

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
No. 2016-002059

RECEIVED

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Clyde N. Davis, Jr., Special Referee

JAN 19 2017

SC Court of Appeals

Jeffery Horning and Janet Shander-Horning Appellants,

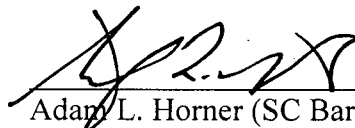
v.

John Challis, Jennifer Challis, Robert Baust, Zeljko Cvitkovic, Stephanie Cvitkovic, Aarik Eberhardt, Amy Eberhardt, James English, Socheata Koy, Carl Flatau, Patrice Flatau, Keith Gonsalves, Sandy Gonsalves, Jonathan Hardin, Maia Hardin, Jay Hurley, Joanne Hurley, Alastair Jones, Tamara Jones, Mike Nickel, Chuck Powell, Christine Powell, Lane Reavis, Kym Reavis, James Seidel, Deborah Seidel, David Templeton, Jennifer Templeton, Elizabeth Yegge Respondents.

APPELLANTS' MOTION FOR (I) LEAVE TO FILE RULE 60 MOTION AND (II) STAY OF APPEAL PENDING DETERMINATION OF RULE 60 MOTION

NOW COME Defendants-Appellants Jeffery Horning and Janet Shander-Horning (the "Appellants"), by and through their undersigned counsel, and move this Honorable Court for leave to file a motion for reconsideration (the "Rule 60 Motion") in the Court of Common Pleas, County of Lancaster, pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. Should this Court grant leave for Appellants to file said Rule 60 Motion, the Appellants also request that this Court stay the above-captioned appeal pending the determination of the Rule 60 Motion by the Court of Common Pleas. In support of this Motion, Appellants concurrently file and serve the attached Memorandum in Support of Motion for (I) Leave to File Rule 60 Motion and (II) Stay of Appeal Pending Determination of Rule 60 Motion.

Respectfully submitted, this the 18th day of January, 2017.



Adam L. Horner (SC Bar 78166)
Hamilton, Stephens, Steele + Martin, PLLC
South College Street, Suite 2020
Charlotte, North Carolina 28244
(704) 344-1117

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v.

John Challis, Jennifer Challis, Robert Baust, Zeljko Cvitkovic, Stephanie Cvitkovic, Aarik Eberhardt, Amy Eberhardt, James English, Socheata Koy, Carl Flatau, Patrice Flatau, Keith Gonsalves, Sandy Gonsalves, Jonathan Hardin, Maia Hardin, Jay Hurley, Joanne Hurley, Alastair Jones, Tamara Jones, Mike Nickel, Chuck Powell, Christine Powell, Lane Reavis, Kym Reavis, James Seidel, Deborah Seidel, David Templeton, Jennifer Templeton, Elizabeth Yegge Respondents.

**MEMORANDUM IN SUPPORT OF APPELLANTS' MOTION FOR (I) LEAVE TO
FILE RULE 60 MOTION AND (II) STAY OF APPEAL PENDING DETERMINATION
OF RULE 60 MOTION**

NOW COME Defendants-Appellants Jeffery Horning and Janet Shander-Horning (the “Appellants”), by and through their undersigned counsel, pursuant to Rule 240 of the South Carolina Appellate Court Rules (“SCACR”) and Rule 60(b) of the South Carolina Rules of Civil Procedure (“SCRCP”) and submit the following Memorandum in Support of Appellants’ Motion for (I) Leave to File Rule 60 Motion and (II) Stay of Appeal Pending Determination of Rule 60 Motion (the “Motion):

STATEMENT OF THE CASE

The Complaint in this matter was originally filed on May 21, 2015 and amended on April 6, 2016 in the Court of Common Pleas, Lancaster County (the “Trial Court”). Complaint at 1; Amended Complaint at 1. This case arises from Plaintiffs-Respondents (the “Respondents”) request for a declaratory judgment and other relief as to their rights to use an alleged ingress/egress easement (the “Path”) on Appellants’ property. Amended Order of the Special Referee at 1.

On August 17, 2016, Special Referee Clyde N. Davis, Jr. entered the Amended Order of the Special Referee (the “Amended Order”) permitting the Respondents to use the Path to walk children to and from school. Amended Order at 13, ¶ e.

The Appellants timely filed this appeal of the Amended Order on September 21, 2016. On December 30, 2016, the undersigned counsel filed a Notice of Appearance in the appeal and began the process of taking over the representation of Appellants. Appellants co-counsel, D. Randolph Whitt is in the process of withdrawing as counsel for the Appellants.

ARGUMENT

Rule 60(b)(2) of the SCRCP provides that a court may relieve a party from a final judgment in the event of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Rule 60(b) also provides that “[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court.”

In the Amended Order, the Trial Court found that “[n]o empirical evidence was presented to this Court that establishes the volume or frequency of usage of the sidewalks, roads and ingress/egress easement.” Amended Order at 11, ¶ f. In the Amended Order, the Trial Court held that “[t]he easement is clearly an unlimited easement for ingress and egress across the sidewalk in the valid easement created by the developer.” Amended Order at 13, ¶ a.

Since trial on the matter and entry of the Amended Order, substantial new evidence regarding the volume or frequency of usage of the Path has arisen that simply did not exist at the time of trial, at the time of entry of the Amended Order or during the thirty days (30) following entry of the Amended Order during which the Appellants could move for a new trial under SCRCP 59. Appellants therefore seek leave of this Court to file a motion asking the Trial Court to consider this newly discovered evidence concerning usage and frequency of the Path, which the Appellants believe will conclusively establish an unacceptable burden on said easement.

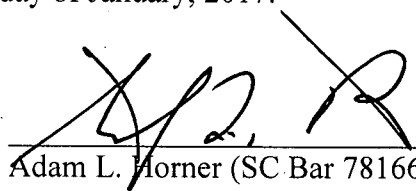
Further, at trial, Appellants’ counsel Mr. Whitt represented to the Court that the developer was unwilling to get involved in the dispute and the Appellants were unable to obtain any evidence from said developer as to the developer’s intent with respect to the Path. Transcript 68:11-21. Although an employee of the developer had written an email to Appellants and Respondent Robert Baust’s wife, Tanya Baust, setting forth its intent with respect to the Path and

the Appellants attached that email to their Answer, due to circumstances beyond Appellants' control, Mr. Whitt was unable to authenticate the email and therefore the Trial Court was unable to consider it as evidence at trial. Answer at Exhibit D. Recently, however, the undersigned counsel for the Appellants was able to locate the author of this email, who no longer works for the developer, and the author has expressed willingness to execute an affidavit authenticating his communication. Appellants believe it is essential for the trial court to consider this evidence as it clearly establishes the intent of the developer when creating the easement.

CONCLUSION

WHEREFORE, the Appellants respectfully request that this Court grant Appellants leave to file their Rule 60 Motion with the Trial Court and stay the above-captioned appeal pending the Trial Court's determination of the Rule 60 Motion.

Respectfully submitted, this the 18th day of January, 2017.



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APPEAL FROM LANCASTER COUNTY
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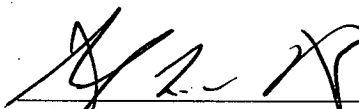
Jeffery Horning and Janet Shander-Horning Appellants,

v.

John Challis, Jennifer Challis, Robert Baust, Zeljko Cvitkovic, Stephanie Cvitkovic, Aarik Eberhardt, Amy Eberhardt, James English, Socheata Koy, Carl Flatau, Patrice Flatau, Keith Gonsalves, Sandy Gonsalves, Jonathan Hardin, Maia Hardin, Jay Hurley, Joanne Hurley, Alastair Jones, Tamara Jones, Mike Nickel, Chuck Powell, Christine Powell, Lane Reavis, Kym Reavis, James Seidel, Deborah Seidel, David Templeton, Jennifer Templeton, Elizabeth Yegge Respondents.

PROOF OF SERVICE

I certify that I have served the MEMORANDUM IN SUPPORT OF APPELLANTS' MOTION FOR (I) LEAVE TO FILE RULE 60 MOTION AND (II) STAY OF APPEAL PENDING DETERMINATION OF RULE 60 MOTION on Respondents listed above by depositing a copy of it in the United States Mail, postage prepaid, on January 18, 2017, addressed to their attorney of record, Phillip E. Wright, 408 North Main Street, Lancaster, South Carolina 29720.



Adam L. Horner (SC Bar 78166)
Hamilton, Stephens, Steele + Martin, PLLC
South College Street, Suite 2020
Charlotte, North Carolina 28244
(704) 344-1117

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

John Challis, et al.

Plaintiff(s)

vs.

Jeffery Horning and Janet Shander Horning

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 29- 00694

Submitted By: Philip E. Wright

Address: 408 North Main Street, Lancaster, SC 29720

SC Bar #: 6241

Telephone #: (803) 286-4343

Fax #: (803) 286-9996

Other:

E-mail: jbarton@pewpa.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: May 21, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allen, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29- 00694

John Challis, Jennifer Challis,)
Robert Baust,)
Zeljko Cvitkovic, Stephanie)
Cvitkovic,)
Aarik Eberhardt, Amy Eberhardt,)
James English, Socheata Koy,)
Carl Flatau, Patrice Flatau,)
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Jon Harden, Maia Harden,)
Jay Hurley, Joanne Hurley,)
Alastair Jones, Tamara Jones,)
Mike Nickel,)
Chuck Powell, Christie Powell,)
Lane Reavis, Kym Reavis,)
James Seidel, Deborah Seidel,)
David Templeton, Jennifer)
Templeton,)
Elizabeth Yegge,)

Plaintiffs,)

vs.)

Jeffery Horning and)
Janet Shander-Horning,)

Defendants.)

SUMMMONS

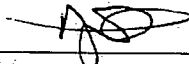
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CLERK OF COURT
LANCASTER, SC

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber hereof at his office within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for a judgment by default to be rendered against you for the relief demanded in the Complaint.

TO ANY DEFENDANTS UNDER 18 YEARS OF AGE OR ANY OTHER PERSONS UNDER ANY LEGAL DISABILITY OR ANY PERSONS KNOWN OR UNKNOWN WHO MAY HAVE A CLAIM OR INTEREST:

You are hereby notified to apply for appointment of a Guardian ad Litem to represent any minor Defendant or any other persons under any legal disability or any persons known or unknown who may have a claim or interest within thirty (30) days after the service of

this Summons upon you and if you fail, application will be made by the Plaintiffs herein for such appointment.



Philip E. Wright
408 North Main Street
Lancaster, SC 29720
(803) 286-4343

ATTORNEY FOR PLAINTIFFS

May 21, 2015

Cause of Action For: Obstruction of Easement,
Injunction, Damages

Lancaster, South Carolina

To Be Tried By: Court

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29- 00694

John Challis, Jennifer Challis,)
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Alastair Jones, Tamara Jones,)
Mike Nickel,)
Chuck Powell, Christie Powell,)
Lane Reavis, Kym Reavis,)
James Seidel, Deborah Seidel,)
David Templeton, Jennifer)
Templeton,)
Elizabeth Yegge,)

Plaintiffs,)

vs.)

Jeffery Horning and)
Janet Shander-Horning,)

Defendants.)

COMPLAINT

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CLERK OF COURT
LANCASTER, SC

The Plaintiffs would respectfully show the Court that:

1. The Plaintiffs are residents of and homeowners in Lancaster County, South Carolina.

All of the Plaintiffs reside in the Bridgehampton Community in northern Lancaster County.

2. The Defendants are residents of and homeowners in Lancaster County, South Carolina and own lot 659, now known as 23004 Norwalk Lane, Bridgehampton Community, Fort Mill SC 29707.

3. The Bridgehampton Community, hereinafter "The Community" is located on a tract of land and is a planned development built by John Wieland Homes and Neighborhoods of the Carolinas.

4. The Community and all the residents and homeowners therein are subject to a certain Declaration of Protective Covenants for Bridgehampton recorded June 15, 1999, at Deed Book 49 at page 52 in the office of the Register of Deeds for Lancaster County, as amended from time to time. A copy of the Covenants is attached as Exhibit A.

6. John Wieland Homes and Neighborhoods of the Carolinas imposed restrictions on the property and included certain easements and rights of way for ingress and egress for the benefit of the Community including a plat recorded in 2002 as Plat 2002-493, and a later plat recorded on February 4, 2004 as Plat Number 2004-60.

7. Plat number 2002-493 was specifically referenced on the deed to the Defendants and their predecessors in title but both plats 2002-493 and 2004-60 are in the chain of title of the Defendants and were recorded before the home located at 23004 Norwalk Lane was sold by John Wieland Homes and Neighborhoods of the Carolinas to the Defendants' predecessors in title Alain Jendly and Catherine Jendly on June 6, 2004. See deed to Jendly marked as Exhibit B and deed to Defendants marked as Exhibit C.

8. The easement in dispute in this litigation is a 7.5 foot easement for ingress and egress along the common boundary of lot 659 with lot 660 located on lot 659, the Defendants' property above described, which connects the Community with an adjacent portion of the Community that fronts on Karriker Court and provides members of the Community with access to the public road known as Harrisburg Road.

FOR A FIRST CAUSE OF ACTION-

Obstruction of Easement by Defendants

9. The Plaintiffs seek to use the sidewalk and easement which runs along the northwestern 7.5 feet of the Defendants' property as part of their rights as members of the Community and as protected and assured to the Plaintiffs' by the Protective Covenants referred to above.

10. The Defendants have denied the Plaintiffs and members of the Plaintiffs' families access to and use of the easement. The Defendants have erected a locked gate across the sidewalk, posted signs on the property and have threatened to tear up the sidewalk which is located on the easement. The Plaintiffs are informed and believe that the Defendants may try to demolish the sidewalk as early as Thursday or Friday, May 21 and 22, 2015.

11. The sidewalk is used as an access to the recently built Harrisburg Elementary School on Harrisburg Road which is immediately across the public road from the Community. The school was built after the Community and is attended by the children of most of the Plaintiffs. The Plaintiffs wish to walk their children to school and to use the easement and sidewalk as a direct access to the public road and school but the Defendants have barricaded the entrance and refuse to allow ingress or egress to the Plaintiffs and other members of the Community by locking the gate and posting threatening signs. .

12. The Plaintiffs seek an order requiring the Defendants to immediately remove the gate and signage and any other obstruction to use of the easement for ingress and egress by the Plaintiffs, their families and any other members of the Community that may wish to use the easement.

FOR A SECOND CAUSE OF ACTION -

Injunctive Relief

13. The Plaintiffs incorporate the allegations of the First Cause of Action herein by reference.

14. The Defendants' blockage of the easement reserved for use by members of the Community violates the rights of the Plaintiffs and the families, guests and invitees of the Plaintiffs.

15. The Defendants' continued obstruction of the sidewalk and easement by the gate and signage causes irreparable harm to the Plaintiffs in that the Plaintiffs cannot use the easement for purposes of walking their children to school and accessing other homes in the Community through a direct and safe route off the traveled streets of the Community and the public highway. The existence of the gate creates a situation where the children attempting to attend the public school have to cross Harrisburg Road at an unprotected intersection to get to the public school whereas using the sidewalk and easement allows the children and parents to cross at a crosswalk protected by a Lancaster County Deputy Sheriff.

16. The Plaintiffs seek an injunction prohibiting the Defendants from blocking the easement and from destroying the sidewalk.

FOR A THIRD CAUSE OF ACTION -

Damages

17. The Plaintiffs incorporate the allegations of the First and Second Causes of Action herein by reference.

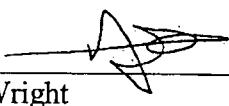
18. The Plaintiffs have suffered loss in that they have been denied the right to use the platted easement, have been denied the right to walk their children to school and to use the easement to access other portions of the Community, have expended money for gas and other costs in taking their children to school by car instead of walking them to school, have been forced to walk on the unsafe public streets of the Community to exit the Community from the main entrance instead of using the protected platted easement for ingress and egress, caused the Plaintiffs undue stress and anxiety because the Plaintiffs' children could not access the easement as a route to school and neighborhood friends.

19. The Plaintiffs are informed and believe they are entitled to judgment against the Defendants in a reasonable amount for damages caused by the Defendants' obstruction of the easement in a reasonable amount not to exceed \$15,000 plus the costs and attorneys fees of this action necessitated by the Defendants' unlawful obstruction of the easement.

Wherefore the Plaintiffs' seek an order:

- a) Finding that the Defendants have violated the rights of the Plaintiffs by obstructing the easement.
- b) Requiring the Defendants' to immediately remove the gate and signs and other impediments to the free use of the easement by the Plaintiffs and other members of the Community.
- c) Enjoining the Defendants from now or in the future from blocking or obstructing the easement.
- d) Entering judgment against the Defendants for damages as prayed above.
- e) Entering judgment for the costs and attorney's fees incurred by the Plaintiffs in this action brought due to the wrongful obstruction of the Plaintiffs' rights to use the easement.

f) For such other and further relief as the court may deem just and proper.



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ATTORNEY FOR PLAINTIFFS

May 21, 2015
Lancaster, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-29-00694

John Challis, Jennifer Challis, Robert Baust,
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Jones, Mike Nickel, Chuck Powell, Christie
Powell, Lane Reavis, Kym Reavis, James
Seidel, Deborah Seidel, David Templeton,
Jennifer Templeton and Elizabeth Yegge

Plaintiffs,

vs.

Jeffery Horning and Janet Shander-Horning,

Defendants.

Answer

Defendants Jeffery Horning and Janet Shander-Horning ("Defendants") offer this answer to the complaint filed May 21, 2015. Plaintiffs John Challis, Jennifer Challis, Robert Baust, Jon Harden, Maia Harden, Alastair Jones, Tamara Jones and Mike Nickel are hereafter referred to collectively as the "Karriker Plaintiffs". The balance of the Plaintiffs are hereafter referred to as the "Residual Plaintiffs".

- 1) Each allegation not hereafter admitted or qualified is hereby denied.
- 2) The allegations of paragraph 4 are admitted. However, Defendants further allege that this declaration contains the following language in Section 8 of Article XI titled "Easements for Common Driveways":

“These easements shall be for the benefit of any Owner of a Lot upon which a Common Driveway is located and shall be for access to and ingress and egress to and from such Owner’s Lot by such Owner, and his or her family members, invitees, and designees in, upon over and across the Common Driveway, or portion thereof, located on such Owner’s Lot. Any Common Driveway shall continue to be used for this purpose by the Owners of the Lots on which such Common Driveway is located and by the subsequent Owners and successors-in-title to such Lots.”

- 3) The declaration continues in Article XI, Section 8:

“No Owner shall be allowed to change, alter or diminish the **rights of an Owner of a lot burdened** by these easements to the use and enjoyment of the Common Driveway located on such Owner’s Lot.”(emphasis added; a copy of the entirety of Article XI attached as Exhibit A)

- 4) There appears to be no paragraph numbered 5 in the Complaint.
- 5) As to the allegations of paragraph 6, the Defendants admit the recordation of the two plats, however, the earlier of the two plats, from 2002, does not show the easement that is the subject of this action. In fact the later plat from 2004 bears a notation as follows:

“The purpose of this plat is to add landscape and signage easements around entry monuments and fencing on Lot 649 and add a 7.5’ ingress/ egress easement on lot 659. The lots were previously shown on a plat titled “Final Plat of Bridgehampton Phase 8 Map 3” and recorded in Lancaster County Register of Deeds in Plat Doc 2002 pg 493.”(copy of 2004 plat attached as Exhibit B)

- 6) As the Plaintiffs acknowledge in paragraph 7, the deed vesting title in the defendants and the deed to their grantors, the Jendllys, from John Wieland Homes, only referenced the 2002 plat. (copy of deed attached as Exhibit C)
- 7) As to the allegations of paragraph 8, Defendants admit the identification of the disputed easement, but expressly deny that the purpose of the easement was to provide access to Harrisburg Road to “the members of the Community”.
- 8) In fact the intention of the developer is illuminated by an email from John Wieland Homes which states:

“In your particular case, the ingress/ egress easement was recorded to establish access from Karriker Court to Norwalk Lane. Thereby, the easement was recorded in favor of John Wieland Homes and the future owners of property on Karriker Court.”(emphasis added, copy of email attached as Exhibit D)

- 9) Neither John Wieland Homes nor the Defendants predecessor in title could have intended the use of the disputed easement to reach the “recently built Harrisburg Elementary School” because the school did not exist in 2004 when the plat showing the easement was recorded and the initial conveyance of the property was made.
- 10) Moreover, the “Revised Final Plat of Bridgehampton Phase 8 Map 4” shows the entirety of Karriker Court and identifies it as a 20’ Private Drive, as does signage posted on Karriker Court (copy of plat and photo of signage attached collectively as Exhibit E). As noted in the declaration and quoted in paragraph 2 of this answer, use of the private drive is limited to the Karriker Plaintiffs and the Residual Plaintiffs have no right to use Karriker court as a thoroughfare to the public road.
- 11) Based on the foregoing, Defendants emphatically deny the allegations of paragraph 9.
- 12) In responding to the allegations of paragraph 10, Defendants deny that they have impeded the Karriker Plaintiffs’ use of the easement for its intended purpose of allowing them to reach Norwalk Lane. The Karriker Plaintiffs have no need to access the disputed easement to reach Harrisburg Elementary. Defendants deny that the gate is locked and allege that the signage erected addresses only the Residual Plaintiffs (photos attached collectively as Exhibit F). Further the Defendants allege that the sidewalk remains undestroyed and that they have no present plans to destroy it.
- 13) In response to the allegations of paragraph 11, Defendants allege that the Karriker Plaintiffs have no need of the easement to reach the school and the Residual Plaintiffs have no right to use the disputed easement, the private drive known as Karriker Court and then cross the

public road in a manner that is not approved by SCDOT, which made a conscious choice not to create a crosswalk at this location (copy of correspondence attached as Exhibit G), to reach the school. Further, a school bus route has been created especially to get the children of the community safely and quickly to school.

- 14) In response to the allegations of paragraph 12, Defendants deny that anyone, and especially not “any other members of the community,” are entitled to the order sought.
- 15) Defendants reincorporate and reallege each of their previous responses as fully as if repeated herein verbatim, in response to the allegations of paragraph 13.
- 16) The allegations of paragraphs 14, 15 and 16 are denied. Further, as to the allegations of paragraph 15, there is no crosswalk traversing Harrisburg Road, and no one directing traffic in the afternoons or at other times that individuals might be tempted to try a crossing, buoyed by a false sense of security from the brief periods where someone is directing traffic.
- 17) Defendants reincorporate and reallege each of their previous responses as fully as if repeated herein verbatim, in response to the allegations of paragraph 17.
- 18) The allegations of paragraphs 18 and 19 are denied. The Defendants allege that no legally cognizable damages have been suffered and that no basis exists in statute for the award of attorney fees or costs and that no contract exists between the parties to serve as a basis for the award of attorney fees or costs.

For a Further Defense

19) The Complaint fails to state a cause of action on which relief can be granted.

Therefore, Defendants request that the Court deny the relief sought by the Plaintiffs.

D. Randolph Whitt SC Bar #13068
Fleming & Whitt, P.A.
Post Office Box 12125
Columbia, SC 29211-2125
(803) 422-2176 Tel

_____, 2015

Exhibit A

telephone inquiry to VA), the following actions shall require the prior approval of the VA and/or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1, hereof pursuant to a plan of annexation previously approved by the VA and/or HUD, as applicable; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; mortgaging of Common Property; and material amendment of the Declaration, Bylaws, or Articles of Incorporation of the Association.

Section 6. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XI

Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests and invitees;

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community.

if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its affiliates, any Lot or Lot Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community or has the right unilaterally to annex property to the Community); and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community or has the right unilaterally to annex additional property to the Community) and Owners representing at least two-thirds (2/3) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required).

(b) Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot if leased.

Section 3. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any

other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which the Declarant or Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designees of either, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repairing, replacing, and maintaining, of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easements for Association Maintenance. There is hereby expressly reserved to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lots and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Lot Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lot over which this easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage.

Section 6. Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 7. Easements for Entry Features and Street Signs. There is hereby reserved to the Declarant, the Association, and the designees of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of entry features and street signs for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and

other vegetation around all entry features and the right to grade the land under and around the entry features.

Section 8. Easements for Common Driveways. Declarant hereby creates joint and reciprocal easements in perpetuity for vehicular and pedestrian traffic in, upon, over and across those areas, if any, shown on any plat for the Community, recorded by Declarant in the land records of the county where the Community is located, as a common driveway (or such similar or equivalent language as would indicate that such area is a common driveway among two or more Lots) (hereinafter referred to as a "Common Driveway"). These easements shall be for the benefit of any Owner of a Lot upon which a Common Driveway is located and shall be for access to and ingress and egress to and from such Owner's Lot by such Owner, and his or her family members, invitees, and designees in, upon, over and across the Common Driveway, or portion thereof, located on such Owner's Lot. Any Common Driveway shall continue to be used for this purpose by the Owners of the Lots upon which such Common Driveway is located and by the subsequent Owners and successors-in-title to such Lots. In connection with the reservation of these easements, it is acknowledged and agreed that the Owner of a Lot burdened by these easements will be required to utilize the easements for access to and ingress and egress to and from such Owner's Lot and that such easements are critical to the future use and enjoyment of such Owner's Lot. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Lot burdened by these easements to the use and enjoyment of the Common Driveway located on such Owner's Lot.

Each Common Driveway shall be cleaned, maintained, repaired and replaced as a joint effort by the Owners of the Lots upon which such Common Driveway is located. This responsibility and the cost thereof shall be shared on an equal basis by each of said Owners, notwithstanding the respective use of the Common Driveway by the Owners of the Lots upon which such Common Driveway is located. In order to protect the value of the respective Lots and to insure the proper use and enjoyment of the respective Lots, the Owner of a Lot upon which a Common Driveway is located shall have the full and unrestricted right to cause the cleaning, maintenance, repair and replacement of the Common Driveway located on such Owner's Lot as may be necessary to insure that such Common Driveway is maintained in a good, proper and functional condition and appearance. The failure by any Owner of a Lot upon which a Common Driveway is located to pay when due his or her portion of any expense incurred by another Owner of a Lot upon which such Common Driveway is located for cleaning, maintenance, repair and replacement of such Common Driveway shall be a violation of the covenants and restrictions set forth in this Declaration, and such nonpaying Owner shall be liable to the Owner who performed such cleaning, maintenance, repair and replacement for his or her portion of such expense, plus costs and expenses, including reasonable attorney's fees, incurred by such Owner in collecting such amount.

Article XII **General Provisions**

Section 1. Enforcement. Each Owner and every Occupant of a Lot shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully

Exhibit B

Exhibit C

2011007566

Return to:
FrickTrent, PLLC
727 Dilworth Lane, Ste 201
Rock Hill, SC 29732

DEED
RECORDING FEES \$19.00
STATE TAX \$1101.10
COUNTY TAX \$465.85



PRESENTED & RECORDED:

07-13-2011 11:59 AM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE KIRKLEY DEPUTY

STATE OF SOUTH CAROLINA)

TITLE TO REAL

COUNTY OF LANCASTER)

BK: DEED 623

PG: 265-267

KNOW ALL PERSONS BY THESE PRESENTS, THAT **Alain Jendly** and **Catherine Jendly** ("GRANTOR") in the State and County aforesaid, for and in consideration of the sum of Four Hundred Twenty Three Thousand and Five Hundred and NO/100 DOLLARS (U.S.) (\$423,500.00) to it in hand paid at and before the sealing of these presents by **Jeffery Horning** and **Janet Shander-Horning** ("GRANTEE"), 23004 Norwalk Lane, Fort Mill, SC 29707 AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON, in the State aforesaid for which the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said GRANTEE, AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON, the following described real property, to wit:

All that certain piece, parcel or lot of land, lying and being situate in the Indian Land Township, Lancaster County, South Carolina and being designated as all of Lot 659, Phase 8 of Bridgelyhampton Subdivision, Map 3 on plat of **John Wieland Homes and Neighborhoods of North Carolinas, Inc.**, recorded in Plat #2002-493 in the Office of the Clerk of Court for Lancaster County, South Carolina, reference to which plat is hereby made for a more complete description.

Derivation: This being the same property conveyed to **Alain Jendly** and **Catherine Jendly** by deed from **John D. Feezor** of **John Wieland Homes and Neighborhoods of The Carolinas, Inc.** t/k/a **John Wieland Homes and Neighborhoods of North Carolina, Inc.**, being dated June 25, 2004 and recorded June 25, 2004 in Book 241, Page 250, in the Office of the Clerk of Court for Lancaster County, South Carolina.

Property Address: 23004 Norwalk Lane, Fort Mill, SC 29707
Parcel ID: 0005A-OB-007

The premises are conveyed subject to all restrictive covenants, easements and rights-of-way of record or apparent upon a reasonable inspection of the premises.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said GRANTEE as Joint Tenants with Right of Survivorship and not as Tenants in Common.

