

NO. 317480

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

CHEWELAH GOLF AND COUNTRY
CLUB ASSOCIATION,

Respondent and Cross-Appellant,

v.

WILBUR "WOODY" WILLIAMS,

Appellant.

RESPONDENT AND CROSS-APPELLANT'S BRIEF

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By _____

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I. INTRODUCTION

Since 2007 Mr. Williams has been attempting to stop golf play and maintenance on a portion of the Chewelah Golf & Country Club Association's (hereinafter "CGCC" or the "Association") course. Mr. Williams' interference with use of the course became increasingly aggressive and CGCC brought this action to enjoin Mr. Williams' interference, establish the Association's right to golf play and maintenance, and seek payment of association fees from Mr. Williams. The trial court granted the Association's Motion for Summary Judgment establishing the Association's right to golf play and maintenance but also granted Mr. Williams' motion ruling that Mr. Williams does not owe association fees. This appeal and cross-appeal followed.

II. RESPONSE TO APPELLANT'S ASSIGNMENT OF ERRORS

The trial court properly confirmed the Association's right to continue play and maintenance on portions of its course used since July 1976. Three separate theories support the Associations right to use: covenant, equitable servitude, and prescriptive easement.

The trial court properly denied Mr. Williams' Motion for Reconsideration because of the Associations right to use its course.

III. CROSS-APPELLANT'S ASSIGNMENT OF ERROR

1. The trial court erred in dismissing CGCC's claim against Mr. Williams for money due on account. CP at 255.

IV. STATEMENT OF THE CASE

A. Facts Related To Respondents Rights To Fairway Use.

The Chewelah Golf Course and Country Estates was created in December 1981 by filing a plat and protective covenants. Decl. of Phillabaum. CP at 74. A nine-hole golf course (the "old nine") was developed prior to the residential subdivision and has been continuously played since July 1976. Decl. of Dashiell. CP at 212. The old nine was incorporated in the plat. Id. CP at 370, Decl. of Beardslee. CP at 365. Mr. Williams owns lot 28 on the first fairway and lots 14 and 16 on the second fairway of the old nine. Decl. of Phillabaum. CP at 75. The protective covenants provided that a portion of each lot bordering on a fairway would

be marked as part of the play area. Decl. of Smith, CP at 114. From the beginning, it was expected and understood by owners that the golf play area would extend into private yards bordering the fairways. The Golf & Country Club Association actually did grading and earth moving on the in-play areas of the private lots adjoining fairways. Decl. of Dashiell, CP at 110; Decl. of Scates, CP at 123.

The out-of-bounds markers delineating the playable portion of yards abutting the fairways of the old nine are 35 feet from the edge of the golf course property, Decl. of Scates, CP at 74. and have been for more than 20 years. Id. Decl. of Dashiell, CP at 212; Decl. of Rowe, CP at 136 . The markers are made of two inch white plastic pipe about three feet high and are clearly visible from Mr. Williams' lots, the fairways, and adjacent lots. Dep. of Williams, p. 161, l. 23 - p. 162, l. 7; p. 158, l. 25 - p. 159, l. 5, CP at 472 - 473.

The play area of private lots along the old nine course has been continuously used by golfers for more than 30 years. Decl. of Scates, CP at 123; Decl. of Rowe, CP at 136; Decl. of Dashiell, CP at 212. This use includes continuous play on or from the 35 foot play area of lots 14, 16, and

28. Decl. of Scates, CP at 204; Decl. of Munson, CP at 140; Decl. of Beardslee, CP at 143; Dep. of Williams, p. 125, l. 6-22, CP at 279.

Because portions of the private lots are considered part of the course, the Association actually waters, mows and fertilizes areas of private lots appropriate to use as fairways or rough. Decl. of Rowe, CP at 136 - 137; Decl. of Dashiell, CP at 110; Decl. of Smith, CP at 114. Mr. Williams' lots all have grassy in-play areas. On lot 14, the grassy portion is 15 feet wide. On lots 16 and 28 it is the full 35 feet. Decl. of Rowe, CP at 136. The grassy portion of lot 14 has been mowed by the Association, just as other portions of fairway play area have been mowed for more than 20 years. *Id.* Such mowing continues to this day. Prior to 2010 the grassy portions of lots 16 and 28 were also mowed on the same schedule as the rest of the fairway play areas. Decl. of Rowe, CP at 137. After Mr. Williams' confrontations with golfers became more aggressive and dangerous, mowing has been modified to minimize risk to the grounds crew until this matter can be resolved in court. Decl. of Rowe, CP at 137. The in-play area of lot 28 is mowed less frequently and lot 16, where Mr. Williams planted a vegetative barrier, is not mowed by the Association. Decl. of Rowe, CP at 137. The Association continues to water and fertilize the in-play portions of all three lots although

a portion of the in-play area of lot 14 is wild and not maintained. Decl. of Rowe, CP at 136 - 137.

At the time he purchased his first property on the Chewelah course in 2003, Mr. Williams received a copy of the protective covenants referencing the golf play area of his yard. Dep. of Williams, p. 15, l. 4-23; p. 182, l.14 - p. 183, l. 3, CP at 271-272. The covenants run with the land. Id., p. 183, l. 4 - 21, CP at 272. Mr. Williams knew he was subject to the covenants. Id., p. 184, l. 6-14, CP at 272. Mr. Williams knows the golf course claims a right to use the 35 foot play area and exercised a right to do so as long as he has been there. Id., p. 222, l.22 - p. 223, l. 10, CP at 285. No one, including his realtor, or others, has ever told Mr. Williams that golfers cannot use the 35 foot play area of his lots. Id., p. 227 l. 18-25, p. 229, l. 1-4, CP at 489; 231, l. 6-9, CP at 490. Mr. Williams was not surprised by the golf use. Mr. Williams is a golfer. Id., p. 130, l. 6-17, CP at 465. Before Mr. Williams purchased his first lot, lot 28, on the first fairway of the old nine he had previously lived on a golf course in Renton for eight years. Id., p. 129, l. 2-7, CP at 284. He knows balls are hit from the course into the rough, into houses and cars. Id., p. 133, l. 7-25, CP at 465.

Beginning almost immediately after his first purchase, Mr. Williams saw players hit into the 35 feet of his property closest to the fairway, Dep. of Williams, p. 125, l. 6-22, CP at 279, as well as other people's property. Id., p. 128, l. 5-11, CP at 284. He did nothing to stop the use in 2004, 2005, or 2006. Id., p. 125, l. 23- p. 128, l. 2, CP at 463 - 464. In fact, he bought two more lots on the second fairway by the end of 2005. Id., p. 126, l. 7-8, CP at 284. He would have purchased the lots whether or not the 35 foot golf play area extended into them. Id., p. 168, l. 20 - p. 169, l.6, CP at 474.

In 2007, however, Mr. Williams planted a vegetative barrier of trees along lot 16 and began to confront golfers who used the 35 foot play area of his lots. Id., p. 128, l. 12-17, CP at 284. The confrontations have escalated. Initially, there was name calling when Mr. Williams used expletive names and threw an envelope at a person trying to deliver the envelope to Mr. Williams. Id., p. 142, l. 15-25, CP at 468; Decl. of Hugus, CP at 130. Mr. Williams intended to offend the man and hoped he would. Dep. of Williams, p. 142, l. 15-25, CP at 468. Mr. Williams then grabbed a piece of plastic property-marking pipe from the man and tried to take it away. Dep. of Williams, p. 142, l. 16 - p. 146, l. 9, CP at 468 - 469. He has also thrown golf balls at players. Decl. of Rick Linehan, CP at 127.

Mr. Williams confronted another golfer and told him he couldn't play a ball in the play area of Williams' lot. *Id.*, p. 210, l. 19-25, CP at 485. They swore at each other. *Id.*, p. 212, l. 5-10, CP at 485. When the golfer tried to play the ball, Mr. Williams went into his house, obtained a police-type Asp telescoping baton. *Id.*, p. 211, l. 24, CP at 485. Mr. Williams deployed the baton to fighting position, picked up the golf ball and threw it onto the fairway. *Id.*, p. 213, l. 20 - p. 214, l. 13, CP at 485 - 486. Mr. Williams admits the steel baton could break bones or even kill someone. *Id.*, p. 213, l. 1-19, CP at 485. He was ready to use it. *Id.*, p. 214, l. 13-23, CP at 486.

In other instances, Mr. Williams went into his house and got a gun because of a confrontation. *Id.*, p. 215, l. 13 - p. 216, l. 12, CP at 486. In July 2010, Mr. Williams threatened a golfer who hit a ball into the play area of Mr. Williams' lot. *Id.*, p. 106, l. 25 - p. 107, l. 1, CP at 459. Mr. Williams said, "If you hit me with a ball on my property, I will put a bullet hole in you big enough to walk through." *Id.*, p. 107, l.5-12, CP at 459. Mr. Williams was weed whacking at the time and tries to justify his behavior because the golfer was "arrogant" when the golfer told Mr. Williams the golfer had "hollered fore for you." *Id.*, p. 111, l. 15 - p. 112, l. 16, CP at 460. Mr. Williams had

a gun in his belt while weed whacking. Id., p. 117, l. 3 - p. 118, l. 20, CP at 461 - 462.

In addition to threatening golfers, Mr. Williams has planted trees and shrubs to impede golfers and golf course ground crew access to the play area. Decl. of Smith, CP at 115; Decl. of Rowe, CP at 137 Initially, in 2007 when Mr. Williams planted trees on the property line, the Golf Course removed those that interfered with mowing. Dep. of Williams, p. 153, l. 17 - p. 155, l. 8, CP at 93; Decl. of Rowe, CP at 137. Mr. Williams, through his attorney, Robert Simone, acknowledged that the Golf Course had an “in-bounds playing area easement” on the Williams property. Id., p. 156, l. 16 - p. 157, l. 7, CP at 94 . As long as access was not impeded, the trees were not a problem. Recently, however, Mr. Williams has planted a line of 20 fast-growing bushy trees along his property line, impeding access by the lawn mower to the 35 feet of the golf play area. Dep. of Williams, p. 194, l. 22 - p. 195, l. 19, CP at 98; Decl. of Smith, CP at 115; Decl. of Rowe, CP at 137; Decl. of Morse, CP at 133.

B. Facts Related To Respondents Cross-Appeal Related To Money Due On Account.

In 1975, several Chewelah residents saw the need for a golf course and formed the Chewelah Golf & Country Club Association (hereinafter

“Association”) as a non-profit corporation in that year. Decl. of Dashiell, Ex. 1, CP at 370. The corporate articles expressly state the Association’s purpose to be construction, maintenance and operation of a golf course and country club, with residences. Id. The Association was empowered to collect money for its services. Id. Following incorporation, the Association built its golf course and country club. The subdivision plat and associated covenants were filed in 1981. Decl. of Dashiell, CP at 370.

The subdivision, golf course and association remain closely related. The Association members, through the Association, own the golf and country club. Decl. of Dashiell, CP at 370. Section 12 of the Chewelah Golf & Country Estates Protective Covenants requires membership in the Association before a person may own a lot in the subdivision. Decl. of Smith, Ex. 1, CP at 347 - 348. The preamble to the covenants provides that the covenants are appurtenant to each and every lot and run with the land. Id. Section 19 expressly provides that the covenants attach to and run with the land. Id. Mr. Williams received a copy of the covenants when he purchased his first property in 2003. Dep. of Williams, p. 15, l. 4-25, CP at 436; p. 182, l. 14 - p. 183, l. 3 CP at 478. Mr. Williams knew he was subject to the covenants. Dep. of Williams, p. 184, l. 6-14 CP at 478.

Covenant 12 was intended as a funding mechanism for the golf course. Decl. of Dashiell, CP at 370. Pursuant to the power in its Corporate Articles and By-Laws, the Association charges dues for Association membership. Decl. of Smith, CP at 348. The Association members pay these dues to provide for golf course operations. Decl. of Smith, CP at 347. These dues are the only charges to Division One lot owners with which the Association can maintain the golf course. Decl. of Smith, CP at 348. Mr. Williams purchased his first lot on November 25, 2003. Dep. of Williams, p. 15 l. 2 - p. 16 l. 7, CP at 91. Mr. Williams admits he was aware that his purchase of a Division One Lot came with an Association Membership:

Q. Right below where it says, "Lot 28, Chewelah Golf and Country Estates," the next sentence says, "Together with and including one membership certificate to Chewelah Golf and Country Club Association." Do you see that?

A. Mm-hmm. That's a yes, sir.

Q. Thank you. I didn't catch that. Do you recall when you first saw this document?

A. No, I can't recall when I first saw it.

Q. A little further down on Exhibit 2, Mr. Williams, it says, "Subject to covenants, conditions, and restrictions contained in plat recorded under Auditor's number 512818." Do you see that?

A. Yes, I do.

Dep. of Williams, p. 16, l. 8-23. CP at 91.

He purchased two additional lots by the end of 2005. CP at 3. The value of

Mr. Williams' lots is increased because of his location on the golf course.
Decl. of Beardslee, CP at 365.

Mr. Williams has not paid the membership dues associated with his three lots in Division One of the subdivision. Dep. of Williams, CP at 281.
Mr. Williams understood that an assessment was due and didn't want to pay.
Id.

V. ARGUMENT

A. The Trial Court Properly Ruled That The Covenants Granted CGCC A Right On Portions Of Williams' Property For Golf Play And Maintenance.

Summary judgments are reviewed de novo *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 860 P.3d 108 (2004). Summary judgment is appropriate where "the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002).

"A material fact is one upon which the outcome of the litigation depends." *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963).
"The nonmoving party must set forth specific facts showing a genuine issue

[of material fact] and cannot rest on mere allegations.” *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). The similar federal rule is interpreted: The “opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986).

1. The Trial Court Properly Ruled That The Covenants Were Intended To And Did Grant The Association A Right to Golf Play And Satisfied The Statute Of Frauds.

a. Washington law supports covenants protecting homeowners collective interests.

The covenants in this case state:

The protective restrictions and covenants hereby established are intended to preserve and enhance the values and amenities of the community. *Decl. of Phillabaum, Ex. 1, Recital 1 of Protective Covenants, CP at 82.*

Building and Landscaping Restriction 6 states:

Front yard landscaping on all lots facing or bordering the fairway shall be restricted to grass, trees and flowers. *The golf playing area of said front yard area shall be marked and any golf balls entering the lot beyond the marked area shall be out of bounds and not played by the golfer.* *Decl. of Phillabaum, Ex. 1, Building and Landscaping Restriction 6, CP at 85.* (Emphasis added.)

It is expressly understood and agreed that the several protective covenants contained herein shall attach to and run with the land and it shall be lawful not only for Chewelah Golf & Country Club Association, or its assigns or successors, but also for the owner or sublessee of any lot in the Subdivision to institute and prosecute any proceeding at law or in equity against any person or persons violating or threatening to violate any covenant or covenants and to recover any damages suffered by it or them, from any violation thereof. *Decl. of Phillabaum, Ex. 1, Building and Landscaping Restriction 19, CP at 88.*

Such covenants may be enforced at law or in equity as equitable restrictions. WILLIAM STOEBUCK AND JOHN W. WEAVER, 17 WASHINGTON PROCEDURE, 2D ED., REAL ESTATE: PROPERTY LAW, SECTION 3.1, P. 123 (2004). The doctrines overlap. *Id.* Such covenants are extensively used in subdivisions as a scheme to enhance the value of everyone's land, *Id. at 129*, and Washington courts have broadly interpreted them to further their purpose. *Viking Properties, Inc. v. Holm*, 155 Wn. 2d 112, 118, P.3d 322 (2005). See, *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 295 P.2d 714 (1956). Interpretation of restrictive covenants is a question of law for the court. *Green v. Country Club*, 137 Wa. App. 665, 681, 151 P.3d 1038 (2007), *Parry v. Hewitt*, 68 Wa. App. 664, 668, 847 P.2d 483 (1992).

Restrictive covenants are interpreted to give effect to the intention of the parties to the agreement incorporating the covenants and to carry out the purpose for which the covenants were created. The purpose of those establishing the covenants is the relevant intent. Subdivision covenants tend to enhance the efficient use of land and its value. The value of maintaining the character of the neighborhood in which the burdened land is located is a value shared by the owners of the other properties burdened by the same covenants. Thus, we must place “special emphasis on arriving at an interpretation that protects the homeowners’ collective interests.” Accordingly, if more than one reasonable interpretation of the covenants is possible regarding an issue, we must favor that interpretation which avoids frustrating the reasonable expectations of those affected by the covenants’ provisions.

Green v. Country Club, 137 Wn. App. 665, 683, 151 P.3d 1038 (citations omitted)(2007). Protection of the community golf course is certainly in the communities collective interest and the golf play area should be enforced.

b. The trial court properly found the statute of frauds met.

Mr. Williams’ first argument, that there can be no covenant because the Statute of Frauds was not met, fails for three reasons.

First, the description contained in the covenants is adequate. It refers to markers on the ground. Washington accepts such metes and bounds descriptions referring to physical features. See, e.g. 810 Properties v. Jump,

141 Wash. App. 688, 697-98, 170 P.3d 1209 (Div. III 2007) (accepting a legal description relative to a road not yet built).

In the present case, the out-of-bounds markers were actually in place and present on the first fairway by 1982. Supp. Decl. of Skates, CP at 204, before the Association sold any of the lots Mr. Williams now owns. Mr. Williams owns lots number 14, 16 and 28. These lots were not sold by the Association to Mr. Williams' predecessors until 1996 and 1998. Supp. Decl. of Phillabaum, CP at 189. As a result, the fairway play area was defined by reference to existing markers at the time of the first sale without recourse to oral testimony.

To properly analyze the situation, a distinction needs to be made between creation of an interest in land and conveyance of the interest. An interest can be created without a deed. For example, adverse use creates ownership, subdivision covenants create covenants, subdivision promotional materials create servitude, wills create interests on the death of a testator. RCW 6.04.010 and 6.04.020, which require conveyances to be by deed does not prevent creation of interests without a legal description. The statutes deal with conveyances not creation. In the present case, the property was subject to a covenant when subdivided and the description was established by markers before sale. The deeds to the property refer to the recorded covenants which reference the actual markers present at the time of conveyance.

Second, to enforce this restriction in equity, a covenant need not satisfy the statute of frauds. *Johnson v. Mt. Baker Presbyterian Church*, 113

Wn. 458, 194 P. 536 (1920); 3d Ed. Washington Real Property Deskbook, Covenants, Sec. 14.2(2)(b)(p. 14-7) 1997.

Third, even if a legal description was necessary in the subdivision context and, even if there was no adequate description by reference to actual, tangible, markers on the ground, part performance would take these covenants out of the statute of frauds. In Washington, a conveyance does not fail for lack of description when part performance is present. *Louron Indus. v. Holman*, 7 Wn. App. 834, 838, 502 P.2d 1216 (1972). Factors to consider in evaluating part performance include: (1) actual possession, (2) payment of consideration, and (3) permanent substantial improvements. *Berg v. Ting*, 125 Wn.2d 544, 556, 886 P.2d 564 (1995). All three factors are not required and one may suffice. *Berg*, at 557-58.

In this case, two factors are present, use and substantial permanent improvements. It is undisputed that the golf play area has been used for 36 years. It is also undisputed that permanent substantial improvements took place to transform raw forest land into a golf course. Improvements include grading the land and installing irrigation. Development of the golf course, as well as decades of use and maintenance, meet the showing for part performance. Such development, use and maintenance are undisputed. Williams' arguments do not raise a fact issue.

Williams cites *Berg v. Ting*, 125 Wn.2d 544, 886 P.2d 564 (1995) as authority that a document conveying an easement must define the servient estate. Williams' reliance on *Berg* is misplaced. In fact, *Berg* supports the Golf Association's position. *Berg* states an easement deed ... "is not required

to establish the actual location of an easement, but is required to convey an easement which encumbrances a specific servient estate .” (Italics by the court.) Berg, 125 Wn.2d at 551.

