

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

RECEIVED
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SC Court of Appeals

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

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

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

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary E. Colley; Iona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.;

Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herman,.....Third Party Defendants.

APPENDIX TO RECORD ON APPEAL

Randall S. Hiller
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Volume II

Transcript of Record (continued)

Hearing date: September 4 & 5, 2012

The Honorable Edward W. Miller.....145-188

1 Q. --- clearly?

2 A. --- but it was described in the plat as five lots.

3 Q. It was described in the deed as containing five lots, was
4 it not?

5 A. But it referenced the plat that showed the five lots.

6 Q. And who saw that other than you? Is it a matter of
7 public record? Is it available to anybody else?

8 A. The, uh, plat was not recorded, the plat was available to
9 all of the people who were involved in that transaction.

10 Q. Did -- are you aware that that that there's a South
11 Carolina statute regarding the recording of plats and the, uh,
12 reference to plats in deeds?

13 A. Yeah, I heard the testimony earlier today, I think there
14 is some general recording but, uh, Mr. Hiller, we did this
15 transaction on the basis of a metes and bounds description
16 which has been accepted in all the eastern states ever since
17 the revolution.

18 Q. Are are you of the opinion that Mr. Watson or his
19 companies at any time between Janu -- or January of 1981 and
20 the present could have lawfully sold five lots without filing
21 a subdivision plat?

22 A. Well, let's look at your question. You said Mr. Watson's
23 company, Mr. Watson sold to Lincoln. Lincoln ---

24 Q. I'm sorry, I meant Mr. Stephens, but, you know, I think
25 you know what I'm tryin' to ask, ---

1 A. No, no, ---

2 Q. --- Mr. ---

3 A. --- no, I'm ---

4 Q. Okay.

5 A. --- tryin' to answer ---

6 Q. Alright, ---

7 A. --- your question ---

8 Q. --- let ---

9 A. --- as clearly ---

10 Q. --- let ---

11 A. --- as I ---

12 Q. --- let ---

13 A. --- can.

14 Q. Mis -- do do you have any personal knowledge as to who
15 owned or controlled any of these corporations to -- of mi --
16 of the property that it was sold to Mr. Stephens?

17 A. Do I have any personal knowledge?

18 Q. Yes, sir.

19 A. Uh, I dealt with, uh, Dan Bruce and I think possibly one
20 of his one of his, uh, relatives may have been involved in
21 that but I don't know who the shareholders are.

22 Q. Alright. Okay. I I I I don't wanna make this any more
23 complicated than I have to, Mr. Grayson, and I I I I think you
24 understand what what the question is. Do -- you would agree
25 with me, would you not, that Mr. Stephens or any of the

1 entities that he subsequent conveyed the property to could not
2 have legally sold five lots outta that tract at any time that
3 he's owned the property.

4 A. No, I don't agree with that because when you say
5 "legally" I think they could do it legally, uh, it may be a a
6 in technical violation of the subdivision ordinance with some
7 kinda fine but legally they can do it through a metes and
8 bounds ---

9 Q. Wait, wait, wait wait, I I didn't say criminally. Are --
10 do you -- are you sayin' that it's only against the law to do
11 somethin' or it's inappropriate to do somethin' that's a
12 criminal offense?

13 A. Well you used the term "criminal", I didn't ---

14 Q. No, I did not use that, I said could have legally sold
15 the property.

16 A. I think they could have legally sold it. They did le --
17 uh, Lincoln or the pro -- Watson's Property Ow -- Owners
18 Association did legally convey the tract that had five lots in
19 it.

20 Q. That wasn't my question. Could Mr. Stephens have sold
21 five individual lots without violating the subdivision
22 ordinance?

23 A. Well the subdivision ordinance speaks for itself.

24 Q. So you aren't gonna answer that question, you don't know
25 the answer?

1 A. Well I think what I understand of the subdivision
2 ordinance is they could, uh, the Planning Commission could get
3 an injunction or they could, uh, charge a a hundred dollar fee
4 if that's what you mean. I think Planning Commission had the
5 right to do that and that John Owings testified that they've
6 never done it.

7 Q. So that makes it okay?

8 A. I don't know.

9 Q. You don't know, you don't have an opinion on it.

10 A. Are you asking me as in what capacity? I telling you
11 what I've done.

12 Q. Thank you, Mr. Grayson, I don't have any further
13 questions.

14 (Whereupon, a discussion was held off the record.)

15 REDIRECT EXAMINATION BY MR. HERLONG:

16 Q. Mr. Grayson, just a few questions. Uh, the, uh,
17 Mr. Hiller asked you some questions a few minutes ago about
18 minimum lot size and I think you referenced that memo, he
19 didn't point it out to you but you might wanna turn to it,
20 it's Exhibit SJ6 in that notebook, page D62, the Wilkins
21 Norwood memo, and there in the middle do you see where it
22 references, uh, second paragraph talkin' to mis -- talkin'
23 about Mr. Stephens he has made an offer to purchase five
24 minimum lots 200 feet frontage, 55,000 square feet, see
25 that?

1 A. Yes.

2 Q. Is that -- do you recall, and if you need to look back at
3 the, uh, restrictions which is SJ2 in that notebook, do you
4 recall what that i -- was the minimum? Actually, why don't
5 you do that, look to page D14 which is Exhib -- in Exhibit SJ2
6 in the notebook. You see, uh, the Paragraph 2 little "i",
7 "The 14.79 acre tract of land fronting Pelham Road described
8 in Exhibit A shall have all lots facing Pelham Road with a
9 minimum frontage of 200 feet and a minimum lot size of
10 55,000 ---

11 A. Yeah.

12 Q. --- square feet"? Okay. If you look at the plat,
13 Defendants' Exhibit 2, each one of these lots is i -- in
14 excess of 55,000 square feet, is it not?

15 A. That's correct.

16 Q. The bottom one's 56.5?

17 A. Yes.

18 Q. The one above it's 55.1?

19 A. Yes.

20 Q. One of above that's 55.2?

21 A. Yes.

22 Q. One above that's 56.9?

23 A. Yes.

24 Q. And then the last one is 59.5?

25 A. Yes.

1 Q. And the the frontage do you see first lot is exactly 200
2 feet, ---

3 A. Yes.

4 Q. --- see that?

5 A. And the second lot 31.9, 99.5 and 68.6, I think that adds
6 up to 200 square feet.

7 A. Two hundred linear feet.

8 Q. Two hundred linear feet I mean.

9 MR. HILLER: Right.

10 Q. The the next one is 100 plus 68 plus 32, I can do it in
11 my head, that's 200 linear feet, isn't it, Mr. Grayson?

12 A. Yes.

13 Q. And then the next one hundred and sixty-eight point four
14 and 31.6, I can do in my head, that's 200 linear ---

15 A. Yes.

16 Q. --- feet, is ---

17 A. Um, hum, yes.

18 Q. And the last one is a hundred and seventy plus, uh,
19 that's (indicating) a corner, it's hard to tell exactly what
20 that is, 43.8, I don't know what the net amount is but that
21 looks like that's about 200 linear feet.

22 A. That's correct.

23 Q. Does it appear, Mr. Grayson, that those lots were
24 surveyed with that precise language in mind?

25 A. Yes.

1 Q. The, uh, the letter of Mr. Robinson that that Mr. Hiller
2 was asking you about, Exhibit 19 to Judge McGowan's Order,
3 which itself for the record is Exhibit SJ8 in Defendants'
4 Exhibit 1, there's a better copy, Mr. Hiller marked it I
5 think, lot more legible, ---

6 A. Alright.

7 Q. --- Plaintiffs' Exhibit 6 the third paragraph, "The above
8 mentioned agreement provides that a, quote, buffer zone will
9 be created on the parcel south of Pelham Road which would be
10 300 feet in depth along the entire Pelham Road frontage
11 containing 14.79 acres and that this buffer zone would be
12 restricted until January 1, 2007, do you see that,
13 Mr. Grayson?

14 A. Yes. Yes.

15 Q. Mr. Robinson was explicitly aware, at least according to
16 this letter, that the so-called buffer zone restrictions could
17 change as of January 1, 2010, is that correct?

18 A. Yes.

19 Q. With respect to the the Wilkins Norwood memo, again let
20 me turn ya to page D170 in the big notebook which is Exhibit
21 16 to Judge McGowan's Order, turn on to the next page,
22 Mr. Grayson, it looks like one, two, you see how these memos
23 that they're signed at the bottom by individuals in the bottom
24 left corner?

25 A. Uh, yes.

1 Q. Alright, looks like the first one is Ashe, I can't read
2 the second one, hard to read the next one but it looks like
3 many copies of this memo are signed by people from the
4 Watson's Orchard Subdivision, is that your recollection?

5 A. I don't think they were ever delivered to me, I think I
6 simply saw one of these, um, letters, uh, I don't recall
7 seeing 'em signed by all of the owners but they appear to have
8 a number of different, uh, signatures on them.

9 Q. Well this is part of the Court file, exhibit to the Court
10 Order, do you recall it?

11 A. Uh, yeah, I think since it is in the Court, attached as a
12 Court Order we must have seen it at that time. Whatever were
13 were produced by the, uh, the owners were entered into the
14 record.

15 Q. Okay. Let me also ask you, Mr. Grayson, Mr. Hiller asked
16 you a question about whether the the plat, Defendants' Exhibit
17 2, was attached or in any way in Judge McGowan's Order, do you
18 remember that?

19 A. There is a schedule of, uh, plaintiffs' exhibits that we
20 did attach when we had handled the case. Item Number 13 is
21 identified and does not seem to be, I can't find it in this
22 tab, it may be in here but it was, um, ---

23 Q. Which one you lookin' for, mis -- Mr. Grayson?

24 A. Survey of the Watson property tract.

25 Q. That's already in. I wanted to call your attention to

1 the Order, I'm sorry not the Order, the offer from
2 Mr. Stephens or Pelham Properties I think which was his his
3 company to WOPOA, actually it's written to Watson's Orchards
4 Homeowners Association, Inc., that we talked about on your
5 direct examination, you remember talking about this, ---

6 A. Yes.

7 Q. --- which is page D167 the attachment? The attachment I
8 think I asked you to read from. Doesn't the attachment
9 specifically reference, look at page D167, does not the
10 attachment the first paragraph specifically reference the
11 Richard Watson survey of December 3rd?

12 A. Yes.

13 Q. Did you say earlier ---

14 A. Wait, wait a minute. What what was the date a that?

15 Q. Um, oh, it references the survey as of August 27, ---

16 A. As of August ---

17 Q. --- 1980.

18 A. --- 27, 1980.

19 Q. And it says a more fully, to be more fully shown on a new
20 survey, see that in the first paragraph?

21 A. Yes.

22 Q. Mr. Grayson, I I think I recall you said on your in
23 response to Mr. Hiller that one a the conditions for the
24 release of the covenants in 1981 was the transfer of the five
25 lots to Mr. Stephens?

1 A. That was correct.

2 Q. And explain to me how that came to be a condition, best
3 you can recall.

4 A. I I think he signed the release on the condition that he
5 could buy the lots and, uh, he had that ---

6 MR. HILLER: Well I ---

7 A. --- deed ---

8 MR. HILLER: --- I I object as with Grayson's qualified
9 answer was I think and I don't think he's established or I
10 think the testimony's actually established that he never had
11 any involvement with it.

12 THE COURT: Can't speculate. ---

13 MR. HILLER: I mean, he he had a conversation with ---

14 THE COURT: Okay, cannot speculate. Alright.

15 BY MR. HERLONG:

16 Q. Mr. Grayson, did, uh, and if you wanna refer to
17 Mr. Wilkins Norwood's memo for this you might need to but, uh,
18 did Mr. Stephens refuse to participate in WOPOA to become a
19 shareholder in WOPOA?

20 MR. HILLER: Your Honor, ---

21 THE COURT: I think that's asked and answered. He's not
22 in ---

23 MR. HILLER: That ---

24 THE COURT: --- there, he he's -- that's all been
25 testified to.

1 MR. HILLER: --- I mean, that the only reason all those
2 documents are not here is they 'cuz they're part of a Court
3 record but, I mean, having' him say ---

4 THE COURT: Okay.

5 MR. HILLER: --- what's in ---

6 THE COURT: Alright.

7 MR. HILLER: --- 'em ---

8 THE COURT: Okay.

9 BY MR. HERLONG:

10 Q. Mr. Grayson, you were asked questions about whether the
11 defendants in the action in 1981 had defaulted, do you
12 remember those questions, had not answered and had defaulted?

13 A. Uh, I tried to answer that, uh, I think, I think the
14 question was did a majority of them default of there were
15 several who filed answers, others did not file an answer, if
16 you wanna call that a default then that's his interpretation
17 of it.

18 Q. Are you aware that in this action today every single
19 shareholder in Watson's Orchard has been named a defendant?

20 A. Yes.

21 Q. Are you aware that other than the plaintiffs nobody has
22 answered, they've all defaulted?

23 A. Whatever's in the record.

24 Q. Thank you.. Oh, one more thing.

25 (Whereupon, a discussion was held off the record.)

1 MR. HERLONG: That's all the questions I have of him,
2 Your Honor.

3 RECROSS-EXAMINATION BY MR. HILLER:

4 Q. Mr. Grayson, if you were representin' somebody who was
5 buying a tract of land that was subject to restrictions and
6 they wanted to subdivide it into five lots, you would consider
7 it a good idea to make sure that there was sufficient acreage
8 there to be able to subdivide it and develop it into five
9 lots, wouldn't you think any reasonable purchaser would do
10 that?

11 A. Rephrase that question ---

12 Q. Alright.

13 A. --- for me.

14 Q. These restrictions require 200 feet of frontage and
15 55,000 square feet, ---

16 A. That's correct.

17 Q. --- you would agree with me that you cannot subdivide any
18 of the property that's subject to these conditions into
19 parcels smaller than that without violating the restrictions.

20 A. Uh, they would have to follow what's in the restrictions.

21 Q. Okay, and so if your client was purchasing land that was
22 subject to these restrictions with the anticipation that they
23 were going to be able to develop five lots and sell 'em, build
24 houses on 'em and sell 'em or whatever they were gonna do, it
25 would be prudent, would it not, to make sure you were a

1 acquirin' enough property?

2 A. You would, uh, look to whatever's in the restrictions.

3 Q. Alright, and make sure that you were acquirin' enough
4 that they could accomplish what they intended to do, correct?

5 A. They'd have to have enough land to meet the requirements
6 of the restriction there.

7 Q. And and of course you are well aware of the reason that
8 there are no restrictions that are in per -- perpetuity.

9 A. Well when I was in law school as every law officer knows
10 there's a rule against perpetuities, ---

11 Q. Right.

12 A. --- is this what you're talkin' about?

13 Q. Yes, sir, so every single set of restrictions that
14 somebody wants it to be considered valid, enforceable always
15 has an expiration date, doesn't it, it has to?

16 A. Well you say "always" that's why you have lawsuits, they
17 don't, uh, even rule against perpetuities as it, whatever it
18 is, I can't quote it, and it has to vest within twenty-one
19 years after lives of people in existence or something to that
20 effect.

21 Q. Right, but you can, you, Mr. Grayson, ---

22 A. I I I don't know, ---

23 Q. --- these aren't trick questions.

24 A. --- I don't know where you're going, I ---

25 Q. I know, I just want you to answer the question. You you

1 have to put, if you want them to be considered valid and
2 enforceable, you have to put an expiration date into a set of
3 covenants and restrictions, do you not?

4 A. I don't know whether that's the, uh, right answer for
5 that or not.

6 Q. Okay.

7 A. Uh, it might be in violation the rule against
8 perpetuities, uh, but I don't know how to answer your
9 question.

10 Q. Thank you.

11 MR. HERLONG: Uh, no further questions, Your Honor.

12 EXAMINATION BY THE COURT:

13 Q. Mr. Grayson, let me just ask you this: If a person was
14 proposing to purchase subject piece of property we're talking
15 about today and they went to the RMC office and searched the
16 title, what piece of property would they find?

17 A. Well they would find that -- those deeds and they could,
18 uh, look at the legal description in the deed into Watson, I
19 mean, into, uh, Stephens and it would refer to five lots, uh,
20 but it would have, uh, the the metes and the bounds that would
21 be set out in the deed which were set out.

22 Q. Which are the boundary of the 6 acres, is that right?

23 A. Uh, that's correct.

24 Q. And nowhere in the public record could they find a metes
25 and bounds description of the these what have been referred to

1 as the five lots, is that right?

2 A. Uh, not in, uh, no recorded plat.

3 Q. Okay. Alright, thank you, that's -- thank you very much.
4 Can we cut him loose?

5 MR. HERLONG: Yes, Your Honor.

6 THE COURT: Cut him loose?

7 MR. HILLER: Yes, sir.

8 THE COURT: Thank you, sir, you're you're released from
9 subpoena. Thank you very much.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness left the stand.)

12 THE COURT: Alright, well what el -- what else do we
13 have, it's five o'clock, we probly have to come back tomorrow.

14 MR. HERLONG: Yeah, Your Honor, we will, uh, uh, just
15 tryin' to think if there's somethin' that could be done
16 quickly but probly ---

17 THE COURT: Okay, we'll give some -- take your time,
18 let's see if we can do anything else today if you can think of
19 anything.

20 MR. HERLONG: Well I do have this one document which is,
21 we we talked about earlier, the tax map and Mr. Hiller
22 questioned it, Janice went over and got the most recent copy,
23 I can put her on the stand to say what it is. Uh, ---

24 THE COURT: Well you al ---

25 MR. HILLER: We requested one as it differs from the

MOTIONS AND MATTERS

1 what's on the website and, uh, ---

2 THE COURT: Well you -- that's in, you put that one in,
3 right?

4 MR. HILLER: Yes, sir.

5 THE COURT: This is public record?

6 MR. HERLONG: Public record.

7 THE COURT: Alright, and ---

8 MR. HILLER: I ---

9 THE COURT: --- as an officer of the Court Mr. Herlong
10 says this is the most current so ---

11 (Whereupon, a discussion was held off the record.)

12 MR. HERLONG: We just went and got it literally.

13 THE COURT: --- you can put it in.

14 MR. HILLER: Okay.

15 MR. HERLONG: Alright. Mark it as whatever's next.

16 (Tax map marked Defendants' Exhibit No. 5 and admitted
17 into evidence.)

18 MR. HERLONG: But this point you just raised, Your Honor,
19 this would probably be the indication.

20 THE COURT: Alright.

21 MR. HERLONG: Your Honor, if you're inclined to stop for
22 the day at this point, that would be fine with me.

23 THE COURT: Well unless you have somethin' that's fifteen
24 minutes but I just can't imagine it.

25 (Laughter.)

MOTIONS AND MATTERS

1 MR. HILLER: Me neither.

2 MR. HERLONG: Yeah, I don't think so although, ya know,
3 we'll work it tonight, maybe we'll get it tighter.

4 THE COURT: Alright.

5 MR. HERLONG: Wait a minute, hold on one second. Let me,
6 uh, ---

7 THE COURT: Is there anybody who can't be back who's an
8 essential, I mean, I -- that's ---

9 MR. HERLONG: We can -- actually if you can give me about
10 two minutes ---

11 THE COURT: Okay.

12 MR. HERLONG: --- to talk ---

13 THE COURT: Alright.

14 MR. HERLONG: --- to one witness who's here.

15 THE COURT: Alright.

16 (Whereupon, a discussion was held off the record.)

17 MR. HERLONG: Your Honor, it would be best to come back
18 in the mornin' if that's alright.

19 THE COURT: Okay, alright. We'll see ya'll back about
20 9:30, that be good?

21 (Proceedings September 5, 2012)

22 THE COURT: Ya'll ready? Okay.

23 MR. HERLONG: Your Honor, I call Bill Kehl.

24 THE COURT: Alright.

25 (Whereupon, the witness came forward.)

1 (Whereupon, a discussion was held off the record.)

2 BILL KEHL, having been
3 first duly sworn, testifies as follows:

4 THE COURT: Alright, thank you very much, please be
5 seated.

6 MR. HERLONG: You mark this one, please.

7 COURT REPORTER: Um-hum.

8 (Letter dated March 11, 1981 marked Defendants' Exhibit
9 No. 6 for identification.)

