

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

20158

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

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SC Court of Appeals

GORDON G. COOPER, MASTER IN EQUITY

CASE NUMBER: 2009-CP-42-05129

CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.,
RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH, AND ELIZABETH
A. HANNAH..... RESPONDENTS

V.

KATHERYNA MULHOLLAND-MERTZ.....APPELLANT.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

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ATTORNEY FOR RESPONDENTS

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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GORDON G. COOPER, MASTER IN EQUITY

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V.

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INDEX

ORDER OF MARCH 8, 2012	2
Motion to Amend Findings of Fact and Conclusions of Law (Rule 52(b) SCRCF)	4
Motion for New Trial (Rule 52(b) SCRCF)	10
Transcript of Motions	16
Order of September 9, 2001	58
Consent Order of Reference	64
Order of June 15, 2010	66
Motion for Temporary Injunction	67
Complaint	68
Answer to Complaint	71
Amended Complaint	74
Answer to Amended Complaint	80
TESTIMONY	
Katheryna Mulholland-Mertz	85
Christine Stenger	174
Terry Burgess	188
Robert Mark Cramer	204
Kenneth J. Mertz	215
Woodrow W. Willard Jr.	218
Robert B. Perry, III	243

PLAINTIFF'S EXHIBITS

1	268
2	282
3	286
4	287
5	288
6	289
7	290
8	292
9	294
10	295
11	299
12	301
13	303
14	309
15	315
16	321
17	328

DEFENDANTS' EXHIBITS

1	330
2	333
3	335
4	339
5	340

6	341
7	346
CERTIFICATE OF APPELLANT	348

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

CIVIL ACTION NO.: 2009-CP-42-5129

Katheryna Mulholland-Mertz,)

Plaintiff,)

vs.)

Corie Crest Homeowners Association)
of Spartanburg, Inc.; Richard T. Biggs;)
Kathleen A. Biggs; James Hannah;)
and Elizabeth A. Hannah,)

Defendants.)

ORDER DENYING PLAINTIFF
POST-TRIAL MOTIONS

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SPARTANBURG COUNTY
2012 MAR -9 AM 10:15
M. HOPE BLACKLEY

This matter came before me on February 23, 2012 for a hearing on Plaintiff's *Notice of Motion and Motion for New Trial Rule 52(b) SCRCP*, and Plaintiff's *Notice of Motion and Motion to Amend Findings of Facts and Conclusions of Law: Rule 52(b) SCRCP*, both of which were filed on September 22, 2011. After hearing and considering the arguments of Plaintiff's counsel, and after reviewing the dozen "Exceptions" contained in the Plaintiff's motions, the entire transcript of the trial from August 24-25, Judge Cole's Form 4 order filed June 15, 2010, and my prior Order Granting Defendants' Rule 41(b) Motion to Dismiss filed on September 9, 2011, I am denying both of Plaintiff's motions.

It appears that one of the Plaintiff's major exceptions to my prior ruling is that I somehow "disregarded" Judge Cole's prior order in this case. However, Judge Cole was simply ruling on motions filed by counsel for both parties when he issued his ruling on June 15, 2010. It is important to note that the first paragraph of Judge Cole's ruling acknowledges the conflicting language of several of the sections of the applicable Covenants and Restrictions. He then states: "Summary judgment is not appropriate if facts are conflicting

or if the inference to be drawn from the facts are doubtful and a further inquiry into the facts is desirable to clarify proper application of the law." The very purpose of the trial before me was to make further inquiry into those conflicting facts. I heard all of the Plaintiff's witnesses and considered all of the documentary evidence she introduced in her case in chief on August 24-25, 2011. It was my role as the trial judge in this non-jury matter to make findings of fact and conclusions of law, which I did in my prior Order. I considered all of the witness testimony, looked at all of the documents admitted into evidence, reviewed the applicable law, and made my ruling dismissing the Plaintiff's case after the Plaintiff rested.

Throughout the hearing on Plaintiff's post-trial motions, Plaintiff's counsel continually argued that I had failed to make a full adjudication on the merits in this matter. To the contrary, I made sure that the Plaintiff had rested her case before hearing argument on the Defendants' motion under Rule 41, SCRCP. Therefore, pursuant to the terms of Rule 41(b), SCRCP, I listened to the arguments of defense counsel and found that the Plaintiff had failed to meet her burden of proof in this case.

Nothing presented to me by Plaintiff's counsel on February 23, 2012 persuaded me that my prior ruling was in error. Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's *Notice of Motion and Motion for New Trial Rule 52(b) SCRCP*, and Plaintiff's *Notice of Motion and Motion to Amend Findings of Facts and Conclusions of Law: Rule 52(b) SCRCP* are denied.


Gordon G. Cooper
Spartanburg County Master in Equity

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SPARTANBURG COUNTY
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HOPE BLACKLEY

Spartanburg, SC

March 8, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

CIVIL ACTION NO.: 2009-CP-42-5129

Katheryna Mulholland-Mertz,)

Plaintiff,)

vs.)

NOTICE OF MOTION TO MOTION
TO AMEND FINDINGS OF FACTS
AND CONCLUSIONS OF LAW:
Rule 52(b) SCRPC

Corie Crest Homeowners Association)
of Spartanburg, Inc.; Richard T.
Biggs; Kathleen A. Biggs; James
Hannah; and Elizabeth A. Hannah,)

Defendants.)

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CLERK OF COURT
SPARTANBURG COUNTY
2011 SEP 22 PM 1:52
M. HOPE BLANKLEY

To the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County
and to A. Todd Darwin, Attorney for the Defendants.

Pursuant to Rule 52(b) ("SCRPC"), the attorney for the Plaintiff shall and does
hereby move before this Honorable Court for an Order to amend its findings and
conclusions of law pursuant to the prior Order of this Court dated September 9, 2011.

Attorney for Plaintiff received notice of the prior Order of the Court on September
13, 2011.

The Plaintiff specifically moves for amendment of judgment upon the following
grounds and exceptions:

EXCEPTION I

This Honorable Court granted judgment in favor of Defendants pursuant to Rule
41(b) SCRPC upon the ground that the Plaintiff did not show any right to relief after the
close of the Plaintiff's case.

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Specification of Error: This Honorable Court committed error when it found insufficient evidence was presented by the Plaintiff to withstand a verdict for the Defendants after the close of the Plaintiff's case because the Court is required to view a motion to dismiss by Defendants under Rule 41(b) SCRPC as a Motion for Summary Judgment which directs the Court to view all evidence in the light most favorable to the non-moving party, or in this instance, the Plaintiff. Ex parte: USAA, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005)

EXCEPTION II

This Honorable Court granted judgment in favor of the Defendants pursuant to Rule 41(b) SCRPC upon the ground that Plaintiff did not show any right to relief after the close of the Plaintiff's case.

Specification of Error: This Honorable Court committed error when it disregarded the prior Order of the Honorable J. Derham Cole filed on June 15, 2010 when he denied the Defendants' Motion of Summary Judgment and Judge Cole's findings made reference to Sections 2, 18 and 20 of the "Restrictions" as conflicting, thus creating genuine issues of fact that warranted a full adjudication upon the merits of the case.

EXCEPTION III

This Honorable Court granted judgment in favor of Defendants pursuant to Rule 41(b) SCRPC upon the ground that the Plaintiff did not show any right to relief after the close of the Plaintiff's case.

Specification of Error: This Honorable Court disregarded testimony of the Plaintiff and demonstrative evidence presented at trial that Architectural Committee has

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to approve identified structures under Section 7 and the full Association has to approve storage buildings under Section 18, thus being conflicting sections and requiring full adjudication upon the merits.

EXCEPTION IV

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that Section 2 of the original "Restrictions" did not prohibit the erection of storage buildings.

Specification of Error: This Honorable Court committed error when it found that insufficient evidence was presented at the close of the Plaintiff's case that showed Defendants Biggs and Defendants Hannah had violated Section 2 of the original "Restrictions," since the testimony of the Plaintiff and Section 2 of the original "Restrictions" introduced into the record presented evidence that those Defendants were in clear violation of the "Restrictions."

EXCEPTION V

This Court granted judgment to the Defendants pursuant to 41(b) SCRPC after the close of the Plaintiff's case upon the ground that Sections 8, 18 and 20 of the Restrictions did not prohibit erection of storage buildings, thus Defendants Biggs and Defendants Hannah were permitted to construct those structures.

Specification of Error: Evidence presented by the Plaintiff showed the Defendants Biggs and Defendants Hannah submitted application for approval of a permanent structure pursuant to Section 7 of the "Restrictions," thus Sections 8, 18 and Section 20 of the "Restrictions" were not relevant to Plaintiff's case in chief regarding

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HONORABLE JUDGE B. B. CHOLEY


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Defendants Biggs and Defendants Hannah.

EXCEPTION VI

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that hobby-type/storage buildings are allowed under the original "Restrictions."

Specification of Error: The Defendants Corie Crest Association of Spartanburg, Inc. (Association) admitted that it amended and recorded "Restrictions" to Section 2 and 7 to clarify ambiguities which was sufficient evidence to withstand a verdict under Rule 41(b) SCRPC after the close of the Plaintiff's case.

EXCEPTION VII

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that the Defendant Association had a right to amend the "Restrictions" under Section 41.

Specification of Error: The express language of Section 41 of the "Restrictions" clearly prohibits amendment or termination of the "Restrictions" until October 1, 2040 and the then owners can vote to terminate or amend the original "Restrictions" by a two-thirds vote in writing. (Emphasis Plaintiff)

EXCEPTION VIII

This Honorable Court granted judgment to the Defendant Association upon the ground that the Defendants had a right to amend the original "Restrictions."

Specification of Error: This Honorable Court has misapprehended the language of Section 41 of the original "Restrictions" to find that aforesaid section granted

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Defendant Association the right to amend the original Restriction upon two-thirds vote in writing but not to terminate such "Restrictions" until October 1, 2040. (emphasis Plaintiff)

EXCEPTION IX

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCP after the close of the Plaintiff's case upon the ground that the Defendant Association had the right to amend the original "Restrictions."

Specification of Error: This Honorable Court committed error when it found the Plaintiff was required to refute evidence that two-thirds of the lot owners agreed to amend the original "Restrictions" because no direct evidence was presented by the Defendant Association that proved it had the written consent of two-thirds owners in writing.

EXCEPTION X

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCP after the close of the Plaintiff's case upon the ground that the Defendant Association had the right amend the original "Restrictions."

Specification of Error: This Honorable Court disregarded undisputed testimony that proper notice was not given to all property owners of Corie Crest Subdivision to consider any amendment to "Restrictions," thus denying Plaintiff and other members of the Defendant Association the right to vote in violation of Article II, Section 2 of the By-Laws of Corie Crest Home Owners Association.

EXCEPTION XI

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCP after the close of the Plaintiff's case upon the ground that the Defendant

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SPARTANBURG COUNTY
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M. HOPE L. ANKLEY

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Association had a right to amend the original "Restrictions."

Specification of Error: This Honorable Court committed error when it failed to find the Defendants did not violate Section 2, 7 and 41 of the original "Restrictions," thus preventing the requirement of this Court to consider equitable doctrines over enforcement of such "Restrictions." Buffington vs T.O.E. Enterprises, 383 S.C. at 388, 680 S.E.2d 289 (2009).

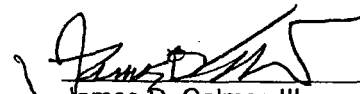
EXCEPTION XII

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCP after the close of the Plaintiff's case to grant the Defendants the right to schedule a hearing for award of attorney fees pursuant to Section 42(D) of said "Restrictions."

Specification of Error: Plaintiff presented sufficient evidence to show violation of original "Restrictions" by Defendants Briggs and Defendants Hannah as to Section 2 and 7 and by Defendant Association as to Sections 2, 7 and 41 of the "Restrictions," which would require a finding by this Court only after full adjudication upon the merits of the case. The any hearing for award or recovery of legal fees would be premature.

For the foregoing reasons the attorney for the Plaintiff requests that this Court amend its findings of fact and conclusion of laws and issue its Order reversing the directed verdict pursuant to SCRCP Rule 41(b) SCRCP and require Defendants present evidence for a full adjudication upon the merits of this case.

Respectfully submitted,


James D. Calmes III
Attorney for the Plaintiff

September 20, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

CIVIL ACTION NO.: 2009-CP-42-5129

Katheryna Mulholland-Mertz,)

Plaintiff,)

vs.)

NOTICE OF MOTION
AND
MOTION FOR NEW TRIAL
Rule 52(b) SCRCP

Corie Crest Homeowners Association)
of Spartanburg, Inc.; Richard T.
Biggs; Kathleen A. Biggs; James
Hannah; and Elizabeth A. Hannah,)

Defendants.)

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SPARTANBURG COUNTY
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M. HOPE BLANKLEY

To the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County
and to A. Todd Darwin, Attorney for the Defendants.

Pursuant to Rule 52(b) ("SCRCP"), the undersigned attorney shall and does
hereby move before this Honorable Court for an Order granting the Plaintiff a new trial
upon the following grounds and exceptions.

The attorney for Plaintiff received notice of the prior Order of the Court dated
September 9, 2011 on September 13, 2011.

EXCEPTION I

This Honorable Court granted judgment in favor of Defendants pursuant to Rule
41(b) SCRCP upon the ground that the Plaintiff did not show any right to relief after the
close of the Plaintiff's case.

Specification of Error: This Honorable Court committed error when it found
insufficient evidence was presented by the Plaintiff to withstand a verdict for the

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Page 1 of 6

Defendants after the close of the Plaintiff's case because the Court is required to view a motion to dismiss by Defendants under Rule 41(b) SCRPC as a Motion for Summary Judgment which directs the Court to view all evidence in the light most favorable to the non-moving party, or in this instance, the Plaintiff. Ex parte: USAA, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005)

EXCEPTION II

This Honorable Court granted judgment in favor of the Defendants pursuant to Rule 41(b) SCRPC upon the ground that Plaintiff did not show any right to relief after the close of the Plaintiff's case.

Specification of Error: This Honorable Court committed error when it disregarded the prior Order of the Honorable J. Derham Cole filed on June 15, 2010 when he denied the Defendants' Motion of Summary Judgment and Judge Cole's findings made reference to Sections 2, 18 and 20 of the "Restrictions" as conflicting, thus creating genuine issues of fact that warranted a full adjudication upon the merits of the case.

EXCEPTION III

This Honorable Court granted judgment in favor of Defendants pursuant to Rule 41(b) SCRPC upon the ground that the Plaintiff did not show any right to relief after the close of the Plaintiff's case.

Specification of Error: This Honorable Court disregarded testimony of the Plaintiff and demonstrative evidence presented at trial that Architectural Committee has to approve identified structures under Section 7 and the full Association has to approve storage buildings under Section 18, thus being conflicting sections and requiring full

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adjudication upon the merits.

EXCEPTION IV

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that Section 2 of the original "Restrictions" did not prohibit the erection of storage buildings.

Specification of Error: This Honorable Court committed error when it found that insufficient evidence was presented at the close of the Plaintiff's case that showed Defendants Biggs and Defendants Hannah had violated Section 2 of the original "Restrictions," since the testimony of the Plaintiff and Section 2 of the original "Restrictions" introduced into the record presented evidence that those Defendants were in clear violation of the "Restrictions."

EXCEPTION V

This Court granted judgment to the Defendants pursuant to 41(b) SCRPC after the close of the Plaintiff's case upon the ground that Sections 8, 18 and 20 of the Restrictions did not prohibit erection of storage buildings, thus Defendants Biggs and Defendants Hannah were permitted to construct those structures.

Specification of Error: Evidence presented by the Plaintiff showed the Defendants Biggs and Defendants Hannah submitted application for approval of a permanent structure pursuant to Section 7 of the "Restrictions," thus Sections 8, 18 and Section 20 of the "Restrictions" were not relevant to Plaintiff's case in chief regarding Defendants Biggs and Defendants Hannah.

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This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that hobby-type/storage buildings are allowed under the original "Restrictions."

Specification of Error: The Defendants Corie Crest Association of Spartanburg, Inc. (Association) admitted that it amended and recorded "Restrictions" to Section 2 and 7 to clarify ambiguities which was sufficient evidence to withstand a verdict under Rule 41(b) SCRPC after the close of the Plaintiff's case.

EXCEPTION VII

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case upon the ground that the Defendant Association had a right to amend the "Restrictions" under Section 41.

Specification of Error: The express language of Section 41 of the "Restrictions" clearly prohibits amendment or termination of the "Restrictions" until October 1, 2010 the then owners can vote to terminate or amend the original "Restrictions" by a two-thirds vote in writing. (Emphasis Plaintiff)

EXCEPTION VIII

This Honorable Court granted judgment to the Defendant Association upon the ground that the Defendants had a right to amend the original "Restrictions."

Specification of Error: This Honorable Court has misapprehended the language of Section 41 of the original "Restrictions" to find that aforesaid section granted Defendant Association the right to amend the original Restriction upon two-thirds vote in

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writing but not to terminate such "Restrictions" until October 1, 2040. (emphasis Plaintiff)

EXCEPTION IX

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCF after the close of the Plaintiff's case upon the ground that the Defendant Association had the right to amend the original "Restrictions."

Specification of Error: This Honorable Court committed error when it found the Plaintiff was required to refute evidence that two-thirds of the lot owners agreed to amend the original "Restrictions" because no direct evidence was presented by the Defendant Association that proved it had the written consent of two-thirds owners in writing.

EXCEPTION X

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCF after the close of the Plaintiff's case upon the ground that the Defendant Association had the right amend the original "Restrictions."

Specification of Error: This Honorable Court disregarded undisputed testimony that proper notice was not given to all property owners of Corie Crest Subdivision consider any amendment to "Restrictions," thus denying Plaintiff and other members of the Defendant Association the right to vote in violation of Article II, Section 2 of the By-Laws of Corie Crest Home Owners Association.

EXCEPTION XI

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRCF after the close of the Plaintiff's case upon the ground that the Defendant Association had a right to amend the original "Restrictions."

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SPARTANBURG COUNTY
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J. HOPE BLAKEY

Specification of Error: This Honorable Court committed error when it failed to find the Defendants did not violate Section 2, 7 and 41 of the original "Restrictions," thus preventing the requirement of this Court to consider equitable doctrines over enforcement of such "Restrictions." Buffington vs T.O.E. Enterprises, 383 S.C. at 388, 680 S.E.2d 289 (2009).

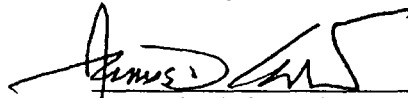
EXCEPTION XII

This Honorable Court granted judgment to the Defendants pursuant to Rule 41(b) SCRPC after the close of the Plaintiff's case to grant the Defendants the right to schedule a hearing for award of attorney fees pursuant to Section 42(D) of said "Restrictions."

Specification of Error: Plaintiff presented sufficient evidence to show violation of original "Restrictions" by Defendants Briggs and Defendants Hannah as to Section 2 and 7 and by Defendant Association as to Sections 2, 7 and 41 of the "Restrictions" which would require a finding by this Court only after full adjudication upon the merits case, thus any hearing for award or recovery of legal fees would be premature.

For the foregoing forgoing exceptions, the attorney for the Plaintiff does hereby move for a new trial absolute.

Respectfully submitted,


James D. Calmes III
Attorney for the Plaintiff

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SPARTANBURG COUNTY
2011 SEP 22 PM 1:53
M. HOPKINS BLACKLEY

September 20, 2011

Greenville, South Carolina

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

3 KATHERYNA MULHOLLAND-MERTZ,)

4)
5)
6 PLAINTIFF,)

7 -VS-)

8 CORIE CREST HOMEOWNERS)
9 ASSOCIATION OF SPARTANBURG,)
10 INC., RICHARD T. BIGGS, KATHLEEN)
11 A. BIGGS, JAMES HANNAH, AND)
12 ELIZABETH A. HANNAH,)

13 DEFENDANTS.)
14)

COURT OF COMMON PLEAS

TRANSCRIPT OF MOTIONS

(2009CP42-5129)

Spartanburg, South Carolina

15 REFERENCE HELD:

FEBRUARY 23, 2012.

16 B E F O R E:

17 HONORABLE GORDON G. COOPER,
18 MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

19 BY: JAMES D. CALMES, III, ESQUIRE
20 Attorney for the Plaintiff.

21 HOLCOMBE, BOMAR, P.A.
22 BY: A. TODD DARWIN, ESQUIRE
23 Attorneys for the Defendants.

24 Sarah Hollis, Court Reporter
25

1 THE COURT: We are here on Case 2009-5129. Katheryna Mulholland-Mertz versus Corie
2 Crest Homeowners Association of Spartanburg, Inc., Richard T. Biggs, Kathleen A. Biggs,
3 James Hannah and Elizabeth A. Hannah. We are here on the Motions filed by the attorney for
4 the Plaintiff. That is the Motion for a New Trial and a Motion to Amend Findings of Facts and
5 Conclusions of Law. Those are the only two motions that I have that are set for this morning.
6 Is that correct, Counsel?

7 MR. DARWIN: Your Honor, I was under the impression that my attorney's fees would carry
8 over to today.

9 THE COURT: All right.

10 MR. DARWIN: However, I guess that depends on how you rule on me.

11 MR. CALMES: And that was the one thing that would come into place is that, one, I think that
12 you need to obviously I guess rule on this first before – well obviously if you rule in my favor
13 then I think the issue of attorney's fees would be held in abeyance.

14 THE COURT: That is correct.

15 MR. CALMES: And I, of course, at that time and with all due respect to Mr. Darwin, of course,
16 I have not had an opportunity to look at the attorneys fees affidavit. So I guess we will just have
17 to proceed accordingly, Your Honor, as you wish.

18 THE COURT: All right. Well lets start with Mr. Calmes' motion.

19 MR. CALMES: All right sir.

20 MR. DARWIN: All right.

21 MR. CALMES: May it please the Court, Your Honor, a decision was reached by you on
22 September 9, 2011 involving this case alleging violations of restrictive covenants. And my
23 client filed this action claiming that the Corie Crest Subdivision and Kathleen Biggs, Richard
24 Biggs, James Hannah and Elizabeth Hannah and Joseph DeNicola at the time violated certain
25 restrictions because they put certain structures up and violated particular sections of the

1 restrictive covenants that we will more accurately describe for the Court's information and to
2 request the Court. Mr. DeNicola was dismissed from the case upon basically by a consent
3 order that was entered into in which the reason for the consent is that Mr. DeNicola did remove
4 his structure that my client complained of and completed the process of moving. So his
5 structure is gone. We took the position at that point in time that case would be struck and also
6 took the position in the event that attorney's fees were awarded in this case in its entirety that
7 those fees would not be a portion by either party. Your Honor, after listening to testimony you
8 granted a motion by Defense counsel pursuant to Rule 41, I think, 41(b). On the grounds that
9 you believe that the Plaintiff did not show any evidence of her particular relief and closing the
10 case. An Order was subsequently issued on September 9. I filed two particular motions. One
11 a motion for a New Trial and a motion for an Amendments and Conclusions of Facts.
12 Obviously your Amendments and Conclusions of Facts the relief that I seek in that regard, tends
13 to come around and I believe that this Honorable Court committed error in that particular thing
14 and that a full adjudication of the merits needed to be addressed at that time and in the alternative
15 we believe that these are the facts and decisions that were made and that our Motion for a New
16 Trial should be granted. Essentially, Your Honor, I filed a number of exceptions that include up
17 to twelve exceptions, and of course, the proper exceptions to determine that the particular
18 attorney's fees at the point in time for a subsequent hearing would have been in issue. Your
19 Honor with regards to the first couple of sections, my exception one (1) and the specification. I
20 believe that the Court committed error when it found insufficient evidence was presented by the
21 Plaintiff to withstand the verdict at the close of the Plaintiff's case because under that standard,
22 Your Honor, the Court is required to view the motion to dismiss under Rule 41(b) as a motion for
23 a summary judgment which means that it had to direct and view the evidence in a light most
24 favorable to the non-moving party and in this instance the Plaintiff. The case as far as the
25 standard is concerned in regards to that is Ex parte: USAA. I am thinking that it goes a little bit

1 further than it indicated but as Ex parte: USAA, United States Service Auto Association
2 regarding a *Becky Todd Smith and an Ola Moore*, that is a 2005 case, Your Honor. It talked
3 about that particular case itself. I have got a copy of that. Your Honor, Exception I also ties
4 into the Exception II. In Exception II, it indicates that, You granted judgment in favor of the
5 Defendant pursuant to Rule 41(b) upon the grounds that did not show any right to relief after the
6 close of the case. We believe that the Court committed error when it disregarded the prior Order
7 of Judge Derham Cole filed on June 15, 2010 and in that Your Honor, I will give you a copy of it
8 but I want to show particular emphasis in regards to the summary judgment which is paragraph 1.
9 Indicates that this matter should come before you on the Motion to Dismiss and for Summary
10 Judgment and Motion for Temporary Injunction. This is an action to enforce restrictive
11 covenants applicable to real property in a residential subdivision. Plaintiff Mulholland-Mertz is
12 a property owner while Plaintiff Mertz is not. The Plaintiff claims covenants Section 2 prohibit
13 anything but one detached single-family dwelling and if approved a private detached garage.
14 Section 18 prohibits any portable buildings, metal storage buildings or other similar off-site
15 constructed storage buildings unless approved by the developer or the Association. Defendants
16 claim also Section 8 reference building materials to be used for construction of any building,
17 garage or hobby type storage building. Summary judgment is not appropriate if the facts are
18 conflicting or the inferences to be drawn of doubtful and further inquiry is desirable to clarify
19 proper application of the law. All ambiguities, conclusions and inferences arising from the
20 evidence must be strongly constructed against the moving party. So based upon that Your
21 Honor, we contend that at best the standard, the Motion for Summary Judgment in that particular
22 respect, the Defendants indicated that they had moved for summary judgment. And they moved
23 for summary judgment essentially on some of the same arguments that we made in regards to
24 testimony that was presented. I believe, Your Honor, in that particular regard I want to cite
25 particular instances of what I construe testimony that would reveal that a genuine issue certainly

1 existed and I want to make reference to those particular sections and I believe you have that. I
2 will start with -- and Your Honor, I just want to note too that I think that it is a little erroneous
3 that throughout the court proceedings on cross examination Mr. Darwin solicited agreement or
4 approval from those witnesses indicating that they may agree with him that certain sections were
5 conflicting and therefore ambiguous. I want you to look at Line 12 through 14, Page 10, where
6 Mr. Darwin certainly agrees with me that certain standard ambiguity conclusions could have
7 been reached from conflicting facts and that is what he got from it, too. So I don't think that we
8 are at odds about the feelings that this was a issue that could have been conflicting. On Page
9 19, Your Honor, if you would go to line 1 through 11, and in that I will read this. This is the
10 testimony from the Plaintiff, All right. And when you talk about specifically of a barn. Who
11 did the barn belong to? Mr. and Mrs. Martin. Question. Okay. That was the person who was
12 an adjoining landowner to you? Answer, yes absolutely. And the other particular structure was
13 Mr. DeNicola's shed, is that right? Answer, correct. And they are both not there now. Yes.
14 But Mr. Biggs told you that they were temporary structures, is that correct. Answer, Mr. Biggs
15 told me that they were in violation of the restrictive covenants and the only thing that could be
16 built is a detached garage. Question, all right. Answer, he told Mr. Biggs that. He told me that
17 and he told Mr. Burgess that. So certainly a portion of the testimony and issuance from Mr.
18 Biggs, from testimony from my client that he did believe at that time. On page 31, Your Honor.
19 Lines 1 through 17. Indicate a question. The same testimony from Mrs. Mulholland. All
20 right. And since the formation of the Bylaws through today, has he held an office? We are
21 talking about Mr. Biggs. Answer, yes. Question, same office. Answer, yes. Question, as
22 president, is that correct? Yes, correct. Question, all right. And do you know what he
23 describes that particular structure to be. Answer, in his deposition he described it as a garden
24 shed. Now we are talking about in reference to Mr. Biggs' deposition in which Mr. Biggs
25 testified that is what he had and when he built the structure. Question, a garden shed. Answer,

1 a garden shed. Question, did he describe that as it was what he was storing things in? Answer.
2 That is what he called it, a garden shed in his deposition. Question. Now lets go back. Are
3 you correct saying that Mr. Biggs had complained about previous structures on there? Answer,
4 yes. Question. Did Mr. DeNicola have a shed. Answer, yes. Go to page 33, This is Mr.
5 Biggs. And did he testify or did the Board testify that it came under Section 7 of the Restrictive
6 Covenants? Yes. Question, if you look at Section 7-A, the first paragraph, would you read that
7 to the Court. Answer, Seven-A. Question. Seven-A. Answer. No building or structure,
8 whether it is a dwelling, garage, fence or driveway shall be erected, placed or altered on any lot
9 until the building plans, elevations, locations and specifications have been approved in writing by
10 the developer or its nominee. If such shall not be approved or disapproved within thirty (30)
11 days after being submitted, then such approval shall conform to the specific building
12 requirements stated herein and otherwise be in harmony with the existing structures in the
13 subdivision. Any proposed building must be built as a permanent structure and be designed in
14 harmony with the main dwelling. Disapproval of plans, elevations, location or specifications
15 may be purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.
16 Question. All right. Are you aware if he made an application to the Architectural Committee to
17 have this structure reviewed? Answer. No, I didn't know about it. Question. Did you
18 subsequently learn that he did do that? Answer. Yes. Question. Okay. Mrs. Mulholland
19 when you read that particular section does that section state anywhere that someone can construct
20 a garden shed? Answer, No. It does not. Question, all right. I would like for you to read or
21 refer to Section 2 of the original covenants and would you please read that. Go to page 34,
22 Your Honor, lines 1 through 12. Answer, single family residential use. No lot shall be used
23 except for private, single family residential purposes. No building shall be erected, altered,
24 placed or permitted to remain on any lot other than one detached single-family dwelling, not to
25 exceed two (2) stories in height, and, if approved in advance in writing, a private detached

1 garage. No lot or portion of a lot shall be used either as a road or easement or other means of
2 access to adjoining property without the express written consent of the developer. Question. All
3 right. And in doing so and in reading that particular section did he construct anything that looked
4 like a private detached garage? Answer, No. Question. Mrs. Mulholland are there any private
5 detached garages in the subdivision? Answer, Yes, there are. Can you tell the Court how many
6 there are? Answer, two. This is reference to Page 37, lines 3 through 11. Mr. Calmes
7 introduces into evidence a picture, above described, with two views, marked as Plaintiff's
8 Exhibit Number 5. This is the application that Mr. Hannah put in. Question. I would like for
9 you to look at this and see if you can identify that? It is an application to the Architectural
10 Review Committee Request for Jim Hannah at 1028 Corie Crest Drive, Boiling Springs. It says
11 here category of requested improvement and it says here patio cover storage. Question. Patio
12 cover storage? Yes, patio cover storage. And then it makes reference on Page 38, lines 11
13 through 13. Just introducing Exhibit Number 6, which is the Architectural Review Committee
14 Request for Mr. Hannah. On Page 40, lines 1 through 15. This is a reference to Mr. Hannah.
15 Answer, first of all it is not a detached garage, number one. Number two, I don't know what to
16 call that building. Most people in the subdivision refer to it as the lean-to. His house is grey
17 with a black roof and white fascia and white trimming or white windows and everything. When
18 you read the covenant it says that the structure needs to be in harmony with the home. In other
19 words, the detached garage needs to be in harmony. Meaning it has to adhere to the same
20 specifications as the home does. That is the rule and his doesn't. His is stained wood. It has
21 got two roofs on it. I am not architect and what concerns me Mr. Calmes, may I continue, is that
22 another homeowner might want to build something and they see Hannah's building and they will
23 turn around and say well he can have that why can't I have something similar to that and that is
24 how it escalates to the domino effect. Then everybody is going to put up whatever they want to
25 put it. And I am concerned about the value of my home. And the integrity of my home. And

1 the integrity of this subdivision. If people start putting up outhouses, outbuildings, and potting
2 shed. Any structure they want to put and it seems to be always the people who are on the Board.
3 Page 60, Your Honor Lines 22 and 23. And this is following, all right. Do you believe that
4 they are in violation of restrictive covenants. One hundred (100) percent. That is Mrs.
5 Mulholland's testimony. On Page 73, lines 1 through 25. It basically is making reference to the
6 Briggs' building. Now this had already been entered in. So this is the Briggs' building?
7 Answer, Yes. What is the difference between that? Those are not detached garages. And why?
8 Answer, because they can – the sizes of them are in harmony with the house that is in a poured
9 concrete foundation. That isn't – they are not a detached garage. That was more like a potty
10 shed. Do you see any difference? Other than a garage door do you see any difference? Yes. It
11 doesn't look like these. These look like detached garages and this doesn't. Let me ask you this.
12 This building that you love, Plaintiff's Exhibit number 4, that took the DeNicola spot? Answer,
13 yes. Do you have any idea what that roof pitch is? Answer, Yes. I talked to the gentleman who
14 erected that and he said that he went that high with the roof is so it is in harmony with his other
15 roof pitch because his other roof pitch is so high that if he did put on something lower it would
16 not be in harmony. And my husband said the same thing. My husband said that, too. Well let
17 me approach with you, Plaintiff's Exhibit 1, the restrictive covenants. If you would please turn
18 to paragraph 7(c). And that is paragraph 7(c) of the restrictive covenants. Yes. The minimum
19 pitch for the roof. Okay. So that is okay with you? No, it is not in harmony with the house.
20 Okay. Answer. That is in harmony with the roof pitch. This is just a note to reference to Line
21 1 through 9 on page 75. Look at Section 8, for me. This is in reference to cross examination by
22 Mr. Darwin. Here again he says it can be brick, stone, stucco, wood or vinyl. Any other must
23 be approved by the Developer or it nominees. Concrete blocks, cement bricks or concrete shall
24 not be used in the construction of any building, garage, hobby-type storage building. The
25 exterior of same is says brick, stone, stucco, wood, or vinyl or some other material approved by

1 the Developer or its nominee. It specifically talks about hobby-type storage buildings does it
2 not. Answer, that is not apart of that section 2 and Section 4. That is not part of that section.
3 Question, Mr. Darwin said it is ambiguous isn't it? The covenants are ambiguous because
4 Section 2 says one thing and Section 8 says something else. Correct. And then she answers no,
5 because his building has an underpinning. In reference to the question that was asked and the
6 statement made by Mr. Darwin. Cross examination, Lines 6 through 12. Question, There it is
7 again, hobby-type storage building. Just as Section 8 it references that again in Section 20,
8 right? Answer, Yes. Question, All right. So it is ambiguous in Section 2, right? Answer, No.
9 Question. Why not? Answer, to me it is not a detached garage. I am sorry. It is not a detached
10 garage. On page 78, lines 13 through 16. Question. As I understand. This is cross
11 examination from Mr. Darwin. Why won't you agree with me that it makes it ambiguous. If
12 they are referenced in other parts of the documents. Answer. Because I don't believe the way
13 that you believe. On page 89, Line 19 through 25. Question. All right. This is a question from
14 cross examination from Mr. Darwin to the Plaintiff. All right. So they didn't get approved by
15 the Association for these detached structures, correct? Answer, correct. All right. These
16 portable sheds, if you look at this particular section, it doesn't go through the Architectural
17 Committee does it? Answer, it does not. Question. It says Association does it not? This is in
18 reference to the Plaintiff's testimony as it relates to the testimony that we believe creates a
19 genuine issue of facts. We will go now to the testimony of Christine Stenger. Lines, Your
20 Honor, 10 through 20. Mrs. Stenger is also a home owner. Questions. In reading that what is
21 your opinion about detached structures within the community? Answer, I took it to mean a
22 detached garage. When I first moved in there then there were no other buildings other than
23 garages and homes. All of the other homes in the area were still being constructed. Question.
24 All right. So at that point in time there were none is that correct? Answer, Correct. Question,
25 When you moved in there in 2006 was it your belief that there would not be any detached

1 structures such as what you have seen since that time? Answer. Yes, that was my belief.
2 Question. When you saw detached structures go up did you object? Answer. Yes, I did. On
3 Page 93, Your Honor. Line 18 through 24. Continuing with the testimony of Mrs. Stenger.
4 Question. If that was the case then if somebody makes an application to have an addition or
5 whatever the building or whatever they are going under Section 7 of the restrictive covenants, is
6 that correct? I would assume so. Question, would you look at Section 7-A. Is there anything
7 in Section 7-A of the restrictive covenants, Section 7-A, I added restrictive covenants. Talking
8 about the original restrictive covenants. It talks about a patio cover for pool support
9 equipment? Page 99, lines 3 through 9. Cross examination of Mr. Darwin. Question. All
10 right. Are those not ambiguous in Section 2? Answer of Mrs. Stenger. I think that it depends on
11 your interpretation of them. Question. How about your interpretation? Answer. I think that
12 Section 2 overrules anything like that because it doesn't mention anything like that. Question. I
13 got you. But if they are referenced somewhere else why are they referenced? So that you don't
14 have them. Testimony from homeowner, Christine Stenger. Then we go to Your Honor the
15 testimony of Terry Burgess. Your Honor, lines 1 through 24. This is a conversation with Mr.
16 Burgess and Mr. Briggs. Question. Did Mr. Biggs express any concerns to you about it?
17 Answer, he liked the buildings almost as well as I did. He didn't like the buildings at all. In
18 fact, Mr. DeNicola's building when they first bought it in was a school bus yellow and referred to
19 it as the yellow school bus and then when - - Question, Mr. Biggs did. Answer, I am sorry.
20 Question, did Mr. Biggs refer to that? Answer, Yes sir. Question. Okay. And then Mr.
21 Martin started constructing his building. I was working the night shift. And from the yard
22 looked across behind the house where the building was being built and I actually thought that
23 they were building a patio away from the house because it was up on blocks and they looked like
24 that they were building a patio. So the next morning they were putting the walls and everything
25 else up on it. So again you know I talked with Mr. and Mrs. Biggs and again we were pretty

1 upset that they were building those buildings in the subdivision because you know from what I
2 had been told when I moved in and looking at the covenants and from the realtor those buildings
3 were not allowed in the subdivision. So actually Mr. Biggs made an appointment with an
4 attorney down town in I think it is the Wachovia Bank building, the big building there, to see an
5 attorney. He said it was his closing attorney. So he wanted to go talk to an attorney about what
6 we could do to have those building removed out of the subdivision. Question. So during this
7 period of time he was objecting to them also? Answer, yes sir. Question. Were there others
8 objecting to these things to? Answer, yes, yes there was. Page 110, Lines 17 through 25.
9 Continuing with the testimony of Mr. Burgess. Question. You obviously learned that Mr. and
10 Mrs. Biggs constructed a garden shed? Answer, yes sir. Question. What is your opinion about
11 that garden shed in relations to the original restrictive covenants? Answer. It doesn't fit with
12 the original covenants. Question. Do you believe that it violates the restrictive covenants?
13 Answer, Yes sir, I do. Do you believe the violation such as that violations such as that have an
14 impact on the property? Answer, I do. This is from testimony of Mr. Cramer, Mark Cramer.
15 Line 18 through 25. All right. This is a follow-up. This is directed to Mr. Cramer. Did Mr.
16 Biggs ever complain to you about those sheds prior to him constructing his own? Answer, yes
17 he did. Question. Did he like them? Answer, No. He advised me to call Hinson
18 Management to complain as well because he said the more people that complained maybe they
19 would do something at that time. Question, all right. And I said no further questions, Your
20 Honor. This is page 129, lines 1 through 7 and 16 through 22. This is redirect examination.
21 Question. Is Mr. Hannah's lean-to building, is that in harmony with the existing structure that is
22 there? No, it is not. And is there a particular reason that you are saying that? What is it that
23 is not in harmony that you know? Answer. Well when I think of - and there is an objection.
24 Go back to line 16. Answer, As I would look at it there is nothing on his home or any other
25 home in the development that would resemble a lean-to. Question. All right. And under that

1 section like you say 7, he had to go through the Architectural Committee, did he not? Answer,
2 yes. Question. Line 21, there is nothing referenced -- in that section it talks about a lean-to, is
3 that correct? Answer, yes. Now to the testimony of Mr. Willard, Page 145. Starting at Line 6.
4 All right, start again. Question. Line 7, Please read the entire Section 18 for me, Mr. Willard?
5 Answer, it says portable buildings, no storage buildings or other similar off-site constructed
6 storage buildings are prohibited to be placed or remain on any lot unless approved by Developer
7 or Association. Question. So they are not outright prohibited are they? Well I guess they are not
8 outright if the Developer or the Association but that seems to be contradictory to what has been
9 so stated in 2. So then -- question, this is from, I am sorry. Todd Darwin's cross examination.
10 Question, and I don't disagree with you on that. Answer, yes. I think that given the price range
11 of these homes and the quality and the style of these homes, if all of a sudden they started having
12 a bunch of metal buildings and storage buildings that they bought at Lowe's or utility buildings
13 and started putting them out in the backyards or the side yards I think it would definitely deter
14 from the value of these properties. So therefore looking at, of course, Section 2 it certainly
15 indicates that there is some testimony, if nothing else, Your Honor, even though we believe that
16 sections were certainly clear it certainly creates a genuine issue of fact as to being conflicting,
17 therefore, the Court needed to listen to testimony of the Defendants or the Defendants' testimony
18 to make a full adjudication on the merits. And in getting back to Section 2, which is very clear
19 about what can be put on. And when you look at obviously Section 2, Section 2 is clear about
20 nothing can be put on except a single family dwelling, and if approved in advance in writing, a
21 private detached garage. That is 2. Obviously relying on Section 7. It indicates in Section 7-
22 A, that reflects no garden shed or reflects any lean-to building. It makes reference to Sections 18
23 and 20, contends that is a situation that is not apart of the Architectural Committee decision is to
24 be construed by this entire Association. And that also effects in reference to Section 20, so
25 therefore in reviewing those Sections and in reviewing what are conflicts with those Sections it

1 certainly indicates that even though we make the argument we believe in clear violation. It
2 certainly as a matter of construing most favorably to the Plaintiff that they need to have a genuine
3 issue of fact because of the so called ambiguities. In addition, Your Honor, we talked about
4 what is important with the restrictive covenants and in talking about one of the most important
5 things that you do in restrictive covenants is the reason that you create it is to try to make sure
6 that you have human uniformity and simplicity. You have clarity with the restrictive covenants.
7 And then you also do that with the intent of reserving the values of your property and that
8 certainly is something that is most important to any type of subdivision that you do that. And in
9 doing so it certainly is important and testimony reveals that you had situations when you believe
10 that people were violating restrictive covenants that would have an effect on the value of the
11 property that is why it is a big conscious to enforce that. So with that in mind we make
12 reference to some of the issues that came into place. Not just to the value but the concern of the
13 Plaintiff that if they were going to be allowed or if they were not going to be allowed that other
14 people would begin to do so and have the opportunity to also put additional buildings. I would
15 make reference Your Honor to page 41, lines 19-25. Again that talks about the concern that
16 Mrs. Mulholland had in regards to other people and in this particular instance there is a
17 gentlemen, a Mr. Bishop that also decided to also file for the permit. Question, do you know
18 whether anyone else has applied for a permit to the Architectural Review Committee that he or
19 she wanted to build a similar shed or a shed? Answer, In Mr. Biggs' deposition he stated that the
20 Bishops applied for a permit to put up an outbuilding and Mr. Bishop displayed a big, red permit
21 sign facing my house and said permit outbuilding. Question, permit outbuilding?
22 Answer, Outbuilding. I have a picture of what it said. And in that particular instance, Your
23 Honor, that is an Exhibit that was introduced, Plaintiff's Exhibits showing - I am not quite sure
24 what number that was.-Plaintiff's Exhibit Number 8, it must be in Exhibit 9. Yes, Plaintiff's
25 Exhibits 8 and 9. This is obviously something that was a concern to Plaintiff and I think it

1 concerned others. Look at Page 14, Line 23 through 25. It says why is it important for you to
2 live in a place with restrictive covenants. Answer, because restrictive covenants help to preserve
3 the integrity of the subdivision and preserve the value of your home. How one lives in a home.
4 We will look at page 43, lines 20 through 25. This is in reference to Mrs. Mulholland's
5 testimony. What are you concerned about if a permanent restraining order is not granted
6 regarding applications such as that, Mrs. Mulholland? My concern is my property value and the
7 integrity of the subdivision and right now we are in a very bad economy market-wise. Everybody
8 knows that and if we allow structures of any kind other than what is in the restrictive covenants
9 to go up it is going to affect the value of my home if I go to sell it. Right now we are parallel in
10 the economy. Go to the next page, Your Honor. Page 44, lines 1 through 13. When the
11 economy we have gotten – this is a continuation of that answer. And we don't enforce and
12 adhere to the restrictive covenants our values are not going to rebound with the market and
13 people when they look, the majority of the people that I talk to and work with — then we get to
14 the objection. Sustained, answer. Okay. I am sorry. Continuation. I look for a subdivision
15 that is going to grow as the neighborhood in aesthetics and also my home is my biggest asset, it is
16 my money sitting in the bank. And I want to preserve my biggest asset. Question, are you
17 concerned that if there are profusion of detached structures that it is going to have a negative
18 impact on the value? Answer, absolutely. That is my biggest fear, Question, and that is why
19 you moved in a neighborhood with restrictive covenants? Answer, yes. Page 54, lines 12
20 through 19. Questions. Okay. In regards to the amendments restrictive covenants what impact
21 do you believe that it would have on the value of your property? Answer, It will have a very
22 negative impact. Question, If you look at the restrictive covenants that talk about outbuildings,
23 shed or whatever else, Architectural Committee can make any judgment it wants about any of
24 those can't it? Answer, Yes, they can. All right. The term outbuilding can be anything can't it.
25 Is that correct? Isn't that correct? Answer, yes. In reference to Page 102, Your Honor. From

1 the testimony of Mrs. Stenger, lines 19 through 24. Question. Well let me ask you this. In the
2 restrictive covenant it talks about what the restrictive covenants will allow and it talks about
3 outbuildings being there, is that correct? Answer, yes. Question. It doesn't define about what
4 kind of outbuildings we are talking about does it? No, it does not. Do you believe that is going
5 to have a negative impact on your property? Well definitely it will This is in reference to the
6 amendments. This is from the testimony of Terry Burgess, page 111, lines 1 through 19. In
7 reference to the restrictive covenants. Do you believe that it has a negative effect? Answer, yes
8 sir. Now how about Mr. Hannah's lean-to building? Answer, Yes sir. I believe that it has a
9 negative impact. Question, When you read restrictive covenants and it talks about going through
10 the Architectural Committee, is it your understanding that they go through the Architectural
11 Committee, Section 7 of the restrictive covenants is the applicable section? Answer, yes sir.
12 Question, Mr. Burgess first of all were you there at the May 14, 2010 hearing? Answer, yes sir.
13 That is the Motion for the Temporary Restraining Order, the Motion for Summary Judgment that
14 were filed by the respective party. Answer, yes sir. Question. Did you learn what the outcome
15 of that hearing was? Answer, bits and pieces of it, yes. Did you learn that there came a
16 Temporary Restraining order? Answer, yes sir. Questions, on future sheds? Answer, yes sir.
17 When did you learn about the restrictive covenants being amended? Answer, when I got the
18 initial, I guess documents in the mail and one of my friends in the subdivision mailed and
19 actually called us before that and told us. So about two years. Now we go to testimony of Mr.
20 Cramer on Page 125, lines 1 through 24. Well when two of the Board members are going
21 around door to door immediately I am thinking this can't be good with the Committee. Did they
22 knock on your door Mr. Cramer? No, they did not. But I was outside. Question, you don't
23 approve of those restrictive, amended restrictive covenants? No, I do not. Have you had an
24 opportunity to read these at all? Yes, I have. Question. In doing so does it substantially amend
25 Section 2 and Section 7 of the original restrictive covenants? Answer, yes. Question, in affect

1 what it does is it opens up the door for any outbuilding and the type structure that can go on this
2 property, is that correct? Answer, basically, yes. Question. What is your opinion if that is
3 allowed how it is going to affect your property? Answer, it will probably decrease in value as you
4 spoke earlier if I might say but I just had my house appraised about three weeks ago and I lost
5 about thirty thousand. Question, all right. This is just a follow up. Did Mr. Biggs ever
6 complain to you about those sheds prior to him constructing his own? Answer, Yes, he did.
7 I think that I already said that earlier. This is the testimony of Mr. Willard. It begins with Line
8 22, Your Honor. Question. Mr. Willard do you have a professional opinion as to the impact on
9 value in Corie Crest, if a trend would continue to allow additional detached structures? Answer,
10 Yes sir. In my opinion protective covenants, Corie Crest Subdivision is surrounded on the east
11 and south side by a subdivision of smaller sized homes and priced homes. When then we go to
12 the next page, Page 138. This subdivision was developed I believe it was the intent of the
13 developer to make this a little upper scaled because the homes are a little larger and the price
14 range in value of those homes are a little larger and with that we typically see protective
15 covenants or restrictions so that it provides some sort of insurance, type of insurance policy to
16 property owners as they are buying their homes and also over the life of them owning the homes
17 that there is some protection so that property values will move with similar homes and style and
18 quality homes within the market then they should move appropriately with those. So I think any
19 changes in those particular restrictions and covenants tends to change - well let me back up a
20 minute. I think that the restrictive covenants the way that they are defined and the way they are
21 that it helps to identify a market segment of people that potentially will look into this subdivision
22 as a qualified buyer. I think that when people are looking for homes my experience is that they
23 determine what they can afford, the type and quality of homes that they can afford and then they
24 are looking at locations and once they establish that size and what they can afford and begin to
25 look in locations then I think it is the protective covenants that keeps that neighborhood looking

1 and maintaining its value. I think once you change those restrictive covenants that you can
2 potentially change and will change the market segment that will look at that particular one and,
3 therefore, it will have influence as to the market value and the trends in the market values of
4 those homes. Question, just as a follow up what do you believe the trend would be if additional
5 detached structures are placed within Corie Crest? Answer, well in the Corie Crest Subdivision
6 the only detached improvements that the restrictive covenants as I read them calls for is the
7 detached garage and they say that it must be in keeping with the house and the structure that is
8 there. So I think that is an another thing. I think that once you get to other kinds of shed, other
9 kinds of buildings then it allows for and it continues on page 139, Lines 1 trough 22. It allows
10 for different uses to take place within the subdivision. It encourages things such as hobby
11 shops. It encourages things of other uses that was not I believe the intended uses as so outlined
12 by the protective covenants and with that I think that is what tends to change the market segment
13 of the individuals that are looking within this price range in a subdivision of this kind. Question,
14 Do you believe that detached sheds and building can distract from the market value? Answer,
15 I think given the type of subdivision that Corie Crest was I think that additional sheds and
16 improvements other than a detached garage will tend to deter any kind of valuation or
17 appreciation of the homes that are out there, yes sir. All right. Question, I believe that will also
18 be an impediment when the recovery takes place maybe? Improving in the market area?
19 Answer, yes sir. I think that what happens is since I mean we are all in down market but as the
20 recovery takes place and subdivisions begin to hopefully recover some of their values if the
21 nature of the subdivision is different than it was when we went into it for sheds or buildings or
22 out buildings are allowed within this subdivision that are different than what was called for in the
23 restrictions I think that they would tend to change the character of the subdivision and, therefore,
24 change the market segment that are looking for it and in my experience it would tend to probably
25 reduce these values because you don't see those in higher priced subdivisions or subdivisions in

1 the two twenty five - two fifty range that are restricted that have a lot of outbuildings in those
2 subdivisions and those developments. Question, all right. Your Honor, I have no further
3 questions of him. All right. On cross examination by Mr. Willard by Mr. Darwin, Page 143,
4 lines 9-25. And it continues 144, 1 through 18. Answer, question. Go down to 20 with me.
5 No garages or hobby-type storage buildings shall be used at any time as a residence, either
6 temporarily or permanently. So again it references hobby-type storage buildings, correct?
7 Answer, yes sir. And I would sort of interpret that as being in my mind and in my opinion when
8 it first talked about single family residential and it restricted it only to a private detached garage
9 and to me that would basically eliminate any of these hobby-type even though they may be
10 mentioned in the back, but they could be mentioned in the back, but if it is not really allowed
11 under Section 2, then in my opinion then those would not be allowed. Question, well how is
12 Section 2 titled? Answer, single family residential use. Question, and you would admit with me
13 that no hobby type or storage buildings to be used at the house in any subdivision correct, it is
14 restricted later in the covenants right? Answer, ask me that again now. Question, now under this
15 section the only thing that it is talking about is a single family residential use, correct? Answer,
16 Yes sir, that is for each lot. Question, that is right. So could you tell me why storage buildings
17 are referenced in other sections of the covenants? Answer, unless it is just a poor writing but I
18 mean this is the use, I mean; I guess you are asking me sort of a legal question here from that
19 standpoint. I am just saying from a real estate standpoint in my opinion that when 2 said single
20 family residential use then that is the occupied and the use of those lots and so when it is talking
21 about that it allows either a single family home and nothing more than a private detached garage,
22 okay, then I think that is saying that they are allowed one additional in my experience a single
23 family detached garage is something else for car storage. I mean today people have more than
24 two cars. They will have three cars or whatever. And it looks like a garage with a garage door
25 that kind of thing which is allowed. So I don't know what it meant by from the standpoint of

1 hobbies, I don't think that it was meant to have hobby-shops or any other kinds of usage in this
2 particular subdivision other than for single family use and enjoyment. Questions, all right.
3 I don't think to sell hobby-items or to sell anything that would not be the intent to that. The
4 production of other items that would be used and sold later was not the intent to be happening
5 out there as well. Those kinds of things is what I would think would restrict it to single family
6 residential use. Go to page 145, he talked about the inconsistency but let me go to lines I guess
7 7 through 19. I know we referenced 7 through 14. This is a reference to Mr. Darwin. Please
8 read the entire Section 18 for me, Mr. Willard? It says portable buildings, no storage buildings or
9 other similar off-site constructed storage buildings are prohibited to be placed or remain on any
10 lot unless approved by Developer or Association. So they are not outright prohibited are they?
11 Well I guess they are not outright if the Developer or the Association approves but that seems to
12 be contradictory to what has been so stated in 2. So then — Question. And I don't disagree with
13 you on that. Answer, Yes. I think that given the price range of these homes — I want the
14 emphasize on this as far as value — and the quality and the style of these homes, if all of a sudden
15 they started having a bunch of metal buildings and storage buildings that they bought at Lowe's
16 or utility buildings and started putting them out in the backyards or the side yards I think it would
17 definitely deter from the value of these properties. Now to page 148, lines 4 through 23.
18 Question from Mr. Darwin. All right. Explain this to me. What homes did you compare values
19 to that allows you to say that Corie Crest mirrors what is taking place in the market to similar
20 type houses? Answer, the comparisons that I made were based on as I stated and as I testified to
21 were based on those in School District 2 between January 1 of 2008 and August 1 of 2011.
22 They were homes that were five to ten years of age and they were between two thousand and
23 twenty three hundred square feet and they ranged in value from two hundred thousand to two
24 hundred and fifty thousand. So what I was trying to identify were homes of similar size, quality
25 and age to those that were found and built in Corie Crest. My comparisons and my judgments

1 were based on not whether they had restrictive covenants. It was based on how they were built
2 and on the market and those particular properties in subdivision, whether they allow or don't
3 allow they didn't have metal detached buildings. They might have had some detached garages
4 but they don't have those types of same facilities or whatever that are in my opinion from reading
5 these restrictions are not allowed in the Corie Crest. If people in Corie Crest want to change and
6 want to have those then that is fine. I mean that is what homeowner associations are for. What
7 I am saying is that I think that if they do start to have a bunch of metal sheds, they start to have a
8 bunch of detached sheds other than what is described as the detached garages that are there of
9 similar quality and of style then I think that the overall property values within Corie Crest for
10 everyone will begin to either erode or they will not increase at a rate that other ones of similar
11 size and age will and that was the conclusions of my study. Page 150, lines 3 through 10,
12 continued cross examination of Mr. Willard. Question, line 3. But as far as the buildings
13 themselves. What I am trying to get at Mr. Willard is you don't know if these storage building
14 are allowed if one owner is going to request to put one up or the other 33, do you? Answer,
15 No sir. That was not my job. My job was to say that if in this subdivision given the restrictive
16 covenants if a lot of detached storage buildings begin to be put up what I was asked in my
17 opinion would it have an effect. Yes sir, in my opinion it would have an effect. It would have a
18 detrimental effect on the overall property values within the subdivision. So obviously there is a
19 correlation, Your Honor, reserving restrictive covenants, violations of restrictive covenants and
20 what value they had. Next, Your Honor, I want to get to the amendments of the restrictions.
21 Your Honor, beginning with page 44, lines 22 through 25. And lines from Page 45, 1 through
22 5. Question, all right. After that Court order, Mrs. Mulholland did you discover that the Board
23 of Directors undertook an act to amend the restrictive covenants, and if so, under what
24 circumstances? Answer, I received in the mail, one day when I come home from work that the
25 Board, the sitting Board changed the restrictive covenants, amended them. We were not aware

1 of it. There was no meeting called. There was no meeting held. There was no notice that they
2 were going to change it. That is how I learned about the amendments to the restrictive
3 covenants. Most of the homeowners learned that way. But they went door to door. I
4 understand that the Jacobs and Merrell went door to door with a petition. Okay. On Page 47,
5 lines 1 through 25. And that is what they took out, is that correct? Correct. And they took out.
6 Wait a minute. Lets finish with Section 2. But that is what they took out? Yes. Question, they
7 Yes. Question, they wanted to have that – when they talked about no buildings being erected
8 they also talk about – they don't make any reference to no building shall be – okay, it is the
9 second sentence? Right. That they have left out? I want to make a comparison to the first
10 Section 2 and I will make reference to what she is talking about once I get through. Totally.
11 In its entirety? Answer, exactly. Question, is that correct? Answer, correct. Question, okay.
12 And that makes reference to what the restrictions were as far as the original restrictions that no
13 other building could be erected on this lot other than the detached single family or if approved in
14 advance a private detached garage? Correct. Question. All right. Now looking at the other.
15 Did it amend another section? Section 7. Answer, Section 7. Question, all right. In looking at
16 Section 7, we will just go through it. They are talking about that is to be deleted in its entirety?
17 Answer, exactly. Question, and so on and it talks about – it just leaves out the first sentence
18 instead of saying no building or structure, whether it is a dwelling, garage, fence or driveway?
19 Then we go through the entire page on 48. Right. Question, they want to add detached garage,
20 outbuildings, hobby-type structures, fences or roofed structures, right? Answer, right. Question,
21 So that is what they amended under Section 7-A? Answer, correct. Now what did they do with
22 Section C? Answer, Section C they left off the pitch, the 6/12 pitch. Question, the 6/12 pitch?
23 Answer, correct. Question, so there is no mention of any pitch at all, is that correct? None
24 whatsoever. Right, Because portable sheds don't have pitches on them. Question, all right.
25 You say portable sheds don't have pitches? Answer, no. I went to look at Lowe's. My

