

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell Scarborough, Master in Equity

**RECEIVED**  
JUN 08 2016  
SC Court of Appeals

Case No. 2011-CP-10-95

Bayview Acres Civic Club . . . . .

Respondent

v.

Gerald E. Moore, Jr. a/k/a Gerald Moore and  
Margaret Bates Moore . . . . .

Appellants

**RECORD ON APPEAL**

David Athell Collins  
P.O. Box 40578  
Charleston, SC 29405-0578  
(843) 760-0220  
(843) 552-2678 facsimile  
Davidacollins2@aol.com  
Attorney for Appellants

Other Counsel of Record:

Benjamin A. Traywick, Esq.  
P.O. Box 564  
Isle of Palms, S.C. 29451

## INDEX

Complaint . . . . .	R – 1
Order of April 6 <sup>th</sup> , 1984 . . . . .	R – 66
Order of November 5 <sup>th</sup> , 2013 . . . . .	R – 73
Motion of May 23 <sup>rd</sup> , 2014 . . . . .	R – 77A
Order of June 25 <sup>th</sup> , 2014 . . . . .	R – 78
Motion of January 15, 2015 . . . . .	R – 80
Order of March 24 <sup>th</sup> , 2015 . . . . .	R – 82
Motion of July 20 <sup>th</sup> , 2015 . . . . .	R – 85
Order of September 16, 2015 . . . . .	R – 87
Transcript of hearing, March 4, 2015 . . . . .	R – 88

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 BAYVIEW ACRES CIVIC CLUB, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 GERALD E. MOORE, JR. a/k/a )  
 GERALD MOORE, MARGARET )  
 BATES MOORE, and ROBERT )  
 PAYNE, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH OF JUDICIAL CIRCUIT

2011-CP-10-95

CIVIL ACTION NO.: ~~2010-CP-10~~

2011 JAN -6 PM 1:38  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

FILED

**COMPLAINT**

Plaintiff, Bayview Acres Civic Club, by and through undersigned counsel, complaining of the Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore (hereinafter "Gerald Moore"), Margaret Bates Moore and Robert Payne states as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with an interest in the real property that is the subject of this action, located in Charleston County, South Carolina.
2. Upon information and belief, Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore, Margaret Bates Moore and Robert Payne are citizens and residents of Charleston County and are not in the military service of the United States of America pursuant to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as Amended.
3. Venue is proper pursuant to S.C. Code Ann. § 15-7-30 (1976, as amended).

4. Jurisdiction is proper pursuant to the Constitution of the State of South Carolina and the South Carolina Code of Laws.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Rule to Show Cause)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

5. On or about November 24, 1982, an action for declaratory and injunctive relief was commenced in the Court of Common Pleas for Charleston County in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234.

6. The litigation involved the access and use of a 50-foot parcel of land which extends about 250-300 feet from Bay View Drive to the marshes of Shem Creek, which is located between lot 37 and lot 38 in Bayview Acres Subdivision (hereinafter the "Subject Property").

7. The Petitioners in the above-referenced matter sought an Order enjoining Gerald E. Moore, Jr. and his wife Margaret Bates Moore from blocking or obstructing the Subject Property after Moore had erected a carport, no-trespassing signs and several metal buildings closer that encroached onto the Subject Property.

8. On April 6, 1984 an Order (the "Order") was issued by the Honorable Louis E. Condon enjoining Gerald E. Moore, Jr. and Margaret Bates Moore from "threatening or interfering in any way with Petitioners' right to use and enjoy the 50-foot strip in question in common with other lot owners in Bay View". A copy of said Order is attached hereto as Exhibit A and incorporated herein by reference.

9. In the Order, the Court found that the metal buildings and carport extended 15 or 20 feet into the Subject Property and ordered Gerald E. Moore, Jr. and Margaret Bates Moore to

remove the metal buildings , no-trespassing signs, and any other obstructions they placed in the 50-foot strip. Since no action was taken to halt construction of the carport, it was not ordered to be removed; however, the Court held that if the carport was ever taken down or removed by the owner, or destroyed by natural forces, it could not be rebuilt.

10. In violation of the Order, Gerald Moore, has interfered in with Plaintiff's right to use and enjoy the 50-foot strip by operating a commercial business on a portion of the parcel and erecting a new structure that encroaches on the Subject Property. See Exhibit A.

11. Large quantities of mulch on the 50-foot strip and dump trucks and other heavy machinery has been driven upon the 50-foot strip to deliver and remove mulch. See Id

12. Upon information and belief, Robert Payne has taken up residence in the new structure and is trying to establish an address by erecting a mailbox with the address of 359 B Bayview Drive.

13. Defendants have, and continue to, knowingly, openly and intentionally violate the terms of the Order issued by Judge Condon.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Declaratory Judgment)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

14. SC Code Ann. § 15-53-20 provides that courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.

15. SC Code Ann. § 15-53-100 provides that in an action for a declaratory judgment, the court may make such award of costs as may seem equitable and just.

16. In Judge Condon's Order, he found that the acquiescence of the original subdividers, together with the language of the Restrictions for Bayview Acres, led to the inescapable conclusion that the lot owners in Bay View Subdivision acquired an easement or property interest which allows them unobstructed access to the Subject Property.

17. Plaintiff seeks a declaration from the Court that the actions of Defendants Gerald E. Moore, Jr., Margaret Bates Moore and Robert Payne interfere with Plaintiff's right to use and enjoy the subject property and are a violation of the Order issued by Judge Condon.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Civil Conspiracy)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

18. Gerald Moore, Margaret Bates Moore and Robert Payne constitute a combination of two or more people for the purpose of injuring Plaintiff.

19. Gerald Moore, Margaret Bates Moore and Robert Payne have conspired to interfere with Plaintiff's right to use and enjoy the Subject Property by operating a commercial business on the Subject Property, erecting structures that encroach on the Subject Property, and attempting to establish a residence for Robert Payne at the Subject Property.

20. As a result of the actions of the conspiring parties, Plaintiff has suffered actual, consequential, and special damages, to include loss of use and enjoyment of the Subject Property and the costs and fees associated with this action, among other things.

**AS AND FOR A FORTH CAUSE OF ACTION  
(Injunctive Relief)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

21 Pursuant to SCRCP Rule 65 and the laws of the State of South Carolina, and for the reasons set forth herein, Plaintiff is entitled to injunctive relief.

22. Plaintiff has suffered and will suffer irreparable injury in the event that Defendants Gerald Moore, Margaret Bates Moore and Robert Payne are allowed to interfere with Plaintiff's right to use and enjoy the Subject Property and to utilize the Subject Property for their own benefit.

23. Defendants Gerald Moore, Margaret Bates Moore and Robert Payne have no legal right to interfere with Plaintiff's right to use and enjoy the Subject Property, and Plaintiff has a great likelihood of success on the merits.

24. An adequate remedy at law does not exist to adequately recompense Plaintiff in the event Defendants are permitted to violate the terms of Judge Condon's Order.

25. Public policy would support the injunctive relief sought, as Defendants has wrongfully interfered with Plaintiff's right to use and enjoy the Subject Property and are in violation of Judge Condon's Order.

26. Wherefore, Plaintiff would respectfully request that this Court issue an Order for a permanent injunction ordering Defendants to remove the structure that encroaches on the Subject Property and to cease and desist from operating a commercial business on the Subject Property.

**WHEREFORE**, having fully set forth its complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore and Margaret Bates Moore be sanctioned for violating the terms of the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234, or in the alternative, an Order be issued requiring Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore and

Margaret Bates Moore to show cause, if they can, why they should not be held in Contempt of Court for failing to comply with the Order; and

2. The Court declare that the actions of Defendants Gerald Moore, Margaret Bates Moore and Robert Payne violate the terms of the the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234 and interfere with the lot owners in Bay View Subdivision's casement and/or property interest which allows them unobstructed access to the Subject Property; and

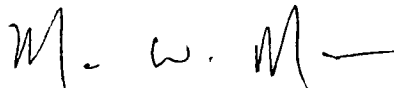
3. Plaintiff have Judgment against Defendants Gerald Moore and Robert Payne for civil conspiracy and an award of actual, consequential and punitive damages in an amount to be proven at trial and to include attorneys' fees and costs and interest; and

4. This Court issue injunctive relief to prohibit Defendants Gerald Moore, Margaret Bates Moore and Robert Payne from interfering with Plaintiff's right to use and enjoy the Subject Property and ordering the structure that encroaches onto the Subject Property be removed; and

5. Plaintiff be awarded the costs associated with the prosecution of this matter, including reasonable attorney's fees; and

6. For such other and further relief as the Court may deem just and proper.

**ALTMAN & COKER, LLC**



---

Charles S. Altman  
Meredith L. Coker  
Marcus W. Meetze  
Post Office Box 265  
Charleston, South Carolina 29402  
843-853-9907  
843-853-9838 Facsimile  
Attorney for the Plaintiff

January 6, 2011

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Bayview Acres Civic Club, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Gerald E. Moore, Jr., a/k/a Gerald )  
 Moore, and Margaret Bates Moore, )  
 )  
 Defendants. )  
 )

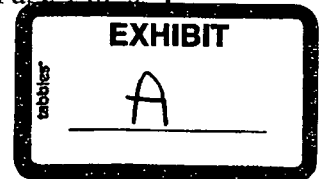
IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH OF JUDICIAL CIRCUIT

C/A No.: 2011-CP-10-95

FILED  
 2013 NOV -5 AM 11:39  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY [Signature]

**ORDER**

This matter is before the Court based on the Complaint of Plaintiff requesting the Court to find the Defendants have violated the terms of the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234; in the alternative, issue an Order requiring Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore and Margaret Bates Moore to show cause, if they can, why they should not be held in Contempt of Court for failing to comply with the Order; declare that the actions of Defendants Gerald Moore, Margaret Bates Moore and Robert Payne violate the terms of the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234 (the "1984 Order") a copy of which is attached hereto as Exhibit A, and interfere with the lot owners in Bay View Subdivision's easement and/or property interest which allows them unobstructed access to the Subject Property; Plaintiff have Judgment against Defendants Gerald Moore and Robert Payne for civil conspiracy and an award of actual, consequential and punitive damages in an amount to be proven at trial and to include attorneys' fees and costs and



interest; this Court issue injunctive relief to prohibit Defendants Gerald Moore, Margaret Bates Moore and Robert Payne from interfering with Plaintiff's right to use and enjoy the Subject Property and ordering the structure that encroaches onto the Subject Property be removed; and Plaintiff be awarded the costs associated with the prosecution of this matter, including reasonable attorney's fees.

The case was referred to the undersigned as Master in Equity for Charleston County by Order filed August 31, 2010.

When filed Robert Payne was a named defendant, however, upon Motion of the Plaintiff, he was dismissed from the case by Order filed November 15, 2010.

The case was scheduled for hearing on September 25, 2013 at 2:00 o'clock P.M. At the time of the hearing, the attorneys for the parties advised the Court an agreement had been reached to resolve the matter. The agreement was announced in open Court by Charles S. Altman, attorney for the Plaintiff and acknowledged and agreed to on behalf of the Defendants by their attorney, David A. Collins.

Based on the Agreement of the Parties and the consents to this Order by their attorneys on their behalf, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

1. For purposes of this Order and the 1984 Order, the term "Plaintiff's Property" shall refer to the piece parcel or lot of land marked "Reserved" lying between Lots 37 and 38 on the Plat entitled "BLOCK "A" OF BAY VIEW ACRES CHARLESTON COUNTY, S.C." prepared by The John McCrady Co., Charleston, S.C., dated February, 1948 and recorded in the RMC Office for Charleston County in Plat Book G at page 48a on April 17, 1948.

2. For purposes of this Order and the 1984 Order, the portion of the Plaintiff's Property which the Defendants are entitled to use as a result of the construction by Defendants on Plaintiff's Property prior to the 1984 Order is described as bordering on the West by Lot 37, on the North by Bay View Drive, on the East by markers placed by a surveyor employed by Plaintiff and on the South by the rear portion of the structure erected by Defendants prior to the 1984 Order.

3. The 1984 Order remains valid and effective and the Order of the Court to be fully complied with by Plaintiff and Defendants, Gerald E. Moore, Jr., a/k/a Gerald Moore and Margaret Bates Moore.

4. The property line between the property occupied by the Defendants, known as Lot 37, Bay View Acres Subdivision and the property belonging to the Plaintiff, designated as "RESERVED" on the plat entitled "Block "A" Bay View Acres Charleston County, S.C." is as shown on said plat recorded in Plat Book G at page 48-A in the RMC Office for Charleston County and shall be marked by appropriate markers installed by a surveyor employed by Plaintiff.

5. No later than October 25, 2013, Defendants shall remove all mulch, dirt and grass they allowed to be placed on the property of Plaintiff. Defendants will be allowed to use small equipment to remove the mulch, dirt and grass and the equipment shall be allowed to cross the property of the Plaintiff to accomplish the removal, provided the Plaintiff's Property will be restored to its condition prior to the time the mulch, dirt and grass was placed on the Property of Plaintiffs and any damage to the Plaintiff's Property created by the removal of the mulch, grass and dirt shall be repaired and the Property returned to its prior condition. Time is of the Essence with regard to the work to be done pursuant to this provision.



6. Defendants shall remove from the Plaintiff's Property any debris on the Property such as propane tanks, doors, sinks, plumbing fixtures, etc. The debris shall be removed no later than October 25, 2013. Time is of the Essence with regard to the removal of the debris.

7. Defendants will not allow their dogs on the Plaintiff's Property except when on a leash and controlled by the Defendants or someone designated by them.

8. Defendants will not, except as specifically provided otherwise herein, use vehicles on the Plaintiff's Property other than a bicycle. Defendants' use of the Plaintiff's Property shall be the same as any other resident of Bayview Acres.

9. With the exception of that portion of Plaintiff's Property which Defendants are entitled to use pursuant to the 1984 Order as described in Paragraph Number 2 of this Order the defendants will not perform any landscaping or cutting of any vegetation or perform any other work on the Plaintiff's Property. In the event Defendants believe any work needs to be performed to maintain the Plaintiff's Property, they will contact the President of the Plaintiff and advise him/her of what the Defendants believe need to be done. The Plaintiff shall be solely responsible through its agents to maintain the Plaintiff's Property. Defendants shall maintain the portion of Plaintiff's Property as described in paragraph 2 of this Order in a neat and clean condition. Nothing contained in this Order shall be deemed to prevent Defendants from using the existing driveway which lies within the portion of Plaintiff's Property which lies within the boundaries described in paragraph 2 of this Order as long as they are entitled to maintain the structures located thereon pursuant to the provisions of the 1984 Order. At such time as the right to maintain the said structures ends, the right to use any portion of the Plaintiff's property by Defendants shall terminate other than any right Defendants may have as residents of Bay View Acres Subdivision.

10. In the event Defendants violate the terms of this Order or the 1984 Order, upon application accompanied by an affidavit by the President of the Plaintiff setting forth with specificity the facts supporting the claim the Defendants or either of them or persons acting on either of their behalf have violated the terms of either Order, the Court will issue a Rule to Show Cause as to why the Defendants should not be held in contempt of Court and appropriate sanctions awarded to Plaintiff against the Defendants, which sanctions may include an award of reasonable attorney's fees to Plaintiff's attorney.

11. This Order shall be public notice, the Plat entitled "Map of Lot No. 37, A-B-C-D and Parcel X-B-E-F-C being joint to form Lot 37X located in Bay View Acres Subdivision, Block A Christ Church Parish, Charleston Co., S.C., recorded in Plat Book AW, at page 57, in the RMC Office for Charleston County on November 10, 1982 is void and of no effect.

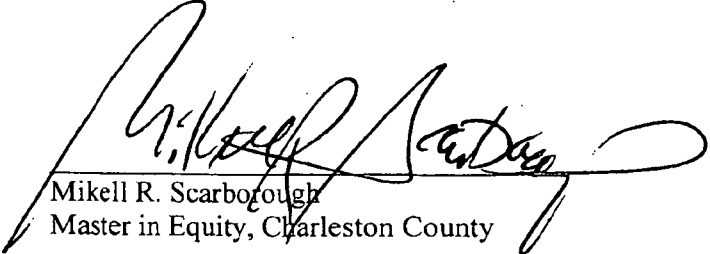
12. This Order shall be recorded in the RMC Office for Charleston County to put the public on notice of the limitations of the owner of Lot 37, Bay View Acres Subdivision with regard to the use of the Plaintiff's Property as set forth herein and in the 1984 Order. The Order shall be indexed under the names of the current owners of Lot 37, Bay View Acres Subdivision, Margaret B. Moore and Alec Elizabeth Cleary and refer to TMS Number 517-06-00-037.

AND IT IS SO ORDERED.

*None Protested*

Charleston, South Carolina  
Dated: October 5, 2013

*Nov. 1, 2013*

  
Mikell R. Scarborough  
Master in Equity, Charleston County

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
CASE NO. 82-CP-10-4234

W. L. GUERRY, JR., and  
PATRICIA S. GUERRY, indi-  
vidually and on behalf of  
all property owners in Bay  
View Acres Subdivision, and  
BAY VIEW ACRES CIVIC CLUB,  
an eleemosynary corporation,

Petitioners,

vs.

GERALD E. MOORE, JR.,  
MARGARET BATES MOORE,  
FRANKLIN P. WERNER, and  
DORIS M. WERNER,

Respondents.

ORDER

This action for declaratory and injunctive relief was commenced on November 24, 1982, by the individual petitioners W.L. and Patricia Guerry, who own a home in Bay View Acres Subdivision, and by the Bay View Acres Civic Club, an eleemosynary corporation. The petitioners seek to enjoin the respondent Gerald E. Moore, Jr., and his wife Margaret Bates Moore from blocking or obstructing the 50-foot-wide strip of land which extends about 250-300 feet from Bay View Drive to the marshes of Shem Creek. This strip or street extension is between lots 37 and 38. The Moores have owned lot 37 since August of 1974, and the other respondents, Franklin P. and Doris M. Werner, own lot 38.

The Werners filed an answer joining in the prayer of the petitioners, and they state among other things in their answer:

~~[These respondents have in no manner ever attempted to claim this property (i.e., the 50-foot strip) to the exclusion of the petitioners;~~

The strip in question is highland which has a few shrubs and trees on it, and it in turn leads to what is apparently a quite old ten-foot-wide dirt causeway, which slices through the marsh down to the edge of Shem Creek. This is apparently the only way for Bay View Acres Subdivision residents to walk from their homes to Shem Creek and crab, fish, or just see the sights along this beautiful creek which often is filled with shrimp boats.

The plat for Bay View shows that the strip in question, along with two other similar strips that lead only to the edge of the marsh, have written on them the words, "Reserved." Mr. Moore argues that these words must mean that the strips were reserved strictly and exclusively for the original subdividers, Miss Daisie Sessions, et al. He further claims, by adverse possession, to have succeeded to the title of the original subdividers.

On the other hand, the petitioners introduced the restrictions for Bay View acres as well as a letter from Miss Sessions' attorney in 1955 addressed to the Bay View Acres Civic Club which clarifies Miss Sessions' position. In pertinent part, Miss Sessions' attorney stated:

Miss Sessions says that the reservation of the 50 feet involved (between lots 37 and 38 on Bay View Drive) was for the purpose of giving unobstructed access to the marsh,

It seems irrefutable from the long usage over the course of more than 35 years by residents of Bay View without the least hindrance from Miss Sessions, et al., that it was her intention and that of the other subdividers' that the lot owners, when they bought their lots in Bay View, also acquired the right to use all of the streets, lanes, ways, etc. shown on the plat) and that these would certainly include the right to reach the marsh and creek along the 50-foot strip. After all, the marsh and harbor views provide the focal points for this subdivision. Certainly, if the subdividers had had a different intention, they would have made that intention manifest in the restrictions, on the plat, or by prohibiting access, on at least one occasion, over the course of the last several decades. These things did not occur, and there is no dispute in the record about this. Indeed, Miss Sessions' attorney confirmed that access was the point of laying out these strips.

Additionally, the petitioners claim that Mr. Moore has violated the restrictions of record which prohibit the erection of structures closer than five feet to a side line. Mr. Moore concedes that his carport was erected closer than five feet to the side lot line on the eastern side of his property. Indeed, it extends 15 or 20 feet into the 50-foot strip. The carport was

erected within the last two or three years. While the petitioners did not bring to Mr. Moore's attention his violation of the restrictions until the carport had been erected, this doesn't excuse Mr. Moore for failing to recognize his error or, possibly, having erected the carport intentionally within the access route.

Adding to the petitioners' consternation has been the fact that since Mr. Moore first occupied his house in 1977, he has slowly taken certain steps which might deter or discourage some of the lot owners from exercising what petitioners believe is their right to traverse the 50-foot strip in question. Specifically, Moore has erected two or three no trespassing signs, located a couple of small metal buildings on the strip, allowed three or four of his dogs to roam the strip without being controlled by a fence or rope, and he personally has questioned people who have sought to walk across the strip. Nevertheless, Mr. Moore concedes that he has never stopped anyone from using the strip in question. Thus, in no sense could Moore's conduct be considered "adverse" though it may be slightly inconvenient to petitioners and other lot owners to have to walk through the carport or around the dogs and metal buildings. Nor can it be said, as Moore claims in his answer, that he acquired any interest in the 50-foot strip from the respondents Werner, for the Werners, as noted, admit that they have never done anything adverse respecting the areas in question. In short, they conveyed



nothing to Moore in the quit claim deed Moore entered in evidence.

From the evidence, it appears that the Respondent Moore made several unsuccessful attempts to purchase the strip. The exchange of quit claim deeds with Werner was a futile move for uncertain motives. Hopefully no attorney suggested it as a means of acquiring title. Rather, Mr. Moore's major purpose seems to have been an attempt to stop trespassers from outside the subdivision whom he suspected had been or were a threat to his family and their peaceful enjoyment of their own property. While such concern is understandable, his acts were without authority in the subject strip.

The parties have agreed that this order shall be considered a final order appealable only to the South Carolina Court of Appeals. In light of the foregoing, I find as follows:


1. The acquiescence of the original subdividers, together with the language of the restrictions, leads to the inescapable conclusion that the lot owners in Bay View Subdivision acquired, when they bought lots pursuant to the McCrady plat, an easement or property interest which allows them unobstructed access to the 50-foot strip in question, and there is no basis for any claim by Mr. Moore to any greater right to use the strip than is enjoyed by the other lot owners.

2. The fundamental purpose of having drawn the 50-foot strip on the subdivision plat (what is referred to as the McCrady plat) was obviously to connect up the newly created Bay View

Drive with the old causeway leading through the marsh to Shem Creek, which is depicted on the much earlier plat in evidence. The lots in Bay View sold in large measure because of their proximity to Shem Creek, and the views afforded of the creek and Charleston Harbor as well as the beautiful marshes. ~~Neither Mr. Moore nor any other lot owner~~ has the right to block either the view or the access afforded so obviously by the subdividers to the marshes and creek. This easement or special property interest owned and enjoyed by the lot owners is sufficient to afford them entitlement to most of the relief they seek in this action. Accordingly, it is hereby ORDERED that:

(a) The 50-foot strip in question is declared to have been reserved to the right, use and benefit of all the lot owners in Bay View Subdivision, and they have, among other things, the right to use and enjoy the 50-foot strip in question which runs from Bay View Drive between lots 37 and 38 to the marshes without hindrance or obstruction from the respondents. This is so because the lot owners are declared to have an easement or special property interest in these areas in question for unimpeded and unrestricted access and view.

(b) The respondents Moore are hereby enjoined and required to immediately remove the metal buildings, no trespassing signs, and any other obstructions they placed in the 50-foot strip. Since no action was taken to halt construction of his carport before completion, I am not ordering its removal. However, if it is ever taken down or removed by the owner, or




destroyed by natural forces, i.e. a storm, earthquake, etc., it can not be rebuilt in violation of the restrictions, if any, then in force. Nor can the respondents do anything to expand said carport.

(c) The respondents Moore are further enjoined permanently from erecting any other structures, fences, or impediments over the area in question and from threatening or interfering in any way with the petitioners' rights to use and enjoy the 50-foot strip in question in common with the other lot owners in Bay View. Nor will any indirect impediments (such as barking dogs allowed to roam across the strip) be allowed within the 50-foot strip if they interfere with free access of the lot owners. If this occurs with any degree of frequency, this Court shall forthwith issue such an order as may then be appropriate.

While I cannot order it, the Court notes in passing that the problem might be resolved if the Civic Club took on the project of maintaining the several "reserved" areas including posting of appropriate no trespassing signs limiting access to residents or property owners in the subdivision.

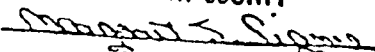
AND IT IS SO ORDERED.

  
Louis E. Condon, Master In Equity

April 6, 1984

Charleston, South Carolina

TEST: A CERTIFIED COPY OF THE  
ORIGINAL FILED IN THIS MATTER,  
LOUIS E. CONDON  
MASTER IN EQUITY FOR  
CHARLESTON COUNTY

By:   
Certifier

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>BAYVIEW ACRES CIVIC CLUB,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>GERALD E. MOORE, JR. A/K/A GERALD MOORE, MARGARET BATES MOORE,</p> <p style="text-align: center;">Defendants</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2011-CP-10-95</p> <p style="text-align: center;"><b>AFFIDAVIT OF GRAHAM STONE</b></p>
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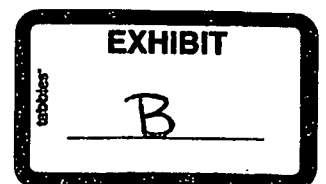
The undersigned affiant appears before me and swears as follows:

1. My name is Graham Stone, I am over the age of 18 years, and I make the following averments on personal knowledge.

2. I have been a member of the Bayview Acres Civic Club (“BVACC”) and a resident of the neighborhood for 22years, and have personal knowledge of the actions of Gerald Moore (“Moore”), who lives 3 doors from my house, as described herein. I was designated by appointment of the President of the BVACC Bobby Warrick, as ratified by May 22<sup>nd</sup>, 2014 vote of the BVACC board, to speak for Mr. Warrick and for the BVACC, in this matter.

3. From the time I have lived in Bayview, Moore has intruded incessantly upon the 50 foot wide strip of property (“Property”) which is adjacent to his house, and which is owned by the BVACC. Exhibit C to the Motion for Rule to Show Cause is a set of photographs which are representative of his intrusion. They illustrate the complete and constant obstruction of the carport which sits predominantly above the Property. They also illustrate the boats, trash, cars, trucks, equipment, and miscellaneous personal property of Moore which he has stored, at all times since my occupancy, on the Property outside of the carport. They also reflect the establishment by Moore of what appears to be a private driveway leading to the carport, a driveway which sits almost entirely on the Property. They also reflect the profound damage done to the Property by Moore’s having heaped thousands of cubic feet of mulch onto the Property, then, upon being ordered by this court to remove it, doing so in such fashion that it left a soggy mud-pit in place of what had been a verdant lawn rolling down to the BVACC’s waterfront property. Moore erected, completely on the Property, a structure which his friend Robert Payne attempted to establish as a church of which he (Payne) claimed to be an ordained minister.

4. These actions by Moore—over the course of 35 years—have severely hindered my and other residents’ access to and enjoyment of the Property. I was the president of the



BVACC for several years, and still sit on its board. At general meetings of the BVACC and meetings of the Board, residents, officers and Board members complain constantly of Moore's conduct. From Bayview Drive to the carport—basically, the personal driveway he has purported to establish—no resident has been able to use the Property. If one walks from the street up the “driveway” (actually BVACC property), one's progress to the waterfront is completely blocked by the boats, cars and heavy equipment which constantly sit on the Property, and by the floor-to-ceiling piles of personal property which completely block the carport.

5. From the carport out to the waterfront, my and other owners' usage has been adversely affected by the heaping piles of crab traps, lumber, mulch, boats, cars, equipment, dogs and other debris that have been stored there for decades.

6. With neither the stretch from the road to the carport, nor the stretch from the carport to the waterfront easily or pleasurably used, the Property has been rendered a nullity from the standpoint of the BVACC. It ought to be a verdant and pleasant area to enjoy marsh views and access to Shem Creek; instead, it is little more than a constant source of aggravation, litigation and the fees that accompany litigation. The BVACC is tasked with operating a park in the central portion of the neighborhood. Families and children in the neighborhood use the park with its softball diamond and tennis court very frequently, and we hold regular neighborhood gatherings there. We have had many proposals for improvements to the park—barbecue grills, improved playground equipment for the children, a gazebo—but the legal fees we have incessantly racked up in fighting with Moore have severely hampered our ability to make these communal improvements.

7. Since the 1984 order Moore's aggressive and intimidating behavior—diplomatically described in the order as “certain steps which might deter or discourage” residents from using the Property—has persisted. The BVACC had a survey of the property line completed, but Mr. Moore unilaterally and wrongfully removed the survey stakes. Moore also removed the surveys markers on the west side of his property, markers that had been placed by the surveyors just 20 minutes beforehand. When I confronted Moore on this subject, he punched me in the face. In front of 5 witnesses, the police were called and offered to arrest Moore for assault, but to be neighborly I refused to press charges. The BVACC installed a fence designed to prevent Moore from using the Property as his personal driveway and parking lot for personal and commercial vehicles, but Moore unilaterally and wrongfully tore the fence down. Photographs of the survey work and fence (and its removal) are included within Exhibit C.

8. The BVACC and I believe that Moore's conduct has put him in constant violation of both the letter and spirit of the 1984 order, in numerous ways:

- The order declares that “there is no basis for any claim by Mr. Moore to any greater right to use the strip than is enjoyed by the other lot owners.” Despite this, all of the conduct described above is undertaken solely by Moore, joined by no other lot owners, and in violation of their property rights. He clearly continues to behave in a fashion consistent with a “greater right” to the Property that simply does not exist under the 1984 order.

- The 1984 order specifically contemplates that BVACC members will be able to walk through the carport to the waterfront: “it may be slightly inconvenient to [BVACC members] to have to walk through the carport”. As noted above, nobody has been able to walk through that carport since I have been a resident as a result of the heaps of personal property which are jammed tightly into the entire carport.
- The 1984 order declares that the purpose of the 50-foot strip was “obviously to connect up the newly created Bay View Drive with the old causeway leading through the marsh to Shem Creek”. As noted above, this connection does not exist, as a result of Moore’s conduct: the jam-packed carport, the boats, vehicles and other obstructions which constantly impede our use of the Property.
- The 1984 order declares that “Neither Mr. Moore nor any other lot owner has the right to block either the view or the access afforded so obviously by the subdividers to the marshes and creek.” As set forth above, Moore has been blocking and continues to block access and the view for decades, in violation of the 1984 order.
- While Moore recklessly asserts his wrongful claim to the Property, in all the ways described above, the 1984 order goes out of its way to declare the economic importance of the Property to all of the landowners in the neighborhood: “The lots in Bay View sold in large measure because of their proximity to Shem Creek, and the views afforded of the creek and Charleston Harbor as well as the beautiful marshes.”
- The 1984 order declares that the Property has been “reserved to the right, use and benefit of all the lot owners in Bayview Subdivision, and they have, among other things, the right to use and enjoy the 50-foot strip in question which runs from Bay View Drive...to the marshes without hindrance or obstruction” from Moore. As set forth above, the use of massive portions of the Property has been denied to BVACC members for decades, as a result of Moore’s implacable wrongful conduct.
- On similar lines, the 1984 order declares that the BVACC members have legal right to “unimpeded and unrestricted access and view” of the Property. As set forth above, I and the BVACC have enjoyed nothing like unimpeded and unrestricted access and view.
- The 1984 order rules as follows: “[Moore is] enjoined and required to immediately remove the metal buildings, no trespassing signs, and any other obstructions [he] placed in the 50-foot strip.” As noted above, for the entirety of the nearly thirty years since the order, Moore has stored an endless collection of obstructions, of all shapes, sizes and kinds, on the Property.
- Finally, the 1984 order enjoins Moore from “erecting...any other impediments over the [Property] or from interfering in any way with the petitioners’ rights to use and enjoy the [Property]. Nor will any indirect impediments (such as barking dogs allowed to roam across the strip) be allowed within the [Property] if they interfere with free access of the lot owners.”

