

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Charles B. Simmons, Jr., Master in Equity

Case No. 2017-002557

RECEIVED
JUN 14 2018
SC Court of Appeals

Deborah L. Boies,

Respondent,

v.

Jacqueline J. Lanier,

Appellant.

RECORD ON APPEAL

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June 13, 2018

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2306923

Deborah L Boies

Jacqueline J Lanier

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Defendant's Motion to Dismiss is denied.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

2130

Judge Code

4/11/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on¹, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter The Carponter Law Firm, PC 819 E.
North St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Matthew Holmes Henrikson PO Box 26554 Greenville,
SC 29616

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Order/Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-04-11 16:08:42 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-23-06923

**ORDER FOR REFERRAL TO
MASTER IN EQUITY**

Upon motion of the Defendant and with consent of the Plaintiff, it appearing that pursuant to Rule 53(b) South Carolina Rules of Civil Procedure, that this case is a proper matter to refer to The Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County;

Now therefore, IT IS ORDERED that the above-captioned matter be, and the same is hereby, referred to The Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County full authority to conduct a full trial on all matters, to make appropriate findings of fact and conclusions of law, and with authority to dispose of any and all issues and enter a final judgment.

Any appeal from the final judgment in this matter shall be to the South Carolina Court of Appeals.

Presiding Judge, Thirteenth Judicial Circuit

April ____, 2014
Greenville, South Carolina

I SO MOVE:

s/Matthew H. Henrikson
Matthew H. Henrikson
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
mhenrikson@henriksonlaw.com
Attorney for Defendant

WE CONSENT:

s/ James G. Carpenter
James G. Carpenter
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, SC 29601
864-235-1269
james.carpenter@carpenterlawfirm.net
Attorneys for Plaintiff



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier
Case Number: 2016CP2306923
Type: Order/Referred to Master or Special Referee

So Ordered

Paul B. Wickensimer, Clerk of Court, Greenville
County

Electronically signed on 2017-05-01 11:10:20 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2306923

Deborah L Boies

Jacqueline J Lanier

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
- ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

The matter is before the Court on Defendant's motion for summary judgement.

After a careful review of the record, the Court finds that there are material issues of fact that preclude the granting of summary judgment. See, *ML-Lee Acquisition Fund, LP v. Deloitte & Touche* 463 SE2d 618 (SC App 1995).

The matter shall proceed to a trial on the merits as soon as possible.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or

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additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	3023	8/21/2017
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on¹, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter The Carponter Law Firm, PC 819 E.
North St. Greenville, SC 29601

Matthew Holmes Henrikson PO Box 26554 Greenville, SC
29616

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Master/Order/Form 4

And It Is So Ordered!

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

Electronically signed on 2017-08-22 08:22:00 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

Order and Judgment

This is a civil action to enforce real estate restrictive covenants. It came before the Court for nonjury trial on October 4, 2017. James G. Carpenter represents the Plaintiff, and Matthew Henriksen represents the Defendant. Both attorneys were well prepared, and presented strong and compelling arguments. The Court, having considered the evidence, the argument of attorneys, the legal authorities, and considering the totality of the circumstances, concludes that Plaintiff is entitled to judgment.

Findings of Fact and Conclusions of Law

1. Plaintiff sold Defendant tracts of real estate totaling approximately 22 acres in what is commonly known as "horse country" near Landrum in Greenville County on two occasions: first in February, 2015, and then again in 2016.
2. On each occasion, the deed conveying title to the real estate contained an attachment, Exhibit A, which was a part of the deed, and constituted the covenants and restrictions applicable to the real estate. The covenants state, among other things, the following:

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

* * *

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plans, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including purely aesthetic reasons.
(Emphasis added).

3. The Plaintiff is the Grantor listed in the restrictive covenants. While there was an issue as to whether the above language was in the deeds of the other six (6) purchasers of the other tracts or was given to them at closing, it is clear that the identical covenants apply to all landowners.
4. Prior to the purchases of real estate, the Defendant had seen and was aware of the approximately two miles of white vinyl fencing around and through the 122 acres of real estate subject to the covenants. The white vinyl fencing had been installed by Plaintiff around and between the six (6) tracts as part of the establishment of the 122 acre tract. Plaintiff testified this was done to ensure an aesthetically pleasing and consistent fencing around and between the tracts within the larger 122 acre tract.
5. Defendant is an experienced and respected real estate attorney in the Greenville area and testified that her law firm handles some 900 real estate closings annually.
6. Since buying the property, Defendant has removed the white vinyl fencing around her tract. Defendant testified that she preferred dark wood fencing in that, in her opinion, the darker wood would be more aesthetically pleasing and easier to maintain. Defendant contends that the language in 1.4 only requires her to have a fence "comparable in style

and constructed material” and that dark wood complies with 1.4. She also contends that “(white vinyl fencing)” in 1.4 is used only to identify the fence is question and is not language that limits any of the owners to have only white vinyl fencing. Defendant also contends that 2.8 is overly broad and confers so much discretion in the grantor, Plaintiff, as to be unenforceable.

7. After carefully reviewing the record and the covenants, the Court finds that removing the white vinyl fencing is a “modification” or “alteration” under paragraph 2.8 of the Covenants, and that the Covenants required the Defendant to submit the plans and specifications to the Grantor and obtain the written permission of the Grantor prior to making this “modification” or “alteration.” Defendant failed to do either.
8. Further, and as noted above, Defendant testified that she intended to replace the white vinyl fencing with dark wooden fencing. The Court finds that dark wooden fencing would violate 1.4 in that it would not be “comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing).”
9. Plaintiff brings this action to enforce the restrictive covenants and for injunctive relief to prevent the erection of a dark wooden fence, and to require the reinstallation of the white vinyl fencing that the Defendant tore down. The new fencing, pursuant to a previous Consent Order, has not yet been installed.
10. Plaintiff relies on *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985). In *Palmetto Dunes*, a residential and resort subdivision on Hilton Head Island filed suit to enforce its restrictive covenants to prevent Brown, a landowner, from building a house that the Architectural Review Board had rejected for “aesthetic” reasons.

11. Like the Defendant here, Brown argued that the Palmetto Dunes covenant:

lacks objective standards to guide the Board in its approval or disapproval of plans. Specifically, he argues that the provision allowing disapproval for “purely aesthetic considerations” is vague and ambiguous, thereby enabling Palmetto Dunes to be arbitrary in its decisions.

Id. 287 S.C. 1, 4-5, 336 S.E.2d 15, 17-18.

12. The Court of Appeals rejected Brown’s argument, and went to great lengths to explain its reasoning:

Rejecting similar arguments, **courts have upheld covenants that provide no criteria** to guide the approving authority in deciding upon the suitability of proposed construction. *See Rhue v. Cheyenne Homes, Inc.*, 168 Colo. 6, 449 P.2d 361 (1969); *Hannula v. Hacienda Homes, Inc.*, 34 Cal.2d 442, 211 P.2d 302, 19 A.L.R.2d 1268 (1949); *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430 (1957). **Other courts** confronted with similar arguments have **upheld covenants** whose criteria for approval can hardly be said to be more specific than the “**aesthetic considerations**” criterion involved here. *See Snowmass American Corp. v. Schoenheit*, 524 P.2d 645 (Colo.App.1974) (stated purpose of all covenants was to establish and maintain mountain residential area “of the **highest possible quality**” and protect its “**value, desirability and attractiveness**”); *Winslette v. Keeler*, 220 Ga. 100, 137 S.E.2d 288 (1964) (covenant required building to be in “**conformity and harmony of external design and general quality** with the existing standards of the neighborhood”); *Normandy Square Association, Inc. v. Ells*, 213 Neb. 60, 327 N.W.2d 101 (1982) (covenant required plans to be approved “**as to the harmony of external design and location in relation to the surrounding structures and topography**”); *Syrian Antiochian Orthodox Archdiocese v. Palisades Associates*, 110 N.J.Super. 34, 264 A.2d 257 (1970) (covenant allowed disapproval of plans “which are **not suitable or desirable** in [grantor’s] opinion”).

Our Supreme Court has held that to be valid and enforceable a restrictive covenant must, among other things, “not be too indefinite.” *Vickery v. Powell*, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976). “Restrictive covenants are contractual in nature,” so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974); *Easterby v. Heilbron*, 26 S.C.L. (1 McMul.) 462 (1840).

Applying these principles, we find **the “aesthetic considerations” clause is not indefinite**. Its settled intent, viewed in relation to the entire document, is to vest in Palmetto Dunes the authority to disapprove plans

based upon its judgment of their aesthetic suitability within Palmetto Dunes Resort. Brown displayed his understanding of this by proposing to make cosmetic changes to the house following the initial rejection. The parties voluntarily bound themselves to this arrangement, which they had the right to do. See *Winslette v. Keeler*, 220 Ga. 100, 137 S.E.2d 288; *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430.

Brown urges that the phrase “aesthetic considerations” is ambiguous so that we must apply the rule of construction that requires ambiguities in a restrictive covenant to be strictly construed against the party seeking to enforce it. See *Donald E. Baltz, Inc. v. R.V. Chandler and Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966). **We conclude, however, that this rule is not applicable here.** “[T]his rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument.” *Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 436, 211 S.E.2d 235, 237 (1975).

The covenant, by making no attempt to set forth objective “aesthetic considerations,” implicitly recognizes, as do we, that **it is impossible to establish absolute standards to guide a judgment of taste. But this does not compel the conclusion that the covenant is ambiguous.** We agree with the trial judge that although people may reasonably differ as to whether a house is aesthetically appropriate, **the covenant is unambiguous in leaving this solitary judgment to Palmetto Dunes.** The plain and obvious purpose of the covenant is to **vest this discretion in Palmetto Dunes, which is constrained only to exercise its judgment reasonably and in good faith.** See *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430.

Palmetto Dunes Resort v. Brown, 287 S.C. 1, 5-7, 336 S.E.2d 15, 18-19 (footnotes omitted, emphasis added).

13. This Court finds the holding and analysis of *Palmetto Dunes* is on point and controlling.
14. Furthermore, the Covenants give the Grantor (the Plaintiff herein) “the right to refuse . . . plans which are not suitable or desirable, . . . for any reason, including purely aesthetic reasons.” Under the rationale of *Palmetto Dunes*, this standard is valid and enforceable.
15. While being sympathetic to Defendant’s position and desire to have dark wood fencing that she believes to be more aesthetically pleasing, nonetheless the Court finds the same is prohibited by the covenants that were in existence at the time she purchased the tracts.

CONCLUSION

Under the covenants, Plaintiff is entitled to exercise aesthetic judgment and enforce the requirement of white vinyl fencing.

WHEREFORE, the Court grants Judgment to the Plaintiff, and Orders that the Defendant shall replace, within 90 days of this Order being filed, the fencing that she removed with fencing that is "comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing)."

JUDGE'S ELECTRONIC SIGNATURE FOLLOWS



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Master/Order/Other

And It Is So Ordered!

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

Electronically signed on 2017-10-19 13:52:43 page 7 of 7

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

Order

This is a civil action to enforce restrictive covenants on real estate. This matter came before the Court for nonjury trial on October 4, 2017. In its Order filed October 19, 2017, the Court ruled that Plaintiff was entitled to enforce the covenants.

On October 30, 2017, the Plaintiff filed, under SCRCP 59(e), a Motion to Reconsider the above Order. On November 14, 2017, the Court held a telephone conference call with counsel for both parties to address the issues raised by the Motion to Reconsider. Those issues included the following:

1. First, the Defendant argued that the second set of restrictive covenants applied only to Defendant's deeds and, as such, was unenforceable. Defendant argued that because the second set of restrictive covenants was not on file at the Register of Deeds Office, they did not apply to anyone's property except the Defendant's, and in light of this, it would be unfair and unenforceable to apply them solely to Defendant's property and no others. Plaintiff contended that Defendant was on actual notice of the second set of restrictions because they were attached to her deeds. Plaintiff also argued that she had testified that she had delivered copies of the same second set of restrictive covenants to all the other persons whose property was affected by the first set of restrictive covenants. The Court notes that a neighbor to both the Plaintiff and Defendant testified at trial that she had been provided both sets of covenants by

Plaintiff and that she was of the opinion that both sets of the covenants were applicable to her property, as well as all of the properties covered by the first set of covenants. The Court finds that the Defendant was on actual notice of the second set of restrictive covenants and that they governed use of her property. Further, and to the extent that Defendant has standing to assert the alleged lack of notice to any other landowners, the Court finds that the testimony established that all property owners were on actual notice of both sets of restrictive covenants. Accordingly, the Motion to Reconsider on this basis is denied.

2. Second, Defendant argued that the restrictive covenants in the case at bar did not meet the standard approved in *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985). Defendant argued that Plaintiff had reserved the right to reject a proposed change “for any reason” and that this is so broad as to be unenforceable. Plaintiff argues, in contrast, that under the restrictive covenants, her decision as Grantor was required to be based on aesthetics, the surrounding topography, and considerations of suitability and harmony, that it was not an arbitrary standard, and that such consent could not be withheld for “any reason,” as the Defendant contends. The Covenants give the Grantor (the Plaintiff herein) “the right to refuse . . . plans which are not suitable or desirable, . . . for any reason, including purely aesthetic reasons.” Covenants, section 2.8 (emphasis added). Under the rationale of *Palmetto Dunes*, this standard is valid and enforceable. Accordingly, the Motion to Reconsider on this basis is denied.
3. Third, the Defendant argued that after the Defendant had torn out the rails of the fence, and while the posts were still standing, Plaintiff told Defendant could do what

she wanted, based on Defendant's ownership of the land. Defendant argued that such a remark should "estop" Plaintiff from insisting that the fence be rebuilt. Plaintiff contends that the alleged remark, if it happened at all, happened during the first telephone call, while Plaintiff was out of town, and when Plaintiff had just been given notice that Defendant had torn the rails out of the fence, without prior written permission, as required by the covenants. Thereafter, Plaintiff testified that she reviewed the covenants and concluded that Defendant had no right to remove the fence without prior written consent of the grantor. Plaintiff immediately filed suit, served the Defendant, and sought an injunction preventing the Defendant from removing the fence posts. While Plaintiff was attempting to get a hearing on her motion for temporary injunctive relief, Defendant finished removing the fence posts. Finally, during the cross-examination at trial, Defendant admitted that removing the fence was a "modification" or an "alteration" of a structure on the property (which includes fences), which, under the Section 2.8 of the Covenants, required prior written consent, which she did not seek or obtain. For these reasons, and considering the totality of the evidence, the Motion to Reconsider on this basis is denied.

4. Finally, Defendant argued that language from Section 1.4 of the restrictive covenants states that any fence must be "comparable" to the fence which is already there, but that Plaintiff testified that the standard was that the fence must be a white vinyl fence. Defendant, in effect, argued that Plaintiff had verbally changed the standard from "comparable" to the existing fence, to exactly like the existing fence. The Court finds that the standard under the restrictive covenants is that the fence be "comparable in style and constructed material to a fence presently located on the boundary of the

Real Property (white vinyl fencing).” See, Restrictive Covenants, section 1.4. The Court finds that Plaintiff’s testimony was consistent with the written standard of the restrictive covenants. Thus, under the plain language of the covenants, the standard is “comparable” and not “exactly”. Accordingly, the Motion to Reconsider on this basis is denied.

CONCLUSION

The Court, having considered the arguments of counsel and the evidence presented in support of the Motion to Reconsider, finds that there is no basis to reconsider, or alter or amend the Order as entered by this Court on October 19, 2017. Accordingly, the Defendant’s Motion to Reconsider is denied.

JUDGE’S ELECTRONIC SIGNATURE ON FOLLOWING PAGE



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Master/Order/Other

And It Is So Ordered!

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

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,

Plaintiff,

v.

Jacqueline J. Lanier,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

Consent Order

Plaintiff filed the Summons and Complaint in this matter November 30, 2016, and emailed them to the Defendant, who emailed them to her counsel; but they have not been officially served on Defendant or responded to.

Plaintiff sold Defendant real property near Landrum in Greenville County. After taking possession of the property, Defendant removed an existing fence on Defendant's property.

Plaintiff moved for a temporary and preliminary injunction to enjoin the Defendant from replacing the removed fence with a fence which Plaintiff believes violates the Covenants and Restrictions on the property. Plaintiff's Motion is set to be heard December 16, 2016. Plaintiff hereby withdraws her Motion, and the parties have agreed, and the Court Orders, as follows:

1. Defendant agrees to not erect any fence on her property, without permission from the Plaintiff, until this case has ended in the trial court.
2. Defendant reserves all defenses as to the applicability or validity of the Covenants and Restrictions, in whole or in part.

3. Defendant agrees to not initiate any construction projects on her property until this matter is resolved in the trial court, without first submitting plans for any such construction projects to the Plaintiff for approval.
4. Plaintiff agrees to consider and act on all future construction project approval submissions from the Defendant in a way that is fair, objective, in good faith, and not arbitrary.

SO ORDERED, this _____ day of December, 2016

Presiding Judge, Thirteenth Judicial Circuit

WE CONSENT:

/S/ Matthew H. Henrikson
SC Bar No. 7897
P.O. Box 26554
Greenville, South Carolina 29616
864.672.7106 (direct)
864.235.4399 (fax)
Attorney for the Defendant
mhenrikson@henriksonlaw.com

/S/ James G. Carpenter
SC Bar No. 1136
819 E. North St., Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiff



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Order/Consent Order

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	CASE NO. 2016-CP-23-_____
Deborah L. Boies,	
Plaintiff,	
v.	
Jacqueline J. Lanier,	
Defendant.	

SUMMONS

TO THE DEFENDANT:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

S/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street, Suite 230
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-_____

Complaint

NOW COMES the Plaintiff, by her undersigned attorney, and as a Complaint in the above-captioned action allege as follows:

1. Plaintiff is a citizen and resident of Greenville County.
2. Defendant is, upon information and belief, a citizen and resident of Greenville County.
3. Venue is properly placed in Greenville County.
4. Plaintiff sold Defendant real estate in what is commonly known as "horse country" near Landrum in Greenville County (**Exhibit A**).
5. The real estate is covered by a restrictive covenants that, among other things require:

1.4 **Walls, Fences and Hedges.** Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

* * *

2.8. **Grantor Approval of Plans.** No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plants, landscaping, or grading plans which are not suitable or

desirable, in the Grantor's sole opinion, for any reason, including pure aesthetic reasons.

6. The Plaintiff is the Grantor listed in the restrictive covenants.
7. Since buying the property, Defendant has torn down the white vinyl fencing, without permission of the Grantor, and, upon information and belief, intends to replace it with dark wooden fencing, which violates the restrictive covenants and is totally out of keeping with the rest of the neighborhood and the area covered by the restrictive covenants, again without the permission of the Grantor.
8. Upon information and belief, as of November 29, 2016, the white poles that supported the white vinyl fencing are still standing. (See attached photographs.)
9. Plaintiff has contacted the Defendant by telephone to discuss this matter and to remind her of the restrictive covenants, without satisfactory results.
10. Upon information and belief, the Defendant intends to continue with her plans to tear down the white fencing and to erect dark wood fencing.
11. Plaintiff brings this action to enforce the restrictive covenants and for injunctive relief to prevent the erection of a dark wood fence, and require the re-erection of the white vinyl fencing, in accordance with the restrictive covenants.
12. The covenants and restrictions, and the common law South Carolina provide for the issuance of a Temporary Restraining Order, a Temporary Injunction, and permanent injunctive relief to prevent the violation of restrictive covenants.

WHEREFORE, Plaintiff prays the Court for a Temporary Restraining Order, a Temporary Injunction, and permanent injunctive relief against the violation of the restrictive covenants, and injunctive relief requiring the re-erection of white vinyl fencing as it was before Defendant began to remove the white vinyl fencing, for costs and attorneys' fees for

the enforcement of the restrictive covenants, and for such other and further relief as the Court
deems just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC

S/ James G. Carpenter

SC Bar No. 1136
819 E. North St., Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiff

2015013306
DEED Book: DE 2460 Page: 2482 - 2486 5 Pgs
February 25, 2015 01:14:14 PM Cons: \$144,950.00
Rec: \$11.00 Cnty Tax: \$159.50 State Tax: \$377.00
FILED IN GREENVILLE COUNTY, SC *Timothy J. Lanier*

Lanier Law Firm, LLC
113 Pelham Commons Blvd.
Greenville, SC 29615

15-033

State of South Carolina)

TITLE TO REAL ESTATE

County of Greenville)

KNOW ALL MEN BY THESE PRESENTS, that Deborah L. Boies, (hereinafter called "Grantor"), in consideration of **One Hundred Forty Four Thousand Nine Hundred Fifty and 00/100 Dollars (\$144,950.00)**, to the Grantor in hand paid at and before the sealing of these presents, by Jacquelyn J. Lanier (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

Jacquelyn J. Lanier,

ALL that certain piece, parcel or lot of land, lying situate and being in the County of Greenville, State of South Carolina, being shown and designated as 11.15 acres more or less on plat entitled "Survey for Jacquelyn Lanier" prepared by Langford Land Surveying, LLC dated January 27, 2015 and recorded in Plat Book 1201 page 56. Greenville County Records.

THIS being a portion of the same property conveyed to Deborah L. Boies by deed of Kathleen W. Welch dated March 3, 1998 and recorded March 6, 1998 in Dced Book 1748 page 575, Greenville County Records.

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises and specifically to those restrictions contained in Exhibit A attached hereto.

Grantee's Address: 209 Crawford Glen Ct Greenville SC

TMS No.: PB 0636040100400

2/15

TOGETHER with all and singular the rights, members, hereditaments and

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TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 25th day of February, 2015.

SIGNED, SEALED AND DELIVERED

in the presence of:

Laura Seems

Abby Roberts

Deborah L. Boies

Deborah L. Boies

State of South Carolina)

County of Greenville)

ACKNOWLEDGEMENT

THE FOREGOING INSTRUMENT was acknowledged before me this 25th day of February, 2015 by **Deborah L. Boies**.

Abby Roberts (SEAL)
Notary Public for South Carolina

My Commission Expires: 7/2/23

Exhibit A

RESTRICTIONS**1. USES PERMITTED AND PROHIBITED**

1.1. Single Family. All parcels or tracts shall be used exclusively for single-family residential dwellings. No modular or mobile homes shall be allowed, except on a temporary basis during construction of a conventional residence. Any additional outbuildings must be approved by Grantor.

1.2. Recreational Vehicles. Any motor scooter, ATV, motorcycle, go-cart, or similar vehicle, must be operated on the owner's property. Roads shall be used only for purposes of ingress and egress, and no racing or recreational driving shall be permitted.

1.3. Disabled Vehicles, etc. Any disabled or wrecked vehicle, and/or similar equipment or vehicles shall at all times be parked completely within a garage and shall at all times be neatly stored and positioned to be inconspicuous.

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

1.5 Businesses Prohibited. No tract or parcel or any structure situate on a tract or parcel shall be used for any business, commercial, amusement, hospital, sanitarium, school, religious, charitable, or manufacturing purposes except those businesses pertaining to the boarding, breeding, showing and/or training of equine animals. No billboards or advertising signs or any kind shall be displayed or erected on the real property, with the exception of neatly displayed 18" X 24" real estate "For Sale" signs or farm name signs. No part of any structure shall be used for the purposes of renting a room or rooms therein. No duplex residences, garage apartments, or apartment houses shall be erected or permitted to remain on any parcel.

1.6 Animals. No animals, livestock or poultry of any kind shall be raised or bred on the Real Property; except for equine animals and dogs, cats or other common household pets. No more than one equine animal shall be allowed per acre. No equine animals or pets shall be allowed to become a nuisance to other residents of a tract or parcel.

1.7 Fuel Tanks. All fuel oil tanks or containers shall be covered so as not to detract from the real property, or buried underground consistent with normal safety precautions and in compliance with all local, state and federal laws and regulations.

1.8 Refuse, Refuse Containers and Personal Items. No parcel or tract owner will engage in any activity which will result in the deposit or accumulation of trash, refuse, debris or other objectionable matter. It shall be the responsibility of each tract or parcel owner to prevent the accumulation of litter, trash, packing crates, or unkempt condition of buildings or grounds on his property, or to permit accumulations which shall tend to substantially decrease the beauty of the property as a whole or the specific area. No loose trash will be permitted to be strewn about a tract or parcel owner's property at

any time. Garbage containers must be kept out of sight from the street, except during collection hours. All personal use items shall be stored inside when not in use. These items include, but are not limited to, yard tools, sprinklers, wheel barrows, and children's toys as would create a nuisance to other property owners.

1.9 Parking. Residents of parcels or tracts shall not be allowed to park vehicles on the streets or roads except in emergencies. Unless otherwise posted, on-street parking shall be allowed to visitors and guests of the owners of tracts or parcels for short durations, as long as the health, safety and convenience of other residents of tracts or parcels are not impaired.

1.10 Maintenance of Property. Parcel or tract owners shall maintain his or her property and any and all improvements thereon in a reasonable manner. Such maintenance to include, but not limited to, routinely mowing/cutting grass, landscaping and maintaining such landscaping, and making necessary repairs to and preserving the appearance of any improvements located on such parcel or tract.

2. HOUSE PLANS AND SPECIFICATIONS.

2.1. Re-cutting of Tracts or Parcels. No tracts or parcels shall be recut to contain less than three (3) acres.

2.2. Setback Lines. No residence shall be erected on any tract or parcel nearer than 50 feet from the street on which it fronts, nor nearer than 50 feet from any side or rear tract or parcel lines. Any additional buildings besides a residence must be approved by Declarant and abide by same setback lines.

2.3. Minimum Areas. The following minimum heated floor space requirements shall apply to the residences on any tract or parcel: One Story Residence – 2,000 square feet; Two Story Residence – 2,000 square feet with minimum of 1,000 square feet on the first story.

2.4. Construction Quality, Height and Roof. All buildings shall be constructed with high quality materials and workmanship to insure that no dwelling shall present an unsightly appearance. No residence shall exceed two stories in height, exclusive of basement and attic. The roof of every residence shall have, as a minimum, 7/12 pitch. Roofing materials must be of the highest quality, no three-tab shingles.

2.5. Garages. All residences must include a garage able to accommodate a minimum of two cars.

2.6. Utilities. All utility wires for electricity, telephone or other utilities shall be installed underground.

2.7. Construction Period. Any residence constructed upon any tract or parcel must be started within twelve (12) months after the date that footings are poured. Once construction is commenced, each tract or parcel owner shall be responsible for insuring

that such work proceeds at an orderly and timely pace, with no work stoppage in excess of fourteen (14) consecutive days, acts of God excepted.

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plans, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including purely aesthetic reasons. Grantee shall deliver a written request for action to the Grantor by certified mail with return receipt requested or by hand delivery with signed receipt together with the necessary building plans and specifications. Building plans and specifications submitted to the Grantor shall consist of not less than the following: foundation plan, section details, floor plans of all floors, elevation drawings of all exterior walls, roof plans, material specifications and site plan showing exterior walls, roof plans, material specifications and site plan showing location and orientation of building on the Lot, with all setbacks indicated. Such plans and specifications shall show the driveway, service court or area, parking and any other buildings, improvements or facilities to be constructed. In the event the Grantor fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within sixty (60) days after submission, the plans and specifications shall be deemed approved. In all circumstances, compliance with the zoning regulations of Greenville County, South Carolina shall be required.

3. DURATION. These covenants, conditions and restrictions shall run with the land and shall survive the transfer or transfers of any property or any portion of property restricted hereby and shall be binding upon any future owners.















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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,

Plaintiff,

v.

Jacqueline J. Lanier,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

ANSWER TO COMPLAINT

(NON-JURY)

The Defendant, Jacqueline J. Lanier, by and through her undersigned attorney,
answer the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically and unconditionally admitted and demands strict proof thereof.
2. She admits upon information and belief the allegations of paragraphs 1, 2, and 3 of the Complaint.
3. Answering the allegations of paragraph 4 of the Complaint, she admits that Plaintiff sold her the subject property and craves reference to the Deed.
4. Answering the allegations of paragraph 5 and 6 of the Complaint, she denies that the purported Covenants and Restrictions which Plaintiff seeks to enforce herein are valid or effective as a whole and as to any fence on Defendant's property.
5. Answering the allegations of paragraphs 7, 8, 9, and 10 of the Complaint, Defendant admits that after she became owner of the fence and the property on which the

fence stood, she has had the fence removed in its entirety and plans to replace the fence with a fence comparable in style and constructed material to the previous fence but which is more aesthetically compatible with the design and appearance of Defendant's home on the property.

6. Answering the allegations of paragraphs 11 and 12 of the Complaint, being the remaining allegations of the Complaint, those paragraphs set forth legal conclusions which the Defendant is required neither to admit nor deny; she denies that even if the alleged Covenants and Restrictions were valid or enforceable or if they applied at all to the Defendant's fence, Defendant has taken no action which is in violation of the Covenants and Restrictions, nor does replacing the fence with a fence comparable in style and constructed material to the previous fence violate any of the alleged Covenants and Restrictions.

FOR A SECOND DEFENSE

7. Further answering the Complaint and as an additional defense thereto, these Defendants would allege and show that the Complaint fails to state facts sufficient to constitute a cause of action as to the Defendant and should be dismissed pursuant to SCRCP 12(b)(6).

FOR A THIRD DEFENSE

8. Further answering the Complaint and as an additional defense thereto, the Defendants would allege and show that the purported Covenants and Restrictions which Plaintiff seeks to enforce herein are invalid and ineffective as a whole and as to any fence

on Defendant's property because they are too vague and overbroad in that Plaintiff in the purported Covenants and Restrictions has retained sole, absolute authority to control and to deny approval of all designs or construction which are not to her liking and can deny homeowner requests for "any reason"; that reservation of such total control which can be exercised arbitrarily and without any recourse for the homeowners, who had no right or opportunity to negotiate the Covenants and Restrictions, goes well beyond the recognized benefit of Covenants and Restrictions and are not enforceable because sole, absolute control at the whim of the Plaintiff creates the complete lack of predictability for the homeowners in buying, selling, and modifying their property.

FOR A FOURTH DEFENSE

9. Further answering the Complaint and as an additional defense thereto, the Defendants would allege and show that *if* the Covenants and Restrictions are valid and enforceable to any extent, which the Defendant denies, Plaintiff has breached the Covenants and Restrictions contract by attempting to enforce terms which do not exist in the Covenants and Restrictions and by altering and changing existing terms of the Covenants and Restrictions regarding "fences" in her allegations herein and has unclean hands in her attempt to get an equitable remedy.

WHEREFORE, having fully answered Plaintiff's Complaint, the Defendant prays that the same be dismissed with costs, for attorney's fees, and for such other and further relief as this Court may deem to be just and proper.

s/Matthew H. Henrikson
Matthew H. Henrikson (SC Bar #07897)
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
864-235-4399 (fax)
mhenrikson@henriksonlaw.com
Attorney for Defendant

January, 13, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

**Motion for Temporary Restraining
Order and Temporary Injunction**

NOW COMES the Plaintiff, by her undersigned attorney, and as a moves the court pursuant to Rule 65 for a Temporary Restraining Order and for a Temporary Injunction to restrain violations of real estate restrictive covenants. In support of these motions, Plaintiff would show to the Court as follows:

1. Plaintiff is a citizen and resident of Greenville County.
2. Defendant is, upon information and belief, a citizen and resident of Greenville County.
3. Venue is properly placed in Greenville County.
4. Plaintiff sold Defendant real estate in what is commonly known as "horse country" near Landrum in Greenville County (**Exhibit A**).
5. The real estate is covered by a restrictive covenants that, among other things require:

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

* * *

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and

approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plants, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including pure aesthetic reasons.

6. The Plaintiff is the Grantor listed in the restrictive covenants.
7. Since buying the property, Defendant has torn down the white vinyl fencing, without permission of the Grantor, and, upon information and belief, intends to replace it with dark wooden fencing, which violates the restrictive covenants and is totally out of keeping with the rest of the neighborhood and the area covered by the restrictive covenants, again without the permission of the Grantor.
8. Upon information and belief, as of November 29, 2016, the white poles that supported the white vinyl fencing are still standing. (See attached photographs.)
9. Plaintiff has contacted the Defendant by telephone to discuss this matter and to remind her of the restrictive covenants, without satisfactory results.
10. Upon information and belief, the Defendant intends to continue with her plans to tear down the white fencing and to erect dark wood fencing.
11. Plaintiff brings this action to enforce the restrictive covenants and for injunctive relief to prevent the erection of a dark wood fence, and require the re-erection of the white vinyl fencing, in accordance with the restrictive covenants.
12. The covenants and restrictions, and the common law South Carolina provide for the issuance of temporary, preliminary and permanent injunctive relief to prevent the violation of restrictive covenants.

WHEREFORE, Plaintiff moves the Court for a Temporary Restraining Order and a Temporary Injunction against the violation of the restrictive covenants, and requiring the re-erection of white vinyl fencing as it was before Defendant began to remove the white vinyl fencing, for costs and attorneys' fees for the enforcement of the restrictive covenants, and for such other and further relief as the Court deems just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC

S/ James G. Carpenter
SC Bar No. 1136
819 E. North St., Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

**NOTICE OF MOTION AND
MOTION TO DISMISS**

To: Plaintiff and her Attorney:

Please take notice that the Defendant, Jacqueline J. Lanier, by and through her undersigned attorney, will move before the Court at such time and place as counsel may be heard for an Order dismissing the Plaintiff's Complaint pursuant to SCRCP 12 (b)(6). This Motion is based on the fact that the language of the subject Covenants and Restrictions, which were made a part of the Complaint, are on their face too overbroad, ambiguous, and vague as a matter of law to be enforceable, and the Complaint should be dismissed.

This Motion may be supported by any such Memoranda as may be filed with the Court.

s/Matthew H. Henrikson
Matthew H. Henrikson (SC Bar #07897)
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
864-235-4399 (fax)
mhenrikson@henriksonlaw.com
Attorney for Defendant

March 14, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-23-06923

**MOTION FOR ORDER FOR
REFERRAL TO MASTER IN
EQUITY**

TO: Plaintiff and her attorneys:

Please take notice that Defendant and with consent of the Plaintiff, will move before the Court at such time and place for an Order referring the above-captioned matter to The Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County, pursuant to Rule 53(b) South Carolina Rules of Civil Procedure, with full authority to conduct a full trial on all matters and issues, to make appropriate findings of fact and conclusions of law, and with authority to dispose of any and all issues and enter a final judgment, and with any appeal from the final judgment in this matter shall be to the South Carolina Court of Appeals.

s/Matthew H. Henrikson
Matthew H. Henrikson
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
mhenrikson@henriksonlaw.com
Attorney for Defendant

April 20, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,

Plaintiff,

v.

Jacqueline J. Lanier,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-23-06923

**MOTION FOR
SUMMARY JUDGMENT**

TO: Plaintiff and her attorney:

Please take notice that Defendant will move before the Court at such time and place as counsel may be heard for an Order granting Summary Judgment in this matter. This motion is made pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure and is based on the fact that the terms of the subject Covenants and Restrictions which are relevant to the Plaintiff's Complaint are ambiguous as a matter of law and the Defendant is entitled to summary judgment.

This Motion may be supported by any Affidavits, memoranda, or other documents as may be filed with the Court.

Respectfully submitted,

s/Matthew H. Henrikson
Matthew H. Henrikson
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
mhenrikson@henriksonlaw.com
Attorney for Defendant

July 13, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

**Plaintiff's Memorandum of Law
in Opposition to Defendant's
Motion for Summary Judgment**

This is a civil action to restrain and correct violations of real estate restrictive covenants. It comes before the Court on the Defendant's Motion for Summary Judgment pursuant to Rule 56. James G. Carpenter represented the Plaintiff and Matthew H. Henriksen represented the Defendant, the moving party.

STATEMENT OF FACTS

Plaintiff sold Defendant real estate in what is commonly known as "horse country" near Landrum in Greenville County. At all times relevant, the real estate has been covered by a restrictive covenants that, among other things require:

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

* * *

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plans, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including pure aesthetic reasons.

(Emphasis added).

The Plaintiff is the Grantor listed in the restrictive covenants.

