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**Jun 30 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Marvin H. Dukes, III,  
Master-in-Equity

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Appellate Case No. 2020-001275

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Westbury Park Residential Association, Inc.....Respondent,

v.

Estate at Westbury Owners Association, Inc.....Appellant.

---

**RECORD ON APPEAL**  
**Vol. 3 of 4**

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ELECTRONICALLY FILED - 2020 Sep 15 9:35 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700158

**Board of Directors**

Stacey Sawyer, President

Karen G. Parks, Treasurer

Phil Mateo, Secretary

Derek Jones, Member

**Westbury Park Residential Association, Inc.**

c/o IMC Resort Services

2 Corpus Christie Suite #302

Hilton Head Island, SC 29928

May 17, 2019

Ms. Jeannette Prinsen, Community Manager  
Estate At Westbury Owner's Association, Inc.  
85 Kensington Blvd.  
Bluffton SC 29910

Ms. Noreen McMullen  
Coastal Security Services, Inc.  
14 Palmetto Business Park Road  
Hilton Head Island, SC 29928

**RE: NOTICE TO CEASE & DESIST AND NOTICE OF VIOLATION – UNAUTHORIZED USE & ENTRY TO PROPERTY OF WESTBURY PARK RESIDENTIAL ASSOCIATION VIA THE CONTROLLED ACCESS GATE SYSTEM ("Main Gate")**

Dear Ms. Prinsen and Ms. McMullen:

Please allow this letter to provide notice to the Estate at Westbury Owner's Association, Inc. (E@W) that Coastal Security Services, Inc. (Coastal Security) as the E@W's security agent, has repeatedly physically forced entry through the vehicular gates of Westbury Park Residential Association, Inc. ("WPRA"). Take notice that E@W and its agent, Coastal Security shall immediately cease and desist forcible entry into and/or any other unauthorized methods of entry into Westbury Park via the vehicular gates of WPRA or otherwise.

This letter also serves as a NOTICE OF VIOLATION of improper gate entry, which carries a fine of \$250.00 *per occurrence*. Per the policy of WPRA, the fine amount doubles for *each subsequent additional violation* (e.g. 2<sup>nd</sup> occurrence is \$500.00, 3<sup>rd</sup> occurrence is \$1,000.00, etc.). Attached is a record of each of the violations by Coastal Security that WPRA has knowledge of as of the date of this letter. Also included are dates, times and photographic or video images of each gate breach by staff and vehicles of Coastal Security.

The gate breaches by Coastal Security employees and vehicles are inexcusable. Until recently, Coastal Security was the security vendor for WPRA and as such, the services WPRA contracted them for included providing security patrols and camera image viewing to deter or detect unauthorized individuals from



attempting to breach the gates of our community as well as improper gate breaches by residents or guests. Their role also included investigating and issuing written reports when this type of inappropriate behavior occurred in order to allow WPRA to track down and issue Notice of Violations. Coastal Security is knowingly violating these rules and intentionally doing damage to WPRA property.

On the morning of Friday, May 10, 2019, WPRA's community manager notified Ms. McMullen of Coastal Security via telephone about the need for these gate breaches to cease immediately. Instead, breaches continued to occur as the attached material shows. This behavior must stop immediately and costs for all of the documented violations which have occurred must be paid.

Further, E@W and its agent and vendor, Coastal Security, must immediately coordinate and arrange with IMC to purchase an appropriately reasonable number of properly authorized and registered access devices (e.g. access cards or fobs) which are to be used at all times – *no exceptions allowed* – by the personnel of Coastal Security to enter the gates at Westbury Park for the sole purpose of performing whatever contracted services E@W has engaged them to perform.

Coastal Security is to immediately cease and desist from allowing anyone without a duly registered and authorized access device to enter the gates at Westbury Park. Any further breaches may result in a report of trespass and/or malicious injury to property damage to be made to the Beaufort County Sheriff's Office.

WPRA also requests that E@W and Coastal Security, including Beaufort County's Sheriff's Office as necessary, conduct an investigation of the specific breach which occurred on May 5, 2019 at approximately 20:58. In this instance, Coastal Security's Patrol Officer is clearly shown breaching the gate to first allow an unidentified and unknown individual entry to Westbury Park and then following this action with his own unauthorized entry. We are specifically looking to have you provide us with the identity of the as yet unknown individual including name, address and contact information.

Finally, please know that Westbury Park is coordinating and completing an inspection and evaluation for any damage to the gate systems and equipment as a result of these multiple breaches. Once known, WPRA will seek payment for the damage from the appropriate parties.

Please respond as soon as possible as indicated. Please contact Dave Lewellen at IMC to arrange for a conference call with us should you have any questions.

Very Truly Yours,

Board of Directors  
Westbury Park Residential Association, Inc.

Encl.

cc: Dave Lewellen, Community Manager of WPRA through IMC Resort Service

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April 8, 2020

VIA EMAIL ONLY

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Re: TRESPASS NOTICE  
DEMAND TO CEASE AND DESIST

Your Client: Estate at Westbury Owners Association  
Our Client: Westbury Park Residential Association, Inc.

Dear Ian, Ainsley, and Evan,

First, I hope you and your families are safe and healthy. This letter is to bring several matters regarding Estate at Westbury Owners Association, Inc. (the "Estate") to your attention that demand immediate action.

In the last several weeks, the use of Westbury Park Residential Association, Inc.'s (WPRA) streets and parks by residents and guests at the Estate has spiked. Estate at Westbury residents are using the WPRA's community playground, fishing in WPRA's parks, exercising in common areas, bringing coolers and lounge chairs to these areas and congregating at increase rates. Dangerous conduct has

occurred, with Estate residents harassing (even getting within a few feet of and taking “selfies” with) the large resident alligator. (See enclosed picture. The arrow on the ground in the attached picture is the tail of a large alligator. The lady next to it is a resident at the Estates. The alligator and the individual are on WPRA community property.)

Meanwhile, an Estate resident recently instigated a confrontation with a WPRA security guard requiring a response by Sheriff’s deputies on WPRA property (report enclosed). In another recent incident, Estate residents or guests rode motorcycles around the gates to gain access to the community. The Estate’s Board and Management continue to fail to meaningfully cooperate in WPRA’s efforts to safeguard and protect the community and enforce their own rules.

By this correspondence, WPRA demands that the Estate notify its residents that, per the terms of the Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Palmetto Lakes Apartments at Westbury Park (Book 02269/ Pages 1997-1999), Estate owners, tenants, guests and invitees do not have use rights or easement access to WPRA amenities, including parks, swimming pools or pool houses and take reasonable action to prevent the same.

WPRA demands that the Estate notify its residents that the streets used for vehicular and pedestrian access to the Estate are for ingress and egress only, and not for recreation by Estate residents, guests or invitees.

Further, WPRA demands that the Estate reasonably enforce its own Covenants, and Rules and Regulations. Please take notice, the Estate will be a party to any claim of damage or injury to WPRA property or injury occurring on WPRA property arising from the Estate’s failure to enforce its own rules.

Finally, please advise the Estate that individuals trespassing on WPRA common property will be deemed trespassers by WPRA security, and county law enforcement will be contacted, as appropriate, in every instance of trespass after notice by Estate residents, guests, or invitees.

My client regrets the necessity of this correspondence. Despite pending litigation intended to end the conduct described above, it is getting worse, not better.

My clients are willing to maintain an open dialogue in cooperation with the Estate to assist it with the enforcement of their Rules (as contemplated by their own Rules, enclosed), and to work together to ensure each respective community is safe during these trying times, and into the future.

Of course, nothing in this correspondence shall constitute or be construed to constitute an admission, waiver, or release of any claims or positions maintained in the pending litigation. This correspondence is sent as an emergency notice, warning and plea for the Estate to compel its residents to comply with existing Covenants, Rules, and Orders of civil authority. I trust you will immediately forward a copy of this correspondence to your client and request the same.

With regards, I am

Respectfully yours,

*FINGER, MELNICK & BROOKS, PA.*

*s/Benjamin T. Shelton*

Benjamin T. Shelton

cc: Client

1 State of South Carolina ) Court of Common Pleas  
 ) 14th Judicial Circuit  
 2 County of Beaufort ) No. 2020-CP-07-00158

3

4 Westbury Park Residential )  
 Association, Inc., )  
 5 )  
 Plaintiff, )  
 6 ) HEARING  
 vs. )  
 7 ) September 16, 2020  
 Estate at Westbury Owners )  
 8 Association, Inc., )  
 )  
 9 Defendant, )  
 \_\_\_\_\_ )

10

11 Hearing reported by Deborah S. Thomas,  
 12 Certified Verbatim Reporter and Notary Public in and  
 13 for the State of South Carolina; said hearing held  
 14 before Honorable Marvin H. Dukes, III, Beaufort  
 15 County Master in Equity and Special Circuit Court  
 16 Judge in accordance with the South Carolina Rules of  
 17 Civil Procedure, at the Beaufort County Courthouse,  
 18 102 Ribaut Road, Room 212, Beaufort, South Carolina  
 19 on September 16th, 2020, at the hour of 10:08 a.m.

20

21 \_\_\_\_\_  
 Deborah S. Thomas, CVRM  
 80 Plymouth Lane  
 Bluffton, South Carolina 29909  
 22 (803) 206-7390

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## Appearances

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3

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| 18 | * * * * *                              |                |
| 19 |                                        |                |
| 20 | EXHIBIT INDEX                          |                |
| 21 | Exhibits:                              | Marked at Page |
| 22 | (Exhibits retained by Clerk of Court.) |                |
| 23 |                                        |                |
| 24 | Plaintiff's Exhibit 1                  | 259            |
| 25 | (Thumb Drive)                          |                |
|    | * * * * *                              |                |

4

1                   This hearing is conducted in accordance  
2                   with the South Carolina Rules of Civil Procedure.

3                   JUDGE DUKES: All right. Good  
4                   morning, then. We're here in 2020-CP-07-00158.  
5                   This is Westbury Park Residential Association versus  
6                   Estate at Westbury Owners Association. We're here  
7                   for two different things. This would be plaintiff's  
8                   motion for injunction -- temporary injunction and  
9                   defendant's motion for a partial summary judgment.  
10                  I understand the parties have discussed an order.

11 The Plaintiff is going to go first.

12 But before we do that, in going through  
13 the exhibits last night, I noticed the name Wes  
14 Jones as executed on a couple of at least one or two  
15 of the documents, proposed Exhibits 1 and 2. And I  
16 think he was perhaps a representative of one of the  
17 declarants at some point in the past. It looked  
18 like 1998. Wes Jones is my mother's brother, making  
19 him my uncle in the third degree of sanguinity. So  
20 before we went on the record, I discussed that with  
21 counsel or informed counsel, at least, of that fact.

22 I'm now going to leave the courtroom for a  
23 few moments and let counsel discuss that. And when  
24 I return, I'll be happy to hear from counsel. So,  
25 we'll be off the record for just a second.

5

1 (BREAK TAKEN)

2 JUDGE DUKES: Back of the record,  
3 then. I guess this needs a hole in it.

4 (OFF RECORD DISCUSSION)

5 JUDGE DUKES: Okay. Pursuant to  
6 rules, I left the courtroom. Counsel had an

7 opportunity to discuss the Wes Jones issue I had  
8 brought up earlier. I'm happy to hear from counsel  
9 on that.

10 MR. SHELTON: Your Honor, for Park,  
11 we have no objection to -- if there's any potential  
12 conflict there, we waive any conflict. We have no  
13 objection of you hearing this hearing even if it  
14 comes to the light that Mr. Jones will later be a  
15 witness in the case.

16 JUDGE DUKES: All right. Thank you.

17 MR. FORD: Same for the Estate. We  
18 have no objection and don't foresee it being a  
19 problem in any event.

20 JUDGE DUKES: All right. Great.  
21 Thank you so much. Well then, I'm happy to hear  
22 from the Plaintiff.

23 MR. SHELTON: Thank you, Your Honor.  
24 May it please the court. First it's good to see you  
25 be in the presence of other great lawyers. I always

1 like to start off a hearing with commending of the

2 lawyers and their collegiality. This has been a  
3 case that is obviously hard fought, but we are, I  
4 think, working well together as we're supposed to.  
5 So I'd like to say thank you for the opposing side  
6 for that.

7 This is a matter between Park and Estate.  
8 And for purposes of the record, I'll say Westbury  
9 Park Residential Association and Estate of Westbury  
10 Owners Association. I represent Westbury Park  
11 Residential Association. The Park, as we'll call it  
12 today.

13 Your Honor may be familiar with this from  
14 being a resident of Beaufort County for your entire  
15 life. But this is a residential neighborhood in  
16 southern Beaufort County between the corner of Buck  
17 Island Road and 278, for all intents and purposes.  
18 It's tucked behind there. It's behind Plantation  
19 Park. Originally, Plantation Properties, LLC was a  
20 declarant of both Westbury Park, also -- or Park and  
21 the Estate.

22 The estate is a 20-acre parcel of  
23 approximately 320 units that is tucked behind and  
24 within and in the northeast corner of the Park. The  
25 Park is an over 120-parcel. I believe 127 acres.

1 But over all, I know it's over a 120-acre parcel  
2 with approximately 350 residential units. The vast  
3 majority of those units are single-family. All of  
4 the units are single-family dwellings. They're are  
5 some townhouses. However, the vast majority are  
6 free-standing, single-family dwellings.

7 Presently, the only way to access the  
8 Estate is through the Park. There are two means of  
9 vehicular and pedestrian access to both properties.  
10 One is -- and they both spill out, if you will, onto  
11 a road called Kensington Boulevard. Kensington --  
12 and for the matters of -- purpose of the record is  
13 K-E-N-S-I-N-G-T-O-N Boulevard.

14 One entrance comes from the direction of  
15 278. We'll call that the 278 entrance. The other  
16 entrance comes from the direction of Buck Island  
17 Road. We'll call that the Buck Island entrance.

18 The 278 entrance is a bit easily -- more  
19 easily accessible in that -- to a certain degree  
20 because it has a farther backup to it of interior  
21 roadways off of the major roadways. The Buck Island  
22 entrance is situated in such a way that there's only

23 one lot that separates the gate from Buck Island  
24 Road. Therefore, if any -- there is no keypad  
25 dialing, for example, on the Buck Island Road

8

1 entrance. There's only keypad dialing on the Estate  
2 entrance.

3 Both entrances have gates that are  
4 supposed to be, at all times, operational. Both of  
5 them are entrance and exit gates. They are lift-arm  
6 gates. The lift-arm gates are operated by a key fob  
7 or a clicker fob system. That's how they're  
8 designed to be operated.

9 Their one gate from 278 is also operated  
10 by keypad through an app on -- that one can download  
11 on their phone or otherwise where you dial the  
12 keypad. You get a notification that someone wants  
13 to get in if you're an owner or resident. And you  
14 can touch it and allow the gate to raise.

15 And I do not mean to be getting into the  
16 testimonial evidence here. I'm just trying to  
17 provide this for background. I think it would be

18       beneficial for all parties. Now, I do not believe  
19       any of these facts are disputed either.

20               Since 1998, these two different  
21       communities have existed. In 1998, what is now  
22       known as the Estate was known as Palmetto Lakes  
23       Apartments. It was originally developed as an  
24       apartment complex with a single owner. All units  
25       were rental units.

9

1               In 1998 in November, we'll reference the  
2       date and the filings as Exhibit 1 to the plaintiff's  
3       memorandum in support and opposition, support of the  
4       temporary injunction, opposition to the summary  
5       judgment motion. In that Exhibit 1, you will see  
6       that it was filed in November of 1998.

7               In that agreement where Plantation  
8       Properties, LLC is the declarant, it grants a  
9       right-of-way, is the term it uses, for ingress and  
10      egress for residents of Palmetto Lakes Apartments to  
11      access their property through Kensington Boulevard.  
12      That section is in Section 7 -- or Article 7 of that  
13      declaration.

14                   Along with it came payment terms for the  
15 maintenance and use of the right-of-way or, and/or  
16 easement, however we want to fashion the term. The  
17 initial payment terms, if I remember correctly  
18 without referencing my documents, were around  
19 \$17,000 a year. I think they're \$17,500 a year if  
20 I'm not incorrect. That is an important notation.

21                   Section 9.01 and 9.02 of the declaration  
22 of Palmetto Lakes Apartments governs its length,  
23 governance the renewal provisions of the  
24 declaration, which I believe is largely at issue  
25 today in the motion for summary judgment. It also

10

1 governs the modification, quote/unquote, extension  
2 of the documents, alteration of the documents and  
3 termination of the documents.

4                   There are two separate sections there  
5 which the briefs go into great detail about,  
6 particularly the Plaintiff's brief which I'm  
7 representing, of course, the Park. It is the  
8 Plaintiff's position that -- and we believe that the

9 documents expressly show that 9.01 and 9.02 are  
10 discernible, separate provisions. Understanding  
11 that these documents are read as one, reading them  
12 as one shows that they are intended to be separate  
13 provisions.

14 In 9.01, it states that the declaration  
15 shall have a 20-year term except for those terms in  
16 the declaration, and I'm paraphrasing here, that  
17 otherwise state, i.e., perpetual, and we would  
18 submit to that and understand that's the Defendant's  
19 position.

20 It also says, however, that the declarant,  
21 its successors or assigns may, by filing a notice,  
22 may renew, renew the declaration for successive  
23 ten-year terms. Not change it. Not modify it. In  
24 no way alter it. But, renew it for successive  
25 ten-year terms by filing a notice of extension with

11

1 -- and I apologize. I always butcher this name.  
2 I'll say mesne conveyance or mesne conveyance. How  
3 ever you're supposed to say it. I'm a formal --  
4 former classical voice major, so it's hard for me to

5 anglicize any word like that even though I'll  
6 butcher the French.

7 But in any event, that is -- the next  
8 section, 9.02, is the Defendant's position. And I  
9 don't want pointed to as the division's position I  
10 don't want to state the position for them, but I  
11 want to be clear to the court. It's the Defendant's  
12 position that it governs any type of extension  
13 whatsoever of the document, even an extension within  
14 9.01. Our position is that's clearly not the case  
15 because the two different provisions contained  
16 materially different terms.

17 For example, 9.02 specifically references  
18 an execution and acknowledgment that must be filed  
19 jointly between the parties in order to make any of  
20 the subject matter therein effective. 9.01 does not  
21 have those requirements, does not reference an  
22 acknowledgment. We believe acknowledgment is a term  
23 of arts, a legal term. It does not reference an  
24 execution. It simply says that the declarant, its  
25 successors or assigns may file a notice of renewal,

1       may renew the document -- excuse me -- by filing a  
2       notice of extension.

3               Now, I'm going to backtrack here and  
4       backup. We were in 1998 when this document was  
5       filed. The next month, the declaration of covenants  
6       for west -- for the Park was filed with the register  
7       of deeds. And that declaration is still in  
8       existence today without any significant alterations  
9       or modifications.

10              In 2005, after a couple of subsequent  
11       purchases of the Palmetto Lakes Apartments, now  
12       known as The Estate, the apartments were converted  
13       to condominium units by the declarant. Well, excuse  
14       me. I shouldn't say by the declarant because that's  
15       not accurate. It's by the developer of the  
16       apartments at the time, the owner of the apartments.

17              Now, under the initial declaration for the  
18       apartments, that is not allowed. They could not be  
19       subdivided. In 2005, an amendment to the  
20       declaration of covenants, conditions, restrictions  
21       and easements for Palmetto Lakes Apartments at  
22       Westbury Park was signed by both parties, both the  
23       owner of the apartments and by the declarant,  
24       Plantation Properties, LLC.

25

Now, that is significant because it

13

1 clearly -- the amendment clearly altered the  
2 original terms of the declaration. Those terms  
3 specified what the rights of use and easement access  
4 to the owners/tenants of the apartments was to be,  
5 strictly for ingress and egress. Not for use of the  
6 amenities of the Park.

7 Our position is the amenities of the Park  
8 clearly mean all common elements of the Park whether  
9 it be lakes, lagoons, common park areas, roadways,  
10 sidewalks, playgrounds, et cetera that are not along  
11 what is defined by the document as the required  
12 streets which is that Kensington Boulevard. The  
13 vast majority of it being Kensington Boulevard which  
14 I spoke of earlier.

15 It also, and this is important, changed  
16 the payment terms under the easement documents --  
17 excuse me -- under the declaration.

18 JUDGE DUKES: What exhibit -- let's  
19 see.

20 MR. SHELTON: That is Exhibit 3 to

21 plaintiff's memorandum, Your Honor.

22 JUDGE DUKES: Okay.

23 MR. SHELTON: Excuse me. No. I  
24 believe it's exhibit -- I changed my exhibits. I  
25 believe it's Exhibit 4. I apologize. Exhibit 4 of

14

1 plaintiff's memorandum.

2 JUDGE DUKES: I got it.

3 MR. SHELTON: And the operable  
4 sections are included in the memorandum  
5 cut-and-paste as well. And it, again -- and the  
6 changes were to 7.02 and 8.01 of the declaration  
7 for, let's call it, the Apartments, if you will. Or  
8 we can still use the word estate, but this was  
9 before the Estate was created.

10 Now, it changed under Section 4 of this  
11 amendment in 2005. It states that the assessment  
12 from the owner, which is the owner of the Apartments  
13 or its successors and assigns, which is now the  
14 Estate, shall pay a monthly -- shall have an  
15 assessment for a monthly basis in the amount of

16       \$7,200 as its share of the cost for maintenance of  
17       the required streets and landscaping along the  
18       required streets and around and within parks within  
19       the Westbury Park residential area and the Westbury  
20       Park commercial area.

21               This assessment shall become due and  
22       payable on the 15th of each month. And if not paid,  
23       shall bear interest at the rate of ten percent per  
24       annum until paid.

25               Under Section 5, it specifies that the

15

1       assessment shall automatically increase pursuant to  
2       the consumer price index adjusted each year. And it  
3       states that under no circumstance will the annual  
4       assessment fall below the minimum of \$86,400 per  
5       year.

6               I beg the court to look at those two  
7       provisions and we will -- and our brief sets forth  
8       that there are no provisions that require an  
9       accounting. There are no provisions that grant  
10      inspection rights. There are no provisions that  
11      call for reconciliation or a refund or any type of

12       recuperation of those amounts. It simply states  
13       that this is the assessment as the share and at no  
14       time shall it fall under \$86,400 per year.

15               Now, we can always speculate as to what --  
16       why that amount was changed. However, the  
17       condominium units clearly gave value to the owner.  
18       And that is what the document states. So I believe  
19       we must rely upon the document for the intent of the  
20       document.

21               Now, if we reference back to the  
22       declaration for the Apartments, which, this is an  
23       amendment of that I'm just referencing. In the  
24       Apartment declaration, it states that it lasts 20  
25       years. Those 20 years -- I do not believe the

16

1       20 year term there's a dispute that it came to a  
2       natural conclusion without any further act in  
3       November of 2018.

4               The dispute between the parties, at from  
5       the Plaintiff's dispute and it's filings, focus on  
6       the fact that the Estate failed to pay the Park any

7        sums after the Park as the assignee and/or successor  
8        of declarant rights as to the assessment after  
9        November of 2018. Excuse me. It was actually  
10       after, I believe October of 2018. This is despite  
11       the fact that the Park filed a notice of extension  
12       and thereby renewed the declaration for Section 9.01  
13       of the declaration for a successive ten-year term  
14       precisely by doing what the declaration says to do  
15       in 9.01.

16                    And at that time in October of 2018, the  
17       Plaintiff, the Park, along with other entities  
18       received a demand or a notice of an accounting for  
19       prior payments for 20 years of the assessments.

20                    We have no information in the record that  
21       there was ever any type of protest, any type of  
22       objection or any type of letter contesting any of  
23       those payments by the Apartments or the Estate for  
24       the 20 years prior to that.

25                    So the partial summary judgment is

17

1       multifold from the Defendants. I bring that factual  
2       background which, of course, the crux of this is

3 going to be from the Plaintiff's position whether  
4 the declaration was it extended which we clearly  
5 was. We did exactly what the declaration told us to  
6 do?

7 JUDGE DUKES: Is that an exhibit?

8 MR. SHELTON: It is. It is Exhibit,  
9 I believe, Number 5, Your Honor. And in that  
10 exhibit, it also includes which is filed at that  
11 time the Estate payment and division agreement. One  
12 thing I did not touch on in this long colloquy which  
13 I admit is already long.

14 MR. FORD: It's kind of an argument,  
15 not opening statement.

16 MR. SHELTON: It is. It is. It is.  
17 And I understand.

18 MR. FORD: I'm not trying to be that  
19 guy but --

20 MR. SHELTON: No. And I appreciate  
21 that.

22 JUDGE DUKES: Luckily we have plenty  
23 of time.

24 (Undiscernible. Several people talking.)

25 MR. SHELTON: I understand that.

1                   MR. FORD: We were doing so -- we  
2                   were so efficient.

3                   MR. SHELTON: We were doing so well.  
4                   But it is very --

5                   MS. TILLMAN: This is --

6                   MR. SHELTON: There's lots of  
7                   background here. And I'm trying to provide the  
8                   background without also compromising a position if  
9                   that makes any sense.

10                  JUDGE DUKES: Sure. Go ahead.

11                  MR. SHELTON: In 2015, I'll just  
12                  state that the declarant rights -- and there's a  
13                  dispute over whether they were properly assigned or  
14                  what was assigned. And I'll admit that dispute  
15                  exists. Were assigned to the Park, to the  
16                  Plaintiff. That's background the court would need  
17                  to understand and understanding how the Plaintiff  
18                  asserts that it has declarant rights.

19                  Now, I will -- that will be my opening  
20                  statement as to the background and as to the  
21                  declarant's position on motion for summary judgment.  
22                  The opening statement as to the temporary

23       restraining, I will be much more concise.

24               The temporary injunction motion is what  
25       the Plaintiff believes is a request, which the

19

1       Plaintiff also will understand and acknowledge that  
2       it is a bit unusual, but these are unusual facts and  
3       unusual circumstances. There's a request the court  
4       to fashion a -- to fashion a restraint order or  
5       fashion a mandatory injunction for the Estate to  
6       take observable actions and quantified actions to  
7       find a way to work with Westbury Park and its  
8       administration of the right-of-way and the gates.  
9       The issue being that all of the traffic goes along  
10      Kensington Boulevard to the Estate.

11              And again, I do not want to -- it's hard  
12      for me not to argue, and I apologize.

13              JUDGE DUKES: Let -- can I interrupt?

14              MR. SHELTON: Yeah.

15              JUDGE DUKES: I apologize for  
16      continuing to interrupt.

17              MR. SHELTON: No. No. No.

18              JUDGE DUKES: Is there a -- I'm

19       trying to visualize this because you referenced --  
20                       MR. FORD: I've got it visually, Your  
21       Honor.  
22                       JUDGE DUKES: Is that -- is there a  
23       small version of that's -- a file one.  
24                       MR. FORD: It's in our memo.  
25                       JUDGE DUKES: Okay. All right.