9. The 1984 order specifically contemplated that remedial orders of the Court would be appropriate if Moore impeded or obstructed the BVACC's free access to the Property "with any degree of frequency". Respectfully, the foregoing establishes that Moore's violation of the Order has been constant.

10. I have personally witnessed constant violations by Moore of the 2013 order issued by this Court. The order required Moore to remove "all mulch, dirt and grass they allowed to be placed on the [Property]" and ordered that he restore the Property to the condition it was in "prior to the time the mulch, dirt and grass was placed on the Property". Though much of the mulch has been removed, Moore's doing so left a grassless, waterlogged, low-sitting tire-tracked, tree-less wasteland which, prior to the mulch being wrongfully put there had been a grassy, verdant, pleasant high ground on which property owners were able to enjoy the views and the marsh. It manifestly is not in the condition it had been in, despite that I personally have met with Moore's attorney to explain specifically what was required.

11. The 2013 order also required Moore to "remove from the Plaintiff's Property any debris on the Property such as propane tanks, doors, sinks, plumbing fixtures, etc" but these items have remained on the Property.

12. The 2013 order states that Moore "will not [with certain exceptions not relevant] use vehicles on the Plaintiff's Property other than a bicycle." I have witnessed, since the order, countless instances of vehicles being parked and driven across the Property, in violation of the Order.


13. The BVACC and I believe that the only sure way to end this thirty-year battle is to have the carport removed, such that clean, unambiguous property lines are reestablished. The 1984 order's apparent compromise resolution—i.e., decisively affirming the BVACC's property rights, yet allowing the carport to persist—has led to incessant uncertainty as to the rights of the parties. Given Moore's constant violation of the 1984 Order, we believe that eliminating the carport is appropriate. The BVACC is willing, in that event, to pay for the erection of a nice, wooden fence which will delineate the parties' property, hopefully with the ultimate result that the parties and the court can move on to other matters.

Respectfully submitted,

  
\_\_\_\_\_  
Graham Stone.



**M. A. CARTER**  
**NOTARY PUBLIC**  
State of South Carolina  
My Commission Expires  
12/19/2023

  
5/22/2014



FROM COURT ORDER APRIL 6<sup>TH</sup> 1984.  
ORDERED BY JUDGE LOUIS CONDON MASTER IN  
EQUITY. CHARLESTON COUNTY.

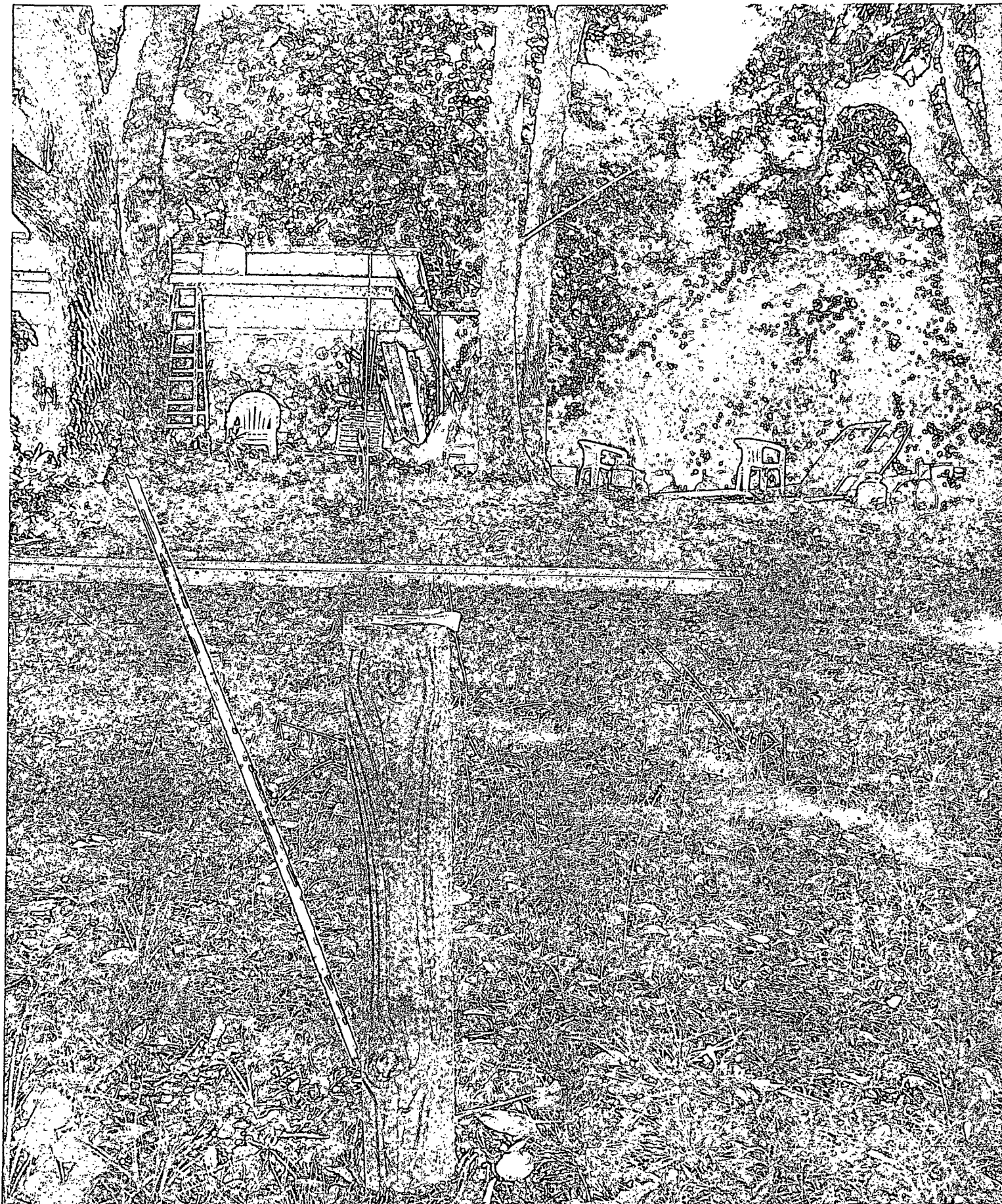
“Thus, in no sense could Moore’s conduct be considered “adverse”  
**though it may be slightly inconvenient to petitioners  
and other lot owners to have to walk through the  
carport”.**

EXHIBIT

C

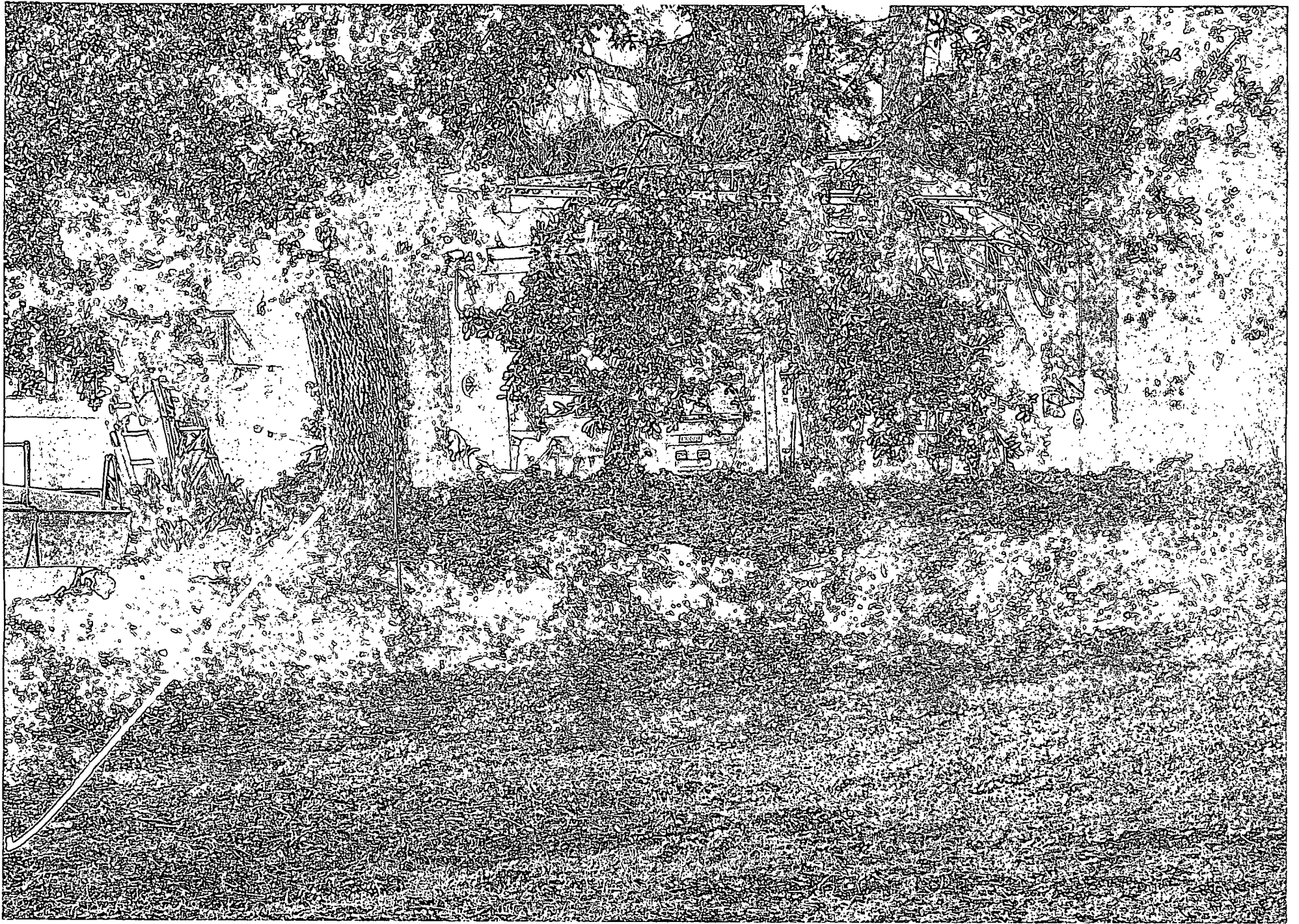
R-23

2-24



5/31/2011





R-26



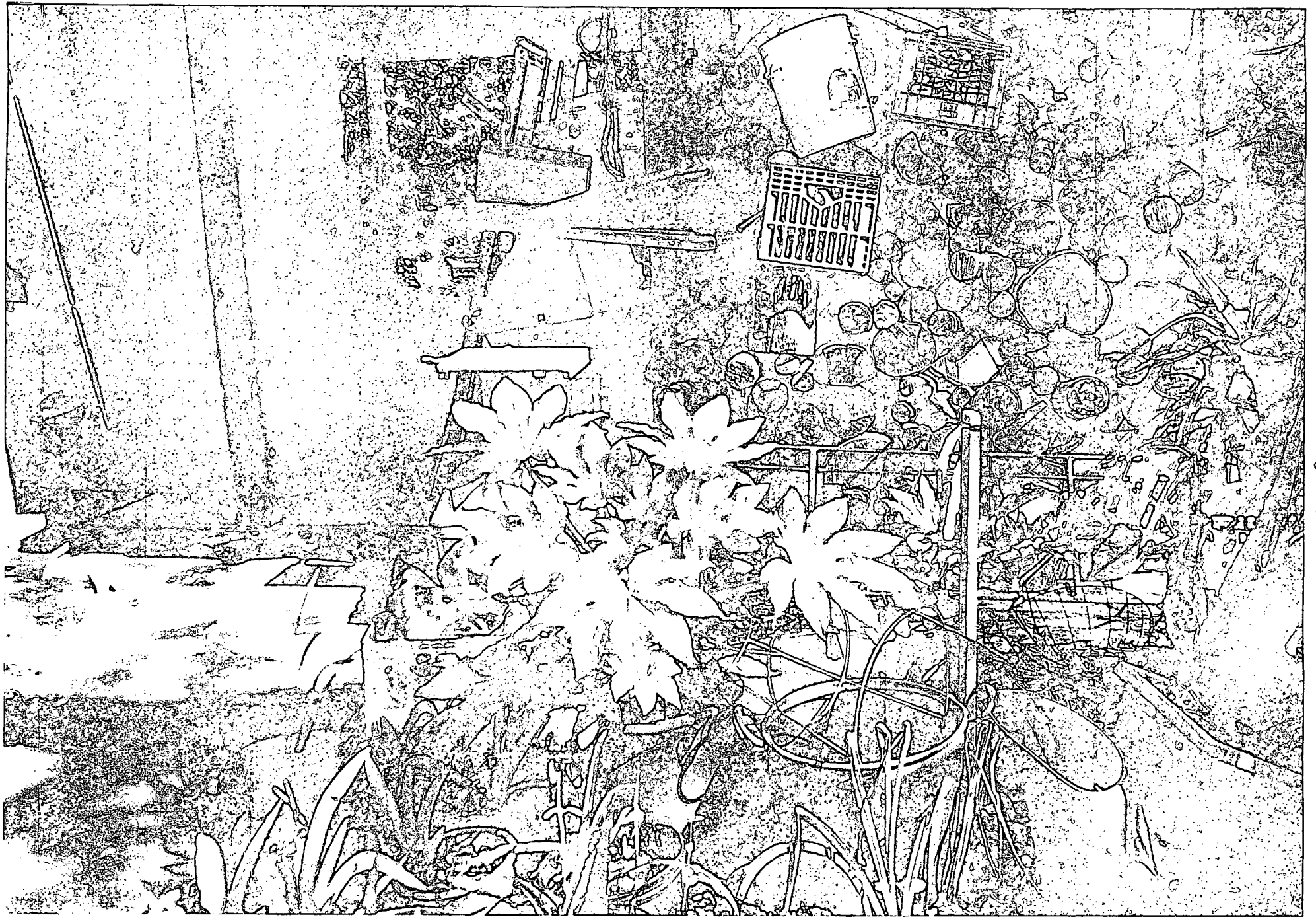
R - 27

SURVEY PAID FOR BY BVACC



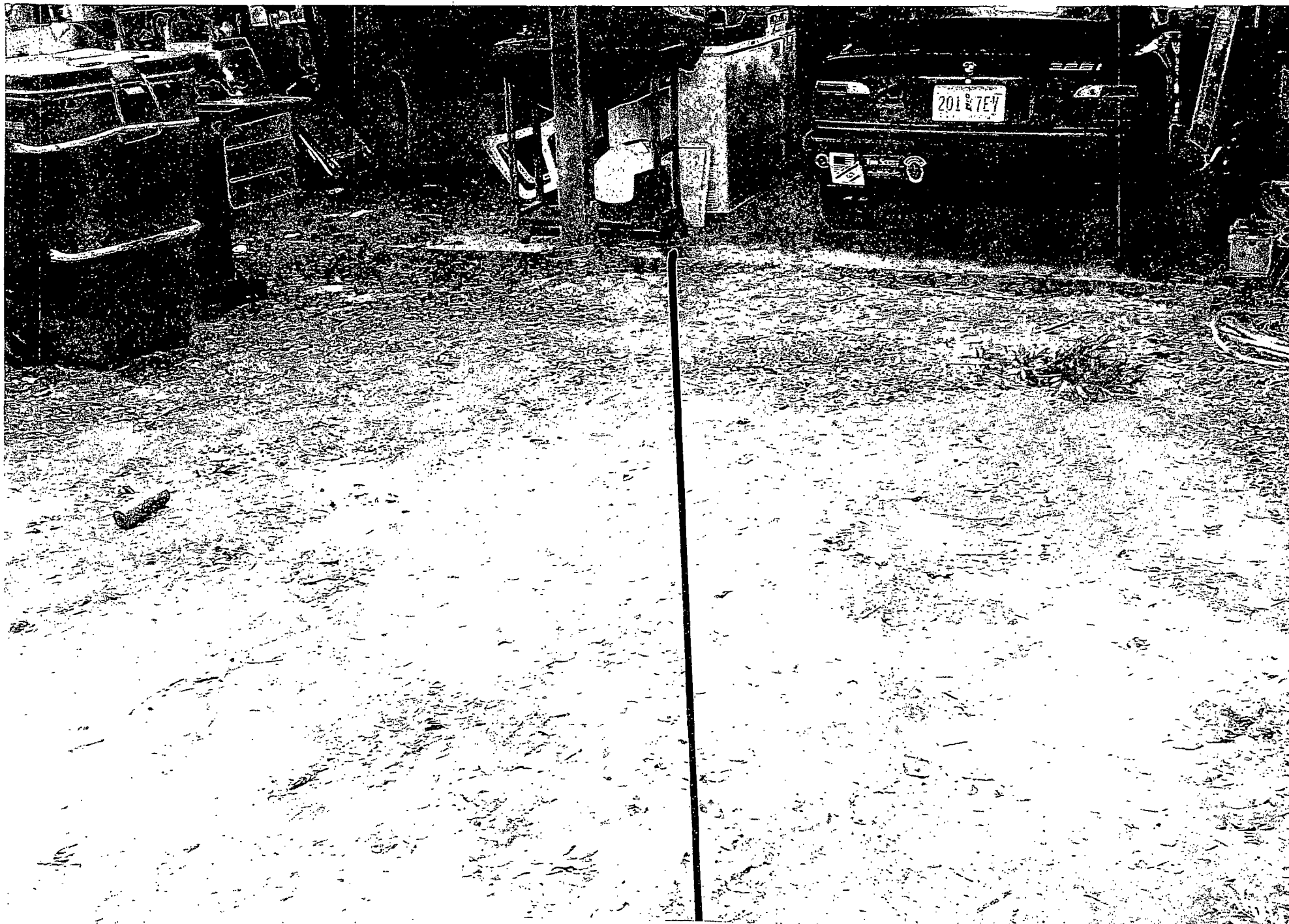
R-28

SURVEY PAID FOR BY BVACC



R-29

SURVEY PAID FOR BY BVACC



R-30

**SURVEYORS PROPERTY LINE**



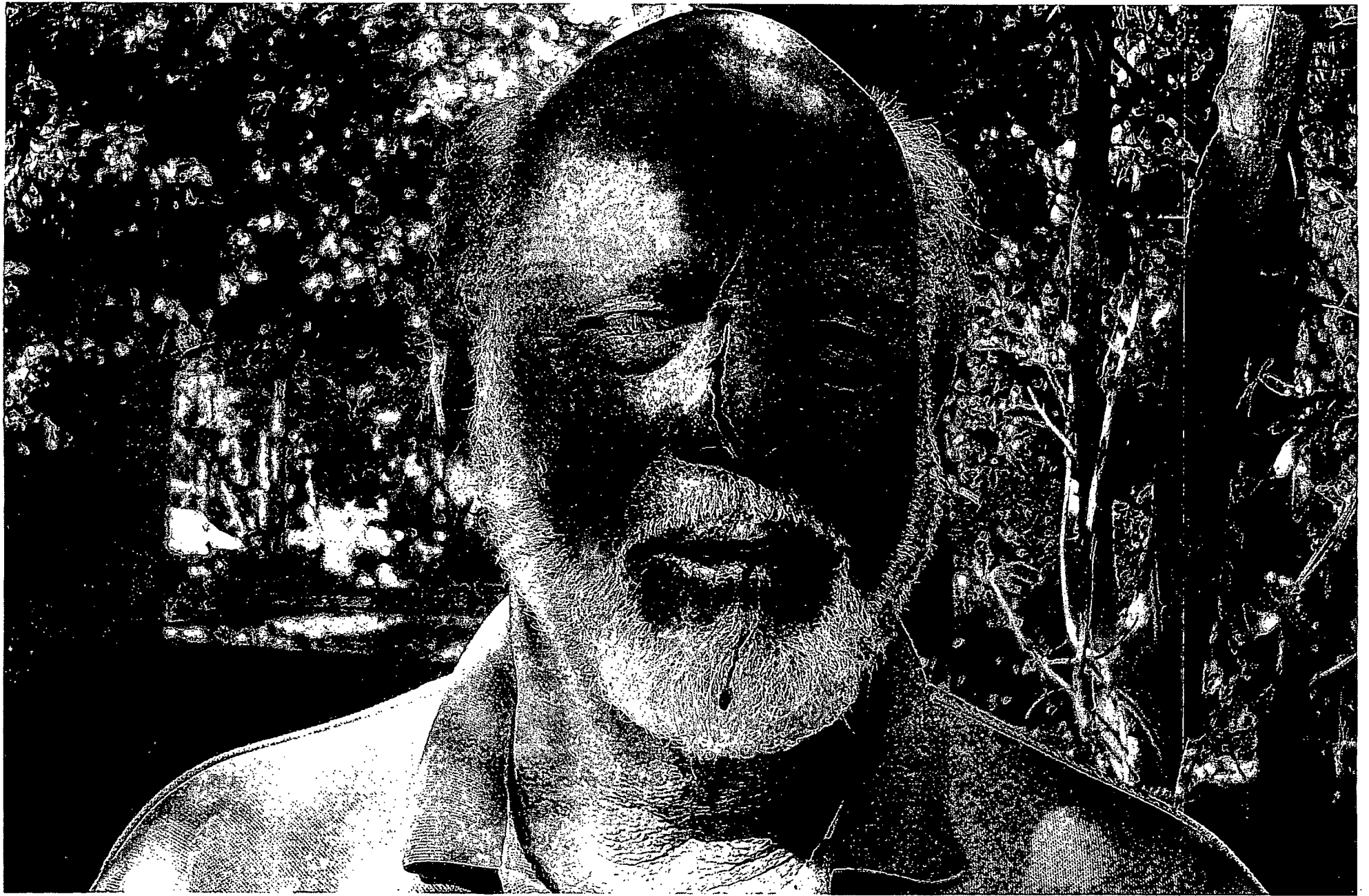
R-31

SURVEY PAID FOR BY BVACC



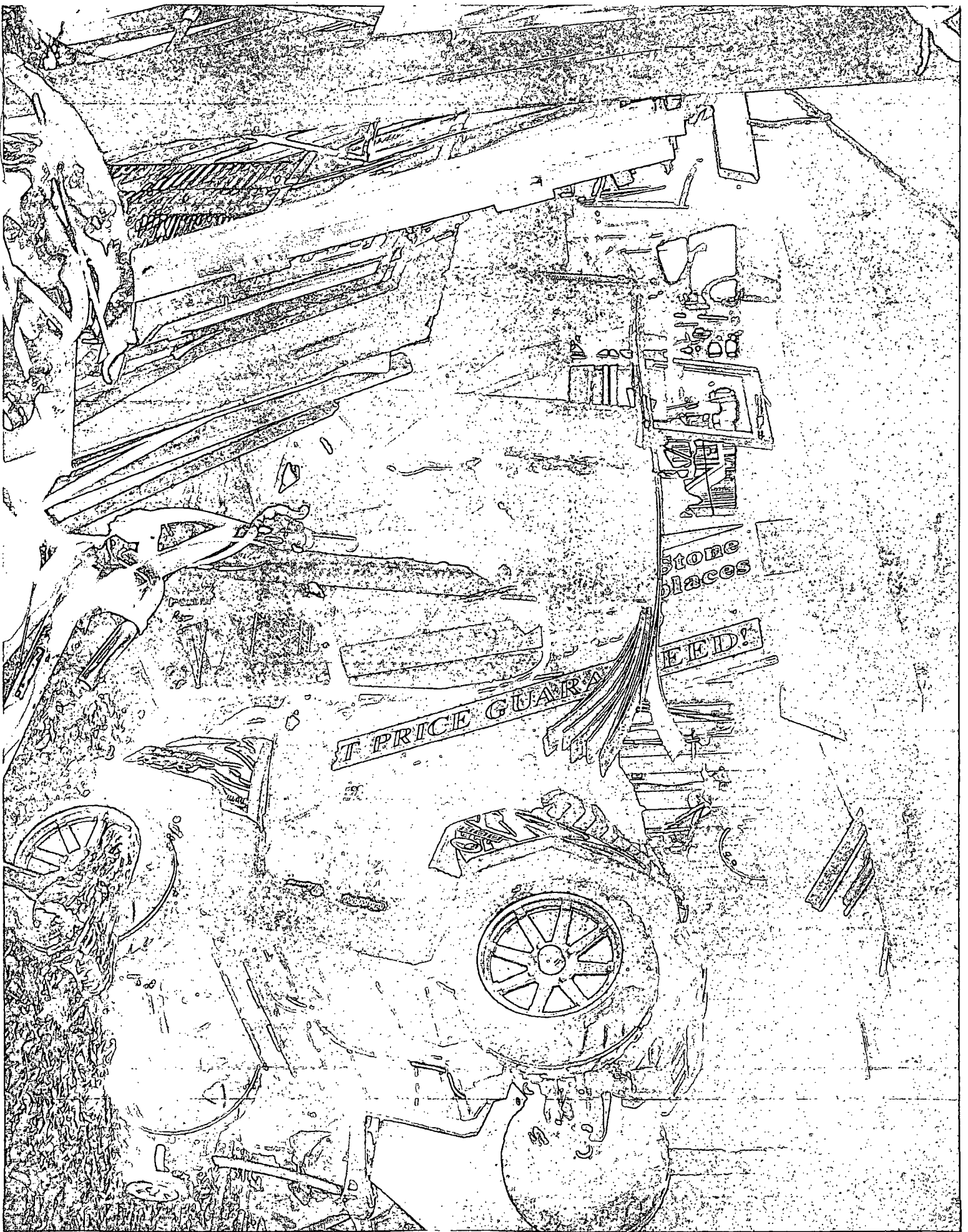
12/8/2010

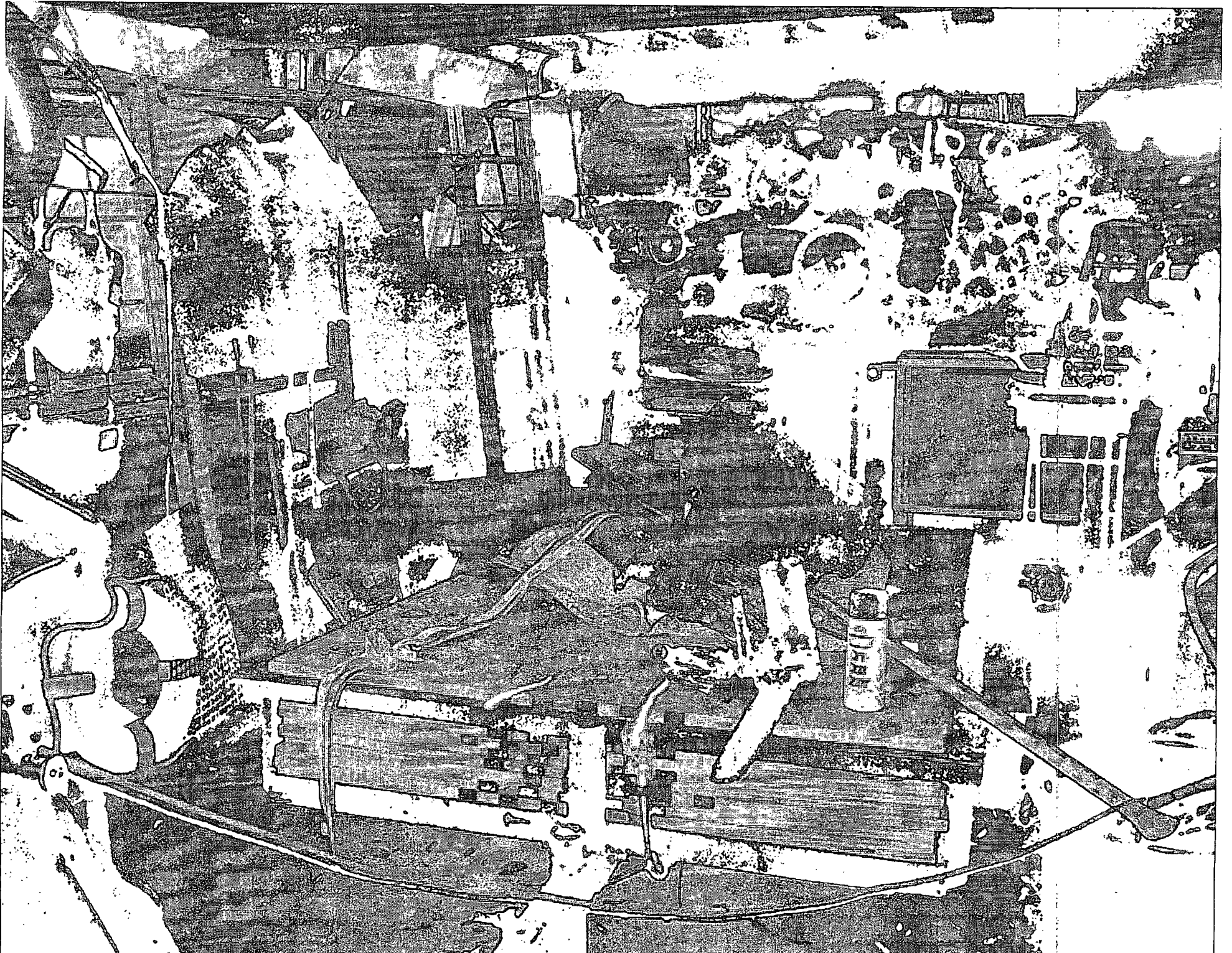




R-34

11/22/11



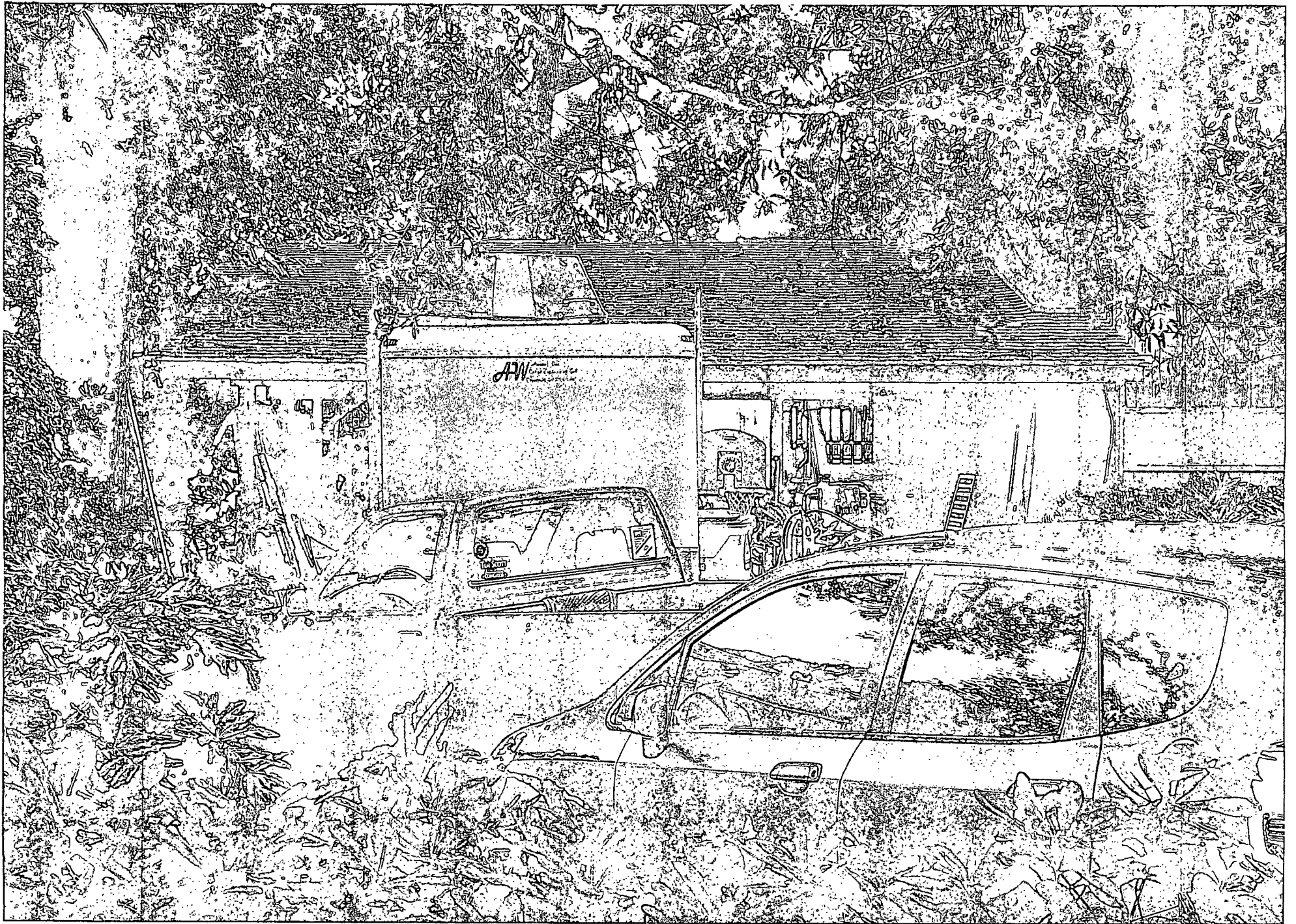


Judge, Condon's 1984 order also states: The respondents Moore are further enjoined permanently from erecting any other structures, fences, or **IMPEDIMENTS** over the area in question and from threatening or interfering in any way with the petitioners rights to use and enjoy the 50-ft strip in question.



