EXHIBIT B 90051

RECEIVED
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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 19 2019
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310

Ex Parte, Ryan Powell ..... Appellant,

In re LB PARK, LLC ..... Respondent,

v.

San Juan Holdings, Brett Osborne trustee, et al. ..... Respondents.

MOTION TO DISMISS APPEAL

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

BACKGROUND

On January 25, 2019, LB PARK, LLC filed this action pursuant to S.C. Code Ann. §§ 12-61-10 to -60 for the purpose of clearing title to real property known as 25056 Timberlake Drive, York County, South Carolina, tax map number 643-10-01-023. (Complaint attached as Ex. 1). On April 8, 2019, Appellant Ryan Powell ("Powell"), a non-party to this action, filed a motion to dismiss or intervene. (Attached as Ex. 2). On May 1, 2019, LB PARK, LLC filed a motion for an order of reference. (Attached as Ex. 3). Both motions were heard on May 30, 2019. The Circuit Court denied the motion to dismiss and granted the motion for order of reference in separate orders filed May 31, 2019. (Orders attached as Exs. 4 and 5). The Court's full ruling with respect to Powell's motion is "[a]fter consideration, the Court denies the Motion to Dismiss that was filed on April 8, 2019, it is so ordered." There is no mention of the request to intervene. These are the orders referenced in Powell's Notice of Appeal. Neither order is appealable.

ARGUMENT

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

Generally, the denial of a motion to dismiss under Rule 12(b)(6) is not immediately appealable. *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *McLendon v. South Carolina*

Dept. of Highways and Public Transportation, 313 S.C. 525, 443 S.E.2d 539 (1994); *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986). The same should apply here. The order merely denies the motion to dismiss. It does not finally decide any matter with respect to this case, nor does it mention the motion to intervene.

With respect to the order of reference, the order does not deprive Powell of any mode of trial to which he might otherwise be entitled. "Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one." *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). "Hence, the issue before the Court is whether the appellant is entitled to a jury trial as a matter of right. If [h]e is not, the appeal should be dismissed." *Id.*

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

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

Id. Additionally, an action concerning the validity of a tax sale is an action in equity. *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 51, 168 S.E.2d 793, 793-94 (1969) ("An action to remove a cloud on and quiet title to land is one in equity.")); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings,* 137 S.C. 450, 135 S.E. 558, 562 (1926) ("A court of equity has

jurisdiction to remove a cloud upon title.") (internal citations omitted). As such, the order granting to motion for reference is not immediately appealable.

CONCLUSION

For these reasons, this appeal should be dismissed at this time.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Respondent
LB PARK, LLC

June 17, 2019

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-_____

LB PARK, LLC,

Plaintiff,

vs.

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

Defendants.

SUMMONS
(Non-Jury)

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

EXHIBIT 1

s/ A. Parker Barnes III

A. Parker Barnes III
SC Bar No. 68359

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

January 25, 2019

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-_____

LB PARK, LLC,

Plaintiff,

vs.

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

Defendants.

COMPLAINT
(Non-Jury)

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

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

The Property

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

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

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

TMS# 643-10-01-023.

Parties

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

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

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

6. Plaintiff is informed and believes that the Osborne Notice did not convey title or any other interest in the Property and that, after the Osborne Notice was recorded, title to the Property

remained vested in San Juan. However, Plaintiff has named Osborne as a party to extinguish and eliminate the Osborne Notice as a cloud, impediment, or encumbrance upon the title to the Property.

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

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

FIRST CAUSE OF ACTION
(Action to Quiet Tax Title)

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

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

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

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

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

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

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

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

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

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

14. Plaintiff is informed and believes that by reason of the Tax Deed conveyed to SB MUNI by York County in strict compliance with the controlling tax sale statutes and the subsequent quitclaim deed to Plaintiff, Plaintiff is the owner of marketable fee simple title to the Property without regard to any outstanding or adverse claims of interest of any of the defendants, and that Plaintiff is entitled to an order of this Court declaring and confirming that its title is free and clear of such adverse lien interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants.

15. Plaintiff is further informed and believes that upon the Court's issuance of its order declaring and confirming that Plaintiff's title is free and clear of such adverse interests and

encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants, Plaintiff is entitled to immediate possession of the Property, and that any tenants or parties in possession of the Property, must be evicted from and vacate the Property within a reasonable time to be determined by this Court.

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION
(Reformation of Tax Deed)

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

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

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

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

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

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

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

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

3. With respect to Plaintiff's Second Cause of Action, Plaintiff prays that judgment be entered declaring and reforming the Tax Deed, the quitclaim deed to Plaintiff, and all

previous deeds in the chain of title to reflect the correct recording information for the Plat, which is Plat Book 73 at Pages 23-26.

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

s/ A. Parker Barnes III
A. Parker Barnes III
SC Bar No. 68359

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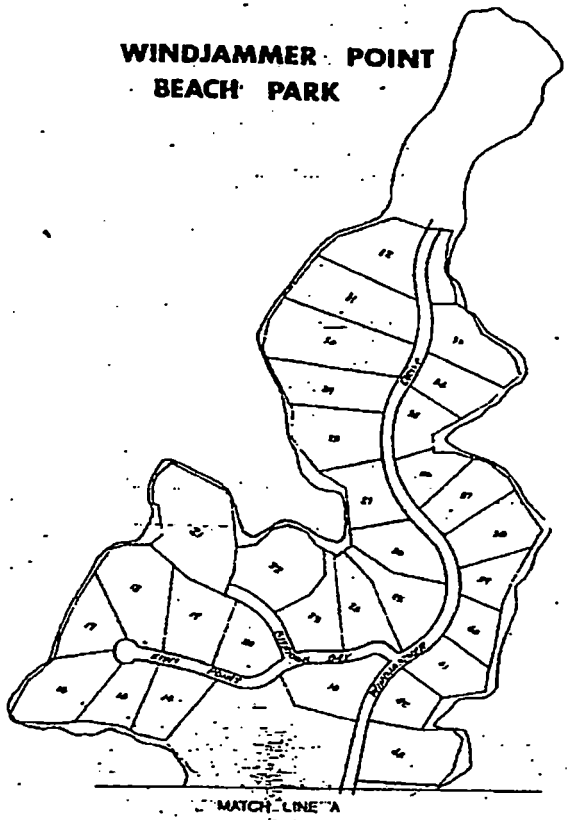
January 25, 2019

