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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Honorable Charles B. Simmons, Jr., Master in Equity

Appellate Case No.: 2018-000340

Joseph Edward McMullen, ... Appellant,

v.

Terr Oaks Architectural Committee, Paola Rogers,
Dwain Cook and John Simpson as putative members of
the Terra Oaks Architectural Committee, ... Respondents.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Joseph Edward McMullen,

Plaintiff,

v.

Terra Oaks Architectural Committee, Paola
Rogers, Dwain Cook and John Simpson as
putative members of the Terra Oaks
Architectural Committee,

Defendants,

Case No.: 2016-CP-23-05898

ORDER OF JUDGMENT

This case involves Plaintiff's request for approval of the Terra Oaks Architectural Committee ("TOAC") to subdivide his property. Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the parties in the above-entitled case have consented to reference of this action to me to make appropriate findings of fact and conclusions of law, with authority to enter final judgment in the case.

I conducted a trial on the matter on January 10, 2018. Plaintiff was represented by Robert C. Childs, III of the Childs Law Firm, LLC and Defendants were represented by Ralph Gleaton of Gleaton Wyatt, PA. Based on the evidence presented at trial I find and conclude as follows:

Plaintiff brought this case alleging five causes of action based on Plaintiff's inability to obtain written permission to subdivide land subject to restrictive covenants. The causes of action are captioned as "Authority to Deny," "Restriction on Alienation of Property," "Restrictive Covenants Superseded by Zoning," "Erroneous Decision," and "Estoppel, Waiver, Laches." The

Honorable William H. Seals, Jr. dismissed the Plaintiff's claims for Restriction on Alienation of Property and for Estoppel, Waiver and Laches pursuant to the motion for summary judgment by Form 4 Order on May 25, 2017. Therefore those causes of action are not before this court.

The gravamen of the Plaintiff's complaint is that the TOAC never met to discuss and make a decision on his proposal to subdivide his land and that if the TOAC did meet, it did not act timely and/or abused its discretion. As a remedy, the Plaintiff requested that this Court order approval of his request to subdivide his land because sending the matter back to the TOAC would not be a legitimate resolution because of the dysfunction of the TOAC. The gravamen of the Defendants' defense is that no action of the TOAC is necessary because Plaintiff's request was to subdivide land and not to build on land and that if action was required, it did act properly and timely.

Terra Oaks Subdivision is located in Greenville County and is subject to certain Restrictive Covenants ("Covenants"). Those covenants were introduced at trial and are a part of the record. Plaintiff, Defendant John Simpson and Defendant Paola Rogers were the members of the TOAC after December 2008. Plaintiff brought up the issue of subdivision of his property informally in May 2015 in that he briefly discussed the matter with both Ms. Rogers and Mr. Simpson and Plaintiff and Mr. Simpson walked Plaintiff's property and discussed Plaintiff's plan for an hour or more. Ms. Rogers sent an email to Plaintiff's e-mail address on May 13, 2015 saying that she and Mr. Simpson had discussed the subdivision of his property and the she and Mr. Simpson could not agree to allow the subdivision. Plaintiff did not bring up the issue again until January 8, 2016 when he sent a written proposal for the subdivision of his property by e-mail to Mr. Simpson and Ms. Rogers. This proposal did not request or demand a meeting but instead only attached his written proposal with signature blocks for the members of the TOAC to

sign the proposal. Ms. Rogers responded to the January 8, 2016 written proposal on January 21, 2106 saying again that the TOAC did not approve the subdivision of Plaintiff's property. This informal process is in keeping with the prior actions of the TOAC, on which Plaintiff was an active member. Specifically, there was a meeting regarding a fence issue in the neighborhood that was not formally notice or called. There was an issue with Ms. Rogers keeping chickens on her property that was informally handled by Plaintiff bringing the issue up with Mr. Simpson and Mr. Simpson informing Ms. Rogers that she would have to remove the chickens. Significantly, in 2009 Plaintiff had the TOAC approve of subdividing another lot in Terra Oaks lot he had purchased. Plaintiff accomplished this by, after consulting a lawyer, having a document captioned "Certification" drafted allowing the subdivision and having it signed by all members of the TOAC. Though the "Certification" recites a meeting of the TOAC, Plaintiff admits that no such meeting was called or held, only that the document was signed. Both Mr. Simpson and Ms. Rogers testified that they were unaware of the previous subdivision of land or "Certification" prior to litigation and did not sign the Certification. I make no findings or conclusions based on Ms. Rogers and Mr. Simpson's testimony regarding the validity of this particular "Certification." Taking Plaintiff's testimony as true, it is evidence that the TOAC had no formal procedure for handling matters related to subdivision of property and had acted informally in the past. Therefore I find and conclude that the informal procedure used by the TOAC in this matter is consistent with its prior practices and that the Plaintiff has failed to prove that the TOAC failed to act appropriately or timely on his request.

The Covenants, filed in August of 1980, are inartfully drafted. Section IV of the Covenants creates the TOAC. Section III Paragraph 4 of the Covenants states that "[n]o lot shall be recut without first obtaining the written permission of the Architectural Committee . . ."

However, Section IV creates the TOAC and deals with what may be built on lots in Terra Oaks. Section IV Paragraph 1. states that all members of the TOAC are a quorum and that a majority vote is required for the transaction of any business. Section IV Paragraph 2. states that "[n]o improvements or buildings shall be erected, placed or altered . . ." without prior written approval of the TOAC further stating that "building plans" and "exterior designs" must be submitted in writing to the TOAC. Further it states that if the TOAC fails to "approve or disapprove such designs and plans within fifteen (15) days" then the designs and plans are deemed approved. Restrictive covenants are contractual in nature. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). "The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the [contract]." *Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct.App.2003). "If a contract's language is clear and capable of legal construction, this [c]ourt's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." *Id.* at 30-31, 586 S.E.2d at 864. Though the Covenants are inartfully drafted, reading the covenants as a whole I find and conclude that the Covenants intend to treat additional subdivision of lots differently from the erection, placement and alteration of improvements to lots. I find and conclude that in order for Plaintiff to be able to subdivide his property he must obtain written permission of the TOAC, as he did in 2008. I therefore find and conclude that Plaintiff failed to prove that the TOAC was required to act and that Defendants did prove that Plaintiff may not subdivide his property pursuant to the covenants.

Further, Plaintiff's request for relief from this Court is that it grant the proposal to subdivide his property that he submitted to Mr. Simpson and Ms. Rogers on January 8, 2016. That proposal was admitted into evidence. Plaintiff testified that no other written proposal was

ever submitted to the TOAC. That proposal, in addition to allowing for one of the lots he owns in Terra Oaks to be subdivided, also states that another lot he owns in Terra Oaks "is not subject to the covenants of Terra Oaks Subdivision" proposing to attach new covenants to that lot that would not allow mobile homes or "any commercial activity." The Covenants require a "vote of the majority of the then owners of the lots and tracts affected" to modify or change the Covenants. I therefore find and conclude that the TOAC did not have authority to grant the Plaintiff's proposal. I further find and conclude that no testimony or evidence for modifying the Covenants was presented at trial and that this Court does not have authority to modify or change the Covenants. Therefore I find and conclude that Plaintiff has failed to request relief that this Court may grant.

No testimony or evidence was presented regarding Plaintiff's cause of action regarding zoning and therefore no evidence of the Covenants being superseded by zoning. However had any such testimony been presented, "when restrictive covenants and zoning ordinances are in conflict, the more restrictive of the two prevails." *Byrd v. City of North Augusta*, 261 S.C. 591, 201 S.E.2d 744 (1974). A zoning law cannot constitutionally relieve land within the district covered by it from lawful restrictions affecting its use, imposed by covenants. *Inabinet v. Boone*, 262 S.C. 81, 202 S.E.2d 643 (1974). I therefore find and conclude that Plaintiff failed to prove that the Covenants have been superseded by zoning.

Regarding Plaintiff's cause of action for Restriction on Alienation of Property, Plaintiff did present testimony and evidence that he contracted to sell his lot as subdivided after the May 13, 2015 email from Ms. Rogers stating that she and Mr. Simpson would not agree to subdivide his lot. The testimony is further that the contract failed because Plaintiff was not allowed to subdivide his lot. However, Plaintiff failed to present testimony or evidence that shows that

Defendants have in any way restricted him from selling his property. Not all restrictions on the alienation of property are invalid, only unreasonable restrictions are. "Under South Carolina common law, any *unreasonable* limitation upon the power of alienation is against public policy and must be construed as having no force and effect." *Wise v. Poston*, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). Only "[a]n *absolute* restraint upon the free and unlimited power of alienation, annexed to a grant or devise in fee simple is void." *Id.* I therefore find and conclude that Plaintiff failed to prove that Defendants unreasonably restricted the alienation of his property.

Based on the above findings of fact and conclusions of law this Court finds in favor of the Defendants and against the Plaintiff on all causes of action before this Court.

NOW THEREFORE IT IS ORDERED that the Plaintiff's Complaint be dismissed.

AND IT IS SO ORDERED!

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW



Greenville Common Pleas

Case Caption: Joseph Edward McMullen vs. Terra Oaks Architectural Committee ,
defendant, et al
Case Number: 2016CP2305898
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2018-02-02 11:10:24 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Joseph Edward McMullen,	)	C. A. No.: 2016-CP-23-
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Non-Jury)
	)	(Declaratory Judgment)
Terra Oaks Architectural Committee,	)	
Paola Rogers, Dwain Cook and	)	
John Simpson as putative members	)	
of the Terra Oaks Architectural Committee	)	
Defendants.	)	

The Plaintiff, complaining of the Defendants above named, would respectfully show unto the Court as follows:

PARTIES

1. The Plaintiff is a citizen and resident of the County of Greenville, in the State of South Carolina.
2. Plaintiff is the owner of a certain piece and parcel of land in the County of Greenville, State of South Carolina located at or near the intersection of Fisher Road and Shady Lane more or less located in a subdivision known as "Terra Oaks" as set forth in its restrictive covenants "the Covenants" filed in the Greenville County Deeds Office.
3. The Defendant Terra Oaks Architectural Committee ("Committee") is a de facto non-profit corporation created by the Covenants whose obligations are as follows:

No improvements or buildings shall be erected, placed or altered on any lot or lots until and unless the building plans, specifications and plot plan showing the proposed type of construction, exterior design and location of such residence have been approved in writing as to conformity and harmony of external design and consistence with plans of existing residence or other buildings and as to the location of the structure with respect to topography and finished ground elevation, by the architectural committee.

No lot shall be recut without first obtaining the written permission of the Architectural Committee created under Article III thereof.

In the event said Committee fails to approve or disapprove such designs and plans within fifteen (15) days after said plans have been submitted to it, or in any even if no suit to enjoin the erection or alteration of such building or improvement had been commenced before such erection or alteration is substantially completed, such prior approval will not be required and this covenant will be deemed to have been fully complied with and no suit or claim will be available to said Committee, nor to any lot owner or other person. The term "building" or "improvement" shall be deemed to include the erection, placement, or alteration of any outbuilding, wall or fence to be made in any lot.

4. The Defendant's Paola Rogers, Dwain Cook and John Simpson are citizens and residents of the County of Greenville, State of South Carolina and during all times alleged herein were residents of Terra Oaks Subdivision.

JURISDICTION

5. This action is brought pursuant to the South Carolina Declaratory Judgment Act S.C. Code Ann. §15-53-30 et. seq.
6. This Court has jurisdiction over the subject matter and parties to this action.

FACTS

7. Prior to January 8th, 2016 the Plaintiff, the Defendant Paola Rogers and John Simpson were members of the Terra Oaks Architectural Committee as established by IV (1) of the Covenants.
8. The Architectural Committee is now a defunct organization with no formal legal existence.
9. Prior to January 8th, 2016 the Plaintiff was the Chairman of the Committee.

10. On or about January 8th, 2016 the Plaintiff advised the Defendant Rogers and Defendant Simpson of his plan to subdivide his property.
11. Although Section IV (1) of the Covenants states "All members shall constitute a quorum" the Defendant Paolo Rogers contends that her and Defendant John Simpson met and denied Plaintiff's request on or about January 21, 2016.
12. Said meeting, if it occurred, took place without notice and opportunity of the Plaintiff to appear and set forth his position relative to his request.
13. On or about January 22, 2016 the Plaintiff as Chairman of the Committee requested a meeting on January 24, 2016 to discuss the issue.
14. On or about January 24th, 2016 the Defendant Paolo Rogers and Defendant John Simpson refused to meet concerning the issues.
15. Issues about conflicts were raised both as to the Plaintiff's position as Chairman and member of the Committee regarding Plaintiff's proposal and the Defendant Paolo Rogers hearing the matter based on her violations of the Covenants and her husband sitting on the Greenville County Planning Commission which would have to approve of the Plaintiff's proposal also.
16. Without a quorum present and without a formally called meeting the Defendant Rogers, Defendant Simpson, and Defendant Cook allegedly met and voted to deny the Plaintiff's request.
17. The Defendant Cook had not been properly installed as a new member of the Committee.
18. The Plaintiff may not subdivide his property through the Greenville County Subdivision regulations without evidence of compliance with restrictive covenants. The Defendant's

refuse to provide such evidence, and in fact, notified the County that The Plaintiff's request had been denied.

**FOR A FIRST CAUSE OF ACTION
(Authority to Deny)**

19. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action as if fully restated herein.
20. A portion of the Plaintiff's lot is outside of the subdivision and Approval of a subdivision plan for lots partially outside of the subdivision is not expressly required by the language of the Covenants and the committee is a defunct legal entity incapable of making legally binding decisions.
21. The Plaintiff is informed and believes that the Committee has no authority to reject the Plaintiff's proposed subdivision.

**FOR A SECOND CAUSE OF ACTION
(Restrictions on Alienation of Property)**

22. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action as if fully restated herein.
23. The Restrictive Covenants unlawfully restrict the alienation of property.
24. Plaintiff is informed and believes such restriction is invalid and unenforceable.

**FOR A THIRD CAUSE OF ACTION
(Restrictive Covenants Superseded by Zoning)**

25. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action as is fully restated herein.
26. The Plaintiff's proposal was in compliance with the Subdivision and Zoning Regulations for the properties in question which takes precedence over the Covenants as they may relate to the subdivision of property.

27. The Plaintiff is informed and believes that the Restrictive Covenants are superseded by the Subdivision and Zoning Regulations of Greenville County

**FOR A FOURTH CAUSE OF ACTION
(Erroneous Decision)**

28. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action as if fully restated herein.
29. If the Defendants had the authority to reject the Plaintiff's proposed subdivision, which is denied, the Plaintiff is informed and believes that such authority was exercised in a capricious, arbitrary, bad faith and unlawful manner as follows;
- a. There was no quorum present at any meeting;
 - b. There was no formally called meeting;
 - c. There was no notice of the meeting to the Plaintiff;
 - d. If there was a meeting it was called unlawfully;
 - e. The Plaintiff was denied the opportunity to appear and defend his proposal;
 - f. The Defendant Paolo Rogers had a conflict of interest in considering the proposal;
 - g. The Defendant Dwain Cook was not a formal member of the committee;
 - h. No formal minutes of said meetings were maintained;
 - i. No written notice of the denial was timely provided;
 - j. The Defendants did not timely deny the Plaintiff's application;
 - k. The appointment of Committee Members was defective;
 - l. The Defendants failed to follow or establish any formal guidelines;
 - m. The alleged decision of the Committee was non-specific, conclusory and indicated no reasons for the alleged rejection;
 - n. The Defendant's decision was arbitrary, unreasonable and in bad faith;

- o. The Defendant's owed a duty to fairly consider Plaintiff's application and breached that duty; and
 - p. Such other and further reasons as may henceforth be set forth.
30. The Plaintiff is informed and believes that the decision of the Defendant's is null, void, and must be overturned.

**FOR A FIFTH CAUSE OF ACTION
(Estoppel, Waiver, Laches)**

31. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action as if fully restated herein.
32. The conduct of the Defendants over a lengthy and undue period of time in failing to enforce the Covenants, refusing to comply with the Covenants and failing to follow formalities has been relied upon by the Plaintiff to his detriment.
33. The Plaintiff is informed and believes that the doctrines of estoppel, waiver and laches prohibit the Defendants from denying the Plaintiff's requests.

WHEREFORE, having fully plead, the Plaintiff requests the following:

1. That the court declares that the Restrictive Covenants cannot be enforced in respect to the Plaintiff's plan to subdivide his property.
2. That the court overturn the alleged decision of the Defendants.
3. That the court declare that all restrictive covenants have been complied with.
4. That the Court declare that laches, waiver, and/or estoppel prevents the restrictive covenants from being enforced against Plaintiff.
5. That the court declares the respective rights and liabilities of the parties.
6. Such other and further relief as the court deems just and proper.

s/Robert C. Childs, III
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Greenville, South Carolina

Date: 10/17/16

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2016-CP-23-05898

Joseph Edward McMullen,

Plaintiff,

vs.

TRANSCRIPT OF TESTIMONY

Terra Oaks Architectural Committee)
Paola Rogers, Dwayne Cook and)
John Simpson as putative members)
of the Terra Oaks Architectural)
Committee,)

Defendants.

January 10, 2018

Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Robert C. Childs, III, Esquire
Attorney for the Plaintiff

Ralph Gleaton, Esquire
Attorney for the Defendant

Wanda E. Fudge, CCR
Court Reporter

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EXHIBITS

(Per Judge Simmons' instructions, all exhibits were marked for identification prior to the commencement of the trial)

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1 BY THE COURT: All right. Anything we need to discuss
2 before we go on the record?

3 MR. CHILDS: I don't think anything off the record. We've
4 got some things on the record we probably need---

5 BY THE COURT: All right. This is 2016-05898, McMullen
6 versus Terra Oaks. So, be glad to hear any preliminary matters,
7 and then we'll move straight into testimony.

8 MR. CHILDS: Yes, sir, Your Honor. We discussed in pretrial
9 conference over the telephone about the testimony of George
10 Mastorakis and the fact that he was unavailable today because of
11 a surgical procedure he was involved in. As you suggested, Your
12 Honor, we got an affidavit from him. I've shared that with the
13 Defendant. I think the objection is relevancy, and we can
14 probably deal with that issue as we present the evidence of this
15 case and get you a little more familiar with the facts. But you
16 had suggested that if we couldn't agree on the affidavit we would
17 have to take his deposition and do it on a short-order basis.
18 So, I wanted to illuminate the Court about that issue.

19 BY THE COURT: If it's -- well, let me hear your argument on
20 that.

21 MR. GLEATON: Thank you, Your Honor. It's my understanding
22 that Mr. Childs will not only present Mr. Mastorakis as a witness
23 either by affidavit or deposition but also Mr. Fenton and -- is
24 it Mr. Marchbank?

25 MR. CHILDS: Yes, Marchbanks... (sic)

1 MR. GLEATON: Mr. Fenton and Mr. Marchbanks are here to
2 testify about a sale that Mr. McMullen had and lost, and we would
3 argue that that entire testimony is irrelevant. The sale has
4 nothing to do with this case. The case---

5 BY THE COURT: Are damages being sought?

6 MR. CHILDS: No, sir, Your Honor. The purpose of Mr. Fenton
7 and Mr. Marchant is to testify about the contract that was signed
8 between the parties and the intent of the parties as it related
9 to cutting of the property. One of the issues that we have is
10 the fact that the committee never officially met and considered
11 the proposal or allowed the Plaintiff to be involved in the
12 proposal. So, the facts surrounding that proposal that would
13 have been conveyed to the Committee are relevant for that
14 purpose.

15 BY THE COURT: For that limited purpose, there may be some
16 relevancy, but we're not going to get far afield from what the
17 issues are.

18 MR. CHILDS: Right.

19 MR. GLEATON: Similarly, Mr. Mastorakis' testimony I
20 understand is basically, "Other people in the neighborhood,
21 including some of the Defendants, have violated the covenants, so
22 I am allowed to violate the covenants." So, I argue that that is
23 irrelevant. If the Court argues that there's relevancy, I feel,
24 as much as I don't want to, I feel like I have to protect my
25 client's objection based on the fact the witness isn't here and I

1 cannot call cross-examine---

2 BY THE COURT: Well, hasn't there been case law that
3 supports the premise that if there's been variations over the
4 years by the HOA, or in this case Architectural Committee, that's
5 a relevant concern as to any enforceability of the covenants?

6 MR. GLEATON: There are but they would have to be so great
7 as to change the flavor of the neighborhood. He's talking about
8 very specific acts and none of them have to do with recutting the
9 lots.

10 BY THE COURT: Well, I guess flavor is up to the beholder.
11 So, it may have some relevancy.

12 MR. GLEATON: I understand, Your Honor. Then what I would
13 like to do -- I just received the affidavit this morning; that's
14 not a reflection on Mr. Childs; that's just a fact -- what I
15 would like to do is reserve my objection based on the inability
16 to cross-examine until I can speak to my client.

17 BY THE COURT: That's fine. And you have absolutely every
18 right to depose the unavailable witness.

19 MR. GLEATON: But let me show my clients at some point, when
20 we have a break, the affidavit, and we may decide not to do that.

21 BY THE COURT: All right. Anything else before we move into
22 testimony?

23 MR. CHILDS: I don't believe so, Your Honor.

24 BY THE COURT: All right. You can call your first witness.

25 MR. CHILDS: Mr. Tom Fenton -- Joe Fenton.

JOSEPH DANIEL FENTON--DIRECT BY MR. CHILDS

1 BY THE COURT: If you would come around to the witness
2 stand, please, sir.

3 JOSEPH DANIEL FENTON, BEING FIRST DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 BY THE COURT: If you would come around and have a seat,
6 please. (complies)

7 DIRECT EXAMINATION BY MR. CHILDS:

8 Q Mr. Fenton, would you state your full name for the record,
9 please.

10 A Joseph Daniel Fenton.

11 Q How are you employed, Mr. Fenton?

12 A Business owner.

13 Q Do you know Mr. Joe McMullen?

14 A Yes, sir.

15 Q How do you know him?

16 A I met Joe about two years ago when we wanted to engage him
17 about a home he was selling.

18 Q All right. How did that come about?

19 A So, my wife and I got preapproval for a loan just to see how
20 much home we could actually afford. We had been in our townhome
21 for about seven years and wanted to move up. We got the
22 preapproval and we started looking at homes in the 29615 zip
23 code. Joe's home appeared and it seemed like a great opportunity
24 for us, but it also seemed like it was little bit more than we
25 wanted to delve into from a loan standpoint plus it was more than

1 our preapproval.

2 So, basically what we wanted to do was to go to Joe and ask
3 him, since he had a large lot, more than we necessarily needed,
4 would it be possible to split the lot and potentially look at
5 financing the lot separate from the home and the one acre. I
6 think it was about one acre. So, we sort of agreed to do
7 something of that nature. We knew it was going to be a process,
8 a long process, because there were some restrictions and things,
9 there were some discussions that needed to be had with other
10 parties. So, we agreed to kind of hang around. I think we wrote
11 up a contractual agreement that had an expiration date on it.

12 And from what I can remember, it was just tough to get any
13 progress or make any progress on the splitting of the lots
14 because of maybe lack of conversation with the other parties.

15 Q Let me show you what's been marked as Plaintiff's Exhibit
16 No. 8 and see if you can identify that.

17 A Yes, the contract. Yes.

18 Q Is that the contract that you entered into with Mr.
19 McMullen?

20 A Yes.

21 MR. CHILDS: I would like to move that into evidence, Your
22 Honor.

23 MR. GLEATON: No objection.

24 BY THE COURT: I'm assuming since we're non-jury if there's
25 an objection, make it; if not, we're going to deem it not

1 objected to.

2 MR. CHILDS: That will be good, Your Honor.

3 BY THE COURT: All right.

4 (Contract For Sale entered into evidence as Plaintiff's
5 Exhibit No. 8)

6 Q All right. Let me show you Plaintiff's Exhibit No. 9 and
7 see if you can identify that.

8 A Yes, the splitting of the lots. Yes.

9 Q Does that accurately depict your conversation with Mr.
10 McMullen about splitting the lots up?

11 A Absolutely.

12 Q Now, what was the intent with splitting the lots? You
13 mentioned it kind of briefly there. Were you able to get
14 financing for the entire piece of property?

15 A No.

16 Q Shown on Plaintiff's Exhibit No. 9 is Lot A which I presume
17 has Mr. McMullen's house on it. Was that the lot that you were,
18 going to finance through the bank?

19 A Yes.

20 Q The other two lots which are marked Lots B and C, was it
21 your intention to buy those lots also from Mr. McMullen?

22 A Yes, starting with Lot B. Yes.

23 Q Okay. So, at any time during your discussion with Mr.
24 McMullen about the purchase of the property did you express any
25 intentions to sell any of the lots to any other individuals?

1 A No.

2 Q So, Mr. McMullen's proposal to separate the lots was solely
3 at your request based upon your need for bank financing?

4 A Absolutely.

5 MR. CHILDS: I would like to -- I've got 8 and 9.

6 ("Lot Subdivision Proposed Option 12/5/15" entered into
7 evidence as Plaintiff's Exhibit No. 9)

8 Q Answer any questions Mr. Gleaton might have, please.

9 CROSS-EXAMINATION BY MR. GLEATON:

10 Q Mr. McMullen -- excuse me -- Mr. Fenton, you entered into
11 this contract on or about December 7th of '15; is that correct?

12 A Yes, sir.

13 Q How long had you been negotiating with Mr. McMullen prior to
14 entering into this contract?

15 A We spent a couple of months, maybe a month, getting to know
16 each other.

17 Q Did you actually speak with Mr. McMullen or was this a case
18 where real estate agent talked to real estate agent and
19 everything was relayed?

20 A I think -- it was a unique scenario. I think I spoke with
21 Tom Marchant and Mr. McMullen throughout the process. I think we
22 met them at the house multiple times.

23 Q Did Mr. McMullen tell you there were covenants for the
24 neighborhood?

25 A Yes.

1 Q Did he tell you there was an issue with recutting the lots?

2 A He said there would have to be some discussion. Yes.

3 Q Did he tell you that previously in May, six or -- almost
4 nine months earlier that he had received a notice from the other
5 two members of the Architectural Committee denying his request to
6 recut the lots?

7 A I don't recall that.

8 Q Had he told you that he had already received a notice from
9 the other two members of the Architectural Committee in May of
10 '15 denying his request to recut the lot would you have entered
11 into the contract to purchase the land?

12 A That's a tough question. I know my wife and I were a bit
13 emotional about the home. Obviously, we stuck it out for quite
14 some time because we were really interested in it.

15 Q So, would you have been able to buy it without the lot being
16 recut?

17 A Yes.

18 Q You didn't?

19 A Right.

20 Q Why not?

21 A It just didn't meet the acreage requirement for our kids and
22 our dogs.

23 Q The lot not being recut, the entire lot, didn't meet the
24 acreage requirements for your kids?

25 A We were really interested in Lot A and B.

1 Q But you could have---

2 A Lot A it's very small in my opinion compared to B for a
3 growing family.

4 Q I'm sorry.

5 A We liked the Lot B and A combination for our dogs and our
6 kids.

7 Q So, Lot B and A is what you would get if the lot isn't
8 recut, correct?

9 A Right.

10 Q But you didn't purchase the lot unrecut. So, that was, in
11 fact, important to you?

12 A Yes.

13 Q That it be recut?

14 A Yes. From a financing standpoint, yes.

15 Q Thank you.

16 MR. GLEATON: Nothing further.

17 BY THE COURT: Any other questions?

18 MR. CHILDS: No further questions, Your Honor.

19 BY THE COURT: May this witness be excused?

20 MR. CHILDS: Yes, sir, Your Honor. I was going to request
21 that.

22 MR. GLEATON: Yes, Your Honor.

23 BY THE COURT: All right. You're free to go or you're free
24 to stay.

25 (witness excused)

1 BY THE COURT: All right. Call your next witness.

2 MR. CHILDS: Joe McMullen, please.

3 JOSEPH EDWARD MCMULLEN, BEING FIRST DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 BY THE COURT: Come around and have a seat, please.

6 (complies)

7 If you'll state your full name, please.

8 THE WITNESS: Joseph Edward McMullen.

9 BY THE COURT: And if you'll pull the microphone down a
10 little bit. My very fine bailiff is going to help you with that.

11 THE WITNESS: Okay. I don't want to get poked in the eye.

12 DIRECT EXAMINATION BY MR. CHILDS:

13 Q Mr. McMullen, I hesitate to ask people this but I ask it all
14 of the time, how old are you?

15 A Seventy-four yesterday.

16 Q Are you retired?

17 A Yes.

18 Q Where are you retired from?

19 A Michelin Tire North America.

20 Q And how long did you work for Michelin Tire North America?

21 A Approximately 25 years.

22 Q All right. What kind of education do you have?

23 A I have a bachelor's degree in engineering and a master's
24 degree in business administration.

25 Q What did you do for Michelin? Right before you retired,

1 what was your position?

2 A I had a variety of management jobs, from engineering
3 manager, to maintenance manager, to a role in personnel, a role
4 in training. That's the Michelin style.

5 Q Okay. Did you at some point become interested in a piece of
6 property located in Terra Oaks subdivision?

7 A Yes, shortly after I moved to Greenville.

8 Q So, what did you do about the purchase of that property?

9 A I purchased it. I purchased the lot my home is built on.

10 Q Can you describe to the Judge how Terra Oaks subdivision is
11 laid out and how it particularly -- what kind of community it is?

12 A It's a community of, at the time, still 21 lots. Most of
13 the lots were built on at that time. I believe there were two
14 lots that were not built on in addition to the one that I was
15 purchasing. My lot was a corner lot of the subdivision but did
16 not actually abut both streets. There's a narrow wedge of land
17 between my lot and Shady Lane but it faced Fisher Road, and it
18 was one and a quarter acres which was a relatively large lot in
19 the neighborhood. The neighborhood was a well -- architecturally
20 well built, nice looking homes. Most every home was built over
21 the minimum requirements of the covenants.

22 Q So, when you purchased your property, what year was that?

23 A It was '82, I believe.

24 Q Were you familiar with the Restrictive Covenants at that
25 time when you purchased it?

1 A Yes, I was.

2 Q Let me show you Plaintiff's Exhibit No. 1 and see if you can
3 identify this.

4 A This is the Restrictive Covenants for Terra Oaks
5 subdivision.

6 (Restrictive Covenants entered into evidence as Plaintiff's
7 Exhibit No. 1)

8 Q I want to direct your attention to page 4 of Plaintiff's
9 Exhibit No. 1, and it states there on page 4, under the subheading
10 of the Architectural Committee that certain persons comprised the
11 Architectural Committee and those were Louis Manios, Charles B.
12 Howard and John Sfiris; is that correct?

13 A Correct.

14 Q Did you deal with Mr. Howard, Mr. Manios, and Mr. Sfiris
15 when you purchased your lot and constructed your home?

16 A Well, contact was with Mr. Manios except that Charles Howard
17 signed the contract with Mr. Manios.

18 Q To your knowledge, were those individuals the developers of
19 the subdivision: Mr. Manios, Mr. Howard and Mr. Sfiris?

20 A Yes.

21 Q Did you -- now, you bought a lot that you built on; is that
22 correct?

23 A Yes.

24 Q Did you have to show them the plans that you had when you
25 purchased the property, what you were going to build?

1 A I did.

2 Q Did you have to get that approved from the Architectural
3 Committee when you purchased the property?

4 A Yes.

5 Q So, you were familiar with--

6 MR. CHILDS: And also, Your Honor, attached to Plaintiff's
7 Exhibit No. 1 is the subdivision plots for -- if you want to
8 review that during the course of the testimony. It just gives
9 you an idea of the size which is a very small sized subdivision.

10 Q Now, you were aware that you deal with the committee on
11 issues related to the property as far as the design of your home
12 and those kind of issues?

13 A Yes.

14 Q Now, let me show you Plaintiff's Exhibit No. 2 and see if
15 you can identify that.

16 A Yes. It's a document.

17 Q What does Plaintiff's Exhibit No. 2 show?

18 A It shows members of the then Architectural Committee had
19 approved, as required by the covenants, the new membership which
20 included Ms. Rogers, Mr. Simpson and myself.

21 (Listing of Architectural Committee Members entered into
22 evidence as Plaintiff's Exhibit No. 2)

23 Q How did that come about? That document, Plaintiff Exhibit
24 No. 2, is dated December 8, 2008. Could you tell the Court how
25 it came about that Mr. Manios, Mr. Howard, Mr. Sfiris resigned

1 from the Architectural Committee and appointed Ms. Rogers, Mr.
2 Simpson and you to the Architectural Committee?

3 A Mr. Manios approached me and asked if I would take the
4 responsibility of the new Architectural Committee and to identify
5 two other members.

6 Q Okay. What was that process? Did you talk to Mr. Simpson
7 and Ms. Rogers about being part of the Architectural Committee
8 for Terra Oaks?

9 A Yes. I visited them and personally asked them if they would
10 be members.

11 Q Now, Mr. Manios was the only person still residing in the
12 subdivision as it relates to the original Architectural
13 Committee; is that correct?

14 A That's correct.

15 Q Did you also purchase some additional property from Mr.
16 Manios following -- or on or about the same time as the new
17 Architectural Committee was created?

18 A Yes, I did.

19 Q Let me show you Plaintiff Exhibit No. 3 and see if you can
20 identify that.

21 (Deed and Plat entered into evidence as Plaintiff's Exhibit
22 No. 3)

23 MR. CHILDS: Your Honor, do you want me to pass up the
24 exhibits he's already looked at?

25 BY THE COURT: I'm fine if you want to leave them for future

1 use by the witnesses or pass them up.

2 MR. CHILDS: Okay.

3 Q What does Plaintiff Exhibit No. 3 show?

4 A It shows the approval of the -- let me study it further
5 please.

6 Q Does that show where you purchased a portion of Mr. Manios'
7 property for \$30,000 on or about August 7, 2008?

8 A Yes, precisely.

9 Q Then attached to that is also, on page 3 of Plaintiff's
10 Exhibit No. 3, is a survey?

11 A Correct.

12 Q Could you describe to Judge Simmons the survey -- and
13 particularly what I'm interested in is it appears that your lot
14 had been modified previously.

15 A Correct.

16 Q Could you explain that to the Court?

17 A Yes. The intersection -- the dashed lines show the previous
18 right-of-way of Fisher Road, and that you can see from this
19 survey that Fisher Road did not line up with the road on the
20 other side of Shady Lane. I went to the County engineering
21 office and explained to them that that had created a dangerous
22 situation because many -- several times -- many times, every week
23 practically, when leaving the neighborhood from Fisher Road to
24 enter onto Shady Lane, vehicles on Shady Lane would come at high
25 speed and take that curve and they did not have a good view of

1 who was at the stop sign and there were several times they had to
2 swerve to miss me while I was parked there.

3 So, I went to the County engineer's office and asked them if
4 they could straighten that intersection out for safety reasons.
5 It took me about five years to get them to do that but they did.
6 The result of that was the road bed or the right-of-way shown
7 here became unuseful to the County.

8 And then in the hashtag area, that part of the land used to
9 be on the other side of the road from where the road is now and
10 that belonged to the property across the street. So I acquired
11 that small parcel and the roadbed which I added to my lot.

12 Q So, you basically got the County to abandon its right-of-way
13 across your property and convey a portion of it to round off the
14 corner at the intersection of Fisher and Shady Lane?

15 A To eliminate the round off, yes.

16 Q To straighten it out?

17 A To straighten it out, to make it what you would call a
18 proper transaction.

19 Q And you did that prior to this transaction with Mr. Manios?

20 A Yes.

21 Q And then you were purchasing from Mr. Manios tract A which
22 basically bottoms up next to your property behind your house?

