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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM YORK COUNTY  
Court of Common Pleas

SEP 09 2020

**SC Court of Appeals**

Daniel Hall, Circuit Court Judge

Case No. 2020-CP-46-00549  
Appellate Case No.

LB PARK, LLC, .....Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Bret Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-0001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 ..... Defendants,

OF WHOM Ryan Powell is the .....Appellant.

**MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, LB PARK, LLC ("LB PARK") hereby moves for the dismissal of this appeal on the grounds that the underlying order is not immediately appealable. LB PARK further asks that this motion be decided on an expedited basis such that title to the property involved can be quickly determined consistent with the procedures in place for clearing tax title.

## BACKGROUND

On February 12, 2020, LB PARK filed this action to quiet tax title to real property located in York County (the "Property"), pursuant to S.C. Code Ann. §§ 12-61-10 to -60. (Complaint attached as Ex. 1). As set forth in the Complaint:

11. SB MUNI CUST % LBSC-11 LLC ("SB MUNI") purchased the Property at the York County tax sale held on November 6, 2017, with a bid of \$171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the ROD in Book 17337, page 73 (the "Tax Deed").

12. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

On May 14, 2020, Appellant Ryan Powell filed a motion to dismiss. (Attached as Ex. 2). On June 23, 2020, LB PARK filed a motion for an order of reference. (Attached as Ex. 3). Both motions were heard on July 22, 2020. The Circuit Court denied Powell's motion to dismiss and granted LB PARK's motion for an order of reference by order dated August 20, 2020. (Order attached as Ex. 4). The order reads: "[a]fter careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED. Defendant's Motions to Dismiss are DENIED." Powell now seeks to appeal that order.

This is not Powell's first appeal as it relates to LB PARK's attempts to confirm its ownership of the Property. Powell previously filed an appeal (Appellate Case No. 2019-000979) that is currently being held in abeyance pending the disposition of this action. LB PARK simply seeks a determination on the merits of this action consistent with the mandate of Rule 1, SCRC

(“These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.”). Powell, on the other hand, does not want possession of the Property to be transferred to LB PARK and has every incentive to delay a ruling for as long as possible.

### ARGUMENT

“The right of appeal arises from and is controlled by statutory law.” *N.C. Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). Appealability is generally governed by S.C. Code Ann. § 14-3-330, and interlocutory orders are otherwise not immediately appealable. *See, e.g., Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). In this case, the order is not appealable under any of the categories provided in S.C. Code Ann. § 14-3-330.

Generally, the denial of a motion to dismiss under Rule 12(b) is not immediately appealable. *Burkey v. Noce*, 398 S.C. 35, 726 S.E.2d 229 (Ct. App. 2012) (noting that generally the denial of motions to dismiss based on failure to state a claim, statute of limitations, lack of subject matter jurisdiction, and to change venue are not immediately appealable); *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *McLendon v. South Carolina Dept. of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (1994); *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986). The same should apply here. The order merely denies the motion to dismiss.

With respect to the grant of LB PARK’s motion for an order of reference, the order does not deprive Powell of any mode of trial to which he might otherwise be entitled. “Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference

deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one.” *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). “Hence, the issue before the Court is whether the appellant is entitled to a jury trial as a matter of right. If [h]e is not, the appeal should be dismissed.” *Id.*

With respect to actions to quiet tax title, the South Carolina Supreme Court has made it clear that there is no right to a jury trial, even if the defendant asserts a counterclaim stating a cause of action at law. *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993). As stated there:

Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

*Id.* Therefore, the portion of the order granting the motion for reference is not immediately appealable.

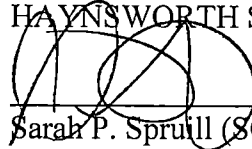
Additionally, an action concerning the validity of a tax sale is an action in equity. *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 51, 168 S.E.2d 793, 793-94 (1969) (“An action to remove a cloud on and quiet title to land is one in equity.”)); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings*, 137 S.C. 450, 135 S.E. 558, 562 (1926) (“A court of equity has jurisdiction to remove a cloud upon title.”) (internal citations omitted). Accordingly, there is no right to a jury trial in this case and there is no immediate appeal from the portion of the order referring this matter to the Master in Equity.

**CONCLUSION**

For these reasons, this appeal should be dismissed at this time for a prompt determination on the merits.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



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Attorneys for Respondent  
LB PARK, LLC

September 4, 2020

**EXHIBIT 1**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2020-CP-\_\_\_\_\_

LB PARK, LLC,

Plaintiff,

vs.

**SUMMONS  
(Non-Jury)**

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint on the subscriber at his office, Haynsworth Sinkler Boyd, P.A., 1201 Main Street, 22nd Floor (29201), Post Office Box 11889, Columbia, South Carolina (29211-1889), within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

s/ Andrew M. Rawl  
A. Parker Barnes III, SC Bar No. 68359  
Andrew M. Rawl, SC Bar No. 102807

Haynsworth Sinkler Boyd, P.A.  
Post Office Box 11889  
Columbia, South Carolina 29211-1889  
(803) 779-3080

February 12, 2020

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2020-CP-\_\_\_\_\_

LB PARK, LLC,

Plaintiff,

vs.

**COMPLAINT  
(Non-Jury)**

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

Plaintiff LB PARK, LLC (“Plaintiff”), complaining of the defendants herein, would respectfully allege and show unto this Court as follows:

1. Pursuant to S.C. Code Ann. §§ 12-61-10 to -60, Plaintiff asserts its Complaint against the defendants for the purpose of clearing title to real property known as 25056 Timberlake Drive, York County, South Carolina, tax map number 643-10-01-023 (the “Property”), which is herein below more specifically described and identified. Plaintiff’s title to the Property derives from a tax

deed resulting from a tax sale conducted by York County pursuant to statute and a subsequent quitclaim deed from the tax sale purchaser.

### **The Property**

2. The Property conveyed by the tax deed is more particularly described as follows:

All that certain piece or lot of land situated, lying or being in the County of York, State of South Carolina, being known and designated as Lot 56 of Tega Cay Section 25 as shown on plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on plat recorded in Plat Book 73 at Pages 23-26, and being more recently shown and more particularly described in Plat Book 131 at Page 306, reference to which is hereby made for a more complete description.

Derivation: This being property conveyed to San Juan Holdings, Brett Osborne, the trustee, by Deed from Paramount Properties, Mark Muccl, the trustee, dated June 1, 2000 (probate says June 15, 2000), recorded June 27, 2000 in Book 3173, Page 343, Office of the Clerk of Court for York County, SC; being the same property conveyed to SB MUNI CUST % LBSC-11 LLC by Tax Title dated and recorded on December 26, 2018, in the Office of the Register of Deeds for York County in Deed Book 17337 at Page 73; and being the same property conveyed to LB Park, LLC by quitclaim deed dated January 7, 2019, and recorded in the York County Register of Deeds Office on January 10, 2019, in Book 17361, page 145.

TMS# 643-10-01-023.

### **Parties**

3. Defendant San Juan Holdings, Brett Osborne, the trustee (“San Juan”) obtained title to the Property by deed dated June 1, 2000, and recorded on June 27, 2000, in the York County Register of Deeds Office (the “ROD”) in Book 3173, page 343.

4. By virtue of the foregoing deed, Plaintiff is informed and believes that San Juan owned 100% of fee simple title to the Property prior to the tax sale. Accordingly, Plaintiff has named San Juan as a party to extinguish and eliminate any and all interests that San Juan has or may claim to have in, to, or upon the Property.

5. Plaintiff named Defendant Brett Osborne as Trustee of San Juan Holdings (“Osborne”) as a party due to the Notice of Sale, Transfer or Exchange dated December 20, 2012, and recorded on December 26, 2012, in the ROD in Book 13103, page 241 (the “Osborne Notice”).

6. Plaintiff is informed and believes that the Osborne Notice did not convey title or any other interest in the Property and that, after the Osborne Notice was recorded, title to the Property remained vested in San Juan. However, Plaintiff has named Osborne as a party to extinguish and eliminate the Osborne Notice as a cloud, impediment, or encumbrance upon the title to the Property.

7. Plaintiff is informed and believes that Defendant Ryan Powell has claimed to possess an unrecorded ownership interest in the Property. While Plaintiff denies that Defendant Ryan Powell has any interest in the Property, Plaintiff has named Defendant Ryan Powell as a party to provide him with notice of this proceeding and the opportunity to protect any interest he claims to have in the Property.

8. Defendants John Doe and Defendant Mary Roe and the other unknown defendants (collectively the “Unknown Defendants”) represent and include all unknown persons or entities having or claiming any right, title, or interest in or to, or lien upon, the Property.

9. The parties hereto, and the subject matter hereof, are within the jurisdiction of this Court.

**FIRST CAUSE OF ACTION  
(Action to Quiet Tax Title)**

10. Plaintiff re-alleges and incorporates herein by reference all of the above allegations.

11. SB MUNI CUST % LBSC-11 LLC (“SB MUNI”) purchased the Property at the York County tax sale held on November 6, 2017, with a bid of \$171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the ROD in Book 17337, page 73 (the “Tax Deed”).

12. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

13. This Complaint is made for the purpose of clearing title to the Property against any and all claims, if any, as have been or may be raised by any of the defendants adverse to the title and ownership interests of Plaintiff acquired by the referenced tax sale proceedings, Tax Deed, and quitclaim deed.

14. In support of the status of Plaintiff's title and in support of this action to clear title by determination of Plaintiff's interests superior to other interests, specifically including any and all interests of the defendants, Plaintiff alleges as follows:

a. On or about November 6, 2017, the Property was sold to SB MUNI at a tax sale conducted by the taxing authorities for York County for unpaid ad valorem taxes.

b. Upon information and belief, the tax sale conducted by the taxing authorities for York County was prosecuted pursuant to the controlling tax sale statutes, S.C. Code Ann. §§ 12-51-40 to -170, including all requisite notices to the owner of record and any other parties in interest to the Property.

c. SB MUNI was the successful purchaser of the Property at the referenced tax sale, and the tax sale bid was paid in full pursuant to the notice of tax sale and was otherwise in accordance with the statutory proceedings.

d. None of the defendants or any other person or entity took any action in response to the notices or otherwise to redeem the Property, and the Property was conveyed by York County to SB MUNI through the Tax Deed.

e. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

15. Plaintiff is informed and believes that by reason of the Tax Deed conveyed to SB MUNI by York County in strict compliance with the controlling tax sale statutes and the subsequent

quitclaim deed to Plaintiff, Plaintiff is the owner of marketable fee simple title to the Property without regard to any outstanding or adverse claims of interest of any of the defendants, and that Plaintiff is entitled to an order of this Court declaring and confirming that its title is free and clear of such adverse lien interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants.

16. Plaintiff is further informed and believes that upon the Court's issuance of its order declaring and confirming that Plaintiff's title is free and clear of such adverse interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants, Plaintiff is entitled to immediate possession of the Property, and that any tenants or parties in possession of the Property, must be evicted from and vacate the Property within a reasonable time to be determined by this Court.

