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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas for the Eighth Circuit

J. Mark Hayes, II, Circuit Court Judge
Trial Court Case No. 2018CP3600089, 2019CP3600245

Appellate Case No. 2025-000497

Lisa Summer Rice and Joseph F. Rice.....Appellants,

v.

Newberry Lions Club and Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick.....Respondents,

AND

A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert.....Appellants,

v.

Betty S. Amick, as Personal Representative of the Estate of C. Ray Amick, and Cheryl Littlejohn.....Respondents.

RECORD ON APPEAL
Vol. II of IV

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick, and Cheryl Littlejohn,

Defendants.

DEFENDANT CHERYL LITTLEJOHN'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, Defendant Cheryl Littlejohn ("Littlejohn") moves for an order granting summary judgment as to Plaintiffs Lisa Summer Rice and Joseph F. Rice's (collectively the "Plaintiffs") Sixth Cause of Action against Littlejohn as set forth in the Fourth Amended Complaint filed March 18, 2020 ("Complaint"). This Motion is supported by the public records available at the Newberry County Register of Deeds Office, the depositions of Lisa Summer Rice, Joseph F. Rice, C. Ray Amick, Claude H. Schumpert, A. Murray Gray, Julia Rebecca McSwain, Clyde Eugene Crocker, Ladson Heath Simpson, Melissa B. Schumpert, Neel B. McSwain, Doggett Whitaker, and Joseph Thaddeus McCrackin, III, the Affidavits of Claude H. Schumpert and Young Schumpert,[1] and the memorandum in support, copies or excerpts of which all of which are filed with this Motion. A list of exhibits is attached as Exhibit A to the Memorandum in Support of this Motion.

[1] In addition to depositions taken in this case, this motion relies on depositions taken and affidavits filed in another case pending before this Court, *Gray and Schumpert et al v. Amick et al*, Case No. 2019-CP-36-00245, which alleges the same easement causes of action. The depositions in the present case were taken before the declaratory judgment easement allegations were raised in the present case, but Littlejohn has no reason to believe that if the depositions were taken now, different testimony would be elicited. Therefore, it is in the interest of judicial economy that the Court consider the depositions from the *Schumpert* case.

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Plaintiffs claim they desire to launch their boats at a Lake Murray boat ramp and beach located on property that does not belong to them. They seek to cross Littlejohn's property to get to the beach and boat ramp and allege three theories that they claim give them a permanent easement over Littlejohn's property: (1) easement implied by prior use; (2) easement by estoppel; and (3) a prescriptive easement. However, each of Plaintiffs' theories fail because they cannot establish that permanent access over Littlejohn's property is necessary for the Plaintiffs to access property they are entitled to use, that Littlejohn should be estopped from asserting unencumbered ownership of her property, or that there has been continuous used of the alleged easement sufficient to create a prescriptive easement. Plaintiffs have taken the deposition of a number of current and prior landowners who live adjacent to Littlejohn, and they all share the common theme and provide the Court with indisputable facts: (1) access to the beach and boat ramp over Littlejohn's property is not necessary for the Plaintiffs to enjoy their property, (2) the access sought by the Plaintiffs is not to access their properties, but instead, to access property owned by Ray Amick; (3) access to the beach and boat ramp has always been available only for Lions Club members and they had a key to access the beach and boat ramp for many years, such that the use was permissive and granted by the former owners of Littlejohn's property. Further, the depositions and the undeniable conclusions from the photographs demonstrate that the alleged easement area has not been used continuously, a fact that is fatal to Plaintiffs' claims.

Plaintiffs also seek to enjoin Littlejohn from using her property in a way that blocks their access. The injunction cause of action also fails because Plaintiffs are not entitled to use Littlejohn's property as explained above, there is no evidence of irreparable harm, and Plaintiffs have an adequate remedy in that they can use the public boat ramp to put their boats in Lake Murray.

Based on the foregoing, Littlejohn requests that the Court dismiss all claims against her and affecting her property, and for such other and further relief as may be just and proper.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick, and Cheryl Littlejohn,

Defendants.

DEFENDANT LITTLEJOHN'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS

Defendant Cheryl Littlejohn ("Littlejohn") respectfully submits this memorandum in support of her motion for summary judgment as to Plaintiffs Lisa Summer Rice and Joseph F. Rice's (collectively the "Plaintiffs") claims for easement and injunction set forth in the Fourth Amended Complaint filed on March 18, 2020. A list of Exhibits referred to throughout this Memorandum is included as **Exhibit A** for ease of reference.

UNDISPUTED FACTS

Littlejohn, C. Ray Amick ("Amick"), and the Plaintiffs each own real property on either Lions Club Road or Lions Club Circle, and each parcel is shown on the GIS map below. (Compl. ¶¶ 1, 3-4, 79.) This peninsula on Lake Murray, shown below, is referred to as "Lions Club Point." Plaintiffs filed this suit seeking an easement right over Littlejohn's and Amick's property in order to access the "Fringe Lands" behind Amick's property. (*Id*. ¶¶ 97-102.) Dominion owned the Fringe Lands for many years, but Amick currently owns the Fringe Lands, which consist of a beach area and a boat ramp. (*See* Deed into Ray Amick dated October 8, 2019, attached as **Exhibit H**.) The below GIS map is attached hereto as **Exhibit B** and included within the body of this

memorandum for the Court's convenience.

