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Mark W. Drutz, # 006772
Jeffrey R. Adams, #018959
Sharon Sargent-Flack, #021590
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86305
(928) 445-5935

Attorneys for Defendants

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2005 JUN 24 PM 4:55

JEANNE HICKS, CLERK

BY: Al Britton ✓

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife; BECKY
NASH, a married woman dealing with her
separate property; KENNETH PAGE and
KATHRYN PAGE, as Trustee of the Kenneth
Page and Catherine Page Trust,

Plaintiffs,

v.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' SEPARATE
STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT RE: AGRICULTURAL
ACTIVITIES**

(Oral Argument Requested)

(Assigned to the Honorable David L.
Mackey)

Pursuant to Rule 56, Ariz. R. Civ. P., Defendants Donald and Catherine Cox submit their
hereby submit their Separate Statement of Facts in Support of Defendants' Motion for Summary
Judgment Re: Agricultural Activities ("FSOF"):

1. Paragraph 2 of the Declaration states:

No trade, business, profession or any other type of commercial or
industrial activity shall be initiated or maintained within said property
or any portion thereof.

See Exhibit "1" attached hereto.

1 COPY of the foregoing hand-delivered
2 this 24 day of June, 2005 to:

3 Honorable David L. Mackey
4 Yavapai County Superior Court
5 Division 1
6 Yavapai County Courthouse
7 Prescott, Arizona 86301

8 David K. Wilhelmsen, Esq.
9 Marguerite M. Kirk, Esq.
10 Favour, Moore & Wilhelmsen, P.A.
11 1580 Plaza West Drive
12 Post Office Box 1391
13 Prescott, Arizona 86302-1391
14 *Attorneys for Plaintiffs*



A large, stylized handwritten signature in black ink, likely belonging to David K. Wilhelmsen, is written over a horizontal line. The signature is highly cursive and loops around the line.

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Robert D. Conlin
2211 North 7th Street

17 161

STATE OF ARIZONA, County of Yavapai
I do hereby certify that the within instrument was filed and recorded at the request of *Tom Lynch*
- June 13 A.D. 1976 at 1:35 o'clock P.M. Book 916. Official Records
Page 680-681-682 Records of Yavapai County, Arizona
WITNESS my hand and official seal the day and year first above written.

PAUL C. JENNEY, County Recorder
By *L. J. Gray & Hampton* Deputy

LUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residential buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Existing buildings shall have concrete foundations.

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidiation of any of the restrictions, covenants or conditions above by judg-

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.

[Handwritten Signature]
Robert D. Conlin

[Handwritten Signature]
Margaret Dell Conlin

[Handwritten Signature]
David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-26-77

[Handwritten Signature]
Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-26-77

[Handwritten Signature]
Notary Public



1 Mark W. Drutz, #006772
2 Jeffrey R. Adams, #018959
3 **MUSGROVE, DRUTZ & KACK, P.C.**
4 1135 Iron Springs Road
5 Prescott, Arizona 86305
6 (928) 445-5935

7 Attorneys for Defendants

8 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF YAVAPAI**

10 JOHN B. CUNDIFF and BARBARA C.)
11 CUNDIFF, husband and wife;)
12 ELIZABETH NASH, a married woman)
13 dealing with her separate property;)
14 KENNETH PAGE and KATHRYN)
15 PAGE, as Trustee of the Kenneth Page)
16 and Catherine Page Trust,)

17 Plaintiffs,)

18 v.)

19 DONALD COX and CATHERINE)
20 COX, husband and wife,)

21 Defendants.)

22 STATE OF ARIZONA)
23) ss.
24 County of Yavapai)

CASE NO. CV 2003-0399

DIVISION 1

AFFIDAVIT OF CATHERINE COX

(Assigned to the Honorable David L. Mackey)

26 CATHERINE COX, having been duly sworn upon his oath, deposes and states as follows:
27
28

1 1. I am over eighteen (18) years of age and have personal knowledge of the matters set
2 forth herein.

3 2. I have personal knowledge of, or am otherwise competent to testify as to, each and
4 every fact set forth in this Affidavit.

5 3. I currently own real property located in Coyote Springs Ranch at 7325 N. Coyote
6 Springs Road, Prescott Valley, Arizona ("**Subject Property**") that was purchased in April, 1998.

7 4. I am one of the named Defendants in the action captioned above.

8 5. Beginning in the year 2000, my husband and I began making improvements to the
9 Subject Property for purposes of using it as a tree farm on which trees and shrubs were to be grown
10 and which were to be relocated at various times to our retail and wholesale business locations on
11 Highway 69 and Viewpoint Drive.

12 6. Since the year 2000, my husband and I constructed improvements to the Subject
13 Property that have included constructing a driveway, drilling a well, establishing electricity and placing
14 thereon a mobile home, establishing and installing irrigation lines and tree lines, support posts and
15 cables along the tree lines, planting boundary trees, construction of a pump-house and meter for the
16 well, construction of boundary fencing, construction of a tack room and corrals and substantial grading
17 of the Subject Property. The majority of improvements to the Subject Property were completed in
18 2002, which coincided with our first use of the Subject Property as a tree farm. Not including the
19 inventory of trees for the tree farm, the Defendants' cost of the Subject Property, improvements
20 constructed thereon and equipment purchased for use at the Subject Property have cost Defendants
21
22
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1 approximately Five Hundred Fifteen Thousand Six Hundred Six Dollars and Seventy-Two Cents
2 (\$515,606.72).

3
4 7. At no time have my husband or I ever transacted any business, sales or commercial
5 activities on the Subject Property. To the contrary, no money has ever changed hands on the Subject
6 Property in connection with our use of the Subject Property. The only locations where my husband
7 and I transact any business, sales or commercial activities is at Prescott Valley Nursery located at 6195
8 East Highway 69, Prescott Valley, Arizona and at Prescott Valley Growers located at 6750 North
9 Viewpoint Drive, Prescott Valley, Arizona.

10
11 8. Prior to purchasing the Subject Property, my husband and I drove around the portion
12 of Coyote Springs Ranch where the Subject Property is located and saw evidence of many types of
13 business and commercial activities that were not residential in nature including a church under
14 construction, a llama farms, alpaca farms, horse breeding, boarding and training facilities, a hay sales
15 facility, properties operated by general contractors, a auto-mechanic shop and numerous properties out
16 of which commercial vehicles are operated. We likewise saw signs posted on properties in the portion
17 of Coyote Springs Ranch where the Subject Property is located which advertised the sale of various
18 types of goods and services.

19
20
21 9. Based upon our observations of Coyote Springs Ranch and the uses being made of
22 properties in the area by other property owners, we believed that our anticipated use of the Subject
23 Property as a tree farm was permissible.