1 husband is a contractor we went to look and they really don't have a 6/12 pitch. They are using
2 more rounded and very small like that. So the pitch is not according to what the covenants were.
3 Line 17, question. Okay. Line 18, so you can go to Lowe's or Home Depot and buy it and bring
4 it in. And they took that out so it would make it legal. Question, so basically what they have
5 done, in that amendment they have opened for basically any type of outbuildings, garage, a
6 hobby-type sheds to be built on that property? Answer, correct, correct. That is how I read it.
7 All right. Were you ever provided any evidence Mrs. Mulholland of any other written signatures
8 on this so call amendment other than what was recorded at the courthouse? Answer, no. Lets go
9 to Page 49, lines 1 through 10. Question, so you did not see any other signatures other than
10 those from the Board of Directors, is that correct? Answer, right. We don't even know what
11 they presented to the Homeowners when they went door to door to collect the signatures. We
12 don't even have a copy of that. Whether it was a letter or whether it was the covenants. We
13 have no idea. All we know is that we received in the mail that this sitting Board amended the
14 covenants without having a special meeting with the homeowners, without consulting with the
15 homeowners, without anything. And may I reiterate on something, at one of the meetings they
16 discussed about taking a poll about amending the covenants and they got rejected by the
17 homeowners. When you look at, Your Honor, and lets just make sure that what we are looking at
18 is on the amendments that they left out on the amendments single family use in reference to the
19 original second sentence completely. No buildings shall be erected, altered or placed or
20 permitted to remain on any lot other than one detached single family dwelling. Not to exceed
21 two (2) stores in height. If approved in advance in writing, a private detached garage. And I
22 think the Court can see the emphasis because they did this after, of course the motion that we had
23 and at the same time that was the basis of the argument that the Plaintiff had that they violated
24 this particular Section. So what it does is it tells me two things, Your Honor. One, if they
25 decided to amend the restrictive covenants on the grounds that the restrictive covenants is vague

1 or on the grounds that it did not follow what they had practiced themselves and then secondly, I
2 have indicated that in the event that if we were successful in the violation of the original
3 restrictive covenants then their position would be while they may have been successful in that but
4 we can go forward now because we have these amended restrictive covenants and that can apply.
5 As far as Section 7, Which we made in argument in reference to Section 7, 7-A, it talked about
6 the type of building that there could be approved by the Architectural Committee. And in that
7 approval of the building plans and Section 7-A, we made the argument that allude to a garden
8 shed is not part of Section 7-A under your original restrictive covenants, Therefore, if you go
9 back and then look at Section 7 and 7-A, it substantially talks about particular things that now
10 can be approved by the Architectural Committee and those things that were approved by the
11 Architectural Committee which were not on Section 7-A says no detached garage, outbuildings,
12 hobby-type structures, fences and roofed structures shall be erected, altered or placed on any lot
13 unless the building plans, specifications and plot have been approved in writing by the
14 Architectural Committee of the Board of Directors. So basically speaking they are getting at the
15 particular issues that they wanted to defend themselves under the original restrictive covenants.
16 It is my contention and I think it is wisely so to say that a reasonable inference can be made that
17 create a genuine issue of facts in this matter for full adjudication on the merits. It is due to the
18 fact that they took this position because of two things, one, they thought that they were violating
19 the restrictive covenants or two they thought that it was vague and ambiguous and as a result they
20 wanted to clear up. And for three, they also wanted to do it to help them for their own benefit
21 because the structures were already placed there. So go back to page 51 line 1 through 25. Mr.
22 Darwin says, Your Honor, I also object to his qualification of the vote. Question, line 2, did you
23 learn that other people did not have knowledge about these amendments for Corie Crest? This is
24 still Mrs. Mulholland testifying. Answer, yes, yes. Questions, and there was no meeting
25 whatsoever? Answer, none. Question, no discussion? Answer, none. Question, just some

1 people bought it in the middle of the night and had people sign it? Answer, they went door to
2 door. Question, have you not seen any written evidence of any other people signing this, is
3 that correct? No, I never seen any signatures from the other homeowners as to what they
4 signed what they read. Question. All right. In doing these amendment is it your opinion they
5 were trying to undo what occurred? Answer, absolutely. Absolutely because they did it after
6 Judge Cole ruled. So if they didn't feel that they were in violation they wouldn't have changed
7 them. They would have left it alone. Apparently they felt that there was something wrong for
8 them to change them in the middle of the night. Question. Did you look at the particular
9 section that they relied on to try to have this amended? And I am making reference to Section 41
10 and I would like to reference 41. Would you read to the Court paragraph number, the first
11 paragraph under Section 41 of the Restrictive Covenants? Answer, the terms and conditions of
12 this instrument. Is that the one? All right. On Page 22. That is Section 41. The whole thing?
13 Question. I want the first paragraph. I want you to read the first sentence, excuse me, I am
14 sorry? I misunderstood. I apologize. That is all right. Second 41. Read the first sentence.
15 Start here. Okay. Terms of Enforcement and Amendments. These covenants, conditions,
16 easements and restrictions shall be binding upon the Developers, its successors and assigns, and
17 upon all future owners, their respective heirs, successors and assign and all parties claiming
18 under them until October 1, 2040 at which time hereof shall be automatically extended for
19 successive periods of ten (10) years thereafter, unless the then owners owning at least two-thirds
20 of the lots in Corie Crest agree in writing to terminate or change same. Is that the first sentence.
21 That is all I wanted you to read. The first paragraph. Okay. It said and I just want you to look at
22 that. It talks about a date and then it talks about being successive periods of ten (10) years
23 unless the then owners, right. What is your interpretation of that particular section Mrs.
24 Mulholland? My interpretation is that these covenants can not be changed until the year 2040.
25 They have to remain status quo. Okay. If that was not the case, if that doesn't apply does it also

1 indicate that if something like this happened again that somebody could just go in the middle of
2 the night and just terminate the restrictive covenants? Yes. That is my biggest concern.
3 Question, okay. Answer, yes. On Page 54, Line 3 through 11. In looking at this if you were
4 looking at this. This is still with Mrs. Mulholland. Answer, that is what I read there. I read
5 that paragraph and part of my covenants at closing and this is what really stuck out to me because
6 I remember having a discussion with Kathy Biggs over the phone and actually it wasn't a
7 discussion it was almost a fight regarding that paragraph. I said nothing can be changed until
8 2043. Question. What did Ms. Biggs tell you? Answer. She agreed with me at that time.
9 Question. She did. Answer. Yes, she did. In reference to Mrs. Stenger regarding the
10 amendments to restrictive covenants. This is Page 94 lines 23 to 25 and Page 95 lines 1 through
11 11. Mrs. Stenger did you have the opportunity to finally read those amendments to restrictive
12 covenants? Answer. Yes. And in reading that and the amendments, and also reading Section 41
13 of the original restrictive covenants. Answer, Okay. Did you have the opportunity there?
14 Answer, yes, I read them. Question. In reading Section 41 is there any ambiguity that you see in
15 Section 41 at all or is it clear? Answer, it is clear. Answer, All right. Being clear do you
16 believe that they had a right to amend those restrictive covenants? Answer, absolutely not.
17 Question, do you believe that can't be done until October 2040? Answer, yes. This is the
18 testimony of Mr. Burgess. This is page 112 lines 4 through 15. Mr. Burgess did you have an
19 opportunity to vote at all at that point in time other than something being put in the mail?
20 Answer, No sir. Question. Is it your understanding with this restrictive covenant that they want
21 to basically substantially amend Section 2 and Section 7? Answer, yes sir. Question, looking at
22 Section 7, it talks about no outbuildings or hobby type structures unless it is approved. I mean
23 that term outbuildings what does that mean to you? Could that be anything? Answer, the
24 definition of an outbuilding could be anything. Question, do you object to having those
25 amendments to the restrictive covenants? Answer, yes sir. The testimony from Robert Cramer,

1 page 124 lines 14 through 25. Question, soon thereafter did you learn that an attempt was made
2 to amend the restrictive covenants? Answer, I think it was hereafter. Question, All right. And
3 did you vote on those restrictive covenants? Answer, I was never approached about the
4 covenants. Question, how did you learn about the covenants being amended? Answer, I don't
5 recall if it was hearsay from another neighbor or if I ever received a copy in the mail honestly.
6 Question, all right. Well did you notice any people going from door to door? Answer, I did
7 notice that. Question, okay. All right. Did it strike you to be any different other than just
8 people going door to door or what? So I need to add 125 on that but it is line 1 through 2. Well
9 when two of the Board members are going around door to door immediately I am thinking this
10 can't be good with the Committee. This is the testimony of Mr. Perry, reference to Mr. Perry
11 page 16 it is on the second day, Your Honor, lines 13 through 20. All right. Just for
12 clarification, you didn't get the signature constituting the amendment? You just got what Mr.
13 Biggs indicated to you the particular lots numbers, correct? Answer, that is all I have seen is lot
14 numbers, no signatures other than Biggs and his wife's. He showed me what it looked like.
15 Question, he showed you the amendments that they recorded at the courthouse, is that correct?
16 Answer, yes. And then I saw the 24 lots. I didn't see the 24 signatures. Question, he just gave
17 you what those lots were, right? Answer, Yes. And going back to what I was talking about
18 basically as far as amendments just to reiterate in construing the evidence most favorable to the
19 Plaintiff in this regard and the Motion for Summary Judgment standards I think it is certainly a
20 natural inference, a reasonable inference to conclude that these restrictions or amended
21 restrictions were done to either change the restrictive covenants or to clarify any ambiguities
22 therefore presented as a genuine issue of fact. Section 7 and Section 8 kind of go together in
23 which I indicated Your Honor that I believe that the clear language in Section 41 clearly prohibits
24 an amendment or termination of restrictions until October 1, 2040 and then the owners can vote
25 to terminate or amend the original restrictions by two thirds (2/3) vote. And with all due respect

1 to the Court I believe that in your findings in the Order you believed that there were two levels
2 there and the two levels were independent of each other therefore it was your meaning that if they
3 could have a right to amend but they couldn't have a right to terminate – they could have a right
4 to amend at any time but they didn't have a right to terminate until October of 2040. In reading
5 that Section, Your Honor, and looking at it, what it talks about and an interpretation and I think
6 certainly it is an interpretation that is telling the people that read this is that it can be changed
7 after October 2040 with two-thirds votes in writing. It specifically tells you and it emphasizes in
8 Section 41 as to the terms and conditions of this instrument may be amended and changed only
9 upon the written agreement of the owners on these two-thirds of the lots in Corie Crest. This is
10 what has happened here is that when someone goes and buys a house and they use their due
11 diligence, and their due diligence looks at restrictive covenants they want to be told that if I buy
12 this and I can see the provisions of what I can do and what I can't do. I know that at least, I
13 know a date certain into which restrictive covenants can not either be terminated or changed. I
14 am just looking at it. I am not trying to get outside the reigns but they are a numerous restrictive
15 covenants that put that language in there and the basis for why they put that language in it is to
16 reflect the interval and that is to reflect the intervals that it is a residential community and the
17 developer desires to provide the preservation of values set for the community and for the
18 maintenance of the facilities and the desire to subject all lots at Corie Crest to restrictive
19 covenants. What has occurred here and I get to the other. What has occurred is that the Court
20 has taken the position that you can amend it and it doesn't mean that they can't go next week in
21 the middle of the night, if that is what they want to do, and go ahead and delete five sections, six
22 sections, seven sections, or eight sections as long as they have got the issue that you just can't
23 terminate them but by that ruling what you can do is that you emasculate the intent and
24 provisions of what that agreement says. So the word terminate, terminate in many ways just
25 becomes a symbol because you can have certain amendments to come into place to the extent

1 that you might as well terminate it because there is nothing in there or there is no exemption to it.
2 So with all due respect to the Court, I do believe that the Court may have misapprehended that
3 particular language because that was the purpose of any restrictive covenants. If you had an
4 owner or any resident that can go in there and then be told oh by the way we can go ahead and
5 amend this and put a bunch of mobile homes in there any time we wants to or we can put a barn
6 in here, we can do anything, we can amend it at any time. If that is what they would look at then
7 you are defeating the whole purpose of restrictive covenants. Those restrictive covenants were
8 supposed to give a set time line and this set time line according to Mr. Willard is an upper scale
9 residential neighborhood that is between two hundred twenty five to two hundred seventy five
10 thousand dollars. It is in a nice Boiling Springs subdivision and that developer also can amend,
11 and that is why this developer took it upon himself to have an impact for restrictive covenants
12 that especially says that if you buy this house here, if you buy this home, these covenants can not
13 be changed for the next thirty five (35) years. I promise you that. That is way different from
14 saying oh no there is two different levels here and you can change it. You just can't terminate it.
15 You might as well say you changed it. On the restrictive covenants and it is an issue where they
16 make the argument that two-thirds of the people voted. It is not in the exhibits. There is
17 nothing in the record to show there is any direct evidence that two thirds of those people voted
18 for anything. I don't think that it is encumbered upon me as the Plaintiff to disprove that they
19 did have the two-thirds vote. I think it is encumbered upon the Defendant to do so. And in
20 doing so the Defendant would have had a duty to say Your Honor we do have valid restrictions
21 and let me show you this particular item. What they have showed was some lots but from the
22 testimony you heard as far as the numbers there is not any signatures and I would further submit
23 to you to is that when you are amending restrictive covenants that those restrictive covenants are
24 meant to say that if you are amending that they have to have two thirds voting rights. If you
25 have got a situation where someone contest that right or says no, I didn't vote for that. I didn't

1 understand that. Then all you have is a representation of the Board of Directors basically saying
2 and the Board of Directors we got two-thirds vote. So therefore, when you look at that and you
3 look at that thing you can't just necessarily certify and an amendment of the restrictive covenants
4 are so vital in a situation where they are needed to have all signatures on amendment to
5 restrictive covenants. Therefore, looking at that and taking that done, there was no meeting, no
6 evidence of signatures that were put in the record that would show that one, there were two third
7 signatures or two if they were, they needed to be recorded at the courthouse to reflect
8 certification of the declaration of these amendments. Your Honor, in reference to Section 10, I
9 believe that one important element that the Court needed to look at and it gets back is that there
10 were people that didn't even have the opportunity to vote that are unit owners. There were unit
11 owners of homes that were denied the opportunity to vote. If you look at Plaintiff's Exhibit
12 Number 13, 14 and 15 and 16, it talks about voting rights. It talking about – it says all persons
13 who hold interest in lots shall be members, and the vote for such lot shall be exercised as the
14 owners determine among themselves. In no event shall more than one (1) vote be cast for any
15 lot. Section 36 of the original restrictions. Section 36-A, every person or entity who is a record
16 owner of a fee simple or undivided fee interest in any Lot which is subject by covenants of record
17 to assessment by the Association shall be a member of the Association, provided that such person
18 or entity, who holds such interest merely as a security. The Association voting rights. Voting
19 rights. 36-B. Class A. Class A members shall be owners defined in paragraph 1 with the
20 exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in
21 which they hold the interest required for membership by paragraph 1. Meetings of members,
22 Article 3 of the Homeowners Association talks about annual meetings. It talks about special
23 meetings. It talks about notice of meetings. It talks about proxies. I have been an attorney for
24 thirty eight (38) years and been on this earth sixty four (64) years and I don't believe, I may be
25 wrong, maybe there have been some times that I don't recall, I have never encountered a situation

1 where we had people that were residents of a subdivisions and recognizing that there was a
2 case going on, pending case, recognizing that case that they had that they were denied the right
3 for summary judgment in the proceeding and the temporary restraining order. They took it upon
4 themselves to try to cure that problem by having people go knock door to door in the middle of
5 the night to get those votes. Now they didn't go knock on people's doors that they had doubt
6 about. They knocked on doors that -- well I don't know what the conversation was and I don't
7 know what the substance was and I don't know what the policy was. Well I mean we had people
8 that are entitled to vote and to be heard and the majority may not want to hear about it but they
9 certainly have the right to be heard and above all they have the right to vote. And I submit to
10 you, Your Honor, that maybe the procedure that they undertook was the procedure because they
11 didn't want to discuss it. They didn't want to discuss the restrictions. Because if they started
12 getting in a discussion it may have been a situation as she said there was a prior meeting at one
13 time and talked about amending the covenants and there were people that didn't want to do that.
14 This is not us. I mean and the philosophy but this is not us. This is not people that want to
15 create a restrictive covenant and create membership for people entitled to vote. So when is the
16 next time. Under what circumstances will be the next time that they disagree and Mrs. Stenger,
17 Mrs. Mulholland, Mr. Cramer, Mr. Burgess or whoever the others that decide not to go. My
18 contention on this exception, Your Honor, not only did they violate the requirements of the
19 section, Article 2 for Membership but also Article 3 - The Homeowners Association. And above
20 all, I think that even to elaborate they violated fundamental due process. The most basic right
21 that we can have and that is to vote. And vote because we have a vested interest in this place.
22 They have a vested interest. You know, there may be some personal dislike here but I can tell
23 you one personal dislike from our testimony. Whatever these people testified to their main
24 concern was their neighborhood and their main concern was if that wasn't complied with it
25 would upset the values of our property and our integrity of our subdivision. And that also was

1 fully supported by the appraiser, Mr. Willard, when he said that I see that it will deter the value
2 and certainly it is substantiated with that. Your Honor, I would just bring up the *Buffington*
3 case, which you may be familiar with. And in the *Buffington* case, of course, it talks about if
4 there is once a restrictive covenant is violated it talks about a rule to reverse the previous other
5 cases, the lower cases, that they overrule and citing *Buffington*. So we take the position that even
6 if they are finding that last page that restrictive covenants violated the Court must consider
7 equitable doctrine to certify the party when deciding to enforce a covenant. And it is our
8 contention, Your Honor, throughout the testimony from our client and others that they did violate
9 restrictive covenants certainly indicates to me that you must consider the equitable doctrines.
10 You can not just rule on the matter of law. As far as Section 12, Your Honor. I will indicate
11 Section 12, is one that will be I guess held up based on what the Court decides. Based upon that
12 Your Honor, based upon the Motion, based upon the citing, and the testimony, I make the
13 following arguments. One, is that there is the clear matter that the violation of the restrictive
14 covenants took place and we take the position that the temporary restraining order needs to take
15 effect. Secondly, we are convinced Your Honor that there is enough evidence to create
16 ambiguities and natural emphasis in order to prevent a standard motion for summary judgment
17 and this Court needs to listen to testimony from the Defendants for final adjudication upon the
18 merits. And third, Your Honor. The Court needs to determine that the amended restrictive
19 covenants are null and void on the grounds that they violate the original restrictive covenants and
20 that due to the fact that they can not be terminated or changed until October 2040, and that it
21 violated the rights guaranteed these owners as voters under Section 2 and 3 of the Bylaws and
22 Section 36 of the Restrictive Covenants. Thank you.
23 THE COURT: All right. Mr. Darwin.
24 MR. DARWIN: Thank you, Your Honor. May it please the Court. Since receiving Mr.
25 Calmes' motions about six (6) months ago in this case, Your Honor, and the last two (2) hours, I

1 have been left scratching my head for those six (6) months and again this morning thinking that I
2 missed something when I was in law school. And thinking that I missed something about who
3 has the burden of proof in a trial and for the life of me I think it is the Plaintiff. I don't think the
4 Defendant in any trial has to prove a single thing. Mr. Calmes carries that burden of proof.
5 Mr. Calmes rested his case and these people that he talks about, Richard Biggs, Kathy Biggs,
6 Judson Merrell, Torrey Jacobs, the people that went around and got the votes. The people that
7 allegedly told him hey we didn't like these buildings we said that these covenants can't be
8 amended under Section 41. They were sitting right here. Right here. They didn't have to be
9 subpoenaed. They were right there. He could have easily called them in his case and he chose
10 not to. I don't know if that was a tactic decision. I don't know if he wasn't thinking. I don't
11 know what the reason was but he didn't call them as witnesses. He rested his case. We don't
12 have to prove a thing, Your Honor. That is the first issue I want to bring out as far as the burden
13 of proof. The second thing is almost all of those 12 Exceptions he referred to in your Order talk
14 about a ruling on the merits of the case. And again, I have been scratching my head for six (6)
15 months. I have reread Rule 41(b) about a hundred times now and I am going to read it again for
16 the record. It says, as to the Plaintiff in actions tried by the Court without a jury has completed
17 the presentation of his evidence the Defendant without waiving his right to offer evidence and in
18 the event the motion is not granted may move for a dismissal on the grounds that upon the facts
19 and the law the Plaintiff has shown no right to relief. The Court as the trier of the facts may then
20 determine them and render judgment against the Plaintiff or may decline to render any judgment
21 until the close of all the evidence. If the Court renders judgment on the merits against the
22 Plaintiff, the Court shall make findings as provided in Rule 52(a). Unless the Court in its order
23 for dismissal otherwise specifies, a dismissal under this subdivision operates as an adjudication
24 upon the merits. That is what happened six (6) months ago. We heard this case for a day and a
25 half. You as wearing both hats, as the finder of facts and the adjudicator of the law ruled

1 against the Plaintiff. . You didn't think that she met her burden. You didn't think her witnesses
2 were creditable. As a matter of fact, you specifically stated on the value issue with Mr. Willard
3 that you do not find it persuasive as far as the valuation in the subdivision. And I didn't get the
4 whole transcript like Mr. Calmes so I am not going to kill any more trees. I got a three (3) page
5 printout of your ruling, Your Honor. And that is what I am based that when I did my order and
6 not only that you signed an order to that effect. That is in your six (6) page order. The law is
7 clear and Mr. Calmes again saying and going through all of the testimony from six (6) months
8 ago that weren't these sections ambiguity - weren't there ambiguities. Well there may have been
9 and the case law is clear and you put on Page 3 of your order any ambiguities are construed
10 strictly against the party attempting to enforce them when you are dealing with restrictive
11 covenants that is against Mrs. Mulholland. There is nothing that has been presented here today,
12 Your Honor, that would change anything that you heard. You heard all of the testimony not just
13 the parts that Mr. Calmes highlighted. You heard it all. So I am going to go through a few of
14 those things and again I am not going to belabor the point, Your Honor. Again I think the case
15 law is clear with the language of restrictions which is equally capable of two or more different
16 constructions, that construction will be adopted which least restricts the use of the property.
17 That is *Davey v. Artistic Builders*, and it is on Page 3 of your Order of September 9th, Your
18 Honor. It is clear that the Covenants, there are some things in Sections 2 and 7 that might
19 support the Plaintiff's case and it is also clear that in Sections 8, 18 and 20, I believe, that it says
20 - it makes specific references to hobby-type storage buildings and how they can be approved if
21 the architectural review board approves them. One thing I think that the Plaintiff keeps missing
22 is that these folks that have been duly elected as board members, she had a right to vote which
23 the voting sections that Mr. Calmes read as to due process happen every year in the annual
24 meeting and that board, that same board was elected three if not four straight years. If you don't
25 like something and the people that you elected and Mr. Calmes know people that have lost

1 elections and I know people but we elect official every day, state level, county level, national
2 level. I don't agree with everything they do. I am sure that no one in this courtroom agrees
3 with every decision they make but we are left with it. That is our due process. We either choose
4 to vote or we don't vote but we are struck with what the majority says and those are the people
5 that we put in office. And whatever they decide is what we are stuck with unless we vote them
6 out. That is due process. They get it every year. They may not like the decisions that the
7 Board makes and I don't like the decisions that our elected officials make all the time but I am
8 bound by them. We have to vote them out of office or run and try to change things ourselves.
9 Your Honor, again he had gone back to Judge Cole's ruling and as to the summary judgment
10 standard and obviously the Court has before it one of the Affidavits that were submitted by both
11 sides. You for a day and a half heard the testimony. You saw these witnesses and you heard
12 them testify. You can either choose to agree with them or you can choose to disagree with them.
13 You disagreed with the Plaintiff's case. You ruled on my Motion to Dismiss and you signed the
14 order to that effect. Nothing has changed. Nothing from what Mr. Calmes said and the
15 motion, and none of the testimony that he quoted should change a thing. And again he had the
16 right to call any one that he wanted to in his case in chief. There were no restrictions. None at
17 all. As a matter of fact, he has sued the Corie Crest HOA as a party. Which means any
18 homeowner out there was a potential Defendant that she had every right to call. Every single
19 right to call he just didn't do it. He didn't depose them. He deposed a few people. Lets get to
20 the covenant part, Your Honor. Section 41 state all they need is two-thirds written agreement.
21 What was filed for the amendments of record in Spartanburg County in 2010, paragraph 5, says
22 whereas owners of two-thirds of the lots in Corie Crest have consented and agree to the
23 following amendments in writing. Written consent is then supplied to the Association. He says
24 it was covenants in darkness or whatever. He had every right to depose those people. He had a
25 right to see the written signatures. I never got anything like that. He had every right to call Mr.

1 Merrell who is here and Mr. Jacobs who is here at the trial because they are the two that he said
2 his client said went around and got the signatures. Say hey what did you tell the homeowners.
3 What did you discuss Where are the written signatures. He had every right to avail himself of
4 that before we came to trial and he chose not to. I don't have to prove anything. I don't have to
5 submit any evidence. The adjudication on the merits was had, and again at least fifty (50)
6 percent if not more of his twelve (12) exceptions to your ruling keep talking about the merits of
7 the case and I am just dumbfounded by what he is referring to. You heard the merits of the case.
8 That is the Plaintiff's case. When she rested that was the merits of her case. And you didn't
9 agree with them. Your Honor, again the property value and again you inserted in your order on
10 Page 4, again I read your exact statement when you ruled from the bench after the second day
11 trial that Mr. Willard, his testimony is not persuasive. As a matter in your order and in his
12 report that was put in the record it refutes that any home values, the observation says that the
13 house was sold and he had to compare them with \$98.57 which compared to a home that was
14 \$95.13. So it was Three & no/100 (\$3.00) dollars more a square foot in Corie Crest. The
15 Plaintiff put no evidence up other than we think it is going to diminish our property values.
16 Well Mrs. Mulholland could have put in a current appraisal of her home. She chose not to. She
17 didn't do it. There is no current appraisal put in the record. There was no appraisal from Mr.
18 Burgess or Mr. Cramer, what have you. Now getting back to the crux of the key issue of the
19 law suit when it was filed about a storage building, one of their own witnesses, Your Honor, Mr.
20 Cramer testified that hobby-type storage buildings are allowed pursuant to the covenant. One of
21 their own witnesses, Mr. Burgess, approved the first Hannah building, structure. These are
22 people that were apart of the Architectural Review Committee which Mr. Burgess was and he
23 approved it. These are the Plaintiff's own witnesses. That said, Mr. Cramer said it was correct
24 they just have to be in harmony with the dwelling. And I think the testimony of Mr. Willard
25 says that it should be in harmony with the main structure. So Your Honor, I don't see anything

1 that has been presented here today that should persuade you at all to change the ruling and the
2 order that you signed back when it was filed on September 9, 2011. Thank you.

3 THE COURT: Mr. Calmes.

4 MR. CALMES: Just a couple of brief replies, Your Honor. One, he talks about he doesn't like
5 election results and I don't either at times but he is missing the point. The point is that at least
6 we have an opportunity to vote. We may not like the outcome but we at least have the
7 opportunity to vote. And that is what their grievance is about. They totally did not. They
8 weren't even aware of it. It is like we wake up one day and we found out that the governor has
9 been elected and we don't know what date the governor got elected because we weren't aware
10 that it was going to be a voting day. That is the point. You also, Your Honor, in your order you
11 talk about even in the Association on page 3, that the Association asserts that the original
12 restrictions provided for the types of buildings and that it decided to amend to clarify any
13 ambiguities. With all due respect, I think Your Honor, that the point is that I am looking at that
14 standard, that standard has got to be met. Obviously, those ambiguities have enough weight, are
15 genuine the hearing has to be decided. So they themselves know why they amended the
16 restrictive covenants because they admit that it was ambiguous. And with that indication, they
17 have the responsibility or whatever to clarify it. We met our burden, Your Honor. And I think
18 that our burden was outlined in what I shared. I think that I said it in details.

19 THE COURT: All right. Anything further?

20 MR. DARWIN: Your Honor, the only thing that I said about elections, we vote congress in and
21 congress amends the constitution. So it is safe to say without congress we wouldn't have jobs.
22 The same thing here. They had every rights to go get two thirds (2/3), Section 41 says two-
23 thirds written vote. On that issue, that is the last point I would make, Your Honor.

24 THE COURT: All right. Mr. Calmes anything?

25 MR. CALMES: I just saying talk about the vote. And I guess we get to where we put common

1 sense, Your Honor. Most of the time when we talk about a vote we are talking about a vote and
2 what the people, everybody knows what they are going to vote on. It is not an unknown
3 procedure. Thank you.

4 THE COURT: I have reviewed Mr. Calmes' motions. I have reviewed my order. I have
5 reviewed the transcript of the portion of my order that was printed out. I have also read the
6 transcript of the day and the half of trial and I have also reviewed once again the order of Judge
7 Cole filed June 15th with the Clerk and not dated on the – and as I remember at the time of the
8 trial I was not in conflict with Judge Cole's ruling. Now the Plaintiff has relied on this heavily
9 that somehow Judge Cole's ruling is controlling in this case. This is at a Motion for Summary
10 Judgment, a Motion for a Temporary Restraining Order and a Motion to Dismiss Mr. Mertz as a
11 party to the case. Had I been in Judge Cole's shoes I would have ruled exactly the same way.
12 One, Mr. Mertz is not a homeowner. That was admitted during the hearing. Number two, that
13 the Motion for Summary Judgment was heard solely on the pleadings and everything on file at
14 the time. Judge Cole did not have the benefit of a day and a half of hearing the Plaintiff's case
15 which I did. And also, without having any more information it is important and it would have
16 been for me to maintain the status quo of the case, which he did. So to rely on Judge Cole's
17 order as somehow controlling in this fact or in this case is not well founded as far as reliance. I
18 have heard the case. I have heard all of Plaintiff's witnesses and again I have heard Mr. Calmes'
19 argument that I should amend the findings and conclusions and or grant a new trial but I have
20 heard nothing today that would change my opinion or my ruling that I have previously entered
21 and therefore I will deny the motion for a new trial and a motion to amend the findings of facts
22 and conclusions of law which have been filed by Mr. Calmes on behalf of the Plaintiff herein.
23 And Mr. Darwin if you will prepare an order to that effect and as to the motion for the
24 assessment of attorney's fees I have not see those, is that motion with all of the supporting
25 documents in the file?

1 MR. DARWIN: Your Honor, the Motion was filed and that is why we were here on January 4th.
2 THE COURT: Right.
3 MR. DARWIN: And then Mr. Calmes brought it to the attention and I agreed with him that it
4 would be premature until you ruled on his motion and I brought the Affidavit of Attorney's Fees
5 with attachments and I will be glad to leave those with both of you and we can set it for another
6 time or I will be glad to give Mr. Calmes time to review it and we can go through it. I am
7 prepared to go forward now, Your Honor. All it reflects are my actual billings in this case. I
8 know sometimes the Court can set attorney's fees on different standards. All I have asked for
9 and I have set forth each itemized billing that was sent to the client or would have been sent to
10 the client including yesterday's preparation and of course what we include today but I have that
11 and however, Your Honor wants to proceed under that is certainly fine by me.
12 THE COURT: Mr. Calmes.
13 MR. CALMES: Your Honor, I believe I need the opportunity to look at the Affidavit. I haven't
14 had the opportunity to cross examine Mr. Darwin.
15 THE COURT: All right, Mr. Darwin why don't you do this.
16 MR. DARWIN: Yes sir. Whatever you need, Your Honor.
17 THE COURT: Furnish a copy of your Affidavit to Mr. Calmes and also file one with the Court.
18 MR. DARWIN: Yes sir.
19 THE COURT: And I will set it where I have had a chance to review it and Mr. Calmes can then
20 at the time of the hearing review or whatever he desires on the question of attorney's fees.
21 MR. CALMES: Certainly.
22 THE COURT: Are you both in a position to set that hearing today?
23 MR. CALMES: I would have to check with my secretary, Your Honor.
24 MR. DARWIN: Your Honor, I think if we can do the same thing that we did on January 4th and
25 just go out and get two or three alternate dates from your staff.

1 THE COURT: All right. Lets do that. Why don't you sit here and I will retrieve the book. I
2 don't have it on my computer.
3 MR. DARWIN: I don't know how long it would take to cross examine -- I can't imagine that
4 we would need a whole morning like we did for this one. I would think that an hour would
5 certainly be sufficient but --
6 THE COURT: Mr. Calmes.
7 MR. CALMES: I would think that an hour would be sufficient.
8 THE COURT: All right. Lets see. I can hold the hearing on March 14th at 9:30 or March 15th
9 at 9:30. I have cancellations on those days. And March 21st at 9:30 or March 22nd at 9:30.
10 That is four days. Hopefully, between the two of you, you can arrive at a time. All right. And
11 Mr. Darwin you will file your Affidavit.
12 MR. DARWIN; Your Honor, I may if you don't mind wait until after I have drafted the order so
13 I can include all the time..
14 THE COURT: All right.
15 MR. DARWIN: It should probably be on there.
16 THE COURT: You can just contact someone in the office because Sharon is out for the week.
17 MR. DARWIN: Once Mr. Calmes and I have agreed on a date I will probably just walk over
18 and make sure we are scheduled --
19 THE COURT: That is fine. Just do that and select one of those dates.
20 MR. DARWIN: Yes sir.
21 THE COURT: All right. And if you will prepare the order and send a copy to Mr. Calmes
22 before you submit it.
23 MR. DARWIN: Absolutely, Your Honor.
24 THE COURT: All right.
25 -----END OF MOTIONS -----

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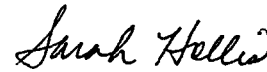
2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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5 CERTIFICATE

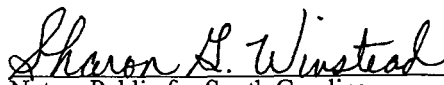
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7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Motions proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 23rd of February, 2012.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13
14 
15 Sarah Hollis
16 Court Reporter

17 SWORN to before me this
18 3rd day of May, 2012

19 Spartanburg, South Carolina.

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22 Notary Public for South Carolina
23 My Commission Expires: September 7, 2016.
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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Katheryna Mulholland-Mertz,

Plaintiff,

vs.

Corie Crest Homeowners Association
of Spartanburg, Inc.; Richard T. Biggs;
Kathleen A. Biggs; James Hannah;
and Elizabeth A. Hannah,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-42-5129

**ORDER GRANTING DEFENDANTS'
RULE 41(b) MOTION TO DISMISS**

THIS MATTER came before me for a trial on the merits on August 24-25. The case was referred to me by a *Consent Order of Reference* signed by Judge Mark Hayes, II and filed on March 24, 2011. After the Plaintiff completed the presentation of her testimony and evidence, Defendants' counsel made a motion to dismiss pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure ("SCRCP"), arguing that upon the facts and the law the Plaintiff had shown no right to the relief she was seeking. After considering the evidence presented by the Plaintiff in her case in chief, and having considered the arguments of counsel and the applicable law, I hereby make the following findings of fact and conclusions of law pursuant to Rule 52(a), SCRCP:

Plaintiff is the owner of a lot and home in the Corie Crest Subdivision located in Boiling Springs, South Carolina. On September 17, 2009 she filed a lawsuit seeking a permanent injunction against the Defendants, consisting of the Corie Crest Homeowners Association of Spartanburg ("Association") and various other landowners in the Corie Crest Subdivision, Richard T. Biggs and Kathleen A. Biggs ("Biggs"), and James Hannah and

Elizabeth A. Hannah ("Hannahs")¹. Plaintiff subsequently filed an amended complaint over the Amended Covenants filed by the Association. Specifically, Plaintiff claims that the Defendant landowners have inappropriate ancillary buildings on their properties in violation of the *Declaration of Protective Covenants, Conditions, Restrictions, and Easements* of the Corie Crest Subdivision ("Restrictions"). In support of her position, Plaintiff relies on Section 2 of the original Restrictions, which reads in pertinent part as follows:

Single Family Residential Use: No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling, not to exceed two (2) stories in height, and, if approved in advance in writing, a private detached garage.

Additionally, in her complaint, Plaintiff refers to Section 18 concerning the construction of ancillary outbuildings.

Portable or Metal Buildings Prohibited: Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot unless approved by the Developer or Association.

Based on these provisions, Plaintiff sought relief from the Court to enjoin and permanently restrain the Defendants from violating the Restrictions and to order the removal of such buildings and structures that are in violation of the Restrictions. As to the Association, Plaintiff sought a Declaratory Judgment that it breached its duty to enforce the Restrictions and that it had improperly amended the Restrictions. Biggs and Hannahs responded by alleging that they got proper approval from the Association prior to constructing the buildings

¹The Plaintiff's husband, Kenneth J. Mertz, and an additional homeowner, Joseph P. Denicola, were parties to the original lawsuit. Mertz was dismissed by Court Order prior to the trial of this case, and Denicola was released from the lawsuit by a prior filed Stipulation of Dismissal.

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[Signature]

on their properties, and that furthermore the Restrictions provide for and expressly allow the buildings they constructed on their properties. The Association asserts that the original Restrictions provided for the types of buildings it approved for the Biggs and the Hannahs, and that it decided to amend the Restrictions to clarify any ambiguities that may have been contained therein.

It was apparent from the testimony presented to me that the Plaintiff and her witnesses blatantly ignore those portions of the Restrictions that provide for "hobby-type/storage buildings" and that they continually cited only the sections that they believe support the Plaintiff's claims. However, restrictive covenants are contractual in nature, so the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined by the whole document. Penny Creek Associates, LLC v. Fenwick Tarragon Apartments, LLC, 651 S.E.2d 617 (Ct. App. 2007). Furthermore, it is a settled rule of law in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions, that construction will be adopted which least restricts the use of the property. Davey v. Artistic Builders, Inc., 211 S.E.2d 235 (1975). In construing restrictive covenants, ambiguities must be strictly construed against the party seeking to enforce them. Queen's Grant v. Greenwood Development, 628 S.E.2d 902 (Ct. App. 2006).

When reading the Restrictions at issue in this case as a whole, it is clear to me that hobby-type/storage buildings are allowed, and Plaintiffs' claims are meritless. Alternatively,

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CLERK OF SUPERIOR COURT
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even if the terms of the Restrictions are ambiguous, then those ambiguities must be strictly construed against the Plaintiff as the party seeking enforcement of the Restrictions.

Sections 8, 18 and 20 of the Restrictions specifically make reference to hobby-type/storage buildings, and what limitations on the materials to be used in their construction are to be placed on them within the subdivision, as well as their use. There is no language in the Restrictions prohibiting such buildings outright. It is clear from the evidence presented to me that the buildings approved by the Architectural Review Committee appointed by the Association and constructed on the Biggs and Hannahs properties, are aesthetically pleasing and in keeping with the Restrictions.

On this topic, one of the Plaintiff's witnesses, Mark Cramer, testified that in his opinion hobby-type/storage buildings are allowed by the Restrictive Covenants as long as they are aesthetically pleasing and in harmony with the main dwelling. Plaintiff's expert witness, Woodrow Willard, also testified that the Biggs structure is aesthetically pleasing and in harmony with the main dwelling. As for Mr. Willard's report, it does not support the Plaintiff's theory of diminished property values within Corie Crest, and actually does just the opposite. His report shows that "Corie Crest Subdivision does mirror what has taken place in the overall market for similar size and price range homes." It also points out that the one home sold within the subdivision in 2011 sold for \$98.57 per square foot, while the median for his comparison homes was \$95.12. Mr. Willard's report also states that it only applies to buildings "outside those outlined in the protective covenants." Therefore, since I find that these types of structures are allowed by the Restrictive Covenants, I find that Mr. Willard's findings as to valuation of properties within Corie Crest is not persuasive.

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The Plaintiff also argues that the Association had no authority to amend the Restrictions according to Section 41 of the Restrictions. Section 41 reads:

TERMS OF ENFORCEMENT AND AMENDMENTS: These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until October 1, 2040, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then owners owning at least two-thirds (2/3) of the Lots in Corie Crest agree in writing to terminate or change same.

The terms and conditions of this instrument may be amended only upon written agreement of the owners owning at least two-thirds (2/3) of the Lots in Corie Crest.

Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of the terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development.

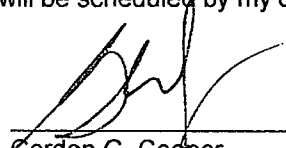
The Plaintiff opines that this Section means the Restrictions absolutely cannot be amended until October 1, 2040. This is simply not an accurate reading of this section as a whole. Section 41 has two levels. The first level is that the Restrictions will remain in force until October 1, 2040, and at that time will be automatically renewed for the successive ten (10) year periods unless two-thirds (2/3) of the owners at that time agree in writing to terminate or change the same. The second level is that the terms and conditions of the Restrictions may be amended or changed only upon written agreement of the owners owning at least two-thirds (2/3) of the lots in Corie Crest. Therefore, while the Restrictions cannot be terminated until, at the earliest, October 1, 2040, they can be amended or changed. The *Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision*, which was recorded in the Spartanburg County Register of Deeds Office on August 26, 2010 at Deed Book 96, Page 965, states that "Owners of at least

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two-thirds (2/3) of the Lots in Corie Crest have consented and agreed to the following amendments to the Declaration in writing which written consents have been supplied to the Association." The Plaintiff provided no evidence to refute the assertion in those filed amendments that this statement was inaccurate, so that issue is moot and I find as a matter of law that the Association had a right to amend the Restrictions as provided therein, and that owners of two-thirds (2/3) of the Lots in Corie Crest consented to the amendments.

Therefore, based upon my review of the relevant case law, the documents on file, as well as the testimony, exhibits and arguments of counsel presented to me during the trial of this case, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Plaintiff's Complaint and Amended Complaint are hereby dismissed in their entirety, and judgment is hereby entered in favor of the Defendants as to all causes of action brought by the Plaintiff in her pleadings.
2. The temporary restraining order previously granted by order of the Honorable J. Derham Cole filed on June 15, 2010 is hereby terminated.
3. The structures on the Biggs and Hannahs properties are consistent with the terms of the Restrictions and are allowed to remain on their respective properties.
4. A subsequent hearing on the Defendants' request for attorneys fees pursuant to the terms of Section 42(D) of the Restrictions will be scheduled by my office.


Gordon G. Cooper
Spartanburg County Master-in-Equity

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M. HOPE-BLOCKLEY

September 9, 2011

Spartanburg, South Carolina

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(13)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

CIVIL ACTION NO.: 2009-CP-42-5129

Katheryna Mulholland-Mertz,

Plaintiff,

vs.

Corie Crest Homeowners Association
of Spartanburg, Inc.; Richard T. Biggs;
Kathleen A. Biggs; James Hannah; and
Elizabeth A. Hannah,

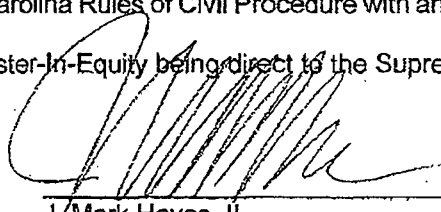
Defendants.

CONSENT ORDER OF REFERENCE

It appearing that pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the parties hereto have agreed and stipulate that the issues in this action be referred to the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County; now, on Motion of the attorneys for the parties, it is

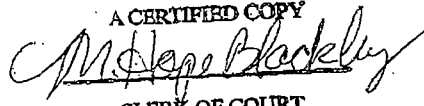
ORDERED that this action is referred to the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, to take the testimony arising under the pleadings and make his findings of fact and conclusions of law, with authority to enter final judgment pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure with any appeal from the final judgment entered by the Master-In-Equity being direct to the Supreme Court.

IT IS SO ORDERED.


J. Mark Hayes, II
Presiding Judge, Seventh Judicial Circuit

February 25, 2011

Spartanburg, South Carolina

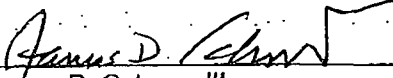
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SPARTANBURG COUNTY
BY: M. Hope Blackley, D.C.
DATED 3/4/11

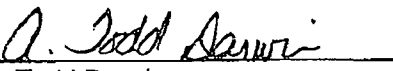
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WE SO MOVE:


James D. Calmes, III
Attorney for the Plaintiff


A. Todd Darwin
Attorney for Defendants

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M. HOPE BLACKLEY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-42-5129

Katheryna Mulholland-MERTZ and Kenneth J. MERTZ,

CORIE CREST Homeowners Association of Spartanburg, Inc., Richard T. BIGGS, Kathleen A. BIGGS, James HANNAH, Elizabeth A. HANNAH, and Joseph P. DENICOLA,

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC; ☐ Rule 11(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

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

This matter came before this court on defendants' motions to dismiss and for summary judgment and plaintiff's motion for temporary injunction. This is an action to enforce restrictive covenants applicable to real property in a residential subdivision. Plaintiff Mulholland-Mertz is a property owner while plaintiff Mertz is not. Mulholland-Mertz claims covenants (section 2) prohibit anything but "one detached single-family dwelling" and "if approved ... a private detached garage" on any lot. Section 18 prohibits on any lot "portable buildings, metal storage buildings, or other similar off-site constructed storage buildings ... unless approved by Developer or Association." Defendants claim section 8 references building materials to be used for construction of "any building, garage, or hobby-type/storage building ..." on the properties and by implication permits those structures to be erected if approved.

Summary judgment is not appropriate if facts are conflicting or if the inferences to be drawn from the facts are doubtful and a further inquiry into the facts is desirable to clarify proper application of the law. All ambiguities, conclusions, and inferences arising from the evidence must be most strongly construed against the moving party.

After consideration of the record and argument of counsel this court finds defendants' motion to dismiss Kenneth J. Mertz as a party should be and is therefore granted. Defendants' motion for summary judgment should be and is therefore denied. Plaintiff's motion for temporary restraining order should be and is therefore granted.

J. Derham Cole, Presiding Judge

This judgment was entered on the day of June, 2010, and a copy mailed first class this day of June, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

James D. Calmes, Esq.
Post Office Box 16135
Greenville, South Carolina 29606
ATTORNEY(S) FOR THE PLAINTIFF(S)

A. Todd Darwin, Esq.
Post Office Box 1897
Spartanburg, South Carolina 29304
ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
CLERK OF COURT, M. Hope Blackley
Sharon Winstead, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Katheryna Mulholland-Mertz and
Kenneth J. Mertz,

Plaintiffs,

vs.

Corie Crest Homeowners Association
Of Spartanburg, Inc., Richard T. Biggs,
Kathleen A. Biggs, James Hannah,
Elizabeth A. Hannah, and Joseph P.
Denicola,

Defendants.

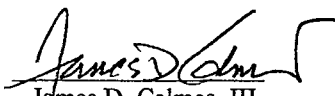
MOTION FOR TEMPORARY
INJUNCTION

C. A. No. 2009-CP-

42-5129
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CLERK OF COURT
MARC KITCHENS

Pursuant to Rule 65, SCRCP and all applicable statutes, cases, and rules of Court, the Plaintiffs will, within ten (10) days of the date of this motion or as soon thereafter as the same may be heard, move this court for an Order Temporarily Restraining the construction, assembling, or transport of any storage buildings on or onto property in the Corie Crest subdivision and requiring the removal of any such structures.

This 14 day of
September, 2009


James D. Calmes, III
S.C. Bar #1089
512 E. North Street
Greenville, SC 29601
(864) 233-6224
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Katheryna Mulholland-Mertz and
Kenneth J. Mertz,

Plaintiffs,

vs.

Corie Crest Homeowners Association
Of Spartanburg, Inc., Richard T. Biggs,
Kathleen A. Biggs, James Hannah,
Elizabeth A. Hannah, and Joseph P.
Denicola,

Defendants.

- COMPLAINT
(PERMANENT INJUNCTION)

C. A. No. 2009-CP-42-5129

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2009 SEP 17 AM 9:40
MARC KITCHENS

Plaintiffs, complaining of Defendants, respectfully shows unto the Court as follows.

1. Plaintiffs are citizens and residents of Spartanburg County South Carolina and owners of property in Corie Crest Subdivision (the "Subdivision").
2. Defendant Corie Crest Homeowners Association (the "Association") is a non-profit South Carolina corporation with its principal office and agents in Spartanburg County South Carolina.
3. Defendants Richard Biggs, Kathleen Biggs, James Hanna, Elizabeth Hannah, and Joseph Denicola are citizens and residents of Spartanburg County, South Carolina and are the owners of property in the Subdivision.
4. The Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision (the "Restrictions") is dated February 15, 2005 and is recorded in

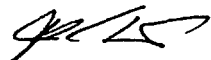
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P1

the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 82H at Pages 773-786.

5. The authority of the Plaintiffs to bring this action and to recover associated costs and attorneys fees is found in Sections 42(B) and (D) of the Restrictions.
6. Section 2 of the Restrictions states, in part, that "No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed two (2) stories in height, and, if approved in advance in writing, a private detached garage."
7. Section 18 of the Restrictions states that "Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot unless approved by Developer or Association".
8. Defendants Richard and Kathleen Biggs and Joseph Denicola have constructed storage buildings on their lots in violation of the Restrictions.
9. Defendants James and Elizabeth Hannah have constructed a "lean-to" building on their lot in violation of the Restrictions.
10. Defendant Association has failed to perform its duties, has failed to record its By-Laws, and otherwise has failed to protect the interests of the property owners by failing to enforce the Restrictions as required by the Restrictions.

WHEREFORE, Plaintiff prays for judgment as follows:

- (a) That the Court issue a Declaratory Judgment finding the Defendants in breach of the Restrictions.
- (b) That the Court issue a Declaratory Judgment finding the Association has breached its duty to enforce the Restrictions and protect the interests of the Plaintiffs.


P2

(c) That the Court enjoin and permanently restrain the Defendants from violating the Restrictions, and order the removal of such buildings and structures that are in violation of the Restrictions.

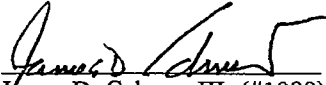
(d) That the Court grant Plaintiffs their attorney's fees, costs and disbursements; and

(e) That the Court grant such additional relief as may be just and appropriate under the circumstances of this case.

FILED
2009 SEP 17 AM 9:40
MARC KITCHENS

Respectfully Submitted,

this 14 day of September, 2009


James D. Calmes, III (#1089)
512 E. North Street
Greenville, SC 29601
Telephone: (864) 233-6224
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Email: jcalmes@charterinternet.com
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2009-CP-42-5129
Katheryna Mulholland-Mertz, and Kenneth J. Mertz,	)	
Plaintiffs,	)	
vs.	)	
Corie Crest Homeowners Association of Spartanburg, Inc.; Richard T. Biggs; Kathleen A. Biggs; James Hannah; Elizabeth A. Hannah; and Joseph P. Denicola,	)	DEFENDANTS' ANSWER TO COMPLAINT (Jury Trial Demanded)
Defendants.	)	

The Defendants, answering the Plaintiff's Complaint, hereby allege the following:

FIRST DEFENSE

1. All allegations of the Complaint which are not hereinafter admitted, qualified or explained are denied.

2. The allegations of paragraph 1 are admitted as to Plaintiff Katheryna Mulholland-Mertz. As for Plaintiff Kenneth J. Mertz, it is admitted that he is a citizen and resident of Spartanburg County South Carolina. However, it is denied that he is an owner of property in Corie Crest Subdivision ("Subdivision") and Defendants would therefore ask this Honorable Court to dismiss him as a party to this lawsuit.

3. The allegations of paragraph 2 are admitted.

4. The allegations of paragraph 3 are admitted. In further answering this paragraph, the Defendants would point out that James Hannah's name was misspelled by the Plaintiffs.

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CLARK KITCHENS

5. The allegations of paragraph 4 are admitted and the Defendants crave reference to the entire *Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision* ("Restrictions") as filed of record.

6. In responding to the allegations of paragraph 5, it is admitted that the Plaintiffs are attempting to find authority for their lawsuit in the quoted sections of the Restrictions. However, Defendants deny any violations have occurred. In further responding to said paragraph, Defendants would agree that the prevailing party in this litigation shall be entitled to recover their reasonable attorneys fees against the losing party as set forth in Section 42 D. of the Restrictions.

7. The Defendants admit that the language quoted in paragraph 6 of the Complaint is a part of Section 2 of the Restrictions.

8. The Defendants admit that the Plaintiffs accurately quoted Section 18 of the Restrictions in paragraph 7 of the Complaint. In further responding to the allegations of said paragraph, Defendants would assert that all of the buildings in question were approved by either the Developer or the Association prior to being placed on the respective properties.

9. In responding to the allegations of paragraph 8, it is admitted that Defendants Richard and Kathleen Biggs and Joseph Denicola have, after first receiving proper approval from the Developer and/or the Subdivision's Architectural Review Committee, constructed storage buildings on their lots. The Defendants deny that their buildings are in violation of the Restrictions.

10. The allegations of paragraph 9 are denied. While the Hannah's have constructed buildings on their property after first receiving proper approval from the

Subdivision's Architectural Review Committee, neither of these buildings are characterized as a "lean-to."

11. In responding to the allegations of paragraph 10, Defendants deny that the Corie Crest Homeowners Association of Spartanburg, Inc. has failed to perform its duties or otherwise failed to protect the interests of the property owners by failing to enforce the Restrictions. It is admitted that the By-Laws have not been recorded.

SECOND DEFENSE

12. The allegations of the previous defense are realleged to the extent they are consistent with this defense.

13. Plaintiff's Complaint fails to state any cause of action against the Defendants and should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed with prejudice, that they be awarded the costs of this action, including their reasonable attorney's fees, and for such other and further relief as this court deems just and proper.

HOLCOMBE, BOMAR, P.A.

A. Todd Darwin
A. Todd Darwin
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Spartanburg, South Carolina 29304
(864) 594-5300

Attorneys for Defendants

October 20, 2009

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 OCT 22 PM 1:11
MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
SEVENTH JUDICIAL CIRCUIT

KATHERYNA MULHOLLAND-MERTZ,)
PLAINTIFF,)
CASE NUMBER: 2009-CP-42-5129
vs.)
AMENDED
COMPLAINT
CORIE CREST HOMEOWNERS)
ASSOCIATION OF SPARTANBURG, INC))
RICHARD T. BIGGS,)
KATHLEEN A. BIGGS,)
JAMES HANNAH)
ELIZABETH A. HANNAH and)
JOSEPH P. DENICOLA,)
Defendants)

PLAINTIFF, COMPLAINING OF DEFENDANTS, shall respectfully
show into this Court the following:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina and owner of property in Corie Crest Subdivision (the "Subdivision")
2. Defendant Corie Crest Homeowners Association (the "Association") is a non-profit South Carolina corporation with its principal office and agents in Spartanburg County, South Carolina.

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SPARTANBURG COUNTY
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3. Defendants Richard Biggs, Kathleen Biggs, James Hanna, Elizabeth Hannah, and Joseph Denicola are citizens and residents of Spartanburg County, South Carolina and are the owners of property in the Subdivision.
4. The Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision (the "Restrictions") is dated February 15, 2005, and is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 82-H at Pages 773-786, inclusive.
5. The authority of the Plaintiff to bring this action and to recover associated costs and attorney's fees is found in Sections 42(B) and (D) of the Restrictions.
6. Section 2 of the Restrictions states, in part, that "No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed two (2) stories in height, and if approved in advance in writing, a private detached garage."
7. Section 18 of the Restrictions states that "Portable buildings; metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot unless approved by Developer or Association."

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SPARTANBURG COUNTY
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P2

8. Defendants Richard and Kathleen Biggs and Joseph Denicola have constructed storage buildings on their lots in violation of the Restrictions.
9. Defendants James and Elizabeth Hannah have constructed a "lean-to" building on their lot in violation of the Restrictions.
10. Defendant Association has failed to perform its duties, has failed to record its By-Laws, and otherwise has failed to protect the interests of the property owners by failing to enforce the Restrictions as required by the Restrictions.

FOR A SECOND CAUSE OF ACTION

1. Plaintiff, **KATHERYNA MULHOLLAND-MERTZ**, incorporates the First Cause of action into this Cause of Action and makes it a part of the same, not inconsistent herein.
2. Plaintiff shall show on June 15, 2010, that this court issued a temporary restraining order to prohibit further construction of any portable buildings, storage buildings, or other similar off-site constructed storage buildings until a final hearing could be had on the merits of this captioned case.
3. Subsequent to the temporary restraining order issued on June 15, 2010, the Defendant Corie Crest Subdivision Homeowners Association of Spartanburg, Inc., (Association) without the knowledge

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and/or consent of Plaintiff, amended the Restrictions that deleted Section 2, Section 7, and Section 8, of the Restrictions and inserted language that provided authority to construct storage buildings, portable buildings or other similar off-site constructed storage buildings.

4. Plaintiff alleges she was notified that said Amended Restrictions were made on August 25, 2010, and recorded in the Register of Deeds for Spartanburg County on August 26, 2010 in Deed Book 96-V, Pages 965-968 until after August 26, 2010.
5. Plaintiff alleges that said Amendments to Restrictions do not include the necessary two-thirds (2/3) of the owners' written consent to amend said Restrictions as shown in the Register of Deeds for Spartanburg County.
6. Plaintiff further alleges and states that no meeting or notice of meeting was given to all owners of Corie Crest Subdivision that a proposal to amend the Restrictions would be submitted for approval of two-thirds (2/3) of the members.
7. Plaintiff furthermore alleges that this improper action of Defendant Association after the issuance of the temporary restraining order violates Section 41 of the Restrictions. Section 41 states in summary, "No amendments can be made until October 1, 2040."

jm
P4

8. Plaintiff has formerly demanded that the Defendant Association immediately rescind the Amended Restrictions but it has failed and refused to do so.
9. Due to the acts complained of, Plaintiff seeks a restraining order enjoining and prohibiting the implementation of the Amended Restrictions dated August 25, 2010.
10. Plaintiff further seeks an injunctive relief to declare the Amended Restrictions null and void, being violative of the original Restrictions.
11. Plaintiff furthermore seeks an award of attorney's fees and court costs against all Defendants in commencement and prosecution of the above causes of action.

WHEREFORE, Plaintiff prays for judgment as follows:

1. **THAT** the Court issue a Declaratory Judgment finding the Defendants in breach of the Restrictions.
2. **THAT** the Court issue a Declaratory Judgment finding the Association has breached its duty to enforce the Restrictions and protect the interests of the Plaintiff and other owners.
3. **THAT** the Court issue its order prohibiting the enforcement of the Amended Restrictions.
4. **THAT** the Court issue its order declaring the Amended Restrictions "Null and Void".

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J. H. DEBLACKEY

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5. **THAT** the Court enjoin and permanently restrain the Defendants from violating the Restrictions and order the removal of such buildings and structures that are in violation of the Restrictions.
6. **THAT** the Court grant the Plaintiff attorney's fees, costs, and disbursements for the First and Second Cause of Action; and
7. **THAT** the Court grant such additional relief as it may deem just and proper under the circumstances of this case.

Respectfully submitted,



JAMES D. CALMES, III, SC ID# 1089
ATTORNEY FOR THE PLAINTIFF
512 EAST NORTH STREET
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GREENVILLE, SOUTH CAROLINA 29606
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jcalmes@charterinternet.com

GREENVILLE, SOUTH CAROLINA

JANUARY 12, 2011

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CLERK OF COURT
SPRING CREEK COUNTY
JAN 13 11:05
MILPE BLACKLEY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

CIVIL ACTION NO.: 2009-CP-42-5129

Katheryna Mulholland-Mertz,)

Plaintiff,)

vs.)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

Corie Crest Homeowners Association)
of Spartanburg, Inc.; Richard T. Biggs;)
Kathleen A. Biggs; James Hannah; and)
Elizabeth A. Hannah,)

Defendants.)

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SPARTANBURG COUNTY
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The Defendants, answering Plaintiff's Amended Complaint, hereby allege the following:

FIRST DEFENSE

1. All allegations of the Complaint which are not hereinafter admitted, qualified or explained are denied.

2. The allegations of paragraph 1 are admitted.

3. The allegations of paragraph 2 are admitted.

4. The allegations of paragraph 3 are admitted. In further answering this paragraph, the Defendants would point out that Joseph P. Denicola was dismissed from this action by prior Stipulation of Dismissal with Prejudice filed of record on February 15, 2011.