Plaintiffs' Ownership History and Use of Fringe Lands

The "Rice Property" is located at 175 Lions Club Circle. (L. Rice Depo at 7:6-7.) Mrs. Rice acquired title to her property from her father, Ferdinand Jacob Summer, when he passed away approximately ten years ago. (*Id*. at 5:24–7:5.) Mrs. Rice testified her father was an active Lions Club member for many years, but he was ill the last few years of his life. (*Id*. at 7:17- 8:11.) Mrs. Rice testified that while growing up, she spent most weekends at the Rice Property and spent her summers there in the 1970s, and described the history of use and access to the Fringe Lands in detail. (*Id*. at 4:23 – 5:9; 8:12 – 9:5.) In her deposition, she testified that Lions Club members and their guests could use the beach, the boat ramp, and the clubhouse, but that it was only for homeowners, who at the time, also had to be Lions Club members. (*Id*. at 9-10.) She acknowledged that there was a gate to access the Fringe Lands over Lions Club property and that the area was for the use of Lions Club members only. (*Id*. at 9-11.) (The deposition Lisa Rice is attached hereto as **Exhibit F**.)

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Mr. Rice testified that he owns dozens of residential or vacation properties, including two pieces of real property in Newberry County, 200 acres in Awendaw, a cattle farm in Jamestown, another property in Awendaw with a 50-stall barn and a house, Bulls Bay Golf Course, a house in Mountain Village, Colorado, a townhouse in the Abacos, Bahamas, a house in Wellington, Florida, and a townhouse in Harbor Island, Bahamas. (J. Rice Depo at 10:18 – 15:25; 24:17-19.) Mr. Rice testified that he considers the Rice Property "a getaway home" that he and Mrs. Rice sometimes use while in town for "a Carolina football game." (*Id*. at 12:23-13:1.) Mr. Rice testified that during the first few years, they would visit the Lions Club road property ten or twelve times during football season, but in 2018 they did not visit the property at all because he would fly in late on Friday nights and then leave. (*Id*. at 20:25 – 21:18.) He testified that he and Mrs. Rice built a log cabin on the Rice Property in approximately 2012 or 2013. (*Id*. at 13:9-16.) The property has a dock with direct access to Lake Murray. (*Id*. at 31:4-12.) (The deposition of Joseph Rice is attached hereto as **Exhibit G**.)

As title owner of the Rice Property, Mrs. Rice's claim for continuous use appears to be grounded in the fact that, while growing up, she and her family frequented the Fringe Lands, but there is no evidence in the record that her parents used the boat ramp and beach as title owners of the property. Even if there was evidence of use by Mrs. Rice's parents, there is clearly not continuous use currently, as Mr. Rice testified they did not visit the Rice property the entirety of 2018. Additionally, while the Rices do own a boat, Mr. Rice testified they keep it in the Bahamas, not in South Carolina. It is undisputed that the Rices do not own the Fringe Lands nor do they state any claim of right to use the Fringe Lands; they only assert a right over Littlejohn's property to access the Fringe Lands, which are now owned by Amick.

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Evidence Regarding Use of Fringe Lands

There have been numerous affidavits filed in this case as well as various depositions taken of current and former Lions Club Point property owners and Lions Club members. The overwhelming common theme of the testimony is that property on Lions Club Point was once only owned and used only by Lions Club members. Excerpts of witness testimony regarding the historical Fringe Lands usage by Lions Club members are included in **Exhibit C**, which is attached hereto and incorporated herein by reference.[1] Here are the highlights of the owner testimony concerning the use of the subject easement area:

- In the 1930s, the Lions Club owned property at the Point, and in the 1950s and 1960s, the Lions Club deeded parcels out to Lions Club Members. (Ex. C at p. 2, 3, 8.)
- The Lions Club owned Amick's property for decades, and the Lions Club members held their meetings at the clubhouse on Amick's property near the Fringe Lands. (Ex. C at p. 4, 6, 9, 11, 19.)
- The Lions Club's property committee maintained the Fringe Lands, including the beach. (Ex. C at 7.)
- Lions Club members' families used the Fringe Lands throughout the late 1960s, 1970s, and/or early 1980s during the summer months when several families would spend their summers at their lake houses on Lions Club Point. (Ex. C at p. 1, 15-16, 19, 20-21, 22-23.)
- Specifically, the Fringe Lands were used for swimming, boating, picnicking, and a parade on the 4th of July between 1978 and the mid-1980s. (Ex. C at p. 15-16, 23-25.)
- Since that time, many Lions Club members who were property owners on Lions Club Point have passed their properties down to the next generation, and the Fringe Lands are used less frequently. (Ex. C at p. 2, 8, 12, 14, 24.)
- One witness, A. Murray Gray, testified that the last 4th of July celebration on the Fringe Lands he has seen evidence of was in 1992. (Ex. C at p. 28.)

[1] The references to page numbers in Exhibits C and D for the depositions is to the number on the exhibit itself, and not to the page numbers of the deposition. This is for ease of reference through the various depositions. Further, only excerpts were filed with this Memorandum for ease of use by the Court, but Littlejohn is happy to provide full copies of any depositions cited herein.

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- A witness testified that the Rices can walk from their property to the Fringe Lands. (Ex. C at p. 26.)

- Multiple witnesses testified that Billy Dreher Island boat ramp is two and a half miles away. (Ex. C at p. 27.)

- Another witness, Claude Schumpert, submitted an affidavit in which he detailed the inconveniences involved with putting a boat in Lake Murray at Billy Dreher Island instead of the boat ramp on the Fringe Lands, and specifically, Schumpert stated:

    - "two people must be involved in the process: one to drive the vehicle towing the boat and trailer from our home to the public boat ramp and back, and another person to drive the boat." (Ex. C at p. 31.)

    - ". . . it is significantly more time involved and expensive to have the boat removed from the lake . . . ." (Ex. C at p. 32.)

- Many witnesses testified that Lions Club members were given a key to the gate on Lions Club Road when they became members of the Club. Excerpts of witness testimony regarding the gate and key are included in **Exhibit D**, which is attached hereto and incorporated herein by reference.

- Decades ago, a gate was installed on Lions Club Road approximately 600 feet in front of the clubhouse on Amick's property. (Ex. D at p. 15.)