**FIRST ALTERNATIVE CAUSE OF ACTION  
(Action to Recover Amounts Due)**

17. Plaintiff re-alleges and incorporates herein by reference all prior paragraphs of its Complaint.

18. Only in the event that the tax sale of the Property is set aside or declared void, Plaintiff seeks to recover the amounts that the controlling authority requires be refunded and tendered to the Plaintiff, which includes a refund of the tax sale bid, a refund of all Property taxes paid, a refund of all costs justly chargeable against the Property, and interest at the statutory rate of 12% on the tax sale bid from the date of the tax sale until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest.

19. South Carolina law provides that, when a tax sale is set aside through litigation, the courts must treat it as the ultimate redemption and that the provisions of S.C. Code Ann. § 12-51-100 apply.

20. Pursuant to S.C. Code Ann. § 12-51-100, Plaintiff is statutorily entitled to a refund of the tax sale bid and the interest required by S.C. Code Ann. § 12-51-90. As the redemption period expired on November 6, 2018, Plaintiff is entitled to interest on the tax sale bid at the statutory rate of 12% from the date of tax sale as provided in S.C. Code Ann. § 12-51-90.

21. Plaintiff is also entitled to a refund of all property taxes that it has paid and all costs that they have paid that are justly chargeable against the Property.

22. As the amount of the tax sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest are sums that are certain or are capable of being reduced to certainty, Plaintiff is further entitled to receive and seeks to recover pre-judgment interest.

23. Therefore, if the Court sets aside the tax sale of the Property, Plaintiff seeks judgment against the party challenging the tax sale of the Property for the amount of the tax sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest at the rate of 12% on the tax sale bid from the date of the tax sale until paid, together with pre-judgment interest.

**SECOND CAUSE OF ACTION  
(Reformation of Tax Deed)**

24. Plaintiff reincorporates and re-alleges each of the foregoing allegations as fully as if repeated herein verbatim.

25. In relevant part, the legal description in the Tax Deed refers to a “. . . plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on Plat Book 73 at Pages 22-26 . . . ” (the “Plat”). (Emphasis added.)

26. According to the applicable records for the Property maintained in the ROD, the Plat was actually recorded in the ROD in Plat Book 73 at Pages 23-26, not Pages 22-26. (Emphasis added.) A copy of the Plat is attached as Exhibit A.

27. Throughout the chain of title for the Property, the Plat is incorrectly referenced as being recorded in Plat Book 73 at Pages 22-26.

28. Therefore, Plaintiff seeks an Order of the Court reforming the Tax Deed, the quitclaim deed to Plaintiff, and all previous deeds in the chain of title to reflect the correct recording information for the Plat, which was actually recorded in Plat Book 73 at Pages 23-26.

WHEREFORE, for the reasons set forth above, Plaintiff prays for the following relief:

1. With respect to Plaintiff's First Cause of Action, Plaintiff prays that judgment be entered in its favor against the defendants with a finding by the Court that any right, title, claim, interest, or lien in or to the Property arising from the interests of any of the defendants in the Property that they now claim or may claim in the future, be found to be junior or subsequent to Plaintiff's title, and that Plaintiff be provided a final and complete adjudication of the nature and extent of its title to the Property so that it may own, possess, and transfer clear title to the Property; and that judgment be entered in Plaintiff's favor against the defendants and any other tenants or parties in possession of the Property with a finding by the Court that Plaintiff is entitled to immediate possession of the Property and ordering the York County Sheriff to evict and remove any tenants or parties in possession of the Property from the Property within a reasonable time as determined by the Court.

2. With respect to Plaintiff's First Alternative Cause of Action, and only in the event that the tax sale of the Property is set aside or declared void, Plaintiff prays that judgment be entered in its favor against the party challenging the tax sale with a finding by the Court that Plaintiff is entitled to a refund of the tax sale bid, all Property taxes paid, all costs justly chargeable against the Property, and legal interest on the tax sale bid at the rate of 12% from the date of the tax sale on November 6, 2017, until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100,

together with pre-judgment interest, and that the Court order the party challenging the tax sale of the Property to refund these amounts to Plaintiff.

3. With respect to Plaintiff's Second Cause of Action, Plaintiff prays that judgment be entered declaring and reforming the Tax Deed, the quitclaim deed to Plaintiff, and all previous deeds in the chain of title to reflect the correct recording information for the Plat, which is Plat Book 73 at Pages 23-26.

4. Plaintiff also prays that the Court award it such other and further relief as the Court may deem just and proper.

s/ Andrew M. Rawl  
A. Parker Barnes III, SC Bar No. 68359  
Andrew M. Rawl, SC Bar No. 102807

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February 12, 2020

Attorneys for Plaintiff

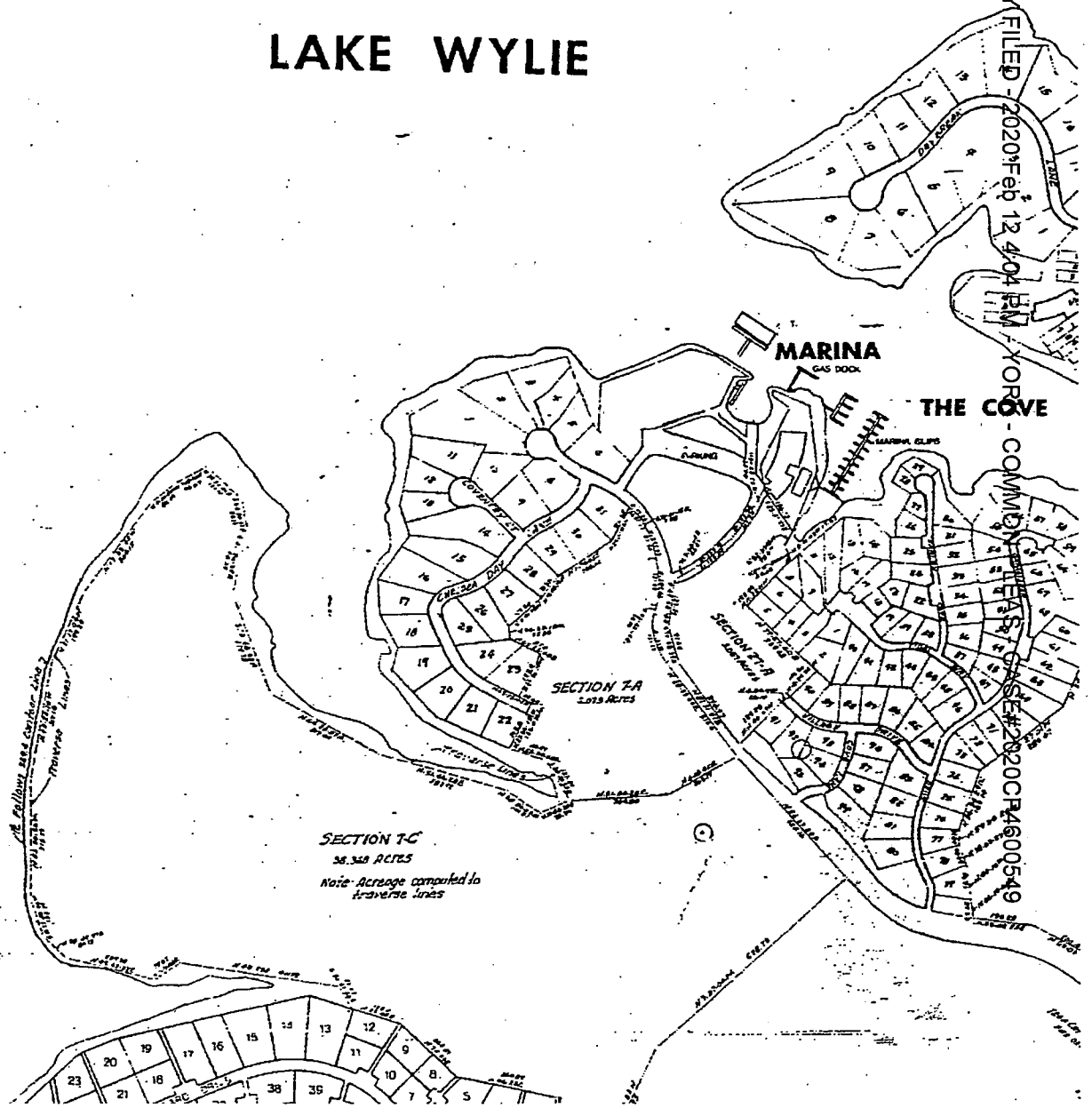
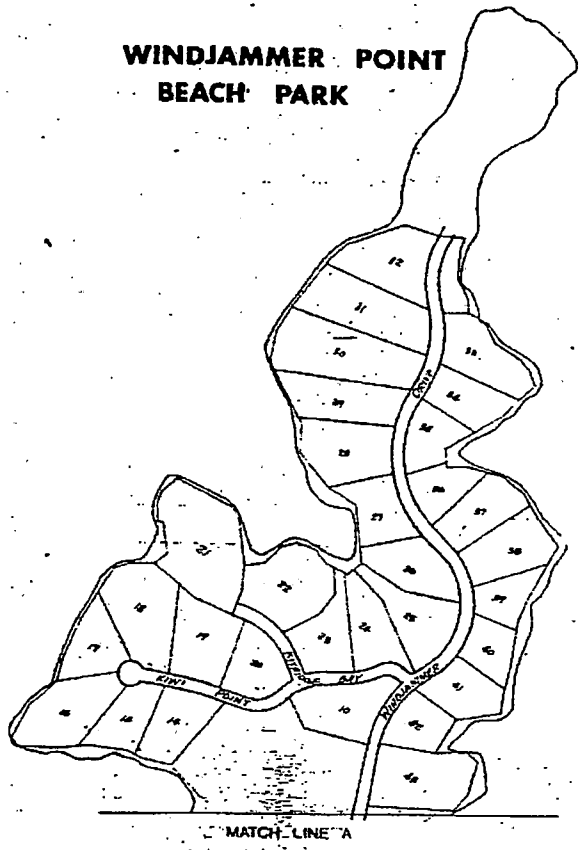
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R-7-26-83