23 A That's correct. That's what we refer to as the woods.

24 Q And that was 1.32 acres?

25 A Yes.

1 Q Now, let me show you Plaintiff's Exhibit No. 4.

2 A Excuse me, it's 1.032 acres.

3 Q I should have known I'm asking an engineer questions.

4 Plaintiff's Exhibit No. 4, see if you can identify that.

5 A Yes. This is an agreement I made with the owners of a home
6 on Shady Lane. Their property included that wedge of property I
7 referred to earlier that separated my property from Shady Lane
8 which I subsequently purchased that from them.

9 (Two Deeds and Plat entered into evidence as Plaintiff's
10 Exhibit No. 4)

11 Q So, it appears that you kind of swapped out a little bit of
12 property with Mr. Holcombe?

13 A Yes.

14 Q And were able to obtain the rest of the property down to the
15 intersection of Shady Lane and Fisher Road?

16 A That's correct.

17 Q And then you sold him some property that you purchased from
18 Mr. Manios?

19 A Correct. The configuration of the property there was --
20 rendered a lot of it unusable. So, we got together and decided
21 that by reconfiguring the land that it would be to everybody's
22 benefit.

23 Q This is, I believe, 2008 you had the survey done and the
24 transactions. We're almost at 2009. I think both of them were
25 in 2009. At that time, going back to Plaintiff's Exhibit No. 2,

1 you were already on the Architectural Committee at that time?

2 A Yes.

3 Q Did you know in 2008 you needed permission from the
4 Architectural Committee to recut your lots?

5 A Yes.

6 Q One, Mr. Manios who was in the subdivision, was cutting up
7 his lot, right?

8 A Yes.

9 Q Then, Mr. Holcombe, now that was a different matter because
10 his property was outside the subdivision somewhat?

11 A That's correct.

12 Q So what did -- let me show you Plaintiff Exhibit No. 5 and
13 see if you can identify this please.

14 A This is a -- the answer is yes. I recognize it.

15 Q What is that?

16 A This is a certification required by the County subdivision
17 office that the -- to indicate that the Architectural Committee
18 from Terra Oaks Subdivision approved the cutting of the lots.

19 (Certification Dated May 7, 2009 entered into evidence as
20 Plaintiff's Exhibit No. 5)

21 Q Now, you were on the Architectural Committee?

22 A That's correct.

23 Q You participated in that vote, right?

24 A Yes.

25 Q Did you see any problem with doing that?

1 A Well, no, for particularly two reasons, one of them is that
2 was the practice of the previous Architectural Committee---

3 Q Which was Mr. Manios, Mr. Howard and Mr. Sfiris?

4 A Yes. They all approved it, that previous resolution to
5 transfer the land from Mr. Manios to me, and then this recutting
6 here is approved by me also.

7 Q Now, there's an allegation in this case that -- Mr. Simpson
8 has submitted an affidavit that says he was out of town when
9 those documents were signed and therefore he didn't know anything
10 about those. And I'm summarizing, and we'll talk about that
11 later. What do you know about how those documents were signed?

12 A To the best of my recollection -- I'm quite confident of
13 this, I believe -- is I drafted this document and took it to
14 Maurice Ashmore. He may have actually typed it -- prepared the
15 document. In any event, I told him that I needed this document
16 either notarized or witnessed.

17 Q Right. So, is that attorney Reese Ashmore that you're
18 talking about?

19 A Yes. He's a neighbor.

20 Q He's in the subdivision?

21 A That's correct. So, I took it to him for that purpose.

22 Q Do those documents bear his signature as a witness?

23 A Yes, they do.

24 Q What do you say about Mr. Simpson's contention that he
25 couldn't have signed that document, he was out of town or that

1 somebody forged his signature there?

2 A I spoke to Paola Rogers first and indicated that Mr. Ashmore
3 had the document -- I believe I showed her a copy of the document
4 -- and that if she approved, to go to his house and sign it. And
5 then I contacted -- I attempted to contact Mr. Simpson but he was
6 out of town. He was unavailable. I was told he was out of the
7 country.

8 Q Then what did you do with respect to Mr. Simpson signing off
9 on that?

10 A In speaking to some neighbors, I learned that he would be
11 returning to the United States on a certain date which was not
12 far in the future. So, I waited until that date. Then I spoke
13 with him -- I think it was in person but it may have been by
14 phone -- and asked him to also go to Mr. Ashmore's house to
15 review and approve the document if he would.

16 Q That's how his document -- his signature became affixed to
17 that document to your knowledge?

18 A Yes.

19 Q Is that the same with Ms. Rogers who I think also in her
20 deposition testifies that that doesn't look like her signature,
21 that her signature was partially -- cut and pasted on that
22 document possibly?

23 A Well, I can't say. When I spoke with her, she said she
24 would do it.

25 Q You've had those two documents filed with the Deeds Office,

1 the certification of the Terra Oaks Architectural Committee that
2 the lots could be recut?

3 A Yes.

4 Q What you were doing basically was enlarging your lot to a
5 size larger than it was before?

6 A Only very slightly. This was really about just
7 straightening out the mishmash of property lines, but it did turn
8 out that I added a few hundred square feet but it was minimal.

9 Q How many square feet did that -- what size did that end up
10 your lot being after that transaction?

11 A Two and a half acres.

12 Q Is two and a half acres the largest lot in the subdivision?

13 A Yes.

14 Q Prior to -- what is the average size of the lots in the
15 subdivision?

16 A They're about three quarters of an acre.

17 Q What size was your lot originally when you purchased it?

18 A One and a quarter.

19 Q Now---

20 A Sorry, I may have misspoken. The current size of the lot is
21 two and one-half acres. It was originally one and one-quarter
22 acres.

23 Q All right. So you got permission from the committee
24 actually to enlarge your lot?

25 A Yes.

1 Q Now, as a result of that did you also improve the corner of
2 Fisher Road, the property you purchased or the property you got
3 from the County?

4 A Yes. The acquisition of the property between my lot and
5 Shady Lane now allowed me to improve that to the intersection,
6 and the property that -- mine abutted against, a portion of that
7 that did, was just scrubbed pine and it no way could be seen as a
8 lawn. It was unmaintainable area.

9 Q So, you cleared it, improved it, made it look better?

10 A Yes. I cleared it out, I put in lawn and irrigation, and
11 it's now grass.

12 Q All right. Now, these certifications that you obtained were
13 obtained by you without a meeting of the Architectural Committee?

14 A Not in the sense that we were all together at the same time.

15 Q Now, it's your contention in this litigation that later on
16 when the Architectural Committee allegedly met or could have met,
17 there was no quorum present and also that you weren't invited to
18 the meeting, there was no formal meeting. How can you
19 distinguish this circumstance where there was no real formal
20 meeting but signing by all of the committee members as opposed to
21 later on when certain members of the committee disputed your
22 request for recutting your lots?

23 A When I spoke to both Ms. Rogers and Mr. Simpson, I made it
24 clear that if they had any questions or wanted to enter into any
25 discussions about it, that I would be glad to do that but that

1 these were rather trivial, particularly the second one, was a
2 rather trivial readjustment of property lines.

3 Q So, in your mind no meeting was required because everybody
4 was on the same page basically?

5 A Right, and they asked for no further information.

6 Q And you had the signature of all members of the committee on
7 a document that certified you were in compliance or they
8 approved?

9 A Yes.

10 Q Now -- and do you know if that was kind of the practice of
11 the previous Architectural Committee, of Mr. Manios, Sfiris, and
12 Howard, to obtain that kind of document?

13 A I have no knowledge of that.

14 Q Now, let me show you Plaintiff's Exhibit No. 6 and see if
15 you can identify that.

16 A Yes, I can.

17 Q Could you tell the Court what that document shows?

18 A This document was created by Ms. Rogers as a result of a
19 discussion that we had about -- there seemed to be a lack of
20 knowledge in the neighborhood about the covenants.

21 (Letter to Neighbors dated June 6, 2011 entered into
22 evidence as Plaintiff's Exhibit No. 6)

23 Q What do you mean by that?

24 A There were a lot of technical violations of the covenants.

25 Q People building stuff without permission?

1 A Yes, building fences, refinishing the front of their house,
2 that kind of stuff. So, we decided that we should go on a
3 campaign to inform the community that there are covenants, and
4 there is an Architectural Committee, and that they were
5 obligatory.

6 Q In this letter, did this go out -- was this the letter that
7 went out to the community?

8 A Yes.

9 Q In this letter it says that you are, "Joe is the leader of
10 the architectural committee and was instrumental in straightening
11 Fisher Road at the intersection with Shady Lane to align it with
12 Edgewood. This significantly reduced a dangerous condition at
13 that intersection"?

14 A That's correct.

15 Q What do you -- do you think that -- is there a document that
16 says you're the chairman of the Architectural Committee?

17 A No. There's no document that infers title per se.

18 Q Did you feel like you were actually the chairman of the
19 Architectural Committee based upon your previous activities with
20 the committee?

21 A Well, I did and in this memo written by Ms. Rogers she
22 recognizes that. I believe it is customary that you call the
23 leader of a committee the chair.

24 Q Now, this is just basically informing the community who the
25 members are which are you, Mr. Simpson and Ms. Rogers, correct?

1 A Yes.

2 Q And that you are the leader of the Architectural Committee?

3 A Yes.

4 Q There is no actual homeowner's association for Terra Oaks?

5 A That's correct.

6 Q The Restrictive Covenants simply named an Architectural
7 Committee to review plans for homes and that type of thing; is
8 that correct?

9 A Well, that and subsequent actions such as putting up fences,
10 hedges, swimming pools and those sort of things.

11 Q Okay. So, how did things go from there after you got the
12 community aware of the Restrictive Covenants in 2011? Did you
13 have any problems with the committee from 2011 to 2015?

14 A No. I don't recall any issue whatsoever. I don't.

15 Q So, let me show you Plaintiff's Exhibit No. 7 and see if you
16 can identify this.

17 A Yes. I recognize this document.

18 (Letter dated May 13, 2015 entered into evidence as
19 Plaintiff's Exhibit No. 7)

20 Q That's an email from Ms. Rogers to you and also Mr. Simpson
21 -- actually it's hard to tell, but it's got Mr. Simpson listed
22 down below and Ms. Rogers listed down below -- but it's an email
23 from Ms. Rogers to you and Mr. Simpson; is that correct?

24 A Yes.

25 Q This talks about some issues related to a George -- I

1 believe his last name is Mastorakis; is that correct?

2 A Yes.

3 Q And a discussion about his chain link fence being not an
4 appropriate material for Terra Oaks. And then it goes on to
5 discuss about your request and talks about subdividing lots and
6 rules against subdividing lots which have stood for 40 years.
7 Could you explain the context of this email for the Court,
8 please?

9 A Well, I don't recall receiving this email. When I say I
10 recognize it, I recognize it from the testimony given before
11 trial.

12 Q Okay.

13 A But it was precipitated, I believe, by a request from Mr.
14 Mastorakis to install a fence.

15 Q Could you explain that situation to the Court?

16 A Mr. Mastorakis came to my home and said that he was planning
17 to install a fence in the -- at his house, that he had been -- I
18 don't know what term he used -- but had burgulated or had some
19 break-ins at his property and that he wanted to improve the
20 security, and that he thought he would put a fence completely
21 around the property.

22 Q Do you recall -- I'm referring to Mr. Mastorakis' affidavit
23 that is tentatively being reviewed by the Plaintiff (sic).

24 MR. CHILDS: I don't want to prejudice that, Your Honor, and
25 I understand the Defendants have a right to object to it and you

1 may very well rule in their favor or against them. I'm not
2 trying to put that before you yet.

3 But Mr. Mastorakis in his affidavit mentioned he had a
4 problem with chickens. Could you explain that to the Court? Was
5 that going on about the same time?

6 A Yes. He had indicated that that was another reason he
7 wanted the fence, is because chickens that were being maintained
8 in the property of the Rogers were disturbing his landscaping and
9 that he wanted to prevent them from coming onto his property, and
10 that that was a major consternation for him.

11 Q Your property is located right next door to Ms. Rogers'
12 property?

13 A Correct.

14 Q Mr. Mastorakis' property where does it lie in relationship
15 to yours and Ms. Rogers' property?

16 A It's not exactly -- precisely the side but in essence we
17 share a mutual corner. His house is on the cul-de-sac of the
18 street that runs parallel to Fisher Road, and he's at the end of
19 the cul-de-sac and his lot then is behind the Rogers' lot and
20 part of my lot.

21 Q So, Mr. Mastorakis wants to put up a fence, complains about
22 break-ins in his cars and also has a complaint about Ms. Rogers'
23 chickens?

24 A Correct.

25 Q What did you do about that request by him to put up a fence

1 and how does that relate to the Restrictive Covenants?

2 A I told him that putting up a fence required approval of the
3 Architectural Committee and that he needed to follow the
4 covenants.

5 Q And what happened?

6 A He requested how one goes about doing that. I told him that
7 he needed to provide a sketch of what he intended to do and also
8 include the height of the fence and the type of the fence. And
9 that I would take it to the -- I would notify the Architectural
10 Committee that he wished to do so.

11 Q What did the Architectural Committee do if anything?

12 A The---

13 Q Right here -- and let me go back, and I'll strike that
14 previous question. Right here in Plaintiff Exhibit No. 7 which I
15 know you say you never received that, but there's a statement in
16 there that says the chain link fence -- that, "John and I
17 discussed your request from the big picture. We both concluded
18 the rules governing the subdivision should be followed" -- and I
19 assume that's John Simpson -- "and we agreed that creating
20 exceptions to these rules for individual homeowners would be
21 unfair to the other owners who have followed the rules for the
22 past 40 years and whose home values would be lowered by making
23 exceptions to these rules." Later on it specifically talks about
24 George's fence and then basically says they've denied the request
25 basically. How were you involved as the chairman of the

1 committee in the denying of Mr. Mastorakis' request?

2 A Well, I wasn't. I asked Ms. Rogers and Mr. Simpson to meet
3 with me at the property to look at George Mastorakis' proposal,
4 and we met at Ms. Rogers' house. At that time we -- Mr. Simpson
5 and I confronted Ms. Rogers on the chickens and explained to her
6 that chickens not only violated the covenants, but they also
7 violated the County ordinance and that they must be removed.

8 Q All right. So what happened with Mr. Mastorakis' request?

9 A And then we went outside and there was -- he had already
10 erected the fence in the back of the yard which was a surprise to
11 me since I thought the understanding I had with him was he was to
12 do no fencing until the Architectural Committee had reviewed it.
13 Ms. Rogers and Mr. Simpson discussed it, and they both stated
14 they were not going to approve the fence for the front of the
15 property which had not been erected and left.

16 Q What do you mean "left"?

17 A They just left. They didn't say anything to me other than
18 they weren't going to approve it.

19 Q And that was a portion of the fence project that Mr.
20 Mastorakis -- which was the front around his property he wanted
21 to fence in, and then he had already started the fence on the
22 back?

23 A He had already completed the fence on the back. Yes.

24 Q What kind of fence was that?

25 A It was a chain link fence. It was a 4 foot chain link fence

1 I believe. Yeah, I'm pretty sure it was 4 feet. There was one
2 section that was probably 20 feet long that was an architectural-
3 style fence. When he originally proposed the project to me, I
4 told him that I would prefer not to have a chain link fence in my
5 back yard and if he would put in an architectural fence that I
6 would pay half the cost of that. When he did it, that's what he
7 did. The part that is facing my property is a black picket-type
8 fence. The rest of the fence is chain link.

9 Q The portion that Mr. Mastorakis erected adjacent to your
10 property was architectural black -- an architectural fence?

11 A Yes.

12 Q The portion across Ms. Rogers' property that Mr. Mastorakis
13 put up was a chain link fence?

14 A That's correct.

15 Q Did you have any discussions with Ms. Rogers about that
16 situation?

17 A Yes.

18 Q What was that discussion?

19 A She asked me why my fence was better than her fence, and I
20 said first of all I didn't expect there would be a fence here
21 when we came and secondly he approached me and I told him that I
22 would prefer that.

23 Q You're talking to Ms. Rogers and Mr. Simpson about Mr.
24 Mastorakis' fence -- about the chickens you've discovered -- I
25 don't know if you discovered it before Mr. Mastorakis told you

1 about it or not.

2 A No, I had not.

3 Q But now you've got---

4 A Excuse me. I had seen a chicken -- two chickens in my yard
5 at one time, but I didn't pursue their origin.

6 Q Okay. All right. So, then now you've got the two committee
7 members are they acting on their own when they say, "We're not
8 approving Mr. Mastorakis' fence"? Were you involved in that
9 decision from the perspective of holding a meeting, discussing
10 it, making a vote?

11 A No, there was no vote.

12 Q To your knowledge was Mr. Mastorakis ever notified
13 officially by the committee in writing of anything about the
14 decision of Mr. Simpson and Ms. Rogers?

15 A I know I went to Mr. Mastorakis a day or two later and told
16 him that the committee was not going to approve it, the fence in
17 the front.

18 Q But the fence in the back kind of went to the wayside? Is
19 it still there?

20 A It's still there. Nobody in my presence objected to it.

21 Q The third paragraph of this email in Plaintiff's Exhibit No.
22 7 starts to talk about you and a request by you, and it states
23 there are rules against subdividing lots. So, apparently you
24 don't know of any rules against subdividing lots because you
25 previously had subdivided your lot?

1 A Yes.

2 Q With their approval?

3 A Twice.

4 Q What's the basis of this? You've heard Mr. Fenton's
5 testimony, that basically the cutting of lots was a mechanism for
6 him to finance the purchase of the property. Here they're
7 talking in May of 2015 about your proposal. So, explain that to
8 the Court.

9 A Ms. Rogers' position from the beginning was that she didn't
10 want me to cut the lot. She specifically stated that she thought
11 it looked quite nice; that it was, quote, beautiful since I had
12 extended my lawn, now the entrance to the neighborhood looked
13 good where before it looked shabby and that -- she just didn't
14 like the idea.

15 Q Let me ask you to explain while you're talking about
16 subdividing your lots in 2015 when that issue also came up when
17 you're selling -- signing a document to sell your property to Mr.
18 Fenton.

19 A I had reflected on the experience of Mr. Manios about a lot
20 of people did not want that large piece of land and now I had two
21 and a half acres and that was a barrier to him selling his home,
22 and secondly that the---

23 Q Let me clarify that. What you're saying is Mr. Manios
24 transferred ownership of a part of his property to you because he
25 had difficulty selling his home because it was a bigger lot than

1 a lot of people wanted?

2 A That's correct.

3 Q Then you became concerned about having the biggest lot in
4 the subdivision?

5 A Yes. When I acquired the property from Mr. Manios, I had no
6 idea about ever leaving and now that I was planning to sell my
7 property, I faced the same dilemma. Then the second motivation
8 was that either two or three lots, it would be more valuable and
9 that I wanted to give a buyer, potential buyer, the option to buy
10 any combination of the lots.

11 Q All right. So, had you submitted a formal request in May of
12 2015 to subdivide your lots to the committee?

13 A No, I had not.

14 Q Was this just kind of a gratis mention back to you from Ms.
15 Rogers and Mr. Simpson that they thought the rules against
16 subdividing lots must be followed?

17 A Well, I take it that way but I was unaware of it.

18 Q Okay. So, let me show you Plaintiff's Exhibit No. 10 and
19 see if you can identify that.

20 A Yes.

21 Q What is that?

22 A This is my -- this is my request to the committee to
23 subdivide the property.

24 Q That's dated January 8th of 2016?

25 A Right.

1 (Email from Plaintiff dated January 8, 2016 (2 Pages)
2 entered into evidence as Plaintiff's Exhibit No. 10)

3 Q You've attached to it a resolution of the Terra Oaks
4 Architectural Committee. Basically, that the committee -- a
5 document for the committee to sign like you did before approving
6 the recutting of the lots?

7 A Uh-huh. (indicating an affirmative response)

8 Q That is the document identified by Mr. Fenton which was the
9 proposal that was dated December 15th of 2015?

10 A Yes.

11 Q Now, from your perspective, what did you expect as a result
12 of this request for permission to recut your lots?

13 A I expected to hold a committee meeting to discuss, negotiate
14 and ultimately approve the cutting of the lot.

15 Q So, what happened?

16 A Nothing.

17 Q Well, explain that.

18 A Immediately nothing.

19 Q Explain that please.

20 A The -- I received a communication -- I'm trying to remember
21 now exactly the form -- that -- from Paola Rogers that they would
22 not -- they had decided not to approve it and that -- there was
23 an interim step we could probably talk about, but that they had
24 added Mr. Cook to the Architectural Committee -- or they claimed
25 they did -- and that they had met and Mr. Cook, Mr. Simpson and

1 Ms. Rogers had met and declined it.

2 Q Let me show you what's been marked Plaintiff's Exhibit No.

3 12. Can you identify that document?

4 A Yes.

5 (Email dated January 10, 2016 from Alison Simpson entered
6 into evidence as Plaintiff's Exhibit No. 12)

7 Q What is that document? Let me ask you this, had you ever
8 seen this document before the litigation involved here today?

9 A I had not and I would like to say that the previous document
10 that I stated I had not seen before, I'm not sure at this time
11 whether I'm confusing this document with that one. This one I
12 never saw. I'm positive.

13 Q That is a communication between basically Ms. Rogers and Mr.
14 Simpson about your proposal, purportedly?

15 A Yes.

16 Q It purports to be basically a summary of some method by
17 which they would deny your request?

18 A Yes.

19 Q Were you involved at all in any participation of those
20 issues?

21 A No.

22 Q Do the subdivision regulations require -- do the covenants,
23 Restrictive Covenants require that a quorum of the members
24 constitute all of the members?

25 A Yes.

1 Q To your knowledge can the committee meet and conduct any
2 business in the absence of all the members?

3 A It cannot.

4 Q Let me show you Plaintiff's Exhibit No. 13 and see if you
5 can identify that.

6 A Yes.

7 (Email dated January 21, 2016 to Plaintiff entered into
8 evidence as Plaintiff's Exhibit No. 13)

9 Q What is that?

10 A This is a -- I guess an email from -- it states it's from
11 Paola Albuquerque.

12 Q You know that to be Paola Rogers?

13 A Yes. And it states that the Architectural Committee received
14 my request for the subdivision of my lot on the 7th of January.
15 The committee gathered to review the request, and it was not
16 approved with two denials and zero approval votes. Therefore, it
17 was not approved.

18 Q So, you emailed the members of the committee that you got a
19 proposal to subdivide your lots, something that you had
20 informally discussed with them last year when there were issues
21 going on with chickens and fences?

22 A Right.

23 Q Now, you submit this formally to them, in a formal request,
24 and this is January of 2016. Is this the next thing you hear
25 after you submit your request?

1 A Yes.

2 Q Basically, a notification that the committee had already
3 met?

4 A Yes.

5 Q And voted against you?

6 A Correct.

7 Q Had you had the opportunity to meet with the committee and
8 provide them with information about your proposal, what
9 information would you have provided?

10 A Well, I think first there would have been a review of the
11 covenants since they were being ignored, and secondly I would
12 explain to them that the contracted buyer was using the cutting
13 of the lot to facilitate the financing of the property and that
14 he had expressed no intention to do anything other than leave it
15 as it is.

16 Q To your knowledge do the Restrictive Covenants -- would the
17 Restrictive Covenants have required Mr. Fenton to get approval
18 for any construction on any of the lots, or any major landscaping
19 or anything like that on the lots?

20 A Yes.

21 Q I mean, aside from getting permission to cut your lots, do
22 you also have to get permission to build on them and do
23 structural changes to the lots?

24 A The covenants are quite explicit that any structure built on
25 any of the lots require the submission of the drawings, a plat to

1 show the position of the building on the lot to be submitted for
2 approval to the Architectural Committee.

3 Q So, this January 21, 2016 email shown as Plaintiff's Exhibit
4 No. 13 indicates that, "A formal document with the same statement
5 will follow by mail for your personal records."

6 A Uh-huh. (indicates an affirmative response)

7 Q Did you ever receive a formal document with the same
8 statement?

9 A I did not.

10 Q Does this document, this email that you received, I believe
11 you received it 14 days after your request was submitted?

12 A Yes. I believe so.

13 Q My math is not good on that. Your request was January 7th,
14 and this email is January 21st. What's the significance of 14 or
15 15 days' consideration by the committee?

16 A The covenants says that they require -- if you don't receive
17 an answer -- a reply from the committee within 15 days, it is
18 deemed approved.

19 Q Since you were the, quote, leader or Chairman of the
20 committee was it your duty or obligation to call meetings if
21 there was a subject to be considered by the committee?

22 A It was not stated as a rule anywhere.

23 Q Did you call a meeting to consider your request for
24 subdivision of the property?

25 A I did.

1 Q Did you call one after January 21, 2016?

2 A I believe it was on the 17th.

3 Q We'll get to that. Why did you request a formal meeting of
4 the committee?

5 A So that there could be a discussion and a vote.

6 Q So you've got two issues with this email, one is a quorum is
7 all the members of the committee?

8 A Right.

9 Q Number two, basically they made a decision without you?

10 A Correct.

11 Q No formal meeting was held?

12 A Correct.

13 Q Does this document, this January 21st email, tell you exactly
14 why the committee disapproved your request?

15 A No. Well, it incorrectly claims that -- I believe it claims
16 that it's not allowed.

17 Q Look at Plaintiff's Exhibit No. 13 is what I'm referring to.

18 A Would you repeat the question?

19 Q Does this email that you received tell you anything about
20 why they denied your request?

21 A Nothing.

22 Q As a result of that email, what did you do? Let me just
23 show you Plaintiff's Exhibit No. 14 and see if you can identify
24 that.

25 A I received a -- I made a complaint about their action and

1 requested a meeting.

2 (Emails dated January 22, 2016 entered into evidence as
3 Plaintiff's Exhibit No. 14)

4 Q So, that looks like January 22nd which is the day following
5 the email of Plaintiff's Exhibit No. 13?

6 A Right.

7 Q You sent an email to Paola and John saying, "It was
8 inappropriate that the committee met and that I was not invited,
9 was not given an opportunity to present a proposal and therefore
10 reject this is a valid response, I, the chair, am calling a
11 meeting on this proposal. The meeting will be at 9 Fisher Road
12 on 1/24/16 at 7:00 p.m. Please confirm your attendance"? Is
13 that right?

14 A That's correct. Yes.

15 Q The response that you received from Ms. Rogers was, "You
16 have a direct financial stake in this matter." That's the first
17 sentence.

18 A That's correct.

19 Q Let me ask you about that. Do you know of any provision in
20 the Restrictive Covenants or any rule that precludes a member of
21 the Architectural Committee from making decisions in which they
22 have a financial stake?

23 A There is no such statement in the covenants, and there is
24 also a substantial past practice of that not being the case.

25 Q In fact, the developers were the original Architectural

1 Committee. So everything they ever decided affected their
2 financial stakes?

3 A That's correct. I had a financial interest in the two
4 previous cutting of the lot that they approved.

5 Q Is this the first time that you had been notified from Ms.
6 Rogers that there was some kind of unethical participation by
7 you?

8 A No. She voiced that to me.

9 Q The last part of the email says, "Accordingly, any action
10 taken by you as described in your email is completely invalid and
11 has no effect."

12 A Yes.

13 Q So, you set a meeting for January 24, 2016 at your home?

14 A Yes.

15 Q Did anybody show up on the 24th?

16 A No. I prepared for the meeting. I waited there for an
17 hour, nobody showed up and I left.

18 Q Let me show you Plaintiff's Exhibit No. 15 and see if you
19 can identify that.

20 A Yes.

21 ("Texts with John Simpson" entered into evidence as
22 Plaintiff's Exhibit No. 15)

23 Q Are those text messages between you and Ms. Rogers and also
24 Mr. Simpson about this meeting and whether or not they would
25 attend?

1 A Yes..

2 Q Does that document indicate that the committee -- that they
3 state, "The Architectural Committee decision to deny your request
4 to reorganize and subdivide your property stands. No further
5 review or meetings will be necessary"?

6 A Yes.

7 Q Now, did you try to resolve this dispute by proposing some
8 compromises?

9 A Yes, I did.

10 MR. GLEATON: Objection to settlement negotiations.

11 BY THE COURT: Why is that settlement negotiations?

12 Mr. Childs, let me hear from you, why that is not properly
13 excluded?

14 MR. CHILDS: The arguments of the Defendants in this case
15 have been that, one, they denied the request in 2015; two, they
16 denied the request in a timely fashion on January 21, 2016;
17 three, that there was a new committee proposed and agreed to by
18 Mr. McMullen that refused to meet and actually issued another
19 decision as a result of that. I don't think it's really trying to
20 compromise the litigation or the legal proceedings, but it was an
21 effort to get a method by which the committee would follow the
22 requirements of the Restrictive Covenants.

23 BY THE COURT: Go ahead for that purpose.

24 Q What did you do as a result of Paola saying that you had a
25 conflict and you shouldn't be involved in it at all and the

1 committee not meeting -- refusing to meet with you and not
2 formally reviewing your request?

3 A Well, my actions were only partially related to this. It
4 became clear to me that there was a much larger problem here,
5 particularly two problems. One of them was that the Covenants
6 had serious flaws in them in my opinion. For example, the
7 Architectural Committee was self-perpetuating if that's the right
8 word. They named -- members of the committee were named by the
9 committee. Therefore, the other residents of the community
10 really had little or no say of who sat on that committee.

11 Q In particular, Plaintiff's Exhibit No. 15, there is a text
12 message I think from Mr. Simpson that says, "Following your
13 Wednesday meeting and in preparation for their temporary AC roles
14 Duane and Hope had Covenants to study, then met with Paola on her
15 return home. Duane met with Paola and myself Monday and was
16 accepted. He then asked many probing questions. In conclusion
17 we did not find justification for another AC review."

18 A Yes. Well, I'm coming to that.

19 Q Okay. I'm hurrying you along because I'm used to court.

20 A Anyway, I decided that we really needed to address those
21 questions. So, I invited, with short notice, just went from
22 house to house, asked people if they would be interested in
23 attending a meeting at my house to discuss these issues, that
24 there were serious problems with the covenants, and also the
25 community really had little or no sense of a community, that most

1 -- there were pockets of people that were friends and so forth
2 but there were no community activities or anything like that. So,
3 I asked people to come to that meeting. I invited all of the
4 Architectural Committee people. I also invited several other
5 people. There was a meeting at my house. Mr. Simpson, Mr. Cook
6 insisted that we discuss the cutting of the property, and I
7 repeatedly told them that that was not the subject of the
8 meeting, the meeting was about these other factors.

9 Q Was Ms. Rogers present at that meeting?

10 A She was not.

11 Q And do the covenants require that in order to do business --
12 all members are a quorum in order to do business?

13 A Absolutely.

14 Q So, that's the basis of his text message to you about
15 following your Wednesday meeting?

16 A Yes.

17 Q Somehow, suddenly Mr. Cook and Ms. Schamalzl -- I hope I'm
18 saying that right, Schamalzl?

19 A Yes.

20 MS. SCHAMALZL: Correct.

21 Q Were suddenly members of the committee?

22 A Well, I'm leading up to that. Mr. Cook and Mr. Simpson kept
23 insisting that we talk about this, and they were disrupting the
24 meeting. There were a couple other people there that said, "Yes,
25 let's talk about it." So, I said, "Okay, we can talk about that

1 but that's not the purpose of this meeting." So, there was a
2 pretty brief discussion about that.

3 Q Was Mr. Cook opposed -- did he state an opinion about your
4 lot proposal?

5 A Yes. He was adamantly opposed to it.

6 Q So, who was proposing him as a member of the committee?

7 A Mr. Simpson.

8 Q How did Ms. Schamalz1 get involved?

9 A After we finished that meeting which was kind of a confused
10 meeting, I approached Mr. Simpson and said, "John, this has
11 gotten completely out of hand. We need to try to solve this as
12 friends and neighbors and cut down on the tension here and get on
13 with our lives." And he said that we could appoint some
14 alternates to the committee. I said, "I'm open to that." And he
15 said, "I would like Duane Cook to sit on it as an alternate." I
16 said, "Mr. Cook has already expressed strong opposition to this,
17 and I would have great concerns about putting him on the
18 committee." The discussion progressed to, "I will accept him on
19 the committee under certain circumstances. The circumstances are
20 that he declare he will give it a fair hearing, that we will be
21 installed with him, that there would be another person named as
22 an alternative member to replace Ms. Rogers"---

23 A Why is that?

24 A Because she also had a conflict of interest in that --
25 recently discovered -- that her husband sat on the County

1 Planning Commission which also had to approve the cutting of the
2 lot. And that we would name a third so there would be two
3 alternates. And that if -- I would be there to make my case and
4 get a fair hearing of what I wanted to do; that I would agree to
5 Mr. Cook but we had to have another alternate. Ms. Schamalzl was
6 there, just like arms away and I said, "What about her?" And we
7 brought her to the conversation and she said she would do that.

8 Q Okay.

9 A So, I then said to Mr. Simpson, "John I want to be crystal
10 clear on this. You cannot have any more secret meetings. You
11 cannot have a meeting without me present, and we have to have a
12 meeting to install the alternates before we proceed."

13 Q As a result of that, you got a text message that said
14 basically---

15 A Well, he did give me an oral response. His response was,
16 "You have a vested interest in the outcome of this, and you're
17 not entitled to participate in this decision." And I said, "The
18 covenants are quite clear you cannot conduct business without all
19 of the members there, and if I'm not at the meeting you don't
20 have any alternates." He said, "Well, I disagree with you," and
21 he left.

22 Q And then you got the email that somehow they met or said
23 they studied the covenants and then met with -- Duane and Paola
24 and himself met---

25 A Well, there was a step before that. I proposed a meeting to

1 install the alternates at a specific time and date which was like
2 two days in the future, and he agreed to that. Then I sent a
3 text message to Paola and John -- I'm sorry, Simpson and Rogers
4 -- saying, "Since I don't understand what your objections are,
5 please let me know before the meeting so I can come prepared to
6 answer your questions." Then I received the message that was
7 under discussion which was, "Following your Wednesday meeting and
8 in preparation for their temporary AC roles Duane and Hope had
9 covenants to study, then met with Paola on her return home.
10 Duane met with Paola and myself" -- this is from John Simpson --
11 "and was accepted. He then asked many probing questions. In
12 conclusion we did not find justification for another AC review."
13 This was the first communication I had that he had completely
14 ignored my conditions to appoint somebody as alternate, and it
15 makes no mention of why Ms. Schamalzl was no longer---

16 Q Why she only just studied the covenants and wasn't
17 involved in any kind of--

18 A Yes.

19 Q And Ms. Rogers was also involved in the decision according
20 to the text?

21 A Yes.

22 Q So, as a result of that -- we're getting into February now.

23 A Uh-huh. (indicating an affirmative response)

24 Q Have you had any formal letter received from the committee
25 denying your request?

1 A No.

2 Q What did you do from there?

3 A I came to see you.

4 Q Well---

5 A I didn't really know what my options were.

6 Q So, let me show you Plaintiff's Exhibit No. 16 and see if
7 you can identify that.

8 A Yes. I did respond to that.

9 (Letter dated September 29, 2016 entered into evidence as
10 Plaintiff's Exhibit No. 16)

11 Q This is September of 2016 now, right?

12 A Yes.

13 Q This is after you are still trying to wrestle with trying to
14 resolve this issue?

15 A Right.

16 Q By this time had your contract with Mr. Fenton expired and
17 been cancelled basically?

18 A Yes. I returned his deposit and moved on.

19 Q So, an email from Paola Rogers, John Simpson and Duane Cook
20 goes out on September 29, 2016 that says basically that the
21 Architectural Committee is now Paola Rogers, John Simpson and
22 Duane Cook with the alternative for a quorum, Hope Schamalzl?

