remember the letter. I mean, I'm looking at

this and have a vague recollection of this having been sent out or --

BY MR. JARMUTH:

Q. How did you receive that letter, my nail or e-mail?

A. I can't -- I don't know.

Q. Who provided the copy to the mail house which was used to physically mail it?

A. I don't know who provided it.

Q. Can you explain how they got it.

A. I'm going to only assume because I can't remember this point in time. It was asked of our agent to mail this out. I don't know.

And so somebody, one of our board members, whether it was me or one of the other board members, took it to them, I don't know. Because I don't remember.

Q. Did you personally, singularly or with any of the other homeowners, approve mailing this list, that and the other documents, to the homeowners?

MS. THOMPSON: Objection to form.

THE WITNESS: It would have been a board decision, not mine.

BY MR. JARMUTH:

Q. Did you vote for or against it?

A. I was for it. And the reason I was for it was because at that time we had been very silent. And it was brought to my and the other board members' attention from some of the people within our community that we need to get something out to the community and let them know where -- what was happening and what was -- how we were handling the situation.

And we went to our attorney and --

MS. THOMPSON: Objection. You can't --

THE WITNESS: Okay. I'm sorry.

MS. THOMPSON: You can't communicate anything that was discussed between you and your attorney.

MR. JARMUTH: She can, it's her privilege. She can do that.

THE WITNESS: Anyways, we took this and made the decision to mail it out to the community.

BY MR. JARMUTH:

Q. Are you claiming that there's any privilege associated with the letter being mailed to the homeowners?

A. I don't know what that means.

MS. THOMPSON: Objection to form.

THE WITNESS: I don't know what that means.

BY MR. JARMUTH:

Q. Can you explain why some renters who did not own units in the community were sent the letter?

A. No. I have -- I can't explain that.

Q. Can you explain why some renters who were not owners were e-mailed copies of the material as well?

A. I can't explain it.

Q. Can you explain how various homeowners received delivery of the mail the next day, the 28th?

A. No, I cannot.

Q. When you mail a letter, how long does it take normally to get to another person in the same area where you live, such as Murrells Inlet?

A. If I hit it right, the next day.

Q. Would you be able to say what time of day you received the e-mail from Henrietta Golding?

A. No.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. Was it in the morning?

A. I don't know.

Q. While you were president of the HOA, an issue came up about the Villas homeowners not getting material from the HOA. What's your recollection about their complaints about this?

A. If my memory serves me correctly, it's my understanding the way information was sent to the Villas was that it was sent to their management company Litus To Let, L-I-T-U-S, to, T-O, L-E-T. And I remember that that wasn't always the case, Litus didn't always pass on the information.

However, we did not have their mailing addresses, therefore we were not able to mail it to them directly. We did the best that we could with the information we had at the time.

Q. Prior to the 2008 general membership meeting and election, were you president of the HOA?

A. Yes.

Q. Didn't Charlie Ferrera after the election complain to you that the Villas homeowners didn't get the 2008 vote packages?

A. He complained to the board, yeah.

Q. Can you explain how the Villas homeowners actually got those mail packages by mail and e-mail when they didn't get the vote packages?

A. I can't answer that. I don't know the

timeframe. I know that there was a point where we finally were able to get ahold of the mailings -- the addresses for the owners. I can't tell you when this was. I can't tell you if it was then or a week from then.

Q. Whose decision was it as to which homeowners would get the Henrietta Golding packages?

MS. THOMPSON: Objection to the form.

THE WITNESS: I don't quite understand the question.

BY MR. JARMUTH:

Q. What guidance did you give K.A. Diehl as to which homeowners would get e-mail and/or mail packages?

A. I don't remember.

Q. Do you have an explanation why Becky Abel received a copy of that material directly from Henrietta Golding?

MS. THOMPSON: Objection to form.

THE WITNESS: No, I do not.

BY MR. JARMUTH:

Q. Who modified the HOA website to add that material to it?

A. I don't know.

Q. Can you explain how the person who wrote the

e-mail was able to know what the website internal address would be so that links would accurately work from the e-mail to the website?

A. No. I am computer illiterate. I don't know anything that has to do with computers or your question.

Q. Have you had an opportunity to read the original covenants and the amendments to those covenants?

A. In my time, yes.

Q. Did amendment number one delete any sections of the original covenants?

A. They deleted sections of the original covenants as they applied to the Villas.

Q. Where do you read in amendment one the word the Villas?

MR. JARMUTH: For the record, I'm going to give you amendment one, and we're going to mark this as evidence.

(PLF. EXH. 1, Amendment One to Covenants, was marked for identification.)

THE WITNESS: And I'll take the time to read through this. All right. If you look at number two, the property set forth and

described in Exhibit A, which is attached hereto and is hereby subjected to the declaration, such property, the multifamily parcel, is being conveyed by the declarant to the International Club Villas, a South Carolina Limited Liability Company.

There is -- and then the next one, there is no common area as such term is defined in the declaration located in or on the multifamily parcel.

Section 3.7 of the declaration is hereby deleted in its entirety. There shall be no restrictions on the property management firm utilizing the multifamily association, so on and so forth.

BY MR. JARMUTH:

Q. On each of these pieces of text you write separate paragraphs in that document?

A. They are separate, yes.

Q. Does the word villas appear there at all?

A. No.

Q. Is there any clarification here that says that the section is waived or deleted, that this applies to less than all the homeowners?

MS. THOMPSON: Objection to form.

THE WITNESS: It is -- all right. Say that -- ask that question again.

BY MR. JARMUTH:

Q. Can you point to any text in the paragraphs which delete or waive covenant provisions which say that that specific waiver or that specific deletion applies to less than all homeowners?

A. The number four, section 3.7 of the declaration is hereby deleted in its entirety. There shall be no restrictions on property management firms utilized to operate any multifamily association created on the multifamily parcel.

We are not a multifamily parcel only. And the Villas was the only multifamily parcel at that time.

Q. Doesn't section 3.7 talk about management companies in the multifamily?

A. Um-hum.

Q. How are the other sections, where do they mention the word multifamily?

A. They all have multifamily units.

Q. The sections on 7.2 and those other ones, does that paragraph have the word multifamily?

A. I'm missing the next page.

Q. Flip it.
A. Because 7.2 is not on here.
Q. Turn the page over.
A. Oh, sorry. All right. Run that question by me again.
Q. In the other paragraphs which delete or waive other provisions, do those paragraphs have the word multifamily?
MS. THOMPSON: Objection to form.
THE WITNESS: Not all of them.
BY MR. JARMUTH:
Q. Do any of them have it?
A. Ten does, eight does.
Q. What does ten talk about?
A. The initial assessment required by Article 6, Section 6.7, shall not be due until conveyance of completed dwelling units in the multifamily parcel to third party purchasers of such property.
Q. What is your understanding of the meaning of the word waive when it applies to covenants?
MS. THOMPSON: Objection to the form.
THE WITNESS: I can't answer that. I see here that Plantation A.D. by Suntech Management is signed here.
BY MR. JARMUTH:

Q. Some of the paragraphs use the word waive.
A. Okay.
Q. Do you see that as anything other than equivalent to the word delete?
MS. THOMPSON: Same objection.
THE WITNESS: Can you give me a for instance. I'm looking now to see if I can find one that says it.
MR. JARMUTH: Can I please have that copy, yours.
BY MR. JARMUTH:
Q. Paragraph nine, declarant hereby waives paragraph 11, the declarant hereby waives.
A. Okay.
Q. Paragraph 12, the declarant hereby waives.
A. And the declarant is who.
Q. Who do you think it is?
A. Who do I think it is? Was that a question, Mr. Jarmuth?
Q. Yes. Isn't that actually the developer?
A. I would think so.
Q. Who had the authority to amend the covenants at that time?
A. It would be the developer. And when you read this, to my eyes this reads specifically for

the multifamily homes. Horizontal property regime is what I think of them in my mind. And this took away their obligation for having to deal with an ARB or parking, because their parking is different than single family homes.

Q. While you were on the transition committee, what was your involvement in the consideration of the ARB guidelines?

A. Well, I -- my involvement was none because that wasn't my area of purview. It was Carl DeLorenzo and Jane Bowers who handled the CC and R's and the ARB guidelines at that time.

Q. Did you receive copies of all the correspondence from the rest of the transition committee regarding the things they were concerned with?

A. At the end we were able to give to the developer our findings and a list of what we wanted to see fixed given to us, what our desires were from the developer before it was turned over to us.

Q. Did you personally write or receive any correspondence regarding the proposed or recommended changes to the bylaws, the covenants or the ARB guidelines while you were on the transition committee?

A. I don't recall my writing anything. But again, that was 2007. I can't remember last week, never mind then.

Q. While you were on the transition committee, what opinion did you express regarding whether the golf course was a proper member of the HOA?

A. We felt they were a part of the HOA, they were in our CC and R's.

Q. While you were president of the HOA, what was your position as to whether or not the golf course was a voting member of the HOA?

A. The CC and R's gave them that right and we agreed as a board.

Q. How about the bylaws?

A. Bylaws apply to the board members. They don't apply to the golf course.

Q. Didn't the bylaws govern the operation of the HOA?

A. Yes, they do.

Q. Did you have a chance to read the bylaws and become familiar with them when you became president of the HOA?

A. Yes.

Q. Do you recall what they said regarding membership in the HOA?

A. I have a vague recollection of it.

Q. When you determined that a golf course was a member, have you at that time carefully read the bylaws?

A. I would say yes, that at that time I carefully read the bylaws.

Q. During the elections which were held while you were president, did the golf course proxies count for the quorum at the annual meetings?