Since buying the property, Defendant has, without permission of the Grantor, torn down the white vinyl fencing that surrounded the property. Plaintiff alleges that Defendant intends to replace it with dark wooden fencing, which she contends violates the restrictive Covenants and is out of keeping with the surrounding properties.

STATEMENT OF THE CASE

Plaintiff brings this action to enforce the Covenants and for injunctive relief to prevent the erection of a dark wooden fence, and to require the re-erection of the white vinyl fencing that the Defendant had torn down, in accordance with the Covenants.

On December 20, 2016, the parties entered into a Consent Order signed by the Hon. R. Scott Sprouse, Circuit Judge, by which the Defendant agreed, "not to erect any fence on her property, without permission from the Plaintiff, until this case is ended in the trial court." *Id.* Par. 1.

Defendant further agreed, and the Court ordered that she would not "initiate any construction projects on her property until this matter is resolved in the trial court, without first submitting plans for any such construction projects to the Plaintiff for approval." *Id.* Par. 3.

Plaintiff agreed and the Court ordered her, “to consider and act on all future construction project approval submissions from the Defendant in a way that is fair, objective, in good faith, and not arbitrary.” *Id.* Par. 4 (emphasis added).

In the Consent Order, the Defendant reserved “all defenses as to the applicability or validity of the Covenants and Restrictions, in whole or in part.” *Id.* Par. 2.

Pursuant to this reservation, Defendant moved to dismiss arguing that the Covenants and Restrictions “are on their face too overbroad, ambiguous, and vague as a matter of law.” Motion to Dismiss filed March 14, 2017. This Court, the Hon. Edward W. Miller, heard argument on the Motion to Dismiss on April 11, 2017, and by Form 4 Order entered April 12, 2017, denied the Motion to Dismiss.

On July 13, 2017, Defendant filed a Motion for Summary Judgment “based on the fact that the terms of the subject Covenants and Restrictions which are relevant to Plaintiff’s Complaint are ambiguous as a matter of law.” Defendant contends two parts of the Covenants are unlawfully ambiguous: Sections 1.4 and 2.8.

LEGAL DISCUSSION

Plaintiff submits this Memorandum to demonstrate that neither section is unlawfully ambiguous.

I. SECTION 1.4 IS NOT UNLAWFULLY AMBIGUOUS.

Section 1.4 is not unlawfully ambiguous, and especially as it applies to the facts of this case. Defendant admits that Exhibit A to the Complaint contains the deed by which she purchased the property and the Covenants which are applicable to the deed (Answer, paragraph 3). Section 1.4 of the Covenants, attached to the Complaint, states the following:

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

(Emphasis added.)

In the Complaint, Plaintiff alleged, “Defendant has torn down white vinyl fencing, without permission from the Grantor, and, upon information and belief, intends to replace it with dark wooden fencing” (Complaint, paragraph 7). Defendant Answered, and admitted that “she has had the fence removed in its entirety and plans to replace the fence with the fence comparable in style and constructed material to the previous fence but which is more aesthetically compatible with the design and appearance of the defendant’s home on the property.” (Answer, paragraph 5). In her argument in support of the Motion for Summary Judgment, Defendant’s attorney admitted that the Defendant sought to erect a dark, wooden fence.

Defendant contends Section 1.4 is unlawfully ambiguous. Plaintiff respectfully submits it is not unlawfully ambiguous. It requires that any fence on the property be “comparable in style and constructed material” to the fence already there (white vinyl fencing). There’s nothing vague or ambiguous about that standard. Furthermore, photographs attached to the Complaint demonstrate white vinyl fencing surrounds all of the property subject to these Covenants. Defendant does not dispute the validity of the photographs. Nor does she contend that the white vinyl fencing hasn’t been there since before she purchased the property.

On the existing fence, the “constructed material” is white vinyl. It is not wood. Any permitted fencing must be comparable in “constructed material.” Wood is not a comparable construction material to vinyl. If there were any question, the⁶Covenants

clarified by stating explicitly “white vinyl fencing.” Plaintiff respectfully suggests there is nothing ambiguous about Section 1.4. The Covenants call for “white vinyl fencing.” It doesn’t have to be the same manufacturer, doesn’t have to be exactly the same style, but it has to be *comparable* in style and construction material, but not dark, wooden fencing. The standard is not ambiguous. Accordingly, Defendant’s Motion for Summary Judgment on this point should be denied.

II. SECTION 2.8 IS NOT UNLAWFULLY AMBIGUOUS.

Second, Defendant argues that Section 2.8 is unlawfully ambiguous. Defendant focuses on one small prepositional phrase in the two long paragraphs that make up section 2.8: “for any reason, including purely aesthetic reasons.” From that language, Defendant extrapolates that the Plaintiff could reject the plans for “no reason.” Defendant’s extrapolation from this prepositional phrase is not a fair reading of section 2.8, nor is it a permissible construction. Plaintiff respectfully submits that the Court must focus on the entirety of Section 2.8, and not single out one small prepositional phrase. Section 2.8 reads as follows:

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plants, landscaping, or grading plans which are not suitable or desirable, in the Grantor’s sole opinion, for any reason, including pure aesthetic reasons. Grantee shall deliver a written request for action to the Grantor by certified mail with return receipt requested or by hand delivery with signed receipt together with the necessary building plans and specifications. Building plans and specifications submitted to the

Grantor shall consist of not less than the following: foundation plan, section details, floor plans of all floors, elevation drawings of all exterior walls, roof plans, material specifications and site plan showing exterior walls, roof plans, material specifications and site plan showing the location and orientation of building on the Lot, with all setbacks indicated. Such plans and specifications shall show the driveway service court or area, parking and any other buildings, improvements or facilities to be constructed. In the event the Grantor fails to approve or disapprove such plans and specifications or **to request additional information reasonably required for proper determination** within sixty (60) days after submission, the plans and specifications shall be deemed approved. In all circumstances, compliance with zoning regulations of Greenville County, South Carolina shall be required.

(Emphasis added).

A fair reading of the entire Section 2.8 demonstrates that the Grantor's decision must relate to "harmony of external design and location in relation to surrounding structures and topography." The determination must reflect whether the plans are "suitable or desirable, . . . for any reason, including purely aesthetic reasons." The prepositional phrase, "for any reason" modifies "suitable or desirable." This is a determination of judgment, suitability, and aesthetics. It does not authorize a purely arbitrary reason unrelated to whether the plans are "suitable and desirable." Furthermore, the judgment must reflect whether the plans are in **"harmony of external design and location in relation to surrounding structures and topography."** Accordingly, the judgment is not an unlimited or arbitrary judgment, it cannot be based on "no reason," as the Defendant contends. It must be based on aesthetics, harmony, location, and "the surrounding structures and topography." It must be a judgment about whether the plans are "suitable and desirable." This is an aesthetic standard, based on judgment and taste; not an arbitrary one; and, contrary to Defendant's argument it may not be based on **"no reason."**

An aesthetic decision based upon judgment and taste is entirely enforceable and defensible. *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985). In *Palmetto Dunes*, a residential and resort subdivision on Hilton Head Island filed suit to enforce its restrictive covenants to prevent Brown, a landowner, from building a house that the Architectural Review Board had rejected for “aesthetic” reasons.

Like the Defendant here, Brown argued that the Palmetto Dunes covenant:

lacks objective standards to guide the Board in its approval or disapproval of plans. Specifically, he argues that the provision allowing disapproval for “purely aesthetic considerations” is vague and ambiguous, thereby enabling Palmetto Dunes to be arbitrary in its decisions.

Id. 287 S.C. 1, 4-5, 336 S.E.2d 15, 17-18.

The Court of Appeals rejected Brown’s argument, and went to great lengths to explain its reasoning:

Rejecting similar arguments, **courts have upheld covenants that provide no criteria to guide the approving authority in deciding upon the suitability of proposed construction.** See *Rhue v. Cheyenne Homes, Inc.*, 168 Colo. 6, 449 P.2d 361 (1969); *Hannula v. Hacienda Homes, Inc.*, 34 Cal.2d 442, 211 P.2d 302, 19 A.L.R.2d 1268 (1949); *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430 (1957). Other courts confronted with similar arguments have upheld covenants whose criteria for approval can hardly be said to be more specific than the **“aesthetic considerations” criterion** involved here. See *Snowmass American Corp. v. Schoenheit*, 524 P.2d 645 (Colo.App.1974) (stated purpose of all covenants was to establish and maintain mountain residential area “of the **highest possible quality**” and protect its **“value, desirability and attractiveness”**); *Winslette v. Keeler*, 220 Ga. 100, 137 S.E.2d 288 (1964) (covenant required building to be in **“conformity and harmony of external design and general quality with the existing standards of the neighborhood”**); *Normandy Square Association, Inc. v. Ells*, 213 Neb. 60, 327 N.W.2d 101 (1982) (covenant required plans to be approved **“as to the harmony of external design and location in relation to the surrounding structures and topography”**); *Syrian Antiochian Orthodox Archdiocese v. Palisades Associates*, 110 N.J.Super. 34, 264 A.2d 257 (1970) (covenant allowed disapproval of plans **“which are not suitable or desirable in [grantor’s] opinion”**).

Our Supreme Court has held that to be valid and enforceable a restrictive covenant must, among other things, “not be too indefinite.” *Vickery v.*

Powell, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976). “Restrictive covenants are contractual in nature,” so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974); *Easterby v. Heilbron*, 26 S.C.L. (1 McMul.) 462 (1840).

Applying these principles, we find the “aesthetic considerations” clause is not indefinite. Its settled intent, viewed in relation to the entire document, is to vest in Palmetto Dunes the authority to disapprove plans based upon its judgment of their aesthetic suitability within Palmetto Dunes Resort. Brown displayed his understanding of this by proposing to make cosmetic changes to the house following the initial rejection. The parties voluntarily bound themselves to this arrangement, which they had the right to do. See *Winslette v. Keeler*, 220 Ga. 100, 137 S.E.2d 288; *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430.

Brown urges that the phrase “aesthetic considerations” is ambiguous so that we must apply the rule of construction that requires ambiguities in a restrictive covenant to be strictly construed against the party seeking to enforce it. See *Donald E. Baltz, Inc. v. R.V. Chandler and Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966). We conclude, however, that this rule is not applicable here. “[T]his rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument.” *Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 436, 211 S.E.2d 235, 237 (1975).

The covenant, by making no attempt to set forth objective “aesthetic considerations,” implicitly recognizes, as do we, that it is impossible to establish absolute standards to guide a judgment of taste. But this does not compel the conclusion that the covenant is ambiguous. We agree with the trial judge that although people may reasonably differ as to whether a house is aesthetically appropriate, the covenant is unambiguous in leaving this solitary judgment to Palmetto Dunes. The plain and obvious purpose of the covenant is to vest this discretion in Palmetto Dunes, which is constrained only to exercise its judgment reasonably and in good faith. See *Kirkley v. Seipelt*, 212 Md. 127, 128 A.2d 430.

Palmetto Dunes Resort v. Brown, 287 S.C. 1, 5-7, 336 S.E.2d 15, 18-19 (footnotes omitted, emphasis added).

This holding and analysis of *Palmetto Dunes* is on point and controlling. The Defendant’s plans to replace the white vinyl fencing with dark wooden fencing has not been “submitted to and approved in writing as to harmony of external design and location

. . . by the Grantor” as required by Section 2.8 of the Covenants. Furthermore, the Covenants give the Grantor (the Plaintiff herein) “the right to refuse . . . plans which are not suitable or desirable . . . for any reason, including pure aesthetic reasons.” Under the rationale of *Palmetto Dunes*, this standard is valid and enforceable.

CONCLUSION

WHEREFORE, Plaintiff prays the Court to deny the Defendant’s Motion for Summary Judgment. The Court should find that the Covenants are not unlawfully ambiguous, and enter an Order requiring the re-erection of white vinyl fencing, for costs and attorneys’ fees expended in the enforcement of the restrictive covenants, and grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2016-CP-23-06923

**MEMORANDUM IN RESPONSE TO
PLAINTIFF'S SUPPLEMENTAL
WRITTEN ARGUMENT**

Defendant responds to the Plaintiff's Supplemental Written Argument as follows.

Defendant purchased twenty-three acres of land from Plaintiff which parcel purports to be subject to the Covenants and Restrictions made an exhibit to the Complaint herein. After completing construction of her house, Defendant removed the existing white vinyl fencing which she owned and was on property that she purchased with the intent to replace it with a fence of the same design in the same location with the same number and sizes of posts and slats, but made out of natural wood rather than vinyl and to be dark in color rather than white. Plaintiff's suit in anticipation of the erection of a dark natural wood fence on Defendant's property is before the Court.

Plaintiff has alleged in her Complaint that Defendant has violated two sections of the Covenants and Restrictions with her proposed fence. Defendant raised as a defense and argues now in her Motion for Summary Judgment that the two allegedly applicable sections are ambiguous and overbroad and thus unenforceable.

ARGUMENT

I. APPLICABLE LAW

"Restrictive covenants, sometimes referred to as 'real covenants,' are agreements 'to do, or refrain from doing, certain things with respect to real property.'" *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, (Ct. App. 2014). "Restrictive covenants are contractual in nature, and thus, the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning." *Penny Creek Assocs., LLC v. Fenwick Tarragon Apartments, LLC*, 375 S.C. 267, 651 S.E.2d 617, 620 (Ct. App. 2007). Restrictions on the use of property are historically disfavored. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987). "The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land." *Rhodes v. Palmetto Pathway Homes, Inc.*, 303 S.C. 308, 311, 400 S.E.2d 484, 485 (1991). "

Courts shall enforce such covenants *unless they are indefinite or contravene public policy*." *Sea Pines Plantation Co.*, 294 S.C. at 270, 363 S.E.2d at 894 (emphasis added).

II. FENCES

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

The plain and ordinary meanings of the words in Section 1.4 of the Covenants and Restrictions clearly state that fences to be placed on any subject land shall be "comparable" in style and constructed material (not "exactly like", which thus allows for some deviation). The word "comparable" in that sentence relates to the words "a fence presently located on

the boundary..." later in the sentence. The words "white vinyl fencing" in parentheses clearly identifies the "a fence" by its then current description (why else would it be in parentheses?). Plaintiff's argument that this sentence in its entirety can only be read to require white vinyl fencing to be on the property is manifestly without merit, when if that was the desire, Plaintiff could have simply written that "any fence placed on any tract shall be white vinyl fencing exactly like the one which is on the property" or could have simply required that the existing fencing had to remain as it existed. Since Plaintiff did not choose to so restrict new fences, she obviously intended for some deviations from "white vinyl fencing" to be permissible.

The clear and plain language of the sentence establishes that new fences must be similar in style and material to the existing fence, but that they can be different as long as they are comparable (so as to preclude such fences and privacy, picket, cyclone, chicken wire, etc.); and moreover by its existence the language suggests that the existing fence may be replaced with one comparable in style and material to the existing fence (which arguably leaves only color as the acceptable variable). At the very least more than one reasonable inference regarding fence requirements can be drawn from this sentence which renders it ambiguous as a matter of law. "Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006).

III. GRANTOR APPROVAL

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction,

modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor. The Grantor shall have the right to refuse to approve any such building plans, specifications, site plants, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including pure aesthetic reasons.

Interestingly, of all of the features and descriptors of proposed improvements required to be submitted for approval, "color" is not one of them.

Plaintiff's reservation of the right to deny any application for improvements on the affected land "for any reason" is grossly indefinite and overbroad, and contravenes public policy because it vests in a single person, a *former* owner of the land, the sole and absolute right to decide how other owners may use their property with no built in means of review other than the Courts of State of South Carolina (the plain definition of "any reason" necessarily includes "no reason" since "no" would be included in the all-inclusive word "any"; if one can do something for any reason, one can also do that thing for no reason). The fact that the subject Covenants and Restrictions simply *give* her the ability, whether she uses it or not, to act arbitrarily, is what renders the Covenants and Restrictions unenforceable, not necessarily what she does with that power. Plaintiff's argument that she may base her decisions on "aesthetics" and that she has promised to refrain from acting arbitrarily misses the point entirely and does not rehabilitate the fatal "any reason" language. Here, by reserving everything, Plaintiff reserves nothing. The examination is on the language of the Covenants and Restrictions, not the manner in which Plaintiff contends that she uses it.

Likewise, Plaintiff's reliance on *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985), is misplaced. *Palmetto Dunes* involved an entire Homeowners' Association Board and Committee of current property owners as the decision makers on its

Covenants and dealt solely with the issue of “aesthetics” being a permissible basis for allowing or denying homeowner requests for improvements or property use. The Covenants and Restrictions in *Palmetto Dunes* did not include the “any reason” language nor was decision making vested in a single former owner person with no avenue of internal review. (The “any reason” language is simply not found in other property Covenants and Restrictions because it is manifestly too broad and indefinite to be enforced.) The issue and examination in the case at bar goes beyond aesthetics as a basis for approval of improvements.

IV. CONCLUSION

The pertinent Covenants and Restrictions in this matter ambiguous as a matter of law and are so vague, overbroad, and indefinite that they violate public policy and are not enforceable. The Court should declare Section 1.4 of the Covenants and Restrictions void as being ambiguous, should declare Section 2.8 of the Covenants and Restrictions void as being so vague, overbroad, and indefinite that they violate public policy, and should grant the Defendant’s Motion for Summary Judgment.

s/Matthew H. Henrikson
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August 22, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Deborah L. Boies,

Plaintiff,

v.

Jacqueline J. Lanier,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23-06923

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
MASTER'S ORDER**

Please Take Notice that the Defendant, by and through her undersigned attorneys, will move the Court at such time as counsel may be heard for an Order Altering or Amending the Judgment of the Court filed October 19, 2017.

This motion is made pursuant to SCRPC 59 (e) and is based on the fact that the Court's Order makes erroneous findings including but not limited to incorrect finding that the "2.8 Grantor Approval" language of the Covenants and Restrictions applied to "all landowners" when the only evidence at trial and the public record show clearly that the subject language applied only to Defendant's Deeds and not to the other similarly situated parcels; that the Order fails to recognize the clearly ambiguous nature of the "1.4 Fences" language; that the Order misapplies the holdings of *Palmetto Dunes Resort v. Brown* 287 S.C. 1, 336 S.E. 2d 15 (Ct. App. 1985) by finding that *Palmetto Dunes* allows "purely aesthetic reasons" for denial of requested construction when the issue was not how Plaintiff decided to deny Defendant's request but rather that the language of the document from which that power emanated (2.8) was too overbroad to be enforceable because it reserved in Plaintiff the ability to make decisions not just based on aesthetics,

but for any reason or no reason, including bad and discriminatory reasons, thus violating public policy, and the Order improperly focused on Plaintiff's assertions that her decisions were based on aesthetics; and that the Court mistakenly ordered the Defendant's removed fence to be replaced in light of the uncontroverted testimony that Plaintiff advised Defendant during the fence removal process that Defendant had the right to remove the fence and Defendant relied on that statement to complete removal of the fence.

This Motion will be supported by any Memoranda or Affidavits as may be filed with the Court.

Respectfully submitted,

s/Matthew H. Henrikson
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October 30, 2017
Greenville, South Carolina

IN THE COURT OF COMMON PLEAS
2016-CP-23-06923

Defendant.

TRANSCRIPT OF TESTIMONY

October 4, 2017
Greenville, South Carolina

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

James G. Carpenter, Esquire
Attorney for the Plaintiff

Matthew H. Henrikson, Esquire
Attorney for the Defendant

Danette P. Hanks, CCR
Court Reporter

<u>I N D E X</u>				
WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Deborah L. Boies				
Carpenter	6		60	
Henrikson		24		64
Robert M. Boies				
Carpenter	67		76	
Henrikson		72		
Gloria Cernock				
Carpenter	77		88	
Henrikson		83		88
Jacqueline Johnson Lanier				
Henrikson	95		128	
Carpenter		119		131
<<- - ->>				
Certificate of Reporter				PAGE
				135

PLAINTIFF EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Restrictive Covenants	5	10
P-2	Photograph from behind barn	5	17
P-3	Photograph of entrance	5	17
P-4	Photograph of farm	5	17
P-5	Photograph of white vinyl fencing	5	17
P-6	Photograph of road frontage fencing	5	17
P-7	Photograph of barn with	5	17
P-8	Photograph of pasture with horses	5	17
P-9	Photograph of pasture with white vinyl fencing	5	17
P-10	Photograph of another pasture	5	17
P-11	Photograph of back pasture along Hawkins Road	5	17
P-12	Photograph of front vinyl fencing to entrance gates	5	17
P-13	Photograph of remainder of vinyl fencing	5	20
P-14	Photograph of three posts remaining	5	20
P-15	Photograph of three posts remaining	5	20
P-16	Photograph of rest of posts	5	20
P-17	Photograph of gates to shared driveway with white vinyl fencing	5	20
P-18	Photograph of front entrance	5	20

DEFENDANT'S EXHIBITS

D-1	Title to Real Estate dated 2/25/15 with Exhibit A - Restrictions	5	43
D-2	Covenants that Brian Ponder initiated	5	37
D-3	Title to Real Estate to Daniel and Gloria Cernoch	5	60
D-4	Warranty Deed of Jason S. Johnson and Wanda C. Sisk	5	60

NO	DESCRIPTION	ID	EV
D-5	Warranty Deed of Eugene A. Mulligan and Cynthia A. Mulligan	5	60
D-6	Title to Real Estate of Jacquelyn J. Lanier with Exhibit A - Restrictions	5	43
D-7	Warranty Deed of Robin Riddle	5	60
D-8	Plat of property dated March 20, 2000	5	119
D-9	Plat of property dated October 28, 2003	5	119
D-10	Plat of property dated May 27, 2003	5	87
D-11	Plat of property dated March 12, 2015	5	119
D-12	Photograph of dark wood fencing	5	29
D-13	Photograph of dark wood fencing	5	29
D-14	Photograph of dark wood fencing	5	29
D-15	Photograph of dark wood fencing	5	28
D-16	Photograph of dark wood fencing on right and white vinyl fencing on left of road	5	29
D-17	Photograph of dirty white vinyl fencing	5	33
D-18	Photograph of dirty white vinyl fencing	5	33
D-19	Email from plaintiff to defendant dated November 28, 2016	46	47

COURT'S EXHIBITS
(NONE)

1 (WHEREUPON, Plaintiff Exhibit Numbers 1 through 18 were
2 marked for identification.)

3 (WHEREUPON, Defendant Exhibit Numbers 1 through 18 were
4 marked for identification.)

5 (WHEREUPON, Court convened with all parties present and
6 the following proceedings were had.)

7 THE COURT: This is 2016-06923.. Here today on an
8 action brought by the Plaintiff to enforce certain
9 restrictive covenants.

10 And gentlemen, what I understand is that ultimately it
11 boils down to two separate issues in the restrictive
12 covenants, 1.4 and 2.8, and whether they are enforceable or
13 whether they are ambiguous or whether they are so outside
14 public policy as to not be enforceable.

15 Is that a correct assessment?

16 MR. HENRIKSON: Yes, sir, I think those are the
17 legal issues.

18 THE COURT: Okay. Mr. Carpenter?

19 MR. CARPENTER: Yes, sir, I believe that's about
20 right.

21 THE COURT: Okay. You can call your first
22 witness.

23 MR. HENRIKSON: Your Honor, I would ask that the
24 witnesses be sequestered.

25 THE COURT: Any objection, Mr. Carpenter?

1 MR. CARPENTER: No.

2 THE COURT: Okay. Then if you would call your
3 first witness. And any other witnesses would need to wait
4 in the anteroom of the courthouse.

5 MR. CARPENTER: Call Debbie Boies.

6 THE COURT: Do you swear to tell the truth, whole
7 truth and nothing but the truth?

8 THE WITNESS: I do, Your Honor.

9 THE COURT: Come around and have a seat, please.
10 And if you would state your full name, please.

11 THE WITNESS: Yes. Deborah Lynn Boies, B-O-I-E-S.

12 THE COURT: Thank you.

13 DEBORAH LYNN BOIES,

14 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. CARPENTER:

17 Q. Where do you live?

18 A. 4651 Howe Road, Landrum, South Carolina.

19 Q. And is that in a part of Greenville County?

20 A. Yes, sir.

21 Q. Is that sometimes known as horse country?

22 A. Can be, yes.

23 Q. How long have you lived up there near Landrum?

24 A. We've lived in the Landrum area since 1987. Q. And
25 how many acres have you owned there in the Landrum area?

1 A. A hundred and twenty-two.

2 Q. Did you make improvements to the real property that
3 you bought in Landrum?

4 A. Yes, we did.

5 Q. What improvements did you make?

6 A. We cleared all the property; my husband personally
7 cleared the property. And he also built a barn for our
8 horses, an outbuilding for his farm equipment, and put up
9 white vinyl fencing around the perimeter of the property and
10 also in paddocks and pastures inside the property.

11 Q. White vinyl fencing around the property, then it
12 divides some of the acreage from other acres; is that right?

13 A. Yes, sir.

14 Q. Okay. At some point did you decide to subdivide the
15 property and sell off pieces of it?

16 A. We did. We're getting older and it was becoming
17 harder to keep all the property maintained the way that we
18 liked it. And so we made a decision, a conscious decision
19 to sell.

20 Q. And did you create some restrictive covenants that
21 would apply to your property?

22 A. Yes, we did.

23 Q. And did they apply to the whole hundred and twenty-two
24 acres?

25 A. Yes, they do.

- 1 Q. Now, initially you sold some parcels off to certain
2 people in the early 2000s; is that right?
- 3 A. Yes, to one couple and also to my husband's daughter.
- 4 Q. Okay. And did the restrictive covenants apply to the
5 pieces of property you sold off?
- 6 A. Yes.
- 7 Q. Did they also apply to the property you retained?
- 8 A. Yes.
- 9 Q. Now, at some point did you make updates to the
10 covenants?
- 11 A. Yes, I did.
- 12 Q. Did you consult an attorney for assistance in making
13 the updates to the covenants?
- 14 A. Yes, I did.
- 15 Q. What attorneys have helped you both with the initial
16 covenants and the updated covenants?
- 17 A. Initially the real estate agent that I had at the time
18 put me in contact with Ms. Lanier's office. And we decided
19 not to go forward with marketing our property at that time.
20 So she was willing to assist with the covenants at that
21 time, but we did not move forward. Sequentially, after
22 that, when we made the decision two years ago to sell the
23 property, I asked my real estate agent for advice on who to
24 advise us with the covenants, and she said Cameron Salley
25 would be good. When we first bought the property in 1999,

1 Brian Ponder did the initial covenants.

2 Q. And when Brian Ponder did them, did the covenants
3 apply to the whole hundred and twenty-two acres?

4 A. Yes, it did.

5 Q. And when Cam Salley helped you with them in more
6 recent years did those covenants apply to the whole hundred
7 and twenty-two acres?

8 A. Yes, sir, it did.

9 Q. And do you still own property -- do you still own part
10 of that hundred and twenty-two acres?

11 A. Yes. We own approximately eight-six acres.

12 Q. And the property you own is subject to the covenants;
13 right?

14 A. Yes.

15 Q. How many other owners have property subject to the
16 covenants?

17 A. To covenants in general?

18 Q. To the same covenants?

19 A. There are six properties.

20 Q. Six pieces of property ---

21 A. Yes.

22 Q. --- all subject to the covenants and restrictions?

23 A. Well, actually seven. Well, six at this point in
24 time, until and unless Ms. Lanier divided out any other.

25 Q. And to the best of your knowledge are all the other

1 property owners following the covenants?

2 A. They have been; yes, to the letter.

3 Q. Did you sell a piece of property to the defendant, Ms.
4 Lanier?

5 A. Yes.

6 Q. All right. And about when did you do that?

7 A. There were two different sales. One in 2015 and one
8 in 2016.

9 Q. And in 2015 was the property surrounded by the white
10 vinyl fencing?

11 A. Yes.

12 Q. And there was a deed, I take it, when you sold the
13 property to Ms. Lanier in 2015; is that right?

14 A. Yes.

15 Q. Do you know who drafted that deed?

16 A. Ms. Lanier's office.

17 MR. CARPENTER: Your Honor, we have Exhibit 1,
18 which I think there's no objection to, but it's the deed and
19 the covenants attached to it. We attached it to the
20 Complaint. I would tender that. Show it to the witness.

21 MR. HENRIKSON: No objection, Your Honor.

22 THE COURT: All right. Thank you.

23 (WHEREUPON, Plaintiff Exhibit Number 1 was admitted
24 into evidence.)

25 Q. I'm showing to you Exhibit 1. Can you tell the Court

1 what that is, please?

2 A. It is the title to real estate.

3 Q. Is that the deed by which you sold the property to Ms.
4 Lanier?

5 A. Yes, it appears to be.

6 Q. And pages three through five contain something called
7 Exhibit A. Can you tell the Court what that is, please?

8 A. Yes. Exhibit A are the restrictions and covenants.

9 Q. And are these the first or the second set of
10 restrictions?

11 A. These are the second.

12 Q. And these restrictions were attached to the deed when
13 the property was conveyed to Ms. Lanier; is that right?

14 A. Yes.

15 MR. CARPENTER: I think that's in evidence
16 already. Is that right, Your Honor? I moved it into
17 evidence.

18 THE COURT: Unless there's any objection. And
19 from what I understand Mr. Henrikson has none, so
20 Plaintiff's Number 1.

21 Q. And does the deed demonstrate that the Lanier Law Firm
22 drafted the deed for the purchase of that piece of property?

23 A. For the first piece of property -- let me see which
24 property this is, since she's bought two parcels. This was
25 the first of the property. So, yes, it was the

1 Lanier Law Firm; an attorney within her firm.

2 Q. All right. And then at some point later did Ms.

3 Lanier ask to buy an additional piece of property?

4 A. Yes, she did. We had it on the market.

5 Q. And you said that was 2016?

6 A. Yes. Best I recall.

7 Q. All right. And was the second piece of property she
8 bought also subject to the covenants and restrictions?

9 A. Yes.

10 Q. Now, when you updated the covenants and restrictions
11 did you do anything to notify any of the other homeowners
12 about the updated restrictions?

13 A. At the time -- well, the homeowners were hand-given
14 copies of the covenants; yes.

15 Q. To your knowledge were they filed in the courthouse?

16 A. To my knowledge they were.

17 Q. Now, was the second piece of property Ms. Lanier
18 bought also subject to the covenants and restrictions?

19 A. Yes.

20 Q. Now, when she bought the second piece of property was
21 the second piece of property surrounded, at least in part,
22 by the white vinyl fencing?

23 A. The second piece of property set back in further, but
24 the whole perimeter of the entire development is surrounded
25 with the white vinyl fencing. So there's not a particular

1 divided line on the second set of property that she bought.

2 But surrounding on the road frontage and in the back there's

3 another road that runs behind the entire property that is

4 all white vinyl fencing.

5 Q. Did she ever tell you what she planned to do with the

6 second piece of property?

7 A. Build a spec house.

8 Q. Now, at any time during this process have you and Ms.

9 Lanier shared a driveway?

10 A. With her second set of property she has an easement to

11 share the driveway. With her initial piece of property, the

12 eleven point five acres, she did not. She has her own road

13 frontage. She has her own driveway off of Howe road for

14 that one.

15 Q. And on the first piece of property is the white vinyl

16 fencing along the road frontage?

17 A. Yes. The entire section; yes.

18 Q. Now, if somebody wants to make a structural change,

19 you know, building a structural change on that hundred and

20 twenty-two acres, what must they do in order to get them to

21 do that?

22 A. They must require that in writing to me.

23 Q. Make a request to you in writing?

24 A. Yes.

25 Q. Okay. And who has discretion to approve or disapprove

1 any kind of structural proposal that's made?

2 A. I do, and according to the covenants.

3 Q. And you retain that in the covenants themselves?

4 A. Yes. The covenants really have not had a distinct or
5 really market change from the initial ones, actually.

6 Q. Now, when someone makes a request to you to make some
7 kind of a structural change or alteration, what kind of
8 things do you consider in considering the request. What
9 factors do you consider?

10 A. I consider the appearance. We want to keep our area
11 looking compatible and aesthetically pleasing. We've kind
12 of upgraded the area and we want to keep it that way. It's
13 not overly confining or overly restrictive. We just want to
14 maintain a certain look and appearance. And as long as --
15 the house plans can be different. But if they're very
16 pleasing and they fit well with the property, then there's
17 no question, they usually -- they're approved.

18 Q. Have people who are now property owners made requests
19 to you for approval of certain structural ---

20 A. Yes, they have.

21 Q. And have you granted certain structural changes to
22 certain people?

23 A. Yes, I have.

24 Q. Have you ever had to deny a proposed structural
25 change?

- 1 A. Not until this point.
- 2 Q. Okay. Now, at some point Ms. Lanier began to tear
- 3 down the white vinyl fencing; is that right?
- 4 A. Yes.
- 5 Q. Had she made a prior request to you for permission to
- 6 tear the fencing down?
- 7 A. No, sir.
- 8 Q. And you didn't grant any permission to tear the
- 9 fencing down?
- 10 A. No, I did not.
- 11 Q. Do you consider the white vinyl fencing as something
- 12 that the covenants require?
- 13 A. I do.
- 14 Q. Now, would you consider dark wooden fencing to be in
- 15 keeping with the covenants?
- 16 A. I do not.
- 17 Q. And tell us why you consider that?
- 18 A. There's a large difference between white vinyl fencing
- 19 and dark wood fencing. The composite material is different.
- 20 The look is obviously different. The maintenance is much
- 21 more difficult with wood fencing than it is with vinyl
- 22 fencing. And vinyl fencing is much more expensive than wood
- 23 fencing. And it needs to be kept the way that it was
- 24 originally designed. And that's with the entire perimeter
- 25 surrounded in white vinyl fencing.

1 Q. Can you tell the Court how long or how much fencing --
2 white vinyl fencing was actually put up around your hundred
3 and twenty-two acres?

4 A. My husband manually put up two miles of that fencing
5 himself.

6 Q. Okay. And it was expensive to put up?

7 A. Very expensive.

8 Q. Have you had conversations with Ms. Lanier about the
9 covenants and the enforcement of the covenants on occasion?

10 A. Yes, we have.

11 Q. Has Ms. Lanier submitted other plans to you such as
12 house plans or other construction plans?

13 A. One.

14 MR. HENRIKSON: I'm not sure that's relevant.

15 We're talking about other submissions ---

16 THE COURT: What's the relevancy of any other ---

17 MR. CARPENTER: I'm just saying there's a process
18 established and sometimes they're approved and ---

19 THE COURT: All right. Go ahead.

20 Q. And have you approved other structural plans for Ms.
21 Lanier?

22 A. Yes, I have.

23 Q. All right. Did it come to your attention that Ms.
24 Lanier might be violating the covenants?

25 A. Yes, it did.

1 Q. How did it come to your attention?

2 A. My neighbor who lives right across from Ms. Lanier on
3 -- who has built a home within the same residential area
4 notified me when I was ---

5 MR. HENRIKSON: Your Honor, I object to any
6 hearsay.

7 A. I received a text message and photos showing me.

8 MR. HENRIKSON: Object to hearsay.

9 MR. CARPENTER: I'll move along.

10 THE COURT: All right.

11 MR. CARPENTER: I have photographs, Your Honor, if
12 I could tender those Exhibits 2 through 12.

13 MR. HENRIKSON: No objection, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, Plaintiff Exhibit Numbers 2 through 12 were
16 admitted into evidence.)

17 Q. Ms. Boies, I hand you photographs which have been
18 marked Exhibits 2 through 12. Can you tell the Court what
19 those are?

