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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2020-000458
Civil Action No. 2017-CP-36-00214

James L. Braswell, Sr., ……..… Respondent – Appellant,

v.

James F. Amick, …… Appellant - Respondent.

CORRECTED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No.: 2017-CP-36-00214
James L. Braswell, Sr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**TEMPORARY RESTRAINING ORDER**
	)	
James F. Amick,	)	
	)	
Defendants.	)	
	)	
_____	)	

This matter came before me for hearing on the Plaintiff's Motion pursuant to Rule 65, SCRCP, for a temporary restraining order preventing the Defendant from obstructing an easement claimed by the Plaintiff. Based on the following findings and conclusion, I grant the Plaintiff's motion subject to certain conditions.

The basic facts are undisputed. The Plaintiff claims an easement by way of a dirt roadway across the Defendant's land for access to a 120-acre tract from Highway 76. The Defendant denies the existence of the easement and, to the extent it is found to exist, the width of the easement. This lawsuit was brought to resolve the dispute. After the case was commenced, the Plaintiff sought a restraining order preventing the Defendant from interfering with the Plaintiff's use of the easement. That motion was resolved by an agreement among counsel on December 15, 2017 as follows:

> Mr. Braswell and his family and employees would be allowed to access to the 120 acre tract of land from Highway 76 across Mr. Amick's land provided first, that the gates will remain closed at all times except from being used for entry. Mr. Braswell's family and employees may go to the property as they wish twenty-four hours a day. Anyone other than those family members and employees who are on the property after dark will be there without permission and Mr. Amick is free to

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> call the sheriff and notify us at the same time there are trespassers on the property. That agreement with will remain in effect pending mediation and final resolution of the case.

A copy of the transcript containing the agreement was introduced at the hearing as Plaintiff's Exhibit 1.

The Plaintiff has now renewed his motion for a temporary restraining order claiming the Defendant has violated the agreement by locking the gates and obstructing the easement. The Defendant claims the Plaintiff has violated the agreement by not closing the gates. The Plaintiff asserts that he and his employees have closed the gates. Thus, there is a factual issue regarding the closing of the gates. I need not resolve that issue because the record before me establishes that the Defendant has locked the gates and obstructed the easement by parking a trailer across the road. These actions of the Defendant violate the terms of the agreement among counsel. .

To obtain a temporary restraining order the Plaintiff must establish four elements: (1) he must state a cause of action for injunctive relief; (2) he must establish a prima facie case that he has a right of access across the Defendant's land; (3) he must show that he will suffer irreparable harm if the temporary restraining order is not issued; and (4) he must show he does not have an adequate remedy at law. AGJ Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The Plaintiff has established these four elements.

1. The Defendant does not contest the sufficiency of the cause of action for injunctive relief.

2. The Plaintiff's affidavits in support of his motion assert that he has at least since 1972 accessed his land by way of the dirt roadway over the Defendant's land from Highway 76. The parties conceded during the hearing, for the purposes of this hearing only, the Plaintiff has no other means of access to his property. Based on these facts, I find that the

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Plaintiff, for the purpose of this motion only, has established a prima facie case that he has a right to use the dirt roadway across the Defendant's land to access the 120-acre tract from Highway 76.

3. The Plaintiff has also that established he will suffer irreparable harm if the restraining order is not issued. The Plaintiff is a dairy farmer and grows crops to provide silage to feed his herd of dairy cattle. In order to do so, he must prepare his land and plant a fall crop of barley by the end of November in order for the barley crop to survive and provide feed in the spring for his herd. In addition, the Plaintiff has an irrigation system on his 120-acre tract, and the pump for that system must be winterized. The Plaintiff must have access to his land to timely plant the barley and winterize the pump. Under these circumstances, if the Plaintiff is not allowed access to his property, he will suffer irreparable harm.

4. Under the circumstances, the Plaintiff has no adequate remedy at law. This case is not set to be tried until December of this year. There is no civil remedy available to the Plaintiff other than the issuance of a temporary restraining order to avoid the harm that will be suffered by the Plaintiff. Therefore, the Plaintiff has no remedy at law which can timely avoid the harm he will suffer absent the issuance of this order.

Rule 65 requires a party obtaining a restraining order to give security "in such sum as the court deems proper." The Plaintiff asserted that the Defendant will suffer no damage from the unobstructed use of the roadway pending resolution of this action and offered security in the amount of $250.00. The Defendant requested the court to require the Plaintiff to purchase a policy of insurance in the amount of $5,000,00.00 insuring the Defendant from liability arising

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from the use of the easement by the Plaintiff. Under the circumstances of this case, I find that the proper amount of security to be provided by the Plaintiff is $1,000.00.

Based on the foregoing I find and conclude that the Plaintiff is entitled to the issuance of a temporary restraining order pursuant to Rule 65, SCRCP, pending final resolution of this case, enjoining and preventing the Defendant from obstructing in any manner the use by the Plaintiff, his family and his employees of the roadway leading from Highway 76 across the land of the Defendant to the 120-acre tract. That order is however subject to the following conditions:

(1) The Plaintiff and his employees and family who access the 120-acre tract shall close and latch the gates located at the Highway 76 terminus of the dirt roadway each time they enter and exit the Defendant's property;

(2) The Defendant, his family, agents and servants, shall not lock the gates or otherwise deny access to the dirt roadway, shall not obstruct the easement in any manner, and shall remove all obstructions to the easement within 24 hours of the time this order is filed;

(3) The Plaintiff shall post a bond in the amount of $1,000.00 by depositing a check in that amount with the Newberry County Clerk of Court within 24 hours from the time this order is filed;

(4) Both parties to this case shall comply with the terms of this order, and failure to do so by either party will be construed as contempt of this court and subject the party who violates any term(s) of this order to appropriate sanctions; and

(5) This order shall be enforceable by any judge having jurisdiction over the parties to this case and it is therefore

SO ORDERED THIS ____ day of November, 2019.

_____
Michael G. Nettles,
Presiding Judge of the Eighth Judicial Circuit

Newberry, South Carolina

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Newberry Common Pleas

Case Caption: James L Braswell Sr. VS James F Amick

Case Number: 2017CP3600214

Type: Order/Temporary Restraining Order

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
James L. Braswell, Sr., Plaintiff, vs. James F. Amick, Defendant.	)	CIVIL ACTION NO.: 2017-CP-36-00214 Order of Judgment

Hearing Dates:	January 6th – 9th, 2020
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff:	Robert W. Dibble & Jennifer Dowd Nichols
Counsel for Defendant:	Karl Stephen Brehmer
Court Reporter:	Joy E. Holston

This matter was before the Court from Monday, January 6th, 2020, through Thursday, January 9th, 2020, in Newberry County, SC, the Eighth Judicial Circuit for the purposes of a non-jury bench trial concerning a Declaratory Judgment Action pursuant to Rule 57, of the SCRCP, to determine the existence or non-existence of an easement across Defendant's land. Attorney Jennifer Dowd Nichols of Nichols and Price Law Firm and Attorney Robert W. Dibble, Jr., of Harrell, Martin & Peace, P.A., were present representing the interests of the Plaintiff, who was present. Attorney Karl Stephen Brehmer of Brown and Brehmer was present representing the interests of Defendant, who was present. Joy E. Holston was the Court Reporter.

PROCEDURAL BACKGROUND:

This action was commenced by the filing of a Summons and Complaint dated May 15th, 2017. A Lis Pendens was also filed on May 15th, 2017. Defendant was served with the Summons, Complaint, and Lis Pendens on July 27th, 2017. An Affidavit of Service was filed on August 4th, 2017. A Notice of Appearance of Counsel was filed on behalf of the Defendant on August 29th, 2017. Defendant filed a Motion to Dismiss, an Answer, and a Counterclaim on August 29th, 2017.

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Plaintiff filed a Reply to Defendant's Motion to Dismiss, Counterclaim, and Answer on September 29th, 2017. Plaintiff filed a Motion for Injunction Pendente Lite and Advancement on the Calendar on October 31st, 2017. An Order was issued on December 15th, 2017, continuing the case and staying all action on the case pending mediation. On March 7th, 2018, Defendant filed a Notice of Motion and Motion for Summary Judgment. A Certificate of Mailing was filed March 8th, 2018, asserting that the Defendant had served on Plaintiff via UPS overnight mail a copy of the Defendant's Motion for Summary Judgment. Plaintiff filed a Motion to Amend the Complaint on March 12th, 2018. Plaintiff filed a Motion for Summary Judgment on April 24th, 2018. A Certificate of Service filed April 30th, 2018, stated that Plaintiff served the Defendant via first class mail with a copy of the Plaintiff's Motion for Summary Judgement. Defendant filed an Answer to the Amended Complaint and Counterclaim on April 30th, 2018. Plaintiff filed a Motion for Summary Judgment on May 1st, 2018. Plaintiff filed a Reply to Defendant's Counterclaim on May 1st, 2018. Defendant filed a Notice of Motion and Motion for Summary Judgment on May 1st, 2018. A Scheduling Order was issued on June 6th, 2018. Plaintiff filed a Motion to Compel on August 17th, 2018. On August 27th, 2018, a scheduling order was issued.

The matter was tried on December 3, 2018. On February 14th, 2019, an Order for a New Trial was issued. Defendant filed an Appeal to the South Carolina Court of Appeals on March 12th, 2019. An Order Relieving Counsel for Defendant was recorded on March 15th, 2019. A Remittitur from the Court of Appeals was filed May 2nd, 2019, stating that the Appellant wished to either withdraw or dismiss the appeal. Plaintiff filed a Motion for Injunction Pendente Lite and Advancement on the Calendar on October 1st, 2019. The hearing on Plaintiff's Motion was held on November 13th, 2019. Defendant filed a Motion for Continuance on December 2nd, 2019. An Order of Continuance was issued on December 3rd, 2019. The parties were before this Court on

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Monday, January 6th, 2020, for the purposes of a non-jury bench trial on all issues. Both Mr. Braswell and Mr. Amick were present for the duration of the trial. The witnesses were sequestered at the commencement of the trial pursuant to the oral motion of the Defendant.

RELIEF REQUESTED IN PLEADINGS OF THE PARTIES:

The Plaintiff, in the original Complaint, first asserted the cause of action of declaratory judgment and for further relief pursuant to S.C. Code Ann. § 15-53-120. Plaintiff argued he is an interested person under a deed with respect to certain rights pertaining to the use of a 31.14 foot right of way over, across, and through land owned by the Defendant for the purpose of access, ingress, and egress to and from the Plaintiff's property. The Plaintiff also asserted the causes of action of easement by necessity, easement by prescription, easement by implication, and the entry of an injunction pendent lite and permanent enjoining of the Defendant from interfering with the right of the Plaintiff and his heirs and assigns use of the right of way.

The Defendant, in the first Motion to Dismiss, Answer, and Counterclaim, requested the Court dismiss for failure to state a claim for relief and failure to join one or more necessary parties pursuant to South Carolina Rules of Civil Procedure, Rule 8(a) and Rule 12(b)(6). The Defendant also requested the Court deny the Plaintiff's request for injunctive relief, enter a declaratory judgment that the Plaintiff was not entitled to any injunctive or other equitable relief, and that the right of way does not run over the Defendant's property, or in the alternative, is not wider than 12.5 feet. Further, Defendant requested the Court find that no easement by prescription, necessity, implication, or adverse possession applies to the right of way.

The Plaintiff filed an Amended Complaint on March 12th, 2018. In the Amended Complaint, the Plaintiff asserted the causes of action of declaratory judgment and for further relief pursuant to S.C. Code Ann. § 15-23-120 related to the 31.14 foot right of way over the Defendant's

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property, easement by necessity, easement by prescription, easement by implication, and request for an injunction pendent lite and permanent enjoining Defendant from interfering with the right of the Plaintiff and his heirs and assigns.

The Defendant filed an Answer to the Amended Complaint and Counterclaim on April 30th, 2018. The Defendant asserted a counterclaim for declaratory judgment, and requested the Court deny the Plaintiff's request for injunctive relief, deny the Plaintiff's requests for easement by prescription, necessity, implication, or adverse possession, enter declaratory judgment in favor of Defendant that no right of way exists, or, in the alternative, that if a right of way exists, it is limited to 12.5 feet in width and reasonable ingress/egress only. Defendant further asserted that reasonable ingress/egress means ingress/egress by persons or vehicles, which do no damage to the Amick land, does not change the nature, character, quality, or value of the land on which the right of way lies, and does not interfere with Mr. Amick's, his guests', invitees', heirs', or assigns' use of the Amick land.

At the commencement of this action, Plaintiff informed the Court and Defendant that he wished to withdraw his causes of action for easement by necessity and easement by implication. The amendment was not objected to by Defendant.

In factual summary, Mr. Braswell owns a 120 acre tract of land, which does not abut a public road. Mr. Amick owns the 17.08 acre tract between the 120 acre tract and Highway 76. The 120 acre tract is shown on a plat first surveyed in May of 1962 for Sula Miller by Claude Johnson. That plat shows a "R/W to Hwy" beginning on the northwestern boundary of the 120 acre tract. The "R/W to Hwy" crosses the extreme western portion of Mr. Amick's land and terminates on Highway 76.

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Mr. Braswell seeks (1) a judgment declaring that he has an appurtenant, prescriptive easement for farming purposes at all times over, across, and through the western 22.75 feet of Mr. Amick's land to access the 120 acre tract to and from Highway 76 and (2) an injunction preventing anyone from interfering with his use of the easement for that purpose.

Mr. Amick denies the existence of any easement over, across, and through his land, but if one is found to exist, he seeks a judgment declaring the size, location, scope and use of the easement; or, in the alternative, that if a right of way exists, it is limited to 12.5 feet in width and reasonable ingress/egress only. Mr. Amick defined reasonable ingress/egress as meaning ingress/egress by persons or vehicles, which do no damage to the Amick land, does not change the nature, character, quality, or value of the land on which the right of way lies, and does not interfere with Mr. Amick's, his guests', invitees', heirs', or assigns' use of the Amick land.

FACTUAL BACKGROUND:

In 1962, Sula Miller owned property which encompassed both the 120 acres now owned by Mr. Braswell and the 17.08 acres now owned by Mr. Amick. In May of 1962, Ms. Miller obtained a plat of "Part of Sula Miller Land." The plat was prepared by Claude E. Johnson and set out the 120 acres as a separate parcel. In and prior to 1964, Mr. Braswell was engaged in the dairy and farming business. In 1964, he leased the northern portion of the 120 acres from Ms. Miller. Mr. Braswell incorporated the leased property into his farming operation and grew row crops on that land to provide feed for his dairy herd. Mr. Braswell accessed the leased property from Highway 76 by way of the R/W to Hwy. (hereinafter "Right of Way".)

On September 28, 1964, Mr. Johnson prepared a plat of 4.04 acres of Ms. Miller's land. The plat for the 4.04 acres was recorded on November 11, 1964, in the Office of the Clerk of Court for Newberry County in Plat Book U at page 61. Ms. Miller conveyed the 4.04 acre tract

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to L.K. Bedenbaugh by deed dated November 28, 1964. The deed referenced the recorded plat. That deed was recorded in the Office of the Clerk of Court for Newberry County on November 28, 1964, in Deed Book 87 at page 429. The 4.04 acre tract was located between the 120 acres and Highway 76 and encompassed the entire Right of Way. At this point in time, the land encompassing the Right of Way was owned by an unrelated third party. It is contended by Plaintiff that Mr. Braswell's subsequent and continuous use of the Right of Way became adverse at that point in time and the prescriptive period began to run.

The plat refers to a 12.5 foot strip of land lying immediately to the West of the 4.04 acres. The deed refers to a dirt road to the West of the property. The property description in the deed to Mr. Bedenbaugh is as follows:

> All that certain piece, parcel and lot of land situated in the County of Newberry and State of South Carolina, being bounded as follows: on the north highway 76; on the east lands of Sula S. Miller, grantor, on the west by dirt road, on the south lands of Sula S. Miller and Zeda Bickley. A lot containing 4.04 acres, more or less, beginning at a point in center of U.S. Highway 76 marked by an iron pipe on side of highway and running with the highway 5(sic)55-50E. 214', to a point in center of highway marked by an iron pipe onside of highway then S44-00W 9.13 to an iron pipe then N45-00W 3.00 to an iron pipe then N73-00W 4:15 to an iron pipe then 5(sic)3-00W 5.40 to an iron pipe then S 44-00W 3.75 to iron pipe in center of highway, iron pipe by side of highway. Plat recorded in Plat Book "U" at page 61.

Mr. Amick admitted that he does not claim ownership of any portion of the 12.5 foot strip. [1] Neither the owner of the 12.5 foot strip, nor the owner of the dirt road referred to it in that deed (to the extent they are not the same) is a party to this action. Therefore, the ownership of that land and any claim Mr. Braswell may have in and to that land is beyond the jurisdiction of this Court and need not be discussed.

In October of 1971, Mr. Johnson re-surveyed the 120 acres owned by Sula Miller. No

[1] For purposes of this action the Court will consider that Mr. Amick claims no ownership interest in the 12.5 foot strip.

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revisions were shown on the plat. That plat was recorded on May 5, 1972, in Plat book AG at page 28 in the Office of the Clerk of Court for Newberry County. On June 20, 1972, Mr. Braswell bought the 120 acre tract from Ms. Miller. The property description in the deed is as follows:

> All that piece, parcel or tract of land containing one hundred twenty and eighty-one-hundredths (120.80) acres, more or less, situate, lying and being in Tax District No. 3, in the County of Newberry, State of South Carolina, said property being bounded by lands of Harold Long, by lands of William Ballentine; by lands of Sula S. Miller, and by lands of Henry Parr. This tract of land is more particularly described on a Plat made by Claude E. Johnson, L.S. 1373, surveyed May 1962 – September 1964 – October 1971, and recorded in the office of the Clerk of Court for Newberry County in Plat Book AG at page 28. This is a portion of the property conveyed to A.B. Miller and Sula S. Miller by deed dated March 14, 1960, and recorded in the office of the Clerk of Court for Newberry County in Deed Book 75 at page 575, and a portion of the property inherited by Sula S. Miller from the Last Will and Testament of A.B. Miller on file in the office of the Probate Judge for Newberry County.[2]

That deed was recorded on June 20, 1972, in the Office of the Clerk of Court for Newberry County in Deed Book 109 at page 270.

The Braswells collectively referred to the western side of the 120 acre tract as the "Ballentine" side and the eastern portion of the 120 acre tract as the "Parr" side. After June of 1972, Mr. Braswell continued to access the Ballentine side of the 120 acre tract by way of the Right of Way. He accessed the Parr side by way of the farm road shown on the plat of the 120 acres. In the 1970s, Mr. Braswell's sons, James L. Braswell, Jr. and Mark Wayne Braswell, became active in the farming and dairy operations with their father, and they began jointly directing the activities of the employees connected with the dairy and farming operations.

The Braswells grew row crops on the Ballentine side and coastal Bermuda hay on the Parr side. Mark Wayne was primarily responsible for the row crops on the Ballentine side of the

[2] Although the deed description indicates Sula Miller received a portion of the property through her husband's estate, the testimony established that this property came entirely through deeds outside of that estate.

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property. The Braswells accessed the Ballentine side of the property by using the Right of Way. Plowing, planting, fertilizing, irrigating and harvesting the row crops required the use of plows, harrows, cultivators, tractors, combines, sprayers, and farm trucks. The Braswells also used the Right of Way to bring windrowers and hay balers to harvest the coastal Bermuda hay on the Parr side of the property. The Braswells brought that equipment across the Right of Way as often as necessary to conduct their farming operations on the 120 acre tract. Those row crops were planted and harvested each year on a regular basis, sometimes twice a year. The coastal Bermuda hay was harvested three or four times each year.

Between 1978 and 1984, the Braswells constructed two ponds on the 120 acre tract and installed a system to irrigate the row crops on the Ballentine side. Operation of the irrigation system required access to the property, both day and night, as often as necessary for the purpose of moving the irrigation equipment and refueling the irrigation pumps. Mr. Braswell was able to cross the pond dam with lighter equipment to harvest the coastal Bermuda hay planted on the Parr side of the property, but he brought that equipment in to the 120 acre tract by using the Right of Way.

Between 1964 and 1988, the 4.04 acre tract changed hands several times. In 1988, Mr. Amick and Tamela Amick, his wife at that time, purchased 17.080 acres from H.L. Brock and Thelma D. Brock. The 17.080 acre tract encompassed the 4.04 acre tract. The property description in the deed is as follows:

> All that certain piece, parcel or tract of land, consisting of 17.080 acres, more or less, located on U.S. Highway No. 76, in the County of Newberry, State of South Carolina, with the following buttings, boundings and delineations, to-wit: Beginning at the Northernmost point and running on a southeasterly direction along the right-of-way of U.S. Highway No. 76 for a distance of 268.43 feet to an iron pin; thence running in a southwesterly direction along the tract of land conveyed to Grace K. Tarlton by Grady Tarlton for a distance of 410 feet to an iron pin; thence running in an southeasterly direction along the tract of land

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> conveyed to Grace K. Tarlton for a distance of 290 feet to an iron pin; thence running in a southwesterly direction along the right-of-way of a farm road and the lands now or formerly of Sula Miller Harley for a distance of 457.53 feet to an iron pin; thence running along the lands now or formerly of Sula Miller Harley in the aggregate of 320.22 feet to an iron pin located in a pond; thence running in a northwesterly direction along the lands of James Braswell for a distance of 329.31 feet to an iron pin; thence running in a northeasterly direction for a distance of 887.27 feet along the lands of James Braswell to an iron pin; thence thence (sic) running in a northwesterly direction for a distance of 198.05 feet to an iron pin; thence running in a northeasterly direction along the lands of William Ballentine for a distance of 604.97 feet to an iron pin, the point of beginning. Reference is hereby craved to and incorporated as a part of this description to a plat entitled "Tarlton Tract", prepared by Claude E. Johnson, L.S., dated August 14, 1979, which plat is of record in the office of the Clerk of Court for Newberry County in Plat Book AU at page 14.
>
> ALSO, all our right, title and interest which we own in a twenty-five (25) foot right-of-way, which is located on the eastern boundary of the property herein conveyed and on the eastern boundary of a 2.996 acre tract conveyed to Grace Tarlton September 7, 1979.
>
> This is the identical property conveyed to the Grantors herein by deed of Grady Tarlton dated September 7, 1979, recorded in the office of the Clerk of Court for Newberry County in Deed Book 165 at page 6.

That deed was recorded June 10, 1988, in the Office of the Clerk of Court for Newberry County in Deed Book 283 at page 183.

The deed to Mr. and Mrs. Amick also conveyed to them a 25 foot easement on the eastern boundary (not the easement that is the subject in this litigation) of the 17.08 acre tract. Testimony presented on behalf of Defendant avers that the 25 foot easement was never assigned to Mr. Braswell.

Sometime after 1992, Mr. Amick asked Mr. Braswell if gates could be placed at or near the entrance to the Right of Way from Highway 76. Although an inconvenience to Mr. Braswell and to his employees, Mr. Braswell did not object to gates being installed provided he had a key. Mr. Braswell purchased four 12 foot gates. Two of the gates (the first set of gates) were installed at the entrance of the Right of Way near Highway 76. The other two gates were installed

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between Mr. Braswell's property and the Amicks' property. Mr. Amick and Mr. Braswell agreed that the first set of gates would be locked and that Mr. Amick and Mr. Braswell would each have a key to the lock.

There is a dispute between the parties regarding a later lock change by Mr. Amick on the first set of gates. However, upon Mr. Braswell's inability to unlock the first set of gates to drive down the Right of Way, Mr. Braswell removed those gates from the hinges so he could gain access to his property over the Amicks' property. Thereafter, Mr. Braswell, his sons, and his employees continued to use the Right of Way for all purposes, at all times as necessary, both day and night, to access the 120 acre tract from Highway 76 to conduct farming operations on the 120 acres.

In 2013, Mr. Amick[3] began to impede and hinder Mr. Braswell's use of the Right of Way by placing obstructions on or along the side of the road in the Right of Way. These obstructions made it difficult for Mr. Braswell to bring equipment to his property from Highway 76, but they did not prevent him from accessing the 120 acre tract. As the result of Mr. Amick's actions, Mr. Braswell filed this action on May 15, 2017. In October of 2017, Mr. Amick installed new gates at the end of the Right of Way near Highway 76 and did not give Mr. Braswell a key. Mr. Braswell objected to those locked gates and filed a motion for an injunction pendent lite on October 31, 2017. That motion was resolved by a Court approved agreement between the parties allowing Mr. Braswell to access his property using the Right of Way without any interference from Mr. Amick. Each party filed and withdrew a motion for summary judgment. The case was then tried to conclusion before Judge Hocker in December of 2018. Defendant made a motion for

[3] By deed dated August 20, 1997 and recorded on August 27, 1997 in the Office of the Clerk of Court for Newberry County, Tamela F. Amick conveyed her interest in the 17.080 acres to James Franklin Amick. Mr. Amick began dating his current wife in 2011.

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a new trial which was granted. Mr. Amick then blocked the Right of Way with a trailer. The Plaintiff renewed his motion for an injunction pendente lite. The motion was heard on November 15, 2019, before Judge Nettles, and, at the conclusion of the hearing, the Court orally issued an immediate order regarding the parties conduct with the understanding that a more detailed written order would subsequently be issued. This trial followed.

APPLICABLE LAW & LEGAL ANALYSIS:

1. **Appurtenant Prescriptive Easement**.

"An easement is a right given to a person to use the land of another for a specific purpose." Murrells Inlet Corp. v. Ward, 378 S.C. 225, 232, 662 S.E.2d 452, 455 (Ct. App. 2008), quoting Frierson v. Watson, 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006). Easements are created by express grant or arise as a matter of law. Brasington v. Williams, et al., 143 S.C. 223, 141 S.E. 375, 382 (1927) ("There seems to have been nine methods recognized under the common law for the creation of an easement, namely, by grant, estoppel, way of necessity, implication, dedication, prescription, ancient window doctrine, reservation, or condemnation."). Under South Carolina law, "A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner." Boyd v. BellSouth Telephone Telegraph Co., Inc., 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006). In order to establish a prescriptive easement, "the claimant must prove by clear and convincing evidence: (1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right." Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016), quoting Darlington County. v. Perkins, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977). The Court in Simmons went on to clarify the third element of a prescriptive easement by stating:

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> "While this Court has recently articulated the third element of a prescriptive easement as requiring the claimant's use be "adverse or under a claim of right," this Court has not always articulated the third element this way." Simmons, 419 S.C. at 230, 797 S.E.2d at 391.

In 1823, the Constitutional Court of Appeals of South Carolina determined three things are necessary to establish a right by prescription: (1) use and occupation or enjoyment; (2) the identity of the thing enjoyed; and (3) that it is adverse to the right of some other person. Lawton v. Rivers, 13 S.C.L. 445, 451 (2 McCord) (1823). In 1917, this Court relied on Lawton and determined: "To establish a right by prescription, it is necessary to prove three things: (1) The continued and uninterrupted use or enjoyment of the right for the full period of 20 years; (2) the identity of the thing enjoyed; (3) that the use or enjoyment was *adverse, or under claim of right.*" Williamson v. Abbott, 107 S.C. 397, 400, 93 S.E. 15, 15–16 (1917). By placing a "comma" after the term "adverse," this Court intended to modify the term "adverse," not create another method to establish a claim. Accordingly, the third element of a prescriptive easement should be interpreted as requiring the claimant's use be adverse or, in other words, under a claim of right contrary to the rights of the true property owner." Simmons, 419 S.C. at 230-231, 797 S.E.2d at 391.

The Court of Appeals in Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005), held that continuous use "must only be of reasonable frequency as determined from the nature and needs of the claimant". Id., 363 S.C. at 318, 609 S.E.2d at 601, citing Cuthbert v. Lawton, 3 McCord 194, 14 S.C.L. 194 (Ct. App. 1825) (Establishing the long held principle of South Carolina law that once a right of way by prescription has been established by twenty years of continuous use, a later diminishment in the frequency of that use does not necessarily nullify the established right by prescription). The Supreme Court in Bundy v. Shirley, 412 S.C. 292, 312, 772 S.E.2d 163, 174 (2015), affirmed the definition of continuous use requirement set out by the

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Court of Appeals in Jones. The Simmons Court, while overturning part of Jones, did not disturb the holding in either Jones or Bundy in respect to the definition of continuous use.

The photographs taken by the United States Department of Agriculture, Plaintiff's Exhibits, are persuasive to the Court. Those photographs clearly show the existence and location of a road within the Right of Way and the increased use of the road between 1959 and 1994. There was testimony that those photographs showed a road crossing Mr. Amick's land within the Right of Way. The evidence establishes that Mr. Braswell used that Right of Way adverse to the successive fee owner(s) of the 4.04 acre tract for twenty (20) consecutive years between 1964 and 1984.

There was testimony that the Right of Way was impassable in and after 1988. That testimony is not consistent with the location or condition of the road on the Right of Way as depicted in the USDA photographs. There was testimony that in 1988 a large portion of Mr. and Mrs. Amick's land, including the Right of Way, had to be cleared. There is a dispute between the parties as to the extent of clearing that was required. It is clear that Mr. Braswell used the Right of Way for access to the 120 acres from Highway 76 for a period in excess of 20 years beginning in November of 1964 in a manner that was adverse and under a claim of right contrary to the rights of the successive, underlying fee owners prior to Mr. Amick purchasing the 17.08 acre tract.

The record also establishes that Mr. Braswell's use of the Right of Way has been continuous and uninterrupted within the meaning of Boyd, Jones, Bundy, and Simmons. Jones and Bundy established the definition of continuous use as noted above. Mr. Braswell has used the Right of Way over, across and through the western portion of Mr. Amick's property as reasonably necessary from time to time to conduct farming operations on the 120 acre tract

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before and since November 28, 1964, when Ms. Miller conveyed the 4.04 acres to Mr. Bedenbaugh. Thus, he has met his burden of proving the continuous and uninterrupted use necessary to meet the requirements of that element of a prescriptive right under Boyd, Jones, Bundy and Simmons.

Mr. Braswell has also established the identity of the "thing" as required by Simmons. The plat recorded in Book AG at page 28 shows the Right of Way to be located on the extreme western side of Mr. Amick's land. There was testimony that the "R/W to Hwy" notation on the Braswell plat might indicate an easement. The USDA photographs show the road within, or close to the proximity of the Right of Way.

There was also testimony presented by Plaintiff's witness, Mr. Dominick, that the plat recorded in Book AG at page 28 had a scale of one-inch equals 5 chains. There was testimony that if anything on the plat had not been drawn to that scale that fact would normally have been noted on the plat. Using that scale and three accepted measurement standards he calculated the average width of the "R/W to Hwy" to be 31.14375 rounded to 31.14 feet. He testified that in his experience it is not normal to have such an odd dimension and, therefore, that it was his opinion the width of the "R/W to Hwy" shown on the plat was 30 feet.

Mr. Dominick also prepared Plaintiff's Exhibit 26, which shows the fence between the 12.5 foot strip and Mr. Ballentine's (now Long's) property, and the location of the fence posts at both ends of the Right of Way. The western most fence posts are each 5.5 feet east of the fence. The distance between the fence posts on the Highway 76 side is 29.75 feet. The distance between the fence posts on the other end of the Right of Way is 29.6 feet. It is alleged by Plaintiff that he, Mr. Braswell, has been effectively using approximately seven (7) feet of the 12.5 foot strip and approximately 22.75 feet in width of the western side of Mr. Amick's property to access the 120

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acre tract. Based on this evidence, I find and conclude that Mr. Braswell has identified an easement within the holding of Boyd and Simmons. However, the exact size of the easement is in dispute between the parties. Mr. Amick contends that the width of the easement is at the most 12.5 feet of the western side of Mr. Amick's property.

The record contains consistent testimony that the use by Mr. Braswell of the Right of Way was under a claim of right adverse to the true owners of the underlying property. It is undisputed that the 4.04 acre tract, which is part of Mr. Amick's 17.08 acre tract was owned by unrelated third parties after November 28, 1964. It has been alleged by Plaintiff that he used the Right of Way as though he owned it. It is uncontested that when Mr. Amick changed the lock on the first set of gates, Mr. Braswell took down those gates and continued to use the Right of Way to access the 120 acres. Each time someone objected to Mr. Braswell's use of the Right of Way after his prescriptive easement had been established [2], Mr. Braswell ignored those objections and continued to drive his equipment to and from Highway 76 to farm his land. No one ever successfully prevented Mr. Braswell from accessing the 120 acres by way of the Right of Way until 2019, when Mr. Amick placed a trailer across the Right of Way. By that time, Mr. Braswell had acquired an easement by prescription over, across and through Mr. Amick's land. This evidence establishes that Mr. Braswell has used the Right of Way since 1964 under a claim of right adverse to each successive owner of the 4.04 acre tract. Thus, the last element set out by the Court in Simmons has been established.

Mr. Braswell has also established that the easement is appurtenant to the 120 acre tract. The Court of Appeals in Rhett v. Gray, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012), held that "an appurtenant easement inheres in the land, concerns the premises, has one terminus on

[2] See Kelley v. Snyder, 396 S.C. 564, 722 S.E.2d 813 (Ct. App. 2012)

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the land of the party claiming it, and it essentially necessary to the enjoyment thereof… It also passes with the dominant estate upon conveyance." Rhett, 401 S.C. at 492, 736 S.E.2d at 881, citing Windham v. Riddle, 381 S.C. 192, 201-202, 672 S.E.2d 578, 583 (2009). The Court of Appeals held "easements in gross are not favored by the courts, and an easement will never be presumed as personal when it may fairly be construed as appurtenant to some other estate." Smith v. Commissioners of Public Works of City of Charleston, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994), citing Am.Jur.2d, Easements and Licenses § 13 (1966).

There is no question that one terminus of the easement is on Mr. Braswell's land. It is also clear from the record that the easement is essential to Mr. Braswell's enjoyment of his land. The evidence revealed the 25 foot easement on the eastern boundary of Mr. Amick's property. He presented testimony that the easement had never been assigned to Mr. Braswell. Mr. Braswell contends that it is impossible to bring heavy equipment across the pond dams. Under these circumstances, both of these elements have been established.

Although the elements necessary to establish that an easement is appurtenant have been recited in several cases (See Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); Springob v. Farrar, 334 S.C. 585, 514 S.E.2d 135 (Ct. App. 1999)), the Courts have not clearly defined either the term "inhere in the land" or the term "concerns the premises." See Shirley We Can Figure This Out: The Continued Confusion Surrounding Prescriptive Easements, 68 S.C.L.Rev. 795 (2017) (Clark, at 808). However, in several cases, South Carolina Courts have held that roadways used for access, ingress, and egress to the dominant estates classify as appurtenant easements. See Smith v. Commissioners of Public Works of City of Charleston, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994) (holding that the owners of the dominant estate had an appurtenant easement across the servient estate of ingress and egress to a canal);

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Proctor v. Steedley, 398 S.C. 561, 574, 730 S.E.2d 357, 364 (Ct. App. 2012) (affirming the Special Referee's holding that an easement for an access road across the servient estate was an appurtenant easement).

The Court finds and concludes that a Right of Way exists in the 120 acre tract and is "related to" the 120 acre tract. The easement exists on Mr. Amick's land and obviously inheres in and concerns Mr. Braswell's land because the easement is the only practical means by which he can gain access to his land for his farming equipment.

Mr. Braswell has established by clear and convincing evidence all of the elements necessary to establish an appurtenant, prescriptive easement over the Right of Way on the extreme western side of Mr. Amick's land (the easement). The western boundary of the easement is co-extensive with the western boundary of Mr. Amick's land. The eastern boundary of the easement is a distance east of the western boundary of Mr. Amick's land. The northern terminus of the easement is the southern boundary of the right of way of Highway 76. The southern terminus of the easement is the northern boundary of the 120 acre tract. However, the Court is not convinced that the size/width of the easement is as large as the Plaintiff contends.

2. Is Mr. Amick a bona fide purchaser for value and took subject to the easement.

Mr. Braswell contends that Mr. Amick is not a bona fide purchaser for value without notice because in 1988 both he and his wife were put on inquiry notice of the fact that someone was using a road across the property they were considering buying. An easement by prescription is not within the scope of the recording act. Means, The Recording of Land Titles in South Carolina (Herein a Bona Fide Purchaser of Land): A Title Examiner's Guide, 10 S.C.L.Q. 346, pp. 358-363 (1957). The authorities are split on whether the purchaser of the servient estate without notice of the unrecorded easement takes free and clear of the prescriptive easement. Id.

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However, under the doctrine of inquiry notice, a purchaser of the servient estate with inquiry notice of the easement when he purchased the land takes subject to the unrecorded easement. Id.

The USDA photographs taken periodically between 1959 and 1994 show a road within the Right of Way leading from Highway 76 to the land now owned by Mr. Braswell. Prior to Mr. Braswell leasing the land, Ms. Miller's son kept an airplane on the Ballentine side of the 120 acre tract and drove a car down that road to get to his airplane. Based on the existence of the road in the Right of Way as shown in the 1984 and 1989 USDA photographs, Mr. Amick either knew or should have known the road existed and that someone was using it to cross the property he was purchasing. To the extent there was any question as to whether the road was on the property Mr. Amick was buying or on the strip of land lying West of that property, the existence of the road, at a minimum, put Mr. Amick on inquiry notice of that road and on inquiry notice that someone was using it to cross the property he was purchasing. There was testimony that Plaintiff used the Right of Way with the knowledge of the Brocks from whom Mr. and Mrs. Amick purchased the 17.08 acre tract.

In Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006), the Court held:

> "Constructive or inquiry notice in the context of a real estate transaction also may arise when a party becomes aware or should have become aware of certain facts which, if investigated, would reveal the claim of another. The party will be charged by operation of law with all knowledge that an investigation by a reasonably cautious and prudent purchaser would have revealed. As this Court has explained in a case involving the transfer of real property,
> If there are circumstances sufficient to put a party upon the inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose; but constructive notice goes no further. It stands upon the principle that the party is bound to the exercise of due diligence, and is assumed to have the knowledge to which that diligence would lead him; but he is not held to have notice of matter which lies beyond the range of that inquiry and which that diligence might not disclose. There must appear to be, in the nature of the case, such a connection between the facts disclosed and the further facts to be discovered, that the former could justly be viewed as furnishing a clue to the latter."

Spence, 368 S.C. at 120-121, 628 S.E.2d at 876, citing Black v. Childs, 14 S.C. 312, 321–322

(1880).

Reasonable diligence by Mr. Amick and his wife in 1988 would have led to the knowledge that the Right of Way had been and was being used by Mr. Braswell to access his land from Highway 76. That resulting knowledge is well within the range of the inquiry necessitated by the obvious existence of the road, and there is a direct connection between the existence of the road and the facts which would have been disclosed had reasonable inquiry been made in 1988. Therefore, Mr. Amick does not fall within the protected class of a purchaser for value without notice and took his property subject to Mr. Braswell's prescriptive easement.

3. Permissive Use

The Court in Simmons also held that it "is well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse" Simmons, 419 S.C. at 232, 797 S.E.2d at 392, citing Bundy, 412 S.C. at 310, 772 S.E.2d at 173; See 2 Am. Jur. Proof of Facts 3d 197 § 6, at 218 (1988). The Defendant has asserted permissive use as a defense to the claim of a prescriptive easement. It is Mr. Braswell's position that his use of the Right of Way was never permissive and became adverse after Sula Miller, on November 28, 1964, sold to L.K. Bedenbaugh the 4.04-acre tract, which the included the entire Right of Way.

The relevant testimony establishes that Mr. Braswell had acquired an easement by prescription well before 1988 when Mr. and Mrs. Amick purchased the property. Mr. Amick's objections after the prescriptive easement was established cannot destroy the easement. To the extent that Mr. Amick consistently objected to the use of the Right of Way by Mr. Braswell, those objections cannot defeat an established prescriptive easement. If Mr. Amick had given Mr. Braswell permission to use the Right of Way, Mr. Amick would not have had reason to object to

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his use of the Right of Way. Therefore Mr. Amick cannot successfully assert this defense.

4. Scope of the Easement

The evidence in the record establishes that Mr. Braswell has conducted farming operations on the 120 acre tract since he leased it in 1964. Those farming operations necessarily involved the use of personnel and equipment to prepare the land for planting crops and fertilizing, cultivating, irrigating, spraying, and harvesting those crops and transporting those crops and silage off of the 120 acres. The equipment used to do those things included plows, harrows, cultivators, trucks, combines, sprayers and all other types of equipment necessary to successfully farm the 120 acres with row crops and coastal Bermuda hay. The equipment varied in width, it is estimated that the combines were are least 20 feet wide. That equipment has been driven or pulled by the Braswells and their employees over the easement on a regular and on an as needed basis at least since 1964.

By the end of 1984, the construction of the two ponds on the 120 acre tract was complete. Those ponds were built to provide water for irrigation systems, which were run by a pump or pumps. Each pump had to be refueled periodically, and that refueling operation sometimes took place at night. The irrigation of crops is an integral part of Mr. Braswell's farming operation and did not unreasonably expand the use or scope of the prescriptive easement.

The largest equipment used by the Braswells in their farming operation is a combine, which has a width of 20 feet. There is no evidence in the record that the combine has not or cannot stay within the easement that has been used and created.

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ARGUMENTS OF COUNSEL:

It is Mr. Braswell's position that he has proven by clear and convincing evidence the elements necessary under Boyd, Jones, Bundy, and Simmons to establish an appurtenant easement by prescription in the Right of Way over, across, and through the western 22.75 feet of Mr. Amick's land for access to the 120 acre tract from Highway 76 for farming purposes. Plaintiff further argues that in order to meet the "continuous use" requirement, Mr. Braswell need only prove that he used the right of way with reasonable frequency as determined by the nature and the needs of his farming operation.

It is the Defendant's position that Plaintiff does not have an easement by grant from Sula Miller by way of deed dated June 20, 1972. Defendant also argues that Plaintiff has not established a prescriptive easement traversing the Defendant's property because the Plaintiff has not established by clear and convincing evidence that he has unequivocally established proof of such facts as will give the right of a prescriptive easement from Defendant to Plaintiff, or, in the alternative, that if a right of way exists, it is limited to 12.5 feet in width and reasonable ingress/egress only. Defendant further asserted that reasonable ingress/egress means ingress/egress by persons or vehicles, which do no damage to the Amick land, does not change the nature, character, quality, or value of the land on which the right of way lies, and does not interfere with Mr. Amick's, his guests', invitees', heirs', or assigns' use of the Amick land.

FINDINGS AND CONCLUSIONS:

The Court acknowledges and appreciates the amount of research and preparation for the trial by all counsel, as well as, the professionalism of all counsel and the parties in their presentations to the Court.

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The Court has considered the testimony presented, Plaintiff's numbered exhibits entered into evidence 1-43, Defendant's numbered exhibits entered into evidence 1-24, the locus in quo and Mr. Braswell's real estate, which were admitted into evidence via viewing by the Court with counsel of record and the Court Reporter present, the arguments of counsel, the applicable law, and after consideration of the record, the Court finds and concludes as follows:

That the property involved in this case is located entirely in Newberry County, South Carolina. Both parties are citizens of South Carolina. This Court has jurisdiction over the parties and the subject matter of the action. Venue is proper in Newberry County; it is further,

Ordered, Adjudged and Decreed, that based upon the foregoing, the Court finds and concludes that the Plaintiff, Mr. Braswell, and his heirs, successors, and assigns are entitled to an easement by way of prescriptive right for the Plaintiff, his immediate family, and his employees, servants and agents, of the easement leading from Highway 76 across the land of the Defendant to the 120 acre tract. However, the following conditions are applied: the width and size of the easement is 12.5 feet from the western boundary of Mr. Amick's land, and the scope of the easement is for access, ingress, and egress, to and from Highway 76 for the purpose of conducting farming operations on the 120 acre tract. The easement may be used by Mr. Braswell and his immediate family for all purposes. The Braswells' agents, servants, and employees are also entitled to use the easement, but that use is limited to access, ingress, and egress at all times necessary in connection with the conduct of farming operations on the 120 acres. Any other use of the easement without the permission of the owner(s) of the servient estate is prohibited. Mr. Amick has admitted he claims no ownership interest in the 12.5 foot strip that is not the subject of this litigation, therefore Mr. Braswell is free to clear the 12.5 foot strip of trees and brush without interference from Mr. Amick. (Mr. Amick admitted that he does not claim ownership of

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any portion of the 12.5 foot strip. The owner of the 12.5 foot strip is not a party to this action. Therefore, the ownership of that land and any claim Mr. Braswell may have in and to that land is beyond the jurisdiction of this Court and need not be discussed). The clearing will potentially eliminate or substantially lessen any movement of the road to the east towards Mr. Amick's house and ensure that Mr. Braswell's equipment stays within the easement. It is noted that Mr. Amick may place a fence or other landmark on the eastern boundary of the easement which is 12.5 feet in width east of his western property line. That will delineate the eastern boundary of the easement and will ensure the Braswells do not encroach on that portion of Mr. Amick's land, which is not subject to the easement. It is presumed that if the 12.5 foot strip is cleared and the eastern boundary of the easement is delineated, the parties will be able to peacefully co-exist in the future; it is further,

Ordered, Adjudged and Decreed, that based on the foregoing, Mr. Amick, his successors, heirs, assigns, agents, servants, employees, guests, invitees and family are hereby enjoined from interfering with the use of the easement for access, ingress, and egress to and from the 120 acre tract and Highway 76 as outlined above; it is further

Ordered, Adjudged and Decreed, that the Court finds and concludes that with regard to the easement the following conditions will apply: persons or vehicles of those who access the easement will do no damage to the Amick land, and will not change the nature, character, quality, or value of the land on which the easement lies, and to the extent possible will not interfere with Mr. Amick, his guests', invitees', heirs', or assigns' or use of the Amick land; it is further,

Ordered, Adjudged and Decreed, that upon this Order becoming final, the Clerk shall record it among the land records of Newberry County, South Carolina, at the expense of Mr. Braswell and shall index it in the name of Mr. Amick as grantor and in the name of Mr. Braswell as grantee. Otherwise, each party shall bear his own costs and fees incurred in this action.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Presiding Judge, Eighth Judicial Circuit

February 10th, 2020
Spartanburg, South Carolina

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Newberry Common Pleas

Case Caption: James L Braswell Sr. VS James F Amick

Case Number: 2017CP3600214

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

ELECTRONICALLY FILED - 2018 Apr 03 1:13 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF NEWBERRY	) Civil Action Number: 2017-CP-36-00214
James L. Braswell, Sr.,	)
	)
Plaintiff,	)
	)
vs.	) **AMENDED COMPLAINT**
	) (Non-Jury)
James F. Amick,	)
	)
Defendants.	)
	)
	)

The Plaintiff, complaining of the Defendant, alleges:

FOR A FIRST CAUSE OF ACTION

1. This is an action brought pursuant to Rule 57, SCRCP, and S.C. Code Ann. §15-53-30 for a declaratory judgment and for further relief pursuant to S.C. Code Ann. §15-53-120. The Plaintiff is a person interested under a deed with respect to certain rights pertaining to the use by the Plaintiff of a right of way over, across, and through land owned by the Defendant. Pursuant to S.C. Code Ann. § 15-53-80, all persons who have or claim any interest which will be affected by the requested declaratory judgment have been made parties to this action.
2. The Defendant, James F. Amick, is a resident of Newberry County, South Carolina and owns property in Newberry County, South Carolina, a portion of which property is the subject of this action.
3. This Court has jurisdiction over the parties to and the subject matter of this action. Venue is proper in Newberry County, South Carolina.

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4. The Plaintiff acquired 120.80 acres ("Plaintiff's Property") from Sula S. Miller Harley ("Sula Miller") by deed dated June 30, 1972 and recorded in the Office of the Clerk of Court for Newberry County on June 20, 1972 in Deed Book 109 at page 270 ("Deed").

5. The Plaintiff's Property is described in the deed as follows:

> All that piece, parcel or tract of land containing one hundred twenty and eighty-one-hundredths (120.80) acres, more or less, situate, lying and being in Tax District No. 3, in the County of Newberry, State of South Carolina, said property being bounded by lands of Harold Long, by lands of William Ballentine; by lands of Sula Miller, and by lands of Henry Parr. This tract of land is more particularly described on a Plat made by Claude E. Johnson, L.S. 1373, surveyed May 1962 - September 1964 – October 1971, and recorded in the Office of the Clerk of Court for Newberry in Plat Book AG at page 28. This is a portion of the property conveyed to A.B. Miller and Sula S. Miller by deed dated March 14, 1960, and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 75 at page 575, and a portion of the property inherited by Sula S. Miller from the Last Will and Testament of A.B. Miller on file in the Office of the Probate Judge for Newberry County.

6. The plat referenced in the Deed ("Plat") and by which the Plaintiff's Property is described in the Deed designates and dedicates a "R/W to HWY" over, across and through adjacent property then owned by Sula Miller ("Adjacent Property"). The "R/W to HWY" begins at an iron pin located at the northwestern corner of the Plaintiff's Property, borders on the northeastern boundary of the Plaintiff's Property as has a uniform width of 31.14 feet over, across and through the Adjacent Property between the northeastern boundary of the Plaintiff's Property and Highway 76 ("Right of Way").

7. The Right of Way over, across, and through the Adjacent Property connects the Plaintiff's Property to Highway 76 and provides the Plaintiff with access to and from the Plaintiff's Property over, across, and through the Adjacent Property to and from Highway 76.

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8. The Defendant now owns the portion of the Adjacent Property on which the Right of Way is located. A dispute has arisen between the Plaintiff and the Defendant James F. Amick concerning the width and the location of the Right of Way.
9. The Defendant, James F. Amick, has repeatedly and wrongfully acted and continues to act in a manner which impedes the Plaintiff from using the Right of Way to access the Plaintiff's Property to and from Highway 76.
10. Based on the foregoing, the Plaintiff is entitled to (a) a judgment declaring that there exists a right of way beginning at the northwestern corner of the Plaintiff's Property, bordering on the northeastern boundary of the Plaintiff's Property for a distance of 31.14 feet uniform in width over, across and through the Adjacent Property, now owned by the Defendant between the Plaintiff's Property and Highway 76 and (b) a judgment declaring that the Plaintiff and his heirs and assigns has and will have the unfettered right to use the Right of Way for the purpose of access, ingress and egress to and from the Plaintiff's Property and Highway 76 without interference of kind or nature by the Defendant.

FOR A SECOND CAUSE OF ACTION

11. The allegations contained in paragraphs 1 through 10 above are incorporated herein by reference.
12. Continuously since 1972, the Plaintiff has utilized as necessary a Right of Way 31.4 in width over, across and through the property now owned by the Defendant for the purpose of accessing his property to and from Highway 76 for all purposes.

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13. The Plaintiff is therefore entitled to a judgment granting him an easement by prescription 31.4 feet uniform in width over, across and through the property now owned by the Defendant for access to and from Highway 76 for all purposes.

FOR A THIRD CAUSE OF ACTION

14. The allegations of paragraphs one through ten above are incorporated herein by reference.
15. A plat dated May 1962 – Sept. 1964 – Oct. 1971 and recorded on May 5, 1972 in Plat Book AG at page 28 was prepared for Sula Miller. That plat showed and depicted the property to be acquired by the Plaintiff (120.8 acres) and a Right of Way to Highway 76 31.4 feet in width over, across and through lands then owned by Sula Miller.
16. The deed by which the Plaintiff acquired the 120.8 acres from Sula Miller referenced the plat recorded in Plat Book AG at page 28. The Plaintiff would not have purchased the 120.8 acres without having access to Highway 76 by means of the 31.4 foot Right of Way.
17. Based on the foregoing, the Plaintiff is entitled to the entry of judgment granting him an easement by implication 31.4 feet in width over, across, and through lands now owned by the Defendant.

FOR A FOURTH CAUSE OF ACTION

18. The allegations of paragraphs one through ten above are incorporated herein by reference.
19. The Plaintiff is entitled to the entry of an injunction pendent lite and permanently enjoining and preventing the Defendant from interfering with the right of the Plaintiff and his heirs and assigns to use the Right of Way from the purpose of access, ingress and egress to and from the Plaintiff's property and Highway 76 for all purposes.

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WHEREFORE, the Plaintiff prays that the Court inquire into the matters and things set out herein and issue its Order:

(1) granting the Plaintiff a judgment declaring the Right of Way exists beginning at the northwestern corner of the Plaintiff's Property, bordering on the northeastern boundary of the Plaintiff's Property for a distance of 31.4 feet uniform in width over, across and through the Defendant's property between the Plaintiff's Property and Highway 76;

(2) granting the Plaintiff a judgment that the Plaintiff and his heirs and assigns have and will have the unfettered right to use the Right of Way for the purpose of access, ingress and egress to and from the Plaintiff's Property and Highway 76;

(3) granting an injunction both pendent lite and permanently enjoining and preventing the Defendant and his heirs and assigns from interfering in any manner with the right of the Plaintiff and his heirs and assigns to use the Right of Way for the purpose of access, ingress and egress to and from the Plaintiff's Property and Highway 76;

(4) granting the Plaintiff an easement by prescription 31.4 feet uniform in width, over, across and through the property of the Defendant;

(5) granting the Plaintiff an easement by implication 31.4 feet uniform in width over, across and through the property of the Defendant;

(6) awarding the Plaintiff such other and further relief as may be just and proper under the circumstance and under Rule 54(c), SCRCP.

s/Jennifer Dowd Nichols, SC Bar #75916
L.K. Harrell, III
Jeremy C. Martin

Robert W. Dibble, Jr.
Of Counsel

Jennifer Dowd Nichols
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Attorneys for Plaintiff

April 3, 2018

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ELECTRONICALLY FILED - 2018 Apr 30 3:39 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

James L. Braswell, Sr.,

Plaintiff,

vs.

James F. Amick,

Defendant.

SUMMONS

17-CP-30-00214

TO: THE ABOVE NAMED PLAINTIFF

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, Townsend Building, 210 West Laurens Street, Laurens, South Carolina, within thirty (30) days after the service hereof; and if you fail to answer the Counterclaim within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Counterclaim.

TOWNSEND & THOMPSON
Registered Limited Liability Partnership

s/Thomas J. Thompson, SC Bar No. 5557
Thomas J. Thompson
210 West Laurens Street
Post Office Box 215
Laurens, SC 29360
Telephone: (864) 984-6554
Attorney for the Defendant

Laurens, South Carolina
April 30, 2018

ELECTRONICALLY FILED - 2018 Apr 30 3:39 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	Civil Action No.: 2017-CP-36-00214
James L. Braswell, Sr., Plaintiff,	
v.	ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM
James F. Amick, Defendant.	

The Defendant, James F. Amick, by undersigned counsel, and responds to the Amended Complaint as follows:

ANSWER

1. **Paragraph 1** consists of conclusory statements requiring no response; but, if deemed to require a response, it is denied.

2. **Paragraphs 2 and 3** are admitted.

3. It is admitted that the deeds referenced in **Paragraphs 4, 5 and 6** speak for themselves; all other allegations therein are denied and strict proof is demanded thereof.

4. **Paragraph 7** is denied and strict proof is demanded thereof.

5. It is admitted that there is a dispute between the parties. All other allegations in **paragraph 8** are denied and strict proof is demanded thereof.

6. It is admitted that Plaintiff has damaged Defendant's property while permitted to cross it; and that Defendant took reasonable steps to stop him from doing so. All other allegations in **paragraph 9** are denied, and strict proof is demanded thereof.

7. **Paragraph 10** is denied, and strict proof is demanded thereof.

8. Defendant answers **paragraph 11** as he answered paragraphs 1-10.

9. **Paragraphs 12 and 13** are denied and strict proof is demanded thereof.

10. Defendant answers **paragraph 14** as he answered paragraphs 1-10.

11. It is admitted that the plat referenced in **paragraph 15** speaks for itself; all other allegations therein are denied, and strict proof is demanded thereof.

12. It is admitted that the deed referenced in **paragraph 16** speaks for itself; all other allegations therein are denied and strict proof is demanded thereof.

13. Defendant answers **paragraph 18** as he answered paragraphs 1-10.

14. It is admitted that the Court has determined that Plaintiff is not entitled to injunctive relief *pendente lite;* this determination is the law of the case; and Plaintiff is estopped and barred from again seeking the same relief. All other allegations in **paragraph 19** are denied and strict proof is demanded thereof.

Defendant having answered the allegations in the Amended Complaint now asserts the following.

AFFIRMATIVE DEFENSES

15. Plaintiff's claims are barred by his failure to join one or more necessary parties, to wit: the Plaintiff's grantor Sula Miller or her heirs or assigns and abutting property owner William Ballentine or his heirs or assigns.

16. Plaintiff's claims are barred by the applicable statute of limitations.

17. Plaintiff's claims are barred by laches.

18. Plaintiff's claims for equitable relief are barred by unclean hands.

19. Plaintiff's claim for injunctive relief pendente lite is barred by res judicata, collateral estoppel and the law of the case.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

20. Defendant-Counterclaimant, James F. Amick ("**Amick**") is the owner of the property described in the 1988 Title to Real Estate ("**Amick Title**") a true copy of which is attached hereto and incorporated herein by this reference as Defendant's Exhibit 1 (Hereafter, the property is the "**Amick land**".) Amick has continuously owned and occupied this property since 1988 and has turned it to his own preferred and chosen uses, consistent with his allegations herein.

21. Plaintiff-Counter defendant, James L. Braswell, Sr. ("**Braswell**") claims ownership rights in property described in the June 20, 1972 deed (the "**Braswell deed**") a true copy of which is attached hereto and incorporated herein by this reference as Defendant's Exhibit 2 (Hereafter, the property is the "**Braswell land**.") The Braswell deed speaks for itself; and it does not create, reserve, dedicate or refer in any way to a right-of-way.

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22. The Braswell deed refers to a plat (the "**Braswell plat**"), for a description of the Braswell land and no other purpose; the Braswell plat speaks for itself; and the Braswell plat does not "designate and dedicate", reserve, create, transfer or otherwise bring into being a right-of-way over the land that is now Amick's land.

23. At and prior to the recordation date of the Braswell deed, June 20, 1972, Sula Miller did not own the land over which Miller is alleged to have granted a right-of-way by reference to the Braswell plat.

24. At and prior to the recordation date of the Braswell plat, May 5, 1972, Sula Miller did not own the land over which the Braswell plat is alleged to "designate and dedicate" a right-of-way;

(a) Amick previously provided the information stated in the two preceding paragraphs to Braswell, through counsel, along with documents of title demonstrating the truth of these facts; and,

(b) Plaintiff recently conceded the truth of these facts in a pleading to the Court, stating: "*At the time Mr. Braswell acquired his property from Sula Miller, Sula Miller no longer owned the property now owned by Mr. Amick[.]*" (Plaintiff's motion for summary judgment, p 3, note 3)

25. No right exists at law or equity which could have allowed Sula Miller to create a right-of-way over property she did not then own; and, there is no basis in law and fact for the amended complaint in this matter; and Plaintiff and his counsel have been aware of this for many months prior to filing the amended complaint, which is and should be held to be frivolous and signed and filed in violation of Rule 11(a) SCRCP.

26. In years past, Amick gave Braswell permissive access to a portion of the Amick land for Braswell's ingress/egress; thereafter Amick withheld that permission as is his right; no easement was created by these events; and none may be inferred therefrom, as a matter of law.

27. The recorded deeds and plats in the chains of title of the parties and of the adjoining Ballantine property establish that Amick is entitled to a declaratory judgment declaring that no right-of-way exists over the Amick land for the benefit of the Braswell land.

28. In the alternative, if the right-of-way in question is determined to run over the Amick land, then the recorded deeds and plats in the chains of title of the parties and of the adjoining Ballantine property establish that Amick is entitled to a declaratory judgment declaring that the right-of-way it is not wider than twelve and one-half feet as shown on the 1964 and 1979 plats attached hereto as Defendant's Exhibits 3 and 4.

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29. If a right-of-way is determined to run over the Amick land, Amick is entitled to a declaratory judgment that Braswell cannot expand the scope or size of the right-of-way beyond that originally granted to him in or his predecessor in interest, by way of this court action.

30. The recorded deeds and plats in the chains of title of the parties and of the adjoining Ballantine property establish that Braswell is not entitled to any injunctive or other equitable relief.

WHEREFORE, having answered the amended complaint and stated his counterclaim, James F. Amick prays for the following relief:

1. That the Court deny Plaintiff's request for injunctive relief, both pendente lite and permanently;

2. That Plaintiff take nothing by way of his amended complaint;

3. That the Court enter its declaratory judgment in favor of James F. Amick, his heirs and successors in interest, declaring that no right-of-way or easement exists on the Amick land in favor of the Braswell land;

4. In the alternative, if a right-of-way is determined to run over the Amick land, it is prayed that the Court enter its declaratory judgment in favor of James F. Amick, his heirs and successors in interest, declaring that the right-of-way at issue:

(a) Is limited to twelve and one-half feet in width;

(b) Is limited to reasonable ingress/egress only;

(c) Reasonable ingress/egress means ingress/egress by persons or vehicles which do no damage to the Amick land, does not change the nature, character, quality or value of the land on which the right-of-way lies; and does not interfere with Amick's, his guests', invitees', heirs' or assignees' use of the Amick land;

5. That the Court's declaratory judgment include findings of fact and conclusions of law that Braswell, his heirs and successors in interest do not hold an easement by prescription, necessity, implication, adverse possession or otherwise over any portion of the Amick land; and,

6. That the Court grant Amick all other reasonable related relief as the Court deems proper.

All of the above is submitted in good faith and not for any improper purpose, by

TOWNSEND & THOMPSON
Registered Limited Liability Partnership
s/Thomas J. Thompson, SC Bar No. 5557
Thomas J. Thompson
210 West Laurens Street
P.O. Box 215
Laurens SC 29360
Telephone: (864) 984-6554

Attorneys for Defendant-Counterclaimant

Laurens South Carolina
April 30, 2018

ELECTRONICALLY FILED - 2018 Apr 30 3:39 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF NEWBERRY	) Civil Action Number: 2017-CP-36-00214
James L. Braswell, Sr.,	)
	)
Plaintiff,	)
	)
vs.	) **MOTION FOR INJUNCTION PENDENTE**
	) **LITE AND ADVANCEMENT ON THE**
James F. Amick,	) **CALENDAR**
	)
Defendants.	)
	)

FILED
NEWBERRY COUNTY
2017 OCT 31 PM 4:47
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, James L. Braswell, Sr., will move before the presiding judge of the Court of Common Pleas for Newberry County at a time and place to be fixed by the Court for an order advancing this matter on the calendar pursuant to Rule 57, SCRCP, and issuing an injunction pendente lite pursuant to Rule 65, SCRCP, preventing the Defendant from impeding and interfering in any way with the Plaintiff's use of the 31.14 foot right of way over, across and through the lands of the Defendant to access his property to and from Highway 76. This motion is based on the following grounds:

1. The Plaintiff has instituted this action for Declaratory Judgment to establish the width of the right of way as 31.14 feet and the right of the Plaintiff and his heirs and assigns to use the right of way now and in the future without interference. A copy of the Complaint in this action is attached hereto as Exhibit A, and, by reference, incorporated herein. The Plaintiff in this action also seeks an injunction both pendente lite and permanently preventing the Defendant from interfering with and impeding

the use by the Plaintiff of the right of way to access his property to and from Highway 76.

2. The Defendant has repeatedly interfered with the use of the right of way and impeded the right of way in a manner which interferes with the Plaintiff's ability to access his property to and from Highway 76 and which interferes with the Plaintiff's ability to harvest hay, seed grain and silage grown on the Plaintiff's property and the Plaintiff's ability to prepare his property for planting, tending and fertilizing those crops, which would cause the Plaintiff irreparable harm.
3. The Defendant has also repeatedly interfered and blocked the right-of-way in a manner that prevents Mr. Braswell's invitees and guests from accessing Mr. Braswell's property to and from Highway 76.
4. Based on the above and the affidavit attached hereto, the Plaintiff is likely to succeed on the merits. As set forth in the Affidavit attached hereto, the Plaintiff does not have an adequate remedy at law as monetary damages will not remedy the Defendant's interference with the Plaintiff's access to and from his property from Highway 76. The Defendant's interference with the Plaintiff's property rights denies the Plaintiff the full and beneficial use of the same.
5. The Plaintiff hereby petitions the Court pursuant to Rule 57, SCRCP, for a speedy hearing on the action for Declaratory Judgment, to advance this action on the appropriate calendar and for an injunction pendent lite.
6. The Plaintiff is informed and believes that the Defendant will not suffer any harm as the result of the issuance of the requested temporary injunction and, therefore, either

no bond should be required by the Court or a bond in only a nominal amount should be set by the Court.

7. By way of the Complaint in this action and the affidavits submitted herewith, the Plaintiff has established a prima facie case showing the width and location of the right of way and his right to make use of the right of way to access his property to and from Highway 76. The Plaintiff is informed and believes that he is entitled to the issuance of the requested injunction pendent lite.

Robert W. Dibble, Jr.,
Of Counsel

L. K. Harrell, III
Jeremy C. Martin
Jennifer Dowd Nichols
Harrell, Martin & Peace, PA
Attorneys for Plaintiff
Post Office Box 1000
135 Columbia Avenue
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

October 31, 2017
Chapin, South Carolina

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF NEWBERRY) Civil Action Number: 2017-CP-36-04214

James L. Braswell, Sr.,

Plaintiff,

vs.

James F. Amick,

Defendants.

COMPLAINT
(Non-Jury)

FILED
NEWBERRY COUNTY
2017 NOV 15 PM 2:06
ELIZABETH P. FOLK
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges:

FOR A FIRST CAUSE OF ACTION

1. This is an action brought pursuant to Rule 57, SCRCP, and S.C. Code Ann. §15-53-30 for a declaratory judgment and for further relief pursuant to S.C. Code Ann. §15-53-120. The Plaintiff is a person interested under a deed with respect to certain rights pertaining to the use by the Plaintiff of a right of way over, across, and through land owned by the Defendant. Pursuant to S.C. Code Ann. § 15-53-80, all persons who have or claim any interest which will be affected by the requested declaratory judgment have been made parties to this action.

FILED
NEWBERRY COUNTY
2017 OCT 31 PM 4:47
ELIZABETH P. FOLK
CLERK OF COURT

EXHIBIT
A
04

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STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF NEWBERRY	) Civil Action Number: 2017-CP-36-00214
James L. Braswell, Sr.,	)
	)
Plaintiff,	)
	)
vs.	) **MOTION FOR INJUNCTION PENDENTE**
	) **LITE AND ADVANCEMENT ON THE**
James F. Amick,	) **CALENDAR**
	)
Defendants.	)
	)
_____	)

TO THE ABOVE NAMED DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, James L. Braswell, Sr., will move before the presiding judge of the Court of Common Pleas for Newberry County at a time and place to be fixed by the Court for an order advancing this matter on the calendar pursuant to Rule 57, SCRCP, and issuing an injunction pendente lite pursuant to Rule 65, SCRCP, preventing the Defendant from impeding and interfering in any way with the Plaintiff's use of the 31.14 foot right of way over, across and through the lands of the Defendant to access his property to and from Highway 76. This motion is based on the following grounds:

1. The Plaintiff has instituted this action for Declaratory Judgment to establish the width of the right of way as 31.14 feet and the right of the Plaintiff and his heirs and assigns to use the right of way now and in the future without interference. A copy of the Complaint in this action is attached hereto as Exhibit A, and, by reference, incorporated herein. The Plaintiff in this action also seeks an injunction both pendente lite and permanently preventing the Defendant from interfering with and impeding

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the use by the Plaintiff of the right of way to access his property to and from Highway 76.

2. The Defendant has repeatedly interfered with the use of the right of way and impeded the right of way in a manner which interferes with the Plaintiff's ability to access his property to and from Highway 76 and which interferes with the Plaintiff's ability to harvest hay, seed grain and silage grown on the Plaintiff's property and the Plaintiff's ability to prepare his property for planting, tending and fertilizing those crops, which would cause the Plaintiff irreparable harm.
3. The Defendant has also repeatedly interfered and blocked the right-of-way in a manner that prevents Mr. Braswell's invitees and guests from accessing Mr. Braswell's property to and from Highway 76.
4. Based on the above and the affidavit attached hereto, the Plaintiff is likely to succeed on the merits. As set forth in the Affidavit attached hereto, the Plaintiff does not have an adequate remedy at law as monetary damages will not remedy the Defendant's interference with the Plaintiff's access to and from his property from Highway 76. The Defendant's interference with the Plaintiff's property rights denies the Plaintiff the full and beneficial use of the same.
5. The Plaintiff hereby petitions the Court pursuant to Rule 57, SCRCP, for a speedy hearing to advance this action on the appropriate calendar for an injunction pendent lite.
6. The Plaintiff is informed and believes that the Defendant will not suffer any harm as the result of the issuance of the requested temporary injunction and, therefore, either

no bond should be required by the Court or a bond in only a nominal amount should be set by the Court.

7. By way of the Complaint in this action and the affidavits submitted herewith, the Plaintiff has established a prima facie case showing the width and location of the right of way and his right to make use of the right of way to access his property to and from Highway 76. The Plaintiff is informed and believes that he is entitled to the issuance of the requested injunction pendent lite.

s/Jennifer Dowd Nichols
Jennifer Dowd Nichols, SC Bar 75916
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Robert W. Dibble, Jr.,
Of Counsel

9/27/2019
Newberry, South Carolina

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2. The Defendant, James F. Amick, is a resident of Newberry County, South Carolina and owns property in Newberry County, South Carolina, a portion of which property is the subject of this action.