A. I don't believe that they voted at all at the annual meetings.

Q. But did they give you a document which was used for a proxy to establish a minimum presence of members so a meeting could be held?

A. I wouldn't know. I would not have received that. That would have been something our management company would have received.

Q. While you were president, wasn't it a requirement that homeowners with more than one person on the title to the lot give the HOA documentation as to who could vote?

A. Yes.

Q. Did you impose the same requirement on the golf course?

A. Yes, to the best of my knowledge.

Q. Are you familiar with the covenants and bylaws requirements as to payment of capital contributions?

A. I have a reasonable memory of that, yeah.

Q. When you first bought your house, do you recall who owned the golf course?

A. No.

Q. Did Davis Mining and Manufacturing own it at that time?

A. No. That I do know.

Q. Did Davis Mining and Manufacturing buy the golf course while you were president?

A. No. I believe it was well before I became president.

Q. Isn't it a fact they bought that in 2008?

A. I can't tell you. I honestly don't know.

Q. While you were president, did Davis Mining and Manufacturing sell the golf course to the International Club, LLC?

A. Say that again.

Q. While you were president of the HOA, didn't the Davis Mining and Manufacturing sell the golf course to the International Club, LLC?

A. I know there was a name change. I don't know that it was sold. I just remember hearing,

and that's hearing from neighbors who are golfers, say that there's a name change that they heard.

Q. What was the procedure while you were president to be aware of changes of ownership of lots in the PUD?

A. None. That would have been our management companies.

Q. What instructions did you give them regarding detecting changes of ownership not reported to them?

A. I don't recall, I don't recall. I don't know that that ever happened.

Q. Can you explain why ledgers of the HOA do not report that Davis Mining and Manufacturing or its predecessor paid a capital contribution when Davis bought the golf course in 2008 or when they resold it to International Club, LLC?

A. That they didn't?

Q. That they did not.

A. I don't believe -- I don't believe that they are obligated to pay that.

Q. Didn't amendment three and four of the covenants require that upon resale the owner of the lot shall pay the HOA equivalent of two months assessments to be used as a capital contribution to

the HOA?

A. Yes, that is true.

Q. Can you explain why under your presidency on those two occasions the golf course did not pay that capital contribution?

A. Because they are not a lot owner. That would be my thinking on it. And they're not a unit owner. It doesn't apply because they are not the same as you or I as far as being owners. They were a commercial venture within the community within the PUD, but only that.

Q. As president of the HOA, was it your interpretation that the golf course was subject to all of the covenants of record?

A. No, it wasn't my interpretation that that was so.

Q. What was your interpretation?

A. That they have 50 votes, and according to our CC and R's that they paid 50 times the assessment of the single family homeowners using the amenities that were provided. However, the golf course agreement changed that and we honored that agreement.

Q. Was the golf course subject to the ARB guidelines?

A. No.

Q. Isn't it a fact that at least on one occasion you directed that a certified letter be sent to the golf course for violation of the ARB guidelines regarding plantings?

A. That is a possibility. Do I remember it, no. However, initially as a group we had to investigate that. And once we investigated it and once we knew better, we did better.

Q. You did what? You said you did that, what was that?

A. No, we did better. Once we knew better, we did better, and once we realized that the golf course was a commercial venture in our CC and R not as a unit owner and not as an owner, our thinking changed from our initial thoughts, that perhaps they are a part of the HOA.

Q. Was it your policy while you were president to enforce the ARB guidelines in their entirety against the golf course?

A. Not during my whole presidency, no. The board -- all right.

Q. What privileges or rights did you give the golf course regarding the operation of the HOA?

A. I don't understand the question.

Q. Did they have the privileges of a member?
A. I still don't understand the question.
Q. Did they have a vote in the HOA, whether or not they cast it?
A. I believe the CC and R's gave them the right to cast 50 votes. I believe they voted perhaps at one election. Did I see their votes, no.
Q. Was it your position and policy that they would be allowed to vote at HOA elections while you were president?
A. While I was president we used the same determination as we would have with any homeowner. We had to be -- we didn't owe any money, you had no violations, so on and so forth.
Q. If the golf course was not in arrears, was it your policy to allow them to vote?
A. The board allowed them to vote if they chose to vote. But I can't tell you whether they took that or not.
Q. What was your position as president of the HOA regarding whether or not a golf course was within a planned unit development as approved by Horry County?
A. Their property is in the PUD.
Q. Have you had an opportunity to look at

Exhibit A to the original covenants?

A. Long time ago.

Q. Can you explain how the golf course is explicitly in Exhibit A, but according to you not subject to the covenants?

MS. THOMPSON: Objection to the form.

THE WITNESS: I don't know what Exhibit A says.

BY MR. JARMUTH:

Q. Exhibit A was a list of property in the PUD originally subject to all of the covenants of record. Can you explain how they were in the property originally subject to the covenants but not subject to the covenants per your opinion?

A. They are a commercial entity. They don't stand up to the definition of an owner, and they don't stand up to the definition of a unit. That's why.

Q. What was your involvement in reaching the agreement with Central Electric regarding sale of something on International Club Drive?

A. I was involved.

Q. What was your involvement in coming up with the agreement ultimately approved?

A. I was involved with it.

Q. Were you the follow-up or leader in reviewing proposals?

A. I was one of the leaders. It was not one person. It was a group effort.

Q. What alternatives did you have regarding the Central Electric proposal to acquire certain rights over the front entrance?

A. What alternatives?

Q. What alternatives did they offer you?

A. I can't remember. I can't remember that there were --

Q. Did Central Electric threaten to condemn the land by eminent domain?

A. They didn't threaten. We discussed it.

Q. Did they state that that was what they could do if a sale was not made voluntarily?

A. I don't know that they said that. I think that was something that we as a board knew.

Q. At the special meeting of April 6th, 2010, isn't that in fact what you told the HOA members?

A. Yes. But you asked a different question.

Q. Why didn't the board give the homeowners a vote whether to approve or disapprove the agreement with Central Electric?

A. Because that wasn't something that we were

elected to do. We were elected to look at the best interest of the community, and that's what we did.

Q. Prior to that decision, had you become familiar with what bylaws say about sale of property of the HOA?

A. I don't understand the question.

Q. Does the bylaws have a section regarding the sale of property of the HOA?

A. Probably. I can't tell you sitting here.

Q. As the president of the HOA, would it have been your fiduciary duty to see what the bylaws said about that?

A. Absolutely.

Q. Did you agree with the decision?

A. What decision?

Q. How did you vote on the proposal to make the set-off?

A. Yes, I agreed, yes.

Q. Did Bill Freiboth make the motion to sell?

A. I couldn't tell you. I don't have any paperwork in front of me.

Q. If the minutes of that meeting record Bill Freiboth making the motion, would that be an error?

A. No. I don't believe so, if that was the way the minutes were written.

MS. THOMPSON: Is it okay to take a break for bathroom?

MR. JARMUTH: Sure.

MS. THOMPSON: Okay.

(A recess transpired from 11:01 a.m. through 11:05 a.m.)

BY MR. JARMUTH:

Q. At the special meeting did at least one homeowner request that a vote be taken?

A. I believe -- I believe somebody did say that.

Q. Before you joined the transition committee, did you complete an application for membership on the transition committee?

A. Yes.

Q. Who appointed you to the transition committee?

A. I can't say for certain. It was the board at the time was my understanding. That's how names were chosen. And that would have been the developer board.

Q. When you say the developer board, do you mean that everybody on the board at the time was appointed by the developer?

A. No, that -- well, the transition committee

was -- I don't understand your question.

Q. Were the members of the developer board, using your words, actually appointed by the developer, or were they elected?

A. I have no clue. I wasn't living there.

Q. When did you buy your lot in the HOA?

A. I got to think. I'm going to have to say winter, because I can't remember if it was the end of one year going into the second year or actually 2005. So we put a deposit down. I believe it was into 2004, beginning of 2005, and moved in, in September of 2005.

Q. Wasn't the charter for the transition committee approved November 16, 2006?

A. Wasn't the what?

Q. The charter for the transition committee --

A. The charter.

Q. -- was it approved November 16, 2006 or thereabouts?

A. I have no idea.

Q. Didn't you join the transition committee in 2007?

A. Yes. I don't remember what the charter date was.

Q. If you joined the transition committee in

2007, wouldn't you have been a member for several years of the HOA?

A. For just over a year. We moved in, in September of 2005, so I was an HOA member from that time.

Q. What was your position on the subcommittee that you were a member of on the transition committee?

A. I was one of three people that took care of the common area. We looked into what common area the HOA had.

Q. Were you the co-chair of that subgroup?

A. I don't think we had chairs or co-chairs. The three of us did it as a group.

Q. Weren't you, in fact, the person who did all the correspondence from the common area and grounds subcommittee on the transition committee as a whole?

A. I may have done the correspondence, but I only did it as someone who could type.

Q. Since you were appointed by the developer, was your allegiance to the developer or to the homeowners?

A. Was to the homeowners.

Q. Did the homeowners have any role in

selecting you?

A. No. Other than I put my hand up along with 19 other people and was one of the people chosen. Everybody had the opportunity, Mr. Jarmuth, to be on that transition committee if they wanted to.