24
25 10. In January, 2001, my husband and I filed an application with Yavapai County for an
26 agricultural exemption for the Subject Property. The exemption was granted (and is still valid and
27

1 effective today). Receipt of the exemption led my husband and I to believe that our use of the Subject
2 Property as a tree farm was allowed.

3
4 11. Since Plaintiffs filed their Complaint, I obtained personal knowledge of, and have
5 observed, numerous other commercial businesses being operated in the Coyote Springs subdivision in
6 which the Property is located. Those businesses and commercial operations are located as depicted
7 on the map attached as Exhibit "1" to the Response to Plaintiffs' Request for the Court's On-Site
8 Inspection of Subject Real Property Subdivision filed on August 11, 2004.

9
10 12. Many of the business and commercial activities I have observed that are being
11 conducted in Coyote Springs Ranch are depicted and described on several of the photographs attached
12 as Exhibit "1". The photographs and the documentation depicted with some of the photographs
13 attached as Exhibit "1" contain references to the parcel numbers for the properties depicted and were
14 verified by my husband and me.

15
16 13. On May 16, 2003, Plaintiffs filed their Complaint against my husband and me in the
17 above-captioned matter. On March 18, 2004, Plaintiffs amended the Complaint and filed their First
18 Amended Complaint in which they have alleged that my husband and I have violated paragraphs 2, 7(e)
19 and 15 of the Declaration of Restrictions that were recorded on June 13, 2004, in the Official Records
20 of Yavapai County, Arizona at Book 416, Page 680 ("Declaration").

21
22 14. Since Plaintiffs filed their Complaint, my husband and I have observed those properties
23 located in the portion of Coyote Springs Ranch purportedly governed by the Declaration that are
24 depicted in the photographs attached hereto as Exhibit "2" and which appear to be in violation of those
25 paragraphs of the Declaration referenced on the photographs. I attest that as of the date of this
26
27

1 Affidavit, that the properties depicted on the photographs attached as Exhibit "2" are in the conditions
2 shown in those photographs.

3
4 AFFIANT FURTHER SAITH NOT.

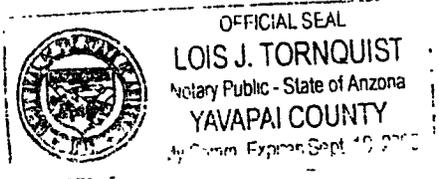
5 DATED this 29th day of September, 2004.

6
7 Catherine Cox
8 CATHERINE COX, AFFIANT

9
10 SUBSCRIBED AND SWORN TO BEFORE me this 29th day of September, 2004, by
11 CATHERINE COX.

12 Lois J. Tornquist
13 Notary Public

14 9/19/05



SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

JOHN B CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
ELIZABETH NASH, a married woman)
dealing with her separate)
property; KENNETH PAGE and)
KATHRYN PAGE, as Trustee of the)
Kenneth Page and Kathryn Page)
Trust,)

Plaintiffs,)

vs.)

Case No. CV 2003-0399

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, Arizona 86301

928.776.1169

1 Prescott, Arizona

June 22, 2004

2 ***

3 CATHERINE COX,

4 the deponent herein, having been first duly sworn, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MS. KIRK:

8 Q. Would you please state your name and address for
9 the record.

10 A. My name is Catherine Helen Cox. My address is
11 7325 North Coyote Springs Road.

12 Q. And you reside there at that address?

13 A. I reside there part of the time.

14 Q. Okay. What is part of the time, ma'am? What do
15 you mean by that?

16 A. Probably three or four days every week and then
17 full-time in the summer, but then we have a home in
18 Scottsdale that I live in during the winter.

19 Q. Okay. Have you ever been deposed before?

20 A. No, I haven't.

21 Q. Okay. I just want to take this opportunity to go
22 over a couple ground rules with you concerning your
23 deposition today.

24 As you can tell, this is a written record;
25 therefore, it is important that we not talk over one

1 basis, that percentage split?

2 A. Yes, we do.

3 Q. Is there a manager, a managing partner?

4 A. No.

5 Q. Who makes the day-to-day decisions concerning the
6 operation of Prescott Valley Growers?

7 A. We all do.

8 Q. Okay. Anybody or any one of you or your partners
9 in charge of hiring or firing of employees?

10 A. No.

11 Q. Okay. How many employees do you have?

12 A. About thirty.

13 Q. Is that at both locations?

14 A. That is at three different locations.

15 Q. Those three, just so we are clear, those three
16 locations are the property in Coyote Springs; correct?

17 A. Yes.

18 Q. The property on North Viewpoint Drive?

19 A. Yes.

20 Q. And the third property is?

21 A. It is our retail nursery at 6195 East Highway 69,
22 in Prescott Valley.

23 Q. Of the approximate thirty employees that you
24 have, how many are at the retail location?

25 A. About eight.

1 Q. How many are at the Viewpoint Drive location?

2 A. About nineteen.

3 Q. And the rest are at the Coyote Springs location?

4 A. Yes.

5 Q. How long has that retail location on Highway 69
6 been in operation?

7 A. Since 1993.

8 Q. Are all three of those locations operated under
9 the name Prescott Valley Growers?

10 A. No.

11 Q. Okay. The retail location on Highway 69, what is
12 the name of that business?

13 A. Prescott Valley Nursery.

14 Q. On Viewpoint Drive?

15 A. Prescott Valley Growers.

16 Q. And Coyote Springs?

17 A. I don't know that we have called that property by
18 any name.

19 Q. Do you have a sign on the Coyote Springs
20 property?

21 A. No. We do not.

22 Q. The Coyote Springs property is used as a nursery;
23 correct?

24 A. No. It is not.

25 Q. What is it used for, ma'am?

1 A. It is a growing yard for our excess inventory.

2 Q. The partnership that you have with your husband
3 and your two sons, what does that relate to? Is it all
4 three of those business locations?

5 MR. ADAMS: Object to the form of the
6 question.

7 Q. (Continued by MS. KIRK:) You can go ahead and
8 answer.

9 A. Would you mind repeating the question?

10 Q. Sure. You testify that you have a partnership;
11 you, your husband and your two sons? Correct?

12 A. Yes.

13 Q. And that partnership is a forty-five, forty-five,
14 ten split; correct?

15 A. Yes.

16 Q. Now the partnership concerns what business?

17 A. It concerns all of the properties.

18 Q. Okay. And when you say all of the properties,
19 what specifically are you referring to?

20 A. The three properties that we discussed.

21 Q. Okay. So the Coyote Springs property; correct?

22 A. Yes, but the business is not on that property.

23 Q. Okay. I'm just trying to clarify.

24 A. Okay.

25 Q. The three properties you say are part of the

1 A. There are some.

2 Q. How would you describe those shrubs in your
3 inventory?

4 A. There are fifteen-gallon-size shrubs and
5 five-gallon-size shrubs.

6 Q. Anything else?

7 A. No.

8 Q. Flowers?

9 A. No.

10 Q. Ma'am, what is the difference between a nursery
11 and a growing yard?

12 A. I would say that a nursery is a facility for
13 people to come to, to shop and purchase all different
14 kinds of items; flowers, roses, vegetables, fruits,
15 fruit trees. It is a place, a retail facility.