3. This Court has jurisdiction over the parties to and the subject matter of this action. Venue is proper in Newberry County, South Carolina.

4. The Plaintiff acquired 120.80 acres ("Plaintiff's Property") from Sula S. Miller Harley ("Sula Miller") by deed dated June 30, 1972 and recorded in the Office of the Clerk of Court for Newberry County on June 20, 1972 in Deed Book 109 at page 270 ("Deed").

5. The Plaintiff's Property is described in the deed as follows:ADD

6. The plat referenced in the Deed ("Plat") and by which the Plaintiff's Property is described in the Deed designates and dedicates a "R/W to HWY" over, across and through adjacent property then owned by Sula Miller ("Adjacent Property"). The "R/W to HWY" begins at an iron pin located at the northwestern corner of the Plaintiff's Property, borders on the northeastern boundary of the Plaintiff's Property as has a uniform width of 31.14 feet over, across and through the Adjacent Property between the northeastern boundary of the Plaintiff's Property and Highway 76 ("Right of Way").

7. The Right of Way over, across, and through the Adjacent Property connects the Plaintiff's Property to Highway 76 and provides the Plaintiff with access to and from the Plaintiff's Property over, across, and through the Adjacent Property to and from Highway 76.

8. The Defendant now owns the portion of the Adjacent Property on which the Right of Way is located. A dispute has arisen between the Plaintiff and the Defendant James F. Amick concerning the width and the location of the Right of Way.

9. The Defendant, James F. Amick, has repeatedly and wrongfully acted and continues to act in a manner which impedes the Plaintiff from using the Right of Way to access the Plaintiff's Property to and from Highway 76.

10. Based on the foregoing, the Plaintiff is entitled to (a) a judgment declaring that there exists a right of way beginning at the northwestern corner of the Plaintiff's Property, bordering on the northeastern boundary of the Plaintiff's Property for a distance of 31.14 feet uniform in width over, across and through the Adjacent Property, now owned by the Defendant between the Plaintiff's Property and Highway 76 and (b) a judgment declaring that the Plaintiff and his heirs and assigns has and will have the unfettered right to use the Right of Way for the purpose of access, ingress and egress to and from the Plaintiff's Property and Highway 76 without interference of kind or nature by the Defendant.

FOR A SECOND CAUSE OF ACTION

11. The allegations contained in paragraphs 1 through 10 above are incorporated herein by reference.

12. At the time the Plaintiff acquired the Plaintiff's Property from Sula Miller, Sula Miller held title to both (a) the property conveyed to the Plaintiff by the deed recorded in Deed Book 109 at page 270 and (b) the property between the property conveyed to the Plaintiff and Highway 76 over, across, and through which the Right of Way is located.

13. The Plaintiff has no means of accessing his property other than the Right of Way over lands then owned by Sula Miller and now owned by the Defendant.

14. Based on the foregoing, the Plaintiff is entitled to the entry of a judgment granting him an easement of necessity, 31.4 feet uniform in width between his property and Highway 76 over, across and through the property now owned by the Defendant.

FOR A THIRD CAUSE OF ACTION

15. The allegations of paragraphs one through ten above are incorporated herein by reference.

16. Continuously since 1972, the Plaintiff has utilized as necessary a Right of Way 31.4 in width over, across and through the property now owned by the Defendant for the purpose of accessing his property to and from Highway 76 for all purposes.

17. The Plaintiff is therefore entitled to a judgment granting him an easement by prescription 31.4 feet uniform in width over, across and through the property now owned by the Defendant for access to and from Highway 76 for all purposes.

FOR A FOURTH CAUSE OF ACTION

18. The allegations of paragraphs one through ten above are incorporated herein by reference.

19. A plat dated May 1962 – Sept. 1964 – Oct. 1971 and recorded on May 5, 1972 in Plat Book AG at page 28 was prepared for Sula Miller. That plat showed and depicted the property to be acquired by the Plaintiff (120.8 acres) and a Right of Way to Highway 76 31.4 feet in width over, across and through lands then owned by Sula Miller.

20. The deed by which the Plaintiff acquired the 120.8 acres from Sula Miller referenced the plat recorded in Plat Book AG at page 28. The Plaintiff would not have purchased the 120.8 acres without having access to Highway 76 by means of the 31.4 foot Right of Way.

(4) granting the Plaintiff an easement of necessity 31.4 feet uniform in width between his property and Highway 76 over, across and through the property of the Defendant;

(5) granting the Plaintiff an easement by prescription 31.4 feet uniform in width, over, across and through the property of the Defendant;

(6) granting the Plaintiff an easement by implication 31.4 feet uniform in width over, across and through the property of the Defendant;

(7) awarding the Plaintiff such other and further relief as may be just and proper under the circumstance and under Rule 54(c), SCRCP.

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Of Counsel

May 11, 2017

State of South Carolina	)	
	)	Court of Common Pleas
County of Newberry	)	
		2017-CP-36-00214
James L. Braswell, Sr.	)	
	)	
Plaintiff	)	
	)	
vs.	)	Transcript of Record
	)	
	)	
James F. Amick	)	
Defendant	)	

January 6-9, 2020
Newberry, South Carolina

B E F O R E:

Honorable Grace Gilchrist Knie, Judge

A P P E A R A N C E S:

Robert W. Dibble, Jr., Esq.
Jennifer Dowd Nichols, Esq.
Attorneys for the Plaintiff

Karl S. Brehmer, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

ADRIANE SINCLAIR, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dibble:

Q Ms. Sinclair, my name is Bob Dibble, as you know. Did you, at my request, take some photographs of the Amick and Braswell properties sometime in 2018?

A Yes, sir.

Q I will hand you three photographs to see if you can identify them as pictures you took of their property.

A Yes, sir.

Q And those photographs, does each of those photographs accurately represent the condition of the property when you took the pictures?

A Yes, sir.

MR. DIBBLE: We would offer those as Exhibits 1, 2 and 3.

MR. BREHMER: What were dates taken, Your Honor?

THE COURT: And if you will state the date, the approximate date that you took the photographs.

A May 7th.

THE COURT: Of what year?

A Oh, Lord.

Q 2018.

A Yeah.

THE COURT: Is that correct?
A Yes, ma'am.
THE COURT: May 7th of 2018, Counsel. Any objection to Plaintiff's Exhibits 1, 2, and 3 coming in?
MR. BREHMER: No. No, ma'am.
THE COURT: All right. So Plaintiff's Exhibits 1, 2, and 3 are admitted into evidence without objection.
(Whereupon, Plaintiff's Exhibits 1 through 3 were admitted into evidence.)
MR. DIBBLE: I have no further questions of this witness.
THE COURT: Counsel, cross-examination?

CROSS-EXAMINATION

By Mr. Brehmer:
Q Ms. Sinclair, what is your association with the Plaintiff?
A I've known him for a long --
Q I'm sorry. Can you speak --
A I said I've known Mr. Jim for a long, long time.
Q How do you know him?
A I mean, him and my dad were in the community together and just both, I don't know. I never worked for him or anything like that.
Q Okay.
A Just family friends, I would reckon.

THE COURT: Good morning, sir. If you'll please come forward. Make yourself comfortable, sir. We will have you sworn by our clerk.

BOYD BEDENBAUGH, being first duly sworn, testified as follows:

THE COURT: Thank you, sir. If you would state your full name and spell your last.

THE WITNESS: Boyd W. Bedenbaugh, B-e-d-e-n-b-a-u-g-h.

THE COURT: Thank you.

COURT REPORTER: Judge, I'm going to mark some Exhibits right quick. Do you want those marked?

MR. DIBBLE: Yes, I do.

COURT REPORTER: This might take me a few minutes.

THE COURT: Okay. Take your time. We'll be at ease while they're marking these, okay, so just be at ease.

THE WITNESS: All right.

(Whereupon, Plaintiff's Exhibit numbers 4 through 22 were marked for identification.)

MR. DIBBLE: Your Honor, these are certified copies of land records from Newberry County consisting of deeds and plats and we will offer them into evidence at this time.

THE COURT: Okay. What are the numbers, sir?

MR. DIBBLE: 4 through 22.

THE COURT: Any objection?
MR. BREHMER: None, Your Honor.
THE COURT: Okay. And so Plaintiff's Exhibits 4 through 22 will come in without objection.
(Whereupon, Plaintiff's Exhibit numbers 4 through 22 were admitted into evidence.)
THE COURT: All right. Are we ready to examine Mr. Bedenbaugh?
MR. DIBBLE: Yes. I believe Mr. Brehmer has agreed that we don't need to qualify our title abstractors as experts.
MR. BREHMER: That's correct.
THE COURT: Okay. All right.

DIRECT EXAMINATION

By Mr. Dibble:

Q You are Mr. Boyd Bedenbaugh, is that correct?
A Yes.
Q All right. And, at my request, did you examine the title to Mr. Braswell's 120-acre tract?
A Yes, sir.
Q And did you examine the title to Mr. Amick's 17 --
A Yes, sir.
Q -- 17-acre tract? Look at Exhibit number 4. Can you tell the Court what that is?
A It is a deed from A.B. Miller to Sula S. Miller and

A.B. Miller.
Q Now, what does that deed convey as?
A For, it's two tracts of land. One was 8.6 acres and one was 286 acres.
Q All right. And is it your opinion that Ms. Miller was the owner of that 286-acre tract?
A Please repeat.
Q Is it your opinion that Ms. Miller was the owner of that 286-acre tract?
A At this time, a half-owner; yes, sir.
MR. BREHMER: Your Honor, I'm going to object to Mr. Bedenbaugh giving legal opinions. It's one thing to give an opinion as to the abstract, but I don't think he can provide legal--
THE COURT: What -- and your objection as, is as to the ownership of the property --
MR. BREHMER: Yes.
THE COURT: -- and her being a fifty percent owner.
MR. BREHMER: Yes.
THE COURT: He can just testify as to --
MR. BREHMER: What the record -- and to what the records were and what the chain of title says. But, as far as, his legal opinion, he -- Mr. Bedenbaugh is an abstractor. He is not a lawyer. He does not have the qualifications to offer legal opinions.

THE COURT: All right. And so I will sustain that objection and limit the testimony of Mr. Bedenbaugh to the documents. Okay. Thank you.

MR. DIBBLE: Okay.

Q What is Exhibit number 5, Mr. Bedenbaugh?

A Yes. It is a deed from A.B. Miller to Sula S. Miller, again, for two tracts, 8.6-acre tract and a 286-acre tract.

Q All right. And what is Exhibit number 6?

A Exhibit 6 is another deed from Sula S. Miller to Zeta or Zeta B. Bickley for 12.64 acres.

Q And what is Exhibit number 7?

A The, what number?

Q Number 7.

A Number 7 is a plat showing the 12.64-acre tract plat.

Q And going back to Exhibit number 6, does that deed reference a plat on the face of the deed?

A Yes. U at 31, at page 31.

Q And is Exhibit number 7 that plat?

A Yes, sir.

Q What is Exhibit number 8?

A It is a deed from Sula B. Miller to L.K. Bedenbaugh.

Q And what property does that convey to Mr. Bedenbaugh?

A 4.04 acres in Plat Book U at 61.

Q All right. And would you please read the property

description in that deed into the record.
A Okay. All that certain piece, parcel, or lot of land situated in the County of Newberry in the State of South Carolina being bounded as follows: On the North, highway 76. On the East, lands of Sula S. Miller, grantor. On the West by a dirt road. On the North -- on, sorry, the West by a dirt road. On the South, land of Sula Miller and Zeta Bickley. A lot containing 4.04 acres more or less beginning at a point in center of U.S. Highway 76 marked by an iron pipe on side of highway and running with the highway South 55-50 East 214 feet to a point in center of highway marked by an iron pipe on side of highway. Then South 44-00 West 9.13 to an iron pipe. Then North or N 45-00 W, West, 3.00 to an iron pipe. Then North 73-00 West, 4.15 to an iron pipe. Then 53-00 West 5.4 to an iron pipe. Then South 44-00 West 3.75 to an iron pipe in center of highway. Iron pipe by side of highway. Plat recorded in Plat Book U at 61.
Q And what is Exhibit number 8, Mr. Bedenbaugh?
A Number 8? I just read number 8.
Q I'm sorry. Exhibit 9. I apologize.
A Number 9 is a deed from Sula S. Miller to L.K. Bedenbaugh.
Q And what property does that deed convey?
A It conveys a lot containing 3.13 acres.

Q And what is Exhibit number 10?
A That is a plat.
Q Is that plat referred to in Exhibit number 8 and 9?
A Yes, sir. Plat Book U at 61.
Q And on the top portion of that Exhibit, on the 4.04-acre tract, does that plat show a dirt road to the west of the 4.04 acres?
A Yes, sir.
Q Does it have a lithe shown on that four-point -- on that dirt road?
A I do not see one, no. Let's see. Oh, it says, 12.5 feet.
Q Correct. All right. What is Exhibit number 11?
A Exhibit 11 is a deed from L.K. Bedenbaugh to Henry E. Bickley for 3.13 acres in Plat Book U, Page 61 and the 4.04 acres in Plat Book U at Page 61.
Q And if you add up the 3.13 acres and the 4.04 acres, how many acres total are conveyed by the deed?
A 7.17.
Q All right. And the second property description that the plat references?
A On --
Q On the --
A On Exhibit 11?
Q On Exhibit 11, yes.

A Okay. The second property description?
Q Yes. If you will read that into the record, please.
A All that piece, parcel, or tract of land situate lying and being in the Tax District number 3, County of Newberry, State of South Carolina containing four and four-hundredths, (4.04), acres more or less, said tract being more particularly describe -- said tract being more particularly described on a plat thereof made by Claude E. Johnson, surveyor, dated September 28, 1964 and recorded in the office of the Clerk of Court for Newberry County in Plat Book U at Page 61. Said tract being bounded on the north by U.S. Highway 76, on the east by land of Henry E. Bickley, on the south by lands of Sula Bickley -- Zeta Bickley -- sorry -- lands of Sula S. Miller. And on the west by a dirt road which separates same from lands of Ballentine and being the identical tract conveyed to the Grantor by deed of Sula S. Miller dated November 28th, 1964 and recorded in Deed Book 87 at Page 429.
Q Now, looking at the plat which is Exhibit number 10, that dirt road is shown to the west of the 4.04 acre tract. Is it not?
A Yes, sir.
Q And it is not shown as being on the 4.04 acre tract on that plat, is it?
A That is correct.

Q And the property description of that 4.04 acres says that acreage is bounded by a dirt road which separates the 4.04 acres from lands of Ballentine. Is that correct?
A Correct.
Q And I believe you testified that the width of that road shown on that plat is 12.5 feet.
A Yes.
Q What is Exhibit number 12?
A Let's see. Exhibit number 12 is a deed from Roy E. Bickley, administrator, CTA, of the Estate of Zeta B. Bickley, deceased; and Henry E. Bickley, deceased, respectively; to L.K. Bedenbaugh.
Q And what does that deed convey?
A It conveys 12.64 acres in Plat Book U at Page 31, I think.
Q I think that's correct. It's 31?
A It is 31.
Q And this -- does it convey an easement property also?
A And also the 7.17-acre, let's see, tract and it doesn't give a plat book reference, I don't believe.
Q Well, the 7.17 acres is a combination of the 4.04-acre tract and the 3.13-acre tract. Is that correct?
A Correct.
Q Now, would you read the property description from the 7.17 acres into the record.

A Also all that piece, parcel, or tract of land situate, lying, and being in Tax District number 3 with the improvements thereon containing seven and seventeen-hundredths (7.17) acres more or less being bounded by U.S. Highway 76 by lands above-described, by lands of Sula S. Miller, and by a dirt road which separates the conveyed premises from lands of Ballentine and being the identical premises conveyed to Henry E. Bickley by deed of conveyance of L.K. Bedenbaugh recorded in the Office of the Clerk of Court of Newberry County in Deed Book 90 at Page 476.

Q And what is Exhibit number 13?

A That is a deed from L.K. Bedenbaugh to Oscar V. Harley, Sr., for 12.64 acres in Plat Book U at 31. It has U at 3 but then it has 31 above it and 7.17 acres.

Q And in the property description, the 7.17 acres?

A It's -- you want me to read it?

Q And what are the boundaries of that?

A Okay. Bounded by U.S. Highway 76 by lands above-described, which means the 12.64 acres, by lands of Sula S. Harley and by a dirt road which separates the conveyed premises from lands of Ballentine.

Q All right. Thank you. Now, is, do know whether Sula Harley is Sula Miller?

A I'm assuming she is. I believe I looked for a

marriage license and I couldn't find one.
Q All right. What is Exhibit number 14?
A It's a deed from Oscar V. -- I believe that's Oscar -- V. Harley, Sr., to Steven R. Gaston and Lynn B. Gaston for 12.64 acres in Plat Book U at 31 and 7.17 acres.
Q And does the 7.17-acre property description reference a dirt road?
A Let me see. Yes, it does and which separates it from the premises -- separates the premises from the land of Ballentine.
Q What is Exhibit number 15?
A This is a deed from Sula S. Miller Harley to James L. Braswell.
Q Now, does that -- what is that deed dated?
A Please repeat the question.
Q What is the date of that deed?
A The date when it was signed?
Q Yes.
A June 20th, 1972.
Q All right. Now, does the property description there make reference to a plat?
A Yes, sir.
Q And what does that plat reference?
A AG, I believe, at 28.
Q And what is Exhibit number 16?

A It is of a plat. I don't see a reference number, but it's 120.80 acres.
Q And if you go back to Exhibit number 15, I draw your attention to the language in the middle of the property description which says, This tract of land is more particularly described on a plat made by Claude E. Johnson, L.S. 1 through 73, surveyed, May 1962, September 1964, and October 1971. I'd ask you to look at Exhibit 16 and see if that language appears on that plat.
A Yes sir, it does.
Q So, do you have any doubt in your mind--
MR. BREHMER: Objection, Your Honor, it is leading.
THE COURT: Okay. I will sustain that and ask you to rephrase.
Q Do you have any doubt that the Exhibit 16 is the plat referred to in Exhibit 15?
A No, sir. I do not have any doubt.
Q And at the top of Exhibit 16, there is a notation of R/W to HW. Do you see that?
A Yes.
Q And also on Exhibit 16, on the east side is a farm road. Do you see that?
A Yes, sir.
Q And you see the location of a pond in the deed?
A Yes, sir.

Q And who is shown on that plat as the owner of the land to the northeast of 120 acres?
A Sula Miller.
Q And what is Exhibit number 17?
A This is a deed from Steven R. Gaston and Lynn B. Gaston to Grady Tarlton. It is for 12.64-acre tract shown in Plat Book U at Page 31. Also 7.17-acre tract, less a 1.35-acre tract on Highway 76.
Q All right. Now, on the description, the 7.17-acre tract, what are the bounds of that?
A Bounded by U.S. Highway 76 by the lands herein before described, meaning the 12.64 acres, lands of Sula S. Miller and by a dirt road, which separates the premises from lands of Ballentine.
Q All right. What is Exhibit 18?
A This is also a deed from Grady Tarlton to H.L. Brock and Thelma D. Brock for 17.080 acres as shown in Plat Book AU at 114.
Q And that 17.080 acres, is that a combination of the 12.64 acres and the 17.17 acres?
A Let's see. One second.
Q Let me, I direct your attention to Exhibit number 19.
A Sir?
Q Look at Exhibit number 19.
A 19. Okay.

Q Is that a copy of the plat referred to in Exhibit number 18?
A It appears so. Yes, sir.
Q And does that plat show it to be the combination of the 4.04 acres and 3.17 acres and 12.64 acres?
A It does appear to be. Yes, sir.
Q And does it show Mr. Ballentine as owning the property lying to the northwest of that property?
A Yes, sir.
Q And does it show a dirt road lying to the west of the 17.08-acre tract of land?
A Yes, it does.
Q What is Exhibit number 20?
A Let's see. One second. Exhibit 20 is a deed from Grady Tarlton to H.L. Brock and Thelma D. Brock.
Q And what does that deed convey?
A 17.080 acres in Plat Book AU at Page 114.
Q And what is Exhibit number 21?
A Exhibit 21 is a deed from H.L. Brock and Thelma O. Brock to James Franklin Amick and Tamela F. Amick for 17.080 acres in Plat Book AU Page 114.
Q And what is Exhibit number 22?
A This is a deed from Tamela F. Amick to James Franklin Amick for a tract of land containing 17.080 acres as shown in Plat Book AU, Page 114.

Q Now, when you have occasion to abstract titles, how long have you been doing that?
A About 27 years.
Q Do you reach conclusions as to ownership of property, have you abstracted a title?
A Yes, sir.
Q Do you report that ownership to those people that ask you to run the title for them?
A Repeat, please.
Q Do you report, do you report the ownership of property to people who ask you to search title?
A Yes.
Q Based on your experience and your knowledge of this title, is it your opinion today that Mr. Amick is the owner of the 17.08 tract?
MR. BREHMER: We are going to object, Your Honor. One, it's a leading question. And, two, it's a legal conclusion. The documents speak for themselves.
THE COURT: Okay. Why don't we rephrase that and just ask him what is shown on the documents.
Q From the documents, the documents we have seen today, could you tell the Court who owns the 17.08-acre tract?
A According to this document, James Franklin Amick.
Q Okay. And can you tell the Court, based on these documents, who owns the 120-acre tract?

A Mr. Braswell.
Q And does the 17.04-acre tract lie between the 120-acre tract and Highway 76?
A Yes, sir.
MR. DIBBLE: That's it. Answer any questions Mr. Brehmer has, please.
THE COURT: Cross-examination.
MR. BREHMER: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Brehmer:
Q Mr. Bedenbaugh, can we agree that the documents that you researched, what the official county records show is that Sula Miller sold the 4.04 acres to L.K. Bedenbaugh in September of 1964?
A I'll have to look at that particular document. But, you got an Exhibit number?
Q Yes sir, I do. Hold on just one second. It would be Exhibit number 8, I believe.
A Okay. Let's see. Exhibit number 8 says, Sula S. Miller conveys to L.K. Bedenbaugh 4.04 acres.
Q Now, can we also agree that Exhibit number 10, Plat U-61--
A Yes, sir.
Q Documents that or a configuration of that property?
A What was your question?

Q Plat Book U-61 --
A Yes.
Q -- recorded or prepared by Mr. Johnson September 28th, '64 --
A Right.
Q -- records the dimensions of the 4.04 acres?
A Yes, sir.
Q Okay. Now, do you have Exhibit number 10 in front of you?
A It's right here.
Q In your hands?
A Yes.
Q At the top it says, U.S. Highway 76, correct?
A Yes.
Q And can we agree that U.S. Highway number 76 does not have any longitudinal coordinates on that, recorded on U-61?
A Longitudinal coordinates?
Q Longitudinal and latitudinal coordinates?
A I would think not.
Q It does not, right?
A It just has the surveyor's notations.
Q Surveyor's notations?
A Yes, sir.
Q And surveyor's notations -- and as an abstractor when

you're looking at a plat, surveyor's notations are used to tell where certain things are, correct, in the general area?

A In relation to the other lines, yes.

Q In relation to the other lines. Now, U.S. Highway number 76 is noted on this surveyor's notation that it is north of the 4.04 acres, correct?

A Correct.

Q In a general area, correct?

A Right.

Q But there were no longitudinal or latitudinal coordinates so that we could go out there and find where U.S. Highway number 76 began or ended, correct?

A Correct.

Q Okay. There was no dimensions as to the width of U.S. Highway number 76, was there?

A Correct.

Q Okay. Now, there is also -- can I come around and point to where I --

A That's fine with me.

Q Okay.

THE COURT: Yes, sir. You may approach the witness.

Q Exhibit number 10.

A Okay.

Q Mr. Bedenbaugh, there is a squiggly, and that's my

term, I don't think that's a legal term, but a squiggly line running down through the plat.

A Right.

Q Is that a denotation of a creek?

A Let's see what it says. It does not. I don't believe it says creek, but, in my experience, I would assume it's a creek or a gully.

Q Okay.

THE COURT: And, Counsel, you're referring to the line that's running in the middle of that --

MR. BREHMER: Yes. Yes.

THE COURT: -- piece of property.

MR. BREHMER: Yes. On Exhibit 10 --

THE COURT: Yes, sir.

MR. BREHMER: -- U-61.

Q Would that be a surveyor's notation?

A Well, I'm assuming the surveyor added it to the plat, yes.

Q Okay. Now, can we agree that it does not have longitudinal and latitudinal coordinates?

A That is true.

Q Okay. All right. And it's actual -- if from this plat we couldn't actually go out there and measure where the creek or the gully or whatever this line denotes begins and ends, could we?

THE COURT: Yes, sir; you will be. If you will state -- who is this?

MR. DIBBLE: Mr. Dominick.

THE COURT: Okay. Yes, sir.

WILLIAM DOMINICK, being first duly sworn, testified as follows:

MR. DIBBLE: At this time, Your Honor, I'd like to introduce into evidence Plaintiff's First Set of Request to Admit to Defendant James F. Amick.

THE COURT: Any objection?

MR. BREHMER: Would that be Exhibit 23?

THE COURT: That's what it was previously marked.

COURT REPORTER: Yes.

MR. BREHMER: No objection, Your Honor.

THE COURT: Okay. And so Plaintiff's Exhibit number 23, the First Set of Request to Admit to Defendant James F. Amick is in without objection.

(Whereupon, Plaintiff's Exhibit number 23 is admitted into evidence.)

THE COURT: All right. And so, sir, if you will state your full name and spell your last.

THE WITNESS: William Bartley Dominick, D-o-m-i-n-i-c-k.

THE COURT: Thank you, sir.

MR. DIBBLE: Your Honor, before I start this witness,

I'd like to call the Court's attention to the definitions on Exhibit 23. Paragraph A describes the Braswell property as the 120-acre tract. Paragraph B describes Mr. Amick's property, the 17.08 acres. C describes the easement claimed by Mr. Braswell over and across and through the western side of Mr. Amick's property. And Paragraph E defines the Braswell plat.

THE COURT: Okay. In Paragraph B, I don't see that an acreage -- maybe I'm missing it. I don't see an acreage listed in Paragraph B, as in boy. And that would be the property of Mr. Amick, correct?

MR. DIBBLE: Yes, and that's the 17.08-acre tract.

THE COURT: Yes, sir. It doesn't say that though.

MR. DIBBLE: No. No, ma'am. It doesn't. It references the deed.

THE COURT: Yes, sir. The deed says 17.

MR. DIBBLE: Yes, ma'am.

THE COURT: All right. Just so we're clear. Yes, sir.

MR. DIBBLE: Now, the first request asked Mr. Amick to admit that he knew Mr. Braswell farmed the Braswell property prior to his purchase of the Amick property in 1988. And his response which I will publish in the record. When Defendant purchased the Amick property he believed the Plaintiff was utilizing the Braswell property

for agricultural purposes. However, the Defendant, at such time, did not have knowledge of any of the details associated with the Plaintiff's use of the Braswell property other than the same is devoted to farming and agriculture.

I call your attention to request number six on Exhibit 23. Please admit that the claim fee ownership of the property either an adverse possession, at-risk or otherwise to the defense of a claimed deed, the Amick property, and the property now owned by Mr. Long.

I publish Mr. Amick's response into the record. Defendant denies this request and admits in connection therewith that he owns the Amick properties, the boundary lines on that certain survey prepared by AtTech survey dated June 29th of 2016, attached as Exhibit 1.

And I call your attention to request number 7. Please admit that the road R/W HWY as shown on the Braswell plat is entirely on the Amick property.

And I will publish his response. The Defendant admits this request to admit.

THE COURT: Yes, sir.

MR. DIBBLE: Okay.

THE COURT: And are the answers -- have the answers been made an Exhibit, as well, the responses?

MR. DIBBLE: No, ma'am. But I'll be happy to do that

in a few minutes.

THE COURT: Any objection, Counsel?

MR. BREHMER: None.

MR. DIBBLE: Exhibit 20?

COURT REPORTER: No. This will be now number 27.

MR. DIBBLE: 27. All right.

(Whereupon, Plaintiff's Exhibit 27 was marked for identification only.)

MR. DIBBLE: I think you have a copy of that already is in that package, Judge, as Exhibit 24.

THE COURT: Yes, sir. I just wanted to make sure these were the same. And so, for the record, Defendant's Second Amended Responses to Plaintiff's First Set of Requests to Admit are entered into evidence as Plaintiff's Exhibit number 27 without objection.

(Whereupon, Plaintiff's Exhibit number 27 was entered into evidence.)

MR. DIBBLE: Thank you.

THE COURT: Thank you and I do have a copy in my packet.

MR. BREHMER: I'm going to object to him just handing stuff up to the witness without giving some type of reference as to what it is.

THE COURT: Okay. And as far as, and I really can't see but if -- Counselor, are you ready to examine Mr.

Dominick?

MR. DIBBLE: Yes.

DIRECT EXAMINATION

By Mr. Dibble:

Q Mr. Dominick, I handed you Exhibit 16 which was introduced into evidence without objection. Can you tell me what that document is?

A It's a plat of the Sula Miller land, the 120.8 acres which is Mr. Braswell's property.

Q All right. Does that plat have a scale on it?

A Yes, sir. It says, One inch equals five chains.

Q And is that a proper scale on that plat as drawn in '64?

A Yes, sir.

Q Did I ask you to measure the right-of-way and highway designation on the northwest corner of that property?

A Yes, sir.

Q And before I get to that, how you did that, when I asked you to do that, by whom were you employed?

A At that present time, I was an associate engineer with the South Carolina Department of Transportation, and I had my own surveying business.

Q And when did you start your survey business?

A 2002.

Q And are you licensed by The State?

A Yes, sir.
Q Is your license current?
A Yes, sir.
Q And what is your educational background?
A I have a Bachelor of Science in Mathematics and Computer Science from Newberry College. I have an Associate Degree in Civil Engineering Technology and Surveying from Midlands Technical College. And I have a Bachelor of Arts in Interdisciplinary Sciences from the University of South Carolina in Civil Engineering and Geographic Information Science.
Q And what were your responsibilities at the South Carolina Department of Transportation?
A I was responsible for the profiles of the roads and bridges in the State of South Carolina.
Q And in carrying out those responsibilities, did you have occasion to refer to plats from time to time?
A Yes, sir. Most of it's done by plat, referred to, though, it was actually the SCDOT plats of the rights-of-way, et cetera, of the roads that we were working on.
Q And did you from time to time have occasion to utilize aerial photography in your responsibilities with the highway department?
A Yes, sir. We would use that to locate road

right-of-ways. Sometimes, we would use it to locate testing areas where we were going to actually do our test sections on the roads. And we would also use it sometimes to pick out landmarks for our test sections. And we even had a virtual reality program where we could actually ride down the road through our computers and see right-of-way markers, et cetera.

Q All right. While you were with the highway department, did they have ways of measuring scale of things?

A Yes, sir.

Q And what were those?

A We used different types of sales but most of the time the scale we used was an engineering or a surveying scale which divides an inch into ten equal parts instead of eighths and quarters. We also used digital calipers. We also used at times architectural scales and which is basically more or less like a carpenter's ruler.

Q All right. Now, if a plat has a scale on it and it has designation, surveyor's notes, would it be common for the surveyor to designate something that was not drawn to scale?

MR. BREHMER: Objection, Your Honor. He hasn't offered the witness as an expert. And secondly, how does he know.

THE COURT: Okay. So first and maybe I misunderstood and assumed that Counsel had agreed that there would not be a requirement to qualify any expert witnesses. Maybe that applied just to Mr. Bedenbaugh?

MR. DIBBLE: It did.

THE COURT: Okay. And so why don't we back up, then, Counsel. Are you offering Mr. Dominick as an expert?

MR. DIBBLE: I'm offering Mr. Dominick as an expert in measurement, scaling plats, as an expert in surveying, and as an expert in interpretation of aerial photographs.

THE COURT: Okay. Counsel, do you wish to examine him regarding those areas? And I need to make sure that I understand. So it is in the area of surveying, measuring?

MR. DIBBLE: That's scale and plats. Yes, ma'am.

THE COURT: Scale and plats and --

MR. DIBBLE: -- interpretation of aerial photography.

THE COURT: Okay.

MR. BREHMER: I didn't know there was such a thing as interpretation of aerial photography. Your Honor, I don't think that that's a recognized discipline or expertise.

THE WITNESS: Yes sir, it is.

THE COURT: Okay. And --

THE WITNESS: I -- I know. I'm sorry.

THE COURT: Let them direct their arguments to me, and I may, maybe call upon you, which is fine. Okay. So

why don't we -- Counsel, are you agreeing that Mr. Dominick is qualified as an expert in the area of surveying?

MR. BREHMER: Surveying, yes.

THE COURT: Scaling of plats?

MR. BREHMER: Not without, with the information we have at this point.

THE COURT: And so it would be as to surveying only?

MR. DIBBLE: Yes, ma'am.

THE COURT: All right. Why don't we let Counsel examine Mr. Dominick concerning his expertise. Sir, if you will answer Mr. Brehmer's questions with regard to your qualifications. All right. Yes, sir.

Proffer Examination

By Mr. Brehmer:

Q Mr. Dominick, I understand that you went to, let's see, Newberry College?

A Yes, sir.

Q What year did you finish?

A 1987.

Q And what was your degree?

A Mathematics and Computer Science.

Q Okay. And when did you attend the Midlands Technical College?

A I'm trying to think when I graduated, but it was

after -- it may have been some -- I think I may have graduated around 2000 or 2001.

Q Midlands Technical College?

A Yes, sir.

Q And what was that degree in?

A Civil Engineering Technology and Surveying.

Q Okay. And that's an Associate's Degree?

A Yes, sir.

Q And when did you go to the University of South Carolina?

A After I finished from Midlands Tech, I went to USC and I think I graduated from there in 2014.

Q Okay. With what degree?

A It was a Bachelor of Arts and Interdisciplinary Studies.

Q Okay.

A It's a higher degree with two different disciplines meshed together to create a degree. They didn't offer a surveying degree because there is no surveying degree in the State of South Carolina. And I wanted to further myself and my knowledge of surveying so I took civil engineering classes that pertained to surveying and highway design, because that's what I did at work. So I took highway design and classes like that and then in the Geography Department, I took geographic information

science type classes, aerial photo interpretations and surveying.
Q Okay. And but you -- I understood in your direct testimony that you had a civil engineering degree from the University of South Carolina. That's not correct?
A No sir, it's not. It's a BAIS, made up of two disciplines, civil engineering and geography or geographic information science.
Q But the actual title of that is interdisciplinary studies?
A Yes, sir.
Q Now, when did you become a licensed surveyor of land?
A 2002.
Q Okay. What's your license number?
A 21933.
Q Okay. Is it still current?
A Yes, sir.
Q Good. And you work for the South Carolina Department of Transportation from when to when?
A 1988 until June the 30th of 2018, I think is when I retired.
Q Okay. So you spent, what, 30 years with the highway department?
A Yes, sir.
Q Okay. And then when you -- you opened up your own

little shop in 2002?
A Yes, sir.
Q Okay.
A I worked for another surveyor before then.
Q Okay. Now, do you have the ability to create a plat on your own?
A Yes, sir.
Q Okay. Do you draw plats?
A Yes sir, I do.
Q Okay. Would you mind telling us the difference between a surveyed line and a surveyor's notation?
MR. DIBBLE: Your Honor, that's cross-examination. That's not --
MR. BREHMER: No. It's just -- it's questioning.
THE COURT: I'll allow it.
MR. BREHMER: Okay.
Q What's the difference between a surveyed line and a surveyor's notation?
A A survey line is a line that is actually surveyed out in the field and a notation is just a note put on the plat to clarify something that's on the plat.
Q All right. Would a surveyed line have a specific beginning point, specific ending point?
A Yes, sir.
Q Okay. And would it have --

THE COURT: All right. I thought this was testing his knowledge, and you can make those points later on in cross.

MR. BREHMER: Okay.

THE COURT: Okay. This is just as to his qualifications.

MR. BREHMER: Okay. Okay. Do we do -- about the photographs at this point?

THE COURT: Sir, I believe that if you want to get into that, it would be as to his training --

MR. BREHMER: Okay.

THE COURT: -- and interpreting aerial photography. Okay. You may ask him about scaling of plats.

MR. BREHMER: Okay.

Q Where did you learn to scale plats?

A At Midlands Technical College.

Q Okay.

A Professor Jim Sanders.

Q Okay. Do you hold any certifications for scaling plats?

A Yes, sir. My surveyor's license.

Q Is that your only survey -- are there any other certifications for it?

A I'm sorry. I don't understand.

Q Is there any other certifications for scaling of

plats?
A Only your surveyor's license.
Q Okay. All right.
A And that's on the surveyor's license, so you have to know how to do it in order to pass the exam to get your license.
Q Okay. So surveying is all inclusive?
A Yes, sir.
Q There is no specific discipline on scaling of plats?
A No, sir.
Q Okay. All right.
MR. BREHMER: All right. And I don't think he has offered photos, so there has been no foundation for the photo interpretation that I heard.
THE COURT: Well, I believe he's been offered, and so I'm happy for you to examine him on that.
Q What is photo interpretation?
A Aerial photo interpretation is to be able to look at an aerial photograph and to be able to tell what is on the ground in the aerial photograph.
Q And what type of training do you have in such?
A I have aerial photographic interpretations, taught at the University of South Carolina by Dr. John Jensen, who also works for NASA and is a world-renowned professor and expert on aerial photo interpretations. I had LiDar and

photogrammetry.
Q Okay.
A And that was taught by Dr. Michael Hodgson, who is a world-renowned professor and expert on Lidar and photogrammetry.
Q Okay. So you've had two courses?
A Three.
Q Three courses. And that was in --
A One of those courses was in my geographic information science class also taught by Dr. Michael Hodgson.
Q Okay. And the photographic interpretation, is it just interpreting what you see on the ground from the photograph?
A Yes, sir.
Q So if there is a dark spot here, you can tell us that's a bush?
A Sometimes.
Q Okay. Or if there is a open field with little rows side-by-side, you could tell us that that's somebody, a crop is planted there?
A Actually, if you do it with infrared photography, we can tell you the exact type of crop that's been planted.
Q But you hadn't done any infrared here?
A I did it in college.
Q I meant on this case, though?

A No, sir.
Q Okay. So you can look at a photo, can you tell where a roadway is from the aerial photograph?
A Yes, sir.
Q Okay. And can you tell where a fence line would be?
A Yes, sir.
Q And where a ditch would be?
A Yes, sir.
Q Okay. All right. And why can't I just do that and look at it? Why do you need the expertise to have somebody tell you what that photograph is showing?
A I guess some people are smarter than others.
Q I understand that but what -- somebody else could look at the same photograph and interpret it, could they not, without the training?
A They might could interpret it but they may not be correct.

MR. BREHMER: All right. Thank you. Your Honor, we stipulate to the surveying. But I do not believe he is qualified as an expert to offer opinions regarding photos. I don't know if taking three courses throughout his higher education career qualifies him to be an expert in that area.

THE COURT: Thank you. Counsel, would you like to follow up?

MR. DIBBLE: No, ma'am. I think he's put in his qualifications quite well on voir dire.

THE COURT: Mr. Dominick, sir, have you been qualified previously as an expert before?

THE WITNESS: Yes, ma'am. In the first trial.

THE COURT: Okay. And prior to that?

THE WITNESS: I never came to trial before that.

THE COURT: Okay. And with regard to being qualified as an expert in interpreting aerial photography, was that previously offered in the first trial.

MR. DIBBLE: Your Honor, we didn't need any experts in the first trial.

THE COURT: And so --

MR. DIBBLE: Those photographs came in without objection and were interpreted by Mr. Dominick without objection.

THE COURT: At this time, I think Mr. Dominick is qualified to testify as an expert in surveying and as a subpart of that, even though I don't know that it's necessary based on his testimony, in scaling plats. I'm not convinced that he is an expert in the area of interpreting aerial photography. And I don't know that that would be a necessary qualification for the testimony that he is going to give, from what little I know about that, I'm assuming it may be in more detail than prior.

But in making this finding, I will say that Mr. Dominick has acquired by study or practical experience such knowledge in the subject matters that I have stated, that his testimony would enable him to give guidance and assistance to me. And that I believe that that would fulfill the requirements of our case law in South Carolina, State v. White, State v. Counsel and I will let him testify accordingly. When we get to the photographs we will be very careful and you all, too, will be very careful in the testimony and opinions that he gives. It's further my understanding that the photographs can come in.

MR. BREHMER: I think we'll be able -- I think that Mr. Dibble has a -- certification --

THE COURT: Right.

MR. BREHMER: -- and that he will be self-authenticated by this.

THE COURT: Yes, sir. Pursuant to Rules 901 --

MR. DIBBLE: 901 and 902.

THE COURT: Okay. Thank you. And so with that, sir, you can start your examination or would you all rather break for lunch and come back at 2:00 and start the examination and it's up to y'all.

MR. DIBBLE: That's fine with me.

MR. BREHMER: I think that would be better than starting and breaking for lunch.

afternoon and then go on our merry way. It will only take about ten minutes at the most.

THE COURT: If y'all know of a good breaking point this afternoon, it would still be daylight.

MR. BREHMER: Yes, ma'am.

MS. NICHOLS: If we broke at 4:00 that would give you time by 5:00.

THE COURT: Does that suit you all. Does that suit your clients.

MR. BREHMER: Yes, ma'am. Now, we ran into a problem last time when different people showed up. I think it would probably be best that they stay away. I mean, the Plaintiff and the Defendant--

THE COURT: That is fine with me. It is up to you all if your clients are there but certainly are welcome. We will adjourn at 4:00 for that purpose.

(Whereupon, a lunch break was taken.)

THE COURT: Are we ready?

MR. DIBBLE: Yes, Ma'am.

MR. BREHMER: Yes.

CONTINUE DIRECT EXAMINATION

By Mr. Dibble:

Q When you were with the Highway Department, do you use several different scales to measure the widths and lengths of roads?

MR. BREHMER: No, ma'am.
THE COURT: All right. Thank you. This is a copy of Plaintiff's Exhibit number 16.
MR. DIBBLE: Yes, ma'am. And we offer this as Defendant's Exhibit number 35.
THE COURT: Okay. Any objection, Counselor?
MR. BREHMER: None.
THE COURT: Okay. And so Plaintiff's Exhibit number 35 is in without objection and that is a copy of Plaintiff's Exhibit number 16 that now has been modified by this witness. Okay. Thank you.
(Whereupon, Plaintiff's Exhibit 35 was entered into evidence.)
Q Now, in addition to registering that early on on the plat, did you prepare some documents for me?
A Yes, sir.
Q I'm going to hand you what's been marked, Your Honor, as 24, 25, and 26 and ask if you will tell the Court what those documents -- each of those documents is.
MR. BREHMER: I can't hear.
Q I ask you to tell the Court what each of those documents is.
THE COURT: Okay. Just one moment. I just want to make sure we're all on the same page. So this would be 24, 25, and 26. Is that correct?

MR. DIBBLE: Yes, ma'am.
THE COURT: Okay. And have those been placed into evidence?
MR. DIBBLE: No, I was going to get him to identify them first and then offer them.
THE COURT: Okay. I just wanted to make sure they hadn't previously been placed in.
MR. DIBBLE: No, ma'am.
THE COURT: Okay. Counsel, have you seen those?
MR. BREHMER: No, ma'am. Mine goes from--
MR. DIBBLE: Those are the previous Exhibit numbers.
MR. BREHMER: What are they now?
MR. DIBBLE: 24, 25, and 26.
MR. BREHMER: 24 -- we would have an objection to these and would like to be heard.
THE COURT: Okay. And just so I'm clear, these have been -- what I have may be the old Exhibit numbers.
MR. DIBBLE: That's correct.
THE COURT: But the old Exhibit numbers are 24 -- I'm sorry -- 34, 35, and 36?
MR. DIBBLE: Yes, ma'am.
THE COURT: All right. And so, Mr. Dibble, do you need your copies back?
MR. DIBBLE: No, ma'am.
THE COURT: Okay. I'm happy to hear from you.

MR. BREHMER: Here is my objection and my objection goes back to my pretrial motion. My pretrial motion was, was that it's undisputed in this particular case that the grantor to Mr. Braswell in June of '72 did not own this property, okay. And she had divested herself of it in September of '64 therefore it is a legal impossibility for Ms. Miller to have conveyed a right-of-way or an easement as designated by Exhibits 24, 25, and 26 and allowing such testimony would be in violation of the existing law and would be misleading. My second objection is, is that the information contained on Exhibit number 16 which has been entered as Exhibit number 35 is a surveyor's notation which is outside of the survey. And we would -- it is not the proper foundation for them to use for creation of any type of easement across my client's property. Those are our two objections.

THE COURT: Okay. And I would tell you that I appreciate your timely objection. I understand now why you're making it at this juncture. And, quite frankly, I didn't even know what this was until you said that in your objection. And so I am going to let this witness testify as to what his understanding of this is. And then I'm going to let you review that. But I think he needs to identify this for my benefit.

MR. BREHMER: Thank you, ma'am.

Mr. Brehmer rides in his vehicle. Mr. Dibble and Ms. Nichols rides in a vehicle. Left the Court House at 3:55 p.m., arrived at the property at 4:05 p.m.)

The Following is on the record while at the property.

THE COURT: Mr. Brehmer is here opening the gates. Mr. Dibble is behind us. There are double red gates. We will go further to make sure all three automobiles can get in. I guess we need for them to tell us how far to go in.

(Whereupon, all participants start walking on the property at 4:10 p.m.)

THE COURT: Okay, I am following someone's lead.

MR. BREHMER: We can come down here and start. The iron pin is right here. We dug it up Saturday morning. It is right there in that hole. And the line, I can show you, on the drive we spray painted it with orange. There is a, a railroad spike denoting the other sections. The line and then we do the cones with the pictures up through there. Our contention from here over is the twelve and a half foot. And Mr. Amick's line comes to here and goes straight there and goes this way.

MR. DIBBLE: I agree with that, Judge, but this is the Amick line down through here. There is a twelve and a half foot gap between Ballentine and Amick.

THE COURT: Okay.

MR. DIBBLE: And I would like you to take note,

because the trees, twelve and a half foot strip and the apparent age of those trees when you leave the premises.

MR. BREHMER: Okay.

THE COURT: Okay.

MR. BREHMER: There is no dispute, all of this is Mr. Braswell's property.

MR. DIBBLE: I have tried to drive down to see the ponds last time and got stuck.

MR. BREHMER: I don't know if that provides any relevance.

MR. DIBBLE: Well, we have the photographs.

THE COURT: Okay. Anything else?

MR. BREHMER: We could go back up to this, the other end up here and I will show you where that railroad spike is.

That piece of orange tape laying on the ground has no bearing whatsoever. That was just, it dropped there.

That is our contention of the side, Mr. Amick's property is this, the twelve and a half foot strip. Now, under that PVC pipe, if you want me to I can walk in there and show you. That PVC pipe has, the PVC pipe has a piece of rebar.

THE COURT: I see it.

MR. BREHMER: That is Mr. Long's property, formerly the Ballentine property. Mr. Long's, that is Mr. Long's

place up there. His house, Mr. Long's, John Long, this is John Long, Jr., Ballentine was his Uncle, he inherited Ballentine's property though it is actually denoted, the Ballentine's property on the deed, on the plat but it is actually entitled in John Long's name now. Okay.

MR. DIBBLE: This is one of the trees I wanted you to take notice of, Judge, which is on the twelve and a half foot strip which has been there longer than I have been alive, I would imagine. And also, if you look down the twelve foot strip inside the fence over there, you will see some other trees, one of which seems to be pretty old also. And there is a dead tree about two-thirds of the way down on the right-hand side. But you will see as you go back there.

MR. BREHMER: Just back up and I will close the gates.

THE COURT: Thank you.

MR. BREHMER: See y'all tomorrow.

THE COURT: 9:30.

(Whereupon, the visit to the property is concluded at 4:20.)

(Whereupon, the trial will resume the next morning at 9:30 a.m.)

January 7, 2020

THE COURT: All right. Again, it's my pleasure to be

MR. DIBBLE: Thank you very much.

MR. BREHMER: Just so that the record is complete. At the site visit yesterday, my client and his wife, Sherri were actually on the property but they stayed away to not interfere in the site visit in any way whatsoever.

THE COURT: Yes, sir. I did not speak with them and I may have seen some -- but I didn't even realize that's who that was.

MR. BREHMER: Okay.

THE COURT: I guess near a pasture or something.

MR. BREHMER: Okay. Thank you.

THE COURT: And so with that, we are ready to continue and we will call the next witness in the Plaintiff's case.

MS. NICHOLS: I call Mickey Johnson.

THE COURT: Yes, sir. If you'll please come forward to the witness chair. Okay. Sir, make yourself comfortable. You may have to adjust that microphone a little bit and if you will state your full name spelling your last.

MICKEY JOHNSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. Nichols:

Q Mr. Johnson, what year were you born?

A 1953.
Q All right. And are you related to Sula Miller?
A Yes, I am.
Q All right.
A I'm her grandson.
Q You're her grandson. Which one of your parents was her child?
A My father is her son.
Q And what's your father's name?
A A.C. Lee Johnson.
Q Okay. You're familiar with the property that we've been discussing through this trial, property that's owned by Mr. Braswell --
A Yes.
Q -- and property that's owned by Mr. Amick?
A Yes.
Q How are you familiar with that property?
A Well, since I was around age ten, I have -- my dad had an airplane --
Q Okay.
A -- and he parked it on that property that's in question.
Q Why did he park it on that property?
A Well, he had a landing strip there.
Q Okay.

A Sometimes, he parked it there but he had a Cessna and he kept it at that field most of the time that he owned that airplane.
Q And when your father owned that airplane and kept it on this property, and I'll ask you about that in just a second, was that property owned by your grandmother, Sula Miller?
A Yes, it was.
Q Did you have the occasion to go out to that property?
A Beg your pardon?
Q Did you have the opportunity to go to that property?
A Yes.
Q Did your dad ever fly you on his airplane?
A Yes, he did.
Q From the property where the plane was located at?
A Yes.
Q And where the property, where your dad had his plane, who owns that property now?
A Well, I assume -- I assume it's James.
Q Okay. Mr. Amick owns the property that you -- so you are familiar with it, it's the property that's in between Highway 76 and where Mr. Braswell's, and I'll show you a plat in a minute.
A Okay.
Q But he kept it on that property whenever your

grandmother owned it, correct?
A Yes, that's correct.
Q All right. Was the plane toward Highway 76 or was it far off of 76?
A Well, it was at the back of the first field there.
Q Okay. All right. And how did, how did your -- how did you -- you said you rode with your dad up in his plane?
A That's correct.
Q How did you get to the plane to go for a ride?
A We drove back there.
Q How did you drive back there?
A Usually in his car.
Q In his car. What kind of car did he have?
A An Oldsmobile.
Q So it was an automobile, not a truck?
A Yes, automobile.
Q Any modifications to the automobile?
A He later bought a truck, a Dodge truck. I am not sure if he bought that after he sold his aircraft or what.
Q Okay. But you remember going to the property in a car?
A Yes.
Q Was there any modifications to the car, was it jacked up?

A No.
Q Just normal?
A Just a normal car.
Q Okay. And you drove back there. How did you access the property?
A We crossed from 76 onto the lot.
Q Okay. So you turned off of 76?
A Yes.
Q All right. When you turned off of 76, what were some of the landmarks? Like, what was on your right?
A Oh, as I recall, there was a fence line on the left as we turned off of 76 onto the property. And we stayed to the left going down the field and then we cross over, once we reached to the end of the field to where his airplane was parked.
Q And there was always a fence on the right side, as you indicated, as you went down to the airplane?
A There was a fence on both sides, all the way up and down 76 there were fences.
Q Okay. And about how old were you when you remember going up in the plane with your dad?
A Probably around nine, ten years old.
Q Okay. Do you remember when your dad sold that plane?
A No, I don't.
Q Okay.

A I was glad he did though.
Q Okay. Were there any impediments? When you went onto the property from 76, did you have to cross anything in order to get back to the property?
A Well, there is a ditch there but it had boards down across it. And later a terracotta was put in, but I don't remember when that terracotta was put in.
MS. NICHOLS: Okay. I'd like to show Mr. Johnson a copy of the plat that was entered in as Exhibit 16 yesterday. Mr. Brehmer, it is an unmarked copy.
MR. BREHMER: Okay.
Q Mr. Johnson, I'm going to give you a copy of the plat that was entered in as Exhibit 16 yesterday. And this is a copy of Mr. Braswell's property when he purchased it from your grandmother. Okay. All right. I'd like for you, if you don't mind, take this blue pen and to draw where your dad's plane was located.
A Let me see.
Q And just to give you a point of reference --
A Where is 76 at?
Q Okay. North is this way.
A Yes.
Q This is R/W to Highway 76.
MR. BREHMER: Oh, may I come around there?
MS. NICHOLS: Yes, sir.

THE COURT: Yes, sir.
Q As I explained to him was, this was the R/W to Highway and 76 was located--
A -- oh, this was taken from the survey?
Q Yes, sir. That is the plat of Mr. Braswell's property when he purchased it from your grandmother, Sula Miller.
A Well, now, Your Honor, I studied Greek, so I understand Greek. But this -- this is not how I remember things.
THE COURT: Yes, sir. Well, just do the best you can. And, of course, Counsel isn't really allowed to give you the answer but if you can provide an answer.
A Well, I've done kind of a drawing here of how things line up down in -- down Highway 76.
THE COURT: All right. Well, why don't we have Counsel then question you about that.
Q Okay. Well, 76 is here.
MS. NICHOLS: Can I give him like which direction pointing to Newberry? Do you have any problems with that? That gives him a direction.
MR. BREHMER: The Defendant would object to the witness making any reference to the contents of Exhibit number 16 because he has laid the foundation that he is not familiar with that document, he did not create that

document and that he is not comfortable with the representation, it is not as he remembers. Therefore I think it would be inappropriate to allow the witness to be led through Exhibit number 16 in that manner.

THE COURT: Well, I think that Mr. Johnson was prefacing his answer by saying he was not that familiar with this. I think we cut him off a little bit. But, again, why don't we do this. Counsel, why don't you ask your question again. Let's start over now that Mr. Brehmer is over here and let's see if the witness can answer.

Q My question, I believe, was could you show us the location on this plat where your father's plane was located?

A I'm assuming this is the 120 acres in question, and we would come down 76 and would turn left onto this property.

Q Okay.

A Cross over the boards they had in the ditch and go straight, straight down the side -- it would be the left side, straight down the field and then cut across to the right to where his airplane was and his strip came this away, I guess.

Q Okay.

A Oh, I can tell you, the house where I live, I lived

right across from the cell tower there on 76 in a brown brick house. And next to me is my brother, Brooks. And next to him is a cement block house and the family that lived there first were named Bickley. The husband and wife died at the same time. That night -- they had just built that house and had not spent a night in it and so they died their first night, both of them did.

Q Can I ask you a question about the direction of these houses? As we're going down 76 from Newberry to Clinton --

A -- towards Clinton.

Q What order, so that's, we are starting in Newberry and we are going down 76.

A Yeah.

Q So this is in order from Newberry to Clinton, correct?

A That's correct.

Q And these are on the left side of 76 or the right side of 76?

A They are on the left side.

Q If we're going toward Clinton?

A That's right.

Q Okay.

A You'll find fences all up and down 76 cutting off these properties. And across the road on 76 you don't see

any fences. I don't know why that turned out the way it did. But past the Bickley house is where he kept his plane, a big field there and he kept the plane to the rear of the field and we would cross over where the terracotta was later put. We'd cross over on boards and go straight down the left of the field, cut over to the right where he parked his airplane.

Q And you said that when you turned on from 76, the fence line, it was to your right?

A No. There was fence on both sides of that field.

Q Okay.

A William Ballentine owned the next property over.

Q As you go down to -- as you turned -- you said you would turn left onto the little roadway, whatever we want to call it, the fence line, and then it was Mr. Ballentine's property?

A Yes.

Q Okay.

A That's how I remember it. Your Honor, may I make a statement?

THE COURT: Sir, unfortunately, you need to respond to the questions.

THE WITNESS: Okay. All right.

THE COURT: And then I may have a couple of questions for you after cross.

THE WITNESS: All right.
THE COURT: But I think I'm getting ahead of myself.
THE WITNESS: Okay.
THE COURT: Okay.
Q Once -- you said you remembered your father selling the plane. Do you remember if that coincided with your grandmother's sale of the property?
A I don't remember when she sold it. But he stopped flying his plane there. And Mr. Braswell, I remember my grandmother saying that Mr. Braswell, she had leased him that property. And then later on she said she had sold him that property.
Q She had sold that property.
A That's correct.
Q Okay.
MS. NICHOLS: I have nothing further at this time, Your Honor.
THE COURT: Okay. Mr. Johnson, please answer Mr. Brehmer's questions.

CROSS-EXAMINATION

By Mr. Brehmer:
Q Good morning, Mr. Johnson.
A Good morning, sir.
Q Now, I'm just trying to establish a timeline and I understand that it's been a while. Okay.

A Yeah, it's been a while.
Q Okay. It's been a while for all of us. But you were born in '53, correct?
A That's correct.
Q So in '63, you would have been ten years old?
A Yes, sir.
Q Okay. Now, your dad kept the plane in what you remember to be the field that was now -- or the field that is now owned by Mr. Braswell?
A That's correct.
Q Okay. In the back portion of the field I think is what you said?
A Yes, sir.
Q I'm assuming he had to have a little room to take off and land?
A Yes, sir. Yes sir, he did.
Q And Mr. Braswell was not farming that field at that time, was he?
A Not until he leased it, no.
Q Okay.
A Now, I'm not sure when he started working the field. I don't know.
Q Okay. You're not sure of when he started working the field?
A Well, when my dad sold his airplane, the field was

not important any more to me.
Q I understand. But the question that I'm trying to establish and the answer that I'm trying to get is, your dad's airplane and Mr. Braswell cultivated that field occurred at two different times, did it not?
A Yes, sir.
Q Your dad's airplane was there before Mr. Braswell was cultivating the field, correct?
A Yes, that's correct.
Q Okay. Your dad's airplane was not there after Mr. Braswell started cultivating the field, correct?
A That's what I remember.
Q So if Mr. Braswell started cultivating the field in '63, your dad would have sold the plane before '63.
A I don't know about that because he parked his plane at the airport also.
Q Okay. But he no longer -- the relevant portion is he no longer parked the plane there --
A That's correct.
Q -- after Mr. Braswell started cultivating that field?
A That's correct.
Q Okay. And you do know that for some period of time Mr. Braswell cultivated that field under a lease agreement with your grandmother before he eventually purchased it from your grandmother?

A And that's how I understand it, yes sir.
Q Okay. And were you aware that your grandmamma sold 4.04 acres in September of 1964, which is contained immediately adjacent to that--
A -- well, as a child, I didn't think in terms of acreage. It was a field to me.
Q Yes sir, a field. Are you aware that in '64 your grandmamma sold a 4.04 acre -- or sold a field there immediately adjacent to the road where Mr. Amick's property is?
A I don't remember exactly when she sold it --
Q Okay.
A -- that field to him.
Q Now, the road that you went in, the road that you went in was right next to Mr. Ballentine's fence, wasn't it, Mr. Bill Ballentine?
A Yes sir, that's how I remember it.
Q Okay. Mr. Ballentine, his real name is William, but he went by Bill, wasn't it?
A That's correct.
Q Okay.
A We called him Mr. Ballentine.
Q Yes, sir. Yes, sir. And it was right down beside Mr. Ballentine's fence there?
A As I recall, yes.

Q Right. All right. Now, the exact location, whether it was a foot from Mr. Ballentine's fence or whether it was two feet from Mr. Ballentine's fence, you don't know where it was exactly --
A That's correct.
Q -- as far as the specific points on the ground, correct?
A That's correct.
Q All you know is it was immediately adjacent to Mr. Ballentine's fence?
A Yes, sir.
Q Okay. Thank you, sir.
THE COURT: Any redirect?
MS. NICHOLS: No, Your Honor.
THE COURT: All right. I think all of my questions have been answered. Thank you for being here Mr. Johnson. And so is there any reason that he cannot be excused?
MS. NICHOLS: I don't think so, Your Honor.
THE COURT: Okay.
THE WITNESS: I would like to make a statement if you would allow it.
THE COURT: No, sir. I can't allow you to make a statement. I wish that I could but unfortunately your testimony, even though it's a lot of trouble for you to be here, I know you've been here for two days, it has to be

in response to a question.

THE WITNESS: Well, may I clarify my role here?

THE COURT: Only if that's -- is there any objection to --

MR. BREHMER: Yes. Yeah, there would be objection to the witness giving a statement.

THE COURT: Okay. All right. I cannot allow you to do that.

THE WITNESS: All right.

THE COURT: But thank you, sir, for being here. It is appreciated. Okay. The next witness, please.

MR. DIBBLE: We call Mr. Mark Wayne Braswell.

MR. BREHMER: I'm sorry?

MR. DIBBLE: Calling Mark Wayne.

MR. BREHMER: Okay.

MR. DIBBLE: Mark Wayne Braswell.

THE COURT: Yes, sir. If you'll please come forward and be sworn by the clerk. So please be seated and adjust that mike if you need to. I need for you to state your full name, spelling your last.

THE WITNESS: My full name is Mark Wayne Braswell, B-R-A-S-W-E-L-L.

THE COURT: Thank you, sir. Please answer the questions of Counsel. Mr. Dibble?

MR. DIBBLE: Yes, ma'am.

MARK WAYNE BRASWELL, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dibble:

Q Mr. Braswell, you are the son of Jim Braswell?

A Yes, sir.

Q And what business is your father engaged in?

A My dad owns Leslea Farms.

Q And what kind of farming operation is that?

A A dairy operation, dairy and row crop, but dairy operation.

Q Dairy and row crop operation?

A Yes, sir.

Q Did you work for him?

A Yes, sir.

Q And when did you start working for him?

A When I was young enough to hold onto his curtail.

Q When was that?

A Roughly, in high school. So I started in high school and we parted ways in '08.

Q All right. So when did you start working for him?

A I started drawing a salary there and I was 14 or 15 years old. So we were -- you know, in '79 or '80.

Q All right.

A And I was milking -- I was milking and doing what was

required of me through high school and all.
Q Were you in charge of the row crops?
A After I got out of high school, yes sir. I was primarily responsible for the row cropping side of the operation.
Q All right. Now, with respect to the row crops on the 120-acre tract we've been talking about here, was those -- were those crops your responsibility?
A Yes, sir.
Q All right.
A But it was -- yes sir. Yes, sir.
Q And what did you have to do with respect to those row crops every year?
A Prepare the soil. One side was cut the hay, take care of the hay, fertilization on the land. All the planting, I did most of the planting, ninety percent of it, most of the harvesting that was pertaining to the silage end of it. And dad was always, dad always loves to run a combine so he did most of the combine operating on the harvesting end of the combine.
Q Now, did you -- how did you access the 120-acre tract?
A We accessed it on both sides. We accessed, we accessed the row crop side which was approximately 80 acres on the right-hand side. And then there was 18 acres

of Bermuda hay, coastal hay on the left-hand side and we accessed that primarily that way, is the way I handle it, just for convenience.

Q Now, I'm going to hand you a copy of a plat of the 120-acre tract.

THE COURT: Has that been marked as an Exhibit or is it a copy?

MR. DIBBLE: This is a copy of Exhibit 16.

THE COURT: Thank you.

MR. DIBBLE: I don't -- I don't mark on Exhibits.

Q Would you take a moment and draw on that plat where the coastal Bermuda is -- the coastal Bermuda field is?

A Say that one more time, Mr. Dibble.

Q Would you draw, please, on that plat where the coastal Bermuda field was located?

A Okay. The ponds are not on this map but it's a plat. So I understand the ponds are not on the map -- so but the coastal -- the coastal Bermuda field was running approximately right in here which would be the left-hand side facing the piece of property from Highway 76. It would be what, it would be what we refer to as the Parr side.

Q The Parr side?

A The Parr side. That's how we always referred to it was the Parr side and the Ballentine side or the coastal

side and the row crop side.
Q Row crop side.
A That was our terminology.
Q So if you use the word Parr side because Mr. Parr owned the land?
A The Parr family owned the land on that side --
Q Yes, sir.
A -- of the boundary, of the property boundary.
Q And the Ballentine's owned the property on the other side?
A Correct, yes sir.
Q So the -- is the coastal Bermuda on the Parr side?
A Yes, sir.
Q All right.
A The Bermuda was on the Parr side.
Q And you access that primarily using the farm road?
A Yes, sir.
Q How did you access the row cop side?
A Through -- through the Amick tract beside the Ballentine property line off of 76.
Q When you were in charge of the row crops, tell the Court what you had to do to plant, fertilize, harvest, irrigate the row crops.
A Mr. Dibble, that changed depending on the crop that was there --

Q Right.
A -- but it was -- it was a constant back and forth depending on the time of the year. There may be certain times of the year that I would have to go in and out of there, you know, eight, ten, twelve times a day. There was -- if we were cutting silage, there wasn't -- there was trucks, tractors and wagons leaving, you know, as long as we were cutting. That's a hard question to try to pin down, Mr. Dibble. It is not that I'm trying not to answer you but it was usually a three crop -- it was usually a three-trip process for preparation for seed bed. It was plant, it was a two to three spray process while the crop was growing within the first 45 days. Then it was irrigating as it was required and then it was the harvest process.
Q All right. Let's start with the planting process. What kind of equipment did you take through Mr. Amick's property to plant?
A From the time I was with dad --
Q Yes.
A -- we had a John Deer 8300 conventional drill.
Q And how wide is that?
A From tire-to-tire, it was probably fourteen, fourteen and a half feet. It was -- if someone wants to do the math, it was 21 rows and they were seven and a half inches

apart plus the outside tires. The planters for the corn and for the sorghum was a set of six row thirties. So they are 15 feet wide. There was six rows, thirty inches apart. So it was a 15-foot wide piece of equipment.
Q All right. Did you use rippers?
A Sir?
Q Did you use a ripper?
A Yes, sir. Yes, sir.
Q And about how high is the ripper?
A The ripper was as well, six row, thirties. It was six feet -- six rows thirty inches apart. So it was 15 feet as well.
Q And you -- did you bring that equipment through what is now Mr. Amick's property?
A Yes sir, on a very regular basis.
Q And that was beginning in what year?
A I was in high school, so --
Q When were you in high school?
A -- 1980-1982 --
Q All right.
A -- in the late seventies, early eighties. Probably more so for me in the early eighties, because I graduated high school in 1982.
Q All right. Now, you said you had to spray the crops. What kind of equipment did you use to spray the crops?

A Early on, we ran a John Blue Applicator. Later on, we went to a larger 3.hitch reddick sprayer that was a 3.hitch on the back of the tractor.
Q All right. Now, how big, how wide is that?
A Transport on the John Blue Applicator would be eight feet but it spread out in 30 feet once you got to the field. The reddick sprayer was approximately ten feet on transport width and it was fifty feet when you opened it up and sprayed with it.
Q And how often did you spray the crops after you planted them?
A It was -- it was a pre-emerged. It was at least post-emerged if not two post-emerged. And then it was another -- it was usually another -- we would side-dress with ammonium nitrate at usually forty to forty-five days to get a better crop.
Q So after you planted your crops, how often did you spray then? Did you put one pre-emergent down?
A We put one pre-emerge and definitely one post-emerge. So minimum of two trips on corn. Normally we probably would average over a five year period. We would probably average three trips per corn or sorghum crop.
Q All right. And did you plant anything besides corn and sorghum?
A Yes, sir. We always did small grains over there. We

would rotate things back and forth for weed -- for weed problems, weed issues.
Q And did you spray the smaller grain?
A Yes, sir.
Q And what was the smaller grain that you planted?
A Just small grain was oats and barley.
Q All right. Now, how did you harvest those crops?
A At the time I worked for dad we had two combines. We had a John Deere 6600 and a John Deere 4435.
Q Now, a combine has a big wide header on it, doesn't it?
A Yes, sir.
Q Now, the header, when you talk about a header, that is a cutting header, right?
A That's -- yes, sir.
Q And on the side of the cutting header, aren't there some gears that make the header wider than the cutting header?
A There's the woba box and the divide crop shields.
Q So how wide is the combine including all of that equipment?
A We had a pole barn that was -- had 20-foot bays and when you put it under the pole barn you had four-to-six inches on each side of it to clear the posts. So you needed eighteen and a half feet to clear.

Q Now, did you -- did you take that combine down over Mr. Amick's property?
A Yes, sir.
Q And how often did you do that?
A Depending on the year, that could be a -- that could be anywhere from a two-to-four times a year depending on what we were harvesting and what was going on with the row crop situation.
Q All right. And you said you're cutting silage. How do you cut silage?
A Silage is a -- it's a machine that takes the corn or the sorghum and it cuts it off six or eight inches above the top of the ground, depending on the operator. And it chops those -- that material. It takes that complete corn stalk and it cuts it to anywhere from half-inch to one-inch lengths and it blows it into a wagon or into a truck or whatever your means of transportation to get it back to the field.
Q And how big is your silage cutter?
A When I got out of high school, we were running a pull-type cutter with a three-row head that ran about, that ran behind a normal row crop tractor. And it would have -- it cut three thirty-inch but it was offset. So road transport on that thing was probably twelve to fifteen feet. I'm kind of estimating on that. Then we

moved to a self-propelled machine. The self-propelled machine was just all one machine together. It had a ten-foot head on it. It took ten foot so it was, it was ten-foot, excuse me, it was twelve -- it was twelve. Four thirties is twelve. It was twelve feet plus the outside, so it was roughly a twelve-to-fourteen foot transport width down the road.