- The gate had a sign on it that read Lions Club property. (Ex. D at p. 2.)

- Property owners on the Point and Lions Club members were given a key to access the gate. (Ex. D at p.1, 7, 8, 11, 13, 17.)

- The keys to the gate were labeled Lions Club. (Ex. D at 13.)

- Over the years, when new Lions Club members joined the Club, they were given a key to the gate. (Ex. D at p. 3, 9, 12.)

- Many witnesses testified that they still have their family's key. (Ex. D at p. 1, 5, 12, 17.)

- Witnesses testified that the gate was consistently locked between the years of 1966 to 1986. (Ex. D at p. at 3, 5, 6-7.) Others said it was locked and unlocked over recent years (Ex. D at p. 1, 2, 3, 4, 5, 13, 15, 17.)

- One witness testified that as recently as 2010 or 2011, he had to use his key to unlock the gate. (Ex. D at p. 16.)

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ARGUMENT

It is undisputed that Lions Club Road extends to Lions Club Circle and the Rice property without crossing over Littlejohn's property. Accordingly, the Plaintiffs have full and unfettered legal access to their property, and they are only seeking now to obtain legal access to the Fringe Lands—property they do not own and have no right to use. Ultimately, they cannot prove a viable claim for a legal right over Littlejohn's property, and their claims should be dismissed.

I. Plaintiffs have failed to prove an easement by prior use because they have not produced evidence that there could be no other reasonable means of enjoying their property, the dominant tenement.

The party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (3) prior use was not merely temporary or casual; (4) prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be **no other reasonable mode of enjoying the dominant tenement** (aka the Plaintiffs' property) without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title. *See Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136 (2006); *see also Pendarvis v. Cook*, 391 S.C. 528, 706 S.E.2d 520 (Ct. App. 2011). Whatever easements are created by implication must be determined as of the time of the severance of the ownership of the tracts involved. *Boyd*, 369 S.C. at 416, 633 S.E.2d at 139. "Necessary" in this context is less than required for an easement by necessity, but is something more than simply convenience. This hinges on whether there is evidence that without this easement, there could be no other reasonable mode of enjoying the dominant tenement. *Boyd, supra*.

Even if Plaintiffs can prove the first four elements of a permanent easement implied by prior use, which Littlejohn does not concede they can, the use of Littlejohn's property to access the Fringe Lands cannot be necessary to the reasonable enjoyment of the Rice property. First and

most importantly, the easement in question is not so that Plaintiffs can enjoy their dominant tenement. The requested easement is to enjoy the Fringe Lands—recreational property owned by Amick and to which Plaintiffs have not proven a right to use in the first place.

Second, there is overwhelming testimony that the use of the boat ramp and beach on the Fringe Lands is an added benefit to property ownership on Lions Club Point, but there are other reasonable modes of enjoying the dominant tenement. The Plaintiffs testified about frequently using the Fringe Lands for the beach, boat ramp, and an annual 4th of July gathering that has not taken place for years; however, their testimony regarding use was prior to Mrs. Rice becoming an owner of the Rice property. Instead, it appears that their main concern is having convenient access to a boat ramp, which would be used for recreation. This is in contrast to the plaintiff in *Boyd*, who needed to use the driveway in order to receive large deliveries, which was essential to her antique business.

Witnesses testified that there are other reasonable alternatives available to crossing Littlejohn's property. All of the Plaintiffs are able to walk to the Fringe Lands from their properties. Additionally, Plaintiffs are able to put their boat in the lake at Billy Dreher Island and store a boat at their dock when not in use. (*See* **Exhibit E**, showing the Plaintiffs' dock and access.) The Plaintiffs' situation is thus very different from that of the claimants in *Pendarvis* and *Boyd*, and it does not rise to the level of necessity to warrant an easement forced upon Littlejohn.

In *Pendarvis*, the road at issue was the only road in existence to get to one side of the property to the main road, whereas in this case, there is already another reasonable alternative in existence. In addition, although the plaintiff in *Boyd* had access to another driveway, the second driveway did not provide reasonable access to the basement, which was necessary for the plaintiff's business. In both *Pendarvis* and *Boyd*, a considerable amount of cost and burden would

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have gone into building new driveways and access points, whereas in this case, alternatives are already available by the Plaintiffs' own admission and the testimony of adjoining owners. Instead, the "necessity" alleged by each of the Plaintiffs amounts to no more than inconvenience from using alternatives to access the Fringe Lands, which is insufficient to provide for an easement implied by prior use. Based on the foregoing, Plaintiffs cannot possibly present facts to establish a permanent easement implied by prior use.

II. Plaintiffs Simply Do Not Allege Facts to Support the Claim of Easement by Estoppel

To establish a claim for easement by equitable estoppel, the party claiming estoppel must show the following elements as to the party sought to be estopped: (1) conduct that amounts to false representation or concealment of material facts, or at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts. "A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it." *Boyd,* 369 S.C. at 423; 633 S.E.2d at 142.

Plaintiffs' Fourth Amended Complaint does not allege facts to support the claim of easement by estoppel. It is silent as to these key elements. Further, Plaintiffs cannot enforce an easement by estoppel on Littlejohn because the lack of an easement is of public record. There is no easement in any deed of public record, which plaintiffs and their predecessors in title had knowledge of the means to obtain knowledge that there was no legal right. *See Boyd,* 369 S.C. at 423, 633 S.E.2d at 142. Further, Plaintiffs have failed to plead or prove with any particularity any promise by the Lions Club related to any easement contradictory to the public records.

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Accordingly, this claim should be denied as it fails as a matter of law.