Here, the subdivision plat and covenants expressly define the actual lots that are subject to the golf play area covenant. The servient estates are precisely defined and there is no dispute regarding the adequacy of the description. The actual covenant area is defined within the servient lots by physical markers. The Berg court cites *Netherlands Am. Mortgage Bank v. Eastern Ry. & Lumber Co.*, 142 Wash. 204, 252 P. 916 (1927) to show such a situation. Berg at 552. In *Netherlands*, easements were described as strips of land “... as the same may be laid out and built ...” across particular described sections of land. *Id.* The floating easements were upheld because the servient estates were defined. In the present case, the recorded protective covenants relate to “each and every lot” of the addition, and the lots are defined and legally described on the recorded plat by the surveyor. Decl. of Phillabaum, Ex. 1, CP at 78. Both Berg and *Netherlands* show that the covenant for golf play area in this case would be valid even if it had not been marked with physical monuments before sale.

For all these reasons, the Golf Association’s covenant does not violate the statute of frauds.

c. The covenants are enforceable at both law and equity.

The trial court properly found that the covenants were enforceable as both covenants and equitable servitude. Covenants such as these run with the land at law when they touch and concern the real property involved, are

intended to bind successors and the parties have horizontal and vertical privity. WILLIAM STOEBCUK AND JOHN W. WEAVER, 17 WASHINGTON PROCEDURE, 2D ED., REAL ESTATE: PROPERTY LAW, SECTION 3.3-3.6, (p. 131-141). Equitable restrictions run with the land to bind subsequent owners of land when they touch and concern the land and are intended to bind successors with notice of the covenant. *Id.* at Section 3.12-3.16 (p. 151-156).

Here, all the elements are present to bind Mr. Williams to the subdivision covenants in law or equity. In Washington, a covenant connected with use and enjoyment of the land or related to placing physical objects on the land, meets the touch and concern requirement. *Id.* at Section 3.3. There is no doubt a covenant allowing golf course use of land touches and concerns the land because the covenant expressly concerns use and enjoyment of the land. The covenants themselves expressly declare they “attach to and run with the land” to bind successors such as Mr. Williams. There is vertical privity because the covenant rides through with deeds from successive owners who take the property subject to the recorded covenant. *Id.* at Section 3.5. There is horizontal privity because the covenants were passed through deed restrictions associated with the initial sales of the properties. *Id.* at Section 3.6.

The elements to run the restriction in equity are also present. As stated above, touch and concern and express intent to bind subsequent owners are present. The other element, notice, is also met. Mr. Williams admitted he had actual notice of the covenants from his title reports and recorded documents. *Dep. of Williams, p. 16, l. 8-23, CP at 91.* In Washington, even

if actual notice is not present, constructive notice from the recorded covenants is sufficient by itself to meet the requirement. *STOEBUCK AND WEAVER at 3.16*. Here, both types of notice are present. The covenants in this case were recorded December 8, 1981. *Decl. of Phillabaum, Chewelah Golf & Country Estates Protective Covenants and Information, CP at 74*, and burden Mr. Williams' land with the Association's right to use and maintain the golf play area up to the out-of-bounds markers.

Mr. Williams argues that because there were no markers actually placed on Williams' properties, no markers existed. This is not true. As Mr. Williams himself admits, the out-of-bounds markers are in place on adjacent lots and golfers can sight between them to determine the out-of-bounds line. *Dep. of Williams, p.158, l.21 – p.159, l.5, CP at 95*.

Mr. Williams argues, without basis, that he should be able to mark a new play area. Such an argument is merely speculation or a "metaphysical doubt" and should be discounted. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.E.D.2d 538 (1986). Moreover, it makes no sense for lot owners to individually establish out-of-bounds markers. If so allowed, there would be no continuity of the in-play lines, some lots might have no golf play area and others a full 35 feet. Obviously, such a result was never intended and is not a 'reasonable interpretation' as suggested by Mr. Williams. Brief of Appellant p. 8.

d. The trial court properly ruled that CGCC had established the elements of a prescriptive easement.

The Association has a prescriptive right to use and maintain the golf play areas of the Williams lots. In Washington, prescriptive easements are created when use is: actual, open and notorious, hostile, continuous and such that an easement holder would do for the statutory period. *The Mountaineers v. Wymer*, 56 Wn.2d 721, 355 P.2d 341 (1960); See, *810 Properties v. Jump*, 141 Wash. App. 688, 170 P.3d 1209 (Div. III, 2007).

Here, the actual use element is met because the Association and its members and guests have actually played and maintained the old nine for more than thirty years. The play area has included 35 feet of adjacent lots for more than 20 years. The open and notorious element is met because golfing, lawn mowing, irrigation, and related activities have been conducted in the open for all to see. The hostility element is present because the use has been done under a claim of right, even though such a strict subjective intent is no longer necessary. *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984). The continuity element is present because seasonal use is sufficient if it is normal for the use and property involved. *Lee v. Losier*, 88 Wn. App. 176, 945 P.2d 214 (Div. I, 1997). Here, the course was played and maintained

as normal for a golf course in the northern United States, Spring, Summer and Fall.

Although Mr. Williams offers no evidence that the associations use of its play area was permissive, either before or after Mr. Williams' purchase of the property, Mr. Williams argues that the golf course has not obtained a right to use the play area of lots abutting the golf course because use was originally permissive. The undisputed facts show that permission was never asked or granted. Supp. Decl. of Dashiell, CP at 212, Supp. Decl. of Scates, CP at 204. No evidence of permission is shown. Defendant's argument was dealt with years ago in *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984). The Court said, "The nature of his possession will be determined solely on the basis of the manner in which [the possessor] treats the property." Chaplin at 860-62. Here, the golf course and its players used the property as if they have an easement or covenant, without regard to ownership claims by the adjacent owners without asking permission and under claim of right. Such use overcomes any presumption of permission. Chaplin, 100 Wn.2d at 860-62.

Mr. Williams also argues that property sold in 1986 could not be subject to 10 years of use. Golf play has been continuous since 1976. Decl.

of Dashiell, CP at 110. Obviously, 10 years of use had accrued by 2006. Further, with color of title from the covenants, only 7 years use was necessary. RCW 7.28.070.

The trial court properly found a prescriptive easement for golf play and maintenance.

e. The trial court did not err by failing to draw inferences in Mr. Williams favor.

When considering a summary judgment motion, the court is to draw reasonable inferences in favor of the non-moving party. *Miller v. Likins*, 109 Wash. App. 140, 144, 34 P.3d 835 (2001). The responding party must show more than speculation. *Miller*, 109 Wash. App. at 145. Mere allegations, argumentative assertions, conclusory statements or speculation do not preclude summary judgment. *Greenhalgh v. Department of Corrections*, 160 Wash. App. 706, 714, 248 P.3d 150 (2011). Inference is a process of reasoning by which a fact or proposition sought to be established is deduced as logical consequence from other facts, or a state of facts, already proved or admitted. *Fairbanks v. J.B. McLoughlin Co., Inc.*, 131 Wash. 2d 96, 929 P.2d 433, 435 (1997). In opposing summary judgment, a party may not rely merely upon allegations or self-serving statements, but must set forth specific facts showing genuine issues of

material fact exist. *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*, 114 Wash. App. 151, 157, 52 P.3d 30 (2002).

Mr. Williams has not presented reasonable inferences to preclude summary judgment. Mr. Williams first argues that he did not see out-of-bounds markers on his property. This is not a disputed fact. Mr. Williams admits the out-of-bounds markers were on properties adjacent to his and sufficient to sight between to determine the out-of-bounds lines. *Second Supp. Decl. of Phillabaum, Ex 1, Dep. of Williams, p. 158, l. 25 – p. 159, l. 5; CP at 280, p. 54, l. 4-13, CP at 281.* The Golf Association has never argued the markers were actually on Williams' property.

Mr. Williams claims he did not know an easement was claimed until 2010. He admits, however, he had notice of the covenant. *Dep. of Williams, p. 182, l. 14 – p. 183, l. 3, CP at 276.* He knew he was subject to it. *Dep. of Williams, p. 183, l. 4-21; p. 184, l. 8-14, CP at 276.* He knew golfers played the area continuously during the golf season. *Dep. of Williams, p. 125, l. 6-22, CP at 279; p. 128, l. 5-11, CP at 284.* He knows the Golf Association claims a right to use the play area and has exercised a right to do so as long as he has been there. *Dep. of Williams, p. 222, l. 22 – p. 223, l. 10, CP at 285.* Mr. Williams knew the Golf Association watered the play

area of his lots over his protest. *Dep. of Williams, p. 151, l. 18 – p. 152, l. 3, CP at 286.* None of these are disputed facts. They are established by Mr. Williams' own testimony at his deposition and show he knew the Golf Association claimed a right to use the in-play area. It makes no difference if Mr. Williams knew the actual name of the right the Golf Association claimed; whether covenant, easement or servitude. What matters is the Golf Association's use under claim of right. That is the issue in a prescriptive easement case. *Chaplin v. Sanders, 100 Wn.2d 853, 676 P.2d 431 (1984).* There is no dispute on that issue and Mr. Williams cites no authority for the position a servient estate holder must know the name of the right claimed by an adverse user.

Mr. Williams then cites the Robert Hibbard Declaration stating markers were distant from one of Mr. Williams' lots. Mr. Williams argues and invites the Court to speculate that it was not easy to sight between the markers. The speculation, however, is contrary to Mr. Williams' own testimony. Mr. Williams himself testified that the out-of-bounds markers could be sighted between. *Dep. of Williams, p. 158, l. 25 – p. 159, l. 5, CP at 280.*

The Hibbard Declaration confirms the presence of 2x4 painted wood markers and the maintenance of their position by golfers. The markers are described as old, confirming statements made by Joe Scates and others. These are not disputed facts. Mr. Hibbard states there were no markers near Mr. Williams' house. Again, this is not a disputed fact. The markers were on adjacent properties. Then, Mr. Hibbard says there was a marker approximately 50-60 yards away. Again, this not disputed. The Golf Association agrees there were markers all along the course. Mr. Hibbard did not state the 50 yard marker was the closest marker to the Williams' property. Even if it was the closest, it is not a material issue. The fact that matters in this case is undisputed; there were and are sufficient markers to sight between and establish the out-of-bounds line. Mr. Williams' argument and invitation to speculate does not raise a fact issue. Moreover, for a prescriptive easement, it is the admitted use of the area, and not precise boundaries that matter. Use is undisputed.

Mr. Williams then argues that Golf Association accommodations to property owners show permissive use. Again, there is no fact issue regarding permissive use in this case. The undisputed facts show use by claim of right. No permission was ever asked or granted. *Supp. Decl. of*

Dashiell, CP at 212, *Supp. Decl. of Scates*, CP at 204. No one asked Mr. Williams for permission. *Second Supp. Decl. of Phillabaum, Ex. 1, Dep. of Williams*, p. 94, l. 16-21, CP at 288. Mr. Williams has no knowledge regarding his predecessor acquiescence or permission. *Dep. of Williams*, p. 101, l. 5-16, CP at 289. Mr. Williams understands the Golf Association has assumed it has a right to use. *Dep. of Williams*, p. 120, l. 21 – p. 121, l. 7, CP at 290. There is not one word in this record stating anyone gave the Golf Association permission for use. Absent actual evidence of permission, all Mr. Williams raises is speculative argument. In *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984), the Court said, “The nature of his possession will be determined solely on the basis of the manner in which [the possessor] treats the property.” *Chaplin*, 100 Wn.2d at 860-62. Here, the Golf Association and its players used the property as if they have an easement or covenant, without asking permission and under claim of right. Such use overcomes any presumption of permission. *Id.*

Mr. Williams admits the use has been without permission: “My understanding is that, apparently, the golf and country club has assumed that they have a right to that which I’ve never agreed to.” *Dep. of Williams*, p.

121, l. 2-4, CP at 290. “By protest. I’ve told them not to do it [irrigation] and they wouldn’t quit.” *Dep. of Williams, p. 152, l. 1-3, CP at 286.*

Q. And then if we were to draw a straight line between those two out-of-bound markers, it’s the area to the left that golfers believe they can come in and hit the ball in there?

A. Apparently, according to the tutelage of Chewelah Golf and Country Club, yes.

Dep. of Williams, p. 193, l. 11-16, CP at 292.

Q. You stated that golfers allegedly trespass on your property, correct?

A. Yes.

Q. Have they ever asked you permission to use your property?

A. No. They demanded that they had a right to.

Q. They demanded that they had a right to use your property?

A. Yes, sir.

Q. Is this something that they spontaneously said to you?

A. When I asked them to take their ball out on the fairway to hit it, they had a right to be on there.

Dep. of Williams, p. 94, l. 13-25, CP at 288. There are no fact issues regarding permission. The Golf Association, as always, treated the in-play area as part of the course. There is no inference that hearsay claims of accommodations made by the Golf Association to lot owners somehow show that the Golf Association’s use is permissive. Such argument is mere speculation. It can just as easily be inferred that the Golf Association’s right

is paramount because the lot owners asked the Golf Association for accommodation.

Then, Mr. Williams alleges the Court disregarded his testimony that the Golf Association had never mowed or fertilized his land. That was not Mr. Williams' testimony. First, Mr. Williams had no knowledge of activities prior to November 2003 and any testimony by Mr. Williams regarding prior times was stricken by the September 19, 2012 Order of the Court. Next, he testified he did not know if the Golf Association mowed lots 14 and 28. *Dep. of Williams, p. 154, l. 11-16, CP at 294*. He did say the Golf Association has not mowed lot 16 but also said the Golf Association did mow lot 16 and cut down his trees. *Dep. of Williams, p. 154, l. 11 – p. 155, l. 8, CP at 471*. Also, declaration testimony cannot be used to contradict previous clear deposition testimony and create a factual issue. *Marthaller v. King Cnty. Hosp. Dist. No. 2, 94 Wash. App. 911, 973 P.2d 1098 (1999)*. Even if the Court accepts that the Golf Association only mowed lot 16 once and did not fertilize the other Williams' lots, there is plenty of undisputed evidence of use to support the Court's decision regarding prescriptive use. As described above, continuous golf play is admitted and irrigation is admitted by Mr. Williams. Tim Rowe, the

grounds superintendent, presented unchallenged evidence that 15 feet of lot 14 is mowed weekly and the remainder of the in-play area mowed occasionally. Lot 28 is also mowed by the Golf Association. *Decl. of Tim Rowe, CP at 137*. The course professional, Jason Pitt, also offered unrefuted testimony of play and maintenance on lots 14 and 28. *Decl. of Jason Pitt, CP at 120*. Even if Mr. Williams disputes mowing on lot 16, it does not create a dispute of material fact. There is enough undisputed evidence of other use to support the Court's ruling on prescriptive use.

Finally, Mr. Williams points out that the course markers deteriorated over time and were replaced. That is undisputed. Mr. Williams then asks the Court, without any evidence, to take a speculative leap that Mr. Williams and his predecessors did not know where the markers were or the markers did not exist. There is no such evidence. As cited above, Mr. Williams stated he saw the markers and golfers sighted between the markers to determine the out-of-bounds line. Declarations show players maintained the markers and deteriorated markers were replaced. Photographs show the markers. Nonetheless, it does not matter if Mr. Williams knew where the markers were. Mr. Williams has not cited any authority making his knowledge of marker location an element of the Golf Association's claims.

Even if he did not know the precise marker location, it is not a material fact in issue. Defendant has not created an issue of material fact.

f. The trial court erred in dismissing Plaintiff's claim against Defendant for money due on account.

Review of the trial courts summary judgment in favor of Mr. Williams is de novo. *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 860 P.2d 108 (2004). The Court must deny a motion for summary judgment if the record shows any reasonable hypothesis that entitles the non-moving party to the relief sought, i.e., denial of summary judgment. *Mostrom v. Pettibon*, 25 Wn. App. 158, 607 P.2d 864 (1980). The Court's function is to determine whether a genuine issue of material fact exists, not to resolve factual issues on their merits. *Balise v. Underwood*, 62 Wn.2d 195, 381 P.2d 966 (1963). Even though evidentiary facts are not in dispute, if different inferences or conclusions may be drawn from them as to ultimate facts such as intent, . . . summary judgment is not warranted, *Preston v. Duncan*, 55 Wn.2d 678, 349 P.2d 605 (1960); *Sec. State Bank v. Burk*, 100 Wn. App. 94, 995 P.2d 1272 (2000).

Here, the original covenants provided that: "12. Membership in the Chewelah Golf & Country Club Association shall be required prior to ownership of any lot in the Chewelah Golf & Country Club Subdivision."

Decl. of Smith, Ex. 1, CP at 355. This provision was intended as a funding mechanism to pay for operation of the golf course, *Decl. of Dashiell, CP at 370, l. 20-21,* and the Association was attempting to collect fees from its members. *Decl. of Dashiell, Ex. 1, CP at 374.*

Mr. Williams understood the covenant to mean “that I had to own that certificate to buy property in the Golf and Country Club Association subdivision.” *Dep. of Williams, p. 184, l. 23-25, CP at 97.*

The covenants run with the land. *Decl. of Smith, Ex. 1, CP at 350, 356.* The covenants were fixed in 1981 and Mr. Williams admits he received copies of the covenants when he purchased his properties. *Dep. of Williams, p. 35-36, CP at 389.* His realtor told him he needed a membership certificate to own property. *Dep. of Williams, p. 18, 21, 22, CP at 387-388.*

The Association, to which membership is required, was formed as a non-profit corporation in 1975. *Decl. of Dashiell, Ex. 1, CP at 370.* The articles state the corporation’s purpose to be construction, maintenance, and operation of the golf course and country club with residences. *Id.* The Association was empowered to collect money. *Id.* By-laws of the Association empower the board of directors to impose dues on membership. *Decl. of Smith, Ex. 1, CP at 348.* The Association has imposed dues in Division One of the golf course development and Mr. Williams has not paid his membership dues. *Id.* Mr. Williams understood that an assessment was due and he didn’t want to pay. *Dep. of Williams, CP at 281.*

Given these facts, the trial court should not have granted summary judgment against the Association’s claim for membership fees. The

Association's Corporate Articles and By-Laws expressly provide authority to impose membership fees. The only issue is whether Covenant #12 requires that membership continue in the Association after initial purchase of a lot. The covenant is not completely clear. As a result, it is an issue of fact as to whether the membership requirement continues beyond the time of initial lot purchase. The finder of fact needs to hear evidence of purpose, intent, and understanding to determine the meaning of the covenant. Because different inferences can be drawn as to intent, summary judgment is not warranted. *Preston v. Duncan*, 55 Wn.2d 678, 349 P.2d 605 (1960).

VI. CONCLUSION

The trial court properly found that the Association had right to continue its long established golf play and maintenance on portions of its course, under several theories. It does not matter which theory is used, covenant, prescriptive easement or servitude. Any of the theories supports the courts granting of summary judgment to the Association allowing continued golf play and maintenance on its course. There are no questions of material fact regarding these theories, Mr. Williams himself admits the material facts: long continued Association use, lack of his permission, recorded covenant rights, notice, and existence of course markers to sight between. The trial courts grant of summary judgment to the Association should be upheld and Mr. Williams appeal denied.

The Associations appeal regarding its ability to assess fees to fund the common golf course should be granted. There is material issue to be

decided regarding whether Covenant 12 requires continuing membership. As a result, the trial court's grant of summary judgment in favor of Mr. Williams should be reversed and the matter remanded to the trial court for further proceedings.

VII. APPENDIX

1. Protective Covenants, CP at 82-89; and
2. Excerpts of the Deposition of Wilbur "Woody" Williams, dated March 1, 2012,

Respectfully submitted this 15th day of October 2013

**PHILLABAUM, LEDLIN, MATTHEWS &
SHELDON, PLLC**

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CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the state of Washington that on this date, a true and correct copy of the document to which this declaration is attached was served by the method indicated below, and addressed to the following:

Loyd A. Willaford	<input checked="" type="checkbox"/>	U.S. Mail
Webster Law Office, PLLC	<input type="checkbox"/>	Hand Delivered
116 N. Main St.	<input type="checkbox"/>	Overnight Mail
Colville, WA 99114	<input type="checkbox"/>	Telecopy (Fax):
	<input checked="" type="checkbox"/>	Email: loyd@websterlawoffice.net
Heather C. Yakely	<input checked="" type="checkbox"/>	U.S. Mail
Evans, Craven & Lackie, P.S.	<input type="checkbox"/>	Hand Delivered
818 W. Riverside, Suite 250	<input type="checkbox"/>	Overnight Mail
Spokane, WA 99201-0910	<input type="checkbox"/>	Telecopy (Fax):
	<input checked="" type="checkbox"/>	Email: hyakely@ecl-law.com

DATED this 15th day of October, 2013.