20 A. Individually or overall?

21 Q. Give a general description first and then we can go
22 through them kind of briefly.

23 A. It's a general description of our original property,
24 all hundred and twenty-two acres. It shows the barn with
25 paddock fencing around it. It shows the entrance to the

1 property with gates ---

2 THE COURT: Ma'am, if you wouldn't mind
3 identifying which photo you're looking at ---

4 THE WITNESS: Oh, sure.

5 THE COURT: --- by the sticker number.

6 THE WITNESS: Yes. I'm sorry, Your Honor.

7 THE COURT: Oh, that's all right.

8 THE WITNESS: This is Exhibit 2. Is that what you
9 would like me to say?

10 THE COURT: Yes, ma'am. Thank you.

11 A. Exhibit 2 is a photograph taken from behind our barn
12 at the back of our property which shows white vinyl fencing
13 paddocks and pastures. Plaintiff's Exhibit 3 shows the
14 entrance to our property, our shared driveway with other
15 owners. It shows gates, stone and white vinyl fencing that
16 runs up to the horse heads on the gates. Exhibit 4 is
17 another view of our farm, our house and our pastures and
18 paddocks, all white vinyl fencing.

19 MR. CARPENTER: Can I watch from up here?

20 THE COURT: Oh, certainly.

21 MR. CARPENTER: Go ahead.

22 A. 5 is white vinyl fencing that is -- runs down along
23 our property, my property, with -- showing the pastures and
24 the outlines all done with white vinyl fencing. Exhibit 6
25 is the road frontage fencing that goes all along the front

1 Howe Road property. Exhibit 7 is a photograph of our barn
2 with a side paddock in white vinyl fencing. Exhibit 8 is
3 our pasture with two horses in them, with two sections of
4 white vinyl fencing showing. Exhibit 9 is a view of the
5 pasture and the line that runs along one of our creek
6 boundaries, all in white vinyl fencing. Exhibit 10 is
7 another view of a separate pasture that's divided and
8 surrounded with white vinyl fencing. Exhibit 11 is a back
9 section of pasture that goes along Hawkins Road; it's white
10 vinyl fencing. And Exhibit 12 is the front vinyl fencing
11 that goes along Howe Road on the opposite side and runs up
12 to the entrance gates.

13 Q. Can you tell the Court whose house that is in the
14 picture I'm holding?

15 A. The houses in this picture, the first one that I see
16 is Gloria Cernoch's house. And we sold that property. And
17 the one that you can see in the distance is Jason Johnson's
18 house. And they are all on Howe Road.

19 Q. And are those properties also subject to the
20 covenants?

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. CARPENTER: Do you want to look at those
24 Exhibits, Your Honor? Do you want us to hand them up to
25 you?

1 THE COURT: I don't need them at this point.

2 MR. CARPENTER: Okay.

3 THE COURT: Thank you.

4 Q. Let me show you a second set of pictures; Exhibits 13
5 through 18.

6 MR. HENRIKSON: No objection.

7 (WHEREUPON, Plaintiff Exhibit Numbers 13 through 18
8 were admitted into evidence.)

9 Q. I'm going to show you pictures 13 through 18. Can you
10 tell me what those are?

11 A. Yes. Exhibit 13 is a photograph of what remains of
12 the white vinyl fencing. It appears to be just the posts
13 for the fencing there along the shared driveway to the
14 entrance and along the frontage road on Howe. Exhibit 14
15 shows three posts only remaining, no rails, of the white
16 vinyl fencing that used to run up to the gates. Exhibit 15
17 also shows the same. It's just extended a little further.
18 There are white vinyl fencing posts. The rails have been
19 removed. And it goes to Howe Road and the entrance to the
20 property. Exhibit 16 shows what's left of the post; all the
21 rails removed as far as I can see in this photograph, along
22 Howe Road. Exhibit 17 shows the gates to the shared
23 driveway with white vinyl fencing leading up on the right-
24 hand side of the entrance when facing, and on the left-hand
25 side all the white vinyl fencing and posts have been

1 removed; only the stone gates remain. Exhibit 18 shows a
2 different view of the front entrance. It shows the white
3 vinyl fencing on the right, continuing to go up to the
4 gates. On the left-hand side all the fencing has been
5 removed.

6 Q. And approximately when was this fencing removed?

7 A. I believe end of November, first part of December, of
8 2016.

9 Q. Almost a year ago?

10 A. Uh-huh (affirmative).

11 Q. Yes?

12 A. Yes.

13 Q. Did you personally observe the violations taking
14 place, the removal of the fencing?

15 A. I did not. I was out of town.

16 Q. Okay. But you came and found -- when you came home
17 you found the fencing had been removed?

18 A. Yes, I did.

19 Q. All right. Did you have any conversation with Ms.
20 Lanier about the removal of the fencing when you found out
21 about it?

22 A. Yes. The day that she was removing it we had a
23 conversation.

24 Q. And what did you say to her?

25 A. I asked her if she was removing the fencing and why,

- 1 and if she understood the covenants.
- 2 Q. And what response did you get?
- 3 A. The response I received was she disagreed with the
- 4 wording of the covenants and what they -- interpretation of
- 5 them.
- 6 Q. Are the posts still in the post holes now or have they
- 7 been removed?
- 8 A. They've all been removed.
- 9 Q. Has Ms. Lanier told you what she plans to do, again,
- 10 where the white fencing was removed?
- 11 A. As best I recall she said that at some future time
- 12 they would like to put a fence up.
- 13 Q. Did she say what kind?
- 14 A. Dark wood. She didn't like white vinyl.
- 15 Q. And you haven't granted her permission to put in the
- 16 dark wood fencing?
- 17 A. No one's requested that of me.
- 18 Q. Okay. And you didn't grant permission for her to tear
- 19 out the white vinyl fencing?
- 20 A. Absolutely not.
- 21 Q. In your judgment is dark wooden fencing a comparable
- 22 constructive material to white vinyl fencing?
- 23 A. In my experience of all the years of having fencing
- 24 and owning horses; no, sir.
- 25 Q. In your judgment do the presence of the -- does the

1 presence of the restrictive covenants on the whole hundred
2 and twenty-two acres add value to the property?

3 A. Yes. It definitely does.

4 Q. And that would include adding value to the real estate
5 now owned by Ms. Lanier?

6 A. Yes.

7 Q. And would add value to the property owned by the other
8 homeowners whose properties are subject to the covenants?

9 A. Absolutely; yes.

10 Q. And you have brought this civil action to ask the
11 Court to enforce the covenants; is that right?

12 A. Yes.

13 Q. All right. And what specifically are you asking the
14 Court to do?

15 A. I'm asking the Court to uphold the covenants,
16 particularly the white vinyl fencing that has been removed,
17 I would like to have it reinstalled.

18 Q. Now, if the defendant were to install white vinyl
19 fencing could she choose a manufacturer different from the
20 one you all have chosen?

21 A. It's possible as long as the quality remained the
22 same.

23 Q. And what is the quality of the other white vinyl
24 fencing?

25 A. The white vinyl fencing that we purchased at the time

1 was the highest quality vinyl fencing on the market. We
2 actually had about two semi loads brought in all the way
3 from the state of Colorado.

4 Q. And could it be white vinyl fencing of a similar style
5 if not the exact style?

6 A. Yes.

7 Q. Okay. To the best of your knowledge are all hundred
8 and twenty-two acres that you initially owned subject to
9 not only the first set of covenants that were adopted around
10 the year 2000, but also the revised covenants that were
11 adopted more recently?

12 A. Yes. And all parties are aware.

13 Q. All right.

14 MR. CARPENTER: That's all I have, Your Honor, of
15 this witness..

16 THE COURT: All right. Your witness.

17 CROSS EXAMINATION

18 BY MR. HENRIKSON:

19 Q. Ms. Boies, the photographs, Exhibits 2 through 12 that
20 you have, those are photographs -- did you make those
21 photographs?

22 A. Let me see. I'll have to find them first. There's a
23 lot here. 2 through 12? Let me find 12. Yes.

24 Q. Okay. So you took those photographs?

25 A. 2 through 12 of the farm.

- 1 Q. Yes, ma'am.
- 2 A. Yes, uh-huh (affirmative).
- 3 Q. You're saying yes?
- 4 A. Yes.
- 5 Q. Okay. Good. And what was the purpose in taking those
- 6 particular photographs?
- 7 A. The purpose of taking these particular photographs at
- 8 the time were multiple purposes, actually. One was to show
- 9 the current state of the fencing. And the previous ones
- 10 were just taken to show the beauty of the farm.
- 11 Q. And many of those photographs were made attachments to
- 12 your Complaint in this case; isn't that right?
- 13 A. For reference to show what the appearance looked like;
- 14 yes.
- 15 Q. The appearance of the area?
- 16 A. The appearance of both.
- 17 Q. Of both what?
- 18 A. Well, the appearance of the farm and our particular
- 19 area; yes.
- 20 Q. Okay. And the area would include the area around the
- 21 original hundred and twenty-two areas; isn't that correct?
- 22 A. I suppose it could; yes.
- 23 Q. Well, you would agree with that; right?
- 24 A. Well, I would say that it's possible; uh-huh
- 25 (affirmative).

1 Q. Okay. And there area other types of fences in that
2 area; you would agree?

3 A. Yes.

4 Q. Okay. And there are dark wood fences in this area?

5 A. Some are; some are not any color. They're just
6 natural wood.

7 Q. Right. And in fact there's a dark wood fence
8 literally right across the street from your property; isn't
9 that correct?

10 A. The one on Hawkins Road that's falling apart; yes.

11 Q. Okay. But it is across the street from you?

12 A. Behind the farm, uh-huh (affirmative).

13 Q. And somehow we didn't get any photographs of dark wood
14 fencing in the photographs that you submitted; is that
15 correct?

16 A. Well, I wouldn't be taking pictures of someone else's
17 dark wood fencing.

18 Q. If you wanted to give a fair representative picture to
19 the Court of what the area looks like, you would have wanted
20 to include other types of fences in the area; isn't that
21 right, Ms. Boies?

22 MR. CARPENTER: Objection. Argumentative.

23 A. Not necessarily.

24 THE COURT: Hold on, please. Pardon me?

25 MR. CARPENTER: Objection. Argumentative.

1 THE COURT: Overruled. Go ahead.

2 Q. Isn't that correct?

3 A. If I wanted to give an overview of all the property, I
4 would have driven around and taken various photographs
5 throughout the county; yes.

6 Q. Let me show you photographs, Defense Exhibits 12, 13,
7 14, 15 and 16 and ask if you recognize anything in those
8 photographs?

9 A. I recognize inexpensive wood fencing in one, Exhibit
10 12. And this is four-board fencing with thoroughbred wire
11 behind it in Exhibit 13. This is inexpensive wood fencing
12 just three-rail and that's Exhibit 14. Again, inexpensive
13 three wood rail fencing, Exhibit 15. And this appears to
14 have white vinyl on one side and three wood fencing on the
15 other side.

16 Q. And in fact this is the fencing ---

17 A. Yes.

18 Q. --- that's across from your house?

19 A. Uh-huh (Affirmative).

20 Q. And can you show me where it's broken down and falling
21 apart and dilapidated as you testified to a few minutes ago?

22 A. Not in this particular photo, but I have known the
23 neighbors. I know who lives there. I know how they've
24 replaced it. And I've witnessed it, so ...

25 Q. And so this is your fencing on one side?

1 A. Uh-huh (affirmative).

2 Q. Is that a yes?

3 A. Yes. One three-board.

4 Q. And I noticed that you qualified all of your answers
5 by calling this wood inexpensive. Are you like a fence
6 expert?

7 A. I'm not a fence expert. I've put up a lot of fencing
8 in my lifetime. And purchased a lot of fencing.

9 Q. And by looking at these photographs you can tell how
10 much it costs for the material and all of that; is that what
11 you're representing to this Court?

12 A. I cannot, as an expert, guarantee that. But I know
13 quality when I see it.

14 Q. And you can tell that just from looking at
15 photographs?

16 A. From some of those; yes, I can.

17 Q. And do you think it's important to maintain fences and
18 make them look presentable and all that?

19 A. Well, I think it's important to do that; yes, of
20 course.

21 Q. Okay. Let me move 12 through 16 into evidence.

22 THE COURT: Any objection?

23 MR. CARPENTER: No, sir.

24 THE COURT: All right. Thank you.

25 (WHEREUPON, Defendant Exhibit Numbers 12 through 16

1 were admitted into evidence.)

2 Q. And how do you maintain your white vinyl fencing,
3 ma'am, on your property?

4 A. Usually once a year we would have it steamed.

5 Q. Okay. Let me show you Defense Exhibit 18, ma'am, if
6 you can look at that.

7 A. Yes. This is typical.

8 MR. CARPENTER: Can I look at these first?

9 THE COURT: Certainly.

10 MR. HENRIKSON: Sorry.

11 MR. CARPENTER: Can I look at those first?

12 MR. HENRIKSON: Again? Because you saw them
13 earlier today. You're welcome to see them again.

14 MR. CARPENTER: Just like you wanted to look at
15 mine again.

16 Q. So this is Exhibit 18?

17 A. Uh-huh (affirmative).

18 Q. I'm just going to ask you, do you recognize that
19 fence?

20 A. Yes. It's part of our white vinyl fencing that needs
21 cleaned.

22 Q. Okay. And that's fencing that you own?

23 A. It needs cleaned; yes.

24 Q. Ma'am, would you please answer the question?

25 A. Yes.

- 1 Q. Do you own that fence?
- 2 A. Yes, I do.
- 3 Q. And ---
- 4 A. Well, from this picture I assume that I do; yes.
- 5 Q. All right. And would you agree that white vinyl
- 6 fencing can look like that if it's not maintained properly?
- 7 A. It can.
- 8 Q. Okay. And do you believe that that's in good
- 9 condition?
- 10 A. It needs cleaned.
- 11 Q. Do you think that's in good condition?
- 12 A. In good condition other than needing cleaned.
- 13 Q. Okay. So it's in good condition but it's ---
- 14 A. It's not falling down. It's not rotting. It's not
- 15 leaning. It just needs cleaned.
- 16 Q. It would be very helpful to the court reporter if I
- 17 could get the question out ---
- 18 A. Okay.
- 19 Q. --- and then you can answer it.
- 20 A. All right. Sure.
- 21 Q. Great. Do you think that is an acceptable appearance
- 22 for a fence?
- 23 A. I would rather for it to be cleaned.
- 24 Q. So the answer is no? You think it is not acceptable
- 25 appearance for a fence?

- 1 A. Well, I don't think it's preferable.
- 2 Q. I didn't ask you about -- is that an acceptable ---
- 3 A. It would be acceptable to me.
- 4 Q. Ma'am, can I get the question out, please?
- 5 A. Oh, yes, I'm sorry.
- 6 Q. Is that an acceptable appearance for the fence?
- 7 A. No.
- 8 Q. Okay. And if the fence looks like that, do you
- 9 believe that that adds value or detracts value from
- 10 surrounding property?
- 11 A. This little section of where this photograph is taken
- 12 is down by the woods and there's only like four sections
- 13 there and it has not been cleaned. So I would have to say
- 14 that it needs cleaned and it should be.
- 15 Q. And it detracts from the value of the property when
- 16 you don't ---
- 17 A. Well, these four sections do, but the rest of it does
- 18 not.
- 19 Q. All right. Let me try to get the question out again.
- 20 A. Uh-huh (affirmative).
- 21 Q. You would agree that it detracts from the value of the
- 22 property when it looks like that?
- 23 A. Those four sections do; yes.
- 24 Q. And do you know what the fencing looked like that Ms.
- 25 Lanier took down?

- 1 A. I know that it did need cleaning.
- 2 Q. Because it looked like that; didn't it?
- 3 A. Not that extreme; no.
- 4 Q. It looks like it was dirty and needed to be ---
- 5 A. Needed to be cleaned.
- 6 Q. It was dirty -- may I please ask the question?
- 7 A. Uh-huh (affirmative).
- 8 Q. It was dirty and it needed to be cleaned ---
- 9 A. Yes, it did.
- 10 Q. --- at the time that she took it down ---
- 11 A. Yes.
- 12 Q. --- because you let it look like that?
- 13 A. Well, she ---
- 14 Q. Yes or no?
- 15 A. Yes.
- 16 Q. Thank you. And Exhibit 17, is this also on your
- 17 property?
- 18 A. Yes.
- 19 Q. That doesn't appear to be by the woods; does it?
- 20 A. Well, there's woods overhanging it; yes. You just
- 21 don't see it in this picture.
- 22 Q. That also needs cleaning; doesn't it?
- 23 A. Yes. I have no objection saying that a lot of this
- 24 fencing needs cleaning. Yes, it does.
- 25 Q. And it's difficult to maintain white vinyl fencing?

- 1 A. No, it's not, if you hire someone or you get out
2 yourself and have a smaller amount and you're healthy and
3 you clean it.
- 4 Q. It takes effort and money; you would agree?
- 5 A. It takes effort and some money; yes, uh-huh
6 (affirmative).
- 7 Q. I would move these exhibits into evidence, 17 and 18.
- 8 MR. CARPENTER: No objection.
- 9 (WHEREUPON, Defendant Exhibit Numbers 17 and 18 were
10 admitted into evidence.)
- 11 Q. Now originally, ma'am, before you began to subdivide
12 this, your original intent was to make it kind of like a
13 subdivision with a homeowner's association and all that?
- 14 A. Not necessarily; no.
- 15 Q. But you had that idea or at least you had that
16 available to you in the restrictive covenants?
- 17 A. I was advised in the covenants that it would be a nice
18 idea to have a homeowner's option if we wanted to.
- 19 Q. Let me show you what's been marked as Defense Exhibit
20 2 and ask you if you recognize this document?
- 21 A. Okay. These appear to be the covenants that Brian
22 Ponder initiated.
- 23 Q. And those were filed; correct?
- 24 A. To my knowledge they were filed; yes.
- 25 Q. Well, let's look at them. They appear to have been

1 filed in book 1909, page 304?

2 A. Uh-huh (affirmative). That's what it says.

3 Q. And so these are in the Greenville County Register of
4 Deeds Office. This is what's on file in the deeds office;
5 correct?

6 A. To my knowledge.

7 Q. Okay. Now, if you ---

8 MR. HENRIKSON: Do you have Plaintiff's Exhibit 1?

9 THE WITNESS: Can I help you find something?

10 MR. HENRIKSON: I'm trying to find Plaintiff's
11 Exhibit 1?

12 THE WITNESS: Right here?

13 MR. HENRIKSON: That's it. Yes, ma'am. Thank
14 you.

15 Q. So if you look at the first page of Plaintiff's
16 Exhibit 1, and this is the title to real estate for one of
17 the purchases to Ms. Lanier. Which tract was this? Is this
18 the first one?

19 A. This was the first one; yes.

20 Q. She paid just under a hundred and forty-five thousand
21 dollars for eleven acres; is that correct?

22 A. That's correct.

23 Q. All right. And it indicates that this conveyance is
24 made subject to any restrictions, reservations, zoning
25 ordinances, etcetera. Specifically to those restrictions

- 1 contained in Exhibit A attached hereto.
- 2 A. Uh-huh (affirmative).
- 3 Q. And there's an Exhibit A; correct, that's entitled
- 4 restrictions?
- 5 A. I see there is; yes.
- 6 Q. Okay. And if you'll look, please, ma'am, on the third
- 7 page of the restrictions, which is the last page of the deed
- 8 under ---
- 9 A. On this that you just gave me?
- 10 Q. Yes, ma'am. Exhibit ---
- 11 A. Where would you like me to look?
- 12 Q. --- 1. Very last page. And under 2.8, grantor
- 13 approval of plans. Do you see that?
- 14 A. No.
- 15 Q. Very last page.
- 16 A. Of which? This? Or of the latest that you handed me?
- 17 Q. Of Exhibit 1?
- 18 A. Oh, Exhibit 1, this ---
- 19 Q. It's the deed.
- 20 A. Yes. Okay.
- 21 Q. All right.
- 22 A. All right.
- 23 Q. Last page. It says 2.8, grantor approval of plans; is
- 24 that correct?
- 25 A. Yes.

1 Q. Okay. Now, that language does not appear in the
2 original covenants, which is Defense Exhibit 2; is that
3 correct?

4 A. It may not. It was updated.

5 MR. HENRIKSON: And so I would move Defense
6 Exhibit 2 into evidence.

7 THE COURT: Let me ask just for my own
8 information. At the time of the purchase by the defendant,
9 which set of covenants were of record?

10 MR. HENRIKSON: These, Your Honor. Exhibit 2 is
11 the only thing that was of record.

12 THE COURT: Mr. Carpenter, do you agree with that?

13 MR. CARPENTER: She testified that both sets were
14 of record as far as she knew, both the original and the
15 later ones.

16 THE COURT: Well, I mean, it ought to be a pretty
17 black and white answer. What was of record at the time
18 Plaintiff's 1 was filed?

19 MR. HENRIKSON: If I can just tell you. The
20 second set of covenants are not filed on record. They
21 appear only in deeds given to Mrs. Lanier. None of the
22 other property owners have these same restrictions; only Ms.
23 Lanier.

24 THE WITNESS: They have the covenants.

25 MR. HENRIKSON: They are not of record.

1 THE WITNESS: I'm sorry.

2 MR. CARPENTER: We disagree with their assessment.

3 THE COURT: Well, that's the first time I've heard
4 of that. So go ahead.

5 (WHEREUPON, Defendant Exhibit Number 2 was admitted
6 into evidence.)

7 Q. So I just want to make sure. Then the language that
8 appears in this first deed to Ms. Lanier, 2.8, approval of
9 grantor, does not appear in the originally filed covenants
10 and restrictions; is that correct?

11 A. I would have to read through them and spend quite a
12 while.

13 Q. Okay. You can do that.

14 A. No owner of tract or parcel, without the prior written
15 approval of owner may impose additional covenants or
16 restrictions. Is that what you're referring to?

17 Q. No, ma'am. I was referring to 2.8 ---

18 A. Uh-huh (Affirmative).

19 Q. --- which appears in Ms. Lanier's deed ---

20 A. Oh, okay.

21 Q. --- does not appear ---

22 A. The updated ones. Okay. Yes, hh-huh (affirmative).

23 Q. Does not appear in Exhibit 2; ---

24 A. Yes.

25 Q. --- is that correct?

- 1 A. Uh-huh (affirmative).
- 2 Q. And when you say updated, you have a set of the
- 3 updated restrictive covenants that are on file with the
- 4 Greenville County Register of Deeds that are separate from
- 5 the restrictive covenants that were added to Mrs. Lanier's
- 6 deed?
- 7 A. To my knowledge they were.
- 8 Q. No, ma'am. That wasn't the question.
- 9 A. Oh.
- 10 Q. Do you have a copy of it?
- 11 A. I do have copies of them. I've given them to every
- 12 homeowner on the property.
- 13 Q. No, ma'am. Filed in this county ---
- 14 A. Yes. To my knowledge they're filed in this county.
- 15 Q. Did you give a set to your lawyer?
- 16 A. He should have a set.
- 17 Q. I'm asking, did you give them to your lawyer?
- 18 A. I gave him the covenants. That's all I can tell you.
- 19 Q. Because we're here today because you've brought a
- 20 lawsuit ---
- 21 A. Uh-huh (Affirmative).
- 22 Q. --- based on these covenants that are attached to Ms.
- 23 Lanier's deed. Isn't that why we're here today?
- 24 A. We're here for the covenants attached to her filing
- 25 the covenants; yes.

1 Q. Okay. And one of them, the -- one of them has to do

2 -- 1.4 is in Exhibit 2; right? About fences?

3 A. Yes. The vinyl fencing is in there; yes.

4 Q. Okay. But the 2.8, which appears in Ms. Lanier's
5 deeds does not appear in Exhibit 2. You admitted to that?

6 A. Yes. Uh-huh (affirmative).

7 Q. So my question is, if we're here today and you're
8 suing on this second set of restrictions and you claim that
9 they were filed in the -- with the register of deeds, why
10 don't we have a copy of this second set that is on file and
11 has a file and date stamp like we do for the first ones?

12 A. I don't have the answer to that. I just have the
13 first covenants in hand.

14 Q. Okay. Because the only time that those extra
15 covenants have ever been filed were as part of Mrs. Lanier's
16 deed; isn't that correct?

17 A. Not to my -- well, not to my knowledge.

18 Q. You don't know anything else -- you have no other
19 knowledge as to whether they ---

20 A. I do not. I was told they were filed. Yes.

21 Q. Regardless of what you were told, ma'am, you're here
22 today suing on covenants that you say were filed with the
23 ROD, the Register of Deeds, but you don't have a copy of
24 anything else filed with the Register of Deeds regarding
25 covenants other than what is attached to Ms. Lanier's deeds;

1 is that correct?

2 A. What I'm here today is to enforce the covenants that
3 are attached to her deed.

4 Q. You need to answer the question. That's the other
5 part about that.

6 A. Oh.

7 Q. And the question is, you do not have a set of this
8 updated covenants which were filed with the Register of
9 Deeds in Greenville County other than that which is an
10 exhibit to Mrs. Lanier's deeds; isn't that correct?

11 A. I have them in my filed.

12 Q. Let's get them.

13 A. I think I brought them with me.

14 MR. HENRIKSON: Your Honor, may the witness find
15 those documents?

16 THE COURT: Certainly. Yes, ma'am.

17 Mr. Carpenter, can you assist her in that?

18 MR. CARPENTER: All right.

19 MR. HENRIKSON: Your Honor, can we take a short
20 restroom break while she does that?

21 THE COURT: You can go out right now and come
22 right back.

23 MR. HENRIKSON: Thank you. I will, Judge.

24 THE COURT: We need to move this thing along.

25 THE WITNESS: May I?

1 THE COURT: Yes, ma'am. You can come back to the
2 witness stand.

3 THE WITNESS: Your Honor, would it help ---

4 THE COURT: I'm sorry. We can't have any
5 discussions while the other attorney is out of the
6 courtroom.

7 THE WITNESS: May I discuss with my attorney
8 something?

9 THE COURT: No, ma'am.

10 THE WITNESS: Okay.

11 MR. HENRIKSON: Your Honor, thank you for that
12 indulgence.

13 THE COURT: Yes, sir.

14 Q. Any luck?

15 A. No. I have them in my email.

16 Q. Oh, in your email; okay.

17 A. But I did not ---

18 Q. Don't have them here today?

19 A. --- bring them.

20 Q. Okay. So let me show you Defense Exhibits 1 and 2.

21 There were two deeds to Ms. Lanier, and both of them have
22 the same Exhibit A; is that correct?

23 A. To my knowledge. I would have to look at them to see.

24 Q. Okay.

25 A. I left that up to the closing attorneys.

1 Q. All right. Let me show you ---
2 A. And the Realtors.
3 Q. --- this document which I thought had been marked
4 previously. This is the second deed; ---
5 A. Uh-huh (affirmative).
6 Q. --- correct, to Ms. Lanier?
7 A. Yes.
8 Q. Take a moment to look at that.
9 A. Yes.
10 Q. And I will represent to you, ma'am, that -- I
11 momentarily lost track of it -- this is Defense Exhibit 6.
12 A. Uh-huh (affirmative).
13 Q. And this is the 10.3 acre tract for which ninety-four
14 thousand five hundred dollars was paid; is that right?
15 A. That's what I have in my hand.
16 Q. Exchange that if you will, please?
17 A. Exchange it?
18 Q. Yes, ma'am.
19 A. Okay.
20 MR. HENRIKSON: I would move Defense Exhibit 6 and
21 Defense Exhibit 1 into evidence.
22 THE COURT: What's Defendant's 1?
23 MR. HENRIKSON: Defendant's 1 is the first deed
24 that we've been talking about. I think it's the same as
25 Plaintiff's 1.

1 THE COURT: All right.

2 (WHEREUPON, Defendant Exhibit Numbers 1 and 6
3 were admitted into evidence.)

4 Q. So Exhibit 6, that's the second piece of property that
5 was sold on November 14, 2016; is that correct?

6 A. Yes.

7 Q. Okay. And that also has the Exhibit A which is the
8 same Exhibit A that exists in the previous deed to Ms.
9 Lanier; correct?

10 A. It appears to be; yes.

11 Q. Okay. And that has the language that we'll talk about
12 in a few minutes about the walls, fences and hedges and also
13 about the 2.8, grantor approval of plans; correct?

14 A. Uh-huh (affirmative).

15 Q. You're saying yes?

16 THE COURT: You need to say yes or no.

17 A. Yes. I'm sorry.

18 THE COURT: That just helps my court reporter be
19 able to clearly get what the answer is.

20 THE WITNESS: I understand.

21 THE COURT: Thank you.

22 Q. Ma'am, you would agree, wouldn't you, that in a
23 situation where you have numerous homeowners governed by
24 covenants and restrictions that in fairness and in equity
25 that the restrictions should apply to all property owners or

- 1 to none of them. Wouldn't you agree with that?
- 2 A. I would agree.
- 3 Q. Okay. Thank you. Now, when you had a conversation
4 with Ms. Lanier about the fence did you give her a phone
5 call?
- 6 A. Yes, I did.
- 7 Q. Okay. And in that phone call you asked her why she
8 was taking the fence down?
- 9 A. Yes, I did.
- 10 Q. And isn't it true that you told her that -- you said I
11 guess you can take the fence down if you want to because
12 it's your property, but I don't know why you're doing it?
- 13 A. I don't recall that I said those words in that manner.
- 14 Q. Do you deny that you said that?
- 15 A. I don't recall that I said those words in that manner.
- 16 Q. Do you deny that you said she could take down ---
- 17 A. I can't confirm or deny. I don't recall.
- 18 Q. Okay. So you can't deny it; right? And you can't
19 confirm it?
- 20 A. Right.
- 21 Q. Okay. You don't recall that phone conversation?
- 22 A. That's right.
- 23 Q. All right.
- 24 A. Well, I recall the phone conversation.
- 25 Q. Do you recall at that time objecting to her in any way

1 of taking the fence down?

2 A. Would you repeat that, please?

3 Q. Yes, ma'am. At any time when you had that
4 conversation or communicated with her about the fence coming
5 down did you ever object to the fence coming down and tell
6 her, hey, you can't take the fence down? Did you ever tell
7 her that?

8 A. I told -- I referred to the covenants and told her
9 that it was not permissible for her.

10 Q. To do what?

11 A. To remove the -- to change the fencing.

12 Q. Did you specifically tell her that she could not take
13 the fence down?

14 A. I don't recall if I used those words, sir.

15 Q. In fact, you do remember telling her that the fence
16 was on her property and she could take it down if she wanted
17 to, but if she put up new fence it had to be white vinyl
18 fencing; isn't that what you told her?

19 A. I don't recall that.

20 Q. Okay. Do you deny that?

21 A. I don't recall it.

22 Q. Do you deny it; yes or no?

23 A. I just don't recall.

24 Q. No, ma'am. Do you deny it; yes or no?

25 A. No.

1 Q. You don't deny that. All right. And then also you
2 communicated to her by email, and at no time when you
3 communicated with her by email did you tell her that she did
4 not have the right to take the fence down; isn't that
5 correct?

6 A. I don't recall.

7 Q. Okay.

8 MR. HENRIKSON: I didn't know I was going to use
9 this, Your Honor, but here's a -- let me show you what I
10 would mark as Defense Exhibit 19.

11 (WHEREUPON, Defendant Exhibit Number 19 was marked for
12 identification.)

13 Q. Let me show you Defense Exhibit 19, ma'am, and ask you
14 to take a look at that.

15 A. Okay.

16 Q. Does this appear to be an email that you sent to
17 Jackie Lanier ---

18 A. I did.

19 Q. --- on November 28, 2016 at 3:18 p.m.?

20 A. Appears to be; yes.

21 Q. And you say, Hey, Jackie, it's been brought to my
22 attention that you are removing the white vinyl fencing on
23 the property you purchased from me. According to the
24 covenants you are only permitted to reinstall like fencing
25 which means white vinyl.

1 A. Uh-huh (affirmative).

2 Q. At this point I have no idea why you are removing it,
3 but felt it important to tell you -- to let you know that
4 any replacement must be the same. If you have any
5 questions, feel free to call me. Is this an email you sent
6 to her?

7 A. It appears to be; yes.

8 Q. Okay.

9 MR. HENRIKSON: I would move that into evidence,
10 Your Honor, as Defense 19.

11 THE COURT: All right.

12 (WHEREUPON, Defendant Exhibit Number 19 was admitted
13 into evidence.)

14 Q. And at no point in this email, Defense 19, did you
15 ever tell her she didn't have the right to take it down or
16 it was a violation of the covenants to take it down. You
17 didn't refer her to the covenants. You simply told her, I
18 don't know why you're taking that down, but whatever you put
19 up has to be white vinyl fencing. Isn't that what you told
20 her, ma'am?

21 A. I refer to, according to the covenants, in this email.

22 Q. Isn't that what you told her, ma'am? You told her
23 white vinyl fencing. You don't even say the word covenants
24 in this email; do you?

25 A. Yes, I do. According to the covenants.

1 Q. Okay. But you told her white vinyl fencing is what
2 she had to put up?

3 A. Yes.

4 Q. And you never told her that you had any objection to
5 her taking the fence down; isn't that right?

6 A. I did not state that in this email.

7 Q. Okay. And you don't deny -- or you don't remember
8 saying it in the phone conversation?

9 A. I do not recall.

10 Q. Okay. And so you sold this property to her; correct,
11 and you received probably about two hundred fifty thousand,
12 two hundred forty-five thousand dollars total for this
13 property; correct?

14 A. Yes.

15 Q. Okay. And if you had wanted to you could have not
16 sold her the property with the fence on it? You could have
17 kept the property with the fence; isn't that correct?

18 A. It would have been unlikely. I could have.

19 Q. You could have. And also you could have reserved the
20 right to have the fence stay exactly like it was as part of
21 the deed; isn't that correct?

22 A. I felt I did.

23 Q. Well, with the restriction -- we'll talk about that in
24 a second. But you could have kept possession of the fence;
25 couldn't you, if you had wanted to?

1 A. Along the front of her property, I could have kept a
2 strip.

3 Q. You chose not to?

4 A. Didn't feel the need.

5 Q. That does not answer the question.

6 A. Yeah.

7 Q. You chose not to, ma'am; isn't that right?

8 A. Yes.

9 Q. Okay. And you were upset when you learned that she
10 was taking her fence down; isn't that right?

11 A. Of course; yes.

12 Q. Because you and your husband had spent a lot of money
13 putting the fence up?

14 A. That was one reason.

15 Q. Isn't that really why we're here today, because you're
16 upset because you spent a lot of money on that fence and she
17 took it down and you just don't like it?

18 A. No, sir.

19 Q. Are you sure?

20 A. Uh-huh (affirmative).

21 Q. Are you saying yes?

22 A. That's not the only reason.

23 THE COURT: Answer yes or no, please, ma'am.

24 A. Would you ask the question again, please?

25 Q. Yes, ma'am, I will. Isn't one of the real reasons

1 that we're here today because you're just upset that she
2 tore down a fence that you spent so much money to build and
3 she tore down part of it and that you want to try to make
4 her put it back up because you're just mad because she took
5 the fence down that you paid for? Isn't that really one of
6 the big reasons why we're here today?

7 A. Yes.

8 Q. Sorry?

9 A. Yes.

10 Q. Okay. Thanks. I appreciate your honesty.

11 A. You're welcome.

12 Q. Let's look at the second set of covenants, if you
13 will, ma'am, if you can look on any one of those exhibits
14 that has a restriction Exhibit A?

15 A. Uh-huh (affirmative).

16 Q. This language ...

17 MR. HENRIKSON: Does the Court have the language?
18 Do you have the exhibit or would you like a copy as we go?

19 THE COURT: No, I don't have the exhibit unless
20 one of y'all gave it to me.

21 MR. HENRIKSON: If I can give you ---

22 THE COURT: I have the respective briefs.

23 MR. HENRIKSON: Okay. We're talking about the
24 specific language which I think everyone agrees has been
25 taken from the briefs.

1 THE COURT: All right.

2 Q. 1.4, it says walls, fences and hedges.

3 A. Uh-huh (affirmative).

4 Q. And the language is, any fence placed on any tract or
5 parcel shall be comparable in style and constructive
6 material to a fence presently located on the boundary of the
7 real property. And then in parenthesis it says, white vinyl
8 fencing, end parenthesis, period; is that correct?