20

1       Let's see if I can find it while I'm -- I'm just  
2       trying to visualize --  
3                       MR. FORD: Yeah, Ainsley's got one.  
4       It's pretty helpful to lay eyes on it.  
5                       JUDGE DUKES: Okay. You have a small  
6       version that I can --  
7                       MS. TILLMAN: I believe I do. I am  
8       (inaudible).  
9                       MR. FORD: I'm not sure if that's  
10       your paper, but if you want to hold it and show that  
11       to the court.  
12                       (OFF RECORD DISCUSSION)  
13                       JUDGE DUKES: If you don't mind, I'll

14 just refer to that. I'll just --

15 MS. TILLMAN: So sorry.

16 JUDGE DUKES: -- refer to that.

17 Thank you very much.

18 MR. SHELTON: Thank you. So -- and  
19 we have -- if you look to the far left of this  
20 document, Your Honor, you see Buck Island Road, the  
21 T there. That's Buck Island Road.

22 JUDGE DUKES: That's on the west  
23 side.

24 MR. SHELTON: On the west side. 278  
25 is on the north side. It'll be running -- there's

21

1 not a visual of the -- above, but it'll be running  
2 approximately where the top line is. Thank you.

3 MS. TILLMAN: This corresponds --  
4 sorry to interrupt you --

5 MR. SHELTON: No. No. No. No.

6 MS. TILLMAN: -- be Vanna White.  
7 This map is up except this has the -- sorry --  
8 commercial --

9 MR. SHELTON: Commercial.

10 MS. TILLMAN: -- and then you can see  
11 the roads on it.

12 MR. SHELTON: Correct. Thank you.

13 JUDGE DUKES: Okay.

14 MR. SHELTON: And so the red line  
15 that is drawn on this is the -- was defined by the  
16 declaration for the Apartments, the Estate, now as a  
17 required streets. And there is a gate at the T of  
18 -- just in from the T of the Buck Island Road that I  
19 reference. There's also a gate just past those two  
20 houses that you see on the top, on the north side of  
21 the document where the red line indicating the  
22 right-of-way or easement head north.

23 All the traffic to the Estate which is to  
24 the far right corner of this document, all that  
25 traffic runs along that road, that corridor. And

22

1 all of the residents, vendors, owners, et cetera  
2 come through those gates to get to the -- to get to  
3 their residence or to do their work.

4 And the temporary injunction, just stating

5        what it's about, is about finding a way to regulate  
6        the traffic, regulate regular gate intrusions, I'll  
7        call them, breaches, if you want to call them that,  
8        pushing open the gates, damaging gates, entering  
9        through the exit ways of the streets, speeding along  
10       the streets, trespassing upon common property by  
11       Estate members, Estate residents, Estate guests,  
12       Estate invitees. We have as a Defendant admittedly  
13       the association. We did not name all 320 owners.

14                    However, we believe that the association  
15       by all those owners -- again, I don't want to get  
16       into arguments. I just want to fashion misuse here.  
17       That -- we believe that the association comprised of  
18       those owners which all subject themselves to the  
19       governing documents, their governing documents --  
20       and I will get into the arguments I -- later. While  
21       I also think there governing documents also touch on  
22       their subjecting themselves to the regulation of our  
23       documents.

24                    And also, they're clearly going across our  
25       common property. Ours being the Park, the

1       Plaintiffs. We are seeking an order to find a way  
2       to better, quote/unquote, police the regular  
3       violations of the Westbury Park's rules and  
4       regulations entering the property and traversing the  
5       property or trespassing upon the property. Is that  
6       fair?

7                   And our thought is that we really have two  
8       motions before you. One is the motion on the merits  
9       of the Defendant's causes of action counterclaims  
10      and on the merits causes of actions claims.

11                  Also, we have a separate which is  
12      really -- the injunction motion is more of a fact  
13      driven motion that also dovetails some with the  
14      documents as about the use of that -- of the  
15      property.

16                  So, with that long opening statement, I  
17      think I've touched on all the background and maybe  
18      more from our my perspective. So thank you, Your  
19      Honor.

20                   JUDGE DUKES: Thank you so much.  
21      Yes, sir.

22                  MR. FORD: Thank you, Ben. Thank  
23      you, Your Honor. May it please the court. Ian Ford  
24      and Ainsley Tillman on behalf of the Estate of  
25      Westbury. And, Your Honor, we have handed up this

1 map of Westbury. It says Westbury Park, but it's  
2 both. Does it make sense to Your Honor? This whole  
3 thing is the original parcel.

4 And the developer, in 1998, went with the  
5 evolution that my friend Mr. Shelton described, set  
6 it up so the Estate is subsumed entirely within the  
7 other property. This is how it was set up. It was  
8 designed that way. Everybody knew it. And  
9 everybody bought in with notice or constructive  
10 notice since 1998 that this was the deal.

11 And for years -- for 20 years, the Estate  
12 paid -- overpaid for an assessment which is  
13 different from the easement. The assessment is  
14 different from the easement. When I refer to the  
15 required streets, that's what they were paying the  
16 assessment for. It has no bearing on the easement.  
17 And we'll get into that in a bit, but I want to make  
18 that vernacular very clear.

19 For more than -- for 20 years the Estate  
20 paid this assessment for -- to help maintain the

21 required street. And it was \$1.3 million, Your  
22 Honor, is what they paid in total. The last ten  
23 years -- last eight years, at least, they were  
24 paying \$90,000 a year for maintenance on the  
25 required streets.

25

1 And the required street are just that red  
2 line. It's a straight shot. They're not allowed to  
3 use the parks. They're not allowed to use the  
4 sidewalks except to go in and out on that one  
5 street. They're not allowed to use anything at  
6 Westbury Park except drive along that street to exit  
7 and enter and walk along it. And for that they paid  
8 \$1.3 million as an assessment over 20 years. And  
9 that was the deal. It wasn't fair from their point  
10 of view, but they did it and it expired and they  
11 were happy about that because they still have the  
12 right go.

13 Unfortunately, since the outset it -- and  
14 Mr. -- we'll enter as evidence, but the Park's  
15 president has testified since -- in deposition.  
16 Since the beginning the Park's never really been

17 happy with this situation. They don't really like  
18 having the Apartments where they're situated. But  
19 that's the way the developer set it up. Everybody  
20 knew that. And we'll put in testimony from Mr.  
21 Matteo, the president, that when he moved in he  
22 looked into it. He had heard bad things that he  
23 realizes was a separate neighborhood. So no one's  
24 surprised by the situation.

25 Okay. Moving on. Unfortunately, where we

26

1 are today, Your Honor, is it's developed into a  
2 bitter grudge by the Park -- certain people in the  
3 Park against the Estates. And this is no reflection  
4 whatsoever on Mr. Shelton who's been a gentleman and  
5 scholar throughout this situation. But -- and he's  
6 dealing with what I perceive to be a difficult time  
7 at times.

8 But what's happened, unfortunately, is  
9 that their beef is really with the developer who  
10 sets this up the way it is. We have -- we, Estate,  
11 have no other way in and out. It was always

12 intended that way. That's the way it was done. And  
13 we paid for it -- the assessment for 20 years.

14 So the money we paid was supposed to be  
15 used solely for maintaining the required street,  
16 putting it aside. We can show you how much it cost.  
17 It needs to be replaced every 20 to 25 years. And  
18 we got the numbers from their own assessments. We  
19 overpaid this for two decades. Which is fine. That  
20 was the deal. It wasn't fair in our view, but that  
21 was the deal. What's not fair, Your Honor, is they  
22 now want to change it.

23 But moving on from that, they tried to  
24 extend the assessment. And that's, I think, the  
25 heart of one of the -- of this dispute is that they

27

1 say under 9.01 they can unilaterally extend it. And  
2 we say you can't because 9.02 and property law and  
3 contract law requires both sides to agree to  
4 accident. It's crystal clear. And that's how  
5 everything was always done in the past.

6 We have found no instance where anything  
7 was changed without both sides' consent. And I

8 think that is the legal kernel at the heart of much  
9 of this dispute is they say they can extend it and  
10 keep charging us \$90,000 a year. And we say you  
11 can't do that under the documents. And Your Honor  
12 is going to, hopefully, tell us who's right about  
13 that.

14 The bitter grudge -- and it's unfortunate  
15 because they're neighbors. And they're always going  
16 to be neighbors. This is not going to change that  
17 they're right side-by-side because it was set up  
18 like that. All right? It's kind of the developer  
19 saw this as mixed-use development and set it up this  
20 way so that it would mixed-use development. You  
21 know, apartments, condos, you know, that's a thing  
22 now. And that's how this was set up. And that's  
23 sort of what everyone bought into.

24 Getting to Mr. Shelton's point about the  
25 gates and so on. The gates are on the Park

28

1 property. We don't control of the gates. We don't  
2 even want the gates. They don't add anything in our

3 view to the safety. It's just a plastic arm that  
4 comes down. There's a sidewalk. Anyone can walk  
5 in. It's fine. It's just a plastic arm.

6 It's actually a breakaway arm. It doesn't  
7 keep anyone with any determination from doing  
8 anything. And it kind of -- it's a pain in  
9 everyone's neck. But some people of Westbury Park  
10 really love a gate. And a lot of people at Westbury  
11 don't. And people at the Estate, it's no never mind  
12 to them. But it is something they have to deal  
13 with.

14 But we agree on one thing. Mr. Shelton  
15 and I agree on -- and my client agrees on. Nobody  
16 should be messing with the gates regardless if  
17 they're a pain in the neck. Whatever. No one  
18 should be destroying them. No one should be doing  
19 any kind of unlawful action regarding the gates.

20 And Mr. Shelton is going to show some  
21 examples of that. And we frankly don't disagree  
22 that people behave badly from time-to-time. And we  
23 support enforcing the law. We support enforcing the  
24 rules. This is the problem that we have. They want  
25 us to enforce their rules.

1                   We're Westbury Estate. It's not on our  
2                   property. And we'll go through the evidence on  
3                   that. But once we step outside of the Estate of  
4                   Westbury, we can't follow out members around. But  
5                   we fully support and we'll provide information and  
6                   so on to help identify people.

7                   Again, we're not allowed to use the parks.  
8                   We're not allowed to use any of their amenities.  
9                   All we're allowed to do is drive on that red strip  
10                  in and out. And Mr. Matteo and others have made a  
11                  hobby of telling our residents that. And we have  
12                  many examples of that if we need to show that,  
13                  Mr. Matteo being less than a gentleman and others  
14                  being less than a gentleman. A small group. What  
15                  most Westbury Park people, like humans everywhere,  
16                  are good descent people. But some people don't  
17                  always behave ideally.

18                 Moving on to the motion to the motion for  
19                 preliminary injunction then I'm going to sit down.  
20                 This is but an introduction to that. As Your Honor  
21                 knows, a motion for preliminary injunction is and  
22                 extreme remedy. And is meant, and this is  
23                 important, to maintain the status quo. The law is

24 crystal clear on that. It's to maintain the status  
25 quo.

30

1 The status quo is what it is today. It's  
2 what it's been since 1998. What, my friend  
3 Mr. Shelton is asking, Your Honor, and I appreciate  
4 it because I wasn't really sure what they're asking  
5 if you look at their memo or their motion. What  
6 they're asking is Your Honor to craft something new  
7 before we've gone through discovery. And Your Honor  
8 to craft a plan and Your Honor to inflict that on  
9 the people. That something new. That is not  
10 maintaining the status quo. So we think under Rule  
11 65 and the ocean of law on preliminary injunction,  
12 this is just the wrong motion at this time.

13 They want to win their case upfront. And  
14 we think under Rule 65 this -- even Mr. Shelton said  
15 this is how it's been since 1998, so that's how it  
16 should remain during the case. This motion was  
17 filed in January. And because of reasons outside of  
18 all the parties' control, it's -- we're now -- where

19 are we? September? Things are working. Right?  
20 This isn't an extraordinary fire drill that needs  
21 Your Honor to create out of whole cloth some sort of  
22 remedy for the situation that was set up by the  
23 developer.

24 Second point is there's no irreparable  
25 harm. And Your Honor knows that's a second legal

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1 prong of Rule 65. Nothing here can't be fixed with  
2 money should Park prevail. And that kills the Rule  
3 65 motion in its infancy. If the gates are damaged,  
4 that money can be taken. If the parks are used by  
5 children that Mr. Matteo doesn't like in his park,  
6 using Westbury Park parks, then those -- whatever.  
7 They can -- the swing-sets can be wiped done or it  
8 can be repainted. Whatever it is that Mr. Matteo.

9 MR. SHELTON: I'm going to -- just  
10 like you, what's good for the goose is good for the  
11 gander.

12 MR. FORD: Fair enough.

13 MR. SHELTON: (Inaudible) we're doing  
14 lots of arguments, some --

15 MR. FORD: We are.  
16 MR. SHELTON: -- (inaudible).  
17 MR. FORD: We are.  
18 MR. SHELTON: And I love my clients  
19 by the way.  
20 MR. FORD: I know.  
21 MR. SHELTON: So (inaudible).  
22 MR. FORD: And I apologize. But I --  
23 I'm going to sit down for this, Your Honor.  
24 Their beef is with the developer. The  
25 developer who set up this structure and who put

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1 everyone in this boat. And everyone bought into the  
2 property knowing it. It's improper for Rule 65  
3 motion and my smarter colleague, Ms. Tillman, is  
4 going to deal with the covenants and so on which  
5 is -- you really have to have a deep understanding.  
6 Your Honor I'm sure does but one has to have a deep  
7 understanding of.  
8 But this is not a Rule 65 situation. It  
9 instead is a strictly legal issue on interpretations

10 of the covenants and the governing documents as to  
11 can it be extended? Can it be done under these  
12 circumstances? And we just don't see eye-to-eye on  
13 that. We're going to need Your Honor, does the  
14 summary judgment motion, to tell this is what the  
15 law is and what the documents are on that. And that  
16 will drive a lot of what goes forward on this.

17 And we appreciate your indulgence, Your  
18 Honor.

19 JUDGE DUKES: Thank you so much.  
20 Yes, sir.

21 MR. FORD: Thank you, Your Honor. If  
22 -- I think the temporary injunction motion was filed  
23 first. So if it pleases the court, we'll go ahead  
24 and move forward on that.

25 JUDGE DUKES: All right.

33

1 MR. FORD: Okay. Thank you.

2 Plaintiff calls Mr. Phil Matteo.

3 I apologize. Can we take a brief break  
4 off the record if possible?

5 JUDGE DUKES: Yeah. We'll be off the

6 record.

7 (BREAK TAKEN)

8 JUDGE DUKES: Back on the record in  
9 2020-CP-07-00158. And we took about a ten-minute  
10 break to see if we could work through some  
11 technology issues. And happy to hear from you, sir.

12 MR. SHELTON: Thank you, Your Honor.  
13 The Plaintiff calls Mr. Phil Matteo.

14 JUDGE DUKES: All right. What did we  
15 decide? We're going to put the witness where? A  
16 chair over there somewhere?

17 MR. SHELTON: The chair right here.

18 JUDGE DUKES: I can't see the chair,  
19 but that'll work. Okay. All right. Can I get you  
20 to hold your right hand up for me please.

21 Do you swear or affirm to tell the truth,  
22 the whole and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 JUDGE DUKES: All right. Have a seat  
25 please. State your whole name loudly for the

1 record. And also, I don't think the mics are  
2 working, so just to keep your voice up if you could.

3 THE WITNESS: Sure. Phillip Francis  
4 Matteo, Junior.

5 JUDGE DUKES: Thank you, sir. Please  
6 answer any questions your counsel may have.

7 MR. SHELTON: Thank you, Your Honor.  
8 May it please the court.

9 WHEREUPON:

10 PHILLIP F. MATTEO, JUNIOR, being duly  
11 sworn and cautioned to speak the truth, the whole  
12 truth and nothing but the truth, testifies as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SHELTON:

16 Q. Mr. Matteo, where do you live?

17 A. 4 Barrington Avenue in Bluffton.

18 Q. And where is that? What --

19 (Undiscernible voices.)

20 JUDGE DUKES: Kind of direct your  
21 voice --

22 THE WITNESS: Okay.

23 JUDGE DUKES: I know it's going to be  
24 hard because he's there and we're here.

25 THE WITNESS: I'm fine. I'll listen

1 with one ear and fact this way if that's okay.

2 COURT REPORTER: I did not get that  
3 address.

4 THE WITNESS: 4 Barrington,  
5 B-a-r-r-i-n-g-t-o-n, Avenue, Bluffton, South  
6 Carolina 29910.

7 BY MR. SHELTON:

8 Q. Thank you. And what neighborhood is that  
9 located in?

10 A. Westbury Park. Sorry. Westbury Park.

11 Q. And when you drive into Westbury Park,  
12 describe how you get to your house.

13 A. Depending on which gate you come in, you  
14 get on Kensington Boulevard and you head east. I am  
15 on the last street before the lake which is just  
16 before the entrance to the Estate of Westbury.  
17 Correction, to the Estate. So you would turn -- you  
18 turn right onto Barrington and I'm the second house  
19 in.

20 Q. When you're sitting on your front porch,  
21 what do you see?

22           A.    When I look out from my front porch,  
23           there's a lake that's known as Lake Forest.  
24           Slightly to the left and further on is the entrance  
25           to the Estate.  If I look directly to my left, I see

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1           in front of me is Barrington.  To the left is  
2           Kensington and approach into and out of the Estate.

3           Q.    What is your role with Westbury -- excuse  
4           me -- the Park, if any?

5           A.    I am the president of the board.

6           Q.    How long have you been president of the  
7           board?

8           A.    A little over -- I'd say roughly 14, 15  
9           months.

10          Q.    And how long have you lived in Westbury  
11          Park?

12          A.    I'd say slightly over four years.

13          Q.    If you will, tell us if you have any  
14          specific role with the board other than being  
15          president.

16          A.    When, I originally joined the board, we

17 had set up what's known as a champion model where  
18 certain board members take primary responsibility  
19 for certain areas, such as the ARC compliance, such  
20 as landscaping. I had gates and security when I  
21 came on the board. I still retain that as I became  
22 president.

23 Q. And what is your role as president? What  
24 do you do within that role?

25 A. I do whatever the primary function

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1 according to the CCRs are as a the board president.  
2 I see to it that we are following our process and  
3 procedures. I see to it that the other champions  
4 are doing what they need to do, contract compliance,  
5 financials, budgets and just generally making sure  
6 that the tone and the process is being followed for  
7 the community. That we're doing what our -- what  
8 our community members are asking us to do.

9 Q. Now, with your role as -- within the  
10 champion model -- first, what is the champion model?  
11 Do you have any other outside information on that or  
12 what for the court's edification.

13           A.    So champion is just an expression. It's  
14           a business term where somebody champions something.  
15           So it basically means you are assigned  
16           responsibility to drive an initiative.

17                        So in the business world you may have  
18           somebody who's driving a new product introduction  
19           and that individual's job is to drive it through  
20           from the beginning to the end. It's the primary --  
21           it's the person with the primary responsibility to  
22           see something happen.

23                        We found that there was two more -- too  
24           much work to be done by our property manager. And  
25           they weren't getting everything done. So each of

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1           the board members take a section of the contracts or  
2           of the work that needs to be done. And they will  
3           spend the day-to-day working with that contractor or  
4           whoever it is to make sure that the things are  
5           getting done that need to be done.

6                        So again, ARC is a committee, the  
7           architectural review committee. So anybody wants to

8 make changes to their property, they have to submit  
9 an application. The ARC reviews it, works with the  
10 homeowner to explain to them what they can and can't  
11 do and then eventually signs off it.

12 The landscaping champion handles the  
13 contract for landscaping. And that's all the  
14 landscaping of the common areas, that's tree  
15 removal, that is anything dealing with that.

16 We have a champion who sort of does what  
17 I'll civil works. So he looks at things like  
18 streets and roads and storm water runoff and our  
19 ponds. Things like that.

20 We have six members of the board. When we  
21 get the seventh, that seventh one will probably take  
22 the social committee and pool pavilion area as a --  
23 area champion.

24 Q. And tell us what you do as the security,  
25 quote/unquote, champion.

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1 A. Well, the role originally started was just  
2 interfacing with the security company. We have two  
3 halves of that. One is the gate equipment and

4 camera services. The other one would be the patrol  
5 services. So in that role, I was working with them  
6 to establish what needs to be done. So it kind of  
7 has evolved from originally being just working with  
8 them to a more direct role.

9 Currently where I will spend time would be  
10 when an incident occurs. I'll be the one that goes  
11 and looks at the cameras, grabs the video and then  
12 contacts whoever needs to be contacted for whatever  
13 it is.

14 Q. You say incident occurs. What do you mean  
15 by that?

16 A. It could be anything. We have had --  
17 there was one event where an Estate member who  
18 apparently has dementia or something, disappeared  
19 and the police were looking for him. I looked at  
20 the cameras and confirmed that they did not leave  
21 the community.

22 It could be that we get a breach of the  
23 gate where somebody has intentionally pushed open  
24 the gate or struck it with their vehicle popping the  
25 gate open. That will send me an e-mail with three

1 pictures of the event. And then we've got to  
2 research and figure out who did it, try to get a  
3 license plate picture, things like that.

4 If somebody calls and says, hey, somebody  
5 snuck into the neighborhood by tailgating. They  
6 will try to find out who they are and where they  
7 went. Occasionally, I will get calls on incidences  
8 where our security team has to be called in to  
9 investigate or to respond to some sort of incident.

10 So basically, anything dealing with the  
11 security of the gates, security of the roads and  
12 streets, anything that you would quasi-call, you  
13 know, law enforcement, rule enforcement type stuff.

14 Q. You referenced that you give some type of  
15 notification that there's been an incident, as you  
16 said, from the gate. How do you access that  
17 information?

18 A. In that particular case, there's an  
19 automatic -- and I'm not an IT person. But the way  
20 it's been explained to me from our security company  
21 is that when the -- when the gate is popped open, a  
22 switch is switched that automatically takes --  
23 causes the cameras to take three still photos. And

24 then takes those three photos, puts them into an  
25 e-mail and e-mails myself, e-mails our property

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1 manager, e-mails our security people and e-mails the  
2 camera security people.

3 Q. You said popped open. Is that -- you get  
4 an e-mail every time the gate opens?

5 A. Well, let me step back. So, at one time  
6 the decision was made, due to cost, to replace the  
7 static up/down arm with a breakaway arm. And the  
8 idea of that was -- is to stop the damage to the  
9 whole system. That if somebody hits it with their  
10 vehicle or, now what was happening was, people push  
11 it open. Instead of just going up and down, it can  
12 pivot in. So it's much like a breakaway door,  
13 emergency door in a building. It will pop open.  
14 And in that case, you'd have an alarm going off.

15 Well, in our case, it sends the two -- it  
16 sends the three photos to the group that needs to do  
17 it. So we call that a breakaway arm. It can be  
18 reset, but it does have a switch built into it. And  
19 the purpose for doing that is is in the past if you

20 hit that gate with your vehicle, you don't just  
21 break the gate arm. You break the whole gate  
22 mechanisms because the internals get all spun  
23 around, twisted and snapped off. So the decision  
24 was made to put the breakaway at the 278 entrance  
25 gate. And that's what would -- when we -- when we

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1 say breakaway, that's what we're talking about.

2 Q. So it's only when it breaks away that you  
3 get the videos is what I'm trying to clarify.

4 A. Correct. It automatically gets sent out  
5 only for that. Nothing comes unless they have  
6 caused that switch to open.

7 Q. Where to view those videos?

8 A. So the three that would be sent to me  
9 would come via e-mail. If I need to go and research  
10 it and get the rest of the information as to what  
11 happens, the other camera, there is a -- in the  
12 cloud -- I have an application that's been loaded on  
13 my computer. It's an application that's managed and  
14 owned by or written by the camera security company.

15        Their name is TSC. TS, something security of  
16        Charleston, also known as iPoint. I have iPoint  
17        software on my computer. I could then, basically,  
18        open it up, dial into it, go to the cameras, choose  
19        the -- that if I wanted to look at back video, I'd  
20        select which one of the four servers is the back  
21        video. I would select the timeframe and then it  
22        would pop up on the screen and I could forward and  
23        back and look at what has happened. And then I can  
24        start going backwards from the event to find out  
25        what happened.

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1            Q.    Is there a way for you to try to follow  
2        it, or for lack of a better term, a vehicle that has  
3        -- that has notified the system by video? By the --  
4        by a breakaway gate?

5            A.    Well, we have cameras along Kensington  
6        from the beginning of the Kensington to the west at  
7        Buck Island all the way to the entrance of the  
8        Estate. So there are -- there's four areas along  
9        Kensington. And so what you can do is if you wanted  
10       to see if somebody did or did not go into the

11 Estate, you could just simply go to the first camera  
12 after the gate. The next intersection, the next  
13 intersection and then the entrance to the -- to the  
14 Estate.

15 Q. How long have you been the one who has  
16 been monitoring this video system?

17 A. Shortly after I joined the board in the  
18 beginning of, I guess, it was January of 2019, we  
19 had a couple of incidences where the security  
20 company, a roving patrol company wasn't getting the  
21 video. And damage was done to our system. And we  
22 had no recourse because we couldn't find out who did  
23 it. So at that point, we requested access to be  
24 able to do this ourself. And it's worked out pretty  
25 well because, quite frankly, there's a lot of times

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1 spent doing this. And someone's got to do it. And  
2 the contract didn't allow for our property manager  
3 to do it. It doesn't allow for the security company  
4 to do it all the time.

5 And the folks that were looking at it,

6 basically, didn't have enough time because of the  
7 large number of events. So we had damages and we  
8 couldn't find who did it. So I asked permission to  
9 gain access to that.

10 Q. And again, tell me when did you first  
11 start doing that. I apologize if you already said  
12 it.

13 A. I'm going to guess. It wasn't in the very  
14 beginning. So I'd say probably maybe March or April  
15 of 2019. But I don't know exactly.

16 Q. Do you have any idea of how many incidents  
17 that you have documented of the gates being broken  
18 open?

19 A. So since I got on the board, I can't tell  
20 you how many events have occurred. I can only tell  
21 what I can go and look up in document. And so I  
22 think it's very important if you're going to  
23 investigate something, you get the proof.

24 I've got -- I take all the pictures and I  
25 put them in a subdirectory. And I have -- well, now

1 probably close to 145 incidences documented of

2 breaches.

3 Q. And what do you -- you say breaches. What  
4 -- tell the court what you define as a breach.

5 A. Well, from my military time, you know, a  
6 breach of security means somebody who comes into  
7 your perimeter unauthorized. So in this particular  
8 case, they can gain access. And again, this is just  
9 vehicles. We -- so if a vehicle hits the gate with  
10 their hood and pops it open, if an individual walks  
11 up and pushed that gate open. If somebody tailgates  
12 somebody into the community. And if somebody goes  
13 in the exit, that's a breach. If a motorcycle  
14 drives around the gate. If a moped or a ATV drives  
15 around the gate, that's all considered a breach.