Mylene M. Warren

State of Washington, County of Stevens, ss
Filed DEC 8 1991 at 8: A.M.

512819

County Auditor
Deputy

1991 file
\$10.50

at request of Richard Hourse
Oelville, Wa. 99131

CHEWELAH GOLF AND COUNTRY ESTATES

PROTECTIVE COVENANTS AND INFORMATION

The following protective covenants and information shall run with and be appurtenant to each and every lot of the above addition:

RECITALS:

1. The Subdivision is designed to be a community with roads, utilities and electrical facilities and services to augment its natural scenic and recreational assets. The protective restrictions and covenants hereby established are intended to preserve and enhance the values and amenities of the community.

GENERAL PROVISIONS:

1. All land in the Subdivision, except common areas, shall be acquired, leased, held and transferred subject to these protective restrictions and covenants, which are intended to benefit all lots and their respective owners, purchasers, and other-occupants.

2. The Architectural Control Committee Members shall be appointed by the President of the Chewelah Golf & Country Club Association subject to approval by its Board of Directors. The Architectural Control Committee shall be three (3) members, comprised of one (1) representative of each of the following categories:

- a. Two (2) members of the Chewelah Golf & Country Club Association.
- b. One (1) member from the Department of Natural Resources of the State of Washington.

UTILITIES AND ROADS:

1. Water will be supplied by the City of Chewelah at rates set by the City of Chewelah with connection fees as set by the City of Chewelah. All residential lots shall be serviced by septic tanks with on site drain fields. Prior to construction of

17. 10/15/81

any improvements the lot lessee shall designate a primary drain field area and no structures shall be placed or constructed on said primary drain field area. No pit toilets shall be provided except that conditional approval for pit toilets can be granted by the Health Office for a period of up to ninety (90) days to accommodate the installation of flush type facilities:

REFUSE, RUINS AND REMAINS:

1. All trash, garbage, ashes and other refuse shall be kept in containers which shall be maintained in a clean and sanitary condition and shall be kept hidden from street view except on the day when same is to be picked up by the garbage collector.

OWNERSHIP AND POSSESSION OF LOTS:

1. No residential lot as shown on the plat shall be partitioned or otherwise subdivided, but rather the entirety of each lot shall at all times be leased and in the possession of one lessee or, if more than one lessee, then as joint tenants or tenants in common of the entire lot.

BUILDING AND LANDSCAPING RESTRICTIONS:

1. Except as noted otherwise herein, only single family residences and outbuildings auxiliary thereto (such as garages, wood sheds and the like) may be constructed or permitted to remain on each single family residential lot in the Subdivision.

2. Notwithstanding the above, all structures will comply with applicable zoning, and construction shall conform to Stevens County regulations and to the specifications of the most recent revisions of the State of Washington Electrical Code and the Uniform Building Code in force at the commencement of construction.

3. Each single family residence shall contain a minimum of 1200 square feet, exclusive of second floors, open decks, garages, covered carports, sheds or other appurtenances or outbuildings. Said residences shall be set on permanent foundations (concrete or block or comparable material) extending not more than twenty-four (24) inches above ground level at the highest ground level point. There shall be no residences more than two (2) stories above the foundation level. The Architectural Control Committee may, upon application, grant exemptions or variances of the requirements of this section.

4. Buildings on residential lots shall be simple, well proportioned structures. Exterior finish shall be stained or painted colors approved by the Architectural Control Committee. Roof covering shall be wood shake shingle or, by permission of the Architectural Control Committee, composition shingle or other materials of approved color and texture.

5. No buildings shall be located, erected or altered until a plan showing the location of the structures and construction plans and specifications shall have been submitted to and approved by the Architectural Control Committee of the Association. In considering the location, plans and specifications for any structure, the Committee shall take into account the following factors:

- a. Quality of workmanship and materials;
- b. Harmony of external design and finish with the topography and with existing structures;
- c. The effect which the proposed structures or alterations will have on other building sites and views therefrom, it being the Committee's duty to give the maximum protection to such views which may be reasonable under the circumstances;

- d. Perimeter fencing will be permitted except that no fence shall be placed beyond the front line of a residence on any lot fronting the golf fairway. Back lot fencing shall not exceed six (6) feet in height and front lot fencing on all other lots shall not exceed four (4) feet in height. No fencing shall be constructed without prior approval of the Architectural Committee, and
- e. All other factors which the Committee may, in its discretion, deem to affect the desirability or suitability of the proposed structure or alteration.

Subject to the prior approval of the Committee, outbuildings may be constructed prior to the construction of permanent residences if such buildings are permissible under Section 9, and if they are complimentary to and compatible with the design and location of the proposed permanent residence. The corners of proposed structures shall be staked on the ground at the time of the Committee's consideration of location, plans and specifications.

6. Front yard landscaping on all lots facing or bordering the fairway shall be restricted to grass, trees and flowers. The golf playing area of said front yard area shall be marked and any golf balls entering the lot beyond the marked area shall be out of bounds and not played by the golfer.

7. The Committee shall have the power to charge a reasonable fee for costs incurred in processing and considering plans and specifications submitted to the Committee for its approval. Approval or disapproval of any matter submitted to the Committee shall be made within sixty (60) days of submission to the Committee or its duly appointed representative and shall be in writing. The Committee shall mail a copy of its decision to the lessee. In the event the Committee or its duly appointed representative fails to

11. (U) PAGE 818

approve or disapprove within sixty (60) days after the plans and specifications have been submitted to it, approval will be deemed to have been given and the related covenants shall be deemed to have been fully complied with. Any lessee aggrieved by the Committee action may appeal to the Board of Directors of the Association. Appeals shall be made in writing within ten (10) days of the Committee's mailing of its decision, and shall set forth the part of the Committee's action deemed objectionable. The appeal shall be considered by the Board at its next scheduled meeting, and a final conclusive determination shall be made by the Board within fifteen (15) days after such meeting.

Approval by the Architectural Control Committee does not imply approval by the Stevens County Building Department or other agencies.

8. The exterior of any buildings shall be completed within one (1) year of the beginning of construction so as to present a finished appearance when viewed from any angle.

9. The use of tents, campers or travel trailers shall be permitted on residential lots for weekend and vacation use and during the one year construction period. Mobile homes of the double-wide variety, or greater, not less than twenty-four (24) feet wide and containing not less than twelve hundred (1200) square feet set on permanent concrete block foundations with tongues and wheels removed shall be permitted in the subdivision.

10. Easements for drainage, utilities, walkways, and golf cart use and access roads are reserved as shown on the face of the plat. There shall be a building setback of not less than fifty (50) feet on all lots bordering the golf course fairway. There shall be a five (5) foot side lot setback and a five (5) foot rear lot setback on all construction other than the fencing.

11. All electrical service shall be by underground service, electrical easements granted under the dedicated streets and access roads.

12. Membership in the Chewelah Golf & Country Club Association shall be required prior to ownership of any lot in the Chewelah Golf & Country Club Subdivision.

13. All lot lessees shall be subject to and required to pay on or before August 1 of each year of this lease, their prorated share of lease payments due the State of Washington under the lease from the State of Washington Department of Natural Resources to the Chewelah Golf & Country Club Association as shown of record. Payment shall be made to the Chewelah Golf & Country Club Association, or its successor, as billed.

14. All residences, whether designated as pre-constructed or pre-fabricated or constructed on the premises, shall comply with all requirements of the Uniform Building Code and modifications thereof.

15. Prior to the construction of any residence or appurtenant outbuildings or lot access roads, trees designated for removal shall be appropriately marked and the Department of Natural Resources of the State of Washington shall be notified of the intention to cut and remove the marked trees. Any expense or fees charged for cutting and removal of trees shall be that of the lot lessee.

16. No animals shall be kept on the various lots of this Subdivision except household animals and pets. All dogs shall be kept on a leash or within a fenced compound and not allowed to run loose.

17. It is acknowledged by all occupants of lots in Country Club Estates Subdivision No. 1 that all of said lots are adjacent to, contiguous to or in the vicinity of an airport leased by the

City of Chewelah from the State of Washington Department of Natural Resources and all claims for damages by reason of noise, airport industrial activity, odors and other activities normally associated with the operation of an airport are hereby expressly waived and the lease and occupancy of lots in this Subdivision is accepted subject to said waiver of claims for damages.

18. No lot or tract as approved on the final plat shall be further divided for any future sale or disposal unless said subsequent division be approved as to size and useage prior to said division by the Planning Commission.

19. It is expressly understood and agreed that the several protective covenants contained herein shall attach to and run with the land and it shall be lawful not only for Chewelah Golf & Country Club Association, or its assigns or successors, but also for the owner or sublessee of any lot in the Subdivision to institute and prosecute any proceeding at law or in equity against any person or persons violating or threatening to violate any covenant or covenants and to recover any damages suffered by it or them, from any violation thereof.

20. Also incorporated by reference in these protective covenants and information are all of the protective covenants and requirements set forth in the legend of the plat of Chewelah Golf and Country Estates as shown of record.

CHEWELAH GOLF & COUNTRY CLUB ASSOCIATION

William C. Dashiell
William C. Dashiell Chairman

R. Kelly P. P. P.
President

Frances Louise Dashiell
Frances Louise Dashiell Secretary

ATTEST:
Gabriel E. ...
Secretary

W. W. NICE 821

88

STATE OF WASHINGTON)
COUNTY OF STEVENS) ss.

On this 22th day of October, 1981, before me, the undersigned, a Notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Phillip P. Stok and Calvin D. Greenaway, to me known to be the president and secretary, respectively, of CHEWELAH GOLF & COUNTRY CLUB ASSOCIATION, and acknowledged that they signed the instrument as the free and voluntary act and deed of said corporation and that the seal affixed is the seal of said corporation.

GIVEN under my hand and official seal the day and year first above written.



[Signature]
Notary Public in and for the State of
Washington, residing at Chewelah

STATE OF WASHINGTON)
COUNTY OF STEVENS) ss.

On this day personally appeared before me William C. Dashiell and Frances Louise Dashiell to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 29th day of October, 1981.



[Signature]
Notary Public in and for the State of
Washington, residing at Chewelah

PL 119 PAGE 822

1 A. He felt that I had spent 26-, \$27,000 for
 2 nothing because of the judicial system they have here,
 3 at least one opinion, and it was a waste of time and
 4 money to continue.
 5 Q. That's what he told you?
 6 A. Mm-hmm. That's what he suggested to me. The
 7 decision was mine.
 8 Q. But as far as you're concerned, the matter is
 9 still ongoing?
 10 A. I was trying to get the prosecuting attorney
 11 to take it up. The man that I was suing was convicted
 12 or admitted to a felony in Spokane County for doing the
 13 same thing to people there, the citizens of Spokane
 14 County as he was doing to me.
 15 So we petitioned Mr. Rasmussen's office to do
 16 the same thing, to get some kind of something against
 17 him, either an admission of guilt or convict him of a
 18 felony so I could either write it off or I could get
 19 some kind of restitution for it.
 20 And Mr. Rasmussen's office declined. And it's
 21 just kind of sitting there right now. It is waiting
 22 for me to make a decision whether to continue or not.
 23 Q. Mr. Williams, I understand that you own three
 24 lots in the Chewelah Golf and Country Estates; is that
 25 correct?

Page 14

1 A. That's correct.
 2 (Exhibit No. 2 marked.)
 3 BY MR. SCHAROSCH:
 4 Q. Mr. Williams, I'm handing you what's been
 5 marked as Exhibit 2. Could you please identify that
 6 for the record.
 7 A. Statutory warranty deed.
 8 Q. If you turn to the second page, it's dated
 9 November 25, 2003.
 10 A. Just a minute.
 11 November 25, 2003. Yes, that's correct.
 12 Q. Have you seen Exhibit 2 before?
 13 A. I may have. I don't know. I can't remember
 14 seeing it before.
 15 Q. In the first paragraph of the first page of
 16 Exhibit 2, it's a deed from Richard J. Weatherall to
 17 Wilbur C. Williams.
 18 That's you, correct, sir?
 19 A. Correct, yes.
 20 Q. A little bit further down the page it says,
 21 "Lot 28, Chewelah Golf and Country Estates"; is that
 22 correct?
 23 A. Yes.
 24 Q. So this is one of the three lots -- this deed
 25 represents one of the three lots that you own in the

Page 15

1 association?
 2 A. Yes, sir, it does.
 3 Q. Is there a street address associated with
 4 Lot 28?
 5 A. Yes, sir.
 6 Q. What is that?
 7 A. 110 Richmond Lane.
 8 Q. Right below where it says, "Lot 28, Chewelah
 9 Golf and Country Estates," the next sentence says,
 10 "Together with and including one membership certificate
 11 to Chewelah Golf and Country Club Association."
 12 Do you see that?
 13 A. Mm-hmm. That's a yes, sir.
 14 Q. Thank you. I didn't catch that.
 15 Do you recall when you first saw this
 16 document?
 17 A. No, I can't recall when I first saw it.
 18 Q. A little further down on Exhibit 2,
 19 Mr. Williams, it says, "Subject to covenants,
 20 conditions, and restrictions contained in plat recorded
 21 under Auditor's number 512818."
 22 Do you see that?
 23 A. Yes, I do.
 24 Q. The next paragraph says, "Subject to
 25 covenants, conditions, and restrictions contained in

Page 16

1 Declaration of Protective Restrictions recorded under
 2 Auditor's File Number 512819."
 3 Do you see that?
 4 A. I guess you've lost me. I don't have that.
 5 Q. The first reference was Auditor's File Number
 6 51281 what?
 7 A. It shows 819.
 8 Q. And the next paragraph?
 9 A. The next paragraph.
 10 Q. The next paragraph shows 512819.
 11 Do you see that, sir?
 12 A. Okay. I see it.
 13 Q. Does looking at this document jog your memory
 14 as to whether you may have looked at this around the
 15 time that it was signed on November 25, 2003?
 16 A. It really doesn't. It's been so long.
 17 Q. Do you know if you received a copy of this
 18 after it was recorded?
 19 A. I believe I have one in my files.
 20 Q. After you received it, did you take it out and
 21 look at it from time to time?
 22 A. No.
 23 Q. So after you received it, it went into your
 24 file and you never looked at it again?
 25 A. Not until, oh, probably 2007 or '8 or

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5 (Pages 14 to 17)

1 something like that.
 2 Q. Exhibit 2, sir, what did you understand the
 3 sentence to mean that says, "together with and
 4 including one membership certificate to Chewelah Golf
 5 and Country Club Association?"
 6 What did you understand that to mean?
 7 A. They had a certificate that I thought was
 8 mandated to own or have to purchase property there.
 9 Q. How did you come to that understanding, that
 10 that was mandated to purchase or buy a piece of
 11 property?
 12 A. I think that was just something that was told
 13 to me by my realtor.
 14 Q. Do you recall that realtor's name?
 15 A. Steve Crisp.
 16 Q. He was the realtor that you used?
 17 A. He's the one I used on that lot.
 18 Q. On Lot 28?
 19 A. Yes.
 20 Q. Have you ever had any interaction with
 21 Mr. Crisp before buying Lot 28?
 22 A. No.
 23 Q. When did you move from Utah up to Chewelah?
 24 A. I believe it was in June of 2004, June or
 25 July.

1 according to plat recorded under Auditor's File Number
 2 512818 in Stevens County, Washington."
 3 Do you see that, sir?
 4 A. Yes, sir, I do.
 5 Q. Is this the instrument by which you obtained
 6 title to Lot 16?
 7 A. Apparently.
 8 Q. Apparently. Why would you say "apparently"?
 9 A. Because I don't believe I have anything else.
 10 Q. You don't believe you have anything else in
 11 relation to what?
 12 A. To the purchase of that lot.
 13 Q. Anything else in terms of documentation?
 14 A. Yes, that's correct.
 15 Q. Did you receive a copy of this quitclaim deed
 16 on or about June 22, 2005?
 17 A. I don't remember when it was, but I remember
 18 getting a copy of this.
 19 Q. Did you place this in the same file as
 20 Exhibit 2 when you received it?
 21 A. It's in the same drawer.
 22 Q. Same drawer, okay.
 23 Since receiving that, have you taken it out
 24 and looked at it from time to time?
 25 A. No. I never felt the need to take it out and

1 Q. Of 2004?
 2 A. Yes.
 3 Q. Where did you live when you first moved up
 4 here?
 5 A. I moved directly into that house.
 6 (Exhibit No. 3 marked.)
 7 BY MR. SCHAROSCH:
 8 Q. Mr. Williams, I'm handing you what's been
 9 marked as Exhibit 3. After you've had a chance to
 10 review, that sir, could you please identify it for the
 11 record.
 12 A. Yes. A quitclaim deed from Louise Williams
 13 Family Trust to me.
 14 Q. In the middle of that first paragraph --
 15 strike that.
 16 Exhibit 3 is dated June 22, 2005, correct?
 17 A. I'm looking at June 9 here. Where are we
 18 going? Okay.
 19 Yes, dated 22nd day of June, 2005.
 20 Q. Are you finished?
 21 A. Yes.
 22 Q. I don't want to interrupt you if you have more
 23 to say. That's why I'm double-checking.
 24 On Exhibit 3, toward the middle of the page,
 25 it says, "Lot 16, Chewelah Golf and Country Estates,

1 look at it.
 2 Q. When was the first time that you recall taking
 3 it out of your drawer and looking at it?
 4 A. I really wouldn't hazard a guess. I had no
 5 reason to take it out and look at it.
 6 Q. That's fine. If you don't recall, that's
 7 fine. You can say that. I don't want you to
 8 speculate. I just want to know what you recall.
 9 That's fine if you don't recall.
 10 Just below that paragraph it again says --
 11 references the "one membership certificate in the
 12 Chewelah Golf and Country Club Association."
 13 Do you see that, sir?
 14 A. Yes.
 15 Q. You had the same understanding to that
 16 statement in Exhibit 3 as you did to that statement in
 17 Exhibit 2?
 18 A. To purchase property in the Chewelah Golf and
 19 Country Club Estates, I needed a certificate that --
 20 this thing that they had.
 21 Q. When I use the word "association," I'm
 22 referring to Chewelah Golf and Country Club
 23 Association.
 24 Do you understand that?
 25 A. Yes.

6 (Pages 18 to 21)

1 Q. And the association provided that to you?
 2 A. **It was included in the paperwork.**
 3 Q. Do you recall what else was included in the
 4 paperwork?
 5 A. **Such as?**
 6 Q. Anything else that you recall being included
 7 in the paperwork.
 8 A. **I know that plat was included in it.**
 9 Q. The plat?
 10 A. **Mm-hmm.**
 11 Q. The membership certificate?
 12 A. **Mm-hmm.**
 13 Q. **Is that a yes?**
 14 A. **That's correct, yes.**
 15 Q. Anything else that you recall being in the
 16 paperwork?
 17 A. **No, not that I can recall just offhand, at**
 18 **this time, anyway.**
 19 Q. Is there a street address associated with
 20 Lot 16 as shown on Exhibit 3? Is there a street
 21 address?
 22 A. **Yes.**
 23 Q. What street address?
 24 A. **134 Richmond Lane.**
 25 Q. Do you reside on Lot 16?

1 of the Chewelah Golf and Country Estates; is that
 2 correct?
 3 A. **That's correct.**
 4 Q. Is there a street address associated with
 5 Lot 14?
 6 A. **Not at this time, but there should be.**
 7 **There's no home on it, no house, so they don't have an**
 8 **address associated with it. That's the best I can say.**
 9 Q. Are there any buildings or structures on
 10 Lot 14 currently?
 11 A. **No, sir.**
 12 Q. The date on Exhibit 4 is down at the bottom of
 13 the first page, June 29, 2005.
 14 Do you see that, sir?
 15 A. **I do see it.**
 16 Q. Do you recall getting a copy of the statutory
 17 warranty deed on or about that date?
 18 A. **Specifically, no. But, obviously, I did have**
 19 **it because I believe most of this stuff came from my**
 20 **file.**
 21 Q. Once you received this, did this also go in
 22 the drawer that you kept the other two deeds in?
 23 Is that a yes?
 24 A. **That's correct.**
 25 Q. I saw you nodding your head.