9 A. It does say that.

10 Q. And so you are allowing for a different fence to be
11 erected; right? Not just white vinyl fencing?

12 A. No.

13 Q. You're not? All right. Comparable in style doesn't
14 mean exactly in style; does it?

15 A. No.

16 Q. Comparable in style is something other than exactly in
17 style; isn't that correct?

18 A. Yes.

19 Q. But it's your position here today that you have
20 maintained at the beginning of the case in your Complaint,
21 that the only fence that can exist on this property is white
22 vinyl fencing. Isn't that your position?

23 A. That's my position.

24 Q. Okay. Well, in 1.4 why didn't you just say you have
25 to have white vinyl fencing in your -- on your property?

1 You could have said that; couldn't you?

2 A. Of course, I could have.

3 Q. But you didn't?

4 A. I defined it.

5 Q. If you wanted to -- well, no, ma'am, you didn't. So
6 the answer is yes or no; not a comment.

7 MR. CARPENTER: Objection, Your Honor. He's
8 arguing with the witness.

9 THE COURT: I sustain the objection.

10 MR. HENRIKSON: Thank you.

11 Q. You did not use that language; did you?

12 A. Which language?

13 Q. The language -- you could very easily, under 1.4, have
14 said all fencing on this property must be white vinyl
15 fencing. You could have said that; right?

16 A. Yes, I could have.

17 Q. Okay. And you did not?

18 A. For reasons, I did not.

19 Q. And in fact, that would have been the simplest way to
20 convey what you think is what the covenants require, which
21 is white vinyl fencing; isn't that right? That would have
22 been the simplest way to convey that thought?

23 A. If that was the only thought; yes.

24 Q. And you didn't express any other thoughts in the
25 covenants; did you?

1 A. Well, I did as far as constructive material to the
2 fence presently located comparable in style.

3 Q. So you're comparing that -- the white vinyl fencing is
4 there to show what you want it to be compared to; isn't that
5 right?

6 A. Well, it is.

7 Q. All right. And so this -- 1.4 itself contemplates
8 that somebody can remove what is there and replace it with
9 something which is comparable in style and constructive
10 material to the white vinyl fencing even if it isn't white
11 vinyl fencing; isn't that right?

12 A. I don't see how it could be.

13 Q. How could it not be?

14 A. Because the material is an important part of this and
15 fencing people want to put around swimming pools is an
16 important part of this conversation. And white vinyl
17 fencing is white vinyl fencing. It's not -- the
18 constructive material -- wooden and vinyl are not the same.

19 Q. Well, that's an excellent point. I'm glad you brought
20 that up. If you believe this -- if this applies to
21 everything then you would have to have white vinyl fencing
22 around your pool; wouldn't you, because that's what you're
23 saying?

24 A. No. Exceptions may be granted.

25 Q. Okay. It doesn't say that in the original covenants;

1 does it?

2 A. I'm not sure if it does or not in the original
3 covenants. It's been a long time since I've looked at them.

4 Q. Well, it wasn't five minutes ago in Exhibit 2. You
5 can look in Exhibit 2.

6 MR. CARPENTER: I borrowed it during the break.

7 THE WITNESS: I was going to say, I don't see it
8 here.

9 Q. If you look at the language that is walls, fences and
10 hedges, exceptions may be granted by grantor is not in the
11 original; isn't that right?

12 A. As soon as I find it, I will answer. It just states
13 white vinyl fencing.

14 Q. Okay. And again, that's in parenthesis even in that
15 one; right?

16 A. That's correct. Parenthesis is to define it; yes.

17 Q. Now, you would agree, wouldn't you, ma'am, that a
18 reasonable person reading this could come to the conclusion
19 that white vinyl fencing is not required but rather
20 something that is comparable in style and constructive
21 material, to a fence which just happens to be white vinyl
22 fencing; isn't that true?

23 A. I do not agree with that statement.

24 Q. So you think that no reasonable person could read 1.4
25 and think that something other than white vinyl fencing is

1 allowable under this language. Is that your testimony
2 today?

3 A. Yes, it is.

4 Q. Okay. Let's look at 2.8. This is the language that
5 does not appear in the original covenants ---

6 A. In the updated.

7 Q. --- and so far today, based on what we've been able to
8 find appears only in Mrs. Lanier's deeds, this is grantor
9 approval of plans. And there was no such similar language
10 in the first covenants and restrictions; is that correct?

11 A. No.

12 Q. Is that not correct?

13 A. Oh, yes.

14 Q. So the 2.8, grantor approval of plans, similar
15 language does not appear in the original covenants; do we
16 agree on that?

17 A. Yes.

18 Q. Okay. Now here the language is no landscaping,
19 building, fence, wall or other structure shall be commenced,
20 erected, maintained. And then it says, all subsequent
21 reconstruction, modifications, additions or alterations.
22 That refers to new construction that is being made. Isn't
23 that what that refers to because it says the word
24 subsequent?

25 A. Yes.

1 Q. And so we know that the -- all subsequent
2 reconstruction, modifications, additions and alterations
3 refer to new construction; something that's constructed
4 after the purchase of the property; isn't that right?

5 A. If it's subsequent.

6 Q. Okay. And this would have been a subsequent change,
7 the removal of the fence, that was a subsequent change;
8 correct? Or that was not a subsequent change because that
9 already existed. That was not new construction?

10 A. That was not new construction.

11 Q. Okay. And in here you indicate that no exterior
12 addition to or change or alteration therein -- again, this
13 is to new construction that is subsequent; right, because
14 the word subsequent is in there. Do you agree?

15 A. Subsequent. Yes.

16 Q. Yes. Okay. Shall be made -- therein be made until
17 the plans and specifications showing the nature, kind,
18 shape, height, materials and location of the same shall have
19 been submitted to and approved in writing. Isn't that what
20 that language is?

21 A. As to primary external design.

22 Q. So in describing an exterior addition that describes
23 literally every aspect except color; right? You didn't put
24 color in 2.8; did you?

25 A. I don't see it in 2.8.

1 Q. Okay. If you had wanted to put color in there, you
2 could have; right?

3 A. Sure.

4 Q. Okay. But you did not?

5 A. No.

6 Q. Okay. So somebody reading this would think that color
7 is not something that has to be submitted for
8 specifications; isn't that right?

9 A. Under this; yes.

10 Q. Okay. The other thing, if you'll look at the very
11 end, you indicate that the grantor shall have the right to
12 refuse to approve any such building plans, specifications,
13 site plans -- whatever may be under the subsequent language
14 that we just talked about -- which are not suitable or
15 desirable in the grantor's sole opinion for any reason.
16 That's what it says?

17 MR. CARPENTER: Objection. He only read part of
18 the sentence, Your Honor.

19 MR. HENRIKSON: I'll read all of it.

20 Q. The grantor shall have the right to refuse to approve
21 any such building plans, specifications, site plans,
22 landscaping or grading plans which are not suitable or
23 desirable in the grantor's sole opinion for any reason,
24 including pure aesthetic reasons. Is that the whole
25 sentence?

1 A. Yes.

2 Q. Okay. And so you reserved for yourself the right to
3 deny any request for any reason; isn't that correct?

4 A. Yes.

5 Q. Okay. And any reason includes all reasons; good
6 reasons, bad reasons, fair reasons, unfair reasons? When
7 you use the word any, that means the whole spectrum of any
8 reason or no reason at all; isn't that right?

9 MR. CARPENTER: Objection.

10 THE COURT: On what basis?

11 MR. CARPENTER: He's misstating what the standard
12 says and he's not -- it's just a mischaracterization of what
13 this says.

14 THE COURT: All right. Overruled.

15 Q. When you say for any reason, that includes -- it could
16 include good reasons, bad reasons, fair reasons, unfair
17 reasons or no reason at all; ---

18 A. Could include any reason.

19 Q. --- isn't that correct?

20 A. Could include any reason.

21 Q. And no reason at all; isn't that correct?

22 A. I suppose.

23 Q. All right. Thank you. Now, the parcels -- two of the
24 parcels that you sold were less than four acres; is that
25 correct? Do you recall selling two parcels less than four

1 acres?

2 A. Yes.

3 Q. And the original covenants indicated that parcels
4 could not be sold in sizes less than four; is that right?

5 A. Yes.

6 Q. All right. And so if the -- and those deeds that the
7 -- where you sold those parcels, those deeds did not include
8 the second set of restrictions; did they?

9 A. They did. They were given to the homeowners.

10 Q. No, ma'am. The deeds that were filed in the Court at
11 the Register of Deeds did not include those restrictive
12 covenants; did they?

13 A. I've not seen the deed; their deeds.

14 Q. Okay. Let me show you Defense Exhibit Number 3. And
15 this is a deed to Daniel and Gloria Cernoch. Is Ms. Cernoch
16 outside waiting?

17 A. Yes, she is. Uh-huh (affirmative).

18 Q. Okay. And Exhibit Number 4 which is a deed to Jason
19 and Wanda Sisk?

20 A. Uh-huh (affirmative).

21 Q. Exhibit 5, which is a deed to Eugene and Cynthia
22 Mulligan.

23 A. They no longer live there.

24 Q. And this is to Robin Riddle?

25 A. That's my husband's daughter who has moved.

1 Q. Okay. And that's Exhibit 17 and Exhibit -- I'm sorry
2 -- Exhibit 5 and Exhibit 7. So we have 3, 4, 5 and 7. And
3 would you take a look at those?

4 A. Uh-huh (affirmative).

5 Q. Do those appear to be deeds that you have given to
6 other property owners other than Ms. Lanier?

7 A. We have sold property to these owners; yes.

8 Q. Okay. And none of those deeds have the same second
9 set of restrictive covenants that Ms. Lanier has; do they?

10 A. It doesn't appear that they're attached to the deed.

11 They were given to them.

12 Q. And as we sit here today, you don't have any evidence
13 that they were ever filed in the ROD office other than as
14 attached to Ms. Lanier's property; is that right?

15 A. All I can say is I was told they were.

16 Q. Okay.

17 (WHEREUPON, Defendant Exhibit Numbers 3, 4, 5 and 7
18 were admitted into evidence.)

19 MR. HENRIKSON: One second, Your Honor, please.

20 Your Honor, I don't think I have any other questions at
21 this time. Thank you.

22 THE COURT: All right, Mr. Carpenter.

23 **REDIRECT EXAMINATION**

24 **BY MR. CARPENTER:**

25 Q. Ms. Boies, do you still have a copy of Exhibit A, the

1 restrictive covenants, up there that are attached to the
2 deed of the I guess would be pages 3, 4 and 5 of Exhibit 1?

3 A. Somewhere I do. Yes, I do.

4 Q. If you'll look at paragraph 2.8.

5 A. Under Exhibit A?

6 Q. Yes. 2.8 has to do with the grantor approval of
7 plans; is that right?

8 A. Yes.

9 Q. Okay. And one of the things it discusses is
10 modifications and alterations, if you look at the third line
11 of paragraph 2.8.

12 A. Yes.

13 Q. Is that right?

14 A. I see that.

15 Q. Is tearing out a fence a modification or alteration?

16 A. I would consider it to be.

17 Q. And was that a modification or alteration that should
18 have been submitted to and approved in writing to you prior
19 to that being done?

20 MR. HENRIKSON: Objection. Leading, Your Honor.
21 He's just testifying for the witness.

22 THE COURT: Sustain the objection.

23 Q. All right. What is required for a modification or
24 alteration?

25 A. Submission requests be sent to me.

- 1 Q. In writing?
- 2 A. In writing; yes.
- 3 Q. All right. And how is the approval conveyed?
- 4 A. In writing.
- 5 Q. All right. Did you receive a request for this
- 6 modification or alteration that consisted of tearing out the
- 7 white vinyl fencing?
- 8 A. No, I did not.
- 9 Q. And you didn't give any approval in writing?
- 10 A. No, I did not.
- 11 Q. Now, the next paragraph you were asked about
- 12 extensively on cross examination. It reads, the grantor
- 13 shall have the right to refuse to approve any such building
- 14 plans, specifications, site plans, landscaping or grading
- 15 plans which are not suitable or desirable; is that right?
- 16 A. That's correct.
- 17 Q. Okay. In the grantor's sole opinion for any reason.
- 18 Now, did you find the tearing out of the white fence not
- 19 suitable or desirable?
- 20 A. That's correct.
- 21 Q. Okay. And did your reasons for not agreeing with the
- 22 tearing out of the white vinyl fencing include purely
- 23 aesthetic reasons?
- 24 A. Yes.
- 25 MR. HENRIKSON: Your Honor, I need to object

1 because she has not testified that she disagreed with the
2 tearing out of the fence. In fact, she specifically denied
3 recalling any opinion about that. And so I would disagree
4 -- I would object to the fact not in evidence that he has
5 put into that question.

6 THE COURT: I think that goes more to weight than
7 admissibility. So overruled. You can go ahead.

8 MR. CARPENTER: Thank you, Your Honor.

9 Q. Did you -- when you found out the white vinyl fencing
10 was being torn out, did you find that suitable or desirable?

11 A. No.

12 Q. Did -- what were the reasons you found it not suitable
13 or desirable to tear out the white vinyl fencing?

14 A. It was changing the character of the entire landscape.
15 And also, I considered it to be in violation of the
16 covenants and the agreed-upon deed.

17 Q. And there's no question those restrictions about the
18 white vinyl fencing were attached to her deed -- both deeds;
19 right?

20 A. Yes. To my knowledge.

21 Q. And there's no question she knew that Exhibit A was
22 attached to her deed; is that correct?

23 A. That's correct.

24 Q. Now, -- excuse me just a second. You testified in
25 cross examination that you gave copies of the updated

1 restrictions to the other homeowners?

2 A. Yes.

3 Q. All right. How did you go about doing that?

4 A. Through my realtor.

5 Q. Your realtor delivered copies to them?

6 A. Yes, uh-huh (affirmative). At the time of closing.

7 Q. Okay. And did you convey or inform Ms. Lanier prior
8 to the purchase of either the first piece of property or the
9 second piece of property the existence and contents of the
10 updated covenants?

11 A. Yes, at the closing, I believe so.

12 Q. Did she know about them before the closing?

13 A. I cannot speak for her, but I made the effort to make
14 sure that she was aware; yes.

15 Q. Okay. And she went ahead and bought the property
16 anyway?

17 A. Yes.

18 Q. And those covenants apply not just to her property but
19 to the whole hundred and twenty-two acres?

20 A. Yes, they do.

21 Q. All right. Thank you.

22 A. Including mine.

23 **RECROSS EXAMINATION**

24 **BY MR. HENRIKSON:**

25 Q. Very briefly. In fact, you were very persistent about

1 reminding Ms. Lanier that she had to have these extra
2 Exhibit A restrictions on her two deeds; isn't that correct?
3 A. Not to my knowledge. I wasn't insistent. I just felt
4 that they should be attached.
5 Q. Okay. And do ---
6 A. My realtor advised that they should be attached and I
7 said, that's fine with me.
8 MR. HENRIKSON: Again, I would move to strike any
9 hearsay.
10 Q. You did not personally yourself deliver copies of
11 anything like Exhibit A to the other homeowners; did you?
12 A. I delivered the covenants.
13 Q. The covenants? You personally delivered them to the
14 other homeowners?
15 A. At the closing.
16 Q. At what closing?
17 A. At the closing for the other properties.
18 Q. Okay. And they were not attached to the deed like Ms.
19 Lanier's was?
20 A. I haven't seen those deeds, so I couldn't say whether
21 they were or not until today.
22 Q. Okay. So today, having seen the deeds ---
23 A. Today I see that they are not attached.
24 Q. Okay. They are not. But you did require Ms. Lanier
25 to attach them to her deed -- her two deeds; isn't that

1 correct?

2 A. That was correct.

3 Q. Okay. Now, Ms. Lanier did, in April -- in or about
4 April of 2017, she did submit a request to put dark wood
5 fencing and you denied that request; isn't that right?

6 A. I don't recall.

7 Q. Okay. That's all I've got. Thank you.

8 THE COURT: All right. Thank you, ma'am. You can
9 step down.

10 You can call your next witness.

11 MR. CARPENTER: We call Bob Boies.

12 MS. BOIES: Your Honor, may I take a restroom
13 break?

14 THE COURT: Oh, yes, ma'am. Certainly. Make sure
15 to clear that with Mr. Carpenter.

16 MS. BOIES: Oh, yes, sir.

17 THE COURT: Sir, if you'll come around to the
18 witness stand. If you'll place your left hand on the bible
19 and raise your right hand. Do you swear to tell the truth,
20 whole truth and nothing but the truth?

21 THE WITNESS: Yes, sir.

22 THE COURT: Come around and have a seat, please,
23 sir. And if you would state your full name.

24 THE WITNESS: Robert M. Boies.

25 ROBERT M. BOIES,

1 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MR. CARPENTER:**

4 Q. Mr. Boies, are you married to Debbie Boies?

5 A. Yes, I am.

6 Q. And you live up near Landrum in what's called horse
7 country?

8 A. Yes.

9 Q. Okay. Could you speak up a little bit?

10 A. Yes.

11 Q. Pull your microphone close or something. And how long
12 have you lived up there in horse country?

13 A. Thirty years.

14 MR. CARPENTER: I'm looking for the picture
15 exhibits. No, I mean plaintiff's exhibits.

16 MADAM COURT REPORTER: Did your client take them
17 with her?

18 MS. BOIES: Yes.

19 Q. I'd like to show you some pictures and ask if you can
20 tell me what these are; Exhibit 2?

21 THE COURT: Plaintiff's Exhibit 2; right?

22 Q. Plaintiff's Exhibit 2; yes. Thank you.

23 A. That's our horse barn.

24 Q. And did you have a role in installing the white
25 fencing that surrounds the property where you live?

1 A. Yes, I did.

2 Q. All right. Exhibits 3 through 12 I think have been
3 admitted already. Would you look at those and confirm that
4 those are pictures of your property?

5 A. Yes. That's our property.

6 Q. And do those pictures reflect the white vinyl fencing
7 that you installed?

8 A. Yes, sir.

9 Q. All right. And how did you go about installing that
10 white vinyl fencing? Did you do it yourself physically?

11 A. Yes.

12 MR. HENRIKSON: Your Honor, I just object. I just
13 don't see how this is relevant at all.

14 THE COURT: Where are we hearing with this?

15 MR. CARPENTER: I'm just going to get him to tell
16 me about, you know, the installation, why he put it in
17 there, what's good about it, and that sort of thing, how it
18 differs from the wood fencing and that sort of thing.
19 That's where I'm going with this.

20 THE COURT: All right. Let's move quickly through
21 it.

22 MR. CARPENTER: All right.

23 Q. Can you tell me what kind of fencing you bought to
24 install?

25 A. Well, it was the best qualify white plastic fencing

1 that I could buy.

2 Q. Okay. And is the fencing reinforced somehow?

3 A. Yes.

4 Q. How is it reinforced?

5 A. The rails have ribs running through it. It's not
6 hollow.

7 Q. Okay. And is this a premium quality vinyl?

8 A. Yes, sir.

9 Q. Okay. And you said it was the best kind you could buy
10 at that point?

11 A. At that point in time; yes.

12 Q. Okay. And approximately how much fencing did you
13 install?

14 A. Roughly two miles.

15 Q. Okay. And did that circumvent the entire hundred and
16 twenty-two acres?

17 A. Yes, sir.

18 Q. All right. Did it do anything else besides circumvent
19 it? Were there internal fences made out of the same white
20 vinyl fencing?

21 A. Yes.

22 Q. And did you make pastures and paddocks out of the
23 white vinyl fencing?

24 A. Yes.

25 Q. Okay. So in general terms would you say the whole

1 hundred and twenty-two acres was surrounded by the white
2 vinyl fencing?

3 A. Yes, sir.

4 Q. In your opinion does the white vinyl fencing add an
5 aesthetic, a desirable aesthetic, to the property?

6 MR. HENRIKSON: Objection, Your Honor. Cumulative
7 answer is irrelevant, his opinion about it. I don't think
8 he owns the property. I think he lives there occasionally.
9 But I would object to his opinion ---

10 THE COURT: Is he an owner?

11 MR. CARPENTER: Are you an owner of this property?

12 THE WITNESS: I live there. It's in my wife's
13 name.

14 Q. Okay. Have you ever had it in your name, as well?

15 A. No. It's always been in her name.

16 Q. Okay. How long have you lived there?

17 A. At this location seventeen years.

18 Q. Okay. All right. Does white vinyl fencing have
19 advantages over wood fencing?

20 A. Yes.

21 MR. HENRIKSON: Objection, Your Honor. No
22 foundation has been laid for a lay person to offer an
23 opinion; it's subjective. Not only that, it's not relevant.

24 THE COURT: All right. Overruled.

25 Q. Does white vinyl fencing have advantages over wood

1 fencing?

2 A. Yes, it does.

3 Q. And what would those advantages be?

4 A. One thing it doesn't rot. You don't have to paint it
5 or stain it. If a horse runs into it, a horse will bounce
6 off of it. It doesn't tear down the fence.

7 Q. A horse doesn't get splinters?

8 A. No.

9 Q. Is it easier to maintain than the wood fencing?

10 A. Oh, yes.

11 Q. Okay. So the upkeep is better?

12 A. Yes.

13 Q. What is the difference in appearance as far as the
14 quality of appearance between white vinyl fencing and wood
15 fencing?

16 A. To me it's night and day. I think white vinyl fencing
17 is much more appealing.

18 Q. Much more what?

19 A. Appealing.

20 Q. Okay.

21 MR. HENRIKSON: Again, Your Honor, this witness's
22 opinion as to whether he likes it or not simply isn't
23 relevant. He does not have any rights under the covenants
24 or restrictions.

25 THE COURT: All right. I think we are kind of

1 getting a little far afield.

2 MR. CARPENTER: Okay. Just a second, Your Honor.

3 Q. Have you had a role in keeping the fencing cleaned or
4 having it cleaned from time to time?

5 A. Yes.

6 Q. What has been, what has been your role in that?

7 A. I've had some people clean it. Other times I've
8 cleaned it. Take a pressure washer and just blow it off.

9 Q. And what's the effect of taking a pressure washer to
10 it?

11 A. Well, it gets a little blackish color and you just
12 pressure wash it and it turns bright white again.

13 Q. So it cleans up pretty easily?

14 A. Yes.

15 Q. Okay. And about how many times have you cleaned this
16 fencing?

17 A. Three times.

18 Q. Over the course of the fifteen, seventeen years you've
19 been there?

20 A. Fifteen, seventeen years; yes.

21 Q. Okay. All right.

22 MR. CARPENTER: That's all I have, Your Honor.

23 THE COURT: All right. Thank you.

24 Your witness.

25 CROSS EXAMINATION

1 BY MR. HENRIKSON:

2 Q. So your wife has owned the property since 1987; is
3 that correct?

4 A. '87? No..

5 Q. '97?

6 A. Maybe '97.

7 Q. All right. And when was the fencing put in?

8 A. Around 1999 to 2000.

9 Q. All right. So in eighteen years or so it's been
10 washed three times?

11 A. Uh-huh (affirmative).

12 Q. You're saying yes, sir?

13 A. Yes.

14 Q. And so if your wife testified it was every year or so,
15 that's inaccurate; right?

16 A. Probably so.

17 Q. Because eighteen divided by three is six; isn't that
18 correct?

19 A. Yeah.

20 Q. All right. And in fact, this is what part of your
21 fence looked like yesterday, Exhibit 18; isn't that right?

22 A. Yes.

23 Q. That's not acceptable; is it?

24 A. No.

25 Q. That's not what your fence should look like?

- 1 A. Needs to be done again. That's on the back side.
- 2 Q. All right. When was it last done? Five years ago?
- 3 A. About that.
- 4 Q. Okay. So it's looked like this for three or four
- 5 years; would you agree with that?
- 6 A. Two years.
- 7 Q. All right. That doesn't add value to the property;
- 8 does it, and the property around it?
- 9 A. Well, nobody can see it.
- 10 Q. Nobody can see that, is that what you're saying?
- 11 A. Nobody can see that ---
- 12 Q. Unless they're driving down the road?
- 13 A. Pardon?
- 14 Q. Unless they drive down the road?
- 15 A. Can't see it from the road.
- 16 Q. You can see that from the road; is that what you're
- 17 saying?
- 18 A. No, sir.
- 19 Q. All right. Now, there is dark wood fencing and dark
- 20 fencing all around your wife's property; isn't that right?
- 21 A. Yes.
- 22 Q. Okay. And when Mr. Carpenter refers to horse country,
- 23 horse country is not just your wife's original hundred and
- 24 twenty-two acres; isn't that right? Horse country is the
- 25 entire area around Landrum that has similar sized and used

1 properties; isn't that correct?

2 A. That's correct.

3 Q. In fact, you can't drive in any direction from your
4 house without seeing dark wood fencing; isn't that right?

5 A. You can see white and dark.

6 Q. You can see both, but you can see dark. In fact, it's
7 about fifty/fifty; isn't it?

8 A. Yes.

9 Q. Okay. And how much time do you and your wife spend
10 here in Landrum on this property?

11 MR. CARPENTER: Objection.

12 THE COURT: Unless you state a basis ---

13 MR. CARPENTER: Relevance. Relevance.

14 THE COURT: What's the relevance.

15 MR. HENRIKSON: Relevance is they're talking about
16 -- I think she's testified that her sensibilities were
17 offended by the fence there. I just want to find out how
18 much time they actually spend there.

19 THE COURT: Go ahead.

20 A. Probably up until last year we spent our full year
21 there. Last winter we -- let's see, we were gone maybe five
22 months last winter.

23 Q. Okay. And where have you lived the last three or four
24 months?

25 A. Here.

1 Q. And where else do you maintain homes?

2 A. In Folly Beach.

3 Q. Thank you, sir. I don't have any other questions.

4 THE COURT: Any other questions?

5 REDIRECT EXAMINATION

6 BY MR. CARPENTER:

7 Q. You've also built wooden fencing; is that right?

8 A. Yes, I have.

9 Q. Okay. And in your opinion the white vinyl is far
10 superior?

11 MR. HENRIKSON: Objection, Your Honor. For the
12 same reason as I objected before. Relevance and no
13 foundation.

14 THE COURT: For those bases overruled.

15 A. To me plastic fencing is a hundred percent better than
16 wood fencing.

17 Q. All right. Thank you.

18 THE COURT: All right. Thank you, sir. You can
19 step down.

20 Mr. Carpenter, you have one more witness?

21 MR. CARPENTER: Yes, sir.

22 THE COURT: How long do you anticipate that
23 witness?

24 MR. CARPENTER: Not long. I wouldn't think direct
25 would be more than five or ten minutes.

1 THE COURT: I'm fine if y'all want to take a ten
2 minute break now or if you want to do this last witness and
3 then take a ten minute break. Gentlemen?

4 MR. HENRIKSON: I'd as soon go forward now with
5 his witness.

6 THE COURT: All right. Call your next witness.

7 MR. CARPENTER: Gloria Cernoch.

8 THE COURT: If you would place your left hand on
9 the bible and raise your right hand, please. Do you swear
10 to tell the truth, whole truth and nothing but the truth?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Thank you. You can come around and
13 have a seat, please. And if you'll state your full name.

14 THE WITNESS: First name is Gloria; last name is
15 Cernoch.

16 MADAM COURT REPORTER: Could you spell your last
17 name, please?

18 THE WITNESS: C-e-r-n-o-c-h.

19 GLORIA CERNOCH,

20 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. CARPENTER:

23 Q. And where do you live?

24 A. 4659 Howe Road, Landrum.

25 Q. And where is that in relation to where Mr. and Ms.

1 Boies live?

2 A. I'm Ms. Boies's neighbor and right across from Ms.
3 Lanier.

4 Q. Okay. And is your property subject to the same
5 covenants that the property of Ms. Boies and Ms. Lanier is?

6 A. It is.

7 Q. Okay. Does your property have white vinyl fencing
8 around it?

9 A. It does.

10 Q. Did you know there was white vinyl fencing before you
11 bought it?

12 A. Yes.

13 Q. Was that something you considered an asset to the
14 property?

15 A. Absolutely; yes.

16 MR. HENRIKSON: Objection to relevance, Your
17 Honor. What this witness thought really is not relevant to
18 the issues that we have here.

19 THE COURT: Let me hear your thoughts on that, Mr.
20 Carpenter.

21 MR. CARPENTER: Your Honor, it's something that --
22 she's a member of the same group subject to the covenants.
23 I'm trying to establish the desirability of the covenants
24 and why they ought to be enforced.

25 THE COURT: I'm going to sustain the objection.

1 You may proffer it, but I think counsel is correct.

2 MR. CARPENTER: All right.

3 Q. In your opinion does the white vinyl fencing add to
4 the beauty and aesthetics of the property?

5 A. Yes.

6 MR. HENRIKSON: Objection, Your Honor. No
7 foundation and this witness's opinion about aesthetics ---

8 THE COURT: I'm assuming this is in the form of a
9 proffer?

10 MR. CARPENTER: Yes, sir.

11 MR. HENRIKSON: Oh, I'm sorry. I'm so used to
12 there being a jury. Judge, I apologize. If this is a
13 proffer ---

14 THE COURT: This is a proffer.

15 MR. HENRIKSON: I apologize.

16 THE COURT: That's fine.

17 Q. Along those lines do you think the white vinyl fencing
18 adds value financially to the property?

19 A. Yes.

20 Q. You said your property is subject to the same
21 covenants and restrictions as ---

22 THE COURT: Now we're out of the proffer; correct?

23 MR. CARPENTER: Yes.

24 THE COURT: All right. Thank you.

25 Q. You said your property is subject to the same

1 restrictive covenants as Mr. and Ms. Boies's property and
2 Ms. Lanier's property?

3 A. Yes.

4 Q. Okay. How many other property owners are subject to
5 those covenants and restrictions to your knowledge?

6 MR. HENRIKSON: Objection. No foundation, Your
7 Honor. I don't know how she can testify to what other
8 people think.

9 THE COURT: He's not asking for her opinion. He's
10 asking for property owners. Go ahead.

11 A. It's one, two, three more, with me four, and then six
12 total.

13 Q. Okay. It's a small neighborhood; right?

14 A. It is.

15 Q. Okay. And did you witness Ms. Lanier having the white
16 vinyl fencing on her property taken down?

17 A. Yes.

18 Q. All right. When was that approximately?

19 A. Sometime November last year, 2016.

20 Q. Okay. And what did you do when you observed that?

21 A. I called Ms. Boies.

22 Q. Did you do anything else?

23 A. I took pictures.

24 Q. All right. If you look at some of these pictures over
25 here, Exhibits 13 through 18, can you look at those and tell

- 1 me whether those are some of the pictures you took?
- 2 A. Would you like for me to state the number ---
- 3 Q. Yes, please. When you're describing a picture ---
- 4 A. Okay.
- 5 Q. --- refer to the number that's on the exhibit sticker.
- 6 A. Okay. Exhibit 13 is one of the pictures I took.
- 7 Q. And what does that show?
- 8 A. It shows the property -- it just shows the pillars.
- 9 Q. The rails have been removed?
- 10 A. Yes. The rails have been removed.
- 11 Q. Okay.
- 12 A. I just lay it down?
- 13 Q. Sure.
- 14 A. The second one is Exhibit 14. And it pretty much
- 15 shows the same thing, rails removed. And that was one of
- 16 mine, too. Exhibit 15 was a picture of mine, too. Also,
- 17 rails removed. Exhibit 16 was one of mine, too. And it's
- 18 alongside Ms. Lanier's property. Exhibit 17, that was me,
- 19 too. And Exhibit 18, as well.
- 20 Q. So you took all pictures ---
- 21 A. Yes.
- 22 Q. --- 13 through 18?
- 23 A. I did.
- 24 Q. And that was during the time when Ms. Lanier was
- 25 having the fence taken down?

1 A. Yes.

2 Q. All right. In those pictures the posts are still up;
3 is that right?

4 A. Except for Exhibit 18. That's the only one.

5 Q. Okay. And currently are the posts removed?

6 A. They're removed; yes.

7 Q. Did you say anything to Ms. Lanier about the removal
8 of the fence?

9 A. No.

10 Q. You just told Ms. Boies?

11 A. Yes.

12 Q. Okay. And you said Ms. Boies's property is next to
13 yours?

14 A. No. It's about two houses, three houses further out.
15 There's two more in between us.

16 Q. Okay. And in relation to your property, where is the
17 property of Ms. Lanier?

18 A. Right across.

19 Q. Directly across the street?

20 A. Yes.

21 Q. So it was easy for you to see what was going on at
22 your house?

23 A. It is. It's the driveway that separates our houses.

24 Q. Okay. You're here willingly to testify today; is that
25 right?

1 A. Yes.

2 Q. You're not under compulsion?

3 A. No.

4 Q. Would you like to see the covenants enforced?

5 A. I'm sorry? Excuse me?

6 MR. HENRIKSON: Objection, Your Honor, irrelevant?

7 Q. Would you like to see the covenants enforced?

8 MR. HENRIKSON: Same objection.

9 THE COURT: What's the relevance?

10 MR. CARPENTER: Just that there are six families
11 all subject to the covenants and I'm asking her to testify
12 as another homeowner there that she would like to see the
13 covenants enforced.

14 THE COURT: I'm going to overrule the objection.
15 So go ahead, for that limited question.

16 A. Yes.

17 Q. All right. Thank you.

18 MR. CARPENTER: That's all I have, Your Honor.

19 **CROSS EXAMINATION**

20 **BY MR. HENRIKSON:**

21 Q. Ma'am, are you friends with Ms. Boies?

22 A. Yes.

23 Q. And y'all socialize together?

24 A. Yes.

25 Q. Okay. And how often do y'all socialize?

- 1 A. It depends. Every few weeks. It depends if she's
2 here or somewhere else out of town.
- 3 Q. Does she spend a lot of time at her house in Folly
4 Beach?
- 5 A. No. Once up until now.
- 6 Q. I'm sorry?
- 7 A. Just once up until now.
- 8 Q. Okay. No, not you. Her, does she spend time away
9 from her property?
- 10 A. Every once in a while; yes.
- 11 Q. And what is the extent to which y'all socialize
12 together?
- 13 A. We chit-chat, we talk and have a cup of coffee.
- 14 Q. Okay. Now, regarding the covenants that you believe
15 you are subject to. What covenants are those?
- 16 A. The white vinyl fence. That's my main concern.
- 17 Q. And what covenants were part of your deed chain?
- 18 A. I guess I don't understand the question. Could you
19 repeat that, please?
- 20 Q. All right. Let me try it this way.
- 21 A. Sure.
- 22 Q. I have Exhibit -- let me show you Exhibit 3 and ask
23 you if you recognize that document?
- 24 A. I do.
- 25 Q. And this is the deed from Ms. Boies to you; is that

1 correct?

2 A. I believe so; yes.

3 Q. And you purchased this property on March 4, 2015? Or
4 at least that's when this deed was filed.

5 A. Yes.

6 Q. It looks like the signatures were March the 3rd, 2015?

7 A. That's what it says; yes.

8 Q. Okay. And the filing -- do you see the -- where --
9 the filing information on the very top of page one?

10 A. Yes.

11 Q. Okay. And it says deed book DE-2460, and then page
12 4531-4532?

13 A. Yes.

14 Q. Okay. And then it's got two pages sort of out off, in
15 the corner?

16 A. Yes.

17 Q. So this deed is a two-page deed; is that correct?

18 A. Yes.

19 Q. All right. And the second page has page 4532 and it
20 has last page in parenthesis; is that correct?

21 A. I don't see what you're -- oh, up here, 4532?

22 Q. Yes, ma'am. It says it's the last page?

23 A. Yeah.

24 Q. So this is the entirety of your deed. There are no
25 exhibits to this deed; there are no additional covenants or

1 anything else in connection -- filed with your deed; do you
2 agree with that?

3 A. Yes. But we did sign the -- we didn't purchase the
4 property until we saw the covenants. We saw the covenants
5 at closing.

6 Q. They were not part of your deed; is that correct? The
7 covenants were not attached as an exhibit to your deed; is
8 that correct?

9 A. Yes.

10 Q. Okay. Let me show you what is marked as Defense
11 Exhibit 10. Let me show you what is Defense Exhibit Number
12 10 and ask you if this appears to be your lot?

