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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2015-001555
Trial Court Case No. 2009-CP-23-07707

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

v.

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

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

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne;

Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T.Azores and Kim 0. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman, ... Third-Party Defendants.

BRIEF OF PETITIONER

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INTRODUCTION

This case concerns whether a 2009 amendment to Restrictions and Covenants ("R&Cs") for certain property (the "Property") in Greenville County was effectively adopted. That question turns on whether five "lots" within the property (the "Stephens Lots") were in fact "lots" and thus entitled to vote on the amendment. The circuit court held the Property had not been "developed" so as to be eligible to vote to amend the 1981 R&Cs. The circuit court ruled the amendment to the 1981 R&Cs and the subsequent recording of the 2009 R&Cs were void and of no effect.

The Court of Appeals affirmed, holding as a matter of law that the Property did not satisfy "the plain and ordinary meaning of 'lots which shall have been developed'" as described in the 1981 R&Cs. The Court purportedly used a definition of "developed" from other jurisdictions as well as a dictionary to hold Petitioners "failed to develop the lots prior to amending the 1981 R&Cs." The Court further found the circuit court properly relied on a state statute and a county ordinance as evidence that there was no intent to subdivide the property because the plat demonstrating the divided lots was not recorded and was, therefore, void or voidable. The Court viewed the statute and ordinance as requiring recordation as a prerequisite to sale, and held it would be inequitable to permit Petitioners to use the unrecorded plat as evidence that the lots were, in fact, subdivided and intended for sale. The Court rejected Petitioners' arguments that (1) either the 1981 R&Cs unambiguously demonstrated the Stephens Lots were "developed" so as to be eligible to vote, and the Court should adopt the least restrictive view of the R&Cs where two views equally apply, or (2) the 1981 R&Cs were ambiguous and extrinsic evidence supports a ruling that least restricts the free use of property.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in holding the 1981 R&Cs limited those who could vote on a change to the R&Cs to owners who held "developed lots" where the actual language of the R&Cs does not require voting lots to be "developed lots"?

II. Is the Court of Appeals' construction of the 1981 R&Cs incorrect because it is more restrictive than the "equally logical" construction Petitioners urged?

III. Did the Court of Appeals improperly disregard the evidence at trial in adopting a "usual and customary" definition of the term "developed"?

IV. Did the Court of Appeals err in holding the R&Cs were unambiguous?

V. Should the Court of Appeals have considered the testimony of Patrick Grayson, who drafted the 1981 R&Cs because the 1981 R&Cs were ambiguous?

VI. Does the overwhelming evidence demonstrate the Stephens Lots have been "developed into lots" so as to be entitled to vote on the 2009 amendment to the 1981 R&Cs?

VII. Did the Court of Appeals incorrectly hold that the circuit court did not err in relying on S.C. Code Ann. § 30-5-240 and Greenville County Subdivision Regulations to support the circuit court's conclusion?

STATEMENT OF THE CASE

Respondents commenced this action on September 8, 2009, seeking a declaratory judgment regarding the validity of 2009 R&Cs that purportedly amended 1981 R&Cs that applied to the Watson's Orchard Subdivision in Greenville, South Carolina. Petitioners answered and counterclaimed for a declaration that the 2009 R&Cs were valid. The parties filed cross-motions for summary judgment and the court denied both motions.

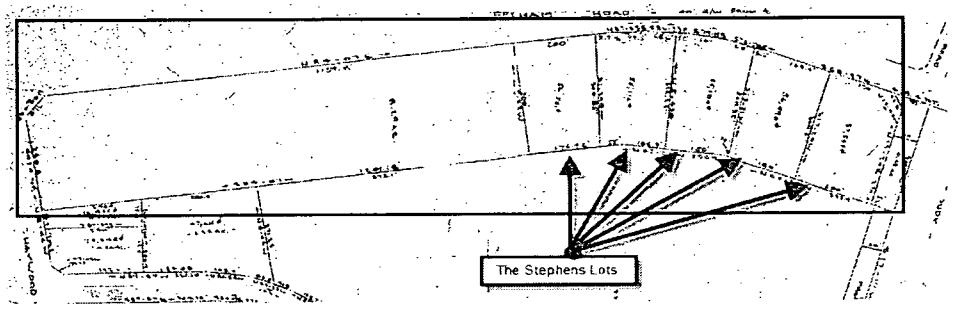
The circuit court held a hearing on the merits September 4-5, 2012. Both parties then submitted post-trial memoranda. On October 19, 2012, the court entered an order holding that the Stephens Lots property "has not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants." The court held the amendment to the 1981 R&Cs was therefore of no effect. (Order of 10/19/12 at 9, ¶5-6, R. p. 17). Petitioners sought reconsideration and the circuit court denied the motion on January 28, 2013. (R. p. 19).

Petitioners filed and served a notice of appeal on February 25, 2013. (R. pp. 195-96). On November 4, 2014, the Court of Appeals heard arguments in the case and on April 15, 2015, the Court affirmed. *Hanold v. Watson's Orchard Property Owners Assoc.*, 412 S.C. 387, 772 S.E.2d 528 (Ct. App. 2015). Petitioners filed a petition for rehearing on April 30, 2015 and on June 19, 2015, the Court of Appeals denied rehearing.

Petitioners sought this Court's review of that decision pursuant to Rule 242, SCACR. On April 15, 2016, this Court issued an order granting the petition and issuing a writ of certiorari to review the Court of Appeals' decision.

