

IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 30180

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**ROBERT and MELISSA HOOD, THOMAS and PATRICIA DONOVAN,  
BERNARD and MARIA JUNG, WILLIAM and JANICE PRICE, JAMES and  
KAY FENENGA, LARRY and DARLENE BAILLY, GREG and DEB PETERS,  
MARK and KITTY GUSTAF, and RODNEY and GINA BOADWIRE,**

Plaintiffs and Appellants  
vs.

**CLYDE and NANCY STRAATMEYER,**

Defendants and Appellees

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Appeal from the  
Fourth Judicial Circuit  
Meade County, South Dakota

The Honorable Kevin J. Krull, Circuit Court Judge

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**APPELLANTS' BRIEF**

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### **PRELIMINARY STATEMENT**

For the convenience of the Court, Individual Appellants-Plaintiffs, Robert and Melissa Hood, Thomas and Patricia Donovan, Bernard and Maria Jung, William and Janice Price, James and Kay Fenenga, Larry and Darlene Bailly, Greg and Deb Peters, Mark and Kitty Gustaf and Rodney and Gina Boadwire, will be referred to by their last name and collectively as “Appellants”; Defendant/Appellees will be referred as “Straatmeyers”; The Trial Transcript shall be referenced as “TT” followed by a page number; and Trial Exhibits will be referenced by the designation of the Exhibit at trial.

### **JURISDICTIONAL STATEMENT**

This is an appeal from a Memorandum of Decision dated September 29, 2022, and an Order in favor of Appellees dated October 13, 2022 by the Honorable Kevin Krull. The resulting Order was dispositive as to all of Appellees’ claims and a final order pursuant to SDCL § 15-26A-3(2). Notice of Entry of the Order was filed October 25, 2022 and Notice of Appeal was filed in the Circuit Court on November 22, 2022. The referenced rulings are appealable and the present appeal is timely.

### **STATEMENT OF LEGAL ISSUES**

- I. **Whether the Circuit Court’s erred in finding multiple unenforced violations of covenants by current property owners.**
- II. **Whether the Circuit Court erred in determining that the covenants where null and void.**

### **STATEMENT OF THE CASE**

This is an appeal of rulings on an action for declarative relief from the Fourth Judicial Circuit, the Honorable Kevin Krull. The case is a civil action brought by

Appellees arising out of a dispute over covenants filed on the property owned by Appellants and Appellees. *See Complaint.*

### **STATEMENT OF THE FACTS**

The Shadowland Ranch Subdivision (the "Subdivision") was created in September 1997. TT 10. All property within the Subdivision were subject to Restrictions and Covenants, which were on file with the Meade County Register of Deeds. TT 11.

Those Covenants govern the use of the property and included the following:

- A. There shall be only one single-family dwelling per lot with no larger than a three-car garage....
- C. The lot shall be used for residential purposes only and lot owner shall conduct no business activities which shall require extra parking facilities or which may result in any materials being stored outside any dwelling or which may in any other way interfere with the peaceful enjoyment of the premises by other lot owners ...
- D. Further subdivisions of any lot shall be prohibited....
- H. No building shall be constructed so that any part of building is within 40 feet of the boundary of said lot.

...are attached to Defendant's Trial Exhibit 1 and Plaintiff's Trial Exhibit 101.

The developer of the subdivision, Eddie Opstedahl, testified at trial that:

1. The covenants did not prohibit or restrict detached garages. TT 11.
2. That, due to concerns about sewer and septic issues, there was a prohibition on the subdivision of any lots. TT 11-12.
3. That the previous owners' subdivision of lot 6, into Lots 6A and 6B was in violation of the covenants. TT 14.
4. That the boundary lines of the lots, as referenced by the covenants, were considered to extend to the center of the road. This was due to the fact that

the roads within the subdivision were private and the responsibility for maintenance of the same was left upon the homeowners. TT 15.

5. That the boundary lines for any given lot were depicted on Exhibit 16 and shows the boundary line going down the center of the roads within the subdivision, namely, Cantle Court, Concho Court and Romel Drive. TT 15-16.
6. That the 40-foot setbacks referenced in the covenants would refer to 40 feet from the boundary lines which would start at the center of those particular roads identified in the previous paragraph. TT 16.
7. That the property owners of various lots which include roads would be responsible for the property taxes on the same up to the center of the road. TT 19.

Sometime in May 2021, several of the Subdivision owners became aware that the Defendants' lot had been subdivided, in contradiction to the Covenants. The other Subdivision owners were not aware of the subdivision as no notice was provided to them. Defendant's Trial Exhibits 3 and 4.<sup>1</sup> The other Subdivision owners further became aware that Defendants had applied for, and received, a building permit for the construction of a pole barn, with the intent of using the same as a part-time residence and storage of Defendants' recreational vehicle. See Plaintiff's Trial Exhibits 104 and 105. The

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<sup>1</sup> The subdivision is outside the legal boundaries of the City of Summerset however, the rezoning of the property was done by the City of Summerset and did not require any prior notice to be given to the subdivision homeowners. *See* Defendant's Trial Exhibits 3 and 4.

proposed structure was in violation of the Covenants with respect to size, use, setback, and other requirements. *Id.*

In the application for their building permits, the Clyde Straatmeyer testified that the covenants were on file with Meade County prior to his purchase of lot 6B and that they would have been available for review prior to subdividing lot 6 and his purchase of the same. TT 40-41. He further acknowledges that had he availed himself to the covenants he would have been aware that subdivision of the lots was prohibited as well as the setback requirements. TT 41.

When asked why he had not taken the opportunity to review the covenants before subdividing or purchasing the lot, Straatmeyer testified that he "... Never gave it a thought..." TT 41. He testified to this despite the fact that documents which he completed and filed with Meade County for the building permit specifically acknowledged that "... He or she is familiar with covenants, deed restrictions, government regulations and Meade County ordinances..." TT42. *See also*, Defendant's Trial Exhibit 103.

The Plaintiffs hired counsel for the purpose of informing the Defendants of the Covenant violations and, to that end, Straatmeyers were sent a letter on May 12, 2021, outlining the Covenant restrictions. Plaintiff's Trial Exhibit 102. Despite having received this letter, Straatmeyers continued to state their desire to continue the construction in violation of the Covenants. This litigation ensued.

In their response to the Complaint of Plaintiffs, the Straatmeyers alleged violations of the Covenants by other homeowners citing, specifically, violations of the

setback requirements, detached garages and potential violations of operation of a business.

In its memorandum of decision, the Circuit Court made specific findings of covenant violations including:

1. That Hoods have a shed within 40 feet of the lot line however, the sheds may be able to be moved. Despite this, the court determines these to be “buildings” within the 40 feet of the boundary line in prohibition of the covenants. *See* Memorandum Decision p. 4.
2. That Bailly’s had constructed in outbuilding with the shop in the 40-foot setback though over 40 feet from the center of the road. *Id.*
3. That Peters have a shed within 40 feet of the lot line, though over 40 feet from the center of the road. *Id.* p. 5
4. That Cottinghams have a building within 40 feet of the lot line.
5. That Peters operates a construction business out of his home and gravel has been added to his lot for a turnaround. *Id.*
6. Boadwire was found to have allowed employees to park their vehicles at his home and also as part of the equipment on the lot and had a gravel to the lot. *Id.*
7. The court also found that detached garages of other lot owners were in violation of the covenants. *Id.* p. 7.

Peters specifically testified that he had purchased his lot approximately 18 years prior to the litigation. TT 66. At the time of the purchase, he was made aware that the boundary of his lot extended to the middle of the road and that he was responsible for that portion of the road on his lot. TT 66. He was specifically aware of the fact that his lot line

and boundary lines were different insomuch as the boundary line would extend 33 feet, to the center of the roadway and while he was responsible for the upkeep of the road, he could not impede other's use of the same. TT 67.

Peters also testified that he operated his construction business out of his home. TT 67. He was aware of the covenants at the time of his purchase and was satisfied that he was in compliance with the same as his business did not require extra parking facilities. TT 68. In fact, since his purchase of the property he had added no parking would which was not pre-existing though he did maintain the parking that was present at the time of his purchase, by adding gravel as necessary as the surface was not paved. TT68.

Finally, Peters testified that, as a contractor he is aware of the prohibition in the covenants of stored materials outside of his dwelling. TT 69. He specifically testified that there is a difference between equipment and materials and the covenants do not prohibit equipment being located on the property. TT69-70. He also testified that the equipment on his property was used for both business and personal purposes insomuch as she was responsible for maintaining that portion of the road that was on his property. *Id.*

Peters was shown pictures of materials which were on his property and noted that the materials constituted fencing which had previously been used for dog run and most recently to fence in his garden. TT 70-71. Additionally, other materials on the property included firewood and equipment used in his hobby as a blacksmith. TT 71-72. There was no material identified on his property as being associated with his business.

Boadwine also testified in this matter. He specifically noted that he operated business known Aim High Tree Service. TT 116. He testified in connection with that business he keeps certain equipment on his property including a bucket truck, a chipper, a



dump truck, a pickup and a skid steer. TT 118. Boadwine also testified that, on occasion, his employees will park their vehicles on his lot. TT120. Finally, in similar to Peters, Boadwine testified that his parking area is gravel and he maintains it from time to time when it gets muddy. TT 120. Boadwine did not add any extra parking to his home after he purchased the same. TT 120.

## **ARGUMENT AND AUTHORITIES**

### **A. STANDARD OF REVIEW**

A trial court's interpretation of a covenant is a legal question which Supreme Court reviews de novo. *Wilson v. Maynard*, 2021 S.D. 37, 961 N.W.2d 596.

### **B. LAW APPLICABLE TO ALL RESTRICTIVE COVENANTS**

The interpretation of a restrictive covenant involves the same rules of construction for contract interpretation. When the wording of the covenant is unambiguous, “its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature’.” *Id.* ¶ 9. “[A] covenant is ambiguous if we have a genuine uncertainty as to which of two or more meanings is correct.” *Id.* When language of a restrictive covenant is unambiguous, we consider the plain meaning of the words in the covenant. *Id.* ¶ 14; *Coffey v. Coffey*, 2016 S.D. 96, ¶ 8, 888 N.W.2d 805, 809.

If the court finds an ambiguity, the court may look beyond the document for assistance in interpreting the covenants. *Halls v. White*, 2006 S.D. 47, 715 N.W.2d 577. There also exist the long-standing principle that requires construing restrictive covenants strictly in favor of the free use of property. *Id.*

### **C. THE CIRCUIT COURT ERRED IN ITS INTERPRETATION OF THE COVENANTS AND VIOLATIONS OF THE SAME.**

**1. The Circuit Court erred in finding detached garages to be in violation of the covenants.**

The Circuit Court found, specifically, that the three-car garage restriction applied to the entirety of all lots, and further, that the term “car garage” was ambiguous. Despite this finding, the court further found that the covenants “... do not bar garages big enough to park trucks, trailers or other types of vehicles...” Memorandum Decision p.8. As such, the proposed design of Straatmeyers, for construction of the facility large enough for an RV did not violate the covenants.

The above finding makes limited sense in light that the court finds Jungs, Hoods, Baillys, Boadwires, Cottinghams Peters and Gustafs to all have detached structures with additional garages. Further, it is clear from the evidence that these garages are big enough to park trucks, trailers or other types of vehicles which, the court found, specifically, were not barred by the covenants.

As the circuit court finds ambiguity with the covenants dealing with garages, then that covenant must be construed strictly and in favor of free use of the property.

It is important to note that, while Circuit Court focused on the number of garages, the actual covenant states “...*There shall be only one single-family dwelling per lot with no larger than a three-car garage...*” This is important because, when taken as a whole, this provision ties together the single-family dwelling *and* the three-car garage. Taken as written, then, the provision only speaks to those garages “with” (i.e., attached to) the single-family dwelling.

When the entirety of the covenant is read as a whole, it is clear that references are only being made to the size of the garage attached to the single-family dwelling. As the

covenants are silent to detached garages or outbuildings, and given the laws' favor for the free use of property, the trial court erred in finding that detached garages are in violation of the covenants.

**2. The Circuit Court erred in finding the “boundary of said lot” to be the mythical lot line.**

In its decision, the Circuit Court also found that the boundaries of the lots at issue were not the actual boundaries on the plat, but instead, deducted from the same any portion of the roads within the subdivision. From the testimony at trial, evidence was produced showing the plats of the property which clearly indicates that the boundary of each lot adjacent to a roadway would include 33 feet of such roadway. This is also testified to by the developer of the subdivision who testified that Defendant's Exhibit 17, which was the original plat of the subdivision, clearly showed that lots two, six, seven, and ten, had boundaries which, as platted and approved, included 33 feet of the roadway as part of the adjoining owners lots. This would show the boundary of the property for which the respective property owners would be responsible for maintaining.

In the decision, the Circuit Court does not specify how it arrives at a different boundary than what was shown on the original plan but only states that the covenant is “... not ambiguous because a boundary of the said lot has a distinct and clear meaning...” Again, the boundary of each lot, i.e., that portion of the subdivision for which each owner is responsible, is inconsistent with the finding of the court and should include that portion of the roadway for which the owner is responsible and which is clearly shown on the plat, Defendant's Exhibit 17.

**3. The Circuit Court erred by finding that sheds and other movable property located within the 40 feet of the boundary of the lots were violations of the covenants.**

As it pertains to property within the 40-foot setback, the Circuit Court determined violations of the covenants include sheds which were determined to constitute buildings; garages and shops which were 40 feet from the center of the road and boundary line but closer than 40 feet from the imaginary lot line; and a small building on a concrete foundation (believed to house the control systems for a sprinkler). As to those items that were 40 feet setback from the actual roadway, those would not be in violation as the boundary line, stated in the preceding section, should have been measured from the actual boundary of the property for which the lot owners are responsible and for which they pay taxes, which would include 33 feet of the roads.

As for any sheds, the circuit court specifically found that those would be movable, however, subsequently stated that those constituted buildings for purposes of the covenant stating “...*No building shall be constructed so that any part of building is within 40 feet of the boundary of said lot...*” This interpretation is incorrect whether the provision is determined to be ambiguous or not.

If the provision is not ambiguous, then this Court must give the plain and ordinary meaning to the words and phrases used. The word “building” has been defined by Merriam-Webster as “... a usually roofed and wall structure built for permanent use (as for a dwelling) ...” Under this definition, a movable shed certainly would not constitute a “building” as the term is used in this covenant.

If this provision of the covenant is deemed to be ambiguous, then this court must strictly construe the term “building” to allow for the free and full use of property, as favored by our courts. It is proposed that such an interpretation would lead to the same definition of a building as set forth in the dictionary. Under either scenario, movable structures, not intended for permanent use counselor to sheds, should be allowable under the covenants.

On the final issue, the court found to be a breach of covenant, a small structure which was believed to house the sprinkler controls for one of the properties. It is long been held that “[a]s a rule, nonobjection to trivial breaches of a restrictive covenant does not result in loss of the right to enforce the covenant by injunction, and acquiescence in violations \* \* \* which are immaterial and do not affect or injure one will not preclude him from restraining violations thereof which would so operate as to cause him to be damaged ... 20 Am.Jur.2d, Covenants, Conditions, etc., § 274, p. 835”. *Pool v. Denbeck*, 196 Neb. 27, 34, 241 N.W.2d 503, 507 (1976) .

On this issue, the court basically undertakes a comparison of the alleged breaches at issue. Here, the structure at issue is a small building of insignificant consequence versus the desire of Straatmeyers to subdivide a lot and construct the home which will have substantial consequences both on the aesthetics and functioning of the subdivision. It being remembered that the prohibition against subdividing was enacted for the purpose of being able to maintain the water and sewer systems of the homes originally planned for the subdivision.

Alternatively, the court abused its discretion by not requiring the removal of this small structure (and if this court requires, the movable sheds) as opposed to striking the entirety of the covenants.

**4. The Circuit Court erred by finding that property owners conducted business on their properties in violation of the covenants.**

The final area of alleged violations from the property owners was the court's interpretation of the covenant stating "... *The lot shall be used for residential purposes only and lot owner shall conduct no business activities which shall require extra parking facilities or which may result in any materials being stored outside any dwelling or which may in any other way interfere with the peaceful enjoyment of the premises by other lot owners...*" Of this covenant, the court found that owners, Peters and Boadwire, violated the "doing business" provision of the covenants. While the court did not specifically state its rationale, the factual basis of the court specifically mentions, first, that on both properties "...gravel has been added to the lot for a turnaround..."

This finding by the court specifically ignores the only testimony offered on the subject by both property owners, each of whom testified that neither added to the parking that was on their property when they purchased the same. While each testified that they have added gravel to the existing surfaces, both noted that this was for the sole purpose of maintaining the existing parking area when the same became muddy. Looking at the plain language of the covenants, neither owner conducts any activities which "require extra parking facilities."

The Circuit Court further noted that the individuals also allow others to park on their premises while they are at work. There is no prohibition in the Covenant against this

activity and thus, the same should not be used for purposes of covenant violation. It is noted that the covenant does not prohibit the operation of a business, only the operation of the business which would require extra parking facilities. Again, neither owner had any extra parking facilities added to their property after they produce the same.

Finally, the Circuit Court indicates that business equipment such as trailers and skid steers are also located on the property. Again, there is no prohibition against parking equipment on your own premises and this is an invalid reason for the violation of the covenants. Each property owner further testified that such equipment is used for business and personal jobs. The record is also voided any materials being stored on the property of any lot owners other than materials that they keep for personal use.

**D. THE CIRCUIT COURT ERRED IN FINDING THE COVENANTS VOID AND NOT APPLICABLE TO STRAATMEYERS.**

In the decision, the Circuit Court found that the covenants were null and void and waived by the above conduct of the homeowners. For the reasons set forth above this was in error. The court further reasoned that the principles of equity govern the enforcement of building restrictions.

In examining the relative equities, the court determined that enforcement of the covenants against the Straatmeyers would be disproportional in harm to the plaintiffs would be minimal. The reasoning for this appears to be solely based on the fact that most of the plaintiffs would not drive by or regularly see the structure at issue.

This finding, the court clearly ignores existing South Dakota law regarding the equities applicable to the enforcement of restrictive covenants. Of this, our courts have stated "...We have recognized the doctrine of unclean hands which requires that '[a] party seeking equity must act fairly and in good faith.'" *Action Mech., Inc. v. Deadwood*

*Historic Pres. Comm'n*, 2002 S.D. 121, ¶ 26, 652 N.W.2d 742, 751. This Court has further held “[i]f a person guilty of unconscionable or wrongful conduct purges himself or herself by adequate and effective renunciation and repudiation, the right to relief will be restored.” Hall, 2006 S.D. 47 at ¶ 18; 27 Am. Jur.2d, Equity § 135; *see also Beavers v. Walters*, 537 N.W.2d 647, 651 (N.D.1995) (stating that “one who purges himself of his wrongdoing will have his right to relief restored” and finding that parties purged themselves of wrongdoing when they reached a settlement with another party).

In contradiction to the above law, this Circuit Court placed the burden of preventing Straatmeyers from violating the covenants, on the remaining property owners. This is done despite the fact that the covenants were of record at the time Straatmeyers subdivided the lot and obtained a building permit. In fact, according to Clyde Straatmeyer he could have easily availed himself to the covenants by merely looking at the records on file would surely would have been with his title insurance policy.

This finding by the court is clearly in contradiction of South Dakota law which provides:

The constructive notice furnished by a recorded instrument, so far as every material fact recited therein is concerned, is equally as conclusive as would be actual notice acquired by a personal examination of the recorded instrument or actual notice acquired by or through other means.

*Lunstra v. Century 21 GKR-Lammers Realtors*, 442 N.W.2d 448, 450 (S.D. 1989).

This, standing alone, establishes actual notice on the part of Straatmeyer and a knowing and willful violation of the covenants. Further, the knowledge was available before he suffered any harm.

In addition, in the instant case, Straatmeyers specifically represented as part of their process of obtaining a building permit, that they were in fact aware of all covenants



and restrictions on the property and that the same did not prohibit the activities in the requested permit.

The potential hardship on the plaintiff is substantial. As indicated in the undisputed testimony of the developer, the reason for the limitation of structures on lots was for the express purpose of assuring no future issues with the septic system or leech field, which was approved for the development. According to the developer, "...Lots were not to be smaller because it may cause perforation in somebody else's property..." TT 13. This was based on the surveying of soil and water samples done at the time of the development. In other words, additional structures which have plumbing and sewer have the possibility to cause sewage to back up onto and into, the property of others. Without enforcement of the covenants, all owners are free to subdivide their properties which would increase this risk substantially.

Conversely, Straatmeyers have not begun construction and are not harmed by enforcement of the covenants of which they should have been aware. Further, they have now, is required by South Dakota law, purged themselves of unclean hands to the extent that would restore their right to complain. In short, the equities favor Appellants.

### **CONCLUSION**

For the reasons stated, Appellants respectfully request this court to reverse the memorandum of decision and subsequent order filed in this matter into uphold the covenants at issue herein.

### **REQUEST FOR ORAL ARGUMENT**

Appellants hereby request oral argument.

Dated this 17<sup>th</sup> day of February, 2023.

CLAYBORNE, LOOS & SABERS, LLP

*/s/ Courtney R. Clayborne*

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*Attorneys for the Appellants/Plaintiffs*

*[Certificate of Service to Follow]*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17<sup>th</sup> day of February, 2023, he electronically filed the foregoing documents with the Clerk of the Supreme Court Odyssey File and Serve portal, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

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Rapid City, SD 57701

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Clerk of the Supreme Court  
State Capitol  
500 East Capitol  
Pierre, SD 57501

/s/ Courtney R. Clayborne  
COURTNEY R. CLAYBORNE

*[Certificate of Compliance to Follow]*

**CERTIFICATE OF COMPLIANCE**

Pursuant to SDCL § 15-26A-66(b)(4), Courtney R. Clayborne, counsel for the Appellants, does hereby submit the following:

The foregoing brief is 15 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 4,026 words, and 24,043 characters (no spaces) in the body of the Brief.

*/s/ Courtney R. Clayborne*  
\_\_\_\_\_  
COURTNEY R. CLAYBORNE

[Appendix to Follow]

## APPELLANT APPENDIX

<b><u>Description</u></b>	<b><u>Page Number:</u></b>
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Defendant's Trial Exhibit Nos. 1, 3, 4 & 17.....	APP 054-APP 064.
Plaintiff's Trial Exhibit Nos. 101, 102, 103, 104 & 105 .....	APP 065-APP 077.

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS )  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG )  
and DEB PETERS, MARK and KITTY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )

46CIV21-000206

**JUDGMENT ENJOINING  
ENFORCEMENT OF COVENANTS  
AND DISMISSING PLAINTIFFS'  
COMPLAINT AND DEFENDANTS'  
COUNTERCLAIMS WITH PREJUDICE**

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY  
STRAATMEYER,

Defendants.

The above matter came before the Court on February 15, 2022 for a court trial wherein Plaintiffs were represented by Courtney Clayborne of Clayborne Loos & Sabers, LLP and Defendants were represented by Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP. The Court having taken judicial notice of certain items, testimony, the parties having submitted proposed Findings of Fact and Conclusions of Law and the Court having rendered a decision on September 28, 2022, the Court hereby enters Judgment and Decree as follows:

1. The Defendants are the owners in fee simple of the following described real estate located in Meade County, South Dakota:

Lot 6B of tract 3 located in NE1/4 NW1/4 of Section 36, Township 3 North, Range 6 East, BHM, Meade County, South Dakota, formerly part of Lot 6 of Tract 3 of Shadowland Ranch Subdivision;

2. That Plaintiffs sought to impose a set of covenants dated September 20, 1976 and filed with the Meade County Register of Deeds as Book 331, Page 687 of Miscellaneous Filings;

3. The Court finds that the covenants filed against the land are not enforceable against the Defendants due to waiver, laches and estoppel as more fully set forth in this Court's decision of September 28, 2022 which is incorporated hereby;

4. That covenants of record are hereby considered void and unenforceable as to all parties given the lack of enforcement and multitude of violations of the covenants that have gone unenforced for a number of years;

5. That Defendants' Proposed Findings of Fact and Conclusions of Law are hereby incorporated into this judgment and to be considered the Court's Findings and Conclusions of Law;

6. That enforcement of the covenants filed with the Meade County Register of Deeds at Book 331, Page 687 is hereby permanently enjoined. The Covenants may not be enforced against any of the parties. The covenants shall be considered void and terminated through inactions of the parties and the failure to enforce said covenants; and

7. That Defendants shall be entitled to taxation of costs in an amount of \$ **2245.67** as more fully set forth in the Application and Affidavit for Taxation of Costs, filed contemporaneously herewith. If no objection is filed within ten (10) days of the date of service of this Judgment, the Clerk is instructed to insert the amount requested therein and docket the Judgment.

Dated this \_\_\_\_ day of October, 2022. **10/13/2022 10:22:30 AM**

Attest:  
Brill, Kimberly  
Clerk/Deputy



A handwritten signature in black ink, reading "Kevin J. Kull". The signature is fluid and cursive, with the first name "Kevin" and last name "Kull" clearly legible.

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS )  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG )  
and DEB PETERS, MARK and KITTY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )

46CIV21-000206

**MEMORANDUM OF DECISION**

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY )  
STRAATMEYER, )

Defendants.

**FILED**

SEP 29 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By 

**MOTION SUMMARY**

This matter having come before the Court on February 15, 2022 and Plaintiffs having been represented by Courtney Clayborne of the law firm of Clayborne, Loos and Sabers and the Defendants by Talbot Wieczorek of Gunderson Palmer Nelson and Ashmore. This Court, having heard arguments of Counsel, and having considered the briefs from both parties, with good cause showing, issues its Memorandum of Decision.

**FACTUAL BASIS**

Defendants Straatmeyers are the record owners of a lot more fully described as: Lot 6B of tract 3 located in NE1/4 NW1/4 of Section 36, township 3 North, Range 6. The lot was subdivided out of a larger lot referenced as Lot 6. The subdivision of Lot 6 resulted in a Lot 6A and Lot 6B. The owners of Lot 6A are not a party to this lawsuit. The Plaintiffs are all owners of lots within



the same subdivision known as Shadowlands Subdivision. Lot 6 was split by Defendant Straatmeyers' predecessor in interest through filing a plat with the City of Summerset. At the time of the filing of the plat with the City of Summerset, the Plaintiffs failed to object to the subdivision of Lot 6 which subsequently led to it being divided into Lot 6A and Lot 6B.

A set of covenants was filed on the properties dated September 20, 1976 (hereinafter, "1976 Covenants"). Defendants Straatmeyers bought the property after the property was subdivided in 2020. When Defendants Straatmeyers looked at buying a lot, they walked the property several times. Before the property was platted, the property was staked, and measurements were taken. Stakes were placed in the ground, and the stakes remained in the ground for several months. Although the stakes were visible to any passerby, specifically the Hoods who lived next door, no questions were asked of the then-current owner, nor was any other investigation done by any parties regarding the activity.

A surveyor was out at the property and flagged and pinned Lot 6 before commencing the plat. No questions were raised by Hoods or any other party regarding this activity. However, the activity was visible, and markings on the ground were visible to any passerby. The City of Summerset oversaw the platting of Lot 6 and had jurisdiction over the platting in the area. The process that the City of Summerset follows goes through planning and then through City Commission for approval of the lot. A resolution authorizing the plat and the City Commission minutes were published in the City's paper of record on two separate days. No Plaintiffs nor any other party objected to the platting of the property. Likewise, no objection was made to the City, the Straatmeyers, or the owner of Lot 6.

When Defendant Straatmeyers purchased the lot, they were not provided a set of the covenants by anyone. As a result, defendant Straatmeyers were unaware of the existence of the

covenants at the time of the purchase of the lot. They became aware of the covenants after a conversation with Hood. The title company never provided Defendant Straatmeyers with a copy of the covenants, so when purchasing the lot, Defendant Straatmeyers were not on notice of the existence of the covenants. After buying the property, Defendant Straatmeyers hired a contractor who commenced construction. Construction included excavation work and starting other activities. It was only after construction work began that Hoods approached Defendants Straatmeyers. When submitting the building permit, Defendants Straatmeyers were unaware of the covenants and firmly believed there were none because the title company had not provided them at closing.

The planned structure is a permanent structure to be constructed on the lot. When the contractor began work on the lot, Plaintiff Robert Hood claimed the construction violated certain covenants and threatened Defendants Straatmeyers with litigation and physical force if they continued to construct. Defendants Straatmeyers stopped building when the suit was filed. Currently, the ground is prepared for construction, and support posts are in place. Plaintiffs asserted various violations of the covenants, which are:

- a. Lot 6 should not have been divided;
- b. The proposed structure has more than a three-car garage in violation of Section A of the covenants;
- c. The structure is modular in violation of Section B of the covenants; and
- d. The structure is being constructed within 40feet of the lot line. See Section H of the covenants.

The proposed structure is not a modular but a permanent structure with a poured concrete floor, support beams into the ground, and concrete footings. The structure would not be modular but constructed on-site. The proposed structure would have three garage doors with one garage

large enough for a recreational vehicle (RV). Several lots in the area already have multiple garages, many big enough to park an RV and more than three garage spaces. Plaintiffs assert that one can have a three-car garage connected to the house and as many other garages and outbuildings as they want and still comply with the covenants. Plaintiffs contend that their extra garage spaces are allowed because they are not attached to the residence. Plaintiffs also claim no prohibition against building a structure large enough for RVs. No one has sought to stop these Plaintiffs or other owners from building outbuildings resulting in more than three garage spaces.

The Defendants' building has three garages that can be used for cars, one big enough for an RV. An RV is a motorized vehicle that people can drive, fitting into the definition of a "car." The covenants do not prevent a garage from being big enough to put an RV inside. Further, the covenants do not prevent a landowner from having an RV garage and two-car garages. The proposed structure will be within 40 feet of the side lot lines, although it will be outside the setbacks provided by the County. Covenant Section H states: "No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot." This definition applies to all buildings, not just houses. Multiple other buildings within the subdivision are within 40 feet of the property lines.

The Hoods, who share a lot line with the Defendants Straatmeyers, have sheds within 40 feet of the property line. These sheds may be able to be moved but constitute buildings within 40 feet of the lot boundary. Hoods have not sought to move the sheds since the commencement of this action. No one has sought to enforce the covenants against Hoods. Across the street from the Defendants' property, Plaintiffs Baillys have built a building that is an outbuilding with a shop and garage in the 40-foot setback. The Baillys' building is within sixteen feet of the actual road. Therefore, the Baillys' building violates the County setback also. This setback is also noted for the

lot that any building should be more than twenty-five feet from the road. No one has sought to enforce the covenants against Baillys. The Baillys' structure is visible from the main thoroughfare coming into the subdivision.

Across the street from Lot 6A, the other lot that was subdivided out of the Lot 6 parcel, is a building within 16 feet of the lot line. There are other buildings in the subdivision in the 40-foot setback. However, no one has sought to enforce the covenants against these other owners. In addition to the shop and garage that Baillys have built within 40 feet of the lot line, Baillys have also placed a shed within seven feet of the south lot line. Plaintiffs Peters has also constructed a shed on their lot within nine feet of the lot boundary. Lot owner 11, the Cottinghams, who are not parties to the action, built a building with a concrete foundation immediately adjacent to the lot boundary fronting the road. This building is also in violation of the County setback. None of the Plaintiffs or any other party has challenged the placement of Hoods', Baillys', Peters', or Cottinghams' structures within 40 feet of the lot lines.

Defendant Straatmeyers' lot is off of a cul de sac with two other homes - the Hoods' home, and the Donovans' home. No other Plaintiffs' home faces Defendant Straatmeyers' property, nor would any other Plaintiff regularly drive by Defendant Straatmeyers' property. There are at least two businesses that do business within the subdivision. One is R.C. Peters Construction, Inc., and the other is Aim High Tree Service. Aim High Tree Services is owned by the Boadwire family and is located on Lot 9. On the lot, Boadwire has employees park in grassy areas and also has parked equipment on the lot. In addition, gravel has been added to the lot for a turnaround. Boadwire has his employees drive in every day and get equipment, trucks, and commercial trucks used for his business, leave with those trucks, and then return at the end of the day.

Part C of the covenants prevents businesses that require extra parking, resulting in materials being stored outside any dwelling. The addition of parking is a violation of the covenants Part C. The Boadwire lot also has more than three garage stalls. Plaintiffs Peters, who lives on Lot 10, also runs a business out of the lot. Peters keeps materials and equipment from jobs outside the dwelling. Multiple parking spots have been developed on the property for business equipment such as trailers and skid steers. Storage of materials and the extra parking violates covenant Section C. Peters also has more than three garage stalls having a house with two garage stalls and an outbuilding with three garage stalls. This is all in addition to having a structure built within 40 feet of the lot line. Boadwire and Peters operate businesses out of these residential lots, and increased traffic associated with both businesses interferes with the lawful enjoyment of the subdivision in violation of covenant Section C. The operation of both businesses is a violation of the covenants. No one has sought to enforce the covenants against these violations.

Plaintiffs contend that all other violations besides Defendant Straatmeyers' should be allowed because most residents do not object to those violations. The covenants do not allow most owners to waive any covenant violations. Allowing homeowners within a subdivision to selectively enforce covenants against some property owners or new property owners that move in while allowing property owners who have been there longer to maintain covenant violations would be inequitable and unjust. No one has any record of anyone attempting to enforce the covenants since their recording in 1976. Plaintiffs called Eddie Opstedal, who had developed the subdivision in 1976 and executed the covenants. Plaintiffs sought to introduce testimony from Mr. Opstedal interpreting Part H of the covenants, specifically that the 40 feet "of the boundary of said lot" meant something different for the side lot boundary versus the part of the lot boundary fronted the road. The language of Part H of the covenants is not ambiguous because a boundary of the said lot

has a distinct and clear legal meaning. Testimony trying to interpret the meaning of the phrase is inappropriate.

Opstedal was also asked questions regarding Section A of the covenants. That subsection provides: "There shall be only one single-family dwelling per lot with no larger than a three car garage." Whether the three-car garage restriction applied to all buildings on the lot or just the house is unclear, and Section A is ambiguous. Opstedal testified that as the party requesting the drafting of the covenants and creator of the subdivision, the intent of Section A was that the three-car garage restriction applied to all structures on the lot permitting only three total garage spaces on the lot. Opstedal also, after reviewing the activity on Boadwire and Peters' property, concluded that both violated the covenants' doing business clause. Plaintiffs assert those covenant violations of other lot owners living in the subdivision pre-exist. Defendants Straatmeyers' purchase of Lot 6B was agreed to by most owners or grandfathered in. The covenants do not have a provision that permits most people to allow certain violations while contesting others.

### OPINION

Interpretation of covenants constitutes a legal question. *Halls v. White*, 206 S.D. 47, ¶4, 715 N.W. 2d 577, 579. In interpreting the terms of a restrictive covenant, courts are to use the same general rules of construction applicable to contractual interpretation. *Id* at ¶7, 715 N.W. 2d 580. When an ambiguity exists, a restrictive covenant should be read strictly as the Court and society favor the free use of property and a restrictive covenant should only be enforced if clear. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). In interpreting the covenants, the drafter of the covenants testimony regarding the intent of the covenants should only be considered if there is an ambiguity. "[W]hen the language of a restrictive covenant is unambiguous, 'its meaning must be determined from the four corners



of the instrument without resort to extrinsic evidence of any nature." *Jackson v. Canyon Place Homeowner's Ass'n, Inc.*, 2007 S.D. 37, ¶ 9, 731 N.W.2d 210, 212, (quoting *Halls v. White*, 2006 S.D. 47, ¶ 7, 715 N.W.2d 577, 580-81).

The term "car garage" is ambiguous as a "car garage" could be used for trucks or other types of cars and would not be exclusively used for "cars." See *Jackson v. Canyon Place Homeowners' Association, Inc.*, 207 S.D. 37 ¶9 731 N.W. 2d 210. "The language of the Covenants is unambiguous when viewed objectively and in the context of the entire Declaration of Protective and Restrictive Covenants. '[A] contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.'" *Coffey v. Coffey*, 2016 S.D. 96, ¶ 9, 888 N.W.2d 805, 809 (quoting *Dowling Family P'ship v. Midland Farms*, 2015 S.D. 50, ¶ 13, 865 N.W.2d 854, 860). Because of the ambiguity, parol evidence can be considered in determining that the three-car garage restriction applied to the entirety of the lot. Based on the testimony from the drafter of the restrictive covenants clarifying the ambiguity, the three-stall garage language applies to the entirety of all structures on the lot.

Furthermore, in determining an ambiguity, a dictionary definition can be used. *Jackson v. Canyon Place Homeowners' Association, Inc.*, 207 S.D. 37 ¶ 12, 731 N.W. 2d 210. In the Merriam-Webster dictionary online, a car is defined as "a car moving on wheels: such as an automobile." An automobile is "usually a four-wheel automotive car designed for passenger transportation." Thus, an RV constitutes an automobile and a car by definition of the dictionary. A "car garage" can be big enough for an RV. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). The covenants do not bar garages big enough to park trucks, trailers, or any other types of vehicles. The covenants do not

prohibit the construction of a large garage for a recreational vehicle. *Id.* As such, the Defendants' design is allowed and not barred by the terms of the covenants. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). Regarding Part H of the covenants, the phrase "boundary of said lot" is not ambiguous as lots are legally defined, and the boundary of the lots is evident from the plats and legal description. As there is no ambiguity, testimony regarding what was supposedly intended by the phrase is not considered or admissible. The boundary of said lot refers to the actual boundaries of the lot, not some area outside the boundary.

If one read the covenants as restricting to only three car garages, the restriction would have to be read to apply to all structures. Therefore, the Plaintiffs have also waived the right to argue that the structure would violate the three-car garage rule, given multiple other violations within the subdivision. *Hammerquist v. Warburton*, 458 N.W.2d 773 (S.D. 1990); *Rodgersen v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser v. Creamer*, 284 A.2d 220, 225-26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925). "The right to enforce a restrictive covenant may be lost by waiver or acquiescence." 20 Am.Jur 2d *Covenants* § 238 (1995). Waiver or acquiescence occurs where landowners in a subdivision fail to object to general and continuous violations of restrictions. *Id.* (citing *Edwards v. Wiseman*, 198 La 382, 3 So 2d 661). A landowner that has knowingly and without objection has allowed others in the subdivision to violate restrictions cannot enforce such restrictions against another. *Id.* (citing *Smith v. Shinn*, 82 Idaho 141, 350 P2d 348). People waive their right to enforce covenants when they violate them. *Rodgersen v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser*



*v. Creamer*, 284 A.2d 220, 225–26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925). The analysis of the waiver is fact specific. *Vaughn v. Eggleston*, 334 N.W.2d 870, 873 (S.D. 1983).

From all of the evidence and testimony this Court heard, the Court finds that multiple Plaintiffs violate the covenants. Specifically, Lot 2, owned by Plaintiff Jungs, violates the covenants by having more than three garage spaces. Lot 3, owned by Plaintiffs Price, violates the covenants by having a two-car garage on the house and two post-frame buildings with additional garage spaces. Lot 5, owned by Plaintiffs Hoods, has more than three garage stalls and a shed that encroaches in the setback. Lot 6A is the subdivided lot. Lot 7, owned by Plaintiffs Baillys, has two buildings that are closer than 40 feet from the lot boundary and have more than three garage stalls. Lot 9, owned by Plaintiffs Boadwires, violates the doing business provisions of the covenants and has more than three garage stalls. Lot 10, owned by Plaintiffs Peters, violates the covenants by having a business operation in violation of the covenants, having more than three garage stalls, and a structure built in the setback. Lot 11, owned by Cottinghams, who are not a party, violates the covenants by having a structure within 40 feet of the lot boundary and having more than three garage stalls. Finally, lot 13, owned by Plaintiffs Gustafs, violates the covenants by having more than three garage stalls. Because of these continuous violations of the restrictive covenant, the Plaintiffs waive their rights to assert a violation of the covenants against the Defendants.

The initial violation was the subdivision of Lot 6 by Defendant's predecessor, to which the Plaintiffs failed to object timely. There is no legal remedy by which Plaintiffs can seek to un-subdivide property that was divided and sold to two separate owners. The Plaintiffs' only recourse is in equity. *Strong v. Atlas Hydraulics, Inc.*, 855 N.W.2d 133, 139 (S.D. 2014). Decisions regarding platting are quasi-judicial decisions. *Armstrong v. Turner Co. Board of Adjustment*, 772

N.W. 2d 643, 650–51 (S.D. 2009) (superseded by statute on other grounds as recognized in *Sierra Club v. Clay County Board of Adjustment*, 959 N.W.2d 615 (S.D. 2021)); *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 398–99 (S.D. 1973).

The "quasi-judicial action of a board having by force of statute and proper procedure acquired jurisdiction of the person and subject matter is not subject to collateral attack." *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 399 (S.D. 1973) (citing *Yankton Cty. v. Klemisch*, 76 N.W. 312, 313 (S.D. 1898)). Platting of the Lots 6A and 6B was a quasi-judicial action. *Ridley v. Lawrence County and Frawley Ranches, Inc.*, 619 N.W.2d 254 (S.D. 2000). The attack on the plat in this action must also be dismissed as it constitutes a collateral attack on a quasi-judicial proceeding undertaken by the City of Summerset. The claim that subdividing the lot was in violation of the covenants must be dismissed because the Plaintiffs failed to include the owner of Lot 6A to have complete relief of the claimed covenant violation. In addition, the City of Summerset would have to be included for the relief sought by the Plaintiffs.

Equitable principles govern the enforcement of building restrictions. Whether such relief will be granted is a matter within the sound discretion of the trial court, which is determined in the light of all the facts and circumstances. 20 Am.Jur. 2d. *Covenants* § 275 (1995) (citations omitted). The Court finds that the harm resulting in enforcement of the covenants against the Straatmeyers would be disproportional. Straatmeyers would be barred from using their property, while the great majority of the Plaintiffs would be able to continue using their property while violating the covenants. Harm to Plaintiffs would be minimal. Most of the Plaintiffs would not drive by or regularly see the Straatmeyers' structure. As to the Plaintiffs on the cul de sac, two of the lots are already violating the covenants. *Hammerquist v. Warburton*, 458 N.W.2d 773, 778 (S.D. 1990). It would be inequitable to enforce covenants against the Straatmeyers while allowing multiple

covenants violations of the Plaintiffs and other parties to stand and continue. Enforcement of the covenant violation against one landowner while allowing numerous other covenant violations to continue would be inequitable. *Id.*

### CONCLUSION

Defendant Straatmeyers are entitled to complete their structure as planned. Their structure does not violate the covenants, or any violations of the covenants are dismissed regarding the platting and the setback issues as a result of the Plaintiffs failing to enforce or violating the covenants themselves. The covenants are not enforceable given the pervasive violations that have gone unchecked or unenforced by the Plaintiffs or any other parties that may have had the right under the covenants to enforce said violations. If the Court were to order strict adherence to the covenants, it would have to order strict adherence to the covenants among all parties and order the removal of all offending structures, which would cause more significant harm to all parties. Getting all the homes in the subdivision to comply with the covenants is impractical and would harm all parties. Therefore, enforcement of the covenants against any of the parties would be inequitable at this point, given the pervasive violations throughout the subdivision. Lastly, this Court also finds that the Plaintiffs have waived the right to enforce the covenants against the Defendants.


Dated this 29<sup>th</sup> day of September 2022.

BY THE COURT:

Attest: LINDA KESZLER  
Clerk

By: Jen Ruede  
Deputy



  
Kevin J. Krull  
Circuit Court Judge

**FILED**

SEP 29 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By: 

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PRINTER FRIENDLY

## **15-26A-3. Judgments and orders of circuit courts from which appeal may be taken.**

Appeals to the Supreme Court from the circuit court may be taken as provided in this title from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order granting a new trial;
- (4) Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment;
- (5) An order which grants, refuses, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court;
- (6) Any other intermediate order made before trial, any appeal under this subdivision, however, being not a matter of right but of sound judicial discretion, and to be allowed by the Supreme Court in the manner provided by rules of such court only when the court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding; or
- (7) An order entered on a motion pursuant to § 15-6-11.

**Source:** SDC 1939 & Supp 1960, § 33.0701; SDCL, § 15-26-1; SL 1971, ch 151, § 2; SL 1986, ch 160, § 2.

STATE OF SOUTH DAKOTA     )  
  ) SS  
COUNTY OF MEADE            )

IN CIRCUIT COURT  
  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD,  
THOMAS and PATRICIA DONOVAN,  
BERNARD and MARIA JUNG,  
WILLIAM and JANICE PRICE, JAMES  
and KAY FENENGA, LARRY and  
DARLENE BAILLY, GREG and DEB  
PETERS, MARK and KITTY GUSTAF,  
and RODNEY and GINA BOADWIRE

Plaintiffs,

vs.

CLYDE and NANCY STRAATMEYER,  
Defendants.

46CIV21-\_\_\_\_\_

**COMPLAINT**

COMES NOW the Plaintiffs, (collectively "Shadowland Ranch Homeowners," "Homeowners," or "Plaintiffs"), by and through their undersigned attorneys of record, and for their cause of action and pursuant to SDCL §21-24, state:

**NATURE OF ACTION**

1. This is an action for a declaratory judgment to declare the covenants of Shadowland Ranch Subdivision, a copy of which are attached hereto and marked as Exhibit A, to be valid and applicable and to further prevent the proposed construction contemplated by Defendants. An order of this court is necessary to resolve this controversy.

2. All Plaintiffs are residents of Meade County residing within the

Shadowland Ranch Subdivision.

3. The Shadowland Ranch Subdivision was created in September of 1976 by Eddie and Sandra Opstedahl, who put in place a set of restrictions and covenants which are attached as Exhibit A. The covenants are intended for the benefit of all lot owners within the Shadowland Ranch Subdivision.

4. Included in the covenants was a provision that no lots within the subdivision shall be further subdivided.

5. Despite this restriction on subdividing, Defendant's predecessors, without notice to the other residents of the subdivision, subdivided their lot and sold a portion of the same to Defendants.

6. On or about May 12, 2021, the Shadowland Ranch Homeowners became aware of the purchase of a subdivided lot by Defendant and cause to be sent to Defendants a letter referencing the covenants and alerting Defendants of the prohibition of further subdividing existing lots and of the building restrictions contained within the covenants. The homeowners specifically informed the Defendants that they reserved the right to seek legal relief if the Defendants elected to proceed in violation of the covenants. A copy of the covenants was included with this letter. A copy of that letter is attached hereto as Exhibit B.

7. Defendants received Exhibit B.

8. Despite having received the letter and covenants, on April 4, 2021, Defendants made application to Meade County for a Building Permit on the disputed lot. The application sought to permit the construction of a pole barn, to be used as a part time residence and storage facility for Defendant's vehicle. A

copy of that application is attached hereto as Exhibit C.

9. On both the application and Building Permit, Defendants acknowledge "... The APPLICANT hereby acknowledges that he/she **is familiar with covenants**, deed restrictions, governmental regulations and Meade County Ordinances ..." (emphasis added) The Building Permit is attached as Exhibit D.

10. Attached as Exhibit E is a true and correct copy of the building plans submitted by Defendants to Meade County.

11. Attached as Exhibit F is a copy of the proposed location of the physical structure of the Defendants on the disputed lot, including the measurements of the set-backs.

12. The structure for which Defendants have received a permit is in violation for the Shadowland Ranch Subdivisions in the following respects:

- a. The proposed structure has larger than a three-car garage, in violation of Section A of the covenants;
- b. The proposed pole barn is considered a modular structure in violation of Section B;
- c. The proposed structure is on a subdivided lot, in violation of Section C of the covenants; and
- d. The proposed structure is to be constructed within forty feet (40') of the boundary of the lot.

13. The proposed structure will breach the Plaintiffs' collective rights the peaceful enjoyment of their premises.



### **PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, Plaintiffs pray for an order of this Court as follows:

1. For an order determining that the subdivision of defendants' lot is in violation of the covenants of shadowland Ranch subdivision;
2. For an order determining that the proposed structure to be constructed by defendants is in violation of the covenants of shadowland Ranch subdivision;
3. For an order directing the removal of any structures constructed on the premises of defendants in violation of the covenants;
4. For plaintiffs costs and disbursements, including reasonable attorney's fees to the extent allowed by South Dakota law; and
5. For any and all other relief that this court deems just and equitable under the premises.

Dated this 23rd day of June, 2021.

CLAYBORNE, LOOS & SABERS, LLP

/s/ Courtney R. Clayborne  
COURTNEY R. CLAYBORNE  
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881-12087

SHARLOCKLAND RANCH SUBDIVISION DESCRIPTION AND COVENANTS

The following covenants and restrictions shall apply to the following property being subdivided by the property owner, Eddie A. Opstead and Sandra L. Opstead, husband and wife.

Lots one (1) through thirteen (13) of the Sharlockland Ranch Subdivision located in the NW 1/4 of Section 36, Township 1 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Twelve Hundred (1,200) square feet. No trailers or modulars.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any materials being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- E. Only dogs, cats, and horses may be kept on the premises. Horses may be kept if one party owns more than six (6) acres in the development. Limit of three (3) mature horses per six (6) acres or more. Foals, yearlings, and ponies count as one-half (1/2) mature horse. All dogs, cats, and horses must be retained on the respective lots.
- F. The outside appearance of the house being constructed on any lot must be fully completed within one (1) year after the beginning of construction.
- G. All vehicles on lots must be in running order.
- H. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.
- I. Buyer of lot six (6) will have right to temporary hook-up to existing well across the road to the west, for minimum of one (1) year and maximum of two (2) years from the time of original purchase.
- J. Overhead electrical system is to be run along north boundary of lots five (5) and six (6) due to trees and poles. All other new lines (electrical and telephone) constructed on the subdivision are to be underground. Electrical and telephone wires are to be run to each lot line.

STATE OF SOUTH DAKOTA

COUNTY OF MEADE

ss.

Eddie A. Opstead  
Eddie A. Opstead

Sandra L. Opstead  
Sandra L. Opstead

On this 20<sup>th</sup> day of September, 1978, before me, the undersigned officer, personally appeared EDDIE A. OPSTEAD and SANDRA L. OPSTEAD, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.



Ed Petersen  
Notary Public, South Dakota  
STATE OF SOUTH DAKOTA, COUNTY OF MEADE-SS.

August 20, 1978  
Recorded in Book 132, Page 687  
Meade County, South Dakota

EXHIBIT

A

APP 020

The Law Offices of

**CL** CLAYBORNE, LOOS  
**& S** AND SABERS LLP

Courtney R. Clayborne  
Michael C. Loos  
Michael K. Sabers  
Travis B. Jones  
Eric M. Schlingens\*  
Hollie L. Smith

Phone (605) 721-1517  
Fax (605) 721-1518  
2834 Jackson Boulevard, Suite 201  
P.O. Box 9129  
Rapid City, South Dakota 57709-9129  
\*Licensed in Wyoming

May 12, 2021

Clyde Straatmeyer and Nancy Straatmeyer  
2458 Outback Trail  
Hermosa, SD 57744

Re: Shadowland Ranch Subdivision

Mr. and Mrs. Straatmeyer:



Please be advised that our office has been contacted and retained by homeowners in the Shadowland Subdivision located in Meade County. It is our understanding that you recently purchased the newly platted Lot 6B of Shadowland Ranch Subdivision with the intent of constructing a habitable structure on the same. This letter is to inform you that such an act would be in violation of the Shadowland Ranch Subdivision Restrictions and Covenants, which should have been referenced in your title insurance, and a copy of which is enclosed herewith.

As you can see, the Restrictions and Covenants included Lot 6 and initially provide that "*further subdivisions of any lot shall be prohibited.*" Unfortunately, other homeowners in the subdivision were not informed of the subdivision and do not waive their right to proceed and have the same nullified.

Additionally, the Restrictions and Covenants also restrict the use of the Lot, including placing certain building restrictions on the property owners. Please be advised that the homeowners are prepared to proceed with enforcement of these Restrictions and Covenants if required to do so by any construction on Lot 6B.

At this time, the homeowners would request that you cease and desist from any further construction activities on Lot 6B, which was formed in violation of the Restrictions and Covenants, which were filed on the property at the time of your purchase. If you elect to proceed, the homeowners may institute legal action which could, as a requested remedy, require that any improvements (and certainly any improvements in violation of the recorded Restrictions and Covenants) be removed. The litigation may also include request for

reimbursement of legal fees incurred in enforcing the covenants, as well as any other damages suffered by the homeowners. Hopefully, this will not be necessary.

Thank you for your cooperation and please feel free to contact me if you have any questions or comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'CTR', is written over the typed name.

