RECEIVED
Jul 18 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master In Equity

Appellate Case No. 2024-000430
Lower Court Case No. 2021-CP-18-01535

Sinclair Brown, Jr. and Joetta A. Brown, Respondents,

v.

George B. Corrie, II, Shawna Corrie, Anthony Wayne All, Sandra Rae All, Paul W. Jones, Madelyn W. Jones, Keith A. Murray, Stephanie L.R. Murray, Dollar Bank Federal Savings Bank, The Bank of South Carolina, John Doe and Mary Roe, fictitious names representing all unknown persons who may claim any right, title or interest or lien upon the subject real estate, as well as anyone who may be incompetents, in the military, or under any legal disability, and Richard Roe and Sarah Doe, fictitious names representing all unknown heirs and devisees, Defendants,

Of which George B. Corrie, II and Shawna Corrie are the Appellants.

APPELLANTS' BRIEF IN RESPONSE TO RESPONDENTS' INITIAL BRIEF

Steven L. Smith (SC Bar No.: 5173)
Zachary J. Closser (SC Bar No. 74005)
SMITH | CLOSSER, P.A.
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
ssmith@scnlaw.com
zclosser@scnlaw.com
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases

Secondary Sources

INTRODUCTION

[INCORPORATE FROM INITIAL BRIEF BY REFERNCE]

STATEMENT OF THE CASE

[INCORPORATE FROM INITIAL BRIEF BY REFERNCE]

STATEMENT OF FACTS

[INCORPORATE FROM INITIAL BRIEF BY REFERNCE]

STANDARD OF REVIEW

[INCORPORATE FROM INITIAL BRIEF BY REFERNCE]

ARGUMENT IN REPLY TO RESPONDENTS' INITIAL BRIEF

As illustrated in their initial brief, the Respondents' contend they are entitled to the 0.12 acres of the "Proposed Pond" shown on Exhibit A, thus granting them an uninhibited right to the use and enjoyment of the body of water located solely on the Appellants' property. While the Appellants' do not dispute the Respondents' are entitled to, and currently in rightful possession of, the 0.12 acres of land conveyed to them within their deed, this ownership of land does not grant the Respondents' property rights to the Appellant's pond.

Furthermore, in observance of the brightline rules that govern ownership rights as they are enumerated within a deed, the law concerning appurtenant easements and special property interests is as equally defined in South Carolina case law. When applying the established doctrine of appurtenant easements and special property interests to the facts of this case, the law does not grant the Respondents' any right to use and enjoy the Appellants' pond due to the absence of an original intent to convey such a right by the original conveyors of the land.

I. The Respondents are entitled to and currently in possession of the 0.12 acres of the land entitled "Proposed Pond" as described within their deed, leaving no further entitlement to the body of water which is located on the property owned solely by the Appellants.

The Respondents contend that because the deed to their property entitles them to 0.12 acres of land as shown on Exhibit A as "Proposed Pond," they are entitled to the uninhibited use of the body of water located solely on the Appellants' property. Relying on established South Carolina case law, the Respondents' cite to *Blue Ridge Realty Co. v. Williamson,* where the Supreme Court opined "We have held that where a deed describes land as is shown on a plat, such plat becomes part of the deed." *Blue Ridge Realty Co. v. Williamson,* 247 S.C. 112, 145 S.E.2d 922 (1965). In employing this law to their argument, the Respondents' appear to contend that they are entitled to 0.12 acres of the aforementioned body of water, regardless of where the waterline exists on the Appellants' property.

As noted within Judge Chellis's Order, "the Plaintiffs [Respondents] Brown own 0.12 acres of the pond." Fin. Dec. Pg. 10. This 0.12 acres of pond owned by the Respondents' correlates to the established boundary lines of the "Proposed Pond" as marked on Exhibit A. This right to 0.12 acres of pond is not fluidly dependent on the rise and fall of the waterline, but rather is an established grant of land which coincides with the established area identified as "Proposed Pond" by Exhibit A.

This interpretation of the Respondents' property rights was not disputed, but rather confirmed by Judge Chellis's Order where he held "The 'top of the slope' as shown in Exhibit 3 is the best approximate location of the south outer edge or contour of the pond within the north lot

line Lot 3."[1] Fin. Dec. Pg. 10. Further supporting this notion of an established boundary line, Judge Chellis held "the water level of the pond does not define the contour of the pond." *Id.*

Once establishing the fixed nature of the 0.12 acres and the Respondents' property line therein, Judge Chellis then turned to the question of whether the Appellants' fence infringed upon the property rights of the Respondents, holding "the Defendants' ("Appellants") erection of a fence across the common boundary line of the Plaintiffs ("Respondents") Brown and the Defendants Corrie, *albeit within their property line*, unreasonably interferes with the Plaintiff's private easement access to the Pond." Fin. Dec. Pg. 11, (*emphasis added*). In acknowledging the erected fence as existing within the Appellants' property line, Judge Chellis confirmed that the Respondents' property line extends no further than the "top of the slope as shown in Exhibit 3," thus rendering any claims by the Respondents' of property ownership extending past the top of the slope invalid.