FACTS

The Property is across Pelham Road from Watson's Orchard subdivision just off Interstate 385 at the entrance of Greenville, South Carolina. (R. p. 229, ll. 19-23; p. 661; p. S. 358). The Property and the Stephens Lots can be seen within the large box in the following excerpt from the December 3, 1980 "Survey for Richard Watson":



(R. p. 318). The R&Cs were created in 1981 (the "1981 R&Cs") and are set forth in the "Declaration of Restrictions and Protective Covenants." (R. pp. 322-330). The 1981 R&Cs generally restrict the Property to residential development on lots in excess of 55,000 square feet.

The 1981 R&Cs specifically provided for amendment as of January 1, 2010, "by vote of a majority of *the then owners of the lots into which the property described above* [the Property along with another strip along Haywood Road owned by Watson's Orchard Property Owners Association, Inc.] *shall have been developed* and in Watson's Orchard Subdivision." (R. p. 322) (emphasis added). In the months prior to that date, Watson's

Orchard Property Owners Association, Inc. ("WOPOA") sought to obtain a majority vote in favor of the proposed amended R&Cs. After obtaining twenty-nine (29) of fifty-four (54) possible votes, and believing it had satisfied the requirement of the 1981 R&Cs, WOPOA filed the amended R&Cs in the Greenville County Register of Deeds Office on November 9, 2009. (R. pp. 332-55). A slightly corrected version was filed on December 21, 2009. (R. pp. 357-68). Generally speaking, the amended R&Cs allow low-density development of the Property, such as two-story doctors' offices. (R. pp. 333-34).

Respondents filed suit on September 8, 2009, seeking a declaratory judgment that the amended R&Cs had not been validly adopted. (R. pp. 20-25). Defendant WOPOA answered on October 12, 2009 (R. pp. 53-55). WOPOA and Petitioners filed a joint Answer and Counterclaim on November 11, 2009 seeking a declaratory judgment that the amended R&Cs had been validly adopted. (R. pp. 56-103). On June 27, 2011, Petitioners and WOPOA filed an amended Answer, Counterclaim, and Third-Party Claim which added the property owners in Watson's Orchard subdivision as third-party defendants. (R. pp. 107-157). None of the third-party defendants answered and judgment by default was entered against them on February 22, 2012. (R. pp. 1-4).

The circuit court held that the Stephens Lots property "has not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants." (R. p. 17, ¶ 5). Accordingly, the circuit court held the amendment to the 1981 R&Cs was of no effect. (R. p. 17, ¶ 6). The circuit court denied Petitioners' motion for reconsideration. (R. p. 19). Petitioners appealed, and following oral argument, the Court of Appeals affirmed. The Court subsequently denied rehearing. This review follows.

ARGUMENTS

SCOPE OF REVIEW

In a declaratory judgment case, an action maybe legal or equitable, depending upon whether law or equity would have had jurisdiction if there had been no declaratory judgment procedure. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 429-430, 673 S.E.2d 448, 454 (2009). Respondents asked the circuit court to enjoin and restrain Petitioners from using their property in any manner inconsistent with the 1981 R&Cs. Actions for injunctive relief are equitable in nature. *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (2014). This Court applies a *de novo* review of equitable issues. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals*, 414 S.C. 33, 777 S.E.2d 176 (2015). *See also Lambries* (in reviewing equity case Supreme Court may make factual findings based on its own view of the preponderance of the evidence).

I. The Court of Appeals Erred in Holding the 1981 R&Cs Limited Eligibility to Vote on Changes to the R&Cs to Owners Who Held "Developed Lots" Where the Language of the R&Cs Does Not Require Voting Lots to Be "Developed Lots"

The Court of Appeals construed the 1981 R&Cs to limit eligibility to vote on a change to those property owners who held "developed lots." However, the language of the R&Cs does not require ownership of "developed lots."

Restrictive covenants are contractual in nature. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). 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. *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009), *citing Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).

The 1981 document provides expressly for amendment "by vote of a majority *of the then owners of the lots into which the property described above shall have been developed* and in Watson's Orchard Subdivision." (R. p. 322)(emphasis added). The vote is therefore limited to those owners who own "lots into which the property . . . shall have been developed." There is *no* requirement of development beyond development into a discrete lot. Nothing requires the construction of any improvements other than developing the property into a separate lot. Had the drafters intended to limit the vote to owners of "developed lots" (*i.e.*, lots that are developed further with a structure or some other improvement) the provision would have stated that the vote is "of a majority *of the then owners of the developed lots* and in Watson's Orchard Subdivision," or perhaps "owners of improved lots." The fact that the document does *not* use such language demonstrates the original intent not to require more than development simply into a discrete lot. The Stephens Lots fit the description in the 1981 R&Cs.

Even so, the language of the restriction is at least reasonably susceptible of more than one interpretation and is therefore ambiguous. *Hardy v. Aiken*, citing *South Carolina Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). The Court is to construe any ambiguity in favor of limited duration and against restricting property. *Hardy v. Aiken*. All doubts are 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. *Hardy v. Aiken*, citing *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). Construing the restriction in this manner the Court should have found the lots were qualified to vote and the 2009 amendment was valid.

The Court should reverse both the Court of Appeals and the circuit court on this point, and should remand with instructions for the circuit court to enter judgment finding the Stephens Lots validly voted to alter the restrictions in 2009.