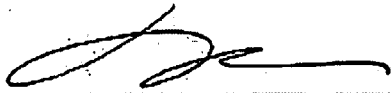
AND, the GRANTOR does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said GRANTEE, as Joint Tenants with Right of Survivorship and Not as Tenants in Common, against its Successors and Assigns, and all persons whomsoever now and hereafter lawfully claiming, or to claim the same or any part thereof.

5A-B-100

WITNESS Grantor's hand and Seal this 27th day of June, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:



Signature 1st Witness

Typed Name: Nora Hinder



Signature 2nd Witness or Notary Public

Typed Name: Stacey Y. Sauls

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

GRANTOR:



Alain Jendly



Catherine Jendly

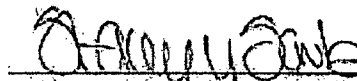
ACKNOWLEDGMENT

I, the undersigned Notary Public do certify that
Alain Jendly and Catherine Jendly, personally appeared before me this
day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this the 27th day of June, 2011.

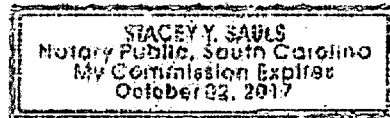


Signature 1st Witness



Notary Public for South Carolina

My Commission Expires: October 23, 2017



File Number:

10059

**STATE OF SOUTH CAROLINA
COUNTY OF YORK**

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the County of Lancaster bearing Tax Map Number 005A-0B-007-00, was transferred by CATHERINE JENDLY AND ALAIN JENDLY to JEFFERY HORNING AND JANET SHANDER-HORNING on 1st day of July, 2011.

3. Check one of the following: The deed is

- (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth,
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary,
- (c) exempt from the deed recording fee because:

4. Check one of the following if either item 3(a) or item 3(b) above has been checked:

- (a) XXX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount \$423,500.00.
- (b) ___ The fee is computed on the fair market value of the realty which is: _____
- (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is: _____

5. Check Yes ___ or No XXX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

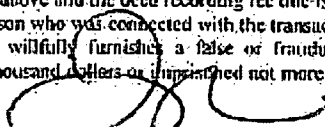
6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$423,500.00
- (b) Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$423,500.00

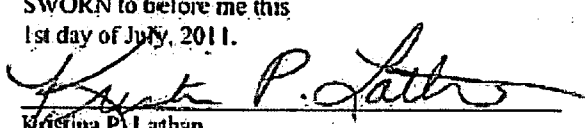
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1566.95

8. As required by Code section 12-24-70, I state that I am responsible person who was connected with the transaction as: Grantee.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Attorney for Grantee

SWORN to before me this
1st day of July, 2011.


Kristina P. Lathan

Notary Public for the State of South Carolina
My Commission Expires:

My Commission Expires
July 31, 2019

Exhibit D

From: Andrew McCoy [<mailto:Andrew.McCoy@JWHOMES.com>]

Sent: Wednesday, November 12, 2014 4:50 PM

To: Janet Shander-Horning

Cc: 'Jeff Horning'; 'Tanya Baust'; 'John & Rachel McKenzie'; Covenants Committee; Jeffery D. Catoe; Penelope Karagounis; JUDY E BOONE

Subject:

Janet,

Please be aware this will be my last correspondence on this issue. I have also copied some of the key folks with Lancaster County. I have included the plats for everyone's review.

John Wieland was developer and owner of the lands in the Bridgehampton community at the time plats were recorded or subsequently amended. As owner and developer we record countless easements across our property which is later transferred and becomes the property of each subsequent buyer. The easements range from Sanitary Sewer easements, to Storm Sewer easements, to Landscape easements, and in your case, an ingress/egress easement. Since we are/were the owners of the land, the easement rights are established by the recorded plat and we do not in turn record easement agreements with ourselves.

The easements are clearly labeled on the recorded plats and by those labels each subsequent buyer can identify the easement on their property and for whose benefit the easement was recorded. A Storm Sewer easement is established for access for future maintenance and repair of the storm system. A Sanitary Sewer easement is established for access for future maintenance and repair of sanitary sewer lines. An ingress/egress easement is establish for access in and over the land it encumbers and for future maintenance and repairs that may be required to keep the ingress/egress passable.

In your particular case, the ingress/egress easement was record to establish access from Karriker Court to Norwalk Lane. Thereby, the easement was recorded in favor of John Wieland Homes and the future owners of property on Karriker

Court. Along these lines, all ownership, maintenance, and repair of public sidewalks and areas of ingress/egress within the South Carolina portion of Bridgehampton are fully the responsibility of the Homeowners Association.

Lastly, John Wieland Homes established the easement and installed the sidewalk in early 2004. As a subsequent owner, you closed on the home in June of 2011. I can only assume that you did not raise any objection to the sidewalk at the time of purchase or any objections over the last three plus years since the purchase. I also assume your objection now is not over the use and access of the easement by the residence on Karriker Court but rather by elementary aged children using the access in the early morning hours to walk to the new school behind Bridgehampton. I can certainly sympathize with you and I also think parents and children are at risk because of the current situation. I feel that during the planning process for the school one of two things should have occurred. Either a well marked and potentially signalized crosswalk should have been installed or a documented position from the school system administrators restricting walking access to the school.

My hope is the parties involved will communicate with one another and that the residence along Karriker Court will not be arbitrarily cut off from walking access to the community and the community amenities. Across an easement establish solely for their benefit.

Common ground exist, I hope you all are able to find it.

Andrew W McCoy

Vice President of Construction

John Wieland Homes and Neighborhoods | JW Homes, LLC

8325-D Arrowridge Blvd. | Charlotte NC, 28273

o: 704-679-5551 | m: 704-309-8833

andrew.mccoy@jwhomes.com

jwhomes.com

Exhibit E

JOHN WILKINS & SONS, INC. OF THE CAROLINAS, INC. 1000 SOUTH MAIN STREET RICHMOND, VIRGINIA	
RECEIVED FINAL PLAN OF BRIDGEHAMPTON PLAT 4 MAP 4 BRIDGEHAMPTON, VIRGINIA	
RECEIVED FOR RECORD FEB 17 1955	

21412

1. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

2. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

3. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

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16. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

17. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

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19. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

20. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

21. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

22. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

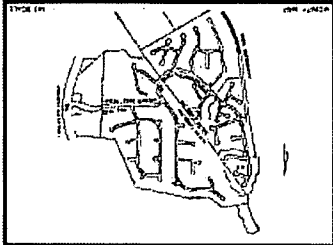
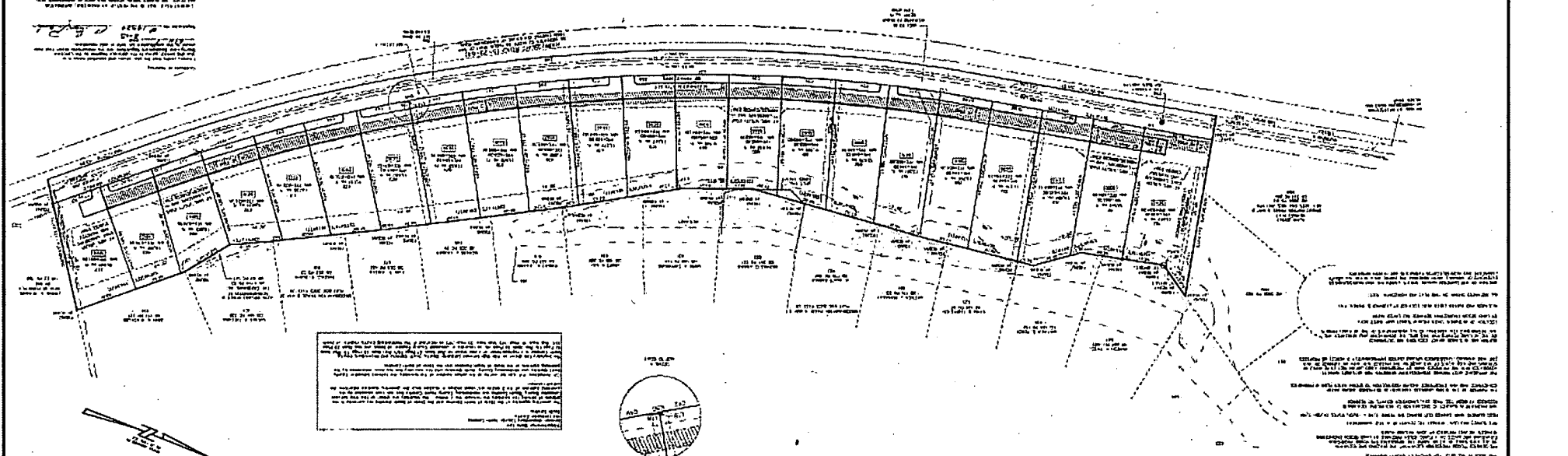
23. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.

24. The area shown on this plan is a portion of the land owned by the State of Virginia, and is subject to the same laws and regulations as the other lands of the State.



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21412

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Exhibit F



PRIVATE
PROPERTY
NO TRESPASSING

KARRIKER COURT
RESIDENTS WELCOME



Hillman Sign Center www.hillmangroup.com

Made in U.S.A.

840147
03-6182-045

**Private
Karriker Court
Residents
Only**

No vehicles allowed in
accordance with SECTION
56 5 3835.

NO SCHOOL ACCESS

Exhibit G



South Carolina
Department of Transportation

Charleston County
Chester County
Chesterfield County
Fairfield County
Lancaster County
Union County
York County

March 31, 2014

Mr. Jim Seidel
23009 Norwalk Lane
Indian Land, South Carolina 29707

RE: Elementary School - Harrisburg Road
Lancaster County

Dear Mr. Seidel:

Thank you for your recent request for information regarding students crossing Harrisburg Road to get to the new elementary school that is scheduled to open in the fall of 2014. The subject of whether or not to place a crosswalk at this school was discussed during the planning and review of the school, and the decision to not provide a crosswalk at this time was a deliberate one based on several factors.

First and foremost in the mind of both the engineers designing and then reviewing the school plans is the safety of the young children that will attend the school. The items considered when deciding if a crosswalk is called for at a school is if the students have sidewalks enabling them to get to the crosswalk, the geometric characteristics of the road, the volume of traffic, the speed of traffic before the school is built and sight distances in the locations where such a crosswalk may be requested.

At this location, the traffic volumes are heavy, the sight distance limited by horizontal curves and the vehicles are traveling at high rates of speed. In addition, neither Harrisburg nor Kanker Court had sidewalks that would allow children to progress down the road without being in an active roadway. It is also of concern when a neighborhood road (Kanker Court in this case) is so close to the school. In our experience, parents attempting to skip the drop off loop will park in the neighborhood, closing the side road and creating a whole different set of issues that puts both students, citizens and the motoring public at risk.

In regards to your innovative ideas of either an overwalk or underpass, neither of these was considered at this location. In locations that have considered them, they have not been an economically feasible solution for the community.

Handwritten signature and date: 4/1/14

Mr. Jim Seidel
Page Two
March 31, 2014

I hope you understand our decision to not install a crosswalk was one based on engineering principles and concern for the people that would be utilizing such a crossing. Thank you again for your interest in this matter. If I can be of any further assistance on this or any other Highway matter, please do not hesitate to contact us directly.

Sincerely,



John M. McCarter, P.E.
District 4 Engineering Administrator

JMM/jha

cc: Bryan Vaughn, Lancaster Schools Safety Director
Representative Deborah Long, SC House District 45

File: D4/TE/MGS/VME

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-29-00694

John Challis, et al.

Jeffery Horning and Janet Shander-Horning

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Philip E. Wright

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Philip E. Wright
Circuit Court Judge Special Referee

SPECIAL REFEREE
Judge Code

8-17-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Aug, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Aug, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Philip E. Wright
408 North Main Street
Lancaster, SC 29720

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Randolph Whitt
Post Office Box 12125
Columbia, SC 29211-2125

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeff Hammon
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29-00694

John Challis, Jennifer Challis,)
Robert Baust, Zeljko Cvitkovic,)
Stephanie Cvitkovic, Aarik)
Eberhardt, Amy Eberhardt, James)
English, Socheata Koy, Carl Flatau,)
Patrice Flatau, Keith Gonsalves,)
Sandy Gonsalves, Jonathan Hardin,)
Maia Hardin, Jay Hurley, Joanne)
Hurley, Alastair Jones, Tamara)
Jones, Mike Nickel, Chuck Powell,)
Christie Powell, Lane Reavis, Kym)
Reavis, James Seidel, Deborah)
Seidel, David Templeton, Jennifer)
Templeton, Elizabeth Yegge,)

Plaintiffs,)

vs.)

Jeffery Horning and Janet)
Shander-Horning,)

Defendants.)

**AMENDED ORDER OF THE
SPECIAL REFEREE**

DATE OF HEARING: May 24, 2016
PRESIDING JUDGE: Clyde N. Davis, Jr.
ATTORNEY FOR PLAINTIFFS: Philip E. Wright
ATTORNEY FOR DEFENDANTS: D. Randolph Whitt

This Order supersedes a previous Order I signed in this case on July 5, 2016. Counsel for the Defendants moved for a new hearing. The motion was heard by telephone, and I determined to make two modifications to the Order. Those modifications have been made and this Order is the final Order in the case.

This matter was referred to me for trial of an action in which the Plaintiffs seek a declaratory judgment and other relief as to their rights to use an ingress/egress easement in

BridgeHampton Community where they all live. The Defendants are also residents of South Carolina and live in BridgeHampton.

BridgeHampton is a residential community in northern Lancaster County developed by homebuilder John Wieland Homes and Neighborhoods, Inc. It lies on the border of North Carolina and South Carolina and is bisected by the state line.

The Plaintiffs commenced this action in May 2015. A hearing on cross motions for summary judgment was held before the Honorable Brian Gibbons. Judge Gibbons issued an Order granting partial summary judgment for the Plaintiffs on the issue of the validity of the ingress/egress easement shown on Plat 2004-60.

The easement is described on the plat as an ingress/egress easement with no further explanation or documentation filed with the easement. The developer, John Wieland Homes, established the easement in 2004 during development of the BridgeHampton Subdivision when an area known as Karriker Court was added to the Subdivision. The easement is the only pedestrian connection between Karriker Court and the other portions of BridgeHampton. The swimming pool, tennis courts, clubhouse and other primary amenities for the subdivision were built in the earlier years of the development of BridgeHampton before the addition of the Karriker Court section.

The easement in question is located entirely on Lot 659 which was owned by the developer in 2004 when the easement was established by the filing of Plat 2004-60. The easement is 7.5 feet wide and extends the length of Lot 659 for 187.41 feet. One terminus of the easement is at the public road cul-de-sac, Norwalk Lane. The other terminus of the easement is a sidewalk that connects Karriker Court to the rest of the subdivision. The developer had the right during the construction phase to add such other sections to the subdivision which were adjacent

to the subdivision. The developer also maintained the right to make such modifications to the plans by the addition of roads, easements or other rights of way under the Protective Covenants for BridgeHampton recorded June 15, 1999, at Deed Book 49 at page 52 before construction on the subdivision began. The language of the Covenants assures these improvements to be available to all residents of the subdivision for their common use.

RELEVANT SECTIONS OF PROTECTIVE COVENANTS

In the table of exhibits to the Covenants, Exhibit C is captioned "ADDITIONAL PROPERTY WHICH MAY BE UNILATERALLY SUBMITTED BY DECLARANT [DEVELOPER]." That exhibit includes language that identifies "additional property" as "all that tract or partial of land lying and being . . . in Lancaster County South Carolina, contiguous (excluding roads) to that real property described above or contiguous (excluding roads) to other real property hereinafter subjected to the Declarations of Protective Covenants for BridgeHampton and being within one mile of any boundary of the real property described above" (Deed Book 49 at Page 99).

In Deed Book 49 at Page 57, under the section captioned "BACKGROUND STATEMENT," the property owner /Declarant (John Wieland Homes and Neighborhoods of North Carolina Inc., a Georgia Corporation) includes the following language:

"NOW, THEREFORE, Declarant hereby declares that the real property described in Article II, Section 1 of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the

title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof."

In Deed Book 49 at Page 64, the Declarant gives the Association (BridgeHampton Homeowners Association) authority to maintain "a blanket easement upon, across, over and under all property within the community for access, ingress, and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder."

In Deed Book 49 at Page 86, first paragraph, the Covenants provide that "Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may not amend this Declaration for any other purpose. . . ."

In Deed Book 49 at Page 87, Section 8, captioned "CONVEYANCE OF PROPERTY TO ASSOCIATION: ASSIGNMENT OF CONTRACTS," provides that "The Declarant and its affiliates may transfer and convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest."

In Deed Book 49 at Page 87, Section 11, captioned "CONSTRUCTION AND SALE PERIOD" (Section A) "The Declarant reserves an easement for the benefit of the Declarant to allow it to take all actions related to or connected with instruction, installation, relocation, development, sale, maintenance, repair or replacement in the community and any other property now owned or which may in the future be owned by the Declarant (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute as a burden on the title to the Community and specifically includes, but is not limited to:

- (a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie in to any portion of the Community with streets, driveways, parking areas, and walkways. . . ."

The issue before me as Special Referee is to determine the extent or scope of the easement and to consider the issues of declaratory relief sought by the Plaintiffs. Since there are no other recorded documents that explain or define the easement, I must interpret the easement in this equity case using common, popular definitions or the terms which established the easement.

RELEVANT CASE LAW ON DEFINING SCOPE OF EASEMENT

The Plaintiffs contend that the language on the plat establishing the easement is clear and unambiguous. The easement is for "ingress and egress." There are no other words of limitation or definition.

Martin v. Bay, 400 S.C. 140, 732 S.E.2d 667 (S.C. App., 2012), relates directly to the extent or scope of an easement. The court held that the easement was not ambiguous and that it was to be "construed according to the terms which parties have used, taken and understood in plain, ordinary and popular sense." Id., p. 672

The easement in the present case was created by the developer before the sale of the lot in question for the benefit of the Community under the terms of the Protective Covenants. It was created by the filing of a plat. It has been recognized by the Circuit Court in the prior hearing as a valid ingress/egress easement. The only issue is the extent of the easement. The extent of the easement is to allow members of the Community to go in and out across the sidewalk that constitutes the easement. That is the plain and popular meaning of the language on the plat. There is no other recorded document that further defines the easement.

The Plaintiffs interpret the easement to mean they can use the easement to go across the Defendants' land within the confines of the easement on the sidewalk which constitutes a portion of the easement for any purpose whatsoever, so long as it is a legal purpose. Walking their children to an elementary school across an easement designed to protect the Community is clearly a legal use of the easement. The Defendants' restriction of use clearly prohibits a legal use by the Plaintiffs.

Binkley v. Rabon Creek Watershed Conserv., 348 S.C. 58, 558 S.E.2d 902 (S.C. App., 2001), also addresses the standard that a court in equity should use in defining the extent or scope of an easement. "A description of an easement in a recorded document is sufficient when it contains language that acts as a guide to the location of the easement on the land such that the easement is capable of being rendered to a certainty." Id., p. 72. The location of the easement is clearly set out on the 2004 plat.

The court in Binkley, supra, also noted that "[t]he scope of an easement is an equitable matter in which a reviewing court may take its own view of a preponderance of the evidence. The language of an easement determines its extent. "Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in [the] plain, ordinary, and popular sense." [citing South Carolina Public Service Authority v. Ocean Forest, Inc., 275 S.C. 552, 554, 273 S.E.2d 773, 774, 777 (1981)]. We must first decide if the language used by the grant here is plain and unambiguous and, if so, what does that language mean." Binkley, supra, p. 67.

FINDINGS

Based on the evidence presented at trial, I find that the paved sidewalk has been in existence within the platted easement since 2004. The sidewalk was open and obvious and used

by many members of the BridgeHampton Community without objection for various uses to move from one portion of the subdivision to another until 2014. Some of the Plaintiffs testified concerning their use of the easement for jogging, walking or riding bicycles. They also testified concerning numerous confrontations with the Defendants, some of which resulted in law enforcement intervention.

After the recording of Plat 2004-60 which established the easement found by Judge Gibbons to be a valid easement for ingress and egress, the developer sold Lot 659 to Alain Jendly and Catherine Jendly (Trial Exhibit 4). When the Jendlys bought the lot, the sidewalk was in place and was used by members of the Community as a pedestrian access for walking, jogging, biking and general access to areas connected by the sidewalk. The Jendlys owned the lot subject to the easement until 2011.

In 2011, the Jendlys sold the lot to the Defendants (Trial Exhibit 5). The sidewalk was still open and obvious and was in use by many members of the Community without incident. The Defendants admit seeing and being aware of the sidewalk and easement prior to purchase.

The deed from Jendly to Horning that conveyed Lot 659 includes the following specific language:

"The premises are conveyed subject to all restrictive covenants, easements and rights of way of record or apparent upon a reasonable inspection of the premises."

The concrete sidewalk ran the length of the Hornings' property. It was open and notorious. The Defendants were on notice that the easement was in place and was being used by residents of the Community to cross between the sections of the Community.

After the building of Harrisburg Elementary School across the street from BridgeHampton during 2013 and 2014, the Defendants decided to block the easement by the

erection of a fence and signs prohibiting traffic through the easement. For various reasons, the Defendants contended the easement was on their lot and was private. The decision of Judge Gibbons recognized the existence and validity of the easement over the Defendants' objections. At the summary judgment hearing, the Defendants conceded the easement was in fact a valid easement. Judge Gibbons did not rule on the scope of the easement. This case was then referred to me for trial.

At trial, the Defendants insisted that the easement was not intended to be used by anyone except residents of Karriker Court and perhaps friends of Karriker Court residents who might want to use the easement to have access for social purposes. The Defendants also raised issues related to their possible liability if someone used the easement and was injured after leaving the easement and were off the Defendants' property. They voiced concern that the easement was being used for reasons beyond any appropriate use seen or unforeseen by the developer.

The real concern of the Defendants is the use of the sidewalk as an access to the new elementary school across Harrisburg Road. When the school opened, parents in BridgeHampton began to walk their children to school. The Defendants confronted people using the easement, including parents taking their children to school. Judge Gibbons in his Order prohibited use only by parents and children using the sidewalk as an access to the school until testimony could be taken on the scope of the easement. All other use for ingress and egress by members of the Community was allowed to continue unrestricted. The gate, which completely blocked the easement, has been taken down but the side posts of the gate and the signs warning persons not to use the easement were still in place at the time of this trial.

I find that the owners of the homes on Karriker Courts are members of the BridgeHampton Community and the Homeowners Association. As such, they are entitled to all

the amenities in BridgeHampton. Members of the Community, both residents of Karriker Court and other parts of the subdivision, used the sidewalk for ingress and egress to various points in the Community.

Another issue before me is whether there is any defining limitation of the use of the sidewalk across the Defendants' lot. I find that there is no limitation of record and no evidence of limitation presented at this hearing. I find that the easement was intended to connect the subdivision without obstruction. The efforts of the Defendants to interfere with that access violate the rights of the other members of the Community. I find that the gate is an obstruction to the easement and should be removed entirely, including the posts and any other structures erected by the Defendants that interfere with the 7.5 foot wide easement.

At the hearing, I ruled that the signs should be taken down. I signed a Temporary Order to that effect. No signs should be erected that limit or chill the rights of the members of the BridgeHampton Community to freely use the easement without obstruction. The Defendants shall cease and desist in their efforts to harass and confront persons using the easement. The persons using the easements are not trespassers. They are residents of a single community using a valid ingress/egress easement.

I find that the existence of the elementary school has not been proven to be any burden on the easement. The Defendant Janet Horning testified that one child walking to school on the easement was a burden and an unintended use. There is no proof at all of the number of persons using the easement for general purposes or for school purposes. Absent compelling evidence that the easement was being overburdened or used for illegal or dangerous purposes, there is no evidence that would persuade this Court to restrict the use of the easement as an access for

school children and/or their parents from using the easement to have access to Karriker Court and access to Harrisburg Elementary school.

The Plaintiffs' Amended Complaint sought declaratory relief, seeking the Court's ruling on a number of questions regarding the easement. As to those specific questions, the Court makes the following declaration of fact.

- a. The Protective Covenants apply to all residents of the BridgeHampton Community, including the Karriker Court phase of the development and give all residents of BridgeHampton equal protection under the Covenants.
- b. The Protective Covenants allow the parties and/or all residents of BridgeHampton to move freely about the Community on the sidewalks, roads and easements for ingress and egress created by the developer without obstruction or harassment by other residents of BridgeHampton or any other persons.
- c. The Protective Covenants do not include any limitations of use of the sidewalk on Lot 659 by residents of BridgeHampton. The Court does impose a limitation of use by motorized vehicles including motorcycles or motorized scooters. This limitation would not prevent use by disabled persons using motorized wheelchairs.
- d. The Protective Covenants do not address any issue related to overburdening or excessive use of any sidewalk, road or ingress/egress easement. There is no numerical or other limitation of the number of persons who may use the easement.
- e. The Protective Covenants do not contain any statements regarding development of the areas around BridgeHampton nor the effect of that development on the residents of BridgeHampton's rights to use the sidewalks, roads and ingress/egress easements.

f. No empirical evidence was presented to this Court that establishes the volume or frequency of usage of the sidewalks, roads and ingress/egress easement.

g. There is insufficient evidence for the Court to determine the numbers of users that is permissible in any given hour or other period of time without overburdening the easement. The Court does find that school children and their parents using the easement to walk to and from school does not constitute overburdening of the easement.

h. The Court cannot declare the rights or obligations of people who use the easement in the abstract. The Court declines to respond of the Plaintiffs to the request for a declaration on point H.

i. The use of the ingress/egress easement on Lot 659 by 25 elementary school children and their parents or escorts walking to and/or from school during each school year period does not, in the opinion of the Court, constitute an overburdening of the easement.

j. The Protective Covenants do not establish any limits on the usage of the sidewalks, roads and easements for ingress and egress regarding the number of people that can use the easement during any particular period of time.

k. The existence of the gate and signs on the gate and fence placed there by the Defendants does chill the rights of the residents of BridgeHampton to free access and use of the easement.

l. The practice of aggressively or with the intent to prevent persons from using the easement constitutes harassment of the residents lawfully using the easement.

m. The Court must use the common, ordinary definition of the term ingress/egress as the standard for determining if the easement on Lot 659 is being overburdened by members of the BridgeHampton Community. Using that ordinary definition of going and coming across the

valid recorded platted easement, the residents of BridgeHampton are not overburdening the easement.

From the testimony presented, it is obvious there are relationships between the neighbors in the Karriker Court section of BridgeHampton and the other parts of the Community. Under the Defendants' theory, those persons not living on Karriker Court could not be visited by pedestrians from the other part of the Community. The friends of the Karriker residents would have to drive out of the subdivision and drive down Harrisburg Road to Karriker Court to socialize with their friends, in the meantime the Karriker Court residents could simply walk down the sidewalk to see their friends in the main portion of the subdivision.

I find that the developer did not intend to isolate sections of the subdivision from the amenities and other residents. The easements follow the land and bind the Defendants. A gate is not reasonable in this case when the interests of the parties are balanced.

CONCLUSION

The Defendants decided they have the unilateral right to determine who can use the sidewalk despite the fact that the sidewalk and ingress/egress easement were created by act of the developer in 2004 for the benefit of the entire BridgeHampton Community. The Defendants have stopped other members of the Community from running, walking and riding their bikes on the easement. They have posted signs that chill the rights of the other Community members to use the easement free of threats and harassment by the Defendants.

The Defendants are violating the rights of every member of the Community, including the Plaintiffs who all live in the Community, by blocking the ability of the Plaintiffs and by implication all BridgeHampton Community members to come and go through the entire Community. Whether it is to walk their child to school or to jog or walk on the sidewalk, the

Defendants have declared that they can stop these activities. Nothing in the facts or law related to the establishment and use of this easement gives the Defendants this ability. The law and facts clearly require that the Defendants stop their activities which disrupt use of the easement and that the gate and signs come down permanently.

WHEREFORE, IT IS ORDERED THAT:

- a. The easement is clearly an unlimited easement for ingress and egress across the sidewalk in the valid easement created by the developer.
- b. There is no limitation of record or in the evidence in this case limiting the use of the easement for ordinary ingress/egress across Lot 659 within the easement.
- c. The gate, side posts and signs posted by the Defendants shall be permanently removed.
- d. The Defendants shall not impede or confront persons using the easement in any fashion.
- e. The use of the sidewalk to walk children to and from school is not a prohibited use of the easement and falls within the definition of normal ingress and egress across the easement.
- f. The prior Order of Judge Gibbons related to restraint regarding the use of the easement by children and their parents as access to Karriker Court and subsequently to Harrisburg Elementary School is hereby vacated.
- g. The declarations set forth in Paragraphs A through M above are made the Order of this Court as the declaratory relief sought by the Plaintiffs.

AND IT IS SO ORDERED.