Q And did you bring that equipment through Mr. Amick's property?

A Yes, sir.

Q Beginning when?

A Sir?

Q When did you begin to do that?

A We would -- I took equipment in and out of there ever since I could drive tractors. I mean, ever since I was able to drive a tractor and could pull certain pieces of equipment. And naturally, as I got older and better driving equipment on the highway and all because of liability purposes, I mean, ever since I can remember, Mr. Dibble.

Q Well, let me ask you this. Did you go into that property -- did you go into the 120 acres over Mr. Amick's property anytime you needed to go back there?

A Yes, sir.

Q All right. Now, you also said, I believe that you

were irrigating crops back there?
A Yes, sir.
Q And what kind of irrigation systems did you have?
A I ran a traveling gun, it is a hard hose system that would reach out 1,150 feet, blow water another 150 feet. And it would blow water 280 to 300-foot on the width. And we had an underground pipe system over there that had hydrants come up out of the ground. So we would attach to -- we would attach to that, drag out, and it would roll back in on its own with the little five-horse power Honda motor and the water would be pumping out the end.
Q And did you ever run an irrigation system with a tractor PTO?
A Yes, sir.
Q Tell the Court what a PTO is?
A It's the drive on the back of the tractor. It comes through the rear end of the tractor and anything that requires -- PTO is power takeoff is what it stands for. It's the power takeoff on the back of the tractor.
Q And was -- what kind of fuel ran that pump in that tractor?
A I'm sorry, Mr. Dibble?
Q What kind of fuel did you use to run the tractor or the pump?
A We used off-road diesel fuel just like in all farm

tractors.
Q All right. And how often did you have to refuel the tractor?
A The tractor we used was a John Deere 4440. Before we went to a self-contained unit, it had a 80-gallon tank on it and I would pretty much run -- I'd have to fill that tank up twice a day if I was running 24/7. It would have to be filled up in the morning or it would have -- and it would have to be topped off in the evening. We weren't burning 160 gallons but I couldn't let it run out.
Q And so how often did you have to go back to the row crop area to refuel that tractor?
A When the irrigation was running and it was running hard, I would make four trips a day over there. I would go over there first thing in the morning. I would go back my -- around lunch. I would go back after lunch and go back late that afternoon. And if I needed to go in at 10:00 o'clock at night, 1:00 o'clock in the morning, 2:00 o'clock in the morning.
Q Okay.
A I had to time the system so that when it got in, I had to be there to break it down and move it to the next point. And I would do that at one -- when corn was burning up, I would do that when it was necessary to take care of it.

Q Now, how did you get back in there to service the irrigation system?
A That traffic went on the Ballentine side ninety percent of the time.
Q And what kind of vehicle did you use to get back there?
A I had a -- I had a half-ton, three-quarter-ton truck, whichever Dad was furnishing me with. And it had a 110-gallon drum in the back of it. So it was a fuel barrel in the back of the truck.
Q Okay. Now, did you change the irrigation system at some point?
A Yes, sir. We went from a -- we went from the PTO in the tractor to a self-contained pumping unit.
Q And what kind of motor ran that self-contained pumping unit?
A It was a John Deere engine on the pump. It was a John Deere engine on the pump.
Q And what kind of fuel did you use to run that pump?
A The same fuel. The same off-road fuel.
Q And how often did you have to refuel that pump?
A Once instead of twice, because it had a -- it had a much larger tank on the front end. So it was, it was where I could -- if I made sure it was full when I started to pull, it would -- it would make through that pull. So

I would cap it off to make a complete pull.
Q And then you'd go back to the row crop area on the Ballentine side over Mr. Amick's property as often as you needed to go?
A Yes, sir. It -- when I needed to go onto the piece of property, I went to the piece of property.
Q Now, did I hand you a copy of Exhibit 16?
A You handed me a copy of the plat and I think you told -- prior that it was, yes, Exhibit --
Q 16.
A It's 16? I thought you said Exhibit 15.
Q No.
THE COURT: It should show on there. Now, does it say 16?
A Yes, sir.
Q Now, right down the middle of that -- right down the middle of that Exhibit, there's a little squiggly line. Do you see that?
A Yes, sir.
Q Is that a creek?
A Yes, sir.
Q Okay. And the row crop area is on the Ballentine side of the creek. Is that correct?
A Yes, sir.
Q Draw just whatever row crop where you planted row

crops on that, please. And show the Judge where this row crop area was.

THE COURT: Let's wait for Counsel to come around.

THE WITNESS: Do you want to see it?

MR. BREHMER: Yes, sir.

A Approximately from that corner right there and it went down. If you had -- if you had an NRCS map, it would show the ponds on the map. And we worked all the way to the borders of the pond. And the ponds, the ponds naturally were on scale with fall, with elevation, so you know how the water would follow it. But I just took the line at the creek. But it was everything from the water edge all the way back to the dam of the big pond. The dam of that big pond would approximately be running right across here. And that's an eight-to-nine acre pond. And then there was another dam on Dad that Dad put in and it was another dam running approximately across right in here. And that was a four, four and a half acre pond. And I just drew it square now. It's, like I said, if y'all had a colored map it would show -- that's it right there.

THE COURT: What is that Exhibit, Mr. Dibble, that you just handed to the witness?

MR. DIBBLE: I'm sorry, Judge. I should have identified that. It is Exhibit number 30. That's an

aerial photograph taken in 1984.

THE COURT: Okay. And I caution the witness not to write on that Exhibit.

THE WITNESS: Okay. Yes, ma'am. I'm going to put that down.

THE COURT: Yes, sir. Okay.

A Do you want me to explain that again with the --

MR. DIBBLE: Please. Please. Yes, sir.

A Okay. You can see that there's three ponds on this map, okay. There's this pond here which does not belong to Dad. The property line, the property line on that original pond went across the dam. Okay. This is one of Dad's ponds and that's a dam. You can't see all of it, but this is -- this is the eight and a half, nine-acre pond and it goes on back. This is the row crop field. If you paying attention and you look, you can see the -- you can see the contour of the soil with the way we had to work it with the terracing and all of the above. The pipeline system is not on this map. The irrigated pipe system, let's see, wait a minute. I can't tell. I can't tell if it's on there or not. But you can see that this is all row crop, by the way I can, I don't -- okay. And this was a W ditch. This is a waterway that runs in and drains through. There is another waterway that comes up through here that was for drainage purposes. But this is

the property line next to the Ballentine's. That's where it goes out to the highway. But we farmed everything. You can see how it, kind of, follows the pond line and we farmed everything from there and grabbed as much land as we could. We call that -- we called it 80 acres. It was about 78 acres in that field on the right-hand side and this is the Bermuda field over here, the coastal field and we called it 18.

Q So how did you access the row crop side?

A Through this road right here.

Q All right. And you did that from -- how old were you when you started?

A When Dad allowed me to start going and coming and when I was 15 and could drive on the highway legally.

Q When were you born?

A 1964.

Q So you were 15 years old -- let me do the math.

A '64, '74, '79.

Q In '79. You started going back in that road from 1979?

A Well, I was going before that because -- Mr. Dibble, when you grow up on a farm -- when you grow up on a farm, it's part of you.

Q Right.

A And I'm just doing what I used to do. I still get to

do it on a smaller scale --

THE WITNESS: I apologize to the Court.

THE COURT: Yes, sir. Take your time. Do you need some water?

THE WITNESS: I'm good.

A I loved what I did. I still love it.

Q Sure.

A I can tell you where every wet spot is on that piece of property. I can tell you what's got to be worked in the fall. I can tell you what's got to be worked in the spring. I can break the soil colors down from the front of that piece of property to the back of that piece of property because I've been across that land that much.

Q And to get to that land how did you get there?

A Through the Amick tract, which I referred to it as now -- but right now, by the Bill Ballentine line. And that, that road has been there ever since I can remember. I remember as a small child -- I don't know how old I was, so you can ask if you want but I won't be able to answer it. I remember as a small child Dad and a couple of other employees over there working on the drive and I was playing in the ditch. There's a ditch that you have to cross coming off of 76. I'm sure if y'all have been to the property, y'all know what ditch I'm -- you should know which ditch I'm talking about. Karl should know which

ditch I'm talking about.
Q How would he know?
A I would think through the legal process he should know where the ditch is at. Is that fair enough, Mr. Dibble?
Q That's fair. I don't know if you have taken Mr. Brehmer out there.
A Oh, I haven't. But I would assume that he's been out there since -- since what's going on in this courtroom. I played in the ditch while they were working. So, I mean, it's always been there. It's always been there, from my recollection.
Q All right. I'm going to hand you a copy --
A I apologize to the Court for being emotional.
THE COURT: Oh, sir, just take your time. I know this is very important to everyone here.
Q This is a copy of Exhibit number 31.
A This one is marked 30 and it had 31 on it. It was X'd out, if I'm -- if I'm seeing that correctly.
Q Yes, sir. I'm sorry. I'm going to --
MR. DIBBLE: Your Honor, this is -- was marked in the previous trial as 31. It is now Exhibit 30. I wanted to ask him if this --
THE COURT: And this is a copy of it?
MR. DIBBLE: Yes.

THE COURT: Okay.
MR. DIBBLE: That's the same photograph, the same date, it is a 1984 photograph.
THE COURT: Okay. And now it is Plaintiff's Exhibit number 30 --
MR. DIBBLE: Yes.
THE COURT: -- and it is a copy and you're getting ready to ask this witness to modify that?
MR. DIBBLE: Modify the copy, not the --
THE COURT: Yes, sir.
MR. DIBBLE: -- not the original Exhibit.
THE COURT: Yes sir, to mark on it. All right.
Q Take this and show the Court and write on that document where the row crop field is.
A You want me to sketch it out or how do you want me to do this?
Q However you want to do it to identify where the row crops are.
A (The witness complies.)
Q Now, if you'll do one more thing for me. Write down the word, road, where you've accessed the row crop area from Highway 76.
A (The witness complies.)
Q And write on this the, coastal Bermuda field.
A You mean sketch it out?

Q That'll be fine.
A (The Witness complies.) And you want me to do the same with the road, I'm assuming?
Q Yes, please.
A (The Witness complies.)
Q Now, how about write your name up here on this blank spot and put the date on it.
A Today is the 7th?
Q I believe that is right.
A Is today the -- I don't have my phone.
THE COURT: Yes sir, it is.
A (The Witness complies.)
MR. DIBBLE: We offer this as the next Exhibit.
THE COURT: Any objection, Counselor?
MR. BREHMER: No, ma'am.
THE COURT: Okay. And that will be number?
COURT REPORTER: Judge, that will be number 40.
(Whereupon, Plaintiff's Exhibit number 40 was admitted into evidence.)
Q I'd like for you to take this copy of Exhibit 16 and write your name on it and put the date on it.
A Okay. (The Witness complies.)
Q Now, you notice on that -- on that copy there's a notation at the top of the plat that says, R/Way to Highway. Do you see that?

A Mr. Dibble, my eyes are not good.
Q Okay.
A Okay. I'm in the process of having surgery on my eyes now, waiting on appointments and stuff. So you'll have to bear with me on that. You're talking located here?
Q Right there.
A I'm not going to be able to read that, not with my glasses or not with my eyes with that fine print.
Q Well, I'd represent to you that that says R --
MR. BREHMER: I --
A R/Way to Highway.
THE COURT: Okay. There's an objection.
MR. BREHMER: Object to the leading nature.
THE COURT: Yeah. Mr. Dibble, unfortunately, I don't think you can provide that information to him. He's stated that he cannot read that and so I'm going to sustain that objection.
Q All right.
A I --
MR. DIBBLE: Your Honor, and I'd like to mark this as the next Exhibit.
THE COURT: And that would be Exhibit number 41.
COURT REPORTER: Yes, ma'am.
THE COURT: Any objections?

MR. BREHMER: No, ma'am.
THE COURT: Okay.
(Whereupon, Plaintiff's Exhibit number 41 was admitted into evidence.)
Q When did you stop working for your father?
A April/May of '08, 2008.
Q So would it be correct to say that you worked for him for 18 years?
A Other than a 10-month -- 10 to 11 month period that I worked at Louis Rich in Newberry, South Carolina.
Q All right. And during that 18-year period, did you plant row crops every year?
A Yes, sir. Most of the time it got double-cropped.
Q And did you take the farm equipment across what it is now Mr. Amick's property to plant the row crops?
A Yes, sir.
Q And did you take equipment across Mr. Amick's property as needed to fertilize the row crops?
A I used the road to get to the property when I needed to use the road.
Q Now, did I ask you about the center pivot irrigation system?
A The center pivot was put in after '08.
Q After '08. At some point, Mr. Braswell, were gates put up across that road?

A Yes, sir.
Q And do you know about when that was?
A No, sir. It was -- it was after -- it was after Mr. Amick purchased the piece of property.
Q All right.
A It was after Frankie purchased the piece of property.
Q And did you have a key to the lock on those gates?
A Most of the time. There was a couple occasions that I went to do work. There was one that I remember vividly and I got over there, I was putting nitrogen out, was pulling a thousand-gallon tank behind me full of nitrogen with a pickup truck and the lock had been changed. I had no key, so I took the gate off the hinges, I throwed them to the side. I twisted them around to the side and went on to do my job.
Q All right. And did you know any history about how those gates got there to start with?
A I know that Frank -- Mr. Amick had -- Mr. -- I know that Mr. Amick requested them because I think he had moved a few animals on his place and he had requested them. And we actually had gates on the farm and so we took the gates over there and Mr. Amick put the gates up.
Q All right.
MR. DIBBLE: That's all I have. Answer any questions Mr. Brehmer has, please.

THE COURT: Cross-Examination, Mr. Brehmer?

MR. BREHMER: Yes, ma'am.

CROSS-EXAMINATION

By Mr. Brehmer:

Q And, Mr. Braswell --

A Hey, Karl. Mr. Brehmer, how are you?

Q Because of the court rules, I'm required to call you Mr. Braswell.

A That's fine.

Q Is that okay?

A And I'm required to call you Mr. Brehmer?

Q No, you can call me Karl. We've known each other all our lives.

A That's, correct.

Q The tractors that you used, what does one of those tractors weigh?

A Karl, that depends on what size tractor you're talking about.

Q The biggest one. What is the biggest one.

A Those tractors, I think that we were going back and forth with -- the smallest thing that I ever ran was a 3020 John Deere with a narrow front-end. I'd have to -- I'd have to guess because, I mean, we never weighed. We ran them on the road. An educated guess on that would be 8-10,000 pounds just on the base tractor.

Q Okay.
A The largest tractor that we ever -- that I ever was involved with was the 8300. That tractor is probably in that 16-20,000 pound weight-range depending on how it's weighted.
Q Somewhere between four and ten tons, average. Is that fair?
A On tractors, yes sir.
Q On the tractors?
A On the tractors, four to ten tons.
Q Okay. And when you cut a load of silage, how many tons are on a load. I know it's depending upon the size of the body of the truck or the wagon. But on average what's the size of the load?
A The trucks in the -- the trucks were hauling five-six tons, plus the weight of the truck.
Q Okay.
A The trucks toward the end of my tenure with Dad in that '05-'08 range as the farm grew, everything else grew with it. Those trucks -- we had a couple of trucks that -- we had a couple of trucks that would haul anywhere from ten to twelve tons.
Q Okay.
A That's just material --
Q Just material.

A -- okay, because they were tandem axle trucks.
Q I understand.
A But they would haul ten to twelve tons without the weight of the truck.
Q And truck's probably --
A Most farm trucks are running 55,000 pound tags because of fuel laws. So we had 55,000 pound tags. It's either fifty -- it's just like -- we had 55,000 pound tags on those -- on the large trucks.
Q Okay. And that would equate to --
A Twenty --
Q -- twenty-two tons -- twenty-two and a half tons.
A That's correct. It is was maxed out.
Q Okay. So fair to say, they pretty heavy, right?
A I guess so. Yes, sir. I guess, you could say pretty heavy.
Q Okay. Well, I'm going to show you some tracks of some ruts. I'll show you an Exhibit here which is Defendant's Exhibit number 1 for ID which shows the tracks, correct?
A Yes, sir.
Q And you can tell -- can you not tell from that photograph, Defendant's Exhibit 1 for identification, that the tracks -- the trough of the track is at a lower elevation than the rest, correct?

A Just like any other dirt road can be.
Q I understand. I understand.
A Yeah. And no dis -- just like any other dirt road would be. You're going to always have crown on the edges and you're going to have a crown in the middle.
Q That's fine.
A That's the nature of any dirt road.
Q That's fine.
A And even a gravel road is going to be the same way.
Q I understand.
A Most county-maintained gravel roads will have that.
Q But my point is, is that those trucks leave tracks. Okay?
A Yes, sir.
Q And the weight of those trucks compress the soil, correct?
A That's correct.
Q And the weight of that equipment and stuff like that has made those tracks?
A It has made a road.
Q Yeah. It makes --
A -- it's no different than a path.
Q I understand. But my point is, is that you can -- if they've been through there, it's pretty obvious where they've been, right?

A Yes, sir.
Q Okay. And you said in your direct examination that you felt that is your job to capture all the useable land you could, correct?
A That's correct.
Q Because the truth of the matter is that you know, you're still a self-employed farmer, are you not?
A Yes, sir.
Q And you know that the profit potential is small, if at all.
A Yes, sir.
Q If at all, it's small.
A Yes, sir.
Q So you have to capture everything that you can possibly do, correct?
A Yes, sir.
Q Now, you agree with me that this 2008 aerial photograph from Newberry County, which has been marked as Defendant's Exhibit number 3, is a pictorial representation of what the property looked like, is it not?
A On that end.
Q Yeah.
A A very small portion of the property. That's approximately -- that's approximately six to eight acres

of Dad's land --
Q Sure.
A -- on that -- on that particular photo.
Q That's right. But the point, it's the relevant portion regarding the road as far as this litigation is concerned, correct?
A That's the road coming into the property.
Q And on Exhibit number 3, you can see where the traffic has been traveling down the property line and across the field, have you not?
A Yes, sir. Yes, sir.
Q And on Exhibit number 3, you can see the tracks where it's been going across Mr. -- your father, Mr. Braswell, Sr. -- let's refer to him as Mr. Braswell, Sr., -- as evidence of the traffic in there, correct?
A Yes, sir.
Q Okay. And you would have been one of the ones making these tracks in '08, 2008, correct?
A No, sir. Because I was -- Dad and I parted ways in '08.
Q Oh, okay. That's right.
A You got to get prior to '08 for me.
Q Okay. Prior to '08. All right.
A But I would have been traveling that road.
Q Okay. All right. I'm going to show you what has

been marked as Defendant's Exhibit number 4 for identification, which I'm going to represent to you is a 2002 aerial photograph.

A Okay.

Q Can you see this?

A Yes, sir.

Q Okay. There's no road across your father's field, is there?

A Yes sir, it is. That road is --

Q Don't mark on the Exhibit.

A I'm not. I'm going to use the end of the pen --

Q Okay.

A -- as a reference. Is that okay?

Q That's fine.

A Okay. If you see on your first map, the fence line has been cleaned up a little bit better. There is a road, that's the road right there. I can see it. I'm telling you that the road was put in after we started irrigating and was traveled more heavily after the irrigation was put in because the pipeline ends -- if you had the map that was larger -- the pipeline ends 150 -- 150 feet off of this property line. And that's the old ditch going to the waterway. I would say approximately another two to four hundred feet past where your map is cut off. So yes, we traveled the road. But prior to the irrigation system, we

were capturing, the terminology that you used, every acre that we could with traveling. So that road going in and out would get plowed and planted to capture that land. When we put in the irrigation, it made no sensible profitability to us not to travel -- we were traveling it all the time. But it made no sense to plant that road because of the additional traffic with the irrigation being added in to get to the pump and where the irrigation system was located on this side.

Q Okay. The road's been changed. You said earlier when you were using it, it was right against the -- right against the fence line, correct?

A That's correct.

Q Okay. And later, it was moved out, correct? It's shown -- where it's shown in --

A You've got it on the map. If the black line is representative of the property line, then it's obvious it's been moved off the property line a little bit.

Q Yeah. Well, that's the point that I'm making. That's the point that I'm making, Mr. Braswell, okay. And let me -- let me finish my thought --

A Okay.

Q -- and I think you'll agree with me. You've made the representation that the farm has grew and so has the equipment. Okay.

A Hands down --
Q -- I understand, but let me finish my -- let me finish my thought. And then we'll get to the point of this. That is -- is that in 1981-1982 when we finished high school, things were different than they are in 2020, are they not?
A Yes, sir.
Q Yeah. Yeah. Y'all were using a, was it, a John Deere 38 silage cutter?
A No, sir. We were running a 3960 with a three-row head.
Q Okay. And that is a lot smaller. It was taking three rows where you're now taking, what, ten or twelve rows?
A Dad's machine now takes six.
Q Okay.
A But prior to '08, the self-propelled machine only took four.
Q I understand.
A So the machine increased by -- if you go from three to four, that's a 33 percent increase.
Q Okay. And then when you go from four to six, that's another 33 percent increase. Okay. That's the point that I'm making is, is the trucks when -- in '81 when you were doing it, you were probably using, what, a C60 Chevrolet

dump truck?
A C65's and we had a --
Q Okay.
A We -- yes, sir. C665, C70's.
Q Which is a single-axle truck?
A A single-axle 14-16 foot dump.
Q Dump. Now, you got -- using a Kenworth row tractor with a much bigger dump.
A Eighteen, twenties, and twenty-twos.
Q -- and instead of one single axle, you got two axles in the back.
A That's correct. But if you do the -- if you do the weight in proportion to the tire ratio, it's actually -- it's actually better now because you've got ten tires toting that twenty tons instead of six tires toting -- toting that weight -- so it's actually better.
Q Okay.
A From that's why we have -- that's why we have rules on the roads for tractor-trailer truck drivers because they have to spread weight out because of tearing up roads and such.
Q I understand, but the point is, is that the machinery is wider.
A The point is the truck didn't get any wider.
Q And that's not --

A I understand that.
Q But the machinery is wider.
A Karl, I am sorry, Mr. Brehmer, actually the last ten to fifteen years transport width of equipment has came down compared to what it was when you and I got out of high school because of liability on road with motorists. I've got a set of planters now that plant eight fifteens. They do eight thirties. They go down the road twelve-feet wide because they pick up and twist completely. Dad now runs a set of twelve row thirties instead of the six thirties. The six thirties, when I was driving, was fifteen feet wide. The twelve thirties are the same width as the six thirties because of the way machinery companies have made the equipment bigger but they've had to get it to fold up. They've had to get it to to handle the highway. So I'm having trouble processing what you trying to --
Q The process is and what I'm -- and what I'm establishing is that as shown in Exhibit number -- Defendant's Exhibit number 4 for identification, which is this aerial photograph. And comparing it to Defendant's Exhibit number 3 which is a 2008 is, is the road, the location of the road has moved from right to left if the right side is Mr. Ballentine's property, it's moved over slightly, hasn't it?

A On Daddy's property, but it hadn't on Mr. Amick's property. Look at the property line.
Q Okay. Now, you haven't worked there since 2008?
A That's correct.
Q Okay. 2008. Now, you haven't --
A -- what bearing does -- what Dad does on his property with the road have to do with bearing on a road with Mr. Amick?
Q The question that I have is --
A I'm sorry. I shouldn't, I don't guess I am allowed to ask a question.
Q Because of the nature of the farming operation there has been a need to move over slightly to get stuff in and out, has there not? Has there not, Mr. Braswell?
MR. DIBBLE: I object to the question because there is no foundation of what he's asking about to move over. What is he asking about moving over?
THE COURT: Okay. I believe --
COURT REPORTER: I need -- I can't hear him over there.
THE COURT: Okay. Mr. Dibble, if you'll come closer. The fan is going and the Court Reporter is having a problem hearing you.
MR. DIBBLE: I object to the question is the lack of foundation. He did not identify what he was asking the

witness to talk about moving over. If he's talking about the road on Mr. Ballentine's -- on Mr. Braswell's property, he's already said it moved over slightly if the property line is right. He's talking about Mr. Amick's property that he's identified when he's talking about, he's asking about before he can ask the question to the witness.

THE COURT: Okay. Mr. Brehmer, I will sustain that objection and ask you, if you will, sir, to restate the question or ask -- I'm not sure you have to rephrase it but just reask it.

MR. BREHMER: Okay.

Q Mr. Braswell, the equipment used in farming has become larger, has it not?

A Yes, sir.

Q Okay. And some of the equipment like the combine heads, the combines in and of themselves have necessitated taking more room to get in and out as it were twenty years ago?

A Once again, Mr. Brehmer, a combine in today's market, the way it's designed has quit attaching and un-attaching, the heads on them. We used to use the old combine with the 18-foot -- 16-foot, 18 and a half foot overall width on the machine because it was the way it was done. Nobody detached and hooked heads up. The modern equipment today,

my combine has a 20-foot head on it but you drop it on a header cart in five minutes and you go down the road 12-foot wide instead of 18-foot wide. So I understand what you're trying to get here but what I'm trying to explain to you is when you start talking about modern equipment as opposed to equipment in the early -- in the early eighties --

Q Yes, sir.

A -- okay. I'm telling you that as a general rule, transport widths have come down on the larger equipments because of the way manufacturers have designed them to get up and down the road because of motors, because of getting up and down the road.

Q Okay. Mr. Braswell, will you agree with me that Exhibit number 1 for identification shows the transition between Mr. Amick's property and Mr. Braswell, Sr.'s property?

A That shows to me the road that I used to travel right up and down to get to and from Dad's property.

Q Okay. And will you agree with me that there is a straight transition between the -- your father's property, Mr. Braswell, Sr., and Mr. Amick's property?

A I mean, as far as I can tell, yes.

Q Okay. And you agree with me that you have just testified that Exhibit number -- Exhibit number 3 shows

that that road has shifted to the left?
A Can I hold that map, please?
Q Yes, sir.
THE COURT: And that would be Defendant's number 3 for identification.
MR. BREHMER: That's right.
A I'm turning them in proportion for me to be able to see.
THE COURT: Yes, sir.
A If you look right here, Mr. Brehmer, I'm going to point something out to you.
Q Mr. Braswell --
MR. BREHMER: I'd ask that the witness answer my question and then he can explain.
THE COURT: Yes, sir. If you will please try and answer --
A Ask the question again.
Q Did you not previously tell us, under oath, that the road on your father's property has shifted to the left from the tree line from where it was originally?
A When was this map taken? When was this photo taken?
Q I --
MR. BREHMER: You know, I would ask that he answer the question, Your Honor. My question was not about that photograph. My question was, didn't he previously testify

that the road shifted from between 2002 and 2008.

MR. DIBBLE: I believe that is a mischaracterization.

THE COURT: I -- and I think --

A Yes, from the property line.

THE COURT: Okay, if he can answer.

A Yes. From the property line, that is assuming the black line on the -- this map is the property line. Then, yes, I testified that it has shifted off the property line on Dad's property.

Q On Dad's property.

A On Dad's property.

Q And you also --

A On Mr. Braswell, Sr., however you refer to it.

Q Mr. Braswell, Sr., your father. I think the Court's got a good record of what it is. And you agree that there is a smooth or a straight transition from Mr. Amick's property to Mr. Braswell, Sr.'s, property that is shown in Defendant's Exhibit number 1 for identification, do you not?

A I want to make sure I understand this correction, Karl. You are asking me is the transition from this point here that we're seeing on this photo to the line right there where it goes onto -- where it transitions into the open field that belongs to Dad. You're asking me is that a straight shot?

Q Yes, sir.
A According to this photo right here, yes, that is a straight shot.
Q Okay. I show you what has been marked as Defendant's Exhibit 2 for identification.
A That's coming from the opposite direction.
Q Coming from the opposite direction. Okay. Mr. Braswell, will you not agree that there is a trough to the left of the traveled lane there shown in that photograph?
A I trough? You're saying a trough on the left side of the road --
Q Yes, sir.
A -- from that lane? I'm not trying to -- I'm seeing the same ditch located here, that's the same ditch located there, is what I'm saying.
Q You agree --
A You see the green grass. I mean, the green grass is showing a low spot.
Q Yeah, the low point.
A The green grass. So the -- what you refer to it as, I see the green grass running right through here just like I see the green grass. I also -- I don't know where this picture was taken from in proportion to the old board fence that was located right there.
Q Okay.

A I don't know --
Q But --
A I don't know what this -- do you understand what I'm saying?
Q I do. I do.
A So when you start flipping from one side to the other, especially with the trouble that I have with my double-vision --
Q Yes, sir.
A -- it can mess with me pretty hard because of my depth-perception is all messed up with my eye condition.
Q But you said it and what I want to make sure that we got is clear. You admit that on the Ballentine side of the track shown in Defendant's Exhibit number, I am sorry, Mark.
A That's fine. We want to make sure we are right.
Q One and two, on the Ballentine side of those tracks, there is a low area, is there not?
A I can answer that, but I want to elaborate. Yes, there is a low area, but there has always been a small ditch over there that drains the water.
Q Okay.
A There's always been a small ditch there.
Q Okay.
A From the best -- from since I can remember.

Q Okay. Now, Mark, isn't it true that where that low area was was where the tracks were when you were going in and out?
A And you're asking me to speculate there, Karl. I can't answer that.
Q That's -- that's the answer.
A I'm telling you --
Q That's the answer, you don't know. You don't know, do you?
A The road to me is the road and that road -- that Exhibit right there looks no different than the road that I used to travel. And if you'll allow me to explain that to you, if I'm not allowed to, I will. Because of this little --
THE COURT: You're allowed to.
THE WITNESS: Okay.
A This little area right here, that is a -- that's a privet bush.
MR. DIBBLE: Show the judge.
A I'm sorry. This area right here, Your Honor, that's a bush. It's a volunteer privet bush and most people know what privet's are, okay, because they're very invasive. There is a -- there is a -- I don't know what's there now. When I was there, there was a post there with, I, three or four boards that went back to this fence line that went

through. We always shot straight down the road and we always hugged that post as close as we could without hitting it. So this road to me, in my mind, is a straight shot straight down through there hugging that right there because that fence, I don't know when it was put in, that board fence, but that little three-board fence was always there from the best of my recollection. You understand what I'm saying? So the road was not always -- it was never against the fence line because, A, it stayed a little more wet in there. Once again, you can't run heavy equipment in a soft spot and it -- and that was there and so that was the point of interest that we took on a straight shot.

Q The point that I'm making, Mr. Braswell is, hasn't this road, just like the road on your Father's, been moved over several feet?

A To me, I'm saying no, I don't think it has unless you go to the map that you're showing as Exhibit -- that's Exhibit 3 -- am I reading that correctly?

Q Yes, sir.

A Okay. That's Exhibit 3 and that road looks like it's typical with the black line right there. And then when it crosses the black line, it looks like it starts bearing weight off the black line if the black line is --

Q The property line.

A If the black line is representative of the property line.
Q But the truth of the matter is, is in 2008 when this photograph was taken, you, you were no longer an employee?
A I've been on that -- I've been on that road one time since '08 --
Q Okay.
A -- and it was back during dove season of this year and me and my two children went back there and set up at the towers on the pivot and tried to shoot at a few birds.
Q Okay. Now, let's talk about the other road. Okay. There is a road that is up above the place that's called the field road. Okay. It goes through the Parr property, the edge of the Parr property.
A We call it the shack road but that's the --
Q The shack road. Okay.
A We -- or the coastal side or it's -- it's actually not off of 76. It's off of Herman Wise Road.
Q Okay.
A You have to hit Herman Wise Road for just 40 feet and when you -- but yes, I know which road you're referring to.
Q And that road provides access to the property, as well, does it not?
A We were -- we used that road as access to that side

of the property, yes sir.
Q Now, and you took tractors through there?
A Yes, sir.
Q Trucks through there.
A Yes, sir.
Q Okay. And you have access from that side. You could get to the row crop side of the property from there, could you not?
A Not with some pieces of equipment.
Q Okay. Now, 2006, y'all quit using that road to a certain degree, did you not?
A I was using that road up to '08.
Q Okay.
A I was using that road through -- that road, I was using that road until me and Dad parted ways.
Q Okay. All right. And you have another access --
THE COURT: One, one second. I'm -- I've been told by the Clerk there's someone in the hall that I'm assuming is outside this door and maybe they need -- I don't know if they can hear or not. They -- if that's -- they probably are wondering if they're up, hoping that they are up now. Thank you. Okay. Please continue.
MR. BREHMER: Okay.
Q Now, the truth of the matter is, is because of your separation of employment in '08, you don't know if the

exact location on Defendant's Exhibit 2 is where the road was when you were there, correct?
A When I was there -- yes. I will say that, yes.
Q Okay. All right. And the other point that I'm making, is you don't know one way or the other whether the road has been moved over one way or the other, do you?
A No, sir.
MR. BREHMER: Thank you, Mr. Braswell.
THE COURT: Any redirect, Mr. Dibble?
MR. DIBBLE: Yes, ma'am.

REDIRECT EXAMINATION

By Mr. Dibble:
Q Mr. Brehmer asked you about a low spot between the Braswell fence line and the road. Do you remember that?
A Yes, sir.
Q And did I understand you correctly, you said you couldn't run equipment down that low spot?
A That was always a -- somewhat of a ditch that drained the water back toward the -- back toward the main ditch that we had to put the pipe in to get across. I mean, there's always been a little low spot even that for the water to not be on the road, so to speak.
Q Did you ever run equipment through that low spot?
A I've probably dropped pieces of equipment over in that low spot trying to get in and trying to get, you

know, you understand just to try to maintain to stay on the road. So if I had a piece of equipment that was hanging off to the right, yes sir, I'm sure equipment has probably ran in that ditch area with me at some point in time or another.

Q Now, at the very beginning of the entrance when you first went to work for your father, is there a ditch on the Highway 76 highway?

A There was a ditch that Dad has put a pipe in to cross to get on through. There -- it used to be a real large ditch.

Q And to the right of that pipe, what's the configuration of the ground at that point, is it flat or is it steep?

A Mr. Dibble, all the water from the -- all the runoff water from the bridge and the highway water crosses there and runs under the road that goes to Dad's property. So it's a pretty good -- it's a pretty good, I'm referring to it as a ditch.

Q All right.

A Three or four feet across the top, three or four feet deep and that's just somewhat of a -- I'm not talking about a knee deep ditch. I'm talking about a three to four feet ditch.

MR. DIBBLE: That's all I have.

THE COURT: Okay. Thank you.
MR. BREHMER: Nothing further for Mr. Braswell, Jr.
THE COURT: Okay. Any objection to Mark Wayne Braswell being excused?
MR. DIBBLE: No, ma'am.
MR. BREHMER: None.
THE COURT: Okay. Thank you, sir. Thank you for being here.
THE WITNESS: Thank you, Your Honor.
THE COURT: Why don't we take ten minutes at this time.
(Whereupon, a break was taken.)
THE COURT: Okay. Counsel, are we ready for the next witness?
MR. DIBBLE: Yes, ma'am. We call Jimmy Braswell, Mr. Braswell, Jr.
THE COURT: Okay. Yes sir, if you'll please come forward to be sworn by our clerk.

JIMMY BRASWELL, JR., being first duly sworn, testified as follows:

THE COURT: Okay. Make yourself comfortable, sir. If you will state your full name spelling your last.
THE WITNESS: My full name is James L. Braswell, B-R-A-S-W-E-L-L, Jr.
THE COURT: Okay. Thank you, sir.

DIRECT EXAMINATION

By Mr. Dibble:

Q Mr. Braswell, what relation are you to Mr. Braswell, Sr.?

A He is my Dad.

Q And the last witness was Mark Wayne Braswell, and he is your brother?

A Correct.

Q How long have you worked for your father in the farming business?

A Pretty much all my life. I think I probably started -- I received an actual check when I was fourteen.

Q And what year would that have been?

A You have to figure it was 1959 so that's --

Q '64?

A No.

Q '74?

A '74.

Q And what did you do for your father in the farming business?

A Well, everything involved in taking care of the dairy animals including crops and we have to milk cows twice a day, feed them.

Q Did you have any responsibility for the 120-acre tract that Mr. Braswell bought from Sula Miller?

A Yes, sir.
Q What did you have responsibility for on that piece of land?
A Well, there's always, you know, I had responsibilities over there since I've been working. But yes, here lately, my main responsibility I have is, kind of, with the irrigation systems and we all jump in and haul silage from there and we always have. Bring -- which Dad generally runs the combine when we -- when we have a spring harvest on grain and a lot of times I'd bring my truck back and forth.
Q Is there a creek that runs down the middle of that 120-acre tract?
A It's a -- yeah, I guess you'd call it a creek. It's, kind of, a dry -- it's called a winter creek or whatever. When it's wet, water runs through it. There may be periods where it is dry but it is still very wet.
Q Now, the last witness was Mr. Mark Wayne described the property on the Parr side and on the Ballentine side. Is that a good way to describe that property?
A Yes.
Q Okay. From the Ballentine side of the property, where did you plant?
A On that side of the field we got an 80-acre field. And there's a road -- ever since he cleared it, it used to

be pastures there. And I can remember as a kid going down on -- I guess y'all -- is it a farm road or whatever, but the one that's in dispute. And we would go back in there and then we'd go through some woods, there'd be like a five-six acre field back in there. There's patches everywhere. After my Dad bought it he started process of clearing it up. And I don't know exactly the dates, but as far back as I can remember there's been like an 80-acre field back there and there's a road that splits it. On all that land it's always been row crops which would be like corn/grain. A lot of times we would make a makeshift path, it is now a permanent road, it splits the field. But we, a lot of times we would plant half of the 80-acre field, what you call it, a double crop. We would plant like a grain crop in the fall and then harvest it in June and replant it in something like sorghum. And then the other half we would put in like early corn.

Q All right. And what kind of equipment -- how did you access the Ballentine side of the 120-acre tract?

A We've always accessed that from on the right-of-way that is in dispute. As far as I can remember, we've always accessed it. We have used both of the roads from time to time, the one going to the hayfield. But we -- as far as I can remember back, we've always used that road.

Q And by that road, you mean the road across Mr.

Amick's land?
A The road across Mr. Amick.
Q And what type of equipment have you driven back there?
A Well, we've driven some pretty big equipment back there, a combine, had a 16-foot header, that's the cutting swath of it. When you add the shields and what not, you probably, 17 maybe even possibly 18 feet wide. I know that the old combine that used to go back there. We've got a different combine now. But one of the old ones is a John Deere, 6600 1979 model. And it still sets up at the dairy up under a machinery shed and it's under a 20-foot bay. If you look at it, you might have a couple of feet on each side of it.
Q Now, when you drive a combine that wide down a road, how much space will you need to safely drive that combine back to the field?
A You need 20-foot or more than 20-foot.
Q And why is that?
A Why would you need that much?
Q Yeah.
A Well, you know, this thing kind of -- it don't maneuver like a car, you know. And you probably -- it's probably wagging back and forth could be even a foot, you know, a foot and half. So you got seventeen, seventeen

and a half feet. This thing, it's kind of slagging back and forth. I mean, you know, you can take something out pretty fast with it.
Q All right. And what other kind of equipment did you drive back there? What did you use to plow with?
A Sir?
Q What did you use to plow the field with?
A Here lately, we use all kinds of tractors over the years. But, I mean, what we use here lately is a 8300 John Deere tractor and a 4755 John Deere tractor.
Q And how wide are those plows?
A The plows are -- they are fifteen -- they cut a path fifteen feet. So what you got with the frame and all, you still up there around 16-17 feet.
Q All right. Now, you said -- I believe you said you planted that field sometimes twice a year?
A Correct.
Q And what did you -- what size planters did you have that you drove back across Mr. Amick's land?
A For many years, I guess probably way back in the 60's he always used a six-row, 30-inch planter. Now, that planter, it's got what you call a marker disc on it. And that planter is, if you go from row to row on it is 15 feet.
Q All right.

A So but if you add the markers that are sticking out on it, you're probably another couple of feet. It's a pretty wide piece of equipment.
Q Okay.
A As far as the grain drills, we have a 10-foot grain drill which is probably 12 or 13 foot wide and then we have a 15 foot grain drill that is, the same way as the planter, probably 16, 17 feet wide.
Q All right. Now, I put in front of you two aerial photographs. Not that -- not that one, the other two. Those are the aerial photographs marked into evidence. One is 1981 and one is 1984.
A Yes, sir.
Q Now, does the 1981 photograph show --
A 1981?
Q Yeah. How many ponds does the '81 photograph show?
A I didn't hear you, Mr. Bob. Say it again.
Q How many ponds, p-o-n-d-s, does the '81 photograph show?
A Just one.
THE COURT: Which Exhibit number is that, sir? That would be number 31. Thank you.
Q And how many ponds does the '84 photograph show?
A It shows the two ponds that my Dad has dug below the sewage pond.

Q Now --
THE COURT: What Exhibit number is that, sir?
MR. DIBBLE: Exhibit 30.
THE COURT: 30. Okay. Thank you.
MR. DIBBLE: Yes, ma'am.
THE COURT: Okay. Yes, sir. I'm sorry. Go ahead.
MR. DIBBLE: Yeah. I should have done that. I apologize.
Q When did you put in the irrigation system on this 120-acre tract?
A Mr. Bob, it was shortly after he built, constructed the ponds. I would say within two or three years. We initially started -- like I say, there's an 80-acre field. He had already, pretty much all of that was cleared and we had a path going down through the middle of it. And when we first initially started with the irrigation it was -- I can remember me and my cousin back there in '88 and '89 and we were moving, we had these six-inch aluminum pipe were 30 feet long and you had to hook them together. We had a tractor with a pump there by the pond and we'd bring them up, this is dry where the road is split and you go so far. You hook this traveler up to it, it is called, it is like a big old reel. It's very top-heavy. We've had -- we turned -- we've turned one over one time because it's just, you know, so it's got to be perfect level and

everything. But, anyhow, we would bring these pipes up in, I would say '87, '89, '86. And you go up so many feet, like 150 feet and you hook this traveler up, pull the reel out, the water starts coming through and it pulls the nozzle back in. When you complete that one, you add another 150 feet of aluminum pipe and start the process all over again. In general, if I was guessing I'd say it's probably -- it would water about eight to ten acres per pull. And I could calculate how far exactly how much but just guessing, it would be 10, 12, 14 hours for the thing to make a process. And later than that we -- what we did in the early '90's was we put a permanent pipe up this road that split the fields. And every 150 feet, 150 feet we would put what they call a hydrant. And what we did then was we charged, this entire line going up in between the fields. And instead of having to build these, aluminum pipe, then we would just hook the traveler to the hydrant, pull it out, which made things a lot easier. And then in 2008 we took and put a center pivot in trying to get away from some of the labor and the inefficiencies of the traveler and gained some more land as far as irrigating.

Q All right. Now, in connection with all of those irrigation systems, would you have to have a pump?

A Yes sir, you have to have a pump.

Q And how often did you have to fuel the pump?
A Well with tractor, most tractors are designed, you know, to run probably eight-twelve hours on a tank of fuel. It may run a little bit longer depending on how far it's running. The system we have now, it uses -- I've actually figured this out. If I am not mistaken it uses like a gallon of fuel -- 1.5 or 1.2 gallons per hour. So it's fifty -- it's a fifty-five gallon tank, so it'll last close to about twenty-four hours.
Q So how often --
A But we'll check before then, but it's somewhere between that twenty and twenty-four hours.
Q So how often did you have to go back across Mr. Amick's land to refuel your pumps?
A Well, we could -- we had a system running over there. I mean, we checked it several times a day and at night.
Q And how do you -- what kind of vehicles do you drive across that -- Mr. Amick's land when you go to check the irrigation system?
A Generally, just four-wheel drive pickups.
Q Now, when you fertilize your crops, do you fertilize with spray?
A No. You fertilize with granular fertilizer. You use lime and especially on corn and grain you use a good bit of nitrogen and that would be a spray.

Q Okay. What kind of equipment do you use to put that fertilizer down?
A We use a pull-type of what they call just a regular fertilizer spreader. It is a pulled behind a tractor. And it puts out a swath, it has basically got two beaters on the back and it puts out a swath about 50-foot, 45-50 foot wide.
Q And how wide is that piece of equipment?
A Well, it's not terribly wide. I'd say maybe nine or ten foot, something like that.
Q Okay. And how often do you fertilize each crop?
A Well, you normally -- you do it at least once a year.
Q And when you harvest your grain --
A -- that's just for the granular. With the nitrogen you are going to do it as well. It is on top of the granular.
Q How often do you do nitrogen?
A After we plant corn we will go in there and put the nitrogen down with the chemicals for some weed control before the corn emerges. And that piece of equipment is -- it's probably about 13 and a half, 14 feet and then the wings or the booms, I am sorry, the booms will spread out and it makes it like fifty-foot wide.
Q But you don't travel across Mr. Amick's property with the booms out, do you?

A No, sir. No, sir.
Q Is it fair to say, Mr. Braswell, that you have traversed Mr. Amick's property any time you needed to do so in commission of that farming operation since you started working for your father?
A Yes, sir.
MR. BREHMER: Object to the leading nature of the question.
THE COURT: I'll sustain that. Rephrase.
MR. DIBBLE: I prefaced the question with the phrase, Is it fair to say.
THE COURT: We will be at ease for just a moment.
(Whereupon, a short break was taken.)
MR. DIBBLE: Why don't I just re-ask it, Judge?
THE COURT: That's fine with me.
Q Is it fair to say that you have crossed Mr. Amick's property every time you needed to go back to the 120-acre tract?
MR. BREHMER: Objection, Your Honor.
THE COURT: Okay. That is suggesting a conclusion and answer, if you will. Can you just ask him if he crossed the property or how he accessed it?
Q Have you crossed Mr. Amick's property to get to the 120 acres every time you've needed to do so since you started working for your father?

A Yes, sir.
Q And have you planted crops on the Ballentine side of the land every year since you have worked for your father?
A Yes sir, at least one crop per year. But backing up to that other question now, Mr. Bob, since this has been going on, we were locked out, you asked me if it was every time. Well, this spring we had to cut a lock off to get in there. This fall we went over there and we could not get in because there was a trailer parked, he had the road blocked with a trailer. Other than that, all these years, there's never been any problems.
Q Well, so every year you have planted a crop on the Ballentine side and have you in every year harvested a crop on the Ballentine side?
A Yes, sir.
Q And have you every year irrigated a crop on the Ballentine side since 1984?
A Since the early mid-eighties, at least, yeah, within a couple of years after building the ponds.
Q And have you every year harvested a crop on the Ballentine side of the property?
A Yes, sir.
Q And have you every year crossed Mr. Amick's land as you needed to do so to conduct those farming operations?
A Yes, sir.

THE COURT: Mr. Dibble, what is that number?
Q It's Defendant's ID number 3. And I'm going to first refer to Exhibit number 30, Plaintiff's Exhibit number 30 and ask you to point out to the Court the road that you used to get back to the Ballentine side of the property.
A This is where we would enter, we would pass right through here. Let's see, right around here is where that road would turn -- let's see here. No, it was on down and we cleared all this out. There's a corner up here. So actually the road is split down here.
Q All right. So how far down the Ballentine line did the road run on your property?
A How far did the road run on our property?
Q Yes, sir.
A It would run almost, I'd say, just within a couple hundred feet of this pin right here.
Q And how long has that road been in existence on your property?
A As far as ever I can remember.
Q Okay. And you said the road splits. Where does the split go?
A The split goes back to the pond --
Q To the ponds.
A -- where we used to water.
Q Okay. Now, is that where the road is located?

A No sir, that's not where the road is currently located. That's kind of like an old road.
Q Okay. This was done in 2008?
A And it was 2008, that fall. I don't know, is there a month on this map?
Q No.
A Well, the fall of 2008, prior to putting this pivot in, we come in here with a bulldozer and a track hoe and we cleared all of this fence line off. Because at one time, you probably wouldn't even see this road under the canopy of trees.
Q Okay.
A And we had a logger come in, he cut the trees. Met with Mr. John Long, he wanted to -- this was an old fence going down through here and met with him. He said go ahead, he moved his cows off of that pasture. He said go ahead and take the fence down while we were clearing it. And after -- when we got it all cleared, me and him went out with a transit and we shot a straight line so he'd know where to put the fence back and we moved this road over next to the fence. That was done in the fall and early part of 2009.
Q All right. So looking at what's been marked as Defendant's Exhibit number 4, can you show us where that road is on your property?

A Well, here's -- here's part of the road coming right here.
Q Okay.
A You see this area right here?
Q Yes.
A That's part of it right there. That's 2002.
Q All right.
A Yeah. I was a photographer in high school and I --
Q Well, you can say that. What did you do with photography in high school?
A I said I was a photographer in high school and we dealt with a lot of film processing pictures and all. And I'm just curious what the speed of that film was on that photo. Do you know, Karl?
MR. BREHMER: No, sir.
Q Well, what difference would the speed of the film make?
A That's why it's grainy. Does it show on that one what -- what the ASO would be?
Q Well, I hand you -- I hand you number 31 and ask if you can point out the road on your -- on your property.
A Well, this is much clearer.
Q So how far down your property of the Ballentine line did your road run in '81?
A Mr. Bob, it's always run almost all the way to that

point. Here is Mr. Bill Ballentine's old pond. So, you see right there, that's kind of where the point is, I am sorry, the property pin. But the property turns and it's no more than where that road is, a couple hundred feet, something like that. Maybe 300 at the most. So we're looking at probably right around here.

Q So and the road splits and where does it go when it splits?

A It goes to my Dad's pond. I can tell you this, on the sprayer tractor, it has a GPS on it and it keeps up with the acreage. It calculates your -- you know, on a GPS. And on one side of the road when I spray, it comes up to about 40 acres, 41 acres and on the other side counting all of that land down there by the pond, not the hayfield but just on this side of the pond next to Mr. Ballentine, when I spray that side, it's going to be within an acre of difference, maybe 39 acres. So on an 80-acre field that road is breaking the field basically in half, 40 acres on one side, 40 acres on the other side.

Q All right. Now, I've handed you a copy of Exhibit number 15, which is a plat of the 120-acre tract and on that plat do you notice something designated as a farm road?

A Yes, sir.

Q And did you use that farm road to access your

property?
A Over the years?
Q Yes.
A Yes.
Q And were you able or are you able to bring your heavy equipment over that farm road now?
A Now, no. And even in the past the road was very narrow. So you couldn't get a lot of wide equipment through there.
Q After you put the ponds in in 1984, were you able to drive equipment across the pond dams?
A Were we able to?
Q Well, did you?
A Not with any big equipment, no.
Q And when you say not any big equipment, what equipment could you not drive across your pond dams?
A Well, you certainly wouldn't take one of those big travelers that we used the reel for the water, irrigating, combines, silage cutter. You know, I guess you could kind of go by the weight classification. I mean, most of what goes across that dam today is hay equipment. And the heaviest part of that would be a tractor which wouldn't be four-wheel drive -- I mean, it wouldn't be a dual-wheel tractor and you're probably looking at a tractor and somewhere around 14-16,000 pounds.

Q So all the big stuff, you still bring across Mr. Amick's land?
A All the big stuff is -- as far as I can remember, all of the big equipment has always come down this road, this right-of-way.
MR. DIBBLE: Answer any questions Mr. Brehmer has for you, please.
THE COURT: Cross-examination, Mr. Brehmer.
MR. BREHMER: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Brehmer:
Q Mr. Braswell, I'm going to show you what's been marked as Defendant's Exhibit number 2 for identification. That's the road that you're referring to?
A Coming off the 76, yes.
Q Yeah. Yeah. Those photographs depict the road that you're talking about, correct?
A Uh-huh.
Q Is that a yes?
A Yes, sir.
Q Okay. And you've been referring to the Amick property in your direct examination, haven't you? You called it Mr. Amick's property, correct?
A He is the owner, yes.
Q I understand. But you're assuming that the Amick

property goes all the way to the Ballentine line, aren't you?
A I guess that's what's up for debate.
Q Well, that's the question.
A Yeah. That's where his pins, his pins are in the center of that right-of-way.
Q I understand. But I want to make sure that the record in this case is clear. When you say you've been crossing the Amick property, okay, what you've been crossing, okay, is you are assuming that Mr. Amick's property line goes all the way to Mr. William Ballentine's line, aren't you?
A Yes.
Q Okay. You have not accounted for the fact that Mr. Amick's property line actually stops twelve and a half feet before it gets to the Ballentine property line, are you?
A Am I what now, Karl?
Q You have not accounted for the fact that Mr. Amick is not contending he owns twelve and a half feet from the Ballentine property.
A Well, he may not contend it. But when he called the police on us back this August, he told the police -- we went there to cut some bushes and he called the police and it was kind of a little scene. And I told the police

officer, I said, you know, because by his affidavit, like you're saying, he admitted that he didn't own it. But he told the police officer his property went to that fence line.

Q I understand. But my point is I want to make sure that the record is clear. When you've been referring to the Amick property in your direct examinations done by Mr. Dibble here, your answers assumed that the Amick property abutted the Ballentine property.

A We only found this out recently. All these years, it -- well, you are correct, it was assumed --

Q That's right.

A -- that Frankie's line went to the Ballentine property. And all of us, including Frankie, assumed that we had a 30 -- 25-30 foot right-of-way going into that property.

Q You hit the nail on the head. You assumed, right?

A You right.

Q You assumed it. Okay.

A All these years that's what we believed.

Q Okay. Okay.

A And everybody involved.

Q Now, but it wasn't until this litigation that you found out that Amick, Mr. Amick's property doesn't go to the Ballentine property, correct?

A Yes, sir.
Q Okay.
A That's what -- that's what the surveyor has said. I don't know, Karl.
Q I understand.
A Like I say, we've always assumed that they were in the middle of the right-of-way.
Q Okay. And you've used the roads next to the Ballentine line to get in and out?
A We've used that same road you showed a picture of. Yes, sir.
Q All right. Now, that road has changed some though in recent years, hadn't it?
A Not that I -- not to my knowledge.
Q Well, let's look at -- let's look at some things. Now, I want to go over this with you. Let's look at some things. Mr. Dibble asked you about Exhibit -- Defendant's Exhibit number 3 that's in for identification. Now, Exhibit number 3 is an aerial photograph, okay, and done in 2008. And it shows the track marks here for the -- across your father's big tract of property, the 120 acres, correct. On the Ballentine side, correct?
A Correct.
Q Now, it shows this road right here against the line, does it not?

A Well, let's see it up close. Which line are you referring to?
Q The black line.
A The black line. Okay. That's just showing the property boundary, isn't that correct?
Q Okay. I understand, but this shows --
A Right here is the fence, right here.
Q Okay. All right. But it's showing the road on Mr. Amick's property, correct?
A Correct. Yeah.
Q You agree that whenever the road on your Dad's property veers out into that field area away from the fence line, correct?
A It did prior to we cleared that off.
Q Okay. Now, this is a 2002 aerial photograph that's Exhibit number 4. Okay. Now, this is what it looked like in 2004, is it not?
A Well --
Q I mean, in 2002. I'm sorry. 2002, correct?
A That's what it's showing.
Q Okay. And you can tell, even up into the corner there, that was a cultivated field at that time, was it not?
A No, way. Let me see the photo. One thing you're dealing with is a very poor quality image here. Okay.

You see this right here, this line right here coming right down through here?
Q Right.
A Right here. Even right here. That's your road.
Q Okay.
A That's the same road in 2008.
Q Okay.
A Granted, we don't go back there all the time.
Q Okay. Well, that's the other part that I'm talking about. You see here where the road is traveled, okay, where it's lighter? It is not lighter here, is it?
A Well, it's probably not because Mr. Amick, he goes there every day to feed horses.
Q Okay. Okay. Now, the point that I'm making is between 2002 and 2008, the road kind of moved over a little bit, didn't it?
A Probably -- the road, the road was the same from, I know for a fact from 1979, the road was pretty much the same in 2008. In 2008 we went over there and we cleared that fence line off. With our neighbor's permission, we took his fence down as well. And we made that road a straight path. Because you are right, that road did jut out into the field.
Q Okay. You changed the road over?
A In the fall and early part of -- the fall of 2008 and

the early part of 2009.
Q Okay. Now, the trees on the Ballentine line on Exhibit number 2 has got these cedars here, right?
A Correct.
Q Okay. And these cedars grow out, do they not?
A They grow out and they're very --
Q Okay.
A -- kind of a fragile tree by themselves with the wind and all.
Q Now, there's a trough there on Defendant's Exhibit number 1 to the right of the road, isn't it?
A Yes.
Q And, Mr. Braswell, isn't it true that where that trough was used to be the right track of the road as you were going in?
A Not that -- I guess anything's possible. Not that I remember.
Q Okay.
A Because, look Karl, there's always been a problem with water coming down through there.
Q Isn't it true, isn't it true that some time between 2002 and 2006, because of the tree growing, because of the size of the equipment, y'all kind of inched over a little bit to get your stuff in and out?
A I can't say if it's true or not. If you want to

really know the truth, when everything was -- whenever Frankie and -- you know, Frankie used to hunt over behind on us and fish and ride his horses. And before all this thing got out of hand in 2015, I would say the road was over there closer away from property, the Ballentine property.

Q Closer to the Ballentine property?

A No, no, it was closer away from it because that's what started was trucks, he said, easing over on his property.

Q Okay. And you agree that Mr. Amick has told you in around 2015 when this stuff started, y'all coming over on me, isn't that right?

A Frankie would call -- I was the one that called. You know, Frankie would call me and it was one thing after another. Either a driver was hauling -- we don't haul silage but maybe two weeks out of the year.

Q Yes, sir.

A So you know, depending on the weather and maybe it's three. But yes, he would call, the drivers are driving too fast. I'd call the drivers and say, slow down, don't go no more than ten miles an hour. Then it would be the dust. It was one thing after another, yes.

Q Okay. And one of the things that he was complaining about in 2015 or that -- was that, listen, y'all not

staying in the right-of-way, you coming on over on me, right?
A Yes, that's one of the things he complained about, Karl.
Q That's right. That what you had done, what you were doing was expanding what right-of-way you had in there. That's what Mr. Amick was complaining about. You're not staying on where you're supposed to be. You are helping yourself to part of my land. Isn't that one of his complaints, Mr. Braswell?
A That has been one of his complaints but I will make a comment on that. When Frankie come over to my Dad's shortly after 1988 about putting those gates up, now it's been a point of contention on when that was, let's just say somewhere around 1990 at the latest. And when he come over there to put those gates up, my Dad bought the gates, Frankie come off Ballentine's property five or six feet. He hung a gate, a twelve-foot gate. He went and hung another twelve-foot gate and he put a big old cedar post there to the furthest left point of it. We're well within reason of that marker as far as where this road is.
Q Okay.
A We're not even close to that cedar tree -- I'm sorry -- that cedar post.
Q Well, here's the thing, here's the thing, Mr.

Braswell.
A You can call me Jimmy, Karl.
Q I can't. I'm not supposed to --
A Oh, you're not supposed to.
Q -- because of court rules.
A Well, maybe I'm supposed to call you Mr. Brehmer.
Q No, you can call me Karl.
A I guess -- I'd better not call you your nickname. I just know that.
Q Okay. Don't do that.
A I won't do that.
Q Okay.
A The last time we saw one another was in Hamm Hardware and I saw it embarrassed you. I'm sorry.
Q That's all right. That's all right. I just heard your Daddy say it. But anyway. Defendant's Exhibit number 2.
A Exhibit 2.
Q What's your understanding because you were the front man for your Daddy's business with -- about this road with James, correct?
A I got caught in the middle of it.
Q Yeah, I understand. I been there. But Exhibit number 2, what Mr. Amick's complaint was was, look fellows, y'all are running your trucks on over here. Stay

over there where you're supposed to, isn't that the complaint?
A Karl, we tried to appease Frankie. Let me tell you what I told the drivers.
Q Let me -- answer my question and then you can explain, Mr. Braswell.
A I'm sorry. I'm sorry. I'm sorry.
Q That was his complaint, hey guys, look, stay where you're suppose -- don't, don't come on over here on me and take part of my yard. That was what his complaint was from the get-go wasn't it, right?
A He, yeah, when it started.
Q I understand. Because y'all had kind of inched over into his yard a little. But you didn't mean anything by it. You thought you had a right to do it, didn't you?
A We did not -- yeah.
Q You thought you had a right to do it.
A We thought we had a 25-30 foot right-of-way --
Q That's right.
A -- and it was designated and Frankie thought the same thing. In all these years, which is probably 30 years --
Q Okay.
A -- we have never had any problem up until about 2015.
Q Okay. But the problem was, what changed in 2015 was -- well, there's several things. But one, y'all kind of

inched over into his yard some. Two, he had a problem with, let's just say, the behavior of some of the drivers. I mean, you turned over three trucks there in the entryway.

A That is not so.

Q Okay.

A Who said that?

Q Okay.

A Well, he said what -- what was said?

Q Okay. Haven't you turned over some trucks there at the entryway?

A Absolutely not.

Q Okay.

A We had one truck -- it was an old Dickert Lumber Company truck. You probably remember it, an old green Dickert Lumber Company truck. It was a 1977 model. It had a wide turning radius. If you do -- when they put the new bridge in and they put those guardrails there, if you're driving this truck and if you don't get over in the opposite lane to make this turn you going to be in trouble. You're going to either hit a guardrail or you're going to ease down that embankment. One time only a driver tried to make that turn without slinging the truck over. He went into the embankment. The truck, in fact, Jennifer's brother was helping us part-time, R.J, because

as close as they come, R.J. made the statement, he says--
Q You can't say what somebody else said.
A But anyhow, the truck did not turn over. We did go get a tractor for safety purposes and hooked a chain to the chassis to keep it from turning over and eased it on out.
Q But the point of it is, is when all this thing got to festering and got us to the point that we are was -- what James' complaint was was that y'all, well you know, whether by mistake or whether necessity because of the equipment or whether the convenience or whatever reason, you kind of inched over onto his property a little bit. And he asked you to, hey don't do that, isn't that true, Jimmy, or Mr. Braswell?
A Karl, if we inched over, it was unknowingly. I don't think, I don't think we inched over. In fact, when he started complaining, we made a point not to get on his property and not to get on his yard. We would -- I would tell drivers, I said, look, if you see another truck, because at one time we used to pass there. Okay. And Frankie had no problem with these trucks passing right there in front of his, on his property. And then when -- well you are right, in 2015 when he started complaining, I would tell drivers, I'd say, look, if y'all see a truck coming out of that field, I said, the driver on the

A Because right now, that's exclusive access.
Q And -- okay. And what really got this thing going was, was that Mr. Amick basically told y'all that y'all are not staying on your right-of-way, you're coming over onto my property, right? Isn't that right, Mr. Braswell?
A That we were coming over on his property.
Q On his property, yes.
A Karl --
Q You can answer, please, and then you can explain it.
A Okay. Say the question again now?
Q What got this thing really going was, was this lawsuit and his complaints was when he told y'all, look, you're not staying on your right-of-way, you're coming over on my property.
A No. I'm not saying that's probably what got this thing going now.
Q Okay. Thank you, Mr. Braswell.
THE COURT: Any redirect?
MR. DIBBLE: Yes, ma'am.
THE COURT: Yes, sir.

REDIRECT EXAMINATION

By Mr. Dibble:
Q I'm going to hand you what's been marked as Plaintiff's Exhibit number 1 which is a photograph of the road taken in 2016 or 2017.

A Did you want to see this?
THE COURT: Yes, sir. I'm familiar with it. Thank you.
Q Do you recognize that area?
A Yes.
Q And is that road taken looking down the road from Highway 76?
A Yes, sir.
Q All right. And has that road ever been any closer to the Ballentine line than that picture shows?
A Not that I'm aware of, Mr. Bob. The only thing I will mention and that's what we went over there to do in August was these bushes over here. On the right before you get to the gate, just the bushes, he got out there on that -- where the asphalt drive is. And we were looking and said, you know, we can get this thing over a couple of feet right there just taking these bushes out. I think we got two bushes cut and they called the police on us and the police told us that --
MR. BREHMER: Objection as to what someone else said.
THE COURT: That's sustained. Yes, sir. You can't say what the police said --
Q Now --
THE COURT: But you can say what you did as a result of the police arriving there. Okay.

Q After the police came and told you whatever they told you, what did you do?
A We stopped.
Q Now, Mr. Braswell, along the Ballentine line are some large trees, is that right?
A There's a -- yes, there's a one -- I think there's one, two big oak trees and then some -- a few cedar trees. One of the cedar trees is two or three years ago blowed over and we removed it and still just a part of the trunk there.
Q Have those trees been there as long as you have been working this property?
A Yes, sir.
Q Do those trees prevent you from getting close to the Ballentine line?
A Well, sure they do.
Q So the road could never have been -- could the road have ever been close to the Ballentine line?
A The road is the same as I can remember as far back.
Q And that picture is --
A And, you know, we could cut that -- there's one big old oak tree there. And it's a pretty oak tree and eventually, it'll die and, you know, we thought, you know, we could cut that tree down. And, you know, we could get over that way a little bit more. You know, you kind of

hate to cut a tree down like that.
Q Yeah, I agree. Aside from the time that the gates were locked and you had to take the gates down, has anybody ever stopped you from getting on Mr. -- going across Mr. Amick's property using that road shown on Exhibit 1?
A No, sir.
MR. DIBBLE: That's all I have.
THE COURT: Okay. Thank you. Any objection to Mr. Braswell, Jr., being excused?
MR. DIBBLE: No, ma'am.
THE COURT: Okay. Thank you, sir. Thank you for being here.
MR. DIBBLE: Could I have five minutes, Judge.
THE COURT: Yes, sir. We'll be in recess for five minutes.
(Whereupon, a short break was taken.)
THE COURT: Are y'all ready?
MR. DIBBLE: We call James Braswell, Sr.

JAMES BRASWELL, SR., being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Dibble:
Q All right. Mr. Braswell, you are the Plaintiff in this action?

A Sir?
Q You are a Plaintiff in this action?
A Yes, sir.
Q Okay. And when did you first start farming the 120-acre tract which you now own?
A When I first started farming?
Q Yes.
A In 1956. June the 28th, I went in the dairy business on June the 28th of 1956.
Q All right. When did you first start farming Sula Miller's land?
A In the middle of the late '60's. I leased that land or a bunches of small patches back in there and Ms. Sula let me lease it to raise feed for the cows.
Q Did Mr. Johnson keep his plane on that piece of property?
A Oh, yes. I saw him at the land several times.
Q Did he ask you to fly with him?
A Yes, but I did not do it.
Q Did you ever see him drive to his airplane?
A Drive to his plane?
Q Yes.
A I've seen him come down sometime while I be out there farming, yeah.
Q All right. And how did he get to his plane?

A In a vehicle.
Q All right. And where did he drive the vehicle?
A What did he drive?
Q How did he get to -- how did he get to his airplane, what --
A He came in in a vehicle. He came down the farm road that we are discussing and one of the pictures of aerial photos shows his plane down on the end of it.
Q Oh, it does?
A Yeah. I don't know which one. It's one that I've saw it or similar that shows a little white spot. That's his plane. It would have probably been made in about 1959 or somewhere, '60, I don't know. It is a fairly large photo.
Q I'm going to hand you what's been marked as Plaintiff's Exhibit number 34 and is that the one you think that shows where the airplane is?
A This -- I saw it on a large photo. Let me get this thing where I want to see -- it was down here in a corner-like. But it was on a large photo, Jennifer, that we, you and I looked at it. It might be one of those pictures you had in the -- in that plastic. I don't know, but it was -- it was a photo. It was a plane down in there.
Q Okay.

A Down in this corner here. See, he used to come in -- he used to come in and land, start landing right here and most of the time he left his plane parked down here. Well, these was patches that I worked around and his plane would land down in here and he's set down in here and they'd come get him. Somebody would come get him, pick him up and take him back.
Q Okay.
A Yeah. But it was one showing a plane on there, Mr. Bob. No question about the plane.
Q Well, I see a -- I see a white dot down here on the corner back here?
A That, that's it right there.
Q That's his plane?
A Yes, sir. That's his plane right there. When was that made? What year was it made?
Q This says 1959.
A '59. I guarantee you that's his plane right there.
Q All right.
A Yes, sir.
Q And what kind of -- what kind of vehicle was Mr. Johnson driving when he came down?
A I'd see him in a car and truck. Sometimes in a truck, sometimes on a car.
Q Okay.