1 A. **At this time.**
 2 Q. There's not a house on Lot 28, is there?
 3 A. **No, there isn't.**
 4 Q. Is that where your hangar is built?
 5 A. **No.**
 6 Q. What is on Lot 28?
 7 A. **Trees, shrubbery.**
 8 Q. No improvements?
 9 A. **No.**
 10 Q. You said you currently do not reside on
 11 Lot 16?
 12 A. **I do reside on Lot 16.**
 13 Q. Thank you.
 14 *(Exhibit No. 4 marked.)*
 15 BY MR. SCHAROSCH:
 16 Q. Mr. Williams, I'm handing you what's been
 17 marked as Exhibit 4. After you've reviewed that, can
 18 you please identify it for the record.
 19 A. **Statutory warranty deed.**
 20 Q. The grantor in this was Mr. Louis F. Miller?
 21 A. **Yes.**
 22 Q. And this property was deeded to you as an
 23 unmarried man; is that correct?
 24 A. **That's correct.**
 25 Q. This statutory warranty deed concerns Lot 14

1 A. **I'm sorry.**
 2 Q. That's okay.
 3 Have you had an opportunity to look at this
 4 document since you placed it in your drawer on or about
 5 June 29, 2005?
 6 A. **I've had many opportunities to but I never**
 7 **did.**
 8 Q. That's a fair answer.
 9 When do you recall the first time pulling this
 10 out of your drawer and looking at it, after you
 11 received it?
 12 A. **This is probably the first time.**
 13 Q. At about the middle of the page on the first
 14 page of Exhibit 4, there's three block paragraphs. The
 15 first one begins with, "Subject to covenants,
 16 conditions, and restrictions," and then there's some
 17 other words, and at the bottom it says, "under
 18 Auditor's File Number 512818."
 19 Do you see that?
 20 A. **Okay. Yes, I do see that.**
 21 Q. The paragraph immediately below that says,
 22 "Subject to covenants, conditions, and restrictions,"
 23 etc., and then it says, "under Auditor's number 512819."
 24 Do you see that, sir?
 25 A. **Yes, sir.**

7 (Pages 22 to 25)

1 the homes and the property.
 2 Q. This paperwork that you mentioned before and
 3 you just mentioned again, that was given to you by
 4 whom?
 5 A. That was given to me by -- not the realtor but
 6 the -- what do they call those people that are supposed
 7 to check and make sure there's no easements or anything
 8 like that through there before you buy them, to let you
 9 know about it.
 10 Q. Title company?
 11 A. Yes.
 12 Q. Before you acquired your lots, a title company
 13 gave you a copy of Exhibit 6?
 14 A. Yes, sir.
 15 Q. And that was placed in your files?
 16 A. Yes, sir.
 17 Q. The first time that you had an opportunity to
 18 look at that document after you initially received it
 19 was in 2007 or 2008?
 20 A. It was the first time I took the opportunity
 21 to look at them, yes.
 22 Q. I understand you had multiple opportunities.
 23 I understand. Thank you.
 24 At the top of Exhibit 6 it says, "Recorded
 25 12/8/81 under Auditor's file 512818."

1 under Auditor's File Number 512818," do you have any
 2 reason to believe that that statement is incorrect?
 3 A. No, I don't.
 4 Q. Sir, if you could please take a look at
 5 Exhibit No. 7.
 6 Do you recognize Exhibit 7, Mr. Williams?
 7 A. I do. I've seen it before.
 8 Q. Up at the top there's a number in the middle
 9 of the page that says "512819."
 10 Do you see that?
 11 A. Yes, sir.
 12 Q. Over to the top left-hand corner it says some
 13 word that's obscured, but "recorded compared pages
 14 plats of Washington, County of Stevens, filed," I
 15 believe, "December 3, 1981, at 8:09 a.m."
 16 Do you see that?
 17 A. Yes, I do.
 18 Q. Was a copy of Exhibit 7 provided to you by the
 19 title company when you acquired your lots in the
 20 association?
 21 A. It was included with that packet.
 22 Q. With that packet of paperwork?
 23 A. Yes.
 24 Q. At that time, did you review Exhibit 7?
 25 A. Not at that time.

1 Do you see that?
 2 A. Yes, I do.
 3 Q. When the title company gave this to you when
 4 you first acquired your lots, did you review it at that
 5 time?
 6 A. I'm sorry. Would you repeat that?
 7 Q. Sure.
 8 When the title company gave you a copy of
 9 Exhibit 6, did you review it at that time?
 10 MR. WEBSTER: I'm going to object. He
 11 answered that he viewed these in 2007 and 2008.
 12 BY MR. SCHAROSCH:
 13 Q. Go ahead and answer, please.
 14 A. I think that I did go over it in a cursory
 15 manner.
 16 Q. Do you have any reason to doubt that this was
 17 not recorded as it states in that sentence at the top
 18 of Exhibit 6?
 19 A. Do I have any reason to doubt that it was not
 20 recorded?
 21 Q. Yes.
 22 A. Could you restate that question?
 23 Q. Sure.
 24 Do you have any reason to doubt that the
 25 statement on Exhibit 6 that says, "Recorded 12/8/81

1 Q. When was the first time after you received it
 2 that you reviewed it?
 3 A. It was about '7 or '8.
 4 Q. Same question for Exhibit 7: Do you have any
 5 reason to believe that this document 512819 was not
 6 recorded with the auditor's office on December 3, 1981?
 7 A. No, sir. I have no reason to believe that it
 8 wasn't.
 9 Q. If you can go back briefly and take a look at
 10 Exhibit 2, please.
 11 A. Okay.
 12 Q. On the first page of Exhibit 2, in the middle
 13 of the page, it references, "Auditor's File Number
 14 512818."
 15 Do you see that?
 16 A. Yes, I do.
 17 Q. Just below that, in the next paragraph, it
 18 references "Auditor's File Number 512819."
 19 Do you see that?
 20 A. Yes, I do.
 21 Q. Is it your understanding that those references
 22 on Exhibit 2 correspond to Exhibits 6 and Exhibit 7?
 23 A. It is my understanding that they do.
 24 Q. If you can take a quick look at Exhibit 3: I
 25 apologize for you having to go back through these.

10 (Pages 34 to 37)

1 Q. Have you seen any golf course markers in the
 2 fairway in or around Lot number 28?
 3 A. Not that I recall.
 4 Q. Have you seen any golf course markers in the
 5 fairway in or around Lot number 16?
 6 A. Golf course markers?
 7 Q. Yes.
 8 A. I guess they're markers. They have little
 9 white 2-inch pieces of plastic pipe that they stick up
 10 in the neighbor's yard.
 11 Q. Who is "they"?
 12 A. The golf course stick them in the neighbor's
 13 yard.
 14 Q. Were those in the fairway of the golf course?
 15 A. I have no idea. They're so far off that
 16 fairway. I don't know what they're for, what the
 17 object of them is or anything.
 18 Q. Did you see any markers that were level to or
 19 just below the level of the ground on the fairway?
 20 A. Property markers, yes, sir.
 21 Q. Sir, if you could turn to page 8 of Exhibit 9,
 22 please. In paragraph 2.9, you reference "adjacent
 23 neighbor's building structures that were in violation
 24 of building requirements."
 25 Do you see that allegation?

1 A. On numerous occasions, adjacent neighbors
 2 built structures on similarly owned property in
 3 violation of -- yeah, I see the paragraph, uh-huh.
 4 Q. Can you identify those structures, those
 5 nonconforming structures?
 6 A. That's what I was trying to think of while I
 7 was reading it. I'm sure there was something in
 8 particular that I was thinking about. But right now it
 9 doesn't come to mind.
 10 Q. Do you recall how you knew that those
 11 structures were nonconforming?
 12 MR. WEBSTER: Objection. He doesn't even
 13 recall the structures.
 14 MR. SCHAROSCH: I understand.
 15 BY MR. SCHAROSCH:
 16 Q. Do you recall what led you to your belief that
 17 the structures didn't conform?
 18 A. Well, I have to apologize to you. I really
 19 can't. I know that if I looked back through this and
 20 find out just exactly what the problems were at the
 21 time, why, I could tell you. But I'm sorry.
 22 Q. Paragraph 2.10, you state that "The
 23 association made concessions to the neighbors."
 24 Do you see that allegation?
 25 A. Yes, sir, I do.

1 Q. Do you recall what those concessions were?
 2 A. Okay. "The counterdefendant made concessions
 3 to the neighbors of Mr. Williams for their failure to
 4 comply with the regulations and alleged covenants, to
 5 include moving the boundary markers upon request of
 6 said neighbors."
 7 I understand that they have moved their
 8 out-of-bound markers out to correspond with the
 9 property markers with a few of the neighbors up and
 10 down Richmond Lane.
 11 Q. These are the golf course boundary out-of-
 12 bounds markers?
 13 A. Yes.
 14 Q. Other than that, do you know of any other
 15 concessions that the association allegedly made to any
 16 other neighbors?
 17 A. I'm sure that I can find some. Like, there
 18 were some people who bought lots on that course, and
 19 they were told that they didn't have to pay
 20 assessments, so on and so forth. But I can't remember
 21 anything specific.
 22 Q. Were there ever any representations to you
 23 saying you didn't have to pay any assessments?
 24 A. When they established that assessment, I was
 25 on the finance committee. I told them that, you know,

1 I came out -- that I moved out here to fly, bring my
 2 plane out and enjoy aviation. And I said, "I'll pay
 3 for my flying, and you pay for your golf. If you have
 4 to have an installation like that to play golf on it,
 5 you pay for it."
 6 "Well, you've got that assessment."
 7 And I said, "What if I don't pay it?"
 8 They said, "If you don't pay it in three
 9 years, we'll take your certificate away."
 10 Q. So you understood that there was an assessment
 11 that was due on your lots, you just didn't want to pay
 12 it; is that correct?
 13 A. That's correct. I didn't really understand
 14 that there was one due.
 15 Q. When was that conversation that -- what was
 16 the time you were on the finance committee?
 17 A. I can't remember when. It's just before Don
 18 here went on it.
 19 THE WITNESS: When was it, Don?
 20 BY MR. SCHAROSCH:
 21 Q. That's okay. He can't give answers for you.
 22 Mr. Williams, can you please turn to page 10
 23 of Exhibit 9. Can you please read to yourself
 24 paragraphs 3.1, 3.2, and 3.3. And let me know when
 25 you're finished.

1 to me. It started with a complaint that I didn't have
 2 my hangar finished. And that hangar was in litigation,
 3 and they knew it was in litigation. And Monasmith was
 4 involved in the courts here at that time. But yet they
 5 wanted to pursue it and harass me.

6 Q. So, to date, you haven't complained to the
 7 association about the golfers' use of your property?

8 A. What good would it do?

9 Q. That's not the question, sir. I understand.
 10 But have you complained to the association to
 11 date about golfers using your property?

12 A. No.

13 Q. You stated that golfers allegedly trespass on
 14 your property, correct?

15 A. Yes.

16 Q. Have they ever asked you permission to use
 17 your property?

18 A. No. They demanded that they had a right to.

19 Q. They demanded that they had a right to use
 20 your property?

21 A. Yes, sir.

22 Q. Is this something that they spontaneously said
 23 to you?

24 A. When I asked them to take their ball out on
 25 the fairway to hit it, they had a right to be on there.

1 It was a sinkhole in that back yard there of my house.
 2 So I started planting it, and whenever someone
 3 would hit a ball in there, I'd holler at them and say,
 4 "Hey, I'm planting grass out there. Could you not hit
 5 the ball out there?"

6 "Okay," and then they'd walk on and get their
 7 ball and go on. That was I don't know when.

8 Q. That was the first time you recall asking
 9 golfers to take their ball off your property to the
 10 fairway?

11 A. I never had any reason to ask them before
 12 that.

13 Q. And then, after that point, what was the
 14 frequency that you would ask golfers to remove their
 15 ball from your property?

16 A. I don't know about the frequency; anytime I
 17 saw one out there. And some of them got some licks in
 18 and left some divots in there where I had the grass
 19 planted. Anytime I saw a golfer out there and told
 20 them to take their ball out of the yard to hit it, why,
 21 generally, they were cooperative and they'd just do it.
 22 There was one that was always kind of a jerk,
 23 and he decided he was going to make an issue out of it.

24 Q. So generally, after the time that you planted
 25 the grass, if you saw a golf ball land in your yard and

1 Q. When a golf ball would land on your property
 2 and golfers would come up to play it, you would say,
 3 "Please take your golf ball and put it in the
 4 fairway" --

5 A. Yes.

6 Q. -- or something to that effect?

7 A. Yes, sir.

8 Q. When golfers -- when the balls would come on
 9 your property -- when do you first recall asking a
 10 golfer to pick their ball up and throw it off of your
 11 property onto the fairway?

12 A. I don't really remember when I first did it.
 13 It was after I started planting grass out there right
 14 along where the -- well, the boundary where the golf
 15 course and my property is, I was planting grass in
 16 there.

17 In fact, while I was building the house, I
 18 went to Tim who is, I think he's the superintendent or
 19 something of the golf course. And I asked him what
 20 kind of grass they use on the fairways so that I could
 21 just put it on my property and blend it on in.

22 He told me what it was and told me where to go
 23 buy it.

24 So I went down and started planting that grass
 25 in there along that place. It was just a flood area.

1 a golfer come up to play it, you would ask them to
 2 throw the ball off into the fairway?

3 A. (Witness nods in the affirmative.)

4 Q. Is that a yes?

5 A. Yes, sir.

6 Q. And generally, they would do so?

7 A. Yes, sir.

8 Q. There was one time where a gentleman didn't?

9 A. Yes, sir.

10 Q. Do you recall any other times where a golfer
 11 wouldn't comply with that request?

12 A. Oh, just recently, last fall. I don't know
 13 who it was. I can't tell who those people are that far
 14 away.

15 Q. So the one time where the guy, you said, was a
 16 jerk, and then this last fall, those are the two times
 17 that you recall when you got some pushback from the
 18 golfer?

19 A. They actually wouldn't take their ball out.
 20 They actually hit it out of the yard.

21 Q. Those are the only two times that you recall?

22 A. Pardon me?

23 Q. Those are the only two times that you can
 24 recall?

25 A. I can recall, yes.

1 Q. Mr. Williams, do you recall how long the prior
 2 owner owned Lot 14 before you acquired it?
 3 A. I don't have a clue. I don't have any idea.
 4 Q. Same question for Lot 16.
 5 Do you have any knowledge of the duration of
 6 the prior ownership of Lot 16?
 7 A. Well, I know, yeah, she -- it's right there on
 8 it, where she acquired it and sold it to me. It was
 9 just a matter of months.
 10 Q. Do you have any knowledge about the duration
 11 of the ownership of Lot 28 prior to when you acquired
 12 it?
 13 A. No, I don't.
 14 Q. Mr. Williams, do you have any personal
 15 knowledge of any contracts that have been entered into
 16 between the association and the prior owners of your
 17 lots?
 18 A. No, sir.
 19 Q. Do you have any personal knowledge of any
 20 written agreements between the association and the
 21 prior owners of your lots?
 22 A. No, sir.
 23 Q. Do you have any personal knowledge of any
 24 disputes between the prior owners of Lots 14, 16, 28,
 25 and the association?

1 A. Yes, sir.
 2 Q. Please describe that.
 3 A. Ms. Williams moved to Chewelah at the same
 4 time I did and purchased that condominium from me. She
 5 moved up from Cedar City the same as I did. Yes, we
 6 had a personal connection.
 7 Q. Anything else with regard to Lot 16, the prior
 8 owner?
 9 A. No.
 10 Q. Have you had any communications with the prior
 11 owner of Lot 28?
 12 A. No. He just wanted to sell it and get out of
 13 here. That's what he did.
 14 Q. Sir, can you please turn to -- still on
 15 Exhibit 9 -- on page 17, I believe. I want you to look
 16 at paragraph 7.4.21.
 17 A. Okay.
 18 Q. After you've read that, please let me know.
 19 A. Okay.
 20 Q. There's a statement in there that says,
 21 "Mr. Williams' predecessors never acquiesced to the
 22 alleged 35-foot boundary line."
 23 Do you see that?
 24 A. Yes, sir, I do.
 25 Q. What's the basis of your knowledge of that

1 A. I wouldn't have any idea. No.
 2 Q. Any personal knowledge of any disputes between
 3 prior owners of your lots and the association regarding
 4 golfers coming onto the property? Do you have any
 5 knowledge of that?
 6 A. No, I don't. Those lots, on Lot 14 and 16,
 7 were raw. You couldn't play off of those lots, either
 8 one of them. You still can't off of 14.
 9 When I started cleaning that up to put the
 10 house on there, I must have got 500 golf balls out of
 11 there that no one could play.
 12 Q. Mr. Williams, do you have any personal
 13 knowledge of any communications from the prior owners
 14 of your lots to the association regarding golfers
 15 playing in the rough adjacent to those lots?
 16 A. No.
 17 Q. Have you ever communicated with -- let me back
 18 up.
 19 Have you ever communicated with the prior
 20 owner of Lot 14 other than in the context of acquiring
 21 property?
 22 A. No, sir.
 23 Q. Have you ever communicated with the prior
 24 owner of Lot 16 other than in the context of acquiring
 25 the property?

1 statement?
 2 A. There was no reason to acquiesce. There was
 3 never any reason to -- I don't think there's a question
 4 about it, a reason for anyone to acquiesce.
 5 Q. Do you have any personal knowledge about
 6 whether the prior property owners acquiesced or did not
 7 acquiesced to any 35-foot boundary line?
 8 A. I'm sure it was never discussed.
 9 Q. You're sure it was never discussed between you
 10 and the prior lot owners?
 11 A. I said "predecessors." Of course, here's
 12 another assumption. I don't have any idea what my
 13 predecessor did.
 14 Q. Okay. By use of the word "predecessors," do
 15 you mean that to mean the prior owners of your lots?
 16 A. Yes.
 17 Q. So you have no personal knowledge of what the
 18 prior owners did or did not do with respect to the
 19 35-foot boundary line; is that correct?
 20 A. Again, on 14 and 16, raw land. No one lived
 21 on it or anything else, so there shouldn't have been
 22 any reason to discuss it, for that issue to even come
 23 up.
 24 Q. And I appreciate that. That there likely was
 25 no reason for it to come up.