16 Q. So a nursery is something that is open to the
17 public in other words?

18 A. I think so.

19 Q. When you described your property on Viewpoint
20 Drive as a wholesale yard, is that a nursery?

21 A. It is a facility where wholesalers can come to
22 purchase trees and plants because at that facility, we
23 do have thirty greenhouses that house a huge variety of
24 material, plant material.

25 Q. What are the differences between your facility on

1 Viewpoint Drive and your facility in Coyote Springs?

2 MR. ADAMS: Object to the form of the
3 question. You can --

4 Q. (Continued by MS. KIRK:) Let me back up. Just
5 so you know, ma'am, from time to time when your attorney
6 objects, you can go ahead and answer the question as
7 posed unless he instructs you not to answer. Okay?

8 A. Okay.

9 Q. Are there greenhouses on the Coyote Springs
10 property?

11 A. There are not. The difference between that
12 facility and the one on Viewpoint --

13 Q. The difference between -- I didn't catch that.

14 A. The difference between Coyote Springs and
15 Viewpoint Drive is that no business occurs in Coyote
16 Springs. There are no sales and no transactions there,
17 whatsoever. It is not open to the public.

18 Q. Your Viewpoint Drive property is open to the
19 public?

20 A. It is open to wholesalers.

21 Q. Are you then -- Is your business then a seller to
22 wholesalers?

23 A. Which one?

24 MR. ADAMS: Object to the form.

25 Q. (Continued by MS. KIRK:) Is your business and --

1 A. Yes.

2 Q. You stated one of your reasons for looking for
3 vacant land was the need for more property for the
4 business; correct?

5 MR. ADAMS: Object to the form of the
6 question.

7 Q. (Continued by MS. KIRK:) Did I misstate your
8 testimony, ma'am? If I did, I didn't mean to.

9 A. No. I said that.

10 Q. You said you needed more property; correct?

11 A. Yes.

12 Q. And the property would be used for what?

13 A. For a holding yard. There was no intention to
14 have a business on that property. We also had two
15 business properties; a retail yard and a wholesale yard.

16 Q. Well, the property was going to be used in
17 conjunction with your business at the retail yard and
18 wholesale yard; wasn't it?

19 MR. ADAMS: Object to the form of the
20 question.

21 THE WITNESS: You could say that.

22 Q. (Continued by MS. KIRK:) At the time that you
23 purchased the Coyote Springs property, were you
24 represented by a real estate agent?

25 A. Yes, I was.

1 Q. Do you recall that individual's name or the firm?

2 A. Her name was Waneta Offerman.

3 Q. And who did or who does Waneta work for?

4 A. Pardon?

5 Q. Was it Waneta or Anita?

6 A. Waneta, with a W.

7 Q. And at that time who did she work for?

8 A. Realty Executives.

9 Q. Had you used her before for any other purchase?

10 A. No.

11 Q. How did you come in touch with her?

12 A. Her sign was on the property in question.

13 Q. How did you become aware of the Coyote Springs
14 property being for sale?

15 A. Through the Weir Racing Stables, because the
16 racing stables had provided us with manure for our
17 plants since we first started growing plants in Prescott
18 Valley in 1991. We were aware of where they were
19 located and that's what brought us to that area.

20 Q. Did you look at any other areas?

21 A. We probably drove through Prescott Ridge because
22 we were looking for more than just a home site.

23 Q. Any other areas that you recall?

24 A. No.

25 Q. How long did you look for property?

1 A. I don't really know.

2 Q. Okay. Now you said that you were looking for
3 more than a home when you were looking for property.
4 Did you have any particular requirement as to the size
5 of the property you wanted to purchase?

6 A. No, I didn't.

7 Q. Fair to say that you wanted more than an acre?

8 A. It is.

9 Q. Fair to say that you wanted more than five acres?

10 A. You can't buy five acres in Coyote Springs. You
11 can only purchase ten or more.

12 Q. Okay. But at the time that you are just looking
13 for property, generally speaking, did you have in your
14 mind that you were hoping or wanting to get more than
15 five acres?

16 A. We thought about ten acres.

17 Q. Okay. So one requirement in the land that you
18 were looking for was that it be approximately ten acres;
19 is that correct?

20 A. It is.

21 Q. Any other requirements, aside from it being
22 vacant or be unimproved?

23 A. I don't think so.

24 Q. What about zoning? Was that a consideration?

25 A. Because we knew of this racing stables, zoning

1 Q. And what did you tell her?

2 A. We told her that we were going to grow plants and
3 trees there.

4 Q. Did she say anything to you concerning that?

5 A. I think she said that should be fine.

6 Q. Your home in Scottsdale, ma'am, that you reside
7 at, is that in a subdivision?

8 A. Yes, it is.

9 Q. What subdivision?

10 A. Paradise Heights.

11 Q. Do you have a homeowner's association?

12 A. No.

13 Q. Are there any restrictions, covenants or
14 conditions?

15 A. I believe so.

16 Q. Do you know what restrictions -- Actually, let me
17 rephrase that question. In general terms, do you know
18 what CC&R's are?

19 A. Yes, I do.

20 Q. How do you know?

21 A. I learned about them after the purchase of the
22 Coyote Springs property.

23 Q. Any of the land that you had purchased in your
24 approximate seven transactions previous to the Coyote
25 Springs property, at any time in any of those were you

1 A. That's correct.

2 Q. Why?

3 A. The agricultural exemption we obtained for that
4 land is for agricultural use on agricultural land.

5 Q. What does your exemption provide, do you know?
6 What are you exempt from?

7 A. High property taxes.

8 Q. Anything else?

9 A. I don't think so. Actually, we are exempt from
10 -- We are exempt from the amount, the number of
11 dwellings we can have on that property. We can have as
12 many dwellings as we have employees. Let's see. We are
13 exempt from permits for certain buildings that we need
14 for our agricultural activity.

15 Q. Anything else?

16 A. There may be more I'm not sure of right now.

17 Q. And that exemption pertains to Yavapai County;
18 correct?

19 A. Yes, it does.

20 Q. Who obtained the exemption?

21 A. I did.

22 Q. Did you fill out paperwork for it?

23 A. Originally we filed for an agricultural exemption
24 for our Viewpoint property. Then we filed for one in
25 Coyote Springs.