COURTNEY R. CLAYBORNE

CRC:  
Enclosures

# Building Permit Documentation Required:

*\*Applications will not be accepted unless the following information is submitted:*

Received

☐

## Foundation Plan

*(Cross-section of footing, wall etc. with rebar size and spacing  
- for post frame structures, a diagram of post holes is required)*

☐

## Floor Plan

☐

## Elevation Plan

*(Diagram of framing and truss information, ex. wall detail)*

☐

## Site Plan

*(Diagram of proposed structures, distance to property lines)*

☐

## Truss Plan(s) - engineered roof truss plan

*(40 psf ground snow load, 90 mph wind speed)*

☐

## Cost Estimate of Project

*(Written or typed detailed breakdown of cost estimate of improvements, including material and labor costs)*

N/A

Received

☐☐

## Owner Statement - (if applicable)

*(Written verification from owner is required if someone other than owner is applying for permit - complete attached statement)*

N/A

Received

☐☐

## Stormwater Site Plan - (if applicable) \* \$25.00 fee applies

*(A stormwater site plan is required to be submitted if the construction area or site is within 250 feet of a drainage ditch, stream, or road ditch - complete attached form.*

*\*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)*

N/A

Received

☐☐

## Percolation Test - (if applicable)

*(Percolation test is required to be turned in at time of building permit application if a new septic system will be installed - if ground is frozen this will be required at time of septic permit application)*

N/A

Received

☐☐

## Copy of Warranty Deed - (if applicable)

*(If the property was purchased within the last 60 days, a copy of the warranty deed is required.)*

*The completed application and all required documentation and plans are to be submitted at the time of application. Plan review will take a minimum of two business days. Permits will be mailed to the applicant when they are issued.*





**MEADE COUNTY  
BUILDING PERMIT APPLICATION**

Equalization & Planning Department  
1300 Sherman St., Suite 222  
Sturgis, SD 57785  
Office 605-347-3818

**PLEASE PROVIDE THE FOLLOWING INFORMATION:**

(Permit will not be issued without completed application and providing required information.)

**APPLICANT:**

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Relationship to Property Owner: \_\_\_\_\_

**PROPERTY OWNER:** Clyde Straatmeyer

Mailing Address: 24587 Outback Trail, Hermosa 57744

Telephone Number: 605-391-2670 Email Address: Straatc007@gmail.com

**PROPERTY INFORMATION:**

Site Address: 10305 Concho Ct, Black Hawk

Parcel ID: \_\_\_\_\_

Legal Description: Lot 6B of Tract 3 located in NE 1/4 NW 1/4 of  
Section 36, Township 3 North, Range 6

The APPLICANT hereby agrees and affirms that all the information given is true and is a correct representation of the structure(s) or construction being built. Any alteration in plans, designs or specifications will require an additional review of the project and may result in additional building permits and/or fees. Failure to provide the correct information may result in a fine or legal action or both. Failure to obtain a building permit will result in a fine per Ordinance No. 34.

Setbacks for all structures shall be 25.0 (feet) front and back and Sides 8.0' (feet). Setbacks are measured from property lines and/or section line right-of-ways and easements. Corner lots, have a 25.0 (feet) setback from each right-of-way. If you are unsure, please ask.

Improvements will be assessed on the property on which they are placed or constructed, unless the proper documents are filed with the Equalization office stating the improvement is a building on leased site.

The APPLICANT hereby acknowledges that he/she is familiar with covenants, deed restrictions, governmental regulations and Meade County Ordinances and recognizes that Meade County enforces the adopted version of the International Building and Residential Codes along with the Fire Code.

Notice is hereby given that it is the homeowner's sole responsibility to apply for the owner-occupied tax reduction program of South Dakota by filling out an application in the Meade County Equalization & Planning office from November 1st through March 15th. The owner must own and occupy the house by November 1st to qualify.

Applicant Signature: \_\_\_\_\_

Date: 4-14-21

**Type of Construction:** ☒ Residential ☐ Commercial ☐ Agricultural

**Type of Improvement:**

☒ Stick-Built New Residence ☐ Mobile Home ☐ Modular Home ☐ Outbuilding ☐ Garage  
☐ Home Remodel ☐ Home Addition ☐ Basement Finish ☐ New Commercial  
☐ Commercial Remodel ☐ Addition to Outbuilding/Garage ☒ Other: Post Frame

**IMPROVEMENT INFORMATION**

**NEW HOME:**

Main Floor Sq. Ft: 1224  
Second Story Sq. Ft: \_\_\_\_\_  
Basement Sq. Ft: \_\_\_\_\_  
Basement Finish Sq. Ft: \_\_\_\_\_  
Total Sq. Ft: 1224  
No. of Bedrooms: 2  
No. of Bathrooms: 2  
Heat Type: Gas/in floor  
Central Air: ☐ Yes ☒ No  
Fireplace: ☒ Yes ☐ No  
Type: Gas No. of Fireplace(s): 1  
No. of Decks: 0  
Deck(s) Sq. Ft: 0

**GARAGE/OUTBUILDING:**

☒ Attached ☐ Detached  
☐ Stick-Built ☒ Post Frame ☐ Other \_\_\_\_\_  
Size: 43 x 72  
(LENGTH X WIDTH X HEIGHT)  
Sq. Ft: 3096  
Electricity: ☒ Yes ☐ No  
Plumbing: ☒ Yes ☐ No  
Finished: ☐ Yes ☐ No Partial  
Insulated: ☒ Yes ☐ No  
Floor Type: Concrete  
Will this structure be used for agricultural purposes?  
☐ Yes ☒ No

**COMMERCIAL:**

Type of Structure: \_\_\_\_\_ Type of Business: \_\_\_\_\_  
Size of Structure (length x width x height): \_\_\_\_\_ Main Floor Sq. Ft: \_\_\_\_\_  
Second Story Sq. Ft: \_\_\_\_\_ Total Sq. Ft: \_\_\_\_\_ No. of Bathrooms: \_\_\_\_\_

**ESTIMATED COST OF IMPROVEMENTS = \$198,000**

(This includes the estimated cost of material & labor costs. A written or typed detailed breakdown of estimated costs is required to be submitted with application.)

Will the construction area or site be within 250 feet of a drainage ditch, road ditch or stream? ☐ Yes ☒ No  
Will structures be in a floodplain area? ☐ Yes ☒ No  
Will structures meet Meade County's property setback requirements? ☒ Yes ☐ No  
Water Source (if applicable): ☐ Private Well ☒ Community Well ☐ Central Water

**FOR OFFICE USE ONLY:**

Date Application Received: \_\_\_\_\_

If Denied, Reason for Denial: \_\_\_\_\_

Reviewed By: \_\_\_\_\_

Review Date: \_\_\_\_\_

Application Approved: ☐ Yes ☐ No

BUILDING PERMIT FEE \$

PD BY: ☐ CASH ☐ CHECK #

☐ CREDIT CARD

## CONTRACTOR LIST

(REQUIRED TO BE SUBMITTED WITH BUILDING PERMIT APPLICATION)

### General Contractor:

Company Name: FORKNER Contracting  
Contact Name: Bryon Forkner  
Address: 327 Sunnydale Boy Elder 57719  
Telephone Number: (605) 923-2628 Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

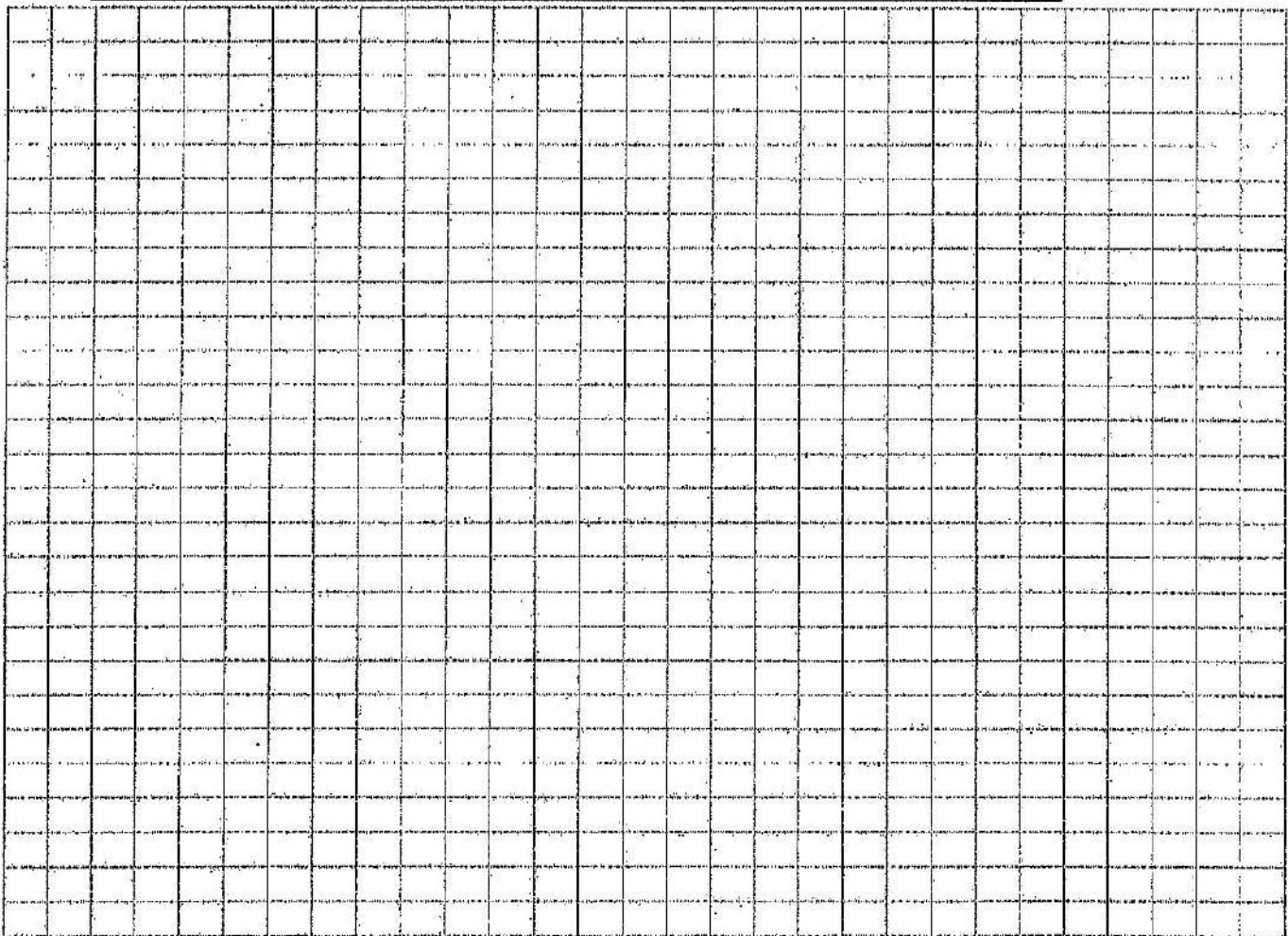
## **STORMWATER SITE PLAN**

*(Required to be completed and submitted with building permit application when the construction area or site is within 250 feet of a drainage ditch, road ditch, or stream. \*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)*

- Site Plan needs to show roads drainage ditches, road ditches, streams and area of excavation or fill including the approximate distances between each feature.
- Site plan must show location of silt fence, waddles, gravel or stone construction entrance for construction vehicles and wash pit for concrete truck washouts.

Check the type of foundation:

- ☐ Piers or Post Holes – Site Sketch Not Required
- ☐ Thickened Edge (Monolithic Slab)
- ☐ Frost Footings and Frost Walls (Crawl Space)
- ☐ Footings and Basement
- ☐ Adding Fill Material



**SKETCH SITE PLAN ABOVE**



**MEADE COUNTY  
BUILDING PERMIT**

Equalization & Planning Department

1300 Sherman St. Suite 222  
Sturgis, SD 57786  
Office 605-347-3818

**PERMIT NO:** 8660

**PERMIT EXPIRATION DATE:** 04/14/2022

**APPLICANT:** Forkner Construction - Bryan Forkner

Phone Number: 605-923-2628

Mailing Address: 10300 Concho Ct

City, State, Zip: Black Hawk, SD 57718

Email: straatc007@gmail.com

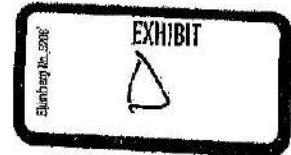
**PROPERTY OWNER:** STRAATMEYER

Phone Number: 605-391-2670

Mailing Address: 24587 OUTBACK TRAIL

City, State, Zip: HERMOSA SD 57744

Email: STRAATC007@GMAIL.COM



**PROPERTY INFORMATION:**

Parcel ID: 15.67.06B

Site Address: 10300 CONCHO CT

City, State, Zip: BLACK HAWK SD 57718

Section: 36

Township: 3

Range: 6

Legal Description:

The APPLICANT hereby agrees and affirms that all the information given is true and is a correct representation of the structure(s) or construction being built. Any alteration in plans, designs or specifications will require an additional review of the project and may result in additional building permits and/or fees. Failure to provide the correct information may result in a fine or legal action or both. Failure to obtain a building permit will result in a fine per Ordinance No. 34.

Setbacks for all structures shall be 25.0 (feet) front and back and Sides 8.0' (feet). Setbacks are measured from property lines and/or section line right-of-ways and easements. Corner lots, have a 25.0 (feet) setback from each right-of-way. If you are unsure, please ask.

Improvements will be assessed on the property on which they are placed or constructed, unless the proper documents are filed with the Equalization office stating the improvement is a building on leased site.

The APPLICANT hereby acknowledges that he/she is familiar with covenants, deed restrictions, governmental regulations and Meade County Ordinances and recognizes that Meade County enforces the adopted version of the International Building and Residential Codes along with the Fire Code.

Notice is hereby given that it is the homeowner's sole responsibility to apply for the owner-occupied tax reduction program of South Dakota by filling out an application in the Meade County Equalization & Planning office from November 1st through March 15th. The owner must own and occupy the house by November 1st to qualify.

If construction for any building permit has not begun within six (6) months from the date of issuance, the permit shall expire; it shall be cancelled by the Meade County Building Official, and notice shall be given to the person affected and/or property owner. If the work described in any building permit has not been substantially completed within (1) one year of the date of issuance, thereof said permit shall expire.

**Applicant Signature:**

*Bryan Forkner*  
*Straatmeyer*

**Date:**

4-14-21

APP 028

**IMPROVEMENT INFORMATION:**

Type of Construction: Residential

Type of Improvement: Other

**NEW HOME:**

Main Floor Sq. Ft: 1224

Second Story Sq. Ft: \_\_\_\_\_

Basement Sq. Ft: \_\_\_\_\_

Basement Finish Sq. Ft: \_\_\_\_\_

Total Sq. Ft: 1224

No. of Bedrooms: 2

No. of Bathrooms: 2

Heat Type: GAS

Central Air: No

Fireplace: Yes

Type: 1

No. Fireplace(s): 1

Decks Sq. Ft: \_\_\_\_\_

Size (length x width): \_\_\_\_\_

Patio/Slab Sq. Ft: \_\_\_\_\_

Size (length x width): \_\_\_\_\_

**GARAGE/OUTBUILDING:**

Type: Attached

Construction Type: Post Frame

Size 43 X 72 X X X

Size (Length) X (Width) X (Height)

Sq. Ft: 3096

Electricity: Yes

Plumbing: Yes

Finished: No

Insulated: Yes

Floor Type: CONCRETE

Will this structure be used for agricultural purposes?

No

**COMMERCIAL:**

Please fill out additional Commercial Building Permit page

**Estimated Cost of Improvements:** \$175032.00**CONTRACTOR INFORMATION:**

FORKNER CONTRACTING

**COMMENTS:**

NEW POST FRAME HOME WITH ATTACHED GARAGE

**OFFICE USE ONLY:**

Permit Date: 04/14/2021

Construction area within Floodplain? No

Construction area or site be within 250 feet of a drainage ditch, road ditch or stream? Yes

Permit Cost: \_\_\_\_\_

Payment Type: \_\_\_\_\_

Check# \_\_\_\_\_

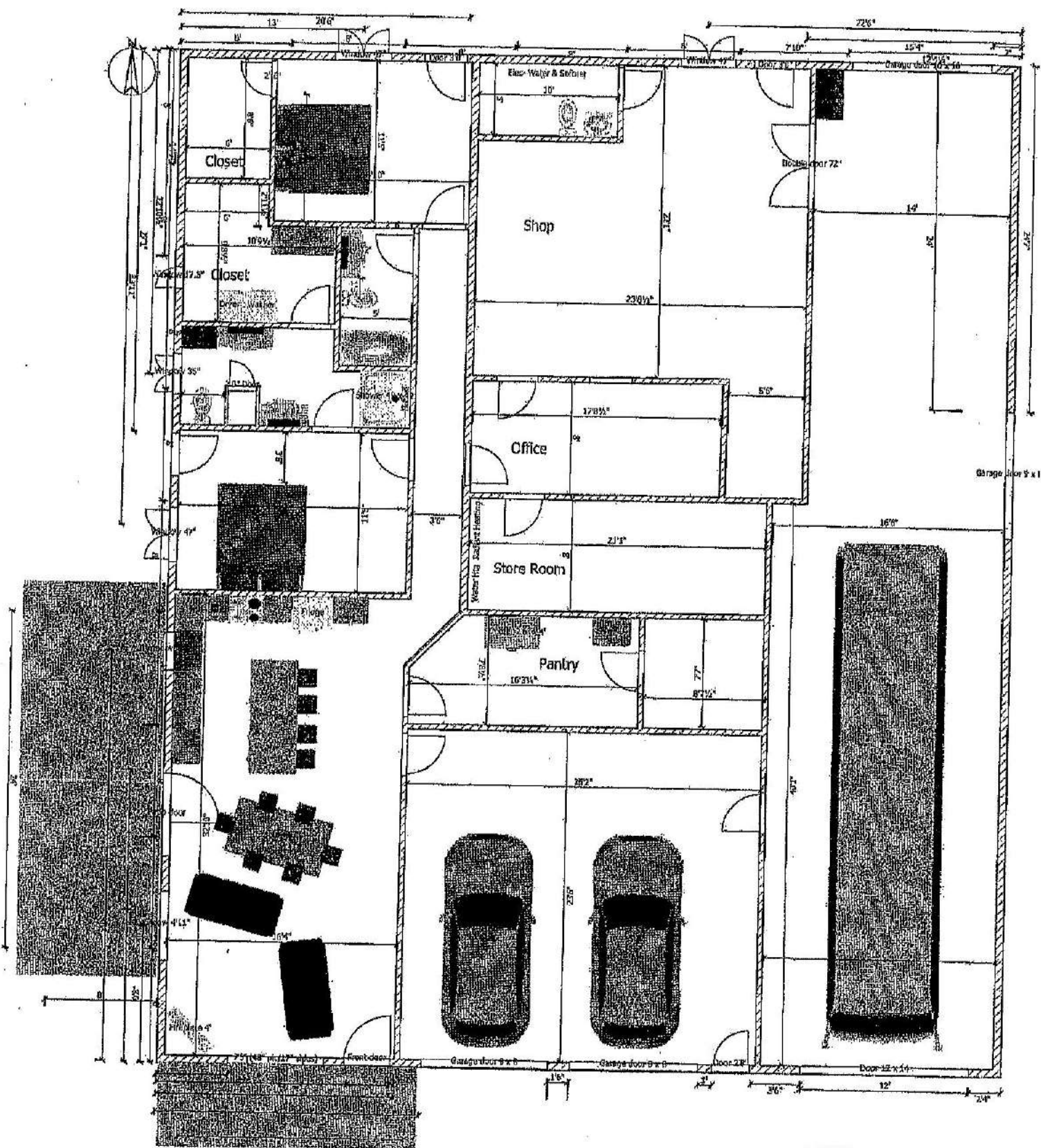
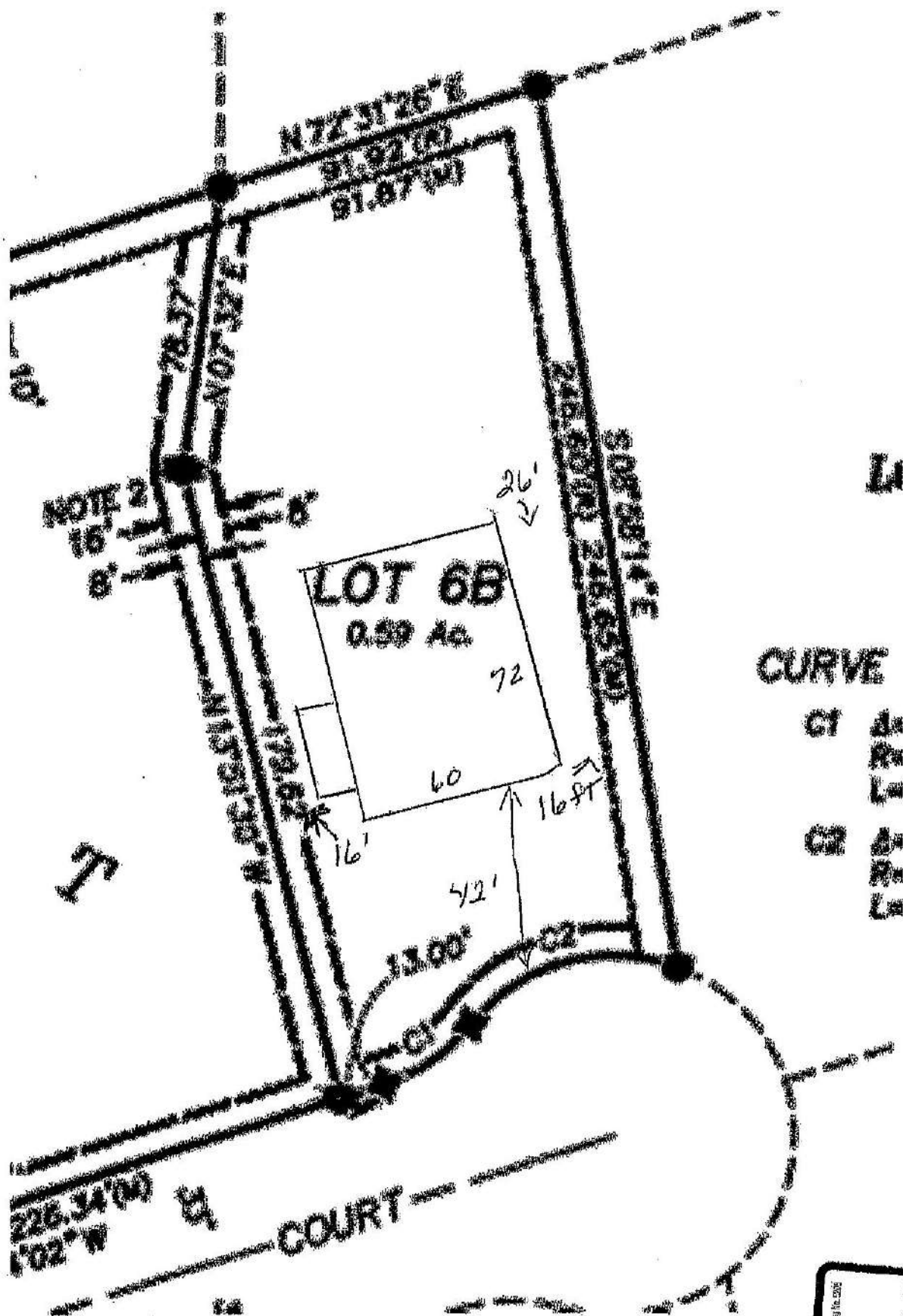


EXHIBIT  
E

APP 030



**CURVE**

**C1** Δ  
R  
L  
**C2** Δ  
R  
L

EXHIBIT  
**F**

APP 031

STATE OF SOUTH DAKOTA )  
 )  
 COUNTY OF MEADE )

IN CIRCUIT COURT  
 FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD,  
 THOMAS and PATRICIA DONOVAN,  
 BERNARD and MARIA JUNG,  
 WILLIAM and JANICE PRICE,  
 JAMES and KAY FENENGA, LARRY  
 and DARLENE BAILLY, GREG and  
 DEB PETERS, MARK and KITTY  
 GUSTAF, and RODNEY and GINA  
 BOADWIRE,

Plaintiffs,

vs.

CLYDE STRAATMEYER and NANCY  
 STRAATMEYER,

Defendants.

COURT TRIAL

46CIV21-000206

BEFORE: **THE HONORABLE KEVIN J. KRULL**  
 Circuit Court Judge  
 Sturgis, South Dakota  
 February 15, 2022 at 8:30 a.m.

APPEARANCES:

For the Plaintiffs: Courtney R. Clayborne  
 Attorney at Law  
 2834 Jackson Blvd., Suite 201  
 Rapid City, South Dakota 57709

For the Defendants: Talbot J. Wieczorek  
 Attorney at Law  
 506 Sixth Street  
 Rapid City, South Dakota 57709

1 THE COURT: All right, please come forward, sir.

2 **EDDIE OPSTEDAHL,**

3 called as a witness, being first duly sworn, testified as  
4 follows:

5 THE COURT: All right, sir, that chair adjusts and the  
6 microphone adjusts, so arrange yourself so you're speaking  
7 right into the microphone, please. You may proceed.

8 MR. CLAYBORNE: Thank you. Any preference if we stand or  
9 sit, Your Honor?

10 THE COURT: It's actually easier for us if you're sitting  
11 and speaking right into the microphone, so that's what I  
12 would prefer.

13 MR. CLAYBORNE: Okay.

14 **DIRECT EXAMINATION**

15 BY MR. CLAYBORNE:

16 **Q** Good morning. Could you please state your name and spell  
17 your last name for the record?

18 **A** Eddie Opstedahl, O-P-S-T-E-D-A-H-L.

19 **Q** Mr. Opstedahl, you're aware that this matter involves the  
20 Shadowland Ranch Subdivision tract?

21 **A** Correct.

22 **Q** Can you explain to the Court your familiarity with that  
23 subdivision?

24 **A** I was the original owner. After the flood of '72 people  
25 were moving, wanting to relocate to other places, so we



1       went ahead and subdivided part of our ranch land and we  
2       developed the Shadowland Ranch development there, and on  
3       this one, we had Francis-Meador-Gellhaus do the surveying,  
4       plotting out the lots, and the restrictions, we requested  
5       that the lots be set up on a plat and they would stay as  
6       that sized lots for the lifetime, and there was going to be  
7       put in individual septic tanks, individual water wells, and  
8       there would be two roads built off the main road that would  
9       be kind of court drives to service four home areas on each  
10      of those division roads that way.

11     **Q** In front of you, you should have a notebook.

12     **A** Okay.

13     **Q** That has a list of exhibits in it and it begins with  
14      Exhibit 101. Do you see that?

15     **A** Correct.

16     **Q** And I know the first page is a little blurry, but the  
17      second two pages spell out what is on the first page, and  
18      do you recognize what Exhibit 101 is?

19     **A** Yes, that's correct.

20     **Q** And what is 101?

21     **A** That was the Shadowland Ranch Subdivision restrictions and  
22      covenants.

23     **Q** And is that your name that appears on Exhibit 101, or your  
24      signature?

25     **A** Yes.

1 Q And was 101 recorded?

2 A Yes.

3 Q And where was 101 recorded at?

4 A Right here in the courthouse.

5 Q In Meade County?

6 A Yes.

7 Q I'm looking at then 101, and I note that there are several  
8 restrictions and covenants, and would those restrictions  
9 and covenants have been restrictions that you would have  
10 been involved with drafting?

11 A Partially, with an attorney also.

12 Q Okay. But these set forth what you wanted --

13 A Yes, it was set up the way we'd like to have it performed  
14 and stayed as.

15 Q And I see Subparagraph A deals with the single family  
16 dwelling with no larger than a three-car garage, is that  
17 correct?

18 A Correct.

19 Q Is there anywhere in the covenants that detached garages  
20 are prohibited or restricted?

21 A No.

22 Q I note that exhibit -- or I'm sorry, Subparagraph D  
23 provides for a prohibition on the subdivision of any lots.  
24 Do you see that?

25 A Yes.



1 Q Can you explain to the Court what was reason for that  
2 prohibition?

3 A The reason behind it, the size of the lots that  
4 Francis-Meador-Gellhaus through the surveying and water  
5 samples -- or the soil samples pertaining to the water  
6 sample and that it be set up as individual wells and also  
7 to be set up with the septic system that would have a leach  
8 field, plus the main septic tank area, and the restrictions  
9 how far it had to be from the property lines so it wouldn't  
10 interfere with other landowners. He ran percolation tests  
11 on most of the lots, and it's all wrote up in his summary  
12 as to the drain field would be accurate that way for that  
13 size lot. Lots were not to be smaller because it may cause  
14 perforation in somebody else's properties.

15 MR. CLAYBORNE: May I approach, Your Honor?

16 THE COURT: You may.

17 Q (BY MR. CLAYBORNE) Mr. Opstedahl, I'm going to show you  
18 what's been marked as Exhibit No. 16, and I'll ask you if  
19 you can identify what Exhibit 16 is?

20 A I haven't seen it before now.

21 Q Okay. Do you recognize the Concho Court --

22 A Right.

23 Q -- shown on Exhibit 16?

24 A Right, that was part of the original development.

25 Q I'll represent to you that lot -- what is on this exhibit

1 now marked as Lot 6A and 6B were the original Lot 6 of  
2 Shadowland Ranch Subdivision?

3 **A** Correct.

4 **Q** And if there is a Lot 6A and 6B, would that be in violation  
5 of the covenants that you proposed?

6 **MR. WIECZOREK:** I'm going to object as this calls for a  
7 legal conclusion.

8 **THE COURT:** Overruled. You may answer, sir.

9 **A** Yes.

10 **Q** (BY MR. CLAYBORNE) I also note in your covenants that you  
11 had in Subparagraph H which provides that no building shall  
12 be constructed so that any part of said building is within  
13 40 feet of the boundary of said lot. Do you see that?

14 **A** Yes, that's correct.

15 **Q** I also note on the plat that you had filed from  
16 Francis-Meador-Gellhaus, there are two courts that were  
17 part of the subdivision, is that right?

18 **A** Right.

19 **Q** Can you explain to the Court what the protocol was for  
20 maintenance of those roadways within that subdivision?

21 **A** At that time, the entryway by the court road, it would be  
22 developed 66 foot wide for access in, for people to go in  
23 and drive in and circle back out. That's the way the  
24 platting board was persistent on trying to make sure that  
25 there was room to move and turn, that's why

1 Francis-Meador-Gellhaus set it up that way rather than  
2 doing a straight road down through the center from the  
3 north to the south and to the shorter runs. But as the  
4 land was divided by lot lines, then the two -- the lots  
5 that went into the circle drive on each side, the road  
6 would be split in half so each landowner on the four  
7 parcels would be responsible for maintenance on that at  
8 that point at that time because the county would not do it.  
9 It was up to the landowners, and that's the way it was set  
10 up with the covenants and per their restrictions for the  
11 county.

12 **Q** So with that explanation, would I understand the lots which  
13 would abut any of the roadways would have added to them  
14 property that would be outside of the lot lines?

15 **A** As far as where the stakes are put for the lot line, yes.

16 **Q** And I'm going to show you now what's marked as Exhibit 17,  
17 and I note on Exhibit 17 -- you understand that to at least  
18 depict the Shadowland Ranch Subdivision?

19 **A** Yes, correct.

20 **Q** And if I look at Cantle Court and Concho Court, as well as  
21 Romel Drive, there appears to be lines going down the  
22 center of those roads?

23 **A** Correct.

24 **Q** And for Lots 6, 7, 10 and 2, would those lines represent  
25 the actual boundary of those lots for which those owners

1 would be responsible?

2 **A** Correct.

3 MR. WIECZOREK: I'm going to object. That's a legal  
4 conclusion.

5 THE COURT: Overruled. You may answer.

6 **A** Yes, correct.

7 **Q** (BY MR. CLAYBORNE) So relative to the 40-foot setback  
8 referenced in the covenants, that 40 foot would be taken  
9 from those boundary lines which would start in the center  
10 of those particular roads?

11 **A** Correct.

12 **Q** And just so I'm clear, if I understood your testimony,  
13 those roads are and remain private roads that are privately  
14 maintained?

15 MR. WIECZOREK: I'm going to object, Your Honor. That's a  
16 legal conclusion.

17 THE COURT: Overruled.

18 **A** Yes.

19 **Q** (BY MR. CLAYBORNE) And it was your intent that those roads  
20 would be maintained by the property owners?

21 **A** Yes, that's the way the county said we had to do it at that  
22 time because the county did not want to take  
23 responsibilities for any of the sub roads or subdivision  
24 roads.

25 **Q** And to your knowledge, does the Shadowland Ranch property,

1 Lot 6, the south side of that lot?

2 **A** Yeah, you'd have to get a surveyor to explain that better.  
3 That's where they plotted their corner stakes on each of  
4 the lots after they took off that restriction for the road  
5 amount, but you still pay taxes to the middle of that road.

6 **Q** What makes you think that?

7 **A** That's what the county told me.

8 **Q** Okay.

9 **A** I have several other properties and everything was that  
10 way.

11 **Q** Yeah, that's what your belief is?

12 **A** This is --

13 **Q** Do you have any tax certificates that would show that you  
14 actually pay beyond Lot 6?

15 **A** That I couldn't tell you, but I do know on the ranch land,  
16 where the property line was, you paid taxes to that  
17 property line. Once it was divided, you still paid  
18 property taxes to that line. That was many years ago. I  
19 don't know what it is now.

20 **Q** Right. You're talking about a section line right-of-way?

21 **A** No, all, quarter sections, sections, any 80, 40, 80, 60,  
22 lots, anything like that.

23 **Q** Let's go back. You said -- so you would agree with me the  
24 corners for Lot 6 are actually marked on the lot line?

25 **A** Yeah, that's where the steel stakes are set.

1       sometime that summer.

2       **Q** Which summer?

3       **A** 2020. A year and a half ago.

4       **Q** So at the time you approached Mr. Schmidt about selling  
5       the, as you call it, the back side of that lot, had that  
6       lot been subdivided?

7       **A** No.

8       **Q** And I note that the subdivision did not take place until,  
9       it looks like the drawings are dated November of 2020?

10      **A** That would be correct.

11      **Q** And what was your role relative to subdividing that lot?

12      **A** I did most of the footwork part of it. Started out asking  
13      the county if I could build on that lot and if we could do  
14      that. The county referred me to Summerset. Had numerous  
15      discussions with Summerset. They -- the county told me I  
16      had to do everything through Summerset.

17      **Q** At any time did you ever look at the Shadowland Ranch  
18      Subdivision restrictions and covenants?

19      **A** No.

20      **Q** Why not?

21      **A** Never gave it a thought to. I had been contacting, like I  
22      say, the county, the city, at a future time contacted the  
23      surveyor then. I didn't know to and it never came up.

24      **Q** Okay. And you know those documents are on file with Meade  
25      County, correct?

1    **A**   Correct.

2    **Q**   So they would have been open and available for your review  
3       at any time prior to subdividing and purchasing that lot?

4    **A**   That would be correct.

5    **Q**   And do you agree with me that had you availed yourself to  
6       the covenants, you would have seen that subdivision of the  
7       lots is prohibited?

8    **A**   I probably would have seen it then, yeah.

9    **Q**   And what would you have done had you seen that?

10   **A**   Maybe -- I don't know.

11   **Q**   Would --

12   **A**   Probably wouldn't have done it then, I don't know.

13   **Q**   And so you had the opportunity to do that, but you just  
14       simply did not look at the covenants?

15   **A**   Never gave it a thought.  Never once did anybody -- I mean,  
16       the whole process was very, very new to me, and nowhere did  
17       anyone from the county, the city, the surveyor, anybody I'd  
18       been working with ever said you should do this or that.  
19       They told me do this, do that, I should, you know, submit  
20       these and everything else, but they never -- it never came  
21       up.

22   **Q**   I just want to make sure this book -- in front of you  
23       there's a white exhibit notebook and I'd ask you to look at  
24       Exhibit 103 in that notebook.

25   **A**   Yes.

1    **Q** Can you tell the Court what Exhibit 103 is?

2    **A** It's the building permit required.

3    **Q** And if I look at page 2, can you tell the Court whose  
4       signature that is?

5    **A** That is my signature.

6    **Q** Now if you go up two lines from your signature, can you  
7       read what that provision says?

8    **A** The applicant hereby acknowledges that he or she is  
9       familiar with covenants, deed restrictions, government  
10      regulations and Meade County Ordinances and recognizes that  
11      Meade County enforces the adopted version of the  
12      International Building Residential Codes and Fire Code.

13   **Q** And did you read that before signing the application?

14   **A** Probably scanned through it.

15   **Q** And in that acknowledgement, you acknowledged that you were  
16      familiar with the covenants?

17   **A** Along with every other paragraph on the document, the  
18      setbacks set by the county, the highlighted portion of it.

19   **Q** My question was simple. In that section of the  
20      application, you acknowledged to the county that you were  
21      familiar with the covenants, correct?

22   **A** I scanned through that and signed it when they told me  
23      "sign here."

24   **Q** Okay. Did you not understand the question?

25   **A** Apparently not.



## DIRECT EXAMINATION

BY MR. CLAYBORNE:

**Q** Could you please state your name for the record?

**A** Greg Peter.

**Q** And are you a property owner in the Shadowland Ranch  
Subdivision?

**A** Yes.

**Q** And which lot do you own?

**A** I'm not sure of the lot. Just a second. It would be Lot  
10.

**Q** And Lot 10 looks like it sits on the corner of Cantle and  
Romel?

**A** Yes.

**Q** When did you purchase that lot?

**A** Roughly 18 years ago.

**Q** When you purchased the lot, were you aware of the  
Shadowland Ranch, of the covenants and restrictions?

**A** Yes.

**Q** Relative to those covenants and restrictions, when you --  
or I should ask when you bought the lot, did you have an  
understanding of what your boundary was?

**A** Property boundary or -- yes, yes.

**Q** Okay. And can you tell the -- well, you said property  
boundary. Is your lot subject to more than one boundary  
line?

1   **A** I got two roads on -- a road on two corners, yeah.

2   **Q** Okay. Can you explain to the Court what you understood to  
3   be your boundary when you purchased your lot?

4   **A** The road was my responsibility.

5   **Q** All of the road?

6   **A** Well, I assumed the road in front of my property, let's put  
7   it that way.

8   **Q** Were you here when Mr. Opstedahl testified?

9   **A** Only a portion of it.

10   **Q** He indicated that he understood the boundary of properties  
11   that abut a road within that subdivision to be  
12   approximately 33 feet to the center of the road. Did you  
13   hear that testimony?

14   **A** No, I did not.

15   **Q** Would that be -- having not heard it however, would that be  
16   consistent with your understanding of your boundaries?

17   **A** Yes.

18   **Q** When you bought the property -- or I believe you currently  
19   have a home business, is that correct?

20   **A** Yes.

21   **Q** And can you explain to the Court what that business is?

22   **A** I have a construction company, RC Peter Construction.

23   **Q** And prior to purchasing your lot, did you access the  
24   covenants to see if that business was allowable within the  
25   subdivision?

1    **A**   Yes.

2    **Q**   And what did you do in that regard?

3    **A**   As far as?

4    **Q**   In terms of satisfying yourself.

5    **A**   It said that you -- in the way I read the covenants, you  
6       could have a home business as long as it didn't require  
7       extra parking, and the way I interpreted from the  
8       stipulations of a home business at that time when I bought  
9       the property was considered a home property if you have a  
10      store front and if you had customers come to your house.

11   **Q**   Okay.  So the actual covenants say that no business  
12      activities shall -- or no lot owner shall conduct business  
13      activities which shall require extra parking facilities.  
14      At the time you purchased the property, were there parking  
15      facilities?

16   **A**   Yes.

17   **Q**   And at any time after purchasing the property, have you  
18      added to any of the parking that was pre-existing?

19   **A**   No.

20   **Q**   Do you maintain that from time to time?

21   **A**   Yes.

22   **Q**   But you have not increased it in any way?

23   **A**   No.

24   **Q**   And to your knowledge, was it being used as a residence  
25      prior to your purchase?

1     **A**   Yes.

2     **Q**   The covenants would also prohibit the storage of any  
3       materials outside any dwelling.  Are you familiar with  
4       that?

5     **A**   Yes.

6     **Q**   And you're a contractor, are you not?

7     **A**   Yes.

8     **Q**   And are you familiar with the difference between equipment  
9       and materials?

10    **A**   Yes.

11    **Q**   And can you explain to the Court briefly what that  
12       difference is?

13    **A**   Equipment is things that I would use on a job, but on the  
14       same token, equipment is things that are basically, when I  
15       buy them they're tax deductible because they're equipment.  
16       If you buy material, I can't deduct it.

17    **Q**   Can you give us some examples of what would normally be  
18       considered equipment?

19    **A**   Well, if you look at some of the pictures that have been  
20       submitted, for the few that I have seen, they would be the  
21       scaffold, the wheel barrels, the Bobcat I guess you can  
22       say, or the trailers, so...

23    **Q**   And is some of that used for both business and personal  
24       use?

25    **A**   Yes.

1 Q Relative to items like Bobcats and trailers, things of that  
2 nature that are on your property, have you enlarged or  
3 added any extra parking to accommodate those items of  
4 equipment?

5 A No.

6 Q How about materials, I note that there were pictures which  
7 depicted some lumber and other various materials that were  
8 stored behind your property. Are you familiar with those?

9 A Yes, the fencing in the back is basically chain link  
10 fencing that I had for a dog run when I first moved out  
11 there. Since then that dog has died and I rolled up the  
12 fencing and stored it in the back, and some of the red  
13 fencing, the construction fencing you can call it, it's a  
14 snow fence. I use that to keep the deer out of my raised  
15 garden beds in the summertime and I take it down in the  
16 wintertime.

17 Q There was a picture that was referred to earlier, it was  
18 Exhibit 2, picture number 29, and it showed -- are those  
19 exhibits still up there?

20 MR. WIECZOREK: Yeah. I don't think it's 2 though. I  
21 think what you're looking for is 21.

22 A Exhibit 21?

23 MR. WIECZOREK: Yeah.

24 Q (BY MR. CLAYBORNE) And picture DEF29.

25 A 29, okay.

1 Q Can you explain to us what is being depicted in DEF29?

2 A That's my -- that's just some personal stuff that I keep  
3 around for -- the metal and stuff on the bottom is to  
4 supply my hobby which I am a blacksmith, so I keep metal  
5 around. I don't throw any metal away. The boards are --  
6 basically you could say they're leftovers from a job that I  
7 take home and keep for personal use because I have horses  
8 at another property with a barn and I always have a -- keep  
9 stuff around because they break something all the time and  
10 I have to fix fence or I have to fix corrals or something.

11 Q Would there be any intent on your part to use any of the  
12 materials shown on DEF29 for profit; that is, to  
13 incorporate them into a project of any sort?

14 A No, most of them are so crooked, I could never use them for  
15 anything that I would ever build for a client.

16 Q Then we go to DEF31.

17 A Okay.

18 Q And I note logs in the background of that picture. Can you  
19 explain what those are?

20 A Firewood.

21 Q Do you sell any firewood or do anything --

22 A No.

23 Q -- commercially with those?

24 A No, I do not. I heat my home primarily with firewood.

25 Q And DEF24, is that your property?

1    **A**  Yes.

2    **Q**  And it shows some equipment parked outside, but I'm more  
3       curious about that parking area.  Was any of that parking  
4       area expanded or added after you purchased the property?

5    **A**  No.

6       MR. CLAYBORNE:  That's all the questions I have.  Thank  
7       you.

8       THE COURT:  Mr. Wieczorek?

9                                   CROSS EXAMINATION

10       BY MR. WIECZOREK:

11    **Q**  Mr. Peter, as understand it, the materials you say that are  
12       on the side of your outbuilding or shed are materials from  
13       jobs that you've brought back to the property?

14    **A**  Yeah, just left over.

15    **Q**  Okay.  But they're materials from jobs?

16    **A**  And some I bought myself, yeah.

17    **Q**  Okay.  And the scaffolding you use for your business?

18    **A**  That's equipment, yes.

19    **Q**  So you use it for your business?

20    **A**  Yes.

21    **Q**  So on the -- when you bought this property, was one of the  
22       reasons you bought it was because of the extra parking?

23    **A**  No.

24    **Q**  You didn't care that it had room for you to park all your  
25       equipment?

1 THE COURT: Please come forward, sir, right up here.

2 **RODNEY BOADWINE,**

3 called as a witness, being first duly sworn, testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. WIECZOREK:

7 **Q** Mr. Boadwine, can you just for the record's purpose state  
8 your full name and where you currently reside?

9 **A** Rodney Brooks Boadwine, III, 10106 Cantle Court, Black  
10 Hawk, South Dakota 57718.

11 **Q** Thank you. One little housekeeping thing. You're a  
12 plaintiff in this matter, correct?

13 **A** (Witness nodded head.)

14 **Q** You have to answer out loud.

15 **A** Yes.

16 **Q** Thank you. The caption has it as "Boadwire," but it's  
17 "Boadwine," is that correct?

18 **A** Yes.

19 **Q** Just so that the court reporter has it correct, can you  
20 spell your last name?

21 **A** B-O-A-D-W-I-N-E.

22 **Q** Thank you. What do you for a living, Mr. Boadwine?

23 **A** I own and operate Aim High Tree Service.

24 **Q** What does Aim High -- what types of service does this Aim  
25 High provide?



1 Q Yeah. So what type of equipment do you keep at the house?

2 A I have a bucket truck, a chipper, a dump trailer, a pickup  
3 and a skid steer.

4 Q Okay. And those are used in your business?

5 A Correct.

6 Q If you look in front of you there, there is a set of  
7 pictures marked as Exhibit 20. There's a 20 sticker on it.

8 A Yep.

9 Q Can you flip through those and can you tell the Court  
10 generally what those show?

11 A Shows my attached garage on the first page with my RV and a  
12 pile of firewood. I guess if you look beyond it, you'd see  
13 my shop in the backyard.

14 Q Okay.

15 A There's my personal truck on the second page with the back  
16 end of my RV, my kids' play stuff in the yard and my shop.  
17 Same thing.

18 Q The third page?

19 A It's got tools, got my truck, got my shop. I got my stuff  
20 out there.

21 Q Let me ask you a question about this third page before we  
22 go into this detail.

23 A Okay.

24 Q These are pictures of your house and your property,  
25 correct?

1 the one attached to my house.

2 **Q** And then -- so do you keep your equipment in here or just  
3 -- I mean, do you keep your vehicles in there, or what do  
4 you keep in your shed?

5 **A** Currently I have my wife's car in there taken apart that  
6 I'm working on and I have all my tools in there. I have --  
7 the whole thing is shoved full of tools.

8 **Q** Okay.

9 **A** Personal tools.

10 **Q** Sure. What's this toolbox sitting in front of the  
11 building?

12 **A** That's just a big storage box that was thrown in with the  
13 truck that I bought and I decided to put it there and I  
14 keep things in it.

15 **Q** So if we go to the next page that shows the two cars.

16 **A** Those are my two employees' cars. They --

17 **Q** What -- go ahead, I'm sorry.

18 **A** They show up in the morning and they jump in the bucket  
19 truck and the pickup and they head out and they go do jobs  
20 offsite.

21 **Q** So do you have just the two employees or more?

22 **A** I have three employees.

23 **Q** Okay. Does the third employee come out there sometimes  
24 too?

25 **A** Very rarely. When we work towards the west, they do, but

# FILED

SOUTH DAKOTA  
BOOK 331 PAGE 687 4TH CIRCUIT

## SHADOWLAND RANCH SUBDIVISION RESTRICTIONS AND COVENANTS

The following covenants and restrictions shall apply to the following property being subdivided by the property owners, Eddie A. Opstedahl and Sandra L. Opstedahl, husband and wife.

Lots one (1) through thirteen (13) of the Shadowland Ranch Subdivision located in the NW 1/4 of Section 36, Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Twelve Hundred (1,200) square feet. No trailers or modulars.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any materials being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- E. Only dogs, cats, and horses may be kept on the premises. Horses may be kept if one party owns more than six (6) acres in the development. Limit of three (3) mature horses per six (6) acres or more. Foals, yearlings, and ponies count as one-half (1/2) mature horses. All dogs, cats, and horses must be retained on the respective lots.
- F. The outside appearance of the house being constructed on any lot must be fully completed within one (1) year after the beginning of construction.
- G. All vehicles on lots must be in running order.
- H. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.
- I. Buyer of lot six (6) will have right to temporary hook-up to existing well across the road, to the west, for minimum of one (1) year and maximum of two (2) years from the time of original purchase.
- J. Overhead electrical system is to be run along north boundary of lots five (5) and six (6) due to trees and rocks. All other new lines (electrical and telephone) constructed on the subdivision are to be underground. Electrical and telephone wires are to be run to each lot line.

STATE OF SOUTH DAKOTA

SE.

COUNTY OF MEADE

On this 20<sup>th</sup> day of September, 1976, before me, the undersigned officer, personally appeared EDDIE A. OPSTEDAHL and SANDRA L. OPSTEDAHL, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledge that they executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.



L. J. Peterson  
Notary Public, South Dakota  
STATE OF SOUTH DAKOTA, COUNTY OF MEADE--SS.

August 1976  
Beverly M. Grant, Register of Deeds  
Shelma Johnson, Deputy

EXHIBIT

1

EXHIBIT

A

APP 054

**CITY OF SUMMERSET PLANNING AND ZONING BOARD  
ONLINE ZOOM MEETING  
REGULAR MEETING  
7055 LEISURE LANE  
TUESDAY SEPTEMBER 22, 2020  
6:00 P.M.**

*Agenda*

**1) ROLL CALL**

Bewley, Oldfield, Osten, Wilson, Christensen

**2) CALL FOR CHANGES**

Approval of Agenda of the Regular Meeting of September 22, 2020 as presented or amended.

**3) CONSENT CALENDAR**

Approval of the minutes of the Public Hearing of August 25, 2020, as presented or amended.

**4) PRELIMINARY AND FINAL PLAT APPLICATION**

Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

**5) PRELIMINARY AND FINAL PLAT APPLICATION**

Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota.

**6) PRELIMINARY AND FINAL PLAT APPLICATION**

Plat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota

**7) FINAL PLAT APPLICATION**

Plat of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota.

**FILED**

**FEB 15 2022**

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT**

**EXHIBIT**

**3**

**APR 055**

*Information regarding accessibility for the disabled may be obtained by calling the Summerset City Finance Officer at 605-718-9858. Individuals needing special accommodations are asked to call at least 48 hours prior to the meeting.*

In relation to the COVID-19 virus, and in following guidelines from the CDC in relation to minimizing exposure, the City will have a call-in number available (instructions below) for Thursday's City Commission meeting. For those that wish to participate in the meeting remotely, we encourage you to follow the instructions below.

### **Call-in instructions:**

Topic: P&Z Meeting

Time: Sep 22, 2020 06:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/87980621764?pwd=UVc1VGkwVlNJVUhoVFZ3VE5uTUtPZz09>

Meeting ID: 879 8062 1764

Passcode: 460285

One tap mobile

+16699009128,,87980621764#,,,,,0#,,460285# US (San Jose)

+12532158782,,87980621764#,,,,,0#,,460285# US (Tacoma)

Meeting ID: 879 8062 1764

Passcode: 460285

Find your local number: <https://us02web.zoom.us/j/87980621764?pwd=UVc1VGkwVlNJVUhoVFZ3VE5uTUtPZz09>

**Final Plat Review**  
LOT 6A AND LOT 6B OF TRACT 3  
(FORMERLY LOT 6 OF TRACT 3 SHADOWLAND RANCH SUBDIVISION)  
LOCATED IN THE NE1/4NW1/4 OF SECTION 36  
TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE BLACK HILLS MERIDIAN,  
MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage                      1.88 acres

Location                              Shadowland Ranch Sub. Meade Co. SD.

Date of Application                ?

Reviewed By:                      Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Divide Lot 6 into two lots

**Access and Utilities:**              Access is off Concho Court. Sewer is onsite septic. Water is a shared well located on Lot 6A.

**Fire Protection:**                      Same as before

**Drainage:**                              Located outside flood hazard

**Final Plat Review:**

Please add Chord Bearing and distance to the curve information.

Remove Note 4 regarding building setbacks.

Replace the "Resolution of Governing Board" with the following resolution:

"Resolution of City Commission

Whereas there has been presented to the City Commission of the City of Summerset, South Dakota, the within plat of the above described lands, and it appears to this Council of Commissioners that:

- a. The system of streets set forth therein conforms to the system of streets of the existing plats of the City,
- b. All provisions of the City subdivision regulations have been complied with,
- c. All taxes and special assessments upon the tract or subdivision have been fully paid, and
- d. Such plat and survey thereof have been executed according to law.

Now therefore, be it resolved that said plat is hereby approved in all respects.