III. Plaintiffs' Claim for Prescriptive Easement Fails because Plaintiffs Cannot Show 20 Years of Continued and Uninterrupted Use of the Fringe Lands

Plaintiffs' third theory is that they are entitled to a prescriptive easement over Littlejohn's property. "A prescriptive easement does not arise from a grant reservation or by implication." Richard M. Unger, Esq., *Treatise on the Law of Easements in South Carolina* p. 39 (2017). "Rather, it is established by the conduct of the dominant estate contrary to the fee simple interest of the owner of a servient estate." (*Id.*; *see also Boyd*, 369 S.C. at 419, 633 S.E.2d at 141).

"In order to establish a prescriptive easement, claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 233, 797 S.E.2d 387, 392 (2016); see also *Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015). When it appears that the Plaintiff has enjoyed such an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse. *Simmons*, 419 S.C. at 232-233, 797 S.E.2d at 391-392. Further, a prescriptive easement may be defeated if the use is with the permission of the servient estate owner. *State v. Murphy*, 124 S.C. 274, 117 S.E. 529 (1923). A party claiming a prescriptive easement has the burden of proving all of the elements by clear and convincing evidence. *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170.

Successive uses of land by different persons may be tacked or added together to satisfy the prescriptive period by adverse users for an easement when successive users are in privity of estate. However, a plaintiff cannot tack use to that of strangers or predecessor in title when the predecessor's usage terminated before claimant acquired the land, and a plaintiff cannot tack adverse use with prior adverse use when intervening parties used land with permission; nor is

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tacking permissible when it is unclear that use by claimant's predecessor was adverse. In order to tack, claimant must show that predecessors in title actually used the alleged easement. *Id*. Importantly, the use must be continual. *Id*.

Mrs. Rice testified that there was a gate and that her family had access to the gate by virtue of being a Lions Club member and Lions Club Point property owner. Mrs. Rice testified that, while there was not a guard at the gate, only Lions Club members were permitted to use the Fringe Lands. Further, Mrs. Rice testified there was never a point in time when the Fringe Lands was open to non-Lions Club members. Tacking is not permitted when prior title owners had permission to use the path, and the fact that only Lions Club members were allowed access beyond the gate is indicative of permission. *Bundy*, 412 S.C. at 308, 772 S.E.2d at 171.

There is no evidence of the prior title holder's use of the easement area over Littlejohn's property, and Mrs. Rice testified that she has only owned the property since her father passed away, which is not a full 20 years. Further, Mr. Rice testified at his deposition in December 2018 that Mrs. Rice has owned the Rice property for 10 years. Therefore, based on the Plaintiffs' own testimony, they have not had continued use of the alleged easement for 20 years, and any use they did have was permissive. As a result, their claim for prescriptive easement fails as a matter of law.

CONCLUSION

For the reasons set forth above, Littlejohn requests that the Court grant this motion and enter summary judgment in its favor as to the Plaintiffs' claims for declaratory judgment and injunction, and grant such other and further relief as is just and proper.

[signature page to follow]

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August 13, 2020

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EXHIBIT A
List of Exhibits

Exhibit A: List of Exhibits
Exhibit B: GIS Map showing parcels
Exhibit C: Witness testimony from the depositions of Julia McSwain, Clyde Crocker, Ladson Simpson, Melissa Schumpert, Neel McSwain, Doggett Whitaker, Joseph McCrackin III, Claude Schumpert, A. Murray Gray, and the Affidavit of Claude Schumpert regarding use of Fringe Lands
Exhibit D: Witness testimony from the deposition of Melissa Schumpert, Julia McSwain, Clyde Crocker, Ladson Simpson, A. Murray Gray, Neel McSwain, Doggett Whitaker, Joseph McCrackin III, Claude Schumpert, and the Affidavit of Young Schumpert regarding gate
Exhibit E: Aerial view showing Plaintiffs' dock and access
Exhibit F: Deposition of Lisa Rice
Exhibit G: Deposition of Joseph Rice
Exhibit H: Amick Deed

EXHIBIT B

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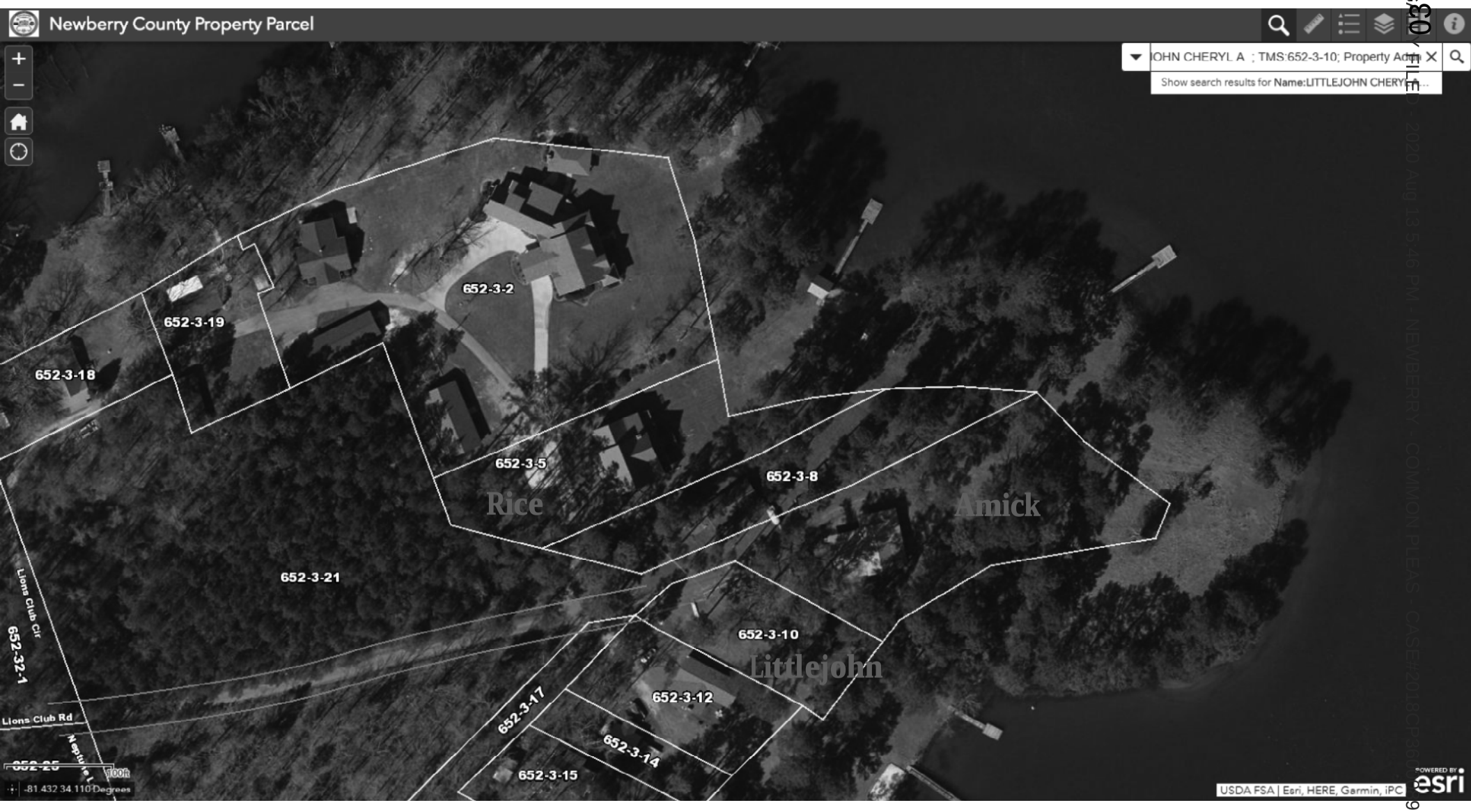