1 Q. When did you make the application for the
2 Viewpoint property?

3 A. I don't remember.

4 Q. Do you recall when you made the application for
5 the Coyote Springs property?

6 A. That was in January of 2001.

7 Q. Did you obtain the exemption for the Viewpoint
8 property?

9 A. Yes. We have that.

10 Q. Did you obtain it for the Coyote Springs
11 property?

12 A. Yes.

13 Q. Is that exemption still valid and effective
14 today?

15 A. Yes, it is.

16 Q. How long does an exemption last for? Do you
17 know?

18 A. It can be reviewed every year and -- What's the
19 best word here. It can be reviewed every year and
20 renewed if you are doing what you are supposed to be
21 doing according to your application.

22 Q. Did you fill out that application?

23 A. I'm not sure.

24 Q. Do you have a copy of the application?

25 A. I have one right here. I have the Coyote

1 Q. Did you keep all of those documents as they were
2 received by you at time of closing?

3 A. Yes, I did.

4 Q. Where is that file located, ma'am?

5 A. In my house.

6 Q. The one here locally?

7 A. In Coyote Springs.

8 Q. Do you recall receiving a Declaration of
9 Restrictions?

10 A. I did not receive that.

11 Q. How do you know, ma'am?

12 A. Because I have been asked about that since then
13 and I have looked through those papers and have not
14 found any evidence of that.

15 Q. After you purchased the Coyote Springs property,
16 what did you do with it?

17 A. We started making payments on it.

18 Q. Okay. In terms of developing the property for
19 use, what did you do first?

20 A. In the beginning, it was about -- It was not
21 until August of 2000 that we drilled our water well.

22 Q. Was that the first thing that you did?

23 A. Yes, it is. I believe electricity was put in
24 about the same time.

25 Q. Between the time of purchase of the property in

1 April of 1998 until August of 2000, you made no
2 improvements or changes to the land?

3 A. That's correct.

4 Q. Was there a road on the land?

5 A. You might call it that.

6 Q. Describe it for me. What would you call it?

7 A. It was an obstacle course.

8 Q. Did you view the land prior to purchase?

9 A. Yes, we did.

10 Q. Did you physically go on the land?

11 A. Yes, we did.

12 Q. How did you get there?

13 A. Over the Coyote Springs Road.

14 Q. Okay. Did you go over this road onto another
15 road onto the property?

16 A. No. You can go right from Coyote Springs Road
17 onto our property.

18 Q. Did you do anything to change the road as
19 originally on the land or at the time that you received
20 it in '98 or the time you purchased it in '98 to
21 present?

22 A. No. We did nothing to the road.

23 Q. So the road is essentially in the same condition
24 now as it was then?

25 A. No. The road has been paved and I have here a

1 letter from --

2 Q. Just for clarity sake, ma'am, the road that I'm
3 referring to is any road actually on the property you
4 purchased. Not any access road to the property.

5 A. There was no road --

6 MR. ADAMS: Actually, I object to the
7 question on the basis I prefer you refer to it as a
8 driveway or a road.

9 Q. (Continued by MS. KIRK:) That's fine. We can
10 use the word driveway. Okay. At the time that you
11 purchased the property at Coyote Springs, was there a
12 driveway on the land?

13 A. No.

14 Q. Did you ever construct a driveway on the land?

15 A. We did.

16 Q. Do you recall when?

17 A. Sometime in the year 2000, because we set our
18 mobile home on the property in August of 2000.

19 Q. Ma'am, I note that in responding to my questions
20 concerning your improvements to the land you are
21 referring to a piece of paper that has a list on it,
22 typed list of some nature; is that correct?

23 A. No. I was looking for a letter from the road
24 department as to when they put in -- when they paved the
25 road. Because knowing when they paved the road, I can

1 before the road was paved.

2 Q. Why did you go see Mr. Launders? You said it was
3 about your property?

4 A. Mr. Launders is a property owner in Coyote
5 Springs. Yavapai County Planning Department had come to
6 the property to talk to us about our project in Coyote
7 Springs. They suggested that I talk to Mr. Launders
8 about our plans.

9 Q. Okay. By project, you are referring to growing
10 trees on the property?

11 A. Yes.

12 Q. And why did Yavapai County Planning Department
13 suggest that you go see Bob Launders?

14 MR. ADAMS: Object to the form of the
15 question.

16 Q. (Continued by MS. KIRK:) Let's back up. You
17 told me that Yavapai County Planning Department came to
18 your property concerning your project?

19 A. Yes.

20 Q. Do you recall when they came to your property?

21 A. They came when there was nothing on that
22 property.

23 Q. Do you recall month and year?

24 A. It would have been in 2001.

25 Q. 2001?

1 A. Yes.

2 Q. Why did they come to your property? Did you call
3 them?

4 A. I did not.

5 Q. Okay. Why did they come to your property?

6 A. I really don't know.

7 Q. Who was it from the planning department that
8 came? Do you recall?

9 A. It was Doug Reynolds.

10 Q. Did Mr. Reynolds make an appointment with you
11 prior to coming?

12 A. I don't think so.

13 Q. Did Mr. Reynolds contact you in any way prior to
14 coming to your property?

15 A. I don't think so.

16 Q. When Mr. Reynolds came to your property, did he
17 tell you why he was there?

18 A. I believe one of the neighbors had called the
19 planning department.

20 Q. Do you know which neighbor? Did he say?

21 A. No. He did not say.

22 Q. So that is just your guess that somebody called,
23 a neighbor called the planning department?

24 A. He may have said that.

25 Q. You just don't recall one way or the other?

1 A. I don't know why else he would have come. We had
2 nothing on the property, nothing.

3 Q. You said that he came in 2001?

4 A. Yes.

5 Q. And you had at that time or by that time in
6 August 2000, you had moved a mobile home onto the
7 property; correct?

8 A. That's true.

9 Q. So when you say there was nothing on the
10 property, what do you mean by nothing?

11 A. Nothing other than our mobile home.

12 Q. Okay. In other words, no trees, box trees,
13 shrubs, that sort of thing; correct?

14 A. Right.

15 Q. And you don't know why Mr. Reynolds came to your
16 property?

17 A. I believe it was because of neighbors calling, a
18 neighbor calling.

19 Q. What did Mr. Reynolds say to you?

20 A. He suggested that we go to see Mr. Launder who
21 owned property in the area, and that was after we talked
22 to him about our plan to grow trees on the property.

23 Q. I'm sorry, who did you speak to about growing
24 trees on the property? You said after you spoke with
25 him about growing trees on the property. To whom are

1 you referring, Mr. Reynolds or Mr. Launders?