Dated at Summerset, South Dakota this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date"

Need to add the following certifications:

"Certificate of Planning Commission

The City of Summerset Planning and Zoning Commission certifies it has reviewed the final plat and hereby recommends approval to the City Commission of the City of Summerset, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Planning Commission Member"

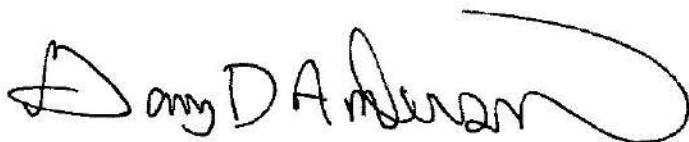
"Certificate of City Finance Officer

I, Finance Officer of the City of Summerset, South Dakota, do hereby certify that all special assessments which are liens upon the described lands are fully paid according to the records of my office.

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date"

Need to provide on the plat or through a separate document an access and utility easement for the water service line from the existing well on Lot 6A to Lot 6B.



Gary Anderson, LS 12000

hdrinc.com

601 Metz Dr. Gillette WY. 82717







September 18, 2020

**Final Plat Review**  
PLAT OF SUN VALLEY ESTATES  
LOTS 161R AND GLENGARRIFF PARK 3 REVISED  
BEING A REPLAT OF LOT 161 AND GLENGARRIFF PARK 3  
LOCATED IN THE NE1/4SW1/4  
IN SECTION 14 TOWNSHIP 3 NORTH- RANGE 6 EAST OF THE B.H.M., CITY OF  
SUMMERSET, MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage                      1.04 ACRES  
Location                              City of Summerset  
Date of Application                September 4, 2020  
Surveyors Project Number       S20 S791  
Reviewed By:                        Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Add area to Lot 161 and make the park smaller

**Access and Utilities:**            Same as before

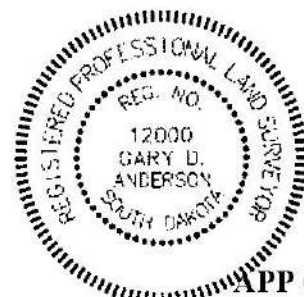
**Fire Protection:**                Same as before

**Drainage:**                            Same as before

**Final Plat Review:**

This plat meets the requirements.

Gary Anderson, LS 12000



## Final Plat Review

PLAT OF SUN VALLEY ESTATES LOT 125 R-1, LOT 125 R-2 AND LOT 125 R-3 LOCATED IN  
LOT 125R OF THE SE1/4 OF THE SW1/4 OF SECTION 14 TOWNSHIP 3 NORTH RANGE 6  
EAST OF THE B.H.M, CITY OF SUMMERSET, MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage 0.88 ACRES  
Location City of Summerset  
Date of Application September 9, 2020  
Surveyors Project Number S20 S792  
Reviewed By: Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:** Subdivide Lot 125R

**Access and Utilities:** Same as before

**Fire Protection:** Same as before

**Drainage:** Same as before

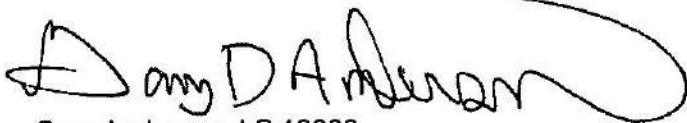
**Final Plat Review:**

All bearings and distances close.

Edit title to "Plat of Sun Valley Estates Lot 125 R-1, Lot 125 R-2 and Lot 125 R-3 Formerly Lot 125R  
Located in the SE1/4 of the SW1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of  
Summerset, Meade County, South Dakota"

Remove the building setback note.

Lots 125 R-2 and 125 R-3 do not meet the minimum lot width of 75' per ordinance 155.058.D.



Gary Anderson, LS 12000



## Final Plat Review

Plat of Lot 1 through Lot 9 and Norpek Court Right of Way and Shadowland Road Right of Way  
of Shadowland Ranch Subdivision

Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25  
in Township 3 North Range 6 East of the Black Hills Meridian City of Summerset Meade County,  
South Dakota

### **General Information:**

Parcel Acreage                      18.94 acres  
  
Location                              Shadowland Ranch Subdivision  
  
Date of Application                August 27, 2020  
  
Surveyor's Project Number      S19 S732  
  
Reviewed By:                        Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Subdivide Lot HG Revised

**Access and Utilities:**              Access is off Shadowland Ranch Road and Norpek Court. Water is  
connecting to Black Hawk Water Users District water system. Sewer is onsite  
septic systems.

**Fire Protection:**                      Black Hawk Volunteer Fire Department

**Drainage:**                              Located outside flood hazard. No major drainages are indicated.

### **Final Plat Review:**

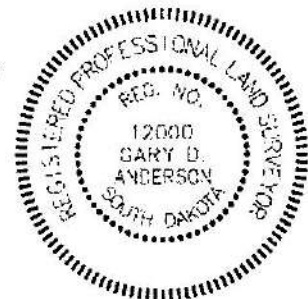
All bearings and distances close.

Plat Note 1 needs to indicate an 8' utility and drainage easement.

Before Final Plat can be filed a final walk-through of the new roadway needs to be conducted with the City  
of Summerset and the following need to be submitted:

- As-recorded plans
- All geotechnical testing results from roadway and utility construction

  
Gary Anderson, LS 12000



*Official Minutes*  
**CITY OF SUMMERSET PLANNING AND ZONING BOARD**  
**ONLINE ZOOM MEETING**  
**REGULAR MEETING**  
**7055 LEISURE LANE**  
**TUESDAY SEPTEMBER 22, 2020**  
**6:00 P.M.**

The meeting was called to order by Chairman Wilson at 6:00 P.M. Bewley, Osten, Oldfield, Christensen, and Wilson were present. Also present was the City Administrator.

Motion by Bewley, second by Christensen to approve The Agenda of the Regular Meeting of September 22, 2020 Motion carried.

Motion by Osten, second by Oldfield to approve the minutes of the Public Hearing of August 25, 2020. Motion carried.

Motion by Bewley, second by Oldfield to approve Plat application of Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota. Motion carried.

Motion by Wilson, second by Bewley to approve Plat application of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota. Motion carried.

Motion by Osten, second by Bewley to approve Plat application of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota. Motion carried.

Motion by Oldfield, second by Bewley to approve Plat application of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota. Motion carried.

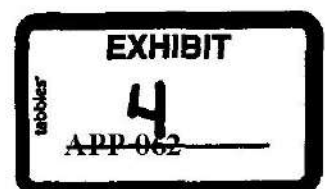
Motion by Bewley, second by Osten to call for Adjournment at 6:11 P.M.

**FILED**

FEB 15 2022

- 1 - SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

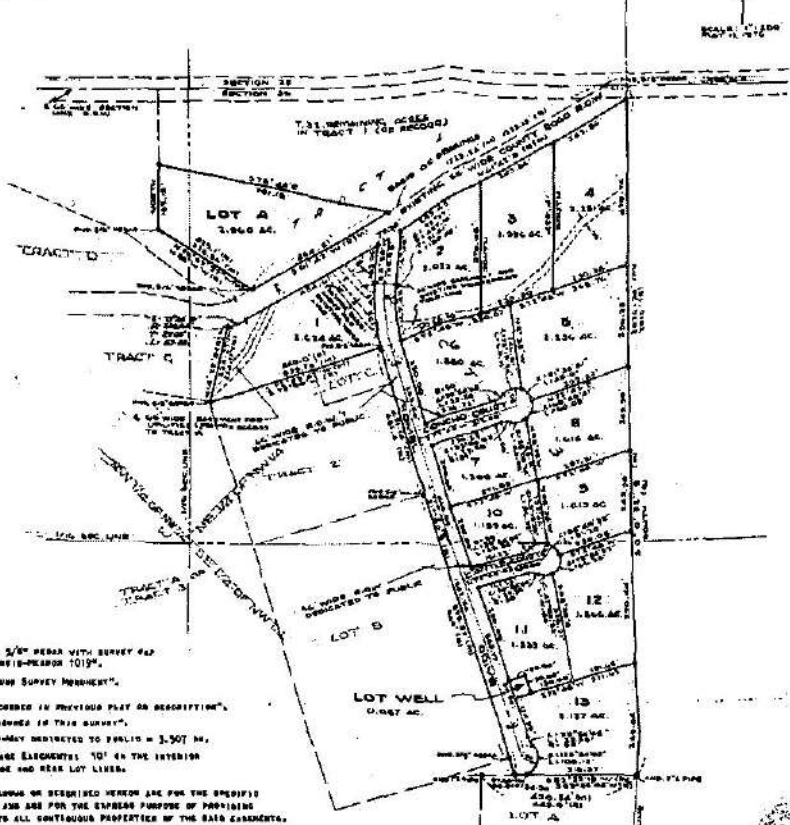






PLAT OF A PORTION OF SHADONLAND RANCH, SUCCESSION IN THE COUNTY OF MEADE, INCLUDING  
LOT A OF TRACT 1; AND  
LOT WELL AND LOTS 1 THRU 13 OF TRACT 3  
ALL IN SHADONLAND RANCH  
LOCATED IN  
W/4 OF SECTION 36, T34N, R6E, S4M,  
MEADE COUNTY, SOUTH DAKOTA

FRANKS + HENDERSON, SULLIVAN, INC.



NOTES:  
(1) CORNER SET 3/4" IRON WITH SURVEY NAIL  
MARKED "FRANKS+HENDERSON 1019"  
(2) CORNER "WOOD SUPPLY MONUMENT".  
(3) CORNER "WOODS IN PREVIOUS PLAT ON DESCRIPTION".  
(4) CORNER "WOODS IN THIS SURVEY".  
AREA OF RIGHT-OF-WAY DEDICATED TO PUBLIC = 3,507 SQ.  
UTILITY & DRAINAGE EASEMENTS: 10' ON THE INTERIOR  
SIDES OF ALL ROADS AND NEAR LOT LINES.  
ALL EASEMENTS SHOWN OR DESCRIBED HEREON ARE FOR THE SPECIFIC  
USES INDICATED AND ARE FOR THE EXPRESS PURPOSE OF PROVIDING  
THE EASEMENTS TO ALL CONTIGUOUS PROPERTIES OF THE SAID EASEMENTS.  
PARTS OF BEARINGS: AS SHOWN HEREON.

CERTIFICATE OF OWNERSHIP  
STATE OF SOUTH DAKOTA  
COUNTY OF MEADE  
We, OLANDER OSTERDAHL, FLORENCE OSTERDAHL, EDWIN A. OSTERDAHL and  
SAMUEL L. OSTERDAHL, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE  
TRACT OF LAND SHOWN AND DESCRIBED HEREON, THAT THE GRANT HAS BEEN AT  
OUR REQUEST FOR THE PURPOSES INDICATED HEREON, AND THAT WE DO HEREBY  
APPROVE THE SURVEY AND WITHIN PLAT OF SAID LAND.  
ANY LAND SHOWN ON THE WITHIN PLAT AS DEDICATED TO PUBLIC RIGHT-OF-  
WAY IS HEREBY DEDICATED TO PUBLIC USE AND PUBLIC UTILITY USE AS SUCH  
HOWEVER, ANY SUCH DEDICATION SHALL NOT BE CONSTRUED TO BE A DONATION OF  
THE FEE OF SAID LAND.  
IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HAND AND SEAL.  
OLANDER OSTERDAHL, FLORENCE OSTERDAHL, EDWIN A. OSTERDAHL, SAMUEL L. OSTERDAHL  
NOTARY PUBLIC, PERSONALLY APPEARED OLANDER OSTERDAHL, FLORENCE  
OSTERDAHL, EDWIN A. OSTERDAHL and SAMUEL L. OSTERDAHL, COUNTO ME TO BE  
THE PERSONS DESCRIBED IN THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME  
THAT THEY SIGNED THE SAME.  
NOTARY PUBLIC: L. J. Osterman  
MY COMMISSION EXPIRES: August 1979

CERTIFICATE OF SURVEYOR  
STATE OF SOUTH DAKOTA  
COUNTY OF MEADE  
I, JAMES P. HEALD, REGISTERED LAND SURVEYOR No. 2199 OF THE STATE OF  
SOUTH DAKOTA, DO HEREBY CERTIFY THAT BEING SO AUTHORIZED, I MADE THE SURVEY AND WITHIN  
PLAT OF THE LAND SHOWN AND DESCRIBED HEREON AND THAT THE SAME IS IN ACCORDANCE  
WITH THE ACTS AND ORDERS. ALL AREA ADJACENT SHOWN ON THE WITHIN PLAT AND TO BE CONSIDERED  
AS BEING THE WORDS "MORE OR LESS" FOLLOWING.  
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL.  
REGISTERED LAND SURVEYOR: James P. Heald  
ON THE 11TH DAY OF May 1979  
ME, A NOTARY PUBLIC, PERSONALLY APPEARED JAMES P. HEALD, SURVEYOR TO ME TO BE  
THE PERSON DESCRIBED IN THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT  
HE SIGNED THE SAME.  
NOTARY PUBLIC: (Theresa W. Osterman)  
MY COMMISSION EXPIRES: 6-21-82  
CERTIFICATE OF DIRECTOR OF EQUALIZATION  
I, DIRECTOR OF EQUALIZATION OF MEADE COUNTY, DO HEREBY CERTIFY THAT I HAVE  
ON RECORD IN MY OFFICE A COPY OF THE WITHIN DESCRIBED PLAT.  
DATED THIS 12th DAY OF May 1979  
By: (Signature) DIRECTOR OF EQUALIZATION OF MEADE COUNTY

CERTIFICATE OF COUNTY TREASURER  
I, TREASURER OF MEADE COUNTY, DO HEREBY CERTIFY THAT ALL TAXES WHICH ARE  
DUE ON THE WITHIN DESCRIBED LAND ARE FULLY PAID ACCORDING TO THE RECORDS  
OF MY OFFICE.  
CALCULATED THIS 12th DAY OF May 1979  
By: (Signature) TREASURER OF MEADE COUNTY  
MEADE COUNTY, S.D.  
APPROVED  
JUN 3 1979  
By: (Signature)

APPROVED BY THE PLANNING COMMISSION OF MEADE COUNTY THIS 22nd  
DAY OF May 1979  
SIGNED: (Signature)  
CLERK

FILED  
FEB 15 2022  
SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

FEB 15 2022

SOUTH DAKOTA

BOOK 231 PAGE 1087

## SHAWNEE HARBOR SUBDIVISION RESTRICTIONS AND COVENANTS

The following covenants and restrictions shall apply to the following property being subdivided by the property owners, RALPH A. OSTERDAHL and GENEVIEVE L. OSTERDAHL, husband and wife.

Lots one (1) through thirteen (13) of the Shawnee Harbor Subdivision located in the NW 1/4 of Section 36, Township 1 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Twenty Hundred (2,000) square feet. No trailers or modulars.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any vehicles being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- E. Only dogs, cats, and horses may be kept on the premises. Horses may be kept if one party owns more than six (6) acres in the development. Limit of three (3) mature horses per six (6) acres or more. Pools, penning, and parties count as one-half (1/2) mature horse. All dogs, cats, and horses must be contained on the respective lots.
- F. The outside appearance of the house being constructed on any lot must be fully completed within one (1) year after the beginning of construction.
- G. All vehicles on lots must be in running order.
- H. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.
- I. Buyer of lot six (6) will have right to temporary hook-up to existing well across the road to the west, for minimum of one (1) year and maximum of two (2) years from the time of original purchase.
- J. Overhead electrical system is to be run along north boundary of lots five (5) and six (6) due to trees and poles. All other new lines (electrical and telephone) constructed on the subdivision are to be underground. Electrical and telephone wires are to be run to each lot line.

STATE OF SOUTH DAKOTA

SS.

COUNTY OF MEADE

On this 1st day of September, 1978, before me, the undersigned officer, personally appeared RALPH A. OSTERDAHL and GENEVIEVE L. OSTERDAHL, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



*[Signature]*  
Notary Public, South Dakota  
STATE OF SOUTH DAKOTA, COUNTY OF MEADE-SS.

*[Signature]* August 21, 1978  
Ralph A. Osterdahl  
Genevieve L. Osterdahl  
RECEIVED OF DEEDS

EXHIBIT

101



SHADOWLAND RANCH SUBDIVISION RESTRICTIONS AND COVENANTS

The following covenants and restrictions shall apply to the following property being subdivided by the property owners, Eddie A. Opstedahl and Sandra L. Opstedahl, husband and wife.

Lots one (1) through thirteen (13) of the Shadowland Ranch Subdivision located in the NW $\frac{1}{4}$  of Section 36, Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Twelve Hundred (1,200) square feet. No trailers or modulars.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any materials being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- E. Only dogs, cats, and horses may be kept on the premises. Horses may be kept if one party owns more than six (6) acres in the development. Limit of three (3) Mature horses per six (6) acres or more. Foals, yearlings, and ponies count as one-half ( $\frac{1}{2}$ ) mature horse. All dogs, cats, and horses must be retained on the respective lots.
- F. The outside appearance of the house being constructed on any lot must be fully completed within one (1) year after the beginning of construction.
- G. All vehicles on lots must be in running order.
- H. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.
- I. Buyer of lot six (6) will have right to temporary hook-up to existing well across the road, to the west, for minimum of one (1) year and maximum of two (2) years from the time of original purchase.
- J. Overhead electrical system is to be run along north boundary of lots five (5) and six (6) due to trees and rocks. All other lines (electrical and telephone) constructed on the

Page 2

subdivision are to be underground. Electrical and telephone wires are to be run to each lot line.

Dated this 20th day of September, 1976.

/s/ Eddie A. Opstedahl  
Sandra L. Opstedahl

Ack'd: September 20, 1976, with seal.  
Filed: September 20, 1976 at 2:50 P.M.  
Recorded in Book 331 on Page 687  
Misc. Records in the office of the  
Register of Deeds, Meade County, South Dakota.

The Law Offices of

**C L CLAYBORNE, LOOS  
& S AND SABERS LLP**

Courtney R. Clayborne  
Michael C. Loos  
Michael K. Sabers  
Travis B. Jones  
Eric M. Schlingens\*  
Hollie L. Smith

Phone (605) 721-1517  
Fax (605) 721-1518  
2834 Jackson Boulevard, Suite 201  
P.O. Box 9129  
Rapid City, South Dakota 57709-9129  
\*Licensed in Wyoming

May 12, 2021

Clyde Straatmeyer and Nancy Straatmeyer  
2458 Outback Trail  
Hermosa, SD 57744

**FILED**

FEB 15 2022

Re: Shadowland Ranch Subdivision

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

Mr. and Mrs. Straatmeyer:

By 



Please be advised that our office has been contacted and retained by homeowners in the Shadowland Subdivision located in Meade County. It is our understanding that you recently purchased the newly platted Lot 6B of Shadowland Ranch Subdivision with the intent of constructing a habitable structure on the same. This letter is to inform you that such an act would be in violation of the Shadowland Ranch Subdivision Restrictions and Covenants, which should have been referenced in your title insurance, and a copy of which is enclosed herewith.

As you can see, the Restrictions and Covenants included Lot 6 and initially provide that "*further subdivisions of any lot shall be prohibited.*" Unfortunately, other homeowners in the subdivision were not informed of the subdivision and do not waive their right to proceed and have the same nullified.

Additionally, the Restrictions and Covenants also restrict the use of the Lot, including placing certain building restrictions on the property owners. Please be advised that the homeowners are prepared to proceed with enforcement of these Restrictions and Covenants if required to do so by any construction on Lot 6B.

At this time, the homeowners would request that you cease and desist from any further construction activities on Lot 6B, which was formed in violation of the Restrictions and Covenants, which were filed on the property at the time of your purchase. If you elect to proceed, the homeowners may institute legal action which could, as a requested remedy, require that any improvements (and certainly any improvements in violation of the recorded Restrictions and Covenants) be removed. The litigation may also include request for

reimbursement of legal fees incurred in enforcing the covenants, as well as any other damages suffered by the homeowners. Hopefully, this will not be necessary.

Thank you for your cooperation and please feel free to contact me if you have any questions or comments.

Sincerely yours



COURTNEY R. CLAYBORNE

CRC:  
Enclosures

# Building Permit Documentation Required:

*\*Applications will not be accepted unless the following information is submitted:*

Received

☐

## Foundation Plan

(Cross-section of footing, wall etc. with rebar size and spacing  
- for post frame structures, a diagram of post holes is required)

☐

## Floor Plan

☐

## Elevation Plan

(Diagram of framing and truss information, ex. wall detail)

☐

## Site Plan

(Diagram of proposed structures, distance to property lines)

☐

## Truss Plan(s) - engineered roof truss plan

(40 psf ground snow load, 90 mph wind speed)

☐

## Cost Estimate of Project

(Written or typed detailed breakdown of cost estimate of improvements, including material and labor costs)

N/A

Received

☐☐

## Owner Statement - (if applicable)

(Written verification from owner is required if someone other than owner is applying for permit - complete attached statement)

N/A

Received

☐☐

## Stormwater Site Plan - (if applicable) \* \$25.00 fee applies

(A stormwater site plan is required to be submitted if the construction area or site is within 250 feet of a drainage ditch, stream, or road ditch - complete attached form.)

\*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)

N/A

Received

☐☐

## Percolation Test - (if applicable)

(Percolation test is required to be turned in at time of building permit application if a new septic system will be installed - if ground is frozen this will be required at time of septic permit application)

N/A

Received

☐☐

## Copy of Warranty Deed - (if applicable)

(If the property was purchased within the last 60 days, a copy of the warranty deed is required.)

The completed application and all required documentation and plans are to be submitted at the time of application. Plan review will take a minimum of two business days. Permits will be mailed to the applicant when they are issued.



# FILED

FEB 15 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By: [Signature]

**MEADE COUNTY  
BUILDING PERMIT APPLICATION**

Equalization & Planning Department  
1300 Sherman St., Suite 222  
Sturgis, SD 57785  
Office 605-347-3818

**PLEASE PROVIDE THE FOLLOWING INFORMATION:**

(Permit will not be issued without completed application and providing required information.)

**APPLICANT:**

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Relationship to Property Owner: \_\_\_\_\_

**PROPERTY OWNER:**

Clyde Straatmeyer

Mailing Address: 24587 Outback Trail, Hermosa 57744

Telephone Number: 605-391-2670 Email Address: Straatc007@gmail.com

**PROPERTY INFORMATION:**

Site Address: 10305 Concho Ct, Black Hawk

Parcel ID: \_\_\_\_\_

Legal Description: Lot 6B of Tract 3 located in NE 1/4 NW 1/4 of  
Section 36, Township 3 North, Range 6

The APPLICANT hereby agrees and affirms that all the information given is true and is a correct representation of the structure(s) or construction being built. Any alteration in plans, designs or specifications will require an additional review of the project and may result in additional building permits and/or fees. Failure to provide the correct information may result in a fine or legal action or both. Failure to obtain a building permit will result in a fine per Ordinance No. 34.

Setbacks for all structures shall be 25.0 (feet) front and back and Sides 8.0' (feet). Setbacks are measured from property lines and/or section line right-of-ways and easements. Corner lots, have a 25.0 (feet) setback from each right-of-way. If you are unsure, please ask.

Improvements will be assessed on the property on which they are placed or constructed, unless the proper documents are filed with the Equalization office stating the improvement is a building on leased site.

The APPLICANT hereby acknowledges that he/she is familiar with covenants, deed restrictions, governmental regulations and Meade County Ordinances and recognizes that Meade County enforces the adopted version of the International Building and Residential Codes along with the Fire Code.

Notice is hereby given that it is the homeowner's sole responsibility to apply for the owner-occupied tax reduction program of South Dakota by filling out an application in the Meade County Equalization & Planning office from November 1st through March 15th. The owner must own and occupy the house by November 1st to qualify.

Applicant Signature: \_\_\_\_\_

Date: 4-14-21



**Type of Construction:** ☒ Residential ☐ Commercial ☐ Agricultural

**Type of Improvement:**

☒ Stick-Built New Residence ☐ Mobile Home ☐ Modular Home ☐ Outbuilding ☐ Garage  
☐ Home Remodel ☐ Home Addition ☐ Basement Finish ☐ New Commercial  
☐ Commercial Remodel ☐ Addition to Outbuilding/Garage ☒ Other: Post Frame

**IMPROVEMENT INFORMATION**

**NEW HOME:**

Main Floor Sq. Ft: 1224  
Second Story Sq. Ft: \_\_\_\_\_  
Basement Sq. Ft: \_\_\_\_\_  
Basement Finish Sq. Ft: \_\_\_\_\_  
Total Sq. Ft: 1224  
No. of Bedrooms: 2  
No. of Bathrooms: 2  
Heat Type: Gas/in-floor  
Central Air: ☐ Yes ☒ No  
Fireplace: ☒ Yes ☐ No  
Type Gas No. of Fireplace(s): 1  
No. of Decks: 0  
Deck(s) Sq. Ft: 0

**GARAGE/OUTBUILDING:**

☒ Attached ☐ Detached  
☐ Stick-Built ☒ Post Frame ☐ Other \_\_\_\_\_  
Size: 43 x 72  
(LENGTH X WIDTH X HEIGHT)  
Sq. Ft: 3096  
Electricity: ☒ Yes ☐ No  
Plumbing: ☒ Yes ☐ No  
Finished: ☐ Yes ☐ No Partial  
Insulated: ☒ Yes ☐ No  
Floor Type: Concrete  
Will this structure be used for agricultural purposes?  
☐ Yes ☒ No

**COMMERCIAL:**

Type of Structure: \_\_\_\_\_ Type of Business: \_\_\_\_\_  
Size of Structure (length x width x height): \_\_\_\_\_ Main Floor Sq. Ft: \_\_\_\_\_  
Second Story Sq. Ft: \_\_\_\_\_ Total Sq. Ft: \_\_\_\_\_ No. of Bathrooms: \_\_\_\_\_

**ESTIMATED COST OF IMPROVEMENTS = \$ 198,000**

(This includes the estimated cost of material & labor costs. A written or typed detailed breakdown of estimated costs is required to be submitted with application.)

Will the construction area or site be within 250 feet of a drainage ditch, road ditch or stream? ☐ Yes ☒ No

Will structures be in a floodplain area? ☐ Yes ☒ No

Will structures meet Meade County's property setback requirements? ☒ Yes ☐ No

Water Source (if applicable): ☐ Private Well ☒ Community Well ☐ Central Water

**FOR OFFICE USE ONLY:**

Date Application Received: \_\_\_\_\_

If Denied, Reason for Denial: \_\_\_\_\_

Reviewed By: \_\_\_\_\_

Review Date: \_\_\_\_\_

Application Approved: ☐ Yes ☐ No

BUILDING PERMIT FEE \$

PD BY: ☐ CASH ☐ CHECK #

☐ CREDIT CARD



## CONTRACTOR LIST

(REQUIRED TO BE SUBMITTED WITH BUILDING PERMIT APPLICATION)

### General Contractor:

Company Name: FORKNER Contracting  
Contact Name: Bryan Forkner  
Address: 327 Sunnydale Boy Elder 57719  
Telephone Number: 605 923-2628 Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

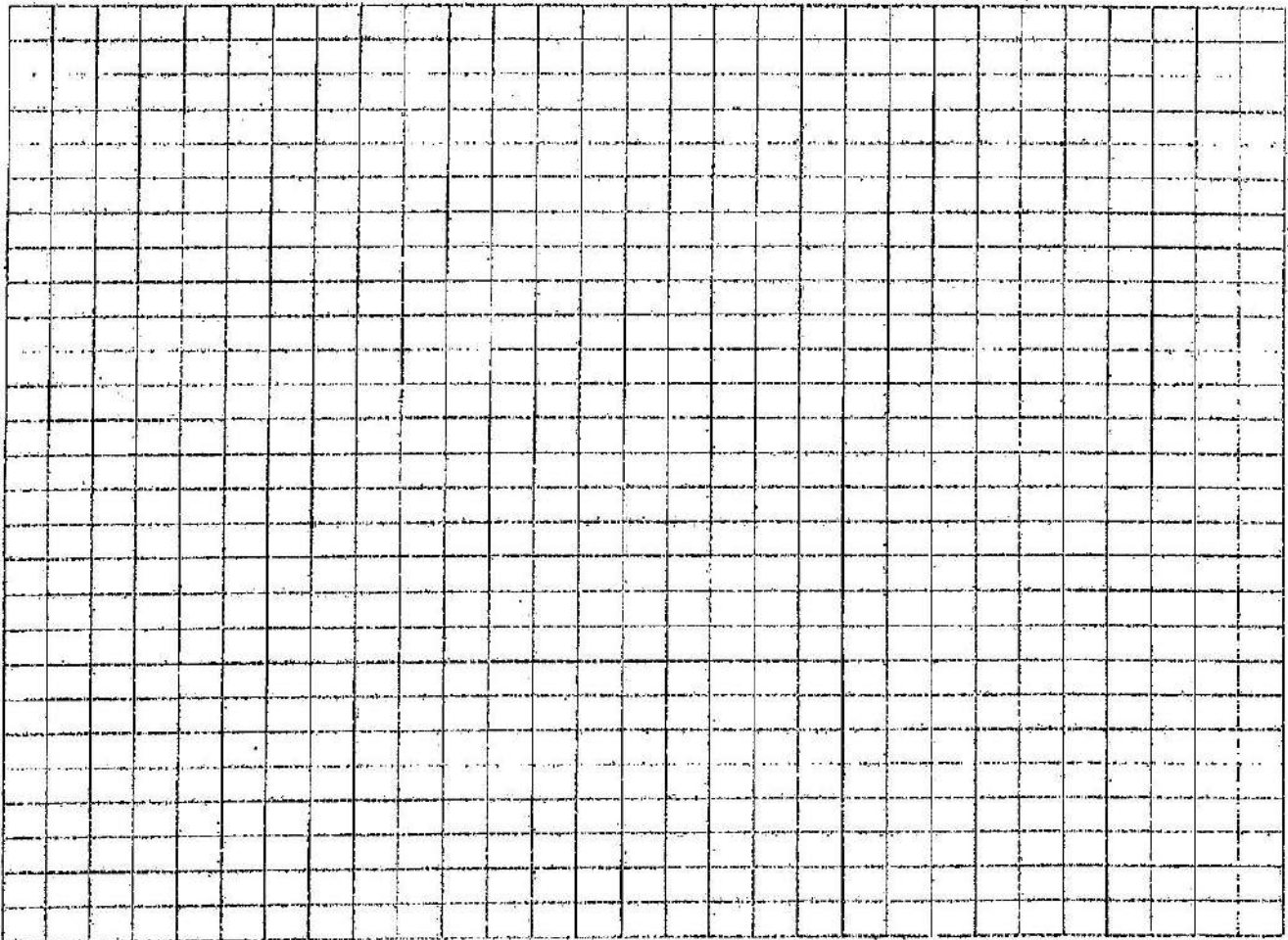
## **STORMWATER SITE PLAN**

*(Required to be completed and submitted with building permit application when the construction area or site is within 250 feet of a drainage ditch, road ditch, or stream. \*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)*

- Site Plan needs to show roads drainage ditches, road ditches, streams and area of excavation or fill including the approximate distances between each feature.
- Site plan must show location of silt fence, waddles, gravel or stone construction entrance for construction vehicles and wash pit for concrete truck washouts.

Check the type of foundation:

- ☐ Piers or Post Holes – Site Sketch Not Required
- ☐ Thickened Edge (Monolithic Slab)
- ☐ Frost Footings and Frost Walls (Crawl Space)
- ☐ Footings and Basement
- ☐ Adding Fill Material



SKETCH SITE PLAN ABOVE

**MEADE COUNTY  
BUILDING PERMIT**

**FILED**

Equalization & Planning Department

**FEB 15 2022**

1300 Sherman St. Suite 222  
Sturgis, SD 57786  
Office 605-347-3818

PERMIT NO: 8660

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT**

PERMIT EXPIRATION DATE: 04/14/2022

**APPLICANT:** Forkner Construction - Bryan Forkner

Phone Number: 605-923-2628

Mailing Address: 10300 Concho Ct

City, State, Zip: Black Hawk, SD 57718

Email: straate007@gmail.com

**PROPERTY OWNER:** STRAATMEYER

Phone Number: 605-391-2670

Mailing Address: 24587 OUTBACK TRAIL

City, State, Zip: HERMOSA SD 57744

Email: STRAATC007@GMAIL.COM

EXHIBIT

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**PROPERTY INFORMATION:**

Parcel ID: 15.67.06B

Site Address: 10300 CONCHO CT

City, State, Zip: BLACK HAWK SD 57718

Section: 36

Township: 3

Range: 6

Legal Description:

The APPLICANT hereby agrees and affirms that all the information given, is true and is a correct representation of the structure(s) or construction being built. Any alteration in plans, designs or specifications will require an additional review of the project and may result in additional building permits and/or fees. Failure to provide the correct information may result in a fine or legal action or both. Failure to obtain a building permit will result in a fine per Ordinance No. 34.

Setbacks for all structures shall be 25.0 (feet) front and back and Sides 8.0' (feet). Setbacks are measured from property lines and/or section line right-of-ways and easements. Corner lots, have a 25.0 (feet) setback from each right-of-way. If you are unsure, please ask.

Improvements will be assessed on the property on which they are placed or constructed, unless the proper documents are filed with the Equalization office stating the improvement is a building on leased site.

The APPLICANT hereby acknowledges that he/she is familiar with covenants, deed restrictions, governmental regulations and Meade County Ordinances and recognizes that Meade County enforces the adopted version of the International Building and Residential Codes along with the Fire Code.

Notice is hereby given that it is the homeowner's sole responsibility to apply for the owner-occupied tax reduction program of South Dakota by filling out an application in the Meade County Equalization & Planning office from November 1st through March 15th. The owner must own and occupy the house by November 1st to qualify.

If construction for any building permit has not begun within six (6) months from the date of issuance, the permit shall expire; it shall be cancelled by the Meade County Building Official, and notice shall be given to the person affected and/or property owner. If the work described in any building permit has not been substantially completed within (1) one year of the date of issuance, thereof said permit shall expire.

Applicant Signature: *Tony Straatmeyer*

Date: 4-14-21

**IMPROVEMENT INFORMATION:**

Type of Construction: Residential

Type of Improvement: Other

**NEW HOME:**

Main Floor Sq. Ft: 1224

Second Story Sq. Ft: \_\_\_\_\_

Basement Sq. Ft: \_\_\_\_\_

Basement Finish Sq. Ft: \_\_\_\_\_

Total Sq. Ft: 1224

No. of Bedrooms: 2

No. of Bathrooms: 2

Heat Type: GAS

Central Air: No

Fireplace: Yes

Type: 1

No. Fireplace(s): 1

Decks Sq. Ft: \_\_\_\_\_

Size (length x width): \_\_\_\_\_

Patio/Slab Sq. Ft: \_\_\_\_\_

Size (length x width): \_\_\_\_\_

**GARAGE/OUTBUILDING:**

Type: Attached

Construction Type: Post Frame

Size 43 X 72 X X

Size (Length) X (Width) X (Height)

Sq. Ft: 3096

Electricity: Yes

Plumbing: Yes

Finished: No

Insulated: Yes

Floor Type: CONCRETE

Will this structure be used for agricultural purposes?

No

**COMMERCIAL:**

Please fill out additional Commercial Building Permit page

**Estimated Cost of Improvements:** \$175032.00**CONTRACTOR INFORMATION:**

FORKNER CONTRACTING

**COMMENTS:**

NEW POST FRAME HOME WITH ATTACHED GARAGE

**OFFICE USE ONLY:**

Permit Date: 04/14/2021

Construction area within Floodplain? No

Construction area or site be within 250 feet of a drainage ditch, road ditch or stream? Yes

Permit Cost: \_\_\_\_\_

Payment Type: \_\_\_\_\_

Check# \_\_\_\_\_

FEB 15 2022

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM**  
**4TH CIRCUIT CLERK OF COURT**

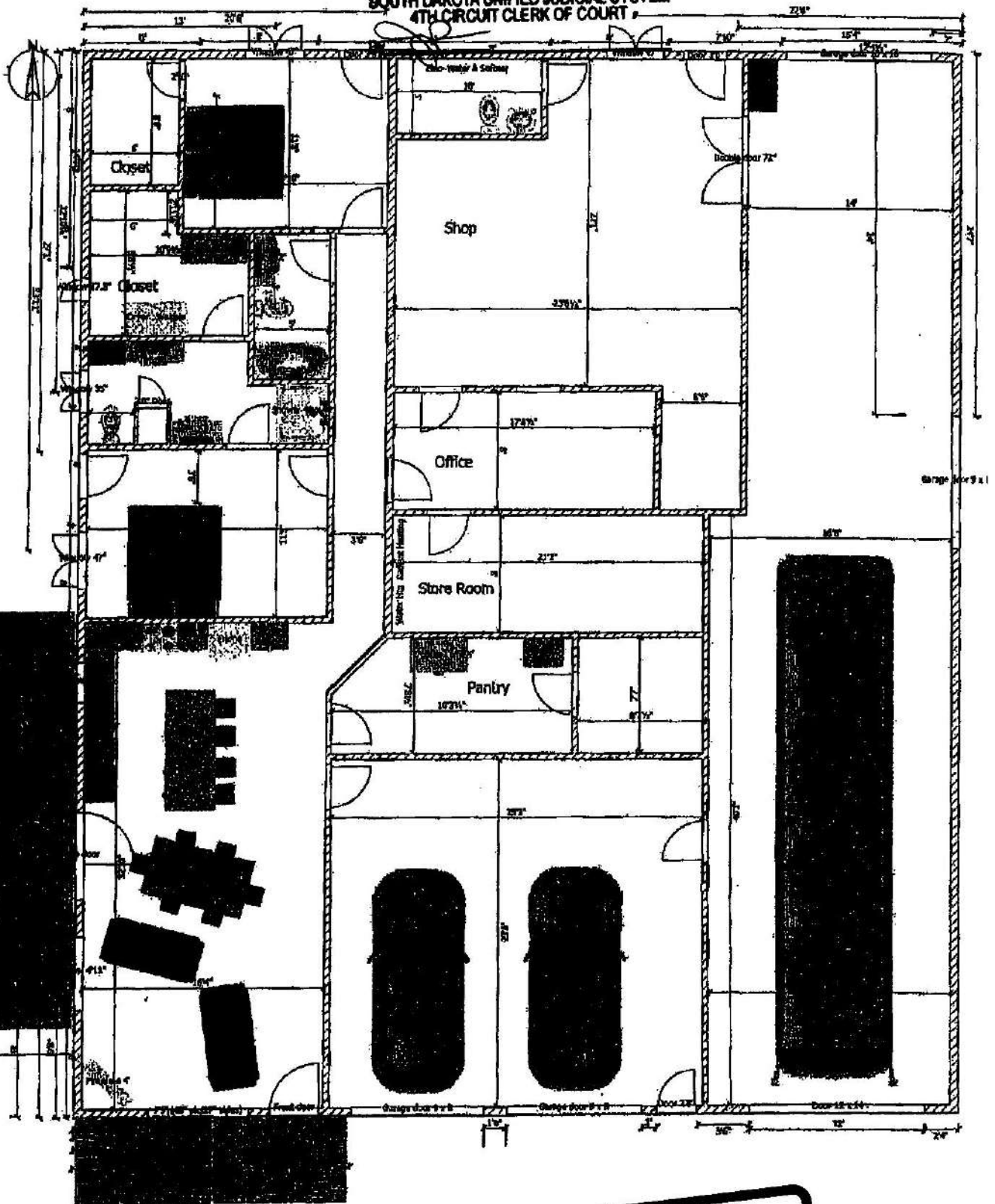


EXHIBIT  
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In the  
**Supreme Court of the State of South Dakota**

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ROBERT and MELISSA HOOD, THOMAS and PATRICIA  
DONOVAN, BERNARD and MARIA JUNG, WILLIAM and JANICE  
PRICE, JAMES and KAY FENENGA, LARRY and DARLENE BAILLY,  
GREG and DEB PETERS, MARK and KITTY GUSTAF, and  
RODNEY and GINA BOADWIRE,

Plaintiffs and Appellants,

v.

CLYDE and NANCY STRAATMEYER,

Defendants and Appellees.

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**Appeal from the Circuit Court  
Fourth Judicial Circuit  
Meade County, South Dakota**

The Honorable Kevin J. Krull

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BRIEF OF APPELLEES CLYDE and NANCY STRAATMEYER

---

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## **PRELIMINARY STATEMENT**

Citations to the record will appear as “(CR \_\_)” with the page number from the Clerk’s Appeal Index. Appellants Robert and Melissa Hood, Thomas and Patricia Donovan, Bernard and Maria Jung, William and Janice Price, James and Kay Fenenga, Larry and Darlene Bailly, Greg and Deb Peters, Mark and Kitty Gustaf, and Rodney and Gina Boadwine<sup>1</sup> will be collectively the “Appellants.” Clyde and Nancy Straatmeyer will be collectively referred to as “Appellees.” Appellees’ appendix will be designated as “APP. \_\_” followed by the appropriate page number. The trial transcript will be referred to as “TT \_\_” followed by the corresponding page number. Trial exhibits will be referenced by “TT Exhibit \_\_” followed by the corresponding page number. Appellees’ Proposed Findings of Fact and Conclusion of Law, which the court adopted in its entirety, will be designated as “FOF \_\_” and “COL \_\_” followed by the appropriate paragraph number.

## **JURISDICTIONAL STATEMENT**

Appellants appeal from the circuit court’s Judgment Enjoining Enforcement of Covenants and Dismissing Plaintiffs’ Complaint and Defendants’ Counterclaims with Prejudice (“Judgment”) filed October 13, 2022. CR. 583. The court’s Judgment incorporated its Memorandum of Decision (“Memorandum Decision”) filed September 29, 2022, as well as Appellees’ Post-Trial Proposed Findings of Fact and Conclusions of Law. APP. 101. The Judgment is one that may be appealed pursuant to SDCL 15-26A-3. Notice of Entry of the Judgment was filed October 25, 2022, and the Notice of Appeal

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<sup>1</sup> Appellants’ counsel, when filing the initial Complaint in this matter, spelled the Boadwines’ name incorrectly in the caption and never corrected the error. CR. 2. The Boadwines’ name is correctly spelled herein.

was filed November 22, 2022. CR 585; CR 587. The Notice of Appeal was filed within the time limits of SDCL 15-26A-6. CR. 587. Therefore, this Court has jurisdiction to consider the issues raised on appeal.

### **STATEMENT OF LEGAL ISSUES AND AUTHORITIES**

#### **I. Whether the circuit court erred in its findings and conclusions regarding Section A of the Covenants.**

The circuit court correctly determined that the phrase, “no larger than a three car garage” in the Covenants restricted all garages to three whether attached to the residence or free standing. To the extent this phrase was ambiguous, the Court properly looked to parol evidence to aid in its interpretation of the disputed provision. APP. 101, FOF ¶ 57–58. By appealing the circuit court’s determination, Appellants effectively request this Court to ignore its longstanding rules regarding contract interpretation.

- *Charlson v. Charlson*, 2017 S.D. 11, 892 N.W.2d 903
- *Coffey v. Coffey*, 2016 S.D. 96, 888 N.W.2d 805
- *Matter of Certification of Question of L. From United States Dist. Ct., Dist. Of S. Dakota, Cent. Div.*, 2021 S.D. 35, 960 N.W.2d 829
- *Wilson v. Maynard*, 2021 S.D. 37, 961 N.W.2d 596

#### **II. Whether the circuit court erred in concluding the lot boundary lines within the Subdivision do not include the dedicated public right-of-way.**

The circuit court properly concluded that lot boundary lines have clear, distinct legal definitions and, therefore, determined that the lot line boundaries within the Subdivision were unambiguous and that the lots do not include the dedicated public right-of-way. APP. 101, FOF ¶ 53–56. The court also correctly determined that

several Appellants violated the 40 foot setback provision in the Covenants. *Id.* at FOF ¶ 32–40. In arguing that the circuit court erred, Appellants ask this Court to ignore the plat’s express, legal boundaries and instead adopt an interpretation that is inconsistent with South Dakota law and the evidence in this matter.

- *Fuoss v. Dahlke Fam. Ltd. P’ship*, 2023 S.D. 3, 984 N.W.2d 693
- *Wilson v. Maynard*, 2021 S.D. 37, 961 N.W.2d 596

**III. Whether the circuit court clearly erred in finding that various property owners within the Subdivision violated the Covenants by conducting businesses out of their lots, building in the setbacks, and having more than the allowed three garages.**

The circuit court correctly found in its findings of fact that various landowners operated businesses out of their lots, that various landowners had more than a three-car garage, and that multiple lot owners built within the setback—all of which violate the Covenants. *Id.* at FOF ¶ 43–49. While Appellants broadly allege that the court erred in these findings, which Appellees strongly oppose, Appellants cannot establish clear error.

- *Fuoss v. Dahlke Fam. Ltd. P’ship*, 2023 S.D. 3, 984 N.W.2d 693

**IV. Whether the circuit court erred in denying Appellants’ declaratory relief based upon its finding that the Covenants are null and void under the doctrine of unclean hands, laches, and waiver.**

The circuit court properly determined it would be inequitable to enforce the Covenants against Appellees given Appellants’ pervasive, ongoing violations. *Id.* at FOF ¶ 67–68. As such, the court concluded that the Covenants were void. *Id.* at COL ¶ 25. Contrary to Appellants’ arguments, Appellants cannot enforce the Covenant given their unclean hands, waiver, and laches.

- *Halls v. White*, 2006 S.D. 47, 715 N.W.2d 577
- *Van Duysen v. Van Duysen*, 2015 S.D. 84, 871 N.W.2d 613
- SDCL 17-1-4

### **STATEMENT OF THE CASE**

This is an appeal from the circuit court, Fourth Judicial Circuit, the Honorable Kevin J. Krull, Circuit Court Judge, presiding. CR. 587. Appellants sought declaratory relief before the circuit court to determine the validity of Shadowland Ranch Subdivision’s 1976 Covenants (the “Covenants”) to prevent Appellees from constructing their home in Shadowland Ranch Subdivision (“Subdivision”). CR. 2. Appellants claimed Appellees violated various provisions in the Covenants, including the provisions addressing garage stalls, modular structures, subdivision, and boundaries lines. *Id.* In response, Appellees argued the Covenants were waived due to numerous, unenforced violations within in the Subdivision—many of which were violations by Appellants. CR. 18. Appellees also argued Appellants’ claims were barred by the doctrine of unclean hands, laches, and waiver. *Id.* Finally, Appellees counterclaimed for declaratory relief and in the alternative breach of contract alleging that if the Covenants are deemed valid, then the Covenants should be enforced against Appellants’ numerous violations.<sup>2</sup> *Id.*

The circuit court presided over a bench trial on February 15, 2022, and later issued a Memorandum Decision wherein it concluded the following: (1) Appellees were entitled to construct their home; (2) the Covenants were not enforceable given the “pervasive violations that have gone unchecked or unenforced by the [Appellants;]” (3)

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<sup>2</sup> The circuit court never addressed Appellees’ counterclaims given the court’s determination that the Covenants were null and void.



enforcement of the Covenants against Appellees would be unequitable given the other violations; and (4) Appellants were barred from enforcing the covenants against the Appellees. CR. 566; APP. 15. In its Judgment, the circuit court adopted Appellees' Post-Trial Proposed Findings of Fact and Conclusions of Law (the "Court's Findings of Fact and Conclusions of Law") and incorporated its Memorandum Decision. CR. 583; APP. 1. Appellees request this Court affirm the circuit court's decision.

### **STATEMENT OF FACTS**

In September 2020, the landowner of Lot 6 in the Subdivision applied to the City of Summerset ("City") to split the property into two lots – 6A and 6B. CR. 226; TT Exhibit 3. Prior to any applications to, or discussions with, the City, the landowner hired a surveyor to flag and pin the property. APP. 101, FOF ¶ 7–8. These markers remained in the ground—visible for all to see—throughout the entire platting process. *Id.* Pursuant to state statute, the City published its September 22, 2020, agenda listing the pending plat prior to its meeting wherein it would discuss the landowner's application to split Lot 6. CR. 226; TT Exhibit 3; APP. 121. The City's published meeting minutes indicate that the plat application was discussed. CR. 233; TT Exhibit 4; APP. 128. In October 2020, the City again included the plat on its agenda. CR. 237; TT Exhibit 6; APP. 130. And during its October meeting, the City approved the plat. CR. 239; TT Exhibit 7; APP. 132. The plat was then published in the City's paper on two different days as required by statute. CR. 242; TT Exhibit 8; APP. 135. At no point in time did Appellants, or anyone else, object to the plat or inform Appellees of the Covenants. APP. 101, FOF ¶ 8, 12.

Appellees purchased Lot 6B, one of the lots resulting from the plat, and became the record owners of the lot legally described as Lot 6B of tract 3 located in NE1/4 NW

¼ of Section 26, township 3 North, Range 6. APP. 101, FOF ¶ 1. Prior to purchasing the lot, Appellees walked the property several times. *Id.* at ¶ 7. Following their purchase of the lot, Appellees filed and obtained a building permit with Meade County in April 2021. APP. 101. Appellees sought to build a residence on their lot with an attached three-car garage, including one stall garage large enough to fit an RV. *Id.* at 3–4. In May 2021, Appellees commenced construction. *Id.* at 3. Shortly thereafter, Appellant Robert Hood approached Appellees’ contractor claiming that Appellees were in violation of the Subdivision’s Covenants. *Id.* Appellees received a letter from Appellants’ counsel soon after to the same effect. *Id.* This letter indicated that should Appellees proceed with construction, legal action would ensue. *Id.* Appellees forestalled construction for purposes of determining their rights to their property. *Id.*

Appellants filed a declaratory action on June 23, 2021, seeking to enforce the restrictive covenants. CR. 2. Specifically, Appellants sought enforcement of the Covenants pertaining to garages, setbacks, modular structures, and subdivision. *Id.* The Covenants relevant to this appeal provide:

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Twelve Hundred (1,200) square feet. No trailers or modular.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any materials being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- ...
- G. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.

CR. 224; TT Exhibit 1; APP. 15. Based on these restrictions, Appellants alleged Appellees' proposed structure violated the Covenants because it was being built on a subdivided lot, within a setback, was modular, and had a nonconforming garage. CR. 535. In response, Appellees argued that their structure was not modular and that their proposed three-car garage aligned with the Covenants. APP. 101, FOF ¶ 18, 22–23, 64. Appellees also argued that their predecessor—rather than themselves—subdivided the lot and that Appellants failed to object to the plat when it was pending before the City. *Id.* at ¶ 64. Given these issues, Appellees argued that Appellants could not now collaterally attack the plat and that they were therefore estopped from challenging the plat. *Id.* at ¶ 66. Further, Appellees asserted that Appellants were barred from enforcing the Covenants because they failed to enforce the Covenants against other landowners, many of whom are named Appellants, in the Subdivision. *Id.* at ¶ 74. Specifically, Appellees identified numerous landowners who had more than a three-car garage, who had buildings within 40 feet of lot boundary lines, and who operated businesses out of their lots. *Id.* at ¶ 23–65.

The circuit court presided over a court trial on February 15, 2022. APP. 16. Appellants called Eddie Opstedal, the original developer of the Subdivision, to testify. TT pg. 10. Mr. Opstedal testified that he believed the center of road was the boundary line from which setbacks should be taken. TT pg. 16. Mr. Opstedal also testified that the Covenants do not prohibit or restrict detached garages. TT pg. 12. However, on cross-examination, Mr. Opstedal admitted that the road is a dedicated public right-of-way. TT pg. 18. Mr. Opstedal also admitted that the Covenants do not allow for more than three garage stalls on each lot, regardless of whether the garage stalls are attached or detached

from the home. TT pg. 24–26. Finally, when asked on cross-examination whether employees parking their vehicles on a lot within the Subdivision constituted extra parking, Mr. Opstedal stated that he did not “think they should have it there to start with” given extra parking for businesses violated the Covenants. TT pg. 28.

Appellants also called Greg Peters and Robert Hood, two property owners within the Subdivision and who are named Appellants, to testify. TT pg. 66, 183. Mr. Peters testified that he operated a business out of his lot in the Subdivision but that he felt he was not in violation of the Covenants because his business did not require him to add extra parking. TT pg. 67–68. However, on a cross examination, Mr. Peters admitted to parking equipment on his lot that he uses for his business, having materials stored on his lot that he uses for business, and having a building within the setback. TT pg. 72–73. Mr. Hood testified that he did not add additional parking on his lot to accommodate his work vehicle. TT pg. 185. Yet, on cross-examination, Mr. Hood admitted that he does not have a separate business address, that he receives business mail to his home within the Subdivision, and that he added gravel to his lot to park his commercial van. TT pg. 187. Mr. Hood also admitted to seeing the surveyor’s stakes on Lot 6 prior to its replatting and doing nothing about it. TT pg. 187.