10 DIRECT EXAMINATION BY MR. HERLONG:

11 Q. Mr. Kehl, will you state your name for the record,
12 please.

13 A. Bill Kehl.

14 Q. Where do you work, Mr. Kehl?

15 A. I'm an attorney with the Wyches Law Firm.

16 Q. And what do ya do?

17 A. I do, uh, corporate and business work and in prior years
18 I did real estate work.

19 Q. Okay, well I I wanna ask you, show you Defendants'
20 Exhibit No. 6, can you identify that? Just a letter on top
21 of.

22 A. Yes, this is a letter that I sent to Jim Stephens on
23 March 11th 1981 providing him with an opinion that he had good
24 title, uh, to the property which he had just bought.

25 Q. You reference the pro -- to the five lots along Pelham

1 Road, is that correct?

2 A. Yes.

3 Q. Were you providing him with a title opinion that he had
4 good title to the five lots along Pelham Road?

5 A. Yes.

6 Q. Alright. Uh, I notice in -- well just read the first
7 sentence then just for the record.

8 A. "I'm enclosing the deed to Pelham Properties, Inc. to the
9 five lots along Pelham Road. The deed has been recorded in
10 the office of the RMC for Greenville County in Deed Book 1141
11 At page 1, ---

12 Q. Okay.

13 A. --- also enclosed is the easement which you and I
14 discussed on the telephone."

15 Q. Okay, and the deed is that attached to the letter?

16 A. Yes.

17 Q. And just read if you would first paragraph of the, of
18 the, uh, insert,

19 A. The first paragraph of the description?

20 Q. Yes.

21 A. "All that certain piece, parcel or tract of land situate,
22 lying and being in the State of South Carolina, County of
23 Greenville, containing five lots as is more fully shown on
24 plat entitled "Survey for Richard Watson", prepared by
25 Carolina Surveying Company dated June 27, 1980, revised August

1 19, 1980, revised August 27, 1980, revised September 3rd 1980
2 and revised December 1st, 2nd and 3rd 1980 and having
3 according to said plat the following metes and bounds to wit."

4 Q. That's fine. Uh, alright. And do you reco -- you probly
5 don't but, uh, by any chance recognize the plat that's been
6 marked as Defendants' Exhibit 2 Richard Watson revi -- revised
7 December 3rd 1980, do you recognize that with the, with the
8 lots up at the top?

9 A. I I believe I do although I haven't looked at it in
10 thirty years.

11 Q. Alright. Do you, uh, one of the issues that's come up
12 here is that the plat was not recorded, you, uh, you indicated
13 in your letter that Mr., uh, Mr. Stephens had good title to
14 the five lots, you didn't reference the plat not being
15 recorded, any particular reason?

16 A. No, um, Jim was acquiring a piece a property that was,
17 uh, described by metes and bounds, uh, I understand that if
18 Jim wanted to convey one or more of those lots separately he
19 un -- at least by today's standards would have to have
20 recorded the plat but it was not considered necessary by me at
21 that time.

22 Q. Were -- are today's standards different than what they
23 were in 1980?

24 A. I frankly don't recall.

25 Q. Yeah, okay, alright. Uh, let me show you these other

1 documents, Mr. Kehl. If you would mark next exhibit.

2 (Documents/title notes marked Defendants' Exhibit No. 7
3 for identification.)

4 Q. Defendants' Exhibit 7, Mr. Kehl, are these documents from
5 your files Wyche?

6 A. I presume they are. I recognize the first page as being
7 title notes from my firm, uh, and I assume that these are the
8 documents that I provided for you when you reviewed my file.

9 Q. I'll represent to you that they are. Mr. Kehl, the first
10 page it looks like a copy of a side of a file what I would
11 assume is the file number and then Davis Electrical
12 Consultants, loan from SCN Bank five lots Pelham Road, is that
13 correct?

14 A. Yes.

15 Q. Did you handle a transaction where he, Mr. Stephens or
16 Pelham Properties, obtained a loan from SCN on those five
17 lots?

18 A. Yes.

19 Q. Alright. The next page can you tell me what the next
20 page is.

21 A. The next page is a page of, um, title notes that came
22 from, uh, the Wyches Law Firm from the person who examined the
23 title. It appears, it appears to represent only, uh, the
24 transaction from Pelham Properties to J.B. Stephens.

25 Q. Okay, and the description from the deed is that five lots

1 Pelham Road per see attached?

2 A. You're referring to the deed that's attached to ---

3 Q. No, ---

4 A. --- those notes?

5 Q. --- before that on the, on the page that's WO003154 the
6 bottom left corner ---

7 A. Yes.

8 Q. --- the description from the deed which is copied there
9 it says five lots Pelham Road see attached.

10 A. That's what it says.

11 Q. Okay, and then the atta -- the following document would
12 that be the deed from Pelham Property to J.B. Stephens?

13 A. Yes.

14 Q. And that appears to be the deed that was being referenced
15 in the prior page?

16 A. Yes.

17 Q. Alright, and that deed I'll I'll I'll read the first
18 part, "All that certain piece, parcel or tract of land
19 situate, lying and being in the County of Greenville, State of
20 South Carolina, containing five lots as more fully shown on
21 the plat entitled "Survey for Richard Watson", prepared by
22 Carolina Surveying Company, dated June 27, 1980, revised
23 August 19, 1980, revised August 27, 1980, revised September 3,
24 1980 and revised December 1, 2 and 3, 1980," did I read that
25 correctly, Mr. Kehl?

1 A. Yes, it has a certain fa -- familiarity, does it not?

2 Q. Yeah, and that's, without going back word-for-word that
3 appears to be the same as what what we read a moment ago from
4 the very first deed?

5 A. Yes.

6 Q. The next page, the one that's got 3157 on the bottom left
7 corner is another, uh, another work paper regarding a deed, is
8 that correct?

9 A. Yes.

10 Q. This looks like the original transfer of Watson's Orchard
11 Property Owners Association to Pelham Properties, Inc. in
12 1981?

13 A. Yes, it appears to be that.

14 Q. Okay. And attached to it or following it is the deed
15 from Watson's Orchard to Pelham Properties, Inc. in 1981 that
16 we were looking at a little while ago, would you agree with
17 that?

18 A. I'm sorry, you'll have to give me the identification of
19 that.

20 Q. At the following page fi -- 5157.

21 A. 5157?

22 Q. Yeah, 5157, the first page after the, uh, the abstract
23 page we were lookin' at so -- I'm sorry, 3157.

24 A. Yes, I see the document number now.

25 Q. Okay, and going back to the prior page, Mr. Kehl, the,

1 uh, the description that your paralegal took from the deed in
2 that case was five lots Pelham Road, see attached deed for a
3 description, that correct?

4 A. That's correct.

5 Q. And again we already looked at this deed, the 1981 deed,
6 from WOPOA to to Pelham Properties. Now look at the next
7 document which page Number 3159 Chicago and Title -- Chicago
8 Title Insurance Company, can you tell me what this is,
9 Mr. Kehl?

10 A. This is a, um, affidavit, uh, from Jim Stephens to the
11 title insurance company, uh, on which, uh, at least in part
12 their title insurance policy was based.

13 Q. Okay, and does the, uh, it -- on the second page of it
14 the description does it say, "The real estate improvements
15 referred to herein are situated at five lots Pelham Road of
16 Greenville, State of South Carolina and are described as 1600
17 block Pelham Road," is that correct, top a that page, "The
18 real estate and improvements referred to herein are situated
19 five lots Pelham Road, ---

20 A. Yes, I see that.

21 Q. Okay. And the signature there in the middle you probly
22 don't recognize Mr. Stephens's signature but do you understand
23 that to be his signature?

24 A. I believe it to be.

25 Q. Okay. The next page, uh, like a March 16, 1988 letter

1 from you from Trudy Tapp, whom I assume was working with you,
2 to J.B. Stephens, correct?

3 A. Yes, Trudy Tapp was a real estate paralegal for us at
4 that time.

5 Q. Okay, the re: line there is, "Loan on five lots Pelham
6 Road from SCN", is that correct?

7 A. That's correct.

8 Q. Alright, and if you turn over to the next page 3162 on
9 the control number bottom left corner, tell me what that is.

10 A. That is a portion of the, uh, title insurance policy,
11 it's Schedule A.

12 Q. Okay. And the the name of the insured is S -- SCN, state
13 is J.B. Stephens, mortgage is for five hundred thousand
14 dollars (\$500,000), correct?

15 A. Yes.

16 Q. And the land referred to is see attached Schedule A
17 and, uh, ---

18 A. I see that as document 3164.

19 Q. I'm sorry. Thank thank you for correcting me there, I
20 was getting confused myself. And would you read the the first
21 paragraph in Schedule A which is the the do -- the property
22 that's being mortgaged.

23 A. It's the familiar language, "All that certain piece,
24 parcel or tract of land situate, lying and being in the County
25 of Greenville, State of South Carolina, containing five lots

1 as is more fully shown on a plat entitled "Survey for Richard
2 Watson", prepared by Carolina Surveying Company, dated June
3 27, 1980, revised August 19, 1980, revised August 27, 1980,
4 revised September 3rd 1980, and revised December 1, 2 and 3
5 1980 and having according to said plat the following metes and
6 bounds to wit."

7 Q. That's fine. The, uh, the following -- let's see, the
8 following page 1, uh, 3165 I believe it is says "Mortgage" at
9 the top, you see that, ---

10 A. Yes.

11 Q. --- Mr. Kehl? Is this the final mortgage that was done?

12 A. This is a mortgage that was done March 16, 1988.

13 Q. Okay. And again it's, uh, mortgagor is J.B. Stephens and
14 the rate of the amount is five hundred thousand dollars
15 (\$500,000)?

16 A. Correct.

17 Q. Description of the property is that same language, "All
18 that certain piece, parcel, tract of land situated, lying and
19 being in the County of Greenville, State of South Carolina,
20 containing five lots as more fully shown," and if Your Honor
21 will allow me I'll stop.

22 THE COURT: Yeah, just just the same language.

23 MR. HERLONG: Same language.

24 THE COURT: Okay.

25 Q. Okay, and behind page 3179 of the package of documents,

1 Mr. Kehl, this looks like an internal, uh, ledger for the law
2 firm, that be right?

3 A. It, uh, it is a document from the Wyches law firm, I'm
4 not quite sure the purpose for it.

5 Q. Okay, it looks like something to do with billing down at
6 the bottom.

7 A. Could be.

8 Q. Right in the middle does it say, "Mortgage loan from SCN
9 Bank dash five lots on Pelham Road"?

10 A. Yes.

11 Q. Okay. At the top it says, "Wyche, Burgess, Freeman,
12 Parham, PA case ledger".

13 A. Correct.

14 Q. Okay. The very last page of the document, Mr. Kehl, is
15 another file folder printout or copy, looks like that perhaps
16 a a file number or matter number then "Davis Electrical
17 Constructor's, Inc. mortgage loan from SCN Bank five lots on
18 Pelham Road"?

19 A. That's correct.

20 Q. Okay. Mr. Kehl, uh, ---

21 (Mortgage marked Defendants' Exhibit No. 8 for
22 identification.)

23 Q. --- Mr. Kehl, Defendants' Exhibit 8 I believe is just a
24 filed copy of the mortgage you were just looking at, if you
25 could just identify it for me.

1 A. Yes, it's the same document but that shows the recording
2 date of ---

3 Q. That's a mortgage for five hundred thousand dollars
4 (\$500,000) on the same five lots?

5 A. Correct.

6 Q. Thank you, that's all the questions I have, Your Honor.

7 THE COURT: Cross?

8 CROSS-EXAMINATION BY MR. HILLER:

9 Q. Good morning, Mr. Kehl.

10 A. Good morning, sir.

11 Q. You would agree with me, would you not, that the
12 descriptions that are contained within your file are the exact
13 same descriptions each and every time?

14 A. Yes.

15 Q. And that you did not prepare the initial deed.

16 A. What do you mean by the initial?

17 Q. The initial deed from Watson Owners Property Owners
18 Association, Inc. to Pelham Properties, Inc.

19 A. That is, that is correct.

20 Q. Alright, so you received the deed, you gave Mr. Stephens
21 a title opinion and then from that point forward you just
22 duplicated the language in the deed in all the transactions
23 that occurred thereafter.

24 A. Obviously that's the case.

25 Q. Alright, and at no time did any of the deeds, the

1 mortgages, your notes or anything else reflect that there was
2 a recorded plat of this property.

3 A. There is not a recorded plat referred to.

4 Q. And I believe you testified in in on direct that you
5 understood that if he wanted to convey any of those lots it
6 would be necessary for him to record a plat.

7 A. That was my understandin'.

8 Q. Okay. Did you convey that to him that he he would have
9 to subdivide the property and record a plat if he wanted to
10 sell any a those lots?

11 A. No, that really wasn't, uh, discussed. He had no
12 interest in anything other than utilizing those five lots as a
13 buffer for his property.

14 Q. Yeah, he was simply buyin' that property so nobody could
15 build across the street from him to block his view.

16 A. I think that is what he wanted to do.

17 Q. Thank you, that's all the questions I have.

18 THE COURT: Redirect?

19 MR. HERLONG: None.

20 EXAMINATION BY THE COURT:

21 Q. Mr. Kehl, do you know of any work that was done to the
22 property?

23 A. Um, I know that that Jim Stephens maintained it as he
24 would his own yard ---

25 Q. Okay.

1 A. --- but that's -- I I'm not aware of any improvements
2 beyond that.

3 Q. Okay. Do you know if any curbs were cut to the road?

4 A. I don't know one way or the other.

5 Q. Okay. So and when you say "maintained" ---

6 A. He cut the grass.

7 Q. Okay. Alright. Anything else from anybody?

8 (No response.)

9 THE COURT: Okay, thank you very much. Can we excuse
10 him?

11 MR. HERLONG: Yes, Your Honor.

12 THE COURT: Thank you, you're released from subpoena.

13 (Whereupon, the witness left the stand.)

14 MR. HERLONG: Your Honor, we call Coleman Shouse.

15 THE COURT: Okay.

16 (Whereupon, the witness came forward.)

17 THE COURT: If you would, left hand on the Bible, raise
18 your right hand.

19 JAMES COLEMAN SHOUSE, having been
20 first duly sworn, testified as follows:

21 THE COURT: Thank you very much, please have a seat.

22 (Whereupon, a discussion was held off the record.)

23 DIRECT EXAMINATION BY MR. HERLONG:

24 Q. Mr. Shouse, would you, would you state your full name for
25 the record, please.

1 A. Uh, James Coleman Shouse.

2 Q. And just tell me who you are and what do ya do,
3 Mr. Shouse.

4 A. I'm a a semi-retired land developer and home builder ---

5 Q. Okay.

6 A. --- and community volunteer.

7 Q. Okay. And starting with since your background's
8 important we'll go through your background a little bit, how
9 you came to Greenville, what you were doin' and and what
10 you've done since.

11 A. I came to Greenville in Spring of 1969 as dire -- and as
12 director of the Greenville County Planning Commission. Um, I
13 was director and eventually executive director until 1978 when
14 I left the commission and went to work for J.E. Serrine
15 Company in their Industrial Planning Department for their
16 industrial clients. I moved from there to sales with Serrine
17 and left there in '82 and started, uh, went into business with
18 Dan Bruce and Ken Padgett and, uh, Charter Capital. We did
19 commercial development and then, uh, three or four years after
20 that Ken and I started our own company, Padgett Shouse Realty
21 and Development, and since then I've be -- I've been involved
22 in land development and home building.

23 Q. Okay. In the course of your career, uh, at the Planning
24 Commission what was your, what was your role?

25 A. I was director of planning which I I did all of the

1 operational things and as executive director I was, uh, I
2 supervised all of the staff and related to the commission and
3 interacted with the county counsel.

4 Q. Explain to me the difference, I I know there's some
5 confusion, at least I've had some confusion, over Planning
6 Commission and the staff and and who's what and who has what
7 responsibilities.

8 MR. HILLER: Your Honor, didn't Mr. Shouse testify that
9 he left in 1978. I I I fail to see how anything that went on
10 prior to the issuance of these deeds could possibly be
11 relevant to this case.

12 THE COURT: Well that's alright, I'm gonna let him -- go
13 ahead.

14 A. Uh, now or when I was there?

15 Q. When you were there and in in the, in the period since,
16 do it separately.

17 A. Well the and when I came here in '69, the Planning
18 Commission was autonomous in in that it was appointed 7-member
19 board and, uh, or when I say autonomous, they did not report
20 to county counsel, they worked for county counsel but we also
21 worked for all the municipalities in the county, we did all
22 the planning for for the county, municipalities and Donaldson
23 Center. We did not at that stage do City of Greenville, they
24 had their own planning director. We, uh, we did all of the
25 planning of the economic planning, the housing planning,

1 sanitation, sanitary sewer, water, school, fire stations, we
 2 did all that work and we we had our own budget,
 3 e -- we were funded by county counsel but we did not report to
 4 them. Now the commission now is still autonomous but the
 5 staff is a county department, the staff reports to the county
 6 administrator and the Commission no longer has staff although
 7 the Commission by law has to be involved in decision-making
 8 about land use planning and some other things but fundamental
 9 differences that the sta -- the Commission no longer has a
 10 staff. When I was there, we worked for the Planning
 11 Commission.

12 Q. And I know you left in '78 but were you familiar with
 13 what the process and procedures of the Planning Commission and
 14 of thereafter?

15 A. Sure, because I was engaged in development in the county
 16 so I -- it was in my best interest to be involved.

17 Q. Were you -- were were the procedures like you
 18 describe -- well at what point did the procedures change if
 19 you can give us a year or or ---

20 A. Well now the procedures didn't, the the the rules and
 21 regulations pretty much they've evolved over time but the
 22 rules and regulations didn't change its -- it -- the change
 23 was in who directs the staff ---

24 Q. Um-hum.

25 A. --- and and that the staff still functions pretty much

1 the same but they they just have a different boss but the
2 ru -- the sub sub regs they've evolved over time, they they
3 were different when I got here than they are now because there
4 are more rules and regulations that have to be dealt with and
5 there's there's federal rules and state rules and regional
6 rules, there's all kinds a rules that weren't here in 1969.

7 Q. With respect to, you're you're familiar with the plat
8 that's at issue in this case, Defendants' Exhibit 2, are you
9 not?

10 A. Yes.

11 Q. There was some testimony from Mr. Owings yesterday about
12 a summary plat, you tell us what a summary plat is.

13 A. A a summary plat is a a a special animal in the
14 legislation that created the ability to control the division
15 of of land or subdivide land. Summary plat essentially is a
16 final plat of property that has frontage on a public road and
17 has utilities and it does not have to be, it it is not treated
18 as a development activity as if it were a subdivision. If it
19 were a subdivision, it would have a new road, it would have
20 utility needs and that requires a different process. A
21 summary plat is is approved administratively when the
22 applicant shows that the land has access to a public road and
23 has water and sewer. Now that in 1969 through late 70's,
24 maybe even early 80's, the, uh, the, uh, test for whether it
25 had utilities was a pretty simple statement and the fact that

1 it had access to a highway it was, it was obvious, you just
2 looked on the, on the highway map and if it was public it was,
3 that was the only test. If you do it today, there are many
4 more things you have to prove along with the application for
5 the summary plat but a summary plat remains a final plat that
6 is not required to be reviewed by the Planning Commission or
7 approved by the Planning Commission, it it is to be approved
8 by an administrator, in this case the director of the planning
9 staff or the Planning Commission staff or his or her designee.

10 Q. Well if you think of what we've do this like section
11 right here (indicating), this could be a pl -- uh, this could
12 be a summary plat?

13 A. Yes, sir.

14 Q. So just cutting off that (indicating) strip along ---

15 A. Yes.

16 Q. --- Haywood Road?

17 A. You you put it on, at at that time you put it on a 22 by
18 27-inch mylar with the title block and, uh, the certifications
19 that the road's public and you got water and sewer and it
20 meets the zoning requirements and and you go record it.

21 Q. Did it meet those certification points in 1980?

22 A. The zoning, yes, ---

23 MR. HILLER: I'll, uh, ---

24 A. --- yes.

25 MR. HILLER: How how how did this witness know that? I

1 I, uh, he he just testified that it would had to prove a
2 number of things and couldn't possibly know the answer to
3 whether it had utility service, whether it had sewer, whether
4 it had water, whether it had curb cuts.