1 Q. Are there any other golfers that you have
 2 specific recollection about having a confrontation
 3 with?
 4 **A. Not really confrontations.**
 5 Q. Do you recall ever threatening a golfer
 6 before?
 7 **A. I don't recall ever threatening a golfer.**
 8 **(Exhibit No. 11 marked.)**
 9 BY MR. SCHAROSCH:
 10 Q. Mr. Williams, can you please take a look at
 11 Exhibit No. 11. And let me know when you're finished
 12 reviewing that.
 13 Exhibit No. 11 is a Chewelah Police Department
 14 additional information report dated July 27, 2010; is
 15 that correct, sir?
 16 **A. That's correct.**
 17 Q. A little more than halfway down the page, on
 18 page 1 of Exhibit 11, there's a paragraph that begins
 19 with, "I spoke with Williams."
 20 Do you see that?
 21 **A. Yes, sir.**
 22 Q. Can you please read that paragraph to
 23 yourself, and let me know when you're finished.
 24 **A. Okay.**
 25 Q. Do you recall working in the yard that day on

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1 July 27, 2010?
 2 **A. Not especially that day, but I recall this**
 3 **incident, yes.**
 4 Q. You recall this incident. Okay.
 5 In that paragraph there's a statement that
 6 says, "Williams stated he told him," being the golfer,
 7 "'If you hit me with a ball on my property, I will put
 8 a bullet hole in you big enough to walk through."
 9 Did you see that statement?
 10 **A. Yes, sir.**
 11 Q. Did you say that to the golfer?
 12 **A. I did verbatim.**
 13 Q. Would you consider that to be a threat?
 14 **A. No, sir, I didn't. I considered the fact that**
 15 **he almost hit me with a golf ball and killed me a**
 16 **threat.**
 17 Q. Do you know whether the golf ball that almost
 18 hit you -- do you know where the golfer was when he hit
 19 the ball that almost hit you?
 20 **A. From what he indicated, about a hundred yards**
 21 **up the fairway.**
 22 Q. Do you know if that particular golfer had the
 23 ability to control where his golf ball went?
 24 **A. I would say if he didn't, he shouldn't have**
 25 **been hitting it toward a human being.**

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1 Q. Do you know if -- to your knowledge, did that
 2 golfer have an intent to hit you?
 3 **A. I don't know that he didn't have --**
 4 Q. But you don't know that he did?
 5 **A. -- and I don't know he didn't.**
 6 Q. Do you consider murder an appropriate response
 7 to being accidentally hit by a golf ball?
 8 MR. WEBSTER: Object to the form of the
 9 question.
 10 BY MR. SCHAROSCH:
 11 Q. Go ahead and answer, sir.
 12 **A. I don't know if you consider "murder" a**
 13 **correct description of it.**
 14 Q. Do you consider killing a person to be an
 15 appropriate response to being accidentally hit by a
 16 golf ball?
 17 **A. No, sir.**
 18 Q. Then why would you make that threat?
 19 **A. I wanted him to understand that if you hurt me**
 20 **or hurt anyone along there that they should do**
 21 **something so that he could enjoy the pain right along**
 22 **with them.**
 23 Q. Even if it was an accident?
 24 **A. It wouldn't be anything but an accident as far**
 25 **as the golfer is concerned, right?**

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1 Q. When you made this statement to the golfer,
 2 did you mean for him to perceive that threat?
 3 MR. WEBSTER: Objection. I'm going to go
 4 ahead and stop my client from answering this question
 5 under his right to plead the Fifth Amendment. It might
 6 incriminate him in a criminal type of investigation.
 7 So I'm going to advise him not to answer.
 8 BY MR. SCHAROSCH:
 9 Q. Do you think that you'd be justified in
 10 killing a person that trespasses onto your property and
 11 hits a golf ball off your lawn?
 12 MR. WEBSTER: Objection. Calls for a legal
 13 conclusion.
 14 **A. No, sir.**
 15 BY MR. SCHAROSCH:
 16 Q. You would not be justified in killing a person
 17 for hitting a golf ball off your lawn?
 18 **A. No.**
 19 Q. Would you be justified -- you believe you'd be
 20 justified in killing a person that hit you with a golf
 21 ball?
 22 **A. No, sir.**
 23 Q. Would you be justified -- if a golfer came
 24 onto your property and hit a golf ball from your
 25 property, would you be justified in hitting them with

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1 an asp or a collapsible baton?
 2 A. If I were attacked by them with their golf
 3 equipment or by them using their golf equipment, yes.
 4 Q. But just hitting a golf ball off your yard?
 5 A. No.
 6 Q. Why did you make this statement that you would
 7 shoot this guy with a bullet hole?
 8 A. I'd put a bullet hole in him big enough to
 9 walk through, because I wanted him to understand if he
 10 hit people -- I think it takes a pretty callous,
 11 arrogant person to deliberately hit a ball, which is
 12 just as lethal as a .38 caliber gun, toward a person
 13 that's working in his yard -- you can't hear him,
 14 doesn't know he's coming -- as it is to shoot someone.
 15 Q. And wanted him to understand that?
 16 A. I did.
 17 Q. Why were you wearing a gun that day, sir?
 18 A. No reason.
 19 Q. Just woke up and said, "I'm going to go work
 20 in my yard and think I'm going to put my gun on"?
 21 A. No. I thought I'd work in the yard for a
 22 while and take the gun out and shoot for a while. I
 23 used to shoot all the time when I was in southern Utah.
 24 And there are a few people up here I like to shoot
 25 with.

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1 Q. Where do you shoot your gun?
 2 A. On private property just west of the golf
 3 course.
 4 Q. Did you see the golfer when he hit the ball
 5 toward you?
 6 A. (Witness shakes head negatively.)
 7 Q. Is that a no?
 8 A. I'm sorry. That's correct. I did not see
 9 him.
 10 Q. Have you threatened other people in your life
 11 with the same type of threat that you threatened this
 12 golfer?
 13 A. Never.
 14 Q. Did this golfer say anything to you when he
 15 came up?
 16 A. Yes. He arrogantly came up and said -- and
 17 the ball was -- like I said, I was here, and I was in
 18 those juniper bushes at the time, cleaning them with a
 19 weed whip, gas powered weed whip. You can't hear
 20 anything.
 21 And the golf ball was about from here to the
 22 chair over there at the other side of Tom. And I
 23 didn't know that it had even been hit.
 24 MR. WEBSTER: Let the record reflect that
 25 where Mr. Williams is pointing is approximately 4 feet,

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1 give or take a couple feet, from his walker.
 2 BY MR. SCHAROSCH:
 3 Q. Is that accurate, Mr. Williams, what your
 4 attorney just said?
 5 A. Yes.
 6 Q. Go ahead.
 7 A. Here come these golfers, and this guy came up
 8 to me, and he's just as arrogant as anyone I've ever
 9 seen. And I'm just trying to do yard work in my yard.
 10 And he said, "I hollered fore to you." And he
 11 says, "Of course, you couldn't hear it." And the
 12 arrogance of that man upset me.
 13 And I said, "Well, you wouldn't want to hit me
 14 on my property anyway with one of those golf balls."
 15 He said, "What would you do if I did hit you?"
 16 And that's when I told him what I'd do.
 17 Q. Mr. Williams, have you ever cut out a
 18 silhouette of yourself and placed it in the window of
 19 your house?
 20 A. No.
 21 Q. Is that a no?
 22 A. No. That's correct, I haven't.
 23 Q. Have you ever thrown golf balls at golfers?
 24 A. Hm-mm.
 25 Q. Is that a no?

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1 A. No. I have not thrown golf balls at golfers,
 2 other than trying to get them back to them as close to
 3 their proximity as I can. Whenever they hit a ball and
 4 it hits my house and I'm sitting there on the deck,
 5 why, I'll throw it back out in the fairway.
 6 I know that one incident, the golf course put
 7 a couple guys up to try to aggravate me. And they hit
 8 the ball, and it just about hit me. And the guy came
 9 on the lot.
 10 The other guy pulled up in front on the other
 11 side of the trees that I had planted at the time, and
 12 all he did was sit down and take notes. And I got the
 13 golf ball out of the flower bed, and I threw it back at
 14 him left-handed. I had this watch on. When you throw
 15 very hard with that, it come off. It's nothing to do
 16 with -- so I threw it back out there to him.
 17 And he says, "It's not my golf ball."
 18 And he went back and got it and took it to the
 19 guy in the car, and he went over and got his golf ball.
 20 And I said, "Will you take it out of my yard
 21 to hit it?"
 22 He said, "Yes, sir. I'm sorry that it
 23 happened."
 24 That's what happened. But the report that
 25 came back on that was just a little bit different than

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1 that.

2 Q. Which report are you referring to?

3 A. The report that they gave to the golf and

4 country club, these two golfers. I don't know who they

5 are. I have no idea who these people are.

6 MR. SCHAROSCH: Mr. Williams, that's all the

7 questions that I think I have. I'm going to review my

8 notes.

9 Mr. Phillabaum is going to start into asking

10 you his questions so we're not sitting here in silence

11 while I review my notes.

12 MR. PHILLABAUM: And any potential exhibits

13 that I have, he's agreed and I've agreed to cover

14 those. He won't need to.

15 EXAMINATION

16 BY MR. PHILLABAUM:

17 Q. Mr. Williams, do the drugs you take cause any

18 restriction in your activities?

19 A. No, sir.

20 Q. Have you been told that because of the drugs

21 you're taking, you should not drive or operate

22 machinery?

23 A. No, sir.

24 Q. Do you believe they interfere with your

25 ability to understand or answer questions?

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1 A. No, sir.

2 Q. You have not had any trouble understanding

3 Mr. Scharosch?

4 A. No, I haven't had.

5 Q. And you've been able to answer the questions

6 accurately; you're comfortable with your answers?

7 A. I am.

8 Q. Okay. If my voice trails off, and sometimes

9 it does, or if any other -- for any other reason you

10 don't understand a question, please feel free to ask me

11 to repeat it.

12 You said you bought a house from a

13 Ms. Williams who moved up here the same time you did

14 from Utah.

15 Are you related?

16 A. No, we're not.

17 Q. Did you know her in Utah?

18 A. Yes, sir.

19 Q. In what capacity?

20 A. Her husband was my home teacher in the Mormon

21 church, and I was, in turn, their home teacher. I got

22 acquainted with her and her husband -- well, with her

23 husband and her and their family through the church.

24 Q. When and where did she tell you that she did

25 not believe there was an easement or right for golfers?

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1 to use property up to the out-of-bounds markers?

2 A. I really -- I don't know that she even said

3 anything specifically that way. We just were in a

4 discussion, and I wanted to know if there was an

5 easement or something that allowed them to do that.

6 And we went through it, and it wasn't just her

7 and I. There was several of us that went through it.

8 And we couldn't find anyplace where there was an

9 easement.

10 Q. To your personal knowledge, what did she ever

11 do to exclude golfers from any portion of Lot 16?

12 A. She didn't live on it. She didn't do

13 anything.

14 Q. You say that discussion you had was after you

15 bought Lot 16?

16 A. It was. Later on.

17 Q. Would you say it was before or after 2010?

18 A. It was before 2010.

19 Q. Was it before you built your house? Was it

20 before 2007?

21 A. Probably as I was building the house.

22 Q. Probably 2007; is that right?

23 A. Yes, sir.

24 Q. Do you have a gun with you here today?

25 A. No, sir.

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1 Q. Why not?

2 A. I'm not afraid of you.

3 Q. Why did you have a gun when you were weed-

4 whacking your yard?

5 MR. WEBSTER: Objection. Asked and answered.

6 You can answer it.

7 A. I said I was going to take it out and shoot

8 it. I just put it in my belt.

9 BY MR. PHILLABAUM:

10 Q. But you weren't going to shoot it on your

11 property?

12 A. My property is too small to shoot on my

13 property there. Too many people could get hurt.

14 Q. Sure.

15 A. I have a friend that lives, again, west of the

16 golf and country club.

17 Q. How far west?

18 A. West.

19 Q. How far west of the club?

20 A. Do you know where Immel Road is?

21 Q. Would it be 100 yards, 200 yards?

22 A. Immel Road must be almost a mile.

23 Q. Do you normally walk from your house over

24 there?

25 A. No.

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1 Q. So if you were going to go shoot that day, you
 2 would go get in your car and drive over to your
 3 friend's property?
 4 A. Yes, sir.
 5 Q. Do you take targets with you when you do it?
 6 A. He has targets, and yes, once in a while -- I
 7 wasn't going to take targets that day, but yes.
 8 Q. What caliber is your weapon?
 9 A. 9 millimeter.
 10 Q. Did you have extra ammunition with you when
 11 you were out there weed-whacking?
 12 A. No, sir. It's in the car.
 13 Q. You had it in the car.
 14 Why didn't you leave the gun in the car so you
 15 could take it and the ammunition?
 16 A. Because I just decided to wear it. I have a
 17 right to wear it, a concealed weapons permit. Just
 18 stuck it in my belt and went out there and worked and
 19 was getting ready to finish up that stuff and go out
 20 and shoot.
 21 Q. What percent of the time would you say that
 22 you have a weapon on your person when you're in your
 23 yard?
 24 A. Very rarely. Percentage? 1 percent, maybe.
 25 Q. 1 percent.

1 A. It's not common. I wouldn't say it never
 2 happened but very rare.
 3 Q. I want to ask a little bit more about the
 4 history of golfers on your property, but I want to be
 5 really precise with our language so we understand each
 6 other.
 7 Your three lots are deeded to you, and you own
 8 them, correct?
 9 A. I thought I did.
 10 Q. And a portion of each lot towards the fairway
 11 is an area that the golf course has allowed play from,
 12 isn't it?
 13 A. Not necessarily.
 14 Q. Let me draw my understanding, and we'll see if
 15 we can agree.
 16 I'm drawing a long oval shape. I'm going to
 17 label this "fairway." And then I'm going to put some
 18 rectangular lots along the side of the fairway. These
 19 are not meant to reflect the actual situation but
 20 merely as an aid to our discussion. And there's a road
 21 here. I'll label it "road."
 22 We'll just call this Lot 1, 2, 3, 4. So I've
 23 done eight lots there. It's my understanding that if
 24 we were to try and make this similar to the Chewelah
 25 Golf Course situation, that along these lots there are

1 markers 35 feet from the edge of the fairway. In other
 2 words, they're 35 feet onto the individual lot owner's
 3 property. And I think, during the course of our
 4 discussions, you've called these OB markers.
 5 MR. WEBSTER: I object to the form of the
 6 question. I don't think there is a question. I object
 7 to counsel testifying as well.
 8 BY MR. PHILLABAUM:
 9 Q. That's my understanding of the situation we're
 10 dealing with, without this representing the actual
 11 plat. So if we talk about your lot, we would be
 12 talking about the entirety of your ownership. That's
 13 my use of the language.
 14 If we talk about your lot up to the out-of-
 15 bounds area, we're talking about the portion of your
 16 lot that is next to the fairway. In other words,
 17 35 feet. What I'm going to do here on this Lot 1 is
 18 just crosshatch that in. So the area I've crosshatched
 19 there on Lot 1 is what I would refer to as the "rough."
 20 You can play from it but you're not out of bounds.
 21 Beyond these markers which are located 35 feet
 22 onto the individual lot owner's property, the ball is
 23 out of bounds and cannot be played. That's my
 24 understanding.
 25 Now, if you have a different understanding,

1 would you tell me what your understanding is.
 2 A. My understanding is that, apparently, the golf
 3 and country club has assumed that they have a right to
 4 that which I've never agreed to.
 5 Q. Let's be clear. When you say they've assumed
 6 they have a right to "that," what are we talking about?
 7 A. The 35 feet that you just mentioned.
 8 Q. I call that the "rough." Is that a term we
 9 can agree to?
 10 MR. WEBSTER: I'm going to object at this
 11 point to the form of the question. I think the
 12 question is compound. If counsel can simply break it
 13 down point by point.
 14 I think you've stated a lot of things point by
 15 point, but there's really no specific question. It's
 16 just a general one about your drawing.
 17 BY MR. PHILLABAUM:
 18 Q. Can we agree that the term "rough" represents
 19 that 35 feet of the lot owner's property next to the
 20 fairway?
 21 A. I think as far as the golf course is
 22 concerned. As far as the property owner is concerned,
 23 no. There's no rough area on my property.
 24 Q. For purposes of our discussion, if I want to
 25 refer to that area from the out-of-bounds marker

1 towards the golf course, will you understand me if I
 2 call that "rough"?
 3 MR. WEBSTER: Object again to the form of the
 4 question. You haven't established that Mr. Williams
 5 believes there is one.
 6 **A. No.**
 7 BY MR. PHILLABAUM:
 8 Q. What term do you want to use for the back
 9 35 feet of your lot next to the golf course?
 10 **A. My property.**
 11 Q. Well, that's too big.
 12 **A. It isn't too big. That's what I paid for.**
 13 **That's what I pay taxes on.**
 14 Q. Do you absolutely refuse to make a distinction
 15 between the back 35 feet of your lot and the front?
 16 **A. It isn't the back 35 feet, east or west or**
 17 **whatever. That whole lot I purchased --**
 18 Q. I understand that.
 19 **A. -- in one unit.**
 20 Q. I understand that.
 21 **A. It wasn't divided up into anything.**
 22 Q. I understand that.
 23 **A. And that's all my property.**
 24 Q. So you refuse to even talk about the 35 feet
 25 that's next to the golf course?

1 **A. Why would there be any discussion about it?**
 2 Q. There's going to be a lot of discussion about
 3 it. That's what the whole case is about. It's your
 4 failure to recognize that that's brought us here.
 5 MR. WEBSTER: Objection. That's getting
 6 argumentative. I think, at this point, I can't protect
 7 my client because you're arguing with him instead of
 8 asking questions. He's designated for the record, he
 9 doesn't believe that there is an easement there of
 10 35 feet, and he won't call it the rough no matter how
 11 much argument is being made.
 12 MR. PHILLABAUM: He can call it whatever he
 13 wants.
 14 MR. WEBSTER: He's not going to use your
 15 terminology.
 16 MR. PHILLABAUM: Counsel, you're not
 17 listening. If you will listen to my question, he can
 18 call it whatever he wants. I'm asking him how he wants
 19 to differentiate it from the rest of his property.
 20 MR. WEBSTER: He's not differentiating it.
 21 He's answered it.
 22 BY MR. PHILLABAUM:
 23 Q. Mr. Williams, what term do you want to use to
 24 differentiate the 35 feet of your property that's
 25 closest to the golf course fairway? You pick the term.

1 **A. It's my property clear out to the point that**
 2 **it says I own here and the golf course owns from.**
 3 Q. Okay. Can I call that the back 35 feet of
 4 your property or the front 35?
 5 **A. You may call that anything you like, but it's**
 6 **not my term.**
 7 Q. Okay. I just want to make sure we
 8 communicate. I don't care what your term is as long as
 9 you understand my questions and I understand your
 10 answers.
 11 MR. WEBSTER: How about "area in dispute"?
 12 BY MR. PHILLABAUM:
 13 Q. You can call it a bagel if you want to.
 14 **A. All right.**
 15 Q. Call it whatever you want as long as we know
 16 we're talking about the 35 feet closest to the fairway.
 17 **A. I'm not going to differentiate between any**
 18 **part of my property. It's all my property.**
 19 Q. So you're going to refuse to answer any
 20 questions about the 35 feet that are closest to the
 21 fairway?
 22 **A. Not so. I just answered your question.**
 23 Q. Okay. We'll see what we can do here.
 24 When was the first time on any of your lots
 25 that you saw a golfer hit a golf ball into the 35 feet

1 of that lot that was closest to the fairway?
 2 **A. To start with, I never knew how far into my**
 3 **property they were at any time because I didn't know**
 4 **where my property lines were.**
 5 **Go ahead.**
 6 Q. When did you first see a golfer hit a ball
 7 into the 35 feet that was closest to the fairway?
 8 **A. Almost immediately.**
 9 Q. Almost immediately. So that would be in what
 10 year?
 11 **A. In 2004.**
 12 Q. Did it happen, what, once every month or two,
 13 once every day?
 14 **A. It happened more regularly than that.**
 15 Q. How often?
 16 **A. I don't know the frequency.**
 17 Q. Was it continuously done during the golf
 18 season?
 19 **A. More than likely.**
 20 Q. It was done in the middle of the day; you
 21 could see it happen?
 22 **A. Yes.**
 23 Q. Did you take any action to stop it in 2003?
 24 **A. No, sir.**
 25 MR. WEBSTER: Misstatement of the record.

1 It's 2004.
 2 BY MR. PHILLABAUM:
 3 Q. In 2004 did you take any action to stop it?
 4 A. No.
 5 Q. In 2005 did you take any action to stop it?
 6 A. No.
 7 Q. Now, by 2005, how many lots did you own?
 8 A. Well, by the end of 2005 I guess I owned
 9 three.
 10 Q. Okay. Did you take any action to stop golfers
 11 from hitting balls into the 35 feet of your lots that
 12 were closest to the fairway in 2005?
 13 A. Onto my property, no.
 14 Q. You testified that you had Lot 16 surveyed?
 15 A. When I purchased it, yes.
 16 Q. You purchased it in 2005?
 17 A. 2007 I think. Maybe it was 2005. It was
 18 2005, yes.
 19 Q. You bought it in 2005 and you finished your
 20 house in 2007; is that right?
 21 A. Mm-hmm.
 22 Q. You have to answer yes or no.
 23 A. Yes, sir.
 24 Q. Now, were you aware that there were already
 25 lot markers on the corners of your lot near the golf

1 has golfers playing on it, doesn't it?
 2 A. I suppose.
 3 Q. You've seen them over there, haven't you?
 4 A. I don't pay that much attention to them.
 5 Q. You wouldn't say that your three lots are the
 6 only three lots along holes 1 and 2 of the old 9 that
 7 people hit golf balls onto, would you?
 8 A. No, I wouldn't.
 9 Q. And you've actually seen balls go onto some
 10 other people's property along 1 and 2?
 11 A. Yes, sir.
 12 Q. The first time you objected to a golfer being
 13 on the 35 feet of your property closest to the golf
 14 course was 2007.
 15 Did I understand correctly?
 16 A. Yes. It probably would have been about in
 17 2007.
 18 Q. When did you start building that house?
 19 A. When did I start building the house? I
 20 believe it was in 2007.
 21 Q. Was it done in one year?
 22 A. Yes. The house was. The hangar wasn't
 23 finished but the house was.
 24 Q. So you started probably early in the year and
 25 finished later in the fall or something?