FROM COURT ORDER APRIL 6<sup>TH</sup> 1984.  
ORDERED BY JUDGE LOUIS CONDON MASTER IN  
EQUITY. CHARLESTON COUNTY.

“Thus, in no sense could Moore’s conduct be considered “adverse”  
**though it may be slightly inconvenient to petitioners  
and other lot owners to have to walk through the  
carport”.**



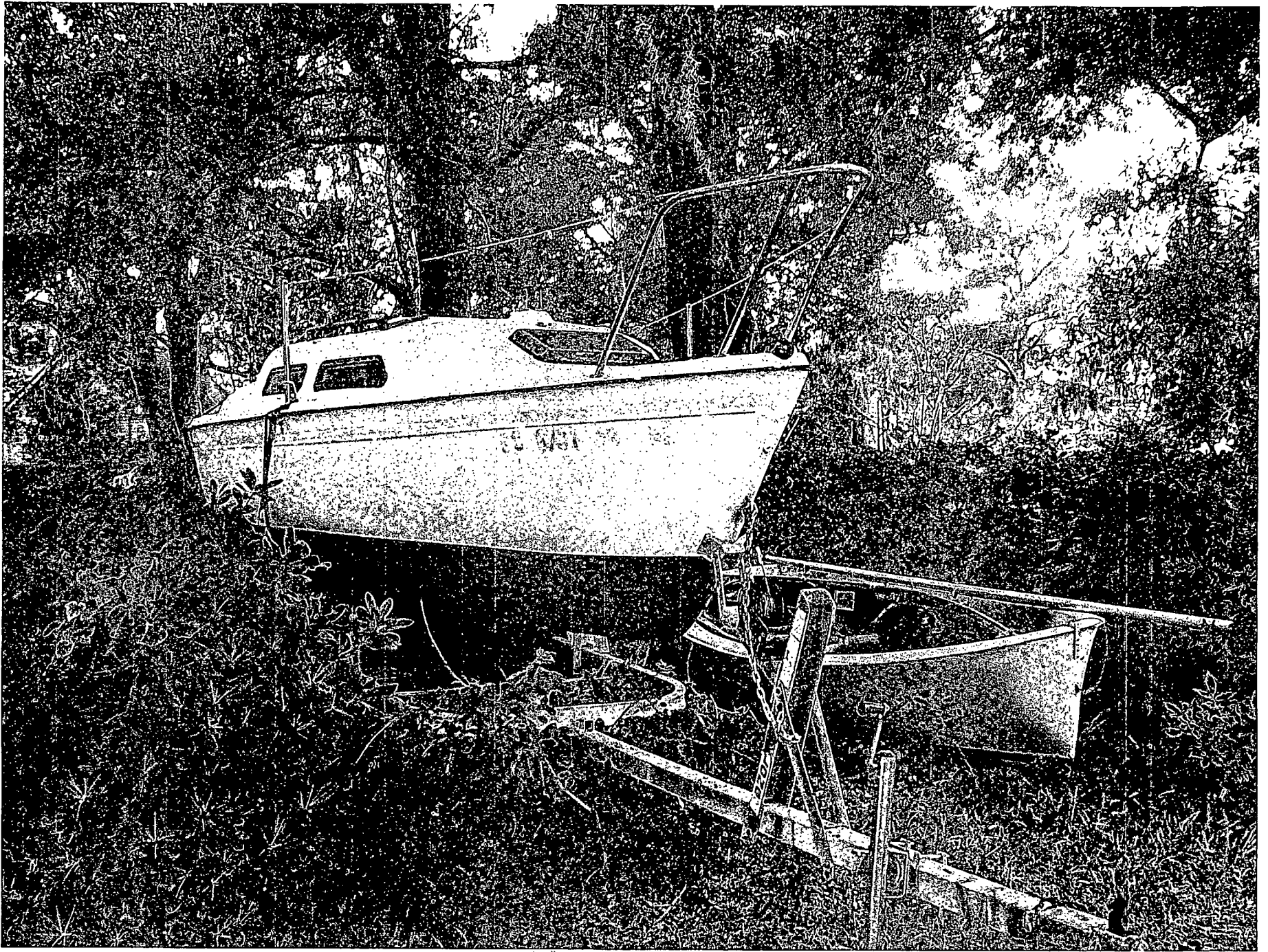
R-38

8/13



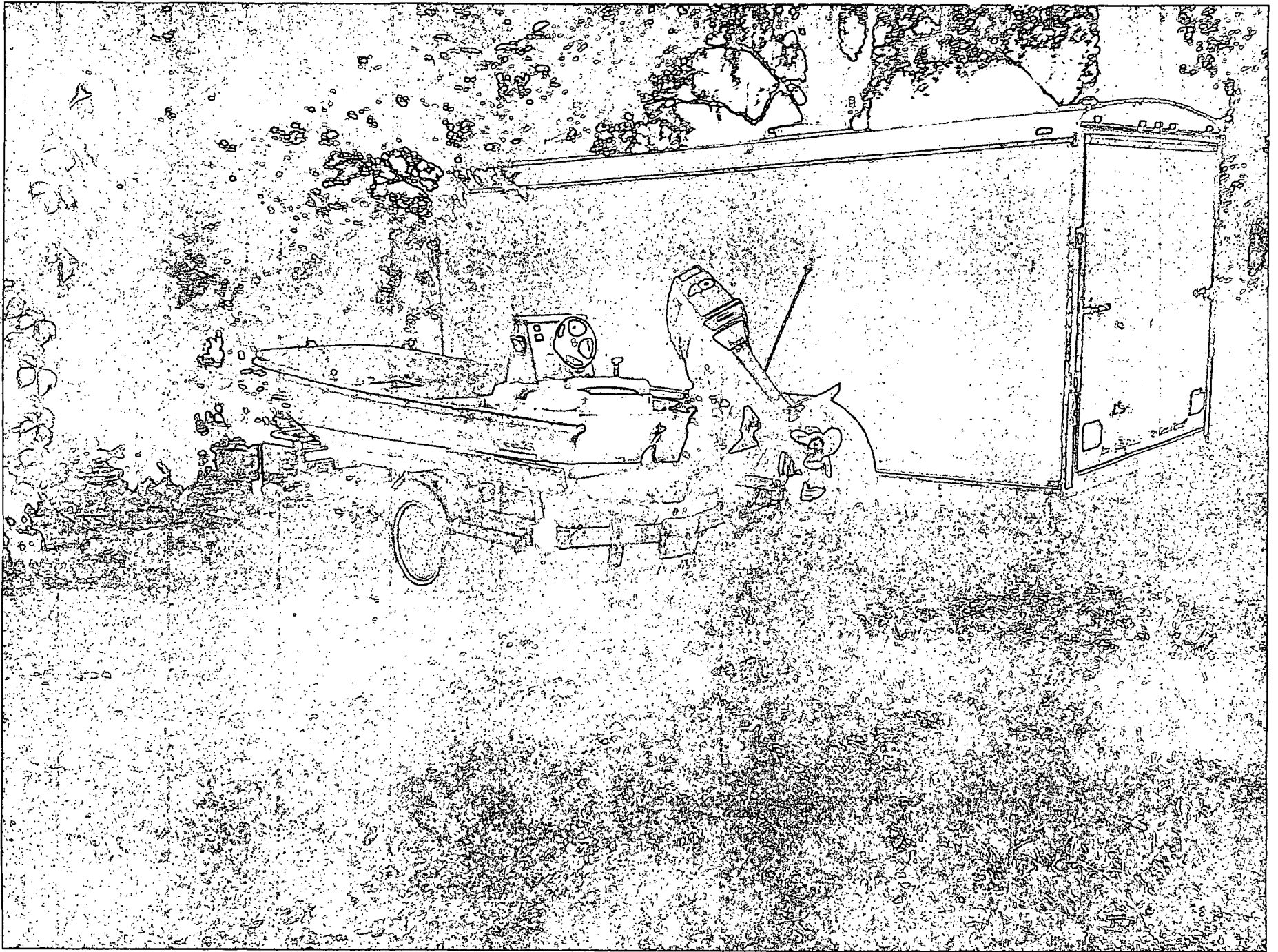
R-39

6/15/2011



R-40

6/17/09



7/16/2011

R-41



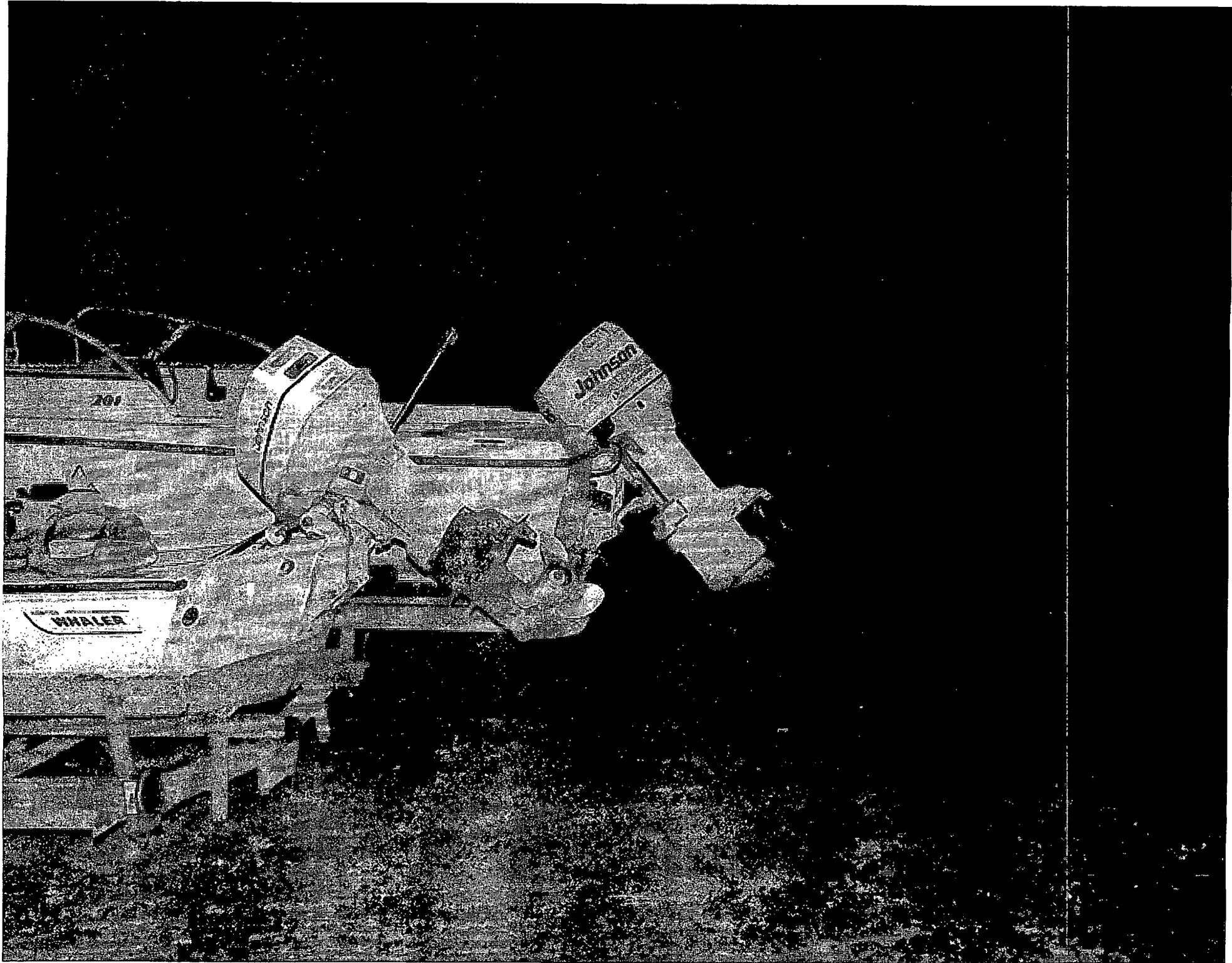
R-42

1984 ORDER: PA 2 (C) "THE RESPONDENTS MOORE ARE FURTHER ENJOINED PERMANENTLY FROM ERECTING ANY OTHER STRUCTURES, FENCES, OR IMPEDIMENTS".