Appellee Clyde Straatmeyer testified on behalf of Appellees.<sup>3</sup> TT pg. 136. Mr. Straatmeyer testified that at the time of purchasing Lot 6B, he was unaware of the Covenants and that the title company did not provide him with the Covenants at closing. TT pg. 136–139. He similarly testified that he was unaware of the Covenants when

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<sup>3</sup> Mr. Straatmeyer was also called as a witness by Appellants; his testimony was substantially similar as his testimony on behalf of Appellees. TT pg. 39, 136.

applying for a building permit and that he did not believe any covenants existed at the time he signed the application. TT pg. 136 –39. In fact, Mr. Straatmeyer testified that he first learned of the Covenants when he received Appellants’ counsel’s letter with the Covenants attached. TT pg. 43, 62, and 137. Mr. Straatmeyer also discussed his proposed structure, stating that it would have poured floors, support beams in the ground, concrete footings, and three garage doors—one of which is large enough for an RV. TT. Pg. 148–149. In other words, Mr. Straatmeyer testified that his proposed structure was not modular and, therefore, did not violate the Covenants. Through Mr. Straatmeyer, Appellees elicited testimony and introduced exhibits as to the numerous other violations of the Covenants in the Subdivision. TT pg. 150–160; TT Exhibits 10–21. In total, Mr. Straatmeyer testified that nine of the thirteen lots in the Subdivision had *at least* one violation.<sup>4</sup> TT pg. 160–161.

In further support of their argument that numerous Covenants were violated, Appellees adversely called Appellant Rodney Boadwine to testify.<sup>5</sup> TT pg. 116. Mr. Boadwine, a homeowner within the Subdivision, testified that he had “a bucket truck, a chipper, a dump trailer, a pickup and a skid steer” on his property that he used for his business. TT pg. 118. Mr. Boadwine further testified to having his employees park on his lot and to having more than three garage stalls. TT pg. 120–121, 128, and 119.

Finally, Appellees called Shannon Vasknetz to testify. TT pg. 89. Mr. Vasknetz stated that he is a registered land surveyor in South Dakota and that his work requires him

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<sup>4</sup> The specific violations are discussed in detail below.

<sup>5</sup> Although named plaintiffs in this matter, Mr. Boadwine and Mr. Peters would not voluntarily appear and had to be subpoenaed by Appellees. CR. 123–128; APP. 14, 15.

to “retrace the boundary work of other surveyors and show people where the property lines are for buildings[.]” TT pg. 89–90. Mr. Vasknetz testified that he has worked with subdivisions across the county on a daily basis. TT pg. 98–99.

Based on his expertise, Mr. Vasknetz determined that all of the roads within the Subdivision were dedicated public right-of-ways and that the roads were neither section lines nor easements. TT pg. 98, 108; TT Exhibit 17. Importantly, Mr. Vasknetz reviewed a plat of the Subdivision and testified that the broken line drawn down the center of the road was not a boundary line but simply a line indicating the center of a dedicated public right-of-way. TT pg. 93–94. He further testified that the solid lines shown on the plat established the boundaries of each lot. TT pg. 93. Based on these conclusions, Mr. Vasknetz testified that the road was not included in each lots’ boundaries. TT pg. 93. As such, any measurements regarding the 40 foot setback were to be taken from each lots’ respective boundaries rather than the center of the road. TT pg. 95–98.

Mr. Vasknetz testified that he conducted several tests throughout the Subdivision wherein he measured the distances of various buildings from each respective lots’ property corners. TT pg. 95. His test results indicated that multiple buildings on multiple, different lots were within 40 feet of a lot boundary line. TT pg. 96–98. These buildings included a multiple car garage and shed located on Lot 7 (owned by Appellants Baillys) as well as shed located on Lot 5 (owned by Appellants Hoods).<sup>6</sup> TT pg. 96–97. However, these buildings are not the only buildings within 40 feet of a boundary line. TT

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<sup>6</sup> Lot 5’s shed was determined to be 9.8 feet from the lot line whereas Lot 7’s shed was 6.2 feet from the boundary of the lot line. TT pg. 97. Lot 7’s detached garage was 15.7 feet from the boundary of the lot line. TT pg. 97.

pg. 96–97. On Lot 10, which is owned by Appellants Peters, there is a structure located 9.0 feet from the side lot line. TT pg. 97–98. On Lot 11, owned by a non-party, Mr. Vasknetz testified that the structure was only 0.2 feet from the lot line. TT pg. 98.

Following trial, the circuit court requested both parties submit proposed findings of fact and conclusions of law. TT pg. 189–193. The court’s Memorandum Decision filed in September 2022 largely incorporates Appellees’ post-trial proposed findings and conclusions, which the court later adopted as its own findings and conclusions. APP. 1; APP. 3; APP. 101. In the Court’s Findings of Fact and Conclusions of Law, the circuit court emphasized Appellees’ predecessor’s actions to get the new plat approved, including the various meetings that were properly noticed as well as the surveyor’s stakes that remained in the ground for several months. APP. 101, FOF ¶ 1–15.

The court properly addressed other non-conforming lots in the Subdivision, noting how each respective lot violated the Covenants. *Id.* at ¶ 24–60. The court determined the following property owners within the Subdivision all have buildings within forty 40 feet of their boundary lines in violation of the Covenants: (1) The Hoods; (2) The Baillys; (3) The Peters; and (4) The Cottinghams. *Id.* at ¶ 31–40. The findings pertaining to the Baillys’ violation are based off of the court’s conclusion that the Covenants’ setback is measured from each lots’ boundary lines rather than the center of the road because “a boundary . . . has a distinct and clear legal meaning.” *Id.* at ¶ 33. As such, the court concluded Part H of the Covenants, which addresses the boundaries of each lot, was not ambiguous. *Id.* at ¶ 53.

The court also found that there are at least two business in the Subdivision that require extra parking—two additional violations of the Covenants. *Id.* at ¶ 43–49.



Additionally, the circuit court concluded that that the three-car garage restriction applied to all structures on the lots, not just to structures attached to homes. *Id.* at ¶ 60. Based on this conclusion, the following properties within the Subdivision are in violation of the three-car garage provision: (1) The Jungs; (2) The Prices; (3) The Hoods; (4) The Baillys; (5) The Boadwines; (6) The Peters; (7) The Cottinghams; and (8) The Gustafs. *Id.* As there are only 13 lots in the Subdivision, over 60% of the lots are in violation of the three-car garage provision. *Id.*; TT Exhibit 17; APP. 139.

Given the multitude of violations and historical lack of enforcement, the circuit court determined Appellants could not enforce the Covenants against Appellees because they failed to enforce the Covenants against themselves and against other landowners in the Subdivision. *Id.* at ¶ 62–68. The court addressed the doctrine of unclean hands, laches, and waiver stating:

The [C]ovenants are not enforceable given the pervasive violations that exist that have gone unchecked and unenforced by [Appellants] or any other parties that may have had the right under the [C]ovenants to enforce said violations. When violations of the [C]ovenants is the rule in the [S]ubdivision as opposed to the exception, it cannot stand that [the C]ovenants can continue to be valid and selectively enforced against new people moving into the [S]ubdivision. Such enforcement would be inequitable.

APP. 14. The circuit court entered its Judgment, which incorporated its earlier Memorandum Decision as well as Appellees’ proposed findings and conclusions, in October 2022. APP. 1. Appellants appeal these findings. CR. 587.

### **STANDARD OF REVIEW**

This court reviews “a circuit court’s factual findings for clear error and its legal conclusions de novo.” *Fuoss v. Dahlke Fam. Ltd. P’ship*, 2023 S.D. 3, ¶ 22, 984 N.W.2d 693, 701 (quoting *Gangle v. Spiry*, 2018 S.D. 55, ¶ 11, 916 N.W.2d 119, 123. “A finding

is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Eagle Ridge Ests. Homeowners Ass’n, Inc. v. Anderson*, 2013 S.D. 21, ¶ 12, 827 N.W.2d 859, 864 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948)). “ ‘[T]he credibility of the witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the circuit court, and we give due regard to the circuit court’s opportunity to observe the witnesses and examine the evidence.’ ” *Id.* (quoting *Hubbard v. City of Pierre*, 2010 S.D. 55, ¶ 26, 784 N.W.2d 499, 511). The interpretation of covenants, like contracts, is reviewed de novo. *Wilson v. Maynard*, 2021 S.D. 37, ¶ 14, 961 N.W.2d 596, 600. “Equitable determinations, however, are reviewed only for abuse of discretion.” *Halls v. White*, 2006 S.D. 47, ¶ 4, 715 N.W.2d 577, 579–80.

### **ARGUMENT AND AUTHORITIES**

As a preliminary matter, it is unclear as to whether Appellants are appealing the circuit court’s findings of fact or the court’s conclusions of law given Appellants’ analysis lacks all but two citations to the record. *See* Appellants’ Brief, pg. 9–15. As such, Appellants fail to “address how the [circuit] court’s findings of fact and conclusions of law [are] debatable or wrong” and therefore cannot “demonstrate that reasonable jurists would find the [circuit] court’s assessment of the [ ] claims debatable or wrong.” *Ashley v. Young*, 2014 S.D. 66, ¶ 11, 854 N.W.2d 347, 351 (reviewing appellate standards in a petitioner’s habeas appeal); *see also Franz Falk Brewing Co. v. Mielenz*, 5 Dakota 136, 37 N.W. 728, 729 (1888) (stating that “[c]ounsel must specifically assign the

error, and, in the assignment, so designate what is complained of as error as to put the finger of the court upon it”).

Furthermore, Appellants neither appealed nor briefed the circuit court’s analysis regarding the platting of Lot 6, the determination that Appellees’ proposed house was not modular, or the court’s conclusions regarding wavier. *See* Appellants’ Brief. Appellants instead focused on the court’s determinations regarding the garages, boundary lines, and unclean hands. *Id.* at 9–15. As such, Appellants waived any arguments in this regard.<sup>7</sup>

**I. The circuit court did not err in its conclusions regarding Section A of the Covenants.**

On appeal, it is unclear what Appellants are actually arguing as to Section A of the Covenants given that they address two separate issues—the *size* of the garages and the *amount* of allowed garages—interchangeably.<sup>8</sup> *Id.* at 8. For example, Appellants initially take issue with the size of Appellees’ proposed garage stall, arguing that Appellees’ proposed structure violates the Covenants because one garage stall is large enough to hold an RV. *Id.* However, Appellants then state that “it is clear that references are only being made to the size of the garage attached to the single family dwelling.” *Id.* In the latter context, it appears the Appellants use the word “size” to establish the total amount of garage stalls allowed on each lot rather than garage stall width and/or height.

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<sup>7</sup> This Court has determined that issues not briefed are waived. *See In re Marvin M. Schwan Charitable Found.*, 2016 S.D. 45, ¶ 13, 880 N.W.2d 88, 92 (“We will consider only those issues that the parties actually briefed.”); *Cook v. Cook*, 2022 S.D. 74, 983 N.W.2d 180 (same); *Daily v. City of Sioux Falls*, 2011 S.D. 48, 802 N.W.2d 905 (Appellant waived on appeal those issues that it listed in its docketing statement accompanying its notice of appeal that it did not brief, as the Supreme Court only considers issues that parties actually brief.).

<sup>8</sup> Section A of the Covenants provides that “[t]here shall be only one single family dwelling per lot with no larger than a three-car garage.” CR. 224; TT Exhibit 1.

*Id.* The size of the garage stalls and the amount of garage stalls are two separate issues, both of which Appellants decline to expand upon by providing any meaningful legal analysis to this Court. Given Appellants' apparent confusion, both issues are discussed herein.

Because Appellees' proposed structure included an attached three-car garage, one of which was large enough for an RV, Appellants argued before the circuit court that Appellees' proposed structure violated the three car-garage provision found in Section A of the Covenants. CR. 561, ¶ 21. To remedy their own violations under such interpretation,<sup>9</sup> Appellants argued that landowners within the Subdivision can build garage stalls large enough to hold RVs so long as said garage stall is not attached to the home. *Id.*

In response to this illogical interpretation, Appellees argued that their proposed structure did not violate the Covenants as it *only* included three garage stalls. APP.5, FOF ¶ 23–24. Appellees first argued that under a plain reading of the Covenants, RVs were not barred. *Id.* However, even if the circuit court were to determine what constitutes a “car garage,” Appellees claimed that the term was ambiguous given the term could be understood to include other vehicles, specifically trucks and RVs. *Id.*, COL ¶ 4. Finally, both parties argued whether the three-car garage provision pertained to the entire lot or only to garages attached to homes. *Id.*; CR. 542, ¶ 10.

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<sup>9</sup> Appellants acknowledge in their brief that many of them have garages large enough to hold RVs, stating that “it is clear from the evidence that [the Jungs, Hoods, Baillys, Boadwines, Cottinghams[,] Peters and Gustafs'] garages are big enough to park trucks, trailers or other types of vehicles[.]” See Appellants' Brief, pg 8.

Given the parties' arguments, the circuit court was first tasked with determining whether a garage stall large enough to hold an RV constituted a violation of the Covenants. APP. 108-109. The court ultimately adopted Appellees' argument that the term "car-garage" was ambiguous, finding that "the term 'car garage' is ambiguous as 'car garage' could be used for trucks or other types of cars and would not be exclusively used for 'cars.'" *Id.* at 8. The court initially looked to the plain language of the Covenant and then, upon finding ambiguity, looked to parol evidence to determine what constitutes a "car." *Id.* at 8-9. Importantly, the court heard testimony from Mr. Opstedal, Appellants' witness, that the Covenants did not restrict the size of the garages but that the three car-garage provision applied to the entire lot—not just to structures attached to homes.<sup>10</sup> TT pg. 31. The court properly aligned its findings and conclusions

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<sup>10</sup> Mr. Opstedal's testimony, on cross-examination, provides:

Q: But if you have a - - I believe we've already talked about this. If you have a two-car garage attached and a two-car garage unattached, that would be more than three?

A: Correct.

Q: And that would be a violation?

A: Correct.

...

Q: You weren't intending to set size restrictions or anything the stalls or what you could put in the stalls, correct?

A: Correct.

TT pg. 31-32.

with Mr. Opstedal's testimony. APP. 109, FOF ¶ 60. In reaching these findings and conclusions, the circuit court did not err.

*A. The circuit court properly concluded that the term "car-garage" is ambiguous.*

This Court recently decided that "[t]he interpretation of a restrictive covenant involves the same rules of construction for contract interpretation. When the wording of the covenant is unambiguous, 'its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature.' " *Maynard*, 2021 S.D. 37, ¶ 15, 961 N.W.2d at 600–01 (citing *Jackson v. Canyon Place Homeowner's Ass'n, Inc.*, 2007 S.D. 37, ¶ 9, 731 N.W.2d 210, 212). However, "[a] covenant is ambiguous if we have a genuine uncertainty as to which of two or more meanings is correct." *Id.* at 601 (citation omitted); *see also Coffey v. Coffey*, 2016 S.D. 96, ¶ 9, 888 N.W.2d 805, 809 (stating that "a contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement") (citations omitted).

Contrary to Appellants' argument before the circuit court that "car-garage" is unambiguous and does not include RVs, the court correctly determined that the term "car-garage" is capable of two or more meanings and is therefore ambiguous. *See Maynard*, 2021 S.D. 37, ¶ 15, 961 N.W.2d at 601. First, the Covenants do not define the term "car garage." CR. 224; TT Exhibit 1; APP. 15. Second, the parties had conflicting definitions as to what constitutes a "car garage." APP. 101, COL ¶ 4; CR. 2, pg. 3. This disagreement, alone, is not sufficient to render the provision ambiguous; however, both parties presented differing definitions that, when reviewed "objectively and by a

reasonably intelligent person,” were plausible. *See Coffey*, 2016 S.D. 96, ¶ 9, 888 N.W.2d at 809 (citation omitted). As such, the court was free to review parol evidence to resolve the ambiguity.

To resolve an ambiguity, courts often look to dictionary definitions. *See Matter of Certification of Question of L. From United States Dist. Ct., Dist. Of S. Dakota, Cent. Div.*, 2021 S.D. 35, ¶ 18, 960 N.W.2d 829, 835 (noting courts often look to dictionary definitions when a term is not defined). The Merriam Webster Dictionary defines “car” as “a vehicle moving on wheels: such as . . . an automobile.” *CAR*, Merriam Webster Dictionary (online edition). In turn, an “automobile” is defined as “a usually four-wheel automotive vehicle designed for passenger transportation.” *AUTOMOBILE*, Merriam Webster Dictionary (online edition). Based upon these definitions, an RV constitutes an automobile *and* a car. As noted above, the court also looked to testimony from Mr. Opstedal—the individual who drafted the Covenants and who was called by Appellants. TT pg. 10–38. It was Mr. Opstedal’s *own* testimony that the Covenants were not intended to include size restrictions. TT pg. 31–32. Therefore, the circuit court’s conclusion regarding the term “car-garage” should be affirmed.

*B. The plain language of the Covenants supports the circuit court’s conclusion that the three-car garage restriction applies to each lot in its entirety.*

Appellees proposed structure only had three garage stalls. The question regarding the application of the three garage stalls requirement arose due to the fact that several of the Appellants have more than three garage stalls and in some cases, multiple RV garage stalls. *See Appellants’ Brief*, Pg. 8. When Appellees emphasized issues with the original enforcement, Appellants claimed that their multiple garages and RV stalls are allowed because they are not attached to the residence. CR. 543, ¶ 18. In response, Appellees



argued that any stalls in excess of the three garage stalls were a violation as were any garage stalls big enough for an RV. APP. 109, FOF ¶ 58, 60.

Although Appellants argue that the circuit court incorrectly applied the three-car garage restriction to the entire lot rather than to garages attached to homes, Appellants fail to acknowledge the plain language of the Covenants and instead request this Court to rewrite the Covenants—a request that is odds with this Court’s authority. *See Matter of Certification of Question of L. From United States Dist. Ct., Dist. of S. Dakota, Cent. Div.*, 2021 S.D. 35, ¶ 17, 960 N.W.2d at 835 (noting that this Court can “neither add language to nor rewrite the [covenants]”). Under Appellants’ interpretation, landowners within the subdivision can build as many garages on their lot as they desire so long as only three garage stalls attached to the home.<sup>11</sup> *See Appellants’ Brief*, pg. 8–9. However, it is evident that Appellants interpretation regarding the *number* of garage stalls per lot is at odds with the plain language of the Covenants.

Section A of the Covenants simply provides that there “shall be *only* one single family dwelling *per lot* with no larger than a three-car garage.” (Emphasis added.) CR. 224; TT Exhibit 1; APP. 15. This Court has stated that “[i]n order to ascertain the terms and conditions of a [covenant], we examine the [covenant] as a whole and give words their plain and ordinary meaning.” *Charlson v. Charlson*, 2017 S.D. 11, ¶ 16, 892 N.W.2d 903, 908 (citations omitted). And “[w]hen the language of a restrictive covenant is unambiguous, [this Court] consider[s] the plain meaning of the words in the covenant.” *Maynard*, 2021 S.D. 37, ¶ 15, 961 N.W.2d at 601; *see also Coffey*, 2016 S.D. 96, ¶ 9, 888

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<sup>11</sup> Under Appellants’ interpretation, a lot owner could have ten or more garages—an interpretation in conflict with the overall purpose of the Covenants.

N.W.2d at 809 (noting that “[w]hen the meaning of [a restrictive covenant] is plain and unambiguous, construction is not necessary”).

Here, the plain language of the at issue covenant establishes that each lot is only entitled to *one* three car-garage regardless of whether the garage is attached or detached from the home. And even if the circuit court were to have found Appellants’ arguments regarding ambiguity convincing, Mr. Opstedahl’s testified that he intended the Covenants to restrict the *total* amount of garage stalls on each lot to three.<sup>12</sup> TT pg. 31–32. As such, the circuit court correctly applied the plain language of the Covenants to conclude that the three car-garage restriction applies to each lot in its entirety. APP. 137.

Therefore, the circuit court’s findings of fact regarding violations of the three-car garage provision are not clearly erroneous. *See Fuoss*, 2023 S.D. 3, ¶ 22, 984 N.W.2d at 701 (noting this Court’s review for factual findings is for clear error). The circuit court found the following:

- ¶ 60. There exists multiple violations of the covenants on numerous lots. Violations include the following:
- (a) Lot 2, owned by Plaintiff Jungs, violates the covenants by having more than three garage spaces.
  - (b) Lot 3, owned by Plaintiffs Price, violates the covenants by having a two car garage on the house and two post frame buildings with additional garage spaces in each building.
  - (c) Lot 5, owned by Plaintiffs Hoods, has more than three garage stalls . . . . .
  - (d) Lot 7, owned by Plaintiffs Baillys, has . . . more than three garage stalls.
  - (e) Lot 9, owned by plaintiffs Boadwines, . . . has more than three garage stalls.
  - (f) Lot 10, owned by Plaintiffs Peters, violates the covenants by having . . . more than three garage stalls . . . .
  - (g) Lot 11, owned by Cottinghams who are not a party . . . have[ ] more than three garage stalls.

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<sup>12</sup> *Supra* fn. 10.

(h) Lot 13, owned by Plaintiffs Gustafs, violates the covenants by having more than three garage stalls.

Importantly, Appellants do not claim that the court clearly erred in these specific findings and instead simply focuses on the court's application of the three-car garage restriction, which is discussed in detail above. *See* Appellants' Brief, pg. 8–9. Because Appellants cannot establish the court erred in applying the three-car garage restriction to the entire lot and similarly cannot show that the court committed clear error in its findings of fact regarding the garage violations, the circuit court's decision should be affirmed.

*C. Even if the circuit court erred in its determinations regarding the garages, other violations support the court's conclusion that the Covenants cannot be enforced.*

The circuit court found that there were numerous, unenforced violations of the Covenants throughout the Subdivision and that said violations, having gone unchecked and unenforced, invoked the doctrine of unclean hands, laches, and waiver.<sup>13</sup> *See Halls v. White*, 2006 S.D. 47, 715 N.W.2d 577 (discussing the doctrine of unclean hands). Here, the circuit court determined that “[m]ultiple other buildings within the subdivision are within 40 feet of the property lines.” APP. 105, FOF ¶ 31. The court individually addressed each setback violation, citing 5 other lots in violation of said setback provision. *Id.* at FOF ¶ 31–40. Furthermore, the court noted that at least two businesses requiring extra parking operated within the Subdivision—two additional violations of Covenants. *Id.* at ¶ 43–44; 47–49.

These findings, some of which are not challenged by Appellants, indicate Appellants' unclean hands. As noted by the circuit court, “[a]llowing homeowners

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<sup>13</sup> The doctrine of unclean hands is discussed at length below.

within a subdivision to selectively enforce covenants against some property owners or new property owners that move in while allowing property owners who have been there longer to maintain covenant violations would be inequitable and unjust.” *Id.* at ¶ 50. This injustice is not denied by Appellants, rather Appellants state that “it is clear from the evidence [many of the Appellants’] garages are big enough to park trucks, trailers or other types of vehicles[.]” *See* Appellants’ Brief, pg. 8. Yet, Appellants continue to seek enforcement of the Covenants to prevent Appellees from building a garage large enough to fit their RV. *Id.* In conclusion, the circuit court did not err in its determinations regarding the garages and even if the circuit court did err, it is harmless given the pervasive, blatant violations of the Covenants throughout the Subdivision. Appellees therefore request this Court affirm the circuit court.

**II. The circuit court properly concluded that the lot boundary lines within the Subdivision are the legally defined lot lines rather than the center of the dedicated public right-of-way.**

Appellants attempted, and illogical, enforcement of the 40 foot setback provision found in Section G of the Covenants gave rise to arguments regarding whether various landowners’ buildings within the Subdivision were within 40 feet of each lots’ boundaries. CR. 536; APP. 108, FOF ¶ 52–56 Appellants argued before the circuit court that the setback measurements for the *front* lot line must be taken from the center of the road rather than the lot’s legally defined boundary line because the center of the road was allegedly the true dividing point of the lots. CR. 536. They asserted this argument even though the following facts are true: (1) the road is a dedicated public right-of-way; and (2) the lot lines are clearly defined on the plat. TT pg. 93–94. Meanwhile, Appellants claimed that the *side* lot lines are to be measured from the plat’s solid lines—

the same lines Appellants previously ignored when addressing front lot lines. CR. 536. Notably, Appellants declined to provide any explanation or justification as to why the setback provision differs between front and side lot lines. *Id.*

In response to Appellants' absurd interpretation, Appellees introduced evidence showcasing the various buildings within the Subdivision that violated Section G of the Covenants. APP. 105-106, FOF ¶ 31-39, 60. For example, Appellees introduced testimony that the Baillys' unattached garage is 40 feet from the center of the road but that it is only 16 feet from the front boundary lot line. *Id.* at FOF ¶ 33. Meanwhile, the Cottingshams' building is only .2 feet from the front lot line. *Id.* at FOF ¶ 33; TT pg. 98. Thus, even if Appellants' interpretation is correct and the 40 feet is measured from the center of the road, the Cottingshams are still in violation of the Covenants. *Id.* Appellees also introduced evidence regarding buildings situated within 40 feet of side lot lines.<sup>14</sup> This evidence highlighted to the circuit court how Appellants' proposed application was neither logical nor workable and was simply an attempt to try remedy their own violations while simultaneously preventing Appellees from building their proposed structure.

In addressing the lot line issue, the circuit court determined in its findings of fact that "[t]he phrase 'boundary of said lot' has a legal, distinct meaning" and that "[t]he lots within the subdivision are platted lots. The lots do not include the roadways. The boundaries of the lots are established and not ambiguous." *Id.* at FOF ¶ 53-54. The court also stated that "[l]ot owners are not required to pay property taxes on the roadways

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<sup>14</sup> Mr. Vasknetz testified that various lots had buildings within 40 feet of side lot boundary lines. TT pg. 97-98.

as the lot owners do not own the roadways.” *Id.* at FOF ¶ 55. The circuit court did not err in these findings as legal boundaries have clear, distinct meanings.

Exhibit 17, which was introduced at trial, depicts the legal boundaries of each lot within the Subdivision. CR. 281; TT Exhibit 17; APP. 139. While Appellants claim that the roadway is included in the lots’ boundaries and that Appellees’ interpretation of the lot lines are “mythical,” Appellants ignore the simple fact that each lots’ boundaries are *defined* in the Exhibit. CR. 281; TT Exhibit 17; APP 12. For example, Lot 6 is defined by the solid line showing its boundaries. CR. 281; TT Exhibit 17; TT pg. 93–94. Because each lot has a distinct boundary, Appellants are unable to articulate that “a genuine uncertainty as to which two or more meanings is correct.” *Maynard*, 2021 S.D. 37, ¶ 15, 961 N.W.2d at 601 (citation omitted). As such, the boundaries of each lot within the Subdivision are unambiguous and not “mythical.”

However, even if the circuit court should have looked to other evidence regarding each lots’ boundaries, the evidence admitted at trial supports Appellees’ argument. For example, Mr. Vasknetz testified to each lot being defined by the solid lines showing the lot area. TT pg. 93–94. When asked whether the boundary of Lot 6 included Concho Court, which is a dedicated public right-of-way, Mr. Vasknetz responded with the following: “No, it does not.” TT pg. 93. Then, when asked what the purpose of the dashed line that goes down the middle of the road is, Mr. Vasknetz responded that the “line just indicates, basically represents a centerline of the right – of that dedicated public right-of-way[.]” TT pg. 93. Mr. Opstedal, like Mr. Vasknetz, testified that the road is a public right-of-way. TT pg. 18. Furthermore, the only evidence Appellants introduced refuting Mr. Vasknetz’s testimony was testimony from other Appellants stating what they

believed the boundary lines to be. TT pg. 15–16; 76. Therefore, it is the Appellants’ alleged boundaries—rather than Appellees’—that are “mythical.”

Given the circuit court properly determined the road is not included in the lots’ boundaries, Appellants arguments regarding the setback violations dissipate. In addition, Appellants do not cite the findings of fact they are appealing and instead broadly allege that the court improperly concluded sheds, garages, and shops violated the Covenants. *See* Appellants’ Brief pg. 10–11. However, the applicable standard of review for a circuit court’s factual findings is clear error, *see Fuoss*, 2023 S.D. 3, ¶ 22, 984 N.W.2d at 701, and Appellants failed to produce any evidence or meaningful argument indicating that the court clearly erred in its findings of fact.

Based on the circuit court’s conclusion that each lots’ boundaries are as reflected on the plat, the court determined that the following property owners were in violation of the 40 foot provision found in Section D of the Covenants: (1) the Hoods; (2) the Baillys; (3) the owner(s) of Lot 6A (a non-party); (4) the Peters; and (5) the Cottinghams (a non-party). APP. 105–106, FOF ¶ 31–39. These findings were based upon Mr. Vasknetz testimony on how he measured the distance of various buildings from each respective lots’ property corners showing that several buildings in the Subdivision were within the 40 feet referenced in the Covenants. TT pg. 95–98. Appellees do not appear to challenge Mr. Vasknetz’s measurements and instead broadly argue—without any supporting legal analysis—that landowners who purchase lots within the Subdivision somehow obtain ownership of the platted public dedicated right-of-way. *See* Appellants’ Brief pg. 10–11; *see also* CR. 536. This contention, however, is clearly incorrect given the circuit court’s



conclusion that each lot is defined by its legal boundaries—not the middle of the dedicated public right-of-way.

Moreover, Appellants decline to actually challenge the circuit court’s findings wherein the court listed each owner and lot that had a building within 40 feet of a boundary lot line. *See* Appellants’ Brief pg. 10–11; APP. 105–106, FOF ¶ 31–40, 60. Of course, had Appellants challenged such findings, such challenge would have emphasized a fundamental flaw in Appellants’ argument—certain buildings would violate the setbacks even under their own definition of “boundary of said lot[.]” For example, the Cottinghams, a nonparty to this action, constructed a building with a concrete floor immediately adjacent to the lot boundary fronting the road. APP. 106, FOF ¶ 39; TT pg. 98. The Cottinghams’ building is only .2 feet from the lot line. TT pg. 98. Thus, even if the circuit court had found Appellants’ argument compelling, the Cottinghams would still be in violation of the Covenants.

In addition, Appellants’ argument that the setback provision should be measured from the center of the road seems at odds with their own position given that some of the Appellants have buildings within 40 feet of their side lot lines. APP. 106, FOF ¶ 41–40. The circuit court found that “[t]he Hoods, who share a lot line with the [Appellees], have sheds within 40 feet of the property line.” *Id.* at FOF ¶ 32. This finding was based off of Mr. Vasknetz’s testimony—and measurements—that the Hoods’ shed was only 9.8 feet from the Appellees shared, side lot line. TT pg. 96–97. Similarly, the Peters built a structure 6.2 feet of their south lot line. APP. 106, FOF ¶ 37; TT pg. 97. Unsurprisingly, Appellants do not challenge the circuit court’s findings regarding multiple buildings

being within 40 feet of side lot lines as an acknowledgement in this accord would emphasize the hypocrisy in their argument. *See* Appellants' Brief.

The hypocrisy being that Appellants discount the plat's solid lines when arguing about front lot boundaries but accept the solid line as the true marker for side lot boundaries. Such interpretation imposes, without any textual or legal support, a different rule for lot lines facing the road and for lot side lot lines—an inconsistent and nonsensical interpretation. It is therefore Appellants' interpretation, rather than Appellees', that results in “mythical” boundaries. In addition, Appellants never argued before the circuit court that the term “building” was ambiguous. As such, Appellants' argument is waived.<sup>15</sup> Given this Court's standard of review for factual findings and Appellants' failure to provide any evidence disputing the court's findings, Appellees request this Court affirm the circuit court.

**III. The circuit court did not clearly err in its findings of fact wherein it determined multiple Appellants operated businesses within the Subdivision.**

The circuit court's findings of fact include the following:

¶ 43. There are at least two businesses that do business within the subdivision. One is R.C. Peters Construction, Inc. and the other is Aim High Tree Service.

¶ 44. Aim High Tree Service is owned by the Boadwine family and is located on Lot 9. On the lot[,] Boadwine has employees park in grassy areas and also has parked equipment on the lot. Gravel has been added to the lot for a turnaround. Boadwine has his employees drive in every day and get equipment, trucks and commercial trucks used for his business, and leave with those trucks and then return them at the end of the day.

¶ 45. Part C of the covenants prevents businesses that require extra parking, result in materials being stored outside any dwelling.

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<sup>15</sup> It is this Court's “standard policy” that “failure to argue a point waives it on appeal.” *In re Estate of Smid*, 2008 S.D. 82, ¶ 43 n. 15, 756 N.W.2d 1, 15 n. 15 (Konenkamp, J., dissenting).

...

¶ 47. Plaintiffs Peters, who live on Lot 10, also run a business out of the lot. Peters keeps materials and equipment from jobs outside the dwelling. Multiple parking spots have developed on the property for business equipment such as trailers and skid steer. Storage of materials and the extra parking is a violation of covenant Section C.

APP. 5, FOF ¶ 43–47. Appellants specifically take issue with the court’s findings regarding additional gravel for parking, arguing that each owner “testified that neither added to the parking that was on their property when they purchased the same.” *See* Appellants’ Brief, pg. 12–13. Appellants also argued that “there was no prohibition against parking equipment on your own premises and this is an invalid reason for the violation of the covenants.” *Id.*

Mr. Peters, the owner of R.C. Peters Construction, testified that he purchased his lot 18 years ago. TT pg. 66. Eighteen years before the trial, which was held in 2022, is 2004. The Covenants were established in 1976. CR. 224; TT Exhibit 1. Regardless of whether Mr. Peters, or his predecessor, initially placed the gravel for additional parking, the additional parking for his business is in violation of the Covenants. Further, Mr. Peters testified that some of the materials and equipment that he stored outside were for *business* and personal use—yet another violation of the Covenants. TT pg. 69, 72–73. Similarly, Mr. Boadwine, the owner of Aim High Tree Service, testified that he operates his business out of his home and that his employees “show up in the morning and they jump in the bucket truck and the pickup and they head out and they go do jobs offsite.” TT pg. 120. Mr. Boadwine also testified to bringing gravel in to maintain a gravel parking turnaround, to having his equipment parked on his lot, and to storing tools outside of his shed. TT pg. 120–122.

Given Mr. Peters and Mr. Boadwine’s testimony, the circuit court’s findings are not clearly erroneous. Both parties currently have additional parking on their lots for business activities. Further, both parties testified that their equipment was used for their respective businesses. As such, the circuit court included the equipment as additional support that the lot owners were operating business out of their lots in violation of Section C of the Covenants—not as a separate reason to invalidate the Covenants. As such, the circuit court did not clearly err in its findings. *See Fuoss*, 2023 S.D. 3, ¶ 22, 984 N.W.2d at 701 (noting factual findings are reviewed for clear error).

**V. The circuit court did not abuse its discretion in denying Appellants’ declaratory relief and in concluding that the Covenants are null and void.**

The circuit court found that the Covenants were unenforceable “given the pervasive, existing violations that have gone unchecked or unenforced by [Appellants] or any other parties that may have had the right under the covenants to enforce said violations.” APP. 118, COL ¶ 21. The court determined that enforcement of the Covenants would be inequitable “as violations of the covenants is the rule in the subdivision as opposed to the exception.” *Id.* Finally, the court concluded that “[t]he harm resulting in enforcement of the covenants against the [Appellees] would be disproportional” and that if the court enforced the Covenants against Appellees, the court would “need to enforce the covenants against [Appellants].” *Id.* ¶ 22, 24.

Appellants claim the court erred in these findings, arguing that Appellees had unclean hands, that the court improperly placed the burden Appellants to prevent violation of the Covenants, and that Appellants will suffer substantial harm if the Covenants are deemed null and void. *See Appellants’ Brief*, pg. 14–15. Appellants arguments, however, lack merit and do not rise to an abuse of discretion. *See White*,

2006 S.D. 47, ¶ 17, 715 N.W.2d at 585 (reviewing a circuit court’s determination of unclean hands for abuse of discretion).

This Court noted the doctrine of unclean hands in *Halls v. White*, stating that “a party must act fairly and in good faith.” *Id.* ¶ 18, 715 N.W.2d at 585 (quoting *Action Mech., Inc. v. Deadwood Historic Pres. Comm’n*, 2002 SD 121, ¶ 26, 652 N.W.2d 742, 751). This Court also noted that “the right to enforce restrictive covenants may be lost.” *Id.* (quoting *Vaughn v. Eggleston*, 334 N.W.2d 870, 873 (S.D.1983)). “[I]f a person guilty of unconscionable or wrongful conduct purges himself or herself by adequate and effective renunciation and repudiation, the right to relief will be restored.” *Id.* (quoting 27A Am. Jur. 2d Equity § 135). While Appellants cite these principles in support of their argument, Appellants fundamentally misinterpret the caselaw. As such, these principles support Appellees’ arguments—not Appellants.

This Court determined in *Halls v. White* that a party seeking to enforce restrictive covenants could purge himself of unclean hands arising out of previous violations *so long as* he quit violating the covenants. *Id.* ¶ 20, 715 N.W.2d at 585–86. The Whites, who were resisting application of the restrictive covenants, argued that Hall could not enforce the covenants due to unclean hands given his previous violations of the covenants. *Id.* ¶ 20, 715 N.W.2d at 586. This Court, upon finding there was no abuse of discretion, affirmed the circuit court’s decision awarding Hall injunctive relief, noting that Hall “quit violating the restrictive covenants” and that his “offensive act was committed and remedied long before the issue in this case arose.” *Id.*

Here, Appellants seek enforcement of the Covenants even though their violations are continuous. This differs significantly from *Halls v. White* wherein the party seeking

enforcement quit his violations. At no point in this proceeding have any Appellants remedied, or attempted to remedy, their own violations; rather, they have continuously sought enforcement of the Covenants against Appellees while simultaneously justifying their own violations. For example, Appellant Greg Peters acknowledged this injustice during his cross-examination when he was asked the following: “Well, so you think it’s okay for some people to violate the covenants, but not others, is that your contention today?” TT pg. 84. Mr. Peters’ responded “Yeah.” *Id.*

While Appellants argue that Appellees could have availed themselves to the Covenants by reviewing county records,<sup>16</sup> the Appellants, in the same vein, could have availed themselves to the various City meeting agendas, meeting minutes, and publications regarding Lot 6. *See* SDCL 17-1-4 (stating that “[e]very person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself). Appellants were also on notice given the survey stakes that remained in the ground for several months during the platting process. APP. 5, FOF ¶ 7–13; *see also* SDCL 17-1-4. Furthermore, the circuit court specifically found that Appellees “were not provided a set of the covenants by anyone” upon purchasing the lot and that they were “unaware of the existence of the covenants at the time of the purchase of the lot and only became aware of the covenants after conversation with [Appellant] Hood.” *Id.* at FOF ¶ 14. Based on the circuit court’s findings, it is

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<sup>16</sup> Appellants conveniently ignore the fact that they admittedly had notice of the Covenants but have continuously violated the Covenants in several aspects for years. TT pg. 124.

readily apparent that the court found Appellee Clyde Straatmeyer's testimony regarding the Covenants compelling. And it is well established that that "[t]he credibility of witnesses and the weight afforded to their testimony is [ ] within the discretion of the [circuit] court." *Van Duysen v. Van Duysen*, 2015 S.D. 84, ¶ 4, 871 N.W.2d 613, 614 (quoting *Pietrzak v. Schroeder*, 2009 S.D. 1, ¶ 37, 759 N.W.2d 734, 743).

Given the circuit court's appropriate application of the doctrine of unclean hands, the court did not abuse its discretion. However, if this Court were to reverse the circuit court and conclude that the Covenants are valid, Appellees' request this Court apply the Covenants to *all* lots within the Subdivision in alignment with the circuit court's finding, which provides: "If the Court was to order strict adherence to the covenants, it would have to order strict adherence to the covenants among all parties and the removal of all offending structures and bringing use into compliance." *Id.* at FOF ¶ 75. This determination would require the Peters and the Boadwines to cease operating their businesses within the Subdivision. *Id.* at FOF ¶ 47–48. It would also require the Hoods, the Baillys, the owner(s) of Lot 6A (a non-party), the Peters, and the Cottinghams (a non-party) to remove all structures located within the setback. *Id.* at FOF ¶ 32–40. Finally, the Jungs, the Prices, the Hoods, the Baillys, the Boadwines, the Peters, and the Gustafs would have to remove all garages exceeding the three car-garage allowance in the Covenants. *Id.* at FOF ¶ 60.

### **CONCLUSION**

Based upon the foregoing, the circuit court neither erred nor abused its discretion in its Judgment. Therefore, Appellees respectfully request this Court affirm the circuit court's determinations regarding the three car-garage limitation, the boundary line and



subsequent setback provision, the numerous violations by Appellants, and the circuit court's conclusion that the Covenants are null and void.

### **REQUEST FOR ORAL ARGUMENT**

Given the circuit court neither erred nor abused its discretion, Appellees do not seek oral argument in this case.

### **CERTIFICATE OF COMPLIANCE**

Pursuant to SDCL 15-26A-66(b)(4), I certify Appellees' Brief complies with the type volume limitation provided for in South Dakota Codified Laws. This Brief for Appellee, excluding the table of contents, table of cases, jurisdictional statement, statement of legal issues, any addendum materials, and any certificate contains 9,131 words. I have relied upon the word count of our word processing system as used to prepare this Brief for Appellee. The original Brief for Appellee and all copies are in compliance with this rule.

Dated: April 3, 2023

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: /s/ Talbot J. Wieczorek

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### **CERTIFICATE OF SERVICE**

I hereby certify on April 3, 2023, I served a true and correct copy of the foregoing **BRIEF OF APPELLEES CLYDE AND NANCY STRAATMEYER** through South Dakota's Odyssey File and Serve Portal and the original plus one copy was mailed to the South Dakota Supreme Court at:

Shirley A. Jameson-Fergel, Clerk  
South Dakota Supreme Court  
500 E. Capital Avenue  
Pierre, SD 57501-5070

And the **BRIEF OF APPELLEES CLYDE AND NANCY STRAATMEYER** was served through South Dakota's Odyssey File and Serve Portal and mailed by U.S. Mail upon the following individuals:

Courtney R. Clayborne  
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By: /s/ Talbot J. Wieczorek  
Talbot J. Wieczorek

## APPENDIX

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STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS )  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG )  
and DEB PETERS, MARK and KITTY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )

46CIV21-000206

**JUDGMENT ENJOINING  
ENFORCEMENT OF COVENANTS  
AND DISMISSING PLAINTIFFS'  
COMPLAINT AND DEFENDANTS'  
COUNTERCLAIMS WITH PREJUDICE**

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY  
STRAATMEYER,

Defendants.

The above matter came before the Court on February 15, 2022 for a court trial wherein Plaintiffs were represented by Courtney Clayborne of Clayborne Loos & Sabers, LLP and Defendants were represented by Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP. The Court having taken judicial notice of certain items, testimony, the parties having submitted proposed Findings of Fact and Conclusions of Law and the Court having rendered a decision on September 28, 2022, the Court hereby enters Judgment and Decree as follows:

1. The Defendants are the owners in fee simple of the following described real estate located in Meade County, South Dakota:

Lot 6B of tract 3 located in NE1/4 NW1/4 of Section 36, Township 3 North, Range 6 East, BHM, Meade County, South Dakota, formerly part of Lot 6 of Tract 3 of Shadowland Ranch Subdivision;

2. That Plaintiffs sought to impose a set of covenants dated September 20, 1976 and filed with the Meade County Register of Deeds as Book 331, Page 687 of Miscellaneous Filings;

3. The Court finds that the covenants filed against the land are not enforceable against the Defendants due to waiver, laches and estoppel as more fully set forth in this Court's decision of September 28, 2022 which is incorporated hereby;

4. That covenants of record are hereby considered void and unenforceable as to all parties given the lack of enforcement and multitude of violations of the covenants that have gone unenforced for a number of years;

5. That Defendants' Proposed Findings of Fact and Conclusions of Law are hereby incorporated into this judgment and to be considered the Court's Findings and Conclusions of Law;

6. That enforcement of the covenants filed with the Meade County Register of Deeds at Book 331, Page 687 is hereby permanently enjoined. The Covenants may not be enforced against any of the parties. The covenants shall be considered void and terminated through inactions of the parties and the failure to enforce said covenants; and

7. That Defendants shall be entitled to taxation of costs in an amount of \$ **2245.67** as more fully set forth in the Application and Affidavit for Taxation of Costs, filed contemporaneously herewith. If no objection is filed within ten (10) days of the date of service of this Judgment, the Clerk is instructed to insert the amount requested therein and docket the Judgment.

Dated this \_\_\_\_ day of October, 2022. **10/13/2022 10:22:30 AM**

Attest:  
Brill, Kimberly  
Clerk/Deputy



A handwritten signature in black ink, reading "Kevin J. Kull". The signature is fluid and cursive, with the first name "Kevin" and last name "Kull" clearly legible.

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS )  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG )  
and DEB PETERS, MARK and KITTY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )

46CIV21-000206

**MEMORANDUM OF DECISION**

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY  
STRAATMEYER,

Defendants.

**FILED**

SEP 29 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

By 

**MOTION SUMMARY**

This matter having come before the Court on February 15, 2022 and Plaintiffs having been represented by Courtney Clayborne of the law firm of Clayborne, Loos and Sabers and the Defendants by Talbot Wieczorek of Gunderson Palmer Nelson and Ashmore. This Court, having heard arguments of Counsel, and having considered the briefs from both parties, with good cause showing, issues its Memorandum of Decision.

**FACTUAL BASIS**

Defendants Straatmeyers are the record owners of a lot more fully described as: Lot 6B of tract 3 located in NE1/4 NW1/4 of Section 36, township 3 North, Range 6. The lot was subdivided out of a larger lot referenced as Lot 6. The subdivision of Lot 6 resulted in a Lot 6A and Lot 6B. The owners of Lot 6A are not a party to this lawsuit. The Plaintiffs are all owners of lots within



the same subdivision known as Shadowlands Subdivision. Lot 6 was split by Defendant Straatmeyers' predecessor in interest through filing a plat with the City of Summerset. At the time of the filing of the plat with the City of Summerset, the Plaintiffs failed to object to the subdivision of Lot 6 which subsequently led to it being divided into Lot 6A and Lot 6B.

A set of covenants was filed on the properties dated September 20, 1976 (hereinafter, "1976 Covenants"). Defendants Straatmeyers bought the property after the property was subdivided in 2020. When Defendants Straatmeyers looked at buying a lot, they walked the property several times. Before the property was platted, the property was staked, and measurements were taken. Stakes were placed in the ground, and the stakes remained in the ground for several months. Although the stakes were visible to any passerby, specifically the Hoods who lived next door, no questions were asked of the then-current owner, nor was any other investigation done by any parties regarding the activity.

A surveyor was out at the property and flagged and pinned Lot 6 before commencing the plat. No questions were raised by Hoods or any other party regarding this activity. However, the activity was visible, and markings on the ground were visible to any passerby. The City of Summerset oversaw the platting of Lot 6 and had jurisdiction over the platting in the area. The process that the City of Summerset follows goes through planning and then through City Commission for approval of the lot. A resolution authorizing the plat and the City Commission minutes were published in the City's paper of record on two separate days. No Plaintiffs nor any other party objected to the platting of the property. Likewise, no objection was made to the City, the Straatmeyers, or the owner of Lot 6.

When Defendant Straatmeyers purchased the lot, they were not provided a set of the covenants by anyone. As a result, defendant Straatmeyers were unaware of the existence of the

covenants at the time of the purchase of the lot. They became aware of the covenants after a conversation with Hood. The title company never provided Defendant Straatmeyers with a copy of the covenants, so when purchasing the lot, Defendant Straatmeyers were not on notice of the existence of the covenants. After buying the property, Defendant Straatmeyers hired a contractor who commenced construction. Construction included excavation work and starting other activities. It was only after construction work began that Hoods approached Defendants Straatmeyers. When submitting the building permit, Defendants Straatmeyers were unaware of the covenants and firmly believed there were none because the title company had not provided them at closing.

The planned structure is a permanent structure to be constructed on the lot. When the contractor began work on the lot, Plaintiff Robert Hood claimed the construction violated certain covenants and threatened Defendants Straatmeyers with litigation and physical force if they continued to construct. Defendants Straatmeyers stopped building when the suit was filed. Currently, the ground is prepared for construction, and support posts are in place. Plaintiffs asserted various violations of the covenants, which are:

- a. Lot 6 should not have been divided;
- b. The proposed structure has more than a three-car garage in violation of Section A of the covenants;
- c. The structure is modular in violation of Section B of the covenants; and
- d. The structure is being constructed within 40feet of the lot line. See Section H of the covenants.

The proposed structure is not a modular but a permanent structure with a poured concrete floor, support beams into the ground, and concrete footings. The structure would not be modular but constructed on-site. The proposed structure would have three garage doors with one garage

large enough for a recreational vehicle (RV). Several lots in the area already have multiple garages, many big enough to park an RV and more than three garage spaces. Plaintiffs assert that one can have a three-car garage connected to the house and as many other garages and outbuildings as they want and still comply with the covenants. Plaintiffs contend that their extra garage spaces are allowed because they are not attached to the residence. Plaintiffs also claim no prohibition against building a structure large enough for RVs. No one has sought to stop these Plaintiffs or other owners from building outbuildings resulting in more than three garage spaces.

The Defendants' building has three garages that can be used for cars, one big enough for an RV. An RV is a motorized vehicle that people can drive, fitting into the definition of a "car." The covenants do not prevent a garage from being big enough to put an RV inside. Further, the covenants do not prevent a landowner from having an RV garage and two-car garages. The proposed structure will be within 40 feet of the side lot lines, although it will be outside the setbacks provided by the County. Covenant Section H states: "No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot." This definition applies to all buildings, not just houses. Multiple other buildings within the subdivision are within 40 feet of the property lines.

The Hoods, who share a lot line with the Defendants Straatmeyers, have sheds within 40 feet of the property line. These sheds may be able to be moved but constitute buildings within 40 feet of the lot boundary. Hoods have not sought to move the sheds since the commencement of this action. No one has sought to enforce the covenants against Hoods. Across the street from the Defendants' property, Plaintiffs Baillys have built a building that is an outbuilding with a shop and garage in the 40-foot setback. The Baillys' building is within sixteen feet of the actual road. Therefore, the Baillys' building violates the County setback also. This setback is also noted for the

lot that any building should be more than twenty-five feet from the road. No one has sought to enforce the covenants against Baillys. The Baillys' structure is visible from the main thoroughfare coming into the subdivision.

Across the street from Lot 6A, the other lot that was subdivided out of the Lot 6 parcel, is a building within 16 feet of the lot line. There are other buildings in the subdivision in the 40-foot setback. However, no one has sought to enforce the covenants against these other owners. In addition to the shop and garage that Baillys have built within 40 feet of the lot line, Baillys have also placed a shed within seven feet of the south lot line. Plaintiffs Peters has also constructed a shed on their lot within nine feet of the lot boundary. Lot owner 11, the Cottinghams, who are not parties to the action, built a building with a concrete foundation immediately adjacent to the lot boundary fronting the road. This building is also in violation of the County setback. None of the Plaintiffs or any other party has challenged the placement of Hoods', Baillys', Peters', or Cottinghams' structures within 40 feet of the lot lines.

Defendant Straatmeyers' lot is off of a cul de sac with two other homes - the Hoods' home, and the Donovans' home. No other Plaintiffs' home faces Defendant Straatmeyers' property, nor would any other Plaintiff regularly drive by Defendant Straatmeyers' property. There are at least two businesses that do business within the subdivision. One is R.C. Peters Construction, Inc., and the other is Aim High Tree Service. Aim High Tree Services is owned by the Boadwire family and is located on Lot 9. On the lot, Boadwire has employees park in grassy areas and also has parked equipment on the lot. In addition, gravel has been added to the lot for a turnaround. Boadwire has his employees drive in every day and get equipment, trucks, and commercial trucks used for his business, leave with those trucks, and then return at the end of the day.

Part C of the covenants prevents businesses that require extra parking, resulting in materials being stored outside any dwelling. The addition of parking is a violation of the covenants Part C. The Boadwire lot also has more than three garage stalls. Plaintiffs Peters, who lives on Lot 10, also runs a business out of the lot. Peters keeps materials and equipment from jobs outside the dwelling. Multiple parking spots have been developed on the property for business equipment such as trailers and skid steers. Storage of materials and the extra parking violates covenant Section C. Peters also has more than three garage stalls having a house with two garage stalls and an outbuilding with three garage stalls. This is all in addition to having a structure built within 40 feet of the lot line. Boadwire and Peters operate businesses out of these residential lots, and increased traffic associated with both businesses interferes with the lawful enjoyment of the subdivision in violation of covenant Section C. The operation of both businesses is a violation of the covenants. No one has sought to enforce the covenants against these violations.

Plaintiffs contend that all other violations besides Defendant Straatmeyers' should be allowed because most residents do not object to those violations. The covenants do not allow most owners to waive any covenant violations. Allowing homeowners within a subdivision to selectively enforce covenants against some property owners or new property owners that move in while allowing property owners who have been there longer to maintain covenant violations would be inequitable and unjust. No one has any record of anyone attempting to enforce the covenants since their recording in 1976. Plaintiffs called Eddie Opstedal, who had developed the subdivision in 1976 and executed the covenants. Plaintiffs sought to introduce testimony from Mr. Opstedal interpreting Part H of the covenants, specifically that the 40 feet "of the boundary of said lot" meant something different for the side lot boundary versus the part of the lot boundary fronted the road. The language of Part H of the covenants is not ambiguous because a boundary of the said lot

has a distinct and clear legal meaning. Testimony trying to interpret the meaning of the phrase is inappropriate.