5. The allegations of paragraph 4 are admitted and the Defendants crave reference to the entire *Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision* ("Restrictions") as filed of record.

6. In responding to the allegations of paragraph 5, it is admitted that the Plaintiffs are attempting to find authority for their lawsuit in the quoted sections of the Restrictions. However, Defendants deny any violations have occurred. In further responding to said paragraph, Defendants would agree that the prevailing party in this litigation shall be entitled to recover their reasonable attorney's fees against the losing party as set forth in Section 42 D. of the Restrictions.

7. The Defendants admit that the language quoted in paragraph 6 of the Complaint was a part of Section 2 of the Restrictions prior to their amendment filed of record on August 26, 2010 at Deed Book 96 at Pages 965-968.

8. The Defendants admit that the Plaintiffs accurately quoted Section 18 of the Restrictions in paragraph 7 of the Complaint. In further responding to the allegations of said paragraph, Defendants would assert that all of the buildings in question were approved by either the Developer or the Association prior to being placed on the respective properties.

9. In responding to the allegations of paragraph 8, it is admitted that Defendants Richard and Kathleen Biggs have, after first receiving proper approval from the Developer and/or the Subdivision's Architectural Review Committee, constructed a storage building on their lot. The Defendants deny that their building is in violation of the Restrictions.

10. The allegations of paragraph 9 are denied. While the Hannah's have constructed buildings on their property after first receiving proper approval from the Subdivision's Architectural Review Committee, neither of these buildings are characterized as a "lean-to."

11. In responding to the allegations of paragraph 10, Defendants deny that the Corie Crest Homeowners Association of Spartanburg, Inc. has failed to perform its duties

or otherwise failed to protect the interests of the property owners by failing to enforce the Restrictions. It is admitted that the By-Laws have not been recorded.

12. The Defendants admit so much of paragraph 1 of the Plaintiff's Second Cause of Action as previously admitted, and deny or qualify so much of said paragraph as previously denied or qualified.

13. In responding to the allegations of paragraph 2 of the Plaintiff's Second Cause of Action, it is admitted that Judge Cole issued an order on June 15, 2010, and the Defendants would crave reference to that order in further responding to said allegations.

14. In responding to the allegations of paragraph 3 of the Plaintiff's Second Cause of Action, the Defendants admit only so much of said paragraph as alleges that the Restrictions were amended and that Plaintiff did not consent in writing to the amendment. The Defendants are unaware of what knowledge the Plaintiff may or may not have had regarding the amendment. Nor did the amendment insert "language that provided authority to construct storage buildings, portable buildings or other similar off-site constructed storage buildings" since this authority was already set forth in the original Restrictions.

15. In responding to the allegations of paragraph 4 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff alleges when she was notified of the amendment.

16. The allegations of paragraph 5 of the Plaintiff's Second Cause of Action are denied.

17. In responding to the allegations of paragraph 6 of the Plaintiff's Second Cause of Action, it is admitted that no meeting or notice of meeting was given to all owners of Corie Crest Subdivision in relation to the amendment. In further responding to said paragraph, the Defendants assert the Restrictions were appropriately followed when the

amendment was undertaken and finalized.

18. The allegations of paragraph 7 of the Plaintiff's Second Cause of Action are denied.

19. The allegations of paragraph 8 of the Plaintiff's Second Cause of Action are admitted upon information and belief.

20. In responding to the allegations of paragraphs 9 and 10 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff is seeking a restraining order and injunctive relief with regards to the amendment, but it is denied that she is entitled to such relief.

21. In responding to the allegations of paragraph 11 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff is seeking an award of attorney's fees and costs just as the Defendants are seeking an award of their attorneys fees and costs against the Plaintiff for bringing this frivolous and unwarranted lawsuit.

SECOND DEFENSE

22. The allegations of the previous defense are realleged to the extent they are consistent with this defense.

23. Plaintiff's Complaint fails to state any cause of action against the Defendants and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants pray that the Complaint be dismissed with prejudice, that they be awarded the costs of this action, including their reasonable attorney's fees, and for such other and further relief as this court deems just and proper.

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1	STATE OF SOUTH CAROLINA	)	
2		)	COURT OF COMMON PLEAS
3	COUNTY OF SPARTANBURG	)	
4	KATHERYNA MULHOLLAND-MERTZ,	)	
5		)	
6	PLAINTIFF,	)	
7	-VS-	)	TRANSCRIPT OF TESTIMONY
8	CORIE CREST HOMEOWNERS	)	
9	ASSOCIATION OF SPARTANBURG,	)	
10	INC., RICHARD T. BIGGS, KATHLEEN	)	
11	A. BIGGS, JAMES HANNAH, AND	)	(2009CP42-5129)
12	ELIZABETH A. HANNAH,	)	
13		)	Spartanburg, South Carolina
14	DEFENDANTS.	)	
15	REFERENCE HELD:		AUGUST 24, 2011.
16	BEFORE:		HONORABLE GORDON G. COOPER,
17			MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.
18			
19			BY: JAMES D. CALMES, III, ESQUIRE
20			Attorney for the Plaintiff.
21			HOLCOMBE, BOMAR, P.A.
22			BY: A. TODD DARWIN, ESQUIRE
23			Attorneys for the Defendants.
24			
25			Sarah Hollis, Court Reporter

HOLCOMBE, BOMAR, P.A.

A. Todd Darwin

A. Todd Darwin

Post Office Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

Attorneys for Defendants

April 25, 2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 28 PM 3:22
M. HOPE BLACKLEY

1	INDEX				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	KATHERYNA MULHOLLAND-MERTZ				
4	(Mr. Calmes)	11		88	
5	(Mr. Darwin)		61		
6	CHRISTINE STENGER				
7	(Mr. Calmes)	90		101	
8	(Mr. Darwin)		96		103
9	TERRY BURGESS				
10	(Mr. Calmes)	104		119	
11	(Mr. Darwin)		113		
12	ROBERT MARK CRAMER				
13	(Mr. Calmes)	120		129	
14	(Mr. Darwin)		126		129
15	KENNETH J. MERTZ				
16	(Mr. Calmes)	131			
17	WOODROW W. WILLARD, JR.				
18	(Mr. Calmes)	134			
19	(Mr. Darwin)		140		
20	EXHIBITS				
21	<u>EX.</u>	<u>DESCRIPTION</u>		<u>ID.</u>	<u>EV.</u>
22	<u>PLAINTIFFS:</u>				
23	PL. - 1	Copy of Declaration of Protective Covenants, Book 82-H.			15
24	PL. - 2	Copy of Consent Order for 2008CP42-958.			23
25	PL. - 3	Photo of a Shed.			30

1	EXHIBITS (continued)			
2	<u>EX.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	PL. - 4	Photo of a Shed.		32
4	PL. - 5	Photo of Hannah's property.		36
5	PL. - 6	Architectural Review Committee Request.		38
6	PL. - 7	Covenant Violation Report.		39
7	PL. - 8	Photo (Orange Sign).		42
8	PL. - 9	Photo (Blurred Orange Sign).		43
9	PL.-10	Copy of Amendments, Book 96-V, Page 965.		45
10	PL.-11	List of Lots Voted/Did not Vote.		50
11	PL.-12	Copy of Database Sheet, Secretary of State.		55
12	PL.-13	Copy of Bylaws (Unsigned) Corie Crest.		56
13	PL.-14	Copy of Bylaws Corie Crest dated 2/18/2008.		56
14	PL.-15	Copy of Bylaws Corie Crest dated 5/21/2009.		56
15	PL. -16	Copy of Bylaws Corie Crest.		59
16	PL.- 17	Copy of Covenant Violation Report.		93
17	<u>DEFENDANTS</u>			
18	DEF. - 1	Large Photograph.		65
19	DEF. - 2	Two Photographs.		71
20	DEF. - 3	One Photograph.		72
21	DEF. - 4	Four Photographs.		72
22	DEF. -5	Copy of Notice of Lien.		113
23	DEF. -6	Copy of Architectural Review Committee Request		116
24	<u>IDENTIFICATION</u>			
25	DEF.-1	Photograph.		152

1 THE COURT: All right. We are here on Case Number 2009-5129. The matter of Katheryna
2 Mulholland-Mertz versus Corie Crest Homeowners Association of Spartanburg, Inc., Richard T.
3 Biggs, Kathleen A. Biggs, James Hannah and Elizabeth A. Hannah. And the attorney for the
4 Plaintiff is James D. Calmes and the attorney for the Defendants is A. Todd Darwin. And we are
5 here pursuant to the Consent Order of Reference dated February 25, 2011. All right.
6 Gentlemen are you ready to proceed.
7 MR. CALMES: We are, Your Honor.
8 THE COURT: All right. Any opening?
9 MR. CALMES: I think as far as I am concerned Judge I believe that you are aware of what the
10 case is about.
11 THE COURT: Right.
12 MR. CALMES: Unless Mr. Darwin prefers ---
13 MR. DARWIN: Your Honor, I would like to make a brief opening, quite frankly.
14 THE COURT: All right.
15 MR. CALMES: If he is, I will.
16 THE COURT: All right.
17 MR. CALMES: Your Honor, Jim Calmes, representing the Plaintiff in this action. And this
18 case involves a complaint that was filed on behalf of my client alleging that there were certain
19 violations of the restrictive covenants at Corie Crest Subdivision of which she is a property
20 owner and the particular allegations that it initially had three individual parties, Mr. and Mrs.
21 Hannah, Mr. and Mrs. Briggs and also the Corie Crest Homeowners Association, Inc., which is
22 composed of the mortgage records and the central issue for the Court initially to determine is that
23 as to whether or not they were violations of the restrictive covenants such as recorded at the
24 Register of Deeds Office at Spartanburg 2005 and if so, two things, should the Court issue an
25 injunctive relief requesting the removal of the attached structures that are already placed on the

1 property that particularly involve Mr. and Mrs. Hannah and Mr. and Mrs. Biggs. At one time
2 Mr. DeNicola was also a Defendant which allegations were made that he had a shed, a detached
3 structure and he was also in violation. That in the period of time between the filing of the action
4 and through today his portion had been basically settled through the removal of his particular
5 shed. The applicable motion were made after certain discovery was made by both respective
6 parties. At that point in time we went before Circuit Judge Cole in which motions were made
7 and that struck Mr. Mertz as a property owner since he was not titled enough though he has lived
8 as man and wife with Mrs. Mulholland but at the same time he granted a temporary restraining
9 order restraining future constructions of any detached structures or buildings until a final hearing.
10 He also denied the Defendants' motions for summary judgment on the grounds of, well there
11 were no grounds that he indicated but in his order he just said that they needed to proceed
12 forward with the trial. After that occurred, Your Honor, steps were taken by the Board of
13 Directors to amend the restrictive covenants and what they did in essence, two main provisions,
14 what they amended were the two particular sections that the Plaintiff and other property owners
15 at that time had relied on that supported their positions that there should not be any detached
16 structures. In doing so, they took out a pertinent and material portion of what we call Section 2
17 of the restrictive covenants and substantially amended and revised Section 7-A and Section 7-C
18 of that restrictive covenant. I don't think that there would be any dispute but my client and other
19 property owners were not aware that any amendments to the restrictive covenants took place.
20 They certainly did not have their consent or knowledge and in doing so they filed an amended
21 motion of the Complaint that Mr. Darwin consented to in which the second cause of action in
22 which the Court is going to have to determine as to whether or not those restrictive covenants are
23 what we call invalid and are of no force and effect on two ground and one is in essence a basic
24 lack of due process that took place in implementing these amendments and secondly our
25 contention is clear. The provision and language in this section I believe is 42, well I am not

1 quite sure that is the correct section. I think it is section, hold on one section. In terms of 41,
2 Your Honor, that we contend that under the terms of the restrictive covenants you can not amend
3 these restrictive covenants until October of 2040. Also, Your Honor I guess the provision is that
4 each party is asking for attorney's fees and costs in this regard and that would apply as to Mr. and
5 Mrs. Biggs and Mr. and Mrs. Hannah and the Corie Crest Homeowners Association. And that is
6 our contention today. And we are ready to move forward.

7 THE COURT: All right.

8 MR. DARWIN: Thank you, Your Honor. May it please the Court. The only reason that I
9 really wanted to make an opening was ---

10 MR. CALMES: I wasn't quite sure what opening argument you wanted. I am sorry if I
11 belabored it too much.

12 MR. DARWIN: No, no. Your Honor, I mean I may go longer than that. I am just saying that
13 the reason that I wanted to -- I am sure the Court has read the file. I know that Your Honor has
14 from past experience. I just wanted a focus because what I think the crux of this case is for my
15 clients, Your Honor, is the case law. In the state of South Carolina based upon the covenant
16 language and Your Honor with the main thrust of the covenant that we are going to be talking
17 about during this trial are Sections 2, 7, 8, 9, 18, 20, those are the ones in reference to the
18 buildings, Your Honor. And then as Mr. Calmes has just discussed about the amendments that
19 is 42. Again we both have asked for attorney's fees for the prevailing party. Your Honor,
20 Section 2 is what the testimony is going to show that the Plaintiffs are relying on and it is titled
21 single family residential use and it says there can be a single family residential house and an
22 attached garage, a private detached garage. Your Honor, in those other sections that I refer to 7,
23 8, 9, 18 and 20, this specifically talks about buildings, storage, hobby-type building, etc., and the
24 reason I point that out Your Honor and the reason that I want to keep it focus and I know you are
25 aware of this case law and it is based on my memo supporting summary judgment but this is

1 South Carolina and this is the status of the law. Restrictions on the use of property are
2 disfavored, that is *Rhodes v. Palmetto Pathway Homes*, 400 S.E.2d 484. It is a settled rule of
3 law in this jurisdiction in South Carolina that restrictions as to the use of real estate should be
4 strictly construed and all doubts resolved in favor of the free use of the property. It follows, of
5 course, the language of the restrictions that is capable of two or more different constructions that
6 constructions be adopted which least restricts the use of the property. That is *Davey v. Artistic*
7 *Builders*, Your Honor. That is 211 S.E.2d 235. In construing restrictive covenants, ambiguities
8 must be strictly construed against the party seeking to enforce them, which is Mrs. Mulholland or
9 Mrs. Mertz, excuse me. That is *Queen's Grant v. Greenwood Development*, 628 S.E.2d 902.
10 And Your Honor the paramount rule of construction of restrictive covenants is to ascertain and
11 give effect to intent of parties as determined by the whole document. Not pulling section by
12 section and reading what you want to and disregarding the remainder of that document. That is
13 why it is the entire document. And Your Honor that is *Penny Creek Associates, v. Fenwick*
14 *Tarragon Apartments*, 651 S.E.2d 617. Now Your Honor what the evidence is going to show
15 and again I just want to have that all in the background, the testimony is going to show it. I
16 expect the evidence to show that Mrs. Mertz has a history of suing individual neighbors,
17 homeowners associations if she doesn't like the way that they are interpreting the covenants as
18 opposed to the way she interprets those covenants. There are two detached garages in that
19 subdivision right now, Your Honor. Those have not been brought into this suit, as a matter of
20 fact the Plaintiff has been made aware of those and those were allowed to go forward and the
21 only difference I can see and you will see the photos, Your Honor, is that they have garage doors.
22 Those are the only difference I see between that and the building that Mr. Biggs put up but now
23 Mr. Hannah structure is not a detached garage but we will get into that Your Honor obviously.
24 And Your Honor the Amended Covenants I think you will see in Section 31, I believe that you
25 will find that it is ludicrous to read that the homeowners could not after they took over that

1 subdivision, the developer had fully developed it, not amend those covenants until the year 2040
2 and then I think it adds another ten (10) years onto that. So it is until the year 2050 they couldn't
3 do that. So Your Honor you will read the plain language of that section obviously and make
4 your determination on that. But in addition to the attorney's fees that we have requested as well
5 Your Honor we would ask that again obviously that the Injunction that Judge Cole, the
6 Temporary Injunction be lifted and that the Architectural Review Committee of Corie Crest be
7 entitled to continue doing their job. Thank you.

8 THE COURT: All right counsel are you ready to proceed.

9 MR. CALMES: Yes sir. I call to the stand Katheryna Mulholland.

10 THE COURT: All right. Before we start let me make one thing – I was reading the Order from
11 Judge Cole and the Plaintiff's motion for Temporary Restraining Order should be in here and is
12 therefore granted not setting out the scope of the temporary injunction. I didn't mean to
13 interrupt you counsel. Is there an agreement as to what the scope of the temporary injunction
14 was?

15 MR. DARWIN: Your Honor, I think Mr. Calmes and I at least have agreed in practice that it
16 applies to everything at this point except the detached garage. Nothing else has gone up out
17 there except as I said the two detached garages.

18 MR. CALMES: I think when I made that filing that application I believe that I remember at the
19 motion that I had or I probably focused on that there would not be any future construction of any
20 detached buildings at the time. It does not call for any removal of those detached structures at
21 the time of the motions.

22 THE COURT: All right. I mean it is not clear from the Order what the extent of the —

23 MR. DARWIN: It is not much clearer Your Honor—

24 THE COURT: So I wanted to make sure before we begin the extent as I read it I can't
25 determine.

1 MR. CALMES: I would say, I would stipulate and I think Mr. Darwin will stipulate that we
2 made the motion for temporary purposes to prevent any future construction at that point and time.
3 THE COURT: All right. It had nothing to do with restraining the Board of Directors or any
4 type of thing like that did it?
5 MR. CALMES: Yes. It had —
6 THE COURT: That is why I am asking.
7 MR. CALMES: Well you will have testimony, Your Honor. There were additional
8 applications that were being made at the point in time.
9 THE COURT: Well I am not talking about that. I am talking about any actions on behalf of the
10 Board not related to construction?
11 MR. DARWIN: Your Honor, the way that I understood it the only thing before Judge Cole at
12 that time was what we were discussing —
13 MR. CALMES: We were discussing basically to focus on any detached buildings other than the
14 detached garage.
15 MR. DARWIN: And I understand that Your Honor is maybe making reference to the
16 amendments—
17 THE COURT: Right.
18 MR. DARWIN: The Board was established whether it – that is not, it is my understanding that
19 none of that was before Judge Cole. We always focus on the —
20 THE COURT: Right. I wanted to make that issue clear as to the scope of the temporary
21 injunction and that was that there were to be no buildings until a final hearing.
22 MR. CALMES: And the issue when the amendment to the restrictive covenants I guess you
23 know even though we questioned to do that probably would not have come within the preview of
24 that restraining order.
25 MR. DARWIN: That is correct, Your Honor.

1 THE COURT: All right.

2 MR. DARWIN: And again the purpose and you will hear testimony – the purpose of those
3 minutes would not affect this litigation at all. It was going forward —

4 THE COURT: All right. I just wanted to make sure.

5 MR. CALMES: And one other thing, too, and I am not trying to put words in Judge Cole's
6 mouth here but I think in the order and if I am not reading it right he just denied the motion for
7 summary judgment so I don't believe that he ever said that there was an issue of ambiguity so the
8 argument, Your Honor, can also be made because we did not make an application for motion for
9 summary judgment. So I guess we can also understand that maybe when he denied that motion
10 for summary judgment that we can also bring into that particular issue that it does not have to be
11 just ambiguous it could have been clear at that time and the motion denied.

12 MR. DARWIN: Oh, I am just reading this first paragraph where he said conflicting testimony
13 and then just the standard ambiguity conclusions and it says from conflicting facts strictly against
14 me. That is where I got that from.

15 MR. CALMES: Well maybe I didn't —

16 MR. DARWIN: You are right. I am not trying to put words in Judge Cole's mouth either.

17 THE COURT: Right. I did not mean to open the whole thing. My issue was the extent of what
18 you understand so that it affects the rest of this hearing and that is the sole purpose as you viewed
19 it was that any building or any buildings of out building whatever they maybe were enjoined until
20 this conclusion.

21 MR. CALMES: Until this hearing.

22 THE COURT: Right.

23 MR. CALMES: That is correct. And we had the amendment that ---

24 THE COURT: Oh, I understand that.

25 MR. CALMES: That is my understanding.

1 MR. DARWIN: That is mine as well subject to that catalysis Your Honor that I did make Mr.
2 Calmes aware of the fact that the detached buildings, I had no objections to those detached
3 garages because under Section 2 which the Plaintiff relies on.

4 MR. CALMES: We advocate that.

5 THE COURT: All right The Amended Complaint was filed after the Order.

6 MR. DARWIN: That is correct.

7 THE COURT: All right.

8 **KATHERYNA MULHOLLAND-MERTZ,**
9 **BEING DULY SWORN, TESTIFIES AS FOLLOWS:**

10 **DIRECT EXAMINATION BY MR. CALMES.**

11 Q. State for the record your full name please ma'am?

12 A. Katheryna Mulholland-Mertz.

13 Q. And Mrs. Mertz do you go by Mrs. Mulholland-Mertz or do you go by both names?

14 A. I go by Mulholland mostly but for legal matters and taxes and everything I use my full
15 marriage name as a courteous to my husband.

16 Q. Okay. And I am just going to refer to you as Mrs. Mulholland if that is all right.

17 A. Absolutely.

18 Q. Because that is how we prepared for the suit?

19 A. Yes.

20 Q. Can you tell us how long you have lived in South Carolina?

21 A. I moved into South Carolina on October 15, 2001.

22 Q. All right. And where did you move from?

23 A. New Jersey.

24 Q. New Jersey. Okay. And when you came down here did you find a particular place that
25 you – again did Mr. Mertz come with you?

1 A. Absolutely. Yes.

2 Q. And did you all relocate in South Carolina?

3 A. Yes.

4 Q. And where did you relocate?

5 A. We moved to a town called Hickory Tavern in Laurens, South Carolina.

6 Q. And tell me how long have you been married to Mr. Mertz?

7 A. A total of twenty-eight (28) years.

8 Q. Twenty eight (28) years. And as a result do you all have any children?

9 A. He has three (3) sons and I have one (1) son.

10 Q. This is you'll second?

11 A. Yes, his second and my second, correct.

12 Q. All right. And were you employed at the time?

13 A. No, I was not.

14 Q. All right. And did you subsequently find employment while you were down here?

15 A. Yes, I did.

16 Q. Okay. And where did you obtain employment?

17 A. Through Manpower I was a session specialist. Actually I started with them as a temp

18 working for Bilo Headquarters and then later Bilo wanted to hire me and I didn't want to

19 work for Bilo so Manpower asked me if I would work for them until they found a session

20 specialist so I worked for them about a year and a half and from there I went to - I applied

21 at Michelin. I needed to work. So they hired me.

22 Q. So are you presently working for Michelin now?

23 A. Yes, I am.

24 Q. How long have you been working for Michelin?

25 A. Almost five (5) years.

- 1 Q. Is there a particular location that you are working with Michelin?
- 2 A. Greenville at Pelham Road, the Corporate headquarters.
- 3 Q. The Corporate headquarters?
- 4 A. Yes.
- 5 Q. Were you recently relocated any where? Did you go to the Dalton area?
- 6 A. Yes. I was just recently relocated as a matter of fact on August 8, and I am going to be
- 7 there until January because they are renovating our floor, I am on the third floor and they
- 8 are renovating consistently and they moved a hundred people out of that building and
- 9 sealed it off.
- 10 Q. When you came down it was just you and Mr. Mertz living together is that correct?
- 11 A. Yes.
- 12 Q. No one else?
- 13 A. No.
- 14 Q. Did you decide to relocate to another place in this area?
- 15 A. Yes. My husband had gotten a stroke when we lived in Hickory Tavern and Lauren
- 16 County Hospital System was not equipped to handled his case. So every time he had an
- 17 episode we ended up in Greenville. I worked for Michelin. And the commute and the
- 18 location of the hospitals and the commute I decided to do a little research and move
- 19 closer to work and to a better hospital system. From my research I found out that
- 20 Spartanburg Regional in Spartanburg had a real good hospital system, cardiac system and
- 21 Boiling Springs was an up incoming area for the school systems and growth. And so we
- 22 looked and we purchased in Boiling Springs.
- 23 Q. You bought in the Boiling Springs area which is in Spartanburg County is that correct?
- 24 A. Yes.
- 25 Q. That was somewhat closer you say to the hospital and also closer to your place of work?

1 A. Yes. It is only about 28 miles from my door to the parking lot and before it was like
2 forty something miles almost fifty. And the hospital system is like four minutes down
3 the road and his doctors are at North Grove. So everything is very convenient for us.
4 Q. All right. When you looked at subdivisions did you look at more than one subdivision?
5 A. Oh, absolutely. We looked at numerous subdivisions. I mean we looked from 9:00
6 o'clock in the morning to 7:00 o'clock at night, every Saturday and every Sunday. We
7 couldn't do it during the week because I worked.
8 Q. All right. Then you approached a neighborhood called Corie Crest subdivision is that
9 right?
10 A. Correct.
11 Q. All right. And when you went into that subdivision what was it that you found attractive
12 in that subdivision?
13 A. The fact that it was new and it was growing and it was small. It wasn't huge. It was a
14 very you know limited homes, I found that interesting and I liked that and the fact that it
15 had restrictive covenants. Every home in these subdivisions we looked at the reasons we
16 didn't buy it was because some of them didn't have certain restrictive covenants and
17 some of them had violations even though they had restrictive covenants. So we chose
18 not to live in those subdivisions because we felt that they weren't enforcing the restrictive
19 covenants. I don't want to live in such. But Corie Crest was new. I mean it was only
20 about two years old and a lot of home were still being built. So I felt that and there was a
21 management company. I was told that there was a management company. So I felt well
22 that is good. A management company, restrictive covenants, a new subdivision.
23 Q. Why is it important for you to live in a place with restrictive covenants?
24 A. Because restrictive covenants help to preserve the integrity of the subdivision and
25 preserve the value of your home. How one lives in a home. If you follow the restrictive

1 covenants, if you enforce the restrictive covenants the integrity of that subdivision, the
2 integrity of your home plays an important part. If restrictive covenants are enforced and
3 the rules are not followed the value of my home will depreciate and the value of other
4 homeowners will depreciate. Nobody is going to want to buy in this subdivision.

5 Q. All right. When you were considering purchasing home with restrictive covenants I want
6 you to look at this document here. Are you familiar with that document?

7 A. Yes, I am.

8 Q. Okay. And can you tell the Court what that document is?

9 A. It is the Corie Crest - Declaration of Protective Covenants, Conditions, Restriction and
10 Easements of Corie Crest Subdivision.

11 Q. Can you tell the Court when that was dated?

12 A. That was dated February 16, 2005.

13 Q. All right.

14 MR. CALMES: I would like to mark this as a Plaintiff's Exhibit.

15 THE COURT: Any objections.

16 MR. DARWIN: I just want to make sure it has pages 73-76. Yes. Without objections, Your
17 Honor.

18 MR. CALMES: We offer these as an exhibit.

19 THE COURT: The Declaration of Protective Covenants, Conditions, Restrictions and
20 Easements of Corie Crest Subdivision dated February 15, 2005 will be Plaintiff's Exhibit
21 Number 1.

22 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE DECLARATION**
23 **OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**
24 **OF CORIE CREST SUBDIVISION, RECORDED IN DEED BOOK 82-H, AT PAGE 773,**
25 **IS MARKED AS PLAINTIFF'S EXHIBIT NUMBER 1.**

1 THE COURT: All right.

2 Q. Can you give us a time frame when you were considering purchasing a home within Corie
3 Crest Subdivision?

4 A. We were in a very small window of opportunity to purchase a home. So we were really
5 pressed for time because the people who purchased our home was on the condition that
6 we evacuate that home by June 26th because we had a lake house and they purchased our
7 lake house for the family and she said I will buy it under one condition that could you
8 close in like three weeks. I said absolutely. Since I didn't go to a realtor and I sold it on
9 my own I wasn't going to argue. I said sure. Absolutely. So we had a window of
10 opportunity to look for a home within three weeks, a three week span. So I would say
11 two weeks looking and one week for closing. So a three week span.

12 Q. What year was this? Do you recall?

13 A. This was 2007, May.

14 Q. May of 2007?

15 A. Correct.

16 Q. All right. So when you came in Corie Crest Subdivision I am assuming that there was
17 one particular place or structure or home that you and your husband found desirable?

18 A. Yes. The home that we are living in right now.

19 Q. Okay. And what address is that?

20 A. That is 1088 Corie Crest Drive.

21 Q. All right. When you were looking at this home and considering buying it, who did you
22 buy it from?

23 A. A builder called Mark Autorino.

24 Q. And did she own the place at the time?

25 A. Yes, he did.

1 Q. All right. When you were looking at the neighborhood did you notice any structures or
2 attached buildings to structures that caused you concerns?
3 A. Yes. As a matter of fact when we were looking we were looking at the Merrell's place
4 first. Then it was the Benson's place and then it was the Johnson's place and then the
5 Merrell's place I noticed this huge barn sitting there, huge. And the realtor was there
6 from Weichert Realty. I do not know her name. I do not recall her name but she was
7 with Weichert Realty. I asked her ----
8 MR. DARWIN: Your Honor, I object to anything that is going to be told to her as to hearsay.
9 This realtor, Mr. Autorino or anybody else that is not here in this courtroom.
10 THE COURT: I sustain that.
11 MR. CALMES: All right.
12 Q. Well tell me what was your understanding.
13 MR. DARWIN: Your Honor, it is hearsay. That is all it is.
14 MR. CALMES: This is not offered to prove the truth of the matter, Your Honor. It is offered to
15 prove what her state of mind was at that point in time when she was considering purchasing it.
16 It is not to prove that in effect that was there. So I mean it is not considered hearsay, Your
17 Honor. It is to show what she learned at that point in time?
18 MR. DARWIN: And what she heard was from a third party and they are not here. They could
19 have been here. They could have been subpoenaed. They could have been sued.
20 MR. CALMES: I am just saying is I think that took place and that is why it is important for her
21 to testify what her understanding is. Not necessarily the specific testimony comes into place.
22 So it is not offered for the truth of the matter. It is offered as to what her general understanding
23 was.
24 THE COURT: I will allow it at this point but I may stop it.
25 MR. CALMES: All right.

1 Q. What was your general understanding about that particular structure?
2 A. My understanding was that was a temporary building—
3 MR. DARWIN: The same objection, Your Honor. It is pure hearsay. She doesn't even know
4 the name of the realtor.
5 MR. CALMES: Your Honor, we are not talking about the —
6 THE COURT: How does her knowledge of that being a temporary structure —
7 MR. CALMES: The knowledge basically was based upon one and Your Honor we will get into
8 maybe testimony later on from Mrs. Biggs and a few others but also from the general
9 understanding of that neighborhood concerning the structures and concerning the application
10 of the restrictive covenants.
11 THE COURT: I am going to sustain the objection.
12 MR. DARWIN: Thank you, Your Honor.
13 Q. Did you have a conversation with Mr. Biggs about that particular structure?
14 A. Yes, I did.
15 Q. Okay. And what did Mr. Biggs say to you about that structure?
16 A. That it was a violation and that they complained to Hinson Management about it, him and
17 Terry Burgess, and him and Terry Burgess around September went to see Mr. Biggs'
18 closing attorney about the barn and it was referred to as yellow school bus.
19 MR. DARWIN: Your Honor, I want to make sure just for the record that we are talking about
20 the same buildings here. She at the first point is talking about a building that was on the
21 property right beside of her which was owned by the Martins. And the building that I think she
22 just testified about is the Carlton structure.
23 A. No, both.
24 Q. You are talking about both structures?
25 A. The barn and the school bus.

1 Q. All right. And when you talk about specifically of a barn. Who did the barn belong to?
2 A. Mr. and Mrs. Martin.
3 Q. Okay. And that was the person who was an adjoining landowner to you?
4 A. Yes, absolutely.
5 Q. And the other particular structure was Mr. DeNicola's shed, is that right?
6 A. Correct, right. And they are both not there now.
7 Q. But Mr. Biggs told you that they were temporary structures?
8 A. Mr. Biggs told me that they are in violation to the restrictive covenants and that the only
9 thing that can be built is a detached garage.
10 Q. All right.
11 A. He told Mr. Biggs that, he told me that and he told Mr. Burgess that.
12 Q. All right. Now in a situation when you went to close on this did you learn whether or not
13 that structure was going to be removed?
14 MR. DARWIN: Again objection Your Honor. Hearsay. Unless she learned it from a party to
15 this lawsuit —
16 MR. CALMES: I think that she needs to have the opportunity to answer the question.
17 MR. DARWIN: If she answers the question and it is hearsay—
18 THE COURT: I will allow it at this point but I may strike it.
19 Q. Did you discuss, did you learn from your discussions about whether or not that shed was
20 going to stay there?
21 A. I learned from my discussions that structure was going to be removed.
22 THE COURT: Now I will sustain the objection.
23 MR. DARWIN: Thank you, Your Honor.
24 Q. Well after you came on the property did that structure remain after you closed?
25 A. Yes it did.

1 Q. Okay. Did you write a letter to Hinson Management complaining about that structure?
2 A. Yes, I did.
3 Q. All right. As a result of you complaining to Hinson Management, they were the property
4 managers at the time, is that correct?
5 A. Correct. And I received a phone call.
6 Q. Well don't – just basically say. When you complained you sent a letter, correct?
7 A. Correct.
8 Q. And it was about that particular structure is that correct?
9 A. Correct.
10 Q. Okay.
11 THE COURT: What structure are we talking about here?
12 MR. CALMES: We are talking about the structure that joins the – this is the property that
13 belonged to the Martins.
14 A. Correct. Next door to me.
15 MR. CALMES: The adjoining.
16 THE COURT: All right.
17 Q. Is that correct?
18 A. Correct.
19 Q. All right. So in doing so were you satisfied with the answer that you got as far as the
20 complaint was concerned?
21 A. From Hinson Management.
22 Q. Yes? Did they do anything about your letter?
23 A. No.
24 Q. Did they do anything about that particular structure?
25 A. No.

1 Q. And I am not trying to – but at that point in time I guess the Homeowners Association
2 were they formed or not formed?
3 A. When I complained, my first complaint was on June 19 and I moved in on the 17th. I
4 wrote a letter on June 19th about the barn.
5 Q. June 19 of what year?
6 A. Of 2007.
7 Q. Okay.
8 A. We didn't vote for a temporary board until October of 2007 because Mr. Biggs told us
9 that Hinson Management didn't want to carry us any more because there was no money in
10 there. That is what he told the homeowners. That we were going to take it over and
11 that was October of 2007.
12 Q. At the time that you filed – did you try to seek the assistance of the formation of the
13 Board at that time in dealing with Mr. Martin's shed?
14 A. Most of them were there. The Burgess did, I did and —
15 MR. DARWIN: Your Honor, I object to anything other than what she did.
16 THE COURT: I will sustain that.
17 Q. Did you get any response from the Board?
18 A. Well we didn't have a Board. I got a response from Dick Biggs. Dick Biggs told me
19 that once we take over the Association and we form our own Board that we will do a
20 better job than Hinson did in enforcing the restrictive covenants.
21 Q. Did you subsequently file a lawsuit against the Martins?
22 A. Yes, I did.
23 Q. All right. And in filing a lawsuit did you ask that structure be removed?
24 A. Yes, I did.
25 Q. All right. And tell us just briefly the disposition of that case?

1 A. The barn was moved. They wrote a letter asking -- that they were going to remove it
2 -- when we circulated that we wanted it removed and they agreed to the removal of it and
3 they removed it. We gave them until June 1st to remove it and they removed it.
4 Q. All right. Was that what you tried to accomplish and the sole purpose was to have that
5 structure removed?
6 A. Yes, it was.
7 Q. And did Mr. Biggs like that structure next door?
8 A. No, absolutely not.
9 Q. When you filed that action you alleged a violation of the restrictive covenants, is that
10 correct?
11 A. Yes.
12 Q. Was that structure removed very quickly?
13 A. Yes, it was.
14 Q. Do you know how it was removed?
15 A. It went up on a truck, my husband told me.
16 Q. Do you know where it had been purchased?
17 A. At Lowe's.
18 Q. And you believe that particular court order helped you preserve your property values?
19 MR. DARWIN: I object to the --
20 A. Yes.
21 THE COURT: I sustain that.
22 MR. DARWIN: The order is what the order is.
23 THE COURT: It is my understanding that did not go to an order.
24 MR. CALMES: Yes it did.
25 THE COURT: It was my understanding from what she testified there was an agreement.

1 MR. CALMES: A court order, Your Honor.
2 MR. DARWIN: And Your Honor, may I approach. The Court order is here.
3 THE COURT: Do you want to check to see if this is the same one.
4 MR. CALMES: Yes sir. It doesn't have the last page on there. There are signatures to
5 indicate that it was removed, Your Honor.
6 MR. DARWIN: Your Honor, I will stipulate that it was removed but I will stipulate that there
7 was no finding fault as the Order reads.
8 MR. CALMES: Your Honor, we introduce the Court Order and the Court can come up with their
9 own interpretation.
10 MR. DARWIN: Without objections.
11 THE COURT: All right. And this will be Plaintiff's Exhibit 2.
12 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF A CONSENT ORDER IN**
13 **CASE NUMBER 2008CP42-958, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 2.**
14 THE COURT: All right.
15 Q. During this process you had Mr. DeNicola's shed still there is that correct or whatever the
16 attached building he had?
17 A. Yes.
18 Q. And during that period of time you still expressed concerns about that particular building
19 is that right?
20 A. Yes.
21 Q. And describe what that building looked like?
22 A. It was a metal, portable shed. The type you get at Home Depot, Lowe's or any garden
23 place. It was a small portable shed.
24 Q. And did you discuss at that point in time with – as far as had the Homeowners
25 Association been created at that time?

1 A. Yes.

2 Q. All right. And did you issue what we call a common violation report to the Board?

3 A. Yes.

4 Q. Concerning this?

5 A. Yes, I did.

6 Q. All right. And did you complain that it violated certain sections of the Restrictive

7 Covenants?

8 A. Yes, I did.

9 Q. All right.

10 MR. DARWIN: Your Honor, I am going to object at this point in time to any Mr. DeNicola

11 violations. The dismissal speaks for itself and the fact that she sued Mr. DeNicola and that

12 building has been removed.

13 MR. CALMES: Your Honor, I think it is a situation that has the right to lay the grounds not

14 only for that and Mr. Darwin stipulated the time of the other agreement would have a right to

15 indicate that there was results or prevailing results involved in doing so. So it is just to show

16 that my client is not being dilatory in trying to pursue actions that have taken place and in doing

17 so have had these sheds removed and that was the purpose of this litigation. I am not trying to

18 get, I am not going to elaborate but I do want to show that there were efforts made to try to get

19 these sheds removed. If they were not, we had to institute an action and that the purpose and the

20 results were that the sheds were removed. And I think it is important that I can be able to just

21 briefly elaborate on that.

22 THE COURT: Well the point that I want to be clear on is that the actions were filed but there

23 was no final determination in any of these cases.

24 MR. CALMES: There was a Court order.

25 THE COURT: On this case there was a dismissal. Which one are you going to now?

1 MR. CALMES: I am going to DeNicola.
2 THE COURT: Right. It is my understanding that it is just a dismissal of that part.
3 MR. CALMES: It was a dismissal but we had to say why it was dismissed which I think is very
4 important in this instance, Your Honor. We can't just say that the case was dismissed. There
5 was an agreement as to why it was dismissed.
6 MR. DARWIN: And I will stipulate Your Honor if it comes to the issue of attorney's fees, you
7 are deciding that for either one of us, I will stipulate that me and Mr. Calmes had that
8 conversation that if it comes up he is going to argue that was a beneficial result to his client. And
9 he can make that argument to Your Honor. I don't think that we need to do it through this
10 witness.
11 MR. CALMES: I understand. And it was also trying to show that was accomplished. That
12 shed was removed. I mean if you want to move forward with that, that is fine with me, Your
13 Honor. But Mr. DeNicola was listed as a Defendant at a point in time.
14 MR. DARWIN: Correct.
15 MR. CALMES: And he struck and the reason it was struck and there was an agreement
16 reached, an agreement was reached that shed was going to be removed and it was removed.
17 That is fine.
18 THE COURT: Well the only thing that I am looking at is there is nothing in the Court file as to
19 the dismissal and basis for dismissal other than the dismissal.
20 MR. DARWIN: Correct. But certainly I would not mislead the Court, Your Honor. Mr.
21 Calmes and I had that conversation in the courthouse. If it came down to the fact that we
22 prevailed that he would be able to argue against our attorney's fees by saying that was, the
23 arguing that was a beneficial result to his client. My word is what I say.
24 THE COURT: All right.
25 MR. CALMES: And that is fine. And all I am saying is the reason that we dismissed it was

1 because the shed was removed. But I think you stipulate to that?
2 MR. DARWIN: Sure. Granted.
3 MR. CALMES: Okay.
4 THE COURT: Then what was the basis for the removal of the shed?
5 MR. CALMES: The basis was that – well you can talk about whatever I guess the reason was.
6 We satisfied our objective with Mr. DeNicola. Our purpose was to get it removed. What
7 occurs was at the time I guess is that Mr. Darwin gave me a call saying we have got an issue here
8 because Mr. DeNicola was going to sell his property, through a contract.
9 MR. DARWIN: Relocate.
10 MR. CALMES: Relocate or whatever. He had the contract. And in doing so Mr. Darwin
11 called me back and said there is this issue here and lets see if we can get it resolved. My client
12 said sure. I want that shed removed. So due to having the shed removed then that removed any
13 impediment on the title that closing attorney was concerned about.
14 MR. DARWIN: Due to this litigation.
15 MR. CALMES: Due to this litigation.
16 THE COURT: All right.
17 MR. DARWIN: Your Honor, we have got the new homeowner who bought that house. He is
18 fully prepared to testify as a rebuttal witness.
19 THE COURT: So basically my understanding of that transaction was Mr. DeNicola wanted to
20 sell his property.
21 MR. DARWIN: Absolutely.
22 MR. CALMES: Yes sir.
23 THE COURT: And the new people didn't want to be a part of the litigation. And so there was
24 no determination of issues other than the fact that he was placed in a position that he either
25 remove the shed so you can sell the house or don't sell the house.

1 MR. DARWIN: Correct.

2 THE COURT: I mean is that —

3 MR. DARWIN: That is correct.

4 THE COURT: So what I am saying is you were successful in holding him up but there was no
5 determination of issues. That is what I see.

6 MR. CALMES: Yes. I guess I could say that I was —

7 MR. DARWIN: Absolutely. The building was in violation—

8 THE COURT: Well that is what I am talking about. I mean the result was that the building
9 was removed but the basis for it is not a basis for me to consider because there is no
10 determination of any issues relating to it other than the fact that the new homeowners didn't want
11 to buy into any litigation and said remove it and we will buy it. If you don't remove it we are
12 not buying it. Is that an accurate statement?

13 MR. CALMES: I don't know what their issue is going to be or what they —

14 MR. DARWIN: That was —

15 THE COURT: Well counsel what I am saying to you is you can not tell me that there was a
16 determination as far as Mr. DeNicola of any issues that relate to what I am considering today.

17 MR. CALMES: Well I guess that I am saying and if you look back on the particular language
18 we had to do this in a very expedited manner. We could not have gone before a — and I am just
19 reciting the circumstances here.

20 THE COURT: Right.

21 MR. CALMES: Looking back on it I guess, Your Honor, if we had to get to a point of making
22 some kind of findings and have a consent order we didn't. It is just an understanding between
23 me and Mr. Darwin that we had to get this accomplished and we did it through the process of a
24 Rule 41(c).

25 THE COURT: I totally understand it but I don't want it to be represented to me that there was a

1 determination of any issues relating to where we are today. The fact that it was accomplished
2 has nothing to do with this case at this point.

3 MR. CALMES: Except our agreement that I make the argument that it was beneficial—

4 THE COURT: That is fine. But just so that I am clear as far as my understanding of how the
5 removal of that shed happened.

6 MR. CALMES: I guess the argument could have been Your Honor and I am just saying looking
7 back if we had objected to it then we would probably be here today with that shed of Mr.
8 DeNicola.

9 MR. DARWIN: And possibly a counterclaim for a lost of a Two hundred thousand dollar
10 contract.

11 MR. CALMES: Whatever.

12 THE COURT: I just want to make sure that I know the terms and why the building was
13 removed. I don't want to think that you are trying to say that there was some kind of
14 determination of these present issues based on his dismissal.

15 MR. CALMES: I will not say that except for the purpose of what our testimony is as we are
16 concerned about the shed and we accomplished our purpose of having the sheds removed.

17 THE COURT: Well I understand —

18 MR. CALMES: I mean I am not going to get to a finding on that.

19 THE COURT: All right. Counsel.

20 MR. DARWIN: I don't want to interrupt you. I would like the same latitude. I haven't
21 objected to any fo the leading if I could just have the same latitude. I just want us to get through
22 this as quickly as we can.

23 THE COURT: I understand.

24 MR. DARWIN: And get everything in front of Your Honor.

25 Q. Mrs. Mulholland when did you learn that Mr. Biggs had constructed a detached structure?

1 A. Well I came home from work one day and I was driving and I saw something going up on
2 his property and I didn't know what it was. I didn't know if he was just building a
3 garden or whatever and then a couple of days later I noticed there was a structure and that
4 is how I found out. It went up.

5 Q. Now were you aware of -- did you have any advance knowledge that this structure was
6 going to go up?

7 A. No we never get any notification of anything that goes on. We never get letters that a
8 structure is going to be going up. We never get letters about what is being built. What is
9 going to be built. Who applied for what. We just don't get any notification about that.

10 Q. All right. I would like to see if you can identify this particular photograph?

11 A. That looks like the Biggs' shed.

12 Q. Is that the shed in question that you discovered was constructed?

13 A. Yes.

14 MR. CALMES: I would like to introduce this as an exhibit.

15 THE COURT: All right. Which one is it?

16 MR. CALMES: This one.

17 THE COURT: There is in the motion to dismiss -- is that the same building that is already in
18 the court file?

19 MR. CALMES: Well there are some in the court file but I didn't know whether they had the
20 pictures. Let me just see.

21 THE COURT: It is a lot clearer than this one. Do you want to use that? Or is that the same
22 one that Mr. Darwin has?

23 MR. CALMES: I have no objections to the one that they have, Your Honor.

24 THE COURT: That is clearer than that one. And Mr. Darwin what is happening is this is
25 attached to your Motion. If we can just take it out of there and adopt it.

1 MR. DARWIN: That is fine, Your Honor. And I have got some clear ones for you later.
2 THE COURT: All right. This will be Plaintiff's Exhibit 3.
3 MR. DARWIN: Yes sir. Without objections, Your Honor.
4 THE COURT: All right.
5 **MR. CALMES INTRODUCES INTO EVIDENCE A PICTURE OF A SHED, THAT**
6 **SHOWS 2 VIEWS OF THE SHED, ABOVE IDENTIFIED, MARKED AS PLAINTIFF'S**
7 **EXHIBIT NUMBER 3.**
8 THE COURT: All right. And there might be others that are in there.
9 MR. DARWIN: Your Honor, any pictures that were submitted with my motion are without
10 objections.
11 MR. CALMES: I had some pictures too, Your Honor.
12 MR. DARWIN: Well those will be without objections.
13 THE COURT: All right.
14 Q. In that reference to that particular picture I want you to identify, maybe it is clear in this
15 particular color picture?
16 A. Yes.
17 Q. All right. Mrs. Mulholland when you found that structure that came up did you have a
18 conversation with Mr. Biggs at that time?
19 A. No.
20 Q. Now when Mr. Biggs constructed that building was he on the Board of Directors?
21 A. Yes.
22 Q. And did he hold an office?
23 A. Yes.
24 Q. And what was his title?
25 A. President.

1 Q. All right. And since the formation of the Bylaws through today, has he held an office?
2 A. Yes.
3 Q. Same office?
4 A. Yes.
5 Q. As president, is that correct?
6 A. Yes. Correct.
7 Q. All right. And do you what he describes that particular structure to be?
8 A. In his deposition he described it as an garden shed.
9 Q. A garden shed?
10 A. A garden shed.
11 Q. Did he describe it as that was what he was storing things in?
12 A. That is what he called it a garden shed in his deposition.
13 Q. Now lets go back. Are you correct in saying that Mr. Biggs had complained about
14 previous structures on there?
15 A. Yes. Yes.
16 Q. And did Mr. DeNicola have a shed?
17 A. Yes.
18 Q. All right. Did you and —
19 THE COURT: Excuse me counsel. She said two things and I don't know that I understand the
20 difference or maybe I do. Let me go back. Is this picture a picture of any of these sheds or what
21 is this shed?
22 MR. DARWIN: That is the DeNicola building.
23 MR. CALMES: That is the DeNicola' building. The one that was removed, Your Honor.
24 THE COURT: All right. Can we put that in just to say that is — when she said that was a
25 portable is that what she is saying is the portable shed?

1 A. Yes.

2 MR. CALMES: Yes sir.

3 THE COURT: Okay. Any objections to that?

4 MR. DARWIN: And without objections.

5 THE COURT: All right. Lets go ahead and put that in. Okay. That is DeNicola's shed. And

6 you call that a portable shed. Excuse me for interrupting counsel. I want to make sure that I

7 understand what your client has testified to. Is that this garden shed by Mr. Biggs was

8 constructed on the site. Is that – she said constructed. I want to make sure?

9 MR. CALMES: It was constructed on site is my understanding.

10 THE COURT: All right. I just wanted to make clear that I heard what she said. All right.

11 **MR. CALMES INTRODUCES INTO EVIDENCE A PICTURE OF A SHED, ABOVE**

12 **IDENTIFIED, SHOWING TWO VIEWS OF THE SHED, MARKED AS PLAINTIFF'S**

13 **EXHIBIT NUMBER 4.**

14 THE COURT: All right.

15 Q. You filed a covenant violation report on that, is that correct?

16 A. On which one.

17 Q. Mr. Biggs' structure?

18 A. Yes, I did.

19 Q. All right. Did others file to report the violations, too?

20 A. I think so. Yes.

21 Q. What did Mr. Biggs say this structure was?

22 A. To me he didn't say. He rejected any violations that we filed. Ninety (90) percent of

23 then were rejected.

24 Q. Has he testified that this was a permanent structure?

25 A. Yes, he did.

1 Q. And did he testify or did the Board testify that it came under Section 7 of the Restrictive
2 Covenants?
3 A. Yes.
4 Q. If you look at Section 7 -A, the first paragraph, would you read that to the Court?
5 A. Seven - A.
6 Q. Section 7-A?
7 A. No building or structure, whether it is a dwelling, garage, fence or driveway shall be
8 erected, placed or altered on any lot until the building plans, elevations, locations and
9 specifications have been approved in writing by Developer or its nominee. If such shall
10 not be approved or disapproved within thirty (30) days after being submitted, then such
11 approval shall conform to the specific building requirements stated herein and otherwise
12 be in harmony with the existing structures in the subdivision. Any proposed building
13 must be built as a permanent structure and be designed in harmony with the main
14 dwelling. Disapproval of plans, elevations, location or specifications may be purely
15 upon aesthetic reasons in the sole discretion of the Developer or its nominee.
16 Q. All right. Are you aware if he made an application to the Architectural Committee to
17 have this structure reviewed?
18 A. No, I didn't know about it.
19 Q. Did you subsequently learn that he did do that?
20 A. Yes.
21 Q. Okay. Mrs. Mulholland when you read this particular section does that section state
22 anywhere that someone can construct a garden shed?
23 A. No, it does not.
24 Q. All right. I would like for you to refer to Section 2 of the original covenants. And
25 would you please read that?

1 A. Single family residential use. No lot shall be used except for private, single family
2 residential purposes. No building shall be erected, altered, placed or permitted to remain
3 on any lot other than one detached single-family dwelling, not to exceed two (2) stories in
4 height, and, if approved in advance in writing, a private detached garage. No lot or
5 portion of a lot shall be used either as a road or easement or other means of access to
6 adjoining property without the express written consent of the developer.

7 Q. All right. And in doing so and in reading that particular section did he construct anything
8 that looked like a private detached garage?

9 A. No.

10 Q. Mrs. Mulholland are there any private detached garages in the subdivision?

11 A. Yes, there are.

12 Q. And can you tell the Court how many are there?

13 A. Two (2). The Toney's build a detached garage after we got the motion from the Court, no
14 building. I woke up one morning and I saw construction going up. We were never
15 notified that Mr. Toney applied for a permit for building or a meeting was held. Nothing.
16 Then the next thing I knew after the new homeowners of Mr. DeNicola that I drove by
17 one day and I saw a detached garage being erected. None of the homeowners were
18 notified neither was I that a building was going to be erected.

19 Q. All right. But you don't dispute the fact that if they go through proper procedures people
20 can put a private detached garage?

21 A. They are both beautiful buildings. Very nice. In harmony with the house. Aesthetically
22 pleasing. Really very well built. Especially in the DeNicola's. That is a beautiful
23 garage.

24 Q. Now only two storage houses - are there garages with the houses itself, the main
25 structure?

1 A. They are detached from the structure.

2 Q. Yes. I know they are detached. But there are those that do not have detached garages

3 but they do have garages, correct?

4 A. Correct. Every homeowner has a garage attached to the home.

5 Q. Okay. Every homeowner?

6 A. Every homeowner, yes.

7 Q. Including those that have the detached garages?

8 A. Correct.

9 Q. All right. So you can put your cars in the garage within the house, right?

10 A. Yes.

11 Q. When you look at the detached garage are there other things that you can put in those

12 detached garages?

13 A. Sure. Lawn mowers, furniture, storage, boxes, tractors, bikes, cars. The garage is a

14 storage facility also.

15 Q. All right. So when you look at it is it your understanding that a detached garage can be

16 used as a storage building?

17 A. Absolutely, yes.

18 Q. All right. And that would be one of the primary purposes for that, is that correct?

19 A. Yes.

20 Q. All right. Do you know Mr. and Mrs. Hannah?

21 A. Yes.

22 Q. Mr. Jim Hannah. Do you know whether he was an officer of the Corie Crest Board of

23 Directors?

24 A. Yes, he was. He resigned I learned from the deposition that he resigned from the Board.

25 Q. All right.

1 A. I was not notified that Mr. Hannah resigned from the Board.
2 Q. All right. What office did he hold? Do you know what office?
3 A. I think he was on the Architectural Committee.
4 Q. All right. Was he vice president of the Association?
5 A. At one time I think he was yes.
6 Q. All right. Was he chairman of the Architectural Committee?
7 A. I think so. I am not sure because I know Terry Burgess was on it once and he was on it.
8 Q. At the time and I guess I am getting back to the point, did you learn that Mr. and Mrs.
9 Hannah had added a wing to or storage or a structure?
10 A. They added a structure that we were not aware of. We woke up one morning and he was
11 building a structure. We were not notified. We didn't know what the structure was
12 going to be. At first, I assumed that it was going to be a small shed because four poles
13 went up and a metal roof went up. Then it was left like that. So it looked like a pavilion
14 I didn't know what it was. And then a couple of months after that I saw construction
15 going behind it with another roof attached to it and I didn't know what it was. I had
16 never seen a building like this in my entire life.
17 Q. I want you to look at that particular picture?
18 A. That is it. That is it. And how he refers to it as a - and I said that really goes on a farm,
19 the way it is built. It is not a structure. It is not even in harmony with the house. The
20 Hannah house has grey texture around the sides. But his trimming is all white. The
21 fascia, the leaders is all white. This is stained. This is old brown stain. It doesn't even
22 match the house. It is not in harmony and I have never seen any structure in any
23 neighborhood like this.
24 Q. All right.
25 MR. CALMES: I would like to introduce this picture.

1 MR. DARWIN: No objections.

2 THE COURT: All right.

3 **MR. CALMES INTRODUCES INTO EVIDENCE A PICTURE, ABOVE DESCRIBED,**

4 **WITH TWO VIEWS, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.**

5 THE COURT: All right.

6 Q. I would like for you to look at this and see if you can identify that?

7 A. It is an application to the Architectural Review Committee Request for Jim Hannah at

8 1028 Corie Crest Drive, Boiling Springs. It says here category of requested improvement

9 and it says here patio cover storage.

10 Q. Patio cover storage?

11 A. Yes, patio cover storage.

12 Q. Yes. Do you know who signed that? It was dated what February 4, 2009?

13 A. It is February 4, 2009.

14 Q. Does it indicate that there was a temporary chairman that signed that?

15 A. Yes. It looks like Judson Merrell.

16 Q. Okay. Is it your understanding that the reason that Mr. Merrell signed it is because Mr.

17 Hannah resigned as chairman of Architectural?

18 A. Okay.

19 Q. Do you know?

20 A. Did I know that he signed it?

21 Q. That indicated that Mr. Merrell signed it and it says acting temporary chairman?

22 A. Right, right.

23 Q. Were you aware who the chairman was at that time of the Architectural Committee?

24 A. I thought that it was Hannah.

25 Q. Okay.

1 MR. DARWIN: Your Honor, we will stipulate that the chairman was Hannah and he recuse
2 himself to take a vote on his own building.
3 MR. CALMES: All right.
4 Q. Basically speaking Mr. Hannah was on the Architectural Committee?
5 A. Correct.
6 Q. And he is the one that made the application and was certified temporary, is that correct?
7 A. Correct.
8 MR. CALMES: We offer this.
9 MR. DARWIN: Without objections.
10 THE COURT: All right.
11 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF AN ARCHITECTURAL**
12 **REVIEW COMMITTEE REQUEST - CORIE CREST HOMEOWNERS ASSOCIATION,**
13 **MARKED AS PLAINTIFF'S EXHIBIT NUMBER 6.**
14 THE COURT: All right.
15 Q. So if Mr. Hannah was chairman of the Architectural Committee he was also an officer, is
16 that correct?
17 A. Yes.
18 Q. And he was also on the Board of Directors, is that correct?
19 A. Correct.
20 Q. I will let you look at this covenant violation report that you submitted. Did you submit
21 that?
22 A. Yes, I did.
23 Q. And in that did you indicate that you thought that Mr. Hannah had violated the restrictive
24 covenants?
25 A. Yes, I did.

1 Q. By putting that structure?
2 A. Yes, I did. Yes, I did.
3 Q. All right.
4 MR. CALMES: I would like to introduce this.
5 THE COURT: All right.
6 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF A COVENANT**
7 **VIOLATION REPORT - CORIE CREST HOMEOWNERS ASSOCIATION, FILE**
8 **NUMBER 21, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 7.**
9 THE COURT: All right.
10 Q. Mrs. Mulholland you alleged Section 2 and Section 18 . They rejected and said Section
11 2 did not apply and Section 18 referring to portable or metal buildings did not apply. Is
12 that correct?
13 A. Yes.
14 Q. Now if you went through the Architectural Committee is it correct that you had to go
15 through Sections 7 of the restrictive covenants?
16 A. Absolutely.
17 Q. All right. You have already read Section 7-A?
18 A. Yes.
19 Q. With Mr. Biggs. I am not going to ask you to repeat that but is there anything that
20 indicates in Section 7-A, that you refers to a structure such as that?
21 A. No, not at all.
22 Q. All right. And also you indicated, and let me just rephrase. Not only did it not apply
23 there but you believed that it was not in harmony with the existing structure?
24 A. It is not to this date in harmony with the structure.
25 Q. Would you repeat again what the reasons were why you feel that is not the case?