Q. While you were on the transition committee, did you receive any correspondence from any attorney regarding matters into which the transition committee had asked?

A. I don't recall. I don't recall that we -- I don't recall. We might have received one item. I can't recall without looking.

Q. What was your involvement in transition committee concerns about capital contributions?

A. I didn't have a concern. I paid my capital contributions when I -- in my settlement. I had no concerns at that time.

Q. As a member of the transition committee, didn't the committee ask questions regarding where the capital contributions had gone to?

A. Possibly. I wasn't on that part of the committee.

Q. So you wouldn't have received any correspondence with that topic?

A. I don't remember. That was five years ago.

Q. Was your area of concern in the transition committee inclusive of amenity center matters?

A. No. Mine was a common area, common area only. There was someone else that handled the building and the amenity center.

Q. What was your position when the transition committee circulated a proposal not to pay any HOA money to the developer until he released all claims on the amenities?

A. I don't recall that.

Q. Didn't you receive a piece of correspondence saying that?

A. I don't recall it. I don't remember.

Q. While you were president, what investigation did you do to determine who actually owned the two amenity center parking lots?

A. We did some fairly extensive hunting. But again, that was so long ago, I just know that we needed to find out who owned them. And sometimes we didn't always have the correct information, so then we had to keep looking.

Q. Why did you direct as president that the private lot sign be taken down from one of the amenity center parking lots?

A. That was not my decision, that was a board's

decision. And I'm going to preface and go on record to say that any decisions that were made were not mine and mine alone. Everything was always a board decision.

We took that down. One was stolen, as I recall. Because we had -- we hadn't had them up that long, and we determined at that time to take the other one down in good faith. Because in discussing it with, I believe it was Jamie Roderick at that time, where we would have a get-together at the amenities center and there was an overflow. They never complained about us using their next lot.

And we felt that that would be a nice neighborly way of getting along. So we took the other sign down and determined until such time that we could know who owned what, we were going to go along and get along.

Q. Isn't it a fact that you personally wrote numerous correspondence to the homeowners asserting that the golf course owned both parking lots?

A. I don't know. Did I?

Q. If you had written that, looking back at it today, would that have been a mistake?

A. No. It was -- if I wrote it, it would have

been with the information that I had at the time, that we as a board had at the time. And when we knew better, we did better.

Q. Can you explain why Mr. Freiboth previously was able to testify that he didn't have a great amount of difficulty determining that both parking lots belonged to the HOA?

A. No, I can't answer for Mr. Freiboth or his testimony.

Q. What was your position as to whether The Glens is a multifamily area or not?

A. They are not a horizontal property regime, they are a town home community.

Q. What is your position as to whether they are a multifamily area of the PUD?

A. No.

Q. Are you saying that they are not a multifamily area of the PUD?

A. They are a town home. I understand the multifamily in our PUD to be a horizontal property regime like the Cambridge and the Villas. The Glens is not a horizontal property regime.

Q. As president of the HOA, did the topic of whether they were eligible for the amenities ever arise?

A. Outsiders have brought that question or had brought that question to the board at meetings. I do recall probably talking about it a couple of times. Not me personally, but in a group setting at the board meeting.

Q. Didn't I personally bring that to your attention at board meetings?

A. You probably did. I can't remember whether it was you or anyone else.

Q. Didn't I personally bring that to your attention by e-mails, to you personally?

A. Bring what, the fact that they --

Q. The question of whether The Glens was eligible to use the amenity center.

A. Possibly.

Q. In responding to my assertion that they were not eligible, did you have a chance to look at the Horry County approval documents for The Glens?

A. Possibly. I don't remember.

Q. Would that have been appropriate for you as president of the HOA to look at the Horry County Planning Commission documents regarding The Glens?

A. Probably.

MR. JARMUTH: For the record, I want to have plat book 197, page 171 marked in

evidence. I'm showing that to the deponent.

(PLF. EXH. 2, Plat Book 197, Page 171, was marked for identification.)

BY MR. JARMUTH:

Q. As attorney work product not being marked in evidence, I'm passing out a blow-up of the notes in the upper right-hand corner.

MS. THOMPSON: What is this?

THE WITNESS: It would be this here.

BY MR. JARMUTH:

Q. Can you read for the record note number nine.

A. The project is zoned as a PUD.

Q. Can you read for the record note 12.

A. The Glens Phase 1 has 47 townhouse units in an area of 8.74 acres. This phase has a density of, I think that's 5.38 units, slash, acres, or acre.

Q. Where do you see on the approval document that these are town homes, not townhouses?

A. That's a matter of my choice of words. Town homes, townhouses, one is the same, as far as I'm concerned. Home and house, homes have hearts and nice people live in them.

Q. How do you explain that Horry County

designated that area as a multifamily area when it approved the subdivision of the International Club?

MS. THOMPSON: Objection to form.

THE WITNESS: You have to ask Horry County, sir.

BY MR. JARMUTH:

Q. Doesn't that determine whether that is a multifamily or not?

A. You'd have to ask Horry County.

Q. Pass that to the court reporter.

A. I put the explanation behind it.

Q. Do you have any explanation why the transition committee charter has no provision to investigate the financial affairs of the HOA prior to transition?

A. No. I didn't write the charter.

Q. Did anyone on the transition committee have the responsibility to do a financial investigation?

A. We did have a financial committee.

Q. Who had that responsibility to investigate the finances of the HOA?

A. On the transition committee?

Q. Yes.

A. I mentioned before that was Bill Fletcher, William Fletcher, and Reginald Corfield.

Q. Do you recall seeing an opinion offered by Tracy Fisher of Willcox Buyck on various topics of concern by the transition committee?

A. I remember her name on some documents or some letters, yeah.

Q. Did another attorney other than Willcox Buyck specifically send you by name a document with a recommendation?

A. Recommendation for what?

Q. To sue the developer for the capital contributions.

A. I don't recall anything like that.

MS. THOMPSON: I'm going to object to that to the extent that you're seeking attorney/client privilege information.

MR. JARMUTH: That I what?

MS. THOMPSON: I'm objecting to the extent that you're seeking attorney/client privilege information.

BY MR. JARMUTH:

Q. Were you ever the client of any of the attorneys retained by the developer?

MS. THOMPSON: Can you say that again, I'm sorry.

THE WITNESS: Yeah, I don't understand.

BY MR. JARMUTH:

Q. Were you ever personally the client of any of the attorneys retained by the developer?

A. I don't understand what you're asking. Was I declined?

Q. Were you ever personally the client?

A. Oh, the client. No.

Q. Did you sign any attorney retention agreement with any attorney who offered the transition committee an opinion?

A. Not to my knowledge.

Q. Were you ever told that when you received any material that it was provided to you with any privilege attached?

A. No.

Q. Could you explain why all those attorney opinions are widespread distribution throughout the HOA?

A. I don't know what you're talking about.

Q. Your attorney's just asserting client privilege.

MS. THOMPSON: I don't know what you're speaking about, Mr. Jarmuth. If you don't have these opinions here to show to the client, I don't know what you're talking

about.

So if you are asking her regarding correspondence that you don't have knowledge of and that has not been waived, I'm just trying to protect that privilege.

BY MR. JARMUTH:

Q. I am referring to materials sent by McCutchen, Mumford, Vaught, O'Dea and Geddie, specifically Pat O'Dea.

A. And what was that date, sir?

Q. That was in January, February 2009.

A. That was not during the transition time, sir.

Q. Did you receive those opinions during your presidency?

A. I received correspondence from that firm at that time.

Q. Didn't they recommend suing the developer for the capital contributions?

MS. THOMPSON: Objection to the form. If you have something that reflects that, you can ask questions about that. But I'm going to object to my client providing any information about any communications from any attorneys that has not already been

waived.

BY MR. JARMUTH:

Q. When did the developer deed any of the roads to the HOA?

A. I don't know. I don't remember.

Q. Isn't it true that you've been asserting that the HOA owns the roads?

A. When I was the president, there were certain times, and I'm trying to remember, where -- and I hate the word assume, but we assumed, and wrongly so in the end, I guess -- I don't know, because I'm not familiar with the new documents -- but at that time we were told that part of International Club Drive was now signed over to us. And I'm -- that's about my recollection, that it was -- that it -- it was then becoming a public road, that the County took it over.

I don't remember the declarant giving us the roads, I just remember them going into county roads. If that's what you're asking me about, I honestly don't remember.

Q. In looking at material provided by your counsel in discovery and material which I received from you directly, over your name by e-mail, I have found that you asserted at times that the County

only had an easement for the road and the HOA owned the road.

MS. THOMPSON: Object.

BY MR. JARMUTH:

Q. My question is how did the HOA get ownership of the roads?

MS. THOMPSON: Objection to form.

THE WITNESS: I have no idea. When did I write that, and what did I write to you? I have no recollection of that. That's not to say it didn't happen.

BY MR. JARMUTH:

Q. What's your position today regarding who owns the roads?

A. I don't know who owns the roads today. I've never seen any other documents.

Q. When you bought your house, did you have a survey taken of your property lines?

A. Yes.

Q. Did the surveyor mark your property line as being at the curb or some distance in front of the curb?

A. I believe -- well, trying to remember where the stakes were. I don't remember where the stakes were.

Q. Were they at the curb?

A. Don't remember. Probably not, but don't remember.

Q. As a homeowner, do you have any obligation under the covenants to actually mow or maintain the land which is beyond your property line?

A. As a homeowner, and this is my feeling, when I read the covenants, it is my obligation to maintain my property in a way that benefits my neighbors.