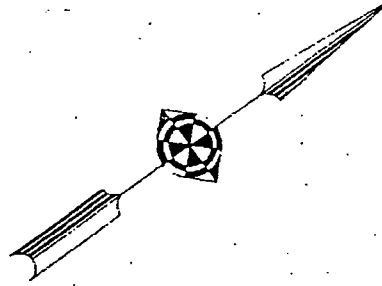
# EXHIBIT A

## LAKE WYLIE

### WINDJAMMER POINT BEACH PARK

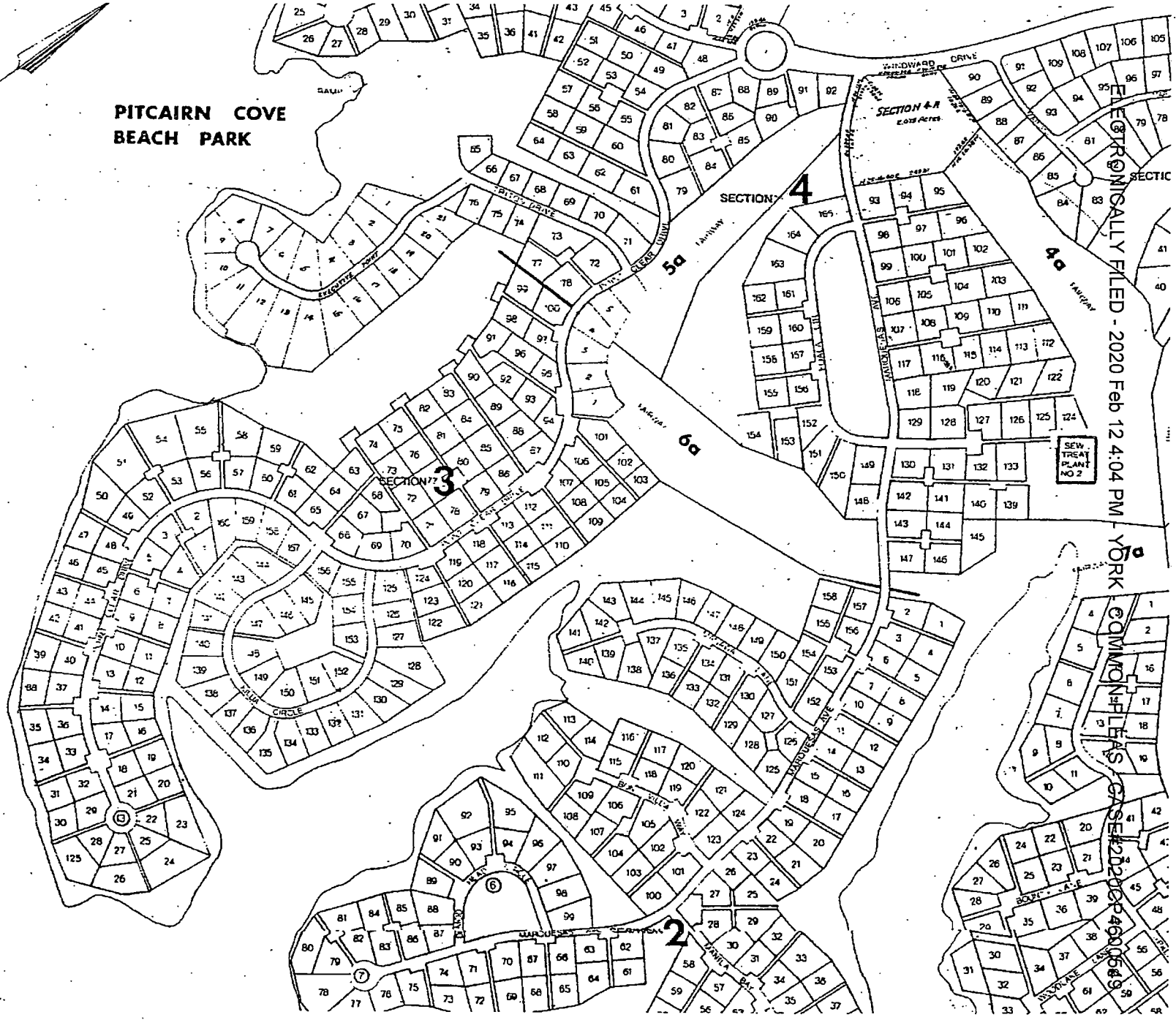


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PITCAIRN COVE  
BEACH PARK

LAKE WYLIE



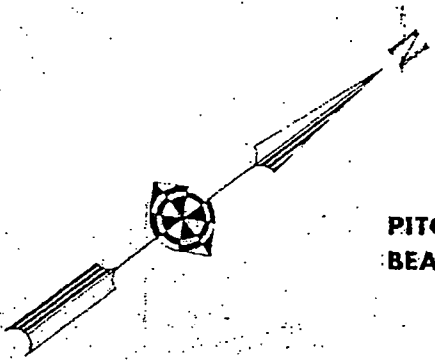
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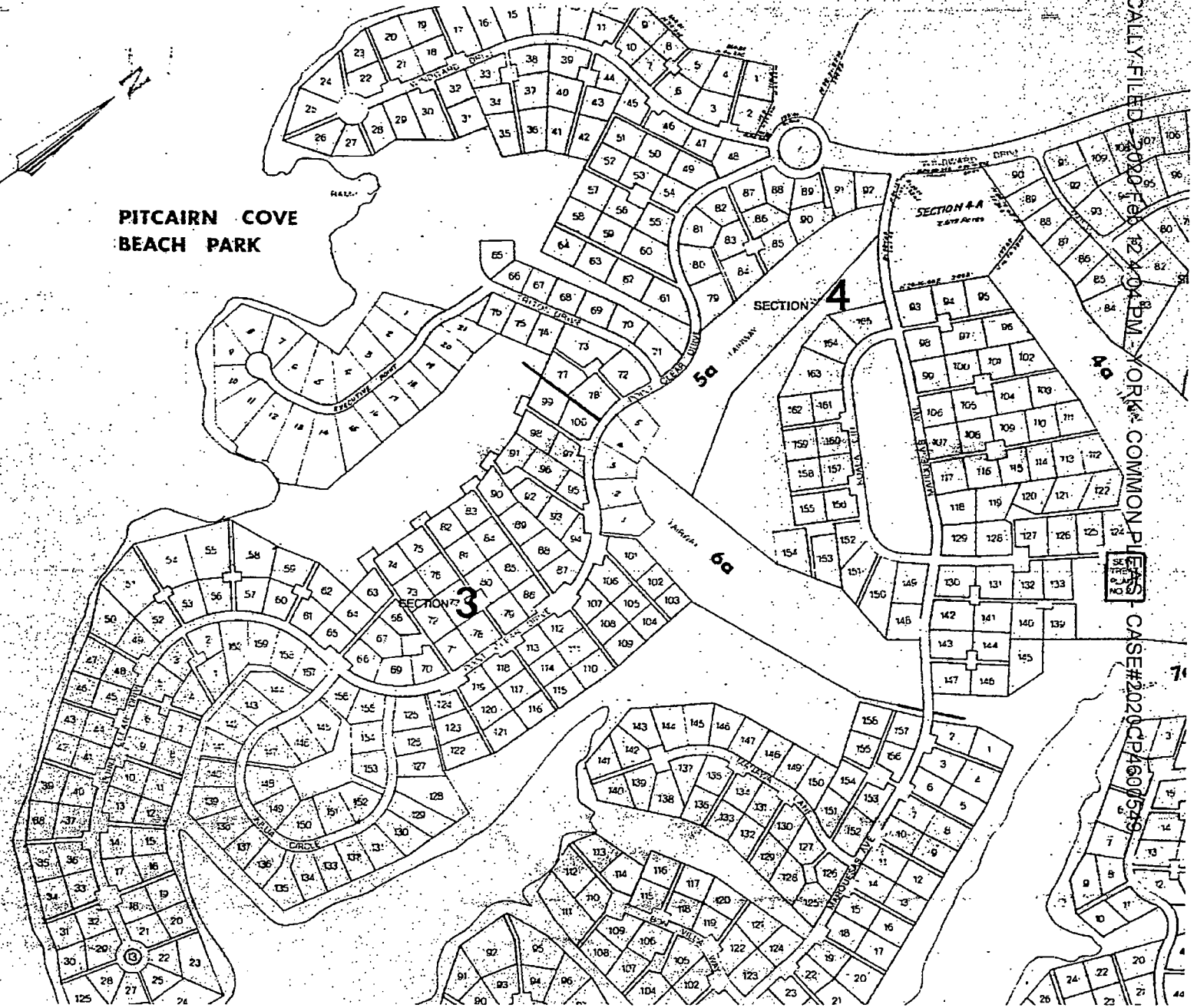


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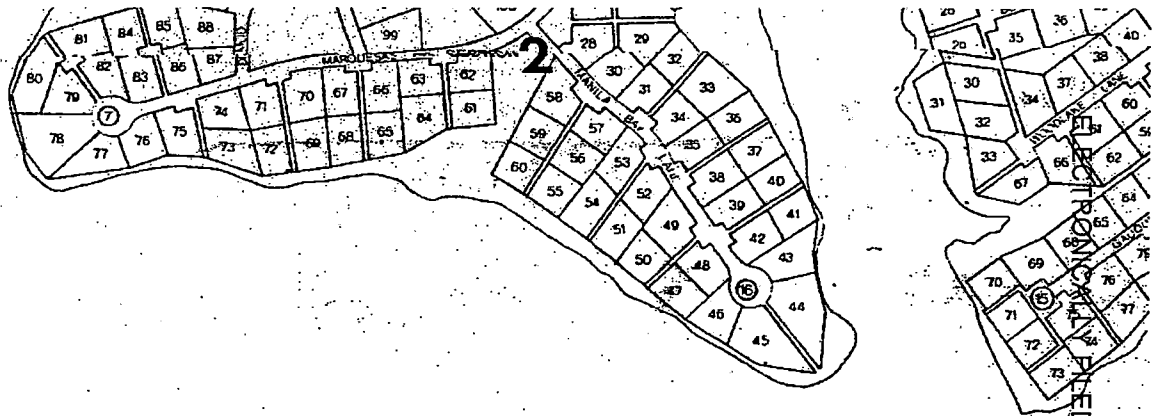