II. The Court of Appeals' Construction of the 1981 R&Cs Is More Restrictive than the "Equally Logical" Construction Petitioners Urged

In its opinion and on rehearing, the Court of Appeals declined to address Petitioners' argument that their position is "equally logical" with the construction the Court of Appeals adopted. This Court should reverse.

Where the language of the restrictions is equally capable of two or more different constructions, the court will adopt the construction that least restricts the use of the property. *SCDNR v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001); *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-864 (1998).

Even if the Court of Appeals' interpretation of the key language is logical, Petitioners' reading is at least "equally logical" (indeed, Petitioners' position is more consistent with the actual language of the R&Cs as shown above). "[W]here two logical interpretations of the same language [of a restrictive covenant] are possible," the one that is "less restrictive" is to be adopted. *Anderson v. Buonforte*, 365 S.C. 482, 497, 617 S.E.2d 750, 758 (Ct. App. 2005), *citing Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263

S.E.2d 378, 380 (1980) ("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.").

Here, because the reading Petitioners urge is "less restrictive," the circuit court and the Court of Appeals should have adopted it. This Court should apply this rule of construction, reverse the courts below, and order judgment favoring Petitioners.

III. The Court of Appeals Improperly Disregarded the Evidence at Trial in Adopting a "Usual and Customary" Definition of the Term "Developed"

The Court of Appeals declined to consider the evidence at trial in determining a "usual and customary" meaning of the term "developed." The Court agreed with the circuit court's refusal to consider the evidence because both courts viewed the language of the covenants ("lots which shall have been developed") to be "plain and ordinary." The only evidence at trial was that the Property had, in fact, been "developed" into "lots." At least the language of the covenant is susceptible of that construction, rendering it ambiguous so that the testimony was admissible. *See North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) ("Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties."); *Bolt v. Ligon*, 144 S.C. 218, 222, 142 S.E. 504, 506 (1928) ("[T]he surroundings and circumstances of the parties may be resorted to to throw light upon and aid in the interpretation of a contract, where it is ambiguous.").

Coleman Shouse, former Executive Director of the Greenville County Planning Commission, is a developer in Greenville and was qualified as an expert in residential

real estate development. (R. p. 281, ll. 10-24). Mr. Shouse testified that the Stephens Lots were "lots" because "they were deeded as lots." (R. p. 282, ll. 5-16). His opinion was strengthened by the fact that the metes and bounds, with one exception, stopped at all of the cross-lines for the lots even when there was no change in bearing, all of which was unnecessary unless the deed was for individual lots. (R. p. 288, ll. 5-4).

Larry Estridge of Womble Carlyle has practiced real estate law in Greenville for over 40 years and been involved in "[m]any hundreds, maybe thousands" of real estate transactions. (R. p. 293, l. 22 - p. 295, l. 5). He was qualified as an expert in real estate law and real estate transactions. (R. p. 299, ll. 10-12). Mr. Estridge testified that the Stephens Lots were "developed into lots." He explained:

> Yes, in my opinion those five lots were developed. When the steps that are in the record had been taken, we had an owner of property being the Watson's Orchard Property Owners Association which owned the dirt, it chose to have a survey prepared drawing lot lines, meaning creating points that would become boundaries of five lots, it then either solicited or other – otherwise came into contact with a perspective buyer of those five lots, that buyer they agreed to a price and they agreed to a price on a per lot basis, my recollection is it was twenty-one thousand five hundred dollars ($21,500) per lot, they then between them had a – then there was a letter I believe to other people in the, in the subdivision across the street that would have to approve that sale and in that letter it was described as five lots with a purchase price of twenty-one thousand five hundred dollars ($21,500) per lot. They then had one or more attorneys involved, don't know exactly who drew the deed, but it was a deed drawn by an attorney for one of them, maybe both of them, which described the ... transaction as a conveyance from one party to a second party of five lots as shown in a survey. The buyer by paying consideration and accepting the deed and recording the deed trusted that the survey he had in his hand was the same as the survey the ... seller's talkin' about, it's identified and we do that all the time, you can identify surveys by who prepared it, its date, survey number, etc. to make sure you're looking at the same survey and paid consideration and recorded the deed, those lots were developed when that process was completed.

(R. p. 307, l. 4 - p. 308, l. 6).

Claire Manning of Chicago Title testified that her office had concluded that the Stephens Lots were in fact "lots" and entitled to votes in connection with the effort to amend the R&Cs in 2009. As she testified regarding her prior opinion:

A. Paragraph 18, "To summarize, it was our conclusion in 2008 and 2009 that the Stephens Lots were lots into which the property had been developed, and that each was entitled to a vote on the amendments – on the amendment of the R&C."
Q. All right. Hold on one second. Does that correctly state your conclusion in 2008 and 2009?
A. It does.
Q. And do you still feel that way?
A. I do.
Q. All right. And read Paragraph 19.
A. 19. "Based upon – based upon that opinion, we, Chicago Title, gave our commitment to issue title insurance if a majority vote was obtained for the amended R&C's with the Stephens lots having one vote each, since in that case, we believed as a factual matter and as a matter of real estate law that the R&C's would then have been validly adopted and would be in full force and effect."
Q. And does that correctly state your opinion in 2008 and '09?
A. It did. It does.
Q. And you still feel that way?
A. I do.

(R. p. 218, l. 10 - p. 219, l. 8).