1 course? I mean lot markers, not out-of-bounds markers.
 2 A. Yes, sir, I was.
 3 Q. When did you first become aware of those?
 4 A. Well, I guess I went out and looked at them --
 5 I think I was still living at 110 Richmond Lane when I
 6 did that. That had to have been in 2005 or '6.
 7 Q. So in 2005 or '6 you knew golf balls were
 8 going onto the 35 feet of your property that was
 9 closest to the fairway?
 10 A. Yes, sir.
 11 Q. And you took no action to stop that?
 12 A. That's correct.
 13 Q. Do you think a day ever went by in the golfing
 14 season when a ball didn't go onto your property that
 15 was within 35 feet of the fairway?
 16 MR. WEBSTER: Objection. Form of the
 17 question.
 18 A. I don't know.
 19 BY MR. PHILLABAUM:
 20 Q. You don't know. Well, what's your best
 21 estimate?
 22 A. I would imagine that they were on it, around
 23 it, but I really don't know.
 24 Q. Now, that area that's within 35 feet of the
 25 fairway, not only your lots but other people's lots,

1 A. Yes.
 2 Q. You mentioned that you'd lived on a golf
 3 course eight years prior to moving to Chewelah?
 4 A. Yes, sir.
 5 Q. What years were those?
 6 A. I moved to Renton in '77, and I lived there
 7 through '84. Yeah, through '84.
 8 Q. How long have you lived on the Chewelah golf
 9 course?
 10 A. I moved here in, I think, June of 2004, and
 11 ever since.
 12 Q. So you spent 16 years living on a golf course?
 13 A. Yes, sir.
 14 Q. That's that roughly a third or a fourth --
 15 it's more than a third of your adult life probably.
 16 About a third?
 17 A. Could be, yeah.
 18 Q. When you moved to the Chewelah golf course,
 19 did you expect to hear golfers playing?
 20 A. Certainly.
 21 Q. And you knew the lot you bought, the first lot
 22 you bought, was right on a fairway, correct?
 23 A. Yes.
 24 Q. In fact, that first lot was Lot 28, correct?
 25 A. That's correct.

1 Q. That's because if we look at your report which
 2 is on page 4 of this exhibit, it says, "I threw his
 3 trash at him and called him a name that I felt
 4 appropriate for his action."
 5 See right here?
 6 **A. So that would mean that --**
 7 Q. That's your signature at the bottom, isn't it?
 8 **A. So that would mean that the person that wrote**
 9 **this had read this report before they wrote this,**
 10 **right?**
 11 Q. I don't know. I'm looking at the police
 12 officer's report; that's the first page. And I'm
 13 seeing that you apparently admitted you called him a
 14 name.
 15 **A. I did, yes.**
 16 Q. So what did you call him?
 17 **A. I don't remember.**
 18 Q. Was it a civil name?
 19 **A. No, it wasn't.**
 20 Q. Was it simply --
 21 **A. It was an expletive name.**
 22 Q. Was it something people would find offensive?
 23 **A. I hope so.**
 24 Q. You intended to offend him?
 25 **A. Yes, sir, I did.**

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1 Q. Did you want to start a fight?
 2 **A. I wanted him off my property.**
 3 Q. Did you hear my question?
 4 **A. And I answered you. I wanted him off my**
 5 **property. The guy --**
 6 Q. My question was did you want to start a fight?
 7 **A. I'm 5-7. This guy looked like Baby Huey.**
 8 **Compared to me, he was a giant. No, I didn't want to**
 9 **start a fight.**
 10 Q. You just wanted to offend him?
 11 **A. I wanted him off my property.**
 12 Q. Let's go down here a little farther. The next
 13 paragraph says, "He confronted the man."
 14 That would be you confronting the man, right?
 15 **A. Okay. Confronted the man.**
 16 Q. So after you called him names in the front of
 17 the house, you went out in the back and you confronted
 18 the man whose name is Richard Mugas -- right?
 19 **A. Right. Yes.**
 20 Q. -- and told him to release the property. The
 21 property was a piece of plastic pipe, right?
 22 **A. (Witness nods in the affirmative.)**
 23 Q. Okay. And you're claiming you told the
 24 policeman "The man refused, believing it to be property
 25 of the golf course, and the two men struggled over the

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1 plastic pipe," correct?
 2 **A. Yes.**
 3 Q. As I picture this man, the big man that you've
 4 insulted, standing there with a piece of pipe in his
 5 hands, and you walk up to him and confront him and you
 6 try and grab the pipe out of his hands; is that right?
 7 **A. That's correct.**
 8 Q. So the touching was initiated by you?
 9 **A. Touching of the pipe. I never touched him.**
 10 Q. Okay. Did he touch you?
 11 **A. With the pipe.**
 12 Q. Who was the first person who had their hand on
 13 the pipe?
 14 **A. He was.**
 15 Q. And you came and grabbed the pipe to take it
 16 away from him?
 17 **A. I told him to give it back to me, yes.**
 18 Q. And then you grabbed the pipe?
 19 **A. Yes.**
 20 Q. You also, I think, earlier had thrown some
 21 trash at him, right?
 22 **A. No.**
 23 Q. If we look at the bottom of your report.
 24 **A. Okay.**
 25 Q. You said, "I threw his trash at him."

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1 **A. He had an envelope.**
 2 Q. Is that a quote from what you said?
 3 **A. This trash?**
 4 Q. No. Did you say on your report signed by you,
 5 given to the police, "I threw his trash at him"?
 6 MR. WEBSTER: I believe Mr. Williams was
 7 trying to respond when he began with "he had an
 8 envelope," and you interrupted him. If you could let
 9 him finish his answer.
 10 MR. PHILLABAUM: That's still not the question
 11 I have. The question I have --
 12 MR. WEBSTER: He still has a right to finish
 13 his answer.
 14 MR. PHILLABAUM: He still has to answer the
 15 question I asked.
 16 BY MR. PHILLABAUM:
 17 Q. Did you say, "I threw his trash at him"?
 18 MR. WEBSTER: Mr. Williams, you may answer in
 19 the manner you can answer.
 20 MR. PHILLABAUM: No. He needs to answer the
 21 question that is asked. He might not like my question;
 22 his lawyer might not like my question.
 23 MR. WEBSTER: He's attempting to.
 24 **A. Let's make sure we understand the question if**
 25 **it's this complicated.**

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1 BY MR. PHILLABAUM:
 2 Q. If your answer is no, that's fine. If your
 3 answer is yes, that's fine. I'd ask you not to tell me
 4 about the shrubs. Just tell me whether you anticipated
 5 those trees would become a barrier.
 6 MR. WEBSTER: At this point I'm objecting to
 7 harassing in nature. He's asked three times the same
 8 question which the response was, "No. I meant them to
 9 show where my boundary line was," for both attorneys.
 10 MR. PHILLABAUM: If that was his answer, I'd
 11 be happy. But it wasn't.
 12 BY MR. PHILLABAUM:
 13 Q. Counsel has said you've answered no. That
 14 isn't the answer I've heard.
 15 A. **I'm sure it isn't.**
 16 Q. Let's back up again.
 17 Did you intend that those trees would become a
 18 barrier?
 19 A. **Did I intend for them to?**
 20 Q. Right.
 21 A. **No more than I intended for the shrubs to**
 22 **become a barrier.**
 23 Q. Did you intend for the shrubs to become a
 24 barrier?
 25 A. **No.**

1 Q. So they irrigate all three of the lots?
 2 A. **By protest. I've told them not to do it and**
 3 **they wouldn't quit.**
 4 Q. Has the golf course irrigated the 35 feet of
 5 other people's lots closest to the fairway?
 6 A. **I have no idea.**
 7 Q. What's your best estimate?
 8 A. **I don't have any idea.**
 9 Q. You think yours are the only lots they
 10 irrigate?
 11 MR. WEBSTER: *Objection. Asked and answered.*
 12 A. **I don't know.**
 13 BY MR. PHILLABAUM:
 14 Q. Has the golf course fertilized any portion of
 15 the back 35 feet of any of your lots?
 16 A. **Not that I know of.**
 17 Q. You don't know. Okay.
 18 If they said they had, would you call them a
 19 liar?
 20 A. **Yes, sir, I would.**
 21 Q. Why?
 22 A. **Because I fertilize it. I'm the one that's**
 23 **put the seed in to grow that grass. I'm the one that's**
 24 **put the fertilizer on there. I'm the one that mowed**
 25 **that lawn. I'm the one that cleared it out so you**

1 Q. Did you understand by planting trees that
 2 would grow that they would, in fact, become a barrier?
 3 A. **Not necessarily. They're more decorative.**
 4 Q. So you had no objection to removal of trees
 5 that would amount to a barrier?
 6 MR. WEBSTER: *Objection. Form of the*
 7 *question.*
 8 *You've got to answer it.*
 9 A. **Restate the question.**
 10 BY MR. PHILLABAUM:
 11 Q. Sure.
 12 You don't intend to maintain a barrier there.
 13 So if trees are removed that make that vegetation not a
 14 barrier, you would not object?
 15 A. **If -- eventually, if the trees became a**
 16 **nuisance of some kind to me, yes. I wouldn't object to**
 17 **taking them out or replanting them.**
 18 Q. Has the golf course irrigated the back -- the
 19 35 feet of any of your lots closest to the fairway?
 20 A. **They have an irrigation system, and I've asked**
 21 **them to stop it since I've been there. They have an**
 22 **irrigation system that sprinkles water on that area,**
 23 **yes.**
 24 Q. On which lots?
 25 A. **All of them.**

1 **could actually get a golf ball in and out of there.**
 2 **Yes, I would call them liars.**
 3 Q. You planted the seed for the back 35 feet
 4 closest to the fairway on all three of your lots.
 5 Is that your testimony?
 6 A. **That's correct.**
 7 Q. Was there grass there prior to the time you
 8 put seed in?
 9 A. **Sand, dirt. It was a sinkhole out there.**
 10 Q. *When did you plant?*
 11 A. **In 2007 is when I started.**
 12 Q. Which lot?
 13 A. **On 15.**
 14 Q. Was there grass on 28?
 15 A. **Yes, sir, there was.**
 16 Q. Who planted that?
 17 A. **I have no idea.**
 18 Q. How can you say the golf course did not
 19 fertilize? How do you know that?
 20 A. **They've never fertilized it since I lived**
 21 **there. We'll put it that way.**
 22 Q. How do you know that?
 23 A. **If they did it, they did it in the dark of the**
 24 **night, just like when they came and took my signs, I**
 25 **guess.**

1 Q. Have you been there continuously every day?
 2 A. I guess they could wait until I leave, like
 3 they did to take the shrubs.
 4 Q. Do they fertilize the golf course itself?
 5 A. I have no idea what they do on the golf
 6 course. I don't.
 7 Q. Have you ever seen them fertilize the fairway?
 8 A. I don't know if they fertilize it. I know I
 9 see foam out there and I see dust and crap out there
 10 all the time, but I don't know what they're doing.
 11 Q. Has the golf course mowed the 35 feet of any
 12 of your lots closest to the fairway?
 13 A. You mean since I've owned them?
 14 Q. Yes.
 15 A. Not since I've owned 16, anyway. I don't know
 16 about the others.
 17 Q. They've never mowed on 16?
 18 A. Never. As a matter of fact, when I first
 19 moved there, when I first started this, I planted trees
 20 out there along the boundary. One of the employees
 21 came up, he was driving one of those big 3-ton
 22 lawnmowers they've got that beich and blow smoke and
 23 everything else at 6:00 in the morning.
 24 He came and said, "Did you plant those trees
 25 out there?"

1 Q. What they did was they put trees in there that
 2 their commercial lawnmower could go through?
 3 MR. WEBSTER: Objection. The there's no
 4 question.
 5 MR. PHILLABAUM: Yes, it did. The "ask" words
 6 were "did they."
 7 BY MR. PHILLABAUM:
 8 Q. There was an agreement reached where trees
 9 were allowed to remain as long as a commercial
 10 lawnmower could get between them?
 11 A. Never an agreement of any kind.
 12 Q. There was a letter from Pat Monasmith to that
 13 effect?
 14 A. Not to me. I never saw one from him, at least
 15 that I knew of.
 16 Q. And Mr. Simeone acknowledged that the golf
 17 course had a right, I think he called it an easement,
 18 to use the back of your lot for play?
 19 A. He did. And I think we discussed that.
 20 Mr. Simeone says, "I don't know where I ever got an
 21 idea that there was an easement through there."
 22 Q. I'm going to object to the hearsay.
 23 A. We've got to call Mr. Simeone and get it
 24 verbatim.
 25 Q. He wrote a letter on your behalf, you

1 And I said, "Yes, I did."
 2 He says, "You're going to have to take care of
 3 it then."
 4 And I said, "I fully plan on it."
 5 The next thing I knew is they had come down
 6 and mowed those trees down. They mowed them down.
 7 Q. So they did mow on that part of your property?
 8 A. They mowed my trees down.
 9 So I went to the board of directors and I
 10 said, "What about this?"
 11 And they, of course, just like they do now,
 12 they pass the buck around from one to the other until
 13 they get -- one of them gets cornered.
 14 Finally, one of them came up and said, "How do
 15 you know a golfer didn't kind of just come up and hit
 16 that and tear it out of the ground?" A tree we're
 17 talking about.
 18 And I said, "Come on. Let's quit being
 19 ridiculous."
 20 Finally, I got an attorney. Talked Bob
 21 Simeone over here, to write them a letter. And we
 22 said, "If you don't replace the trees, we'll take legal
 23 action."
 24 And they replaced the trees along that
 25 boundary.

1 mentioned, correct?
 2 A. That's correct.
 3 Q. Did you read that letter?
 4 A. I did.
 5 Q. Did you object to it when he wrote it?
 6 A. I didn't pay that much attention to it. But
 7 no, I didn't object to it.
 8 Q. You intended that he write that letter on your
 9 behalf and send it to the association?
 10 A. Got the results I wanted. Got the trees
 11 replaced.
 12 Q. Only with the correct spacing, right?
 13 A. No. They came out and they put them where I
 14 told them to put them.
 15 Q. Okay.
 16 (Exhibit No. 12 marked.)
 17 MR. WEBSTER: I'll make an objection as to
 18 relevance.
 19 BY MR. PHILLABAUM:
 20 Q. Mr. Williams, the first two pages of
 21 Exhibit 12 of the letter your attorney wrote June 22,
 22 2006, is regarding those trees, isn't it?
 23 A. It looks like it, yes.
 24 Q. And he attached copies of the covenants and
 25 restrictions related to your property, didn't he?

1 That's the next two pages. Do you see those?
 2 **A. Yes.**
 3 Q. And the last two pages are the letter that
 4 Mr. Monasmith wrote on behalf of the country club,
 5 correct?
 6 **A. This is something that I've never seen.**
 7 Q. Your attorney never showed that to you; is
 8 that correct?
 9 **A. See, that was -- his statement there is**
 10 **incorrect.**
 11 Q. My question is, did your attorney ever show
 12 you this?
 13 **A. I never saw it.**
 14 Q. So you've never seen it before today?
 15 **A. No.**
 16 Q. So you don't know what agreement was reached
 17 between your attorney and Mr. Monasmith then; is that
 18 correct?
 19 **A. Apparently not. This statement that**
 20 **Mr. Monasmith has is incorrect.**
 21 Q. There's no question pending.
 22 Have you ever moved the out-of-bounds markers
 23 near your property?
 24 **A. No, sir.**
 25 Q. There were out-of-bounds markers on adjacent

1 property to yours, weren't there?
 2 **A. There still are.**
 3 Q. And someone can sight between them to see what
 4 is considered the out-of-bounds area?
 5 **A. Yes, sir.**
 6 Q. That's what golfers do, isn't it?
 7 **A. I have no idea what golfers do.**
 8 Q. The out-of-bounds area, if you go beyond that
 9 35 feet closest to the fairway onto your property,
 10 would be considered an area out of play, wouldn't it?
 11 **A. By whom?**
 12 Q. A golfer.
 13 **A. I would consider it out of play when it comes**
 14 **to my property.**
 15 Q. Explain to me what "out of bounds" means.
 16 You've played golf for 20 years, and I haven't played
 17 golf.
 18 What does it mean to be out of bounds?
 19 **A. It means that you take your ball and put it**
 20 **back in place. I think you hold your ball out and drop**
 21 **it in bounds and take a stroke and go on.**
 22 Q. So you can't play it where it lays. You have
 23 to go get it and move it back to the course?
 24 **A. From what I understand. At least the courses**
 25 **I've played on.**

1 Q. And there's a stroke penalty associated with
 2 that?
 3 **A. Pardon me?**
 4 Q. There's a stroke penalty associated with that?
 5 **A. There were at least -- I've never really**
 6 **discussed it as far as the course is concerned. But**
 7 **the people who I play golf with on golf courses have**
 8 **explained it that way.**
 9 Q. So on your properties, if somebody hits onto
 10 your property and the ball comes to rest closer to you,
 11 the front of your property, and beyond the back
 12 35 feet, does the golfer have the ability to go pick up
 13 the ball, walk back to the other side of the out-of-
 14 bound markers, drop the ball, take a stroke penalty,
 15 and hit it?
 16 **A. I don't know.**
 17 Q. Have you ever objected to anybody doing that?
 18 **A. Like I said, up until these people started**
 19 **trying to push me around, I didn't object to anything.**
 20 Q. Since 2010 have you objected to golfers
 21 picking up their ball, putting it back on the other
 22 side of the out-of-bounds marker, and hitting it?
 23 MR. WEBSTER: Objection. I'd like to clarify
 24 where Mr. Phillabaum is indicating some "out-of-bounds
 25 markers" are located.

1 MR. PHILLABAUM: He won't let me define a term
 2 like that, Counsel.
 3 MR. WEBSTER: You're stating there's
 4 out-of-bounds markers apparently somewhere. I just
 5 don't know where they are.
 6 MR. PHILLABAUM: He just admitted there are.
 7 MR. WEBSTER: Not on his property.
 8 BY MR. PHILLABAUM:
 9 Q. Do you understand the question?
 10 **A. No. Do it again.**
 11 Q. Do you object to a player, since 2010, who
 12 goes farther than 35 feet from the fairway onto your
 13 property, picks up a ball, and takes it back on the
 14 other side of the out-of-bounds markers to play it?
 15 **A. Yes, I do. That's still on my property.**
 16 **Remember, we defined that as all my property. That's**
 17 **my property, and I've asked them not to drive off of my**
 18 **property.**
 19 Q. Have you asked them not to come onto your
 20 property to retrieve a ball?
 21 **A. No, sir. I've been more than -- I even get**
 22 **out and help them find their ball.**
 23 Q. You mentioned the out-of-bounds markers are
 24 2-inch pieces of plastic pipe in the neighbor's yard?
 25 **A. Yes, sir.**

1 Q. How tall are they?
 2 A. How tall?
 3 Q. Yes.
 4 A. From the surface up, about 3 feet.
 5 Q. How long have they been there?
 6 A. I have no idea.
 7 Q. Do you ever remember them not being there?
 8 A. I never really paid any attention to it. But
 9 yes, there have been times when they weren't there.
 10 Q. Have they come and gone? Can you think of a
 11 continuous period of more than six months?
 12 A. As a matter of fact, I can.
 13 Q. Okay.
 14 A. They weren't there at all in 2008. I think it
 15 was August 8 of 2008. They came in -- when I say
 16 "they," it was Tim who was the supervisor -- I don't
 17 know if they fired him or not, but Tim was the
 18 administrator, I guess, of the condition of the golf
 19 course --
 20 Q. Would you call him, like, a grounds person or
 21 something?
 22 A. Yes. Terrific guy. -- and him and the guy
 23 that they fired because they thought he was in
 24 collusion with me, and the police officer, came over
 25 and they were putting in these out-of-bounds markers.