5 THE COURT: Well he's made that statement, you can ---

6 MR. HILLER: Alright.

7 THE COURT: --- clear it up on cross.

8 BY MR. HERLONG:

9 Q. Why don't you go ahead and explain how you know what you
10 just testified to, Mr. Mr. Shouse.

11 A. Well I know those lots are are bigger than than 20,000
12 square feet which was the minimum zoning would permit. Uh, if
13 it had public water, uh, the the minimum would be 25,000 feet,
14 if it did not have public water the minimum be 37.5 and I
15 think all those lots are 55,000 feet so they meet the zoning
16 ordinance and that would be the first test -- the test are the
17 lots the proper size to meet zoning and that and zoning was
18 then put on that property in May of '70. The, uh, the highway
19 is clearly a public road and, uh, and I don't, I don't recall
20 when the water was extended out Pelham Road but, uh, I'm
21 reasonably sure there was water available but if even if water
22 weren't available the lots are big enough to, uh, meet the
23 requirements of zoning ordinance that that existed at that
24 time.

25 Q. Okay. So you think it would have satisfied the

1 requirements for a summary plat at that time?

2 A. Absolutely.

3 Q. Okay. Uh, and just to be clear, a summary plat that's an
4 administrative function?

5 A. Yes.

6 Q. The the the staff just checks off that it has those
7 things and ---

8 A. Yes.

9 Q. --- then stamps it.

10 A. Yes.

11 Q. Doesn't have to go through the Planning Commission to get
12 approval as a subdivision.

13 A. Does not.

14 Q. Okay. In your career, Mr. Shouse, of both with Planning
15 Commission and and in your career in private development, have
16 you been involved in the creation or development or the
17 approval of the creation of development of lots, residential
18 lots?

19 A. Yes, sir.

20 Q. How many? thousands?

21 A. Couple thousand.

22 Q. Alright. Have you looked at the issue of whether these
23 properties, these what we're referring to as the Stephens'
24 lots are in fact lots?

25 A. Well by deed they are and by by that plat they are.

1 Q. Okay. Um, is it your opinion that they are lots?

2 MR. HILLER: Uh, I I I I object to that testimony on the
3 grounds that ---

4 THE COURT: Hadn't been qualified as an expert.

5 MR. HILLER: No, sir, ---

6 THE COURT: Okay.

7 MR. HILLER: --- and even if he was, I I think it goes
8 back to the issues that we talked about before and that's for
9 the Court to determine.

10 MR. HERLONG: Your Honor, ---

11 THE COURT: Okay.

12 MR. HERLONG: --- Your Honor, I I would move for the
13 admission of Mr. Shouse as an expert based on his his
14 experience in in lot development and his experience with the
15 Planning Commission.

16 THE COURT: Expert in what?

17 MR. HERLONG: In residential real estate lots, the
18 development, creation of residential real estate lots.

19 THE COURT: Wanna voir dire him on that?

20 MR. HERLONG: What he's asking him is the legal question,
21 Your Honor. Um, you know, he's already testified what was
22 necessary to meet the county standards to subdivide lots, now
23 he wants to testify as what the deed says and and and that's a
24 legal question and he's certainly not qualified to, uh, uh,
25 uh, give that opinion nor would would that opinion be

1 appropriate for the reasons that that we objected to and
2 discussed yesterday. Uh, I I -- he's certainly qualified as a
3 developer but well yeah, I'll I'll voir -- I'll -- let me voir
4 dire.

5 THE COURT: Yeah, go ahead.

6 VOIR DIRE EXAMINATION BY MR. HILLER:

7 Q. Mr. Shouse, in order to sell a lot as you defined it,
8 would it not be necessary to record a subdivision plat?

9 A. No, sir.

10 Q. Okay. You, when you developed your lots, did you record
11 subdivision plats?

12 A. Yes, sir.

13 Q. You submitted 'em to the Planning Commission and had 'em
14 approved and then you recorded the plats?

15 A. Yes, sir.

16 Q. You actually testified earlier that that and that even
17 though the summary plat was administrative process you would
18 go record it after you got it, correct?

19 A. No.

20 Q. The summary plat.

21 A. Yeah, a summary plat has -- is recorda -- recordable,
22 yes.

23 Q. And and that completes the process, does it not?

24 A. If you choose to do it, yes.

25 Q. Right, but if you don't choose to do it you haven't

1 created the lots.

2 A. Uh, if you -- no, you've created the lot, you just have
3 not recorded it.

4 Q. If if if you own 6 acres and you wanna subdivide it into
5 five pieces of property to be sold, would it be necessary for
6 you to have a ---

7 THE COURT: Well, Mr. Hiller, you're kinda getting
8 beyond ---

9 MR. HILLER: Oh, ---

10 THE COURT: --- voir dire.

11 MR. HILLER: --- alright.

12 THE COURT: I mean, ---

13 MR. HILLER: Alright.

14 THE COURT: --- is he an expert in this, that's what
15 we're talkin' about.

16 MR. HILLER: And and what is -- what was specifically
17 they wanna qual -- as a real estate developer?

18 THE COURT: As a residential real estate ---

19 MR. HERLONG: Developer in ---

20 THE COURT: --- developer.

21 MR. HERLONG: --- in the creation of lots.

22 THE COURT: Well that that ---

23 MR. HILLER: I don't think he can testify. I don't think
24 he's an expert in creation of lots.

25 THE COURT: Yeah, I mean, I don't know if he's a surveyor

1 or what he does. I, you know, you -- that's what I'm gettin'
2 at but but he -- I think it's just as a residential real
3 estate developer, expert in residential real estate
4 development, is that right?

5 MR. HERLONG: That will do, Your Honor.

6 THE COURT: Okay, ask him about that. You ever been
7 qualified as an expert before in court?

8 THE WITNESS: No, sir.

9 THE COURT: Okay.

10 (Laughter.)

11 THE COURT: Gonna do me proud, Mr. Shouse.

12 (Laughter.)

13 THE COURT: I mean, with respect to his experience and
14 all that.

15 MR. HILLER: I have no i ---

16 THE COURT: It doesn't change ---

17 MR. HILLER: I I don't even know what that phrase means,
18 Your Honor. I I don't know how to voir dire somebody and and
19 and and what relevance even if he was qualified ---

20 THE COURT: Well that's a separate, that's a separate
21 question. I mean, so...

22 MR. HILLER: Well let's just ---

23 THE COURT: You you ---

24 MR. HILLER: --- let him ask him questions.

25 THE COURT: --- describe, how how many developments do

1 you think that you've been involved in, Mr. Shouse?

2 THE WITNESS: Twenty, twenty-five.

3 THE COURT: Okay. And in that capacity you've you've had
4 to do what?

5 THE WITNESS: Well I've I've identified land, I've bought
6 land, I've supervised engineering and desig -- actually done
7 the layout, I've supervised engineering, I've supervised the
8 construction, I've sold lots and I built houses.

9 THE COURT: Okay, and you've, uh, prior experience as
10 executive director of the Greenville County Planning
11 Commission was that part of, uh, did that come into play in
12 your, um, uh, role as a real estate developer?

13 THE WITNESS: Well I ---

14 THE COURT: I mean, the knowledge you gained from that.

15 THE WITNESS: --- I have a Master's in Urban
16 Planning, ---

17 THE COURT: Okay.

18 THE WITNESS: --- uh, and I used the knowledge I gained
19 workin' on that side of the equation to and when I went into
20 private business.

21 THE COURT: Okay, I'm gonna, I'm gonna qualify him as an
22 expert in residential real es -- real estate development
23 under, what, is it Rule 701 or 2, 2?

24 MR. HERLONG: Yeah, 2 ---

25 THE COURT: Two.

1 MR. HERLONG: I think, Your Honor.

2 THE COURT: Alright.

3 DIRECT EXAMINATION BY MR. HERLONG:

4 Q. Uh, Mr. Shouse, having looked at all of this and is it
5 your opinion that these Stephens' lots are in fact lots?

6 MR. HILLER: Well I I I object to that, Your Honor.

7 THE COURT: Well he, now he's askin' him if they're lots
8 but that that doesn't go to the final legal question, okay?

9 Q. Is that your opinion, Mr. Shouse?

10 A. Yes.

11 Q. And explain to me the basis for that opinion.

12 A. Well again they were deeded out as lots ---

13 Q. Okay.

14 A. --- and and and, uh, I mean, I I don't really have any
15 other basis other than that they were deeded as lots.

16 Q. Okay. Do you, uh, there's been a lotta talk about how
17 there's not a plat, that a plat was not recorded, have you
18 examined any of the other properties in the area with respect
19 to that question and reached any kinda conclusion?

20 A. Yes, sir. I I was involved, uh, uh, where Haywood Plaza
21 is, I actually built that for the owner and, uh, in the, in
22 the process of of building that center I had, I spent
23 appreciable amount a time on the Watson property so I'm
24 familiar with a a good number of those transactions.

25 Q. What did you find?

1 A. Well that all of those, once the, once Lincoln of South
2 Carolina got control of the bulk of that property, uh,
3 practically all of those deeds came out metes and bounds
4 referencing the plat for Richard Watson property and including
5 the piece that where Haywood Ma -- where Haywood Plaza sits.
6 Uh, ---

7 Q. Did any of 'em involve unrecorded plats?

8 A. Uh, that they all reference that plat I'm lookin' at and
9 that plat's not recorded.

10 Q. They all reference this (indicating) plat, Defendants'
11 Exhibit 2?

12 A. Yes.

13 Q. This -- so it was incorporated by reference into the
14 deeds?

15 A. Yes, ---

16 Q. Okay.

17 A. --- and and all all of the covenants that describe the
18 uses that could occur on those parcels, all of those covenants
19 use metes and bounds descriptions.

20 Q. Okay. Alright, well has anybody ever challenged the
21 legit to your knowledge ---

22 MR. HILLER: Well I object to that, how could he possibly
23 know that.

24 A. Not to my knowledge, no.

25 Q. Fair enough, fair enough. In your time at the Planning

1 Commission, Mr. Shouse, did ya'll ever question, uh, ha -- did
2 ya'll ever sue to enjoin a sale where a sale of multiple lots
3 did not have a plat?

4 A. No, sir.

5 Q. Had you ever levied a fine allowed by the ordinance?

6 A. I I never had that issue arise.

7 Q. Did did -- was there ever even a discussion of whether to
8 start bringin' lawsuits or start levying fines if people sold
9 property without regi -- uh, recording a plat?

10 A. No, sir.

11 Q. Okay. Um, ---

12 (Whereupon, a discussion was held off the record.)

13 (Deed marked Defendants' Exhibit No. 9 for
14 identification.)

15 Q. Mr. Shouse, let me show you Defendants' Exhibit No. 9 and
16 ask you to identify it for the record.

17 MR. HILLER: Your Honor, ---

18 A. This ---

19 THE COURT: Well wait a ---

20 MR. HILLER: Excuse ---

21 THE COURT: --- minute, wait a minute, wait a minute.

22 MR. HILLER: He's handed him a deed from me to my
23 corporation. What's he -- what what bein' qualified as a
24 residential real estate developer is gonna allow him to
25 testify about a commercial property, especially mine?

1 THE COURT: Yeah, I I don't what know what the relevance
2 of this is, what you're -- where you goin'?

3 MR. HERLONG: The point is, Your Honor, there are five
4 separate lots there, they're transferred, there's no recorded
5 plat. This has ---

6 THE COURT: Well we're not in a he said, she said thing
7 and this is ---

8 MR. HERLONG: Just tryin' to establish, Your Honor, that
9 this is not a usual thing which happened here.

10 THE COURT: Is this, is this commercial property?

11 MR. HERLONG: It's lots up on, uh, Paris Mountain.

12 MR. HILLER: And they all have different tax map numbers.

13 THE COURT: Well he can ask him on -- okay, go ahead, go
14 ahead with it.

15 BY MR. HERLONG:

16 Q. Mr. Shouse, the point on this is simply does this -- is
17 this a deed for the transfer of I believe five lots?

18 A. Uh, yes, sir.

19 Q. You see any reference to any recorded plat?

20 A. No, sir.

21 Q. I'll show you a printout from the tax map for the
22 relevant area, uh, ---

23 MR. HILLER: Well and and may I see that?

24 (Whereupon, plaintiffs' counsel examined the printout.)

25 THE COURT: He's looked at it, what do you wanna do with

1 it?

2 MR. HERLONG: Uh, I guess I should mark it next exhibit.

3 (Plat marked Defendants' Exhibit No. 10 for
4 identification.)

5 BY MR. HERLONG:

6 Q. Show you what's been marked as Defendants' Exhibit No.
7 2, Mr. Shouse, which I believe should indicate where those
8 properties are, are those contiguous properties?

9 A. Yes, sir.

10 Q. Would they meet the requirements of the Greenville County
11 Subdivision Ordinance for needing to have a recorded plat?

12 A. The, uh, uh, to answer that I need to to describe what
13 the lot is here. The -- these are metes and bounds
14 descriptions of lots, each of the lots has frontage on
15 Altamont Road and the frontages vary from, let's see, here's
16 one with 11 feet on Altamont, well let's see, says well about
17 8 8 and 11 so approximately 20 feet, here's (indicating)
18 another with 20 feet, I suspect they're all 20 feet, and, uh,
19 uh, then they -- there's a in the trade we call those "flag
20 lots" and and they go back, the 20 feet goes back and expands.
21 These lots, um, c -- I don't know when it, uh, if the code
22 allowed when this was done, I don't know what the minimum
23 frontage on the public road was, but if if that, if the
24 minimum frontage permitted was 20 feet, those lots would've
25 been eligible to be done, uh, as a summary plat; however, they

1 weren't, they did it by metes and bounds and, uh, and I I
2 don't have any idea if they've ever been transferred or not.

3 Q. Okay.

4 MR. HERLONG: Your Honor, I'd move for the admission of
5 these two exhibits.

6 MR. HILLER: I object to it as irrelevant, Your Honor.

7 THE COURT: I'm gonna sustain the objection. I don't
8 think it's got any relevance to issue today so...

9 MR. HERLONG: Your Honor, I just argue that the relevance
10 is to show that, uh, to to show that what happened in this
11 case with these lots is nothing unusual and it's happened all
12 around Greenville County for a long time, that's -- this is
13 just an example of that, that's the only point of it.

14 THE COURT: Okay, well I'm sustaining the objection.

15 MR. HERLONG: Okay.

16 BY MR. HERLONG:

17 Q. Mr. Shouse, with respect to the properties on, uh, let's,
18 see, I'll show you this this picture, Your Honor, it's a
19 little, shows the subdivision, ---

20 THE COURT: Okay.

21 Q. --- a little easier to see. There was some testimony
22 yesterday, Mr. Shouse, where, uh, Mr. Hiller asked various
23 questions regarding a letter from Jamie Robinson that was
24 attached to the Order of Judge McGowan in 1981, Mr. Robinson
25 had done an appraisal of the, of the property and or or or had

1 issued an opinion that changing the restrictions the way it
2 was done in 1981 would not affect the property values of the
3 people at Watson's Orchard, the implication being that this
4 change today would affect their property values, and I wanna
5 ask you as an ---

6 MR. HILLER: No, I I ---

7 Q. --- expert ---

8 MR. HILLER: --- I don't ---

9 Q. --- real estate developer ---

10 THE COURT: Wait a minute.

11 MR. HILLER: --- I don't know he's qualified to give an
12 opinion on that, Your Honor, he certainly hasn't been
13 qualified as a real ---

14 THE COURT: An appraiser.

15 MR. HILLER: --- estate appraiser.

16 MR. HERLONG: As an expert in real estate development, he
17 sells houses all the time, Your Honor, he sold thousands ---

18 THE COURT: Well there's there's a difference -- are you
19 qualified as a -- are you a certified appraiser?

20 THE WITNESS: No, sir.

21 THE COURT: Okay.

22 MR. HERLONG: Alright. Uh, you sustained the objection?

23 THE COURT: Yes.

24 HERLONG: Alright, that's all the questions I have.

25 THE COURT: Okay. Cross.

1 CROSS-EXAMINATION BY MR. HILLER:

2 Q. Mr. Shouse, if, uh, you acquired five tracts of land that
3 had independent tax map numbers, you ---

4 A. Right.

5 Q. --- you buy this tract, this tract, this tract and this
6 tract no matter what size they are, it could be a half acre,
7 it could be 30 acres but they already have a tax map number
8 assigned to them and then there you decide to transfer those
9 to a corporation, you can do that any way you want; can't ya,
10 that's doesn't have anything to do with the subdivision
11 ordinance as long as you are conveying the tracts that you
12 acquired.

13 A. And if I'm assembling them?

14 Q. Yes, ---

15 A. Yeah.

16 Q. --- you're just taken 'em outta your personal name and
17 puttin' 'em into a development company. You do one deed, you
18 put all in, all of 'em in there and you don't need any kind of
19 approval or subdivision ordinance so that doesn't matter how
20 you describe the property, you can re -- refer to a plat, you
21 can describe a metes and bounds, correct?

22 A. Correct.

23 Q. Subdivision ordinance is not indicated in any way, shape
24 or form.

25 A. Not if -- no, if you're just acquiring and assembling

1 land, ---

2 Q. Right.

3 A. --- correct.

4 Q. Alright. Now when you were with the Planning Commission,
5 was it ever the policy of the Planning Commission not to
6 enforce the subdivision ordinance?

7 A. No, sir.

8 Q. Okay. You were charged with responsibility of enforcin'
9 it?

10 A. Yes, sir.

11 Q. And and so if you didn't charge anybody a fine or file a
12 suit, didn't mean you weren't expecting everybody to comply
13 with the ordinance.

14 A. Well I -- we we expected people to obey, yes.

15 Q. Okay, and and is it possible that the reason you didn't
16 have to sue anybody is because you would either require 'em to
17 perform and they would do it if you, if you caught 'em tryin'
18 to sneak around and ---

19 A. You ---

20 Q. ---- violate the law?

21 A. We just never had that those issues.

22 Q. Never had it come up.

23 A. No.

24 Q. Alright. Now summary plat. In order to subdivide lots
25 even with by way of a summary plat, if you wanna sell the lot

1 or obtain a buildin' permit you have to record the plat, do ya
2 not?

3 A. Well I'm not -- well you you just complicated the
4 question.

5 Q. Alright, I'll take out buildin' permit. You wanna sell
6 the lot ---

7 A. N -- well ---

8 Q. If you subdivide it into more than three pieces and you
9 get a summary plat and you wanna sell it, you have to record
10 the plat, do you not?

11 A. The the buyer no. No, you you can sell property without
12 havin' a plat, okay, 'cuz you can, again you can do metes and
13 bounds and record the lot, that happens a -- it still
14 happens.

15 Q. But it's a violation of the zone -- I mean, the
16 subdivision ---

17 A. Not ---

18 Q. --- ordinance.

19 A. --- not necessarily 'cuz there there are plats that don't
20 meet, there are plats they're recorded regularly that are
21 stamped as not being a subdivision so there's not a yes or no
22 answer to your question 'cuz there are plats that say this is
23 not a subdivision, ---

24 Q. Okay, but that's 'cuz ---

25 A. --- okay.

1 Q. --- they meet one of the exceptions.

2 A. Well it meets an exception. It can be for mortgage, it
3 can be for for reassembly of of ---

4 Q. Right.

5 A. --- tracts or there lot of so there's not yes or
6 no, ---

7 Q. Well ---

8 A. --- it's not black or white.

9 Q. --- the subdivision ordinance if you subdivide per the
10 the definition, the ordinance requires ---

11 A. Yeah.

12 Q. --- you to record a plat.

13 A. If I do a subdivision that involves a new street for and
14 and improvements and storm water and all the other things and
15 today, if I did it today, I have to go through a a 2-step
16 process: preliminary plat and a final plat and the final plat
17 has to be recorded before you can trans -- transfer a lot
18 within that subdivision. Does that answer your question?

19 Q. Kinda.

20 A. Okay.

21 Q. Um, you talked about Haywood Plaza and the deed you
22 reviewed, that was all commercial property, right?

23 A. Yeah.

24 Q. E -- all those, all that's commercial property, right?

25 A. Well no, it's it's part a. that was apartment that are

1 there ---

2 Q. Well ---

3 A. --- now.

4 Q. --- commercial, multi-family, ---

5 A. Right, yeah.

6 Q. --- okay, it's not a single-family residence.

7 A. Correct.

8 Q. Alright. And the, uh, did did you make an effort to, uh,
9 plot the metes and bounds description contained in the deed
10 from Pelham Pro -- I mean, from Watson Owner Owners Property
11 of Owners Association to Stephens?