PITCAIRN COVE  
BEACH PARK

LAKE WYLIE



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**LEGEND**

- OPEN SPACE AND RECREATION
- GOLF COURSE FAIRWAYS
- PAVED (ROADS, PARKING)
- BUILDINGS
- LAKES, PONDS

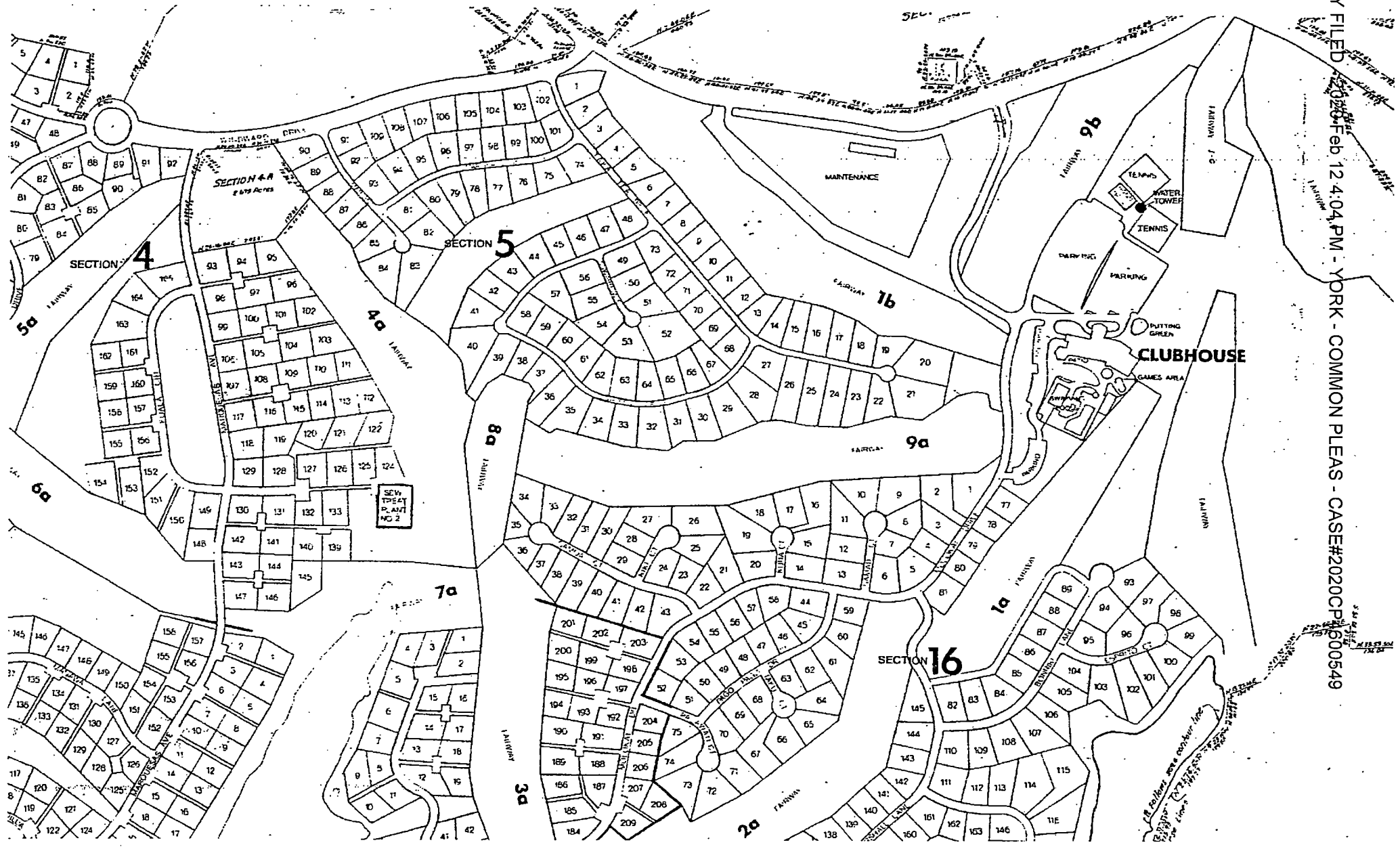
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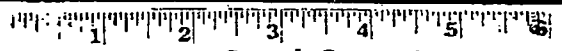
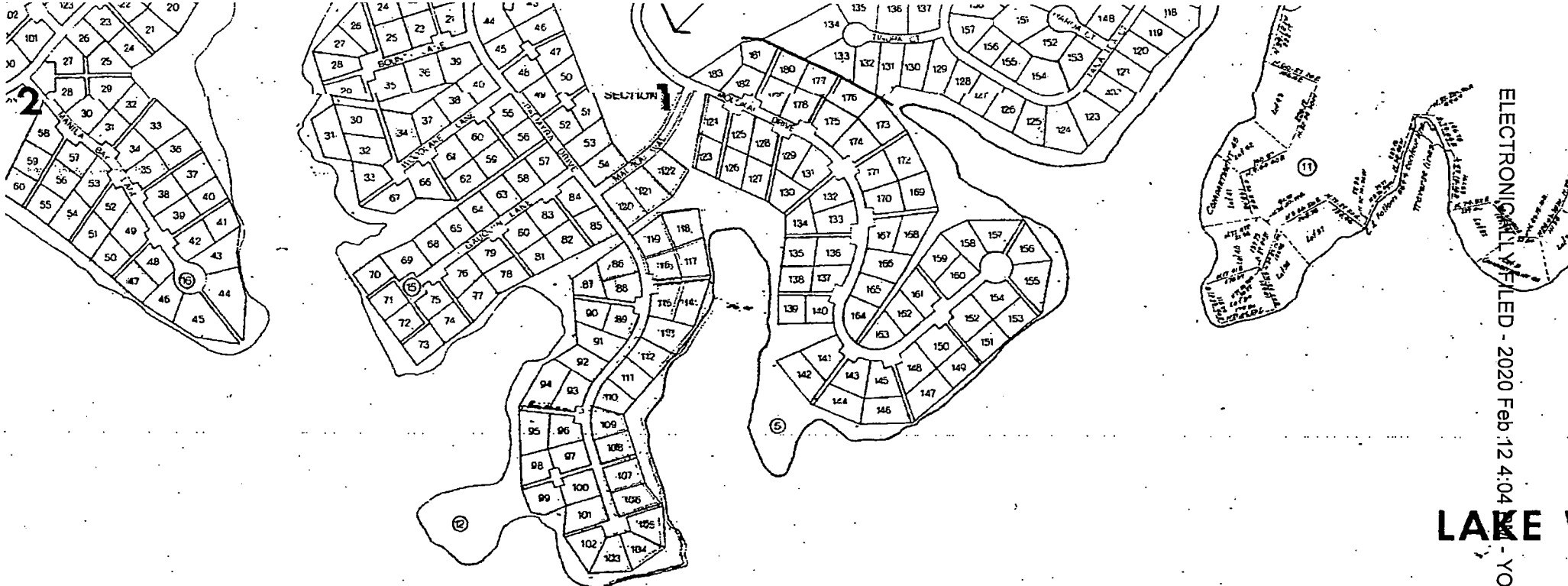
Business Record  
 1022 East Liberty Street, Suite 102  
 Columbus, Ohio 43215

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 CO. RECORDS  
 ON PLEAS - CASE#2020CP4600549

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**Business Records Corporation**

1022 East Lincoln Street • Greensboro, N.C. 27405

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**LAKE**

# LAKE WYLIE

**SECTION 17**  
68.216 Acres  
Note: Acreage computed to  
prostate lands

**SECTION 18-C**  
27.936 Acres  
Note: Acreage computed to  
prostate lands

**Highway 15-C**

Note:  
Actual boundary surveys made of sections  
4-A, 7-A, 7-B, 7-C, 11, 13, 14, 17, 18, 20, 20-A, 22, 25, 26-C, 27-A, 32  
and transferred to aerial map made Oct 1, 1971

# TE

# MAST YORK C

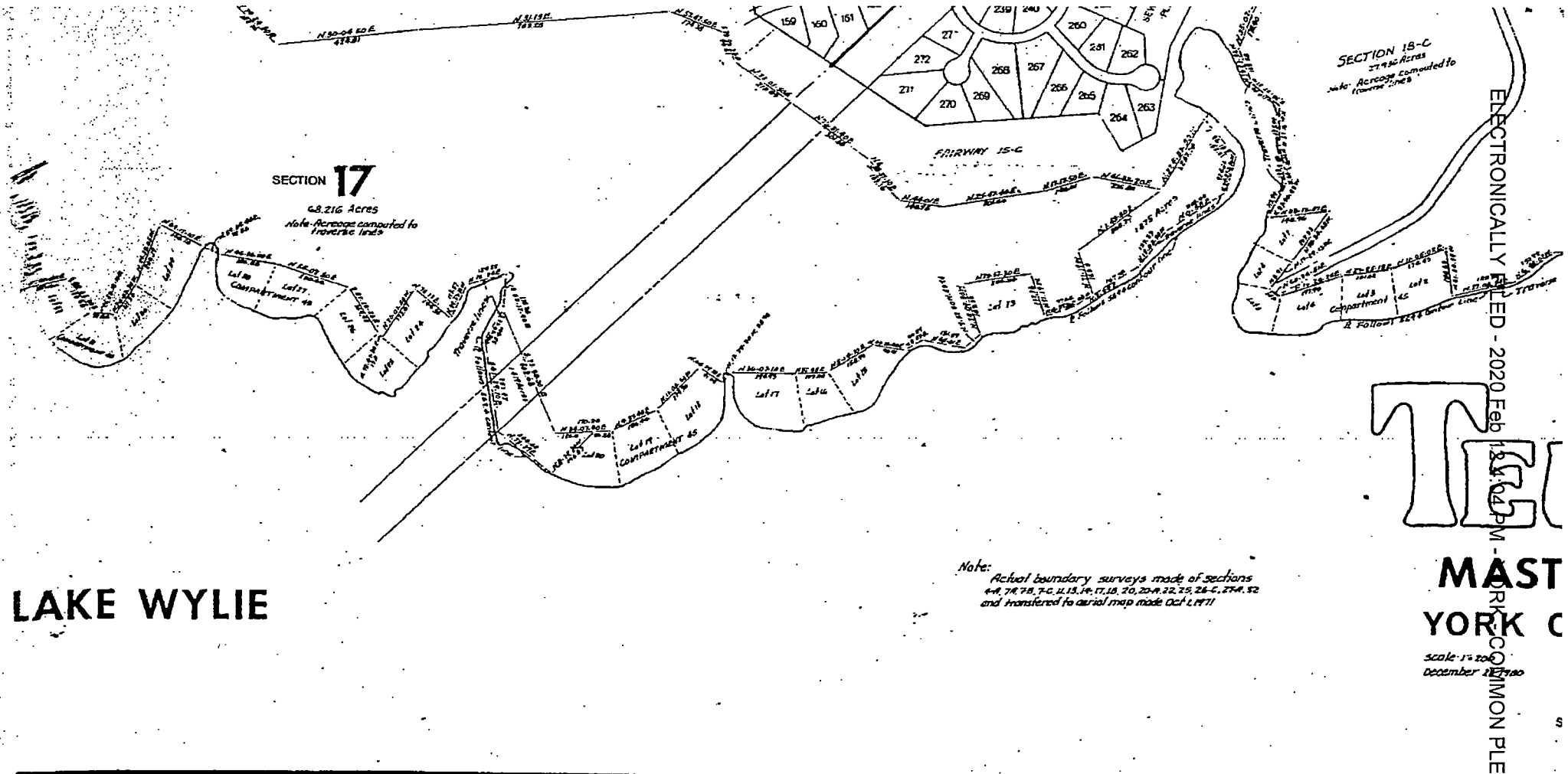
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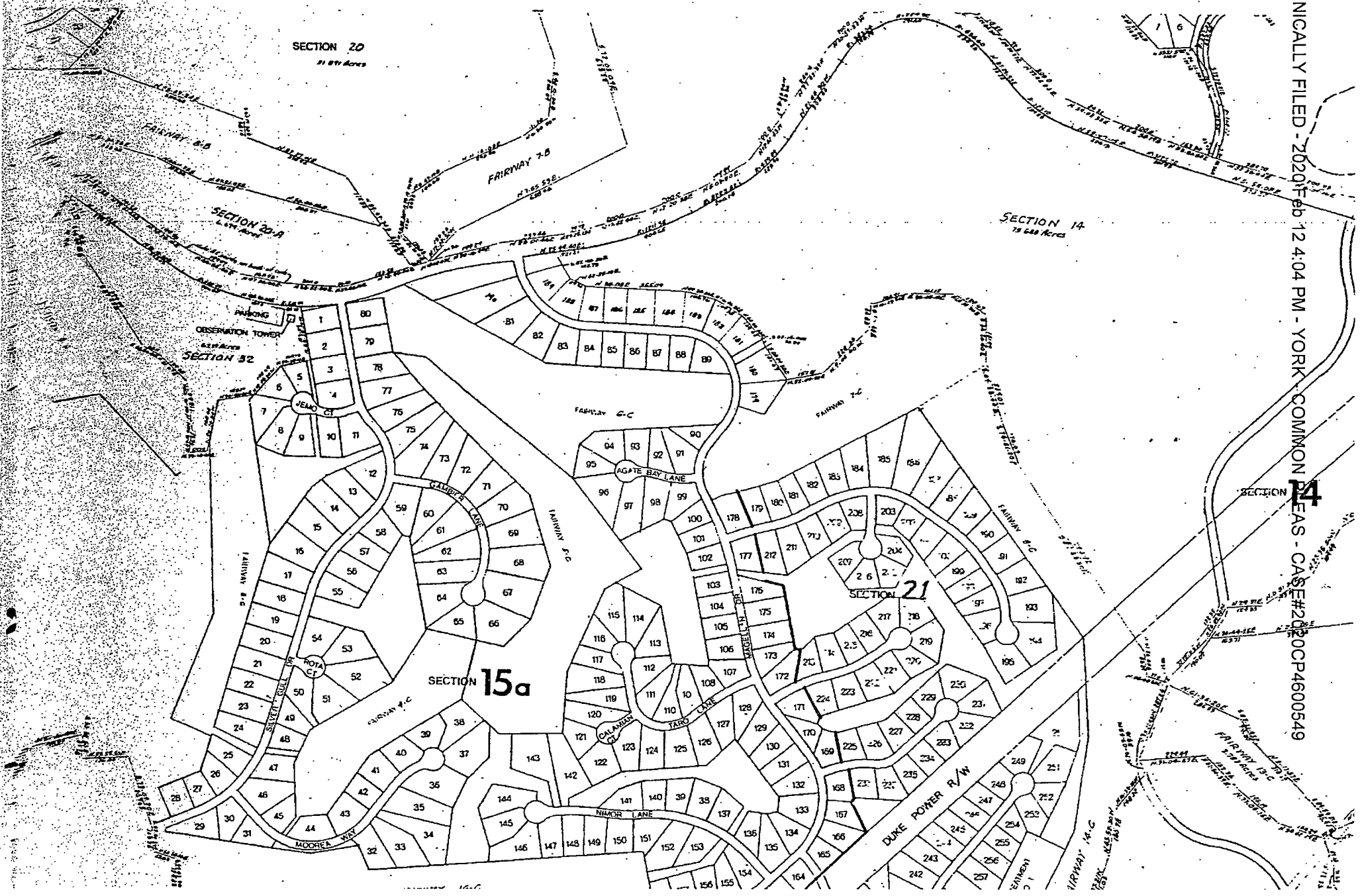
Business Record