2 A. We spoke to Mr. Reynolds. He suggested that we
3 go to see Mr. Launders.

4 Q. Okay. Did Mr. Reynolds say anything else to you
5 at that time?

6 A. He mentioned something about CC&R's.

7 Q. Do you remember what in particular that he
8 mentioned about that?

9 A. Just that they were -- just that they had CC&R's
10 in that area.

11 Q. Did he tell you anything in particular about
12 those CC&R's? Specifically, what they did allow or what
13 they didn't allow?

14 MR. ADAMS: Object to the form.

15 THE WITNESS: I don't remember.

16 Q. (Continued by MS. KIRK:) When he told you about
17 the CC&R's, did you ask him any questions about the
18 CC&R's?

19 A. I don't think so.

20 Q. Who else was present, do you recall?

21 A. My husband.

22 Q. Anybody else?

23 A. No.

24 Q. Did you know what CC&R's were at that time?

25 A. I did not.

1 Q. But you didn't ask Mr. Reynolds what a CC&R was?

2 A. He simply suggested that we go to see this lawyer
3 that lived in the area. He said he would know all about
4 it.

5 Q. Did you go see Mr. Lauanders?

6 A. We did.

7 Q. Did you see him because he was a neighbor?

8 A. No.

9 Q. Why did you see him then?

10 A. Because Mr. Reynolds suggested that we go see
11 him.

12 Q. Okay. When you saw Mr. Lauanders because Mr.
13 Reynolds told you to, or suggested that you do that,
14 what was your purpose? Was it because --

15 A. I don't think we were sure at the time. We only
16 went because he asked us to go see him.

17 Q. What did you say to Mr. Lauanders?

18 A. We talked to him about our plans to grow nursery
19 product on that property in Coyote Springs. He said he
20 would not want a nursery next to him, but he said that
21 if our neighbors didn't mind, he didn't think we would
22 have a problem. Then he mentioned these CC&R's. At
23 some point in the meeting, he looked in his filing
24 cabinet for a copy of them but could not find them.

25 During that meeting, I asked him what he thought

1 A. It is conjecture on my part.

2 Q. Is it also conjecture on your part that they are
3 training horses for a profit?

4 A. No.

5 Q. On what personal facts or what personal knowledge
6 do you have of facts that any of these stables in the
7 area are training horses for profit?

8 A. I can see that.

9 Q. Okay. Do you know who owns any of the horses
10 that are on those properties, those racing stables?

11 A. Do I know the people that own them?

12 Q. Do you know whether the horses that are at these
13 stables are owned by any person other than the owner of
14 the land?

15 A. I don't know that.

16 Q. After you drilled the well in August of 2000, you
17 then set up your mobile home; is that correct?

18 A. That's correct.

19 Q. Is that mobile home still there, ma'am?

20 MR. ADAMS: Counsel, if you are going to use
21 my client's note, I prefer that you give her a copy of
22 them.

23 Q. (Continued by MS. KIRK:) Sure. I can give her
24 -- Can you not testify without referring to this list
25 about developments made on the land?

1 A. I probably can.

2 Q. While that is being copied, let's continue with
3 some questions then. Is the mobile home still there?

4 A. Yes, it is.

5 Q. Is there any other house there on the land?

6 A. There are no other houses there.

7 Q. Are there any other structures where someone
8 could live on the land?

9 A. There are not.

10 Q. So just a mobile home is the only residential
11 structure on the property?

12 A. It is.

13 Q. Any offices?

14 A. There are no offices, because there is no
15 business conducted on that property.

16 Q. Okay. Garages? Sheds?

17 A. No garages.

18 Q. Sheds?

19 A. There is a pump house.

20 Q. Okay. And what does the pump house consist of?

21 A. It is there for the operation of the well. I'm
22 not sure what is in that pump house other than a pump.

23 Q. Who is currently living in the mobile home,
24 ma'am?

25 A. Mr. Cox and myself.

1 Q. How many acres do have you on the Coyote Springs
2 property?

3 A. Twenty acres.

4 Q. Any corrals?

5 A. We have a corral for our two horses.

6 Q. Any other area structures for the horses? Barn?

7 A. There is a tack room.

8 Q. Do you have a barn?

9 A. No. We do not.

10 Q. So in terms of structures you have the mobile
11 home; correct?

12 A. Yes.

13 Q. Is that affixed to the land?

14 A. It is not.

15 Q. So that is something that can be moved at any
16 time; is that correct?

17 A. That's correct.

18 Q. And you have the pump house?

19 A. Yes.

20 Q. Or pump room?

21 A. Uh-huh. Pump house.

22 Q. And a tack room?

23 A. A tack room.

24 Q. No barns? Sheds? Storage areas? Nothing like
25 that? Is that correct?

1 A. That's correct.

2 Q. Going down this list you note that a fence was
3 installed May of 2001. What is the purpose of that
4 fence, ma'am? Is that a perimeter fence?

5 A. It is a perimeter fence.

6 Q. What type of fence is it? Is it wood?

7 A. Wire. It is a wire fence.

8 Q. Wire fence. Okay. You indicated here that the
9 property was graded September through November of 2001.
10 What was the property graded for?

11 A. Property was graded because it slopes from the
12 east end to the west end twenty feet. And before that
13 was graded, any rain water would stand in the road and
14 cause tremendous potholes. We graded the property
15 simply to get it flat and that would allow us to keep
16 our trees in containers on a flat piece of land.

17 Q. How many acres were graded? Do you know?

18 A. Ten acres were graded.

19 Q. You next note on your list, first production of
20 trees January of 2002?

21 A. Yes.

22 Q. What are you referring to, ma'am?

23 A. Those are bare root trees.

24 Q. So first production of trees, why did you use the
25 term production?

1 A. Because we are producing those trees.

2 Q. Then you also have in here, February of 2002
3 start of irrigation lines. What do you mean by that?

4 A. Bare root trees are potted up and not watered for
5 months. They just sit in their containers without being
6 watered. At some point in time, that is usually when
7 they start to leaf out. The first sign of leaving out
8 means that they will need water. So irrigation lines
9 were put in the ground in preparation for the trees
10 needing water.

11 Q. The irrigation lines that you put in the ground
12 in February of 2002, how many trees could they sustain
13 or be irrigated from that?

14 A. I really can't say, because we put those lines in
15 periodically during the year.

16 Q. Throughout 2002?

17 A. No. Yes. There was just like a section at a
18 time where you would irrigate or prepare to irrigate a
19 section at a time.

20 Q. How many times have you installed or otherwise
21 increased the amount of irrigation lines that you have
22 had since February of 2002?