A According to who came and got him, I think.
Q Now, there was discussion this morning about the road across Mr. Amick's land shifted back and forth?
MR. DIBBLE: Do you have Plaintiff's 1 by any chance?
THE COURT: No, sir. I have a -- I believe I have a copy of Plaintiff's -- no, sir. I don't even think I have a copy of that. That would be the photograph with the red gate?
MR. DIBBLE: Yes ma'am, I have it.
Q You recognize that, Mr. Amick?
A Mr. Amick?
Q Mr. Braswell.
A You mean I got to fight both attorneys now?
Q No.
A No, I'm picking on you, Mr. Bob. Yes, I recognize it. I sure do.
Q Has that road ever been any closer to the Ballentine line than it has?
A No. I hate to hear all this disagreement and I've heard enough stuff here today and yesterday and before. These gates here, they -- I don't know why they saying it's so close. You see right here there's a -- there's a big oak tree here, okay, a big oak tree. And Mr. Amick put some boards on that tree and went to a post here. I don't know, three, four, five feet. I don't know how many

feet. And so you see the gate's hung right here. I have always assumed, and I am getting back to that assuming, Mr. Brehmer, that the -- the right-of-way's, they's always been two large posts right here, one here, and one here, one here and one here. And those posts were put up back whenever either I -- Bedenbaugh owned it or either Ms. Brock. I forget which one owned it. They had a few cows in there, okay. And those posts was put up and they never, never questioned me going in and out, you know, and real nice -- and the lady was real nice, Ms. Brock, you know. But I don't know who put the posts up, but I've always assumed and that's assuming again that those two posts -- and if y'all went out there and looked at the property yesterday I understand. And if notice those posts, that's where I have always assumed the right-of-way to be and you'll notice that road is not on the outside of that post, okay? You follow me?

Q Yes, sir.

A The road's inside that post. So I hate all the disagreement and I wish we could get it straightened out. I'm just tired of hearing about it and tired, you know, of putting up with it, you know.

Q Okay. Have you or your employees used the road across Mr. Amick's land any time you needed to do so?

A My employees?

Q Have you and your employees?
A Yeah. First off, most of the time, I'm in front of my employees when we go in there in the mornings and the days, I'm the one that runs the silage chopper. I'm the one that runs the corn planter. I run all that stuff, okay, and most of the time, I'm in there and my employees are back and forth, okay. And just for curiosity, here I am 83 years old and I got to get out of a truck and open a gate, go in the gate, close the gate back going out, you know. And sometimes, I have to do that five, six times a day, okay. You know, I don't have any idea why those gates are up there except to aggravate and hinder me. That's all I can, that's all I can figure out, you know, because these -- there is no point. And at night, I don't mind closing the gates and chaining them, whatever they do coming out, you know. But during the daytime when I'm back there in the fields, why in the world have I got to open and close the gates. I cut 125 loads of silage over there this year myself and my guys had to get out of a big truck, open the gate, go through, get back in, go through, get back out. It's, it's just -- and I'm sitting back there with a 250-300,000 machine sitting there running waiting on a truck. So, I mean, I don't know why. But anyway, maybe -- maybe it'll work out. I don't know.
Q Mr. Amick bought this property in 1988, did he come

and ask you to put gates up across that road?
A Prior to him -- well, when, prior to him buying it?
Q No, after he bought it.
A Yeah. We put up gates, four gates and I furnished the gates and Mr. -- Frankie hung them. Yeah. Yeah.
Q Did he ask you to -- did he ask you to put them up?
A Do what?
Q Did he ask you to put them up?
A No. He asked me to furnish the gates and he put them up. I didn't put them up.
Q Okay.
A Oh, did he ask -- oh, yeah. I mean, I agreed to put them up. I didn't have a problem with that until he started changing the locks and all that kind of stuff.
Q Were the gates beneficial to you in any way?
A Benefit me?
Q Yeah.
A No, they don't benefit me. They hinder me.
Q And when did he ask you to put those gates up?
A I don't know. Probably in the '90's or early '80's, '90, in the early '90's and whatever then.
Q So you were using the road across Mr. Amick's property. Were you using the road across Mr. Amick's property in the '90's?
A Sure.

MR. DIBBLE: That's all I have.
THE WITNESS: Mr. Bob, I got something to straighten out on that plat, if you don't mind. I have heard so much stuff about it. Let me straighten it out.
MR. BREHMER: I object.
THE COURT: Just --
THE WITNESS: Ma'am?
THE COURT: Just one moment.
THE WITNESS: Excuse me.
THE COURT: Is there a further question that you have?
MR. DIBBLE: I would -- yes.
Q I would like you to tell me what plat you would like to look at.
A The plat. My plat.
Q Your plat.
A Is that permissible, Judge?
THE COURT: Just answer his questions, okay?
Q A copy of -- what do you want to show the Court on that plat.
A Okay. I've heard so much stuff from people that hadn't even been there before and all of this is visual stuff. And I've been there all my life practically, you know. This mark right here, this mark right here is a creek, okay? We did come in on this side one time. This

was so wet, we couldn't cross it. We had to pull tractors and stuff, occasionally. So Ms. Sula, Ms. Sula Miller, she gave us permission -- I told you she didn't care if I went across her dam with some of our lighter equipment, okay. Then, I built the ponds, okay. I've heard all kind of stuff. Then I bought the land. I cleared the land. I put in irrigation and those roads, I don't care what nobody says, that road has been there since I was fooling with it in the late -- mid-'60's, the late '60's. I come down there. I come down to my ponds and it's real simple. I mean, I didn't know how far y'all went for the road yesterday. But if you'd have come down that road that is not showing up good there, if you'd have come on down that road, they could have drove their vehicle right on down to the pond where our irrigation system is. There is a little building down there. We got all of our electrical controls in it. Our pump sits down there and even got gravel in that road. And I don't see the map showing it nowhere.

Q That road is -- how long has that road been there?

A Since about in the '80's. Because we put in the first irrigation -- I looked it up last night and we -- I bought the first pivot -- well, I meant the first traveler in 1985. I bought the next one in 1991. We put a line up through there somewhere between '85 and '91. It's got

five hydrants coming up through there, I think, we'd hook up. I think one of the son's told you about that and these hydrants we put up, they comes all the way up and that road, that's what we use is that road. Everything goes into this corner right here where we got a nitrogen tank and we kind of work out of that corner down this road in these fields here and we don't use this road here all the time. I mean, just to get in, but most of our activity is in this road here and in this Ballentine side.

MR. DIBBLE: Okay. Thank you, Mr. Braswell.

A I just, I just wanted to say that and I'm through.

THE COURT: Okay. Cross-examination?

MR. BREHMER: Okay.

THE WITNESS: Karl -- Mr. Brehmer, if you don't mind, you can come around here so I can hear you.

MR. BREHMER: Okay. Okay.

THE WITNESS: I mean, if that's -- is that okay?

THE COURT: Yes sir, that is fine.

MR. BREHMER: That's fine. That's fine. Let me get Mr. Dibble's stuff out of the way. This suits you better, Mr. Braswell?

THE WITNESS: Yeah. If you don't -- I mean, fine with me because I can't half hear.

MR. BREHMER: Well, I understand.

THE WITNESS: I just hear what I want to hear.

MR. BREHMER: Well --
THE WITNESS: No, I just said that.
MR. BREHMER: You sound like I'm married to you then.
THE WITNESS: Yeah. That's what -- yeah. All right. Go ahead.

CROSS-EXAMINATION

By Mr. Brehmer:

Q Mr. Braswell, you agree that this is what the property looked like in 2002, correct?
THE COURT: What Exhibit is that?
MR. BREHMER: That is Defendant's Exhibit number 4 for identification.
THE COURT: Thank you.
A It looked like the road in -- yeah. Well, let's see. It's coming -- well, that's showing here -- well, it's not showing this down here. See, that's what's confusing. This thing comes on out and it then comes down to my pond. See, it don't include everything. But, yeah, I mean, that's the -- that's the cover I cleared. I personally cleared that myself, Karl -- Mr. Brehmer, with my track hoe and bulldozer. And Johnny Long come and put a fence up behind me and it looks pretty good now except some of the stuff's coming back but that's -- yeah, I agree with that. That looks like the road.
Q And you were cultivating this area out in here,

correct?
A Yeah. But I wouldn't -- now, I don't never plant the road. You know, I don't plant the road and we have to leave the road to get up to all this back here, you know.
Q Okay. Now, this here is Defendant's Exhibit number 3, which is a 2008 --
A That's where we cleared. Yeah, that's where we cleared it.
Q All right. But the road's changed. The road's come more out in the field, hadn't it?
A The onliest way it's -- the only reason it changed because I cleared this here, you know. And before it would probably -- if you do one in 2019 or 2018, you won't see that.
Q Okay. But my point is, though, the tracks --
A Well, now, I don't care what your point is. The road and, you know, we had to get away from the trees, okay?
Q It's come more out in the field.
A Well, what's wrong with that?
Q I understand. But you --
A What's wrong with that?
Q It's moved out.
A What's wrong with that?
Q That's the point.
A Well, what's your point?

Q My point is, you also moved over some up here, did you not?
A No. That ain't no -- that's no point there, Karl, and you know that.
Q Mr. Braswell --
A There ain't no point. That's no point. Okay?
Q Mr. Braswell, isn't what happened is y'all just kind of inched over a little bit?
A No, no, no, no, no. That was eased over because of those gates.
Q Okay.
A Okay.
Q But you agree, you agree --
A No. I don't agree until I hear what you saying.
Q I understand.
A All right. Well, you want to use a different term then, okay?
Q Well, I get to pick the terms.
A Well, if you pick it, then I'll answer you if I need to, okay?
Q You, you agree that when you were -- been referring to Amick's property in your direct testimony with Mr. Dibble, you were assuming that Mr. Amick's property went all the way to the Bill Ballentine line?
A I was assuming a 25-foot right-of-way that I thought

we had --
Q Okay.
A -- and it does not go to his line.
Q Okay. But you thought it was a 25-foot right-of-way?
A I assumed it was 25.
Q Yes, sir. Okay.
A We both have.
Q Okay.
A Because he hung 12-foot gates --
Q Okay.
A -- which is -- you know where that comes out to.
Q Okay.
A He hung 12 -- two 12-foot gates so that's 25 feet. So we both assumed that, okay?
Q But it's actually twelve and a half feet, isn't it?
A What?
Q The right-of-way?
A I don't know what it is. As far as I'm concerned, it's 25 feet.
Q Okay.
A That's what I'd always --
Q But you --
A That's what I'd always used, okay?
Q Okay. Okay. But now you didn't use any more than where the tracks are shown in the photographs, did you?

A Use anymore what?
Q I'll show you Exhibit number -- Defendant's Exhibit number 1. This is the tracks you're referring to, correct?
A Probably so. Yeah. Right.
Q Okay.
A Yeah.
Q And you didn't use any more than what's in the tracks, did you?
A No. We try to use -- we try to get over there and see how it's wore. See the color -- different color of the grass.
Q Yeah.
A You see that, that's green. See where we got over right there and tried to get over further, you notice that?
Q Yeah.
A Okay. So we just used as narrow place as we could and always had. We had to cut out here to get under a tree. You see those limbs?
Q Yeah.
A You know as well as I do you can't get a piece of equipment under a tree because you use tractors too.
Q I do. I do.
A You know, it might knock your mirrors off and

everything else, you know.
Q I got a chainsaw, too, though.
A Yeah. Yeah.
Q You got one, don't you?
A Yeah, I got a pole saw.
Q Okay.
A Every time you go to do something over there, we get a complaint, you can't do it. He owns it.
Q Okay. But you assumed that you had 25 feet in here?
A I did, Karl.
Q Okay. And but in practicality, okay, if you did use anything, the only thing that you used is where the tracks are shown, correct?
A No. That's not what I'm -- no, that's not so. I'm telling you we tried to get over. I am bad about driving my truck, the left-hand, the driver side, right up here and go over here. I am bad about that, okay.
Q I understand. Okay. But the point of it is, the point of it is, is that if it is twelve and a half feet, if the paperwork is correct and it's twelve and a half feet right-of-way in there to that property. And if Mr. Amick's line is actually twelve and a half feet from Bill Ballentine line or the John Long line, which is what it is now, okay. Then the most that you ever used of Mr. Amick's property was four -- four or five feet where you

came over on it?
A No. That's not right and you know that because you've got from the fence to the track you showing me.
Q Yeah.
A That's four or five feet right there. So, you know, if you looking at it like that no, it's -- and you've got equipment going in there hanging over the tracks. You know that as good as I do. You take a combine in there and you got 18 -- 18 or 18 and a half feet, it's going to go past the tracks. It don't hurt nothing but hanging over. You got to dodge trees. So I don't know what your point is --
Q Okay.
A -- but anyway.
Q All right. Now, you have thought that you had a right-of-way, did you not?
A My plat says I got a right-of-way.
Q Okay. All right. And you thought that the plat was 25 feet right-of-way, correct?
A I just assumed that.
Q You assumed that.
A Yeah, we assumed that. Yeah.
Q But --
A And I was going by the posts, Karl. I mean, you know.

Q Okay.
A Back years ago, you know, you probably too young to remember that because you just a chap as far as I'm concerned. But anyway, back years ago surveyors put the pin in the middle of the road. You know that --
Q Yes, sir.
A -- as well as I do. Well, this pin all at once showed up up there at my property line in the middle of the road, in the middle of the road. Hand me the paper, please, sir.
Q Which one?
A The one -- either one of them. The one that's got the tracks you been showing me.
Q Okay.
A Back here -- let me see. It's somewhere back -- it's right in here -- right in here at my property line, a pin showed up in the middle of the road with a flag on it. And that's been recently in the last three or four years.
Q Can I get another photograph to help us out?
A I don't care. I mean, what you need?
Q And I'm going to show you, I am going to show you.
A The pin showed up. I don't know what it showed up for. I guess his surveyor --
Q Hold on. Hold on. Hold on, Mr. Braswell.
MR. BREHMER: This is the next identification.

COURT REPORTER: Okay. That will be number 6.
(Whereupon, Defendant's Exhibit number 6 was marked for identification.)
THE COURT: Okay. If you'll show that first to Mr. Dibble.
MR. BREHMER: Okay.
THE COURT: Any objection, Mr. Dibble?
MR. DIBBLE: No, ma'am.
THE COURT: Okay. Without objection.
(Whereupon, Defendant's Exhibit 6 was marked for identification only.)
Q Mr. Braswell, I show what's Defendant's Exhibit number 6 for identification. You see that pin there in the dirt?
A Uh-huh.
Q Is that the pin you're referring to?
A No, it's not.
Q Okay. So you got a picture of your pin?
A No, I don't have a picture of it.
Q Where is the pin that you saw?
A There's a pin back in here on my line.
Q Okay. Well, isn't this on your line?
A I don't know where that's at, Karl. I really don't.
Q Okay.
A But it showed up, it showed up about -- about the

middle of the road somewhere.
Q In the track?
A I don't know about the track, now. But it's somewhere in -- where my property line meets Frankie's or Mr. -- Frankie's line, it showed up there and then one up in here too.
Q Yes, sir.
A You got that one, too?
Q Yes, sir. I got a picture of it.
A I don't need to see it.
Q All right.
A I know where it's at.
Q Okay.
A It just popped up.
Q Okay. They -- did it just pop up --
A Well, it was just put there --
Q -- or were they freshly marked, freshly marked?
A Now, I don't know about that. They, they hadn't been there before.
Q Okay. Had you dug down in the ground?
A Who?
Q You.
A Did I?
Q Yeah.
A No. It was sticking up. It was sticking up just

even with the ground.
Q Okay.
A It had a flag on it.
Q Okay. All right.
A A ribbon or a red ribbon.
Q A red ribbon marked it.
A That's how I noticed it, yeah.
Q So you claiming somebody's claimed the location of the property line?
A I ain't changed -- I ain't saying nothing.
Q I understand.
A I'm just saying the pin had not been there before.
Q Okay.
A So don't try to get me to put something out there that's not so --
Q Okay.
A -- because I don't blame nobody for doing something like that. I don't think nobody would do it.
Q All right.
A You know.
MR. BREHMER: All right. Thank you, Mr. Braswell.
THE COURT: Redirect?

REDIRECT EXAMINATION

By Mr. Dibble:
Q Mr. Braswell, you said that when you took a combine

in over Mr. Amick's tracks, the combine header hung over outside the tracks?
A Oh, sure. Yeah.
Q All right. What other piece of equipment that you took in across Mr. Amick's land --
A And we use a ripper plow -- it's a six-point ripper plow that pulls with a big dual wheel tractor, a 8300 John Deere. And it's probably, I don't know, I'm going to guess 16 feet or better, you know.
Q Okay.
A And I know when I went in it the last time, he had moved a trailer over there next -- just real close to the track, outside track, you know. And I bumped it a little bit because I couldn't get through there with the thing so wide, you know what I mean. He just had some trailer pulled in there just to aggravate me, I guess. I don't know. But anyway, I bumped it a little bit. You know, it didn't hurt anything. But then you got that and you basically get around, you know, 20 feet getting in -- 20, 22 feet, you know. And that's the reason I've always assumed the 25 right-of-way because I -- you know, I don't have no problem with that. You know, I -- like I say, I don't have no problem with the gates and shutting them at night, you know. But I do have a problem with them when we go in and I'm back there to watch everything because my

employees are not back there. And normally, they're never back there unless I'm with them except occasionally. I know just recently, and I guess I could say this, I had a guy back there bush hogging and he came out there on a Saturday night about the 7th -- December the 7th, I think. And then on Saturday night, a black guy, he's a real good employee, you probably know him, Karl, and he pulled up and he said that Frankie came in behind him and he got out to open the gate and Frankie came in behind him and waved him on through and got out of the truck to wave him on through. And he called me and I said, you go back and shut that gate. And he said -- when he went back, he said the gate's been shut, and then he told me why he done that and I won't refer to that, you know.

MR. DIBBLE: Judge, that's all I have and the Plaintiff rests.

THE COURT: Okay. All right. Thank you. Sir, you may step down. You may step down. Watch your step, okay?

MR. DIBBLE: Thank you, sir.

THE COURT: Any motions before we break?

MR. BREHMER: Yes, we do.

THE COURT: And if you want to make them after lunch, that's fine. However you want to do it.

MR. BREHMER: If it's all right with you, I'll just go ahead and knock it out.

THE COURT: Yes, sir.

MR. BREHMER: Your Honor, we move for a directed verdict as to the Plaintiff's claim. The Plaintiff, as I understand it, has made basically two theories or two different assertions. One, that they have a written easement across the property that is 30-plus feet in addition to the twelve and a half feet. We would move for a directed verdict as to that claim on the claim that they have a 30-foot easement as opined potentially by Mr. Dominick based upon the fact that it is a legal impossibility for the Plaintiff to have such a 30-foot easement. The basis for that is, is that Ms. Miller in 1964 sold that property to L.K. Bedenbaugh and that there was no way that in June of 1971, when she transferred the property, I think it was June 28th of '71, she transferred the 120 acres that she had any ability to transfer an easement. It is a legal impossibility. The other thing is, is that -- the second basis of it is, is that Mr. Dominick's opinion that the -- he is scaling it from a surveyor's note is not a legally recognized position pursuant to S.C. Rule 70, the S.C. Rule of Evidence 703 is not based upon the types or kinds of information that such a surveyor would do. And you can't grow an easement off a plat off a surveyor's notes. Our basis first is, is for a directed verdict as to any claim of a 30-foot easement in

addition to the twelve and a half foot right-of-way that was conveyed by the 19 -- that was left there by -- I don't -- there was not a conveyance for the twelve and a half feet. It was just a, left there, twelve and a half foot that we believe may still own to Susa Miller's heirs.

THE COURT: Okay.

MR. BREHMER: Okay.

THE COURT: Thank you.

MR. BREHMER: That's the first, that's the first motion.

THE COURT: Okay. Let me hear from Mr. Dibble before, in regard to that motion.

MR. DIBBLE: Well, first of all, Judge, I think that's a factual question that you have to decide based upon the measurements that Mr. Dominick did. Your comment, I believe, said that his testimony would go to the weight, his drawing would go to the weight of the evidence. You didn't exclude it, it is in the record. It is scaled out to 31 feet, he averaged it down to 30 feet. I don't see any basis for that fact to be disregarded. And a motion for directed verdict or summary judgment or judgment is a matter of law. Second, Your Honor, if you look at Plaintiff's Exhibit 16, that plat was drawn and surveyed first in 1962, May of 1962. And Ms. Miller owned the property between the 120 acres and the road in 1962

shown on the 1962 plat lies entirely on his land.

THE COURT: All right. Anything else with regard to the motion for a directed verdict?

MR. DIBBLE: No. And as I understand the motion, it is only -- it is limited only to a -- try to exclude a finding of a 30-foot easement. The motion is not directed, as I understand it, to the fact that there is no easement.

MR. BREHMER: That's my next one.

THE COURT: Okay. The next motion.

MR. BREHMER: Okay. Your Honor, we move for a directed verdict as to the Plaintiff's claim that they are entitled to a prescriptive easement of some dimension of sort. In that there are three elements that have been cited for prescriptive easement. They are in the Williamson case which is cited at 93 South Eastern, 16, page 15 through 16. And Lawton versus Rivers which is a much older case. But in this they have to show that there has continued an uninterrupted use for a period of 20 years, the benefit of thing that was enjoyed. And that the use or enjoyment was adverse under claim or of right. We believe that we have shown that what has occurred in this property is that the Plaintiff has a twelve and a half foot right-of-way from the highway that was designated on the plat of -- that was in 1962, September

of '62. And that timeframe Ms. Miller transferred the 4.04 acres to L.K. Bedenbaugh, okay. And that that's what he has is a 12.5 foot right-of-way from Highway 76 back to this 120 acres. That what has occurred was, which we believe is documented by these photographs, the aerial photographs, is sometime between 2002 and 2006 or 2008, I believe it was, that there was a change. That this road was kind of moved over a little bit onto Mr. Amick's property and that basically they have tried to enlarge the right-of-way that they had previously had for whatever reason, unintentional, unintentional mistake, inadvertent. I don't know, okay, or necessity because of the equipment. But regardless, that occurred within the last 20 years. So he can't fulfill and meet those elements that he is required to do so. And we believe that we would be entitled to a directed verdict as to their claim for prescriptive easement.

THE COURT: Mr. Dibble or Ms. Nichols?

MR. DIBBLE: Well, Judge, I think, number one, the burden is on us to prove continuous and uninterrupted use as necessary for the use of the easement. But it is not necessary to prove that you walked on that easement or drove on an easement 24 hours a day, 7 days a week, 365 days a year. So we have established that we have used their easement as needed to farm the land, 120 acres,

MR. BREHMER: Your Honor, I don't think that having the witness create this makes it -- having a witness alter an Exhibit makes it an admissible Exhibit.

THE COURT: From your recollection, did they come in or not?

MR. DIBBLE: I don't recall to be honest with you.

THE COURT: Okay. And so what we will have to do then is, our Court Reporter is going to have to review the testimony.

MR. DIBBLE: Well, just to be safe on the record, I move to reopen and I move to introduce Exhibits 36, 37 and 39.

THE COURT: Okay. Any objection to the Plaintiff reopening their case?

MR. BREHMER: Yes ma'am, Your Honor.

THE COURT: Well, I'm going to allow it, and I understand that you're protecting your client's interest. But I'm the one that asked the question and maybe I should have asked it before I heard the motions.

MR. BREHMER: Okay.

THE COURT: I thought that there was -- was this raised yesterday afternoon at the close but then we went to view the property.

MR. DIBBLE: It just slipped my mind until just when -- when you asked that question, it came back in my head

you, Joy.

COURT REPORTER: You welcome. I'll take care of that.

THE COURT: Okay.

MR. BREHMER: We call as our first witness, Mr. Ford Tarbert.

THE COURT: Yes, sir. Good afternoon.

THE WITNESS: Hey there.

THE COURT: Please be sworn.

FORD TARBERT, being first duly sworn, testified as follows:

THE WITNESS: My name is Foard Holden Tarbert, Jr. It's T-A-R-B-E-R-T.

THE COURT: Thank you.

MR. BREHMER: Your Honor, I'd request permission to have the Court Reporter mark this package of Exhibits.

THE COURT: Any objection, Mr. Dibble?

MR. DIBBLE: None.

COURT REPORTER: All right. It'll take me just a moment, Judge.

THE COURT: Yes, ma'am. Take your time. So we'll be at ease.

(Whereupon, a brief recess was taken.)

DIRECT EXAMINATION

By Mr. Brehmer:

Q Mr. Tarbert, if you could, give the Court the benefit of your educational background?
A I have a Bachelor of Arts from Newberry College in economics.
Q Speak in the--
A A Bachelor of Arts from Newberry College in economics.
Q Okay.
A I have a PhD. in Engineering Management from Clemson University.
Q Okay. And your -- what's your professional career been like since you finished school?
A It has been pertaining to surveying, I was licensed by the State in 1986 and have been practicing ever since then.
Q As a surveyor?
A Yes, sir.
Q Okay. And your business is -- what's the -- what's your business name?
A Adtech Surveying.
Q Okay. And where is that located?
A In Clinton, South Carolina.
Q And is your -- do you hold a current license by the State of South Carolina as a land surveyor?
A I do, sir.

Q Okay. And have you held a license since 1986?
A I have.
Q And is that license in good standing?
A Yes, sir.
MR. BREHMER: Your Honor, at this time, we would offer Mr. Foard Tarbert as an expert in the area of land surveying.
THE COURT: Mr. Dibble, any examination of this gentleman with regard to his credentials?
MR. DIBBLE: No, ma'am.
THE COURT: All right. And so it is noted that Mr. Foard Tarbert is an expert in the field of surveying and can give opinions in that matter to assist the Court. Yes, sir.
Q Mr. Tarbert, I am going to ask you to identify for the Court Defendant's Exhibit number 7. Could you please tell the Court what Defendant's Exhibit number 7 is?
A That is a plat drawn by me on the 29th, I believe, of June based on surveys that I prepared proceeding a week or so.
Q Okay.
THE COURT: What year, sir?
THE WITNESS: '16.
THE COURT: June 29th of 2016?
THE WITNESS: Correct.

MR. BREHMER: Okay.
THE COURT: Okay. And this is Defendant's Exhibit number 7?
MR. BREHMER: Yes. Yes, ma'am.
THE COURT: All right. Yes, sir. And I hope it doesn't make you nervous. I'm going to try to follow along over your shoulder. Okay?
MR. BREHMER: Okay.
THE COURT: Thank you. There is no jury here so this is a little bit less formal.
Q Would you please explain to the Court what is the contents of Exhibit number 7? We know it's a survey and it's a plat that you drew, what the meaning of it is for the Court?
A As it pertains to this case, the line in question was the twelve and a half foot easement, excuse me.
COURT REPORTER: Yes, I need to hear.
A -- twelve and a half foot right-of-way.
THE COURT: Mr. Dibble, can you see, sir?
MR. DIBBLE: I have a copy.
THE COURT: Okay. Thank you.
A It was prepared with the benefit of a field survey where I located monuments. Some of them being rebars, some of them being iron pins, some of them being railroad spikes. I correlated those to the referenced plats that I

gathered during my due diligence and prepared this survey.
Q Okay. All right. And where on Exhibit number 7 is -- what is the width of the right-of-way from U.S. Highway 76 between the Ballentine property and the property owned by the Defendant, Mr. Amick?
A It shows it's twelve and a half feet on several plats.
Q Okay. And did you find that information in the court records?
A I did.
Q Okay. Now, the property that Mr. Amick owns that you surveyed, what was the acreage that he had?
A The final acres was 16.403 acres.
Q Okay. And does the Plaintiff, Mr. James L. Braswell, Sr., own property immediately adjacent to Mr. Amick's?
A To the rear of Mr. Amick.
Q To the rear of Mr. Amick. Okay. And that's a 120.8 acre tract, I believe?
A I think that's correct, yes.
Q All right. And now, on Exhibit number 7, is that your opinion to a reasonable degree of land surveying certainty as to the location of the right-of-way between U.S. 76 and the Braswell property?
A Yes.
Q All right. Now, let me --

MR. BREHMER: Your Honor, we'd move Exhibit number 7 into evidence at this time.

MR. DIBBLE: No objection.

THE COURT: Okay. Thank you.

(Whereupon, Defendant's Exhibit number 7 was entered into evidence.)

Q Now, Mr. Tarbert, I'm going to show you a series of Exhibits which have been identified as Defendant's Exhibit 1, Defendant's Exhibit 2, Defendant's Exhibit 6, Defendant's Exhibit 8, the Defendant's Exhibit 9, the Defendant's Exhibit 10, the Defendant's Exhibit 11, Defendant's Exhibit 12, Defendant's Exhibit 13, Defendant's Exhibit 14 and Defendant's Exhibit number 15. Can you please look at those Exhibits that I just itemized and tell us who took those pictures?

A I took those pictures on, I believe it was December 21st.

Q Okay. Saturday, December the 21st?

A That was correct.

Q And --

THE COURT: All of those pictures?

MR. BREHMER: Yes.

Q Did we meet at the property of Mr. Amick's that day?

A We did.

Q Per my request?

A Yes, sir.
THE COURT: In the year of 2019?
A Yes.
MR. BREHMER: That's correct.
THE COURT: Okay.
MR. BREHMER: Okay.
THE COURT: I'm sorry to be interrupting. I just want to make sure I understand, sir. Go ahead.
Q And per my request that day, did you locate the points of reference on the plat that shows the beginning and end of Mr. Amick's property that would be most immediately adjacent to the Ballentine property?
A Yes, I did.
Q Okay. Did you take photographs of those two endpoints?
A I did.
Q Would you give the Court the number of that Exhibit and explain to the Court what that Exhibit is showing?
A Exhibit number 15 shows a three-quarter inch solid bar located approximately in the center of the dirt road.
Q Okay.
A And Exhibit number 11 shows a railroad spike at the edge of the driveway which would be on the margin of Highway 76.
Q Okay. Margin of 76. Okay. Now, so just so that the

court record is clear and so that Your Honor understands, the railroad spike that's shown would be at the top of your survey here where the drive is, correct?
A Correct.
Q And the three-quarter inch bar is in one of the lanes of the ruts going into the property?
A I don't remember whether it was exactly in the middle of the rut or on top of it.
Q Did we take that photograph of it?
A There it is, yes, it appears to be in the rut.
Q But this is the one on the side of the road?
A I am sorry.
Q This is in the rut.
A Uh-huh.
Q Okay. And did you not --
THE COURT: And that's Exhibit number 15?
A 15.
MR. BREHMER: 15, Okay.
THE COURT: Okay. And the next Exhibit number showing the railroad spike is Exhibit number what?
A 11.
MR. BREHMER: Okay.
THE COURT: Okay. Thank you.
Q Now, could I see these for a second? Just for point of reference, is it Exhibit number 6 a photograph showing

the same pin as shown in Exhibit number 15 --
A Yes, it is.
Q -- with the exception that it has your surveying equipment in the photograph?
A That's correct.
Q And does that Exhibit number 6 show the location of the pin in the rut closest to the Ballentine property?
A Yes, it does.
Q And is that the corner of Mr. Amick's property?
A Yes.
Q Okay. Now, this railroad pin which is denoted in Exhibit number 11 -- Exhibit number 10 -- what is Exhibit number 10?
A In Exhibit number 10, I'm standing right at the base of this cone and the railroad spike is right below me.
Q And you have pointed to Exhibit number 11?
A Correct.
Q So Exhibit number 10 is another shot from another angle of the Exhibit of number 11?
A That's correct.
Q Okay. So Exhibit 10 and 11 are one end of the line and Exhibit number 6 and 15 are the other end?
A Correct.
Q Okay. Now per my request, did you take -- did you bring cones that are commonly used in traffic or traffic

control to document the location of the line?
A Yes, I did.
Q And per my request, did you put your surveying equipment to use the exact location of the line?
A I placed all of the cones with the surveying, yes.
Q And does Exhibit number 12 denote where you placed those cones? Is that a fair and accurate representation of where you placed those lines?
A Yes, it is.
Q Okay. Is Exhibit number 13 the same?
A Correct.
Q Okay. Is Exhibit number 14 a correct and accurate depiction?
A Yes.
Q Okay. Is Exhibit number 1 a correct and accurate depiction?
A Yes, it is.
Q Okay. Is Exhibit number 2 a correct and accurate depiction?
A Yes, it is.
Q And is Exhibit number 8 a correct and accurate depiction?
A Yes.
MR. BREHMER: Your Honor, at this time, we would offer into evidence Defendant's Exhibits 8, 2, 1, 14, 13,

12, 11, 10, 6 and 15.

THE COURT: Any objection, Mr. Dibble?

MR. DIBBLE: No objection.

THE COURT: Okay. Those Exhibits -- let's see, 1, 2, 6, 8, 12, 13, 14, and 15 are in without objection.

COURT REPORTER: And 11 and 10.

THE COURT: Is that right -- and 11? Is that right?

COURT REPORTER: I got 1, 2, 6, 8, 10, 11, 12, 13, 14, and 15. Yes, ma'am. Okay.

(Whereupon, Defendant's Exhibits 1, 2, 6, 8, 10, 11, 12, 13, 14, and 15 were admitted into evidence.)

Q Could you identify the contents of Exhibit number 9, Mr. Tarbert?

A That is a five inch rebar placed on the corner of Mr. Long's property by another surveyor, Tom Abraham. It reflects the location of that line starting at the road and going up the western side of the twelve and a half foot right-of-way.

Q Okay. And that's the -- what is referred on some plats as the Ballentine property but now known as the Long property?

A The Long property, that's correct.

Q Okay. And that particular pin is the property line for the Long property, also known as the Ballentine property?

A That's correct.
Q Okay. And that's out next to the highway?
A Yes, it is.
Q Okay. And it had -- does it have a piece of PVC pipe that has been placed over the rod as an additional marker?
A It did.
Q For ease and location?
A Yes, sir.
Q Okay. All right. Now, is that line twelve and a half feet to the edge of Mr. Amick's property?
A Yes, it is.
Q And did you denote on Exhibit number 7 the location of the Ballentine property?
A Yes, I did.
Q Okay. Okay. And is that pin consistent with where you denote?
A Yes, it is. The iron pin is 5/8's rebar.
Q Okay. Now, these documents I believe are already into evidence, but I wanted to go over them with you. This is Plaintiff's Exhibit number 10, okay, which is a plat that I represent to you was done in 1964 by Mr. Johnson.
A That's correct.
Q Okay. Is the location of the twelve and a half foot right-of-way consistent with what you located?

A It is.
Q Okay. And is that part of the due diligence and the research?
A Yes, it is.
Q All right.
A I believe that's recorded in Plat book U, Page 61.
Q Yes, sir. U at 61. Now, I show you what has been marked as Plaintiff's Exhibit number 19 which is a plat driven by -- drawn by Mr. Johnson, I believe, in '79.
A Well, it's drawn from a survey and a plat of 1964, house lot -- dated 1979.
Q Okay. All right. Does that -- which Exhibit number is that, 19?
A 19.
Q On Plaintiff's Exhibit is the twelve and a half foot right-of-way consistent with the twelve and a half foot right-of-way that you located?
A It is.
Q Okay. It's consistent with that other Exhibit?
A It is.
Q All right. Now, I show you what has been marked and entered into evidence as Plaintiff's Exhibit number 16 which is another plat drawn by Mr. Johnson, okay. And there's been a lot of controversy about this denotation up here of R/W to Highway. Okay. What is that? Is that a

marking on the plat or a surveyor's denotation or note or what?

A I think that's simply an annotation to the drawing. The dotted lines do not indicate that he surveyed those lines.

Q Okay. What does the dotted line mean on a survey?

A A dotted line is frequently used to extend the line to show that it's, you know, I might not have, I might have gone to the end of a piece of property and dotted the line where the line would continue. It could be to show easements, fences.

Q Okay. So if the line on a survey is dotted, does that mean it hasn't been measured?

A That's my way -- the way I draw it and I think I'm consistent with most other surveyors.

Q Standard industry practices?

A I think that's a standard practice, yes sir.

Q Okay. So that's what these little dash lines mean?

A Yes, sir.

Q In the industry surveying practices, can you rely on those dash lines with any degree of specificity as to the actual location of a right-of-way or a property boundary?

A The specific location?

Q Yes, sir.

A No, I do not.

Q You -- no, you do not?
A I did not rely on it.
Q Okay. Now, these other lines, just so for clarity and for edification and all like that, these other ones that they have the pins here, the iron pin with the circle around them and the solid lines, are those meant to be things that you rely upon?
A Yes.
Q Okay. And those are supposed to be accurate?
A Yes.
Q And to scale?
A Yes.
Q Okay. Does the same apply to this dash line?
A I would argue it did not.
Q Okay.
MR. DIBBLE: I'm sorry. What was his response?
THE WITNESS: I said I would argue it did not.
MR. DIBBLE: You argue that it did not.
Q All right. Now, do you hold an opinion to a reasonable degree of engineering certainty, as being more probable than not, as to what right-of-way the Braswell property has from 76 -- from 76 to the 120 acres?
MR. DIBBLE: Your Honor, that calls for a legal conclusion that you are going to have to make as a result of this case. I object to the question.

THE COURT: I'm going to allow it. It is his opinion and I certainly did allow Mr. Dominick to also state opinions and it goes to the weight.

MR. DIBBLE: Okay.

THE COURT: It goes to the weight. All right. Yes, sir.

A My opinion based on the reference plats that we've already looked at is that that is a twelve and a half feet right-of-way that Mr. Braswell has a right to use.

Q Has a right to use. Okay.

MR. DIBBLE: Your Honor, I move--

MR. BREHMER: Okay. All right.

Q Now --

COURT REPORTER: Wait. Wait a minute. I didn't get what Mr. Dibble said.

MR. DIBBLE: I was going to make an objection. I withdraw it.

COURT REPORTER: Oh, okay.

MR. BREHMER: Okay. Now, before I sit down, I want to make sure that I have put all of the Exhibits that we have discussed into evidence. Your Honor, would it be appropriate if I can ask Ms. Court Reporter, did I put the last Exhibit which was the pin of the Long property into evidence?

COURT REPORTER: What number is that? I've got still

yours 3, 4, and 5.

MR. BREHMER: 9.

THE COURT: That is Exhibit number 9.

MR. BREHMER: 9.

COURT REPORTER: 9. Yes -- no, it was not put in.

MR. BREHMER: Your Honor, at this time, we've move Defendant's Exhibit number 9 into evidence.

THE COURT: Any objection, counsel?

MR. DIBBLE: No objection.

MR. BREHMER: Okay.

THE COURT: All right.

(Whereupon, Defendant's Exhibit 9 was admitted into evidence.)

MR. BREHMER: Is there any other that I didn't move into evidence?

COURT REPORTER: Those -- the three maps.

MR. BREHMER: Oh, I got them -- I'll get those later.

THE COURT: And 10 is in, is that correct?

COURT REPORTER: Yes, ma'am.

MR. BREHMER: All right.

THE COURT: Thank you.

MR. BREHMER: Mr. Tarbert, answer any questions that Mr. Dibble may have for you or his co-counsel.

CROSS-EXAMINATION

By Mr. Dibble:

Q Mr. Tarbert, I'm Bob Dibble. We've met this morning.
A This morning.
Q I'm going to hand you what's been marked as Plaintiff's Exhibit number 8 --
COURT REPORTER: I can't hear.
THE COURT: Yes, sir. I know it's difficult to be here and speak loudly.
MR. DIBBLE: Okay.
THE COURT: Yes, sir. Thank you.
Q Do you have Plaintiff's Exhibit number 8 before you?
A Yes.
Q And if I understood your testimony, that shows the property line between the Amick property and 12.5 foot right-of-way. Is that correct?
A Correct.
Q That road you showed on that photograph is partially on Mr. Amick's land, is it not?
A It is.
Q Did you measure how many feet that road is on Mr. Amick's land?
A At one end if you're right at the end of the asphalt within an inch or two. At the other end it appeared to be about six feet.
Q All right. And did you measure the width of the road?

A No, I did not.

MR. DIBBLE: Those are all the question I have.

MR. BREHMER: Nothing further, Your Honor. We'd ask that Mr. Tarbert be excused to go back to his business.

THE COURT: Yes sir, you may be excused. Thank you for being here.

THE WITNESS: Thank you.

MR. BREHMER: Thank you, Mr. Tarbert. Mr. Tarbert, would you mind asking Mr. White to come in next, please.

THE COURT: Okay. Sir, if you will make yourself comfortable. Adjust that microphone.

THE WITNESS: Okay.

THE COURT: State your full name spelling your last.

THE WITNESS: Patrick Sean White. The last name is White, W-H-I-T-E.

THE COURT: Okay.

PATRICK SEAN WHITE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Brehmer:

Q Good afternoon, Mr. White. Could you give the Court the benefit of your educational background?

A Twelve years high school. Lander University, graduated. Clerked for Watson Lawfirm. During that time did title work under Chuck Watson for those four years and

then started my business once I graduated from Lander in '95 doing title work.
Q What is your business?
A Sean White Title Abstracting.
Q And what year did you form that business?
A 1996.
Q Okay. So that would mean, have you been continuously in the title abstracting business for the last 24 years?
A Yes, sir.
Q Okay. Is that all you do?
A Yes, sir.
Q And what is your service area?
A Title exams, background work.
Q Okay. Where all do you go?
A Abbeville, Greenwood, McCormick, Newberry, Laurens, a good part of the State.
Q Okay. And in that work, do you research the records?
A Yes, sir.
Q And you assimilate those records to -- you assimilate those records --
A Yes.
Q -- for preparation, correct?
A For attorneys is one-hundred percent of our work, that we do the work for, yes sir.
Q Now, in this particular case, okay, have you

researched the title history of Mr. Amick's property?
A Yes, sir.
Q Have you researched the title history of Mr. Braswell's property?
A Yes, sir.
Q And in that title history, did you find the location for any easements?
A Dedicated easement, no sir.
Q Okay.
A Mr. Amick's, the survey that we have showing a 12.5-foot area left adjacent to his property, is the only thing that we found that would be considered possibly an easement on there.
Q Okay. All right. Now, let me show you what is -- I just had it. Oh, here it is. I show you what has been placed into evidence as Plaintiff's Exhibit number 10 is -- do you recognize that document?
A Yes, sir.
Q What is that document?
A That is the plat for the 4.04 acres that originally, I believe, went to Bedenbaugh in '64 that was deeded out by Ms. Miller.
Q Okay. And that 12.5-foot strip there?
A Yes.
Q Did you make a determination or you find the record

as to who the owner of that strip is?
A No sir, we did not.
Q Okay. Was there ever -- did Ms. Sula Miller deed that property to L.K. Bedenbaugh?
MR. DIBBLE: I object unless he has, he has not checked the title of Ms. Miller's property.
COURT REPORTER: Judge, I can't hear him.
THE COURT: Okay. Mr. Dibble, you can come over there. There's a fan going, but it's difficult to hear.
MR. DIBBLE: I object unless he's checked the title of Ms. Miller's property.
THE COURT: Okay. I guess that requires a follow-up question.
Q Mr. White --
A Yes.
Q -- did you check the title to Mr. Amick's property?
A Correct. Yes, sir.
Q Was that 4.4 acres part and portion of the property that Mr. Amick now owns?
A Yes, sir.
Q When you were checking that, did you find any deed where Ms. Miller ever deeded out that 12.5 acres or 12.5-foot strip of land?
MR. DIBBLE: Same objection, Your Honor. He didn't -- was not checking Ms. Miller's title.

THE COURT: Well, I guess he can answer that he didn't find it and then you can ask him on cross if he examined Ms. Miller's property, okay, if he examined the title.

MR. DIBBLE: Okay.

THE COURT: Yes, sir. I'll overrule that objection.

Q You can answer it. Did you find any place where Ms. Miller deeded out the 12.5 --

A I did not find where Ms. Miller deeded a 12.5-foot, no sir.

Q Okay. Now, did you find -- I'll show you what's been marked as Plaintiff's Exhibit number 19, okay. Did you find this plat of record?

A Yes sir, I did.

Q Okay. And does that show the same 12.5 feet?

A Yes sir, it does.

Q Now, in your research and in your chain of title documents, you researched the records of Mr. James Braswell, did you not?

A Yes, sir.

Q Okay. Now, were there -- was there another easement into Mr. Braswell's property?

A I'm not sure how you want me to answer that. Is it that, did I find another easement during my title exam?

Q Yes, did you find --

A That was on -- this was during me searching Ms. Miller --
Q Okay.
A -- on conveyances out. It was not found in Mr. Braswell's search, on the search of his property.
Q Okay. Did you find out where Ms. Miller deeded out another easement or right-of-way that ended on the 120 acres James Braswell bought?
A Yes sir, we did. Well, we found -- I found another easement in a deed out, yes, in our chain of title.
Q Okay. And do you have that document?
A I do, yes sir.
Q Okay.
MR. BREHMER: Let's mark it so we'll have it for the Court.
THE WITNESS: This deed and survey.
(Whereupon, Defendant's Exhibit numbers 16 and 17 were marked for identification.)
Q All right.
A And to clarify that, at the time, that was not Mr. Braswell's property.
Q I understand.
A At the time that was done.
Q I understand. Okay.
THE COURT: Okay. I need for you to show those, if

you intend to enter them into evidence, to Mr. Dibble, please.

Q Okay.

THE COURT: Any objection?

MR. BREHMER: Any objection, Mr. Dibble?

MR. DIBBLE: No, thank you. Those are already in as Plaintiff's Exhibits.

MR. BREHMER: Okay.

THE COURT: All right. So Defendant's numbers 16 and 17 are in without objection.

MR. BREHMER: Okay.

THE COURT: Thank you.

(Whereupon, Defendant's Exhibits 16 and 17 are admitted into evidence.)

Q What is Exhibit number 16?

A A survey.

Q Okay. And a survey of what?

A Of 12.64 acres.

Q Okay. And what is the significance of that survey in your title evaluation or your research?

A On conveyances out on Ms. Miller, the way we run a chain and title, you have to pick up any easement, any right-of-way in her chain of title, conveying out. And that's where we picked that one up on out conveyances. On her, when she sold that property, the 12.5-foot on either

side of the line to be designated as a right-of-way road in and out of the remaining property of Ms. Miller. And at that time Ms. Miller still owned the back piece where Mr. Braswell's came out of, where it comes in the chain of title.

Q So before Mr. Braswell bought the property, when did Ms. Miller make that?

A '64, I believe is the date.

Q I show you what's Exhibit number 17.

A 1964, yes.

Q Okay. In 1964 when Ms. Miller transferred out that 12 point what acres?

A 64.

Q 12.64 acres, she reserved a right-of-way?

A She agreed to a right-of-way by herself and the grantee would each give 12.5 feet on either side of the eastern and southern line as a right of ingress and egress to the property.

Q And Zelda Miller was -- oh, who was the grantee?

A Ms. Miller.

Q Okay.

A I mean, I'm sorry. Ms. Miller was grantor. Grantee was a Bickley.

Q Ms. Bickley?

A Ms. Bickley.

Q Zelda Bickley, I think?
A That's her name, yes sir.
Q Okay. So in 1964, Ms. Sula Miller made a deal with Ms. Bickley for the sale of the property and each gave twelve and a half feet for a total of 25 feet right-of-way into the property that ran into the property that is -- was subsequently bought by Mr. Braswell in '72?
A Yes, sir. It reads as 12.5 feet on either side of the southern and eastern line.
Q Okay.
MR. BREHMER: I want to have this marked for identification next.
THE COURT: Any objection, Mr. Dibble?
MR. DIBBLE: No, ma'am.
THE COURT: And that's for identification?
MR. BREHMER: Yes.
(Whereupon, Defendant's Exhibit number 18 was marked for identification only.)
Q I show you what is an aerial photograph from 2008. Can you tell where that 25-foot right-of-way was there?
A If you are comparing?
Q Yes, sir.
A The property, appears this would be the property here that would follow the east line and the south line.
Q Okay. Would you tell -- show the Court? So we have

to describe this in words so that if someone has to look at this record later they can say what was said as opposed as to here and there.
A Okay.
Q Would you describe from Highway 76, which is the -- we'll use U.S. Highway 76 down, what lines this ran into the Braswell property?
A As to what line it is?
Q Yes, sir.
A It would be the -- I guess the best way I can -- is the eastern side of the 12.64 acres.
Q Okay. Which is where?
A The eastern side would be to the right side.
Q Okay. Is there some red markings here?
A Yes, sir.
Q And part of the markings have slashes across them and the others are just bold down through there?
A Yes, sir.
Q Okay. And does this property, Mr. Braswell's property, does it run into that?
A It runs into the southern line.
Q Okay.
A Yes sir, the southeastern line.
Q So on Exhibit number 16 where the red -- well, on Exhibit number 18 for identification, these lines would

run on down this property designated with number 228-16?
A Yes, sir.
Q 16.43 acres?
A Yes, sir. They added more property to that. This was the original 12.65.
Q Okay.
A And then your -- this is the survey that you would be reflecting.
Q What number is that?
A That is number, is it 19?
Q It's 19.
A Yes, sir.
Q On Exhibit number 19 or Plaintiff's Exhibit number 19, you found a deed or a document that gave a right-of-way from the U.S. Highway number 76 all the way down to Mr. Braswell's property?
A It is defined as the east -- all the way down the eastern line and southern line.
Q Okay. And that is done in what document? Mr. Dibble has that.
A Yes, sir. I don't have it, but it's book at page -- I believe it's deed book 87, page 330.
Q And that would be denoted in Defendant's Exhibit number 17?
A Yes, sir.

THE COURT: Deed book 87.
THE WITNESS: Page 330.
THE COURT: Page 330.
THE WITNESS: Yes, ma'am.
MR. BREHMER: Okay.
THE COURT: Defendant's number?
THE WITNESS: 17.
THE COURT: Thank you.
Q Okay.
A Which also has the plat listing and it took a while to figure out what it was.
Q The plat listing. Now, what is the plat listed?
A U at 31.
Q And what is U at 31?
A Exhibit number 16.
Q Exhibit number 16.
THE COURT: Whose is Exhibit number 16?
MR. BREHMER: Defendant's.
THE COURT: Thank you.
Q Okay. So the records that you found showed that on the Ballentine -- there was a twelve and a half foot right-of-way between the Ballentine property and the property that had been sold to L.K. Bouknight, on that end?
A Yes.

Q Correct?
A Yes, sir.
Q And down on the property that --
THE COURT: Bouknight?
MR. BREHMER: Bedenbaugh. I'm sorry, Bedenbaugh.
THE COURT: Thank you.
MR. BREHMER: Bedenbaugh.
THE COURT: All right. Go ahead.
Q Okay. And then there was a 25-foot easement that goes down the side of the property denoted on Defendant's Exhibit number 16?
A Correct. Which is Mr. Amick's property, his chain of title, again, that is how we come about it.
Q Okay. So your research showed that on one side he's got a twelve and a half right of -- Mr. Braswell has a twelve and a half foot right-of-way?
A Yes, sir.
Q Okay. And on the lower side, okay, Mr. Braswell has a 25-foot right-of-way?
A Yes, sir.
Q And did both of those right-of-ways stop at Mr. Braswell's line?
A They appear to, yes sir.
Q Okay. Okay. And you've provided and documented those in the records?

A Yes, sir.

MR. BREHMER: Okay. Thank you, Mr. White.

THE WITNESS: Yes, sir.

MR. BREHMER: Answer questions Mr. Dibble may have.

CROSS-EXAMINATION

By Mr. Dibble:

Q The easement that was granted by Ms. Miller and Ms. Bickley --

A Yes, sir.

Q -- now that was reserved to Ms. Miller and was granted to Ms. Bickley. Is that correct?

A It is to their heirs and assigns.

Q So have you found any document assigning a right to use that easement to Mr. Braswell?

A No, sir.

MR. DIBBLE: Okay. That's all I have. Thank you very much.

MR. BREHMER: Nothing else for Mr. White. Can Mr. White be excused?

THE COURT: Mr. Dibble, any objection to Mr. White being excused?

MR. DIBBLE: I have no objection.

THE COURT: Okay.

MR. BREHMER: Before we -- before he -- excuse me. We did admit all of those into evidence, did we not?

THE COURT: Ma'am, please have a seat and make yourself comfortable. State your full name spelling your last?

THE WITNESS: It's Tamela Adkins, A-D-K-I-N-S.

THE COURT: Thank you.

DIRECT EXAMINATION

By Mr. Brehmer:

Q Ms. Adkins, what is your relationship to the Defendant, Mr. James Frankie Amick?

A I am his ex-wife.

Q Okay. When were you and Mr. Amick married and when were you divorced?

A Oh, my gosh. We married in 19 --

Q Would you speak into the microphone because hearing --

A I'm sorry.

Q -- hearing with this air --

A Married 1977. Divorced in 1994.

Q 1994. Now, as a result of your marriage, did y'all have any children?

A Each one.

Q A son and a daughter?

A Yes, sir.

Q Okay. Now, where do you live now?

A Saluda, South Carolina.

Q Now, were you married to Mr. Amick at the time that he purchased -- he and you purchased this property from the Brocks?
A Yes, sir.
Q Okay. When y'all purchased the property from the Brocks, was that in 1988?
A Yes, sir.
Q Okay. What was the condition of the 17 acres that you purchased from the Brocks in '88?
A It was like a jungle.
Q Okay. Explain that for us. What do you mean?
A It was full of trees and briars and brush. It was in bad -- I wouldn't go down in it because I was scared.
Q Okay. Now, could you drive into the property at that point?
A No, sir. Not down into it, no sir.
Q Could you drive in -- did it have a driveway?
A It had like a pull-off from the Highway Department and you could stop, what I call, up at the road, you could stop there. But you could not go down into the property.
Q Could not go down into the property?
A No.
Q Okay. What do you mean by going down into the property?
A Well, there's a little hill or maybe it's just a

bump. But when you come off the highway, you kind of go down a little bit --
Q Yeah.
A -- and you couldn't get down in there. You had to stay up at the top.
Q Okay. Now, was that condition changed?
A Yes, sir.
Q How was that condition changed?
A My ex-husband and my son.
Q What did they do?
A They cleared it.
Q With what?
A Machetes and I think a weed eater, every now and then.
Q Okay. Chainsaw?
A Yes, sir.
Q Okay. They do it all by hand?
A All by hand.
Q When you and your husband purchased this property in 1988 from your -- how old were you then? What year were you born?
A '59.
Q '59. So in '88, you would have been 38?
A 38 maybe, I think so.
Q Okay. Did you see any tracks, paths, roadway, any

evidence that you thought that vehicles had been passing through the property that you and your husband just bought from the Brocks?
A No, sir. I couldn't get down through there.
Q Okay. Okay. And after -- how long did it take your husband and your son to get it where you could get a vehicle down in there?
A Oh, between two and three years --
Q Okay.
A -- before I could actually get down in there.
Q When would they work on it?
A In the afternoons after school and from then up until, you know, the summertime and when he wasn't at work. The spent about every weekend up there.
Q Okay. All right. Now, do you know Mr. Braswell, Mr. James Braswell, Sr.?
A Yeah, I know Mr. Jim.
Q How do you know Mr. Jim?
A Gosh, I just known him -- he dealt with my mama through insurance. And it's a distant relation, my dad's wife is his niece.
Q Okay.
A But as far as a personal relationship, I don't have one, but I do know who he is.
Q Okay. Did you ever have any experience with Mr.

Braswell while you were married to Mr. Amick?
A No, sir.
Q Okay. All right. Did you ever see Mr. Braswell going through or close to the property that y'all had bought when you were still married to Mr. Amick?
A Not that I can recall, no sir.
Q Okay. Now, were you there or were you still married to Mr. Amick whenever the gates were put up?
A Yes, there was a gate put up.
Q Okay. Let me show you something. I show you what has been marked as Plaintiff's Exhibit number 1 and I represent to you those aren't the same gates that were originally put up. But do you remember when gates being put up in the location shown in Plaintiff's Exhibit number 1?
A I remember there was a single gate put up.
Q There was a single gate.
A Yes, sir. But I don't know --
Q Double gates?
A Well, single, yes.
Q Single gates?
A Yes.
Q There was just one there, there weren't two?
A Right.
Q Where it had to been in a different location, I

guess?
A Well, this was still grown up --
Q Okay.
A -- and there was room enough for one gate to --
Q Okay.
A -- I mean, this was being cleared out --
Q Okay.
A -- completely from what it was.
Q All right. But it's entirely different than what it was.
A Yes, sir.
Q Okay. Now, was that gate closed?
A When we weren't --
Q Was it kept closed?
A When we weren't there, yes sir.
Q Was there any -- I mean, why was that gate put up?
A Because he liked his privacy and he didn't want people driving on his land.
Q Okay. So it was put up to keep others out?
A Yes, sir.
Q And what year would that have been? If you bought it in '88, you divorced in '92, was it between '88 and '92?
A Oh, yes. Oh, yes.
Q Okay. Which was it closer to, '88 or '94?
A Now, closer to '94 --

Q Okay.
A -- because it took them a while to clean it where you could even put a gate up.
Q Okay. So '90-'91?
A Someone in there, yes sir.
Q Okay. All right. And that gate was put up by Mr. Amick?
A Yes, sir.
Q Okay. Did you ever have any problems with Mr. Braswell while you were there?
A No, sir.
MR. BREHMER: Thank you, ma'am. Answer any questions that Mr. Dibble may have for you.
THE COURT: Cross-examination, Mr. Dibble?
MR. DIBBLE: Yes, ma'am.

CROSS-EXAMINATION

By Mr. Dibble:
Q Ms. Adkins, I'm Bob Dibble. We met before, I believe --
A Yes, sir.
Q -- a year or so ago?
A I do remember.
Q Well, you hadn't changed -- you hadn't changed any, I can promise you that.
A Well, thank you.

Q I'm going to hand you two photographs that have been marked Plaintiff's Exhibit number 30 and Plaintiff's Exhibit number 29.
A Okay.
Q And I'm going to also hand you a copy of the deed.
A I don't have my glasses.
Q You don't have your glasses.
A I am sorry.
THE COURT: What Exhibit number is that, sir?
MR. DIBBLE: Your Honor, I call the Court's attention to Plaintiff's Exhibit number 21.
THE COURT: 21?
MR. DIBBLE: 21 which is a deed from Mr. and Mrs. Brock to Mr. and Mrs. Amick.
THE COURT: June the 10th of 1988?
MR. DIBBLE: Yes, ma'am. I call your attention to that. The notary is sworn on June the 8th of 1988, filed in Newberry County on June 10th. The deed itself is dated June the 8th.
THE COURT: Yes, sir.
MR. DIBBLE: I also call to the Court's attention Plaintiff's Exhibit number 29 which is an aerial photograph dated March 26th, 1989 which is nine months after Mr. and Mrs. Amick bought the 17.8 acre tract.
THE COURT: Exhibit number, sir?

MR. DIBBLE: 29.
THE COURT: Yes, sir.
Q Ms. Adkins, I am going to talk loud because the acoustics are bad, I am not yelling at you. Can you show the Court on this photograph where your property was located?
A I think it is going to be right in here. I don't have my glasses with me, I am pretty sure that is it. That is 76, that should be it right there.
Q What is that little white line going down the property line right there?
A I have no idea. I really don't know, Mr. Dibble.
Q Isn't that a road, Ms. Adkins?
A I don't know if it is or not. I will be honest with you, I don't know. But I know if this is the driveway here, you can see this is closed off. We could not get down in there.
Q But you would not, so what took you three years to clean up?
A My husband and my son was eight years old and that is what took it three years. They didn't have any help.
Q Right. But this photograph was taken nine months after you bought the property?
A I can't tell you, I don't know, I don't know that this picture was taken then. I mean, I am not disputing

you but I can tell you we could not get down in there and my son developed a hernia getting this property cleaned.

Q All right.

THE COURT: What Exhibit number was that?

MR. DIBBLE: 29, Judge.

THE COURT: Thank you.

Q I have no further questions.

THE COURT: Any redirect?

MR. BREHMER: No, Your Honor. Thank you and we would ask that the witness be released to go back to her personal business.

THE COURT: Yes, ma'am. Ms. Adkins, thank you for being here, you are free and thank you for your patience if you have been waiting. We will take a break, it is 3:44 so we will be in recess until 4:00.

(Whereupon, a short break was taken.)

THE COURT: Call your next witness, please.

MR. BREHMER: We call Robert Beard.

THE COURT: Please come forward and be sworn, sir. Come right here. State your name and spell your last name.

THE WITNESS: Robert David Beard, B-E-A-R-D.

ROBERT BEARD, being first duly sworn, testified as follows:

MR. BREHMER: Your Honor, I would like to have these

Exhibits marked, I am going to offer them all into evidence at this juncture.

THE COURT: Show them to Mr. Dibble.

MR. DIBBLE: I have no objection provided--

MR. BREHMER: We will authenticate them.

THE COURT: Okay. Thank you.

MR. BREHMER: Okay.

THE COURT: So we have got 3, 4, 5 and 18 and 19 for identification.

(Whereupon, Defendant's Exhibits 3, 4, 5, 18 and 19 were marked for identification only.)

THE COURT: And that is without objection?

MR. DIBBLE: Yes, ma'am.

THE COURT: All right, thank you.

MR. BREHMER: So we are moving them into evidence?

THE COURT: We are not moving them in if he can lay a foundation for them, is that correct?

MR. DIBBLE: Yes, ma'am.

THE COURT: Okay. So we will do them one by one with Mr. Beard. All right.

DIRECT EXAMINATION

By Mr. Brehmer:

Q Good afternoon, Mr. Beard.

A Good afternoon.

Q Would you please tell the Court how you are employed?

A I am the Newberry County GIS Analyst, that is Geographic Information System.
Q And how long have you held that position?
A A little over 14 years.
Q Okay. What is the Newberry County Graphic Information System?
A It is the mapping system, we map parcels, roads, a lot of stuff, different things.
Q And have you performed some research on the properties in question at my request?
A Yes, sir.
Q And I am going to show you what has been marked as Defendant's Exhibit 5. Is Defendant's Exhibit number 5 a document that you produced at my request?
A Yes, it is.
Q And how is that?
A This is off of our Geographic Information System. The aerial photographs is from 2002 and this is parcel 228-5.
Q How does that parcel number correspond with the tax number, tax map number?
A That is the same thing.
Q Same thing, one in the same?
A Correct.
Q Is Exhibit number 5 a business record kept in the

ordinary course and scope of business of the Newberry County Graphic Information Systems?
A Yes, it is.
Q And is that a record that you produced for me pursuant to my request, Freedom of Information request?
A Yes, it is.
MR. BREHMER: Your Honor, we would move Exhibit number 5 into evidence.
THE COURT: What is this, I know that he gave a tax map number but what is the property location, sir.
A The driveway that they are talking about is right up through here, is what they are talking about.
Q This property here, this 225, I mean 228-15, is that the property that is owned by Mr. James Braswell?
A Yes.
Q And is the property 228-16, the 16.403 acres, the property owned by Mr. James Amick, the Defendant?
A Yes, it is.
Q And is this property, Highway 76 up here at the top?
A Right.
Q Okay. And when, this property has a number of 2002 on it, aerial, what does that mean?
A It means that the aerial photography was in 2002. That is, in the winter, January, February, maybe early March of 2002.

Q So in the, around this time of year 18 years ago?
A Correct.
Q Is when this photograph would have been made?
A Correct.
Q Okay.
MR. BREHMER: Your Honor, at this time we would offer Exhibit number 2 into evidence, I am sorry, Exhibit number 5 into evidence.
THE COURT: Mr. Dibble?
MR. DIBBLE: No objection.
THE COURT: All right. Thank you. 5 is in without objection.
(Whereupon, Defendant's Exhibit 5 was admitted into evidence.)
Q Let's put the rest of these, this is 4, Defendant's Exhibit number 4, that is the number up there, it is upside down from where you are looking. But take my word for it. What is Exhibit number 4?
A That is the aerial photography for parcel number 228-16.
Q Okay. 228-16?
A Right.
Q And is that a business record kept in the ordinary course and scope of business for Newberry County?
A Yes, it is.

Q And is it very similar in nature to Exhibit number 5?
A Yes, it is. They were taken the same year, in fact the aerial on number 5 up here is this area up here.
Q It is more of a expansion?
A Well, it is zoomed in on the other parcel.
Q Zoomed in on the other parcel. And it had also been taken in January, February or March of 2002?
A Correct.
Q Okay. And Exhibit number -- 228-16 is the 16.403 acres owned by Mr. James Amick?
A That's correct.
Q And 228-15, 120.8 acres owned by Mr. James Braswell?
A That's correct.
Q Okay. All right. And this would be a record kept in the ordinary course and scope of business for Newberry County?
A Yes, it is.
MR. BREHMER: Your Honor, at this time we would move Defendant's Exhibit number 4 into evidence.
THE COURT: Mr. Dibble?
MR. DIBBLE: Do objection.
THE COURT: Thank you. Number 4 is in.
(Whereupon, Defendant's Exhibit 4 was admitted into evidence.)
Q I show you what has been marked as Defendant's

Exhibit number 3. Okay. What is Defendant's Exhibit number 3?
A It is parcel number 228-16. The same as Defendant's Exhibit number 4 with the exception of the aerial photograph behind it is 2008.
Q And is Defendant's Exhibit number 3 a photograph that is kept in the ordinary course and scope and business of Newberry County GIS office?
A Yes, it is.
Q Okay. And is this a document that you produced at my request?
A Yes, it is.
Q And does this also show the tract of property that is owned by Mr. Amick?
A Yes.
Q And Mr. Braswell, a portion of Mr. Braswell?
A A portion of Mr. Braswell.
Q A portion of Mr. Braswell's. Okay.
MR. BREHMER: We would offer Defendant's Exhibit number 3 into evidence, Your Honor.
MR. DIBBLE: No objection.
THE COURT: Okay, number 3 is in without objection.
(Whereupon, Defendant's Exhibit 3 was admitted into evidence.)
Q I will show you what has been marked as Defendant's

Exhibit number 18. Okay. What is Defendant's Exhibit number 18?
A It is parcel 228-15 with the 2008 aerial photography behind it.
Q Okay. And that would be Mr. Braswell's property?
A Correct.
Q Okay. And is Defendant's Exhibit number 8 a document that is kept in the ordinary course and scope of business of Newberry County?
A Yes, it is.
Q And is that a document that you produced at my request?
A Yes, it is.
Q And would that document have been compiled in January, February or March of 2008?
A The aerial photography would have, yes sir.
Q Okay.
MR. BREHMER: We would move Defendant's Exhibit number 18 into evidence, Your Honor.
MR. DIBBLE: No objection.
THE COURT: Okay. So it is 18, not 8.
MR. BREHMER: 18.
THE COURT: 18 is in.
(Whereupon, Defendant's Exhibit 18 was admitted into evidence.)

Q Sir, I show you what has been marked as Defendant's Exhibit number 19. Could you please identify Defendant's Exhibit number 19?
A It is a copy of tax map 228. I believe it is a 1976 or thereabout aerial photography behind it.
Q Okay. And is that a record kept in the ordinary course and scope of business of the Newberry GIS office?
A It is kept by the Assessor's Department.
Q But it is a business record of Newberry County?
A Yes, it is.
Q And did you produce that pursuant to my request?
A I did.
Q And when you say tax map, does it show Mr. Braswell and mr. Amick's property?
A Yes, it does.
Q Is Mr. Amick's property designated with 16?
A Yes, it is.
Q 32?
A Right.
Q And Mr. Braswell's property, is it--
A 15.
Q 15. Okay. And this would have been compiled when?
A The aerial photography was around 1976, I believe.
Q Okay. Things have changed a little bit in aerial photography since '76?

A Changed a lot since '76. This, the '76 came in on Bellems, (phonetic), and the 2002 on, we received digitally.
Q Okay. All right. So is it fair to say that, the records after '76 are much clearer?
A The aerial photography is much better. It gets better every time they do it.
Q Okay. Now, in '76, are you familiar with these photographs?
A Yes.
Q Do you work with them every day?
A Not these particular ones but I work every day, yes.
Q And how long have you been doing that?
A For over 14 years.
Q To you interpret information on them?
A Yes, I do.
Q And you been doing that for the County for the last 14 years?
A Correct.
Q What type of information do you interpret on them?
A I do the parcel lines, the road center lines. When a plat comes in, I am the one that puts it in the system.
Q Okay.
A And I, when we have requests for information about how many, you know, population of certain areas then I

take the residential addresses and multiple that by the census average and come up with stuff like that.

Q Okay. Now, for the Court's assistance--

THE COURT: Has that been offered in?

MR. BREHMER: I think we have. Oh, we would offer Defendant's Exhibit number 19 into evidence.

THE COURT: Any objection?

MR. DIBBLE: Your Honor, before it can come in I believe he has to explain the markings on this document. I don't know where those markings come from. This is an aerial, if the aerial photograph itself was available. Before we let it in we need to explain the markings on this thing a little bit. I have no idea what they are.

A Well, they--

THE COURT: You need to respond to questions.

A Okay.

MR. BREHMER: Pursuant to the evidentiary rules, Your Honor, this would be, fall under the business record exception to the hearsay rule. He has testified that he is custodian of these records, that they are kept in the ordinary course and scope of business and that they are part and portion of the Newberry County business records. And as such I think they have been properly authenticated to be in evidence. And I wanted to get them into evidence and then I am going to ask him questions about them. But

I think we have laid the appropriate foundation for them to be moved into evidence or for this document, Exhibit number 19, to be moved into evidence.

THE COURT: Anything else, Mr. Dibble?

MR. DIBBLE: Well, Your Honor, the only thing I can say in response to that is that this is not a business record kept in the ordinary course of business. The photograph is. The document itself is not.

THE COURT: You are meaning that the markings on this would need to be redacted unless he can explain it.

MR. DIBBLE: Explain it, that is all I was asking.

THE COURT: Is he going to explain?

MR. BREHMER: Yes, ma'am.

THE COURT: Okay. And so do we want to hold, I know that you are trying to go ahead and get them all in and you are going to ask him questions.

MR. DIBBLE: Would you prefer to move to the next document and then in your questioning we will remember to bring this in, to bring that up.