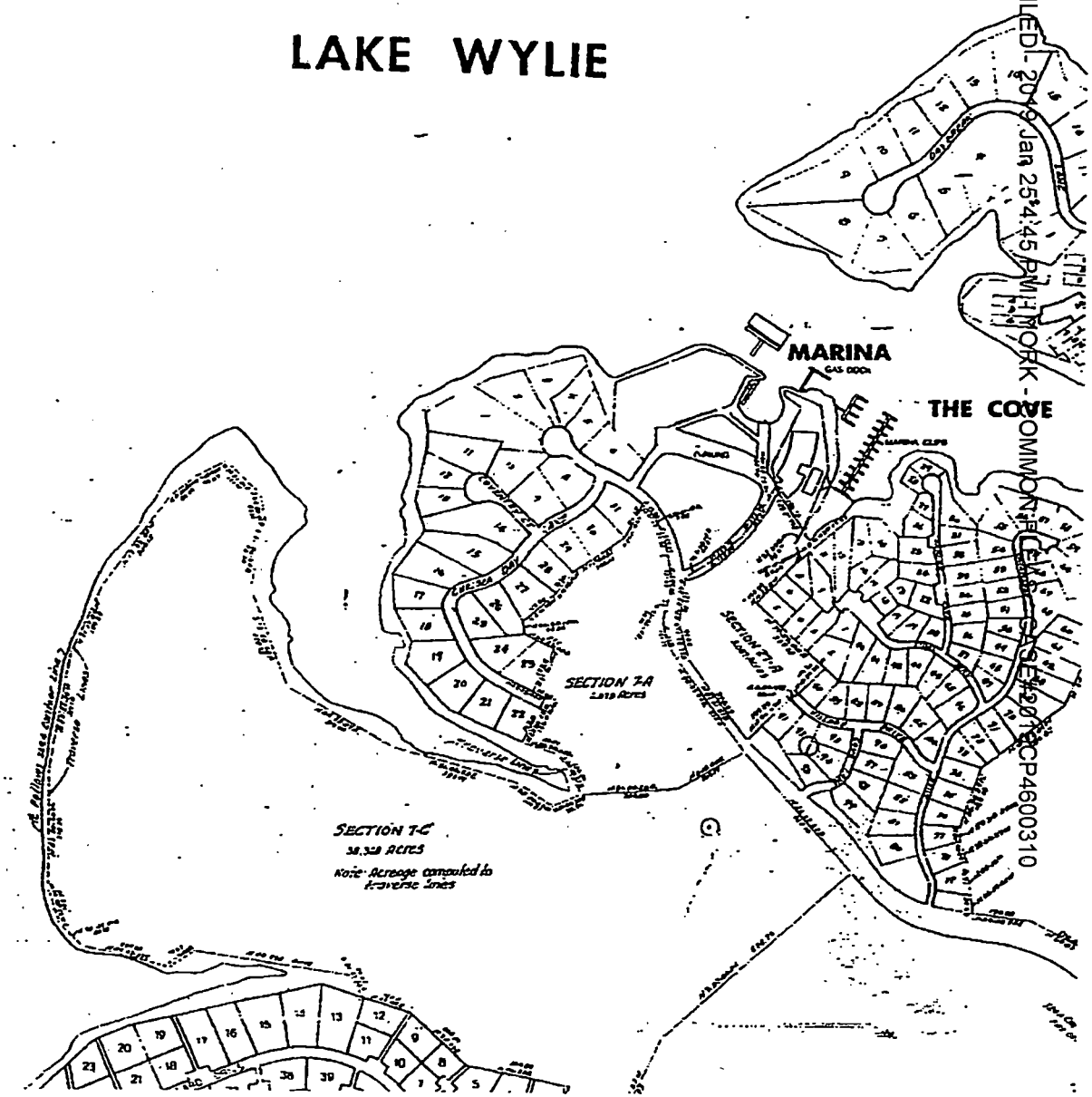
Attorneys for Plaintiff

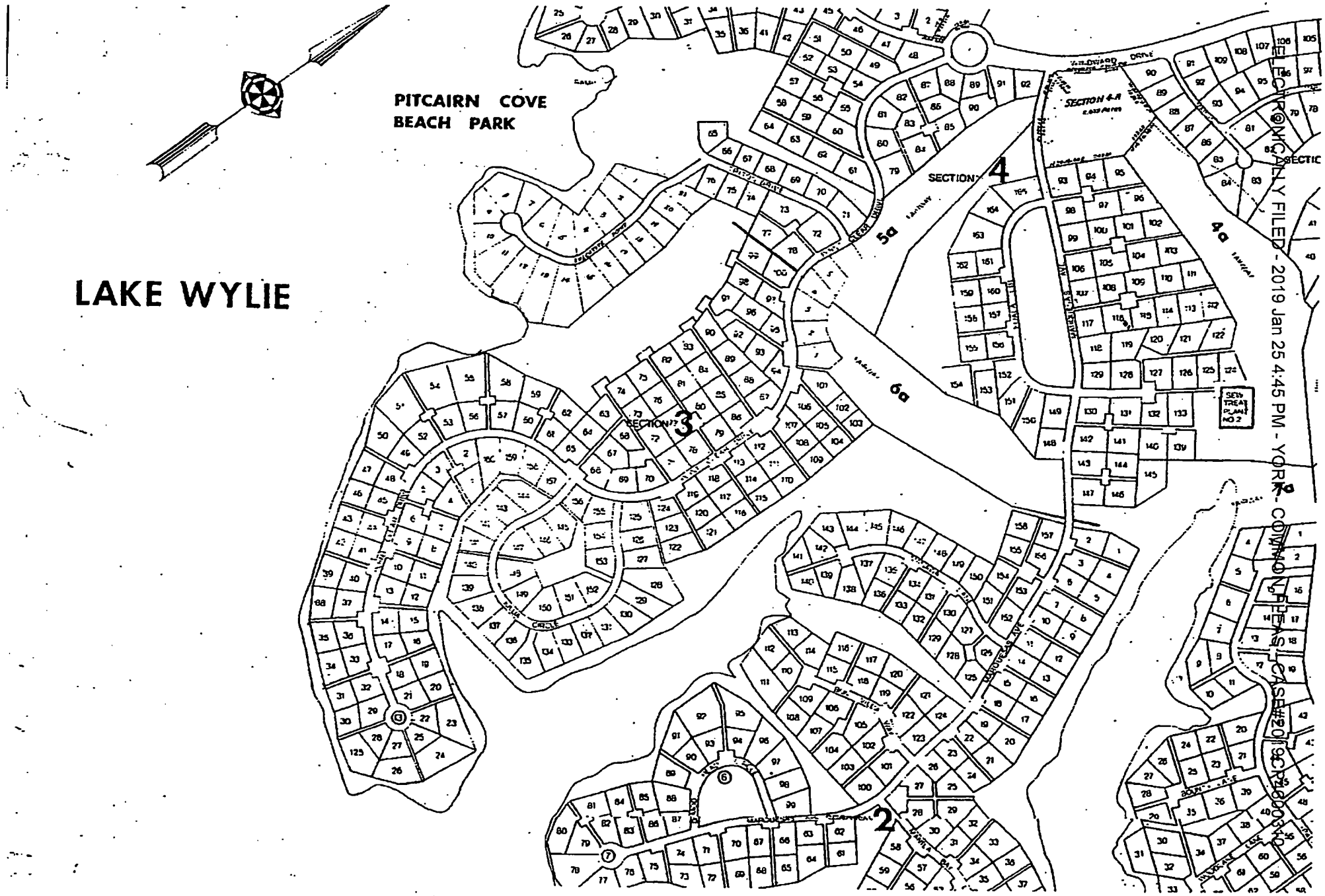
73/23

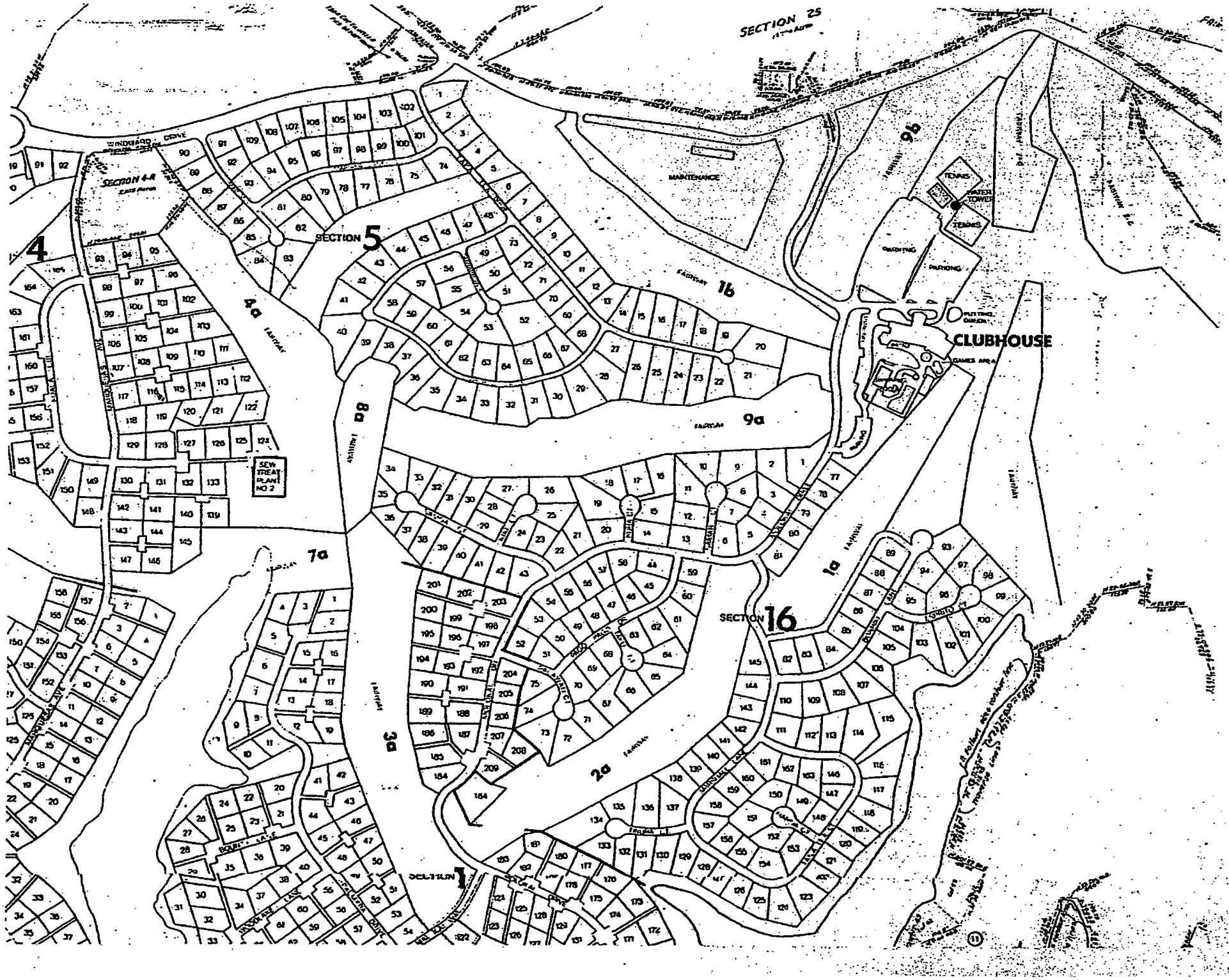
R-7-26-83

LAKE WYLIE