23 A Yes.

24 Q Were you involved in that decision to completely remake the
25 Architectural Committee?

1 A No, not at all.

2 Q And I think you responded back the very---

3 A Yes, I immediately responded---

4 Q A couple days later.

5 A I was highly disturbed by this message. I wrote back and
6 said, "I am very surprised in the inaccuracy in your report to
7 the community that I am no longer on the architectural committee
8 for Terra Oaks. I suggest you read the covenants. They clearly
9 state that a quorum for the committee is all its members. Since,
10 I am the chair and have not called a meeting and there has been
11 no notice of a meeting, and since I have not resigned there
12 cannot be a new committee member, nor can I be off the
13 committee."

14 Q As far as you're concerned as of October 7, 2016 the
15 committee had never properly met, never formally reviewed your
16 proposal, never had a quorum present in which to review your
17 proposal and never provided you a formal document that said, your
18 request is denied because of this, this and this?

19 A That's correct.

20 Q Now, you're off the committee struggling with the issue of
21 who's actually on it?

22 A Well, allegedly.

23 Q Let me show you Plaintiff's Exhibit No. 17 and 18.

24 A Yes.

25 Q Can you identify those documents?

1 A These are two letters, one of which I sent to Ms. Rogers and
2 one I sent to Mr. Simpson.

3 (Letter dated October 11, 2016 (2 Pages) entered into
4 evidence as Plaintiff's Exhibit No. 17)

5 (Letter dated October 11, 2016 (3 Pages) entered into
6 evidence as Plaintiff's Exhibit No. 18)

7 Q Basically the Court will be able to review these documents,
8 but could you summarize what you were doing with these registered
9 letters to Paola Rogers and Mr. John Simpson?

10 A Well, the situation had now become, to me, totally
11 dysfunctional, couldn't call a meeting, et cetera. So, I wrote
12 each of them a letter, a separate letter, which basically says,
13 there has been evidence that -- events that have affected the
14 operation of the Terra Oaks Architectural Committee. These
15 incidents have rendered the committee ineffective and unable to
16 conduct business, and then I enumerated in each of their cases
17 what those were.

18 Q All right. Basically, that's you firing all of the
19 remaining members of the committee?

20 A That's correct.

21 Q Your contention in this litigation as obviously expressed in
22 your testimony, what remedies are you looking for out of these
23 proceedings? Because one of the remedies might be we could send
24 it back to the Architectural Committee and they could do a formal
25 review, listen to your proposal and make a decision, a written

1 decision, that specifies a reason for that decision. Is there
2 any hope of that the way the committee now is?

3 A There would not be -- since the, so to speak, the well has
4 been poisoned, no, that certainly would not be a fair process.

5 Q Since the committee, according to you, never officially
6 acted, never officially responded to your proposal, do you
7 contend that the proposal was approved by the committee by their
8 failure to act?

9 A I do.

10 Q Again, I want to emphasize according to your knowledge of
11 the Restrictive Covenants if your request to divide your lots was
12 granted, nothing could be done on those lots the Architectural
13 Committee wouldn't have to approve?

14 A That's correct.

15 Q Now, you've provided me with several photographs and
16 exhibits concerning the area of the community and also with some
17 issues that you continue to have with Ms. Rogers as a next-door
18 neighbor. So, I want to show you those.

19 I actually have, Your Honor, color copies of those I want to
20 kind of attach to the black and white that was affixed by the
21 court reporter.

22 I know you have an objection.

23 MR. GLEATON: I have an objection to the exhibits. I have
24 no objection to the substitution of color for black and white.

25 BY THE COURT: What's the objection to the exhibits?

1 MR. GLEATON: Your Honor, Exhibit 19-B1, I object to
2 relevance. First of all, I object to all of them on relevance.
3 In addition to all of them being objected to for relevance---

4 BY THE COURT: Let's start with the big picture first,
5 what's the relevancy, Mr. Childs?

6 MR. CHILDS: Mr. McMullen wants to establish that Mr.
7 Simpson also was in violation of the Restrictive Covenants by
8 having an outdoor lighting---

9 BY THE COURT: Are those issues that are pled here today?
10 We've gone so far afield. They've got to be pretty doggone
11 relevant because we're not going to let the whole community air
12 their dirty laundry in court.

13 MR. CHILDS: I don't intend to. I'll exclude that one. The
14 next one was related to the erection of fencing by the Rogers
15 next door--

16 BY THE COURT: How is that relevant?

17 MR. CHILDS: --which is a continued violation of the
18 Restrictive Covenants.

19 BY THE COURT: Is that an action that has been pled in this
20 lawsuit?

21 MR. CHILDS: I believe so. Let me double check, Your Honor.
22 I want to make sure.

23 BY THE COURT: There's a pending action to remove that fence?

24 MR. CHILDS: No, sir. No, sir.

25 BY THE COURT: So, how is it relevant?

1 MR. CHILDS: It's relevant by, I think, the motive and the
2 purpose of this dispute goes back to the issue of Mr. McMullen
3 opposed -- taking issue with Ms. Rogers' violation of the
4 Restrictive Covenants. So, as a result of that, when this issue
5 came up about recutting the lot, it was never going to get
6 approved because he had already talked to her about his concern
7 about chickens next door---

8 BY THE COURT: How are the other photographs relevant?

9 MR. CHILDS: The other photographs?

10 BY THE COURT: What are the other photographs?

11 MR. CHILDS: Of the chicken coop, of the pool erected on the
12 property and the pergola that was erected on Ms. Rogers' property
13 which Mr. McMullen contends is a violation of the Restrictive
14 Covenants.

15 BY THE COURT: What's the prejudice to the admission of
16 these documents since this is non-jury?

17 MR. GLEATON: Your Honor, I understand but Exhibit 20, Pages
18 1 through 4, I also object to hearsay.

19 MR. CHILDS: I'll withdraw that.

20 MR. GLEATON: One through four?

21 MR. CHILDS: Yes.

22 MR. GLEATON: So, relevance and then those four on hearsay.
23 That's my objection, Your Honor.

24 BY THE COURT: Over the objection, I'm going to allow the
25 photographs in for whatever limited relevance they may have.

1 MR. GLEATON: Thank you, Your Honor.

2 Q Let me show you Plaintiff's Exhibit No. 21. I think that's
3 the color copy -- that's the color copy of that. What does that
4 depict?

5 A This is the chicken coop that was built on the lot of the
6 Rogers.

7 (Black and White Photograph (with color attached) of Chicken
8 Coop entered into evidence as Plaintiff's Exhibit No. 21)

9 Q I think probably the best way I can do this is show you -- I
10 have multiple copies -- your aerial photographs of Plaintiff's
11 Exhibit No. 23. It's all attached to 23 which is the aerial of
12 Fisher Road. Could you explain that to the Court?

13 (Aerial Photographs of Property (8 Pages) entered into
14 evidence as Plaintiff's Exhibit No. 23)

15 Q They're actually satellite photographs available online.
16 The question that I raised with Mr. Simpson, which we haven't
17 really discussed yet, was that as a---

18 BY THE COURT: Sir, if you could just answer the question
19 about the relevancy and what's the impact of those photographs.

20 A Well, the relevancy is these are photographs of violations
21 of the covenants by the Rogers, and the relevance is that these
22 are part of the reasoning that I gave for removing both members,
23 Simpson and Rogers, from the committee.

24 Q Those are supplemental to the basic letter that you already
25 got into evidence that you sent them removing them?

1 A Yes.

2 Q So, Mr. McMullen, you proposed to the Defendants certain
3 interrogatories which are legal questions that were posed in this
4 case. Do you remember those?

5 A Yes.

6 Q The Defendants answered those questions On February 7th of
7 2017?

8 A Huh-huh. (indicating an affirmative response)

9 MR. CHILDS: I would like to mark that as an exhibit.

10 MR. GLEATON: Your Honor, I would object to these as
11 hearsay. They all are witnesses in the courtroom he can call if
12 he would like to get in what their answers to those
13 interrogatories are.

14 MR. CHILDS: The purpose---

15 BY THE COURT: If they're answers to interrogatories, I have
16 no problem---

17 MR. GLEATON: Thank you, Your Honor.

18 BY THE COURT: What's the exhibit number?

19 MR. CHILDS: It's going to be 26.

20 (Responses to Plaintiff's First Set of Interrogatories
21 entered into evidence as Plaintiff's Exhibit No. 26)

22 MR. CHILDS: Go ahead and mark this as 27.

23 (Responses to Plaintiff's First Request to Admit entered
24 into evidence as Plaintiff's Exhibit No. 27)

25 Q So, Mr. McMullen, you posed certain questions to the

1 Defendants in this case and one of those was: "Identify each and
2 every official meeting of the Architectural Review Committee
3 including the agenda thereof, specifying the date, the place and
4 time of each meeting from 1/1/2010 to the present." Do you see an
5 answer to that in number 6?

6 A Yes.

7 Q What was that answer?

8 A "No meetings at all were held from December 8, 2008 until
9 January 5, 2015 when a meeting was held regarding a fence issue
10 for George Marchbanks (sic). Then another meeting was held
11 January of 2016 regarding the matter at issue in this
12 litigation."

13 Q Was any agenda specified in that answer?

14 A No.

15 Q Was there any date, specific date, and time of that alleged
16 meeting in January?

17 A No.

18 Q Let me show you Plaintiff's Exhibit No. 27 and those are
19 Request to Admit posed by the Plaintiff?

20 A Yes, they are.

21 Q Did they deny that you are the chairman of the committee?

22 A I don't see it addressed. Oh, now I see it. It says,
23 "Admit that Plaintiff was Chairman of the Terra Oaks
24 Architectural Committee prior to January 8, 2016."

25 Q And they denied that?

1 A No, admitted it.

2 Q No, down below that.

3 A Oh, the one below. Yes, they denied that.

4 Q Now, I know we've discussed a number of issues and gone
5 through a number of issues relative to your request of the
6 Architectural Committee's review. Are there any others that you
7 have that I haven't covered with your testimony?

8 A Would you repeat that please?

9 Q Are there any other issues relative to the actions or the
10 inactions of the Terra Oaks Architectural Committee that we have
11 not addressed?

12 A I'm not aware of anything.

13 MR. CHILDS: Let me check my notes real quick, Your Honor.

14 BY THE COURT: Yes, sir.

15 THE WITNESS: May I rise, Your Honor, to pour some water?

16 BY THE COURT: Certainly. Yes, sir.

17 Q Mr. McMullen, are you aware of whether or not the
18 Architectural Committee is incorporated or not?

19 A It is not to my knowledge.

20 Q We've talked about a quorum being present at the meetings?

21 A Yes.

22 Q You contend there was never a quorum for any meeting that
23 possibly could have been held because you never were involved in
24 the meeting. Were there any formally called meetings? In other
25 words, I think your testimony was you formally called a meeting

1 that nobody attended?

2 A Yes.

3 Q Do you know of any other formally called meetings?

4 A No.

5 Q Have you seen any information provided that showed any
6 minutes being held or recorded of these alleged meetings that you
7 didn't participate in?

8 A I have not.

9 Q Did you ever receive -- I think you testified to this but I
10 want to make sure -- you never received a formal notice of your
11 denial -- your contention is a simple email saying the thing was
12 denied wasn't sufficient?

13 A Well, it was also not a meeting that I attended. So, it was
14 not a meeting.

15 Q To this day do you know any reason why your request was
16 denied?

17 A No.

18 Q Do you still wish to subdivide your property in the fashion
19 that you proposed?

20 A Yes, I do.

21 Q Now, there was an issue in some of the emails that you
22 basically no longer live in the subdivision; is that correct?
23 That you've moved?

24 A I purchased and moved into a new home. I do not live at
25 that address.

1 Q Do you know of any -- I think in some of the responses we've
2 already got into evidence Ms. Rogers said you're no longer a
3 resident in the subdivision so you're not even involved in the
4 committee anymore. Do you know any provision in the Restrictive
5 Covenants that specify that you have to live there to be a part
6 of the Architectural Committee?

7 A There are no restrictions on that. In the past practice --
8 there's only been two committees, the first one by the developers
9 and two of the three did not live in the community. The second
10 committee, which is in discussion right now -- I lived in the
11 community for thirty-plus years and the only reason I don't live
12 there now is because I thought I would have sold my house by now.

13 Q But when the committee was turned over to you, Ms. Rogers
14 and Mr. Simpson, there was no -- Mr. Howard no longer lived in
15 the subdivision?

16 A He never lived in the subdivision.

17 Q And Mr. Sfiris never lived in the subdivision?

18 A Correct.

19 Q Answer any questions Mr. Gleaton might have.

20 BY THE COURT: Mr. Gleaton, how long do you anticipate your
21 cross going?

22 MR. GLEATON: I will try to keep it as brief as possible,
23 Your Honor, but we do have a lot of ground to cover. I would say
24 at least thirty minutes, possibly an hour but I would try not to
25 let it take that long.

1 BY THE COURT: I'm kind of guessing that y'all's estimate of
2 the case being finished by 12:00 today, we're long past that.

3 MR. GLEATON: I believe we set aside a day, Your Honor.

4 BY THE COURT: I understand that.

5 MR. CHILDS: I thought my case would be done by 12:00.

6 BY THE COURT: All right. We'll take a ten-minute break.

7 MR. CHILDS: Thank you, Your Honor.

8 (Whereupon, a recess was taken at 10:50 a.m.)

9 (Whereupon, the trial resumed at 11:00 a.m.)

10 BY THE COURT: All right. Your witness.

11 CROSS-EXAMINATION BY MR. GLEATON:

12 Q Thank you, Mr. McMullen.

13 MR. GLEATON: Your Honor, during the break, I was looking
14 through the exhibits and I could not find Plaintiff's Exhibit 1.

15 BY THE COURT: I've got Plaintiff's 1 right here.

16 MR. GLEATON: I'm going to ask Mr. McMullen about that.
17 I've got a copy for the Court if the Court needs a copy.

18 BY THE COURT: Certainly.

19 Q Mr. McMullen, you're here today because you want to
20 subdivide a piece of property you own in Terra Oaks subdivision;
21 is that correct?

22 A Yes.

23 Q And the reason you want to subdivide that piece of property
24 is because you believe you can get more money for selling two
25 smaller pieces of property than one larger piece of property; is

1 that correct?

2 A That's one of the reasons.

3 Q That's the reason you gave during your deposition. Now, I
4 want you to look at what I've handed you, Plaintiff's Exhibit 1.
5 That's the covenants of Terra Oaks, correct?

6 A It is.

7 Q Look at Page 3 of Exhibit 1, No. 4.

8 A Yes.

9 Q That says, "no lot shall be recut." Now, you take those
10 five words alone, no one in Terra Oaks would be allowed to recut
11 any lot; is that correct? Plain reading.

12 A Yes.

13 Q But it does not stop there. It goes on to say, "without
14 first obtaining the written permission of the Architectural
15 Committee created under" a different Article.

16 A Yes.

17 Q Actually, it says Article III, and this is Article III. So,
18 that's a typo. They obviously meant Article IV, correct?

19 A Agreed. Yes.

20 Q So, in order to recut your lot, you need written permission,
21 correct?

22 A That's correct.

23 Q Doesn't say anything about a meeting, does it?

24 A No.

25 Q Doesn't say anything about submitting a proposal, does it?

1 A No.

2 Q Doesn't say anything about quorums, does it?

3 A Not directly.

4 Q It says you need written permission?

5 A That's correct.

6 Q And you failed to get written permission from two of the
7 members that you chose to be on the Architectural Committee; is
8 that correct?

9 A That's correct.

10 Q Now, is it fair to say you would have signed your own
11 proposal?

12 A It's fair to say that I probably would have.

13 Q You created the proposal, correct?

14 A Yes.

15 Q Right now I'm talking -- I don't have the exhibit number in
16 front of me, but the one you sent on January 8th. Now, during
17 your testimony you were talking a lot about quorums, and meetings
18 and 15-day notices, and notices of that, that comes in Section IV
19 of these covenants which start on Page 4 of Exhibit 1; is that
20 correct?

21 A Section Four?

22 Q Yes, IV, Four, yes.

23 A Yes.

24 Q Section IV says Architectural Committee?

25 A Correct.

1 Q Paragraph 1 names the committee and says they can be
2 replaced and how they're replaced?

3 A That's right.

4 Q Paragraph 2 says no improvements or buildings shall be
5 erected without first obtaining their permission?

6 A Correct.

7 Q It says what you have to do to get their permission and it
8 includes presenting a proposal?

9 A Uh-huh. (indicating an affirmative response)

10 Q It goes on to say that if the committee -- if you do submit
11 a proposal and the committee fails to meet, then your proposal is
12 granted?

13 A Correct.

14 Q So, the committee doesn't have to take any affirmative
15 action, and your proposal for a building can be approved?

16 A Yes.

17 Q But to recut land, you must have written permission?

18 A That's correct.

19 Q I want you to look please at Exhibit 2. That is the
20 document where the original members of the Architectural
21 Committee -- I'm going to call it AC from now on -- resigned, and
22 they appointed you, Ms. Rogers, and Mr. Simpson; is that correct?

23 A Yes.

24 Q And that document was dated 12/8 of '08 by two of the former
25 members and 12/3 of '08 by one of the former members, correct?

1 A Talking about Exhibit 2?

2 Q Yes.

3 A Yes.

4 Q Mr. Manios had approached you about being agreeable to do
5 this and who to put on the committee with you, correct?

6 A Not quite. He approached me to be on the committee and to
7 find two other members. I named the members.

8 Q I want you to go ahead and look at Exhibit 3 for me now.

9 A Okay.

10 Q Exhibit 3 is actually two documents together, right? You've
11 got a deed from Mr. Manios to you and you've got a survey of
12 property attached to it as Page 3 of Exhibit 3?

13 A Yes.

14 Q Now, Page 3 of Exhibit 3, the survey, is dated August 7th of
15 2008?

16 A I can't read the date on this copy, but that sounds correct.

17 Q And you commissioned the survey. It's a survey for Joseph
18 E. and Nita McMullen?

19 A Correct.

20 Q And you commissioned the survey prior to becoming a member
21 of the Architectural Committee?

22 A Yes.

23 Q Clearly, the intent of this survey is to subdivide or recut
24 a piece of Mr. Manios' lot which is inside of Terra Oaks
25 subdivision?

1 A Correct.

2 Q The deed which is Pages 1 and 2 of this Exhibit 3 is dated
3 January 5th of 2009, that's the date it was signed?

4 A Okay.

5 Q Is that right?

6 A That's what it says.

7 Q That's after you were a member of the Architectural
8 Committee?

9 A Yes.

10 Q Yet there is no written permission anywhere that has been
11 provided to the Defendants in this case or filed with the County
12 for Mr. Manios to divide his property, is there?

13 A You will have to repeat that question because I'm not sure
14 of the sequence of events. It's not clear to me what sequence of
15 events you're talking about.

16 Q Okay. The sequence of events are in August of '08 you
17 commissioned a survey in order to divide a piece of Mr. Manios'
18 property. That's page 3 of Exhibit 3.

19 A Okay.

20 Q In December of 2008, beginning on the 3rd and then
21 concluding on the 8th of December, 2008, you, Mr. Rogers and Mr.
22 Simpson were appointed members of the AC?

23 A Right.

24 Q On January 5th of 2009, you actually did the deal with Mr.
25 Manios and obtained a portion of his property, a subdivided

1 portion of his property within Terra Oaks?

2 A Yes.

3 Q And nowhere is there written permission allowing Mr. Manios
4 to subdivide his property?

5 A I can't say it doesn't exist. I don't see it.

6 Q You haven't provided it to us in discovery, have you?

7 A Not that I remember.

8 Q And you haven't found any in the public records, have you?

9 A I have not looked.

10 Q Now, Mr. Manios was the one selling the property. So, he
11 would be the one that had to receive the written permission to
12 recut his land, correct?

13 A I can't say. That's a matter of law.

14 Q But you were on the Architectural Committee at the time the
15 deal was done, and you didn't make sure that it was done by him
16 before you bought his property, did you?

17 A Well, from my perspective, this was all one transaction.

18 Q Of course, it was one transaction. You bought a piece of
19 property from Mr. Manios.

20 A Yes. And it was approved by the Architectural Committee at
21 that time -- it was approved by the previous Architectural
22 Committee as I understand it.

23 Q You don't have that, do you? You haven't provided that?

24 A No. I employed an attorney to make that -- to make whatever
25 arrangements were required.

1 Q Now, I'm going to ask you to look at Exhibit 4.

2 A 5, 6, 7, 2, 1---

3 MR. GLEATON: Your Honor, is it possible that Exhibit 4 is
4 in front of the Court?

5 BY THE COURT: It is possible but not very likely because I
6 haven't seen Plaintiff's 4. Plaintiff's 4 was introduced but the
7 only exhibit I had up here, Mr. Gleaton, was Plaintiff's 1.

8 MR. GLEATON: I went through at half time or after the first
9 quarter and put them in order, but I might have messed up, Your
10 Honor.

11 MR. CHILDS: There's No. 4.

12 MR. GLEATON: I apologize. Thank you, Mr. Childs.

13 Q Exhibit 4 is five pages, correct?

14 A Yes.

15 Q And what it is is two deeds and a plat of land, correct?

16 A Yes.

17 Q Let's talk about the plat first. This plat was commissioned
18 on August 7th of 2008, the same date you commissioned a plat from
19 Mr. Manios?

20 A Yes.

21 Q And this plat has two pieces of property that are important
22 to these two deeds on it. There's one called Tract C and one
23 called Tract B. If your copy is like mine, it's hard to read.
24 Can you see those two tracts?

25 A I can.

1 Q Now, pages 1 and 2 of Exhibit 4 are a deed where you sold to
2 Mr. Holcombe Tract C on Page 5 of Exhibit 4, correct?

3 A Yes.

4 Q Now, Mr. Holcombe already owned the property that -- and I'm
5 going to use an imprecise word here -- that is under Tract C, and
6 by under I mean southwest if you look at the direction marker on
7 that plat. He already owned that. So, what he was doing was he
8 was adding to a piece of property he already owned; is that
9 correct?

10 A Yes.

11 Q What happened was is we created a piece of property that was
12 owned by Mr. Holcombe -- I keep saying Mr. Holcombe, it was
13 actually Mrs. Holcombe -- no, Mr. Holcombe bought it -- what
14 happened was we ended up with a piece of property that is
15 partially outside of Terra Oaks and partially inside of Terra
16 Oaks; is that correct?

17 A Yes.

18 Q And Pages 3 and 4 of Exhibit 4 are Mr. Holcombe turning
19 around and selling you a piece of property, a piece of property
20 shown as Tract B on Page 5 of Exhibit 4?

21 A Yes.

22 Q So, what Mr. Holcombe had was kind of a long, thin piece all
23 along the road and he got himself kind of a deeper piece and you
24 extended on to both your lot that you already owned ever since
25 you bought into Terra Oaks and added on to the portion that you

1 bought from Mr. Manios; is that correct?

2 A Yes.

3 Q Now, this portion that is connected to the lots you already
4 owned -- one of them owned previous by Mr. Manios and one you've
5 owned the whole time you were there -- that is also outside of
6 Terra Oaks, correct?

7 A Yes.

8 Q Now you own -- not only does your neighbor, Mr. Holcombe,
9 own land that is both inside and outside of Terra Oaks, now you
10 own land that is both inside and outside of Terra Oaks?

11 A That's right.

12 Q Did you inform the Architectural Committee that you were
13 doing this, creating lots both inside and outside of Terra Oaks
14 by doing this transaction?

15 A Are you asking me if I specifically mentioned that they were
16 overlapping the Terra Oaks' border?

17 Q Correct.

18 A I don't recall.

19 Q As a matter of fact, you never actually called a meeting
20 about it?

21 A That's correct.

22 Q Didn't inform any of your neighbors about it?

23 A No.

24 Q Now, Mr. Holcombe's house is built on his portion of the
25 property outside of Terra Oaks and was already built when you did

1 this transaction; is that correct?

2 A Yes.

3 Q But since he bought this land, he's built a fence; is that
4 correct?

5 A Yes.

6 Q And that fence is directly adjacent to property you own?

7 A Yes.

8 Q He never submitted that fence for approval to the
9 Architectural Committee?

10 A No.

11 Q You never brought it to the attention of the Architectural
12 Committee?

13 A That's correct.

14 Q I want you to look now at what's been marked as Plaintiff's
15 Exhibit 5. Plaintiff's Exhibit 5, although it's been marked this
16 way -- I'm sorry, do you not have 5?

17 A I think I do. Yes, I have it.

18 Q Despite the way it's been marked for entry into these
19 proceedings, Plaintiff's 5 has recording doc stamps down on the
20 bottom of it -- there are two pages of it and they each have --
21 each page has a recording stamp down at the bottom, correct?

22 A Yes.

23 Q These two pages were actually recorded with the two deeds
24 that are a part of Exhibit 4; is that correct?

25 A Yes.

1 Q What this is is a Certification that says, "Paola Rogers,
2 John Simpson and Joseph McMullen hereby certify the following:
3 The current Architectural Committee for Terra Oaks subdivision
4 consists of Paola Rogers, John Simpson and Joseph E. McMullen and
5 that on Thursday May 8, 2009 the above three members unanimously
6 approved the recutting of Lot 4." That was so you could do that
7 deal with Mr. Holcombe; is that correct?

8 A Yes.

9 Q Now, there was no meeting on May 7th, correct?

10 A That is correct.

11 Q Mr. Simpson was out of town, and you know that?

12 A Yes.

13 Q As a matter of fact, this document wasn't necessarily signed
14 by all three parties on May 7th if it was signed by the three
15 parties at all?

16 A There's no indication of the date of the signatures.

17 Q But it does say they approved on May 7th, and it definitely
18 didn't happen on May 7th?

19 A Well, when I requested that it be signed, I was told that
20 Mr. Simpson was out of the country.

21 Q Who told you that?

22 A I don't recall. I think it was one of his neighbors.

23 Q The Ashmores are neighbors of yours in Terra Oaks, correct?

24 A Yes.

25 Q You testified at your deposition that you signed at the

1 Ashmores' house?

2 A I did.

3 Q But that you didn't recall whether or not or when Ms. Rogers
4 signed, if she signed, or when Mr. Simpson signed if he signed;
5 you just believed they had all signed in front of the Ashmores?

6 A Yes.

7 Q And you know that you signed it and the Ashmores signed it
8 at the same time?

9 A No. I believe the way this transpired was I took this
10 document to Mr. Ashmore and asked him to witness signatures and I
11 signed it. Then I asked Ms. Rogers to go there and she signed
12 it, presumably. And then when Mr. Simpson returned to his home,
13 I asked him to go there and sign it. And then when I picked it
14 up from Mr. Ashmore, I believe that's when he signed it.

15 Q So, everybody went to Mr. Ashmore's house. He didn't sign
16 as witnessing anybody's signature but he signed it when you came
17 to pick it up?

18 A I believe so.

19 Q That's what your memory is. Now, it's important -- this
20 Thursday, May 7, 2008 date is important, isn't it?

21 A In what way?

22 Q Go back and look at Exhibit 4, the two deeds, for me.

23 A Okay.

24 Q If you look at Pages 2 of Exhibit 4 and Page 4 of Exhibit 4,
25 these are the signature pages of the deeds, correct?

1 A Yes.

2 Q Each of these deeds are dated on May 8th of 2009.

3 A Okay.

4 Q So, in order to recut the lot, you needed this document to
5 be signed on May 8th, giving you permission to execute these
6 deeds on May 8th, correct?

7 A Yes. I presume so, yes.

8 Q Despite that, these documents were not filed until June 1st.
9 Now, we've asked for original ink-signed copies of this document
10 and it's never been provided, has it?

11 A I don't know.

12 Q You don't know? You do not recall providing it, do you?

13 A I did not provide it.

14 Q Now, I'm going to move on to Exhibit 6.

15 A Okay.

16 Q Flipping back to Exhibit 2, Exhibit 2 is when you, Ms.
17 Rogers, and Mr. Simpson were made members of the Architectural
18 Committee, correct?

19 A Yes.

20 Q That happened again in December of 2008, correct?

21 A Yes.

22 Q And you knew about it in December of 2008, correct?

23 A I knew about it shortly thereafter.

24 Q Yet you did not tell Mr. Simpson or Ms. Rogers they were
25 members of the Architectural Committee until 2011, did you?

1 A That is not a correct statement.

2 Q In 2011 when they were aware they were members of the
3 Architectural Committee, they decided, "Hey, we didn't even
4 understand there was an Architectural Committee. We're happy to
5 help." But you just told them they were on the committee; you
6 didn't actually show them the document, did you?

7 A I did not show them the document but they---

8 Q I'm going to show you -- already looking at Plaintiff's
9 Exhibit 6. I'm going to ask you to also look at Defendant's
10 Exhibit 2. You talked about Defendant's (sic) Exhibit 6 when Mr.
11 Childs was with you and you used it to point out that this was a
12 letter sent to the neighbors announcing y'all, you, Mr. Simpson,
13 Ms. Rogers, as members of the Architectural Committee, and
14 talking about the covenants and letting people just be aware?

15 A This appears to be a draft of that.

16 (Draft Terra Oaks letter dated February 11, 2011 entered
17 into evidence as Defendants' Exhibit No. 2)

18 Q Exhibit 6 says that Joe is the leader, correct?

19 A Yes.

20 Q Defendant's Exhibit 2 does not have that language, does it?

21 A Defendant's Exhibit 2?

22 Q The blue one in---

23 A This one?

24 Q That one.

25 A It does not seem to say that.

1 Q And that was drafted by Ms. Rogers?

2 A If you say so.

3 Q That's what you said earlier. Am I wrong about your---

4 A I'm saying I don't know anything about this document. I
5 know the final document was provided by her.

6 Q And the date on that document is February 11th?

7 A Yes.

8 Q So, when Mr. Simpson and Ms. Rogers took action was in
9 February of 2011 and possibly again June 6th of 2011 notifying
10 everybody they're on board with being members of the committee?

11 A I'm not sure what do you mean by "on board".

12 Q They're part of the AC. We're letting you know that there
13 are covenants. And if you have any issues, come to us. Whatever
14 that letter says. They're informing the neighborhood they're
15 involved now?

16 A That's correct.

17 Q Let's move on to Plaintiff's Exhibit 7. Now, before we talk
18 about Plaintiff's Exhibit 7, I want to take you back to May of
19 2015. In May of 2015, there was a time early in May when Paola
20 Rogers called you and Mr. Simpson -- I know you don't know that
21 she called Mr. Simpson -- but you both showed up at her house
22 because Mr. Mastorakis had a fence issue; is that correct?

23 A I don't think so.

24 Q Isn't it true the three of you met at Ms. Rogers' house to
25 discuss Mr. Mastorakis' fence issue because he was her neighbor

1 and he came across the backyard and wanted to talk to her about a
2 fence. So, she called both of you and you both came over. Are
3 you denying that?

4 A No. That's not correct. That is not what I'm saying.

5 Q Is it untrue that at that meeting you only, as a committee,
6 only considered the front fence that Mr. Mastorakis was talking
7 about? He wanted a security fence and you told him as a
8 committee that he could have a three-foot fence in accordance
9 with the Architectural -- excuse me -- the covenants?

10 A Did I tell him that?

11 Q That the committee -- was that the committee's unanimous
12 decision?

13 A No.

14 Q Are you saying it's untrue that at that meeting once you got
15 through talking about the fence, you raised the issue at that
16 meeting with Mr. Simpson and Ms. Rogers, "Hey I'm thinking about
17 subdividing my land. Could y'all come out and walk it with me so
18 I can show you what I want to do"?

19 A I don't know if that was the same meeting. I can't say.

20 Q Are you denying that Ms. Rogers said, I don't have time.
21 I've got another thing. I've already spent enough time on this
22 fence issue, but Mr. Simpson actually went out and walked the
23 land with you?

24 A That's quite possible. Yes.

25 Q Now, you and Mr. Simpson walked that land for a good bit of

1 time -- it's a good bit of land -- and he spent an hour to an
2 hour and a half with you that day?

3 A If he says so, yes.

4 Q He asked you -- said, Look -- you're an engineer, correct?

5 A Yes.

6 Q He's an engineer, correct?

7 A Yes.

8 Q He said, "Get me some plans and go out and take some aerial
9 photographs or get a survey, and then put a footprint of a house
10 on the survey, so we can kind of see what you're talking about,
11 maybe even get some stakes and stake it off so we can see what
12 you're trying to do." That's what he asked you to do?

13 A Yes.

14 Q All right. And you did not do that, at least not
15 immediately?

16 A I did do it. I can't tell you how much time had passed.

17 Q Regardless, on May 13th, Paola sent you an email saying,
18 "We've discussed it and we're not going to approve you
19 subdividing your land." Even though Paola sent the email, it was
20 copied to John Simpson and it had John Simpson at the bottom as
21 if he were one of the co-authors; is that correct? That is
22 Plaintiff's Exhibit 7 that we're talking about.

23 A So, what is your question about 7?

24 Q That they told you through this email on May 13th of 2015
25 that they would not approve your proposal to recut -- it wasn't a

1 written proposal, just the one brought up at that meeting -- to
2 recut your land?

3 A That's what it says, yes.

4 Q All right. Now, you said to Mr. Childs earlier that you
5 never saw this until this litigation started?

6 A Well, I'm uncertain of that response, as I said later in my
7 testimony, when I became aware of this.

8 Q It was sent to josephmcmullen@gmail.com. That is your
9 email address, correct?

10 A That is correct.

11 Q That's the same email address you used when you sent the
12 proposal to Ms. Rogers and Mr. -- the written proposal to Ms.
13 Rogers and Mr. Simpson, correct?

14 A Yes.

15 Q All right. Regardless of whether or not you received this
16 email, certainly you did not receive any written permission or
17 anything affirmative that, "We will allow it," after May of '13,
18 correct?

19 A Yes.

20 Q Obviously, they had gotten wind that you wanted to cut your
21 land by that time because they're responding to it. You, whether
22 you're the chairman or not of this committee, never called a
23 meeting of the committee between May of 2015 and December 7th of
24 2015 when you entered into the contract with Mr. Fenton?

25 A Yes.

1 Q So, you knew when you entered into that contract with Mr.
2 Fenton that you did not have the written permission of the AC in
3 order to subdivide your land?

4 A That's correct.

5 Q And you knew from the transactions you did in 2008 that you
6 had to have written permission of the AC in order to recut or
7 subdivide land?

8 A At that time I had neither approval nor denial.

9 Q But you knew that you had to have written permission to do
10 it?

11 A I did.

12 Q And you did not have written permission when you entered
13 into the contract with Mr. Fenton?

14 A That's correct.

15 Q You entered into that contract on---

16 (Cellphone ringing)

17 BY THE COURT: I'm sorry. If another phone goes off, you're
18 to escort the individual out. Thank you. (addressing the bailiff)

19 Q You entered into the contract with Mr. Fenton on December 7th
20 of 2015, but you did not send a request for -- on December 7th --
21 I'm done with Exhibit 8, so we'll skip on past Exhibit 8 and No.
22 9; we're down to Exhibit 10 now -- you sent an email on January 8
23 asking, "Attached you will find a proposed resolution. Note that
24 the surveyor's drawing attached is a bit different than the one I
25 sent earlier that was partially hand drawn. The building set-

1 back lines have also been added." So, you sent that to Mr.
2 Simpson and Ms. Rogers, correct?