Clyde N. Davis, Jr.
Special Referee

August 17, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29-00694

John Challis, Jennifer Challis,)
Robert Baust, Zeljko Cvitkovic,)
Stephanie Cvitkovic, Aarik)
Eberhardt, Amy Eberhardt, James)
English, Socheata Koy, Carl Flatau,)
Patrice Flatau, Keith Gonsalves,)
Sandy Gonsalves, Jonathan Hardin,)
Maia Hardin, Jay Hurley, Joanne)
Hurley, Alastair Jones, Tamara)
Jones, Mike Nickel, Chuck Powell,)
Christie Powell, Lane Reavis, Kym)
Reavis, James Seidel, Deborah)
Seidel, David Templeton, Jennifer)
Templeton, Elizabeth Yegge,)

Plaintiffs,)

vs.)

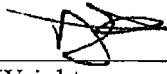
Jeffery Horning and Janet)
Shander-Horning,)

Defendants.)

AMENDED SUMMONS

FILED
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OF COURT
2016 APR -6 AM 11:52
CLERK OF COURT
LANCASTER, SC

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscriber hereof at his office within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for a judgment by default to be rendered against you for the relief demanded in the Amended Complaint.


Philip E. Wright
408 North Main Street
Lancaster, SC 29720
(803) 286-4343

ATTORNEY FOR PLAINTIFFS

April 1, 2015
Lancaster, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-29-00694

John Challis, Jennifer Challis,)
Robert Baust, Zeljko Cvitkovic,)
Stephanie Cvitkovic, Aarik)
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Jones, Mike Nickel, Chuck Powell,)
Christie Powell, Lane Reavis, Kym)
Reavis, James Seidel, Deborah)
Seidel, David Templeton, Jennifer)
Templeton, Elizabeth Yegge,)

Plaintiffs,)

vs.)

Jeffery Horning and Janet)
Shander-Horning,)

Defendants.)

AMENDED COMPLAINT

FILED
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OF COURT
2016 APR -6 AM 11:52
CLERK OF COURT
LANCASTER, SC

The Plaintiffs would respectfully show the Court that:

1. The Plaintiffs are residents of and homeowners in Lancaster County, South Carolina.

All of the Plaintiffs reside in the Bridgehampton Community in northern Lancaster County.

2. The Defendants are residents of and homeowners in Lancaster County, South Carolina and own Lot 659, now known as 23004 Norwalk Lane, Bridgehampton Community, Fort Mill SC 29707.

3. The Bridgehampton Community, hereinafter "The Community" is located on a tract of land and is a planned development built by John Wieland Homes and Neighborhoods of the Carolinas.

4. The Community and all the residents and homeowners therein are subject to a certain Declaration of Protective Covenants for Bridgehampton recorded June 15, 1999, at Deed Book 49 at page 52 in the office of the Register of Deeds for Lancaster County, as amended from time to time. A copy of the Covenants is attached as Exhibit A [filed with original Complaint].

5. John Wieland Homes and Neighborhoods of the Carolinas imposed restrictions on the property and included certain easements and rights of way for ingress and egress for the benefit of the Community including a plat recorded in 2002 as Plat 2002-493, and a later plat recorded on February 4, 2004 as Plat Number 2004-60.

6. Plat number 2002-493 was specifically referenced on the deed to the Defendants and their predecessors in title but both plats 2002-493 and 2004-60 are in the chain of title of the Defendants and were recorded before the home located at 23004 Norwalk Lane was sold by John Wieland Homes and Neighborhoods of the Carolinas to the Defendants' predecessors in title Alain Jendly and Catherine Jendly on June 6, 2004. See deed to Jendly marked as Exhibit B [filed with original Complaint] and deed to Defendants marked as Exhibit C [filed with original Complaint].

7. The easement in dispute in this litigation is a 7.5 foot easement for ingress and egress along the common boundary of Lot 659 with Lot 660 located on Lot 659, the Defendants' property above described, which connects the Community with an adjacent portion of the Community that fronts on Karriker Court and provides members of the Community with access to the public road known as Harrisburg Road.

FOR A FIRST CAUSE OF ACTION
Obstruction of Easement by Defendants

8. The Plaintiffs seek to use the sidewalk and easement which runs along the northwestern 7.5 feet of the Defendants' property as part of their rights as members of the

Community and as protected and assured to the Plaintiffs' by the Protective Covenants referred to above.

9. The Defendants have denied the Plaintiffs and members of the Plaintiffs' families access to and use of the easement. The Defendants have erected a locked gate across the sidewalk, posted signs on the property and have threatened to tear up the sidewalk which is located on the easement. The Plaintiffs are informed and believe that the Defendants may try to demolish the sidewalk as early as Thursday or Friday, May 21 and 22, 2015.

10. The sidewalk is used as an access to the recently built Harrisburg Elementary School on Harrisburg Road which is immediately across the public road from the Community. The school was built after the Community and is attended by the children of most of the Plaintiffs. The Plaintiffs wish to walk their children to school and to use the easement and sidewalk as a direct access to the public road and school but the Defendants have barricaded the entrance and refuse to allow ingress or egress to the Plaintiffs and other members of the Community by locking the gate and posting threatening signs.

11. The Plaintiffs seek an order requiring the Defendants to immediately remove the gate and signage and any other obstruction to use of the easement for ingress and egress by the Plaintiffs, their families and any other members of the Community that may wish to use the easement.

FOR A SECOND CAUSE OF ACTION
Injunctive Relief

12. The Plaintiffs incorporate the allegations of the First Cause of Action herein by reference.

13. The Defendants' blockage of the easement reserved for use by members of the Community violates the rights of the Plaintiffs and the families, guests and invitees of the Plaintiffs.

14. The Defendants' continued obstruction of the sidewalk and easement by the gate and signage causes irreparable harm to the Plaintiffs in that the Plaintiffs cannot use the easement for purposes of walking their children to school and accessing other homes in the Community through a direct and safe route off the traveled streets of the Community and the public highway. The existence of the gate creates a situation where the children attempting to attend the public school have to cross Harrisburg Road at an unprotected intersection to get to the public school whereas using the sidewalk and easement allows the children and parents to cross at a crosswalk protected by a Lancaster County Deputy Sheriff.

15. The Plaintiffs seek an injunction prohibiting the Defendants from blocking the easement and from destroying the sidewalk.

FOR A THIRD CAUSE OF ACTION
Declaratory Judgment

16. The Plaintiffs incorporate the allegations of the First and Second Causes of Action herein by reference.

17. The Plaintiffs and Defendants are engaged in litigation which involves the use and enjoyment of real property owned by the Plaintiffs and Defendants.

18. The Protective Covenants which were filed of record and bind all the residents of the community are being interpreted differently by the Plaintiffs and Defendants. The Plaintiffs seek a declaratory judgment on the following issues:

a. Do the Protective Covenants apply to all residents of the Bridgehampton community, including the Karriker Court phase of the development thus giving all residents equal protection under the Covenants?

b. Do the Protective Covenants allow the parties and/or all residents of Bridgehampton to move freely about the community on the sidewalks, roads and easements for ingress and egress created by the Developer without obstruction or harassment by other residents of Bridgehampton?

c. Do the Protective Covenants include any limitations of use of the sidewalks, roads and easements by residents of Bridgehampton? If so, what are those limitations?

d. Do the Protective Covenants address any issue related to overburdening or excessive use of any sidewalk, road or ingress/egress easement?

e. Do the Protective Covenants contain any statements regarding development of the areas around the Bridgehampton and the effect on that development of the residents of Bridgehampton's rights to use the sidewalks, roads and ingress/egress easement?

f. Are there any empirical, quantitative studies that establish the volume or frequency of usage of the sidewalks, roads and ingress/egress easement?

g. How many people can walk on and use the ingress/egress easement on Lot 659 in any given hour or other period of time without overburdening the easement?

h. Are the owners of Lot 659 responsible for the actions of any person using the ingress/egress easement on Lot 659 once that person has left the easement?

i. Is the use of the ingress/egress easement on Lot 659 by 25 elementary school children and their parents or escorts walking to and/or from school during the school year period an over burdening of the easement?

j. Does any portion of the Protective Covenants establish any limits on the usage of the sidewalks, roads and easements for ingress and egress regarding the number of people that can use the easement during any particular period of time?

k. Does the existence of the gate and signs on the gate and fence placed there by the Defendants chill the rights of the residents of Bridgehampton and discourage use of the ingress/egress easement?

l. Does the practice of confronting people walking on the easement with the dogs of the owners of Lot 659 constitute harassment of the residents using the easement?

m. What is the standard for determining if the easement on Lot 659 is being overburdened by members of the Bridgehampton community?

19. The Plaintiffs seek a declaration of the Court on these issues to clarify their rights and the rights of the Defendants in and to the ingress/egress easement on Lot 659.

WHEREFORE, the Plaintiffs seek an order:

a) Finding that the Defendants have violated the rights of the Plaintiffs by obstructing the easement.

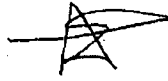
b) Requiring the Defendants to immediately remove the gate and signs and other impediments to the free use of the easement by the Plaintiffs and other members of the Community.

c) Enjoining the Defendants from now or in the future from blocking or obstructing the easement.

d) For a declaration of the rights of the residents of Bridgehampton and of the Defendants in and to the easement created by the developer on Lot 659.

e) Entering judgment for the costs and attorney's fees incurred by the Plaintiffs in this action brought due to the wrongful obstruction of the Plaintiffs' rights to use the easement.

- f) For such other and further relief as the Court may deem just and proper.



Philip E. Wright
408 North Main Street
Lancaster, SC 29720
(803) 286-4343

ATTORNEY FOR PLAINTIFFS

April 1, 2016
Lancaster, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

Case No. 2015-CP-29-00694

John Challis, Jennifer Challis, Robert Baust,
Zeljko Cvitkovic, Stephanie Cvitkovic,
Aarik Eberhardt, Amy Eberhardt, James
English, Socheata Koy, Carl Flateau, Patrice
Flateau, Keith Gonsalves, Sandy Gonsalves,
Jonathan Hardin, Maia Hardin, Jay Hurley,
Joanne Hurley, Alastair Jones, Tamara
Jones, Mike Nickel, Chuck Powell, Christie
Powell, Lane Reavis, Kym Reavis, James
Seidel, Deborah Seidel, David Templeton,
Jennifer Templeton and Elizabeth Yegge

Plaintiffs,

vs.

Jeffery Horning and Janet Shander-Horning,

Defendants.

Answer to Amended Complaint

Defendants Jeffery Horning and Janet Shander-Horning ("Defendants") offer this answer to the amended complaint filed April 6, 2015. Plaintiffs John Challis, Jennifer Challis, Robert Baust, Jon Harden, Maia Harden, Alastair Jones, Tamara Jones and Mike Nickel are hereafter referred to collectively as the "Karriker Plaintiffs". The balance of the Plaintiffs are hereafter referred to as the "Residual Plaintiffs".

- 1) Each allegation not hereafter admitted or qualified is hereby denied.
- 2) The allegations of paragraphs 1-3 regarding the residences of the Plaintiffs and Defendants and the location of the property are admitted

- 3) The allegations of paragraph 4 are admitted. However, Defendants further allege that this declaration contains the following language in Section 8 of Article XI titled "Easements for Common Driveways":

"These easements shall be for the benefit of any Owner of a Lot upon which a Common Driveway is located and shall be for access to and ingress and egress to and from such Owner's Lot by such Owner, and his or her family members, invitees, and designees in, upon over and across the Common Driveway, or portion thereof, located on such Owner's Lot. Any Common Driveway shall continue to be used for this purpose by the Owners of the Lots on which such Common Driveway is located and by the subsequent Owners and successors-in-title to such Lots."

- 4) The declaration continues in Article XI, Section 8:

"No Owner shall be allowed to change, alter or diminish the rights of an Owner of a lot burdened by these easements to the use and enjoyment of the Common Driveway located on such Owner's Lot."(emphasis added, a copy of the entirety of Article XI attached as Exhibit A)

- 5) As to the allegations of paragraph 5, the Defendants admit the recordation of the two plats, however, the earlier of the two plats, from 2002, does not show the easement that is the subject of this action. In fact the later plat from 2004 bears a notation as follows:

"The purpose of this plat is to add landscape and signage easements around entry monuments and fencing on Lot 649 and add a 7.5' ingress/ egress easement on lot 659. The lots were previously shown on a plat titled "Final Plat of Bridgehampton Phase 8 Map 3" and recorded in Lancaster County Register of Deeds in Plat Doc 2002 pg 493."(copy of 2004 plat attached as Exhibit B)

- 6) As the Plaintiffs acknowledge in paragraph 6, the deed vesting title in the defendants and the deed to their grantors only referenced the 2002 plat. (copy of deed attached as Exhibit C)
- 7) As to the allegations of paragraph 7, Defendants admit the identification of the disputed easement, but expressly deny that the purpose of the easement was to provide access to Harrisburg Road to "the members of the Community".

- 8) In fact the intention of the developer is illuminated by an email from John Wieland Homes which states:

“In your particular case, the ingress/ egress easement was recorded to establish access from Karriker Court to Norwalk Lane. Thereby, the easement was recorded in favor of John Wieland Homes and the future owners of property on Karriker Court.”(emphasis added, copy of email attached as Exhibit D)

- 9) Neither John Wieland Homes nor the Defendants predecessor in title could have intended the use of the disputed easement to reach the “recently built Harrisburg Elementary School” because the school did not exist in 2004 when the plat showing the easement was recorded and the initial conveyance of the property was made.
- 10) Moreover, the “Revised Final Plat of Bridgehampton Phase 8 Map 4” shows the entirety of Karriker Court and identifies it as a 20’ Private Drive, as does signage posted on Karriker Court(copy of plat and photo of signage attached collectively as Exhibit E). As noted in the declaration and quoted in paragraph 2 of this answer, use of the private drive is limited to the Karriker Plaintiffs and the Residual Plaintiffs have no right to use Karrikker court as a thoroughfare to the public road.
- 11) Based on the foregoing, Defendants emphatically deny the allegations of paragraph 8.
- 12) In responding to the allegations of paragraph 9, Defendants deny that they have impeded the Karriker Plaintiffs’ use of the easement for its intended purpose of allowing them to reach Norwalk Court. The Karriker Plaintiffs have no need to access the disputed easement to reach Harrisburg Elementary. Defendants deny that the gate is locked and allege that the signage erected addresses only the Residual Plaintiffs (photos attached collectively as Exhibit F). Further the Defendants allege that the sidewalk remains undestroyed and that they have no present plans to destroy it.

- 13) In response to the allegations of paragraph 10, Defendants allege that the Karriker Plaintiffs have no need of the easement to reach the school and the Residual Plaintiffs have no right to use the disputed easement, the private drive known as Karriker Court and then cross the public road in a manner that is not approved by SCDOT, (copy of correspondence attached as Exhibit G), to reach the school.
- 14) In response to the allegations of paragraph 11, Defendants deny that anyone, and especially not “any other members of the community,” are entitled to the order sought.
- 15) Defendants reincorporate and reallege each of their previous responses as fully as if repeated herein verbatim, in response to the allegations of paragraph 12.
- 16) The allegations of paragraphs 13, 14 and 15 are denied.
- 17) Defendants reincorporate and reallege each of their previous responses as fully as if repeated herein verbatim, in response to the allegations of paragraph 16.
- 18) The allegations of paragraph 17 are admitted.
- 19) As to the allegations of paragraph 18(a), (b) and (c) and paragraph 19, the Defendants join in the request for the court to declare the respective rights of the Karriker Plaintiffs and the Residual Plaintiffs to the easement that is the subject of this action.
- 20) As to the allegations of paragraph 18(d) through (j) and (m), the balancing of equities sought by the Plaintiff's is precluded by South Carolina law and the Order granting partial summary judgment in this matter, which is unappealed from and is the law of the case. This order provided :

As noted in *Rhett v. Gray* (Opinion No. 5066, S.C. App. 12/19/2012) : “A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land, whether adjoining or distinct tracts, to which the right is not attached. The purpose of this rule is to prevent an increase in the burden upon the servient estate, and it applies whether the easement is created by grant, reservation,

prescription, or implication.” (citing Adams v. Winnett 156 S.W. 2d 353, 357 (Tenn. Ct. App. 1941)(internal quotation marks omitted).

Plaintiffs cannot expand the disputed easement beyond the original use intended at the time of the grant of easement.” A copy of the filed order granting partial summary judgment is attached as Exhibit H.

- 21) As to the allegations of paragraph 18(k) the Plaintiffs join in the request for a declaration of the propriety of the gate and signage.
- 22) As to the allegations of paragraph 18(l) the Plaintiffs deny the underlying assertion of the Plaintiffs and allege that they have the right to walk their dogs, on a leash and in compliance with any law or ordinance.

For a Further Defense

- 23) The Complaint fails to state a cause of action on which relief can be granted.

Therefore, Defendants request that the Court deny the relief sought by the Plaintiffs. Further, Defendants ask that the Court declare that the use of the easement is limited to the Karriker Plaintiffs and the the gate and signage do not improperly interfere with use of the easement.



D. Randolph Whitt SC Bar #13068
Fleming & Whitt, P.A.
344 Blossom View Ct.
West Columbia, SC 29170
(803) 422-2176 Tel

5/6, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

Case No. 2015-CP-29-00694

John Challis, Jennifer Challis, Robert Baust,
Zeljko Cvitkovic, Stephanie Cvitkovic,
Aarik Eberhardt, Amy Eberhardt, James
English, Socheata Koy, Carl Fleteau, Patrice
Fleteau, Keith Gonsalves, Sandy Gonsalves,
Jonathan Hardn, Maia Hardin, Jay Hurley,
Joanne Hurley, Alastair Jones, Tamara
Jones, Mike Nickel, Chuck Powell, Christie
Powell, Lane Reavis, Kym Reavis, James
Seidel, Deborah Seidel, David Templeton,
Jennifer Templeton and Elizabeth Yegge

Plaintiffs,

vs.

Jeffery Horning and Janet Shander-Horning,

Defendants.

The undersigned hereby certifies that I served the Answer to Amended Complaint on May 6, 2016 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Philip E. Wright
408 North Main Street
Lancaster, SC 29720



D. Randolph Whitt
Fleming & Whitt, P.A.
344 Blossom View Ct.
West Columbia, SC 29170
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May 6, 2016

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT

2

3 JOHN CHALLIS, JENNIFER)
CHALLIS, ROBERT BAUST,)
4 ZELJKO CVITKOVIC,)
STEPHANIE CVITKOVIC, AARIK)
5 EBERHARDT, AMY EBERHARDT,)
JAMES ENGLISH, SOCHEATA)
6 KOY, CARL FLATAU, PATRICE)
FLATAU, KEITH GONSALVES,)
7 SANDY GONSALVES, JONATHAN)
HARDIN, MAIA HARDIN, JAY)
8 HURLEY, JOANNE HURLEY,)
ALASTAIR JONES, TAMARA)

9 JONES, MIKE NICKEL, CHUCK) CASE NO. 2015-CP-29-00694

POWELL, CHRISTIE POWELL,)
10 LANE REAVIS, KYM REAVIS,)
JAMES SEIDEL, DEBORAH)
11 SEIDEL, DAVID TEMPLETON,)
JENNIFER TEMPLETON,)
12 ELIZABETH YEGGE,)
PLAINTIFFS,)

13

VS

14

JEFFERY HORNING AND JANET)
15 SHANDER-HORNING,)
DEFENDANTS.)

16

17

18 REFERENCE HEARING BEFORE

19 SPECIAL REFEREE CLYDE DAVIS

20 LANCASTER, SOUTH CAROLINA

21 MAY 24, 2016

22

23

24 REPORTER: KELLY L. REITER
DALLAS REPORTING, A HUSEBY COMPANY

25

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Pages 2..5

Page 2		Page 4	
1	Appearances: For the Plaintiffs -	1	P L A I N T I F F S' E X H I B I T S
2	Philip E. Wright, Esquire	2	Exhibit 1 Declarations of Covenants, Conditions, and
3	Law Office of Philip E. Wright, PA	3	Restrictions Page 5
4	408 North Main Street	4	Exhibit 2 Original 2002 Plat Page 5
5	Lancaster, South Carolina 29720	5	Exhibit 3 Revised Plat Page 5
6	Phone: 803-286-4343	6	Exhibit 4 Deed to Jendlys Page 5
7	Email: philwright@pewpa.com	7	Exhibit 5 Deed to Hornings Page 5
8	For the Defendants -	8	Exhibit 6 Plat Page 5
9	D. Randolph Whitt, Esquire	9	Exhibit 7 Photos of Sign Page 5
10	Fleming and Whitt, PA	10	Exhibit 8 Photo of Gate Page 5
11	344 Blossom View Court	11	Exhibit 9 Aerial Photo of Area Page 5
12	West Columbia, South Carolina 29170	12	Exhibit 10 Affidavit of Jennifer Rumbaugh Page 5
13	Phone: 803-422-2176	13	Exhibit 11 Video of Confrontation Page 5
14	Email: dwhitt2001@aol.com	14	Please Note: All exhibits were retained by Special
15		15	Referee Davis.
16		16	
17		17	
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Page 3		Page 5	
1	I N D E X	1	Reference hearing, taken before me, Kelly Reiter, a
2	Opening Statement of Mr. Wright Page 10	2	Notary Public for the State of South Carolina, at the
3	Opening Statement of Mr. Whitt Page 11	3	Lancaster County Courthouse, 104 North Main Street,
4	Rebuttal by Mr. Wright Page 11	4	Courtroom B, Lancaster, South Carolina, commencing at
5	Rebuttal by Mr. Whitt Page 12	5	10:24 a.m. on May 24, 2016. Special Referee Clyde Davis,
6	Testimony of Socheata Koy	6	presiding.
7	Examination by Mr. Wright Page 13	7	*****
8	Examination by Mr. Whitt Page 18	8	Whereupon - Documents were marked as Plaintiffs'
9	Testimony of John Challis	9	Exhibit Numbers 1 through 11.
10	Examination by Mr. Wright Page 20	10	Mr. Wright - If it please the Court, Your Honor,
11	Examination by Mr. Whitt Page 30	11	we have gone through some of the exhibits and
12	Testimony of Jon Hardin	12	have agreed to introduce these following
13	Examination by Mr. Wright Page 30	13	exhibits, eleven exhibits. That will speed
14	Examination by Mr. Whitt Page 37	14	things up and reduce us by one witness. The
15	Further Examination by Mr. Wright Page 38	15	first exhibit is the Declaration of Protective
16	Further Examination by Mr. Whitt Page 39	16	Covenants for BridgeHampton, the subdivision.
17	Testimony of Patrice Flatau	17	Special Referee Davis - Okay.
18	Examination by Mr. Wright Page 40	18	Mr. Wright - The second is what we refer to as
19	Testimony of Robert Baust	19	the 2002 plat.
20	Examination by Mr. Wright Page 44	20	Special Referee Davis - Okay.
21	Testimony of Kym Reavis	21	Mr. Wright - This is a plat of the - - - a major
22	Examination by Mr. Wright Page 47	22	portion of the subdivision.
23	Examination by Mr. Whitt Page 53	23	Mr. Whitt - It's the original subdivision plat.
24	Testimony of Janet Shander-Horning	24	Mr. Wright - The original subdivision. The plat
25	Examination by Mr. Wright Page 55	25	that's Exhibit Number 3 is a revised plat, which
	Examination by Mr. Whitt Page 63		
	Motion for Directed Verdict Page 64		
	Rebuttal by Mr. Wright Page 68		
	Rebuttal by Mr. Whitt Page 72		
	Testimony of Jeffery Horning		
	Examination by Mr. Whitt Page 76		
	Examination by Mr. Wright Page 80		
	Further Examination by Mr. Whitt Page 85		
	Rebuttal Testimony of Robert Baust		
	Further Examination by Mr. Wright Page 87		
	Further Examination by Mr. Whitt Page 90		
	Clarification Questions by Referee Davis Page 92		

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.
Reference Hearing on 05/24/2016

Pages 6..9

Page 6	1 includes on it a revision of Lot 659, which is 2 the lot in question. 3 Special Referee Davis - Okay. 4 Mr. Wright - Exhibit Number 4 is the deed where 5 the developer, John Wieland Homes, sold the 6 property originally to the Jendlys, J-e-n-d-l-y. 7 Special Referee Davis - Are you talking about 8 Lot 659? 9 Mr. Wright - I'm sorry? 10 Special Referee Davis - You're talking about Lot 11 659? 12 Mr. Wright - Lot 659. 13 Special Referee Davis - Okay. 14 Mr. Wright - Exhibit 5 is the deed where the 15 Jendlys sold the plat to the Hornings. Again, 16 Lot 659. 17 Mr. Whitt - And, Your Honor, the Hornings are 18 the current owners, the defendants, and the 19 people that I represent. 20 Special Referee Davis - All right, sir. 21 Mr. Wright - Exhibit 7 is a map of Bridge Hampton 22 subdivision, Phase 8, known as Karriker Court. 23 Special Referee Davis - Now, did I miss 6? What 24 did you say 6 was? 25 Mr. Wright - I'm sorry. It's not Exhibit 7.	Page 8
Page 7	1 I'm looking at my - - - It should be Exhibit 6. 2 Special Referee Davis - Okay. 3 Mr. Wright - Exhibit 6. Exhibit 7 are 4 photographs of a couple of signs posted on Lot 5 659. 6 Special Referee Davis - Okay. 7 Mr. Wright - Exhibit 8 is the photograph of the 8 gate on Lot 659. 9 Special Referee Davis - Okay. 10 Mr. Wright - Exhibit 9 is an aerial photograph 11 of the area depicting the various homes, 12 streets, and sidewalks. 13 Special Referee Davis - Okay. 14 Mr. Wright - Exhibit 10 is the affidavit of 15 Jennifer Rumbaugh from the Lancaster County 16 Sheriff's Department, who is here today. We 17 have agreed to submit her affidavit in lieu of 18 her testimony. She's here under subpoena. If 19 counsel agrees, I'll release her from the 20 subpoena upon submission of this affidavit. 21 Special Referee Davis - And, Your Honor, we're 22 going to stipulate with two additional facts 23 related to the entry of that affidavit. One of 24 which is, there's a reference in the affidavit 25 to a crosswalk. There is, in fact, not a	Page 9
	1 painted crosswalk on the - - - on the highway in 2 question. It's a crosswalk in the sense that 3 people are crossing it while she's directing 4 traffic, but there's not the - - - the white 5 lines painted on the pavement. 6 Special Referee Davis - All right. 7 Mr. Wright - That's correct. 8 Mr. Whitt - And then we're also going to 9 stipulate that she was - - - neither she, nor 10 anybody else, was out there directing traffic in 11 2004, because there was no school at that point. 12 Mr. Wright - That's correct. 13 Special Referee Davis - All right. So you're in 14 agreement to release her? 15 Mr. Whitt - Absolutely, Your Honor. 16 Special Referee Davis - All right. You - - - 17 Mr. Wright - And then the last exhibit that 18 we've agreed upon is a videotape of a 19 confrontation that took place out on the 20 sidewalk, and it's marked Plaintiffs' 11. It's 21 a videotape for the Court to watch at your 22 convenience. We'll submit that. 23 Special Referee Davis - All right. 24 Mr. Wright - It speaks for itself. 25 Special Referee Davis - All right.	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 10..13**

Page 10 1 if I could. 2 Special Referee Davis - All right. 3 Mr. Wright - Your Honor, this case, as you can 4 see from the file, was before the Court 5 previously, and Judge Gibbons ruled that the 6 easement that we are talking about, the easement 7 in question - - - 8 Whereupon - There was feedback from the sound 9 system in the courtroom, and it was resolved. 10 Mr. Wright - All right. The easement in 11 question is a valid easement, and it's recorded 12 in the Clerk of Court's office. The terms of 13 what Judge Gibbons found are in his order, so 14 Your Honor can review that. The purpose of the 15 hearing today is to determine the extent or 16 scope of the easement. Judge Gibbons wanted us 17 to try to find evidence of what the purpose of 18 the easement was to be. We have our theory of 19 that, and I'll present testimony about that. 20 They have their theory about that and will 21 present testimony. We've got exhibits that show 22 you everything we can, and we'd simply ask you 23 to review that and give us a ruling. We - - - I 24 amended my complaint since the original hearing 25 and asked for a declaratory judgment on several	Page 12 1 one was a letter, because they're hearsay. My 2 understanding is, neither of those persons are 3 here today to testify now, and I would ask the 4 Court to not consider the affidavit and the 5 letter that are attached to the defendants' 6 answer. They were also submitted at the summary 7 judgment hearing, but not considered by the 8 Court because of the hearsay issue. I would ask 9 the Court not to consider those in this case. 10 Special Referee Davis - All right. Mr. Whitt? 11 Mr. Whitt - Your Honor, Mr. Wright is correct. 12 Neither of the people that I would need to get 13 those two documents in are here, and we don't 14 plan on introducing either of those two 15 documents into evidence today. 16 Special Referee Davis - All right, sir. Well, I 17 grant the motion to strike them then. 18 Mr. Wright - And, Your Honor, I would call 19 Socheata Koy as my first witness. 20 Special Referee Davis - Okay. 21 Mr. Wright - The left side there. 22 Ms. Koy - Okay. 23 Special Referee Davis - Ms. Koy, if you will, 24 raise your right hand. 25 Whereupon, Socheata Koy, having been first duly sworn, was
Page 11 1 points that are listed in the amended complaint. 2 Have you seen the amended complaint - - - 3 Special Referee Davis - Yes, sir, I have. 4 Mr. Wright - In the file? 5 Special Referee Davis - Yes. 6 Mr. Wright - So those are specifically the 7 points that we need to have clarified to get the 8 relations between these parties back on an even 9 keel. 10 Special Referee Davis - All right, sir. Mr. 11 Whitt, you go ahead. 12 Mr. Whitt - Your Honor, just briefly. With this 13 being a political season, our campaign has got 14 one message, and that is, the question for the 15 day is, what was the developer's original intent 16 in 2004 when this easement was created by being 17 recorded on this plat? And the only conclusion 18 that we believe can be drawn is that the intent 19 was not to get to the school, because there was 20 no school. 21 Special Referee Davis - All right, sir. 22 Mr. Wright - Your Honor, I had also made, as you 23 can see in the file, a motion to strike a 24 portion of the answer that included two 25 affidavits - - - Well, one was an affidavit, and	Page 13 1 examined and testified as follows: 2 Special Referee Davis - All right. Be seated. 3 If you would, state your name for the court 4 reporter. 5 Ms. Koy - Socheata Koy. 6 Special Referee Davis - Mr. Wright? 7 Mr. Wright - And if you would, pull up close to 8 the microphone and speak into that microphone, 9 it will help me hear you and help the court 10 reporter record you. 11 Ms. Koy - Okay. 12 DIRECT EXAMINATION 13 BY MR. WRIGHT: 14 Q Is your full name Jetta or - - - 15 A It's Socheata. 16 Q Okay. Could you spell that for the reporter? 17 A It's S-o-c-h-e-a-t-a. 18 Q Okay. And, Ms. Koy, where do you live? 19 A At 23041 Norwalk Lane. 20 Q Okay. And as we got through the case, we're going to 21 be referring to Karriker Court and BridgeHampton 22 subdivision. Now, is BridgeHampton subdivision and 23 Karriker Court one and the same? Are they one thing? 24 A That's correct. 25 Q But do you live on Karriker Court?