And to mow an easement in front of my property, I've been around this earth over 60 years, and I've never known anywhere where I've lived that I've never maintained up to the curb. And I always would for the benefit of my community or my neighbors.

Q. I salute your observance of the duty. But do you actually believe under the covenants you have an obligation to maintain that additional area beyond your property line?

A. Is it written? Not to my knowledge.

Q. If you did not maintain land beyond your actual the property line, looking at it from the perspective of the president of the HOA, would you be subject to a violation of failing to maintain

your property?

A. Personally, I believe yes, because that's my obligation to my community. And we have obligations under those CC and R's, sometimes it's unwritten --

Q. Did you actually read in the covenants you have an obligation to maintain land you do not own?

A. No, I told you that before. It's unwritten.

Q. Do you recall the amendment to the covenants and bylaws that the transition committee proposed?

A. No. I know there were some, but I don't remember what they are.

Q. Do you consider the decisions of boards of directors reflected in the minutes to be the policies binding how the later boards and the HOA contractors unless and until a later board through a vote changes the policy?

A. I would say yes.

Q. Why did your board in the minutes require K.A. Diehl to ask the board for approval of every piece of correspondence to any homeowner prior to sending it?

A. Because there were some correspondence sent out with misinformation in it. And I'm not going to remember what that information was, but we found

it. And as I said earlier, when you know better, you do better, and as a board we decided that that was the way we were going to do better.

Q. From when you served on the board of directors, did the covenants give the board alone the power to amend the covenants?

MS. THOMPSON: Objection to form.

THE WITNESS: Yeah, I'm not sure that -- the covenants don't give the board the power to change the covenants, that has to be done by the community.

BY MR. JARMUTH:

Q. When you bought your house, did K.A. Diehl give you copies of any of the covenants and/or the amendments?

A. No. We had asked for them before we purchased our homes so that we could read them.

Q. As a homeowner when the developer made amendment five to the covenants in 2008, had you been notified before that that there was intention to amend the covenants?

A. I don't remember.

Q. After amendment five was made in 2008 --

A. You know what, let me amend that. I do remember getting something, because I remember my

husband saying they are making some change in the covenants. I do remember getting something from them. But it wasn't to me, it was to me as a homeowner, under my home.

Q. Can you explain why amendments two through five did not appear on the HOA website until I found them in the recorder of deeds and sent them to the HOA?

A. No, I couldn't. But thank you for that.

Q. Do you recall a meeting of the board of directors when no one knew amendment five had been made in 2008 until I told them?

A. I'm sorry, say that again.

Q. Do you recall a meeting of the board of which you were the chairperson where the board was unaware on the record of amendment five of the covenants in 2008 until I told them it had happened?

A. I have a vague recollection. I'm not going to say any more than that, yeah. And, again, I thank you.

Q. What was your policy as board member to K.A. Diehl regarding information Diehl should be collecting from new homeowners?

A. Information such as?

Q. Anything that someone was supposed to write down and give Diehl.

A. Well, I know that they were supposed to fill out a certificate for voting.

Q. Was Diehl asked to collect information on who lived in the house?

A. Not to my knowledge.

Q. Can you explain why until recently the September 2002 board of directors minutes were not in the records of K.A. Diehl?

A. I lived in Connecticut then. I haven't a clue.

Q. In 2009 I inspected the files of the HOA. At that time and on the website until very recently as late as November 2011, there were no minutes of the board of directors earlier than September of 2003. Can you explain where the prior minutes went to?

A. I don't even know that there were any minutes, Mr. Jarmuth.

Q. What is your relationship to the Highway 17 Association?

A. I am the east side of 707 representative.

Q. Are you on the board of directors of that association?

A. Yes, as a representative or -- Russ Campbell appointed me a few years ago and Doug Machen is -- was at that time the other board member from the west side of 707.

Q. Does the Highway 17 Association have members?

A. Yes.

Q. What makes someone eligible to be a member of Highway 17?

A. Simply by where you live on Tournament Boulevard, west of 707 or east of 707.

Q. Does that mean a renter is a member?

A. No. Their property is a member. And I know I remember that I sent you all of that information, because that I do remember you and I had some e-mails. And you had requested it, and I sent you the CC and R's for the Highway 17 Connector.

Q. Could you explain as an official of some sort of Highway 17 why none of the homeowner members in the PUD ever get any material at all from the Highway 17 Association of which they are supposedly members?

A. First off, you're a member and you are encumbered by your title, you read. And I know I sent you a copy of that, because I send everybody

my copy off of my deed. That you are encumbered to pay into the Highway 17 Connector.

You know the history of the Highway 17 Connector, I know you know that. We are all members by virtue of the property that we live on. You don't vote because your homeowners association would have a vote if we ever have a vote on anything.

Q. How would the homeowners association be able to cast my member vote if no homeowner has ever given a delegation to the HOA to vote for them?

A. There's -- this is a very unique group. And we've never had anything that would encompass everyone to vote on. So there isn't anything to vote on. I can't say any more than that. We just take care of the soft elements along Tournament Boulevard, period.

Q. Does Highway 17 Association actually own any property?

A. No.

Q. Who owns Tournament Boulevard?

A. County. We maintain the soft center and the sides up until the middle of the ditch, the swale. That's what we maintain.

Q. Some of the Highway 17 material uses a

phrase, road maintenance district?

A. And that's -- it is the Highway 17 Connector Road Maintenance District Association. That is the full name of the group.

Q. Is the Highway 17 Association a nonprofit corporation under the South Carolina Nonprofit Corporation Act?

A. Yes.

Q. To your knowledge as an official of Highway 17, is there any special legislation in the way of an Horry County ordinance or state law which provides for road maintenance districts?

A. I can't answer that.

Q. Is Highway 17 claiming any privileges as a road maintenance district?

A. Privileges such as?

Q. Special rights or privileges in a capacity other than just another ordinary nonprofit corporation.

A. No, not to my knowledge.

Q. How long have you been involved with Highway 17 Association?

A. Approximately three years.

Q. Did Highway 17 get involved with Central Electric in any way regarding Central Electric

running power lines across tournament?

A. Yes.

Q. What was Highway 17's position on the matter?

A. Highway 17 Connector Association along with the Burgess -- Greater Burgess Community Association were very instrumental in getting the substation to be moved from where Bojangles now is on that corner over to behind Lowe's. That was the one thing that I can recall us, us being Highway 17, trying to implement.

Q. Did Highway 17 offer an opinion regarding where and how the power lines would cross Tournament?

A. No, Highway 17 did not.

Q. Did Highway 17 receive any compensation when the power lines crossed Tournament?

A. No.

Q. Can you explain why more than half of Highway 17's budget is administrative charges instead of actual direct charges for maintenance?

A. All right. The administrative charges.

Q. Contracts with the management company --

A. Yeah, and the mailings. It is a reasonable charge. It seems like a lot. It's a reasonable

charge. We're volunteers, and for what they do, we're okay with it. It was a board decision, and no, I can't say any more than that.

Q. How familiar are you with the 2011-2012 Highway 17 budgets?

A. Fairly knowledgeable.

Q. Did Highway 17 increase or decrease its 2012 budget compared to 2011?

A. Decreased.

Q. Can you explain why the HOA's assessment has gone up in 2012 when the amount being assessed in the communities has gone down for 2012?

A. Ask me that again. I got lost in that.

Q. Can you explain how the HOA's reported assessment to Highway 17 for 2012 is essentially more than it was in 2011 when Highway 17 is assessed here by in general less?

A. It shouldn't be. It should be less. 2012's payment from -- 2012's assessment to the International Club should have been less this year than last year.

Q. When the Highway 17 Association covenant was written, was Plantation's commitment to Highway 17 limited to the PUD, or did it include other property outside the PUD?

A. All right. Say that again, please.
Q. I'll make it easy, okay. Is Plantation a signatory to the Highway 17 covenants?
A. To the best of my knowledge, yes.
Q. Did Plantation pledge to be subservient to that covenant any land which it did not include in the PUD?
A. I can't answer that.
Q. Can you explain why Highway 17 is billing the HOA for property which was not part of the PUD when Plantation signed up?
A. I don't know that they are.
Q. The billing for 10.0 acres of Meadows which was not part of the PUD when the covenants were signed.
A. I can't answer that.
Q. As the east side representative of Highway 17, what have you done to verify that acreage basis of assessments accurately reflects assessable property?
A. I and the other board members would sit with the management company and go over what it was. And when we saw something that didn't seem right, we would call it to their attention. And we feel today as a board that what is being reflected as

acreage for all properties involved with the Highway 17 Connector is true to the best of our knowledge.

Q. What property in the PUD would be exempt from computation in the assessable acreage?

A. I don't know of any.

Q. How familiar did you make yourself with the Highway 17 covenants when you became a member of the Highway 17 organization?

A. I read it through, I have it available for me. And when I need to -- I know where to go to look something up. Do I know it off the top of my head, I can tell you no.

Q. Isn't it a fact that the Highway 17 covenant exempts from assessment land used for roads, wetlands, land in the golf course, land owned by the HOA?

MS. THOMPSON: Objection to form.

THE WITNESS: Let me clarify one thing, the golf course is not exempt. The golf course is by itself. And no, it would be the acreage that makes up the International Club is what is figured into the formula.

BY MR. JARMUTH:

Q. Are you saying after looking at the

covenants it was a specific exemption for the land which originally somehow was identified as a golf course?