3 A Yes.

4 Q You actually called Mr. Simpson on the phone and saying,
5 "Hey, I've got this sale. We've got a closing in a week. I need
6 you to sign this for me real quick" didn't you, after you sent
7 this?

8 A I didn't say we needed to sign on it. I said we needed to
9 meet on it.

10 Q And he came to your house and he met with you about it on
11 January 9th, the day after this?

12 A I don't recall that. I assume he did.

13 Q At that meeting he didn't tell you yea or nay. He said,
14 "I'm going to go talk to Paola about it," didn't he?

15 A He said that. I can't say it was at that meeting but he
16 said that.

17 Q I want to talk a little bit more about that. What we've got
18 is -- you've got Exhibit 10 in front of you. I just read Page 1
19 which is the email, but attached to Exhibit 10 is page 2 and that
20 is the proposal that you sent.

21 A That's 10?

22 Q Yes.

23 A Yes, it is.

24 Q Now, look at Exhibit 11. Even though it's a different
25 exhibit, that is the survey that you mention in the email which

1 is Page 1 of Exhibit 10. So, the two pages of Exhibit 10 and
2 Exhibit 11 are actually -- were one email?

3 A Yes.

4 Q In this proposal you say that "Lot C" on the survey attached
5 "is not subject to the Covenants of Terra Oaks subdivision and
6 the current owner will attach covenants into perpetuity, to any
7 sale of the property, prohibiting its use from mobile homes and
8 commercial activity." So, the proposal that you sent to your
9 fellow AC members required not only that you be allowed to cut
10 the piece of land you originally purchased but also allowed you
11 to take the piece of land that you purchased from Mr. Manios when
12 he recut his land without any permission and take it entirely out
13 of the neighborhood's covenants?

14 A A portion of it, yes.

15 Q And the AC does not have the authority by itself to take
16 land out of the covenants?

17 A There's no -- that authority is not defined in the
18 covenants.

19 Q Well, it is. Let's go to Exhibit 1 again.

20 A Okay.

21 Q So, in the first page of Exhibit 1, the third paragraph
22 down, before we even get to Section 1, the last sentence of that
23 paragraph says, "unless by a vote of the majority of the then
24 owners of the lots and tracts affected, it is agreed to change
25 the covenants." So, the covenants may be changed by a majority

1 vote of the owners of Terra Oaks, correct?

2 A Yes.

3 Q Okay. But the AC doesn't have the authority under this to
4 change the covenants?

5 A Correct.

6 Q And certainly three people don't have the votes to be a
7 majority of the neighborhood to change the covenants?

8 A Yes.

9 Q So, the proposal you sent them on January 8th is something
10 that the Architectural Committee, even if it cared to, could not
11 have signed and if it signed would have no legal effect, correct?

12 A I don't agree with that.

13 Q You think it would have had legal effect?

14 A I don't know about legal effect, but they certainly could
15 have signed it.

16 Q They couldn't have signed it -- they didn't have the
17 authority to take land out of the subdivision. Let's put it that
18 way.

19 A Not by themselves, no.

20 Q According to your answer to Mr. Childs' question, what you
21 are asking this Court to do is to grant the relief that you
22 requested from the Architectural Committee. So, you're asking
23 this Court not only to allow you to subdivide your land, but
24 you're asking this Court to take a piece of property outside of
25 the covenants?

1 A The proposal that I made to the Architectural Committee was
2 clearly labeled a proposal with the intention that there would be
3 a discussion about the details and---

4 Q Mr. Simpson did come and discuss it with you.

5 MR. CHILDS: Can you let the witness answer?

6 MR. GLEATON: Thank you, Mr. Childs.

7 A So, my expectation was that the three of the Architectural
8 Committee would meet and we would discuss this request, and that
9 we would decide what was allowable, and what was doable, and what
10 would be approved.

11 Q A meeting is not necessary if they just sign it, correct?

12 A Repeat that.

13 Q A meeting is not necessary if they just sign it?

14 A Yes.

15 Q Yes a meeting is necessary?

16 A No.

17 Q But they didn't sign it?

18 A They did not meet nor did they sign it.

19 Q You did not call a meeting because this email on January 8th
20 doesn't say, "I would like to meet and discuss." It says,
21 "Please find this proposal." You did not call a meeting until
22 after Mr. Simpson did come over and sit down with you and until
23 after Ms. Rogers sent you the email which is Plaintiff's Exhibit
24 13 saying, "We received it and we're not going to approve"?

25 A I believe I requested -- I believe I requested a meeting

1 prior to that.

2 Q Okay. Well, look at Plaintiff's Exhibit 14.

3 A Okay.

4 Q Plaintiff's Exhibit 14 is on January 22nd, email from you.

5 Now, there are two emails on that page, but the one on the bottom
6 of the page is from you to Paola and John dated January 22nd?

7 A Correct.

8 Q And it says that you want a meeting on January 24th?

9 A Yes.

10 Q There is nothing else you provided us showing that you
11 requested a meeting in writing whether by email or any other
12 method, is there? Not since the May time when you brought it up
13 until January 24th, that's the first time you asked for a meeting
14 and they had denied you twice?

15 A Yes.

16 Q Let's look at Defendant's Exhibit 1 which I'm handing you
17 right now.

18 A I would like to add, when you say they denied it twice,
19 there was no vote.

20 Q They refused to cooperate with you twice?

21 A They refused---

22 Q Whether the AC as a whole denied it or whether the two
23 members said they would not cooperate with you, you were notified
24 twice the other two members would not cooperate with you,
25 correct?

1 A I was notified they would not meet and they would not
2 discuss it.

3 Q Okay. That meant you didn't get the written permission that
4 you needed?

5 A That's correct.

6 Q Now, Defendant's Exhibit 1 is a Preliminary Subdivision
7 Application that you applied for with the County?

8 A Correct.

9 (Preliminary Subdivision Application entered into evidence
10 as Defendants' Exhibit No. 1)

11 Q After being told in May of '15 that you couldn't have your
12 written permission and again in January of '16 that you couldn't
13 have your written permission, you went to the County and applied
14 to subdivide your land; is that correct?

15 A Yes.

16 Q About half way down, there is a question, "Are there
17 recorded private covenants and/or restrictions that are contrary
18 to conflict with or prohibit the proposed request?" And you
19 checked no?

20 A I did.

21 Q You told the County that there was no prohibition on you
22 cutting the land even though you had already asked the AC to
23 allow you to cut the land, and even though in 2008 a lawyer told
24 you that you needed to have written permission and drafted a
25 written permission for you to get signed, you told the County

1 that you didn't need to do that?

2 A The part about hiring an attorney to -- would you repeat the
3 part about---

4 Q In 2008 when you traded the land with Mr. McMullen (sic)--

5 A Yes.

6 Q --you testified earlier that you talked to a lawyer named
7 Cheros who told you that you needed written permission to
8 subdivide land in that neighborhood?

9 A Yes. What was the second part of your question?

10 Q You told the County -- regardless of that, you told the
11 County there was nothing that kept you from subdividing this
12 land?

13 A I did. Would you like---

14 Q And the County ended up finding out---

15 MR. CHILDS: Let him answer the question.

16 A Would you care to hear the reason?

17 Q No. The County then found out that there were, in fact,
18 covenants that kept you from subdividing land and wouldn't let
19 you do it despite you marking that incorrectly?

20 A That's correct.

21 Q Briefly, on Plaintiff's Exhibit 12 -- I know you need a
22 second to find it because it's a different exhibit than what
23 we've been on.

24 A I have it.

25 Q Okay. This is an email from Mr. Simpson from his wife's

1 email address to himself and Ms. Rogers, correct?

2 A Yes.

3 Q You were not copied on this email, but you were provided it
4 in discovery?

5 A That's right.

6 Q This is Mr. Simpson telling Ms. Rogers how he feels about
7 your proposed recutting of the land that you sent on January 8th
8 and he goes into very much detail saying of all of the reasons
9 that -- all of the things that should be considered and all of
10 the reasons he thinks it should be denied. He didn't just willy-
11 nilly, off the hip say no; he actually considered this proposal;
12 is that correct?

13 A That's what this document says.

14 Q Now, after -- they told you no in May, and after they told
15 you no in January, and after you lied to the County and were told
16 no February, you called a neighborhood meeting in March of 2016,
17 correct?

18 A I did not lie to the subdivision on my application.

19 Q You called a meeting in March of 2016, a neighborhood
20 meeting?

21 A That's correct.

22 Q And you didn't invite Ms. Rogers?

23 A I did invite her.

24 Q Several people showed up at your house. The first thing you
25 talked about was, "Hey, we don't have a neighborhood association

1 and maybe we should incorporate a neighborhood association and
2 there are good reasons to do that including making a neighborhood
3 feel more like a neighborhood"?

4 A Yeah. I actually said that that was one of the options we
5 could consider.

6 Q And after talking about that for a short while, you were the
7 one who brought up the fact that you might want to subdivide your
8 land?

9 A Absolutely not.

10 Q And there were some people, not necessarily Mr. Simpson or
11 Mr. Cook who were present, who were vocal against it and wanted
12 to know more about it, isn't that true?

13 A That is not true.

14 Q Based on that, it was proposed, actually you proposed, that
15 somebody take your place to decide at that meeting with lots of
16 neighbors present, you were the one who said, "Let's put an
17 alternate on for me and let's reconsider this proposal"?

18 A That did not occur at that -- during the meeting.

19 Q At that meeting Mr. Simpson is the one who put forward Mr.
20 Cook as a possible alternate?

21 A Yes, he did. At the post-meeting, yes.

22 Q The post-meeting happened the same night?

23 A Yes.

24 Q Whether it was a post-meeting or a continuation of the
25 meeting, it all happened that night?

1 A The meeting where Mr. Simpson proposed that was just a
2 meeting of me and him.

3 Q And then, taking you at your word, they got together with
4 Mr. Cook and they said, "Hey, we'll reconsider it again one more
5 time," and again they refused to sign and give you written
6 approval?

7 A Please repeat that.

8 Q They again refused to give you the written permission that
9 you needed according to the covenants?

10 A Yes, but you prefaced that question with something else I
11 didn't understand.

12 Q I don't even remember what the preface was right now. I'm
13 sorry. If it's necessary, we can ask the court reporter, but I
14 don't think it was important. You didn't get the written
15 permission you needed?

16 A I did not get the meeting or the permission.

17 MR. GLEATON: Beg the Court's indulgence one moment. Thank
18 you for your patience, Your Honor. No further questions.

19 REDIRECT EXAMINATION BY MR. CHILDS:

20 Q Mr. Simpson, you were asked questions about Defendant's
21 Exhibit No. 2 about---

22 A I'm not Mr. Simpson.

23 Q I'm sorry. Mr. McMullen. Thank you. I guess that's a
24 flashback of wanting to be involved in the Simpson case.

25 Mr. McMullen, you were asked questions about Defendant's

1 Exhibit No. 2 but never asked to explain why you entered the
2 remark on the application that Restrictive Covenants didn't
3 apply. Could you explain that for us?

4 A Yes. Of course, I had no experience in this process of
5 subdividing the property and going through the subdivision
6 department of the County. So, I didn't know that process. I
7 went to the subdivision department, and they explained to me the
8 process and the calendar that I had to follow and the need to
9 have approval of the homeowner's association if there were
10 restrictive covenants and I asked what -- how do you define
11 restrictive covenants? And they said, "Whatever is attached to
12 the property -- to the subdivision property." I asked, "How do I
13 obtain -- how do I validate what is attached? There may be other
14 documents attached." I was instructed to go to the Registrar of
15 Deeds which I did.

16 I asked them to tell me or to show me what the attachments
17 to the property were, and they reported there were none. I told
18 them that, "I'm relatively sure there are some. Can you verify
19 it?" They went and they searched again and they came back and
20 said, "Absolutely, there are none." I was quite surprised by
21 that, but that was the response I received.

22 So, I went back to the subdivision department and marked
23 that box that says, "No, there are no requirements." I submitted
24 that to the manager of the subdivision department, and then she
25 called me a couple days later I believe----

1 Q Let me ask you this, did they give you signs when you did
2 that?

3 A Did they give me what?

4 Q Signs.

5 A Sign?

6 Q To put in the yard.

7 A I'm sorry.

8 Q When you applied for a subdivision---

9 A Yes, they gave me signs to post.

10 Q Did they call you before or after you put the signs in your
11 yard that you had applied for a subdivision?

12 A After.

13 Q So, if you were trying to sneak something through, putting
14 signs in your yard is a pretty bad way to do it?

15 A Yes.

16 Q I think that explains why you checked that box, that you
17 could not possibly have done anything other than to bring it to
18 the local people's attention by posting a sign in your yard.

19 A Yeah. That's right. And I would have had that -- the
20 manager called me and said that there were indeed covenants that
21 applied and I asked her why they couldn't be found by the
22 Registrar of Deeds and she said, "I went down there and found
23 them myself." So, I said, "I will withdraw my application."

24 Q In fact, I think Ms. Rogers' testimony was that she didn't
25 know anything about this until she saw the signs?

1 A Yes.

2 Q All right. That's the deal with the subdivision
3 application. Now, you were asked questions about the Restrictive
4 Covenants. I would direct your attention to Plaintiff's Exhibit
5 No. 1 again at page 4.

6 A This is the covenants?

7 Q Yes, sir.

8 A I've got a mess here. I have it. Okay.

9 Q Did you understand in paragraph 2 of the Restrictive
10 Covenants it says, "No improvements or buildings shall be
11 erected, placed or altered on any lot or lots until and unless
12 the building plans, specifications and plot plan showing the
13 proposed construction, exterior design and location of such
14 residence have been approved in writing"--

15 A Yes.

16 Q --"as to conformity and harmony of external design and
17 consistence with plans of existing residence or buildings so as
18 to be in harmony" -- it skips a page -- but basically they
19 required approval of everything by the committee in writing,
20 anything that the committee's business involved required written
21 approval?

22 A Yes.

23 Q Any decision by the committee, Architectural Committee,
24 required a quorum of all members and a majority vote for a
25 transaction to any business of the committee?

1 A That's right.

2 MR. CHILDS: That's all I have.

3 BY THE COURT: Any other very brief, limited questions?

4 MR. GLEATON: No, Your Honor.

5 BY THE COURT: Thank you, sir. You can step down.

6 THE WITNESS: What do I do with all of this paper here?

7 BY THE COURT: Yes, sir. Thank you.

8 MR. CHILDS: We'll work on that.

9 (witness excused)

10 BY THE COURT: You can call your next witness.

11 MR. CHILDS: Your Honor, Mr. Marchant is here. He's the
12 real estate agent. We briefly discussed this with Mr. Gleaton.
13 I think his testimony would be the same as Mr. Fenton as far as
14 his discussions about the transaction about Mr. Fenton wanting to
15 finance through the bank one lot and wanting to purchase the
16 other lots through a separate arrangement with Mr. McMullen. I
17 don't know if I should call him.

18 MR. GLEATON: Subject to the same objection as to relevance,
19 we stipulate that he would testify substantially similar to Mr.
20 Fenton.

21 BY THE COURT: I know he's sitting here, and his time is
22 valuable like everybody else's. Do you intend to call him or not
23 call him?

24 MR. CHILDS: Well, I think if they would stipulate that he
25 would testify in the same fashion as Mr. Fenton, I don't need to

1 call him and I would like to have him excused.

2 BY THE COURT: All right.

3 MR. CHILDS: You can be excused. (addressing Mr. Marchant)

4 The last issue for the Plaintiff would be Mr. Mastorakis'
5 affidavit.

6 MR. GLEATON: Thank you, Your Honor. I have spoken to my
7 client. Subject to objection for relevance, we withdraw any
8 other objection to this affidavit being presented.

9 BY THE COURT: All right. Then you can go ahead and hand
10 the affidavit in.

11 (Affidavit of George Mastorakis entered into evidence as
12 Plaintiff's Exhibit No. 28)

13 MR. CHILDS: With that, Your Honor, the Plaintiff rests.

14 BY THE COURT: All right. How many witnesses do you
15 anticipate?

16 MR. GLEATON: I anticipate one, however, I reserve the right
17 to call another short witness that will be short for me but based
18 on cross-examination.

19 BY THE COURT: I've learned over the years what a lawyer
20 says is a short testimony---

21 MR. GLEATON: I can't say that the cross-examination would
22 be short.

23 BY THE COURT: So, if there is a problem, it will be
24 opposing counsel?

25 MR. CHILDS: I don't agree with that, Your Honor.

1 BY THE COURT: So, how long do you anticipate the first
2 witness?

3 MR. GLEATON: Again---

4 BY THE COURT: What I'm trying to gauge: Do we take a lunch
5 break or just push on through?

6 MR. CHILDS: We should take a lunch break, Your Honor.

7 BY THE COURT: All right.

8 MR. CHILDS: The crowd says different. I think Ms. Rogers
9 will be a little lengthy even on direct and then cross will take
10 a while if that's the witness he's talking about.

11 MR. GLEATON: It is not but either way we're going to have
12 to kind of go through the same issues from a different point of
13 view.

14 BY THE COURT: All right. We'll plan on starting back -- is
15 1:15 realistic?

16 MR. CHILDS: It's fine with me.

17 BY THE COURT: Mr. Gleaton?

18 MR. GLEATON: Yes, sir. 1:15 is realistic. I'll probably
19 not go to lunch but be here.

20 BY THE COURT: I'll allow you two input. I'm not necessarily
21 concerned about what the other folks want to do here this
22 morning.

23 MR. GLEATON: Thank you, Your Honor. Whenever it's
24 appropriate, I understand how the Court would most likely hear---

25 BY THE COURT: You can go ahead and make your motions for

1 the record and I'm going to deny them for the record and
2 everybody go to lunch.

3 MR. GLEATON: Motion for summary judgment, Your Honor, based
4 on the law, not the facts.

5 BY THE COURT: I take that as an involuntary nonsuit and I'm
6 going to deny the same based on the evidence presented thus far.

7 MR. GLEATON: Thank you, Your Honor.

8 BY THE COURT: All right. See you back at 1:15.

9 (Whereupon, a luncheon recess was taken at 11:55 a.m.)

10 (Whereupon, the trial resumed at 1:15 p.m.)

11 BY THE COURT: I trust everyone had a nice lunch and we're
12 ready to get back into this.

13 MR. GLEATON: Yes, Your Honor.

14 MR. CHILDS: That wasn't very enthusiastic.

15 BY THE COURT: Ready for you to call your witness.

16 MR. GLEATON: I'm sorry, Your Honor. I apologize.

17 BY THE COURT: That's fine. Ready for you to call your next
18 witness.

19 MR. GLEATON: Thank you, Your Honor. We would call John
20 Simpson.

21 JOHN SIMPSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 BY THE COURT: Come around and have a seat, please, sir.

23 (complies)

24 If you'll state your full name.

25 THE WITNESS: My name is John Simpson.

1 BY THE COURT: All right.

2 DIRECT EXAMINATION BY MR. GLEATON:

3 Q Mr. Simpson, you're an engineer by trade, correct?

4 A Yes, retired.

5 Q Before you retired, you worked for Michelin for a number of
6 years, correct?

7 A I did.

8 Q It was through Michelin that you met the Plaintiff, Mr.
9 McMullen?

10 A Yes.

11 Q And you knew him before you moved to Terra Oaks?

12 A Yes.

13 Q And you then moved to Terra Oaks in about 1986; is that
14 correct?

15 A Yes.

16 Q And you've lived there continuously ever since 1986?

17 A Yes.

18 Q Now, Mr. Simpson, you are currently on the Terra Oaks
19 Architectural Committee?

20 A I am.

21 Q When did you become aware that you were a member of that
22 committee?

23 A 2011, February 2011.

24 Q How did you become aware that you were a member of that
25 committee?

1 A I was asked by Joe if I would consider it. I am a
2 vocational archeologist which means I work with the Department of
3 -- USC in the archeology department on a regular basis and I
4 said, "Providing it doesn't take a lot of time, I'll certainly
5 offer my services."

6 Q You said you're a retired engineer. This archeology thing,
7 that's a volunteer---

8 A That's volunteer but it takes quite a bit of time.

9 Q Now, you said he asked if you would consider.

10 A Yes.

11 Q He didn't tell you you were already a part of this
12 committee?

13 A No, no, no.

14 Q Do you know whether or not he approached anyone else?

15 A Paola Rogers prior to me.

16 Q Do you know when she was approached?

17 A It was before I met with them.

18 Q Years or days or---

19 A Maybe days.

20 Q Did Ms. Rogers also agree?

21 A My understanding is she had already agreed when I was asked
22 and agreed.

23 Q I want to ask you to look at those documents in front of
24 you, the ones with the yellow stickers on them, and look for
25 Plaintiff's Exhibit 2.

1 A Okay.

2 Q Mr. McMullen testified this was a document that took Mr.
3 Manios, Mr. Howard, and Mr. Sfrisis away from being on the AC and
4 appointed he, you and Ms. Rogers. When did you first become
5 aware that this document existed?

6 A When we were getting documents together to respond to the
7 trial.

8 Q Where did you find it?

9 A It was attached to the back of a copy of the covenants that
10 Joe McMullen gave me in 2011.

11 Q So, when he approached you in 2011, he gave you a copy of
12 the covenants?

13 A Yes. Mine were in the safe at the bank with my deeds.

14 Q So, you were aware the covenants existed?

15 A Oh, yes.

16 Q But you hadn't looked at them since when?

17 A Since the day that I signed to buy the house.

18 Q Did you read them in detail on the day that you signed to
19 buy the house in 1986?

20 A No. I just looked at the front of it and I was assured that
21 it took care of the real estate. So, I said, "That's enough."

22 Q I ask you to dig through that stack of papers and look at
23 Plaintiff's Exhibit 6.

24 A Okay.

25 Q Now, also look over to your left. There are two documents

1 with blue stickers. Excuse me, to your right, my left your
2 right. Plaintiff's Exhibit 2, I believe it is. Let me make sure
3 I'm telling you the right number.

4 A 2 of 1?

5 Q That it.

6 A Okay.

7 Q Looking at Defendants' Exhibit 2 first, do you recognize
8 that document?

9 A Absolutely. It's got my writing on it.

10 Q What is it?

11 A It was the original draft after the second meeting that we
12 had at Paola's house to communicate to the association, the Terra
13 Oaks neighbors that we are on the committee, and that the
14 committee consists of these three people, and the covenants which
15 are in place will be used and interpreted by the committee.

16 Q You said your second meeting. Tell me about the first
17 meeting and second meeting. What business was conducted at those
18 meetings?

19 A The first meeting was the meeting that Joe called for the
20 three of us to meet to discuss the Architectural Committee and
21 basically what you do on the Architectural Committee. The second
22 meeting was to formalize this and make sure that we agreed this
23 is what we wanted to do going forward.

24 Q About how much time had passed between the first meeting and
25 the second meeting?

1 A One week exactly.

2 Q How long between when you were asked to be on the committee
3 and you had the first meeting?

4 A Within days.

5 Q Within days?

6 A For the first meeting.

7 Q So, the date on Defendants' Exhibit 2 is what?

8 A February 11th.

9 Q So, you were not aware of this committee until January 11th
10 or that you were on it?

11 A That I was on it? Absolutely not. That's why we put this
12 memo together, to make sure everybody understood that we are on
13 it and this is what it entails.

14 Q Basically, as soon as you decided to be on it, you decided
15 to get together a form and let the neighborhood know.

16 A Yes. I insisted that we have some communication. In other
17 words, since there's nothing been out, certainly from my
18 perspective since I bought the house, I thought this was the kind
19 of vehicle that we needed to communicate to the neighborhood.

20 Q Did y'all send Defendants' Exhibit No. 2 to the
21 neighborhood?

22 A I personally didn't because I was on my archeological dig.
23 After we had formulated this memorandum, I left that Saturday to
24 go down to Allendale County for six weeks for an archeological
25 dig.

1 Q That was six years ago and you're stating it with pretty
2 certainty. How do you remember things six years ago that well?

3 A I keep a regular agenda.

4 Q Electronic, on the computer?

5 A Well, at this time since I was not very literate
6 electronically, it was on paper but today it's on my I-Phone.

7 Q Okay. Now, look at Plaintiff's Exhibit 6. It's a slightly
8 different version of the same thing, isn't it?

9 A Yes. It looks like this one's been upgraded a little bit.

10 Q Were you a part of upgrading it?

11 A No.

12 Q Do you remember before discovery in this trial ever seeing
13 Plaintiff's Exhibit 6 in the form that it is?

14 A First time I had seen it.

15 Q Do you know if this particular version ever went out to the
16 neighborhood?

17 A I personally didn't get it but again that's understandable
18 because I already was somewhat the architect of this one anyway.

19 Q So, you were asked to be on the Architectural Committee on
20 the 11th. You notified the neighborhood, "Hey, we're the
21 Architectural Committee. Let us know if you have any issues."
22 When was the first time the Architectural Committee was called
23 into action and had to actually perform any work for the
24 neighborhood?

25 A There were no meetings called, but there were phone calls.

1 and the very first phone call I got was regarding the Mastorakis
2 fence request.

3 Q When was this?

4 A 2015, May timeframe.

5 Q May of 2015. And who called you about that?

6 A Paola.

7 Q Ms. Rogers?

8 A Ms. Rogers. Pardon me.

9 Q What did you do as a result of that phone call?

10 A I went to her house to find out what the details were,
11 discussion evidentially had taken place before I got there.

12 Q Who was there at Ms. Rogers' house when you got to her
13 house?

14 A Joe McMullen and Ms. Rogers.

15 Q So, it wasn't like somebody sent an email and said, "We're
16 going to have a meeting next week." Paola called you, you went
17 to her house and the three of you met?

18 A Yes.

19 Q So, this was in May of '15?

20 A Yes.

21 Q Tell me about the discussion you had about Mastorakis'
22 fence.

23 A He apparently, according to what I understood at that time,
24 had had some cars broken into. He lives on the end of a cul-de-
25 sac. Evidently, somebody had taken the opportunity in the dead

1 of the night to go and ransack his cars. I don't think he had
2 locked them. He had made a request, I understand, verbally to
3 Joe to erect basically a compound fence around his property and I
4 think in the discussion that Joe had with him -- I wasn't a party
5 to that, but my understanding was that discussion basically said
6 that the covenants prevailed here and you cannot build across the
7 front of your property anything bigger than three feet tall.

8 Q All three of you discussed that?

9 A We did, yes.

10 Q Did you come to a decision, the three of you?

11 A Absolutely.

12 Q The decision was what you just stated?

13 A Yes.

14 Q Did all three of you agree?

15 A Yes.

16 Q Was that communicated to Mr. Mastorakis?

17 A Not personally by myself. My understanding was that Joe
18 McMullen was going to do that but again, as I did with the advice
19 to the community about the covenants, I said, "We need to
20 document what we have discussed today."

21 Q Did you document yourself?

22 A I created a document as a basis. Paola had offered in 2011
23 to be the scribe because I didn't have a computer. I had a
24 cellphone -- at that time, I had a cellphone.

25 Q Once you finished the discussion about the fence, was any

1 other business brought up or discussed?

2 A There was some discussion about the side fencing between the
3 two neighbors, the three neighbors quite frankly, and it was
4 evident that there had been some bartering or some agreements
5 between neighbors but since it wasn't covenant controlled, I
6 elected not to get involved in that.

7 Q So, your reading of the covenants was the fence, other than
8 the front of the house, wasn't controlled by the
9 covenants---

10 A Exactly. And I didn't try to get involved in that. I
11 understood there were some issues, but I didn't want to get
12 involved in that.

13 Q Once the fence issue was put to rest, did anything else come
14 up while you were meeting?

15 A Yes. Joe McMullen then indicated that he floated, if I can
16 for want to a better expression, the concept of he's got quite a
17 big lot now with all of the things that have taken place, that
18 he's accrued and he's exploring the possibility of splitting his
19 lot into two.

20 Q Was there any discussion about that?

21 A Yes.

22 Q Who discussed it?

23 A The three of us initially and I said to Joe, "I really don't
24 understand what it is that you own and how it's laid out. Can we
25 walk the property?" Evidently, Paola had a conflict in terms of

1 timeframe available for that. So, she elected not to go but Joe
2 said, "Yes, let's do that."

3 Q The talk you had about the fence, how long did that take?

4 A Twenty minutes, thirty minutes at the latest.

5 Q But you offered or asked Mr. McMullen to walk the property
6 with you. And did he?

7 A Yes.

8 Q How long did that take?

9 A I would say at least an hour because it was quite detailed
10 in the discussion of where we were walking. It was very rough in
11 a couple of areas, and we spent time just looking from both the
12 street side as well as the neighbor side looking at where are the
13 neighbor fences because the lines weren't clear. So I relied
14 upon his interpretation of where the lines would be.

15 Q Did you make any decision while you were out there?

16 A I made a recommendation.

17 Q What was the recommendation?

18 A "Joe, this is quite a complex situation you've just dropped
19 on me. What I would like to do is -- you handle projects with
20 Michelin. Treat this like a project. Give us documentation.
21 Give us some idea of the scope of what you're talking about, some
22 idea of the location of where -- a footprint like your house
23 would go." And I said, "Further, since I don't represent this
24 myself, but if we're going to be talking to the neighborhood
25 about a change here on this corner, how about considering also

1 putting posts and delineating the corner of the footprint of the
2 house, use yours as the example and let's tape it off so we can
3 come from the street and look at the impact upon the
4 neighborhood." In other words, we need a visual as well because
5 as an engineer we can talk all day, but people aren't as skilled
6 at reading drawings as perhaps engineers are. So, we needed a
7 visual to see what the impact would be on that corner lot.

8 Q Were you provided with -- did he act on any of those
9 recommendations?

10 A He wasn't enthused and he, in fact, never followed up.

11 Q Did you ever end up having another meeting with him prior to
12 May 13th about the subdivision of his lot?

13 A No.

14 Q Did you ever end up speaking---

15 A Now, May was when we had the meeting on his lot when we
16 walked it.

17 Q Right. Did you ever speak with Ms. Rogers about the issue?

18 A Absolutely.

19 Q How did you and Ms. Rogers speak?

20 A What I did after walking the lot and spending some time back
21 at my house now, trying to get my head around this, what this
22 proposal is, and looking at the fact that he was part of the
23 Architectural Committee, I put some, as I do, words together on
24 my phone, but my phone is too small and you can't really see --
25 when you are constructing a document, it doesn't work. So, I

1 used my wife's I-Pad. That's why you see her name, Allison
2 Simpson, on the top. And I sent it to my phone, and I sent a
3 copy to Paola Rogers.

4 Q You and Paola communicated by email. Did you ever talk
5 either on the phone or in person?

6 A Yes.

7 Q Tell me about that conversation, how long did it take --
8 where did it take place, how did it take place, how long?

9 A It would be -- again, the only place we ever met was at
10 Paola's house. It was either by phone or at Paola's house. I
11 can't remember whether we did it at the house or -- certainly, we
12 did it on the phone, and I sent to her a copy of what my
13 reservations were about Joe's proposal but also I attached it
14 with my recommendations also about the fence issue. So, I've got
15 one document with both of those elements on it.

16 Q Did the two of you make any decisions in May of '15?

17 A Absolutely because the result of that documentation we put
18 together was, "Joe, we have an issue." One is, as a member of
19 the Architectural Committee, there is a question of the viability
20 of that. In other words, "You have an interest, a fiscal
21 interest, in being able to make this happen if it gets to that."
22 That was the key.

23 Q About how much time in total did you spend on making this
24 decision?

25 A Counting when I put the memo together -- the memorandum.

1 together and the discussions, no more than 45 minutes, an hour.

2 Q That doesn't include the walk of the neighborhood?

3 A Oh, no, this is outside of that.

4 Q Did you review the covenants---

5 A That was a week or so later.

6 Q I'm sorry. Did you review the covenants themselves?

7 A Yes.

8 Q I want to ask you to pull out Plaintiff's Exhibit 7, the
9 yellow stickers in front of you.

10 A Yes.

11 Q Do you recognize that?

12 A That's the memorandum I'm talking about.

13 Q Paola Rogers actually sent this?

14 A She did, yes. But it was -- I had sent -- I had ghost
15 written some of it.

16 Q You drafted this. She might have changed it slightly and
17 sent it to Mr. McMullen?

18 A Well, as the scribe for the committee, she had a Google
19 account or whatever account it was -- yes, gmail -- she had a
20 gmail account and you can see from mine, mine is a Bell South
21 account. She as the scribe kept all of the documentation that we
22 were building in that gmail account. So, it would have come from
23 her anyway.

24 Q So, this is both of you working together and agreeing with
25 each other?

1 A Absolutely.

2 Q Even though an actual written request hadn't been made you
3 kind of figured -- or what did you think Mr. McMullen would do as
4 far as his own proposal?

5 A I would have thought he would have come back with at least
6 -- on hindsight now knowing what he did have in his possession --
7 some documentation to have elaborated more on the question I
8 asked him in terms of: "What are your plans? What's it going to
9 look like?"

10 Q If you had a meeting where all three of you were present and
11 you voted on whether or not to accept his proposal, what would
12 you imagine his vote would be?

13 MR. CHILDS: That calls for speculation.

14 BY THE COURT: I sustain the objection.

15 Q Did you ever hear from Mr. McMullen after you sent this
16 email on May 13th?

17 A Yes.

18 Q When did you hear from him again regarding this issue?

19 A January 7th, 2016.

20 Q From May 13th 2015 to January 8th---

21 A 7th.

22 Q --7th, 2016, nothing?

23 A Nothing.

24 Q He didn't call you on the phone and bug you about it?

25 A No. He called me on the phone and said, "I've got a client"

1 -- or "I've got a sale for my house and I'm going to send you
2 some documentation."

3 Q That phone call you just mentioned was prior to receiving an
4 email from him?

5 A Yes.

6 Q Did y'all talk about the issue while you were on the phone?

7 A If any, very, very briefly but I did account to him that I
8 had seen the "For Sale" sign in his yard and assumed that
9 basically he had advertised his house for sale.

10 Q Okay. I'm going to ask you to look at Exhibits 10 and 11.

11 A Okay.

12 Q 10 and 11 together Mr. McMullen testified were the email he
13 sent and the attachments to that email; is that correct?

14 A Yes.

15 Q What did you do after you received this email?

16 A I was shocked because it looked like I was being strong-
17 armed into signing a document which we had no discussion at all.

18 Q So, May 15th you didn't have this document?

19 A Oh, no. Not until the 7th -- the 8th. Pardon me.

20 Q You say he called you to tell you, "I'm sending the
21 document" and he sent the document.

22 A Yes.

23 Q Did you talk to Mr. McMullen after he sent the document?

24 A On the day when I received it, no.

25 Q Whether it was that day or any other day.

1 A No. I called Joe back after I received it when I recovered
2 my composure and said, "Joe, this looks like you're not only
3 following up on our conversation in the May timeframe but further
4 it's gone from two lots to three lots you're now proposing. I
5 need to understand what exactly you're proposing because the
6 document you sent to me" -- which is No. 11 -- tiny, little
7 document and even blowing it up, it wasn't self-explanatory. I
8 said, that is not -- "There's no way can I possibly understand
9 what it is you're asking on that little tiny document." So, he
10 said, "Well, I'm not at the house," wherever he's living. I
11 said, "But I do need to get with you because I cannot accept that
12 document as explanation of what your proposal is."

13 Q Did you ever get together with him?

14 A Yes, on a Saturday morning in his house. What he did -- it
15 was bare because there was no furniture in the house, but we had
16 a table to work from.