23 A. I honestly don't know.

24 Q. Currently, as of today, the irrigation lines that
25 you have in place on the property, how many trees can

1 that sustain?

2 A. I don't know. The lines cover about nine acres.

3 Q. And the lines, you have been building them since
4 2002 to present?

5 A. They were all installed by -- I would say that
6 they were all installed by the end of March because we
7 planted these perimeter trees and they had to be on drip
8 lines.

9 Q. So the irrigation lines that were on the property
10 as of March of 2002 are substantially the same as what
11 is on the property right now?

12 A. Yes, they are.

13 Q. Are these above ground irrigation lines?

14 A. No. They are in the ground, but then little
15 spaghetti lines come out of them and are placed in the
16 container.

17 Q. How many spaghetti lines are there?

18 A. As many as the trees that we have there.

19 Q. What is the most number of trees that you have
20 had on the property?

21 A. I honestly don't know. I've never counted them.

22 Q. Do you keep records of what excess inventory you
23 keep on the property?

24 A. Yes, we do.

25 Q. Where are those records?

1 A. In the office.

2 Q. Which office, ma'am?

3 A. The office on Viewpoint.

4 Q. Who maintains those records?

5 A. Normally the foreman of the yard.

6 Q. Do you ever maintain those?

7 A. No.

8 Q. Your husband?

9 A. No. I said it's the foreman of the yard. His
10 name is Dusty.

11 Q. What is Dusty's last name?

12 A. Eiker, E-I-K-E-R.

13 Q. How long has he worked for you?

14 A. Over two years. No. Let me see here. He
15 started -- Yes. He started in January of 2002. So he
16 has been with us almost two and a half years.

17 Q. Has he worked at the Coyote Springs property?

18 A. Yes.

19 Q. Throughout that time?

20 A. Yes.

21 Q. Is that a full-time position for him?

22 A. Yes.

23 Q. What does he do?

24 A. He was in charge of installing the water lines
25 and he is in charge of all the trees, taking care of

1 them.

2 Q. Does he have any help?

3 A. He has two helpers, maybe three.

4 Q. And those people assist him with maintaining the
5 trees?

6 A. Yes, they do.

7 Q. Are those full-time employees, those two or three
8 people?

9 A. Yes, they are.

10 Q. Do they always work at the Coyote Springs
11 property?

12 A. Yes, they do.

13 Q. Any other employees at the Coyote Springs
14 property?

15 A. No.

16 Q. The two or three additional helpers that Dusty
17 has, how long have they been working at the Coyote
18 Springs property?

19 A. I don't really know.

20 Q. Okay. Do you keep employment records?

21 A. Yes.

22 Q. For those individuals?

23 A. We do.

24 Q. Have you ever had part-time, seasonal help?

25 A. Occasionally we do.

1 he owned in the whole wide world and he said that he had
2 purchased his property to subdivide it. That was his
3 intention, to divide it into five equal parcels and rent
4 them out for his retirement.

5 Q. Has he done so?

6 A. He has not done so.

7 Q. When he said that -- When he said to you that
8 your conduct on the land was devaluing his property, did
9 he say to you what he meant by that?

10 A. No. I simply responded by telling him that the
11 property in the area just keeps going up in value.

12 Q. What was his concern about your water usage if
13 you are on your own well?

14 A. Mr. Sanders has great concerns about water. But
15 since I've talked to him, he just recently planted trees
16 all around the outside perimeter of his own property.

17 Q. Do you know how many trees?

18 A. I haven't counted them.

19 Q. Do you think it is as many as the 800 you've
20 planted?

21 A. Well, it will be close. It will be half of that
22 when he finishes planting around his entire property.
23 It will probably be about 400. He has ten acres.

24 Q. Do you know how many are there right now?

25 A. I really don't know.

1 Q. How do you do that?

2 A. We have a meter on the well.

3 Q. Describe for me the process you use to meter or
4 monitor your water usage?

5 A. This is not my department.

6 Q. Whose department is it, ma'am?

7 A. My son could explain the use of the water well.

8 Q. Which son?

9 A. Jimmy could.

10 Q. Anybody else?

11 A. Dusty is in charge of the well on that property.

12 Q. Do you know a neighbor by the surname of James?

13 A. I have never met Mr. James. My husband has.

14 Q. Okay. Do you know whereabouts Mr. James'
15 property is located?

16 A. Yes, I do.

17 Q. Could you tell me where that is?

18 A. It is north of us, approximately two or three
19 parcels on the other side of Coyote Springs Road.

20 Q. Okay. Do you consider a church a business?

21 A. Yes, I do.

22 Q. Why? Where is the profit?

23 A. Probably depends on the church.

24 Q. So not all churches are businesses?

25 A. No. I think they are all businesses.

1 MR. ADAMS: Object to the form of the
2 question.

3 Q. (Continued by MS. KIRK:) Your attorney was
4 talking when you were speaking.

5 A. I think they are all businesses. I just don't
6 know how they disperse of the money that they take in.

7 Q. And why is it that churches are businesses,
8 because they take in money?

9 MR. ADAMS: Object to the form.

10 THE WITNESS: The pastor who runs that
11 church has to have an income provided to him to do what
12 he does there.

13 Q. (Continued by MS. KIRK:) Okay. Are you
14 referring to the church in Coyote Springs?

15 A. That one and a lot of other churches.

16 Q. Why is it that you think that the church in
17 Coyote Springs is a business?

18 A. They operate for a profit.

19 Q. And how do you know that? What personal
20 knowledge do you have that the church in Coyote Springs
21 operates for a profit?

22 A. I don't have personal knowledge of that. I
23 thought it was an understood -- something.

24 Q. What if it is a nonprofit church? Is it then
25 still a business to you?

1 A. I don't know.

2 Q. If somebody is self-employed and they have an
3 area in their home -- this is a hypothetical -- They
4 have an office in their home and they take calls from
5 people, for whatever their business is, but they don't
6 do any actual work at the house. They go out and do the
7 work. Are they, in your opinion, operating a business?

8 A. I don't know.

9 Q. At their home?

10 A. I've wondered about that.

11 Q. Okay. And what have you wondered?

12 MR. ADAMS: Object to the form.

13 THE WITNESS: It is a gray area, as far as I
14 am concerned.

15 Q. (Continued by MS. KIRK:) Okay. At what point,
16 in your opinion, what particular criteria or factors
17 would make it a business operating out of a home?

18 A. I think you are asking me how do you identify
19 businesses in Coyote Springs.

20 Q. No. I'm asking you generally -- No. Let's use
21 your question. How do you identify businesses in Coyote
22 Springs? What is your criteria?