12 A. I did.

13 Q. And that's a boundary survey, is it not?

14 A. Yes, but the calls are dimensional, dimensionally
15 accurate to the plat so I I'm satisfied that that plat ---

16 Q. Well ---

17 A. --- was used.

18 Q. --- that would be absolutely the same no matter what,
19 wouldn't it, I mean, the calls are the calls on the exterior
20 boundary?

21 A. Well I know that when the calls are dimensionally
22 accurate to a plat that is referenced in the deed, I've got
23 to ---

24 Q. I understand that ---

25 A. --- you know where I'm going.

1 Q. --- but but the calls you're talkin' about and the calls
2 I'm talkin' about are out here (indicating).

3 A. Yes, that -- you're correct.

4 Q. Right, and and ---

5 A. But those ---

6 Q. --- and this (indicating) call, if that's the boundary of
7 the property is always gonna be that call, right?

8 A. Um-hum.

9 Q. Ya can't, ya can't change it out into Pelham Road, ya
10 can't short it and or or lengthen it, right, it is what it
11 is?

12 A. You're right.

13 Q. Alright, so the deed which says "containing five lots"
14 then describes a 6 1/2 acre tract, correct?

15 A. And and then says according to the plat.

16 Q. Unrecorded.

17 A. Didn't say unrecorded, it just says according to the
18 plat ---

19 Q. Okay.

20 A. --- prepared by ---

21 Q. Well we we all know it's unrecorded, right?

22 A. It's not recorded.

23 Q. Alright. Thank you, Mr. Shouse.

24 REDIRECT EXAMINATION BY MR. HERLONG:

25 Q. Mr. Shouse, that last point, uh, pull out, uh, we haven't

1 done this and and we probly should have, let's see, uh,
2 Mr. Shouse, hold up the, uh, and and let the Court -- Your
3 Honor, I'm gonna have him trace these 'cuz his testimony was
4 little bit I think inaccurate. Uh, tur -- I'll call out the
5 calls and if you would point 'em out to the Court as I do
6 this.

7 A. Wait, give me the starting point.

8 Q. Uh, let's see, it says, "Beginning at a stake at the
9 intersection of Pelham Road and a proposed road," and I'm
10 reading from SJ9 the, uh, 1981 deed, "running thence with the
11 curvature of said intersection the coord of which is S25-48
12 east, 43.8 feet to a stake," do you see that one?

13 A. No. What was your your distance?

14 Q. 43.8.

15 A. Yeah, there's -- it's a coord, yeah.

16 Q. So that's the corner.

17 A. Yeah.

18 Q. Alright, "To a stake running thence with the western side
19 of said proposed road S17-20W, 270.6 feet to a stake."

20 A. Okay, like that (indicating).

21 MR. HILLER: Your Honor, we will stipulate that the metes
22 and bounds follow ---

23 A. Yeah, that's ---

24 MR. HILLER: --- the survey boundary.

25 THE COURT: Yeah, I don't, I don't know why we need to go

1 through ---

2 MR. HERLONG: Your Honor, they don't follow the survey
3 boundary. The point is some of the metes and bounds are
4 interior and some are exterior and they stop at the point of
5 the cross ties, that's that's that's the very point and so the
6 stipulation is stipulation to a fact that's not quite right.

7 MR. HILLER: Well there's no interior lines.

8 A. Anyway, you're right here (indicating).

9 Q. Okay, so that takes us down here (indicating), if I may
10 continue, Your Honor, it won't take but a minute, let's see
11 which one 270 feet, uh, "To a stake at a corner a tract
12 containing 22.15 acres..." ---

13 A. Which is this (indicating) tract.

14 Q. Okay, "Running thence with the line of said tract north
15 68-57 west 200 feet to a point."

16 A. Which is right there (indicating).

17 Q. Two hundred feet, Your Honor, is 200 feet to a point.
18 Mr. Shouse, is there any reason for that line to stop at that
19 point?

20 A. 'Cuz there's a property line right there.'

21 Q. Okay. Is that exterior or interior number, the 200 feet
22 to a point?

23 A. That's an exterior, that's the rear line of this
24 (indicating) lot and that point is the, is the point at which
25 this (indicating) line connects to it.

1 Q. The crossline?

2 A. Yeah.

3 Q. If they were simply doing exterior dimensions, would they
4 not use 397.9 to get to the next turn?

5 A. Correct.

6 Q. Alright, okay, so that's an interior 200. "Thence
7 continuing north 86-57 west 180 feet to a point."

8 A. And that's interior along this (indicating) same bearing
9 in distance.

10 Q. Okay, and again that goes up to the cross point on
11 the ---

12 A. To again a lot line.

13 Q. Okay, a lot line. "Thence continuing 7.9 feet to a
14 point."

15 A. That's that little angle right there (indicating) which
16 is the break in the, in the bearing on this (indicating)
17 line ---

18 Q. Okay, so ---

19 A. --- changes ---

20 Q. --- 200 and 180 and 7.9 are all on one line.

21 A. Right.

22 Q. Okay, that the call for those things there would be no
23 reason to do those calls unless you were designating internal
24 lots.

25 A. None whatsoever.

1 Q. Okay. Let's see, "Running thence 256 feet to a point."

2 A. Okay, or that or that's this this (indicating) exterior
3 of this (indicating) perimeter line (uh) bearing forward to
4 this (indicating) point.

5 Q. Okay.

6 A. Those are bearing changes.

7 Q. So they did not ---

8 A. So they missed this (indicating) one.

9 Q. --- they didn't go stop for that crossline.

10 A. Right.

11 Q. Okay. "Running thence 55 feet to a point."

12 A. Which is on this this (indicating) bearing and distance.

13 This bearing is 84.7 ---

14 Q. So they went 55 feet and that was ---

15 A. Fifty-five feet and created a point.

16 Q. Okay, that was to the next lot line.

17 A. Yes.

18 Q. Alright, and then running a hundred and seventy-six point
19 nine two feet to a point.

20 A. Which is on the same bearing but it's a, it's a -- the
21 property line.

22 Q. There have been no point, Mr. Shouse, to do this 55 and a
23 hundred and ---

24 A. No.

25 Q. --- seventy-six separately if they had not intended to

1 designate that cross point?

2 A. Absolutely not.

3 Q. Okay. "Running thence 300 feet to a point on the
4 southern side of Pelham Road," so that's the the end of
5 the ---

6 A. That separates those two.

7 Q. --- lot, okay. "Running thence with the southern side of
8 Pelham Road 200 feet to a point."

9 A. Here (indicating).

10 Q. So that's the top of this (indicating) lot?

11 A. Yes.

12 Q. No point to stop there is there unless ---

13 A. The bearing doesn't change.

14 Q. Okay, there's no point to stop there unless it's
15 designating a lot, correct?

16 A. Correct.

17 Q. "Thence continuing with the southern side of Pelham Road
18 31.9 feet to a point."

19 A. You have a bearing change there (indicating).

20 Q. Okay, so that changes direction to 31.9 ---

21 A. And that's an interior dimension here.

22 Q. Okay. "Thence continuing with the southern side of
23 Pelham Road the following course and distance to wit 99.5
24 feet."

25 A. Bearing distance, uh, bearing change.

1 Q. Okay, so that's a shift in direction right there
2 (indicating). Then 68.6 feet ---

3 A. To a, to a point but no bearing change.

4 Q. So there'd a been no point to stop there unless they were
5 designating that cross ---

6 A. Right.

7 Q. --- line. Okay. And then 32 feet to a point.

8 A. Bearing change.

9 Q. Okay. Uh, and then a hundred feet to a point.

10 A. Bearing change again right here (indicating).

11 Q. Alright. And then 68 feet to a point, um, right there
12 (indicating)?

13 A. That's, yeah, that's, uh, to a a imaginary point, bearing
14 change is over here (indicating).

15 Q. Okay, so again no point to have the 68 feet unless you
16 were stopping ---

17 A. Right.

18 Q. --- for a crossline.

19 A. Right.

20 Q. And then a hundred, uh, I'm sorry, a hundred and seventy
21 feet to the point at the beginning.

22 A. This says a hundred and sixty-four. Oh, a hundred and
23 seventy here (indicating), you dropped, you missed a hundred.

24 Q. Did I miss a hundred and sixty-one?

25 A. Yeah.

- 1 Q. Now let me go go back and get it hundred before.
- 2 A. 168.4 on the same; on the ---
- 3 Q. Wait a minute, I ---
- 4 A. --- 68 side.
- 5 Q. Thirty-one point -- what was that ---
- 6 A. Six.
- 7 Q. Next one's 6.68?
- 8 A. 168 4.
- 9 Q. Sixty-eight point six feet to a point and then 32 feet to
- 10 a point.
- 11 A. That's not here.
- 12 Q. That, is that the on right there (indicating)?
- 13 A. Um-hum. You got thirty-one six, I don't know where this
- 14 dropped but then the last call is 170 to the point
- 15 beginnin'.
- 16 Q. What have I done wrong here, 31.6 ---
- 17 A. Which is right there (indicating).
- 18 Q. Thirty-one point six and then a hundred and
- 19 sixty-eight.
- 20 A. Point ---
- 21 Q. A hundred sixty-eight point four to ---
- 22 A. Right.
- 23 Q. --- a point. Again, no point in stopping at that ---
- 24 A. Its bearing, bearing is constant.
- 25 Q. That's an internal dimension ---

1 A. Yeah.

2 Q. --- to that crossline, correct?

3 A. There's a hundred and seventy to the closing point.

4 Q. Okay. So, Mr. Shouse, is it fair to say that with I
5 think one exception the calls all do stop at the crosslines?

6 A. Yes.

7 Q. Does that get to -- does that give you any, uh, does that
8 strengthen your position or does it have any impact at all on
9 your your position that these are in fact ---

10 A. It just, ---

11 Q. --- lots as designated by the deed?

12 A. --- it it just affirms that they were in t -- they are
13 lots, they were intended to be lots, they are lots.

14 Q. And anybody who's tracing those metes and bounds from the
15 public record would see those stop points?

16 A. Sure.

17 Q. Okay. Alright, that's all the questions I have.

18 RECROSS-EXAMINATION BY MR. HILLER:

19 Q: Mr. Shouse, why in the world would anybody do it that
20 way?

21 A. Got me.

22 Q. You got the other lines, don't ya?

23 A. Uh-huh.

24 Q. You're gonna go figure out that these calls may not be in
25 the right or were in some place where they could have drawn

1 vertical, uh, vertical lines and they didn't ---

2 A. But ---

3 Q. --- and that's that's what we're gonna do. Couldn't they
4 have just recorded a survey if they really wanted five lots,
5 they had one, didn't they?

6 A. Yes, sir.

7 Q. Alright, so they had a survey and it had all the calls,
8 every single one: up, down, vertical, ---

9 A. Yes.

10 Q. --- up, down, vertical, up, down, vertical.

11 A. Yes, sir.

12 Q. So if you really wanted five lots and you were tryin' to
13 sell five lots and what you thought you were gettin' is five
14 lots, all you had to do is record the survey, right? Right?

15 A. Well you didn't have to record the survey. He chose not
16 to and I don't know why.

17 Q. That's right and and and do you know what the the minimum
18 footage, the, um, uh, frontage that the covenants require for
19 this property?

20 A. Think it's 200 feet.

21 Q. Okay, and do you know the minimum square footage?

22 A. Fifty-five thousand.

23 Q. Alright, so if if if you were gettin' ready to buy 6 1/2
24 acres that you might some day wanna develop into five lots,
25 would you wanna make sure that ya had enough land to do it?

1 A. He had enough land to do it but yes.

2 Q. But wouldn't you wanna make sure?

3 A. Yes.

4 Q. I mean, that would be somethin' that a a prudent
5 developer would do, right? You you you might sit down
6 yourself and do it, plot out and make sure how you were gonna
7 be able to lay out five lots when you developed the property,
8 wouldn't you?

9 A. Yes.

10 Q. Any prudent purchaser would, would they not?

11 A. Yes.

12 Q. Okay. But if you wanted to maybe chan -- I mean, if you
13 didn't necessarily sure that you were gonna make five lots,
14 you wanted to be sure you could, but there wouldn't be any
15 reason to record a plat unless you were plannin' on actually
16 developin' 'em and selling 'em 'cuz you could always do two
17 lots or one lot or three lots if you changed your mind later
18 on, couldn't ya?

19 A. I I I'm not following you.

20 Q. Okay.

21 A. I'm sorry. I ---

22 Q. In other wor -- as long as you own a tract of land, you
23 have the option of havin' bigger lots, don't you?

24 A. But you'd have ---

25 Q. My question is don't you have the option of makin' bigger

1 lots?

2 A. You always have that option.

3 Q. Alright. Well not after if you record the survey and
4 sell one of 'em.

5 A. But but you can always deal with the remainder. You can
6 make 'em whatever size that the the rules ---

7 Q. Okay.

8 A. --- let you make them so ---

9 Q. Okay.

10 A. --- I don't understand.

11 Q. Alright. Um, the the point is is somebody made a
12 conscious decision not to use this survey and not record it
13 and not set out a metes and bounds description that contained
14 vertical breaks for the lots, correct?

15 A. Yes.

16 Q. And we don't know why, you don't know ---

17 A. I don't know why.

18 Q. Alright. Thank you.

19 REDIRECT EXAMINATION BY MR. HERLONG:

20 Q. Mr. Shouse, with respect to buying a piece of property if
21 you were gonna make sure it had 6 acres or 5 acres, whatever
22 it needed to do the lots, uh, if you were just buyin' a piece
23 of property to make sure it was that big, would you go to the
24 trouble to go ahead and survey the lots internally and specify
25 them and so forth or would the deed just say chunk a land, 6

1 acre?

2 A. Again, if I -- yeah, if I -- it just, it just be 6 acres
3 if I would put me in that position.

4 Q. Okay.

5 THE COURT: Well, ya know, you guys are tryin' to
6 speculate into the, read the mind of Mr. Stephens who
7 purchased this property and you can ask Mr. Shouse all these
8 questions but he doesn't know what was in his mind, that's why
9 we are a record notice state. I I don't see any reason to go
10 forward with asking these kinda questions that you're just
11 tryin' to show what Mr. Stephens was thinking at the time.
12 Isn't that where you're goin', William? That's what, that's
13 what ---

14 THE WITNESS: No, he ---

15 THE COURT: --- Mr., that's what Mr. Hiller did.

16 MR. HERLONG: Yeah, well it -- Stephens understood he was
17 buyin' five lots, and, uh, ---

18 MR. HILLER: Well ---

19 THE COURT: No, no, no. No, that -- you're -- you don't
20 know what he understood.

21 MR. HERLONG: He had an offer for five lots, it was
22 accepted ---

23 THE COURT: Well ---

24 MR. HERLONG: --- according to, uh, uh, ---

25 MR. HILLER: Well Mr. Kehl just testified he was just

1 buyin' a few, uh, but but but I agree, Your Honor, I mean, I
2 don't, I don't think anything Mr. Shouse ---

3 THE COURT: Okay, ---

4 MR. HILLER: --- can testify to is ---

5 THE COURT: --- alright, ---

6 MR. HILLER: --- relevant.

7 THE COURT: --- is is there another ---

8 MR. HERLONG: Well I was gonna establish the point, Your
9 Honor, uh, that the numbers on the tax map correspond exactly
10 to the, to the, uh, numbers on the survey but clearly those
11 tax -- the survey was taken up to the tax people and I want to
12 establish that fact.

13 THE COURT: Well go ahead, I I'm not sure where you're
14 goin' but ---

15 BY MR. HERLONG:

16 Q. Alright, well, Mr. Shouse, just real quickly, uh, ---

17 MR. HILLER: Your Honor, I'm gonna object to this not
18 being reply to anything that or not being a redirect of
19 anything that I examined him on.

20 THE COURT: Okay, overruled.

21 (Survey marked Defendants' Exhibit No. 11 for
22 identification.)

23 BY MR. HERLONG:

24 Q. Mr. Shouse, let's do this as fast as we can but I want
25 to -- that's from the tax map, I'm sorry, that's from the, uh,

1 survey, Defendants' Exhibit 11, this is from the tax map,
2 Defendants' Exhibit 5. If you look at Exhibit 5, can you tell
3 that the numbers in the tax map correspond to the lot numbers
4 or the the dimensions of the lots from the survey, ---

5 MR. HILLER: Uh, well ---

6 Q. --- 300 on the left end and 200 on the top of the left
7 lot and a 166.9 on the bottom of the left lot?

8 A. Yeah, they're they're identical.

9 Q. Does it appear that the the survey was presented to the
10 tax office ---

11 MR. HILLER: Uh, I'll ---

12 Q. --- in order to know how to, in order to know how to draw
13 these ---

14 MR. HILLER: I I ob ---

15 Q. --- lots on here?

16 THE COURT: Wait, let him ask the question. Go ahead,
17 finish your question.

18 Q. Does it appear that the survey was presented to the tax
19 authorities to know how to draw these lines and these lots
20 that's ---

21 MR. HILLER: Speculation, ---

22 THE COURT: Wait.

23 MR. HILLER: --- Your Honor.

24 A. Yes.

25 THE COURT: Wait, wait, wait, Mr. Shouse.

1 THE WITNESS: Oh, excuse me. I'm sorry, sir.

2 MR. HILLER: I object to speculation and and and
3 irrelevant.

4 THE COURT: I'm gonna sustain it. Okay.

5 MR. HERLONG: Okay, and move for the admission of Exhibit
6 11, Exhibit ---

7 THE COURT: Over his objection.

8 (Defendants' Exhibit No. 11, survey, admitted into
9 evidence.)

10 MR. HERLONG: --- 5 is already in. That's all the
11 questions that I have, Your Honor.

12 THE COURT: Alright.

13 EXAMINATION BY THE COURT:

14 Q. Mr. Shouse, is there a difference between raw land and
15 developed land?

16 A. In what respect?

17 Q. In any respect.

18 A. Well ---

19 Q. --- is there a difference between raw land and developed
20 land?

21 A. And improved land, yes.

22 Q. Developed, the term "developed"?

23 A. Uh, that's improved to me ---

24 Q. Okay, that those those words would be synonymous as far
25 as you're concerned?

1 A. Yes, yes.

2 Q. Okay, what are those differences?

3 A. Well raw land it it's it doesn't have a a known use.
4 When you develop it or improve it, you add value to it by
5 installin' improvements ---

6 Q. Okay, which is ---

7 A. --- and ---

8 Q. --- what?

9 A. --- and give it some utility.

10 Q. Alright.

11 A. Now ---

12 Q. But when you say "utility" let's 'cuz that, you know,
13 that could be utilities or ---

14 A. No, it's utility, ---

15 Q. --- use ---

16 A. --- use.

17 Q. Use.

18 A. Use.

19 Q. Okay.

20 A. A defined use.

21 Q. Alright.

22 A. Uh, the, uh, and again, if you just take any raw piece of
23 land, you you you look at a lot of of, uh, you look at its
24 attributes of of course ---

25 Q. Okay.

1 A. --- then then what kind of, what kind of, uh, external
2 forces or external things have been put on that land to to
3 limit its use or its utility.

4 Q. Such as?

5 A. Such as zoning, ---

6 Q. Okay.

7 A. --- uh, the ability to get, uh, utilities, you know, ---

8 Q. Okay.

9 A. --- are they there or not there, how much does it cost to
10 get 'em there, what kinda topography does it have, what kinda
11 ground cover does it have, does it have rock, all those
12 things ---

13 Q. Okay.

14 A. --- and then when you develop it you you add that, you
15 you put in water, you put in sewer, you put in streets, you
16 put in utilities ---

17 Q. Okay.

18 A. --- and then you sell it to some user dependin' on where
19 it's located.

20 Q. Okay, and and would it be, uh, in order for a piece of
21 property to be considered developed, would it have to ha -- it
22 would have access to public highways?