A. An exemption?

Q. Yes.

A. I don't know. Are you saying it's exempt from being a part of the Highway 17 Connector?

Q. Yes.

A. Not to my knowledge. It is not the International Club that's -- the international golf course is not exempt.

Q. Are the Highway 17 covenants independent from the PUD covenants?

A. Yes.

Q. While you were president of the HOA, did the HOA pay any Highway 17 assessments?

A. I know that -- yes.

Q. Did the owner of the Bali Castle pay any money to the HOA while you were president?

A. I don't even know who owns the Bali Castle, no. To the best of my knowledge, no.

Q. The property to the east of the golf clubhouse has been identified for each development as a Bali Castle, which is across from The Glens.

A. Yes. I know where the property is.

Q. While you were president of the HOA, did whoever the owner was pay any money to the HOA?

A. Not to my knowledge.

Q. Can you explain why the HOA is paying that portion of the assessment which is included in the Bali Castle 13.1 acres?

A. Because it's part of the International Club.

Q. Is your statement, then, that collectively the homeowners are paying the highway assessment for Bali Castle acreage and the Bali Castle isn't?

MS. THOMPSON: Objection to the form.

THE WITNESS: Without going back to management and looking over what is involved, I can't answer that.

BY MR. JARMUTH:

Q. Is the HOA paying Highway 17 assessments on the land it got from Horton which is called generically the front entrance?

A. I don't know. Can't answer that.

Q. Is that on the east side of Tournament Drive?

A. It has nothing to do with Tournament Drive. It has to do with Highway 707. And it is a part of the Highway 17 Connector Association. I don't know if that's figured into the initial acreage. I

would think yes, but I can't say for certain. Because this goes back to when Highway 17 Connector all came about.

As you know in what I've sent to you, there's a little history of how the five plats of property came to be. But what it all entails, I can't tell you whether the entrance is included. I would think yes.

Q. While you were president of the HOA, did you believe per the golf course agreement, which sold the second parking lot to the HOA, that the HOA had an obligation to install a fountain next to the amenity center in the pond closest to the amenity center.

A. You asking did I believe?

Q. Yes.

A. I hadn't -- I had no thoughts on that.

Q. While you were president, did the golf course ask you to install that fountain?

A. No.

Q. While you were president of the HOA, what work did Sullivan Irrigation do for the HOA?

A. None, no work.

Q. While you were president of the HOA, did the buildings and grounds committee give you a

presentation, specifically Mike Butrin, PPC and other members, which said that the HOA was spending money to irrigate and maintaining land it did not own?

A. Do I recall that?

Q. Yes.

A. I have a fairly vague recollection of it, but yes, I remember them, because we had discussion about that, yes.

Q. What land along International Club Drive was irrigated by the HOA using golf course water?

A. All of International Club Boulevard is.

Q. Did there come a time when the board or you was asked to address the question of alternatives to buying water from the golf course?

A. That went back -- no, it wasn't an alternative, it was that we -- in the golf course agreement there was a $150 a month provision. And we asked Becky to investigate, because this was all before any of our time, had the payments been made to the golf course. And apparently there was some time where it hadn't been.

So in order to honor the golf course agreement, we made sure that from that point on, and I don't remember the month, but when we found

out, again, when you know better, you do better, we started paying them the $150 a month.

Q. Was there an alternative available to the HOA as to where they could get water from to irrigate that area?

A. Possibly. Putting in our own wells.

Q. How about the water in the pond near the Villas?

A. That's not our pond.

Q. Who owns the water in those ponds per the covenants?

A. Which ponds?

Q. Any of the ponds in the PUD.

A. Depends upon whose pond it is. The HOA owns three ponds, and we maintained four when I was president.

Q. Don't the covenants of the HOA say explicitly that all of the water in all of the ponds belongs to the HOA, and including the effluent, and that the HOA has the right to use that water for irrigation?

A. I don't know what you're talking about, sir. I've never read anything like that.

Q. As president of the HOA, what control did you exercise over the ARB?

A. Control?
Q. Yes.
A. None. They are a separate -- they were a separate entity. I didn't control them as the president.
Q. Who appointed the members of the ARB?
A. The board.
Q. Did the ALB have any source of money other than the board?
A. Money for what? No.
Q. For paying, among other things, members of Diehl to attend the meetings.
A. That was part of the contract.
Q. Was it the HOA board or the ARB which determined and ultimately approved the ARB guidelines?
A. The board approved the guidelines that were suggested by the ARB.
Q. Could the ARB itself write the guidelines by themselves?
A. Yes. But they still had to have board approval before they could be implemented.
Q. From your perspective on the board, what is the difference between a guideline and a rule?
A. And this is with regards to the ARB

guidelines?

Q. Yes.

A. Guidelines in that regard would be the way the ARB -- the way that the general homeowner -- all right. Let me back up.

With regards to guidelines and rules for the ARB to my thinking, there is no difference. However, Webster may have found a difference between guidelines and rules. Both need to be followed.

Q. For the record, I'm reading from page eight of the ARB guidelines as amended in April of 2008. It says, quote, "These guidelines are not all-inclusive. They are intended to provide guidance to homeowners regarding the most common improvements and decorative changes to homes."

A. Okay.

Q. How was the individual homeowner to know what is actually prohibited under the guidelines or not if they were intended only for guidance?

MS. THOMPSON: Objection to the form.

THE WITNESS: In the covenants it directs the homeowners to have to follow the ARB and fill out whatever changes they want to do to their home outside of their home.

And it's on a case-by-case basis.

BY MR. JARMUTH:

Q. What's the difference between the word guidance and rule?

A. All right, I'll bite. It's a guide to take you through any changes that the ARB -- they put into that, the ARB put into that, any thoughts that anybody could possibly come up with.

However, it was always a fluid document where changes could be made. And they tried to make it yearly, every two years. They've always tried to keep up with what wasn't necessary anymore, let's get rid of it. Everybody is doing it. So we all had an obligation to apply to the ARB for any -- and that would be a rule. We had that obligation.

Q. As the president of the ARB, what guidance did you give the ARB regarding getting input from the homeowners in general as to what they felt the ARB guidelines should be?

A. They have always -- the homeowners were always, always asked at any given time at meetings, committee meetings, whatever, any suggestions you have, please send them to either the ARB, give them to K.A. Diehl, send them to the board, so that we

can keep abreast of what changes are happening in the neighborhood.

Q. Could you estimate in the ballpark how many communications via e-mail, a letter to the homeowners, you wrote to the homeowners while you were present of the HOA.

A. That I wrote to the homeowners?

Q. Yes.

A. I wouldn't have a clue.

Q. Was it many?

A. Are you talking to individual homeowners or in mass?

Q. The homeowners in general. Friday facts, newsletters, all letters or announcements.

A. I guess as time moved on, we as a board did a fair share of e-mails.

Q. Can you explain why in examining the records of the HOA I'm unable to find a single invitation to the homeowners in general to give their input on the ARB?

A. Mr. Jarmuth, I don't think it ever was put out to you or any other homeowner. We welcome ARB suggestions. It has always been any suggestion. And I know that some had come through for ARB suggestions. I don't know that there's a

difference. I don't know that anybody's upset about the ARB guidelines. When they are, they let us know.

Q. Is the ARB a committee of the board?

A. No. They're a board separate unto themselves by virtue of the CC and R's.

Q. Are you saying, then, that the bylaws which govern the HOA do not apply to the ARB?

A. With regards to what?

Q. You just said they are not part of the -- they are not a sub-entity of the board.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. Are they part of the HOA's governing organization?

A. Yes.

Q. Are they, then, a committee of the board?

A. Well, see, a committee has to get permission before they make decisions. They come with suggestions to the board. The ARB can make decisions on their own, they are autonomous in that regard. And that's what makes them different from a committee.

So I'm not -- I'm not certain how to answer your question. Perhaps if you could rephrase it a

little differently or just repeat it, I will do my best.

Q. Did the board ever give the ARB any guidance as to who was allowed to be present at ARB decision-making sessions?

A. We've never had anybody except for yourself and one other person, I believe, and I'm not even going to remember that because I wasn't the liaison at that time, ever request to be there.

They would mail in, you know, I want a full screen storm -- or a full storm door, full view storm door, and no one would show up to be there while that was presented. And for decision making, that was done as a group with no outsiders present. I mean, that's kind of a given. That's a private thing.

Q. Is the ARB subject to the South Carolina Nonprofit Corporation Act?

MS. THOMPSON: Objection to the form.

THE WITNESS: Are they subject to it?

I don't know, I can't answer that.

BY MR. JARMUTH:

Q. Can you explain why the ARB excludes any individual from a session who is not the actual applicant?

A. No, I can't.

Q. Can you see any executive privilege which exists in excluding homeowners from decisions which affect other homeowners?

A. I think there's a nice comfort level when you can sit down, discuss issues -- not issues but discuss any changes that someone wants to make. Everybody feels comfortable in saying what they need to say, and the outcome is had. It's all followed -- they follow a set of rules and regulations that are given to them.

Q. Can the board of directors in executive session make any decisions which are binding which would be in the minutes?

A. No, not to my knowledge.

Q. How is the ARB exempt from the requirement of open decision making?

A. I don't know that they are.

Q. How familiar are you with the houses in the Seville Drive area and those on Tavistock and Adare?

A. Where's Tavistock? I mean, I don't know where Tavistock is.

Q. Tavistock opens into Seville, Adare opens into Seville?

A. There is no Tavistock on -- off of Seville. There's a Dunham Court, there's a Dare Court, there's Castle Rock and there's Caldera Court. But there is no Tavistock.