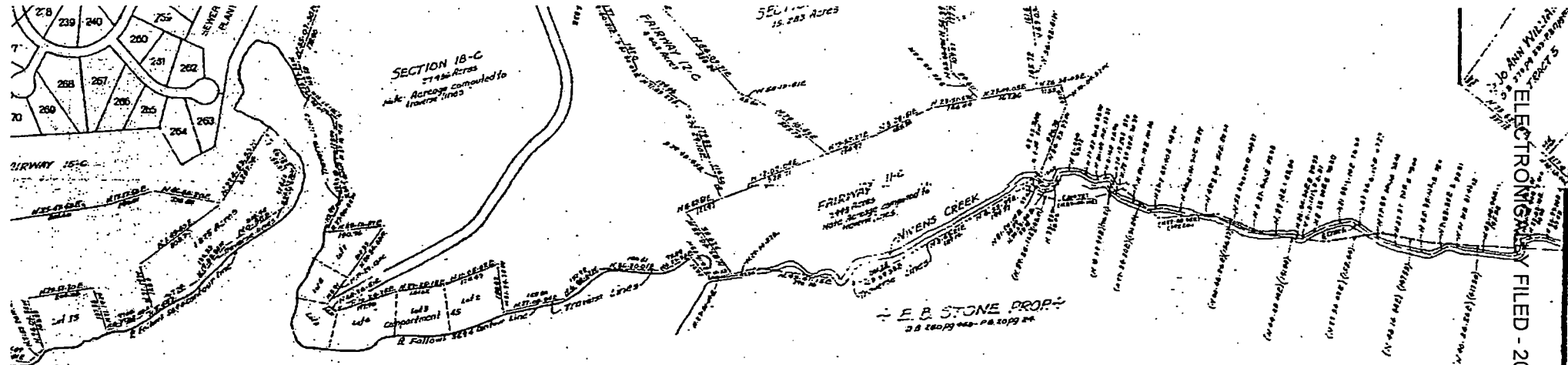
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Cedar Rapids, Iowa 52403

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MARIANNE J. COFFMAN, CLERK  
COMMON PLEAS COURT  
#2020CP4600549

73/85







# TEGA CAY

## MASTER DEVELOPMENT PLAN YORK COUNTY, SOUTH CAROLINA

*Note:*  
Actual boundary surveys made of sections  
4, 7, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

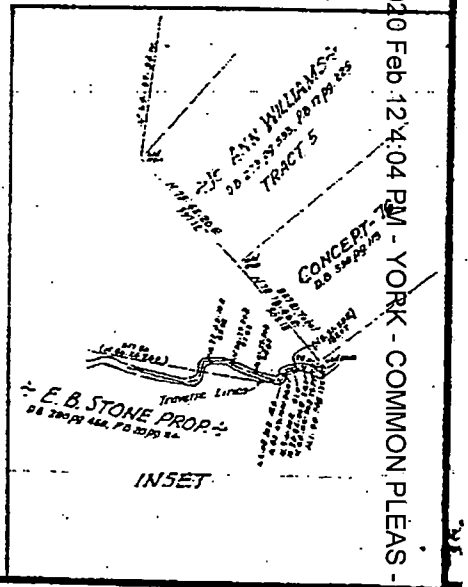
Scale: 1" = 200'  
December 23, 1960

Fort Mill, S.C.

A. Alan Mathwork  
Reg. S.C. Land Surveyor

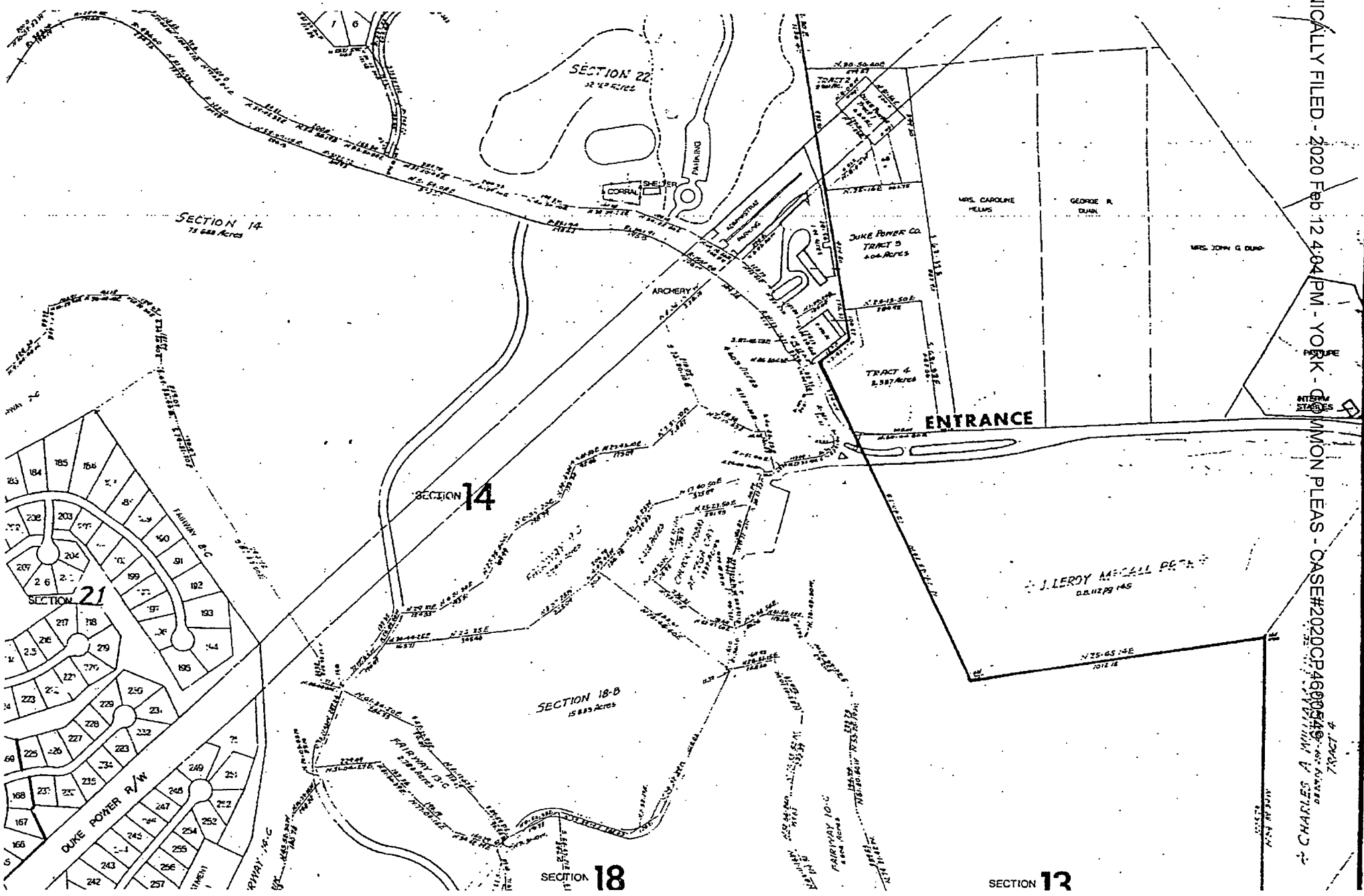
SCALE 1" = 200'