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Q. Tell us whether or not Lions Club Road, in your experience, goes all the way down across the fringe land.
A. As far as I know, it does. It always has since...
MR. SOWELL: Are you finished? It always has since what?
MR. POPE: She said always has been.
MR. SOWELL: Oh, is that what you said?
THE WITNESS: Uh-huh.
MR. SOWELL: Okay. That's fine.
MR. POPE: You'll have to borrow my hearing aids.
MR. SOWELL: All right.
THE WITNESS: As far as I know.
MR. SOWELL: Yeah. I understand.
BY MR. POPE:
Q. Now, how would you describe the Lions Club Point neighborhood growing up, growing up and all the way up until 2018? How would you describe that community of adjacent landowners?
A. We all -- everybody that I know down there, my experience was everybody shared everything. It was a truly communal type of environment and living area: Swap, share, enjoy.

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Q. So when you went down there, did you stay only with your family or did you interact with all the families?
A. All the families. I can remember nights that I spent at the Summers', at the Schumperts', wherever we ended up.
Q. Spend the night there?
A. Right.
Q. Now, what would the neighborhood down there use the fringe land for, in your -- in your observation for the last 60 years? What different uses?
A. You mean the point?
Q. Well, yeah. The fringe land, the point, whatever you want to call it.
A. Yeah. Okay. Yeah. We always called it the point, and it was the area -- what I would describe is that it's the area between the cabin and the lake on, like a 180 arc, and it was -- as far as I was aware, it was always community space. We -- you know, the kids would ride golf carts. It's where we had the July 4th parade. It's where you'd go down to put your boat in the water and take it back out. The very tip of the point, everybody took turns putting sand down

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there. For the summer it was the perfect place to learn to ski. We all learned to ski because -- off the point because the -- you know, the boats -- we could just sweep in with the boat and you could just drop off and land right at the point.
And it was basically just community space, and in the recent past there have been osprey. There's an osprey nest down there, and everybody always kept track of the ospreys and clams. We always collected the clams.
Q. Now, what uses did that beach area you talked about get in the warm months?
A. Oh, my goodness. It -- everybody would gather there. It was like a gathering place, and there was a -- at one time, and I'm not -- I don't know that it matters, but there was a gazebo -- well, a pergola, and -- for all the ladies, the mothers, to sit under while all the kids played, and that -- it would be going on down there. I mean, somebody would be there from almost sunup to sundown.
Q. And is there any way to drive a boat or a trailer to get to the fringe land or the point or the boat ramp other than using Lions Club Road?
A. No. You have to go down to Billy

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Dreher Island.
Q. So if you wanted to launch your boat other than at Lions Club Point boat ramp, you had to go to -- the nearest one was Billy Dreher Island?
A. As far as I'm aware.
Q. Now, from 1960 until 2018, had Lions Club Road ever been blocked so as to prohibit access to -- for the landowners down there to use the fringe land?
A. Never.
Q. All right. Was there ever a no trespass --
A. Nobody's property was ever blocked.
Q. Now, when the road was -- the Lions Club Road was paved sometime in the last decade or so; is that right?
A. It had to be at least '11, I mean, more -- it had to be prior to 2011 because that's when Mom and Daddy moved to Springfield Place. And I know it was done a few years prior to that. I'm not sure what year.
Q. Who paid for the paving of the road?
A. Everybody who lives down there.
Q. Including the McSwains?

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A. Yes. Our family, everybody who has a house down there. As far as I know, the Lions Club did not contribute.
Q. Okay. And did anyone at the Lions Club at that time ever complain about your paving the road or your right to do so?
A. No. The history was that all of us had houses because all of our family are members of the Lions Club, had been members of the Lions Club. And as far as I'm aware, nobody -- there were no complaints. They just said they didn't have the money to contribute.
Q. Now, does Lions Club Road extend beyond the point at which the pavement ends?
A. I never thought of it as -- I mean, they may not have -- I thought they ran out of money and couldn't go any further. But in my mind Lions Club Road goes all the way down to where the boat ramp is and then all the way down to the -- what I call the back of the sandy beach point area. And, you know, most of the time you could just make a loop and turn around and go back because there was gravel. I mean, as far as I'm aware, there was gravel. I just thought they ran out of money and had to use gravel.