Q. To the north of Seville Drive, how familiar are you with the houses in that area?

A. Fairly knowledgeable.

Q. How would you explain the fact that there are numerous houses in that area who have large fences on the back lot line and the side lot lines of their property open to and facing the various cul-de-sacs?

A. There is none that have fences on property lines. They are fences or little stone walls like on Caldera Court which was the developer model homes, they put some nice little walls back there. They are all -- they would all be considered privacy for the patio. And that is allowed, a privacy fence for the patio.

Q. Is it your statement, then, that houses to the north of Seville Drive had such fences, they would be in violation of the covenants in the ARB guidelines?

A. Not if they are around their patio and they applied for them and were put in with permission of

the ARB.

Q. How about if they are along the property lines, as I described them?

A. I don't know of any on the property line.

Q. If they are on the property lines?

A. Now, when you say north of Seville Drive, you're talking north being the Highlands which would take in Marbella, and then we would go up toward the Pebble Creek area?

Q. I'm talking about when you turn into Seville from International Club Drive and drive past the GSWSA transformer station --

A. On the right-hand side of the road?

Q. Yes, the houses further on to the right.

A. I have absolutely no idea of any fence that is on the property line on any of those homes.

Q. If there are such, would they be in violation of the covenants and the ARB guidelines?

A. I would have to -- yes, to my knowledge, to my way of thinking, yes. But I would have to see how any of them would be -- why they were approved. But on Seville and the three little cul-de-sacs there, I don't know of any that have any on their property line.

Q. If I was to tell you that I personally

observed at least half a dozen of such, how would you explain that?

A. That they are not on their property line. What you were looking at were little fences that are around their patio. There's none on the property line to my knowledge.

Q. How about when you go down Pickering Drive from my house and make a right at the first corner?

A. That would be Castle Bridge.

Q. Castle Bridge?

A. Castle Bridge.

Q. Isn't it a fact that the first house there on the left at the corner has a rear yard fence which goes along Pickering, back through the property line, along Castle Bridge, back to the rear property line, across a entire rear property line, and then back towards Pickering along the left property line?

A. That fence is there, and it was put in by the developer, Charles Flynn. Any fence that you see in the development that doesn't follow the guidelines as we know them, if you look, they were put in by the developer long before I had anything to do with it.

MS. THOMPSON: Mr. Jarmuth, do you

think we'll be breaking around 1 o'clock for lunch, or do you think you'll be finished with her by 1 o'clock? Off the record.

(Off-the-record conference.)

BY MR. JARMUTH:

Q. Are chain link fences allowed around swing sets?

A. No.

Q. Can you explain how there's a chain link fence around each of the swing sets?

A. There is no chain link fence around the -- we don't have a swing set.

Q. Do you have a playground?

A. Yes. But to my knowledge, there's no swing set there.

Q. Is there a chain link fence around that area?

A. No.

Q. What's that fence made of?

A. It's made of a white -- it's a white metal, it's the same fence that's around the pool.

Q. Can you explain how there's a metal fence around the playground?

A. The developer put it in. It was there when I moved in.

Q. Why hasn't the HOA under you replaced that with the kind of fence that's allowed under the covenants?

A. I have no idea. I don't know that it's necessary.

Q. What water is the golf course supposed to use to irrigate the golf course, the lawns?

A. Their own water.

Q. Are they allowed to use the ponds as a source of water to irrigate the golf courses?

A. Their ponds, yes.

Q. Is it your statement, then, that as president of the HOA you read the covenants and determined that the pond water in their ponds does not belong to the HOA?

A. Yes.

Q. Before you became president of the HOA, how familiar were you with the members of the developer appointed board?

A. Never met any of them, to the best of my knowledge.

Q. What is the eligibility requirement to be a member of the board, per the bylaws and covenants?

A. If my memory serves me correct, you had to be an owner, you had to be in good standing, and

that was basically it, and be voted in.

Q. Were any of the developer appointed board members homeowners?

A. No, not to my knowledge.

Q. During the time you were the HOA president, was the cable TV issue a major focus for you?

A. That was a question that you brought to the board, and we were able to get you an answer. So it was one of many, yeah.

Q. Does the HOA have an agreement with any of the developers regarding the developer providing cable TV services?

A. I don't understand the question. I don't --

Q. With whom does the HOA have an agreement with for cable TV services?

A. The developer board signed a contract that we're obligated to, I think 15 years.

Q. Who are the parties for that agreement?

A. Horry County Telephone and whoever was on the board at that time and president, and I believe it was Doug Brown.

Q. Isn't it a fact that he signed as president of the International Club master HOA?

A. I don't know how he signed it, but I believe he was president of the HOA.

Q. Was any of the developers a party to that agreement?

A. I don't know. His is the only name that I can remember.

Q. But his capacity was as an officer of the HOA?

A. Yes, sir.

Q. And the other party was Horry Telephone Company -- Cooperative?

A. Yeah.

Q. How does cable TV service have anything to do with what I can do with my land?

A. How does -- I haven't a clue.

Q. As individual homeowners are the customers of HTC?

A. Yes.

Q. Can you explain why HTC gave you and me both copies of a letter from HTC who said that their customer is the HOA, and we have no relationship as homeowners with HTC?

A. I can't answer that. I'm a customer because I have other services coming from HTC, so I feel I'm a customer of HTC.

Q. For the cable TV services, not including extra services --

A. Okay.
Q. -- who do the homeowners have their contractual relationship with; is it the HOA?
MS. THOMPSON: Objection to form.
BY MR. JARMUTH:
Q. Is it the covenants which require --
A. Yes, we are obligated through -- through the contract. That's all I know.
Q. Are homeowners parties to that contract?
A. By virtue of being a member of the HOA, yes, we are.
Q. Do their names appear on that contract?
A. By virtue of being a member of the HOA, they don't. It's -- we're under the same umbrella.
Q. Who bills the homeowners for cable TV services?
A. The association does, the HOA. And it's not billed as services, it comes with -- in our assessment every month. It's part of our assessment.
Q. Were you present Monday when Julie Case testified about the cable TV billing?
A. I was present. Do I remember what she said, no.
Q. At that testimony Julie Case stated that

different neighborhoods get billed at different rates by HTC.

A. Okay. I remember.

Q. Is it a fact that the HOA bills at a uniform rate for all homeowners?

MS. THOMPSON: Objection to form.

THE WITNESS: What I know is that we are billed -- we're billed the same rate. However, it never comes out that way. And we've always -- I can remember having at sometime in the past, and now I'm going back years ago, Mr. Jarmuth, I had a conversation with several board members with Becky Abel.

And we tried to get HTC to get the correct number. However, Becky looked into it, and the problem is, is that new homes were being built or being sold or someone moved out and the cable got turned off. It was always in flux.

So nothing ever comes out to be quite what you and I would think would be normal. It doesn't come out that way. There's always some kind of a change happening in the different neighborhoods.

BY MR. JARMUTH:

Q. Have you had an opportunity to read the original cable TV contract?

A. I've glanced at parts of it.

Q. Does the cable TV contract have a fixed starting rate per home?

A. Possibly, probably. I don't know.

Q. Doesn't the cable TV contract also say that HTC cannot increase the rate more than 7 percent each year?

A. I don't remember.

Q. Can you explain why Pebble Creek homeowners' cable TV per the HOA budget have increased in some years by as much as 13 percent?

A. I can probably go back to what I had stated earlier, that more homes were built. That may have been the time when Wicklow finally was built. That was the last part of it.

So if you're looking at one year prior to Wicklow being built, then, yeah, at the end of that, then they were going to have more homes.

Q. Was Wicklow built out by the time you became an officer of the board?

A. No.

Q. When do you recall Wicklow was built out by?

A. Maybe the last home, early 2009.

Q. Would that have been less than four homes to be built at that time?

A. Oh, I'm not going to remember. But it wasn't a whole lot.

Q. What's your position regarding whether homeowners have any discretion as to whether or not to get cable TV service from the HOA?

A. Say that.

Q. Can they go to someone else other than the HOA for cable TV service?

A. No. They can get Dish Network or one of those things, I've seen.

Q. But they have to get cable TV service from the HOA?

A. Yes. At this time.

Q. What does our amenity center have to do with what I can do with my lot?

A. I have no idea what you're asking me, sir.

Q. How do the activities at the amenity center affect what I can plan or build on my lot?

MS. THOMPSON: Objection to form.

THE WITNESS: I don't know what you're asking. What goes on at the amenity center? We've got card playing, we have crafting. What goes on there?

BY MR. JARMUTH:

Q. Does that somehow determine what I can or can't do with my lots?

A. No.

Q. What was your recollection as to what the covenants tell a developer regarding whether he's allowed to run a private amenity center?

A. I'm going to ask you to restate that question, sir. I don't know what you're asking.

Q. Do the covenants allow the developer to run a private amenity center?

A. The developer?

Q. Yes. Or other private club.

A. I don't -- I have no idea. I have no idea what you're asking, either. I don't know what the developer was allowed to do.

Q. Which members of the transition committee had the duties to look at amenity center issues?

A. That was Tony Millioti and Carl -- I think it was Tony. I don't remember everybody on the transition committee, I got to go through.

I think Carl helped him with that. No, no, no, no, no, it was someone else. Larry Sherman, Larry Sherman.