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 14..17**

Page 14		Page 16	
1	A No, I do not.	1	when you attempted to use that sidewalk?
2	Q You live in the other part of BridgeHampton	2	A Yes, on several occasions.
3	subdivision?	3	Q Can you tell me what problem you had with those
4	A That's correct.	4	children attempting - - - excuse me, with the
5	Q How far from the defendants do you live?	5	defendants, attempting to use that sidewalk?
6	A They are on the same street, at the end of the cul-	6	A Janet Horning has come out of her home and told us to
7	de-sac.	7	leave and not to trespass, and that we are not
8	Q Okay. Do you have children?	8	allowed to use the sidewalk.
9	A Yes, I do.	9	Q Okay.
10	Q How many?	10	A And on other occasions, where she's - - - She views
11	A Two.	11	me walking to pick up the children, and then she goes
12	Q What ages are they?	12	and locks the gate. Then when I'm coming back, I
13	A Seven and twelve.	13	don't have excess - - - I mean, access, excuse me, to
14	Q And at the time we started this case, did those	14	get back in the gate, to the community.
15	children attend Harrisburg Elementary School?	15	Q All right. So there's a gate erected across the
16	A Yes, they did.	16	sidewalk?
17	Q Okay. And did you walk your children to school	17	A Right.
18	occasionally?	18	Q And do you know who erected that gate?
19	A Yes, I did.	19	A She did - - - or they did.
20	Q Did you have - - - I think you have an assistant?	20	Q Okay. And you've encountered that gate, at times,
21	A Yes, I do.	21	when it was locked?
22	Q Did you have your assistant walk them some days when	22	A Oh, yes, several occasions.
23	you couldn't walk them?	23	Q And can you manage to get around that gate if you - -
24	A Yes, I did.	24	-
25	Q And how did your children get to school? What path	25	A We walk around the gate, where the shrubs and the - -
Page 15		Page 17	
1	did they follow?	1	- the - - - the pine straw stuff - - -
2	A They go on the sidewalk.	2	Q Okay.
3	Q Which sidewalk?	3	A I'm not a landscaper, so I don't know what it's
4	A The sidewalk at the end of Norwalk.	4	called.
5	Q Okay. Did - - -	5	Q All right.
6	A That leads onto Karriker Court.	6	A Yeah.
7	Q Is that the sidewalk that crosses Lot 659?	7	Q Have you encountered those problems when your
8	A That is correct.	8	children were with you?
9	Q And when you leave that sidewalk from Horning - - -	9	A Oh, yeah, and my assistant, too.
10	or excuse me, Norwalk Lane, where does that sidewalk	10	Q All right. Did - - -
11	escort you onto? Where do you go to?	11	A And there's cones sometimes on the sidewalk.
12	A It goes onto Karriker, and then we would cross to the	12	Q Now, the Court back in the - - - We heard this case
13	school.	13	last year, and the Court entered an order that you
14	Q Okay. And how long have you been living in the	14	could not use the sidewalk to walk your children to
15	community?	15	school. Do you recall that?
16	A Since 2003.	16	A Yes.
17	Q And how long have you been using that sidewalk to go	17	Q And have you obeyed that court order?
18	in and about the community?	18	A Yes.
19	A Awhile. I mean, years.	19	Q Have you used that sidewalk for other purposes,
20	Q Do you use it for any purpose other than taking your	20	though, that were permitted under the court order
21	children to school?	21	since then?
22	A Well, my assistant will - - - They'll let them like	22	A We try to avoid it as much as possible, because we
23	walk, or they'll ride a bike or whatever, but not on	23	really don't want to see them.
24	the sidewalk.	24	Q Why do you try to avoid it?
25	Q Okay. Have you had any problems with the defendants	25	A Because of many times where she's approached us.

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Pages 18..21

Page 18	Page 20
1 It's not friendly, it's not okay, and I don't want my 2 children to see that. 3 Q Okay. And is it your desire to be able to walk your 4 children to school by using that sidewalk? 5 A Yes. 6 Q Have you been able to do that this entire school 7 year? 8 A No, I have not. 9 Mr. Wright - All right. Thank you. Answer any 10 questions he might have. 11 A Okay. 12 Mr. Wright - Stay there. 13 A Oh, okay. 14 CROSS EXAMINATION 15 BY MR. WHITT: 16 Q Ms. Koy, my name is Randy Whitt. I'm the attorney 17 for the Hornings. 18 A (Indicating yes) 19 Q I'm going to ask you just a couple of questions. If 20 I ask a question which you don't understand, I'll be 21 happy to try to explain it. Sometimes, I ramble. So 22 if you have trouble with what the question is, feel 23 free to say, I've got no idea what you're talking 24 about, try again. But just a couple of questions. 25 Do your children still go to the elementary school?	1 way to sort of get a sense of. 2 Special Referee Davis - All right. We - - - And 3 let me clarify something else. We're talking 4 about - - - We're not talking about a road with 5 access to - - - with cars, are we? We're just 6 talking about - - - 7 Mr. Wright - No. 8 Mr. Whitt - No, sir. It's - - - 9 Special Referee Davis - All right. 10 Mr. Whitt - Sections of concrete that are 11 designed to be walked on, not for any kind of 12 vehicular traffic. 13 Mr. Wright - It's just purely sidewalk, Your 14 Honor. 15 Special Referee Davis - Okay. Thank you. 16 Mr. Wright - I'll call John Challis. 17 Special Referee Davis - All right, sir. If 18 you'd raise your right hand - - - 19 Whereupon, John Challis, having been first duly sworn, was 20 examined and testified as follows: 21 Special Referee Davis - Be seated. 22 DIRECT EXAMINATION 23 BY MR. WRIGHT: 24 Q State your name, please. 25 A John Challis.
Page 19	Page 21
1 A My youngest one does. 2 Q Okay. So one does, one doesn't? 3 A That's correct. 4 Q And you seem to be in relatively good physical 5 condition. Is opening an unlocked gate a physical 6 burden, or is that something you have difficulty 7 with? 8 A Well, it actually snapped back on my finger one time, 9 so that wasn't too nice. 10 Q Okay. But it is something you can do without, you 11 know, having to go rest or anything after you've 12 opened it? 13 A No. It's like opening a door and hoping that it 14 doesn't slam on your finger; but yeah. 15 Mr. Whitt - Great. That's all I have, Your 16 Honor. 17 Mr. Wright - You can come down. 18 Special Referee Davis - Mr. Wright, one of the 19 exhibits that you've already entered, is there a 20 plat of the subdivision that I can look at as 21 these witnesses testify? Is there any objection 22 to that? 23 Mr. Whitt - Your Honor, that aerial photograph 24 might be the best way to sort of - - - I'm not 25 sure which exhibit that is, but that's a good	1 Q And, Mr. Challis, where do you live? 2 A I live on Karriker Court, 5074 Karriker Court. 3 Q Okay. Now, how long have you been living there? 4 A It will be ten years this year. I moved in October 5 of 2006. 6 Q Do you have children? 7 A I have three children. 8 Q What ages? 9 A A five-year-old, a nine-year-old, and an eleven-year- 10 old. Boy, girl, boy. 11 Q Any of them go to Harrisburg Elementary School? 12 A The oldest two go this year. The youngest one will 13 go next year. 14 Q When was Harrisburg Elementary School built? 15 A This is its second full year in - - - in existence, 16 so - - - (No further response) 17 Q Okay. So we're coming to the close of the second 18 full school year? 19 A Correct. 20 Q During the first school year, did you walk your 21 children to school? 22 A Yes. 23 Q Now, in order to walk your children to school, do you 24 have to go across the sidewalk that is across Lot 25 659?

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 22..25**

Page 22		Page 24	
1	A I do not, no.	1	any impediment?
2	Q Okay. Your house is on Karriker Court. What does	2	A Yes.
3	Karriker Court front on?	3	Q And when the school was built, how soon after that
4	A Karriker Court is - - - Well, Karriker Court is a	4	was the gate put up?
5	private road that runs parallel to Harrisburg Road.	5	A I don't recall exactly, but it was within - - -
6	It fronts onto Harrisburg, so - - - (No further	6	within weeks of the start of the school year that a
7	response)	7	gate was erected, and then periodically locked.
8	Q So you have direct access to Harrisburg, across from	8	Q All right. So there were times when it was locked,
9	the school?	9	and times when it was not locked?
10	A That's correct.	10	A That's correct.
11	Q Okay. Do you know people that live in the other	11	Q When the gate was locked, how did you get around it?
12	portion of BridgeHampton?	12	A Well, the - - - Initially, if the gate was locked,
13	A Absolutely.	13	you could still walk off of the sidewalk, so
14	Q Do you use the amenities that are located in the	14	technically off of the easement, and - - - and walk
15	other portion of BridgeHampton?	15	around the gate, until they erected a fence that
16	A Daily, or at the very least weekly. There's - - -	16	extended from property line to property line. It
17	There's a pool we have access to. There are tennis	17	completely blocked it, and then you had absolutely no
18	courts that we have access to. There's a sand	18	access whatsoever.
19	volleyball court that we have access to, and - - -	19	Q So if the gate is locked now, you can't get around
20	and all of that is accessible. Unless I drive, I	20	it?
21	have to use the sidewalk across Lot 659 to access the	21	A I would have had to - - - If - - - For a pedestrian
22	amenities in the neighborhood.	22	or a bike, I would have had to have ridden or walked
23	Q So the sidewalk across the lot owned by the Hornings	23	on Harrisburg Road. It's exceptionally unsafe to
24	is the only pedestrian access to the other part of	24	walk on that probably quarter-mile stretch of
25	the subdivision?	25	Harrisburg Road because there's no sidewalk. So I -
Page 23		Page 25	
1	A That is correct.	1	- - I would have felt uncomfortable doing that.
2	Q Okay. Do you engage in any other activities that	2	Q Now, the sidewalk that we're talking about was put in
3	involve the use of the sidewalk?	3	about what year?
4	A Yeah. I - - - I go running regularly. I do	4	A The sidewalk on - - - on the easement?
5	triathlons, so I ride a triathlon - - - a triathlon	5	Q (Indicating yes)
6	bike. The same thing, if I'm cutting through the	6	A It was there when I moved in in 2006. From my
7	neighborhood, I will use the sidewalk to access the	7	understanding, it's been there, I think, from around
8	neighborhood.	8	2004, which was when the houses were - - - on my
9	Q Okay. Now, I don't do triathlons, but in triathlons,	9	street, on Karriker, were completed.
10	what kind of bike do you use?	10	Q All right.
11	A Well, it's - - - So the unique thing about the	11	A Being completed.
12	triathlon bike and what has really been inconvenient	12	Q Can you describe what is on either side of the
13	relative to the gate is, you have to clip in and out	13	sidewalk?
14	of the pedals. It's not like a regular bike, where	14	A Sure. So on - - - You enter the sidewalk from
15	you just step down. So the process of clipping out,	15	Karriker Court. You'll actually access Lot 659 from
16	while trying to hold onto what quite frankly is a	16	another lot. I don't recall the number, but it's on
17	very expensive bike, to open up the gate, and then	17	Karriker Court. So you - - - You're entering from
18	get the bike through and not let the gate close on my	18	Karriker Court, across one lot on Karriker, entering
19	very expensive carbon bike, it's - - - It really	19	Lot 659, and then you exit on Norwalk, which is a
20	seems like an undue nuisance for, you know, something	20	cul-de-sac in the main section of the neighborhood.
21	for which I understand there's an easement for.	21	Q What is on either side of the sidewalk?
22	Q Before the school was built, was there any gate	22	A On either side of the sidewalk is - - - is
23	across the sidewalk?	23	landscaping, shrubbery. I don't know the exact type
24	A There was no gate. No.	24	of plant that it is.
25	Q Were you able to ride your bike through there without	25	Q How tall is the shrubbery?

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 26..29**

Page 26		Page 28	
1	A It's - - - It's tall. It's probably six to eight	1	A Much more seldomly now, because the - - - The kids
2	feet tall on either side.	2	oftentimes are scared or intimidated to use the
3	Q Can you see the home of the Hornings over the	3	sidewalk, but yes.
4	shrubbery?	4	Q So they don't use the sidewalk?
5	A Not over, and you can see in and through a little	5	A Some of them do not, yeah. Some of them, their
6	bit. It's not - - - You know, it's not completely -	6	parents will not let them use the sidewalk because
7	- - - But there's definitely - - - You'd have to try to	7	they don't want them to have a run-in with the
8	see through the shrubbery, I think. You know, it	8	Hornings, and some of the kids are scared to use the
9	provides what I would imagine is some privacy.	9	sidewalk.
10	Q Do the Hornings have dogs?	10	Q Are the signs still up?
11	A Yes. They have three dogs, I believe.	11	A To my knowledge, yes. There still are signs up that
12	Q And have you ever used the sidewalk, and the dogs	12	say, private property, Karriker Court residents only,
13	were let out?	13	but I didn't check today.
14	A They, you know, let them out in the backyard.	14	Q Do you understand that the Hornings take the position
15	They're very loud, seemingly aggressive dogs. I used	15	that the people that live on Karriker can use the
16	to have a dog myself. When walking my dog along that	16	sidewalk, but the people that live in BridgeHampton
17	sidewalk, it sometimes would be very, very difficult	17	can't use the sidewalk?
18	until - - - until I was able to train our dog to - -	18	A That is my understanding of their position.
19	- you know, to react responsibly in those situations.	19	Q Do you understand that that would segregate your
20	But the dogs would bark very, very aggressively, and	20	community?
21	you know, it was kind of intimidating.	21	A Yeah. No, absolutely. It's - - - It's frustrating
22	Q Have you ever encountered either Mr. or Mrs. Horning	22	and disappointing. I mean, certainly, that wasn't
23	on or in the area of the sidewalk?	23	what was communicated to me by John Wieland when I
24	A No. No, not - - - not immediately on the sidewalk,	24	bought the house, that I would be living on my own
25	on their property. No.	25	planet out there, completely separated and segregated
Page 27		Page 29	
1	Q Okay. Did you have a run-in with Ms. Horning that	1	from the rest of the community. Where I would be
2	resulted in the police coming out?	2	able to access the community, but none of the members
3	A Yes. I forget the exact date, but I was out for a	3	of the community, my friends and family, and the
4	morning run before work one morning. Later on that	4	kids' friends would not be able to come visit us by
5	day, I received a telephone call from my wife that a	5	way of the sidewalk.
6	sheriff had visited the - - - visited the house.	6	Q And you have friends that live in BridgeHampton?
7	Q Okay. And did you talk to the police?	7	A Yes, absolutely.
8	A Actually, I didn't. You know, my wife relayed a	8	Q Not on Karriker, but over in BridgeHampton?
9	couple of pieces of information, but the sheriff	9	A Yes.
10	left.	10	Q And do you use that as access to go see them?
11	Q All right. Did you see Ms. Horning that day?	11	A Yes.
12	A Yes.	12	Q Okay. On Harrisburg Road, how many highway entrances
13	Q Did you have any conversation with Ms. Horning that	13	are there into the subdivision?
14	day?	14	A On Harrisburg Road, there's only one entrance into
15	A I - - - I don't recall saying anything, no.	15	the main - - - the main area of BridgeHampton, so - -
16	Q Okay. And do your children have friends that go to	16	- (No further response)
17	Harrisburg Elementary School?	17	Q How far down from Karriker Court is that?
18	A Yes.	18	A I think it's about a quarter mile, a quarter to a
19	Q Do they have friends that live in the other part of	19	third of a mile.
20	BridgeHampton?	20	Q And are you asking the Court to grant the declaratory
21	A Absolutely.	21	relief we asked for in the complaint?
22	Q Do they play together?	22	A Absolutely.
23	A Absolutely.	23	Q And do any of your children's friends ever come to
24	Q Do they go back and forth up that sidewalk to go see	24	walk to school with them?
25	their friends?	25	A Well, not anymore, because - - - you know, because of

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 30..33**

Page 30	Page 32
1 the current judgment, but they did and would like to. 2 Mr. Wright - Answer any questions they might 3 have. 4 A Thank you. 5 CROSS EXAMINATION 6 BY MR. WHITT: 7 Q Mr. Challis, Randy Whitt. I represent the Hornings. 8 A Nice to meet you, Randy. 9 Q Good to meet you as well. Have you ever heard the 10 term, First World problems? 11 A I have. 12 Mr. Whitt - Okay. Your Honor, that's all I 13 have. 14 Special Referee Davis - Okay. 15 Mr. Wright - You can come down. I'll call Jon 16 Hardin. 17 Special Referee Davis - Mr. Hardin, if you 18 would, raise your right hand. 19 Whereupon, Jon Hardin, having been first duly sworn, was 20 examined and testified as follows: 21 Special Referee Davis - All right. Be seated. 22 DIRECT EXAMINATION 23 BY MR. WRIGHT: 24 Q Tell us your name. 25 A Jonathan Hardin, H-a-r-d-i-n.	1 Q Did you have problems then using the sidewalk? 2 A Not in the mornings, because we walked directly 3 across the street. 4 Q Right. But at other times? 5 A At other times - - - 6 Q Well, let me direct your attention to one particular 7 evening. 8 A Okay. 9 Q Do you walk at times for exercise? 10 A Yes. 11 Q And do you use that path to walk for exercise? 12 A Yes. 13 Q Did you suffer an injury to your groin during 14 exercising? 15 A Yes. 16 Q Had you used that path to walk that off? In other 17 words, to walk to try to get rid of that pain? 18 A Yes. 19 Q And were you walking on that path one night sometime 20 in the past year? 21 A Yes. 22 Q Okay. Tell me what happened. 23 A I was walking. My goal was to walk to the clubhouse 24 and back, because I had been laid up for a few days 25 from the groin injury. I made it down to about the
Page 31	Page 33
1 Q And, Mr. Hardin, where do you live? 2 A We live on 5054 Karriker Court. 3 Q So you live on Karriker Court and don't have to have 4 access for purposes of getting to the school? 5 A Correct. 6 Q What purposes - - - Or how long have you lived there? 7 A We also will be ten years at the end of June. 8 Q When you moved there, was the sidewalk put in place 9 to give you access to the rest of the community? 10 A Yes. 11 Q Did you need that sidewalk to have pedestrian access 12 to the amenities in the subdivision? 13 A Yes. 14 Q Did you use it for that? 15 A Yes. 16 Q Did you use it for other purposes? 17 A Just for going to see friends, not necessarily 18 amenities. 19 Q You had friends in the other part of the community? 20 A Yes. 21 Q All right. Until the school was built, did you have 22 any problem using the sidewalk? 23 A None. 24 Q When the school got built, was there a gate erected? 25 A Yes.	1 section where the gate is on the - - - on the 2 Hornings' property. I didn't necessarily feel like 3 it was something that I felt a hundred percent that I 4 should go that far, so I stayed on that section for a 5 little bit and started stretching out to see if it 6 felt better. If it felt better, I was going to 7 continue forward. If not, I was going to go back to 8 the house. 9 Q How were you dressed that night? 10 A I was just dressed in shorts and a T-shirt. 11 Q Okay. 12 A As I was stretching out maybe ten, fifteen minutes, I 13 noticed - - - I noticed a car coming back on Norwalk, 14 towards the sidewalk. I was, you know, still doing 15 some slow stretches. I hear a door open, and the 16 dogs started barking, running back. I had a good 17 idea what was getting ready to happen, but I - - - I 18 stayed where I was. I think I was in the process of 19 leaning down, and Mrs. Horning came up to the gate, 20 started asking me who I was and what I was doing. 21 Q Let me stop you right there. Do you know Ms. 22 Horning? 23 A I'd met her on one occasion before that. 24 Q Okay. Do you know her husband? 25 A Yes.

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Pages 34..37

Page 34 1 Q Have you served on the board with him before - - - 2 A Correct. 3 Q The homeowners' board out there? 4 A Yes. 5 Q She asked you who you were? 6 A Correct. 7 Q Did you respond to her? 8 A I do not believe I said anything to her. 9 Q Okay. How long did she stay there? 10 A She was there briefly, maybe thirty seconds. 11 Q Okay. Did her husband come up? 12 A Yes. 13 Q Did he have a conversation with you? 14 A Yes. 15 Q Did he know who you were? 16 A Yes. 17 Q Did you address each other by name? 18 A Yes. 19 Q Did you tell him what you were doing? 20 A I told him exactly what I was doing. 21 Q Okay. What did he say to you? 22 A Do you want me to say exactly what he said to me? 23 Q Yes, sir. 24 A He said, why don't you go stretch it out in front of 25 your own fucking house?	Page 36 1 Q And about how long did the officer stay? 2 A Probably - - - Probably about fifteen minutes. 3 Q Was that an upsetting event at your house that night? 4 A It was - - - It was upsetting and embarrassing. I 5 mean, I don't necessarily want my kids to open the 6 door and see an officer there and say, can I speak to 7 your dad? I don't want my neighbors to see it and 8 think that something inappropriate is going on at the 9 house. 10 Q Had you done anything wrong? 11 A I had done nothing wrong. 12 Q Does the existence of the gate and the signs hinder 13 your ability to use that property? 14 A It doesn't - - - It doesn't hinder my ability, but my 15 kids do not want to go down there. 16 Q They won't go? 17 A They will - - - They will walk down through there 18 every once in awhile. My youngest will not. She's 19 eight. As a matter of fact, we were walking back 20 from somewhere Saturday night. We were walking down 21 the sidewalk, and she said, let's hurry up, this 22 scares me being on the sidewalk. And I said, why? 23 Why does it scare you? She said, I don't want 24 anybody to come out - - - 25 Mr. Whitt - Your Honor, I've got to object to
Page 35 1 Q Okay. Did you find that appropriate? 2 A I did not. 3 Q Were you on the easement? 4 A Yes. 5 Q And you knew an easement existed there? 6 A Correct. 7 Q You've been using it for years? 8 A Correct. 9 Q And did you leave and go back to your home? 10 A Within a few minutes, I did. 11 Q After you got home, what happened? 12 A I was home - - - I don't know for how long, maybe 13 fifteen minutes. I had gone upstairs. My son, he 14 was eleven at the time, came upstairs and said 15 somebody was at the door for me. Being a little 16 later in the evening, I said, who is it? He said, 17 it's the police. I said, okay. I said, tell them 18 I'll be right there. So not - - - I'm not moving as 19 quickly as I normally would. I made it downstairs 20 and went outside. I spoke to the officers, told them 21 exactly what happened. 22 Q Was it about that incident on the sidewalk? 23 A It was about that incident. 24 Q Were you charged with anything? 25 A No.	Page 37 1 two levels of hearsay there. 2 Special Referee Davis - All right. 3 Mr. Wright - That's hearsay. You can't repeat 4 what they said. 5 A I'm sorry. 6 Mr. Wright - That's all. 7 Special Referee Davis - You can't say what she 8 said. 9 Mr. Wright - That's all the questions I have. 10 Answer any questions that Mr. Whitt has. 11 CROSS EXAMINATION 12 BY MR. WHITT: 13 Q Mr. Hardin, Randy Whitt. 14 A Yes. 15 Q I'm the attorney for the Hornings. 16 A Nice to meet you. 17 Q Nice to meet you as well. You are a physically- 18 imposing man. How tall are you? 19 A I'm six four. 20 Q Okay. And what's your approximate weight? I won't - 21 - - - We don't have a scale here or anything, so - - - 22 A Well, what exactly does that - - - 23 Q Approximate weight. 24 A Have to - - - I'm about three forty. 25 Q Okay. Do either or all of your children have

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.
Reference Hearing on 05/24/2016

Pages 38..41

Page 38 1 motorbikes or motorized scooters? 2 A No, just one. 3 Q And do they ride those around the neighborhood? 4 A They used to. 5 Q Okay. And when they go out riding, do they - - - I 6 assume you're not riding with them? 7 A No, not right now. 8 Q Okay. 9 A I have, in the past. 10 Q Okay. But not currently? 11 A No. 12 Mr. Whitt - Okay. Your Honor, that's all I 13 have. 14 Special Referee Davis - All right. 15 FURTHER EXAMINATION 16 BY MR. WRIGHT: 17 Q In regard to the motorbikes, have you given your 18 children any instructions relative to the motorbikes 19 and the use of those motorbikes on the easement area? 20 A Yeah. I instructed my son to - - - If he was going 21 to ride it, that he go to the end of the street, turn 22 it off, and walk it down the section of the easement 23 that's at the end of Karriker Court that leads into 24 the easement on Lot 659. When he gets to the street, 25 then he can start it.	Page 40 1 Special Referee Davis - All right. Be seated. 2 DIRECT EXAMINATION 3 BY MR. WRIGHT: 4 Q Tell the reporter your name. 5 A Patrice Flatau. 6 Q And, Ms. Flatau, where do you live? 7 A I live at 17014 Laurelmont Court, BridgeHampton. 8 Q And that's not in Karriker Court? 9 A Correct. 10 Q So it's the other section of BridgeHampton? 11 A Correct. 12 Q And how long have you been living there? 13 A About ten years. 14 Q And are you familiar with the easement area we're 15 talking about? 16 A Yes, I am. 17 Q The sidewalk that runs beside the Hornings' house? 18 A Yes, I am. 19 Q It connects it to Karriker Court? 20 A Yes. 21 Q Do you know people that live on Karriker Court? 22 A Yes, I do. 23 Q You have friends that live there? 24 A Yes, I do. 25 Q Now, do you have any children that go to the school?
Page 39 1 Q Have you ever observed your son disobeying those 2 instructions? 3 A I have not. 4 Mr. Wright - Thank you. 5 Mr. Whitt - Your Honor, one more on recross. 6 Special Referee Davis - All right, sir. 7 FURTHER EXAMINATION 8 BY MR. WHITT: 9 Q Mr. Hardin, have you ever had the experience of - - - 10 particularly when they're not in your presence, your 11 children doing something different than what you've 12 instructed them? 13 A I'm sorry. Could you repeat that? 14 Q Have you ever had the experience of your children 15 doing something different than what you've instructed 16 them to do in a particular situation, particularly if 17 you're not present when it arises? 18 A Yeah, I have, and I believe every parent has probably 19 had the same situation. 20 Mr. Whitt - Thank you. 21 Mr. Wright - You can come down. Patrice Flatau. 22 Special Referee Davis - Ma'am, if you will, 23 raise your right hand. 24 Whereupon, Patrice Flatau, having been first duly sworn, 25 was examined and testified as follows:	Page 41 1 A No, I do not. 2 Q So you're not - - - The issue of the children walking 3 to school is not an issue with you? 4 A No, it's not. 5 Q But the issue of using the easement is an issue for 6 you? 7 A Yes, it is. 8 Q Tell me about the incident that you had with Ms. 9 Horning at the easement. 10 A I was jogging, as I often have done over the last ten 11 years while living in the neighborhood. I often jog 12 on Karriker Court. That's one of my routes. It was 13 the morning of January 7th, I believe, and I was 14 jogging down - - - 15 Q Of this year? 16 A This year. 17 Q Okay. 18 A And I had to drop something off at a friend's house. 19 So I jogged through Karriker Court. I dropped 20 something off. As I was coming back and coming off 21 the sidewalk, I saw Janet Horning walking down 22 Norwalk with her dogs. As I was - - - I was kind of 23 approaching her, and I said, good morning. I noticed 24 she was kind of gesticulating and talking, and I had 25 my headphones on. I said, excuse me? And she said,