Opstedal was also asked questions regarding Section A of the covenants. That subsection provides: "There shall be only one single-family dwelling per lot with no larger than a three car garage." Whether the three-car garage restriction applied to all buildings on the lot or just the house is unclear, and Section A is ambiguous. Opstedal testified that as the party requesting the drafting of the covenants and creator of the subdivision, the intent of Section A was that the three-car garage restriction applied to all structures on the lot permitting only three total garage spaces on the lot. Opstedal also, after reviewing the activity on Boadwire and Peters' property, concluded that both violated the covenants' doing business clause. Plaintiffs assert those covenant violations of other lot owners living in the subdivision pre-exist. Defendants Straatmeyers' purchase of Lot 6B was agreed to by most owners or grandfathered in. The covenants do not have a provision that permits most people to allow certain violations while contesting others.

### **OPINION**

Interpretation of covenants constitutes a legal question. *Halls v. White*, 206 S.D. 47, ¶4, 715 N.W. 2d 577, 579. In interpreting the terms of a restrictive covenant, courts are to use the same general rules of construction applicable to contractual interpretation. *Id* at ¶7, 715 N.W. 2d 580. When an ambiguity exists, a restrictive covenant should be read strictly as the Court and society favor the free use of property and a restrictive covenant should only be enforced if clear. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). In interpreting the covenants, the drafter of the covenants testimony regarding the intent of the covenants should only be considered if there is an ambiguity. "[W]hen the language of a restrictive covenant is unambiguous, 'its meaning must be determined from the four corners



of the instrument without resort to extrinsic evidence of any nature." *Jackson v. Canyon Place Homeowner's Ass'n, Inc.*, 2007 S.D. 37, ¶ 9, 731 N.W.2d 210, 212, (quoting *Halls v. White*, 2006 S.D. 47, ¶ 7, 715 N.W.2d 577, 580-81).

The term "car garage" is ambiguous as a "car garage" could be used for trucks or other types of cars and would not be exclusively used for "cars." See *Jackson v. Canyon Place Homeowners' Association, Inc.*, 207 S.D. 37 ¶9 731 N.W. 2d 210. "The language of the Covenants is unambiguous when viewed objectively and in the context of the entire Declaration of Protective and Restrictive Covenants. '[A] contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.'" *Coffey v. Coffey*, 2016 S.D. 96, ¶ 9, 888 N.W.2d 805, 809 (quoting *Dowling Family P'ship v. Midland Farms*, 2015 S.D. 50, ¶ 13, 865 N.W.2d 854, 860). Because of the ambiguity, parol evidence can be considered in determining that the three-car garage restriction applied to the entirety of the lot. Based on the testimony from the drafter of the restrictive covenants clarifying the ambiguity, the three-stall garage language applies to the entirety of all structures on the lot.

Furthermore, in determining an ambiguity, a dictionary definition can be used. *Jackson v. Canyon Place Homeowners' Association, Inc.*, 207 S.D. 37 ¶ 12, 731 N.W. 2d 210. In the Merriam-Webster dictionary online, a car is defined as "a car moving on wheels: such as an automobile." An automobile is "usually a four-wheel automotive car designed for passenger transportation." Thus, an RV constitutes an automobile and a car by definition of the dictionary. A "car garage" can be big enough for an RV. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). The covenants do not bar garages big enough to park trucks, trailers, or any other types of vehicles. The covenants do not



prohibit the construction of a large garage for a recreational vehicle. *Id.* As such, the Defendants' design is allowed and not barred by the terms of the covenants. *Hall v. White*, 206 S.D. 47 ¶ 5; *Breckweg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965). Regarding Part H of the covenants, the phrase "boundary of said lot" is not ambiguous as lots are legally defined, and the boundary of the lots is evident from the plats and legal description. As there is no ambiguity, testimony regarding what was supposedly intended by the phrase is not considered or admissible. The boundary of said lot refers to the actual boundaries of the lot, not some area outside the boundary.

If one read the covenants as restricting to only three car garages, the restriction would have to be read to apply to all structures. Therefore, the Plaintiffs have also waived the right to argue that the structure would violate the three-car garage rule, given multiple other violations within the subdivision. *Hammerquist v. Warburton*, 458 N.W.2d 773 (S.D. 1990); *Rodgers v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser v. Creamer*, 284 A.2d 220, 225–26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925). "The right to enforce a restrictive covenant may be lost by waiver or acquiescence." 20 Am.Jur 2d *Covenants* § 238 (1995). Waiver or acquiescence occurs where landowners in a subdivision fail to object to general and continuous violations of restrictions. *Id.* (citing *Edwards v. Wiseman*, 198 La 382, 3 So 2d 661). A landowner that has knowingly and without objection has allowed others in the subdivision to violate restrictions cannot enforce such restrictions against another. *Id.* (citing *Smith v. Shinn*, 82 Idaho 141, 350 P2d 348). People waive their right to enforce covenants when they violate them. *Rodgers v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser*

*v. Creamer*, 284 A.2d 220, 225–26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925). The analysis of the waiver is fact specific. *Vaughn v. Eggleston*, 334 N.W.2d 870, 873 (S.D. 1983).

From all of the evidence and testimony this Court heard, the Court finds that multiple Plaintiffs violate the covenants. Specifically, Lot 2, owned by Plaintiff Jungs, violates the covenants by having more than three garage spaces. Lot 3, owned by Plaintiffs Price, violates the covenants by having a two-car garage on the house and two post-frame buildings with additional garage spaces. Lot 5, owned by Plaintiffs Hoods, has more than three garage stalls and a shed that encroaches in the setback. Lot 6A is the subdivided lot. Lot 7, owned by Plaintiffs Baillys, has two buildings that are closer than 40 feet from the lot boundary and have more than three garage stalls. Lot 9, owned by Plaintiffs Boadwires, violates the doing business provisions of the covenants and has more than three garage stalls. Lot 10, owned by Plaintiffs Peters, violates the covenants by having a business operation in violation of the covenants, having more than three garage stalls, and a structure built in the setback. Lot 11, owned by Cottinghams, who are not a party, violates the covenants by having a structure within 40 feet of the lot boundary and having more than three garage stalls. Finally, lot 13, owned by Plaintiffs Gustafs, violates the covenants by having more than three garage stalls. Because of these continuous violations of the restrictive covenant, the Plaintiffs waive their rights to assert a violation of the covenants against the Defendants.

The initial violation was the subdivision of Lot 6 by Defendant's predecessor, to which the Plaintiffs failed to object timely. There is no legal remedy by which Plaintiffs can seek to un-subdivide property that was divided and sold to two separate owners. The Plaintiffs' only recourse is in equity. *Strong v. Atlas Hydraulics, Inc.*, 855 N.W.2d 133, 139 (S.D. 2014). Decisions regarding platting are quasi-judicial decisions. *Armstrong v. Turner Co. Board of Adjustment*, 772

N.W. 2d 643, 650–51 (S.D. 2009) (superseded by statute on other grounds as recognized in *Sierra Club v. Clay County Board of Adjustment*, 959 N.W.2d 615 (S.D. 2021)); *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 398–99 (S.D. 1973).

The "quasi-judicial action of a board having by force of statute and proper procedure acquired jurisdiction of the person and subject matter is not subject to collateral attack." *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 399 (S.D. 1973) (citing *Yankton Cty. v. Klemisch*, 76 N.W. 312, 313 (S.D. 1898)). Platting of the Lots 6A and 6B was a quasi-judicial action. *Ridley v. Lawrence County and Frawley Ranches, Inc.*, 619 N.W.2d 254 (S.D. 2000). The attack on the plat in this action must also be dismissed as it constitutes a collateral attack on a quasi-judicial proceeding undertaken by the City of Summerset. The claim that subdividing the lot was in violation of the covenants must be dismissed because the Plaintiffs failed to include the owner of Lot 6A to have complete relief of the claimed covenant violation. In addition, the City of Summerset would have to be included for the relief sought by the Plaintiffs.

Equitable principles govern the enforcement of building restrictions. Whether such relief will be granted is a matter within the sound discretion of the trial court, which is determined in the light of all the facts and circumstances. 20 Am.Jur. 2d. *Covenants* § 275 (1995) (citations omitted). The Court finds that the harm resulting in enforcement of the covenants against the Straatmeyers would be disproportional. Straatmeyers would be barred from using their property, while the great majority of the Plaintiffs would be able to continue using their property while violating the covenants. Harm to Plaintiffs would be minimal. Most of the Plaintiffs would not drive by or regularly see the Straatmeyers' structure. As to the Plaintiffs on the cul de sac, two of the lots are already violating the covenants. *Hammerquist v. Warburton*, 458 N.W.2d 773, 778 (S.D. 1990). It would be inequitable to enforce covenants against the Straatmeyers while allowing multiple

covenants violations of the Plaintiffs and other parties to stand and continue. Enforcement of the covenant violation against one landowner while allowing numerous other covenant violations to continue would be inequitable. *Id.*

### CONCLUSION

Defendant Straatmeyers are entitled to complete their structure as planned. Their structure does not violate the covenants, or any violations of the covenants are dismissed regarding the platting and the setback issues as a result of the Plaintiffs failing to enforce or violating the covenants themselves. The covenants are not enforceable given the pervasive violations that have gone unchecked or unenforced by the Plaintiffs or any other parties that may have had the right under the covenants to enforce said violations. If the Court were to order strict adherence to the covenants, it would have to order strict adherence to the covenants among all parties and order the removal of all offending structures, which would cause more significant harm to all parties. Getting all the homes in the subdivision to comply with the covenants is impractical and would harm all parties. Therefore, enforcement of the covenants against any of the parties would be inequitable at this point, given the pervasive violations throughout the subdivision. Lastly, this Court also finds that the Plaintiffs have waived the right to enforce the covenants against the Defendants.

Dated this 29<sup>th</sup> day of September 2022.

BY THE COURT:

Attest: **LINDA KESZLER**  
Clerk

By: *Jan Rude*  
Deputy



*Kevin J. Krull*  
Kevin J. Krull  
Circuit Court Judge

**FILED**

SEP 29 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

*[Signature]*





STATE OF SOUTH DAKOTA )  
 )  
 COUNTY OF MEADE )

IN CIRCUIT COURT  
 FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD,  
 THOMAS and PATRICIA DONOVAN,  
 BERNARD and MARIA JUNG,  
 WILLIAM and JANICE PRICE,  
 JAMES and KAY FENENGA, LARRY  
 and DARLENE BAILLY, GREG and  
 DEB PETERS, MARK and KITTY  
 GUSTAF, and RODNEY and GINA  
 BOADWIRE,

Plaintiffs,

vs.

CLYDE STRAATMEYER and NANCY  
 STRAATMEYER,

Defendants.

COURT TRIAL

46CIV21-000206

BEFORE: **THE HONORABLE KEVIN J. KRULL**  
 Circuit Court Judge  
 Sturgis, South Dakota  
 February 15, 2022 at 8:30 a.m.

APPEARANCES:

For the Plaintiffs: Courtney R. Clayborne  
 Attorney at Law  
 2834 Jackson Blvd., Suite 201  
 Rapid City, South Dakota 57709

For the Defendants: Talbot J. Wieczorek  
 Attorney at Law  
 506 Sixth Street  
 Rapid City, South Dakota 57709

1 THE COURT: All right, please come forward, sir.

2 **EDDIE OPSTEDAHL,**

3 called as a witness, being first duly sworn, testified as  
4 follows:

5 THE COURT: All right, sir, that chair adjusts and the  
6 microphone adjusts, so arrange yourself so you're speaking  
7 right into the microphone, please. You may proceed.

8 MR. CLAYBORNE: Thank you. Any preference if we stand or  
9 sit, Your Honor?

10 THE COURT: It's actually easier for us if you're sitting  
11 and speaking right into the microphone, so that's what I  
12 would prefer.

13 MR. CLAYBORNE: Okay.

14 **DIRECT EXAMINATION**

15 BY MR. CLAYBORNE:

16 **Q** Good morning. Could you please state your name and spell  
17 your last name for the record?

18 **A** Eddie Opstedahl, O-P-S-T-E-D-A-H-L.

19 **Q** Mr. Opstedahl, you're aware that this matter involves the  
20 Shadowland Ranch Subdivision tract?

21 **A** Correct.

22 **Q** Can you explain to the Court your familiarity with that  
23 subdivision?

24 **A** I was the original owner. After the flood of '72 people  
25 were moving, wanting to relocate to other places, so we



1       went ahead and subdivided part of our ranch land and we  
2       developed the Shadowland Ranch development there, and on  
3       this one, we had Francis-Meador-Gellhaus do the surveying,  
4       plotting out the lots, and the restrictions, we requested  
5       that the lots be set up on a plat and they would stay as  
6       that sized lots for the lifetime, and there was going to be  
7       put in individual septic tanks, individual water wells, and  
8       there would be two roads built off the main road that would  
9       be kind of court drives to service four home areas on each  
10      of those division roads that way.

11   **Q** In front of you, you should have a notebook.

12   **A** Okay.

13   **Q** That has a list of exhibits in it and it begins with  
14      Exhibit 101. Do you see that?

15   **A** Correct.

16   **Q** And I know the first page is a little blurry, but the  
17      second two pages spell out what is on the first page, and  
18      do you recognize what Exhibit 101 is?

19   **A** Yes, that's correct.

20   **Q** And what is 101?

21   **A** That was the Shadowland Ranch Subdivision restrictions and  
22      covenants.

23   **Q** And is that your name that appears on Exhibit 101, or your  
24      signature?

25   **A** Yes.

1 Q And was 101 recorded?

2 A Yes.

3 Q And where was 101 recorded at?

4 A Right here in the courthouse.

5 Q In Meade County?

6 A Yes.

7 Q I'm looking at then 101, and I note that there are several  
8 restrictions and covenants, and would those restrictions  
9 and covenants have been restrictions that you would have  
10 been involved with drafting?

11 A Partially, with an attorney also.

12 Q Okay. But these set forth what you wanted --

13 A Yes, it was set up the way we'd like to have it performed  
14 and stayed as.

15 Q And I see Subparagraph A deals with the single family  
16 dwelling with no larger than a three-car garage, is that  
17 correct?

18 A Correct.

19 Q Is there anywhere in the covenants that detached garages  
20 are prohibited or restricted?

21 A No.

22 Q I note that exhibit -- or I'm sorry, Subparagraph D  
23 provides for a prohibition on the subdivision of any lots.  
24 Do you see that?

25 A Yes.

1 Q Can you explain to the Court what was reason for that  
2 prohibition?

3 A The reason behind it, the size of the lots that  
4 Francis-Meador-Gellhaus through the surveying and water  
5 samples -- or the soil samples pertaining to the water  
6 sample and that it be set up as individual wells and also  
7 to be set up with the septic system that would have a leach  
8 field, plus the main septic tank area, and the restrictions  
9 how far it had to be from the property lines so it wouldn't  
10 interfere with other landowners. He ran percolation tests  
11 on most of the lots, and it's all wrote up in his summary  
12 as to the drain field would be accurate that way for that  
13 size lot. Lots were not to be smaller because it may cause  
14 perforation in somebody else's properties.

15 MR. CLAYBORNE: May I approach, Your Honor?

16 THE COURT: You may.

17 Q (BY MR. CLAYBORNE) Mr. Opstedahl, I'm going to show you  
18 what's been marked as Exhibit No. 16, and I'll ask you if  
19 you can identify what Exhibit 16 is?

20 A I haven't seen it before now.

21 Q Okay. Do you recognize the Concho Court --

22 A Right.

23 Q -- shown on Exhibit 16?

24 A Right, that was part of the original development.

25 Q I'll represent to you that lot -- what is on this exhibit

1       now marked as Lot 6A and 6B were the original Lot 6 of  
2       Shadowland Ranch Subdivision?

3       **A**   Correct.

4       **Q**   And if there is a Lot 6A and 6B, would that be in violation  
5       of the covenants that you proposed?

6       MR. WIECZOREK: I'm going to object as this calls for a  
7       legal conclusion.

8       THE COURT: Overruled. You may answer, sir.

9       **A**   Yes.

10      **Q**   (BY MR. CLAYBORNE) I also note in your covenants that you  
11      had in Subparagraph H which provides that no building shall  
12      be constructed so that any part of said building is within  
13      40 feet of the boundary of said lot. Do you see that?

14      **A**   Yes, that's correct.

15      **Q**   I also note on the plat that you had filed from  
16      Francis-Meador-Gellhaus, there are two courts that were  
17      part of the subdivision, is that right?

18      **A**   Right.

19      **Q**   Can you explain to the Court what the protocol was for  
20      maintenance of those roadways within that subdivision?

21      **A**   At that time, the entryway by the court road, it would be  
22      developed 66 foot wide for access in, for people to go in  
23      and drive in and circle back out. That's the way the  
24      platting board was persistent on trying to make sure that  
25      there was room to move and turn, that's why

1 Francis-Meador-Gellhaus set it up that way rather than  
2 doing a straight road down through the center from the  
3 north to the south and to the shorter runs. But as the  
4 land was divided by lot lines, then the two -- the lots  
5 that went into the circle drive on each side, the road  
6 would be split in half so each landowner on the four  
7 parcels would be responsible for maintenance on that at  
8 that point at that time because the county would not do it.  
9 It was up to the landowners, and that's the way it was set  
10 up with the covenants and per their restrictions for the  
11 county.

12 **Q** So with that explanation, would I understand the lots which  
13 would abut any of the roadways would have added to them  
14 property that would be outside of the lot lines?

15 **A** As far as where the stakes are put for the lot line, yes.

16 **Q** And I'm going to show you now what's marked as Exhibit 17,  
17 and I note on Exhibit 17 -- you understand that to at least  
18 depict the Shadowland Ranch Subdivision?

19 **A** Yes, correct.

20 **Q** And if I look at Cantle Court and Concho Court, as well as  
21 Romel Drive, there appears to be lines going down the  
22 center of those roads?

23 **A** Correct.

24 **Q** And for Lots 6, 7, 10 and 2, would those lines represent  
25 the actual boundary of those lots for which those owners

1 would be responsible?

2 **A** Correct.

3 MR. WIECZOREK: I'm going to object. That's a legal  
4 conclusion.

5 THE COURT: Overruled. You may answer.

6 **A** Yes, correct.

7 **Q** (BY MR. CLAYBORNE) So relative to the 40-foot setback  
8 referenced in the covenants, that 40 foot would be taken  
9 from those boundary lines which would start in the center  
10 of those particular roads?

11 **A** Correct.

12 **Q** And just so I'm clear, if I understood your testimony,  
13 those roads are and remain private roads that are privately  
14 maintained?

15 MR. WIECZOREK: I'm going to object, Your Honor. That's a  
16 legal conclusion.

17 THE COURT: Overruled.

18 **A** Yes.

19 **Q** (BY MR. CLAYBORNE) And it was your intent that those roads  
20 would be maintained by the property owners?

21 **A** Yes, that's the way the county said we had to do it at that  
22 time because the county did not want to take  
23 responsibilities for any of the sub roads or subdivision  
24 roads.

25 **Q** And to your knowledge, does the Shadowland Ranch property,

1 is that within the city limits of the City of Summerset?

2 **A** No.

3 MR. CLAYBORNE: That's all the questions I have. Thank  
4 you.

5 THE COURT: Go ahead, Mr. Wieczorek.

6 CROSS EXAMINATION

7 BY MR. WIECZOREK:

8 **Q** Mr. Opstedahl, my name is Talbot Wieczorek and I represent  
9 the Straatmeyers. I'm going to have some questions for  
10 you.

11 MR. WIECZOREK: Is it okay for me to approach, Your Honor?

12 THE COURT: You may.

13 **Q** (BY MR. WIECZOREK) Mr. Clayborne was just showing you this  
14 Exhibit 17. I'm going to show it to you yet again. If I'm  
15 to understand your testimony here today, your claim is --  
16 you would agree with me this road was platted out as a  
17 separate -- it's not part of the actual lots?

18 THE COURT: Mr. Wieczorek, maybe --

19 MR. WIECZOREK: Concho Court.

20 THE COURT: This road?

21 MR. WIECZOREK: Concho Court.

22 THE COURT: Okay. Thank you.

23 **A** The access into the four lots was by this little spur,  
24 Concho type deal. Okay, so it was for the landowner's use,  
25 plus public use.



1   **Q** (BY MR. WIECZOREK) Right, you would agree it's a dedicated  
2   public right-of-way?

3   **A** Right, right, but the county would not maintain it.

4   **Q** Right, county does not maintain all dedicated public  
5   right-of-ways within the county, correct?

6   **A** Some they do; some they don't.

7   **Q** Right, but they don't maintain them all?

8   **A** Yeah, yeah, right.

9   **Q** And so Concho Court you agree is a public dedicated  
10   right-of-way?

11   **A** Right.

12   **Q** And it's actually not part of the Lot Number 6?

13   **A** That's a technicality. I can't say, because at the time  
14   they told me it still is, but as far as where the stakes  
15   are on the property line for that landowner, it backs it  
16   off that but you're still responsible for that area on that  
17   property to that.

18   **Q** Okay. So there's a difference here. I just want to make  
19   sure. The county told you they're not going to be  
20   responsible for the road; the people who live out there are  
21   going to have to be responsible for the road?

22   **A** Right.

23   **Q** But you'd agree that this plat shows Lot 6 lines do not  
24   include Concho Court; it just -- there's actual surrounding  
25   four sides of Lot 6 marked, with Concho Court being, for

1 Lot 6, the south side of that lot?

2 **A** Yeah, you'd have to get a surveyor to explain that better.  
3 That's where they plotted their corner stakes on each of  
4 the lots after they took off that restriction for the road  
5 amount, but you still pay taxes to the middle of that road.

6 **Q** What makes you think that?

7 **A** That's what the county told me.

8 **Q** Okay.

9 **A** I have several other properties and everything was that  
10 way.

11 **Q** Yeah, that's what your belief is?

12 **A** This is --

13 **Q** Do you have any tax certificates that would show that you  
14 actually pay beyond Lot 6?

15 **A** That I couldn't tell you, but I do know on the ranch land,  
16 where the property line was, you paid taxes to that  
17 property line. Once it was divided, you still paid  
18 property taxes to that line. That was many years ago. I  
19 don't know what it is now.

20 **Q** Right. You're talking about a section line right-of-way?

21 **A** No, all, quarter sections, sections, any 80, 40, 80, 60,  
22 lots, anything like that.

23 **Q** Let's go back. You said -- so you would agree with me the  
24 corners for Lot 6 are actually marked on the lot line?

25 **A** Yeah, that's where the steel stakes are set.

1 Q Right.

2 A Yeah.

3 Q On the lot line; not in the middle of the road?

4 A Correct.

5 Q And your testimony here today is that the phrase "40 feet  
6 from the boundary of the lot," which is Subpart H, from a  
7 side lot line, that's 40 feet from the actual lot line, is  
8 that correct?

9 A Right.

10 Q But if it's next to a road, it's 40 feet from the center of  
11 the road?

12 A From the boundary line.

13 Q Or the boundary line is the lot line?

14 A That's a technicality. I can't tell you.

15 Q Okay. So you're not sure what is actually legally a  
16 boundary line of a lot?

17 A That's kind of up to the tax board however they take it, I  
18 guess.

19 Q Right.

20 A Yeah.

21 Q Yeah, so -- but the corners are marked on the actual lot  
22 line, not the road, correct?

23 A Correct.

24 Q And so that 40-foot setback, you're not even sure what the  
25 definition of boundary line is? Who wrote "boundary line

1 of the lot" in those covenants? Your lawyer?

2 **A** That's the way it was presented.

3 **Q** Okay.

4 **A** But I'm saying that's -- I cannot tell you from 40 years  
5 ago what --

6 **Q** Yeah, I do --

7 **A** Yeah.

8 **Q** These were signed 46 years ago.

9 **A** Yeah, I know, that's what I say, so I'm not sure just how  
10 they interpreted that. But I do know the engineers that  
11 did it, that's the way they set it up so it would be  
12 approved that way.

13 **Q** As the boundary line of the lot?

14 **A** Yeah.

15 **Q** So --

16 **A** But like I say --

17 **Q** Yeah, I understand. I understand you're kind of getting  
18 pulled back into this.

19 **A** Yes.

20 **Q** And it's been a long time since you owned this land. So  
21 what -- if something's built within the 40 feet, what  
22 should happen to it?

23 MR. CLAYBORNE: Objection, calls for a legal conclusion.

24 THE COURT: Overruled. You may answer.

25 **A** That's a tight question. It's a -- I don't know what

1       happened at that time when they did it or who did it, but  
2       most of the time you had to have approval to what you're  
3       doing on the lots or whatever through the county.

4       **Q** (BY MR. WIECZOREK) Okay.

5       **A** So if it was closer and the county said fine, or some of  
6       them would do it that way as long as nobody contested it  
7       that surrounded them, that I can't tell you. I'm not an  
8       attorney.

9       **Q** Well, yeah, but I mean you're here now trying to --

10      **A** We asked to be 40 feet back from the lines, yeah.

11      **Q** Okay. But what my question is -- you know, you just kind  
12      of threw a lot into that answer, so let me dissect it a  
13      bit.

14               So are you saying if the county would approve the  
15      location of the building, you'd be fine with it even if it  
16      was within the 40-foot setback?

17      **A** Basically when you submit to the county now, they review it  
18      and they're the ones that should have the final approval on  
19      it at that time.

20      **Q** Okay.

21      **A** Even though what you had set up originally might get  
22      overwrote because it's been happening other places too.

23      **Q** Okay. So you're fine, if the county approves the location  
24      of the building, that's all right?

25      **A** Yeah.

1 Q Even if it's within that 40 foot?

2 A They're the ones that have the -- through the years it  
3 changed because too many have gotten too far or too close  
4 to some of the lines; not here, but other places too. But  
5 anyhow, they had to set up that planning committee and  
6 inspection and get everything approved, so it just -- the  
7 steps through the years has changed.

8 Q Right. So my question is simply this. As I understand  
9 what you've just said is as long as the county approves it,  
10 even if it's in the 40-foot setback, you're okay with it?

11 A Yes.

12 Q Okay. Yeah, it's been a long time since these were signed.  
13 46 years I think?

14 A Right.

15 Q The land's changed quite a bit?

16 A Oh, yes.

17 Q You had said it was part of your ranch before?

18 A Yeah, we had control of the ranch until 2011 and finally  
19 sold the rest of it, but we did subdivide other lots  
20 through the years.

21 Q Where do you live now?

22 A In Rapid.

23 Q Yeah, Summerset didn't even exist in 2000 when you sold out  
24 of it at that point, did it?

25 A 2011?

1    **Q** Oh, 2011. I thought you said 2000. I'm sorry.

2    **A** They had started in different areas at that time. Started  
3       the housing development first down there, I don't remember  
4       which year that was for sure, on the east side of the  
5       service road that goes towards Black Hawk.

6    **Q** Suffice to say what's going on in the area has changed  
7       drastically since you did this plat?

8    **A** Oh, yes.

9    **Q** Okay.

10   **A** But it still was set up for -- to last.

11   **Q** Yeah. Excuse me one moment. So as to the -- that first  
12       part, I want to move on then to that subdivision in A, part  
13       A of the restrictions. So you say that the three-car  
14       garage is only a restriction as to what can be added  
15       actually physically to the house, is that -- am I  
16       understanding your testimony today?

17   **A** No. A three-car garage are sometimes detached, not with  
18       the house, so it's kind of option that way, whoever the  
19       builders are doing it at the time.

20   **Q** Okay. So if you have a two-car garage on the house and a  
21       two-car garage detached, that would be more than the  
22       three-car garage?

23   **A** There you're getting technical again.

24   **Q** Well, I mean you --

25   **A** Yes.



1 Q So you would see that as a violation of the covenants?

2 A Yes, but okay, whoever gave them permission to do it  
3 though?

4 Q You mean like if the county gave them a building permit, it  
5 would be allowed?

6 A Right, yep.

7 Q And, you know, three-car garage isn't -- a three-car garage  
8 is kind of a nebulous term, do you agree with that, what  
9 constitutes a three-car garage? You're not saying that you  
10 couldn't park a boat in a three-car garage, correct?

11 A Those interpretations are very limited.

12 Q I'm not sure what you mean there, sir.

13 A Depending on the size of your house, if it's a one story  
14 or two stories above ground as to how tall your garage can  
15 be then. If it's a two-story house, I've seen taller  
16 garages for boats, but if it's a single, one floor you  
17 might say, most of them, as far as the constructors, they  
18 usually just do a one level --

19 Q So what you're --

20 A -- garage then.

21 Q I'm sorry, I'm sorry for stepping over your comments. It's  
22 always a hard thing when I try not to -- I try to let you  
23 finish the answer and sometimes I jump in and I apologize  
24 for that.

25 A That's fine.

1 Q So basically you're going for like -- you have three garage  
2 doors, you shouldn't have more than three garage doors?

3 A Right.

4 Q So this subdivision was approved by the City of Summerset,  
5 did you know that?

6 A No, because they were not around at that time.

7 Q Okay. So if the City of Summerset approved the  
8 subdivision, is that allowable?

9 A No.

10 Q So you say that violates the covenants even though the city  
11 approved it?

12 A That is not in the city.

13 Q Okay. Sir, the -- I understand it's not in the city. Do  
14 you understand who has platting jurisdiction in the area?

15 A Yes and no. That's been the confusion.

16 Q Okay. So if I represent to you that Summerset has the  
17 proper platting jurisdiction in that area and they allow  
18 the plat, is that plat then acceptable under your  
19 covenants?

20 A I still don't agree that they have the jurisdiction to do  
21 that.

22 Q I understand --

23 A I don't know.

24 Q Well, I understand that you don't agree with the legal  
25 premise, that's fine, but if the county had the -- you

1 think the county should have the platting jurisdiction  
2 then?

3 **A** Correct.

4 **Q** And if the county had the platting jurisdiction and they  
5 allowed the plat, the county allowed the plat, would it  
6 have been acceptable under the covenants?

7 **A** That I'd have to see what the county said, if they actually  
8 went by the actual setup, the way it was approved or not,  
9 or if they rewrote it. Most of the time the county does  
10 not make that change from what I've heard or what I've  
11 seen.

12 **Q** Well --

13 **A** But I don't know what they're -- how it's happened through  
14 the years.

15 **Q** Okay. So you have another section of the covenants that  
16 talks about business activities. That's C of the  
17 covenants. Do you see that in front of you?

18 **A** Correct.

19 **Q** And it talks about -- it talks about if you require extra  
20 parking facilities, it would be a violation. Do you see  
21 that?

22 **A** Right.

23 **Q** So if somebody would have employees come to the site and  
24 park their vehicles there, would that constitute extra  
25 parking?

1   **A** I don't think they should have it there to start with.

2   **Q** Have what there?

3   **A** Extra parking for the employees.

4   **Q** Okay. So extra parking for the employees, parking spots  
5   for the employees to park their vehicles there --

6   **A** I disagree with that.

7   **Q** Okay. So that would be a violation of the covenants?

8   **A** Yes.

9   **Q** And then how about if you put extra parking so you can park  
10   your equipment there if you're running your business out of  
11   your house, would that be extra parking facilities too?

12   **A** It's designed residential only, not business.

13   **Q** So you'd see that as a violation also?

14   **A** Yes.

15   **Q** And you also say it's a violation if there's any materials  
16   being stored outside the dwelling. So would that include  
17   construction materials that somebody uses in their  
18   business?

19   **A** That's an awful fine line. I think the adjacent landowners  
20   would be the ones that should be reviewing that portion of  
21   it. Where I'm not living there, I can't tell you what's in  
22   and out of there.

23   **Q** Yeah, fair enough.

24   MR. WIECZOREK: May I approach again, Your Honor?

25   THE COURT: Yes. You don't need to ask each time.

1 MR. WIECZOREK: All right. Thank you.

2 Q (BY MR. WIECZOREK) I'm going to show you what's been  
3 marked as Defendants' Exhibit 21 which is some pictures of  
4 one of the sites. Can you flip through those quick?

5 A (Witness complying.)

6 Q Now do you know what site this is from just flipping  
7 through those pictures?

8 A No.

9 Q All right. I'll represent to you this is one of the lots  
10 within the subdivision. I'm going to show you specifically  
11 on Exhibit 21, we have what's called Bate stamps at the  
12 bottom which are page numbers of how they were produced.  
13 I'm going to refer to those numbers. So I'll show you  
14 like -- excuse me here. Like 28 and 29, what's 29 show?

15 A Looks like contractor supplies.

16 Q And you would agree those would be materials?

17 A Yes.

18 Q And you see 30, do you recognize what that is? There's  
19 scaffolding?

20 A I see the scaffolding, but that's primarily it.

21 Q Okay. I'll show you a better picture of it. Do you see  
22 the fencing, the rolled fencing?

23 A Oh, yeah.

24 MR. CLAYBORNE: Which exhibit?

25 MR. WIECZOREK: 40 then.

1     **A**   Yes.

2     **Q**   (BY MR. WIECZOREK)   And then several wheel barrels?

3     **A**   Yes.

4     **Q**   Would you agree those would be materials?

5     **A**   Construction materials, right.

6     **Q**   Okay.   So you would agree those would violate the covenants  
7         too?

8     **A**   Yes.   Yes.

9     **Q**   Now in the setbacks, there's this discussion of  
10         construction within the setbacks.   If you look at the last  
11         couple pages of the exhibit, it shows a shed and it shows  
12         that it's been -- would you agree with me that it shows  
13         that it's built into the ground, the support beams?  
14     MR. CLAYBORNE:   Which photograph?

15     MR. WIECZOREK:   34.   The last page of the documents.   I  
16         apologize, these got out of order in the way they're  
17         presented.

18     **A**   Yes, they're in the ground.

19     **Q**   (BY MR. WIECZOREK)   And so if a structure like that's built  
20         within the setbacks, you would agree that's a violation,  
21         unless the county gave a permit?

22     **A**   Correct, the county should be giving the permit, and that I  
23         will disagree, some garages are built with squares in the  
24         ground because I've done that with contractors also.

25     **Q**   Okay.   So if I understand this 40-foot setback, as long as

1 the county gives the building permit to be in the 40-foot  
2 setback, you don't see it as a violation of the covenants?  
3 MR. CLAYBORNE: I'm going to object as being a misstatement  
4 of the covenants.

5 THE COURT: Overruled. You can answer, sir.

6 **A** Restate it.

7 **Q** (BY MR. WIECZOREK) Well, you've said that if the county  
8 gives the building permit to be in that location, you don't  
9 see it as a violation?

10 **A** If the county approves it, yes.

11 **Q** Now you talked about outbuildings, that outbuildings per se  
12 are not addressed in the covenants, correct?

13 **A** They're not addressed, yes, because it says three-car  
14 garage, so that does not have to be attached to the house,  
15 it could be a separate building.

16 **Q** All right.

17 **A** Yeah.

18 **Q** But if you have a -- I believe we've already talked about  
19 this. If you have a two-car garage attached and a two-car  
20 garage unattached, that would be more than three?

21 **A** Correct.

22 **Q** And that would be a violation?

23 **A** Correct.

24 **Q** So to the extent an outbuilding would be a garage, that's  
25 covered under the three-garage rule by your understanding



1 of the covenants?

2 **A** Correct.

3 **Q** When's the last time you drove out and looked at the area?

4 **A** I drove out there last Friday.

5 **Q** Okay. Did you look for other violations, or did you just  
6 go out to this one site, or what did you do?

7 **A** No, I just drove the main road and then down the -- or  
8 not -- Cantle, just kind of looked down in there and then  
9 drove over and looked at the other one too which you're  
10 talking about, the Concho one.

11 **Q** Okay.

12 **A** And then just left. There was a big pole barn construction  
13 project started.

14 **Q** On the Lot 6B that we're talking about?

15 **A** Right.

16 **Q** And there's no prohibition to a pole barn construction, is  
17 there, in your covenants?

18 **A** No, just a three-car garage.

19 **Q** Yeah, and when you say three-car garage, it's basically  
20 three stalls?

21 **A** Correct.

22 **Q** You weren't intending to set size restrictions or anything  
23 on the stalls or what you could put in the stalls, correct?

24 **A** Correct.

25 **Q** And, sir, are you friends with any of the plaintiffs or the

1 parties in this matter, do you know them personally?

2 **A** No, I just know the names.

3 **Q** When you were out there, drove out there the other day,  
4 were you looking to see if there were any other violations  
5 of the covenants?

6 **A** Yes.

7 **Q** So did you note there were other -- there were places that  
8 have four-car garages?

9 **A** No, what I was checking was to see why a lot got split.

10 **Q** Okay. So you weren't looking to see if people had too many  
11 garage stalls or anything like that?

12 **A** No.

13 MR. WIECZOREK: That's all I have, Your Honor.

14 THE COURT: Mr. Clayborne?

15 MR. CLAYBORNE: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. CLAYBORNE:

18 **Q** Eddie, I just want to unravel some of this testimony and  
19 make sure I'm on the same page as you. If I understand,  
20 let's start with the drawing of -- that you had done by  
21 your engineers back in 1976, and again, that's Exhibit 17.  
22 If I see right, on Concho Court, on Cantle, and on Romel  
23 Drive, there are lines down the middle of those streets  
24 depicted on this drawing, correct?

25 **A** Correct.

1 Q And if I understood your testimony earlier, those lines  
2 were put in there to show those property owners that that  
3 was their maintenance and tax responsibility, that's the  
4 boundary of what they're responsible for?

5 A Correct.

6 Q And so when you were referring to boundary, the term, the  
7 word "boundary," it would encompass those lines, correct?

8 A Correct.

9 Q Is there any other reason to have those lines on the  
10 drawing?

11 MR. WIECZOREK: Objection, calls for speculation. He's not  
12 a surveyor, Your Honor.

13 THE COURT: Overruled. You may answer, if you know, sir.

14 A That is what the surveyors stated it should be done as and  
15 what the county said.

16 Q (BY MR. CLAYBORNE) So that everybody knew the boundary of  
17 the property they were responsible for?

18 A Correct.

19 Q And at the current time, you don't have any land -- you  
20 don't have any land within the Shadowland Ranch  
21 Subdivision, do you?

22 A No.

23 Q And then if I understood, you said basically the  
24 enforcement of the covenants is up to the adjacent  
25 landowners?

1    **A**   Correct.

2    **Q**   And so you would expect that the landowners within the  
3       Shadowland Ranch Subdivision would be the ones enforcing  
4       the covenants, correct?

5    **A**   Correct.

6    **Q**   Regarding the garages, is there anything written in the  
7       covenant that would tell anybody reading them that they  
8       could not have a detached three-car garage?

9    **A**   No.

10   **Q**   You were shown some pictures of materials outside of  
11       various properties. Do you recall that?

12   **A**   Yes.

13   **Q**   Do you know if those materials were for business or  
14       personal use?

15   **A**   That I cannot say, because it could be used either for the  
16       individuals or they could be doing it for other people. I  
17       can't say for sure.

18   **Q**   So if one of the homeowners had to have -- well, I presume  
19       you expected if they're going to do the roads and maintain  
20       them, they would have to have equipment necessary to do  
21       those?

22   **A**   Somebody does, yes.

23   **Q**   All right. So in that --

24   **A**   Hired, or bring it in, either way, yeah.

25   **Q**   So if somebody keeps materials that are necessary for those

1 projects, that wouldn't be against the covenants?

2 **A** No.

3 **Q** Did you see any areas where anybody added parking to  
4 accommodate any businesses when you were driving out there?

5 **A** I didn't look that closely.

6 **Q** But nothing stuck out to you?

7 **A** No, nothing jumped out.

8 **Q** In addition to the -- well, the covenants refer to the  
9 prohibition against subdividing the lots, correct?

10 **A** Correct.

11 **Q** Did that -- was there any aesthetic reason for that?

12 **A** Yes, primarily with what the engineers showed me for  
13 Francis-Meador-Gellhaus, they run the percolation test to  
14 be sure that each lot would have correct drainage around  
15 their lot for the sewage system and not contaminate other  
16 wells in that area, that's the primary reason we set it up  
17 that way. And if you went down to more condensed, shorter,  
18 smaller lots, half acre, three-quarter of an acre, you're  
19 going to have to have central water or sewer for sure, some  
20 other way of disposing of your waste.

21 **Q** So there's a safety concern?

22 **A** Right.

23 MR. CLAYBORNE: That's all the questions I have. Thank  
24 you.

25 THE COURT: All right. Mr. Wieczorek?

## RECROSS EXAMINATION

BY MR. WIECZOREK:

**Q** I'll show you what's been marked as Defendants' Exhibit 20.  
Why don't you flip through those pictures quick.

THE COURT: Is that 20?

MR. WIECZOREK: 20, Your Honor.

THE COURT: Thanks.

**A** (Witness complying.)

**Q** (BY MR. WIECZOREK) All right, you can keep those in front  
of you. Sir, if you flip to what's marked on the bottom as  
DEF50, do you see where that parking is there?

**A** Yeah, it's two vehicles.

**Q** Okay. Would that be kind of the additional parking that  
you would have wanted to have avoided under the covenants?

**A** That I can't tell you.

**Q** Okay. If you flip to page 53, do you see all that added  
gravel on 53, turnaround?

**A** Yeah, I'm not sure what lot that is.

**Q** Yeah, I'm not asking which lot. Would that be kind of some  
of the additional parking and business activity that you  
would have wanted to avoid?

**A** Like I say, I don't even know where that's at there.

**Q** Okay. Well, let's assume it's within the subdivision.

**A** Yeah, that's -- all I can tell is this looks like this must  
be over there next to Summerset.

1 Q Right.

2 A And that's why I'm not sure what that is.

3 Q Sure. So you don't know what all that gravel on the ground  
4 is for?

5 A I haven't seen it, no.

6 Q All right.

7 A I wasn't looking for it, so I didn't see it.

8 Q Okay. You said something that we try not to allow  
9 businesses in this area?

10 A Correct.

11 MR. WIECZOREK: That's all, Your Honor.

12 THE COURT: Mr. Clayborne?

13 MR. CLAYBORNE: Nothing.

14 THE COURT: All right. Mr. Opstedahl, I just had one  
15 question. When you said the name of the firm that did the  
16 engineering, you kind of buzzed right through it. Is it  
17 Francis-Meador-Gellhaus?

18 THE WITNESS: Correct.

19 THE COURT: Is that the name? Okay, all right, very good.  
20 You may step down.

21 MR. CLAYBORNE: Your Honor, and just for the Court's --  
22 Exhibit 17 has the firm name up in the top right-hand  
23 corner.

24 THE COURT: Yeah, I found it. All right, you can step  
25 down, sir. Thank you. Mr. Clayborne, you can call your



1 next witness.

2 MR. CLAYBORNE: We would call Clyde Straatmeyer, Your  
3 Honor.

4 THE WITNESS: Please come forward, sir.

5 **CLYDE STRAATMEYER,**

6 called as a witness, being first duly sworn, testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. CLAYBORNE:

10 Q Can you state your name for the record, please?

11 A Clyde Straatmeyer.

12 Q And what is your relationship to the Shadowland Ranch  
13 Subdivision?

14 A I'm owner of the lot, 6B.

15 Q How did it -- how did you come to be the owner of Lot 6B?

16 A Like what do you mean? I bought it.

17 Q And who did you buy it from?

18 A Jerry Schmidt.

19 Q How did you know 6B was for sale?

20 A It wasn't necessarily put up for sale. We had been looking  
21 for some land and property. I knew Jerry Schmidt, and I  
22 asked him if he would be willing to sell the back part of  
23 that lot.

24 Q And when did this conversation take place?

25 A Oh, July to August or something of that neighborhood,

1 Q Okay. In that portion of the application, do you  
2 acknowledge that you're familiar with the covenants?  
3 That's a yes or no question.

4 A I signed the document along with everything else on that  
5 document.

6 Q Were you familiar with the covenants of Shadowland Ranch  
7 Subdivision when --

8 A No, not at that time.

9 Q Sorry, let me finish. Were you familiar with the covenants  
10 of the Shadowland Ranch Subdivision on April 14th of 2021?

11 A No.

12 Q When did you become familiar with the covenants of the  
13 Shadowland Ranch Subdivision?

14 A When we got the letter from you.

15 Q And that letter from me is what's in that book as  
16 Exhibit 102, correct?

17 A Yes.

18 Q And that is May 12 of 2021 would have been the first time  
19 you became familiar with the covenants, correct?

20 A That is correct.

21 Q I want you to go to Exhibit 4 and see if you can tell me  
22 what that is?

23 A Excuse me, go to which?

24 Q I'm sorry, Exhibit 104 in the white book.

25 A Building permit.

1       there?

2       **A**   The three-car rule, three-stall, three-car garage rule.

3       **Q**   And is there anything in the covenants where you can point  
4       out to me that prohibits detached garages?

5       **A**   That there's a restriction of outbuildings?

6       **Q**   Correct.

7       **A**   Specifically, no.

8       **Q**   And it's fair to say that you never were concerned or even  
9       knew about the covenants until somebody pointed out to you  
10      that you were in violation of the covenants, correct?

11      **A**   That is correct.

12      **Q**   And so at that point was the first time you went around and  
13      started trying to find other violations so you could  
14      support your building?

15      **A**   That's when we started observing others, violations.

16      **Q**   But your purpose was simple, you wanted to find other  
17      violations so that you could continue your project?

18      **A**   By the time we realized that there were covenants, we were  
19      into this project substantially.

20      **Q**   And that all could have been avoided had you simply went,  
21      looked at the property and the recorded covenants?

22      **A**   Possibly, yeah, it could have if we did, but we did not.

23      **Q**   And that's on you?

24      **A**   I am not an expert on that. I was relying upon county,  
25      Summerset, the other people that do this on a daily basis

## DIRECT EXAMINATION

BY MR. CLAYBORNE:

**Q** Could you please state your name for the record?

**A** Greg Peter.

**Q** And are you a property owner in the Shadowland Ranch Subdivision?

**A** Yes.

**Q** And which lot do you own?

**A** I'm not sure of the lot. Just a second. It would be Lot 10.

**Q** And Lot 10 looks like it sits on the corner of Cantle and Romel?

**A** Yes.

**Q** When did you purchase that lot?

**A** Roughly 18 years ago.

**Q** When you purchased the lot, were you aware of the Shadowland Ranch, of the covenants and restrictions?

**A** Yes.

**Q** Relative to those covenants and restrictions, when you -- or I should ask when you bought the lot, did you have an understanding of what your boundary was?

**A** Property boundary or -- yes, yes.

**Q** Okay. And can you tell the -- well, you said property boundary. Is your lot subject to more than one boundary line?

1     **A** I got two roads on -- a road on two corners, yeah.

2     **Q** Okay. Can you explain to the Court what you understood to  
3     be your boundary when you purchased your lot?

4     **A** The road was my responsibility.

5     **Q** All of the road?

6     **A** Well, I assumed the road in front of my property, let's put  
7     it that way.

8     **Q** Were you here when Mr. Opstedahl testified?

9     **A** Only a portion of it.

10    **Q** He indicated that he understood the boundary of properties  
11    that abut a road within that subdivision to be  
12    approximately 33 feet to the center of the road. Did you  
13    hear that testimony?

14    **A** No, I did not.

15    **Q** Would that be -- having not heard it however, would that be  
16    consistent with your understanding of your boundaries?

17    **A** Yes.

18    **Q** When you bought the property -- or I believe you currently  
19    have a home business, is that correct?

20    **A** Yes.

21    **Q** And can you explain to the Court what that business is?

22    **A** I have a construction company, RC Peter Construction.

23    **Q** And prior to purchasing your lot, did you access the  
24    covenants to see if that business was allowable within the  
25    subdivision?

1     **A**   Yes.

2     **Q**   And what did you do in that regard?

3     **A**   As far as?

4     **Q**   In terms of satisfying yourself.

5     **A**   It said that you -- in the way I read the covenants, you  
6       could have a home business as long as it didn't require  
7       extra parking, and the way I interpreted from the  
8       stipulations of a home business at that time when I bought  
9       the property was considered a home property if you have a  
10      store front and if you had customers come to your house.

11    **Q**   Okay.  So the actual covenants say that no business  
12      activities shall -- or no lot owner shall conduct business  
13      activities which shall require extra parking facilities.  
14      At the time you purchased the property, were there parking  
15      facilities?

16    **A**   Yes.

17    **Q**   And at any time after purchasing the property, have you  
18      added to any of the parking that was pre-existing?

19    **A**   No.

20    **Q**   Do you maintain that from time to time?

21    **A**   Yes.

22    **Q**   But you have not increased it in any way?

23    **A**   No.

24    **Q**   And to your knowledge, was it being used as a residence  
25      prior to your purchase?

1     **A**   Yes.

2     **Q**   The covenants would also prohibit the storage of any  
3       materials outside any dwelling.  Are you familiar with  
4       that?

5     **A**   Yes.

6     **Q**   And you're a contractor, are you not?

7     **A**   Yes.

8     **Q**   And are you familiar with the difference between equipment  
9       and materials?

10    **A**   Yes.

11    **Q**   And can you explain to the Court briefly what that  
12       difference is?

13    **A**   Equipment is things that I would use on a job, but on the  
14       same token, equipment is things that are basically, when I  
15       buy them they're tax deductible because they're equipment.  
16       If you buy material, I can't deduct it.

17    **Q**   Can you give us some examples of what would normally be  
18       considered equipment?

19    **A**   Well, if you look at some of the pictures that have been  
20       submitted, for the few that I have seen, they would be the  
21       scaffold, the wheel barrels, the Bobcat I guess you can  
22       say, or the trailers, so...

23    **Q**   And is some of that used for both business and personal  
24       use?

25    **A**   Yes.

1     **A** Yes.

2     **Q** And it shows some equipment parked outside, but I'm more  
3       curious about that parking area. Was any of that parking  
4       area expanded or added after you purchased the property?

5     **A** No.

6       MR. CLAYBORNE: That's all the questions I have. Thank  
7       you.

8       THE COURT: Mr. Wieczorek?

9                               CROSS EXAMINATION

10      BY MR. WIECZOREK:

11     **Q** Mr. Peter, as understand it, the materials you say that are  
12       on the side of your outbuilding or shed are materials from  
13       jobs that you've brought back to the property?

14     **A** Yeah, just left over.

15     **Q** Okay. But they're materials from jobs?

16     **A** And some I bought myself, yeah.

17     **Q** Okay. And the scaffolding you use for your business?

18     **A** That's equipment, yes.

19     **Q** So you use it for your business?

20     **A** Yes.

21     **Q** So on the -- when you bought this property, was one of the  
22       reasons you bought it was because of the extra parking?

23     **A** No.

24     **Q** You didn't care that it had room for you to park all your  
25       equipment?



1   **A** No, I didn't have that equipment when I bought the  
2       property.

3   **Q** Okay. So one of the reasons you can store the equipment  
4       there is because it had the extra parking?

5   **A** I can at this time, yes.

6   **Q** And the equipment you said -- which one picture shows that  
7       you have a Bobcat there?

8   **A** Yes.

9   **Q** And that's used -- you use it both personally and for jobs?

10   **A** Yes.

11   **Q** And you have a dump trailer there?

12   **A** Yes.

13   **Q** And that's used for both personal and jobs?

14   **A** Yes.

15   **Q** Then you have, I think just a trailer, probably a trailer  
16       for your skid steer?

17   **A** Yes.

18   **Q** And you need a trailer to get it to the jobs, right?

19   **A** I use the trailer to take it if I need to haul it to jobs  
20       or to maintenance.

21   **Q** Maintenance on jobs, or maintenance on your horse property?

22   **A** Maintenance on the Bobcat.

23   **Q** Oh, okay. Those never break, do they?

24   **A** No.

25   **Q** So how many garages -- you have a two-car garage on the

1     **A**   No.

2     **Q**   Why?

3     **A**   I guess it's considered a public road.

4     **Q**   Well, it is a public road, wouldn't you agree?

5     **A**   Yes.

6     **Q**   I mean, there's a plat right in front of you.  You know the  
7       difference between a public road and an easement as a  
8       contractor, don't you?

9     **A**   Yes.

10    **Q**   And this is a dedicated public road in front of your house  
11       and on the side of your house, correct?

12    **A**   Yes.

13    **Q**   And do you agree with me that you do not own the road?

14    **A**   No.

15    **Q**   You believe you own the road?

16    **A**   I own -- I have ownership because I have to take care of  
17       it.  It works the same way with the county when you have  
18       boundary lines on section lines for county roads.

19    **Q**   Sir, this isn't a section line, is it?

20    **A**   No, but it's the same qualification for boundary.

21    **Q**   Well, are you telling me that you actually own the property  
22       outside of your lot lines?

23    **A**   You know, I've never checked to make sure what I pay  
24       property tax on for the amount of land that I have.