Q. Does The Glens have its own common property

co-owned by the various owners of The Glens?

A. Yes.

Q. Is there any side lot setbacks between the individual homes of The Glens?

A. I don't know.

Q. Do they share common laws?

A. Possibly.

Q. When was the last time you saw The Glens townhouses?

A. Wednesday, when I drove by them, or when I came to the end of my street and took a right.

Q. Does The Glens townhouses consist of blocks of adjacent connected units?

A. Yes.

Q. Do you recall from when you were president who was responsible for maintaining repairing Madrid Drive?

A. The Glens homeowners.

Q. How are The Glens different from the Cambridge area?

A. The Cambridge is a horizontal property regime. Only two of the three units, as I remember watching them being built, actually go to the ground. The third one runs across the top with a garage in the middle. But that is considered, to

my recollection, as a horizontal property regime. And they own the land in common, I believe.

Q. For the record, what is the name of the company that printed the copies of Golding's materials?

A. I have no idea.

Q. I'm asking that to be provided to me with the address. Because I've asked in interrogatories for things of anyone with knowledge material to the complaint, and that's material. I just found out Monday about their existence.

MS. THOMPSON: Mr. Jarmuth, we will provide you that information.

MR. JARMUTH: Thank you.

BY MR. JARMUTH:

Q. Prior to sending the material about me to the homeowners, did you have an opportunity to read that material?

A. Yes.

Q. What did you do to verify that the material was accurate?

A. Prior to even -- to see if it was accurate. That was from our attorney, so I'm just going to say it came from our attorney.

Q. Am I correct in saying you did no fact

checking before it was sent out?

A. I don't remember. I do know I checked some things prior to this, long before this, that was brought to my attention by a homeowner.

Q. What fact checking did you do before the material about me was sent out?

A. I looked at a couple of things on Google.

Q. How did you know that I was the pro se plaintiff in every case which I was a party to, which is an assertion of the material?

MS. THOMPSON: Objection to the form.

THE WITNESS: I don't.

BY MR. JARMUTH:

Q. How do you know that the assertion is true which was in that material that I lost every case I was appointed to?

MS. THOMPSON: Objection to the form.

THE WITNESS: I don't.

BY MR. JARMUTH:

Q. How did you know that I was not represented by counsel in any of the cases which were mentioned on that material?

A. I don't.

MS. THOMPSON: Objection to form.

BY MR. JARMUTH:

Q. The materials said I sued Tara Patterson; how do you know that's true?

MS. THOMPSON: Objection to the form.

THE WITNESS: I don't.

BY MR. JARMUTH:

Q. Who is Tara Patterson?

A. I don't know.

Q. Your material sent out on behalf of the HOA used the title Dr. Brian Krolczyk, K-R-O-L-C-Z-Y-K. How do you know he's a doctor?

A. I don't.

Q. How do you know that the case caption included the phrase doctor?

A. I don't understand the question.

Q. Your material said there was a case involving Dr. Brian Krolczyk as a defendant?

A. Okay.

Q. How do you know that he was actually a doctor or that in the caption he used that phrase doctor?

A. I don't know.

Q. You said you did Google checking. Who is Oxana Turetsky, O-X-A-N-A, T-U-R-E-T-S-K-Y?

A. Sir, this was so many years ago, I haven't a clue.

Q. Wasn't she named as a defendant in many of those cases cited in your mailing?

A. I don't know.

Q. What Google search, if any, did you do regarding the defendants of those cases?

A. None to my knowledge, except Janet Reno.

Q. At the time that Golding sent material to the board, who were her clients?

MS. THOMPSON: Objection to the form.

BY MR. JARMUTH:

Q. Was just the board her client, or did it include others?

A. To the best of my knowledge, it was the HOA and myself.

Q. When the deal with Central Electric was approved, did the result of that require any repairs to the property or restoration work?

A. A little bit. And a lot of improvement.

Q. Was that land on which the HOA has previously spent money to improve?

A. No.

Q. Isn't that an area where you personally asked Horry County for an encroachment permit to plant trees?

A. No. We planted trees along International

Club Boulevard.

Q. Isn't that International Club Boulevard?

A. Yes. But not in the area where the Central Electric power was going to be doing any digging or installation of anything.

Q. Have the HOA been spending money for grounds maintenance for that area?

A. Which area?

Q. The area affected by the Central Electric agreement.

A. Some of it but not all.

Q. Whose idea was it to distribute some of the money received from Central Electric to the homeowners?

A. That was a board decision.

Q. What was your vote on the matter?

A. Absolutely.

Q. On June 25th, 2008 the buildings and grounds committee made a presentation to the board, including you. Is it fair to say that these were the HOA's experts on this matter?

MS. THOMPSON: Objection to form.

THE WITNESS: Nobody ever purported themselves as being an expert.

BY MR. JARMUTH:

Q. Do they have more knowledge on buildings and grounds than the members of the board?

A. Wait, say that again. I missed something.

Q. Did the buildings and ground committee members --

A. Okay.

Q. -- which included Mike Templeton --

A. Okay.

Q. -- Mike Butrin, Pete Pizzi, do they have more knowledge on that topic and have they done more investigation of buildings and ground matters than the board had?

A. I will probably say that they did a lot more investigating, because that's what they were charged to do.

Q. Was their finding that the HOA was spending money for ground it did not own?

A. Was there a question there, Mr. Jarmuth?

Q. What was their finding?

A. They reported to the board that after looking at who owned what, that they felt we were maintaining property that wasn't HOA's property.

Q. What was their recommendation?

A. That we not maintain that property, if my memory serves me correctly. However, as an HOA and

as a board, that was our responsibility, to maintain and keep a continuity within our community to make sure that it looked good. And the developer maintained it that way, and we continued maintaining it the way the developer did.

Q. What's your explanation as to why the HOA should be spending money to maintain golf course property?

A. The golf course does well, and when -- if the golf course does well, it maintains their property to a particular degree. And our HOA, our homeowners, profit from that look in sales of homes, when someone chooses to move out of the community.

And it is -- it was the board's feeling that we were to maintain that property because it fell -- it fell into -- no, that's the wrong word to use. In order to keep a continuity within the community, we needed to maintain every property that the developer maintained along International Club Boulevard and around the corner.

Q. Can't that same argument be used to say the HOA should be maintaining everybody's lot in the HOA?

A. No.

Q. Isn't the presentation of everybody's lot an influence on property values?

A. You're correct when you say that. I agree with you on that.

Q. Why shouldn't the golf course have been required to spend the money necessary to maintain the standard to which you think they should be maintained to?

A. And you are talking specifically about the areas that we maintained?

Q. Yes, ma'am.

A. Because it would not be maintained in a manner that would be timely to any other mowing. This is the way that the original homeowner did it, and that was what we continued doing. And it's to my way of thinking, even as I sit here today, the right thing to do.

Q. Did you perform any cost analysis to see whether it was cheaper to buy water from GSWSA instead of from the golf course to irrigate water?

A. It is much cheaper to get it from the golf course, way, way. Yes, we did. One of the board members, and I don't remember which one, took it upon themselves, and yes, we did.

I've got to just stand up. I'll answer the

questions, but I have to stand.

MS. THOMPSON: If you need a break, you're welcome to walk around for five minutes.

THE WITNESS: Why don't I take a quick walk.

(A recess transpired from 12:45 p.m. through 12:52 p.m.)

BY MR. JARMUTH:

Q. Did there come a time when you applied to Horry County for an encroachment permit for International Club Drive?

A. Yes.

Q. Did there come a time when you were visited on International Club Drive by someone from Horry County Engineering Services?

A. Yes.

Q. Was Charlie Ferrera present at that meeting?

A. Yes.

Q. What did the gentleman tell you regarding the ownership of International Club Drive?

A. Oh, God. I don't remember. I don't remember what he said. But I do know that all of that area was county right-of-way.

Q. Didn't he tell you that Horry County owned

that entire stretch of road?

A. That could possibly be true. I wouldn't deny that.

Q. Why did the HOA under you take title to at least the Horton owned areas of the front entrance?

A. Why did we take title to it?

Q. Title.

A. Because that was part of what was supposed to be turned over to the HOA.

Q. Where did it say that?

A. It was part of the common area. Was ours to maintain.

Q. Was the front entrance part of the PUD?

A. I couldn't tell you sitting here, no.

Q. Isn't it a fact that it was not, either Exhibit A or Exhibit B to the original covenants, was never within the area approved by Horry County for the PUD?

A. Possible. I don't know.

Q. Who's going to pay for the warranty deed to Horry County when that road is taken over?

A. Please ask the question again.

Q. Who is going to pay for the warranty to Horry County for when the front entrance area is turned over to the County?

MS. THOMPSON: Objection to form.

THE WITNESS: I have no idea. I have no idea that that's even going to happen, I don't know.

BY MR. JARMUTH:

Q. Is it the HOA or the County that owns Pickering Drive?

A. When I left the board, it was with assumption that that was owned by the County. Whether that changed, I don't know.

Q. Are there any classes of property owners in the HOA that do not pay assessments?

A. No, not to my knowledge.

Q. So if I'm a company that owns property in the PUD, I owe you assessments as the HOA?

A. Yes.

Q. When you were involved in the matter of my swing set, did you find any provisions in the covenants other than setbacks which applied to swing sets?

A. Not to my knowledge.

Q. You wrote to the South Carolina Human Rights Commission that the covenants do not allow swing sets in side yards. Is that exclusion part of the covenants?