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 42..45**

Page 42	Page 44
1 you realize that's private property, and started 2 yelling at me. You realize that's private property. 3 I was kind of taken aback, and I said, oh, well, no, 4 it's not. Yes, it is. I mean, I kind of fumbled my 5 words, and I said - - - I said, well, I have the 6 right, you know, to use that property. She said, oh, 7 you realize, you know, you know that that's private - 8 - - and just kind of started yelling at me, and it 9 upset me. 10 Q Okay. So she expressed to you that that sidewalk 11 that you just came down was private property? 12 A Yes. 13 Q And did you know that the Court, at that point, had 14 already determined there was an easement there? 15 A Yes, I did. 16 Q You knew you had the right to use it to jog? 17 A Yes, I did. 18 Q And you were using it within those rights? 19 A Yes, I was. 20 Q Did that confrontation with her upset you? 21 A Very much, yes. It was disturbing and upset me for 22 the remainder of the day. 23 Q Would you call yourself a confrontational person? 24 A Not at all. 25 Q Okay. And has that confrontation kept you from	1 Special Referee Davis - Sir, if you will, raise 2 your right hand. 3 Whereupon, Robert Baust, having been first duly sworn, was 4 examined and testified as follows: 5 Special Referee Davis - Be seated. 6 DIRECT EXAMINATION 7 BY MR. WRIGHT: 8 Q Tell the reporter your name. 9 A Robert Baust. 10 Q And, Mr. Baust, where do you live? 11 A I live at 5038 Karriker Court. 12 Q Okay. Do you use the easement along Lot 659 to 13 access the rest of the community? 14 A Yes, I do. 15 Q Do you ride a bike? 16 A Occasionally. I have a bike, both my wife and I do, 17 and I occasionally ride the bicycle through the 18 neighborhood, yes. 19 Q Okay. Before the school was built, was there a gate 20 across the sidewalk? 21 A There was not. 22 Q After the school was built, did the Hornings put one 23 up? 24 A Yes. The fence and the gate were erected after the 25 school was opened.
Page 43	Page 45
1 jogging that route? 2 A Yes. It's - - - It's made me kind of get that - - - 3 You know, when I go down that road, I get that kind 4 of sick feeling. I don't really want to go there and 5 - - - which is upsetting, because I typically have 6 enjoyed that in the past and have visited friends 7 there in the past. So, yes, it's upsetting. 8 Q Okay. Are the signs still up that say, Karriker 9 Court only? 10 A I believe the last time I saw it, they were still up. 11 Q Okay. The gate, the gate itself is not there 12 anymore, is it? 13 A I don't believe the gate is there anymore. 14 Q The swinging part of the gate? 15 A Correct. The fence is there. 16 Q But the post and the other parts are there? 17 A I - - - That's the last - - - to my recollection. 18 Mr. Wright - All right. Thank you. Answer any 19 questions from - - - 20 A Okay. 21 Mr. Whitt - Your Honor, no questions for this 22 witness. 23 Special Referee Davis - All right. You can step 24 down. 25 Mr. Wright - Robert Baust.	1 Q And did they close the gate? 2 A Yes. When the gate was there, it was always closed. 3 Q Did you encounter the gate when it was locked? 4 A I have never encountered the gate when it was locked. 5 Q So when you're riding your bike, what do you have to 6 do when you get to the gate? 7 A Obviously, I have to get off the bike and go through 8 the gate. Now, my bike is not a fancy one like Mr. 9 Challis' is, so - - - 10 Q You don't have to unstrap? 11 A No. So I don't have to disengage from the bicycle, 12 but it's - - - It's an inconvenience that wasn't 13 there before, and I don't understand why it's there. 14 Q Have you had any personal confrontations with the 15 Hornings at the easement or on the easement anywhere? 16 A Not really. I mean, I was present on one occasion, 17 the first day of school 2015. I believe you were 18 there, also. But that's probably the only time that 19 I've been on the sidewalk at the same time one of the 20 Hornings was. 21 Q Could you describe what happened that day when you 22 were out there? 23 A We were on Norwalk, walking towards Karriker Court. 24 I was the last person in line. So I was on the 25 bicycle, so I was kind of pedaling as slow as I could

Page 46 1 behind the people that were walking. Mrs. Horning 2 was at the back part of her property. So in other 3 words, the - - - She was at the last section of the 4 sidewalk before it goes into the next lot on Karriker 5 Court. I know some people that were ahead of me were 6 having a conversation of some kind with Mrs. Horning. 7 When that was over, she then walked down the sidewalk 8 and went back into her house. 9 Q Was Mr. Horning there that day? 10 A I don't remember Mr. Horning being there. 11 Q Okay. Does the existence of that gate and the 12 interference impede your ability to use that 13 easement? 14 A It doesn't impede it significantly, but it does 15 impede it some. My biggest concern with it is that 16 the existence - - - just the existence of the fence 17 and the sign on it that says, you know, Karriker 18 Court only. It tells the rest of the neighborhood 19 that they can't use it. So, you know, there is no 20 free flow of traffic along that sidewalk. It makes 21 me feel isolated from the rest of the neighborhood, 22 which I seriously dislike. That's not why I bought a 23 home in a big neighborhood. I bought it here, to be 24 part of a big neighborhood, and I don't like being 25 forced to be segregated from it.	Page 48 1 Q All right. How long have you lived there? 2 A Almost thirteen years. 3 Q You're familiar with the subdivision? 4 A Yes. 5 Q You've lived there longer than anybody who has 6 testified so far, I think? 7 A (Indicating yes) 8 Q You're aware that the state line bisects that 9 subdivision? 10 A Yes. 11 Q Part of the subdivision is in North Carolina, and 12 part of the subdivision is in South Carolina? 13 A Correct. 14 Q The children that live on the South Carolina side can 15 go to South Carolina schools? 16 A Yes. 17 Q And the children in North Carolina go to the North 18 Carolina school? 19 A Yes. 20 Q And there's about two hundred plus lots on the South 21 Carolina side? Is that about right? 22 A That's what I've heard, yes. 23 Q Okay. And are you familiar - - - Do you have 24 children that go to the school? 25 A I do.
Page 47 1 Mr. Wright - Okay. Thank you. Answer any 2 questions they have. 3 Mr. Whitt - Your Honor, no questions. 4 Special Referee Davis - All right. Sir, would 5 you step down? 6 Mr. Wright - Kym Reavis. 7 Special Referee Davis - Ma'am, will you raise 8 your right hand? 9 Whereupon, Kym Reavis, having been first duly sworn, was 10 examined and testified as follows: 11 Special Referee Davis - Be seated. 12 Mr. Wright - Your Honor, may I have Exhibit 2? 13 Special Referee Davis - Yes, you may. It's 14 right here. 15 DIRECT EXAMINATION 16 BY MR. WRIGHT: 17 Q First, tell us where you live. 18 A 23047 Norwalk Lane. 19 Q I'm not sure I ask you your name. 20 A Kym Reavis. 21 Q Okay. And is Norwalk Lane in Karriker Court? 22 A No. 23 Q So it's on the other side of Karriker Court? That's 24 in what we call Bridgehampton proper? 25 A Yes.	Page 49 1 Q And are you familiar with the population of students 2 generally that go to the school? 3 A Generally, yes. 4 Q Okay. You live close enough to the school to where 5 your children would take advantage of walking to 6 school, if they could? 7 A We did. 8 Q The first year? 9 A No, not even the full first year. 10 Q Okay. 11 A (Indicating no) 12 Q Did you try to walk the second year? 13 A No, we haven't walked at all this year. No. 14 Q Okay. 15 A And we did not finish walking last year. 16 Q All right. Would your children walk to school every 17 day or only on temperature-appropriate days? 18 A Temperature-appropriate days. 19 Q If it was raining, would they walk to school? 20 A No. 21 Q If it was snowing? 22 A No. 23 Q Cold? 24 A Not typically, no. 25 Q Is there a bus that comes through the neighborhood to

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 50..53**

Page 50	Page 52
1 get the children? 2 A Yes, there is. 3 Q Do your children sometimes ride back home on the bus? 4 A They ride home every day on the bus. 5 Q Okay. So there is bus service? 6 A (Indicating yes) 7 Q Well, what is it about walking the children to school 8 that you find special? 9 A It was time in the mornings, basically, with our 10 kids. My husband and I, a lot of times, would walk 11 them together to school. You know, my son needed to 12 let out a little energy before school started, and it 13 just - - - We'd meet up with a few of their friends. 14 There weren't a lot of us that walked, so there was 15 just a few friends that would meet. We'd just walk 16 together, just to kind of - - - (No further response) 17 Q So you would see the traffic flow up and down the 18 sidewalk? 19 A Yes. 20 Q Was the sidewalk crowded? 21 A I would not say crowded, no. 22 Q Was the sidewalk congested - - - 23 A No. 24 Q Blocked? 25 A I would not use that word, no.	1 never walked on that sidewalk again. Ever. I won't 2 let my kids walk on it. I don't walk on it. I just 3 - - - I stay away from it because of the harassment 4 and the bullying. I won't - - - I don't want my kids 5 to see it, so - - - (No further response) 6 Q Are you afraid of Ms. Horning? 7 A Let's just say - - - I wouldn't say afraid, but I 8 don't personally like being screamed at when I've 9 never even spoken to somebody before. So I thought 10 it was a little excessive that she came running out 11 of her house, screaming at me, when I've never even - 12 - - that she better not have to tell me again, when 13 I've never even spoken to her, so - - - (No further 14 response) 15 Q Okay. And just for the record, this is Exhibit 16 Number 2, which is the 2002 plat. That was the 17 original subdivision plat. 18 A Yes. 19 Q Do you see Lot 659 located here? 20 A I do.. 21 Q Okay. And on that original plat, there is not a 22 sidewalk, is there? 23 A Correct. 24 Q All right. Let me show you Exhibit 3, which is the 25 2004 plat. Does that specifically show Lot 659?
Page 51	Page 53
1 Q Did you ever see any untoward activity on the 2 sidewalk, fighting, scuffling, throwing trash, things 3 like that? 4 A I did not, no. 5 Q Okay. Did you ever have an occasion to have a 6 confrontation with Ms. Horning or her husband in or 7 around the easement area? 8 A There was one occasion in the afternoon, where I was 9 walking with another neighbor. An eight-year-old 10 girl, who actually is homeschooled so she wasn't in 11 the school, and Mrs. Horning came out of the house 12 very quickly and very loudly. She started yelling at 13 us, that if she ever had to tell us again not to walk 14 on her property, that it was private property, she 15 was going to call the cops. The gate was up at this 16 time. We honestly just kept walking. I knew when we 17 got to the school and got the kids to walk back, that 18 it would probably - - - The dogs would be out, but - 19 - - And they were. The dogs were let out in the 20 backyard. 21 Q So you walked to the school - - - 22 A Went to the school, came back with the kids. Quite 23 honestly, other than one time after the decision was 24 made at the last court date, when my husband and I 25 walked on the sidewalk during times allowed, I have	1 A It does. 2 Q And does it show an ingress/egress easement along the 3 side of Norwalk between 659 and 660? 4 A It does. 5 Q Okay. And is that the easement that we're talking 6 about? 7 A Correct. 8 Q And is that the easement that you've used for over 9 ten years? 10 A Yes. 11 Court Reporter - And I'm sorry, you said over 12 ten years, right? 13 Mr. Wright - I'm sorry? 14 Court Reporter - Did you say, you've used it 15 over ten years? 16 Mr. Wright - Over ten years. 17 Court Reporter - Thank you. 18 Mr. Wright - Okay. Thank you. Answer any 19 questions they may have. 20 A Okay. 21 CROSS EXAMINATION 22 BY MR. WHITT: 23 Q Ms. Reavis? 24 A Correct. 25 Q Is that correct?

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 54..57**

Page 54	Page 56
1 A (Indicating yes) 2 Q Randy Whitt, representing the Hornings. You 3 testified to an encounter you had with Ms. Horning? 4 A Yes. 5 Q Were there any other times where you encountered her? 6 A No. I pretty much try to stay away from her. She 7 pretty - - - She's much taller than I am. She's very 8 loud and very intimidating. 9 Q Well, you also testified, though, that you had walked 10 your children to school regularly for most of that 11 first year. 12 A No, until they put the gate up, and they made such a 13 big deal in the neighborhood. Then a friend of mine 14 and I walked to pick our kids up from school that one 15 day. I agreed to walk with her to pick my children 16 up, and that happened, and I - - - No more. 17 Q Well, then help me out here. How many days did you 18 actually walk your children to school? 19 A I have no idea. I don't remember when they put the 20 gate up. 21 Q Well, ten? Five? One? 22 A It would have been more than five or ten. 23 Q Twenty? 24 A But they didn't harass people before that, either. 25 So this was after the gate was put up.	1 it? 2 A We asked the realtor what it was for. It went to a 3 private road, so she said it was a - - - it was a 4 sidewalk to the private road. 5 Q Okay. Do you understand that the Court, at a 6 previous hearing, declared that to be a valid 7 recorded easement? 8 A Yes, I understand that. 9 Q Okay. You are a mechanical engineer, I believe? 10 A That's correct. 11 Q And you have children, but none of those children go 12 to the public schools in that area. Is that correct? 13 A I have a - - - five children. One attends a college 14 in - - - a public college in South Carolina, but the 15 others do not attend Harrisburg Elementary. 16 Q Okay. Where do they attend school? 17 A Saint Matthew Catholic School and Charlotte Catholic 18 High School. 19 Q During the years that you've lived there before the 20 school was built, did you see people using the 21 sidewalk? 22 A We had people using the sidewalk, just very sparse. 23 Mostly Karriker Court residents. 24 Q Okay. What did they use the sidewalk for? 25 A To access the amenities, or to walk. We had some
Page 55	Page 57
1 Mr. Whitt - Thank you very much. 2 Mr. Wright - You can come down. I call the 3 defendant, Janet Horning. 4 Special Referee Davis - Will you raise your 5 right hand? 6 Whereupon, Janet Shander-Horning, having been first duly 7 sworn, was examined and testified as follows: 8 Special Referee Davis - Be seated, please. 9 DIRECT EXAMINATION 10 BY MR., WRIGHT: 11 Q Ms. Horning, tell us your name. 12 A Janet Shander-Horning. 13 Q And where do you live? 14 A 23004 Norwalk Lane. 15 Q And is that on Lot 659 in the BridgeHampton 16 subdivision? 17 A It is. 18 Q Okay. Did you buy that house in 2011? 19 A Yes. 20 Q Was the sidewalk there when you bought it? 21 A The sidewalk was there when we bought the property, 22 yes. 23 Q Did you see it before you bought it? 24 A Yes, I did. 25 Q Did you ask any questions about it before you bought	1 issues with motorcycle usage on there. We talked 2 about that previously. Some people ride their bikes, 3 skateboards, things like that. 4 Q Do you know the identity of all the people who used 5 the sidewalk - - - 6 A No. 7 Q During that time? 8 A Absolutely not. 9 Q Would it be fair to say that people that lived in 10 BridgeHampton on the - - - not on Karriker Court, 11 used the sidewalk as well as people who were in 12 Karriker Court? 13 A I've seen people use it that don't live on Karriker 14 Court. Some of which are in this courtroom used that 15 sidewalk. Correct. 16 Q Okay. During the school year, are you aware of what 17 time school opens at Harrisburg Elementary? 18 A I don't know what time it opens. 19 Q What - - - 20 A I - - - I'm aware of the time we would typically see 21 the traffic, school traffic. Anywhere between seven 22 and seven twenty, seven twenty-five, we would see the 23 most traffic. 24 Q A twenty- or thirty-minute period? 25 A Yeah. I would say most of the traffic was within a

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 58..61**

Page 58		Page 60	
1	thirty-minute period in the mornings and in the	1	Q But he was on the sidewalk?
2	afternoons.	2	A He was on the sidewalk, correct.
3	Q And did you ever count the number of people walking	3	Q Did you and your husband put a gate up on that
4	up and down the sidewalk?	4	sidewalk?
5	A I never counted, no.	5	A We did put a gate up on the sidewalk, yes.
6	Q Okay. Has there ever been any damage created in the	6	Q Did you lock it at times?
7	area of the sidewalk that's damaged your property?	7	A We locked it at times, to stop school traffic. We
8	A No damage other than some littering, snack littering	8	never locked it against anybody on Karriker Court
9	and bottles and things. We've had a couple of	9	trying to use it.
10	branches broken off on our trees. Other than that,	10	Q So you locked it to block the - - - to stop the
11	no significant damage.	11	school traffic?
12	Q Have you called the police on people using the - - -	12	A Correct. We had a significant issue with school
13	A Yes, I have.	13	traffic that we were trying to stop.
14	Q Have you referred to people using the easement as	14	Q And what was the significant issue with school
15	trespassers?	15	traffic?
16	A I have caught them as trespassers on my property,	16	A That there was numerous people, the traffic. The
17	yes.	17	traffic.
18	Q Okay. You were involved in the incident involving	18	Q The traffic?
19	Jon Hardin that night?	19	A The school traffic.
20	A Yes, I was.	20	Q But you can't tell me how many?
21	Q Okay. And did you not know Jon Hardin from previous	21	A I - - - I mean, it was more than five. I mean, it
22	contact?	22	was significant. It was a heck of a lot more than
23	A I had met Jon once, and it was at night. I don't see	23	was on there previously, and this was daily, twice a
24	well at night. I - - - I don't have good vision. I	24	day.
25	asked him repeatedly, at least ten times, who he was.	25	Q Did they do - - -
Page 59		Page 61	
1	He would not answer any of my questions. In fact, I	1	A Seven a.m., and then two o'clock in the afternoon.
2	told him I was going to call the police unless he got	2	Q Did they do anything as they walked down the easement
3	off of my property, and he just completely ignored	3	to cause a disturbance?
4	me.	4	A Well, at seven o'clock in the morning, you know,
5	Q How close - - -	5	that's when our neighbors and ourselves, we would try
6	A He didn't tell me he was hurt. He didn't say	6	to get to work. We would try to get kids off to
7	anything. Just wouldn't say a word.	7	school. People walking in the cul-de-sac. Cars
8	Q How close were you to Jon Hardin at that point?	8	parked in the cul-de-sac. We had an incident one
9	A Seven, eight feet away.	9	where - - - once where we had asked folks to move
10	Q Seventeen feet away?	10	their car, so that we could get our car out of our
11	A No. Seven or eight.	11	driveway.
12	Q Seven or eight?	12	Q How long has it been - - -
13	A Yes.	13	A So - - -
14	Q Okay. And would you describe your tone of voice?	14	Q How long has it been since a car has been parked in
15	A I was very nervous. I was very - - - You know, a	15	the cul-de-sac?
16	stranger on my property. He's imposing. He's taller	16	A Well, I think the last one I saw was maybe a couple
17	than I am. I'm tall.	17	of days before the preliminary judgment came out the
18	Q Were you loud?	18	last time, prohibiting school traffic.
19	A I don't think I was loud. I think I was just getting	19	Q Do you still have up signs on the gate?
20	very agitated. It was - - - It was at night. It was	20	A We have a - - - We have two signs up, one facing
21	the night of my son's birthday. To come back from a	21	either way, and it - - - It pretty much says, private
22	family birthday to find somebody on your property	22	property, Karriker Court residents only. No
23	that won't explain why they're there, they refused to	23	motorcycle - - - or no motorized vehicles or
24	leave, and he's just standing there, you know, it was	24	something like that.
25	very disconcerting.	25	Q Okay. You understand the ruling of the Court

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 62..65**

Page 62	Page 64
1 previously was that anybody in the subdivision could 2 use that property? 3 A That's correct. 4 Q Except people - - - They couldn't walk to school 5 until we determined the extent of the easement? 6 A Correct. 7 Q So the sign that says, Karriker Court only, is that 8 designed to keep people who don't live on Karriker 9 Court from walking on that easement? 10 A It's to notify people that it's private property, and 11 it was for Karriker Court residents only, correct. 12 Q Okay. 13 A Again, it's a - - - it's a private road back there. 14 It states it in the covenants of the organization - - 15 - of the homeowners' association. There's a section 16 in there about who's allowed to use the easements 17 along the private road. It very clearly says the 18 owners of the property only, and you cannot - - - 19 There's a section there that talks about 20 overburdening the owners of the easements. It's very 21 clear to us who should be allowed to use the 22 easements on that - - - on that road. 23 Q So is it correct that - - - And I depose you on this 24 matter. Is it correct that one child - - - 25 A Correct.	1 Mr. Whitt - Your Honor, I think briefly just to 2 get this on the record, I'd like to ask for a 3 directed verdict at this point. I think, based 4 on the summary judgment motion, the only issue 5 is establishing the intent of the developer. 6 There's no evidence that the developer intended 7 this easement to be used to get to school, 8 because there was no school at the time that it 9 was created. So there's not - - - It's not that 10 the plaintiffs failed to bring forward something 11 that existed. It's just incapable of existing 12 because presumably the folks at Wieland Homes 13 didn't have the gift of prophecy. So they 14 couldn't have intended it to be used to access 15 something that didn't exist in 2004. It 16 actually didn't exist until two years ago. So 17 in light of that, the plaintiffs, being the ones 18 that use the easements, have the burden of proof 19 to establish that the scope that they contend 20 for is, in fact, the appropriate one. There's 21 also case law that indicates that if the 22 construction of the easement is subject to 23 differing interpretations, that the law favors 24 the interpretation that least restricts the 25 ownership rights of the party or parties that
Page 63	Page 65
1 Q Walking to school is inappropriate in regard - - - 2 A I feel that - - - 3 Q To the - - - 4 A That the - - - that the use of the property outside 5 of what was intended or the original intent of the 6 easement is inappropriate, yes. 7 Q Okay. And one child walking on - - - 8 A One child is - - - is too many. 9 Q Is too many? 10 A Correct. 11 Mr. Wright - Thank you very much. 12 Mr. Whitt - Your Honor, I've just got one 13 question. 14 CROSS EXAMINATION 15 BY MR. WHITT: 16 Q Ms. Horning, on the night when Mr. Hardin is out on 17 the sidewalk, did you observe him stretching or 18 engaging in any kind of - - - 19 A No. 20 Mr. Whitt - Thank you. 21 Special Referee Davis - All right. You can step 22 down. 23 Mr. Wright - That's all for the plaintiffs. 24 Special Referee Davis - All right, sir. Mr. 25 Whitt?	1 own the footprint of that easement. So in this 2 case, we've got no evidence, because there 3 couldn't be, of an intent to use this ease - - - 4 to allow the use of this easement for people to 5 walk to a school that didn't exist. As far as 6 Karriker Court residents using it to access the 7 amenities, that circumstantially is the only 8 thing that makes sense because the amenities did 9 exist in 2004. In light of that, we'd ask you 10 to find that the use of this easement, except 11 for going to Karriker Court or returning from 12 Karriker Court to the amenities, is in excess of 13 the original use, and that any use in excess of 14 the original intent is inappropriate. There's a 15 lot of overlap between easements and deeds. 16 When you get an easement, you get a particular 17 thing at that point in time. It's not a living, 18 breathing document that can ripen into something 19 else. Just as if I get a deed with a particular 20 property line on it, and several years later, it 21 develops that it would be really nice if I had 22 another three feet out of my neighbor's ten 23 acres, that I can come in and say, well, you 24 know, I know that's not my original property 25 line, but I really want this three feet. It's

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 66..69**

Page 66 1 not going to hurt this homeowner. They've got 2 plenty of other territory. So, you know, give 3 me that - - - Give me that three feet. It's not 4 going to hurt anybody. It's not a problem. 5 Move the property line. Just as no one would 6 argue that you can do that, you can't expand the 7 use of an easement to go to a school that didn't 8 exist when it was created. 9 Special Referee Davis - Let me see if I can 10 understand your position. Now, do you think 11 that the people that are not on Karriker Court 12 but are in other parts of the subdivision, can 13 they use that sidewalk to, say, visit somebody 14 on Karriker Court, or - - - 15 Mr. Whitt - Your Honor - - - 16 Special Referee Davis - Or to exercise? 17 Mr. Whitt - Your Honor, if they - - - 18 Special Referee Davis - Not going to the school, 19 but to exercise? 20 Mr. Whitt - If they want to exercise or if they 21 want - - - If they are a social invitee of one 22 of the Karriker Court residents, then I think 23 they have the right to do that. 24 Special Referee Davis - And that - - - 25 Mr. Whitt - What I'm - - -	Page 68 1 just coming to visit, coming to hang out at my 2 house, and then we're all going to walk to 3 school. 4 Special Referee Davis - All right, sir. Mr. 5 Wright? 6 Mr. Wright - Your Honor, the easement was 7 created in 2004. The only evidence in the 8 record anywhere is that 2004 plat that calls it 9 an ingress/egress easement, going in and coming 10 out. It doesn't limit it in any way. It's a 11 general easement for ingress and egress. The 12 developer - - - At the summary judgment hearing, 13 the judge urged us to try to get the developer 14 to opine about what the reason was. The 15 developer is not going to get involved in this, 16 will not come back and say anything. They've 17 sold the lot. They've made their money. 18 They're gone. They're not going to get back in 19 the middle of this fight. So the case law says 20 that it's up to a court in equity to determine 21 the extent of that easement. You have heard the 22 testimony of the people here today, that they 23 use that easement for various purposes and have 24 used it for ten, twelve years, since it was 25 built in 2004, before the Jendlys first bought
Page 67 1 Special Referee Davis - Comes from where? 2 Mr. Whitt - What's I'm - - - 3 Special Referee Davis - Where do you get that? 4 Mr. Whitt - Well, Your Honor, I believe it was 5 to allow the Karriker Court residents to not be 6 ostracized from the rest of the neighborhood. 7 So they can go to the pool. They can invite 8 somebody else to come to their home. What I 9 think they can't do, and what there's at least 10 been some rumbling of, is putting out the word, 11 hey, everybody that wants to walk to school, 12 come to my house. We'll have hot chocolate, and 13 then we'll all walk to school together. That - 14 - - That's our reticence about this being a - - 15 - the camel's nose into the tent, to then have 16 school traffic just continue unabated. But if 17 it's an individual person who is a social friend 18 of one of the Karriker Court people, I don't 19 think my folks have any concern about that. I 20 believe that's part of the use and enjoyment of 21 the Karriker Court lots, and that is what the 22 easement was intended for. But it's not 23 intended for some sort of, you know, we're going 24 thwart the no school traffic provision by just 25 saying, oh, you're not school traffic. You're	Page 69 1 that house. It's in the chain of title that 2 goes to the Hornings, and it binds their lot. 3 They refer to this as their property. It is 4 their property, but it is subject to the 5 easement. It was already determined by Judge 6 Gibbons in summary judgment, the easement is 7 there. The only question is the extent of the 8 easement. If they are alleging that the 9 easement is now overburdened because there is a 10 school there, I think the burden is on them to 11 show that it is overburdened, and they have not. 12 There are no counts. There's no empirical 13 numbers. You've heard testimony from my 14 witnesses, there were five, ten, fifteen school 15 children that walked to school with their 16 parents, and that's it. It's only during the 17 school year, and it's only during climate- 18 appropriate weather. There's bus service. A 19 lot of the children use the bus service. So 20 you're talking about a minuscule use of an 21 easement, but if the - - - What the Hornings 22 decided was, they didn't want people going up 23 and down that easement, and they put up a gate 24 to block it, to stop people from using it. They 25 blocked everybody. They didn't just block