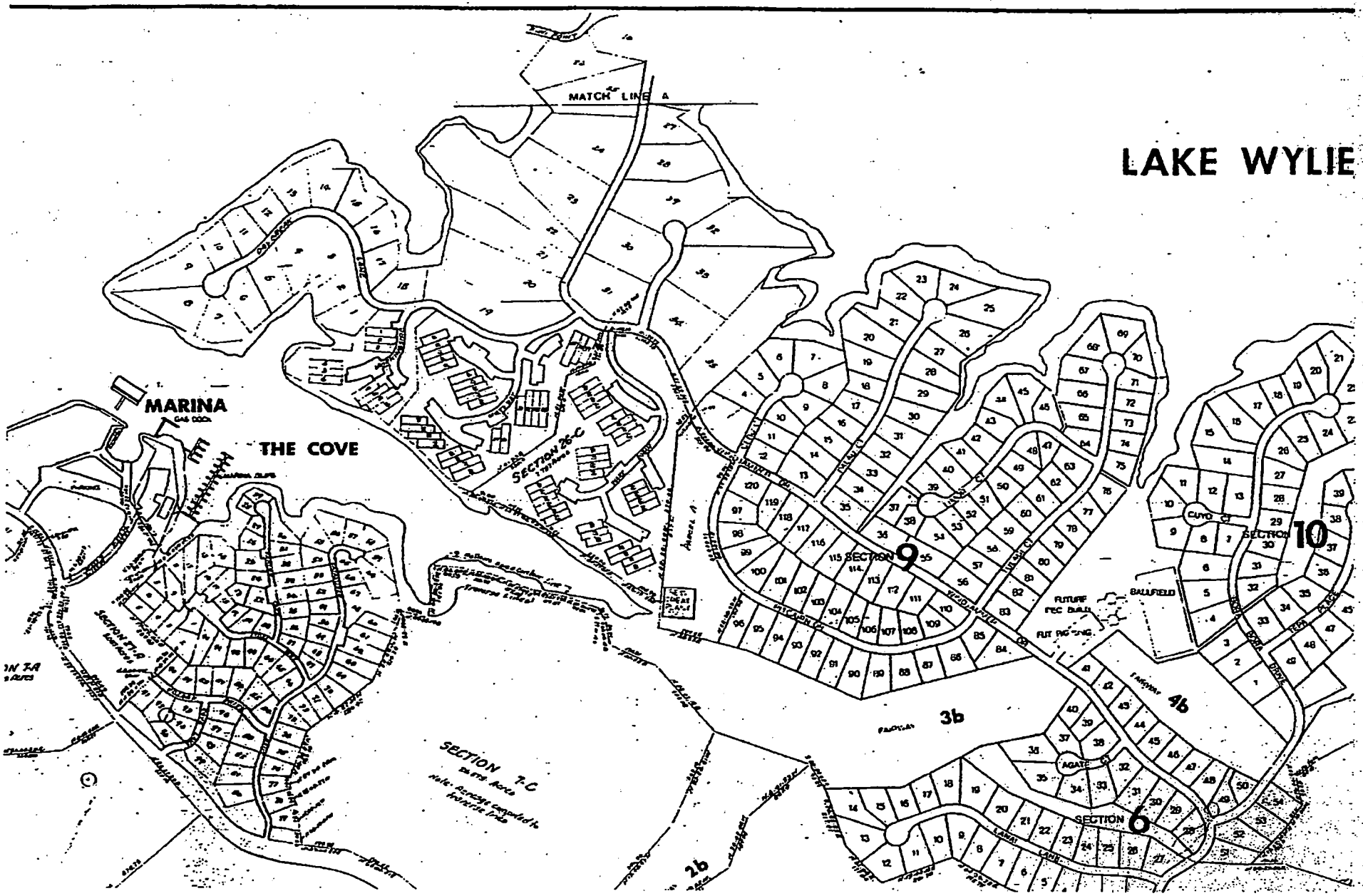


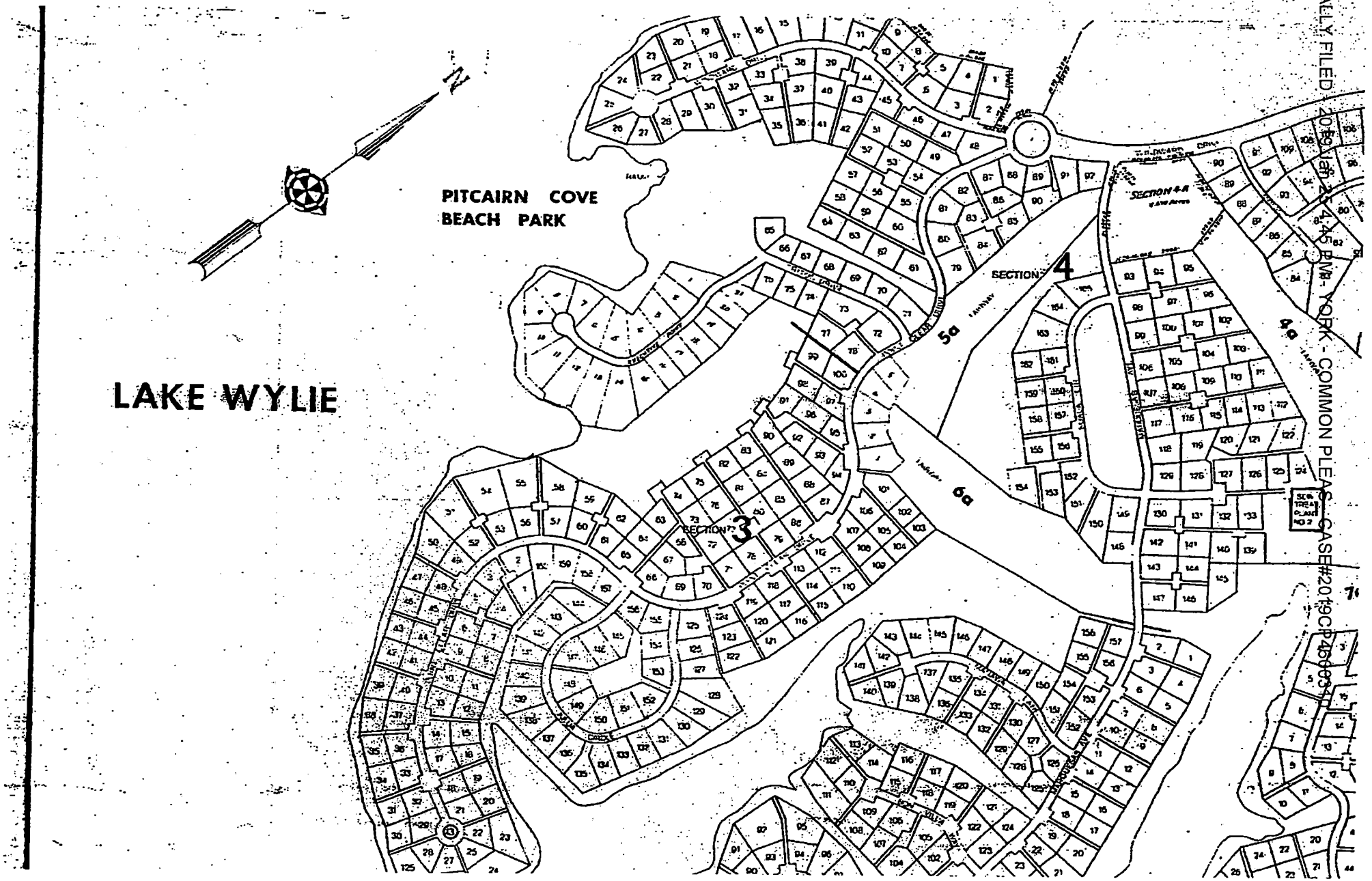


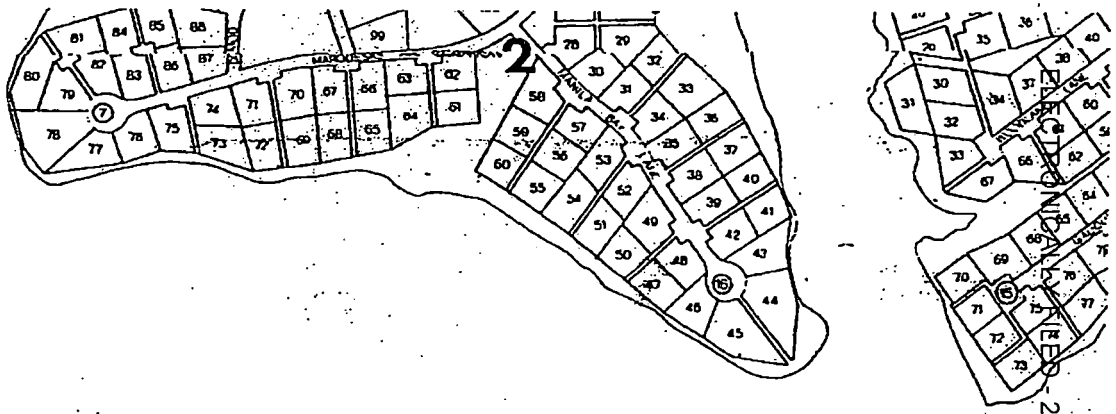




Plat Bk. 73 Pg. 23





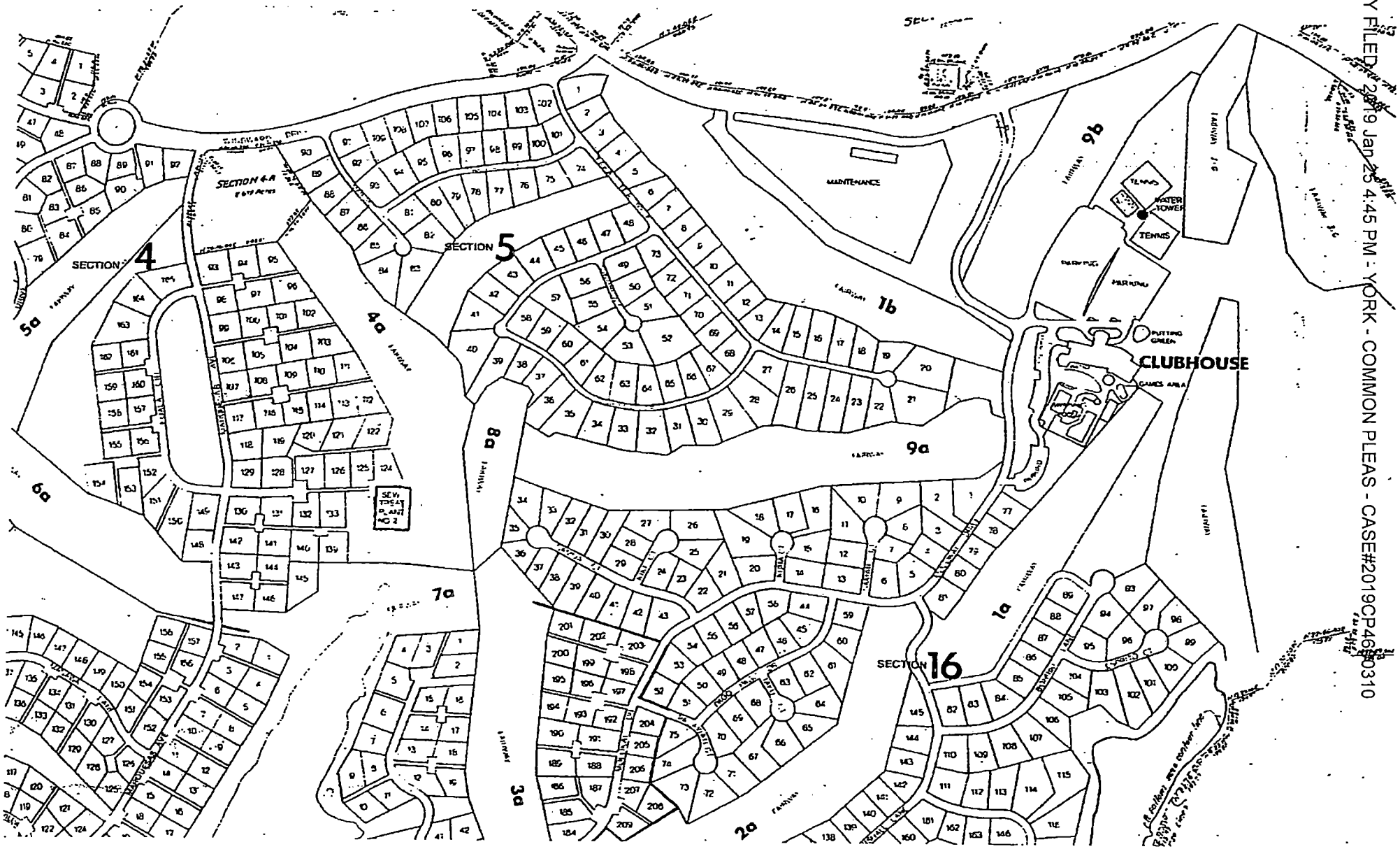