A. You know, without the covenants in front of me, I can't remember, Mr. Jarmuth. But I want to state that every case has always been taken on a case-by-case basis. I have never seen any prejudice at the ARB level, ever, whether it be you or anyone else.

But there are no swing sets in the community that are located in a side yard visible from the street, given permission or --

Q. Are you aware of the swing set erected by Robert S-O-B-C-Z-Y-K?

A. Robert Sobczyk, yes.

Q. And isn't it a fact that it's visible from the cul-de-sac on which his house is located?

A. Not to my knowledge.

Q. Isn't it a fact that's on the same side of his house relative to where I proposed to put my swing set?

A. Every decision is made on a case-by-case basis. And the positioning of his home on his lot is totally different than your home on your lot. His is, for all intents and purposes to the common man, to the back of his house because it's the back side. And you can't see it from the street and you can't see it from the back, even. I mean, there's

woods back there, trees.

Q. Does he have a patio in the back of his house?

A. I don't know.

Q. Does he have windows which open up to the trees in the back of his house?

A. I don't know. I've never been to the back of his house.

Q. How are you defining the side of his house which is opposite his front door?

MS. THOMPSON: Objection to form.

THE WITNESS: It is by the position on his lot is how I would determine a side of a home. But it's all relative to the lot that your house is on. We could call it north, south, west and east side.

BY MR. JARMUTH:

Q. What guidance did you give the ARB to have consistency in their decisions?

A. Consistency?

Q. So that every decision reflects the criteria and decision process of previous decisions of previous boards.

A. All right. As a board, we would always ask the ARB to make their decisions without prejudice.

There was a set of guidelines, and there's rules that the ARB follow stated in the covenants, and good common sense. And that's -- I don't know what else to say. I mean, did we -- I don't know.

Q. In general, about how far back from the curb are people's actual property lines?

A. I can only say that I know that the utility easements are somewhere in the 10 to 13-foot range. And those are utility easements. I don't know as far as property lines. My property line is where it is, and I don't know where the stake is today.

Q. About how far to either side of the curbs from the roadway right-of-way run, in general?

A. On mine, I think it would probably be about ten because I think it's -- all right, International Club Boulevard is a -- has a 66-foot right-of-way. So if you measure, and I measured with Pete Pizzi, the right-of-way, we went from the center of the road over, and a good portion of International Club Boulevard and the back of Caldera Court and even the amenity center area has county right-of-way along it.

Q. Are individual homeowners allowed to erect structures within that county right-of-way?

A. No.

Q. Are they allowed to erect trees within that right-of-way?

A. With -- all right. Now, we're talking about a homeowner? Give me a for instance because --

Q. For instance, were you required to get an encroachment permit from the County to erect a tree in that area?

A. Yes. To add more trees along International Club Boulevard, yes.

Q. Can you explain, what role has Bill Fletcher had in the governance of the HOA?

A. None.

Q. Has he been a member of the ARB?

A. Recently.

Q. Has he been a member of the board?

A. No.

Q. Has he been the central person in financial management of the HOA?

A. No.

Q. During the transition, didn't he handle the financial books?

A. No. He and Reginald Corfield took that on as -- because that's some of the their background, and they looked at the information that they looked at.

Q. Can you explain how Bill Fletcher has managed to have two palm trees absolutely at the curb with zero setback from the curb?

A. Okay. There's -- no, I can't.

MS. THOMPSON: Mr. Jarmuth, can I clarify something with you?

MR. JARMUTH: Sure.

MS. THOMPSON: Wait, finish your answer.

THE WITNESS: Okay. But I was not the ARB liaison when he applied for those, and others on Seville and a few other areas in the community that I am aware of, that if they did plant a palm tree or a large bush or whatever there, it was with the understanding that if the utilities had to come by and dig that up, that was on the homeowner, not on the HOA.

MS. THOMPSON: Mr. Jarmuth, are you going to ask questions after lunch of Ms. Toth?

MR. JARMUTH: If I haven't finished, yes.

MS. THOMPSON: Because if so --

MR. JARMUTH: Do you want to take a

break now for lunch? That's fine with me.

MS. THOMPSON: You're okay with that?

MR. JARMUTH: Yeah.

MS. THOMPSON: We can go off the record.

(A recess transpired from 1:04 p.m. through 2:12 p.m.)

MR. JARMUTH: I want to mark a letter for identification so that the updated May 31st, 2007 from Reggie Corfield on the transition committee to Rosemary Toth in her capacity as a transition committee.

Could you please mark that and give it to her for testimony.

(PLF. EXH. 3, Letter to R. Toth from R. Corfield, was marked for identification.)

MR. JARMUTH: For the record, I want to say that the box for the transition committee on top and Reggie Corfield on the bottom were added by me for identification, and I drew the boxes around the affected type.

I'm placing this into identification which relates to prior testimony of

Ms. Toth.
BY MR. JARMUTH:
Q. May I proceed?
A. I'm almost done. Okay.
Q. Having seen that letter, do you want to amend any earlier answer you gave regarding these matters?
MS. THOMPSON: Objection to the form.
THE WITNESS: Amend what?
BY MR. JARMUTH:
Q. Add anything, change anything?
A. No.
Q. We're done with that. Earlier you stated that you published the material from Ms. Golding because numerous people, homeowners were asking about the litigation. Why didn't you simply publish the complaint and the answers?
A. You have to get our whole board together and disseminate our conversations.
Q. Didn't your whole board meet regarding this matter?
A. Yeah. And this was the decision that they made.
Q. What committees does the HOA board have?
A. I don't know what committees they have now.

Under the board when I was on it, we had a social committee, we had a building and grounds committee, we had a pool committee. I'm trying to think what else we had. Those were the top ones I can think off the top of my head. And we -- somewhere along the line we tried to get a welcome committee up and running.

Q. In the presentations by those committees to the board at the quarterly board meetings, it was represented that the board had a liaison to each committee. Could you explain what was meant by liaison?

A. Let's say Mike Templeton was the liaison to the building and grounds committee. When the building and grounds would have a meeting, the liaison would bring back to the board what transpired at that meeting. Just basically a note taker, shall I say, or a reporter.

Q. Was there any board members who were actually members of these committees?

A. Never. And let me ask a question, because maybe I misunderstood that. I'm rethinking. Were there any board members who were members of that committee while serving as a board member; is that what you're asking?

Q. Yes.

A. Then my answer stands as no.

Q. As a homeowner and as a former president of the HOA, what options did a homeowner have or does the homeowner have after receiving a first violation of the covenants letter?

A. I could fix the problem and let our managing agent know, management company know, that I fixed the problem that was written to me on the violation. That would be the first thing that I would do. If I got a second violation letter after that?

Q. No. What were the options regarding a first violation letter what you could do? How would you think it was a violation?

A. All right. If I didn't think it was a violation, then I would go down and speak with K.A. Diehl and/or write to them, e-mail them. We may have dialogue going back and forth.

If I wasn't satisfied with that, then I would ask the board to meet with me to talk to them about it, or write them a letter.

Q. What were the minutes requirements for the various board committees, were they required to keep minutes?

A. Their charters, if I'm remembering correctly, ask that minutes be kept or notes be kept, yeah.

Q. What was supposed to be done to perpetuate those minutes, if anything?

A. To perpetuate them in order -- you mean to keep them or?

Q. To keep them.

A. Yeah. They would be on file.

Q. Where?

A. I'm trying to think. I know I don't ever remember receiving them, per se. I would think that the committees would have them. Like the ARB has -- each ARB member keeps their information. I don't know.

Q. What is the duties of the treasurer of the HOA board?

A. When I was on the board, the treasurer used to go down and check the books periodically, monthly, every two months, depending upon where we were at. But generally, it was the same person. I'm trying to remember who was even the first one that went down there. I'm not going to say a name because I'm not certain which one it was, but whoever it was at the time. And let's say it was

Reggie Corfield, Reggie would go down there and look at the books. Although he was not the treasurer, but --

Q. Recalling when you were elected president and you chose a treasurer of the board, do you recall what the criteria would have been or should have been in selecting this person?

A. Well, should have and could have and would have, different things. At that time we were trying to wrap our hands and heads around all that was missing that we couldn't find that we had unearthed on the transition committee. And we were making lists and starting from what we thought was of most importance and chipped away at it.

And initially the treasurer did not have the obligation to go down and check with K.A. Diehl, not in the beginning, not in the infancy of the resident HOA board.

Q. Years two or three of your presidency?

A. Yeah. Usually the treasurer would look it over with, you know, Becky Abel and/or they would go down and meet with Lynne Weber is the name that I believe was one of the gals that helped us out in the accounting department.

Q. In years two and three, were new members

elected to the board or appointed to the board?

A. Yes.

Q. Was there any consideration of picking the treasurer from among any of these new people?

A. I can't recall. I can't recall anything with regards to that.

Q. During your presidency did you have the opportunity to appoint at least several new board members to replace board members who had resigned?

A. Yes, the board was able to do that.

Q. In picking replacements, did you look for people with financial expertise to fill those slots?

A. Not particularly for financial background. We were looking for people that had a true caring for the community and that had perhaps a business background.

Q. What was the responsibility of the secretary of the board, which is a board member?

A. They would basically make sure that all the board minutes and any filings, like when D.R. Horton started turning over HOA properties, she would make sure or he would make sure, whichever the case may be, that it was in our files down at K.A. Diehl.