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 70..73**

Page 70 1 school traffic. So we got that taken down until 2 we could get to this hearing, to have the Court 3 determine what the extent of the easement is. I 4 think the extent of the easement is what the 5 ordinary, every day, common term ingress and 6 egress are used for. It's going in and coming 7 out. It covers 187.41 feet of land across their 8 property. Where the children go after they go 9 off their property is none of their business. 10 What they do is none of their business and none 11 of their concern. They're just going across the 12 land, using the easement that was put in by the 13 developer before he sold the lots in that 14 section to protect everybody in the community, 15 so they could use it. Originally their position 16 was, well, no, the easement isn't properly 17 recorded and this - - - They had fourteen 18 different - - - The Court said, no, the easement 19 is properly recorded, and it's there. So now 20 the issue is, how do you use it? They can't 21 show that it's overburdened, and I don't think 22 they have any evidence that it's overburdened. 23 You know, they're getting their kids off to 24 school at seven o'clock. So are my clients, but 25 they're walking down that easement, calmly	Page 71 1 taking their children to school. There have 2 been no incidents, so there's no reason for the 3 Court to not declare that that easement is 4 available to use for that. Now, if they build 5 other stuff, the subdivision - - - Well, they 6 can't get through. It's a huge subdivision. 7 They wouldn't come from anywhere else. But 8 there's nothing in the record that would show 9 that there needs to be any limit on the use of 10 that easement at this point in time, and that 11 use by school children, simply walking to school 12 with their parents, is any kind of harm or 13 burden to these folks. They have created - - - 14 The Hornings have created a very hostile 15 atmosphere in the community. You've heard the 16 people that have testified. They confront 17 everybody. They call the - - - They call the 18 police. It's made the community a displeasure 19 to live in. It needs to stop. The only way 20 it's going to stop is if this Court declares 21 that that easement is open, and people can pass 22 up and down it. They're not going to bother the 23 Hornings. They just want to walk on the 24 easement that they were granted by the 25 developer. That's all.	Page 72 1 Mr. Whitt - Your Honor - - - 2 Special Referee Davis - Anything further, Mr. 3 Whitt? 4 Mr. Whitt - Just a - - - Just briefly. One 5 thing, I would direct your attention to a case 6 from the Court of Appeals. It's Rhett versus 7 Gray, G-r-a-y, and it's a case from Judge Dukes' 8 master down in Beaufort. It's Opinion 5066 and 9 was filed on December 19, 2012. That was a case 10 about an easement and how much additional use 11 was okay. I'd just offer that for Your Honor to 12 consider and to review that case. I'd like to 13 quote a couple - - - a couple of sentences from 14 that opinion. This is the Court of Appeal's 15 opinion. It says, thus, it would have increased 16 the usage by one household containing two 17 people. Accordingly, the master did not err in 18 failing to allow the Rhett's, who were the 19 plaintiff in that case, to access their property 20 other than the 5.97 acres with the easement. So 21 it's kind of a convoluted situation where there 22 were - - - There was an additional tract 23 acquired by these folks. They had an easement. 24 They acquired an additional adjoining tract. 25 They were going to put a house on it for their	Page 73 1 son, and they wanted the son to be able to use 2 the easement as well for his house that he was 3 building. So in that case, if one household and 4 two people is excessive, then I think we don't 5 have to get out there with a clicker to 6 determine how many school kids is more than 7 allowed. If it exceeds the original grant, it's 8 too much to ask. 9 Special Referee Davis - Well, I'm - - - And 10 maybe we don't need to get into this at this 11 point because I'm inclined to deny the motion 12 for a directed verdict, because I want to read 13 all of this stuff before I make a ruling. 14 Mr. Whitt - Understood. 15 Special Referee Davis - But let me ask you about 16 his argument. Was the easement for ingress and 17 egress unrestricted? I mean, were there 18 restrictions on it? 19 Mr. Whitt - Your Honor - - - 20 Special Referee Davis - Any restrictions? 21 Mr. Whitt - Your Honor, unfortunately, this is 22 not a situation where the developer, for all the 23 easements in this subdivision, did a written 24 grant of easement, which is what you'll 25 typically have in a situation where you're
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JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 74..77**

Page 74	Page 76
1 talking about two lots rather than two hundred 2 plus. So there is no written grant of easement 3 that's - - - 4 Special Referee Davis - Just this plat. 5 Mr. Whitt - That spells out the details. The 6 plat is what we've got, and we're forced, 7 because we can't - - - The developer has sold 8 the trade name to somebody else, and there's - - 9 - There's nobody left minding the store to tell 10 us what they intended, or nobody who would know. 11 So we're forced to look at circumstantial 12 evidence of, could they in 2004 have intended 13 for this to be used to get to a school? 14 Special Referee Davis - Well, that gets to my 15 question about it. I mean, a developer granting 16 an easement can't anticipate everything that 17 happens. Suppose this would have been a 18 shopping center put over there, instead of a 19 school, and they used it to access the shopping 20 center. 21 Mr. Whitt - And, Your Honor, we'd think that was 22 just as inappropriate. 23 Special Referee Davis - All right. I understand 24 your position, but I'm going to deny the motion. 25 Mr. Whitt - Understood, Your Honor, and just one	1 you are. 2 Special Referee Davis - I'm ready. 3 Mr. Whitt - Your Honor, I'd like to call Jeff 4 Horning to the stand. 5 Special Referee Davis - All right, sir. Mr. 6 Horning, if you'll come around. Sir, if you 7 will, raise your right hand. 8 Whereupon, Jeffery Horning, having been first duly sworn, 9 was examined and testified as follows: 10 Special Referee Davis - Be seated. 11 DIRECT EXAMINATION 12 BY MR. WHITT: 13 Q Mr. Horning, you're the owner of Lot 659 - - - or one 14 of the owners of Lot 659, which is the subject to 15 this action. Is that correct? 16 A That's correct. 17 Q And what is your relationship to the other owner of 18 that property? 19 A That's my wife. 20 Q Okay. And we've heard a number of people talk about 21 how this issue and this litigation has affected them. 22 I'd like you to just briefly tell the Court how this 23 litigation has affected your family. 24 A Well, we bought a house on a cul-de-sac. Previously 25 to the school opening, we were very active in the
Page 75	Page 77
1 final point. I understand your ruling, but just 2 to get this in. Karriker Court is also a 3 private drive, so that the - - - Even after they 4 - - - It's further evidence of the intent that 5 they didn't intend you to walk across a private 6 drive, which by the covenants, people don't have 7 the right to cross. The treatment of private 8 drives is addressed in the covenants, which 9 you've got. It's one of the stack of stuff 10 we've given you to read. 11 Special Referee Davis - All right, sir. 12 Mr. Whitt - But I think that's further evidence 13 of the intent. 14 Special Referee Davis - All right. Do you want 15 to put up any evidence? 16 Mr. Whitt - Yes. Your Honor, can we take a 17 break for a minute, and let me confer with my 18 clients? 19 Special Referee Davis - Yes, sir. 20 Mr. Whitt - Thank you, sir. 21 Special Referee Davis - We'll take a five- or 22 ten-minute break. 23 Mr. Whitt - Thank you, sir. 24 Whereupon - A recess was taken. 25 Mr. Whitt - Judge, I think we're all ready when	1 community. I was the HOA board president. I headed 2 up the maintenance group. I was very concerned about 3 the kids with speed bumps, speed cushions in the 4 neighborhood to get the speed reduced. Had 5 conversations with the principal at Harrisburg. You 6 know, as far as people walking up and down that 7 sidewalk, you know, I keep hearing people talk about 8 how my vicious dogs are attacking people on the 9 sidewalk. It's their - - - It's their yard. They 10 run out in the yard. It's a black lab that's three 11 years old, a hundred and sixteen pounds. He's a big 12 dog. I can bring him into the court if you want to 13 see him. He'd lick you to death, but he doesn't bite 14 or chew or anything. An English Setter, that's a 15 quail hunting dog that, you know - - - My five kids, 16 you know, they - - - they didn't get a chance to go 17 to the pool last year. There was conversations at 18 the pool, soliciting money to - - - to sue us. 19 Mr. Wright - Objection, Your Honor, regarding 20 conversations that's hearsay. 21 Special Referee Davis - Yes, sir. That's 22 hearsay. 23 A Okay. I apologize. 24 Special Referee Davis - That's fine. 25 A But we don't feel comfortable going to the pool. We

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Pages 78..81

Page 78	Page 80
1 don't feel comfortable - - - We get dirty looks 2 walking up and down the street. We walk our dogs 3 every day, five miles a day. It's - - - I don't even 4 know ninety percent of the people that are suing me. 5 Never met them. Never talked to them. We spoke of 6 the evening Mr. Hardin was on the - - - on the 7 sidewalk. It was raining. We came home from a 8 birthday party. I have three ten-year - - - or 9 they're ten-year-olds today. Ten-year-old girls who 10 were afraid because some big man is standing on the 11 sidewalk, staring at our house. I drove around the 12 cul-de-sac again to flash the lights, and the person 13 didn't move. It wasn't a matter of five or six 14 minutes. It was a half hour by the time I got the 15 kids in the house, and Janet ran out. I go out 16 there. I see that it's Jon Hardin. I said, Jon, 17 what are you doing here? You're scaring my kids. He 18 wouldn't say, you know, what he was doing. Then 19 finally after the third time, he says, oh, I'm 20 stretching. I said, fine. If you're hurt, I would 21 have helped him, but to sit - - - Just to stand there 22 and stare at the house - - - He's a big guy. I'm a 23 big guy. This neighborhood, I don't want to live 24 here no more. These people are a bunch of idiots, I 25 mean. I hear her - - - people talk about my wife	1 he just kind of mumbled, I'm stretching. And I said, 2 go stretch at your own - - - And I did use the 3 expletive. I'm sorry. I - - - You know, should I 4 cuss and swear? I'm the one that gets loud. I get 5 loud in the house, and I get mad. So the fact that 6 the guy was standing there, staring at my house, 7 ticked me off. 8 Mr. Whitt - Okay. Answer any questions Mr. 9 Wright has. 10 A All right. 11 CROSS EXAMINATION 12 BY MR. WRIGHT: 13 Q So the people who sued you are idiots? 14 A In my - - - 15 Q That's what you said? 16 A In my - - - In my opinion. 17 Q And you said that you should have tried to talk it 18 out? 19 A Well, I - - - I don't understand your question. 20 Q You said that, instead of suing you, they should have 21 tried to talk it out. Is that correct? 22 A I would hope that people would come and ask questions 23 why you felt so strongly about our property. We do 24 pay taxes on that property. 25 Q Did you talk with them before you put the fence up?
Page 79	Page 81
1 coming out of the house, waving her arms, jumping up 2 and down. We've been married almost twenty-five 3 years. I have never seen her run out of the house, 4 raising her arms and jumping up and down. I hear Mr. 5 Challis say, you know, that we don't teach - - - You 6 know, yeah, my dog behaves himself. They don't - - - 7 I've never met the man, never talked to him. So if 8 you wanted to use the sidewalk, talk it out. Don't 9 just start suing me. You know, I've known Carl, one 10 of the guys that's suing me. He never said a word to 11 me about, my kids can't go up and see their friends. 12 We've never said they can't go up and see their 13 friends. You know, you - - - You buy your house to 14 live in a nice community, and be peaceful and 15 everything. If somebody gets hit by a car after 16 using that sidewalk, I have the opportunity, whether 17 it's small or large, to lose my house. So, you know, 18 I don't know whether - - - if you have any other - - 19 - 20 Q I do. Did you observe Mr. Hardin stretching on the 21 night that there was the confrontation? 22 A When I walked out there, he was - - - he had his 23 hands on his hips. He was bent slightly over. I 24 said, Jon, what are you doing? I got no answer. I 25 asked several times and got no answer. Then finally,	1 A We had conversations. At the - - - (No further 2 response) 3 Q Yes or no. Did you have conversations with them 4 before you put that fence up? 5 Mr. Whitt - Your Honor, I believe the witness is 6 allowed to explain his answer. 7 Mr. Wright - He can explain it, but he hasn't 8 answered the question yet. 9 Special Referee Davis - All right. 10 A Did I have conversations with what individual? 11 FURTHER EXAMINATION 12 BY MR. WRIGHT: 13 Q Any of the individuals, before you - - - 14 A There were several individuals. I had conversations 15 with Mr. Baust about why we wanted to put the gate up 16 and what we felt about that - - - 17 Q Okay. 18 A And how we felt about that. 19 Q You were made aware by the homeowners' association 20 that you could not put a gate up? 21 A I was the president of the homeowners' association. 22 Q And you were made aware you couldn't put a gate up? 23 A And I - - - And these - - - These - - - Some of the 24 plaintiffs were on the committees and the board. 25 They - - - The board never showed up the guideline

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 82..85**

Page 82	Page 84
1 that we violated in putting the gate up. We were - - 2 - We were fined for - - - Not for putting the gate 3 up, but because we did not have an approved RFM. 4 They wouldn't approve an RFM, because they were on 5 the board and they were on the committees that 6 approved it. 7 Q And you were fined for putting - - - having the gate 8 up? 9 A Yes, sir. 10 Q You paid the fines? 11 A Yes, I did. 12 Q But the gate is still up? 13 A The gate's not up. 14 Q Is there not an enclosure that comes out within the 15 seven-and-a-half foot easement - - - 16 A There is a fence. 17 Q That houses the gate? The gate itself is not hung, 18 but the supports for the gate are still there? 19 A Yes, they are. 20 Q Okay. They encroach in the easement, do they not? 21 A They do not cross the sidewalk. 22 Q The encroach - - - The sidewalk is not seven-and-a- 23 half feet. 24 A They do not impede the easement. 25 Q The sidewalk - - -	1 A It's an invitation. That sidewalk was an invitation 2 for them to use and - - - and caused damage. You're 3 an attorney. They'll - - - They'll sue everybody. 4 Q You were there the first day of school this year, 5 weren't you? 6 A Yes, I was. 7 Q Did you see me out there that day? 8 A Yes, I did. 9 Q You came off the porch, didn't you? 10 A I came off the porch. 11 Q And what did you say? 12 A I don't recollect exactly what I said. 13 Q Do you remember saying, this is private property, get 14 off of it? 15 A I believe that's probably what it was. 16 Mr. Wright - Thank you. That's all, Your Honor. 17 A There was no trespassing signs, there. 18 Special Referee Davis - Thank you, sir. 19 A And there was also - - - Those trespassing signs were 20 directed to be put there by an officer, who came and 21 discussed that with us. So we put - - - 22 Mr. Wright - Thank you. 23 A Can I answer the question completely? 24 Mr. Whitt - You can answer it. 25 Special Referee Davis - Yes, sir. Go ahead.
Page 83	Page 85
1 A In my opinion, they do not impede the easement. 2 Q Is the sidewalk seven-and-a-half feet wide? 3 A No, it isn't. 4 Q The easement is seven-and-a-half foot wide? 5 A (No response) 6 Q Don't your fences go to the edge of the sidewalk? 7 A They do not impede the easement, in my opinion. 8 Q You tried to sell that land to the homeowners' 9 association, didn't you? 10 A I tried to reach an agreement with the homeowners' 11 association. 12 Q And you couldn't reach an agreement because they 13 would not agree to limit the use of people who could 14 go up and down that - - - 15 A That's what they told the community. That's not, in 16 fact, the truth. 17 Q Okay. Now, you think that if somebody crosses that 18 easement, legally crosses that easement say jogging, 19 and they run off of your property and out into the 20 middle of Harrisburg Road and they get run over, that 21 somehow you're liable? Is that what you think? 22 A That I feel that there's a possibility that that 23 could happen. 24 Q Although - - - Even though the activity didn't take 25 place on your property?	1 A We had several instances of people trespassing. We 2 talked to the Lancaster Sheriff's Department. 3 Officers kept being dispatched. They did not arrest 4 anybody, but they would come out. Officer McSwain 5 asked me - - - At one point, I said, what else can we 6 do? And he said - - - 7 Mr. Wright - Objection, Your Honor - - - 8 A Put up no trespassing signs. 9 Mr. Wright - To the hearsay. He's - - - 10 Special Referee Davis - Yes, sir. Don't testify 11 as to what the officer said. 12 A I was instructed by the officer to put up no 13 trespassing signs. Is that fair? 14 Mr. Whitt - Your Honor, I've just got two more. 15 Special Referee Davis - Yes, sir. 16 FURTHER EXAMINATION 17 BY MR. WHITT: 18 Q Mr. Horning, when you walk your dogs, are they on a 19 leash? 20 A Yes, always. 21 Q And have you observed any other gates in the 22 BridgeHampton community? 23 A We - - - We showed multiple times that there's gates 24 across sidewalks throughout the community. There is 25 a subcommunity of our - - - of the BridgeHampton

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Pages 86..89

Page 86	Page 88
1 master. There is a subcommunity of - - - of forty- 2 five homes. That is a gated community. It has a key 3 fob type or a key type of thing, so only - - - So 4 that only the people that can go into and out of it 5 are the - - - are the people that live in that 6 property. 7 Mr. Whitt - That's all I have, Your Honor. 8 Special Referee Davis - All right. Anything 9 further? 10 Mr. Wright - No, sir. 11 Special Referee Davis - All right. You can step 12 down. 13 A Thank you. 14 Special Referee Davis - Anything else? 15 Mr. Whitt - No, Your Honor. That's it. 16 Special Referee Davis - All right. Do y'all 17 want to make any closing arguments, or do you 18 want to file a brief, or what do you want to do? 19 Mr. Wright - I'd like to have one brief witness 20 in rebuttal. 21 Special Referee Davis - All right, sir. 22 Mr. Wright - Robert Baust. 23 Mr. Whitt - And, Your Honor, on the other 24 question while we're waiting for the witness, 25 I'd suggest we each do a proposed order and	1 A It's not specified for whom. It's just an 2 ingress/egress easement. So in my opinion, it's 3 pretty much the same as the easement that's on Lot 4 659. 5 Q But the easement across 659 that connects with the 6 easement to Karriker Court and that crosses the 7 sidewalk simply connects the two communities, and the 8 sidewalk - - - 9 A Yes. 10 Q And the sidewalk, as far as you know, is not private, 11 is it? On the other side. 12 A On the - - - 13 Q The sidewalk that goes to Karriker. 14 A It is on private property, but again, there's an 15 easement on that piece of property also. 16 Mr. Wright - Okay. Thank you. 17 A Now, one of the - - - My concerns in this case, if I 18 might speak, Your Honor - - - 19 Special Referee Davis - Yes, sir. 20 A Is Mr. Whitt's argument that an easement can only be 21 used for those things that existed when the easement 22 was created. The easement on my street was created 23 about the same time as the easement on the Hornings' 24 property. So if the Court rules that their easement 25 can't be used to go to school, because the school
Page 87	Page 89
1 submit them to you and to obviously copy the 2 other side with it. 3 Special Referee Davis - All right. That will be 4 fine. 5 Mr. Wright - All right. 6 Special Referee Davis - Yes, sir. If you'd 7 raise your right hand - - - Well, you've already 8 testified. 9 Mr. Baust - Yes, sir. I've already testified. 10 Special Referee Davis - You're still under oath. 11 I said he's still under oath. 12 Mr. Wright - Okay. Thank you. 13 Special Referee Davis - I reminded him he's 14 still under oath. 15 FURTHER EXAMINATION 16 BY MR. WRIGHT: 17 Q Mr. Baust, one thing, when the sidewalk that goes 18 across Lot 659 ends, what does it connect to? 19 A It connects to another sidewalk on a lot on Karriker 20 Court. 21 Q Okay. And does that sidewalk go to Karriker Court? 22 A That sidewalk connects to Karriker Court, which is a 23 private drive, but it's also an ingress/egress 24 easement. 25 Q For who?	1 didn't exist when the easement was created, then I'm 2 assuming that rule would also apply to the easement 3 on my street. Which means, none of the homeowners on 4 my street will be able to send their children to 5 Harrisburg School, whether they drive or walk. They 6 have to cross that ingress/egress easement. They 7 have to cross my property and other people's property 8 on Karriker Court to get to that school. Likewise, 9 that would prevent me from going to Walmart, because 10 Walmart didn't exist when that easement was created. 11 So this is a scary proposition to me, that an 12 easement could be restricted to only those 13 destinations that existed when the easement was 14 created. I mean, that's - - - that's frightening. 15 It makes my house unusable. I mean, how could I 16 possibly sell it and tell the new homeowners, oh, you 17 can't go to the school, you can't go to Walmart, you 18 can't go to this restaurant that didn't exist in 19 2004. 20 Special Referee Davis - All right, sir. I 21 understand your argument. 22 Mr. Wright - Thank you. 23 Mr. Whitt - Your Honor - - - 24 Special Referee Davis - Yes. 25 Mr. Whitt - Unfortunately, I need to find an

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 90..93**

Page 90	Page 92
1 exhibit. 2 Special Referee Davis - Okay. 3 Mr. Whitt - I need to find the one that's the 4 plat - - - 5 Special Referee Davis - It should be right here. 6 What's the number? 7 Mr. Whitt - Of Karriker Court. 8 Special Referee Davis - Excuse me. Do you know 9 which number we're looking for? 10 Mr. Whitt - Your Honor, unfortunately, I don't. 11 Mr. Wright - It's Exhibit 4, I think. 12 Mr. Whitt - Here it is. 13 FURTHER EXAMINATION 14 BY MR. WHITT: 15 Q Mr. Baust, I'm showing you a copy of the plat of the 16 Karriker Court area. 17 A Right. 18 Q And in looking at that with you, I see a couple of 19 outlets for the street to then outlet into Harrisburg 20 Road. Is that a fair assessment of what's there? 21 A Yes, it is. 22 Q So if you are driving to Walmart, you'd just stay on 23 the road - - - 24 A What road? 25 Q Your street, and the entryway from your street to	1 erected is in direct violation of the covenants. I 2 can quote you what page and paragraph it's in. 3 Q Well, we're talking about the covenants. There's 4 also a section that deals with private roads, isn't 5 there? 6 A I don't think so. 7 Q Well, we'll - - - 8 Mr. Whitt - Judge, you've got a copy of it. You 9 can feel free to - - - 10 A There's a section that deals with common driveways. 11 FURTHER EXAMINATION 12 BY MR. WHITT: 13 Q Okay. 14 A But Karriker Court is not a driveway. It's a street. 15 It has a street name. It has stop signs. None of 16 which exist on driveways. 17 Mr. Whitt - Your Honor, that's all I have. 18 Special Referee Davis - All right. Mr. Wright? 19 Mr. Wright - You can come down. That's all. 20 Special Referee Davis - All right. I've got a 21 few things. Let me ask you about them before we 22 go. I've heard a little bit of testimony today 23 perhaps about motorized vehicles being on the 24 sidewalk. Is there any dispute about that? I 25 mean, nobody's claiming the right - - -
Page 91	Page 93
1 then Harrisburg Road? 2 A Correct. 3 Q So you're not crossing any kind of sidewalk or 4 easement - - - 5 A Not correct. 6 Q To get to Walmart? 7 A Not correct. 8 Q Well, which sidewalk are you crossing? 9 A All right. I'm not crossing a sidewalk. I'm 10 crossing an easement. 11 Q Okay. Well, then if we have that - - - 12 A It's - - - It's difficult to read it, because this 13 print is so small. But over here, this text on this 14 plat says - - - I forget the dimension. I think it's 15 a thirty-foot line easement, and it runs the entire 16 length of Karriker Court. Because the street of 17 Karriker Court is actually one every person's 18 property. Everybody's front yard has a slice of 19 Karriker Court. 20 Q Absolutely. 21 A So in order for any of us to enter or leave, we have 22 to cross another person's property, which was the 23 reason the builder created an easement there. 24 Q And you're familiar with the covenants? 25 A Very much so, which is why I know that the fence they	1 Mr. Wright - No. 2 Special Referee Davis - To use it for motorized 3 - - - 4 Mr. Wright - No. Motorized bikes aren't 5 permitted. 6 Special Referee Davis - Okay. 7 Mr. Wright - No, that's not in question. 8 Special Referee Davis - So whatever order you're 9 wanting to do, put that in there, that there's 10 no - - - no motorized vehicles on any - - - I 11 mean, if you've got a bike with a motor on it, 12 if you want to push it across it, that's one 13 thing, but to have it running - - - I mean, I 14 think that's probably illegal in South Carolina, 15 anyway. 16 Mr. Whitt - Yes, Your Honor. 17 Special Referee Davis - Now, let's see. The 18 other thing, when does school end in South - - - 19 This is a South Carolina school, right? 20 Mr. Whitt - It is a South Carolina school. 21 Mr. Wright - I'm sorry. I'm having difficulty - 22 - - - 23 Someone from the Audience - Friday. 24 Special Referee Davis - This Friday, okay. So 25 what I'm going to order is that the judge's - - -

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.**Reference Hearing on 05/24/2016****Pages 94..97**

Page 94 1 - the circuit judge's order remain in effect 2 until I issue a ruling. Which basically means, 3 once school is over, your clients shouldn't be 4 impeding anybody's use of that easement until I 5 issue a ruling. The other thing that I'm 6 inclined to think at this point, unless y'all 7 can convince me differently, is if the easement 8 is seven-and-a-half feet wide, then the fence 9 that's impeding that seven-and-a-half feet 10 should come down, because there are - - - There 11 clearly are people who are entitled to use it. 12 I mean, even if I adjoin it for school use, it - 13 - - The fence shouldn't be there for the people 14 that have the right to use it. So that fence 15 should come down. 16 Mr. Whitt - Your Honor, I - - - 17 Mr. Wright - And, Your Honor, that would include 18 the signs that are on the fence? 19 Special Referee Davis - Yes, sir. 20 Mr. Whitt - Your Honor, I'd like at least the 21 opportunity to convince you in an order, because 22 there are - - - In reading easement cases until 23 I felt like I was going to fall asleep 24 permanently, there are plenty of easements where 25 a fence and a gate, and in many cases, a fence	Page 96 1 Special Referee Davis - All right. Well, I'll 2 let you - - - 3 Mr. Whitt - And I understand, if you go the 4 other way, then the whole thing's got to come 5 down. So, you know, we understand that. 6 Special Referee Davis - All right. 7 Mr. Wright - Are we taking the fence down? 8 Special Referee Davis - Huh? 9 Mr. Wright - Are we going to take the fence down 10 now? 11 Special Referee Davis - I'm going to let him 12 keep it up until I - - - I'm going to let him 13 keep it up until I sign an order. 14 Mr. Wright - All right. What about the signs? 15 Special Referee Davis - But no - - - no gate. 16 Mr. Wright - And the signs? 17 Mr. Whitt - And, Your Honor, the gate - - - The 18 gate's down and has been down. So we'll 19 maintain the status quo, pending your ruling. 20 Special Referee Davis - All right, and take the 21 signs down. They seem to be very offensive, and 22 I don't see where they serve a whole great deal 23 of purpose. I mean, you don't have people from 24 outside of the community coming through there. 25 I haven't heard any testimony about that. So
Page 95 1 and a gate that was locked with some people 2 having keys, have been found to be appropriate. 3 So I don't think - - - In light of there not 4 being some further development, that we'd at 5 least ask you to let us try to convince you that 6 the fence is a reasonable way to control and 7 separate the people that should be there, from 8 the people that shouldn't be there. 9 Mr. Wright - That's the point. It's a 10 separation that shouldn't be there. It's an 11 easement that's open. If that gate's there, if 12 the walls are there, it appears to be not an 13 easement. 14 Special Referee Davis - Mr. Whitt, even if I let 15 you say that the gate could be there and all of 16 these people could be given a key to it, it 17 would still have to be seven-and-a-half feet 18 wide, the gate, is what I'm - - - And I don't 19 think the fence can block part of an easement. 20 Mr. Whitt - Well, Your Honor, I think - - - And 21 again, I think there's case law where you've got 22 a forty foot road that's then got an actual road 23 bed that is narrower than that. You've got a 24 fence and a gate that's the size of the road 25 bed, that now goes to the sidewalk in this case.	Page 97 1 take the signs down, and we'll rule on the 2 fence. 3 Mr. Whitt - Understood, Your Honor. 4 Mr. Wright - Thank you. 5 Special Referee Davis - Now, let's see. The 6 other thing is, I'm going to take these 7 exhibits, unless you want to make copies for me. 8 Mr. Wright - We - - - 9 Special Referee Davis - I'll take the exhibits, 10 and I'll return them to Mr. Wright when I get 11 done with them. 12 Mr. Wright - Okay. 13 Mr. Whitt - That sounds like a good plan. 14 Special Referee Davis - All right. 15 Mr. Wright - If I could get the original file 16 before you leave, I told the clerk I'd bring it 17 back to them. 18 Special Referee Davis - Yeah, yes. 19 Mr. Wright - And I'll advise them that you have 20 the exhibits. 21 Special Referee Davis - All right. I guess we 22 can go off the record now. 23 Whereupon - The reference hearing was concluded 24 at 12:13 p.m. 25

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.
Reference Hearing on 05/24/2016

Page 98

Page 98	
1 CERTIFICATE OF REPORTER 2 State of South Carolina) 3 County of York) 4 5 I, Kelly Lynn Reiter, a Notary Public for the State 6 of South Carolina, do hereby certify that I reported the 7 foregoing proceedings at the time and place herein 8 designated and that the foregoing pages are a true, 9 accurate, and correct transcript of the aforesaid 10 proceedings. 11 I further certify that I am not a relative, employee, 12 attorney or counsel of any of the parties, nor relative or 13 employee of such attorney or counsel, nor in any way 14 interested in the event of said cause. 15 In witness my hand and official seal this the 16 ____ day of _____, 20____, in the City of Rock Hill, 17 County of York, State of South Carolina. 18 <i>Kelly Lynn Reiter</i> 19 20 Kelly Lynn Reiter 21 Court Reporter/Notary Public 22 23 My Commission Expires: 24 7-20-22 25	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: 1..addressed