THE COURT: I understand Mr. Dibble's point. It looks almost like there are chalk marks on this. This does look a little different than the other documents.

MR. BREHMER: Okay.

Q Could you explain the markings on this document, sir?

A It is, on this particular tax map the--

Q And we are referring, so the record is complete, Exhibit 19.
A Exhibit 19, this was before the digital, before we started doing it digitally. The parcel lines were actually drawn on Bellem, over the aerial photography. And then once that was done, to update them they did the red lines. Parcel 16 and 32 on here was one parcel at one time. And then they were split where this red line is and 32 was created. And that is what all these are, is just where the new parcels were created. This line that was X'd out, parcel 7 became part of parcel 26. That is before we had it digitally. Now if I split it out this line would go away. But when they were doing it, when it wasn't digital the only way they had to do it was come in and they just took the red pen and X'd it out and take the red pen and draw one in.

MR. DIBBLE: With that explanation I withdraw my objection.

THE COURT: Okay. Thank you. So Exhibit number 19 is in.

(Whereupon, Defendant's Exhibit 19 was admitted into evidence.)

Q Exhibit number 19, let's deal with it first since it is the oldest. Okay. You previously testified that number 16 and number 32 are part of Mr. Amick's property,

correct?
A Correct.
Q Number 16 contains the road in question, correct?
A Correct.
Q And so the Court's information, some of this is kind of a grayish or a light gray area, some of it is kind of dark, some of it is kind of speckled like, like speckles you might see on a bird dog or something. Could you explain to the Court what those different colorings mean?
A The darker speckles are trees, tree lines. This could be a tree line or bushes or something similar to that. And it captions the darker shadow next to it. This would be a open field.
Q The light gray?
A The light gray would be the open field. The field back here with the swirls on it are planted.
Q Farm crops?
A Farm crops.
Q Farm crops. Okay. All right. And down here you got solid lines and then you got a solid line that hangs a left. What are those things?
A Those are parcel lines.
Q Parcel lines. Okay. So on this '76 map there is a gap between the parcel number 29 that I will represent to you was the Ballentine or Long property and parcel 16.

What are those two solid lines mean on this photograph?
A That would indicate that parcel 15 went out to the road.
Q Okay. And that would be the 120 acres?
A Right, that is what it looks like on this one.
Q Now, is there no way to measure the distances in these things, is there, accurately?
A Not accurately with something that small.
Q Okay. You would have to go find the documents to support it in the court records?
A Correct. In fact that is on any tax map, that is a map. The plats and deeds are the legal documents. Those are just the representation of --
Q Photographing?
A Right.
Q Okay. I show you now what has been marked as Defendant's Exhibit number 18 which is 2008, correct?
A Correct.
Q What in parcel number 228-15, at the upper point there is two white streaks down in there. What is that?
A That looks like a road.
Q Okay. Looks like a road. Okay. Now, this would have been done in January, February, March of '08, correct?
A Correct. The photography was, yes sir.

Q Now, here is parcel 228-16 done in '08 which is Defendant's Exhibit number 3, correct?
A Correct.
Q What is this white line here?
A That would be the road or driveway going through there.
Q All right. Any way to measure that driveway?
A I can in my office. I can't out here. It does, I do have a scale down there at the bottom.
Q But this is what it represented in '08, correct?
A That's correct.
Q Now, on parcel 228-15 this road, this road bears out, does it not?
A Yes it does.
Q The tree line. Now, let's go to do a little comparison shopping here. I want you to compare, tell the Court what Defendant's Exhibit number 4 is.
A It is the same aerial as Defendant's Exhibit 3 with a 2002 aerial photography.
Q Okay. So this would have been marked of Mr. Amick's property and a portion of Mr. Braswell's property in January, February, March --
A Of 2002.
Q 2002. Okay. Now, any road there?
A It comes part way back, it kind of disappears before

it gets to the back property line.
Q How do we know that?
A You can see the road coming in and it looks like it is just a mowed area back there.
Q Grass.
A Grass.
Q Grass?
A Right.
Q Okay. And these are trees that are along that fence line?
A Correct.
Q Okay. But if there was a road there could you see it on Exhibit number 4, correct?
A Correct, you can see it coming part of the way in but it stops before it gets to the back of the property line.
Q Okay.
MR. DIBBLE: I am sorry, where were you pointing, Mr. Beard?
A You can see the road coming in and then it stops before you get back here, it stops somewhere up along about three quarters of the way back.
Q So that the record is clear and there is a verbal description, you were pointing on Defendant's Exhibit number 16 that there is a gray streak down the property line that came about two-thirds of the way back and

stopped?
A Defendant's number 4.
Q Defendant's number 4 and the sub-parcel was 228-16. There was a light colored streak that came about two-thirds of the way down the property. Is that correct?
A That's correct.
Q And that would have been immediately adjacent to where the property, with tax map number 228-29 consists of 158.54 acres?
A That's correct.
Q But it did not extend all the way back to parcel number 228-15 consisting of the 120.8 acres belonging to the Plaintiff?
A Correct.
Q Okay. Now, and that this coloration here showed that basically this was just a mowed area?
A Correct.
Q Not running all the way back to Mr. Braswell's, right?
A Right.
Q That is the way it was back in January, February, March of '08?
MR. DIBBLE: What year?
MR. BREHMER: 2002, I am sorry.
A 2002.

Q 2002. Okay. Now, let's compare in contrast for the Court, which I believe to be the same, Exhibits number 4 which is a 2002 aerial photograph of Mr. Amick's property and a portion of Mr. Braswell's. And Exhibit number 3 which is a 2008 photograph representation of Mr. Amick's and Mr. Braswell's property. Now, is there a difference that you see?
A Yes, there is.
Q What difference do you see, sir?
A The driveway clearly comes across the property line and out into, what on 2002 is a plowed field. You can see it.
Q So the same photograph six years later clearly shows a road?
A The same aerial photograph six years later, yes sir.
Q Six years later, okay. And it shows the road back on across Mr. Braswell's property that is not shown in Exhibit number 4, correct?
A That's correct.
Q Okay. Now, would these have been made the same time of year?
A Yes, sir.
Q Of the same pieces of property?
A Correct.
Q The only difference being is, one was made, I am

sorry, number 4 was made in 2002; number 3 was made in 2008?
A That's correct.
Q Okay. And looks like there has been a home added during that timeframe, has there not?
A Yes, there has.
Q Mr. Amick's has got a home here on his property, correct?
A That's correct.
Q Now, I show you what has been marked as Defendant's Exhibit number 18 which is an aerial photograph of Mr. Braswell's property done in 2008, correct?
A Correct.
Q And this shows his entire property, does it not?
A Yes, it does.
Q All of this area within the black is Mr. Braswell's property?
A That's correct.
Q Okay. Is the road on Mr. Braswell's property very visible here?
A Yes, it is.
Q Now, one thing that came up, this photograph would have been made in January, February or March. This area, and let's just call it, I take a wild guess, 80 acres here. Is there any photographic evidence of a roadway

breaking the 80 acres into two separate 40 acre tracts?
A No, there isn't.
Q From your experience, work experience, everything, does this seem to be one constant field?
A Yes, it does.
Q But no roadways?
A No roadways going through the center of it.
Q The field of it?
A The field.
Q The field of the field. Okay. But at the top where they have been traveling you can definitely see tracks, correct?
A Correct.
Q Okay. All right. Thank you, sir, answer any questions that Mr. Dibble may have.

THE COURT: Cross-examination, Mr. Dibble.

MR. DIBBLE: Yes, ma'am.

MR. BREHMER: We did move all of these into evidence, correct?

COURT REPORTER: Yes, I believe all of Karl's is in evidence.

MR. BREHMER: Thank you.

CROSS-EXAMINATION

By Mr. Dibble:
Q Mr. Beard, my name is Bob Dibble, I think we met the

other morning?
A Yes, sir.
Q I represent Mr. Braswell. I am handing you Defendant's Exhibit number 19 which you have identified as a 1976 tax map compilation, is that correct?
A That's correct.
Q Let me show you Mr. Amick's land on this tax map compilation.
A It will be parcel 16 and parcel 32.
Q What is that white line that comes off of Highway 76 and runs down to Mr. Braswell's property?
A That looks like a driveway running.
Q Runs all the way down to Mr. Braswell's property in 1976, is that right?
A Close to it.
Q Now, are you familiar with the USDA aerial photographs?
A Yes, sir.
Q Do you see those on a routine basis?
A I have them, I don't use them very often.
Q Have you found out, found that their resolution is better than the aerial photography in your office?
A In the cases that I have had, they were a lot worse than mine.
Q Well, let's look at--

A I haven't seen any recent stuff of theirs.
Q I hand you what has been marked as Plaintiff's Exhibit 28 and ask if you can point out Mr. Amick's property on that Exhibit?
A Yes, sir.
Q And is the same road on Exhibit 28 the same road that is on Defendant's Exhibit 19, on Mr. Amick's property?
A On 28 it looks like the road comes down and turns and goes down the fence line and stays on Mr. Amick's property.
Q But the driveway, the white line you identified as the driveway on Defendant's 19 is the same as being shown on this, Plaintiff's 28, is that right?
A You can see the driveway coming down but on this one, number 28 you can actually see it curving and going down beside the fence.
Q But the driveway does exist on this side of Mr. Amick's, on the left side of Mr. Amick's property?
A On the northwest side of the property, yes sir.
Q That is in '94. I hand you Plaintiff's Exhibit 29 and ask if you can locate Mr. Amick's property?
A Yes, sir.
Q And what is that white line running down the northwest side of Mr. Amick's property?
A That looks like the driveway.

Q Is that the same driveway as you showed on the 1976 tax map compilation?
A Yes, sir.
Q All right. I am going to hand you what has been marked as Plaintiff's Exhibit number 30 and ask if you can locate Mr. Amick's property on that Exhibit?
A Yes, sir.
Q And where is it, sir?
A It is right here.
Q And is that white line that you described as a roadway, is it located on Mr. Amick's property in 1984?
A Yes, sir.
Q Goes all the way down to Mr. Braswell's property, doesn't it?
A It looks like it does.
Q I hand you what has been marked as Plaintiff's Exhibit number 31 and ask if you can locate Mr. Amick's property on that?
A Yes, sir.
Q What is that white line on the northwest side of Mr. Amick's property?
A It looks like the driveway.
Q Goes all the way down to Mr. Braswell, doesn't it?
A The driveway looks like it stops right about here.
MR. BREHMER: Could we describe that, where about

here is on the Exhibit.
A It looks like it stops about three quarters of the way down.
MR. BREHMER: Of what parcel?
A Of, this would be parcel 16, 228-16, Mr. Amick.
Q Have you ever been out to this property?
A I haven't been on the property, I have been by it a lot of times but I have not been on the property.
Q How often do you go by Mr. Amick's land?
A I don't go that way regularly. I went to Clinton last Saturday and went by it.
Q Where do you live?
A I live on Highway 121, about, between the old Haile's Restaurant and the interstate.
Q You grew up in Newberry County?
A No, sir.
Q You didn't. Okay. That is all the questions I have, Mr. Beard, thank you very much.
A You are welcome.
THE COURT: Redirect?
MR. BREHMER: No additional questions for Mr. Beard. We would ask that he be released, to go back to his other endeavors.
THE COURT: Thank you, Mr. Beard. You are free to go, sir. Thank you for your patience.

MR. BREHMER: Mr. Beard, would you ask Mr. Richardson to come in next, please.

MR. DIBBLE: Judge.

THE COURT: Yes, sir.

MR. DIBBLE: Mr. Brehmer has three more witnesses. We are not going to finish this case today.

THE COURT: Okay.

MR. DIBBLE: It is quarter to 5:00. I just assume break if the Court would permit that.

THE COURT: Mr. Brehmer?

MR. BREHMER: I am here for everybody's pleasure, whatever Mr. Dibble and the Court wants to do I am willing to do.

THE COURT: Is Mr. Richardson a brief witness, I am assuming he has been here at least this afternoon waiting.

MR. BREHMER: He has.

THE COURT: Is this an expert witness?

MR. BREHMER: No. He is a factual witness.

THE COURT: And, again, I know you all are a lot more familiar with the witnesses than I am and I am not trying to cut anybody off and I certainly don't want to interrupt the testimony. And so, if you think that we can finish this in the next 15 or 20 minutes I am happy to do this. But if we are going to require this gentleman to return tomorrow we might as well stop now.

MR. BREHMER: I don't think it is going to be done in 15 to 20 minutes.

THE COURT: Okay. And so we will reconvene in the morning at 9:30. Mr. Richardson, sir, thank you for being here and I will see you tomorrow.

(Whereupon, the trial will resume the next morning at 9:30 a.m.)

January 8, 2020.

THE COURT: Do we have the same request with witnesses being sequestered?

MR. DIBBLE: Judge, I have a matter to take up before the Court, before we start.

THE COURT: Okay, give me one moment. Yes sir, Mr. Dibble.

MR. DIBBLE: I am going to hand you Plaintiff's Exhibit number 31 which is the aerial photograph.

THE COURT: Yes, sir.

MR. DIBBLE: You will notice on that photograph that there is only one pond in 1981.

THE COURT: Okay.

MR. DIBBLE: Mr. Braswell did not build his ponds until sometime after 1981.

THE COURT: Okay.

MR. DIBBLE: After Court adjourned and after Mr. Brehmer left Mr. Braswell pointed out to me on this

Exhibit that all -- that his ponds are, in fact, shown on this Exhibit. His ponds are down here. The only reason this is significant was that Mr. Beard dated this in 1976. And I cross-examined him about the road--

THE COURT: Yes sir, do you want to recall your client on that issue in reply testimony. I think that would be the most appropriate way to handle it. You can't testify about this. Let me hear from Mr. Brehmer.

MR. DIBBLE: Let me finish. The only reason is significant is I cross-examined Mr. Beard about the road across Mr. Amick's land. So I wanted to give Mr. Brehmer an opportunity to recall Mr. Beard if he wanted to, to get the correct date on this. As it stands right now the record is incorrect.

THE COURT: Well, again, I think that could be cleared up through testimony of your client or testimony of Mr. Beard.

MR. DIBBLE: I just didn't want the record to be incorrect.

MR. BREHMER: I don't know that the record is incorrect. I mean, that is a question of fact and often as in a lot of cases you have inconsistent evidence. Mr. Beard testified that this was a record kept in the ordinary course of business and the date of it in the county records which probably authenticated it and brought

it into evidence. Mr. Dibble put that Exhibit as a self-authenticating document, a government document. He is assuming that that is dated correctly as opposed to this. So I am not sure that Mr. Dibble's assertion is correct. Okay. There is a competing, there is competing evidence. So I don't know, I see the inconsistency that he is pointing out but I don't know which one is correct. I have no way to validate one way or the other.

THE COURT: Okay. And so I guess this could also be addressed in your closing arguments to Counsel, if that is your wish. But, of course, you all can't testify about it and so I will let you all think about the best way to handle it and I will hand this back to the Clerk. Is there anything else we need to take up before we discuss the Exhibit issue from yesterday?

MR. DIBBLE: No, not from the Plaintiff.

MR. BREHMER: Not from the Defendant.

THE COURT: Madam Court Reporter, did you have an opportunity to determine whether, it was Exhibits, was it 35, 36, 37 and 39.

COURT REPORTER: Yes ma'am, they were put into evidence.

THE COURT: Okay. Thank you.

MR. DIBBLE: Thank you very much.

MR. BREHMER: Thank you.

THE COURT: Mr. Brehmer, are you ready to proceed.

MR. BREHMER: Yes, Your Honor, we are.

THE COURT: And just, again, to clarify for planning purposes for everyone's day. We will be stopping as close to 11:30 as possible. Is that correct?

MR. BREHMER: That's correct.

THE COURT: Thank you.

MR. BREHMER: Your Honor, we would call Mr. Mark Richardson.

THE COURT: Mr. Richardson, good morning, sir. If you would please come around and come up to this witness stand.

MARK RICHARDSON, being first duly sworn, testified as follows:

THE COURT: Please state your full name for the record, spelling your last for me.

THE WITNESS: Mark Anthony Richardson, R-C-H-A-R-D-S-O-N.

THE COURT: Yes sir, Mr. Brehmer.

DIRECT EXAMINATION

By Mr. Brehmer:

Q Mr. Richardson, so we got some information, where do you live?

A 370 Henderson Court, Newberry, South Carolina.

Q How long have you lived there?

A Moved there in December of 2004.
Q How old are you, Mr. Richardson?
A I am 59.
Q Okay. And are you employed?
A No sir, I am disabled.
Q What is your disability?
A I had emergency neck surgery and then had back surgery. The emergency neck surgery caused severe nerve damage and from what the doctors told me, it will never get any better.
Q And how long have you been disabled?
A The neck injury happened in 2010.
Q 2010?
A Yes, sir.
Q So for the last ten years?
A Yes, sir.
Q Now, do you know James Amick?
A Yes, sir.
Q Does he go by Frankie?
A Yes, sir.
Q How long have you known James Amick?
A I would estimate from the time I was eight or nine years old.
Q Okay. So were y'all childhood friends?
A Yes, sir. My grandparents lived two doors up from

one of his best friends. We grew up in the same neighborhood, known each other most of our lives.
Q Okay. Have y'all been friends since you were children, nine years old?
A Yes, sir.
Q So for the last 50 years?
A Yes, sir.
Q So would it be fair to say that you and he are good friends?
A Yes, sir.
Q Now, do you remember in June of '88 when Frankie and his then wife, Tamela, bought that property?
A Yes sir, I do.
Q And the property I am referring to is the 17.04 acres up off of U.S. Highway 76?
A Yes, sir.
Q In 1988, after he bought the property, did you visit the property?
A Yes, sir.
Q How soon after June of '88 was it when you visited the property?
A Just a couple of weeks.
Q Sometime in June or July of '88?
A Yes, sir.
Q What was the condition of the entryway of the

property at the intersection of U.S. Highway 76 and the property?
A It was completely grown up. There was no access to it all, you had to park as soon as you pulled off of Highway 76. You couldn't go no further.
Q You parked on the lower apron coming off of 76?
A Yes, sir. And that is when the old bridge was there.
Q Okay. And what is there now, the Highway Department replaced over here, the bridge, a couple of years ago?
A Yes, sir.
Q When you say it was completely grown up, can we elaborate on that. What was in the way or what was in the location that now exist as the entryway to the property?
A The entire property was grown up to the point that you could walk between the trees, the brush but there was actually no access. You couldn't take a lawnmower through it.
Q Okay. You could walk through it, but you couldn't -- could you drive a vehicle into it?
A No sir, not at all.
Q And how far into the property, let's just call it understory.
A The entire way.
Q Did you observe James Amick and his son, Benji, doing anything to rectify that situation?

A Yes, sir. I went out there with a mutual friend of mine and Mr. Amick's, Mr. Artie Driggers and unfortunately is now deceased. But we would stop by occasionally and we would see Frankie and Benji out there with chainsaws, bush axes, axes, push mower, weed eater, whatever they could use to clear into the property.
Q Okay. All right. And did they eventually get it to where you could drive into it?
A Yes sir, eventually.
Q Let's see if we can define the timeframe, that we refer to as eventually because that is kind of vague. How long did it take Frankie and his son, Benji, to get it so that you could drive a pickup truck into the property?
A Two to three years.
Q Okay. And did they continue to work on it after that?
A Yes, sir.
Q Okay. From your familiarity--
A Let me say, I assisted in some of that.
Q What did you do?
A I would bring my chainsaw and go up there and help him cut up trees, remove brush. We spent some time burning brush, stayed up there overnight and camp out by a campfire and cook on the campfire.
Q And so you were familiar with the property during

that timeframe?
A Yes, sir.
Q And you said it took him two to three years to get the property up. At that timeframe, when he got it where he could put it up or drive into it with a pickup, did he install a gate?
A Yes sir, at some point.
Q What is your best recollection as to when he installed the first gate?
A I estimate probably and this would be a best guess, '94, '95.
Q Okay. Now, did you see a lock on that gate?
A Yes, sir.
Q Was the gate locked if Mr. Amick wasn't there?
A Yes, sir. That was a habit. And I will reference, if I knew I was going to see him I would stop by his home, at the time, on Highway 76 right before Airport Road, and we would go up there together because I couldn't get access to the property unless he was there. And I knew that.
Q I am going to use for purposes, demonstrative purposes Defendant's Exhibit number 1 that is in evidence which is a photograph that was made a couple of weeks ago. Back where that tripod is on the left of this photograph and that fellow standing there with the Carhart jacket and

the stocking cap which just happens to be me, there is a gap in the hedgerow and the fencerow. Okay. What was in that place that I just referred on Defendant's Exhibit number 1 as the gap whenever Mr. Amick bought the property in '88?

A Trees and brush. This entire driveway was, up to that point. And all of this was grown across.

Q Unfortunately, Mr. Richardson, if this matter ends up at the Appellate Court, this is not going to come out very well. Can you describe what you referred to as this and you pointed to what is the, I refer to as the hedgerow.

A Yes, sir. All of this was grown up, there was trees and brush and when Mr. Amick eventually established his driveway you would turn into his yard back here.

Q Yes, sir.

A From this point forward was grass and brush even after he opened the property up for his own access.

Q You used the term, this, again and pointed. And I just want to make sure that we have a verbal record. When you said this, there is some cones shown in here marking the property line that was put there by a surveyor. We are going to refer to cone number one as the one up closet to the gap and the one behind the Chevrolet pickup on the left is cone number two. Where was the entryway to Mr. Amick's yard once he got it where you could drive into it.

Was it between cone two and the back of the Chevrolet pickup's truck, where that mudhole is there? Is that where you pointed?
A Yes, sir. You would come into the property and all of this, all of the, what you call the gap was completely grown up.
Q Okay.
A All of what I could see of the field behind it was planted but this area, the area you call the gap was completely grown up with trees and brush, undergrowth. There was no way to access it.
Q There was no access there through?
A No, sir.
Q Now, when you talk about trees, people call trees different things. You know, in the midwest they call what I say a bush as a tree. But when you are talking about a tree, let's talk about diameter. Were they like the size of a jelly jar, were they the size of a quart jar, were they the size of a five gallon bucket, can you put some type of dimensions as to the size of these trees?
A The ones that I remember were the size of a gallon jug or bigger.
Q Gallon jug or bigger?
A Yes, sir. So you are talking eight inches in diameter or bigger.

Q And we are talking eight inches at the base?
A Yes, sir.
Q Okay. So not like the timber people do breast high, you talking about eight inches at the base?
A Yes, sir. And being I have been around the logging industry, that is where I measure from.
Q From the base?
A I worked in wood for quite a bit of my life.
Q Okay. All right. So it was grown up and even after he cleared in from the cone up, was still grown up. Okay.
A Yes, sir. He cleared to the point where this first cone is and then went down the hill into the property and started clearing down the hill because his, from what he told me, his eventual plan was to have it for horses, for farming and the more he cleared into the property and opened it up the better his chances of making it what he wanted it to be.
Q Okay. Now, so he got it cleared where he could get into it. After he cleared it, sometime thereafter he put a gate up with a lock on it?
A Yes, sir.
Q All right. Now, just so that we have a point of reference, frequency, what was your frequency of visiting the property. Let's just say from 1988 to, let's use the '94 date when you said the gate was installed. How often

would you go out there, in a months time or in some increment that we can measure, how often would you visit the property.

A From 1988 to 1994, at least once a month. There were times when I went more, there were a few times that I went less. Mr. Artie Driggers and myself and Mr. Amick, we would get together and sit down and talk, might have a beer, just discuss how things were going in each other's lives. But in general, just being friends.

Q Now, whenever Mr. Amick was coming there and I meant to ask you this question earlier. From '88 to '94 did you see any evidence, tracks, ruts, anything of anybody coming in and out of there with heavy equipment?

A No, sir.

Q Farming equipment?

A No, sir.

Q The times that you were up there did you see anybody going in and out?

A No, sir.

Q Over to the 120.8 acres owned by Mr. Braswell?

A No, sir.

Q Okay.

A The only persons that I saw coming up there were coming to see Mr. Amick.

Q Okay.

I happened to leave Mr. Amick's and went to my mom's and mentioned that I had met him. And my mom said that they had went to school together. Said she knew Mr. Braswell and his wife.

Q Okay. Now, have you seen anybody going through Mr. Amick's property at the times you have been out there?

A Yes, sir.

Q What, who have you seen going through the property other than Mr. Amick?

A Before I met, actually met Mr. Braswell and the gates were already up, there was occasion where I was, just happened to be there and somebody would come into the property and go through the back gate, what you call the gap.

Q The gap.

A And immediately Mr. Amick would pick up the phone and call Mr. Braswell and say, look, somebody just went back onto your property and I wanted to let you know about it. Figured somebody was going to go back there to the ponds fishing. And, I mean, as a courtesy Mr. Amick would pick up the phone and say, look, somebody is--

MR. DIBBLE: This is all hearsay, I object to that.

THE COURT: I will sustain that objection. Yes sir, you can't say what someone else said.

Q Other than seeing somebody go back through the

property, how many times did you see people go through the property?
A Initially very rarely, I mean extremely rarely.
Q Did it increase at some point and time?
A Yes, sir. I would estimate in 2007 it started to increase traumatically.
Q What did you see after 2007?
A Well, I started seeing farm trucks, pickup trucks. There was at one point, there was a dove shoot back there and it became, unfortunately, like a super highway. It was like, why is all of this traffic coming through here. And the more it happened the more frustrated I saw Mr. Amick become over it.
Q But 2007, thereabouts, is when you saw an increase in the traffic?
A Yes, sir.
Q You and Mr. Amick are still friends?
A Yes, sir.
Q You still go out there?
A Yes, sir.
Q Okay.
A And I hope I am still welcome, we have been freinds so long I wouldn't think any other way.
Q I understand. Answer any questions Mr. Dibble may have.

than what, what someone else says.
Q You can't say what he said.
A I am sorry.
Q My question, have you observed him?
A Yes, sir.
Q Have you observed any trailer being parked anywhere?
A Yes sir, I have, there were two trailers parked there. And as well, we have--
Q Parked where, parked where because there is not going to come out.
A I am sorry. At the end of his property and the beginning of the Braswell's property. Right there at the driveway.
Q And was that to keep them off?
A Yes, sir.
Q And the gates have always remained locked?
A Yes, sir.
Q Up until there was a court order to say otherwise?
A Yes, sir.
Q Okay. And have you seen, observed anything that you would characterize as being less than courteous, the two parties.
MR. DIBBLE: I am sorry, what was the question, Mr. Brehmer?
Q Anything less than courteous, has there been heat,

hostile?
A Between--
Q Mr. Amick and Mr. Braswell?
A Yes, sir. And also toward me, yes sir.
Q Thank you, Ms. Amick. Answer any questions that Mr. Dibble has. Just so that the record is clear, when we are talking about, we are talking about 2011 to present?
A Yes sir, we are.
Q Thank you.
THE COURT: Mr. Dibble, any cross-examination?
MR. DIBBLE: Yes, ma'am.

CROSS-EXAMINATION

By Mr. Dibble:
Q Ms. Amick, I am Bob Dibble, we met a year ago or so.
A Yes, sir.
Q You testified this morning that Mr. Amick, you observed Mr. Amick object to Mr. Braswell's use of the road across his property, is that correct?
A Yes, sir.
Q In spite of those objections Mr. Braswell continued to use the road to access his property?
A He did, yes sir.
Q And despite your objections Mr. Braswell continued to use the road to access his property?
A He did, yes sir.

Q And he accessed his property with trucks, is that correct?
A Not only trucks, there were other people. There were people, we actually had one that had a fishing boat in the back of their truck that came out and we have had men and women, older men and women, several people have come across our property.
Q So, those are invitees of Mr. Braswell?
A I assume, I don't know, I am assuming.
Q And they would come across the property and access Mr. Braswell's property?
A Yes, sir.
Q You observed that?
A Yes, sir.
Q Between 2011--
A Yes sir, 2011, yes sir.
Q And you also observed Mr. Braswell having some farm equipment coming down?
A I did, yes sir.
Q And did you see a combine coming down the road?
A I have been told that is what it was, I don't know but I have been told that is what it is.
Q You saw a piece of equipment and somebody told you it was a combine?
A Yes, sir. I don't know, yes sir, I have been told it

was that.
Q That's all I have, thank you.
A Yes, sir.
THE COURT: Any redirect?
MR. BREHMER: Nothing more for Ms. Amick, Your Honor.
THE COURT: Thank you, ma'am, you may step down. Can Ms. Amick be excused?
MR. BREHMER: Yes.
THE COURT: If she wishes.
MR. BREHMER: If she wishes.
THE COURT: Thank you, ma'am.
MR. BREHMER: Your Honor, at this time we would call Mr. James Frankie Amick.

JAMES FRANKIE AMICK, being first duly sworn, testified as follows:

THE COURT: If you will state your name and spell your last.
THE WITNESS: James Franklin Amick, A-M-I-C-K.

DIRECT EXAMINATION

By Mr. Brehmer:
Q Mr. Amick, speak into the microphone because it is kind of like getting married, speak now or forever hold your peace.
A Okay.
Q Are you the owner of 17 acres up on U.S. Highway

number 76?
A Yes, sir.
Q When did you purchase that property?
A The year was 1988.
Q Is that the property that you bought from Mr. and Ms. Brock?
A Yes, sir.
Q Now, just so the Court has got some information about you, how old are you?
A 62.
Q 62. What is your date of birth?
A May 7th, 1957.
Q May 7th of '57. And are you employed?
A No, sir.
Q Are you disabled?
A Yes, sir.
Q How long have you been disabled?
A Since 2005.
Q What is your disability?
A What do you mean, what part--
Q It is a physical disability, right?
A Yes, sir. I have had two back surgeries.
Q Two back surgeries?
A Plus I have had open heart surgery.
Q So you have had two back surgeries and a heart

surgery?
A Yes, sir.
Q In 1988 you bought this property from the Brock's, correct?
A Yes, sir.
Q Tell the Court what the condition of the property was at the time that you purchased it from the Brock's. And please start your description from US 76 back towards the Braswell property.
A In 1988 a friend of mine, his name was mentioned earlier but he is deceased. Artie Driggers had found this piece of property. He told me about it. I went and talked to Mr. H.L. Brock. If you go down 76, up 76 like you going to Clinton it will be right before you get to the second overhead bridge on the left. At the time that I bought the property, as you turn off of 76 it was, it was like a hill but you could only pull off of the driveway which was not a very good looking driveway. If it was wet you would probably spin unless you have four-wheel drive coming out. To my recollection, it has been 32 years I think, but we had, when we bought the property we had -- all I had was a riding lawnmower and tools. But we had a lot of broom straw briars. There was some trees in there, they wasn't trees like you could get lumber out of, they were trees that you could not take

down with the lawnmower, you would have to cut them with a chainsaw. This was--

Q You made a hand measure and I am trying to get everything on the record. What was the dimension of the trees at the base?

A They were, up and down, what now is the road, they were like, some of them like four or five inches, six inches maybe in diameter. It was a mixture varying very small like pine trees, cedar trees, broom straw, just any and everything that grows kind of wild, if a piece of property was left alone for years and that is what happens to it. So it took, if I had some of things I have now we could have probably done it at no time at all. But only what we had, it was probably, I don't know, two and a half years maybe before the property was cleaned up good enough where you could see it is clean. I mean, but that was spending many nights because when I was working, I mean I worked third shift or when I was with the County and the City I would work 24 on and 48 off. So I mean it was, during the spare time that we had to go up there, we didn't do it every day. But when we got a chance to go we went. And my son was, I think my son was seven, eight at the time. He was very young and I think his mother said yesterday about a hernia, he did get a hernia because he was eager to get and start doing things. But the little

fellow picked up some firewood and stuff like that that just was, it was just too heavy for him. But he did get a hernia for doing it.
Q Did you eventually get a drive into it?
A We eventually got the drive where we could access it. As time progressed and the State would come through, I think it got bigger, more asphalt added.
Q How long did it take to get a drive into the property?
A How far down the property--
Q Well, where you could get a pickup truck off the road onto your land?
A If you had four-wheel drive you could have used it probably, I don't know, probably three-quarters of a year after we got the property.
Q Now, was this an ongoing process?
A Cleaning it?
Q Yes?
A Sure it was.
Q Let me ask you this, before we move to the next topic. At that time, 1988 up until, let's say 1990.
A Okay.
Q Let's do it June of '98 when you bought the property, '88, June of '88 when you bought the property.
A Right.

Q Did you see anything, evidence on the ground, a scraped tree or rut or track--
A In what part of the yard?
Q On what the driveway is where something had been going through there?
A No, sir.
Q Could a passenger car, farm tractor gone through there?
A Not at the time.
Q Not at the time.
A Can I express that?
Q Yes.
A If you drive like some of the people you could have probably took a go-cart through there. It wouldn't have been a good ride.
Q Yes, sir.
A As far as a regular civilian car, you wouldn't have made it down through there. A tractor, I mean, you know, you are going to run over this and that with a tractor anyways. So, I mean, probably could have struggled it down through there. But you wouldn't know what you would have been running over.
Q Was there any evidence of traffic through there?
A No, sir.
Q None?

A No, sir.
Q All right. So six, eight, I think eight months, nine months, you got it where you could get a pickup truck on it.
A Okay.
Q How did the clearing progress from that point forward?
A Still very slow. We had to work, I mean, you know.
Q I want to go through something because we went through this with the other witness. I am showing you what is Defendant's Exhibit number 1 and this is a photograph we made a couple of Saturday's ago, correct?
A Correct.
Q And you were out there when this was made, were you not?
A Correct.
Q And that fellow there with the jacket on and the stocking cap is me, isn't it?
A That's correct.
Q There is a break between what is a hedgerow on the left side and there is a cedar tree and another tree right here on the right side where that tripod is in the middle of the road?
A Correct.
Q Let's refer to that as the gap, okay.

A All right.
Q What was the condition of this gap between your property and Mr. Braswell's property in 1988 when you bought the property?
A When I bought the property this was not here, this was growed up.
Q Okay.
A All across there was growed up.
Q Growed up how. Was it growed up with broom sage or was it growed up with sweet gums or cedars or trees or what?
A The trees would have been like small stuff but the briars, the broom straw that was up there, it had just taken over everything.
Q Taken over--
A It hadn't been used, hadn't been taken care of.
Q Was there any evidence that anybody had been passing through the gap at any time?
A No, sir. No, sir.
Q Could they have gotten through the gap all the way out to 76 through that other stuff that was blocking the other drive?
A No.
Q Okay. So in 1988 when you bought this property, is it your testimony that the gap was a hedgerow, covered

with a hedgerow?
A That is a possibility, I would say yeah.
Q Similar to what is down there now?
A Yes, sir.
Q That hadn't been cleared?
A Right.
Q Okay.
A In '88.
Q 1988 when you bought it?
A Yes, sir.
Q When you bought it. Okay.
MR. BREHMER: I would ask that Mr. Dibble--
MR. DIBBLE: I am sorry, I'm sorry, I was admiring his boots.
MR. BREHMER: They are pretty.
Q Now, once you got it cleared, okay, where you could get a truck in, okay, and were continually to work on it, we have heard about some gates. Were some gates installed?
A Yes, sir.
Q Approximately when were the gates installed?
A I can't remember the date.
Q What year?
A It was, I can say between '88 and '90, it may be, in that neighborhood. I can tell you where they came from.

Q That is my next question, don't get ahead of me now. What type of gates were installed?
A They were metal gates.
Q What is commonly referred to in the term as livestock gates?
A Yes, sir.
Q Tell us how you came by getting those gates, where the gates came from?
A After I got it cleaned up I started noticing trash get located in certain areas. Okay. The only way I could stop that was put a gate up. So I had a piece of gate that I was trying to use but I decided that would be temporary. So I got to find some gates. I knew absolutely nothing about where to go buy gates, I had never bought a gate. But I knew Mr. Braswell and I have always thought the world of Mr. Braswell in 1988.
Q Friendly?
A Yes, I would say so. But I went to him on his property and I forget what he was doing at the time and I asked him, where do you buy your gates at. And he replied to me, I either get them off the truck or he buys them in bulk whenever he goes and buys a bunch of gates. I said, the reason I am asking is because I am having problems, you know, with this and that and I want to put up some gates. So I put up some gates, he gave me the gates, he

gave me some gates. As a matter of fact, he gave me four gates. And I took them and I thanked him, I tried to pay for them. He said, no, that is just, Jim is a good guy, I am not going to take it away from him at the time. And he was, you know, he looked like he was a nice guy and give you the shirt off his back. And I tried to return the same favor. So he gave me the gates, I took the gates and I installed the gates. The gates stayed up for, well, until they started rotting, metal does that by the water standing in them. Mark Wayne that was here yesterday, he pulled out one day and this was years down the road when they gradually came in and out. And I think he may have had a silage wagon behind him or a maneuver spreader or something. But he left something out of gear and it rolled back and hit one of the gates. He flipped it over and run back over it again. I mean, it worked so I put it back up.

Q So you put these gates up?

A Yes.

Q And where did you put the gates up, where were they physically located?

A They were physically located where the two front gates are at this time.

Q So we have got a record of it.

A If you bring the picture back, the thing that you

call the gap, there was some old posts that was in that.
Q Let me get the pictures and then we are going to talk about it so we have got a record. Let's go from the road and then back. I am going to show you what has been marked as Defendant's Exhibit number 13 in this case. There is two livestock gates there at the entryway now?
A Correct.
Q What was the location where you installed the original gates in '90 or thereabouts?
A They were in the same place except the post was chained because the post that was down there rotted.
Q Okay. Did you put the post back in the same location or did you move the location?
A I want to think pretty close to where they were and I may be wrong. But I don't remember but the purpose for doing it was to keep horses in. If they would get out they wouldn't get in the road. I didn't have any wire handy so I put those boards there.
Q The boards shown in Exhibit number 13?
A Right.
Q You put those boards there?
A Right. And that was just on account of a safety precaution for the horses getting in and out.
Q Okay. Now, let's deal with the gap back there. When was that gap opened up?

A Again, between '88 and '90, '2,'3, somewhere in there. As we continued to get down in there and get everything straightened out we put them back there because we didn't want the horses to go to Mr. Braswell's property back there. He kept it, I mean, if he was going to plant or whoever was going to plant they needed to stay on my property.
Q Okay. Well, here is the thing. Why did you even clear the gap?
A Because there was, it looked a fence or something that was in there.
Q Okay.
A And we just replaced it with the gates. When we cleaned that out we just replaced it with the gate.
Q Now, let's, before we move on, those gates shown in Exhibit number 13, the ones on the road, okay. When you put them up in '90 did you start locking them?
A Not immediately but I had some things that got stolen.
Q Tell us about that.
A Then I started locking the gate but I gave Mr. Braswell a key.
Q Okay. You gave, let's get a timeframe. When in relation to '90 when did you start, when did you start locking the gates?

A It was sometime after, way after '90. I don't remember but it was after '90.
Q Before 2000?
A I am trying to reference back to where I was working at the time. I think it was, I think so, I think it was maybe -- I am not sure.
Q So you started locking the gates?
A Yes, sir.
Q What did you do, did you give Mr. Braswell a key?
A Yes, sir.
Q When, you cleared this out and you got opened up in 1999, about when did Mr. Braswell start coming through there?
A Steady coming through there, I would say between 2006 and 2008. It just kept picking up with traffic coming through.
Q Let's go from '90 to 2006. What was, was there any use by Mr. Braswell or his farm employees or his children between '90 and 2006?
A There was always, well, not always but when the traffic coming through there there was mainly a bunch of people going fishing. And I was objecting to that. But by objecting to them coming down there I was trying to look out for Jim. I would call, Jim didn't answer the phone. Jimmy would answer the phone and tell Jimmy just

to let him know that there are people down there trespassing or, unless you know who they are. That is the way it was.
Q And then you locked the gate?
A Yes, I did.
Q Why did you lock the gate?
A Because I had some chainsaws stolen, I had chains stolen, I have had some tools stolen. And at the time the only way to stop it was to keep them out.
Q So was it your impression that that was your property?
A It was.
Q It was your property?
A It was my property.
Q And you had the right to lock it?
A That's correct.
Q Now, did you give Mr. Braswell permission to use the property by giving him a key?
A I didn't have a problem at the time with Mr. Braswell using the property.
Q So he was doing it permissive?
A He helped me and I was helping him, you know, I didn't have a problem with that.
Q Here is the point, did you give Mr. Braswell permission by allowing him to come through the property?

A Yes.
Q Okay. All right. Did you ever represent, hey, this ain't my property, it's yours?
A No.
Q Because it was always your property?
A Yes.
Q Okay. And but sometime around 2000 you started locking it?
A Yes.
Q Around 2000 you started locking it?
A Yes.
Q You exercised control?
MR. DIBBLE: Objection --
THE COURT: That would be sustained, rephrase that.
Q Did you exercise control over the road?
A I tried.
Q You tried. But did you give Mr. Braswell permission to use it by giving him the key?
A That was the purpose of giving him a key because he was coming in and out regardless. I mean, I didn't want him to tear the gates up.
Q Okay. Now, there has been a lot of discussion about some Exhibits that we have placed into evidence. And I want to go over these Exhibits with you, Mr. Amick, so that we got -- I am going to show you what is Defendant's

Exhibit number 4 which is an aerial photograph taken of the property in 2002 which would have been, what, 14 years after you bought it. Okay.

A Okay.

Q Is this the condition that it looked like on the ground in 2002?

A Pretty much, yes.

Q We have had a witness that came in here yesterday, the gentleman from the GIS office, said it looks like from the photograph the road stopped about where this one, two, three, four, fifth tree is on the right side, shown on tax map number 228-29.

A That's correct.

Q Is that where the road stopped?

A That is where the road stopped at that time.

Q At that time. Was anybody going through here?

A No.

Q Okay.

A It stopped in here because that as far as we got with the lawnmower and we cut over some but my road stopped right there.

Q Right there before you got to the fifth tree, right?

A Yes, if you want to call it that.

Q So was Mr. Braswell using the road then?

A Well, no, I don't guess so -- this is where we

stopped at.
Q I understand.
A And my house is sitting over here now. And it was before we got to this tree.
Q And this was a mowed area back here?
A That's correct.
Q Green grass?
A That's correct.
Q Were there any traffic going through what we call the gap?
A Not this way at the time.
MR. DIBBLE: I am sorry--
Q Can you say which way towards 76?
A Not going towards 76.
Q Okay.
A Because this was all plowed up.
Q Cultivated field?
A Yes.
Q That had crops?
A Yes.
Q Just leave that one right there. I am going to show you Defendant's Exhibit number 3 which is an aerial photograph six years later in 2008. Okay. There has been several changes. One of which is, there is a house here?
A That's right.

Q You put your house in and when did you do that?
A I started in 2006.
Q Now, on Defendant's Exhibit number 3, this drive looks like it extends on down there, did it?
A What year was this?
Q '08.
A Yeah.
Q And was that where the Braswell's were coming through?
A To my knowledge they were the only ones coming through.
Q Okay. And they were doing that, that was after you gave them the key to the gate?
A Yes.
Q So that was with your permission.
MR. DIBBLE: Objection, that is leading, Your Honor.
THE COURT: I will sustain that.
Q Was that with your permission?
A He had the right, I gave him permission to use until he started abusing the situation.
Q I understand, we are going to get to that. But, okay, so you have answered the question.
A Yes, sir.
Q Now, since we got these two bench marks, Exhibit number 4 and Exhibit number 3 which are our points of

reference. What changed between '02 and '08?
A Between '02 and '08?
Q Yes.
A My house was built, I put up my house.
Q What about the road?
A Well, the road is -- it just went crazy.
Q Frequency of use a lot greater?
A Yes.
Q All right. But all during this timeframe it was gated?
A Yes, sir.
Q Okay. Now, when did things go sideways?
A About the time -- in '-06 we didn't see much traffic at all. I was told by Jimmy Braswell--
MR. DIBBLE: Your Honor,--
Q You can't say, Jimmy is not a party, you can't say what he said but tell us what happened in '06?
THE COURT: And I will sustain that. Thank you.
Q Tell us what happened in '06?
A In '06 the traffic picked up very heavy. That is the year that we started the house.
Q Okay.
A We had equipment scattered, we had lumber scattered because, naturally, we were building. There was a time when my contractor would holler at the trucks coming by

because they were just flying up and down the road. If they had the respect they didn't have it then. And I respected them, you know, at least they could have done was show some courtesy. I guess they didn't believe in that. That is when things started going sour?

Q '06?

A '06.

Q Now, okay, when did you let Mr. Braswell know or did you let Mr. Braswell know that this ain't working for me?

A There again, I didn't see too much of Mr. Braswell. I seen more of Jimmy.

Q Braswell?

A Braswell. He and I talked periodically when they was coming through. But at this time the talk that I got back wasn't as friendly as it normally was. But he had told me--

Q You can't say what he said. The rules of evidence, James, don't allow you to say what somebody else said. That is just the rules. But tell us what you did, James.

A Well, I started locking the gate.

Q Okay.

A At a certain point I started locking the gate.

Q To lock them out?

A To lock everybody out.

Q Everybody?

A Everybody out.
Q Everybody, inclusive of Mr. Braswell?
A Everybody.
Q Now, Mr. Braswell had had a key to the lock that was there. Did you change the lock?
A I had to change the lock.
Q You changed the lock. When did you change the lock?
A I don't remember when I changed it but I did change the lock at one point and time.
Q Was it after '06?
A It was after '06.
MR. DIBBLE: He said he didn't remember.
A I think it was after '06.
Q Changed the locks?
A Yes.
Q What happened when you changed the locks?
A Well naturally they cut it.
Q Okay.
A They cut the lock and my chain.
Q Did you put another lock on?
A I did, this has been recently, a few months back, a year or so back.
Q Okay.
A I put a couple of locks on there and they cut them every time.

Q Cut them every time. Have they taken the locked gates off the hinges?
A That was, yes, that did happen.
Q All right. And the reason that you put the lock on, that the Braswell's did not have a key was--
MR. DIBBLE: Objection, leading.
MR. BREHMER: Can I finish the question before you object.
THE COURT: Okay. Let me, before I rule on that let me, let Mr. Brehmer finish the question.
Q What was the purpose for changing the lock?
A To keep people out.
Q Inclusive of who?
A Everybody.
MR. DIBBLE: Objection, leading.
THE COURT: Okay. That is sustained. Please rephrase.
Q Who do you include in the definition of everybody?
A The Braswell's, everybody that was going fishing, people going hunting coming out after dark, people of the public in general.
Q Now, let's talk about this, I want to move gears with you, okay. Testimony of a 12.5 foot right-of way.
A Okay.
Q You are aware of such a right-of-way?

A I am now.
Q Now, over the years when you were letting Mr. Braswell go through the property, okay, were they driving in the same location that they are now?
A In what year?
Q Well, let's reference these Exhibits. Between 2002, okay, when they would pass through and then in -- between 2002 when they were coming through less frequently and 2008 which is shown on Exhibit number 3, did they change, did they move over any?
A The road itself -- as they said yesterday, all of this was growed up at the time.
Q We need to say what this is and is that the hedgerow down the Ballentine property?
A This is the hedgerow that went from my corner back down through, it has separated the Braswell's from Ballentine.
Q Okay.
A And just a portion on Braswell's part, if I am not mistaken, all of that was growed up. So and you can see on this picture how it is offset some, it is not a straight shot like it is now. But they did bring equipment in and they took all of this stuff and they moved this road over. But the road that goes by the house on my property, they kept coming over a little bit every

time. It did move.
Q Over onto your property?
A It did move over on my property.
Q Let's get another Exhibit. Okay. I show you Defendant's Exhibit number 8 which we have offered into evidence. Can you explain to the Court where when they originally starting coming through they were coming through, where the tracks were as opposed to where they are now?
A When I bought the property this tree was nowhere near the size it is.
Q This tree being the big cedar there?
A There was two cedars there. They have grown tremendously since I bought the place in '98, I mean in '88. But that was, at one time, a tire track.
Q That being the green strip?
A The green strip where they claim was a ditch, it had been run over.
Q Okay. Is that where, if you were going in from 76 towards Mr. Braswell's property the right tire would run?
A That's correct.
Q Where would the left tire be running?
A The left tire should have been over here.
Q About where the--
A Probably about where the cones are.

Q Cone number two is?
A Yes.
Q When did it move from the point when it was, when they first started coming through here over to the other place?
A I can't say specifically when because it was an ongoing thing.
Q Gradual?
A Gradually. But the fence was also moved.
Q Okay.
A I came up to the Court House at one point to see where my line was. I didn't know too much about title search, you know, hunting anything so I was asking the guy in this very Court House. Okay. And he told me--
Q You can't say what he said. The Rules of Evidence--
A I was told by looking at what he found that my property went from fence to fence, meaning this fence to the other fence on the other side of Grace Rankin's house.
Q Okay.
A So the same as the Braswell's did, I assumed that that was my property which I claimed that property. I never said it is mine. But in 32 years, I was the only one that took care of that property.
Q But the Braswell's were driving over closer to the Ballentine fence?

A Yes.
Q You said the Ballentine fence has been moved?
A Yes.
Q Which was, was it moved towards Mr. Ballentine's property or towards your property?
A It has moved back towards Ballentine Property.
Q Okay.
A It was moved back there whenever they took, when they cleaned this up.
Q Okay.
A This fence was moved.
Q Which way?
A It was moved back toward Ballentine property.
Q Okay.
A It opened it up more.
Q It opened it up more?
A It opened it up more.
Q All right. In that area, right?
A That is how it is.
Q But prior to 2008, just so that we -- where were the Braswell's driving when they would come through. To the right of the cones?
A Yes, I would say so.
Q Shown in Defendant's Exhibit number 8?
A Yes.

Q Now, have you asked them to get back right of the cones?
A Yes.
Q And in success?
A No. My main thing was, I like for my grass to stay green.
Q Yes, sir.
A Especially in the summertime. But when they would come out and at the time they didn't care, they still don't care. But a truck would come out of the pasture, I mean out of the field down there going towards 76. A driver would be coming in up here. Instead of sitting down there at the gap, allow this truck to get off of that highway he would come up and they would end up pulling over all the way in the yard, on my grass, so the other truck could come by. This is part of the process of this thing enlarging like it has. That is when I started locking the gate as much as I could. They kept cutting it. It is the same thing as saying you can put your dog on this chain, okay, but if you keep riding by your house and throw a rock at your dog you are going to stop it. I have tried everything that I could to talk with the people. It is not right, it wasn't fair to me. As these pictures indicate, they have done more damage and the damage gets worse every time it rains.

Q And all of this--
A Nobody has offered to fix it. So and I guess this is going to be objected to. Regardless of how this outcomes is somebody needs to take care of what they tear up.
Q Yes, sir. Now, let's stay on top here. So that we have a timeframe, was it basically 2006 forward when they started coming over, what we know now to be on you?
A I don't understand the question.
Q You said in 2006 or thereabouts is when they started inching over?
A Right.
Q If Foard Talbert that we put up yesterday has the property line drawn correctly and if you own in Exhibit number 1, Defendant's Exhibit 1, everything to the left of the cones when did they start coming from right of the cone on to you, what year?
A I don't understand what you are saying.
Q Say that they were driving over here in the twelve and a half foot gap before they started inching over. And say they were to the right of the cones, when did they start coming over on to you?
A I don't remember when but it was gradually. I mean just gradually.
Q But it was, was it around the time that they started using -- shown on these Exhibits?

A Well, it had to be between '06 and now.
Q Okay. And is that when you started, changed the locks?
A Yes.
Q Okay. Now, you agree or do you agree now that you don't own that twelve and a half foot strip?
A No sir, I don't own that strip.
Q And you agree with, what Mr. Tolbert's assertion was about where your line ends?
A Yes, sir.
Q Okay.
A According to him nobody owned that strip.
Q I understand. All right. Now, have you put up no trespassing signs?
A Yes, sir.
MR. BREHMER: Any objection?
MR. DIBBLE: No objection.
MR. BREHMER: You have any objection to 20, 21 and 22, Mr. Dibble?
MR. DIBBLE: No objection.
MR. BREHMER: We would move 20, 21 and 22 into evidence, Your Honor.
THE COURT: Those Exhibits are in without objection.
(Whereupon, Defendant's Exhibits 20, 21 and 22 were admitted into evidence.)

Q Mr. Amick, is this your drive, Exhibit number 20?
A Yes, sir.
Q Is that one of Mr. Braswell's farm tractors coming out?
A Yes, sir.
Q There is a, what appears to be a post with a series of signs there, is it not?
A Yes, sir.
Q What do those signs say?
A One of them is an Equine sign, one of them is a no trespassing sign and one of them says Horses About.
Q Okay.
A It is probably a Private Property sign in there.
Q Who installed those signs?
A I did.
Q When was the no trespassing sign thereabouts installed?
A I would say around, maybe '07, '08, '09, somewhere in that area. I don't remember exactly.
Q Why was it installed? I know it seems like a silly question but answer it, please.
A It was put there to help keep people out. But it couldn't keep some people out because they were Mexican. So I went behind the tractor on the other side, on this fence that divides me from John Long. And I put one

written in Spanish on that fence and put it so they could see it if they look down the driveway, as they are driving in they got to see it.

Q Okay.

A But that didn't work too good.

Q Exhibit 21. Is that a better photograph that you can read the signs?

A I can't read them.

Q The same signs though?

A The same sign it looks like.

Q Another photograph of it?

A Another photograph.

Q Okay. And 22, is that another photograph?

A Yes, sir.

Q So you had a gate, you had a lock, you had a lock with a key that only you had and you had no trespassing signs?

A No, sir. You are right, but as far as the key goes, at this time my son had a key.

Q Your son had a key?

A Yes, sir.

Q You had a key, your son had a key?

A Yes, sir.

Q Anybody else have a key?

A No, sir.

Q Okay.
A Actually they did, they had bolt cutters.
Q Universal key. All right. This is Exhibit 23 which is a collection of three photographs that were made in this case. Do you recognize this photocopy of photographs?
A I recognize this one.
Q The lower left one?
A Yes, sir.
Q The one with the pole of it, right above it?
A Yes, sir.
Q All right. And what about the one at the right?
A Yes.
Q What are those photographs of, photocopies or photographs of?
A The picture of the first one on the left is where I was trying to show how deep that the ruts had got in my driveway. This picture was taken, the big picture.
Q This one?
A Yes.
Q Exhibit number 3, is that the one you wanted?
A This picture was taken around in this area.
Q By the creek--
A -- right up there around that tree.
Q Right across the, from your house?

A If I am not mistaken.
Q How deep were the ruts. What is your estimation as to the depth of the ruts? The hand measurements that you make are not going to show up on the record?
A Probably, I don't know, probably a foot deep.
Q Okay.
A The reason I took that was because I have a Mustang and the Mustang is low to the ground. It is very hard to get that car where I park my car as bad as the driveway is.
Q The car drags?
A It will drag. If you don't, if you don't barely move when you are going down through there you will snatch the oil pan slap out from under it.
Q Yes, sir?
A My mother-in-law has got a van. A lot of times if we go to Columbia or something and stop back by there, if we are in the van, the van is the same way and it drags when we come through there. That was the purpose of that picture.
Q Was it like that before Mr. Braswell started coming through?
A No, sir. No, sir. The picture here--
Q -which one?
A The one at the bottom left, I have my truck parked a

little bit more to the fence than where it originally was at one time. But I have even took the two trailers and put them in front of the gap. So they are being smart, all they doing is aggravating me now because they want to cut my lock off. So, I said you still ain't getting through there unless you run over my stuff then we are going to have a problem. But he clipped it one time but that was--

Q You parked the trailers across the road?

A I did.

Q And that was for the purpose of keeping Mr. Braswell out?

A Everybody.

Q Everybody, inclusive?

A Everybody.

Q When was the trailer parked across the road?

A A few months back.

Q In the calendar year of '18?

A Yes, sir.

Q '19?

A '19.

THE COURT: What is the Exhibit number that the Defendant is referring to?

MR. BREHMER: 23.

THE COURT: Defendant's Exhibit number 23 and that

has been entered into evidence?

MR. BREHMER: No, it has not yet been entered into evidence. We will move shortly though.

THE COURT: Thank you.

Q What is the significance of the photograph on the lower right?

A It is the same scenario of different tire treads and stuff coming in.

Q Okay. So--

A I tried to get one on this side but it didn't turn out but it is where they had put the dump truck over there. It didn't turn out.

Q All right. Now, let's go back, just so that the record is clear and so that everybody is on the same sheet of music. Exhibit number 23, the bottom left photograph has some points of reference like the trees and whatnot?

A Right.

Q In relationship one, where was Exhibit number -- the top left photograph taken in relationship to the pickup truck in Exhibit number--

A If you leave Highway 76 and you come down the driveway it is before you get to that part.

Q Right across the road from the house?

A Yes, sir. Well,--

Q Show us where it would be on Exhibit number 3?

A I think one would be closer back towards 76.
Q The one in the lower right corner would be closer back to 76. The one in the upper left corner on Exhibit number 23 would be where on Exhibit number 3?
A By the tree up here, somewhere close to that cedar tree.
Q The tree that is directly across from the house?
A Yes, sir.
Q Okay. Now, just so that we have everything documented, Exhibit number 4 is the 2002 aerial photograph. Before the house was there this tree was there, correct?
A Still is.
Q And it would be, counting from the road, it would be one, two, three, fourth tree on the right?
A Correct.
Q Was this condition shown in Exhibit number 23 present in 2002, in March, January, February, March of 2002 in this photograph?
A Was what present?
Q These ruts, were they there?
A No.
Q Okay. And these ruts were made after they moved over?
MR. DIBBLE: Objection, leading.

THE COURT: Sustained.
Q When were these ruts made?
A I would say 2015, '16, somewhere in there.
MR. BREHMER: Your Honor, at this time we would move to introduce Defendant's Exhibit number 23 into evidence.
THE COURT: Any objection, Mr. Dibble?
MR. DIBBLE: No, ma'am.
(Whereupon, Defendant's Exhibit 23 was admitted into evidence.)
MR. BREHMER: Your Honor, I am almost complete, we are out of time. I probably don't have much more, you know, but I don't want to hinder Mr. Dibble in way whatsoever. Could we adjourn at this point and just resume here Thursday?
THE COURT: We will resume in direct or starting cross?
MR. DIBBLE: He was not quite finished.
THE COURT: Okay. So we are going to resume direct?
MR. BREHMER: Yes.
THE COURT: Okay.
MR. BREHMER: And just so that everybody is clear, I would ask the Court to instruct my client that we are unable to talk about his testimony while we are in recess.
THE COURT: Sir, even though you are a party, it is very unusual to interrupt testimony. But we don't have a

jury here and it is just me and this is a little bit unusual circumstance that we are breaking. It is even more unusual, it is unusual to break between direct and cross but it is even more unusual to break on direct overnight.

THE WITNESS: I understand.

THE COURT: So I am cautioning you and saying this for the benefit of the Plaintiff who is here that you won't be allowed to replow new, replow old ground tomorrow. If you think of something that has already been covered and you didn't say it exactly right we are not going back through that tomorrow. Do you understand?

MR. BREHMER: Yes, ma'am.

THE COURT: Okay.

THE WITNESS: Can I add one more thing before we go?

THE COURT: Yes, sir.

THE WITNESS: It would be, never mind, it will be okay.

THE COURT: Tomorrow you will still be under oath, sir and you will still be on direct and Mr. Brehmer will continue his examination of you. And so anything, Mr. Dibble, before we adjourn?

MR. DIBBLE: No, ma'am.

THE COURT: And so we will see everyone tomorrow then at 9:30. And I am assuming that everyone, directing this

to the Clerk, the documents, the paperwork, the courtroom will be secured.

(Whereupon, the trial will resume the next morning at 9:30.)

January 9, 2020.

THE COURT: Good morning. I believe when we adjourned yesterday Mr. Amick was still under direct. So I will ask him to return to the witness stand. You are still under oath.

(Whereupon, Mr. Amick came to the witness stand.)

CONTINUE DIRECT EXAMINATION

By Mr. Brehmer:

Q Mr. Amick, there is one additional issue that I want to address with you. Okay. We established that you bought the property in '88, you put the gates up sometime between '92, '94, in that timeframe and that you locked the gates and Mr. Braswell had a key. Were there incidents where Mr. Braswell or his staff didn't have a key. Were you ever called at work?

A Yes, I was called upon.

Q And what did you do in response to that call?

A The first time I had given him a key and I worked for Newberry Feed and Farm at the time. So I have a truck route that I had to be on. Before I left on my route I received a phone call and it was Mr. Braswell, Sr. and he

was trying to get in the gate. He said he had left the key at home.

MR. DIBBLE: I would object to that, Your Honor, hearsay.

MR. BREHMER: Mr. Braswell is a party.

THE COURT: He is a party and I will allow it. Yes sir, you can continue.

A The key was left at home so I was asked, I was told to bring him a key. I had to get off of work and take him a key.

Q Approximately when was that?

A I don't remember that.

Q But the gate was locked at the time?

A Yes sir, the gate was locked at that time.

Q Now, one thing that I want to clarify. Yesterday we talked about the trees being between four and eight inches in diameter.

A Yes.

Q Just so that the record is clear, were those trees in the drive area?

A Not all of them.

Q Were some of them?

A A couple of them were in the driveway area but not all of them.

Q So that the record is clear, what is your best

recollection as to the dimensions of the trees in the drive area?
A I think maybe there was two or three maybe little small trees but they were too big for the lawnmower to go over.
Q Okay.
A They were big enough I had to use a chainsaw.
Q And what is your best estimate as to the dimensions of the trees in the drive?
A Probably maybe two to three inches in the drive.
Q And that is the diameter there at the base?
A Yes, sir.
Q There were two to three inch trees in your drive and two or three inches trees at the base in the drive area?
A Yes, sir.
Q What was the approximate height of those trees, were they as tall as you?
A They were taller than I was.
Q What is your height, Mr. Amick?
A I am 5'9".
Q There has been a question about the home that was on the property. When did you start the construction of the home on your property?
A It was in the summer of '06, if I am not mistaken.
Q And who was the original contractor?

A The original contractor was Troy Martin.
Q Who drew the original building permit for that home?
A Who did we get it from?
Q Who obtained it, who came and got it. Whose name was it in?
A Troy had it, he came and got it. The zoning lady downstairs.
Q The original building permit was Mr. Martin?
A Yes.
Q And that was in 2000--
A '06.
Q '06. Did you have to renew that building permit?
A I did.
MR. DIBBLE: No objection.
MR. BREHMER: The next Exhibit.
COURT REPORTER: This is Defendant's number 24.
MR. BREHMER: Your Honor, we would move Defendant's Exhibit 24 into evidence without objection.
THE COURT: No objection?
MR. DIBBLE: No objection.
THE COURT: Okay. 24 is in.
(Whereupon, Defendant's Exhibit 24 was admitted into evidence.)
Q Mr. Amick, what is Defendant's Exhibit number 24?
A It is a building permit from Newberry County.

Q And is that the original building permit or was it an amended updated permit?
A This is a copy of the second permit.
Q And what is the date of issuance?
A The date of this is 10/12/07.
Q And is that for the area or for the house that is on the property that we are here about?
A That is correct.
Q This is for that tract of property?
A Yes, sir.
Q Mr. Braswell was given a key to the gate when they were installed, correct?
A Yes, sir.
Q You gave it to him?
A Yes, sir.
Q All right. At what point did you start revoking that permission?
A There again, the dates, I don't know. I locked the gate, I gave him a key. I guess, I don't know if he had any made or what. But I am assuming that he shared the key with whomever else would use it. I don't know. It just, everything that was in my heart, I felt like, was suppose to be a friendly why not, you know. But the more it was used the more it was abused. But it did no good to say anything about it because it kept on. I tried locking

the gate again. And like I said yesterday, the lock gets cut, the chain gets cut.

Q Now, you testified yesterday they kept getting over?

A Yes, sir.

MR. DIBBLE: I am sorry?

Q Moving over to the left of the road. Was that one of the issues?

A Yes, sir. There was more than one issue I had when this started.

Q And you also testified yesterday that at the beginning Mr. Braswell was a good guy?

A Yes, sir.

Q And that that relationship deteriorated?

A A little bit at the time. The relationship was doing like my driveway was doing. It was getting a little bit at the time rougher and rougher and rougher, harder and harder to deal with it.

Q All right. Thank you, Mr. Amick, answer any questions Mr. Dibble has for you.

THE COURT: Mr. Dibble, cross-examination?

MR. DIBBLE: Yes, ma'am.

CROSS-EXAMINATION

By Mr. Dibble:

Q Mr. Amick, I am Bob Dibble. It is good to see you again. You were in the courtroom yesterday when Mr.

Richardson testified?
A Yes, sir.
Q And you recall I asked him to draw with my black pen a circle around the area that you had to clear on your property?
A Yes, sir.
Q And I will ask you, if he correctly drew the circle around that area that you cleared?
A Yes, sir.
MR. DIBBLE: And, Your Honor, that is on Plaintiff's 42.
THE COURT: Thank you.
Q And it took you two and a half years to clear that property, didn't it?
A Basically, yes.
Q And while you owned your property there were people going back through it going fishing, were they not?
A That's correct.
Q And when did that start?
A I don't know any idea when it started. But it was, I caught them coming and going. I complained about it.
Q That started from the time you bought your property all the way--
A --not the time I bought my property, no. It was a few years probably later.

Q In the '90's?
A Probably middle to late '90's.
Q Middle to late '90's?
A Somewhere maybe in there, I think.
Q So people were going back there going fishing in the ponds?
A There were people all the time going back there, whether he said so or not. They were just people that sneak in there. It is one of the purposes of putting the gates up.
Q Come right across your property?
A They go right through there. I mean, if I can say this without being objected or anything. I mean, there was a guy that came down there with a bag and he was not welcome, Jim and them didn't want him on their property. The next door didn't want him on their property because he was catching, this has been recently, I mean he was catching bass and taking them downtown and selling them. So I mean, it was one thing after another.
Q And you went fishing back in the ponds too?
A I have been fishing in this pond with permission.
Q Correct, I understand. He let you go fishing?
A He would let me go fishing back there.
Q And you went right through the gap to get to it, didn't you, to the ponds, didn't you?

A Not when I first went back there, I crossed my fence at the back where my deer stand was it, I was crossing back there at the back.
Q All right. Now, you testified yesterday, I believe, that you put the trailer up to stop Mr. Braswell from coming down the road, is that right?
A I have put a trailer up there for that reason, to keep not only Mr. Braswell out but everybody out.
Q Well,--
A But I was told to move the trailer so I moved the trailer and I put the trailer back.
Q Do you recall testifying in the earlier trial?
A I don't remember everything in the earlier trial.
Q But you did testify, didn't you?
A I testified on a lot of things.
Q And I am going to show you page 192--
MR. BREHMER: I can't hear.
THE COURT: Yes, sir.
Q Did you testify,--
THE COURT: Can you show that to the witness, sir, you need to keep your voice up, you have got to show it to him.
MR. DIBBLE: I am sorry.
THE COURT: If that is your intent, I don't know if that is your intent.

MR. DIBBLE: Well, I just want to make sure his testimony is consistent with what he said last time.

THE COURT: Has been inconsistent so far?

MR. DIBBLE: He put, he said yesterday he put the trailer to stop them going across the road.

Q What did you testify to the last time you testified?

A The last time--

MR. BREHMER: What page and line, please.

MR. DIBBLE: It is 192, line 3 through 6, I believe.

Q Just read that into the record.

A It says I did not put a trailer up there to keep him out of the property. I put a trailer up there hoping that it would slow them down. And also, a man ran into my trailer.

Q Thank you. Now, what are you trying to accomplish with this lawsuit?

MR. BREHMER: Objection, Your Honor, we are the Defendant.

MR. DIBBLE: Well, you have got a counterclaim, Mr. Brehmer.

MR. BREHMER: Well, I would object, that is a matter of law for the Court, as to the matter plead.

MR. DIBBLE: Well, Your Honor, he testified last time about what he wanted to accomplish. I have his testimony in front of me. He was allowed to testify before and I

think I can ask him again today. It is on page 193 if you would like to look at it.

THE COURT: Just so you understand, I want everyone to understand, I haven't read this transcript because it is not part of the record. It was handed to me as part of a pretrial motion but it has not been entered into evidence. I am only reviewing the parts of the transcript that Counsel agreed for me to review. I will say, Mr. Brehmer, that I will allow some latitude here because there is no jury. If the witness knows and he may not know the answer to this question and I will certainly allow him to examine him about that. Yes sir, you can answer the question if you know the answer.

Q The question was, Mr. Amick, what are you trying to accomplish with this lawsuit?

A What I am trying to accomplish is keeping everybody out of my property. I don't go on their property, I have no reason back there. And when I bought my property I understood that no one, when you buy land or house or whatever you are buying, that is suppose to be your castle. That is nobody else's. And my plat, no where did it say you bought a parcel piece of land that you have to share with anybody. So I try and I did say that and I am saying this again. I did put the chain and lock on the gate. I did put my trailer up there but it wasn't the

A Right.
Q And you want them to fix your road?
A That's correct.
Q All right. That is all I got.
THE COURT: Redirect, Mr. Brehmer?

REDIRECT EXAMINATION

By Mr. Brehmer:
Q Mr. Amick, do you want to keep your land and integrity that you bought it back in 1988?
A I would love to keep it, sure.
Q You want to maintain what you bought in 1988?
A Yes, sir.
Q Thank you. That is all.
THE COURT: I have a couple of questions and I would certainly allow follow-up on this.