23 A. Well that again, that's one of those external things, it
24 has to have a -- it's required to have access to a, ---

25 Q. Okay.

1 A. --- to a public road.

2 Q. Alright, and how do you define access to a public road?

3 A. Frontage owned.

4 Q. Frontage, okay. Do ya ha ---

5 A. You get it ---

6 Q. --- is there a requirement for a curb, ---

7 A. No, ---

8 Q. --- an entrance? If there is a curb, do you have to have
9 a a I forget, we have curb cut, whatever they call ---

10 A. Yes, sir, you have to get an encroachment permit.

11 Q. Okay.

12 A. Now and and again that is in -- that's an evolving
13 standard.

14 Q. Sure.

15 A. In in 1970 gettin' an encroachment permit was a whole lot
16 simpler than gettin' one today but yes ---

17 Q. That's pretty much true across the board in any matter.

18 A. Yes, and ---

19 Q. Okay.

20 A. --- and and the state encroachment permit's much more
21 difficult to get now than it used to be.

22 Q. Okay.

23 A. The county now has an encroachment permit, they didn't
24 have one until recently.

25 Q. Do you know when that came into ---

1 A. No, but, uh, probly the early 2000's is when they ---

2 Q. Okay.

3 A. --- started the encroachment permit.

4 Q. That would be the county?

5 A. County.

6 Q. Okay.

7 A. Now the state's always had one but it was administered
8 differently over time.

9 Q. Okay.

10 A. For ex -- I'll just give an example.

11 Q. Okay.

12 A. If you want an encroachment permit on on a road that
13 intersects with the interstate, the highway department won't
14 give you an encroachment permit for the first 1320 feet so you
15 gotta figure out a way to get around 1320 foot, no no
16 encroachment zones.

17 Q. Okay.

18 A. Now that's because they don't want cars stacking up
19 tryin' to get on and off the interstate ---

20 Q. Okay.

21 A. --- to be impeded by a curb cut.

22 Q. Okay.

23 A. But the standards vary all over the place about gettin'
24 curb cuts but yes you gotta get 'em ---

25 Q. Okay.

1 A. --- and that's part of the development process ---

2 Q. Alright.

3 A. --- and in any piece a property that you look at. If I'm
4 buyin' a piece a property, the first thing that I'm gonna
5 determine is what what kinda sight lines do I have for my curb
6 cut, ---

7 Q. Yeah.

8 A. --- you know, where can I get to the, get to the road
9 because that dictates the design layout ---

10 Q. Okay.

11 A. --- and, you know, if I don't have, I got just a little
12 bitty frontage then I I gotta start there. If I've got 1400
13 feet a frontage, I got some options.

14 Q. Okay. Alright.

15 MR. HERLONG: Your Honor, ---

16 A. But that's that's, raw land is is a raw -- there's no
17 such thing as just pure old raw raw land, it's all got
18 characteristics ---

19 Q. Okay.

20 A. --- that affect what you can do with it or should do with
21 it.

22 Q. But all land at one point was ---

23 A. Was raw.

24 Q. --- raw.

25 A. Yes.

1 Q. Okay.

2 THE COURT: Alright anything?

3 MR. HERLONG: Just a little, Your Honor.

4 REDIRECT EXAMINATION BY MR. HERLONG:

5 Q. Mr. Shouse, on that, on that subject, uh, with respect to
6 developing property, what about respect devel -- developing
7 property into lots, how would you go about that?

8 A. Same process. Uh, you know, you you you gotta determine
9 what your, what your density is permitted, what your
10 dimensions limitations are and, uh, and you just start from
11 that and and, uh, lay out, lay out your streets and then lay
12 out your lots dimensionally accurate and dependin' on the
13 zonin' you got and all the, all the other limiting factors you
14 just -- it's pretty simple process.

15 Q. Is it your opinion that this property here had been
16 developed, uh, the top of, uh, Defendants' Exhibit 2, we're
17 talkin' about being the Stephens' lots, that the Stephens'
18 lots had been developed into lots?

19 A. Well that yes, just the fact they created 'em was de --
20 in thi -- in the case of this property, it didn't take much to
21 develop that because it had the road frontage and it had
22 utilities and, uh, and it had reasonable topography, uh, and I
23 don't, I don't, I can't tell you what the the zoning is
24 because, uh, I suspect it's residential because of the
25 restrictions, I don't know that.

1 Q. With respect to the property today, uh, do you have an
2 opinion as to whether that can be developed for
3 residential ---

4 MR. HILLER: I I object, ---

5 Q. --- purposes today?

6 MR. HILLER: --- to that, Your Honor, I -- irrelevant.

7 THE COURT: Yeah, you -- I'll sustain.

8 MR. HERLONG: That's all I have ---

9 THE COURT: Alright, one last question, Mr. Shouse. Are
10 you, uh, glad that I certified you as an expert in this case?

11 (Laughter.)

12 THE WITNESS: Can I put it on my resumé?

13 THE COURT: Yes, you can.

14 (Laughter.)

15 THE COURT: Alright, thanks, sir, you can, you can stand
16 down.

17 THE WITNESS: Thank you, sir.

18 MR. HILLER: Well actually, Your Honor, ---

19 THE COURT: Oh, oh, wait, wait, wait, you're not ---

20 MR. HILLER: --- follow-up question what ---

21 THE COURT: --- very briefly, yes.

22 MR. HILLER: --- what you asked.

23 RECROSS-EXAMINATION BY MR. HILLER:

24 Q. Mr. Shouse, you describe yourself as a real estate
25 developer ---

1 A. Yes, sir.

2 Q. --- and and as a real estate developer your goal is to
3 buy a tract of land that's unimproved and turn it into
4 somethin' that you can sell.

5 A. Yes, sir.

6 Q. Alright, and so if you buy 20 acres in south Greenville
7 over near Pelham Road, I -- didn't you do some developin' out
8 there?

9 A. Yes, sir.

10 Q. Alright, and, uh, so your plan is take that property
11 subdivide it into lots, submit a plan to the Greenville County
12 Planning Commission, get it approved, record it, put in the
13 infrastructure and then sell the lots, right?

14 A. Yes, sir.

15 Q. And until you do that you can't sell a single lot in that
16 tract you bought, can ya?

17 A. Yeah, yeah, all -- when when I, when I go that route,
18 you're absolutely right.

19 Q. Thank you.

20 THE COURT: Okay. Alright, thank you, sir, you can step
21 down.

22 THE WITNESS: Okay.

23 THE COURT: Were gonna take about a 10-minute break.

24 (Whereupon, the witness left the stand.)

25 THE COURT: Can we cut him lose if he wants to go?

1 MR. HERLONG: Yes, Your Honor.

2 THE COURT: You're free.

3 THE WITNESS: Thank you.

4 THE COURT: Yes, sir.

5 (Whereupon, a recess was taken.)

6 MR. HILLER: Your Honor, we do a little housekeepin' just
7 for plannin' purposes?

8 THE COURT: Sure.

9 MR. HILLER: As I understood yesterday, you you got a
10 conflict at two o'clock?

11 THE COURT: Well I don't know if you'd call it a
12 conflict, I've got ---

13 MR. HILLER: Well another ---

14 THE COURT: Have you heard ---

15 MR. HILLER: --- obligation.

16 (Whereupon, a discussion was held off the record.)

17 THE COURT: Okay. Yeah, I don't know how long it'll last
18 but it's a motion hearing that was set some time ago.

19 MR. HILLER: I only have possibly one reply witness, of
20 course they're on standby and I'm just tryin' to get if
21 Mr. Herlong give us a feel for what our time tables are, that
22 will be helpful.

23 THE COURT: Okay.

24 MR. HERLONG: Uh, Your Honor, we've got two witnesses and
25 a deposition so I and I think that we might be buttin' up

1 against 2:30, I don't know if we have to take lunch.

2 THE COURT: Well we'll just -- let's just go ahead and
3 call your witness, let's go.

4 MR. HERLONG: Your Honor, I next call Mike Stephens.

5 (Whereupon, the witness came forward.)

6 THE BAILIFF: Left hand ---

7 THE COURT: Left hand, yeah.

8 JAMES M. STEPHENS, having
9 been first duly sworn, testified as follows:

10 THE COURT: Alright, thank you, sir. Come on around have
11 a seat, please state your name for the record.

12 THE WITNESS: Uh, my name is James M. Stephens.

13 THE COURT: Okay.

14 DIRECT EXAMINATION BY MR. HERLONG:

15 Q. Mr. Stephens, are you the son of the Mr. Stephens that
16 we've been talkin' about in this trial?

17 A. Yes.

18 Q. Okay. Just real quickly ask you this, uh, we talked
19 about Exhibit, I don't know what exhibit it was, Exhibit 7
20 earlier today, documents that Mr. Kehl was talking about,
21 on -- in the middle of that there's a affidavit relating to
22 the title insurance policy, uh, that it relating to the five
23 lots, it appears your dad had si -- your dad signed, is that
24 (indicating) your dad's signature?

25 A. Definitely.

1 Q. Okay. Same question about the offer that is in the
2 record, uh, it's SJ5 in in Defendants' Exhibit No. 1 page D58,
3 is that your dad's signature?

4 A. Yes.

5 Q. Okay. There's actually another, just just for the record
6 there's another copy of that offer I think D167 in the same
7 notebook. Mr. Stephens, tell me what ya know about these five
8 lots, your dad's purchase of the five lots.

9 A. Uh, I was livin' in Louisiana and, uh, ---

10 MR. HILLER: Well, Your ---

11 A. --- the first ---

12 MR. HILLER: --- Honor, Your Honor, I don't think that's
13 a proper question without laying some foundation or basis as
14 to how he has personal knowledge, it may or may not be
15 hearsay.

16 THE COURT: Well let's, I mean, -- okay, we'll keep,
17 we'll be attentive to that. Go ahead, yes, sir.

18 A. Well, I was livin' in Baton Rouge at the time, I'd
19 started a branch office of our company and my father and I
20 talked on a regular basis ---

21 MR. HILLER: Well then then ---

22 A. --- about his ---

23 MR. HILLER: --- then I would object to all of his
24 testimony as hearsay.

25 BY MR. HERLONG:

1 Q. Tell tell us about when you moved back to South Carolina.

2 A. When I moved back to South Carolina, he ---

3 MR. HILLER: I object to ---

4 THE COURT: Well wait a minute.

5 MR. HILLER: He's -- alright.

6 THE COURT: He just said he moved back to South Carolina,
7 he's gonna testify to what he observed, ---

8 MR. HILLER: No, he said he ---

9 THE COURT: --- is that what you -- where you're goin',
10 Mr. Stephens?

11 THE WITNESS: No, what I'm gettin' to is the fact that my
12 dad offered me one a those lots.

13 MR. HILLER: And I object to that as hearsay.

14 THE WITNESS: It's not hearsay, it's a fact.

15 THE COURT: Well -- okay.

16 THE WITNESS: Well ---

17 THE COURT: Alright, I'm gonna, I'm gonna, I'm the fact
18 finder too so I'm gonna, I can sift through it, Mr. Hiller.
19 Go ahead.

20 BY MR. HERLONG:

21 Q. Mr. Stephens, did you understand that you had an
22 opportunity to buy one of those lots?

23 A. We never discussed a price, he offered me, he said, Mike
24 would you like to have one of my lots ---

25 MR. HILLER: I I ---

1 THE COURT: Now that's that's goin' a little -- ya
2 can't ---

3 Q. Just just tell me what you understood, ---

4 MR. HILLER: Well ---

5 THE COURT: Well he can -- what his state a mind was is
6 fine.

7 Q. Was it your understanding that you had the opportunity to
8 buy one of those lots if ---

9 A. Yes.

10 Q. --- you want to? Okay. And did you, did you review the
11 plat at any time?

12 A. I I saw the plat.

13 Q. When did you first see the plat the best your -- is ---

14 A. Approximately that point in time.

15 Q. Alright. Did your dad show you the five lots?

16 A. Yeah.

17 Q. Okay. And did you consider whether to purchase one a
18 those five lots from your dad?

19 A. I did consider it.

20 Q. Ultimately I take it you did not purchase one a the lots..

21 A. That's correct.

22 Q. Okay, bought somethin' on the other side a town?

23 A. Yes.

24 Q. Okay.

25 MR. HERLONG: That's all the questions I have of

1 Mr. Stephens, Your Honor.

2 MR. HILLER: I have no questions.

3 THE COURT: Alright. Thank you, sir, you can step
4 down.

5 MR. HERLONG: Your Honor, we call Larry Estridge.

6 THE COURT: Okay.

7 (Whereupon, the witness came forward.)

8 THE BAILIFF: Left hand on the Bible, sir.

9 THE WITNESS: Yes.

10 THE BAILIFF: --- face the judge.

11 LARRY ESTRIDGE, having been first
12 duly sworn, testified as follows:

13 THE COURT: Alright, thank you, sir, please have a seat,
14 state your name for the record.

15 THE WITNESS: Larry Estridge.

16 THE COURT: Okay. Would you spell that for the court
17 reporter so she ---

18 THE WITNESS: E-S-T-R-I-D-G-E.

19 THE COURT: Okay.

20 DIRECT EXAMINATION BY MR. HERLONG:

21 Q. Mr. Estridge, would you tell us what you do.

22 A. An attorney.

23 Q. And where do you work?

24 A. I'm with Womble, Carlyle, Sandridge & Rice in
25 Greenville.

1 Q. How long you been practicing law?

2 A. Uh, if you count the Army, forty and a half years.

3 Q. How long you practice law in Greenville?

4 A. In Greenville 40 years, ---

5 Q. Forty ---

6 A. --- actually 41 1/2 year, one year in the Army.

7 Q. And describe for me the nature of your practice generally
8 speaking.

9 A. Most of my practice is real estate, certainly for the
10 last thirteen years after I joined Womble, Carlyle it's been
11 almost exclusively some aspect of real estate.

12 Q. And tell me what kind of work your real estate work
13 typically involves.

14 A. Uh, involves representing buyers, sellers, lessors,
15 lessees, mortgagors, mortgagees, uh, sometimes I I get
16 involved in land use, regulation, zoning, incentives that are
17 attached to real estate, related to real estate and disputes
18 among people arising from real estate.

19 Q. What kinda training do you have for your real estate work
20 other than your experience?

21 A. Well I did have some real estate courses in law school,
22 beyond that the training has been on the job.

23 Q. Okay. You teach, you teach seminars yourself?

24 A. I do not. I have, I have taught a couple of CLEs on
25 leasing.

1 Q. Okay. And in the course of your career, I don't know,
2 can you put a number on how many real estate transactions
3 you've been involved in?

4 A. Many hundreds, maybe thousands.

5 Q. Okay.

6 MR. HERLONG: Your Honor, we would offer Mr. Estridge as
7 an expert in the area of real state transactions and real
8 estate law.

9 MR. HILLER: Your Honor, I thought we established this
10 yesterday that that no expert testimony is allowed or
11 admiss -- Mr. Herlong claimed they were fact witnesses
12 yesterday but but I I I I I I I I would submit that he's going
13 to attempt to elicit expert testimony from him that is an
14 interpretation of the agreement is sole province of the Court,
15 it's nothing more than another ar -- attorney arguin' the same
16 thing that Mr. Herlong and I are more than capable of arguin'
17 and that it is expressly prohibited by the cases that I
18 pointed out yesterday.

19 MR. HERLONG: Your Honor, case that I've mentioned
20 yesterday that I didn't have on the top a my tongue Vortech.
21 The case that Mr. Hiller mentioned the Dawkins, that the one?

22 MR. HILLER: Yes.

23 MR. HERLONG: Dawkins. Dawkins ---

24 MR. HILLER: Dawkins the the ---

25 MR. HERLONG: --- was a case where Professor Freeman

1 wrote an affidavit in opposition to the motion for summary
 2 judgment and it was basically a brief and they submitted it
 3 and the trial court said that's not okay, Court of Appeals
 4 said it was, Supreme Court said it was not but he --
 5 notwithstanding that there's parts of it were probly okay but
 6 in 2008 South Carolina Court of Appeals revisited the issue in
 7 light of the *Dawkins* case and you look, uh, the relevant
 8 portion, Your Honor, starts on really bottom of page 13
 9 because and again it was Professor Freeman and the the
 10 defendant there, I believe it was the defendant, was arguing
 11 he should not have been allowed to testify while the facts ---

12 THE COURT: Bottom of page what?

13 MR. HERLONG: --- not, she should not have been allowed
 14 to testify.

15 THE COURT: What page are you referring to?

16 MR. HERLONG: Page, bottom of page 9, ---

17 THE COURT: Okay.

18 MR. HERLONG: Page number's at the top.

19 THE COURT: Yeah, alright.

20 MR. HERLONG: And the, uh, the relevant issue there was
 21 that there was a claim that these these people had breached
 22 their fiduciary duties and then there was an aiding and
 23 abetting claim and associated with that and Professor Freeman
 24 was gonna testify on the issue of the fiduciary duties and the
 25 Court does a good discussion at the top, "If scientific,

1 technical or other specialized knowledge will assist the trier
2 of fact to understand the evidence or determine a fact and
3 issue a witness qualify as an expert by knowledge, skill,
4 experience, training, education may testify thereto in the
5 form of opinion or otherwise," that's coming straight outta
6 702, "When an expert is, when an expert testimony is based
7 upon facts sufficient to form the basis for an opinion, the
8 trier of fact determines its probative value," and then it
9 goes on and they relied on *Dawkins* in that case but the Court
10 of Appeals distinguished it said, "However, the Supreme Court
11 note that an opinion is not objectionable simply because it
12 embraces an an ultimate issue to be decided by the trier of
13 fact, the Supreme Court also found the affidavit, meaning
14 Professor Freeman's, contained some helpful factual
15 information such as Professor Freeman's on the va -- opinion
16 on the value of the stock and selling it for significantly
17 less and the value being improper, ---

18 THE COURT: Wait, I can read it, ---

19 MR. HERLONG: Okay.

20 THE COURT: --- you don't have to read it to me.

21 MR. HERLONG: Okay, I'll just let you do that, Your
22 Honor, and be quite for a minute.

23 THE COURT: Mr. Hiller, anything you wanna ---

24 MR. HILLER: Well, yes, Your Honor, I mean, and and
25 number one is is Court of Appeals obviously can't overrule the

1 Supreme Court. They distinguished this and they distinguished
2 it from specifically from the standpoint of saying that he did
3 not make improper legal conclusions but simply opined
4 regarding acts where committed and that is completely
5 different than the issues that are, I mean, than what what the
6 Supreme Court did specifically state in the *Dawkins* case and
7 that is over and over again that ---

8 THE COURT: Well we'll just have to be attentive that
9 Mr. Estridge does not make improper legal conclusions.

10 MR. HILLER: Well then what can he testify to? He ---

11 THE COURT: I don't know.

12 MR. HILLER: --- he's not, he wasn't a party or had
13 anything to do with any of these transactions.

14 THE COURT: Okay, well we'll find out just you have to be
15 on on your toes.

16 MR. HILLER: I will be.

17 MR. HERLONG: Your Honor, just to to clarify that
18 point ---

19 THE COURT: Figuratively speaking.

20 (Laughter.)

21 MR. HERLONG: --- factual issue in this case it's a mixed
22 fact of law but its first and factual issue is were these lots
23 lots ---

24 THE COURT: Okay, ---

25 MR. HERLONG: --- and, uh, ---

1 THE COURT: --- alright, just go ahead, I'm gonna, I'm
2 gonna ---

3 MR. HERLONG: Okay. Alright, Mr. Estri ---

4 THE COURT: We we qualified Coleman Shouse as an expert
5 and I think he regretted that decision later but I'll be happy
6 to -- what and you're gonna ---

7 MR. HERLONG: Area ---

8 THE COURT: --- expert ---

9 MR. HERLONG: --- real estate law, real estate
10 transactions.

11 THE COURT: Okay, alright.

12 BY MR. HERLONG:

13 Q. Mr. Estridge, have you reviewed the materials in
14 connection with these these five lots and the the plaintiffs'
15 allegation in this case and the defendants' counter-
16 allegations?

17 A. I've reviewed a number of materials, I've looked at a
18 series of deeds starting with the deed to I think it was
19 Pelham Properties and then the subsequent deeds to
20 Mr. Stephens and then to a revocable trust and then I think
21 you -- of a -- an undivided one percent interest to three LLC.
22 I reviewed those deeds, I reviewed the survey that is referred
23 to in those deeds, I reviewed a a document referred to as the
24 Stephens', uh, offer or the offer to purchase five lots, I
25 reviewed a letter that went out from Mr. Wilkins Norwood to

1 certain property owners, I I reviewed a number of affidavits
2 that were submitted previously in this case including that of
3 Mr. Mr. Shouse and I have probably reviewed some other
4 materials but those are the, those the ones that are are most
5 important to what I've been asked to consider here.

6 Q. Before I ask you your opinion let me back up and ask you
7 about the general practice, real estate practice and how
8 documen -- how plats are recorded and when they're not
9 recorded.

10 A. Well plats, uh, well the the recording requirements for
11 surveys and plats varies from jurisdiction to jurisdiction.
12 In Greenville County the specifications for actual recording a
13 plat for the pertinent periods here are largely set forth in
14 recording statutes which is a matter of state law and, um, and
15 planning and in subdivision regulations which are more a
16 matter of county law and those vary according to the the year
17 in which the plat is actually presented for recording.