	23004	55:14	52:19, 25	access	16:13
<u>1</u>					
	23041	13:19	53:3 55:15	20:5 22:8,	
1 5:9	23047	47:18	76:13, 14	17, 18, 19,	
10 7:14			87:18	21, 24 23:7	
104 5:3	24	5:5	88:4, 5	24:18	
10:24 5:5			660 53:3	25:15	
	<u>3</u>			29:2, 10	
11 5:9 8:20	3	5:25	<u>7</u>	31:4, 9, 11	
12:13 97:24		52:24		44:13	
17014 40:7			7 6:21, 25	56:25	
187.41 70:7	<u>4</u>		7:3	64:14 65:6	
19 72:9			7th 41:13	72:19	
	4	6:4 90:11		74:19	
			<u>8</u>	accessible	
<u>2</u>	<u>5</u>			22:20	
			8 6:22 7:7	acquired	
2 47:12	5	6:14		72:23, 24	
52:16	5.97	72:20	<u>9</u>	acres	65:23
2002 5:19	5038	44:11	9 7:10	72:20	
52:16	5054	31:2		action	76:15
2003 15:16	5066	72:8	<u>A</u>	active	76:25
2004 8:11	5074	21:2	a.m. 5:5	activities	
11:16 25:8			61:1	23:2	
52:25	<u>6</u>		aback	42:3	
64:15 65:9			ability		
68:7, 8, 25	6	6:23, 24	36:13, 14	activity	51:1 83:24
74:12		7:1, 3	46:12	actual	95:22
89:19	659	6:1, 8,	absolutely	additional	
2006 21:5		11, 12, 16	8:15 22:13	7:22	
25:6		7:5, 8 15:7	24:17	72:10, 22,	
2011 55:18		21:25	27:21, 23	24	
2012 72:9		22:21	28:21	address	
2015 45:17		25:15, 19	29:7, 22	34:17	
2016 5:5		38:24	57:8 91:20	addressed	
		44:12		75:8	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: adjoin..attorney

adjoin 94:12	7:17 8:18	Appeal's	asleep 94:23
adjoining	54:15	72:14	assessment
72:24	agreement	Appeals 72:6	90:20
advantage	8:14	appears	assistant
49:5	83:10,12	95:12	14:20,22
advise 97:19	agrees 7:19	apply 89:2	15:22 17:9
aerial 7:10	ahead 9:3	approached	association
19:23	11:11 46:5	17:25	62:15
affected	84:25	approaching	81:19,21
76:21,23	alleging	41:23	83:9,11
affidavit	69:8	approve 82:4	assume 38:6
7:14,17,	allowed 16:8	approved	assuming
20,23,24	51:25	82:3,6	89:2
11:25 12:4	62:16,21	approximate	atmosphere
affidavits	73:7 81:6	37:20,23	71:15
11:25	amended	area 7:11	attached
afraid 52:6,	10:24	26:23	12:5
7 78:10	11:1,2	29:15	attacking
afternoon	amenities	38:19	77:8
51:8 61:1	22:14,22	40:14 51:7	attempted
afternoons	31:12,18	56:12 58:7	16:1
58:2	56:25	90:16	attempting
ages 14:12	65:7,8,12	argue 66:6	16:4,5
21:8	anticipate	argument	attend 14:15
aggressive	9:2 74:16	73:16	56:15,16
26:15	anybody's	88:20	attends
aggressively	94:4	89:21	56:13
26:20	anymore	arguments	attention
agitated	29:25	86:17	32:6 72:5
59:20	43:12,13	arises 39:17	attorney
agree 83:13	anytime 9:10	arms 79:1,4	18:16
agreed 5:12	apologize	arrest 85:3	37:15 84:3
	77:23		

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: Audience..bullying

Audience	50:9 94:2	birthday	65:18
93:23	Baust 43:25	59:21,22	Bridgehampton
avoid 17:22,	44:3,9,10	78:8	5:16 6:21
24	81:15	bisects 48:8	13:21,22
aware 48:8	86:22	bit 26:6	14:2
57:16,20	87:9,17	33:5 92:22	22:12,15
81:19,22	90:15	bite 77:13	27:20
awhile 15:19	Beaufort	black 77:10	28:16
36:18	72:8	block 60:10	29:6,8,15
	bed 95:23,	69:24,25	40:7,10
B	25	95:19	47:24
	behaves 79:6	blocked	55:15
back 11:8	bent 79:23	24:17	57:10
16:12,14	bicycle	50:24	85:22,25
17:12 19:8	44:17	69:25	briefly
27:24	45:11,25	board 34:1,3	11:12
32:24	big 46:23,	77:1	34:10 64:1
33:7,13,16	24 54:13	81:24,25	72:4 76:22
35:9 36:19	77:11	82:5	bring 64:10
41:20	78:10,22,	bother 71:22	77:12
46:2,8	23	bottles 58:9	97:16
50:3	biggest	bought 28:24	broken 58:10
51:17,22	46:15	46:22,23	build 71:4
59:21	bike 15:23	55:20,21,	builder
62:13	23:6,10,	23,25	91:23
68:16,18	12,14,17,	68:25	building
97:17	18,19,25	76:24	73:3
backyard	24:22	boy 21:10	built 21:14
26:14	44:15,16	branches	23:22 24:3
51:20	45:5,7,8	58:10	31:21,24
bark 26:20	93:11	break 75:17,	44:19,22
barking	bikes 57:2	22	56:20
33:16	93:4	breathing	68:25
based 64:3	binds 69:2		bullying
basically			52:4

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: bumps..closed

bumps 77:3	79:15	25 21:1	children's
bunch 78:24	carbon 23:19	30:7 79:5	29:23
burden 19:6	Carl 79:9	Challis'	chocolate
64:18	Carolina	45:9	67:12
69:10	5:2,4	chance 77:16	circuit 94:1
71:13	48:11,12,	charged	circumstantial
bus 49:25	14,15,17,	35:24	74:11
50:3,4,5	18,21	Charlotte	circumstantial
69:18,19	56:14	56:17	ly 65:7
business	93:14,19,	check 28:13	claiming
70:9,10	20	chew 77:14	92:25
buy 55:18	cars 20:5	child 62:24	clarified
79:13	61:7	63:7,8	11:7
	case 10:3	children	clarify 20:3
c	12:9 13:20	14:8,15,	clear 62:21
	14:14	17,25	clerk 10:12
call 12:18	17:12	15:21	97:16
20:16 27:5	64:21 65:2	16:4,11	clicker 73:5
30:15	68:19	17:8,14	clients
42:23	72:5,7,9,	18:2,4,25	70:24
47:24	12,19 73:3	21:6,7,21,	75:18 94:3
51:15 55:2	88:17	23 27:16	climate-
59:2 71:17	95:21,25	37:25	69:17
76:3	cases 94:22,	38:18	clip 23:13
called 17:4	25	39:11,14	clipping
58:12	Catholic	40:25 41:2	23:15
calls 68:8	56:17	48:14,17,	close 13:7
calmly 70:25	caught 58:16	24 49:5,16	21:17
camel's	caused 84:2	50:1,3,7	23:18 45:1
67:15	center	54:10,15,	49:4 59:5,
campaign	74:18,20	18 56:11,	8
11:13	chain 69:1	13 69:15,	closed 45:2
car 33:13	Challis	19 70:8	
61:10,14	20:16,19,	71:1,11	
		89:4	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: closer..counted

closer 9:21	complaint	51:6 79:21	convince
closing	10:24	confrontationa	94:7,21
86:17	11:1,2	1 42:23	95:5
clubhouse	29:21	confrontations	convoluted
32:23	completed	45:14	72:21
Clyde 5:5	25:9,11	congested	copies 97:7
Cold 49:23	completely	50:22	cops 51:15
college	24:17 26:6	connect	copy 87:1
56:13,14	28:25 59:3	87:18	90:15 92:8
comfortable	concern	connects	correct 8:7,
77:25 78:1	46:15	40:19	12 12:11
commencing	67:19	87:19,22	13:24 14:4
5:4	70:11	88:5,7	15:8 19:3
committees	concerned	considered	21:19
81:24 82:5	77:2	12:7	22:10 23:1
common 70:5	concerns	construction	24:10 31:5
92:10	88:17	64:22	34:2,6
communicated	concluded	contact	35:6,8
28:23	97:23	58:22	40:9,11
communities	conclusion	contend	43:15
88:7	11:17	64:19	48:13
community	concrete	continue	52:23
15:15,18	20:10	33:7 67:16	53:7,24,25
16:14	condition	control 95:6	56:10,12
28:20	19:5	convenience	57:15
29:1,2,3	cones 17:11	8:22	60:2,12
31:9,19	confer 75:17	conversation	62:3,6,11,
44:13	confront	27:13	23,24,25
70:14	71:16	34:13 46:6	63:10
71:15,18	confrontation	conversations	76:15,16
77:1 79:14	8:19	77:5,17,20	80:21
83:15	42:20,25	81:1,3,10,	91:2,5,7
85:22,24		14	counsel 7:19
86:2 96:24			count 58:3
			counted 58:5

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: counts..Davis

counts 69:12	62:7,9,11	71:13,14	cutting 23:6
County 5:3	65:6,11,12	88:22	
7:15	66:11,14,	89:1,10,14	D
	22 67:5,	91:23	
couple 7:4	18,21	cross 15:12	dad 36:7
18:19,24	68:20	18:14 30:5	daily 22:16
27:9 58:9	70:2,18	37:11	60:23
61:16	71:3,20	53:21	damage 58:6,
72:13	72:6,14	63:14 75:7	8,11 84:2
90:18	75:2 76:22	80:11	damaged 58:7
court 5:10	77:12	82:21	date 27:3
6:22 8:21	87:20,21,	89:6,7	51:24
10:4 12:4,	22 88:6,24	91:22	
8,9 13:3,	89:8 90:7,	crosses 15:7	Davis 5:5,
9,21,23,25	16 91:16,	83:17,18	17,20 6:3,
15:6	17,19	88:6	7,10,13,
17:12,13,	92:14	crossing 8:3	20,23 7:2,
17,20 21:2	Court's	91:3,8,9,	6,9,13,21
22:2,3,4,	10:12	10	8:6,13,16,
19 25:15,	Courthouse	crosswalk	23,25 9:4,
17,18	5:3	7:25 8:1,2	7,9,14,20
28:12	courtroom	crowded	10:2 11:3,
29:17,20	5:4 9:13	50:20,21	5,10,21
31:2,3	10:9 57:14	cul- 14:6	12:10,16,
38:23	courts 22:18	cul-de-sac	20,23
40:7,8,19,	covenants	25:20	13:2,6
21 41:12,	5:16 62:14	61:7,8,15	19:18
19 42:13	75:6,8	76:24	20:2,9,15,
43:9 44:11	91:24	78:12	17,21
45:23	92:1,3	current 6:18	30:14,17,
46:5,18	covers 70:7	30:1	21 37:2,7
47:21,23	created	cushions	38:14
51:24	11:16 58:6	77:3	39:6,22
53:11,14,	64:9 66:8	cuss 80:4	40:1 43:23
17 56:5,23	68:7		44:1,5
57:10,12,			47:4,7,11,
14 60:8			13 55:4,8
61:22,25			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: day..directing

63:21,24	days 14:22	defendants	15 70:13
66:9,16,	32:24	6:18 14:5	71:25
18,24	49:17,18	15:25 16:5	73:22
67:1,3	54:17	defendants'	74:7,15
68:4 72:2	61:17	12:5	developer's
73:9,15,20	de-sac 14:7	deny 73:11	11:15
74:4,14,23	deal 54:13	74:24	development
75:11,14,	96:22	Department	95:4
19,21	deals 92:4,	7:16 85:2	develops
76:2,5,10	10	depicting	65:21
77:21,24	death 77:13	7:11	differently
81:9	December	deposed	94:7
84:18,25	72:9	62:23	differing
85:10,15	decided	describe	64:23
86:8,11,	69:22	25:12	difficult
14,16,21	decision	45:21	26:17
87:3,6,10,	51:23	59:14	91:12
13 88:19	Declaration	designed	difficulty
89:20,24	5:15	20:11 62:8	19:6 93:21
90:2,5,8	declaratory	desire 18:3	dimension
92:18,20	10:25	destinations	91:14
93:2,6,8,	29:20	89:13	direct 13:12
17,24	declare 71:3	details 74:5	20:22 22:8
94:19	declared	determine	30:22 32:6
95:14	56:6	10:15	40:2 44:6
96:1,6,8,	declares	68:20 70:3	47:15 55:9
11,15,20	71:20	73:6	72:5 76:11
97:5,9,14,	deed 6:4,14	determined	92:1
18,21	65:19	42:14 62:5	directed
day 11:15	deeds 65:15	69:5	64:3 73:12
27:5,11,14	defendant	developer	84:20
42:22	55:3	6:5 64:5,6	directing
45:17,21		68:12,13,	8:3,10
46:9 49:17			
50:4 54:15			
60:24 70:5			
78:3 84:4,			
7			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: directly..elementary

directly	dogs 26:10,	duly 12:25	71:3, 10,
32:2	11,12,15,	20:19	21,24
dirty 78:1	20 33:16	30:19	72:10,20,
	41:22	39:24 44:3	23 73:2,
disappointing	51:18,19	47:9 55:6	16,24
28:22	77:8 78:2	76:8	74:2,16
disconcerting	85:18		82:15,20,
59:25	door 19:13	E	24 83:1,4,
discussed	33:15		7,18 87:24
84:21	35:15 36:6	ease 65:3	88:2,3,5,
disengage	doubt 9:3	easement	6,15,20,
45:11	downstairs	10:6,10,	21,22,23,
dislike	35:19	11,16,18	24 89:1,2,
46:22	drawn 11:18	11:16	6,10,12,13
disobeying	dressed	23:21	91:4,10,
39:1	33:9,10	24:14 25:4	15,23
dispatched	drive 22:20	35:3,5	94:4,7,22
85:3	75:3,6	38:19,22,	95:11,13,
displeasure	87:23 89:5	24 40:14	19
71:18	drives 75:8	41:5,9	easements
dispute	driveway	42:14	62:16,20,
92:24	61:11	44:12	22 64:18
disturbance	92:14	45:15	65:15
61:3	driveways	46:13 51:7	73:23
disturbing	92:10,16	53:2,5,8	94:24
42:21	driving	56:7 58:14	edge 83:6
document	90:22	61:2 62:5,	effect 94:1
65:18	drop 41:18	9 63:6	egress 68:11
documents	dropped	64:7,22	70:6 73:17
5:8 12:13,	41:19	65:1,4,10,	eight-year-old
15	drove 78:11	16 66:7	51:9
dog 26:16,	Dukes' 72:7	67:22	elementary
18 77:12,		68:6,9,11,	14:15
15 79:6		21,23	18:25
		69:5,6,8,	21:11,14
		9,21,23	27:17
		70:3,4,12,	
		16,18,25	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: eleven..exhibits

56:15	enjoyed 43:6	64:5	39:25 44:4
57:17	enjoyment	evening 32:7	47:10 55:7
eleven 5:13	67:20	35:16 78:6	76:9
35:14	enter 25:14	event 36:3	exceeds 73:7
eleven-year-	91:21	Everybody's	exceptionally
21:9	entered	91:18	24:23
embarrassing	17:13	evidence	excess 16:13
36:4	19:19	10:17	65:12,13
empirical	entering	12:15 64:6	excessive
69:12	25:17,18	65:2 68:7	52:10 73:4
enclosure	entire 18:6	70:22	excuse 15:10
82:14	91:15	74:12	16:4,13
encounter	entitled	75:4,12,15	41:25 90:8
45:3 54:3	94:11	exact 25:23	exercise
encountered	entrance	27:3	32:9,11
16:20 17:7	29:14	EXAMINATION	66:16,19,
26:22 45:4	entrances	13:12	20
54:5	29:12	18:14	exercising
encroach	entry 7:23	20:22	32:14
82:20,22	entryway	30:5,22	exhibit 5:9,
end 14:6	90:25	37:11	15,25 6:4,
15:4 31:7	equity 68:20	38:15 39:7	14,21,25
38:21,23	erected	40:2 44:6	7:1,3,7,
93:18	16:15,18	47:15	10,14 8:17
ends 87:18	24:7,15	53:21 55:9	19:25
energy 50:12	31:24	63:14	47:12
engage 23:2	44:24 92:1	76:11	52:15,24
engaging	err 72:17	80:11	90:1,11
63:18	escort 15:11	81:11	exhibits
engineer	establish	85:16	5:11,13
56:9	64:19	87:15	9:1,3,5
English	establishing	90:13	10:21
77:14		92:11	19:19
		examined	97:7,9,20
		13:1 20:20	
		30:20	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: exist..folks

exist 64:15,	4	feeling 43:4	86:18
16 65:5,9		feet 26:2	97:15
66:8 89:1,	F	59:9,10	filed 72:9
10,18		65:22,25	final 75:1
92:16	facing 61:20	66:3 70:7	finally
existed 35:5	fact 7:25	82:23 83:2	78:19
64:11	36:19 59:1	94:8,9	79:25
88:21	64:20 80:5	95:17	find 10:17
89:13	83:16	felt 25:1	35:1 50:8
existence	facts 7:22	33:3,6	59:22
21:15	failed 64:10	80:23	65:10
36:12	failing	81:16,18	89:25 90:3
46:11,16	72:18	94:23	fine 77:24
existing	fair 57:9	fence 24:15	78:20 87:4
64:11	85:13	43:15	fined 82:2,7
exit 25:19	90:20	44:24	fines 82:10
expand 66:6	fall 94:23	46:16	finger 19:8,
expensive	familiar	80:25 81:4	14
23:17,19	40:14	82:16	finish 49:15
experience	48:3,23	91:25	five- 75:21
39:9,14	49:1 91:24	94:8,13,	five-year-old
explain	family 29:3	14,18,25	21:9
18:21	59:22	95:6,19,24	flash 78:12
59:23	76:23	96:7,9	Flatau
81:6,7	fancy 45:8	97:2	39:21,24
expletive	favours 64:23	fences 83:6	40:5,6
80:3	feedback	fifteen	flow 46:20
expressed	10:8	33:12	50:17
42:10	feel 18:22	35:13 36:2	fob 86:3
extended	33:2 46:21	69:14	folks 61:9
24:16	63:2 77:25	fight 68:19	64:12
extent 10:15	78:1 83:22	fighting	67:19
62:5 68:21	92:9	51:2	
69:7 70:3,		file 10:4	
		11:4,23	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: follow..guy

71:13	friends	33:1,19	girl 21:10
72:23	27:16,19,	36:12	51:10
follow 15:1	25 29:3,4,	43:11,13,	girls 78:9
foot 82:15	6,23	14 44:19,	give 10:23
83:4 95:22	31:17,19	24 45:1,2,	31:9 66:2,
footprint	40:23 43:6	3,4,6,8	3
65:1	50:13,15	46:11	goal 32:23
forced 46:25	79:11,13	51:15	good 19:4,
74:6,11	frightening	54:12,20,	25 30:9
forget 27:3	89:14	61:19	33:16
91:14	front 22:3	69:23	41:23
forty 37:24	34:24	81:15,20,	58:24
95:22	91:18	22 82:1,2,	97:13
forty- 86:1	fronts 22:6	7,12,17,18	grant 12:17
forward 33:7	frustrating	94:25	29:20
64:10	28:21	95:1,15,	73:7,24
found 10:13	fucking	18,24	74:2
95:2	34:25	96:15,17	granted
fourteen	full 13:14	gate's 82:13	71:24
70:17	21:15,18	95:11	granting
frankly	49:9	96:18	74:15
23:16	fumbled 42:4	gated 86:2	Gray 72:7
free 18:23		gates 85:21,	great 19:15
46:20 92:9	G	23	96:22
Friday	G-r-a-y 72:7	general	groin 32:13,
93:23,24	gate 7:8	68:11	25
friend 54:13	16:12,14,	generally	group 77:2
67:17	15,18,20,	49:2,3	guess 97:21
friend's	23,25 19:5	gesticulating	guideline
41:18	23:13,17,	41:24	81:25
friendly	18,22,24	Gibbons	guy 78:22,
18:1	24:4,7,11,	10:5,13,16	23 80:6
	12,15,19	69:6	
	31:24	gift 64:13	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: guys..hope

guys 79:10	79:20	77:20,22	51:10
	harm 71:12	85:9	honestly
H	Harrisburg	heck 60:22	51:16,23
H-a-r-d-i-n	14:15	helped 78:21	Honor 5:10
30:25	21:11,14	hey 67:11	6:17 7:21
half 78:14	22:5,6,8	High 56:18	8:15 9:6,
82:23	24:23,25	highway 8:1	17 10:3,14
hand 9:8	27:17	29:12	11:12,22
12:24	29:12,14	hinder	12:11,18
20:18	56:15	36:12,14	19:16,23
30:18	57:17 77:5	hips 79:23	20:14
39:23 44:2	83:20 89:5	hit 79:15	30:12
47:8 55:5	90:19 91:1	HOA 77:1	36:25
76:7 87:7	headed 77:1	hold 23:16	38:12 39:5
hands 79:23	headphones	home 16:6	43:21
hang 68:1	41:25	26:3 35:9,	47:3,12
happen 33:17	hear 9:19	11,12	63:12 64:1
83:23	13:9 33:15	46:23	66:15,17
happened	78:25 79:4	50:3,4	67:4 68:6
32:22	heard 17:12	67:8 78:7	72:1,11
35:11,21	30:9 48:22	homeowner	73:19,21
45:21	68:21	66:1	74:21,25
54:16	69:13	homeowners	75:16 76:3
happy 18:21	71:15	89:3,16	77:19 81:5
harass 54:24	76:20	homeowners'	84:16
harassment	92:22	34:3 62:15	85:7,14
52:3	96:25	81:19,21	86:7,15,23
Hardin	hearing 5:1	83:8,10	88:18
30:16,17,	10:15,24	homes 6:5	89:23
19,25 31:1	12:7 56:6	7:11 64:12	90:10
37:13 39:9	68:12 70:2	86:2	92:17
58:19,21	77:7 97:23	homeschooled	93:16
59:8 63:16	hearsay		94:16,17,
78:6,16	12:1,8		20 95:20
	37:1,3		96:17 97:3
			hope 80:22

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: hoping..ingress/egress

hoping 19:13	40:17		41:8 58:18
Horning 15:9	41:18 46:8	I	61:8
16:6 26:22	51:11	idea 18:23	incidents
27:1,11,13	52:11	33:17	71:2
33:19,22	55:18	54:19	inclined
41:9,21	67:12 68:2	identity	73:11 94:6
46:1,6,9,	69:1 72:25	57:4	include
10 51:6,11	73:2 76:24	idiots 78:24	94:17
52:6 54:3	78:11,15,	80:13	included
55:3,11	22 79:1,3,	illegal	11:24
63:16	13,17	93:14	includes 6:1
76:4,6,8,	80:5,6	imagine 26:9	inconvenience
13 85:18	89:15	immediately	45:12
Hornings	household	26:24	inconvenient
6:15,17	72:16 73:3	impede	23:12
18:17	houses 25:8	46:12,14,	increased
22:23	82:17	15 82:24	72:15
26:3,10	huge 71:6	83:1,7	indicating
28:8,14	hundred 33:3	impediment	18:18 25:5
30:7 37:15	48:20 74:1	24:1	48:7 49:11
44:22	77:11	impeding	50:6 54:1
45:15,20	hung 82:17	94:4,9	individual
54:2 69:2,	hunting	imposing	67:17
21 71:14,	77:15	37:18	81:10
23	hurry 36:21	59:16	individuals
Hornings'	hurt 59:6	inappropriate	81:13,14
33:2 40:17	66:1,4	36:8 63:1,	information
88:23	78:20	6 65:14	27:9
hostile	husband	74:22	ingress
71:14	33:24	incapable	68:11 70:5
hot 67:12	34:11	64:11	73:16
hour 78:14	50:10	incident	ingress/egress
house 22:2	51:6,24	35:22,23	53:2 68:9
27:6 28:24	60:3		
33:8 34:25			
36:3,9			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: Initially..Karriker

87:23 88:2	intimidating	78:15	judgment
89:6	26:21 54:8	January	10:25 12:7
Initially	introduce	41:13	30:1 61:17
24:12	5:12	Jeff 76:3	64:4 68:12
injury	introducing	Jeffery 76:8	69:6
32:13, 25	12:14	Jendlys 6:6,	jumping
instances	invitation	15 68:25	79:1, 4
85:1	84:1	Jennifer	June 31:7
instructed	invite 67:7	7:15 9:12	K
38:20	invitee	Jetta 13:14	Karriker
39:12, 15	66:21	jog 41:11	6:22
85:12	involve 23:3	42:16	13:21, 23,
instructions	involved	jogged 41:19	25 15:6, 12
38:18 39:2	58:18	jogging	21:2 22:2,
intend 75:5	68:15	41:10, 14	3, 4 25:9,
intended	involving	43:1 83:18	15, 17, 18
63:5 64:6,	58:18	John 6:5	28:12, 15
14 67:22,	isolated	20:16, 19,	29:8, 17
23 74:10,	46:21	25 28:23	31:2, 3
12	issue 12:8	Jon 30:15,	38:23
intent	41:2, 3, 5	19 58:19,	40:8, 19, 21
11:15, 18	60:12, 14	21, 23 59:8	41:12, 19
63:5 64:5	64:4 70:20	78:16	43:8 44:11
65:3, 14	76:21	79:24	45:23
75:4, 13	94:2, 5	Jonathan	46:4, 17
interference	issues 57:1	30:25	47:21, 23
46:12	J	judge 10:5,	56:23
interpretation	J-e-n-d-l-y	13, 16	57:10, 12,
64:24	6:6	68:13 69:5	13 60:8
interpretation	Janet 16:6	72:7 75:25	61:22
s 64:23	41:21	92:8	62:7, 8, 11
intimidated	55:3, 6, 12	judge's	65:6, 11, 12
28:2		93:25 94:1	66:11, 14,
			22 67:5,
			18, 21 75:2

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: keel..locked

87:19,21,	42:16	leads 15:6	litigation
22 88:6,13	51:16	38:23	76:21,23
89:8 90:7,	knowledge	leaning	littering
16 91:16,	28:11	33:19	58:8
17,19			
92:14	Koy 12:19,	leash 85:19	live 13:18,
	22,23,25		25 14:2,5
keel 11:9	13:5,11,18	leave 9:10	21:1,2
Kelly 5:1	18:16	15:9 16:7	22:11
		35:9 59:24	27:19
key 86:2,3	Kym 47:6,9,	91:21	28:15,16
95:16	20	97:16	29:6 31:1,
keys 95:2		leaves 9:13	2,3 40:6,
kids 28:1,8	L	left 12:21	7,21,23
36:5,15	lab 77:10	27:10 74:9	44:10,11
50:10	laid 32:24	legally	47:17
51:17,22	Lancaster	83:18	48:14 49:4
52:2,4	5:3,4 7:15	length 91:16	55:13
54:14 61:6	85:2	letter 12:1,	57:13 62:8
70:23 73:6	land 70:7,	5	71:19
77:3,15	12 83:8	levels 37:1	78:23
78:15,17	landscaper	liable 83:21	79:14 86:5
79:11	17:3	lick 77:13	lived 31:6
kids' 29:4	landscaping	lieu 7:17	48:1,5
kind 20:11	25:23	light 64:17	56:19 57:9
23:10	Lane 13:19	65:9 95:3	living 15:14
26:21	15:10	lights 78:12	21:3 28:24
41:22,24	47:18,21	Likewise	40:12
42:3,4,8	55:14	89:8	41:11
43:2,3	large 79:17	limit 68:10	65:17
45:25 46:6	Laurelmont	71:9 83:13	located
50:16	40:7	lines 8:5	22:14
63:18	law 64:21,	listed 11:1	52:19
71:12	23 68:19		lock 60:6
72:21 80:1	95:21		locked 16:21
91:3			24:7,8,9,
knew 35:5			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: locks..moved