EXAMINATION BY THE COURT

By The Court:
Q I am a little confused based on a statement made. When did you learn that this 12.5 right-of-way apparently was not something that had been deeded or was owned by the person that deeded the land to you. When did you learn that was not the right-of-way that has been discussed, I guess, in a prior trial.
THE COURT: And I am looking at the lawyers because it seemed like maybe that was new information or it

appeared to be new information in the courtroom this time.

MR. DIBBLE: No ma'am, that is not correct.

THE COURT: Let me just ask this witness and then I will want you all to address that in your summation to me. Okay.

Q So, sir, when, you testified a little bit about that.

A Yes, ma'am.

Q And the last hearing in this case, I believe was in December 2018, so that has been a year and six weeks ago.

A When I started having problems with people coming in and out, I was getting aggravated. I mean it would have aggravated anybody. So I came up here, I don't remember the date and time. I came to this Court House, there was a gentleman and I went to, I didn't come into this place very often, and I told him what I was searching for. I said, I am looking to see and I don't know anything about the way they have the setup where you go look and dig this up, dig that up. I don't know all that. But this guy looked at my plat, I brought it with me. I said, can you look at this plat and tell me where my line, what do I own. The guy looked at the plat. He said, Mr. Amick, from what I am looking at you own from fence to fence. I said, okay. The time we started cleaning the place up to this day today I have taken care of that property, even the 12.5 feet that you are talking about. I did now know

because the fence has been moved, the fence was at one place for years and years. And then the fence got, when they cleaned up their stuff and the new fence went down, if I am not mistaken, Mr. Braswell's son shot a line up through there and that is where they put the fence at. So it was actually moved, I haven't measured it but it moved the fence, it moved everything. With that being said, I still continue to keep that up.

Q What is the approximate date that you came to the Court House?

A Oh lord, I can't even tell you what year it was. I don't know, I don't remember.

Q And then, sir, a lot of your testimony was focused on clearing this land.

A Yes, ma'am.

Q And I am not, please understand I am just trying to restate what you said.

A I understand.

Q I know that the Plaintiff disputes a lot of what you said.

A I understand.

Q But you stated that you bought the land in 1988 as did your former wife. She testified to that as well. And then you and your young son and your former wife and your friend, Mr. Richardson and another friend who is now

deceased, helped clear this land for a period of time in your spare time, almost like a hobby but y'all were trying to get done on the weekends and evening. And so over a period of years. And you testified that that was from like 1988 to 1992 or '93, am I getting that period of time correct, as to what you testified to. I am not trying to get you to change your testimony.

A Yes, ma'am.

Q Sir, so when did you, when is it your contention that the Plaintiff started coming across your land to enter his land?

A I can't answer for the date.

Q I know you stated that it was much worse in 2006 or 2007 but prior to that, do you know a date when Mr. Braswell or his invitee, his employee, his children, when they were crossing this land to enter their land. Was it that it was going -- and I am not trying to put words in your mouth -- was it happening all the time even if it was difficult for them to do it or was it not happening at all until you cleared the land?

A It wasn't, from the track, everything that we seen or could make out--

Q Yes sir, I know you weren't living on the property so you didn't know exactly--

A Right, that is my point, I didn't know how to say

that.
Q I understand. They had a lot more access to your property than you did at that point.
A Right.
Q From what you could see did it appear that someone was going across it once a month or not at all?
A When I bought the property it was none at all.
THE COURT: Any follow-up questions to what I have asked this witness.
MR. BREHMER: Just one follow-up.

REDIRECT EXAMINATION

By Mr. Brehmer:
Q Did it appear that anybody had been across it in a long time?
A Not when I first bought the property.
Q That was my question. Thank you.
THE COURT: Mr. Dibble, any follow-up?

RECROSS-EXAMINATION

By Mr. Dibble:
Q Mr. Amick, I am going to hand you Defendant's Exhibit number 1 and Defendant's Exhibit number 2, both of which show the fence between you and Mr. Ballentine's property. That fence has always been right up against those trees, hasn't it? It has never been on the side of the trees--
A It has been, yeah, it has been closer to the trees.

It wasn't moved much but it was moved.
Q So how far, six inches? It wasn't moved ten feet, was it?
A No, lord no. It wasn't moved that far but it was moved.
Q All right. That is fine. That is all I have.
A The only thing I was going to say, it doesn't matter to me how far it was moved. The generosity that I had for myself and my family, I would have kept it anyway. I kept that area clean.
Q Are you saying now that you believe that land is yours?
A No, I am not saying that at all. I am saying that the man that was here said fence to fence. When I put the gates up I got it as close as I could get because I had no idea where this line was at the time. It has been recently that this thing was surveyed. Okay. I think yesterday something was brought up about a pin in the middle of this road. There again, I will have to call names but one of Mr. Braswell's children, how about that, showed me that pin years ago. But he never said that is your corner. His comment was, that is our pin. I don't know anything about that pin.
Q And that pin at that time was in the middle of the road?

A It was, the pin was, well, from where that cone is. The pin was, if I am not mistaken, it was to the right of that cone.
Q So that road has been on your property ever since that road started being used, isn't it?
A What has been there?
Q The road has been on your property ever since they started using the road, right?
A I don't know what you are saying. Ever since I started using the property and cleaning this road off, okay--
Q It has been on your land.
MR. BREHMER: I am going to object, he wants to finish--
Q The road has--
MR. BREHMER: Let the witness finish, please.
THE COURT: Yes sir, I tell you what, Mr. Dibble, give him an opportunity to completely answer.
Q Let me reask the question then, Mr. Amick and I am not trying to confuse you. I am a little confused. The road in that picture, Defendant's Exhibit number 1, has always been on your land, at least part of it has always been on your land, isn't that right?
A If what the guy that was at this Court House told me then it has always been on my land. But from the way the

survey runs then I can't say that is a true statement.
Q Well, at least part of the road has always been on your land based on the survey, is that right?
A According to the survey, most of this road, well, most of this road is on my land.
Q That's right. Thank you.

REDIRECT EXAMINATION

By Mr. Brehmer:
Q Just so we clarify, Mr. Amick, as of today, right?
A Yes.
Q But the road has been moved over by Mr. Braswell as years have progressed?
A Yes.
Q Moved over to the west towards your property?
A Yes.
Q And he has continued to encroach on it, correct?
A Yes.
Q And didn't you testify earlier that that occurred sometime around the 2006 timeframe?
A That's correct.
Q Okay. So prior to 2006 where was the location of the path of travel of Mr. Braswell and his crew, was it on the Ballentine side?
A It was closer to the fence than what it is now.
Q And your testimony as to where it was prior to 2006

was what. Tell the Court where they were traveling in 2006?

A The way that the weather is and when it rains it washes, a lot of times it comes across that road.

Q Okay.

A So what appears to be a ditch, where the green is, is actually where tire tracks used to be. The tree, when I bought the place, was no where near what it is now. I mean, if the tree was two, three or four inches in diameter and I am saying in '88, then it would have been explanatory why the ditch was there. You know, the track was there, the water never has ran down that ditch into the creek or gully or whatever y'all want to call it because of another tree that sets here at the gate. With the roots and everything on that tree, all the water and stuff goes across my yard where I was wanting to fix that because the State actually messed it up when they built the bridge. But every time I would get ready to go down there and try to fix that, I had talked to Mr. Braswell one time about fixing that and he told me you cannot do that because you will be tearing up my road. It was suppose to be my road, it went with my property. But there was no road when I bought my property, if you understanding what I am saying.

Q I do, I do. But just so that the record is clear,

prior to 2006 was Mr. Braswell and his crew driving through the east side or the Ballentine side of the cone shown in Exhibit 1?

A Yes, they were a whole lot closer than what they are now.

Q Okay. And in 2006 or thereabouts is when they starting merging over onto your property?

A I would say in that neighborhood, yes.

Q Thank you.

MR. DIBBLE: Your Honor, that is all I have.

MR. BREHMER: No further questions, Your Honor.

THE COURT: Okay, Mr. Amick, sir, you may step down. Thank you, watch your step.

MR. BREHMER: Your Honor, at this time the Defendant will rest.

THE COURT: Anything in reply, Counsel?

MR. DIBBLE: Yes, we call Mr. James Braswell in reply.

THE COURT: Good morning, sir, watch your step. You can have a seat, you are still under oath.

DIRECT EXAMINATION

By Mr. Dibble:

Q Mr. Braswell, you heard a lot of testimony in this trial about that road looking towards Mr. Amick's home. In all the time that he is in that road, you bought the

MR. DIBBLE: No, ma'am. The Plaintiff rest again.

THE COURT: All right, thank you. Anything before we have closing arguments or summations?

MR. BREHMER: Your Honor, I would like to renew my motion for a directed verdict at this point. I think that the rules of procedure require me to do so.

THE COURT: Yes, sir.

MR. BREHMER: First and I have tried to organize so that it makes sense. The Plaintiff, as I understand the facts putting, they have two potential theories. One, an expressed easement or two, an easement by prescription. Okay. From a legal prospective we don't believe that either could occur. Okay. The first I will deal with is the expressed easement. As I understand the Plaintiff's theory of the case was, was that in 1971 when he purchased the property from Ms. Miller, the 120.08 acres, that he is claiming that a plat that was drawn by Mr. Claude Johnson in 1971 indicated a right-of-way in the upper left-hand corner through 76. That, he claims, create an expressed easement or right-of-way to the State Highway. Well, we believe that that to be a legal impossibility. And the reason is, is for two reasons. One, Ms. Sula Miller did not own the property therefore she could have no legal basis for giving a right-of-way to the property. And the property that I am referring to is what was designated as

to 4.04 acres that had been deeded to L.K. Bedenbaugh that I have mistakenly called Bouknight at several times throughout the trial. But she had deeded that property out and that property is now part and portion of the property owned by Mr. Amick. She had, at that time, reserved or kept a twelve and a half foot right-of-way that was clearly designated on the plat that was drawn, I believe, in 1961 or '62 by Mr. Johnson that showed the location that had measured directional boundaries and width and was referenced in the deeds of record. My argument is, is that the Plaintiff's surveyor, Mr. William Berkeley Dominick, had a misplaced theory that the '71 right-of-way created a right-of-way for Mr. Braswell but that is a legal impossibility because one, all that was, was a surveyor's notation. And two, that Ms. Miller didn't own the property therefore legally she couldn't deed it out. That is the first basis for no expressed easement. The second basis is, is that Mr. Daniel, I mean Mr. Dominick's opining, which I don't really think that he ever said, was that there was a right-of-way created by that plat. That is flawed. We show that from the other surveyor that we had and we got Mr. Dominick to admit that in 1971 markings of the right-of-way on the '71 plat were nothing more than a surveyor's notation, they were not designated with pins, they were not designated as with

directional guidelines, they were not physically able to be located on the ground from that plat. And that any opining that the location on that plat provides any definition as to the easement was flawed because it was not based upon the standards. What we did was, we pointed out and I think everybody eventually agreed to it, that what that plat markings were were a surveyor's notation. They were in the general area but it was not a specific point of reference so that you could actually designate that right-of-way on the ground. And that Mr. Dominick's opining that this, he scaled this surveyor's notation which was, and that there is a right-of-way there that is 30 feet is not based on competent expert evidence under South Carolina Rules of Evidence 703. And for that reason the claim of an expressed easement of 30 feet should be a legal nullity because one, it is a legal impossibility. And two, it is not based upon their appropriate standard. That is my first basis for a motion for a directed verdict on the issue of liability of an expressed easement.

Then I will proceed to my second argument on a prescriptive easement if the Court so chooses.

THE COURT: Yes, sir.

MR. BREHMER: I, over the last 30 years have tried a lot of cases, Your Honor, but very few have been easement cases. This has been a real interesting endeavor for me

because fortunately, for this Court, there has been a flurry of activity in the Appellate Court regarding prescriptive easements which is the issue in this case. The Court has set out a number of viable grounds and it is, or the Courts very clearly said that there is three requirements for establishing a prescriptive easement. The first is, is that the property has to been having used for 20 years. Okay. The second is, is that it has to be identifiable. Okay. And the third is, is that it has to be adverse and under claim of title or claim of, rightful claim of ownership. Well, in my research and in my preparation and in my defense of my client I have gone through and studied those cases tremendously. I spent a lot of time reading them. And, one, I think that there is one legal basis that solves all of these problems. The Court recently, in the case of Simmons versus Berkeley Electric which I have a copy for the Court and Mr. Dibble, if they don't have a copy but I feel sure that they have done their research. It basically says that and I am going to deal with the third element first because it deals with the third element. It goes back in the Simmons case which is a 2016 Supreme Court Case that was authored by Justice Beatty. And it goes back through the history and it says that, is that the third element of the prescriptive easement has, needed to be clarified. The

Court had interpreted that the adverse requirement and the claim of ownership or claim of right was an either or, type of scenario in previous cases. Okay. And the Court says that is not the case. That the third element is a and, you have to prove both. Okay. One, you have to prove 20 years. Two, you have to prove the identity of the matter that you are claiming the easement of. And three, you have to claim adverse interest and claim of right. Okay. So there is really, instead of three elements I guess you could call them four but three and four are very closely aligned which goes back to the old elements of adverse possession which was often mistaken by me in law school as prescriptive easements. But nevertheless, there is a Court opinion and the name of that Court opinion that I would like to address the Court is, Jones versus Daly which is a South Carolina Court of Appeals decision that was decided in 2005 and to the best of my representation that is still applicable law. Now, in the page three of the Court's analysis on Jones versus Daly, the Court said this. To establish an easement by prescription one need only establish either a justifiable claim of right or adverse and hostile use. Well, in the Simmons case the Court has basically, the Supreme Court took out the or and inserted an and. But that is the only change in this particular law. Now the important word in

that analysis is, is justifiable claim. And that is what the Plaintiff has to show, is a justifiable claim. Well, Your Honor, as a matter of law the Plaintiff can't show that in this case and here is why. The plat that we put into evidence in '61 that was done by Mr. Johnson clearly designated that there was a twelve and a half foot right-of-way from US 76 with the 120.08 acres that the Plaintiff purchased in June of '72. Okay. So for that period of time that was theirs. Now, the Plaintiff says that he made an assumption. Well, Your Honor, that is not a justifiable reliance. The Plaintiff is charged with knowledge of the history of his property which was a matter of public record in this court. The Plaintiff is charged with the knowledge of that 1961 or '62 plat done by Mr. Johnson that designated the twelve and a half foot right-of-way here. So the Plaintiff was charged, at any time, at the time that he purchased the property forward that he knew or should have known from the records in the court that he only had a twelve and a half foot right-of-way. Therefore he cannot have a legitimate claim of right or an adverse right to how he has strayed from that twelve and a half foot. He can't establish, as a matter of law, the third element of the adverse possession. Okay. So as a matter of law we believe that the Plaintiff's claim should fail both on his prescriptive

easement because he does not have a justifiable claim of right nor an adverse claim of right be he is charged from 1962 or from the date of his purchase that there was only twelve and a half foot there. Okay. So he is not allowed to expand it as a matter of law when he knew that it was what it was and he can't meet the elements of adverse because he knew it belonged to somebody else, okay, or that he had an appropriate claim to it because he knew he was trespassing. So if he used this property, which we dispute that he does, just for sake of argument, if he used it it was as a trespasser, okay, only. And we believe because of the reasons stated that we are entitled, the Defendant, not we, the Defendant because I am not a party to this. The Defendant is entitled to a judgment as a matter of law that the Plaintiff does not have a claim for a prescriptive easement or an expressed easement of anything other than the twelve and a half foot designated on the right-of-way easement recorded in '61 or '62, whatever year it was. Thank you.

THE COURT: Thank you. Mr. Dibble.

MR. DIBBLE: I will say the same thing at the close of the Plaintiff's case. There are factual questions in this case, I have tried a lot of cases also and the evidence in this case is as far apart between the Plaintiff and the Defendant as any case I have ever seen.

reasonable doubt the existence of a prescriptive easement, 30 feet in width, across Mr. Amick's property for farming purposes. I realize, that is just a formal motion to protect the record.

THE COURT: Yes, sir. And let me hear from Mr. Brehmer in regard to that.

MR. BREHMER: Your Honor, we oppose that motion and disagree with it vehemently. We believe that we have established that Mr. Braswell knew or should have known that he had nothing but a twelve and a half foot right-of-way there, that in years has progressed, recent years as late as 2006. Mr. Braswell has chosen to try to expand his right-of-way into that and has merged over onto my client's property. There is no evidence to support the Plaintiff's contention that he has been using the road in the location that it was, that is not in controversy. My client has always said that he, when he used the road previously it was over against the Ballentine line, that as time has progressed as recently as 2006, we have aerial photographs in that, that the Braswell's have migrated to the west which is to my client's side of the property which one, would create an adverse -- wouldn't qualify as to 20 years. Second, it was with permission at that time and it was not, does not meet the elements and therefore we would oppose and think that the Plaintiff's motion

have notice of everything which that inquiry properly conducted. And as I have said, there is enough evidence in this record to show that road existed on Mr. Amick's property in 1982, '84 and '89, he bought it in 1988. And the existence of that road going into Mr. Braswell's field should have put him on inquiry notice and made him inquire as to whether or not that road is being used by third party to access the 120 acre field. If that is the case, he is not a bonified purchaser, notice, he took the property subject to the right-of-way across his land. Fourth, under the circumstances we have established here, we think Mr. Amick should be enjoined permanently from impeding in any merit including his, from Mr. Braswell using the property, Mr. Amick's property to access his own property for farming purposes. And that, of course, is based upon arguments I just have made leading up to the injunctive relief. Thank you very much.

THE COURT: Thank you. Mr. Brehmer.

MR. BREHMER: May it please the Court, Your Honor. Your Honor --

MR. DIBBLE: Just one second. Ms. Nichols is having family problems of her Grandmother. I am going to excuse her if that is all right with the Court.

THE COURT: Yes ma'am, I hope everything is okay. Mr. Brehmer.

MR. BREHMER: Your Honor, since this is a bench trial I renew all the arguments that I made on the expressed easement and totality so as not to have to repeat those matters for the record. I would ask for the record to incorporate my arguments at the directed verdict stage at the end of all evidence into this closing argument on the legal basis that I may on the expressed easement claim and on the prescriptive easement claim.

THE COURT: Yes, sir.

MR. BREHMER: Okay. Now, let's deal with the factual issues in this particular case. James Amick purchased this property in 1988. We have submitted evidence in this case from Mr. Amick, from Mr. Amick's former wife and from Mr. Amick's friend, Mark Richardson, that at the time that he purchased that property in 1988 that the roadway, okay, was grown up. That you could not drive a vehicle off of the highway right-of-way onto this particular property. And the reason that you could not do so were that there were trees. And I have explicitly asked the witnesses about those trees. And the purpose for that is, is that in 1988 the testimony is that these trees were anywhere from four inches in diameter at the base to eight inches in diameter at the base and that they were in the roadway. Okay. The purpose for doing that is, is that I would ask the Court to take judicial notice that trees don't grow

that fast. Okay. And the point that I was trying to make was, was that those trees are evidence that the Plaintiff does not have a 20 year prescriptive easement dating back when they are claiming one in 1962 or '3 because the trees would have had to have four or five years growth on them which would have shown that he did not have a 20 year continuous use of the property. Okay. Now, we have also shown that the Plaintiff has not, that the Plaintiff had a twelve and a half foot right-of-way into the property. And that the Plaintiff, after my client purchased the property within several years he went to the Plaintiff and they discussed this. And my client put gates up on the property. My reading of the case of Bill Bundy versus Bobby Shirley which is a South Carolina Supreme Court case decided in 2015, that the installation of the gates is very relevant because at that point the gates were installed and the gates were locked. Okay. Mr. Braswell, the Plaintiff, was given a key by the Defendant. This shows that this is a permissive use of the roadway. That this was not a hostile event that Mr. Amick and Mr. Braswell agreed that they had a permissive use. The other piece of evidence is that, is that, is as follows. We propose to the Court that the fact that the installation of those gates in 1993 or 1994, whenever it was, also shows that the Plaintiff knew that he didn't have the

third element of a prescriptive easement. The basis for that is, is that the acceptance of the key, okay, shows that he acknowledged that he did not have a claim of right across that property, he had a claim of permission that that would predate. It doesn't make any sense, if you look at the Plaintiff's outline of their particular case, they are saying, well, we were claiming rights since '62. Well, if you are claiming of '62 why would you be allowing somebody to block the road in '94 with a gate and lock it and you have to get a key from them. That particular evidence shows that he knew that he wasn't adverse and he knew that he did not have a claim of right across that particular property because of the fact that he accepted the key. Okay. Now, that deals with the use of the property. My client has shown that once he purchased the property, that he opened the property up and it is, we have documented photographs. I direct the Court's attention and ask that the Court review Defendant's Exhibit number 4 which is an aerial photograph that we have placed into evidence. And, Your Honor, it is the Defendant's position that the contents of Defendant's Exhibit number 4 are very germane. You can tell in Defendant's Exhibit number 4 that there is no roadway transversing from the Defendant's property to the Plaintiff's property. There is a road that stops here but

the Defendant's property, the field that we rode out into earlier today, there was no road going down this property line like we have just drove across a few minutes ago. And that all of that establishment of a roadway was done after this photograph was captured in 2002 and this photograph being Defendant's Exhibit number 4. Defendant's Exhibit number 3 shows how the property existed in 2008, six years after Defendant's Exhibit number 4. This shows clearly a road between my client's property and the Ballentine property designated as tax map number 228-29. And it also shows the roadway system that we visited today on the Plaintiff's property as it follows the tracks as to what we said. Now, this road wasn't there in 2002. I ask the Court to reference Defendant's Exhibit number 19 which Mr. Robert Beard of the Newberry County GIS office came in and identified a 1976 aerial photograph of the property. And he identified that the Defendant's property would be designated with number 16 and 32. And that the Plaintiff's property would be designated as number 5. On this aerial photograph you can clearly make out that there is no road system from my client's property onto the Plaintiff's, onto the Plaintiff's property. The significance of that, Judge, is, if you go back to the holding in the Bundy case and the Court, the Supreme Court went to great pains to

explain this and they said in the opinion that they wanted to clarify this for both the bench and the bar. The standard of review on a prescriptive easement action is clear and convincing evidence, unequivocal evidence that the Plaintiff has clearly established his constant and repeated use of a piece of property for 20 years. The identity of the property that he has claimed and adverse to the, the serving of State as well as under claim of right. One, there is no clear and convincing evidence in this case. Okay. There is more evidence that probably wouldn't even arise to the level of the preponderance of evidence standard. The Plaintiff has failed to establish to meet the burden of proof. The Court in the Bundy case made out the rationale as to why they were taking the pains that they did. Because what the Plaintiff is asking you to do or asking this Court to do, is to take property that my client purchased in 1988, paid for, as a bonified purchaser for value and is asking this Court to take his property, a portion of a property away from him and give the Plaintiff a right across it. Okay. My client has presented ample evidence that there was no roadway across the property in 1988 when he purchased it, that there was vegetation, trees that indicated that it had been a long time since anybody had used that particular road, more than four years. Okay. That that road, there was no

notice, he bought this property as a bonified purchaser for value. He thought at that time that his property line went all the way to the Ballentine property line. He has learned that it was mistaken, that he was mistaken and that there was a twelve and a half foot right-of-way there. But even at that, he had no, he had no issue with giving permissive use to the Plaintiff to take his farming equipment across there until the Plaintiff started abusing the property. In 2006 or thereabouts the trees on the side of the hedgerow had grown, the Plaintiff moved over and had incapsulated the yard. They were driving discourteously, they were basically doing flagrant disregard. He was complaining to the owner, he was complaining to the adjoining landowner, the Plaintiff and the Plaintiff's representative, i.e., Jimmy Braswell, Jr. about this and nothing was done about it. The Defendant was asked what he wants, all he wants in this case is, is what he paid for, nothing more, nothing less. He wants full unfettered, fee simple, right of use of his property up to the property line that he purchased in 1988. He has testified that the Plaintiff has moved over, we have offered documentary evidence. In Defendant's Exhibit 6, 8 and 12 as well as other associated photographs, he has testified that in these Exhibits, where the green grass is you can see the track where they used to drive. In 2006

or thereabouts they started moving on which is very consistent, very consistent with the 2002 and 2008 aerial photographs that was shown. Okay. That what the Plaintiff has done is, the Plaintiff has a right to use the twelve and a half foot between my client's property and between the Ballentine property. But he doesn't and is not allowed to expand that right-of-way to the detriment of my client. And what is happened is, is that the hedgerow between my client's property and the Ballentine property, also known as the Long property grew over the years. Nobody wanted to cut the limbs so let's just slide over a little bit, James won't mind and that is what they did, they slid over a little bit. Okay. My client wanted to be a good neighbor, he went along with it, hey those guys, you know. And he was a good guy, he was a good guy. But finally he just got out of control, okay. He, being Mr. Braswell, got out of control and extended what he had a right to do. He has encroached on my client's property. I questioned Mr. Dominick, he has encroached about six or seven feet onto my client's property according to the tracks. I asked Mr. Dominick what was the length from where the eastern side of the 12.05 right-of-way and the track onto my client's property and he said about six feet. They have had overhang of equipment but he, the Plaintiff, has encroached on my

client's property since 2006 and that is documented. Now, I want to point out two things. What we saw out there today and what is shown in the 2008 aerial photograph is a recent development. Okay. It has occurred in the last 15 years. It is not the way it was prior to that. It has occurred with my client's permission. That is what was not out there in 1988 when my client bought the property. And the, we are not disputing that in 1961 there was a dirt road, okay, we know that, the deeds say that. But that dirt road was not on my client's property. And the photographs that the Plaintiff has put into evidence is evidence of that dirt road. But what has happened since 2005, 2006 is, is the hedgerow grew up, equipment got bigger and the Plaintiff just moved over. You know, I have got a right to use this so I am using this, a little bit more is not going to hurt. Well, Your Honor, what he has done and what he is trying to get this Court to do is in essence, take my client's property. We dispute that. We ask that this Court, we ask that this Court examine all the evidence and apply the standard in the Bundy case to a clear and convincing evidence. And at one point the Supreme Court says basically unequivocally. There is no unequivocal evidence that James L. Braswell, Sr. has a prescriptive easement across the property of James Franklin Amick. Okay. What the evidence shows and we

believe clear and convincingly is, is that Mr. Braswell, nice guy, but he runs a business, he is running a farm, time is money to him. And, you know, he made an assumption, like he said, it will be all right with Frankie if I move over, it will be all right with Frankie. Well, Frankie took as long as he could take it and enough is enough. And the truth of the matter is, is Mr. Braswell, you don't have a right to run down that road into places that you are running. You have a right, six feet to the right of it or to the west of it, to the Ballentine side of it. But you don't have a right where you are running, okay. Your Honor, we would ask the Court to look also at Mr. Amick's transaction. He purchased this property in 1988 without any notice. He relied upon the title search and the deeds, the records and that he was a bonified purchaser of value. We also want to reiterate that from a legal perspective, under the authority that we previously cited to this Court, that Mr. Braswell cannot legally be a claimant of a claim of right or be adverse because he is charged with the knowledge of this court in 1962 that there was only a twelve and a half foot right-of-way there. And he knows if he goes over that he is off, he is trespassing as a matter of law. And we would ask that this Court make a determination that James L. Braswell does not have a prescriptive easement

across any of the property belonging and owned by James Franklin Amick. We would ask that this Court, that James Franklin Amick owns the entire tract of property which is 16.8 some odd acres without any encumbrances or liens, easements or otherwise from James L. Braswell. And that the Court issue as a matter of law that the 12.5 foot right-of-way still exist and that all property to Mr. Amick's side opposite of the Ballentine side is on fee simple without any easements or encumbrances by James L. Braswell. Thank you.

THE COURT: Thank you. Anything in reply, Mr. Dibble?

MR. DIBBLE: Just one thing, Your Honor. I am glad Mr. Brehmer pointed out that it would take a long time for a tree to grow eight inches into diameter. And so if you look at the photographs of 1981 and the photographs of 1984 where the road is located, you will see that there are no trees. If you look at the photographs of those years and other years you can see trees on the property in other places but you cannot see trees on the property where that road is. Thank you.

THE COURT: Okay. Anything else?

MR. DIBBLE: No, ma'am.

MR. BREHMER: No, Your Honor, but we would, the Defendant would like to thank the Court's time and



EXHIBIT
Plaint. 665
#1

PLAINTIFF'S
EXHIBIT
#1
1-620



Blumberg No. 5118
EXHIBIT
PLAINTIFF'S
#2 FUP

PENGAD 800-631-6989
PLAINTIFF'S
EXHIBIT
#2
1-6-20



EXHIBIT
Pla. #66
#3
Blumberg No. 5116

PLAINTIFF'S
EXHIBIT
#3
1-6-20
PENGAD 800-631-6989

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.

NOV 2 9 2018

Elizabeth P. Folk
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. Miller, of Newberry County

in the State aforesaid for and I bear my wife in consideration of the sum of Five Dollars and the love and affection

to me in hand paid at and before the sealing of these presents by Sula S. Miller and A. B. Miller, of Newberry County

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Sula S. Miller and A. B. Miller, their heirs and assigns forever:

All that certain piece, parcel or tract of land situate, lying, and being in Tax District No. 3, County of Newberry, State of South Carolina containing Eight and 6/10 (8.6) acres, more or less, and being more accurately and fully described on a plat made by J. Roy Crawford, Surveyor dated January 1923 and of record in the office of the Clerk of Court for Newberry County in Plat Book F, page 361, and being the identical tract conveyed to grantor herein by deed of Susan E. Shannon as recorded in Deed Book 28, page 22.

ALSO, ALL that certain piece, parcel or tract of land situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing Two Hundred Eighty Six (286) acres, more or less, bounded now or formerly was bounded on the North, East and South by lands of Henry L. Parr, West by lands of Susan B. Bickley and J. Simeon Bickley, Northwest by lands of Shannon, and being perhaps otherwise bounded. Less a conveyance of 38.5 acres to Claude U. Miller as recorded in Deed Book 55, page 278, office of the Clerk of Court for Newberry County, this is the identical tract of land conveyed to Henry B. Miller and A. B. Miller by James D. Wheeler by deed dated November 3, 1909 as recorded in Deed book 17, page 506; on Aug. 4, 1917 by deed recorded in Deed Book 24, page 391, the said Henry B. Miller conveyed a one-fourth interest in the place to William O. Miller who died testate leaving his Last Will and Testament as recorded in Will Book No. 7, page 479, in which he devised to Sallie Belle Miller his one-fourth undivided interest in said tract and the said Sallie Belle Miller by deed as recorded in Book 52, page 427 conveyed her interest to A. B. Miller; the remaining one-fourth interest being acquired by A. B. Miller by deed of Henry B. Miller as recorded in Book 23, page 149, office of the Clerk of Court for Newberry County.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Sula S. Miller and A. B. Miller, their Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Sula S. Miller, and A. B. Miller, their Heirs and Assigns, against me and my Heirs and any other person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 11th day of March in the year of our Lord one thousand nine hundred and Sixty, in the one hundred and Eighty-fourth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

E. Maxcy Stone — A. B. Miller (L. S.)

Virginia Senn (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Virginia Senn and made oath that she saw the within-named A. B. Miller sign, seal and as his act and deed, deliver the within-written Deed, and that she with E. Maxcy Stone witnessed the execution thereof.

SWORN to before me, this 11th day of March, A. D. 19 60

E. Maxcy Stone — Virginia Senn

Notary Public for S. C. (L. S.)

THE STATE OF SOUTH CAROLINA, County.

I, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

NO RENUNCIATION OF DOWER GRANTEE IS WIFE OF GRANTOR

Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (SEAL)

A true record March 11th, 19 60 — BURKE M. WISE

C. C. C. P.

EXHIBIT Plaintiff's #4

PLAINTIFF'S EXHIBIT 4 EVD 1-6-2020

Blumberg No. 5118 PENGAD 800-631-6989

Form 1. Book No. 77 TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY.

I, Elizabeth P. Kyle, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of what is recorded in this office
NOV 29 2018
Elizabeth P. Kyle
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, A. B. Miller of Newberry County, in the State aforesaid for and in consideration of the sum of Five Dollars ($5.00) and the love and affection, I dollars
bear my wife, to me id hand paid at and before the sealing of these presents by Sula S. Miller, of Newberry County, in the State aforesaid ---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Sula S. Miller, her heirs and assigns fofever:

"All that certain piece, parcel or tract of land situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing eight and sixth-tenths (8.6) acres, more or less, and beingmore accurately and fully described in a plat by J. Roy Crawford, Surveyor, dated January, 1923, and of record in the office of the Clerk of Court for Newberry County in Plat Book "F", at page 364, and being the identical tract conveyed to grantor herein by deed of Susan E.Shannon as recorded in Book 28, page 22."

"Also, all that certain piece, parcel or tract of land situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing 286 acres, more or less, bounded now or formerly was bounded on the North, East and South by lands of Henry L. Parr, West by lands of Susan B. Bickley and J. Simeon Bickley, northwest by lands of Shannon and being perhaps otherwise bounded. Less a conveyance of thirty-eight and five tenths (38.5) acres to Claude U. Miller as recorded in Deed Book 55 at page 278 in the office of the Clerk of Court for Newberry County. This is the identical tract of land conveyed to Henry B. Miller and A. B. Miller by deed recorded in Deed Book 24, at page 391, the said Henry B. Miller conveyed a one-fourth (1/4) interest in the place to William O. Miller who died testate leaving his last Will and Testament as recorded in Will Book No. 7, page 479, in which he devised to Sallie Belle Miller his one-fourth (1/4) undivided interest in said tract and the said Sallie Belle Miller by deed recorded in Book 52, at page 427; conveyed her interest to A. B. Miller; the remaining one-fourth (1/4) interest being acquired by A. B. Miller by deed of Henry B.Miller as recorded in Book 23, at page 149, in the office of the Clerk of Court for Newberry County. The grantor herein has previously deeded a one-half (1/2) interest in these lands to the grantee and the purpose of this deed is to convey the remaining one-half (1/2) to grantee. The dirt road is the dividing line between grantor and Claude Miller.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Sula S. Miller, her ---------- Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, ---------- Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Sula S. Miller, her ---------- Heirs and Assigns, against me and my Heirs and any person whomsoever ---------- lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 10th day of October in the year of our Lord one thousand nine hundred and Sixty, in the one hundred and eighty-fifth ---------- year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

E. Maxcy Stone — A. B. Miller (L. S.)

E. J. Dickert, M.D. — (L. S.)

THE STATE OF SOUTH CAROLINA, NEWBERRY County.

PERSONALLY appeared before me E. J. Dickert and made oath that he saw the within-named A. B. Miller ---------- sign, seal and as his act and deed, deliver the within-written Deed, and that he with E. Maxcy Stone witnessed the execution thereof.

SWORN to before me, this 10th day of October, A. D. 1960.

E. Maxcy Stone (L. S.) — E. J. Dickert, M. D.

Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County. GRANTEE IS WIFE OF GRANTOR. RENUNCIATION OF DOWER

I, ---------- Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. ---------- did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named ---------- Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this ---------- day of ----------, Anno Domini 19----

A true record ---------- Notary Public for ---------- (SEAL)

:09 P.M. Burke M. Wise

C. C. C. P.

Blumberg No. 5118 EXHIBIT P-5

PENGAD 800-631-6989 PLAINTIFF'S EXHIBIT 5 END 1-6-2020

Deed Book 87

330

Affidavit Book #5, page 8- Stamps: State $4.00- Federal $2.20

Form 1 Book No. 87 — TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

KNOW ALL MEN BY THESE PRESENTS, That I, Sula S. Miller, of the County of Newberry-----

in the State aforesaid for and---------- in consideration of the sum of Five ($5.00) Dollars and other valuable ----Dollars
to me in hand paid at and before the sealing of these presents by Zeda B. Bickley--------
considerations-----

in the State aforesaid County of Newberry---------- the receipt whereof is hereby
acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Zeda B. Bickley, her
heirs and assigns forever:

All that certain piece, parcel of tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing twelve and 64/100 (12.64) acres, more or less, fronting North-east on highway No. 76, and being otherwise bounded as follows: on the East, South and West by other lands of the Grantor, Sula S. Miller, also bounded on the North by other lands or lots of the Grantor, Sula S. Miller, and being more particularly described on a plat of survey made by Claude E. Johnson, Surveyor, dated September 28, 1964, which plat was made for the purpose of this conveyance. The said tract or parcel of land hereby conveyed is a portion of the lands conveyed to me, the said Sula S. Miller, by deed of my late husband A. B. Miller, dated March 14, 1960, recorded in the office of the Clerk of Court in Deed Book 75 at page 575.

And, it is agreed by and between the grantor and the grantee that each shall give a 12.5 feet right of way along the South-east boundary of the premises above described for the construction of a road in, to and from the premises of each, or their heirs and assigns. L-31

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Zeda B. Bickley, her Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Zeda B. Bickley, her Heirs and Assigns, against me and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 5th day of October in the year of our Lord one thousand nine hundred and sixty-four, in the one hundred and eighty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Myrtis F. Halfacre — Sula S. Miller (L. S.)

Walter T. Lake (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Myrtis F. Halfacre and made oath that she saw the within-named Sula S. Miller sign, seal and as her act and deed, deliver the within-written Deed, and that she with Walter T. Lake witnessed the execution thereof.

SWORN to before me, this 5th day of October, A. D. 1964

Walter T. Lake (L. S.) — Myrtis F. Halfacre

Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER — GRANTOR A WOMAN

I, , Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (L. S.) (SEAL)

A true record October 6 M. WISE

C. C. C. P.

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true NOV 29 2018 nal on file in this office.

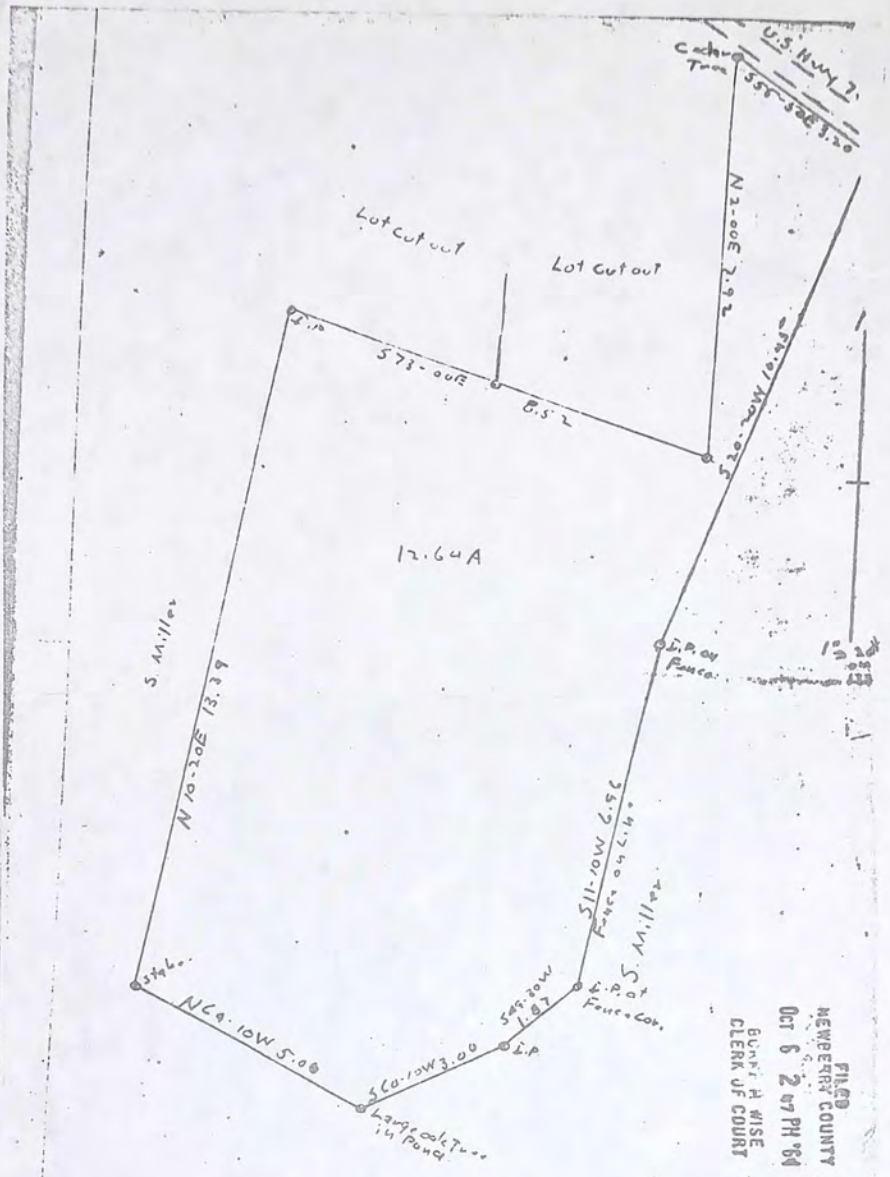
Clerk of Court

EXHIBIT P-6

PLAINTIFF'S EXHIBIT 60 1-6-2020

PENGAD 800-631-6989

Zeda B. Bickley - 12.64 ac.



A Part of
SULA S. MILLER Land
12.64 Acres
Newberry County, S.C.
4M. N.W. of Newberry, S.C.
Surv. 2E, 11C4 Claude E. Robinson L.S. 1373

FILED
NEWBERRY COUNTY
OCT 6 2 07 PM '64
CLERK OF COURT

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
NOV 29 2018
Elizabeth P. Folk
Clerk of Court

EXHIBIT P-7

PLAINTIFF'S EXHIBIT 7 EV 1-6-2020

Deed Book 87

Affidavit Book #5, page 25- Stamps: State $3.00-, Federal $1.65

429

Form 1 Book No. 87

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office
NOV 29 2018
Elizabeth P. Folk
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, Sula S. Miller A widow of Newberry County----------

In the State aforesaid for and---------- in consideration of the sum of Ten ($10.00) Dollars

to me in hand paid at and before the sealing of these presents by L. K. Bedenbaugh----------

in the State aforesaid ---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said L. K. Bedenbaugh,

All that certain piece, parcel and lot of land situated in the County of Newberry and State of South Carolina, being bounded as follows: on the north highway 76, on the east lands of Sula S, Miller, grantor, on the west by dirt road, on the south lands of Sula S. Miller and Zeda Bickley. A lot containing 4.04 acres, more or less, beginning at a point in center of U. S. Highway 76 marked by an iron pipe on side of highway and running with the highway 555-50E. 214', to a point in center of highway marked by an iron pipe onside of highway then S44-00W 9.13 to an iron pipe then N45-00W 3.00 to an iron pipe then N73-00W 4115 to an iron pipe then 53-00W 5.40 to an iron pipe then S 44-00W 3.75 to iron pipe in center of highway, iron pipe by side of highway.

Plat recorded in Plat Book "U" at page 61.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said L. K. Bedenbaugh, his Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, ---------- Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said L. K. Bedenbaugh, his---------- Heirs and Assigns, against me---------- and myself, my Heirs and any other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 28th day of November in the year of our Lord one thousand nine hundred and sixty-four, in the one hundred and eighty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

E. Maxcy Stone

Virginia Senn

Sula S. Miller (L. S.)

(L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Virginia Senn and made oath that she saw the within-named Sula S, Miller sign, seal and as her act and deed, deliver the within-written Deed; and that she with E. Maxcy Stone witnessed the execution thereof.

SWORN to before me, this 28th day of November, A. D. 19 64

E. Maxcy Stone (L. S.) Virginia Senn

Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER GRANTOR A WOMAN

I, ---------- Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. ---------- the wife of the within-named ---------- did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named ---------- Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this ---------- day of ----------, Anno Domini 19----

Notary Public for S. C. (L. S.)

A true record November 28th, 19 64 (11:28 AM) (SEAL) BURKE M. WISE

C. C. C. P.

PLAINTIFF'S EXHIBIT #84
16-2020
PENGAD 800-631-6989

EXHIBIT P-8
Blumberg No. 5118

Deed Book 87

430

Affidavit Book #5, page 25- Stamps: State $2.00- Federal $1.10

Form 1, Book No. 87

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

KNOW ALL MEN BY THESE PRESENTS, That I, Sula S. Miller, a Widow of Newberry

in the State aforesaid for and---------- in consideration of the sum of Ten ($10.00) and other considerations Dollars to me in hand paid at and before the sealing of these presents by L. K. Bedenbaugh----------

in the State aforesaid ---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said L.K. Bedenbaugh-

All that certain piece, parcel and lot of land situated in the County of Newberry and State of South Carolina, being bounded as follows: on the north highway 76, on the east and south by lands of Zeda Bickley, on the west lands of Sula S Miller., A lot containing 3;13 acres, more or less, beginning at a point in center of U. S. highway 76 marked by iron pipe on side of highway and running with highway 555-50E 2.17 to iron pipe on side of highway then 52-00W 7.92 marked by iron pipe then N73-00W 4.35 to an iron pipe then N3-00E 5.40 to iron pipe then N44-00E 3.40 to iron pipe by side of highway. Land located 4 M. N.W. of Newberry, S. C.

Plat Book "U"at page 61.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said L. K. Bedenbaugh, his Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs, ---------- Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said L. K. Bedenbaugh, his Heirs and Assigns, against me and my Heirs and any other person s whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 28th day of November in the year of our Lord one thousand nine hundred and sixty-four, in the one hundred and eighty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

E. Maxcy Stone — Sula S. Miller (L. S.)

Virginia Senn (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Virginia Senn and made oath that she saw the within-named Sula S. Miller sign, seal and as her act and deed, deliver the within-written Deed, and that she with E. Maxcy Stone witnessed the execution thereof.

SWORN to before me, this 28th day of November, A. D. 19 64

E. Maxcy Stone (L. S.) Virginia Senn

Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER GRANTOR A WOMAN

I, ----------, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. ---------- the wife of the within-named ---------- did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named ---------- Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this ---------- day of ----------, Anno Domini 19----

(L. S.)

Notary Public for S. C.

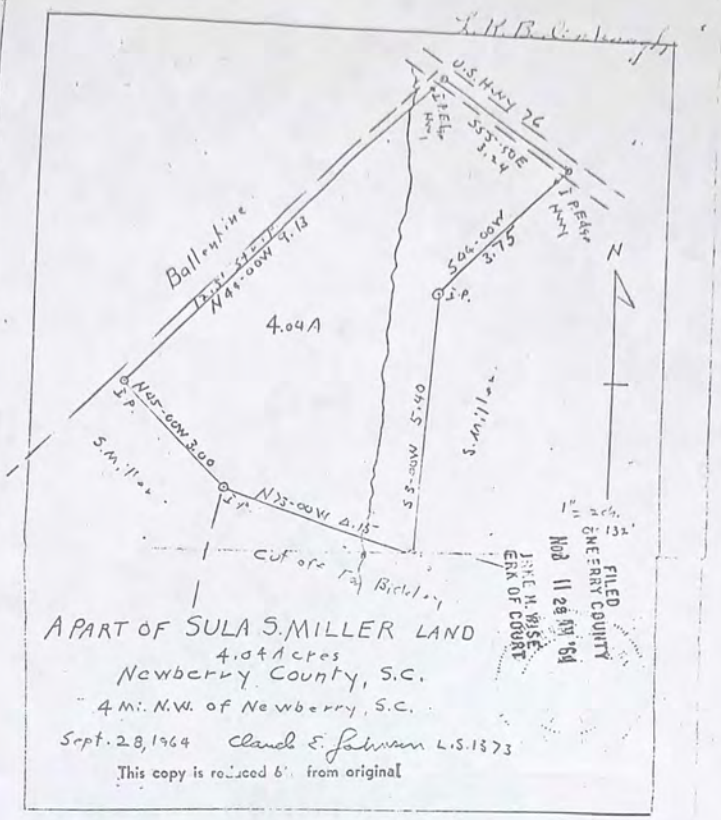
A true record November 28, 19 64 (11:28 AM) (SEAL) BURKE M. WISE

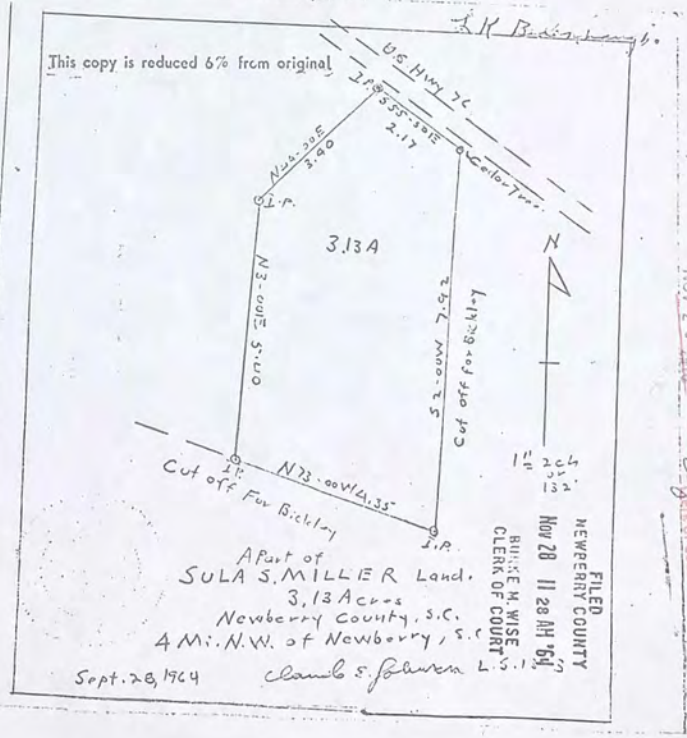
C. C. C. P.

PLAINTIFF'S EXHIBIT #91 1-6-2020 PENGAD 800-631-6989

EXHIBIT P-9 Blumberg No. 5118

I, Elizabeth P. Fox, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true ... on file in ... NOV 21 2018 Clerk of Court





I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the document on file in this office.
NOV 29 2019
Clerk of Court

PLAINTIFF'S EXHIBIT #10 EJS 1-6-2020
PENGAD 800-631-6989
EXHIBIT P-10
Bluebeam No. 3118

Deed Book 90

476

Affidavit Book #5, page 258- Stamps: State $12.00- Federal $6.60

Form 1. Book No. 90

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

KNOW ALL MEN BY THESE PRESENTS, That L. K. Bedenbaugh

in the State aforesaid for and in consideration of the sum of $5.00 and other valuable considerati Dollars to me in hand paid at and before the sealing of these presents by Henry E. Bickley------

in the State aforesaid Newberry County---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Henry E. Bickley, his

heirs and assigns:

All that piece, parcel or tract of land, situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing three and thirteen hundredths (3.13) acres, more or less, said tract being more particularly described on a plat thereof made by Claude E. Johnson, Surveyor, dated September 28, 1964, and recorded in the Office of the Clerk of Court for Newberry County in Plat Book U at page 61. Said tract being bounded on the North by U. S. Highway 76, on the East and South by lands of Zeda Bickley, and on the West by lands of Henry E. Bickley, and being the identical tract conveyed to the grantor by deed of Sula S. Miller, dated November 28, 1964, and recorded in Deed Book 87 at page 430.

ALSO, all that piece, parcel or tract of land, situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing four and four hundredths (4.04) acres, more or less, said tract being more particularly described on a plat thereof made by Claude E. Johnson, Surveyor, dated September 28,1964, and recorded in the office of the Clerk of Court for Newberry County in Plat Book U at page 61. Said tract being bounded on the North by U. S. Highway 76, on the East by lands of Henry E. Bickley, on the South by lands of Zeda Bickley and lands of Sula S. Miller and on the West by a dirt road which separates same from lands of Bellentine and being the identical tract conveyed to the grantor by deed of Sula S. Miller, dated November 28, 1964, and recorded in Deed Book 87 at page 429.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Henry E. Bickley, his Heirs and Assigns forever.

AND I do hereby bind myself, my Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Henry E. Bickley, his Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 28th day of April in the year of our Lord one thousand nine hundred and sixty-six, in the one hundred and ninetieth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Gordon N. Clarkson

Peggy S. Boozer

L. K. Bedenbaugh (L. S.)

(L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Peggy S. Boozer and made oath that she saw the within-named L. K. Bedenbaugh sign, seal and as his act and deed, deliver the within-written Deed, and that she with Gordon N. Clarkson witnessed the execution thereof.

SWORN to before me, this 28th day of April, A. D. 19 66

Gordon N. Clarkson (L. S.)

Notary Public for S. C.

Peggy S. Boozer

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER GRANTOR A WIDOWER

I, , Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (L. S.)

A true record April 28th, 19 66 (3:54 PM) (SEAL)

BURKE M. MTGR.

C. C. C. P.

Blumberg No. 5118 EXHIBIT P-11

PENGAD 800-631-6989 PLAINTIFF'S EXHIBIT #11 EJO 1-6-2020

I, Elizabeth P. Folk, Clerk of Court, Newberry, do hereby certify that this is a true copy of the instrument on file in this office. NOV 29 2018 Clerk of Court

Affidavit Book #6, page 70 - Stamps: State $15.00- Federal $8.25

Form 1. Book No. 82

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

WHEREAS, upon a hearing of the Petitions of Roy D. Bickley, administrator, c.t.a., of the estates of Zeda B. Bickley, deceased, and Henry E. Bickley, deceased, respectively, to the Probate Court of Newberry County, for authority to sell real property belonging to the said Zeda B. Bickley and Henry E. Bickley, for the purpose of paying the debts of the said estates, the personal property thereof being wholly insufficient for such purposes, the said Court did order and adjudge that the lands hereinafter mentioned and described, should be sold and conveyed by the said Roy D. Bickley, as administrator, c.t.a., of the estates of Zeda B. Bickley, deceased. and Henry E. Bickley, deceased, on the terms and for the purposes mentioned in the said Petitions and Orders, as by reference thereto, on file in the respective estates in the said Court will apear; and,

WHEREAS, Roy D. Bickley, administrator, c.t.a., of the estates of Zeda B. Bickley and Henry E. Bickley, respectively, after having duly advertised said lands for sale, did sell and dipose of the said lands, hereinafter described, unto L. K. Bedenbaugh:

NOW THEREFORE, be it known that I, Roy D. Bickley,administrator, c.t.a., of the estates of Zeda B. Bickley, deceased, and Henry E. Bickley, deceased, respectively, in consideration of the said premises, and also in consideration of the

KNOW ALL MEN BY THESE PRESENTS, That I

in the State aforesaid, to me in hand paid at and before the sealing of these presents by the sum of Five & 00/100 ($5.00)---------- Dollars

L. K. Bedenbaugh, of Newberry County----------

in the State aforesaid

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said L. K. Bedenbaugh, his heirs and assigns forever: the receipt whereof is hereby

All that certain piece, parcel or tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing twelve & 64/100 (12.64) acres, more or less, fronting northeast on Highway No. 76, and being otherwise bounded on the east, south, west and north by lands of Sula S. Miller, said premises being more particularly described on plat recorded in the office of the Clerk of Court of Newberry County in Plat Book "U" at page 31 and being the identical property conveyed to Zeda B. Bickley by deed of conveyance of Sula S. Miller recorded in the office of the Clerk of Court of Newberry County in Deed Book 87 at page 330;

ALSO, all that piece, parcel or tract of land situate, lying and being in Tax District No. 3, with the improvements thereon, containing seven and 17/100 (7.17) acres, more or less, being bounded by U. S. Highway 76, by lands above described, by lands of Sula S. Miller and by a dirt road which separates the conveyed premises from lands of Bellentine and being the identical premises conveyed to Henry E. Bickley by deed of conveyance of L. K. Bedenbaugh, recorded in the office of the Clerk of Court of Newberry County in Deed Book 90 at page 476.

Filed in the Office of the Clerk of Court for Newberry, South Carolina. I do hereby certify that this is a true Copy of the original filed in this office.

NOV 29 2018

Elizabeth B. Reid

Clerk of Court

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said L. K. Bedenbaugh, his----------

AND I do hereby bind myself and my successors, and my---------- Heirs and Assigns forever.

Heirs, ---------- Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said L. K. Bedenbaugh, his----------

Heirs and Assigns, against me----------

and ---------- Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 30th day of December in the year of our Lord one thousand nine hundred and sixty-six, in the one hundred and ninety-first year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Maude G. Ross

Virginia Senn

Roy D. Bickley

Administrator, c.t.a of the Estates of Zeda B. Bickley, deceased, and Henry E. Bickley, deceased, respectively. (L. S.) (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Virginia Senn and made oath that she saw the within-named Roy D. Bickley, administrator, c.t.a. of the estates of Zeda B. Bickley, deceased, and Henry E. Bickley, deceased respectively sign, seal and as his act and deed, deliver the within-written Deed; and that she with Maude G. Ross witnessed the execution thereof.

SWORN to before me, this 30th day of December, A. D. 19 66

Maude G. Ross

Notary Public for S. C. (L. S.)

Virginia Senn

THE STATE OF SOUTH CAROLINA, County.

RENUNCIATION OF DOWER

I, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (L. S.)

A true record December 30th, 19 66 (4:24 PM)

(SEAL)

MILDRED R. HARMON S C. C. C. P.

PLAINTIFF'S EXHIBIT #120 1-6-2020 PENGAD 800-631-6989

EXHIBIT P-12 Blumberg No. 5118

Form 1. Book No. 93 APP. # 6 Page 109 STAMPS STATE $20.00 FEDERAL $11.00 TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

I, Elizabeth P. Falk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the document on record in this office.
NOV 29 2018
Elizabeth P. Falk
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, L.K. Bedenbaugh

in the State aforesaid for and in consideration of the sum of Five Dollars and other valuable consid Dollars
to me in hand paid at and before the sealing of these presents by Oscar V. Harley, Sr.

in the State aforesaid Newberry County the receipt whereof is hereby
acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said
Oscar V. Harley, Sr., his heirs and assigns:

All that certain piece, parcel or tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing twelve and 64/100 (12.64) acres, more or less, fronting Northwest on Highway No. 76, and being otherwise bounded on the East, South, West and Northby lands of Sula S. Harley, said premises being more particularly described on Plat recorded in the office of the Clerk of Court for Newberry County in Plat Book "U" at page 3.

ALSO, all that piece, parcel or tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing seven and 17/100 (7.17) acres, more or less, being bounded by U. S. Highway 76, by lands above described by lands of Sula S. Harley and by a dirt road which separates the conveyed premises from lands of Ballentine.

The above tracts being the identical tracts conveyed to the grantor by deed of Roy D. Bickley, Administrator, dated December 30, 1966, and recorded in Deed Book 92 at page 492.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said
Oscar V. Harley, Sr., His Heirs and Assigns forever.

AND I do hereby bind myself, my
Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said
Oscar V. Harley, Sr., his
Heirs and Assigns, against me, and my Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 7th day of December in the year of our Lord one thousand nine hundred and Sixty-Seven, in the one hundred and Ninety-Second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of
Gordon N. Clarkson — L.K. Bedenbaugh (L. S.)
Marjorie F. Morison (L. S.)

THE STATE OF SOUTH CAROLINA, newberry County.

PERSONALLY appeared before me Marjorie F. Morison and made oath that she saw the within-named
L.K. Bedenbaugh sign, seal and as his act and deed, deliver the within-written
Deed; and that she with Gordon N. Clarkson witnessed the execution thereof.

SWORN to before me, this 7th day of December, A. D. 19 67

Gordon N. Clarkson (L. S.) Marjorie F. Morison
Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County. NO RENUNCIATION OF DOWER (Grantor a widower)

I, , Notary Public for South Carolina, do hereby certify unto all whom it may concern, that
Mrs. the wife of the within-named
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named
Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (L. S.) (SEAL)

A true record December 7, 19 67 MILDRED R. HARMON (D.) C. C. C. P.

(3:39 PM)

PLAINTIFF'S EXHIBIT #13 EVD 1-6-2020
PENGAD 800-631-6989
EXHIBIT P-13
Blumberg No. 5118

Form 1. Book No. 103

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
NOV 29 2018
Elizabeth P. Folk
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, Oscar V. Harley, Sr.

in the State aforesaid for and in consideration of the sum of Five Dollars and other valuable consideration to me in hand paid at and before the sealing of these presents by Steven R. Gaston and Lynn B. Gaston, 1310 Fourth Street, Newberry, S. C.

in the State aforesaid Newberry County the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

Steven R. Gaston and Lynn B. Gaston, their heirs and assigns:

All that certain piece, parcel or tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing twelve and 64/100 (12.64) acres, more or less, fronting Northeast on Highway No. 76, and being otherwise bounded on the East, South, West and North by lands of Sule S. Harley, said premises being more particularly described on plat recorded in the office of the Clerk of Court for Newberry County in Plat Book "U" at page 31 and being the identical property conveyed to the grantor by deed of L. K. Bedenbaugh, dated December 7, 1967, and recorded in Deed Book 95 at page 85.

ALSO, all that piece, parcel or tract of land, situate, lying and being in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing seven and 17/100 (7.17) acres, more or less, being bounded by U. S. Highway 76, by lands above described, by lands of Sule S. Harley, and by a dirt road which seperates the premises from lands of Ballentine and being the identical premises conveyed to the grantor by deed of L. K. Bedenbaugh, dated December 7, 1967, and recorded in Deed Book 95 at page 85.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Steven R. Gaston and Lynn B. Gaston, their Heirs and Assigns forever.

AND I do hereby bind myself, my Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Steven R. Gaston and Lynn B. Gaston, their Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 22nd day of February in the year of our Lord one thousand nine hundred and Seventy-One, in the one hundred and Ninety-Fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

/s/ Gordon N. Clarkson
/s/ Peggy S. Boozer

/s/ Oscar V. Harley, Sr. (L. S.)
(L. S.)

THE STATE OF SOUTH CAROLINA, NEWBERRY County.

PERSONALLY appeared before me Peggy S. Boozer and made oath that she saw the within-named Oscar V. Harley, Sr. sign, seal and as his act and deed, deliver the within-written Deed, and that she with Gordon N. Clarkson witnessed the execution thereof.

SWORN to before me, this 22nd day of February, A. D. 19 71

/s/ Gordon N. Clarkson (L. S.)
Notary Public for S. C. Notarial Seal

/s/ Peggy S. Boozer

My commission expires August 27, 1979

THE STATE OF SOUTH CAROLINA, NEWBERRY County.

RENUNCIATION OF DOWER

I, Gordon N. Clarkson, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Sule S. Harley the wife of the within-named Oscar V. Harley, Sr. did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Steven R. Gaston and Lynn B. Gaston, their Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 22nd day of February, Anno Domini 19 71

/s/ Gordon N. Clarkson (L. S.)
Notary Public for S. C. Notarial Seal

(SEAL) /s/ Sule S. Harley

My commission expires August 27, 1979

A true record February 23, 19 71 11:00 A.M. Mildred R. Harmon, (h)

C. C. C. P.

EXHIBIT P-14
Blumberg No. 5118
PLAINTIFF'S EXHIBIT 14 EJD 1-6-2020
PENGAD 800-631-6989

Deed
Book 109

270

Affidavit book # 8, page 185.
Stamps--State $49.00-----Recording Stamp Fee of $26.95 Paid

Form 1. Book No. 109

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY.

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.
DEC 14 2017
Elizabeth P Folk
Clerk of Court

KNOW ALL MEN BY THESE PRESENTS, That I, Sula S. Miller Harley,

in the State aforesaid for and in consideration of the sum of Five and No/100 ($5.00)----------Dollars and other valuable considerations
to me in hand paid at and before the sealing of these presents by James L. Braswell, Route 3, Newberry, South Carolina 29108

in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

James L. Braswell, his Heirs and Assigns, forever:

All that piece, parcel or tract of land containing one hundred twenty and eighty-one-hundredths (120,80) acres, more or less, situate, lying and being in Tax District No. 3, in the County of Newberry, State of South Carolina, said property being bounded by lands of Harold Long, by lands of William Ballentine; by lands of Sula S. Miller, and by lands of Henry Parr. This tract of land is more particularly described on a Plat made by Claude E. Johnson, L. S. 1373, surveyed May 1962- September 1964 - October 1971, and recorded in the office of the Clerk of Court for Newberry County in Plat Book AG at page 28. This is a portion of the property conveyed to A. B. Miller and Sula S. Miller by deed dated March 14, 1960, and recorded in the office of the Clerk of Court for Newberry County in Deed Book 75 at page 575, and a portion of the property inherited by Sula S. Miller from the Last Will and Testament of A. B. Miller on file in the office of the Probate Judge for Newberry County.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said James L. Braswell, his Heirs and Assigns forever.

AND I do hereby bind myself and my Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said James L. Braswell, his Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS My Hand and Seal, this 20th day of June in the year of our Lord one thousand nine hundred and seventy-two, in the one hundred and ninety-sixth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

/s/ Nellie W. Welborn
/s/ Eugene C. Griffith

/s/ Sula S. Miller Harley (L. S.)
(L. S.)

THE STATE OF SOUTH CAROLINA, NEWBERRY County.

PERSONALLY appeared before me Eugene C. Griffith and made oath that he saw the within-named Sula S. Miller Harley sign, seal and as her act and deed, deliver the within-written Deed, and that he with Nellie W. Welborn witnessed the execution thereof.

SWORN to before me, this 20th day of June, A. D. 19 72

/s/ Nellie W. Welborn (L. S.)
Notary Public for S. C.
My commission expires Nov. 16, 1980.

/s/ Eugene C. Griffith

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER GRANTOR IS A MAN.

I, , Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

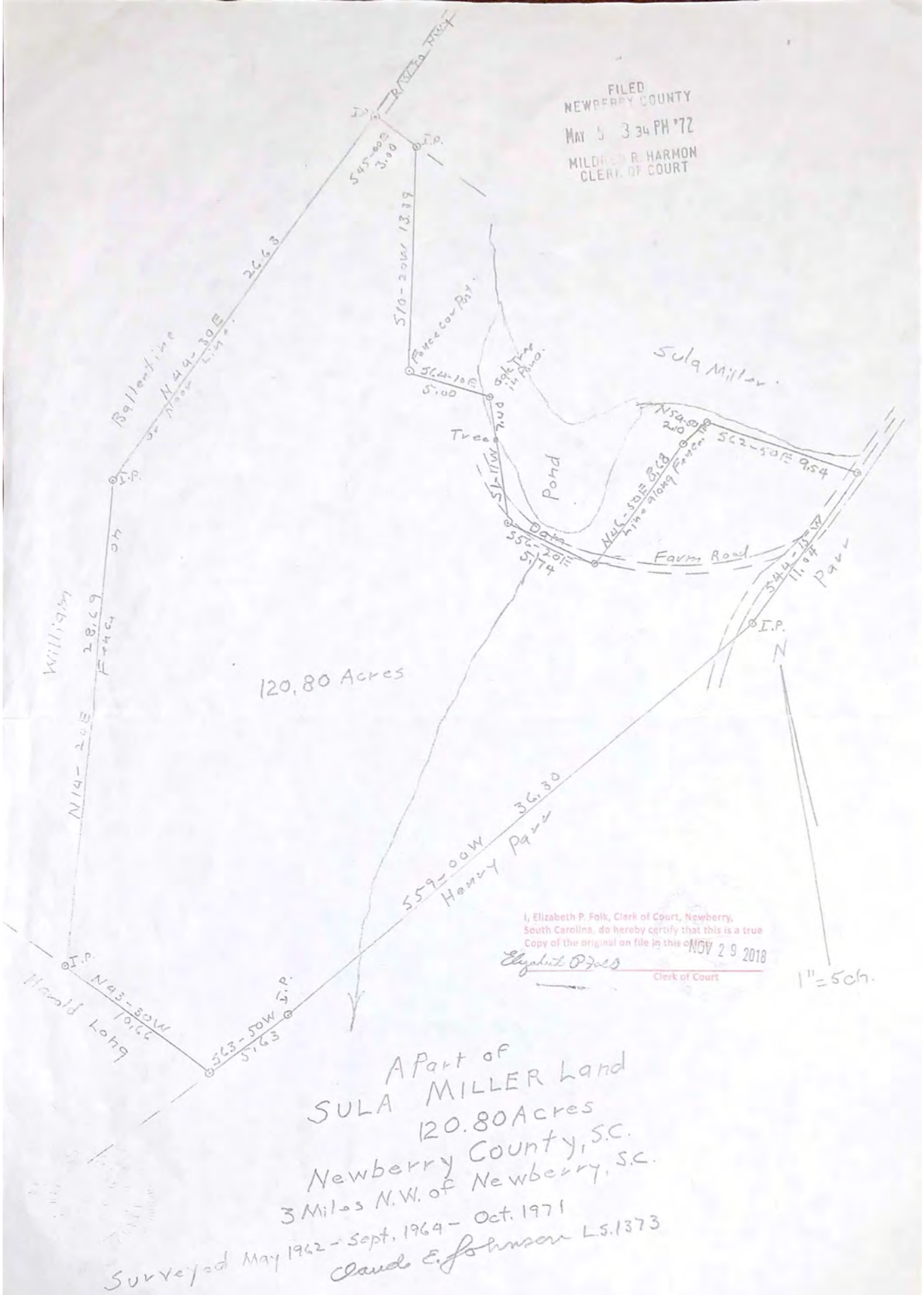
Given under my Hand and Seal, this day of , Anno Domini 19

(L. S.)
Notary Public for S. C.

(SEAL)

A true record June 20 19 72 1:37 P M Mildred R. Harmon, (b)
C. C. C. P.