18 Q. Okay. In terms of of the practice, do people, let's just
19 talk about today, do people sell property and not record
20 plats?

21 A. That it is a fairly common practice for people to sell
22 and to otherwise transfer property with reference to a plat
23 which is not recorded for a variety of reasons.

24 Q. And and was that the case in 1981 or ---

25 A. That was certainly was the case in 1981. Uh, it is, it

1 is very common for instance among transactions among related
2 parties such as a a family company or family partnerships or
3 family LLCs or family trusts, etc. when the purpose of the
4 transaction is -- has to do with what the grantor and the
5 grantee wish to accomplish from the transaction. It's also
6 very common among related companies, Company A and Company B,
7 for whatever reason may wish to transfer and to receive one or
8 more or a variety of properties and they elect based on their
9 negotiations and their own due diligence and their own
10 purposes to make re -- to make that conveyance and record a
11 deed that refers to a plat that they both have and they both
12 understand that this is the plat referred to but that for
13 whatever reason they choose not to file it in the public
14 records at least and not at that time, ---

15 Q. Okay.

16 A. --- that's a, has been and still is a common practice.

17 Q. Have you been involved in transactions like ---

18 A. I have been ---

19 Q. --- those?

20 A. --- involved in a number of transactions that involved
21 creating and presenting for recording a deed that describes
22 the property by reference to a plat that has not been recorded
23 plat.

24 Q. Okay. That, in your experience that is not an uncommon
25 practice?

1 A. It isn't. It is not an uncommon practice.

2 Q. Okay. With respect to these these, uh, Stephens' lots,
3 you were telling me the materials you had reviewed have you
4 reached an opinion as to whether these, uh, I guess the
5 language is in the, uh, ---

6 A. Shall have been developed ---

7 MR. HILLER: I'm on my toes now, ---

8 THE COURT: Alright.

9 MR. HILLER: --- Your Honor.

10 Q. --- into which the property ---

11 THE COURT: Okay.

12 MR. HILLER: I I I object to that as being a legal
13 opinion and has no factual or other basis. He's expressing an
14 opinion, uh, on the ultimate question that you have to decide
15 and that this, uh, that testimony falls squarely under the
16 provision of *Dawkins vs. Fields*.

17 THE COURT: Well show me -- you got the case?

18 MR. HILLER: Yes, sir.

19 THE COURT: Show it to me, let me read what you're
20 showin'.

21 (Whereupon, counsel handed the document to the Court.)

22 MR. HILLER: Your Your Honor, the the pertinent portion
23 begins at the bottom of the second page where it says, "In
24 general expert testimony on issues of law is inadmissible,"
25 and then it goes on to say, "Federal rules of e --", cites

1 with authority commenting that, "Federal Rule of Evidence 702,
2 702 and 704 prohibit experts from offering opinion about legal
3 issues that will determine the outcome of a case," and and of
4 course then it goes on, talks about how they prohibit it in
5 PCR actions an an an attorney comin' in and sayin' somebody,
6 uh, did not represent someone with the appropriate standard of
7 care, completely prohibited any testimony in that regard and
8 then they applied it to the facts of that particular case
9 prohibiting that expert and what he's in -- intending to do is
10 give you a legal opinion and and and neither the case
11 Mr. Herlong handed up has anything that changes that which is
12 prohibited by *Dawkins*.

13 MR. HERLONG: Your Honor, I I I disagree with that
14 characterization. The question of whether they are lots
15 developed into lots is a factual question first and foremost.
16 You will have a legal decision whether or not that satisfies
17 the requirement of the, of the restrictive covenants but it is
18 first and foremost a factual question to the extent it
19 encompasses the ultimate issue. You know, 704 explicitly,
20 Rule 704 explicitly says that is okay and even apart from that
21 what the *Dawkins* case is very cle -- not *Dawkins*, the *Vortex*
22 case is very clear that once the judge had made the decision
23 that a fiduciary duty applied there, that was the decision for
24 the judge, for the Court to make then Professor Freeman was
25 entitled to testify whether it had been violated. Under

1 Mr. Hiller's reasoning, Mr. -- Professor Freeman wouldn't a
2 been able to testify at all because those, as he would put,
3 those are legal issues but here the analogy if you can put it
4 an analogy to the ca -- this case is once you've made the
5 decision that real estate law and contract law and so forth
6 applies to this issue, Mr. Estridge can testify with respect
7 to those as to a factual conclusion, ha -- what does that mean
8 with respect to this particular set of lots.

9 MR. HILLER: But that's not what he asked him. I mean,
10 if he's gonna ask him and and and I did not get on my toes
11 when he was asked about common practice and recordin' deeds
12 or whatever and that might have some relation from an expert
13 standpoint to a factual determination or a legal decision that
14 you have to make but he, what he asked him was specifically
15 what his opinion was which is the sole province of the Court
16 as to the issue of whether this created those lots. He wants
17 to talk about ways it mighta been then I assume you're gonna
18 let him although, you know, I'm I'm object to all his
19 testimony but but but based on your earlier ruling I'm
20 limiting it to when he's expressing an opinion as to a legal
21 conclusion which is exactly what Mr. Herlong just asked him to
22 do.

23 THE COURT: Ask your question again.

24 BY MR. HERLONG:

25 Q. Mr. Estridge, in your opinion the Stephens' lots were --

1 was was this property represented by the Stephens' lots, was
2 it developed into lots?

3 A. Yes ---

4 MR. HILLER: I ---

5 A. --- and I can expand?

6 THE COURT: Well wait a minute.

7 A. Yeah.

8 MR. HILLER: Well that that and that that's exactly what
9 *Dawkins* prohibits.

10 MR. HERLONG: That is not ---

11 MR. HILLER: That that ---

12 MR. HERLONG: --- what *Dawkins* prohibits.

13 MR. HILLER: --- that that is the legal question that
14 you're gonna have to answer.

15 MR. HERLONG: *Dawkins* prohibits a a expert witness, and
16 I've been here with Professor Freeman as as you may have seen,
17 an expert witness opines on what the relevant standards are:
18 who has the burden of proof, what is the law that applies
19 here, is there a fiduciary duty at all? *Dawkins* preve --
20 prevents an expert from coming in here and being a law
21 professor talking about the general rules of law, it
22 specifically does not prevent an expert taking those rules of
23 law and applying 'em to a factual ---

24 MR. HILLER: Here here ---

25 MR. HERLONG: --- question.

1 MR. HILLER: --- here here's a quote from *Dawkins*, "The
2 expert offered no factual evidence. He proffered his opinion,
3 assuming certain facts, trials coun -- counsel's actions fell
4 below acceptable legal standard of competence. The testimony
5 was not designed to assist the PCR court to understand certain
6 facts, but, rather, was legal argument why the PCR -- C -- PCR
7 court should should rule..." This witness has no facts to
8 offer, none whatsoever. He only has a an opinion assuming
9 certain facts, that's all he has, that's exactly what the
10 Court said was not admissible. He hasn't offered any facts,
11 he can't offer any facts.

12 MR. HERLONG: Your Honor, he's an expert witness. Expert
13 witnesses, he has offered some facts, but expert witnesses
14 testify based on the facts and information they learn from the
15 record and from others in the kinds of things they can rely
16 on, one of those things is the law, what is the law. Expert
17 witnesses are entitled to testify about that all the time,
18 that's what experts do, that's a complete ---

19 MR. HILLER: Objection.

20 MR. HERLONG: --- misreading of ---

21 THE COURT: Well ---

22 MR. HERLONG: --- *Dawkins*.

23 THE COURT: --- subject to your objection I'm gonna allow
24 him to to to answer the question.

25 BY MR. HERLONG:

1 Q. Mr. Estridge, you said you had an opinion, tell us what
2 it is and explain it.

3 A. Yes, in my opinion those five lots were developed. When
4 the steps that are in the record had been taken, we had an
5 owner of property being the Watson's Orchard Property Owners
6 Association which owned the dirt, it chose to have a survey
7 prepared drawing lot lines, meaning creating points that would
8 become boundaries of five lots, it then either solicited or
9 other -- otherwise came into contact with a perspective buyer
10 of those five lots, that buyer they agreed to a price and they
11 agreed to a price on a per lot basis, my recollection is it
12 was twenty-one thousand five hundred dollars (\$21,500) per
13 lot, they then between them had a -- then there was a letter I
14 believe to other people in the, in the subdivision across the
15 street that would have to approve that sale and in that letter
16 it was described as five lots with a purchase price of
17 twenty-one thousand five hundred dollars (\$21,500) per lot.
18 They then had one or more attorneys involved, don't know
19 exactly who drew the deed, but it was a deed drawn by an
20 attorney for one of them, maybe both of them, which described
21 the the transaction as a conveyance from one party to a second
22 party of five lots as shown in a survey. The buyer by paying
23 consideration and accepting the deed and recording the deed
24 trusted that the survey he had in his hand was the same as the
25 survey the sar -- seller's talkin' about, it's identified and

1 we do that all the time, you can identify surveys by who
2 prepared it, its date, survey number, etc. to make sure you're
3 looking at the same survey and paid consideration and recorded
4 the deed, those lots were developed when that process was
5 completed.

6 Q. Okay.

7 A. Obviously, in order to go further and improve or build
8 upon those lots, the present owner or any future owner would
9 have to take some additional steps and go through some of the
10 processes that you've been hearing about and talking about to
11 get building permits. The the the principle enforcement
12 mechanism for the whole subdivision regulation and subdivision
13 and the Planning Commission staff, etc. is to make sure that
14 before grading and building permits can be pulled and
15 construction can begin that certain requirements have been
16 complied with but the development of the lots it's it's a very
17 common practice for for land to be divided into lots by
18 identifying the points of dimension in the lots, that it
19 continues to be raw land until and unless somebody chooses to
20 build improvements on it.

21 Q. Okay. In terms of the Stephens like Mr. Mike Stephens
22 testified a few minutes ago that his dad, did have the
23 opportunity to purchase a lot from his dad, would his dad have
24 been able to sell him a lot?

25 A. He certainly could've. Um, ---

1 Q. And how would that ---

2 A. Uh, ---

3 Q. --- have worked without a recorded plat?

4 A. A deed woulda been prepared from whichever entity owned
5 that that lot at that time, that deed woulda made reference to
6 the same survey that is referred to in the five lot deed,
7 consideration woulda passed and Michael Stephens would have
8 taken that deed and recorded it at the courthouse so that from
9 that day forward as between the grantor and the grantee, title
10 would absolutely have passed to the grantee and the whole
11 world woulda been placed on notice that that was the case.

12 Q. What about that notice issue with respect to these five
13 lots and the fact that the plat it identifies the lots with
14 specificity was not recorded, does that present a notice
15 issue?

16 A. Notice is given by the deed and the notice con --
17 consists of whatever the deed states. The deed in this case
18 stated that these were five lots located in a particular place
19 and with reference to a particular survey, that that satisfies
20 the no -- notice requirement. If if for instance just
21 hypothetically, um, the Watson's Orchard Property Owners
22 Association had come to me and said, We'd like to sell you a
23 lot and here's a survey and we'll sell you lo -- this lot
24 shown right here, if I had been naive enough to pay them and
25 to take a deed referencing that lot and gone to the

1 courthouse, I would not have been able to acquire good title
2 because I was on constructive notice that Pelham Properties
3 owned that lot, that's the purpose of giving construction
4 no -- constructive notice by recording.

5 Q. Okay. Have you ever known -- well first I assume that
6 you have dealings with the Planning Commission and their staff
7 have had dealings with them over the years.

8 A. I have had considerable dealings with them.

9 Q. Have you ever known them to levy a fine, ---

10 MR. HILLER: I ---

11 Q. --- hundred dollar fine?

12 MR. HILLER: --- I I object to his testimony. What what
13 what benefit and relevance is it whether he's known whether
14 the Planning Commission has fined somebody?

15 THE COURT: Well I'm gonna let him answer it, that's
16 alright.

17 BY MR. HERLONG:

18 Q. Well have you ever known them to levy a fine when someone
19 sold couple lots, four or five lots like this, without
20 recording a plat?

21 A. I am not aware of any such fine ever having been levied
22 in my experience.

23 Q. In your experience personal and whatever you've known
24 from being a real estate agent in Greenville, have you ever
25 known them to move to enjoin a sale where there are a couple

1 lots, five lots being sold without recorded plat?

2 A. Well I'm not a real estate agent in Greenville but I am a
3 real estate attorney in Greenville and I'm not aware of there
4 ever even having attempted to enjoin the sale of lots for that
5 reason.

6 Q. Okay.

7 MR. HERLONG: Your Honor, that's all the questions I
8 have.

9 EXAMINATION BY THE COURT:

10 Q. Do you know of any, of any violations of those
11 ordinances?

12 A. Uh, the subdivision regulations, uh, violations in what
13 sense? I'm I'm aware of of people who have violated, uh, one
14 or more provisions within the overall subdivision
15 regulation.

16 Q. Okay, and no fines levied, no no suit was was initiated
17 to enjoin it?

18 A. Not to my knowledge.

19 Q. Does that make it right?

20 A. Uh, it doesn't make it in complia -- it doesn't make it
21 comply ---

22 Q. Okay, ---

23 A. --- and ---

24 Q. --- would that be a a yes? Do -- is it -- does it follow
25 the directives of the regulations which are promulgated

1 pursuant to law because no fine is levied?

2 A. It's up to, it it it doesn't make it comply. Whether
3 it's right or wrong I'm I'm not quite sure I can answer it
4 that way 'cuz that connotes more on moral judgment but the
5 planning commission ---

6 Q. No, no, ---

7 A. --- it had staff ---

8 Q. --- no. If a regulation lays out a course of conduct
9 which is not followed and that same regulation says if you
10 don't follow it you can get fined or enjoined, does the fact
11 that they don't fine them and they don't move to enjoin it
12 does that make that then comply with the the course of conduct
13 required under the regulation?

14 A. It doesn't make it comply with that regulation, ---

15 Q. Okay. Okay, ---

16 A. --- doesn't necessarily aff ---

17 Q. --- not a moral decision.

18 A. --- doesn't necessarily affect what has happened as
19 between two parties, it may affect as what what has happened
20 vis-a-vis the regulations and the purpose they're designed to
21 accomplish.

22 Q. Okay.

23 THE COURT: Alright, Mr. Hiller, what you want?

24 CROSS-EXAMINATION BY MR. HILLER:

25 Q. Mr. Estridge, if you went down to the courthouse and you

1 wanted to look up the re -- plat that's referenced in the
2 deed, could you do that?

3 A. I I have done this often ---

4 Q. No, I'm talkin' about this case.

5 A. I I'm I'm do -- I'm saying could I do it yes, I would
6 call the survey -- surveyor. I wouldn't ---

7 Q. No, no ---

8 A. --- find it ---

9 Q. --- I didn't -- that wasn't my question, Mr. Estridge.
10 Can you go down where we record documents, this is a record
11 state, ---

12 A. Sure.

13 Q. --- you record documents, state law states that you
14 record subdivision plats; can you go down to the record office
15 and find this survey?

16 A. Not at the record office.

17 Q. Okay, and and you got the survey from Mr. Herlong.

18 A. I surely did, yes.

19 Q. Okay, a -- but if I wanted to get the survey I could not
20 go to ROD office and look at it, right?

21 A. Yeah, but ---

22 Q. Just yes or no.

23 A. --- not at the ROD office.

24 Q. Right, and and any other attorney searchin' the title to
25 this property could not go to the ROD office where the

1 survey's supposed to be recorded to comply with the recording
2 statute and get a copy a that survey.

3 A. That's not where that attorney would look for it.

4 Q. Okay. And and and and you say you would call the
5 surveyor, well you understand the reason that title insurance
6 came into existence is 'cuz you and I will die, right, we're
7 gonna die some day?

8 A. Oh, yes, we will die someday ---

9 Q. Okay, ---

10 A. --- I understand.

11 Q. --- and and and and so somebody who wants to sue me
12 because I put a bad call on a deed or I I didn't find a
13 mortgage is not gonna be happy if I'm dead when that happens,
14 are they?

15 A. I don't know.

16 Q. Okay, and and and the same with the survey. Surveyors
17 can come in and out of existence, they don't have some central
18 depository other than the ROD office for their per -- work
19 product, do they?

20 A. They have their own offices, ---

21 Q. Right, yeah.

22 A. --- where surveys ---

23 Q. As long as they're alive or in still in business.

24 A. Or their successors which ---

25 Q. Well maybe.

1 A. --- frequently happens.

2 Q. Maybe. Now you testified that WOPOA, Watson Orchard
3 Property Association, Inc. commissioned this survey?

4 A. No, I don't know who commissioned it.

5 Q. Oh, but that's what you said, they -- you said as part of
6 your expla -- explanation for why you considered it lots is
7 is that the the pro -- the owners of the property commissioned
8 the survey.

9 A. I don't think I used the word "commission". They signed
10 a deed that referred to ----

11 Q. Okay, they signed ---

12 A. --- a survey.

13 Q. --- a deed that referred to a a a a survey that was not
14 recorded that somebody else had prepared.

15 A. I don't know who prepared it, ---

16 Q. Okay, ---

17 A. --- a surveyor ---

18 Q. --- well ---

19 A. --- prepared it.

20 Q. Alright, uh, well do you even know who the surveyor
21 was?

22 A. I don't have it in front of me but it was referenced in the
23 deed. If I had the deed in front of me, I could call that
24 out.

25 Q. Okay. Now who owned the property when that survey was

1 prepared?

2 A. Uh, I would have to look back in the records to see,
3 uh, the ---

4 Q. Well no, I wanna know what what what your understand is
5 based upon the documents you said you reviewed because that's
6 what your opinion's based on, isn't it?

7 A. I would have to look at the date of the survey and then
8 at the record of title to determine who was the record owner
9 on the date the survey was signed.

10 Q. Okay, did you do that before you gave this opinion
11 today?

12 A. I didn't need to do that because my opinion is that the
13 lots had been developed.

14 Q. My question is is did -- so the answer to my question as
15 I understand it, Mr. Estridge, is you have no idea who owned
16 the property when this survey was prepared.

17 A. I don't have an idea without looking at series of
18 deeds.

19 Q. Okay.

20 A. I could esta -- ascertain that ---

21 Q. But you did not feel that it was necessary to know who
22 owned this property when the survey was prepared.

23 A. No, because as between the grantor and grantee they made
24 reference to existing survey they both agreed to.

25 Q. Alright, now are you aware that this property is subject

1 to covenants and restrictions?

2 A. Yes.

3 Q. Did you review those?

4 A. I did and I I I reviewed covenants and restrictions, uh,
5 not A to Z but I reviewed them for certain purposes.

6 Q. Okay, do those covenants specify minimum lot sizes?

7 A. At what time and which set?

8 Q. The set that we're talkin' about, this property -- well
9 let me ask ya this: What -- do you know who put the covenants
10 and restrictions on the property?

11 A. Well there were, uh, my recollection just from history is
12 that there were some covenants placed on there in the 60s I
13 believe and then pursuant to an Order of Judge McGowan those
14 covenants were changed on or about 1980 or so.

15 Q. Okay. Do you know -- so your your opinion is that these
16 are lots under the covenants, is that what your opinion was?

17 A. That was not my opinion.

18 Q. Okay, so your your opinion is they -- you you are not
19 sayin' that these have been created lots under the covenants,
20 under whatever the covenant's requirements are.

21 A. My opinion is that these were lots developed by the time
22 the deed was recorded.

23 Q. By and between the grantor and the grantee.

24 A. Before the deed was recorded the lots referred to in the
25 deed had been developed, that's my opinion.

1 Q. You agree with me, do you not, that the metes and bounds
2 description contained in the deed from Watson Orchards
3 Property Owners Association, Inc. to Pelham Properties, Inc.
4 is a metes and bounds boundary description?

5 A. It's a description of ---

6 MR. HERLONG: Object to the form.

7 A. --- the outside ---

8 MR. HERLONG: Your Your Honor, I think that misstates the
9 testimony that we went through pretty laboriously early.

10 MR. HILLER: I do not believe in this ---

11 THE COURT: Well ---

12 MR. HILLER: --- cross-examination.

13 THE COURT: --- go ahead. Go ahead.

14 BY MR. HILLER:

15 Q. Mi -- Mi -- Mr. Estridge, you would agree with me, would
16 you not, that this is a boundary survey of a single piece of
17 land?