11,12,19	loud 26:15	marked 5:8	mine 54:13
45:3,4	54:8	8:20	minuscule
60:7,8,10	59:18,19	married 79:2	69:20
95:1	80:4,5	master 72:8,	minute 75:17
locks 16:12	loudly 51:12	17 86:1	minutes
long 15:14,		matter 36:19	33:12
17 21:3	M	62:24	35:10,13
31:6 34:9	mad 80:5	78:13	36:2 78:14
35:12 36:1	made 11:22	Matthew	money 68:17
40:12 48:1	32:25	56:17	77:18
61:12,14	35:19 43:2	Mcswain 85:4	morning 27:4
longer 48:5	51:24	means 89:3	41:13,23
lose 79:17	54:12	94:2	61:4
lot 6:1,2,	68:17	mechanical	mornings
8,10,12,16	71:18	56:9	32:2 50:9
7:4,8 15:7	81:19,22	meet 30:8,9	58:1
21:24	main 5:3	37:16,17	motion 11:23
22:21,23	25:20	50:13,15	12:17 64:4
25:15,16,	29:15	members 29:2	73:11
18,19	maintain	message	74:24
38:24	96:19	11:14	motor 93:11
44:12 46:4	maintenance	met 33:23	motorbikes
50:10,14	77:2	58:23 78:5	38:1,17,
52:19,25	major 5:21	79:7	18,19
55:15	make 9:22,	microphone	motorcycle
60:22	25 73:13	9:18 13:8	57:1 61:23
65:15	86:17 97:7	middle 68:19	motorized
68:17	makes 46:20	83:20	38:1 61:23
69:2,19	65:8 89:15	mile 29:18,	92:23
76:13,14	man 37:18	19	93:2,4,10
87:18,19	78:10 79:7	miles 78:3	move 61:9
88:3	manage 16:23	mind 74:9	66:5 78:13
lots 48:20	map 6:21		moved 21:4
67:21			
70:13 74:1			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: moving..opportunity

25:6 31:8	30:8	23:20	October 21:4
moving 35:18	37:16,17	number 5:25	offensive
multiple	65:21	6:4 25:16	96:21
85:23	79:14	52:16 58:3	offer 72:11
mumbled 80:1	night 32:19	76:20	office 10:12
	33:9 36:3,	90:6,9	officer
	20 58:19,	numbers 5:9	36:1,6
N	23,24	69:13	84:20
	59:20,21	numerous	85:4,11,12
narrower	63:16	60:16	officers
95:23	79:21		35:20 85:3
necessarily	nine-year-old	O	oftentimes
31:17 33:2	21:9		28:2
36:5	ninety 78:4	oath 87:10,	oldest 21:12
needed 50:11	nobody's	11,14	open 23:17
neighbor	92:25	obeyed 17:17	33:15 36:5
51:9	North 5:3	object 36:25	71:21
neighbor's	48:11,17	objection	95:11
65:22	Norwalk	9:5 19:21	opened 19:12
neighborhood	13:19	77:19 85:7	44:25
22:22	15:4,10	observe	opening
23:7,8	25:19	63:17	9:23,25
25:20 38:3	33:13	79:20	19:5,13
41:11	41:22	observed	76:25
44:18	45:23	39:1 85:21	opens 57:17,
46:18,21,	47:18,21	occasion	18
23,24	53:3 55:14	33:23	opine 68:14
49:25	nose 67:15	45:16	opinion
54:13 67:6	Notary 5:2	51:5,8	72:8,14,15
77:4 78:23	noticed	occasionally	80:16
neighbors	33:13	14:18	83:1,7
36:7 61:5	41:23	44:16,17	88:2
nervous	notify 62:10	occasions	opportunity
59:15	nuisance	16:2,10,22	
nice 19:9			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: order..periodically

79:16	62:20	43:14	96:19
94:21	overlap	46:2,24	people 6:19
order 10:13	65:15	48:11,12	8:3 12:12
17:13,17,	owned 22:23	67:20	22:11
20 21:23	owner 76:13,	95:19	28:15,16
86:25	17	parties 11:8	40:21
91:21	owners 6:18	64:25	46:1,5
93:8,25	62:18,20	parts 43:16	54:24
94:1,21	76:14	66:12	56:20,22
96:13	ownership	party 64:25	57:2,4,9,
ordinary	64:25	78:8	11,13
70:5		pass 71:21	58:3,12,14
organization		past 32:20	60:16 61:7
62:14	P	38:9 43:6,	62:4,8,10
original	p.m. 97:24	7	65:4 66:11
5:23,24	paid 82:10	path 14:25	67:18
10:24	pain 32:17	32:11,16,	68:22
11:15	painted 8:1,	19	69:22,24
52:17,21	5	Patrice	71:16,21
63:5	paragraph	39:21,24	72:17 73:4
65:13,14,	92:2	40:5	75:6 76:20
24 73:7	parallel	pavement 8:5	77:6,7,8
97:15	22:5	pay 80:24	78:4,24,25
originally	parent 39:18	peaceful	80:13,22
6:6 70:15	parents 28:6	79:14	83:13 85:1
ostracized	69:16	pedaling	86:4,5
67:6	71:12	45:25	94:11,13
outlet 90:19	parked 61:8,	pedals 23:14	95:1,7,8,
outlets	14	pedestrian	16 96:23
90:19	part 14:2	22:24	people's
overburdened	22:24	24:21	89:7
69:9,11	27:19	31:11	percent 33:3
70:21,22	31:19	pending	78:4
overburdening			period 57:24
			58:1
			periodically

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: permanently..private

24:7	31:8 83:25	7	39:10
permanently	plaintiff	police 27:2,	present
94:24	72:19	7 35:17	10:19,21
permitted	plaintiffs	58:12 59:2	39:17
17:20 93:5	9:15 63:23	71:18	45:16
person 42:23	64:10,17	political	president
45:24	81:24	11:13	77:1 81:21
67:17	Plaintiffs'	pool 22:17	presiding
78:12	5:8 8:20	67:7	5:6
person's	plan 12:14	77:17,18,	pretty 54:6,
91:17,22	97:13	25	7 61:21
personal	planet 28:25	population	88:3
45:14	plant 25:24	49:1	prevent 89:9
personally	plat 5:19,	porch 84:9,	previous
52:8	21,23,24,	10	56:6 58:21
persons 12:2	25 6:15	portion 5:22	previously
Phase 6:22	11:17	11:24	10:5 57:2
photograph	19:20	22:12,15	60:23 62:1
7:7,10	52:16,17,	position	76:24
19:23	21,25 68:8	28:14,18	principal
photographs	74:4,6	66:10	77:5
7:4	90:4,15	70:15	print 91:13
physical	91:14	74:24	privacy 26:9
19:4,5	play 27:22	possibility	private 22:5
physically-	plenty 66:2	83:22	28:12
37:17	94:24	possibly	42:1,2,7,
pick 16:11	point 8:11	89:16	11 51:14
54:14,15	42:13 59:8	post 43:16	56:3,4
piece 88:15	64:3 65:17	posted 7:4	61:21
pieces 27:9	71:10	pounds 77:11	62:10,13,
pine 17:1	73:11 75:1	preliminary	17 75:3,5,
place 8:19	85:5 94:6	61:17	7 84:13
	95:9	presence	87:23
	points 11:1,		88:10,14

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: problem..read

92:4	83:19,25	54:12,19,	37:9,10
problem 16:3	84:13 86:6	25 60:3,5	43:19,21
31:22 66:4	88:14,15,	69:23	47:2,3
problems	24 89:7	70:12	53:19
15:25 17:7	91:18,22	72:25	55:25 59:1
30:10 32:1	prophecy	74:18	80:8,22
process	64:13	75:15	quickly
23:15	proposed	80:25	35:19
33:18	86:25	81:4,15,	51:12
prohibiting	proposition	20,22	quo 96:19
61:18	89:11	84:20,21	quote 72:13
proof 64:18	protect	85:8,12	92:2
proper 47:24	70:14	93:9	
properly	Protective	putting	R
70:16,19	5:15	67:10	
property 6:6	provision	82:1,2,7	raining
24:16	67:24	Q	49:19 78:7
26:25	public 5:2	quail 77:15	raise 12:24
28:12 33:2	56:12,14	quarter	20:18
36:13	pull 13:7	29:18	30:18
42:1,2,6,	purely 20:13	quarter-mile	39:23 44:1
11 46:2	purpose	24:24	47:7 55:4
51:14	10:14,17	question 6:2	76:7 87:7
55:21	15:20	8:2 10:7,	raising 79:4
58:7,16	96:23	11 11:14	ramble 18:21
59:3,16,22	purposes	18:20,22	ran 78:15
61:22	17:19	63:13 69:7	Randy 18:16
62:2,10,18	31:4,6,16	74:15	30:7,8
63:4	68:23	80:19 81:8	37:13 54:2
65:20,24	push 93:12	84:23	reach 83:10,
66:5 69:3,	put 24:4	86:24 93:7	12
4 70:8,9	25:2 31:8	questions	react 26:19
72:19	44:22	18:10,19,	read 73:12
76:18		24 30:2	75:10
80:23,24			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: reading..reporter

91:12	70:17,19	74:4,14,23	regularly
reading	recross 39:5	75:11,14,	23:4 54:10
94:22	reduce 5:14	19,21	Reiter 5:1
ready 33:17	reduced 77:4	76:2,5,10	related 7:23
75:25 76:2	refer 5:18	77:21,24	relations
realize	69:3	81:9	11:8
42:1,2,7	Referee 5:5,	84:18,25	relationship
realtor 56:2	17,20 6:3,	85:10,15	76:17
reason 68:14	7,10,13,	86:8,11,	relative
71:2 91:23	20,23 7:2,	14,16,21	23:13
reasonable	6,9,13,21	87:3,6,10,	38:18
95:6	8:6,13,16,	13 88:19	relayed 27:8
Reavis 47:6,	23,25 9:4,	89:20,24	release 7:19
9,20 53:23	7,9,14,20	90:2,5,8	8:14
rebuttal	10:2 11:3,	92:18,20	relief 29:21
86:20	5,10,21	93:2,6,8,	remain 94:1
recall 17:15	12:10,16,	17,24	remainder
24:5 25:16	20,23	94:19	42:22
27:15	13:2,6	95:14	remember
received	19:18	96:1,6,8,	46:10
27:5	20:2,9,15,	11,15,20	54:19
recess 75:24	17,21	97:5,9,14,	84:13
recollect	30:14,17,	18,21	reminded
84:12	21 37:2,7	reference	87:13
recollection	38:14	5:1 7:24	repeat 37:3
43:17	39:6,22	97:23	39:13
record 13:10	40:1 43:23	referred	repeatedly
52:15 64:2	44:1,5	58:14	58:25
68:8 71:8	47:4,7,11,	referring	reporter
97:22	13 55:4,8	13:21	13:4,10,16
recorded	63:21,24	refused	40:4 44:8
10:11	66:9,16,	59:23	53:11,14,
11:17 56:7	18,24	regard 38:17	17
	67:1,3	63:1	
	68:4 72:2	regular	
	73:9,15,20	23:14	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: represent..school

represent	64:24	29:12,14	running 23:4
6:19 9:15	resulted	43:3 56:3,	33:16
30:7	27:2	4 62:13,	52:10
representing	reticence	17,22	93:13
54:2	67:14	83:20	runs 22:5
residents	return 97:10	90:20,23,	40:17
28:12	returning	24 91:1	91:15
56:23	65:11	95:22,24	
61:22	review	roads 92:4	S
62:11 65:6	10:14,23	Robert 43:25	S-o-c-h-e-a-t-
66:22 67:5	72:12	44:3,9	a 13:17
resolved	revised 5:25	86:22	Saint 56:17
10:9	revision 6:1	route 43:1	sand 22:18
respond 34:7	RFM 82:3,4	routes 41:12	Saturday
response	Rhett 72:6	rule 89:2	36:20
21:16 22:7	Rhetts 72:18	97:1	scale 37:21
29:16	rid 32:17	ruled 10:5	scare 36:23
50:16	ridden 24:22	rules 88:24	scared 28:2,
52:5,14	ride 15:23	ruling 10:23	8
81:2 83:5	23:5,25	61:25	scares 36:22
responsibly	38:3,21	73:13 75:1	scaring
26:19	44:15,17	94:2,5	78:17
rest 19:11	50:3,4	96:19	scary 89:11
29:1 31:9	57:2	Rumbaugh	school 8:11
44:13	riding 38:5,	7:15 9:12,	11:19,20
46:18,21	6 45:5	13	14:15,17,
67:6	rights 42:18	rumbling	25 15:13,
restaurant	64:25	67:10	21 17:15
89:18	ripen 65:18	run 27:4	18:4,6,25
restricted	road 20:4	77:10 79:3	21:11,14,
89:12	22:5	83:19,20	18,20,21,
restrictions	24:23,25	run-in 27:1	23 22:9
73:18,20		28:7	23:22
restricts			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: schools..side

24:3,6	schools	segregate	Seventeen
27:17	48:15	28:19	59:10
29:24	56:12	segregated	Shander-
31:4,21,24	scooters	28:25	horning
40:25 41:3	38:1	46:25	55:6,12
44:19,22,	scope 10:16	seldomly	sheriff
25 45:17	64:19	28:1	27:6,9
48:18,24	screamed	sell 83:8	sheriff's
49:2,4,6,	52:8	89:16	7:16 9:9
16,19	screaming	send 89:4	85:2
50:7,11,12	52:11	sense 8:2	shopping
51:11,17,	scuffling	20:1 65:8	74:18,19
21,22	51:2	sentences	shorts 33:10
54:10,14,	season 11:13	72:13	show 10:21
18 56:16,	seated 13:2	separate	52:24,25
17,18,20	20:21	95:7	53:2 69:11
57:16,17,	30:21 40:1	separated	70:21 71:8
21 60:7,	44:5 47:11	28:25	showed 81:25
11,12,14,	55:8 76:10	separation	85:23
19 61:7,18	seconds	95:10	showing
62:4 63:1	34:10	serve 96:22	90:15
64:7,8	section	served 34:1	shrubbery
65:5 66:7,	25:20	service 50:5	25:23,25
18 67:11,	33:1,4	69:18,19	26:4,8
13,16,24,	38:22	Setter 77:14	shrubs 16:25
25 68:3	40:10 46:3	seven-and-a-	sick 43:4
69:10,14,	62:15,19	82:22	side 12:21
15,17	70:14	seven-and-a-	25:12,21,
70:1,24	92:4,10	half 82:15	22 26:2
71:1,11	Sections	83:2,4	47:23
73:6	20:10	94:8,9	48:14,21
74:13,19	seemingly	95:17	53:3 87:2
76:25 84:4	26:15		88:11
88:25			
89:5,8,17			
93:18,19,			
20 94:3,12			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: sidewalk..South

sidewalk	60:1,2,4,5	71:11 88:7	79:23
8:20 15:2,	63:17	sir 6:20	slow 33:15
3,4,7,9,	66:13	11:3,10,21	45:25
10,17,24	77:7,9	12:16	small 79:17
16:1,5,8,	78:7,11	20:8,17	91:13
16 17:11,	79:8,16	34:23 39:6	snack 58:8
14,19 18:4	82:21,22,	44:1 47:4	snapped 19:8
20:13	25 83:2,6	63:24 68:4	snowing
21:24	84:1	75:11,19,	49:21
22:21,23	87:17,19,	20,23	Socheata
23:3,7,23	21,22	76:5,6	12:19,25
24:13,25	88:7,8,10,	77:21 82:9	13:5,15
25:2,4,13,	13 91:3,8,	84:18,25	social 66:21
14,21,22	9 92:24	85:10,15	67:17
26:12,17,	95:25	86:10,21	sold 6:5,15
23,24	sidewalks	87:6,9	68:17
27:24	7:12 85:24	88:19	70:13 74:7
28:3,4,6,	sign 46:17	89:20	soliciting
9,16,17	62:7 96:13	94:19	77:18
29:5 31:8,	significant	sit 78:21	son 35:13
11,22 32:1	58:11	situation	38:20 39:1
33:14	60:12,14,	39:16,19	50:11 73:1
35:22	22	72:21	son's 59:21
36:21,22	significantly	73:22,25	sort 19:24
40:17	46:14	situations	20:1 67:23
41:21	signs 7:4	26:19	sound 10:8
42:10	28:10,11	sixteen	sounds 97:13
44:20	36:12 43:8	77:11	South 5:2,4
45:19	61:19,20	size 95:24	48:12,14,
46:4,7,20	84:17,19	skateboards	15,20
50:18,20,	85:8,13	57:3	56:14
22 51:2,25	92:15	slam 19:14	93:14,18,
52:1,22	94:18	slice 91:18	19,20
55:20,21	96:14,16,	slightly	
56:4,21,	21 97:1		
22,24	simply 10:22		
57:5,11,15			
58:4,7			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: sparse..students

sparse 56:22	75:11,14,	standing	stop 33:21
speak 9:18	19,21	59:24	60:7,10,13
13:8 36:6	76:2,5,10	78:10 80:6	69:24
88:18	77:21,24	stare 78:22	71:19,20
	81:9		92:15
speaks 8:24	84:18,25	staring	store 74:9
special 5:5,	85:10,15	78:11 80:6	
17,20 6:3,	86:8,11,	start 9:23	stranger
7,10,13,	14,16,21	24:6 38:25	59:16
20,23 7:2,	87:3,6,10,	79:9	straw 17:1
6,9,13,21	13 88:19	started	street 5:3
8:6,13,16,	89:20,24	14:14	14:6 25:9
23,25 9:4,	90:2,5,8	33:5,16,20	32:3
7,9,14,20	92:18,20	42:1,8	38:21,24
10:2 11:3,	93:2,6,8,	50:12	78:2 88:22
5,10,21	17,24	51:12	89:3,4
12:10,16,	94:19	state 5:2	90:19,25
20,23	95:14	13:3 20:24	91:16
13:2,6	96:1,6,8,	48:8	92:14,15
19:18	11,15,20	statements	streets 7:12
20:2,9,15,	97:5,9,14,	9:23	stretch
17,21	18,21		24:24
30:14,17,	specifically	states 62:14	34:24 80:2
21 37:2,7	11:6 52:25	status 96:19	
38:14	speed 5:13	stay 9:11	stretches
39:6,22	77:3,4	18:12 34:9	33:15
40:1 43:23	spell 13:16	36:1 52:3	stretching
44:1,5	spells 74:5	54:6 90:22	33:5,12
47:4,7,11,	spoke 35:20	stayed 33:4,	63:17
13 50:8	78:5	18	78:20
55:4,8	spoken 52:9,	step 23:15	79:20 80:1
63:21,24	13	43:23 47:5	strike 11:23
66:9,16,	stack 75:9	63:21	12:17
18,24	stand 76:4	86:11	strongly
67:1,3	78:21	stipulate	80:23
68:4 72:2		7:22 8:9	students
73:9,15,20			
74:4,14,23			

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: stuff..testify

49:1	suffer 32:13	25	15,16
stuff 17:1	suggest	talked 57:1	54:21,22
71:5 73:13	86:25	78:5 79:7	58:25
75:9	suing 78:4	85:2	65:22
subcommunity	79:9,10	talking 6:7,	68:24
85:25 86:1	80:20	10 10:6	69:14
subdivision	summary 12:6	18:23	ten-minute
5:16,22,	64:4 68:12	20:3,4,6	75:22
23,24 6:22	69:6	25:2 40:15	ten-year
13:22 14:3	supports	41:24 53:5	78:8
19:20	82:18	69:20 74:1	Ten-year-old
22:25	Suppose	92:3	78:9
29:13	74:17	talks 62:19	ten-year-olds
31:12	swear 80:4	tall 25:25	78:9
48:3,9,11,	swinging	26:1,2	tennis 22:17
12 52:17	43:14	37:18	tent 67:15
55:16 62:1	sworn 12:25	59:17	term 30:10
66:12	20:19	taller 54:7	70:5
71:5,6	30:19	59:16	terms 10:12
73:23	39:24 44:3	taxes 80:24	territory
subject	47:9 55:7	teach 79:5	66:2
64:22 69:4	76:8	technically	testified
76:14	system 10:9	24:14	13:1 20:20
submission		telephone	30:20
7:20		27:5	39:25 44:4
submit 7:17	T	tells 46:18	47:10 48:6
8:22 87:1	T-shirt	temperature-	54:3,9
submitted	33:10	appropriate	55:7 71:16
12:6	taking 15:20	49:17,18	76:9 87:8,
subpoena	71:1 96:7	ten 21:4	9
7:18,20	talk 27:7	31:7 33:12	testify 12:3
sue 77:18	76:20 77:7	40:13	19:21
84:3	78:25 79:8	41:10	85:10
sued 80:13	80:17,21,	53:9,12,	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016 Index: testimony..understand

testimony	ticked 80:7	tone 59:14	truth 83:16
7:18	time 14:14	tract 72:22,	turn 38:21
10:19,21	19:8 35:14	24	twelve 14:13
68:22	43:10	trade 74:8	68:24
69:13	45:18,19	traffic 8:4,	twenty 54:23
92:22	50:9	10 20:12	57:22
96:25	51:16,23	46:20	twenty-
text 91:13	57:7,17,	50:17	57:24
theory	18,20	57:21,23,	twenty-five
10:18,20	61:18 64:8	25 60:7,	57:22 79:2
thing 13:23	65:17	11,13,15,	type 25:23
23:6,11	71:10	16,17,18,	86:3
65:8,17	78:14,19	19 61:18	typically
72:5 86:3	88:23	67:16,24,	43:5 49:24
87:17	times 16:20	25 70:1	57:20
93:13,18	17:25	train 26:18	73:25
94:5 97:6	24:8,9	trash 51:2	
thing's 96:4	32:4,5,9	treatment	U
things 5:14	50:10	75:7	unabated
51:2 57:3	51:25 54:5	trees 58:10	67:16
58:9 88:21	58:25	trespass	uncomfortable
92:21	60:6,7	16:7	25:1
thirteen	79:25	trespassers	understand
48:2	85:23	58:15,16	18:20
thirty 34:10	title 69:1	trespassing	23:21
thirty-foot	today 7:16	84:17,19	28:14,19
91:15	10:15	85:1,8,13	45:13
thirty-minute	12:3,15	triathlon	56:5,8
57:24 58:1	28:13	23:5,12	61:25
thought 52:9	68:22 78:9	triathlons	66:10
throwing	92:22	23:5,9	74:23 75:1
51:2	told 16:6	trouble	80:19
thwart 67:24	34:20	18:22	89:21
	35:20 59:2		96:3,5
	83:15		
	97:16		

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: understanding..Whitt

understanding	56:6	15:23	49:5, 15
12:2 25:7	vehicles	16:25	50:7, 51:9,
28:18	61:23	17:14 18:3	16 58:3
Understood	92:23	21:20, 23	61:7 62:9
73:14	93:10	24:13, 14,	63:1, 7
74:25 97:3	vehicular	24 29:24	70:25
undue 23:20	20:12	32:9, 11,	71:11 77:6
		16, 17, 23	78:2
unique 23:11	verdict 64:3	36:17	walls 95:12
unlocked	73:12	38:22	
19:5	versus 72:6	49:12, 16,	Walmart
unrestricted	vicious 77:8	19 50:10,	89:9, 10, 17
73:17	videotape	15 51:13,	90:22 91:6
unsafe 24:23	8:18, 21	17 52:2	wanted 10:16
unstrap	views 16:10	54:15, 18	73:1 79:8
45:10	violated	56:25 62:4	81:15
untoward	82:1	65:5	wanting 93:9
51:1	violation	67:11, 13	watch 8:21
unusable	92:1	68:2 71:23	waving 79:1
89:15	vision 58:24	75:5 78:2	weather
upset 42:9,	visit 29:4	85:18 89:5	69:18
20, 21	66:13 68:1	walked 20:11	weekly 22:16
upsetting	visited 27:6	24:22 32:2	weeks 24:6
36:3, 4	43:6	46:7 49:13	weight
43:5, 7	voice 59:14	50:14	37:20, 23
upstairs	volleyball	51:21, 25	welcomed
35:13, 14	22:19	52:1 54:9,	9:11
urged 68:13		14 61:2	whatsoever
usage 57:1		69:15	24:18
72:16		79:22	white 8:4
	W	walking	Whitt 5:23
v	waiting	16:11	6:17 8:8,
	86:24	26:16	15 9:5, 6
valid 10:11	walk 14:17,	32:19, 23	11:11, 12
	22, 23	36:19, 20	
		41:2, 21	
		45:23 46:1	

JOHN CHALLIS, ET AL. vs. JEFFERY HORNING, ET AL.

Reference Hearing on 05/24/2016

Index: Whitt's..youngest

12:10,11	Whitt's	19:17,18	
18:15,16	88:20	20:7,13,	Y
19:15,23		16,23	
20:8,10	wide 83:2,4	30:2,15,23	y'all 9:22
30:6,7,12	94:8 95:18	37:3,6,9	86:16 94:6
36:25	Wieland 6:5	38:16	yard 77:9,
37:10,12,	28:23	39:4,21	10 91:18
13 38:12	64:12	40:3	year 17:13
39:5,8,20	wife 27:5,8	43:18,25	18:7 21:4,
43:21 47:3	44:16	44:7 47:1,	12,13,15,
53:22 54:2	76:19	6,12,16	18,20 24:6
55:1	78:25	53:13,16,	25:3 32:20
63:12,15,		18 55:2,10	41:15,16
20,25 64:1	witnesses	63:11,23	49:8,9,12,
66:15,17,	9:24 19:21	68:5,6	13,15
20,25	69:14	77:19	54:11
67:2,4	word 50:25	80:9,12	57:16
72:1,3,4	59:7 67:10	81:7,12	69:17
73:14,19,	79:10	84:16,22	77:17 84:4
21 74:5,	words 32:17	85:7,9	
21,25	42:5 46:3	86:10,19,	years 15:19
75:12,16,		22 87:5,	21:4 31:7
20,23,25	work 27:4	12,16	35:7 40:13
76:3,12	61:6	88:16	41:11 48:2
80:8 81:5	World 30:10	89:22	53:9,12,
84:24		90:11	15,16
85:14,17	Wright 5:10,	92:18,19	56:19
86:7,15,23	18,21,24	93:1,4,7,	64:16
89:23,25	6:4,9,12,	21 94:17	65:20
90:3,7,10,	14,21,25	95:9 96:7,	68:24
12,14	7:3,7,10,	9,14,16	77:11 79:3
92:8,12,17	14 8:7,12,	97:4,8,10,	yelling
93:16,20	17,24 9:1,	12,15,19	42:2,8
94:16,20	8,14,17,25		51:12
95:14,20	10:3,10	written	
96:3,17	11:4,6,22	73:23 74:2	youngest
97:3,13	12:11,18,	wrong 36:10,	19:1 21:12
	21 13:6,7,	11	36:18
	13 18:9,12		

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
No. 2016-002059

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
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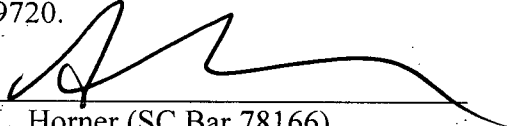
Jeffery Horning and Janet Shander-Horning Appellants,

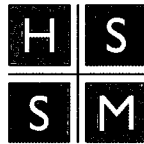
v.

John Challis, Jennifer Challis, Robert Baust, Zeljko Cvitkovic, Stephanie Cvitkovic, Aarik Eberhardt, Amy Eberhardt, James English, Socheata Koy, Carl Flatau, Patrice Flatau, Keith Gonsalves, Sandy Gonsalves, Jonathan Hardin, Maia Hardin, Jay Hurley, Joanne Hurley, Alastair Jones, Tamara Jones, Mike Nickel, Chuck Powell, Christine Powell, Lane Reavis, Kym Reavis, James Seidel, Deborah Seidel, David Templeton, Jennifer Templeton, Elizabeth Yegge Respondents.

PROOF OF SERVICE

I certify that I have served the APPELLANTS' MOTION FOR (I) LEAVE TO FILE RULE 60 MOTION AND (II) STAY OF APPEAL PENDING DETERMINATION OF RULE 60 MOTION on Respondents listed above by depositing a copy of it in the United States Mail, postage prepaid, on January 18, 2017, addressed to their attorney of record, Phillip E. Wright, 408 North Main Street, Lancaster, South Carolina 29720.


Adam L. Horner (SC Bar 78166)
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January 18, 2017

VIA FEDERAL EXPRESS, OVERNIGHT

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Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
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Re: Jeffrey Horning, et al. v. John Challis, et al.
South Carolina Court of Appeals Case No. 2016-002059

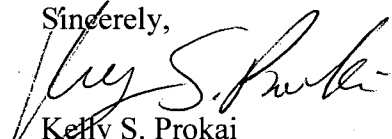
Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of (1) Appellants' Motion for (i) Leave to file Rule 60 Motion and (ii) Stay of Appeal Pending Determination of Rule 60 Motion, and (2) Memorandum in Support.

Six (6) of the copies are provided per Rule 240(d), but the remaining one (1) copy is to be file-stamped and returned to my attention in the enclosed self-addressed, stamped envelope. A check (No. 8037) for \$25.00 is enclosed to cover the related filing fee.

Should you have any questions or concerns, please contact me at the phone number and/or email above.

Sincerely,


Kelly S. Prokai
Paralegal to Adam L. Horner

Enclosures

cc: Opposing counsel Phillip E. Wright (via U.S. mail; w/ enclosures)
Appellant Co-Counsel D. Randolph Whitt (via U.S. mail; w/ enclosures)
Jeff Horning & Janet Shander-Horning (via email; w/ enclosures)

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