- 1 A. First of all it is not a detached garage, number one. Number two, I don't know what to
2 call that building. Most people in the subdivision refer to it as the lean-to. His house is
3 grey with a black roof and white fascia and white trimming or white windows and
4 everything. When you read the covenant it says that the structure needs to be in harmony
5 with the home. In other words, the detached garage needs to be in harmony. Meaning it
6 has to adhere to the same specifications as the home does. That is the rule and his
7 doesn't. His is stained wood. It has got two roofs on it. I am not architect and what
8 concerns me Mr. Calmes, may I continue, is that another homeowner might want to build
9 something and they see Hannah's building and they will turn around and say well he can
10 have that why can't I have something similar to that and that is how it escalates to the
11 domino effect. Then everybody is going to put up whatever they want to put it. And I
12 am concerned about the value of my home. And the integrity of my home. And the
13 integrity of this subdivision. If people start putting up outhouses, outbuildings, potting
14 shed. Any structure they want to put and it seems to be always the people who are on the
15 Board.
- 16 Q. And isn't it true that the two detached structures that we are talking about today involve
17 people that were officers of the Board of Directors, is that correct?
- 18 A. Yes, it is.
- 19 Q. And one of them is still an officer at present, is that correct?
- 20 A. Correct.
- 21 Q. In doing so you talked about the restrictive covenants. Does it say in the preamble, if you
22 would read the first section, or the second paragraph of the preamble of the restrictive
23 covenants?
- 24 A. The second paragraph.
- 25 Q. Yes.

1 Q. All right. Do you have that?

2 A. Yes..

3 Q. Lets see if we can find that particular picture. I will let you look at this. Would you

4 identify those pictures again please?

5 A. It is a big orange I guess twenty by twenty four or something sign with red underneath it

6 and in black. It says, out building permit.

7 Q. All right. And that picture was put on whose property?

8 A. Mr. and Mrs. Bishop.

9 Q. And I am assuming they live —

10 A. They are next door to Mr. and Mrs. Biggs. They are neighbors of Mr. and Mrs. Biggs.

11 Q. Do you know what number that is?

12 A. I think they are, I think the Biggs are 1073 and they are 1077, but don't quote me on that.

13 I could be wrong. But I think those are the numbers.

14 Q. All right. And when you talked about — are you diagonally across from that?

15 A. Absolutely, yes. I could see it right from my front porch.

16 Q. All right. So does the sign face —

17 A. Towards my house, yes.

18 Q. Toward your house?

19 A. Yes.

20 Q. All right.

21 A. And you can see how it is diagonal facing us.

22 Q. All right.

23 MR. CALMES: I would like to introduce this.

24 MR. DARWIN: No objections.

25 **MR. CALMES INTRODUCES INTO EVIDENCE A PHOTOS, ABOVE IDENTIFIED,**

1 A. Whereas Developer deems it desirable to create an agency to which should be delegated
2 and assigned the powers of maintaining and administering and enforcing the Covenants
3 and Restrictions and collecting and disbursing the assessments and charges hereafter
4 created, and is incorporating under the laws of the State of—
5 Q. I am sorry. I am talking about the this paragraph?
6 A. I am sorry. That is the second. I am sorry. I am just nervous.
7 Q. All right.
8 A. Whereas, Corrie Crest will be a residential community, and the Developer desires to
9 provide for the preservation of values and amenities of said community and for the
10 maintenance of common facilities and, to this end, desires to subject all of the lots in
11 Corie Crest as shown on the above plat to the within Protective Covenants, Conditions,
12 Restrictions, Easements, charges and liens (herein referred to as Covenants and/or
13 Restrictions) for the benefit of each and every owner in Corie Crest.
14 Q. Is that section very important to you also?
15 A. Absolutely.
16 Q. You are applying for a restraining order to remove the two remaining structures regarding
17 Mr. and Mrs. Biggs and Mr. and Mrs. Hannah?
18 A. Correct.
19 Q. Do you know whether anyone else has applied for a permit to the Architectural Review
20 Committee that he or she wanted to build a similar shed or a shed?
21 A. In Mr. Biggs's deposition he stated that the Bishops applied for a permit to put up an
22 outbuilding and Mr. Bishop displayed a big, red permit sign facing my house and said
23 permit outbuilding.
24 Q. Permit outbuilding?
25 A. Outbuilding. I have a picture of what it said.

1 **SHOWING AN ORANGE SIGN WITH THE WORDS, "OUTBUILDING PERMIT,"**
2 **MARKED AS PLAINTIFF'S EXHIBIT NUMBER 8.**

3 **MR. CALMES INTRODUCES INTO EVIDENCE A PHOTOS, ABOVE IDENTIFIED,**
4 **SHOWING AN ORANGE SIGN, SIGN IS BLURRED, MARKED AS PLAINTIFF'S**
5 **EXHIBIT NUMBER 9.**

6 THE COURT: All right.

7 Q. Now that was at least one permit that had made an application for an outbuilding and did
8 Mr. Biggs tell you that it had gone through any review process at that time?

9 A. In his deposition he stated that it was in the in-box.

10 Q. The in-box?

11 A. Quote, unquote. That was in his deposition that they applied for a permit and it was in
12 his in box.

13 Q. All right. Was that deposition taken before we went for the motion hearing?

14 A. Yes.

15 Q. And I believe that deposition was taken on April 23, 2010?

16 A. Correct.

17 Q. And you are also, of course, asking for a prohibition of future detached structures is that
18 correct?

19 A. Correct.

20 Q. What are you concerned about if a permanent restraining order is not granted regarding
21 applications such as that, Mrs. Mulholland?

22 A. My concern is my property value and the integrity of the subdivision and right now we
23 are in a very bad economy market-wise. Everybody knows that and if we allow
24 structures of any kind other than what is in the restrictive covenants to go up it is going to
25 affect the value of my home if I go to sell it. Right now we are parallel in the economy.

1 When the economy we have gotten and we don't enforce and adhere to the restrictive
2 covenants our values are not going to rebound with the market and people when they
3 look, the majority of the people that I talk to and work with —
4 MR. DARWIN: I object to the hearsay, Your Honor.
5 THE COURT: I sustain that.
6 A. Okay. I am sorry. I look for a subdivision that is going to grow as the neighborhood in
7 aesthetics and also my home is my biggest asset, it is my money sitting in the bank. And
8 I want to preserve my biggest asset.
9 Q. And are you concerned that if there are profusions of detached structures that it is going
10 to have a negative impact on the value?
11 A. Absolutely. That is my biggest fear.
12 Q. And that is why you moved in a neighborhood with restrictive covenants?
13 A. Yes.
14 Q. We had a hearing before the Judge on May 14, 2010, do you remember?
15 A. Yes, I remember.
16 Q. That Court issued an Order that spelled out granting a temporary restraining order?
17 A. Yes.
18 Q. It dismiss your husband as a party because he did not hold legal title?
19 A. Correct.
20 Q. And then denied what we call a motion for summary judgment. Do you remember that?
21 A. Yes.
22 Q. All right. After that Court order, Mrs. Mulholland did you discover that the Board of
23 Directors undertook an act to amend the restrictive covenants, and if so, under what
24 circumstances?
25 A. I received in the mail, one day when I come home from work that the Board, the sitting

1 Board changed the restrictive covenants, amended them. We were not aware of it.
2 There was no meeting called. There was no meeting held. There was no notice that
3 they were going to change it. That is how I learned about the amendments to the
4 restrictive covenants. Most of the homeowners learned that way. But they went door to
5 door. I understand that the Jacobs and Merrell went door to door with a petition.
6 Q. And so you all didn't have a meeting to discuss anything like this, is that correct?
7 A. No, no. We tried to have meetings with the Board. We really did. We wrote letters
8 requesting for a meeting. And it was rejected. Somebody from the Board wrote a letter
9 to the older homeowners not to attend that meeting. We tried to fix the problem. We
10 went to a meeting. One of the meetings. I said to Dick Biggs and the Board was sitting
11 there and the homeowners and I said why don't we take these covenants and bring it in
12 front of a judge and let him read it and let him interpret it and if we are wrong we will
13 abide by those rules but if you are wrong we expect you to enforce the restrictive
14 covenants. Mr. Biggs replied this way, bring it on. So here we are.
15 Q. All right. I want you to look at this particular document and is that the document that
16 you discovered recorded?
17 A. The amendment, Yes.
18 Q. In looking at that amendment that they made and got recorded without your knowledge.
19 Do you know —
20 MR. CALMES: Well first of all, Your Honor, I would like to introduce this.
21 THE COURT: Any objections?
22 MR. DARWIN: No objections, Your Honor.
23 THE COURT: All right.
24 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE AMENDMENTS**
25 **TO THE DECLARATION OF PROTECTIVE COVENANTS, RECORDED IN DEED**

1 **BOOK 96-V, AT PAGE 965, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 10.**
2 **THE COURT:** All right.
3 Q. In looking at that restrictive covenants, Mrs. Mulholland, is there any where in this
4 provision that it states that the original restrictive covenants may have been ambiguous?
5 A. No.
6 Q. Do you see anywhere in there it says the word ambiguous?
7 A. No, not at all. Even when I read it I couldn't see it.
8 Q. All right.
9 A. I don't see it.
10 Q. All right. So there is nothing in there that would indicate that one of the reasons that
11 they wanted to amend the restrictive covenants is that the Board felt like that the previous
12 restrictive covenants were ambiguous?
13 A. No.
14 Q. Does it make any reference to that temporary court order signed by Judge Cole?
15 A. No.
16 Q. In looking at that amendment what sections in looking at the original covenants versus
17 that they wanted to amend?
18 A. It looks like Section 2.
19 Q. All right. And Section 2 in their amendment what did they delete, if anything?
20 A. I don't see -- it says no lot shall be used except for private, I don't see this language in
21 here.
22 Q. Does it say anything about a detached garage in the amendment at all?
23 A. No, not at all. No it doesn't.
24 Q. It doesn't say anything about. Is that correct?
25 A. Absolutely, not.

1 Q. And that is what they took out, is that correct?

2 A. Correct. And they took out —

3 Q. Wait a minute. Lets finish with Section 2. But that is what they took out?

4 A. Yes.

5 Q. That they wanted to have that — when they talked about no buildings being erected they

6 also talk about — they don't make any reference to no building shall be — okay, it is the

7 second sentence?

8 A. Right.

9 Q. That they have left out?

10 A. Totally.

11 Q. In its entirety?

12 A. Exactly.

13 Q. Is that correct?

14 A. Correct.

15 Q. Okay. And that makes reference to what the restrictions were as far as the original

16 restrictions that no other building could be erected on this lot other than the detached

17 single family or if approved in advance a private detached garage?

18 A. Correct.

19 Q. All right. Now looking at the other. Did it amend another section? Section 7.

20 A. Section 7.

21 Q. All right. In looking at Section 7, we will just go through it. They are talking about that

22 is to be deleted in its entirety?

23 A. Exactly.

24 Q. And so on and it talks about — it just leaves out the first sentence instead of saying no

25 building or structure, whether it is a dwelling, garage, fence or driveway?

- 1 A. Right.
- 2 Q. They want to add detached garage, outbuildings, hobby-type structures, fences or roofed
3 structures, right?
- 4 A. Right.
- 5 Q. So that is what they amended under Section 7 - A?
- 6 A. Correct.
- 7 Q. Now what did they do with Section C?
- 8 A. Section C they left off the pitch, the 6/12 pitch.
- 9 Q. The 6/12 pitch?
- 10 A. Correct.
- 11 Q. So there is no mention of any pitch at all, is that correct?
- 12 A. None whatsoever. Right, Because portable sheds don't have pitches on them.
- 13 Q. All right. You say portable sheds don't have pitches?
- 14 A. No. I went to look at Lowe's. My husband is a contractor we went to look and they
15 really don't have a 6/12 pitch. They are using more rounded and very small like that. So
16 the pitch is not according to what the covenants were.
- 17 Q. Okay.
- 18 A. So you can go to Lowe's or Home Depot and buy it and bring it in. And they took that
19 out so it would make it legal.
- 20 Q. So basically what they have done, in that amendment they have opened for basically any
21 type of outbuildings, garage, a hobby-type sheds to be built on that property?
- 22 A. Correct. Correct. That is how I read it.
- 23 Q. All right. Were you ever provided any evidence Mrs. Mulholland of any other written
24 signatures on this so call amendment other than what was recorded at the courthouse?
- 25 A. No.

1 Q. So you did not see any other signatures other than those from the Board of Directors, is
2 that correct?

3 A. Right. We don't even know what they presented to the Homeowners when they went
4 door to door to collect the signatures. We don't even have a copy of that. Whether it
5 was a letter or whether it was the covenants. We have no idea. All we know is that we
6 received in the mail that this sitting Board amended the covenants without having a
7 special meeting with the homeowners, without consulting with the homeowners, without
8 anything. And may I reiterate on something, at one of the meetings they discussed about
9 taking a poll about amending the covenants and they got rejected by the homeowners.

10 Q. Okay. Did someone inquire with Mr. Biggs about who supposedly voted for this
11 meeting?

12 A. Bobby Perry.

13 Q. All right. Did you get this information back —

14 A. From Bobby Petty.

15 Q. Indicating supposedly what lots voted for it?

16 A. Yes. It was a memo from Bobby Perry to me and the subject is 24 lots got to vote. The
17 24 lots, they are 2, 3, 4, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, 26, 27, 28, 29, 32, 33,
18 34, 36 and 37.

19 Q. All right. When you look at that did you calculate or did you determine what lot owners
20 did not vote?

21 A. Yes.

22 Q. All right. And did you have that typed up?

23 A. Yes, I did.

24 Q. All right. I want you to look at that for me please.

25 A. Okay.

1 Q. And tell us who the lot number is and who the owner is?
2 A. Lots that did not vote. Lot 5, the Cramers. Lot 6, the Tollesons. Lot 7 the Lawsons
3 Lot 8 the Whites. Lot 10 - Maggie Bobo. Number 21 the Burgesses. And 22, Mrs.
4 Ostapenko. Lot 23 Stenger and 24 myself. And 30 Mr. & Mrs. Knox. Lot 31 - Bobby
5 Perry. And 35 is the new house that a builder owns that built it and it is being put up for
6 sale. There is a for sale sign in front of it. Those are the lots that did not - twelve of
7 them.
8 MR. CALMES: I would like to mark this.
9 MR. DARWIN: Without objections.
10 THE COURT: All right.
11 **MR. CALMES INTRODUCES INTO EVIDENCE A SHEET THAT LISTED THE LOTS**
12 **THAT DID VOTE AND A SHEET THAT LISTED THE LOTS THAT DID NOT VOTE,**
13 **ABOVE IDENTIFIED, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 11.**
14 THE COURT: All right.
15 Q. Did you ask the lot owners that did not vote as to whether or not they had any knowledge
16 about this?
17 A. Well yes I received phone calls and they said did you get anything in the mail and I said
18 yes, I got - the restrictive covenants were amended. They said we got them too. And
19 Mr. Lawson ----
20 MR. DARWIN: Objection. Hearsay.
21 MR. CALMES: All right.
22 THE COURT: I will sustain that.
23 Q. From that did you learn that other people did not vote?
24 A. Yes.
25 Q. And —

1 MR. DARWIN: Your Honor, I also object to the qualification of the vote.
2 Q. Did you learn that other people did not have knowledge about these amendments for
3 Corie Crest?
4 A. Yes, yes.
5 Q. And there was no meeting whatsoever?
6 A. None.
7 Q. No discussion?
8 A. None.
9 Q. Just some people bought it in the middle of the night and had people sign it?
10 A. They went door to door.
11 Q. And you have not seen any written evidence of any other people signing this
12 is that correct?
13 A. No, I never seen any signatures from the other homeowners as to what they signed and
14 what they read.
15 Q. All right. In doing these amendment is it your opinion they were trying to undo what
16 occurred?
17 A. Absolutely. Absolutely because they did it after Judge Cole ruled. So if they didn't feel
18 that they were in violation they wouldn't have changed them. They would have left it
19 alone. Apparently they felt that there was something wrong for them to change them in
20 the middle of the night.
21 Q. Did you look at the particular section that they relied on to try to have this amended?
22 And I am making reference to Section 41 and I would like to reference 41. Would you
23 read to the Court paragraph number, the first paragraph under Section 41 of the
24 Restrictive Covenants?
25 A. The terms and conditions of this instrument. Is that the one?

1 Q. That is Section 41.
2 A. The whole thing?
3 Q. I want the first paragraph. I want you to read the first sentence, excuse me, I am sorry?
4 A. I misunderstood. I apologize.
5 Q. That is all right. Second 41. Read the first sentence? Start here.
6 A. Okay. Terms of Enforcement and Amendments. These covenants, conditions,
7 easements and restrictions shall be binding upon the Developers, its successors and
8 assigns, and upon all future owners, their respective heirs, successors and assign and all
9 parties claiming under them until October 1, 2040 at which time hereof shall be
10 automatically extended for successive periods of ten (10) years thereafter, unless the then
11 owners owning at least two-thirds of the lots in Corie Crest agree in writing to terminate
12 or change same.
13 Q. Is that the first sentence. That is all I wanted you to read.
14 A. The first paragraph.
15 Q. Okay. It said and I just want you to look at that. It talks about a date and then it talks
16 about being successive periods of ten (10) years unless the then owners, right. What is
17 your interpretation of that particular section Mrs. Mulholland?
18 A. My interpretation is that these covenants can not be changed until the year 2040. They
19 have to remain status quo.
20 Q. Okay. If that was not the case, if that doesn't apply does it also indicate that if something
21 like this happened again that somebody could just go in the middle of the night and just
22 terminate the restrictive covenants?
23 A. Yes. That is my biggest concern.
24 Q. Okay.
25 A. Yes.

1 Q. I understand. But not only change it but you could have something in the mail to be told
2 that there are no longer any more restrictive covenants, is that correct?
3 A. That is correct.
4 Q. Based upon what they have tried to do?
5 A. Right.
6 Q. And please keep in mind also that you have three (3) people on the Board that makes all
7 the rules for all of us. There are five (5) members but three can uphold the other two.
8 Q. All right. Obviously you want that to be stricken from being recorded at the courthouse
9 is that correct?
10 A. Yes, absolutely.
11 Q. Are you asking the Court to determine their effort to amend it as null and void?
12 A. Yes, I am. I am pleading with the Court to.
13 Q. The Court?
14 A. The Court, yes.
15 Q. Do you believe that is in clear violation of Section 41 of the restrictive covenants?
16 A. Yes, I do. Yes, I do.
17 Q. All right. If not then you are concerned that one day you could wake up and not have
18 them at all, is that correct?
19 A. That is exactly my concern.
20 Q. Does a person that is interested in purchasing a lot of Corie Crest have a right to rely on
21 restrictive covenants that would stay in place until a particular time ----
22 MR. DARWIN: Your Honor, I object.
23 A. Yes.
24 MR. DARWIN: I object to her testifying about anybody's else state of mind.
25 A. Mine.

1 MR. CALMES: Just a minute, just a minute.
2 THE COURT: I sustain that.
3 Q. In you looking at it. If you were looking at it?
4 A. That is what I read there. I read that paragraph and part of my covenants at my closing
5 and that is what really stuck out to me because I remember having a discussion with
6 Kathy Biggs over the phone and actually it wasn't a discussion it was almost a fight
7 regarding that paragraph. I said nothing can be changed until 2040 if you read it.
8 Q. And what did Mrs. Biggs tell you?
9 A. She agreed with me at that time.
10 Q. She did?
11 A. Yes, she did.
12 Q. Okay. In regards to the amendments restrictive covenants what impact do you believe
13 that it would have on the value of your property?
14 A. It will have a very negative impact.
15 Q. If you look at the restrictive covenants that talk about outbuildings, shed or whatever else,
16 architectural committee can make any judgment it wants about any of those can't it?
17 A. Yes, they can.
18 Q. All right. The term outbuilding can be anything can't it? Isn't that correct?
19 A. Yes.
20 Q. You were living here when the bylaws were created for Corie Crest Homeowners
21 Association, is that correct?
22 A. Yes. Correct.
23 Q. And I believe that they were incorporated were they not?
24 A. I believe that they were.
25 Q. I am showing you this which you indicated that this is the incorporation of the

1 Homeowners Association, is that right?

2 A. This is the first time that I have seen it.

3 Q. Can you identify that it is from the Secretary of State that they have been incorporated?

4 A. Yes.

5 Q. And they indicated that they wanted it to be a mutual benefit organization, is that right?

6 A. Correct.

7 MR. CALMES: I offer this.

8 MR. DARWIN: Without objections.

9 THE COURT: All right.

10 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE ONLINE**

11 **DATABASE SHEET FROM THE SECRETARY OF STATE FOR CORIE CREST**

12 **HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC., MARKED AS**

13 **PLAINTIFF'S EXHIBIT 12.**

14 THE COURT: All right.

15 Q. They created bylaws for the Homeowners Association, is that correct?

16 A. Correct.

17 Q. In those bylaws the copy was given to you and I will see if you can identify that?

18 A. Yes.

19 Q. It is not a signed copy?

20 A. No, it isn't.

21 Q. But it states what at the end?

22 A. The Board elected on January 15, 2008 to approve these bylaws.

23 Q. All right.

24 MR. CALMES: I would like to make it apart of this record, Your Honor.

25 MR. DARWIN: Without objections.

1 THE COURT: All right.
2 MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE BYLAWS OF
3 CORIE CREST HOMEOWNERS ASSOCIATION, UNSIGNED COPY, MARKED AS
4 PLAINTIFF'S EXHIBIT NUMBER 13.
5 MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE BYLAWS OF
6 CORIE CREST HOMEOWNERS ASSOCIATION, DATED 2/18/2008, MARKED AS
7 PLAINTIFF'S EXHIBIT NUMBER 14.
8 MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE BYLAWS OF
9 CORIE CREST HOMEOWNERS ASSOCIATION, DATED 5/21/2009, MARKED AS
10 PLAINTIFF'S EXHIBIT NUMBER 15.
11 THE COURT: All right.
12 Q. All right. I would like for you to look at that. Is that the bylaws that you just looked at
13 with one exception?
14 A. Right. This one has the signatures and it is missing one signature of the Board and that
15 would be Mark Kramer. And he was on the Board at that time but it does not have his
16 signature on it.
17 Q. Does that indicate to you that was the initial document for the creation of the
18 Homeowners Association?
19 A. Yes. Yes.
20 Q. All right. And I would like for you to look at Section, Article 7 about amendments. Do
21 you see that?
22 A. Seven, yes.
23 Q. Let me identify that first. I am sorry. It makes reference to amendments?
24 A. Yes.
25 Q. Article 7?

1 A. Yes.

2 Q. Turn to the last page. Does it indicate the procedure in which amendments to the bylaws
3 can be undertaken?

4 A. It says a quorum shall consist of two thirds (2/3) of the members either in person or
5 represented by proxy at the meeting for the purpose of consideration of such amendment.
6 A majority of those attending or represented shall be required for acceptance of any
7 Amendment in these Bylaws.

8 Q. Would you finish reading that?

9 A. A vote to accept the Amendment shall be effective immediately upon completion of the
10 vote. The Secretary will notify all members in writing showing the changes, if accepted,
11 that have been approved. The secretary will notify in writing all members if the vote at
12 the special meeting rejects the amendment.

13 Q. All right.

14 MR. DARWIN: I am sorry. What section were you reading from?

15 A. The last section.

16 MR. CALMES: Article 7 of the Amendments.

17 MR. DARWIN: What date, I am sorry?

18 MR. CALMES: I am sorry.

19 Q. I would like for you to look at that Bylaws of the Homeowners Association?

20 A. Yes.

21 Q. And what date does that state?

22 A. It doesn't have a date. It has the Board elect but it doesn't have a signature, I stand
23 correct.

24 Q. I didn't ask for signatures. Does it have a date?

25 A. The Board elected on January 15, 2008, approved these Bylaws as amended on

1 September 4, 2008.

2 Q. All right. That is unsigned, right?

3 A. Correct.

4 Q. In looking at that did you notice any amendments to that Bylaws?

5 A. I think it is in 9. Yes. Section 9 amended, September 4, 2008. That was amended as is.

6 Q. Did you vote on that amendment?

7 A. No. Absolutely not.

8 Q. All right. You didn't vote on that amendment?

9 A. No.

10 Q. Now looking on that, voting on that amendment did it still have in place Article 7 as

11 originally stated on the original By-laws?

12 A. A quorum shall consist of two thirds of the members—

13 Q. Well I am just going to ask you. Is there anything different between that and what you

14 read previously as far as amendments?

15 A. No.

16 Q. Okay. And it is your testimony that you were not aware of any amendments?

17 A. None whatsoever.

18 Q. You didn't vote on that amendment?

19 A. No, we did not.

20 Q. I want you to look at this copy of the Homeowners Association and look at the last page

21 and see if that has been dated and signed?

22 A. Yes, it has been dated May 21, 2009 and signed by Mr. Richard Biggs, James Hannah,

23 Merrell, Johnson and I think it is Jacobs, I am not sure of the signature.

24 MR. CALMES: We offer this.

25 MR. DARWIN: No objections.

1 **MR. CALMES INTRODUCES INTO EVIDENCE A COPY OF THE CORIE CREST**
2 **BYLAWS, UNSIGNED COPY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 16.**
3 Q. In looking at this did they add a Section 10 to these Bylaws?
4 A. Yes.
5 Q. Okay. Did you vote on that?
6 A. No.
7 Q. Do you recall whether there was any meeting to vote on that?
8 A. No, none.
9 Q. Did you look at Article 8 of the Amendments? It talks about Amendments to Bylaws?
10 A. Article 8.
11 Q. Excuse me.
12 A. In 7.
13 Q. In 7, I am sorry. Is it Seven? Seven.
14 A. Seven. Amendments to these By-laws may be made at any board meeting provided the
15 consideration of Bylaws has been submitted as an agenda item prior to the meeting of the
16 Board.
17 Q. Does that indicate to you that the procedure as far s voting for amendments no longer
18 apply to members of the Association?
19 A. Yes. We don't have any right.
20 Q. Were you aware that was going to be an amendment?
21 A. No.
22 Q. So based upon this last Bylaws whatever the Board wishes to do as far as any
23 amendments they an do, is that correct?
24 A. Yes, yes. Absolutely.
25 Q. And nobody has any knowledge?

1 A. Nobody has any knowledge or any rights. Their statement was – in other words we pay
2 our assessment and keep our mouths shut.

3 Q. Okay. When that was questioned to you when Mr. Biggs was questioned about those
4 amendments do you recall what he said in his deposition?

5 A. I recall that he said many things and one of them was that the Board can do whatever they
6 want to do.

7 Q. And when you saw that was that another example of what you thought the Board could
8 do what they wanted to do?

9 A. Yes sir, absolutely.

10 Q. So based upon right now if that is allowed to stand the Board can make any amendments
11 to Bylaws at all?

12 A. Absolutely.

13 Q. And it doesn't matter what anybody thinks?

14 A. Absolutely.

15 Q. It doesn't matter whether anybody has had any knowledge about this meeting?

16 A. Exactly. Exactly.

17 Q. So there is no meeting at all?

18 A. No meeting. No letters. No input. I thought that I moved into a subdivision that was a
19 democracy not a dictatorship.

20 Q. Are you seeking attorney's fees in this case?

21 A. Yes, I am.

22 Q. All right. Do you believe that they are in violation of restrictive covenants?

23 A. One hundred (100) percent.

24 Q. Did you try to make an effort to see if some other procedure could take place other than
25 being in Court today?

1 A. Yes. We tried to have meetings and we were just shut down. That is why we are here.
2 It is because they don't want to work as a team. They do not want to work as a group,
3 and it isn't any more about the integrity of the subdivision. It isn't anymore about what
4 is best for the subdivision. This is also an attack on me, personally by the Board.
5 Q. Mrs. Mulholland in your relief you are seeking the award of attorney's fees, correct?
6 A. Correct.
7 Q. You are asking the Court for a permanent restraining order to remove Mr. Biggs'
8 structure and Mr. Hannah's, Mr. and Mrs. Biggs is that correct?
9 A. That is correct.
10 Q. And you are asking that the amended restrictions be determined null and void?
11 A. That is absolutely correct.
12 Q. And that they would be restrained from implementing those on a permanent basis?
13 A. Correct.
14 MR. CALMES: Just one moment, Your Honor.
15 THE COURT: All right.
16 MR. CALMES: Thank you. Mrs. Mulholland answer any questions that Mr. Darwin has.
17 **CROSS EXAMINATION BY MR. DARWIN.**
18 Q. Mrs. Mulholland why do you choose to live in a subdivision?
19 A. Because certain parts in this state don't have a zoning and where there is no zoning then
20 anything can be erected. So you build a three hundred thousand dollar home and a
21 garbage dump can come next door to you. Living in a subdivision, most subdivisions, all
22 subdivisions in fact have restrictive covenants and that is why I live in a subdivision
23 because they have restrictive covenants.
24 Q. Okay. You testified earlier that you moved from New Jersey to Laurens, South Carolina
25 in 2003, correct?

- 1 A. Correct.
- 2 Q. Did you move straight to the Pond at Lake Rabon? Is that the subdivision where you
3 moved initially to South Carolina?
- 4 A. No. I moved from Florida to South Carolina. I stayed in Florida for three (3) months
5 while we were looking for a house.
- 6 Q. Okay.
- 7 A. We had a house in Florida in Deland.
- 8 Q. Okay. Where was the first property that you lived in South Carolina located?
- 9 A. In Laurens.
- 10 Q. And was it in a subdivision?
- 11 A. It was in a subdivision, yes.
- 12 Q. And was that the Pond at Lake Rabon?
- 13 A. Correct.
- 14 Q. Okay. All right. Did that subdivision have restrictive covenants?
- 15 A. Yes, it did.
- 16 Q. All right. You sued over those covenants in 2003, didn't you?
- 17 A. For non-compliance of restrictive covenants, yes.
- 18 Q. And who did you sue?
- 19 A. McHam was the developer of Lake Rabon and the gentlemen who erected his home next
20 door in the subdivision.
- 21 Q. And what was the final results of that lawsuit?
- 22 A. We dropped it because they enforced the restrictive covenants.
- 23 Q. Okay.
- 24 A. And that was the whole purpose.
- 25 Q. So an Order of Dismissal was filed?

1 A. I beg your pardon.
2 Q. An Order of Dismissal was filed dismissing all of the causes of action?
3 A. Right. Because they enforced the restrictive covenants, correct.
4 Q. All right. So the motions and all of those causes of action you had in your lawsuit you
5 dropped all of that?
6 A. Correct because they promised that they would enforce the restrictive covenants and they
7 did and that was the purpose of it.
8 Q. All right. Then you moved to Corie Crest in June of 2007, correct?
9 A. Yes.
10 Q. All right. And you testified that it took you roughly three weeks to relocate from Laurens
11 to Boiling Springs, right?
12 A. Well two weeks we were looking for a house and the one week that we had the time
13 between after making our deposit and closing.
14 Q. So for two weeks you would go out on weekends and look in different subdivisions from
15 sun up to sun down that was your testimony, correct?
16 A. The first couple of weekends, yes.
17 Q. All right. And you testified earlier that you felt that some of the other subdivisions that
18 you looked at had covenants violations, correct?
19 A. Correct.
20 Q. Just by driving through you made that of your own determination, right?
21 A. No. The realtors we talked to we specifically stated to them that we wanted to be in a
22 subdivision that had restrictive covenants and when they took us to the subdivision and
23 we saw that the covenants were in violation we realized that we don't want to live there
24 because they weren't enforcing them. One especially had a note from the Board saying
25 to the homeowner because we picked up already that he was in violation with his mail

1 box.
2 Q. Okay.
3 A. Okay.
4 Q. How was that not enforcing it if he told the homeowner that he was in violation?
5 A. Because he refused to fix the mailbox.
6 Q. Okay.
7 A. And they said they were going to bring proceedings against him if he didn't fix the
8 violation. It was right in here in Spartanburg County one of the subdivisions.
9 Q. Well did you decide not to buy in that subdivision because you didn't want to buy in to a
10 subdivision where litigation was going to take place?
11 A. No. I didn't want to buy into a subdivision where people don't follow the rules.
12 Q. Okay. When you were looking at your home in May and June of 2007, both the Martin
13 and DeNicola buildings were there, correct? They were within the subdivision?
14 A. They were in the subdivision.
15 Q. All right. Let me ask you a question. Do you recognize that building?
16 A. Yes. But that is not apart of the subdivision.
17 Q. I understand that. That is not my question. Do you recognize the building?
18 A. Yes. My husband caused it to be moved.
19 Q. Mrs. Mulholland, yes or no, do you recognize that building?
20 A. Yes.
21 Q. Okay. Was that building directly in your backyard when you moved into your house?
22 A. Diagonally.
23 Q. Okay.
24 A. Not directly. Diagonally on this angle. So when I look out my window I did not see it.
25 I have to go on the side between Christine Stenger's house and my house to see it.

1 Q. Well let me ask you this. This corner of this house —
2 A. That is Christine Stenger.
3 Q. That is Mrs. Stenger's house?
4 A. Yes.
5 Q. This end?
6 A. Yes, it is.
7 MR. DARWIN: I would like to enter this please.
8 MR. CALMES: No objections.
9 MR. DARWIN: Defendant's Exhibit 1, please Your Honor.
10 THE COURT: All right.
11 **MR. DARWIN INTRODUCES INTO EVIDENCE A LARGE PHOTOGRAPH OF A**
12 **TIN SHED, DATED SHOWN AS 2009/10/29, 11:34, MARKED AS DEFENDANT'S**
13 **EXHIBIT NUMBER 1.**
14 THE COURT: All right.
15 Q. And tell me again when that removed?
16 A. My husband called the county I think it was last year and they came down and removed it.
17 Q. Have you still got the tin?
18 A. Yes, I think we— well you will have to ask him because he handled it. I didn't.
19 Q. Well let me just ask you. That picture that was just entered was taken October 29, 2009,
20 do you know when in relations to that photograph—
21 A. I think between then and some time in 2010. But you would have to ask him because I
22 don't know. He handled it.
23 Q. Okay. And then again just shortly after moving into the Corie Crest subdivision you
24 sued the Martins over there outbuilding, correct?
25 A. I had asked them to have it removed. I went to —

1 Q. Yes or no, did you sue the Martins?
2 A. Yes.
3 Q. Okay.
4 MR. CALMES: Your Honor, I think she has the right to explain.
5 MR. DARWIN: Well it was a yes or no questions, Your Honor.
6 THE COURT: She responded to the question at this point.
7 MR. CALMES: Thank you.
8 Q. And Plaintiff's Exhibit 2 is a copy of the consent order which ended that litigation,
9 correct?
10 A. Yes.
11 Q. And at the bottom of that there was no admission of guilt from either party, correct?
12 A. That was the agreement.
13 Q. Okay. Thank you. Mrs. Mulholland what is your understanding of the way the U. S.
14 Government including our local governments are run? Who runs the government?
15 A. I thought that the people run the government.
16 Q. Let me ask you this. Do elected officials make the decisions governing the U. S., in
17 Spartanburg County?
18 A. Based on the elections. Good people are elected.
19 Q. I agree with you a hundred percent. You agree with me on that right?
20 A. Right. And when they don't do their job.
21 Q. We do.
22 A. You file a complaint.
23 Q. And you just vote them out of office, correct?
24 A. Correct.
25 Q. That is what we try to do every November, right?

1 A. Yes.

2 Q. Do you agree with every law that is passed? Every law that is on the books, nobody

3 does. You agree with me that no one agrees with every law that is out there, correct?

4 Right?

5 A. I guess if you want to say yes, yes.

6 Q. No, I want you to say what you want to say?

7 A. I just believe that the laws are written in a way to protect all of us in that way we let

8 people protect us.

9 Q. I understand and I agree with you. Absolutely. Absolutely I agree with you but they

10 ultimately make those decisions. They don't consult Mrs. Mulholland or Mr. Darwin

11 when the government pulls the trigger on a project, do they?

12 A. I am a little bit confused because when you write an official that is in the county or in the

13 government you elect based on what they tell you. They promise you that they are going

14 to do this for you and do that for you and then do that for you. Okay. So you vote them

15 into office based on that. A board is the same way. When they promise you something

16 and then they don't follow through they violated what they promised us.

17 Q. And I am with you. Let me ask you something. How long has this Board been in place

18 at Corie Crest? How many years?

19 A. Three.

20 Q. All right. They have been voted in every year haven't they? Yes or no? You are a

21 homeowner and your fellow homeowners have voted them in for three consecutive years,

22 correct?

23 MR. CALMES: Your Honor, she has a right to answer the question.

24 A. I can't answer that.

25 THE COURT: Let her answer yes or no to the question.

1 Q. You can't answer that?

2 A. Because the way they do the election and the ballot.

3 Q. Was an election held for the last three years at Corie Crest for the Board?

4 A. Yes.

5 Q. Where the voted tallied?

6 A. Yes.

7 Q. When they were tallied did the same board get re-elected those three years?

8 A. They did.

9 Q. All right. Have you run before for a Board position?

10 A. Once.

11 Q. And what happened?

12 A. I lost by one vote.

13 Q. You lost?

14 A. Yes.

15 Q. And you have never served on the Board?

16 A. Not in Corie Crest, no.

17 Q. And you are sure that you only tried once?

18 A. Yes.

19 Q. All right.

20 A. That I know of unless somebody put my name on it.

21 Q. All right. Do you know what the purpose of an architectural review committee is?

22 A. An architectural review committee is a committee and the start when something gets put

23 up whether it be a fence or whether it be a building or whether it be any kind of structure

24 they have to make sure that structure or that item that they are erecting is according to the

25 restrictive covenants and according to the rules of the bylaws.

1 Q. When Hinson Management was over Corie Crest Subdivision did they ever share with
2 you and the other homeowners architectural reviews by request?
3 A. No, because the reason is. May I answer.
4 Q. Yes.
5 A. We moved in June and they dropped us in October.
6 Q. Okay.
7 A. Did I experience them, no. The other homeowners did for two years but I didn't.
8 Q. Okay. So you don't know whether they did or they didn't?
9 A. No, I can't answer that. I am sorry.
10 Q. How about did Lake Rabon in Laurens have an architectural committee?
11 A. Yes, we did.
12 Q. Were you on that committee?
13 A. Well I served only for a short period of time. Not for the architectural committee on the
14 board. When someone was relocated for six months I took the position.
15 Q. All right. How about the architectural review committee?
16 A. No, no.
17 Q. All right. But would that committee within Lake Rabon handle the request for any
18 structure or anything to be added to a property?
19 A. Yes, they were a separate committee. They were a part of the Board.
20 Q. Okay.
21 A. Right.
22 Q. But they decided on what was approved and not approved not the individual
23 homeowners, right?
24 A. They decided it but they discussed it at meetings with us. We were allowed to go to the
25 Board meetings. At Lake Rabon they had a board meeting once a month.

- 1 Q. Okay.
- 2 A. Okay. The Board would meet. The architectural committee representative would be at
3 the Board meeting and every homeowner was invited to that board meeting and they
4 would delegate about fifteen or twenty minutes at the end of their meeting to homeowners
5 who had any concerns or questions whether it be from the architectural committee or
6 whether it would be from the Board. So they could observe and see what is going on and
7 if they have issues or concerns or about violations that is when they could be brought up
8 and discussed in front of them.
- 9 Q. All right. I am going to show you a series of pictures, okay?
- 10 A. Yes.
- 11 Q. I am going to start with this. Mrs. Mulholland I am going to ask you first of all, well we
12 are going to start with this one grouping first, okay?
- 13 A. Okay.
- 14 Q. Do you recognize first those two photographs?
- 15 A. This looks like Dick Biggs' building.
- 16 Q. Okay.
- 17 A. I don't see this part. So I can't see it from the street, I am sorry.
- 18 Q. Okay.
- 19 A. I have never seen this part of it.
- 20 Q. All right. So you can't even see his building from the street?
- 21 A. I can only see this part, the end of it. That is what I can see.
- 22 Q. Okay.
- 23 A. And I have never looked at this structure enough so I don't know what he has. I just saw
24 it when it was being built. Okay.
- 25 Q. But this one you recognize as being the side of it?

1 A. Yes. That looks —
2 Q. Okay.
3 A. Let me see.
4 Q. Sure.
5 A. It has the underpinning, yes. And it has a wooden plank and they have to drive up to go
6 to it but it is not on solid ground. I am sorry but I don't see that from the street from
7 where I live.
8 MR. DARWIN: Any objections to that?
9 MR. CALMES: No objections.
10 MR. DARWIN: Defendant's Exhibit 2, Your Honor.
11 THE COURT: All right.
12 **MR. DARWIN INTRODUCES INTO EVIDENCE TWO PHOTOGRAPH, BELOW**
13 **IDENTIFIED, MARKED AS DEFENDANT'S EXHIBIT NUMBER 2.**
14 THE COURT: All right.
15 Q. I show you these two photographs, Mrs. Mulholland. Do you recognize those?
16 A. I don't know whose pool this is.
17 Q. Okay. Well let me represent to you that is Mr. Toney's detached garage.
18 A. Okay. I don't see that part of it, I am sorry.
19 Q. Okay. How about the one behind it. Do you see it?
20 A. No, I don't see that part. I just see from my yard the side of it. I see this part. That is all
21 I see. Is the garage, that is all I see. And kind of a little piece of the pool and that is it.
22 I don't see that. But that is the view from my house.
23 Q. All right. And how about those photographs?
24 A. This is their garage that was just put up where DeNicola had his shed. That is beautiful.
25 Q. I agree with you it is beautiful.

1 MR. DARWIN: Your Honor, if I may I would enter Defendant's Exhibit 3 for identification
2 purposes only at this point since she doesn't recognize it. I don't move to have it entered into
3 evidence .
4 THE COURT: All right. It has already been admitted.
5 MR. DARWIN: That one has. Very good, Your Honor.
6 MR. CALMES: It is the same. It is just a clearer picture, that is all.
7 MR. DARWIN: Is it okay if I enter that one.
8 MR. CALMES: This is the same as what you entered. Just a clearer picture.
9 MR. DARWIN: Okay.
10 THE COURT: That is fine.
11 MR. DARWIN: Defendant's Exhibit 3, please Your Honor.
12 THE COURT: All right.
13 **MR. DARWIN INTRODUCES INTO EVIDENCE A PHOTOGRAPH OF A BUILDING,**
14 **MARKED AS DEFENDANT'S EXHIBIT NUMBER 3.**
15 THE COURT: All right.
16 MR. DARWIN: I would enter these as a group as Defendant's Exhibit 4; Your Honor.
17 MR. CALMES: No objections.
18 **MR. DARWIN INTRODUCES INTO EVIDENCE 4 PHOTOGRAPHS OF A BUILDING,**
19 **MARKED AS DEFENDANT'S EXHIBIT NUMBER 4.**
20 THE COURT: All right.
21 Q. All right. Now looking at Exhibit 4, which is where the DeNicola shed used to be,
22 correct?
23 A. Yes.
24 Q. Mr. Toney's detached garage?
25 A. Yes.

1 Q. And now this had already been entered in. So this is the Biggs' building?
2 A. Yes.
3 Q. What is the difference between that?
4 A. Those are not detached garages.
5 Q. And why?
6 A. Because they can – the sizes of them are in harmony with the house that is in a poured
7 concrete foundation. That isn't – they are not a detached garage. That was more like a
8 potty shed.
9 Q. Do you see any difference? Other than a garage door do you see any difference?
10 A. Yes. It doesn't look like these. These look like detached garages and this doesn't.
11 Q. Let me ask you this. This building that you love, Plaintiff's Exhibit number 4, that took
12 the DeNicola spot?
13 A. Yes.
14 Q. Do you have any idea what that roof pitch is?
15 A. Yes. I talked to the gentleman who erected that and he said that he went that high with
16 the roof is so it is in harmony with his other roof pitch because his other roof pitch is so
17 high that if he did put on something lower it would not be in harmony. And my husband
18 said the same thing. My husband said that, too.
19 Q. Well let me approach with you, Plaintiff's Exhibit 1, the restrictive covenants. If you
20 would please turn to paragraph 7c.
21 A. Yes. The minimum pitch for the roof.
22 Q. Okay. So that is okay with you?
23 A. No, it is not but it is harmony with the house.
24 Q. Okay.
25 A. That is in harmony with the roof pitch.

1 Q. So fi it fits the aesthetics it is okay whether it is —
2 A. It said minimum pitch. It does say six twelve. It says minimum. That means you can
3 go higher.
4 Q. I am with you. I am with you. But it is higher because it is in harmony with the home,
5 correct?
6 A. Correct.
7 Q. All right.
8 A. And it is according to the restrictive covenants.
9 Q. So it is your testimony that the Biggs building is not aesthetically pleasing and in
10 harmony with their home?
11 A. I don't think so because what I am seeing here is that somebody else can come in and say
12 I want to put up a shed and like the Biggs I don't want that porch I want it to be
13 something different. So now somebody else comes in and puts up another shed that is
14 different than the Biggs. But it is not a detached garage. It is not in harmony and it is
15 not within the restrictive covenants that it has to be a detached garage. That is what it is.
16 This is not a detached garage. This is a gardening shed.
17 Q. Lets go through Plaintiff's Exhibit 1, the restrictions. If you would turn over to
18 paragraph 2, Section 2, excuse me?
19 A. Section 2. Single family residential use.
20 Q. That is what it is titled, right. Single family residential use?
21 A. Yes.
22 Q. All right. You read that earlier?
23 A. Yes.
24 Q. And you read a part of Section 7 earlier, right?
25 A. Correct.

1 Q. All right. Look at Section 8 for me. Exterior finishes can be brick, stone, stucco, wood
2 or vinyl. Any other must be approved by the Developer or its nominee. Concrete
3 blocks, cement bricks or concrete walls shall not be used in the construction of any
4 building, garage or hobby-type/storage building unless the exterior of same is faced with
5 brick, stone, stucco, wood or vinyl or some other material approved by Developer or its
6 nominee. It specifically talks about hobby-type storage buildings does it not?
7 A. But that is not part of Section 2 and Section 4. That is not part of that section.
8 Q. So it is ambiguous isn't it? The covenants are ambiguous because Section 2 says one
9 thing and Section 8 says something else, correct?
10 A. No, because his building has an underpinning. Look at his building, okay. Look at it
11 and it says no. It says here no. Concrete blocks, cement bricks or concrete shall not be
12 used in the construction of any building. He doesn't have - this is not poured on the solid
13 concrete it sits on poles. I would refer to this as a pole house enclosed with what you call
14 it, lattice.
15 Q. So you don't agree with me that is a hobby-type storage building?
16 A. No.
17 Q. Mr. Briggs' building?
18 A. That is not a detached garage.
19 Q. I understand that. I didn't say that it was. But look at paragraph 8. Do you not want to
20 read paragraph 8? Do you just want to disregard that?
21 A. No. I am not disregarding it.
22 MR. CALMES: I am going to object to —
23 A. You are confusing me.
24 MR. CALMES: Wait just a minute.
25 THE COURT: Wait.

1 MR. CALMES: I think Mr. Darwin is getting argumentative with my client in presenting that,
2 Your Honor. He can ask the question and let her answer it.
3 THE COURT: All right. Lets start again.
4 MR. DARWIN: Yes sir.
5 Q. Mrs. Mulholland this Section 8 of the restrictions reference a garage or hobby-type
6 storage building?
7 A. Yes.
8 Q. All right. Then Section 18 for me. All right. Portable or metal buildings prohibited,
9 correct?
10 A. Yes.
11 Q. Portable buildings, metal storage buildings or other similar off-site constructed storage
12 buildings are prohibited to be placed or remain on any lot unless approved by Developer
13 or Association, correct?
14 A. Or Association.
15 Q. Correct?
16 A. As to homeowners.
17 Q. Developer or association, correct?
18 A. Yes.
19 Q. So they are actually allowed, right?
20 A. If approved by the Association.
21 Q. If they are approved the way that you want them to be?
22 A. No. No. It says here by the developer or the Association. We are the Association. We
23 the homeowners, pay our dues, we are the Corie Crest Homeowners Association.
24 Q. I understand the way you read the covenants Mrs. Mulholland, that is why we are here.
25 Number 20, Read that for me?

1 A. Number 20.

2 Q. Yes ma'am. Please.

3 A. No temporary residences, no garages or hobby-type/storage building shall be used at any

4 time at the residence either temporarily or permanently, nor shall any structure of a

5 temporary character be used as a residence.

6 Q. There it is again, hobby-type storage building. Just as Section 8 it references that again

7 in Section 20, right?

8 A. Yes.

9 Q. All right. So it is ambiguous in Section 2, right?

10 A. No

11 Q. Why not?

12 A. To me it is not a detached garage. I am sorry. It is not a detached garage.

13 Q. Mrs. Mulholland I am not arguing that point with you. I am not arguing with you period.

14 Section 2 says the only thing that can be on those lots is a two story house and a detached

15 garage if approved, correct?

16 A. Yes it does but they amended —

17 Q. Mrs. Mulholland just stick with me for a minute, okay?

18 A. Okay.

19 Q. That is what Section 2 says, right?

20 A. Yes.

21 Q. That is the only thing that you can put on your property out there according to Section 2,

22 right? Is a two story house and a detached garage if it has been approved, right?

23 A. And a private detached garage.

24 Q. Correct. And then in Section 8 and Section 20 it references garage, excuse me, hobby-

25 type or storage building, right? You don't disagree with that do you?

1 A. No.

2 Q. All right. So it is ambiguous if it references —

3 A. I am sorry. I apologize for not seeing it. I apologize to the Court and I apologize to you

4 but it is not to me.

5 Q. Well if it is not ambiguous what is it? Why is —

6 A. It is a violation.

7 Q. No, no. Why is that in the covenants? Why is it referenced in the covenants?

8 A. Why.

9 Q. Yes why?

10 A. It is written in a way that in interpret it is that those are not allowed. That those hobby-

11 type storage houses or portable or metal building they do not reference with Section 2 and

12 the Section where it says only a detached garage.

13 Q. And I understand. And why won't you agree with me that makes it ambiguous. If they

14 are referenced in other parts of the documents?

15 A. Because I don't believe the way that you believe.

16 Q. Well what are they then? Why are they in there? Why are they referenced within the

17 covenants twice?

18 A. I don't know.

19 Q. Maybe three here?

20 A. But that is not how I am reading it. I am sorry. I apologize but I disagree with you.

21 Q. All right. Let me ask you this. Lets turn to the Hannah's building. From my

22 understanding of this lawsuit — oh first of all before I jump to that. I just have a quick

23 question. Plaintiff's Exhibit 4 is a picture of the DeNicola's shed. Did you testify that

24 was a metal building?

25 A. It looks like metal to me. I was never up close to it.

1 Q. Oh. So you don't know if it was metal or wood?
2 A. To me it looks like metal.
3 Q. All right.
4 A. Sorry but that is what it looks like to me, painted.
5 Q. Okay. This is the Hannah's building,
6 A. Right.
7 Q. It is my understanding that the only thing that we are here today about Mrs. Mulholland
8 and if you don't mind my reaching over you is this extension, correct?
9 A. The whole thing.
10 Q. Hold on now? Hold on now? Is the whole thing you are characterizing a lean-to?
11 A. The whole thing is not according to -- no where in the covenants does it say about a
12 pavilion or anything like that.
13 Q. Now wait a minute. That patio cover was approved by Mr. Burgess was it not? Have
14 you seen that? Because your pleadings --
15 MR. DARWIN: Your Honor, if you would take judicial notice.
16 Q. It only references a lean-to. They were built at two different times?
17 A. Right.
18 MR. DARWIN: I thought that we cleared that up in your chambers this morning. That we
19 weren't talking about the patio covers but we are talking about lean-to. And I apologize if I am
20 wrong. But that means Mr. Calmes can correct me.
21 MR. CALMES: My understanding Your Honor is that we are talking about the lean-to
22 building.
23 A. The one, the second one or the second roof?
24 MR. CALMES: That is correct. Make clear what we are talking about.
25 A. Okay. All right.

1 MR. CALMES: We are talking about that?

2 A. Right

3 MR. CALMES: All right.

4 MR. DARWIN: Thank you. Thank you, Mr. Calmes. I just wanted to make sure.

5 MR. CALMES: Me too.

6 Q. All right. So we are talking about this?

7 A. Yes.

8 MR. DARWIN: Okay. And just for the Court do you mind if we have a circle around that part

9 so we will?

10 MR. CALMES: That is fine.

11 Q. Do you mind just circling that on both of the up ramp portion?

12 A. Here.

13 Q. Thank you. Thank you. Now do you know which house within that storage building?

14 A. No, I have no idea.

15 Q. Can you see that from the street? Can you read that aloud?

16 A. This section lean-to.

17 Q. Yes ma'am. Just what we are talking about?

18 A. Yes, yes.

19 Q. All right.

20 A. Absolutely.

21 Q. All right. Can you see that from your property?

22 A. No. Because I am on one end and they are on the other end. But I can see it every time I

23 drive in or drive out. You can see it. I mean it is actually way above the fence.

24 Q. All right. And can you see over the fence to see what it houses? What is inside of it?

25 A. You can see the whole half of building over the fence whether driving or walking you can

1 see te entire lean-to, you can see it, yes.

2 Q. All right. Your testimony earlier was that the people on the Board, those are the only
3 two people that have these buildings that you are not in agreement with, correct? At this
4 time, the Hannahs and the Biggs?

5 A. You are talking about violations.

6 Q. Yes ma'am. Just the buildings. Yes ma'am?

7 A. Okay.

8 Q. Right?

9 A. Right. So is it your testimony and your belief that if someone in Corie crest sits on the
10 Board that they can't put in a request to have something added to their property? That is
11 not your testimony is it?

12 A. I never said that.

13 Q. Okay. I just want to make sure. I wanted to clarify. I was confused by it. That is all.
14 They shouldn't vote on it right? They shouldn't vote on their own request but they can
15 make a request, right?

16 A. Right. You can make a request.

17 Q. Mrs. Mulholland Plaintiff's Exhibits Number 8 and 9, they are photos of the outbuilding
18 permits you testified were another homeowner's property?

19 A. Yes.

20 Q. That was never built, correct?

21 A. No because there was a restraining order put in.

22 Q. Right.

23 A. By Judge Cole that nothing was to be, no portable type sheds should be put up. Nothing
24 could be done.

25 Q. All right. So your lawsuit restricted Mr. Bishop putting that building up, right?

1 A. Well actually I was really surprised when Toney's building went up. But that was a
2 detached garage but I was surprised the way Judge Cole ruled it the way I understood it
3 and read it was that nothing should have been built.
4 Q. Can you show me or present to me a copy of the violations, the covenant violation request
5 that you put in on the Biggs' garden shed?
6 A. That I wrote.
7 Q. Right?
8 A. Right. I wrote say under garden shed. I didn't put a violation about their garden shed.
9 Q. You did not?
10 A. No, I did not.
11 Q. Okay.
12 A. This trailer that he parked there 7-24, I did.
13 Q. No. I am talking about the Biggs. The Biggs' garden shed?
14 A. I think I did. I think that I did put a violation on their building.
15 Q. Okay. Do you have a copy of that?
16 A. I think I did. I am not sure.
17 Q. All right. Where does Mr. Burgess live in relations to your house?
18 A. Across the street from me.
19 Q. And can you see his incomplete fence from your house?
20 A. Yes. He has the fence this way.
21 Q. Is it incomplete?
22 A. I guess it is, yes.
23 Q. Well it doesn't go all the way around his property, right? It encircles a portion but there
24 is a large portion that is not in the fence right?
25 A. Yes.

1 Q. Did you send a covenant violation with him?

2 A. No, because I spoke to Mr. Burgess about that and he said that he was going to finish it

3 and there was a reason that he and I can't disclose the reason. He needs to disclose the

4 reason.

5 Q. Well let me ask you this. How long has it been unfinished?

6 A. Well he relocated and he just got back last month and so about a year.

7 Q. Have you ever asked to see the signatures for the covenant amendments?

8 A. Have I ever asked.

9 Q. Yes. You testified earlier that you knew about it. Did you ever ask anybody on the

10 Board if you could see them?

11 A. No. They mailed them to us.

12 Q. No, no. I am talking about the actual signatures that you said that you had never seen of

13 your 24 homeowners that signed off on the amendments?

14 A. They sent that to us.

15 Q. I understand. Do you see these?

16 A. Okay. I don't know what you are talking about. I am sorry.

17 Q. I thought that you testified earlier that you hadn't seen the signatures of the owners that

18 signed off on the covenant amendments?

19 A. Not these.

20 Q. Okay. Have you ever asked to see those?

21 A. No.

22 Q. Okay.

23 A. What is the point. They did it any way. It was done. What was the purpose in seeing it.

24 Q. Okay. Do you disagree with me that 24 of your follow homeowners signed off on that?

25 A. But I spoke to some of my homeowners. They didn't know what they were signing.

1 Q. I am just asking you a question?

2 A. Right. They went door to door.

3 Q. Right.

4 A. They missed the ones that they knew were not with them – okay, let me put it this way.

5 We had a meeting at one time. Jacobs was there. We all were there. We were talking

6 about amending the bylaws. We were talking about rewriting the bylaws and the

7 covenants. It never went into a motion. All right. Then they sent out a poll to all of us,

8 to all of the homeowners about who wants to amend it and it came back nobody wanted,

9 most of them didn't respond and I think seven or ten said that they didn't want the

10 covenants changed.

11 Q. Okay.

12 A. Okay. They went ahead and changed them any way.

13 Q. Well you are holding 24 signatures of your fellow homeowners—

14 A. And I have never seen these.

15 Q. Well have you ever asked to see them. You told me no.

16 A. No.

17 Q. You never asked to see them. Okay. Lets go to Section – turn to Section 41 of those

18 covenants for me please. Do you see that?

19 A. Yes, I do.

20 Q. All right. Now Mr. Calmes had you read the first sentence. I am going to ask you read

21 the second for me please. Starting with the terms and conditions of this instrument?

22 A. The terms and conditions of this instrument may be amended or changed only upon

23 written agreement of the owners owning at least two-thirds (2/3) of the lots in Corie

24 Crest.

25 Q. Okay. It doesn't talk about a vote does it? It doesn't talk about a special meeting. That

1 sentence says what it says, correct?

2 A. But it is also in our bylaws that says that we have to vote on amendments.

3 Q. I am just asking you now if that sentence in the covenants says two third (2/3) written

4 agreement, correct?

5 A. Right.

6 Q. All right. Now you said and you talked about being at the depositions of Mr. Biggs,

7 correct? Earlier today you testified a lot about what Mr. Biggs said in his deposition,

8 correct?

9 A. Yes.

10 Q. And you were also sitting in the deposition of Jenneane Froman who is with Hinson?

11 A. Correct.

12 Q. And Mike Seay, correct?

13 A. Correct.

14 Q. And do you recall that Mike Seay said that it was never his intention to band storage

15 buildings at Corie Crest? Do you remember that testimony?

16 A. Yes.

17 Q. And he was the developer of that whole subdivision, right?

18 A. Right.

19 Q. Okay. Now these Board positions that these folks are on they are unpaid positions,

20 correct?

21 A. Correct.

22 Q. And they are voluntarily, correct?

23 A. Correct.

24 Q. Is it your opinion and are you telling Judge Cooper that you think these members of the

25 Board as in any way trying to damage their own property values out there?

1 A. That is not what I am saying.

2 Q. Okay.

3 A. I am saying that when you run for a position whether it be a public service position,
4 whether it be a government position or whether it be a position in the court of law or
5 whether it is a position in a subdivision you are telling the homeowners or you are telling
6 the people that you are going to enforce the rules. This Board doesn't enforce the rules.
7 This Board is more of a dictatorship than it is a democracy.