The Court of Appeals determined that the language of the covenant was "plain," but then utilized what it considered was the "usual and customary definition" of the word "developed" to conclude that "the Property was not developed into lots as required by the 1981 R&Cs." (App. p. 7). The Court then noted, however, that the term "developed" was not defined in the 1981 R&Cs. (App. p.7). To decide the case the Court then turned to cases from other jurisdictions as well as dictionaries to find "the term 'developed' requires affirmative acts on the part of the owner to transfer the property from raw land to

a more improved state." (App. pp. 8-9). The cases the Court relied upon distinguish "raw land" from "developed" land by finding "develop" connotes converting land into "an area suitable for use or sale." (App. p. 8). The evidence, however, establishes that Petitioners had done just that.

The Court recognized that Petitioners "possess an easement for sewer, drainage, and utilities over the Property" but held "an easement, in and of itself, is not tantamount to an improvement." (App. p. 9). The Court then stated even if Petitioners "took some prefatory steps to develop the Property into five lots, under the plain meaning of the term, we find [Petitioners] failed to develop the lots prior to amending the 1981 R&Cs." (App. p. 10). These ruling are internally inconsistent.

Furthermore, the Court should have considered all of the evidence outlined above in determining the "usual and customary" meaning of "developed" in the context of the R&Cs. The Court should have concluded that this evidence supports Petitioners' argument that the Stephens Lots were "developed" into "lots" so as to be able to separately vote for the 2009 amendment to the 1981 R&Cs.

This Court should reverse the Courts below and find in view of this evidence that the 2009 amendment to the R&Cs was valid.

IV. The Court of Appeals Erred in Holding the Key Language of the R&Cs Was Unambiguous

The Court of Appeals held that key language of the R&Cs was unambiguous, requiring that the Property at issue be "developed lots." Another at least "equally logical" reading, as demonstrated above, is that the R&Cs require only that the Property be

"developed" into "lots," not that the lots have to be fully developed with some improvement. And the evidence at trial set forth above demonstrates that the Property had in fact been "developed" into lots.

At minimum, the Court of Appeals was incorrect in concluding that the language of the 1981 R&Cs is unambiguous. Does the 1981 R&C language only require development of the Property into a "lot," and nothing more, as it appears to do and as Petitioners argue? Or does it require, contrary to the literal reading, that the "lots" be in fact be fully "developed lots," as the Court of Appeals held?

The Court's opinion itself demonstrates that the language is at least ambiguous. The Court looked beyond the four-corners of the R&Cs to find the "usual and customary definition" of "developed." If the language was clear and unambiguous, none of that would be necessary.

This Court should reverse and order judgment for Petitioners.

V. The Court of Appeals Should Have Considered the Testimony of Patrick Grayson, Who Drafted the 1981 R&Cs, Because the 1981 R&Cs Were Ambiguous

The Court of Appeals stated that because it held the language of the R&Cs to be unambiguous, the trial court did not need to consider extrinsic evidence. This ruling was error.

A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015). Where a contract is ambiguous, parol evidence is admissible to

ascertain the true meaning and intent of the parties. *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). *See also Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 320, 751 S.E.2d 256, 261 (2013) ("[E]xtrinsic evidence may only be considered if the contract is ambiguous.").

The language at issue is, in fact, ambiguous, so that the trial court and the Court of Appeals should have considered the testimony of the drafter, Patrick Grayson. Mr. Grayson's testimony is, aside from the words in the document itself, the only evidence in the record regarding the meaning of the text in the 1981 R&Cs. Mr. Grayson testified that his intent in drafting the document was for the word "develop" in "shall have been developed" to mean to "come into existence" or be "created." Nothing more. As Mr. Grayson testified:

> Q. Mr. Grayson, what was your intent with respect to the language and I'll just read it, "By a vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard," what was your intent with respect to that?
> A. To come into existence. Develop would mean to come into existence, to be created.

(R. p. 243, l. 23 - p. 244, l. 4).

The only evidence in the record was that the Stephens Lots were intended to fall within this language. As Mr. Grayson testified:

> Q. Back to the restrictions that you drafted, Mr. Grayson, which were Exhibit SJ2, page D11 [Def. Ex. 1 at D11 (R. p. 322)], was it, was it your intention in connection with the drafting of the deed and the restrictions all of which, I believe all of which occurred about the same time, is that correct?
> MR. HILLER: I object, I object ---
> THE COURT: Same objection?
> MR. HILLER: Yes, sir.
> THE COURT: Alright. Go ahead answer it.
> Q. Was it your intention that the Stephens' lots would be, would qualify

under that language "lots into which the property described above shall have been developed" ---

A. Yes.

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

A. Yes.

Q. --- restrictions and covenants?

(R. p. 255, l. 25 - p. 256, l. 16). Respondents presented no evidence to the contrary.

The Court should find the 1981 R&Cs are ambiguous such that the trial court and the Court of Appeals should have considered Mr. Grayson's testimony. The Court should also conclude that against the backdrop of that testimony the 2009 amendment is valid and that Petitioners should prevail.

VI. The Overwhelming Evidence Demonstrates the Stephens Lots Have Been "Developed into Lots" So as to Be Entitled to Vote on the 2009 Amendment to the 1981 R&Cs

The Court of Appeals refused to consider the overwhelming evidence that the Stephens Lots had in fact been "developed into lots" and were viewed as five (5) lots by the seller, the purchaser (multiple times), the attorneys, the mortgage lender, and the Circuit Court in 1981. This Court should reverse that ruling, consider this evidence, and hold that the Stephens Lots were each eligible to vote on the 2009 amendment.