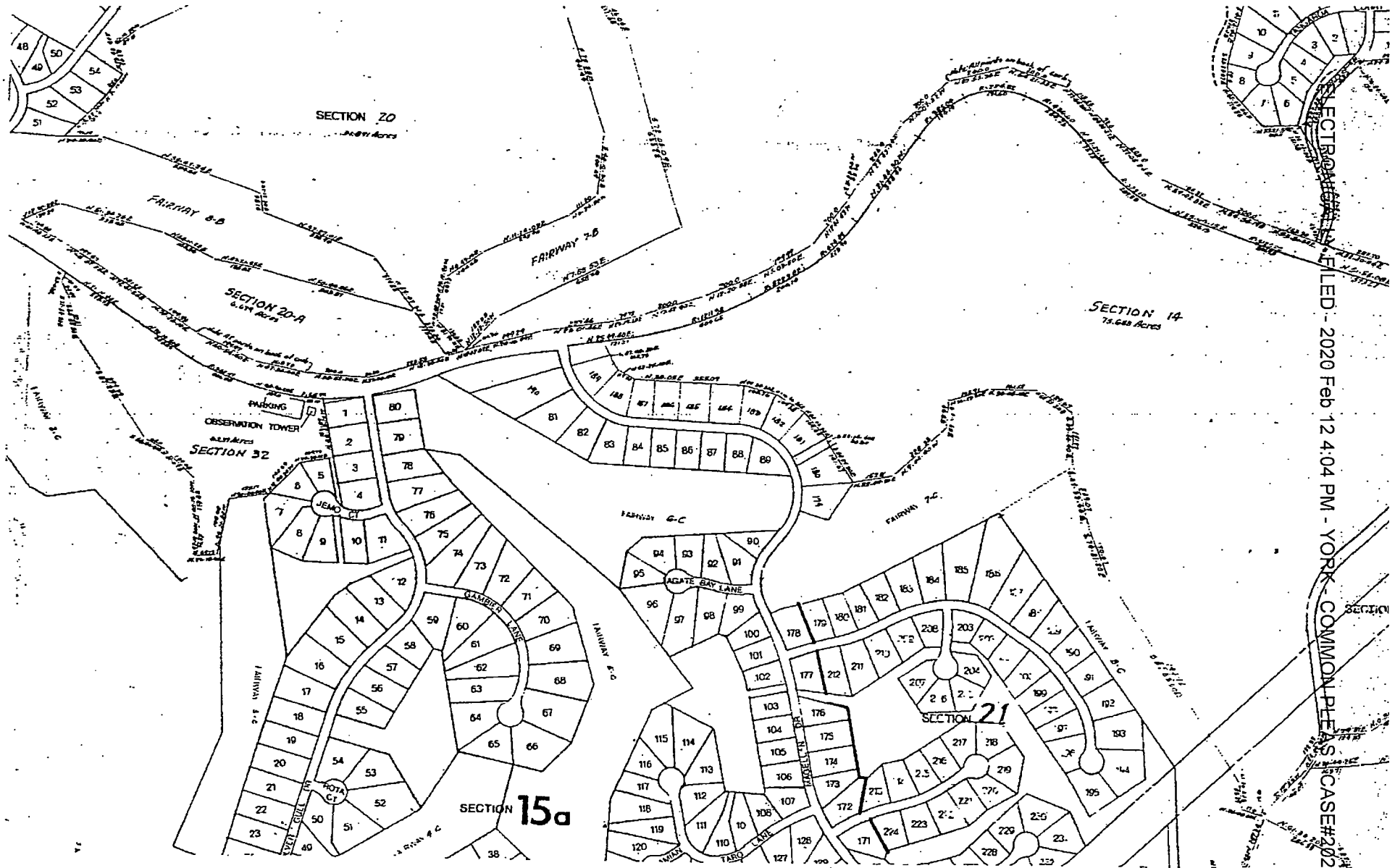
OCTOBER 1, 1971



Business Records Corporation  
1022 East Liberty Street • Greensboro, N.C. 27408

ELECTRONICALLY FILED - 2020 Feb 12 4:04 PM - YORK - COMMON PLEAS - CASE#2020CP4600549

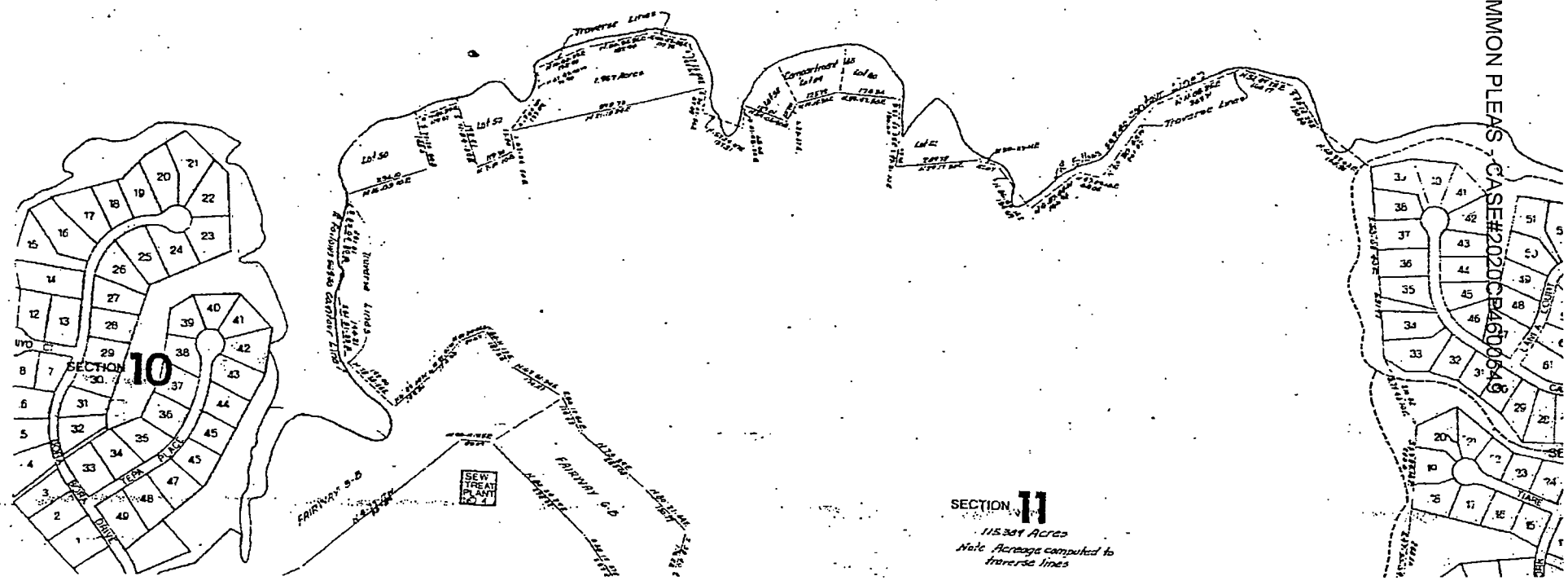




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73/26

# E WYLIE



**SECTION 11**  
 11381 Acres  
 Note: Acreage computed to traverse lines





**EXHIBIT 2**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023.

IN THE COURT OF COMMON PLEAS

Case # 2020-CP-46-00549

**Several Motions to Dismiss  
Under Special Appearance**

FILED-RECEIVED  
2020 MAY 14 AM 11:14  
DAVID PHILTON  
C.C.P. & C.S.  
YORK COUNTY, SC

*COMES NOW* Ryan Powell, the absolute owner of the land at issue in this case ("Owner" hereinafter). Owner makes these several motions to dismiss by special appearance with no intentions of ever submitting himself to the jurisdiction of this Court.

Attached as **Exhibit A** is an affidavit of Owner that is to be used to support these motions. Unless or until Owner's affidavit is rebutted by a person with first hand knowledge, Owner's affidavit stands as the truth in this matter.

**Motion to Dismiss as Another Action is Pending  
Between the Same Parties for the Same Claims**

Owner brings this Motion under Rule 12(b)(8) SCRPC. LB PARK filed an action in January of 2019 that includes the same claims made against the same parties (case #2019-CP-46-000310). As a John Doe party Owner made a motion to dismiss that action for want of subject matter jurisdiction and if the Court found it had jurisdiction over Owner's private unrecorded property, Owner demanded he be allowed to intervene in that action. The Circuit Court judge who heard that motion to dismiss admitted on the record that he

knew he did not have subject matter jurisdiction over Owner's private unrecorded property but then he refused to do his duty to dismiss the case and also refused to allow Owner to intervene. Owner took an immediate appeal of that final judgment. LB PARK moved to have Owner's appeal dismissed. Owner prevailed. LB PARK then moved to have the case remanded so that it could take a stipulated dismissal of that action. Owner prevailed in that the Appellate Court did not grant the relief sought but did grant a remand for the "*limited purpose of allowing LB PARK to file a motion to dismiss ... This appeal shall be held in abeyance pending the lower court's consideration of the motion*". That order was issued on October 15, 2019 ("Remand Order" hereinafter).

LB PARK then flagrantly ignored the Court of Appeal's Remand Order and filed a Notice of Stipulated Dismissal into that case, which appeared to dismiss the case in the lower court but left the case being held in abeyance in the Appellate Court. Owner filed a motion to revive/restore his appeal from being held in abeyance and return it to the active roster. That motion is still awaiting a disposition by the Court of Appeals. Unless or until Owner's appeal is dismissed by the Court of Appeals (and then if the South Carolina Supreme Court refuses to issue a Certiorari to the Court of Appeals) that case still exists.

**RELIEF DEMANDED:** dismiss this duplicate case.

**Motion to Dismiss for Lack of Subject Matter Jurisdiction**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(1) SCRPC. Owner is the grantee on a signed and executed general warranty deed to the land at issue in this action ("Owner's Private Property" hereinafter). Owner's land was granted to him on December 20, 2012 by San Juan Holdings the legal and lawful owner of the land at that time. Owner has been seised and possessed of the land at issue since December 20, 2012 which predates all the allegations made in LB PARK's complaint by many years. Possession carries with it the presumption of title. See **Exhibit A** wherein Owner testifies to these facts.

Owner chose to stand on his recognized human rights to own his property privately and alone so Owner did not record his deed as that is the method one uses to exercise those human rights (see **Exhibit A**). Therefore having not recorded his deed, Owner is the sole owner of the land at issue, i.e, no other person shares any ownership interest in the land at issue in this case. Jurisdiction is always based on ownership as an owner is

the only person who has the authority to dictate, regulate, or dispose of his property. Since Owner owns his property alone, only Owner possesses the authority to determine when, how, to whom, or if his property is to be disposed. Accordingly this Court has no authority to make ANY determination that deals with the subject matter of this case - i.e., Owner's Private Property.

Once the issue of lack of subject-matter jurisdiction is raised it is the plaintiff's burden to prove. Therefore, unless and until LB PARK can produce first-hand witness evidence showing that San Juan Holdings ("SJH" hereinafter) did **NOT** dispose of their property over eight years ago as testified to in a notice that SJH recorded when their land was sold and transferred ("SJH Notice" hereinafter<sup>1</sup>) and that LB PARK can produce first-hand witness evidence showing that Owner is **NOT** the owner of the land at issue in this case as testified to in **Exhibit A**, then this Court wants jurisdiction over the subject-matter of this action. No judge has discretion to ignore the lack of subject matter jurisdiction or to knowingly issue a void order.

**RELIEF DEMANDED:** dismiss this case for lack of subject-matter jurisdiction.

**Motion to Dismiss for Lack of Personal Jurisdiction Over All Defendants**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(2) SCRPC. Both Owner and the other two named defendants were served outside the territory of this State (see all affidavits of service in the record). Service of a summons is not effective outside the boundaries of the State unless there is a statute that allows such service (see Rule 3(f) SCRPC). The long-arm statutes are the only statutes that allow this Court to exercise personal jurisdiction over out-of-state defendants in any case that involves "*having an interest in, using, or possessing real property in this State*" (see SC Code of Laws 36-2-803(5)).