8 Q. Mrs. Mulholland —

9 A. No, no, let me finish. You asked me the question. Let me finish.

10 Q. Finish your answer?

11 A. First of all we are the homeowners. It is our money. It is our dues. It is our money
12 also. We have a right to know what is going to be done in our subdivision. We have a
13 right to be notified via mail via a meeting of what this Board is planning to do. We
14 never knows what goes on. We have no idea. We ask for checks, we ask for financial
15 statements, we ask for anything and it privacy. Everything is privacy. Everything is
16 secret and everything is privacy. We have no rights. We have no rights. Even in
17 meetings they will not even let us talk.

18 Q. Mrs. Mulholland how is Corie Crest a dictatorship if the Board is elected by you and your
19 fellow homeowners?

20 A. A dictatorship when you don't communicate to your fellow homeowners that you are
21 going to be changing the amendments when you change the bylaws without notifying the
22 homeowners and change things to suit the Board not the homeowners.

23 Q. Once again —

24 A. My concern is my integrity of my home and the value of my home. And any time you
25 don't allow homeowners to voice their opinions.

1 Q. What in your opinion is the procedure with an architectural review committee in place for
2 a building or any type of addition to someone's home out at Corie Crest? What is your
3 opinion as to how that should work?

4 A. I think that the homeowner should apply for a permit or approval from the architectural
5 committee. I think the architectural committee should send out a letter for all of the
6 homeowners, that Mr. and Mrs. Smith are planning to erect a building and it has been
7 approved by the Board of Directors and it is going to be in compliance with the restrictive
8 covenants. So all of the homeowners know what is going up and what is happening in
9 the neighborhood.

10 Q. Well why have a Board and why have an architectural review committee?

11 A. We have a Board and we have an architectural review committee because we, we are the
12 homeowners. They are working for us with us.

13 Q. I understand that but you have elected them to do their job and part of their job is to get
14 request and to act upon those request, correct?

15 A. Yes.

16 Q. All right. You said that you worried about your home value, correct?

17 A. Yes.

18 Q. Let me ask you this. Do you think that having neighbors sue each other is good for home
19 values in a subdivision?

20 A. Absolutely not but we are here because this Board would not work with us. They would
21 not give us a meeting. We could have had this all resolved if we had sit down and had a
22 meeting. Mr. Biggs said to me, bring it on. Mr. Briggs told us when you told us jury
23 trial. Why are we going to a jury trial because arbitration, because he said arbitration is
24 so wishy washy. That is why we are going to a jury trial. They didn't even want to
25 work with us. They didn't want to talk to us. Anything we asked they refused us.

1 Q. Well they talked to 24 of your homeowners?
2 A. They went door to door.
3 Q. All right.
4 A. There was no meeting. There was no special meeting. There was nothing for us to
5 come together and discuss what they were going to change and what they were going to
6 amend.
7 Q. I understand the way that you think it should work. I got it. Thank you.
8 THE COURT: Counsel.
9 MR. CALMES: Just some follow up questions.
10 **REDIRECT EXAMINATION BY MR. CALMES.**
11 Q. Mrs. Mulholland they didn't try to amend the restrictive covenants before we had this
12 hearing before Judge Cole did they?
13 A. Absolute. This was done after the fact.
14 Q. This was after the fact when the restraining order came?
15 A. Exactly.
16 Q. All right. Let me ask you a question about I guess in referenced to Mr. Burgess
17 concerning his fence issue. Are you aware of whether or not the Board of Directors
18 issued any type of violation of covenants or purported violation against Mr. Burgess?
19 Did they undertake anything?
20 A. Not that I know of. I mean Mr. and Mrs. Burgess didn't tell me and they never
21 communicated that to us in our annual meeting.
22 Q. Under the restrictive covenants does the Board of Directors have a right to take actions
23 themselves to determine if a violation is taking place?
24 A. Absolutely.
25 Q. Looking at Section 20 again, that he asked you about. No temporary residences.

1 A. I am sorry. Which section?

2 Q. Section 20. If you are looking at the temporary residences it just indicates that there are
3 not to be any type of hobby-type garage at any residence, either temporarily or
4 permanently?

5 A. Exactly. Yes.

6 Q. All right.

7 MR. DARWIN: Your Honor, if I have a chance to recross on that issue. That is not what it
8 says.

9 MR. CALMES: He has a right to recross I guess if the Court says.

10 Q. All I am saying is that it just talks about no hobby-type garage at any kind of residence at
11 all, is that correct?

12 A. Correct.

13 Q. All right. These particular portable shed that they are talking about, these portable shed
14 that they are talking about no portable sheds and that point is true, correct?

15 A. Yes.

16 Q. Now in these two particular instances according to the structures they went through the
17 architectural committee, correct?

18 A. That is my understanding, correct.

19 Q. All right. So they didn't get approved by the association for these detached structures,
20 correct?

21 A. Correct.

22 Q. All right. These portable sheds, if you look at this particular section, doesn't go through
23 the architectural committee does it?

24 A. It does not.

25 Q. It says association does it not?

1 A. It does.
2 Q. And is it your understanding that means the members of the association?
3 A. That is exactly my understanding, we the association. We the members.
4 Q. Does that mean to you that you all had a right to vote on something like this?
5 A. Yes. That is how we felt. Yes.
6 Q. And does it mean that initially you had a right to vote and then the Board decided that you
7 don't have a right to vote?
8 A. Exactly.
9 Q. All right.
10 MR. CALMES: I have no further questions.
11 MR. DARWIN: Nothing further, Your Honor.
12 THE COURT: All right. You may step down.
13 A. Thank you.
14 **CHRISTINE STENGER, BEING DULY**
15 **SWORN, TESTIFIES AS FOLLOWS:**
16 **DIRECT EXAMINATION BY MR. CALMES.**
17 Q. State for the record your full name please ma'am?
18 A. Christine Stenger.
19 Q. Mrs. Stenger where do you live?
20 A. At 1092 Corie Crest, Boiling Springs.
21 Q. And how long have you lived there?
22 A. It will be five (5) years, October 1.
23 Q. Five (5) years, October 1?
24 A. Yes.
25 Q. October 2006, is that correct?

1 A. Correct. That is right.

2 Q. When you came to live to Corie Crest Subdivision did you know whether it was subject
3 to restrictive covenants?

4 A. Yes, I did.

5 Q. Are you familiar with those restrictive covenants?

6 A. Yes, I am.

7 Q. And you had the opportunity to – you reviewed those restrictive covenants at the time that
8 you moved into the place?

9 A. Yes sir.

10 Q. In reading that what is your opinion about detached structures within the community?

11 A. I took it to mean a detached garage. When I first moved in there then there were no other
12 buildings other than garages and homes. All of the other homes in the area were still
13 being constructed.

14 Q. All right. So at that point in time there were none is that correct?

15 A. Correct.

16 Q. And when you moved in there in 2006 was it your belief that there would not be any
17 detached structures such as what you have seen since that time?

18 A. Yes, that was my belief.

19 Q. When you saw detached structures go up did you object?

20 A. Yes, I did.

21 Q. Did you take your complaints to the management committee and the Board of Directors?

22 A. Yes. I sent them a complaint and they said sort of it was none of my business. I
23 requested proof that DeNicola's building was permitted to be there and if they said that it
24 was permitted to be there to just send me proof and I would drop the whole thing. But I
25 was told that it was none of my business.

1 MR. DARWIN: Your Honor, just for the record I would appreciate it if she is talking about the
2 Board that she identify who she is talking about when she says they and some person, I don't
3 know if it is hearsay or not. Was it the Board or not someone else.
4 THE COURT: All right.
5 A. The Board. I am saying they meaning the Board members. They don't sign anything so
6 I don't have who it comes from.
7 Q. So when you issue a covenant violation they send something back. What do they send
8 back?
9 A. They send out a rejection or an accepting notice and I think that I only got one accepting
10 from a garbage can and the rest of them were all rejected.
11 Q. Did anybody sign any of them?
12 A. No.
13 Q. All right. I would ask you to look at this covenant violation report and can you identify,
14 is that one of the reports of violations that you believe listed there?
15 A. Yes.
16 Q. Okay. And who is that in reference to?
17 A. That is in reference to Mr. and Mrs. Hannah.
18 Q. Okay. And what are you claiming that the violation is?
19 A. Regarding the description on the new existing building. Per construction of the existing
20 building that I complained that it was not approved and they told me, may I read what
21 they said?
22 Q. Yes, read it all.
23 A. The Board said the addition to the existing structure was approved on 2-4-09 by the
24 architectural committee. The addition provides coverage for the pool equipment. It is
25 not a storage facility and it is in harmony with the existing structure. I said that it wasn't.

1 Q. And has anybody signed this?
2 A. No. They don't sign anything.
3 Q. The Board doesn't sign?
4 A. That is the way that I got it.
5 MR. CALMES: I would like to offer this as an exhibit.
6 MR. DARWIN: No objections.
7 THE COURT: All right. This will be Plaintiff's Exhibit 17.
8 **MR. CALMES INTRODUCES INTO EVIDENCE A COVENANT VIOLATION**
9 **REPORT, ABOVE IDENTIFIED, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 17.**
10 THE COURT: All right.
11 Q. When they made the Board comments, when they talked about the structures approved by
12 the ARC.
13 A. Yes.
14 Q. That is the architectural review board?
15 A. Yes.
16 Q. Is that correct?
17 A. That is correct.
18 Q. If that was the case then if somebody makes an application to have an addition or
19 whatever the building or whatever they are going under Section 7 of the restrictive
20 covenants, is that correct?
21 A. I would assume so.
22 Q. Would you look at Section 7-A. Is there anything in Section 7-A that talks about a patio
23 cover for pool support equipment?
24 A. No.
25 Q. Mrs. Stenger when did you become aware that the restrictive covenants were amended?

1 A. When I received the noon mail.
2 Q. Did you ever have any advance notice from anyone that the meeting was going to take
3 place to discuss this?
4 A. No, I did not.
5 Q. Okay. Do you know whether or not when this amendment was recorded was it before
6 the motion that we had or after the motion?
7 A. After.
8 Q. Are you aware of what they had deleted or amended?
9 A. I was not aware of anything until I was sent these change in the covenants.
10 Q. The change in the covenants?
11 A. Yes.
12 Q. And in looking at that did they want to amend Section 2?
13 A. Yes.
14 Q. Correct?
15 A. Yes.
16 Q. And they wanted to amend Section 7? Is that correct?
17 A. Correct.
18 Q. And in doing so you are aware of the lawsuit that Mrs. Mulholland filed, is that correct?
19 A. Yes.
20 Q. And of course the filing of that lawsuit really centered around those two particular
21 sections regarding Mr. Biggs' structure and Mr. Hannah's structures?
22 A. Yes.
23 Q. Did you have the opportunity to finally read those amendments to restrictive covenants?
24 A. Yes.
25 Q. And in reading that and the amendments, and also reading Section 41 of the original

1 restrictive covenants.

2 A. Okay.

3 Q. Did you have the opportunity there?

4 A. Yes, I read them.

5 Q. In reading Section 41 is there any ambiguity that you see in Section 41 at all or is it clear?

6 A. It is clear.

7 Q. All right. Being clear do you believe that they had a right to amend those restrictive

8 covenants?

9 A. Absolutely not.

10 Q. Do you believe that can't be done until October 2040?

11 A. Yes.

12 Q. Mrs. Stenger do you recall an annual meeting that you had concerning inquiry about why

13 Mr. Biggs and the Defendants wanted a jury trial?

14 A. Yes. I asked them at one of the meetings. I said why did you request a jury trial and

15 Mrs. Mulholland requested arbitration or something before a judge. And he said my

16 attorney said arbitration is a wishy washy thing and that we should have a jury trial. That

17 he didn't give us a meeting about it like it says. We didn't know anything, that he had

18 even hired an attorney.

19 Q. All right.

20 A. For our protection which was absolutely just to get the covenants either this is correct or

21 this isn't correct.

22 Q. You heard testimony about the Bylaws, is that correct?

23 A. Yes.

24 Q. You heard concerning votes as far as amendments to bylaws. Have you ever participated

25 in the vote to amend any of the bylaws?

1 A. No.

2 Q. Have you had an opportunity to see the bylaws dated May 21, 2009?

3 A. Yes.

4 Q. Based upon that amendment did you have an opportunity to vote on those amendments?

5 A. No.

6 Q. What is your reading from that bylaws amended May 21, 2009?

7 A. That they have changed things according to their belief and not as the covenants or

8 bylaws state by the Board.

9 Q. According to those bylaws do you believe that you have a right to vote on any

10 amendments?

11 A. Yes.

12 Q. Now if you look at the bylaws that they amended, do you believe that if those were

13 accepted that you would have a right to vote?

14 A. No, we did not.

15 Q. All right.

16 MR. CALMES: I have no further questions.

17 THE COURT: Mr. Darwin.

18 **CROSS EXAMINATION BY MR. DARWIN.**

19 Q. Mrs. Stenger you moved there in 2006?

20 A. Yes.

21 Q. Hinson Management was the managing company at that point in time, correct?

22 A. Yes.

23 Q. There was no Board, right?

24 A. No, there was not.

25 Q. Hinson Management approved the DeNicola and Martin buildings, correct?

1 A. That is what the Board told me.

2 Q. Wait a minute. You never wrote Hinson Management about it?

3 A. My husband was very ill when I moved here. He was in the hospital. In 2008, I asked

4 the Board to send me proof regarding this shed after my husband had passed away. They

5 said that it wasn't any of my business. That Hinson Management did it on their own and

6 that was it. And I said well just give me proof that Hinson approved this because from

7 what I knew Hinson did not approve it. That they were arguing with Mr. DeNicola.

8 Q. What about the Martins? Were they arguing with the Martins?

9 A. I have no idea.

10 Q. Okay. So you never wrote Hinson, yourself?

11 A. No, I did not.

12 Q. Did you get any records like that?

13 A. I wrote the Board because they had already taken over.

14 Q. Yes. But if you weren't getting the response you wanted from the Board and Hinson

15 Management you knew had been the management company to approve those or you had

16 been told that they approved them you didn't then as a concerned homeowner go to

17 Hinson Management?

18 A. What for? They had already given it to the Board.

19 Q. Well if the Board wasn't giving you is your testimony any —

20 A. Yes. The Board wouldn't give me any answers. They told me that it wasn't any of my

21 business and they had all of the records. So what was Hinson Management going to do

22 when they turned everything over to the Board.

23 Q. Okay. So you don't know if Hinson Management maintained copies of the records?

24 You have no idea do you?

25 A. I have no idea.

1 Q. Because you never tried to go to Hinson Management?
2 A. Correct.
3 Q. All right.
4 A. I only know when I was here with the deposition.
5 Q. Each time that you filed a Complaint the Board has responded to you haven't they? You
6 might not like the response but you got a response, right?
7 A. Yes, eventually.
8 Q. All right. Lets go to the covenants. I don't know if you have those in front of you or
9 not?
10 A. No, I don't.
11 Q. All right. So you were fully in line with the complaint with Mrs. Mulholland that the
12 only thing that is allowed out there is under Section 2, a two story building and a detached
13 garage, if approved?
14 A. A detached garage, yes sir.
15 Q. Right, right. That is it, right?
16 A. Yes.
17 Q. Okay. Go to Section 8 for me. Are you there?
18 A. Yes.
19 Q. You see that it references to garage or hobby-type storage buildings, do you not?
20 A. Yes.
21 Q. All right. Go to Section 18 for me. Are you there?
22 A. Yes.
23 Q. That talks about portable buildings, metal storage buildings or other similar off-site
24 constructed storage buildings, correct?
25 A. Yes.

- 1 Q. And 20 talks again about hobby-type storage building, correct?
- 2 A. Yes.
- 3 Q. All right. Are those not ambiguous in Section 2?
- 4 A. I think that it depends on your interpretation of them.
- 5 Q. How about your interpretation?
- 6 A. I think that Section 2 overrules anything like that because it doesn't mention anything like
- 7 that.
- 8 Q. I got you. But if they are referenced somewhere else why are they referenced?
- 9 A. So that you don't have them.
- 10 Q. But it says they are okay, right. If they are approved by the Developer or his nominee?
- 11 A. Well it depends on what they approve, I guess. I mean just like it says no junk cars.
- 12 What if they decide to put something, you know, what if they decide to put a metal
- 13 storage building up to junk cars or anything else if the Association Board says that it is
- 14 okay—
- 15 Q. Does it say no junk cars unless approved by the Association and nominee?
- 16 A. No, it says that you are not allowed to put junk cars in your yard.
- 17 Q. How about Section 41? I know you just read one part but what about the terms and
- 18 conditions of this instrument may be amended or change only upon written agreement of
- 19 the owners owning at least two-thirds (2/3) of the lots in Corie Crest?
- 20 A. Yes. It doesn't say who the Board – I would assume that when anyone. I know that you
- 21 shouldn't assume but anyone would be over and above would have a meeting.
- 22 Q. I am asking you what the covenant reads?
- 23 A. That is what it reads.
- 24 Q. Did I read it properly?
- 25 A. Yes, you did.

- 1 Q. It doesn't talk about a meeting does it?
- 2 A. No, it does not.
- 3 Q. It doesn't talk about a vote does it?
- 4 A. It does not.
- 5 Q. All right.
- 6 A. But it does in the bylaws.
- 7 Q. Talk to me about each year you have lived out there and there has been a Board and
- 8 elections, have you been given an opportunity to vote for the Board members?
- 9 A. Yes, I have.
- 10 Q. Has this Board been re-elected three years in a row by the majority of your homeowners?
- 11 A. Yes, it has.
- 12 Q. And have you voted?
- 13 A. Yes, I have.
- 14 Q. Have you ever run for a position?
- 15 A. Yes, I have.
- 16 Q. Have you lost or won that position?
- 17 A. I lost.
- 18 Q. How many times did you run?
- 19 A. Once.
- 20 Q. Okay. When was that?
- 21 A. Not this year but the year before.
- 22 Q. Why haven't you run since? Why didn't you run this year?
- 23 A. Why.
- 24 Q. Well?
- 25 A. I looked for the management company to be nominated they told me. That is why I

1 didn't run. I wanted the management company.

2 Q. But you don't you try to run and rally your fellow homeowners to elect you so you can get
3 your wishes and get a management company?

4 A. No. Because the Board would not let anybody have any say so and I requested at the
5 meeting why they did not put this on the ballot and they said that it is too involved and I
6 wouldn't understand.

7 Q. But you had a chance to run?

8 A. Yes. But why would I want to be aligned with that again.

9 Q. Because you didn't run did you?

10 A. No, I did not. I wanted the management company.

11 MR. DARWIN: That is all I have.

12 THE COURT: Mr. Calmes.

13 **REDIRECT EXAMINATION BY MR. CALMES.**

14 Q. Mr. Darwin asked you about and he cited sections and asked you whether certain sections
15 meant that they were ambiguous. Did you hear when he said that?

16 A. Yes.

17 Q. In this amendment to declarations restrictive covenants does any of this talk about one of
18 the purpose of amending that there was some ambiguity involved?

19 A. No.

20 Q. Mrs. Stenger are you concerned about the value of your property?

21 A. Yes. When my husband and I were looking there he was very ill so he was highly
22 concerned that we bought a home that was going to hold its value because he knew that
23 he was not going to live very long and he wanted to make sure that I was secure for the
24 rest of my life. He did not want me buying a home where the valuation of my home was
25 going to decrease in value because of things that were permitted in the neighborhood.

- 1 Q. All right. What is your opinion about having detached buildings within Corie Crest
2 Subdivision?
- 3 A. I think a detached garage is absolutely fine. I think it would increase the property value
4 not decrease it.
- 5 Q. All right. As far as the property attached garage, you know that there are two (2) of them
6 out there is that correct?
- 7 A. Yes.
- 8 Q. And how do they look?
- 9 A. I can see one of the people's house it is very nice I do not see the other one. I can only
10 see the roof of the other one but from what I have seen and when the gates are open it
11 seems quite nice.
- 12 Q. Do you believe that they have increased the value of the subdivision?
- 13 A. Definitely.
- 14 Q. How about portable structures like Mr. Biggs and Mr. Hannah?
- 15 A. I have never seen Mr. Biggs, only the roof from the road. And Mr. Hannah's the Board
16 did approve part of it so I can't do anything about that but the lean-to, I don't understand
17 that at all.
- 18 Q. Well let me ask you this. In the restrictive covenant it talks about what the restrictive
19 covenants will allow and it talks about outbuildings being there, is that correct?
- 20 A. Yes.
- 21 Q. It doesn't define about what kind of outbuildings we are talking about does it?
- 22 A. No, it does not.
- 23 Q. Do you believe that is going to have a negative impact on your property?
- 24 A. Well definitely it will.
- 25 Q. Do you believe that it will decrease your property?

1 A. Absolutely.

2 MR. CALMES: I have no further questions.

3 **RECROSS EXAMINATION BY MR. DARWIN.**

4 Q. Have you had your property appraised since you closed in 2006?

5 A. No, I have not.

6 Q. All right. You just said that the Board approved Mr. Hannah's patio cover so there is

7 nothing you can do about it, right? That is exactly what you just said?

8 A. Yes, I did.

9 Q. Didn't they approve the portable lean-to?

10 A. Yes, but that is —

11 Q. What is the difference?

12 A. Because it is ridiculous. It is a lean-to added on to store his pool equipment in---

13 Q. Okay. So it is storing things but ---.

14 A. They have a pool May I finish.

15 Q. Sure?

16 A. They have a pool and they have children and I thought that their children should be

17 protected from the sun so I was not going to say you can't put this up because you don't

18 put children out in the pool and not have any protection for them. All right. It looks

19 similar to a garage type but it just doesn't have sides. So I agreed with that. I said okay

20 that is fine. I have no objections about that part. But I did have the objection about the

21 lean-to on the back that makes it look like a barn.

22 Q. Well just for sake of argument where in the covenants do you see anything that references

23 a covered patio?

24 A. I don't know. I mean I don't know about a covered patio.

25 Q. But you are okay with that. You just testified that you were.

1 A. I said that it looks like a garage and it was to protect the children. There are situations in
2 certain instances but it doesn't say anything about he did not put a shed up.
3 Q. Did you not just testify Mrs. Stenger that the Board approved the patio cover so there is
4 nothing you can do about it. Were those not your exact words?
5 A. Those were my words. They did approve the patio cover.
6 Q. And didn't they approve the lean-to?
7 A. Yes, but I didn't like that and I objected immediately.
8 Q. Oh. Okay. Thank you.
9 A. You are welcome.
10 THE COURT: Counsel?
11 MR. CALMES: I have no further questions.
12 THE COURT: You may step down.
13 A. Thank you.
14 **TERRY BURGESS, BEING DULY SWORN,**
15 **TESTIFIES AS FOLLOWS:**
16 **DIRECT EXAMINATION BY MR. CALMES.**
17 Q. Will you please state your name for the record?
18 A. Terry Burgess.
19 Q. Mr. Burgess are you a lot owner?
20 A. Yes.
21 Q. All right. In the Corie Crest Subdivision?
22 A. Yes sir. Lot 21, address is 1089.
23 Q. All right. And how long have you lived there?
24 A. We bought the house in December of 2005 and we lived there until probably August or
25 September of 2009. And we spent the last two years in Alabama and just moved back

1 about a month ago.

2 Q. You still own a house there?

3 A. Yes sir..

4 Q. Do you recall when you first met Mr. and Mrs. Biggs?

5 A. Yes sir. I do. They were approximately the first neighbors that actually came to the

6 house when we moved in the subdivision.

7 Q. And do you remember at that point in time there wasn't a formal Association is that

8 correct?

9 A. That is right. We had Hinson Management.

10 Q. Hinson Management Company?

11 A. Yes sir.

12 Q. And I guess in looking at Hinson Management how did Hinson Management become

13 involved in this subdivision?

14 A. Mr. Seay hired Hinson to like I say I guess oversee the subdivision. During one issue

15 that we had I talked to the realtor that we bought our house from concerning an issue and

16 she told me to call Mike Seay, he is the developer, he can answer your questions. So I

17 called Mike and Mike told me, he said when we got the thing done, this was early in the

18 process probably the spring of '07 and he said that he had turned everything over to

19 Hinson you know early in the process so he had nothing else to do with the subdivision so

20 he told me to call them.

21 Q. All right. Right off the top of your head do you recall when the homeowners association

22 was formed?

23 A. I do sir.

24 Q. And when was that?

25 A. It was I think the fall maybe the later part of '07.

1 Q. Okay. Were you elected on the Board at that time?

2 A. Yes sir, I was.

3 Q. All right. Prior to that time between Hinson Management and the formation of the
4 homeowners association did there become any detached structures put on some properties
5 within the Corie Crest community?

6 A. Yes sir. Actually they told us what it was. There was actually I came in one afternoon
7 and there was a rollback trailer or a rollback truck backed up there and they were
8 unloading a storage building off of that onto that lot.

9 Q. They were loading that off onto the lot?

10 A. Yes sir. They were taking it off of the truck onto the lot.

11 Q. And when you noticed that did you have any concerns about that?

12 A. I did. I did. When my wife and I bought our house we relocated to the area and spent
13 probably about two months in a house and then 8 months in Boiling Springs so we looked
14 several weekends during that ten month period for houses and we went into numerous
15 subdivisions that had the portable storage buildings such as the one that was hauled in
16 and yes we definitely didn't want to live in one of those subdivisions. When those
17 buildings get a little bit of age on them they start looking bad and they affect the way that
18 the property looks. So when we bought our house or started to look at our house one of
19 the first thing that we asked about was the covenants and we looked at the covenants and
20 I talked to our realtor and she said no way will a portable storage building be in that
21 subdivision.

22 Q. So when you came and bought the property there were no structures like that at all there?

23 A. Right.

24 Q. When you saw that come up did you know Mr. Biggs at that time?

25 A. Oh yes.

1 Q. Did Mr. Biggs express any concerns to you about it?
2 A. He liked the buildings almost as well as I did. He didn't like the buildings at all. In fact,
3 Mr. DeNicola's building when they first bought it in was a school bus yellow and
4 referred to it as the yellow school bus and then when —
5 Q. Mr. Biggs did.
6 A. I am sorry.
7 Q. Did Mr. Biggs refer to that?
8 A. Yes sir.
9 Q. Okay. And then Mr. Martin started constructing his building. I was working the night
10 shift. And from the yard looked across behind the house where the building was being
11 built and I actually thought that they were building a patio away from the house because it
12 was up on blocks and they looked like that they were building a patio. So the next
13 morning they were putting the walls and everything else up on it. So again you know I
14 talked with Mr. and Mrs. Biggs and again we were pretty upset that they were building
15 those buildings in the subdivision because you know from what I had been told when I
16 moved in and looking at the covenants and from the realtor those buildings were not
17 allowed in the subdivision. So actually Mr. Biggs made an appointment with an attorney
18 down town in I think it is the Wachovia Bank building, the big building there, to see an
19 attorney. He said it was his closing attorney. So he wanted to go talk to an attorney
20 about what we could do to have those building removed out of the subdivision.
21 Q. So during this period of time he was objecting to them also?
22 A. Yes sir.
23 Q. Were there others objecting to these things to?
24 A. Yes, yes there was.
25 Q. Did you express your concerns or complaints to Hinson Management?

1 A. I did. I talked to Hinson numerous times. In fact, when I met Mrs. Mulholland I was
2 sitting in my front yard. I met Mr. Mertz first but I was sitting in my front yard. I had
3 just got through mowing and I called Hinson on my cell phone to fine out where they
4 were at with the building. I met with Jeanne on several occasions to talk about them.
5 One of the things that she told me was —
6 MR. DARWIN: I object to hearsay, Your Honor.
7 A. No it is not hearsay.
8 THE COURT: Sustained.
9 A. It is not hearsay at all.
10 THE COURT: I sustain the objection.
11 Q. Well any how well basically not necessarily what Mr. Hinson but you expressed concerns
12 with Hinson, the Hinson Management, right?
13 A. I talked to Jenneane. I met with her in the office.
14 Q. Okay. Did Mr. Biggs also talk with Mrs. Froman?
15 A. I am sure he did. I wasn't with him when he talked to her but she relaid to me that —
16 MR. DARWIN: I object to hearsay, Your Honor.
17 THE COURT: Sustained.
18 Q. All right. Now you talked with her and you were talking about these structures were you
19 not?
20 A. Right.
21 Q. Did you ask Hinson Management to take some actions to have them removed?
22 A. I did. She basically told me —
23 Q. Okay. Just did you ask?
24 A. Yes, I did. Yes.
25 Q. Did they do anything?

1 A. No sir. They asked me to go talk to the homeowners.
2 Q. Okay. You went to go talk to the homeowners?
3 A. Yes. She asked me to go talk to the homeowners that had the buildings because if I can
4 tell—
5 Q. Well let me just put it this way.
6 A. Okay.
7 Q. You tried to make an effort to express your concerns about this shed?
8 A. Yes.
9 Q. You complained to Hinson Management is that correct?
10 A. Yes.
11 Q. And nothing was done is that correct?
12 A. Yes.
13 Q. And as a result did Mrs. Mulholland decide to file an action?
14 A. Yes.
15 Q. Okay. As a result of that action ultimately did the shed, the structure get removed?
16 A. Yes.
17 Q. Concerning Mr. DeNicola's shed did Mr. Biggs tell you that he believed — what did Mr.
18 Biggs tell you about DeNicola's shed in reference to making complains to Hinson
19 Management?
20 A. One of the things goes back to when we first started talking to Mr. and Mrs. Biggs, we
21 expressed the fact that one of the reason that we bought into this subdivision was because
22 the buildings couldn't be put in the subdivisions, and he knows those buildings are not
23 allowed in this subdivision. So yes we did talk numerous times about Mr. DeNicola's
24 building and Mr. Martin's building. Are you aware that members of the community tried
25 to file covenant report violations to the Board after the Board was formed regarding Mr.

1 DeNicola?
2 A. Yes sir.
3 Q. Did that help in any way with having the shed removed?
4 A. I believe so.
5 Q. Were you finally aware that Mrs. Mulholland filed an action to ask that the DeNicola's
6 shed be removed?
7 A. Yes.
8 Q. Did you support her in that action to have Mr. DeNicola's shed removed?
9 A. Yes sir, one hundred (100) percent.
10 Q. Mr. Burgess have you had the opportunity when you moved in to read the restrictive
11 covenants?
12 A. They were actually mailed to me in Alabama and I did read over them..
13 Q. I am talking about the original restrictions?
14 A. The original restrictions, yes sir.
15 Q. You have had an opportunity to read them?
16 A. Yes sir.
17 Q. You obviously learned that Mr. and Mrs. Biggs constructed a garden shed?
18 A. Yes sir.
19 Q. What is your opinion about that garden shed in relations to the original restrictive
20 covenants?
21 A. It doesn't fit with the original covenants.
22 Q. Do you believe that it violates the restrictive covenants?
23 A. Yes sir, I do.
24 Q. Do you believe that violations such as that have an impact on the property?
25 A. I do.

1 Q. Do you believe that it has a negative effect?
2 A. Yes sir.
3 Q. Now how about Mr. Hannah's lean-to building?
4 A. Yes sir. I believe that it has a negative impact.
5 Q. When you read restrictive covenants and it talks about going through the architectural
6 committee, is it your understanding that they go through the architectural committee
7 Section 7 of the restrictive covenants is the applicable section?
8 A. Yes sir.
9 Q. Mr. Burgess first of all were you there at the May 14, 2010 hearing?
10 A. Yes sir.
11 Q. Did you learn what the outcome of that hearing was?
12 A. Bits and pieces of it, yes.
13 Q. Did you learn that there came a temporary restraining order?
14 A. Yes sir.
15 Q. On future sheds?
16 A. Yes sir.
17 Q. When did you learn about the restrictive covenants being amended?
18 A. When I got the initial, I guess documents in the mail and one of my friends in the
19 subdivision mailed and actually called us before that and told us. So about two years.
20 MR. DARWIN: Objections.
21 THE COURT: Sustained.
22 Q. Just a minute. Somebody mailed them to you?
23 A. Yes sir.
24 Q. Did you send it back voting in favor of this Mr. Burgess?
25 A. No sir.

1 Q. If you had known about this would you have voted against it if you had an opportunity to
2 vote?--
3 A. I would have voted against changing them. Yes sir.
4 Q. Did you have an opportunity to vote at all at that point in time other than something being
5 put in the mail?
6 A. No sir.
7 Q. Is it your understanding with this restrictive covenant that they want to basically
8 substantially amend Section 2 and Section 7?
9 A. Yes sir.
10 Q. Looking at Section 7, it talks about no outbuildings or hobby type structures unless it is
11 approved. I mean that term outbuildings what does that mean to you? Could that be
12 anything?
13 A. The definition of an outbuilding could be anything.
14 Q. Do you object to having those amendments to the restrictive covenants?
15 A. Yes sir.
16 Q. Mr. Burgess do you believe that Mrs. Mulholland was required to file this action?
17 MR. DARWIN: I object to the form. I object to the question he can't testify as to Mrs.
18 Mulholland's state of mind.
19 THE COURT: All right. Why don't you see if you can restructure that.
20 MR. CALMES: All right.
21 Q. Looking at the circumstances involved, when these structures came about including Mr.
22 Biggs and Mr. Hannah's, what was your belief that the Board of Directors was going to
23 do if anything about these particular structures?
24 A. They wasn't going to do anything.
25 Q. Based upon that do you believe that Mrs. Mulholland was justified in filing this action?

1 A. Yes sir. If I had the money I would have done it myself.
2 Q. All right.
3 MR. CALMES: At this time I have no further questions, Your Honor.
4 THE COURT: All right Counsel.
5 **CROSS EXAMINATION BY MR. DARWIN.**
6 Q. Mr. Burgess if you had the money would you have paid your homeowners dues?
7 A. If they would have followed the homeowners' covenant, I would have.
8 Q. You haven't paid since 2009, correct?
9 A. Right.
10 Q. As a matter of fact you have a lien against your property for non-payment of homeowners
11 dues, correct?
12 A. It looks like I do.
13 Q. All right.
14 MR. DARWIN: I offer this as the Defendant's exhibit.
15 THE COURT: Defendant's Exhibit 5.
16 **MR. DARWIN INTRODUCES INTO EVIDENCE A COPY OF A NOTICE OF LIEN,**
17 **RECORDED IN BOOK 4336 AT PAGE 844, MARKED AS DEFENDANT'S EXHIBIT 5.**
18 THE COURT: All right.
19 Q. Mr. Burgess when did you start your fence there?
20 A. I don't know to be honest.
21 Q. You don't have any earthly idea what year? Has it been more than two years?
22 A. Yes.
23 Q. Is it finished?
24 A. Yes, it is finished.
25 Q. It is?

1 A. Yes sir.

2 Q. If Judge Cooper drives out there he is going to see a complete fence—

3 MR. CALMES: Your Honor, wait a minute—

4 Q. It is a complete —

5 MR. CALMES: Your Honor, I object. Give him an opportunity to —

6 THE COURT: Wait a minute.

7 MR. CALMES: I am sorry.

8 MR. DARWIN: I apologize.

9 THE COURT: Everybody just relax a second. All right. Start again.

10 A. Okay. In the covenants —

11 THE COURT: Wait a minute. Mr. Darwin ask a question.

12 Q. Do you have a fence running the entire perimeter of your house?

13 A. No sir.

14 Q. Why not?

15 A. Can I ask a question?

16 Q. No, you answer the question?

17 A. Okay. Because the covenant doesn't say that I have to have a fence all the way around

18 my house. I have one going down the line between my house and my neighbors because

19 when I went out in my yard I could not enjoy my backyard because of the dogs and then I

20 have across the front edges of my house because if I want to put something in my back

21 yard such as my garbage can which can not be opened or a trailer if I want to put it in my

22 back yard I can put it behind those two parts without it being sent. I don't want to close

23 my entire yard in because I enjoy it being open.

24 Q. Did you post the entire yard?

25 A. Did I what.

1 Q. Are there post around your yard?
2 A. No.
3 Q. There is not?
4 A. No.
5 Q. Really?
6 A. Yes.
7 Q. What is the status of your gate?
8 A. My gate got torn down while I was in Alabama.
9 Q. How long have you been back?
10 A. I have been back probably, I think the delivery truck delivered on 18th of July.
11 Q. What steps have you taken to have it repaired since then?
12 A. What steps have I taken to have it repaired.
13 Q. Yes?
14 A. I will repair it myself. I won't take any steps to have it repaired. I will repair it myself
15 when I get a couple of days at home.
16 Q. All right. Is that house still currently in foreclosure?
17 A. What does that have to do with this case?
18 MR. CALMES: Your Honor, I would object to. I think that is total irrelevant. We are here
19 talking about —
20 MR. DARWIN: Your Honor that is to credibility —
21 THE COURT: I will sustain that.
22 Q. Do you think the Hannah's patio cover negatively impacts your property value?
23 A. I was on the Board when we — can I elaborate.
24 Q. Sure?
25 A. I was on the Board when we approved the patio cover and from going back and looking

1 we were dead wrong in approving that patio cover That has my signature, yes, it does.
2 Q. Okay.
3 A. And that is what I said you know we approved it but from looking at it we were dead
4 wrong with it.
5 MR. DARWIN: I offer this.
6 THE COURT: Any objections?
7 MR. CALMES: No sir.
8 THE COURT: This is the approval of the patio cover.
9 MR. DARWIN: Of the patio cover itself not what they call the lean-to.
10 THE COURT: All right. This will be Exhibit 6.
11 **MR. DARWIN INTRODUCES INTO EVIDENCE A COPY OF AN ARCHITECTURAL**
12 **REVIEW COMMITTEE REQUEST, MARKED AS DEFENDANT'S EXHIBIT**
13 **NUMBER 6.**
14 THE COURT: All right.
15 Q. That is your signature?
16 A. Absolutely.
17 Q. Is that your handwriting as well?
18 A. Absolutely.
19 Q. It says plan calls for patio and has been approved?
20 A. Yes sir.
21 Q. If that then would have been in September of 2008, why did you approve it?
22 A. Why did we approve it.
23 Q. Yes?
24 A. You know being new on a board and never serving in that capacity on the Board from my
25 standpoint I made a mistake.

- 1 Q. But what portion of the covenants did you rely on in approving it?
- 2 A. We probably didn't rely on any of them to approve it. It was at a Board meeting and the
3 group meeting and so we probably didn't rely on anything out of the covenants to approve
4 it.
- 5 Q. Would you call that an architectural review committee to approve that?
- 6 A. Yes sir.
- 7 Q. Okay. You and two other members?
- 8 A. Yes sir.
- 9 Q. And you received Mr. Hannah's request right?
- 10 A. Yes sir.
- 11 Q. And did you share this request with all of the other homeowners out there?
- 12 A. No.
- 13 Q. Why not?
- 14 A. Again like I said it was probably the first – one of the first projects that we dealt with and
15 a learning process for me and I made a mistake.
- 16 Q. Well how many other projects did you review on the architectural review committee?
- 17 A. I think a fence.
- 18 Q. All right.
- 19 A. I think Mr. Jacobs applied for a fence and Mr. Miller well Mr. Martin I think applied for a
20 fence.
- 21 Q. All right and with those two did you approve them?
- 22 A. Yes.
- 23 Q. And did you share those request with the other members of the community?
- 24 A. No.
- 25 Q. Why not?

1 A. Because - - -
2 Q. Did you - - -
3 MR. CALMES: Let him answer.
4 A. According to Mr. Biggs we didn't have to.
5 Q. Why didn't you and the Board sue the Martins and the DeNicola on those structures if
6 you didn't agree with them?
7 A. We talked about it on several occasions. Can I answer something besides yes or no.
8 Q. Sure.
9 A. Okay. We talked about it on several different occasions. Even at one time and the
10 architectural committee at that point consisted of Mr. Hannah, Mr. Cramer, myself. We
11 talked about it. We even - Mr. Hannah drafted a letter to send copies basically
12 concerning the fact that we did not believe that those buildings were in compliance and
13 we were going to mail that letter and then Mr. Hannah decided that he felt like that we
14 needed to bring it before the entire board and at that point it was three to two against Mr.
15 Cramer and myself that we didn't need to send that letter at that point that we did not feel
16 like those buildings were in compliance.
17 Q. All right. They did approve those buildings, correct?
18 A. According to what I see in the documentation that I have I don't feel like they approved
19 them as they were standing.
20 Q. All right.
21 A. They were approved with stipulations.
22 Q. Did you receive a violation notice on your fence from the Board on March 14, 2009?
23 A. Probably so.
24 MR. CALMES: Your Honor, I want to object. This doesn't have anything to do with the issue
25 of what is here.

1 THE COURT: I am going to allow it.

2 MR. CALMES: Okay.

3 Q. Continue your answer.

4 A. I did and I finished down the siding. That is what it said. That blocked me from having
5 to deal with the dogs next door.

6 Q. All right.

7 THE COURT: Counsel.

8 **REDIRECT EXAMINATION BY MR. CALMES.**

9 Q. There has been some testimony about the election of officers and people being on the
10 Board?

11 A. Right.

12 Q. You were on the Board, too?

13 A. Yes sir.

14 Q. And you are no longer on the Board?

15 A. Right.

16 Q. I believe Mr. Cramer is also on the Board at t his time, is that correct?

17 A. Yes sir.

18 Q. All right. When you were on the Board at that time is it your testimony that obviously
19 there were violations of the detached structures?

20 A. Yes sir.

21 Q. Was one of the reasons that you just didn't undertake any lawsuits because of the lack of
22 funds?

23 A. Yes sir. And one of the things that came up and Mr. Biggs constantly talked about it in
24 our Board meeting was the fact that lets wait and see what happens with Mr. Martin and
25 his lawsuit and then whatever happens there will take precedence on what we do with the

1 other buildings.

2 Q. All right.

3 MR. CALMES: I have no further questions, Your Honor.

4 THE COURT: Mr. Darwin?

5 MR. DARWIN: Nothing, Your Honor.

6 THE COURT: All right. You may step down sir.

7 **ROBERT MARK CRAMER, BEING DULY**

8 **SWORN, TESTIFIES AS FOLLOWS:**

9 **DIRECT EXAMINATION BY MR. CALMES.**

10 Q. State for the record your full name please sir?

11 A. Robert Mark Cramer.

12 Q. Mr. Cramer where do you live sir?

13 A. At 209 Corie Field Court.

14 Q. All right. Is that in the Corie Crest Subdivision?

15 A. Yes. We are opposite facing the road.

16 Q. Okay. And how long have you lived there sir?

17 A. About five and a half years.

18 Q. All right. And during that five and a half years were you ever on the Board?

19 A. Yes. I was on the original Board as a Board member.

20 Q. When you moved into the neighborhood were there any detached structures at that time?

21 A. No, there was not.

22 Q. All right. And you have heard obviously the testimony regarding detached structures.

23 Now did you approve those or disapprove of those?

24 A. I disapproved of them.

25 Q. All right. Did you communicate that to Mr. Biggs?

1 A. Many times.

2 Q. All right. And in doing that what was Mr. Biggs response to you?

3 A. Basically what Terry elaborated on just a minute ago about when we were on the original
4 committee and we wanted to know what type of action we could take since there was
5 some hearsay that Hinson had approved or not approved and we were going to wait
6 basically to see what happen in the Court of law system and then we would make a
7 decision on any other buildings after that time.

8 Q. Did you learn that the Martin's building, shed was removed?

9 A. Yes, I did. And at that time I contacted Mr. Biggs with an e-mail to ask him how that
10 would affect now the relation of DeNicola's building and I have an e-mail response that
11 he never made that type of statement to me and I said okay but you know.

12 Q. All right. Were you on any special committees with Mr. Biggs?

13 A. I was on the architectural review committee when I served on the Board.

14 Q. All right. And were there certain instances when certain things would go before your
15 architectural review committee?

16 A. Yes.

17 Q. All right. Were there occasions when you had a particular decision that you denied a
18 particular request, this architectural committee?

19 A. Yes, there was.

20 Q. Okay. And elaborate on that please?

21 A. At one particular meeting we had several things to approve and disapprove that night and
22 it was the night that we were voting on the patio cover for Mr. Hannah.

23 Q. All right.

24 A. And we were kind of caught between a rock and a hard place because the covenants
25 really never stipulated about that type of structure so you know we thought okay he wants

1 to do it basically free fold to keep basically his children, you know protect them from the
2 sun so we basically approve that and the same night be brought forth a request to have a
3 building erected and we voted that evening to disapprove that because I interpreted the
4 covenants as it wasn't a detached garage and secondly it wasn't aesthetically matching the
5 house and that the foundation that he was going to put under the building was not
6 basically to fit the grade and I said that I could not approve that and so at that time myself
7 and Mr. Burgess we voted against that and so immediately they called for another vote.

8 Q. All right. How many members are on the architectural committee?

9 A. There were three (3).

10 Q. All right. Three (3) members on the architectural committee?

11 A. Yes.

12 Q. And who was the other member? Do you recall?

13 A. You know, I am not sure. Well we had someone sitting in that night because Mr.
14 Hannah normally was on that committee but since we were voting on his building he
15 asked to be removed from that on that night.

16 Q. All right.

17 A. And I think Judson was the other one that voted. I believe.

18 Q. Okay. So it was two to one the initial vote, is that correct?

19 A. Yes.

20 Q. Okay. So the architectural committee initially denied that, is that right?

21 A. Yes, the exterior building, yes.

22 Q. All right. So what happened after that?

23 A. They opposed that —

24 Q. Who is they? Who are you referring to?

25 A. Well Judson Merrell said lets just call a full Board vote at this time and I am thinking that

1 is not even legal and so they overturned our vote by a three to two margin at that time I
2 said so basically you can do what you want to do then at the drop of a hat and so then you
3 know it just started from there.

4 Q. Okay. So I am assuming that Mr. Biggs didn't like your decision by the architectural
5 committee on the application regarding Mr. Hannah, is that correct?

6 A. That is true. And I have an e-mail from Mr. Biggs stating that he —

7 Q. Okay. Do you have that email?

8 A. I do.

9 Q. All right. Would you refresh your memory and tell us what that e-mail said please?

10 A. They were discussing who was going to sit on the architectural review committee that
11 night to review the proposals and Jim said I am going to - - -

12 Q. Jim?

13 A. Jim Hannah.

14 Q. Okay.

15 A. Was going relieve himself from voting because that was his building and then Dick says I
16 don't think as president that I should sit on the committee. The Board and I suggested
17 that Judson be the third member of the architectural committee.

18 Q. Okay.

19 A. He said that it would not be right for me to vote on my own project. That was Mr.
20 Hannah's statement. And so in the minutes it says later on here, signed by Mr. Hannah it
21 says this request was denied by a two and one vote and that was Terry and myself and
22 Judson and then it says the denial was overturned by a vote of the entire Board and the
23 request for the shed was approved three to two.

24 Q. All right. Now let me ask you in that regard when you are talking about the architectural
25 committee does it have anywhere that under Section 7 or anywhere in the restrictive

1 covenants that the Board of Directors can overturn a decision of the architectural
2 committee?

3 A. Not that I am aware of.

4 Q. All right. So that is what occurred that particular evening, is that correct?

5 A. Yes.

6 Q. Were you there at the motion hearing before Judge Cole? Were you there at the hearing?

7 A. I think that was the one I attended, yes.

8 Q. All right. And we learned as a result of that hearing that a temporary restraining order
9 took place?

10 A. Yes.

11 Q. And that is to restrain the erection of any further detached structures until a final hearing
12 can be conducted?

13 A. Yes.

14 Q. Soon thereafter did you learn that an attempt was made to amend the restrictive
15 covenants?

16 A. I think it was hereafter.

17 Q. All right. And did you vote on those restrictive covenants?

18 A. I was never approached about the covenants.

19 Q. How did you learn about the covenants being amended?

20 A. I don't recall if it was hearsay from another neighbor or if I ever received a copy in the
21 mail honestly.

22 Q. All right. Well did you notice any people going from door to door?

23 A. I did notice that.

24 Q. Okay. All right. Did it strike you to be any different other than just people going door
25 to door or what?

1 A. Well when two of the Board members are going around door to door immediately I am
2 thinking this can't be good with the committee.
3 Q. Did they knock on your door Mr. Cramer?
4 A. No, they did not. But I was outside.
5 Q. You don't approve of those restrictive covenants, amended restrictive covenants?
6 A. No, I do not.
7 Q. Have you had an opportunity to read these at all?
8 A. Yes, I have.
9 Q. All right. In doing so does it substantially amend Section 2 and Section 7 of the original
10 restrictive covenants?
11 A. Yes.
12 Q. And in affect what it does is it opens up the door for any outbuilding and the type
13 structure that can go on this property, is that correct?
14 A. Basically, yes.
15 Q. What is your opinion if that is allowed how it is going to affect your property?
16 A. It will probably decrease in value as you spoke earlier if I might say but I just had my
17 house appraised about three weeks ago and I lost about thirty thousand.
18 Q. All right. This is just a follow up. Did Mr. Biggs ever complain to you about those
19 sheds prior to him constructing his own?
20 A. Yes, he did.
21 Q. Did he like them?
22 A. No. He advised me to call Hinson Management to complain as well because he said the
23 more people that complained maybe they would do something at that time.
24 Q. All right.
25 MR. CALMES: I have no further questions, Your Honor.

1 THE COURT: All right counsel.

2 **CROSS EXAMINATION BY MR. DARWIN.**

3 Q. Mr. Cramer did you just say that you had your house appraised three weeks ago and you
4 lost thirty thousand dollars?

5 A. Well yes on the original – what I have in my house because I put a swimming pool in
6 since I purchased it. I did an upgrade on my kitchen worth about ten grand and
7 landscaping and so forth.

8 Q. Do you have a copy of that appraisal?

9 A. No, I do not. Not on me no.

10 Q. Are you telling Judge Cooper that is because of these two buildings out there?

11 A. I didn't say that in the least.

12 Q. Oh, okay. Well why do you think that is? Why did you lose thirty thousand?

13 A. Probably the economy has something to do with it and just you know it could be
14 numerous things. I am just saying what I lost in mine.

15 Q. Oh. What you were talking about just was about a ten by twelve building that Mr.
16 Burgess had requested that had been denied that was never built was it on his property?

17 A. You mean Mr. Hannah.

18 Q. Mr. Hannah, excuse me, excuse me, Mr. Hannah.

19 A. Not that I am aware of.

20 Q. Okay. Now you did approve to have the patio cover, correct?

21 A. Yes, I do. I voted and like I said we were kind of in a – you know we were in fix right
22 there we didn't know which way to go because it really wasn't mentioned and so we
23 basically said okay we can do this. Like if somebody wanted a Gazebo probably, you
24 know.

25 Q. While you are on that what section of the covenants that Mr. Calmes put in front of you

1 as Plaintiff's Exhibit 1 references Gazebos or patio covers?

2 A. On memory I don't recall.

3 Q. Well go ahead and look through it. We have got time.

4 A. I don't see that even listed in here unless I overlooked it unless you know what I am

5 supposed to be looking for.

6 Q. No. I actually believe you are not going to find any reference to a Gazebo or patio?

7 A. Okay.

8 Q. But what I will reference to you is to look at 8 and 20, or 18 and 19 and 20 And tell me

9 if you see garage or hobby type storage building?

10 A. Yes, I do. In 8, I see construction of any building, garage or hobby-type storage.

11 Q. Okay. And in 18 do you see any reference to portable or metal storage buildings they are

12 prohibited unless approved right?

13 A. Yes, I do.

14 Q. All right. And in 20 it reference hobby-type storage buildings again?

15 A. Yes, I do.

16 Q. Is it your testimony here today that storage buildings are not allowed at Corie Crest?

17 A. No my testimony is that if it is constructed, aesthetically matching the home, my

18 interpretation has always been if it had a permanent foundation matching the existing

19 dwelling which is a brick to grade foundation it would be permitted.

20 Q. Storage buildings would?

21 A. According to my interpretation of it if it matched my home and my home is basically a

22 vinyl siding house with a brick wrap around. If I were to put up a storage building in my

23 interpretation of it, and again this is my interpretation, I would say it would match my

24 home.

25 Q. But it would be allowed under those covenants under your interpretations?

1 A. Under mine if it matched my home with the pitch, the siding, the soffit, the fascia, the
2 whole nine yards.
3 Q. All right. So you don't take the stand that storage or hobby-type buildings are prohibited
4 out at Corie Crest?
5 A. Me personally.
6 Q. That is my question to you and it is consist with the Affidavit that you put in this case, is
7 it not?
8 A. That is exactly right.
9 Q. Thank you for your honesty. I appreciate that. Do you know at the time that you were
10 on the Board Mr. Cramer what the approximate annual budget was?
11 A. No. No, I am clueless.
12 Q. What are your annual dues out there?
13 A. One twenty five.
14 Q. One twenty five. And how many lots are occupied, do you know?
15 A. Thirty something, I believe.
16 Q. Thirty something?
17 A. Yes, So probably about four thousand I guess if you want to do the quick math.
18 Q. Okay. You didn't get paid when you were on the Board did you?
19 A. Not yet.
20 Q. Do you know if any of these folks have been paid for their services?
21 A. I seriously doubt it, no.
22 Q. Okay. I appreciate it.
23 A. All right.
24 THE COURT: Mr. Calmes.
25 MR. CALMES: Just a few follow up questions.

1 **REDIRECT EXAMINATION BY MR. CALMES.**

2 Q. Is Mr. Hannah's lean-to building, is that in harmony with the existing structure that is
3 there?

4 A. No, it is not.

5 Q. And is there a particular reason that you are saying that? What is it that is not in
6 harmony that you know?

7 A. Well when I think of —

8 MR. DARWIN: Your Honor just for the record this goes outside the scope of my Cross. I
9 didn't ask him anything about that lean-to building.

10 MR. CALMES: He asked about —

11 MR. DARWIN: Not a single question.

12 THE COURT: All right.

13 MR. CALMES: He asked about the patio cover and then he talked about structures and storage
14 buildings and all of that. I think that covers it.

15 THE COURT: I will allow it.

16 A. As I would look at it there is nothing on his home or any other home in the development
17 that would resemble a lean-to.

18 Q. All right. And under that section like you say 7, he had to go through the architectural
19 committee, did he not?

20 A. Yes.

21 Q. And there is nothing referenced — in that section it talks about a lean-to, is that correct?

22 A. Yes.

23 MR. DARWIN: I have no further questions, Your Honor.

24 THE COURT: All right.

25 MR. DARWIN: Just one question.

1 **RECROSS EXAMINATION BY MR. DARWIN.**

2 Q. Mr. Cramer just one question. Does the siding that is on that lean-to match his house?

3 A. Yes, I think it is the same color, yes.

4 Q. The same siding on it, right?

5 A. It probably is.

6 Q. Okay. Thanks.

7 THE COURT: Counsel?

8 MR. CALMES: No further questions.

9 THE COURT: You may step down sir.

10 MR. CALMES: Your Honor, I am not quite sure if any of them have to leave but would there
11 be any objections to any of the witness leaving?

12 MR. DARWIN: I certainly don't have a problem with it, Your Honor.

13 THE COURT: All right.

14 MR. CALMES: I call to the stand Kenneth Mertz.

15 MR. DARWIN: And Your Honor again we talked about this in chambers. I object to Mr.

16 Mertz testifying at all unless he is going to be some type of expert. He is not a homeowner, he is
17 not on the deed. And the Homeowners Association doesn't have to give him credence
18 whatsoever. He has no say in any vote —

19 MR. CALMES: I want —

20 MR. DARWIN: If Mr. Calmes can explain what his testimony is going to aid due to fact
21 finding is fine but otherwise he is not a member of the HOA and he is not on the deed.

22 MR. CALMES: It doesn't matter whether he is on the deed or not. He has a right to come and
23 testify if he has got relevant testimony, Your Honor. And I have the right to depose that
24 testimony.

25 MR. DARWIN: Your Honor he can't talk about property values because he doesn't own the

1 property.

2 MR. CALMES: He is not going to talk about property value, Mr. Darwin.

3 THE COURT: Counsel, counsel.

4 MR. DARWIN: I am sorry.

5 MR. CALMES: Well you will find out when he testifies.

6 THE COURT: Lets see what he testifies to and I may just stop his testimony.

7 MR. DARWIN: Thank you, Your Honor.

8 **KENNETH J. MERTZ, BEING DULY SWORN,**

9 **TESTIFIES AS FOLLOWS:**

10 **DIRECT EXAMINATION BY MR. CALMES.**

11 Q. Mr. Mertz state for the record your full name please sir?

12 A. Kenneth J. Mertz.

13 Q. All right. And Mr. Mertz are you married to Katheryna Mulholland-Mertz?

14 A. Yes sir.

15 Q. How long have you been married to her?

16 A. Twenty-seven (27) years.

17 Q. All right sir. And Mr. Mertz's do you live with her in Corie Crest Subdivision?

18 A. Yes sir.

19 Q. And you all moved in there in -- do you recall what year?

20 A. June 17, 2007.

21 Q. In 2007. All right. At that point in time did you see some detached structures in there?

22 A. Yes sir.

23 Q. All right. And when you saw that did you have an opportunity to talk to Mr. Biggs about
24 those detached structures?

25 A. Yes sir.

1 Q. And in that conversation was that detached structure that is right next to your home?
2 A. Yes sir.
3 Q. Okay. All right. And in that did you notice another detached structure in the
4 neighborhood?
5 A. I didn't see that right off. It was pointed out to me by my wife.
6 Q. Okay. You saw I guess DeNicola's shed?
7 A. I go out certain times in the morning that way.
8 Q. Okay. But you noticed the two structures there is that correct?
9 A. Yes.
10 Q. Okay. And did you have a conversation with Mr. Biggs about those structures?
11 A. Yes.
12 Q. And what did Mr. Biggs tell you about that?
13 A. He told me that Hinson is allowing it and my wife wrote a letter two days afterwards to
14 Hinson Management that it doesn't conform to the covenants.
15 Q. All right. And did Mr. Biggs agreed with you on that?
16 A. Yes sir.
17 Q. In your conversation?
18 A. Yes sir.
19 Q. Do you recall where that conversation took place?
20 A. Yes sir. My garage. We were having a beer together.
21 Q. All right. Have you had the opportunity to see the lean-to building of Mr. Hannah?
22 A. Yes sir.
23 Q. Are you retired now?
24 A. Yes sir.
25 Q. What kind of business were you in before you retired?

1 A. The sheet metal business, waterproofing business and the roofing business.
2 Q. All right.
3 A. I did jobs all over the world. Including work I did for the air force.
4 Q. All right. So you were in the construction business, correct?
5 A. Yes. I was a subcontractor.
6 Q. All right. And with reference to Mr. Hannah's building, the lean-to, do you believe that
7 building is in harmony with existing structures?
8 A. No sir.
9 Q. Okay. Would you tell the Court —
10 MR. DARWIN: Your Honor, I object unless he is going to be qualified as an expert witness in
11 building and he hasn't even asked the question about what he did then his testimony is irrelevant.
12 THE COURT: I sustain the objection.
13 MR. CALMES: Your Honor, I am not trying to make a point but I think that he has a right to
14 say based upon what existing are in harmony, I think he could have the right to a lay opinion if he
15 is living there. I am not putting it in for the point being an expert witness but I think that he has
16 a right to testify to that. Like any other person's testimony. I don't see why that has to come
17 under the confines of being an expert witness. I don't think you have to be an expert witness —
18 THE COURT: What was the purpose of your preliminary question?
19 MR. CALMES: Well my question is under the Section is to find out if this structure based upon
20 his observation is in harmony with this existing structure. That is all that I am asking. Your
21 Honor, that doesn't call for an expert conclusion.
22 MR. DARWIN: Your Honor if he were a homeowner I would have absolutely no problem with
23 that but he is not. He lives there. That is the same as if I take anybody off the street and let
24 them drive through there and put them up here, fifty people, and say what do you think about the
25 building out there. It is totally irrelevant. It helps you in no way, whatsoever. It is nothing but

1 cumulative to what the homeowners have already testified. .
2 MR. CALMES: Just because somebody is a homeowner doesn't mean that person's opinion is
3 admissible versus a person that is not admissible because I mean he lives there. You don't
4 create a different standard for that, Your Honor.
5 THE COURT: It would be different if he were an outsider who had been qualified as an expert
6 and he is not.
7 MR. CALMES: Well I just got to talking about it —
8 THE COURT: And he has because he is not a homeowner a vested interest.
9 MR. CALMES: But if you have —
10 THE COURT: I am going to sustain the objection.
11 MR. CALMES: All right sir..
12 Q. Mr. Mertz do you believe that your wife is justified in bringing this action?
13 MR. DARWIN: I object.
14 THE COURT: I will sustain that.
15 MR. CALMES: Thank you, Your Honor. I have no further questions.
16 THE COURT: All right. Counsel?
17 MR. DARWIN: Nothing is to be gained.
18 THE COURT: You may step down Mr. Mertz.
19 A. Thank you.
20 **WOODROW W. WILLARD, JR., BEING**
21 **DULY SWORN, TESTIFIES AS FOLLOWS:**
22 **DIRECT EXAMINATION BY MR. CALMES.**
23 Q. Mr. Willard state for the record your full name please sir?
24 A. Woodrow W. Willard, Jr.
25 Q. All right. And Mr. Willard where do you live sir?