13 A. Yes.

14 Q. And it is 3.55 acres?

15 A. Yes.

16 Q. And this is the property that was sold to you by Ms.
17 Boies in Exhibit 3? I'm sorry. Exhibit 3?

18 A. Yes.

19 MR. HENRIKSON: I want to move 10 into evidence.
20 I think 3 is already in evidence.

21 MR. CARPENTER: No objection.

22 THE COURT: All right.

23 (WHEREUPON, Defendant Exhibit Number 10 was admitted
24 into evidence.)

25 Q. Now, you said that you saw the covenants. Let me show

1 you Defense Exhibit 2, a document entitled declarations of
2 covenants and restrictions for Deborah L. Boies's property.

3 Let me ask if you recognize those documents?

4 A. Those appear to be the ones; yes.

5 Q. Okay. Were these the covenants that you saw prior to
6 your closing?

7 A. Yes.

8 Q. Okay. Now, have you had any discussions today with
9 anybody about whether or not the covenants that applied to
10 Ms. Lanier also applied to you?

11 A. No.

12 Q. Okay. Are you aware of any other covenants other than
13 those expressed in Defense Exhibit 2?

14 A. No.

15 Q. So you don't know exactly what may or may not apply to
16 Ms. Lanier other than what is in Exhibit 2; is that correct?

17 A. Yes.

18 Q. Thank you. No further questions.

19 THE COURT: Any other questions?

20 MR. CARPENTER: Yes, Your Honor.

21 Exhibit 1?

22 MADAM COURT REPORTER: I don't have any other
23 exhibits. Is it your Exhibit 1 you're looking for?

24 MR. HENRIKSON: I do have exhibits. I apologize.

25 MR. CARPENTER: I'm looking for Plaintiff's

1 Exhibit 1.

2 MR. HENRIKSON: That I don't have. Do I?

3 MR. CARPENTER: Yeah.

4 MR. HENRIKSON: I've got all of them.

5 REDIRECT EXAMINATION

6 BY MR. CARPENTER:

7 Q. Let me show you what was a part of Plaintiff's Exhibit
8 1. I'll show you the whole Exhibit 1. This Exhibit 1 has
9 been admitted in this case.

10 A. Okay.

11 Q. Pages 1 and 2 are here. Pages 3, 4 and 5 are over
12 here. Let me ask you, have you seen pages 3, 4 and 5
13 before?

14 A. Yes.

15 Q. Okay. And what are pages 3, 4 and 5?

16 A. Those are the covenants.

17 Q. Okay. You saw those when you bought your property?

18 A. We did. Yes.

19 Q. Okay. Thank you.

20 THE COURT: Any other questions?

21 MR. CARPENTER: I'm consulting with my client now.

22 That's all I have, Your Honor. Thank.

23 RECROSS EXAMINATION

24 BY MR. HENRIKSON:

25 Q. Ma'am, I'm confused. Before I asked you were you

1 aware of any other restrictions or covenants other than
2 those which appeared in Defense Exhibit 2 and you said no;
3 isn't that right?

4 A. I guess I did.

5 Q. Okay. And then Ms. Boies's lawyer shows you something
6 else and says haven't you seen these before and suddenly you
7 remember that you have. Is that what you're saying?

8 MR. CARPENTER: Objection.

9 A. Well, it's been a while since I've read the covenants,
10 so I just ---

11 THE COURT: Ma'am, hold on a minute.

12 THE WITNESS: Sorry. Sorry.

13 THE COURT: What's the objection?

14 MR. CARPENTER: That's a significant
15 mischaracterization of what I did.

16 THE COURT: Rephrase the question, please, sir.

17 Q. Okay. And you're saying you saw these for the first
18 time when?

19 A. Before we purchased the property, our property.

20 Q. And specifically when?

21 A. That was March ---

22 Q. Relative to your closing?

23 A. At the day of closing.

24 Q. Okay. And we're looking at Exhibit A to Plaintiff's
25 Exhibit 1; is that correct?

1 A. Yes.

2 Q. All right. And yet these were not made a part of your
3 deed, but they were at your closing?

4 A. They were.

5 Q. Okay. Thank you. No further questions.

6 THE COURT: All right. May this witness be
7 excused?

8 MR. CARPENTER: Yes.

9 THE COURT: Ma'am, you're free to go or free to
10 stay here in the courtroom.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you. Anything else from the
13 Plaintiff?

14 MR. CARPENTER: No, Your Honor.

15 THE COURT: All right. And you have the one
16 witness?

17 MR. CARPENTER: Well, I want to make sure that
18 we've got all of our exhibits moved into evidence. I was
19 told we had 1 through 12 in. I think we have 13 through 18,
20 the other pictures about the fence being torn down. If we
21 haven't moved those into evidence, I do so now.

22 THE COURT: All right. Thank you. It's my
23 understanding all the exhibits have now been introduced
24 without objection.

25 MR. CARPENTER: Thank you.

1 THE COURT: You just have the one witness?

2 MR. HENRIKSON: Yes, sir.

3 THE COURT: Okay. Why don't we take about a ten-
4 minute break and then we'll start back. All right. Thank
5 you.

6 (WHEREUPON, Court stood at recess for a short break.)

7 MR. HENRIKSON: I would make a motion for a
8 directed verdict at this point, if I can do that. Or we can
9 preserve that until later if you like. I just ---

10 THE COURT: If you want to go ahead and put it on
11 the record.

12 MR. HENRIKSON: Your Honor, I would move for a
13 directed verdict on behalf of the defendant on the following
14 grounds. Evidence taken in the light most favorable to the
15 plaintiff, I think that, first of all, as to 1.4 of the
16 covenants and restrictions, that as a matter of law, these
17 are ambiguous. They've got words like comparable and
18 similar, and it's -- clearly as a matter of law this gives
19 more than one reasonable inference as to meaning. And I
20 think that's the very definition of ambiguous.

21 The way that it's written with the words white vinyl
22 fencing and the language constructive material to a fence
23 presently located, so it clearly -- the plain English
24 language is that it simply refers to a fence that is there.
25 And then that fence is identified as white vinyl fencing.

1 And their language comparable in style and constructive
2 material, the plaintiff admitted that if she had wanted to
3 have only white vinyl fencing, she could have put that
4 language plainly in there. Instead, for whatever reason,
5 she chose this convoluted language with a lot of unnecessary
6 words and language if she really intended for it to be white
7 vinyl fencing only.

8 But the point is, as a matter of law, reasonable people
9 could read this sentence and decide that it's -- something
10 other than white vinyl fencing is acceptable. And if she's
11 taking the position that only white vinyl fencing is
12 acceptable, and so I think based on that, any reasonable
13 reading of this would admit some other possible fence other
14 than white vinyl fencing. So I think as to 1.4, clearly as
15 a matter of law, this is ambiguous and we should get a
16 directed verdict on that issue.

17 THE COURT: I'm going to deny your motion on that
18 ground. Any other motions?

19 MR. HENRIKSON: Yes. As to 2.8, Your Honor, the
20 plaintiff's case is over. There is no evidence at all that
21 the covenants and restrictions that include 2.8, the ones
22 that are part of Ms. Lanier's deed, are part of the record.
23 The Court can take judicial notice of the public record of
24 the register of deeds and we believe the Court will find
25 that no such separate restrictions have been put in the deed

1 chain. It doesn't matter if you hand them out to your
2 neighbors and send it to them on a paper airplane, they've
3 got to be in the deed chain, and they're not. And if you
4 look at the exhibits that are in evidence now, there was no
5 indication that those restrictions have been filed with the
6 county other than with, other than with the deed of Ms.
7 Lanier. The only reasonable inference to draw from that is
8 that the restrictions and covenants which include 2.8 only
9 appear in Ms. Lanier's deed chain. They do not appear in
10 any other deed chain, and thus they are not effective to any
11 other piece of property other than Ms. Lanier's, which is
12 just patently unfair.

13 And even the plaintiff admitted restrictions should be
14 applied to everybody or nobody. And so the plaintiff
15 herself has admitted that if they do not apply to all
16 parties then they should not apply to Ms. Lanier. And what
17 is clear here is that they are not of record -- the
18 plaintiff has failed to make a prima facie case and has
19 failed to prove that the Exhibit A -- I'll call them the
20 second or the extra restrictions -- are part of the deed
21 chain other than Ms. Lanier. And so for that reason they
22 should be -- we should get a directed verdict.

23 Also, I don't want to waive anything. I would like to
24 incorporate all of the filings that I've made, arguments,
25 legal arguments that I have made with the Court, but to

1 point out specifically without waiving anything else that
2 the language where the plaintiff, and she admitted that she
3 reserved for herself the right to deny any request for any
4 reason or no reason at all. You know, she admitted that
5 that could be good reasons, bad reasons, fair reasons,
6 unfair reasons. This is language that is not in any other
7 set of restrictive covenants that I've ever, ever seen or
8 dealt with. It is language that is too over-broad. It
9 reserves too much power to somebody who is a non-elected,
10 you know, standard board of -- homeowner's board of
11 directors or anything. This is just one person who has
12 absolutely control over use of the property. And it is a
13 matter of public policy -- a violation of public policy --
14 as a matter of law, it's a violation of public policy to
15 have one person have absolutely unfettered control over
16 other people's property. It's simply manifestly not
17 enforceable. And so for that reason I think we would be
18 entitled to a directed verdict as to 2.8.

19 THE COURT: All right. Thank you. You're
20 protected on the record. I'm going to deny your motion on
21 that ground as well.

22 You can call your witness.

23 MR. HENRIKSON: Jackie Lanier, Your Honor.

24 THE COURT: Place your left hand on the bible and
25 raise your right. Do you swear to tell the truth, whole

1 truth and nothing but the truth?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Thank you. You can come around and
4 have a seat. And if you'll state your full name.

5 THE WITNESS: Jacqueline Johnson Lanier.

6 JACQUELINE JOHNSON LANIER,

7 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. HENRIKSON:

10 Q. Please state your full name for the record again. I'm
11 sorry.

12 A. Jacqueline Johnson Lanier.

13 Q. And Ms. Lanier, are you an attorney?

14 A. I am.

15 Q. And where did you graduate from law school?

16 A. Law school was at Mercer.

17 Q. Okay. And what year were you admitted?

18 A. 2003.

19 Q. And you are admitted in the state of South Carolina?

20 A. I am.

21 Q. And are you a member in good standing with the bar?

22 A. I am.

23 Q. And you're an officer of this Court?

24 A. Yes.

25 Q. All right. And with respect to this property that we

1 are here for today, you own this property and bought it from

2 Ms. Boies?

3 A. Yes.

4 Q. Can you tell the judge a little bit about the nature
5 of the property?

6 A. Well, I own a total of around twenty-two acres. It's
7 pasture land. It's got some wooded portions to it, as well.
8 It's kind of, I like to say, out in the middle of nowhere.
9 It's very quiet out where we live. And it's pretty. And I
10 hope to have some horses on it one day soon.

11 Q. Okay. And tell us, did you buy this in two parcels?

12 A. I did. I purchased around eleven acres first and then
13 later purchased a little over ten.

14 Q. And let me show you some photographs and ask if you
15 recognize these. I'm going to hand you Exhibits 18, 17, 16,
16 15, 14, 13 and 12.

17 MR. CARPENTER: Can I see those?

18 MR. HENRIKSON: I think they're already in
19 evidence, but sure.

20 MR. CARPENTER: Are they in evidence?

21 MR. HENRIKSON: Yes. They're already in evidence.

22 MR. CARPENTER: Oh, okay. All right.

23 Q. Are those -- who took those photographs?

24 A. I did.

25 Q. When did you take those photographs?

1 A. Yesterday.

2 Q. All right. If you'll just sort of look at the back
3 and just tell the judge what those are?

4 A. Defendant's Exhibit 12 is just an example of fence
5 similar to what I would like to have on my property. It's
6 about maybe a half a mile from my house. Pretty much right
7 across the street from the plaintiff's house.

8 Q. Okay.

9 A. Oh, keep going. This fence is Defendant's Exhibit 13.
10 It's further away. I took it just because it's about a mile
11 and a half away. Just shows kind of the same color and a
12 little bit more natural look that I prefer. Defendant's
13 Exhibit 14 -- wait, is that 14?

14 Q. I think it is.

15 A. --- is just a natural wood fence. It doesn't look
16 like it has any paint on it, but just another example of my
17 preference. Defendant's Exhibit 15 is more of the black
18 fencing directly across the street from the plaintiff's
19 property. Defendant's Exhibit 16 is just an example of how
20 you can see the plaintiff's fence directly across the street
21 from the fence, just trying to show that in this area of the
22 county it's pretty customary to see both types of fencing
23 and that I'm not trying to do anything unusual. Defendant's
24 Exhibit 17 is the plaintiff's fence near her residence from
25 Hawkins Road, just showing that it's dirty and how vinyl can

1 get to where it looks kind of unkept and one reason that I
2 don't like it. And then Defendant's Exhibit 18 is the fence
3 actually directly beside my driveway that I have to look at
4 every day when I drive it that's on the plaintiff's property
5 that's in bad need of cleaning.

6 Q. How long has it looked like that, Exhibit 18?

7 A. It looked like that once we -- when we first purchased
8 -- when I purchased the first piece, the fence was already
9 dirty. That's -- I mean some time has elapsed, so it might
10 be dirtier now than it was then, but it's looked like that
11 for -- it's never been cleaned since I have been there.

12 Q. And Mr. Boies testified that he might clean it once
13 every five or six years. Is that your experience?

14 A. Well, I haven't been there that long, but I mean,
15 that's a huge job, so I can imagine that's probably
16 accurate.

17 Q. Has anyone cleaned it since you've lived out there?

18 A. No.

19 Q. With respect to Exhibit 18, how does that compare to
20 what the plastic fencing looked like when -- that you took
21 down?

22 A. It's identical. This was actually connected to the
23 fence. You can see the stake in the ground that's the
24 property line between my property and Ms. Boies's. And this
25 is just the portion that we did not remove because it was

1 not on our property.

2 Q. Okay. With respect to the condition of the mold or
3 dirt or whatever that is, how does that picture in Exhibit
4 18 compare to the plastic fencing that you took down?

5 A. It's the same.

6 MR. HENRIKSON: Your Honor, I think these are
7 already in evidence.

8 THE COURT: Yes, they are.

9 MR. HENRIKSON: Okay. Thank you.

10 Q. Let me show you Defense -- Plaintiff's Exhibit Number
11 1, and this is the deed that you got from Ms. Boies for the
12 eleven acre tract?

13 A. Yes.

14 Q. All right. Now, did you prepare this deed yourself?

15 A. Yes.

16 Q. Okay. Was this the first closing?

17 A. Yes.

18 Q. And let me show you on Exhibit A, the three pages, the
19 last part of the deed. Is there any kind of marking or
20 indication on Exhibit A that Exhibit A has been filed in and
21 of itself with the county?

22 A. No. Only as an attachment to the deed.

23 Q. Okay. And did you have any discussions with Ms. Boies
24 regarding Exhibit A?

25 A. Only that I was to be sure to include it with the

1 deed.

2 Q. All right. And how many times did you have
3 discussions with her about your including Exhibit A with
4 your deed?

5 A. She reminded me of that several times.

6 Q. Okay. And how about with the next closing and the
7 next piece of property?

8 A. The same. However, I did not prepare the deed for the
9 second closing.

10 Q. Okay. Did you have discussions with Ms. Boies -- who
11 did?

12 A. Heather Welch was the closing attorney and the
13 discussions at that point, since the negotiations on the
14 second piece had been a little difficult, were basically
15 between Ms. Boies's realtor and the closing attorney in
16 emails just reiterating to make sure that the Exhibit A was
17 included with the deed.

18 Q. Okay. And so with both pieces of property that you
19 bought from Ms. Boies were you reminded numerous times that
20 you had to include Exhibit A?

21 A. Yes.

22 Q. And at the time of the second closing had Exhibit A
23 been filed with the register of deeds to your knowledge?

24 A. On its own independently?

25 Q. Right?

- 1 A. No.
- 2 Q. Only in connection with your deed?
- 3 A. Correct.
- 4 Q. All right. Let me show you Defense Exhibit Number 2
- 5 and ask if you can tell me what that is?
- 6 A. Those are the restrictive covenants that cover the
- 7 entire parcel of property out there.
- 8 Q. All right. And were those in existence when you
- 9 bought your property?
- 10 A. Yes.
- 11 Q. And do they apply to your property?
- 12 A. Yes.
- 13 Q. All right. Now, does the language of 2.8 in Exhibit A
- 14 of your deeds appear in Exhibit 2?
- 15 A. No.
- 16 Q. Have you done -- are you familiar with doing real
- 17 property searches?
- 18 A. Very.
- 19 Q. Is that part of your everyday course of business?
- 20 A. Yes.
- 21 Q. What kind of lawyer are you?
- 22 A. Real estate attorney.
- 23 Q. And what do you do every day?
- 24 A. I do closings; I research title; I review restrictive
- 25 covenants; surveys; closing documents for buyers; handle the

1 entire transaction; supervise the recording; disbursement.

2 Q. How many times do you think you've reviewed
3 restrictive covenants?

4 A. Well, I handle approximately nine hundred closings a
5 year and I would say probably two-thirds of those have
6 property covered by restrictions, if not more. And for the
7 past thirteen years I've been doing that. So a lot.

8 Q. Have you ever seen a restrictive covenants where one
9 sole person reserves total control over changes made to the
10 property for any reason?

11 MR. CARPENTER: Objection.

12 A. Not ---

13 MR. CARPENTER: I think this is invading the
14 providence of the Court. The Court has got to make that
15 decision, not a witness or a party. I think this is an
16 improper matter for testimony, even if she is a lawyer.
17 It's the providence of the Court.

18 MR. HENRIKSON: She's talking about her own
19 experience.

20 THE COURT: I understand. Based upon the phrasing
21 of the objection, overruled.

22 Q. Based on your experience reviewing six hundred
23 covenants and restrictions for the last thirteen years, have
24 you ever seen a covenants and restrictions where one person
25 reserves the right to allow or deny property changes for any

1 reason?

2 A. No.

3 Q. Does this strike you as unusual?

4 A. Yes.

5 Q. Okay. When you -- did you notice that when you bought
6 this property since it was attached to your deed?

7 A. Yes, I did.

8 Q. All right. And when you saw that, what did you think?

9 A. I felt like that provision was probably unenforceable.
10 But I felt like there were sufficient guidelines otherwise
11 that I could rely on. So it wasn't a huge cause of concern
12 for me.

13 Q. Okay. We'll get into that in a minute. Now, have you
14 -- how do you go about doing a real property search in
15 Greenville County?

16 A. We ---

17 MR. CARPENTER: Objection, relevance.

18 THE COURT: What is the relevance?

19 MR. HENRIKSON: She's going to testify that the
20 Exhibit A does not appear in the deed chain of the other
21 deeds.

22 Ms. Boies opened that door by testifying that despite
23 the fact she couldn't produce it, she believed that those
24 covenants were filed with the register of deeds and this
25 witness has actual knowledge that they are ---

1 THE COURT: Is that something, Mr. Carpenter,
2 you're familiar with or aware of? It either is or isn't.

3 MR. CARPENTER: I don't know the answer to the
4 question.

5 THE COURT: Then I'll allow -- I don't want to go
6 into how you do a title abstract. But if she's looked at
7 these ---

8 MR. HENRIKSON: I apologize. I keep forgetting we
9 don't have a jury. I'm sorry, Your Honor.

10 Q. Exhibit A, the restrictions that appear in Exhibit A,
11 do they appear -- other than as attached to your two deeds,
12 do they appear to be filed in Greenville County in any
13 capacity?

14 A. They are not.

15 Q. Okay. And of Exhibit A to your deeds, section 2.8,
16 does any language similar to 2.8 appear in Defense Exhibit
17 2?

18 A. No.

19 Q. All right. So other than the restrictions that appear
20 as exhibits to your deed, the only restrictions of record at
21 the time that you bought your property was Exhibit 2?

22 A. That's correct.

23 Q. Okay. Now, let me show you the Exhibits 3, 4, 7, and
24 5. Are these deeds that you have looked up?

25 A. Yes.

1 Q. And are those deeds to other property owners who
2 purchased from the original hundred twenty-two?

3 A. Yes.

4 Q. Do any of those deeds have attached or refer to in any
5 way the restrictions that appear as Exhibit A in your two
6 deeds?

7 A. They do not.

8 Q. Okay. And without a reference to Exhibit A, or
9 without Exhibit A being attached, are those deeds subject to
10 any restrictions other than Exhibit 2?

11 A. They are not.

12 Q. Okay. And so do you agree with the plaintiff who
13 testified that these restrictions should apply to all the
14 property owners or to none of them?

15 A. Yes.

16 Q. What is in 2.8, does that apply to the other property
17 owners?

18 A. No one but me.

19 Q. Okay. Now, why did you decide to remove the fencing?

20 A. It really didn't look good. It was mildewed really
21 bad. And you have to understand it's only -- it was only
22 along one property line. It wasn't that our property was
23 surrounded by the white fencing; it was along the road
24 frontage. So it didn't connect anything. It didn't really
25 make sense for, you know, what we were building on the

1 property and what our plans were going to be down the road
2 as far as having horses and that kind of thing.

3 Q. Okay. Why did you want dark wood as opposed to white
4 plastic?

5 A. I have a lot of reasons. I like the dark wood, first
6 of all. I want wood because I feel like it's more
7 environmentally responsible. I feel like it looks more
8 natural. It goes better with my home that has no white trim
9 on it whatsoever. I would like wood because I feel like
10 it's easier to maintain in that if something does happen and
11 there's damage to the fence I can repair it more easily. I
12 can take a board and nails and hammer and put it back
13 together; whereas if it's vinyl I'm going to have to most
14 likely have a professional come out and do that with
15 materials that may or may not be readily available. The
16 cost of vinyl is significantly more. And I just have had
17 bad experiences with it. I've had horses all my life and at
18 one particular farm I worked at in Georgia we had white
19 vinyl fencing and I grew to really not like it.

20 Q. Okay. With your reading of the covenants and
21 restrictions did you feel like there was any restriction
22 against having a different colored fence?

23 A. No.

24 Q. Okay. Did you feel that as long as the material was
25 similar in appearance and construction that it was

1 permissible?

2 A. Yes.

3 Q. Okay. When you did start to take it down did you have
4 any contact with Ms. Boies?

5 A. Yes. After we had started taking it down but before
6 it was complete she had called me and sent an email to me.

7 Q. All right. And tell us about that conversation. What
8 do you recall that she told you about taking down the fence?

9 A. When she called me she said I don't know why you're
10 taking that fence down. I guess you can since it's your
11 property but I don't understand why you're doing it.

12 Q. And did you explain to her why?

13 A. I told her that I did not care for it and I just
14 didn't want it there.

15 Q. Okay. And what was her response?

16 A. She told me that anything that I put back needed to be
17 white vinyl.

18 Q. Okay. Did you have any other communications with her
19 at all about taking down the fence?

20 A. Only the email that she sent to me.

21 Q. Okay. And let me show you what's in evidence as
22 Exhibit 19. Is this the email that was sent to you?

23 A. It is.

24 Q. Okay. And in that email does it say at any point that
25 you're not to take the fence down?

- 1 A. It does not.
- 2 Q. Okay. Any other conversations you recall regarding
- 3 Ms. Boies ---
- 4 A. No.
- 5 Q. --- and taking the fence down?
- 6 A. No.
- 7 Q. All right. And when -- relative to that conversation
- 8 with Ms. Boies when were you sued?
- 9 A. It was shortly thereafter. It may have even been that
- 10 same week.
- 11 Q. Okay. After the, after the lawsuit was commenced did
- 12 you then subsequently submit a proposal to put up a fence of
- 13 dark wood fencing?
- 14 A. Yes.
- 15 Q. And what was the response?
- 16 A. That Ms. Boies declined to approve that because it was
- 17 not white vinyl.
- 18 Q. Okay. Has Ms. Boies always taken the position that
- 19 the only fence that can be -- that can exist on that
- 20 property according to her is white vinyl fencing?
- 21 A. Yes.
- 22 Q. Okay. What is the -- we heard Mr. Boies testify that
- 23 in horse country that the white fencing versus dark fencing,
- 24 plastic versus wood, it's about fifty/fifty in the area.
- 25 Does that -- how long have you lived up there?

- 1 A. I've only lived there since last October in this
2 particular horse country.
- 3 Q. Okay. And does that about -- do you agree with that
4 assessment, that in terms of these, quote, horse fences that
5 are out there, that about fifty/fifty are white or dark?
- 6 A. That's fair.
- 7 Q. And there's a lot of wood and a lot of plastic?
- 8 A. Yes.
- 9 Q. Okay.
- 10 A. Well, I wouldn't say a lot of plastic. There is other
11 white fencing but most of it is wood. There's very little
12 white vinyl fencing anywhere up there.
- 13 Q. Okay. Now, what fencing do you want to put up? What
14 have you requested to be allowed to put up?
- 15 A. Black wood three board horse fence.
- 16 Q. Okay. And is that something that is prevalent in the
17 area?
- 18 A. It is.
- 19 Q. Okay. Now, let me ask you to look at Exhibit A of
20 your deed. I think you've got Defense Exhibit 1 in there.
- 21 A. The first deed? Well, they're both the same thing ---
- 22 Q. Exhibit A is the same to both deeds; is that correct?
- 23 A. Yes.
- 24 Q. All right. So let me ask you to, if you will, look at
25 the 1.4 language. Tell the Court how you interpret 1.4.

1 A. I interpret it to mean that I can construct a fence
2 that's similar to the fence that was already there.

3 Q. Okay. And what do the words comparable in style mean
4 to you?

5 A. They mean to me that it would have to be basically the
6 same design in that the three board horizontal horse fence,
7 not privacy fence, not barbed wire or chain link or chicken
8 wire but wooden -- or horse fence that had that same design
9 as what's already there; a post with boards in between it
10 horizontally with space in between the boards.

11 Q. Okay. And with respect to the language, white vinyl
12 fencing, which is in parenthesis, what did you understand
13 that to mean?

14 A. They were describing the fence presently located on
15 the boundary of the real property, because if you weren't
16 out there looking at it, you wouldn't know what that fence
17 was, so they had to describe it.

18 Q. Okay. And so comparable in style and constructive
19 material, did you take that to mean something that looked
20 like it and was built similar to it, but it didn't have to
21 be white vinyl fencing?

22 A. Exactly.

23 MR. CARPENTER: Objection. Leading, Your Honor.
24 There's been a series of leading questions.

25 THE COURT: Sustain the objection.

1 Q. What was your, what was your understanding of the
2 effect of the language comparable in style and constructive
3 material?

4 A. That I had to build something similar but not exactly
5 like it.

6 Q. Okay. The fence that you have proposed to build, and
7 requested, is that comparable in style and constructive
8 material?

9 A. Yes.

10 Q. I'm going to ask you to look at 2.8 of Exhibit A to
11 your deed. Now, the language which states no landscaping,
12 building, fence, wall or other structure shall be commenced,
13 erected, maintained -- the language that's after that -- and
14 all subsequent reconstruction, what do you, what do you take
15 subsequent reconstruction, modifications, additions or
16 alterations to mean?

17 A. That I would ---

18 MR. CARPENTER: Objection. Calls for legal
19 conclusion.

20 MR. HENRIKSON: I'm asking what her personal
21 opinion is.

22 THE COURT: I'll allow it for the limited basis of
23 her personal understanding. But ultimately it's a decision
24 that the Court has to make.

25 A. I believe that any fence that I wanted to put up I

1 would need to seek approval for.

2 Q. Okay. And at the time that you received this lawsuit
3 had you begun to construct a fence?

4 A. No.

5 Q. Okay. All you did was take down the one that existed?

6 A. Yes.

7 Q. Okay. And to your knowledge Ms. Boies said that you
8 have a right to do that as the property owner; correct?

9 A. Yes.

10 Q. All right. And you have never at any time attempted
11 to erect a new fence before getting this lawsuit?

12 A. I did not.

13 Q. Okay. So the word subsequent would mean something
14 that -- as I understand your testimony would mean something
15 that was a change to an existing property, something new?

16 A. Yes.

17 MR. CARPENTER: Objection. Legal conclusion.

18 Q. Is that correct?

19 THE COURT: Don't lead.

20 MR. HENRIKSON: Okay.

21 MR. CARPENTER: Sir?

22 THE COURT: I was telling him not to lead.

23 Q. Now, just assuming that this would require some extra
24 -- or some request, did you read the language that indicates
25 that any exterior addition to or change or alteration

1 therein be made until the plans and specifications showing
2 the nature, kind, shape, height, materials and location of
3 the same shall have been submitted to and approved. Did you
4 read that language?

5 A. Yes.

6 Q. Does that language at all refer to color?

7 A. No.

8 Q. Could it have?

9 A. Of course.

10 Q. Okay. When you read these, did you believe that
11 wanting the fence that you wanted to put in was inconsistent
12 with any of the covenants and restrictions that existed as
13 part of your deed chain?

14 A. I thought it was completely consistent with these
15 restrictions.

16 Q. Okay. Is there a homeowner's association?

17 A. No.

18 Q. Was -- in the original Exhibit 2, the original
19 restrictions, was there a provision to have a homeowner's?

20 A. There's a provision that allows her to establish --
21 Ms. Boies to establish a homeowner's association if she
22 chooses.

23 Q. Okay. And have you ever learned from Ms. Boies as to
24 what her original plan was with this property?

25 A. No.

1 Q. In any event there is no homeowner's association?

2 A. There is -- original subdivision plats indicate that
3 there was going to be a subdivision called Castle Ridge.
4 The first two lots deeded out referred to it as such. So
5 maybe there was going to be an association at some point or
6 it might have been more of a structured neighborhood, but I
7 suppose that plan was changed along the way.

8 Q. Okay. Let me show you Exhibits 8, 9, 10 and 11 and
9 ask you what those are?

10 A. Defendant's Exhibit 8 is the subdivision plat, if you
11 want to call it that, that shows tract one and tract two of
12 Castle Ridge, which were the two initial properties sold by
13 Ms. Boies. Defendant's Exhibit 9 is a miscellaneous
14 recorded survey that's actually part of my property, but
15 there was never a deed done in conjunction. It's just
16 another reference plat. I don't know if there was a
17 transaction that didn't occur or what, but it's just out
18 there on public record. Defendant's Exhibit 10 is the
19 property that was deeded to Mr. and Mrs. Cernoch. And then
20 Defendant's Exhibit 11 is the survey of the property deeded
21 to Jason Johnson and Wanda Sisk, I believe is her last name.

22 Q. Do any of those deeds and those plats and their
23 respective reciprocating plats, do any of those deed
24 transfers from Ms. Boies violate the provision in Exhibit 2
25 of not selling property less than four acres?

1 A. Both of the transactions, the one to Mr. and Mrs.
2 Cernoch, and also the sale to Jason Johnson, both are less
3 than four-acre parcels and in violation of those restrictive
4 covenants.

5 Q. Okay. And at the time that those sales took place
6 were the only restrictive covenants, the ones that apply to
7 those property, were the ones that were in Exhibit 2?

8 A. Yes.

9 Q. Okay. Do you believe that by making those sales based
10 on the only record -- the only restriction, the covenants on
11 records, that Ms. Boies has violated her own covenants?

12 A. Yes.

13 MR. CARPENTER: Objection. Relevance. Calls for
14 a legal conclusion.

15 THE COURT: What -- in light of the pleadings
16 what's the relevancy?

17 MR. HENRIKSON: Well, the relevancy is, Your
18 Honor, we're in equity and she needs to come into equity
19 with clean hands. And ---

20 THE COURT: Has any of that been raised in the
21 pleadings?

22 MR. HENRIKSON: Well, yes. She's arguing that
23 there's a violation of the covenants, which is an equitable
24 matter. And in order to seek equity she has to practice
25 equity. And she has violated her own covenants by selling

1 property which violates the lot size restriction. And so
2 that's just something for the Court to consider, that she's
3 violating her own covenants at the same time she's accusing
4 Ms. Lanier of violating covenants.

5 THE COURT: Mr. Carpenter, let me hear your
6 argument on that.

7 MR. CARPENTER: I don't recall any of the stuff
8 being raised in the pleadings. I think this is new
9 information that's dropped on me today. I don't believe
10 it's in the pleadings and I don't think it has anything to
11 do with what we're here for. It's irrelevant and I object
12 to it.

13 THE COURT: I'm going to sustain the objection.

14 MR. HENRIKSON: If I could just argue that, Your
15 Honor. Your Honor, in paragraph 11 she says Plaintiff
16 brings this action to enforce the restrictive covenants and
17 for injunctive relief to prevent the erection of dark wood
18 fence and to require the re-erection of ---

19 THE COURT: Basically what you're doing is
20 attacking the very essence of the restrictive covenants,
21 which is fine, as long as it's been raised by the pleadings.
22 Mr. Carpenter is saying it has not been raised by the
23 pleadings and I'm just trying to understand what the issues
24 are before the Court that the lawyers can agree on.

25 MR. HENRIKSON: Well, I mean there's no paragraph

1 in the Complaint that says you are -- let me try to
2 understand this. The plaintiff is trying to enforce the
3 restrictive covenants. She is, in the Complaint, alleging
4 that the restrictive covenants have been violated. That is,
5 as a matter of law, a matter of equity. The interpretation
6 and application of restrictive -- restrictions and covenants
7 are a matter of equity. And I've cited that in ---

8 THE COURT: I understand. I agree with you.

9 MR. HENRIKSON: All right. So, you have to come
10 into equity with clean hands. And if she is violating her
11 own policy -- her own restrictive covenants then I think the
12 Court can consider that when deciding whether or not she's
13 entitled to equity. Even if she is entitled to equity in
14 this case, and I don't think that we have violated it, but
15 just to cover all of our bases, we raised in our answer that
16 she has not violated -- that the covenants and restrictions
17 are not enforceable. But she is seeking equity, clearly,
18 and so her equitable behavior, so to speak, I think is
19 relevant.

20 THE COURT: Mr. Carpenter.

21 MR. CARPENTER: I don't think in his Answer he
22 even referenced the 1999 or 2000 covenants at all. And he
23 hasn't raised in his Answer anything about selling property
24 for less than four acres. There's nothing like that in his
25 pleadings at all. It's well beyond the pleadings and

1 irrelevant to the matter that's before the Court.

2 THE COURT: All right.

3 MR. HENRIKSON: Your Honor, just one more thing.

4 The deed was an exhibit to the Complaint. The deed itself

5 refers to Exhibit 2, the covenants that were on file.

6 THE COURT: You may proffer her testimony in that

7 area, but I'm going to sustain the objection.

8 MR. HENRIKSON: Okay.

9 Q. Has Ms. Boies been -- did she violate her own

10 restrictive covenants by selling property less than four

11 acres?

12 A. Yes.

13 Q. Okay. Do you think that she is coming here to Court

14 today with unclean hands so to speak?

15 A. Yes.

16 Q. And she is seeking equity against you but she has not

17 been equitable; is that right?

18 A. Yes.

19 Q. Okay. Thank you.

20 MR. HENRIKSON: That's the end of the proffer,

21 Your Honor.

22 THE COURT: All right. Thank you.

23 MR. HENRIKSON: Your Honor, I would move into

24 evidence Exhibits 10, 8, 11 and 9.

25 THE COURT: All right.

1 MR. CARPENTER: Your Honor, I think they're
2 irrelevance, as well. He's trying to move into evidence the
3 exhibits related to people whose property is not an issue at
4 this point. They are other members of the hundred and
5 twenty-two acres, but those deeds and those homeowners and
6 their actions are not at issue in this case. I think it's
7 irrelevant.

8 THE COURT: All right. I'm going to overrule the
9 objection.

10 MR. HENRIKSON: I think that -- okay.

11 (WHEREUPON, Defendant Exhibits Numbers 8, 9 and 11
12 were admitted into evidence.)

13 MR. HENRIKSON: Ms. Lanier, thank you. Please
14 answer any questions Mr. Carpenter may have for you.

15 **CROSS EXAMINATION**

16 **BY MR. CARPENTER:**

17 Q. Ms. Lanier, you were asked about Exhibit 2 which is
18 the declaration of covenants and restrictions for Deborah L.
19 Boies's property; is that right?