A. The Documentary Evidence

James Stephens, through Pelham Properties, Inc., made a formal, written offer (the "Stephens Offer") on October 6, 1980, to purchase the five (5) lots at issue "for a purchase price of Twenty One Thousand One Hundred and 00/100 ($21,100) Dollars *per lot*." (R. p. 370) (emphasis added). The lots are described in the offer as "five (5) lots as

are more fully described in Exhibit 'A' annexed hereto." Exhibit A to the offer describes the property being purchased as:

> All those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Greenville, *being identified as five (5) lots* fronting on Pelham Road, to be more fully shown on a new survey, and being described in the aggregate according to a survey entitled "Survey for Richard Watson", dated June 27, 1980, revised August 19, 1908, and August 27, 1980, prepared by Carolina Surveying Company, with the following metes and bounds, to-wit: . . . .

(R. p. 371) (emphasis added).

Mr. Wilkins Norwood wrote a memorandum to the property owners in Watson's Orchard describing the offer and recommending acceptance. He wrote in pertinent part:

> J. B. Stephens, a homeowner whose lot fronts on Pelham Road, does not want to participate in the corporation [WOPOA]. Instead, he is willing to buy *the five lots* most directly across from his home. He has made an offer to purchase *five minimum lots* (200 feet frontage and 55,000 sq. ft.) in front of his house for a purchase price of $105,500.00 and give up his interest in the corporation. This is a price of $21,100.00 *per lot.*
>
> When you consider that the value of a share of stock in Watson's Orchard Property Owners Association, Inc. should be worth a minimum of $7,000.00, the corporation will net around $22,500.00 *per lot.*
>
> If the *lots* were sold in the open market for $25,000.00 through a realtor, only $22,500.00 would be netted after commission. It is our opinion that this is a fair price for this purchase.
>
> Therefore, your committee believes the offer is fair and recommends that it be accepted.

(R. p. 373) (emphasis added). WOPOA accepted the offer. (R. pp. 484-507) (the "WOPOA Acceptance.") (See generally testimony of Patrick Grayson, R. pp. 252-53).

On December 9, 1980, Judge Frank P. McGowan, Jr., issued a detailed order (R. pp. 386-563) in the declaratory judgment action (R. pp. 375-84) brought by Mr. Grayson

on behalf of Lincoln of South Carolina, Inc. ("Lincoln"). Lincoln was seeking the change in the prior restrictions and covenants. The action was filed before Judge McGowan seeking approval of the 1981 R&Cs and the process by which they had been adopted. (R. pp. 229-38). One of the conditions of the release of the covenants that was at issue in Judge McGowan's Order was the transfer of the five (5) lots to Mr. Stephens. (R. p. 260, l. 23 - p. 261, l. 2). Judge McGowan specifically considered and approved the planned sale of the five (5) lots to Pelham Properties by WOPOA. His order provides:

> . . . Based upon the entire record, I hereby make the following findings and conclusions, with resulting declarations and orders thereon: . . .
>
> (18) That more than a majority of the defendants as charter member and pending stockholders in Watson's Orchard Property Owners Association, Inc., are willing *to sell five (5) lots* as described in the deed shown as Exhibit 14 [Def. Ex. 1 at D251 (R. p.)], for the consideration of One Hundred Five Thousand Five Hundred and 00/100 ($105,500.00) Dollars, pursuant to the Offer shown as Exhibit 15 [Def. Ex. 1 at D59 (R. p. 370)], and that the President has authority to execute said deed within the usual and regular course of corporate business; that documentary deed stamps be paid from said consideration. . . .
>
> IT IS FURTHER ORDERED that the officer of Watson's Orchard Property Owners Association, Inc. be authorized to execute and deliver a deed conveying good fee simple title to the property shown on Exhibit 14 [Id. at D251 (R. p. 565)], upon receipt of the consideration of One Hundred Five Thousand Five Hundred and 00/100 ($105,500.00) Dollars, less documentary deed stamps.

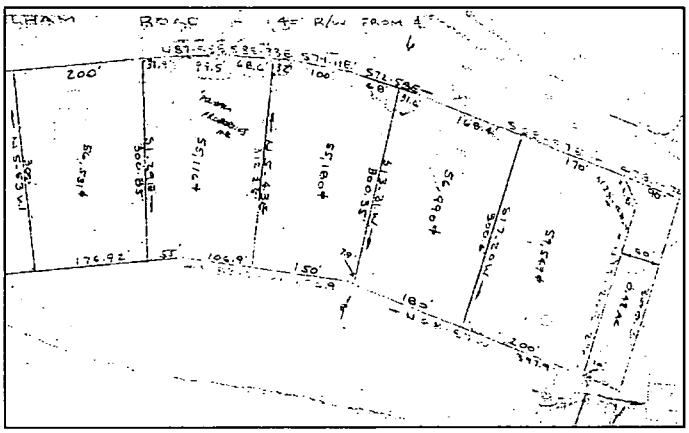
(R. pp. 391, 393) (emphasis added) (See generally R. pp. 250-52).

Upon receiving Judge McGowan's approval, the property along Pelham Road was transferred from Lincoln to WOPOA. (R. p. 427). Thereafter, on January 15, 1981, as per the Stephens Offer and the WOPOA Acceptance, five (5) lots out of that property were transferred from WOPOA to Pelham Properties [Mr. Stephens' entity]. (R. pp. 565-66). The deed (the "1981 Deed") describes the conveyance as:

> All the certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, *containing five (5) lots* as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 8, 1980, and revised December 1, 2, and 3, 1980 . . . .
>
> Subject however, to a sewer easement across the rear twenty-five (25') feet of the above lots for the purpose of installation and maintenance of a sewer line ...