1 A. I live at 1027 Four Mile Branch Road here in Spartanburg, South Carolina.
2 Q. All right sir. And what do you do for a living sir?
3 A. I am a licensed real estate appraiser and I am a licensed real estate broker in the State of
4 South Carolina and I own my own business called Willard, Incorporated.
5 Q. And how long have you been in the —
6 THE COURT: The Court will take judicial notice of Mr. Willard's expertise because of prior
7 testimony in this Court.
8 MR. DARWIN: No objections, Your Honor.
9 MR. CALMES: Thank you, Your Honor.
10 Q. Mr. Willard did I undertake your services in connections with this particular litigation sir?
11 A. Yes sir, you did.
12 Q. All right sir. And in doing so did I undertake our services in connection with this case in
13 determining values of property within the Corie Crest Subdivision?
14 A. No sir. What you asked me to do was you asked me to determine if the construction of
15 two detached framed sheds had any affect on the marketability and valuations of homes in
16 the subdivision.
17 Q. I was going to get to that but that was the primary purpose of that?
18 A. Yes sir.
19 Q. Was it also to determine the impact of values within the Subdivision if additional
20 detached structures would be placed or construction within the Subdivision too?
21 A. Yes sir.
22 Q. Did you have an opportunity to undertake your due diligence concerning those two
23 particular issues?
24 A. Yes sir, I did.
25 Q. All right. Would you tell the Court what you have done sir?

1 A. As Mr. Calmes said I was hired and on July 29th of this year and on August 1st of this year
2 I went out and rode through the Corie Crest Subdivision and observed the houses and the
3 subdivision in general. I got a copy of the recorded plat from the Register of Deed's
4 Office as well as got a copy of the recorded Declaration of Protective Covenants,
5 Conditions, Restrictions and Easements in Corie Crest Subdivision. I went and did
6 some research into market activity within Corie Crest over the last from January 1, 2008
7 until August 1, 2011 and I found that seven (7) properties had sold during that time
8 period with one property currently listed. From my analysis the overall price range
9 during that period was between Two hundred two thousand to Two hundred forty four
10 thousand with a medium sales price of Two hundred twelve thousand five hundred
11 dollars (\$212,500.00). The medium number of days on the market was 132 and the
12 overall size of homes sold fell between 2074 square feet and 2610 square feet and all of
13 this was according to the MLS or the assessor's records as to its size. The average size
14 of those that sold was 2,234 feet. So if you take the average price and the average price
15 it would indicate an overall price per square foot of around ninety five & no/100 (\$95.00)
16 dollars a square foot is what the homes had been selling for over that period of time. In
17 2011 there was one home that was sold and it sold in February for Two hundred twenty
18 eight thousand and it has 2313 square feet which was for about \$98.57 cents a square
19 foot. The reason I went through that analysis to get a feel for the type of subdivision that
20 Corie Crest is, its market activity and the value of the homes so that I can make some
21 kind of comparability between Corie Crest and other subdivisions in the same School
22 District 2. And so I did that and looked at homes that were around five to ten years of
23 age which the homes in Corie Crest are. And between 2023 hundred quare feet and that
24 sold between two hundred thousand and two hundred fifty thousand and I found that 31
25 properties had sold between January 1 of 2008 and August 1, 2011. Those 31 in the

1 medium list price was Two twenty five and the medium sales price was Two hundred
2 twenty and the medium number of days on the market was 157. The average size was
3 2317 square feet similar to that in Corie Crest and the overall price per square foot was
4 \$94.95 or \$95.00 a square foot. So by comparing those two it would suggest that at this
5 point that there has been no real difference between what is happening overall in the
6 market and what is happening in Corie Crest Subdivision as far as sales up to this
7 particular time.

8 Q. All right. However, taking into consideration from this comparison of Boiling Springs
9 and the subdivisions, is this an attractive area within Spartanburg County?

10 A. Yes sir. Boiling Springs has been a very active area over the last ten to fifteen years with
11 the exception of the last two or three years with real estate in itself over the last two or
12 three years, three to four years it has been down but in the previous ten to fifteen years the
13 Boiling Springs area is probably one of the hottest growing areas in the County.

14 Q. And in connection with that did I ask you to determine if there was going to be additional,
15 first of all did you have the opportunity to go out and look at this particular subdivision?

16 A. Yes sir. I went out on two occasions and looked at it and you identified to me those
17 properties that had some sheds that were maybe in question and I just was able to view
18 them from the road. You did provide me with a couple of pictures of the sheds that I
19 think were in questions.

20 Q. And those are the particular ones that you were able to personally view too?

21 A. Yes sir.

22 Q. Mr. Willard do you have a professional opinion as to the impact on value in Corie Crest,
23 if a trend would continue to allow additional detached structures?

24 A. Yes sir. In my opinion protective covenants, Corie Crest Subdivision is surrounded on
25 the east and south side by a subdivision of smaller sized homes and priced homes. When

1 this subdivision was developed I believe it was the intent of the developer to make this a
2 little upper scaled because the homes are a little larger and the price range in value of
3 those homes are a little larger and with that we typically see protective covenants or
4 restrictions so that it provides some sort of insurance, type of insurance policy to property
5 owners as they are buying their homes and also over the life of them owning the homes
6 that there is some protection so that property values will move with similar homes and
7 style and quality homes within the market then they should move appropriately with
8 those. So I think any changes in those particular restrictions and covenants tends to
9 change – well let me back up a minute. I think that the restrictive covenants the way that
10 they are defined and the way they are that it helps to identify a market segment of people
11 that potentially will look into this subdivision as qualified buyer. I think that when
12 people are looking for homes my experience is that they determine what they can afford,
13 the type and quality of homes that they can afford and then they are looking at locations
14 and once they establish that size and what they can afford and begin to look in locations
15 then I think it is the protective covenants that keeps that neighborhood looking and
16 maintaining its value. I think once you change those restrictive covenants that you can
17 potentially change and will change the market segment that will look at that particular one
18 and therefore it will have influence as to the market value and the trends in the market
19 values of those homes.

20 Q. And just as a follow up what do you believe the trend would be if additional detached
21 structures are placed within Corie Crest?

22 A. Well in the Corie Crest Subdivision the only detached improvements that the restrictive
23 covenants as I read them calls for is the detached garage and they say that it must be in
24 keeping with the house and the structure that is there. So I think that is an another thing.
25 I think that once you get to other kinds of shed, other kinds of buildings then it allows for

1 different uses to take place within the subdivision. It encourages things such as hobby
2 shops. It encourages things of other uses that was not I believe the intended uses as so
3 outlined by the protective covenants and with that I think that is what tends to change the
4 market segment of the individuals that are looking within this price range in a subdivision
5 of this kind.

6 Q. Do you believe that detached sheds and building can distract from the market value?

7 A. I think given the type of subdivision that Corie Crest was I think that additional sheds and
8 improvements other than a detached garage will tend to deter any kind of valuation or
9 appreciation of the homes that are out there, yes sir.

10 Q. All right. I believe that will also be an impediment when the recovery takes place
11 maybe? Improving in the market area?

12 A. Yes sir. I think that what happens is since I mean we are all in down market but as the
13 recovery takes place and subdivisions begin to hopefully recover some of their values if
14 the nature of the subdivision is different than it was when we went into it for sheds or
15 buildings or out buildings are allowed within this subdivision that are different than what
16 was called for in the restrictions I think that they would tend to change the character of
17 the subdivision and therefore change the market segment that are looking for it and in my
18 experience it would tend to probably reduce these values because you don't see those in
19 higher priced subdivisions or subdivisions in the two twenty five - two fifty range that are
20 restricted that have a lot of outbuildings in those subdivisions and those developments.

21 Q. All right.

22 MR. CALMES: Your Honor, I have no further questions of him.

23 THE COURT: All right. Counsel.

24 MR. DARWIN: May it please the Court.

25 THE COURT: All right.

1 **CROSS EXAMINATION BY MR. DARWIN.**

2 Q. Mr. Willard my name is Todd Darwin and I represent the Defendants in this matter. As
3 you said here today in your testimony, you don't have any imperial data to support our
4 hypothesis correct? The only thing that you have provided the Court is the home that
5 sold this year that actually sold for \$97.57 per square foot, correct? I am looking at page
6 3 of your report?

7 A. Yes sir. Well no sir I mean as far as my comparisons as I stated today there appears to be
8 in my analysis that there was no, that it was mirroring the other market as to similar prices
9 and that there has been no change or damage to any of the valuations to this date.

10 Q. All right. Again if the restrictive covenants actually allow for storage buildings then
11 your report has no validity either, correct? It is either allowed or disallowed? Whether
12 you think that it impacts marketability or not if they are allowed in this document then
13 they are allowed, correct?

14 A. Yes sir, I mean well the document stands by itself and so the document is what has been
15 taking place. And so the values are representing what is there today with the absence of
16 sheds and detached garages. I mean there is some detached garages that are in the
17 subdivision that were allowed but to my knowledge there are only two of these particular
18 sheds.

19 Q. Okay.

20 A. And so what I was asked to consider if there was an outpouring of a lot of these particular
21 sheds in my opinion do I think that it would have an effect on the market value and so
22 that is what I did.

23 Q. Well there are actually and I know that you only drove through twice. But there are
24 actually two detached garages and two sheds, right?

25 A. If that is what you say there is.

1 Q. Okay. The ones that you looked at. Let me ask it that way then. How many detached
2 garages did you see in your two trips out there?

3 A. Just one that was being constructed at the beginning and I recall seeing one other. And
4 that is about all that I remember right off hand.

5 Q. All right. And I see you have some pictures that looks like one storage shed and then one
6 patio cover, correct?

7 A. Yes sir. These are the two pictures that were provided to me by Mr. Calmes.

8 Q. Mr. Willard and I don't mean to get too close but is this the storage building you saw on
9 the left when you entered? Excuse me, detached garage. I apologize. Does that appear
10 to be ?

11 A. Yes sir. I think that is the -- I mean it was under construction but given that the road is
12 back over here that appears to be the one -- I mean I don't have a picture of the house and
13 the road there but it appears to be the one, yes sir.

14 Q. How about that one. Do you recognize it? And there are two pictures there. Do you
15 recognize that detached garage and there is a second picture behind it?

16 A. I did notice that one because it didn't appear to be a garage.

17 Q. Let me ask you what this is?

18 A. Okay. It has got a garage on the back of it. Yes, I do recall, remember seeing this one
19 because it was sort of that pool but I was questioning from a garage standpoint whether it
20 was truly a detached garage.

21 Q. How about this. Did you see this building during your tours out there?

22 A. I do recall seeing that because I thought that was like a playhouse or a little hobby house
23 and wondered whether that would be one that would be acceptable under the current
24 restrictions.

25 Q. Okay. Let me ask you about these pictures and this is Defendant's Exhibits 2 and 3. Is

1 there anything that is not aesthetically pleasing about that structure in your expertise?

2 A. No sir, there is not anything that is aesthetically pleasing. It is just as I read the
3 restrictions it says detached garage and that is obviously not a detached garage.

4 Q. All right. And do you have the restrictions with you, Mr. Willard?

5 A. Yes sir, I did.

6 Q. Okay. Lets go through that while we are on that topic. Section 2, on the second page, is
7 actually where it was discussed as the single residential use, correct Mr. Willard?

8 A. Yes sir.

9 Q. And it talked about a two story residential family dwelling and a detached garage, if
10 approved in advance in writing a private detached garage?

11 A. It says no buildings shall be erected, altered, placed or permitted to remain on any lot
12 other than one detached single-family dwelling, not to exceed two (2) stories in height,
13 and, if approved in advance in writing, a private detached garage.

14 Q. Now would you flip over to Section 8 for me please, Mr. Willard?

15 A. Section 8.

16 Q. Yes sir. It should be right there at the bottom?

17 A. Yes sir.

18 Q. If you see building materials?

19 A. Yes sir.

20 Q. And the second sentence says any other must be approved by the developer or its
21 nominee. Concrete blocks, cement bricks or concrete walls shall not be used in the
22 construction of any building, garage or hobby- type/storage building, correct?

23 A. Yes sir.

24 Q. So it references hobby-type storage buildings, correct?

25 A. Yes sir.

1 Q. How about turning over to Section 19 for me, 18 excuse me.
2 A. What section.
3 Q. Eighteen (18)?
4 A. Eighteen (18).
5 Q. Yes sir. And it says portable or metal buildings prohibited. Portable buildings, metal
6 storage buildings or other similar off-site constructed storage buildings are prohibited to
7 be placed or remain on any lot unless approved by the developer or association, correct?
8 A. Yes sir.
9 Q. And go down to 20 with me. No garages or hobby-type/storage building shall be used at
10 any time as a residence, either temporarily or permanently. So again it references hobby-
11 type storage buildings, correct?
12 A. Yes sir. And I would sort of interpret that as being in my mind and in my opinion when
13 it first talked about single family residential and it restricted it only to a private detached
14 garage and to me that would basically eliminate any of these hobby-type even though they
15 may be mentioned in the back but they could be mentioned in the back but if it is not
16 really allowed under Section 2 then in my opinion then those would not be allowed.
17 Q. Well how is Section 2 titled?
18 A. Single family residential use.
19 Q. And you would admit with me that no hobby type or storage buildings to be used at the
20 house in any subdivision correct, it is restricted later in the covenants right?
21 A. Ask me that again now.
22 Q. Now under this section the only thing that it is talking about is a single family residential
23 use, correct?
24 A. Yes sir, that is for each lot.
25 Q. That is right. So could you tell me why storage buildings are referenced in other sections

1 of the covenants?

2 A. Unless it is just a poor writing but I mean this is the use, I mean, I guess you are asking
3 me sort of a legal question here from that standpoint. I am just saying from a real estate
4 standpoint in my opinion that when 2 said single family residential use then that is the
5 occupied and the use of those lots and so when it is talking about that it allows either a
6 single family home and nothing more than a private detached garage, okay, then I think
7 that is saying that they are allowed one additional in my experience a single family
8 detached garage is something else for car storage. I mean today people have more than
9 two cars. They will have three cars or whatever. And it looks like a garage with a
10 garage door that kind of thing which is allowed. So I don't know what it meant by from
11 the standpoint of hobbies, I don't think that it was meant to have hobby-shops or any
12 other kinds of usage in this particular subdivision other than for single family use and
13 enjoyment.

14 Q. All right.

15 A. I don't think to sell hobby-items or to sell anything that would not be intent to that. The
16 production of other items that would be used and sold later was not the intent to be
17 happening out there as well. Those kinds of things is what I would think would restrict it
18 to single family residential use.

19 Q. When you said Sections 8, 19 and 20 may have been poor drafting by the wording then
20 Section 2 could have been poor drafted correct?

21 A. That one is pretty clear but I think it become contradictory to the other sections back there
22 when it talks about well one it says portable or metal buildings are prohibited period. So
23 there are no metal or portable buildings in my opinion would even be allowed to start
24 with.

25 Q. But that is not true is it Mr. Willard?

1 MR. CALMES: Let him finish his answer.
2 Q. Mr. Willard read the entire sentence.
3 THE COURT: Counsel, counsel.
4 Q. Just read the entire sentence.
5 MR. CALMES: I object. He is not allowing him to answer the question.
6 THE COURT: All right. Start again.
7 Q. Please read the entire Section 18 for me, Mr. Willard?
8 A. It says portable buildings, no storage buildings or other similar off-site constructed
9 storage buildings are prohibited to be placed or remain on any lot unless approved by
10 Developer or Association.
11 Q. So they are not outright prohibited are they?
12 A. Well I guess they are not outright if the Developer or the Association but that seems to be
13 contradictory to what has been so stated in 2. So then —
14 Q. And I don't disagree with you on that.
15 A. Yes. I think that given the price range of these homes and the quality and the style of
16 these homes, if all of a sudden they started having a bunch of metal buildings and storage
17 buildings that they bought at Lowe's or utility buildings and started putting them out in
18 the backyards or the side yards I think it would definitely deter from the value of these
19 properties.
20 Q. Okay. You testified earlier that the intent of the developer, you put a lot of stock in that
21 correct?
22 A. I said what I believe that the intent of the Developer was.
23 Q. But the best intent of the Developer is through his mouth, right?
24 A. Absolutely.
25 Q. Have you been shared the deposition of Mike Seay who developed that property?

1 A. No sir, I have not.

2 Q. Would it surprise you to know that he said that his intent was —

3 MR. CALMES: Your Honor —

4 Q. That storage buildings can not be prohibited.

5 MR. CALMES: I object. There has been nothing in the evidence to indicate that at all. He

6 wouldn't know that.

7 THE COURT: I will allow it.

8 Q. Would it surprise you to know that Mr. Seay testified that it was never his intent to band

9 storage buildings out at Corie Crest?

10 MR. CALMES: Your Honor, I am not quite sure that is what the purpose that the deposition

11 stated, okay. So if we can get down to a point I don't know. I do know that if a deposition

12 states — I object to answering the form of the question in which Mr. Darwin was asking that. I

13 don't even think that should be permissible on cross examination. He is talking about someone

14 else.

15 Q. Let me ask you this, Mr. Willard. Are homes in Londonderry more expensive than

16 homes in Corie Crest?

17 A. Yes sir.

18 Q. Are they allowed garages or hobby-type storage buildings?

19 A. I don't know.

20 Q. Let me show you the restrictive covenants for Londonderry. If you would go to the blue

21 tab in the highlighted section?

22 MR. CALMES: Your Honor, he is asking —

23 THE COURT: I will sustain it.

24 MR. CALMES: All right. Thank you.

25 Q. Let me ask you this Mr. Willard. Did any of your analysis go to any other subdivisions

1 on what the impact of allowing storage buildings would be on marketability and market
2 values in those other subdivision, such as Woodridge, Londonberry, Twin Forest?

3 A. Well the ones that you are commenting on specifically are not excluded but two. My
4 analysis was basically looking in School District 2 in looking at properties that I have
5 knowledge of as far as whether I would look at the restrictive covenants, no sir, I did not.
6 What I looked at was in value and what those values of those particular homes and I
7 guess through my thirty years of experience of knowing what 250, 230 to 250 to 260
8 thousand dollars home subdivision typically what you find and what you don't find in
9 those particular ones and that is what I drew my conclusions on.

10 MR. DARWIN: Your Honor, if that is the case I am not really sure why I can't enter the
11 restrictive covenants for the subdivisions that allow for these thing. If it is just thirty (30) years
12 of experience in Spartanburg County.

13 MR. CALMES: Well make the comparison then. He is asking him to look at something out of
14 the ---

15 THE COURT: I am not going to allow it because those were subdivisions which he did not
16 compare in his analysis for presentation today.

17 MR. DARWIN: All right.

18 THE COURT: Had he compared those then I would allow the testimony, but that was not the
19 scope of his review as I understand it. So there is no comparison that he can rely upon as far as
20 his experience.

21 Q. Mr. Willard how many subdivisions in District 2 did you look at other covenants and
22 restrictions other than Corie Crest?

23 A. I didn't look at any others.

24 Q. None?

25 A. No sir.

1 Q. So you don't know how many subdivisions in District 2 allow for storage buildings or not
2 today?

3 A. No sir.

4 Q. All right. Explain this to me. What homes did you prepare values to that allows you to
5 say that Corie Crest mirrors what is taking place in the market to similar type houses?

6 A. The comparisons that I made were based on as I stated and as I testified to were based on
7 those in school district 2 between January 1 of 2008 and August 1 of 2011. They were
8 homes that were five to ten years of age and they were between two thousand and twenty
9 three hundred square feet and they ranged in value from two hundred thousand to two
10 hundred and fifty thousand. So what I was trying to identify were homes of similar size,
11 quality and age to those that were found and built in Corie Crest. My comparisons and
12 my judgments were based on not whether they had restrictive covenants. It was based on
13 how they were built and on the market and those particular properties in subdivision,
14 whether they allow or don't allow they didn't have metal detached buildings. They
15 might have had some detached garages but they don't have those types of same facilities
16 or whatever that are in my opinion from reading these restrictions are not allowed in the
17 Corie Crest. If people in Corie Crest want to change and want to have those then that is
18 fine. I mean that is what homeowner associations are for. What I am saying is that I
19 think that if they do start to have a bunch of metal sheds, they start to have a bunch of
20 detached sheds other than what is described as the detached garages that are there of
21 similar quality and of style then I think that the overall property values within Corie Crest
22 for everyone will begin to either erose or they will not increase at a rate that other ones of
23 similar size and age will and that was the conclusions of my study.

24 Q. So you have not idea what subdivisions these home prices came from that you
25 compared?

1 A. Those are the ones in Corie Crest. No sir, I don't have here, I don't have with me today
2 well hold on, I might have those. Yes sir, we have got some in Stonehedge, we have got
3 some in Shallowford Subdivision. We have got some in Sterling Estates. Coral Creek,
4 Cold Creek, Sterling Estates. So some of these are similar type subdivisions that I would
5 consider similar to the style and quality of those homes that are in Corie Crest. And did
6 you drive through those subdivisions to see what type of ----
7 A. Yes sir. I mean I have been in those subdivisions on many occasions or whatever and
8 they don't have a lot of detached sheds and storage buildings that are there.
9 Q. But they do have some?
10 A. I am sure maybe. I guess maybe if you produced a picture for me I guess so but when I
11 ride through I don't get the sense that they are predominant and that there are a lot of
12 those that are there.
13 Q. Well when you drive through Corie Crest you didn't get that feeling either, did you?
14 A. Well I mean the one feeling I really did get was all of the fences.
15 Q. Okay.
16 A. I mean you know the one thing that I did get I mean from an appraiser and from someone
17 that studies the market it is a bunch of wooden fences which makes me wonder if people
18 kind of like each other in that subdivision because there is a whole bunch of wooden
19 fences to kind of block anybody out.
20 Q. All right.
21 A. You know it talks about in the restrictions, it says must be attached to the back of the
22 house well in many of these cases yes they are all attached to the back of the house but
23 they stick out toward the front of the yard. I mean the subdivision within itself I am sort
24 of surprised that some of that is kind of taking place but obviously those that are living
25 there I mean I think that from a professional standpoint they are hurting themselves with

1 these kinds of fences and structures as it relates to other subdivisions that are of similar
2 quality and style and sized homes.

3 Q. Yes. But as far as the buildings themselves. What I am trying to get at Mr. Willard is
4 you don't know if these storage building are allowed if one owner is going to request to
5 put one up or the other 33 , do you?

6 A. No sir. That was not my job. My job was to say that if in this subdivision given the
7 restrictive covenants if a lot of detached storage buildings begin to be put up what I was
8 asked in my opinion would it have an effect. Yes sir, in my opinion it would have an
9 effect. It would have a detrimental effect on the overall property values within the
10 subdivision.

11 Q. And the next to the last page of your report, Page 3, it says however if the trend allowing
12 for addition of detached improvements outside of those outlined in the protective
13 covenants continues, correct?

14 A. You are reading from —

15 Q. The first sentence of your next and last paragraph Mr. Willard?

16 A. Right, yes sir.

17 Q. Okay. So it is only the outside those outlined in the covenants?

18 A. Yes sir, I think so. Because I mean as I interpret the covenants that is what maintains it
19 value.

20 Q. I show you Plaintiff's Exhibit 10. Have you seen those filed amendments to the
21 covenants in Corie Crest?

22 A. I did pull those about two days ago.

23 Q. Okay. And because you just testified about that if you can find out if 24 to 33
24 homeowners out there had signed off on those amendments would that change your
25 testimony at all? I think you just said if the homeowners wanted it then —

1 A. Oh no sir, I mean. The protective covenants are there to protect all of the homes. I
2 mean if they all of a sudden they wanted to paint their homes purple they are going to
3 reduce the value of their homes but if they all decide that is what they want to do they are
4 going to reduce the value of their homes and that is what my testimony today is. It is if
5 they go outside of these restrictions and allow a lot of sheds and buildings to be done then
6 in my opinion that will be a detrimental effect to the value of their property.

7 Q. Well from your thirty years experience and the sections I just shared with you Section 2
8 and then 8, 18 and 20 discussing hobby-type and storage buildings, do you find that to be
9 ambiguous language or not if one section says no and three sections refer to those types of
10 structures?

11 A. I think as someone once told me we are playing with ceramics instead of synectics. It is
12 the wording itself. As a real estate person when I read that it is detached garages I am
13 thinking detached garages I am thinking that the pictures that you showed me like for this
14 one I am not thinking that is really a detached garage. I am thinking a detached garage is
15 something with a roll up door that keep kind of car storage whether it be single or
16 whatever that is probably in fairly close proximity to the house and I don't think of any
17 kind of shed or I don't think of pool houses or things of that particular nature. It is just
18 not as attractive as you see for homes that are in the two thirty to two fifty range.

19 Q. I am going to show you again Defendant's Exhibits 2 and 3. What in your estimation
20 distinguishes that from that pointing to the detached garage with the pool other than a
21 garage door not being there?

22 A. The Defense Exhibit Number 3 in my mind is not a detached garage. It is a hobby
23 building it is a -- it can either be a guest quarters, it could be something but it is in keeping
24 with the house itself.

25 Q. I am sorry.

1 A. It is in keeping I am sure with the house that maybe it is behind. I assume that house has
2 got it looks like vinyl siding of similar and nature. I mean it is not a shed from a shed
3 standpoint. It is an attractive one but it is not you know that is a detached garage. There
4 is no question. It is off the driveway and it is a detached garage. This to me just from
5 the pictures itself it is minimal construction. I wouldn't think that it is the same quality
6 construction as the house that it sits behind just from the exterior itself. I mean there is
7 no real distinguishing overlay of the roof. That is no detail to it. There is very little
8 detail to it. It is on a slab that is very – it just gives an appearance to me – well I mean it
9 may be elegant inside, it may be really finished on the inside so it may be fine but just
10 looking at these particular pictures it doesn't look to be of the same quality on the exterior
11 as these two are detailed.

12 Q. And what two are you referring to?

13 A. These are the exhibits 3. And the one that I was looking at with the pool.

14 MR. DARWIN: I am going to make that for identification right now. I want these marked for
15 identification so we know what we are referring to for the record.

16 THE COURT: All right.

17 A. And that is for identification Exhibit Number 1 which has the building next to the pool.

18 **MR. DARWIN INTRODUCES FOR IDENTIFICATION A PHOTO, IDENTIFIED AS**
19 **HAVING A BUILDING NEXT TO THE POOL, MARKED AS DEFENDANT'S**
20 **EXHIBIT NUMBER 1 FOR IDENTIFICATION.**

21 Q. Mr. Willard have you found in your experience over the years that real storage and or
22 storage buildings it is a personal preference, some people like it and some don't, just like
23 pools in their yards? Well to a certain extent?

24 A. Yes. Obviously not everybody has a detached garage. I guess it depends on the size of
25 your family and your needs. If it like my children and my wife if I got a detached

1 garage it is full and if I don't have a detached garage I don't have as much stuff.

2 Q. If you have a detached garage what is it full of?

3 A. I mean it is full of stuff.

4 Q. You don't put cars in it?

5 A. Well you know, yes, I mean I had two children so at that point if I had a detached garage

6 then it would have had you know their cars in it and stuff, too. So – but you know some

7 people keep a lot of stuff and some people don't keep a lot of stuff. I think when you go

8 in subdivisions where you have a lot of detached buildings you begin to see a lot of

9 different kinds of things that you know hobbies that go on. People working doing

10 woodwork. People you know especially if there is a big garage you know they are

11 working on and their buddies I have seen it you know where they have motorcycles. I

12 have seen it where they have you know cars, antique cars that they are refinishing and

13 they are doing for their hobbies and stuff and in some subdivisions they just don't want

14 that to happen because it does deter from its overall property values.

15 Q. But those types of occurrences would be happen in a detached garage, right.

16 A. They could be happening in a detached garage, yes sir.

17 Q. Because you would be able to get old cars in there or things like that, correct?

18 A. Yes sir.

19 Q. Thank you.

20 THE COURT: Counsel?

21 MR. CALMES: Your Honor, I have no further questions.

22 THE COURT: All right. You may step down.

23 MR. DARWIN: Thank you for your time, Mr. Willard.

24 MR. WILLARD: Yes sir.

25 MR. CALMES: Your Honor, we had one other potential witness but he has had a personal issue

1 come up so he is not here today and I didn't know whether the Court was going to go beyond
2 5:00 o'clock or not today but I don't have him here.
3 THE COURT: And that would be your only—
4 MR. CALMES: My last witness.
5 THE COURT: All right.
6 MR. CALMES: But he will be a very short witness.
7 THE COURT: All right. Mr. Darwin —
8 MR. DARWIN: I don't know that I have a short enough witness — that is perfectly fine, Your
9 Honor.
10 MR. CALMES: We are going to have to try to find out what his personal issues about and try
11 to get him here tomorrow but if the Court says he is not here that is it then ---
12 THE COURT: All right.
13 MR. CALMES: But if I don't have him it concludes our case.
14 MR. DARWIN: And I am ready. And whatever Your Honor decides I am ready to drive on or
15 whatever.
16 THE COURT: Well why don't we just go ahead and break for today and then maybe you will
17 have your witness in the morning.
18 MR. CALMES: I would appreciate that.
19 THE COURT: And then start with yours.
20 MR. CALMES: Yes sir.
21 THE COURT: We will start again at 9:30 in the morning.
22 MR. CALMES: Nine thirty. Thank you, Your Honor.
23 MR. DARWIN: Thank you, Your Honor. We appreciate it.
24 THE COURT: All right.
25 -----HEARING CONTINUED-----

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1 STATE OF SOUTH CAROLINA

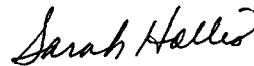
2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4
5 CERTIFICATE

6
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and
9 accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case,
10 before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South
11 Carolina, on the 24th day of August, 2011.

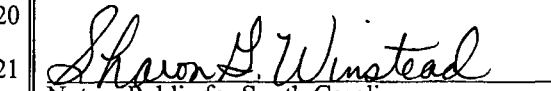
12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13 

14 Sarah Hollis
15 Court Reporter

16
17 SWORN to before me this
18 16th day of February, 2012

19 Spartanburg, South Carolina.

20 
21 Notary Public for South Carolina
22 My Commission Expires: September 7, 2016.

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF SPARTANBURG)
4)
5 KATHERYNA MULHOLLAND-MERTZ,)
6)
7 PLAINTIFF,)
8 -VS-)
9 CORIE CREST HOMEOWNERS)
10 ASSOCIATION OF SPARTANBURG,)
11 INC., RICHARD T. BIGGS, KATHLEEN)
12 A. BIGGS, JAMES HANNAH, AND)
13 ELIZABETH A. HANNAH,)
14)
15 DEFENDANTS.)

COURT OF COMMON PLEAS

TRANSCRIPT OF TESTIMONY

(2009CP42-5129)

Spartanburg, South Carolina

15 REFERENCE HELD: AUGUST 25, 2011.

16 B E F O R E: HONORABLE GORDON G. COOPER,
17 MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

18
19 BY: JAMES D. CALMES, III, ESQUIRE
20 Attorney for the Plaintiff.

21 HOLCOMBE, BOMAR, P.A.
22 BY: A. TODD DARWIN, ESQUIRE
23 Attorneys for the Defendants.

24 Sarah Hollis, Court Reporter
25

1	INDEX			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	ROBERT B. PERRY, III			
4	(Mr. Calmes)	3		16
5	(Mr. Darwin)		8	17
6				
7				
8				
9				
10	EXHIBITS			
11	<u>EX.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
12	<u>DEFENDANTS:</u>			
13	Def. - 7	A copy of the Corie Crest News, May 2011 issue.		14
14				
15				
16				
17				
18				
19				
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21				
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23				
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25				

1 THE COURT: All right. Gentlemen are we ready to proceed?

2 MR. CALMES: Yes sir.

3 MR. DARWIN: Yes sir.

4 MR. CALMES: I have one more witness I would like to call to the stand, Mr. Perry please.

5 THE COURT: All right.

6 **ROBERT B. PERRY, III, BEING DULY**

7 **SWORN, TESTIFIES AS FOLLOWS:**

8 **DIRECT EXAMINATION BY MR. CALMES.**

9 Q. Mr. Perry state for the record your full name please sir?

10 A. Robert B. Perry, III.

11 Q. And Mr. Perry where do you live sir?

12 A. In Corie Crest Subdivision.

13 Q. All right sir. And what particular number?

14 A. At 1040.

15 Q. All right. And how long have you lived there sir?

16 A. Over four (4) years.

17 Q. And where did you live previously before you came to Corie Crest Subdivision?

18 A. In a subdivision directly across - Searidge Farms. It is directly across from it.

19 Q. Corie Crest?

20 A. Yes.

21 Q. I know you had probably a number of reasons but was any one of the reasons that you
22 decided to relocate from that subdivision across the street over to the Corie Crest
23 Subdivision?

24 A. Yes. There were some houses that my wife wasn't too fond of that there were dirt
25 mounds in front of the house and like rock gardens or whatever. Different color

1 buildings and stuff and she just wanted to get into a more structured and bigger home.

2 Q. Were you concerned about the restrictive covenants in that subdivision?

3 A. In our old subdivision - Searidge Farms or Corie Crest?

4 Q. No, in Searidge.

5 A. Oh yes.

6 Q. What were your concerns about it?

7 A. It was a lot of mulch.

8 Q. Sir.

9 A. It was a lot of mulch. I mean it was put up what you want it doesn't matter.

10 Q. Did you believe that you decided to leave that was going to have a negative impact on

11 your property values there?

12 A. I was hopeful that it wasn't but yes it crossed my mind yes. Absolutely. It was going to

13 affect my property value.

14 Q. And what was it that you found attractive when you were looking at Corie Crest

15 Subdivision?

16 A. Just the bigger style of homes and the covenants basically. My wife said a neighborhood

17 like that is going to have something on there where nobody can put anything, You know

18 nobody had build big rock gardens in front of their house and nobody can just put up

19 whatever. She said that right there is going to help us keep value in our home.

20 Q. When you purchased your home in Corie Crest were you somewhat familiar with the

21 restrictive covenants?

22 A. Yes.

23 Q. All right. In looking at particular sections like Section 2, did you find that persuasive in

24 purchasing your house at Corie Crest?

25 A. Yes, is it definition one or Section 2?

1 Q. Section 2 which would have been single family?
2 A. Yes, yes, absolutely.
3 Q. Was that one of the purgative things that encouraged you to move there?
4 A. Yes. I had a building across the street and that was one thing I said can I take that with
5 me and my wife said you can't take that across to there.
6 Q. You understood that probably the only thing that you could see would have been —
7 A. I would have to build a detached garage.
8 Q. A detached garage. Mr. Perry obviously being there for a number of years did you
9 understand that there had been some changes on the Bylaws at Corie Crest that caused
10 you concern?
11 A. Well through talking with neighbors I heard about it but I never knew for sure until —
12 because I had always had the original Bylaws that got sent in an e-mail when we first
13 formed the new Association.
14 Q. Did you learn that there had been some changes to the Bylaws that you were not aware
15 of?
16 A. Oh yes, yes.
17 Q. Okay. And did you have any discussion with any officer of Corie Crest concerning other
18 changes?
19 A. Yes. I had asked the Board some things and they did and I just wanted to bring up some
20 of those concerns about how did those amendments take place when it says here that —
21 Q. You cited a particular statute which they thought that they had the authority to change it?
22 A. It was told me that it was state law that I didn't agree with and I haven't heard back since
23 but that it was a state law that gives the Board the power to —
24 MR. DARWIN: Your Honor, I object to any hearsay. He said that he was told by somebody
25 about some —

1 THE COURT: I sustain that.
2 A. That it was a state law.
3 Q. You heard that from Mr. Biggs?
4 A. From Mr. Biggs.
5 Q. Did you not research that law?
6 A. Yes, I researched it and I didn't agree with it. That is not what it says.
7 Q. All right. That law that he relied on did he show you that you had to have notice for any
8 changes?
9 A. Yes. All members must be notified.
10 Q. All right. Mr. Perry were you notified about any changes to the restrictive covenants?
11 A. None until after it was already passed. No.
12 Q. Therefore you didn't have an opportunity to vote on it at all did you?
13 A. No.
14 Q. When you learned that there had been changes did you request a meeting with the Board?
15 A. Yes. I mean I pay my dues just like everybody else I mean I wasn't you know – but
16 mine was more flabbergasted would be the word I would say about that. I was just told
17 that it got to the number that was necessary that was all that was needed and then they
18 stopped.
19 Q. All right. Did you talk with Mr. Biggs about these thing?
20 A. Yes. After that is when I requested to meet with him.
21 Q. Did you have a special meeting with Mr. Biggs and the other officers?
22 A. Yes, everybody – I mean all the Board was there.
23 Q. Okay.
24 A. We met at Torrey's house.
25 Q. All right.

1 A. To talk about the concerns and stuff like that.

2 Q. Okay. And did Mr. Biggs tell you about the amendments?

3 A. One of the things that I wanted to talk about in that meeting was when they read the

4 deposition of that Mr. Froman, I think from Hinson Management she was talking about—

5 MR. DARWIN: Your Honor, I object to anything he read in the deposition transcript from a non-

6 Board member.

7 Q. Well at the meeting did you question how they came about getting this amendment?

8 A. Oh yes. That was one of my main concerns. Why wasn't every homeowner involved.

9 Q. What did Mr. Biggs tell you his participation was in reference to those restrictive

10 covenants?

11 A. It was a state law that give him the right to do it.

12 Q. Did he ever tell you that he had anything to do with it?

13 A. As far as —

14 Q. The amendments?

15 A. The amendments.

16 Q. Yes?

17 A. It would take three out of five to pass them.

18 Q. And that was there opinion that it would take three out of five —

19 A. Board members instead of 24 homes. It took all of the power in my view out of the

20 homeowner.

21 Q. Were you upset about what their decision was?

22 A. I mean I went to sleep that night but yes I don't agree with them at all.

23 Q. All right. Did you ever read this particular section that they relied on?

24 A. The covenants.

25 Q. Yes on the amendments. Section 41?

1 A. Yes, this is what was given to me after the fact, yes.

2 Q. Did you question whether or not they could amend these restrictive covenants until

3 October 2040?

4 A. I did not question it but I noticed that was in there. I did not question it personally but the

5 way I understand it covenants and Bylaws they are made by a vast majority and they are

6 made to be hard to change. That is just I mean —

7 Q. Well let me ask you this. If you thought that somebody could just change restrictive

8 covenants after you bought your house relying on those restrictive covenants would that

9 discourage you from buying that house?

10 A. That is what has happened.

11 Q. I am sorry?

12 A. That is what has happened I mean yes I bought that house and saw certain covenants and

13 now I have got a new set of covenants that I had no part of.

14 Q. No part of is that correct?

15 A. Yes.

16 Q. In fact, if you look at those restrictive covenants or amendments if you believe what they

17 could do — they could just go ahead and terminate these couldn't they?

18 A. In my opinion, yes.

19 Q. Well if that was to be —

20 A. Well it has already happened once. And it could happen again.

21 Q. All right.

22 MR. CALMES: Your Honor, at this time I have no further questions.

23 THE COURT: All right counsel.

24 MR. DARWIN: Thank you, Your Honor.

25 **CROSS EXAMINATION BY MR. DARWIN.**

1 Q. Mr. Perry, I am Todd Darwin and I represent the Defendants in this case. Do you know
2 what at Sea Ridge Farm was there an approximate percentage of rentals out there?
3 A. There wasn't any when I was there.
4 Q. So it is not twenty to twenty five percent?
5 A. When I lived there it was all homeowner. It has quadrupled in size since then though.
6 Q. Okay. When did you first read the Corie Crest Restrictive Covenants?
7 A. My lawyer made me.
8 Q. Your closing attorney?
9 A. The closing attorney.
10 Q. So it didn't weigh into your decision to buy that house at all did it?
11 A. I am sorry.
12 Q. Those covenants didn't weigh into you buying that house at all if you read them the day
13 that you were signing that loan, did they?
14 A. It did.
15 Q. How? How could they Mr. Perry?
16 A. Because that is what my wife wanted. She wanted the strict covenants as far as a
17 permanent structure being put up.
18 Q. I understand with all due respect your wife is not here is she?
19 A. No, she is not.
20 Q. You are right?
21 A. Yes.
22 Q. And you just told me that you read those the day that you - well you didn't even tell me
23 that you read them.
24 A. Oh yes.
25 Q. You said that you got them the day of your closing?

1 A. Right.

2 Q. Well had you decided to buy that house before you walked into the attorney's office the
3 day of the closing?

4 A. The covenants would have —

5 Q. Mr. Perry —

6 MR. CALMES: Your Honor, he needs to let him answer it.

7 THE COURT: All right. Counsel. Start again counsel.

8 MR. DARWIN; I am sorry, Your Honor.

9 THE COURT: Start again.

10 Q. Did the covenants that you got the day of your closing at your closing attorney's office
11 have anything to do with you buying that house in Corie Crest?

12 A. If they would have deterred me I would have not bought the house.

13 Q. Okay. But you didn't read them before you went to the closing of the house? Before you
14 signed the document, correct? Before you signed the loan documents?

15 A. I can't — I don't remember.

16 Q. Well you just told me that you didn't get them until the day of the closing?

17 A. I am pretty sure that I didn't get them before but if it would have said anything that would
18 have deterred me saying that we can change it whenever then yes I would have walked out.
19 Yes, I wouldn't have bought that house.

20 Q. Are you telling me under oath —

21 A. Under oath.

22 Q. That you read those covenants before you signed your loan documents the day of your
23 closing?

24 A. Yes, because I can tell you this under oath that I remember asking that lawyer — I had a
25 building that I would like to put up and my wife was adamant about me not —

1 MR. DARWIN: I object to any hearsay, Your Honor.
2 THE COURT: I will sustain it.
3 MR. DARWIN: Thank you.
4 MR. CALMES: I think he was just trying to be responsive to the question.
5 THE COURT: Counsel I have ruled on it.
6 Q. All right. Well if you read these covenants let me show you Plaintiff's Exhibit 1. Mr.
7 Calmes just had you to read Section 2. How about you turning over to Section 8 for me.
8 A. Okay.
9 Q. All right. You see about three sentences there. It references garage or hobby-
10 type/storage buildings?
11 A. Are these the new covenants.
12 Q. No, they are not Mr. Perry.
13 A. They are the old ones.
14 Q. They are the old covenants?
15 A. Yes sir.
16 Q. That is correct. Those are the ones you got when you closed that you just told me.
17 A. All right.
18 Q. You see there garage or hobby-type/storage building?
19 A. Yes.
20 Q. Did you read that the day that you closed?
21 A. I know I saw them.
22 Q. All right. How about Section 18? Do you see that it says portable or metal buildings
23 prohibited?
24 A. Yes.
25 Q. Unless they are approved by the Developer or the Association. Read that. Read that

1 whole section.

2 A. Right.

3 Q. Did you buy your home from Mike Seay?

4 A. No.

5 Q. Who did you buy it from?

6 A. I forget their name. It will come to me in a minute but not Mike.

7 Q. Did you know Mike before you bought your house? Did you know Mike?

8 A. I have seen Mike a few times but I don't know him.

9 Q. Did you know Mike had developed Corie Crest?

10 A. Yes.

11 Q. Did you go ask him anything about metal storage buildings?

12 A. To be honest with you that building wasn't worth the cost for me to try to take it over

13 because she didn't want it.

14 Q. But the answer is no?

15 A. No. I did not talk to Mike.

16 Q. How about Section 20, right down there. Do you see that? No garages or hobby-type

17 storage buildings shall be used as a residence and then it references hobby-type storage

18 buildings, correct?

19 A. That is the way that I take it, yes. No buildings at all.

20 Q. No buildings can be as a residence and it mentioned hobby-typed storage buildings, right?

21 Do you agree with me on that?

22 A. Yes.

23 Q. All right.

24 A. Yes, it can not be used as a residence.

25 Q. So that is three times that it is mentioned. Storage buildings or hobby-type buildings,

1 correct?

2 A. Can not be used as a residence yes.

3 Q. But it references it at least three times, right?

4 A. It can not be used as a residence.

5 Q. Mr. Perry do those covenants reference —

6 MR. CALMES: Your Honor, he has already answered the question.

7 MR. DARWIN: No, he hasn't.

8 THE COURT: I will allow it counsel. I will allow it.

9 Q. Mr. Perry did those Sections that I had you read reference hobby- type storage buildings,

10 specifically in those three sections?

11 A. As far as —

12 Q. Do they just reference the word?

13 A. Oh yes, they reference it.

14 Q. All right. Go to Section 41.

15 A. All right.

16 Q. Are you there with me?

17 A. Yes.

18 Q. Right here. Start with the terms and conditions. Do you see that?

19 A. Yes.

20 Q. The terms and conditions of this instrument may be amended or changed only from a

21 written agreement the owners owning at least two thirds (2/3) of the lots in Corie Crest

22 correct?

23 A. Yes.

24 Q. Do you see anything there that talks about a meeting?

25 A. Oh no. The way I read that was after 40 years then it can be done.

1 Q. All right. That is how you read it. Okay.

2 A. And again you have got more knowledge about it —

3 Q. Well no, no. I am just reading the language. Read that language. Do you agree with me

4 that it just says two-thirds of the owners?

5 A. That is why I didn't say anything about it. I mean if that is the way we want to go about

6 our laws without allowing every member to have a voice then that is fine. That is not

7 looking out for my best interest thought.

8 Q. Well did you recently ask to see — well let me ask you this. Did you get the May 2011

9 Corie Crest news?

10 A. Yes, I have been getting my letter.

11 Q. Did you see the part about the Board book?

12 A. Yes, I just got it.

13 Q. Right, right.

14 MR. DARWIN; Your Honor, if I may introduce that please as Defendant's Exhibit.

15 MR. CALMES: Okay.

16 THE COURT: That will be Defendant's Exhibit 7.

17 **MR. DARWIN INTRODUCES INTO EVIDENCE A COPY OF THE MAY 2011 CORIE**

18 **CREST NEWS, MARKED AS DEFENDANT'S EXHIBIT 7.**

19 THE COURT: All right.

20 Q. And Mr. Perry at the bottom of that first page it talks about the new Board book, correct?

21 A. Yes.

22 Q. And you actually asked to see that book didn't you?

23 A. Yes.

24 Q. Just this past weekend and you got it right?

25 A. Yes. It looks good.

1 Q. It looks good?

2 A. Yes.

3 Q. All right. Did you have any questions after you looked at it?

4 A. I haven't really been able to look at it that much yet. I mean the main thing is every since

5 last year I am just trying to become more involved because all I hear is they said, he said,

6 she said. Why not me get the records then I make my own opinion.

7 Q. All right.

8 A. That is the way I am. I don't want nobody to tell me what to think.

9 Q. And you got the records this weekend right?

10 A. Yes.

11 Q. All right. Okay. All right. And did you ever ask to see the 24 signatures for the

12 amendments?

13 A. Yes.

14 Q. You saw them?

15 A. He showed me what was signed and how it was signed.

16 Q. Okay.

17 A. And then I asked him you know what 24 lots signed it and he sent that to me.

18 Q. Okay. So you saw all of this?

19 A. Yes sir.

20 Q. That twenty four (24) of your fellow homeowners agreed to those amendments?

21 A. Yes. Well I didn't see all 24 signatures but Dick Biggs, he showed me every lot.

22 Q. All right. Okay. Since you wanted to become familiar with the officers in the past year

23 have you asked to see the Board, have they met with you and talked to you in giving you

24 your voice?

25 A. Yes.

1 Q. All right. Thanks. I appreciate it.

2 THE COURT: Counsel.

3 REDIRECT EXAMINATION BY MR. CALMES.

4 Q. Have you been requesting these records for some period of time?

5 A. I did before, yes.

6 Q. All right.

7 A. The year before my wife was wanting to see them and they refused her because she wasn't

8 on the deed and that is what made me want to become more involved.

9 Q. They denied it because she was not a lot owner, is that what you are saying?

10 A. She wasn't on the deed is what I was told.

11 Q. Okay. And then you finally got them this weekend, is that what you are said?

12 A. No, I got an update. I got the books before then when I had to go to his office to get them.

13 Q. All right. Just for clarification, you didn't get the signature constituting the amendment?

14 You just got what Mr. Biggs indicated to you the particular lots numbers, correct?

15 A. That is all I have seen is lot numbers, no signatures other than Biggs and his wife's. He

16 showed me what it looked like.

17 Q. He showed you the amendments that they recorded at the courthouse, is that correct?

18 A. Yes. And then I saw the 24 lots. I didn't see the 24 signatures.

19 Q. He just gave you what those lots were, right?

20 A. Yes.

21 Q. Like you said you were not one of them that they came to talk to, right?

22 A. I wasn't.

23 Q. So they didn't knock on your door at the same time that they went around to everybody

24 else's door?

25 A. I didn't get a chance to vote.

1 MR. CALMES: Your Honor, I have no further questions.
2 THE COURT: All right counsel.
3 **RECROSS EXAMINATION BY MR. DARWIN.**
4 Q. Do you want to see the 24 signatures since you are here?
5 A. I won't take up a lot of time to read them.
6 Q. That is all right. And can we talk and read?
7 A. Yes.
8 Q. I mean you did ask to come and see some records and because this litigation had begun the
9 records had been given to my office, correct?
10 A. I understand.
11 Q. And you coordinated to come to my office and see them correct?
12 A. Yes.
13 Q. Okay. And you were allowed to do that?
14 A. Yes.
15 Q. And there was some correspondence and or e-mails between you and the Board as well
16 about a Book the Board put together and they told you that it was going to take some time
17 didn't they?
18 A. Right.
19 Q. Because they are volunteers right?
20 A. Absolutely.
21 Q. Okay. Thank you Mr. Perry. I appreciate your time.
22 MR. CALMES: Your Honor, I have no further questions.
23 THE COURT: All right. Counsel any further questions?
24 MR. DARWIN: Nothing further, Your Honor.
25 THE COURT: You may step down sir. Thank you.

1 MR. CALMES: May he be allowed to leave sir?
2 MR. DARWIN: Absolutely, without objections Your Honor.
3 THE COURT: All right. You may leave sir if you so desire.
4 A. Thank you.
5 MR. CALMES: Your Honor, at this point in time that concludes the Plaintiff's case with the one
6 exception is that I was talking with Mr. Darwin about submitting my Affidavit of Attorney's Fee,
7 And I can do that at the close or whatever.
8 MR. DARWIN: Your Honor it was just that it my reasoning that it might be better to present
9 both of them at the same time.
10 THE COURT: All right. Lets go ahead and do that at the conclusion.
11 MR. CALMES: That is fine with me, Your Honor.
12 THE COURT: All right. Mr. Darwin.
13 MR. DARWIN: Your Honor, may it please the Court. I do have a Rule 41(b) motion to dismiss
14 the case based on what we have heard.
15 THE COURT: All right.
16 MR. DARWIN: Your Honor as you know under Rule 41 after the Plaintiff in an action tried by
17 the Court without a jury has concluded the presentation of its evidence, the Defendant, without
18 waiving his right to offer evidence in the event the motion is not granted, may move for a
19 dismissal on the ground that upon the facts and the law the Plaintiff has shown no right to relief.
20 Your Honor, I think it is clear based on the facts presents in the Plaintiff's case as well as the law I
21 presented at the start of the case yesterday that Mrs. Mulholland has shown no right to relief in
22 this case. I don't want to belabor the point but I do want to go over that law again. Again, Your
23 Honor, the law is clear on restrictions on the use of property in South Carolina. It is a settled rule
24 of law in this State that restriction as to the use of real estate should be strictly construed and all
25 doubts resolved in favor of free use of the property, subject, Your Honor, to the provision that this

1 rule of strict construction should not be applied as to defeat the plain and obvious purpose of the
2 instrument. It follows, that where the language of the restrictions is equally capable of two or
3 more different constructions that construction will be adopted which least restricts the use of the
4 property. In construing the restrictive covenants, ambiguities must be strictly construed against
5 the party seeking to enforce them, Mrs. Mulholland in this case. Restrictive covenants are
6 contractual in nature, so the paramount rule of construction is to ascertain and give effect to intent
7 of parties as determined by the whole document, Your Honor, not cherry picking certain sections.
8 When you take those restrictive covenants as a whole there is no doubt that hobby-type/storage
9 buildings are allowed or at least referenced by inference or allowed or that makes it ambiguous,
10 Your Honor. Now I know because again it is referenced in Sections 18 and 20. Now I realize
11 that Mrs. Stenger and Mr. Burgess wouldn't concede yesterday that the language in those Sections
12 compared to Section 2 as ambiguous but according to Merriam-Webster Dictionary ambiguous is
13 defined as capable of being understood in two or more possible senses or ways. Your Honor, I
14 think it is chief that they called Mr. Cramer in their case in chief because he testified in his
15 opinion that hobby-type/storage buildings are allowed by the restrictive covenants as long as they
16 are aesthetically pleasing and in harmony with the main dwelling. His own expert witness, Mr.
17 Willard, testified that the Biggs structure is aesthetically pleasing and in keeping in harmony with
18 the main dwelling. And furthermore anticipating Your Honor when I showed him those pictures
19 of the two detached garages and Mr. Biggs' building that it actually was more aesthetically
20 pleasing than at least one of those attached garages which is not in issue in this case which Mrs.
21 Mulholland apparently had no problem with pursuant to her reading of Section 2. Again Your
22 Honor you can see the only difference between those buildings as far as I can tell is a garage door,
23 that is it. Mr. Cramer was also on the architectural review committee when the patio cover was
24 approved and you will remember I asked him Your Honor where he could find reference to that
25 type of structure and again that is not the part that is in issue in this law suit. Mrs. Mulholland

1 and Mrs. Stenger don't have a problem with that. There has been testimony that just the addition
2 they call a lean-to. There is no reference to a patio cover in those restrictive covenants because
3 that is what it is designed to do, Your Honor. Those types of buildings and constructions are
4 referenced as other building, other structures and sent to the architectural review committee to
5 make that determination. And they are elected by the majority of the homeowners and they are
6 doing their job. And Mr. Cramer had done his job when he was on the ARC and so did Mr.
7 Burgess and they both told you by their testimony that they didn't share those request with the
8 other members of the subdivision as Mrs. Mulholland wants to because you couldn't get anything
9 done at all. That is why you elect these people and that is why they are put in place to make those
10 decisions. Your Honor, I submit that even the patio covers aren't mentioned in the restrictive
11 covenants. They are allowed and that is not in issue in this case. That is there. The hobby-type
12 storage buildings are referenced in at least three (3) sections of the covenants yet the Plaintiff has
13 already admitted those aren't allowed. Your Honor, again I submit to you that when you read the
14 restrictive covenants as a whole, as I am sure you have already done, that they do call for the
15 allowance of hobby-type storage buildings. I also think it is important when after this law suit
16 was filed the end of 2009, September 17th, and since that time in 2010 and 2011 this same Board
17 has been re-elected by the majority of the homeowners. So Mrs. Mulholland and a few of her
18 supporters think that they aren't doing a good job but the majority of the homeowners do and
19 again that is based on the twenty-four (24) signatures they obtained to even amend those
20 restrictions because they have been filed just to clarify that language so it is no longer ambiguous.
21 But Your Honor, Mr. Willard's report also there is an argument about the diminished value of the
22 property, of Mrs. Mulholland's property. His report actually supports the exact opposite. The
23 only home he said the medium sales price in homes in District 2 of a similar nature are selling for
24 Ninety-five & 12/100 (\$95.12) dollars a square foot from the time he did his research and that the
25 home that sold in Corie Crest in 2011 actually sold for ninety-eight & 57/100 (\$98.57) dollars a

1 square foot. His report also said that the Corie Crest Subdivision does mirror what has taken
2 place in the overall market pursuant to the size of Boiling Springs homes. And Your Honor,
3 finally he mentioned in his report that it only applies to any buildings or structures outside those
4 outlined in the protective covenants. So Your Honor, I submit to you that if you find that the
5 storage buildings are allowed in a reading of the entire document that report really has no
6 application to the Corie Crest Subdivision and home values. Even though it supports the
7 Defendants' position that there has been no drop in value and in fact, perhaps, an increase in value
8 because the second page of his report Mr. Willard says when he had rode through he saw a nice
9 looking subdivision with well maintained yards. Your Honor, therefore, based on the evidence
10 presented by the Plaintiff and the overall case law in support of the Defendants I would ask that
11 you find that the Plaintiff has not met her burden. That you find in favor of the Defendants and
12 that you lift the temporary injunction that Judge Cole issued last year. Thank you.

13 THE COURT: Counsel.

14 MR. CALMES: Your Honor, briefly. Obviously tin speaking to that motion for summary
15 judgment that was made through Judge Cole and our application for the restraining order denying
16 that respect Judge Cole ruled that certainly he shouldn't issue a genuine fact to which we
17 concluded the case and we look at these particular issues that are involved Your Honor and in
18 looking at the Section when one makes a motion for a directed verdict the testimony must be most
19 favorable to the moving party at that point in time and that is what he is asking, he is asking
20 basically he says that there is no genuine fact for the Court to consider in this particular case. We
21 certainly take issue with that because, Your Honor, if you look at the Sections and look at the
22 predominate sections that take place, Section 2 and Section 7 of the original covenants that take
23 place is that when Mr. Biggs and Mr. Hannah applied for those particular improvements they went
24 under Section 7, 7(a) and 7 (c) and if you will look under Section 7 under that approval it makes
25 no reference to a garden shed. It makes no reference to a lean-to building, none whatsoever. And

1 it also talks about, Your Honor, in a situation even if there is an argument made about whatever
2 portable shed or storage. It does not go under Section 7. It goes under a particular Section that
3 they indicate that had to be approved by the developer or the Association. So that makes a radical
4 difference in whatever the procedure is that takes place. So it is certainly our contention Your
5 Honor that there is, at best, we make it clear from the restrictive covenants but if the Court
6 considered certainly there is some at their best argument some inconsistencies then obviously there
7 are certainly inconsistencies involved there which created ambiguities that a factual situation that
8 has to be determined by this Court. Then obviously looking at particular cases that are resolved
9 Your Honor it talks about the case of *Buffington*, in the *Buffington* case and it talks about that is a
10 violation of the restrictive covenants takes place it shall be the duty on the part of the Court to
11 consider whatever equitable doctrines they think they need to consider in that regard. Certainly,
12 Your Honor, there is ample testimony from the testimony of Mrs. Mulholland, Mr. Burgess, Mrs.
13 Stenger and even Mr. Willard that he believes that Section 2 is a paramount section that carried
14 certainly strong weight and that certainly has to be considered in making a determination and that
15 is what it says, single family use. No other building that can be built except a private detached
16 garage. And it is very clear. Your Honor in looking at that I think that it is very important for the
17 Court to view the testimony most favorable. When the Defendants recognized that they were not
18 able to get a motion for summary judgment that was granted in this particular instant they decided
19 to take upon themselves to go door to door without any kind of meeting at all to change the
20 particular sections, Section 2 and Section 7. Now the Court has a right to inquire as to why they
21 did that. I submit to you, Your Honor, the reasons that they decided to try to do that is that they
22 had made a determination that Section 7 and Section 2, one was not favorable to the facts that had
23 been applied into this particular case. Two, I guess considered them to be ambiguous and three
24 they wanted to make sure that they could have the necessary range so they could proceed forward
25 with the future constructions such as detached improvements. So therefore, if he makes the

1 argument that the case law is pretty clear then that particular step that was taken after the motion,
2 after the restraining order, after the denial for summary judgment and taking two months
3 thereafter would certainly indicate and have a right to indicate that they also believed at best that
4 the restrictive covenants were ambiguous or at worse believing that they were wrong in their
5 interpretation of it and therefore they wanted to change it. . So that is certainly I think very
6 important as far as the amendments because that makes the connection back to the original
7 covenants that they placed and the procedure to try to make it right prior to coming to Court today.