20 A. Yes.

21 Q. All right. And did you read those restrictions ---

22 A. Yes.

23 Q. --- before you bought the property?

24 A. Yes.

25 Q. All right. And when you read those restrictions you

1 saw this section 1.4; is that right?

2 A. Yes.

3 Q. All right. And 1.4 has specifically the words white
4 vinyl fencing on it; right?

5 A. It does.

6 Q. And it says any fence placed on the tract or parcel
7 shall be comparable in style and constructive material to a
8 fence presently located on the boundary of the real
9 property, white vinyl fencing. Isn't that what that says?

10 A. Yes.

11 Q. And you looked at the property; right?

12 A. Yes.

13 Q. And you saw that all around the boundary of the
14 property was white vinyl fencing; right?

15 A. On the property I was purchasing, one side was -- had
16 white vinyl along one side of the property line.

17 Q. But the hundred and twenty-two acres that were -- that
18 is the subject of Exhibit 2, there was white vinyl fencing
19 all around the perimeter of it; right?

20 A. When I purchased the property I wasn't looking at
21 anything except the property I purchased.

22 Q. Well, my question was, before you purchased the
23 property you saw that the whole hundred and twenty-two acres
24 had white vinyl fencing all around the perimeter of it;
25 isn't that right?

1 A. There are some sides that are surrounded by white
2 vinyl fencing.

3 Q. And in addition, as we saw from the pictures, there's
4 white vinyl fencing that runs throughout the hundred and
5 twenty-two acres; isn't that right?

6 A. Ms. Boies has lots of paddocks on her property that
7 are surrounded by white vinyl fencing.

8 Q. And when you bought your property specifically with
9 the deed there were a group of what's called Exhibit A that
10 was attached to your deed; right?

11 A. Yes.

12 Q. Okay. And Exhibit A is a part of your deed; right?

13 A. Yes.

14 Q. And after you bought eleven acres, you went back and
15 bought another ten acres?

16 A. Yes.

17 Q. And you knew then that the restrictions in Exhibit A
18 were a part of your first deed; right?

19 A. Yes.

20 Q. And you knew they were going to be a part of your
21 second deed; didn't you?

22 A. Yes.

23 Q. Now, if you look at Exhibit A which is attached to the
24 deeds, there's a paragraph 2.8 that talks about grantor
25 approval of the plans; is that right?

1 A. Yes.

2 Q. Are you familiar with paragraph 2.8?

3 A. Yes.

4 Q. All right. Have you had occasion to make requests
5 pursuant to paragraph 2.8 to Ms. Boies?

6 A. Yes.

7 Q. And what requests have you made to her pursuant to
8 paragraph 2.8?

9 A. I submitted a plan for the house that I built. And
10 also a plan for a garage.

11 Q. Okay. And when you submitted the plan for the house
12 did Mrs. Boies get back to you on that?

13 A. Yes.

14 Q. Did she approve the plans for the house?

15 A. She did.

16 Q. Did she ask for any modifications?

17 A. Not that I remember.

18 Q. All right. And when you submitted plans for a garage
19 did Ms. Boies get back to you about the plans for the
20 garage?

21 A. Yes.

22 Q. Did she approve those?

23 A. Yes.

24 Q. All right. Did you also build a barn of sorts out
25 there?

- 1 A. No. That's the garage.
- 2 Q. Okay. Now, attached to the garage there is a lean-to
- 3 section on one end; right?
- 4 A. A little covered area.
- 5 Q. And you're going to use that for what?
- 6 A. I'm going to tie my horse up if I ever get one.
- 7 Q. And shoe your horse there and feed your horse and that
- 8 sort of thing?
- 9 A. Brush it.
- 10 Q. And did you submit those plans to Ms. Boies?
- 11 A. No, not until after it was brought to my attention
- 12 that I had neglected to include that on the original plan.
- 13 Q. So what did you do then?
- 14 A. Asked her permission.
- 15 Q. You submitted it in writing; right?
- 16 A. Yes.
- 17 Q. So have you made any other submissions to Ms. Boies in
- 18 writing requesting her consent to your plans?
- 19 A. Just the fence.
- 20 Q. All right. That was in April after this lawsuit
- 21 started?
- 22 A. I would have to look back. That sounds right.
- 23 Q. Okay. You didn't submit any requests to her before
- 24 you started removing the white vinyl fencing?
- 25 A. I didn't have any plans to construct a fence at that

1 time.

2 Q. Okay.

3 A. I knew that I wanted to eventually, but I didn't have
4 any concrete plans as to what I wanted to do. I just wanted
5 to get rid of that white vinyl.

6 Q. Okay. You could have washed the white vinyl; right?

7 A. Yes, I could have.

8 Q. You could have power washed it, pressure washed it,
9 got rid of the mold that way; right?

10 A. I don't know that it would have gotten rid of it, but
11 I could have done all those things.

12 Q. Okay. Over here in paragraph 2.8 there's language
13 that talks about modifications and alterations on any lot.
14 Would you agree that tearing out a fence is a modification
15 or alteration?

16 A. Yes. It's probably I guess an alteration in that I'm
17 getting rid of it.

18 Q. It certainly modifies the look of the property;
19 doesn't it, when you tear out a fence?

20 A. Much improved.

21 Q. Look at Plaintiff's Exhibit 17. It's a picture of the
22 driveway and a stone wall on either side of the driveway; is
23 that right?

24 A. Yes.

25 Q. All right. And on one side of the stone wall, on the

1 right side of the picture there is a white vinyl fence;
2 right?
3 A. Yes.
4 Q. All right. On the other side there's no white vinyl
5 fence; right?
6 A. Correct.
7 Q. There was one before and you -- that's part of the
8 fence you tore out; right?
9 A. On my property; yes.
10 Q. Would you agree that having the white vinyl fencing on
11 the right side and a commensurate white vinyl fencing on the
12 left side would create a balance?
13 A. In that there would be white vinyl fencing on both
14 sides of the stone?
15 Q. Yes, ma'am.
16 A. Yes.
17 Q. And it's not there now; is it?
18 A. No.
19 Q. And Exhibit 18 is another view of the same subject
20 matter; right?
21 A. Yes.
22 Q. All right. Is Exhibit 3 the same driveway or is that
23 a different one?
24 A. That's the same drive.
25 Q. Okay. And this shows what it looked like, at least a

1 small section of it, with the white fencing on either side
2 of the driveway with the stone wall there; right?

3 A. Yes.

4 Q. Okay. Do you agree that under the covenants Ms. Boies
5 has a right to make purely aesthetic judgments about plans
6 that are submitted to her for approval?

7 A. The covenants state that she does.

8 Q. Well, I'm asking you if she has that right to make
9 purely aesthetic decisions about plans submitted to her for
10 approval?

11 A. I think that's over-broad and unfair.

12 Q. Okay. Do you think she has a right under the
13 covenants to make decisions about whether site plans and
14 landscaping are suitable or desirable?

15 A. The covenants attached to my deed say that she does.

16 Q. Okay. And those covenants attached to your deed are
17 attached to the deed and they're a part of the deed; are
18 they not?

19 A. Of my deed; yes.

20 Q. Has Ms. Boies also spoke to you about making sure that
21 the grass is kept mowed pursuant to the covenants?

22 MR. HENRIKSON: Objection. Not relevant, Your
23 Honor.

24 THE COURT: Relevance?

25 MR. CARPENTER: I'm just, you know, -- Your

1 Honor, the point I'm trying to make is that every other part
2 of the covenant is being enforced and has been enforced and
3 everybody complies with it except for this one small part.
4 And it goes to the validity of the covenants, which they
5 seem to be contesting.

6 THE COURT: I'll allow a little brief leeway.

7 A. Can you repeat the question?

8 Q. Did Ms. Boies contact you about keeping the grass cut
9 on your property in accordance with the covenants?

10 A. She sent me an email.

11 Q. And did you make -- take any actions in response to
12 that email?

13 A. I had already taken action in response to that before
14 the email was ever sent to me.

15 Q. So you cut the grass; right?

16 A. I cut it regularly.

17 Q. Okay. One time it got up to about three feet high;
18 didn't it?

19 A. I have about twenty acres of pasture that I'm unable
20 to keep any animals on at this time because I can't have a
21 fence. So we have to arrange to have someone come out and
22 bush hog it because I don't own a tractor myself. Sometimes
23 I'm dependent on their schedules and their ability to get
24 out there. But sometimes it does get a little high, but it
25 is pasture. Our yard that's only a couple of acres around

1 our house is always maintained, cut every other week.

2 Q. Well, my question was at one point your grass got up
3 to almost three feet high; didn't it?

4 A. As pasture grass often does, especially if you're
5 going to try to raise hay or anything else that would be
6 typical on a farm; yes. The pasture grass did get high.

7 Q. And the covenants require you to keep it ---

8 A. Reasonable.

9 Q. And pursuant to that you went out and had it cut;
10 right?

11 A. I've had it cut several times this year.

12 Q. All right.

13 MR. CARPENTER: That's all I have, Your Honor.

14 THE COURT: Any other questions?

15 MR. HENRIKSON: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HENRIKSON:

18 Q. You had already requested a cutting before you got the
19 email?

20 A. Yes.

21 Q. Again, that's pasture property; that's not your yard?

22 A. Correct.

23 Q. Okay. Now, Mr. Carpenter brought up the, I guess -- I
24 don't want to call it a lean-to. What is it that's on the
25 extension of the garage that you would shade your horse with

1 if you had a horse?

2 A. On the side of the garage the like roof has been
3 extended a little bit and there's a post that holds that up,
4 so it makes shade so that there -- or it would protect you
5 from rain so that you could have a horse to tie a horse if
6 you crosstie a horse, you know, with their halter. So I had
7 a good safe place to brush them, and, you know, tack them up
8 to go ride; that kind of thing.

9 Q. Did you think that was the kind of change that
10 required some permission from the sole arbiter of changes on
11 the property?

12 A. It just -- it never crossed my mind.

13 Q. Okay. Did you subsequently submit plans for that?

14 A. Yes, right away.

15 Q. And how long ago was there?

16 A. Oh, goodness. I'm not sure. I believe we started
17 construction on that in maybe March. I don't know when I
18 asked, but it's been quite a while.

19 Q. Has it been a few months since you submitted your
20 request?

21 A. Yes.

22 Q. Has it been responded to?

23 A. It has not.

24 Q. Do you think she has an obligation -- Ms. Boies has an
25 obligation to respond promptly to ---

- 1 A. Yes.
- 2 Q. --- requests? Has she responded promptly?
- 3 A. No.
- 4 Q. You were asked about whether you think it's fair for
- 5 Ms. Boies to be able to make decisions based on pure
- 6 aesthetic reasons. Do you think it's fair for her to be
- 7 able to make decisions for any reason?
- 8 A. No. I don't think that's fair.
- 9 Q. Mr. Carpenter asked you about the language in 2.8.
- 10 With respect to the word subsequent in the initial language
- 11 2.8, that refers to -- or let me ask you this. Does that
- 12 refer to landscaping, building of fences that the homeowner
- 13 erects?.
- 14 A. Yes.
- 15 MR. CARPENTER: Objection. Calls for a legal
- 16 conclusion.
- 17 THE COURT: Overruled.
- 18 Q. All right. And so the fence, which was already there,
- 19 pre-existed anything you did; correct?
- 20 A. Yes.
- 21 Q. All right. So you did not erect the fence that you
- 22 took down?
- 23 A. No.
- 24 Q. All right. So 2.8 talks about structures that are
- 25 commenced or erected and any -- and all subsequent

1 reconstruction, modifications or additions. So the language
2 that Mr. Carpenter asked you about, reconstruction,
3 modifications, additions or alterations, that refers to
4 actions done subsequently to structures that the homeowner
5 erects; isn't that correct?

6 A. Yes.

7 Q. So that wouldn't even apply to this fence?

8 A. Correct.

9 Q. So even if 2.8 were enforceable or applied or -- it
10 wouldn't apply to what you did to your fence and what fence
11 you want to put up; isn't that correct?

12 A. Right.

13 Q. Thank you. No further questions.

14 THE COURT: Anything else?

15 **RECROSS EXAMINATION**

16 **BY MR. CARPENTER:**

17 Q. Your counsel asked you about a request for approval of
18 the lean-to on the end of your garage; is that right?

19 A. Yes.

20 Q. Did you submit that to Ms. Boies?

21 A. Through my attorney.

22 Q. Your attorney did? You sent it through your attorney
23 to her attorney; right?

24 A. Yes.

25 Q. Okay.

1 A. I would be required to do that. I would think it
2 wouldn't be proper for me to speak directly with her when we
3 have ongoing litigation.

4 Q. Well, your counsel asked you about the words
5 modification and alteration. I think in my cross
6 examination of you, you agreed with me that modification and
7 alterations would be actions that included tearing down the
8 fence; isn't that right?

9 A. If it was a fence that I had constructed originally.

10 Q. Take a look at 2.8. Doesn't 2.8 say all subsequent
11 reconstruction, modifications, additions or alterations upon
12 any lot require submission to the grantor. Isn't that what
13 that says?

14 A. Yes.

15 Q. And we agreed that a modification -- that removing the
16 fence was a modification or alteration; didn't we?

17 A. It's just not subsequent to my original construction.
18 I think that's the difference.

19 Q. Well, it was subsequent to your purchasing the
20 property; wasn't it?

21 A. Yes.

22 MR. CARPENTER: Thank you, Your Honor.

23 MR. HENRIKSON: Nothing else.

24 THE COURT: All right. You can step down. Thank
25 you.

1 MR. HENRIKSON: That's the defendant's case, Your
2 Honor.

3 THE COURT: All right. Anything else from
4 plaintiff?

5 MR. CARPENTER: No.

6 THE COURT: Okay.

7 All right. Ladies, thank y'all for being here. I know
8 y'all are ready to have some closure on this. Nobody looks
9 forward to coming to Court. But the Court is a good place
10 when you have nice folks like both of you who have a good
11 faith dispute you just can't work out.

12 So I'm going to look through all the exhibits, because
13 there have been several things brought up here today that I
14 simply was not familiar with. So I want to, out of fairness
15 to both of you and out of fairness to my obligation to make
16 a decision that I feel is based on the facts and the
17 evidence and the law of the law of the state, look at all of
18 this.

19 And probably what I will try to do is sometime next
20 week to have a conference call with both of the attorneys.
21 And then give them my opinion at that point.

22 But I do appreciate y'all. Again, I know you've spent
23 a lot of time, a lot of money and a lot of energy and a lot
24 of emotions. And at the end of the day, unless one of you
25 moves, you're going to still be neighbors. So I hope there

1 can be some ability to move on from all of the emotions that
2 necessarily come with lawsuits and litigations.

3 So I'm going to ask the attorneys if y'all will go
4 through all the exhibits with my court reporter just to make
5 sure they stay with her.

6 Thank you, gentlemen.

7 MR. HENRIKSON: Thank you, Your Honor. Appreciate
8 your time.

9

10 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, do hereby certify
3 that the foregoing is a true, accurate, and complete
4 transcript of record of all the proceedings had and evidence
5 introduced in the trial/hearing of the captioned case,
6 relative to appeal, in the Court of Common Pleas for
7 Anderson County, South Carolina, on the 4th day of October,
8 2017.

9 This transcript may contain quoted material. Such
10 material is reproduced as read by the speaker.

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

13 January 19, 2018
14
15

16 _____
17 Danette P. Hanks

2015013306
DEED Book: DE 2460 Page: 2482 - 2486 5 Pgs
February 25, 2015 01:14:14 PM Cons: \$144,950.00
Rec: \$11.00 Cnty Tax: \$159.50 State Tax: \$377.00
FILED IN GREENVILLE COUNTY, SC *Timothy J. Lanier*

Lanier Law Firm, LLC
113 Pelham Commons Blvd.
Greenville, SC 29615

15-033

State of South Carolina)

TITLE TO REAL ESTATE

County of Greenville)

KNOW ALL MEN BY THESE PRESENTS, that Deborah L. Boies, (hereinafter called "Grantor"), in consideration of **One Hundred Forty Four Thousand Nine Hundred Fifty and 00/100 Dollars (\$144,950.00)**, to the Grantor in hand paid at and before the sealing of these presents, by Jacquelyn J. Lanier (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

Jacquelyn J. Lanier,

ALL that certain piece, parcel or lot of land, lying situate and being in the County of Greenville, State of South Carolina, being shown and designated as 11.15 acres more or less on plat entitled "Survey for Jacquelyn Lanier" prepared by Langford Land Surveying, LLC dated January 27, 2015 and recorded in Plat Book 1201 page 56. Greenville County Records.

THIS being a portion of the same property conveyed to Deborah L. Boies by deed of Kathleen W. Welch dated March 3, 1998 and recorded March 6, 1998 in Deed Book 1748 page 575, Greenville County Records.

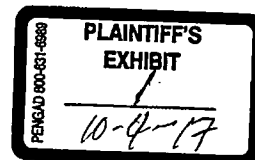
This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises and specifically to those restrictions contained in Exhibit A attached hereto.

Grantee's Address: 209 Crawford Glen Ct Greenville SC

TMS No.: PB 0636040100400

2/6/15

TOGETHER with all and singular the rights, members, hereditaments and



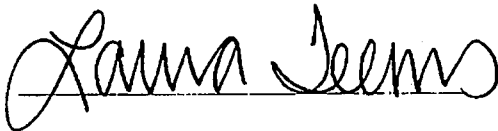
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

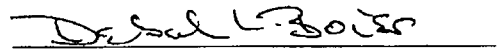
WITNESS the Grantor's hands and seals this the 25th day of February, 2015.

SIGNED, SEALED AND DELIVERED

in the presence of:






Deborah L. Boies

State of South Carolina)
County of Greenville)

ACKNOWLEDGEMENT

THE FOREGOING INSTRUMENT was acknowledged before me this 25th day of February, 2015 by **Deborah L. Boies**.

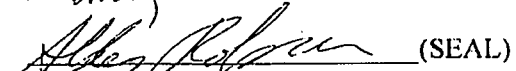
 (SEAL)
Notary Public for South Carolina
My Commission Expires: 7/2/23

Exhibit A

RESTRICTIONS

1. USES PERMITTED AND PROHIBITED

1.1. Single Family. All parcels or tracts shall be used exclusively for single-family residential dwellings. No modular or mobile homes shall be allowed, except on a temporary basis during construction of a conventional residence. Any additional outbuildings must be approved by Grantor.

1.2. Recreational Vehicles. Any motor scooter, ATV, motorcycle, go-cart, or similar vehicle, must be operated on the owner's property. Roads shall be used only for purposes of ingress and egress, and no racing or recreational driving shall be permitted.

1.3. Disabled Vehicles, etc. Any disabled or wrecked vehicle, and/or similar equipment or vehicles shall at all times be parked completely within a garage and shall at all times be neatly stored and positioned to be inconspicuous.

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

1.5 Businesses Prohibited. No tract or parcel or any structure situate on a tract or parcel shall be used for any business, commercial, amusement, hospital, sanitarium, school, religious, charitable, or manufacturing purposes except those businesses pertaining to the boarding, breeding, showing and/or training of equine animals. No billboards or advertising signs or any kind shall be displayed or erected on the real property, with the exception of neatly displayed 18" X 24" real estate "For Sale" signs or farm name signs. No part of any structure shall be used for the purposes of renting a room or rooms therein. No duplex residences, garage apartments, or apartment houses shall be erected or permitted to remain on any parcel.

1.6 Animals. No animals, livestock or poultry of any kind shall be raised or bred on the Real Property; except for equine animals and dogs, cats or other common household pets. No more than one equine animal shall be allowed per acre. No equine animals or pets shall be allowed to become a nuisance to other residents of a tract or parcel.

1.7 Fuel Tanks. All fuel oil tanks or containers shall be covered so as not to detract from the real property, or buried underground consistent with normal safety precautions and in compliance with all local, state and federal laws and regulations.

1.8 Refuse, Refuse Containers and Personal Items. No parcel or tract owner will engage in any activity which will result in the deposit or accumulation of trash, refuse, debris or other objectionable matter. It shall be the responsibility of each tract or parcel owner to prevent the accumulation of litter, trash, packing crates, or unkempt condition of buildings or grounds on his property, or to permit accumulations which shall tend to substantially decrease the beauty of the property as a whole or the specific area. No loose trash will be permitted to be strewn about a tract or parcel owner's property at

any time. Garbage containers must be kept out of sight from the street, except during collection hours. All personal use items shall be stored inside when not in use. These items include, but are not limited to, yard tools, sprinklers, wheel barrows, and children's toys as would create a nuisance to other property owners.

1.9 Parking. Residents of parcels or tracts shall not be allowed to park vehicles on the streets or roads except in emergencies. Unless otherwise posted, on-street parking shall be allowed to visitors and guests of the owners of tracts or parcels for short durations, as long as the health, safety and convenience of other residents of tracts or parcels are not impaired.

1.10 Maintenance of Property. Parcel or tract owners shall maintain his or her property and any and all improvements thereon in a reasonable manner. Such maintenance to include, but not limited to, routinely mowing/cutting grass, landscaping and maintaining such landscaping, and making necessary repairs to and preserving the appearance of any improvements located on such parcel or tract.

2. HOUSE PLANS AND SPECIFICATIONS.

2.1. Re-cutting of Tracts or Parcels. No tracts or parcels shall be recut to contain less than three (3) acres.

2.2. Setback Lines. No residence shall be erected on any tract or parcel nearer than 50 feet from the street on which it fronts, nor nearer than 50 feet from any side or rear tract or parcel lines. Any additional buildings besides a residence must be approved by Declarant and abide by same setback lines.

2.3. Minimum Areas. The following minimum heated floor space requirements shall apply to the residences on any tract or parcel: One Story Residence – 2,000 square feet; Two Story Residence – 2,000 square feet with minimum of 1,000 square feet on the first story.

2.4. Construction Quality, Height and Roof. All buildings shall be constructed with high quality materials and workmanship to insure that no dwelling shall present an unsightly appearance. No residence shall exceed two stories in height, exclusive of basement and attic. The roof of every residence shall have, as a minimum, 7/12 pitch. Roofing materials must be of the highest quality, no three-tab shingles.

2.5. Garages. All residences must include a garage able to accommodate a minimum of two cars.

2.6. Utilities. All utility wires for electricity, telephone or other utilities shall be installed underground.

2.7. Construction Period. Any residence constructed upon any tract or parcel must be started within twelve (12) months after the date that footings are poured. Once construction is commenced, each tract or parcel owner shall be responsible for insuring

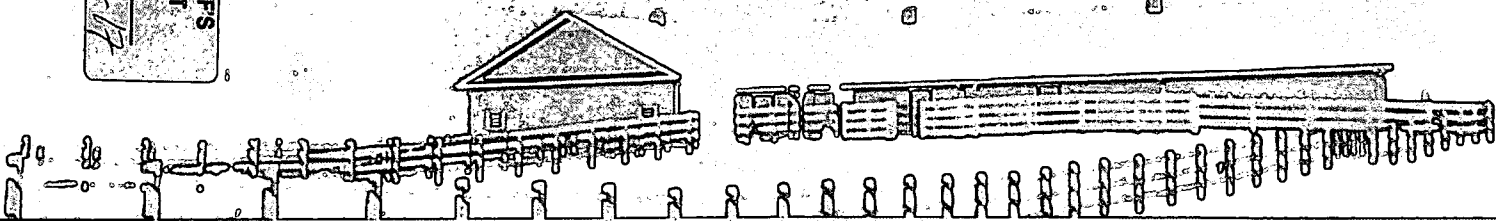
that such work proceeds at an orderly and timely pace, with no work stoppage in excess of fourteen (14) consecutive days, acts of God excepted.

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plans, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including purely aesthetic reasons. Grantee shall deliver a written request for action to the Grantor by certified mail with return receipt requested or by hand delivery with signed receipt together with the necessary building plans and specifications. Building plans and specifications submitted to the Grantor shall consist of not less than the following: foundation plan, section details, floor plans of all floors, elevation drawings of all exterior walls, roof plans, material specifications and site plan showing exterior walls, roof plans, material specifications and site plan showing location and orientation of building on the Lot, with all setbacks indicated. Such plans and specifications shall show the driveway, service court or area, parking and any other buildings, improvements or facilities to be constructed. In the event the Grantor fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within sixty (60) days after submission, the plans and specifications shall be deemed approved. In all circumstances, compliance with the zoning regulations of Greenville County, South Carolina shall be required.

3. DURATION. These covenants, conditions and restrictions shall run with the land and shall survive the transfer or transfers of any property or any portion of property restricted hereby and shall be binding upon any future owners.

PENGAD 600-831-6969
PLAINTIFFS
EXHIBIT
10-4-17





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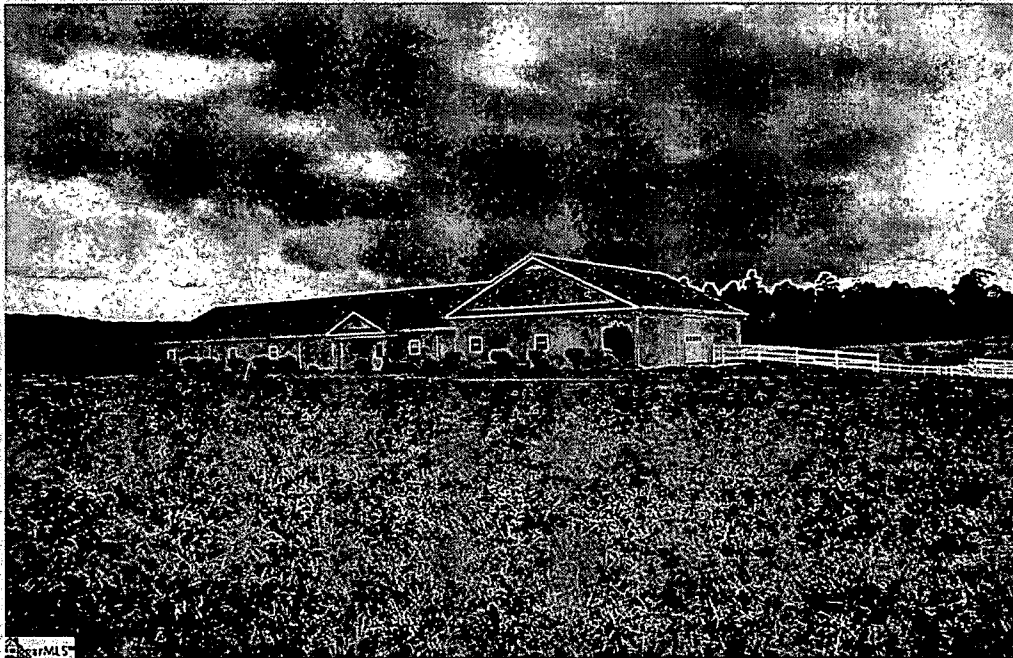
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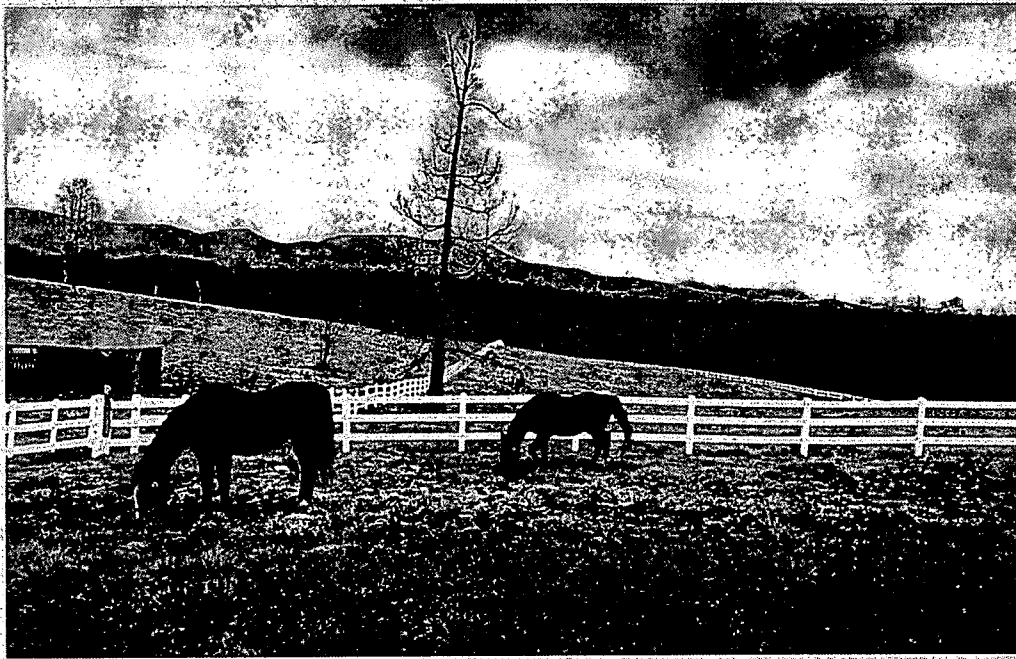
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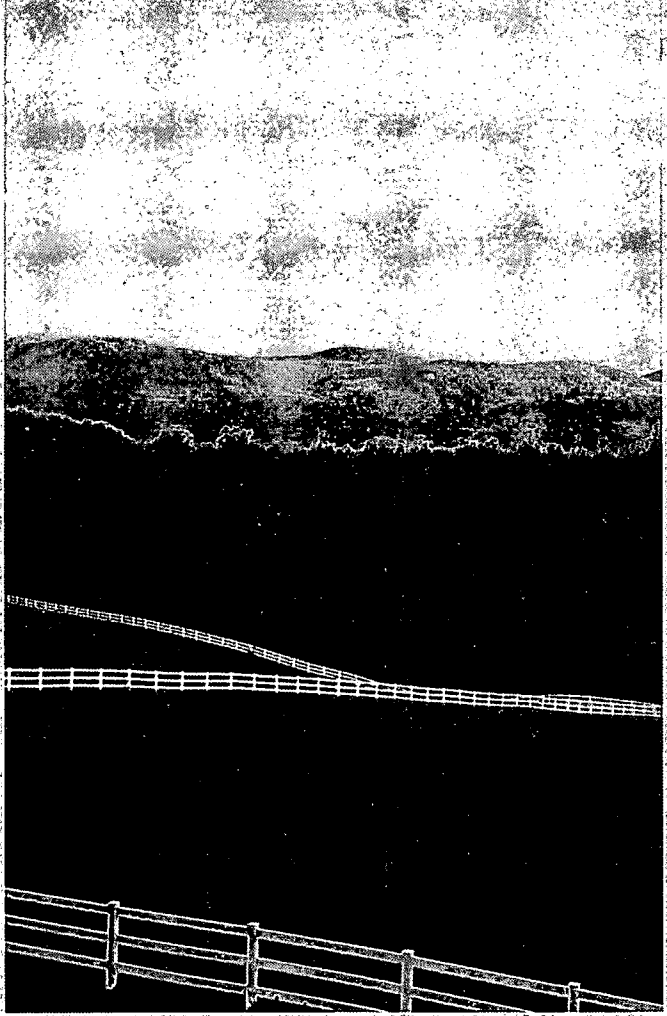
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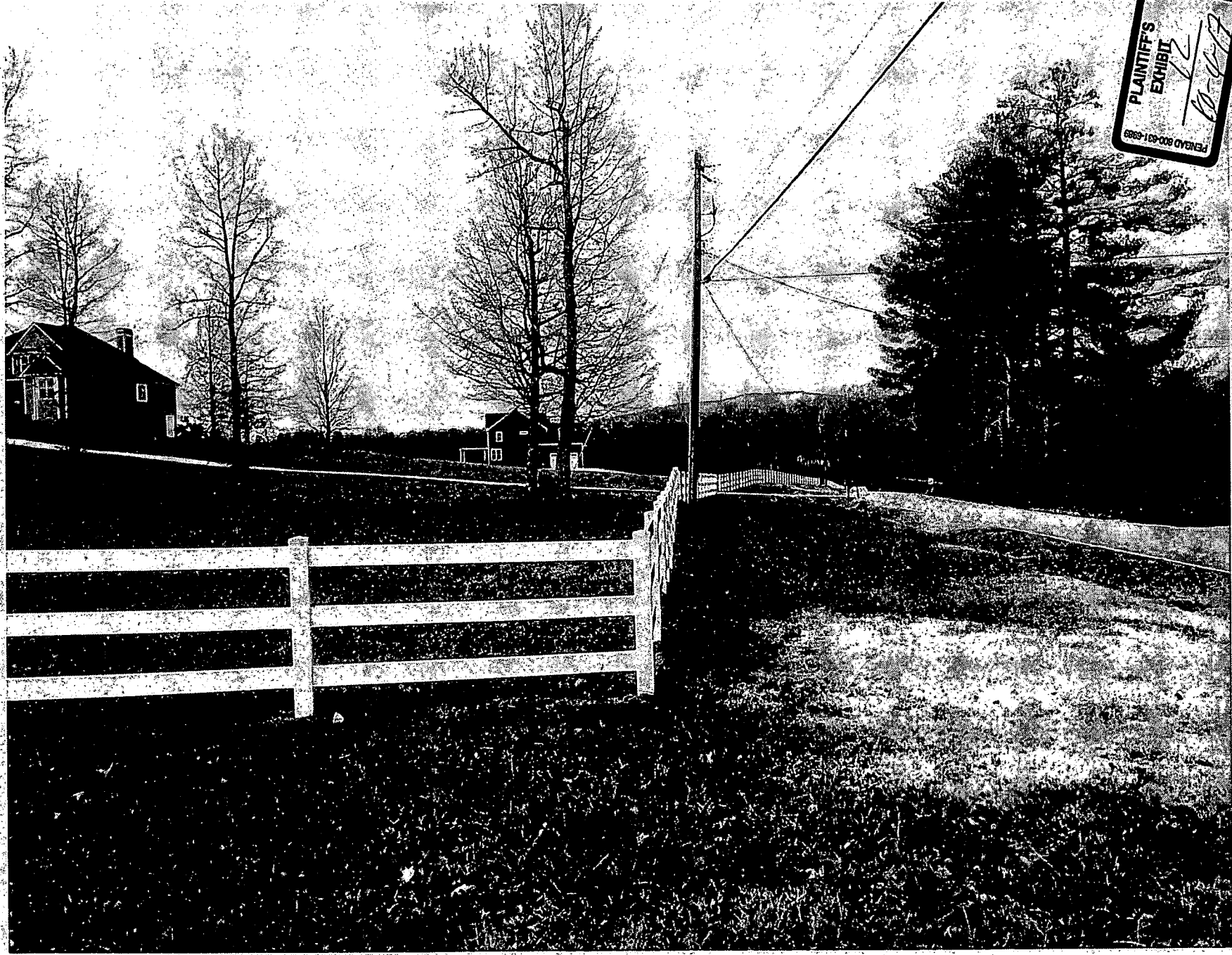
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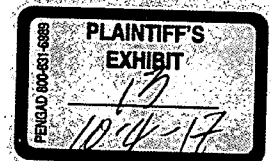