16 Q. Have you been able -- out of that, how  
17 many did you say? Over 140 that you have document?

18 A. About 145 now.

19 Q. And when you say documented, could there  
20 have been more than that or is that all that there  
21 have been?

22 A. Absolutely. You know, I -- when someone  
23 tells me to look at something, I look at something.  
24 Otherwise, I really have no way to know that it  
25 occurred. There are occasions where if I'm coming

1 in the community and I see somebody do this in front  
2 of me or if I'm out walking the dogs and I see  
3 somebody do it, I will then go ahead and get the  
4 proof of what occurred. And then once you get the  
5 proof, you know, you try to find out who they were  
6 and what you can do about it.

7 Q. So of the over 140, how many of those have  
8 you documented in Westbury Park, that's called the  
9 Park -- excuse me -- residence?

10 MR. FORD: Objection. If you could  
11 set the foundation for how he knows.

12 MR. SHELTON: Well -- thank you.

13 Q. So earlier you testified as to being able  
14 to monitor the roadway through other camera systems,  
15 correct?

16 A. Correct.

17 Q. So if you watch someone enter in to the  
18 Park, if you're able to watch that video after the  
19 fact, how do you know whether someone goes into the  
20 Estate or not?

21 A. It's fairly simple. You simply watch the

22 cameras from the gate to the next intersection to  
23 the next intersection to the next intersection. And  
24 then there is one camera that faces towards the  
25 Estate, and you can watch them drive right into the

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1 Estate.

2 So I will capture a screen capture of each  
3 of those -- you know, of where they are in this  
4 process. And if they're going into the Estate, then  
5 we assume that it's an Estate person. If I can't  
6 say that it's an Estate person or someone visiting  
7 the Estates, then I have to assume it's a Westbury  
8 Park issue.

9 Q. What do you do if you find that it's a  
10 Westbury Park issue? If it's a Westbury Park  
11 resident or guest?

12 A. So they are violating our gate rules. And  
13 there is a -- a notice of violation gets sent to the  
14 individual. And they receive, for the first event,  
15 a \$250 fine. If they did a second time, which has  
16 not ever occurred since I've been on the board, it  
17 would be a \$500 fine. And then after that \$1,000,

18 and subsequently \$1,000 fine per event.

19 Q. And back to the question, the times that  
20 you have been able to, for lack of a better term,  
21 track or follow the vehicle to the Estates, how many  
22 times out of the 140, approximately, if you have  
23 that number, has that occurred?

24 A. I have at last count where I actually  
25 counted them 137 events.

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1 Q. That is events of what?

2 A. Of where somebody breached the gate and  
3 drove into the Estate.

4 Q. How many do you have where someone  
5 breached the gate and remained in the Park?

6 A. There's been three that I've been able to  
7 show is a Westbury Park person by tracking their  
8 license plate and then issuing them a fine.

9 Q. Have you ever had someone who has been  
10 issued a fine, breached the gate a second time?

11 A. No. Not of our community, no. No, none  
12 at all.

13 Q. How does the Estate of Westbury  
14 residents -- how do they access their property?

15 A. Each time?

16 Q. Correct.

17 A. They would use a swipe card. Well, what  
18 is supposed to happen is they would use a swipe  
19 card, a computer key much like you probably use here  
20 in the courtroom to enter a doorway. You swipe --  
21 called the swipe card. You would swipe it against  
22 at the kiosk and the gate would go up and you would  
23 drive in.

24 If somebody is a resident, they can use  
25 what's known as the owners gate which is Buck Island

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1 or they could use the main gate which is 278. All  
2 visitors entering would have to go through the 278  
3 gate.

4 The 278 gate which is, again, the primary  
5 gate has a system for visitors where if somebody  
6 gets up to that gate and they're visiting somebody  
7 in either community, they find their name on the  
8 display. They hit a button. It dials that

9 individual. Well, they hit a button, then a  
10 four-digit code. It will call the resident who's  
11 registering there. It will call them on their  
12 phone. They pick up the phone. They listen to who  
13 it is. They hit the number nine and the gate would  
14 open, the visitor would come in.

15 What is supposed to happen is everybody  
16 who's a resident of either community's to use the  
17 swipe card. That is the quickest way to get in the  
18 community without backing up traffic.

19 We do have an issue where there's a lot of  
20 folks from the Estates have, are using the visitor  
21 log in system to enter the community because they  
22 don't have a swipe card. And that creates issues  
23 with traffic backing up out into the commercial  
24 area.

25 Q. Have you visually observed that

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1 personally?

2 A. Yes, I have many, many, many times.

3 Q. Lets -- it's the same question but as to

4 the Park, how do residents of the Park access the  
5 property?

6 A. Same ways.

7 Q. And what happens if they are a resident  
8 and use -- can they use the dialing system if  
9 they're a resident?

10 A. They are not supposed to and I can't  
11 guarantee that nobody ever does. But the swipe card  
12 is just so quick and easy that there's no reason for  
13 anyone to want to use the dial-in visitor system.

14 Q. And what mechanism do you have, if any, as  
15 an association to ensure that someone who moves into  
16 Westbury Park or the Park -- apologies -- receives a  
17 swipe card?

18 A. Anybody who's going to use that access  
19 gate is a resident of either the Estate or at -- or  
20 the Park has to register with the property manager.  
21 And as part of that process, you go into share  
22 information and what kind of vehicle you have.  
23 What's the license plate, the make and model number.  
24 You can buy a -- you know however many swipe cards  
25 you need.

1                   For our community, some of the swipe cards  
2           also allow you access to the pool. So it's more or  
3           less a dual use card. We also have cards that are  
4           just used for vehicle access through the gate. So  
5           when you register as a new resident in the community  
6           with IMC, you go in there. You get your welcome  
7           packet. You get -- you register your vehicle. You  
8           register, obviously, your family who's living there  
9           who's authorized to be there. And then the IMC  
10          who's the property manager can then enter it in to  
11          the database, so to speak, that's used to control  
12          access to the gates. And as far as I know it  
13          happens instantly as soon as I put the number in and  
14          save then that card is active.

15                Q.   Has it been your experience that all of  
16          the Estate of Westbury residents have a swipe card?

17                A.   No. They definitely don't. What's been  
18          relayed to me; although, I can't say for sure. But  
19          what I hear --

20                   MR. FORD: I'm going to object to the  
21          hearsay. If he doesn't know, he doesn't know.

22                   JUDGE DUKES: Sustained.

23          BY MR. SHELTON:

24                Q.   I would say you're -- I'm asking from your

25           experience. Have you -- do you -- from your

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1           experience, do people -- let me ask it this way. Do  
2           more people from the Estates use the (inaudible)  
3           system or more people from the -- Westbury Park use  
4           the (inaudible) system?

5                       MR. FORD: Objection. I'd like  
6           foundation. I think this is a second way to get at  
7           just his unknown impressions.

8                       THE WITNESS: Now, my known  
9           impressions of what I have observed --

10                      MR. FORD: Let the judge rule on the  
11           objection.

12                      JUDGE DUKES: Yeah, I mean, he's  
13           going to-- it sounds like he's going to fix it  
14           himself. But --

15                      MR. FORD: Go ahead.

16                      JUDGE DUKES: Yeah. Don't testify as  
17           to what you -- others have told you. But your --

18                      MR. FORD: My concern is all this is  
19           he doesn't know. He's just doing sort of this is my

20       general gestalt.

21                       JUDGE DUKES: Right.

22                       MR. FORD: And that's what I'm trying  
23       to get out without interrupting the flow. I would  
24       ask he only testify as to actual, personal  
25       knowledge, what he knows himself.

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1                       JUDGE DUKES: Thank you. And, yes,  
2       exactly that. So it sounded like that's where you  
3       were going. But please stick to that, what you have  
4       personally observed and what you know, not you --  
5       not what you know from others telling you.

6                       THE WITNESS: I have sat at the front  
7       gate with our security people watching the flow  
8       through the gates. Our security person Joel O'Quinn  
9       of Intercept Security. And while we sat there  
10      observing, when he first came on board, we wanted to  
11      ensure that he understood what was going on and how  
12      the community works, et cetera, et cetera. And he  
13      and I sat there and observed vehicles coming in.

14                      And you could see where folks that are  
15      using the swipe card would easily move in and there

16 might be one or two cars backed up. Then there  
17 would get a vehicle there that was starting to use a  
18 visitor access. And they had an Estate parking pass  
19 in their window. So we know they're an Estate  
20 person.

21 And they would start using the key. So  
22 Joel O'Quinn would go over and ask them if they were  
23 a member --

24 Q. Let me interrupt you. You said they have  
25 a parking pass. How do you -- what do you mean a

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1 parking pass?

2 A. So the Estate uses a six -- a sticker with  
3 six digit, purple, I believe is an owner. Yellow  
4 means it's a resident. And it's got a code on it,  
5 QR code I think they're called. And so whoever does  
6 security at the east gate can quickly just scan it  
7 and see that, yes, their vehicle is registered and  
8 is active in the community. So that goes on their  
9 front window, driver side, down by -- down by the  
10 bottom corner of the four window.

11 Q. So you're observing these parking passes  
12 on the vehicles that are dialing in.

13 A. Correct. And then Joel O'Quinn was asking  
14 people if you --

15 Q. Again, don't testify to what other people  
16 testified to, what other people said. Just --

17 A. I was standing there as he said -- as he  
18 asked them.

19 Q. You can -- you can --

20 A. And I heard answers.

21 Q. But after listening to those  
22 conversations, what was your mental understanding?

23 A. My understanding was that in two different  
24 events where I was doing this, half of the people  
25 were using -- half of the Estate people were using a

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1 visitor call-in access system, not a swipe card.

2 Q. You said earlier that when you're sitting  
3 on your front porch, you could see the Estates; is  
4 that correct?

5 A. Correct.

6 Q. See the entrance at least?

7 A. Correct.

8 Q. Is it your -- have you reviewed the  
9 governing documents? And I understand you're not a  
10 lawyer, but have you reviewed the governing  
11 documents of both associations?

12 A. Yes.

13 Q. What is your understanding as to the road  
14 that you live on, Barrington, whether that is,  
15 quote/unquote, a required street per the governing  
16 documents?

17 A. It is not.

18 Q. Do you have an understanding as to whether  
19 Estate residents are supposed to be, without  
20 invitation, on that passage? On that roadway?

21 A. I do know.

22 Q. What is it?

23 A. They're not allowed to.

24 Q. Have you ever had the occasion to  
25 personally witness individuals from the Estate using

1 the common areas of Westbury Park?

2 A. Yes.

3 Q. Can you described that?

4 A. If I sit on my from porch in the morning  
5 to have coffee or in the afternoon after work, I  
6 will easily observe within an hour period, three,  
7 four, five different individuals coming out of the  
8 Estate and turning up either into Barrington --  
9 turning into Barrington in front of my house. So  
10 that means they're off the easement and they're in  
11 our -- in our common areas.

12 Q. How often does that happen?

13 A. Well, every day. Any time I'm out on the  
14 porch I see it happen.

15 Q. And what do they do?

16 A. Some of them are exercising. Some of them  
17 are riding bicycles. Some of them are walking  
18 stroller with a child. Some of them are walking  
19 their dogs.

20 Q. And why does -- you're the president of  
21 Westbury Park Residential Association, correct?

22 A. Correct.

23 Q. Why does that bother you?

24 A. It's about property rights. It's about  
25 what is fair. We pay a premium to live in our

1 community and pay a premium to have those amenities.  
2 And no different than any other community, if you're  
3 not a resident of that community, you don't get to  
4 enjoy the benefits of that community without paying  
5 for it or without being invited in. And when these  
6 individuals are coming into our community without  
7 permission, they're trespassing. And that isn't  
8 fair to the folks in our community that's paid for  
9 this.

10 We have very nicely landscaped walking  
11 sidewalks that are set back away from the road.  
12 They're not right against the road. There's  
13 actually a buffer of grass. And then there's a nice  
14 wide sidewalk. We do that to encourage the people  
15 to walk through the neighborhood. The tree -- the  
16 roads are all tree-lined. It's one of the unique  
17 communities in Bluffton that are that way.

18 Those amenities are paid for by our  
19 community. Not by others. And so if you come in  
20 and you're not part of our community and using our  
21 amenities, it's just not fair. It's not -- it  
22 violates our property rights, but it's just not

23 fair.

24 Q. And have you ever seen any dangerous  
25 behavior by Estate residents on your common areas?

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1 A. I've seen a number of different things.  
2 Yes, I have.

3 Q. Okay. Describe that. Any single  
4 incidence.

5 A. Well, the one that really brought this to  
6 a head was an individual from the Estate, an  
7 African-American woman came into the community,  
8 turned right in front of my -- turned left in front  
9 of my house, walked around the community, came back.  
10 She's along side the pond. And we have a large -- a  
11 very, very large, old gator living in that pond.  
12 And it likes to sun itself up on the bank. And she  
13 proceeded to walk down and start trying to take a  
14 selfie of herself with the gator, probably to this  
15 chair here away from herself, with her camera taking  
16 a picture of herself. Anything that happens in our  
17 community in those common areas is on us. It's our

18 community. It's privately owned land. And if  
19 something was to happen, that's a huge liability for  
20 us. Besides the fact it's extremely dangerous for  
21 the individual.

22 Os at that point is when we went to the  
23 law firm -- to your law firm and asked to send a  
24 letter to the Estate saying please don't do this.

25 Q. Thank you. How -- now, I have the video

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1 screen up. I'm going to ask has there ever been an  
2 incident where the gate is actually damage, not just  
3 broken open, whether that damages the gate or not.  
4 I'm not going to ask you that question. I'm asking  
5 you whether the gate was physically damaged?

6 A. Yes.

7 Q. How recently has that been? The most  
8 recent time to the best of your recollection?

9 A. Oh, probably four or five months ago.

10 Q. And can you describe that incident?

11 A. Yes. I got a --

12 Q. Well, first, let me ask you how do you  
13 have knowledge of that incident? I'm assuming it's

14 from watching the video.

15 A. I have knowledge of this because I got the  
16 e-mail stating that there -- showing me the three  
17 pictures that the gate was broken open.

18 Q. And did you look into that incident?

19 A. Yeah. First thing I did was go out to see  
20 -- to assess the gate damage first off. If it's  
21 open, I need to see what's going on. Was anybody  
22 hurt? That kind of thing. Our security luckily was  
23 on board time at the same. And our security, Joel  
24 O'Quinn, saw the individual also in the  
25 neighborhood, so we both met at the gate. He called

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1 me. Said, hey, I'm closing the gate. We went and  
2 found that a restraining device was snapped off by a  
3 contractor's vehicle belonging to a resident of the  
4 Estate.

5 We were able -- Joel was able to find the  
6 resident vehicle in the Estate, talked to the owner  
7 of the vehicle and she acknowledged that, yes,  
8 that's her vehicle. It's her cousin, I believe,

9           that was driving it. They were a little worried  
10          because he does not have a driver's license. And so  
11          we provided all that information to the Estate and  
12          to that woman.

13               Q.    But you were able to determine that the  
14          individual was either a resident or visitor of the  
15          Estate?

16               A.    That the -- that the driver was a visitor,  
17          but the vehicle was belonging to a resident in the  
18          Estate.

19               Q.    And did that damage -- was that damage  
20          something that Westbury Park had to pay for?

21               A.    Yes.

22               Q.    And did you notify the Estate management  
23          of that incident?

24               A.    I believe I did. I copy them on  
25          everything that comes up. I don't remember that one

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1          exactly.

2               Q.    And did you receive any money from that  
3          individual who caused it or anything from the Estate  
4          of Westbury as to paying for that damage?

5           A.    This is the only one where anybody has  
6           paid for it. The resident paid for the damage.

7           Q.    And the resident, did they pay you  
8           directly? Not you personally, but --

9           A.    They went into the property manager's  
10          office and made payment.

11          Q.    And how were they notified of their  
12          responsibility?

13          A.    In this case, the resident -- and I'm  
14          trying to recall how this occurred. She spoke with  
15          our security person and told them what was going to  
16          happen. And I believe she reached out to us since  
17          we had her information and talked to us about what  
18          she needed to do to make it right.

19          Q.    So in that scenario, the resident made it  
20          right for Westbury Park?

21          A.    Correct.

22          Q.    Is that fair to say? Tell me about an  
23          incident on June 13th, 2019, of the -- that's the  
24          Ramirez incident. But fair enough.

25          A.    So a resident of the Estate, last name

1 Ramirez, came in. And I don't remember the exact  
2 time unless you have the pictures there. But he  
3 came into the 278 entrance gate. And for some  
4 reason instead of driving through the opening which  
5 is the roadway, he drifted to the left and hit the  
6 bollard which bounced him off that and into the gate  
7 and completely destroyed the entrance gate.

8 Q. How much did that cost, if you know, to  
9 repair?

10 A. I don't recall. I believe that that was  
11 probably between 10 and 15,000.

12 Q. You don't know an exact amount?

13 A. I don't recall the exact amount.

14 Q. And did you notify the Estate of Westbury  
15 as to that incident?

16 A. Yes.

17 Q. If that had been a Westbury Park resident,  
18 what procedure would have been in place? What would  
19 you have done as a board?

20 A. In that case, if they have insurance, we'd  
21 let their insurance -- we would file a claim with  
22 their insurance company, their automobile insurance  
23 company to make that payment. But the individual  
24 would also get a fine for breaching the gate by

25       destroying it.

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1           Q.    Would that come from the association, that  
2           fine?

3           A.    Correct.  It's managed by the property  
4           manager.  But it in effect comes from the board.

5           Q.    Do you know whether there was any action  
6           taken, by personal knowledge of your own through the  
7           interaction of the management, of the -- of the  
8           Estate?  Whether there was action taken by the  
9           Estate as to that resident?

10          A.    I do not believe there was anything done  
11          by the Estate in this matter.

12          Q.    I'm going to show you a picture.  And this  
13          is -- this is just for identification.  This will  
14          the court as well.  Do you recognize this,  
15          Mr. Matteo?

16          A.    That used to be our entrance gate at 278.

17          Q.    And I'm going to note for the record this  
18          is labeled as 20191 -- excuse me --  
19          20190113\_095604.jpeg for the record.  And do you  
20          know when this photograph was taken?

21           A.    That would have been on -- based on the  
22           date/time stamp, January 13th of 2019.

23           Q.    And you -- so is this -- you said this was  
24           the gate?

25           A.    This was the gate.  It had to be replaced.

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1           Q.    And this is from the -- what we call the  
2           Mr. -- the incident with Mr. Ramirez?

3           A.    Correct.

4           Q.    How long was the gate of service after  
5           this incident?

6           A.    About two and a half months.  I believe  
7           two and a half months.

8           Q.    And during that timeframe, what was the  
9           security protocol for anyone getting in and out of  
10          Westbury Park?

11          A.    It was free and open.

12          Q.    Have you received any -- as the president  
13          of the board, I'm not asking you what the complaints  
14          were, but did you receive any input from Association  
15          members as to it being open?

16 A. I received plenty.

17 Q. And what -- and I'll just ask you what was  
18 the general understanding as to the thought process  
19 of the Park as to that gate being open?

20 A. The Park?

21 Q. Westbury Park.

22 A. Well, since we are a private gated  
23 community, I kept being reminded from our residents  
24 that this is supposed to be a gated community. When  
25 is this gate going to be put up? You know, when is

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1 it going to be replaced? And I had to keep  
2 explaining that for some reason it just took forever  
3 to get the equipment. But they were not happy with  
4 the fact that, you know, 25 percent of our -- of our  
5 gate were free and open.

6 Q. I'm showing you another incident from --  
7 this is labeled 5-20-2019 and -- under the file.  
8 And I'm going to reference a specific file of  
9 20190520\_162118. What do you see there Mr. Matteo?

10 A. I see parts of a gate arm on the ground.

11 Q. And do you know who took this photograph?

12           A.    That would be me.

13           Q.    And do you know what incident -- let me  
14 show you another picture. This is 20190520\_162127  
15 for the record. What do you see in that picture?

16           A.    That is the 278 exit gate arm that's bent.

17           Q.    Do you know what caused this damage by  
18 observing the video system?

19           A.    I took these photos first because I found  
20 that that gate was bent. I looked at the cameras  
21 and found that a person did not wait for the gate to  
22 fully open before she drove her -- I believe it was,  
23 a van straight through the gate arm bending it all  
24 the way back. They left for about 20 minutes, I  
25 think, and then came back, drove up to the entrance,

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1           and she and another younger man came out and tried  
2 to bend it back into -- back into place. However,  
3 since it's plastic, you can't really -- you could  
4 see that in that bend the plastic is cut. So that  
5 gate arm had to be replaced.

6           Q.    Do you know how much that cost?

7           A.   Gate arms are roughly \$600 if they're just  
8           a standard lift arm like that.

9           Q.   I'll show you this is 20190520\_162133.

10          A.   Yup.  There you go.

11          Q.   Is that the same --

12          A.   That's the same picture, yup.

13          Q.   It's a different picture, same gate, same  
14          time?

15          A.   Correct.

16          Q.   And this is 2000 -- excuse me.  This one  
17          is labeled gate destruction 05202009\_08586.  I know  
18          this is -- I'll try to zoom in on this.  Is that  
19          what you were describing?  Was someone pushing the  
20          gate back together?

21          A.   Correct.

22          Q.   Were you able to determine who was  
23          responsible for that gate damage?

24          A.   We got the license plate and turned it to  
25          the Estate.  I think there was a picture someplace

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1          of the license plate.  But as they exited, right  
2          before she hit it, we were able to get a license

3 plate off the vehicle.

4 Q. And were you able to determine who it was  
5 through your communications with the Estate?

6 A. Yes.

7 Q. And did you receive any payment for that  
8 damage?

9 A. No.

10 Q. Do you know whether the Estate took any  
11 action whatsoever towards that resident for that  
12 damage?

13 A. None that was shared with me.

14 Q. What would you have done if this had been  
15 a Park resident creating this damage?

16 A. So, per our rules, which apply to  
17 everybody who drives on our property, they would  
18 have to make good on the damages. And then they  
19 would get a \$250 fine.

20 Q. This is in a folder called 09.12.2019 van  
21 damage. I'm going to play a video. I'm going to  
22 ask as this video is playing, to describe it to the  
23 court. What do you see here, Mr. Matteo?

24 A. That is one of our security cameras facing  
25 out. That van that just drove through there is

1 driving out the exit gate at 278.

2 Q. Were you able to determine who owned that  
3 van?

4 A. Yes.

5 Q. Who owned that van?

6 A. I don't recall the name of that  
7 contractor. It's a contractor who was doing work in  
8 the Estate. So we turned -- once we found that --  
9 this case, we turned it into Beaufort County  
10 Sheriff. And they were able to track down the  
11 individual.

12 MR. FORD: Need you to set the  
13 foundation for how he determined who that person  
14 was.

15 BY MR. SHELTON:

16 Q. And how did you -- how did you come to  
17 that determination as to who owned it?

18 A. License plate and the markings on the  
19 vehicle were shared with BCSO who then investigated.

20 Q. And how did you determine that they were  
21 coming from the Estate?

22 A. Cameras going back to the Estate.

23           Q.   And did you notify the Estate of this  
24           incident?

25           A.   I believe so.

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1           Q.   Do you know whether the Estate made any --  
2           did anything to investigate or otherwise do anything  
3           to help pay for this damage?

4           A.   None that was shared with me.

5           Q.   I'm going to show you now what's labeled  
6           under a folder 09.29.19 entrance through exit. You  
7           just describe what the label entrance through exit  
8           means.

9           A.   This would be where somebody instead of  
10          driving down the entrance into the committee on the  
11          right side, obviously, of the -- of the center  
12          median, came in the exit gate, so, against traffic.

13          Q.   And I'm going to pull up for the record  
14          20190929\_171348. That's the file number. You were  
15          describing license plates earlier. Is that a  
16          picture of a license plate?

17          A.   Yes.

18          Q.   Where does this picture come from?

19           A.    That came from my cell phone.  
20           Q.    And how did you find this license plate?  
21           A.    As I mentioned earlier, sometimes when I'm  
22           driving by the gate, I will see an event.  And in  
23           this particular time, I was coming down Kensington  
24           from the Buck Island gate and looked to my left and  
25           saw this person drive in the exit gate.

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1           Q.    Is this another picture from your cell  
2           phone?  
3           A.    No.  That's from the security camera.  
4           Q.    And what does it show?  
5           A.    It shows a vehicle going in the exit.  
6           Q.    Where is this picture taken?  
7           A.    It is from the camera at the -- at the  
8           entrance.  It is just a part of the -- of the  
9           picture.  
10          Q.    I'm sorry.  For the court, which entrance  
11          is this?  
12          A.    278 entrance.  
13          Q.    So, it's the entrance on the north side of

14 the exhibit that the court -- or the picture that  
15 the court is looking at. So, what -- go ahead.

16 Thank you. I'm sorry. So what do you see here?

17 A. I see a car driving in the exit. I see a  
18 car -- a Jeep further on that had to stop.

19 Q. And were you able to determine where this  
20 car was headed?

21 A. Yes. It drove -- I --

22 Q. Wait. Wait. How did -- how did -- how  
23 were you able to determine that?

24 A. I observed it myself drive down into the  
25 Estate.

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1 Q. Did you notify the Estate of this  
2 incident?

3 A. I believe so.

4 Q. Do you always notify the Estate after an  
5 incident where you located or observed through the  
6 video system or personally an Estate resident, for  
7 lack of a better term, breaching the gate, entering  
8 in without authority and that you were able to  
9 determine it was an Estate resident or it had gone

10 to the Estates?

11 A. Yes. If I'm -- if I'm home or if I have  
12 access to do the documentation, I will then send  
13 copies of the pictures and what information I know  
14 to the property -- to the community manager at the  
15 Estate.

16 Q. Are you always able to identify the  
17 individual?

18 A. No.

19 Q. Through that process?

20 A. No.

21 Q. To your knowledge, has the Estate ever  
22 sent any fine or anything else to any of their  
23 residents for a violation of these -- of these  
24 rules? I say the rules of the Park.

25 A. As far as I know, no.

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1 Q. You've never seen any?

2 A. No.

3 Q. Are these the only incidents that you've  
4 documented?

5 A. No.

6 Q. I'm going to show one more for the court.  
7 This is 05.19.20 MC, as in motorcycle passing truck  
8 and truck back up. Is that act of the motorcycle  
9 passing the gate arm without using the gate? Is  
10 that a violation of Westbury Park's -- excuse me --  
11 the Parks rules and regulations?

12 A. Yes.

13 Q. And what does it appear to you, being a  
14 resident there, that the truck is doing in that  
15 picture, that still frame?

16 A. The truck appeared to be sitting, waiting  
17 for a gate open. Because of the length of the time,  
18 I assume that they were calling to somebody to have  
19 them hit the button and open the gate. If it's a  
20 swipe card, they drive up and just pause for just a  
21 second, hit the swipe, gate goes up, they drive in.

22 Q. And is this the area that you were  
23 referencing where you experience backups as an  
24 association, traffic backups?