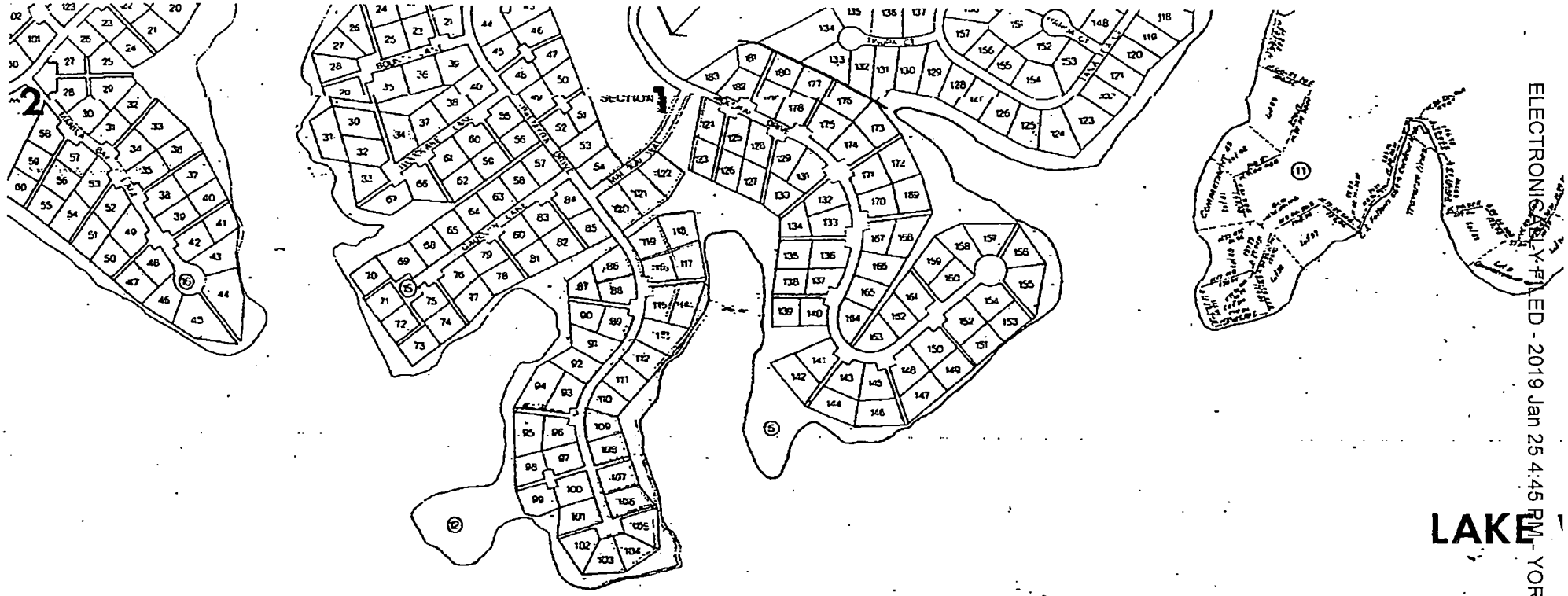
LEGEND

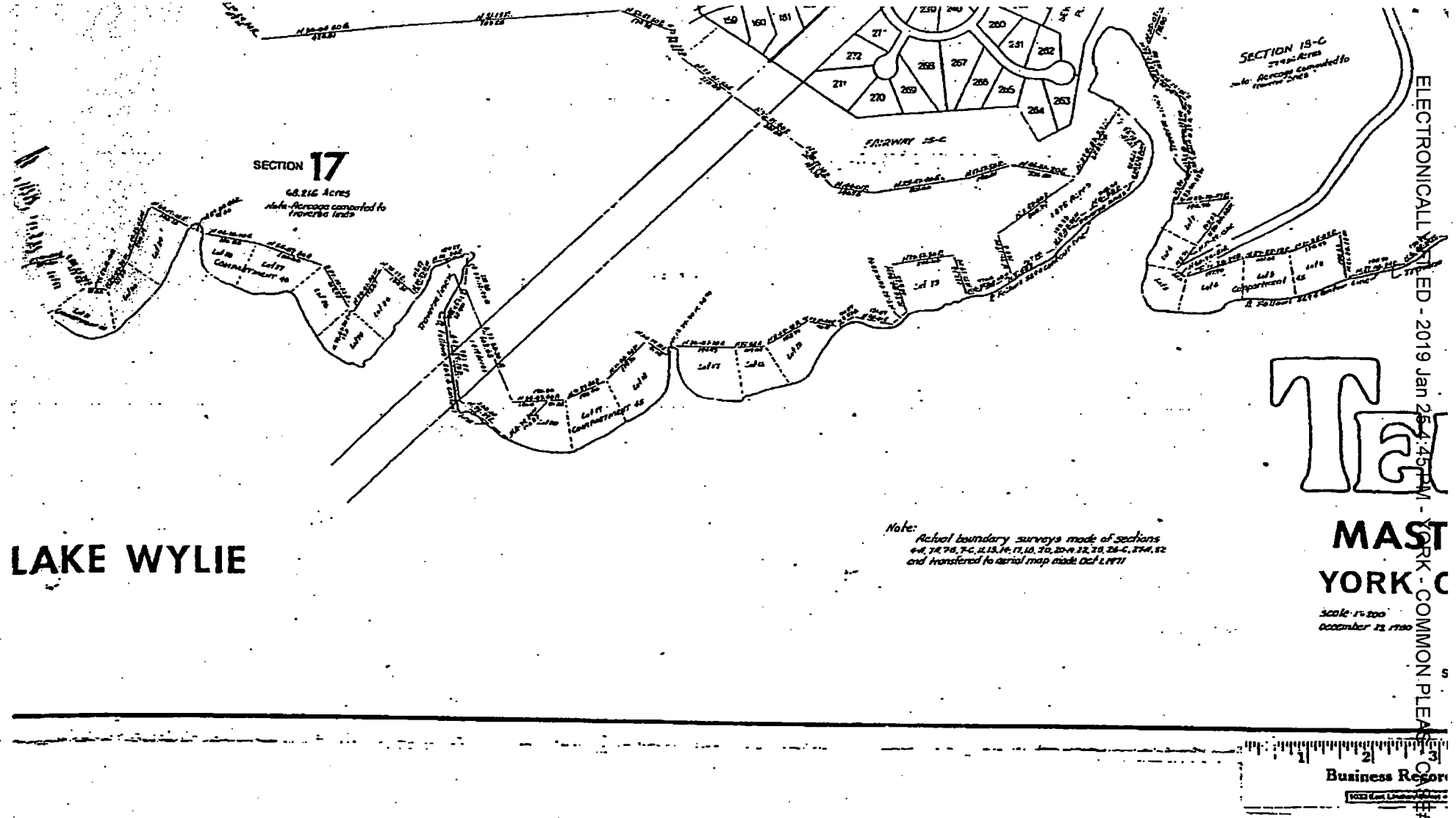
- OPEN SPACE AND RECREATION
- GOLF COURSE FAIRWAYS
- PAVED (ROADS, PARKING)
- BUILDINGS
- LAKES, PONDS