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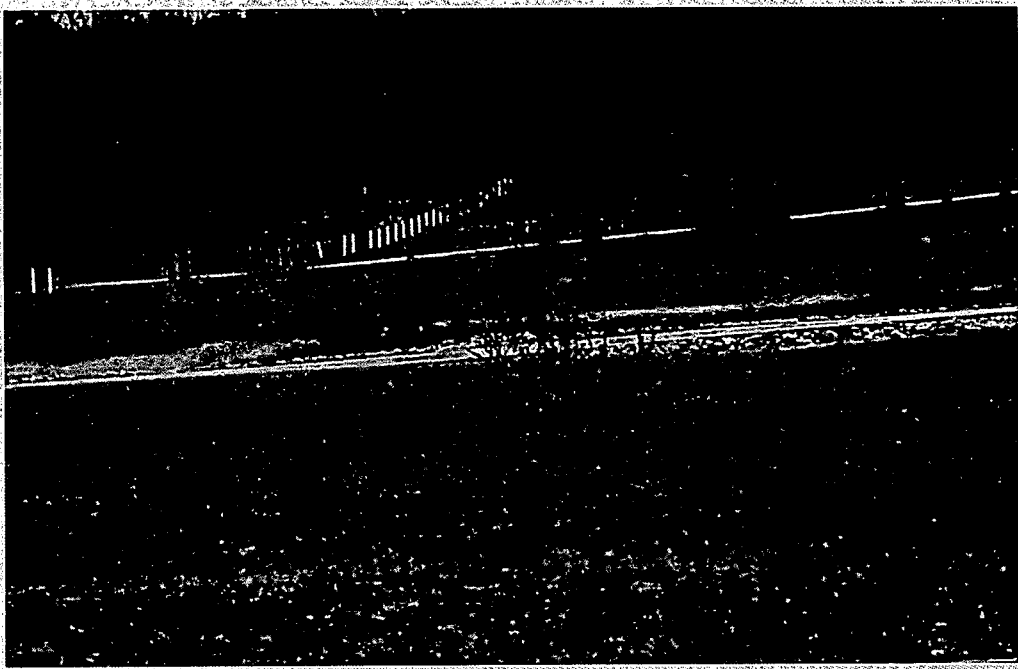




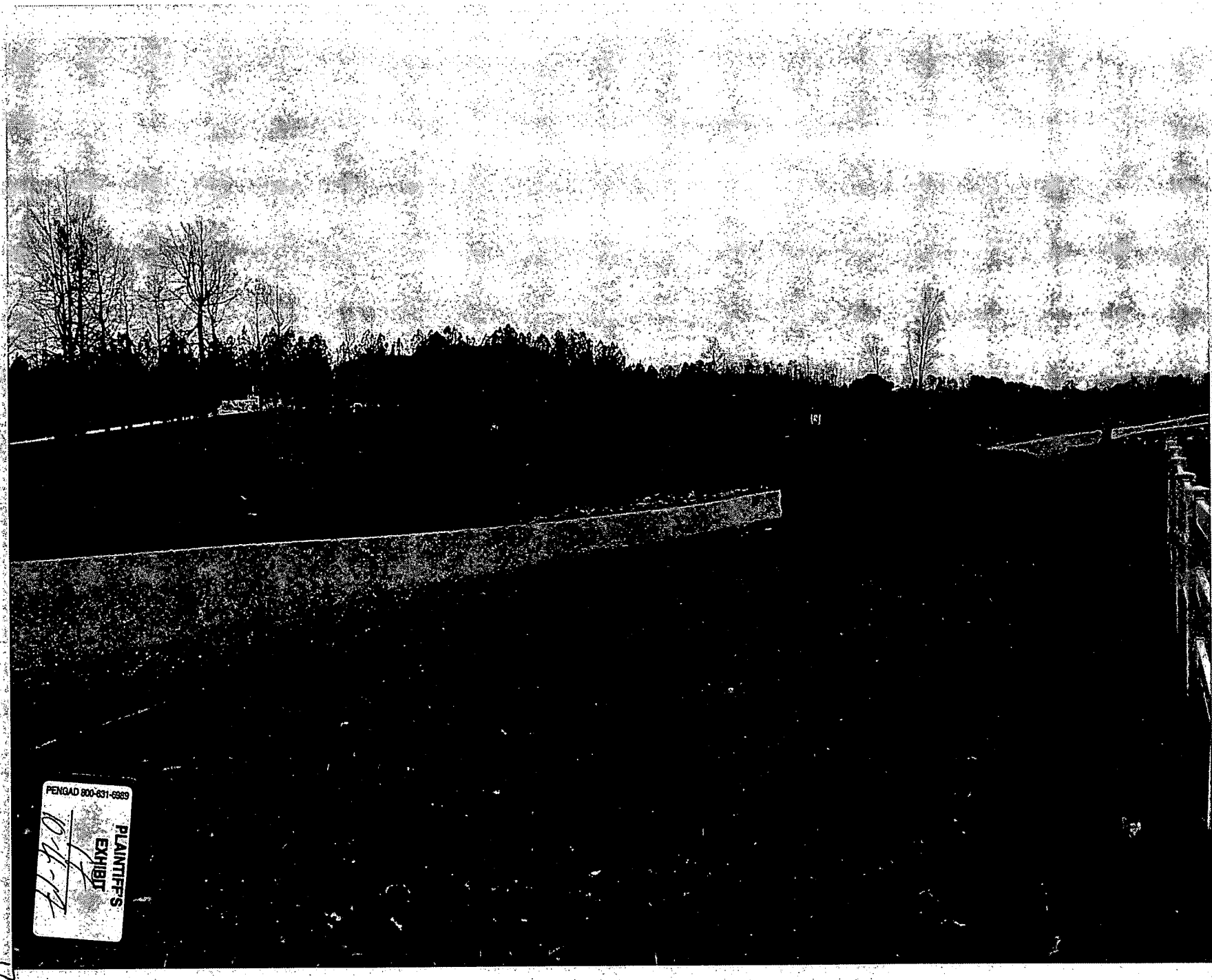


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PENGAD 800-831-6969
PLAINTIFFS
EXHIBIT
0-6-17



PERGAD 800-631-6989
PLAINTIFF'S
EXHIBIT
11-4-17

2015013306
DEED Book: DE 2460 Page: 2482 - 2486 5 Pgs
February 25, 2015 01:14:14 PM Cons: \$144,950.00
Rec: \$11.00 Cnty Tax: \$159.50 State Tax: \$377.00
FILED IN GREENVILLE COUNTY, SC *T. J. Lanier*

Lanier Law Firm, LLC
113 Pelham Commons Blvd.
Greenville, SC 29615

15-033

State of South Carolina)

TITLE TO REAL ESTATE

County of Greenville)

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Jacquelyn J. Lanier,

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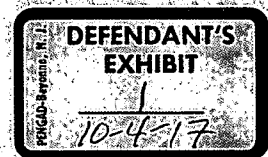
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TMS No.: PB 0636040100400

2/25

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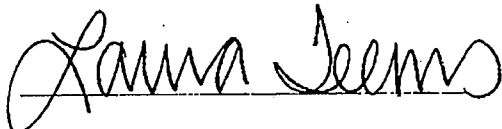
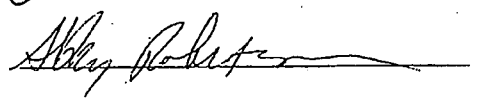


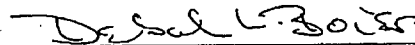
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WITNESS the Grantor's hands and seals this the 25th day of February, 2015.

SIGNED, SEALED AND DELIVERED
in the presence of:


Deborah L. Boies

State of South Carolina)
)
County of Greenville)

ACKNOWLEDGEMENT

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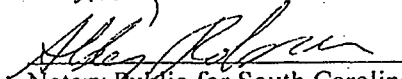
 (SEAL)
Notary Public for South Carolina
My Commission Expires: 7/2/23

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3. DURATION. These covenants, conditions and restrictions shall run with the land and shall survive the transfer or transfers of any property or any portion of property restricted hereby and shall be binding upon any future owners.

BOOK 1909 PAGE 304 LBO 00-269

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) 11 30
DECLARATIONS OF
COVENANTS AND RESTRICTIONS FOR
DEBORAH L. BOIES PROPERTY

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made this 20 day of April, 2000, by the undersigned, (herein referred to as "Owner") of Greenville County, South Carolina, applicable to the property described in Exhibit A attached hereto and incorporated herein by reference (hereinafter the "Real Property").

WITNESSETH

WHEREAS, the Owner of the Real Property which is the subject of this Declaration wishes to provide for a quality residential neighborhood thereon with the following objectives, to-wit:

A. To promote the construction of well designed and constructed single family residences and appurtenances with quality materials and workmanship harmonious with the environment and with each other;

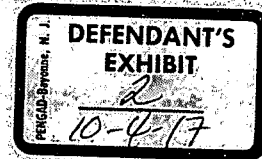
B. To attract permanent homeowners;

C. To provide privacy and security to homeowners in a spacious natural environment;

D. To enhance the value of investments made by purchasers therein; and

E. To secure to each future tract or parcel owner the full benefit and enjoyment of his/her home.

NOW, THEREFORE, for and in consideration of the above objectives and in further consideration of the mutual covenants, herein created for the benefit of Owner, her heirs and assigns, Owner hereby declares, creates and imposes the following covenants, restrictions, easements, and reservations, which are hereby declared covenants running with the land for the period or periods set forth below.



Page 1 of 188

REC FEE 14.00
4-25-0 11:50AM

32328

over, across, and under any area of the property for ingress, egress, erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains, gas lines, and other suitable equipment, television cable, gas, water, sewer, and other public conveniences and utilities. Said easements shall also allow Owner or any appropriate utility or other authority to cut drainways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety and appearance. Said easements include the right to cut any trees, bushes, or shrubbery, and to make any gradings of the soil or take similar actions reasonably necessary to provide safe and effective utility installation and maintenance.

The easements and rights-of-way granted in this Section may be enjoyed and utilized by all parties to whom such easements and rights-of-way are granted, and to their assignees, lessees, guests, invitees, and licensees. Nothing contained herein shall prevent Owner from dedicating such easements and rights-of-way to any public authorities. After such dedication, said areas shall be governed by applicable laws and regulations, and Owner shall have no further responsibility for maintenance or upkeep of the areas so dedicated, except as may be required by such applicable law.

4. HOMEOWNERS' ASSOCIATION.

4.1. Formation and Incorporation. Owner reserves the right to allow for the formation of a Homeowners Association.

5. TERMS AND ENFORCEABILITY.

5.1. Enforcement. If Owner or any person, their heirs and/or assigns owning any portion of the Real Property subject to the within covenants, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person owning any parcel to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of such covenants and either to prevent him or them from doing so or to recover damages and other dues for such violation. Invalidity of any one or more of these covenants by a judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

In addition to the enforcement provided above, it shall also be permissible for any owner of a tract or parcel to take any such action it deems necessary to compel compliance with these covenants.

1.8 Refuse, Refuse Containers and Personal Items. No parcel or tract owner will engage in any activity which will result in the deposit or accumulation of trash, refuse, debris or other objectionable matter. It shall be the responsibility of each tract or parcel owner to prevent the accumulation of litter, trash, packing crates, or unkempt condition of buildings or grounds on his property, or to permit accumulations which shall tend to substantially decrease the beauty of the property as a whole or the specific area. No loose trash will be permitted to be strewn about a tract or parcel owner's property at any time. Garbage containers must be kept out of sight from the street, except during collection hours. All personal use items shall be stored inside when not in use. These items include, but are not limited to, yard tools, sprinklers, wheel barrows, and children's toys as would create a nuisance to other property owners.

1.9 Parking. Residents of parcels or tracts shall not be allowed to park vehicles on the streets or roads except in emergencies. Unless otherwise posted, on-street parking shall be allowed to visitors and guests of the owners of tracts or parcels for short durations, as long as the health, safety and convenience of other residents of tracts or parcels are not impaired.

1.10 Maintenance of Property. Parcel or tract owners shall maintain his or her property and any and all improvements thereon in a reasonable manner. Such maintenance to include, but not limited to, routinely mowing/cutting grass, landscaping and maintaining such landscaping, and making necessary repairs to and preserving the appearance of any improvements located on such parcel or tract.

2. HOUSE PLANS AND SPECIFICATIONS.

2.1. Recutting of Tracts or Parcels. No tracts or parcels shall be recut to contain less than four (4) acres.

2.2. Setback Lines. No building or residence shall be erected on any tract or parcel nearer than 25 feet from the street on which it fronts, nor nearer than 7½ feet from any side or rear tract or parcel lines.

2.3. Minimum Areas. The following minimum heated floor space requirements shall apply to the residences on any tract or parcel:

One Story Residence - 1,800 square feet
Two Story Residence - 1,800 square feet with

minimum of 1,000 square
feet on the first story

2.4. Construction Quality, Height and Roof. All buildings shall be constructed with high quality materials and workmanship to insure that no dwelling shall present an unsightly appearance. No residence shall exceed two stories in height, exclusive of basement and attic. The roof of every residence shall have, as a minimum, 7/12 pitch.

2.5. Garages. All residences must include a two-car garage.

2.6. Utilities. All utility wires for electricity, telephone or other utilities shall be installed underground.

2.7. Construction Period. Any residence constructed upon any tract or parcel must be started within twelve (12) months after the date that footings are poured. Once construction is commenced, each tract or parcel owner shall be responsible for insuring that such work proceeds at an orderly and timely pace, with no work stoppage in excess of fourteen (14) consecutive days, acts of Gods excepted.

3. EASEMENTS.

Owner reserves easements for herself and for the benefit of any public authorities and utility companies to which Owner may choose to grant such easements, over and through all areas designated as roads, streets, walkways, and such additional portions of the property as may be necessary in order to provide water, sewerage, power, gas, television cable, surface water, drainage and other utility and common services to owners or any portion of the property, including, without limitation, all areas designated as such by broken lines on the initial plat. All tracts or parcels within the property are also subject to an access, drainage and utility easement five feet in width along and inside all property lines; provided, that if a dwelling is built adjacent to or near a side property line or shares a party wall built on a tract or parcel line with a dwelling built on the adjacent tract or parcel, when there shall be no drainage and utility easement along such tract lines.

The easements reserved to Owner above, and the easements which Owner has granted and shall grant to appropriate public authorities and utilities, shall include the right to go upon,

1. USES PERMITTED AND PROHIBITED

1.1. Single Family. All parcels or tracts shall be used exclusively for single-family residential dwellings. No modular or mobile homes shall be allowed, except on a temporary basis during construction of a conventional residence.

1.2. Recreational Vehicles. Any motor scooter, ATV, motorcycle, go-cart, or similar vehicle, must be operated on the owner's property. Roads shall be used only for purposes of ingress and egress, and no racing or recreational driving shall be permitted.

1.3. Disabled Vehicles, etc. Any disabled or wrecked vehicle, and/or similar equipment or vehicles shall at all times be parked completely within a garage and shall at all times be neatly stored and positioned to be inconspicuous.

1.4. Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing).

1.5. Businesses Prohibited. No tract or parcel or any structure situate on a tract or parcel shall be used for any business, commercial, amusement, hospital, sanitarium, school, religious, charitable, or manufacturing purposes except those businesses pertaining to the boarding, breeding, showing and/or training of equine animals. No billboards or advertising signs or any kind shall be displayed or erected on the real property, with the exception of neatly displayed 18" X 24" real estate "For Sale" signs or farm name signs. No part of any structure shall be used for the purposes of renting a room or rooms therein. No duplex residences, garage apartments, or apartment houses shall be erected or permitted to remain on any parcel.

1.6. Animals. No animals, livestock or poultry of any kind shall be raised or bred on the Real Property, except for equine animals and dogs, cats or other common household pets. No more than one equine animal shall be allowed per acre. No equine animals or pets shall be allowed to become a nuisance to other residents of a tract or parcel.

1.7. Fuel Tanks. All fuel oil tanks or containers shall be covered so as not to detract from the Real Property, or buried underground consistent with normal safety precautions and in compliance with all local, state and federal laws and regulations.

7.2. Term of Covenants. These covenants and restrictions, as altered, annulled, and amended from time to time as provided for herein unless released or waived as herein provided, shall be deemed covenants running with the land and shall remain in full force and effect until the first day of January, A.D. 2020 and thereafter, these covenants shall be automatically be extended for successive periods of twenty (20) years unless within six (6) months prior to January 1, 2020, or within six (6) months preceding the end of any successive twenty year (20) period, as the case may be, a written agreement is executed by the owners of the majority of acres of the Real Property subject to these Covenants and Restrictions, in which written agreement any of the covenants, restrictions, reservations, and easements provided for herein may be changed, modified, waived, or extinguished, in whole or in part, as to all or any part of the Real Property which is subject hereto in the manner and to the extent provided in such written agreement.

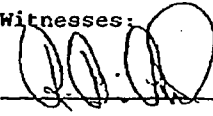
8. AMENDMENTS AND MODIFICATIONS.

8.1. Reservations. Owner reserves and shall have the right to amend these Covenants and Restrictions for the purpose of resolving any ambiguity in, or any inconsistency between, the provisions contained herein, and to make any additional covenants and restrictions applicable to the Real Property which do not substantially alter or change the standards of the covenants and restrictions herein contained.

8.2 Additional Covenants. No owner of any tract or parcel without the prior written approval of Owner may impose additional covenants or restrictions on any part of the Real Property.

IN WITNESS HEREOF, Owner has caused this Declaration of Covenants and Restrictions to be executed this date and year first above written.

Witnesses:

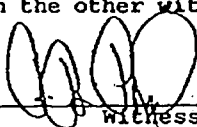

 Linda B. Oliver

By: 
 Deborah L. Boies, Owner

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within Owner, Deborah L. Boies sign, seal and as her act and deed, deliver the within-written Declaration of Covenants and Restrictions; and that the undersigned witness, with the other witness above, witnessed the execution hereof.



Witness

Sworn to before me, this
21 day of April, 2000.



Linda B. Oliver (SEAL)
Notary Public for South Carolina
My Commission Expires: 2-21-03

BOOK 1909 PAGE 311

EXHIBIT A: DESCRIPTION OF DEBORAH L. BOIES PROPERTY

ALL that piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, Highland Township on the southwesterly side of Howe Road (S. C. Road No. 115), formerly known as Welcome Road, and being shown as containing 122.66 acres according to a plat entitled "Property of Kathleen W. Welch" prepared by Tri-State Surveyors, dated April 29, 1974 and recorded in Plat Book 37-E at Page 85 in the Office of the Register of Deeds for Greenville County, South Carolina, reference to said plat being made for a more complete property description.

This is the identical property conveyed to Owner by deed of Kathleen T. Welch, Trustee recorded on March 6, 1998 in Deed Book 1748 at Page 575 in the Office of the Register of Deeds for the aforesaid County and State.

TAX MAP REFERENCE: 0636.04-01-004.00

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 01:30 PM
04 25 00 RECORDED IN DEED
BOOK 1909 PAGE 0304 THRU 0311
DOC # 2000032328

Judy B. Hix



2015015148

2 Pgs

DEED Book: DE 2460 Page: 4531 - 4532

March 4, 2015 10:12:26 AM Cons: \$53,500.00

Rec: \$10.00 Cnty Tax: \$58.85

State Tax: \$139.10

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Haring

State of South Carolina)

TITLE TO REAL ESTATE

County of Greenville)

File #: 2015020032

KNOW ALL MEN BY THESE PRESENTS, that, Deborah L. Boies, (hereinafter called "Grantor"), in consideration of Fifty Three Thousand Five Hundred and 00/100 (\$53,500.00) Dollars, to the Grantor in hand paid at and before the sealing of these presents, by Daniel Cernoch and Gloria Cernoch, (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto Daniel Cernoch and Gloria Cernoch, as joint tenants with rights of survivorship and not as tenants in common

ALL that certain piece, parcel or lot of land with all improvements thereon or hereafter constructed thereon situate, lying and being in the County of Greenville, State of South Carolina, being shown and designated as as 3.55 acres, as more particularly appear on that certain plat entitled "Survey for Deborah L. Boies" prepared by Lanford Land Surveying, dated May 27, 2003, recorded on March 3, 2015 in the Office of the Register of Deeds for the County of Greenville, South Carolina in Plat Book 1201 at Page 97, reference to said plat is hereby made for a more complete metes and bounds description thereof.

This being a portion of the property conveyed unto Deborah L. Boies by Kathleen W. Welch, Trustee under a Revocable Trust Agreement dated July 28, 1992 and Kathleen W. Welch, F/K/A Kathleen Wilson MacLauchlin, Individually dated 03/03/98, recorded 03/12/98 in Deed Book 1748, Page 575 in the ROD Office of Greenville County, South Carolina.

Property Address: 4651 Howe Road, Landrum, SC, 29356

TMS # PART OF 0636 04 01 004 00

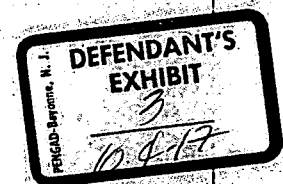
This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Grantee's Address:

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining,

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.



WITNESS the Grantor's hands and seals this 3 day of March, 2015

Signed, sealed and delivered in the presence of:

[Signature]
Witness #1-

Deborah L. Boies (Seal)
Deborah L. Boies

Witness #2- [Signature]

[Signature] (Seal)

State of South Carolina)

Probate

County of Greenville)

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that (s)he saw the within-named Deborah L. Boies sign, seal, and, as his/her/their act and deed, deliver the within-written Title to Real Estate, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

[Signature]
Witness #1-

Sworn to before me this 3 day of March, 2015.

[Signature] (L.S.)

Notary Public

My Commission Expires: 07/25/17

[SEAL]

Instrument Prepared By:

Cristine Oyer Law Firm LLC
1154-B Haywood Road
Greenville, SC 29615

Grantor's Address: 5 Rockledge Dr
Greenville, SC
29609

Prepared By and Return to:
Noon and Hammett, LLC
110 East Stone Avenue
Greenville, SC 29609

File No.: A8101MN

2015029065
DEED Book: DE 2463 Page: 4991 - 4995 5 Pgs
April 22, 2015 02:21:07 PM Cons: \$53,500.00
Rec: \$10.00 Cnty Tax: \$58.85 State Tax: \$139.10
FILED IN GREENVILLE COUNTY, SC *Timothy J. Hammett*

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **DEBORAH L. BOIES**, in the State aforesaid, for and in consideration of the sum of Fifty-Three Thousand Five Hundred and 00/100 Dollars (\$53,500.00), unto me paid by **JASON S. JOHNSON AND WANDA C. SISK**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell, and release unto the said **Jason S. Johnson and Wanda C. Sisk**, as joint tenants with right of survivorship and not as tenancy in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

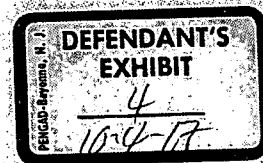
ALL that piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Greenville, being shown and designated as Lot No. 1 on a plat of Howe Road Estate prepared by Langford Land Surveying, LLC, dated March 12, 2015 and recorded in the RMC Office for Greenville County in Plat Book 1205 at Pages 13 and 14. For a more complete and accurate description refer to the above referenced plat.

BEING a portion of the same property conveyed to Deborah L. Boies from Kathleen W. Welch, Trustee under a Revocable Trust Agreement Dated July 28, 1992 and Kathleen W. Welch, f/k/a/ Kathleen Wilson MacLauchlin by Deed dated March 3, 1998, recorded March 6, 1998, in Deed Book 1748, Page 575, in the official records for Spartanburg County, South Carolina.

Tax Map #: p/o 0636-04-01-004.00

Property Address: Howe Road, Landrum, SC 29356

Grantee(s) Address: 2064 Howlong Ave, Greenville, SC 29609



THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

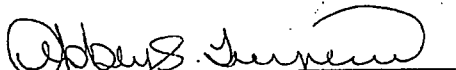
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

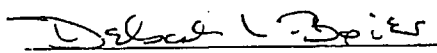
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Jason S. Johnson and Wanda C. Sisk, as **joint tenants with right of survivorship and not as tenancy in common**, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantor does hereby bind herself and her heirs and assigns, to warrant and forever defend all and singular the said premises unto the said Jason S. Johnson and Wanda C. Sisk, as **joint tenants with right of survivorship and not as tenancy in common**, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against the Grantor's heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF my Hand and Seal this 21st day of April, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


1st Witness

 {L.
Deborah L. Boies

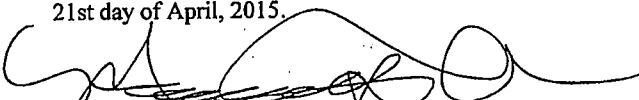

2nd Witness

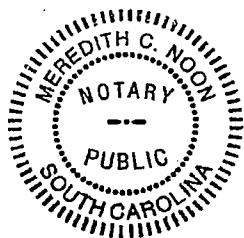
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

ACKNOWLEDGEMENT

I, Meredith C. Noon, a Notary Public, do hereby certify that Deborah L. Boies personally appeared before me this day and acknowledged the due execution of foregoing instrument.

SWORN to before me this
21st day of April, 2015.


Notary Public for South Carolina
My Commission Expires: 3/30/16



(SEAL)

File # A8101MN

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

STATE OF SOUTH CAROLINA)

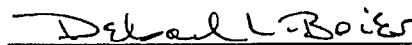
COUNTY OF GREENVILLE)

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

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at **4651 Howe Road, Landrum, SC 29356**, bearing Greenville County Tax Map Number p/o 0636-04-01-004.00, and was transferred by **Deborah L. Boies** to **Jason S. Johnson and Wanda C. Sisk** on **April 21, 2015**.
3. Check one of the following: The deed is
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

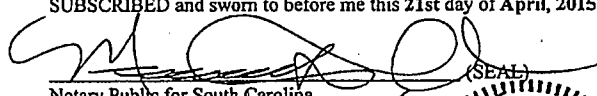
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$53,500**.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$_____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check Yes _____ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$_____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: **53,500**
 - (b) _____ Place the amount listed in item 5 above here: _____
 - (If no amount is listed, place zero here.) _____
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place result here: **53,500**
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ **197.95**.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.

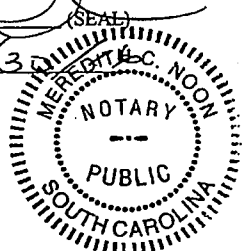


Deborah L. Boies

SUBSCRIBED and sworn to before me this 21st day of April, 2015.



Notary Public for South Carolina
My Commission Expires: 3/30/16



Affidavit for Taxable or Exempt Transfers

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16.U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Affidavit for Taxable or Exempt Transfers

BOOK 1909 PAGE 312

PREPARED BY: W. ALLEN REESE AND R. BRIAN PONDER, Attorneys at Law
304 North Main Street, Greer, SC 29650

GRANTEE'S ADDRESS:

450 Pink Dill Mill Road
Greer, SC 29651

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) **WARRANTY DEED**

KNOW ALL MEN by these presents, that **Deborah L. Boies**, in consideration of the sum of Twenty Four Thousand and No/100ths (\$24000.00) Dollars, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto **Eugene A. Mulligan and Cynthia A. Mulligan**, their Heirs and Assigns Forever:

ALL that certain piece, parcel or lot of land, with all improvements thereon, or to be constructed thereon, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as **TRACT 1** containing 4.00 acres on Plat of **CASTLERIDGE** prepared by Lindsey & Associates, Inc. dated March 20, 2000 and recorded in Plat Book 41-X at Page 13. Reference to said plat is hereby made for a more complete property description.

ALSO, an easement for ingress and egress in, to, and along the portion of a "Gravel Road" as shown on the above described plat that extends from Howe Road to a driveway located on the above referenced Tract 1 and an easement for ingress and egress across a 20.02 foot strip of land being a portion of Tract 2 as shown on the above described plat. Such easements are intended to provide access to the above described driveway located on Tract 1 from Howe Road.

This is a portion of the property conveyed to the Grantor by deed of Kathleen W. Welch, Trustee Under a Revocable Trust Agreement dated July 28, 1992 and Kathleen W. Welch, f/k/a Kathleen Wilson MacLauchlin, individually recorded on March 6, 1998 in Deed Book 1748 at Page 575.

This conveyance is subject to those Covenants and Restrictions for Deborah L. Boies Property recorded in Deed Book 1909 at Page 304, and to any and all other restrictions, easements, rights-of-way, roadways and zoning ordinances of record affecting the above described property and to such matters as would appear from a current resurvey of the property.

-317-

TAX MAP REFERENCE: 0636.04-01-004.01

STATE 62.40
SW
APR 25 2000
COUNTY 26.40

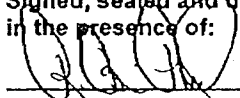
32334

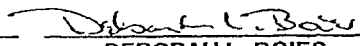


Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantees, and the Grantees' heirs or successors and assigns, forever. And, the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantees and the Grantees' heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand and seal this 20 day of April, 2000.

Signed, sealed and delivered
in the presence of:

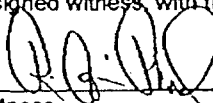


 (SEAL)
DEBORAH L. BOIES

Linda B. Oliver (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE

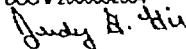
PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Deborah L. Boies sign, seal and as her act and deed, deliver the within written Deed; and that the undersigned witness, with the other witness subscribed above, witnessed the execution hereof.


Witness

Sworn to before me, this
20 day of April, 2000.

Linda B. Oliver (SEAL)
Notary Public for South Carolina
My Commission Expires: 2-21-03

FILED FOR RECORD IN GREENVILLE
COUNTY SC F.L.D. OFFICE AT 01:31 PM
04 25 00 RECORDED IN DEED
BOOK 1909 PAGE 0312 THRU 0313
DOC # 2000032334



2016090748
5 Pgs
DEED Book: DE 2500 Page: 1579 1583
November 14, 2016 02:27:04 PM Cons: \$94,500.00
Rec: \$11.00 Cnty Tax: \$103.95 State Tax: \$245.70
FILED IN GREENVILLE COUNTY, SC *Timothy J. Hargis*

State of South Carolina)

County of Greenville)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Deborah L. Boies, (hereinafter called "Grantor"), in consideration of Ninety-four Thousand Five Hundred and 00/100 Dollars (\$94,500.00), to the Grantor in hand paid at and before the sealing of these presents, by Jacquelyn J. Lanier (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

Jacquelyn J. Lanier,

ALL that certain piece, parcel or lot of land, lying situate and being in the County of Greenville, State of South Carolina, being shown and designated as 10.38 acres, more or less on plat entitled "Survey for Deborah L. Boies" prepared by Langford Land Surveying, LLC dated January 27, 2015, revised October 25, 2016, and recorded in Plat Book 1253 page 0060, Greenville County Records.

TOGETHER WITH a non-exclusive easement for ingress and egress over and upon that private road lying within the 80' easement area as shown on the above-referenced plat leading from Howe Road and continuing along the Northwestern property line of the property herein.

THIS being a portion of the same property conveyed to Deborah L. Boies by deed of Kathleen W. Welch dated March 3, 1998 and recorded March 6, 1998 in Deed Book 1748 page 575, Greenville County Records.

THIS CONVEYANCE IS SPECIFICALLY SUBJECT TO the following restriction, in addition to all other restrictions of record:

1. No more than one residence may be constructed on the 10.38 acre parcel described herein.
2. This parcel shall only be subdivided a maximum of one time.
3. Restrictions attached hereto as Exhibit A.

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.



Grantee's Address: 113 Pelham Commons Blvd., Greenville SC 29615

TMS No.: P/O 0636040100400

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 4 day of November, 2016.

SIGNED, SEALED AND DELIVERED
in the presence of:

Deborah L. Boies
Deborah L. Boies

Shannon Jackson
Shannon Jackson

Joseph Norcross
Joseph Norcross

State of South Carolina)
County of Greenville)

ACKNOWLEDGEMENT

THE FOREGOING INSTRUMENT was acknowledged before me this 11 day of November, 2016 by **Deborah L. Boies**.

Joseph Norcross (SEAL)
Notary Public for South Carolina
My Commission Expires: 10/24/2025



2016090748 DE BK 2500 PG 1580

" Exhibit A "

RESTRICTIONS

I. USES PERMITTED AND PROHIBITED

1.1 Single Family. All parcels or tracts shall be used exclusively for single-family residential dwellings. No modular or mobile homes shall be allowed, except on a temporary basis during construction of a conventional residence. Any additional outbuildings must be approved by Grantor.

1.2 Recreational Vehicles. Any motor scooter, ATV, motorcycle, go-cart, or similar vehicle, must be operated on the owner's property. Roads shall be used only for purposes of ingress and egress, and no racing or recreational driving shall be permitted.

1.3 Disabled Vehicles, etc. Any disabled or wrecked vehicle, and/or similar equipment or vehicles shall at all times be parked completely within a garage and shall at all times be neatly stored and positioned to be inconspicuous.

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

1.5 Businesses Prohibited. No tract or parcel or any structure situate on a tract or parcel shall be used for any business, commercial, amusement, hospital, sanitarium, school, religious, charitable, or manufacturing purposes except those businesses pertaining to the boarding, breeding, showing and/or training of equine animals. No billboards or advertising signs or any kind shall be displayed or erected on the real property, with the exception of neatly displayed 18" X 24" real estate "For Sale" signs or farm name signs. No part of any structure shall be used for the purposes of renting a room or rooms therein. No duplex residences, garage apartments, or apartment houses shall be erected or permitted to remain on any parcel.

1.6 Animals. No animals, livestock or poultry of any kind shall be raised or bred on the Real Property, except for equine animals and dogs, cats or other common household pets. No more than one equine animal shall be allowed per acre. No equine animals or pets shall be allowed to become a nuisance to other residents of a tract or parcel.

1.7 Fuel Tanks. All fuel oil tanks or containers shall be covered so as not to detract from the real property, or buried underground consistent with normal safety precautions and in compliance with all local, state and federal laws and regulations.

1.8 Refuse, Refuse Containers and Personal Items. No parcel or tract owner will engage in any activity which will result in the deposit or accumulation of trash, refuse, debris or other objectionable matter. It shall be the responsibility of each tract or parcel owner to prevent the accumulation of litter, trash, packing crates, or unkempt condition of buildings or grounds on his property, or to permit accumulations which shall tend to substantially decrease the beauty of the property as a whole or the specific area. No loose trash will be permitted to be strewn about a tract or parcel owner's property at

any time. Garbage containers must be kept out of sight from the street, except during collection hours. All personal use items shall be stored inside when not in use. These items include, but are not limited to, yard tools, sprinklers, wheel barrows, and children's toys as would create a nuisance to other property owners.

1.9 Parking. Residents of parcels or tracts shall not be allowed to park vehicles on the streets or roads except in emergencies. Unless otherwise posted, on-street parking shall be allowed to visitors and guests of the owners of tracts or parcels for short durations, as long as the health, safety and convenience of other residents of tracts or parcels are not impaired.

1.10 Maintenance of Property. Parcel or tract owners shall maintain his or her property and any and all improvements thereon in a reasonable manner. Such maintenance to include, but not limited to, routinely mowing/cutting grass, landscaping and maintaining such landscaping, and making necessary repairs to and preserving the appearance of any improvements located on such parcel or tract.

2. HOUSE PLANS AND SPECIFICATIONS.

2.1. Re-cutting of Tracts or Parcels. No tracts or parcels shall be recut to contain less than three (3) acres.

2.2. Setback Lines. No residence shall be erected on any tract or parcel nearer than 50 feet from the street on which it fronts, nor nearer than 50 feet from any side or rear tract or parcel lines. Any additional buildings besides a residence must be approved by Declarant and abide by same setback lines.

2.3. Minimum Areas. The following minimum heated floor space requirements shall apply to the residences on any tract or parcel: One Story Residence – 2,000 square feet; Two Story Residence – 2,000 square feet with minimum of 1,000 square feet on the first story.

2.4. Construction Quality, Height and Roof. All buildings shall be constructed with high quality materials and workmanship to insure that no dwelling shall present an unsightly appearance. No residence shall exceed two stories in height, exclusive of basement and attic. The roof of every residence shall have, as a minimum, 7/12 pitch. Roofing materials must be of the highest quality, no three-tab shingles.

2.5. Garages. All residences must include a garage able to accommodate a minimum of two cars.

2.6. Utilities. All utility wires for electricity, telephone or other utilities shall be installed underground.

2.7. Construction Period. Any residence constructed upon any tract or parcel must be started within twelve (12) months after the date that footings are poured. Once construction is commenced, each tract or parcel owner shall be responsible for insuring

that such work proceeds at an orderly and timely pace, with no work stoppage in excess of fourteen (14) consecutive days, acts of God excepted.

2.9. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plans, landscaping, or grading plans which are not suitable or desirable, in the Grantor's sole opinion, for any reason, including purely aesthetic reasons. Grantee shall deliver a written request for action to the Grantor by certified mail with return receipt requested or by hand delivery with signed receipt together with the necessary building plans and specifications. Building plans and specifications submitted to the Grantor shall consist of not less than the following: foundation plan, section details, floor plans of all floors, elevation drawings of all exterior walls, roof plans, material specifications and site plan showing exterior walls, roof plans, material specifications and site plan showing location and orientation of building on the lot, with all setbacks indicated. Such plans and specifications shall show the driveway, service court or area, parking and any other buildings, improvements or facilities to be constructed. In the event the Grantor fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within sixty (60) days after submission, the plans and specifications shall be deemed approved. In all circumstances, compliance with the zoning regulations of Greenville County, South Carolina shall be required.