There are two issues that prevent this Court from exercising personal jurisdiction over Owner under the long-arm statutes found in SC Code of Laws 36-2-803(5).

First, the only allegation in the entire complaint that mentions Owner is #7 wherein LB PARK alleges that Owner "*claims to have an unrecorded interest in the property*" (complaint #7, first sentence). But then LB PARK negates that allegation by stating

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<sup>1</sup> See copy of SJH Notice attached as **Exhibit B** and fully incorporated herein by reference.

"Plaintiff denies that Defendant Ryan Powell has any interest in the Property" (complaint #7, second sentence). Taken as a whole paragraph #7 fails to make a *prima facie* case showing that this Court has the authority to exercise personal jurisdiction over Owner.

Second, while Owner does own land that can be found within the borders of the geographical area commonly known as South Carolina, Owner's land is **NOT** "*real property in this State*". The legal term "*in this State*" cannot be construed to mean "*within the borders of South Carolina*" because in the English language "*in*" and "*within*" have different meanings and also because there are **only** three codes where "*in this State*", "*this State*", or "*State*" has been defined to mean "*South Carolina*" instead of "*State of South Carolina*". Not one of those three codes applies to Title 36. (see 12-28-110, 27-16-30, and 48-11-10). Clearly "*State of South Carolina*" is an entirely different legal entity than "*South Carolina*" or the codes would not have to define and redefine the terms "*State*" and "*this State*" as often as it does. Since there are neither any allegations in the complaint nor evidence that could ever support a finding that Owner has "*an interest in, using, or possessing real property in this State*", this court cannot exercise personal jurisdiction over Owner.

There is a huge issue that prevents this Court from exercising personal jurisdiction over San Juan Holdings, Brett Osborne the trustee, and Brett Osborne as trustee of San Juan Holdings under **any** statute, code, or legal principle. That issue being, San Juan Holdings does not exist and Brett Osborne is not its trustee. The complaint alleges the existence of a document titled "*Notice of Sale, Transfer and Exchange*" (i.e., SJH Notice, see **Exhibit B**) and requests this Court extinguish that document as a cloud on LB PARK's alleged title (see complaint #5 & #6) so that document is central to LB PARK's claims. Since Owner has attached copy of the SJH Notice to this motion as **Exhibit B**, the SJH Notice becomes part of the pleadings<sup>2</sup>. The pleadings allege that those two defendants do not exist and have not existed for over seven years before this case was initiated. The pleadings are also confirmed by the response that Brett Osborne filed into

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<sup>2</sup> "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claims.", Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498-99 (5th Cir. 2000).

the case on April 1, 2020. Every part of the pleadings, which includes the SJH Notice, must be considered by this Court for disposition of these motions. It is impossible for any court to exercise any jurisdiction over non-existent persons. Since LB PARK has already plead that those two entities do not exist it has already made a *prima facie* case showing this Court does not have jurisdiction over those non-existent persons.

Once the issue of personal jurisdiction is raised the plaintiff is required to show it exists - "*It is well-settled that the party seeking to invoke personal jurisdiction over a non-resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction.*", Moosally v. WW Norton & Co., Inc., 594 SE 2d 878 (2004). Having failed that burden, this case must be dismissed because this Court does not have personal jurisdiction needed to bind any defendant to any orders this Court makes.

**RELIEF DEMANDED:** dismiss this case for want of personal jurisdiction over all defendants.

#### **Motion to Dismiss for Lack of Territorial Jurisdiction**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under State v. Dudley, 614 SE 2d 623 (SC Supreme Court 2005). Territorial jurisdiction can be raised at any time and can never be waived<sup>3</sup>. Also since this case deals with title to and affects interests in Owner's land it is an *in rem* action. Accordingly, Owner's Private Property **MUST** be within the territory over which this Court has jurisdiction in order for this Court to hear and decide this case.

However, this Court ONLY has territorial jurisdiction over real property that can be found in "County of York". Being that County of York is a [private court] business entity and not a geographical area all deeds recorded in the books and records of County of York must declare that the real property is situated in County of York. For example, a typical deed recorded in the books and records of the County of York business entity would need to contain the following (or similar) words in its legal description:

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<sup>3</sup> "Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding. ... The exercise of extraterritorial jurisdiction implicates the state's sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent.", State v. Dudley, 614 SE 2d 623 (2005).

"All that certain piece or lot of land situated, lying or being in the County of York, State of South Carolina, being known and designated as ...".

There are no allegations that Owner's Private Property is in County of York, State of South Carolina. Therefore, unless and until LB PARK alleges that fact and can ultimately produce evidence proving that fact then this case must be dismissed for lack of territorial jurisdiction.

**RELIEF DEMANDED:** dismiss this case for lack of territorial jurisdiction.

**Motion to Dismiss for Improper Venue**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(3). The venue code in SC Code of Laws 15-7-10 states in pertinent part:

"An action for the following causes **must be tried** in the county in which the subject of the action or some part of the property is situated, ...:

(1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property;"

LB PARK's complaint fails to allege any venue for this action. Nevertheless, since LB PARK filed its action in this Court, then County of York must be the county wherein Owner's Private Property is **presumed** to be situated. For the same reasons as stated above in Owner's Motion to Dismiss for Lack of Territorial Jurisdiction, LB PARK is required to allege, and ultimately to be able to prove, that Owner's land is in County of York in order for this Court to be the proper venue to hear this action. Absent allegations, and ultimately evidence to support those allegations, showing Owner's land is in County of York, this case must be dismissed for improper venue.

**RELIEF DEMANDED:** dismiss this case for improper venue.

**Motion to Dismiss for Failure to State Facts Sufficient to Constitute a Cause of Action**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(6) SCRPC. LB PARK uses SC Code of Laws 12-61-10 to 60 (complaint #1) as the authority for bringing its action. When a plaintiff uses a code as the authority for its action, the case becomes one of limited jurisdiction even when the case is brought in a court of general jurisdiction. Accordingly,

the plaintiff in a limited jurisdiction action must alleged the facts required by that code that it uses to bring its action.

The code chapter that LB PARK uses to bring its action is a special remedy that can be used only by purchasers of property at tax sales. In other words, in order for any plaintiff to use SC Code of Laws 12-61-10 to 60 to clear its tax title, that plaintiff must have a tax title, i.e., the plaintiff must be the grantee on a tax title. LB PARK admits in its complaint that it only has a quitclaim deed, not a tax title (complaint #12). SB MUNI CUST % LBSC-11 LLC ("SB MUNI" hereinafter) is the alleged tax title purchaser (complaint #11). SB MUNI is the ONLY person who had the ability to bring an action to clear its tax title under SC Code of Laws 12-61-10 to 60. This requirement is clearly stated in SC Code of Laws 12-61-60 - "*This chapter shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by forfeiture unto him.*". The property at issue in this case was allegedly forfeited unto SB MUNI not unto LB PARK (complaint #11, #12). LB PARK therefore has not alleged the facts needed to fulfilled the requirements of the special remedy found in SC Code of Laws 12-61-10 to 60.

**RELIEF DEMANDED:** dismiss the case for failure to state a claim upon which relief can be granted.

**Motion to Dismiss First Alternative Cause of Action  
for Failure to State Facts Sufficient to Constitute a Cause of Action**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(6) SCRCF. LB PARK requests in its First Alternative Cause of Action that in the event the tax sale is set aside or declared void it "seeks to recover the amounts that the controlling authority requires be refunded and tendered to the Plaintiff" (complaint #18). There are at least three fatal issues with that claim.

First, to recover (i.e., to get back or to regain) something, the person making the claim has to be the person who lost the thing in the first place. LB PARK alleges that SB MUNI paid those monies it seeks to recover therefore SB MUNI is the only person that can make a claim for a recovery/refund of those monies it paid.

Second, LB PARK wants this court to enter a money judgment to be paid by "*the party challenging the tax sale*" (complaint #23). In order for "*the party challenging the tax sale*" to return or refund monies to any person, "*the party challenging the tax sale*" must be the person who received and is in possession of those monies. Since the complaint alleges that SB MUNI paid York County those monies that LB PARK wants returned to it, then York County is the only person whom can be held liable to return those monies it received and is in possession of.

Third, LB PARK alleges that code sections 12-51-90-100 allows this claim to be made but those code sections do not apply to any of the facts alleged in the complaint. Those codes sections 12-51-90-100 allow for a refund of bid monies, including interest, to be paid to the tax title purchaser (SB MUNI) by the entity holding those monies (York County) during the redemption period (one year after the tax sale) IF the property is redeemed during the redemption period. Clearly none of these facts apply to the facts alleged for this case.

**RELIEF DEMANDED:** dismiss the First Alternative Cause of Action for failure to state a claim upon which relief can be granted.

**Motion to Dismiss for Failure to  
State a Claim Against Owner**

All allegations made above are incorporated herein as if they were repeated.

The complaint only mentions Owner in paragraph #7 under the heading of parties and makes no allegations whatsoever that could show that Owner has damaged LB PARK or that Owner is liable to LB PARK for any act or omission of Owner. LB PARK states that it named Owner in order to give Owner notice of the action (complaint #7, third sentence). However, in any case that involves title to and interest in land, a plaintiff cannot give notice of its action by naming that person as a defendant and forcing them into the case. The plaintiff in such a case is required to publish its summons and complaint to give notice to any person WHO CHOOSES to have a court decide their claims.

**RELIEF DEMANDED:** dismiss the case for failure to state a claim against Owner.

**Motion to Dismiss Cause #2 for Failure to  
State Facts Sufficient to Constitute a Cause of Action**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(6). LB PARK alleges it is the grantee on a quitclaim deed granted by SB MUNI (complaint #12 & #11). In LB PARK's Second Cause of Action it requests this Court reform its quitclaim deed and also the entire chain of title. Equity only has jurisdiction to reform a written instrument so as to conform to the intentions, agreement and understanding of the parties to that agreement. The parties to LB PARK's quitclaim deed are SB MUNI and LB PARK. Equity does NOT have jurisdiction to reform a written instrument when the creator of the instrument (SB MUNI) is not even a party to the reform action and where the party's intentions, agreement and understanding are not even before the court. LB PARK has also failed to alleged that it has, or will, suffer any harm from the minor and meaningless Scribner's error it wants reformed. Equity does not have jurisdiction to reform a written instrument to correct an error that is without any legal or equitable effect, i.e., the error doesn't matter.

**RELIEF DEMANDED:** The Second Cause of Action must be dismissed for failure to state a claim upon which relief can be granted.

**Motion to Dismiss for Ineffective Service on All Defendants**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 12(b)(5) SCRPC. The affidavit of service found in the record that is presumed to show that Owner was served states that a Wake County, North Carolina, Sheriff served "POWELL, RYAN". However, that is not Owner's name. Owner is making a special appearance in this action as a private person (i.e., a natural person, see **Exhibit A #8**). People never use an "all caps" style for their name as the "all caps" style is used to designate a corporation or fictitious entity. Further people never write their given name as "LASTNAME, FIRSTNAME". Accordingly there is no affidavit of service in the record showing that Owner was served.