25 A. Yes. So, in those times where I have

1       actually -- as I mentioned earlier where I watched  
2       it, I was standing on the sidewalk over to the right  
3       side along with Joel O'Quinn watching the traffic  
4       backup. The driveway that you see in the upper left  
5       corner is not our property. That's the commercial  
6       property. And there's office in there. So, when  
7       the traffic backs up at our gate, it stops them from  
8       being able to get in and out of there work area. So  
9       it's an issue for us.

10           Q.    Was -- I'm sorry.

11                   MR. SHELTON: Court's indulgence just  
12       one second. I have a folder here that will -- a  
13       flash drive. It says 69.2.20. You had depositions  
14       of September 2nd, 2020. Is that your recollection?

15           A.    Correct.

16           Q.    Since then, have you observed any  
17       unauthorized gate access at the Park?

18           A.    Yes.

19           Q.    And have you been able to determine  
20       through the processes who was responsible for that  
21       as far as where they were going? Who was  
22       responsible for that rising gate access?

23           A.    Yes.

24           Q.    And is that by using the same procedure as  
25       you were discussing earlier as following the

1 individual through the camera systems?

2 A. Correct. Usually somebody tells me. I  
3 look at the cameras. And I get still copies of each  
4 of the photos and share.

5 Q. I'm going to pick one. It's called --  
6 dated 952020. It says breach 952020\_11146 blue  
7 Versa 1. Which gate is this?

8 A. This is the 278 entrance.

9 Q. And did you review the video in reference  
10 to this incident?

11 A. Yes.

12 Q. And what did you see?

13 A. This blue Versa, AAA -- in front of this  
14 blue Versa as you see, the gate is open now. It  
15 looks like it's starting to come down. You can tell  
16 that because the red light in the upper left. That  
17 blue Versa, what I found on the tape is you can't  
18 see it, but in front of it is a Pizza Hut delivery  
19 vehicle that drove to the Estate.

20 What they did is they drove and they park

21 in front of that gate until such time as somebody  
22 behind them gets frustrated and lets them in. So  
23 the blue Versa let them in. And then the blue Versa  
24 got stuck.

25 So a -- two vehicles behind, who was a

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1 resident of the Estate, got out of his vehicle,  
2 walked up and used his swipe card to let all three  
3 in; himself and the two people in front of him. And  
4 then they proceeded down -- you can't see it, but  
5 there a left turn. They turned left and they drove  
6 to the Estate.

7 Q. You testified earlier that you've only  
8 been a resident for approximately four years; is  
9 that correct?

10 A. Roughly. I don't recall the date when we  
11 bought.

12 Q. And do you have an understanding from  
13 being the president of the board as to how long the  
14 gates have been there? Not these specific gates but  
15 a gate into Westbury Park or the Park, rather.

16 A. From the inception, 1998 or so. But I

17 don't exactly. But it's been there the whole time.

18 Q. Is it your understanding that the gates  
19 have always been there?

20 A. That is what I'm told, yes.

21 Q. Just for the record 09052020\_1146, that's  
22 Honda 1. I'm going to pull this up. Is that the  
23 other -- one of the other vehicles you were  
24 referencing?

25 A. That is the vehicle that swiped in the

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1 other people in front of him.

2 Q. You mentioned that the -- there's an --  
3 the Estate have a parking decal. You have something  
4 red written on this image. Something red circled on  
5 this image with an arrow. What is that?

6 A. That is their parking decal.

7 Q. So you said they swiped and let two people  
8 in in front of them?

9 A. Correct.

10 Q. What do you mean by that?

11 A. So the way the swipe card works is you can

12 swipe in. You can use it as often as you need. So  
13 he apparently parked, walked up, swiped in the first  
14 vehicle, went through, swiped in the second vehicle  
15 and they got in, his vehicle came up, swiped himself  
16 in.

17 Q. And if someone did this for -- as I Park  
18 resident, what would you do?

19 A. They would get a violation -- notation of  
20 violation for that. It's unauthorized access. We  
21 don't know who those people are. And they're not  
22 using the correct process to get in. The -- using  
23 the swipe card means that you are authorized to be  
24 in the community. If people are bypassing that, we  
25 have no way to know whether they're authorized to be

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1 in the community or not.

2 Q. Is this problem, in your experience, been  
3 getting better or worse?

4 A. I can't say that it's gotten better. I  
5 can't say that it's gotten worse. The general of  
6 people swiping other people in?

7 Q. Well, just in general folks accessing the

8 property without authority or improperly accessing  
9 the property and going to the Estate.

10 A. It still happens all the time. So the  
11 question might be is how many, you know, is  
12 allowable versus isn't allowable. I would say that  
13 since we found a different way to secure that gate  
14 so it doesn't easily pop open, the number of folks  
15 coming in has -- coming in unauthorized has been  
16 reduced. We still have people tailgating other  
17 folks. We still have people going in the exit.

18 Q. The -- I'm going to hold this up just out  
19 of an abundance of caution. You see this flash  
20 drive here?

21 A. Correct.

22 Q. Did you score your initials into the flash  
23 drive earlier?

24 A. Yes, PFM.

25 Q. And did you review all the videos, at

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1 least briefly, on that flash drive before the  
2 hearing?

3 A. Yes.

4 Q. And those are true and accurate copies of  
5 the videos that you provided through the course of  
6 this litigation?

7 A. Yes.

8 Q. And still shots -- pictures, I should say?

9 A. Yes.

10 Q. I'm showing you a picture of the image  
11 that's labeled 09072020\_17301.jpeg. Which entrance  
12 is this?

13 A. This is the road to the right where the  
14 white and black truck is is the Buck Island exit.  
15 The bluish van to the left corner is the Buck Island  
16 entrance lane.

17 Q. And that cone you're seeing -- you see  
18 there, why is that there?

19 A. The Buck Island exit gate went through its  
20 life cycle much quicker than expected, and it  
21 failed. It had a hydraulic leak, and the gate  
22 became unreliable. The gate arm wasn't working  
23 correctly. So we had to take the gate arm off out  
24 of an abundance of caution so that the gate arm  
25 wouldn't hit somebody, a pedestrian or a person in a

1 vehicle. That left that gate open.

2 Those cones are there to tell people that  
3 they can't come in that entrance and then do a quick  
4 loop around and come in through the exits. So there  
5 are two cones there with a sign that says exit.

6 Q. It's the same number 09072020\_17302. Is  
7 that the same van. Do you know why that van is  
8 looping back? I shouldn't ask that. I'll just --  
9 I'll strike that.

10 The next image in again 17303. What do  
11 you see in this image?

12 A. I see the blue van bypassing the cones,  
13 driving right past them and turning into -- turning  
14 right into the exit lane and driving into the  
15 community against traffic.

16 Q. And this occurred on September 7th, 2020?

17 A. September 7th, 2020, correct.

18 Q. Describe for me, and as you're entering  
19 the Buck Island gate, as soon as you enter into the  
20 gate, what is on -- when you're moving into the  
21 neighborhood, what is on the left and what is on the  
22 right?

23 A. Beginning of the stretch of homes. That

24 section is a street and has homes on both the left  
25 and the right as you enter.

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1 Q. Are there children that live in Westbury  
2 Park and the Park?

3 A. Absolute, yes.

4 Q. Do they play in those front yards?

5 A. Yes. The house to the direct left which  
6 would be where this lane is, there is a young girl  
7 there who's probably nine years old who lives there,  
8 rides her bicycle.

9 Q. And this ends in four, this same number.  
10 As I show them going -- I assume that shows them  
11 going in the exit?

12 A. Correct.

13 Q. Did you -- excuse me. What do you see in  
14 this image?

15 A. I see that same blue van driving into the  
16 Estate.

17 Q. Okay. So where is this camera located?

18 A. Just at the borderline with the Estate.

19 Q. Is that Kensington Boulevard?  
20 A. Correct.  
21 Q. Did you notify the Estate manager about  
22 this incident?  
23 A. Yes.  
24 Q. And did you receive a response?  
25 A. Yes.

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1 Q. What was that? After receiving the  
2 response, were you able to determine who that was?  
3 A. The Estate did not know who it was. They  
4 had a temporary paper tag. And I could not read the  
5 temporary paper tag number. So they were not able  
6 to tell me who it was.  
7 Q. Was there any other effort, to your  
8 knowledge, undertaken by the Estate or to determine  
9 who it was and to notify them of the violation?  
10 A. She asked me if I could get a better  
11 picture of the plate. I said I could not. And as  
12 far as I know, it ended there. I didn't receive  
13 anymore notifications.  
14 Q. But clearly you see the van, correct?

15 A. Correct.

16 Q. In these images?

17 A. Yes.

18 MR. SHELTON: Beg the court's  
19 indulgence.

20 JUDGE DUKES: Take your time.

21 BY MR. SHELTON:

22 Q. If someone has a gate card, are these  
23 incidents -- would these incidents happen in  
24 general?

25 MR. FORD: Object to form. I'm

82

1 sorry.

2 BY MR. SHELTON:

3 Q. If someone has a gate card, is there a  
4 reason for them to enter in the exit?

5 A. No.

6 Q. Why?

7 A. They would not need to. It would take  
8 them longer to do it. And it's more dangerous for  
9 them. So if they have swipe card and it's active,

10       there is no -- I do not see any reason why anybody  
11       would try to go in the exit if they have the active  
12       gate card. It doesn't make sense to me.

13             Q.    What about violating the gate policies by  
14       pushing open a gate? Is there any reason for  
15       someone to do that if they have a gate card?

16             A.    No.

17             Q.    Is there any reason for someone to  
18       piggy-back in with -- when they have a gate card?

19             A.    No.

20             Q.    Is there any reason for anyone to break  
21       open the gate because they're piggy-backing in and  
22       the gate closes on them too quickly if they have a  
23       gate card?

24             A.    No.

25             Q.    Have you attempted to obtain a roster of

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1       current residents at the Estate in order to ensure  
2       that they all properly have gate cards?

3             A.    Yes.

4             Q.    What was the result of that?

5             A.    We were denied.

6 Q. What do you mean you were denied?

7 A. The background for this is we need a new  
8 kiosk, a new system. Our system is out of date. It  
9 uses a hard drive. And if that hard drive -- if  
10 somebody hits that kiosk, we lose complete access  
11 for everybody. So we -- last year -- more than a  
12 year ago, we went through and authorized a  
13 replacement system where the databases for the gates  
14 would be in the cloud; i.e., you can't destroy that.

15 We did a roster push within our community.  
16 We required everybody to tell us what vehicles you  
17 had, what were your swipe cards, what access devices  
18 you had, serial numbers, all that information. We  
19 then asked the Estate to do the same thing. They  
20 refused to provide it to us. So that project  
21 basically is still in limbo. We still have a system  
22 that's subject to fail without any prior planning.  
23 And when it does fail, we will end up not having  
24 access to the gates.

25 Q. And you -- so to be clear, you've

1 requested a roster of individuals that reside at the  
2 Estate in to help grant them access, and you were  
3 denied by the Estates from receiving that  
4 information?

5 A. Correct. We explained to them what we  
6 needed. We gave an example of the log sheet that we  
7 used and the individual sign-up sheet. We provided  
8 that to the Estate?

9 Q. When you -- do you ever report a,  
10 quote/unquote, trespasser on Westbury Park property  
11 or Park property to the sheriff's office?

12 A. I have attempted to. Yes, I have called.  
13 They have come to the house. And they've told me  
14 that unless they have damaged the gate, that them  
15 coming in and trespassing -- are you talking about  
16 gate --

17 Q. No. I'm sorry.

18 A. -- trespassing or just general?

19 Q. I'm not asking for -- I'm asking for  
20 individuals that are off the required streets.

21 A. I asked a deputy sheriff one time. I  
22 don't recall the individual. And he said that --

23 MR. FORD: Object to the form.

24 BY MR. SHELTON:

25 Q. I asked if you've -- have you ever asked?

1 Have you ever asked someone from the sheriff's  
2 office whether --

3 A. Yes.

4 Q. And was it your -- after having that  
5 conversation, what is your understanding as to  
6 whether there's any enforcement possibility there?

7 A. The sheriff's not going to get into the  
8 middle of this.

9 Q. Did -- now, you are speaking as to the  
10 gate policy. You -- have you had a conversation  
11 with the sheriff's office or anyone from law  
12 enforcement about folks pushing open or unlawful act  
13 or unregulated access into the property? Have you  
14 spoken with anyone from law enforcement about that?  
15 Please answer yes or no.

16 A. Yes.

17 Q. Okay. Now, as to that instance, after  
18 having that conversation, what is your understanding  
19 as to whether there's any enforcement opportunity  
20 there through the sheriff's office?

21 A. What I've been told is, unless there's

22 damage done to the gate, there's nothing they can  
23 do. They can enforce trespassing. And they can  
24 enforce criminal damage, I believe is what it's  
25 called.

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1 Q. Right.

2 A. But short of having any damage, there's  
3 nothing they're going to do.

4 Q. So if someone is entering the gate in  
5 violation of your rules and regulations, you don't  
6 know who they are, they're on your property, you  
7 call the sheriff, the sheriff can't do anything or  
8 is not going to do anything.

9 A. Correct.

10 Q. Briefly, and I'm almost finished, I  
11 believe. Do you ever observe any traffic violations  
12 on Kensington Boulevard?

13 A. Yes.

14 Q. Describe those. I'm talking about your  
15 personal observations.

16 A. As I sit outside having coffee in the

17 morning, I can see the Barrington intersection with  
18 Kensington which is a three-way -- is a three-way  
19 stop. And every morning people are coming out of  
20 the Estate.

21 There is a speed bump, a speed hump for  
22 the stop. They will slow slightly to go over the  
23 speed hump, and they just drive straight through the  
24 intersection without stopping. I would say that  
25 probably happens one in every three vehicles, maybe

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1 one in every four vehicles doesn't bother to stop.  
2 They just drive right through the intersection.

3 Q. And where are these individuals going?

4 A. I don't know where they're going, but  
5 they're looking to be leaving the neighborhood.  
6 Since they've come out of the Estate and are going  
7 down Kensington, I can only assume they're going to  
8 work in the morning. But I don't know.

9 Q. I apologize. I should ask what direction  
10 they're going.

11 A. They're going westbound towards one of the  
12 two gates.

13           Q.   Thank you.  And they're leaving from the  
14   Estate?

15           A.   Correct.

16           Q.   Do you have security on premises?

17           A.   We have a contracted security company that  
18   gives us three hours a day of service.

19           Q.   Why don't you have them there all day  
20   every day?

21           A.   It's just not financially possible.  We  
22   just don't have the funds for that.

23                       MR. SHELTON:  I believe that's all  
24   the questions I have for now.  Please answer any  
25   questions of Mr. Ford.

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1                       JUDGE DUKES:  All right.

2                       MR. FORD:  Do you need a break,  
3   Judge?

4                       MR. SHELTON:  Yeah.  I was about to  
5   say --

6                       JUDGE DUKES:  I'm good.  I'm going to  
7   let the witness or our court reporter or anybody

8 else --

9 MR. FORD: Bailiff?

10 JUDGE DUKES: You all want to take  
11 five minutes? Is that --

12 Q. It's up to you all?

13 JUDGE DUKES: Okay. Sir, don't  
14 discuss your testimony with anyone during the break.  
15 Okay? So why don't we just take five minutes, and  
16 then we'll come back and do cross.

17 (BREAK TAKEN)

18 JUDGE DUKES: Back on the record. Go  
19 ahead, please.

20 BY MR. FORD:

21 Q. Good afternoon, Mr. Matteo. We never met  
22 in person. It's nice to see you in person. I'm  
23 trying to figure out first which house you live in.  
24 I just want to put an X on it, so I can figure out  
25 where he's -- where he's having coffee. Can you

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1 look at this and just tell me which one you are?  
2 And do you have a pen you can mark it? I have a  
3 pen, but I don't know if you want to touch it or

4 not.

5 JUDGE DUKES: They have tiny little  
6 numbers on them.

7 MR. FORD: I know. But -- good. Mr.  
8 Matteo's going to mark which house he's at just so  
9 we have some context. Thank you. Got you. Your  
10 Honor, you want to at least see so we can -- I won't  
11 get to close, but you can -- it's just a little  
12 helpful to me.

13 JUDGE DUKES: I think I have an idea  
14 from the testimony, but I'll just copy what's on  
15 that one. Okay. The second house on the right.  
16 Got it. As you make the right turn from --

17 MR. FORD: If you're going towards  
18 the Estate, it's on Kensington.

19 JUDGE DUKES: Yeah. Kensington. You  
20 make a right on Barrington. It's the second house  
21 on the right.

22 BY MR. FORD:

23 Q. Okay. So that's where you sit having  
24 coffee that you've mentioned several times. Is that  
25 correct, sir?

1 A. Correct.

2 Q. Okay. So, you pretty much have a view of  
3 the entrance to the Estates or at least that portion  
4 of Kensington.

5 A. Correct.

6 Q. Okay. But you don't have a view of those  
7 other turns before that Westbury Parkway and Norse  
8 Avenue and the alley and all those streets to the  
9 other side, right? That's just -- your view is of  
10 the Estate of Westbury.

11 A. From my front porch --

12 Q. Right.

13 A. -- correct.

14 Q. So all this stuff you're talking about, it  
15 makes sense you would see any violations of the  
16 Estate of Westbury because that's what you're  
17 looking at, right?

18 A. It's the way I face, yes.

19 Q. Right. You're not seeing whatever's going  
20 on in the rest of the community during your morning  
21 coffee, right?

22 A. Correct.

23 Q. And anything could be happening. You're

24 just not seeing it, right?

25 A. Correct.

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1 Q. Okay. I'm going to read this in, one  
2 thing, and then I'm going to get into just sort of  
3 the basics. You testified a minute ago that you --  
4 did you ask for a list of residents from the Estate  
5 or did somebody else for the Park? You said you  
6 asked and it was denied.

7 A. I don't recall whether we sent it or if  
8 IMC sent it.

9 Q. Okay. Would it surprise you if their  
10 memory is that you sort of stormed in there and  
11 demanded a list of residents?

12 MR. SHELTON: Objection, verbal --

13 BY MR. FORD:

14 Q. Did that happen?

15 MR. FORD: -- foundation.

16 THE WITNESS: No, it definitely did  
17 not happen.

18 BY MR. FORD:

19 Q. Okay. You deny that?

20 A. Correct.

21 Q. And do you deny the Estate of Westbury  
22 offered -- didn't want to give you a list, but they  
23 offered to look at your list and cross off whoever  
24 it was who shouldn't be coming in?

25 A. I do not know --

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1 Q. Did that happen?

2 A. -- that one.

3 Q. Huh?

4 A. I do not recall that one.

5 Q. Okay. But you don't deny that they  
6 offered to try to work with you and you just wanted  
7 the list and weren't going to have it any other way.  
8 That's the question.

9 A. I deny that.

10 Q. Okay. We'll get to that later. Okay.  
11 How many -- if you know, how many homes or units are  
12 in Westbury Park?

13 A. Three hundred fifty homes.

14 Q. Thank you. Do you know how many are in

15 the Estate of Westbury?

16 A. Three hundred and twenty.

17 Q. So, if I do my math, I've got 670 total.

18 You've got an engineering background, right?

19 A. No. I'm a chemist.

20 Q. All right. Well, my read is there are 670  
21 homes or units, however we'd describe, total. Is it  
22 fair to say that hundreds of people are going  
23 through those gates every day.

24 A. Yes.

25 Q. Okay. So if we looked at a sample of 20,

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1 hypothetically, that would be a microcosm of what  
2 happened, not only on a given day, but in a given  
3 month or a given year, correct?

4 A. Correct.

5 Q. Okay. You lived at Westbury for about  
6 four years, correct?

7 A. I believe so.

8 Q. And you've been the president for a little  
9 over a year, right?

10 A. Correct.

11 Q. All right. And you do not have a long  
12 history with the association, correct?

13 A. Only up to the time we moved in.

14 Q. Okay. You remember I took your  
15 deposition?

16 MR. FORD: We did take some  
17 depositions, Judge. And I asked if you have a long  
18 history in the association. And he said no.

19 BY MR. FORD:

20 Q. Does that sound right?

21 A. Four years isn't that long. Now, on the  
22 board, it's been a short time. It's been less than  
23 two years on the board. And the two years before  
24 that would have been just visiting, you know, going  
25 to the monthly meeting or the quarterly meetings.

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1 Q. Okay. I thought this was the easy part.  
2 Did you testify, I don't have a lot of long history  
3 with the association, in your deposition under oath  
4 at Page 13, Lines 1 and 2?

5 A. If you say I said that, then I said that.

6 Q. Okay. This is the easy part. Okay? And  
7 you're not a lawyer, you don't have any legal  
8 expertise, correct?

9 A. Correct.

10 Q. You do not have any firsthand knowledge of  
11 the long history between the Estate of Westbury and  
12 Westbury Park, correct?

13 A. Correct.

14 Q. So you're not claiming that you yourself  
15 can interpret the covenants and declaration,  
16 correct?

17 A. I can interpret them. I just wasn't there  
18 when they were created.

19 Q. Okay. But can you offer legal  
20 interpretation of those documents?

21 A. Not legal interpretation. I'm not a  
22 lawyer.

23 Q. And it's your understanding that the Park,  
24 the Estate and the commercial properties was part of  
25 a planned development out of a single parcel of land

1 originally, correct?

2 A. I believe so.

3 Q. Okay. Well, that's what you testified.

4 And you moved into Park knowing that the Estates was  
5 there and was a separate neighborhood, correct?

6 A. Correct.

7 Q. Okay. And before you bought, you had  
8 heard that there were some -- there's some problems  
9 with crime in the area generally, correct?

10 A. Correct.

11 Q. And then you looked into it and you  
12 decided that the problem was with the Estate and not  
13 with the Park. And you were comfortable enough then  
14 to move into the Park. Is that a fair summary?

15 A. Fair.

16 Q. Okay. So it's no surprise to you that the  
17 Estate is there, correct?

18 A. Correct.

19 Q. And it's no surprise to you when you  
20 bought in that there was a separate community there  
21 with it's own thing going on, correct?

22 A. Correct.

23 Q. Okay. And Estate of Westbury is very  
24 clearly marked as another separate community within  
25 Westbury Park. It's marked as a separate community.

1 A. Correct.

2 Q. Okay. And there are signs that say that  
3 Estate of Westbury people can only use the easement  
4 for ingress and egress, correct?

5 A. Correct.

6 Q. And that those are on sidewalks on both  
7 sides of Kensington Boulevard, correct?

8 A. Correct.

9 Q. Okay. So anyone who comes in and is  
10 paying any attention who buys in is going to  
11 understand that there's a separate community within  
12 and there's -- one community is coming through the  
13 other to get in and out, correct?

14 A. I can only speak to what I know.

15 Q. Does it seem obvious to you?

16 A. I would not say that. I don't know what  
17 other people know. I know that when I buy a house,  
18 I do probably more research than somebody else  
19 would.

20 Q. My question, sir, was did it seem obvious  
21 to you?

22 A. No. It did not seem obvious.  
23 Q. But you did your research and you figured  
24 it out.  
25 A. Correct.

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1 Q. Okay. And you have had conversations with  
2 people who you think are not -- or sort of going off  
3 the required streets and using the facilities that  
4 are Westbury Park. You kind of talked about that  
5 earlier, correct?  
6 A. Correct.  
7 Q. And you have from time-to-time videoed  
8 those people, correct?  
9 A. Correct.  
10 Q. And you've told me that you're a guy who  
11 videos things because in this day and age you have  
12 to video people to almost -- to show what happened,  
13 correct?  
14 A. Correct.  
15 Q. There are 25 cameras in the Park  
16 community?  
17 A. I think there's 24.

18 Q. I thought you told me 25, but that's fine.

19 A. Maybe it's 25. I could count them, but I  
20 don't recall off the top of my head.

21 Q. And going back, you have on several  
22 occasions talked to Estate people who have -- about  
23 how they need to not be on Park property and need to  
24 be off the property, correct?

25 A. Correct.

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1 Q. And your experiences in general, they  
2 understand that and head back to the Estate,  
3 correct?

4 A. I don't know what they understand. We  
5 have a conversation where I explain that they are  
6 not supposed to be in there. Generally, they head  
7 back to the Estate. Sometimes they continue  
8 walking.

9 Q. All right. Let's go to your testimony.  
10 And remember in your deposition you told the truth.  
11 Do you remember telling the truth?

12 A. Yes.

13 Q. And this is the truth, right? And it  
14 hasn't changed, right, since --

15 A. Correct.

16 Q. Okay. Did you testify, but generally  
17 they're not happy. But they understand it and they  
18 head back to the Estate. Do you deny testifying  
19 that?

20 A. If it's there, I said it.

21 Q. The Park, it your understanding about  
22 24 percent are tenants, correct. They're landlords  
23 owned, correct?

24 A. The last time I did numbers, yes.

25 Q. Okay. The -- your understanding is that

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1 the problems between the Estate and the Park go back  
2 to at least 2003, correct?

3 A. Correct.

4 Q. Okay. So this is nothing new, this  
5 tension that -- that's going on, correct?

6 A. Correct.

7 Q. And the Park has been unhappy with the  
8 fact that there's an easement been there for the

9 full time that easement has been in place, correct?

10 A. They have been unhappy with the situation,  
11 yes.

12 Q. Okay. For the full time the easement ha  
13 been in place.

14 A. Yes.

15 Q. Is Jeanette the manager at the Estate?

16 A. As far as I understand.

17 Q. Okay. And that's kind of your current  
18 contact with the Estate person, correct?

19 A. Correct.

20 Q. Okay. So when I say Jeanette, we  
21 understand that's the person that you sometimes  
22 communicate with at Estate of Westbury.

23 A. Correct.

24 Q. Okay. You believe that Jeanette has been  
25 good at trying to correct things regarding your

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1 concerns at the Estate, correct?

2 A. I believe she's done some good work?

3 Q. Okay. But you believe she's been very

4 good at trying to correct that.

5 A. Yeah. I think she's been trying to.

6 Q. Do you believe that Jeanette has been very  
7 good at trying to correct things, but things still  
8 occur. Is that accurate?

9 A. Yes.

10 Q. Okay. Thanks. And when you communicate  
11 with Jeanette, she is helpful?

12 A. Sometimes.

13 Q. Question, when you communicate with  
14 Jeanette in that way, is she helpful? Answer, yeah.  
15 Is that a true statement?

16 A. Yes.

17 Q. Okay. Thank you. And is it your  
18 understanding that the Estate, if you know, has  
19 Parking Boss which -- for people who have parked in  
20 the Estate?

21 A. That's what I'm told.

22 Q. Right. And that's a system to register  
23 visitors and so on. And is it true that Jeanette  
24 uses that to try to help identify people when you  
25 come to her with these concerns that you've talk

1       about? She goes to the database. She tries to  
2       identify people if she can.

3           A. I don't know what system she uses. I know  
4       Parking Boss is used for overnight guests. If it's  
5       the same system she uses every day then yes.