5. DURATION. These covenants, conditions and restrictions shall run with the land and shall survive the transfer or transfers of any property or any portion of property restricted hereby and shall be binding upon any future owners.

EXEMPT

APR 30 2001

BOOK 1951 PAGE

6

PREPARED BY: W. ALLEN REESE AND R. BRIAN PONDER, Attorneys at Law
304 North Main Street, Greer, SC 29650

GRANTEE'S ADDRESS:

4653 Howe Road
Landrum, SC 29356

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) WARRANTY DEED

KNOW ALL MEN by these presents, that Deborah L. Boies, in consideration of the sum of One Dollar, (\$1.00), Love and Affection, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto Robin Riddle, her Heirs and Assigns Forever:

ALL that certain piece, parcel or lot of land, with all improvements thereon, or to be constructed thereon, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as TRACT 2 containing 4.00 acres according to a Plat entitled CASTLERIDGE prepared by Lindsey & Associates, Inc. dated March 20, 2000 recorded in Greenville County Plat Book 41-X at Page 13. Reference to said plat is hereby made for a more complete property description.

ALSO, an easement for ingress and egress in, to and along the portion of a "Gravel Road" as shown on the above described plat that extends from Howe Road to a driveway located on the above referenced Tract 2.

This is a portion of the property conveyed to the Grantor by deed of Kathleen W. Welch, Trustee Under a Revocable Trust Agreement dated July 28, 1992 and Kathleen W. Welch, f/k/a Kathleen Wilson MacLaughlin individually recorded on March 6, 1998 in Deed Book 1748 at Page 575.

This conveyance is subject to all restrictions, easements, rights-of-way, roadways and zoning ordinances of record affecting the above described property and to such matters as would appear from a current resurvey of the property.

TAX MAP REFERENCE: 0636.04-01-004.02

37223

4949 000001 OPER.2

REC FEE
4-30-1
2:23PM

1

4949 000001 OPER.2

REC FEE 10.00
4-30-1 2:22PM



Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever. And, the Grantor does hereby bind the Grantor and the Grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof

WITNESS the Grantor's hand and seal this 27 day of April, 2001.

Signed, sealed and delivered
in the presence of:

[Signature] Deborah L. Boies (SEAL)
DEBORAH L. BOIES
Linda B. Oliver (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Deborah L. Boies sign, seal and as her act and deed, deliver the within written Deed; and that the undersigned witness, with the other witness subscribed above, witnessed the execution hereof.

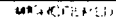
[Signature]
Witness

Sworn to before me, this
27 day of April, 2001.

Linda B. Oliver (SEAL)
Notary Public for South Carolina
My Commission Expires: 2-21-03

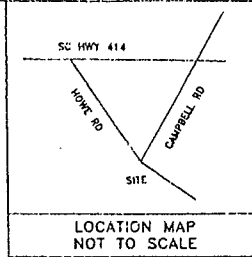
FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 02:49 PM
04 30 01 RECORDED IN DEED
BOOK 1951 PAGE 0006 THRU 0007
DOC # 2001037223

Judy A. Hix



1/2" IRON PIN FOUND = ●
 1/2" REBAR SET = ○
 FENCE = X
 POWER POLE = P
 POWER LINE = P

LANGFORD
 GREENVILLE, SC
LAND SURVEYING
 2004 MAR -8 P 3:42
 526 HIGHWAY 14 W
 ANDRUM, SC 29356
 OFF. 864-457-2157
 FAX 864-472-3181



**LOT #1
 CASTLERIDGE**

5.00 ACRES

N/F
DEBORAH L. BOIES
 D.B. 1748/575
 TMS #636.4-1-4

SEE PLAT FOR DEBORAH L. BOIES
 BY THIS OFFICE DATED 27 MAY 2003

MAR - 8 2004

LINE TABLE		
LINE	LENGTH	BEARING
L1	49.35	N 57°48'12" E

19632 ✓

48-E-11

**DEFENDANT'S
 EXHIBIT**
 9
 10-4-17

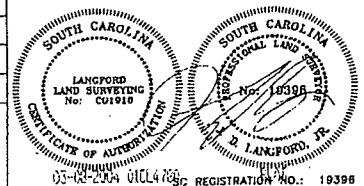
SURVEY FOR:
DEBORAH L. BOIES

LOCATION: SOUTHWEST OF GOWENSVILLE
 GREENVILLE COUNTY, SC

TAX MAP NO.: PART OF 6.6.04-01-004.00

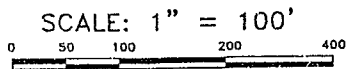
DATE: 28 OCT 2003 **Jud NC.:** 154003

I HERE BY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUALS FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "C" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



FILED FOR RECORD IN GREENVILLE
 COUNTY SC R.O.D. OFFICE AT 03:42 PM
 03 08 04 RECORDED IN PLAT
 BOOK 48-E PAGE 0011 THRU 0000
 DOC # 2004019632

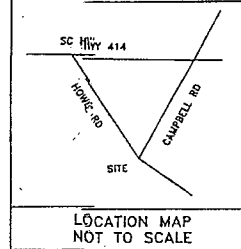
Judy B. Hix



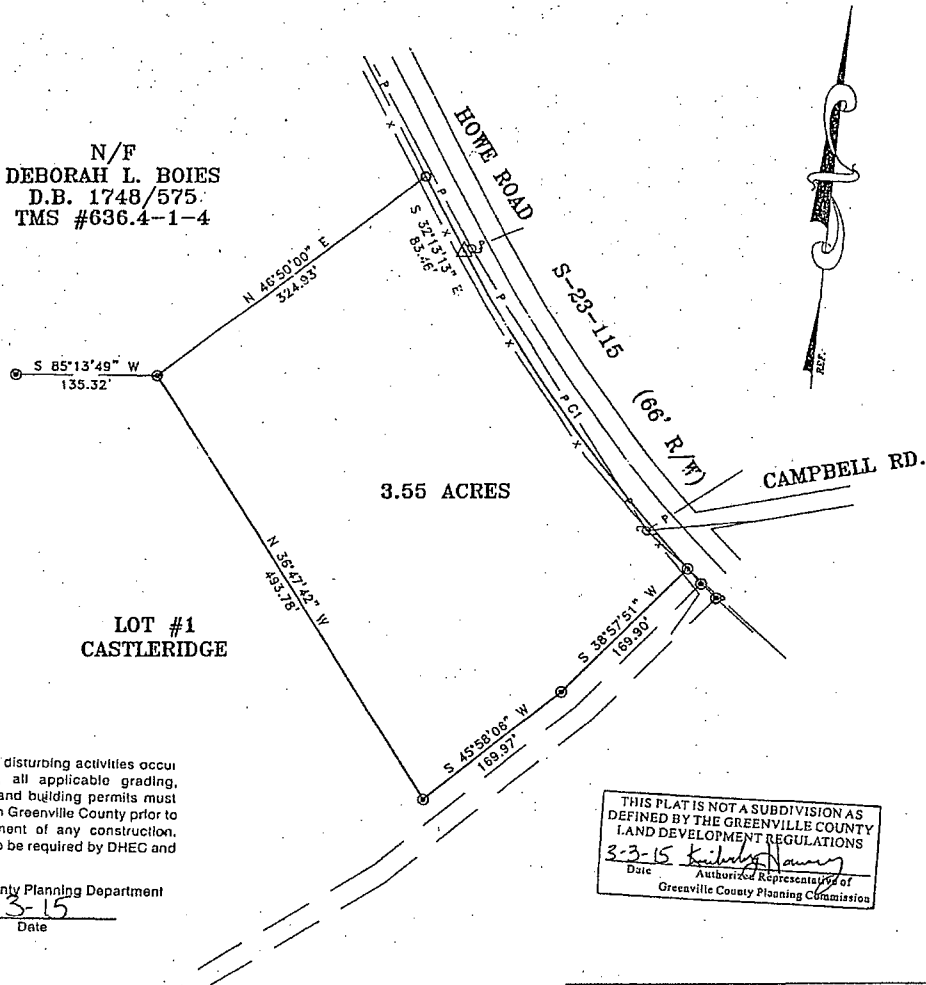
1/2" IRON PIN FOUND = $\odot$
 1/2" REBAR SET = $\circ$
 FENCE = — x —
 POWER POLE = $\odot$
 POWER LINE = — P —

LANGFORD LAND SURVEYING

526 HIGHWAY 14 W
 LANDRUM, SC 29356
 OFF. 864-457-2157
 FAX 864-472-3181



N/F
 DEBORAH L. BOIES
 D.B. 1748/575
 TMS #636.4-1-4



Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, and building permits must be obtained from Greenville County prior to the commencement of any construction. Permits may also be required by DHEC and SCDOT.

Greenville County Planning Department
 3-3-15
 Date

THIS PLAT IS NOT A SUBDIVISION AS DEFINED BY THE GREENVILLE COUNTY LAND DEVELOPMENT REGULATIONS
 3-3-15
 Date
 Authorized Representative of Greenville County Planning Commission

CURVE TABLE				
CURVE	LENGTH	RADIUS	BEARING	CHORD
C1	384.81	1548.62	S 39°20'20" E	383.82

SURVEY FOR:

DEBORAH L. BOIES

LOCATION: SOUTHWEST OF GOWENSVILLE

GREENVILLE COUNTY, SC

TAX MAP NO.: PART OF 636.04-01-004.00

DATE: 27 MAY 2003

JOB NO.: 154003

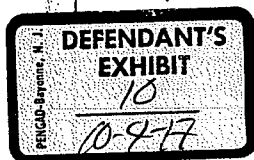
SCALE: 1" = 100'

0 50 100 200 400

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUALS FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "C" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



SC REGISTRATION NO.: 19396





Office of the Register of Deeds

Timothy L. Nanney
Register of Deeds
(864) 467-7240
www.greenvillecounty.org/rod

File Page

2015014769
PLAT/LG Book: EL 1201 Page: 0097 - 0098 2 Pgs
March 3, 2015 10:11:03 AM
Rec: \$10.00
FILED IN GREENVILLE COUNTY, SC *Timothy L. Nanney*

County Square • 301 University Ridge • Suite 1200 • Greenville, SC 29601

POINT IN ROAD = Δ

LANGFORD
LAND
SURVEYING, LLC
PO BOX 697
108 RIDGE ROAD
LANDRUM, SC 29356
OFF. 864-457-2157

NOTES:

THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, EASES, ENCUMBRANCES, AND ANY'S & CONDITIONS RECORDED OR UNRECORDED.

THIS SURVEY DOES NOT REPRESENT A TITLE GUARANTEE.

THESE ARE 4" X 6" BRANDED & UNIFORM EASEMENTS ALONG THE LINE OF EACH SIDE OF THE ROAD AND A 10' BRANDED & UNIFORM EASEMENT ALONG THE PROPERTY LINE ADJACENT TO THE ROAD.

THESE ARE 4" X 6" BRANDED & UNIFORM EASEMENTS ALONG THE PROPERTY LINE ADJACENT TO THE ROAD. THESE ARE 4" X 6" BRANDED & UNIFORM EASEMENTS ALONG THE PROPERTY LINE ADJACENT TO THE ROAD.

STANDARDIZED MEASUREMENTS & STANDARD REDUCTION PLAN HAS BEEN PROVIDED FOR THIS PROPERTY. ALL MEASUREMENTS FOR LAND SURVEYING ACTIVITIES MUST BE APPROVED BY THE SURVEYOR. THIS PLAN IS APPROVED FOR THAT PURPOSE.

STANDARD BUILDING SETBACK LINES:
FRONT: 10'
SIDE: 10'

THERE IS A LIMITED SHORT DISTANCE FOR OWNERS. EACH LOT OWNER WILL BE EXPECTED TO INSTALL A SETBACK WITH A POINT FROM 2000.

EACH LOT MUST HAVE A 10' SETBACK FROM THE A. GREENVILLE COUNTY LAND DISTANCE PERMITS HAVE BEEN OBTAINED FOR THAT LOT.

AT THE TIME OF DEVELOPMENT, EACH LOT MUST HAVE TO OBTAIN A PERMIT FROM THE GREENVILLE COUNTY PLANNING DIVISION TO ACQUIRE STANDARD QUALITY AND QUALITY.

STANDARDIZED POINT MARKS: 1/2" DIA. ALL MARKS (PAVING, LANDMARK, ETC.) TO BE OCCUPY WITHIN 2000. PERMIT. A GENERAL RECORD FOR APPROVED RECORD ENROLLMENT. IF CONTRACT A DEVELOPER ON A SITE PLAN.

N/P
DEBORAH L. BOIES
D.B. 1748/575
638040100400

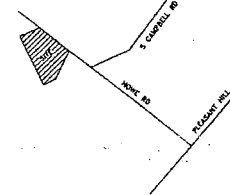
LOT #1
3.63 ACRES

N/P
DANIEL CERNOCH
D.B. 2480/4531
P.B. 1201/97

N/P
K. NOGUEIRA
LOT #2
CASTLERIDGE
P.B. 41X/13
0638040100402

N/P
K. NOGUEIRA
LOT #1
CASTLERIDGE
P.B. 41X/13
0638040100402

REFERENCE:
DEED BOOK 1748 PAGE 571



LOCATION MAP
NOT TO SCALE

SCALE: 1" = 100'

CERTIFICATE OF ACCURACY

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION & BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARD STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

4-3-15
DATE
SURVEYOR'S SIGNATURE
19396
SURVEYOR'S NUMBER

CERTIFICATE OF OWNERSHIP AND DEDICATION

THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT I AM ONE (ONE) OF THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HAVE READ THE PLAN OF SUBDIVISION AND CONSENT TO THE SAME. I HAVE READ THE PLAN OF SUBDIVISION AND CONSENT TO THE SAME. I HAVE READ THE PLAN OF SUBDIVISION AND CONSENT TO THE SAME.

4-9-15
DATE
NAME

CERTIFICATE OF APPROVAL FOR RECORDING

I HEREBY CERTIFY THAT THE SUBDIVISION PLAN SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR GREENVILLE COUNTY, WITH THE EXCEPTION OF THE VARIANCE FROM THE 10' SETBACK IN THE ADJACENT TO THE GREENVILLE COUNTY PLANNING DIVISION. THE SUBDIVISION PLAN HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR GREENVILLE COUNTY, WITH THE EXCEPTION OF THE VARIANCE FROM THE 10' SETBACK IN THE ADJACENT TO THE GREENVILLE COUNTY PLANNING DIVISION.

4-9-15
DATE
AUTHORITY REPRESENTATIVE
GREENVILLE COUNTY
PLANNING DIVISION

SUMMARY PLAT SHOWING: 2015-128
HOWE ROAD ESTATE

DEBORAH L. BOIES
4551 HOWE ROAD
LANDRUM, SC 29356
864-395-2214
OWNER/DEVELOPER

J.D. LANGFORD, JR.
328 HWY 14 W
LANDRUM, SC 29356
864-457-2157
SURVEYOR

NO. OF ACRES 3.63
MILES OF NEW ROAD 0.00

NO. OF LOTS 1
DATE 12 MAR 2015

ZONING: UNZONED

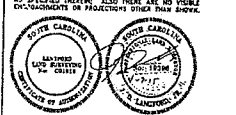
ERROR OF CLOSURE 1 : 10000

LOCATION: NORTH OF GREER

GREENVILLE COUNTY, SC JOB NO.: 2631133

TAX MAP NO.: PART OF 0638040100400

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION & BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARD STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN. I, J.D. LANGFORD, JR., DO NOT HAVE ANY OTHER ENCUMBRANCES OR PROVISIONS OTHER THAN SHOWN.



SC REGISTRATION NO. 19396





Office of the Register of Deeds

Timothy L. Nanney

Register of Deeds

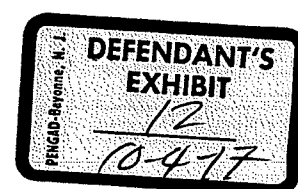
(864) 467-7240

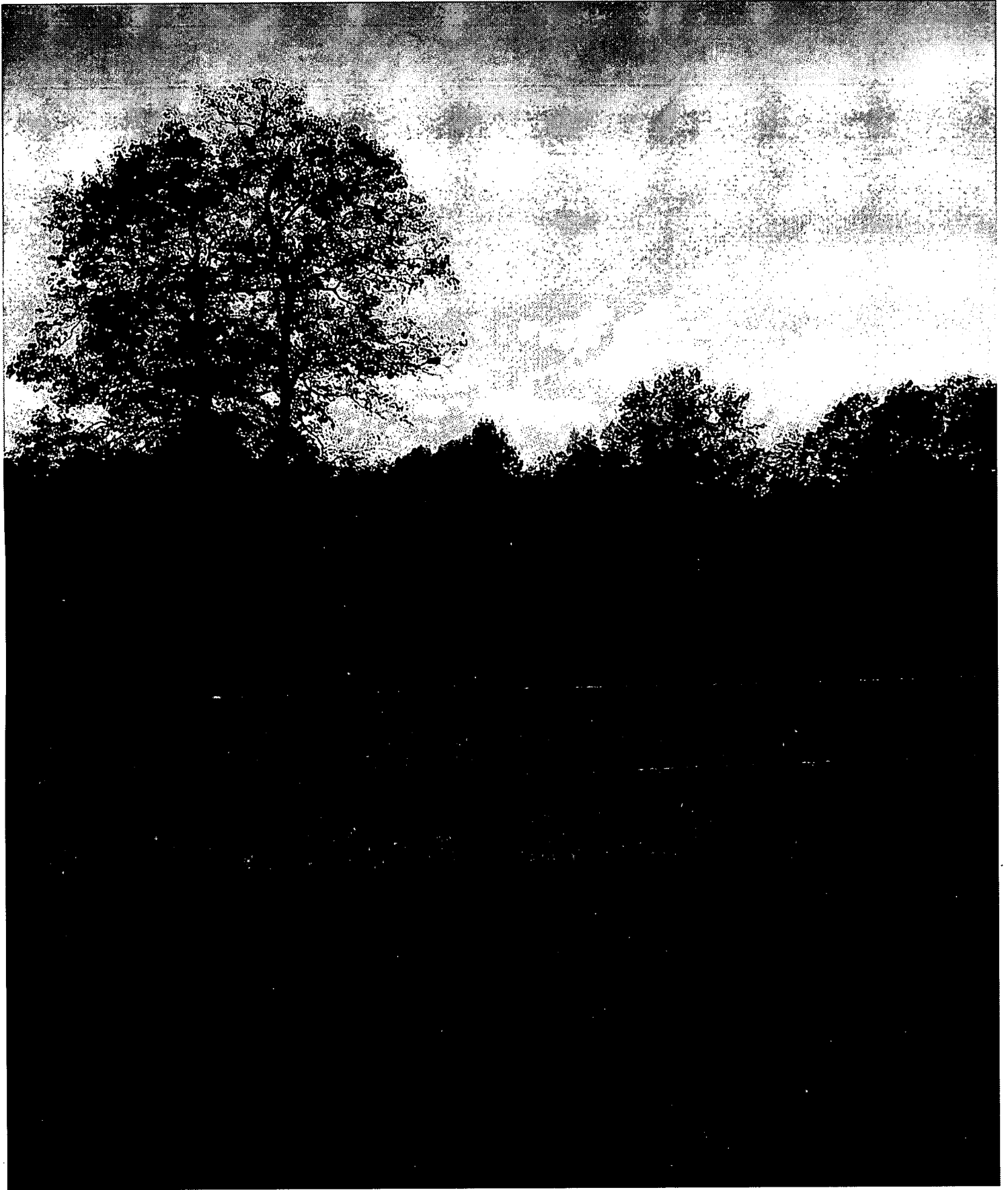
www.greenvillecounty.org/rod

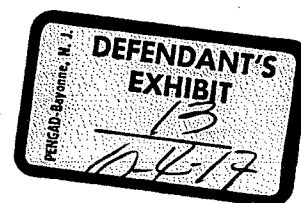
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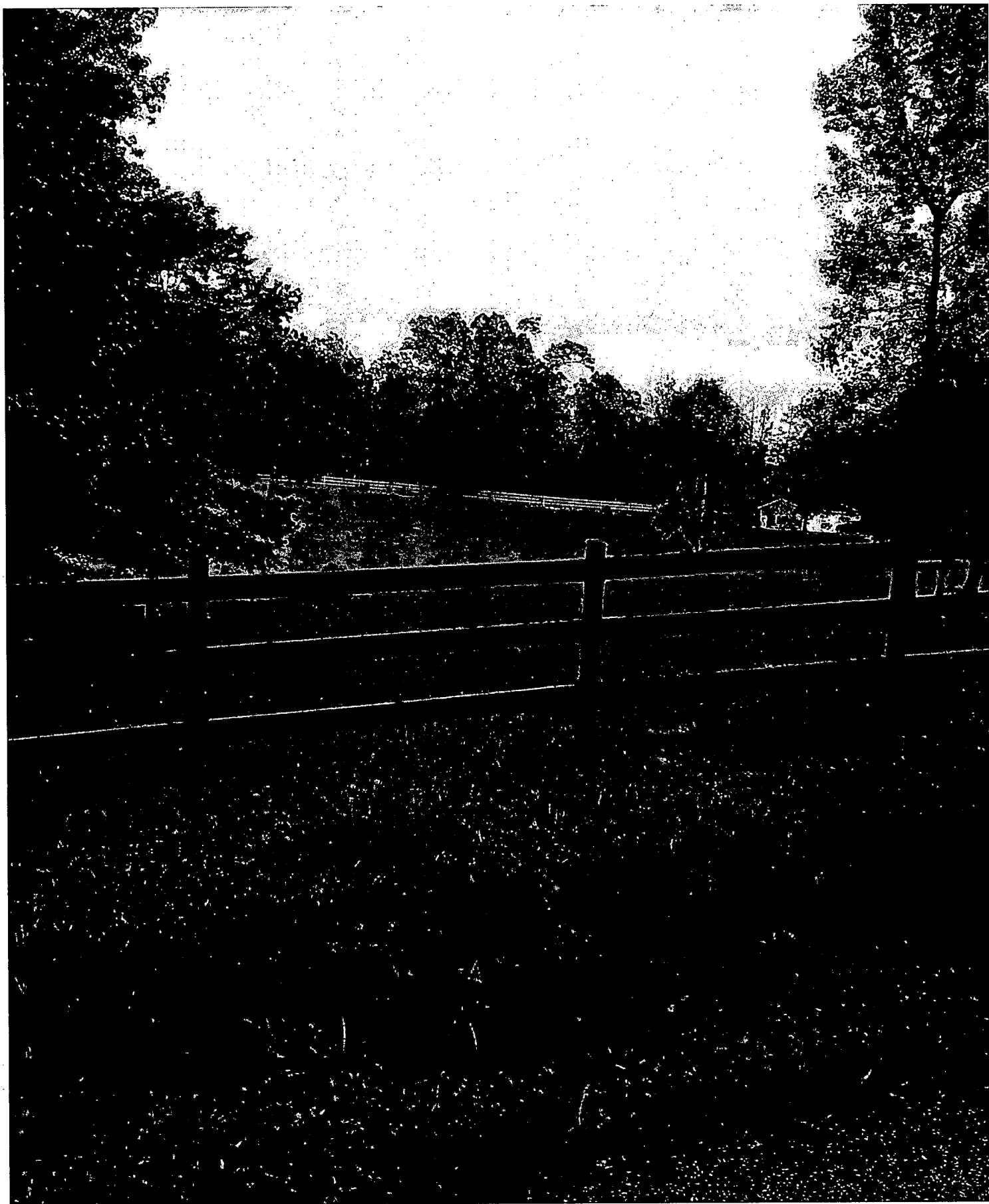
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April 9, 2015 11:15:46 AM
Fee: \$10.00
FILED IN GREENVILLE COUNTY, SC *Timothy L. Nanney*







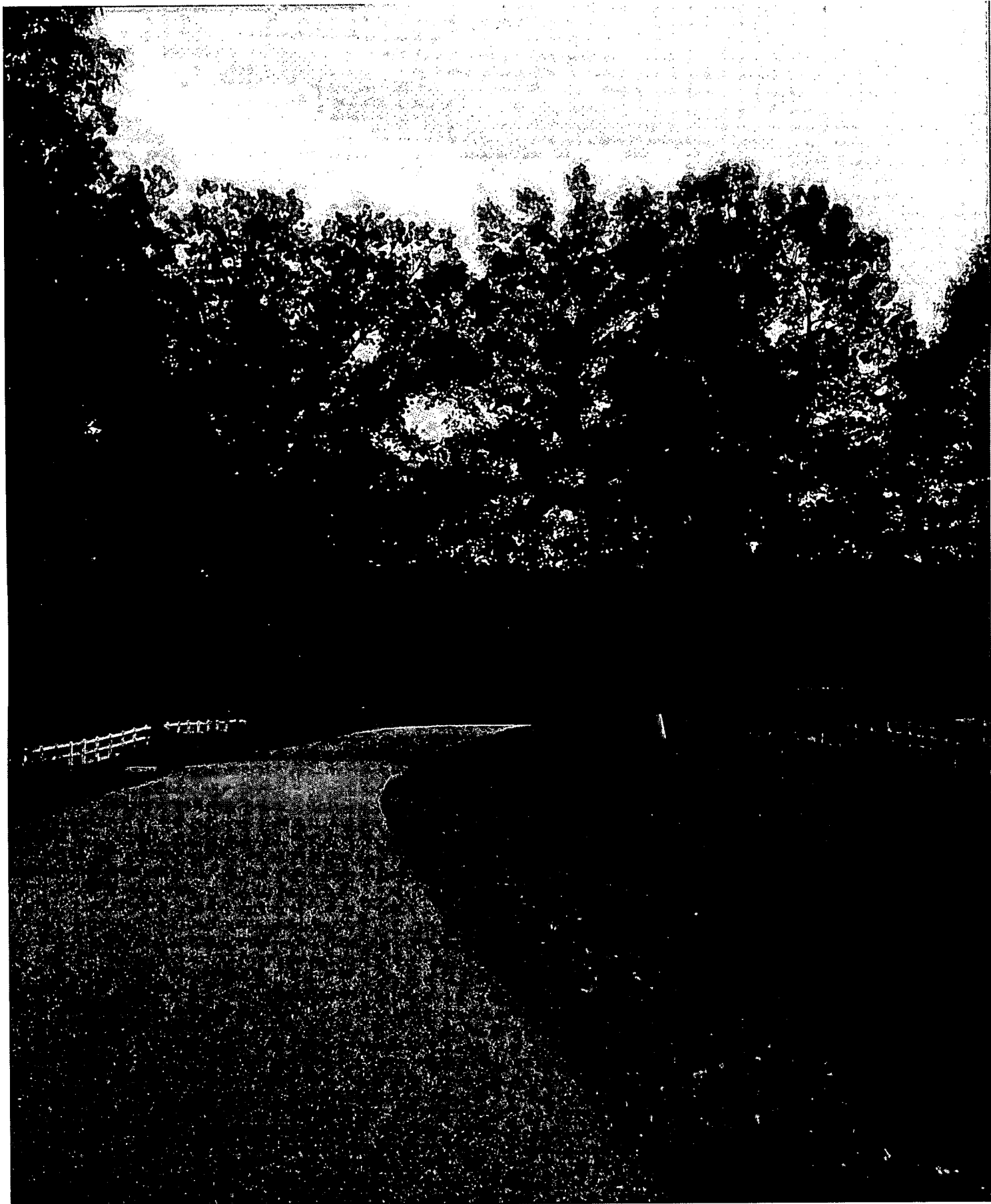


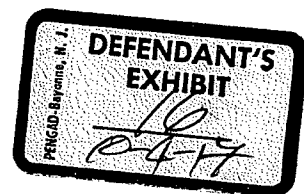


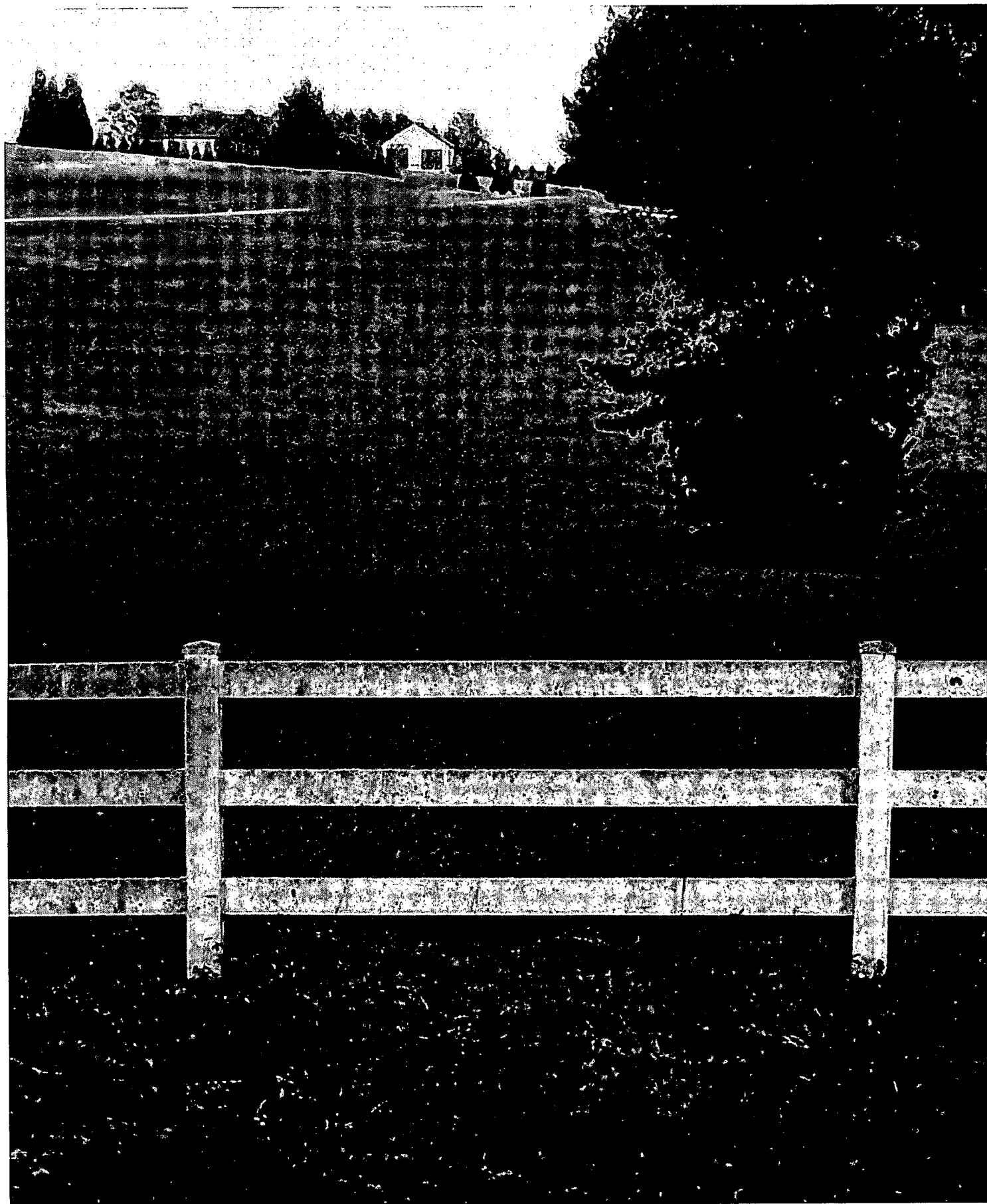


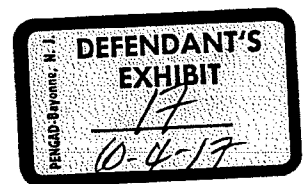




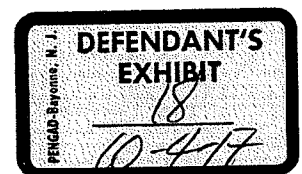












Jacqui Lanier

Subject:

FW: Debi Boies to Jacqui Lanier/Covenants

From: Deborah Boies [mailto:castle_ridge@msn.com]

Sent: Monday, November 28, 2016 3:18 PM

To: Jacqui Lanier <jacqui@LanierLaw.net>

Subject: Debi Boies to Jacqui Lanier/Covenants

Hey Jacqui,

It has been brought to my attention that you are removing the white vinyl fencing on the property you purchased from us. According to the covenants you are only permitted to re-install "like" fencing which means white vinyl.

At this point I have no idea why you are removing it but felt it important to let you know that any replacement must be the same. If you have any questions please feel free to call my cell 864-979-5272.

Thank you

Debi

Debi Boies
Founder, Pilots N Paws
Executive VP Pet Philanthropy Circle
Board of Directors, Air Care Alliance
Landrum, S.C.
864-895-5234



Pilots N Paws

www.pilotsnpaws.org

www.petphilanthropycircle.org

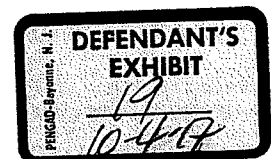
www.aircarealliance.org

Follow Pilots N Paws on Facebook! www.facebook.com/pilotsnpawsfanpage
Twitter @PilotsNPaws

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Deborah L. Boies,
Plaintiff,

v.

Jacqueline J. Lanier,
Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-23- 06923

**Affidavit in Support of
Temporary Restraining Order**

Gloria Cernoch, being first duly sworn on oath deposes and states as follows:

1. My name is Gloria Cernoch. I live at 4659 Howe Rd. Landrum 29356, near the Plaintiff's and Defendant's property near Landrum in Greenville County, South Carolina. I submit this affidavit to the court in support of the Plaintiff's Motion for a Temporary Restraining Order to restrain violations of real estate restrictive covenants.
2. Plaintiff sold Defendant real estate in what is commonly known as "horse country" near Landrum in Greenville County (Exhibit A). The real estate is covered by a restrictive covenants that, among other things require:

1.4 Walls, Fences and Hedges. Any fence placed on any tract or parcel shall be comparable in style and constructed material to a fence presently located on the boundary of the Real Property (white vinyl fencing). Exceptions may be granted by Grantor.

* * *

2.8. Grantor Approval of Plans. No landscaping, building, fence, wall or other structure shall be commenced, erected, maintained, and all subsequent reconstruction, modifications, additions or alterations upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Grantor.

The Grantor shall have the right to refuse to approve any such building plans, specifications, site plants, landscaping, or grading plans which are

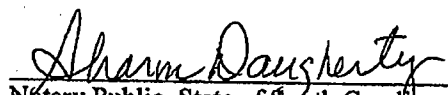
not suitable or desirable, in the Grantor's sole opinion, for any reason, including pure aesthetic reasons,

3. The Plaintiff is the Grantor listed in the restrictive covenants.
4. Since buying the property, Defendant has torn down the white vinyl fencing, without permission of the Grantor, and, upon information and belief, intends to replace it with dark wooden fencing, which violates the restrictive covenants and is totally out of keeping with the rest of the neighborhood and the area covered by the restrictive covenants, again without the permission of the Grantor.
5. As of November 29, 2016, the white poles that supported the white vinyl fencing are still standing.
6. As a neighbor, I support this action to enforce the restrictive covenants and for injunctive relief to prevent the erection of a dark wood fence, and require the re-erection of the white vinyl fencing, in accordance with the restrictive covenants.

Further the Affiant saith naught.


Gloria Cernoch

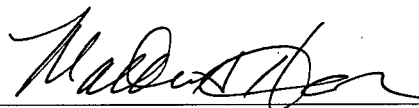
Subscribed and sworn to before me
This 30th day of November, 2016.


Notary Public, State of South Carolina
My commission expires: Aug 11, 2020

Certificate of Counsel

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.

June 13, 2018



Matthew H. Henrikson
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
(864) 672-7106
Attorney for Appellant

RECEIVED

JUN 14 2018

SC Court of Appeals