17 Q Let me be clear, you met at his house in Terra Oaks?

18 A Yes.

19 Q By this time he had physically moved away -- he still owned
20 the home---

21 A He owned the home but he was not living there.

22 Q When you say it was cold and barren, it was because he had
23 not been living there?

24 A Because he had not been living there but I wanted it to be
25 at his house so if there was an issue we would have to go out and

1 look at, I would at least be able to qualify it.

2 Q What happened -- who was at that meeting, just you and Mr.
3 McMullen?

4 A Just myself -- because there's no way for Paola -- Ms.
5 Rogers to understand what was on that diagram, not that I'm
6 qualified any better than anybody else but certainly from
7 somebody that's not been in a technical field, it would be
8 difficult to understand.

9 Q Did Mr. McMullen say, "Hey, while we're here, let's go grab
10 Paola real quick"?

11 A No. What I did was I talked to him -- I've got a printer --
12 so I maximized the -- I blew up four or five of these copies and
13 took a bunch of colored crayons with me.

14 Q You were just pointing at a document. The document you're
15 pointing at was Plaintiff's Exhibit No. 11?

16 A No. 11, yes.

17 Q What was your and Mr. McMullen's conversation like there on
18 that Saturday morning at his house?

19 A I would say open. He tried to explain step by step how this
20 thing evolved, and how he had acquired this property, and how he
21 had incorporated this and whatever else. So, what I did is I
22 marked up four separate documents that I could then take to Paola
23 so she could understand the evolution of what had happened and
24 what this proposal on Exhibit 10 consisted of.

25 Q Did you tell Mr. McMullen your plan to go speak with Ms.

1 Rogers?

2 A Absolutely. He knew exactly why I was there.

3 Q Did he object to you speaking with her about this?

4 A No.

5 Q Did he insist on a meeting between the three of you?

6 A No.

7 Q Did you and Ms. Rogers ever get together and talk about
8 this---

9 A Absolutely.

10 Q First, how long did you spend with Mr. McMullen that day?

11 A At least an hour and a half. At first I couldn't understand
12 what this plan was so we would have to agree on the strategy of
13 how I was going to build my documentation in understanding what
14 it was that he was wanting to propose.

15 Q Did you end up getting together with Ms. Rogers?

16 A Yes.

17 Q How did that conversation go?

18 A Well, we reviewed all of the documentation that I had now
19 built, explaining in detail what the proposal was that Joe was
20 wanting to put forward.

21 Q How long did you and her spend talking about this?

22 A At least an hour and a half.

23 Q What were your conclusions?

24 A We were aghast that he would attempt to try to make
25 something like this happen without calling a meeting and saying,

1 "Guys, I've got a proposal I would like to make to you"
2 especially since the May prior to that I had said to him, you
3 know, "Money is just like a project." But just to send it in the
4 mail without any advanced notice---

5 Q Okay. Do you know when you met with Ms. Rogers?

6 A It was along the 8th. I met with Joe on the 9th, I think it
7 was a Saturday and I met with her, I think, on the Monday which
8 would be the 11th roughly. It could be the 12th. But it was
9 within days of when I had that explanation. Now, prior to that I
10 also started putting some notes together in addition.

11 Q Please look at Plaintiff's Exhibit 12.

12 A There you go. It was on the Sunday after the Saturday
13 meeting where I got my head together and said, "Even with the
14 drawings I've marked up, there needed to be a detailed
15 explanation of what the proposal was."

16 Q So, he sent you an email on the 8th, you met with him on the
17 9th, you sent this to Ms. Rogers on the 10th?

18 A Yes.

19 Q It was after this email that y'all got together?

20 A Yes.

21 Q Did y'all use these notes in your discussion, you and Ms.
22 Rogers?

23 A Absolutely, these and my drawings.

24 Q What was your decision with Ms. Rogers at that time?

25 A That we couldn't approve -- under the circumstances of what

1 we had received, we could not approve it.

2 Q Did you decide that you couldn't sign his proposal?

3 A Absolutely.

4 Q Is there any reason other than just the plain recutting of
5 the lot that you couldn't approve of his proposal?

6 A Well, of course, as we stated before, we had a concern that
7 somebody on the committee would be using his position to be able
8 to gain monetarily.

9 Q Is there any lots that would change the nature of the lot
10 itself?

11 A The second issue that we had clearly was the fact that he
12 was trying to take a piece of property outside of the covenants.

13 Q Did you believe you had the authority to do that?

14 A No.

15 Q I'm going to ask you to look at Plaintiff's Exhibit 13.

16 A Yes.

17 Q Is that the notice to Mr. McMullen that you and Paola would
18 not agree---

19 A That is the agreement that we had, and Paola as the scribe
20 would send that note to him.

21 Q That was sent on January 21, 2016?

22 A Yes.

23 Q Mr. McMullen turned around fairly quickly and said, "Hey, I
24 want to have a meeting"?

25 A Yes.

1 Q Why not give him this meeting?

2 A I think we had already exhausted in the meeting that I had
3 with him on that Saturday morning that -- what else could he
4 discuss? I think I had a pretty clear understanding of what his
5 proposal was and I documented what his proposal was.

6 Q Having a meeting would just -- what do you think---

7 A Same old, same old. Where was it going to go?

8 Q After he said, "We're going to meet on the 24th", did you
9 hear from him again about this issue?

10 A He sent me a text. It moved away from emails into texts,
11 and I got a text that said, "I've withdrawn my application."

12 Q Okay. He talked about a meeting he had at his house. Were
13 you invited to that meeting?

14 A He and his daughter came to my house one time to talk about
15 community relations basically and he invited me---

16 Q When was this roughly?

17 A Pardon me?

18 Q When was this roughly?

19 A March, the beginning of March.

20 Q March/April of 2016?

21 A Yes. It was 2016, March or April of 2016. I could go to my
22 diary and find it.

23 Q Did you go to this meeting?

24 A Yes.

25 Q Did you initially tell him that you were going to be at the

1 meeting?

2 A When he invited me? I looked at my planner and erroneously
3 I had a conflict.

4 Q But it turned out you didn't have a conflict and you went to
5 the meeting?

6 A It wasn't until a couple days later that I realized, "Dang,
7 that should be the day before." So, since I had been invited, I
8 went to the meeting.

9 Q What happened at that meeting?

10 A Basically, it started off as he had already described to me,
11 it was going to be a community meeting, talk about
12 communications, principles of an HOA, that kind of stuff, what we
13 need to do is -- there's a concern I've got based upon when I've
14 been around -- when Mr. McMullen's been around to talk to the
15 neighbors, that there isn't a cohesiveness. That's how it
16 started out.

17 Q What happened after he started with that portion of the
18 meeting?

19 A He quickly started to drift and presented a document that
20 talked about -- I don't see it in here at the moment -- that I am
21 a concerned neighbor. "I don't live here anymore, but I want to
22 protect the corner of my lot that's outside of the covenants, and
23 he had a diagram for the participants in that meeting with like a
24 nice, green stripe over the top that showed the piece I'm talking
25 about," and it was where the road had changed from being across

1 the corner of his lot to now being square which is ideal for
2 safety.

3 Q So---

4 A So, he talked about that specifically and he got -- how he
5 got into his own real estate.

6 Q Did you respond that night to that meeting?

7 A Not to that particular document, no.

8 Q But did anybody respond?

9 A Oh, yes.

10 Q Without going into the substance of what other people said,
11 was there a discussion about that topic?

12 A One -- of course, there was 10 to 12 people there,
13 neighbors, some families. One of the neighbors, as the dialogue
14 was starting to evolve now about his splitting of the lots, one
15 of the neighbors stood up and said, "Joe"---

16 MR. CHILDS: Objection, hearsay.

17 BY THE COURT: Why is that not hearsay?

18 MR. GLEATON: It is.

19 Q You can't tell the Court what---

20 A Somebody else said.

21 Q But some people had---

22 A Objections.

23 Q Talked to him about---

24 A There were objections raised about the tone of what the
25 meeting was. I'm sorry, I did not realize---

1 Q Were you the one that raised the objection?

2 A No. It was---

3 Q Let's be careful -- what happened as a result of this
4 discussion on the objection? First of all, was there a
5 discussion on the objection? Don't tell what the discussion was.
6 Yes or no, was there a discussion?

7 A Oh, yes, it then went from what was a neighborhood meeting
8 to, "I'm looking for support for the splitting of my lots"
9 basically.

10 Q What happened as a result of all of that?

11 A I'm going to say the meeting degenerated and it became
12 obvious that there were issues. There were other discussions
13 taking place, and it was no longer a meeting. It was pockets of
14 discussion taking place. So, I seized the opportunity. One of
15 the neighbors, Duane Cook was in there. If I can elaborate a
16 little bit why Duane Cook -- maybe it's not---

17 Q Who raised the issue about Duane Cook to start with? Who
18 raised the issue---

19 A I did.

20 Q So, you're the one who voiced that?

21 A Yes. Specifically, that we need to have a third member -- I
22 have it written somewhere, at some stage -- "we need to have a
23 third member on the committee who is not involved in your" -- to
24 replace you basically -- "and I would like to also consider
25 another one because if Paola can't serve or I can't serve" -- "I

1 would rather have more than not enough so we don't get into this
2 situation where when you see this memo and we basically don't
3 have a third person to talk about it."

4 Q Y'all talked about this that night at that meeting?

5 A Absolutely.

6 Q Did Mr. McMullen agree to alternates?

7 A Yes. Well, he knows -- did know Duane. So it was not an
8 introduction. He knew of Duane and his skills. Duane also
9 worked at Michelin at one time.

10 Q Duane's also a retired engineer from Michelin?

11 A Yes, exactly.

12 Q So, the three of you knew each other from work as well as---

13 A Absolutely, but his recommendation was for an alternative we
14 also needed to consider someone else in the organization -- in
15 the subdivision and Hope Schamalzl was there and he beckoned to
16 her, "Would you be interested?" or whatever. I know Hope. She
17 is here today. I said, "That's an ideal choice as well."

18 Q So, when you left there that night, what was your
19 understanding of Joe's agreement with regard to Duane
20 specifically?

21 A Duane specifically? Yes. He could be an alternate.

22 Q Based on that, did you, Duane and Paola get together?

23 A I had indicated to Joe McMullen in that meeting that what I
24 would like to do since there is this question of now again
25 raising the issue of, is my recommendation to split my lots.

1 coming back up again, I would like to raise that issue, I said,
2 "What I would like to do is have both Hope and Duane read the
3 covenants specifically as they are identified to the splitting of
4 lots especially and then we will get back to you."

5 Q Did Duane and Hope do that?

6 A Duane took the initiative immediately and called me and let
7 me know, "I have been through" -- "I think I've a pretty good
8 understanding of the covenants. Can I make a copy for myself?"
9 I said, "Certainly. While you're doing that, can you make me an
10 extra copy? Because I would like to get one to Hope." I went to
11 Hope's house to give her and her husband came to the door and
12 said, "You're out of luck." She was out of town on an
13 assignment, and she wouldn't be back until, I think, the Monday
14 or the Tuesday.

15 Q So, did you, Duane and Paola ever consider the question of
16 recutting his lot again?

17 A Since Duane had already taken the initiative to say that on
18 -- I think it was the Saturday morning -- that he had gotten
19 copies and felt pretty confident that he understood how the
20 covenants applied, I said, "Then I need to get you to Paola's
21 house when she gets back" -- I think she was out of town on the
22 Saturday -- "and let her know that you are" -- because she had no
23 idea what had taken place at this meeting -- and that you can
24 make a decision whether you feel that Duane should be the other
25 member.

1 Q Again, did y'all ever make a decision on Mr. McMullen's
2 proposal, another decision?

3 A Well, as a natural development of that meeting where she
4 interviewed Duane and felt that he was -- that he had character
5 necessary to be able to make judgmental decisions,
6 interpretations -- it naturally developed into, "Well, what is
7 the issue that we're trying to clearly understand?" Because at
8 this particular stage, Duane had no concept of what was going on.

9 Q So, is that a yes, y'all did make a decision?

10 A Yes.

11 Q What was the decision?

12 A No.

13 Q That's the third time you've said no to him?

14 A Absolutely.

15 Q You personally had said no three times?

16 A Yes.

17 Q Paola had said no three times?

18 A Yes.

19 MR. CHILDS: Objection to leading the witness.

20 Q Before this litigation suit, did you hear from Joe again
21 about this issue?

22 A Before litigation? Yes.

23 Q When was that?

24 A In a text where he wanted to talk about chickens.

25 Q So, his issue with Ms. Rogers' chickens occurred after you

1 had denied him?

2 A Oh, yes. He sent me a text.

3 Q If the call was about chickens, how did it evolve into
4 talking about his recutting?

5 A Well, I didn't know that she had chickens. So, the first I
6 hear about it. What do I do? I go to the covenants. Sure
7 enough, it talks about in the covenants you cannot -- I don't
8 know whether it says chickens or not, but certainly you can't
9 have livestock. So, I went to Paola's house and said, "Look, you
10 obviously" -- "as a member of the committee, I question your
11 integrity if, in fact, you are keeping chickens in violation of
12 the covenants." And she said, "You know, I really didn't
13 understand that." I said, "You now need to make the decision to
14 get those chickens out."

15 Q So, that was about chickens and she moved her chickens.
16 What did she do with her chickens?

17 A Took a little bit longer to get rid of them than I was happy
18 with, but she got rid of them.

19 Q That was about chickens and not about recutting of his lots?

20 A No.

21 MR. CHILDS: Objection to leading the witness.

22 BY THE COURT: Try not to lead.

23 Q Nothing else from Mr. McMullen. Did you hear from Mr.
24 McMullen again about recutting his land prior to this litigation?

25 A The next thing I knew was litigation. "What can I do to

1 avoid litigation?" text.

2 Q How long before litigation did that happen?

3 A I don't know the exact date but it was quite quick, weeks, a
4 couple of weeks.

5 Q What I'm getting at, was there any other discussion between
6 you, and Ms. Rogers, and Mr. McMullen or Mr. Cook, any of the
7 four of you, about the recutting of his land before---

8 A No. For me, it was a done deal.

9 Q Thank you. I want you to pull out Plaintiff's Exhibit 5.

10 A I'm getting there. There you go. All right.

11 Q This is a certification, two copies -- according to Mr.
12 McMullen's testimony because they were attached, two separate
13 deeds where he traded land with the Holcombes -- this purports to
14 be the AC unanimously agreeing to him being allowed to cut Lot 4
15 of Terra Oaks. Your signature is on that document, isn't it?

16 A That is a signature that is mine that's on that document.

17 Q Did you sign that document?

18 A No.

19 Q Where were you on May 7, 2009?

20 A I was on the beach in England on an archeological dig.

21 Q England has beaches? You're under oath.

22 A Yes, cold beaches.

23 Q It doesn't have a date on it. It says that you unanimously
24 approved. Did you meet with anybody on May 7th about this issue--

25 A No.

1 Q --from the beach in England?

2 A I found some very old artifacts there.

3 Q It wasn't filed until June 1 of 2009. It's a little bit
4 less than a month later. Where were you between May 7th and June
5 1st of 2009?

6 A I was in the UK until -- I can't give you an exact date
7 because I need my diary -- let's say, the 25th and on the 27th I
8 left for my archeological dig down in Allendale County.

9 Q So, you came back from England. You were at home for one
10 day?

11 A Yes.

12 Q Then you left again?

13 A Yes..

14 Q Not out of the country but out of the city?

15 A I went down to Allendale County.

16 Q During that one day, did you hear from anybody about
17 recutting land?

18 A No.

19 Q Now, this is dated -- again, it says you met on May 7, 2009,
20 and it was filed on June 1, 2009, and it says the Architectural
21 Committee unanimously approved. Earlier you testified you didn't
22 even know about the Architectural Committee until 2011?

23 A Huh-Huh (indicating a negative response).

24 Q Were you aware in 2009 that you were even on this committee?

25 A No.

1 Q If somebody had called you and said, "You're on the
2 committee. I need you to come and sign a document," what would
3 your reaction have been in 2009?

4 A Exactly the same as when I saw the document, "What are you
5 talking about?"

6 Q So, not only are you saying you didn't sign this, you're
7 saying you couldn't have signed it and you weren't even aware you
8 were on the committee at that time?

9 A No.

10 Q Were you aware that Mr. -- when did you become aware that
11 Mr. McMullen had swapped parcels of land with Mr. Holcombe?

12 A When I went to his house on that Saturday morning, trying to
13 understand what the heck this proposal was that he was presenting
14 us with for our signature.

15 Q Now, you had walked the property with him back in May?

16 A Yes.

17 Q Now, we're talking about January 10th of 2009?

18 A Yes.

19 Q Excuse me. 2016, I apologize.

20 A Yes.

21 Q Is when you became aware, even though you walked the
22 property with him, in May of 2015?

23 A Yes.

24 Q How is that the case?

25 A Because, as I said earlier, you know, the lines of

1 demarcation to the property wasn't evident and until you get a
2 diagram marked up like I did on that Saturday morning, you have
3 no concept of where -- who owned what and why. It was a jungle
4 at that end anyway.

5 Q When did you first become aware that Mr. McMullen had
6 purchased a subdivided portion of Mr. Manios' lot?

7 A When I saw the document that I proposed -- purported to have
8 approved.

9 MR. GLEATON: Beg the Court's indulgence one moment.

10 Q Thank you, Mr. Simpson. Please answer any questions Mr.
11 Childs might have.

12 BY THE COURT: All right. Your witness, Mr. Childs.

13 MR. CHILDS: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. CHILDS:

15 Q Mr. Simpson, you signed an affidavit dated March 16th of 2017
16 in this case, did you not?

17 A Yes.

18 Q Let me show you this and ask you if -- this document is
19 marked Plaintiff's Exhibit No. 1 for Ms. Rogers' deposition. I'm
20 going to show you that and see if you can identify that as your
21 actual -- a copy of the affidavit you provided to the Court in
22 2017?

23 A Yes.

24 Q All right.

25 Let me mark that as Plaintiff's Exhibit No. 29.

JOHN SIMPSON-CROSS BY MR. CHILDS

1 BY THE COURT: I'm sorry, what's the exhibit number?

2 MR. CHILDS: 29.

3 BY THE COURT: Thank you.

4 (Affidavit of John Simpson entered into evidence as
5 Plaintiff's Exhibit No. 29)

6 Q Now, Mr. Simpson, in this document, this affidavit you
7 submitted to the court, you stated, "I was approached by the
8 Plaintiff in 2010 and was asked to serve on the Terra Oaks
9 Architectural Committee"?

10 A Correct and that was a typo.

11 Q So, you're saying that that was an incorrect date, and it
12 was actually 2011?

13 A Yes.

14 Q All right. Now, also in this document and---

15 A I didn't pick that up when I read that. So, I approved it.
16 I didn't see it.

17 Q In this affidavit you talk about certification that we have
18 here that was filed with the deeds office, that is witnessed by
19 Reese Ashmore. Do you know Mr. Ashmore?

20 A Now, I do. Yes.

21 Q How do you know him now?

22 A Because I went to his house.

23 Q Mr. Ashmore witnessed this, did he not?

24 A He witnessed that document, yes.

25 Q Okay. And you're saying that Mr. Ashmore witnessed a

1 document that somebody cut and pasted your signature onto? Is
2 that what you're trying to say?

3 A I'm not saying anything of that nature. I don't know how my
4 signature got there.

5 Q And your Answer to this Complaint alleged that all of this
6 is fraud?

7 A Do I say fraud?

8 Q Yes, sir. In the Answer to this Complaint you do. Do you
9 want me to read it to you?

10 A Yes, please.

11 Q All right. For a second defense, "Fraud, All previous
12 answers and allegations are incorporated as fully restated here.
13 The documents described in E and F," which I assume are one of
14 those certifications, "are fraudulent."

15 A I suppose -- that would be--

16 Q So, you---

17 A That would be a word -- it's not one that I would normally
18 use. In other words, I did not sign that document.

19 Q And you---

20 A Now, how it got there, whether you call it fraud or
21 misrepresentation, or whatever, I don't know.

22 Q So, it's entirely possible, as Mr. McMullen has testified,
23 that you were out of the country when Ms. Rogers went over to
24 sign that document with Reese Ashmore; that when you came into
25 the country, he asked you to go over there and sign that document

1 as well? So, you were here before that was filed?

2 A I was here for one day..

3 Q Right.

4 A I came from the UK and left the next day for my
5 archeological dig.

6 Q Here's what I'm coming at is you're saying somebody forged
7 your name basically, stole your signature somehow and put it on
8 those documents which is a criminal offense. Do you understand
9 that?

10 A I understand that I didn't sign that document.

11 Q But you've not gone into any other efforts to interview Mr.
12 Ashmore or subpoena him as a witness to testify about this
13 document, have you?

14 A No, because I didn't sign it.

15 Q And you haven't looked at the actual original document at
16 the deeds office to see if it is tampered with?

17 A My understanding is the original document can't be found.

18 Q It's filed with the deeds office. Do you understand that?

19 A Oh, yes.

20 Q Now, these Restrictive Covenants shown as Plaintiff's
21 Exhibit No. 1 that you've got it up there.

22 A Yes.

23 Q They're essentially a contract, aren't there?

24 A I suppose one could use that word.

25 Q It's a contract between the developers of the subdivision

1 and the subsequent owners, and really with you and all of the
2 present owners, that you will do certain things in the community.
3 It's a contract for how you conduct yourself, how you build your
4 house, how you structure your house, all of those things? And
5 you knew when you purchased your property---

6 THE COURT REPORTER: Is that---

7 A Yes.

8 MR. CHILDS: I'm sorry. And I go too fast.

9 Q And you knew when you purchased the property that you had
10 Restrictive Covenants?

11 A Absolutely.

12 Q Because you had them in your safe with your deeds?

13 A Yes.

14 Q So, you knew that the people that approved -- did you buy a
15 house or build a house?

16 A Bought it. It was already constructed.

17 Q All right. But you knew that your house had been approved
18 by the Architectural Committee at some point because it's in the
19 covenants that they had to?

20 A Consciously did I know that? No. I knew that--

21 Q But you know that now?

22 A --there were covenants at the time when I bought my house,
23 and I was pleased to see that they were Restrictive Covenants.

24 Q Good.

25 A It made me feel good.

1 Q And you know -- you've been an engineer for how long?

2 A Have I got to count?

3 Q I could count mine. It's 33 but I don't know about yours,
4 but it's a long time.

5 A Forever.

6 Q But you know the obligation of parties to deal -- parties to
7 a contract -- to deal with good faith and fair dealings with each
8 other?

9 A Uh-huh. (indicating an affirmative response)

10 Q In other words, if you and I entered---

11 BY THE COURT: If you could answer yes or no.

12 A I'm sorry. Yes.

13 Q If you and I enter into a contract, you have to be fair with
14 me and how we deal with the contract?

15 A Yes.

16 Q Don't you think that also applies with Restrictive
17 Covenants?

18 A Interpretation of?

19 Q That you have an obligation of good faith and fair dealings
20 when you're dealing with issues of the Restrictive Covenants?

21 A Yes.

22 Q So -- you talked a lot in your testimony about meetings.
23 I'm still not really certain about -- was there ever a meeting
24 where there was a quorum of the Architectural Committee?

25 A Yes.

1 Q When was that?

2 A In May of 2015 when we looked at Mr. Mastorakis---

3 Q The Mastorakis issue?

4 A And when we went to look at Joe's -- when I personally went
5 to walk Joe's property where he gave me an explanation of what he
6 anticipated subdividing the lot into two.

7 Q You understand that the covenants say a quorum is all of the
8 members?

9 A Yes.

10 Q Okay.

11 A It was a quorum, the three of us were there but when we
12 walked the lot, which was explanatory by Joe to further define
13 what his plan was, Paola couldn't go -- Paola was not available,
14 but there was a quorum to start with.

15 Q So, when was that quorum to start with?

16 A May.

17 Q May?

18 A May of 2015.

19 Q And that was a proposal of just cutting the property up --
20 an idea I would say--

21 A Yeah, he floated the---

22 Q --to cut the property up in two pieces?

23 A Yes.

24 Q And y'all provided an email to that which said the
25 Restrictive Covenants doesn't allow you to change your lot lines.

1 Doesn't it say that?

2 A In the memorandum that we sent?

3 Q Yeah, that you can't do that.

4 A I said we don't approve it.

5 Q Well, let's look at it.

6 A What do you want me to look at?

7 Q It would be the email in 2015 where you talked about the
8 Mastorakis property.

9 A Oh, yeah. Okay. I'll find it.

10 Q That would be here, Plaintiff's Exhibit No. 12. But this is
11 your thoughts about it, right? I'm sorry, this is 2016.

12 A Yeah. That was my -- that was on my wife's I-Pad.

13 Q So, it's going to be the May 13, 2015 email--

14 A Yes.

15 Q That said---

16 A Yes, that one. Yes.

17 Q It said, "The rules against subdividing lots have stood for
18 the past 40 years."

19 A Absolutely.

20 Q Explain that to me. Is there a rule against subdividing the
21 lots?

22 A When you say a rule, in the covenants you have to get
23 written permission to subdivide lots.

24 Q Right, just like anything else in the subdivision, right?

25 A Yes.

1 Q Just like if you changed your landscaping or any
2 installation -- "No improvements or building shall be erected,
3 placed or altered unless the building plans, specifications, plot
4 lines, et cetera are approved in writing by the committee"?

5 A Uh-huh. (indicating an affirmative response) Yes.

6 Q So, when Mr. Mastorakis' issue came up, you were concerned
7 that -- the Restrictive Covenants don't allow a fence in the
8 front?

9 A It's stated very clearly.

10 Q So, that's not optional for y'all to decide that. It's just
11 a fact, right?

12 A Yes.

13 Q The other issue, was it not, that Mr. Mastorakis had erected
14 fences on his property, other fences, without the approval of the
15 committee?

16 A Which I didn't at that time consider to be an issue.

17 Q Why not?

18 A Because in the covenants it doesn't specifically state side
19 fences.

20 Q Right.

21 A It talked specifically about fences higher than 3 foot in
22 front of the lot.

23 Q But side fences, aren't those improvements to property?

24 A Yes, but you can nitpick on that, but it was -- three
25 neighbors had already spent an inordinate amount of time

1 discussing it and I didn't feel like I needed to be involved in
2 it particularly since two of them were on the Architectural
3 Committee.

4 Q It's your testimony that the chicken issue with Ms. Rogers
5 was not raised in May of 2015?

6 A Absolutely not.

7 Q The way you dealt with Mr. Mastorakis was y'all had a formal
8 meeting about it? You, Mr. McMullen and Ms. Rogers sat in the
9 same room and met?

10 A In Paola's house.

11 Q Okay. And then y'all listened to Mr. Mastorakis---

12 A He was not there. Joe made the presentation regarding what
13 his plans were and the dialogue that he had with Mr. Mastorakis,
14 and indicated that he would let him know that we unanimously do
15 not support -- and cannot support -- him building a fence over 3
16 foot in front of his house.

17 Q So, Ms. Rogers is the scribe for the committee?

18 A Oh, yes.

19 Q So, there should be like minutes or some notes about that
20 meeting?

21 A The minutes or notes are those that are reflected---

22 Q In the email?

23 A Yes.

24 Q That's it, the email---

25 A No. Also what I put together in the---

1 Q What was the vote in respect to Mr. McMullen's proposal, the
2 issue you raised in May of 2015? What vote did y'all take?

3 A Well, remember this is a concept that was floating.

4 Q Right. So, it didn't need a vote at that point, right?

5 A No. Paola and I discussed it and we said, "As we have done
6 from the very first time in 2011 as a committee, we want to
7 document what our decision is."

8 Q I don't get it. Why you can't just meet, the three of you,
9 and discuss his proposal and vote on it? What was the problem?

10 A There wasn't a problem.

11 Q So, why didn't you do it?

12 A Because we provided written documentation that laid out what
13 our decision was regarding---

14 Q Yes. But the person making a proposal -- you have a quorum
15 of the committee, right? That's everybody, right? So, y'all get
16 together and you say, "Mr. McMullen, what's your proposal?" And
17 he said, "This is it." And you say, "What about this? So, what
18 are you planning on doing with the lots, Mr. McMullen? Can you
19 tell us that?" Would you be interested in that, what his plans
20 were?

21 A I had already asked him that.

22 Q So, you knew he was selling--

23 A I met with him. I walked---

24 Q You knew he was selling it to Mr. Fenton?

25 A No, not that time. No. We're talking about May?

1 Q And Mr. Fenton -- huh?

2 A Aren't we talking about May when we're talking about the
3 fence?

4 Q No, no. I'm talking about any time.

5 A Any time?

6 Q Yes. Wouldn't you have been wanting to know what the buyer
7 was going to do with the property?

8 A I asked that specifically and I was told that the second
9 lot, B -- I think if that was the notation -- that that would be
10 covered by a five-year balloon loan. And as you know, a balloon
11 loan is financed by Mr. McMullen.

12 Q Right.

13 A And a balloon loan, if there's a default it reverts back to
14 the owner.

15 Q What's wrong with that?

16 A I mean that's the person who was buying, or it was suggested
17 that was going to be buying the lot, if he defaulted on the
18 balloon loan, then Mr. McMullen would own not only the one that
19 he's proposing which was B but also C.

20 Q ---would go back to McMullen. Is that the argument?

21 A I'm not following you.

22 Q That there was a chance that Mr. Fenton would default on the
23 loan, then it would go back to Mr. McMullen?

24 A No. That's how balloon loans work.

25 Q Okay. Was that the concern then?

1 A No.

2 Q Okay.

3 A It could be a concern, but it wasn't anything that we were
4 raising.

5 Q I'm still trying to -- and I understand you didn't bring
6 your calendar with you, but I want to know if there was ever an
7 occasion where the three of you sat down in a formal meeting
8 called to consider his application where people actually voted
9 openly, with one another in the room ever, where all three
10 members were present and took a formal vote?

11 A That wasn't how the committee did business.

12 Q How many committees have you been on?

13 A Several.

14 Q Bunches of them I would say. I'm sure. You worked for
15 Michelin. You've been on 50 or 100.

16 A Yeah.

17 Q The committee doesn't make decisions outside the committee
18 meeting, do they? They're there meeting to decide the issues?
19 They don't go and email and call each other later and then claim
20 they've made a decision. They sit there in the meeting and say,
21 "Hey, Joe, we vote no. What is your vote?"

22 A Are we talking about the May timeframe or are we talking
23 about the January timeframe??

24 Q Any time.

25 A The May timeframe, Joe was there when we -- when I walked

1 his lot and we provided him feedback regarding what we had
2 decided based upon his recommendation to consider splitting his
3 lot. In January I met with him personally and then to give Paola
4 Rogers a clear understanding of what his proposal so she could
5 make a decision, informed decision.

6 Q So, you informed her about what Mr. McMullen informed you
7 of?

8 A I did what Mr. McMullen should have done, and that is made
9 that proposal -- made that presentation to clarify and clearly
10 show what his proposal was.

11 Q As a result of that, you and her sat in a room and said, "We
12 vote no"?

13 A Absolutely.

14 Q As a result of that you sent the email that's identified in
15 Plaintiff's Exhibit No.---

16 A Yes. We sent an email on the 21st.

17 Q Correct.

18 A Within the 25 day---

19 Q Within the 15 days?

20 A 15 days.

21 Q And that email said, "A formal document is to follow,"
22 right?

23 A I think there was a similar dialogue in there, yes.

24 Q Did a formal document ever follow?

25 A I don't know that. I wasn't the scribe.

1 Q You can't swear under oath that a formal document was ever
2 provided to Mr. McMullen--

3 A I cannot.

4 Q --explaining to him the decision of the committee and why
5 the committee reached its decision?

6 A I cannot -- no, I did not see that formal document.

7 Q Do you think that good faith and fair dealings requires a
8 person to notify an applicant, say to the architectural board, of
9 the reasons for the denial? Isn't that just good faith to say,
10 "Hey, the reason we denied this is because we felt the balloon
11 loan might be a dangerous thing and the lots"---

12 A That was not a consideration. I just used that as an
13 example of one of the elements.

14 Q What was the consideration?

15 A The consideration for?

16 Q For denying it?

17 A Because he was wanting to take, clearly, part of the
18 subdivision out of the covenants.

19 Q You could say no to that. What do you mean by that, he's
20 taking clearly part of the subdivision out of the covenants? Did
21 he not propose to keep all of the property in the Restrictive
22 Covenants?

23 A No. If you read his -- where is the email and the
24 attachments? -- it clearly states that it will not be part of the
25 covenants, and we cannot take stuff out of the covenants.

JOHN SIMPSON-CROSS BY MR. CHILDS.

1 Q So, that's going to be Exhibit No. 1 or 2 which is---

2 A No, not that one. It's here somewhere.

3 Q Yes, sir. The January email?

4 A Yes.

5 MR. GLEATON: Check Exhibits 10 and 11.

6 MR. CHILDS: All right.

7 Q There's 11 and there's 10.

8 A That's the one.

9 Q Show me where that says he's taking it out of the
10 subdivision.

11 A Do you want me to read it to you?

12 Q Yes.

13 A Part C, "A portion of the lot at 19 Fisher Road previously
14 on the other side of Fisher Road prior to the aforementioned
15 reconstruction," is what we're talking about. "The part
16 indicated as Lot C" which it says "is a newly created lot from"
17 parts of Terra Oaks and that previously mentioned piece there
18 which is not part of Terra Oaks subdivision.

19 Q Did you ask him about that?

20 A Yes.

21 Q What was the reasoning behind that?

22 A Well, because -- he did not divulge what he wanted to do
23 with that but that was my fourth diagram that I had built in his
24 house.

25 Q You deny that he offered to have all of that property in

1 Terra Oaks even though some of it previously was not in Terra
2 Oaks?

3 A Number 4 on my diagram was clearly not covered by the
4 covenants.

5 Q Now---

6 A And I marked that up in a color specifically because that
7 caused me a great deal of concern.

8 Q Is it true that the -- that you became aware of Mr.
9 McMullen's proposal only after you saw a sign in his front yard
10 from the County for subdividing the property?

11 A No. I knew from the email that he sent me on the 8th.

12 Q Right. Is it true that -- so, you got the email before you
13 ever saw the signs in his yard?

14 A Which signs are you talking about?

15 Q The subdivision signs from the County.

16 A The subdivision signs? That was after, after we had denied
17 him on the 21st.

18 Q So, it would be not a correct statement that you actually
19 came up with the decision after you realized there were signs in
20 front of Mr. McMullen's property for the County to subdivide the
21 property?

22 A We made a decision before then.

23 Q How long had you been considering the decision?

24 A From when we received the email?

25 Q Yes, sir.

1 A The day after when I went to his house and marked up those
2 four or five prints, to the Sunday when I put my reflections
3 together, it would have been three days; three to four days after
4 that.

5 Q Then you and Ms. Rogers met, you think, about January 11th on
6 Mr. McMullen's proposal?

7 A Yes.

8 Q You met physically at her house?

9 A Yes, with my diagrams.

10 Q Without Mr. McMullen?

11 A Absolutely.

12 Q Now, you've stated in your testimony that you felt like that
13 Mr. McMullen could not be engaged in this because he had a
14 financial interest in the outcome?

15 A That was one of the issues we were concerned about; in other
16 words, using your position on the board to sway the decision.

17 Q I'm confused about where that idea comes from. Is that an
18 idea that because governmental officials can't decide on issues
19 that have their financial interest? I don't see it in the
20 Restrictive Covenants. I want to find out where that comes from.

21 A If you're on a committee and you are going to be passing
22 legislation from which you personally gain, is that a conflict of
23 interest?