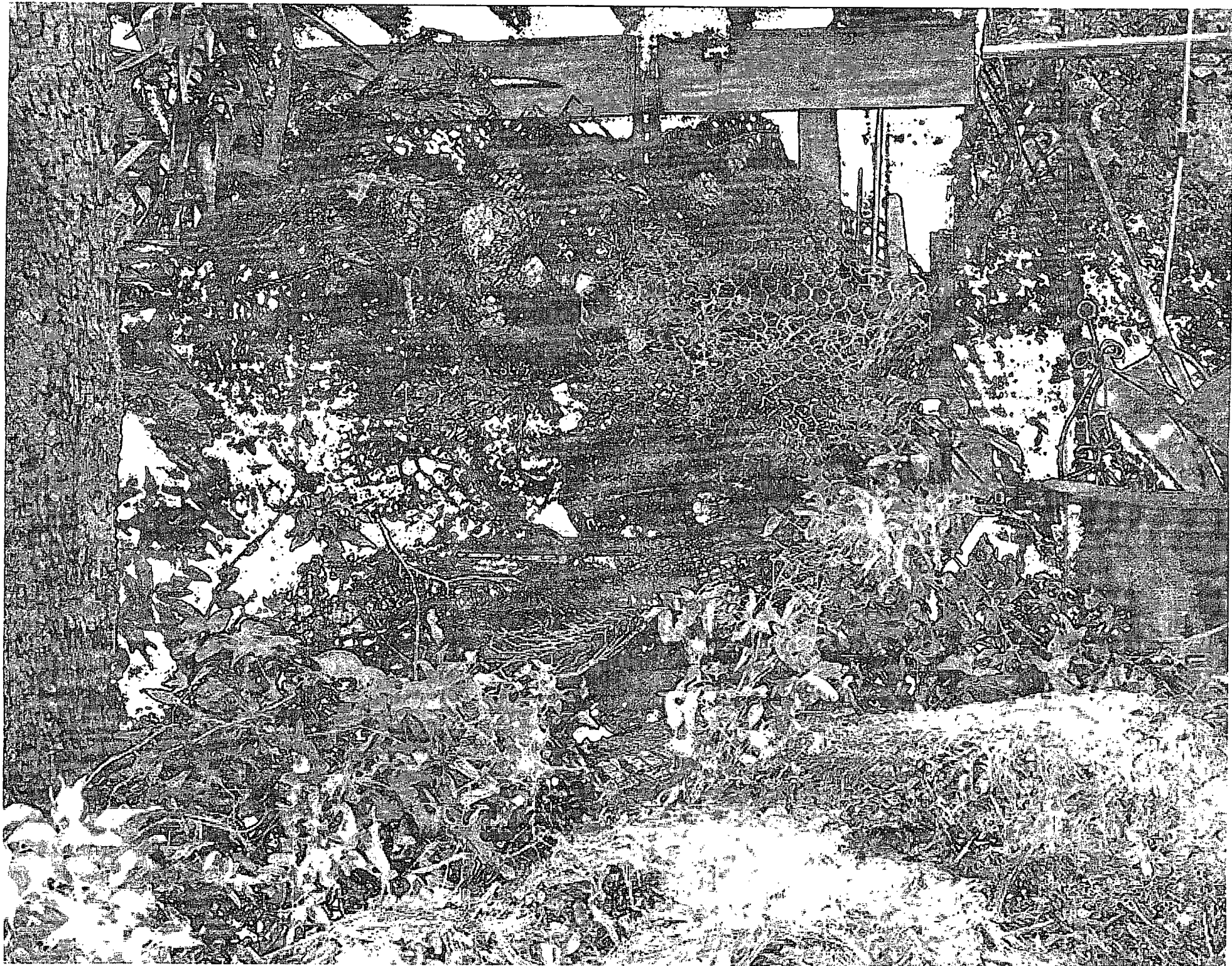
7/10







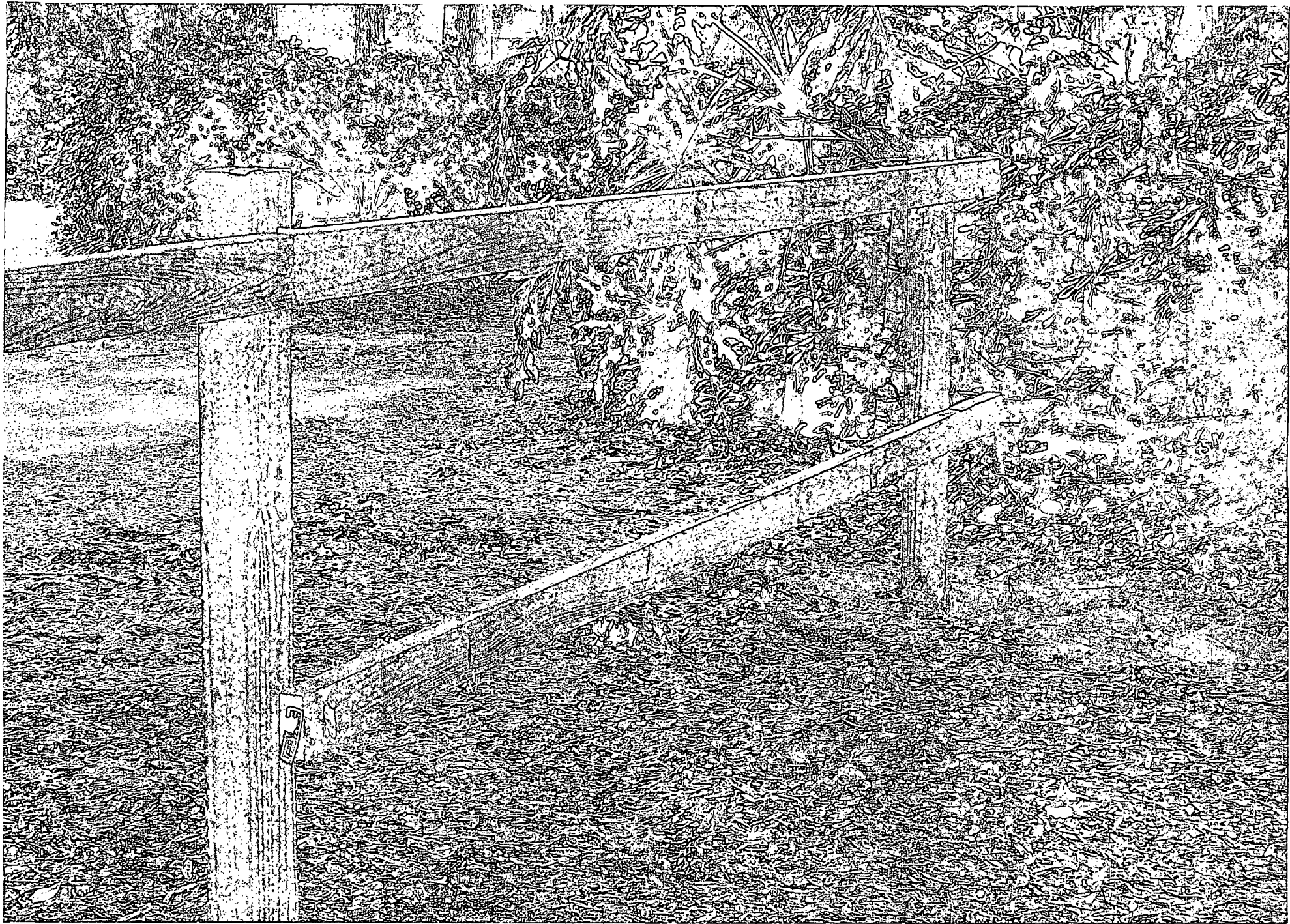
R-45



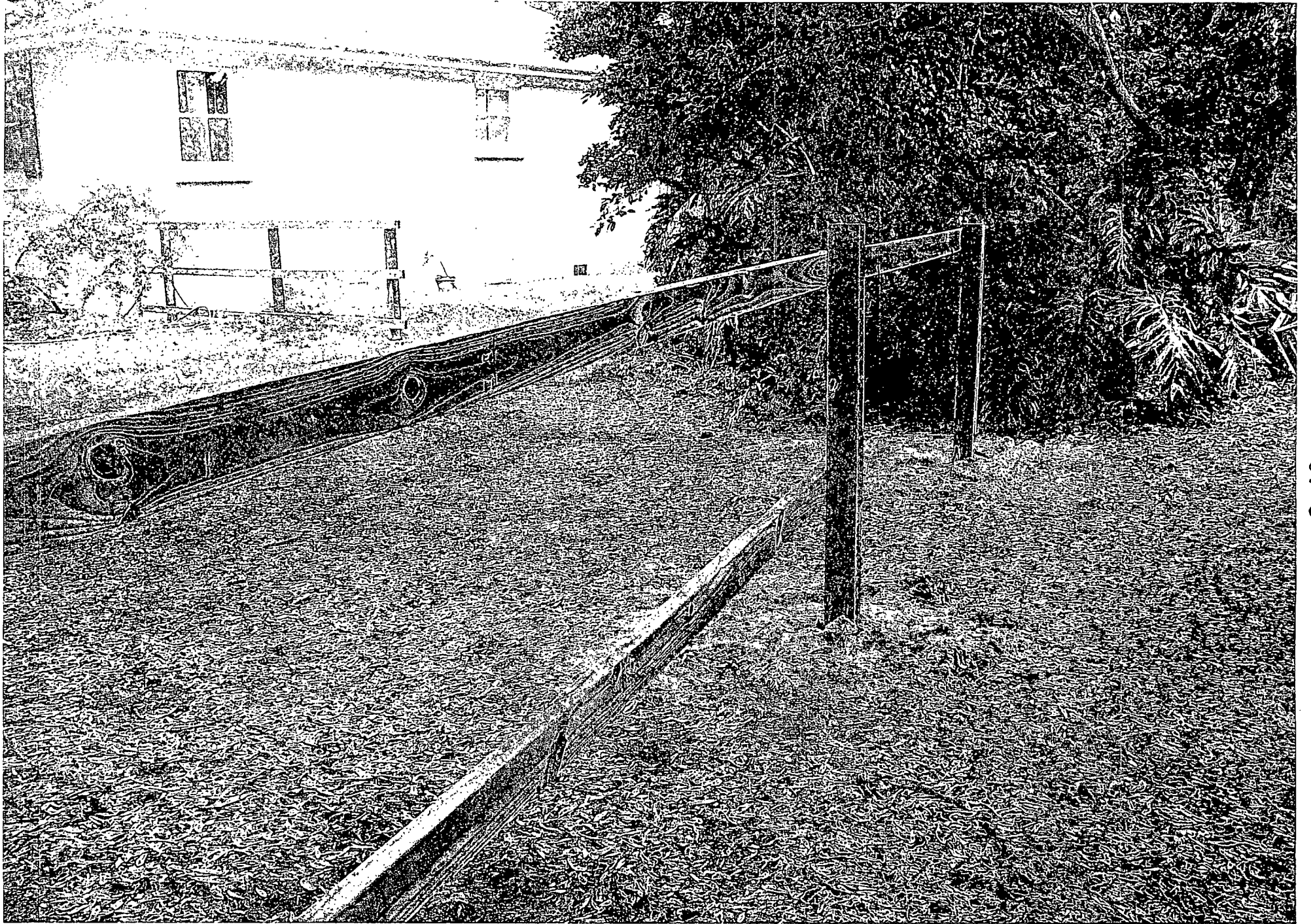
P-46



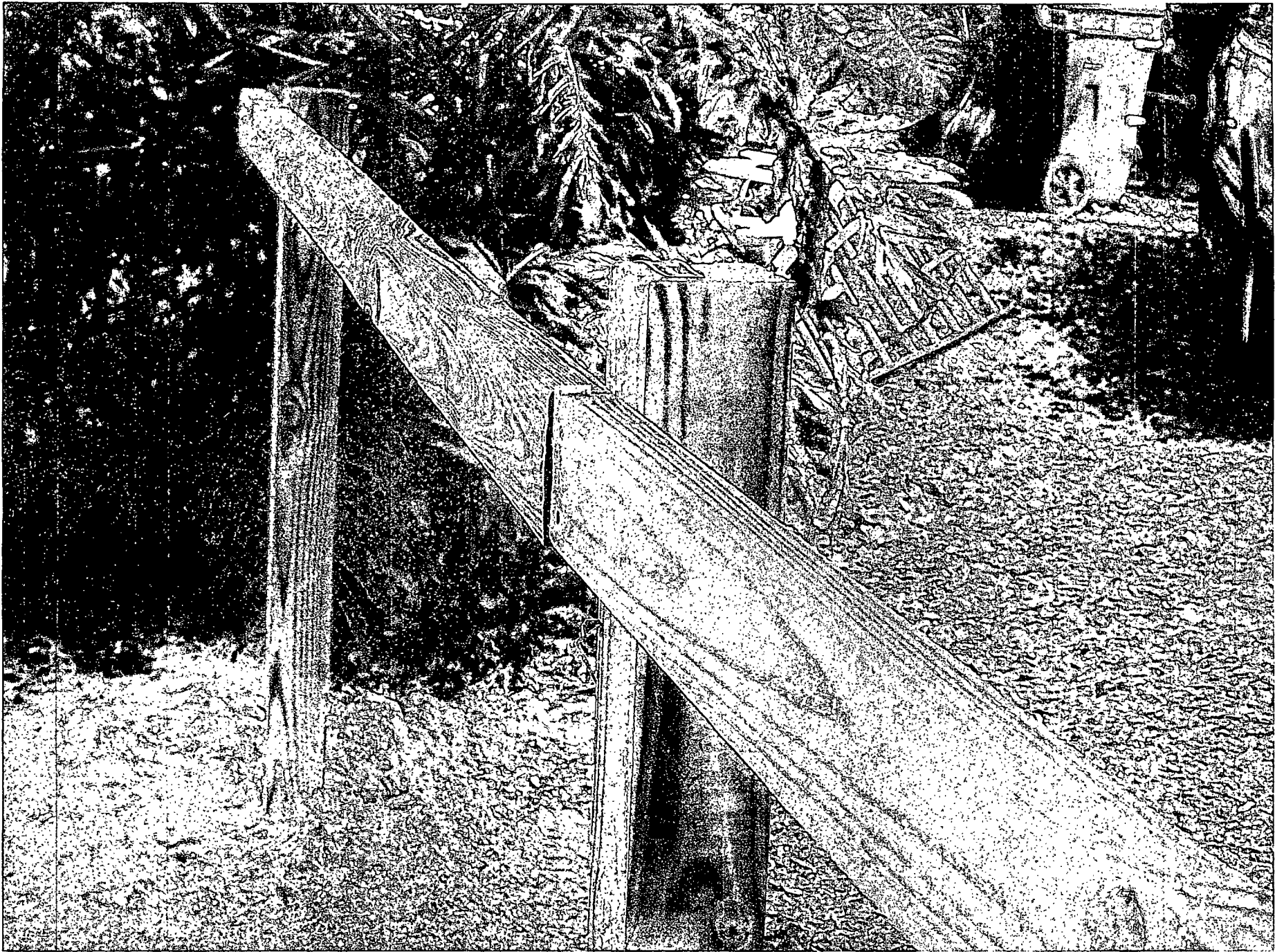
R-47



R-48



R-49



8/1/2010

R-50



R-51

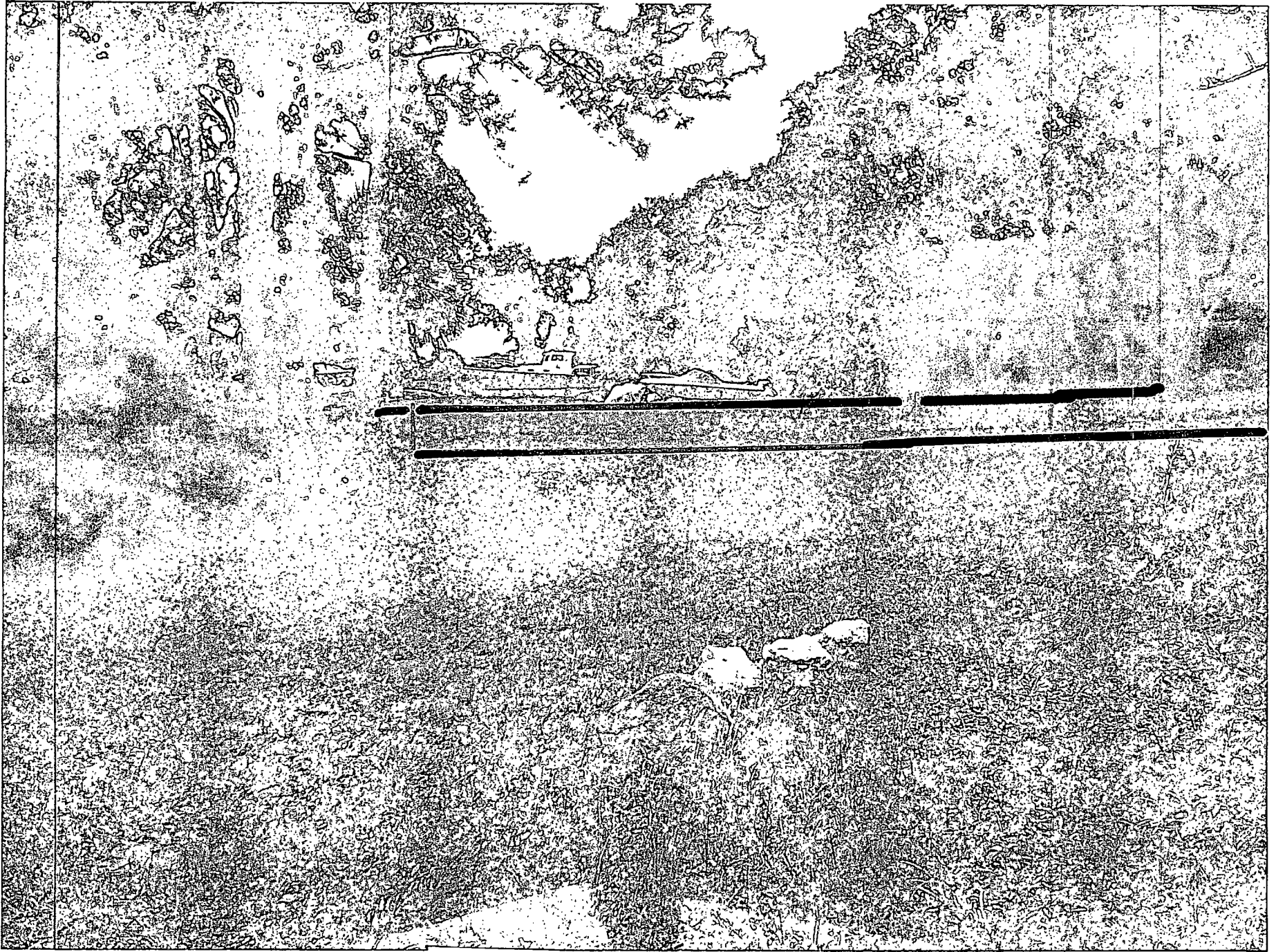
**THE "BEAVERS" MUST BE GETTING STRONGER**





R-53

PRIOR TO COURT ORDER



R-54

PRIOR TO COURT ORDER

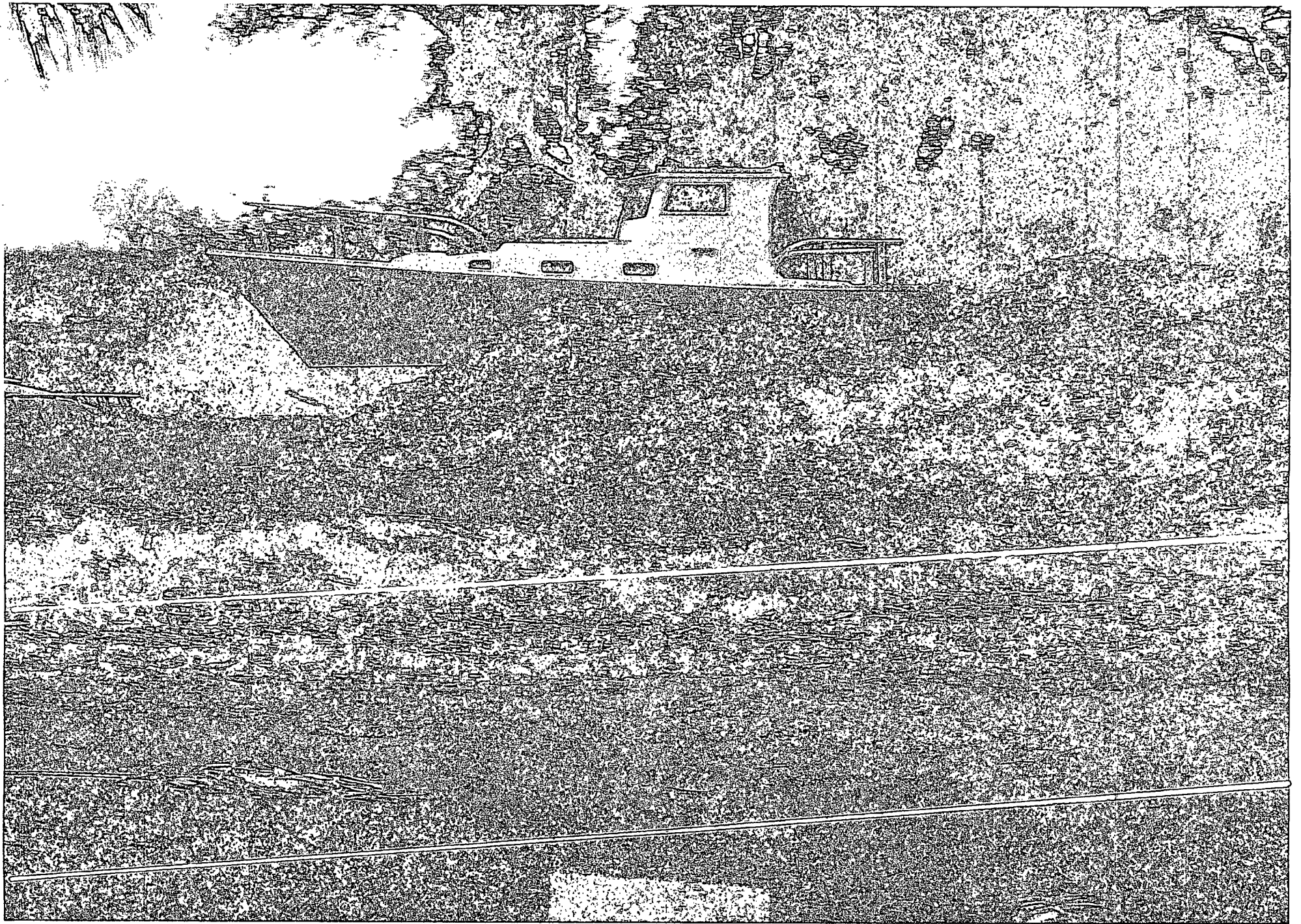


R-55

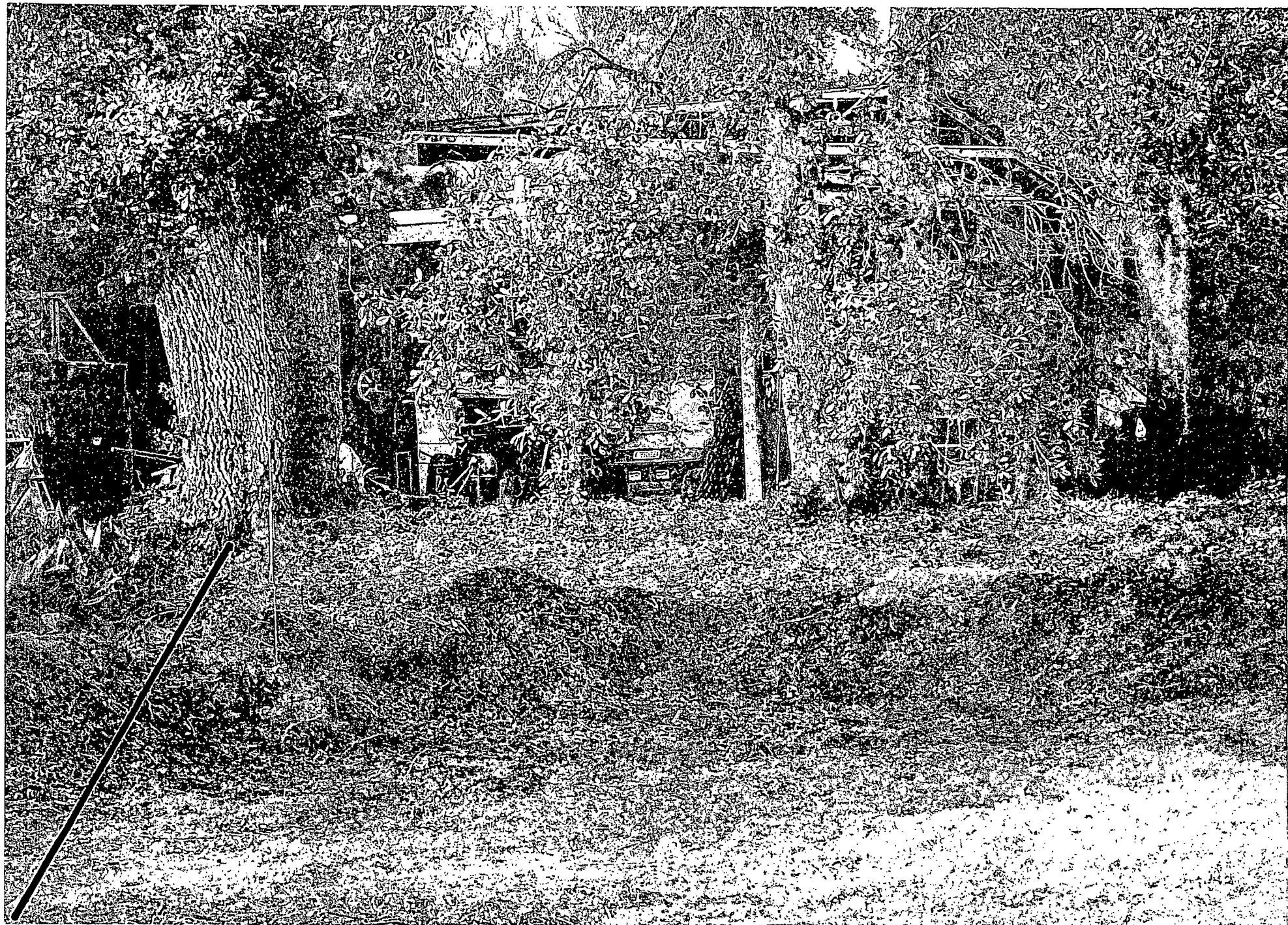


R-56

10/6/2010



NOW



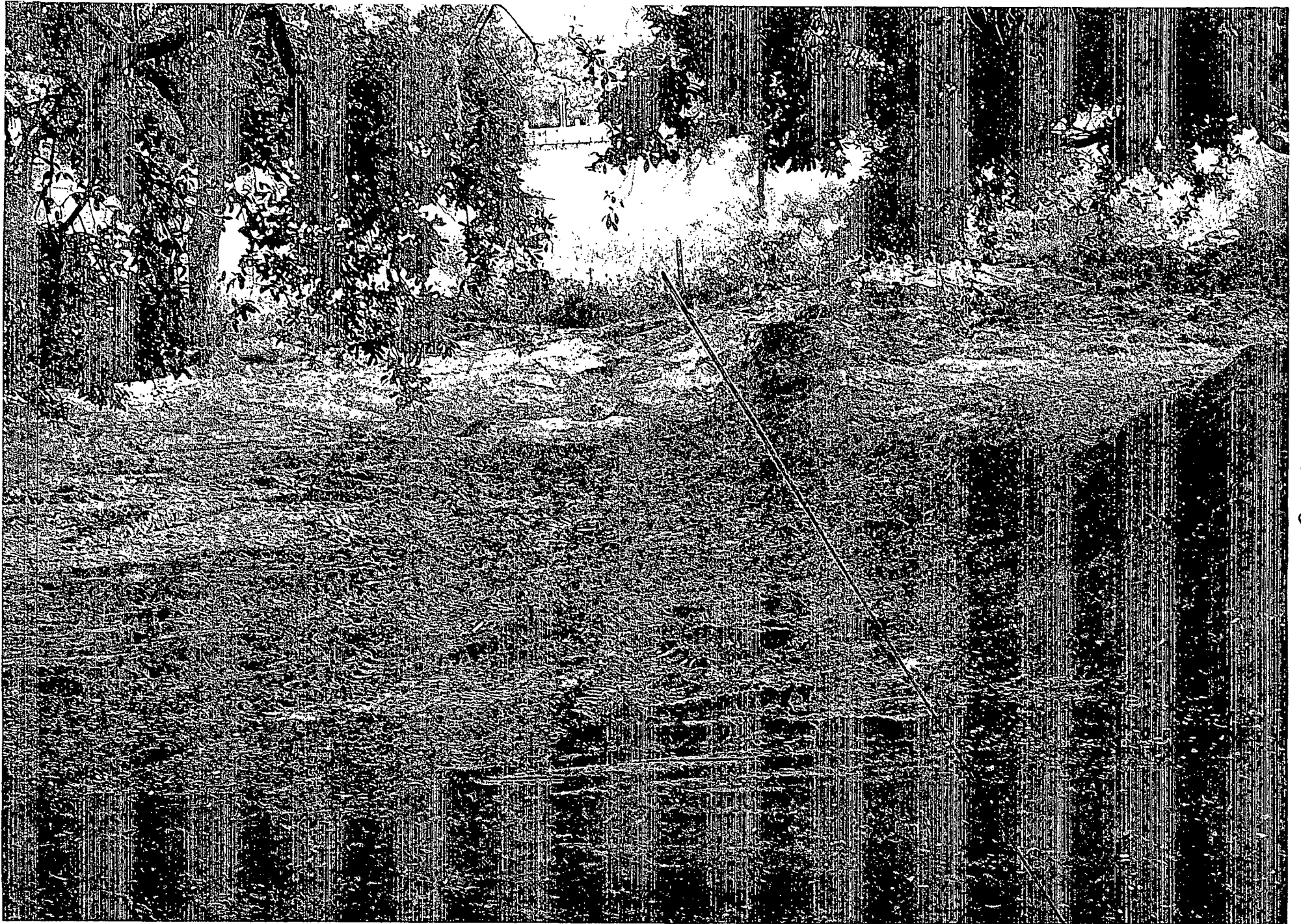
R-58

NOW



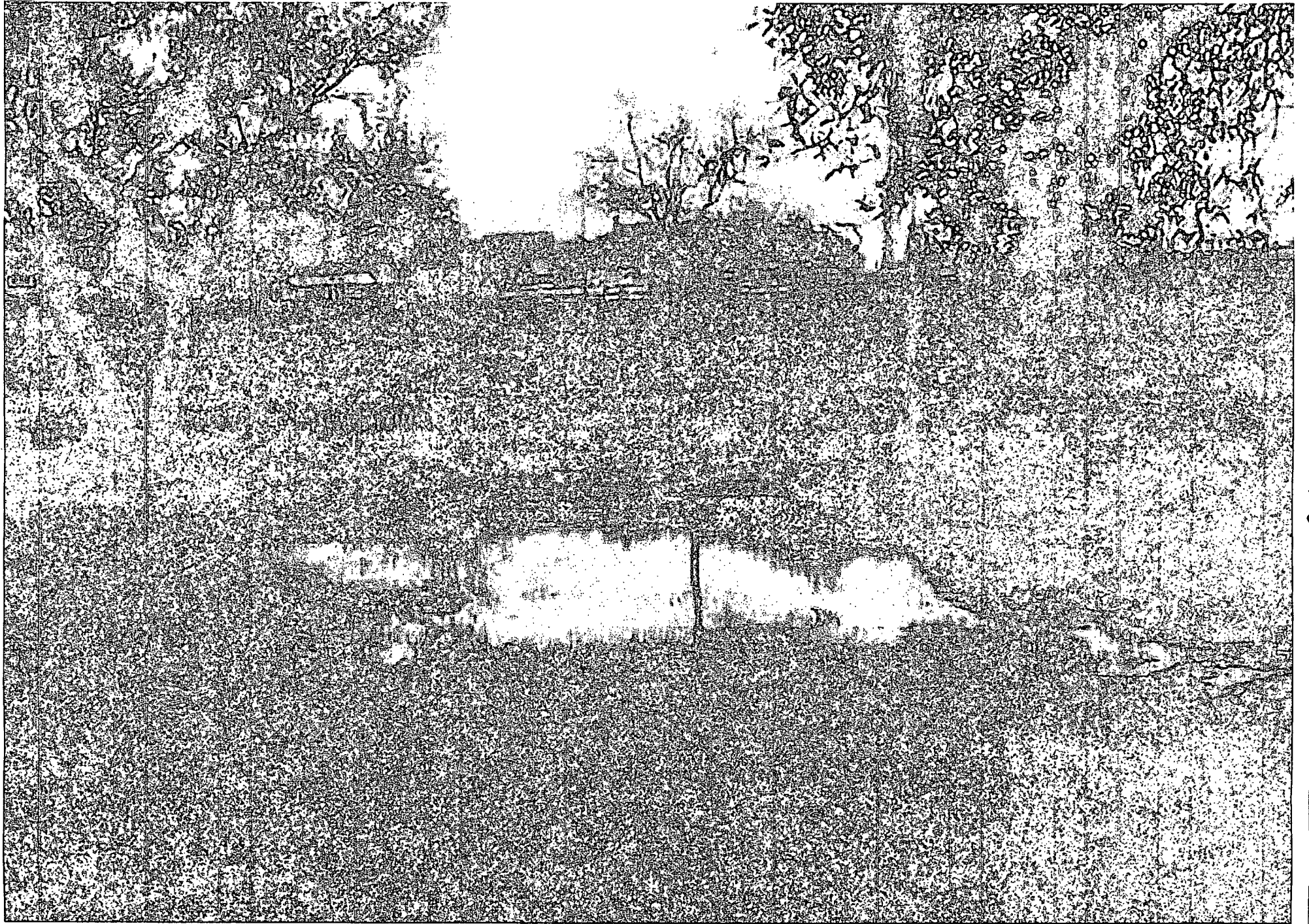
R-59

**NOW**



R.60

**NOW**



R-61



R-62

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PRIOR TO COURT ORDER

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R-63

NOW




R-6A

11/19/2013

Certificate of Service

The undersigned, by affixing his signature hereto, does certify that he caused a copy of the forgoing to be served by depositing a copy of same into US Mail, postage prepaid, first class and addressed as follows:

Mr. David A. Collins, Esq.  
PO Box 40578  
Charleston, SC 29423  
And via email to, Davidacollins2@aol.com

By:   
\_\_\_\_\_  
David P. Traywick

May 22, 2014

FILED  
2014 MAY 22 PM 4: 27  
JULIE J ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
CASE NO. 82-CP-10-4234

W. L. GUERRY, JR., and )  
PATRICIA S. GUERRY, indi- )  
vidually and on behalf of )  
all property owners in Bay )  
View Acres Subdivision, and )  
BAY VIEW ACRES CIVIC CLUB, )  
an eleemosynary corporation, )

Petitioners, )

vs. )

GERALD E. MOORE, JR., - )  
MARGARET BATES MOORE, )  
FRANKLIN P. WERNER, and )  
DORIS M. WERNER, )

Respondents. )

ORDER

This action for declaratory and injunctive relief was commenced on November 24, 1982, by the individual petitioners W.L. and Patricia Guerry, who own a home in Bay View Acres Subdivision, and by the Bay View Acres Civic Club, an eleemosynary corporation. The petitioners seek to enjoin the respondent Gerald E. Moore, Jr., and his wife Margaret Bates Moore from blocking or obstructing the 50-foot-wide strip of land which extends about 250-300 feet from Bay View Drive to the marshes of Shem Creek. This strip or street extension is between lots 37 and 38. The Moores have owned lot 37 since August of 1974, and the other respondents, Franklin P. and Doris M. Werner, own lot 38.

The Werners filed an answer joining in the prayer of the petitioners, and they state among other things in their answer:

~~[These respondents have in no manner ever attempted to claim this property (i.e., the 50-foot strip) to the exclusion of the petitioners;~~

The strip in question is highland which has a few shrubs and trees on it, and it in turn leads to what is apparently a quite old ten-foot-wide dirt causeway, which slices through the marsh down to the edge of Shem Creek. This is apparently the only way for Bay View Acres Subdivision residents to walk from their homes to Shem Creek and crab, fish, or just see the sights along this beautiful creek which often is filled with shrimp boats.

The plat for Bay View shows that the strip in question, along with two other similar strips that lead only to the edge of the marsh, have written on them the words, "Reserved." Mr. Moore argues that these words must mean that the strips were reserved strictly and exclusively for the original subdividers, Miss Daisy Sessions, et al. He further claims, by adverse possession, to have succeeded to the title of the original subdividers.

On the other hand, the petitioners introduced the restrictions for Bay View acres as well as a letter from Miss Sessions' attorney in 1955 addressed to the Bay View Acres Civic Club which clarifies Miss Sessions' position. In pertinent part, Miss Sessions' attorney stated:


Miss Sessions says that the reservation of the 50 feet involved (between lots 37 and 38 on Bay View Drive) was for the purpose of giving unobstructed access to the marsh,

It seems irrefutable from the long usage over the course of more than 35 years by residents of Bay View without the least hindrance from Miss Sessions, et al., that it was her intention and that of the other subdividers! that the lot owners, when they bought their lots in Bay View, also acquired the right to use all of the streets, lanes, ways, etc. shown on the plat) and that these would certainly include the right to reach the marsh and creek along the 50-foot strip. After all, the marsh and harbor views provide the focal points for this subdivision. Certainly, if the subdividers had had a different intention, they would have made that intention manifest in the restrictions, on the plat, or by prohibiting access, on at least one occasion, over the course of the last several decades. These things did not occur, and there is no dispute in the record about this. Indeed, Miss Sessions' attorney confirmed that access was the point of laying out these strips.

Additionally, the petitioners claim that Mr. Moore has violated the restrictions of record which prohibit the erection of structures closer than five feet to a side line. Mr. Moore concedes that his carport was erected closer than five feet to the side lot line on the eastern side of his property. Indeed, it extends 15 or 20 feet into the 50-foot strip. The carport was

erected within the last two or three years. While the petitioners did not bring to Mr. Moore's attention his violation of the restrictions until the carport had been erected, this doesn't excuse Mr. Moore for failing to recognize his error or, possibly, having erected the carport intentionally within the access route.

Adding to the petitioners' consternation has been the fact that since Mr. Moore first occupied his house in 1977, he has slowly taken certain steps which might deter or discourage some of the lot owners from exercising what petitioners believe is their right to traverse the 50-foot strip in question. Specifically, Moore has erected two or three no trespassing signs, located a couple of small metal buildings on the strip, allowed three or four of his dogs to roam the strip without being controlled by a fence or rope, and he personally has questioned people who have sought to walk across the strip. Nevertheless, Mr. Moore concedes that he has never stopped anyone from using the strip in question. Thus, in no sense could Moore's conduct be considered "adverse" though it may be slightly inconvenient to petitioners and other lot owners to have to walk through the carport or around the dogs and metal buildings. Nor can it be said, as Moore claims in his answer, that he acquired any interest in the 50-foot strip from the respondents Werner, for the Werners, as noted, admit that they have never done anything adverse respecting the areas in question. In short, they conveyed



nothing to Moore in the quit claim deed Moore entered in evidence.

From the evidence, it appears that the Respondent Moore made several unsuccessful attempts to purchase the strip. The ~~exchange of quit claim deeds with Werner was a futile move for uncertain motives.~~ Hopefully no attorney suggested it as a ~~means of acquiring title.~~ Rather, Mr. Moore's major purpose seems to have been an attempt to stop trespassers from outside the subdivision whom he suspected had been or were a threat to his family and their peaceful enjoyment of their own property. While such concern is understandable, ~~his acts were without~~ authority in the subject strip.

The parties have agreed that this order shall be considered a ~~final order appealable only to the South Carolina~~ Court of Appeals. In light of the foregoing, I find as follows:

1. The acquiescence of the original subdividers, together with the language of the restrictions, leads to the inescapable conclusion that the lot owners in Bay View Subdivision acquired, when they bought lots pursuant to the McCrady plat, an easement or property interest which allows them unobstructed access to the 50-foot strip in question, and there is no basis for any claim by Mr. Moore to any greater right to use the strip than is enjoyed by the other lot owners.

2. The fundamental purpose of having drawn the 50-foot strip on the subdivision plat (what is referred to as the McCrady plat) was obviously to connect up the newly created Bay View

Drive with the old causeway leading through the marsh to Shem Creek, which is depicted on the much earlier plat in evidence. The lots in Bay View sold in large measure because of their proximity to Shem Creek, and the views afforded of the creek and Charleston Harbor as well as the beautiful marshes. ~~Neither Mr. Moore nor any other lot owner has the right to block either the view or the access afforded so obviously by the subdividers to the marshes and creek.~~ This easement or special property interest owned and enjoyed by the lot owners is sufficient to afford them entitlement to most of the relief they seek in this action. Accordingly, it is hereby ORDERED that:

(a) The 50-foot strip in question is declared to have been reserved to the right, use and benefit of all the lot owners in Bay View Subdivision, and they have, among other things, the right to use and enjoy the 50-foot strip in question which runs from Bay View Drive between lots 37 and 38 to the marshes without hindrance or obstruction from the respondents. This is so because the lot owners are declared to have an easement or special property interest in these areas in question for unimpeded and unrestricted access and view.

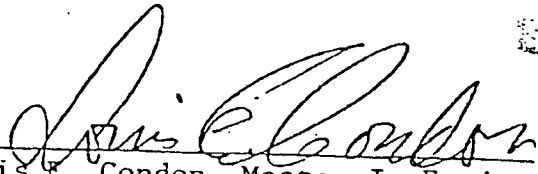
(b) The respondents Moore are hereby enjoined and required to immediately remove the metal buildings, no trespassing signs, and any other obstructions they placed in the 50-foot strip. Since no action was taken to halt construction of his carport before completion, I am not ordering its removal. However, if it is ever taken down or removed by the owner, or

destroyed by natural forces, i.e. a storm, earthquake, etc., it can not be rebuilt in violation of the restrictions, if any, then in force. Nor can the respondents do anything to expand said carport.

(c) The respondents Moore are further enjoined permanently from erecting any other structures, fences, or impediments over the area in question and from threatening or interfering in any way with the petitioners' rights to use and enjoy the 50-foot strip in question in common with the other lot owners in Bay View. Nor will any indirect impediments (such as barking dogs allowed to roam across the strip) be allowed within the 50-foot strip if they interfere with free access of the lot owners. If this occurs with any degree of frequency, this Court shall forthwith issue such an order as may then be appropriate.

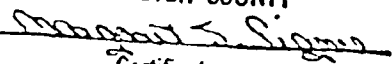
While I cannot order it, the Court notes in passing that the problem might be resolved if the Civic Club took on the project of maintaining the several "reserved" areas including posting of appropriate no trespassing signs limiting access to residents or property owners in the subdivision.

AND IT IS SO ORDERED.

  
Louis E. Condon, Master In Equity

April 6, 1984


Charleston, South Carolina

ATTEST: A CERTIFIED COPY OF THE  
ORIGINAL FILED IN THIS MATTER.  
LOUIS E. CONDON  
MASTER IN EQUITY FOR  
CHARLESTON COUNTY  
By:   
Certifier

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Bayview Acres Civic Club, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Gerald E. Moore, Jr., a/k/a Gerald )  
 Moore, and Margaret Bates Moore, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH OF JUDICIAL CIRCUIT

C/A No.: 2011-CP-10-95

FILED  
 2013 NOV -5 AM 11:35  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY 

**ORDER**

This matter is before the Court based on the Complaint of Plaintiff requesting the Court to find the Defendants have violated the terms of the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234; in the alternative, issue an Order requiring Defendants Gerald E. Moore, Jr. a/k/a Gerald Moore and Margaret Bates Moore to show cause, if they can, why they should not be held in Contempt of Court for failing to comply with the Order; declare that the actions of Defendants Gerald Moore, Margaret Bates Moore and Robert Payne violate the terms of the Order issued on April 6, 1984 in the matter of *W.L. Guerry, Jr, et. al. vs. Gerald E. Moore, Jr., et. al.*, Civil Action No. 1982-CP-10-4234 (the "1984 Order") a copy of which is attached hereto as Exhibit A, and interfere with the lot owners in Bay View Subdivision's easement and/or property interest which allows them unobstructed access to the Subject Property; Plaintiff have Judgment against Defendants Gerald Moore and Robert Payne for civil conspiracy and an award of actual, consequential and punitive damages in an amount to be proven at trial and to include attorneys' fees and costs and



interest; this Court issue injunctive relief to prohibit Defendants Gerald Moore, Margaret Bates Moore and Robert Payne from interfering with Plaintiff's right to use and enjoy the Subject Property and ordering the structure that encroaches onto the Subject Property be removed; and Plaintiff be awarded the costs associated with the prosecution of this matter, including reasonable attorney's fees.

The case was referred to the undersigned as Master in Equity for Charleston County by Order filed August 31, 2010.

When filed Robert Payne was a named defendant, however, upon Motion of the Plaintiff, he was dismissed from the case by Order filed November 15, 2010.

The case was scheduled for hearing on September 25, 2013 at 2:00 o'clock P.M. At the time of the hearing, the attorneys for the parties advised the Court an agreement had been reached to resolve the matter. The agreement was announced in open Court by Charles S. Altman, attorney for the Plaintiff and acknowledged and agreed to on behalf of the Defendants by their attorney, David A. Collins.

Based on the Agreement of the Parties and the consents to this Order by their attorneys on their behalf, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

1. For purposes of this Order and the 1984 Order, the term "Plaintiff's Property" shall refer to the piece parcel or lot of land marked "Reserved" lying between Lots 37 and 38 on the Plat entitled "BLOCK "A" OF BAY VIEW ACRES CHARLESTON COUNTY, S.C." prepared by The John McCrady Co., Charleston, S.C., dated February, 1948 and recorded in the RMC Office for Charleston County in Plat Book G at page 48a on April 17, 1948.

2. For purposes of this Order and the 1984 Order, the portion of the Plaintiff's Property which the Defendants are entitled to use as a result of the construction by Defendants on Plaintiff's Property prior to the 1984 Order is described as bordering on the West by Lot 37, on the North by Bay View Drive, on the East by markers placed by a surveyor employed by Plaintiff and on the South by the rear portion of the structure erected by Defendants prior to the 1984 Order.

3. The 1984 Order remains valid and effective and the Order of the Court to be fully complied with by Plaintiff and Defendants, Gerald E. Moore, Jr., a/k/a Gerald Moore and Margaret Bates Moore.

4. The property line between the property occupied by the Defendants, known as Lot 37, Bay View Acres Subdivision and the property belonging to the Plaintiff, designated as "RESERVED" on the plat entitled "Block "A" Bay View Acres Charleston County, S.C." is as shown on said plat recorded in Plat Book G at page 48-A in the RMC Office for Charleston County and shall be marked by appropriate markers installed by a surveyor employed by Plaintiff.

5. No later than October 25, 2013, Defendants shall remove all mulch, dirt and grass they allowed to be placed on the property of Plaintiff. Defendants will be allowed to use small equipment to remove the mulch, dirt and grass and the equipment shall be allowed to cross the property of the Plaintiff to accomplish the removal, provided the Plaintiff's Property will be restored to its condition prior to the time the mulch, dirt and grass was placed on the Property of Plaintiffs and any damage to the Plaintiff's Property created by the removal of the mulch, grass and dirt shall be repaired and the Property returned to its prior condition. Time is of the Essence with regard to the work to be done pursuant to this provision.

6. Defendants shall remove from the Plaintiff's Property any debris on the Property such as propane tanks, doors, sinks, plumbing fixtures, etc. The debris shall be removed no later than October 25, 2013. Time is of the Essence with regard to the removal of the debris.

7. Defendants will not allow their dogs on the Plaintiff's Property except when on a leash and controlled by the Defendants or someone designated by them.

8. Defendants will not, except as specifically provided otherwise herein, use vehicles on the Plaintiff's Property other than a bicycle. Defendants' use of the Plaintiff's Property shall be the same as any other resident of Bayview Acres.

9. With the exception of that portion of Plaintiff's Property which Defendants are entitled to use pursuant to the 1984 Order as described in Paragraph Number 2 of this Order the defendants will not perform any landscaping or cutting of any vegetation or perform any other work on the Plaintiff's Property. In the event Defendants believe any work needs to be performed to maintain the Plaintiff's Property, they will contact the President of the Plaintiff and advise him/her of what the Defendants believe need to be done. The Plaintiff shall be solely responsible through its agents to maintain the Plaintiff's Property. Defendants shall maintain the portion of Plaintiff's Property as described in paragraph 2 of this Order in a neat and clean condition. Nothing contained in this Order shall be deemed to prevent Defendants from using the existing driveway which lies within the portion of Plaintiff's Property which lies within the boundaries described in paragraph 2 of this Order as long as they are entitled to maintain the structures located thereon pursuant to the provisions of the 1984 Order. At such time as the right to maintain the said structures ends, the right to use any portion of the Plaintiff's property by Defendants shall terminate other than any right Defendants may have as residents of Bay View Acres Subdivision.



10. In the event Defendants violate the terms of this Order or the 1984 Order, upon application accompanied by an affidavit by the President of the Plaintiff setting forth with specificity the facts supporting the claim the Defendants or either of them or persons acting on either of their behalf have violated the terms of either Order, the Court will issue a Rule to Show Cause as to why the Defendants should not be held in contempt of Court and appropriate sanctions awarded to Plaintiff against the Defendants, which sanctions may include an award of reasonable attorney's fees to Plaintiff's attorney.

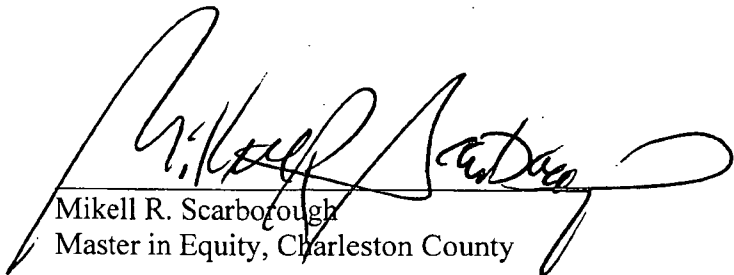
11. This Order shall be public notice, the Plat entitled "Map of Lot No. 37, A-B-C-D and Parcel X-B-E-F-C being joint to form Lot 37X located in Bay View Acres Subdivision, Block A Christ Church Parish, Charleston Co., S.C., recorded in Plat Book AW, at page 57, in the RMC Office for Charleston County on November 10, 1982 is void and of no effect.

12. This Order shall be recorded in the RMC Office for Charleston County to put the public on notice of the limitations of the owner of Lot 37, Bay View Acres Subdivision with regard to the use of the Plaintiff's Property as set forth herein and in the 1984 Order. The Order shall be indexed under the names of the current owners of Lot 37, Bay View Acres Subdivision, Margaret B. Moore and Alec Elizabeth Cleary and refer to TMS Number 517-06-00-037.

AND IT IS SO ORDERED.