(R. p. 565). (See generally R. pp. 247-49).

The plat (the "Plat") referenced in the 1981 Deed specifically identifies the five (5) lots. (R. p. 657). The following excerpt is the relevant portion of the Plat (R. p. 317):



In addition to expressly referencing the five (5) lots and the Plat, the 1981 Deed sets forth metes and bounds in a manner and level of detail that would have been unnecessary if it was other than to identify five (5) separate lots.

To follow this point, it is necessary to carefully compare the metes and bounds in the 1981 Deed to those on the Plat, which was done at trial in the testimony of Mr. Shouse, the former Executive Director of the Greenville County Planning Commission. It is immediately apparent that the deed's metes and bounds used "interior" dimensions for the lots and not the longer "external" dimensions. The "calls" stopped even when there

was no change in direction or bearing. It made no sense to stop in such instances except to identify the cross-lines for each of the lots. As Mr. Shouse testified:

Q. If they were simply doing exterior dimensions, would they not use 397.9 to get to the next turn?
A. Correct.
Q. Alright, okay, so that's an interior 200. "Thence continuing north 86-57 west 180 feet to a point."
A. And that's interior along this (indicating) same bearing in distance.
Q. Okay, and again that goes up to the cross point on the ---
A. To again a lot line.
Q. Okay, a lot line. "Thence continuing 7.9 feet to a point."
A. That's that little angle right there (indicating) which is the break in the, in the bearing on this (indicating) line ---
Q. Okay, so ---
A. --- changes ---
Q. --- 200 and 180 and 7.9 are all on one line.
A. Right.
Q. *Okay, that the call for those things there would be no reason to do those calls unless you were designating internal lots.*
A. *None whatsoever.*

(R. pp. 283-84) (emphasis added).

Q. Alright, and then running a hundred and seventy-six point nine two feet to a point.
A. Which is on the same bearing but it's a, it's a – the property line.
Q. *There [would] have been no point, Mr. Shouse, to do this 55 and a hundred and* ---
A. No.
Q. --- *seventy-six separately if they had not intended to designate that cross point*?
A. *Absolutely not.*

(R. pp. 284-85) (emphasis added).

Q. Okay. "Running thence 300 feet to a point on the southern side of Pelham Road," so that's the end of the ---
A. That separates those two.
Q. --- lot, okay. "Running thence with the southern side of Pelham Road 200 feet to a point."
A. Here (indicating).
Q. So that's the top of this (indicating) lot?
A. Yes.
Q. *No point to stop there is there unless* ---

A. **The bearing doesn't change.**
Q. *Okay, there's no point to stop there unless it's designating a lot, correct?*
A. *Correct.*

(R. p. 285) (emphasis added).

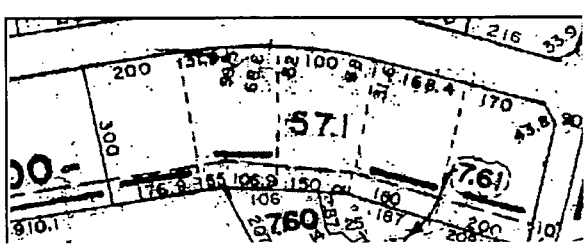
Q. Okay, *so again no point to have the 68 feet unless you were stopping* ---
A. *Right.*
Q. ---*for a crossline.*
A. *Right.*

(R. p. 286) (emphasis added). Thus, even the prose description of the Property in the 1981 Deed makes plain that the 1981 Deed was conveying five (5) lots. For Mr. Shouse, this was yet another factor showing that the 1981 Deed was conveying five (5) lots:

Q. Okay. So, Mr. Shouse, is it fair to say that with I think one exception the calls all do stop at the crosslines?
A. Yes.
Q. Does that get to -- does that give you any, uh, does that strengthen your position or does it have any impact at all on your position that these are in fact ---
A. It just, ---
Q. --- lots as designated by the deed?
A. --- it just affirms that they were in t -- *they are lots, they were intended to be lots, they are lots.*
Q. And anybody who's tracing those metes and bounds from the public record would see those stop points?
A. Sure.

(R. p. 288) (emphasis added).

The tax map for the Property also shows the five (5) lots:



(R. pp. 658-60). The lot dimensions on the tax map (across the top, left to right, 200, 31.9, 99.5, 68.6, 32, 100, 68, 31.6, 168.4, 170, and 43.8, and across the bottom, left to right, 176.9, 55, 106.9, 150, 180, and 200) are identical to those on the Plat (p. 18, above; R. pp. 317, 657). The Plat was submitted to the appropriate authorities (*i.e.*, the tax authorities).

The Wyche Law Firm issued a title opinion to Mr. Stephens that he had (through Pelham Properties, Inc.) purchased five (5) lots and had good title. The opinion letter expressly describes the deed as being for "*five lots* along Pelham Road." (R. pp. 662-63)(emphasis added.). The 1981 Deed was recorded in the Greenville County R.M.C. office. (R. p. 574). The RMC Index describes the transaction as for "*5 lots* Pelham Rd." (*Id.*) (emphasis added) (R. p. 254, l. 20 p. 255, l. 24).