The opinion issued in *Blue Ridge Realty Co.* establishes "where a deed describes land as is shown on a plat, such plat becomes part of the deed." *Blue Ridge Realty Co* at 145. In applying the case law in *Blue Ridge Realty Co.* to the ownership rights allocated to both parties pursuant to the Order, the Appellants do not dispute that the Respondents are entitled to and are currently in full rightful possession of the 0.12 acres of the "Proposed Pond" as it is illustrated in Exhibit A and Exhibit B. However, any claims put forth by the Respondents' contending that they are entitled to further ownership rights to any land which exceeds past the "top of the slope as shown in Exhibit 3" are inconsistent with both the Order, and the case law which their argument employs, and are therefore invalid.

[1] Exhibit B in this Brief

II. There was no original intent on behalf of the original subdividing owners to convey an appurtenant easement or special property interest with the Respondents' land, therefore no appurtenant easement or special property interest exists.

In their brief, the Respondents seemingly offer two separate justifications as to the existence of a special property interest in the form of an appurtenant easement favoring their use of the body of water located solely on the Appellants' land. The first justification takes form in the testimony given at trial by Mr. Hager, the original surveyor who included the "Proposed Pond" language on the plat mentioned in the deed. The second justification relies on *Cason v. Gibson*, a case cited in the Order which concerns special property interests granted to landowners whose property borders government lands. Neither justification provides a legally valid argument as to why the Respondents' are entitled to unfettered use of the body of water located entirely on the Appellants' property.

A. Ms. Jones's testimony establishes there was never intent on behalf of the original subdividers of the Respondents' property to convey a special property interest with the land, and therefore no special property interest exists.

As exemplified in the Appellants' Initial Brief, there are generally two types of appurtenant easements that are recognized in South Carolina: express easements and implied easements. Express easements are normally manifested and conveyed in the plain language of the deed. *See Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 467 (S.C. Ct. App.) (1994). However, implied easements are non-express easements and require judicial recognition in the event of a dispute over property rights. South Carolina courts have been historically hesitant to recognize implied easements. In *Harbor Inlet v. S.C. Dept. of Parks, Recreation and Tourism*, the Supreme Court provided "The purpose of an implied easement is to give effect to the intentions of the parties to a transaction, and because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored." *Harbor Inlet*

v. S.C. Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008) citing 17 Aam. Jur. Easements 37 (1957) (*see also* 28A C.J.S. *Easements* 61 (1996)).

When determining whether a special property interest exists, This Court ruled in *Braselton v. Roberts* that "In the interpretation of maps and plats, intention will not be inferred by symbols of uncertain meaning or from fanciful adornments on the plat…circumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction." *Braselton v. Roberts*, No. 2021-UP-280, 2021 S.C. App. Unpub. LEXIS 305 (Ct. App. July 21, 2021). Further expounding upon the interpretation of an implied special property interest, this Court opined "As the grantors, their intent is paramount as only the grantors can create a restriction that runs with the land." *Id* at 12.

In an attempt to display the Jones's original intent to convey a special property interest, the Respondents' brief includes an extensive recitation of the trial testimony given by Mr. Hager, the original surveyor of the subdivided land. In summarizing his testimony, the Respondents' state in their own words that the Jones's hired Mr. Hager to "survey it [the land] and subdivide it so they could sell waterfront lots including pond acreage." Fin. Dec. Pg. 9. However, in the excerpts included in the Respondents' brief from the actual testimony offered by Mr. Hager, there is no mention whatsoever of the selling of "waterfront lots," nor any indication by Mr. Hager that the Jones's had authorized him to portray the excavated sand mine as a "Proposed Pond" on the plat in the first place. *See* Tr. Pg. 16-33.