8 So I submit to this Court that there are issues and serious genuine issues of fact here that the
9 Court needs to consider and I would request the Court to basically deny that.

10 THE COURT: Mr. Darwin.

11 MR. DARWIN: Just briefly, Your Honor. The Plaintiff has his right to prove his case and
12 to present his case. And he presented it and he rested. He didn't call any member of the Board.
13 He didn't call anybody to elicit any testimony about what their thought process was in going
14 around to amend those covenants. He rested. His case is over. So if he wanted to elicit that
15 testimony he had the opportunity to do that and he failed to do that. So all you can consider is my
16 motions and what he put in evidence in his case in chief and they have not carried their burden,
17 Your Honor.

18 MR. CALMES: Can I just respond.

19 THE COURT: Yes.

20 MR. CALMES: I have done so. And I think it is sufficient enough, Your Honor, in what we
21 have done that created from the testimony and created from the documents here.

22 THE COURT: The main thrust of the Plaintiff's action here is that the two buildings that have
23 been referenced throughout this matter are prohibited and violates the restrictions or the recorded
24 restrictions of Corie Crest. There has been no allegation as I reviewed the pleadings that these
25 Declaration of Restrictions, Plaintiff's Exhibit 1, violate the laws of the State of South Carolina.

1 My review of the declaration of restrictions, and I am going to start with the back-end of it and
2 that is 41. There are two levels of that Section. One is that these restrictions remain in force
3 until October 1, 2040 and at that time, on October 1, 2040, the restrictions are automatically
4 renewed for the ten (10) year successive periods, unless the then owners owning at least two-thirds
5 (2/3) of the Lots in Corie Crest agree in writing to terminate or change the same. The second
6 level is that the terms and conditions of this instrument, meaning the restrictions, may be
7 amended or changed only upon written agreement of the owners owning at least two-thirds (2/3) of
8 the Lots in Corie Crest. So it is important as I look at the document to remember that there are
9 two levels. One is the 2040, at which time there is a provision as far as the then owners and to
10 change or terminate. Until 2040 these restrictions can not be terminated but they can be amended
11 or changed. Also, in reviewing the document it is very clear that the restrictions apply as to this
12 is a single family residential use and that is for private single family residential use and that is for
13 private single family residential purposes instead of a multi-family or commercial area. And
14 along with that building or construction there can be constructed a private detached garage. Now
15 reading the whole document additional structures or buildings are prohibited unless approved by
16 the Developer or the Association. The By-laws of the Association as presented by the Plaintiff
17 provide for an ARC that is the Architectural Review Committee and this Association and the
18 Homeowners, that is, each homeowner took title to their property subject to these restrictions and
19 also have a voice in this democratic procedure and that is that the election is held to elect the
20 Board and also the process for approving any structures is set up in the By-laws. I think it is clear
21 from the case law that whenever possible the position to uphold the restrictions in a subdivision
22 such as this and to allow for the orderly control of the construction and the other matters relating
23 to the subdivision. Based on the documents presented by the Plaintiff during its case in chief, as
24 well as the testimony and also the testimony of Mr. Willard, which I do not find persuasive as far
25 as evaluation in the subdivision, I find that the Plaintiff has failed to carry the burden in this case

1 and therefore at this point based on the documents presented, testimony and the evidence
2 presented during this period, I will not allow the Injunction to proceed and thereby dismissing the
3 case of the Plaintiff and at a subsequent hearing will entertain the motion for the award of
4 attorney's fees as far as the Defendants is allowed under the documents of record. And Mr.
5 Darwin if you will prepare the Order reflecting that finding.

6 MR. DARWIN: I will, Your Honor. .

7 THE COURT: All right.

8 ----- END OF HEARING -----

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4

5 CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Testimony of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 25th day of August, 2011.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14

15

16

Sarah Hollis

Sarah Hollis
Court Reporter

17 SWORN to before me this
18 16th day of February, 2012

19 Spartanburg, South Carolina.

20

21 *Sharon H. Winstead*
22 Notary Public for South Carolina
23 My Commission Expires: September 7, 2016.

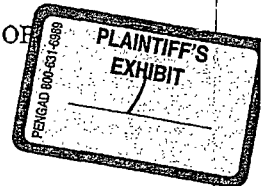
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STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS OF
CORIE CREST SUBDIVISION

THIS DECLARATION is made this 15th of February, 2005, by M Seay, L L C,
hereinafter "Developer."



WHEREAS, Developer is the owner of certain Lots of land in Spartanburg County,
South Carolina, shown and upon a plat entitled "Corie Crest Subdivision" made by Shamling Bros.
Surveying dated 12-20-04, recorded in Plat Book 157 Page 485, ROD Office for
Spartanburg County, SC, and

WHEREAS, Corie Crest will be a residential community, and the Developer desires to
provide for the preservation of values and amenities of said community and for the maintenance of
common facilities and, to this end, desires to subject all of the lots in Corie Crest as shown on the
above plat to the within Protective Covenants, Conditions, Restrictions, Easements, charges and
liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner
in Corie Crest, and

WHEREAS, Developer deems it desirable to create an agency to which should be
delegated and assigned the powers of maintaining and administering and enforcing the Covenants
and Restrictions and collecting and disbursing the assessments and charges hereafter created, and
is incorporating under the laws of the State of South Carolina, as a nonprofit corporation, Corie
Crest Homeowners Association of Spartanburg, Inc. for exercising the aforesaid functions;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in
consideration of the mutual benefits and advantages to the Developer and to future property
owners of lots shown on the above plat, Developer hereby impose upon Corie Crest the following
covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer,
its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

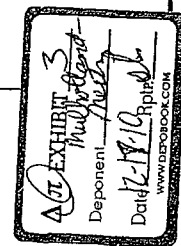
1. **DEFINITIONS:** The following words when used herein (unless the context shall
require a different meaning) shall have the following meaning:

A. "Association" shall mean and refer to Corie Crest Homeowners
Association of Spartanburg, Inc.

B. "Corie Crest" shall mean and refer to all of the lots and property shown
upon a plat of "Corie Crest Subdivision," prepared for the Developer and recorded in the ROD
Office of Spartanburg County.

C. "Common Properties" shall mean and refer to any and all properties or
property rights, such as easements or other rights which shall be conveyed by the Developer or
other grantors to the Association, which property and rights shall be held, managed and

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Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



maintained by the Association in accordance with its rules, regulations, and Bylaws.

D. "Developer" shall mean and refer to M Seay, L L C.

E. "Lot" or "lots" shall mean and refer to any numbered parcel of land shown upon a plat of Corie Crest subdivision prepared for the Developer and recorded in the ROD Office for Spartanburg County.

F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated within Corie Crest Subdivision, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in Paragraph 36 hereof.

2. SINGLE FAMILY RESIDENTIAL USE: No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed two (2) stories in height, and, if approved in advance in writing, a private detached garage. No lot or portion of a lot shall be used either as a road or easement or other means of access to adjoining property without the express written consent of the Developer.

3. SUBDIVISION OF LOTS: Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. After Developer has conveyed all the lots, adjoining owners may adjust their boundary lines without additional approval provided that under no circumstances shall a new lot be created by such adjustment.

4. MINIMUM HEATED AREA: Each dwelling shall have at least two (2) bathrooms and no less than sixteen hundred (1600) square feet of heated floor area and a double garage. The heated floor area required by this paragraph shall not include basements, porches, verandahs, breezeways, terraces and garages.

5. BUILDING SETBACK LINES: No building or portion of a building, including stoops, verandahs, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of a lot than the setback line (s) shown for such lots on the plat referred to in the deed to such lots from Developer, nor nearer than five (5) feet to any side property line. Furthermore, no such above ground improvements shall be built within ten (10)

feet of the rear property line and, in the case of a corner lot, within ten (10) feet of the side street right-of-way. Nonetheless, Developer reserves the right and privilege to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. SUBDIVISION SIGN AREAS AND EASEMENT: Lot Nos. 1 and 37 are subject to sign easement areas as shown on a plat of Corie Crest Subdivision above referred to. Reference is made to the area of said plat shown as "SIGN EASEMENT DETAIL" for these lots. Sign easement areas on Lots Nos. 1 and 37 are specifically reserved for the location, installation, maintenance and upkeep of signs identifying Corie Crest Subdivision and for the purposes of beautification, planting and landscaping initially to be undertaken and handled by the Developer and later to be undertaken and managed by the Association. The owners of those lots shall not build, construct or do anything upon their lots which shall interfere with the use of the sign easement areas for the purposes set forth hereto.

7. APPROVAL OF BUILDING PLANS-SPECIAL CONDITIONS:

A. No building or structure, whether it is a dwelling, garage, fence or driveway shall be erected, placed or altered on any lot until the building plans, elevations, location and specifications have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the landscaping of the yard, including grassing all of the disturbed area, and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.

C. The minimum pitch for the roof of each dwelling or other approved structure shall be 6/12.

D. All garages must have an electric garage door installed.

8. BUILDING MATERIALS: Exterior finishes to be Brick, Stone, Stucco, Wood or Vinyl. Any other must be approved by the Developer or its nominee. Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco, wood or vinyl or some other material approved by Developer or its nominee.

9. TRAILERS AND MOBILE HOMES PROHIBITED: Trailers and mobile homes, including typical double-wide mobile homes are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot unless approved by Developer or its nominee.

10. REQUIREMENTS FOR DRIVEWAYS: All driveways shall be constructed of either asphalt paving, concrete or other material approved by Developer and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done shall bear the cost of replacing such damage to the satisfaction of the Developer.

11. DEVELOPERS DISCLAIMER: DEVELOPER, AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OF MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS AND APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED. FURTHERMORE, WHILE DEVELOPER IS NOT AWARE OF ANY LOTS CONTAINING FILL DIRT, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR CONSTRUCTION.

12. GENERAL EASEMENTS: Developer reserves an easement five (5) feet inside each side and rear lot line of each lot for the installation, maintenance and repair of utilities, sewer lines and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Corie Crest Subdivision. All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure located upon a lot.

13. SEWAGE: All sewage shall be disposed of in septic tanks approved in writing by the local officials of the South Carolina Department of Health and Environmental Control. Each owner is responsible for the proper maintenance of the septic system on his or her lot and shall abide by all applicable rules and regulations concerning same.

14. FENCING: No fencing shall be erected on any lot from the rear corner of the residence erected thereon to the front of the lot. Subject to the Developer's approval, wire, metal or wooden fencing may be permitted on a lot from the rear corner of the residence erected thereon to the rear of the lot, provided, however, that no such fence shall exceed six (6) feet in height. No fencing of any kind shall be installed or allowed to remain on any lot which shall interfere, damage or obstruct the installation or maintenance of any utility. On corner lots, no fence shall be erected beyond the side building setback line shown on the plat above referred to.

15. BUSINESS ACTIVITIES PROHIBITED: No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of hand-crafted items for occasional off premises sale.

16. NUISANCES AND OFFENSIVE ACTIVITIES: No nuisance or other noxious, offensive, unsightly activity or condition shall be conducted or allowed to exist on any lot or adjoining street or streets.

17. PARKING OF VEHICLES: No inoperable motor vehicle, wrecked vehicle, junk car or truck, unsightly vehicle, or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarters (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Furthermore, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicle.

18. PORTABLE OR METAL BUILDINGS PROHIBITED: Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot unless approved by Developer or Association.

19. SWINGSETS AND BASKETBALL GOALS: Swingsets, sandboxes, gym sets, and any such similar devices or structures primarily for children's enjoyment must be located behind the rear corners of the dwelling. Basketball goals, both portable and permanent, must be located behind the front edge of the house.

20. NO TEMPORARY RESIDENCES: No garages or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

21. ANIMALS: No domestic fowl, cows, hogs, mules, wild animals or any other farm-type animal shall be kept on any lot at any time, however, household pets, such as cats and dogs, may be kept on a lot, provided such pets shall not exceed a total of two (2) in number and provided further that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others. The owners shall abide by all laws and regulations relating to keeping pets.

22. TRASH RECEPTACLES: All receptacles for trash or garbage must be kept within a fenced or enclosed area and hidden from public view.

23. CLOTHESLINES: Clotheslines and poles may be installed on the rear portion of a lot away from the street if they are not visible from the street.

24. SCREENING OF YARD EQUIPMENT: Lawn mowers or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property unless approved by Developer or Association.

25. TELEVISION ANTENNA AND SATELLITE DISHES: No antenna, satellite dish or similar device for the transmission or receipt of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer or Association. The Developer reserves the right to formulate and require specific rules and regulations for such items and/or approve same on a case-by-case basis. Developer will approve satellite dishes which are eighteen (18) inches or smaller in diameter but the location of each one requires the written approval of Developer or Association. No device will be attached to the front of the dwelling.

26. COMPLETION OF IMPROVEMENTS: All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.

27. COVENANTS OF GOOD APPEARANCE AND REPAIR: Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free from debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or Association, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 38.1. THE DEVELOPER, THE ASSOCIATION OR ANY OTHER RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR OTHER MEMBER SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

28. SIGNS: No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty (30) inches by thirty (30) inches in size, provided, however, the Developer shall have

the right to use additional signs for development of the property. Any provisions herein expressly providing for identifying signs for the subdivision take precedence over this paragraph.

29. STREET LIGHTING: If street lighting is installed by the Developer, the cost and expense of operation will be transferred to the Homeowners Association.

30. MAINTENANCE OF STREET RIGHT-OF-WAY: The owner of a lot shall be responsible for the planting and maintaining of the area from the property line to the edge of the pavement or curb of the street or streets upon which said lot abuts.

31. FUEL TANKS: All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control: whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth. Propane tanks for gas logs must be located at the rear of the house or screened from the street.

32. FIREWORKS: Shooting of fireworks of any kind, and the storage thereof, are prohibited, unless carried out in conjunction with a supervised activity of the Developer or the Association.

33. SWIMMING POOLS: No swimming pool may be constructed and placed on a lot within Corie Crest Subdivision until the location and design of said pool including fencing and landscaping is approved in writing by the Developer or Homeowners Association.

34. MAIL RECEPTACLES: All mail boxes or other mail receptacles and their supporting structure, including fixing the location and height thereof, shall conform to Developer's uniform requirements. After installation, each Owner has the responsibility of keeping same in good repair and appearance.

35. TEMPORARY SALES OFFICE: The Developer or its agent shall have the right to place or erect a temporary sales office on any lot in the development for the purpose of marketing.

36. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:

A. Membership: Every person or entity who is a record owner of a fee simple or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

B. Voting rights: The Association shall have two (2) classes of voting membership as follows:

Class A: Class A members shall be all those Owners defined in paragraph 1 with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by paragraph 1. When more than one person holds such interest or interests in any such Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B: Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2020.

37. PROPERTY RIGHTS IN COMMON PROPERTIES:

A. Title to Common Properties: The Developer may retain the legal title or other rights to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all its right, title and interest in the common properties to the Association no later than January 1, 2020.

B. Restrictions on Common Properties: The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas or for the identification signs for Corie Crest. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities.

38. COVENANT FOR MAINTENANCE ASSESSMENTS:

A. Creation of Lien and Personal Obligation of Assessments: The Developer for each lot owned by it within Corie Crest hereby covenants and each owner of any Lot by acceptance of a deed to a Lot within Corie Crest, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

(1) Expenses for the maintenance, upkeep and improvement of the Common Properties.

(2) Payment for services in connection with the maintenance, upkeep and improvements of the Common Properties, including utilities, taxes, water usage and other

reasonable and necessary expenses.

(3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.

(4) For the payment of services for any street lighting undertaken and accepted by the Association.

(5) For the payment of expenses related to the upkeep, maintenance and replacement of signs identifying the subdivision, containing street names or other safety signs, if any.

(6) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility to the Association as determined by the Board of Directors of said Association in accordance with the Bylaws or these restrictions.

C. Basis and Maximum of Annual Assessments: There will be no annual assessments until the year beginning January 1, 2006. For the year beginning January 1, 2006 the annual assessment shall be One Hundred Twenty-five (\$125.00) Dollars per Lot. Beginning January 1, 2007, the annual assessment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by the Developer shall be exempt from annual assessments until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developers voting rights in the Association. Builders are exempt from paying assessments for the first 6 months after purchase.

D. Special Assessment for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

E. Change in Basis and Maximum of Annual Assessment: Subject to the limitations in paragraph 38C above, and for the periods therein specified, the Association may change the maximum and basis of assessments fixed by paragraph 38C hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum of any Action Authorized Under Paragraph 38D and 38E: The quorum required for any action respecting assessments authorized by paragraph 38D and 38E hereof shall be the Members present at a meeting duly called and convened pursuant to paragraphs 38D and 38E hereof.

G. Date of Commencement of Annual Assessments; Due dates: The annual assessments provided herein shall commence January 1 of each year. The annual assessments provided herein shall begin and become due January 1, 2006 and on January 1 of each year thereafter. Prior to January 1, 2006, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under paragraph 38D hereof shall be fixed in the resolution authorizing such assessment. At the initial closing of each lot sold by the Developer, the pro-rated portion of any annual assessment shall be collected from the buyer at closing and paid to the Association.

H. Duties of the Board of Directors: The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster on the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of the Association: If the assessments are not paid on the dates when due (being the dates specified in paragraph 38G above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien upon the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half (1.50%) percent per month. (ANNUAL PERCENTAGE RATE- 18%) from the delinquency date. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

J. Lien of Assessments is Subordinate to Recorded Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the

assessment lien, provided, however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

K. Collection of Maintenance Assessments: It is the intent of the Developer by virtue of executing and recording this document to provide additional and final notice as to the existence of the aforesaid maintenance assessments including the fact that their nonpayment constitutes a lien against the property and causes late charges to accrue and in the event legal action is required for reimbursement of all cost and expenses thus incurred including a reasonable attorneys fee. Furthermore a provision is also made that in the event of a sale of a lot or lots, and the nonpayment at that time of any unpaid maintenance assessments, including those that have accrued prior to the date of the sale including late charges if any for their collection from the new owner who will likewise be subject to suit, and will also have to pay all cost and expenses of collection thereby incurred including a reasonable attorneys fee. Consequently, at or before the resale of any property covered by the aforesaid protective covenants, the Developer's representative, presently Hinson Management, Inc. located at P. O. Box 6451, Spartanburg, SC 29305, 864-599-9019, should be contacted, to determine if there are any unpaid assessments and, if so, the amount owed, and any pro-ration of those assessments that should be collected at the time of sale.

L. Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing must be held before and adjudicatory panel appointed by the executive board to determine if any lot owner must be fined or id planned community privileges or services must be suspended pursuant to the powers granted to the association in South Carolina Code of Law Section 27-30-520 (4) and (12). If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section must be held before the executive board. The lot owner charged must be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine must be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. These fines are assessments secured by liens under South Carolina Code of Law Section 27-30-670. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

39. ENFORCEMENT BY HOMEOWNERS ASSOCIATION: Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the Bylaws of the Association adopted in accordance with the terms thereof.

40. DELEGATION OF DEVELOPER'S RIGHTS: All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Association.

41. TERMS OF ENFORCEMENT AND AMENDMENTS: These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until October 1, 2040, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Corie Crest agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or changed only upon written agreement of the Owners owning at least two-thirds (2/3) of the Lots in Corie Crest. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of the terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development.

42. EFFECT OF COVENANTS AND ENFORCEMENT:

A. Effect of Provisions of These Covenants: Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Corie Crest do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, the Association and all other owners, their respective heirs, successors and assigns;

(3) shall be deemed a real covenant by the Developer for itself, its Successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot, which lien with respect to any such lot shall be deemed a lien in favor of the Association.

B. Who May Enforce: The benefits and burdens of these covenants run with the land at law and in equity, and the Developer and the Association, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal

Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. Against Whom May the Covenants be Enforced: The obligation and benefits prescribed by this Instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, and any other person whose activities bear a relation to the property, including guest and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate contravene or circumvent the terms hereof.

D. Enforcement Remedied: In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) prevent any act, conduct, business or use which is in breach of these covenants; (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

43. MISCELLANEOUS

A. No Waiver: Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions: The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization: All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its Bylaws, unless the terms of this instrument provide otherwise.

D. Gender, Tense, Number and Applicability of Definitions: When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender and the singular, the plural and visa versa, and words used in the present tense shall include the future tense.

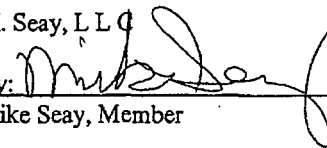
E. Savings Clause: If any provision or provisions of this instrument are

found to be ineffective or unenforceable for any reason in the final judgement of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

IN WITNESS WHEREOF, the undersigned has set its hand and seal the 15th day of February, 2005.


Cristi Seay

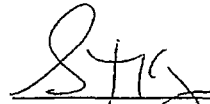
M. Seay, L L C

By: 
 Mike Seay, Member

STATE OF SOUTH CAROLINA }
 }
 COUNTY OF SPARTANBURG }

ACKNOWLEDGMENT

I, an undersigned Notary Public for the State and County aforesaid, certify that the within named Developer personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this ____ day of February, 2005.


 Notary Public for SC
 My Commission Expires: 4-10-10

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

KATHERYNA C. MULHOLLAND)

☒ Plaintiff)

v.)

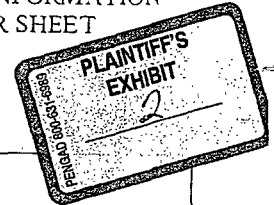
MILLARD PAUL MARTIN And ROSANNE M. MARTIN)

☐ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-42-958

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET



Plaintiff's Attorney: James D. Calmes III, Bar No. 1089 Address: 512 East North Street phone: 864/233-6224 fax: 864/233-5088 e-mail: jcalmes@charterinternet.com other:		Defendant's Attorney: S. Frank Adams, Bar No. Address: 1082 Boiling Springs Road, Spartanburg SC 29303 phone: 864/573-7229 fax: 864/573-7449 e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		January 19, 2009 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
KATHERYNA C. MULHOLLAND,)
) Plaintiff,)
)
vs.)
)
MILLARD PAUL MARTIN AND,)
)
ROSANNE M. MARTIN)
)
) Defendants)

IN THE COURT OF
COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-42-958

CONSENT ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 FEB -5 PM 3:53
MARC KITCHENS

IT HAS COME TO THE ATTENTION OF THIS COURT that a settlement has been reached by and between the parties, which is recited hereinbelow and approved by respective counsel and their parties.

This case involved allegations of certain violations of protective and restrictive covenants of a subdivision known at Corie Crest Subdivision located in Boiling Springs, Spartanburg County.

The particular complaint violation made by the Plaintiff was that the Defendants constructed and placed a detached utility-storage building behind their residence. Plaintiff sought an order to remove such building and to obtain award of legal fees and costs.

The Defendants steadfastly deny that they were in violation of any restrictive covenant and asserted general and affirmative defenses in their answer and counterclaim. Defendants also sought an award of legal fees and costs.

Without admission of any fault or liability from either party, the Plaintiff and Defendants have reached a complete agreement in this case which fully disposes of all issues in dispute.

The Defendants are relocating from Corie Crest Subdivision and are in the process of selling their present home located and known as 1066 Corie Crest Drive, Boiling Springs, South Carolina, which adjoins the home of the Plaintiff.

In the event the Defendants sell their residence before July 1, 2009, then the utility-storage building in issue shall be completely removed prior to or at the closing of the sale.

In the event the Defendants have not sold their residence prior to July 1, 2009, then the utility-storage shall be removed from the property no later than July 15, 2009 by the Defendants and at their expense.

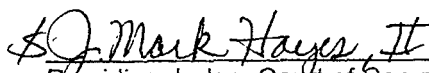
The Plaintiff and Defendants shall be responsible for their own legal fees, court cost, and all other litigation expenses associated with this case in hand.

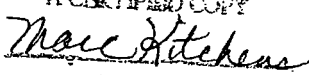
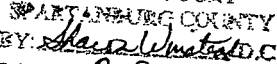
THEREFORE, pursuant to the motion of the Plaintiff and her counsel along with the consent of the Defendants and their counsel, this court finds that the agreement described herein is hereby adopted and made the order of this court and fully binding upon the named parties and subject to any and all enforcement powers granted to this court.

IT IS SO ORDERED!

I SO MOVE!


JAMES D. CALMES, III
Attorney for the Plaintiff

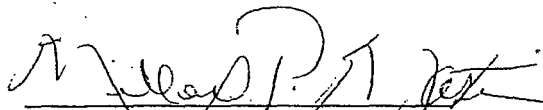

Residing Judge, Court of Common Pleas
Sharon Winston, D.C.

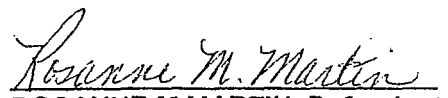
A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: 
DATED 2-9-09

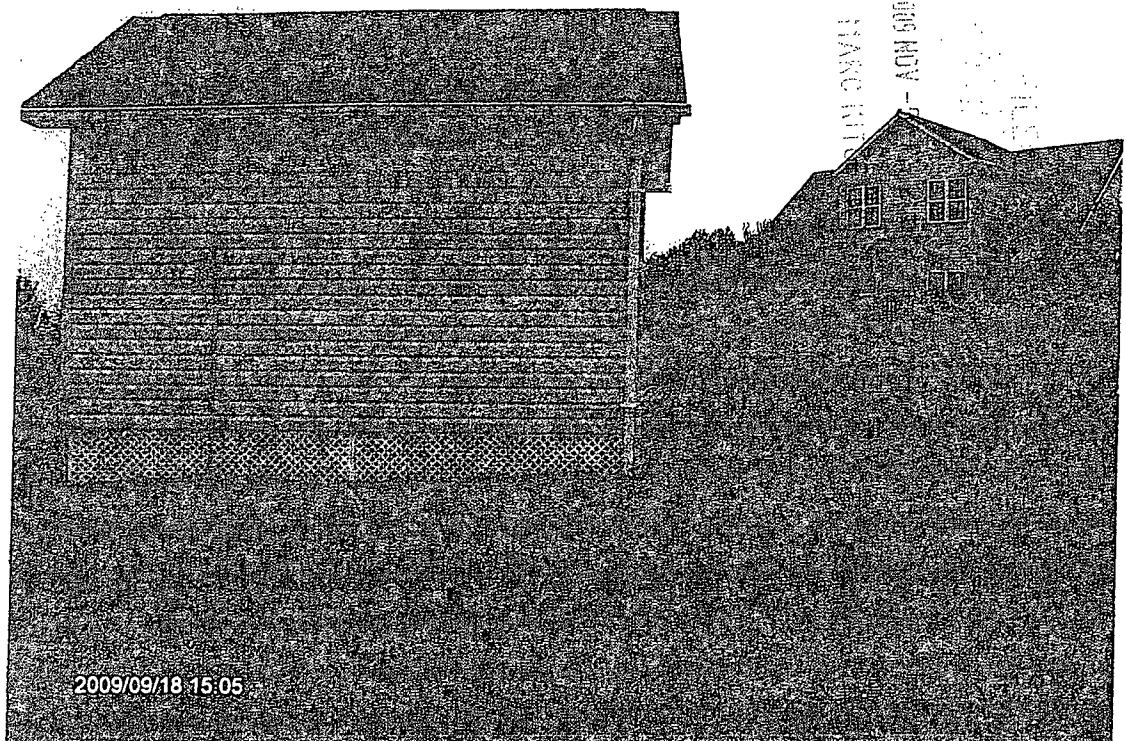

KATHERYNA C. MULHOLLAND
Plaintiff

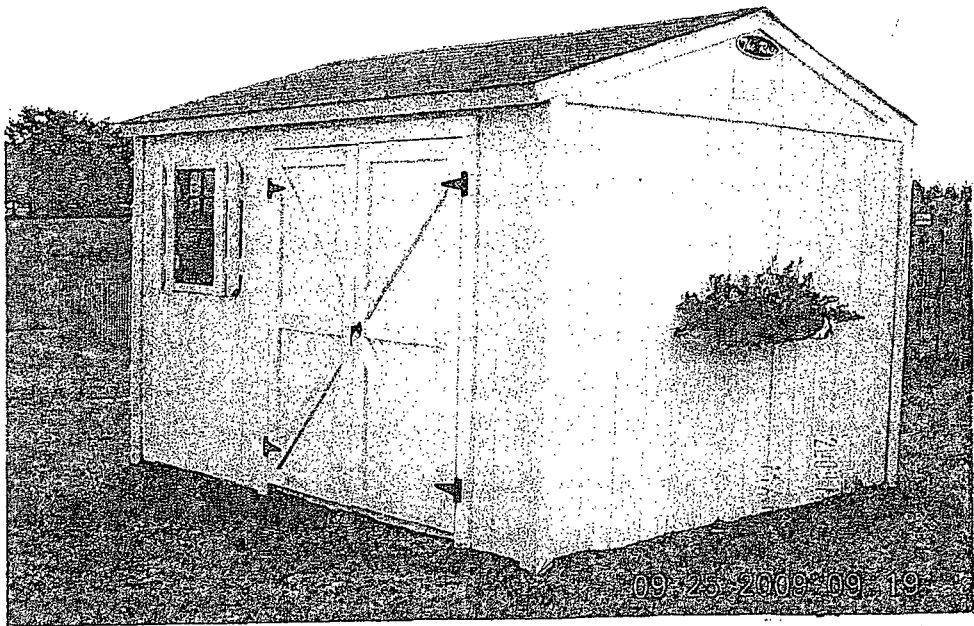
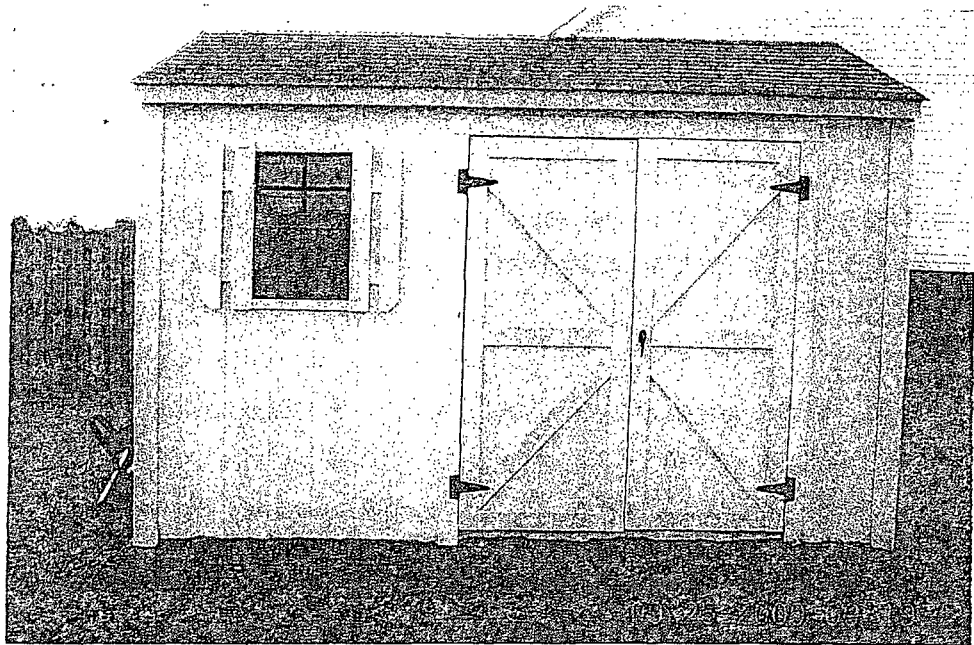
WE CONSENT!


S. FRANK ADAMS
Attorney for the Defendants

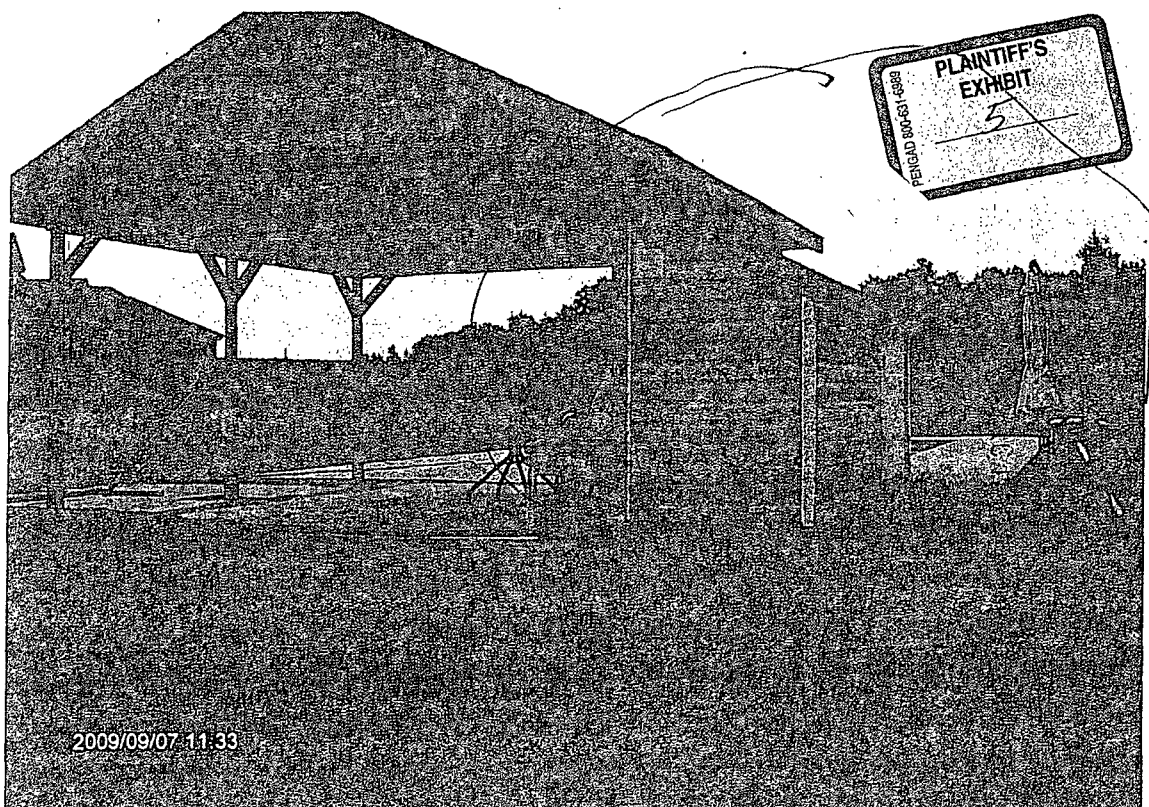
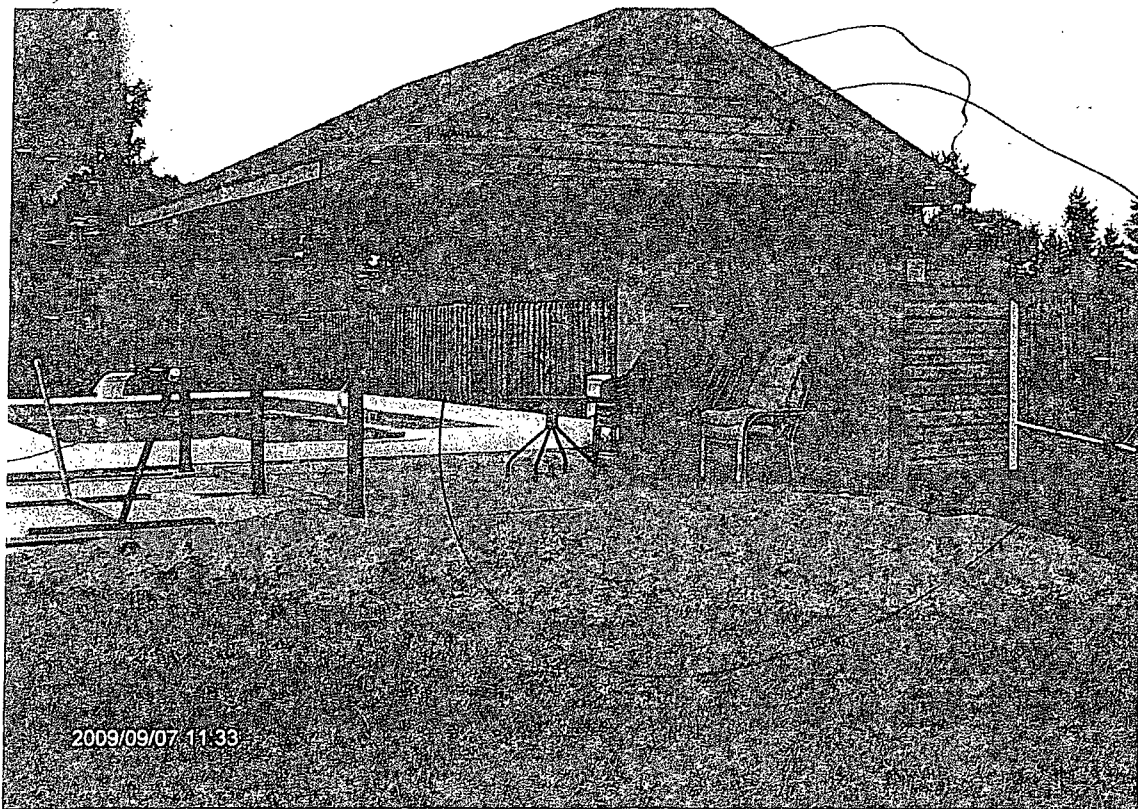

MILLARD PAUL MARTIN, Defendant


ROSANNE M MARTIN, Defendant





PLAINTIFF'S
EXHIBIT
4



Corie Crest Homeowners Association

Post Office Box 161051
Boiling Springs, S.C. 29316

Architectural Review Committee Request

Please complete all the required information for your request and refer to the Corie Crest Restrictive Covenants when planning your project. Incomplete applications will be returned. A response will be provided within 30 days as outlined in the Covenants. Requests should be approved before scheduling any work with contractors. All projects must be completed within one (1) year after the commencement of construction.

Homeowner: Jim Hannah Date: 02/02/2009
Address: 1028 Corie Crest Drive Phone (H): 278-0114
Boiling Springs, SC 29316 Phone (W): 216-5640

Category of Requested Improvement

☐ Landscaping	☐ Patio
☐ Fence / Wall	☐ Shed / Storage Building
☐ Addition to home	☒ Other: <u>Patio Cover Storage</u>

Requirement Checklist (Please provide ALL the following items):

- ☒ Site plan (Included in your closing documents).
- ☒ Indicate the location, set backs and dimensions of exterior improvements on the site plan.
- ☒ Grading / Landscaping Plan.
- ☒ Include photos, brochure or sketch of improvement.

Clear, concise written description:

1. Original proposal was for concrete slab. Would like to use concrete pavers instead.
2. Would like to add enclosed storage area to the back side of existing approved patio cover to enclose filter, pool equipment and pool toys. Additional structure would be 4' by 16' on back of existing structure.

Material listing (type, color, etc.):

1. Concrete pavers – Area under patio cover.
2. Wood frame with gray vinyl siding and architectural shingles to match existing structures.

Contractor: DIY

Contractor Phone: _____

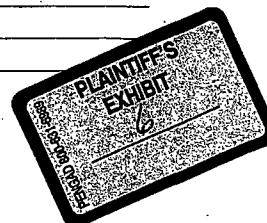
☒ APPROVED

ARC - temp chair
Vice President's Signature: _____

☐ DENIED

Date: 2-4-2009

Notes: _____



File Number 21

**Corie Crest Homeowners Association
Covenant Violation Report**

Lot, member name, or address: #34 Hannah

Covenant Section and paragraph: Section 2 & 18

Description of Violation: Lean-to building .

Name: Katheryna Mulholland
4/24/09

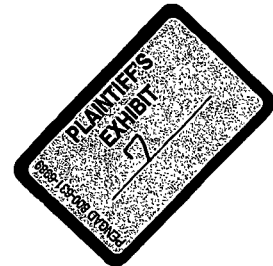
CCHOA Board Action:

☒ Rejected

☐ Accepted.

Board Comments: Section 2 prohibits the construction of more than one single family residence (attached garage optional) on any lot, and does not apply.

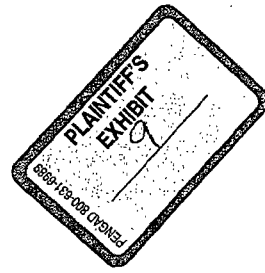
Section 18 refers to "Portable or metal buildings" and does not apply.











DEE-2010-32393
Recorded 4 Pages on 8/26/2010 9:30:43 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



DEE96--VP6965

**AMENDMENT TO DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF CORIE CREST SUBDIVISION**

WHEREAS, M Seay, LLC, a South Carolina limited liability company (the "Developer"), imposed certain protective covenants, conditions restrictions and easements on Corie Crest Subdivision, Spartanburg County, South Carolina, by Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision dated February 15, 2005, and recorded February 15, 2005, in Deed Book 82-H, page 773, Register of Deeds for Spartanburg County, South Carolina, hereinafter called the "Declaration"; and

WHEREAS, Corie Crest Homeowners Association of Spartanburg, Inc., a South Carolina nonprofit corporation (the "Association"), is an association of the Owners of Lots in Corie Crest Subdivision; and

WHEREAS, the Owners and Association desire to make certain changes and amendments to the Declaration; and

WHEREAS, Section 41 of the Declaration provides, in part, that "[t]he terms and conditions of this instrument may be amended or changed only upon written agreement of the Owners owning at least two-thirds (2/3) of the Lots in Corie Crest."; and

WHEREAS, Owners of two-thirds (2/3) of the Lots in Corie Crest have consented and agreed to the following amendments to the Declaration in writing which written consents have been supplied to the Association; and

WHEREAS, all capitalized terms not otherwise defined herein shall have their respective meanings set forth in the Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Owners and Association hereby amend the Declaration as follows:

2. SINGLE FAMILY RESIDENTIAL USE: Shall be deleted in its entirety and placing in its stead, in lieu thereof, the following:

"No lot shall be used except for private, single family residential purposes, and no residence shall exceed two (2) stories in height. No lot or portion thereof shall be used as a road or easement or other means of access to adjoining property without the express written consent of the Association."

7. APPROVAL OF BUILDING PLANS-SPECIAL CONDITIONS: Shall be deleted in its entirety and placing in its stead, in lieu thereof, the following:

"A. No detached garage, outbuildings, hobby-type structures, fences or roofed structures, shall be erected, altered, or placed on any lot



unless the building plans, specifications, and plot have been approved in writing by the Architectural Committee of the Board of Directors. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein. A proposed building or other structure must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be purely upon aesthetic reasons.

B. The completion of improvements upon a lot shall include the landscaping including grassing all of the disturbed area, and the planting of shrubs and/or decorative plants or bushes along the front elevation of the structure.

C. The pitch for the roof of each outbuilding or other approved structure shall be in harmony with the dwelling."

8. **BUILDING MATERIALS:** Shall be deleted in its entirety and placing in its stead, in lieu thereof, the following:

"Exterior finishes to be Brick, Stone, Stucco, Wood or Vinyl. Materials available as the result of improved technology may be used but first must be approved in writing by the Architectural Committee of the Board of Directors. Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any outbuilding, hobby-type building, garage or structure as the sole exterior finish. Concrete blocks, cement bricks or concrete walls shall be faced with brick, stone, stucco, wood or vinyl or other material approved by the Architectural Committee of the Board of Directors."

38. **COVENANT FOR MAINTENANCE ASSESSMENTS:** Paragraph K of Section 38 shall be deleted in its entirety and placing in its stead, in lieu thereof, the following:

"K. **Collection of Maintenance Assessments:** It is the intent of the Owners and Association by virtue of executing and recording this document to provide additional and final notice as to the existence of the aforesaid maintenance assessments including the fact that their nonpayment constitutes a lien against the property and causes late charges to accrue and in the event legal action is required for reimbursement of all costs and expenses thus incurred, including a reasonable attorneys fee. Furthermore a provision is also made that in the event of a sale of a lot or lots, and the nonpayment at that time of any unpaid maintenance assessments, including those that have accrued prior

to the date of the sale including late charges if any for their collection from the new owner who will likewise be subject to suit, and will also have to pay all costs and expenses of collection thereby incurred, including a reasonable attorneys fee. Consequently, at or before the resale of any property covered by the aforesaid protective covenants, the Corie Crest Homeowners Association located at P.O. Box 160151, Boiling Springs, S.C. 29316, should be contacted, to determine if there are any unpaid assessments and, if so, the amount owed, and any pro-ratio of those assessments that should be collected at the time of sale."

Except as amended hereby, the Declaration, and any prior amendments thereto, shall continue in full force and effect.

IN WITNESS WHEREOF, the Association has executed these Amendments this 25 day of AUGUST, 2010.

**CORIE CREST HOMEOWNERS ASSOCIATION
OF SPARTANBURG, INC.**

[Signature]
Witness 1

Lauren W. Johnson
Witness 2

[Signature]
Witness 1

[Signature]
Witness 2

Lauren W. Johnson
Witness 1

[Signature]
Witness 2

By: [Signature]
Its: President

Lauren W. Johnson
By: Lauren W. Johnson
Its: Vice President

[Signature]
By: [Signature]
Its: Treasurer

DEEC96--VP6968

[Signature]
Witness 1

Marc C. Tang
By:
Its: Board Member

[Signature]
Witness 2

Lauren W. Johnson
Witness 1

[Signature]
By:
Its: Board Member

[Signature]
Witness 2

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

I, an undersigned Notary Public for the State of South Carolina, certify that the above-named individuals personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 25th day of August, 2010.

Andrew J. Davis

Notary Public for South Carolina

My Commission Expires: May 27, 2014
{Affix Seal}



perry33@charter.net
08/15/2011 07:40 PM

To katheryna.mulholland@us.michelin.com
cc
bcc
Subject 24 Lots that got to vote

The 24 lots are 2,3,4,9,11,12, 13,14,15,16,17,18, 19,20,25,26,27,28 ,29,32,33,34,36,37

Dick



Lots that did not vote

- 5 Cramer
- 6 Tolleson
- 7 Lawsons
- 8 White
- 10 Bobo
- 21 Burgess
- 22 Ostepenکو - *not shown*
- 23 Stenger
- 24 Mulholland-Mert
- 30 Knox
- 31 Perry
- 35 New House (Vacant)

**CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.**

Note: This online database was last updated on 8/20/2011 6:01:29 PM.

See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Non Profit

**REGISTERED AGENT INFORMATION**

REGISTERED AGENT NAME:	LAUREN W. JOHNSON
ADDRESS:	1017 CORIE CREST DR
CITY:	BOILING SPRINGS
STATE:	SC
ZIP:	29316
SECOND ADDRESS:	

FILE DATE:	03/03/2005
EFFECTIVE DATE:	03/03/2005
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	07/07/2008	CHG OF ADD/ AGT FROM ANN H. SHEPHERD	
Eleemosynary Amendment	03/21/2008	AMD- CHG TO MUTUAL BENEFIT/ CHG AGT/ADD. FROM MICHAEL A. SEAY	
Eleemosynary Incorporation	03/03/2005		

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any

updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC
29201

By-laws of the Corie Crest Homeowners Association

Article I NAME AND PURPOSE

Section 1. The name of this organization shall be the Corie Crest Homeowners Association (CCHOA).

Section 2. The purpose of this organization is to provide for the preservation of values and amenities of the community and for the maintenance of street lighting, entry signs, and items that are for the benefit and safety of every owner.

Article II MEMBERSHIP

Section 1- Members: The members of the Corie Crest Homeowners Association shall be the record owners of the Corie Crest Subdivision identified in the Spartanburg County Records Department Register of Deeds plat map PLT-2005-7775.

Section 2: Voting Rights: All persons who hold interest in a lot shall be members, and the vote for such Lot shall be exercised as the owners determine among themselves. In no event shall more than one (1) vote be cast for any lot.

ARTICLE III MEETING OF MEMBERS

Section 1- Annual meeting: The meeting shall be on the 2nd Monday in January at such time and place as the Board may designate. If, in the opinion of the Board of Directors, the Annual meeting cannot be held on the second Monday of January, the Board is empowered to call the Annual meeting for the 2nd Monday in February.

Section 2- Special meetings: Special meetings shall be held whenever called by the Board of Directors. Special meetings shall also be held within thirty days after being so requested in writing by at least 20 % (8) of the members in good standing, which request shall specify the purpose of such meeting and shall be addressed to the Secretary. If upon receipt of any such request the Secretary shall fail to call and give notice of a special meeting, the members requesting shall have the right to fix a time and place for such meeting and give notice.

Section 4 – Notice of meetings: Printed notice of the time and place of meetings of the members, whether the Annual meetings or Special meetings, shall be given to each member not less than fourteen days before the date of said meeting. All such notices shall be given by personal delivery, e- mail, or mail, postage or other charges prepaid.

Section 6 – Proxies: At all meetings of the members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable prior to the meeting.



Section 7 – Quorum: All members present or represented by proxy shall constitute a quorum for any action except as otherwise provided in these By-laws or the Covenants.

Section 8. *Adjourned Meetings And Notice Thereof.* Any meetings, regular or special, may be adjourned from time to time by a vote of the majority of the members present, in person or in proxy. No notice of adjournment is required if the adjournment shall be for a period within thirty (30) days.

ARTICLE IV NOMINATION OF OFFICERS AND DIRECTORS

Section 1 – *Board elections:* Any member can nominate a candidate to the slate of nominees to be presented at the Annual meeting. Directors and Officers shall be elected by a majority of members either in person or represented by proxy at the meeting. The Board of Directors will consist of five voting members and the Secretary. Voting member will be two (2) at-large Directors and three (3) officers: President, Vice President, and Treasurer.

Section 2- *Quorum for Board Elections:* Members entitled to vote either present or represented by proxy shall constitute a quorum for the election of the Board and Officers.

Section 3 – *Terms and Qualifications:* All elected Officers and Board members shall serve one-year terms that begin at election at the Annual meeting. When a vacancy on the Board exists, the Board of Directors will fill the vacancy by appointment. Vacancies will be filled only to the end of the particular Board member's term.

ARTICLE V BOARD OF DIRECTORS

Section 1 – *Board size:* Election of the Board of Directors shall consist of five (5) members as specified in Article IV.

Section 2- *Meetings:* The Board shall meet at least quarterly. All Board members shall have written notice at least 2 weeks in advance of a quarterly Board meeting.

Section 3 – *Board quorum:* Three (3) members of the Board of Directors present or represented by proxy shall constitute a quorum at a Board meeting. A quorum must be present for business transactions to take place and motions to pass.

Section 4 – *Responsibility and Powers of the Board:* The Board of Directors shall have full charge of the property and business of the CCHOA. Duties shall include:

- a. Enforce the By-laws and the Restrictive Covenants as registered in the Spartanburg County Records Department Register of Deeds DEE-2005-7776.
- b. Cause to be kept a complete record of all its acts and corporate affairs and to present a summary to the members at the Annual Meeting. A summary can be requested at a Special Meeting where it is requested by one-fourth (9) of the members at least 5 days prior to the Special Meeting.

- c. Collect annual assessments against each lot as required by the Covenants.
- d. Procure and maintain insurance covering the Association (CCHOA) as described in Article VI.
- e. Cause the Common Area in the property easement of lots one (1) and thirty-seven (37) to be maintained.

Section 5 – Officers and Duties: There shall be three (3) officers on the Board consisting of the President, Vice President, and Treasurer. The secretary shall be a non-voting member of the Board. Their duties are as follows:

The President:

Shall assure adherence to the By-laws in the conduct of CCHOA business, shall convene regularly scheduled meetings, shall preside or arrange for other members of the Board to preside over the Board meetings.

The Vice President:

Shall be responsible for preparation and filing of liens or other required legal notices in Spartanburg County ROD.

Shall be responsible for obtaining Indemnification by providing the Board with options and costs. Upon approval of proposed coverage by the Board the Vice President shall take the necessary action to comply with Article VI.

Shall be the Chairman of the Architectural Committee that shall consist of the Vice President and the two at large Directors. The Architectural Committee will meet apart from Board meetings. The Committee shall meet the requirements of Paragraph 7A. Of the Corie Crest Covenants.

The Architectural Committee Request (ACR) form shall be submitted to the Vice President for approval by the Committee and shall include specifications, drawings, and other materials to support the request.

The Vice President upon receipt of an ACR shall notify the Architectural Committee and CCHOA member(s) submitting the ACR of the date, time, and place of the Committee meeting no less than 5 days before the meeting.

The Committee shall review the ACR for the purpose of verifying compliance with the requirements of the Covenants, Conditions, Restrictions and Easements required by DEE-2005-7776 in the Register of Deeds Office of Spartanburg County.

Members submitting an ACR form shall have the right to attend the meeting. If the Committee does not find the ACR to be in compliance the member shall have the right to amend the ACR to conform to the Covenant requirements at that meeting. Changes and amendments shall be indicated on the ACR in writing and initialed by the member and the Committee.

Members shall have the right to resubmit an ACR not in compliance at the time of the Committee review indicating modifications that have been made in the original ACR so that it meets the requirements of the Covenants.

The Vice President shall notify the Secretary in regard to acceptance or denial of all ACR submissions. The Secretary will notify the member in writing of the results of the ACR whether original or resubmitted. The Secretary will maintain a permanent record of all requests and correspondence notes and documentation related to the request.

The Treasurer:

Shall make a financial report at each Board meeting.

Shall be responsible for preparing the annual budget as directed by the Board and distributing copies to all members as required in the CCHOA Covenants. Annual reports are required to be submitted to the Board showing income, expenditures and pending income.

Shall be responsible for maintaining all Federal and State tax records and assuring timely filing of forms and documents required by law.

Shall make all financial activity of the Association available to all members of the CCHOA. The Treasurer will only make disbursements approved by the Financial Committee or Board of Directors except that disbursements for supplies and other expenses necessary for the administration of the business of the Association can be made without prior approval up to \$25.00.

Shall prepare the annual budget and submit it to the Board. The Board must approve the budget and all expenditures must be within budget. The Board must approve any significant change in the budget.

The Secretary:

Shall be appointed by the President with the approval of the Board.

Shall take minutes of every Board meeting, send meeting announcements, and distribute copies of minutes and agenda to each Board member.

Shall be responsible for maintaining all records of the CCHOA in the Board Book to include: minutes of meetings, records, and papers related to actions of the Board.

Shall make the Board Book of the Association available during reasonable hours for inspection by any member.

Section 5 – Attendance or Removal for Cause: A Board member shall be terminated from the Board due to excess absences. More than two unexcused absences from announced Board meetings shall result in termination. A Board member may be removed for other reasons by a vote of four (4) members of the Board. Any Officer or Director may be removed from the Board, with or without cause, by a two-thirds (22) vote of the members of the Association

Members must be notified, in writing, no later than 14 days prior to a Board meeting to remove any Board member for cause. The meeting for removal of a Board member shall be open to all members of the CCHOA

Section 6- Terms and vacancies: Vacancies filled by resignation or termination shall be only to the end of the Officer/Board member's term. All resignations shall be made in writing and addressed to the President and received and included in the CCHOA records. Vacancies shall be filled in the following manner:

- a. President: shall be assumed by the Vice-President.
- b. Vice-President: the President shall appoint a replacement with the approval of the Board of Directors.
- c. Treasurer: the President shall appoint a replacement
- d. Secretary: the President shall appoint a replacement with the approval of the Board of Directors.

Section 7 – Special meetings of the Board: Special meetings of the Board shall be called upon the request of the President or two (2) members of the Board. Each Board member must be notified at least two weeks in advance of the meeting.

Section 8 – Compensation: No Officer or Director shall receive compensation for any services rendered on behalf of the CCHOA. However all members of the Association may be reimbursed upon presentation of documentation for actual expenses and approval of disbursement described in Article V Section 5.

ARTICLE VI INDEMNIFICATIONS

Section 1 – Indemnification: CCHOA shall indemnify any Directors or Officers or former Directors or Officers against expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action or suit or proceeding to be liable for negligence or misconduct in the performance of duty.

ARTICLE VII AMENDMENTS

Amendments to these By-laws may be made at the Annual meeting of the CCHOA or at a Special Meeting for the purpose of amending the By-laws. Any amendment may be approved for submission as follows:

Amendments may be recommended by a majority vote of the Board at a Board meeting called for the purpose of amending the By-laws.

Amendments may be recommended by a majority of the CCHOA members at any meeting of the CCHOA.

A quorum shall consist of two thirds (24) of the members either in person or represented by proxy at the meeting for the purpose of consideration of such Amendment. A majority of those attending or represented shall be required for acceptance of any Amendment in these By-laws.

A vote to accept the Amendment shall be effective immediately upon completion of the vote. The Secretary will notify all members, in writing showing the changes, if accepted, that have been approved. The secretary will notify, in writing, all members if the vote at the Special meeting rejects the Amendment.

CERTIFICATION

The Board elected on January 15, 2008 approved these bylaws.

President

Date

Vice President

Date

Treasurer

Date

Board Member

Date

Board Member

Date



By-laws of the Corie Crest Homeowners Association

Article I NAME AND PURPOSE

Section 1. The name of this organization shall be the Corie Crest Homeowners Association (CCHOA).

Section 2. The purpose of this organization is to provide for the preservation of values and amenities of the community and for the maintenance of street lighting, entry signs, and items that are for the benefit and safety of every owner.

Article II MEMBERSHIP

Section 1- Members: The members of the Corie Crest Homeowners Association shall be the record owners of the Corie Crest Subdivision identified in the Spartanburg County Records Department Register of Deeds plat map PLT-2005-7775.

Section 2: Voting Rights: All persons who hold interest in a lot shall be members, and the vote for such Lot shall be exercised as the owners determine among themselves. In no event shall more than one (1) vote be cast for any lot.

ARTICLE III MEETING OF MEMBERS

Section 1- Annual meeting: The meeting shall be on the 2nd Monday in January at such time and place as the Board may designate. If, in the opinion of the Board of Directors, the Annual meeting cannot be held on the second Monday of January, the Board is empowered to call the Annual meeting for the 2nd Monday in February.

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Section 1 – Board elections: Any member can nominate a candidate to the slate of nominees to be presented at the Annual meeting. Directors and Officers shall be elected by a majority of members either in person or represented by proxy at the meeting. The Board of Directors will consist of five voting members and the Secretary. Voting member will be two (2) at-large Directors and three (3) officers: President, Vice President, and Treasurer.