1 knew balls got hit onto the 35 feet adjacent to the
 2 golf course. You knew people played it within that
 3 35 feet. All that had been going on for years.
 4 You bought that property through Mark
 5 Beardsley, correct?
 6 A. That's his name. Mark Beardsley.
 7 Q. And it's your testimony that you never went to
 8 the property with him?
 9 A. We never stepped on that property together
 10 ever.
 11 Q. Okay. And you'd call him a liar if he said
 12 that he did that?
 13 A. To his face.
 14 Q. Okay.
 15 A. And I know that he said he'd swear, when we
 16 were going through that arbitration there, he would
 17 swear that he walked on that. If you read that very,
 18 very closely, I think he said that he'd swear that he
 19 and I walked that property, and he told me about all
 20 the easements and everything that went through that
 21 property.
 22 Q. Did he tell you that the area up to the
 23 out-of-bounds markers were golf course use property?
 24 A. He and I never stepped foot on that ground at
 25 all. Period. We never talked about that.

1 I don't remember them being there before 2008 ever.
 2 Q. Now, when you say "these out-of-bounds
 3 markers," do you mean along the entire number 1 and
 4 number 2 fairways?
 5 A. I don't know. They just happened to come into
 6 my yard about then. I don't know if they did it the
 7 entire length of it or what.
 8 Q. The first time you noticed out-of-bounds
 9 markers anywhere on the golf course, Fairway 1 or 2,
 10 was 2008?
 11 A. Yes, sir.
 12 Q. Okay. Would you testify that they were never
 13 there before that or you simply didn't know?
 14 MR. WEBSTER: Where?
 15 A. I just never saw them.
 16 MR. PHILLABAUM: Out-of-bounds markers on
 17 Fairway 1 and 2 of the old 9.
 18 A. I never saw them, but I didn't pay any
 19 attention to them. They weren't a major reason for me
 20 to look.
 21 BY MR. PHILLABAUM:
 22 Q. Was Lot 14 the last lot you bought?
 23 A. Yes, sir.
 24 Q. Obviously, you knew it was on a golf course.
 25 You knew people played; you knew people talked. You

1 Q. Were there white 2 X 2 markers out there
 2 showing the out-of-bounds boundaries?
 3 A. I don't know.
 4 Q. Did he point those out to you and showed you
 5 those?
 6 A. He and I were never on that property together.
 7 Q. Did you tell him you were familiar with the
 8 golf course play area because you already had two lots
 9 there?
 10 A. The subject never came up. No, I didn't.
 11 Q. At the time you bought that property, could
 12 you see that it was mowed up to the out-of-bounds
 13 markers?
 14 A. No, sir.
 15 Q. You said at one point you went to
 16 Mr. Monasmith for advice, and that it seemed to be that
 17 you were really using his firm to close your first
 18 purchase out there.
 19 A. I went to Monasmith's firm for advice for
 20 what?
 21 Q. I was unclear about your testimony. It seemed
 22 when you first answered Mr. Scharosch, you said you
 23 went to Patrick Monasmith personally to serve as an
 24 attorney for you and advise you.
 25 And then later on, it seemed like you were

42 (Pages 162 to 165)

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1 Q. You wanted to be on the golf course?
 2 A. No. I wanted to be on the airport.
 3 Q. You'd been on a golf course before?
 4 A. But I bought this house to be on the airport,
 5 specifically.
 6 Q. You mentioned you had seen an advertisement
 7 for this first lot, Lot 28, when you were still living
 8 in Utah.
 9 A. I saw it on the Internet.
 10 Q. What did you see?
 11 A. Steve Crisp had a website that said that he
 12 had air park property.
 13 Q. Do you have a copy of any of the prints of
 14 screens for what you saw on the Internet?
 15 A. I don't. He may still have.
 16 Q. He's a realtor?
 17 A. Yes, he is.
 18 Q. Where is his office?
 19 A. In his house.
 20 Q. What's it called?
 21 A. He just went into business for himself just
 22 recently.
 23 Q. At the time you contacted him to buy this lot.
 24 A. He was with Park Street Group.
 25 Q. Where are they?

1 A. I saw it afterwards. I got the paperwork
 2 after I bought the house.
 3 Q. Was I wrong when -- I thought you said
 4 Mr. Crisp gave you a copy of that before you bought it.
 5 A. I decided to buy the house, and after I bought
 6 it, why then that's when he walked back and said, "You
 7 have to make the decision to buy it." It's when he
 8 took me out and said, "You've got a golf course behind
 9 the house here."
 10 Q. Was that before or after the sale closed?
 11 A. No. It was actually before the sale closed.
 12 Q. Okay. So it's when he was showing you the
 13 property?
 14 A. Yes.
 15 (Exhibit No. 15 marked.)
 16 BY MR. PHILLABAUM:
 17 Q. Exhibit 15 is copies of a multipage brochure
 18 that I made.
 19 Have you ever seen that brochure before?
 20 A. No, I haven't.
 21 Q. Never have?
 22 A. No.
 23 Q. Have you seen the content of that brochure?
 24 A. I've seen this right here.
 25 Q. The colored map.

1 A. They used to be down on the corner of Park
 2 Street and Main in Chewelah.
 3 Q. They're no longer there?
 4 A. No. That's been gone for a while.
 5 Q. Who was the broker?
 6 A. Mark -- they still have a real estate company
 7 in town. I can't remember his name.
 8 (Exhibit No. 14 marked.)
 9 A. That's another one.
 10 BY MR. PHILLABAUM:
 11 Q. It also has the number 10 on it. I just saw
 12 that. We're talking about Exhibit 14. I don't know if
 13 it's the same exact one or not.
 14 A. Yeah, it is.
 15 Q. When was the first time you saw one of those?
 16 A. Like I said, I didn't see -- I don't recall
 17 when I saw one of those. The plat, which is
 18 actually -- this setup here in a big scale was with the
 19 paperwork that I got when I bought the house, and I saw
 20 that when I bought the house.
 21 Q. And it showed an area that was golf course on
 22 that plat, didn't it?
 23 A. Yes.
 24 Q. You saw that actually before you bought the
 25 house?

1 A. This is the first time I've seen it. I've
 2 never seen this before.
 3 Q. Did you recall when the first time you saw
 4 Exhibit 5 or 14 was? You told us you'd seen the actual
 5 plat. When did you see the brochure, the sales
 6 brochure, Exhibit 5 or 14?
 7 A. It was just right when I was -- I'm sure it
 8 was right about when I was buying the house, but I
 9 really can't remember now.
 10 Q. Okay.
 11 (Exhibit No. 16 marked.)
 12 BY MR. PHILLABAUM:
 13 Q. Mr. Williams, Exhibit 16 is a copy of the
 14 title insurance policy you got when you bought Lot 28,
 15 correct?
 16 A. Yes.
 17 Q. And prior to this time, you'd got a commitment
 18 for title insurance?
 19 A. Yes. Apparently.
 20 Q. It's very similar to this. If you'd look on
 21 the third page of Exhibit 16. You can see that the
 22 date is December 5, and it deals with Lot 28, correct?
 23 A. Third page, Schedule B?
 24 Q. No. If you would start counting from the
 25 first page of the exhibit, right there, the one you're

1 on.
 2 **A. Okay.**
 3 Q. We agree it's Lot 28, correct?
 4 **A. Okay. This is when I bought Lot 28. Yes.**
 5 Q. Okay. Did you look at this at the time you
 6 bought it?
 7 **A. Like I said before, I didn't look at anything**
 8 **in particular.**
 9 Q. Did you look at the preliminary commitment for
 10 title insurance at the time you bought or before you
 11 bought?
 12 **A. I wouldn't even know what that is.**
 13 Q. Okay. If you go to the next page, and the
 14 next page is actually numbered page 2. It's the fourth
 15 one back in the exhibit.
 16 Do you see that?
 17 **A. Mm-hmm. Yes, sir.**
 18 Q. And there's a heading called "General
 19 Exceptions."
 20 Do you have any understanding as to what it
 21 means to you when it says there are exceptions to your
 22 title?
 23 MR. WEBSTER: Objection. Form of the
 24 question.
 25 **A. I'm vague about that. I really wouldn't be**

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1 **A. No.**
 2 Q. Did you ask anybody if there were any uses,
 3 prescriptive rights, easements, or boundaries
 4 associated with the property before you bought it?
 5 **A. They told me about the easements that are on**
 6 **the front of the property. And I thought whenever they**
 7 **were telling me about those easements, they would**
 8 **include all easements.**
 9 Q. Again, my question was, did you ask anybody?
 10 **A. I wouldn't have been -- I wouldn't have the**
 11 **foresight to ask them.**
 12 Q. Okay. Then if you'd move over to the next
 13 page, number 4 under "Special Exceptions."
 14 **A. Okay.**
 15 Q. There's a special exception that tells you
 16 that there are covenants recorded December 8, 1981,
 17 under Auditor's File Number 512819, correct?
 18 **A. Correct.**
 19 Q. Okay. Would you agree with me that this
 20 document and the prior preliminary commitment are
 21 notice to you that there are covenants on the property,
 22 and that the title company is not insuring against
 23 easements or prescriptive rights or boundaries that you
 24 can see if you went out there and looked at the
 25 property?

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1 **able to.**
 2 BY MR. PHILLABAUM:
 3 Q. When it says there's an exception like B,
 4 "Encroachments and questions of location, boundary, and
 5 area disclosed only by inspection of the premises or by
 6 survey," what's that mean to you?
 7 MR. WEBSTER: Objection. Form of the
 8 question.
 9 **A. To me, I guess, if someone -- again, it's**
 10 **vague. "Encroachments," are you talking about -- I**
 11 **would assume you want to relate it to the golfers**
 12 **coming on my property. "Questions of location."**
 13 **In other words, I'd have to have it surveyed**
 14 **to make it legal. "Areas disclosed only by inspection**
 15 **of the premises," I don't have a clue what that is.**
 16 Q. Sure.
 17 Did you ask anybody at the closing or prior to
 18 the closing what that meant?
 19 **A. You know, I really have never had a reason to**
 20 **ask anybody anything like that. So the answer is no.**
 21 Q. The next one there, number C, letter C,
 22 "Easements, prescriptive rights, rights of way,
 23 streets, roads, alleys," so on, "not disclosed by
 24 public record."
 25 Did you ask anybody what that meant?

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1 **A. I would now, but I sure wouldn't have six**
 2 **months ago.**
 3 Q. Okay.
 4 (Exhibit No. 17 marked.)
 5 BY MR. PHILLABAUM:
 6 Q. Looking at Exhibit 17. It's a copy of the
 7 covenants and encumbrances on your property that the
 8 title insurance company gave you prior to your
 9 purchase, isn't it?
 10 **A. Okay. Yes.**
 11 Q. And you'll see if you look on this top one,
 12 which is recorded under Auditor's number 512819, number
 13 6 --
 14 **A. Page 6?**
 15 Q. No. Paragraph -- Provision Number 6. It's on
 16 page 4.
 17 **A. Okay.**
 18 Q. Number 6 is the one we're really talking about
 19 here, isn't it?
 20 **A. Yes, sir.**
 21 Q. And the first sentence of that says,
 22 "Landscaping is restricted to grass, trees, or
 23 flowers."
 24 **A. Yes, sir.**
 25 Q. And so you say you can plant trees, and we say

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1 you can't make trees into a wall.
 2 **A. It doesn't say that here.**
 3 Q. No. But that's our dispute, isn't it?
 4 **A. I don't know. That's something you brought**
 5 **up. That's not in here.**
 6 Q. Then the next sentence says, "The golf playing
 7 area of said front yard area," that would be the golf
 8 playing area of your property, right?
 9 **A. No. That would be the back yard area.**
 10 Q. They refer to it as front yard because it
 11 faces the golf course.
 12 **A. The president of the golf course referred to**
 13 **the front of my house herself as the other side.**
 14 Q. I don't want to fight with you on semantics.
 15 You were given a document that was referenced
 16 in a preliminary commitment of title and in a policy of
 17 title insurance, it was of record, of notice to the
 18 whole world, and it says, "The golf playing area of
 19 said front yard area shall be marked, and any golf
 20 balls entering the lot beyond the marked area shall be
 21 out of bounds and not played by the golfer." Correct?
 22 **A. Correct.**
 23 Q. I read that accurately?
 24 **A. Correct.**
 25 Q. And you had this document that you were given,

1 Q. What does it mean when it says, "the several
 2 covenants attach to and run with the land"?
 3 **A. That's what we're talking about right here.**
 4 **It means that the covenants remain by the golf and**
 5 **country club, and they pertain both to the golf and**
 6 **country club and to the participants of the ownership**
 7 **of the property.**
 8 Q. And everybody who owns land is subject to
 9 these, correct?
 10 **A. The golf and country club, included, correct?**
 11 Q. Are you subject to them?
 12 **A. Are they?**
 13 Q. I'm asking the question.
 14 **A. Yes, I am.**
 15 **Are they?**
 16 Q. Now, if you look, the pages are out of order,
 17 but a couple of pages back, you get page 6, and it's
 18 Provision Number 12. Number 12?
 19 **A. "12. Membership in the Golf and Country Club**
 20 **Association shall be required prior to ownership of any**
 21 **lot in the Chewelah Golf and Country Club subdivision."**
 22 Q. What's that mean to you?
 23 **A. That means that I had to own that certificate**
 24 **to buy property in the Golf and Country Club**
 25 **Association subdivision.**

1 prior to closing, in your files for years before you
 2 bothered to look at it; isn't that true?
 3 **A. Yes.**
 4 Q. If you look at Provision Number 19. That
 5 says, "It is expressly understood and agreed that the
 6 several protective covenants contained herein shall
 7 attach to and run with the land."
 8 Do you see that?
 9 **A. Yes, sir.**
 10 Q. As a layperson, what does that mean to you?
 11 **A. Well, "It is expressly understood and agreed**
 12 **that several protective covenants contained herein**
 13 **shall attach to and run with the land. And it shall be**
 14 **lawful only to the Chewelah Golf and Country Club**
 15 **Association or to assigns or successors, but also for**
 16 **the owners or sublessees of any lot in the subdivision**
 17 **to institute and prosecute any proceedings at law or in**
 18 **equity against any person or persons violating or**
 19 **threatening to violate any covenants or covenant and to**
 20 **recover any damage suffered by it or them from any**
 21 **violation thereof."**
 22 What that would mean that if the golf and
 23 country club wants to violate one of these things, it's
 24 up to me to sue them and to recommend them to comply
 25 with it.

1 Q. And that's what Mr. Crisp told you?
 2 **A. Yes.**
 3 Q. Did he elaborate or tell you any more than
 4 that?
 5 **A. Not at the time.**
 6 **(Exhibit No. 18 marked.)**
 7 BY MR. PHILLABAUM:
 8 Q. Exhibit 18 is a preliminary commitment for
 9 title insurance regarding Lot 17, correct?
 10 **A. Lot 17?**
 11 Q. Excuse me. Lot 14.
 12 **A. Getting tired?**
 13 Q. Yes.
 14 **A. Okay.**
 15 Q. It's Lot 14, right? It's right here.
 16 MR. WEBSTER: Flip the page.
 17 **A. Okay. Yes. Yes, that's correct.**
 18 BY MR. PHILLABAUM:
 19 Q. It's dated June of 2005?
 20 **A. Yes.**
 21 Q. So this is before you bought the lot. As part
 22 of the transaction, you got this before you bought the
 23 lot?
 24 **A. Okay. Yes.**
 25 Q. And again, it has general exceptions on

1 page 3. A is for they're not going to "insure your
 2 title for rights or claims disclosed by possession or
 3 encroachments or questions of locations or boundaries
 4 disclosed by inspection or easements or prescriptive
 5 rights."
 6 Do you see that?
 7 **A. Yes, sir.**
 8 Q. So, once again, you were advised that you had
 9 no insurance for those kind of claims, correct?
 10 **A. Yes, sir.**
 11 Q. But you didn't inquire about what might be
 12 there, did you?
 13 **A. No, I didn't.**
 14 Q. And then again, in the Special Exceptions,
 15 again, number 4, your reference to Auditor's File
 16 Number 512819, correct?
 17 **A. Yes.**
 18 Q. And that's the document we just went over that
 19 talks about the golf play area of your lot, correct?
 20 **A. Okay. Yes.**
 21 Q. Well, it talks about the golf play area of all
 22 the lots.
 23 **A. Of course, I'm thinking of the golf play area**
 24 **as being on the other side of my property line.**
 25 Q. You mean out there in the street?

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1 **A. Out there in the fairway.**
 2 Q. Or on the runway?
 3 **A. Out there on the fairway.**
 4 Q. There's a golf course on one side of your
 5 property; on the other side there's Richmond Lane, and
 6 beyond that there's an airport, correct?
 7 **A. Yes.**
 8 **(Exhibit No. 19 marked.)**
 9 BY MR. PHILLABAUM:
 10 Q. For some reason, in 2006 you got another
 11 preliminary commitment for title on April 19, didn't
 12 you?
 13 **A. Okay. Yes.**
 14 Q. And again, that refers to Lot 14.
 15 **A. Yes.**
 16 Q. It has the same exceptions, and it advises you
 17 of the same covenants, doesn't it?
 18 **A. Yes.**
 19 Q. And again, you didn't bother to look at those
 20 covenants or inquire about the exceptions, did you?
 21 **A. Again, I depended on my legal advice.**
 22 **(Exhibit No. 20 marked.)**
 23 BY MR. PHILLABAUM:
 24 Q. Exhibit 20 is an actual policy of title
 25 insurance for Lot 14, correct?