*None Protested*

Charleston, South Carolina  
Dated: October 5, 2013

  
Mikell R. Scarborough  
Master in Equity, Charleston County

*to*  
*Nov. 1, 2013*

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>BAYVIEW ACRES CIVIC CLUB,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>GERALD E. MOORE, JR. A/K/A GERALD MOORE, MARGARET BATES MOORE,</p> <p style="text-align: center;">Defendants</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2011-CP-10-95</p> <p style="text-align: center;"><b>MOTION FOR RULE TO SHOW CAUSE</b></p>
---	---

FILED  
 2014 MAY 22 PM 4:27  
 JULIE J. SIMMONS  
 CLERK OF COURT  
 BY [Signature]

Pursuant to Rule 53, *SCRCP*, the Order of Reference dated October 2, 2012, and the Honorable Mikell R. Scarborough's Order of November 5, 2013, Plaintiff Bayview Acres Civic Club ("Bayview") hereby moves this Court for a Rule to Show Cause compelling Gerald E. Moore, Jr. a/k/a Gerald Moore, and Margaret Bates Moore (collectively, "Moore") to appear before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on June 6, 2014, or as soon thereafter as may be ordered by the Court, and to show cause why they are not in contempt and violation of the Orders of the April 6<sup>th</sup>, 1984 and of November 5<sup>th</sup>, 2013.


The Orders (attached hereto, Exhibit A) has been violated in the various particulars set forth in Graham Stone's affidavit (attached hereto, Exhibit B) and in the photographic evidence (attached hereto, Exhibit C). The foregoing materials make clear that Moore is in violation of substantially all provisions of the Orders.

Based on the foregoing, Plaintiff requests this Court to: 1) order Moore to appear at the Rule to Show Cause hearing and to show why they have not complied with the April 6<sup>th</sup>, 1984 and November 5, 2013 Orders by failing to afford unimpeded, unrestricted access to the Plaintiff's property, to remove his property from the Plaintiff's property, and to remediate the land back to its original condition and 2) order such other relief as the Court deems just and appropriate, including a) finding that Moore is in contempt of Court and b) finding that any and all interests, claims, and rights Moore may have or claims to have, whether arising under the

November 5, 2013 Order, or arising under any other authority, including the April 6, 1984 Order, are extinguished.

Respectfully submitted,

TRAYWICK & TRAYWICK, LLC

By: 

David P. Traywick  
Benjamin A. Traywick  
Meredith Ann Carter  
PO Box 564  
Isle of Palms, SC 29451  
843-343-5092

Attorneys for Plaintiff, Bayview Acres Civic Club

Charleston, South Carolina  
May 22, 2014

R-778

<p>STATE OF SOUTH CAROLINA  COUNTY OF CHARLESTON</p> <p>BAYVIEW ACRES CIVIC CLUB,    Plaintiffs</p> <p>v.</p> <p>GERALD E. MOORE, JR. A/K/A GERALD  MOORE, MARGARET BATES MOORE,    Defendants</p>	<p>IN THE COURT OF COMMON PLEAS  NINTH JUDICIAL CIRCUIT  CASE NO: 2011-CP-10-95</p> <p><b>ORDER ON PLAINTIFF'S MOTION FOR RULE  TO SHOW CAUSE</b></p> <p>BY _____</p> <p>JULIE J. ARMSTRONG  CLERK OF COURT</p> <p>2014 JUN 30 AM 8:51</p> <p><b>FILED</b></p>
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This matter is before me on the Plaintiff's Rule to Show Cause. Having considered the submissions of the parties, and having taken testimony and heard oral argument on June 13<sup>th</sup>, 2014, I find the Defendant Gerald Moore to be in contempt of my ~~September 25<sup>th</sup>~~ <sup>Nov. 1</sup>, 2013 Order, and order as follows:

1. The Defendants shall utilize the Bayview Acres Civic Club property—which abuts the Eastern edge of the Defendants' property, and which has been at issue throughout this litigation—solely for ingress and egress to the carport at issue. Any use by the Defendants of the Bayview Acres Civic Club property other than ingress/egress to the carport—storage, parking, driving other than to and from the carport, or otherwise—shall constitute a violation of this order.

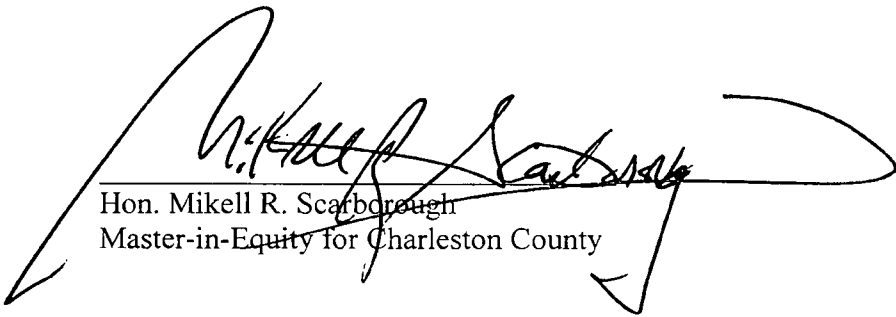
2. Within the two-bay carport, the Defendants' occupation of the Western bay—i.e., the bay that is closest to the Defendants' house—shall be at their discretion. Within the Eastern bay, the Defendants' use and occupation of the bay shall be limited to the storage of a single motor vehicle: automobile, motorcycle, golf cart, etc. Any use or occupation of the Eastern bay of the carport beyond this single-vehicle storage shall constitute a violation of this order.

3. Finding that good fences make good neighbors, the Court orders that the Plaintiff shall be and is by this order deemed entitled to survey the property line, and to build a fence from the rear of the carport down to the marsh line. Any interference by the Defendants with the survey, construction or maintenance of this fence, should the Plaintiff choose to erect it, shall

constitute a violation of this order. Should any violation of this order be perpetrated by the Defendants, and proved by the Plaintiff, the Plaintiff will be entitled, in addition to any other remedy the Court deems appropriate, to erect a fence from the front of the carport, along the property line, down to Bayview Drive.

4. As a penalty for his contempt of court, the Defendant Gerald Moore shall pay to the Bayview Acres Civic Club \$1,000.00, within thirty (30) days of this order.

AND IT IS SO ORDERED.



Hon. Mikell R. Scarborough  
Master-in-Equity for Charleston County

Date 6/25/14

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>BAYVIEW ACRES CIVIC CLUB,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>GERALD E. MOORE, JR. A/K/A GERALD MOORE, MARGARET BATES MOORE,</p> <p style="text-align: center;">Defendants</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2011-CP-10-95</p> <p style="text-align: center;"><b>MOTION FOR RULE TO SHOW CAUSE</b></p> <p style="text-align: right;"> <b>FILED</b>  2015 JAN 15 PM 12:49  JULIE J. ARMSTRONG  CLERK OF COURT  BY _____ </p>
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Pursuant to Rule 53, *SCRCP*, and to the Honorable Mikell R. Scarborough’s Orders of April 6<sup>th</sup>, 1984, November 5<sup>th</sup>, 2013 and June 25<sup>th</sup>, 2014, the Plaintiff Bayview Acres Civic Club (“Bayview”) hereby moves this Court for a Rule to Show Cause compelling Gerald E. Moore, Jr. a/k/a Gerald Moore, and Margaret Bates Moore (collectively, “Moore”) to appear before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on December 1<sup>st</sup>, 2014, or as soon thereafter as may be ordered by the Court, and to show cause why they are not in contempt and violation of the Orders of the April 6<sup>th</sup>, 1984, November 5<sup>th</sup>, 2013 and June 25<sup>th</sup>, 2014.

The Orders (attached hereto, Exhibit A) have been violated as set forth in Benjamin A. Traywick’s affidavit (attached hereto, Exhibit B) and as demonstrated by the photographic evidence (attached hereto, Exhibit C). These material establish violations of the letter and spirit of all three Orders, by demonstrating the Defendants’ utter disdain for the Plaintiff’s property rights, despite repeated, specific orders by the Court that they respect the Plaintiff’s rights. As a result, the Defendants have shown the same disdain—utter, and shocking—of the Court’s authority.

Of particular note is that these materials establish willful violations of an order the Court handed down just this year, on June 25<sup>th</sup>, including:

- That Defendant Gerald Moore has failed to tender the \$1,000.00 the Court ordered him to pay the Plaintiff as a sanction for his most recent contempt of Court;

- That the Defendants have directly violated the order that they use the Plaintiff's property "solely for ingress and egress to the carport at issue", and
- That the Defendants have directly violated the order that "[w]ithin the Eastern bay [of the carport], the Defendants' use and occupation of the bay shall be limited to the storage of a single motor vehicle: automobile, motorcycle, golf cart, etc."

Based on the foregoing, Plaintiff respectfully asks that the Court 1) order the Defendants to appear and to show why they have not complied with the Court's orders, and 2) order such other relief as the Court deems just and appropriate, including without limitation:

- Find that the Defendants are in contempt of Court and impose as a sanction, rather than a monetary penalty, that the Defendants are deemed to have forfeited any and all rights they were granted under the 1984 Order;
- Order, as specifically provided under the June 25<sup>th</sup> order, that the Plaintiff is permitted to complete the street-ward fence along the Westward boundary of its property;
- Order that the Plaintiff can, at its expense, and without harm to the Defendants' property, remove the carport, as a means of re-establishing the meaningful demarcation of its and Moore's property, thereby finally ending the parties' and the Court's involvement in this decades-old dispute, and
- Award the Plaintiff costs and fees associated with this motion.

A proposed Rule to Show Cause is enclosed herewith. Respectfully submitted.

TRAYWICK & TRAYWICK, LLC



---

David P. Traywick  
Benjamin A. Traywick  
Meredith Ann Carter  
PO Box 564  
Isle of Palms, SC 29451  
Telephone: 843-343-5092  
Email: ben@traywicklaw.com  
Attorneys for Plaintiff

Charleston, South Carolina  
November 20<sup>th</sup>, 2014

<p>STATE OF SOUTH CAROLINA  COUNTY OF CHARLESTON  BAYVIEW ACRES CIVIC CLUB,    Plaintiffs    v.  GERALD E. MOORE, JR. A/K/A GERALD  MOORE, MARGARET BATES MOORE,    Defendants</p>	<p>IN THE COURT OF COMMON PLEAS  NINTH JUDICIAL CIRCUIT  CASE NO: 2011-CP-10-95    <b>ORDER ON MOTION FOR RULE  TO SHOW CAUSE</b></p> <p>FILED  2015 MAR 24 AM 10:26  JULIE J. ARNSTRONG  CLERK OF COURT  BY _____</p>
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This matter is before me on the Plaintiff's November 20<sup>th</sup>, 2014 motion for Rule to Show Cause why the Defendants are not in violation of orders in this case issued on April 6<sup>th</sup>, 1984, November 5<sup>th</sup>, 2013, and June 25<sup>th</sup>, 2014, concerning the Plaintiff's fifty (50) foot strip of land ("subject property" or "Plaintiff's property") which lies immediately adjacent to the Defendants' property, all as more specifically described in the prior filings in this matter. Having considered the parties' submissions, and having conducted an evidentiary hearing and heard oral arguments of counsel on March 4<sup>th</sup>, 2015, I make the following findings of fact and conclusions of law.

1. I find that the Defendants are in violation of my order of June 25<sup>th</sup>, 2014, in the following particulars: they have failed to pay the \$1,000.00 that I ordered them to pay to the Plaintiff within thirty days of that order; they have utilized the Plaintiff's property for storage of their personal belongings and parking of their vehicles, in violation of my order that they utilize it solely for ingress and egress; they have kept more than a single vehicle in the lefthand or Eastern bay of the carport (the bay furthest from the house), in violation of my order.



2. I find that the long history of this matter establishes that the Defendants have impeded and interfered with the Plaintiff's use and enjoyment of the property regularly and frequently. I find that this ongoing interference with the Plaintiff's rights has triggered the portion of the 1984 Order which asserts that this Court "shall forthwith issue such an order as may be appropriate," (1984 Order, p. 7, item 2(c)), and that this triggering—along with the repeated violations of my orders—justifies a modification of rights allocated under prior orders on this matter.

3. I find that the Defendants' conduct does not yet support the imposition of jail time as a sanction for their contempt of Court, nor that their repeated interference with the Plaintiffs' use and enjoyment of their property justifies the relief requested by the Plaintiff: the removal of the carport. However, I find that any further violation by the Plaintiff of this or any of the Court's other orders in this matter will justify jail time as a contempt sanction, and I find that any further interference with the Plaintiff's use and enjoyment of the subject property will justify an order that the carport be removed altogether.

Having so found, and so concluded, I order as follows:

4. As I indicated from the bench on March 4<sup>th</sup>, 2015, the Defendants shall have paid the \$1,000.00 payment required by my June 25<sup>th</sup>, 2014 order no later than the close of business on March 5<sup>th</sup>, 2015. As a sanction for their contempt, I order the Defendants to pay the Plaintiff a further \$1,000.00 within thirty (30) days of this order.

5. I reiterate the Court's finding that "good fences make good neighbors." Per my June 25<sup>th</sup>, 2014 order, a consequence of the Defendants' violations of that order is that the Plaintiff now is entitled to erect a fence along the length of the subject property line, from Bayview Drive back to the marsh. I order that this fence is to terminate no less than fifteen (15) feet from the

*not five* *AD*  
*15*

paved portion of Bayview Drive, and no less than ~~fifteen (15)~~ feet from the perpendicular marsh line.

6. The Defendants' rights to use the righthand or Western bay of the carport (i.e., the bay nearest their house) continues at their discretion. However—with the exception of any rights the Defendants have to the subject property by virtue of their residency in the neighborhood, or of their membership in the Bayview Acres Civic Club—the Defendants' rights or other authorizations to utilize the Plaintiffs' property are hereby terminated. In the interest of clarity only, I note that this ruling terminates the Defendants' right or authority to utilize the Eastern bay of the carport (the bay furthest from the house), and it terminates the Defendants' right or authorization to utilize any part of the Plaintiff's property for ingress or egress to any part of the Defendants' property.

7. ~~I instruct the Plaintiff that~~ upon entry of this order, <sup>IT</sup> it shall file this Order with the Charleston County Register of Mesne Conveyance, in order that the Defendants' successors in interest to their property be notified of this and the Court's previous rulings concerning rights to use the subject property and concerning the carport.

AND IT IS SO ORDERED

*Mikell R. Scarborough*  
Hon. Mikell R. Scarborough  
*Mikell R. Scarborough*  
Charleston, SC

*3/18/15*  
Date

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>BAYVIEW ACRES CIVIC CLUB,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>GERALD E. MOORE, JR. A/K/A GERALD MOORE, MARGARET BATES MOORE,</p> <p style="text-align: center;">Defendants</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2011-CP-10-95</p> <p style="text-align: center;"><b>PLAINTIFF'S THIRD MOTION FOR RULE TO SHOW CAUSE</b></p> <div style="text-align: right;"> <p><b>FILED</b></p> <p>2015 AUG 21 AM 10:00</p> <p>JULIE J. ARNSTRONG CLERK OF COURT</p> </div>
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Pursuant to Rule 53, *SCRCP*, and to the Court's Orders in this matter of April 6<sup>th</sup>, 1984, November 5<sup>th</sup>, 2013, June 25<sup>th</sup>, 2014, and/or March 24<sup>th</sup>, 2015, the Plaintiff Bayview Acres Civic Club ("Bayview") hereby moves this Court for a Rule to Show Cause compelling Gerald E. Moore, Jr. a/k/a Gerald Moore, and Margaret Bates Moore (collectively, "Moore") to appear before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on August 4<sup>th</sup>, 2015, or as soon thereafter as may be ordered by the Court, and to show cause why they are not in contempt and violation of these orders. The Defendants' violations include:

- The June 25<sup>th</sup>, 2014 order required the Defendants to pay the Plaintiff \$1,000.00 within thirty days of that order; as of July 17<sup>th</sup>, 2015, that money has not been paid, despite a further admonition, in open court on March 4<sup>th</sup>, 2015, that this sum be paid by March 5<sup>th</sup>, 2015;
- The March 24<sup>th</sup>, 2015 order required the Defendants to pay the Plaintiff a further \$1,000.00 within thirty days of that order; as of July 17<sup>th</sup>, 2015, that money has not been paid.<sup>1</sup>

Based on the foregoing—and in special consideration of the flagrancy of the Defendants' repeated refusal to comply with the Court's order—the Plaintiff respectfully asks that the Court 1) order the Defendants to appear and to show why they have not complied with the Court's

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<sup>1</sup> The Defendants have appealed this order.

orders, and 2) order such other relief as the Court deems just and appropriate, including without limitation:

- Find that the Defendants are in contempt of Court and impose as a sanction, in addition to a monetary penalty, that the Defendants are deemed to have forfeited any and all rights they were granted under the 1984 Order;
- Order that the Plaintiff can, at its expense, and without harm to the Defendants' property, remove the carport, as a means of re-establishing the meaningful demarcation of its and Moore's property, thereby finally ending the parties' and the Court's involvement in this decades-old dispute, and
- Award the Plaintiff costs and fees associated with this motion.

A proposed Rule to Show Cause is enclosed herewith. Respectfully submitted.

TRAYWICK & TRAYWICK, LLC



---

David P. Traywick  
Benjamin A. Traywick  
TRAYWICK & TRAYWICK, LLC  
875 Lowcountry Boulevard, Ste 204  
Telephone 843-352-9569  
Facsimile 843-300-1051  
[dpt@traywicklaw.com](mailto:dpt@traywicklaw.com)  
[ben@traywicklaw.com](mailto:ben@traywicklaw.com)

Attorneys for the Plaintiff

Charleston, South Carolina  
Date: July 20<sup>th</sup>, 2015

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>Bayview Acres Civic Club,</p> <p>Plaintiff</p> <p>v.</p> <p>Gerald E Moore, Jr. a/k/a Gerald Moore, and Margaret Bates Moore,</p> <p>Defendants</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2011-CP-10-95</p> <p><b>ORDER</b></p> <p>BY _____</p> <p>JULIE J. ARMSTRONG CLERK OF COURT</p> <p>2015 SEP 22 PM 3:28</p> <p>FILED</p>
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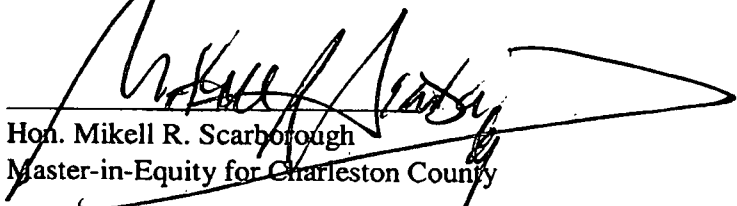
This matter is before me on the Plaintiff's motion for Rule to Show Cause, dated July 22nd, 2015, but shown on the clerk's register as having been filed on August 21st, 2015. Having considered the parties' filings and having heard oral argument on September 3rd, 2015, I find and order as follows:

I find that Defendant Gerald E Moore, Jr. is in contempt of the two prior orders by which I have found him to be in contempt, dated June 25th, 2014 and March 24th, 2015. Each order required him to pay to the Plaintiff \$1,000.00; though Mr. Moore delivered \$2,000.00 to the Plaintiff on or about September 2nd, 2015, neither payment was timely.

As a penalty for this contempt, I fine Mr. Moore an additional \$1,000.00, which he is to pay to the BVACC within thirty days of the date of this order.

I further order Mr. Moore to pay to the BVACC reasonable attorney's fees in connection with their attorney's efforts, via the motion at hand, to enforce my prior contempt orders. Having considered the affidavit of Benjamin A.C. Traywick, I find that the reasonable attorney's fees to be paid shall be in the amount of \$ 500.00. Like the \$1,000.00 fine, this amount shall be paid to the Plaintiff within thirty days of this order.

AND IT IS SO ORDERED.

  
 Hon. Mikell R. Scarborough  
 Master-in-Equity for Charleston County

9/16/15  
 Date

1 STATE OF SOUTH CAROLINA  
 2 COURT OF COMMON PLEAS  
 3 COUNTY OF CHARLESTON  
 4 Bayview Acres Civic Club,  
 5 Plaintiff,  
 6 vs. CASE NO. 2011-CP-10-959  
 7 Gerald E. Moore, Jr., a/k/a  
 8 Gerald Moore and Margaret Bates Moore,  
 9 Defendants.

10  
 11 Hearing before the Honorable Mikell  
 12 R. Scarborough, reported by Christine A. Smith,  
 13 Court Reporter and Notary Public, at 3:38 p.m.  
 14 on March 4, 2015, at 100 Broad Street,  
 15 Charleston, South Carolina.

16  
 17  
 18  
 19 Christine A. Smith, Court Reporter  
 20 Master-in-Equity  
 21 P. O. Box 30276  
 22 Charleston, South Carolina, 29417  
 23 (843) 958-5071  
 24 casmith@charlestoncounty.org  
 25

1 APPEARANCES OF COUNSEL:  
 2  
 3 ATTORNEYS FOR THE PLAINTIFF:  
 4  
 5 Benjamin A. Traywick, Esq.  
 6 Law Office of Benjamin Traywick  
 7 P.O. Box 564  
 8 Isle of Palms, SC 29451  
 9 (843) 810-3121  
 10 ben@traywicklaw.com  
 11  
 12 ATTORNEYS FOR THE DEFENDANT:  
 13  
 14 David A. Collins, Esq.  
 15 Law Office of David A. Collins  
 16 P.O. Box 40578  
 17 Charleston, SC 29423  
 18 (843) 760-0220  
 19  
 20 (INDEX AT REAR OF TRANSCRIPT)  
 21  
 22  
 23  
 24  
 25

1 PROCEEDINGS  
 2  
 3 THE COURT: Mr. Traywick, this is your  
 4 Rule to Show Cause. You filed a motion in  
 5 00:00:01 January and we set it for today. When it  
 6 came in I did see some accompanying exhibits.  
 7 How do you wish to proceed, or do you want to  
 8 just tell me what's going on?  
 9 MR. TRAYWICK: Your Honor, I'm happy to  
 10 00:00:12 put some testimony up, and I think we need  
 11 to. It may be worthwhile to just give us  
 12 three or four minutes here just to kind of  
 13 outline what's happening. I know you're  
 14 familiar with the situation.  
 15 00:00:26 The gist of it is, here we are back in  
 16 2013 you issued an order in November that  
 17 Mr. Moore take some actions to clean up the  
 18 property that belongs to the BVACC that he  
 19 had piled a bunch of junk up on and had  
 20 00:00:45 plowed up and churned up with all this heavy  
 21 equipment. He didn't do it.  
 22 We filed yet another Rule -- we filed  
 23 our first Rule to Show Cause. That was  
 24 heard. You heard that in June of 2014. So  
 25 00:00:56 for seven months Mr. Moore did nothing to

1 comply with the order, completely flaunted  
 2 the order which I've never seen. I've  
 3 actually never seen this. Then he makes  
 4 these efforts two or three days before the  
 5 00:01:09 hearing to do what you had ordered him to do  
 6 seven months before.  
 7 It appeared that the Court was not  
 8 overly impressed with those efforts and  
 9 ultimately found him to be in contempt of the  
 10 00:01:17 court for violation of the order from  
 11 November of 2013.  
 12 So you found him in contempt, he  
 13 violated the order, you issued a new order in  
 14 June of 2014, so last June. That order  
 15 00:01:32 included four or five things. The first one  
 16 was that Mr. Moore pay BVACC \$1,000. He  
 17 hasn't done it.  
 18 The second one was that you ordered  
 19 Mr. Moore to keep his property, his personal  
 20 00:01:44 property off of our real property. We're  
 21 going to put up some exhibits and some  
 22 testimony to show that that hasn't happened.  
 23 I reached out months after the compliance  
 24 deadline and said, can we please just -- we  
 25 00:01:49 really don't want to go back to Court.

1 Honestly, Your Honor, we're at a loss.  
2 We need some kind of remedy here that  
3 prevents us from coming back here. All of  
4 these people leaving work, you know, the  
5 BVACC expending time and resources all  
6 because this gentleman will not comply with  
7 pretty straightforward orders.

00:02:13

8 So we would love to find some solution  
9 that actually brings this to a close. We  
10 didn't want to come back, but we're back for  
11 noncompliance. Ongoing. You told him not to  
12 park anything on the left side of that  
13 carport except one vehicle. He's parking  
14 multiple vehicles.

00:02:22

15 Your told him to keep his personal  
16 property off there. He's parking cars all  
17 over our property. He's parking his trash  
18 cans and his recycling. All of this stuff is  
19 all over our property, and they're obvious  
20 violations of your order.

00:02:33

00:02:42

21 So here we are again. We can prove all  
22 this. I can show you everything we need to  
23 show you, but really we've seen this movie.  
24 This man does not want to comply with the  
25 Court's orders. He doesn't want to

00:02:56

1 acknowledge our property rights. I think,  
2 it's important to point out, Your Honor, that  
3 the whole reason we're in this mess -- it  
4 could be well, the BVACC needs to just kind  
5 of get over it.

00:03:00

6 Well, the whole reason we're in this  
7 mess is that if the 1984 order says, Well,  
8 you-all didn't tell him to stop building on  
9 your property back at the time. He's got  
10 ongoing litigation, I think, the last time I  
11 checked for adverse possession with people on  
12 the other side of the property.

00:03:15

13 It's an ongoing issue out there. All  
14 we're trying to do is protect our rights here  
15 so that we don't get into this same problem.  
16 It seems like there should be a  
17 straightforward solution. I personally think  
18 that your orders have been clear and really  
19 easy to comply with and yet we keep coming  
20 back here to the same thing, wasting the  
21 Court's time, wasting all of these people's  
22 time. It feels like now is the time for a  
23 final remedy.

00:03:25

00:03:35

24 I don't know whether this man needs to  
25 be locked up in jail for the message to get

00:03:48

1 through to him, but he doesn't care about the  
2 orders that the Court issues. Thus far, none  
3 of them have been sufficiently serious grade  
4 to bring this man into compliance with  
5 really, really simple orders.

00:04:01

6 So we can put up whatever we need to  
7 put up. We have photographs showing from the  
8 day you issued that order until today or  
9 until February he's violating the order.  
10 He's doing it knowingly. He doesn't care.  
11 He certainly doesn't care about his neighbors  
12 or the property rights of others. He doesn't  
13 care about the Court's orders. I find it  
14 shocking.

00:04:12

15 There needs to be a solution, and  
16 obviously it's your call on how to proceed,  
17 but this is our view.

00:04:21

18 THE COURT: Thank you. Mr. Collins?

19 MR. COLLINS: Judge, I really don't

00:04:33

20 believe a lot of that. I think they want to  
21 be here. This is an ongoing dispute. You  
22 know how homeowner's associations are. You  
23 have these people. Some of them are on the  
24 board. They just walk around and try to pick  
25 on people. Really, you've never heard me say

00:04:48

1 something like that before I know. I can  
2 tell you, in all the years I've been in this  
3 court in front of you I've always tried be  
4 candid and honest. A lot of times that has  
5 hurt me and hurt my client. I'm not going to  
6 stop.

00:05:07

7 We've got two issues today. The first  
8 one is the thousand bucks. That's on me.  
9 I've had it for six months. Mr. Moore and I  
10 have had ongoing discussions about whether to  
11 release it or not. I've got it. I can give  
12 them a check tomorrow. I would be glad to do  
13 it. I wish I had time to go back to my  
14 office and bring it today, but I didn't.

00:05:22

15 I'm not in the habit of falling on the  
16 sword for my client. I have got to do it  
17 this time. If you're going to sanction  
18 somebody for that sanction me. I'll take it.  
19 If I need to pay him some more money I'll do  
20 it.

00:05:33

00:05:48

21 The bigger issue today is these  
22 pictures. Look at them. All you've got is  
23 another car parked in the driveway for five  
24 days. How is that impeding their access to  
25 the easement. It's not, not one bit. Not

00:06:08

1 one bit. Now understand this, there's  
 2 another whole road right there where they can  
 3 access the easement. Is this really about  
 4 access? Really? Or is this about just  
 5 messing with him? I mean, come on.  
 6 We're sitting here. We've got all  
 7 these people and we're fighting over one car  
 8 or two cars in a driveway that's not impeding  
 9 access to anything?

00:06:17

00:06:18

10 THE COURT: All right. Very good.  
 11 Mr. Traywick, call your first witness.  
 12 MR. TRAYWICK: I call Mr. Gerald Moore,  
 13 Your Honor.

00:06:51

14 THE COURT: Come on up, Mr. Moore.  
 15 GERALD MOORE,  
 16 being first duly sworn, testified as follows:  
 17 THE COURT: Please have a seat and give  
 18 me your full name and address.

00:07:19

19 THE WITNESS: Gerald Edgar Moore,  
 20 Junior.  
 21 THE COURT: Address, sir? Your  
 22 address?

00:07:26

23 THE WITNESS: Oh, 359 Bayview Drive,  
 24 Mt. Pleasant, South Carolina, 29464.  
 25 EXAMINATION

1 BY TRAYWICK:  
 2 Q. Good afternoon, Mr. Moore.  
 3 A. Good afternoon, sir.  
 4 Q. Why haven't you paid us the thousand  
 5 bucks?  
 6 A. I paid it the day the Judge ruled. I  
 7 gave it to my attorney.  
 8 Q. Have you instructed him to pay the  
 9 money to us?  
 10 A. I told him to do what was proper.  
 11 Q. Did you instruct your attorney to pay  
 12 the money to us as required?  
 13 A. The check was written to my attorney's  
 14 escrow account for Bayview.  
 15 Q. Are you going to answer the question?  
 16 THE COURT: It's irrelevant. It's  
 17 owed. The Court ordered it. It's got to be  
 18 paid. Okay? I don't know why it wasn't  
 19 paid, but it wasn't paid. There will be a  
 20 sanction for that. Go ahead.  
 21 Q. (BY MR. TRAYWICK) Mr. Moore, do you  
 22 recall being ordered by this Court not to park  
 23 your vehicles on the property owned by the  
 24 Bayview Acres Civic Club?  
 25 A. Absolutely.

00:07:36

00:07:42

00:07:49

00:08:02

00:08:13

1 Q. Have you parked your vehicles on the  
 2 property owned by the Bayview Acres Civic  
 3 Club?  
 4 A. No.  
 5 Q. So since June of 2014 your testimony is  
 6 you've not parked your vehicles on BVACC  
 7 property?  
 8 A. I have not parked any vehicle that I  
 9 drove on Bayview property.  
 10 Q. How about your family members or guests  
 11 while they've been at your house?  
 12 A. They've all been instructed not to.  
 13 Q. Have you permitted any of your family  
 14 and --  
 15 A. Absolutely not.  
 16 Q. Let me finish my question. Have you  
 17 permitted any of your family members or guests  
 18 to park their vehicles on BVACC property?  
 19 A. Not when I was at home. If I had an  
 20 unexpected guest and they didn't know the  
 21 rules they may have parked there temporarily.  
 22 Q. What do you drive?  
 23 A. I drive a Honda Fit.  
 24 Q. What does your wife drive?  
 25 A. She drives a Chevrolet Suburban.