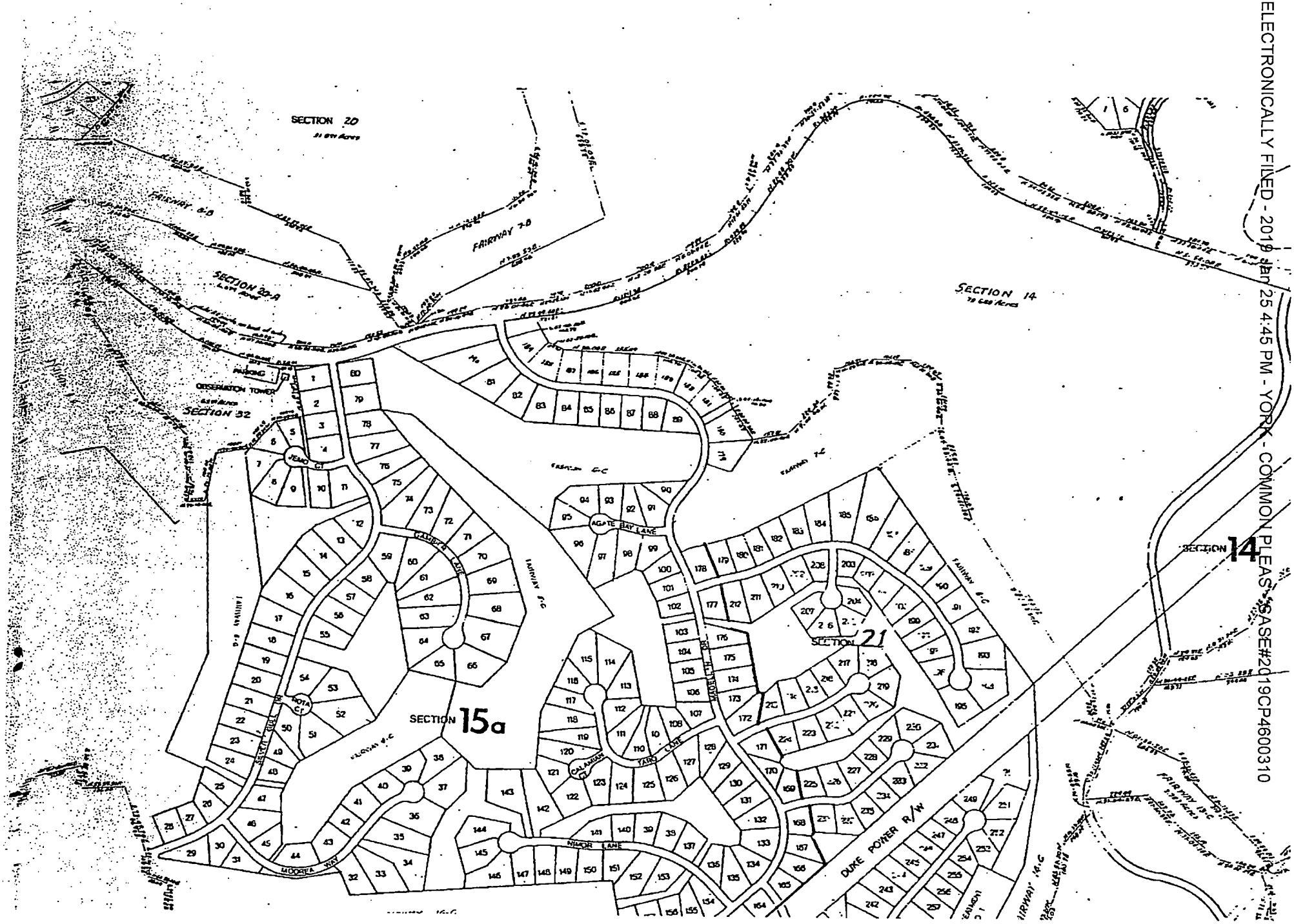
③ WELLS AND WELL NUMBERS

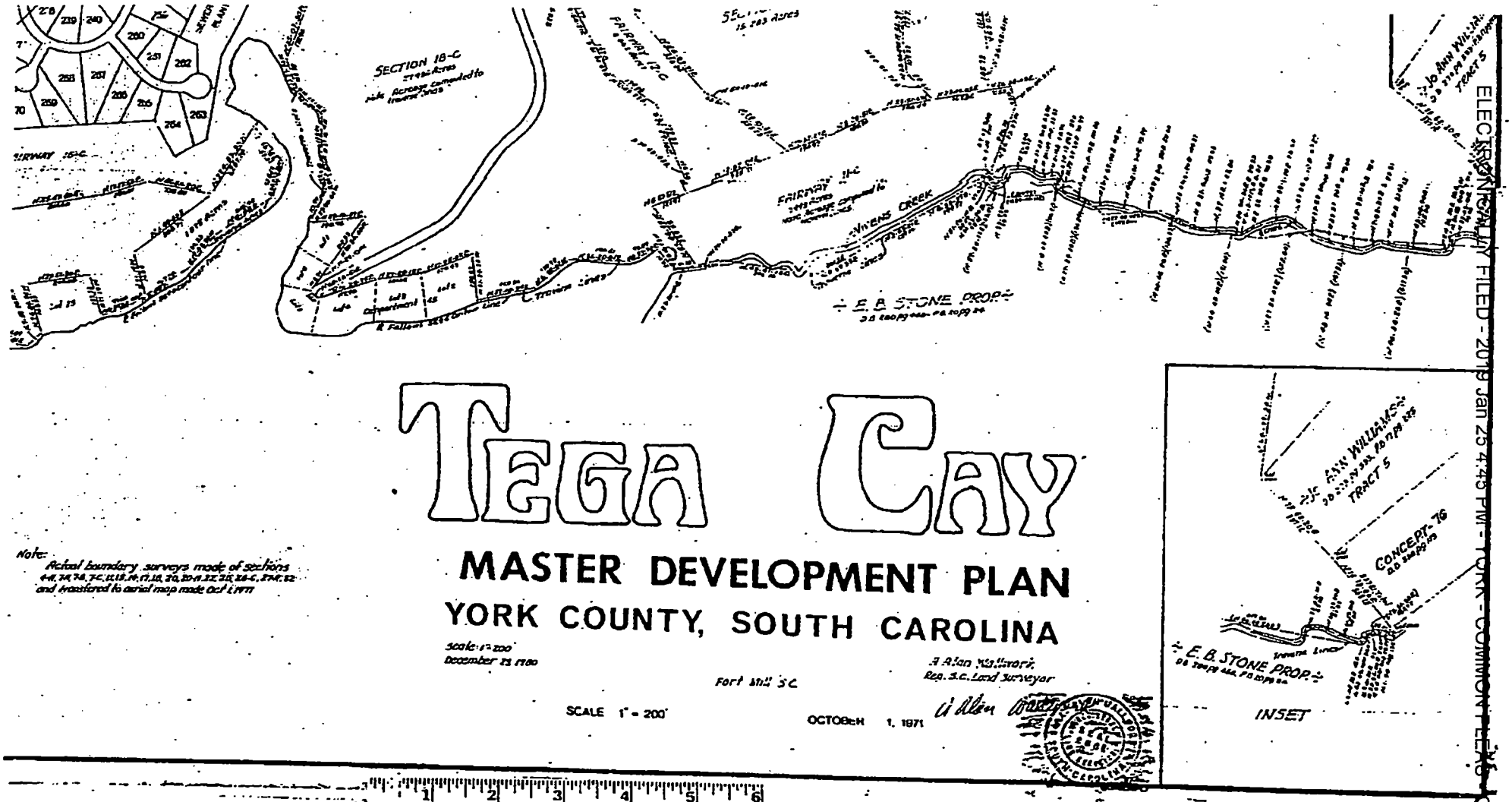
24

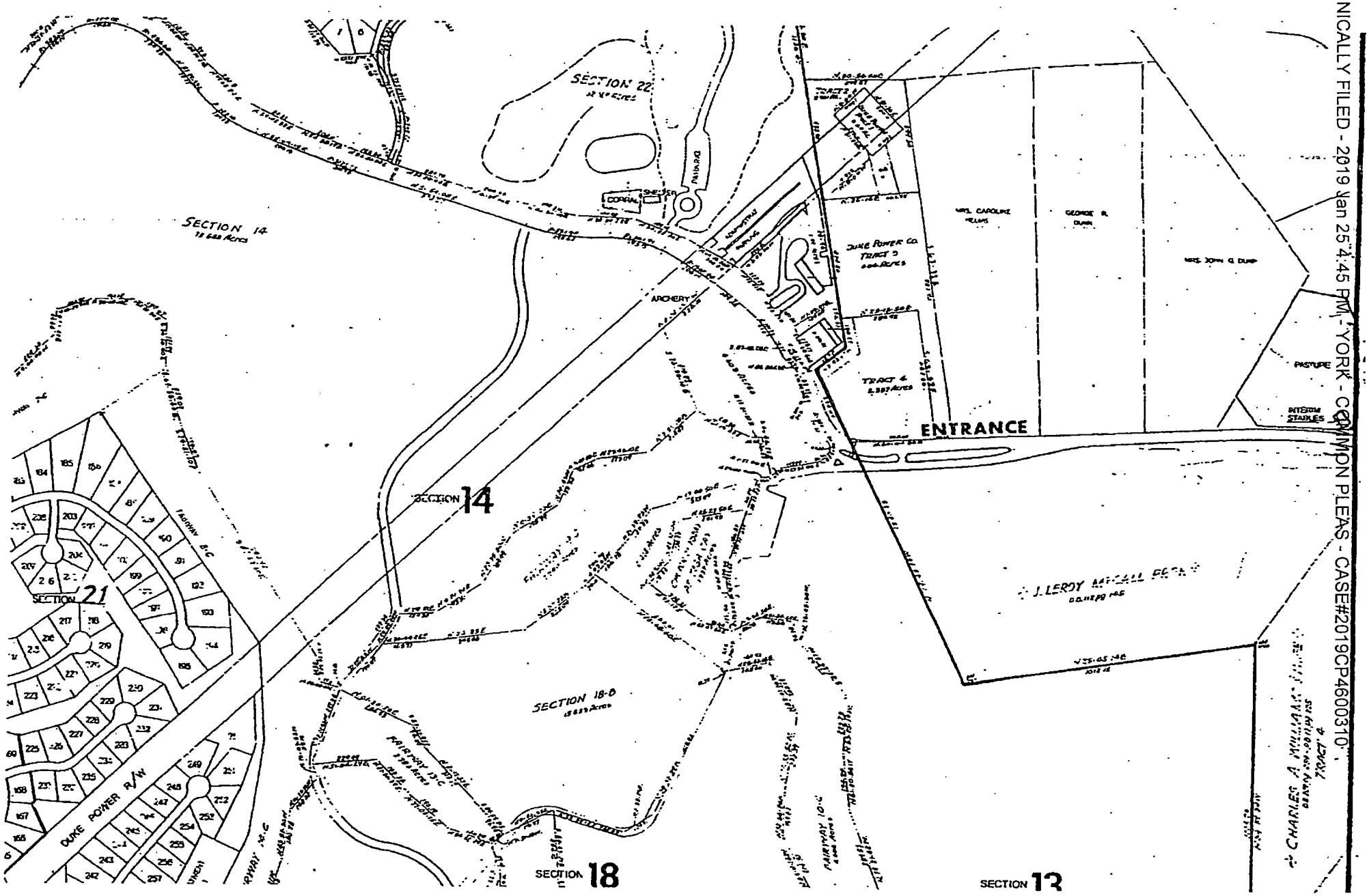


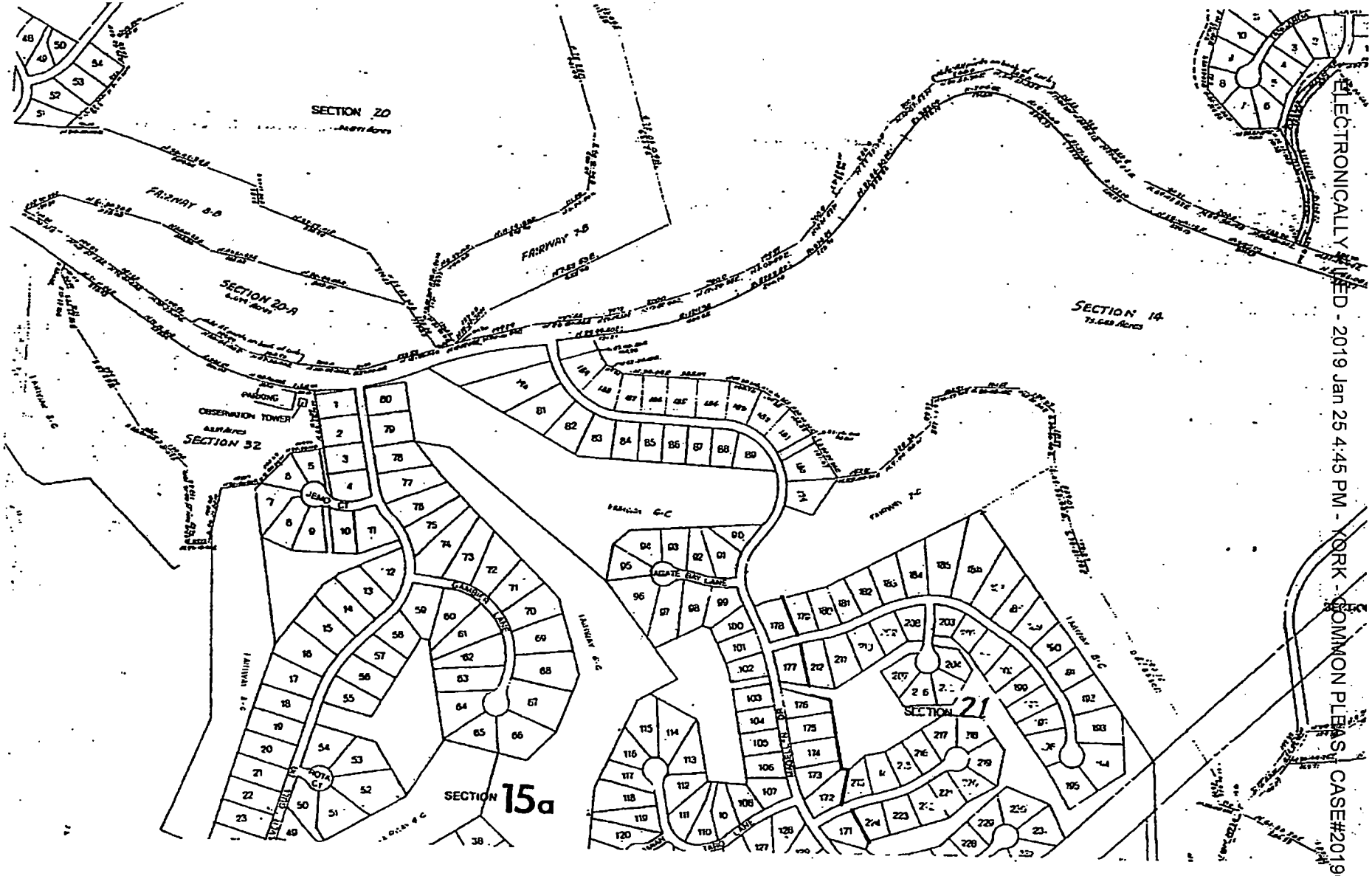