A man named Brett Osborne was served for the two defendants named San Juan Holdings, Brett Osborne the trustee and Brett Osborne as trustee of San Juan Holdings. LB PARK alleged in its complaint that Brett Osborne is no longer the trustee for San Juan Holdings (see **Exhibit B**, complaint #5 & #6) which allegation was confirmed by the response filed by Brett Osborne on April 1, 2020. Notwithstanding, LB PARK fraudulently pretended to serve those two defendants it named while alleging those two defendants do not exist and that Brett Osborne is not its trustee.

**RELIEF DEMANDED:** dismiss this case for failure to effectively serve process on all defendants named.

**Motion to Drop Defendants**

All allegations made above are incorporated herein as if they were repeated.

Owner brings this Motion under Rule 21 SCRPC. LB PARK alleged in its complaint that Brett Osborne is no longer the trustee for San Juan Holdings, that SJH does not exist, and that SJH no longer owns the property at issue in this case (see **Exhibit B**, complaint #5 & #6). Those allegations were confirmed by the response filed by Brett Osborne on April 1, 2020. Notwithstanding, LB PARK fraudulently named them and pretended to serve them as defendants. Since those two entities do not exist and do not own the land at issue in this action, Owner is burdened with the impossible task of having to defend his property in a case where all of the allegations made in the complaint have been made against two parties that the complaint alleges do not exist and do not have any standing. Since those parties neither exist nor own the land at issue they can not appear in this action and even if they could appear they have any motivation to do so. Therefore those two non-existent defendants must be dropped.

**RELIEF DEMANDED:** drop the two defendants San Juan Holdings, Brett Osborne the trustee and Brett Osborne as trustee of San Juan Holdings as they do not exist and do not have standing to be in this case.

Respectfully submitted: 5/12/2020

Ryan Powell

Ryan Powell  
c/o 25056 Timberlake Drive  
Fort Mill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023.

IN THE COURT OF COMMON PLEAS

Case # 2020-CP-46-00549

Affidavit of Ryan Powell

FILED-RECEIVED  
2020 MAY 14 AM 11:14  
DAVID CAMPBELL  
C.C. P. & G.S.  
YORK COUNTY, SC

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

1. I am over the age of 18 years and competent to make this testimony. I will testify to these facts in open court if needed..
2. Since December 20, 2012 I have been seized and possessed of the land that is the subject of this action and which has been identified in this action as 25056 Timberlake Drive, York County, South Carolina.
3. On December 20, 2012 I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a general warranty deed, for the grantor, granting in fee simple all rights, title and interest that SAN JUAN HOLDINGS had previously enjoyed in the land at issue in this case to me, Ryan Powell, as the grantee on that deed. I then signed and accepted my deed. Two witnesses that I did not know then signed my deed as witnesses. Then a notary public for STATE OF SOUTH CAROLINA notarized my deed.

4. My deed was then handed to me by the notary and I have had the original of my deed in my possession since it was executed.
5. I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a document titled "Notice of Sale, Transfer, or Exchange" that was prepared so that I could give notice to the world that SAN JUAN HOLDINGS no longer owned my land and no longer existed as a legal entity.
6. I did not record my deed and I have no intentions of ever doing so because I want to own my land privately and alone. I have recognized human, natural, and Constitutionally protected rights to own my land privately and alone.
7. I have never received any bill, notice, or demand from any governmental corporation demanding payment from me; notifying me that I owe any assessment, tax, payment, duty, fee, penalty; notifying me that I have a right to redeem my property; or notifying me that my property was going to be taken from me or sold.
8. I am making a special appearance in this action as a natural person not as legal (corporate) fiction. As such my natural person name is Ryan Powell and is not "Powell, Ryan".

WITNESS my Hand and Seal this the 4 th day of May 2020.

  
Ryan Powell

SWORN to before me this 4 th day of May, 2020

  
Notary Public for State of South Carolina

Celeste Brendlinger  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires 10/12/2027

My Commission Expires: 10-12-2027

Exhibit B

201200198786  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON, CLERK OF COURTS  
12-26-2012 At 02:40 pm.  
NOTICE 10.00  
OR Vol 13103 Page 241 - 242

STATE OF SOUTH CAROLINA )  
 ) Notice of Sale, Transfer or Exchange  
COUNTY OF YORK )

WHEREAS, SAN JUAN HOLDINGS is a private contractual trust (hereinafter Trust); and

WHEREAS, Trust is the owner of record of the property recorded on June 28, 2000 in vol: 3173 page: 343 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Brett Osborne's trustee of Trust with power to convey title to the aforesaid property; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, aforesaid recorded property of Trust has been assigned the tax map number of 643-10-01-023 by the York County Tax Assessor; and

WHEREAS, On December 20, 2012 Trust, by and through Brett Osborne trustee, in a private transaction did grant, bargain, sell, release, and convey the aforesaid private property to an unenfranchised living man; and

WHEREAS, the proceeds of the aforesaid transaction have been distributed as required by the law of the Trusts' indenture terminating the Trust; and

WHEREAS, giving this notice is the final duty of Brett Osborne trustee for Trust;

THEREFORE, YOU ARE TO TAKE NOTICE THAT: SAN JUAN HOLDINGS no longer owns the property in the records of the Office of the Clerk of the Court for York County, South Carolina and those records should be updated accordingly; that SAN JUAN HOLDINGS has been terminated and no longer exists by the aforesaid actions according to the law of the trusts' indenture; and that Brett Osborn has completed his duties as trustee for SAN JUAN HOLDINGS.

After Recording return this Notice to:  
Brett Osborne  
c/o 9127 Dalmeny House Lane  
Charlotte, North Carolina

WITNESS our Hand and Seal this 20th day of December, 2012.

SAN JUAN HOLDINGS

By:   
Brett Osborne, trustee

Signed and Sealed in the presence of:



STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee;  
Brett Osborne as trustee of San Juan Holdings;  
Ryan Powell, John Doe and Mary Roe,  
representing all unknown persons having or  
claiming to have any right, title, or interest in  
or to, or lien upon, the real estate described as  
25056 Timberlake Drive, York County,  
South Carolina ....

IN THE COURT OF COMMON PLEAS

Case # 2020-CP-46-00549

**PROOF OF SERVICE**

I, Ryan Powell, hereby certify that I have served the above listed parties with my  
Several Motions to Dismiss Under Special Appearance on the below date by depositing it  
in the United States mail, with sufficient postage affixed, and addressed as follows:

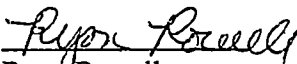
A. Parker Barnes, III  
P.O. Box 11889,  
Columbia, SC 29211-1889

San Juan Holdings, Brett Osborne, trustee; and  
Brett Osborne as trustee of San Juan Holdings;  
190 Aviation Lane  
Gold Hill NC 28071

This the 12 day of May 2020.

FILED-RECEIVED  
2020 MAY 14 AM 11:14  
DAVID B. HAMILTON  
C.C. P. & G.S.  
YORK COUNTY, SC

Sincerely,

  
Ryan Powell  
c/o Timberlake Drive  
Fort Mill, South Carolina

**EXHIBIT 3**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2020-CP-46-00549

LB PARK, LLC,

Plaintiff,

vs.

**MOTION FOR ORDER OF REFERENCE**

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

Plaintiff commenced this action in equity to quiet its tax title to certain real property located in York County, South Carolina and hereby moves this Court, pursuant to Rule 53(b), SCRCPC, to issue an Order of Reference, referring this equitable proceeding to the Honorable Teasa Kay Weaver, Master in Equity for York County, for the purpose of receiving evidence and with all appeals to be made directly to the South Carolina Court of Appeals.

*[signature on following page]*

s/ Andrew M. Rawl  
Andrew M. Rawl  
SC Bar No. 102807

Haynsworth Sinkler Boyd, P.A.  
Post Office Box 11889  
Columbia, South Carolina 29211-1889  
(803) 779-3080

June 23, 2020

Attorneys for Plaintiff

Lb Park Llc  
PLAINTIFF(S)

San Juan Holdings et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), 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:

After careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED.

Defendant's Motions to Dismiss are DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/20/2020 .

Brett Osborne Trustee  
Brett Osborne  
Ryan Powell for Ryan Powell  
John Doe  
Mary Roe  
San Juan Holdings  
Ryan Powell for Ryan Powell

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

---



York Common Pleas

**Case Caption:** Lb Park Llc VS San Juan Holdings , defendant, et al

**Case Number:** 2020CP4600549

**Type:** Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2020-08-20 09:58:35 page 3 of 3

ELECTRONICALLY FILED - 2020 Aug 20 10:10 AM - YORK - COMMON PLEAS - CASE#2020CP4600549

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
SEP 09 2020  
SC Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2020-CP-46-00549  
Appellate Case No.

LB PARK, LLC, .....Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Bret Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-0001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 ..... Defendants,

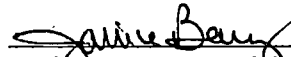
OF WHOM Ryan Powell is the ..... Appellant.

**PROOF OF SERVICE**

I certify that I have served *Respondent's Motion to Dismiss Appeal* on all attorneys of record by depositing a copy of the same in the United States Mail, postage prepaid, on September 4, 2020, addressed to:

Brett Osborne  
San Juan Holdings, Brett Osborne, the trustee  
Brett Osborne as Trustee of San Juan Holdings  
190 Aviation Lane  
Gold Hill, NC 28071

Ryan Powell  
c/o 25056 Timberlake Drive  
Fort Mill, SC 29708

  
\_\_\_\_\_

Janice Barry, Legal Secretary

HAYNSWORTH SINKLER BOYD, P.A.

864.240.3223

**HAYNSWORTH  
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.  
ONE NORTH MAIN STREET, 2<sup>ND</sup> FLOOR  
P.O. BOX 2048 (29602)  
GREENVILLE, SOUTH CAROLINA 29601  
MAIN 864.240.3200  
FAX 864.240.3300  
www.hsblawfirm.com

SARAH P. SPRUILL  
DIRECT 864.240.3220  
sspruill@hsblawfirm.com

September 4, 2020

**VIA U.S. MAIL**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

SEP 09 2020

**SC Court of Appeals**

Re: Ex Parte, Ryan Powell, In re LB PARK, LLC v. San Juan Holdings, Brett Osborne trustee,  
et al.; C.A. No.: 2020-CP-46-00549  
Appellate Case No.:

Dear Ms. Kitchings:

Enclosed for filing, please find *Respondent's Motion to Dismiss Appeal* in the above-referenced matter, together with our Proof of Service of same.


I am enclosing a check for the filing fee in the amount of \$50.00. Please note service on Appellant by copy of this letter. In the meantime, we ask that the current filing deadlines be stayed pending resolution of this request.

If you have any questions, please give me a call.

Thank you for your assistance in this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

  
Sarah P. Spruill

SPS/jmb  
Enclosures

cc: Ryan Powell  
Brett Osborne  
A. Parker Barnes, III (via email only)  
Andrew M. Rawl (via email only)



HAYNSWORTH  
SINKLER BOYD RECEIVED  
P.O. BOX 2848  
GREENVILLE, SOUTH CAROLINA 29602-2848 SEP 09 2020  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211