00:08:20

00:08:31

00:08:36

00:08:47

00:08:56

1 Q. Have either of those vehicles been  
 2 parked on BVACC property since --  
 3 A. Not that I know of.  
 4 Q. Let me finish my question. Have any of  
 5 those vehicles been parked on BVACC property  
 6 since June of 2014?  
 7 A. Not while I was driving them or my  
 8 wife.  
 9 Q. Who else drives those vehicles?  
 10 A. I have three children, two  
 11 grandchildren, and anybody else that wants to  
 12 borrow a car, but normally my wife and I drive  
 13 them.  
 14 Q. Have you used the Bayview Acres Civic  
 15 Club property since June of 2014 for anything  
 16 other than ingress and egress to and from the  
 17 carport?  
 18 A. Not that I know of.  
 19 Q. Okay.  
 20 A. Not that comes to mind.  
 21 MR. TRAYWICK: Okay. That's all the  
 22 questions, Your Honor. Thank you.  
 23 THE COURT: Very good.  
 24  
 25

00:09:06

00:09:14

00:09:31

00:09:41

EXAMINATION

1 BY MR. COLLINS:  
 2 **Q.** Mr. Moore, how long have you lived  
 3 there?  
 4 **A.** About 50 years.  
 5 **Q.** Have you always had a good relationship  
 6 with your neighbors?  
 7 **A.** Yes.  
 8 **Q.** Have you really?  
 9 **A.** Well, one or two I haven't.  
 10 **Q.** Well, let's be honest. Sometimes you  
 11 don't, do you?  
 12 **A.** I beg your pardon?  
 13 **Q.** Sometimes you have conflicts with your  
 14 neighbors, don't you?  
 15 **A.** Not my immediate neighbors but one or  
 16 two neighbors in Bayview, yes.  
 17 **Q.** Let's talk about Mr. Stone sitting  
 18 right back here (indicating).  
 19 **A.** Yes.  
 20 **Q.** You've had physical confrontations with  
 21 him, right?  
 22 **A.** I've had what?  
 23 **Q.** You've had physical confrontations with  
 24 him in the past?  
 25

1 **A.** Absolutely.  
 2 **Q.** And the police were called?  
 3 **A.** Yes.  
 4 **Q.** Were charges filed?  
 5 **A.** No.  
 6 **Q.** Have you ever had any tires slashed or  
 7 damage to your personal property?  
 8 **A.** Many times the Mt. Pleasant Police  
 9 Department's records will show that my tires  
 10 have been slashed.  
 11 MR. TRAYWICK: Your Honor, what is the  
 12 relevance of this?  
 13 MR. COLLINS: The relevance is that --  
 14 MR. TRAYWICK: Is this an accusation of  
 15 criminal conduct? Pretty reckless and  
 16 totally irrelevant.  
 17 THE COURT: Overruled. Go ahead.  
 18 **Q.** (BY MR. COLLINS) Tell me about that.  
 19 **A.** Well, over the years my tires, my car  
 20 tires and lawnmower tires have been cut. I've  
 21 called the police. My next door neighbor who  
 22 wouldn't join in the Bayview assault, her  
 23 tires were cut, and she moved away. A lady  
 24 down the street wouldn't join the Bayview  
 25 team, you might say, against me, her tires

1 were cut and her husband put in a security  
 2 camera. This has happened over a long period  
 3 of time, not just recently.  
 4 **Q.** What about other confrontations with  
 5 members of the board? Have you found them on  
 6 your property taking pictures of your guests?  
 7 **A.** Well, just the other night my  
 8 partner -- I say just the other night -- a  
 9 month or two ago my partner came down from  
 10 Tryon for a doctor's appointment. He drove  
 11 into my driveway at dusk and 20 feet away he  
 12 looks and here's this outline of a man taking  
 13 a picture of him and his fiancée.  
 14 The lady said she was creeped out. She  
 15 wouldn't get out of the car. My partner  
 16 recognized it as Mr. Stone. This was dusk.  
 17 That's just the tip of the iceberg. I've had  
 18 hollering choruses along my property line on  
 19 Saturday. I've had car patrols when I'm out  
 20 working in the yard. You've got the list.  
 21 **Q.** Now, let's talk about the other side.  
 22 All right? We've got some pictures of two  
 23 cars parked in the driveway, right?  
 24 **A.** If you say so.  
 25 **Q.** Have you seen them?

1 **A.** No.  
 2 MR. TRAYWICK: Your Honor, I have  
 3 premarked seven or eight pictures, and I've  
 4 got copies for you all. I'm happy for  
 5 Mr. Collins to use them if that will be  
 6 beneficial.  
 7 THE COURT: I've got some colors that  
 8 came in with your motion. Are these the same  
 9 or different?  
 10 MR. TRAYWICK: I've got that and a few  
 11 supplemental ones as well.  
 12 THE COURT: Whatever you would like to  
 13 use.  
 14 MR. COLLINS: Well, I want to use the  
 15 ones that are in evidence. Of course,  
 16 nothing is in evidence right now.  
 17 THE COURT: Nothing is in evidence yet.  
 18 MR. COLLINS: Are you going to use  
 19 them?  
 20 MR. TRAYWICK: They will be introduced.  
 21 **Q.** (BY MR. COLLINS) All right. Here's a  
 22 picture of August, 2014.  
 23 MR. TRAYWICK: Can Mr. Collins hand a  
 24 copy to the Court so we're all on the same  
 25 page?

1 MR. COLLINS: I will when he identifies  
2 it.  
3 THE COURT: Do you have multiple copies  
4 or just one?

5 MR. TRAYWICK: I have got four copies  
6 of each one, Your Honor.

7 THE COURT: Okay.

8 Q. (BY MR. COLLINS) Okay. Is that the  
9 driveway?

00:14:12 10 A. Yes.

11 Q. There are two cars there, right?

12 A. Well, yes.

13 Q. Why are there two cars?

14 A. Well, this side of the driveway is mine  
15 (indicating).

00:14:16

16 Q. Okay.

17 A. I mean, they've painted the driveway  
18 and the carport showing clearly half of it  
19 belongs to them and half of it belongs me.

00:14:30

20 Q. Does it impede anybody's use of the  
21 easement?

22 A. No, but it's my property.

23 Q. Can anybody go to the marsh if they  
24 want to? Does this block anybody's access?

00:14:44

25 A. I don't think anybody goes this way

1 Club property line.

2 Q. Do you have shrubbery on their  
3 property?

4 A. I beg your pardon?

00:15:59

5 Q. Do you have shrubbery on their  
6 property?

7 A. Yes. It has always been there.

8 Q. How long has that been there?

9 A. 50 years.

00:16:04

10 Q. Have they ever asked you to remove it?

11 A. No.

12 Q. Speaking about shrubbery and  
13 landscaping, tell me about how the Civic Club  
14 maintains the property that is on the  
15 easement. Do they cut the grass?

00:16:37

16 MR. TRAYWICK: Your Honor, once again,  
17 what is the relevance? What is the relevance  
18 of this about how we handle our own property?  
19 It's none of their business.

00:16:43

20 MR. COLLINS: Your Honor --

21 THE COURT: You're just talking about  
22 on this easement, right?

23 MR. COLLINS: Right. It is relevant  
24 because it goes directly to the relationship  
25 between the parties in this case.

1 anyway.

2 Q. I didn't ask you that. Hold on. I  
3 didn't ask you that.

4 A. No, it does not.

00:14:48

5 Q. I asked you whether or not that car  
6 there impedes anybody in the neighborhood from  
7 going to the marsh and using the easement?

8 A. No, it does not.

9 Q. Hold on. Now, you've identified this.

00:15:03

10 A. Now somebody has drawn a line here on  
11 this one that's not correct.

12 MR. COLLINS: I guess that will be  
13 Defendant's 1.

14 THE COURT: If you want to hand that to  
15 my court reporter, I'll mark that one.

00:15:18

16 (DFT. EXH. #1, Photograph, was marked  
17 for identification.)

18 (DFT. EXH. #2, Photograph, was marked  
19 for identification.)

20 MR. COLLINS: I move that into  
21 evidence, Judge.

22 THE COURT: Very good. Thank you.

23 Q. (BY MR. COLLINS) Here is one of  
24 October of 2014; can you identify that?

00:15:51

25 A. It is a flag showing the Bayview Civic

1 THE COURT: Go ahead. Go ahead.  
2 Overruled. Go ahead.

3 THE WITNESS: Well, for the first 50  
4 years I maintained it. I even tried to cut  
5 the path down the causeway, but my lawnmower  
6 bogged down and I had to pull it back by  
7 cable. I, for the almost 50 years that I  
8 have lived there until recently, I maintained  
9 it. Now it's unmaintained. It's a jungle.

10 Q. (BY MR. COLLINS) All right. You say a  
11 jungle. Describe it to me.

12 A. Well, before I moved the fill I have  
13 pictures of weeds shoulder high (indicating).  
14 I would say that the weeds down there now are  
15 probably knee high.

00:17:39

16 Q. Okay. Have you complained?

17 A. No.

18 Q. Why not?

19 A. Well, because -- one reason was because  
20 when I pulled all that stuff on my yard, I  
21 haven't smoothed my yard out sufficiently to  
22 complain about theirs. As a matter of fact,  
23 my wife this morning was complaining about it.  
24 I need to do something so she can cut the  
25 grass.

00:18:08

1 MR. TRAYWICK: This is going to be 3?  
2 (DFT. EXH. #3, Photograph, was marked  
3 for identification.)

4 MR. COLLINS: Yes.

00:18:20 5 Q. (BY MR. COLLINS) Here's a picture in  
6 January of this year. It shows what appears  
7 to be two vehicles on the left-hand side of  
8 the carport; is that right?

9 A. No. No, it's wrong.

00:18:35 10 Q. No.

11 A. Look at the picture.

12 Q. I am.

13 A. Well, that one is underneath the  
14 carport, and that's according to the Judge's  
00:18:42 15 ruling that I could keep a wheeled vehicle in  
16 the carport. That car's been there for over a  
17 year. It won't start.

18 Q. What about this other vehicle that's  
19 parked behind it?

00:18:57 20 A. Well, that is the Fit.

21 Q. Okay.

22 A. This is my wife's --

23 Q. So that's your vehicle?

24 A. Well, it is, yes.

00:19:01 25 Q. And it is parked kind of across the

1 line?

2 A. Yes, it is. Apparently so.

3 Q. Is that a common occurrence?

00:19:17 4 A. I don't think so. I have a permanent  
5 parking place on my front lawn that everybody  
6 sort of leaves to me to park there. It's  
7 right by the front steps.

8 Q. Does that vehicle in any way impede  
9 anybody's access for the marsh?

00:19:25 10 A. No.

11 Q. Or easement?

12 A. No. And you know, I've got no idea  
13 except for this date that that is where this  
14 was taken. The last hearing we had, we had a  
00:19:39 15 picture that had been modified and  
16 misrepresented to the Judge as being on one side  
17 of the house and it was on the other side.  
18 The lawyer didn't apologize for that. He  
19 apologized for misquoting the thing about  
20 Mr. --

21 Q. We're not going there. We're past  
22 that.

23 A. You have pictures that are modified by  
24 somebody.

00:19:58 25 Q. Well, I know but we're past all that.

1 Okay? That's not what we're here today for.

2 Let me ask you something. Some time ago

3 somebody put a bunch of big rocks in this

4 easement, right?

00:20:19 5 A. Yes.

6 Q. And I guess what the reason that was  
7 was to keep you from turning around, right?

8 A. Yes.

9 Q. Do you think that's right?

00:20:29 10 A. Well, as far as I'm concerned it's a  
11 violation of --

12 MR. TRAYWICK: Objection.

13 THE COURT: Hold on just one second,  
14 Mr. Moore. Objection?

00:20:37 15 MR. TRAYWICK: It's speculation. He's  
16 asking to give the reason somebody placed  
17 some rocks out there. How can this man  
18 possibly know what reason somebody else had  
19 to put rocks on their own property.

00:20:50 20 MR. COLLINS: Fair game. I agree. I  
21 withdraw the question.

22 MR. TRAYWICK: Leaving aside the fact  
23 that it's completely irrelevant.

00:20:56 24 THE COURT: He just withdrew the  
25 question, so stay ahead of it.

1 MR. COLLINS: It's not irrelevant  
2 because this is a matter of equity.

3 THE COURT: I understand. Go ahead.

00:19:17 4 Q. (BY MR. COLLINS) That's a fence, isn't  
5 it?  
6 A. It is a fence and I pointed it out to  
7 you and you told me just to live with it.

8 Q. Well, are you familiar with the bylaws  
9 and covenants and restrictions of Bayview?

00:19:25 10 A. I am.

11 Q. Is there something in the restrictions  
12 that says something about building a fence  
13 without association approval?

14 A. Yes. I don't --

00:19:39 15 MR. TRAYWICK: Your Honor?  
16 MR. COLLINS: Hold on.  
17 MR. TRAYWICK: This is sort of getting  
18 into a legal -- he's asking for a legal  
19 conclusion about what the covenants and  
20 restrictions say.

00:21:33 21 MR. COLLINS: Judge, it's a matter of  
22 equity.

23 THE COURT: I'm going to allow it. Go  
24 ahead.

00:21:39 25 MR. COLLINS: Clean hands.

1 THE COURT: Go ahead.  
2 Q. (BY MR. COLLINS) Go ahead.  
3 A. **Fences are not allowed in the front of**  
4 **your property, period, of any kind.**

00:21:48 5 Q. Did anybody ever say anything to you  
6 about building a fence and putting the rocks  
7 there?

8 A. **Of course not.**

9 Q. Have you complained about it?

00:21:54 10 A. **I complained to you.**

11 Q. But not to anybody else?

12 A. **What point is there?**

13 Q. What did I tell you? I don't mind you  
14 telling the Court. What did I tell you about  
15 it?

00:21:59 16 A. **Just to live with it.**

17 MR. COLLINS: Okay. That's all I've  
18 got. Thank you.

19 THE COURT: Mr. Traywick?

00:22:08 20 EXAMINATION

21 BY MR. TRAYWICK:

22 Q. Do you recall being ordered to keep one  
23 vehicle on the left side of that carport?

24 A. **Yes.**

00:22:22 25 Q. And looking at these pictures you can

1 see that you're obviously in violation of  
2 that, correct?

3 A. **That certainly appears so.**

4 Q. So you're in violation of that. Let's  
5 look at No. 1 here. This is dated August 21,  
6 2014.

7 A. **You say it. You say it. You've**  
8 **presented pictures in the past that were**  
9 **false.**

10 Q. Okay.

11 A. **I'm not going to accept your date.**

12 Q. Okay.

13 A. **And how about Mr. Payne when you**  
14 **testified that I had served his papers. You**  
15 **apologized privately. Why don't you apologize**  
16 **to the Judge?**

17 MR. COLLINS: May I instruct my  
18 witness --

00:22:55 19 MR. TRAYWICK: No. No. No. You can't  
20 save your own witness.

21 MR. COLLINS: Well, fine. No. Go  
22 ahead. That's subject for recross.

23 THE COURT: You all stop. Everybody.  
24 Mr. Moore, he's going to ask you some  
00:23:09 25 questions. He's going to ask you questions.

1 I would like you to answer his questions.

2 THE WITNESS: All right, sir. I will.

3 Yes, sir.

4 THE COURT: If you go far afield, we're  
5 going to have a problem.

6 THE WITNESS: All right. I will answer  
7 them.

8 THE COURT: Let's stick with that  
9 question.

10 Q. (BY MR. TRAYWICK) So in looking at  
11 No. 1 here, we can see that you agree that the  
12 left-hand portion of this driveway belongs to  
13 the BVACC, right?

14 A. **Absolutely.**

15 Q. Is your vehicle parked on it right  
16 here?

17 A. **Yes, it is.**

18 Q. Very good. You're in violation of the  
19 order there.

20 A. **The car is.**

21 Q. Very good. Your car and your property?

22 A. **Absolutely.**

23 Q. You parked it there?

24 A. **I don't know that that's true.**

00:23:38 25 Q. You're in violation of the order by

1 having your garbage cans on it, right?

2 A. **The garbage cans have always been**  
3 **there. The judge didn't ever say anything**  
4 **about garbage cans.**

00:23:50 5 Q. Well, the order says what it says, but  
6 that's fine.

7 A. **Okay.**

8 Q. Now, the most interesting thing you  
9 said was that nobody uses that part of the  
00:23:57 10 right of way that goes through the carport.

11 Remember that? Do you remember saying that?

12 A. **I did, yes.**

13 Q. And there's a roadway on the left-hand  
14 side that people do use, don't they?

00:24:04 15 A. **As far as I know they do, yes.**

16 Q. But they don't go up the part of their  
17 driveway on the part of their property that  
18 includes the part that you use as your  
19 driveway?

20 A. **Never have.**

21 Q. And that you treat as your own?

22 A. **Never have.**

23 Q. Does that strike you as being something  
24 more than just a coincidence that people don't  
25 use that part that you're exercising

1 illegally?  
2 **A. Over the years I have kept that walkway  
3 clean and neat and free from debris.**

4 **Q.** Really? Because you were ordered to  
5 clean up that exact same right of way that you  
6 were --

7 **A. No. No. I --**

8 COURT REPORTER: I can't take two  
9 people down at the same time.

10 THE COURT: Gentlemen, she can't take  
11 this down. You-all are arguing over one  
12 another. I need questions and answers.  
13 Okay?

14 MR. TRAYWICK: All right, sir.

00:25:46 15 **Q.** (BY MR. TRAYWICK) I'm showing you  
16 Plaintiff's Exhibit No. 1. Whose black Chevy  
17 is that?

18 **A. I don't have a clue.**

00:25:59 19 **Q.** You agree that it's parked on BVACC  
20 property?

21 **A. Absolutely.**

22 **Q.** You don't deny that whoever's car that  
23 is was visiting your residence, do you?

24 **A. No, absolutely not.**

00:26:08 25 **Q.** So that wasn't your car, but we have

1 the Fit on there at one point. We have this  
2 on there at one point. Let me show you  
3 Plaintiff's No. 2. Whose minivan is that?

00:26:17 4 **A. I don't have a clue.**

5 **Q.** You don't deny, do you, that that  
6 person was visiting your house?

7 **A. No.**

8 **Q.** You don't deny that it's sitting on  
9 BVACC property, do you?

00:26:23 10 **A. No, I do not.**

11 **Q.** Once again let me ask you, do you think  
12 it's possible that the reason nobody uses that  
13 half of the right of way is that you and all  
14 your guests park all over it and treat it as  
00:26:27 15 if it's your private property?

16 **A. I have instructed all of my family, who  
17 come on a regular basis, to park on my front  
18 lawn.**

19 **Q.** Now, answer the question.

00:26:41 20 **A. So if somebody comes and hasn't gotten  
21 that instruction, and I don't happen to be  
22 there and tell them to move it then it stays  
23 there.**

24 **Q.** Now, answer the question.

00:26:47 25 **A. Now what is the question?**

1 **Q.** The question is, does it seem  
2 reasonable to you to conclude that the reason  
3 people don't use that half of their property  
4 is that you and your guests and your family  
00:27:02 5 members are treating it as if it's your  
6 property?

7 **A. The answer is, no.**

8 MR. TRAYWICK: Very good. Nothing  
9 further, Your Honor. Thank you.

00:27:13 10 MR. COLLINS: Nothing further.

11 THE COURT: Mr. Moore, thank you. You  
12 may step down, sir.

13 (Witness excused.)

14 THE COURT: Mr. Traywick?

00:27:18 15 MR. TRAYWICK: Your Honor, just to sort  
16 of save some time, what I would do is bring  
17 Mr. Stone up just to sort of authenticate the  
18 dates that appear on these photographs. If  
19 we can stipulate to it then it can save us  
00:27:36 20 the time, but it's totally up to the Court  
21 and Mr. Collins.

22 MR. COLLINS: I wouldn't quibble with  
23 that.

00:27:49 24 THE COURT: We have Plaintiff's 1 and  
25 Defendant's 3, right?

1 MR. TRAYWICK: Plaintiff's 2, Your  
2 Honor. And if I may --

3 MR. COLLINS: Did you move those in?

00:28:01 4 MR. TRAYWICK: Yes. Well, let me just  
5 show them to you.

6 MR. COLLINS: I've got them.

7 THE COURT: Plaintiff's 1 and 2. All  
8 right.

9 MR. COLLINS: Without objection.

00:28:25 10 THE COURT: Very good.

11 MR. TRAYWICK: If I can beg the Court's  
12 indulgence for one quick second?  
13 Nothing further, Your Honor. Thank  
14 you.

00:28:52 15 THE COURT: All right. Any response,  
16 Mr. Collins?

17 MR. COLLINS: Judge, I'm not going to  
18 call any witnesses. It is what it is.

00:29:00 19 THE COURT: All right. Very good.

20 What do you seek, Mr. Traywick?

21 MR. TRAYWICK: Well, it's hard to know,  
22 but I can tell you what I think makes the  
23 most sense. This is what we're asking for,  
24 Your Honor. Shoot for the moon, right? What  
25 we think makes the most sense, and I've got

1 this in our memo, is that we should be  
 2 allowed to -- that you, Your Honor -- and I  
 3 realize this is always an uncomfortable  
 4 topic, but the 1984 order that is sort of the  
 5 wellspring of this whole problem provides  
 6 that in the event there are -- I can point  
 7 out the provision. It actually specifically  
 8 says that in the event that there are  
 9 violations of the order, impediments to  
 10 residents' view and access of the marshes, if  
 11 there are violations with any degree of  
 12 frequency then the order is subject to  
 13 modification.

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00:29:59

14 In my view what should happen is the  
 15 '84 -- what we respectfully ask Your Honor to  
 16 do is just eliminate the '84 order. Let us  
 17 go back to the time when we owned our  
 18 property, Mr. Moore owned his, and there was  
 19 nothing over there to cause any confusion  
 20 about whose was whose and what was what. We  
 21 can tear down that carport at our own expense  
 22 exposing ourselves to whatever liability  
 23 might befall us as a result of it to damage  
 24 Mr. Moore's house. We'll do it at our own  
 25 expense. We'll build a fence all the way

1 down there.  
 2 As Your Honor ordered before and as you  
 3 said, Good fences make good neighbors. Never  
 4 could that phrase be more apt than it is in  
 5 this situation. So that's what we think  
 6 makes the best sense. I will point out to  
 7 Your Honor that at a bare minimum that the  
 8 order that you entered in June of 2014 on  
 9 this subject of the fence you said, In the  
 10 event there is a violation of this order we  
 11 can build a fence from the carport along the  
 12 property line down to the roadway. I think  
 13 that, at a bare minimum, we ought to do.  
 14 Obviously we can take the position,  
 15 well, it's in the order. We can just do it,  
 16 but obviously we think that that's a  
 17 sensitive issue and we would like your input.  
 18 We would like the 1,000 bucks that we were  
 19 entitled to. By the way, you ordered before  
 20 that we could build a fence from the carport  
 21 down to the marsh.

00:30:41

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00:31:04

00:31:17

00:31:19

22 Do you know why that hasn't been done?  
 23 Because with our \$3,500 annual collections  
 24 that is our entire annual budget we thought  
 25 you know, we'll take the 1,000 bucks. We

1 actually rounded up a bunch of guys from the  
 2 neighborhood to agree to come out there and  
 3 build it one day. We could buy the materials  
 4 with the 1,000 bucks. That hasn't happened  
 5 because Mr. Moore apparently instructed his  
 6 lawyer not to give us the \$1,000.

00:31:41

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00:32:00

00:32:00

00:32:23

7 So at a bare minimum we think we ought  
 8 to be able to build a fence right straight  
 9 down that property line. Since we were last  
 10 here we had that property line surveyed.  
 11 We've got some nice, fresh marks. We can get  
 12 out there and build that thing. I'm not  
 13 quite sure that would alleviate the matter.  
 14 It would still be the case that that fence  
 15 would run rather awkwardly through the middle  
 16 of a carport that straddles the property  
 17 line. Really I believe that until that thing  
 18 is gone that this is never going to end.  
 19 THE COURT: Your proposal is to run the  
 20 fence from the street all the way to the  
 21 marsh; is that your proposal?  
 22 MR. TRAYWICK: Yes, sir. It probably  
 23 wouldn't come all the way -- to the point  
 24 that it's anywhere near the actual roadway,  
 25 but on down to within ten or 12 feet of the

1 roadway so that it's very clear when you're  
 2 standing in the street, hey, this is one  
 3 piece of property. This is another.  
 4 Mr. Moore would still be able to get into his  
 5 side of the carport. We'd be able to use  
 6 ours. I thought it was very, very  
 7 interesting. He said, oh, yeah. Nobody ever  
 8 uses this route. Of course they don't. How  
 9 could we?

00:32:37

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00:33:06

00:33:27

00:33:40

10 THE COURT: Very good. Mr. Collins,  
 11 let me hear from you on that.  
 12 MR. COLLINS: All right, Judge. We've  
 13 got an order in place, 1984. It gives us the  
 14 right to encroach. This is a Court of  
 15 Equity. You've seen the pictures. They're  
 16 in evidence. How can any reasonable person  
 17 come to the conclusion that the parking of  
 18 one car over the easement line limits access  
 19 to this easement? It doesn't. You've seen  
 20 it. Every time we come down here we have  
 21 multiple people from the Civic Club. This is  
 22 more than about this easement. There is  
 23 nothing that restricts any access to this at  
 24 all, period. It never has.  
 25 You instructed my client to clean it

R-96

1 up? He's cleaned it up. There haven't been  
2 any pictures in evidence that it's dirty.  
3 There's no refuse. There's nothing. Look at  
4 the pictures. The only violation we can  
5 claim is the parking of this car on three or  
6 four different dates since we were here last  
7 time six or seven months ago. That's it.  
8 That's it.

00:33:55

9 This is a matter of equity. We're not  
10 in a court of law. Equity works on both  
11 sides. I agree. We shouldn't be here. If  
12 this is the evidence that they've got -- they  
13 want to run a fence through my client's  
14 carport -- is totally insufficient.

00:34:12

15 THE COURT: Very good. All right.  
16 Well, there is at least the third hearing  
17 that we've had since I've been here. This  
18 matter is hotly contested, and it is  
19 unfortunate, but that's where we are. I am a  
20 Judge who thinks good fences make good  
21 neighbors. That's what I'm going to order.  
22 Okay? We had a hearing -- an order issued in  
23 November of 2013, and then June of 2014, and  
24 now here we are in March of 2015. At this  
25 rate we're going to be back in October of

00:34:30

00:34:51

00:35:09

1 homeowners without hindrance or obstruction,  
2 for an unimpeded and unrestricted access and  
3 view.

00:36:36

4 Paragraph B was removing metal  
5 buildings. We crossed that bridge back in  
6 November of 2013.

7 Paragraph C, talking about structures  
8 and impediments. If this occurs with any  
9 degree of frequency this Court shall

00:36:50

10 forthwith issue such an order as it may then  
11 be appropriate. That was in 1984. We've  
12 been to Court in 2013, 2014, and now 2015.

13 I find this to be sufficient frequency  
14 to take some type of action that needs to be  
15 taken. So I'm finding Mr. Moore to be in

00:37:06

16 contempt for having failed to pay the \$1,000  
17 and I'm going to charge him another \$1,000.

18 That's my ruling. That needs to be paid  
19 forthwith. Okay? If that's not paid within  
20 30 days, Mr. Traywick, let me know.

00:37:17

21 Mr. Moore, somebody is going to have to  
22 go to jail if that doesn't get paid. Okay?  
23 I want that to be paid ASAP. I'm authorizing  
24 them to build the fence. I don't know  
25 whether that's in conformity with the

00:37:32

1 2015. Then somebody's going to have to go to  
2 jail. I don't know who that's going to be.  
3 \$1,000 needs to be paid over today, no later  
4 than 5:00 p.m. tomorrow. There's an  
5 additional \$1,000 for not having paid the  
6 first \$1,000. Contempt of Court. Contempt  
7 of Court.

00:35:29

8 I'm authorizing the neighborhood  
9 association to build a fence from the roadway  
10 back to the marsh. I think it should be at  
11 least ten to 12 feet off the roadway. I  
12 think it should be at least ten to 25 feet  
13 off the marsh. Okay? I don't know how  
14 you're going to build it through the carport.

00:35:53

15 I'm not ordering the carport to be torn down.  
16 If we continue to have problems I'm going to  
17 order the carport to be removed, at least to  
18 the property line. Okay? I'm not doing that  
19 today. I'm not having -- neither am I having  
20 to change the order from 1984. Let me read  
21 to you--all what I think is relevant from  
22 that. It is hereby ordered -- this is Page 6  
23 of Judge Condon's order.

00:36:07

24 The 50-foot strip in question is for  
25 the right to use and enjoy by the Bayview

00:36:18

1 restrictions or not, but unfortunately that's  
2 what needs to happen in this case. All  
3 right?

00:37:38

4 MR. COLLINS: As a matter of  
5 clarification, is the fence going to run  
6 through the carport?

7 THE COURT: I don't know how they're  
8 going to do that.

9 MR. COLLINS: Well, my client --

10 THE COURT: They have the authority to  
11 build it through the carport. Okay?

12 MR. COLLINS: So you're denying access  
13 to my client of the carport?

14 THE COURT: Only the part of the  
15 carport that's on the Bayview Acres property.

16 MR. COLLINS: Right. That's the  
17 subject of Judge Condon's order?

18 THE COURT: Right. Yes. Yes. So from  
19 that standpoint, that's the frequency part  
20 that says, we need to create some sort of  
21 remedy.