On August 22, 1986, Pelham Properties, Inc. transferred the five (5) lots to Mr. Stephens. This deed (the "1986 Deed") refers to "five (5) lots" in the same manner as the 1981 Deed. (R. p. 576). It also incorporates the Plat by reference and uses the same metes and bounds description as the 1981 Deed which, as noted regarding the 1981 Deed above, has "calls" that are unnecessary except to identify individual lots. (*Id.*) (R. p. 256, l. 16 - p. 257, l. 9). The 1986 Deed was recorded in RMC Deed Book 1274 at page 237. The Index describes the transaction as for "*5 Lots* Cnr Pelham & Proposed Rd . . . ." (R. p. 578) (emphasis added).

In 1988, in an affidavit submitted as part of an application for a $500,000 loan for which the Stephens Lots were to be collateral, Mr. Stephens described the property as "*5 lots*, Pelham Road." (R. p. 673) (See generally Kehl Testimony, R. p. 268, ll. 6-25). Mr. Stephens received the $500,000 loan from South Carolina National Bank in 1988. The

loan documents describe the property as "containing five (5) lots as is more fully described in [the Plat]." (R. p. 677). The paralegal for Mr. Stephens' attorney sent the loan documents and the mortgage to Mr. Stephens by letter dated March 16, 1988. The "RE" line for the letter is "Loan on *5 lots*, Pelham Road from SCN." (R. p. 674) (See R. p. 269, l. 1 - p. 270, l. 7). The mortgage for the $500,000 loan was recorded on March 16, 1988. The property subject to the mortgage is described as "containing five (5) lots as is more fully shown on [the Plat]," as in the 1981 and the 1986 deeds. (R. pp. 686-89) (See R. p. 270, ll. 8-25).

On July 15, 2003, Mr. Stephens transferred the lots and various other property to a revocable trust. (R. pp. 580-84). "Parcel Three" in that deed (the "2003 Deed") identifies the parcel as containing "five (5) lots." (R. pp. 580-81). The description is the same as in the 1981 and 1986 deeds. (See R. p. 557, l. 10 - p. 558, l. 15).

On April 15, 2008, Mr. Stephens transferred a one (1%) percent interest in the five (5) lots from his revocable trust to Pelham Farm, LLC, Legacy One, LLC, and SESP LLC, the Petitioners here. (R. pp. 586-88). This deed (the "2008 Deed"), like the previous ones, described the property as "containing five (5) lots as is more fully shown in the 'Survey for Richard Watson' [the Plat]." (R. p. 586) (See R. p. 258, ll. 16-25). The 2008 Deed was filed in the Register of Deeds Office in Book 2320 at page 1674-76. The Index describes the five (5) lots: "INT *5 LTS* PELHAM ROAD." (R. p. 590) (emphasis added)(See R. p. 259, ll. 1-11).

These documents demonstrate the Stephens Lots are not one large tract but instead are five (5) discrete lots. As such, these lots were eligible to vote separately on the 2009 Amendments to the R&Cs.

B. The Testimonial Evidence Was That The Stephens Lots Were "Lots"

Patrick Grayson, who has practiced predominantly real estate law in Greenville since 1958 (R. p. 228, ll. 5-19), prepared the 1981 Deed (R. p. 248, ll. 1-8). He testified that it conveyed five (5) lots to Pelham Properties:

> Q. Alright. And does this deed as you prepared it convey *five lots* from Watson's Orchard Property Owners Association to Pelham Properties?
> A. Yes.

(R. p. 248, ll. 9-12) (emphasis added).

William Kehl, another experienced corporate and real estate attorney in Greenville (R. p. 262, ll. 12-19), testified the he had issued the title opinion referenced above that Mr. Stephens had obtained good title to the five (5) lots at issue. (R. p. 262, l. 20 - p. 263, l. 6). He also went through his file and identified the myriad instances where the transaction was referenced as being for five (5) lots. (R. pp. 666, 667, 669, 682 & 685).

Michael Stephens is the son of Jim Stephens. (R. p. 289, ll. 13-18). He testified that when he moved back to Greenville from Baton Rouge, Louisiana, he considered purchasing one of the lots from his father. His father showed him the five (5) lots and Michael looked at the Plat. Ultimately, he did not purchase one as he bought something on the other side of town. (Stephens Testimony, R. p. 290, l. 19 - p. 292, l. 24).

This evidence yields but one logical conclusion -- that the Stephens Lots were five (5) distinct lots and, as such, each lot was eligible to vote on the 2009 amendment to the 1981 R&Cs. The circuit court and the Court of Appeals erred in concluding otherwise.

This Court should find that the Stephens Lots were eligible to vote separately on the 2009 amendment, and should reverse and order judgment for Petitioners.

VII. The Court of Appeals Incorrectly Held That the Circuit Court Did Not Err in Relying on S.C. Code Ann. § 30-5-240 and Greenville County Subdivision Regulations to Support the Circuit Court's Conclusion

The trial court relied upon Section 30-5-240 and Greenville County Subdivision Regulations to support its view that the Stephens Lots were not "developed" so as to be eligible to vote on the 2009 Amendments to the R&Cs. This Court should reverse.

Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*. *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (2014), *citing Town of Summerville v. City of N. Charleston,* 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." *Lambries*, 409 S.C. at 7-8, 760 S.E.2d at 788, *citing Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). "The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and public policies of this state and the Court's sense of law, justice, and right." *Id.*

Under South Carolina law, the recording of a plat is not necessary for the valid conveyance of lots. Even an unrecorded plat may still be incorporated by reference. *See Boyd v. Hyatt*, 294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988) (easement valid even though referenced in unrecorded plat). *Cf. Boozer v. Evans*, 109 S.C. 374, 96 S.E. 126 (1918) (affirming trial court's decision to allow unrecorded plat as evidence of title); *Cook v. Eller*, 298 S.C. 395, 280 S.E.2d 853 (Ct. App. 1989) (abstracts, deeds, and unrecorded plats that supported Cook's claim were not in the record on appeal but if they had been could have supported the trial court's decision).

The Greenville County Subdivision Regulations (the "Regulations,")(R. pp. 593-656) define "lot" as follows: "Lot – A portion of a subdivision or other parcel of land having a minimum of twenty (20) feet frontage on a public street and intended for transfer of ownership or for building purposes." (R. p. 600). The Stephens Lots indisputably meet this definition.

Section 1.4 of the Regulations further recognizes a sale without a previously recorded plat by providing for a penalty of "one hundred dollars for each lot so transferred or sold or agreed or negotiated to be sold" and by providing that the County can sue to enjoin such a sale if it so desires. Greenville County Subdivision Regulations, §1.4 (1979)(R. pp. 602-03). Notably, Greenville County has never sued to enjoin such a sale and has never assessed the penalty. (R. p. 221, l. 23 - p. 222, l. 14). Moreover, the County has never taken the position that a transfer that does not comply with Section 1.4 is not, in fact, a transfer. (R. p. 222, ll. 15-19). Indeed, John Owings, a Greenville County Planning Department employee and the only witness Respondents called, testified that even today if a transfer came in that did not comply with Section 1.4 he would simply call the person and tell them to correct it. (R. p. 222, ll. 20-26). The recording requirement, Mr. Owings testified, was simply "an administrative act," and the whole process "an administrative process." (R. p. 223, l. 11; p. 224, l. 20 - p. 225, l. 3).

The trial testimony was that, especially during the period of the 1981 Deed, it was not uncommon for lots to be transferred pursuant to an unrecorded plat. Mr. Estridge, who was qualified as an expert in real estate law and real estate transactions, testified that "it is a fairly common practice for people to sell and to otherwise transfer property with reference to a plat which is not recorded for a variety of reasons," and "certainly [was] in

1981." (R. p. 300, l. 22 - p. 301, l. 1). This was "very common," he said, for "transactions among related parties such as ... a family company or family partnerships or family LLCs or family trusts." He added it is also "very common among related companies." (R. p. 301, ll. 2-15).

Code Section 30-5-240 also does not support the decisions below. Section 30-5-240 provides:

> When real property is subdivided for the purpose of sale and is sold or offered for sale according to a plat of a survey thereof, the person first offering such property for sale shall file a plat or blueprint of such survey in the office of the clerk of court of the county in which such real estate is situate. In the event that the owner fails to comply with the above provision he shall become liable to the purchaser or to any subsequent grantee of the land, or of any portion thereof, in such sum as shall be found necessary to procure and record such plat. Such sum shall be recovered by any such grantee provided he be interested as owner of all or a portion of the subdivided property at the time of the institution of the action for the enforcement of the liability hereby created.

S.C. Code Ann. § 30-5-240 (1976). While the statute provides that a person subdividing land according to a plat "shall file a plat or blueprint," the statute recognizes the viability of a sale without a recorded plat by using the word "sold" in the past tense and referring to the "purchaser or ... any subsequent grantee" of the property. *Id.* Further, the statute conspicuously does *not* provide that a sale pursuant to an unrecorded plat is void or voidable. The *only* consequence of such a sale is that the grantor is responsible for the cost of any action to "procure and record" the plat.

Again, as Mr. Estridge testified, transfers without recorded plats are "common," and were especially so in 1981. (R. p. 300, l. 21). Claire Manning, State Manager for Chicago Title Insurance Company ("CTI"), mentioned in her *de bene esse* deposition that "most plats in Charleston County don't get recorded." She said the "lawyers just refer to

the plats, but they don't record them. It's just custom there." (R. p. 216-217; p. 220, ll. 8-11).

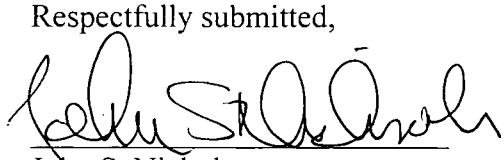
The Court of Appeals erred in finding the failure to record the plat was evidence J.B. Stephens did not intend to subdivide the Stephens Lots when the plat was initially prepared. The testimony demonstrates whether the plat was recorded is irrelevant to the question of whether the Stephens Lots were subdivided "lots" eligible to vote to amend the 1981 R&Cs. The effect of the Court of Appeals decision is to read language into both the statute and the County ordinance that invalidates how the Stephens Lots were developed into discrete parcels. This is not the law.

This Court should reverse the decision of the courts below which found this plat invalid because it was not recorded. The Court should find the plat further supports Petitioners' position that the Stephens Lots were five (5) discrete lots eligible to vote on the 2009 amendment to the R&Cs.

CONCLUSION

For the reasons stated this Court should reverse the Court of Appeals and the circuit court, and hold that the 2009 amendment to the R&Cs were valid.

Respectfully submitted,



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May 11, 2016

RECEIVED
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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2015-001555
Trial Court Case No. 2009-CP-23-07707

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

v.

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

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

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne;

Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T.Azores and Kim 0. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman, ... Third-Party Defendants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Brief of Petitioners* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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May 16, 2016

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