23 A. How is the property used. Some of them are used
24 agriculturally. In my opinion, they are agricultural
25 businesses. There are independent contractors that

1 drive huge semi trucks as an independent contractor, but
2 park that vehicle on their property in Coyote Springs.
3 I consider them to be businesses. There are other
4 nurseries in Coyote Springs.

5 There is a Christmas tree farm that advertises
6 Christmas trees for sale at Christmas time. You can go
7 there and cut your own tree and pay for it on that
8 property. I have talked to the lady that owns that
9 property. There is another nursery out there that
10 advertises in the phone book and the newspaper. You can
11 go to that property and buy barrels, for one thing, half
12 barrels to plant plants in. How do I identify
13 businesses in Coyote Springs?

14 Q. Can I ask you another question?

15 A. Okay.

16 Q. How would you identify a business operation in
17 general terms?

18 A. One that buys and sells on the property. A
19 business would be to me where you buy and sell on that
20 property. That to me is considered commerce and we
21 don't do that in Coyote Springs. We have no commerce,
22 no business.

23 Q. So if you are going back to my hypothetical about
24 the self-employed person, about the office space in his
25 home, but he does all his business at his customers, is

1 or type or form are on the property currently?

2 (Brief interruption.)

3 THE WITNESS: I have a mobile home on the
4 property -- excuse me. My motor home is on that
5 property and my son Alan has his motor home there for a
6 short time. That is all the structures that are on
7 there other than the water tank.

8 Q. (Continued by MS. KIRK:) Is the water tank above
9 ground?

10 A. Yes, it is.

11 Q. How large is the water tank? How many gallons of
12 water does it hold?

13 A. I should know that. I really don't know.

14 Q. Are there any facilities that your employees use
15 for bathroom breaks?

16 A. There is a J-John on the property.

17 Q. Okay. Anything else that they have access to,
18 where they can eat their lunch or take a break?

19 A. There is a shed.

20 Q. Is that where they eat lunch?

21 A. They eat in their cars.

22 Q. Okay. Do any of your --

23 (Brief interruption.)

24 Q. (Continued by MS. KIRK:) Do any of your
25 employees at any time, have they ever lived on the

1 Q. And why did she provide those to you?

2 A. We had been to see Mr. Lauanders. He wanted to
3 give us a copy of them but could not find them. So
4 after that meeting, I called Ms. Offerman to get them
5 for me.

6 Q. Did you review them?

7 A. Yes, I did.

8 Q. At the time that Waneta Offerman showed you the
9 property in 1998, before you bought it, did she ever
10 tell you about the CC&R's?

11 A. She did not.

12 Q. Did you ever ask if the property was subject to
13 any restrictions as to use?

14 A. I did not.

15 Q. At the time that you purchased the property or
16 just before you purchased the property, could you
17 describe for me the character of the area of that Coyote
18 Springs Ranch Subdivision?

19 MR. ADAMS: Object to form.

20 THE WITNESS: We drove around the area and
21 saw evidence of many types of activities that were not
22 residential. It looked like a do-your-own-thing area.

23 Q. (Continued by MS. KIRK:) Okay. Based upon or
24 using a percentage, how many or what percentage of homes
25 -- pardon me -- What percentage of lots in the

1 subdivision were used for residential purposes?

2 MR. ADAMS: Object to form.

3 THE WITNESS: I don't know.

4 Q. (Continued by MS. KIRK:) Okay. What businesses
5 did you see, aside from the stables that you already
6 told me about?

7 A. I saw a tree farm.

8 Q. Is that the Christmas tree farm you testified
9 about?

10 A. Yes. I saw a llama farm. I saw an alpaca farm.
11 I saw a yard full of commercial vehicles that are still
12 there and were there six years ago. I saw a lot of
13 junkyards. I saw a horse breeding facility. I saw hay
14 sales. That is some of what we saw then.

15 Q. The commercial vehicles that you referred to, did
16 they have any insignia on them? Signs?

17 A. I don't know. They are large vans.

18 Q. The junkyards, are they open to the public?

19 A. Pardon?

20 Q. You said that you saw some junkyards in the
21 subdivision, are those open to the public?

22 A. One of them is open. The others are just -- They
23 are not what you would consider businesses. They were
24 just --

25 Q. Messy?

1 A. Junkyards on private property.

2 Q. Meaning they were messy, they were not open to
3 the public, they are just --

4 MR. ADAMS: Object to the form.

5 Q. (Continued by MS. KIRK:) What do you mean when
6 you say they are junkyards but they are not businesses?

7 A. I mean they are abandoned cars on property,
8 abandoned boats. Just plain junk.

9 Q. The junkyard that is open to the public, where is
10 that located?

11 A. That is on the northern most parcel of Coyote
12 Springs. It is now for sale.

13 Q. Is there a business sign or a sign?

14 A. No, there isn't.

15 Q. How do you know it is open to the public?

16 A. You see about forty abandoned or used cars on the
17 property. If you are looking for -- Actually, it is a
18 known thing in the area. People know that if you go
19 over to so and so's place, he might have a part that you
20 need for your vehicle.

21 Q. Do you know if he advertises?

22 A. I don't know that.

23 Q. The hay sales, you said some place is involved in
24 hay sales?

25 A. Uh-huh.

1 Q. How do you know?

2 A. They just had -- let's see, what do you call
3 it -- a huge storage area or a huge amount of hay
4 stored, with a tarp over it.

5 Q. Do you know the owners of that property?

6 A. Well at that time, it was the Gardners. They did
7 the hay sales. They no longer do it. At the time that
8 we purchased the property, they were doing the hay
9 sales. But since then, they are no longer doing that
10 and a man named Wylie, his name is Wylie. He does hay
11 sales.

12 Q. Is that a surname?

13 A. I don't know if it is his first name or his last
14 name.

15 Q. Is that open to the public?

16 A. He advertises and you can -- In fact, we have
17 bought hay there for our horses.

18 Q. Where does he advertise?

19 A. He advertises in the Lonesome Valley Newspaper.

20 Q. Have you ever seen any of his ads?

21 A. Yes, I have.

22 Q. Do they advertise that he will deliver the hay?

23 A. I believe so.

24 Q. Does he advertise that people can come out to the
25 property to get it?

1 A. I'm not exactly sure what the advertisement says.
2 He will deliver if you purchase ten bails or more.

3 Q. When you purchased hay from him, did he deliver?

4 A. Yes, he did.

5 Q. Each time that you've purchased hay from him, has
6 he delivered?

7 A. We've only purchased one time from him.

8 Q. Okay. The llama ranch or the llama farm --

9 A. It's a ranch. It is called A Llama Ranch.

10 Q. Okay. Where is that located?

11 A. It's at the corner of Turtle Rock and Coyote
12 Springs Road.

13 Q. Do you know who owns that property?

14 A. Bill Jensen and his wife owned it at that time.
15 Since then, they have divorced but he still has llamas.

16 Q. Is that ranch open to the public?

17 A. I believe it is. I took my grandson there
18 several years ago to show him the llama and while we
19 were there, a lady came to the property to buy wool and
20 Ms. Jensen took us into a room where she stored the wool
21 from the llama and this customer chose the color that
22 she wanted and bought it while I was there.