00:37:58

22 MR. COLLINS: And it's going to be a  
23 written order?

24 THE COURT: I hope so.

00:38:08

25 MR. TRAYWICK: I'll prepare the order

1 and share it with Mr. Collins before we  
 2 submit it, Your Honor.  
 3 THE COURT: Please do. Please do. Any  
 4 problems, you-all let me know.  
 5 MR. TRAYWICK: Thank you, Your Honor.  
 6 THE COURT: I'm hoping this fixes it,  
 7 but I don't know that it does. I can tell  
 8 you, I like fences. All right? I just do.  
 9 Sometimes they're made out of stone.  
 10 (PLF. EXH. #1, Photograph, was marked  
 11 for identification.)  
 12 (PLF. EXH. #2, Photograph, was marked  
 13 for identification.)  
 14 (The proceedings were concluded at  
 15 4:18 p.m.)  
 16  
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 25

1 State of South Carolina)  
 )  
 2 County of Charleston ) C E R T I F I C A T E  
 3  
 4 I, Christine A. Smith, Court Reporter and  
 5 Notary Public for the State of South Carolina at  
 6 Large, do hereby certify that the foregoing  
 7 transcript is a true, accurate, and complete  
 8 record.  
 9 I further certify that I am neither  
 10 related to nor counsel for any party to the  
 11 cause pending or interested in the events  
 12 thereof.  
 13 Witness my hand, I have hereunto affixed  
 14 my official seal this 16th day of June, 2015 at  
 15 Charleston, Charleston County, South Carolina.  
 16  
 17  
 18  
 19  
 20 Christine A. Smith  
 Notary Public  
 My Commission Expires  
 21 May 12, 2021  
 22  
 23  
 24  
 25

1 I N D E X  
 2 Page  
 3 WITNESS/EXAMINATION  
 4 GERALD MOORE, 9  
 5 EXAMINATION 9  
 6 BY TRAYWICK  
 7 EXAMINATION 13  
 8 BY MR. COLLINS  
 9 EXAMINATION 25  
 10 BY MR. TRAYWICK  
 11 C E R T I F I C A T E 42  
 12  
 13  
 14 E X H I B I T S  
 15 Page  
 16 PLF. EXH. #1, Photograph 41  
 17 PLF. EXH. #2, Photograph 41  
 18  
 19 DFT. EXH. #1, Photograph 18  
 20 DFT. EXH. #2, Photograph 18  
 21 DFT. EXH. #3, Photograph 21  
 22  
 23  
 24  
 25

R-98

<p><b>\$</b></p> <p><b>\$1,000</b> [7] - 4:16, 35:6, 38:3, 38:5, 38:6, 39:16, 39:17  <b>\$3,500</b> [1] - 34:23</p>	<p><b>4</b></p> <p><b>4</b> [1] - 1:14  <b>40578</b> [1] - 2:11  <b>41</b> [2] - 43:16, 43:17  <b>42</b> [1] - 43:11  <b>4:18</b> [1] - 41:15</p>	<p><b>additional</b> [1] - 38:5  <b>address</b> [3] - 9:18, 9:21, 9:22  <b>adverse</b> [1] - 6:11  <b>affixed</b> [1] - 42:13  <b>afield</b> [1] - 27:4  <b>afternoon</b> [2] - 10:2, 10:3  <b>ago</b> [3] - 15:9, 23:2, 37:7  <b>agree</b> [5] - 23:20, 27:11, 29:19, 35:2, 37:11  <b>ahead</b> [11] - 10:20, 14:17, 20:1, 20:2, 23:25, 24:3, 24:24, 25:1, 25:2, 26:22  <b>alleviate</b> [1] - 35:13  <b>allow</b> [1] - 24:23  <b>allowed</b> [2] - 25:3, 33:2  <b>almost</b> [1] - 20:7  <b>annual</b> [2] - 34:23, 34:24  <b>answer</b> [6] - 10:15, 27:1, 27:6, 30:19, 30:24, 31:7  <b>answers</b> [1] - 29:12  <b>anyway</b> [1] - 18:1  <b>apologize</b> [2] - 22:18, 26:15  <b>apologized</b> [2] - 22:19, 26:15  <b>appear</b> [1] - 31:18  <b>APPEARANCES</b> [1] - 2:1  <b>appeared</b> [1] - 4:7  <b>appointment</b> [1] - 15:10  <b>appropriate</b> [1] - 39:11  <b>approval</b> [1] - 24:13  <b>apt</b> [1] - 34:4  <b>arguing</b> [1] - 29:11  <b>ASAP</b> [1] - 39:23  <b>aside</b> [1] - 23:22  <b>assault</b> [1] - 14:22  <b>association</b> [2] - 24:13, 38:9  <b>associations</b> [1] - 7:22  <b>AT</b> [1] - 2:15  <b>attorney</b> [2] - 10:7, 10:11  <b>attorney's</b> [1] - 10:13  <b>ATTORNEYS</b> [2] - 2:3, 2:9  <b>August</b> [2] - 16:22, 26:5  <b>authenticate</b> [1] -</p>	<p>31:17  <b>authority</b> [1] - 40:10  <b>authorizing</b> [2] - 38:8, 39:23  <b>awkwardly</b> [1] - 35:15</p>	<p><b>buy</b> [1] - 35:3  <b>BVACC</b> [11] - 3:18, 4:16, 5:5, 6:4, 11:6, 11:18, 12:2, 12:5, 27:13, 29:19, 30:9  <b>BY</b> [16] - 10:1, 10:21, 13:2, 14:18, 16:21, 17:8, 18:23, 21:5, 24:4, 25:2, 25:21, 27:10, 29:15, 43:6, 43:8, 43:10  <b>bylaws</b> [1] - 24:8</p>
<p><b>'84</b> [2] - 33:15, 33:16</p>	<p><b>5</b></p> <p><b>50</b> [4] - 13:5, 19:9, 20:3, 20:7  <b>50-foot</b> [1] - 38:24  <b>564</b> [1] - 2:5  <b>5:00</b> [1] - 38:4</p>	<p><b>6</b></p> <p><b>6</b> [1] - 38:22</p>	<p><b>B</b></p> <p><b>bare</b> [3] - 34:7, 34:13, 35:7  <b>basis</b> [1] - 30:17  <b>Bates</b> [1] - 1:6  <b>Bayview</b> [14] - 1:3, 9:23, 10:14, 10:24, 11:2, 11:9, 12:14, 13:17, 14:22, 14:24, 18:25, 24:9, 38:25, 40:15  <b>befall</b> [1] - 33:23  <b>beg</b> [3] - 13:13, 19:4, 32:11  <b>behind</b> [1] - 21:19  <b>belongs</b> [4] - 3:18, 17:19, 27:12  <b>ben@traywicklaw.com</b> [1] - 2:7  <b>beneficial</b> [1] - 16:6  <b>Benjamin</b> [2] - 2:4, 2:5  <b>best</b> [1] - 34:6  <b>between</b> [1] - 19:25  <b>big</b> [1] - 23:3  <b>bigger</b> [1] - 8:21  <b>bit</b> [2] - 8:25, 9:1  <b>black</b> [1] - 29:16  <b>block</b> [1] - 17:24  <b>board</b> [2] - 7:24, 15:5  <b>bogged</b> [1] - 20:6  <b>borrow</b> [1] - 12:12  <b>Box</b> [3] - 1:20, 2:5, 2:11  <b>bridge</b> [1] - 39:5  <b>bring</b> [3] - 7:4, 8:14, 31:16  <b>brings</b> [1] - 5:9  <b>Broad</b> [1] - 1:14  <b>bucks</b> [5] - 8:8, 10:5, 34:18, 34:25, 35:4  <b>budget</b> [1] - 34:24  <b>build</b> [10] - 33:25, 34:11, 34:20, 35:3, 35:8, 35:12, 38:9, 38:14, 39:24, 40:11  <b>building</b> [3] - 6:8, 24:12, 25:6  <b>buildings</b> [1] - 39:5  <b>bunch</b> [3] - 3:19, 23:3, 35:1  <b>business</b> [1] - 19:19</p>	<p><b>C</b></p> <p><b>cable</b> [1] - 20:7  <b>camera</b> [1] - 15:2  <b>candid</b> [1] - 8:4  <b>cans</b> [4] - 5:18, 28:1, 28:2, 28:4  <b>car</b> [13] - 8:23, 9:7, 12:12, 14:19, 15:15, 15:19, 18:5, 27:20, 27:21, 29:22, 29:25, 36:18, 37:5  <b>car's</b> [1] - 21:16  <b>care</b> [4] - 7:1, 7:10, 7:11, 7:13  <b>CAROLINA</b> [1] - 1:1  <b>Carolina</b> [6] - 1:15, 1:21, 9:24, 42:1, 42:5, 42:15  <b>carport</b> [21] - 5:13, 12:17, 17:18, 21:8, 21:14, 21:16, 25:23, 28:10, 33:21, 34:11, 34:20, 35:16, 36:5, 37:14, 38:14, 38:15, 38:17, 40:6, 40:11, 40:13, 40:15  <b>cars</b> [5] - 5:16, 9:8, 15:23, 17:11, 17:13  <b>case</b> [3] - 19:25, 35:14, 40:2  <b>CASE</b> [1] - 1:5  <b>casmith@charlestoncounty.org</b> [1] - 1:22  <b>causeway</b> [1] - 20:5  <b>certainly</b> [2] - 7:11, 26:3  <b>certify</b> [2] - 42:6, 42:9  <b>change</b> [1] - 38:20  <b>charge</b> [1] - 39:17  <b>charges</b> [1] - 14:4  <b>CHARLESTON</b> [1] - 1:2  <b>Charleston</b> [6] - 1:15, 1:21, 2:11, 42:2,</p>
<p><b>1</b></p> <p><b>1</b> [10] - 18:13, 18:16, 26:5, 27:11, 29:16, 31:24, 32:7, 41:10, 43:16, 43:19  <b>1,000</b> [3] - 34:18, 34:25, 35:4  <b>100</b> [1] - 1:14  <b>12</b> [3] - 35:25, 38:11, 42:21  <b>13</b> [1] - 43:7  <b>16th</b> [1] - 42:14  <b>18</b> [2] - 43:19, 43:20  <b>1984</b> [5] - 6:7, 33:4, 36:13, 38:20, 39:11</p>	<p><b>6</b></p> <p><b>7</b></p> <p><b>760-0220</b> [1] - 2:12</p>	<p><b>7</b></p> <p><b>8</b></p> <p><b>810-3121</b> [1] - 2:6  <b>843</b> [3] - 1:21, 2:6, 2:12</p>	<p><b>com</b> [1] - 2:7  <b>beneficial</b> [1] - 16:6  <b>Benjamin</b> [2] - 2:4, 2:5  <b>best</b> [1] - 34:6  <b>between</b> [1] - 19:25  <b>big</b> [1] - 23:3  <b>bigger</b> [1] - 8:21  <b>bit</b> [2] - 8:25, 9:1  <b>black</b> [1] - 29:16  <b>block</b> [1] - 17:24  <b>board</b> [2] - 7:24, 15:5  <b>bogged</b> [1] - 20:6  <b>borrow</b> [1] - 12:12  <b>Box</b> [3] - 1:20, 2:5, 2:11  <b>bridge</b> [1] - 39:5  <b>bring</b> [3] - 7:4, 8:14, 31:16  <b>brings</b> [1] - 5:9  <b>Broad</b> [1] - 1:14  <b>bucks</b> [5] - 8:8, 10:5, 34:18, 34:25, 35:4  <b>budget</b> [1] - 34:24  <b>build</b> [10] - 33:25, 34:11, 34:20, 35:3, 35:8, 35:12, 38:9, 38:14, 39:24, 40:11  <b>building</b> [3] - 6:8, 24:12, 25:6  <b>buildings</b> [1] - 39:5  <b>bunch</b> [3] - 3:19, 23:3, 35:1  <b>business</b> [1] - 19:19</p>	<p><b>BY</b> [16] - 10:1, 10:21, 13:2, 14:18, 16:21, 17:8, 18:23, 21:5, 24:4, 25:2, 25:21, 27:10, 29:15, 43:6, 43:8, 43:10  <b>bylaws</b> [1] - 24:8</p>
<p><b>2</b></p> <p><b>2</b> [7] - 18:18, 30:3, 32:1, 32:7, 41:12, 43:17, 43:20  <b>20</b> [1] - 15:11  <b>2011-CP-10-959</b> [1] - 1:5  <b>2013</b> [5] - 3:16, 4:11, 37:23, 39:6, 39:12  <b>2014</b> [11] - 3:24, 4:14, 11:5, 12:6, 12:15, 16:22, 18:24, 26:6, 34:8, 37:23, 39:12  <b>2015</b> [5] - 1:14, 37:24, 38:1, 39:12, 42:14  <b>2021</b> [1] - 42:21  <b>21</b> [2] - 26:5, 43:21  <b>25</b> [2] - 38:12, 43:9  <b>29417</b> [1] - 1:21  <b>29423</b> [1] - 2:11  <b>29451</b> [1] - 2:6  <b>29464</b> [1] - 9:24</p>	<p><b>9</b></p> <p><b>9</b> [2] - 43:4, 43:5  <b>958-5071</b> [1] - 1:21</p>	<p><b>9</b></p> <p><b>9</b> [2] - 43:4, 43:5  <b>958-5071</b> [1] - 1:21</p>	<p><b>beneficial</b> [1] - 16:6  <b>Benjamin</b> [2] - 2:4, 2:5  <b>best</b> [1] - 34:6  <b>between</b> [1] - 19:25  <b>big</b> [1] - 23:3  <b>bigger</b> [1] - 8:21  <b>bit</b> [2] - 8:25, 9:1  <b>black</b> [1] - 29:16  <b>block</b> [1] - 17:24  <b>board</b> [2] - 7:24, 15:5  <b>bogged</b> [1] - 20:6  <b>borrow</b> [1] - 12:12  <b>Box</b> [3] - 1:20, 2:5, 2:11  <b>bridge</b> [1] - 39:5  <b>bring</b> [3] - 7:4, 8:14, 31:16  <b>brings</b> [1] - 5:9  <b>Broad</b> [1] - 1:14  <b>bucks</b> [5] - 8:8, 10:5, 34:18, 34:25, 35:4  <b>budget</b> [1] - 34:24  <b>build</b> [10] - 33:25, 34:11, 34:20, 35:3, 35:8, 35:12, 38:9, 38:14, 39:24, 40:11  <b>building</b> [3] - 6:8, 24:12, 25:6  <b>buildings</b> [1] - 39:5  <b>bunch</b> [3] - 3:19, 23:3, 35:1  <b>business</b> [1] - 19:19</p>	<p><b>car's</b> [1] - 21:16  <b>care</b> [4] - 7:1, 7:10, 7:11, 7:13  <b>CAROLINA</b> [1] - 1:1  <b>Carolina</b> [6] - 1:15, 1:21, 9:24, 42:1, 42:5, 42:15  <b>carport</b> [21] - 5:13, 12:17, 17:18, 21:8, 21:14, 21:16, 25:23, 28:10, 33:21, 34:11, 34:20, 35:16, 36:5, 37:14, 38:14, 38:15, 38:17, 40:6, 40:11, 40:13, 40:15  <b>cars</b> [5] - 5:16, 9:8, 15:23, 17:11, 17:13  <b>case</b> [3] - 19:25, 35:14, 40:2  <b>CASE</b> [1] - 1:5  <b>casmith@charlestoncounty.org</b> [1] - 1:22  <b>causeway</b> [1] - 20:5  <b>certainly</b> [2] - 7:11, 26:3  <b>certify</b> [2] - 42:6, 42:9  <b>change</b> [1] - 38:20  <b>charge</b> [1] - 39:17  <b>charges</b> [1] - 14:4  <b>CHARLESTON</b> [1] - 1:2  <b>Charleston</b> [6] - 1:15, 1:21, 2:11, 42:2,</p>
<p><b>3</b></p> <p><b>3</b> [4] - 21:1, 21:2, 31:25, 43:21  <b>30</b> [1] - 39:20  <b>30276</b> [1] - 1:20  <b>359</b> [1] - 9:23  <b>3:38</b> [1] - 1:13</p>	<p><b>A</b></p> <p><b>a/k/a</b> [1] - 1:6  <b>able</b> [3] - 35:8, 36:4, 36:5  <b>absolutely</b> [7] - 10:25, 11:15, 14:1, 27:14, 27:22, 29:21, 29:24  <b>accept</b> [1] - 26:11  <b>access</b> [11] - 8:24, 9:3, 9:4, 9:9, 17:24, 22:9, 33:10, 36:18, 36:23, 39:2, 40:12  <b>accompanying</b> [1] - 3:6  <b>according</b> [1] - 21:14  <b>account</b> [1] - 10:14  <b>accurate</b> [1] - 42:7  <b>accusation</b> [1] - 14:14  <b>acknowledge</b> [1] - 6:1  <b>Acres</b> [5] - 1:3, 10:24, 11:2, 12:14, 40:15  <b>action</b> [1] - 39:14  <b>actions</b> [1] - 3:17  <b>actual</b> [1] - 35:24</p>	<p><b>A</b></p> <p><b>a/k/a</b> [1] - 1:6  <b>able</b> [3] - 35:8, 36:4, 36:5  <b>absolutely</b> [7] - 10:25, 11:15, 14:1, 27:14, 27:22, 29:21, 29:24  <b>accept</b> [1] - 26:11  <b>access</b> [11] - 8:24, 9:3, 9:4, 9:9, 17:24, 22:9, 33:10, 36:18, 36:23, 39:2, 40:12  <b>accompanying</b> [1] - 3:6  <b>according</b> [1] - 21:14  <b>account</b> [1] - 10:14  <b>accurate</b> [1] - 42:7  <b>accusation</b> [1] - 14:14  <b>acknowledge</b> [1] - 6:1  <b>Acres</b> [5] - 1:3, 10:24, 11:2, 12:14, 40:15  <b>action</b> [1] - 39:14  <b>actions</b> [1] - 3:17  <b>actual</b> [1] - 35:24</p>	<p><b>AT</b> [1] - 2:15  <b>attorney</b> [2] - 10:7, 10:11  <b>attorney's</b> [1] - 10:13  <b>ATTORNEYS</b> [2] - 2:3, 2:9  <b>August</b> [2] - 16:22, 26:5  <b>authenticate</b> [1] -</p>	<p><b>case</b> [3] - 19:25, 35:14, 40:2  <b>CASE</b> [1] - 1:5  <b>casmith@charlestoncounty.org</b> [1] - 1:22  <b>causeway</b> [1] - 20:5  <b>certainly</b> [2] - 7:11, 26:3  <b>certify</b> [2] - 42:6, 42:9  <b>change</b> [1] - 38:20  <b>charge</b> [1] - 39:17  <b>charges</b> [1] - 14:4  <b>CHARLESTON</b> [1] - 1:2  <b>Charleston</b> [6] - 1:15, 1:21, 2:11, 42:2,</p>

<p>42:15  <b>check</b> [2] - 8:12,  10:13  <b>checked</b> [1] - 6:11  <b>Chevrolet</b> [1] - 11:25  <b>Chevy</b> [1] - 29:16  <b>children</b> [1] - 12:10  <b>choruses</b> [1] - 15:18  <b>Christine</b> [4] - 1:12,  1:19, 42:4, 42:19  <b>churned</b> [1] - 3:20  <b>Civic</b> [7] - 1:3, 10:24,  11:2, 12:14, 18:25,  19:13, 36:21  <b>claim</b> [1] - 37:5  <b>clarification</b> [1] -  40:5  <b>clean</b> [5] - 3:17,  24:25, 29:3, 29:5,  36:25  <b>cleaned</b> [1] - 37:1  <b>clear</b> [2] - 6:18, 36:1  <b>clearly</b> [1] - 17:18  <b>client</b> [5] - 8:5, 8:16,  36:25, 40:9, 40:13  <b>client's</b> [1] - 37:13  <b>close</b> [1] - 5:9  <b>Club</b> [7] - 1:3, 10:24,  11:3, 12:15, 19:1,  19:13, 36:21  <b>clue</b> [2] - 29:18, 30:4  <b>coincidence</b> [1] -  28:24  <b>collections</b> [1] -  34:23  <b>COLLINS</b> [40] - 7:19,  13:2, 14:13, 14:18,  16:14, 16:18, 16:21,  17:1, 17:8, 18:12,  18:20, 18:23, 19:20,  19:23, 20:10, 21:4,  21:5, 23:20, 24:1,  24:4, 24:16, 24:21,  24:25, 25:2, 25:17,  26:17, 26:21, 31:10,  31:22, 32:3, 32:6,  32:9, 32:17, 36:12,  40:4, 40:9, 40:12,  40:16, 40:22, 43:8  <b>Collins</b> [9] - 2:10,  2:10, 7:18, 16:5,  16:23, 31:21, 32:16,  36:10, 41:1  <b>colors</b> [1] - 16:7  <b>coming</b> [2] - 5:3,  6:19  <b>Commission</b> [1] -  42:20  <b>COMMON</b> [1] - 1:1  <b>common</b> [1] - 22:3</p>	<p><b>complain</b> [1] - 20:22  <b>complained</b> [3] -  20:16, 25:9, 25:10  <b>complaining</b> [1] -  20:23  <b>complete</b> [1] - 42:7  <b>completely</b> [2] - 4:1,  23:23  <b>compliance</b> [2] -  4:23, 7:4  <b>comply</b> [4] - 4:1, 5:6,  5:24, 6:19  <b>concerned</b> [1] -  23:10  <b>conclude</b> [1] - 31:2  <b>concluded</b> [1] -  41:14  <b>conclusion</b> [2] -  24:19, 36:17  <b>Condon's</b> [2] -  38:23, 40:17  <b>conduct</b> [1] - 14:15  <b>conflicts</b> [1] - 13:14  <b>conformity</b> [1] -  39:25  <b>confrontations</b> [3] -  13:21, 13:24, 15:4  <b>confusion</b> [1] - 33:19  <b>contempt</b> [5] - 4:9,  4:12, 38:6, 39:16  <b>contested</b> [1] - 37:18  <b>continue</b> [1] - 38:16  <b>copies</b> [3] - 16:4,  17:3, 17:5  <b>copy</b> [1] - 16:24  <b>correct</b> [2] - 18:11,  26:2  <b>counsel</b> [1] - 42:10  <b>COUNSEL</b> [1] - 2:1  <b>County</b> [2] - 42:2,  42:15  <b>COUNTY</b> [1] - 1:2  <b>course</b> [3] - 16:15,  25:8, 36:8  <b>court</b> [4] - 4:10, 8:3,  18:15, 37:10  <b>COURT</b> [47] - 1:1,  3:3, 7:18, 9:10, 9:14,  9:17, 9:21, 10:16,  12:23, 14:17, 16:7,  16:12, 16:17, 17:3,  17:7, 18:14, 18:22,  19:21, 20:1, 23:13,  23:24, 24:3, 24:23,  25:1, 25:19, 26:23,  27:4, 27:8, 29:8,  29:10, 31:11, 31:14,  31:24, 32:7, 32:10,  32:15, 32:19, 35:19,  36:10, 37:15, 40:7,</p>	<p>40:10, 40:14, 40:18,  40:24, 41:3, 41:6  <b>Court</b> [16] - 1:13,  1:19, 4:7, 4:25, 7:2,  10:17, 10:22, 16:24,  25:14, 31:20, 36:14,  38:6, 38:7, 39:9,  39:12, 42:4  <b>Court's</b> [4] - 5:25,  6:21, 7:13, 32:11  <b>covenants</b> [2] - 24:9,  24:19  <b>create</b> [1] - 40:20  <b>creeped</b> [1] - 15:14  <b>criminal</b> [1] - 14:15  <b>crossed</b> [1] - 39:5  <b>cut</b> [6] - 14:20,  14:23, 15:1, 19:15,  20:4, 20:24</p> <p style="text-align: center;"><b>D</b></p> <p><b>damage</b> [2] - 14:7,  33:23  <b>date</b> [2] - 22:13,  26:11  <b>dated</b> [1] - 26:5  <b>dates</b> [2] - 31:18,  37:6  <b>David</b> [2] - 2:10, 2:10  <b>days</b> [3] - 4:4, 8:24,  39:20  <b>deadline</b> [1] - 4:24  <b>debris</b> [1] - 29:3  <b>DEFENDANT</b> [1] -  2:9  <b>Defendant's</b> [2] -  18:13, 31:25  <b>Defendants</b> [1] - 1:7  <b>degree</b> [2] - 33:11,  39:9  <b>deny</b> [3] - 29:22,  30:5, 30:8  <b>denying</b> [1] - 40:12  <b>Department's</b> [1] -  14:9  <b>describe</b> [1] - 20:11  <b>DFT</b> [6] - 18:16,  18:18, 21:2, 43:19,  43:20, 43:21  <b>different</b> [2] - 16:9,  37:6  <b>directly</b> [1] - 19:24  <b>dirty</b> [1] - 37:2  <b>discussions</b> [1] -  8:10  <b>dispute</b> [1] - 7:21  <b>doctor's</b> [1] - 15:10  <b>done</b> [2] - 4:17,  34:22</p>	<p><b>door</b> [1] - 14:21  <b>down</b> [16] - 14:24,  15:9, 20:5, 20:6,  20:14, 29:9, 29:11,  31:12, 33:21, 34:1,  34:12, 34:21, 35:9,  35:25, 36:20, 38:15  <b>drawn</b> [1] - 18:10  <b>Drive</b> [1] - 9:23  <b>drive</b> [4] - 11:22,  11:23, 11:24, 12:12  <b>drives</b> [2] - 11:25,  12:9  <b>driveway</b> [10] - 8:23,  9:8, 15:11, 15:23,  17:9, 17:14, 17:17,  27:12, 28:17, 28:19  <b>driving</b> [1] - 12:7  <b>drove</b> [2] - 11:9,  15:10  <b>duly</b> [1] - 9:16  <b>dusk</b> [2] - 15:11,  15:16</p> <p style="text-align: center;"><b>E</b></p> <p><b>easement</b> [11] - 8:25,  9:3, 17:21, 18:7,  19:15, 19:22, 22:11,  23:4, 36:18, 36:19,  36:22  <b>easy</b> [1] - 6:19  <b>Edgar</b> [1] - 9:19  <b>efforts</b> [2] - 4:4, 4:8  <b>egress</b> [1] - 12:16  <b>eight</b> [1] - 16:3  <b>either</b> [1] - 12:1  <b>eliminate</b> [1] - 33:16  <b>encroach</b> [1] - 36:14  <b>end</b> [1] - 35:18  <b>enjoy</b> [1] - 38:25  <b>entered</b> [1] - 34:8  <b>entire</b> [1] - 34:24  <b>entitled</b> [1] - 34:19  <b>equipment</b> [1] - 3:21  <b>equity</b> [4] - 24:2,  24:22, 37:9, 37:10  <b>Equity</b> [2] - 1:20,  36:15  <b>escrow</b> [1] - 10:14  <b>Esq</b> [2] - 2:4, 2:10  <b>event</b> [3] - 33:6,  33:8, 34:10  <b>events</b> [1] - 42:11  <b>evidence</b> [7] - 16:15,  16:16, 16:17, 18:21,  36:16, 37:2, 37:12  <b>exact</b> [1] - 29:5  <b>EXAMINATION</b> [6] -  9:25, 13:1, 25:20,</p>	<p>43:5, 43:7, 43:9  <b>except</b> [2] - 5:13,  22:13  <b>excused</b> [1] - 31:13  <b>exercising</b> [1] -  28:25  <b>EXH</b> [10] - 18:16,  18:18, 21:2, 41:10,  41:12, 43:16, 43:17,  43:19, 43:20, 43:21  <b>Exhibit</b> [1] - 29:16  <b>exhibits</b> [2] - 3:6,  4:21  <b>expending</b> [1] - 5:5  <b>expense</b> [2] - 33:21,  33:25  <b>Expires</b> [1] - 42:20  <b>exposing</b> [1] - 33:22</p> <p style="text-align: center;"><b>F</b></p> <p><b>fact</b> [2] - 20:22,  23:22  <b>failed</b> [1] - 39:16  <b>fair</b> [1] - 23:20  <b>falling</b> [1] - 8:15  <b>false</b> [1] - 26:9  <b>familiar</b> [2] - 3:14,  24:8  <b>family</b> [5] - 11:10,  11:13, 11:17, 30:16,  31:4  <b>far</b> [4] - 7:2, 23:10,  27:4, 28:15  <b>February</b> [1] - 7:9  <b>feet</b> [4] - 15:11,  35:25, 38:11, 38:12  <b>fence</b> [15] - 24:4,  24:6, 24:12, 25:6,  33:25, 34:9, 34:11,  34:20, 35:8, 35:14,  35:20, 37:13, 38:9,  39:24, 40:5  <b>fences</b> [4] - 25:3,  34:3, 37:20, 41:8  <b>few</b> [1] - 16:10  <b>fiancee</b> [1] - 15:13  <b>fighting</b> [1] - 9:7  <b>filed</b> [4] - 3:4, 3:22,  14:4  <b>fill</b> [1] - 20:12  <b>final</b> [1] - 6:23  <b>fine</b> [2] - 26:21, 28:6  <b>finish</b> [2] - 11:16,  12:4  <b>first</b> [7] - 3:23, 4:15,  8:7, 9:11, 9:16, 20:3,  38:6  <b>Fit</b> [3] - 11:23, 21:20,  30:1</p>
---	---	---	---	---

<p><b>five</b> [2] - 4:15, 8:23  <b>fixes</b> [1] - 41:6  <b>flag</b> [1] - 18:25  <b>flaunted</b> [1] - 4:1  <b>follows</b> [1] - 9:16  <b>FOR</b> [2] - 2:3, 2:9  <b>foregoing</b> [1] - 42:6  <b>forthwith</b> [2] - 39:10, 39:19  <b>four</b> [4] - 3:12, 4:15, 17:5, 37:6  <b>free</b> [1] - 29:3  <b>frequency</b> [4] - 33:12, 39:9, 39:13, 40:19  <b>fresh</b> [1] - 35:11  <b>front</b> [5] - 8:3, 22:5, 22:7, 25:3, 30:17  <b>full</b> [1] - 9:18</p>	<p><b>Hearing</b> [1] - 1:11  <b>hearing</b> [4] - 4:5, 22:14, 37:16, 37:22  <b>heavy</b> [1] - 3:20  <b>hereby</b> [2] - 38:22, 42:6  <b>hereunto</b> [1] - 42:13  <b>high</b> [2] - 20:13, 20:15  <b>hindrance</b> [1] - 39:1  <b>Hold</b> [2] - 18:2, 24:16  <b>hold</b> [2] - 18:9, 23:13  <b>hollering</b> [1] - 15:18  <b>home</b> [1] - 11:19  <b>homeowner's</b> [1] - 7:22  <b>homeowners</b> [1] - 39:1  <b>Honda</b> [1] - 11:23  <b>honest</b> [2] - 8:4, 13:11  <b>Honestly</b> [1] - 5:1  <b>Honor</b> [22] - 3:9, 5:1, 6:2, 9:13, 12:22, 14:11, 16:2, 17:6, 19:16, 19:20, 24:15, 31:9, 31:15, 32:2, 32:13, 32:24, 33:2, 33:15, 34:2, 34:7, 41:2, 41:5  <b>Honorable</b> [1] - 1:11  <b>hope</b> [1] - 40:24  <b>hoping</b> [1] - 41:6  <b>hotly</b> [1] - 37:18  <b>house</b> [4] - 11:11, 22:17, 30:6, 33:24  <b>hurt</b> [2] - 8:5  <b>husband</b> [1] - 15:1</p>	<p><b>impressed</b> [1] - 4:8  <b>included</b> [1] - 4:15  <b>includes</b> [1] - 28:18  <b>INDEX</b> [1] - 2:15  <b>indicating</b> [3] - 13:19, 17:15, 20:13  <b>indulgence</b> [1] - 32:12  <b>ingress</b> [1] - 12:16  <b>input</b> [1] - 34:17  <b>instruct</b> [2] - 10:11, 26:17  <b>instructed</b> [5] - 10:8, 11:12, 30:16, 35:5, 36:25  <b>instruction</b> [1] - 30:21  <b>insufficient</b> [1] - 37:14  <b>interested</b> [1] - 42:11  <b>interesting</b> [2] - 28:8, 36:7  <b>introduced</b> [1] - 16:20  <b>irrelevant</b> [4] - 10:16, 14:16, 23:23, 24:1  <b>Isle</b> [1] - 2:6  <b>issue</b> [4] - 6:13, 8:21, 34:17, 39:10  <b>issued</b> [4] - 3:16, 4:13, 7:8, 37:22  <b>issues</b> [2] - 7:2, 8:7</p>	<p>25:22  <b>kept</b> [1] - 29:2  <b>kind</b> [5] - 3:12, 5:2, 6:4, 21:25, 25:4  <b>knee</b> [1] - 20:15  <b>knowingly</b> [1] - 7:10</p> <p style="text-align: center;"><b>L</b></p> <p><b>lady</b> [2] - 14:23, 15:14  <b>landscaping</b> [1] - 19:13  <b>Large</b> [1] - 42:6  <b>last</b> [5] - 4:14, 6:10, 22:14, 35:9, 37:6  <b>law</b> [1] - 37:10  <b>Law</b> [2] - 2:5, 2:10  <b>lawn</b> [2] - 22:5, 30:18  <b>lawnmower</b> [2] - 14:20, 20:5  <b>lawyer</b> [2] - 22:18, 35:6  <b>least</b> [4] - 37:16, 38:11, 38:12, 38:17  <b>leaves</b> [1] - 22:6  <b>leaving</b> [2] - 5:4, 23:22  <b>left</b> [5] - 5:12, 21:7, 25:23, 27:12, 28:13  <b>left-hand</b> [3] - 21:7, 27:12, 28:13  <b>legal</b> [2] - 24:18  <b>liability</b> [1] - 33:22  <b>limits</b> [1] - 36:18  <b>line</b> [10] - 15:18, 18:10, 19:1, 22:1, 34:12, 35:9, 35:10, 35:17, 36:18, 38:18  <b>list</b> [1] - 15:20  <b>litigation</b> [1] - 6:10  <b>live</b> [2] - 24:7, 25:16  <b>lived</b> [2] - 13:3, 20:8  <b>locked</b> [1] - 6:25  <b>look</b> [3] - 8:22, 26:5, 37:3  <b>Look</b> [1] - 21:11  <b>looking</b> [2] - 25:25, 27:10  <b>looks</b> [1] - 15:12  <b>loss</b> [1] - 5:1  <b>love</b> [1] - 5:8</p>	<p>37:24  <b>Margaret</b> [1] - 1:6  <b>mark</b> [1] - 18:15  <b>marked</b> [5] - 18:16, 18:18, 21:2, 41:10, 41:12  <b>marks</b> [1] - 35:11  <b>marsh</b> [7] - 17:23, 18:7, 22:9, 34:21, 35:21, 38:10, 38:13  <b>marshes</b> [1] - 33:10  <b>Master</b> [1] - 1:20  <b>Master-in-Equity</b> [1] - 1:20  <b>materials</b> [1] - 35:3  <b>matter</b> [7] - 20:22, 24:2, 24:21, 35:13, 37:9, 37:18, 40:4  <b>mean</b> [2] - 9:5, 17:17  <b>members</b> [4] - 11:10, 11:17, 15:5, 31:5  <b>memo</b> [1] - 33:1  <b>mess</b> [2] - 6:3, 6:7  <b>message</b> [1] - 6:25  <b>messaging</b> [1] - 9:5  <b>metal</b> [1] - 39:4  <b>middle</b> [1] - 35:15  <b>might</b> [2] - 14:25, 33:23  <b>Mikell</b> [1] - 1:11  <b>mind</b> [2] - 12:20, 25:13  <b>mine</b> [1] - 17:14  <b>minimum</b> [3] - 34:7, 34:13, 35:7  <b>minivan</b> [1] - 30:3  <b>minutes</b> [1] - 3:12  <b>misrepresented</b> [1] - 22:16  <b>misquoting</b> [1] - 22:19  <b>modification</b> [1] - 33:13  <b>modified</b> [2] - 22:15, 22:23  <b>money</b> [3] - 8:19, 10:9, 10:12  <b>month</b> [1] - 15:9  <b>months</b> [5] - 3:25, 4:6, 4:23, 8:9, 37:7  <b>moon</b> [1] - 32:24  <b>Moore</b> [22] - 1:6, 1:6, 3:17, 3:25, 4:16, 4:19, 8:9, 9:12, 9:14, 9:19, 10:2, 10:21, 13:3, 23:14, 26:24, 31:11, 33:18, 35:5, 36:4, 39:15, 39:21  <b>MOORE</b> [2] - 9:15, 43:4</p>
<p style="text-align: center;"><b>G</b></p> <p><b>game</b> [1] - 23:20  <b>garbage</b> [3] - 28:1, 28:2, 28:4  <b>gentleman</b> [1] - 5:6  <b>Gentlemen</b> [1] - 29:10  <b>Gerald</b> [4] - 1:6, 1:6, 9:12, 9:19  <b>GERALD</b> [2] - 9:15, 43:4  <b>gist</b> [1] - 3:15  <b>glad</b> [1] - 8:12  <b>grade</b> [1] - 7:3  <b>grandchildren</b> [1] - 12:11  <b>grass</b> [2] - 19:15, 20:25  <b>guess</b> [2] - 18:12, 23:6  <b>guest</b> [1] - 11:20  <b>guests</b> [5] - 11:10, 11:17, 15:6, 30:14, 31:4  <b>guys</b> [1] - 35:1</p>	<p style="text-align: center;"><b>I</b></p> <p><b>iceberg</b> [1] - 15:17  <b>idea</b> [1] - 22:12  <b>identification</b> [5] - 18:17, 18:19, 21:3, 41:11, 41:13  <b>identified</b> [1] - 18:9  <b>identifies</b> [1] - 17:1  <b>identify</b> [1] - 18:24  <b>illegally</b> [1] - 29:1  <b>immediate</b> [1] - 13:16  <b>impede</b> [2] - 17:20, 22:8  <b>impedes</b> [1] - 18:6  <b>impediments</b> [2] - 33:9, 39:8  <b>impeding</b> [2] - 8:24, 9:8  <b>important</b> [1] - 6:2</p>	<p style="text-align: center;"><b>J</b></p> <p><b>jail</b> [3] - 6:25, 38:2, 39:22  <b>January</b> [2] - 3:5, 21:6  <b>join</b> [2] - 14:22, 14:24  <b>Jr</b> [1] - 1:6  <b>Judge</b> [10] - 7:19, 10:6, 18:21, 22:16, 26:16, 32:17, 36:12, 37:20, 38:23, 40:17  <b>judge</b> [2] - 24:21, 28:3  <b>Judge's</b> [1] - 21:14  <b>June</b> [9] - 3:24, 4:14, 11:5, 12:6, 12:15, 34:8, 37:23, 42:14  <b>jungle</b> [2] - 20:9, 20:11  <b>Junior</b> [1] - 9:20  <b>junk</b> [1] - 3:19</p>	<p style="text-align: center;"><b>M</b></p> <p><b>maintained</b> [2] - 20:4, 20:8  <b>maintains</b> [1] - 19:14  <b>man</b> [5] - 5:24, 6:24, 7:4, 15:12, 23:17  <b>March</b> [2] - 1:14,</p>	
<p style="text-align: center;"><b>H</b></p> <p><b>habit</b> [1] - 8:15  <b>half</b> [4] - 17:18, 17:19, 30:13, 31:3  <b>hand</b> [6] - 16:23, 18:14, 21:7, 27:12, 28:13, 42:13  <b>handle</b> [1] - 19:18  <b>hands</b> [1] - 24:25  <b>happy</b> [2] - 3:9, 16:4  <b>hard</b> [1] - 32:21  <b>hear</b> [1] - 36:11  <b>heard</b> [3] - 3:24, 7:25</p>	<p style="text-align: center;"><b>K</b></p> <p><b>keep</b> [6] - 4:19, 5:15, 6:19, 21:15, 23:7,</p>			