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Q. To your knowledge, who put the gravel down and paid for it?
A. The same families that did the paving. But even before the paving everybody pitched in to do gravel.
Q. Okay. All right. So before it was paved, then, you're saying the maintenance on that road was by the -- by whom?
A. Property owners.
Q. What type of maintenance did you observe with your own eyes over that period from 1960 to 2018 about -- about the maintenance that was done on the road prior to paving?
A. Everybody would contribute to filling the potholes there. When I was younger and there were teenagers around, the fathers would recruit all the boys to fill the potholes. And then as they got older, even my dad was still doing it after he retired and lived there. He was going himself and filling potholes.
Q. Was there any maintenance performed on the ditches to keep them opened also?
A. Yes. And that was -- a lot of times the girls would do that. We would walk along and clean out the ditches and pick up trash all the way

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from -- is that Billy Dreher Island Road at the beginning where Lions Club Road --
Q. It's called State Park Road now.
A. Okay. Yeah, yeah.
Q. Some people call it Billy Dreher Island. Some call it State Park Road.
A. Yeah. We did it all the way, even in front of Mr. Amick's house and, you know, whatever. We'd pick up trash all the way down.
Q. All right. At any time from 1960 until 2018 did your family or any family to your knowledge ever request permission to use Lions Club Road to get on the fringe land?
A. No. No.
Q. You ever even --
A. I didn't know there was -- I mean, I'd never -- at least I've never heard of that.
Q. Okay. And if you could, name the property owners that -- you refer to them as the neighborhood or the property owner. Name the families either by the current owner or the predecessor owner that did all this work on maintaining the road, paving the road, paying for gravel on the point, fringe land. Who are those property owners?

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A. Over by us there was -- I think the Setzlers did it until, you know, they passed away and sold their property. And then it was another -- it was Debbie Coggins and her husband. And I forget. His name was --
Q. Durrett.
A. -- Durrett or something, yeah.
Q. Yeah.
A. I forget their last name. And then Wick Byars, who owns it now, and he paid a lot. You know, he's done work since then as well. And then of course our family, so that's McSwains. And then the Schumperts were next and then the Summers and then --
Q. Excuse me. The Summers' property is now owned by --
A. Lisa.
Q. -- Lisa Summer Rice and Gerald Rice?
A. Oh, okay.
Q. Is that right?
A. Yes, yes, yes.
Q. Yeah. Okay.
A. I don't give anybody credit for their married names. Sorry.
And then next were the McCrackins and

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Was your father Bill McSwain?
A. Yes.
Q. From Spartanburg?
A. From Newberry. We moved to Spartanburg in '65.
Q. All right. And then back to Newberry?
A. That's correct. They moved back and retired in '92.
Q. Was he a member of the Newberry Lions Club?
A. He was.
Q. Was your mother a member of the Newberry Lions Club?
A. I don't know.
Q. Are you a member of the Newberry Lions Club?
A. They closed it.
Q. No. But are you a member regardless of that?
A. You mean prior to --
Q. At any time.
A. No.
Q. Beginning of time to right now.
A. By -- by association.
Q. Right. I understand your father, but

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you were never a member?
A. A real member, that is correct.
Q. And your brother Neel was never a member?
A. As far as I'm aware.
Q. He was not?
A. Was not.
And Mr. Amick wouldn't be either if it wasn't for my daddy.
Q. Well, I'm sure Mr. Amick appreciates that. I'm serious, truly.
Let's see what we've got here. I may have asked you this, but do you know if Mr. Amick gave Neel, your brother, permission to launch his boat?
A. He did not. I asked my brother that. Mr. Amick told me he did, and I asked my brother and he said no, that he did not.
Q. Okay. Okay. I'm going to have this marked as Exhibit...
THE REPORTER: Nine.
MR. SOWELL: Nine, yeah.
(DFT. EXHIBIT 9, Title to Real Estate, was marked for identification.)
BY MR. SOWELL:

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Q. Now, I was talking about this a minute ago. I believe this is the deed from the Lions Club to your grandfather, step grandfather, Haskell N. Wallace. I see it's dated June 29, 1971, and about all I can get you to agree to, I guess, is that Haskell N. Wallace was your step grandfather?
A. This is really the first time that I have seen this. We have all the deeds to the property, and I believe that the first deed is 1961.
Q. I think that's right. I think that's right.
A. So what is this for?
Q. Well, I'm going to tell you.
A. Okay.
Q. In 1971, I believe, the Newberry Lions Club decided in its wisdom, since what had formerly been Lexington County had become Newberry County, that they would redeed and file all of these deeds that they had done before in Newberry County, and this is one of them.
MR. POPE: Object to the form.
BY MR. SOWELL:
Q. That's what I believe. But, you know, look, you raised a good point. If you don't mind,

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if you would give all of your deeds to Mr. Pope, I would like to see them, then we will know.
A. As long as he can wait until February the 18th --
MR. POPE: That's fine.
THE WITNESS: -- when I'm in Newberry, back in Newberry.
MR. POPE: Whenever you can get them in the next month is fine.
MR. SOWELL: Yeah.
THE WITNESS: We'll be staying there for the week.
MR. POPE: That's fine. Yeah.
THE WITNESS: And --
MR. SOWELL: We have not been able to find, and it's probably because it went through the trust and all -- not been able to find any deeds beyond this one to your step grandfather, Haskell N. Wallace. It's not that I think there's anything peculiar about it. I don't. I'm sure you've got some. I would just like to see them so I can, you know, put everything in place.
MR. POPE: Well, when she brings them, I'll copy them and send them to you.
MR. SOWELL: Thank you.