6           Q. Okay. She goes to some system and tries  
7       to help if she can?

8           A. Correct.

9           Q. Okay. Thanks. And you have no reason not  
10      to trust Jeanette, correct?

11          A. I don't know of any reason not to trust  
12      her.

13          Q. Jeanette answers all of your e-mails even  
14      if she doesn't have the information, correct?

15          A. Well, that's not necessarily true.  
16      However, you can look at that, but we went back. I  
17      looked -- after that question, I looked further into  
18      it to make sure that I had the documentation  
19      correct.

20          Q. I don't understand your answer.

21          A. That question was asked in deposition. I  
22      then went back and researched e-mails.

23          Q. Uh-huh. And so what are you saying? What  
24      did you find?

25           A.    So the 65 breaches that I communicated to

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1       Jeanette about, she was able to help give us a name  
2       on ten of those 65 out of the 140--some that we set.  
3       Twenty-four of them she said she did not know. So  
4       that's -- that is a total of 34 out of 65 where she  
5       was helpful. That means that there is half of them  
6       she did not respond.

7           Q.    Okay. That, however --

8           A.    But I did not know that at the time of the  
9       deposition.

10          Q.    Again, under oath, you testified, you were  
11       asked, does she generally answer all of your e-mails  
12       even if she doesn't have the information? Your  
13       answer, I would say anymore, absolutely. Is that  
14       what you believed at the time you testified under  
15       oath?

16          A.    At the time I --

17          Q.    Okay.

18          A.    -- testified, yes.

19          Q.    And you also testified, if I sent her

20 something, she'll absolutely, if she has it, she  
21 will give it to us now. I do believe that. Was  
22 that the truth when you testified?

23 A. At that time, yes.

24 Q. And you knew you were having your  
25 deposition taken that day, right?

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1 A. Correct.

2 Q. You were not prepared. And you understand  
3 you were oath, right?

4 A. I understood.

5 Q. And you told the truth that day.

6 A. Yes, I did.

7 Q. Okay. The motorcycle guy, I think --

8 MR. FORD: Did you refer to the  
9 motorcycle guy today?

10 MR. SHELTON: No.

11 MR. FORD: No? Okay.

12 BY MR. FORD:

13 Q. There was a guy on a motorcycle who was --  
14 who was doing violations at some point. He is from  
15 Estate of Westbury, right?

16 A. Correct.

17 Q. Okay. And Jeanette gave you the  
18 information and you issued him a ticket for a fine  
19 or a notice for a fine, right?

20 A. Correct.

21 Q. And you did that -- you were to able to do  
22 that Jeanette identified him for you?

23 A. Correct.

24 Q. Westbury Park has no control over Park  
25 residents once they go into the Estate, correct?

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1 A. I'm not sure what you're asking.

2 Q. The Park, does it have control over Park  
3 residents once they leave the Park and go into the  
4 Estate?

5 A. I'm not sure what you mean by control of  
6 them.

7 Q. Okay. Let's go to your --

8 A. There are rules in place, absolutely.

9 Q. Okay. Did you testify under oath at  
10 Page 105 -- Page 20. I'm happy to show it to you.

11 Quote, I have no control over people going over to  
12 the Estates and doing something. That's what you  
13 said. Is that the truth?

14 A. If it's in there, that's what I said.

15 Q. Okay. And you also believe that on Estate  
16 property it's up to Estate people to enforce their  
17 rules, correct?

18 A. Correct.

19 Q. Okay. It's not up to Park people to  
20 enforce Estate rules on Estate property, correct?

21 A. Correct. We have no agreement with them.

22 Q. Right. And the gates are entirely on Park  
23 property, correct?

24 A. Correct.

25 Q. And the Estate has no control, no say over

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1 the gates, correct?

2 A. Correct.

3 Q. And you don't know one way or the other  
4 whether the Estate has enforcement power over Estate  
5 residents once they leave the Estate.

6 A. They do have some.

7 Q. Okay. Did you testify at Page 107, Line  
8 15, you say that Westbury. What enforcement power  
9 do they have over the residents within your  
10 residential association community? Answer, I'm not  
11 sure. Was that the truth?

12 A. Yes. It was --

13 Q. Was that the truth?

14 A. -- at the time.

15 Q. Is that the truth today?

16 A. No. It's not the truth today.

17 Q. So the truth has changed?

18 A. Yes. I have more information than I had  
19 at that time.

20 Q. Okay. Let's talk about the breach?

21 MR. SHELTON: Let him answer the  
22 question and then (inaudible) --

23 MR. FORD: (Inaudible) I --

24 MR. SHELTON: -- changed. And then  
25 he elaborated he had more information at that time.

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1 I ask that he fully answer the question.

2 MR. FORD: Go ahead.

3 THE WITNESS: So at that time, that  
4 is to the best of my knowledge I answered that  
5 question. I then went and looked at the Estate  
6 rules, and there's a section in the rules that  
7 states about noise on our property, that they are  
8 not allowed to have loud noises when they drive  
9 through our community.

10 So to answer your question, they do have  
11 some authority over what their people do in our  
12 community in their own rules.

13 BY MR. FORD:

14 Q. Let's talk about those breaches that you  
15 testified about earlier. When you talked about  
16 breaches of the gates, that did not necessarily mean  
17 that damage was done to the gates; is that correct?

18 A. Correct.

19 Q. Okay. Sometimes it can be somebody pushed  
20 the gate open, correct?

21 A. Correct.

22 Q. Okay. Sometimes it could mean someone  
23 went around the gates, correct?

24 A. Correct.

25 Q. Okay. It can be a technical violation of

1 Westbury Park rules without any property damage  
2 whatsoever, correct?

3 A. Correct.

4 Q. Okay. Are Estate people or anyone with  
5 the swipe card allowed to let other people in?

6 A. No.

7 Q. Nobody else?

8 A. No.

9 Q. Then how do they -- if they have someone  
10 coming, how do they let them in?

11 A. They use a visitor kiosk access system.

12 Q. Okay. So the Westbury Park's rule is that  
13 if someone goes in -- Ben goes in, he's got someone  
14 behind him, he can use his swipe card but his friend  
15 behind him has to then call him and use the access  
16 code?

17 A. That's the way it should be. Yes.

18 Q. Is that the way it is in the rules?

19 A. Yeah. Each individual comes through has  
20 to use a correct device to get in.

21 Q. What is the Park's property management  
22 company for the gates? Is it IMC?

23           A.    IMC is our property manager.  
24           Q.    Then who controls the gates, which  
25           company?

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1           A.    TSC.  
2           Q.    TSC.  So is it accurate to say that --  
3           tell me and the Judge the relationship between IMC  
4           and the property management company and TSC, the  
5           gate company.  Does IMC control TSC?  
6           A.    They manage the contract on behalf of the  
7           board as they do any other contract.  TSC's just  
8           another vendor who does work for us.  
9           Q.    Got you.  IMC is responsible for the gate  
10          process though, correct?  
11          A.    They handle the administration of the  
12          adding of folks to that database.  
13          Q.    Got you.  And IMC started in September  
14          2018, correct?  
15          A.    Correct.  
16          Q.    Okay.  And it's a breakaway gate meaning  
17          if someone forces it -- is it still like this if

18 someone pushes it it will open? Is it still that  
19 way?

20 A. No. There's a restraining device on it  
21 now that keeps somebody from pushing it open.

22 Q. Yeah. I saw a lot of videos of people  
23 just pushing it open and it was going. Was that  
24 before the restraining device came along?

25 A. Correct.

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1 Q. And when did you all put the new device  
2 on?

3 A. Boy, we started probably six to eight --  
4 six to nine months ago. I don't recall. Don't  
5 remember the exact date.

6 Q. I thought I ask ed you in deposition if it  
7 was a breakaway gate, and you said yes. But you're  
8 telling us now that there's some new system in the  
9 last six months or so.

10 A. No. There's a restraining device on the  
11 breakaway gate.

12 Q. Okay. But anyone can just walk in on the  
13 sidewalk. There's no restriction of any sort on

14       that.

15           A.    Correct.

16           Q.    So really the entirety of the security as  
17       far as the gate is this plastic arm that goes up and  
18       down.

19           A.    Correct.

20           Q.    Okay. For the Estate, when someone buys  
21       at the Estate, they have to go to Jeanette who has  
22       them fill out a form and then gives it to IMC,  
23       correct?

24           A.    Correct.

25           Q.    Okay. And Estate people aren't allowed to

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1       have the fobs or clicker, are they?

2           A.    Correct.

3           Q.    Okay. Why is that?

4           A.    I do not know.

5           Q.    Okay. So Park people are allowed -- Park  
6       people can have a clicker. Or they can have -- is  
7       there a little scanner thing that they can come up  
8       and it scans them automatically?

9           A.    There is some legacy RFID, but it's not a  
10       bar --

11           Q.    What is it?

12           A.    -- bar code scanner. Like if you go out  
13       to Hilton Head, it's not one of those. It's just an  
14       RFID.

15           Q.    Okay. So Park people can use the fob or  
16       they can use a scanner or they can use their card or  
17       they can use their code, correct?

18           A.    Correct.

19           Q.    Okay. I'm sorry. Park people can use  
20       those four ways, correct?

21           A.    Correct.

22           Q.    Okay. Estate people aren't allowed to use  
23       the fob and aren't allowed to use the -- whatever  
24       the scanner thing is, correct?

25           A.    If they have it, they are allowed to use

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1       it. We're just not selling any them moving forward.

2           Q.    Okay. Estate people fill out the same  
3       form that Park people do in order to get access to  
4       the gate, correct?

5 A. Yes.

6 Q. Okay.

7 A. As far as I know.

8 Q. And all of those forms are all given to

9 IMC, correct?

10 A. I assume so.

11 Q. I mean, that's how they get their pass

12 code, correct?

13 A. Correct.

14 Q. They go to Jeanette. Jeanette has them

15 fill out the form. The form then goes to IMC. And

16 it's the exact same form as Park people do. It's

17 just got different letterhead on it, correct?

18 A. Well --

19 Q. So your --

20 A. Yes.

21 Q. So your vendor, IMC, has a list of

22 everyone and their information, their codes -- I'm

23 sorry -- their license plates, their addresses,

24 everyone that fills out the form and who is issued a

25 code, IMC has all that information.

1           A.    They have the information.  They don't  
2   have a list.

3           Q.    What's the difference?

4           A.    A list is a list.  The information is in a  
5   computer software database.

6           Q.    IMC has -- my understanding is a binder  
7   with the information of all the Estate people in it  
8   who are supposed to have access.  And it has their  
9   name and the license plates and all that.  They have  
10 all those forms?

11          A.    That's not correct.

12          Q.    Okay.  Tell me what's correct.

13          A.    They would only have what they received  
14 when they started the contract.  As I understand it,  
15 the only thing they would have is anything that  
16 started from the day that IMC started managing the  
17 gate access software.

18          Q.    So IMC started in -- September 2018,  
19 right?

20          A.    Uh-huh.

21          Q.    Who -- yes?

22          A.    Yes.

23          Q.    I'm sorry.  I apologize.

24          A.    Sorry.

25 Q. That's alright. So who did it before

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1 that? Who managed it before that?

2 A. Century was the property management  
3 company.

4 Q. So -- and they worked for Westbury Park?

5 A. Yes.

6 Q. Okay. So when they left, Westbury Park  
7 got them to give it all the information that they  
8 had because they were the vendor, right?

9 A. That's not accurate.

10 Q. All right. What happened?

11 A. I was not part of that transition. There  
12 was a big argument about computer, about who owned  
13 the computer and all the forms and files and  
14 everything else was in there. Beyond that, I don't  
15 know. I just know we did not get everything.

16 Q. Okay.

17 A. What we did get or didn't get, I don't  
18 know.

19 Q. Okay.

20 A. It was before I got on the board.

21 Q. Sorry. I didn't mean to interrupt. Are  
22 you done? So, you all are sort of starting fresh  
23 from September 2018 on knowledge about who is  
24 filling out these forms; is that accurate?  
25 A. That would be accurate.

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1 Q. Because you all didn't get the historical  
2 information from your own vendor.

3 A. What I said was I don't know what we got.  
4 I don't think we did.

5 Q. Okay. So that would be a problem for you  
6 all, right?

7 A. In that date, yes, it is.

8 Q. But the way it works at Estate of Westbury  
9 is they have someone fill out the exact same form  
10 the Park people do. That is provided to your vendor  
11 and your vendor has that information just like they  
12 do for Westbury Park people.

13 A. From the people -- not the same way as  
14 Westbury Park, no.

15 Q. Just tell me --

16           A.    Because we did a roster run through the  
17           community where we had everybody come and give us  
18           all the information they had so we could develop  
19           this new database to load on the new kiosk. So we  
20           had everybody. And we collected it in a massive  
21           spreadsheet, a list, so-to-speak. We have that for  
22           our people. We do not have it for the Estate  
23           people.

24                     In the database that IMC took over, at one  
25           count, there was ten times as many people in there

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1           as there are residents. And so our issue is people  
2           were being added to the database, but nobody was  
3           being removed from the database. So we have a lot  
4           of active cards. And we don't know who they have --  
5           who they are. Where they're at, et cetera, et  
6           cetera.

7           Q.    And Jeanette offered, if you would give  
8           her the list that you have, to tell you who the  
9           active people were and you could exclude the rest.  
10          She offered that to you, right?

11          A.    The problem --

12 Q. Did she offer that to you? And then you  
13 can go on.

14 A. Yes.

15 Q. Okay. Thank you. Go ahead.

16 A. I am not a database expert. But there was  
17 no way to export the database from that system into  
18 a spreadsheet. So, to be able to give her a  
19 spreadsheet and says just delete the people that are  
20 on there, technically, doesn't work. Hence the  
21 reason why we needed a fresh roster. Take our  
22 roster that we did plus the roster the Estate did.  
23 Put them two together and upload them into the  
24 database. In other words, override it with new  
25 information because there's no easy way to go

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1 through and find anybody who does not belong -- is  
2 -- does not belong on the list. In other words,  
3 anybody who's no longer a resident.

4 Q. So, is this largely a data entry problem?

5 A. Yes.

6 Q. Okay.

7           A.    It's a software limitation problem under  
8           the existing system. The new system would give us  
9           that capability to upload, download, backup and  
10          restore system all the database for all the access.  
11          We don't have that with this system. Hence the  
12          reason why we're trying to upgrade.

13          Q.    Okay. So a couple of things. First, IMC,  
14          Westbury -- the Estate of Westbury provides IMC with  
15          forms with all the information. It's just on a  
16          form. It's not in the electronic format, correct?

17          A.    From 2018 -- from October 2018.

18          Q.    Fair enough. Westbury Park just for some  
19          reason didn't get it's vendor stuff in an incomplete  
20          form, correct?

21          A.    I don't know. I heard that they didn't.  
22          But I --

23          Q.    You're the president.

24          A.    -- can't say for sure.

25          Q.    What do you say?

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1           A.    I can tell you I don't know for sure.

2           Q.    You're the champion, right? On the

3 (inaudible), right? If you don't know, who knows?

4 A. I don't know.

5 Q. And -- okay. So, let's take a step back.

6 This problem with the -- is it pass card? Is that  
7 what we're calling it? Swipe card?

8 A. We call it a swipe card just --

9 Q. Fair enough.

10 A. -- convenience.

11 Q. The way it works is that the Estate of  
12 Westbury person has to fill out the form. Jeanette  
13 confirms it. Then they have to take it over to IMC  
14 who then gives them a pass code, correct?

15 A. No.

16 Q. Okay, tell me.

17 A. They go in there and they register their  
18 vehicle and turn in their form and that information  
19 is used. They can then buy a swipe card and they  
20 can get assigned a visitor access code.

21 Q. Okay. But when they take the form in, the  
22 process you just described, they get an access code,  
23 correct?

24 A. A visitor access code.

25 Q. And why don't Westbury Park just require

1       them to buy a pass card when they do that?

2           A.   Well, good question.  And we have in our  
3       rules that they have to do that.  But how do we  
4       enforce the Estate person -- how can we force them  
5       to buy something?

6           Q.   You don't give them a pass code until they  
7       buy it.  And the board of the Estate would fully  
8       support that, correct?

9           A.   Well, I don't know that.

10          Q.   I'm telling you they would.  Why don't you  
11       all have your vendor require them to buy a pass  
12       code?  You've got full control over that.  Estate  
13       has no control over IMC.  Why don't you all do that?

14          A.   Because we don't control their folks.

15          Q.   You control IMC.

16          A.   We don't deny them the access because we  
17       don't want to get sued.  We do the best that we can  
18       with what we're allowed to do.

19          Q.   Okay.  The Estate would fully support  
20       requiring people -- IMC not to issue a pass code  
21       until people get the -- get the card.

22                   MR. SHELTON:  Objection.  It's

23 testimony.

24 JUDGE DUKES: Yeah.

25 MR. FORD: All right.

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1 BY MR. FORD:

2 Q. Is it accurate to say the Estate has no  
3 control as to whether or not Westbury Park has gates  
4 at the entrance? That is entirely controlled by the  
5 Park.

6 A. The decision-making on the gates is  
7 definitely controlled by Westbury Park.

8 Q. And I think we established this, but the  
9 gates are on Park property only.

10 A. Correct.

11 Q. Westbury Park, the Park, has a security  
12 company. And I deposed the very nice leader of that  
13 -- of Mr. O'Quinn, right?

14 A. Correct.

15 Q. Okay. And that security company is blue  
16 lights, they're SLED authorization, they can issue  
17 traffic tickets on Kensington Boulevard, correct?

18 A. Correct.

19 Q. They have full authority to do that.

20 A. Correct.

21 Q. The sidewalks, you haven't said anything  
22 about the sidewalks. Did you tell me at the  
23 deposition that a problem with the sidewalks being  
24 -- needing repair is largely tree roots? That's  
25 what you told me at the deposition.

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1 A. The general failure point for sidewalks is  
2 tree roots growing up underneath them causing the  
3 sidewalks to split and become uneven, yes.

4 Q. Got you. As we go along Kensington  
5 Boulevard towards the Estate of Westbury, there's  
6 only one park along there, right?

7 A. There is one park. And then there is the  
8 lake park.

9 Q. Okay. You told me that there was one park  
10 along Kensington Boulevard.

11 A. There's one formal park.

12 Q. Okay. And Estate of Westbury people are  
13 not allowed to use that, correct?

14 A. Correct.

15 Q. Westbury Park people use the commercial  
16 properties portion of Westbury Parkway. So,  
17 Westbury Parkway continues well beyond the required  
18 streets, correct?

19 A. Correct.

20 Q. Okay. And then it eventually goes into  
21 the commercial properties that are kind of a part of  
22 Westbury, the Westbury thing, correct?

23 A. As I understand they are now owned and  
24 maintained by Beaufort County. But they were part  
25 of the original --

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1 Q. Right.

2 A. -- development.

3 Q. And when Park people -- when it was  
4 controlled by commercial properties, Park people  
5 used those as well, correct?

6 A. I can't say because that was before my  
7 time.

8 Q. You don't know --

9 A. I would assume to drive in and out, yes.

10           Q.    And when they did, they didn't have to pay  
11           for use of that section of the commercial property  
12           of Westbury Park, did they?

13           A.    I don't know of any payments for their  
14           rights to drive up and down that road.  No.  I don't  
15           know of anything.

16                       MR. FORD:  Can I have just a minute,  
17           Your Honor?

18                       JUDGE DUKES:  Sure.

19                       MR. FORD:  That's all I have at this  
20           moment, Your Honor.  Thank you, sir.

21                       JUDGE DUKES:  Any redirect?

22                       MR. SHELTON:  Briefly.

23           BY MR. SHELTON:

24           Q.    We were talking about all the gates.  Has  
25           anyone from the Estate ever request to you as

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1           president or have you ever heard of anyone from the  
2           gate requesting that the gate -- from the Estate  
3           requesting the gates be removed?

4           A.    No.

5 Q. Do you know whether Jeanette, the manager  
6 at the Estate, has all of the information on ever  
7 single resident of the Estate?

8 A. I do not know. I'm not sure that she  
9 does.

10 Q. How about every vehicle that parks at the  
11 Estate?

12 MR. FORD: Only his personal  
13 knowledge.

14 THE WITNESS: I do not know.

15 BY MR. SHELTON:

16 Q. Do you know?

17 JUDGE DUKES: My understanding is the  
18 question is does he know if Jeanette knows?

19 MR. SHELTON: Right.

20 JUDGE DUKES: So --

21 MR. SHELTON: Correct.

22 BY MR. SHELTON:

23 Q. Do you know whether Jeanette has  
24 information on every vehicle at the Estate?

25 A. I do not know.

1 Q. Now, these gates, they are on the common  
2 area of Westbury Park, correct? When you --

3 A. Correct.

4 Q. Are they a lawn? How -- are they covered?  
5 The right-of-way or alleged easement?

6 A. I'm sorry. Rephrase it.

7 Q. Do they actually -- are the gates across  
8 the actually street?

9 A. Correct.

10 MR. SHELTON: Okay. Those are all  
11 the follow-up questions. Thanks.

12 All right. Thank you so much. So would you all  
13 like to take about 20 or 30 minutes, try to eat  
14 something.

15 (BREAK TAKEN)

16 JUDGE DUKES: Back on the record in  
17 2158. Call your next witness, please.

18 MR. SHELTON: Thank you, Your Honor.  
19 The Plaintiff calls Ms. Karen Parks.

20 JUDGE DUKES: Come on around in the  
21 chair I can't see, but I know it to be right there  
22 somewhere, please. Can I get you to hold your right  
23 hand up, please. Do you swear or affirm to tell the  
24 truth, the whole truth and nothing but the truth so  
25 help you God?

1 THE WITNESS: I do.

2 JUDGE DUKES: All right. Have a  
3 seat, please. State your whole name for the record.

4 THE WITNESS: Karen G. Parks.

5 MR. SHELTON: Thank you, Your Honor.  
6 May it please the court.

7 JUDGE DUKES: Go ahead. Please  
8 answer any questions counsel may have.

9 WHEREUPON:

10 Karen G. Parks, being duly sworn and  
11 cautioned to speak the truth, the whole truth and  
12 nothing but the truth, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. SHELTON:

15 Q. Ms. Parks, please -- you already given  
16 your full name? Give your full name for the record,  
17 please.

18 A. Karen G. Parks.

19 Q. Thank you. And where do you live?

20 A. At 67 Westbury Parkway in Bluffton?

21 Q. Is that in the neighborhood of Westbury  
22 Park?

23 A. It is.

24 Q. For the purposes of this hearing, can we  
25 call it the Park?

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1 A. Yes.

2 Q. Okay. How long have you lived there or  
3 had a residence there?

4 A. Eleven years.

5 Q. And how long have you lived there  
6 full-time?

7 A. Almost three years, now.

8 Q. And do you have any role as to the  
9 association?

10 A. Yes. I'm currently the treasurer of the  
11 board.

12 Q. And how long have you been in that role?

13 A. A year and a half. And before that I was  
14 an assistant treasurer and not on the board, just a  
15 volunteer assistant treasurer.

16 Q. And how long did you fulfill that role?

17 A. About two years.

18 Q. Were you a member of Westbury Park during  
19 the transition from West -- from declarant control  
20 to board control?

21 A. Yes. I was the chairperson of that  
22 committee that was formed.

23 Q. And when did that happen?

24 A. That happened -- we were seated as a  
25 committee in September of '12, I believe.

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1 Q. And do you know when the transition  
2 actually occurred? When it was finalized?

3 A. Yes. In October of 2015.

4 Q. Thank you. Now, you've been a resident  
5 there for 11 years, you stated, correct?

6 A. Yes.

7 Q. Has a gate all -- a gate of one form or  
8 the other always been in Westbury Park during that  
9 time period?

10 A. Yes.

11 Q. In both locations on the Buck Island

12 entrance and also 278 entrance?

13 A. Yes.

14 Q. What is your understanding as to whether  
15 the length of time a gate of some form or the other  
16 has been at the neighborhood?

17 A. It was -- gates were always present from  
18 the initial development of the community and which  
19 started in circa 1998.

20 Q. And have -- during your time at Westbury  
21 Park and as a member of the board, have you ever  
22 seen any document, any demand, any request of any  
23 form whatsoever from the Estate to remove the gates?

24 A. No.

25 MR. SHELTON: Beg the court

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1 indulgence. Could I have a sidebar?

2 JUDGE DUKES: Yeah.

3 (OFF RECORD DISCUSSION)

4 MR. SHELTON: And I'll -- back on the  
5 record, please, Your Honor. For the court's  
6 edification, I just -- Ms. Parks has information  
7 available as to how money was split between

8 declarant and the association prior to the  
9 transition. And I think it may be -- I was just  
10 speaking with Mr. Ford. I was going to ask her a  
11 few questions about that which isn't necessarily  
12 directly on point with the injunction motion, but it  
13 may save time for the court later.

14 JUDGE DUKES: Go ahead.

15 BY MR. SHELTON:

16 Q. Ms. Parks, you're the treasury, correct?

17 A. Yes.

18 Q. Would -- has Westbury Park -- you heard  
19 the number 1.3 referenced earlier in the hearing; is  
20 that correct?

21 A. Yes.

22 Q. 1.3 million?

23 A. Yeah.

24 Q. Did Westbury Park Residential Association  
25 receive \$1.3 million from the Estate of Westbury?

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1 A. No, it did not.

2 Q. Who received the money initially?

3           A.    From the beginning, the first payment,  
4           according to the records and my understanding,  
5           records we found, it was January of 1999. And all  
6           payments up until, I believe, November or December  
7           of 2015. So from that period of commencement  
8           through the extreme end of 2015, Plantation Park,  
9           LLC was the recipient of all the money paid.

10          Q.    Park Plantation Properties, was that --

11          A.    Yeah.

12          Q.    Okay.

13          A.    Yeah. PPLC --

14          Q.    Okay.

15          A.    -- LLC is how we always --

16          Q.    Thank you.

17          A.    -- refer to it.

18          Q.    And did the -- did the -- to your  
19           knowledge, did the residential association, the  
20           Park, receive any of those funds prior to the  
21           separation from declarant's rights?

22          A.    We did get, over the years, varying  
23           amounts provided to us from the developer. The  
24           amounts varied. We have, as part of the transition,  
25           work and research that we undertook. We had

1 developed -- I actually had developed a spreadsheet  
2 of the flow of money, what was paid. We have some  
3 invoices from the Estate at -- or the Estate, some  
4 accounting records that we had access to for some  
5 reason. And so we have -- so we have some numbers  
6 that are spot-on. And we have some numbers that we  
7 needed to say, well, we don't know that they  
8 implemented the CPI this year. So we kept it, like,  
9 whatever it was because every year the CPI didn't  
10 com into play. So we have a very, I think -- you  
11 know, very solid estimate of what was the money that  
12 was paid.

13 Q. At what point did the residential  
14 association beginning receiving all of the money per  
15 the assessment from the Estate?