25    **Q**   So if a city or a county or some governmental entity says

1 Q Yes.

2 A I'm not saying that. I'm saying I will move my shed if I'm  
3 in violation. I will remove it.

4 Q Well, so you think it's okay for some people to violate the  
5 covenants, but not others, is that your contention today?

6 MR. CLAYBORNE: Objection. It assumes facts not in  
7 evidence.

8 THE COURT: Overruled.

9 Q (MR. WIECZOREK) Is that your contention today, sir?

10 A Yeah.

11 Q It's your contention some people should be allowed to  
12 violate and others not?

13 A At my point at this, I assumed all the properties were in  
14 compliance because those properties were there before I  
15 bought the property. I had no reason to assume anything  
16 different.

17 Q All right. Let's go back to Mr. Opstedahl's definition of  
18 three-car garage counts even the outbuildings. So  
19 everybody who has more than three-car garages when you  
20 start counting garages, should those people remove those  
21 buildings?

22 A No, I -- he didn't say -- it doesn't say anything about  
23 outbuildings that I seen in the covenants.

24 Q Yeah, but you understand, sir, you're the plaintiff, right?

25 A Yeah.

1 detail.

2 THE COURT: Okay.

3 MR. WIECZOREK: I had Mr. Peter subject to subpoena and I  
4 released him from that subpoena, so he's no longer --

5 THE COURT: All right, Mr. Peter will be released then.

6 MR. WIECZOREK: The defendants would call Shannon Vaskretz.

7 THE COURT: Please come forward.

8 **SHANNON VASKRETZ,**

9 called as a witness, being first duly sworn, testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WIECZOREK:

13 Q Mr. Vaskretz, why don't you state your name and what you do  
14 for a living.

15 A My name is Shannon Vaskretz. I'm a registered land  
16 surveyor. I have a business here in Sturgis.

17 Q So is it okay if I call you Shannon?

18 A Absolutely.

19 Q I have a bad tendency to butcher your last name.

20 A I do the same with yours.

21 Q Okay.

22 A It's fair enough.

23 Q Okay. So what do you do for a profession?

24 A I am a licensed land surveyor in the State of South Dakota,  
25 so...

1    **Q** And what is a licensed land surveyor?

2    **A** My job is to basically to -- it's a number of things, but I  
3       would say the most part is to retrace the boundary work of  
4       other surveyors and show people where the property lines  
5       are for building fences, for a lot of different reasons, so  
6       just to basically to establish property boundaries for  
7       landowners.

8    **Q** Okay. Do you also address plats as part of that?

9    **A** I do. We do subdivision development, design work,  
10       construction staking for those subdivisions, a number of  
11       things for the whole project.

12   **Q** When you say construction staking, what would that mean?

13   **A** Construction staking would be like if there was a road  
14       being built, curb and gutter, we basically work off the  
15       engineered plans to stake the points for the contractors,  
16       horizontally and vertically.

17   **Q** Okay. If a house was being constructed, do you also stake  
18       for that sometimes?

19   **A** We do. We do do a house stake for foundation work, so...

20   **Q** So how long have you been in this profession?

21   **A** Been working full-time with the position since 1996, and  
22       then I've been actually a licensed surveyor for the last  
23       15 years.

24   **Q** When you say licensed, what does that entail?

25   **A** That means you just met all the qualifications to become a

1       If I were -- in your professional opinion, what's the  
2       boundary of a lot?

3       **A** The boundary of a lot, like pertaining to this plat,  
4       looking at this plat?

5       **Q** Yeah, or Lot 6 specifically on this plat.

6       **A** So Lot 6, the boundary lines on this plat are very clear on  
7       what the boundary of the lot is because in surveying, in  
8       our profession we really try to highlight what's being  
9       platted, you know, what's the intent. So Lot 6, I can  
10      clearly see, you know, the boundaries of that lot because  
11      it has varying of distances along those boundaries which  
12      that's what controls -- that's basically what controls the  
13      boundary lines, the true boundary lines of that lot.

14      **Q** So is that the four lot lines around Lot 6?

15      **A** Yes, yes.

16      **Q** Does Lot 6 boundary line include the Concho Court?

17      **A** No, it does not.

18      **Q** But there's been reference to that there's a line down  
19      Concho Court on that plat. What's the purpose of that line  
20      that goes down the middle of the road?

21      **A** So that line -- that line just indicates, basically  
22      represents a centerline of that right -- of that dedicated  
23      public right-of-way, so...

24      **Q** And that's so if you're working on the road, you know where  
25      the centerline is and if you're centering the road?

1   **A** Yeah, and it's more for a visual because if that  
2       right-of-way is 66 feet wide, they're just showing the  
3       centerline of that so you can determine 33 feet on each  
4       side of that.

5   **Q** And is this a dedicated public right-of-way, can you tell  
6       by the plat?

7   **A** Yes, I can, because it says just clear as day, 66-foot wide  
8       right-of-way and dedicated to the public.

9   **Q** Okay. Now I -- have you've seen situations where like a  
10      public easement exists and there's not a dedication?

11   **A** I have, yes, yep.

12   **Q** And in that case -- and so when it's publicly dedicated,  
13      what happens to the property that's publicly dedicated as  
14      it regards to the tax rolls?

15   **A** At that point then it's taken by the county and taken off  
16      the tax rolls, so...

17   **Q** Okay. So Lot 6 only actually pays taxes for Lot 6, is that  
18      correct?

19      MR. CLAYBORNE: Objection as being beyond the scope of the  
20      knowledge of this witness.

21      THE COURT: You can answer, if you know.

22   **A** Yes, that's correct.

23   **Q** (MR. WIECZOREK) Yeah, and you work with county  
24      equalization, correct?

25   **A** I do.

1    **Q** And you understand -- or from that experience with working  
2       with the county of equalization that the public  
3       right-of-way comes off of the tax rolls?

4    **A** Yes, I do, yep.

5    **Q** So when you were asked to go out to this site to shoot some  
6       distances, how do you establish distances from structures  
7       and corners?

8    **A** In this case for -- what we did is we actually brought our  
9       total station with us so that way -- we have an electronic  
10      distance meter and within that we can shoot distances with  
11      that as well as turn the angles, and so basically how we  
12      establish, we -- you have to start out finding some  
13      existing property corners that are on the plat and then you  
14      establish your control based off that and then turn at your  
15      angles and distances based on that to the structures, so...

16   **Q** Okay. And so when you are asked to shoot distances, did  
17      you come up with a diagram showing distances of certain  
18      buildings?

19   **A** Yes.

20   **Q** And up there is marked as Exhibit 19, can you tell the  
21      Court what that is?

22   **A** This is an exhibit that I prepared based off of our work on  
23      site that day.

24   **Q** There's two pages there. What's the difference between the  
25      first page and the second page?



1   **A** What we were -- the first page just shows the entire scope  
2       of the lots that we were -- the subject lots, the subject  
3       lot and then other lots around it that had other additional  
4       structures. The second page is simply just a little more  
5       detailed, so we need to get a little more detail on it,  
6       look at the first page.

7   **Q** So when you say the subject property, are you talking Lot  
8       6B?

9   **A** Correct, yep.

10  **Q** So when you shot the distances for the structure on Lot 6B,  
11       there's currently no structure there, correct?

12  **A** On Lot 6B?

13  **Q** Yeah. That bigger square on the front, is there a  
14       structure there currently?

15  **A** Not completed.

16  **Q** Okay. So what is there?

17  **A** Basically all that's there is the posts in the ground that  
18       -- that's what we -- that's what we shot in was the corner  
19       post. I would say corner post of, you know, the beam work  
20       that was there, so...

21  **Q** And so based on that beam work, you can establish where the  
22       building will sit in relationship to the side lot lines?

23  **A** Yes.

24  **Q** On Lot 5, the neighboring lot, there's another structure  
25       that you shot distances on. What is that?

1     **A**   That is a shed.

2     **Q**   And what's the distance from Lot 5 and the shed to the side  
3       lot line that you determined?

4     **A**   9.8 feet.

5     **Q**   And then on Lot 7 across Concho Court there's another  
6       structure that you shot distances for. Do you recall what  
7       that is?

8     **A**   Yes, I do, that's a garage, a detached.

9     **Q**   And what's the distance from the boundary of the lot line  
10      for the garage on Lot 7?

11    **A**   15.7 feet.

12    **Q**   And staying with that Lot 7, there's a smaller structure on  
13      the south, by the south boundary line, do you see that?

14    **A**   Yes.

15    **Q**   Can you tell the Court what that is?

16    **A**   That's also a shed.

17    **Q**   Then in shooting that, what distance did you determine is  
18      between that and the boundary of the lot?

19    **A**   6.2 feet.

20    **Q**   Across then that lot line on Lot 10 there's another  
21      structure?

22    **A**   Correct.

23    **Q**   And you shot distances at that?

24    **A**   We did.

25    **Q**   And what did you derive as the distances?

1     **A**   That distance is 9.0 feet.

2     **Q**   From the boundary of the lot?

3     **A**   From the boundary line.

4     **Q**   On Lot 11 then, you also shot a structure, correct?

5     **A**   Correct.

6     **Q**   And what did you determine for distances on that?

7     **A**   That distance is 0.2 feet.

8     **Q**   So essentially almost just right on the boundary of the lot  
9         line?

10    **A**   Yes, basically, yep.

11    **Q**   What's the -- what's the setbacks in Meade County, are you  
12         familiar with those?

13    **A**   Yes, I am. Meade County's typically 8 feet on the sides,  
14         25 foot on the front or rear.

15    **Q**   So going back to this dedicated right-of-way, is Cantle  
16         Court also dedicated?

17    **A**   Yes, it is.

18    **Q**   Were all the roads in Shadowlands dedicated for public  
19         right-of-way?

20    **A**   Yes, according to these plats, the Romel Road, Cantle, and  
21         Concho.

22    **Q**   Are any of these roads section lines?

23    **A**   No.

24    **Q**   Have you worked with subdivisions within the county?

25    **A**   Yes, I have.

1 Q How often do you do that?

2 A Daily.

3 Q There's been some discussion on the obligation to maintain  
4 the road. What's your understanding of the county's  
5 position on public right-of-ways on who's --

6 MR. CLAYBORNE: Objection.

7 MR. WIECZOREK: Sorry, go ahead.

8 MR. CLAYBORNE: Objection on foundation.

9 THE COURT: Overruled.

10 Q (MR. WIECZOREK) On who's responsible for the roads?

11 A Well, typically -- but it's -- typically back in the day  
12 when this plat was done, I believe it is the county's --  
13 typically once a road was dedicated, the county would  
14 maintain that road.

15 MR. WIECZOREK: Nothing further, Your Honor.

16 THE COURT: Mr. Clayborne?

17 MR. CLAYBORNE: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. CLAYBORNE:

20 Q Is it Vaskretz?

21 A Yes, it is.

22 Q Okay. Mr. Vaskretz, I want to start with you were  
23 reviewing some of the earlier plats with Mr. Wiecezorek. So  
24 I note that both the 1976 plat and then the 2000 plat both  
25 do mark the easements on Romel, Cantle, and Concho Courts,

1       portion of any of the lots contained within Shadowland  
2       Ranch Subdivision?

3       **A**   No.

4       MR. CLAYBORNE:   That's all the questions I have.   Thank  
5       you.

6       THE COURT:   Mr. Wieczorek?

7                               REDIRECT EXAMINATION

8       BY MR. WIECZOREK:

9       **Q**   Shannon, I want to make sure we're clear on a couple of  
10       things just the way the questions were being asked.   If you  
11       look at the line that goes down the middle of Concho Court,  
12       that is not an easement line, is it?

13       **A**   No, it's not an easement line.   It's just depicting the  
14       centerline of the dedicated public right-of-way.

15       **Q**   Right.   And the reason -- these roads are not easements,  
16       correct?

17       **A**   No, these roads on these plats that are in front of me are  
18       actually dedicated public right-of-way.

19       **Q**   And the difference between an easement that might go across  
20       somebody's property is they continue to own the land  
21       underneath it, correct?

22       **A**   Absolutely, yep.

23       **Q**   But when you dedicate the public right-of-way, that becomes  
24       public property, correct?

25       **A**   That's correct, the developer at that point gives up that

1 THE COURT: Please come forward, sir, right up here.

2 **RODNEY BOADWINE,**

3 called as a witness, being first duly sworn, testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. WIECZOREK:

7 **Q** Mr. Boadwine, can you just for the record's purpose state  
8 your full name and where you currently reside?

9 **A** Rodney Brooks Boadwine, III, 10106 Cantle Court, Black  
10 Hawk, South Dakota 57718.

11 **Q** Thank you. One little housekeeping thing. You're a  
12 plaintiff in this matter, correct?

13 **A** (Witness nodded head.)

14 **Q** You have to answer out loud.

15 **A** Yes.

16 **Q** Thank you. The caption has it as "Boadwire," but it's  
17 "Boadwine," is that correct?

18 **A** Yes.

19 **Q** Just so that the court reporter has it correct, can you  
20 spell your last name?

21 **A** B-O-A-D-W-I-N-E.

22 **Q** Thank you. What do you for a living, Mr. Boadwine?

23 **A** I own and operate Aim High Tree Service.

24 **Q** What does Aim High -- what types of service does this Aim  
25 High provide?

1 Q Yeah. So what type of equipment do you keep at the house?

2 A I have a bucket truck, a chipper, a dump trailer, a pickup  
3 and a skid steer.

4 Q Okay. And those are used in your business?

5 A Correct.

6 Q If you look in front of you there, there is a set of  
7 pictures marked as Exhibit 20. There's a 20 sticker on it.

8 A Yep.

9 Q Can you flip through those and can you tell the Court  
10 generally what those show?

11 A Shows my attached garage on the first page with my RV and a  
12 pile of firewood. I guess if you look beyond it, you'd see  
13 my shop in the backyard.

14 Q Okay.

15 A There's my personal truck on the second page with the back  
16 end of my RV, my kids' play stuff in the yard and my shop.  
17 Same thing.

18 Q The third page?

19 A It's got tools, got my truck, got my shop. I got my stuff  
20 out there.

21 Q Let me ask you a question about this third page before we  
22 go into this detail.

23 A Okay.

24 Q These are pictures of your house and your property,  
25 correct?

1    **A**   Yes.

2    **Q**   So attached to your house, do you have a two-car garage?

3    **A**   I'd call it a big one-car garage.

4    **Q**   It's got a double door?

5    **A**   If you measure it, it's a big door, but I mean, put two  
6       cars in there, it's going to be tight and you're going to  
7       be scratching them.

8    **Q**   And then the third page then shows your shed and it's got  
9       the two garage stalls, is that correct?

10   **A**   Yep.

11   **Q**   So what's the fourth page then show?

12   **A**   Shows where I keep my firewood, with my log splitter  
13       sitting there right in the middle of it with split firewood  
14       around it.

15   **Q**   Let's clarify.  You don't sell firewood?

16   **A**   I don't sell firewood.

17   **Q**   This is just tree trimmings you're doing for your own  
18       personal firewood?

19   **A**   This is my own firewood, yes.

20   **Q**   Then the next page I believe just shows the front-on of  
21       your shed, is that correct?

22   **A**   Yep.

23   **Q**   So is the door on the right, is that a double door?

24   **A**   I believe that door might be 16 foot.  It's pretty wide, so  
25       I -- you could probably call it -- that one's bigger than



1 the one attached to my house.

2 **Q** And then -- so do you keep your equipment in here or just  
3 -- I mean, do you keep your vehicles in there, or what do  
4 you keep in your shed?

5 **A** Currently I have my wife's car in there taken apart that  
6 I'm working on and I have all my tools in there. I have --  
7 the whole thing is shoved full of tools.

8 **Q** Okay.

9 **A** Personal tools.

10 **Q** Sure. What's this toolbox sitting in front of the  
11 building?

12 **A** That's just a big storage box that was thrown in with the  
13 truck that I bought and I decided to put it there and I  
14 keep things in it.

15 **Q** So if we go to the next page that shows the two cars.

16 **A** Those are my two employees' cars. They --

17 **Q** What -- go ahead, I'm sorry.

18 **A** They show up in the morning and they jump in the bucket  
19 truck and the pickup and they head out and they go do jobs  
20 offsite.

21 **Q** So do you have just the two employees or more?

22 **A** I have three employees.

23 **Q** Okay. Does the third employee come out there sometimes  
24 too?

25 **A** Very rarely. When we work towards the west, they do, but

1 usually when they're working in Rapid or toward the east  
2 anywhere, we meet them in town.

3 **Q** Yeah, you just have the two employees come out, one takes  
4 the bucket truck and one takes the other -- what did you  
5 say?

6 **A** It's a pickup.

7 **Q** And so then they park --

8 **A** Right there. They can park anywhere. If that was a  
9 problem, I've -- you know, I've talked to Chris and I've  
10 talked to, I think, it's Ron, or you know, Roy right there,  
11 they're happy.

12 **Q** Okay. Yeah, your neighbors haven't complained about the  
13 parking?

14 **A** Nope.

15 **Q** But that additional -- having that additional parking area  
16 was part of your reason for buying the lot?

17 **A** Not necessarily. We liked the volleyball court, the acre  
18 and a half, the five bedrooms, the three bath, the big shop  
19 for all my tools.

20 **Q** Right, and enough parking for your vehicles?

21 **A** For my equipment, yeah.

22 **Q** In the back of your house, you've got kind of a gravel  
23 roundabout?

24 **A** Correct.

25 **Q** When's the last time you gravelled that?

1   **A** A lot of that was there when I moved in. I've touched it  
2       up because it gets really muddy. So the last time I  
3       touched it up, shoot, probably the last time I worked on  
4       the road. I'd give it three years or so.

5   **Q** You brought gravel in and you --

6   **A** I did bring gravel in. Yeah, it was getting really muddy.

7   **Q** Right. Gravel tends to get packed down into the soil?

8   **A** That's right.

9   **Q** And then there's a picture, you said there's a -- you've  
10      got a volleyball court in the next picture, correct, that  
11      you mentioned?

12   **A** Yep, we got a volleyball court.

13   **Q** And then next to that you have parked, what's that?

14   **A** A dump trailer.

15   **Q** Okay. And that's a business dump trailer?

16   **A** Yes.

17   **Q** And so you said though there's a work pickup and then you  
18      had your other pickup by the sheds. What's this pickup?

19   **A** That pickup's my personal pickup.

20   **Q** And the next page then shows this area looking back towards  
21      your building?

22   **A** Yep.

23   **Q** What kind of an operation was there before you got there?

24   **A** Well, that's interesting. You know, I didn't know who  
25      lived in the house before me, but I literally found a Mason

1 Q Did you ever read the covenants before you bought the  
2 property?

3 A I got a copy of the covenants when I bought the property,  
4 yeah.

5 Q Did you read them before you bought the property?

6 A No, they came with the closing papers. But we also rented  
7 before we bought for a few years and got to know the  
8 neighbors and made sure that this was a good purchase for  
9 us.

10 Q You rented that house that you're in now before buying?

11 A Correct.

12 Q Do you know of any -- do you know of any enforcement action  
13 besides this one where somebody sought to enforce the  
14 covenants in that area?

15 A No.

16 Q So you're a plaintiff in this matter. What are you asking  
17 the Court for here?

18 A I'm asking the Court to not allow any further subdivisions  
19 in our community, or what do you call it, the association  
20 or --

21 Q Subdivision?

22 A Subdivision, yeah. No further subdivisions in our  
23 subdivision, right, that's line B in our covenants,  
24 straight up, prohibited.

25 Q Okay. Anything else you're asking for?

1 MR. CLAYBORNE: That's all I have. Thank you.

2 MR. WIECZOREK: One follow-up.

3 REDIRECT EXAMINATION

4 BY MR. WIECZOREK:

5 Q You allow your employees to park just in the grass?

6 A Yeah. Well, they can park anywhere they want, just out of  
7 the way.

8 Q Right. So you're allowing parking in areas, you haven't  
9 built any facilities there?

10 A Right, I haven't built anything.

11 Q Just added the gravel turn-around?

12 A (Witness nodded head.)

13 Q You have to answer out loud.

14 A Yes. Sorry.

15 MR. WIECZOREK: Thank you, that's all I've got.

16 THE COURT: Mr. Clayborne?

17 MR. CLAYBORNE: Nothing.

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

19 MR. CLAYBORNE: May he be released from his subpoena?

20 THE COURT: Mr. Wieczorek?

21 MR. WIECZOREK: Yes.

22 THE COURT: All right. He may be released. Mr. Wieczorek?

23 MR. WIECZOREK: Your Honor, I would call Mr. Schmidt to the  
24 stand, Jerry Schmidt.

25 THE COURT: All right, please come forward, sir.

1 MR. CLAYBORNE: Nothing further.

2 MR. WIECZOREK: Nothing further, Your Honor.

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

4 THE WITNESS: Thank you.

5 MR. WIECZOREK: Call Clyde Straatmeyer.

6 THE COURT: All right. Please come forward, sir. All  
7 right, sir, you've been previously sworn, so I'm not going  
8 to have you sworn in again, but you still are under oath.  
9 Do you understand that?

10 THE WITNESS: I do.

11 THE COURT: Okay.

12 **CLYDE STRAATMEYER,**

13 called as a witness, having been previously sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WIECZOREK:

17 **Q** Mr. Straatmeyer, there's been some question on the building  
18 permit and I think I kind of want to just start there  
19 because there's been some conversation on what was known  
20 when. I want to make sure we all know this. If you look  
21 to Exhibit 104. Do you remember Mr. Clayborne asked you  
22 about that? It's in the white binder.

23 **A** Um-huh.

24 **Q** He pointed you to that third paragraph above the signature  
25 where it talks about being familiar with the covenants. Do

1       you remember that?

2       **A** I do.

3       **Q** Okay. At the time of signing these documents, did you  
4       believe there were any covenants against the land?

5       **A** I did not.

6       **Q** And why not?

7       **A** We had no notifications of them, or just had no knowledge  
8       of them.

9       **Q** So you just heard Mr. Clayborne asking Mr. Schmidt about  
10      title work. Did there come a time when you went back to  
11      the title company to find out why you had no knowledge of  
12      it?

13      **A** Yes. I think it was in your letter, Mr. Clayborne's letter  
14      that might have said we should have known at the time of  
15      closing or something to that effect, and so we went back  
16      and started looking through the documentation we got at the  
17      time of closing. At the time of closing, they asked us if  
18      we wanted copies of everything electronically or in paper,  
19      and I said both. So my wife and I, we went back and  
20      started searching through the documentation, the electronic  
21      version, all that type of thing. We could not find  
22      anything referring to covenants. So I called Pennington  
23      Title, I believe it was Greg Wick that did our closing and  
24      he said that --

25      **MR. CLAYBORNE:** Your Honor, to the extent that this calls

1 for conversations of somebody that's not a witness, I'd  
2 object for hearsay.

3 THE WITNESS: Oh, okay.

4 THE COURT: It is hearsay.

5 MR. WIECZOREK: Your Honor, it's being offered to show why  
6 he believed that he didn't have any covenants on the ground  
7 when he signed this where it says he's familiar with the  
8 covenants. He's been cross-examined why, because the  
9 allegation's basically that he should have had knowledge  
10 and he's explaining why he didn't or didn't believe there  
11 were any at the time.

12 THE COURT: So not offered for the truth of the matter  
13 asserted, is that what you're saying?

14 MR. WIECZOREK: Right.

15 THE COURT: Mr. Clayborne?

16 MR. CLAYBORNE: If he's relying on a statement made by a  
17 nontestifying party, that's classic hearsay. So if that's  
18 the basis for his stating why, I can't see a -- I didn't  
19 hear an exception to the hearsay rule, I guess, Your Honor.

20 THE COURT: Well, you're stating that it's not hearsay  
21 because it's not offered for the truth of the matter  
22 asserted?

23 MR. WIECZOREK: Yes, it shows why he believed there were no  
24 covenants.

25 THE COURT: All right. The objection is overruled. You



1       may answer.

2       **A** So we were told that the title search, title work, because  
3       the property was in Meade County, they ordered the title  
4       work and search from the title company here in Sturgis,  
5       Black Hills Title I believe it is, and we would have gotten  
6       the information from them, and I would have to contact them  
7       as to why we didn't get it.

8               When I contacted them, it was indicated that when  
9       Pennington County ordered the title work, they did not  
10      submit any other buyers or sellers or emails or anything  
11      like that. The only address they provided was Pennington  
12      Title's.

13      **Q** (BY MR. WIECZOREK) And so at the time you signed the  
14      applications in April of 2021, what was your belief as to  
15      there being any covenants?

16      **A** There were no covenants.

17      **Q** Let's back up now, at least time wise, and you heard Mr.  
18      Schmidt talk about the fact that you looked at the land and  
19      hooking up the land. Can you explain to the Court what you  
20      did to see if this would work for what you were trying to  
21      do?

22      **A** Well, that's quite a -- our goal, my wife and I, excuse me,  
23      was to get land and build a barndominium, if you would,  
24      that was our goal to build one of those, and so we were  
25      kind of after the least amount of land possible to do -- to

1       septic?

2       **A** Oh, absolutely none. The guy -- the perk test is done by a  
3       professional, a guy that will be putting in the wastewater  
4       system. He said it was super good, excellent ground for  
5       that.

6       **Q** So going back, you put up a post and is that when you got  
7       served?

8       **A** That is correct.

9       **Q** And the Complaint sets forth that you violated in four  
10      different areas. Do you recall that?

11      **A** Yes.

12      **Q** One, that the structure has a larger than a three-car  
13      garage?

14      **A** Yeah.

15      **Q** And how many garages are you going to have on that?

16      **A** Three stalls.

17      **Q** One contends that a proposed pole barn is considered a  
18      modular structure in violation of Section B. Do you agree  
19      with that?

20      **A** No, I have no idea how that would have even came about.

21      **Q** Does this have a poured -- does this have a concrete slab,  
22      or is it going to be just on the dirt?

23      **A** Well, you put the posts in first to construct the building  
24      and then you pour the slab within it, yes.

25      **Q** Okay. So the poles are put in the ground?

1   **A** Oh, absolutely, down to below frost line, yes.

2   **Q** Concrete?

3   **A** At the bottom of the posts, yes.

4   **Q** The proposed structure is on a subdivided lot which we've  
5   talked about, correct?

6   **A** Yes.

7   **Q** And proposed structure is constructed within 40 feet of the  
8   boundary line. There was a question that Mr. Clayborne had  
9   that, oh, you drove around to find violations. When did  
10   you do that?

11   **A** After we were served.

12   **Q** In front of you there is a set of pictures marked as  
13   Exhibit 10. Do you see those?

14   **A** Yes.

15   **Q** Did you put together this packet of pictures?

16   **A** Yes, I did.

17   **Q** All right. So I'm just going to walk you through it.  
18   There's also a Defendants' Exhibit 2 which just kind of  
19   showed an overview of the whole neighborhood, is that  
20   correct?

21   **A** Yes, and the names on each lot.

22   **Q** So -- and we have the plat too. So let's just take a look  
23   at these pictures. So what's the first picture? Well, let  
24   me ask you. There's comments on these pictures. Are those  
25   your comments?

1     **A** Yes, they are.

2     **Q** Is this from your inspections and observations of these  
3       locations?

4     **A** Yes.

5     **Q** Okay. Let's start with the first page. Can you explain to  
6       the Court what that shows?

7     **A** Well, it shows a sizable Morton pole post frame building on  
8       that property. He's got the two-car garage on his house  
9       and a sizable building similar to what I intend to build on  
10      that property.

11    **Q** And if you look at the second page on that, is that -- is  
12      this the same property taken from the street level then?

13    **A** Yes, it is.

14    **Q** So how many garage spaces does he have?

15    **A** Well, he's got the two on the house and many numerous in a  
16      building that size.

17    **Q** And third page?

18    **A** Same lot, different angle. Again showing the size of that  
19      post frame building.

20    **Q** So Lot Number 2 would violate the three-car garage rule is  
21      your understanding?

22    **A** Oh, in a big way.

23    **Q** Then the next page has a Lot Number 3. Can you explain to  
24      the Court what that shows?

25    **A** The Lot Number 3 is a similar; they have a two-car garage

1 on the house. They also have another post frame building,  
2 again similar building as to what I was proposing, and they  
3 actually since this Google Earth picture was taken, there  
4 is another building that was constructed to park their RV  
5 in.

6 **Q** And so is the picture after that, is that of Lot 3 also but  
7 from street level?

8 **A** Yes, it is.

9 **Q** And so how many garage spaces did you count there?

10 **A** Well, the again the size of the building, you could park  
11 many in there. The building on that left on that top  
12 picture, that's the building that they just recently put up  
13 to park their RV in. The other -- so there's two post  
14 frame buildings on that location. The other one is on the  
15 lower picture.

16 **Q** And then they have a garage attached to the house too?

17 **A** Yes, they do, a two-car garage too.

18 **Q** Go to Lot Number 5.

19 **A** Lot Number 5, same thing, they have a two-car garage  
20 attached to the house, plus an oversized two-car garage  
21 built right beside it to where he could park one vehicle  
22 between them, but very close in proximity, and that's an  
23 oversized garage, plus he's got two storage sheds in the  
24 back that are well within the 40-foot proposed setback.

25 **Q** So the second, the page following the Lot 5 overview, --

1     **A**   Yes.

2     **Q**   -- what does that show?

3     **A**   That's the view of their properties as taken.

4     **Q**   That's the street view?

5     **A**   Yeah, street -- well, I think that's standing on my  
6       property.

7     **Q**   Okay.  So this property is immediately east of your  
8       property, correct?

9     **A**   That's correct.

10    **Q**   And so you've got the double garage attached to the house?

11    **A**   Yep.

12    **Q**   And then you've got a two-stall garage next to it?

13    **A**   Yes, oversized.

14    **Q**   And then you have a van parked between?

15    **A**   He does carpet installation and so that's his company van.

16    **Q**   And so he has a parking area for his company van?

17    **A**   Yes, cemented.

18    **Q**   So do you know, does he run his business out of there as  
19       far as you know?

20    **A**   As far as I know.

21    **Q**   And so he has parking facilities for his business, correct?

22    **A**   Yes.

23    **Q**   And then he would violate the three-car garage rule?

24    **A**   Yes.

25    **Q**   Okay.  And the next picture then shows a shed.  Was this on

1 Mr. Hood's property too?

2 **A** That's correct, that's his shed that's right there adjacent  
3 to our line.

4 **Q** And this is the shed that the surveyor shot?

5 **A** Yes.

6 **Q** I'm going to take you to the next one, that's an overview  
7 of Lot Number 7. Can you explain to the Court what this  
8 is?

9 **A** Well, this was on the supposedly 40-foot setback rule is  
10 obviously -- we had recently had our lot surveyed and  
11 plotted and stuff, so it was very easy to determine exactly  
12 for a layman where these lot lines are, and so this was a  
13 Google Earth picture with the blue being the road  
14 right-of-way, the 66 feet, and then the red was measured  
15 with Google Earth showing what I thought was about 16-foot  
16 away from that lot line.

17 **Q** All right. And I think the surveyor came up with 15.7, is  
18 that right?

19 **A** Yes, yes.

20 **Q** So that's closer than 40 foot from the lot boundary?

21 **A** Yes.

22 **Q** And that next page is just part of your survey that shows  
23 that you were using the distances, is that correct?

24 **A** Yes, that was a little screenshot I took of the plats to  
25 show the 66-foot wide to determine where the lot lines

1 would be.

2 **Q** And then the next page after that that shows a tape  
3 measure?

4 **A** Well, I took a tape measure then to get an idea,  
5 perspective, and 66 feet, and I stuck that tape measure in  
6 the ground and then took that photo to get a perspective of  
7 where that garage is in relationship to that lot line.

8 **Q** And so you actually measured from an established survey pin  
9 from the lot boundary --

10 **A** Yeah.

11 **Q** -- that you had just gotten reset?

12 **A** That is correct, a very visible and known pin, reference.  
13 That's why that one was easy.

14 **Q** And then the next page, what does that show about Lot 7?

15 **A** Well, that's the picture of the same property, Lot 7,  
16 showing a two-car attached garage and an oversized, again,  
17 garage, double garage, plus, behind it.

18 **Q** The next page is labeled Lot Number 9. Can you tell the  
19 Court what that shows?

20 **A** Yeah, that would be the Boadwine. I spelled it wrong here  
21 too. And again, you see two-car garage attached to the  
22 house. This is another Google Earth showing at that time  
23 two, I don't know if they were used vehicles, trucks parked  
24 in the back of the property, plus his current boom truck  
25 parked there, and just showing a large building in addition



1 to his two-car garage that's attached.

2 Q All right. So it shows the two vehicles up in the  
3 right-hand corner?

4 A Yep.

5 Q The boom truck down there by the two-car detached  
6 shed/garage?

7 A Right.

8 Q And then a couple trailers that are parked in that area  
9 too, correct?

10 A And those are parked right on the lot line on the Summerset  
11 residential area.

12 Q That boom truck is?

13 A Yeah, those fences are the residents of Summerset.

14 Q Do you know how big the lots are in Summerset right there?

15 A I do not.

16 Q And the next page, can you show tell the Court what that  
17 shows?

18 A Well, that's a picture, that's the only picture I could get  
19 from the road showing that same lot, you know, showing the  
20 two-car garage in the front of the house, but that's all I  
21 could get from the house -- or from the road.

22 Q Otherwise then, Mr. -- the photos we went through with Mr.  
23 Boadwine show the rest of his property?

24 A Excuse me?

25 Q The photos I went through with Mr. Boadwine show the back

1 part of his property?

2 **A** Yes, yes.

3 **Q** But at the time you took these, you didn't have permission?

4 **A** Absolutely, no, I never -- when we went around to visit  
5 with neighbors, he was outside, so that's when we went up  
6 to visit with him. That's the only time I've been on the  
7 property and I didn't take any photos then.

8 **Q** All right. Lot Number 10 picture.

9 **A** Well, Lot Number 10, when you search for RC Peter  
10 Construction and the location, it actually places the pin  
11 on his lot there showing that that is his place of  
12 business, and again, it's an aerial view showing the extra  
13 buildings out there and everything else in addition to the  
14 two-car garage on the house.

15 **Q** So then the page after that overview, what does that show?

16 **A** Well, that's a photo again from the road. That's the best  
17 I could do just from the road.

18 **Q** And that's his back shed, correct?

19 **A** That's correct, his shop, or shed, yeah, the back building.  
20 I didn't get a picture of the house.

21 **Q** Okay. When Mr. Peter -- you were here when Mr. Peter  
22 testified?

23 **A** Pardon me?

24 **Q** You were here when Mr. Peter testified?

25 **A** Yes.

1 Q And that's the -- that's got the two garage doors and then  
2 the bay, correct?

3 A That's correct.

4 Q How many spots -- how big of a garage does he have attached  
5 to the house?

6 A Two-car.

7 Q So it violates the three-car garage?

8 A Yes.

9 Q And Lot 11, what does that show?

10 A Well, this is the lot, he's not part of the lawsuit, but as  
11 I was driving by, I took a picture of multiple garages in  
12 addition to his house and a couple of vehicles that were  
13 questionable on whether or not they run or not.

14 Q So besides just -- you've got one building with the  
15 two-door garage and then another building in this picture  
16 with two one-stall garages, correct?

17 A Correct.

18 Q Did he have a garage on his house too?

19 A I don't -- yeah, I'm not sure. I'm not a hundred percent  
20 sure there.

21 Q Okay.

22 A I initially didn't pay a lot of attention to his property  
23 because he wasn't listed as a plaintiff.

24 Q Yeah, you were just looking for people that were making the  
25 accusations, whether they were compliant with the

1 covenants?

2 **A** Yeah, I was interested in the people that are questioning  
3 it on what they're all doing.

4 **Q** How about 13 which is the next page?

5 **A** 13 is the -- yeah, that end lot. Again, a Google Earth  
6 picture showing a two-car garage attached to the house,  
7 plus an oversized two-car garage behind it.

8 **Q** So are there any structures on Lot 1 in this subdivision?

9 **A** No.

10 **Q** So nobody's built on to that lot?

11 **A** No, that's a vacant lot.

12 **Q** And I also show you now what's marked as Defendants' 18.

13 **A** Um-huh.

14 **Q** And can you describe what Exhibit 18 shows?

15 **A** Well, that's a structure, could be a single car garage, and  
16 it's constructed on site. It has a full concrete slab  
17 under it. You can see the concrete on all sides of it.

18 **Q** So you've looked at it?

19 **A** Yes.

20 **Q** And where is that in relation to the property line?

21 **A** It appears to be right -- this is the one that the surveyor  
22 showed right on the property line, or the .2 feet.

23 **Q** And that would be whose property?

24 **A** Cottingham.

25 **Q** And what lot number are they?

1   **A** I've got to reference that.

2   **Q** If you look at your Exhibit 2, I think you've got it  
3       written on it.

4   **A** Yeah. That would be 10, or 11? I think it's 10.

5   **Q** Lot 10 is Mr. Peters' property.

6   **A** Oh, then that's the one across the road, 11. Yeah, with  
7       the road I see in there, it's across the road from Mr.  
8       Peter, so it would be 11.

9   **Q** So what are you asking this Court to do here today?

10   **A** Well, I'm not wanting to go in and change everything in the  
11       neighborhood and force people to tear down buildings and  
12       all that, but I also don't feel it's right that they hold  
13       me solely to the covenants when other people have very  
14       blatantly knowingly violated them all the time. I mean,  
15       I've heard people say that they bought their place of -- or  
16       their structure or their lot to do business out of and  
17       that's why they bought it, and I just want to peacefully  
18       continue on with my project.

19   **Q** So you basically are asking this Court to declare the  
20       covenants null and void?

21   **A** Exactly. I mean, they're 45 years old. They really don't  
22       pertain really well. Obviously there's a huge number of  
23       violations. Probably a majority of the people by far have  
24       violated the covenants in one way or another.

25   **Q** Yeah, let's -- not to go back through it, but if you pick

1 up your pictures of Lot 10 -- I mean, excuse me, of  
2 Exhibit 10.

3 **A** Yes.

4 **Q** You say there's no -- Lot 1 is bare, correct?

5 **A** That's correct, yes.

6 **Q** And Lot 2, you show the three-car garage violation,  
7 correct?

8 **A** Yes, and full-sized post frame building there.

9 **Q** And that's -- so if you do a count of that, plus the  
10 Cottingham one, can you do a quick count and tell me how  
11 many lots you found violations on?

12 **A** I count seven at least.

13 **Q** Well, you count Lot 2.

14 **A** Okay, Lot 2.

15 **Q** If you look at your pictures --

16 **A** Oh, eight. Now I've got eight.

17 **Q** And then Cottingham on top of it?

18 **A** Yeah.

19 **Q** So that's nine lots that you found violations on?

20 **A** Yeah, eight or nine, yeah.

21 **Q** And that subdivision has 12 lots in total?

22 **A** I believe that's correct, or 13, 12.

23 **Q** The plat in front of you should show you how many.

24 **A** Yep. Sorry, I don't know all that by heart.

25 **Q** That's fine. You can look at it in actually Mr.

1 Clayborne's Exhibit 101.

2 **A** It's 13. Counting the one on the other side, there's 13 I  
3 see.

4 **Q** Okay. So understanding that you're not -- it's not your  
5 preference that the Court -- it's your preference the Court  
6 throw out the covenants given the fact that 9 out of 13  
7 lots have existing violations. If the Court enforces the  
8 covenants, what are your beliefs the Court should do for  
9 enforcing the covenants against the neighbors?

10 **A** If it's enforced against one, shouldn't it be enforced  
11 against all?

12 **Q** And so in your counterclaim, that's the relief you asked  
13 for?

14 **A** Exactly.

15 **Q** Either throw out the covenants, or enforcing the integrity?

16 **A** Or it's for everybody.

17 **Q** Do you have any way to un-subdivide your lot?

18 **A** No. No, that bell has rung. I mean, the property was  
19 subdivided off. It's been sold. That's impossible to  
20 undo.

21 **Q** And so --

22 **A** And the lot would become virtually worthless because the  
23 lot is only a hundred feet wide, which means you could only  
24 put a 20-foot wide structure on it.

25 **Q** So if you -- so basically you'd be out all of -- all your

1                                   **ROBERT HOOD,**

2           called as a witness, being first duly sworn, testified as  
3           follows:

4                                   DIRECT EXAMINATION

5           BY MR. CLAYBORNE:

6           **Q** Can you please state your name for the record?

7           **A** Robert Gerald Hood.

8           **Q** And you've been in the courtroom today?

9           **A** Correct.

10          **Q** And you're a plaintiff in this action?

11          **A** Correct.

12          **Q** How long have you lived in the Shadowland Ranch  
13          Subdivision?

14          **A** Seventeen years.

15          **Q** And when you purchased your property, were you aware of  
16          covenants associated with that property?

17          **A** Yes, we were.

18          **Q** Did you understand or come to any understanding as to any  
19          restrictions in the covenants on garages or detached  
20          buildings?

21          **A** I understood that I have an attached garage, and if I  
22          wanted to build like everybody else in the neighborhood  
23          did, I had the availability, from our realtor of course.

24          **Q** Is there anything in the covenants, and you can refer to  
25          them, they're Exhibit 101, do you find anything in the



1    **Q** Did you have to build any additional parking on your lot in  
2       order to accommodate your work vehicle?

3    **A** No, that space, the space between the house and the garage  
4       is gravel because I have a double gate there for my dogs to  
5       come out and when I go back in there to mow, so I have an  
6       eight-foot wide gate and that's what the county told me I  
7       had to be spaced from in order to build a detached garage  
8       next to my attached garage. I need to have so much  
9       variance.

10   **Q** There has been some questions about covenant enforcement.  
11       Have you, yourself, ever been subject to any covenant  
12       enforcements?

13   **A** Yes, I was.

14   **Q** Can you explain that to the Court?

15   **A** 2008 I was going to build an additional garage, the one  
16       that's existing now, on my property and when I had it  
17       staked out, I had it too close to the property line  
18       apparently because I received a notice and a letter  
19       unaddressed, other than to Robert Hood, no stamp, no return  
20       address, to me stating that I was too close to the property  
21       line. And so I referred to our covenants, and what we did  
22       is we re-staked it and moved it back to where I was 40 foot  
23       6 inches away from the property line and built it that way  
24       by my contractor.

25   **Q** Did that notice contain any indication that a detached

1 walking that property.

2 Q And so -- but you saw the stakes, you saw the --

3 A I saw some stakes, yes.

4 Q You saw the surveyor out there?

5 A Yes.

6 Q And when did you see the surveyor out there?

7 A Sometime in '20.

8 Q All right. So that space between the house and the  
9 detached two-car garage, you just gravelled?

10 A Yes, it's got rock in it. Not even gravel. It's like  
11 three-quarter to one-inch wide rock that just -- I just  
12 went over to Frontier Stone and grabbed a pickup load and  
13 just dumped it in there.

14 Q And you do run your business out of your house?

15 A No, I do not.

16 Q Do you have a separate business address?

17 A No, I do not. I have a mailing address as my house, but I  
18 go to job sites and warehouses and stores and pick up, and  
19 I don't store anything on my property. I don't -- except  
20 for my van which I drive to work and drive home from work.

21 Q You have no physical work space; you just go to job sites?

22 A Correct, I pick up at stores. I'm not a salesperson. I  
23 only install.

24 Q Right, and you keep your work van parked between the  
25 buildings?

1 MR. WIECZOREK: That's all I have, Your Honor.

2 THE COURT: Any more questions, Mr. Clayborne?

3 MR. CLAYBORNE: Nothing further, and with that, we would  
4 rest, Your Honor.

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

6 THE WITNESS: Okay.

7 THE COURT: Any surrebuttal witnesses?

8 MR. WIECZOREK: None, Your Honor.

9 THE COURT: All right. Well, it's my intent to take this  
10 under advisement. I received the proposed findings and  
11 conclusions. Do the parties wish to supplement those or  
12 amend those?

13 MR. CLAYBORNE: I would.

14 MR. WIECZOREK: I think it makes sense. I mean, there's a  
15 lot of -- there's a lot going on here today that probably  
16 isn't addressed in there.

17 THE COURT: Yeah, and I have one of those to bring up also,  
18 but how much time do we need to supplement those?

19 MR. CLAYBORNE: Are we going to do it off the transcript?  
20 That would be my druthers, that way we can actually refer  
21 to specific testimony.

22 THE COURT: Okay, all right, my court reporter is saying,  
23 we have a criminal jury trial next week, so it might be  
24 three weeks from today before that transcript is prepared.  
25 Today is the 15th, so that's -- well, three weeks from

1       today is the 8th of March.

2       MR. CLAYBORNE: And then perhaps Talbot and I just can get  
3       -- I think we're talking about doing simultaneous, then  
4       with a short period for rely just on the counterclaim  
5       thing, so we can probably discuss that and let the Court  
6       know if that's acceptable.

7       THE COURT: Okay. You don't want me to set any deadlines  
8       at this point then?

9       MR. WIECZOREK: Yeah, I think we could tie it to -- I think  
10      we could just -- tell you what, judge, I would suggest that  
11      we tie it to the day that the transcript is available at  
12      some sort. The one problem I'm looking at is I'm out of  
13      the office the week of the 6th through the 12th.

14     THE COURT: Of March?

15     MR. WIECZOREK: Yeah. So I mean, if the transcript  
16     actually showed up there, I would probably need a longer  
17     time to respond even if you got it by the 8th. I mean, I  
18     guess what I'm saying is it doesn't make any difference if  
19     it's the 8th or the 14th to me.

20     THE COURT: Sure, all right.

21     MR. CLAYBORNE: So do we just want to go two weeks from the  
22     14th or something?

23     MR. WIECZOREK: Are you comfortable getting the transcript  
24     by that week?

25     THE COURT: I assume this can all be off the record?

1 MR. WIECZOREK: Yes.

2 (Off-the-record discussion.)

3 THE COURT: So back on the record. March 28th, which is a  
4 Monday, will be the due date for the amended or  
5 supplemental proposed findings and conclusions, whatever  
6 you want to call it. And then maybe this is what you're  
7 talking about, Mr. Wieczorek, but in your Answer, you talk  
8 about failure to join an indispensable party, and you refer  
9 to, let me make sure I get it right, you refer to other  
10 people who may have violations. Those aren't your words,  
11 but it's something like that. "Other parties are in  
12 violation of the covenants if the covenants are  
13 enforceable." Then in your brief that you submitted, your  
14 pretrial brief, you talk about indispensable party and I  
15 think in that case you refer to prior landowner, owner  
16 of 6.

17 MR. WIECZOREK: And if you look at the Answer, there's a  
18 discussion of an indispensable party from the fact of the  
19 city, and so my indispensable argument, Your Honor, would  
20 be limited to the fact that we can't -- if the request is  
21 to unplat it or to do something about the platting, you  
22 would have to have named the city and the other landowner,  
23 so that's really what our argument's with. That violation  
24 is basically waived legally because you didn't name the  
25 other parties involved in that issue.

1 THE COURT: Okay. And were you planning on addressing that  
2 in your proposed findings and conclusions?

3 MR. WIECZOREK: Yes, I will, yes.

4 THE COURT: Okay.

5 MR. CLAYBORNE: And just so the Court is aware, the nature  
6 of the action is a declaratory judgment action, and that is  
7 the -- I am looking at the first paragraph that says, "This  
8 is an action for declaratory judgment to declare the  
9 covenants to be valid," and then from that ruling is where  
10 we would take it and do whatever's necessary after that,  
11 but that's got to be the first step in this process.

12 THE COURT: Okay. Then I guess my question, Mr. Wieczorek,  
13 is you talked about our deadline is the 28th and then a  
14 week after that, what is the purpose for that?

15 MR. WIECZOREK: The only thought I have, sometimes, Your  
16 Honor, parties like, okay, if he's going -- if we're going  
17 to submit simultaneous, if there's anything we feel we need  
18 supplement a week later. Given the fact we've already  
19 submitted, given the fact he's already submitted, I think  
20 the 28th would probably suffice unless somebody is  
21 requesting -- and if I think there's -- if there's a need  
22 to do something else after that, I'll ask the Court's  
23 indulgence.

24 THE COURT: Okay. So we won't set any additional  
25 deadlines, just that 28th.

1 MR. CLAYBORNE: And I agree with him. I think that would  
2 be prudent at least to have the Court aware that that  
3 typically happens in my experience with findings and  
4 conclusions.

5 THE COURT: Okay. All right, well, we'll see what happens  
6 after the 28th. All right, anything else for the record,  
7 Mr. Clayborne?

8 MR. CLAYBORNE: Nothing, Your Honor.

9 THE COURT: Anything else for the record, Mr. Wieczorek?

10 MR. WIECZOREK: Nothing, Your Honor.

11 THE COURT: All right. Thank you. We'll be in recess.

12 (These proceedings were concluded.)  
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STATE OF SOUTH DAKOTA       )  
  ) SS.  
COUNTY OF MEADE            )

IN CIRCUIT COURT  
  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS    )  
and PATRICIA DONOVAN, BERNARD        )  
and MARIA JUNG, WILLIAM and JANICE    )  
PRICE, JAMES and KAY FENENGA,        )  
LARRY and DARLENE BAILLY, GREG       )  
and DEB PETERS, MARK and KITTY        )  
GUSTAF, and RODNEY and GINA           )  
BOADWIRE,                                )

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY        )  
STRAATMEYER,

Defendants.

46CIV21-000206

**DEFENDANTS' PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF  
LAW  
(POST TRIAL)**

This matter having come before the Court on February 15, 2022 and Plaintiffs having been represented by Courtney Clayborne of the law firm of Clayborne, Loos and Sabres and the Defendants by Talbot Wieczorek of Gunderson Palmer Nelson and Ashmore. The Court having taken evidence on the matter and arguments, the Court hereby sets for its findings and conclusions as follows:

**FINDINGS OF FACT**

1. Defendants Straatmeyers are the record owners of a lot more fully described as: Lot 6B of tract 3 located in NE1/4 NW1/4 of Section 36, township 3 North, Range 6. The lot was subdivided out of a larger lot referenced as Lot 6. The subdivision of Lot 6 resulted a Lot 6A and Lot 6B. The owners of Lot 6A are not a party to this lawsuit.



2. The Plaintiffs are all owners of lots within the same subdivision known as Shadowlands Subdivision.
3. Lot 6 was split by Defendant Straatmeyers' predecessor in interest through the filing of a plat with the City of Summerset.
4. A set of covenants was filed on the properties dated September 20, 1976 (hereinafter, "1976 Covenants").
5. The covenants have never been enforced although several violations of the covenants pre-exist the subdividing at Lot 6.
6. Defendants Straatmeyers bought the property after the property was subdivided in 2020.
7. When Defendants Straatmeyers looked at buying a lot they walked the property several times. Prior to the property being platted the property was staked and measurements taken. Stakes were placed in the ground and the stakes remained in the ground for several months. Although the stakes were clearly visible to any passerby and specifically the Hoods who lived next door, no questions were asked of the then current owner or any other investigation done by any parties as to the activity.
8. A surveyor was out at the property and flagged and pinned Lot 6 before commencing the plat. No questions were raised by Hoods or any other party regarding this activity. The activity was visible and markings in the ground were visible to any passerby.
9. The City of Summerset oversaw the platting of Lot 6 and has jurisdiction over platting in the area.
10. The process that the City of Summerset follows goes through planning and then through City Commission for approval of the lot.

11. A resolution authorizing the plat and the City Commission minutes were published in the City's paper of record on two different days.

12. No Plaintiffs nor any other party objected to the platting of the property. No objection was made to the City, the Straatmeyers or the owner of Lot 6.

13. No appeal was taken from the platting of the property.

14. When Defendant Straatmeyers purchased the lot, they were not provided a set of the covenants by anyone. Defendant Straatmeyers were unaware of the existence of the covenants at the time of the purchase of the lot and only became aware of the covenants after conversation with Hood.

15. The title company never provided Defendant Straatmeyers a copy of the covenants so when purchasing the lot Defendant Straatmeyers were not on notice of the existence of the covenants.

16. After buying the property, Defendant Straatmeyers hired a contractor who commenced construction. Construction included excavation work and commencing other activities. It was only after construction work began that Hoods approached Defendants Straatmeyers.

17. When submitting the building permit Defendants Straatmeyers were unaware of the existence of covenants and firmly believed there were none because they had not been provided by the title company at closing.

18. The planned structure is a permanent structure to be constructed on the lot.

19. When the contractor began work on the lot, Plaintiff Robert Hood claimed the construction was in violation of certain covenants and threatened Defendants Straatmeyers with litigation and physical force if they continued to construct.

20. Defendants Straatmeyers stopped building when the suit was filed. Currently, the ground is prepared for construction and support posts in place.

21. Plaintiffs asserted various violations of the covenants.

- a. Lot 6 should not have been divided;
- b. The proposed structure has more than a three car garage in violation Section A of the covenants;
- c. The structure is a modular structure in violation of Section B of the covenants; and
- d. The structure is being construction within 40feet of the lot line. See Section H of the covenants.