24 Q If you're an elected official and there's a law about it,
25 yes.

JOHN SIMPSON-CROSS BY MR. CHILDS

1 A In normal business, isn't that a conflict of interest--

2 Q No, sir.

3 A --to represent yourself?

4 Q No, sir, not unless there's a law---

5 BY THE COURT: Mr. Childs, I appreciate y'all's colloquy and
6 discussion of ethics and law, but that's beyond our issues today.

7 MR. CHILDS: All right.

8 Q But you'll admit the developers of the subdivision all had a
9 financial interest in the outcome of the Architectural Committee
10 because they were the people---

11 A I have no knowledge of how that worked.

12 Q Now, you talked about the letter that went out from Terra
13 Oaks subdivision, Defendants' Exhibit No. 2, this was not sent
14 out to anybody, was it?

15 A That was carried -- that particular one, no, because that's
16 the one that I marked up which is a draft.

17 Q In fact, Plaintiff's Exhibit No. 6 is what went out?

18 A I don't know that because I never got a copy. I didn't need
19 one because I had already drafted this.

20 Q Have you seen a copy of anything else that would have gone
21 out other than Plaintiff's Exhibit No. 6?

22 A I've not seen that one before.

23 Q In Plaintiff's Exhibit No. 6 it describes Mr. McMullen as
24 the leader of the committee?

25 A It does on that document, yes.

1 Q Do you know who prepared those documents?

2 A The one that I marked up, this one, Exhibit No. 1 on the
3 blue, I prepared some of the dialogue in there and Paola Rogers
4 contributed as well. Mr. McMullen was in that same meeting and
5 gave his input as well.

6 Q All right.

7 A So, all three of us basically. But somebody had to be the
8 scribe.

9 Q And that was Paola. So, basically the secretary?

10 A If you like. We didn't have titles. We were just members
11 of the committee.

12 Q So, y'all have any formal proceedings where you just
13 basically opened the session, had votes and things like that?

14 A No. That was never the format.

15 Q You agreed to serve on the committee without hesitation when
16 you were asked to serve?

17 A My hesitation was that I, as an amateur archeologist, I have
18 commitments to some fairly lengthy explorations down in Allendale
19 County.

20 Q Now, Mr. McMullen also eventually, you say, talked to you
21 about the chickens, Ms. Rogers' chickens, right?

22 A Yes.

23 Q Clearly in the Restrictive Covenants, it says no chickens?

24 A It may not exactly -- I don't know what the verbage was---

25 Q Do you want me to show it to you?

1 A You're right but I talked to Ms. Rogers about that
2 specifically, and she agreed that was an issue and took care of
3 it.

4 Q How long did it take?

5 A As I said earlier, a little bit longer than I expected, but
6 finding a home for chickens isn't easy.

7 Q And building a home for chickens also is a violation of the
8 Restrictive Covenants, isn't it?

9 A Oh, yes and that's why I specifically met with her and
10 talked with her about the need for her to address it.

11 Q And the building is still there?

12 A It's not a chicken coop anymore. I wouldn't call it a
13 building. It's more like a big dog pen.

14 Q Right.

15 A Nobody here but us chickens.

16 Q None of y'all approved that?

17 A My understanding was it was there before. I don't know. It
18 was just -- to me, it was a nonissue.

19 Q Now, you talked about---

20 A But there was no meeting called about that.

21 Q Right because there was no decision to make. It's a
22 violation of the Restrictive Covenants. There's no decision the
23 committee needs to make.

24 A Exactly.

25 Q "You just need to comply with it."

1 A Take care of it.

2 Q Just like Mr. Mastorakis' fence, you just need to comply
3 with it?

4 A Yeah but we wanted to document that because it would have
5 affected---

6 Q Ms. Rogers, was she upset about the fence along her property
7 line being chain link?

8 A As I said earlier, there was some dialogue there between
9 them, but I did not want to get involved in that.

10 Q All right. Mr. McMullen had the architectural fence between
11 him and Mr. Mastorakis, and Ms. Rogers had the chain link fence
12 between her and Mr. Mastorakis; is that right?

13 A It could be. I didn't get involved in it.

14 Q Well -- so, from the committee's perspective y'all didn't
15 issue a ruling on that fence, did you?

16 A (Witness shakes head)

17 THE COURT REPORTER: Is that a yes or a no?

18 A No.

19 Q Now, tell me when Mr. McMullen was removed from the
20 Architectural Committee.

21 A After we had the meeting at his house in March and he agreed
22 that Duane Cook and Hope Schamalzl could be alternates.

23 Q Mr. McMullen demanded that y'all have a meeting, did he not,
24 to legitimize any potential alternates, did he not?

25 A We had that meeting at his house.

1 Q No, no, not at the community meeting but later. Ms.

2 Schamalzl was supposed to replace Ms. Rogers, wasn't she?

3 A As an alternative.

4 Q Right. Ms. Rogers was never replaced by anybody?

5 A No.

6 Q Ms. Schamalzl, how did she become an alternate?

7 A Because Joe and I at his meeting asked her if she would
8 consider it and she was yes.

9 Q Was there a quorum of the committee members there when y'all
10 made that decision?

11 A Joe and myself.

12 Q Is that a quorum?

13 A Well, Paola Rogers was not invited to the meeting.

14 Q That was not a quorum, was it?

15 A It wasn't a quorum, but certainly it was two members of the
16 committee.

17 Q Two members talking to each other?

18 A Yes.

19 Q Okay. How did Mr. Cook become a permanent member of the
20 committee?

21 A After we had -- after Joe McMullen's house meeting when he
22 recommended or approved Mr. Cook and Ms. Schamalzl, like I said,
23 Duane did some studying of the covenants -- Ms. Schamalzl was not
24 in town so she couldn't get to it -- and we met with Paola on the
25 Monday after -- mid-week myself and Duane Cook to introduce Duane

1 to Paola as being the alternate as approved by myself and Joe at
2 his meeting.

3 Q So, that's the meeting -- what day was that meeting?

4 A I think it was a Wednesday.

5 Q So, there would be -- are there any scribe notes of that
6 meeting?

7 A There were never any notes that were scribed on that---

8 Q So, at that meeting -- which was without Mr. McMullen?

9 A No. Mr. McMullen was there. Are you talking about -- which
10 meeting are you talking about?

11 Q The alternates.

12 A The alternates? He was a part of that discussion.

13 Q No, no, no. That's the community meeting.

14 A You're talking about when---

15 Q I'm talking after that, you got together with Hope
16 Schamalzl, and Mr. Cook---

17 A No, no. Hope was out of town. It was Mr. Cook and Ms.
18 Rogers in Ms. Rogers' house.

19 Q Is this the text message in Plaintiff's Exhibit 15 that you
20 sent?

21 A Oh, yes.

22 Q And it says, "Following your Wednesday meeting and in
23 preparation for their temporary roles, Duane and Hope had
24 Covenants to study, then met with Paola on her return home.

25 Duane met with Paola and myself Monday and was accepted. He then

1 asked many probing questions. In conclusion we did not find
2 justification for another AC review." So, this is your second --
3 I guess your third meeting where you're denying his request?

4 A Yes.

5 Q And this time---

6 A And that was a quorum.

7 Q How?

8 A Myself, Ms. Rogers and Duane Cook the temporary.

9 Q Did not Mr. McMullen object to Duane Cook being on the
10 committee because he had already expressed an opinion?

11 A No. He accepted it in his house and in the meeting.

12 Q Again, you held another meeting about Mr. McMullen's
13 proposal without him present?

14 A Because we now had a quorum.

15 Q But you don't have the applicant there, the guy that's
16 asking the request.

17 A We had all of the information that I put together from the
18 meeting I had in his house of the marked-up prints.

19 Q And then you're telling the committee what you interpreted
20 from that meeting at his house?

21 A No. I'm telling the committee what he told me was the plan
22 of how he got to where he was to make his presentation.

23 Q Was any formal decision issued from that meeting other than
24 your text message?

25 A The text message was---

JOHN SIMPSON-CROSS BY MR. CHILDS

1 Q That was it?

2 A That was it.

3 Q Again, no explanation of the reasons behind all of this.

4 You were just inconvenienced by the whole thing, weren't you?

5 A No. It was the same logic that we had already used prior to
6 the -- on two separate occasions before. In other words---

7 Q How did Mr. McMullen become no longer a member of the
8 Architectural Committee?

9 A As the covenants state, two members of the Architectural
10 Committee have the ability to be able to temporarily or
11 permanently replace an individual who is no longer able to carry
12 out his responsibilities.

13 Q Right. When was that done? What meeting was that done at?

14 A When we met with Ms. Rogers and Duane Cook.

15 Q So, y'all permanently removed Mr. McMullen from the
16 committee at a meeting where he wasn't present?

17 A To say that we did it specifically like that, but that's
18 when the concept of, "We now need to make sure that we have the
19 three of us now as a committee to make the quorum."

20 Q Is it there a document out there other than your text
21 message?

22 A No. A text message was sufficient.

23 Q Is sufficient for formalizing Mr. McMullen's removal from
24 the Architectural Committee?

25 A Yeah.

1 Q Did Mr. McMullen also complain to you about other violations
2 in the community?

3 A He -- yes.

4 Q Did you address those with Ms. Rogers?

5 A Yes.

6 Q Were they fixed?

7 A Are you talking about the chickens? Yes.

8 Q No. The swimming pool that was added and the pergola.

9 A The swimming pool already existed when I -- the very first
10 time I ever went to Ms. Rogers' house.

11 Q Really? It was a fishing pond. It was a fish pond. It was
12 a fish pond.

13 A Not what I saw. What I saw---

14 Q You saw a swimming pool?

15 A I would call it a lap pool.

16 Q Before that, it was a basic pond?

17 A I have no idea what it was.

18 Q Okay. You never saw a pond there?

19 A It may have been but, you know, I didn't meet Ms. Rogers
20 until 2011.

21 Q Weren't wading pools required to be approved by the
22 subdivision? I will let the conditions speak for themselves.

23 A There's some dialogue, but to me it wasn't new construction.
24 Whatever was there, was there when I---

25 Q So, anybody can just install anything on their property

1 without the Architectural Committee's approval?

2 A No, no. That's not what I'm saying. What I'm saying as far
3 as the pool was concerned, which apparently was an issue, it was
4 already installed.

5 Q And Mr. McMullen complained to you about that?

6 A He indicated that he had a concern about, but I didn't see
7 what the concern was because it was already in the ground. And
8 he was complaining about it after we had denied him the ability
9 to split his lots. Before that, it was never an issue and
10 neither were the chickens.

11 Q So, you're saying that Mr. McMullen fraudulently joined
12 three pieces of property to his land? Were you saying that my
13 signature was not on that document---

14 A I'm saying I didn't approve it.

15 Q Right. In order for you to deny him a request to redivide
16 it -- because that's what's happened, right? He acquired
17 additional lots for his property, right, and you say that was
18 fraudulent?

19 A I'm saying that I didn't sign the approval for it.

20 Q Only later to find out that the committee wouldn't approve
21 it?

22 A Which committee?

23 Q The committee, the January 8th proposal?

24 A I'm not sure I'm following your point.

25 Q You're saying that he fraudulently acquired more property

JOHN SIMPSON-CROSS BY MR. CHILDS

1 for his lot in 2--8---

2 A I never claimed that. The only claim I made is I did not
3 sign that document.

4 Q Well, you do. Do you want me to read from your Answer to
5 the Complaint again? "Fraud was perpetrated because the
6 Plaintiff was aware that his purchase of a portion of Lot 4 and
7 subsequent sale of a portion of Lot 4 was without the committee's
8 approval." It sounds like fraud.

9 BY THE COURT: Is that a question, Mr. Childs?

10 Q Does that sound like fraud?

11 A In those terms there, yes.

12 Q "Because of the fraud perpetrated by the Plaintiff, the
13 Plaintiff's hands are unclean and he may not seek the equity of
14 the court."

15 My last question -- in just one minute I need to check with
16 my client -- but I think my last question is -- again, I don't
17 think you've ever answered it, and I'm going to ask it one last
18 time -- why did y'all not have a meeting with him present and
19 make a vote or a decision with him there?

20 A We already had all of the information we needed and it was
21 never offered before the 7th, and he took an hour or so of my time
22 on the Saturday morning to get the true details of what he was
23 proposing. Another meeting wouldn't have given any more
24 information.

25 Q So, it was just not worth the time?

JOHN SIMPSON-REDIRECT BY MR. GLEATON

1 A Well, it would not have given any more information.

2 Q In response to Paola's email that his request was denied
3 which was on January 21st--

4 A Yes.

5 Q --he asked for a formal meeting?

6 A After.

7 Q Yes. Did you go to that meeting?

8 A No.

9 Q Did Ms. Rogers go to that meeting?

10 A No.

11 MR. CHILDS: That's all of the questions I have.

12 BY THE COURT: Any other brief questions?

13 MR. GLEATON: Yes, sir, very briefly.

14 REDIRECT EXAMINATION BY MR. GLEATON:

15 Q Plaintiff's Exhibit 5 which is the certification that you
16 say you did not sign, Mr. Childs asked you if you ever went to
17 talk to the Ashmores about your signature being on that document?
18 Did you, in fact, go and talk to the Ashmores about your
19 signature?

20 A No.

21 Q You did not speak to the Ashmores about that?

22 A No.

23 BY THE COURT: All right. Thank you, sir. You can step
24 down.

25 (Witness excused)

1 BY THE COURT: You can call your next witness.

2 MR. GLEATON: Nothing further, Your Honor. Thank you. No
3 more witnesses.

4 BY THE COURT: Mr. Childs, any rebuttal?

5 MR. CHILDS: Your Honor, in rebuttal, I would like to
6 introduce excerpts of the Defendant Paola Rogers' deposition, and
7 I would have Mr. McMullen read those sections or we could just
8 read them into the record.

9 BY THE COURT: I'm pretty good at reading if they're
10 admissible.

11 MR. CHILDS: Without objection, could we just put her -- I
12 have not stripped these out. These were -- I don't have the
13 pages stripped out of the proposal. I would have to read it,
14 read out the sections that I would propose to add. Would it be
15 okay to just give you the deposition with me announcing the
16 sections I would introduce in rebuttal?

17 MR. GLEATON: I would like to see what he wants to
18 introduce. She is not being called as a witness. I'm going to
19 object to statements if they are statements made by a party
20 opponent. They weren't made with intent of being admitted at
21 trial.

22 BY THE COURT: Is it proper to put in a deposition excerpt
23 on rebuttal which I understand is the basis of the objection?

24 MR. GLEATON: Yes, Your Honor.

25 MR. CHILDS: And I'm not sure about that but I did ask

PAOLA ROGERS--DIRECT BY MR. CHILDS

1 specific questions of Mr. Simpson to which Ms. Rogers' deposition
2 excerpts would address directly.

3 BY THE COURT: If you wish to call Ms. Rogers, she's here in
4 the courtroom. I think I have no option but to sustain the
5 objection.

6 MR. CHILDS: I would call Ms. Rogers.

7 BY THE COURT: All right. If you would come around, please,
8 ma'am.

9 PAOLA ROGERS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 Thank you. Come around and have a seat. (complies)

11 If you'll state your full name.

12 THE WITNESS: Paola Rogers.

13 BY THE COURT: All right. Spell Rogers for the record,
14 please.

15 THE WITNESS: R-o-g-e-r-s.

16 DIRECT EXAMINATION BY MR. CHILDS:

17 Q Ms. Rogers, you remember your deposition was taken in this
18 proceeding?

19 A Yes, sir.

20 Q I'm going to show you -- and open your deposition
21 transcript, and I'm going to direct your attention to paragraph
22 43 -- Page 43---

23 MR. GLEATON: Objection. He can use her deposition to
24 cross-examine her if she testifies differently today.

25 BY THE COURT: I sustain the objection. I think you may use

1 the deposition to impeach her.

2 MR. GLEATON: I apologize. I said cross-examine when I
3 meant exactly that, Your Honor. Thank you.

4 MR. CHILDS: She's a party opponent. So, she's an adverse
5 witness.

6 BY THE COURT: I understand and you have a right to cross-
7 examine her, I believe.

8 MR. CHILDS: All right.

9 Q Is it your testimony that you actually came up with a
10 decision about Mr. McMullen's property after the sign in front of
11 Mr. McMullen's property was posted by the County for a
12 subdivision?

13 A I oppose the same day we made a decision on January 11th at
14 my house.

15 Q Let me rephrase that because I was definitely not clear.
16 Did you become aware -- did y'all make your decision about Mr.
17 McMullen's proposal after you saw the subdivision signs for
18 Greenville County in his yard?

19 A No. It was before.

20 Q Let me direct your attention to Page 43 of your deposition,
21 Line 20, and I asked you in your deposition, "Okay. So you and
22 Mr. Simpson talked a lot about the proposal between yourselves.
23 And when did you come up with a decision?" And what was your
24 answer?

25 A "We actually came up with a decision after we realized there

1 was a sign in front of Mr. McMullen's property from the county
2 for subdivision of the property."

3 Maybe I got mixed up with the date, but clearly the proposal
4 from Mr. McMullen came in January and after reviewing the
5 documentation to come here today, it came clear to me that his
6 proposal for the County didn't come up after February. So,
7 clearly on the day of the deposition maybe I just mix up the
8 date.

9 Q In your deposition on Page 44, I asked you on Line 2, I
10 said, "Okay."

11 And your answer was, "So at this point there was no formal
12 decision, as I recall."

13 A All right.

14 Q Was that your answer then? When your deposition was taken,
15 was that your answer then, that there was no formal decision when
16 the signs went up?

17 A Well, because probably when you asked me that, I got
18 confused to the date---

19 BY THE COURT: Ms. Rogers, if you'll just answer the
20 question yes or no, and then you may explain your answer.

21 THE WITNESS: Okay.

22 BY THE COURT: If you could repeat the question.

23 A Yes. I did answer that---

24 BY THE COURT: Hold on. Repeat the question, please, sir.

25 Q Did you state in your deposition that at the point of the

1 subdivision signs going up, that there was no formal decision was
2 made at that time?

3 A Yes. Again, if I may explain---

4 BY THE COURT: Certainly.

5 A It's just because I probably got mixed up with the dates
6 when the signs for the County came up and when we got the
7 proposal from him in the meeting on January 11th.

8 Q All right. So, you know the signs went up in February,
9 right?

10 A The signs came up at some point in the middle of that
11 transaction clearly after I saw the documentation from Mr.
12 McMullen that he applied for the County in February. So, clearly
13 I was mistaken again with the date.

14 Q All right. You're the self-described, by Mr. Simpson, the
15 scribe of the committee. But there's no notes of these meetings
16 other than there's an email and a text message. Is that how you
17 did business?

18 A Yes. Our business, we aren't represent -- we represent a
19 group of homeowners. We're not a homeowner's association. So,
20 it's a voluntary position. And every time something is
21 requested, we review the documents and go over whatever is
22 requested. So, yes, it's very informal.

23 (Cellphone rings)

24 BY THE COURT: Somebody's phone went off. If you'll make
25 sure he understands he's not to be back in here. (addressing the

1 bailiff)

2 Q I got distracted by that too.

3 BY THE COURT: That's why courts always have big signs on
4 the doors saying, "Don't come in with here your phone on."

5 Q So, you got the formal request from Mr. McMullen in January,
6 on January 8th or 7th of 2016, correct?

7 A Yes, sir.

8 Q As a result of that, did you ever have three members of the
9 committee, including Mr. McMullen, you and Mr. Simpson, formally
10 meet and discuss the issues of his application?

11 A Yes, in May of the prior year.

12 Q So, you're tracking back to May. I'm going to January of
13 2016. You're talking May of 2015, aren't you?

14 A Yes because that's when we first -- the issue rise and
15 that's when the whole communication started about division of
16 lots. Since then we didn't hear anything until Mr. McMullen send
17 the document for us to sign for him to sell the property.

18 Q Right. Did you ever have a meeting after that, after he
19 sent that to you, to discuss the prospects or the issues of Mr.
20 McMullen's proposal, you, Mr. Simpson, Mr. McMullen sitting in
21 the same room, talking about the issues?

22 A No. After May we didn't. I work fulltime and have two
23 young kids. So, I don't have as much time as the two retired
24 members of the Architectural Committee.

25 BY THE COURT: I'm sorry, is this the gentleman whose phone

1 just went off? If that's him, he is banished from the courtroom.

2 SOMEONE IN THE GALLERY: That's not him.

3 BY THE COURT: All right. Thank you.

4 Q Ms. Rogers, what was the formal response of the committee
5 to Mr. McMullen's application in January of 2016?

6 A He request us to sign a document, and we review and we
7 deny the request.

8 Q How?

9 A By email and then I sent -- we signed a paper and I
10 personally put in the mail the same letter but just signed by ink
11 to his house.

12 Q The same email that says a formal document will follow?

13 A Yeah. I mean, the same decision. Yes.

14 Q This letter that we've never seen in discovery of a letter
15 that you delivered to Mr. McMullen. Have you been able to
16 produce that?

17 A Was the same one.

18 Q As the email that was sent to him and said---

19 A As the email that I sent out.

20 Q January 22nd, 21st or 22nd?

21 A Yes, sir.

22 Q That said a formal document will follow?

23 A Yes, sir.

24 Q So, you took that email, you put it on a piece of paper and
25 sent it -- dropped it in his mailbox---

1 A I didn't drop it in his mailbox. I put a stamp and I sent
2 it in the mail.

3 Q That document said, "A formal document will follow"?

4 A Yes.

5 Q And a formal document never followed?

6 A Well, that email was printed out, signed and that's why it
7 was sent.

8 Q That email said a formal document would follow?

9 A Right.

10 Q So, you never explained to Mr. McMullen why you denied his
11 request?

12 A Yes, we did talk about it over the phone, he came to my
13 house. He talk -- like Mr. Simpson explained, he, Mr. Simpson,
14 went several times to Mr. McMullen's house and he did a drawing
15 with colorful, very explanatory -- and that's why we went at
16 length on the 11th to determine if we could do it or not as a
17 member of the Architectural Committee representing the other
18 homeowners.

19 Q When was Mr. McMullen removed as a permanent member of the
20 Terra Oaks Architectural Committee?

21 A I was not present. So, I cannot tell exactly when that
22 happened. I was informed that---

23 Q How could that happen without you? I don't want to
24 interrupt you, but how could that happen without you?

25 A Because I was not present when they had the meeting at Mr.

1 McMullen's house with the whole neighborhood. I wasn't available
2 there at his house. So, the following day I got a call saying
3 that Duane was going to represent him. Again, on the same issue
4 because after we denied in May, after we denied in January, he
5 was never satisfied with the denial. There was always something
6 else. In good faith, we keep reviewing and keep, you know,
7 giving a chance to review in really good faith.

8 Q Isn't it true that in bad faith you never explained to him
9 the reasons for your denial formally and in bad faith you never
10 met with him directly, the three members of the Architectural
11 Committee, to discuss it and take a formal vote?

12 A No, it's not. It was not a bad faith.

13 Q Do you think Mr. McMullen was removed in the community
14 meeting in February?

15 A That's what I understand, that he was going to be
16 represented by Mr. Cook one more time so it could be reviewed one
17 more time, his proposal.

18 Q And then one more time the committee doesn't meet with Mr.
19 McMullen at all, doesn't have a formal meeting with you and all
20 of the other members present?

21 A Well, because Mr. Cook was representing him as a third
22 member of the committee.

23 Q Again, go back and ask you the question, when was Mr.
24 McMullen removed as a permanent member of the Architectural
25 Committee of Terra Oaks?

1 A Formally when we met with Mr. Cook and he was introduced to
2 me and was brought to my attention that he was going to represent
3 Mr. McMullen as a third member to finally -- be reviewed one more
4 time, the proposal. That's when we talked again and decided that
5 would be interesting to have somebody that lived in the community
6 that is there every day to be part of the Architectural
7 Committee.

8 Q All right. Let me direct your attention to your deposition,
9 page 63, Line 18 where I said: "But the question is: Has Mr.
10 McMullen been removed as a permanent member of the architectural
11 committee of Terra Oaks?" What was your answer?

12 A Just a minute. Let me find it. Which line is that?

13 Q Page 63, Line 18 I just read to you through 20, and 21 is
14 your answer.

15 A I said, "No. He was not removed."

16 Q And I asked you: "Has he ever been removed?" And what was
17 your answer on Line---

18 A He was not removed because he was replaced by Mr. Cook to
19 answer just that particular issue at that point.

20 Q Really?

21 A Yes.

22 Q And didn't you not send an email later that said the
23 permanent members of the committee are Mr. Cook, Mr. Simpson and
24 you?

25 A Right but that was after the fact, after the review of his

1 proposal.

2 Q All right. Did you---

3 A Two separate facts there.

4 Q I understand what you're trying to say. Did you have a
5 problem with Mr. Mastorakis and his chain link fence?

6 A Well, I did not like it, but I did not create a big issue
7 about it.

8 Q Are chain link fences allowed in the subdivision?

9 A Well, as you -- it state on my email in May, it's not the
10 preferred fence. I don't recall on the covenants exactly how it
11 states, but there are some houses that have chain link.

12 Q But you were disturbed by that. That was your property line
13 that you've got a chain link fence down it. And then Mr.
14 McMullen had an architectural fence put up by Mr. Mastorakis.

15 A It was not an official oppose. I did not create any
16 problems.

17 Q Did you feel like Mr. McMullen went behind your back on the
18 fence issue?

19 A I think it was a miscommunication for sure.

20 Q And this decision back in May of 2015 was a decision you and
21 Mr. Simpson made, solely you and Mr. Simpson participated in the
22 email that was sent out to Mr. McMullen saying his idea to
23 subdivide the lots was in violation of the Restrictive Covenants;
24 is that correct?

25 A No. It was a meeting that we have in my house that started

1 because of the fence for Mr. Mastorakis, and that same meeting
2 evolved into Joe bringing the subject of subdividing his lot
3 because all of our meetings are informal. Every time something
4 rise, we call each other and we meet and we advise the covenants.
5 I was not prepared to have several hours of the rest of my day.
6 So, we did talk about it. He showed some ideas that he had to
7 subdivide his lot, and I'm not an engineer. So, I said, "Well,
8 why don't you two go walk around like you planned and then talk
9 to me about it" and we advised the drawings and go from there.

10 Q So, how did y'all come up with a decision? Did you decide
11 the issue there at a meeting with Mr. McMullen?

12 A We did not make a decision -- like I said again, what
13 happened is I did not walk around with them. We did talk about
14 it, but we did not vote if that's what you're asking me.

15 Q But you nevertheless sent an email to Mr. McMullen saying
16 that his idea was denied?

17 A Yes, was sent in May.

18 Q Right. How was that done, how did that vote come up?

19 A I don't recall exactly all of the details of it, but I do
20 recall that -- like I said again -- I'm going to repeat -- we had
21 a meeting, the three of us. Mr. McMullen showed his ideas of
22 dividing his lot and John offered to walk around to better
23 understand. After that we agreed to talk on the phone and then
24 make a decision, and that's when the decision was made that
25 states on the email.

1 Q By you and Mr. Simpson?

2 A Well, the three of us.

3 Q Was Mr. McMullen ever present when the decision was made?

4 A Well, he was present on the meeting and he was present on
5 the walkabout with Mr. John Simpson.

6 Q So, he was never present when the decision was made?

7 A Well, the decision was made over the phone with
8 information---

9 Q Was that a three-way call with Mr. McMullen and Mr. Simpson?

10 A I don't recall honestly exactly how it happened. It's been
11 several years ago.

12 Q So, it probably wasn't. It was you and Mr. Simpson talking
13 on the phone and deciding you didn't like his idea?

14 A Well, I'm not saying that it was or was not.

15 Q You understand in order to transact business, the
16 Architectural Committee has to have all of the members present?

17 A Right, and the conversation started between the three of us.

18 Q Right.

19 A And it was agreed between the three of us that I would
20 recuse myself of the walkabout. So, that---

21 Q Was it agreed---

22 A That was agreed between the three of us.

23 Q Was it agreed that Mr. McMullen wouldn't be present when you
24 made the decision?

25 A Not specifically.

1 Q Who would agree to that?

2 A Well, I mean specifically---

3 Q "I don't want to be there when y'all decide this."

4 A No. Specifically, we met and we discussed about it again,
5 and we agreed that he and John would walk around the neighborhood
6 and I couldn't do it at the time. That's what we agreed. And we
7 would make a decision from there.

8 Q Now, you understand what I discussed with Mr. Simpson about
9 the covenants being a contract, and that you're enforcing the
10 covenants, and you've got an obligation to deal with people in
11 good faith and provide fair dealings with them; is that correct?

12 A Okay.

13 Q You feel like that's your obligation?

14 A Sure.

15 Q To deal with anybody that's made a request in good faith and
16 fair dealings?

17 A Absolutely.

18 Q And the Restrictive Covenants themselves say that the quorum
19 of the committee is all of the members?

20 A Right.

21 Q And a majority vote of the members is required to agree to
22 anything?

23 A What is your question?

24 Q Don't the requirements -- don't the Restrictive Covenants
25 require that three people be there when the decision's made?

1 A It say that the Architectural Committee need to decide.

2 Q Right. But don't the fact that a quorum is all of the
3 members, and it requires all of the members to be present to make
4 a decision, right? A decision was never made with the presence
5 of Mr. McMullen in the room?

6 A Right. That's correct.

7 MR. CHILDS: That's all of the questions I have.

8 BY THE COURT: Mr. Gleaton.

9 CROSS-EXAMINATION BY MR. GLEATON:

10 Q Ms. Rogers, the covenants say no lot shall be recut without
11 written permission, correct?

12 A Correct.

13 Q If no decision was made, no lot shall be recut, correct?

14 A Correct.

15 Q You never gave your permission by signing his proposal
16 therefore giving him written permission, correct?

17 A Correct.

18 Q To the best of your knowledge, Mr. Simpson never gave
19 written permission by signing his name to the proposal; is that
20 correct?

21 A Correct.

22 Q To the best of your knowledge, Mr. McMullen never even gave
23 his own approval to his own decision by signing the written
24 proposal; is that correct?

25 A It seems like.

- 1 Q When did you become aware that you were a member of the AC?
- 2 A The beginning of 2011.
- 3 Q Is that when those letters went out, Defendants' Exhibit 2
- 4 and Plaintiff's Exhibit 6 or 7?
- 5 A Yes. I drafted that February 11, 2011 document.
- 6 Q You drafted that shortly after you became aware that you
- 7 were on the committee?
- 8 A Yes, sir.
- 9 Q Were you aware that you were on the committee back in 2008?
- 10 A No.
- 11 Q Did you ever take any actions on behalf of the committee in
- 12 2008?
- 13 A No, sir.
- 14 Q Defendants' Exhibit No. 5 -- excuse me -- Plaintiff's
- 15 Exhibit No. 5 -- I do apologize -- is a Certification. Did you
- 16 sign that?
- 17 A That is half of my signature, and I don't recall signing
- 18 that particular document.
- 19 Q Do you ever just sign half of your signature?
- 20 A No.
- 21 MR. GLEATON: Nothing further.
- 22 BY THE COURT: Anything else, Mr. Childs?
- 23 MR. CHILDS: No, sir, Your Honor.
- 24 BY THE COURT: Thank you, Ms. Rogers. You can step down.
- 25 (witness excused)

1 BY THE COURT: Any other witnesses?

2 MR. CHILDS: No, sir.

3 BY THE COURT: Anything else, Mr. Gleaton?

4 MR. GLEATON: No, Your Honor.

5 BY THE COURT: All right. Then anything else for the
6 record, gentlemen?

7 MR. CHILDS: No, sir, not from the Plaintiff.

8 MR. GLEATON: No, Your Honor.

9 BY THE COURT: All right. Let me explain to the litigants
10 and also to the other folks who I assume are here with some
11 degree of interest since you have spent the better part of a day
12 with us.

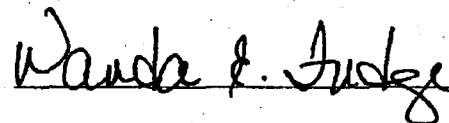
13 First, I appreciate the fact I have good lawyers here
14 because you can tell by the sheer volume of documents and the
15 large amount of discovery that has been undertaken, they're very
16 zealous and they have been very serious about their advocacy of
17 you which is a good thing. That helps make my job easier.

18 Now, I have the unenviable task of ultimately deciding what
19 the result is. I have been doing this long enough to understand
20 several things. One, in this particular case, there is no baby
21 to split. There is no middle ground. It's either all of nothing.
22 And as a result of that, one side will think I'm a pretty smart
23 fellow and I'm a good judge. The other side will wonder if I
24 ever got out of law school. I'm okay with that. That's kind of
25 the nature of the position that I have occupied here for a while.

1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 10th day
8 of January, 2018.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11
12 April 26, 2018

13
14 

15 Wanda E. Fudge, CCR

16 Certified Court Reporter
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA,)
COUNTY OF GREENVILLE.) RESTRICTIVE COVENANTS - TERRA OAKS

For your protection as a homeowner, these restrictions and covenants have been provided. These restrictions are applicable to the numbered lots appearing on Plat entitled "Terra Oaks", made by Carolina Surveying Co., dated August 1, 1980 and recorded in the RMC Office of Greenville County, South Carolina in Plat Book 7X at Page 33.

WHEREAS, Terra Oaks, Inc., a South Carolina corporation is the owner of all that certain real estate in the City of Greenville, Greenville County, South Carolina, known as Terra Oaks, and is developing said property as a single subdivision.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that in consideration of the mutual covenants and promises herein contained and under good and valuable consideration, the parties hereto do by these presents impose the following covenants and restrictions and affirmative covenants upon the sale, transfer or use of the property hereinafter referred to in Section 1, Paragraph 1 of these restrictions, which shall be binding upon the parties hereto, their heirs, successors and assigns, purchasers or transferees until January 1, 2010, at which time these covenants shall be automatically extended for successive periods of ten (10) years each, unless by a vote of the majority of the then owners of the lots and tracts affected, it is agreed to change the covenants in whole or in part.

1.

PROPERTY AFFECTED

1. These restrictive and protective covenants shall apply to the following property:

"All those lots shown on Plat of Terra Oaks made by Carolina Surveying Co. dated August 1, 1980 and recorded in the RMC Office of Greenville County, S. C. in Plat Book 7-X at Page 33."

PAGE ONE



II.

USES PERMITTED AND PROHIBITED

1. All numbered lots shall be used exclusively for single family residential dwellings.
2. No trailer, basement, tent, shack, garage, barn or other outbuilding erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence.
3. No house trailer shall be placed on any lot either temporarily or permanently.
4. No noxious or offensive activity shall be carried on anywhere on the property subject to these covenants, nor shall anything be done thereon which may be or become a nuisance or menace to the neighborhood. No numbered lot or any part thereof shall be used for any business or commercial purpose or for any public purpose.
5. Sewerage disposal shall be by municipal or community sewerage disposal system or, if by septic tank, in compliance with the specifications of the State Board of Health.
6. No animals, horses, ponies, chickens, pigeons or livestock of any type shall be kept, maintained or quartered on any lot except that cats, dogs, and caged birds may be kept in reasonable numbers as pets for the pleasure of the occupants. The owner of Lot 4 may keep a reasonable amount of hunting dogs provided they are quartered behind said house and near the northwest property line.

III.