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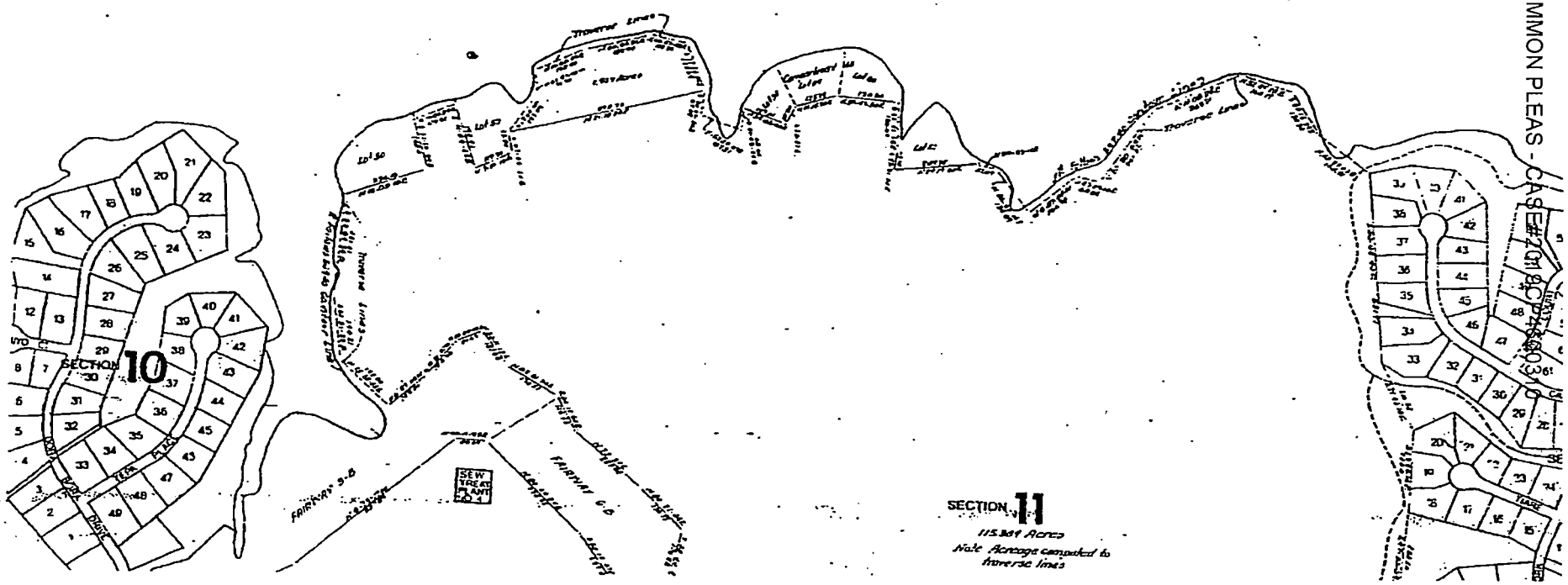
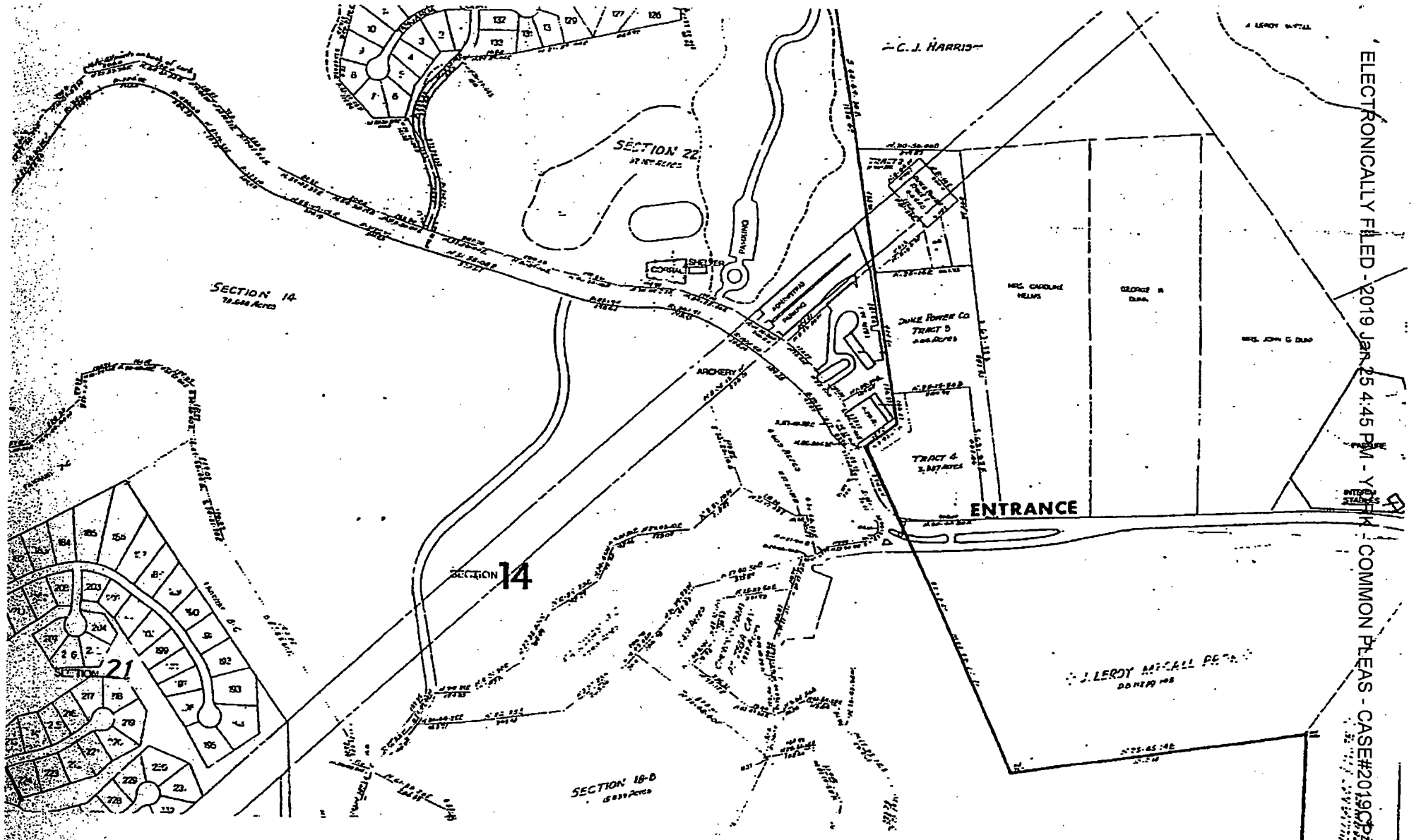
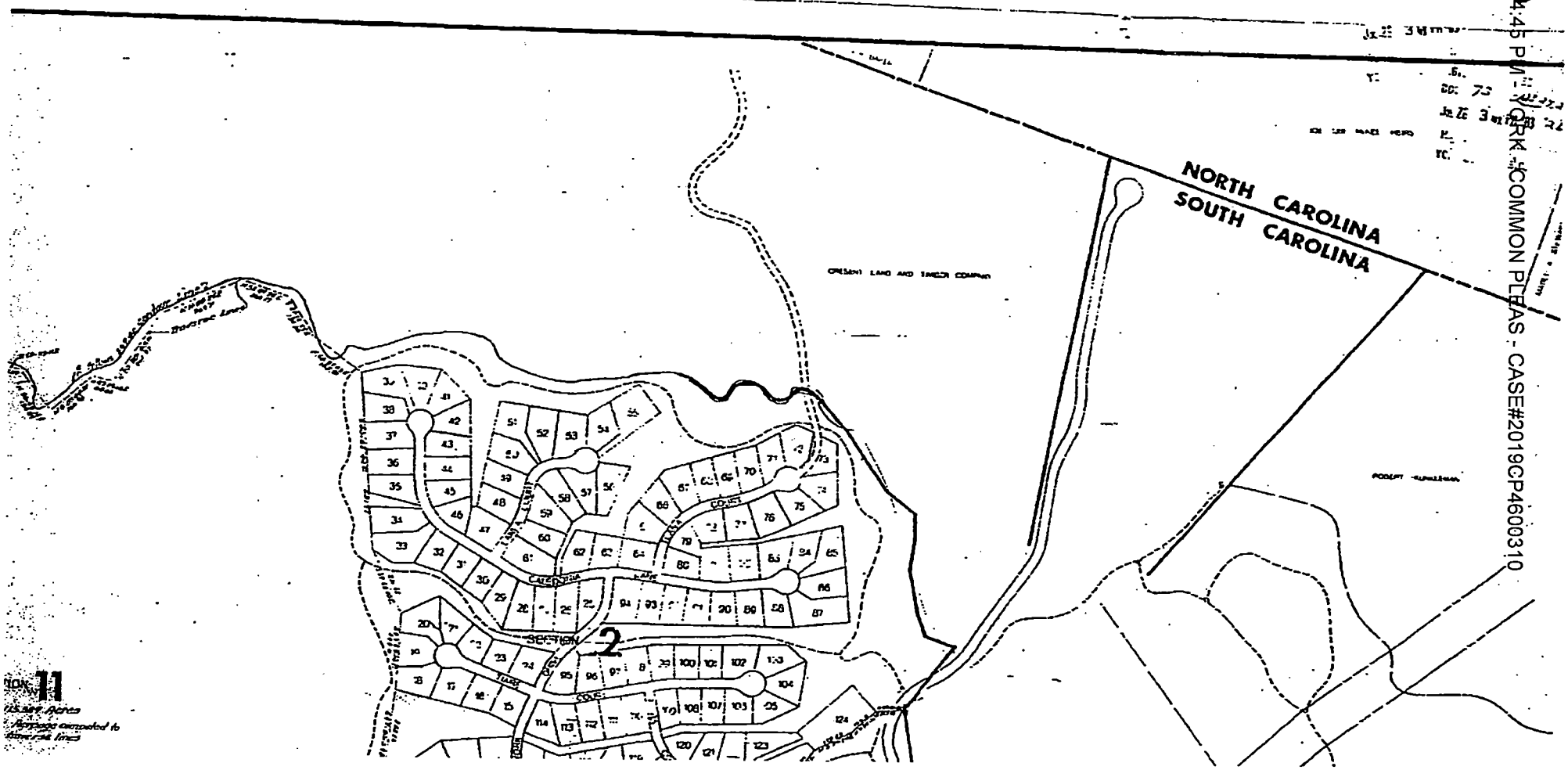
E WYLIE







STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
16th JUDICIAL CIRCUIT

CASE NO.: 2019-CP-46-00310

LB PARK, LLC
Plaintiff,

vs.

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

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
A. Parker Barnes III, Bar No. 68359	NONE, Bar No. _____
Address:	Address:
P.O. 11889, Columbia, SC 29211-1889	_____
Phone: 803-779-3080 Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 30 Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Ryan Rowell 4/6/2019
Signature ~~of Attorney~~ for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

EXHIBIT 2

CLERK'S VERIFICATION

Collected by: [illegible] Date Filed: 4/8/19

☑ MOTION FEE COLLECTED: $ 250

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	Case # 2019-CP-46-00310
LB PARK, LLC	
v.	**SPECIAL APPEARANCE MOTION TO DISMISS OR INTERVENE**
San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as trustee of San Juan Holdings; John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina....	

COMES NOW your movant, Ryan Powell, a private person ("I", "Me", "My", or "Myself" hereinafter) who is making this special appearance motion to dismiss as an invited "John Doe". I hold absolute title to the property that is the subject of this action; however, I have neither been named as a party nor served with any process. My title is paramount to any title the plaintiff claims to have. This motion is being brought under Rule 12(b)(1) SCRCP, Rule 12(b)(2) SCRCP, and Rule 24(a)(2) SCRCP. My affidavit is attached as **Exhibit A** and is fully incorporated herein by reference. I allege the following in support of this motion and will testify to same if I am allowed to have any due process of law before My property is stolen from Me.

Jurisdictional Facts

A "private person" is a kind of a natural person that is not suffering any disability. I am neither under the disability of being a minor nor am I under the disability of being incapacitated as I am capable of understanding, handling, and taking care of Myself and My property[1]. I have all the rights to which men are entitled to including the unalienable rights[2] to life, liberty, and property. I have the right to contract which includes the right to NOT contract if I so desire. Having NOT entered into any contract with COUNTY OF YORK pertaining to My property, I have NOT subjected My property to the jurisdiction of the Corporate STATE OF SOUTH CAROLINA, the Corporate COUNTY OF YORK, or any of their corporate agencies and corporate agents, which includes this Court.

On December 20, 2012, I witnessed the then authorized trustee, Brett Osborne, for San Juan Holdings ("SJH" hereinafter) seal a general warranty deed for the grantor. That deed transferred all

[1] See SC Code of Laws § 15-72-10 - "Jurisdiction of Circuit Court".

[2] unalienable rights are rights that can never be waived or taken away.

rights, title and interests in SJH's property to Me, in fee simple absolute. I then accepted and sealed My deed as the grantee. I saw two people that I did not know witness the sealing of My deed and then I saw each of them sign My deed as witnesses. I saw a notary public sign My deed and put her official stamp/impression on My deed and then I she handed My deed to Me[3]. My original deed has been in My care and possession ever since that date.

I then saw Brett Osborne sign another document titled "Notice of Sale, Transfer, or Exchange" ("SJH's Notice" hereinafter) that had been prepared in order to give notice to the world that SJH no longer owned My property that is the subject of this action and no longer existed as a legal entity after having sold the trust's corpus. I saw the same two witnesses and the same notary public sign and notarize that document and then I saw the notary public hand that document to Brett Osborne. I have attached a true and correct copy of SJH's Notice as **Exhibit B** which is incorporated fully herein by reference. That notice was recorded because I chose to exercise My recognized and protected human rights to own My property **privately** and untaxed[4] which can only be accomplished by Me not recording My deed. An unrecorded deed is valid as between the parties and as to all those who have notice thereof, which includes the plaintiff, who admits to having received notice of the deed (see complaint #4, #5, #6).

Rule 12(b)(1) grounds for dismissal

Since I never subjected My property to the jurisdiction of this State, then My property can never be taxed (and it has not been) and it can never be taken from Me (and it has not been although it "appears" to have been taken from SJH). This is irrefutable evidence that this State has NO jurisdiction over My property. Accordingly, this Court does not have subject matter jurisdiction to hear or determine a quiet title action pertaining to property that has not been subjected to the jurisdiction of this State or to oust Me or My family from My property that is not under the jurisdiction of this State; especially without first giving Me due process of law which has never been provided to Me. Any due process of law must include providing Me with a meaningful opportunity to defend My property in a court having jurisdiction over both My person and My property. But this is an impossibility because this Court does not have subject matter jurisdiction over property that has neither been subjected to the jurisdiction of this State by its owner, nor that is owned by a man. Governments can control only legislatively created artificial persons; they cannot

[3] My deed has all the attributes of a valid deed; it is in writing and signed, it has a grantor and a grantee, it was accepted by the grantee, it was delivered to the grantee, it was witnessed, and notarized.