16 A. Again, that goes back to very late in 2015  
17 after all of the settlement and transition documents  
18 were signed and we were able to notify the Estate  
19 that -- of the transition and provide them a copy of  
20 the -- that we were now the assignee of that  
21 agreement.

22 Q. And did you have any rights as to  
23 enforcement of that assessment prior to 2015?

24 A. No.

25 Q. Now, after 2015, between 2015 and October

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1 of 2018, did you ever receive any notice or demand  
2 from the Estate for an accounting?

3 A. No.

4 Q. Did you receive any notice or demand from  
5 the Estate for any type of reconciliation at the end  
6 of the year of the funds?

7 A. No.

8 Q. Did you receive any notice or demand to  
9 see your budget?

10 A. No.

11 Q. Past treasurer -- I not going to -- I  
12 don't want to get into the how much, but does it  
13 cost money to maintain the required streets?

14 A. Yes, it does.

15 Q. Does it cost money to maintain the gates?

16 A. Yes, it does.

17 Q. Does it cost money to provide security in  
18 all of -- and pay third parties for their monitoring

19 of the gate and the required streets?

20 A. Yes, it does.

21 Q. Do you have any idea how much it would  
22 cost to pay someone to monitor the camera system the  
23 way that Mr. Matteo does?

24 A. I don't know how to put a figure on that.

25 Q. And you heard earlier Mr. Matteo give that

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1 information to the Estate, correct? The information  
2 that he --

3 A. Yes. I've actually been copied on some of  
4 the -- at least a number of the e-mails to Ms.  
5 Prinsen.

6 Q. Thank you. Now, you're a resident of  
7 Westbury Park, correct?

8 A. Yes.

9 Q. Is it important for you that it's a gated  
10 community?

11 A. Yes.

12 Q. Please elaborate on that.

13 A. When shopping for real estate in the  
14 community -- in the area, the region, I looked at --

15 I think on my first real estate tour, I looked at 26  
16 properties. And I'd say at least in ten different  
17 communities. And speaking with realtors, doing  
18 research myself, I determined that because I was  
19 still going to be working and maintaining a home in  
20 the northeast while I was employed, I wanted a place  
21 that I felt was very secure with gates so that I  
22 wouldn't have to necessarily do a robust security  
23 system on the home myself.

24 Q. Has the gate that's located -- the gates  
25 rather that are located at Westbury Park -- excuse

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1 me -- the Park now, have they been the same gates  
2 that have been there since you resided there or  
3 purchased your home there?

4 A. No. No. As part of the research during  
5 -- for the transition and the eventual settlement,  
6 we were able to look at documents and really get  
7 underneath some of the expenses of the Park. And  
8 one of the things I noted was that the gates were  
9 essentially leased. It's kind of leasing an

10 automobile instead of buying them. And that was a  
11 very expensive way to go.

12 And so we undertook a study and we  
13 purchased -- and the gates were old. They had  
14 started to reach their -- end of their life cycle.  
15 And so we decided to do a competitive bid and have  
16 security companies provide us with quotes for new  
17 gates, new technology, including the latest  
18 surveillance camera. And actually, the municipal  
19 buildings here in Beaufort were one of ones that we  
20 identified as the best of breed at the time. And  
21 those were the cameras we bought.

22 Q. And what year was that?

23 A. That was in 2014 that study was  
24 undertaken. And by early 2015, we had board  
25 approval. We had all of the logistics. We had a

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1 number of data lines, T1 lines we had to run because  
2 data now -- we have a new -- for the new equipment,  
3 the better cameras required more robust data network  
4 support as well as electrical.

5 Q. Does Westbury Park, or the Park, have

6 capital reserves?

7 A. Yes, we do.

8 Q. And do you have a budget for how much you  
9 put in those capital reserves each year?

10 A. Yes, we do. Yeah, I do.

11 Q. Do you have any idea what that figure is  
12 in your capital reserve budget per year now?

13 A. Right now it's \$132,000, I believe,  
14 132-133,000 a year. It's down from what it was.

15 Q. How much was it before?

16 A. We were always putting more in the range  
17 of 170 to 175 until the easement payments ceased.

18 MR. SHELTON: I believe those are all  
19 the questions I have. Thank you so much.

20 (OFF RECORD DISCUSSION)

21 BY MR. FORD:

22 Q. Ms. Parks, we've met before. It's nice to  
23 meet you in person. I just -- since your testimony  
24 is relatively limited, I'm going to try to just  
25 stick to that. Kensington Boulevard has always been

1 as far as you know the only way in and out of the  
2 Estate of Westbury, correct?

3 A. Correct.

4 Q. Okay. And this gate is pretty much just  
5 like a physical arm. Were you here? Did you see  
6 the videos?

7 A. Well, I heard all the bits and pieces.  
8 But, yes, it is a lift-arm.

9 Q. It's just an arm and anyone can walk in  
10 and out because there's sidewalk, right?

11 A. It doesn't prevent pedestrians. It's  
12 intended to be a vehicular control.

13 Q. And the gates are on Westbury Park  
14 property, correct?

15 A. Correct.

16 Q. And Westbury Park, the Park, makes all  
17 decisions about the gates now the turnover has  
18 happened, right?

19 A. Yes. Although, there have been times when  
20 we've consulted with the community manager at the  
21 Estate.

22 Q. You may have talked to them, but the Park  
23 makes all the decisions and has the sole authority  
24 to make the decision about the gates, correct?

25 A. Correct. Ultimately, yes.

1 Q. And the gates have evolved over time. You  
2 mentioned that just a minute ago. You need to say  
3 out loud for the record.

4 A. Yes.

5 Q. And they used to be open all day and just  
6 closed at night, correct?

7 A. That was -- there were very few periods of  
8 time when that occurred.

9 Q. Okay. But that did occur. You testified  
10 to that at your deposition it used to be open all  
11 day and just closed at night, right?

12 A. During my deposition, I recall that I  
13 testified what I knew to be the truth which is when  
14 the community was being developed, there were four,  
15 five -- four phases with that each had an A and B.  
16 During the time that there was heavy construction  
17 vehicles and all sorts of contractors coming in and  
18 out, building 350 homes, not to mentioned 320  
19 apartments, the gates would be open during the  
20 weekday from early morning until a certain point,  
21 7:00 o'clock or something at night. I can't testify

22 exactly to what the time was. I recall 7:00 at that  
23 time. The only other time when the gates have been  
24 open has been when there has been damage to them,  
25 they were waiting for parts, in my history.

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1 Q. You testified in your deposition that the  
2 Estate of Westbury is not involved in decisions  
3 about changing the gates. Is that the truth?

4 A. That's correct.

5 Q. Okay. And you testified at your  
6 deposition Estate of Westbury has no authority or  
7 control over the gates. Question, is that the  
8 truth?

9 A. Authority?

10 Q. No authority or control over the gates.

11 A. I'm not sure I understand your question  
12 regarding authority. They have no control over the  
13 gates. I don't know what you're inferring by the  
14 term authority.

15 Q. In your deposition I asked you, does  
16 Estate at Westbury have any authority or control

17 over the gates. Your answer was, I don't believe  
18 so. Question, is that the truth?

19 A. That's my statement. However, I think now  
20 you've -- getting to know you a little bit, I think  
21 when you say the word authority, we've already  
22 clarified that Jeanette Prinsen authorizes people  
23 from the Estate to have access.

24 Q. Well, that's not true, is it?

25 A. Well, that is -- that is --

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1 Q. Okay. IMC --

2 A. -- the policy and the practice.

3 Q. IMC controls the gates, right?

4 A. They do.

5 Q. Okay. And IMC works for Westbury Park.

6 A. Correct.

7 Q. Okay. And Jeanette and the Estate of  
8 Westbury has no authority whatsoever to issue gate  
9 passes or cards, correct?

10 A. No, she authorizes residents.

11 Q. She authorizes residents who then go to  
12 IMC.

13           A.    Correct.  Yeah.

14           Q.    And the Estate of Westbury has no control

15           whatsoever over IMC, correct?

16           A.    That's correct.

17           Q.    Okay.  IMC does not work for Estate at

18           Westbury, works entirely for Westbury Park, correct?

19           A.    Correct.

20           Q.    And IMC alone issues codes for the gates,

21           correct?

22           A.    Correct.

23           Q.    Okay.  And IMC could require people to

24           purchase a swipe card when they issue the codes,

25           correct?

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1           A.    Correct.

2           Q.    But they don't, correct.

3           A.    It appears they have not.

4           Q.    Okay.  And as we've said, Westbury Park

5           controls what IMC does, right?

6           A.    Correct.

7           Q.    I'm sorry?

8 A. Correct.

9 MR. SHELTON: I'm going to object. I  
10 think it's a little bit beyond the scope. But we're  
11 -- I give some latitude, but let's reign it in.

12 BY MR. FORD:

13 Q. I think you testified that it is your  
14 understanding that the Estate of Westbury, over  
15 time, paid 1.265 million towards the required  
16 streets. Over time, that's what they paid.

17 A. Yes.

18 Q. Okay. And I understand what you just  
19 said. It didn't always go to Estate -- to Westbury  
20 Park?

21 A. Correct.

22 Q. But, at least going to 2010, they were  
23 paying roughly \$90,000 a year, right?

24 A. Yes. Just under 90,000, I believe, yes.

25 Q. Right. And have you seen the letter from

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1 Westbury Park, in December 2010, sort of summarizing  
2 that at that -- at least as early as 2010, Westbury  
3 Park -- Westbury Estate -- I apologize. I'm going

4 to start over. At least as early as 2010, Estate  
5 was paying about \$90,000 towards the required  
6 streets. Does that sound accurate to you?

7 A. Yes.

8 Q. Okay. And one of the things that Westbury  
9 Park used that money for was lawn care for its --  
10 all of its residents, correct?

11 A. That's incorrect.

12 Q. Tell me.

13 A. Your statement was that part of that money  
14 was used to pay for the front lawn care of all  
15 residents. That's incorrect.

16 Q. Tell me what the truth is.

17 A. The truth is that at that point in time,  
18 2010, front lawn maintenance, mow, blow and edge, as  
19 it's known, was provided for homes that opted for  
20 it. And there are 40 homes along the required  
21 streets. So those 40 homes had, obviously, a need  
22 to have their front lawns maintained.

23 Q. Did there ever come a time where Westbury  
24 Park was having all the front lawns -- when everyone  
25 in Westbury Park mowed, blown -- what did you say?

1           A.    I have no -- I have no knowledge if that  
2           was ever the correct statement. There was the  
3           option for people to have that. For instance, my  
4           home has never been maintained by anyone else other  
5           than myself or my private contractor.

6           Q.    Okay. You've seen the memo from Westbury  
7           Park dated March 17th, 2020. I'll show you that.  
8           Have you seen this?

9                   JUDGE DUKES: Is that something in  
10           the file, yet?

11                  MR. FORD: I don't remember.

12                  MR. SHELTON: I believe it's -- I  
13           believe it's one of the exhibits. Perhaps Exhibit  
14           Number 4 to the defendant's motion in opposition to  
15           temporary injunction if I remember correctly.

16                  MR. FORD: Ben knows my file better  
17           than I do. Do you want me to hand it up --

18                  MR. SHELTON: Three, four or five.  
19           It's one of the exhibits.

20                  JUDGE DUKES: Let's see. Yeah, four  
21           is an amendment of this --

22                  MR. SHELTON: To the -- to the  
23           opposition, the defendant's opposition.

24 JUDGE DUKES: Oh, okay. Hold on.  
25 I'm looking at the wrong thing then.

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1 THE WITNESS: I think the --

2 MR. FORD: Hold on. Just hold on.

3 JUDGE DUKES: It's just easier if I  
4 look at -- did you say -- did you have an extra  
5 copy?

6 MR. SHELTON: I do.

7 JUDGE DUKES: Thank you very much.  
8 So this is already in the file as exhibit something,  
9 right? This exhibit -- this would be a motion for a  
10 -- is it a partial summary judgment?

11 MR. FORD: I believe --

12 MR. SHELTON: It is in the record. I  
13 know I proffered it.

14 MR. FORD: Yeah. I believe it's an  
15 exhibit -- one of the exhibits to defendant's motion  
16 in opposition of -- to the temporary injunction.  
17 Yes, Your Honor.

18 MR. SHELTON: I know it's in.

19 JUDGE DUKES: You're not saying --

20 MR. SHELTON: I just don't know --

21 JUDGE DUKES: It might be used for

22 one.

23 MR. FORD: It may be Number 1.

24 There's Number 1.

25 JUDGE DUKES: Yeah, there it is.

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1 It's Exhibit 1 to (inaudible) in opposition.

2 MR. SHELTON: Just for the  
3 transcript, it's Westbury Park (inaudible) Board of  
4 Directors.

5 BY MR. SHELTON:

6 Q. And, Ms. Parks, your name is at the top,  
7 right?

8 A. Correct.

9 Q. Okay. And it's dated March 17th, 2020?

10 A. Yes.

11 Q. And you've seen this before?

12 A. Yes, I have.

13 Q. Okay. And it says, among other things, a  
14 major change is that all mowing, trimming and leaf

15 removal for the front yards of all single-family and  
16 townhome lawns will no longer be a service provided  
17 under the new contract. Effective immediately, all  
18 residents will be individually responsible for the  
19 maintenance of all areas of their yards. While this  
20 decision was a difficult one, it was necessary for  
21 the following reasons.

22 Westbury Park R.A. continues to experience  
23 operational challenges due to the loss of income  
24 from the easement agreement with the Estate of  
25 Westbury. It goes on, but I'm going to pause there.

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1 Question, is that the truth?

2 A. Yes.

3 Q. Okay. There came a time when Westbury  
4 Park tried to extend the assessment obligation and  
5 says that they did extend it, correct? You know  
6 what I'm talking about?

7 A. Yes.

8 Q. Okay.

9 A. In October of '18?

10 Q. That's right.

11 A. Yes.

12 Q. I have a single question. To your  
13 knowledge, did the Estate of Westbury ever consent  
14 to that?

15 A. No.

16 Q. It's accurate that Estate of Westbury  
17 people are not allowed to use any of the parks at  
18 Westbury Park, correct?

19 A. That is correct per the agreement.

20 Q. And Estate of Westbury is not allowed to  
21 use any sidewalks at Westbury Park except along  
22 Kensington Boulevard to come in and out, correct?

23 A. Along the required street --

24 MR. FORD: Object. I just believe  
25 this is beyond the scope of direct. And I

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1 understand the court gives latitude, but these  
2 issues have already been covered.

3 JUDGE DUKES: Okay.

4 MR. SHELTON: I may be done.

5 JUDGE DUKES: Okay.

6 MR. SHELTON: Sorry.

7 JUDGE DUKES: No. Go ahead.

8 MR. SHELTON: All right. Then that's  
9 all I've got. Thank you then.

10 MR. FORD: Brief redirect. Very  
11 briefly.

12 BY MR. FORD:

13 Q. The exhibit that you're holding, Ms.  
14 Parks, as to all single-family and townhome lawns  
15 will be no longer service provided. This doesn't  
16 mean -- let me back track. It's your testimony that  
17 that was never a service provided to all homes.

18 A. It was a service available to all homes,  
19 but there was a significant number of owners, like  
20 myself, who opted not have that service done.

21 Q. Okay. So it was a service available to  
22 all owners. Did the owners have to pay for that  
23 service?

24 A. No. It -- well, if it -- of course you  
25 pay for it under your assessments.

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1 Q. Okay.

2           A.    It's part of what was included under your  
3 homeowners dues.

4           Q.    And all homes along the boulevard, along  
5 Kensington Boulevard were provided that service.

6           A.    They had the ability to have that service.  
7 But again, some proportion of them did not avail  
8 themselves of that.

9                   MR. FORD:   Okay.   Thank you.   Those  
10 all the questions I have.

11                   THE WITNESS:   Okay.

12                   JUDGE DUKES:   All right.   Anything  
13 specifically with regard to that question?

14                   MR. SHELTON:   Nothing no, Your Honor?

15                   JUDGE DUKES:   All right.   Any  
16 questions?   Thank you so much.   You can have a seat.  
17 Any objection if she leaves us?

18                   MR. SHELTON:   No.   She may want to  
19 stick around, but she -- maybe you want to switch  
20 out.

21                   JUDGE DUKES:   All right.   Anything  
22 else?

23                   MR. SHELTON:   Can I consult with --

24                   JUDGE DUKES:   Yeah.   You all take  
25 your time.   We'll be off the record for a second.

1 (BREAK TAKEN)

2 JUDGE DUKES: Back on. Yeah. Sorry.

3 MR. SHELTON: I believe that -- I'm  
4 not going to make him motion for him, but there's --  
5 we were discussing whether a directed verdict motion  
6 would be appropriate at this time. I -- if -- I  
7 would like to place Ms. Prinsen's deposition  
8 testimony into the record in lieu of calling her  
9 today, if that's without objection.

10 MR. FORD: No objection.

11 MR. SHELTON: This is an original.

12 JUDGE DUKES: All right.

13 MR. SHELTON: Or do you want me to  
14 e-mail a transcript to --

15 JUDGE DUKES: The -- let's go ahead  
16 and put it in if you want it in. There's no  
17 objection. But is you would e-mail me one, it would  
18 be easier to read it than --

19 MR. SHELTON: Right. Absolutely. I  
20 do not know if I have it on my -- I don't have it on  
21 my flash drive. But you would need it for the

22 directed verdict motion, I believe.

23 JUDGE DUKES: Right. I was thinking  
24 that.

25 MR. SHELTON: Yeah.

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1 JUDGE DUKES: How long is the  
2 deposition?

3 MR. SHELTON: It is over -- it's -- I  
4 can't remember the exact number pages. But it's  
5 approximately 100 pages, I believe.

6 JUDGE DUKES: All right. So, I would  
7 need to read that, of course, before I ruled on --

8 MR. SHELTON: Right.

9 JUDGE DUKES: -- either the directed  
10 verdict --

11 MR. SHELTON: That's the question.

12 JUDGE DUKES: -- motion or --

13 MR. FORD: I don't want to wait. If  
14 you wanted to just put her on, we could do the whole  
15 thing.

16 MR. SHELTON: Right. I don't think  
17 I'm going to be -- I'm going to be --

18 MR. FORD: Hey, why don't we do this.  
19 Could we do this. You've put her on for what you  
20 want.

21 MR. SHELTON: Correct.

22 MR. FORD: And then if I can reserve  
23 the right --

24 MR. SHELTON: You can reserve the  
25 right to call her.

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1 MR. FORD: Are you all right with  
2 that, Judge?

3 JUDGE DUKES: I'm okay with that.

4 MR. FORD: Okay. Let's do that.

5 MR. SHELTON: Thank you.

6 (OFF RECORD DISCUSSION)

7 JUDGE DUKES: Hold your hand up for  
8 me, please. Do you swear or affirm to tell the  
9 truth, nothing but the truth so help you God?

10 THE WITNESS: Yes.

11 JUDGE DUKES: All right. Have a seat  
12 and state your whole name for the record, please.

13 THE WITNESS: Jeanette Prinsen.  
14 MR. SHELTON: Thank you, Ms. Prinsen.  
15 WHEREUPON:  
16 Jeanette Prinsen, being duly sworn  
17 and cautioned to speak the truth, the whole truth  
18 and nothing but the truth, testifies as follows:  
19 DIRECT EXAMINATION  
20 BY MR. SHELTON:  
21 Q. Thank you, Ms. Prinsen. How are you  
22 today?  
23 A. I'm good. How are you. rent like ask you  
24 specifically's question.  
25 Q. Will you please spell your full name for

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1 the record.  
2 A. J-e-a-n-n-e-t-t-e, P-r-i-n-s-e-n.  
3 Q. And what is your role as to the Estate of  
4 Westbury?  
5 A. I'm the community manager.  
6 Q. Why do you call it the community manager?  
7 A. I guess you could call it the association  
8 manager.

9 Q. Do you have a property manager's license?  
10 A. I do.  
11 Q. Okay. Is it current?  
12 A. It is current. It is on an inactive  
13 status.  
14 Q. Thank you. I would like to ask you  
15 specifically some questions about your residence  
16 status. Okay?  
17 A. Okay.  
18 Q. Do you maintain a database for all  
19 occupants of the Estate?  
20 A. A database, no.  
21 Q. What do you have?  
22 A. We have a couple of different things. I  
23 have a software program. It's Pay HOA. And that is  
24 just for the owners. Then we have a parking system.  
25 And that would be for anybody who drives or parks on

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1 the property. So residents come in and get a  
2 parking decal. Guests of residents would have to  
3 register their vehicle into the system so that they

4 don't get a warning or get towed off the property.

5 I keep an Excel spreadsheet of tenants of  
6 property managers and of owners. And that's just  
7 for my own quick if I need to e-mail everybody, it's  
8 real quick to get in and copy and paste off an Excel  
9 sheet. So those are the different ways. And then  
10 we have actual, physical, hardcopy folders of every  
11 resident.

12 Q. What is the procedure that you use in  
13 order -- when a new resident moves in -- I'm using  
14 the word resident as any resident, not an occupant  
15 versus an owner.

16 A. Anybody that lives there.

17 Q. Anybody that lives there. When a new  
18 resident moves in, what is the procedure you use in  
19 order to insure that you have the right information?

20 A. Okay. Boy, it's a little bit different  
21 for renters and owners. So owners, typically, if  
22 they're going to live there, usually they come  
23 straight in from the lawyer's office with their  
24 closing paperwork. I can verify everything right  
25 then. They give me their license, their proof of

1 insurance, their registration. We go ahead and get  
2 their decal put on their car. I have them fill out  
3 a gate registration form. We verify that, yes, they  
4 are the owner. We scan it. We e-mail it over to  
5 IMC. They have to go to IMC to purchase their cards  
6 to get in. For owners.

7 Renters, the only real difference is the  
8 landlord has to provide their lease and a national  
9 background check to us to verify they're a tenant.  
10 As far as decals and cards, it's the same process.

11 Q. And how does renter go in and get a decal?

12 A. They would come into the office,  
13 presumably --

14 JUDGE DUKES: Parking decal?

15 MR. SHELTON: Parking decal.

16 (UNDISCERNIBLE/Everyone speaking at once.)

17 MR. SHELTON: Yeah, parking decal.

18 THE WITNESS: They either bring the  
19 lease and national background check with them or  
20 their landlord has already provided it. It can go  
21 either way. They fill out the same form. They  
22 provide driver's license, registration for the  
23 vehicle, proof of insurance and they pay \$20 for a  
24 parking decal.

25 BY MR. SHELTON:

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1 Q. And do -- does -- do you automatically  
2 then transmit that information to the Park? To  
3 Westbury Park?

4 A. For the parking decal, no. I put it into  
5 our parking system. They have to provide all of  
6 their vehicle information on their gate registration  
7 form to get gate access.

8 Q. And what is done with that gate access  
9 registration form?

10 A. We scan it in and e-mail it to IMC.

11 Q. And then what happens?

12 A. That person has to go to IMC to purchase  
13 their card. And usually Kathy at IMC will call us  
14 or e-mail us an access code to give to the person.

15 Q. So you take the paperwork, you scan it in,  
16 you send it to IMC. Is there any follow-up to  
17 insure they've gone to get a card?

18 A. Not on my end.

19 Q. And are you confident that you have all

20 drivers registered in your system?

21 A. All?

22 Q. Yes.

23 A. It would probably be fair to say probably  
24 not all.

25 Q. And have you been -- do you regularly -- I

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1 want -- without using the word regularly, do you get  
2 e-mails from Phil Matteo regarding gate breaches or  
3 violations by someone who's gone through the Estate?

4 A. I do.

5 Q. How often does that happen?

6 A. It varies. Sometimes I might get three in  
7 one week. Sometimes I might go several weeks and  
8 not hear from Phil at all.

9 Q. And are you always able to identify the  
10 individual that has gone into the Estate?

11 A. No.

12 Q. Why not?

13 A. I couldn't identify every car that drives  
14 down my street. I mean, it could be somebody's  
15 visitor. I wouldn't know. We don't require every

16 person that drives in to stop in the office and give  
17 us their vehicle information.

18 Q. And do you -- when you receive a  
19 notification from Mr. Matteo as to an individual  
20 that you do identify, that you do know who they are,  
21 what do you do?

22 A. Typically, I -- well, first I give that  
23 information to Phil. I provided that to him. And a  
24 lot of times -- usually I'll send them an e-mail, a  
25 reminder. There was a specific incidence with a

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1 motorcycle guy. Sent him a reminder. Just because  
2 you can go around the gates, you are not supposed  
3 to. Please use the property access. There was one  
4 gentleman that kept breaching the gate. We went so  
5 far as we had him sent a letter from our attorney.

6 Q. When was that?

7 A. I can't give you an exact date. Within  
8 the last several months.

9 Q. Did he stop?

10 A. As far as I know.

11 Q. Did you ever do that prior to the  
12 institution of this lawsuit?

13 A. I don't know the answer to that.

14 Q. Do -- have you provided either IMC or the  
15 Park with all the information you have as to all of  
16 your drivers?

17 A. I have provided them all of the gate  
18 access cards that have been returned to me by  
19 drivers.

20 Q. Do you provide them -- I asked you a  
21 different question. I asked you have you provided  
22 the Estate -- excuse me -- the Park with all the  
23 information that you have as to all the drivers that  
24 are registered with the Estate?

25 A. No.

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1 Q. Why not?

2 A. Because their registered in our parking  
3 system. They would have to have access to that  
4 parking system to have that.

5 Q. So do they -- what mechanism do you have  
6 -- okay. Let me back up. When someone has a pass

7 code -- is that right, a pass code?

8 A. For the gate?

9 Q. For the gate.

10 A. Okay.

11 Q. That carries with them, correct? They can

12 use any vehicle to get in or out whether they have a

13 pass card or whether they have an emblem on the

14 front of their vehicle or not with that pass code.

15 Is that fair to say?

16 A. Correct. The code, yeah.

17 Q. I guess you could say the same thing for a

18 card, but the card would read who's coming in and

19 you would have knowledge as to who that card is

20 registered to.

21 A. True. But with a code, you would know who

22 that code is registered to as well.

23 Q. Okay. If you -- do you have knowledge of

24 how the system works?

25 A. Do I?

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1 Q. Yes.

2           A.    I have basic knowledge of how you bring  
3           somebody in with a code.

4           Q.    And do you take any measures whatsoever to  
5           see that your -- other than what you've just  
6           described, to see that your residents have a card?

7           A.    I tell them when they come in that it is  
8           highly suggested you go purchase a card. Codes are  
9           for you letting guests in. Cards is for you,  
10          yourself to use.

11          Q.    And you acknowledge that -- do you  
12          acknowledge that your rules and regulations, being  
13          you being the Estate, have a term that allows  
14          Westbury Park to regulate noise violations on their  
15          street?

16          A.    There is a clause in the rules that  
17          addresses noise from the time you enter the gate  
18          into Westbury Park. Yes.

19          Q.    And?

20          A.    I don't know that that gives Westbury Park  
21          authorization. I would have to read it, again.