EXHIBIT P-15
Blumberg No. 5118
PLAINTIFF'S EXHIBIT 15 WM
1-6-2020
PENGAD 800-631-6989



A Part of
SULA MILLER Land
120.80 Acres
Newberry County, S.C.
3 Miles N.W. of Newberry, S.C.
Surveyed May 1962 - Sept. 1964 - Oct. 1971
Claude E. Johnson L.S. 1373

EXHIBIT
P-16

PLAINTIFF'S
EXHIBIT
16
1-6-2020

Deed Book 109

560

Stamps--State $6.00---Recording Stamp Fee of $3.30 Paid

Form 1. Book No. 109

TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY

KNOW ALL MEN BY THESE PRESENTS, That we, Steven R. Gaston and Lynn B. Gaston

in the State aforesaid for and in consideration of the sum of Three Thousand ($3,000.00) Dollars and the assumption of mortgage dated December 7, 1967 and recorded in the Office of the Clerk of Court for Newberry County in Mortgage Book 126 at Page 39.

to us in hand paid at and before the sealing of these presents by Grady Tarlton, Route 3, Newberry, S. C.

in the State aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

GRADY TARLTON, HIS HEIRS AND ASSIGNS:

All that piece, parcel or tract of land, situate, lying and being in Tax District No. 3, County of Newberry, State of South Carolina, containing 12.64 acres, more or less, fronting on the Northeast by Highway 76 and now or formerly otherwise bounded on the East, South, West and North by lands of Sula S. Harley, the same premises being more particularly described on a plat recorded in Plat Book "U" at Page 31. ALSO, all that piece, parcel or tract of land in the County of Newberry, State of South Carolina, containing 7.17 acres, more or less, and bounded by U. S. Highway 76 by the lands herein before described (lands of Sula S. Harley) and by a dirt road which separates the premises from lands of Ballentine.

This being the identical lands conveyed to Steven R. Gaston and Lynn B. Gaston by deed of Oscar V. Harley, Sr. dated February 22, 1971 and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 103 at Page 278.

LESS, HOWEVER, All that certain piece, parcel or lot of land situate in the County of Newberry, State of South Carolina, Tax District No. 3, containing 1.35 acres, the same fronting on U. S. Highway 76 for a distance of 158.7 feet by which it is bounded on the Northeast and being otherwise bounded on the Southeast by a farm road (the center being the line) which separates this tract from the lands of Sula Miller and being otherwise bounded by lands of Steven R. Gaston and Lynn B. Gaston today being conveyed to Grady Tarlton. The 1.35 acres being more particularly described on a plat prepared for Steve Gaston by Walton B. Halfacre, Dated October 4, 1972 which plat is recorded in the Office of the Clerk of Court for Newberry County in Plat Book AG at Page 200.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Grady Tarlton, his Heirs and Assigns forever.

AND we do hereby bind ourselves, our Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said Grady Tarlton, his Heirs and Assigns, against us and our Heirs and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS our Hand & and Seal & , this 10th day of October in the year of our Lord one thousand nine hundred and Seventy Two , in the one hundred and Ninety-seventh year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

/s/ James N. Parr

/s/ Valeria S. Bowers

/s/ Steven R. Gaston (L. S.)

/s/ Lynn B. Gaston (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Valeria S. Bowers and made oath that she saw the within-named Steven R. and Lynn B. Gaston sign, seal and as their act and deed, deliver the within-written Deed, and that she with James N. Parr witnessed the execution thereof.

SWORN to before me, this 10th day of October, A. D. 19 72

/s/ James N. Parr (L. S.)

Notary Public for S. C.

My commission expires 12-29-80

/s/ Valeria S. Bowers

THE STATE OF SOUTH CAROLINA, Newberry County.

RENUNCIATION OF DOWER

I, James N. Parr, Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. Lynn B. Gaston the wife of the within-named Steven R. Gaston did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Grady Tarlton, his Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 10th day of October, Anno Domini 10 72

/s/ James N. Parr (L. S.)

Notary Public for S. C.

My commission expires 12-29-80

A true record October 24, 10 ...ynn B. Gaston ...on, (b)

C. C. C. P.

I, Elizabeth P. Fork, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy on file in this office.
NOV 29 2018
Clerk of Court

EXHIBIT P-17
Blumberg No. 5118

PLAINTIFF'S EXHIBIT 17
1-6-2020
PENGAD 800-631-6989

TITLE TO REAL ESTATE — FORM 14-9
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

State of South Carolina,
COUNTY OF NEWBERRY.

Know All Men By These Presents, That I, Grady Tarlton,----------



RECORDING STAMP FEE
of $ 22.55 PAID
Geo. W. Summer, C'ty Treas.

FILED
NEWBERRY COUNTY
SEP 11 1 00 PM '79
MILDRED R. HARMON
CLERK OF COURT

in the State aforesaid ----------for and---------- in consideration of the sum of Five and No/100 ($5.00) Dollars, and other valuable considerations---------- to ---me---- paid by H. L. Brock and Thelma D. Brock, Route 2, Box 162, Newberry, South Carolina 29108---------- in the State aforesaid,---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said H. L. Brock and Thelma D. Brock, their heirs and assigns, forever:

All that certain piece, parcel or tract of land, consisting of 17.080 acres, more or less, located on U. S. Highway No. 76, in the County of Newberry, State of South Carolina, with the following buttings, boundings and delineations, to-wit: beginning at the northernmost point and running in a southeasterly direction along the right-of-way of U. S. Highway No. 76 for a distance of 268.43 feet to an iron pin; thence running in a southwesterly direction along the tract of land conveyed to Grace K. Tarlton by the grantor on even date for a distance of 410 feet to an iron pin; thence running in a southeasterly direction along the tract of land conveyed on even date to Grace K. Tarlton for a distance of 290 feet to an iron pin; thence running in a southwesterly direction along the right-of-way of a farm road and the lands now or formerly of Sula Miller Harley for a distance of 457.53 feet to an iron pin; thence running along the lands, now or formerly, of Sula Miller Harley, in the aggragate of 320.22 feet to an iron pin located in a pond; thence running in a northwesterly direction along the lands of James Braswell for a distance of 329.31 feet to an iron pin; thence running in a northeasterly direction for a distance of 887.27 feet along the lands of James Braswell to an iron pin; thence running in a northwesterly direction for a distance of 198.05 feet to an iron pin; thence running in a northeasterly direction along the lands of William Ballentine for a distance of 604.97 feet to an iron pin, the point of beginning. Reference is hereby craved to and incorporated as a part of this description to a plat entitled

(over)

Affidavit Bk. 12 Pg. 148

County — COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

PLAINTIFF'S EXHIBIT 18
1-6-2020
PENGAD 800-631-6989

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
NOV 29 2018
Clerk of Court

EXHIBIT Pl8
Blumberg No. 5116

"Tarlton Tract", prepared by Claude E. Johnson, L. S., dated August 14, 1979, which plat is of record in the office of the Clerk of Court for Newberry County in Plat Book A11, at page 114. This is part of the same property purchased by the grantor herein from Steven R. Gaston and Lynn Gaston by deed recorded in the office of the Clerk of Court for Newberry County in Deed Book 109, at page 560.

The grantor herein is also conveying all right, title and interest which he has in a twenty-five (25) foot right-of-way which is located on the eastern boundary of the property herein conveyed and on the eastern boundary of the 2.996 acre tract conveyed on even date pursuant to a Divorce Decree signed by the Honorable Curtis G. Shaw, on July 13, 1979, to the former wife of the grantor herein, Grace K. Tarlton.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

H. L. Brock and Thelma D. Brock, their----------

Heirs and Assigns forever

And ---I------ do hereby bind ----------myself and my---------- Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

H. L. Brock and Thelma D. Brock, their----------

Heirs and Assigns, against me and ----------my---------- Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS My Hand and Seal this ----7th-------- day of September----------

in the year of our Lord one thousand nine hundred and seventy-nine----------

and in the two hundred and fourth---------- year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of

Grady C. Tarlton (SEAL)
Grady Tarlton

(SEAL)

STATE OF SOUTH CAROLINA,
Newberry County

Personally appeared before me ---------Robert E. Summer, Jr.----------
and made oath that he saw the within named Grady Tarlton----------
sign, seal and as his------ act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that he, with -------Ken W. Riebe---------- witnessed the execution thereof.

SWORN to before me this 7th---------
day of September-------- 19 79.
Mark D. Nation (L. S.)
Notary Public of S. C.
My Commission expires: Expires August 7, 1982.

Robert E. Summer, Jr.

STATE OF SOUTH CAROLINA,
Newberry County

RENUNCIATION OF DOWER

I, Mark D. Nation, a Notary Public for S. C.------ do hereby certify unto all whom it may concern, that Mrs. Donna K. Tarlton----------
the wife of the within named Grady Tarlton----------
did this day appear before me, and upon being privately and separetely examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named H. L. Brock and Thelma D. Brock, their---------
heirs

and assigns, all her interest and estate, and also her rights and Claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 7th------
day of September----------
Anno Domini 19 79.
Mark D. Nation (L. S.)
Notary Public of S. C.
My Commission expires: Expires August 7, 1982.

Donna K. Tarlton

State of South Carolina

COUNTY OF NEWBERRY.

Grady Tarlton,

TO

H. L. Brock and Thelma D. Brock,
Route 2, Box 162
Newberry, South Carolina 29108

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at M o'clock on the day of 19 , and was immediately entered upon the proper indexes and duly recorded in Book of Deeds, page

Clerk of Court of Common Pleas and General Sessions for County, S. C.

I hereby certify that the within Deed has been this day of , A. D. 19 , Recorded in Book of Deeds, page

Auditor for County

— COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

Deed Book 165

412



TARLTON TRACT
Newberry County, S.C
Approx 3 Miles N.W. of Newberry S.C
on U.S. Highway #76
This Plat drawn from Survey and
Plats in 1964. House Lot cut out
this date.
Bearings and Distances adjusted for
closure. Area by D.M.D.
Aug. 19, 1977 Chas. E. Pearson
1373
R#3 Box #12 Newberry S.C.

FILED
NEWBERRY COUNTY
SEP 11 1 00 PM '79
MILDRED H. HARMON
CLERK OF COURT

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
NOV 29 2018
Elizabeth P. Folk
Clerk of Court

PLAINTIFF'S EXHIBIT 19
1-6-2020
PENGAD 800-631-6989

EXHIBIT P-19
Blumberg No. 5118

TITLE TO REAL ESTATE — FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

State of South Carolina,
COUNTY OF NEWBERRY.

WHEREAS, previously hereto the grantor herein, Grady Tarlton, conveyed to H. L. Brock and Thelma D. Brock a 17.080 acre tract of land on U. S. Highway No. 76 in the County of Newberry, State of South Carolina, and wishes to correct the interest conveyed by executing a new deed,

Know All Men By These Presents. That I, Grady Tarlton,----------

FILED
NEWBERRY COUNTY
Nov 29 1 29 PM '79
MILDRED H. HARMON
CLERK OF COURT

in the State aforesaid ----------for and---------- in consideration of the sum of Five Dollars, and no other considerations----------
to ---me-----paid by H. L. Brock and Thelma D. Brock, Route 2, Box 162, Newberry, South Carolina 29108----------
in the State aforesaid,----------the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said H. L. Brock and Thelma D. Brock, their heirs and assigns, forever:

All my right, title and interest in and to all that certain piece, parcel or tract of land, consisting of 17.080 acres, more or less, located on U. S. Highway No.76, in the County of Newberry, State of South Carolina, with the following buttings, boundings and delineations, to-wit: beginning at the northernmost point and running in a southeasterly direction along the right-of-way of U. S. Highway No. 76 for a distance of 268.43 feet to an iron pin; thence running in a southwesterly direction along the tract of land conveyed to Grace K. Tarlton by the grantor on even date for a distance of 410 feet to an iron pin; thence running in a southeasterly direction along the tract of land conveyed to Grace K. Tarlton for a distance of 290 feet to an iron pin; thence running in a southwesterly direction along the right-of-way of a farm road and the land s now or formerly of Sula Miller Harley for a distance of 457.53 feet to an iron pin; thence running along the lands, now or formerly, of Sula Miller Harley in the aggregate of 320.22 feet to an iron pin located in a pond; thence running in a northwesterly direction along the lands of James Braswell for a distance of 329.31 feet to an iron pin; thence running in a northeasterly direction for a distance of 887.27 feet along the lands of James Braswell to an iron pin; thence running in a northwesterly direction for a distance of 198.05 feet to an iron pin; thence running in a northeasterly direction along the lands of William Ballentine for a distance of 604.97 feet to an iron pin, the point of beginning. Reference is hereby craved to and incorporated as a part of this description to a plat entitled "Tarlton Tract',

(over)

10

PLAINTIFF'S EXHIBIT 20
PENGAD 800-631-6989
1-6-2020

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.
NOV 29 2018
Elizabeth P. Folk
Clerk of Court

EXHIBIT P-20
Blumberg No. 5118

prepared by Claude E. Johnson, L. S., dated August 14, 1979, which plat is of record in the office of the Clerk of Court for Newberry County in Plat Book AU, at page 114. This is a part of the same property purchased by the grantor herein from Steven R. Gaston and Lynn Gaston by deed recorded in the office of the Clerk of Court for Newberry County in Deed Book 109, at page 560.

The grantor herein is also conveying all right, title and interest which he has in a twenty-five (25) foot right-of-way which is located on the eastern boundary of the property herein conveyed and on the eastern boundary of the 2.996 acre tract of land conveyed on even date pursuant to a Divorce Decree signed by the Honorable Curtis G. Shaw, on July 13, 1979, to the former wife of the grantor herein, Grace K. Tarlton.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

H. L. Brock and Thelma D. Brock, their----------

Heirs and Assigns forever.

And ---I------ do hereby bind ---------myself and my---------- Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

H. L. Brock and Thelma D. Brock, their----------

Heirs and Assigns, against me and ---------my---------- Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS My Hand and Seal this -----16th-------- day of November----------

in the year of our Lord one thousand nine hundred and seventy-nine----------

and in the two hundred and fourth---------- year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of

Grady Tarlton (SEAL)

Grady Tarlton

(SEAL)

STATE OF SOUTH CAROLINA,
Newberry County

Personally appeared before me ---------Marvin F. Kittrell----------
and made oath that he saw the within named Grady Tarlton----------
sign, seal and as his------ act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that he, with ---------Vickie K. Zobel---------- witnessed the execution thereof.

SWORN to before me this 16th----------
day of November--------- 19 79.
Vickie K. Zobel (L.S.)
Notary Public of S. C.
My Commission expires August 26, 1985.

Marvin F. Kittrell

STATE OF SOUTH CAROLINA,
Newberry County

RENUNCIATION OF DOWER

I, Marvin F. Kittrell------, a Notary Public for S. C.------, do hereby certify unto all whom it may concern, that Mrs. Donna K. Tarlton----------
the wife of the within named Grady Tarlton----------
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named H. L. Brock and Thelma D. Brock, their---------
heirs

and assigns, all her interest and estate, and also her rights and Claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 16th----
day of November----------
Anno Domini 1979.
Marvin F. Kittrell (L.S.)
Notary Public of S. C.
My Commission expires June 22, 1981

Donna K. Tarlton
Donna K. Tarlton

B & B.

State of South Carolina

COUNTY OF NEWBERRY.

Grady Tarlton,

TO

H. L. Brock and Thelma D. Brock,
Route 2, Box 162
Newberry, South Carolina 29108

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at M o'clock on the day of 19 , and was immediately entered upon the proper indexes and duly recorded in Book of Deeds, page

Clerk of Court of Common Pleas and General Sessions for County, S. C.

I hereby certify that the within Deed has been this day of , A. D. 19 , Recorded in Book of Deeds, page

Auditor for County

— COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

Deed Book 167

Deed Book 283 page 183 HK

01829

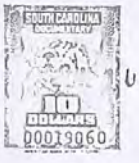
TITLE TO REAL ESTATE — FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

State of South Carolina,
COUNTY OF NEWBERRY.

AFFIDAVIT

Know All Men By These Presents. That we, H. L. Brock and Thelma D. Brock, of the County of Newberry,----------





1988

FILED
NEWBERRY COUNTY
JUN 10 3 38 PM '88
ELLOUISE O. SETZLER
CLERK OF COURT

RECORDING STAMP FEE
OF $ 23 00
GEO. W. SUMMER, CTY. TREAS.

in the State aforesaid ----------for and---------- in consideration of the sum of

to ----us----- paid by James Franklin Amick and Tamela F. Amick, 4007 1/2 College Street, Newberry, South Carolina 29108---------- in the State aforesaid, ---------- the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said James Franklin Amick and Tamela F. Amick, their heirs and assigns, forever:

All that certain piece, parcel or tract of land, consisting of 17.080 acres, more or less, located on U. S. Highway No. 76, in the County of Newberry, State of South Carolina, with the following buttings, boundings and delineations, to-wit: beginning at the northernmost point and running in a southeasterly direction along the right-of-way of U. S. Highway No. 76 for a distance of 268.43 feet to an iron pin; thence running in a southwesterly direction along the tract of land conveyed to Grace K. Tarlton by Grady Tarlton for a distance of 410 feet to an iron pin; thence running in a southeasterly direction along the tract of land conveyed to Grace K. Tarlton for a distance of 290 feet to an iron pin; thence running in a southwesterly direction along the right-of-way of a farm road and the lands now or formerly of Sula Miller Harley for a distance of 457.53 feet to an iron pin; thence running along the lands, now or formerly, of Sula Miller Harley in the aggregate of 320.22 feet to an iron pin located in a pond; thence running in a northwesterly direction along the lands of James Braswell for a distance of 329.31 feet to an iron pin; thence running in a northeasterly direction for a distance of 887.27 feet along the lands of James Braswell to an iron pin; thence thence running in a northwesterly direction for a distance of 198.05 feet to an iron pin; thence running in a northeasterly direction along the lands of William Ballentine for a distance of 604.97 feet to an iron pin, the point of beginning. Reference is hereby craved to and incorporated as a part of this description to a plat entitled "Tarlton Tract", prepared by Claude E. Johnson, L. S., dated August 14, 1979, which plat is of record in the office of the Clerk of Court for Newberry County in Plat Book AU, at page 114.

ALSO, all our right, title and interest which we own in a twenty-five (25) foot right-of-way which is located on the eastern boundary of the property herei

I, Elizabeth Y. Crapse, Clerk of Court for Newberry County, South Carolina, do hereby certify that this is a true and correct copy of the original on file in my office.
NOV 29 2018
Clerk of Court

EXHIBIT
P-21
Blumberg No. 5118

PLAINTIFF'S EXHIBIT
21
PENGAD 800-631-6989

conveyed and on the eastern boundary of a 2.996 acre tract conveyed to Grace Tarlton September 7, 1979.

This is the identical property conveyed to the grantors herein by deed of Grady Tarlton dated September 7, 1979, recorded in the office of the Clerk of Court for Newberry County in Deed Book 165, at page 6.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said James Franklin Amick and Tamela F. Amick, their---------- Heirs and Assigns forever

And ---we----- do hereby bind ---------ourselves and our---------- Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said James Franklin Amick and Tamela F. Amick, their---------- Heirs and Assigns, against --us-- and our---------- Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS Our Hands and Seals this 8th---------- day of June----------

in the year of our Lord one thousand nine hundred and eighty-eight----------

and in the two hundred and ---------twelfth---------- year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of

Vickie W. Zobel

Nellie N. Shelburne

W. L. Brock (SEAL)

Thelma D. Brock (SEAL)

Thelma D. Brock

STATE OF SOUTH CAROLINA,
Newberry County

Personally appeared before me ---------Vickie K. Zobel----------
and made oath that she saw the within named H. L. Brock and Thelma D. Brock----------
sign, seal and as --their--- act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that he, with ----------Nellie W. Welborn---------- witnessed the execution thereof.

SWORN to before me this 8th---------
day of June---------- 19 88
Nellie W. Welborn (L.S.)
Notary Public of S. C.

Vickie K. Zobel
Vickie K. Zobe

My Commission expires: November 21, 1990.

STATE OF SOUTH CAROLINA,
COUNTY OF NEWBERRY.

~~H. L. Brock and Thelma D. Brock~~
Grantor

TO

James Franklin Amick
and Tamela F. Amick,
Grantee.

FILED
NEWBERRY COUNTY
JUN 10 3 55 PM '88
ELLEE S. SETZLER
CLERK OF COURT

AFFIDAVIT AS TO TRUE CONSIDERATION

PERSONALLY APPEARED H. L. Brock---------- who, being duly sworn, deposes and says that the true and full consideration for the conveyance as set out in the above stated deed does not exceed the sum of Twenty Thousand and No/100---------- Dollars.

SWORN to before me this 8th day of June---------, 19 88.
Nellie W. Welborn (L.S.)
Notary Public for South Carolina.
My Commission expires November 21, 1990

H L Brock

State of South Carolina

COUNTY OF NEWBERRY.

H. L. Brock and Thelma D. Brock

TO

James Franking Amick and
Tamela F. Amick,
4007 1/2 College Street,
Newberry, South Carolina 29108

FILED
NEWBERRY COUNTY
JUN 10 3 38 PM '88
ELLEN [illegible] SETZLER
CLERK OF COURT

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 3:38 P. M o'clock on the 10 day of June 19 88, and was immediately entered upon the proper indexes and duly recorded in Book 283 of Deeds, page 182

Clerk of Court of Common Pleas and General Sessions for Newberry County, S. C.

I hereby certify that the within Deed has been this 13 day of June, A. D. 19 88, Recorded in Book V of Deeds, page 3-8

for Newberry County

— COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

Deed Book 283 page 182

Deed Book 467 242

TITLE TO REAL ESTATE — FORM 14-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

State of South Carolina,
COUNTY OF NEWBERRY

DEED ONLY - TITLE NOT EXAMINED BY THIS OFFICE

FP

5508

Filed this AUG 27 1997
Book 467 Page 242
Clerk of Court, Newberry Co., S. C.
By Joshua Bowers

Know All Men By These Presents, That

I, Tamela F. Amick,

FILED
97 AUG 27 AM 9:56
CLERK OF COURT

STATE OF SOUTH CAROLINA
DOCUMENTARY TAX FEES
Exempt

in the State aforesaid in consideration of the sum of Five and no/100 ($5.00) Dollars, love and affection to my husband, to me paid by James Franklin Amick, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, by these presents do grant, bargain, sell and release unto the said JAMES FRANKLIN AMICK, his heirs and assigns forever:

All my right, title and legal and equitable interest in and to the following property:

All that certain piece, parcel or tract of land, consisting of 17.080 acres, more or less, located on U.S. Highway No. 76, in the County of Newberry, State of South Carolina with the following buttings, boundings and delineations, to wit: Beginning at the Northernmost point and running in a southeasterly direction along the right-of-way of U.S. Highway No. 76 for a distance of 268.43 feet to an iron pin; thence running in a southwesterly direction along the tract of land previously conveyed to Grace K. Tarlton by Grady Tarlton for a distance of 410 feet to an iron pin; thence running in a southeasterly direction along the tract of land conveyed previously to Grace K. Tarlton for a distance of 290 feet to an iron pin; thence running in a southwesterly direction along the right-of-way of a farm road and the lands now or formerly of Sula Miller Harley for a distance of 457.50 feet to an iron pin; thence running along the lands, now or formerly, of Sula Miller Harley in the aggregate of 320.22 feet to an iron pin located in a pond; thence running in a northwesterly direction along the lands now or formerly of James Braswell for a distance of 329.31 feet to an iron pin; thence running in a northeasterly direction for a distance of 887.27 feet along the lands of James Braswell, now or formerly, to an iron pin; thence running in a northwesterly direction for a distance of 198.05 feet to an iron pin; thence running in a northeasterly direction along the lands, now or formerly, of William Ballentine for a distance of 604.97 feet to an iron pin, the point of beginning. Reference is hereby craved to and incorporated as a part of this description to a plat entitled "Tarlton Tract", prepared by Claude E. Johnson, L.S., dated August 14, 1979, which plat is of record in the office of the Clerk of Court for Newberry County in Plat Book AU, at page 114..

ALSO, a twenty-five (25') foot right-of-way which is located on the eastern boundary of

(CONVINUED, OVER)

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of a deed on file in this office.
NOV 29 2018
Clerk of Court

EXHIBIT P-22

PLAINTIFF'S EXHIBIT 22 EM 462020

(LEGAL DESCRIPTION, CONTINUED FROM PAGE 1)

the property herein conveyed and on the eastern boundary of a 2.996 acre tract conveyed to Grace Tarlton on September 7, 1979.

This is the identical property conveyed to James Franklin Amick and Tamela F. Amick by deed of H. L. Brock and Thelma D. Brock, dated June 8, 1988, and recorded in the office of the Clerk of Court for Newberry County on June 10, 1988, at 3:38 p.m., in Deed Book 283, at page 183.

ALSO: All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, in Tax District No. 1 Outside, said lot being bounded by the right of way of Highway 76, by lands, now or formerly, of Ruth F. Bouknight, Thelma Bollinger, Williene W. Shealy and the Civitan Club. The within property is designated as 2727 Wilson Road, Newberry, South Carolina, and is Tax Map No. 284-A-9. This property is designated as Lots A & B on plat recorded in the office of the Clerk of Court for Newberry County in Plat Book I, at page 192.

This is the identical property conveyed to James F. Amick and Tamela F. Amick, by deed of Ruth F. Bouknight, dated April 21, 1989, and recorded in the office of the Clerk of Court for Newberry County on April 21, 1989, in Deed Book 301, at page 94.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said

James Franklin Amick, his

Heirs and Assigns forever

And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

James Franklin Amick, his

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 20th day of August in the year of our Lord one thousand nine hundred and ninety-seven and in the two hundred and twenty-first year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the presence of

Susan P. Fulmer

[illegible]

Tamela F. Amick (SEAL)

(SEAL)

Deed Book 467 Page 244

STATE OF SOUTH CAROLINA,
NEWBERRY County

Personally appeared before me W. Frank Partridge, Jr.
and made oath that he saw the within named Tamela F. Amick
sign, seal and as her act and deed, deliver the within written Deed for the uses and purposes therein
mentioned, and that he, with Susan R. Fulmer witnessed the
execution thereof.

SWORN to before me this 20th
day of August, 1997.
Susan R. Fulmer (L. S.)
Notary Public of S. C.

My Commission expires: 7-12-2003

NEWBERRY COUNTY
ASSESSOR
228-16.
TAX MAP # 284-1-9
PART OF MAP #
TAX YEAR 1998
BY CB

Deed Book 467 - 245

State of South Carolina

COUNTY OF NEWBERRY

TAMELA F. AMICK

TO

JAMES FRANKLIN AMICK
2727 Wilson Road
Newberry, S.C. 29108

TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for record in my office at 9:56 A M o'clock on the 27 day of August 19 97, and was immediately entered upon the proper indexes and duly recorded in Book 467 of Deeds, page 242

Cachus Bowers

Clerk of Court of Common Pleas and General Sessions for Newberry County, S. C.

I hereby certify that the within Deed has been this 4th day of September A. D. 19 97, Recorded in Book Reg # 15,068 of Deeds, page

Nancy P. Owen (mc) Auditor for Newberry County

FILED
97 AUG 27 AM 9:56
CLERK OF COURT

COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

Deed Book 467 246

AFFIDAVIT

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

1. Property located at 2727 Wilson Road, Newberry, SC, bearing Newberry County Tax Map Number 284-A-9, was transferred by Tamela F. Amick to James Franklin Amick on August 20, 1997.

The transaction was (Check one):

_____ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $ _____ *.

_____ not an arm's length real property transaction and the fair market value of the property is $ _____ *.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is (See back of affidavit.): transfer from wife to husband

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(Tamela F. Amick)
Purchaser, Legal Representative of the Purchaser, or other Responsible Person Connected with the Transaction
GRANTOR

SWORN to before me this 20th day of August 19 97.
(Susan R. Bulow)
Notary Public for S.C.
My Commission Expires: 7-12-2003

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

42

ELECTRONICALLY FILED - 2018 Aug 17 4:14 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No.: 2017-CP-36-00214
James L. Braswell, Sr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S FIRST SET OF
	)	REQUESTS TO ADMIT TO DEFENDANT
James F. Amick,	)	JAMES F. AMICK
	)	
Defendants.	)	
	)	

TO: DEFENDANT JAMES F. AMICK:

Pursuant to Rule 36, SCRCP, you are hereby required to answer or object to the following Requests for Admission within thirty (30) days from the date of service.

For purposes of these Requests to Admit, the following terms shall be used:

A. Braswell Property: Real property located in Newberry County containing approximately 120.80 acres. Said property was conveyed to James L. Braswell, Sr. by deed of Sula S. Miller dated June 20, 1972 and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 109 at page 270. A copy of the deed is attached hereto as Exhibit A.

B. Amick Property: Real property located in Newberry County, where said real property was conveyed to James F. Amick by deed of H.L. Brock and Thelma D. Brock dated June 8, 1988 and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 283 at page 183. A copy of the deed is attached hereto as Exhibit B.

C. Easement: The easement claimed by Mr. Braswell to exist over, across, and through the western side of the Amick Property between the Braswell Property and Highway 76.





D. Braswell Plat: That plat entitled "A Part of Sula Miller Land, 120.80 Acres, Newberry County, SC, 3 Miles N.W. of Newberry, S.C., Surveyed May 1962 – Sept. 1964 – Oct. 1971" by Claude E. Johnson, L.S. 1373 and recorded in the Office of the Clerk of Court for Newberry County on May 5, 1972. A copy of which is attached hereto as Exhibit C.

REQUESTS TO ADMIT

1. Please admit that you knew the Plaintiff, James L. Braswell, Sr., farmed the Braswell Property prior your purchase of the Amick Property in 1988.

2. Please admit that you knew the Plaintiff, James L. Braswell, Sr., accessed the Braswell Property from Highway 76 by using the Easement prior to your purchase of the Amick Property.

3. Please admit that you knew the Plaintiff, James L. Braswell, Sr., accessed the Braswell Property by using the Easement after your purchase of the Amick Property.

4. Please admit that your primary residence is in Laurens County, South Carolina.

5. Please admit that you receive the residential property ad valorem tax rate of 4% on the Amick Property.

6. Please admit that you claim fee ownership of the property, either by adverse possession, acquiescence, or otherwise, to the fence between you, the Amick Property, and the property now owned by Mr. Long.

7. Please admit that the road marked as "R/W to HWY" as shown on the Braswell Plat is entirely on the Amick Property.

8. Please admit that now you own, either by adverse possession, acquiescence, or otherwise, the land on which the dirt road referred to in the deeds attached hereto as Exhibits D through H.

ELECTRONICALLY FILED - 2018 Aug 17 4:14 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

9. Please admit that Mr. Braswell has accessed the Braswell Property using the Easement as necessary with equipment that is in excess of 12.5 feet in width since you purchased the Amick Property.

HARRELL, MARTIN & PEACE, P.A.

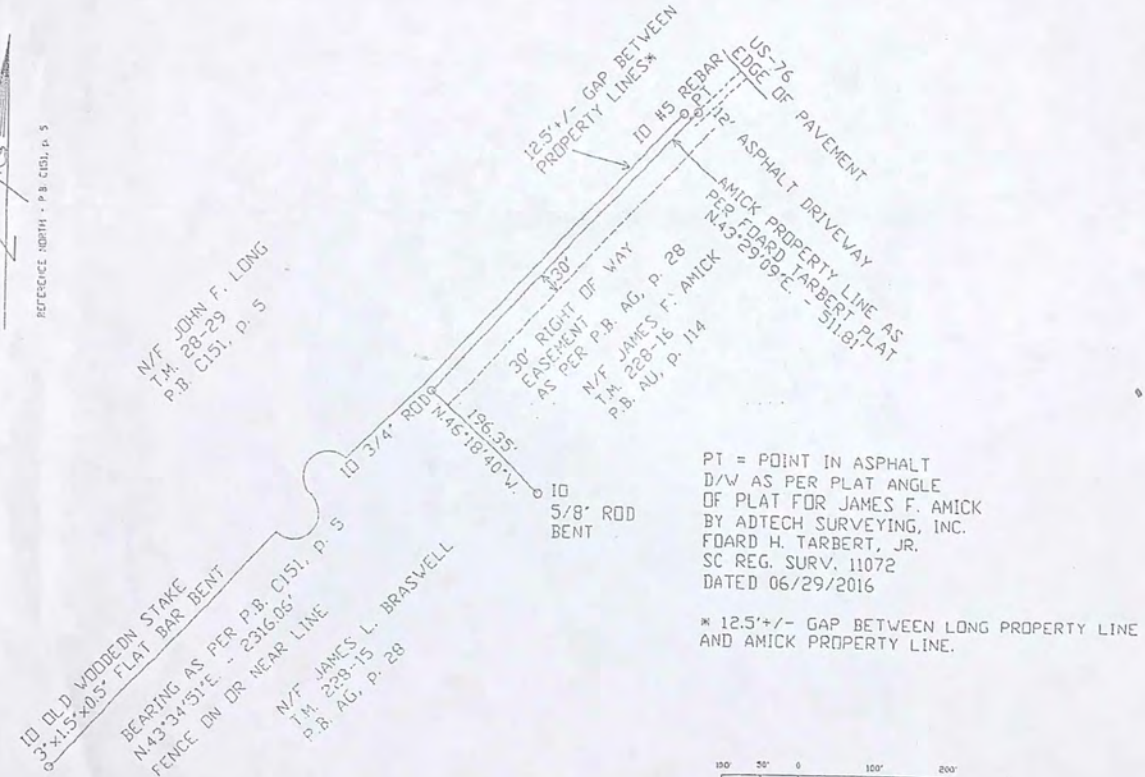
By: s/Jennifer Dowd Nichols, SC Bar 75916
L.K. Harrell, III
Jeremy C. Martin
Jennifer Dowd Nichols
Brent M. Takach
135 Columbia Avenue
Post Office Box 1000
Chapin, South Carolina 29036
Telephone: (803) 345-3353
Facsimile: (803) 345-9171

Attorneys for Plaintiff, James L. Braswell, Sr.

Robert W. Dibble, Jr.
Of Counsel

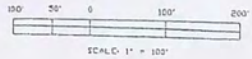
June 22, 2018
Chapin, South Carolina

ELECTRONICALLY FILED - 2018 Aug 17 4:14 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214



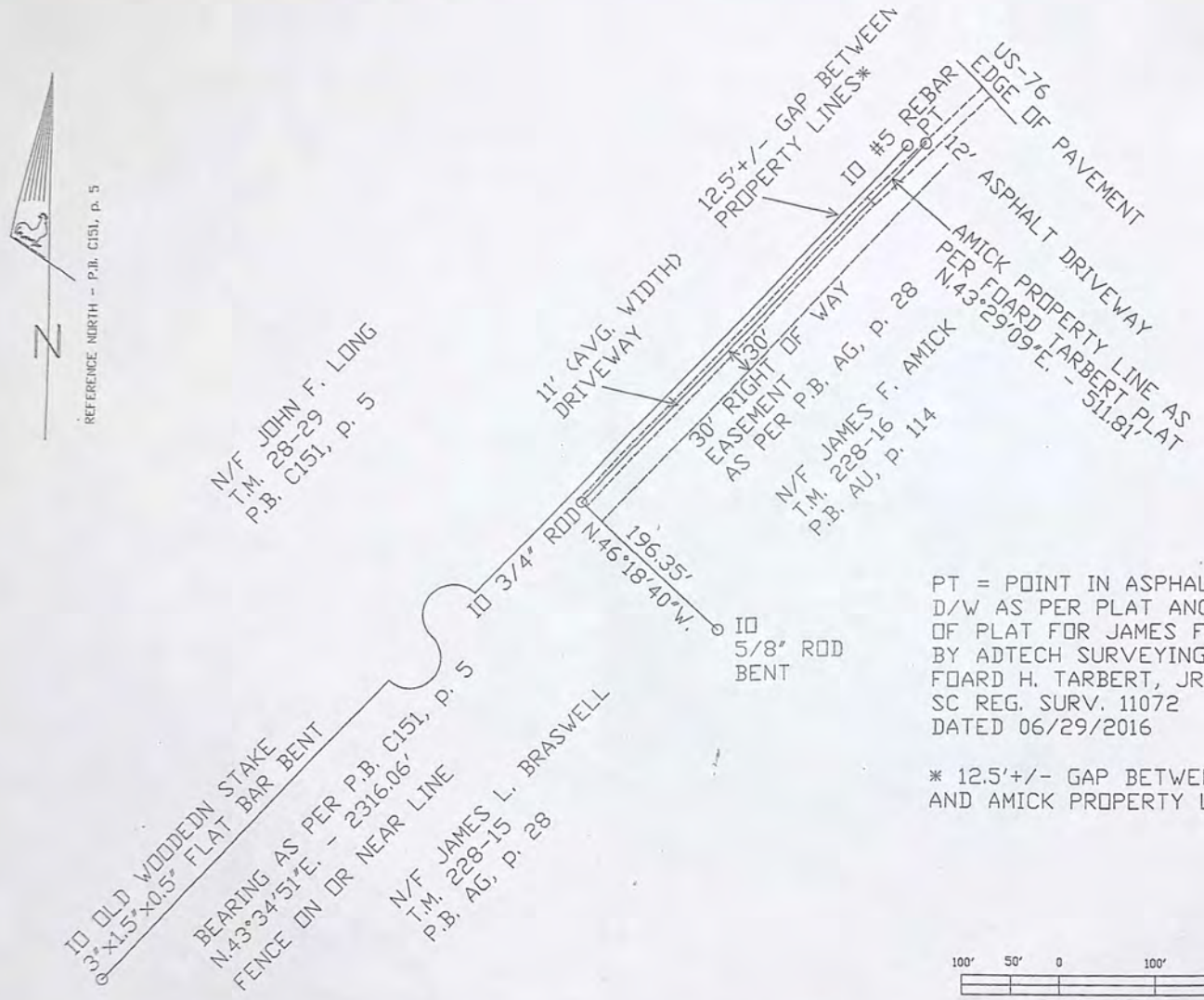
PT = POINT IN ASPHALT
D/W AS PER PLAT ANGLE
OF PLAT FOR JAMES F. AMICK
BY ADTECH SURVEYING, INC.
FOARD H. TARBERT, JR.
SC REG. SURV. 11072
DATED 06/29/2016

* 12.5'+/- GAP BETWEEN LONG PROPERTY LINE AND AMICK PROPERTY LINE.









PT = POINT IN ASPHALT
D/W AS PER PLAT ANGLE
OF PLAT FOR JAMES F. AMICK
BY ADTECH SURVEYING, INC.
FOARD H. TARBERT, JR.
SC REG. SURV. 11072
DATED 06/29/2016

* 12.5'+/- GAP BETWEEN LONG PROPERTY LINE AND AMICK PROPERTY LINE.

PLAINTIFF'S EXHIBIT 35 4:00

PLAINTIFF'S EXHIBIT 25 2:00 16220

BRASWELL LAND
GATE POST
GATE POST
29.6
5'
DRIVEWAY TO US-76
EXISTING FENCE
JOHN LONG
PROPERTY
PLAINTIFF'S
EXHIBIT
PENDAD 800-631-6989
GATE POST
GATE POST
DRIVEWAY TO BRASWELL LAND
5.25'
29.75'
EXISTING FENCE
JOHN LONG
PROPERTY
THERE IS AN OLD FENCE
RUNNING ON THE SAME POSTS
AS THE NEW FENCE FROM
THE GATE TOWARDS
MR. BRASWELL'S PROPERTY
FOR APPR. 150'+/-
US-76

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY James L. Braswell, Sr., Plaintiff, vs. James F. Amick, Defendant.	IN THE COURT OF COMMON PLEAS DEFENDANT'S SECOND AMENDED RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT 2017-CP-36-00214

TO: JAMES L. BRASWELL, SR., AND HIS ATTORNEYS, JENNIFER DOWD NICHOLS, ESQUIRE, AND ROBERT DIBBLE, ESQUIRE

The Defendant provides the following Second Amended Responses to Plaintiff's First Set of Requests to Admit to Defendant, James F. Amick, dated July 22, 2018:

1. Please admit that you knew the Plaintiff, James L. Braswell, Sr., farmed the Braswell Property prior your purchase of the Amick Property in 1988.

RESPONSE: When Defendant purchased the Amick Property, he believed Plaintiff was utilizing the Braswell Property for agriculture purposes; however, Defendant, at such time, did not have knowledge of any of the details associated with Plaintiff's use of the Braswell Property, other than same was devoted to farming/agriculture.

2. Please admit that you knew the Plaintiff, James L. Braswell, Sr., accessed the Braswell Property from Highway 76 by using the Easement prior to your purchase of the Amick Property.

RESPONSE: Defendant denies this request for admission.

3. Please admit that you knew the Plaintiff, James L. Braswell, Sr., accessed the Braswell Property by using the Easement after your purchase of the Amick Property.

RESPONSE: Defendant admits Plaintiff has used, on a limited/restricted basis, the easement to access the Braswell Property, which began in the early 1990s, and Defendant has interrupted Plaintiff's use of the easement on repeated occasions, starting in the early 1990s through the present.

PLAINTIFF'S EXHIBIT #2 1-6-2020 PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT 24 PENGAD 800-631-6989

4. Please admit that your primary residence is in Laurens County, South Carolina.

RESPONSE: Defendant denies that his primary residence is located in Laurens County, South Carolina. Defendant is temporarily residing in Laurens County, South Carolina, and will move to the Amick Property once the residence on the Amick Property's construction is completed.

5. Please admit that you receive the residential property ad valorem tax rate of 4% on the Amick Property.

RESPONSE: Defendant admits that he receives the residential property ad valorem tax rate of 4% on the Amick Property.

6. Please admit that you claim fee ownership of the property, either by adverse possession, acquiescence, or otherwise, to the fence between you, the Amick Property, and the property now owned by Mr. Long.

RESPONSE: Defendant denies this request to admit and admits, in connection therewith, that he owns the Amick Property to the boundary line as depicted on that certain survey prepared by Adtech Surveying, Inc., dated June 29, 2016, attached as Exhibit 1.

7. Please admit that the area marked as "R/W to HWY" as shown on the Braswell Plat is entirely on the Amick Property.

RESPONSE: Defendant admits this request to admit.

8. Please admit that now you own, either by adverse possession, acquiescence, or otherwise, the land on which the dirt road referred to in the deeds attached hereto as Exhibits D through H.

OBJECTION: Defendant objects to this request on the grounds that it seeks the results of trial preparation, inquires into trial strategy, the mental impressions of counsel and attorney-client privileged information.

9. Please admit that Mr. Braswell has accessed the Braswell Property using the Easement as necessary with equipment that is in excess of 12.5 feet in width since you purchased the Amick Property.

#2
T.J.T.

RESPONSE: Defendant admits Plaintiff has, on occasion, since the early 1990s, accessed the Braswell Property with farming equipment by use of the easement; however, Defendant has no knowledge as to the size of Plaintiff's farm equipment which may have crossed over the easement.

Respectfully submitted,

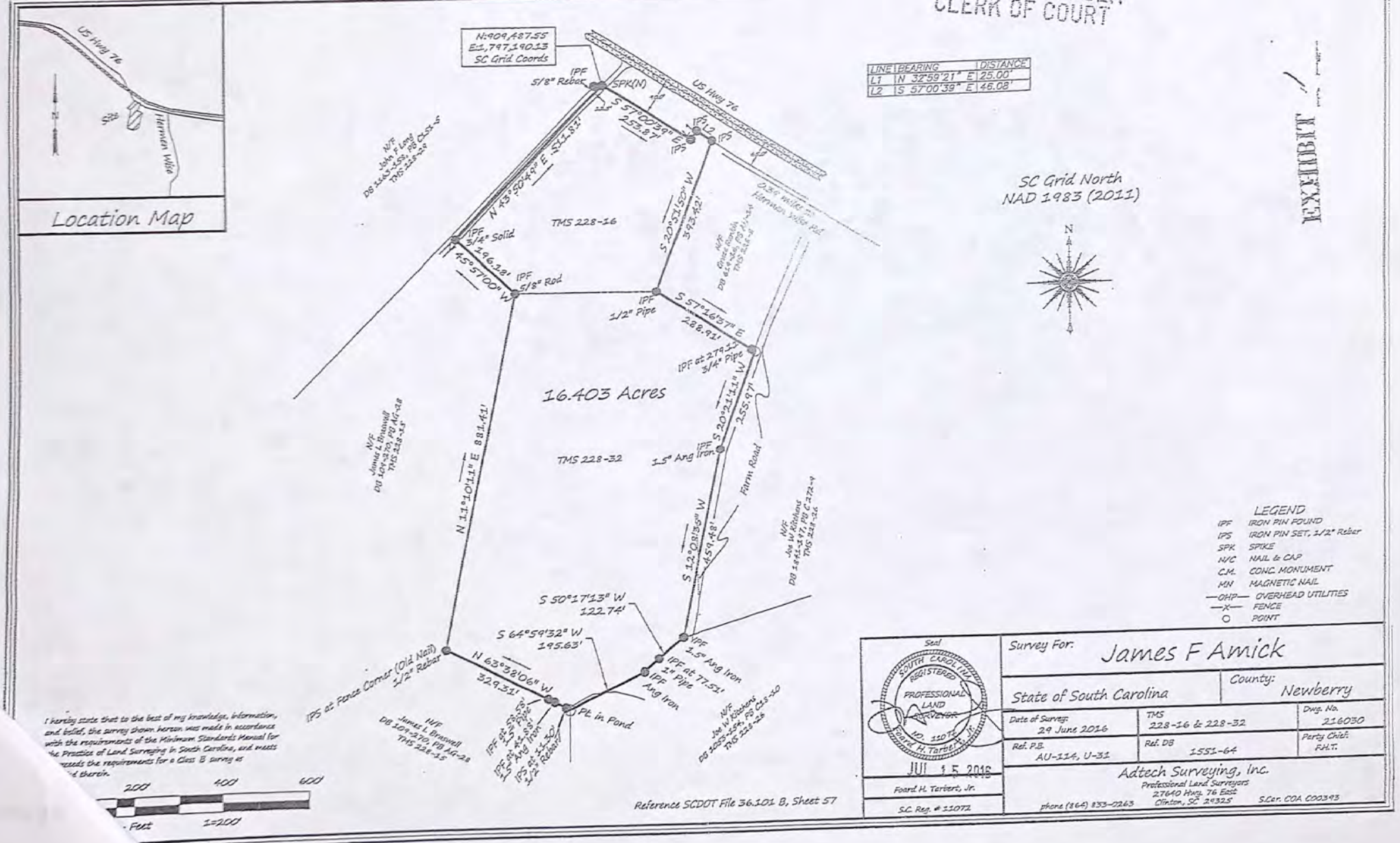
8/29/18

/Thomas J. Thompson, SC Bar No. 5557

TOWNSEND & THOMPSON
Registered Limited Liability Partnership
Attorneys for Defendant
Thomas J. Thompson
210 West Laurens
Street Post Office
Box 215
Laurens, SC 29360
Telephone: 864-984-6554
Fax: 864-984-8000

FILED
NEWBERRY COUNTY
2017 AUG 29 PM 1:38
ELIZABETH P. FOLK
CLERK OF COURT

EXHIBIT



LINE	BEARING	DISTANCE
L1	N 32°59'21" E	25.00'
L2	S 57°00'39" E	46.08'

SC Grid North
NAD 1983 (2011)

N

LEGEND

IPF	IRON PIN FOUND
IPS	IRON PIN SET, 1/2" Rebar
SPK	SPIKE
N/C	NAIL & CAP
C.M.	CONC. MONUMENT
MN	MAGNETIC NAIL
—OHP—	OVERHEAD UTILITIES
—X—	FENCE
○	POINT

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class B survey as specified therein.

Seal
SOUTH CAROLINA
REGISTERED
PROFESSIONAL
LAND
SURVEYOR
No. 11072
Foard H. Tarbet, Jr.

JUL 15 2016

Foard H. Tarbert, Jr.
S.C. Reg. # 11072

Survey For: James F Amick

State of South Carolina | County: Newberry

Date of Survey:	TMS	Dwg. No.
29 June 2016	228-16 & 228-32	216030
Ref. P.B. AU-114, U-31	Ref. DB 1551-64	Party Chief: F.H.T.

Adtech Surveying, Inc.
Professional Land Surveyors
27640 Hwy. 76 East
Clinton, SC 29325
phone (864) 833-0263
S.Cer. COA C00393

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

VERIFICATION

PERSONALLY appeared before me, JAMES F. AMICK, who being first duly sworn, deposes and says that he is the Defendant in the above entitled action; that he has read the foregoing Defendant's Second Amended Responses to Plaintiff's First Set of Requests to Admit; and the allegations therein contained are true of his knowledge, except for those matters and things therein stated on information and belief, and these he believe to be true.

James Amick
JAMES F. AMICK

SWORN to before me this
29th day of August, 2018.

Name: Thomas J. Thompson
Notary Public for South Carolina
My commission expires: 1/13/21

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
James L. Braswell, Sr.,)
)
Plaintiff,)
)
vs.)
)
James F. Amick,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF MAILING
2017-CP-36-00214

I HEREBY CERTIFY that a copy of Defendant's Second Amended Responses to First Request to Admit in the above matter was served upon counsel for the Plaintiff via regular US mail, with proper postage affixed thereto, on the 29th day of August, 2018, addressed as follows:

Robert Dibble, Esquire
HARRELL, MARTIN & PEACE, PA
PO Box 1000
Chapin, SC 29036

Brenda L. Jones

Brenda L. Jones, Legal Assistant
TOWNSEND & THOMPSON
Registered Limited Liability Partnership
Attorneys at Law
210 West Laurens Street
Post Office Box 215
Laurens, South Carolina 29360
(864) 984-6554
(864) 984-8000 Fax

SWORN to before me this
29th day of August, 2018.

Name: Moira J. Mayo
Notary Public for South Carolina
My commission expires: 11/3/21


NAPP-7480-172-X
1-19-94
PLAINTIFF'S
EXHIBIT
#
1-6-2020
AGAD 800-631-6989
PLAINTIFF'S
EXHIBIT
PENGAD 800-631-6989

USDA

United States Department of Agriculture

United States Department of Agriculture

Farm Service Agency

Aerial Photography Field Office

2222 W 2300 S
Salt Lake City, UT
84119-2020

801-844-2922
855-415-2014 fax

May 8, 2018

RE: Order No.1049234

The below identified aerial image is a true and accurate copy of the image maintained in the library of the United States Department of Agriculture, Farm Service Agency, Aerial Photography Field Office, located in Salt Lake City, Utah 84119 in accordance with Title 7 CFR 2.16(a)(1)(iii)(J), and was captured under government contract and identified with the following information:

AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
NAPP-7480-172-X	January 19, 1994

CERTIFICATION

This is to certify that the attached print was made from the aerial record which was secured while photographing:

Newberry County, South Carolina

and is on file as the official government record.

David Parry
Supervisor, Customer Service Section

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NAPP-1375-46-X
3-26-89
PLAINTIFF'S
EXHIBIT
PLAINTIFF'S
EXHIBIT

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United States Department of Agriculture

Farm Service Agency

Aerial Photography Field Office

2222 W 2300 S
Salt Lake City, UT
84119-2020

801-844-2922
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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
NAPP-1375-46-X	March 26, 1989

CERTIFICATION

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HAP83-159-90-X
2-2-84
PLAINTIFF'S
EXHIBIT
PENGAD 800-631-6989
PLAINTIFF'S
EXHIBIT
PENGAD 800-631-6989

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United States Department of Agriculture

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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
HAP83-159-90-X	February 2, 1984

CERTIFICATION

This is to certify that the attached print was made from the aerial record which was secured while photographing:

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Supervisor, Customer Service Section

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PLAINTIFF'S EXHIBIT #31 1-6-2020 PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT 30 PENGAD 800-631-6989

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2222 W 2300 S
Salt Lake City, UT
84119-2020

801-844-2922
855-415-2014 fax

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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
45071-177-70-X	February 25, 1981

CERTIFICATION

This is to certify that the attached print was made from the aerial record which was secured while photographing:

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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
ASZ-1LL-217-X	February 20, 1970

CERTIFICATION

This is to certify that the attached print was made from the aerial record which was secured while photographing:

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EXHIBIT
#
FENGAD 800-631-6989

PLAINTIFF'S
EXHIBIT
FENGAD 800-631-6989

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Salt Lake City, UT
84119-2020

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855-415-2014 fax

May 8, 2018

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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
ASZ-2FF-27-X	December 1, 1964

CERTIFICATION

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Supervisor, Customer Service Section

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PLAINTIFF'S EXHIBIT #3 PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT PENGAD 800-631-6989

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United States Department of Agriculture

Farm Service Agency

Aerial Photography Field Office

2222 W 2300 S
Salt Lake City, UT
84119-2020

801-844-2922
855-415-2014 fax

May 8, 2018

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AERIAL IMAGE IDENTIFICATION	DATE OF ACQUISITION
ASZ-8W-123-X	February 19, 1959

CERTIFICATION

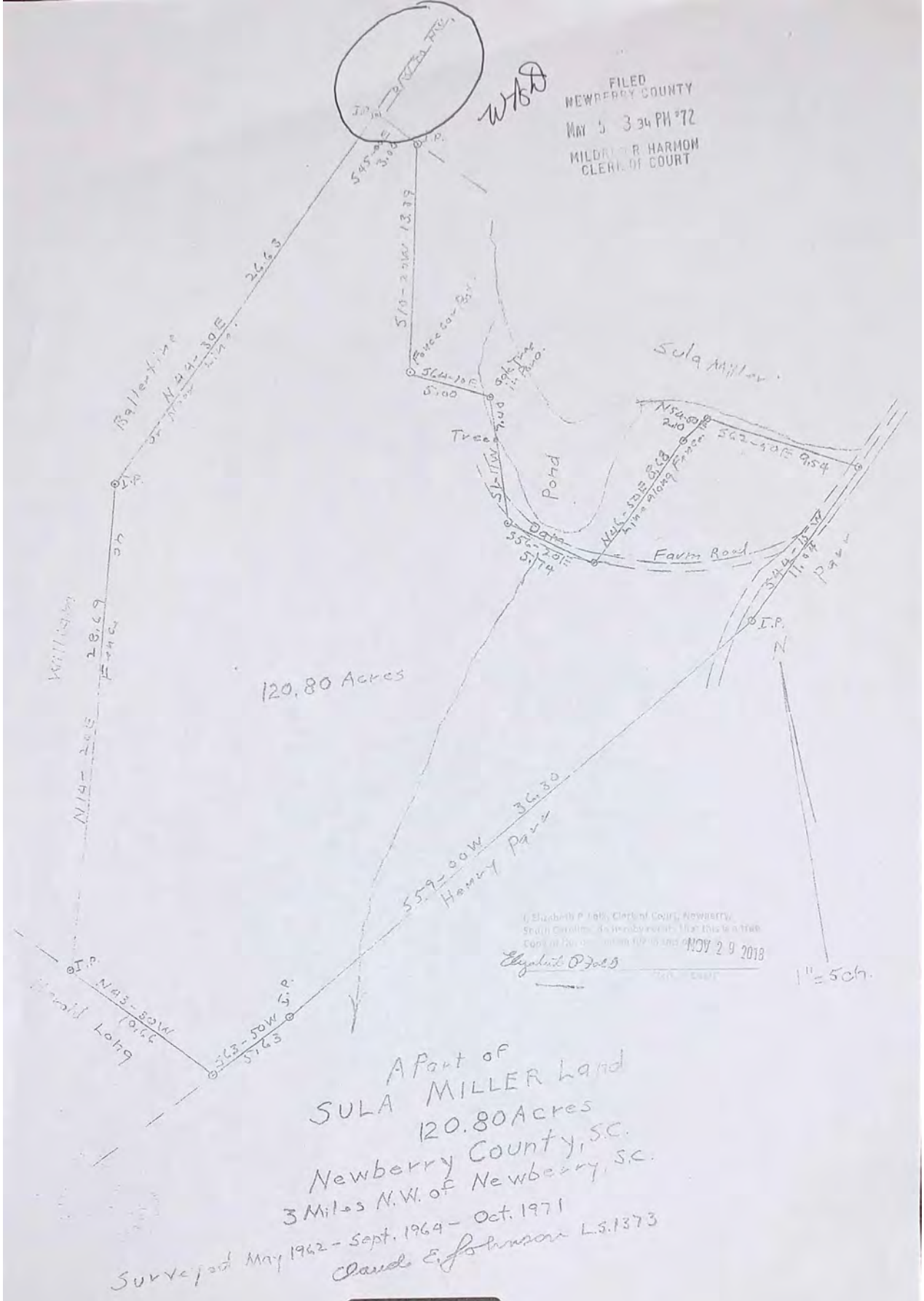
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Supervisor, Customer Service Section

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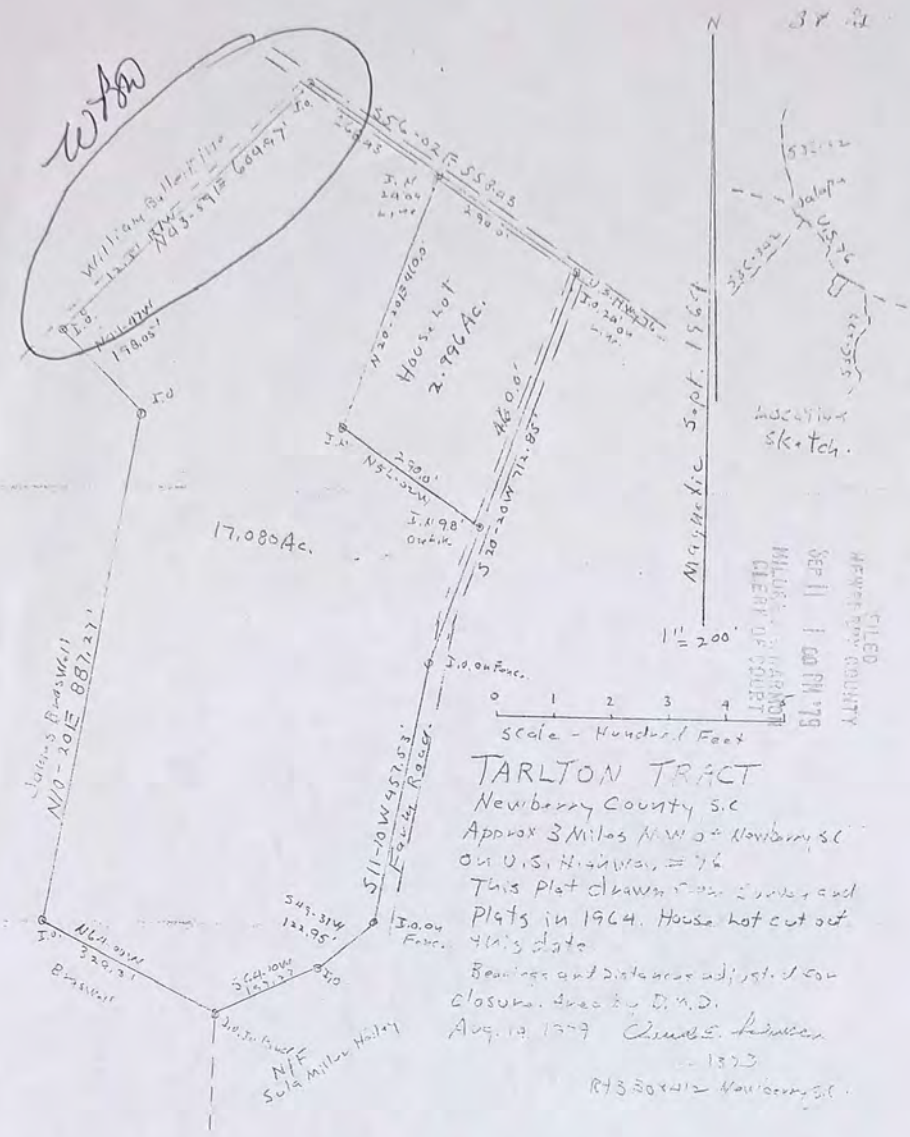


A Part of
SULA MILLER Land
120.80 Acres
Newberry County, S.C.
3 Miles N.W. of Newberry, S.C.
Surveyed May 1962 - Sept. 1964 - Oct. 1971
Claude E. Johnson L.S. 1373

I, Elizabeth P. Hall, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of [illegible] as same appears of record in my office.
NOV 29 2018
Elizabeth P. Hall
Clerk of Court

EXHIBIT
P-

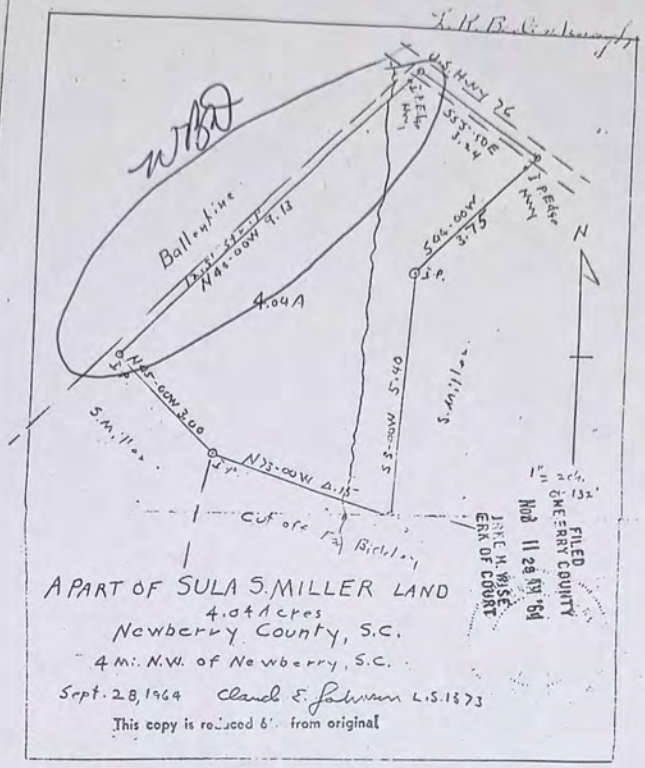
PLAINTIFF'S EXHIBIT
#35
6-2020



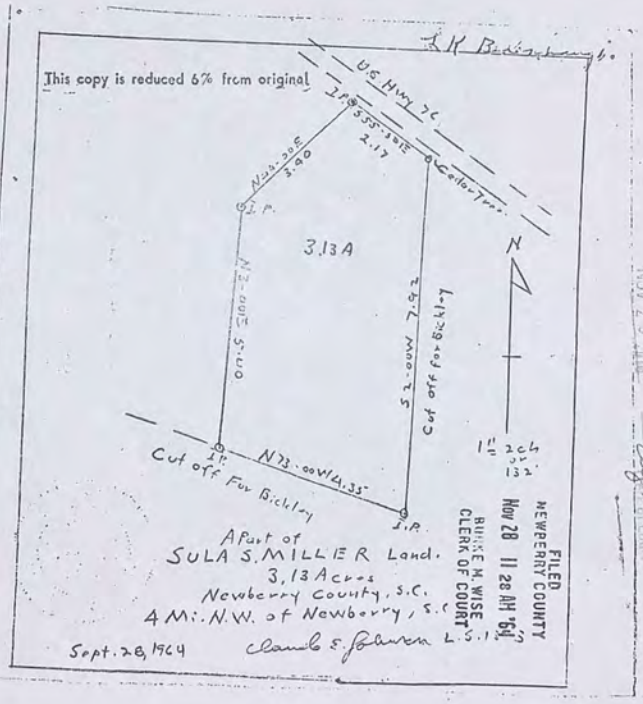
I, Elizabeth Pitts, Clerk of Court, Newberry County, South Carolina, do hereby certify that this is a true Copy of [illegible] on file in this office.
NOV 29 2018
Elizabeth Pitts
Clerk of Court

PLAINTIFF'S EXHIBIT #36 1-16-2020
PENLAND & DUNCAN 4999

EXHIBIT P-19
Blumberg No. 5118



A PART OF SULA S. MILLER LAND
4.04 Acres
Newberry County, S.C.
4 Mi. N.W. of Newberry, S.C.
Sept. 28, 1964 Claude E. Johnson L.S. 1873
This copy is reduced 6% from original



A Part of
SULA S. MILLER Land.
3.13 Acres
Newberry County, S.C.
4 Mi. N.W. of Newberry, S.C.
Sept. 28, 1964 Claude E. Johnson L.S.

EXHIBIT
P-10

PLAINTIFF'S
EXHIBIT
#37
1-6-2020

PLAINTIFF'S EXHIBIT
PENGAD 800-631-6989



457

PLAINTIFF'S EXHIBIT #34 1-6-2020

PENGAD 800-631-6989

MARK
Burnell
1-7-20

PLAINTIFF'S EXHIBIT #40 Evd 1-7-2020
PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT 31 Evd
PENGAD 800-631-6989



USDA

United States Department of Agriculture

United States Department of Agriculture

Farm Service Agency

Aerial Photography Field Office

2222 W 2300 S
Salt Lake City, UT
84119-2020

801-844-2922
855-415-2014 fax

May 8, 2018

RE: Order No.1049234

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HAP83-159-90-X	February 2, 1984

CERTIFICATION

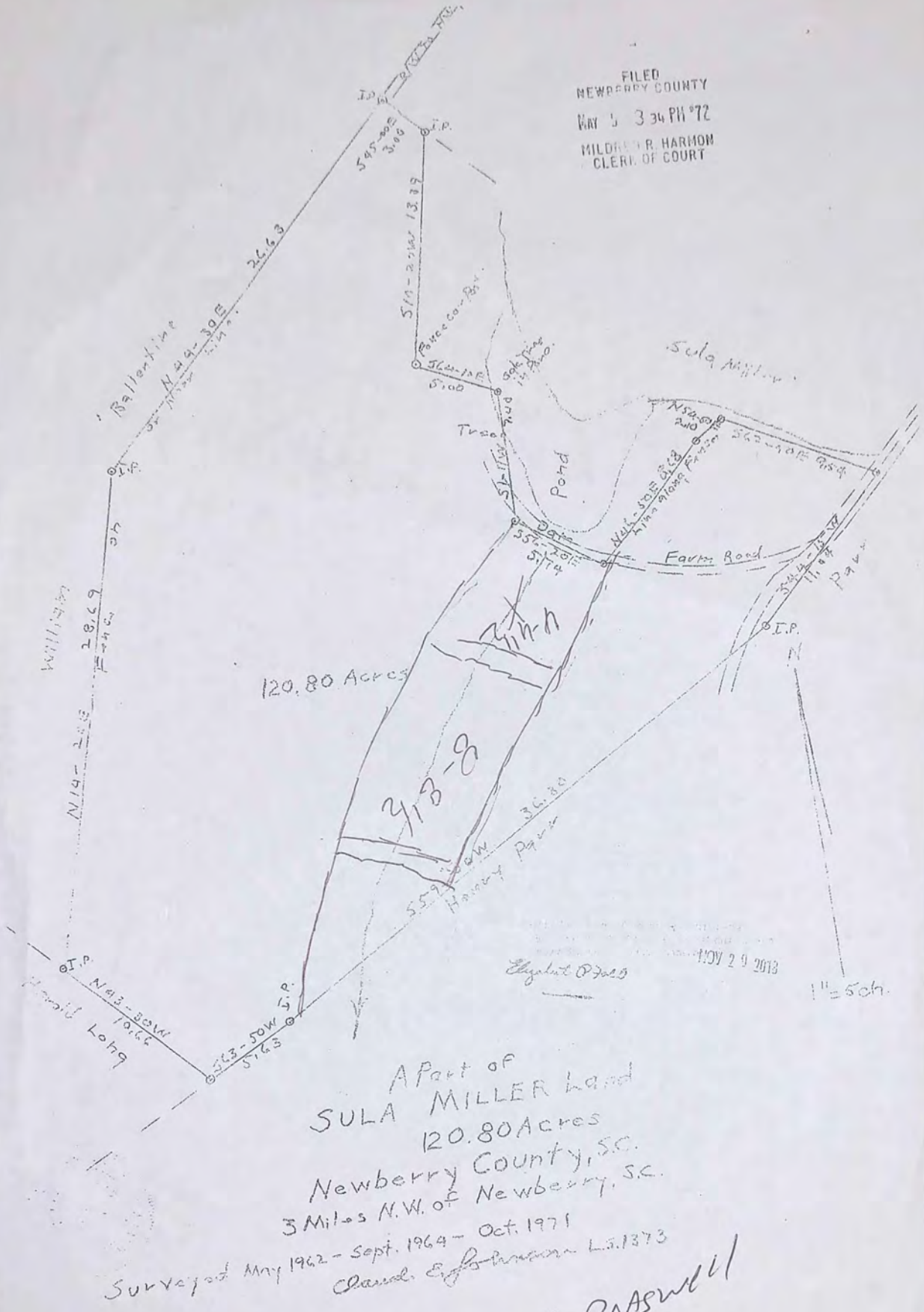
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David Parry
Supervisor, Customer Service Section

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A Part of
SULA MILLER Land
120.80 Acres
Newberry County, S.C.
3 Miles N.W. of Newberry, S.C.
Surveyed May 1962 - Sept. 1964 - Oct. 1971
Claude E. Johnson S.C. 1373

MARK BASWELL
1-7-20

EXHIBIT
P-16

PLAINTIFF'S EXHIBIT
#47
1-7-2020

PENGAD 800-631-6989


NEWBERRY COUNTY
Parcels 228-16 2008 Aerials
PLAINTIFF'S EXHIBIT
281-26
157.68 AC
228-1
1 AC
228-2
1 AC
US76
228-29
158.54 AC
228-8
1 AC
228-23
1 AC
228-7
1 AC
228-16
18.403 AC
228-25
1 AC
228-15
120.8 AC
228-33
8.54 AC
228-26
21.26 AC
0 4.5 9 18 27 36
Meters
0 15 30 60 90 120
Feet
TAX MAP NOT TO BE USED AS A PLAT



THE COURT: You are free to go, thank you. Call your next witness.