<p><b>Moore's</b> [1] - 33:24  <b>morning</b> [1] - 20:23  <b>most</b> [3] - 28:8,  32:23, 32:25  <b>motion</b> [2] - 3:4, 16:8  <b>move</b> [3] - 18:20,  30:22, 32:3  <b>moved</b> [2] - 14:23,  20:12  <b>movie</b> [1] - 5:23  <b>MR</b> [73] - 3:9, 7:19,  9:12, 10:21, 12:21,  13:2, 14:11, 14:13,  14:14, 14:18, 16:2,  16:10, 16:14, 16:18,  16:20, 16:21, 16:23,  17:1, 17:5, 17:8,  18:12, 18:20, 18:23,  19:16, 19:20, 19:23,  20:10, 21:1, 21:4,  21:5, 23:12, 23:15,  23:20, 23:22, 24:1,  24:4, 24:15, 24:16,  24:17, 24:21, 24:25,  25:2, 25:17, 25:21,  26:17, 26:19, 26:21,  27:10, 29:14, 29:15,  31:8, 31:10, 31:15,  31:22, 32:1, 32:3,  32:4, 32:6, 32:9,  32:11, 32:17, 32:21,  35:22, 36:12, 40:4,  40:9, 40:12, 40:16,  40:22, 40:25, 41:5,  43:8, 43:10  <b>Mt</b> [2] - 9:24, 14:8  <b>multiple</b> [3] - 5:14,  17:3, 36:21</p>	<p><b>nice</b> [1] - 35:11  <b>night</b> [2] - 15:7, 15:8  <b>NO</b> [1] - 1:5  <b>nobody</b> [3] - 28:9,  30:12, 36:7  <b>noncompliance</b> [1] -  5:11  <b>none</b> [2] - 7:2, 19:19  <b>normally</b> [1] - 12:12  <b>Notary</b> [3] - 1:13,  42:5, 42:20  <b>nothing</b> [9] - 3:25,  16:16, 16:17, 31:8,  31:10, 32:13, 33:19,  36:23, 37:3  <b>November</b> [4] - 3:16,  4:11, 37:23, 39:6</p>	<p>37:22, 38:17, 38:20,  38:23, 39:10, 40:17,  40:23, 40:25  <b>ordered</b> [9] - 4:5,  4:18, 10:17, 10:22,  25:22, 29:4, 34:2,  34:19, 38:22  <b>ordering</b> [1] - 38:15  <b>orders</b> [6] - 5:7, 5:25,  6:18, 7:2, 7:5, 7:13  <b>ought</b> [2] - 34:13,  35:7  <b>ourselves</b> [1] - 33:22  <b>outline</b> [2] - 3:13,  15:12  <b>overly</b> [1] - 4:8  <b>Overruled</b> [1] - 20:2  <b>overruled</b> [1] - 14:17  <b>owed</b> [1] - 10:17  <b>own</b> [6] - 19:18,  23:19, 26:20, 28:21,  33:21, 33:24  <b>owned</b> [4] - 10:23,  11:2, 33:17, 33:18</p>	<p><b>partner</b> [3] - 15:8,  15:9, 15:15  <b>party</b> [1] - 42:10  <b>past</b> [4] - 13:25,  22:21, 22:25, 26:8  <b>path</b> [1] - 20:5  <b>patrols</b> [1] - 15:19  <b>pay</b> [5] - 4:16, 8:19,  10:8, 10:11, 39:16  <b>Payne</b> [1] - 26:13  <b>pending</b> [1] - 42:11  <b>people</b> [10] - 5:4,  6:11, 7:23, 7:25, 9:7,  28:14, 28:24, 29:9,  31:3, 36:21  <b>people's</b> [1] - 6:21  <b>period</b> [3] - 15:2,  25:4, 36:24  <b>permanent</b> [1] - 22:4  <b>permitted</b> [2] -  11:13, 11:17  <b>person</b> [2] - 30:6,  36:16  <b>personal</b> [3] - 4:19,  5:15, 14:7  <b>personally</b> [1] - 6:17  <b>Photograph</b> [10] -  18:16, 18:18, 21:2,  41:10, 41:12, 43:16,  43:17, 43:19, 43:20,  43:21  <b>photographs</b> [2] -  7:7, 31:18  <b>phrase</b> [1] - 34:4  <b>physical</b> [2] - 13:21,  13:24  <b>pick</b> [1] - 7:24  <b>picture</b> [5] - 15:13,  16:22, 21:5, 21:11,  22:15  <b>pictures</b> [11] - 8:22,  15:6, 15:22, 16:3,  20:13, 22:23, 25:25,  26:8, 36:15, 37:2,  37:4  <b>piece</b> [1] - 36:3  <b>piled</b> [1] - 3:19  <b>place</b> [2] - 22:5,  36:13  <b>placed</b> [1] - 23:16  <b>Plaintiff</b> [1] - 1:4  <b>PLAINTIFF</b> [1] - 2:3  <b>Plaintiffs</b> [5] - 29:16,  30:3, 31:24, 32:1,  32:7  <b>PLEAS</b> [1] - 1:1  <b>Pleasant</b> [2] - 9:24,  14:8  <b>PLF</b> [4] - 41:10,  41:12, 43:16, 43:17</p>	<p><b>plowed</b> [1] - 3:20  <b>point</b> [7] - 6:2, 25:12,  30:1, 30:2, 33:6, 34:6,  35:23  <b>pointed</b> [1] - 24:6  <b>police</b> [2] - 14:2,  14:21  <b>Police</b> [1] - 14:8  <b>portion</b> [1] - 27:12  <b>position</b> [1] - 34:14  <b>possession</b> [1] -  6:11  <b>possible</b> [1] - 30:12  <b>possibly</b> [1] - 23:18  <b>premarked</b> [1] - 16:3  <b>prepare</b> [1] - 40:25  <b>presented</b> [1] - 26:8  <b>pretty</b> [2] - 5:7, 14:15  <b>prevents</b> [1] - 5:3  <b>private</b> [1] - 30:15  <b>privately</b> [1] - 26:15  <b>problem</b> [3] - 6:15,  27:5, 33:5  <b>problems</b> [2] - 38:16,  41:4  <b>proceed</b> [2] - 3:7,  7:16  <b>proceedings</b> [1] -  41:14  <b>proper</b> [1] - 10:10  <b>property</b> [45] - 3:18,  4:19, 4:20, 5:16, 5:17,  5:19, 6:1, 6:9, 6:12,  7:12, 10:23, 11:2,  11:7, 11:9, 11:18,  12:2, 12:5, 12:15,  14:7, 15:6, 15:18,  17:22, 19:1, 19:3,  19:6, 19:14, 19:18,  23:19, 25:4, 27:21,  28:17, 29:20, 30:9,  30:15, 31:3, 31:6,  33:18, 34:12, 35:9,  35:10, 35:16, 36:3,  38:18, 40:15  <b>proposal</b> [2] - 35:19,  35:21  <b>protect</b> [1] - 6:14  <b>prove</b> [1] - 5:21  <b>provides</b> [1] - 33:5  <b>provision</b> [1] - 33:7  <b>Public</b> [3] - 1:13,  42:5, 42:20  <b>pull</b> [1] - 20:6  <b>pulled</b> [1] - 20:20  <b>put</b> [7] - 3:10, 4:21,  7:6, 7:7, 15:1, 23:3,  23:19  <b>putting</b> [1] - 25:6</p>
<p style="text-align: center;"><b>N</b></p> <p><b>name</b> [1] - 9:18  <b>near</b> [1] - 35:24  <b>neat</b> [1] - 29:3  <b>need</b> [8] - 3:10, 5:2,  5:22, 7:6, 8:19, 20:24,  29:12, 40:20  <b>needs</b> [7] - 6:4, 6:24,  7:15, 38:3, 39:14,  39:18, 40:2  <b>neighbor</b> [1] - 14:21  <b>neighborhood</b> [3] -  18:6, 35:2, 38:8  <b>neighbors</b> [7] - 7:11,  13:7, 13:15, 13:16,  13:17, 34:3, 37:21  <b>never</b> [8] - 4:2, 4:3,  7:25, 28:20, 28:22,  34:3, 35:18, 36:24  <b>new</b> [1] - 4:13  <b>next</b> [1] - 14:21</p>	<p style="text-align: center;"><b>O</b></p> <p><b>Objection</b> [1] - 23:12  <b>objection</b> [2] - 23:14,  32:9  <b>obstruction</b> [1] -  39:1  <b>obvious</b> [1] - 5:19  <b>obviously</b> [4] - 7:16,  26:1, 34:14, 34:16  <b>occurrence</b> [1] -  22:3  <b>occurs</b> [1] - 39:8  <b>October</b> [2] - 18:24,  37:25  <b>OF</b> [5] - 1:1, 1:1, 1:2,  2:1, 2:15  <b>Office</b> [2] - 2:5, 2:10  <b>office</b> [1] - 8:14  <b>official</b> [1] - 42:14  <b>once</b> [2] - 19:16,  30:11  <b>one</b> [26] - 4:15, 4:18,  5:13, 8:8, 8:25, 9:1,  9:7, 13:10, 13:16,  17:4, 17:6, 18:11,  18:15, 18:23, 20:19,  21:13, 22:16, 23:13,  25:22, 29:11, 30:1,  30:2, 32:12, 35:3,  36:2, 36:18  <b>ones</b> [2] - 16:11,  16:15  <b>ongoing</b> [5] - 5:11,  6:10, 6:13, 7:21, 8:10  <b>order</b> [31] - 3:16, 4:1,  4:2, 4:10, 4:13, 4:14,  5:20, 6:7, 7:8, 7:9,  27:19, 27:25, 28:5,  33:4, 33:9, 33:12,  33:16, 34:8, 34:10,  34:15, 36:13, 37:21,</p>	<p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> [3] - 1:13, 38:4,  41:15  <b>P.O</b> [3] - 1:20, 2:5,  2:11  <b>Page</b> [3] - 38:22,  43:2, 43:15  <b>page</b> [1] - 16:25  <b>paid</b> [11] - 10:4, 10:6,  10:18, 10:19, 38:3,  38:5, 39:18, 39:19,  39:22, 39:23  <b>painted</b> [1] - 17:17  <b>Palms</b> [1] - 2:6  <b>papers</b> [1] - 26:14  <b>paragraph</b> [2] - 39:4,  39:7  <b>pardon</b> [2] - 13:13,  19:4  <b>park</b> [6] - 5:12,  10:22, 11:18, 22:6,  30:14, 30:17  <b>parked</b> [13] - 8:23,  11:1, 11:6, 11:8,  11:21, 12:2, 12:5,  15:23, 21:19, 21:25,  27:15, 27:23, 29:19  <b>parking</b> [6] - 5:13,  5:16, 5:17, 22:5,  36:17, 37:5  <b>part</b> [7] - 28:9, 28:16,  28:17, 28:18, 28:25,  40:14, 40:19  <b>parties</b> [1] - 19:25</p>		

<p style="text-align: center;"><b>Q</b></p> <p><b>questions</b> [5] - 12:22, 26:25, 27:1, 29:12</p> <p><b>quibble</b> [1] - 31:22</p> <p><b>quick</b> [1] - 32:12</p> <p><b>quite</b> [1] - 35:13</p>	<p><b>residents'</b> [1] - 33:10</p> <p><b>resources</b> [1] - 5:5</p> <p><b>respectfully</b> [1] - 33:15</p> <p><b>response</b> [1] - 32:15</p> <p><b>restrictions</b> [4] - 24:9, 24:11, 24:20, 40:1</p> <p><b>restricts</b> [1] - 36:23</p> <p><b>result</b> [1] - 33:23</p> <p><b>rights</b> [3] - 6:1, 6:14, 7:12</p> <p><b>road</b> [1] - 9:2</p> <p><b>roadway</b> [6] - 28:13, 34:12, 35:24, 36:1, 38:9, 38:11</p> <p><b>rocks</b> [4] - 23:3, 23:17, 23:19, 25:6</p> <p><b>rounded</b> [1] - 35:1</p> <p><b>route</b> [1] - 36:8</p> <p><b>Rule</b> [3] - 3:4, 3:22, 3:23</p> <p><b>ruled</b> [1] - 10:6</p> <p><b>rules</b> [1] - 11:21</p> <p><b>ruling</b> [2] - 21:15, 39:18</p> <p><b>run</b> [4] - 35:15, 35:19, 37:13, 40:5</p>	<p><b>shoulder</b> [1] - 20:13</p> <p><b>show</b> [6] - 4:22, 5:22, 5:23, 14:9, 30:2, 32:5</p> <p><b>Show</b> [2] - 3:4, 3:23</p> <p><b>showing</b> [4] - 7:7, 17:18, 18:25, 29:15</p> <p><b>shows</b> [1] - 21:6</p> <p><b>shrubbery</b> [3] - 19:2, 19:5, 19:12</p> <p><b>side</b> [10] - 5:12, 6:12, 15:21, 17:14, 21:7, 22:16, 22:17, 25:23, 28:14, 36:5</p> <p><b>sides</b> [1] - 37:11</p> <p><b>simple</b> [1] - 7:5</p> <p><b>sitting</b> [3] - 9:6, 13:18, 30:8</p> <p><b>situation</b> [2] - 3:14, 34:5</p> <p><b>six</b> [2] - 8:9, 37:7</p> <p><b>slashed</b> [2] - 14:6, 14:10</p> <p><b>Smith</b> [4] - 1:12, 1:19, 42:4, 42:19</p> <p><b>smoothed</b> [1] - 20:21</p> <p><b>solution</b> [3] - 5:8, 6:17, 7:15</p> <p><b>sometimes</b> [3] - 13:11, 13:14, 41:9</p> <p><b>sort</b> [6] - 22:6, 24:17, 31:15, 31:17, 33:4, 40:20</p> <p><b>SOUTH</b> [1] - 1:1</p> <p><b>South</b> [6] - 1:15, 1:21, 9:24, 42:1, 42:5, 42:15</p> <p><b>speaking</b> [1] - 19:12</p> <p><b>specifically</b> [1] - 33:7</p> <p><b>speculation</b> [1] - 23:15</p> <p><b>standing</b> [1] - 36:2</p> <p><b>standpoint</b> [1] - 40:19</p> <p><b>start</b> [1] - 21:17</p> <p><b>STATE</b> [1] - 1:1</p> <p><b>State</b> [2] - 42:1, 42:5</p> <p><b>stay</b> [1] - 23:25</p> <p><b>stays</b> [1] - 30:22</p> <p><b>step</b> [1] - 31:12</p> <p><b>steps</b> [1] - 22:7</p> <p><b>stick</b> [1] - 27:8</p> <p><b>still</b> [2] - 35:14, 36:4</p> <p><b>stipulate</b> [1] - 31:19</p> <p><b>stone</b> [2] - 15:16, 41:9</p> <p><b>Stone</b> [2] - 13:18, 31:17</p> <p><b>stop</b> [3] - 6:8, 8:6, 26:23</p>	<p><b>straddles</b> [1] - 35:16</p> <p><b>straight</b> [1] - 35:8</p> <p><b>straightforward</b> [2] - 5:7, 6:17</p> <p><b>Street</b> [1] - 1:14</p> <p><b>street</b> [3] - 14:24, 35:20, 36:2</p> <p><b>strike</b> [1] - 28:23</p> <p><b>strip</b> [1] - 38:24</p> <p><b>structures</b> [1] - 39:7</p> <p><b>stuff</b> [2] - 5:18, 20:20</p> <p><b>subject</b> [4] - 26:22, 33:12, 34:9, 40:17</p> <p><b>submit</b> [1] - 41:2</p> <p><b>Suburban</b> [1] - 11:25</p> <p><b>sufficient</b> [1] - 39:13</p> <p><b>sufficiently</b> [2] - 7:3, 20:21</p> <p><b>supplemental</b> [1] - 16:11</p> <p><b>surveyed</b> [1] - 35:10</p> <p><b>sword</b> [1] - 8:16</p> <p><b>sworn</b> [1] - 9:16</p>	<p>10:4</p> <p><b>three</b> [4] - 3:12, 4:4, 12:10, 37:5</p> <p><b>tip</b> [1] - 15:17</p> <p><b>tires</b> [7] - 14:6, 14:9, 14:19, 14:20, 14:23, 14:25</p> <p><b>today</b> [8] - 3:5, 7:8, 8:7, 8:14, 8:21, 23:1, 38:3, 38:19</p> <p><b>tomorrow</b> [2] - 8:12, 38:4</p> <p><b>topic</b> [1] - 33:4</p> <p><b>torn</b> [1] - 38:15</p> <p><b>totally</b> [3] - 14:16, 31:20, 37:14</p> <p><b>transcript</b> [1] - 42:7</p> <p><b>TRANSCRIPT</b> [1] - 2:15</p> <p><b>trash</b> [1] - 5:17</p> <p><b>Traywick</b> [7] - 2:4, 2:5, 3:3, 9:11, 25:19, 31:14, 32:20</p> <p><b>traywick</b> [1] - 39:20</p>
<p style="text-align: center;"><b>R</b></p> <p><b>rate</b> [1] - 37:25</p> <p><b>rather</b> [1] - 35:15</p> <p><b>reached</b> [1] - 4:23</p> <p><b>read</b> [1] - 38:20</p> <p><b>real</b> [1] - 4:20</p> <p><b>realize</b> [1] - 33:3</p> <p><b>really</b> [12] - 4:25, 5:23, 6:18, 7:5, 7:19, 7:25, 9:3, 9:4, 13:9, 29:4, 35:17</p> <p><b>REAR</b> [1] - 2:15</p> <p><b>reason</b> [8] - 6:3, 6:6, 20:19, 23:6, 23:16, 23:18, 30:12, 31:2</p> <p><b>reasonable</b> [2] - 31:2, 36:16</p> <p><b>recently</b> [2] - 15:3, 20:8</p> <p><b>reckless</b> [1] - 14:15</p> <p><b>recognized</b> [1] - 15:16</p> <p><b>record</b> [1] - 42:8</p> <p><b>records</b> [1] - 14:9</p> <p><b>recross</b> [1] - 26:22</p> <p><b>recycling</b> [1] - 5:18</p> <p><b>refuse</b> [1] - 37:3</p> <p><b>regular</b> [1] - 30:17</p> <p><b>related</b> [1] - 42:10</p> <p><b>relationship</b> [2] - 13:6, 19:24</p> <p><b>release</b> [1] - 8:11</p> <p><b>relevance</b> [4] - 14:12, 14:13, 19:17</p> <p><b>relevant</b> [2] - 19:23, 38:21</p> <p><b>remedy</b> [3] - 5:2, 6:23, 40:21</p> <p><b>remember</b> [2] - 28:11</p> <p><b>remove</b> [1] - 19:10</p> <p><b>removed</b> [1] - 38:17</p> <p><b>removing</b> [1] - 39:4</p> <p><b>reported</b> [1] - 1:12</p> <p><b>reporter</b> [1] - 18:15</p> <p><b>Reporter</b> [3] - 1:13, 1:19, 42:4</p> <p><b>REPORTER</b> [1] - 29:8</p> <p><b>required</b> [1] - 10:12</p> <p><b>residence</b> [1] - 29:23</p>	<p style="text-align: center;"><b>S</b></p> <p><b>sanction</b> [3] - 8:17, 8:18, 10:20</p> <p><b>Saturday</b> [1] - 15:19</p> <p><b>save</b> [3] - 26:20, 31:16, 31:19</p> <p><b>SC</b> [2] - 2:6, 2:11</p> <p><b>scarborough</b> [1] - 1:12</p> <p><b>seal</b> [1] - 42:14</p> <p><b>seat</b> [1] - 9:17</p> <p><b>second</b> [3] - 4:18, 23:13, 32:12</p> <p><b>security</b> [1] - 15:1</p> <p><b>see</b> [3] - 3:6, 26:1, 27:11</p> <p><b>seek</b> [1] - 32:20</p> <p><b>seem</b> [1] - 31:1</p> <p><b>sense</b> [3] - 32:23, 32:25, 34:6</p> <p><b>sensitive</b> [1] - 34:17</p> <p><b>serious</b> [1] - 7:3</p> <p><b>served</b> [1] - 26:14</p> <p><b>set</b> [1] - 3:5</p> <p><b>seven</b> [4] - 3:25, 4:6, 16:3, 37:7</p> <p><b>shall</b> [1] - 39:9</p> <p><b>share</b> [1] - 41:1</p> <p><b>shocking</b> [1] - 7:14</p> <p><b>shoot</b> [1] - 32:24</p>	<p><b>solution</b> [3] - 5:8, 6:17, 7:15</p> <p><b>sometimes</b> [3] - 13:11, 13:14, 41:9</p> <p><b>sort</b> [6] - 22:6, 24:17, 31:15, 31:17, 33:4, 40:20</p> <p><b>SOUTH</b> [1] - 1:1</p> <p><b>South</b> [6] - 1:15, 1:21, 9:24, 42:1, 42:5, 42:15</p> <p><b>speaking</b> [1] - 19:12</p> <p><b>specifically</b> [1] - 33:7</p> <p><b>speculation</b> [1] - 23:15</p> <p><b>standing</b> [1] - 36:2</p> <p><b>standpoint</b> [1] - 40:19</p> <p><b>start</b> [1] - 21:17</p> <p><b>STATE</b> [1] - 1:1</p> <p><b>State</b> [2] - 42:1, 42:5</p> <p><b>stay</b> [1] - 23:25</p> <p><b>stays</b> [1] - 30:22</p> <p><b>step</b> [1] - 31:12</p> <p><b>steps</b> [1] - 22:7</p> <p><b>stick</b> [1] - 27:8</p> <p><b>still</b> [2] - 35:14, 36:4</p> <p><b>stipulate</b> [1] - 31:19</p> <p><b>stone</b> [2] - 15:16, 41:9</p> <p><b>Stone</b> [2] - 13:18, 31:17</p> <p><b>stop</b> [3] - 6:8, 8:6, 26:23</p>	<p style="text-align: center;"><b>T</b></p> <p><b>team</b> [1] - 14:25</p> <p><b>tear</b> [1] - 33:21</p> <p><b>temporarily</b> [1] - 11:21</p> <p><b>ten</b> [3] - 35:25, 38:11, 38:12</p> <p><b>testified</b> [2] - 9:16, 26:14</p> <p><b>testimony</b> [3] - 3:10, 4:22, 11:5</p> <p><b>THE</b> [52] - 2:3, 2:9, 3:3, 7:18, 9:10, 9:14, 9:17, 9:19, 9:21, 9:23, 10:16, 12:23, 14:17, 16:7, 16:12, 16:17, 17:3, 17:7, 18:14, 18:22, 19:21, 20:1, 20:3, 23:13, 23:24, 24:3, 24:23, 25:1, 25:19, 26:23, 27:2, 27:4, 27:6, 27:8, 29:10, 31:11, 31:14, 31:24, 32:7, 32:10, 32:15, 32:19, 35:19, 36:10, 37:15, 40:7, 40:10, 40:14, 40:18, 40:24, 41:3, 41:6</p> <p><b>theirs</b> [1] - 20:22</p> <p><b>thereof</b> [1] - 42:12</p> <p><b>they've</b> [4] - 11:11, 11:12, 17:17, 37:12</p> <p><b>thinks</b> [1] - 37:20</p> <p><b>third</b> [1] - 37:16</p> <p><b>thousand</b> [2] - 8:8,</p>	<p><b>TRAYWICK</b> [35] - 3:9, 9:12, 10:1, 10:21, 12:21, 14:11, 14:14, 16:2, 16:10, 16:20, 16:23, 17:5, 19:16, 21:1, 23:12, 23:15, 23:22, 24:15, 24:17, 25:21, 26:19, 27:10, 29:14, 29:15, 31:8, 31:15, 32:1, 32:4, 32:11, 32:21, 35:22, 40:25, 41:5, 43:6, 43:10</p> <p><b>treat</b> [2] - 28:21, 30:14</p> <p><b>treating</b> [1] - 31:5</p> <p><b>tried</b> [2] - 8:3, 20:4</p> <p><b>true</b> [2] - 27:24, 42:7</p> <p><b>try</b> [1] - 7:24</p> <p><b>trying</b> [1] - 6:14</p> <p><b>Tryon</b> [1] - 15:10</p> <p><b>turning</b> [1] - 23:7</p> <p><b>two</b> [12] - 4:4, 8:7, 9:8, 12:10, 13:10, 13:17, 15:9, 15:22, 17:11, 17:13, 21:7, 29:8</p> <p><b>type</b> [1] - 39:14</p> <p style="text-align: center;"><b>U</b></p> <p><b>ultimately</b> [1] - 4:9</p> <p><b>uncomfortable</b> [1] - 33:3</p> <p><b>underneath</b> [1] - 21:13</p>

<p><b>unexpected</b> [1] - 11:20  <b>unfortunate</b> [1] - 37:19  <b>unfortunately</b> [1] - 40:1  <b>unimpeded</b> [1] - 39:2  <b>unmaintained</b> [1] - 20:9  <b>unrestricted</b> [1] - 39:2  <b>up</b> [17] - 3:10, 3:17, 3:19, 3:20, 4:21, 6:25, 7:6, 7:7, 9:14, 28:16, 29:5, 31:17, 31:20, 35:1, 37:1  <b>uses</b> [3] - 28:9, 30:12, 36:8</p>	<p><b>wish</b> [2] - 3:7, 8:13  <b>withdraw</b> [1] - 23:21  <b>withdrew</b> [1] - 23:24  <b>witness</b> [3] - 9:11, 26:18, 26:20  <b>Witness</b> [2] - 31:13, 42:13  <b>WITNESS</b> [5] - 9:19, 9:23, 20:3, 27:2, 27:6  <b>WITNESS/ EXAMINATION</b> [1] - 43:3  <b>witnesses</b> [1] - 32:18  <b>works</b> [1] - 37:10  <b>worthwhile</b> [1] - 3:11  <b>written</b> [2] - 10:13, 40:23</p>
<p><b>V</b></p>	<p><b>Y</b></p>
<p><b>vehicle</b> [8] - 5:13, 11:8, 21:15, 21:18, 21:23, 22:8, 25:23, 27:15  <b>vehicles</b> [9] - 5:14, 10:23, 11:1, 11:6, 11:18, 12:1, 12:5, 12:9, 21:7  <b>view</b> [4] - 7:17, 33:10, 33:14, 39:3  <b>violated</b> [1] - 4:13  <b>violating</b> [1] - 7:9  <b>violation</b> [8] - 4:10, 23:11, 26:1, 26:4, 27:18, 27:25, 34:10, 37:4  <b>violations</b> [3] - 5:20, 33:9, 33:11  <b>visiting</b> [2] - 29:23, 30:6  <b>vs</b> [1] - 1:5</p>	<p><b>yard</b> [3] - 15:20, 20:20, 20:21  <b>year</b> [2] - 21:6, 21:17  <b>years</b> [7] - 8:2, 13:5, 14:19, 19:9, 20:4, 20:7, 29:2  <b>you-all</b> [4] - 6:8, 29:11, 38:21, 41:4</p>
<p><b>W</b></p>	
<p><b>walk</b> [1] - 7:24  <b>walkway</b> [1] - 29:2  <b>wants</b> [1] - 12:11  <b>wasting</b> [2] - 6:20, 6:21  <b>weeds</b> [2] - 20:13, 20:14  <b>wellspring</b> [1] - 33:5  <b>wheeled</b> [1] - 21:15  <b>whoever's</b> [1] - 29:22  <b>whole</b> [4] - 6:3, 6:6, 9:2, 33:5  <b>wife</b> [4] - 11:24, 12:8, 12:12, 20:23  <b>wife's</b> [1] - 21:22</p>	

R-104

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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**SC Court of Appeals**

The Honorable Mikell Scarborough, Master in Equity

Case No. 2011-CP-10-95

Bayview Acres Civic Club . . . . .

Respondent

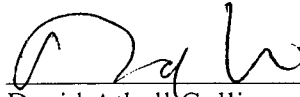
v.

Gerald E. Moore, Jr. a/k/a Gerald Moore and  
Margaret Bates Moore . . . . .

Appellants

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



David Athell Collins  
7455 Cross County Road  
P.O. Box 40578  
Charleston, SC 29423-0578  
(843) 720-0220  
(843) 556-0278 facsimile  
[davidacollins2@aol.com](mailto:davidacollins2@aol.com)

6/2, 2016  
Charleston, SC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Record on Appeal was served, via United States Mail or hand delivery, upon

Benjamin A. Traywick, Esq.  
P.O. Box 564  
Isle of Palms, S.C. 29451

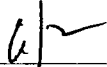
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**SC Court of Appeals**



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