In stark contrast to the Respondents' erroneous representation that Mr. Hager created the plat so that the Jones's could sell "waterfront lots," Mrs. Jones herself provided testimony which diametrically opposes this notion. At trial, when asked "did you market these properties as being waterfront?" Mrs. Jones responded "No." Tr. Pg. 88, 14-20. Furthermore, when asked whether the

Jones's merely marketed the land as property for sale, with no further defining characteristics promised in its conveyance Mrs. Jones answered "Yeah." *Id.*

In compliance with the precedential case law established by this very Court in *Brasselton*, the grantor's intent is paramount, as only the grantors can create a restriction that runs with the land. *Brasselton* at 12. When applying this Court's holding in *Brasselton* to the facts of this case, Mrs. Jones, the original subdivider and grantor of the property in question, testified under oath that there was no intent on behalf of the original owners to convey any special property rights in the pond with land which is now in possession of the Respondents. Thus, in adhering to the precedential law established by this Court, the special property interest which the Respondents' are seeking to enforce have not been conveyed to them with the land and have in fact never existed.

B. The holding in *Cason v. Gibson* concerned private land that bordered public land, and thus does not apply to the facts of this case.

Both Judge Chellis's Order and the Respondents' initial brief cite *Cason v. Gibson* as applicable case law in demonstrating a special property interest exists granting the Respondents' a right to use the Appellants' property. As stated in the Order, *Cason v. Gibson* holds "Persons owning lots fronting or adjacent to property dedicated as public parks or squares, or streets, highways, and the like, have such special property interests as entitle them to maintain a suit for the enforcement and preservation of the use of the property as such" *Cason v. Gibson*, 217 S.C. 500, 509–10, 61 S.E.2d 58, 62 (1950).

While *Cason* remains applicable case law today, the holdings found within the precedent apply strictly to "public parks, or squares, or streets, highways and the like." *Id.* Nowhere in the Supreme Court's opinion does the Court indicate that a landowner may obtain a special property interest in another private landowner's property, simply because the adjacent landowner's property

maintains a place of recreational interest. The Court blatantly opined that this type of property interest is reserved for individuals owning lots fronting or adjacent to *public* land.

This unthinkable interpretation of the law is not supported by the Order, nor by the Respondents' brief, and thus does not bestow upon the Respondents' a special property interest to use the body of water located solely on the Appellants' land, simply because the Appellants' land closely borders the Respondents'.

CONCLUSION

For the foregoing reasons, this Court should overturn the lower court's ruling on the grounds that the lower court erred in finding an appurtenant easement and special property interest exists over the Appellants' land and rescind the Order requiring the removal of the Appellants' fence.

Respectfully submitted,

SMITH | CLOSSER, P.A.

s/Steven L. Smith

Steven L. Smith (SC Bar No.: 5173)
Zachary J. Closser (SC Bar No. 74005)
SMITH | CLOSSER, P.A.
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
ssmith@scnlaw.com
zclosser@scnlaw.com
Attorneys for Appellants