22. The proposed structure is not a modular structure but a permanent structure that would have a poured concrete floor, support beams into the ground and concrete footings. The structure would not be modular but constructed on site.

23. The proposed structure would have three garage doors with one garage large enough for a recreational vehicle (RV).

24. Several lots in the area already have multiple garages, many big enough to park an RV and more than three garage spaces.

25. Plaintiffs assert that one can have a three car garage connected to the house and then as many other garages and outbuildings as they may want and still comply with the covenants.

26. Plaintiffs contend their extra garage spaces are allowed because they are not attached to the residence. Plaintiffs also contend there is no prohibition against building a

structure large enough for RV's. No one has sought to stop these Plaintiffs or other owners from building out buildings resulting in more than three garage spaces.

27. The Defendants' building has three garages that can be used for cars, one big enough for an RV.

28. An RV is a motorized vehicle that people can drive fitting into the definition of a "car." The covenants do not prevent a garage from being big enough to put an RV inside. Further, the covenants do not prevent somebody from having an RV garage and two car garages.

29. The proposed structure will be within 40 feet of the side lot lines although it will be outside the setbacks as provided for by the County.

30. Covenant Section H provides as follows: "No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot." This definition applies to all buildings not just houses.

31. Multiple other buildings within the subdivision are within 40 feet of the property lines.

32. The Hoods, who share a lot line with the Defendants Straatmeyers, have sheds within 40 feet of the property line. These sheds may be able to be moved but constitute buildings within the 40 feet of the lot boundary. Hoods have not sought to move the sheds since the commencement of this action. No one has sought to enforce the covenants against Hoods.

33. Across the street from the Defendants' property, Plaintiffs Baillys have built a building that is an outbuilding with shop and garage in the 40 foot setback. The Baillys' building is within sixteen feet of the actual road. The Baillys' building violates the County setback also. This setback is also noted for the lot that any building should be more than twenty five feet from the road. No one has sought to enforce the covenants against Baillys.

34. The Baillys' building is visible from the main thoroughfare coming into the subdivision.

35. Across the street from Lot 6A, the other lot that was subdivided out of the Lot 6 parcel, is a building within 16 feet of the lot line.

36. There are other buildings in the subdivision in the 40 foot setback. No one has sought to enforce the covenants against these other owners.

37. In addition to the shop and garage that Bailly's have built within 40 feet of the lot line Baillys' have also placed a shed within seven feet of the south lot line.

38. Plaintiffs Peters have also constructed a shed on their lot within nine feet of the lot boundary.

39. Lot owner 11, the Cottinghams, who are not parties to the action, constructed a building with a concrete foundation immediately adjacent to the lot boundary fronting the road. This building is also in violation of the County setback.

40. None of the Plaintiffs or any other party has challenged the placement of Hoods', Baillys', Peters' or Cottinghams' structures within 40 feet of the lot lines.

41. The location of the Defendant Straatmeyers' lot is off of a cul de sac that has two other homes on it, the Hoods' home and the Donovans' home.

42. No other Plaintiffs' home faces Defendant Straatmeyers' property nor would any other Plaintiff regularly drive by Defendant Straatmeyers' property.

43. There are at least two businesses that do business within the subdivision. One is R.C. Peters Construction, Inc. and the other is Aim High Tree Service.

44. Aim High Tree Services is owned by the Boadwire family and is located on Lot 9. On the lot Boadwire has employees park in grassy areas and also has parked equipment on the

lot. Gravel has been added to the lot for a turnaround. Boadwire has his employees drive in every day and get equipment, trucks and commercial trucks used for his business, and leave with those trucks and then return at the end of the day.

45. Part C of the covenants prevents businesses that require extra parking, result in materials being stored outside any dwelling.

46. The addition of parking is a violation of the covenants Part C. The Boadwire lot also has more than three garage stalls.

47. Plaintiffs Peters, who live on Lot 10, also run a business out of the lot. Peters keeps materials and equipment from jobs outside the dwelling. Multiple parking spots have been developed on the property for business equipment such as trailers and skid steer. Storage of materials and the extra parking is a violation of covenant Section C. Peters also has more than three garage stalls having a house with two garage stalls and an outbuilding with three garage stalls. This is all in addition to having a structure built within 40 feet of the lot line.

48. Both Boadwire and Peters operate businesses out of these residential lots and there is increased traffic associated with both businesses that interferes with lawful enjoyment of the subdivision in violation of covenant Section C.

49. The operation of both businesses is a violation of the covenants. No one has sought to enforce the covenants against these violations.

50. Plaintiffs contend that all other violations besides Defendant Straatmeyers' should be allowed because the majority of the residents do not object to those violations. The covenants do not provide for a majority of owners to waive any covenant violations. Allowing homeowners within a subdivision to selectively enforce covenants against some property owners or new

property owners that move in while allowing property owners who have been there longer to maintain covenant violations would be inequitable and unjust.

51. No one has any record of anyone attempting to enforce the covenants since their recording in 1976.

52. Plaintiffs called Eddie Opstedal who had developed the subdivision in 1976 and executed the covenants.

53. Plaintiffs sought to introduce testimony from Mr. Opstedal interpreting Part H of the covenants, specifically that the 40 feet “of the boundary of said lot” meant something different for the side lot boundary versus the part of the lot boundary that fronted the road. The language of Part H of the covenants is not ambiguous. The phrase “boundary of said lot” has a legal, distinct meaning.

54. The lots within the subdivision are platted lots. The lots do not include the roadways. The boundaries of the lots are established and not ambiguous.

55. Lot owners are not required to pay property taxes on the roadways as the lot owners do not own the roadways.

56. As the boundary of said lot has a distinct and clear legal meaning, testimony trying to interpret the meaning of the phrase is inappropriate.

57. Opstedal was also asked questions regarding Section A of the covenants. That subsection provides: “There shall be only one single family dwelling per lot with no larger than a three car garage.” The question of whether the three car garage restriction applied to all buildings on the lot or to just the house is unclear and Section A is ambiguous. Because Section A of the covenants is ambiguous, testimony regarding the intent of the drafter may be relevant and admissible.

58. Opstedal testified as the party requesting the drafting of the covenants and creator of the subdivision the intent of Section A was that the three car garage restriction applied to all structures on the lot permitting only three total garage spaces on the lot.

59. Opstedal also after reviewing the activity on Boadwine and Peters' property concluded that both violated the covenants' doing business clause.

60. There exists multiple violations of the covenants on numerous lots. Violations include the following:

- a. Lot 2, owned by the Plaintiff Jungs, violates the covenants by having more than three garage spaces.
- b. Lot 3, owned by Plaintiffs Price, violates the covenants by having a two car garage on the house and two post frame buildings with additional garage spaces in each building.
- c. Lot 5, owned by Plaintiffs Hoods, has more than three garage stalls and a shed that encroaches in the setback.
- d. Lot 6A is the subdivided lot.
- e. Lot 7, owned by Plaintiffs Baillys, has two buildings that are closer than 40 feet from the lot boundary and have more than three garage stalls.
- f. Lot 9, owned by Plaintiffs Boadwires, violates the doing business provisions of the covenants and has more than three garage stalls.
- g. Lot 10, owned by Plaintiffs Peters, violates the covenants by having a business operation in violation of the covenants, having more than three garage stalls and a structure built in the setback.



- h. Lot 11, owned by Cottinghams who are not a party, violates the covenants by having a structure within 40 feet of the lot boundary and having more than three garage stalls.
- i. Lot 13, owned by Plaintiffs Gustafs, violates the covenants by having more than three garage stalls.

61. Plaintiffs assert that covenant violations of other lot owners living in the subdivision that pre-exist Defendants Straatmeyers' purchase of Lot 6B were agreed to by a majority of the owners or are grandfathered in. The covenants do not have a provision that permits a majority of people to allow certain violations while contesting others.

62. The violations of the Plaintiffs are ongoing and continuing. Violations cannot be grandfathered in as the violation is generally referred to as being grandfathered is an activity that existed prior to the rule coming into place. Plaintiffs' violations are ongoing.

63. The proposed building of Defendants Straatmeyers as set forth in their building permit does not violate the three garage stall covenant and is not a modular structure and does not violate the covenants as a modular structure.

64. The lot that the Straatmeyers purchased from Mr. Schmidt is a lot that was subdivided where the resulting two lots were sold to the Wilsons, Lot 6A and to Defendant Straatmeyers', Lot 6B. These lots cannot be unplatted in this action as the Wilsons are not a party, the City of Summerset has jurisdiction on platting in this area and the plat does not violate Summerset ordinance.

65. Defendant Straatmeyers' proposed structure would be within 40 feet of the lot boundary.

66. Having not objected to the platting of the property and not including all parties necessary for any resolution as to the platting issue of the property, Plaintiffs are estopped from asserting that the plat was improper based on their failure to object to the platting by the City and inquire when stakes and flags were being posted.

67. As to the enforcements of the covenants, Plaintiffs have unclean hands as most of the Plaintiffs are in violation of the covenants and those that do not have specific violations of the covenants have allowed multiple violations of the covenants to exist.

68. Plaintiffs failed to enforce the covenants as to the Plaintiffs and other land owners within the subdivision and it would be unjust and inequitable to enforce the covenants against the Defendant Straatmeyers at this point.

69. Defendants would suffer substantial financial harm if the covenants were enforced. Defendants Straatmeyers have purchased the lot, began construction and enforcement of the covenants would render the land valueless.

70. Resulting harm to the majority of the Plaintiffs if Defendants Straatmeyers are allowed to continue their home, would be nominal or non-existent. This is especially true given that a structure of this type and size, pole built building of same or similar size, could have been built on Lot 6 even prior to the subdividing of Lot 6. Further, with the exceptions of two of the Plaintiffs, most Plaintiffs would not even drive by the structure.

71. As to Donovans and Hoods, they would see the structure but have no other harm would arise from the existence of the structure. Moreover, given that a structure this size could have been constructed on Lot 6 even prior to platting, any harm is minimal.

72. Plaintiffs' failure to object to the plat through an appearance at the City of Summerset or filing an action prior to the lots 6A and 6B being sold by the original owner results

in a waiver of their claim or in the alternative, they are estopped from claiming the plat was invalid.

73. Defendant Straatmeyers have no ability to remedy the alleged violation of the lot being subdivided because the owners of Lot 6A were not involved in this matter.

74. Plaintiffs' failures to enforce the covenant violations against others constitutes a waiver and an estoppel of Plaintiffs' right to enforce against Defendant Straatmeyers. Plaintiffs cannot selectively choose to enforce covenants by enforcing covenant sections against Defendant Straatmeyers while allowing other Plaintiffs and neighbors to violate the covenants.

75. If the Court was to order strict adherence to the covenants, it would have to order strict adherence to the covenants among all parties and the removal of all offending structures and bringing use into compliance.

76. Any of these findings of fact deemed to be a conclusion of law shall be considered a conclusion of law.

### **CONCLUSIONS OF LAW**

1. Plaintiffs seek to enforce the covenants and prevent or remedy violations of the covenants Plaintiffs claim exist as a result of the Defendants' actions. Defendant Straatmeyers assert that they are not in violation of the covenants or those violations that do exist cannot be subject to enforcement because of the myriad of covenant violations that exist within the subdivision. Defendant Straatmeyers further assert that if the Court finds the covenants enforceable against the Defendants, the Court must also enforce the covenants against the other parties that are in violation and bring them into compliance.

2. Interpretation of covenants constitutes a legal question. *Halls v. White*, 206 S.D. 47, ¶4, 715 N.W. 2d 577, 579. In interpreting the terms of a restrictive covenant, courts are to

use the same general rules of construction applicable to contractual interpretation. *Id* at ¶7, 715 N.W. 2d 580. When an ambiguity exists, a restrictive covenant should be read strictly as the Court and society favor the free use of property and a restrictive covenant should only be enforced if clear. *Hall v. White*, 206 S.D. 47 ¶5; *Breckwedg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965).

3. In the interpretation of the covenants in this situation, the drafter of the covenants testimony regarding the intent of the covenants should only be considered if there is an ambiguity. “[W]hen the language of a restrictive covenant is unambiguous, ‘its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature.’” *Jackson v. Canyon Place Homeowner's Ass'n, Inc.*, 2007 S.D. 37, ¶ 9, 731 N.W.2d 210, 212, (quoting *Halls v. White*, 2006 S.D. 47, ¶ 7, 715 N.W.2d 577, 580-81). Concerning Part H of the covenants the phrase, “boundary of said lot” is not ambiguous as lots are legally defined and the boundary of the lots are evident from the plats and legal description. As there is no ambiguity, testimony regarding what was supposedly intended by the phrase is not considered or admissible. The boundary of said lot refers to the actual boundaries of the lot, not some area outside of the boundary.

4. The reference to “three car garage” in Part A of the covenants is ambiguous as it is objectively unclear by the language as to whether the restriction of a three car garage relates to only a three car garage connected to a dwelling or any three garage stalls being a restriction on the entire lot. “The language of the Covenants is unambiguous when viewed objectively and in the context of the entire Declaration of Protective and Restrictive Covenants. ‘[A] contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated

agreement.” *Coffey v. Coffey*, 2016 S.D. 96, ¶ 9, 888 N.W.2d 805, 809 (quoting *Dowling Family P’ship v. Midland Farms*, 2015 S.D. 50, ¶ 13, 865 N.W.2d 854, 860). Because of the ambiguity, parole evidence can be considered in determining that the three car garage restriction applied to the entirety of the lot. Based on the testimony clarifying the ambiguity, the three stall garage language applies to the entirety of all structures on the lot.

5. Parties may waive the right to enforce the covenants against others by their failure to enforce the covenants against themselves and others in the neighborhood or due to unclean hands. The test for waiver of restrictive covenants has six factors: [1] whether those seeking to enforce the covenants had notice of the violation and the period of time in which no action was taken; [2] the extent and kind of violation; [3] the proximity of the violations to those who complain of them; [4] any affirmative approval of the same; [5] whether such violations are temporary or permanent in nature; and [6] the amount of investment involved. *Hammerquist v. Warburton*, 458 N.W.2d 773, 778 (S.D. 1990) (citing *Vaughn v. Eggleston*, 334 N.W.2d 870 (S.D.1983)). The analysis of waiver is fact specific. *Vaughn v. Eggleston*, 334 N.W.2d 870, 873 (S.D. 1983).

6. Parties’ rights to enforce covenants may be also waived by the doctrine of unclean hands wherein a party in violation of the covenants cannot enforce covenants against third parties. A party seeking equitable relief must come with clean hands and “act fairly and in good faith.” *Action Mech., Inc. v. Deadwood Historic Pres. Comm’n*, 2002 S.D. 121, ¶ 26, 652 N.W.2d 742, 751.

7. People waive their right to enforce covenants when they themselves are violating the covenants. *Rodgers v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser*

*v. Creamer*, 284 A.2d 220, 225–26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925).

8. Even if the Defendants were aware of the covenants prior to beginning their construction it is not relevant because Plaintiffs had waived the covenants and are estopped from enforcing the covenants based on prior actions. *See Ellis v. George Ryan Co., Inc.*, 424 N.E.2d 125, 127 (Ind. Ct. App. 1981).

9. Even if covenants may be enforceable, in shaping a remedy the Court can look to relative harm of the violation and harm to the parties involved. *Harksen v. Peska*, 1998 S.D. 70, ¶ 35, 581 N.W.2d 170.

10. The structure being proposed by Defendant Straatmeyers is not modular in that it is not being constructed someplace else and moved here. The mere fact that how to construct the building might have been predesigned and might have been part of a standard package does not make it modular. The unit will be permanent and constructed from the ground up and on site. Meade County Ordinance 34.

11. The term “car garage” is ambiguous as a “car garage” could be used for trucks or other types of cars and would not be exclusively used for “cars.” *See Jackson v. Canyon Place Homeowners’ Association, Inc.*, 207 S.D. 37 ¶9 731 N.W. 2d 210. In determining an ambiguity, a dictionary definition can be used. *Id* at ¶12. The definition of car in the Merriam Webster dictionary online, a car is defined as “a car moving on wheels: such as an automobile.” Automobile in turn is defined as “usually a 4 wheel automotive car designed for passenger transportation.” Thus, a RV constitutes an automobile and a car by definition of the dictionary. A “car garage” can be big enough for an RV. *Hall v. White*, 206 S.D. 47 ¶5; *Breckwedg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965).

12. The covenants do not bar garages big enough parking trucks, trailers or any other types of vehicles. The covenants do not prohibit the construction of a garage large enough for a recreational vehicle. *Id.*

As such, the Defendants' design is allowed and not barred by the terms of the covenants. *Hall v. White*, 206 S.D. 47 ¶5; *Breckwedg v. Knochenmus and May*, 81 S.D. 244, 254, 133 N.W. 2d 860, 866 (1965).

13. If one would read the covenants as restricting to only three car garages, the restriction would have to be read to apply to all structures. Therefore, Plaintiffs have also waived the right to argue that the structure would violate the three car garage rule given what would be multiple other violations within the subdivision. *Hammerquist v. Warburton*, 458 N.W.2d 773 (S.D. 1990); *Rodgers v. Davis*, 218 S.E.2d 471, 475 (N.C. Ct. App. 1975); *Goodfriend v. Maltesta*, 224 N.W. 389 (Mich. 1929); *Teagan v. Keywell*, 180 N.W. 454 (Mich. 1920); *Schlosser v. Creamer*, 284 A.2d 220, 225–26 (Md. Ct. App. 1971); *Schwartz v. Holycross*, 149 N.E. 699, 701 (Ind. Ct. App. 1925).

14. Defendant Straatmeyers' proposed structure would be within 40 feet of lot lines contrary to what is allowed under the covenants. However, multiple Plaintiffs have structures within 40 feet of lot lines. Two of Defendant Straatmeyers' adjacent neighbors have structures within the setback. Plaintiffs' selective enforcement is inequitable. By not consistently enforcing covenants against all parties, Plaintiffs waive their rights to assert violation of the covenants against the Defendants. *Id.*

15. If the Court was going to enforce the covenants promoted by the Plaintiffs against the Defendants, the Court would also have to enforce the covenants against all Plaintiffs' violations. This could mean that the Jung lot, Price lot, Hood lot, Bailly lot, Boadware lot, Peters lot, and



Gustav lot wouldall be required to take down structures and/or change the use of their lots. In addition, Hood, Peters and Bailly would have to relocate structures outside of the setback or remove the structures.

16. There is no legal remedy by which Plaintiffs can seek to un-subdivide property that was divided and sold to two separate owners. Plaintiffs only recourse is in equity. *Strong v. Atlas Hydraulics, Inc.*, 855 N.W.2d 133, 139 (S.D. 2014).

17. Decisions regarding platting are quasi-judicial decisions. *Armstrong v. Turner Co. Board of Adjustment*, 772 N.W. 2d 643, 650–51 (S.D. 2009) (superseded by statute on other grounds as recognized in *Sierra Club v. Clay County Board of Adjustment*, 959 N.W.2d 615 (S.D. 2021)); *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 398–99 (S.D. 1973).

18. The “quasi-judicial action of a board having by force of statute and proper procedure acquired jurisdiction of the person and subject matter is not subject to collateral attack.” *Taylor v. Pennington Cty.*, 204 N.W.2d 395, 399 (S.D. 1973) (citing *Yankton Cty. v. Klemisch*, 76 N.W. 312, 313 (S.D. 1898)). Platting of the Lots 6A and 6B was a quasi-judicial action. *Ridley v. Lawrence County and Frawley Ranches, Inc.*, 619 N.W.2d 254 (S.D. 2000). The attack on the plat in this action must also be dismissed as it constitutes a collateral attack on a quasi-judicial proceeding undertaken by the City of Summerset.

19. The claim that subdividing the lot was in violation of the covenants must be dismissed because Plaintiffs failed to include the owner of Lot 6A to have complete relief of the claimed covenant violation. In addition, the City of Summerset would have to be included for the relief sought by Plaintiffs.

20. Defendant Straatmeyers are entitled to complete their structure as planned as the structure does not violate the covenants or any violations of the covenants are dismissed in regards



to the platting issues and as to the setback issues as a result of the Plaintiffs failing to enforce or actually violating the covenants themselves. Plaintiffs have waived the right to enforce the covenants against Defendant Straatmeyers.

21. The covenants are not enforceable given the pervasive violations that exist that have gone unchecked or unenforced by Plaintiffs or any other parties that may have had the right under the covenants to enforce said violations. When violations of the covenants is the rule in the subdivision as opposed to the exception, it cannot stand that covenants can continue to be valid and selectively enforced against new people moving into the subdivision. Such enforcement would be inequitable.

22. The harm resulting in enforcement of the covenants against the Straatmeyers would be disproportional. Straatmeyers would be barred from using their property while the great majority of the Plaintiffs would be able to continue to use their property while in violation of the covenants. Harm to Plaintiffs would be minimal. Most of the Plaintiffs would not drive by or regularly see the Straatmeyers' structure. As to the Plaintiffs on the cul de sac, two of the lots are already violating the covenants. *Hammerquist v. Warburton*, 458 N.W.2d 773, 778 (S.D. 1990)

23. It would be inequitable to enforce covenants against the Straatmeyers while allowing multiple covenants violations of the Plaintiffs and other parties to stand and continue. Enforcement of the covenant violation against one landowner while allowing numerous other covenant violations to continue to exist would be inequitable. *Id.*

24. If the Court enforces the covenants against Defendant Straatmeyers the Court will need to enforce the covenants against the Plaintiffs. Bringing all parties into compliance with the covenants is impractical and would simply harm all parties. Enforcement of the covenants against

any of the parties would be inequitable at this point given the pervasive violations throughout the subdivision. *Id.*

25. The covenants are not enforceable by Plaintiffs or any party. Equity requires that the covenants be deemed unenforceable based on existing violations that have not been addressed on a great majority of lots within the subdivision.

26. Any conclusion of law more appropriately deemed a finding of fact shall hereby be deemed a finding of fact.

Dated: April 1, 2022.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: /s/ Talbot J. Wieczorek

Talbot J. Wieczorek  
Attorneys for Plaintiff  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
Telefax: (605) 342-9503  
E-mail: tjw@gpna.com

#### **CERTIFICATE OF SERVICE**

I hereby certify on April 1, 2022, I served a true and correct copy of the foregoing **DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (POST TRIAL)** through South Dakota's Odyssey File and Serve Portal upon the following individuals:

Courtney R. Clayborne  
*Attorneys for Plaintiffs*  
2834 Jackson Blvd., Suite 201  
P.O. Box 9129  
Rapid City, SD 57709-9129  
(605) 721-1517  
courtney@clslawyers.net

By: /s/ Talbot J. Wieczorek  
Talbot J. Wieczorek

**CITY OF SUMMERSET PLANNING AND ZONING BOARD  
ONLINE ZOOM MEETING  
REGULAR MEETING  
7055 LEISURE LANE  
TUESDAY SEPTEMBER 22, 2020  
6:00 P.M.**

***Agenda***

**1) ROLL CALL**

Bewley, Oldfield, Osten, Wilson, Christensen

**2) CALL FOR CHANGES**

Approval of Agenda of the Regular Meeting of September 22, 2020 as presented or amended.

**3) CONSENT CALENDAR**

Approval of the minutes of the Public Hearing of August 25, 2020, as presented or amended.

**4) PRELIMINARY AND FINAL PLAT APPLICATION**

Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

**5) PRELIMINARY AND FINAL PLAT APPLICATION**

Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota.

**6) PRELIMINARY AND FINAL PLAT APPLICATION**

Plat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota

**7) FINAL PLAT APPLICATION**

Plat of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota.

**FILED**

**FEB 15 2022**

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT**

- 1 -

APP. 121

**EXHIBIT**

**3**

*Information regarding accessibility for the disabled may be obtained by calling the Summerset City Finance Officer at 605-718-9858. Individuals needing special accommodations are asked to call at least 48 hours prior to the meeting.*

In relation to the COVID-19 virus, and in following guidelines from the CDC in relation to minimizing exposure, the City will have a call-in number available (instructions below) for Thursday's City Commission meeting. For those that wish to participate in the meeting remotely, we encourage you to follow the instructions below.

## **Call-in instructions:**

Topic: P&Z Meeting

Time: Sep 22, 2020 06:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/87980621764?pwd=UVc1VGkwVlNJVUhoVFZ3VE5uTUtPZz09>

Meeting ID: 879 8062 1764

Passcode: 460285

One tap mobile

+16699009128,,87980621764#,,,,,0#,,460285# US (San Jose)

+12532158782,,87980621764#,,,,,0#,,460285# US (Tacoma)

Meeting ID: 879 8062 1764

Passcode: 460285

Find your local number: <https://us02web.zoom.us/j/87980621764?pwd=UVc1VGkwVlNJVUhoVFZ3VE5uTUtPZz09>

**Final Plat Review**  
LOT 6A AND LOT 6B OF TRACT 3  
(FORMERLY LOT 6 OF TRACT 3 SHADOWLAND RANCH SUBDIVISION)  
LOCATED IN THE NE1/4NW1/4 OF SECTION 36  
TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE BLACK HILLS MERIDIAN,  
MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage                      1.88 acres

Location                              Shadowland Ranch Sub. Meade Co. SD.

Date of Application                ?

Reviewed By:                      Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Divide Lot 6 into two lots

**Access and Utilities:**              Access is off Concho Court. Sewer is onsite septic. Water is a shared well located on Lot 6A.

**Fire Protection:**                      Same as before

**Drainage:**                              Located outside flood hazard

**Final Plat Review:**

Please add Chord Bearing and distance to the curve information.

Remove Note 4 regarding building setbacks.

Replace the "Resolution of Governing Board" with the following resolution:

"Resolution of City Commission

Whereas there has been presented to the City Commission of the City of Summerset, South Dakota, the within plat of the above described lands, and it appears to this Council of Commissioners that:

- a. The system of streets set forth therein conforms to the system of streets of the existing plats of the City,
- b. All provisions of the City subdivision regulations have been complied with,
- c. All taxes and special assessments upon the tract or subdivision have been fully paid, and
- d. Such plat and survey thereof have been executed according to law.

Now therefore, be it resolved that said plat is hereby approved in all respects.

Dated at Summerset, South Dakota this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date"

Need to add the following certifications:

"Certificate of Planning Commission

The City of Summerset Planning and Zoning Commission certifies it has reviewed the final plat and hereby recommends approval to the City Commission of the City of Summerset, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Planning Commission Member"

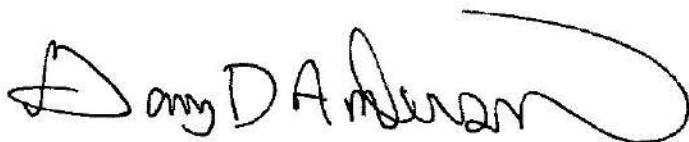
"Certificate of City Finance Officer

I, Finance Officer of the City of Summerset, South Dakota, do hereby certify that all special assessments which are liens upon the described lands are fully paid according to the records of my office.

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date"

Need to provide on the plat or through a separate document an access and utility easement for the water service line from the existing well on Lot 6A to Lot 6B.



Gary Anderson, LS 12000

hdrinc.com

601 Metz Dr. Gillette WY. 82717





September 18, 2020

**Final Plat Review**  
PLAT OF SUN VALLEY ESTATES  
LOTS 161R AND GLENGARRIFF PARK 3 REVISED  
BEING A REPLAT OF LOT 161 AND GLENGARRIFF PARK 3  
LOCATED IN THE NE1/4SW1/4  
IN SECTION 14 TOWNSHIP 3 NORTH- RANGE 6 EAST OF THE B.H.M., CITY OF  
SUMMERSET, MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage                      1.04 ACRES  
Location                              City of Summerset  
Date of Application                September 4, 2020  
Surveyors Project Number       S20 S791  
Reviewed By:                        Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Add area to Lot 161 and make the park smaller

**Access and Utilities:**            Same as before

**Fire Protection:**                Same as before

**Drainage:**                            Same as before

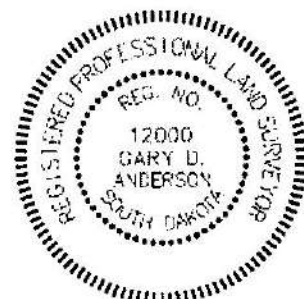
**Final Plat Review:**

This plat meets the requirements.

Gary Anderson, LS 12000

hdrinc.com

601 Metz Dr. Gillette WY. 82717





## Final Plat Review

PLAT OF SUN VALLEY ESTATES LOT 125 R-1, LOT 125 R-2 AND LOT 125 R-3 LOCATED IN LOT 125R OF THE SE1/4 OF THE SW1/4 OF SECTION 14 TOWNSHIP 3 NORTH RANGE 6 EAST OF THE B.H.M, CITY OF SUMMERSET, MEADE COUNTY, SOUTH DAKOTA

**General Information:**

Parcel Acreage 0.88 ACRES  
Location City of Summerset  
Date of Application September 9, 2020  
Surveyors Project Number S20 S792  
Reviewed By: Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:** Subdivide Lot 125R

**Access and Utilities:** Same as before

**Fire Protection:** Same as before

**Drainage:** Same as before

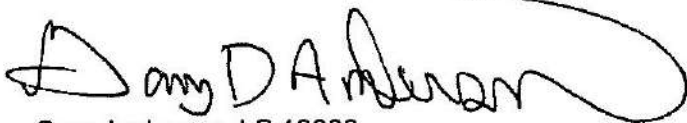
**Final Plat Review:**

All bearings and distances close.

Edit title to "Plat of Sun Valley Estates Lot 125 R-1, Lot 125 R-2 and Lot 125 R-3 Formerly Lot 125R Located in the SE1/4 of the SW1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota"

Remove the building setback note.

Lots 125 R-2 and 125 R-3 do not meet the minimum lot width of 75' per ordinance 155.058.D.



Gary Anderson, LS 12000



## Final Plat Review

Plat of Lot 1 through Lot 9 and Norpek Court Right of Way and Shadowland Road Right of Way  
of Shadowland Ranch Subdivision

Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25  
in Township 3 North Range 6 East of the Black Hills Meridian City of Summerset Meade County,  
South Dakota

### **General Information:**

Parcel Acreage                      18.94 acres  
  
Location                              Shadowland Ranch Subdivision  
  
Date of Application                August 27, 2020  
  
Surveyor's Project Number      S19 S732  
  
Reviewed By:                      Gary Anderson, LS, HDR Engineering, Inc.

**Purpose:**                              Subdivide Lot HG Revised

**Access and Utilities:**              Access is off Shadowland Ranch Road and Norpek Court. Water is  
connecting to Black Hawk Water Users District water system. Sewer is onsite  
septic systems.

**Fire Protection:**                      Black Hawk Volunteer Fire Department

**Drainage:**                              Located outside flood hazard. No major drainages are indicated.

### **Final Plat Review:**

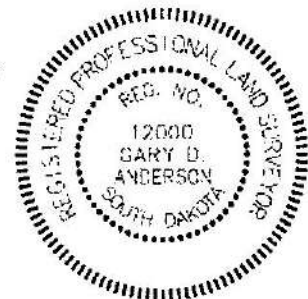
All bearings and distances close.

Plat Note 1 needs to indicate an 8' utility and drainage easement.

Before Final Plat can be filed a final walk-through of the new roadway needs to be conducted with the City  
of Summerset and the following need to be submitted:

- As-recorded plans
- All geotechnical testing results from roadway and utility construction

  
Gary Anderson, LS 12000



*Official Minutes*  
**CITY OF SUMMERSET PLANNING AND ZONING BOARD**  
**ONLINE ZOOM MEETING**  
**REGULAR MEETING**  
**7055 LEISURE LANE**  
**TUESDAY SEPTEMBER 22, 2020**  
**6:00 P.M.**

The meeting was called to order by Chairman Wilson at 6:00 P.M. Bewley, Osten, Oldfield, Christensen, and Wilson were present. Also present was the City Administrator.

Motion by Bewley, second by Christensen to approve The Agenda of the Regular Meeting of September 22, 2020 Motion carried.

Motion by Osten, second by Oldfield to approve the minutes of the Public Hearing of August 25, 2020. Motion carried.

Motion by Bewley, second by Oldfield to approve Plat application of Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota. Motion carried.

Motion by Wilson, second by Bewley to approve Plat application of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota. Motion carried.

Motion by Osten, second by Bewley to approve Plat application of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota. Motion carried.

Motion by Oldfield, second by Bewley to approve Plat application of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota. Motion carried.

Motion by Bewley, second by Osten to call for Adjournment at 6:11 P.M.

**FILED**

FEB 15 2022

- 1 - SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

APP. 

EXHIBIT

4



**SUMMERSET CITY COMMISSION  
SPECIAL ZOOM MEETING  
SUMMERSET MUNICIPAL BUILDING  
7055 LEISURE LANE  
THURSDAY OCTOBER 10, 2020 6:00 P.M.**

**AGENDA**

**1) ROLL CALL**

Kitzmiller, McCoy, Butler, Lutz, Hirsch

**2) PLEDGE OF ALLEGIANCE**

**3) CALL FOR CHANGES**

Approval of the Agenda of the Special Meeting of the Summerset City Commission for October 10, 2020 as presented or amended.

**4) RESOLUTION 2020-13**

Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision)  
Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black  
Hills Meridian, Meade County, South Dakota

**5) RESOLUTION 2020-14**

Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot  
161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North-  
Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota.

**6) RESOLUTION 2020-15**

Plat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R  
of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M.,  
City of Summerset, Meade County, South Dakota

**7) RESOLUTION 2020-16**

Plat of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right  
of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch  
Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of  
the Black Hills Meridian, City of Summerset, Meade County, South Dakota

**8) CITIZENS INPUT**

**9) ITEMS FROM CITY ATTORNEY**

Executive Session per SDCL 1-25-2 for discussing legal, economic development, and personnel

**FILED**

**FEB 15 2022**

**SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT**



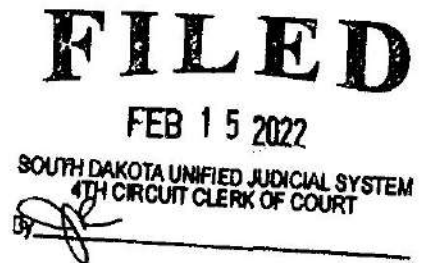
issues.

**10) ADJOURNMENT**

*Information regarding accessibility for the disabled may be obtained by calling the Somerset City Finance Officer at 605-718-9858. Individuals needing special accommodations are asked to call at least 48 hours prior to the meeting.*

***ALL MEETINGS OF THE SOMERSET CITY COMMISSION ARE OPEN TO THE PUBLIC***

**SUMMERSET CITY COMMISSION  
SPECIAL MEETING  
ZOOM MEETING  
7055 LEISURE LANE  
THURSDAY OCTOBER 08, 2020 6:00 P.M.**



Mayor Lutz called the Special Meeting to order at 6:05 p.m. Commissioners McCoy and Butler were present. Commissioners Hirsch and Kitzmiller were absent. Present was the Finance Officer and the City Administrator.

Motion by McCoy, second by Butler to approve the agenda for October 08, 2020. Motion carried

**RESOLUTION 2020-13**

**City of Summerset  
RESOLUTION 2020-13**

**WHEREAS**, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

**NOW THEREFORE BE IT RESOLVED** that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

ATTEST:  
(SEAL)

\_\_\_\_\_  
Candace Sealey  
Finance Officer

\_\_\_\_\_  
Bryce Lutz  
Mayor

Motion by Butler, second by McCoy to approve Resolution 2020-13. A Resolution approving a plat of the real property described as Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota. Roll call vote. All ayes.

**RESOLUTION 2020-14**

**City of Summerset  
RESOLUTION 2020-14**

**WHEREAS**, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:



Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota.

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

**NOW THEREFORE BE IT RESOLVED** that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

ATTEST:  
(SEAL)

---

Candace Sealey  
Finance Officer

---

Bryce Lutz  
Mayor

**Motion** by McCoy, second by Butler to approve Resolution 2020-14. A Resolution approving the Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North- Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota. Roll call vote. All ayes.

#### **RESOLUTION 2020-15**

#### **City of Summerset RESOLUTION 2020-15**

**WHEREAS**, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Plat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW ¼ of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

**NOW THEREFORE BE IT RESOLVED** that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

ATTEST:  
(SEAL)

---

Candace Sealey  
Finance Officer

---

Bryce Lutz  
Mayor



**Motion by Butler, second by McCoy to approve Resolution 2020-15. A resolution approving a replat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW ¼ of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota. Roll call vote. All ayes.**

**RESOLUTION 20-16**

**City of Summerset  
RESOLUTION 2020-16**

**WHEREAS**, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Plat of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW ¼ of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota.

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

**NOW THEREFORE BE IT RESOLVED** that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

ATTEST:  
(SEAL)

\_\_\_\_\_  
Candace Sealey  
Finance Officer

\_\_\_\_\_  
Bryce Lutz  
Mayor

**Motion by McCoy, second by Butler to approve Resolution 2020-16. A Resolution approving Plat of Lot 1 through Lot 9 and Norpeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW ¼ of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota. Roll call vote. All ayes.**

**ADJOURNMENT**

**Motion for adjournment at 6:12 p.m. by McCoy, second Butler. Motion carried.**

(SEAL)  
ATTEST:

\_\_\_\_\_  
Candace Sealey  
Finance Officer

\_\_\_\_\_  
Bryce Lutz  
Mayor

Published October XX, 2020 at a cost of \$XX.XX

# Affidavit of Publication

STATE OF SOUTH DAKOTA

County of Pennington

SS:

October 17, 2020 L19297  
SUMMERSET CITY COMMISSION  
SPECIAL MEETING  
ZOOM MEETING  
7055 LEISURE LANE  
Thursday, October 8, 2020  
6:00 P.M.

Mayor Lutz called the Special Meeting to order at 6:05 p.m. Commissioners McCoy and Butler were present. Commissioners Hirsch and Kitzmiller were absent. Present was the Finance Officer and the City Administrator.

Motion by McCoy, second by Butler to approve the agenda for October 08, 2020. Motion carried.

RESOLUTION 2020-13  
City of Summerset  
RESOLUTION 2020-13

WHEREAS, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid; and that said plat and survey thereof have been executed according to law.

NOW THEREFORE BE IT RESOLVED that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

Bryce Lutz  
Mayor

ATTEST:  
Candace Sealey  
Finance Officer

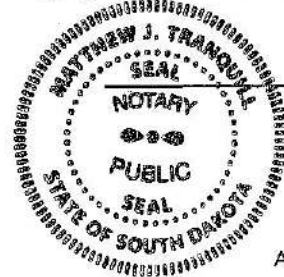
(SEAL)

Motion by Butler, second by McCoy to approve Resolution 2020-13: A Resolution approving a plat of the real property described as Lot 6A and Lot 6B of Tract 3 (Formerly Lot 6 of Tract 3 Shadowland Ranch Subdivision) Located in the NE1/4NW1/4 of Section 36 Township 3 North Range 6 East of the Black Hills Meridian, Meade County, South Dakota. Roll call vote. All ayes.

Sheri Sponder being first duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, an employee of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, the owner and publisher of the RAPID CITY JOURNAL, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published in the English language, at and within an office maintained by the owner and publisher thereof, at Rapid City, in said Pennington County, and has been admitted to the United States mail under the second class mailing privilege for at least one year prior to the publication herein mentioned; that the advertisement, a printed copy of which, taken from said Rapid City Journal, the paper in which the same was published, is attached to this sheet and made a part of this affidavit, was published in said paper once each

day for one successive  
day, the first publication there of being on the  
17th day of Oct 2020 that the fees charged for  
the publication there of are 163 dollars  
and 93 cents.

Sheri Sponder  
Subscribed and sworn to before me this 24th  
day of October, 2020.



Matthew J. Tranquill  
Notary public

December 5, 2025

My commission expires

RESOLUTION 2020-14  
City of Summerset  
RESOLUTION 2020-14

WHEREAS, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4, in section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County South Dakota.

I and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

— NOW THEREFORE BE IT RESOLVED that said plat is hereby approved in all respects.

— Dated this 8th Day of October 2020.

— Bryce Lutz  
Mayor

— ATTEST:  
Candace Sealey  
Finance Officer

— (SEAL)

— Motion by McCoy, second by Butler to approve Resolution 2020-14. A Resolution approving the Plat of Sun Valley Estates Lots 161R and Glengarriff Park 3 Revised being a Replat of Lot 161 and Glengarriff Park 3 Located in the NE1/4SW1/4 in section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota. Roll call vote. All ayes.

F RESOLUTION 2020-15  
City of Summerset  
RESOLUTION 2020-15

1 WHEREAS, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

2 Plat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota.

A and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

NOW THEREFORE BE IT RESOLVED that said plat is hereby approved in all respects.

Dated this 8th Day of October 2020.

Bryce Lutz  
Mayor

ATTEST:  
Candace Sealey  
Finance Officer

(SEAL)

Motion by Butler, second by McCoy to approve Resolution 2020-15. A resolution approving a replat of Sun Valley Estates Lot 125R-1, Lot 125R-2 and Lot 125R-3 Located in Lot 125R of the SE1/4 of the SW 1/4 of Section 14 Township 3 North Range 6 East of the B.H.M., City of Summerset, Meade County, South Dakota. Roll call vote. All ayes.

RESOLUTION 20-16  
City of Summerset  
RESOLUTION 2020-16

P WHEREAS, there has been presented to the Board of Commissioners, of the City of Summerset, South Dakota a plat of the following described real property:

Plat of Lot 1 through Lot 9 and Norbeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota.

and it appearing to the Board of Commissioners that said plat conforms to the existing plats of said City of Summerset, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the land have been fully paid, and that said plat and survey thereof have been executed according to law.

— NOW THEREFORE BE IT RESOLVED that said plat is hereby approved in all respects.

— Dated this 8th Day of October 2020.

— Bryce Lutz  
Mayor

ATTEST:  
Candace Sealey  
Finance Officer

(SEAL)

Motion by McCoy, second by Butler to approve Resolution 2020-16. A Resolution approving Plat of Lot 1 through Lot 9 and Norbeck Court Right of Way and Shadowland Road Right of Way of Shadowland Ranch Subdivision, Formerly Lot HG Revised Shadowland Ranch Subdivision in Tract 6 of the SW 1/4 of Section 25 in Township 3 North Range 6 East of the Black Hills Meridian, City of Summerset, Meade County, South Dakota. Roll call vote. All ayes.

ADJOURNMENT  
Motion for adjournment at 6:12 p.m. by McCoy, second Butler. Motion carried.

Bryce Lutz  
Mayor

ATTEST:  
Candace Sealey  
Finance Officer

(SEAL)

(Published once at the approximate cost of \$163.95)

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS )  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG )  
and DEB PETERS, MARK and KITTY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )

46CIV21-000206

**ORDER ON DEFENDANTS' MOTION  
TO TAKE JUDICIAL NOTICE**

Plaintiffs,

v.

CLYDE STRAATMEYER and NANCY  
STRAATMEYER,

Defendants.

This matter having come before the Court on Defendants' request for the Court to take judicial notice of legal publications and City records, the parties having appeared in front of the Court on February 1, 2022 at 1:15 and the Court having heard arguments on the motion it is hereby

ORDERED that the following Summerset records are hereby judicially noticed as adjudicated facts regarding the actions of the Summerset City Planning and Commission as set forth in the following documents:

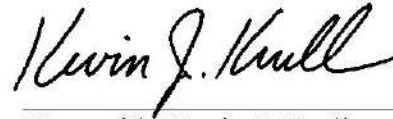
- A. Summerset Planning & Zoning Minutes – Tuesday, September 22, 2020;
- B. Affidavit of Publication of Planning & Zoning Minutes;
- C. Summerset City Commission Agenda – Thursday, October 10, 2020; and
- D. Affidavit of Publication of City Commission Minutes.

The documents will come into the record as evidence of the City's actions concerning the real property involved in this matter.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

2/4/2022 11:39:51 AM

BY THE COURT:



Honorable Kevin J. Krull  
Fourth Circuit Court

ATTEST:

Attest:  
Rude, Jennifer  
Clerk/Deputy

\_\_\_\_\_  
Circuit Court Clerk



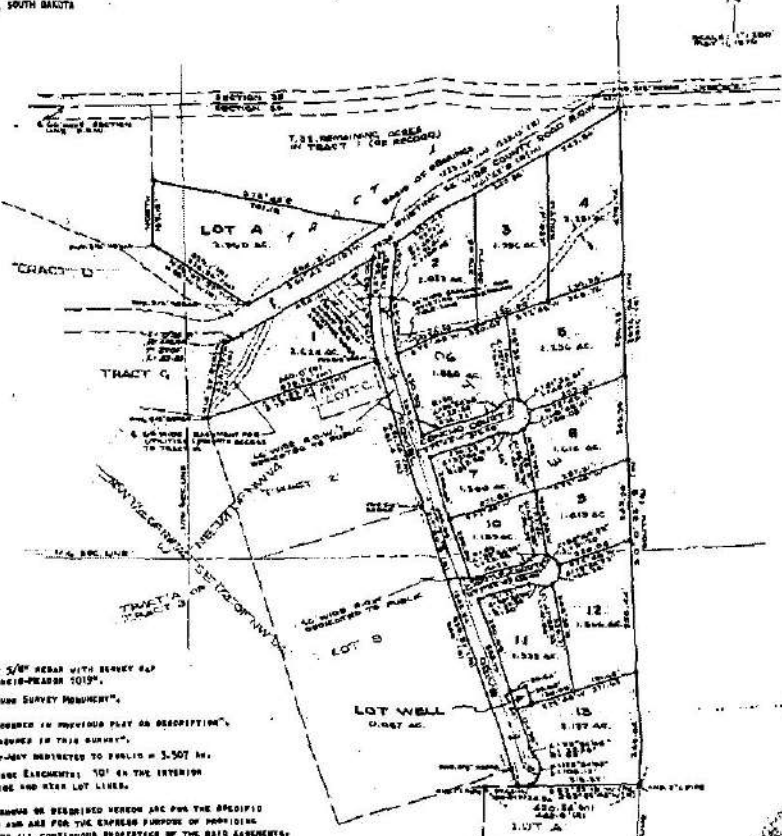
7-1000

7-1000

FRANCIS - HEARD - ELLMAN, INC.

PLAT OF A PORTION OF SHADONLAND RANCH, SUBDIVISION IN THE COUNTY OF HEARD, (INCLUDING)

LOT A OF TRACT 1 AND  
LOT WELL AND LOTS 1 THRU 13 OF TRACT 5  
ALL IN SHADONLAND RANCH  
LOCATED IN  
NW 1/4 OF SECTION 34, T34N, R24E, S24M,  
HEARD COUNTY, SOUTH DAKOTA



NOTES:

- CENTER SET 5/8" HEREIN WITH SURVEY SET  
NAMES "FRANCIS-HEARD 1019".
- CENTER "FOUND SURVEY MONUMENT".
- (R) CENTER "MONUMENT" IN PREVIOUS PLAT ON DESCRIPTION.
- (H) CENTER "MONUMENT" IN THIS SURVEY.
- AREA OF RIGHT-OF-WAY RESTRICTED TO PUBLIC IN 3,507 AC.
- UTILITY & DRAINAGE EASEMENTS: 10' ON THE INTERIOR  
SIDES OF ALL SIDE AND NEAR LOT LINES.
- ALL EASEMENTS SHOWN ON THIS PLAT ARE FOR THE SPECIFIC  
USES INDICATED AND ARE FOR THE EXCLUSIVE PURPOSE OF PROVIDING  
THE EASEMENTS TO ALL CONTIGUOUS PROPERTIES OF THE SAID EASEMENTS.
- BOUNDARY OF RIGHT-OF-WAY AS SHOWN HEREON.

CERTIFICATE OF OWNERSHIP

STATE OF SOUTH DAKOTA  
COUNTY OF HEARD  
We, DELORAN OSTERDAHL, FLORENCE OSTERDAHL, CARL E. OSTERDAHL AND  
SAMUEL L. OSTERDAHL, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE  
TRACT OF LAND SHOWN AND DESCRIBED HEREON, THAT THE GRANTY HAS BEEN AT  
OUR REQUEST FOR THE PURPOSES INDICATED HEREON, AND THAT WE DO HEREBY  
APPROVE THE SURVEY AND WITHIN PLAT OF SAID LAND.

ANY LAND SHOWN ON THE WITHIN PLAT AS DESIGNATED TO PUBLIC PROPERTY  
MAY BE HEREBY DESIGNATED TO PUBLIC USE AND PUBLIC UTILITY USE AS SUCH  
PROPERTY, BUT SUCH DESIGNATION SHALL NOT BE A DONATION OF  
THE FEE OF SAID LAND.

IN WITNESS WHEREOF, WE HAVE HEREON SET OUR HAND AND SEAL.

DELORAN OSTERDAHL  
FLORENCE OSTERDAHL  
CARL E. OSTERDAHL  
SAMUEL L. OSTERDAHL

On this 12th day of May, 1979, at the County of Heard, State of South Dakota, I, JAMES P. HEARD, Registered Land Surveyor No. 2199 of the State of South Dakota, do hereby certify that being an authorized, I have the survey and plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon.

Notary Public, John J. Peterson  
My Commission Expires, August 1979

CERTIFICATE OF EQUALIZATION

I, Director of Equalization of Heard County, do hereby certify that I have  
as shown in my office a copy of the WITHIN DESCRIBED PLAT,  
DATED THIS 12th day of May, 1979.

Signature of John J. Peterson  
Director of Equalization of Heard County

APPROVED BY THE PLANNING COMMISSION OF HEARD COUNTY THIS  
DAY OF May, 1979.

SIGNED: Paul Potter  
Chairman

CERTIFICATE OF SURVEY

STATE OF SOUTH DAKOTA  
COUNTY OF HEARD  
I, JAMES P. HEARD, Registered Land Surveyor No. 2199 of the State of South Dakota, do hereby certify that being an authorized, I have the survey and plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon.

IN WITNESS WHEREOF, I HAVE HEREON SET MY HAND AND SEAL.  
REGISTERED LAND SURVEYOR: James P. Heard  
JAMES P. HEARD

On this 12th day of May, 1979, at the County of Heard, State of South Dakota, I, JAMES P. HEARD, Registered Land Surveyor No. 2199 of the State of South Dakota, do hereby certify that being an authorized, I have the survey and plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon and that the same is a true and correct plat of the land shown and described hereon.

Notary Public, John J. Peterson  
My Commission Expires, August 1979

CERTIFICATE OF DIRECTOR OF EQUALIZATION

I, Director of Equalization of Heard County, do hereby certify that I have  
as shown in my office a copy of the WITHIN DESCRIBED PLAT,  
DATED THIS 12th day of May, 1979.

Signature of John J. Peterson  
Director of Equalization of Heard County

CERTIFICATE OF COUNTY TREASURER

I, Treasurer of Heard County, do hereby certify that all taxes which are  
due upon the WITHIN DESCRIBED LANDS ARE FULLY PAID ACCORDING TO THE  
RECORDS OF MY OFFICE.  
DATED THIS 12th day of May, 1979.