MR. THOMPSON: Call Mark Richardson to the stand.

MARK RICHARDSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Thompson:

Q Mr. Richardson, you are here today to testify on behalf of Mr. Amick, is that not correct?

A That's correct.

Q How long have you known Mr. Amick?

A Since 1975 or '76.

Q 1975 to 1976. Do you know Mr. Braswell?

A Yes sir, I do.

Q Do you have any type of personal relationship with Mr. Braswell?

A Not at this time.

Q Okay. Well, you know him when you see him?

A Yes, sir.

Q And he knows you I take it?

A Yes, sir.

Q Where are you currently living?

A 370 Henderson Court in Newberry.

Q Are you a Newberry native?

A Yes sir, born and raised.

Q You went to school here then?
A Yes, sir.
Q And all of that. You been married on two occasions, is that correct?
A Three occasions.
Q Three occasions. Okay. Do you have any children?
A Yes, sir.
Q One of those is a daughter, right?
A Yes, sir.
Q And which one of the daughter's, are there more than one girl?
A No.
Q The one girl. It is just, as she became a little older in life did she develop a desire to do certain things related to animals?
A She wanted to have horses and ride and train horses.
Q And did she pursue that endeavor?
A Yes, sir.
Q Did you assist her with that?
A Yes, sir.
Q About what age was she when she first got a horse?
A She first mentioned wanting a horse in 2004.
Q And she would have been how old at that time?
A Eight years old, well actually, she was seven at the time.

Q Okay. And did you have horses of your own at that time?
A No, I did not.
Q Did you ultimately obtain a horse for your daughter?
A Yes, sir.
Q What is her first name?
A Tristyn.
Q Pardon me?
A Tristyn.
Q Tristyn?
A T-R-I-S-T-Y-N.
Q Okay. So did you acquire a horse or horses for this, for your daughter, Tristyn?
A Yes, sir.
Q Do you remember what year that was?
A Yes, sir. My house burned in 2004. When I settled with the insurance company in 2004 and January 1st, New Year's Day of 2005 I purchased two horses for her.
Q Now, did you have a area where you could board them and have pasture lands for them?
A Not at that time. When I settled with the insurance company I bought a piece of property but it was not fenced, it was wooded. So the horses were delivered to Mr. Amick's property in February of 2005.
Q And when you say Mr. Amick's property, would that be

that 17, 18 acre tract adjoining Highway 76?
A Yes, sir.
Q How did you know about the fact that he might be able to help you with this boarding of your horses?
A I knew Mr. Amick for many years and knew he had horses. And I ask if he could board the horses until I could get a fence put up and board my horses on my own property.
Q So in early of 2005 you delivered these horses to Mr. Amick's property that is in litigation now?
A Yes, sir.
Q And did he have some type of fencing up?
A Yes, sir.
Q And did he have gates?
A Yes, sir.
Q And after you delivered the horses to him were you in a position to visit out there as some type of a reservationist?
A Yes, sir.
Q Did you have a job at that time?
A Yes, sir. In 2005, yes sir, I did. I started my own landscaping and lawn care business.
Q Did your daughter take to the horses and begin training with Mr. Amick?
A Yes sir, she did.

Q And how many days a week would you say she was out there at the Amick farm?
A She was with me every other weekend and she was with me half of the summer. She was also a week with me a Christmas. Any time she was with me we would be at the farm, either she would be riding the horses or training the horses or learning about how to take care of horses and going through Mr. Amick's knowledge she learned.
Q Well, from February of '05 moving forward how long did that process go on where you were with her and she was riding or training and it all going on at the Amick place, how long, how many years or months or whatever?
A Two and a half years.
Q Pardon me?
A Two and a half years.
Q So that would have put us into sometime in 2007, is that right?
A That's correct.
Q At that time did you move the horses from the Amick property?
A Yes, sir.
Q Now to get into Mr. Amick's property between February of '05 and when you removed your horses was there any type of blockade or gate at the entry?
A Yes, sir. There was a gate at the entrance to the

property.
Q Do you know whether it was locked or unlocked?
A Mr. Amick kept it locked unless he was there personally.
Q And let's just take it a year at a time. In 2005, when you were there who, if anybody, was crossing his property that didn't belong to the Amick household?
A No one.
Q You didn't see anyone?
A No, sir.
Q See any tractors come through there?
A No, sir.
Q Any type of farm equipment?
A No, sir.
Q Where on that property, because it is wooded, I think, to some extent, where did your daughter ride her horse?
A She would start down behind the house where the buildings were, that is where the horses would be saddled. She would ride up the hill and she would ride to the gate, from the back gate between Mr. Amick's and Mr. Braswell's property to the front gate. The gates would stay shut so she would have a safe means of travel unimpeded with her horse in a nice open area.
Q And that went in for what period of time?

A Two years.
Q Pardon me?
A Two years.
Q Okay. And you were generally there?
A Yes sir, if she was there I was there.
Q Did you see Mr. Braswell come through there any of those days?
A No, sir.
Q Could you see any of his children come through there?
A No, sir.
Q And what about people who may or may not have been looking for him but were in some type of a farm vehicle?
A No, sir.
Q Well, after 2007 did anything change down there with respect what was being built on the property?
A In 2006, as I said, I started my own landscaping business, part of the equipment I had was a Bobcat. I used that Bobcat and Mr. Amick and I dug the foundation for his house.
Q That would have been in--
A In 2006.
Q Okay. Do you still go out there now?
A Yes, sir.
Q Is the house completed?
A No, sir.

Q Does Mr. Amick still come down that way?
A Every day.
Q Does he spend the night there?
A Yes sir, at times.
Q At times. Now, since '05, moving forward, what have, did you personally know about Mr. Braswell and the use of that property, people or his relatives using the Amick property?
A The first time I can recall seeing a conversation or being privy to a conversation with Mr., it wasn't with Mr. Braswell, it was with his son, Jimmy, he told Mr. Amick that his daddy was going to start using that property to travel through with his equipment because the other access he had had been washed out and wasn't a viable means of entry.
Q And what was Amick's response?
A He told him he wasn't comfortable with that. He didn't mind if somebody came through occasionally to go back there and go fishing. But he didn't tell him no but he didn't tell him yes either. And it wasn't put in a form that he wants to start using it, it was a put in a form that he was going to start using it.
Q From that point forward.
MR. DIBBLE: I didn't hear that last answer.
THE COURT: Repeat your last answer, Mr. Richardson.

A It was put into the form of that he is going to start using your driveway to enter into his property.
Q And Amick's reply to that?
A He tried to talk to Jimmy and tell he wasn't comfortable with a lot of traffic through there.
Q Well, after that did the traffic begin to increase?
A It did.
Q And were you there when some that took place?
A Yes, I was.
Q And what, if anything, did anyone do about this traffic?
A Mr. Amick closed the gates, he told Jimmy Braswell that if these people were going to come in there they needed to close the gates when they came in and when they went out. He fussed at people that were coming through there and questioned why they were coming through there. He would stop trucks that would come through there that were traveling entirely too fast because of the safety issues and because they were stirring up dust.
Q Did he do anything to stop this?
A Yes, sir.
Q What?
A He started back locking the gates. He put a trailer at the back gate which limited what could go through there because of the width of it.

Q Okay. And all of this happened after 2007?
A It started in 2006, it got worse in 2007 and it has increasingly gotten worse since.
MR. DIBBLE: Your Honor, I object to that answer, he has only been on the property since 2007.
THE COURT: Ask him about, I know that he quit the horses being on the property in 2007. Ask him about how frequent did he go to the property after he moved the horses.
Q After 2007 how often would you visit Mr. Amick's property?
A Four or five times a week.
Q Was that mainly to help him with his home?
A That was some to help with his home, it was some because I needed help with him in my business doing welding for me, various fabrication. I bought a welder and gave it to Mr. Amick so I would have access to welding when I need it. And because we were freinds, I enjoyed spending a lot of time up there.
Q Was it common or uncommon for Mr. Amick to have confrontation with the Braswell's?
A Very common.
MR. DIBBLE: Your Honor, I object to that unless he was present during those confrontations.
THE COURT: Ask him, Mr. Thompson, if he had ever

been present during the confrontations.
Q Did these confrontations take place in your presence?
A Yes sir, some of them did.
Q And what was Amick trying to make clear to them?
A That they needed to slow down and respect his property or stay off of it.
Q Did you continue to go there after those kind of conversations were had?
A Yes, sir.
Q And did you, did Amick change his the way he would handle the Braswell's or was it the same thing keep going on?
A It kept going on. At first when the traffic first started it was--
MR. DIBBLE: Your Honor, I am sorry, this is getting into hearsay testimony.
THE COURT: Mr. Richardson, you can only testify as to what you have personal knowledge of. You cannot testify as to what maybe what somebody told you or you heard something. It has got to be personal knowledge. Okay.
A Okay.
THE COURT: You may proceed.
Q Now, you are telling us about things you observed yourself or are you talking about what somebody told you?

A No, sir. I saw these things.
Q And you saw what?
A There was one conversation that I was standing literally as close as I am to this lady to Mr. Amick and Mr. Jimmy Braswell.
Q You have already told us about that one.
A No sir, this is the second one.
Q Okay.
A Where Mr. Amick confronted Mr. Braswell and told him how he felt about them traveling through the property and how he didn't appreciate them traveling through and, what Mr. Amick called a reckless manner. And Mr. Braswell told him, daddy is going to do what he wants to do, there is nothing you can do about it.
Q After the traffic commenced did you notice any difference in the property?
A Yes, sir.
Q What difference did you notice?
A In 2006 when I was up there to dig the foundation, from the point to where we were building the house back toward the back gate the grass, like I said, that is where my daughter rode her horse, there was a cedar tree right across from the end of the house. From that point back toward the main road, toward Highway 76 it was, you could tell it was a driveway but at the point where the end of

the house was back toward that back gate was, like I say, grassy area. There was traffic going through and over the course of the next couple of years the driveway back to that gate started getting worn down and at one point it got to the point you couldn't drive a car it was so rutted out from heavy traffic. And I am not talking heavy as far as the amount of traffic, I am talking about heavy as far as the size of the equipment going through, the large trucks that were going through.

Q Let me look at my notes for a moment. Did Mr. Amick put any signs anywhere around the property?

MR. DIBBLE: Your Honor, objection, again, I hate to keep objecting--

Q Did you see any signs?

MR. DIBBLE: If he has personal knowledge of it, what Mr. Amick did Mr. Amick can testify to.

THE COURT: If he has personal knowledge witnessing Mr. Amick putting up signs or whatever he did he can certainly testify to that. If he has personal knowledge.

A I do, Your Honor.

Q Did you see him put up any signs?

A Yes sir, he put up posted no trespassing signs entering his property.

Q Answer any questions Mr. Dibble might have.

CROSS-EXAMINATION

By Mr. Dibble:
Q Mr. Richardson, I am Bob Dibble, I represent Mr. Braswell in this case. I just have a few questions for you. Despite Mr. Amick's objections and confrontations with Mr. Braswell, Mr. Braswell and his employees continued to cross Mr. Amick's land to get to the 120 acre field, is that right?
A He did but with many objections.
Q But over those objections he continued to access the 120 acres from Highway 76, didn't he?
A Yes, sir.
Q And you saw him do that on a routine basis, didn't you?
A Yes, sir.
Q And you saw heavy equipment going down the Ballentine fence line from 76 to the 120 acre field, didn't you?
A Yes, sir.
Q And you saw combines going down there?
A No sir, I have never seen a combine go through there.
Q What equipment have you seen go down there?
A I have seen an occasional tractor, I have seen pickup trucks. I have seen someone come in in a car and go back there to go fishing or that's what they said they were doing. Mr. Amick would confront them when they did.
Q And they still would go back there after Mr. Amick

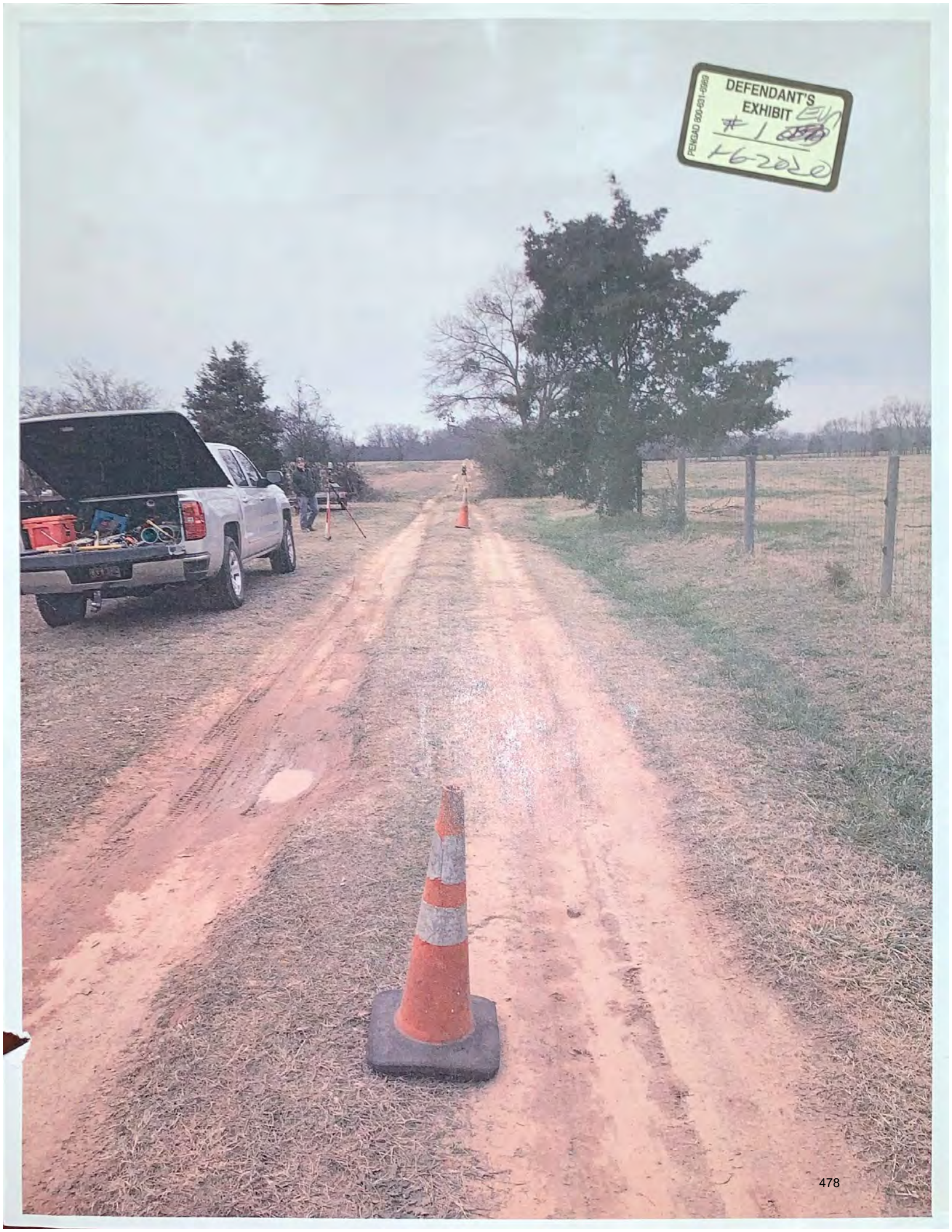
Q As far as you know.
A As far as I know, yes sir.
Q Now, Mr. Richardson, Mr. Braswell didn't start building his house until 2006, did he?
A I am not sure when Mr. Braswell started building.
Q I am sorry. Mr. Amick didn't start building his house on the 17 acres until 2006, is that correct?
A That is correct.
Q And you didn't help him build his house anytime before 2006, did you?
A No, sir.
Q Did you file an affidavit in this case, Mr. Richardson?
A Yes sir, I did.
Q Is this a copy of your affidavit that you filed, do you have it with you?
A Yes sir, I do.
Q And did you sign that?
A Yes sir, I did.
Q Would you read paragraph four to the Court, please.
A Beginning in 1988 I was on the Amick property regularly and I assisted with the construction of Mr. Amick's residence on that tract at times.
Q There was no residence being built in 1988, was there, Mr. Richardson?

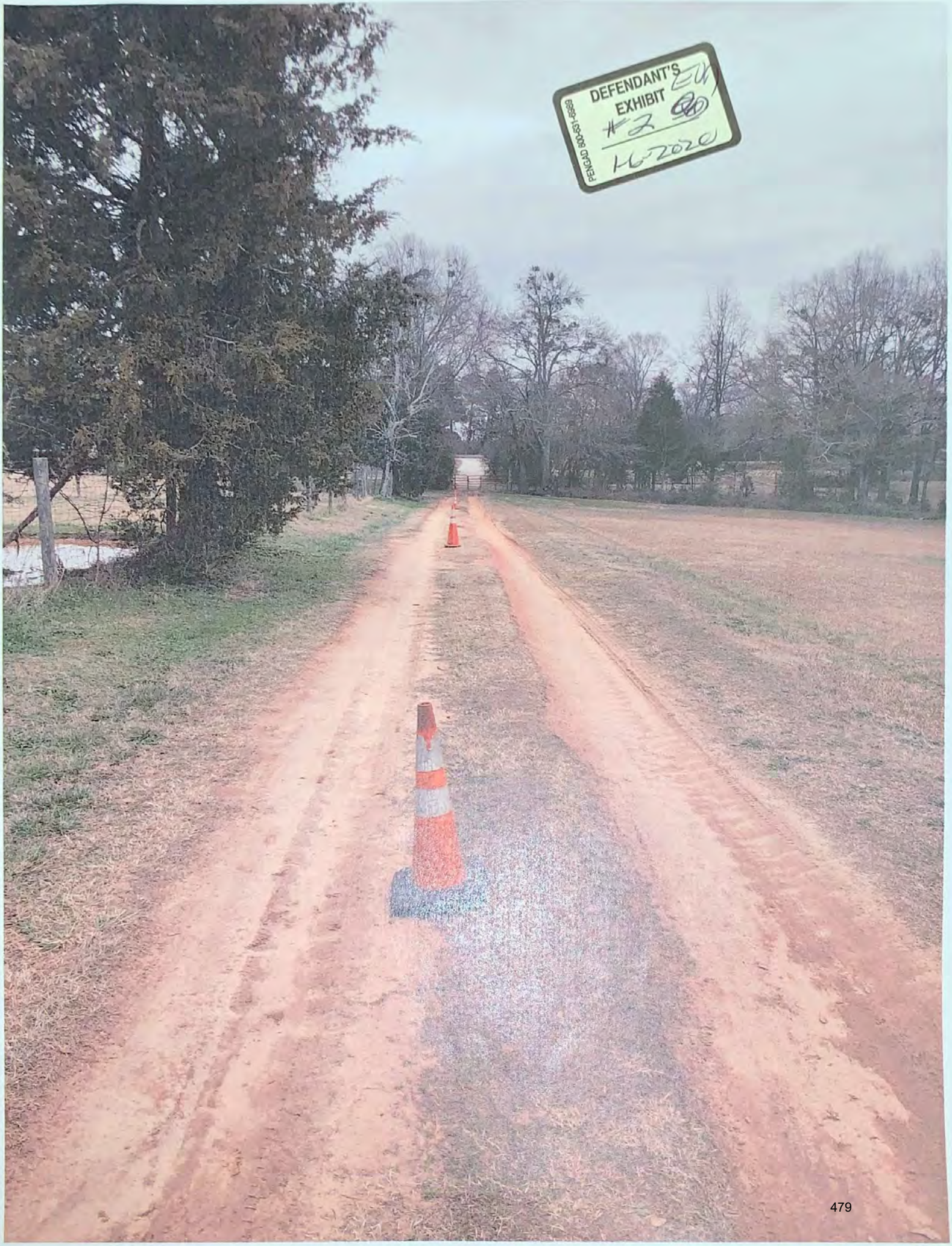
A There was other construction--
Q Was there a residence being built on the house in 1988?
A No sir, it was not.
Q Thank you, sir, no further questions.
THE COURT: Anything in redirect, Mr. Thompson?
MR. THOMPSON: No, sir.
THE COURT: You are free to go or you are welcome to remain with us.
MR. THOMPSON: Call James Amick to the stand.

JAMES AMICK, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Thompson:
Q Are you Mr. James F. Amick?
A Yes, sir.
Q And when were you were born?
A When?
Q What County?
A Newberry County, Prosperity.
Q Were you raised in Newberry County?
A Yes, sir.
Q And you and your wife were married in Newberry County, right?
A Yes, sir.


DEFENDANT'S
EXHIBIT
1
H-2020
PENGAD 800-631-6989

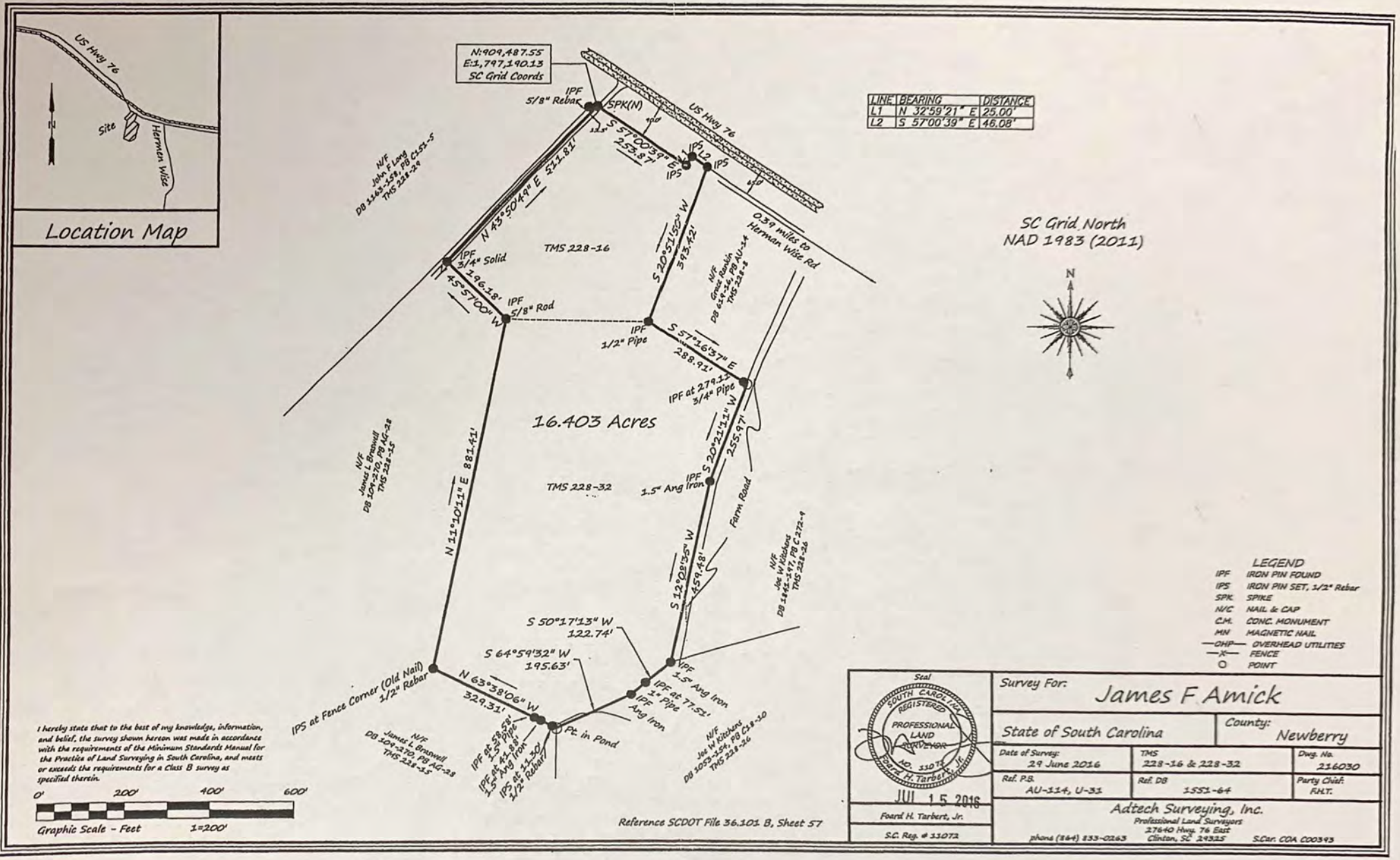

DEFENDANT'S
EXHIBIT
#2
1-6-2020


NEWBERRY COUNTY
Parcels 228-16 2008 Aerials
DEFENDANT'S EXHIBIT #3
281-26
157.68 AC
228-1
1 AC
228-2
1 AC
228-29
158.54 AC
228-16
19.40 AC
228-15
228-22
228-25
TAX MAP NOT TO BE USED AS A PLAT


NEWBERRY COUNTY
Parcels 228-16 2002 Aerials
281-26
157.68AC
228-1
228-2
7AC
228-29
158.54AC
228-16
228-15
120.0AC
228-33
228-26
TAX MAP NOT TO BE USED AS A PLAT


NEWBERRY COUNTY
Parcels 228-15 2002 Aerials
228-29
228-10
228-26
228-19
281-6
283-45
230-2
281-26
228-2
US76
TAX MAP NOT TO BE USED AS A PLAT

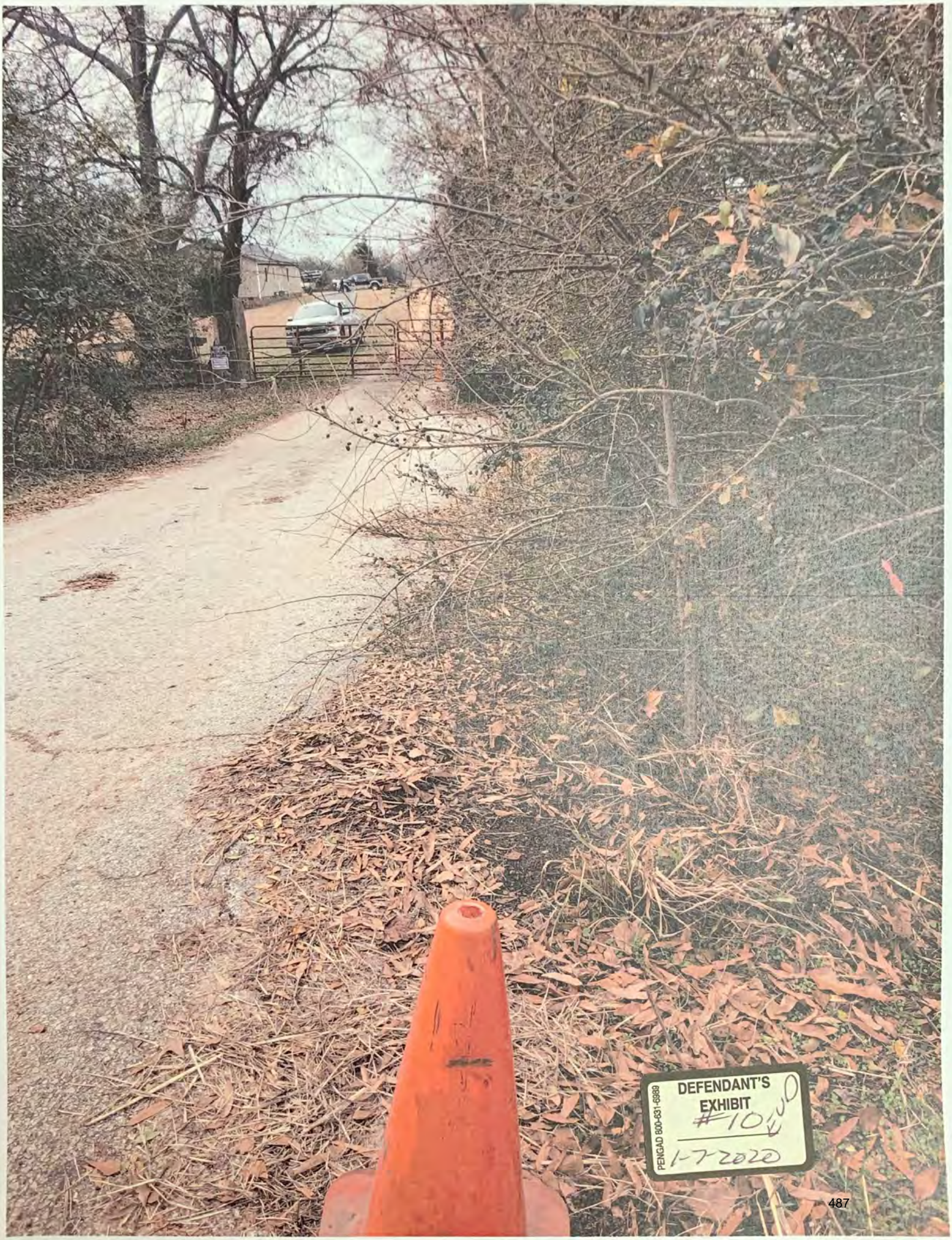

DEFENDANT'S
EXHIBIT
6
1-7-2022
PENGAD 800-631-6989

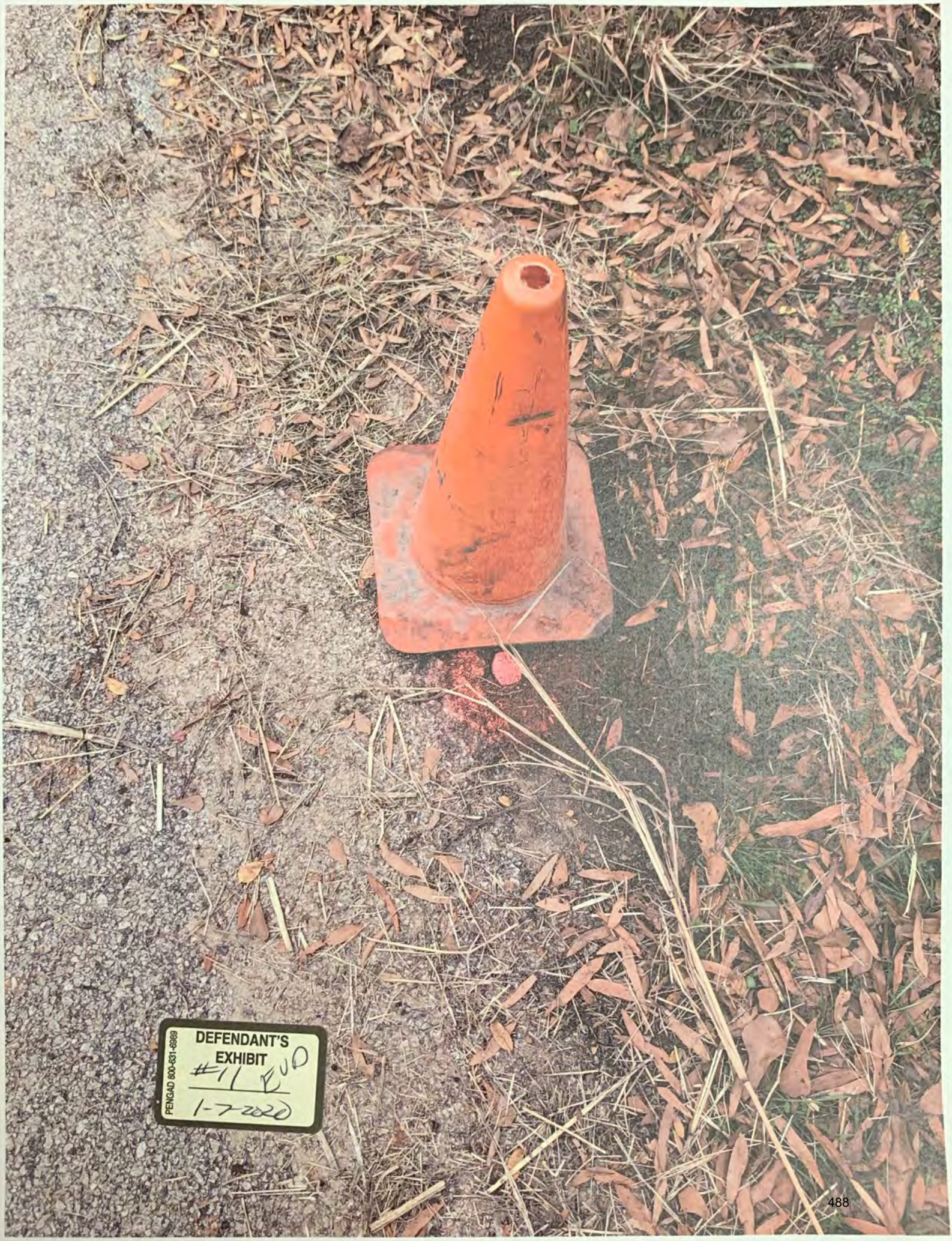


DEFENDANT'S EXHIBIT #7 EVD 1-7-2020
PENGAD 800-631-6989


DEFENDANT'S
EXHIBIT #
1-7-2020
PENGAD 800-631-6989


DEFENDANT'S
EXHIBIT
#9 E JD
1-7-2020
PENGAD 800-631-6989

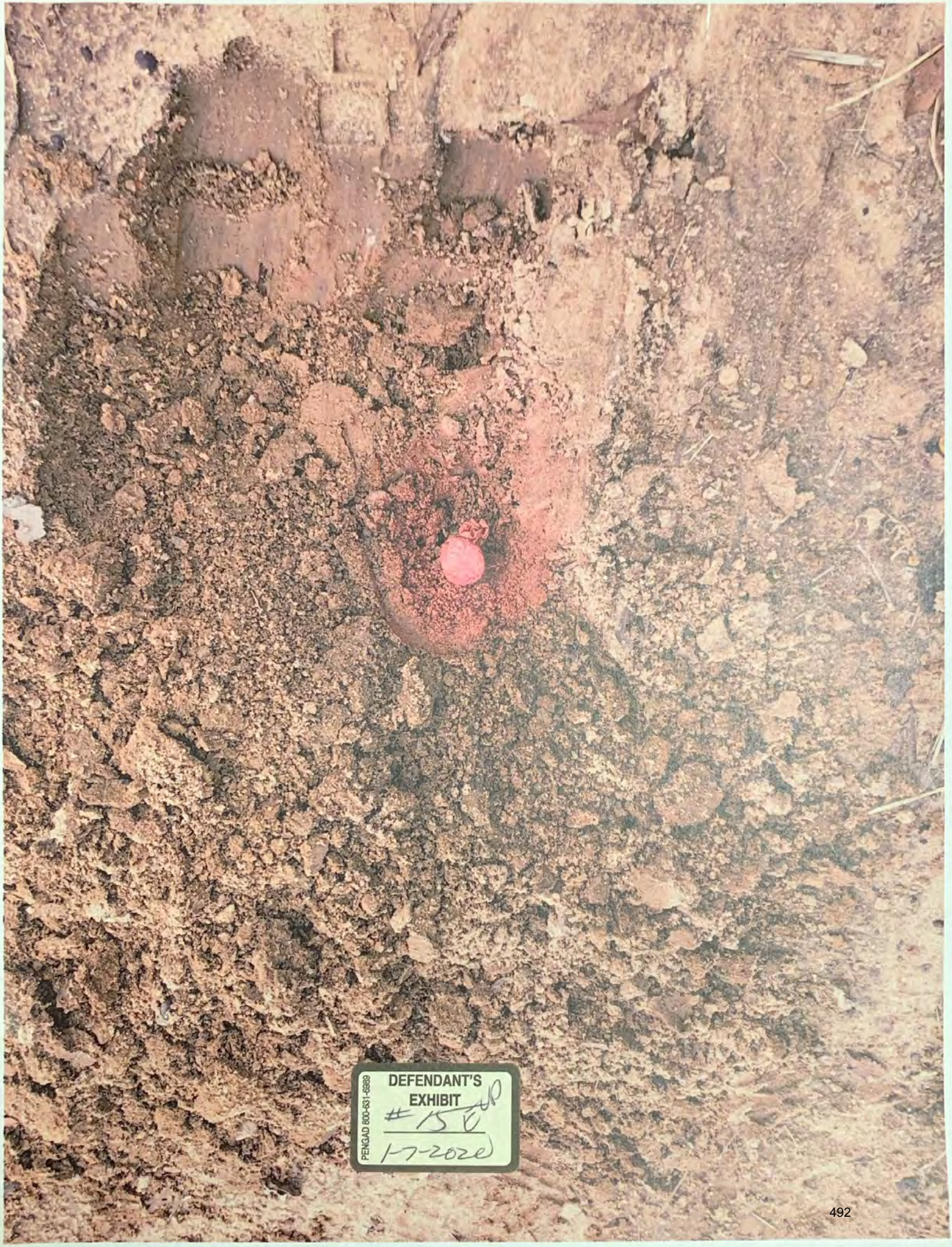

DEFENDANT'S
EXHIBIT
#10
1-7-2020
PENGAD 800-631-6989


DEFENDANT'S
EXHIBIT
#11 EJP
1-7-2020
PENGAD 800-631-6989


DEFENDANT'S
EXHIBIT
#12 EVD
1-7-2020
PENGAD 800-631-6989

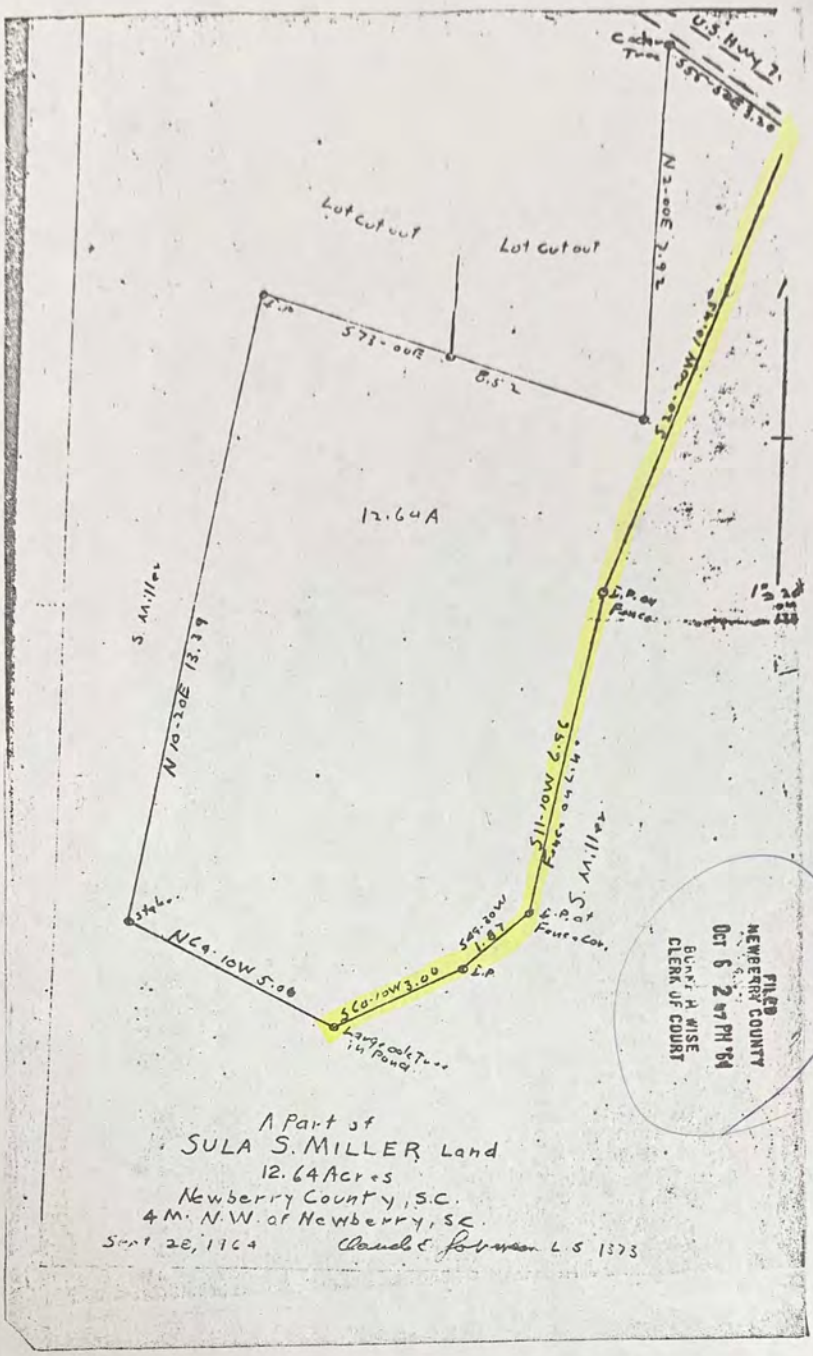

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DEFENDANT'S
EXHIBIT
#13
1-7-2020


DEFENDANT'S
EXHIBIT
#14 V
1-7-2020
PENGAD 800-631-6989


PENGAD 800-631-6989
DEFENDANT'S
EXHIBIT
#15
1-7-2020

Jesse B. Bickley - 13.6 ac

3/31



DEFENDANT'S EXHIBIT
16 EVID
1-7-2020
PENGAD 800-631-6989

FILED
NEWBERRY COUNTY
OCT 6 2 37 PM '64
BUNYE H WISE
CLERK OF COURT

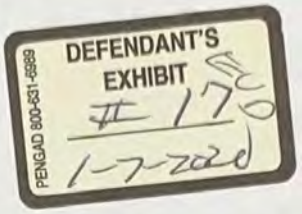
A Part of
SULA S. MILLER Land
12.64 Acres
Newberry County, S.C.
4 M. N.W. of Newberry, S.C.
Sept 28, 1964 Charles E Johnson L.S 1373

Affidavit Book #5, page 8- Stamps: State $4.00- Federal $2.20

Form 1, Book No. 87 TITLE TO REAL ESTATE

THE STATE OF SOUTH CAROLINA,

COUNTY OF NEWBERRY



KNOW ALL MEN BY THESE PRESENTS, That I, Sula S. Miller, of the County of Newberry-----

in the State aforesaid for and---------- in consideration of the sum of Five ($5.00) Dollars and other valuable ----Dollars
to me in hand paid at and before the sealing of these presents by Zeda B. Bickley--------
the receipt whereof is hereby
in the State aforesaid County of Newberry----------
acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Zeda B. Bickley, her
heirs and assigns forever:

All that certain piece, parcel of tract of land, lying and being situate in Tax District No. 3, in the County of Newberry, in the State of South Carolina, containing twelve and 64/100 (12.64) acres, more or less, fronting North-east on highway No. 76, and being otherwise bounded as follows: on the East, South and West by other lands of the Grantor, Sula S. Miller, also bounded on the North by other lands or lots of the Grantor, Sula S. Miller, and being more particularly described on a plat of survey made by Claude E. Johnson, Surveyor, dated September 28, 1964, which plat was made for the purpose of this conveyance. The said tract or parcel of land hereby conveyed is a portion of the lands conveyed to me, the said Sula S. Miller, by deed of my late husband A. B. Miller, dated March 14, 1960, recorded in the office of the Clerk of Court in Deed Book 75 at page 575.

And, it is agreed by and between the grantor and the grantee that each shall give a 12.5 feet right of way along the South-east boundary of the premises above described for the construction of a road in, to and from the premises of each, or their heirs and assigns. LJ-31

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Zeda B. Bickley, her
Heirs and Assigns forever.

AND I do hereby bind myself and my
Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said
Zeda B. Bickley, her
Heirs and Assigns, against me
and my Heirs and all other persons whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 5th day of October in the year of our Lord one thousand nine hundred and sixty-four, in the one hundred and eighty-ninth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Myrtis F. Halfacre — Sula S. Miller (L. S.)

Walter T. Lake (L. S.)

THE STATE OF SOUTH CAROLINA, Newberry County.

PERSONALLY appeared before me Myrtis F. Halfacre and made oath that she saw the within-named Sula S. Miller sign, seal and as her act and deed, deliver the within-written Deed, and that she with Walter T. Lake witnessed the execution thereof.

SWORN to before me, this 5th day of October, A. D. 19 64

Walter T. Lake (L. S.) Myrtis F. Halfacre

Notary Public for S. C.

THE STATE OF SOUTH CAROLINA, County.

NO RENUNCIATION OF DOWER GRANTOR A WOMAN

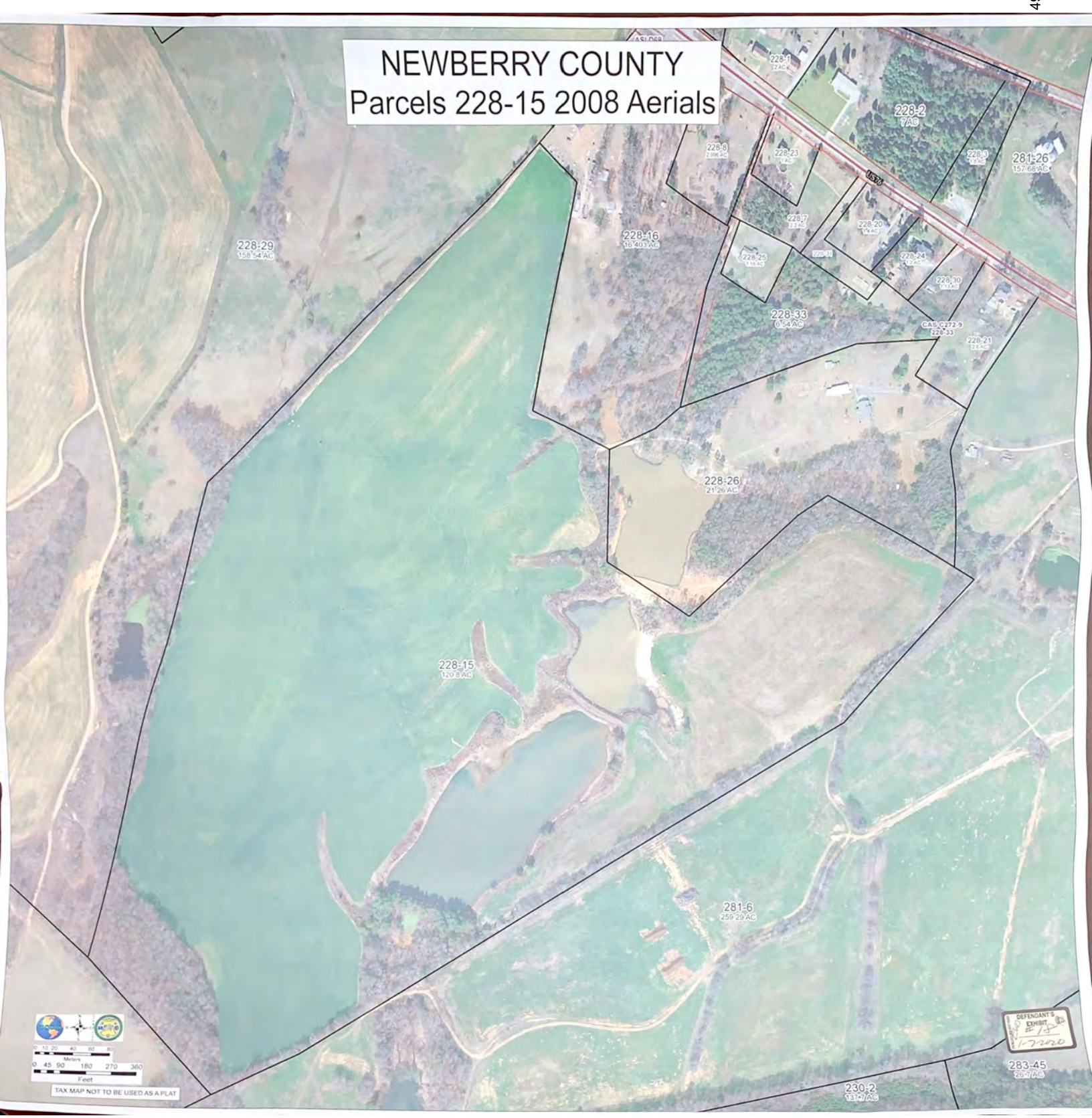
I, , Notary Public for South Carolina, do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named Heirs and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in, or to all and singular the premises within mentioned and released.

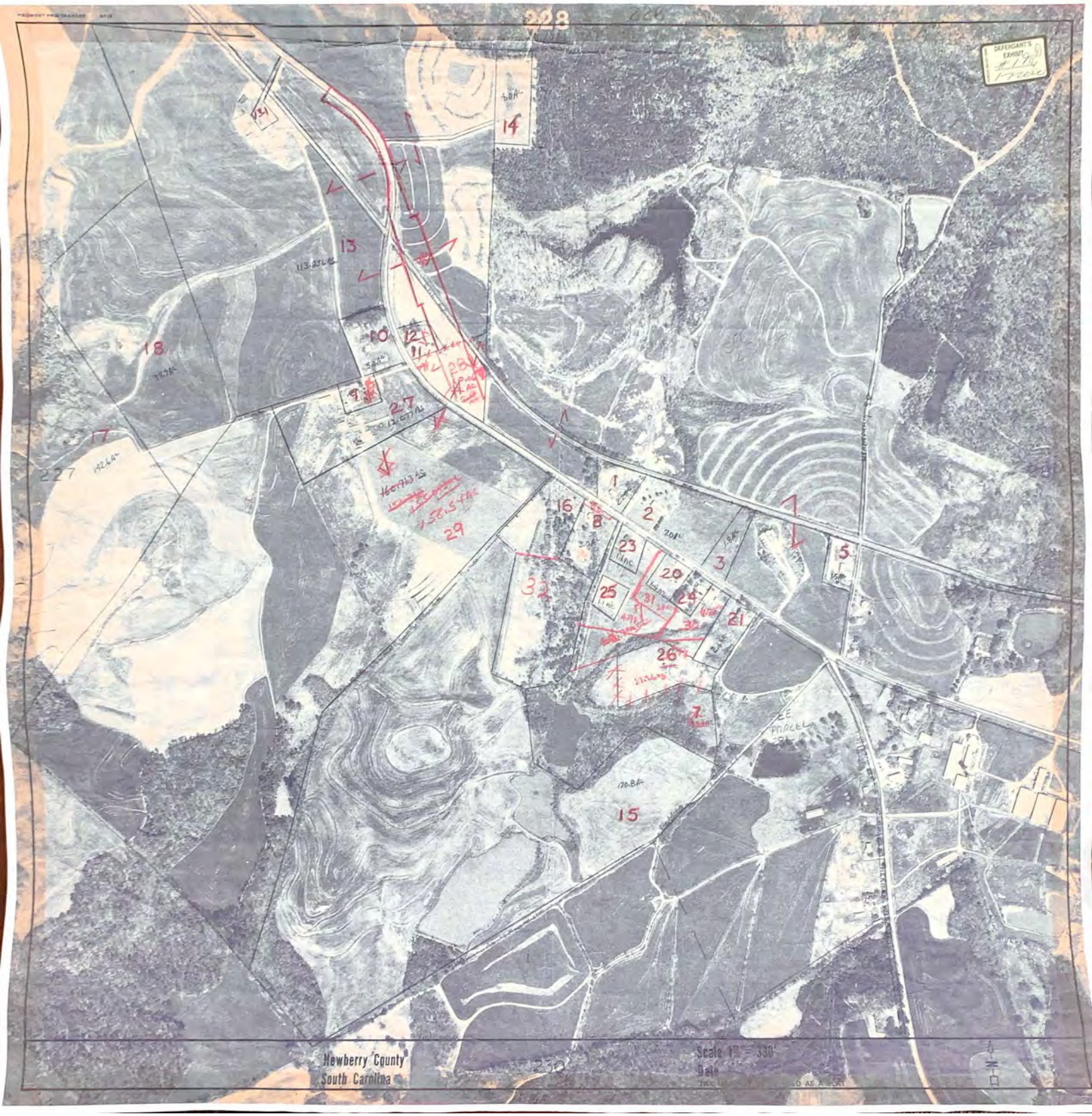
Given under my Hand and Seal, this day of , Anno Domini 19

Notary Public for S. C. (L. S.)

A true record October 6, 19 64 (2:47 PM) (SEAL) BURKE M. WISE

C. C. C. P.

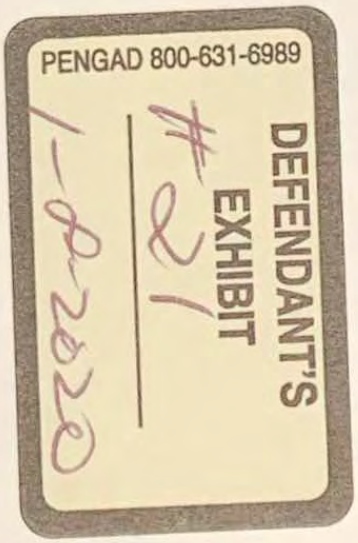

NEWBERRY COUNTY
Parcels 228-15 2008 Aerials
228-1
2 AC
228-2
7 AC
228-3
2.06 AC
228-23
1 AC
228-9
7 AC
281-26
157.68 AC
US76
228-7
7.3 AC
228-16
16.403 AC
228-20
2 AC
228-29
158.54 AC
228-25
1.15 AC
228-24
2 AC
228-30
1.3 AC
228-33
8.54 AC
CAS-C272-9
228-33
228-21
3.6 AC
228-26
21.26 AC
228-15
120.8 AC
281-6
259.29 AC
283-45
20.7 AC
230-2
137.7 AC
DEFENDANT'S
EXHIBIT
#15
Meters
0 45 90 180 270 360
Feet
TAX MAP NOT TO BE USED AS A PLAT


228
DEFENDANT'S EXHIBIT
#14
14
13
113.27Ac
18
37.78Ac
17
227
192.6Ac
10
12
11
28
9
27
29
1
2
16
8
23
20
3
5
25
24
21
26
7
15
120.8Ac
Newberry County
South Carolina
Scale 1" = 330'
Date

497


DEFENDANT'S
EXHIBIT
#20
1-8-2020
PENGAD 800-631-6989

PRIVATE
PROPERTY


PENGAD 800-631-6989
DEFENDANT'S
EXHIBIT
#21
1-8-2020


PRIVATE

DEFENDANT'S
EXHIBIT
#22
1-8-2020
PENGAD 800-631-6989

PENGAD 800-631-6989
DEFENDANT'S EXHIBIT
#23
1-8-2020

TO BE DISPLAYED AT BUILDING SITE

DEFENDANT'S EXHIBIT #246 1-3-2020

NEWBERRY COUNTY

BUILDING PERMIT

OWNER: James F. Amick

TAX MAP NO.: 228-16 (New House)

PERMIT NO.: 0600942 (22134 Hwy 76)

updated: 10-12-07
DATE OF ISSUE

Tracy Taft
ISSUING AGENT

ELECTRONICALLY FILED - 2018 Apr 24 3:00 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No.: 2017-CP-36-00214
James L. Braswell, Sr.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AFFIDAVIT**
	)	
James F. Amick,	)	
	)	
Defendants.	)	
	)	
	)	

Personally appeared before me, William Bartley Dominick, and, who being first duly sworn, said the following:

1. I am over the age of 21 and competent to give this affidavit which is based upon my personal knowledge unless indicated otherwise, and as to those matters I believe them to be true.

2. I am a registered land surveyor in the State of South Carolina, my license number is 21933. I have been a registered land surveyor in the State of South Carolina since 2002. I have personally participated in the preparation of over three hundred (300) plats in the State of South Carolina.

3. I have a BS in Mathematics and Computer Science from Newberry College, from which I graduated with honors.

4. I have an AS in Civil Engineering Technology from Midlands Technical College, from which I graduated with honors.

5. I have a BAIS in Civil Engineering and Geography from the University of South Carolina, from which I graduated with honors.

6. I have been the Vice President and President of the Mid-State Chapter of Professional Land Surveyors, and I currently serve as Treasurer for this organization.

7. I am the past Chairman of the "Four Year Degree Committee" of the South Carolina Society of Professional Land Surveyors (SCPLS) and I am past member of the "Exam Committee" for the SCPLS.

8. I am a guest lecturer for the Department of Geography at the University of South Carolina for lectures on the subject of surveying.

9. I am employed by the South Carolina Department of Transportation and perform engineering surveying. I perform profiles of roads and bridges, as well as other duties.

10. I have been retained by Mr. James L. Braswell, Sr. to determine the width and location of the easement or right of way ("Right of Way") which connects a 120.80 acre tract of land owned by Mr. Braswell with Highway 76.

11. To make the determination I reviewed the deed by which Mr. Braswell acquired the 120.80 acres. Mr. Braswell acquired the 120.80 acres from Sula S. Miller Harley by deed dated June 20, 1972 and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 109 at page 270 ("Deed").

12. The 120.80 acres conveyed by the Deed is described by reference to a plat prepared for Sula Miller by Claude E. Johnson, L.S. 1373, dated September 1961 – October 1971 and recorded in the Office of the Clerk of Court for Newberry County on May 5, 1972 in Plat Book AG at page 28. ("Plat").

ELECTRONICALLY FILED - 2018 Apr 24 3:00 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

13. The Plat also shows the Right of Way which provides access to the 120.80 acre tract to and from Highway 76.

14. I reviewed the original of the Plat in the Newberry County Courthouse.

15. There are four recognized methods by which to determine the width of a tract of land or right of way: (a) Engineering/Surveying Scale, (b) Architectural Scale, (c) Highway Patrol Scale, and (d) VWR Scientific Products Scale. I used all four methods and one (1) digital caliper, a VWR Scientific Products Traceable Digital Caliper, to determine the accuracy of the lines shown on the Plat including the lines depicting the Right of Way.

16. I concluded that the Plat was accurate in all respects and was within the accepted parameters which were in force in 1971.

17. I checked and scaled other lines on the plat for correctness and then scaled the right-of-way shown on the Recorded Plat.

18. The Plat was drawn to a scale of one inch equals five chains. A chain is 66 feet in length. Five chains represents 330 feet. Therefore, one inch equals 330 feet.

19. By using the Engineering/Surveying Scale, Architectural Scale, Highway Patrol Scale, and the VWR scale, I determined that the uniform width of the Right of Way shown on the Plat is 3 thirty-two seconds (3/32) of an inch. Three Thirty-Two seconds of an inch is 0.09375 of an inch (3/32 =0.09375). Since one inch equals 330 feet on the Plat and the Right of Way is 0.09375 of an inch as shown on the Plat, I concluded that, using those four scaling methods, the uniform width of the Right-of-Way is 30.9375 feet (330 x 0.09375 = 30.9375).

20. By using the VWR Scientific Products Traceable Digital caliper, I determined that the uniform width of the Right-of-Way shown in the Plat is 0.095 of an inch. Since one inch equals

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330 feet on the Plat, and the Right of Way is 0.0.95 of an inch as shown on the Plat, I concluded that the uniform width of the Right of Way shown on the Plat is 31.35 feet (330 x 0.095 = 31.35).

21. Based on the foregoing, I concluded that the average uniform width of the Right of Way shown on the Plat is 31.14375 feet (31.35 + 30.9375 = 62.278 / 31.14375), rounded to 31.14 feet. To scale the Recorded Plat, the right-of-way measures 0.095 inches. For a scale of one inch equaling 5 chains that would be 0.095 x 330 feet = 31.35 feet.

22. The Plat also shows the location of the Right of Way. By reference to the Plat and using the same scaling methods set out above, I concluded that the Right of Way began at the Northern corner of the 120.80 acres tract shown on the Plat, and the right of way extends from that point to Highway 76.

AFFIANT FURTHER SAYETH NOT.

William Bartley Dominick

SWORN TO BEFORE ME THIS 31
DAY OF October, 2017

Andrea Ringer
Notary Public for South Carolina
My Commission Expires: 4.27.27

ELECTRONICALLY FILED - 2018 Apr 24 3:00 PM - NEWBERRY - COMMON PLEAS - CASE#2017CP3600214

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	) C/A: 2017-CP-36-00214
James L. Braswell, Sr.,	)
Plaintiff,	)
vs.	) AFFIDAVIT OF JAMES L. BRASWELL, JR.
James Franklin Amick,	)
Defendant.	)

FILED

PERSONALLY APPEARED BEFORE ME, JAMES L. BRASWELL, JR., who after being duly sworn and deposed says the following:

1. I am over the age of 18 and I am competent to make this affidavit.
2. The statements in this affidavit are based upon my personal knowledge.
3. I am the son of James L. Braswell, Sr., the Plaintiff in the above captioned matter.
4. I was born in 1959.
5. My father owns a 120.80 acre tract of land ("Property") located off of Highway 76 in Newberry County.
6. My father purchased the Property from Sula Miller in 1972. The Property was and is accessed from Highway 76 by an easement that crosses over the adjoining land, which is now owned by James Franklin Amick.
7. I began working for my father when I became a tecnager and I have worked for him since that time.
8. My duties in my father's farming operations include the planting, cultivating, and harvesting of crops on the Property for my father's dairy cattle operations.

9. Since at least 1978, farming equipment has been and is used on the Property as necessary throughout the calendar year for planting, cultivating and harvesting crops planted on the Property.

10. I drive a tractor that is used to spray the crops planted on the Property from Highway 76 to the Property and back over the easement that crosses Mr. Amick's property.

11. I also drive other large trucks that are used in the farming operations on the Property, and I drive those large trucks from Highway 76 to the Property and back using the easement that crosses Mr. Amick's property.

12. My father built ponds on the Property after he purchased the Property. Those ponds were completed in 1979.

13. After the ponds were completed, I drove my 1979 Honda Civic from Highway 76 to the Property and back using the easement that crosses Mr. Amick's property to show my girlfriend (who is now my wife) the ponds prior to the ponds filling with water.

14. I also drove my 1979 Honda Civic from Highway 76 to the Property and back using the easement that crosses Mr. Amick's property for the purposes of "parking" with my girlfriend, (who is now my wife) at various times while we dated.

15. I access the Property at night from Highway 76 and back using the easement that crosses Mr. Amick's property for purposes of checking the irrigation system that is used on the Property.

16. Mr. Amick has contacted me over the last 2-4 years regarding ruts he alleges were made by the equipment used on the Property that crossed the easement over his land. Anytime he has made a complaint regarding ruts, my father and I have undertaken efforts to have gravel placed on the easement.

AFFIANT FURTHER SAYETH NOT.

James L. Braswell, Jr.

James L. Braswell, Jr.

SWORN TO BEFORE ME THIS
15th day of December 2017

Catherine A. Nichols Catherine A. Nichols
Print name of Notary Public:
Notary Public for South Carolina
My commission expires: 10/26/2027

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	) C/A: 2017-CP-36-00214
James L. Braswell, Sr.,	)
Plaintiff,	)
	) AFFIDAVIT OF JAMES L. BRASWELL, SR.
vs.	)
James Franklin Amick,	)
Defendant.	)

PERSONALLY APPEARED BEFORE ME, JAMES L. BRASWELL, SR., who after being duly sworn and deposed says the following:

1. I am over the age of 18 and I am competent to make this affidavit.
2. The statements in this affidavit are based upon my personal knowledge.
3. I own a 120.80 acre tract of land ("Property") located off of Highway 76 in Newberry County.
4. I purchased the Property from Sula Miller in 1972. The Property was and is accessed from Highway 76 by an easement that crosses over the adjoining land, which is now owned by James Franklin Amick. That easement is shown on the recorded plat referenced in the deed conveying the Property to me from Sula Miller.
5. I own a dairy cattle farm, and I plant, cultivate, and harvest crops grown on my Property to feed my dairy cattle.
6. Prior to purchasing the Property from Sula Miller in 1972, I leased the Property from Sula Miller to grow crops for my dairy cattle. I drove large farming equipment from

Highway 76 to the Property and back across the easement that crosses Mr. Amick's property.

7. After I purchased the Property, I continued the farming operations on the Property and continued to drive large farm equipment to the Property from Highway 76 and back using the easement that crosses Mr. Amick's property.

8. In 1978 I purchased a John Deere 6600 16 foot header combine. The header on that combine is not removed when being moved from place to place. The combine has been used to harvest crops on the Property since I purchased the combine. I drive that combine from Highway 76 to the Property and back using the easement that crosses Mr. Amick's property.

9. I also drive tractors, grain ~~mills~~ drills JCB, and other large trucks that are used in planting, cultivating and harvesting the crops planted on the Property. I drive the tractors, grain ~~mills~~ drills JCB, and other large trucks from Highway 76 to the Property and back over the easement that crosses Mr. Amick's property.

10. I access my Property at night from Highway 76 and back using the easement that crosses Mr. Amick's property for purposes of checking the irrigation system that I use on my Property for purposes of cultivating the crop that is grown there.

11. I am not aware of anyone accessing my Property to and from Highway 76 using the easement that crosses Mr. Amick's property at night without permission.

12. I have not asked or contacted Mr. Amick for permission to use the easement crossing Mr. Amick's property to access my Property to and from Highway 76.

13. Mr. Amick has not contacted me to request that I cease to use the easement.

14. Shortly after Mr. Amick purchased his property, he contacted me to get permission to put up gates across the easement. I purchased a total of 4 12 foot gates, and Mr. Amick installed the gates. Two gates were placed at the entrance to Mr. Amick's property from Highway 76, and the remaining 2 gates were installed at the entrance to my Property from Mr. Amick's property. Mr. Amick and I agreed the gates would be locked, and he and I would have keys to the gates.

15. Shortly after the gates were installed, my son attempted to cross the easement from Highway 76 to access the Property for farming purposes, and he found the lock had been changed and was not able to access the easement. I instructed my son to remove the gates at the hinges and access the Property from Highway 76 and back using the easement across Mr. Amick's property. Mr. Amick never informed me that he changed the locks, nor did he provide a key to me for the new lock.

16. Since Mr. Amick purchased his property, Mr. Amick contacted me to get permission to hunt and fish on my Property. I gave him permission to hunt and fish on my Property.

17. Mr. Amick contacted me to ask me to sign a letter on his behalf regarding some personal legal issues he was facing

18. Since Mr. Amick purchased his property, I have spoken with him about preventing his goat from entering my Property and eating crops I had planted on my Property.

19. I have also spoken to Mr. Amick to request that he stop riding horses on my Property.

AFFIANT FURTHER SAYETH NOT.

James L Braswell, Sr.
James L. Braswell, Sr.

SWORN TO BEFORE ME THIS
15th day of December 2017

Catherine A Nichols Catherine A. Nichols
Print name of Notary Public:
Notary Public for South Carolina
My commission expires: 10/26/2027

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	) C/A: 2017-CP-36-00214
James L. Braswell, Sr.,	)
Plaintiff,	)
	) AFFIDAVIT OF MARK WAYNE BRASWELL
vs.	)
James Franklin Amick,	)
Defendant.	)

FILED

PERSONALLY APPEARED BEFORE ME, MARK WAYNE BRASWELL, who after being duly sworn and deposed says the following:

1. I am over the age of 18 and I am competent to make this affidavit.
2. The statements in this affidavit are based upon my personal knowledge.
3. I am the son of James L. Braswell, Sr., the Plaintiff in the above captioned matter.
4. I was born in 1964.
5. My father owns a 120.80 acre tract of land ("Property") located off of Highway 76 in Newberry County.
6. My father purchased the Property from Sula Miller in 1972. The Property was and is accessed from Highway 76 by an easement that crosses over the adjoining land, which is now owned by James Franklin Amick.
7. I turned 14 in 1978. After that, I was employed by my father until 2008.
8. During that time, I performed various duties in connection with my father's farming operations. Those duties included the planting, cultivating, and harvesting of crops on the Property.

9. Since at least 1978, I drove various farming machines, such as tractors, combines, grain drills, and silage trucks from Highway 76 to the Property and back over the easement that crosses Mr. Amick's property.

10. The crops grown on the Property were used in my father's dairy cattle operations.

11. Other large trucks were used in the farming operations on the Property, and I drove them from Highway 76 to the Property and back using the easement that crosses Mr. Amick's property.

12. One piece of equipment which I drove from Highway 76 to the Property and back over the easement that crosses Mr. Amick's property was a John Deere 6600 16 foot header combine my father purchased in 1978. The header on that combine is not removed when it is being moved from place to place. The combine has been used to harvest crops on the Property since my father purchased the combine.

13. The grain drill which I drove from Highway 76 to the Property and back over the easement that crosses Mr. Amick's property has a width of 14 ½ feet.

14. When I turned 15 in 1979, I purchased a Toyota Celica, which is an automobile that sits low to the ground. I used that car during my teenage years to access the Property to and from Highway 76 using the easement that crosses Mr. Amick's property to go "parking" with my girlfriends.

AFFIANT FURTHER SAYETH NOT.

Mark Wayne Braswell
Mark Wayne Braswell

SWORN TO BEFORE ME THIS
15th day of December 2017

Catherine A. Nichols Catherine A. Nichols
Print name of Notary Public:
Notary Public for South Carolina
My commission expires: 10/26/2027

RECEIVED
Jun 04 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2020-000458
Civil Action No. 2017-CP-36-00214

James L. Braswell, Sr., ……..… Respondent – Appellant,

v.

James F. Amick, …… Appellant - Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Corrected Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Jennifer Dowd Nichols
Jennifer Dowd Nichols, (SC Bar #75916)
Samuel M. Price, (SC Bar #101035)
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