July 18, 2024

Exhibit A

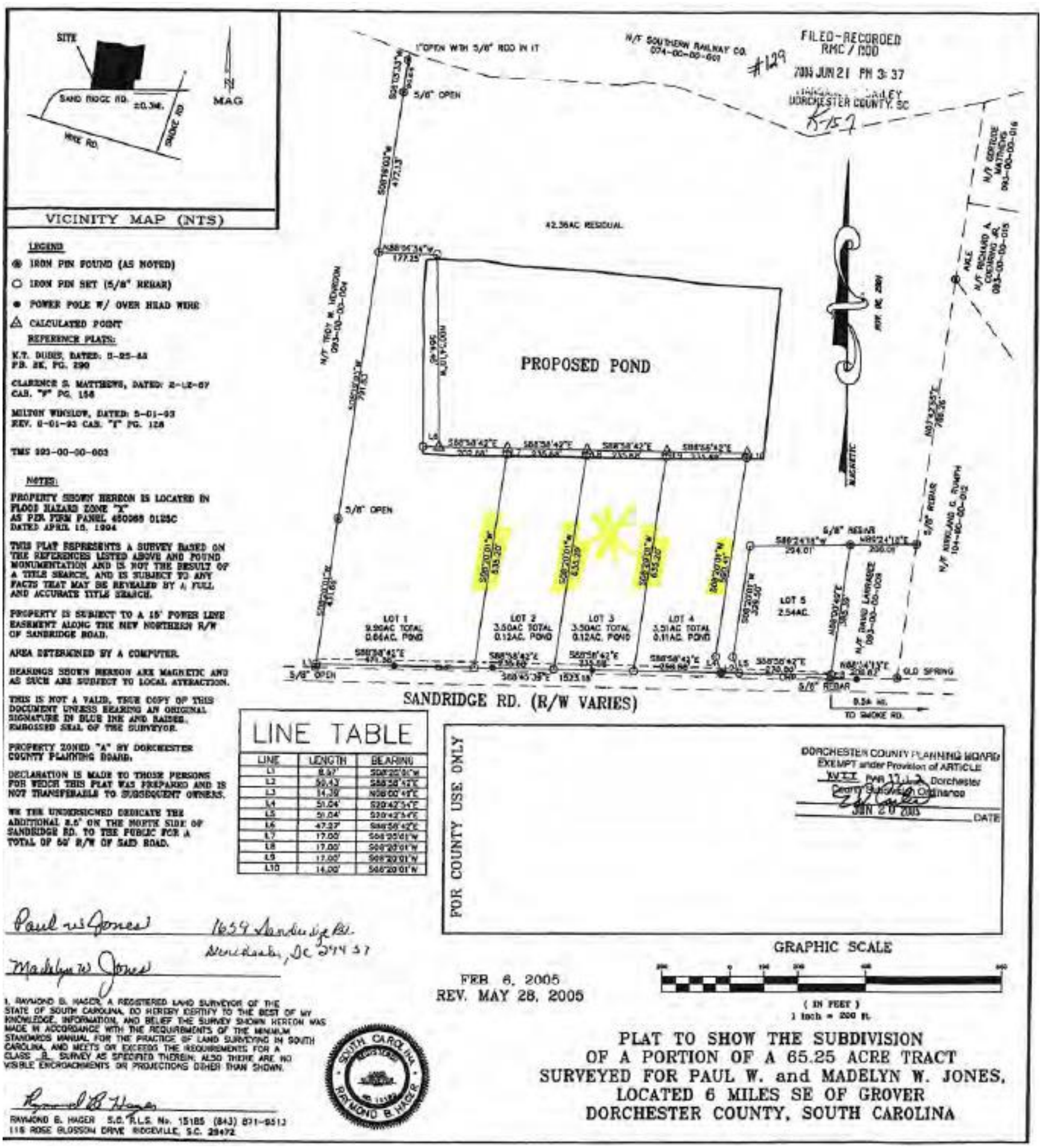
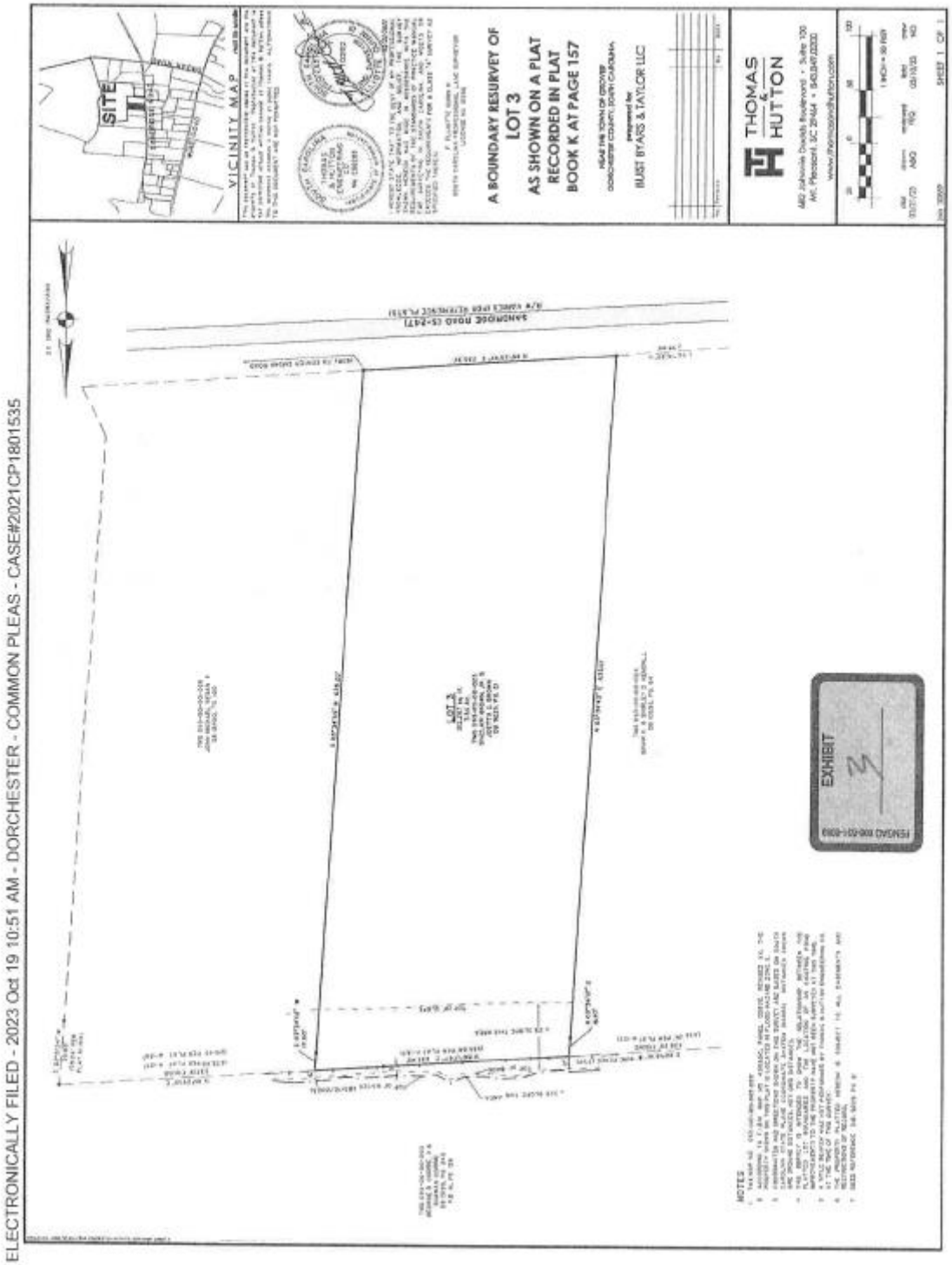