SETBACKS, LOCATIONS AND SIZE OF IMPROVEMENTS & LOTS

1. No building shall be erected on any lot nearer to the front lot line than the building setback line as shown on the recorded Plat, and any such building shall face toward the front line of the lot except that buildings to be constructed on corner lots may face either street or the intersection line. No residence shall be nearer to any

PAGE TWO

0101-25

side lot line than a distance equal to 10% of the width of the lot measured at the building setback line

2. No detached garage or other outbuilding shall be nearer than 75 feet from the front lot line nor nearer than 5 feet from any side or rear lot line.

3. No wall, fence or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building setback line having a height of more than 3 feet.

4. No lot shall be recut without first obtaining the written permission of the Architectural Committee created under Article III thereof.

5. Nothing herein contained shall be construed to prohibit the use of more than one lot or of portions of one or more lots as a single residential building site, provided said site is not in violation of the restrictions as to lot width and provided said site faces as required by those restrictions and the recorded Plat.

6. No one-story, split-level or story and a-half residence shall be constructed on any numbered lot containing less than 2400 square feet of floor space. In computing the square footage of any split-level residence, credit shall be given for one-half the square footage of any basement which is finished and heated. In computing the square footage of any story and a-half residence, no credit shall be given for the area above the ground floor. No two-story residence shall be constructed on any numbered lot containing less than 1600 square feet of floor space on the ground floor nor less than 1200 square feet of floor space on the second floor. In computing the area under this Paragraph, all basements (except split-levels), porches, carports, garages and breezeways shall be excluded and only heated areas shall be counted toward the above minimum area requirements.

7. No residence more than two stories in height shall be erected upon any numbered lot.

PAGE THREE

0020

3328 RV-2

1131-30

8. No garage or other outbuilding more than one story in height shall be erected upon any numbered lot.

9. All driveways serving any residence constructed on any lot shall be paved with either asphalt or concrete paving.

10. No heavy truck or trailer shall be parked on any lot in the subdivision at any time, except for purposes of loading or unloading; no house trailer, disabled vehicle, or unsightly machinery or junk, shall be placed on any lot, either temporarily or permanently; providing, however, this shall not be construed as prohibiting the parking or keeping of travel trailers, so long as they are not used as a residence, either temporarily or permanently, and are maintained in a sightly manner to the rear of any residence constructed on any lot.

11. No concrete block shall be used in the construction of any building on any lot which may be visible from the exterior after grading has been completed. All fuel oil tanks or containers shall be covered or buried underground in the rear of all residences erected on any lot.

IV

ARCHITECTURAL COMMITTEE

1. The Architectural Committee shall be composed of Louis C. Manios, Charles E. Howard and John Sfiria. In the event of the failure or inability, for any reason, of a member to act, the vacancy created shall be filled temporarily or permanently, as necessary by the remaining members of the Committee.

All members shall constitute a quorum and a majority vote shall be required for the transaction of any business of the Committee.

2. No improvements or buildings shall be erected, placed or altered on any lot or lots until and unless the building plans, specifications and plot plan showing the proposed type of construction, exterior design and location of such residence have been approved in writing as to conformity and harmony of external design and consistence with plans of existing residence or other buildings and as to the

PAGE FOUR

401-31

location of the structure with respect to topography and finished ground elevation, by the Architectural Committee.

3. In order to prevent duplication of buildings or improvements to be constructed in this section or adjacent sections, the Committee is vested with full authority to approve or disapprove plans for the construction of any building or improvements with its major features so similar to an existing building or improvement as to be construed as a practical duplication thereof in the discretion of the Committee.

4. In the event said Committee fails to approve or disapprove such designs and plans within fifteen (15) days after said plans have been submitted to it, or in any event, if no suit to enjoin the erection or alteration of such building or improvement had been commenced before such erection or alteration is substantially completed, such prior approval will not be required and this covenant will be deemed to have been fully complied with and no suit or claim will be available to said Committee, nor to any lot owner or other person. The term "building or improvement" shall be deemed to include the erection, placement or alteration of any outbuilding, wall or fence to be made in any lot.

5. The Committee is authorized by majority vote of all its members to approve or ratify in the construction or alteration of any building minor violations or the requirements herein set forth under Section II), "Setbacks, Locations and Size of Improvements and Lots", if in the opinion of all the members of the committee the same shall be necessary to prevent undue hardship because of topography, the shape of any platted lot or the setback lines as shown on the recorded plat, and if in the opinion of the members of the Committee such violation will cause no substantial injury to any other lot owner. In the event may the Committee approve or ratify a violation of the front setback line of more than 5 feet or of the main building side line restriction of more than 4 feet or of the restrictions as to building size imposed by Section III thereof. The approval or ratification by the Committee in

PAGE FIVE

4326-2

accordance with this Paragraph shall be binding on any persons.

6. No member of this Committee shall be liable for any act or omission except willful misconduct or gross and inexcusable neglect.

V.

EASEMENTS

1. An easement is reserved over the rear lot line 10 feet in width on lots 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14 for installation, operation and maintenance of utilities and for drainage purposes. A 5 foot easement is reserved over the rear lot line of the remaining lots and a 5 foot easement over all side lot lines for the installation, operation and maintenance of utilities and for drainage purposes. Such easements across the lots as are shown on the recorded Plat are also reserved.

VI.

MISCELLANEOUS

1. No signs shall be permitted on any residential lots except that a single sign offering property for sale or for rent may be placed on any such lot provided such sign is not more than 24 inches wide by 20 inches high.

2. Names or numbers painted on mailboxes and/or any other house numbers will be painted in a professional manner.

3. The property within the subdivision is hereby declared to be a bird sanctuary and any hunting of any wild birds is hereby prohibited.

4. The entrance to a garage shall not face the street.

5. Any residence constructed upon any lot must be completed on the exterior and the lot landscaped within eight (8) months after the date the footings are poured. A fine of \$500.00 for each month or portion thereof shall be imposed by the building committee when any house and landscaping remains incomplete after the expiration of the said eight (8) months and this fine is hereby levied against the said lot.

PAGE SIX

101-85

and the said fine shall constitute a lien against this lot; provided, however, that the said lien shall not affect or prejudice the rights of liens of other lien creditors. Any fines so collected shall be used by the Architectural Committee constituted in Paragraph IV for the beautification of the subdivision; provided, further, the said Committee shall have the rights and authority to waive the said fine at any time either before or after it shall accrue.

6. No bathing pools shall be constructed or maintained on any lot unless it is surrounded by a sightly screening fence.

If the undersigned, or their successors, heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person owning any real property situated in said sector of the subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages or other dues for such violation.

Invalidation of any one or more of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

If any of these covenants shall be found to be contrary to the recommendations of the Federal Housing Administration or any other national agency granting or insuring loans and shall render any lot in said subdivision unacceptable for any such loan, the developer shall have the authority to alter, amend or annul any such covenants as may be necessary to make any of the lots herein acceptable for such loan.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals at Greenville, South Carolina, this the 28th day of July, 1980.

IN THE PRESENCE OF

[Signature]
[Signature]

[Signature]
[Signature]

William R. Francis

Glenn L. Mancoske

PAGE SEVEN

14325 IN 23

STATE OF SOUTH CAROLINA,)
COUNTY OF GREENVILLE.)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that he saw the within named grantors sign, seal as as their act and deed deliver the within Restrictive Covenants and that he with the other witnesses subscribed above witnessed the execution thereof.

Ernest Howard

SWORN to before me this 28 day
of July, 1980.

SEAL

[Signature]
Notary Public, S. C.

My Commission Expires: 4-11-88

PAGE EIGHT

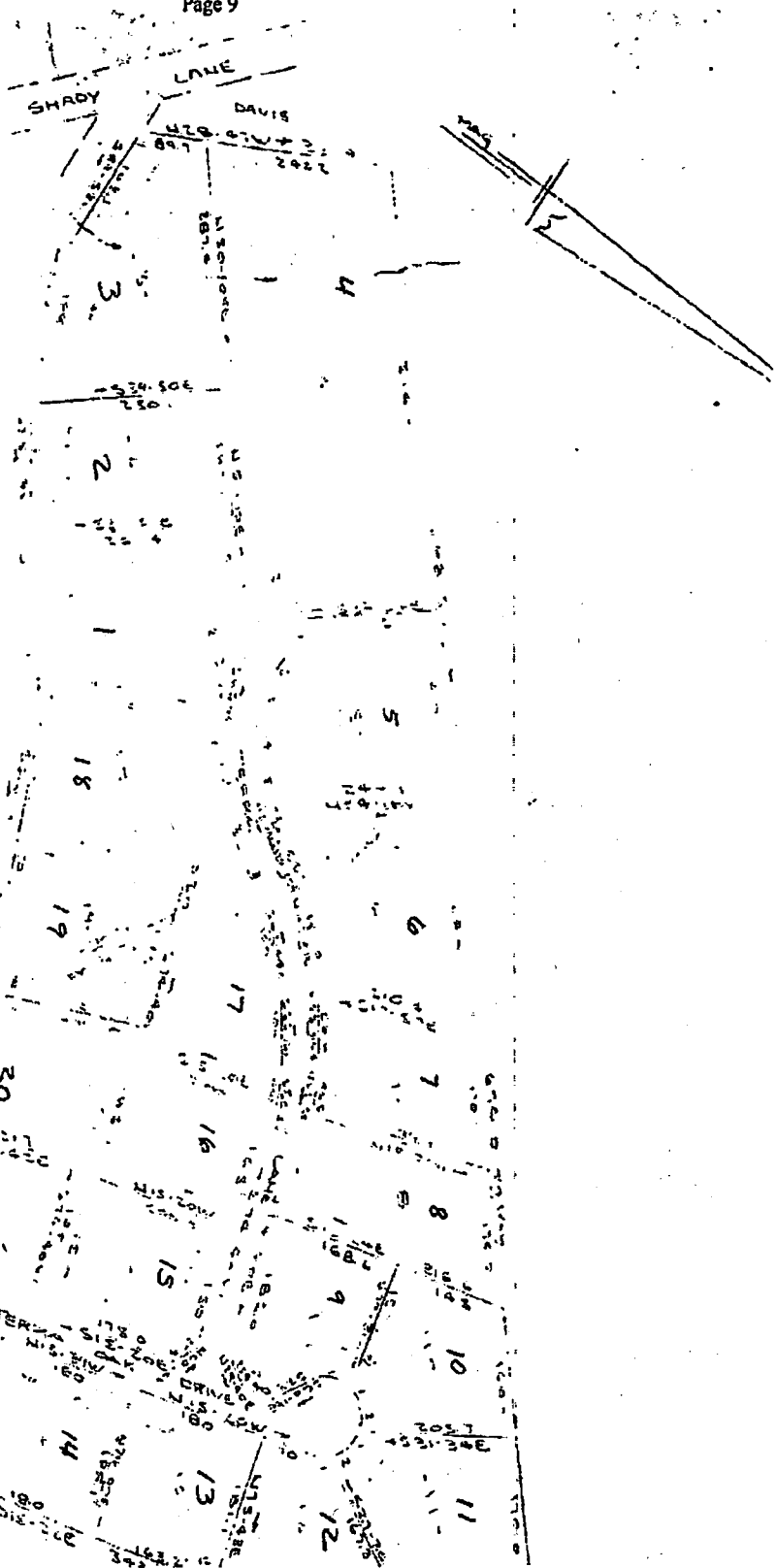
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12122

1325 0-2

Reserve Table

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Pursuant to the Restrictive Covenants of Terra Oaks, dated August 1, 1980 and recorded in the ROD Office for Greenville County In Deed Book 1131 at Page 27, the undersigned do hereby appoint as permanent members of the Architectural Committee of Terra Oaks the following:

Paola Rogers

Greenville, SC 29615

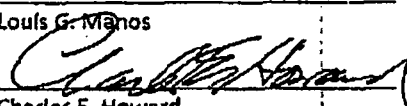
John Simpson

Greenville, SC 29615

Joe McMullen

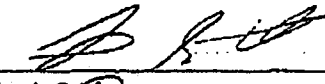
Greenville, SC 29615

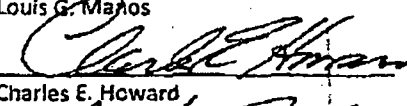
 12/08/08
Louis G. Manos

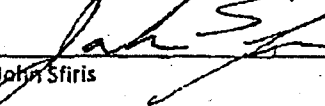
 12-3-08
Charles E. Howard

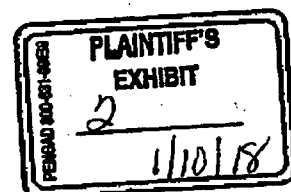
 12-8-08
John Sfiris

We do hereby resign from the Architectural Committee of Terra Oaks, effective immediately:

 12/02/08
Louis G. Manos

 12-3-08
Charles E. Howard

 12-08-08
John Sfiris





2009000574 DEED
2 PGS
Book: DE 2351 Page: 2534-2535
January 05, 2009 01:38:33 PM Cons: \$30,000.00
Res: \$10.00 Crty Tax: \$33.00 State Tax: \$78.00

FILED IN GREENVILLE COUNTY, SC

Space above this line for recording information

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, LOUIS G. MANIOS herein referred to as Grantor for and in consideration of the sum of THIRTY THOUSAND AND 00/100 (30,000.00) Dollars to me paid by JOSEPH E. MCMULLEN, hereinafter referred to as Grantee in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do es grant, bargain, sell and release unto the said Grantees, their heirs, successors, and assigns forever:

All that certain piece, parcel, or lot of land containing 1.032 acres, being known and designated as part of Lot No. 4, on Plat entitled: "Survey for Joseph E. & Nita McMullen " prepared by James E. Creighton, RLS of Benchmark Surveying, Inc., dated August 7, 2008, and recorded January 1, 2009, in the ROD Office for Greenville County in Plat Book 1231, Page 5. Reference being craved to said Plat for a more particular metes and bounds description.

This being a portion of the property heretofore conveyed unto the grantor herein by Deed of Gloria R. Manios, et al dated 8/22/80 and recorded in the ROD Office for Greenville County in Deed Book 1239, Page 89 on 5/9/85.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Tax Map No.: p/o 540.20-1-4

Grantees' Address: 9 Fisher Road
Greenville, SC 29615

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee s, their heirs and assigns forever.

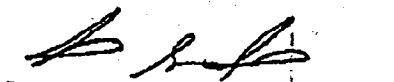
AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

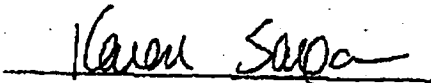


WITNESS my Hand and Seal this January 5, 2009.

Signed, Sealed and Delivered
In the Presence of:



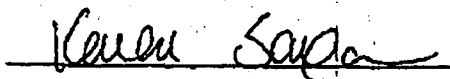

Louis G. Manios

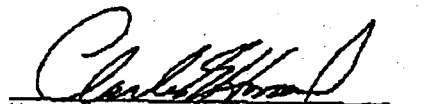


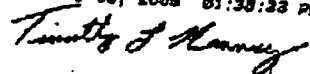
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Personally appeared before me the undersigned and made oath that she saw the within-named Grantor sign, seal and as his act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
5th day of January, 2009,




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

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2009000574 Book: DE 2351 Page: 2534-2535
January 06, 2009 01:30:23 PM




ELECTRONICALLY FILED

John G. Cheros, Attorney at Law, Greenville, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) TITLE OF REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that

Joseph E. McMullen

in consideration of Four Thousand Thirty-Two and 67/100
(\$4,032.67) Dollars, receipt of which is hereby acknowledged,
have granted, bargained, sold, and released, and by these
presents do(es) grant, bargain, sell and release unto

Richard Alan Holcombe

All that certain piece, parcel or tract of land lying and
being in the State of South Carolina, County of Greenville,
shown as Tract C, 7,253 Sq. Ft, 0.166 Acres, on plat
entitled SURVEY FOR JOSEPH E McMULLEN, NITA McMULLEN, AND
TERESA S. HOLCOMBE, prepared by Benchmark Surveying, Inc.,
dated August 7, 2008, recorded in Plat Book 1012, page 65
and having such courses and distances as will appear by
reference to said plat.

This is a portion of the same property conveyed by deed of
Louis G. Manios, recorded in Deed Book 2351, page 2534 on
January 6, 2009.

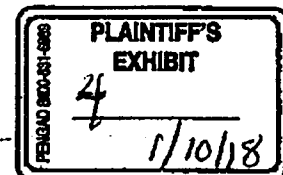
The above property is conveyed subject to all rights-of-way,
easements, protective covenants, setback lines, roadways,
dedications, and zoning ordinances, if any, of record, on
the recorded plat(s) or on the premises affecting said
property.

Grantee's Address: 200 Shady Lane
Greenville, SC 29615

TMS #: Part of 0540.20-01-004.00

2009044111 DEED
3 PGS
Book DE 2357 Page: 4302-4304
June 01, 2009 04:33:27 PM Cons: \$4,032.67
Rec: \$10.00 Cnty Tax: \$4.95 State Tax: \$11.70

FILED IN GREENVILLE COUNTY, SC



BACK 2257 PAGE: 4303

WITNESS the grantor's(s') hand(s) and seal(s) this 25th day of May, 2009.

in the presence of:

<u>John B. Cheroz</u>	<u>Joseph E. McMullen</u> (LS)
<u>[Signature]</u>	<u>Joseph E. McMullen</u>
	_____ (LS)

COUNTY OF GREENVILLE)

SWORN before me this 8th day of May, 2009.

Notary Public for SC
My Commission Expires:
Seal

John G. Oker
Witness

John G. Cheros, Attorney at Law, Greenville, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

TITLE OF REAL ESTATE
NO TITLE EXAM

KNOW ALL MEN BY THESE PRESENTS, that

Richard Alan Holcombe

in consideration of Six Thousand Six Hundred Two and 25/100
(\$6,602.25) Dollars, receipt of which is hereby acknowledged,
have granted, bargained, sold, and released, and by these
presents do(es) grant, bargain, sell and release unto

Joseph B. McMullen

All that certain piece, parcel or tract of land lying and
being in the State of South Carolina, County of Greenville,
shown as Tract B, 11,875 Sq. Ft, 0.273 Acres, on plat
entitled SURVEY FOR JOSEPH B. McMULLEN, NITA McMULLEN, AND
TERESA S. HOLCOMBE, prepared by Benchmark Surveying, Inc.,
dated August 7, 2008, recorded in Plat Book 1087, page 65
and having such courses and distances as will appear by
reference to said plat.

This is a portion of the same property conveyed by deed of
Richard D. Holcombe, recorded in Deed Book 2353, page 944 on
February 13, 2009.

The above property is conveyed subject to all rights-of-way,
easements, protective covenants, setback lines, roadways,
dedications, and zoning ordinances, if any, of record, on
the recorded plat(s) or on the premises affecting said
property.

Grantee's Address: 9 Fisher Rd
Greenville, SC 29615

TMS #: Part of 0540.02-01-007.00



June 01, 2009 04:33:26 PM
Rec: \$10.00

Chy Tax: \$7.78

2009044110 DEED
3 PGS
Book: DE 2357 Page: 4289-4301
Cons: \$5,602.25
State Tax: \$10.20

FILED IN GREENVILLE COUNTY, SC

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining thereto; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs, successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and unto the grantee's(s') heirs, successors and assigns against the grantor(s) and the grantor's(s') heirs, successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 8th day of May, 2009.

SIGNED, sealed and delivered
in the presence of:

John G. Chesor
[Signature]

[Signature] (LS)
Richard Alan Holcombe

[Signature] (LS)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

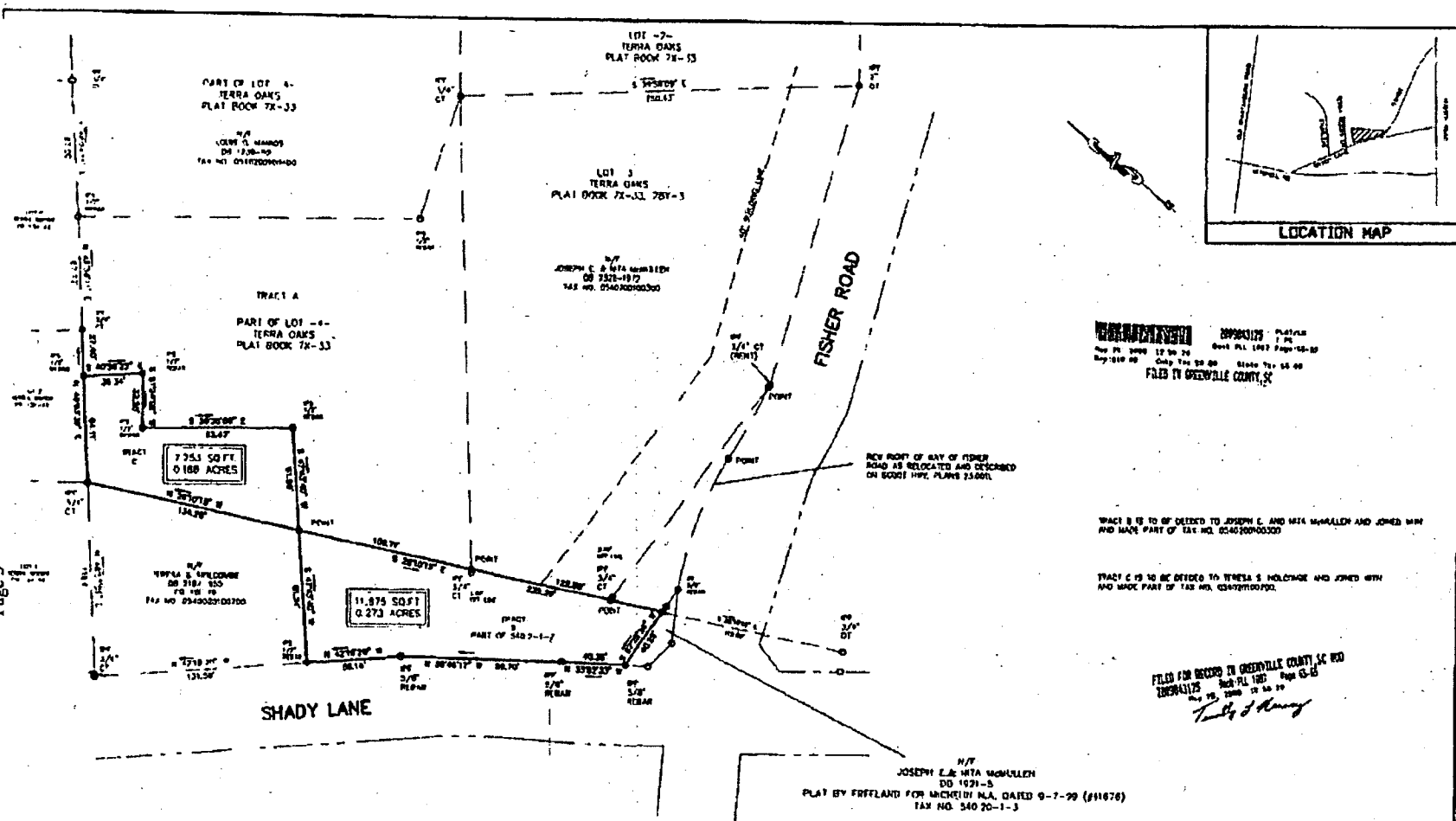
PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within deed and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN before me this 8th day of May, 2009.

[Signature]
Notary Public for SC
My Commission Expires: 12/05/15
Seal

John G. Chesor
Witness



RECORDED 20000127 PLATS
Map PL 2000 12 00 20 Book PL 1987 Page 12-20
May 1987 00 Only Tax 50 00 State Tax 50 00
FILED IN GREENVILLE COUNTY, SC

TRACT B IS TO BE DEEDED TO JOSEPH E. AND NITA McMULLEN AND JAMES M. AND MAKE PART OF TAX NO. 55400000300

TRACT C IS TO BE DEEDED TO TERESA S. HOLCOMBE AND JAMES M. AND MAKE PART OF TAX NO. 55400000300

FILED FOR RECORD IN GREENVILLE COUNTY, SC AND
RECORDED
May 19, 2000 12 00 20
Terry J. Henry

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE GEODESIC STANDARD WHICH SET THE PRECISION OF LAND SURVEYS IN SOUTH CAROLINA, AND WAS MADE WITHIN THE REQUIREMENTS FOR A "CLASS 1" SURVEY AS SPECIFIED THEREIN. ALSO, THERE MAY BE OTHER ENCUMBRANCES OR PROCEEDINGS OTHER THAN SHOWN, AND PROPERTY IS NOT LOCATED IN A DESIGNATED PLACED AHEAD DATA.

BENCHMARK SURVEYING, INC.			
0'	10'	20'	30'
DATE:	NOVEMBER 7, 2000	P.O. BOX 25405	TEL: (844) 670-8001
SCALE:	1" = 40'	GREENVILLE, SC 29616	
STATE OF SOUTH CAROLINA		GREENVILLE COUNTY	
	SURVEY FOR JOSEPH E. McMULLEN NITA McMULLEN AND TERESA S. HOLCOMBE		
	PLAT BY FREELAND FOR MOULIN N.A. DATED 9-7-99 (#11676) SC001 R/W PLANS 23,001 (FISHER RD & SHADY LN)		

THIS PLAT IS NOT A SUBDIVISION
AS DEFINED BY THE GREENVILLE
COUNTY LAND DEVELOPMENT REGULATIONS

SEAL *SEAL*
DATE AUTHORIZED REPRESENTATIVE OF
GREENVILLE COUNTY PLANNING COMMISSION

REFERENCE
DO 1202-470, 1021-01680-R88, 7239-09
79 76-31, 28Y-3, 134-44, 8Y 78
TAX NO. 540,70-1-4
PLAT BY C.O. RIDDLE DATED
NOV 1966 FOR ELIZABETH MAULE
B DAYS

PLAT BY FREELAND FOR MOULIN N.A. DATED 9-7-99 (#11676)
SC001 R/W PLANS 23,001 (FISHER RD & SHADY LN)

NOTE
1' 5" DRAINAGE AND UTILITY AND DRAINAGE EASEMENT
ALONG ALL SET AND REAR LOT LINES

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

CERTIFICATION

THE UNDERSIGNED, Paola Rogers, John Simpson, and Joseph E. McMullen hereby certify the following:

1. The current Architectural Committee for Terra Oaks Subdivision consists of Paola Rogers, John Simpson, and Joseph E. McMullen;
2. On Thursday, May 7, 2009, the above three (3) members unanimously approved the re-cutting of Lot 4, Terra Oaks Subdivision into three (3) parcels, two of which are shown as Tract A and Tract C on a Survey for Joseph E. McMullen, Nita McMullen, and Teresa S. Holcombe, by Benchmark Surveying, Inc., dated August 7, 2008, recorded in Plat Book 1087, page 65 in the ROD Office for Greenville County, SC.

Greenville, SC
Date:

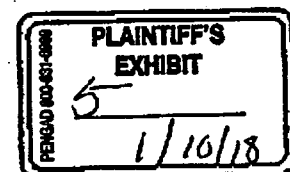
WITNESS:

L. Maurice Ashmore
Lorie Ashmore

Joseph E. McMullen
Joseph E. McMullen
Paola Rogers
Paola Rogers
John Simpson
John Simpson

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2009044110 Book:DE 2357 Page:4299-4381
June 01, 2009 04:33:28 PM

Timothy J. Manning



TOTAL P. 02

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) CERTIFICATION

THE UNDERSIGNED, Paola Rogers, John Simpson, and Joseph E. McMullen hereby certify the following:

1. The current Architectural Committee for Terra Oaks Subdivision consists of Paola Rogers, John Simpson, and Joseph E. McMullen;
2. On Thursday, May 7, 2009, the above three (3) members unanimously approved the re-cutting of Lot 4, Terra Oaks Subdivision into three (3) parcels, two of which are shown as Tract A and Tract C on a Survey for Joseph E. McMullen, Nita McMullen, and Teresa S. Holcombe, by Benchmark Surveying, Inc., dated August 7, 2008, recorded in Plat Book 1087, page 65 in the ROD Office for Greenville County, SC.

Greenville, SC
Date:

WITNESS:

D. Maurice Ashmore
Lonnie Ashmore

Joseph E. McMullen
Joseph E. McMullen
Paola Rogers
Paola Rogers
John Simpson
John Simpson

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2009044111 Book:DE 2357 Page:4302-4304
June 01, 2009 04:33:27 PM

Timothy J. Harney

TOTAL P.02

Main Identity

From: "Paola Rogers" <rogers.paola@gmail.com>
To: <josephmcmullen@gmail.com>
Cc: <scconfed1@bellsouth.net>
Sent: Wednesday, May 13, 2015 6:54 PM
Subject: Terra Oaks ARC

Hi Joe,

John and I discussed your request. From a big picture standpoint, we both concluded that the rules governing the subdivision should be followed. We agreed that creating exceptions to these rules for individual homeowners would be unfair to the other homeowners who have followed the rules for the past 40 years and whose home values would be lowered by making exceptions to those rules.

Specifically regarding the chain link fence that George has requested, we both feel that chain link is not an appropriate material for Terra Oak. We understand the security issue and from my point of view it is fine to have a taller fence on the sides of George's property, but without using chain link as the fencing material, as it devalues all properties in the neighborhood. The 3 foot rule needs to be preserved on the front of the property. John and I discussed this at some length and we agreed that if we make an exception for George on this point, as noted above it is not fair to the other home owners who have had to respect this rule all these years.

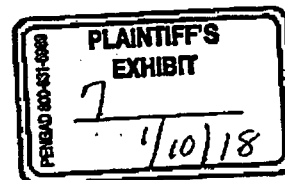
Regarding your request a similar principle applies. The rules against subdividing lots which have stood for the past 40 years must be followed by all. Permitting exceptions would open a can of worms which will ultimately lead to devaluing all of the properties in the neighborhood. In addition, since you are and have been a member of the Architectural Review Committee for many years, making an exception in your case carries the added risk of being seen by the other residents as favoritism on the part of the ARC. So, we cannot agree to your request for an exception to the rules against subdividing lots. On a personal level, I am sorry if this is disappointing to you, as you have been a good neighbor to us and we are sorry to see you leave. John and I both agreed, however, that everyone must follow the same rules for the ARC to function properly and to have integrity in the eyes of the neighborhood.

If you have any further questions or want to set up a conference call with John and I to discuss, just let me know. John will be out of town until this

John Simpson -

Regards,

Paola Rogers



11/10/2016



CONTRACT FOR SALE

1. OFFER AND DESCRIPTION: Joe and Roxy Fenton
(Purchaser) agrees to buy and Joseph E McMullan (Seller)
agrees to sell all that lot or parcel of land, with the buildings and improvements thereon, if any located in
County, South Carolina, (the "Property") and being described as follows:
Street 9 Fisher Rd City Greenville Zip 29615
Subdivision Terra Oaks Tax Map # 0540200100300 (see attached) Legal Lot # _____

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA, AS A REAL ESTATE LICENSEE.

2. PRICE: The purchase price is Five hundred eleven thousand dollars ---
follows: \$ 5,000.00 to be paid herewith and held in trust by Nelson Galbreath LLC (\$ 511,000.00) to be paid as
Escrow Agent, as a deposit of earnest money until the sale is closed, at which time it will be credited to Purchaser, or if no
closing takes place, disbursed as herein provided. At closing, the balance must be paid by certified funds or wire transfer to
complete this transaction.

3. EARNEST MONEY: All cash monies or certified funds will be deposited within 48 hours of receipt. All other monies will
be deposited within 48 hours after the Effective Date. If a binding Contract is not executed by all parties, the earnest money
will be returned to Purchaser. The Listing and Selling Brokers and their Agents do not guarantee payment of check(s)
accepted as earnest money. In the event of default, the earnest money will be disbursed in accordance with Paragraph 14.

4. FINANCING: The obligation of Purchaser to purchase the Property is contingent upon the Purchaser obtaining a loan in
an amount equal to 80.00 % of the purchase price, (this contingency is not applicable unless the preceding blank is
completed) of the following type: ☐ FHA ☐ VA ☒ Conventional ☐ Other _____

5. CONTINGENCY: The obligation of the Purchaser to purchase is also contingent upon:
a. ☒ The Property appraising for not less than the purchase price as determined by the Lender's appraisal or other
appraisal(s) obtained by the Purchaser. If the appraised value is less than the purchase price, the Purchaser shall
deliver notice to the Seller within 3 business days of notification. Upon receipt of such notice by Seller or Seller's
agent, Purchaser and Seller may agree, in writing, to amend the contract and proceed to closing. Should such
agreement not be reached, the Purchaser may proceed to closing or may terminate this contract by written notice. In
the event of such termination, the Purchaser will be entitled to a return of earnest money and neither party shall have
any further rights hereunder.
b. ☐ The Purchaser completing the sale and closing of Purchaser's home located at: _____
☐ which is under contract and due to close on or before _____
☐ which is not under contract. (Addendum, GGAR #504, Purchaser's Right of First Refusal, regarding the
contingency attached: ☐ Yes ☐ No)
c. ☐ Other Contingencies: _____

6. LOAN APPLICATION: Purchaser agrees to apply for financing, as indicated in Paragraph 4, from the Lender of his
choice within 10 calendar days after the Effective Date and to provide all documents or information requested by the
Lender in a prompt and timely manner. At the time of application, the Purchaser will advance the necessary money to
process any financing. Purchaser will take any reasonable action which is needed or requested by the Lender to process the
loan application. Purchaser hereby authorizes Lender to disclose pertinent information concerning the Purchaser's ability to
obtain financing to the Listing or Selling Broker(s) or Agent(s).

7. CLOSING COSTS: All expenses necessary for the consummation of this sale, unless otherwise agreed herein, will
be paid as follows: (a) Seller will pay for deed preparation, deed recording fees, costs associated with payoff and satisfaction
of mortgages and any other liens, as well as any costs not allowed by the Lender to be charged to Purchaser; (b) Purchaser

11 Purchaser RT Purchaser _____ Seller _____ Seller _____ have read this page PAGE 1 OF 2
Phone _____ Fax _____

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ROA 215

will pay all other closing costs including, but not limited to, discount points, all non-recurring closing costs, prepaid items, Private Mortgage Insurance, FHA-MIP or VA Funding Fee, if applicable. Other terms: _____

8. **CONVEYANCE AND CLOSING DATE:** Seller agrees to convey marketable fee simple title and deliver to Purchaser a proper general warranty deed, free of liens and encumbrances, except subject to all reservations, easements, rights of way, and restrictive covenants of record on the Property (provided they do not make the title unmarketable or materially or adversely affect the use and value of the Property) and to all government statutes, rules, ordinances, and regulations. The deed will be prepared in the name(s) of Joseph D Fenton, Roxanne H Fenton (JTWROS) and delivered to the office of the closing attorney, Nathan Galbreath or stipulated place of closing with the transaction to be closed no later than 5:00 PM on January 14, 2018. Seller and Purchaser authorize their attorneys and/or Settlement Agent to furnish to the Listing Broker and Selling Broker copies of the Closing Disclosure for the transaction.

9. **POSSESSION:** Possession of said Property will be given to Purchaser ☒ at the time of closing, provided any net proceeds of the sale have been disbursed or ☐. Seller agrees to deliver the Property free of debris and in a clean condition. The Property, including but not limited to landscaping and/or lawn, will be maintained in the same condition from the Effective Date until possession is delivered ordinary wear and tear excepted.

10. **PRORATIONS:** Taxes, fuel(s), rents, other fees associated with rentals, and homeowner's association fees will be adjusted as of the date of closing. Tax prorations will be based on the tax information available on the date of closing and are to be prorated on that basis. Prorations at closing shall be final.

11. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of Section 12-8-580 of the Code of Laws of South Carolina, 1976, (as amended), regarding withholding requirements of owners who are not residents of South Carolina as defined in said statute.