22          Q.    And do you -- are you aware of a -- do you  
23          remember sending out some correspondence to your  
24          residents earlier this year as to your residents'  
25          requirement to abide by Westbury Park's rules and

1 regulations?

2 A. I sent out several of those e-mails, yes.

3 Q. And do you remember stating that we are  
4 bound by the rules and regulations of Westbury Park?

5 A. I can't tell you I remember stating that  
6 specifically.

7 Q. Do you dispute stating that?

8 A. That we are bound by their rules? I don't  
9 dispute that. You would be bound by their rules on  
10 their property. I don't dispute that. I would  
11 think I would actually say that. I just can't  
12 confirm it without seeing it.

13 Q. Thank you.

14 MR. SHELTON: Beg the court's  
15 indulgence.

16 JUDGE DUKES: Take your time. We're  
17 good.

18 BY MR. SHELTON:

19 Q. Do you as the manager believe that the  
20 entryway being a private, peaceful, attractive,  
21 residential neighborhood, whether that provides  
22 value to your residents?

23           A.    Our entranceway or Westbury Park's  
24           entryway?

25           Q.    The Park's entryway.

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1           A.    No.

2           Q.    Do you believe that it provides a value  
3           for you to be hidden from the main highway and  
4           aligned with a quiet, residential neighborhood?

5           A.    I'm not sure I understand the question.  
6           We're not only hidden behind their neighborhood.  
7           We're also hidden behind a business community. So  
8           either way, we're still hidden.

9           Q.    Do you believe that that provides value to  
10          your neighborhood?

11          A.    Possibly.

12          Q.    They say at Westbury you call yourselves  
13          the hidden jewel of Bluffton.

14          A.    We did.

15          Q.    Are you familiar with the meeting minutes,  
16          the historical meeting minutes of the Estate as  
17          manager?

18           A.    I'm familiar with some. I'm not familiar  
19           with minutes that took place before my arrival  
20           there.

21           Q.    Are you familiar with the offer at one  
22           point for Westbury Park to build a second gate into  
23           Estate along with Beaufort County?

24           A.    That the Estate made an offer to build?  
25           I'm not aware --

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1           Q.    No. I'm sorry. The Park made an offer to  
2           build.

3           A.    I'm not aware of that.

4           Q.    Have you reviewed the meeting minutes in  
5           preparation for this hearing or for prior to your  
6           deposition?

7           A.    I have not.

8           Q.    Have you reviewed the meeting minutes of  
9           the Estate of Westbury during your tenure as the  
10          community manager?

11          A.    I -- a lot of the minutes I typed up and  
12          made during my time as community manager. So, yes.

13          Q.    And how about the historical meeting

14 minutes. For example, minutes from ten years ago,  
15 eleven years ago.

16 A. No. I've not had the opportunity to do  
17 so.

18 MR. SHELTON: I'm going to reference  
19 Exhibit 2 to the plaintiffs memorandum in opposition  
20 to summary judgment and, also, memorandum in support  
21 of the temporary injunction. And I'm going to hand  
22 this -- is it okay for me to hand this to the  
23 witness, Your Honor?

24 JUDGE DUKES: Yeah. Tell me what's  
25 -- list it, again.

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1 MR. SHELTON: It is Exhibit 2 to the  
2 plaintiff's memorandum, supplemental memorandum and  
3 opposition to summary judgment and --

4 MR. FORD: I don't know what he's  
5 going to ask. I'd just like to reserve an  
6 objection. She said she hadn't read it. But go  
7 ahead.

8 MR. SHELTON: Correct.

9 JUDGE DUKES: So tell me that, again.

10 So, memo in --

11 MR. SHELTON: It's Exhibit 2. It is  
12 a -- of the plaintiff's memo in opposition to  
13 summary judgment and in support of the temporary  
14 restraining order. It's exhibit --

15 JUDGE DUKES: Was that the one  
16 e-mailed?

17 MR. SHELTON: It's -- it has -- it's  
18 the one that start off -- looks like this at the  
19 beginning, Your Honor. And the second exhibit is  
20 this.

21 JUDGE DUKES: Okay. Let me see.

22 MR. SHELTON: The first exhibit was  
23 the apartment covenants.

24 JUDGE DUKES: I think -- I think I  
25 have it. Anyway, go ahead.

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1 BY MR. SHELTON:

2 Q. Does this look like the Estate of Westbury  
3 letterhead?

4 A. It does.

5 Q. Is that the same letterhead you use today,  
6 more or less?

7 A. I believe so.

8 Q. And if you go down to proposed back gate  
9 entrance on the bottom this first page, do you see  
10 that, this Exhibit Number 2, the plaintiff's  
11 memorandum in -- supplemental memorandum in  
12 opposition to summary judgment and in support of  
13 temporary injunction?

14 A. I see it.

15 Q. Do you see that it states Westbury  
16 community has approached the Estates of Westbury to  
17 consider their offer to construct a back entrance  
18 and gate to the Estate citing the perceived benefits  
19 to our community. The board noted the negative  
20 effects far out way any benefits. And the Number 1,  
21 the Estates would presently have a positive  
22 selling/renting point to enter the Estate community  
23 through a private, peaceful, attractive residential  
24 neighborhood. We are the hidden jewel of Bluffton  
25 because we are hidden from the main highway and

1 aligned with a quiet residential neighborhood. A  
2 back gate will not enhance this.

3 Do you see that?

4 A. I see it.

5 Q. Do you agree with that statement from the  
6 board back in 2011?

7 A. Obviously, my opinion differs from theirs.

8 Q. Excuse me. 2010. I don't want to  
9 misquote. This is from 12/11/2010. I apologize.

10 A. I'm of a different opinion than they are?

11 Q. Did this -- your opinion's not the board  
12 opinion, correct?

13 A. I can only give you my opinion.

14 Q. Okay. But you're the manager. You're not  
15 part of the board, correct?

16 A. That is correct.

17 Q. Okay. Thank you. It also references on  
18 Number 3, the Estate will experience increased  
19 community through traffic generated from the  
20 Westbury community seeking a fast approach to  
21 Highway 278. Do you see that?

22 A. I see it.

23 Q. Even if it's directly at the back gate,  
24 will suffer loss of tranquility, privacy, vehicle

25 noise and possible reduction in property values.

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1 That's Number 4. Do you see that?

2 A. I see it.

3 Q. Do you know any of the individuals on  
4 Page 1, whether they are still a -- residents of the  
5 Estate?

6 A. Yes. Aldo Rocasano is still a resident.

7 Q. Out of the Estate permanent -- or full  
8 time residents, how many are renters versus owners?

9 A. I can't give you an exact figure because  
10 it's been probably a month or so since I did -- I  
11 can give you pretty close. It's 116 owner/occupied  
12 and 204 renters, I believe. That's real close to  
13 accurate.

14 Q. And you rely on the landlords to do the  
15 background checks; is that correct?

16 A. They have to provide us the results of the  
17 national background checks, yes.

18 Q. And do they do that for all occupants or  
19 simply for the applicant?

20 A. All occupants over 18 years old that are

21 owners.

22 Q. And do you have a mechanism of monitoring  
23 those occupants to determine whether they're  
24 actually the occupants over time?

25 A. I don't have an answer for you. Do we

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1 have a mechanism? We're very observant on the  
2 property. I keep an eye out. We follow traffic  
3 violations or traffic warnings. So if a car gets a  
4 warning, it triggers me to look at the license plate  
5 number. So I know somebody's parking there that's  
6 not registered. I also check in parking logs  
7 regularly, see if people are utilizing guest parking  
8 a lot. So there's several different way, yes, that  
9 we verify everybody's on the up and up.

10 Q. Is there anything that would prevent you  
11 from providing all of your drivers' information, all  
12 of it, including license plate, registration, et  
13 cetera, to the Park?

14 A. Anything that would prevent it? I mean,  
15 no, other than the daunting task of it.

16 Q. Explain that for me, please.

17 A. And you're asking me to go through every  
18 folder and pull out every single person's  
19 registration and driver's license and bio and form  
20 they filled out. And then it changes regularly. I  
21 mean, if we did it as they moved in, it wouldn't be  
22 a big deal. But it would be tough to go back and  
23 redo unless you -- they have access to our parking  
24 system.

25 Q. What do you mean it changes?

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1 A. Well, if somebody moves out late or  
2 somebody gets a new car or if they get a new plate,  
3 I mean, things like that change all the time.

4 Q. So, you're --

5 A. They let us know because they have to to  
6 keep their decals current.

7 Q. Do you not provide that information to the  
8 Park when it changes, when someone gets a new car or  
9 when someone gets a new license plate or  
10 registration?

11 A. They have to -- they were told to notify

12 IMC. Once we send the initial form, they're -- they  
13 deal with IMC. We verify this is a resident here.  
14 Now you're IMC's.

15 Q. So, if I move into the Estate in 2005 and  
16 I provide my registration form to you and then it  
17 goes to IMC, I purchase three vehicles since that  
18 time, different vehicles, IMC is not going to have  
19 any of that new information if I didn't go bring it  
20 to them myself.

21 A. If you renew your lease, they will because  
22 --

23 Q. Why?

24 A. -- you're going to have to fill out a new  
25 form when you fill out -- when you renew your lease.

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1 Q. Okay. Thank you.

2 A. Maybe not at the time you reregister your  
3 car. But at the time your lease expires, at least  
4 you would fill out a new form.

5 Q. And if I'm single, I have a girlfriend  
6 comes in, what about her?

7           A.    She would register in the parking system  
8           on -- you get online and you register your vehicle.  
9           You register it for up to three days.

10          Q.    And would she -- would her information be  
11          provided to IMC?

12          A.    If she didn't provide it, it wouldn't be.

13          Q.    So it would be up to her to provide it.

14          A.    No.  It would be up to -- if she was going  
15          to ask for a gate registration, but we can't monitor  
16          every time somebody let's a guest in with a code.  
17          That's why they have a code is so they can let their  
18          own guests in.  I can't monitor every single time  
19          somebody drives onto the property.

20          Q.    What if she's living with me?

21          A.    If she's living there, then we would have  
22          her vehicle information.  And she would have to  
23          provide that on the form that we give to IMC because  
24          the form asks for everybody in the unit.

25          Q.    So you -- if you have updated database of

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1           everyone in your system, is there anything that  
2           prevents you to giving that to IMC for -- on behalf

3 of the Park?

4 A. And as long as there wasn't any --

5 Q. Excuse me. Let me rephrase that. To IMC  
6 for the Park, I should say.

7 A. Yeah. As long as there wasn't any  
8 confidentiality issues, I don't -- I don't mind  
9 giving them that information.

10 Q. Okay.

11 A. We actually do give them that information  
12 on the forms that the people fill out.

13 Q. But that information may change over time  
14 and may be stale. Do you agree with that?

15 A. And it can be, yes.

16 MR. SHELTON: Thank you. Those are  
17 all the questions I have.

18 MR. FORD: And if we could just  
19 reserve the right to call her if we go forward. Can  
20 I ask her just one quick question without  
21 jeopardizing that?

22 MR. SHELTON: I not going to  
23 (inaudible) that.

24 BY MR. FORD:

25 Q. Ms. Prinsen, did there come a time when

1       Mr. Matteo came in and asked you for a list of  
2       Estate residents? And just tell the judge about  
3       that conversation, what you offered and how it went  
4       down, please.

5           A.    He came in. I believe it was either --  
6       I'm sorry. I believe it was either the second or  
7       the third time he came into the clubhouse. And he  
8       and I met. And he demanded I give him a list of all  
9       of our residents. And I said I don't think I can do  
10      that. Just because as a board member, I just don't  
11      think it's proper for me to give you that  
12      information.

13               And he said, well, people get put into the  
14      system, but the old people don't get taken out of  
15      the system. So we need the current people so we  
16      know who should be there and shouldn't be there.

17               And I said, well, as a board member, him  
18      being a board member, not I, I don't feel  
19      comfortable giving you that.

20               And he said, well, you'll give it to the  
21      management company and they'll give it to me.

22               And I said, no. Why don't you have the

23 management company give me all of the people that  
24 are in the database, and I'll take off all the ones  
25 that aren't here because I don't feel comfort giving

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1 that to a board member.

2 And he didn't like that answer. The  
3 meeting ended very abruptly.

4 MR. FORD: That's all I have for the  
5 moment on that. (Inaudible) and so on.

6 JUDGE DUKES: Anything else?

7 MR. SHELTON: No, Your Honor. Thank  
8 you.

9 JUDGE DUKES: All right. Thank you.

10 MR. FORD: -- you may not leave the  
11 premises.

12 THE WITNESS: Okay. Do I give these  
13 back to you?

14 MR. FORD: Yeah. Sure. Thank you.  
15 Thank you so much.

16 JUDGE DUKES: All right. Anything  
17 else from the Plaintiff?

18 MR. SHELTON: No, Your Honor. We'll

19 rest as to the temporary injunction motion.

20 JUDGE DUKES: All right.

21 MR. FORD: Your Honor --

22 JUDGE DUKES: -- hear any motions.

23 MR. FORD: -- at this point, I know  
24 directed verdict is not the right term. But the  
25 gist of it, I have witnesses I can put on and

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1 they're ready to go. But I would respectfully  
2 suggest, having heard the Plaintiff's best case,  
3 putting aside the issue of success on the merits  
4 which is one of the elements of a Rule 65 motion.  
5 There are two points, critical points they have not  
6 met. And those are the two I think I alluded at the  
7 outset.

8 One, there is no immediate harm. What  
9 they're asking Your Honor to do -- and it's a vague  
10 question. They're asking Your Honor craft a  
11 solution for what has been the status quo since  
12 1998. That is not immediate harm in any way of --  
13 or Rule 65 preliminary injunction temporary

14       restraining order. They want you to change it. And  
15       that's just, respectfully, to my friend Mr. Shelton,  
16       not correct for a preliminary injunction.

17               Second thing, there's no irreparable  
18       harm. And that is everything we've heard, damage to  
19       the gates, all this stuff can be fixed with money.  
20       The gates can be fixed. We heard how much they  
21       cost, about \$600 for an arm and so on. That can all  
22       be repaired with money. And, in fact, that's how  
23       it's often gone down.

24               So putting aside the likelihood of success  
25       on the merits which I think is what Ben and I are

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1       arguing about a lot, they fail in those two critical  
2       points. And I would respectfully suggest that their  
3       motion be denied and we move into the crux of it  
4       which is interpretation of the governing documents.  
5       It's just -- what are there as parties' rights under  
6       the easement. And that's kind of my motion at this  
7       moment.

8               JUDGE DUKES: All right. Thank you.  
9       I'm happy to hear from you, sir.

10 MR. SHELTON: Thank you, Your Honor.

11 Of course, we oppose this motion and ask the court  
12 to grant our motion or, at least, move to the next  
13 state of it, if you will, if that's appropriate.

14 We -- we're not asking the court to create  
15 anything that doesn't already exist. We're asking  
16 the court -- first of all, if you look at our -- the  
17 plaintiff's memorandum in support, if you look at  
18 Page 3, we cite 2.01 of the declaration of the  
19 apartments, establishment of restrictions. This is  
20 the section of the declaration, understanding that  
21 the headings don't necessarily have meaning, but I  
22 think they at least give us some guidance as to what  
23 the intent is. Establish the restrictions of the  
24 purpose -- and the purpose of restrictions of the  
25 apartment declaration.

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1 And it states, establishment of  
2 restrictions. Declarant, owner of the property  
3 whereby declares that the property is now held and  
4 shall forever be held, leased, hypothecated and --

5       excuse me. It's hard for me to speak with this mask  
6       on. And use subject to the restrictions set forth  
7       in this declaration.

8               And then if you go back -- and even -- and  
9       it goes on to -- let me paraphrase. Everyone who  
10      takes a part -- takes any property subject to this  
11      declaration, obviously, is agreeing to be adhered by  
12      it.

13             2.02, the purpose of these restrictions is  
14      to insure proper development and use of the property  
15      to be in keeping with the community-wide standards  
16      established for the Westbury Park community  
17      subdivision and the Westbury Park residential  
18      subdivision. The later of which is contiguous to  
19      the property.

20             So what are these community-wide  
21      standards. The community-wide standards which I  
22      believe is recognized by Ms. Prinsen stating that  
23      their residents are bound by Westbury Park's rules  
24      and regulations. The community-wide standards are  
25      to respect each others respective rights.

1                   Now, injunctions are absolutely  
2                   appropriately. Historical, our case law goes back a  
3                   very long time referencing a continual trespass as  
4                   being something that when otherwise it would be  
5                   subject to a civil action. It is something that's  
6                   appropriate for a court to enjoin.

7                   We have cited several cases to that point.  
8                   Some of those cases have to do with water  
9                   trespassing and it being released from a spillway.  
10                  But other trespasses are a little league game  
11                  constantly being played out, noise pollution in the  
12                  event -- and the violation people's peace and  
13                  sanctity because of this little league game. The  
14                  citation for that case is contained in our brief on  
15                  Page 5 -- if I talk slowly enough, I'll get there.  
16                  14th Carter v. Lake City Baseball Club 218 SC 255.

17                  And indeed, I believe that the language in  
18                  that case from 1950 South Carolina Supreme Court is  
19                  very instructive. While it is undoubtedly the  
20                  correct rule that a court of equity will not  
21                  interfere by injunction in cases of nuisances,  
22                  trespasses and like injuries to property when the  
23                  parties can have complete redress in a court of law.  
24                  Still it appears that irreparable mischief will be  
25                  done by withholding the process or where the damages

1       that will result through the complainants are  
2       incapable of being adequately measured or where the  
3       mischief is such from its continuous and permanent  
4       character that must occasion constantly occurring  
5       grievances which cannot be other prevented.

6               A court of equity ought to interfere by  
7       injunction to stay the wrong and protect the  
8       complainants property and personal rights from hurt  
9       or destruction. In this situation, we have Mr.  
10       Matteo who has testified that in this instance that  
11       they tried with the sheriff's office. They tried  
12       reaching out to the community manager. They tried  
13       everything that's within their power. They have  
14       gone after individuals. But the damage to the gates  
15       keeps happening.

16              The trespasses, when you push open a gate  
17       of someone elses property, we've established it's  
18       Westbury Park's property, that's a trespass. And it  
19       happens all the time. And how many times does it  
20       happen? It happens over 140 times that have been at

21       least documented by video evidence pursuant to  
22       Mr. Matteo's testimony since only the end of 2018.

23               And out of those documented instances,  
24       over -- I'll refer to the record for the precise  
25       number, but I believe it's over 130 where Estate

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1       residents, only three were Westbury Park residents.  
2       Westbury Park residents do not do it a second time.  
3       Why? Because they get fined. The rules and  
4       regulations are enforced and it's taken care of.

5               So, what are we asking for? I believe  
6       that this is a property conduct to be restrained. I  
7       think it's proper to restrain a continual trespass  
8       on someone's property that happens every day whether  
9       it being walking on sidewalks, walking on parks.

10               JUDGE DUKES: But who am I  
11       restraining?

12               MR. SHELTON: Exactly. Who are you  
13       restraining. Are you restraining the association?  
14       Are you restraining the individuals? And therein  
15       lies the issue. And I will absolutely under the  
16       court's issue. We'll -- I'll call it a conundrum

17 with that because the parties have the same  
18 conundrum.

19 Who are you restraining? We believe that  
20 the Estate by having -- if they have an easement,  
21 which they state that they do, a right-of-way  
22 through the property, they do have certain  
23 obligations to restrain their conduct on that  
24 right-of-way to ensure that their conduct that  
25 they're using that flows -- again, by these

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1 documents to their individual members, and those  
2 members and invitees, flows to them individually.

3 So, what can they do? I believe that it's  
4 within the court's power to state that, first of  
5 all, they should enforce their own rules and  
6 regulations and documents. And those rules and  
7 regulations and documents require them to, I  
8 believe, cooperate with Westbury Park.

9 They may say they're already doing this.  
10 And we will submit that it is getting better. It is  
11 getting better. However, the cooperation is but the

12 conduct is not getting better. Even since September  
13 2nd, there have been multiple incidences of people  
14 running through the side gate because they see that  
15 the arm's knocked down. This is a very dangerous  
16 situation that absolutely does call for the -- of  
17 the potential and likelihood of irreparable harm.  
18 We're talking about kids that are on this street.

19 So, what are we asking? And quite  
20 frankly, this is about something that would be much  
21 better if the parties can figure a way to work it  
22 out themselves and consent to it. I would be the  
23 first one to admit to that. We're asking for a  
24 ruling, Your Honor, and I have a proposed consent  
25 order here for Your Honor's edification to look at

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1 it if you'd like. We're asking for a ruling that  
2 forces the parties to provide -- share information.  
3 Both sides, not just one side? Both sides.

4 If they want our database, they get our  
5 database. If they -- we're entitled to get their  
6 information for who's driving through streets every  
7 single day. A requirement that if we have a

8 violation they'll recognize that if it happens on  
9 our property, we have a right to regulate our  
10 property. And we have a right to send them a  
11 violation. And then their residents have a -- have  
12 a responsibility to pay it.

13 If you look at the Harbor Island case,  
14 which I know Your Honor is familiar with, that case  
15 is -- the facts are a little different here, but a  
16 gate was placed on the easement. The subservient  
17 estate was available to put a fee on that -- put a  
18 fee as to each person that comes through that gate  
19 because while they had an easement, and for the  
20 edification, the easement was in place in that case,  
21 I believe, after -- placed after the declaration for  
22 the subservient estate. So the facts are little bit  
23 different here. I don't want to misquote the case.

24 However -- but it was clear in that case  
25 that the -- that the subservient estate had the

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1 right to very much regulate its -- anyone's conduct  
2 over its streets. And maybe we don't have a

3 disagreement there. I believe we do, but maybe we  
4 don't have a disagreement there.

5           The issues is that what their asking us to  
6 do is to have full-time security where we police the  
7 streets constantly, where every single time someone  
8 blows a stop sign, well, the right thing to do would  
9 be issue them a ticket. Well, that costs a lot of  
10 money. That has -- that is a huge burden on our  
11 property. We don't have those issues with our  
12 residents because we're able to send them a fine.  
13 We're able to send them a violation. The Estates  
14 have already established a precedent for working  
15 with Westbury Park in its -- and its enforcement of  
16 it's rules and regulations by stating within its  
17 rules that when there's a noise ordinance violation  
18 on that street, Westbury Park may send the Estate a  
19 notice of violation. And then their residents may  
20 be fined.

21           We're asking for the court to fashion  
22 procedure here out of necessity because there's  
23 nothing -- we have tried everything. And I believe  
24 we have to date to remedy the situation. That's why  
25 we're here today. It's really sad. These are two

1 neighborhoods that are right next to each other.  
2 But -- and we're asking the court to fashion  
3 something that is difficult for a court to do.  
4 However, I believe the testimony today and the  
5 evidence that's set forth plus precedent as to this  
6 continual trespass would be in place.

7 Now, another thing the court could  
8 consider is for a ruling, the Estate, that any  
9 Estate resident that is on Westbury Park property,  
10 that is a trespass. And Westbury Park would be able  
11 to then enforce that much more effectively whether  
12 it be through law enforcement, notices of trespasses  
13 being served on individuals to prescribe that  
14 conduct much better than they are today.

15 Similarly, you've heard testimony that  
16 presently when a -- when an Estate resident or guest  
17 pushes a gate, right now law enforcement is  
18 determining it is (inaudible) which is apt -- no  
19 offense to law enforcement. I love law enforcement.  
20 But oftentimes they don't want to get involved in  
21 what they can see is a civil -- is a potential civil  
22 dispute. They say, well, the gates there. They're  
23 an Estate resident. We're not going to do anything

24 with them even though they've bumped open the gates  
25 because they might have a right to be through -- go

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1 through there.

2 If we had a ruling that simple stated that  
3 no one is allowed to bump open the gate. The Estate  
4 residents are restrained from pushing into the  
5 gates, period. Then that would allow us to go to  
6 the law enforcement, which is what, I believe, in  
7 their briefs, the Defendants have requested and have  
8 suggested we do to be able to help prescribe this  
9 conduct.

10 The Plaintiffs are happy to submit a  
11 supplemental brief as to proposed remedies. But  
12 those are the remedies that I am proposing on behalf  
13 of the Estate. And I also have a proposed consent  
14 order that really goes -- sets forth a procedure for  
15 how we believe the -- this could be fashioned. At  
16 least a starting point.

17 JUDGE DUKES: Well, of course, the  
18 consent order requires a consent to --

19 MR. SHELTON: I absolutely -- it's a  
20 consent order. However -- but it is a -- I'll just  
21 strike out consent and say proposed order, Your  
22 Honor.

23 JUDGE DUKES: Okay.

24 MR. FORD: And they did send that to  
25 us. And we made a counteroffer which involved

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1 sharing all the information and cooperating. But  
2 they we -- they wanted more. So that's what that --

3 MR. SHELTON: Yeah. Yeah.

4 JUDGE DUKES: Okay.

5 MR. FORD: I'm sorry, Ben.

6 MR. SHELTON: Oh, no. That's fine.  
7 I believe we're done. I'll just believe that this  
8 -- the conduct that's described here certainly falls  
9 within the court's discretion and the intent of a  
10 temporary injunction order per our previous case law  
11 as to trespass.

12 We believe that every single time the gate  
13 is bumped into, particular -- especially every time  
14 the gate is broken, it is a trespass. Every single

15       time there's a resident on our common property  
16       that's not allowed to be there, it's a trespass.  
17       This happens as a continuous matter. And it was  
18       within the court's power to restrain. The question  
19       is how do we fashion a remedy. And I believe that  
20       is perhaps a separate issue.

21                       JUDGE DUKES: Thank you so much.

22       Yes.

23                       MR. FORD: Just briefly. I wrote  
24       down because one of the questions Ms. Tillman and I  
25       have had since they filed this in January is what do

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1       they want out of this motion because it doesn't look  
2       like anything I've ever seen. I've argued a lot of  
3       TROs and this is not that. And I finally found out  
4       they want Your Honor to order them to find a better  
5       way to police things. I respectfully submit that  
6       that is not a Rule 65 motion. They want Your Honor  
7       to create something.

8                       We have a lot of disputes as to the  
9       underlying obligations. And what I heard most

10 powerfully from Ben was his summary judgment  
11 argument. But Your Honor asked the right question.  
12 And what we've been asking ourselves is their  
13 problem is with a few lawbreakers. And we don't  
14 disagree with that. But their lawsuit is against  
15 the board. And we don't control the lawbreakers.  
16 Especially when they're not on our property.

17 So, I -- what I didn't hear was  
18 irreparable harm. And what I didn't hear was  
19 immediate harm because -- which is an unusual thing  
20 meaning this has been happening for a long time.  
21 And I think Mr. Matteo says, is it getting worse?  
22 No. Is it getting better? No.

23 So, there's no Rule 65 urgency here. And  
24 I would discourage Your Honor from writing a  
25 solution to this when I really believe this won't be

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1 solved until we get -- we get a common understanding  
2 of the easements and of the required streets and  
3 what the declarations mean.