Section 2- Quorum for Board Elections: Members entitled to vote either present or represented by proxy shall constitute a quorum for the election of the Board and Officers.

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CERTIFICATION

The Board elected on January 15, 2008 approved these bylaws.

[Signature]
President

2/18/2008
Date

[Signature]
Vice President*

2/18/2008
Date

[Signature]
Treasurer

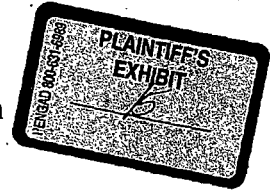
2/18/2008
Date

[Signature]
Board Member

2/18/2008
Date

Board Member

Date



By-laws of the Corie Crest Homeowners Association

Article I NAME AND PURPOSE

Section 1. The name of this organization shall be the Corie Crest Homeowners Association (CCHOA).

Section 2. The purpose of this organization is to provide for the preservation of values and amenities of the community and for the maintenance of street lighting, entry signs, and items that are for the benefit and safety of every owner.

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ARTICLE III MEETING OF MEMBERS

Section 1- Annual meeting: The meeting shall be on the 2nd Monday in January at such time and place as the Board may designate. If, in the opinion of the Board of Directors, the Annual meeting cannot be held on the second Monday of January, the Board is empowered to call the Annual meeting for the 2nd Monday in February.

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The Committee shall review the ACR for the purpose of verifying compliance with the requirements of the Covenants, Conditions, Restrictions and Easements required by DEE-2005-7776 in the Register of Deeds Office of Spartanburg County.

Shall make the Board Book of the Association available during reasonable hours for inspection by any member.

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Section 8 – Compensation: No Officer or Director shall receive compensation for any services rendered on behalf of the CCHOA. However all members of the Association may be reimbursed upon presentation of documentation for actual expenses and approval of disbursement described in Article V Section 5.

Section 9 – Special Duties of the Board: Enforcement of the Protective Covenants and Restrictions. It shall be the duty of the Board of Directors to review Covenant Violation Reports submitted by Members and take appropriate action. The request shall be on a form designated by the Board that will be submitted to the Board by mail or directly to the Secretary.

Review and action of a Report will be either a regularly scheduled Board Meeting, a special meeting convened at the request of 3 or more Board Members, or an 'electronic' meeting in which the approval/rejection is accomplished via e-mail.

If the Board confirms the Violation Report, a violation letter will be sent to the Member in violation that includes the specific Covenant violation and the action required to bring their property into compliance. If the Covenants include punitive measures, the letter will also include dates or other deadlines and a description of the action to be taken, and the Secretary will notify the Board when such a deadline has expired so that action can be taken.

If the Report is not a Violation of the Covenants, the Board will note the reason on the Member Request form and return the Form to the Member. An annotated copy will be maintained for the HOA files and a copy returned to the Member.

All Reports submitted by Members will be given a sequential number and maintained in the HOA records, whether accepted or rejected. Further documentation related to the violation will be included in the HOA files.

Section 10 - Privacy of Member documents: The Architectural Committee Request (ACR) form will be available to any member by written request. Documentation related to the Request will be available to the lot owner by submitting a written request. The requested documentation will be sequentially numbered and the request included in the Board ARC files.

Covenant Violation Reports will be available for the submitting member only. In order to maintain the 'no fault' basis of violation reports, all documents related to the Violation will Remain in the Board files and will not be available to members.

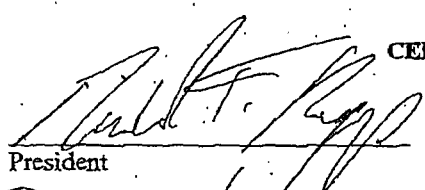
ARTICLE VI INDEMNIFICATIONS

Section 1 - Indemnification: CCHOA shall indemnify any Directors or Officers or former Directors or Officers against expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action or suit or proceeding to be liable for negligence or misconduct in the performance of duty.

ARTICLE VII AMENDMENTS

Amendments to these By Laws may be made at any Board meeting provided the consideration of By Laws has been submitted as an agenda item prior to the meeting of the Board.

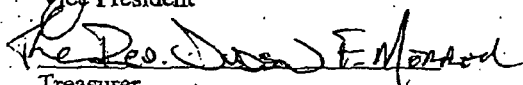
CERTIFICATION


President

Date


Vice President

5/21/2009
Date


Treasurer

5/21/2009
Date

[Signature]
Board Member

Dr. Lauren W Johnson
Board Member

6/21/09
Date

5/21/09
Date

By-laws of the Corie Crest Homeowners Association

Article I NAME AND PURPOSE

Section 1. The name of this organization shall be the Corie Crest Homeowners Association (CCHOA).

Section 2. The purpose of this organization is to provide for the preservation of values and amenities of the community and for the maintenance of street lighting, entry signs, and items that are for the benefit and safety of every owner.

Article II MEMBERSHIP

Section 1- Members: The members of the Corie Crest Homeowners Association shall be the record owners of the Corie Crest Subdivision identified in the Spartanburg County Records Department Register of Deeds plat map PLT-2005-7775.

Section 2: Voting Rights: All persons who hold interest in a lot shall be members, and the vote for such Lot shall be exercised as the owners determine among themselves. In no event shall more than one (1) vote be cast for any lot.

ARTICLE III MEETING OF MEMBERS

Section 1- Annual meeting: The meeting shall be on the 2nd Monday in January at such time and place as the Board may designate. If, in the opinion of the Board of Directors, the Annual meeting cannot be held on the second Monday of January, the Board is empowered to call the Annual meeting for the 2nd Monday in February.

Section 2- Special meetings: Special meetings shall be held whenever called by the Board of Directors. Special meetings shall also be held within thirty days after being so requested in writing by at least 20 % (8) of the members in good standing, which request shall specify the purpose of such meeting and shall be addressed to the Secretary. If upon receipt of any such request the Secretary shall fail to call and give notice of a special meeting, the members requesting shall have the right to fix a time and place for such meeting and give notice.

Section 4 - Notice of meetings: Printed notice of the time and place of meetings of the members, whether the Annual meetings or Special meetings, shall be given to each member not less than fourteen days before the date of said meeting. All such notices shall be given by personal delivery, e-mail, or mail, postage or other charges prepaid.

Section 6 - Proxies: At all meetings of the members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable prior to the meeting.



Post-it® Fax Note	7671	Date	4/23	# of pages	7
To	Jim Calmes	From	K. Mulholland		
Co./Dep.		Co.	MICHELLE		
Phone #		Phone #			
Fax #	864-233-5088	Fax #			

Section 7 – Quorum: All members present or represented by proxy shall constitute a quorum for any action except as otherwise provided in these By-laws or the Covenants.

Section 8. Adjourned Meetings And Notice Thereof. Any meetings, regular or special, may be adjourned from time to time by a vote of the majority of the members present, in person or in proxy. No notice of adjournment is required if the adjournment shall be for a period within thirty (30) days.

ARTICLE IV NOMINATION OF OFFICERS AND DIRECTORS

Section 1 – Board elections: Any member can nominate a candidate to the slate of nominees to be presented at the Annual meeting. Directors and Officers shall be elected by a majority of members either in person or represented by proxy at the meeting. The Board of Directors will consist of five voting members and the Secretary. Voting member will be two (2) at-large Directors and three (3) officers: President, Vice President, and Treasurer.

Section 2- Quorum for Board Elections: Members entitled to vote either present or represented by proxy shall constitute a quorum for the election of the Board and Officers.

Section 3 – Terms and Qualifications: All elected Officers and Board members shall serve one-year terms that begin at election at the Annual meeting. When a vacancy on the Board exists, the Board of Directors will fill the vacancy by appointment. Vacancies will be filled only to the end of the particular Board member's term.

ARTICLE V BOARD OF DIRECTORS

Section 1 – Board size: Election of the Board of Directors shall consist of five (5) members as specified in Article IV.

Section 2- Meetings: The Board shall meet at least quarterly. All Board members shall have written notice at least 2 weeks in advance of a quarterly Board meeting.

Section 3 – Board quorum: Three (3) members of the Board of Directors present or represented by proxy shall constitute a quorum at a Board meeting. A quorum must be present for business transactions to take place and motions to pass.

Section 4 – Responsibility and Powers of the Board: The Board of Directors shall have full charge of the property and business of the CCHOA. Duties shall include:

- a. Enforce the By-laws and the Restrictive Covenants as registered in the Spartanburg County Records Department Register of Deeds DEE-2005-7776.
- b. Cause to be kept a complete record of all its acts and corporate affairs and to present a summary to the members at the Annual Meeting. A summary can be requested at a Special Meeting where it is requested by one-fourth (9) of the members at least 5 days prior to the Special Meeting.

- c. Collect annual assessments against each lot as required by the Covenants.
- d. Procure and maintain insurance covering the Association (CCHOA) as described in Article VI.
- e. Cause the Common Area in the property easement of lots one (1) and thirty-seven (37) to be maintained.

Section 5 – Officers and Duties: There shall be three (3) officers on the Board consisting of the President, Vice President, and Treasurer. The secretary shall be a non-voting member of the Board. Their duties are as follows:

The President:

Shall assure adherence to the By-laws in the conduct of CCHOA business, shall convene regularly scheduled meetings, shall preside or arrange for other members of the Board to preside over the Board meetings.

The Vice President:

Shall be responsible for preparation and filing of liens or other required legal notices in Spartanburg County ROD.

Shall be responsible for obtaining Indemnification by providing the Board with options and costs. Upon approval of proposed coverage by the Board the Vice President shall take the necessary action to comply with Article VI.

Shall be the Chairman of the Architectural Committee that shall consist of the Vice President and the two at large Directors. The Architectural Committee will meet apart from Board meetings. The Committee shall meet the requirements of Paragraph 7A. Of the Corie Crest Covenants.

The Architectural Committee Request (ACR) form shall be submitted to the Vice President for approval by the Committee and shall include specifications, drawings, and other materials to support the request.

The Vice President upon receipt of an ACR shall notify the Architectural Committee and CCHOA member(s) submitting the ACR of the date, time, and place of the Committee meeting no less than 5 days before the meeting.

The Committee shall review the ACR for the purpose of verifying compliance with the requirements of the Covenants, Conditions, Restrictions and Easements required by DEE-2005-7776 in the Register of Deeds Office of Spartanburg County.

Members submitting an ACR form shall have the right to attend the meeting. If the Committee does not find the ACR to be in compliance the member shall have the right to amend the ACR to conform to the Covenant requirements at that meeting. Changes and amendments shall be indicated on the ACR in writing and initialed by the member and the Committee.

Members shall have the right to resubmit an ACR not in compliance at the time of the Committee review indicating modifications that have been made in the original ACR so that it meets the requirements of the Covenants.

The Vice President shall notify the Secretary in regard to acceptance or denial of all ACR submissions. The Secretary will notify the member in writing of the results of the ACR whether original or resubmitted. The Secretary will maintain a permanent record of all requests and correspondence notes and documentation related to the request.

The Treasurer:

Shall make a financial report at each Board meeting.

Shall be responsible for preparing the annual budget as directed by the Board and distributing copies to all members as required in the CCHOA Covenants. Annual reports are required to be submitted to the Board showing income, expenditures and pending income.

Shall be responsible for maintaining all Federal and State tax records and assuring timely filing of forms and documents required by law.

Shall make all financial activity of the Association available to all members of the CCHOA. The Treasurer will only make disbursements approved by the Financial Committee or Board of Directors except that disbursements for supplies and other expenses necessary for the administration of the business of the Association can be made without prior approval up to \$25.00.

Shall prepare the annual budget and submit it to the Board. The Board must approve the budget and all expenditures must be within budget. The Board must approve any significant change in the budget.

The Secretary:

Shall be appointed by the President with the approval of the Board.

Shall take minutes of every Board meeting, send meeting announcements, and distribute copies of minutes and agenda to each Board member.

Shall be responsible for maintaining all records of the CCHOA in the Board Book to include: minutes of meetings, records, and papers related to actions of the Board.

Shall make the Board Book of the Association available during reasonable hours for inspection by any member.

Section 5 – Attendance or Removal for Cause: A Board member shall be terminated from the Board due to excess absences. More than two unexcused absences from announced Board meetings shall result in termination. A Board member may be removed for other reasons by a vote of four (4) members of the Board. Any Officer or Director may be removed from the Board, with or without cause, by a two-thirds (22) vote of the members of the Association

Members must be notified, in writing, no later than 14 days prior to a Board meeting to remove any Board member for cause. The meeting for removal of a Board member shall be open to all members of the CCHOA

Section 6- Terms and vacancies: Vacancies filled by resignation or termination shall be only to the end of the Officer/Board member's term. All resignations shall be made in writing and addressed to the President and received and included in the CCHOA records. Vacancies shall be filled in the following manner:

- a. President: shall be assumed by the Vice-President.
- b. Vice-President: the President shall appoint a replacement with the approval of the Board of Directors.
- c. Treasurer: the President shall appoint a replacement _____
- d. Secretary: the President shall appoint a replacement with the approval of the Board of Directors.

Section 7 – Special meetings of the Board: Special meetings of the Board shall be called upon the request of the President or two (2) members of the Board. Each Board member must be notified at least two weeks in advance of the meeting.

Section 8 – Compensation: No Officer or Director shall receive compensation for any services rendered on behalf of the CCHOA. However all members of the Association may be reimbursed upon presentation of documentation for actual expenses and approval of disbursement described in Article V Section 5.

Section 9 amendment Sept. 4, 2008

Section 9 – Special Duties of the Board: Enforcement of the Protective Covenants and Restrictions. It shall be the duty of the Board of Directors to review Covenant Violation Reports submitted by Members and take appropriate action. The request shall be on a form designated by the Board. The Board will review each Violation submitted.

All Reports of Covenant Violations will be reviewed by the Board within 30 days of receipt.

Board meetings for the purpose of considering a Report will be either the quarterly meeting, a special meeting convened at the request of 3 or more Board Members, or an 'electronic' meeting in which the approval/rejection is accomplished via e-mail.

If the Report is confirmed by the Board as a violation of the Covenants, a letter will be sent to the member in violation. The notification letter will include the specific Covenant violation and the action required to bring their property into compliance.

If the Covenants include punitive measures or deadlines, the letter will also include dates and a description of the action to be taken. The Secretary will notify the Board when such a deadline has expired so that action can be taken.

If the Report is not a Violation of the Covenants, the Board will note the reason on the Member Request form and return the Form to the member. The original Request will be maintained in the HOA files and a copy returned to the Member.

All Reports submitted by members will be given a sequential number and maintained in the HOA records, whether accepted or rejected. Any additional documents related to the violation will be included in the HOA files.

All Members shall have access to any file relating to their property.

ARTICLE VI INDEMNIFICATIONS

Section 1 – Indemnification: CCHOA shall indemnify any Directors or Officers or former Directors or Officers against expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action or suit or proceeding to be liable for negligence or misconduct in the performance of duty.

ARTICLE VII AMENDMENTS

Amendments to these By-laws may be made at the Annual meeting of the CCHOA or at a Special Meeting for the purpose of amending the By-laws. Any amendment may be approved for submission as follows:

Amendments may be recommended by a majority vote of the Board at a Board meeting called for the purpose of amending the By-laws.

Amendments may be recommended by a majority of the CCHOA members at any meeting of the CCHOA.

A quorum shall consist of two thirds (2/3) of the members either in person or represented by proxy at the meeting for the purpose of consideration of such Amendment. A majority of those attending or represented shall be required for acceptance of any Amendment in these By-laws.

A vote to accept the Amendment shall be effective immediately upon completion of the vote. The Secretary will notify all members, in writing showing the changes, if accepted, that have been approved. The secretary will notify, in writing, all members if the vote at the Special meeting rejects the Amendment.

2

CERTIFICATION

The Board elected on January 15, 2008 approved these bylaws as amended on Sept. 4, 2008:

_____ President	_____ Date
_____ Vice President	_____ Date
_____ Treasurer	_____ Date
_____ Board Member	_____ Date
_____ Board Member	_____ Date

File Number 19

**Corie Crest Homeowners Association
Covenant Violation Report**

Lot, member name, or address: #34 Hannah

Covenant Section and paragraph: Section 7A & 42D

Description of Violation: New construction on an existing building

Name: Christina Stenger
4/24/09

CCHOA Board Action:

☒ Rejected

Accepted.

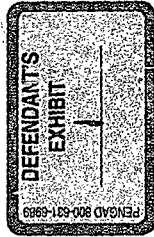
Board Comments: The addition to the existing structure was approved on 2/4/2009 by the ARC. The addition provides cover for pool support equipment. It is not a storage facility and is in harmony with the existing structure.

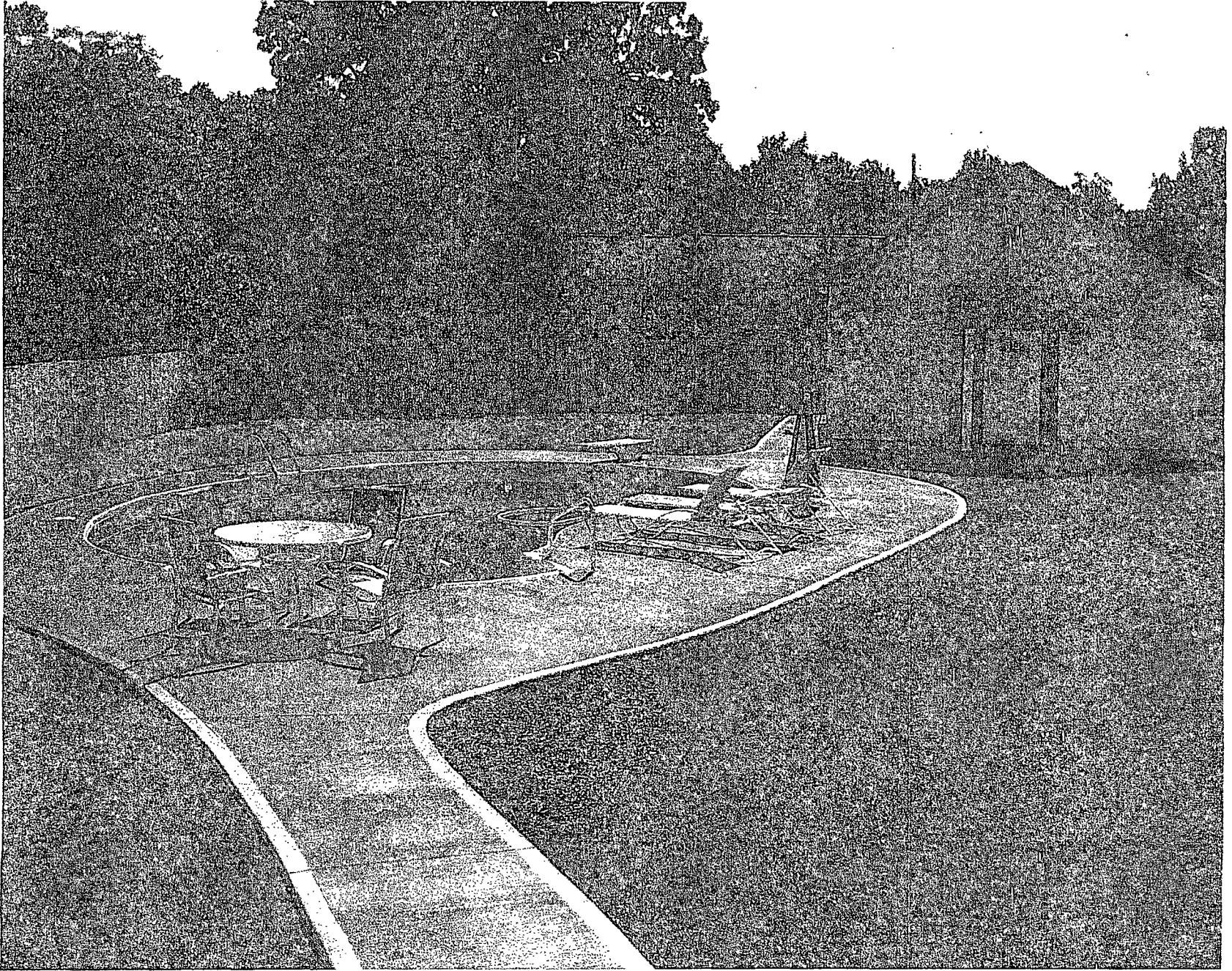
Section 42D is a description of enforcement alternatives for violations.

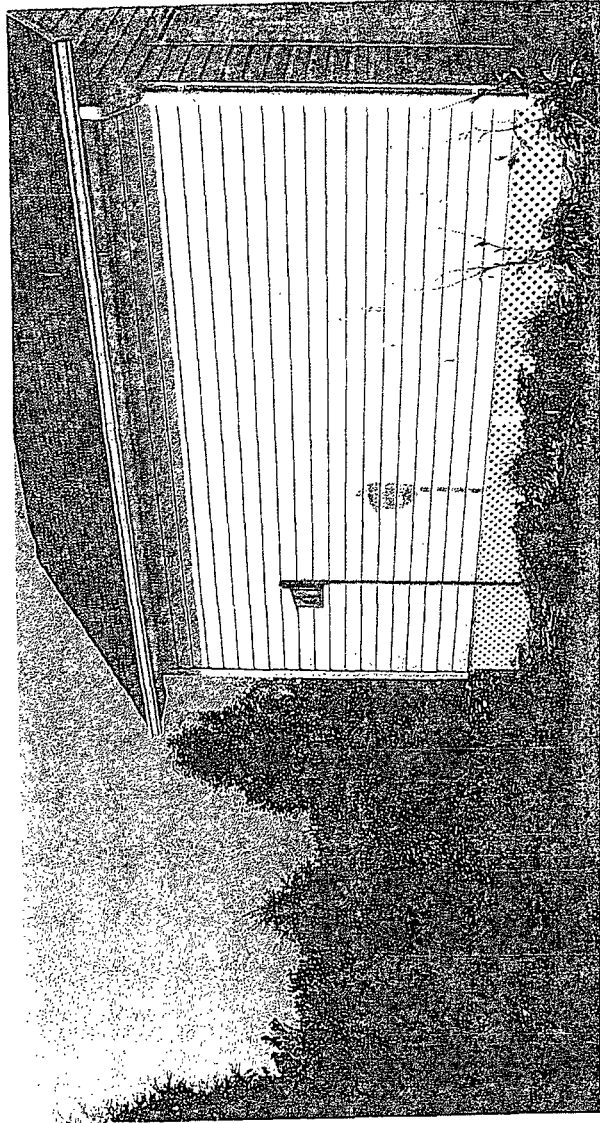




2009/10/29 11:34

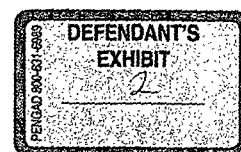


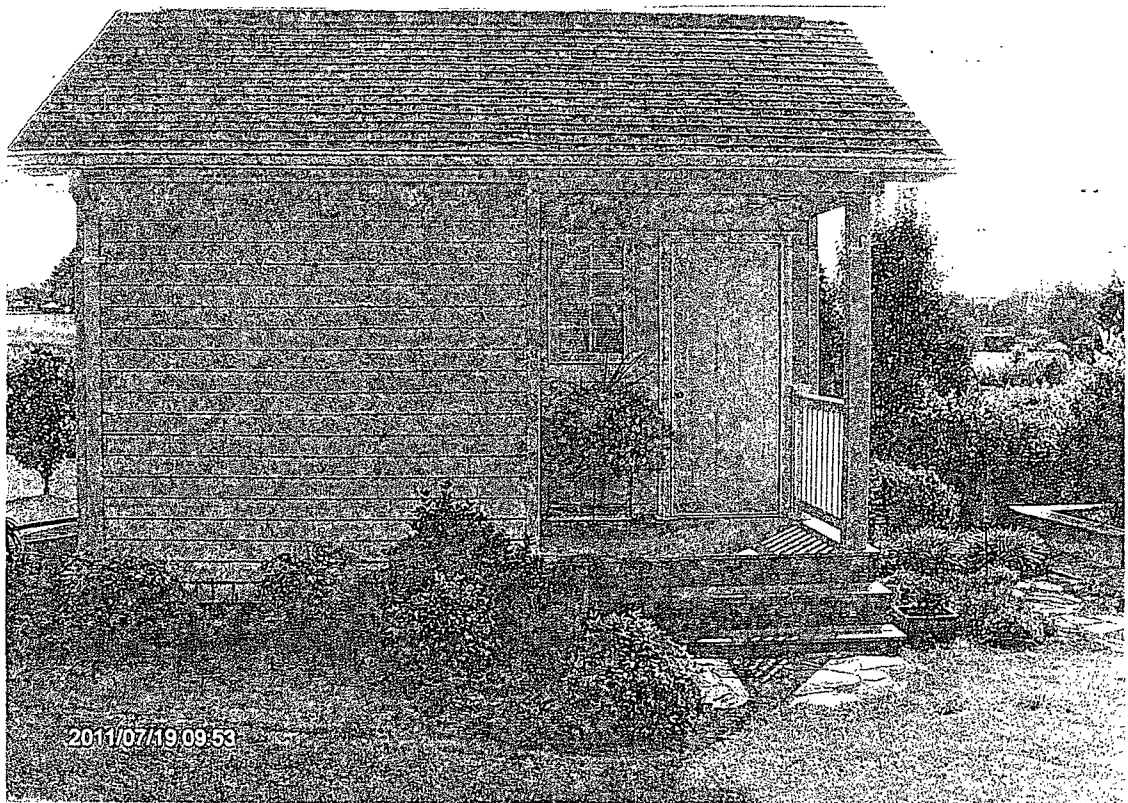




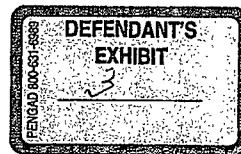
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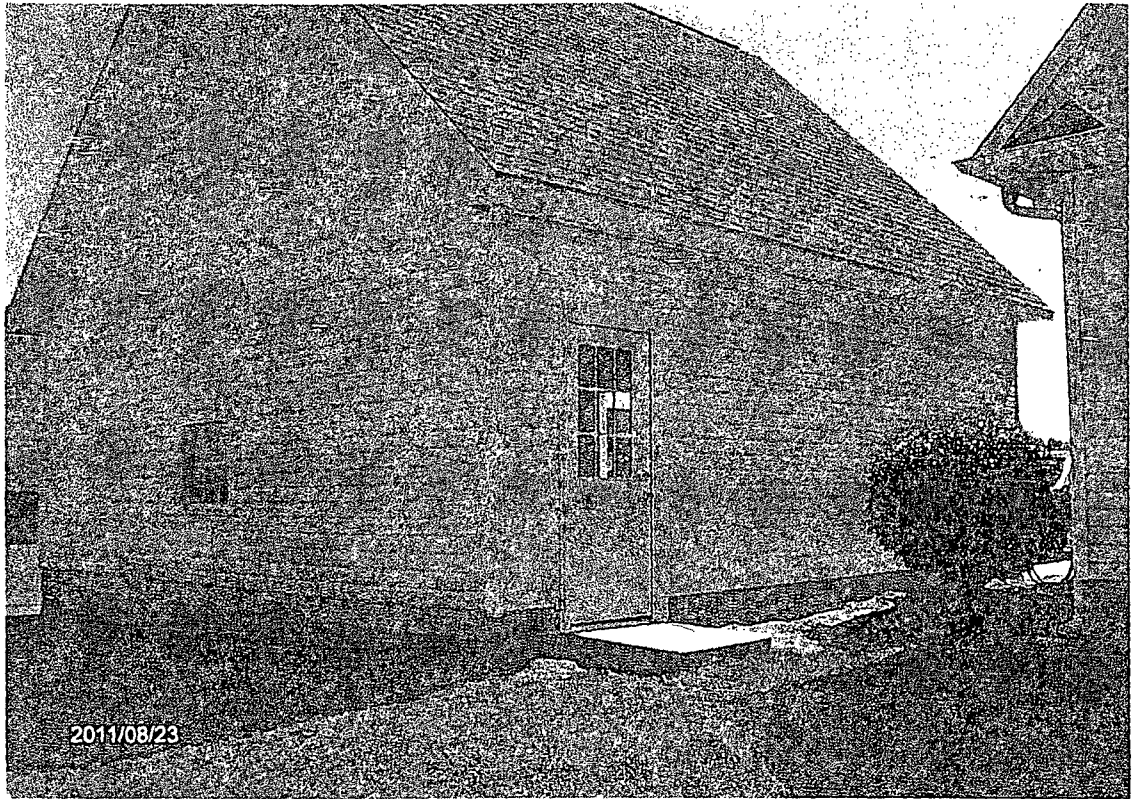


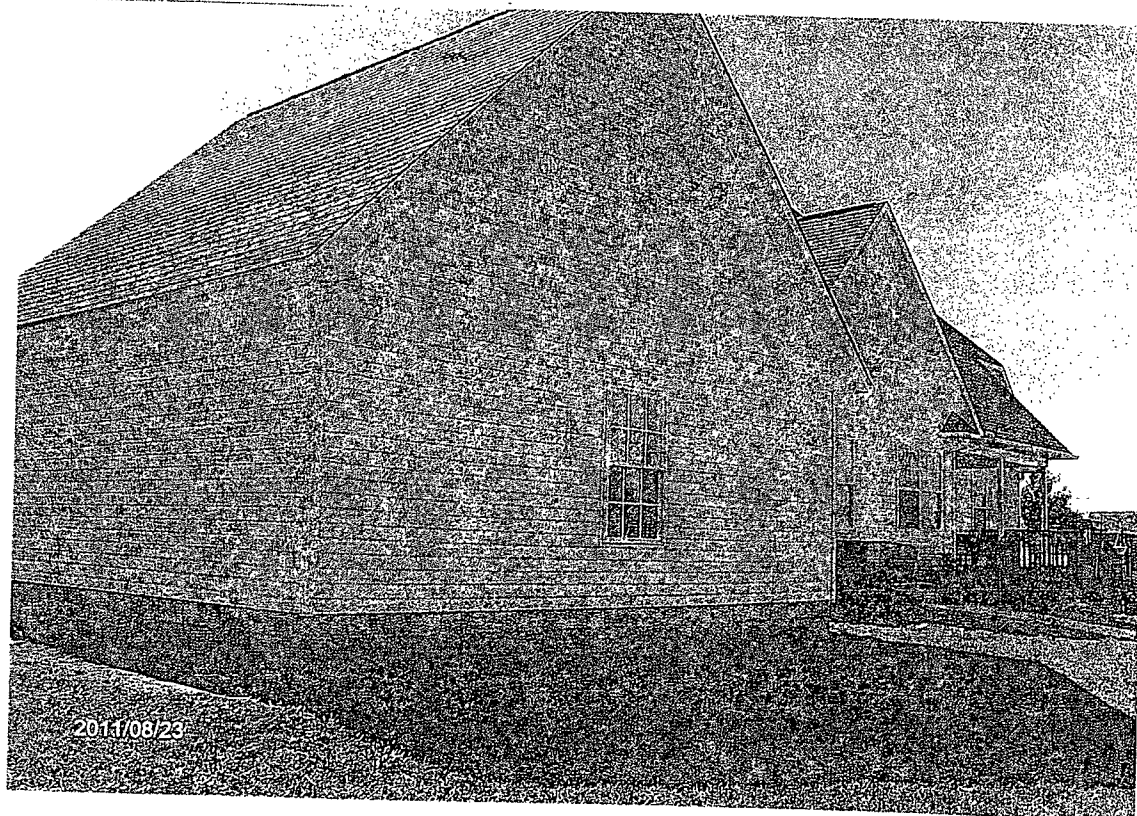
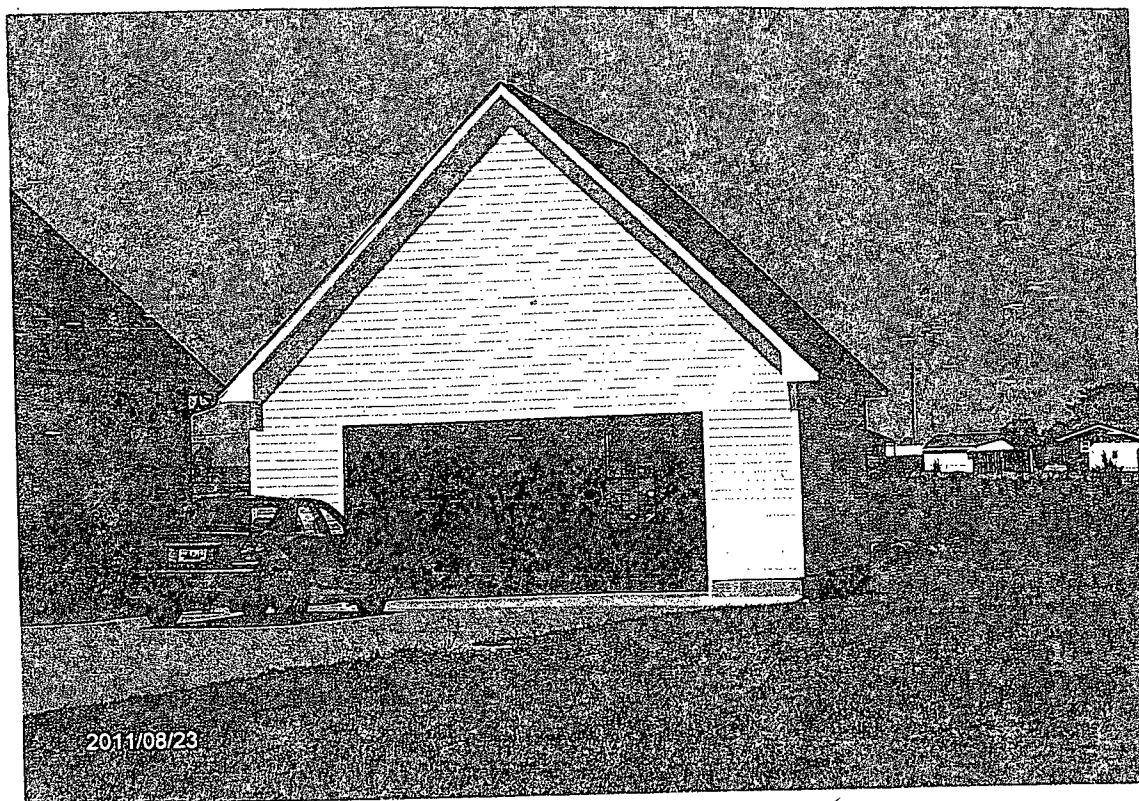


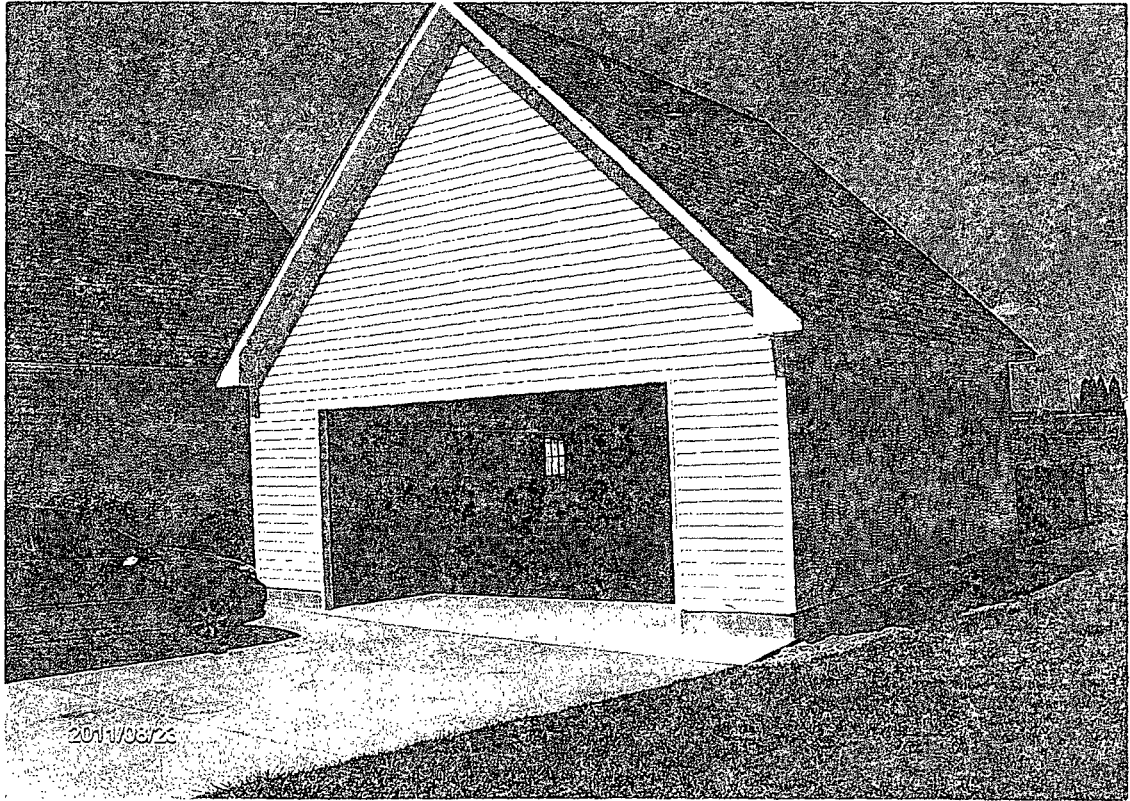
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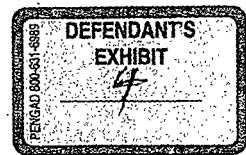
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REN 4336 PAGE 844



STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

NOTICE OF LIEN

PURSUANT to the Declaration of Covenants and Restrictions of the Corie Crest Homeowners Association, Inc., recorded in deed Book 82H beginning at page 773 in the Spartanburg County Courthouse setting fourth authority for this lien and the Deed conveying the below described property to the owner below, having therefore complied with the provisions of said Declarations the **CORIE CREST HOMEOWNERS ASSOCIATION, INC.**, hereby claims and files Notice of its Lien on the following property for assessments, and the amount of said lien being One Hundred Thirty and 63/100 (\$130.63) Dollars plus Ten and no/100 (\$10.00) filing costs for the filing of this lien.

Name of Property Owner: **Terry Burgess and Susan D. Burgess**

Property Description: Lot #21 within the Corie Crest subdivision
Block Map Reference #2-31-00-039.00
Recorded in Deed Book 84T/761

CORIE CREST HOMEOWNERS ASSOCIATION, INC.

By:

Richard T. Biggs
Richard T. Biggs

Its: President

Corie Crest Homeowners Assoc.
P.O. Box 161051
Boiling Springs, S.C. 29316
(864) 814-3910

WITNESS the hand and seal of
Said Association this 5th
day of April, 2010.

[Signature]
[Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Association sign, seal and as its act deliver the within Notice Of Lien and that (s)he with the other subscribed above witnessed the execution hereof.

SWORN to me this 5th
Day of April, 2010

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires _____

MY COMMISSION EXPIRES APRIL 26, 2014

[Signature]
MTG-2010-12819
Recorded 1 Pages on 4/8/2010 10:19:58 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



5

Corie Crest Homeowners Association

Post Office Box 161051
Boiling Springs, S.C. 29316

Architectural Review Committee Request

Please complete all the required information for your request and refer to the Corie Crest Protective Covenants when planning your project. Incomplete applications will be returned. A response will be provided within 30 days as outlined in the covenants. Requests should be approved before scheduling any work with contractors. All projects must be completed within one (1) year after the commencement of construction.

Homeowner: <u>Jim Hannah</u>	Date: <u>9/4/2008</u>
Address: <u>1028 Corie Crest Dr</u>	Phone (H): <u>278-0114</u>
<u>Boiling Springs, SC 2316</u>	Phone (W): <u>216-5640</u>

Category of Requested Improvement

☐ Landscaping ☐ Fence / Wall ☐ Satellite Dish	☒ Patio (Covered) ☐ Shed / Storage Building ☐ Other: _____

Requirement Checklist (Please provide ALL the following items):

- ☒ Site plan (Included in your closing documents).
- ☒ Indicate the location, set backs and dimensions of exterior improvements on the site plan.
- ☒ Grading / Landscaping Plan.
- ☒ Include photos, brochure or sketch of improvement.

Clear, concise written description:

16' by 16' covered patio with concrete slab floor adjacent to existing pool as indicated on site plan. Gable style roof with 6/12 pitch.

Material listing (type, color, etc.):

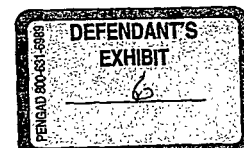
Pressure-treated lumber (Cedar stain to match existing fencing).
Black roof shingles matching house
Concrete slab floor

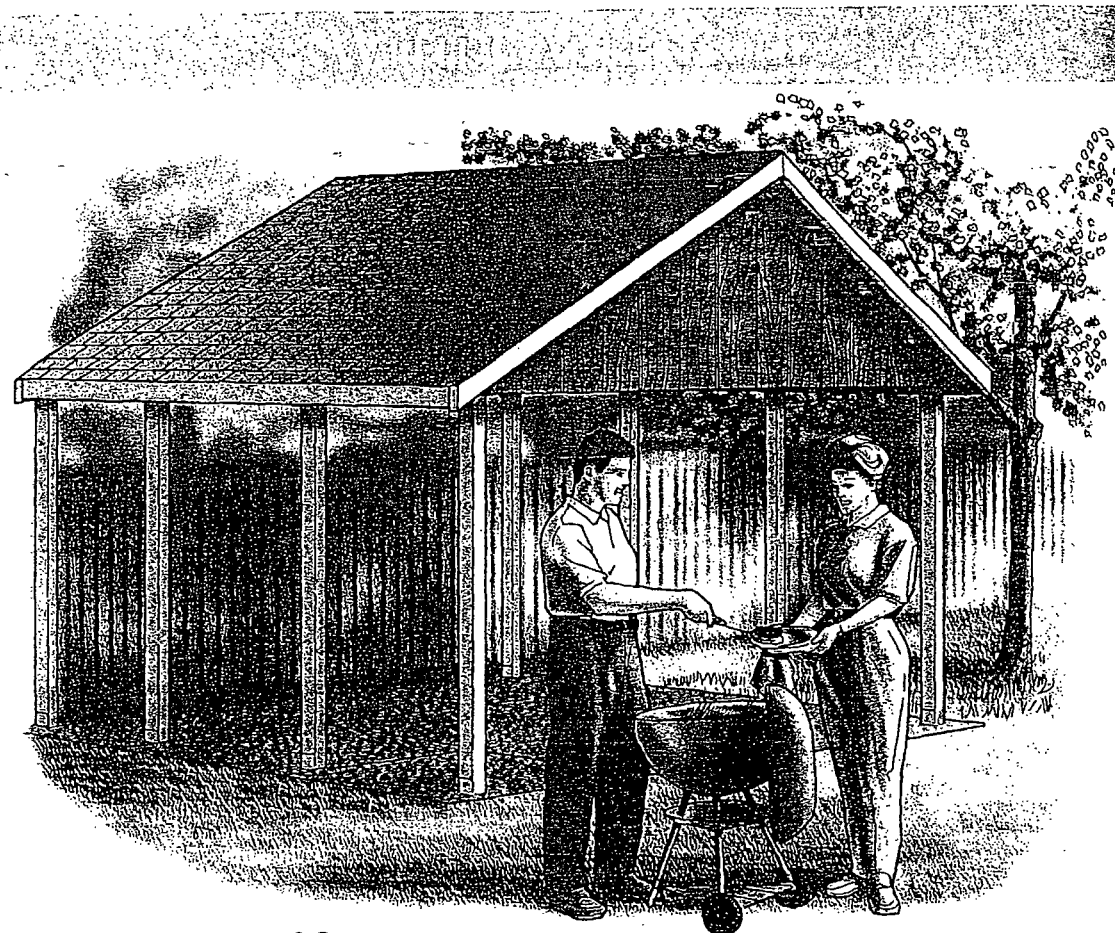
Contractor: DIY Contractor Phone: _____

☒ APPROVED Vice President's Signature: [Signature]

☐ DENIED Date: 9/4/08 9/4/08

Notes: Plan calls for patio and has been approved.

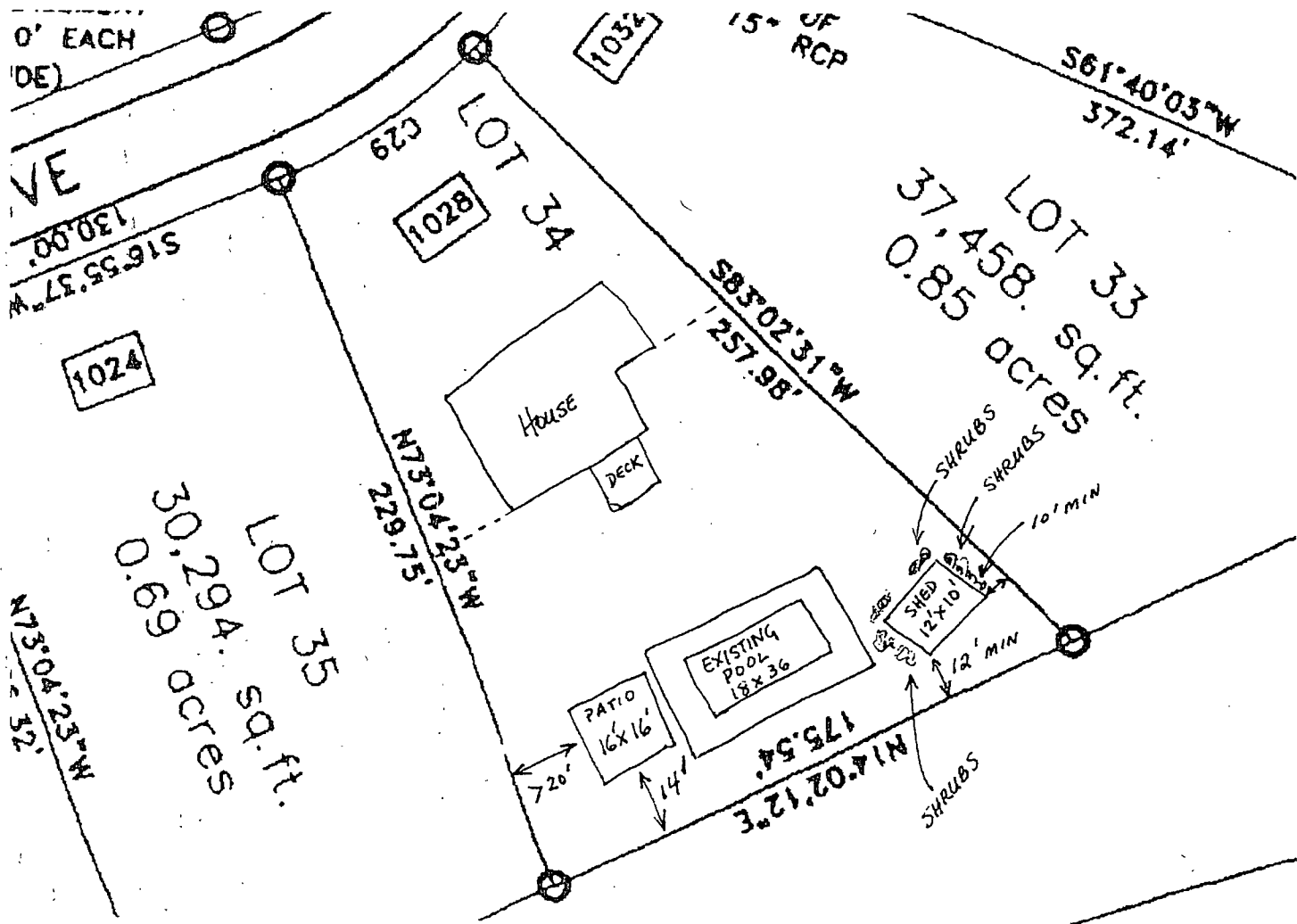




CUTTING & MATERIALS LIST **II**

Name	Quantity	Size
Pavilion Framing		
Posts	8	4"x4"x8'
Top Plates	2	2"x4"x12'
Cap Plates	2	2"x4"x12'
Roof Framing		
Top Chord	8	2"x4"x94"
Bottom Chord	4	2"x4"x12'
Long Brace	8	2"x4"x41"
Short Brace	8	2"x4"x18 3/4"
Purlin Blocks	24	2"x4"x46"
Plywood Siding	2	1/2"x4"x8'
Fly Rallers	4	2"x4"x94 1/2"
Lookout Blocks	16	2"x4"x8"
Plywood Sheathing	7	3/4"x4"x8'
Roofing Felt	2	1"x4"x13'5"
Metal Drip Edge	3	200 sq. ft.
Composite Shingles		8' lengths
		200 sq. ft.

Name	Quantity	Size
Nails & Fasteners		
Nails		
16d Common		
12d Common		
10d Common		
8d Common		
6d Common		
Roofing		
Post Anchors	8	
Purlin Clips	80	
Storm or Hurricane Clips	8	
Truss Clip Packs	4	Sized for 2x4 truss system
Premixed Concrete		As required to set post footings below frost line
Ready-Mix Concrete		As required for 4"-thick slab



Building Codes Room 500
366 N. Church Street
Spartanburg, SC 29303

Spartanburg County

2-31-00-039.36
Phone Numbers:
864-596-2727 ... Office
864-596-2194 ... Fax

Parcel ID Number	Permit #	Date	Permit Type	Valuation	Applied
2-31-00-039.36	08-04370	09/05/2008	BLDG-RES	\$ 7680.00	Chris

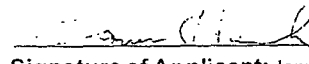
Location: 1028 Corie Crest Dr Boiling Springs, SC 29316	Valuation: 7680.00
Subdivision CORIE CREST	Fees Due:
Lot: 34	Fees Paid: 45.00
Owner: James Hannah (864 278 0114)	Check/Card #: 5006
Owner or Contractor: /James Hannah	1028 Corie Crest Dr Boiling Springs, 29316 864 278 0114
1028 Corie Crest Dr Boiling Springs, 29316	License:

DESCRIPTION OF WORK: BUILDING COVERED PATIO	Foundation: SLAB	Type Frame: WOOD
Occupancy: U Utility, Miscellaneous	Roofing: SHINGLE	Exterior: OPEN
Const. Type: VB	Heating: NONE	Air/Cond: NONE
Sep. Occupancies: 1	Basement: NONE	# Fireplaces: 0 / NONE
Square Feet: Finished SqFt: 0	# Stories: 1	# Bedrooms: 0
Accessory: 256	# Bathrooms: 0	
Gas/Propane Co.: Piedmont Nat.Gas		
Electric Co.: Duke Power		
Sewer/Septic: Septic		

Directions: HWY 9 TO PARRIS BRIDGE LEFT ONTO MOUNTAIN VIEW RD LEFT ONTO CORIE CREST DR LOT ON RIGHT

The Applicant/Permit Holder hereby certifies and agrees as follows: 1.) that he/she is authorized to make this application; 2.) that he/she has read the above information and it is true and correct; 3.) that he/she will comply with all county ordinances, laws, and regulations, all federal, and state laws related to the use of land and structures and the construction of structures; 4.) that he/she grants right of entry to the property to the building official and his employees for the purpose of inspections and posting of notices. If any of the information supplied by the owner/owners agent is incorrect then this permit may be revoked. Persons signing this permit agrees to post same on front of lot visible from road or street. This permit expires 6 months from date of issuance or inactivity. All building or parts thereof to be completed before occupied.

Chris
Issued by:


Signature of Applicant: James Hannah

Date: 09/05/2008

02/25/08 mnw

COUNTY OF SPARTANBURG

Construction
Permit ☐

Mobile Home
Permit ☐

INSPECTION CARD

PERMIT NUMBER: 08-04370

BLOCK MAP REFERENCE #: 2-31-00-039.36 LOT NUMBER: 34

ISSUED TO: James Hannah

ADDRESS: 1028 Corie Crest Dr. Boiling Springs

DESCRIPTION OF WORK: covered patio

INSPECTION RECORD

	OK	DATE	INSPECTOR
FOOTING	<u>OK</u>	<u>10/7</u>	<u>BK</u>
FOUNDATION			
PLUMBING UNDER SLAB			
SLAB			
ROUGH PLUMBING			
ROUGH FRAMING			
ROUGH HVAC			
ROUGH ELECTRICAL			
MECHANICAL			
GAS			
SWIMMING POOL BONDING			
SWIMMING POOL FINAL			
ELECTRICAL SERVICE			
FINAL INSPECTION	<u>OK</u>	<u>2/4/09</u>	<u>BK</u>
MOBILE HOME INSPECTION			

DO NOT COVER WORK UNTIL INSPECTIONS HAVE BEEN APPROVED

ISSUED BY: R. Chris McHenry DATE: 9/5/08

THE APPLICANT HEREBY CERTIFIES AND AGREES AS FOLLOWS: 1) That he/she is authorized to make this application; 2) that he/she has read the above information and it is true and correct; 3) that he/she will comply with all county ordinances, laws and regulations, all Federal, and State laws related to the use of land and structures and the construction of structures; 4) that he/she grants right of entry to the property to the Building Official and his employees for the purpose of inspections and posting of notices. If any of the information supplied by the owner/owners agent is incorrect that this permit may be revoked. If this work has not started within six (6) months of permit issuance or if the work has been suspended for six (6) months then this permit becomes invalid.

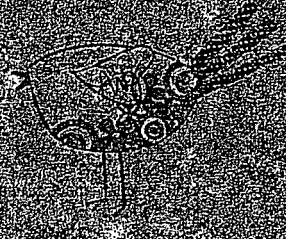
May 2011
Volume 3, Issue 2

CORIE CREST NEWS



Newsletter Topics

- Second Quarter Board Meeting
- Treasurer's Report
- Front Entrance Maintenance
- Neighborhood Yard Sale
- HOA Records Book
- Other News



Second Quarter Board Meeting

The second quarter board meeting was held on April 20, 2011.

The agenda for the meeting was to discuss the status of the Spartanburg Water bill, the new lawn mowing contractor, an architectural committee update, the status of the HOA records notebook, the neighborhood yard sale, and the status of the law suit. Two covenant violation reports were discussed.

We would like to congratulate Shay Berry on her new appointment as HOA secretary!

Treasurer's Report

The HOA bank account balance to date as of April 20, 2011 is \$2847.53. Expenses to date have included Spartanburg Water, Nationwide Insurance, Duke Energy, Liberty Tax, Southern Mulch, supplies for the records book and mailing expenses for the annual election. The projected balance for the end of the year is \$137.84.

Front Entrance Maintenance

We have changed the HOA lawn service provider from Boiling Springs Lawn Maintenance to Frank's Plants. This change will save \$10 per lawn mowing.

We were able to freshen up the front entrance with two loads of mulch at the annual front entrance clean-up day. Thanks to all the homeowners that helped with this.

As suggested at the annual meeting, neighbors would like to form a committee that helps with the up keep of the front entrance. If you are interested in participating in and/or leading this committee, please send an email to coriecresthoa@yahoo.com

Neighborhood Yard Sale

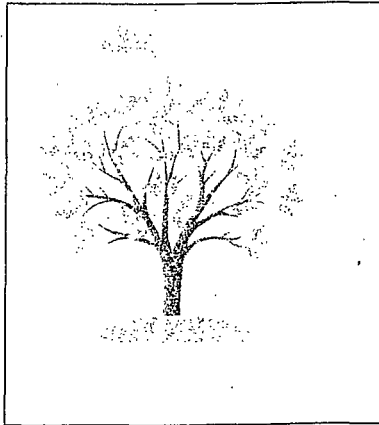
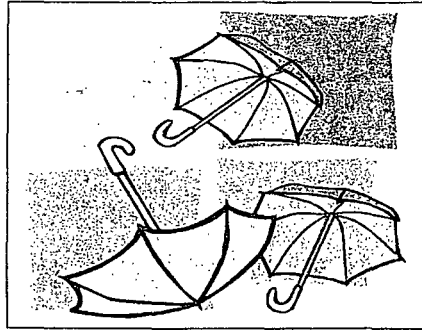
A big thanks goes out to Debbie White for a successful neighborhood yard sale. We had several neighbors participate and many yard sale goers. Start saving for next year as this may become an annual event!

New! Corie Crest HOA Records Book

Behind on HOA business? The board has compiled a binder with HOA records available for homeowners to view. This binder contains meeting minutes, financial reports, legal records, newsletters, etc. If you are interested in viewing the book, please send an email to coriecresthoa@yahoo.com and we will arrange a time for you to view it. If homeowners would like to have a copy of any of these documents then they are responsible for making the copies.

Just a note.....

WATCH YOUR SPEED!!
It has been brought to our attention again that people are speeding through the neighborhood! The speed limit is **20 mph**. Please remind your family and guests!



CORIE CREST IS GOING GREEN!

We have collected several email addresses to date but are still missing a few. If you would like to receive HOA correspondence via email, please take a moment to send your address to coriecresthoa@yahoo.com. This will help cut down on copying costs. Your email address will only be used for HOA business.

CCHOA

P.O. Box 161051
Boiling Springs, SC 29316

Board Of Directors

President
Dick Biggs

Vice-President
Lauren Johnson

Treasurer
Judson Merrell

At-large board members
Torrey Jacobs

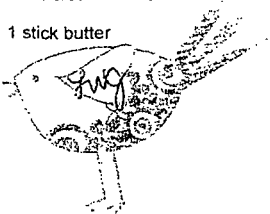
Marc Toney

RECIPE CORNER

Corn-Jalapeno Dip

Ingredients:

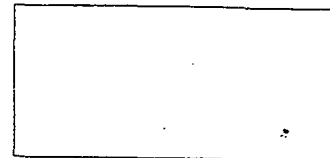
- 2 cans white nibblet corn, drained
- 1 small jar diced jalapenos
- 8 oz. cream cheese
- 1 stick butter



Preparation:

Mix contents in a small crockpot. Warm on low until melted.

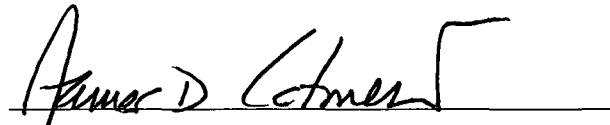
Serve with tostitos scoops or your favorite chips.



CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 17 2012

A handwritten signature in black ink, appearing to read "James D. Calmes III", is written over a horizontal line.

**JAMES D. CALMES III
POST OFFICE BOX 16135
GREENVILLE, SOUTH CAROLINA 29606
TELEPHONE: 864/233-6224
ATTORNEY FOR APPELLANT**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

COURT OF COMMON PLEAS

RECEIVED
SEP 24 2012

SC Court of Appeals

THE HONORABLE GORDON G. COOPER, MASTER IN EQUITY

CASE NUMBER: 2009-CP-42-05129

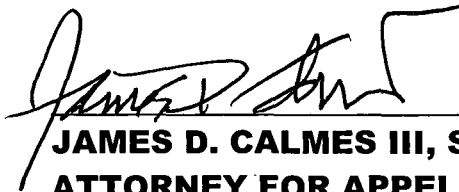
CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.,
RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH; AND ELIZABETH
A. HANNAH..... RESPONDENTS

V.

KATHERYNA MULHOLLAND-MERTZ.....APPELLANT.

PROOF OF SERVICE

I certify that I have served the **RECORD ON APPEAL** on **A. TODD DARWIN, JR.,**
ESQUIRE, ATTORNEY FOR RESPONDENTS, by depositing one (1) copy in the United
States Mail, postage prepaid, on September 20, 2012, addressed to him at **HOLCOMBE**
BOMAR, P.A., POST OFFICE BOX 1897, SPARTANBURG, SOUTH CAROLINA
29304



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