23 Q. Is that the only time that you've ever seen or
24 have personal knowledge of someone purchasing from the
25 llama ranch?

- 1 A. It is.
- 2 Q. Does she sell her llamas, do you know?
- 3 A. She advertises them.
- 4 Q. Okay. Have you seen her advertisements?
- 5 A. Yes, I have.
- 6 Q. Where has she advertised?
- 7 A. In the Lonesome Valley Newsletter.
- 8 Q. The Lonesome Valley Newsletter?
- 9 A. Yes.
- 10 Q. Is that the same as where you saw the hay sales?
- 11 A. Yes.
- 12 Q. When you say newspaper or newsletter?
- 13 A. It is a ten- or twelve-page pamphlet.
- 14 Q. Do people subscribe to it?
- 15 A. No.
- 16 Q. Something that is just dropped off at area homes?
- 17 A. It is mailed to your home.
- 18 Q. In those advertisements for the llama ranch, do
- 19 you recall what was stated, what was being advertised?
- 20 A. The llamas I believe, but I'm not sure.
- 21 Q. Llamas to sell or llamas to view, kind of like a
- 22 tour?
- 23 A. No. It is for selling them.
- 24 Q. Anything else that you can recall?
- 25 A. No.

1 Q. In terms of the businesses that were in that
2 subdivision at the time that you purchased, have there
3 been new businesses that have started?

4 A. There have, but I do not have any time frame for
5 them.

6 Q. Okay. What new businesses?

7 A. Well there again, I'm not sure because I have to
8 think about what we saw in 1998 and I'm not really sure
9 about that junkyard. It's there now and I'm not sure
10 about when we bought the property.

11 When I said junkyards, I actually was thinking
12 about residences with a lot of junk, abandoned cars and
13 such. The junkyard itself I'm not sure about. So when
14 you ask me what new businesses are in there, I know that
15 there are many more businesses, I just don't know when
16 they came in.

17 Q. Do you know how many lots comprise the Coyote
18 Springs Ranch Subdivision?

19 A. It might be 400

20 Q. 400 or more lots?

21 A. I believe so.

22 Q. Of those, how many would you say have businesses?

23 A. I'm not sure.

24 Q. Fair to say less than half?

25 MR. ADAMS: Object to the form of the

1 questions?

2 A. Yes.

3 Q. And during your direct examination you had
4 mentioned junkyards and a llama ranch. Are you aware of
5 any other type of activities out there concerning
6 vehicles?

7 A. Absolutely.

8 Q. Tell me some of the other businesses that you are
9 aware of as to vehicles?

10 MS. KIRK: Object to form. Go ahead and
11 answer, if you can.

12 THE WITNESS: There is a full-fledged
13 mechanic shop in Coyote Springs, with a two bay garage
14 and many of the Coyote Springs residents have their work
15 done at that garage. It is owned by Curtis Kinchloe.

16 Q. (Continued by MR. ADAMS:) Are there any other
17 farms or ranches out there with animals, other than
18 llamas that you have observed?

19 MS. KIRK: Object as to form.

20 THE WITNESS: There are two alpaca farms
21 that I know of, and there is a goat farm. Actually,
22 those people raise border collies that are supposed to
23 be used in the herding of sheep.

24 There is a produce company, Jose's Produce
25 Company. He has many many goats on his property. I

1 always call that a goat farm, but of course he has his
2 produce business that he operates off that property. In
3 fact, he has the produce section at the swap meet in
4 Prescott Valley. The big fruit and vegetable stand at
5 the swap meet belongs to Jose.

6 Q. (Continued by MR. ADAMS:) Where did you meet
7 with Mr. Lauanders?

8 MS. KIRK: Object as to form. Which time?

9 THE WITNESS: We met with him in his
10 Prescott Valley office.

11 Q. (Continued by MR. ADAMS:) Was it during the day?

12 A. I think it was one o'clock in the afternoon was
13 the time.

14 Q. How long did you meet with him?

15 A. A good thirty or forty minutes. It could have
16 been an hour.

17 Q. And that was prior to the time that you did any
18 of your improvements to your property; correct?

19 A. That was before we had even put up a fence. I
20 think that the neighbors knew that we owned property
21 elsewhere and were concerned about us owning that
22 property.

23 Q. Was that meeting with Mr. Lauanders before or
24 after the meeting that he conducted at the church?

25 A. It was long before.

1 MR. ADAMS: It is common courtesy to provide
2 other attorneys with copies of the exhibits.

3 MS. KIRK: Just kind of like what you did
4 earlier. I understand your understanding of what common
5 courtesy is.

6 MR. ADAMS: Do you remember the question
7 that she asked regarding paragraph ten? Can you read
8 it?

9 (Whereupon, the requested portion of the record is
10 read back.)

11 Q. (Continued by MR. ADAMS:) Does that refresh your
12 recollection of the question?

13 A. Yes, but didn't I answer it?

14 MS. KIRK: Yes, you did.

15 Q. (Continued by MR. ADAMS:) Isn't it true that you
16 didn't have notice of the CC&R's at the time you
17 purchased the property because it was your understanding
18 that the CC&R's have been abandoned?

19 MS. KIRK: Objection as to form.

20 THE WITNESS: That's true.

21 MR. ADAMS: I have no further questions.

22 EXAMINATION

23 BY MS. KIRK:

24 I have a couple redirect. Ma'am, what do
25 you mean when you testify that you believed, in response

1 said?

2 A. There are probably more.

3 MS. KIRK: I have no further questions.

4 EXAMINATION

5 BY MR. ADAMS:

6 Q. Just one follow up question. In 1998 when you
7 purchased the property, you drove around the
8 subdivision; correct?

9 A. Yes.

10 Q. And at that time you observed all these business
11 activities that were ongoing; correct?

12 A. Yes.

13 Q. And what did that lead you to believe?

14 MS. KIRK: I am going to object as to form.

15 THE WITNESS: That it was a
16 do-your-own-thing area.

17 Q. (Continued by MR. ADAMS:) So based upon that,
18 you perceived that you didn't have any restrictions of
19 your use of the property; correct?

20 A. Right.

21 Q. And that belief was confirmed when you talked to
22 Mr. Lauanders, who is an attorney and who lived in the
23 same subdivision as you did; correct?

24 A. Yes.

25 MR. ADAMS: No further questions.