12. **PERSONAL PROPERTY:** No personal property will be transferred or conveyed as a part of this sale. Personal property should be transferred or sold separately by a Bill of Sale (SC Form 503).

13. **FIRE OR CASUALTY:** In the event the Property is destroyed or damaged by fire or other casualty prior to closing, Purchaser or Seller will have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Contract by written notification to the other party.

14. **DEFAULT:** If Purchaser or Seller fails to perform any covenant of this Contract, the other party may seek any available legal or equitable remedy, and may terminate this Contract. If termination is due to default by Purchaser, Seller shall be entitled to retain the earnest money deposit. If termination is due to default by Seller, Purchaser shall be entitled to a refund of the earnest money deposit, and Seller shall reimburse Purchaser for Purchaser's actual costs incurred, as defined hereinbelow. However, it is expressly understood and agreed that Escrow Agent shall not release any earnest money until both parties execute a written release of the other from this Contract and any rights, obligations and claims arising hereunder. Said release shall also provide Escrow Agent with conclusive instructions regarding the disbursement of the earnest money. If either party refuses to execute the release contemplated by this paragraph, Escrow Agent shall hold the earnest money in trust until said release is executed, or until the disposition of the matter by a court of competent jurisdiction. If litigation is required to resolve the matter, the prevailing party shall be entitled to an award of costs and expenses of the action including reasonable attorney's fees. Furthermore, the parties expressly agree to indemnify and hold Escrow Agent harmless from any claims or damages arising from Escrow Agent's refusal to release the earnest money in a manner inconsistent with the provisions of this paragraph. For the purposes of this contract, "actual costs incurred" by the Purchaser shall include all documented costs, expenses or obligations incurred for or by Purchaser or Broker in an effort to consummate this sale. Such costs include, but are not limited to: costs of loan application, credit report, appraisal, survey, inspections and reports, title examination and broker's fee or commission for this sale.

15. **DISCLAIMER:** Except in the case of a new home being sold by the builder, the Purchaser acknowledges the Seller gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the Property, unless otherwise provided for in the Contract. Seller does not warrant the condition of any improvements, services, appliances or systems thereto, or as to the merchantability or fitness for a particular purpose of the Property or improvements thereon. Any such implied warranties are hereby disclaimed by the Seller.

11 Purchaser RF Purchaser _____ Seller _____ Seller have read this page PAGE 2 OF 8

Purchaser and Seller will indemnify and hold listing and/or selling Brokers and their agents harmless from any breach of contract, and any negligent or intentional acts or omissions of any inspectors, repair companies, or other service providers employed by Purchaser or Seller, including any and all such service providers introduced or recommended to Purchaser and/or Seller by listing and/or selling Brokers and their agents.

16. INSPECTIONS, CONDITION, AND REPAIRS:

(A) **INSPECTION PERIOD:** At Purchaser's expense and risk, Purchaser will have 14 calendar days from the Effective Date (the "Inspection Period") to conduct such inspections of the property as Purchaser deems necessary or desirable. Seller shall have the right to continue to market the Property during the Inspection Period and to accept backup offers thereon. Nothing in this paragraph shall be construed to modify the rights and obligations created by paragraph 16 (G) (Reinspection/Maintenance).

(B) **RIGHT TO TERMINATE:** Prior to the expiration of the Inspection Period, Purchaser ☒ will ☐ will not have the unilateral right to terminate this Contract, upon written notice to Seller or Seller's Agent. If such termination rights are exercised, Purchaser shall be entitled to a return of the earnest money (subject to the release requirements of Paragraph 14). If Purchaser fails to notify Seller or Seller's Agent of such termination within the Inspection Period, this contingency shall be deemed satisfied, and any termination rights created by this paragraph shall automatically expire. If such termination rights are not exercised, Purchaser and Seller shall proceed as provided below.

(C) **INSPECTION:** Purchaser will have the right and responsibility to inspect or select an inspector(s) at Purchaser's expense and risk to make any inspections, tests, or investigations, including, but not limited to testing for air quality, mold, radon gas and asbestos and to verify the square footage of the Property. Seller will make the Property available for all inspections and will have all utilities in service for the inspections, appraisals and final walk through or re-inspection. Purchaser will indemnify and hold the Seller harmless from any liability arising as a result of any negligent acts or omissions of Purchaser and of any inspector(s) and/or their agents during such inspections, and will repair any damages to the property resulting from same. Prior to the expiration of the Inspection Period, as defined in paragraph 16A, Purchaser will provide Seller or Seller's Agent with a written and signed list of repairs requested, including CL-100, (using GGAR Form #502 Grv, Purchaser's Requested Repairs/Seller's Response or its equivalent), excluding appraisal and occupancy permit requirements. Failure of Purchaser to provide Seller or Seller's Agent GGAR Form #502 Grv (or its equivalent) and a copy of the inspection report(s), if any, within the Inspection Period shall be deemed a waiver of Seller's obligation, if any, to make repairs. Seller agrees to respond in writing to the Purchaser's list of requested repairs within 4 calendar days after receipt of said list by the Seller, acknowledged by Seller's signature and date. Failure by the Seller to provide a signed response to the Purchaser's written request for repairs within the specified time shall be deemed acceptance of Purchaser's request as submitted. Purchaser shall respond in writing to Seller's written response within 3 calendar days after receipt. Otherwise, failure by Purchaser to respond within the specified time shall be deemed acceptance of Seller's response to Purchaser's request.

(D) **RADON:** Within the Inspection Period, Purchaser may, at Purchaser's expense and risk, have the property tested for the presence of Radon. Should test results indicate the presence of radon in excess of EPA standards for a habitable dwelling, the Purchaser will have the option to terminate this Contract and receive a return of the earnest money deposit subject to provisions in Paragraph 14 of this Contract, with neither party having any further rights hereunder. Should Purchaser elect not to terminate this Contract, the Seller will mitigate the presence of the radon that is in excess of EPA standards for a habitable dwelling, subject to subparagraph 16 (F) below.

(E) **WOOD INFESTATION/MOISTURE REPORT:** Within the Inspection Period, Purchaser may, at Purchaser's expense and risk, have the property inspected and obtain a CL-100 Wood Infestation Report from a licensed and bonded pest control operator (see paragraph 16A). If new construction, a soil treatment letter will be provided by Seller. If any infestation, structural damage, or excessive moisture is found, the Seller agrees to have it corrected and/or repaired at Seller's expense, subject to subparagraph 16 (F) below.

(F) **REPAIRS:** To the extent the Purchaser has requested such repairs, the Seller will consider making repairs or paying for repairs to the following items: (1) Structural defects or damage; (2) Leaks to roof or basement; (3) Repairs required to place the heating, air conditioning, electrical and plumbing systems and any appliances to be conveyed in an operative condition and functioning properly; (4) Repairs required to cause the sewer or septic system, well or public water system, irrigation system, pool or spa and any related equipment to function properly; (5) Repairs required to mitigate the presence of any

11 Purchaser P.F. Purchaser _____ Seller _____ Seller have read this page PAGE 3 OF 6

hazardous substances; (8) Replacement of any missing or cracked glass. The Seller will have no obligation to repair or replace any double glass panes which have lost their seal (fogged); (7) Repairs required pursuant to Paragraph 16 (D) above; (8) Repairs required pursuant to Paragraph 16 (E) above; and (9) Repairs required by a VA, FHA or other appraisal. If the Seller refuses to make or pay for repairs per items (1) through (9) above, the Purchaser will have the right to terminate this Contract and receive a return of the earnest money subject to provisions of Paragraph 14, and neither party will have any further rights hereunder.

If the Purchaser elects not to terminate this Contract, the Parties will proceed hereunder and any requested repairs refused by the Seller will be the sole responsibility of the Purchaser. Further, if the Seller agrees to make or pay for the cost of the repairs requested by the Purchaser, the Purchaser will not have the right to terminate this Contract and the Parties will proceed hereunder. The Seller will not be required to make any repairs until the Purchaser's financing has been approved.

The obligations of the Seller under Paragraph 16 terminate on the day of closing or on the day of possession, whichever occurs first.

(G) REINSPECTION/MAINTENANCE: Seller agrees to allow Purchaser, or his designee, the right to re-inspect the Property and to perform a walk-through of the Property, prior to closing, to confirm any personal property to be transferred or conveyed is on the premises and that any required repairs or replacements have been made. The Seller will maintain the Property in the same condition, including lawn, shrubbery and grounds, as on the Effective Date, until the day of closing or possession, whichever occurs first, ordinary wear and tear excepted.

(H) OTHER: The property is sold with the following additional stipulations. Final survey to be provided and paid for by seller.

17. WATER/WASTE SYSTEMS: Seller represents that the Property is connected to ☐ public sewer system, ☒ septic tank, ☒ public water system, ☐ individual well system, ☐ other water well system.

18. HOME WARRANTY: It is understood a third-party, 1-year home warranty ☒ will, ☐ will not be provided through First American Home Warranty Company, Plan Basic + First Class Upgrade at a cost of \$ 474.00 at closing. If applicable, the cost will be paid at closing by ☐ Purchaser ☐ Seller.

19. MEGAN'S LAW: The parties to this contract agree that real estate licensees are not responsible for obtaining or disclosing information from the South Carolina Sex Offender Registry. Information regarding the sex offender registry and persons registered with the registry can be obtained by contacting the county sheriff or other law enforcement officials. Parties further agree that no action may be brought against licensees or the brokerage for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain this information.

20. DISCLAIMER BY BROKERS AND AGENTS: The Listing Brokers or Selling Brokers and their Agents do not make any warranties or representations, either expressed or implied, as to the condition of the Property including, but not limited to: termite infestation or damage, excessive moisture or water, air quality, roof or basement leaks, appliances, heating or air conditioning systems, plumbing (including the presence or lack thereof of polybutylene piping), sewage disposal systems, electrical systems, building materials, the structural components of any buildings or the presence of any hazardous substances including radon gas, lead, electromagnetic fields, asbestos or mold. Further, the Listing Brokers, Selling Brokers and their Agents make no warranties or representations, either expressed or implied, as to the marketability of the Property, as to any matters which would be revealed by a current survey and plat of the Property, or as to the accuracy of the published square footage.

It is recommended the Purchaser obtain professional inspections of the Property, have an attorney examine the title to the Property, obtain a current survey and plat of the Property, and verify any information about which Purchaser may have questions.

21. ENTIRE CONTRACT; BINDING CONTRACT; TIME: This written Contract expresses the entire agreement between the parties, unless there is a written addendum or modification signed by Purchaser and Seller. Any response, counteroffer, or written communication which would alter any of the terms of this agreement must be acknowledged in writing by each party. Both the Purchaser and Seller hereby acknowledge they have not received or relied upon any statements or representations by either Broker or their Agents which are not expressly stipulated herein. This Contract shall be binding on

ff Purchaser RF Purchaser _____ Seller _____ Seller have read this page PAGE 4 OF 6

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Form 310 Grv (8/13/15)

ROA-218

the Purchaser, the Seller and their heirs, personal representatives, successors and assigns. This is a legally binding Contract; the Purchaser and Seller should seek legal advice if the contents are not understood. **TIME IS OF THE ESSENCE IN EACH PARAGRAPH OF THIS CONTRACT WHERE A PERFORMANCE TIME IS STIPULATED.**

22. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relating to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Purchaser(s), Seller(s) or any Real Estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; or (d) any matter which is within the jurisdiction of a probate court. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

23. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it will survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

24. EXPIRATION OF ORIGINAL OFFER: The original offer is deemed revoked if not accepted and a signed acceptance communicated by delivery to Purchaser or Purchaser's Agent by December 9, 2015, at 6:00 ☐ AM ☒ PM

25. COMMUNICATION OF ACCEPTANCE: The acceptance of this offer or any counteroffer shall be ineffective unless and until such acceptance is communicated by the accepting party to the offering party by one of the acceptable methods set forth in paragraph 28 hereinbelow.

26. ACCEPTABLE METHODS OF DELIVERY AND COMMUNICATION: The parties agree that the offer, any counter offer and/or acceptance of any offer, as well as any other notice or response required to be given, may be communicated by hand delivery, Federal Express or other overnight courier, by fax or other secure electronic means, including, but not limited to, electronic mail. The signatures, initials and handwritten or typewritten modifications to any of the foregoing which are conveyed electronically shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. EFFECTIVE DATE: The Effective Date shall be the last date upon which the Purchaser or Seller signs or initials, dates, and delivers this Contract as evidenced by the date beside the name or initials of the last party to sign or initial.

28. OTHER ADDENDA:

(A) LEAD-PAINT ADDENDUM: Seller states house may have been built prior to 1978. ☒ No ☐ Yes.

(If yes, lead-paint disclosure form 315 must be attached and made part of this Contract.)

(B) ADDITIONAL ADDENDA: ☐ No ☒ Yes. If yes, 2 Pages, covering Flat of proposed property lines.

29. REMARKS: Subject property is indicated as "Lot A" on attachment.

3% fee of sale price to be paid by seller at closing to The Marchant Company.

Seller to grant a five year option to buyer for \$100 under which buyer can purchase "Lot B" for \$75,000, which option will be drafted and recorded by the closing attorney at the time of closing.

41 Purchaser RF Purchaser _____ Seller _____ Seller _____ have read this page PAGE 5 OF 6

Printed with eForm by ePeople 180/0 Fillet Mto Road, Fraser, INDIAN 46008 WWW.EPEOPLE.COM

Form 310 Grv (8/13/15)

ROA 219

30. ACKNOWLEDGEMENT OF AGENCY DISCLOSURE: Purchaser and Seller acknowledge receipt of a copy of the South Carolina Agency Disclosure Brochure and acknowledge that agency relationships have been explained by the respective agents involved in the transaction. For the purpose of this transaction:

The Purchaser is a ☒ client or ☐ customer of The Marchant Company
(Brokerage)

The Seller is a ☒ client or ☐ customer of Greenville Realty, LLC
(Brokerage)

Joe Jente Purchaser 12/7/15 Date 5:30 pm Time

Reanne Jente Purchaser 12/7/15 Date 5:30 pm Time

____ Seller _____ Date _____ Time _____

____ Seller _____ Date _____ Time _____

The Listing and Selling Agent and Company Information below is for informational purposes only. None of the Agents and Companies below are, nor shall be considered to be, parties to this contract.

Barry Venuto, Greenville Realty LLC 864.313.3337
Listing Agent & Company (print) Agent Telephone Number

greenvillerealtyllc@gmail.com 82495 864.322.2222
Listing Agent E-Mail Address Listing Agent Company Telephone Number
Real Estate License #

Tom Marchant, The Marchant Company 864.449.1658
Selling Agent & Company (print) Agent Telephone Number

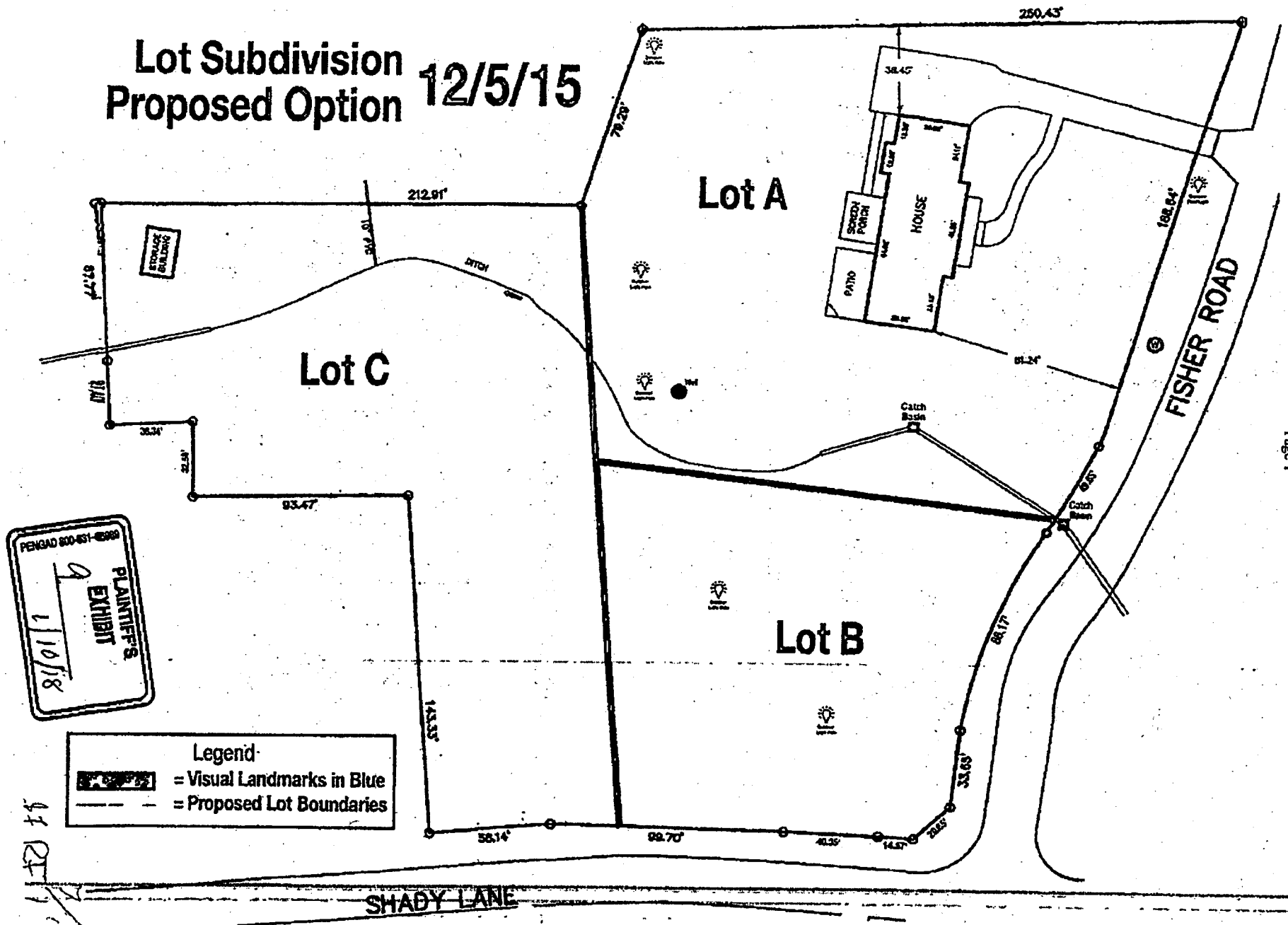
Tom@TomMarchant.com 39502 864.467.0085
Selling Agent E-Mail Address Selling Agent Company Telephone Number
Real Estate License #

Form 310 Gvrl (8/13/16)
PAGE 6 OF 6

Produced with eSignature by eSign, 18270 Finsen Lane Road, Folsom, Michigan 48028 www.esign.com

PA 6

**Lot Subdivision
Proposed Option 12/5/15**



Main Identity

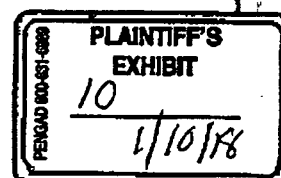
From: "Joseph McMullen" <josephemcmullen@gmail.com>
To: <scconfed1@bellsouth.net>, "Paola Rogers" <OSRogers@gmail.com>
Sent: Friday, January 08, 2016 4:24 PM
Attach: BM825-2B3 lot cut 1-8-16 pdf, Terra Oaks AC Resolution Lot 3 Cut 1-7-16 docx
Subject: Proposed resolution

Attached you will find a proposed resolution.

Note that the surveyor's drawing attached is bit different than the one I sent earlier that was partially hand drawn. The building set-back lines have also been added.

Joe

Note new email:



1/10/2016

1/7/2016

Resolution Terra Oaks Architectural Committee

The property at 9 Fisher Road is defined in the attached survey.

1. The part indicated as Lot B is a newly created lot from portions of the original Lot 3 and properties not part of Terra Oaks subdivision including:
 - a. Properties previously part of the lot at 200 Shady Lane.
 - b. The former road bed and right-of-way of Fisher Road prior to the reconstruction of the intersection of Fisher Road and Shady Lane.
 - c. A portion of the lot at 19 Fisher Road previously on the other side of Fisher Road prior to the aforementioned reconstruction.
2. The part indicated as Lot C is a newly created lot from portions of Terra Oaks Lot 4 and the property at 200 Shady Lane which is not part of Terra Oaks subdivision.

It is resolved that the combined property as described above may be recut as indicated and that the following restrictions apply:

Lot B is perpetually part of the Terra Oaks Subdivision and subject to all covenants of that subdivision including those parts not originally part of the Terra Oaks subdivision.

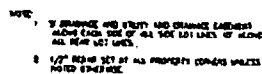
Lot C is not subject to the covenants of Terra Oaks Subdivision and the current owner will attach covenants into perpetuity, to any sale of the property, prohibiting its use for mobile homes or any commercial activity.

Approved by the Standing Terra Oaks Architectural Committee:

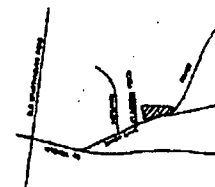
John Simpson _____ Date _____

Paola Rogers _____ Date _____

Joseph McMullen _____ Date _____



REFERENCE
DETD BODY 2256 PAGE 899 11027-472 1921-3, 1699-6880
TR 72-31 287-1-1-1-4, 28-74
TR 60-0500700100200
PLAY BY CO EDDLE DATED
NOT 1968 FOR FLJABC-2 WAFB
@ DAWB
PLAY BY FIRELAND FOR MCH-CHN W-A DATED 9 1-99 1699
SCOOT R/B PLANK 2300N (FISHED ON @ 54-545 LK.)



**PLAINTIFF'S
EXHIBIT.**

8/10/17

ENCLOSURE

CERTIFICATE OF OWNERSHIP AND DEDICATION

[illegible][illegible]

CERTIFICATE OF ACCURACY

I hereby state that to the best of my knowledge, information and belief, that the survey shown herein was made in accordance with the requirements of the pertinent standards issued by the practice of land surveying in Iowa, and made true to the said requirements to the best of my belief as qualified surveyor.

EW RECEIVED 10-4-68
 E. C. BREWSTER JR. 1968



CERTIFICATE OF APPROVAL FOR RECORDING

"I would surely find the madhouse gone down before this time had I not been with the Southern Department for Southern County, with the exception of full attention, if any, as we called in the presence of the Southern County Planning Commission of Southern County, South Carolina, and that I had never before in my life in the office of the County Board of Health."

6-4

FILE NUMBER

PRELIMINARY

PROPERTY DIVISION FOR
JOSEPH E McMULLEN

JOHN E. CONNELLEY
1000 1/2 STREET
SPRINGFIELD, MA 01103

GERMANY STATE INC.
P.O. BOX 13423
BIRMINGHAM, AL 35202
TEL (205) 975-0001

10 27 1964 2 34

1978

44 of 4576 3

Page 2 of 2

PAGE 2 - JC

Figure 2. Δ

Main Identity

From: "Alison Simpson" <alisonsimpson@bellsouth.net>
To: "John Simpson" <scconfed1@bellsouth.net>; <rogers.paola@gmail.com>
Sent: Sunday, January 10, 2016 9:17 PM
Subject: Joe McMullen proposal

Paola, please find my reflections to add to anything that you would also propose, feel free to modify add to or eliminate parts or all!
John

Preamble.

Terra Oak subdivision has a Restrictive Covenant that is recorded in the RMC Office of Greenville County SC in plat book 7X at page 33. This Covenant is designed to protect the 20 identified homes and their owners under good and valuable consideration on the use and livability of their properties. To administer the interpretation and application of the Covenants an Architectural Committee is established consisting of 3 residents of the Terra Oak Subdivision: Joe McMullen, Paola Rogers and John Simpson.

Subject

Joe McMullens verbal request on Jan 7, 2016 for Committee approval of his lot #3 to be sub divided in anticipation of closing on the sale of part of this lot by the end of Jan 2016.

Procedural Reflections.

To fully understand the details of the proposal, interpret and assess the possible impacts on the other 19 households in Terra Oaks needs adequate time and reflection by the Committee. Joe already has an offer and closing scheduled. The proposal was submitted by e mail Jan 8, 2016.

Since Joe is both the homeowner of lot 3's proposal and an active member of the Committee, this ethically precludes him from participating in the review and approval process. To fully meet the quorum requirements of the Covenant another homeowner selected by the Committee needs to be identified and installed as detailed in the Covenants.

Proposal reflections.

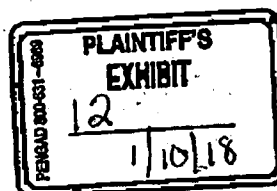
The proposal subdivides the aggregated lot 3 into 3 separate lots:
Lot 3 (A) house and reduced lot, to be closed on by end Jan 2016. Financing secured will be limited to this piece only. This proposed sale will be the price used for comparables on all Terra Oak houses houses offered for sale in the future.

Lot 3 (B) Joe to finance under a proposed 5 year ballon loan with no guaranteed that new owner of lot 3 (A) will aggregate this into his part (A) lot, or not be able to raise the balloon final payment, or resell it now that it separated from the original lot. There is no proposal for the utilization of this lot. This is a financial work around for the seller and the buyer, since the potential buyer cannot finance the combined parts A and B. Therefore affecting the comp calculation for all homes in the area.

Lot 3 (C) Joe retains full ownership of this lot that has no access. It is the end of the original lot 4 originally owned by L. Manos, who sold it to Joe to reduce his lot size.

Joe proposes to eliminate this from the Terra Oak Covenant control. There is no proposal for the utilization of this lot. It backs onto lot 3 and lot 4 and is diagonal to lot 2, so whatever develops in the future on this lot the proposal eliminates any protection from the Covenant.

The current lot 3 (and its aggregation) is a gateway to the subdivision, any changes to the layout or appearance of this lot (or lots) will impact the appearance and ultimately the salability of homes in the subdivision.



Terra Oaks 027
11/10/2016

Recommendation
Due to factors listed the proposal cannot be approved.

Sent from my iPad=

Terra Oaks 028
11/10/2016

On Jan 21, 2016, at 11:00 PM, Paola Albuquerque
<terraoaks@gmail.com> wrote:

Dear Mr. McMullin,

The Terra Oaks Architectural Committee, received a request for the
division of your Lot on the 7 of January 2016; follow by documents
received on January 8, 2016.

The Comittee gathered to reviewed and pondered your request.
The Architectural committee out come was: Not Approved. With two
denials and zero approval votes.
Therefor the division your lot is ceased.

A formal document with the same statement will follow by mail for your
personal records.

Regards,

Terra Oaks Architectural Committee



Terra Oaks 040

rogers.paola@gmail.com
Re Terra Oaks Architectural Committee response for your request on Jan 7, 2016
January 22, 2016 at 1:12 PM
Joe McMullen Consolidatd
Paola Albuquerque

John Simpson

Joe,

You have a direct financial stake in this matter. It is therefore unethical for you to participate as a member of the ARC or to call a meeting regarding your land. You have already used up countless hours of my and John's time arguing for your proposal, which the ARC has considered at great length and rejected. Accordingly, any action taken by you as described in your email is completely invalid and has no effect.

Paola Rogers

On Jan 22, 2016, at 12:15 AM, Joe McMullen Consolidatd
<josephmcmullen@gmail.com> wrote:

Paola, and John,

It was inappropriate that the committee met and that I was not invited to this meeting nor was I given the opportunity to present the case for this proposal. I therefore reject this as a valid response.

I, the chair, am calling a meeting on this proposal.

The meeting will be at 9 Fisher Road 1/24/16 at 7:00 p.m.

Please confirm your attendance.

Joe McMullen

Joe



Texts with John Simpson

100 Verizon 4:34 PM 70%
 < Messages (2) R Paola Details

Paola:
 I would like to have a brief
 meeting with you and Jay today
 at your convenience.
 I am available any time except
 3:00 to 5:00
 Joe

We are heading to a party soon
 and to the presidential debate
 later. I am sorry I cannot
 accommodate your request.

Can we do Sunday at 9 or 10?

Joe you ask to meet with Jay and
 I last yesterday, I believe is not
 related to the AC, since Jay is not
 part of it.
 Jay will be out of town for the
 second part of the week, so if you
 want to anticipate your topic, um

100 Verizon 4:34 PM 20%
 < Messages (2) R Paola Details

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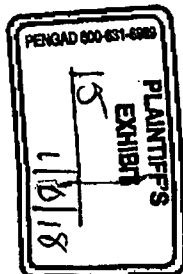
Joe you ask to meet with Jay and
 I last yesterday, I believe is not
 related to the AC, since Jay is not
 part of it.
 Jay will be out of town for the
 second part of the week, so if you
 want to anticipate your topic, um

104 Bell LTE 3:11 PM 41%
 < Messages S John Details

The Architectural Committee
 decision to deny your request
 to "reorganize" and subdivide
 your property stands.
 No further review or meetings will
 be necessary

Are you saying we will not be
 meeting on the 17th. As we
 agreed on the 2nd?

Following your Wed meeting & in
 preparation for their temporary
 AC roles Duane and Hope had
 Covenants to study, then meet
 with Paola on her return home.
 Duane met with Paola and myself
 Mon. and was accepted. He then
 asked many probing questions.
 In conclusion we did not find
 justification for another AC
 review.



Joseph E McMullen

Greenville, SC, 29615

Chair, Terra Oaks Architectural Committee

October 11, 2016

Paola Rogers

Greenville, SC

Delivered by registered mail and first class mail.

Mrs. Rogers,

There have been several incidents that have adversely affected the operation of the Terra Oaks Architectural Committee (AC). These incidents have rendered the AC ineffective and unable to conduct business.

Below is a list of the actions, taken by you, contributing to this dysfunction of the AC:

You have:

1. Boycotted scheduled meetings making it unable to conduct business.
2. Repeatedly failed to follow the procedures defined in the covenants regarding the proceedings of the AC. This is after being informed of your errors.
3. Constructed a chicken coop in sight and smell of your neighbor's main entrance, without seeking or receiving approval from the AC, and in violation of county ordinance.
4. Kept chickens on your property. This includes several months after being informed that the covenants explicitly prohibit the keeping of chickens and your agreement to remove them. This is also contrary to county ordinance.
5. Allowed your chickens to run freely in the neighborhood in violation of county ordinances. These chickens caused damage to the property of other residents. This is also in violation of county ordinance.
6. Built a large structure in your backyard without requesting or receiving approval from the AC. You continued this work after being notified that AC approval is required and you are yet to ask for approval.



ROA 230

Joseph E McMullen

Greenville, SC, 29615

Chair, Terra Oaks Architectural Committee

October 11, 2016

7. Installed an outdoor bathing pool without seeking or receiving required approval from the AC.
8. Failed to disclose, to the committee, that your husband sits on the Greenville County Planning Commission which would review and approve or deny the cutting of a lot. This was while this issue was in discussion with the AC and you opposed its approval. You failed to recuse yourself for this conflict of interests.
9. Reported to or agreed to report to the Greenville County Subdivision Department, that a request to cut a lot had been disapproved by the TOAC, when the AC had not met or voted on it.
10. Held an illegitimate AC board meeting with Dwain Cook as though he were a committee member when no meeting was held or vote taken to install him as a member or as an alternate.
11. Incorrectly and inaccurately communicated, to the Terra Oaks Community that Mr. Cook is a member of the AC and that Hope Schmalzl is an alternate member. You also failed to mention that I am a member and chair of the AC.

The covenants state "...In the event of failure or inability, for any reason, of any member to act, the vacancy created shall be filled temporally or permanently, by the remaining members..." and "All members shall constitute a quorum."

You are hereby removed from the AC. You are not authorized to communicate to the community or any other persons or body on behalf of the Terra Oaks Architectural Committee.

Respectfully,

Joseph McMullen
Chair, Terra Oaks AC

Joseph E. McMullen
Chair, Terra Oaks Architectural Committee

Greenville, SC 29615

October 11, 2016

John Simpson

Greenville, SC 29615

Delivered by registered mail and first class mail.

Mr. Simpson,

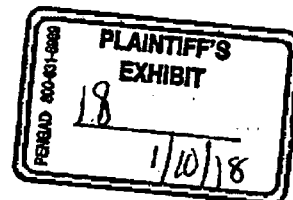
There have been several recent incidents that have adversely affected the operation of the Terra Oaks Architectural Committee (AC). These incidents have rendered the AC ineffective and unable to conduct business.

Below is a list of the actions taken by you, contributing to the dysfunction of the AC.

You have:

1. Boycotted scheduled committee meetings making it unable to conduct business
2. Repeatedly failed to follow the procedures defined in the covenants regarding the proceedings of the AC, even after being informed of your errors.
3. Refused to participate in an investigation into the building of a large structure and bathing pool which had not been submitted to the AC for review and approval.
4. Refused to participate in confronting home owners who were keeping chickens on their property in violation of the covenants. This being after they had been warned by you and me about six months earlier.
5. Reported to or approved reporting to the Greenville County Subdivision Department, that the cutting of a lot was disapproved by the TOAC when the AC had not met or voted on it.

1



a Oaks 031

Joseph E. McMullen
Chair, Terra Oaks Architectural Committee

Greenville, SC 29615

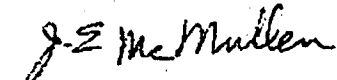
October 11, 2016

6. Held an illegitimate meeting including Dwain Cook as though he were a committee member when he was not, as no meeting notice was given and was held or vote taken to install him as a member or as an alternate.
7. Communicated erroneously, to the Terra Oaks Community that Mr. Cook is a member of the AC and that Hope Schmalzl is an alternate member. You also failed to mention that I am a member and chair of the AC.

The covenants state "...In the event of failure or inability, for any reason, of any member to act, the vacancy created shall be filled temporally or permanently, by the remaining members..." And "All members shall constitute a quorum."

You are hereby removed from the AC. You are not authorized to communicate to the community or any other persons or body on behalf of the Terra Oaks Architectural Committee.

Respectfully,



Joseph McMullen
Chair, Terra Oaks AC



John Simpson
Greenville, SC 29615

John Simpson
Greenville, SC 29615

Terra Oaks 033

ROA 234

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Honorable Charles B. Simmons, Jr., Master in Equity

Appellate Case No.: 2018-000340

Joseph Edward McMullen, ... Appellant,

v.

Terr Oaks Architectural Committee; Paola Rogers,
Dwain Cook and John Simpson as putative members of
the Terra Oaks Architectural Committee, ... Respondents.

CERTIFICATE

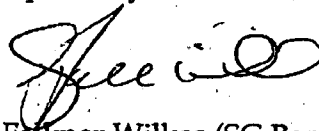
I certify that on April 26, 2019, I served the Record on Appeal on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

Ralph Gleaton
935 South Main Street
Suite 203
Greenville, SC 29601

Blake A. Hewitt
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
Attorneys for Respondents

Robert Clyde Childs, III
CHILDS LAW FIRM, LLC
2100 Poinsett Highway, Suite D
Greenville, SC 29609
Attorney for Appellant

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Appellant

April 26, 2019.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Honorable Charles B. Simmons, Jr., Master in Equity

Appellate Case No.: 2018-000340

Joseph Edward McMullen, ... Appellant,

v.

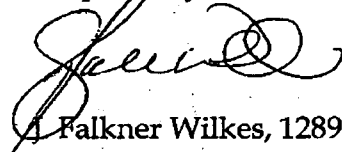
Terr Oaks Architectural Committee, Paola Rogers,
Dwain Cook and John Simpson as putative members of
the Terra Oaks Architectural Committee, ... Respondents.

CERTIFICATE

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

The undersigned further certifies that the Record on Appeal has been redacted consistent with the applicable rules and the Supreme Court's Order.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

RECEIVED

MAY 17 2019

SC Court of Appeals