18 A. No.

19 Q. Okay. Did you plot the metes and bounds?

20 A. It is a boundary survey of an area which surrounds what
21 is also shown on the survey, i.e., five lots.

22 Q. There is no survey, mis -- mis -- Mr. Estridge, there is
23 no survey. What what I'm talkin' about is the deed, it's
24 what's recorded at the courthouse, it shows no, it has no
25 internal calls, correct?

1 A. The -- it was not directly -- it incorporates a survey
2 which does have internal calls and that survey is therefore
3 incorporated in the description of what is being conveyed.

4 Q. Alright, and that portion, that prefatory portion of the
5 description, you have never once mentioned the word
6 "containing", are you ignoring that?

7 A. Would you like to show me the exhibit you're talkin' to,
8 I will attempt to answer the question.

9 MR. HILLER: This is not in evidence, ---

10 COURT REPORTER: Uh-uh (negative).

11 MR. HILLER: --- okay, well nor is that.

12 MR. HERLONG: This needs to be kept for, uh, marked for
13 identification.

14 COURT REPORTER: Thanks.

15 Q. I'm showing you what, I'm sure there's numerous copies in
16 the, in the record, this is the deed from Watson Orchard
17 Property Association to Pelham Properties, Inc., this is the
18 deed, you've seen this deed.

19 A. Yes, I've seen a copy of that deed.

20 Q. And this deed says, "containing five lots".

21 (Whereupon, the witness examined the exhibit.)

22 A. Yes, and the well the the phrase "containing five lots"
23 appears in the deed followed by the words "as is more fully
24 shown on a plat entitled "Survey for Richard Watson",
25 prepared ---

1 Q. No, ---

2 A. --- by Carolina ---

3 Q. --- I I don't -- I ---

4 A. --- Surveying Company," etc.

5 Q. Well that's been read in the record so many times, I'm
6 sure Judge Miller is aware a what it says, but you placed,
7 you've removed that word from your opinion, the word
8 "containing".

9 A. My opinion is that by the time this deed was recorded
10 these five lots shown on that survey had been developed into
11 lots.

12 Q. So you're basing your opinion solely on the survey, the
13 fact that somebody had a survey done that was later referenced
14 in the deed that had lots on it even though they aren't in the
15 deed.

16 A. That's not a true statement.

17 Q. Okay, tell me what a true statement would be.

18 A. Is that a series of actions on the part of various
19 parties led to the development of these lots and I described
20 that series of actions earlier, ---

21 Q. Okay.

22 A. --- that was all a part of my ---

23 Q. Would would your opinion be different if you were aware
24 that Mr. Watson didn't own this property when this survey was,
25 uh, revised?

1 A. What Mr. Watson?

2 Q. Well who's it say the survey's for?

3 A. Uh, ---

4 Q. What is, what is the title of the survey in the ---

5 A. Title of the survey says "Survey for Richard Watson", ---

6 Q. Okay.

7 A. --- didn't matter whether they owned 'em or not at the
8 time these actions took ---

9 Q. Alright.

10 A. --- place.

11 Q. So so the only people, the only people at the time these
12 transactions took place that knew what they were talkin' about
13 from the standpoint of the lots is WOPOA and Pelham, Inc.
14 Pelham Properties?

15 A. I don't know who else may have had access to that survey
16 nor to this legal description, I don't know. I know that the
17 grantor and grantee ---

18 Q. But n ---

19 A. --- deemed to have had had ---

20 Q. --- but nobody ---

21 A. --- access ---

22 Q. --- could go down to the courthouse and find out,
23 right?

24 A. May I finish the ---

25 Q. Certainly.

1 A. --- answer to your previous question? I know of two
2 parties who had access to the survey reference and that is the
3 two parties who were named as grantor and the grantee. The
4 grantor and the grantee were satisfied that that survey
5 depicted the lots that they both wanted developed. The
6 grantee was entitled to do whatever due diligence the grantee
7 chose to do in reviewing that survey and making sure that he
8 was buying what he thought he was buying, that's all it took
9 for those five lots to have been developed.

10 Q. And and you would agree with me, would you not,
11 Mr. Estridge that none of those five or or no more than --
12 that property could not be sold as anything other than a tract
13 of land unless a a plat was recorded and approved by the
14 Greenville County Planning Department?

15 A. I disagree.

16 Q. Alright. What what what -- in your opinion how could it
17 be sold and not violate the subdivision ordinance?

18 A. By deed between the owner and a willing purchaser who is
19 willing to purchase those lots by reference to an unrecorded
20 plat, it's a very, ---

21 Q. No, I'm talkin' ---

22 A. --- very common ---

23 Q. --- can he ---

24 A. --- practice.

25 Q. --- sell five, can he -- could Pelham Property sell five

1 pieces a property without recordin' a subdivision plat?

2 A. If there had been five buyers of those lots named on this
3 deed and they had all five ---

4 Q. Well ---

5 A. --- relied upon, finish my answer, and they had all five
6 relied upon this same unrecorded survey then there would have
7 been five buyers instead a one buyer; ---

8 Q. Now ---

9 A. --- as it happens in in in this instance there was a
10 single buyer.

11 Q. --- Mr. Estridge, what I'm asking ya is are your eyes
12 better than mine? Can you read what that date of recording
13 is?

14 A. No.

15 Q. Subsequent to the date of recording of this deed, Pelham
16 Properties, Inc. could not sell this property as five
17 individual pieces without complying with the Greenville County
18 Subdivision Ordinance.

19 A. It, again, as between a willing seller ---

20 Q. Well ---

21 A. --- and a ---

22 Q. --- wait, wait, wait, ---

23 A. --- willing buyer ---

24 Q. --- can ya give me a yes or a no on that. This doesn't
25 have anything to do with sellers and buyers. I'm asking

1 whether he could sell, Pelham Properties could sell five
2 individual tracts of land after they receive title and be in
3 compliance with the subdivision ordinance without filing a
4 plat, now that's a yes or no question and then you can
5 explain.

6 A. When you added the phrase "and be in compliance" then
7 obviously no, they woulda violated probably, I'm not
8 completely sure that's right, but they woulda violated
9 probably that phrase in the overall subdivision ordinance
10 which says one should not sell by reference to a plat without
11 recording that plat and if one does sell then one is subject
12 to a hundred dollar fine or subdivision but as between the
13 seller and the purchaser as a matter of common law and
14 recording law that transaction could have taken place.

15 Q. That's all the questions I have, thank you.

16 REDIRECT EXAMINATION BY MR. HERLONG:

17 Q. Mr. Estridge, as a -- is it your position that a deed
18 that references an unrecorded ---

19 MR. HILLER: Well, Your Honor, I'm going to ask that he
20 not lead anymore in this, well in this -- I I've been really
21 good about that but if he's askin' for a professional opinion
22 which of course I object to anyway, I ask that he not lead as
23 well.

24 MR. HERLONG: I I'll try to ask a non-leading question,
25 Your Honor, I'm sorta struggling with how to ask the question.

1 BY MR. HERLONG:

2 Q. Mr. Estridge, is there a rule of construction with
3 respect to whether, uh, unrecorded plats and so forth
4 referenced in a deed are incorporated by reference?

5 A. I, without havin' it in fronta me I think there's
6 actually a a portion of the recording statute that says that.
7 It is certainly our understanding in the practice of real
8 estate law that the metes and bounds shown on the survey are
9 incorporated into the deed.

10 Q. With what? I think the record of that statute ---

11 A. I mean, that the lines shown on the referenced survey are
12 the lines by which the property is being conveyed.

13 Q. Okay, I think the statute you're thinking of probably
14 refers to a recorded survey, I'm asking you about an
15 unrecorded survey or any survey.

16 A. Likewise, if if I am the buyer and I choose to pay my
17 consideration and accept and record a li -- a description
18 based on an unrecorded survey, I have in fact incorporated
19 what's in that un -- unrecorded survey into my and into my
20 purchase, uh, I'm gonna be very diligent if I represent that
21 party to either if it's not gonna be recorded to make sure
22 that it shows what I want it to show.

23 Q. No further questions.

24 RECROSS-EXAMINATION BY MR. HILLER:

25 Q. Mr. Estridge, are you sayin' that you would prepare a

1 deed that only contained the prefatory portion of that that
2 deed in front of ya and consider that transferring good title?

3 A. It it it certainly would, the grantee accepts it at its
4 peril. It may be that the grantor and grantee are the same
5 party or related parties ---

6 Q. Okay.

7 A. --- and that's where it's common practice.

8 Q. I meant, you know, as a real estate attorney professional
9 would you ever prepare a deed that conveyed property and had
10 no more description other than saying, The property that's
11 shown on an unrecorded plat?

12 A. If that fits the purpose of the conveyance between
13 Party A and Party B and Party B has that survey and it serves
14 its purpose and that's what they asked me to do, yes.

15 Q. And if all three of ya got hit by a bus, is anybody gonna
16 be able to figure that out down the road from a title
17 standpoint?

18 A. If, uh, you were -- if you made sure that before you
19 subjected yourself to traffic that you weren't the only person
20 who had that survey and I would advise Mr. Y who had that who
21 was the grantee to make sure that persons who worked for or
22 represented him such as his attorney at a minimum had a copy
23 of that survey. I'm not advising you that's the best way to
24 transact real estate but as between related parties ---

25 Q. Well these aren't related ---

1 A. --- can be done.

2 Q. --- parties. These aren't related parties, we know that.
3 You would -- have you ever prepared a deed that's that
4 referenced only your unrecorded survey as your property
5 description ever?

6 A. Quite a few.

7 Q. Really?

8 A. Yes.

9 Q. Always related parties?

10 A. Between Company A and Company B both of whom had reason
11 to want to convey those tracts of land by reference to a
12 survey that was not recorded and whose intentions were clear,
13 I have not only prepared but recorded those deeds.

14 Q. Hmm, well, thank you.

15 EXAMINATION BY THE COURT:

16 Q. Alright, Mr. Estridge, just curious. I understood from
17 your direct testimony that you felt that developed land can be
18 raw land, ---

19 A. Yes.

20 Q. --- is that right?

21 A. Well not -- my -- is that -- my testimony is that lots
22 can be developed and continue to be raw land, developed with a
23 small "d" and undefined term, as in the sense of being
24 created. It's very common to create lots by identifying the
25 points on the raw land that will constitute the boundaries of

1 those lots and you have developed those lots ---

2 Q. Okay, in this ---

3 A. --- and developed -- I'm sorry, go ahead.

4 Q. Well, I'm sorry, but in this circumstance with this the
5 facts in this case, is there anything that requires that this
6 property in the future be deeded pursuant to those, what, lot
7 lines?

8 A. The consent of the parties who own the five lots
9 described ---

10 Q. Um-hum.

11 A. --- would have to be obtained in order to change those
12 lot lines.

13 Q. But but there are no tax map numbers for those individual
14 parcels, are there?

15 A. I don't think so, I think they're all under a single tax
16 map would have --- that has dotted lines.

17 Q. So those, your opinion then is that just drawing a line
18 on a survey changes raw land into a developed lot, is that
19 right?

20 A. Well yes, ---

21 Q. So all, ---

22 A. --- it ---

23 Q. --- it's just a line on a piece a paper.

24 A. Or that it is a method by which the owner of that raw
25 land can develop that raw land into lots, develop in a sense

1 of ---

2 Q. And so ---

3 A. --- create.

4 Q. --- you'd -- okay, and and but it's just a line on a
5 piece a paper and once that line is on the piece a paper
6 you've got a developed lot, is that ---

7 A. That's correct ---

8 Q. Okay.

9 A. --- 'cuz devel -- not a developed lot in the sense of one
10 that now has a water line running up to the middle of it, it's
11 the term "developed" is used in a lotta different contexts.
12 In the context of of the restricted covenants which says, Into
13 which such land shall have been developed or ---

14 Q. Um-hum.

15 A. --- then I think the context is that once those lines
16 were drawn and the grantor and the grantee and anyone who
17 wanted to look in the public record can see that it's
18 been ---

19 Q. Okay.

20 A. --- that five lots have been created ---

21 Q. Well ---

22 A. --- that it satisfies the definition of developed in that
23 context.

24 Q. --- but there is no way from the public record that you
25 can know what those five lots are, is there?

1 A. Not from the public record ---

2 Q. Okay.

3 A. --- but for purposes of people that needed to know,
4 there's a way to find out.

5 Q. And if the grantee Mr. Stephens had expressed to his
6 attorney, closing attorney, that he wanted this property as a
7 buffer zone, would that impact your opinion in any way?

8 A. I ---.

9 Q. This is the the ex -- what he expressed to the closing
10 attorney who handled this transaction he wanted it as a buffer
11 zone to buffer his property.

12 A. That it it coulda been a buffer as five lots as well as
13 it coulda been a buffer as a single lot depending upon what
14 his total intention was and I don't know what his total
15 intention was.

16 Q. Okay, alright.

17 A. Alright..

18 Q. Thanks.

19 (Whereupon, the witness left the stand.)

20 THE COURT: Can we cut him loose?

21 MR. HERLONG: Yes, Your Honor.

22 THE COURT: Okay.

23 THE WITNESS: Thank you.

24 THE COURT: Cut him loose?

25 MR. HILLER: (Nodded in the affirmative.)

MOTIONS AND MATTERS

1 THE COURT: Alright.

2 MR. HERLONG: Your Honor, I'm gonna read into the record
3 at this point, uh, the deposition *de bene esse* of Claire
4 Manning.

5 THE COURT: How long is it?

6 MR. HERLONG: It's it's about twenty, how far -- it's
7 about, I think it took about an hour.

8 THE COURT: Well I'm not gonna let you read that to me,
9 I'm ---

10 MR. HILLER: Well and my ---

11 THE COURT: --- I might fall asleep.

12 MR. HERLONG: We can submit it, Your Honor, I'm happy to
13 to that.

14 MR. HILLER: --- and my objections with regards to that
15 will be exactly the same, Your Honor.

16 THE COURT: I don't know who this, who the wit -- I
17 don't ---

18 MR. HILLER: She's a lawyer that they sent documents to
19 and asked to give an opinion.

20 THE COURT: Askin' that it be ---

21 MR. HERLONG: Well she was more than that. She she, uh,
22 she was the title person, the head of the State of South
23 Carolina, the vice-president ---

24 MR. HILLER: Well she's what the deposition ---

25 MR. HERLONG: --- of Chicago Title ---

MOTIONS AND MATTERS

1 THE COURT: Wait a minute, wait a minute.. Randy, quit
2 interrupting. Alright, go ahead, William.

3 MR. HERLONG: She is the I I think is vice-president of
4 legal affairs or something like that for Chicago Title and she
5 is the person who deals with title questions as they come
6 forward., She's the person along with three of her attorney
7 colleagues who dealt with all the questions that Pat Grayson
8 was putting to them and they concluded, all four of 'em
9 together, that these were lots and were entitled to vote, they
10 concluded that in 2009 and then when I asked her at deposition
11 is that still your opinion, it's still her opinion. She's an
12 uncompensated witness, Your Honor, she's, we're not payin'
13 her, she's -- it's just her opinion, her t -- her factual
14 testimony but her opinion on top of it.

15 THE COURT: Well you have her qualified as an expert? Is
16 she qualified as an expert?

17 MR. HERLONG: Uh, she's ---

18 MR. HILLER: I don't believe she's qualified ---

19 MR. HERLONG: --- she's definitely qualified ---

20 MR. HILLER: --- as an expert.

21 MR. HERLONG: --- as an expert, Your Honor.

22 THE COURT: No, no, no, in in the deposition.

23 MR. HERLONG: In the deposition I did not make a motion
24 to make her a expert witness. I would do that ---

25 THE COURT: Well ---

MOTIONS AND MATTERS

1 MR. HERLONG: --- now and ---

2 MR. HILLER: And and and and all this talk about other
3 people that agreed with her and it was all hearsay and it's,
4 you know, this was a -- I I understood to be a *de bene esse*
5 deposition so ---

6 MR. HERLONG: Yes.

7 MR. HILLER: --- I I -- we reserved objections, uh, and
8 and but of course I I have always taken the position even
9 though I obviously attended the deposition that Mr. Herlong
10 scheduled them but; number one, she's not an expert; number
11 two, if she was an expert expert in this, uh, her her
12 particular opinions were ---

13 THE COURT: Well if she's not qualified as an expert in
14 the -- ya can't and she's not ---

15 MR. HERLONG: She is ---

16 THE COURT: --- here ---

17 MR. HERLONG: --- qualified, Your Honor. She is
18 qualified.

19 THE COURT: No, no, wait a minute. It's a *de bene esse*
20 deposition. At the time you take the deposition is when you
21 gotta make the motion to have her qualified as an expert
22 because he's gotta have an opportunity to *voir dire* to to
23 consent or object to it. You can't come in later and go,
24 Well, this person's an expert, I can't, I mean, that that's
25 not how it works.

1 MR. HERLONG: Well as a factual witness she tes -- she's
2 got factual information about what happened and how all went
3 through in 2009, what their opinions were ---

4 THE COURT: Well that's the ---

5 MR. HERLONG: --- and those are ---

6 THE COURT: --- pro ---

7 MR. HERLONG: --- but factual ---

8 THE COURT: Wait a minute.

9 MR. HERLONG: --- opinions, Your Honor.

10 THE COURT: It -- she's not an expert, she can't render
11 opinions.

12 MR. HILLER: And and and you ruled all the things that
13 their opinions about what they should do to that Mr. Grayson
14 was gonna testify all durin' that period and this was his
15 liaison, um, it's irrelevant anyway.

16 MR. HERLONG: Your Honor, she's probly the most
17 knowledgeable person in the state on these issues, she deals
18 with 'em all the time ---

19 THE COURT: Well, I don't -- you know, that that may well
20 be but but, uh, you know, we we gotta deal with the rules of
21 evidence and, I mean, ---

22 MR. HERLONG: Well she testified factually, for ex -- let
23 me give you auto factual example, there's lots of facts in
24 there. She testified factually that they never record things
25 in Charleston, this is routine what happened here, it's

1 common ---

2 MR. HILLER: That's not a factual ---

3 MR. HERLONG: --- place, that's her testimony.

4 MR. HILLER: But that's not a factual issue that's
5 relevant to this case. I I mean, what other people do doesn't
6 have anything to do with this case frankly, Your Honor, is is
7 my position. What coulda been done, what shoulda been done,
8 what they thought they shoulda done, none a that had anything,
9 all we're concerned about is what was done and and and and,
10 you know, what happens in Charleston certainly doesn't have
11 any relevance up here.

12 MR. HERLONG: What happens in Charleston is within the
13 State of South Carolina. What she testified to is the
14 practice in this state very often, just like Mr. Estridge
15 says, things are not recorded, they happen exactly like this
16 and, you know, she did reach an opinion of her own based on
17 that and based on everything else but she just said at the
18 whether it's, whether it's on a tax map, whether it's recorded
19 with the GCIS, all that is just immaterial from a title
20 standpoint. Now that's getting into the opinion part ---

21 THE COURT: Is there, ---

22 MR. HERLONG: --- but the factual ---

23 THE COURT: --- is there, is there title insurance on
24 this tract a land?

25 MR. HERLONG: No, but they committed to provide it,

1 that's part of ---

2 MR. HILLER: Well you could ---

3 MR. HERLONG: --- what she says here.

4 MR. HILLER: No, no, there is. Well they put into
 5 evidence Mr., um, Kehl's opinion on the title and his title
 6 insurance policy and and and, you know, the one thing that
 7 just seems to be overlooked here, Your Honor, is is what we've
 8 said all along is what these people were supposed to have done
 9 is subdivide it and sell it as residential real estate. It
 10 can be done today, this minute they can subdivide these lots
 11 and sell 'em as residential real estate and that's what we
 12 want 'em to do so there it can be gotten title insurance, just
 13 not if you wanna build a Walgreens, uh, uh, uh, because then
 14 it's gonna be subject to the restrictive covenants that
 15 prohibit or limit it to single-family residential use so so
 16 that's why her testimony has nothin' to do with this case,
 17 it's all about commercial, it's all about after you've busted
 18 the current homeowners out of what they were entitled to
 19 have.

20 MR. HERLONG: Your Honor, ---

21 MR. HILLER: On his ---

22 MR. HERLONG: --- this is your ---

23 MR. HILLER: --- dir -- no, no, no ---

24 MR. HERLONG: His testi ---

25 THE COURT: Wait, wait.

MOTIONS AND MATTERS

1 MR. HILLER: Now he sat there and said all these things
2 that she was gonna say that's not in evidence, I don't see why
3 I can't say my side a the story as well.