4 And I would respectfully submit that the  
5 Rule 65 motion is inappropriate. Summary judgment

6 motion is entirely appropriate and really is the  
7 underlying premise that really should be decided  
8 before anything else is done.

9 Thank you, Your Honor.

10 JUDGE DUKES: Thank you all very  
11 much. So, with regard to the motion. I mean, I've  
12 heard enough to understand why it was brought. I  
13 mean, there's clearly a problem. But -- and the  
14 Plaintiff had to do something. But I find it hard  
15 to disagree with the logic of the Defendant that  
16 this is not a case where I can issue an order of the  
17 type requested by the Plaintiff.

18 I mean, this is not a status quo  
19 situation. The status quo is not what you want to  
20 preserve. You know, you want to -- you want to  
21 change. And so I think I'm going to deny the  
22 temporary injunction. I think a lot of this -- I  
23 mean, I think I heard agreements that neither of you  
24 were even aware were available just in the testimony  
25 today as far as shared databases, as far as

1       agreements on, you know, the boundaries of the  
2       easement and that sort of thing.

3               So, have you all picked a mediator, yet?

4               MR. SHELTON: We've been to mediation  
5       long ago.

6               MR. FORD: I don't know that it was a  
7       mediation. It was a lawyer's conference without a  
8       third-party neutral. And it was more just a brief  
9       discussion. I don't know --

10              JUDGE DUKES: Okay.

11              MR. SHELTON: And the frustration of  
12       it was, if we could just all speak openly, the  
13       primary discussion was what Westbury Park wants us  
14       to create a whole new entrance. And that -- and we  
15       just couldn't get -- I don't want to go into it too  
16       much.

17              But -- you said that in your papers. What  
18       they really want, and that's the 800-pound whatever  
19       is 800 pounds. They want us to create a separate  
20       entrance and do that and not come through and close  
21       this off. That's what we couldn't get them off of.  
22       So that's why we need to understand both sides'  
23       rights under the easements. And we just have a  
24       common disagreement, legally as to what those are.  
25       And so we started out with a mediation or a

1       whatever.

2                       JUDGE DUKES:  Because, I mean, a lot  
3       of persons share databases and some agreement.  You  
4       know, and, again, I don't know about this other  
5       easement issue or access issue.

6                       MR. SHELTON:  They want us out.  
7       That's what they want.

8                       JUDGE DUKES:  Well --

9                       MR. FORD:  They had the opportunity  
10      -- they -- I think theres lots of -- lots of old  
11      frustrations with the fact that there could have  
12      been a remedy fashioned about ten years ago that was  
13      essentially free.  And this is something that, why  
14      can't that happen again is a understanding that our  
15      folks have a very hard time coming off of which I  
16      believe is understandable particularly when you hear  
17      the testimony today of the ongoing issues.  We see  
18      this as -- we see this as the only discernable  
19      long-term solution for the peace and quiet of both  
20      neighborhoods, quite frankly.  There's a  
21      disagreement there.

22                   But if you look at the Estate of  
23           Westbury's memorandum as to -- or their board notes  
24           as to why they rejected the offer of essentially a  
25           free entrance and a free gate, maintaining the other

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1           gate, it is all the reasons -- it's everything that  
2           Westbury Park deals with on a daily basis from  
3           Estate traffic.

4                   So that's background. It's not really  
5           argument. I don't --

6                   MR. SHELTON: I've got more to say,  
7           but let's --

8                   MR. FORD: Yeah. Yeah.

9                   MR. SHELTON: -- not.

10                  MR. FORD: All right. Go ahead.

11                  JUDGE DUKES: Okay. That's why you  
12           haven't been able to come together.

13                  MR. FORD: Correct.

14                  MR. SHELTON: Right. They want us to  
15           get a whole new entrance and we have things to say  
16           about that that I won't. That's that.

17 JUDGE DUKES: But again, I think I'm  
18 going to grant the, for want of a better term,  
19 directed verdict motion on the temporary injunction  
20 and just ask you all to continue to try to work  
21 together toward some solution because I heard a  
22 whole lot of good stuff on ways to bring some of  
23 these problems to a conclusion. I mean, nobody  
24 wants -- I don't think the Defendant was ever  
25 arguing that it's okay to knock the gate over or to

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1 push the gate up, to go around the gate, to make  
2 noise. I mean, there's consensus on all this. It's  
3 just a matter of enforcing it and prevention.

4 MR. FORD: And obviously, presently  
5 at issue is the cooperation side of this and then  
6 the burden of that administration which is on their  
7 property, the burden of it completely falls on my  
8 client. And as well as -- and the assessment is not  
9 being paid, not only for that burden but also for  
10 the use and also the maintenance thereof.

11 JUDGE DUKES: Right.

12 MR. FORD: Any assessment. Nothing.

13       Period. For over -- almost two years now. So,  
14       actually, two years next month. So, that is -- that  
15       is --

16                   JUDGE DUKES: It is a problem --

17                   MR. FORD: -- also a major issue.

18                   JUDGE DUKES: -- I grant you. I'm  
19       guessing there are reasons that --

20                   MR. SHELTON: We have a response to  
21       that.

22                   JUDGE DUKES: Yeah. But -- okay.  
23       All right then. Do you all want to break before we  
24       launch into the partial summary judgment?

25                   MR. FORD: I'm going to turn that

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1       over to Ms. Tillman.

2                   JUDGE DUKES: Okay.

3                   MR. FORD: She's the easement guru.

4                   JUDGE DUKES: Well, let's take a  
5       ten-minute break or so, fifteen, and we'll launch  
6       into that. Thank you.

7                   (BREAK TAKEN)

8 JUDGE DUKES: We're back on the  
9 record in 2020-CP-07-00158, Westbury Park versus the  
10 Estate at Westbury. And we have now come to the  
11 part of today's hearing where we're going to hear  
12 the Defendant's motion for partial summary judgment.  
13 And I'm happy to hear from you.

14 MS. TILLMAN: Yes, Your Honor. May  
15 it please the court. I'm Ainsley Tillman, and I  
16 represent the Defendant, the Estate of Westbury.  
17 And we have brought a motion for partial summary  
18 judgment.

19 Your Honor has heard some testimony this  
20 morning about the different parties' opinion about  
21 the nature of the relationship between the  
22 communities. And respectfully, Your Honor, the  
23 relationship between the communities was  
24 contractually determined more than 20 years ago by  
25 the developer of the Westbury Park development.

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1 And so, the rest of our argument today is  
2 we're seeking a ruling from this court that will  
3 give direction and definition in this lawsuit going

4 forward as to the various causes of action, some  
5 counterclaims as well as the Plaintiff's causes of  
6 action that can be determined by Your Honor without  
7 any question of disputed facts because they involve  
8 the interpretation of contracts. And the  
9 interpretation of recorded instruments, covenants,  
10 conditions and restrictions that run with the land  
11 which are in the nature of contracts and which are  
12 questions of the law for this court, also, deeds.  
13 Again, questions of law for this court as to the  
14 interpretation of them.

15 And so it is only as to those causes of  
16 action that we are seeking a judgment from Your  
17 Honor today.

18 And you've heard a little bit about the  
19 background already this morning. But I wanted to go  
20 into more detail on it. In the 1990s, the developer  
21 of this -- well, a developer called Plantation  
22 Property, LLC purchased a large tract of property in  
23 the Bluffton area. And the developer had a vision  
24 for that land tract. And it (inaudible) hold a  
25 commercial component, a single-family residential

1 component and a multi-family residential component.

2 And as developers do, the developer  
3 implemented his plan first by creating a master plan  
4 for the development. And that's Exhibit 1 to our  
5 memorandum in support of motion summary judgment.  
6 It is also the piece of paper that I passed up to  
7 you earlier. That is it. Yes, Your Honor.

8 And this master plan indicates the  
9 developers intent. You can see all this shaded area  
10 in the master plan is the property that was owned by  
11 the developer of Plantation Properties. And you can  
12 -- if you're looking at the -- if you're looking at  
13 it with Westbury Park, the writing, written in the  
14 upper right-hand corner and you look in the upper  
15 left-hand corner, you can see the commercial  
16 component.

17 And then the rest of the tract sort of is  
18 single-family residential component. But then in  
19 the middle is -- and the single-family residential  
20 component (inaudible) is the Plaintiff in this  
21 lawsuit.

22 And then the multi-family residential  
23 component is the Defendant in the lawsuit, the

24 Estate of Westbury.

25 And one thing needs -- immediately becomes

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1 apparent in looking at this master plan by the  
2 developer is that the multi-family residential  
3 component is landlocked. It is in the midsts of the  
4 single-family residential property. It is bound on  
5 the other side by a business park that's owned by  
6 someone else. And behind it is marshland. And I'll  
7 get to that later.

8 But -- so the developer had this large  
9 tract of land and he imposed on it, as he was  
10 developing it, various declarations of covenant  
11 conditions, restriction and easements that went  
12 along with the different components.

13 So the commercial tract, before he  
14 conveyed it, he subjected it to covenants and  
15 conditions. And then -- and that was actually the  
16 first component of his development.

17 The second component was what was then  
18 referred to as Palmetto Lake Apartment. And that is  
19 the Defendant. The Estate at Westbury's predecessor

20 in title. And the Palmetto Lake Apartment was his  
21 second component of his development. And so while  
22 he still owned the rest of the property, he created  
23 a declaration that would run with the apartment  
24 parcel. This is how it was referred to. And that  
25 is Exhibit 2 to our memorandum in support of our

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1 motion for partial summary judgment which is the  
2 declaration of covenants, conditions, restrictions  
3 and easements for Palmetto Lakes Apartments at  
4 Westbury Park.

5 And I've thought about how to go through  
6 this argument which is sort of long and clunky. And  
7 I think the best way to do it is cause of action by  
8 cause of action.

9 And our first counterclaim on which we are  
10 seeking judgment for this court -- from this court  
11 is our counterclaim for declaratory judgment that  
12 the Defendant, the Estate of Westbury, has a -- an  
13 appurtenant easement over the streets that are the  
14 subject of this litigation.

15                   And so as to that particular counterclaim,  
16           the way that you would discern or if Your Honor  
17           would determine that the nature of the easement  
18           would be with reference to the easement grant.

19                   And in this case, the easement grant was  
20           from the developer who was the owner of the entire  
21           tract to the Defendant's predecessor in title. And  
22           it's contained on Page 7 of that declaration of  
23           covenants for Palmetto Lake Apartments which is  
24           Exhibit 2 to our memorandum.

25                   And, Your Honor, I will read it to you

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1           because we're going to look at the grant. And then  
2           we're going to look to see whether it meets the  
3           elements for an appurtenant easement. And we're  
4           going to determine the intent of the grantor from  
5           those words.

6                   And so, what the developer granted --

7                   COURT REPORTER: Judge, I need her to  
8           speak up a little bit.

9                   JUDGE DUKES: Yeah. Could you speak  
10          --

11 MS. TILLMAN: I know. I'm so sorry.

12 It's the mask.

13 JUDGE DUKES: That's all right. I

14 know. They're horrible.

15 MS. TILLMAN: And if you need me --

16 if you have any questions or you need me to repeat

17 anything, please let me know because this dense

18 material to go through.

19 But the -- so, the easement grants are

20 contained within Section 7.02 of the declaration

21 which is Exhibit 2 to our memorandum in support.

22 And I should rewind a little and say that the terms

23 that are being used as they're (inaudible) they're

24 defined within the declaration.

25 And one of the terms that's used in the

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1 easement grant is owner. And the owner is defined

2 in the early part of the declaration as the owner of

3 the interest in the property.

4 And the property is defined as what is now

5 the Defendant condominium regime parcel, the

6 predecessor in title. The -- and if you look at the  
7 master plan, it is the -- I'm not sure how to  
8 describe it without pointing to it. But this is the  
9 property. And there's a property description as  
10 well at the end. It's the 20-acre parcel that is  
11 the predecessor in title to -- I can't say the  
12 Defendant, but to the Defendant's individual members  
13 who are all owners of individual condominium  
14 interests.

15 And if you have a question about that, I  
16 can -- I'd be glad to clarify. But for the purpose  
17 of this argument, the owner is the predecessor in  
18 title to the Defendant in this instance.

19 And so the easement grants stated that  
20 subject to the provisions hereof and the  
21 restrictions contained in Subparagraph 7.02(a), and  
22 the restrictions pertain actually to the commercial  
23 property so there are nine relevant now, the owner,  
24 its successors and assigns, owner's tenants, all  
25 guests and invitees of the tenants and owners, all

1 employees, contractors, its suppliers, vendors and

2       representatives of the owner and all other persons  
3       who reasonably need, on owner's behalf, access to  
4       the property shall have a right in easement of use  
5       of this certain easement as hereinafter more fully  
6       described.

7               And then you turn to the next page where  
8       the hereinafter and more fully described which is  
9       Subparagraph 8. And I won't read the whole thing.  
10      But it -- the first sentence of it says that the  
11      grant is a perpetual, non-exclusive right for  
12      vehicular and pedestrian access over and across  
13      Westbury Park Way from its intersection with U.S.  
14      Highway 278 and its intersection with Kensington  
15      Boulevard.

16             And then the second easement grant are the  
17      recurrent concern with here today is Subparagraph  
18      (b). A perpetual non-exclusive right for  
19      vehicular/pedestrian access over and across  
20      Kensington Boulevard from its intersection with Buck  
21      Island Road to its intersection with the property.  
22      And those were the streets that are the subject of  
23      this litigation.

24             In order to discern the intent of the  
25      grant, I'm able to see whether it meets the elements

1 of an appurtenant easement. And we know from South  
2 Carolina Law that an appurtenant easement adheres in  
3 the land. It runs with the land. It is necessary  
4 for the use and enjoy of the property. It has a  
5 terminus on the land that the party that is claiming  
6 it.

7 And those are the elements of an  
8 appurtenant easement. And the declaration which  
9 contains the grant, at the very beginning of it, it  
10 talks about how it's intended to run with the land.  
11 And so we know that it is -- it concerns the  
12 premises. It is adheres with the land. And we know  
13 that it has a terminus in the land of the party  
14 claiming it because it runs to a landlocked parcel.  
15 That's where it ends. Those street -- goes to the  
16 Defendant's property and it ends there. It has a  
17 terminus.

18 And then we know that it is essentially  
19 necessary for the enjoyment of that property because  
20 it is clear from the developer's master plan that  
21 the property would otherwise be landlocked and the

22 residents of the apartment parcel would have no  
23 access to their property.

24 And so we're asking the court, first --  
25 Your Honor, first to find that the clear language of

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1 the apartment declaration conveys an appurtenant  
2 easement over the streets that are the subject of  
3 this litigation. And that's the -- not only the  
4 clear language of the granting language, but, also,  
5 there's an additional reason that we -- the  
6 Defendant has an appurtenant easement, and that's  
7 just the common law in South Carolina which says  
8 that any owner who purchases with reference to a  
9 plat and the plat depicts easements, that person  
10 acquires every interest that's depicted on the plat.

11 And the successors in title to the owner  
12 -- and I guess I should go a little bit just real  
13 quick into the chain of title. The owner under the  
14 apartment declaration then conveyed it to another  
15 entity who conveyed it to another entity who  
16 developed it into condominiums. And we'll hear a  
17 little bit about that later.

18                   Once the property was developed into  
19                   condominiums, there was a master deed that was  
20                   created. And then, as you know, every purchaser of  
21                   a condominium unit acquired a fee simple interest  
22                   and they sort of sliced up the property. And so the  
23                   individual unitholder were owners within the  
24                   Defendant condominium (inaudible) were already  
25                   successors in title to the owner.

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1                   And so each of those -- and, also, the  
2                   Defendant is a successor in title to the owner  
3                   because the Defendant owns the common area that is  
4                   within the condominium regime. So it also has  
5                   standing here to make this argument.

6                   And that is that as each of these  
7                   individual unit holders and the Defendant acquired  
8                   their title to their property, there was a property  
9                   description in their deed. And the deed references  
10                  a plat. And the plat is Exhibit 7 to our memorandum  
11                  in support for our motion for partial summary  
12                  judgment.

13                   And this one, Your Honor, if you have the  
14           capability to blow it up on your computer, it has  
15           language within the plat that references that the  
16           access for the property which is otherwise  
17           landlocked is by Westbury Parkway, Kensington  
18           Boulevard and another street called Arly Way that is  
19           not the subject of this litigation. And that is  
20           under -- it's within the notes. And it also shows  
21           the street, Kensington Parkway. But it also  
22           specifically says in the plat what the intended  
23           access road parcel is.

24                   And so every owner who purchased with  
25           reference to this plat, which is part of the

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1           property description from the inception of this  
2           property, would have acquired every interest on that  
3           plat. And that's the Blue Ridge case and the  
4           Carolina Land case and that slew of cases that's  
5           long-standing property law. And so alternatively or  
6           in addition, we're asking for a ruling from Your  
7           Honor that (inaudible) owner including the Defendant  
8           has an appurtenant easement over the streets that

9 the subject of this litigation, Westbury Parkway and  
10 Kensington Boulevard.

11 And then alternatively, also, we're asking  
12 for declaratory judgment from this court that in  
13 addition to the plain language of the -- this grant  
14 easement grant and the plat, if Your Honor is still  
15 not convinced, we would believe we meet every  
16 element of an easement by necessity, if it comes to  
17 that. And the elements of an easement by necessity  
18 would be that there was unity of title, there is  
19 severance of title and the way is essentially  
20 necessary to the enjoyment of the separate tract.

21 And in this instance, we know that the  
22 developer once owned all of this property. There  
23 was unity in title and that he severed -- or it,  
24 more correctly, severed the apartment tract which is  
25 the predecessor to the Defendant. And if he did so,

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1 without creating an access, which he did, but if  
2 this court needs additional convincing then it -- by  
3 severing that tract from the larger tract he --

4       there would be by necessity an easement created for  
5       access to that tract.

6               And so those are sort of the easement  
7       causes of action on which we're seeking a judgment  
8       from -- a declaratory judgment from Your Honor. And  
9       that they -- there is -- there is easement already  
10      been dovetailed with the Plaintiff's causes of  
11      action that correspond to the easement. And that  
12      the Plaintiff has asked for a ruling from this court  
13      that no easement exists. And our argument is that,  
14      yes, the plain language of the documents and the  
15      master plan and just the common law of South  
16      Carolina make it clear that an easement does exist  
17      and it's an appurtenant -- it's a perpetual  
18      easement.

19             So that's the Plaintiff's burden, cause of  
20      action and we're asking Your Honor to rule in our  
21      favor in summary judgment on that. And that  
22      concerns-- that third cause of action also has a  
23      component asking this court to require that  
24      alternate access be found, that Your Honor -- or we  
25      contend that that's not necessary because there is

1 access. The access is the planned access by the  
2 developer over Kensington Boulevard and Westbury  
3 Parkway.

4 And the Plaintiff's fourth cause of action  
5 is for a ruling from this court that the easement is  
6 in gross. And my understanding that the Plaintiff's  
7 argument on that cause of action is that it goes to  
8 necessity. And that because the Plaintiff contends  
9 that this access isn't necessary, then it would only  
10 be in gross.

11 And for all the reasons that I just stated  
12 but, also, by the obvious depictions on the plats,  
13 including our Exhibit 7 which showed the property as  
14 landlocked and with property owned by others and  
15 marsh behind it and it is clear from the recorded  
16 instruments that, indeed, the easement is necessary  
17 for access.

18 And the Plaintiff has talked about an  
19 alternative access that was proposed by the  
20 Plaintiff in 2010 and involved getting permission  
21 from the county and doing all kinds of -- maybe from  
22 the Army Corp of Engineers and it was never a  
23 concrete other access. It was an idea.

24 And for purposes of this court's

25 determination of whether the easement that the

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1 Defendant holds is appurtenant or in gross, it would  
2 look to the time and place that the easement was  
3 conveyed. And that was in 1998 when the developer  
4 conveyed it. And at that time, it was necessary.  
5 And hypothetical other access in 2010, 12 years  
6 later, wouldn't go to the question of whether the  
7 easement was appurtenant or in gross.

8 And so, we're asking Your Honor to grant  
9 us summary judgment as to the Plaintiff's fourth  
10 cause of action as to the easement is appurtenant  
11 and not in gross.

12 And then similarly -- well, the Plaintiff  
13 has asked -- or has a cause of action invoking the  
14 equitable doctrines of hardship or change in  
15 conditions. And we're asking for summary judgment  
16 in our favor as to that cause of action which is the  
17 Plaintiff's seventh cause of action.

18 And the reason for that is if you  
19 carefully read the Plaintiff's complaint on that

20 cause of action, it becomes readily apparent that it  
21 there is any hardship on the Plaintiff or if there  
22 is -- there is -- if this easement is a burden on  
23 the Plaintiff, which is what the Plaintiff contends,  
24 that is not the Defendant's problem.

25 The Plaintiff's real complaint lies with

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1 the developer. The developer was the architect of  
2 this community. It designed the access as over  
3 Kensington Boulevard. And the Plaintiff and every  
4 single one of its voters within that single-family  
5 residential component of the subdivision took title  
6 (inaudible) with knowledge of that easement's  
7 location. And with knowledge of the terms of the  
8 Plaintiff's own declarations which was imposed by  
9 the same developer.

10 And that is Exhibit 4 to our memorandum in  
11 support of our motion for partial summary judgment.  
12 And that's the Plaintiff's declaration. And the  
13 Plaintiff's declaration which run with title to all  
14 the lots in the Plaintiff's subdivision is very  
15 clear about what the developer's plan for the

16 community was. In fact, the master plan, which is  
17 Exhibit 1, was -- is attached. If you scroll to the  
18 very end of the very lengthy Plaintiff's  
19 declaration, the master plan is an exhibit to the  
20 Plaintiff's own declaration. And the master plan is  
21 referenced throughout the Plaintiff's own  
22 declaration, frequently.

23 Then, not only is the master plan  
24 referenced throughout the Plaintiff's declaration,  
25 and in my memorandum, I've quoted certain excerpts

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1 from the Plaintiff's own declaration. But the  
2 developer's vision for the property is reverberated  
3 throughout the Plaintiff's declaration.

4 And I may be a little stalling for time  
5 until I can find the sections that I have. This is  
6 a lot of paper, Your Honor. Forgive me.

7 The Plaintiff's declaration references the  
8 apartment parcel which is the Defendant property.  
9 And it talks about -- it specifically splits the  
10 apartment parcel from the confines of the

11 Plaintiff's declaration.

12 And it then goes on to define the required  
13 streets. And required streets is a term that's  
14 found in the Defendant's declaration and in the  
15 Plaintiff's declaration. And it's specifically  
16 defined as the streets that are required for the  
17 access to the Defendant parcel. Kensington  
18 Boulevard and Westbury Parkway and the Plaintiff's  
19 own declaration gives notice to every owner who buys  
20 a lot within the Plaintiff subdivision that the  
21 required streets are within the maintenance area of  
22 common responsibility of the Plaintiff.

23 And that this was the developer's plan.  
24 It's Section 7.2. I quote it on Page 27 of my  
25 memorandum.

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1 I don't know how many different things  
2 Your Honor has in front you, but 7.2 of Exhibit 4,  
3 section, says that the association, and this refers  
4 to the Plaintiff, subject to the rights of the  
5 owners, shall manage and control the common area and  
6 all improvements thereon and shall keep it in good,

7 clean, attractive and sanitary conditions, order and  
8 repair, which shall include, but need not be limited  
9 to, (a), all the landscaping and other floral,  
10 parks, lakes, signs, structures, improvements and  
11 bike and pedestrian pathways; and, (b), all streets,  
12 specifically including the required streets within  
13 the property and all street lights and signage.

14 And so the Plaintiffs and all of their  
15 members took title to their property with, at least,  
16 constructive notice that one of their  
17 responsibilities in owning property within that  
18 Westbury Park subdivision was going to be to  
19 maintain the required streets.

20 And that was the developer's plan all  
21 along. The developer, also, within the apartment  
22 declaration, which is Exhibit 2, discussed this  
23 vision for the maintenance of the required streets.  
24 And that is, if you'll look, at Section 8.01. It  
25 goes to the assessment which we will talk about in a

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1 minute. But importantly, the last sentence within

2 Section 8.01 is the developer talking about its plan  
3 for maintenance.

4 And it says the reasonable care and  
5 replacement of the required street and landscaping  
6 within the Westbury Park residential area shall  
7 remain the responsibility of the Westbury Park  
8 Residential Association. And a reasonable -- well,  
9 then the second part says the maintenance of the  
10 streets with the commercial area remains the  
11 responsibility of the commercial association, which  
12 is not a party to this litigation.

13 But, Your Honor, the Plaintiff simply  
14 cannot contend that there is any relative hardship  
15 in maintaining streets that it has always known that  
16 it was its responsibility to maintain. And the  
17 doctrine of relative hardship is also an equitable  
18 remedy. And equitable remedies are not available  
19 when the parties are -- remedies are set forth in a  
20 contract. And in this instance the rights and  
21 obligations of the Plaintiff and the Defendant are  
22 very clearly set forth by the developer in these  
23 covenants that run with the land.

24 One of those obligations was the  
25 obligation on the part of the Defendant to pay and

1       assessment for 20 years that added up to a total of  
2       \$1.3 million. And the purpose of that was for its  
3       share of the maintenance of those streets. And so,  
4       therefore, there is a remedy. And there is a  
5       recourse to the hardship the Plaintiff claims. And  
6       that is the assessment was paid. It's been paid.  
7       That money has been paid to the developer and also,  
8       ultimately, to the Plaintiff. And I will get into  
9       that in my discussion of the next cause of action.  
10      But just because the Plaintiffs have knowledge of  
11      their responsibility when they took title to their  
12      property, we're asking Your Honor to find in our  
13      favor on that -- the Plaintiff's seventh clause of  
14      action for a change of condition or relative  
15      hardship.

16                 Sorry. One last on that -- on that  
17      particular cause of action because, again, many of  
18      the Plaintiff's causes of action seek to deprive the  
19      members of Defendant of access to their property.  
20      The design of this lawsuit is to, if the Plaintiff  
21      had its way, to require the Defendant to find other  
22      access to their property. They don't like our

23 people coming down their road.

24 And so the final reason that this court  
25 should not find that there's been any relative

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1 hardship or change in condition that would require  
2 the Defendant to seek other access is that the  
3 Plaintiff has only sued the horizontal property  
4 regime. And this court can't divest our 320  
5 individual property owners of their property  
6 interest in access to their property in the way that  
7 this lawsuit is designed. Those property owners are  
8 not -- are not named parties in this case. And they  
9 all have a property interest in that easement which  
10 can't -- cannot be divested without due process of  
11 law. So that's just one more reason that this court  
12 should find in the Defendant's favor as to the  
13 seventh cause of action brought by the Plaintiff.

14 So this is sort of the easement increments  
15 or causes of action on which the Defendant is  
16 seeking summary judgment from Your Honor. We also  
17 have causes of action that there are to be