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MS. RICE

(INDEX AT REAR OF TRANSCRIPT)

(PLF. EXHIBITS 1 - 10 were pre-marked by Counsel.)

CLYDE EUGENE CROCKER,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. POPE:

Q. State your full name and address, please.

A. My full name is Clyde Eugene Crocker, Jr., but my name is really Gene. And I live at 723 Mendenhall Road in Newberry, South Carolina, 29108.

Q. And what -- what position do you hold with the Lion's Club -- Newberry Lion's Club?

A. Right now I'm a member of the board, but I don't hold an office.

Q. And you held offices up for a period of years, I guess?

A. Oh, yes. Several times. I think maybe three times I've served as president, and the last time was a two year period.

Q. So you rotated off as president when?

A. I've been off now for a year and a half.

Q. So you were the first -- the first time you were president was, like, 15 years ago or something?

A. Or longer. I've been a member 33 years.

Q. Since 1976?

A. '86.

Q. '86. Excuse me. All right. I'm going to show you Exhibit 1A. This is the subpoena that was sent out to the Lion's Club in care of your lawyer, Mr. Price; is that right?

A. Right.

Q. Is this the one -- you got possession of this?

A. Well, now, Sam Price is representing the Lion's Club.

Q. Right.

A. He's not my personal.

Q. I didn't mean that. I meant as your lawyer or as your club's lawyer, he sent you this subpoena?

A. Yes.

Q. If you just look at Attachment A, those are the documents that were requested?

A. Yes.

Q. And you went through that list, did you not?

A. Yes, I did.

Q. In each of those -- I think there were 14 categories of information. It's 13.

A. Right.

Q. You attempted to find documents responsive to each of those 13?

A. Yes, I did.

Q. This is Exhibit 1 to your deposition, and that's a letter that you sent to me pursuant to that subpoena?

A. Yes.

Q. Okay. Now, according to the letter, it says that you and Pete Simpson, who was the secretary of the club, have reviewed all the records of the Lion's Club?

A. Yes. All that we could locate.

Q. And it appears from your letter that you could only locate documents and letters starting in 1995?

A. That's correct.

MR. SOWELL: Tom, let me interrupt a minute. Did you send this to us?

MR. POPE: Uh-huh.

MR. SOWELL: The documents?

MR. POPE: Yeah. There were only six pages. We did. This is all. That was all we got.

MR. SOWELL: But you sent these to --

MR. POPE: Betty sent it to you

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electronically, I'm sure.
MR. SOWELL: Betsy Alexander?
MR. POPE: Yeah, Betsy Alexander.
MR. SOWELL: I say I don't remember getting this. Well, now, I'm not --
MR. POPE: I can get her to tell you the date, but I don't know.
MR. SOWELL: I'm just saying I don't remember getting it. Thank you.
BY MR. POPE:
Q. So what did you and Mr. Simpson do to locate the documents?
A. Well, we -- he had a good many of them because some of them, Lion Jay Verner was a member of the Lion's Club for many years. In his office he had some of the older ones and he had already transferred those. I went to check with him and he had already sent them to -- to Pete Simpson. And so Pete turned them over to me, along with all the written copies that he had, and then he had some of the newer ones on his computer. And so he reviewed all those, but I reviewed all the written information.
Q. So he took care of the electronic --
A. He did.
Q. -- information?

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And you looked through all the -- you're talking about all the written documents, like one box, five boxes?
A. Two boxes. One box and then a stack of additional documents.
Q. Okay. And the earliest record in there was from 1995?
A. Yes.
Q. Okay. Do you have any idea what happened -- and I know, you know, you probably aren't responsible, but what happened to records before 1995?
A. I don't. Charles Commengor was our secretary at one time, and I did check also with Dickson Brooks. Mr. Commengor is deceased.
Q. Right. I knew that.
A. I checked with Dickson Brooks, he was secretary prior to Garrett Wyatt, and he had no material. He had already turned it in.
Q. Mr. Brooks lives out Bush River Road?
A. Bush River Road, yeah.
Q. So basically you -- you don't know any other source or any other person who might be holding any old records then?
A. I don't. I don't.

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Q. All right. So you made a diligent effort, obviously?
A. Yes.
Q. And based on that, you produced Exhibit 1, which is the letter you sent to me and the records are attached and they're only, like, six pages, seven pages?
A. However many. Seven pages.
Q. Okay.
A. And there's not a date on this first one. So I really don't know.
Q. All right. The first page is captioned, "Rules Governing the Use of the Newberry Lion's Club Lake Property and Clubhouse;" is that correct?
A. Yes.
Q. Okay. Now, is there any reference in this document -- in this page about use of Lion's Club Road?
A. Let me look it over again. I don't see one regarding the road.
Q. I'm sorry?
A. I don't see one regarding the road.
Q. Okay. Now, was there any paper -- and you produced these seven pages, but I don't see in these seven pages -- I'm asking you to clarify if you

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disagree. I don't see any reference to permission being required for anyone who is an adjacent property owner to utilize Lion's Club Road to get to fringe land?
A. There is none. I recall that there's not.
Q. Sir?
A. There is none.
Q. And I understand you made the diligent search and you located none. Are you aware of any verbal requirement that permission of the Lion's Club was required for someone to use Lion's Club Road to go down to the fringe land?
A. No. The documents mainly refer to members of the club.
Q. Is it your understanding -- let's look at Exhibit 2. That's a map --
A. Yes.
Q. -- that's been used previously, I believe. I think it was attached to Murray Gray's affidavit. Did you read any affidavits that were prepared in this case?
A. In this case?
Q. Well, in this litigation or in the Rice litigation?
A. Yes.