4 MR. HERLONG: Well then I'm gonna call more witnesses,
5 Your Honor, 'cuz ---

6 MR. HILLER: I don't care.

7 MR. HERLONG: --- everything he says is subject to
8 dispute. He chose to prevent a le -- present a legal case and
9 not call in, we wanna go into what -- there's no Walgreens
10 possible under the, under the -- that's just, that's just
11 completely wrong ---

12 THE COURT: Well I I'm not, we're not ---

13 MR. HILLER: It's not relevant ---

14 MR. HERLONG: Um, ---

15 MR. HILLER: --- just like his ---

16 MR. HERLONG: --- Your Honor, ---

17 MR. HILLER: --- talk about ---

18 MR. HERLONG: --- what she did do, to answer your
19 question, what she did do was they gave a title commitment,
20 Chicago Title gave a title commitment that if they got this
21 vote including a a majority with the property owners inside
22 with the Stephens' lots, if they got a majority of votes for
23 that, Chicago Title would issue title insurance for the
24 property, that's what they got and that's a factual question.

25 MR. HILLER: No, it's not. Well, I mean, Your Your

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1 Honor, she didn't even look at the subdivision order until the
2 day before her deposition which was in August and yet she had
3 filed an affidavit. She hadn't even looked at it and then she
4 just looked over it, she didn't even know who owned the
5 property, didn't know who the declarant was so she she's
6 certainly not an expert and certainly doesn't have anything to
7 add to this case.

8 MR. HERLONG: Your Honor, she is a ---

9 MR. HILLER: Well, he didn't, I mean, she's not an
10 expert, end of story.

11 MR. HERLONG: She -- well okay, fair enough on that point
12 but she's -- they agreed to issue title insurance ---

13 MR. HILLER: Well ---

14 MR. HERLONG: --- with the Stephens' lots voting and that
15 is a factual question ---

16 MR. HILLER: No ---

17 MR. HERLONG: --- which is highly important. Ya know, we
18 can scrub out the opinion part if you'd like. I'll I'll go
19 out and I'll I'll remove that part but talk about factually
20 and particularly the part where they, uh, they agreed to issue
21 the title insurance, that they gave a commitment, that's a
22 pretty big deal.

23 MR. HILLER: Well, she's a ---

24 THE COURT: You have a ---

25 MR. HILLER: --- risk manager, ---

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1 THE COURT: --- do ---

2 MR. HILLER: --- she's a risk manager.

3 THE COURT: You have a document shows a commitment?

4 MR. HERLONG: I have it, I have her testimony, Your
5 Honor.

6 THE COURT: You don't have a signature on the dotted
7 line?

8 MR. HERLONG: (Nodded in the negative.)

9 MR. HILLER: And she she in fact testified that she was
10 not prepared to issue a commitment because there were other
11 things that may be involved.

12 MR. HERLONG: Well they were standard other things, you
13 know.

14 THE COURT: Well, um, ---

15 MR. HILLER: No they weren't standard other things. I
16 specifically asked her if she had been served some
17 additional ---

18 THE COURT: Okay. Why don't you see if you can remove
19 the opinion part, we'll just, we'll stop. Well what else? Do
20 you have anything else?

21 MR. HERLONG: That's it.

22 THE COURT: You got a reply witness?

23 MR. HERLONG: Yes, sir.

24 THE COURT: Well well they're not here?

25 MR. HILLER: No, sir, that's why I had asked earlier what

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1 what I thought the ---

2 THE COURT: Yeah, ---

3 MR. HILLER: --- he was, you know, ---

4 MR. HERLONG: Well we wanna go through the exhibits, Your
5 Honor, just make sure we made a proper motion to, I think we
6 have, made a proper motion to admit stuff, uh, I believe we
7 have but I wanted to double check that.

8 THE COURT: Okay, well ---

9 MR. HILLER: In fact, Your Honor, if if in fact that's
10 all the witnesses that Mr. Herlong's gonna call, my reply
11 witness would not apply to any of the witnesses he has in fact
12 called so I would not be calling a reply witness.

13 THE COURT: Alright, well why don't you see if you can,
14 uh, scrub out the improper opinion part a that and, uh, and
15 we'll, I mean, I guess what we'll do is just break till 2:30
16 and hopefully I can get through the -- that motion hearing by
17 then and we'll finish up.

18 MR. HERLONG: You want me, do you want me to, uh, I can
19 scrub it out and, uh, and hand it to, you don't want me to
20 read it, I'm happy to read it if you'd like ---

21 THE COURT: No, no, no, you're not gonna read it, nope.

22 (Laughter:)

23 THE COURT: Um, ---

24 MR. HERLONG: Didn't figure you'd want it.

25 THE COURT: Yeah, well and then ---

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1 MR. HILLER: I'm gonna wanna see his scrubs ---

2 THE COURT: Yeah, I know, I know.

3 MR. HILLER: --- because actually it's easier with hers.

4 THE COURT: I figured you would, I figured you would.

5 MR. HILLER: He's gonna pull out two pages and hand it to
6 you and one page cross and then that should do it.

7 THE COURT: Okay, alright. We'll see ya'll at 2:30.

8 MR. HILLER: Thank you.

9 THE COURT: If you wanna hang around here and look
10 through your, all the exhibits and all that kinda stuff, okay.

11 (Whereupon, a recess was taken.)

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: Mr. Herlong.

14 MR. HERLONG: Your Honor, I'd like to offer, we were
15 talking about Ms. Manning's affidavit ---

16 THE COURT: Um-hum.

17 MR. HERLONG: --- before the break, I would like to -- I
18 went through and I have marked the places where she makes a
19 current opinion 'cuz she had to reach decisions, opinions,
20 whatever you call it back in 2008 in the process of deciding
21 to do a title commitment and her deposition goes into all of
22 that but several times in the deposition I went on and I said,
23 And is that your opinion today, is that your opinion today, so
24 I I went through and I marked those or I haven't marked 'em
25 out, noted 'em, and I would offer the deposition marking out

1 those things which are really just three, three lines or
2 little more than three lines, three chunks of the dep -- three
3 small chunks of the deposition.

4 THE COURT: Okay.

5 MR. HILLER: Well, Your Honor, we we've established that
6 she's not qualified as an expert and and and I understood
7 that ---

8 THE COURT: We have established she's not qualified as an
9 expert but she hadn't been ruled to be an expert but you're
10 right, she's not going to be. I'm sorry ---

11 MR. HILLER: Okay, she's not an expert and and so the
12 only relevant testimony as I understood it before we left was
13 that she coulda stayed that they made a decision that they
14 would issue a title insurance policy and and and that
15 everything in this deposition she's saying, you know, it -- my
16 legal opinion is, as as a matter of law, you know, or
17 whatever, uh, you can't can't block out a a statement that but
18 on page 20 of her deposition line 21 she says, "Based upon,
19 based on that opinion, without saying what the opinion is but
20 I'm not asking to strike that, it says, We, Chicago Title gave
21 our commitment to issue title insurance if a majority vote was
22 obtained for the amended RMCs to the Stephens' lots having one
23 vote each since in that case we believed, and, uh, she
24 actually says as a factual matter and as a matter of le -- law
25 which I would not agree to have put in there but but but

1 that's all that qualifies as what you, in my opinion, to what
2 you ruled on prior to our breaking for lunch and then and so
3 if you're allowin' that in, to me that's it.

4 MR. HERLONG: Your Honor, I I didn't take what you said
5 before lunch to be a ruling per se but there's all the
6 background for how she got to that, like I I do have a back up
7 position, I would like to proffer the whole deposition the way
8 I just said with the the, uh, three sections where she's
9 bringing her opinion current and if you deny that, you deny
10 it, just offer the whole, proffer the whole thing but the
11 section that Mr. Hiller read and two or three other sections
12 basically give a little bitta background on her, it's and
13 I -- it it might be just as quick if I read these other
14 sections and Mr. Hiller if he wants to object I gave him a
15 list as we went along but, you know, the first section is just
16 who she is, you know, what her background is and then then a
17 few other things and then the section ---

18 MR. HILLER: But, Your Honor, she ---

19 MR. HERLONG: --- that he just read from, the section
20 that he just read from is among the stuff.

21 MR. HILLER: --- if she's not an expert and she's not
22 going to be qualified as an expert then her background is
23 irrelevant, her opinion's irrelevant. The only thing that the
24 Court, I understood the Court to rule would be relevant
25 possibly was that her title insurance company had agreed to

1 issue a title in -- insurance commitment for this property and
2 that's that's what I read.

3 THE COURT: Yeah. Well, I don't know how I'm gonna make
4 a decision without reading the deposition.

5 MR. HILLER: Well and one of the problems with the
6 deposition is is in, you know, we aren't gonna be able 'cuz, I
7 mean, we are gonna have to read it in the record 'cuz I'm
8 gonna have to object 'cuz durin' the course a the deposition
9 she said, Well I talked to this person, I, uh, that we got
10 together, we discussed, so there's a lotta hearsay involved in
11 it. Um, ---

12 MR. HERLONG: It was a *de bene esse* deposition, Your
13 Honor, as as you pointed out with me not, uh, doing ---

14 THE COURT: Yeah, yeah. Uh, ---

15 MR. HILLER: Fine but but but, you know, and that's
16 why ---

17 THE COURT: So you're proposin' we read it?

18 MR. HILLER: Well that that's -- no, I'm not because I I
19 don't think it's relevant. I mean, the one relevant
20 provision ---

21 THE COURT: Do ya not ---

22 MR. HILLER: --- is ---

23 THE COURT: --- trust me ---

24 MR. HILLER: I mean, I don't even think that's relevant
25 but but but you've you've had a very ---

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1 MR. HERLONG: This this is a ---

2 MR. HILLER: --- liberal, uh, uh, definition of relevance
3 throughout the course of these proceedings as is your ---

4 THE COURT: I wanna ---

5 MR. HILLER: --- right ---

6 THE COURT: --- give everybody a chance ---

7 MR. HILLER: --- it's it's a non-jury trial.

8 THE COURT: --- to ---

9 MR. HILLER: Yes, sir, I ---

10 THE COURT: --- present ---

11 MR. HILLER: --- under ---

12 THE COURT: --- their case. Do you not trust me to be
13 able to distinguish between what's admissible and what's not
14 admissible?

15 MR. HILLER: I absolutely trust Your Honor and and
16 whether, no matter what you rule on you may very well read the
17 whole deposition and I trust you to do that but I still want
18 my objections on the record and and if you're, if you're
19 sayin' that you're gonna just take it in and under a proffer
20 and then you'll read it and you'll throw out what's irrelevant
21 and and only use what's relevant then then you certainly have
22 the right to do that.

23 THE COURT: I don't know how else I could do it.

24 MR. HILLER: I think it happens every day in a non-jury
25 case.

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1 THE COURT: Yeah.

2 MR. HERLONG: Your Honor, Your Honor, why don't I read
3 into the record the pages I was talking about specifically ---

4 THE COURT: You, that you acknowledge are not ---

5 MR. HERLONG: That I would, yeah, that I acknowledge are
6 present opinion, present day ---

7 THE COURT: Okay.

8 MR. HERLONG: --- opinion, okay.

9 THE COURT: Alright.

10 MR. HERLONG: That would be page 20 lines 18 and 19; 21
11 lines 7 and 8; 40 lines 4 through 11, uh, the rest of the
12 deposition as I said before we would offer 50, I'm sorry, page
13 5 lines 11 through page 7 lines 17; page 9 lines 3 through 9;
14 page 11 lines one through 4; page 15 line 13 through 16, line
15 3 I think; page 20 lines 21 through 24; page 35 lines 7
16 through 36 23 and we'll just hand it up.

17 THE COURT: Well you gonna give me your little sheet so I
18 know what you're -- can you make a copy a that?

19 MR. HERLONG: Yes, sir, I -- well actually why don't I
20 make a better ---

21 THE COURT: A legible copy?

22 MR. HERLONG: Yeah, it's kinda messy.

23 MR. HILLER: I had to work off a that one.

24 MR. HERLONG: It's very messy, it's written one of those
25 great big pens. Lets, see ---

1 THE COURT: Just take your time, no hurry.

2 (Pause.)

3 (Whereupon, counsel handed the deposition to the Court.)

4 THE COURT: Okay. Alright, anything else?

5 MR. HERLONG: Your Honor, I've got one little tiny
6 excerpt from Mr. Hanold's deposition that I would like to read
7 in.

8 (Whereupon, a discussion was held off the record.)

9 MR. HERLONG: Your Honor, what -- did I -- I might have
10 given you Mr. Hanold's right then, I'm sorry.

11 MR. HILLER: Good.

12 (Laughter.)

13 (Whereupon, a discussion was held off the record.)

14 MR. HERLONG: Line 16 page, uh, I'm sorry, page 16, line
15 13 through 15 which just says ---

16 MR. HILLER: Well ask the question and then give me an
17 opportunity ---

18 MR. HERLONG: Okay.

19 MR. HILLER: --- to object.

20 MR. HERLONG: Question: "Okay, I'll hear about that and
21 so when did you move into the Watson's Orchard Subdivision?

22 "It would be 2004," that's that.

23 Uh, beginning page starting at line 18, question, "And
24 when you bought your property did anybody make you any
25 promises with regard to the property across the road, the

1 Pelham Road tract or the property along Haywood Road, the
2 Haywood Road tract, did anybody make any promises to you?"

3 MR. HILLER: Oh, alright, I object not because I really
4 care but because it's ---

5 THE COURT: Hears ---

6 MR. HILLER: --- irrelevant and, yeah, we we aren't
7 bringin' a claim based on any kinda promissory estoppel or
8 anything else. The covenant clearly say that any homeowner
9 can bring an action to enforce the lawsuit, I mean, the the
10 covenants and and ---

11 THE COURT: Okay.

12 MR. HILLER: --- he's a homeowner so and and, you know,
13 he he wasn't but but it's still irrelevant and anything beyond
14 that's irrelevant.

15 MR. HERLONG: His, uh, shall I proceed, Your Honor?

16 THE COURT: Yeah, go ahead.

17 MR. HERLONG: --- answer, "Not that I recall."

18 Question: "Did you buy your property or reliance on
19 anything that anybody said with respect to those properties?"

20 Answer: "Not that I recall, no."

21 And then down to line 8, page 29, "Do you know where he
22 got," talkin' about his attorney, "he got the information to
23 use the term "buffer", do you have any idea about that?"

24 Answer: "Where he got it. no."

25 "Do you know where the term comes from?"

MOTIONS AND MATTERS

1 "Yes."

2 "Today you do?"

3 "Yeah."

4 "Did you know anything about that when you moved into
5 Watson's Orchard?"

6 Answer: "Not when I moved in". That's it, Your Honor.

7 THE COURT: Okay. Alright.

8 MR. HERLONG: Rest of our case.

9 THE COURT: No reply?

10 MR. HILLER: No, sir.

11 THE COURT: Okay. Well clearly I'm not gonna rule from
12 the bench, gotta re -- I've got to read this deposition, go
13 through everything. Has this caused a big rift in the
14 subdivision, ---

15 MR. HILLER: Uh, two thirds ---

16 THE COURT: --- hope ---

17 MR. HILLER: --- of 'em hate the other third ---

18 THE COURT: Well and ---

19 MR. HILLER: --- and vice versa.

20 THE COURT: --- and I'm sorry that's happened ---

21 (Whereupon, a discussion was held off the record.)

22 THE COURT: --- but I I hope that, uh, folks can repair
23 their relationships and and move forward and I will review all
24 this and and come to decision sometime in the near future.
25 Okay. Thank you very much. You need to tell me anything? I

MOTIONS AND MATTERS

1 mean, ya'll wanna ---

2 MR. HERLONG: Well, I ---

3 THE COURT: You wanna make closin' statements?

4 UNIDENTIFIED WOMAN: Yes.

5 MR. HERLONG: Not a big one ---

6 MR. HILLER: No.

7 MR. HERLONG: --- but maybe a little one.

8 THE COURT: Alright, go.

9 MR. HILLER: What can we do? Can we just do a post-
10 trial brief?

11 THE COURT: Short one.

12 MR. HERLONG: A short one's fine.

13 MR. HILLER: Forty, fifty pages?

14 MR. HERLONG: Yeah, sixty, seventy pages.

15 (Laughter.)

16 MR. HILLER: Yeah, ---

17 MR. HERLONG: Short one's fine, Your Honor.

18 MR. HILLER: --- I think he's got one prepared, uh, uh,
19 but but I ---

20 THE COURT: How can you have ---

21 MR. HILLER: --- there was, ---

22 THE COURT: --- it prepared ----

23 MR. HILLER: --- there was some testimony I expected that
24 didn't happen and there was some testimony I didn't expect
25 that did happen so it needs a little tweaking plus it it

1 it it ---

2 THE COURT: Okay, ya'll do a post-trial brief if ya'd
3 like, limit it to, uh, less than ten pages.

4 MR. HILLER: Alright.

5 THE COURT: Is that good?

6 MR. HERLONG: Yes. Your Honor, I'd like to double check
7 with her make sure everything got admitted that shoulda been
8 and, uh, ---

9 THE COURT: Okay.

10 MR. HERLONG: --- just, uh, double check our
11 housekeeping.

12 (Whereupon, a discussion was held off the record.)

13 MR. HERLONG: Your Honor, if I might interrupt you for
14 one second. Um, I believe all the exhibits were admitted
15 except for those two that were just marked for identification
16 involvin' your, that lot with you.

17 MR. HILLER: You mean the five lots that I own, ---

18 MR. HERLONG: Yeah, exactly.

19 MR. HILLER: --- that I bought ---

20 MR. HERLONG: Yeah, exactly.

21 MR. HILLER: --- and then transferred to my corporation?

22 MR. HERLONG: Exactly.

23 MR. HILLER: Right, ---

24 MR. HERLONG: I think everything was admitted ---

25 MR. HILLER: --- that was just ---

MOTIONS AND MATTERS

1 MR. HERLONG: --- other than that. Are you, are you in
2 agreement on that, Randy?

3 THE COURT: Over over his objection.

4 MR. HERLONG: Over his objection.

5 MR. HILLER: No, you actually sustained that objection.

6 I recall ---

7 THE COURT: Yeah, yeah, I did, ---

8 MR. HILLER: Okay.

9 THE COURT: --- I did.

10 MR. HERLONG: We're talkin' about everything else,
11 the ---

12 MR. HILLER: Oh, yeah, everything else was over my
13 objection.

14 MR. HERLONG: Okay, alright, that ---

15 MR. HILLER: That's the ---

16 MR. HERLONG: --- sounds good.

17 MR. HILLER: --- only one I won, right?

18 THE COURT: Which one, which one were in?

19 MR. HERLONG: It was ---

20 MR. HILLER: Somethin' somethin' vs. Washington ---

21 MR. HERLONG: --- was it 9 ---

22 MR. HILLER: --- Holdings, ---

23 MR. HERLONG: --- and 10?

24 MR. HILLER: --- Washington Holdings ---

25 COURT REPORTER: Nine and ten.

MOTIONS AND MATTERS

1 MR. HILLER: --- uh, ---

2 MR. HERLONG: Nine and ten we do need to have 'em in
3 here. Oh, here it is.

4 COURT REPORTER: Yep.

5 MR. HILLER: What are ya'll showin' as Number 3?

6 (Whereupon, a discussion was held off the record.)
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on September 4 and 5, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 5 through 287, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

June 11, 2013

Margaret A. Woods 6/11/13

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

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

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

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

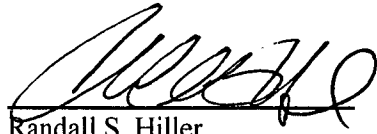
Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and

Patricia L. Herman,.....Third Party
Defendants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Appendix to Record on Appeal complies with Rule 211(b), SCACR.

April 7, 2014



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP23-7707

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SC Court of Appeals

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v.

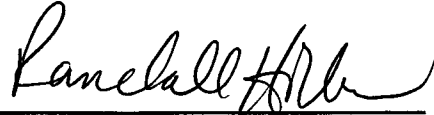
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PROOF OF SERVICE

I certify that I have served the Appendix to Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on April 11, 2014, addressed to its attorney of record, William Herlong, Esq., Post Office Box 2003, Greenville, South Carolina 29602.

April 10, 2014



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