Signature of John J. Peterson  
Treasurer of Heard County

APPROVED  
Signature of John J. Peterson

FILED

FEB 15 2022

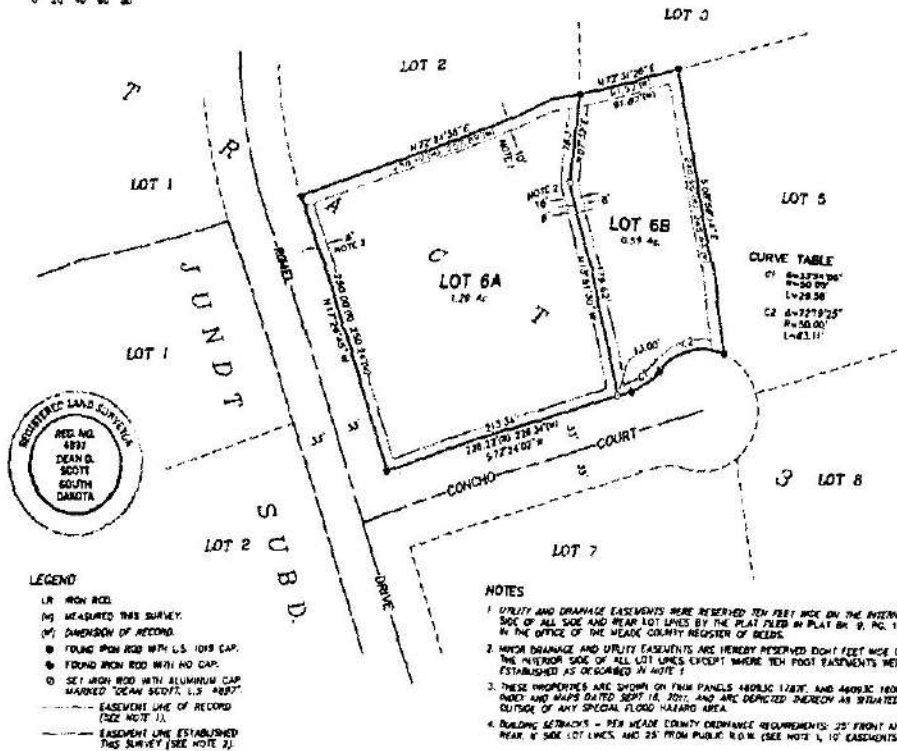
SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT



**SHADOWLAND RANCH SUBDIVISION**  
**SURVEY PLAT OF**  
**LOT 6A AND LOT 6B OF TRACT 3**  
 (FORMERLY LOT 6 OF TRACT 3 OF SHADOWLAND RANCH SUBDIVISION)  
 LOCATED IN THE NE1/4 NW1/4 OF SECTION 36,  
 TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE BLACK HILLS MERIDIAN,  
 MEADE COUNTY, SOUTH DAKOTA.  
 OCTOBER, 2020

**D.C. Scott**  
 SURVEYOR, INC.  
 2115 ANDERSON ROAD  
 RAPID CITY, SD 57703  
 (605) 342-2447

SCALE IN FEET  
 0 20 40 60



**LEGEND**

- LR - IRON ROD
- M - MEASURED THIS SURVEY
- D - DIMENSION OF RECORD
- - IRON PIN ROD WITH U.S. 1005 CAP
- - IRON PIN ROD WITH NO CAP
- - SET IRON ROD WITH ALUMINUM CAP MARKED "DEAN D. SCOTT, S.D. 4887"
- EASEMENT LINE OF RECORD (SEE NOTE 1)
- EASEMENT LINE ESTABLISHED THIS SURVEY (SEE NOTE 2)

**NOTES**

1. UTILITY AND DRAINAGE EASEMENTS WERE RESERVED TEN FEET WIDE ON THE INTERIOR SIDE OF ALL SIDE AND REAR LOT LINES BY THE PLAT FILED IN PLAT BK. 9, PG. 118 IN THE OFFICE OF THE MEADE COUNTY REGISTER OF DEEDS.
2. HIGH DRAINAGE AND UTILITY EASEMENTS ARE HEREBY RESERVED EIGHT FEET WIDE ON THE INTERIOR SIDE OF ALL LOT LINES EXCEPT THOSE TEN FOOT EASEMENTS WERE ESTABLISHED AS DESCRIBED IN NOTE 1.
3. THESE PROPERTIES ARE SHOWN ON FIRM PANELS AERIAL 1787, AND AERIAL 1800, 1907, AND MAPS DATED SEPT. 18, 2007, AND ARE DEPICTED INDEED AS SITUATED OUTSIDE OF ANY SPECIAL FLOOD HAZARD AREA.
4. BUILDING SETBACKS - PER MEADE COUNTY ORDINANCE REQUIREMENTS: 25' FRONT AND REAR, 8' SIDE LOT LINES, AND 25' FROM PUBLIC R.O.W. (SEE NOTE 1, 10' EASEMENTS).

**OWNER'S CERTIFICATE**

We, Jerry L. Schmidt and Julie A. Schmidt, do hereby certify that we are the Owners of the land above and described herein, and that we did authorize and do join in and approve the survey and plat. We further certify that the development of this land shall conform to all applicable applicable zoning, subdivision and erosion and sediment control regulations.

IN WITNESS WHEREOF, We hereunto set our hands

This 29th day of November, 2020.

*[Signature]*  
 Jerry L. Schmidt, Owner

*[Signature]*  
 Julie A. Schmidt, Owner

**SURVEYOR'S STATEMENT**

I, Dean D. Scott, Registered Land Surveyor, do hereby state that, at the request of the Owners listed herein, I have surveyed the tract of land as shown herein, and have marked upon the ground the boundaries in the manner shown, and that this plat is correct to the best of my knowledge, information and belief. Certain easements, restrictions, or other property rights of public record or private agreement may not be shown herein.

IN WITNESS WHEREOF, I hereunto set my hand and seal

This 29th day of October, 2020

*[Signature]*  
 Registered Land Surveyor No. 4887

**COUNTY TREASURER'S CERTIFICATE**

I, Treasurer of Meade County, South Dakota, do hereby certify that all taxes which are liens upon the land described herein, as shown by the records of my office, are fully paid.

Dated this 1st day of November, 2020.

*[Signature]*  
 Meade County Treasurer

**CERTIFICATE OF HIGHWAY AUTHORITY**

I, (11-5-12) agree to this property from the abutting Highway or Specific approach location and configuration must conform to all current Highway and/or Street regulations.

Dated this 2nd day of November, 2020.

*[Signature]*  
 Highway Authority

**CERTIFICATE OF DIRECTOR OF EQUALIZATION**

I, Director of Equalization of Meade County, South Dakota, do hereby certify that I have a copy of the within described plat in my office.

Dated this 11th day of November, 2020.

*[Signature]*  
 Meade County Director of Equalization

**CERTIFICATE OF REGISTER OF DEEDS**

MEADE COUNTY REGISTER OF DEEDS  
 Case #1007371, Recording Fee \$45.00  
 MEADE COUNTY REGISTER OF DEEDS  
 Page Book 31 Page 122 Case 121 3 Pages  
 Recording: 11/23/20 at 2:28 PM  
 Lane Anderson, Register of Deeds

**ACKNOWLEDGMENT OF OWNERS**

STATE OF SOUTH DAKOTA  
 COUNTY OF Meade

On this 2nd day of November, 2020, before me, the undersigned officer, personally appeared Jerry L. Schmidt and Julie A. Schmidt, known to me to be the persons who executed the foregoing Owner's Certificate, and acknowledged to me that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereby set my hand and official seal

*[Signature]*  
 Notary Public

*[Signature]*  
 Notary Public

**RESOLUTION OF GOVERNING BOARD**

WHEREAS there has been presented to the Governing Board of the City of SUNDT, South Dakota, the within plat of the above described lands, and it appears to the Council that:

- a. the system of streets conforms to the system of streets of existing plats and Section 36 of the city,
- b. adequate provision is made for access to adjacent unimproved lands by public dedication or physically accessible section line,
- c. all provisions of the City Subdivision Regulations have been complied with,
- d. all taxes and special assessments upon the property have been fully paid, and
- e. the plat and survey have been lawfully completed.

NOW THEREFORE, BE IT RESOLVED that said plat is hereby approved in all respects.

Dated this 5th day of November, 2020.

*[Signature]*  
 Mayor, City of Sundt

*[Signature]*  
 Planner, City of Sundt



**FILED**

FEB 15 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
 4TH CIRCUIT CLERK OF COURT

EXHIBIT  
 10

) IN CIRCUIT COURT  
 ) SS.  
 ) FOURTH JUDICIAL CIRCUIT

MAS )  
D )  
NICE )  
EG )  
Y )

46CIV21-000206  
  
**TRIAL SUBPOENA**

CATTLE COURT, BLACK HAWK, SD 57718:

ENDED to appear at the Meade County Courthouse in  
February 15, 2022, at 1:00 p.m. to give testimony as a

enclosed with this Subpoena

able Kevin Krull, Judge of the Fourth Judicial Circuit.

022.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP



By: /s/ Talbot J. Wieczorek

Talbot J. Wieczorek  
*Attorneys for Defendants*  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
E-mail: [tjw@gpna.com](mailto:tjw@gpna.com)

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF MEADE )

Ct. File # CIV 21-206

**ROBERT and MELISSA HOOD, et al**

Plaintiff,

vs.

**CLYDE STRAATMEYER, et al**

Defendant,

CERTIFICATE OF SERVICE

I, **John Glodt**, Elector / Constable of Pennington County, South Dakota, hereby certify and return that the annexed,  
**TRIAL SUBPOENA & CHECK #100354 @ \$40.92**

came into my hands on the **7TH** day of **February**, 2022, and that I completed service of the same  
on, **RODNEY BOADWINE**, on the **8TH** day of **February**, 2022, at **1000** hrs.  
at, **10106 CANTLE CT.**, **Black Hawk**, **Meade** County, South Dakota,

by,

☒ personally delivering to and leaving a copy / copies thereof with **RODNEY BOADWINE**

☐ substituting service at the dwelling house of said person, with \_\_\_\_\_

who was then a member of his/her family (or the family with which he/she resides) over the age of fourteen years,  
and that service was so made for the reason that said person could not be found conveniently in said county.

☐ returning the annexed documents unserved because of the following reason: \_\_\_\_\_

That the costs of service herein are as follows:

Endeavors	<b>2</b>
Service	<b>\$ 50.00</b>
Mileage <b>50</b>	<b>\$ 20.00</b>
Tax	<b>\$ 4.55</b>
Total Fees	<b>\$ 74.55</b>

**John Glodt**  
Constable - Pennington County - Elector

Subscribed and sworn to before me this **9TH** day of **February**, 2022

**KIM S. GLODT**

NOTARY PUBLIC  
SOUTH DAKOTA

My Commission Expires

**12-18-24**

**Kim S. Glodt** Notary Public

J & J Attorney Service, PO Box 8024, Rapid City, South Dakota, 57709, (605) 342-0077

STATE OF SOUTH DAKOTA                    )       IN CIRCUIT COURT  
  ) SS.  
COUNTY OF MEADE                         )       FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD, THOMAS ) 46CIV21-000206  
and PATRICIA DONOVAN, BERNARD )  
and MARIA JUNG, WILLIAM and JANICE )  
PRICE, JAMES and KAY FENENGA, )  
LARRY and DARLENE BAILLY, GREG ) **TRIAL SUBPOENA**  
and DEB PETERS, MARK and KITY )  
GUSTAF, and RODNEY and GINA )  
BOADWIRE, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CLYDE STRAATMEYER and NANCY )  
STRAATMEYER. )

Defendants.

TO: GREG PETER, 10108 CATTLE COURT, BLACK HAWK, SD 57718:

YOU ARE HEREBY COMMANDED to appear at the Meade County Courthouse in Sturgis, South Dakota, on Tuesday, February 15, 2022, at 1:00 p.m. to give testimony as a witness in the above-captioned matter.

Payment for witness fee and mileage is enclosed with this Subpoena.

Issued in the name of the Honorable Kevin Krull, Judge of the Fourth Judicial Circuit.

Dated this 7<sup>th</sup> day of February, 2022.

GUNDERSON, PALMER, NELSON  
& ASHMORE, LLP

By: /s/ Talbot J. Wieczorek

Talbot J. Wieczorek  
*Attorneys for Defendants*  
506 Sixth Street  
P.O. Box 8045  
Rapid City, SD 57709  
Telephone: (605) 342-1078  
E-mail: [tjw@gpna.com](mailto:tjw@gpna.com)

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF MEADE )

Ct. File # CIV 21-206

ROBERT and MELISSA HOOD, et al

Plaintiff.

vs.

CLYDE STRAATMEYER, et al

Defendant.

CERTIFICATE OF SERVICE

I, John Gladt, Elector / Constable of Pennington County, South Dakota, hereby certify and return that the annexed  
TRIAL SUBPOENA & CHECK #100355 @ \$40.92

came into my hands on the 7TH day of February, 2022, and that I completed service of the same  
on, GREG PETER, on the 7TH day of February, 2022, at 2005 hrs.  
at, 10108 CANTLE CT., Black Hawk, Meade County, South Dakota.

by

☒ personally delivering to and leaving a copy / copies thereof with GREG PETER

☐ substituting service at the dwelling house of said person, with \_\_\_\_\_

who was then a member of his/her family (or the family with which he/she resides) over the age of fourteen years  
and that service was so made for the reason that said person could not be found conveniently in said county.

☐ returning the annexed documents unserved because of the following reason: \_\_\_\_\_

That the costs of service herein are as follows:

Endeavors	
Service	\$ <u>50.00</u>
Mileage	\$ <u>0</u>
Tax	\$ <u>3.25</u>
Total Fees	\$ <u>53.25</u>

John Gladt  
Constable - Pennington County - Elector

Subscribed and sworn to before me this 9TH day of February, 2022

My Commission Expires

John S. Gladt

Notary Public

12-18-24

J & J Attorney Service, PO Box 8024, Rapid City, South Dakota, 57709, (605) 342-0077

IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

APPEAL NO. 30180

---

**ROBERT and MELISSA HOOD, THOMAS and PATRICIA DONOVAN,  
BERNARD and MARIA JUNG, WILLIAM and JANICE PRICE, JAMES and  
KAY FENENGA, LARRY and DARLENE BAILLY, GREG and DEB PETERS,  
MARK and KITTY GUSTAF, and RODNEY and GINA BOADWIRE,**  
Plaintiffs and Appellants

vs.

**CLYDE and NANCY STRAATMEYER,**  
Defendants and Appellees

---

Appeal from the

Fourth Judicial Circuit

Meade County, South Dakota

The Honorable Kevin J. Krull, Circuit Court Judge

---

**APPELLANTS' REPLY BRIEF**

---

**ATTORNEYS FOR APPELLANTS**

COURTNEY R. CLAYBORNE  
Clayborne, Loos & Sabers, LLP  
PO Box 9129  
Rapid City, South Dakota 57709  
(605) 721-1517

**ATTORNEYS FOR APPELLEES**

TALBOT WIECZOREK  
Gunderson, Palmer, Nelson and  
Ashmore.  
506 6<sup>th</sup> Street  
Rapid City, SD 57701  
(605) 342-1078

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## **TABLE OF AUTHORITIES**

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## **PRELIMINARY STATEMENT**

Appellees having filed their Brief in the above matter, Appellants hereby file this response.

## **ARGUMENT AND AUTHORITIES**

### **A. Covenants and knowledge of the same.**

In introducing this matter to the Court, Appellees spend an inordinate amount of time stating the process in which they engaged in order to have the lot re-platted, in violation of the covenants. In doing so they informed the Court of various steps taken by the City of Summerset to approve the plat. What is not stated, however, is the fact that the particular subdivision at issue is not within the city limits of the City of Summerset. APP 008-APP 015, p. 17. Equally as important is the fact that there is no evidence or even allegation that any of the Appellants ever received notice of the attempts to violate the covenants.

In terms of knowledge of the covenants, however, it is without dispute that the covenants at issue were on file with Meade County prior to any efforts to subdivide a lot. APP 001. It is also undisputed that in the application for their building permits, Clyde Straatmeyer testified that the covenants were on file with Meade County prior to his purchase of lot 6B and that they would have been available for review prior to subdividing lot 6 and his purchase of the same. APP 008-APP 015, p. 40-41. He further acknowledges that had he availed himself to the covenants he would have been aware that subdivision of the lots was prohibited as well as the setback requirements. APP 008-APP 015, p. 41.

When asked why he had not taken the opportunity to review the covenants before subdividing or purchasing the lot, Straatmeyer testified that he "... Never gave it a thought..." APP 008-APP 015, p. 41. He testified to this despite the fact that documents which he completed and filed with Meade County for the building permit specifically acknowledged that "... He or she is familiar with covenants, deed restrictions, government regulations and Meade County ordinances..." APP 008-APP 015, p. 42, APP 003-APP 007.

It also bears mentioning that the prohibition against subdividing lot has a rational basis as testified to by one of the developers, Eddie Opstedahl, who specifically testified that the lots were set up in such a way as to allow each lot to have each to have its own leech field and septic tank area. APP 008-APP 015, p. 13. He continued and testified that if additional, smaller lots were allowed, this could lead to sewage leakage and water contamination on other properties. *Id.* Thus the restriction on subdividing.

The foregoing may be superfluous insomuch as the law charges the Appellees with constructive knowledge of the restrictive covenants because they were properly filed with the register of deeds. As long stated by this Court:

The constructive notice furnished by a recorded instrument, so far as every material fact recited therein is concerned, is equally as conclusive as would be actual notice acquired by a personal examination of the recorded instrument or actual notice acquired by or through other means....

*Lunstra v. Century 21 GKR-Lammers Realtors*, 442 N.W. 2d 448, 450 (S.D. 1989).

Given this, appellees are charged with knowledge of the covenant and should not have subdivided the lot at issue.

**B. The Circuit Court erred in finding detached garages to be in violation of the covenants.**

Appellees next argue that the court's interpretation of detached garages was not in error. This too is incorrect. Specifically, it is clear that the covenants at issue do not address any issue concerning the right to have or maintain outbuildings, with the exception of the location of certain buildings. This is consistent with the testimony provided by Opstedahl, at trial. APP 008-APP 015, p. 12. Opstedahl specifically testified that detached garages are not prohibited or restricted by the covenants. *Id.*

The Trial Court found the covenants dealing with garages to be ambiguous, which is not the case. That covenant simply reads "... There shall be only one single-family dwelling per lot with no larger than a three-car garage ...". This is the totality of this covenant and the same is not ambiguous. The interpretation of a restrictive covenant involves the same rules of construction for contract interpretation and when the wording of the covenant is unambiguous, 'its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature'." *Id.* ¶ 9. "[A] covenant is ambiguous if we have a genuine uncertainty as to which of two or more meanings is correct." *Id.* When language of a restrictive covenant is unambiguous, we consider the plain meaning of the words in the covenant. *Id.* ¶ 14; *Coffey v. Coffey*, 2016 S.D. 96, ¶ 8, 888 N.W.2d 805, 809.

It is only if the court finds an ambiguity, may it look beyond the document for assistance in interpreting the covenants. *Halls v. White*, 2006 S.D. 47, 715 N.W.2d 577. There also exist the long-standing principle that requires construing restrictive covenants strictly in favor of the free use of property. *Id.*

Here, the phrase "... with no larger than a three-car garage ..." has absolutely no meaning standing alone. Instead, this phrase is descriptive of the noun, "one single family

dwelling,” meaning the two phrases need to be read together. A plain reading of those terms together leads to the inescapable conclusion that it is the one single-family dwelling that is limited to a three-car garage. Again, there is no prohibition against detached garages contained within the covenants and therefore the same should be allowed. As this term is not ambiguous, no extrinsic evidence is necessary to define the same in the court erred in doing so.

**C. The Circuit Court erred in finding the “boundary of said lot” to be the mythical lot line.**

Appellees next argue, and the trial court found, that the lot boundary lines within the subdivision are legally defined as lot line, rather than the center of the road. This, too is in error.

This issue is best handled to the exhibits introduced at trial. As a precursor to that, it is without dispute that the property owners within the subdivision are responsible for the maintenance of all easements contained within the same. This was the intention expressed by Opstedahl who noted that the roads would be split in half so “... each landowner on the four parcels would be responsible for maintenance ...” APP 008-APP 015, p. 15. Contrary to the assertions of Appellees, this was necessary “... because the county would not do it [maintenance]...” *Id.* In other words, the property over which the easement’s was placed remained the property of the individual lot owners who were given the responsibility of maintenance pursuant to the covenants.

Introduced at trial were several exhibits showing the various lots and lot lines. Of note was Exhibit 16 which included legends showing the various lots. The lot lines were denominated on that exhibit as “Easement lines of record.” APP 002. The term “easement” is not ambiguous and is Merriam-Webster defines it as “... a right to cross or

otherwise use *someone else's land ...*” or “... an interest in *land owned by another* that entitles its holder to a specific limited use or enjoyment...” (emphasis added) CAR, *Merriam Webster* (online edition).

Essential to the definition of “easement” would be the fact that the ownership of the property (lot) at issue and which is subject to the easement, remains with the property of the property (lot) owner. As applicable here, according to the exhibits and testimony on trial, the land over which the easement travels remain the property of the various landowners, constituting their “lot.” While they have the responsibility of maintenance of the easement, they still are owners of that property in fee. This establishes the basis for setting the same as their “lot line” as the boundaries of entire lot owned, including the land over which the easement travels, for purposes of the covenant which indicates that no structure “... shall be constructed so that any part of said building is within 40 feet of the boundary of said lot ...”

**D. The Circuit Court erred by finding that sheds and other movable property located within the 40 feet of the boundary of the lots were violations of the covenants.**

As it pertains to the 40-foot setback, the Appellees argue violations of the covenants include sheds which were determined to constitute buildings, garages and shops which were 40 feet from the center of the road and boundary line but closer than 40 feet from the imaginary lot line; and a small building on a concrete foundation (believed to house the control systems for a sprinkler). As to those items that were 40 feet setback from the actual roadway, those would not be in violation of the covenants.

As argued in previous briefing, substructures do not constitute “buildings” as that term is commonly used. The word “building” has been defined by Merriam-Webster as

“... a usually roofed and wall structure built for permanent use (as for a dwelling) ...”

Under this definition, a movable shed certainly would not constitute a “building” as the term is used in this covenant.

**E. The Circuit Court erred by finding that property owners conducted business on their properties in violation of the covenants.**

It is believed that this issue was adequately briefed and the initial filings by Appellants. With the specific caveat on this, after reviewing the Appellees brief, being the fact that nowhere in that brief do they allege any “business,” i.e., the conducting of an occupation or trade, being performed on any premise located within the subdivision. Instead, they cite the parking of work vehicles at the premises which, in and of itself, does not violate any covenants. Nowhere was there a single piece of evidence of any customer visiting any lot to conduct business with the owner.

**F. A Word on Equity**

In the final argument, Appellees commented on the application of equity and equitable doctrines to be weighed or balanced against the parties. While this was again briefed, previously, this Court would be reminded of the long-standing equitable principle that “... the doctrine of unclean hands which requires that “[a] party seeking equity must act fairly and in good faith.” *Action Mech., Inc. v. Deadwood Historic Pres. Comm’n*, 2002 SD 121, ¶ 26, 652 N.W.2d 742, 751. In contradiction to the above law, the Circuit Court placed the burden of preventing Straatmeyers from violating the covenants, on the remaining property owners. This is done despite the fact that the covenants were of record at the time Straatmeyers subdivided the lot and obtained a building permit. In fact, according to Clyde Straatmeyer he could have easily availed himself to the covenants by

merely looking at the records on file would surely would have been with his title insurance policy.

The potential hardship on the plaintiff is substantial. As indicated in the undisputed testimony of the developer, the reason for the limitation of structures on lots was for the express purpose of assuring no future issues with the septic system or leech field, which was approved for the development. Without enforcement of the covenants, all owners are free to subdivide their properties which would increase this risk substantially.

Conversely, Straatmeyers have not begun construction and are not harmed by enforcement of the covenants of which they should have been aware. Further, they have now, is required by South Dakota law, purged themselves of unclean hands to the extent that would restore their right to complain. In short, the equities favor Appellants.

### **CONCLUSION**

For the reasons stated, Appellants respectfully request this court to reverse the memorandum of decision and subsequent order filed in this matter into uphold the covenants at issue herein.

### **REQUEST FOR ORAL ARGUMENT**

Appellants hereby request oral argument.

Dated this 3rd day of May, 2023.

CLAYBORNE, LOOS & SABERS, LLP

/s/ Courtney R. Clayborne  
Courtney R. Clayborne  
2834 Jackson Blvd., Suite 201  
PO Box 9129  
Rapid City, SD 57709-9129  
*Attorneys for the Appellants/Plaintiffs*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3rd day of May, 2023, he electronically filed the foregoing documents with the Clerk of the Supreme Court Odyssey File and Serve portal, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

Ms. Shirley A. Jameson-Fergel  
Clerk of the Supreme Court  
State Capitol  
500 East Capitol  
Pierre, SD 57501

TALBOT WIECZOREK  
Gunderson, Palmer, Nelson and Ashmore.  
506 6<sup>th</sup> Street  
Rapid City, SD 57701  
(605) 342-1078

/s/ Courtney R. Clayborne  
COURTNEY R. CLAYBORNE

*[Certificate of Compliance to Follow]*



### **CERTIFICATE OF COMPLIANCE**

Pursuant to SDCL § 15-26A-66(b)(4), Courtney R. Clayborne, counsel for the Appellants, does hereby submit the following:

The foregoing brief is 7 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 1,982 words, and 9,915 characters (no spaces) in the body of the Brief.

/s/ Courtney R. Clayborne  
COURTNEY R. CLAYBORNE

## APPELLANT APPENDIX

### **Description**

### **Page Number:**

Defendant's Exhibit 1 - Shadowland Covenants .....	APP 001.
Defendant's Exhibit 16 – Shadowland Ranch Subdivision Survey Plat of Lot 6A & Lot 6B of Tract 3 .....	APP 002.
Plaintiff's Exhibit 103 – Building Permit Documentation Required.....	APP 003-APP 007.
02/15/2022 Court Trial Transcript (Excerpts) .....	APP 008-APP 015.

BOOK 381, PAGE 687 4TH CIRCUIT DISTRICT COURT  
SOUTH DAKOTA

## SHADOWLAND RANCH SUBDIVISION RESTRICTIONS AND COVENANTS

The following covenants and restrictions shall apply to the following property being subdivided by the property owners, Eddie A. Opstedahl and Sandra L. Opstedahl, husband and wife.  
Lots one (1) through thirteen (13) of the Shadowland Ranch Subdivision located in the NW 1/4 of Section 36, Township 3 North, Range 6 East of the Black Hills Meridian, Meade County, South Dakota.

- A. There shall be only one single family dwelling per lot with no larger than a three-car garage.
- B. The main level of each dwelling constructed shall be a minimum of Two-hundred (200) square feet. No trailers or modulars.
- C. The lots shall be used for residential purposes only, and lot owners shall conduct no business activities which shall require extra parking facilities or which shall result in any materials being stored outside any dwelling or which shall in any other way interfere with the peaceful enjoyment of the premises by other lot owners.
- D. Further subdivisions of any lot shall be prohibited.
- E. Only dogs, cats, and horses may be kept on the premises. Horses may be kept if one party owns more than six (6) acres in the development. Limit of three (3) mature horses per six (6) acres or more. Foals, yearlings, and ponies count as one-half (1/2) mature horse. All dogs, cats, and horses must be retained on the respective lots.
- F. The outside appearance of the house being constructed on any lot must be fully completed within one (1) year after the beginning of construction.
- G. All vehicles on lots must be in running order.
- H. No building shall be constructed so that any part of said building is within forty (40) feet of the boundary of said lot.
- I. Buyer of Lot six (6) will have right to temporary hook-up to existing well across the road, to the west, for minimum of one (1) year and maximum of two (2) years from the time of original purchase.
- J. Overhead electrical system is to be run along north boundary of lots five (5) and six (6) due to trees and rocks. All other new lines (electrical and telephone) constructed on the subdivision are to be underground. Electrical and telephone wires are to be run to each lot line.

STATE OF SOUTH DAKOTA

COUNTY OF MEADE

SS.

*Eddie A. Opstedahl*  
Eddie A. Opstedahl

*Sandra L. Opstedahl*  
Sandra L. Opstedahl

On this 20th day of September, 1978, before me, the undersigned officer, personally appeared EDDIE A. OPSTEDAHL and SANDRA L. OPSTEDAHL, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledge that they executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.



*Ed. Peterson*  
Notary Public, South Dakota  
STATE OF SOUTH DAKOTA, COUNTY OF MEADE - SS.

*August 1978*  
Registrar of Deeds  
Meade County, South Dakota

EXHIBIT

1

EXHIBIT

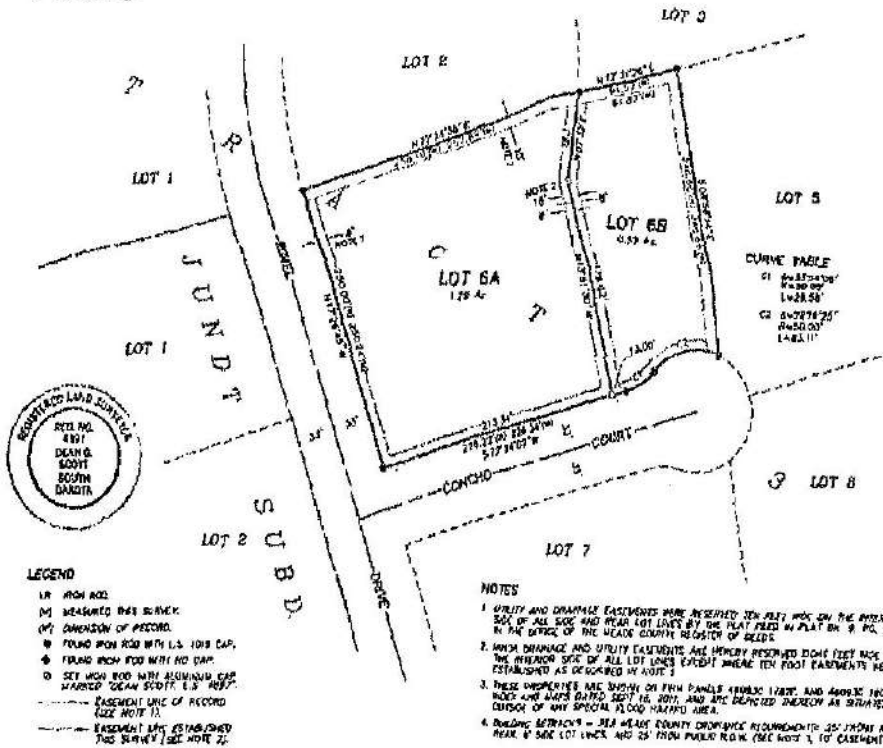
A

# SHADOWLAND RANCH SUBDIVISION

SURVEY PLAT OF  
LOT 6A AND LOT 6B OF TRACT 3  
(FORMERLY LOT 6 OF TRACT 3 OF SHADOWLAND RANCH SUBDIVISION)  
LOCATED IN THE NW 1/4 NW 1/4 OF SECTION 38  
TOWNSHIP 3 NORTH, RANGE 8 EAST OF THE BLACK HILLS MERIDIAN,  
MEADE COUNTY, SOUTH DAKOTA.  
OCTOBER, 2022

D.C. SCOTT  
SURVEYOR, INC.  
1118 S. DAKOTA AVE.  
SIOUX FALLS, SD 57105  
605.336.5400

SCALE IN FEET  
0 10 20 30 40



## OWNER'S DECLARATION

We, Jerry L. Schmidt and Julie A. Schmidt, do hereby certify that we are the owners of the land above and described herein, and that we do authorize and do join in and approve this survey and plat. We further certify that the development of this land shall conform to all existing applicable zoning, subdivision, and other and subsequent local regulations.

IN WITNESS WHEREOF, We hereunto set our hands

This 29th day of October, 2022.

*[Signature]*  
Jerry L. Schmidt, Owner

*[Signature]*  
Julie A. Schmidt, Owner

## SURVEYOR'S STATEMENT

I, Dean C. Scott, Registered Land Surveyor, do hereby state that, at the request of the Owners listed herein, I have surveyed the tract of land as shown herein, and have marked upon the ground the boundaries to the survey shown, and that this plat is correct to the best of my knowledge, information and belief. Certain easements, restrictions, or other property rights of public record or private agreement may not be shown herein.

IN WITNESS WHEREOF, I hereunto set my hand and seal

This 29th day of October, 2022.

*[Signature]*  
Registered Land Surveyor No. 4607

## ACKNOWLEDGMENT OF OWNERS

STATE OF SOUTH DAKOTA

COUNTY OF MEADE

On the 29th day of November, 2022, before me, the undersigned official, personally appeared Jerry L. Schmidt and Julie A. Schmidt, known to me to be the persons who executed the foregoing Owner's Certificate, and acknowledged to me that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereby set my hand and official seal

*[Signature]*  
Notary Public

*[Signature]*  
My Commission Expires August 8, 2025

## COUNTY TREASURER'S CERTIFICATE

I, Treasurer of Meade County, South Dakota, do hereby certify that all taxes which are due upon the land described herein, as shown by the records of my office, are fully paid.

This was done on the 29th day of November, 2022.

*[Signature]*  
Meade County Treasurer

## CERTIFICATE OF HIGHWAY AUTHORITY

11-5-123 access to this property from the existing Highways or roads is approved. Specific approach location and configuration must adhere to all current Highway and/or Street regulations.

Dated this 29th day of November, 2022.

*[Signature]*  
Highway Authority

## CERTIFICATE OF DIRECTOR OF EQUALIZATION

I, Director of Equalization of Meade County, South Dakota, do hereby certify that I have a copy of this within described plat in my office.

Dated this 29th day of November, 2022.

*[Signature]*  
Meade County Director of Equalization

## COMMITTEE OF GOVERNING BOARD

WHEREAS there has been presented to the Governing Board of the City of SUNDY, South Dakota, the within plat of the above described lands, and it appears to the Council that:

- the system of streets conforms to the system of streets of existing plat and Section 38 of the city;
- adequate provision is made for access to adjacent unimproved lands by public dedication or physically accessible means;
- all provisions of the City Subdivision Regulations have been complied with;
- all taxes and special assessments upon the property have been fully paid; and
- the plat and survey have been lawfully executed.

NOW THEREFORE, BE IT RESOLVED

that said plat be hereby approved to all intents.

Dated this 29th day of November, 2022.

*[Signature]*  
Mayor, City of Sundy

*[Signature]*  
Attest, Finance Officer, City of Sundy

**FILED**

FEB 15 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

APP 002

EXHIBIT  
16

## Building Permit Documentation Required:

\*Applications will not be accepted unless the following information is submitted:

Received

☐

### Foundation Plan

(Cross-section of footing, wall etc. with rebar size and spacing  
- for post frame structures, a diagram of post holes is required)

☐

### Floor Plan

☐

### Elevation Plan

(Diagram of framing and truss information, ex. wall detail)

☐

### Site Plan

(Diagram of proposed structures, distance to property lines)

☐

### Truss Plan(s) - engineered roof truss plan

(All psf ground snow load, 90 mph wind speed)

☐

### Cost Estimate of Project

(Written or typed detailed breakdown of cost estimate of improvements, including material and labor costs)

N/A

Received

☐☐

### Owner Statement - (if applicable)

(Written verification from owner is required if someone other than owner is applying for permit - complete attached statement)

N/A

Received

☐☐

### Stormwater Site Plan - (if applicable) \* \$25.00 fee applies

(A stormwater site plan is required to be submitted if the construction area or site is within 250 feet of a drainage ditch, stream, or road ditch - complete attached form.)

\*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)

N/A

Received

☐☐

### Percolation Test - (if applicable)

(Percolation test is required to be turned in at time of building permit application if a new septic system will be installed - if ground is frozen this will be required at time of septic permit application)

N/A

Received

☐☐

### Copy of Warranty Deed - (if applicable)

(If the property was purchased within the last 60 days, a copy of the warranty deed is required.)

The completed application and all required documentation and plans are to be submitted at the time of application. Plan review will take a minimum of two business days. Permits will be mailed to the applicant when they are issued.



# FILED

FEB 15 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
4TH CIRCUIT CLERK OF COURT

Page | 1



MEADE COUNTY  
BUILDING PERMIT APPLICATION

Equalization & Planning Department  
1300 Sherman St., Suite 222  
Sturgis, SD 57785  
Office 605-347-3818

PLEASE PROVIDE THE FOLLOWING INFORMATION:

(Permit will not be issued without completed application and providing required information.)

APPLICANT:	
Mailing Address: _____	
Telephone Number: _____	Email Address: _____
Relationship to Property Owner: _____	
PROPERTY OWNER: <u>Clyde Streetmeyer</u>	
Mailing Address: <u>24587 Outback Trail, Hermosa 57244</u>	
Telephone Number: <u>605-391-2670</u>	Email Address: <u>Street007@gmail.com</u>

PROPERTY INFORMATION:	
Site Address: <u>10305 Concho Ct, Black Hawk</u>	
Parcel ID: _____	
Legal Description: <u>Lot 6B of Tract 3, located in NE 1/4 NW 1/4 of Section 36, Township 3 North, Range 1a</u>	

The APPLICANT hereby agrees and affirms that all the information given is true and is a correct representation of the structure(s) or construction being built. Any alteration in plans, designs or specifications will require an additional review of the project and may result in additional building permits and/or fees. Failure to provide the correct information may result in a fine or legal action or both. Failure to obtain a building permit will result in a fine per Ordinance No. 34.

Setbacks for all structures shall be 25.0 (feet) front and back and Sides 8.0' (feet). Setbacks are measured from property lines and/or section line right-of-ways and easements. Corner lots have a 25.0 (feet) setback from each right-of-way. If you are unsure, please ask.

Improvements will be assessed on the property on which they are placed or constructed, unless the proper documents are filed with the Equalization office stating the improvement is a building on leased site.

The APPLICANT hereby acknowledges that he/she is familiar with covenants, deed restrictions, governmental regulations and Meade County Ordinances and recognizes that Meade County enforces the adopted version of the International Building and Residential Codes along with the Fire Code.

Notice is hereby given that it is the homeowner's sole responsibility to apply for the owner-occupied tax reduction program of South Dakota by filling out an application in the Meade County Equalization & Planning office from November 1st through March 15th. The owner must own and occupy the house by November 1st to qualify.

Applicant Signature: C. Streetmeyer Date: 4-14-21

Type of Construction: ☒ Residential ☐ Commercial ☐ Agricultural

**Type of Improvement:**

☒ Stick-Built New Residence ☐ Mobile Home ☐ Modular Home ☐ Outbuilding ☐ Garage  
☐ Home Remodel ☐ Home Addition ☐ Basement Finish ☐ New Commercial  
☐ Commercial Remodel ☐ Addition to Outbuilding/Garage ☒ Other: Post Frame

**IMPROVEMENT INFORMATION**

**NEW HOME:**

Main Floor Sq. Ft. 1224

Second Story Sq. Ft. \_\_\_\_\_

Basement Sq. Ft. \_\_\_\_\_

Basement Finish Sq. Ft. \_\_\_\_\_

Total Sq. Ft. 1224

No. of Bedrooms: 2

No. of Bathrooms: 2

Heat Type: Gas / In-floor

Central Air: ☐ Yes ☒ No

Fireplace: ☒ Yes ☐ No

Type Gas No. of Fireplace(s): 1

No. of Decks: 0

Deck(s) Sq. Ft. 0

**GARAGE/OUTBUILDING:**

☒ Attached ☐ Detached

☐ Stick-Built ☒ Post Frame ☐ Other \_\_\_\_\_

Size: 43' x 72'

(LENGTH X WIDTH X HEIGHT)

Sq. Ft. 3096

Electricity: ☒ Yes ☐ No

Plumbing: ☒ Yes ☐ No

Finished: ☐ Yes ☐ No Partial

Insulated: ☒ Yes ☐ No

Floor Type: Concrete

Will this structure be used for agricultural purposes?

☐ Yes ☒ No

**COMMERCIAL:**

Type of Structure: \_\_\_\_\_ Type of Business: \_\_\_\_\_

Size of Structure (length x width x height): \_\_\_\_\_ Main Floor Sq. Ft. \_\_\_\_\_

Second Story Sq. Ft. \_\_\_\_\_ Total Sq. Ft. \_\_\_\_\_ No. of Bathrooms: \_\_\_\_\_

**ESTIMATED COST OF IMPROVEMENTS = \$ 198,000**

(This includes the estimated cost of material & labor costs. A written or typed detailed breakdown of estimated costs is required to be submitted with application.)

Will the construction area or site be within 250 feet of a drainage ditch, road ditch or stream? ☐ Yes ☒ No

Will structures be in a floodplain area? ☐ Yes ☒ No

Will structures meet Meade County's property setback requirements? ☒ Yes ☐ No

Water Source (if applicable): ☐ Private Well ☒ Community Well ☐ Central Water

**FOR OFFICE USE ONLY:**

Date Application Received: \_\_\_\_\_

If Denied, Reason for Denial: \_\_\_\_\_

Reviewed By: \_\_\_\_\_

Review Date: \_\_\_\_\_

Application Approved: ☐ Yes ☐ No

BUILDING PERMIT FEE \$

FD BY: ☐ CASH ☐ CHECK #

☐ CREDIT CARD

## CONTRACTOR LIST

(REQUIRED TO BE SUBMITTED WITH BUILDING PERMIT APPLICATION)

### General Contractor:

Company Name: Forkner Contractors  
Contact Name: Bryan Forkner  
Address: 327 Sunnydale Box Elder 57719  
Telephone Number: (809) 923-2628 Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### Subcontractor:

Company Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_



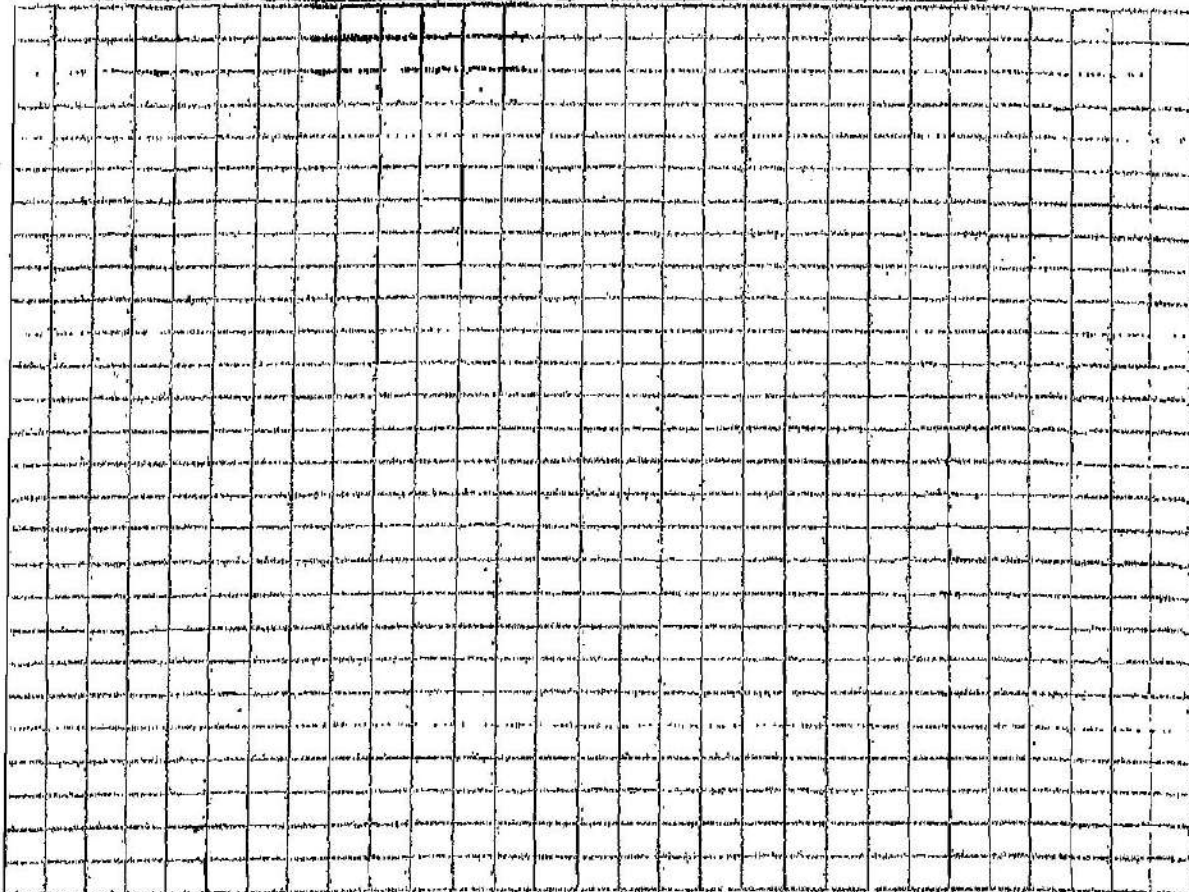
## STORMWATER SITE PLAN

*(Required to be completed and submitted with building permit application when the construction area or site is within 250 feet of a drainage ditch, road ditch, or stream. \*Construction on agriculturally taxed properties, of structures to be used for agricultural use only, is exempt from this requirement.)*

- Site Plan needs to show roads drainage ditches, road ditches, streams and area of excavation or fill including the approximate distances between each feature.
- Site plan must show location of silt fence, waddles, gravel or stone construction entrance for construction vehicles and wash pit for concrete truck washouts.

Check the type of foundation:

- ☐ Piers or Post Holes - Site Sketch Not Required
- ☐ Thickened Edge (Monolithic Slab)
- ☐ Frost Footings and Frost Walls (Crawl Space)
- ☐ Footings and Basement
- ☐ Adding Fill Material



SKETCH SITE PLAN ABOVE

STATE OF SOUTH DAKOTA )  
 )  
 COUNTY OF MEADE )

IN CIRCUIT COURT  
 FOURTH JUDICIAL CIRCUIT

ROBERT and MELISSA HOOD,  
 THOMAS and PATRICIA DONOVAN,  
 BERNARD and MARIA JUNG,  
 WILLIAM and JANICE PRICE,  
 JAMES and KAY FENENGA, LARRY  
 and DARLENE BAILLY, GREG and  
 DEB PETERS, MARK and KITTY  
 GUSTAF, and RODNEY and GINA  
 BOADWIRE,

COURT TRIAL

46CIV21-000206

Plaintiffs,

vs.

CLYDE STRAATMEYER and NANCY  
 STRAATMEYER,

Defendants.

BEFORE: **THE HONORABLE KEVIN J. KRULL**  
 Circuit Court Judge  
 Sturgis, South Dakota  
 February 15, 2022 at 8:30 a.m.

APPEARANCES:

For the Plaintiffs: Courtney R. Clayborne  
 Attorney at Law  
 2834 Jackson Blvd., Suite 201  
 Rapid City, South Dakota 57709

For the Defendants: Talbot J. Wieczorek  
 Attorney at Law  
 506 Sixth Street  
 Rapid City, South Dakota 57709

1 Q And was 101 recorded?

2 A Yes.

3 Q And where was 101 recorded at?

4 A Right here in the courthouse.

5 Q In Meade County?

6 A Yes.

7 Q I'm looking at then 101, and I note that there are several  
8 restrictions and covenants, and would those restrictions  
9 and covenants have been restrictions that you would have  
10 been involved with drafting?

11 A Partially, with an attorney also.

12 Q Okay. But these set forth what you wanted --

13 A Yes, it was set up the way we'd like to have it performed  
14 and stayed as.

15 Q And I see Subparagraph A deals with the single family  
16 dwelling with no larger than a three-car garage, is that  
17 correct?

18 A Correct.

19 Q Is there anywhere in the covenants that detached garages  
20 are prohibited or restricted?

21 A No.

22 Q I note that exhibit -- or I'm sorry, Subparagraph D  
23 provides for a prohibition on the subdivision of any lots.  
24 Do you see that?

25 A Yes.

1 Q Can you explain to the Court what was reason for that  
2 prohibition?

3 A The reason behind it, the size of the lots that  
4 Francis-Meador-Gellhaus through the surveying and water  
5 samples -- or the soil samples pertaining to the water  
6 sample and that it be set up as individual wells and also  
7 to be set up with the septic system that would have a leach  
8 field, plus the main septic tank area, and the restrictions  
9 how far it had to be from the property lines so it wouldn't  
10 interfere with other landowners. He ran percolation tests  
11 on most of the lots, and it's all wrote up in his summary  
12 as to the drain field would be accurate that way for that  
13 size lot. Lots were not to be smaller because it may cause  
14 perforation in somebody else's properties.

15 MR. CLAYBORNE: May I approach, Your Honor?

16 THE COURT: You may.

17 Q (BY MR. CLAYBORNE) Mr. Opstedahl, I'm going to show you  
18 what's been marked as Exhibit No. 16, and I'll ask you if  
19 you can identify what Exhibit 16 is?

20 A I haven't seen it before now.

21 Q Okay. Do you recognize the Concho Court --

22 A Right.

23 Q -- shown on Exhibit 16?

24 A Right, that was part of the original development.

25 Q I'll represent to you that lot -- what is on this exhibit

1 Francis-Meador-Gellhaus set it up that way rather than  
2 doing a straight road down through the center from the  
3 north to the south and to the shorter runs. But as the  
4 land was divided by lot lines, then the two -- the lots  
5 that went into the circle drive on each side, the road  
6 would be split in half so each landowner on the four  
7 parcels would be responsible for maintenance on that at  
8 that point at that time because the county would not do it.  
9 It was up to the landowners, and that's the way it was set  
10 up with the covenants and per their restrictions for the  
11 county.

12 Q So with that explanation, would I understand the lots which  
13 would abut any of the roadways would have added to them  
14 property that would be outside of the lot lines?

15 A As far as where the stakes are put for the lot line, yes.

16 Q And I'm going to show you now what's marked as Exhibit 17,  
17 and I note on Exhibit 17 -- you understand that to at least  
18 depict the Shadowland Ranch Subdivision?

19 A Yes, correct.

20 Q And if I look at Cantle Court and Concho Court, as well as  
21 Romel Drive, there appears to be lines going down the  
22 center of those roads?

23 A Correct.

24 Q And for Lots 6, 7, 10 and 2, would those lines represent  
25 the actual boundary of those lots for which those owners

1 is that within the city limits of the City of Summerset?

2 **A** No.

3 MR. CLAYBORNE: That's all the questions I have. Thank  
4 you.

5 THE COURT: Go ahead, Mr. Wieczorek.

6 CROSS EXAMINATION

7 BY MR. WIECZOREK:

8 **Q** Mr. Opstedahl, my name is Talbot Wieczorek and I represent  
9 the Straatmeyers. I'm going to have some questions for  
10 you.

11 MR. WIECZOREK: Is it okay for me to approach, Your Honor?

12 THE COURT: You may.

13 **Q** (BY MR. WIECZOREK) Mr. Clayborne was just showing you this  
14 Exhibit 17. I'm going to show it to you yet again. If I'm  
15 to understand your testimony here today, your claim is --  
16 you would agree with me this road was platted out as a  
17 separate -- it's not part of the actual lots?

18 THE COURT: Mr. Wieczorek, maybe --

19 MR. WIECZOREK: Concho Court.

20 THE COURT: This road?

21 MR. WIECZOREK: Concho Court.

22 THE COURT: Okay. Thank you.

23 **A** The access into the four lots was by this little spur,  
24 Concho type deal. Okay, so it was for the landowner's use,  
25 plus public use.

1       sometime that summer.

2       **Q** Which summer?

3       **A** 2020. A year and a half ago.

4       **Q** So at the time you approached Mr. Schmidt about selling  
5       the, as you call it, the back side of that lot, had that  
6       lot been subdivided?

7       **A** No.

8       **Q** And I note that the subdivision did not take place until,  
9       it looks like the drawings are dated November of 2020?

10      **A** That would be correct.

11      **Q** And what was your role relative to subdividing that lot?

12      **A** I did most of the footwork part of it. Started out asking  
13      the county if I could build on that lot and if we could do  
14      that. The county referred me to Summerset. Had numerous  
15      discussions with Summerset. They -- the county told me I  
16      had to do everything through Summerset.

17      **Q** At any time did you ever look at the Shadowland Ranch  
18      Subdivision restrictions and covenants?

19      **A** No.

20      **Q** Why not?

21      **A** Never gave it a thought to. I had been contacting, like I  
22      say, the county, the city, at a future time contacted the  
23      surveyor then. I didn't know to and it never came up.

24      **Q** Okay. And you know those documents are on file with Meade  
25      County, correct?

1    **A**   Correct.

2    **Q**   So they would have been open and available for your review  
3       at any time prior to subdividing and purchasing that lot?

4    **A**   That would be correct.

5    **Q**   And do you agree with me that had you availed yourself to  
6       the covenants, you would have seen that subdivision of the  
7       lots is prohibited?

8    **A**   I probably would have seen it then, yeah.

9    **Q**   And what would you have done had you seen that?

10   **A**   Maybe -- I don't know.

11   **Q**   Would --

12   **A**   Probably wouldn't have done it then, I don't know.

13   **Q**   And so you had the opportunity to do that, but you just  
14       simply did not look at the covenants?

15   **A**   Never gave it a thought.  Never once did anybody -- I mean,  
16       the whole process was very, very new to me, and nowhere did  
17       anyone from the county, the city, the surveyor, anybody I'd  
18       been working with ever said you should do this or that.  
19       They told me do this, do that, I should, you know, submit  
20       these and everything else, but they never -- it never came  
21       up.

22   **Q**   I just want to make sure this book -- in front of you  
23       there's a white exhibit notebook and I'd ask you to look at  
24       Exhibit 103 in that notebook.

25   **A**   Yes.



1 Q Can you tell the Court what Exhibit 103 is?

2 A It's the building permit required.

3 Q And if I look at page 2, can you tell the Court whose  
4 signature that is?

5 A That is my signature.

6 Q Now if you go up two lines from your signature, can you  
7 read what that provision says?

8 A The applicant hereby acknowledges that he or she is  
9 familiar with covenants, deed restrictions, government  
10 regulations and Meade County Ordinances and recognizes that  
11 Meade County enforces the adopted version of the  
12 International Building Residential Codes and Fire Code.

13 Q And did you read that before signing the application?

14 A Probably scanned through it.

15 Q And in that acknowledgement, you acknowledged that you were  
16 familiar with the covenants?

17 A Along with every other paragraph on the document, the  
18 setbacks set by the county, the highlighted portion of it.

19 Q My question was simple. In that section of the  
20 application, you acknowledged to the county that you were  
21 familiar with the covenants, correct?

22 A I scanned through that and signed it when they told me  
23 "sign here."

24 Q Okay. Did you not understand the question?

25 A Apparently not.