VICINITY MAP (NTS)
SITE
MAG
LEGEND
IRON PIN FOUND (AS NOTED)
IRON PIN SET (5/8" REBAR)
POWER POLE W/ OVER HEAD WIRE
CALCULATED POINT
REFERENCE PLATS:
TMS 193-00-00-003
NOTES:
PROPERTY SHOWN HEREON IS LOCATED IN FLOOD HAZARD ZONE "X" AS PER FIRM PANEL 450068 0125C DATED APRIL 15, 1994
THIS PLAT REPRESENTS A SURVEY BASED ON THE REFERENCES LISTED ABOVE AND FOUND MONUMENTATION AND IS NOT THE RESULT OF A TITLE SEARCH, AND IS SUBJECT TO ANY FACTS THAT MAY BE REVEALED BY A FULL AND ACCURATE TITLE SEARCH.
PROPERTY IS SUBJECT TO A 15' POWER LINE EASEMENT ALONG THE NEW NORTHERN R/W OF SANDRIDGE ROAD.
AREA DETERMINED BY A COMPUTER.
BEARINGS SHOWN HEREON ARE MAGNETIC AND AS SUCH ARE SUBJECT TO LOCAL ATTRACTION.
THIS IS NOT A VALID, TRUE COPY OF THIS DOCUMENT UNLESS BEARING AN ORIGINAL SIGNATURE IN BLUE INK AND RAISED, EMBOSSED SEAL OF THE SURVEYOR.
PROPERTY ZONED "A" BY DORCHESTER COUNTY PLANNING BOARD.
DECLARATION IS MADE TO THOSE PERSONS FOR WHICH THIS PLAT WAS PREPARED AND IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS.
WE THE UNDERSIGNED DEDICATE THE ADDITIONAL 8.5' ON THE NORTH SIDE OF SANDRIDGE RD. TO THE PUBLIC FOR A TOTAL OF 66' R/W OF SAID ROAD.
FILED-RECORDED
N/F SOUTHERN RAILWAY CO.
42.36AC RESIDUAL
PROPOSED POND
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
2.54AC.
SANDRIDGE RD. (R/W VARIES)
OLD SPRING
TO SMOKE RD.
LINE TABLE
LINE | LENGTH | BEARING
FOR COUNTY USE ONLY
DORCHESTER COUNTY PLANNING BOARD
DATE
GRAPHIC SCALE
(IN FEET)
FEB. 6, 2005
REV. MAY 28, 2005
PLAT TO SHOW THE SUBDIVISION
OF A PORTION OF A 65.25 ACRE TRACT
SURVEYED FOR PAUL W. and MADELYN W. JONES.
LOCATED 6 MILES SE OF GROVER
DORCHESTER COUNTY, SOUTH CAROLINA

Exhibit B


ELECTRONICALLY FILED - 2023 Oct 19 10:51 AM - DORCHESTER - COMMON PLEAS - CASE#2021CP1801535
SITE
VICINITY MAP
A BOUNDARY RESURVEY OF
LOT 3
AS SHOWN ON A PLAT
RECORDED IN PLAT
BOOK K AT PAGE 157
THOMAS & HUTTON
SANDROSE ROAD (S-247)
EXHIBIT