[4] "the individuals rights to live and own property are natural rights for the enjoyment of which an excise [tax] cannot be imposed.", *Redfield v. Fisher*, 292 P 813, at 819.

control the people who are the sovereigns in this country[5]. This Court has no lawful authority over a man unless and until he violates the rights of another man and then only under the common law. These concepts were demonstrated by Judge Hall on April 1, 2019 when he heard Karen Powell's motion to dismiss this action. During that hearing Judge Hall refused to allow Karen Powell, a lien holder on My property, into this case as he knew he had no jurisdiction over her or her unrecorded lien.

So either this Court can dismiss this case for lack of subject matter jurisdiction under Rule 12(h)(3) SCRCP[6] or this Court can take property that has never been subjected to the jurisdiction of this State and that is owned by a man without first providing him ANY due process of law. It should be clearly obvious which of those two alternatives is the correct one.

Rule 12(b)(2) grounds for dismissal

The file for this action is missing both an order of publication and an affidavit showing that the summons was published. Both are required in order for this Court to assert personal jurisdiction over the unnamed defendants, which includes Myself. Under the code that plaintiff brought its action (i.e. Title 12, chapter 61), paragraph 30 clearly states that the plaintiff was required to publish its summons against absent or unknown defendants, i.e. Me:

> SC Code of Laws § 12-61-30. Laws applicable to proceedings.
>
> The proceeding authorized in this chapter shall be subject to the rules and laws governing the procedure and conduct of similar proceedings, **including the laws governing service of process and the publication thereof against absent or unknown defendants**.

Since plaintiff never published its summons it has failed to serve the unknown parties; therefore, according to Whaley v. CSX Transp., Inc., 609 SE 2d 286 (SC Supreme Court 2005) - "Proper service of process on a defendant, therefore, confers personal jurisdiction over the defendant. *Moore v. Simpson,* 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct.App.1996).". Wanting personal jurisdiction over Me, this Court can never enter any order that personally affects Me or My property which absolutely includes quieting My title or ousting any person from My property.

Conclusion

---

[5] "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people., by whom and for whom all government exists and acts." Yick Wo v. Hopkins, 118 U.S. 356; 6 S.Ct. 1064 (1886) [never been overruled].

[6] SCRCP 12(h) (3) "Whenever it appears by suggestion of the parties **or otherwise** that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.".

Any order issued in this case other than an order of dismissal will have been entered in total absence of all jurisdiction, which will strip the judge making such order of judicial immunity for all damages his void *ab initio* order does to Me[7] and the lien holder.

VI. Relief Demanded

This Court must hold a hearing to give the Plaintiff an opportunity to fulfill its burden of proof showing that this Court has subject matter jurisdiction to quiet the paramount title of a man who has never subjected his property to the jurisdiction of this State. After failing that burden of proof, this Court must dismiss both the action and the *lis pendens* with prejudice for want of subject matter jurisdiction and personal jurisdiction. In the alternative, if this Court finds it does have subject matter jurisdiction and that I can be joined, then it must grant Me leave to intervene into this action under Rule 24(a)(2) SCRCP so that I can get My due process of law before My property is stolen from Me.

Respectfully submitted,

4/6/2019
Date

Ryan Powell
c/o 3459 Mill Run
Raleigh, North Carolina
RyanPowell@comporium.net

[7] When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Rankin v. Howard, (1980) 633 F.2d 844; Zeller v. Rankin, 451 U.S. 939. See also O'Laughlin v. Windham, 498 SE 2d 689 (SC: Court of Appeals 1998) - " no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman,* 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978).".

Exhibit A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	Case # 2019-CP-46-00310
LB PARK, LLC	
v.	**AFFIDAVIT OF TRUE OWNER**
San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as trustee of San Juan Holdings; and John Doe and Mary Roe	

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

1. I am over the age of 18 years, competent to make this testimony, and I will testify to these facts in open court if I am ever given an opportunity to do so.

2. On December 19, 2012 I did willingly sign a private lien agreement with Karen Powell which lien was to attach to the property that I was buying which has been identified in this action as 25056 Timberlake Drive, York County, South Carolina.

3. On December 20, 2012 I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a general warranty deed, for the grantor, granting in fee simple all rights, title and interest that SAN JUAN HOLDINGS had previously enjoyed to me as the grantee on that deed. I then signed and accepted that deed. Two witnesses that I did not know then signed that deed as witnesses. Then a notary public notarized that deed.

4. That warranty deed was then handed to me by the notary and I have had the original copy of that deed in my possession since it was executed.

5. I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a document titled "Notice of Sale, Transfer, or Exchange" that was prepared to give notice that SAN JUAN HOLDINGS no longer owned my property and no longer existed.

6. More or less 10 days after the closing of the sale of my property I received in the mail the original copy of the Notice of Sale, Transfer, or Exchange executed by Brett Osborne and recorded in the public records of County of York.

7. Since December 20, 2012 I have been seized and possessed of the property that is the subject of this action and which has been identified in this action as 25056 Timberlake Drive, York County, South Carolina.

8. I have not recorded my deed for my property as I have a right to do and I have no intentions of ever recording my deed because I want to own my property privately and without making myself liable to pay an excise tax [property tax].

9. I have never received any notice from any government or employee of any government informing me that **I am required** to record my deed for it to be valid and in fact I have receive notice from the published codes of the STATE OF SOUTH CAROLINA that say my deed does NOT have to be recorded to be valid.

10. I have never been given any notice that the action below was even filed. The only way I knew it had been file was after Karen Powell received a phone call from Brett Osborne telling her that he had been served with papers and telling her the case number that had been assigned to that case.

11. I looked up the case in the YORK COUNTY online case website and there was no order of publication or affidavit in the case file showing that a summons had been published.

WITNESS my Hand and Seal this the 7 th day of February in the year of our Lord Two Thousand and Nineteen.

Ryan Powell (Seal)
Ryan Powell

SWORN to before me this

7th day of February, 2019

S Florence Mays
Notary Public for State of North Carolina

My Commission Expires: Sep 9th 2023

S FLORENCE MAYS
Notary Public
Wake Co., North Carolina
My Commission Expires Sept. 9, 2023

Exhibit B

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

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

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

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

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

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

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

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

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

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

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

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

SAN JUAN HOLDINGS

By: _____ Trustee
Brett Osborne trustee

Signed and Sealed in the presence of:

_____

April 6, 2019

Clerk of Court, Court of Common Pleas
P.O. Box 649
York, SC 29745

803-684-8507

Dear Clerk,

Enclosed for filing please find the following four documents:
Special Appearance Motion to Dismiss,
Motion Cover Sheet,
Notice of Hearing, and
Proof of Service
that should each be filed into case #.2019-CP-46-00310.

Also please find a money order for $25.00 to cover the filing fee for this motion.

Please send any correspondence to me at the following postal location.

Thank you,

Ryan Powell
c/o 3459 Mill Run
Raleigh, North Carolina
RyanPowell@comporium.net

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-46-00310

LB PARK, LLC,

Plaintiff,

vs.

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

Defendants.

MOTION FOR ORDER OF REFERENCE

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

[signature on following page]

EXHIBIT 3

s/ Andrew M. Rawl

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

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

Attorneys for Plaintiff

May 1, 2019

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-46-00310

LB PARK, LLC,

Plaintiff,

vs.

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

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 1, 2019, I caused the below named parties to be served with a copy of the following document(s):

1. Motion for Order of Reference; and
2. Certificate of Service.

by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

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

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

Karen Marie Powell
c/o 25056 Timberlake Drive
Fort Mill, South Carolina 29708

Ryan Powell
c/o 3459 Mill Run
Raleigh, North Carolina 27612

Carol A. Williamson
Paralegal

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4600310

LB Park LLC
PLAINTIFF(S)

San Juan Holdings et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

After consideration, the Court denies the Motion to Dismiss that was filed on April 8, 2019, it is so ordered.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/31/2019 .

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

EXHIBIT 4

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

York Common Pleas

Case Caption: LB Park LLC VS San Juan Holdings , defendant, et al

Case Number: 2019CP4600310

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4600310

LB Park LLC
PLAINTIFF(S)

San Juan Holdings et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

After consideration, the Court grants Plaintiff's Motion to Refer to the Master, it is so ordered. This case if referred to the Master in Equity to hear all matters until a resolution or disposition is reached.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/31/2019 .

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

EXHIBIT 5

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310

Ex Parte, Ryan Powell ..... Appellant,

In re LB PARK, LLC ..... Respondent,

v.

San Juan Holdings, Brett Osborne trustee, et al. ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appearance of Sarah P. Spruill and Respondent LB PARK, LLC's Motion to Dismiss Appeal on all attorneys of record by depositing copies of the same in the United States Mail, postage prepaid, on June 17, 2019, addressed to

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

Brett Osborne as Trustee of San Juan Holdings
190 Aviation Lance
Gold Hill, NC 28071

Brett Osborne
190 Aviation Lane
Gold Hill, NC 28071

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

Janice Barry, Legal Secretary
HAYNSWORTH SINKLER BOYD, P.A.
864.240.3223

HAYNSWORTH SINKLER BOYD

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

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

June 17, 2019

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

Re: Ex Parte, Ryan Powell, In re LB PARK, LLC v. San Juan Holdings, Brett Osborne trustee, et al.; C.A. No.: 2019-CP-46-00310
Appellate Case No.: 2019-000979

Dear Ms. Kitchings:

Our firm represents Respondent LB PARK, LLC, in the above-referenced matter. Enclosed herewith for filing is an original and seven (7) copies each of the Notice of Appearance of Sarah P. Spruill and Respondent's Motion to Dismiss Appeal, regarding the above-referenced case together with a Proof of Service. Also enclosed is our firm's check in the amount of $50.00 to cover the cost of the filing fee. Please file the originals and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

SPS/jmb
Enclosures

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

HAYNSWORTH
SINKLER BOYD
P.O. BOX 2048
GREENVILLE, SOUTH CAROLINA 29602-2048

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