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1 **A. Yes, that's correct.**
 2 Q. And again, it has the same exceptions and
 3 tells you about the same covenants and advises you
 4 there's no coverage for prescriptive rights or
 5 encroachments, correct?
 6 **A. Yes, sir.**
 7 Q. And again, you chose not to look at it or
 8 inquire about it; is that correct?
 9 **A. That's correct.**
 10 **(Exhibit No. 21 marked.)**
 11 **(Off the record.)**
 12 BY MR. PHILLABAUM:
 13 Q. Mr. Williams, Exhibit 21 is a copy of your
 14 deed to Lot 14, correct? It says the "Deed" and here's
 15 the description?
 16 **A. Yes.**
 17 Q. It's got those same "subject to" covenants,
 18 conditions, and so on --
 19 **A. Uh-huh. Yes, sir.**
 20 Q. -- regarding the documents that are Auditor's
 21 File 512819?
 22 **A. Yes.**
 23 **(Exhibit No. 22 marked.)**
 24 BY MR. PHILLABAUM:
 25 Q. Exhibit 22 is the policy of title insurance

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1 you received for Lot 16; is that correct?
 2 **A. Yes, sir.**
 3 Q. You got that in November of 2004?
 4 **A. That's correct.**
 5 Q. You got that in 2004?
 6 **A. Yes, sir.**
 7 Q. And it excepted encroachments or claims
 8 proposed by prescriptive easements, didn't it?
 9 **A. Yes, sir.**
 10 Q. And it also advised you of the covenants
 11 recorded at Auditor's Number 512819?
 12 **A. Yes.**
 13 Q. And yet again, you chose not to inquire,
 14 further look at those documents?
 15 **A. That's correct, yes.**
 16 **(Exhibit No. 23 marked.)**
 17 BY MR. PHILLABAUM:
 18 Q. Exhibit 23 is a preliminary commitment for
 19 title insurance for Lot 16 that you got in 2008, isn't
 20 it?
 21 **A. Yes.**
 22 Q. It looks like maybe you were refinancing?
 23 **A. Could have been, yes.**
 24 Q. And again, it had those same exceptions to
 25 "claims disclosed by possession, questions of

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1 encroachments, easements, or prescriptive rights shown
 2 by possession," didn't it?
 3 **A. Yes.**
 4 Q. It advised you you had no coverage for those,
 5 and then it advised you there were covenants recorded
 6 under Auditor's Number 512819, correct?
 7 **A. Yes.**
 8 Q. And again, you chose not to inquire further or
 9 look at those documents?
 10 **A. Yes.**
 11 **(Exhibit No. 24 marked.)**
 12 BY MR. PHILLABAUM:
 13 Q. Exhibit 24 is another preliminary commitment
 14 for Lot 16. This one was done in October of 2010.
 15 Do you see that?
 16 **A. Mm-hmm. Yes.**
 17 Q. And I assume that was for refinancing or
 18 something. It had the same notice to you that there
 19 was no coverage for claims based on possession or
 20 encroachments or easements or prescriptive rights,
 21 right?
 22 **A. Yes.**
 23 Q. It also advised you of the covenants located
 24 at Auditor's File Number 512819, right?
 25 **A. Yes.**

1 **A. You're not supposed to do that. You're**
 2 **supposed to check each one of those things individually.**
 3 Q. I couldn't figure it out when I saw it, so I
 4 thought I'd better ask you if there was some purpose to
 5 it.
 6 **A. I don't know.**
 7 **(Exhibit No. 25 marked.)**
 8 BY MR. PHILLABAUM:
 9 Q. Mr. Williams, do you see that white marker
 10 there in the foreground of the picture? And there's
 11 another in the background of the picture.
 12 **A. Yes, I do.**
 13 Q. Those are the out-of-bound markers we've
 14 talked about, aren't they?
 15 MR. WEBSTER: Objection. What out-of-bound
 16 markers, where?
 17 **A. Tell me the last part of the question.**
 18 BY MR. PHILLABAUM:
 19 Q. Those are the out-of-bound markers we've
 20 talked about, aren't they?
 21 **A. That you've talked about, yes.**
 22 Q. Who placed those, do you know?
 23 **A. The Chewelah Golf and Country Club.**
 24 Q. Is this area shown in here, your property?
 25 **A. Yes. Between the two markers.**

1 Q. Now, this is in 2010.
 2 **A. Mm-hmm.**
 3 Q. Then did you go look at those documents?
 4 **A. I had been looking at them starting in about**
 5 **2007, yes.**
 6 Q. So you'd already seen them by now?
 7 **A. Oh, yes.**
 8 Q. One of your pieces of property -- I think it
 9 was one of the 1031 exchanges. I didn't go over those
 10 in detail -- I noticed something kind of funny. You
 11 had a quitclaim deed as part of that transaction.
 12 Then, a little bit later, you quitclaimed the property
 13 to yourself again.
 14 Do you recall what I'm referring to?
 15 **A. That would have been Lot 16.**
 16 Q. Why did you quitclaim it to yourself?
 17 **A. I have no idea.**
 18 Q. Because you obtained a quitclaim deed through
 19 a 1031 exchange from Lois Williams, and that was in
 20 2005. And then later, there's a quitclaim deed from
 21 you to yourself.
 22 **A. I don't know why.**
 23 **Was there a law firm that did that or a title**
 24 **company?**
 25 Q. I didn't pay any attention.

1 Q. When did you say you first noticed those
 2 markers?
 3 **A. It was in 2008.**
 4 Q. This is Lot 16?
 5 **A. Yes, sir.**
 6 Q. As we look at the picture, your house would be
 7 on the right?
 8 **A. Yes, sir.**
 9 Q. Golf fairways were on the left?
 10 **A. Yes, sir.**
 11 Q. And then if we were to draw a straight line
 12 between those two out-of-bounds markers, it's the area
 13 to the left that golfers believe they can come in and
 14 hit the ball in there?
 15 **A. Apparently, according to the tutelage of**
 16 **Chewelah Golf and Country Club, yes.**
 17 Q. And that's the area where you object to them
 18 being in there and hitting the ball?
 19 **A. I don't object to them being in there at all.**
 20 **All I ask is that they take the ball out of there and**
 21 **hit it.**
 22 Q. So you object to golfers hitting their ball to
 23 the left of the line between those two white posts?
 24 **A. One more time.**
 25 Q. You object to golfers hitting their ball if

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1 they are to the left of the line between those two
 2 white posts?
 3 A. Left or right?
 4 Q. Under the course rules, they could hit the
 5 ball on the right side, couldn't they?
 6 A. Those course rules don't mean a thing there.
 7 Q. Do you know if there is a rule about hitting a
 8 ball that's on the outside of the out-of-bounds marker?
 9 A. Yes, sir, I do. But those golfers hit 3 feet
 10 from my deck there.
 11 Q. Does Exhibit 25 depict the back of your
 12 property in 2010? Would you say that looks about like
 13 it was in 2010?
 14 A. I believe so, yes.
 15 Q. Okay.
 16 (Exhibit No. 26 marked.)
 17 BY MR. PHILLABAUM:
 18 Q. Did it look that way in 2011?
 19 A. Yes. I'd probably taken another tree or so
 20 out of there, but it's pretty close to the same.
 21 Q. Okay. Now let's move to Exhibit 26.
 22 Do you see the small trees planted diagonally
 23 across the picture?
 24 A. Yes, sir.
 25 Q. Are those some of the 20 trees you've talked

1 removed that day and took it on my property and put it
 2 next to my back deck.
 3 Q. You can also, I think, start to see a little
 4 bit of a white line that goes from that property marker
 5 over in front of the lawnmower.
 6 Do you see that?
 7 A. Yes, sir.
 8 Q. What's that?
 9 A. That's part of the irrigation system for those
 10 trees.
 11 Q. Who put that in?
 12 A. I did.
 13 Q. Does it actually have water in it?
 14 A. It doesn't yet.
 15 Q. So it's white plastic pipe that you put in
 16 when?
 17 A. That I put in -- I don't remember when I put
 18 it in. It was after I put the trees in -- it was about
 19 the same time -- so I could irrigate them. I just
 20 haven't got around to it yet.
 21 Q. So that would be 2010?
 22 A. It would have been, I think.
 23 Q. Do you have any sprinkler heads on it?
 24 A. Not yet. I'm trying to build it up.
 25 Q. Is it hooked to a water system anywhere?

1 about being planted along your property line?
 2 A. I believe they are.
 3 Q. So the out-of-bounds marker we saw in
 4 Exhibit 125 would be to the right of those trees?
 5 A. Yes, sir.
 6 Q. Approximately 35 feet?
 7 A. Or less.
 8 (Exhibit No. 27 marked.)
 9 BY MR. PHILLABAUM:
 10 Q. Exhibit 27 shows the golf course's lawnmower
 11 facing the trees you planted on the back of your
 12 property line, correct?
 13 A. It looks like it has its back to it, the back
 14 side of it, not facing.
 15 Maybe it is facing. I guess it is. Yes. I'm
 16 sorry.
 17 Q. So clearly, that mower cannot fit between the
 18 trees, correct?
 19 A. I guess not.
 20 Q. If you look over to the right of the mower,
 21 you see a stake in there that's white and orange.
 22 What's that?
 23 A. That's my property line marker.
 24 Q. Who put that up?
 25 A. I did. That's the one they took off and

1 A. No. It will be. I'm just going to hook it up
 2 to a hose.
 3 Q. And that area is already watered by the golf
 4 course, correct?
 5 A. Under protest, yes. I told them to keep their
 6 water off there. I don't like getting wet when I'm out
 7 mowing the lawn. I know that they have asked me not to
 8 water their fairway because their golfers get wet. So
 9 I think it's only fair for them to quit if they're
 10 going to make me quit.
 11 (Exhibit No. 28 marked.)
 12 BY MR. PHILLABAUM:
 13 Q. Exhibit 28 is a picture taken from the fairway
 14 towards your house.
 15 A. Yes, sir.
 16 Q. What year would that be?
 17 MR. WEBSTER: Objection. Form of the
 18 question.
 19 A. That had to have been -- that picture was
 20 taken the day that I came home and found that they had
 21 stolen the shrubs from me.
 22 BY MR. PHILLABAUM:
 23 Q. What year was that?
 24 A. That would have to have been in 2010, I
 25 believe.

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1 Q. You had mowed out to where Mr. Monasmith was,
 2 and they had mowed into where Mr. Monasmith was?
 3 A. At that time, yes.
 4 Q. Okay.
 5 (Exhibit No. 33 marked.)
 6 BY MR. PHILLABAUM:
 7 Q. 33 is a copy of a police report from
 8 Chewelah -- do you see that? -- from March of 2010?
 9 A. Okay.
 10 Q. Have you seen this before?
 11 A. I'm not sure.
 12 Q. It's regarding you threatening somebody with a
 13 baton?
 14 A. Oh, that was probably his brother. There's a
 15 guy named -- remember, I told you there was a guy came
 16 up and was a jerk. That was Coleman, is the guy's name
 17 that I was talking about. His golfing friend was Ryan
 18 Monasmith, Pat's brother.
 19 Q. The third paragraph it says, "Coleman advised
 20 Williams he was about to strike the golf ball, and
 21 Williams told him not to and to place the ball in the
 22 fairway so as not to create a divot on Williams'
 23 property."
 24 Is that true?
 25 A. Yes, sir.

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1 A. No. I started out toward him. And I got
 2 about halfway there and he started kind of threatening
 3 me with that -- at least I felt it was a threat -- with
 4 his golf club.
 5 Q. What did he say to you that was a threat?
 6 A. I don't remember what was said. It was harsh
 7 words. He's a foul-mouthed guy. And I'm just as
 8 foul-mouthed, whenever I get upset like that, as he is.
 9 Q. So you were both swearing at each other?
 10 A. Yes, we were.
 11 Q. Okay.
 12 A. And I thought, I'm not going to go out there
 13 and get one of those golf clubs wrapped around my neck.
 14 So I went back in and I got this asp.
 15 Q. What's an "asp"?
 16 A. It's a device that police officers use. It's
 17 about that long.
 18 Q. Okay. You're showing it's about a foot long?
 19 A. It's -- okay. Foot long. Shows about a foot
 20 long. When you push it forward like that, it extends
 21 out to maybe three feet. And it's heavy enough, and
 22 it's designed that if you want to continue giving me
 23 problems, I can take out a clavicle or I can take out
 24 your knees or I can put you to sleep with it. It's one
 25 of those -- it's a defense weapon.

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1 Q. "Coleman argued with Williams about the
 2 property line and noticed that Williams came toward him
 3 with a baton."
 4 Is that true?
 5 A. I don't know what he noticed.
 6 Q. Well, did you go towards him with a baton?
 7 A. Well, not initially. Initially I didn't -- I
 8 don't run out of my house with shoes on. Initially, I
 9 went out there in my bare feet.
 10 And then he started swinging his golf club
 11 around, and I said, I'm not going to go out there with
 12 that palooka swinging that thing around without some
 13 kind of defense.
 14 Q. You were in the house and he was swinging it?
 15 What do you mean?
 16 A. He was out there, and I opened the door and I
 17 said, "Don't hit that ball there. Take it out on the
 18 fairway and hit it."
 19 "This isn't your property. This belongs to
 20 the golf and country club."
 21 Q. So he was out in the yard, and you were in the
 22 house?
 23 A. Yes, sir.
 24 Q. So you went back farther into the house and
 25 got a baton?

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1 Q. What's it made out of?
 2 A. Steel.
 3 Q. Where did you get it?
 4 A. I bought it in a gun store in Utah.
 5 Q. It's made to cause significant injury if you
 6 hit somebody with it?
 7 A. It's made for defense, that's correct.
 8 Q. Well, when you say "take out a clavicle," you
 9 mean it breaks somebody's shoulder?
 10 A. You can, yes.
 11 Q. And if you hit them in the knee, you'd break
 12 their knee?
 13 A. Take their knee out.
 14 Q. And when you said "put them to sleep," you
 15 mean actually render them unconscious with a blow to
 16 the head?
 17 A. Very easily with it.
 18 Q. Could you kill somebody with it?
 19 A. I think you probably could.
 20 Q. Mr. Coleman was out there; you guys were
 21 yelling at each other. You went into the house, got
 22 this weapon, and then came out and continued to argue.
 23 Is that it?
 24 A. And I went back out and I said, "Just take the
 25 golf ball out on the fairway to hit it."

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1 And I reached over -- he wouldn't do it. And
 2 I reached over to pick the ball up and throw it on the
 3 fairway.
 4 "Don't touch that ball." And he backed off
 5 and I thought he was going to hit me with the golf
 6 club. So I opened up the asp.
 7 Q. You extended it?
 8 A. I extended it.
 9 Q. Put it into fighting position?
 10 A. Yes, sir. And I reached down and threw the
 11 golf ball out on the fairway, and he approached me nose
 12 to nose. And I thought he was going to hit me with
 13 that golf club. And I was standing there, ready.
 14 Q. When you say you were "ready," you were ready
 15 to hit him with that asp?
 16 A. I was ready to defend myself.
 17 Q. By hitting him with the asp?
 18 A. By whatever means necessary.
 19 Q. Did that include hitting him with the asp?
 20 A. Whatever means necessary.
 21 Q. Is there some reason you don't want to answer
 22 my question?
 23 A. If I had to hit him with the asp, yes.
 24 Q. Did you have a gun?
 25 A. No.

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1 got a gun?"
 2 And I said, "Yeah, I've got a gun."
 3 But I didn't have a gun on when that guy was
 4 out there.
 5 Q. There was a time when you had a gun when
 6 people were there?
 7 A. Like I say, I carry a gun once in a while. I
 8 put a gun on, and if I'm going to go shoot or play with
 9 it or whatever else it's going to be, well, I will.
 10 I'll just stick it on. There's no reason for me not to
 11 carry one. I have a right to do it, and I do it.
 12 Second Amendment.
 13 And I agree you --
 14 MR. WEBSTER: Mr. Williams, just wait for a
 15 question.
 16 BY MR. PHILLABAUM:
 17 Q. Mr. Williams, if you could look at Exhibit 9,
 18 please. Mr. Scharosch has already established that
 19 this is a document that you swore under oath was true
 20 to the best of your information and knowledge, correct?
 21 A. Yes. Okay.
 22 Q. Okay. So these are statements that you were
 23 representing, under oath to God and everybody, are
 24 true. Correct?
 25 A. Okay. Yes.

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1 Q. Why not?
 2 A. I didn't need a gun. I don't have a gun
 3 everywhere I go.
 4 Q. Why do you select a gun sometimes to
 5 intimidate people and an asp other times?
 6 MR. WEBSTER: Objection. Argumentative.
 7 A. You're playing games with me.
 8 MR. WEBSTER: I think this is beyond the scope
 9 of the deposition. If you can ask a question that's
 10 not argumentative and not meant to push my client's
 11 buttons, we can go on in a civil manner.
 12 BY MR. PHILLABAUM:
 13 Q. You told us you intended to frighten somebody,
 14 to intimidate them with a gun.
 15 How do you select which weapon you're going to
 16 use to intimidate people?
 17 A. I don't select anything. If I've got a
 18 situation -- that's the only two times I ever even
 19 happened to have one that was close enough to use.
 20 Q. You had to go back in the house and get the
 21 asp?
 22 A. Yes, I did. And I probably went back in
 23 the -- as a matter of fact, when I had the gun, I had
 24 to go in the house and put it on.
 25 And the cop came back by and said, "Have you

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1 Q. If you would turn to page 5. I need to
 2 understand what some of your claims are.
 3 Number 15 there on page 5. What contract are
 4 you talking about?
 5 A. "The plaintiff breached the contract that
 6 existed with this answering defendant?"
 7 Q. Yeah. What contract did you have with the
 8 golf course that you said was breached?
 9 A. I never had a golf -- I never had a contract
 10 with the golf and country club at all under any
 11 condition.
 12 Q. Number 16 it says, "Our claims, the golf
 13 course claims, are barred by accord and satisfaction."
 14 MR. WEBSTER: Objection.
 15 BY MR. PHILLABAUM:
 16 Q. That means the claims were settled.
 17 Now, when were the claims between my client
 18 and you settled?
 19 MR. WEBSTER: Objection to the form of the
 20 question.
 21 A. I don't know. I never had a contract with the
 22 country club.
 23 BY MR. PHILLABAUM:
 24 Q. I'm not talking about a contract. I'm looking
 25 at 16.

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1 agree that "Patrons, members, or invitees," in other
 2 words, golfers, "have on numerous occasions entered
 3 your property?"
 4 **A. Yes.**
 5 Q. You're alleging that. We're agreeing.
 6 There's no doubt that they've been doing that
 7 continuously since before you were there.
 8 **A. I would imagine. I don't know about before I**
 9 **was there.**
 10 Q. And then page 13, down at the bottom, 7.4.3.
 11 This is where you're suing the golf club --
 12 **A. Okay.**
 13 Q. -- so they're the counterclaim defendants.
 14 They're defending against your claim.
 15 And you say, "The counterdefendant claims to
 16 have a longstanding covenant over the property which
 17 would infer permission to use the property."
 18 Do you see that?
 19 **A. I was trying to listen to you.**
 20 Q. Okay.
 21 **A. Okay. Yes.**
 22 Q. So we agree that the golf course claims a
 23 right to play on that 35 feet of your property next to
 24 the golf course, don't we?
 25 **A. Yes, we do.**

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1 Q. And as long as you've been there, they've been
 2 claiming that right, haven't they?
 3 **A. I don't know if they just stood up and claimed**
 4 **it, but they've exercised a right to do it.**
 5 Q. And as far as you know, they were exercising
 6 and/or claiming that right prior to the time you moved
 7 to the golf course?
 8 MR. WEBSTER: Objection. Calls for
 9 speculation.
 10 **A. I don't know.**
 11 BY MR. PHILLABAUM:
 12 Q. I said as far as you know.
 13 **A. Before me, I have no idea. I never lived**
 14 **here. I don't know what the problem or the situation**
 15 **was.**
 16 Q. We've saved the most tedious part for the
 17 last.
 18 Off the record a minute.
 19 (Off the record.)
 20 (Exhibit No. 34 marked.)
 21 MR. WEBSTER: Mr. Phillabaum, I do have an
 22 objection. You're not going to like it because it's
 23 speaking, but I don't know any other way to make it.
 24 MR. PHILLABAUM: One thing we can do is we can
 25 ask Mr. Wilson to leave and then you can object to

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1 anything.
 2 MR. WEBSTER: Ask who?
 3 MR. PHILLABAUM: Williams. I'm sorry. You
 4 could ask your client to leave, and then I don't feel
 5 like you're coaching him.
 6 MR. WEBSTER: That's fine with me as well.
 7 THE WITNESS: Do you want me to leave?
 8 MR. WEBSTER: Yes. Step out.
 9 MR. PHILLABAUM: I've got no problem with
 10 that.
 11 [Witness exits conference room.]
 12 MR. WEBSTER: For the record, Mr. Phillabaum
 13 has indicated that with regard to Interrogatory
 14 Number 13, he's going to be requesting from my client
 15 information, if he has any, as to what the listed
 16 witnesses will be testifying to.
 17 There's an objection noted on Answer Number 13
 18 that "This question is overbroad, unduly burdensome."
 19 I'm the one who answered the interrogatories and also
 20 included that "We are not required under Washington law
 21 to put on a dress rehearsal of our trial. Case law is
 22 very clear about that. Nor are we required to put on
 23 or speculate as to what third parties will be
 24 testifying to."
 25 So I'm making an objection for the record that

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1 this continues to be overbroad, unduly burdensome,
 2 inquires into facts that are not necessarily being able
 3 to be testified by my client. And further, it's
 4 overbroad and unduly burdensome, given the nature of
 5 this deposition.
 6 [Witness returns to conference room.]
 7 BY MR. PHILLABAUM:
 8 Q. We're on Interrogatory Number 13 which is part
 9 of Exhibit 34. These are written questions that I
 10 submitted to you and your attorney, and you and your
 11 attorney answered them and sent them back to me. What
 12 I want to do is go over a couple of your answers.
 13 **A. Okay.**
 14 Q. Have you read these answers before?
 15 **A. I haven't. I probably have but I can't**
 16 **remember them.**
 17 Q. You likely gave this information to your
 18 attorney?
 19 **A. More than likely.**
 20 Q. Interrogatory Number 13 asks you for the name,
 21 address, and telephone number, and the summary of the
 22 information known to the people that you believe have
 23 knowledge relevant to the issues in this case. So it's
 24 what you think they know that's relevant to the case.
 25 Now, the first guy listed is you. We've

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