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Q. Have you seen the affidavits?
A. Yes, I have.
Q. Okay. Do you recognize this Exhibit 2 as being an accurate depiction of the adjoining property owners at Lion's Club Point?
A. I do. Historically I haven't been that familiar with who owns what property. But as I understand it, this is correct. It makes reference in the old abandoned gate.
Q. Right.
A. When I joined the club, that gate was always locked.
Q. In 1986?
A. And the members of the club -- and for many years after. The members of the club each had a key to the gate.
Q. So it was locked in -- it was locked at the place where it's indicated on Exhibit 2?
A. That's correct. That's correct.
Q. Just as you enter the Lion's Club property, so to speak?
A. Correct. And as far as I know, if Lion'sLion Club Circle existed at that time, it was not locked.
Q. But every land owner had a key to that

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gate?
A. I would assume.
Q. How long did the gate stay locked?
A. For a number of years. I will say it's been quite a large number of years that it has not been locked.
Q. Well, would it be fair to say --
A. I still have my key. The lock is probably long gone.
Q. It would at least be 30 years it hadn't been locked, right?
MR. SOWELL: Object to the form of the question.
THE WITNESS: I really don't know.
BY MR. POPE:
Q. Well, I just -- if you do 30, that's 1979.
A. I don't know.
Q. Does it sound like --
A. I'm 78 years old.
Q. Well, the gate has not been locked in many years?
A. That's correct.
Q. Okay. But when it was locked, all the -- all the adjacent property owners shown on Exhibit 2 or otherwise would have had a key to it?

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A. I assume.
Q. You assume that. Okay. Are you aware of any discussion ever coming up at a board meeting since you've been a member where there was any discussion about permission being required for an adjacent land owner to use Lion's Club Road to get to the fringe land?
A. No.
Q. Have you spoken to Doggett Whitaker about that issue at all?
A. I don't know that I -- I've talked to Doggett a lot of things through the years.
Q. Sure, sure.
A. He's the oldest member of the club we have. But I can't say that I have or have not, to be honest.
Q. Well, did you -- when was the last time the Lion's Club met at the board -- the board of the Lion's Club met at the Lion's Club cabin?
A. I don't recall ever having a board meeting at the Lion's Club cabin.
Q. Well, before you were a member, do you have any idea when the last meeting at the clubhouse was?
A. No, I don't.

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Q. You did go down to the Lion's Club property from time to time?
A. Oh, we had meetings there as a club.
Q. That's what I --
A. You said board.
Q. Oh, okay. So you would have club meetings at the -- at the clubhouse, but not --
A. Yes.
Q. -- board meetings?
A. Not the board meetings.
Q. When was the last time the club met at the clubhouse?
A. I don't reckon you can help me with that?
MR. SOWELL: Can Ray help him or not?
MR. POPE: I'm sorry?
MR. SOWELL: That's up to Tom. He asked if Ray could help him with that.
THE WITNESS: It was about two and a half years.
MR. SOWELL: I'm deferring to you as the deposition taker.
BY MR. POPE:
Q. You're not supposed to ask someone. So if you're making an estimate, that's understandable.
A. About two and a half years.

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Q. Approximately two and a half years. All right. Throughout the time that you've had club meetings and you've been a member, have you ever known a time when Lion's Club Road was blocked so people could not get onto the fringe land at the end of the road?
A. You mean -- no. I know what you're saying and, no, I don't recall.
MR. SOWELL: When you say "people," do you mean any people?
MR. POPE: I'm saying any adjacent land owner.
MR. SOWELL: That's what I'm asking.
MR. POPE: That's the question.
MR. SOWELL: Adjacent land owners. Not just people in general.
BY MR. POPE:
Q. You've never known of any person who is an adjacent property owner being blocked from going down to the fringe land by use of Lion's Club Road; is that right?
A. I'm not. Not while the property was owned by the Lion's Club.
Q. Right. Now, on Exhibit 2 that you are looking at, it's marked that there is a boat ramp and

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there's a beach on the fringe land; is that right?
A. Yes.
Q. Can you confirm or deny that there is in fact a community boat ramp in the approximate location of the arrow on Exhibit 2?
A. There's a boat ramp. I've never heard it referred as a community boat ramp.
Q. Okay. Well, the boat ramp is used by -- was used by Lion's Club members, was it not --
A. Yes.
Q. -- to launch boats?
A. Yes.
Q. It was used by the adjacent property owners identified on Exhibit 2 to launch boats?
A. I assume.
Q. Well, have you seen --
A. I have not seen that, no.
Q. And where it indicated on the tip of Lion's Club point, there's a beach which was used by the members and by the adjacent property owners to swim, fish, et cetera?
A. When I joined, there was a beach there that had sand that had been brought in. There was a little shelter there, and it was just some -- in fact, I think I took my sons down there. My youngest

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son was seven when I moved here. But anyway I knew that that was available for use by the members.
Q. And, of course, it wasn't -- it wasn't natural sand that had to be brought in, but it was a nice, flat beach, wasn't it?
A. It was at the time. All that's pretty much eroded by now.
Q. Oh, yeah. But the beach sand was replenished from time to time annually or otherwise, correct?
A. No, not since I've been a member of the club. No sand was added during the years I was a member of the club.
Q. Do you know whether the adjacent property owners put sand down there?
A. I am not aware if they did.
Q. Do you know who maintained the boat ramp as far as the gravel? There's a gravel bottom there, is it not?
A. I'm not aware.
Q. You don't remember?
A. I don't remember. We had a lake property committee in the Lion's Club, and the members of that committee really took care of what needed to be done on Lion's Club property. The membership as a whole

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was not always aware of what that committee did.
Q. Are you aware that the adjacent property owners maintained the Lion's Club Road from time to time?
A. I'm not. Well, I saw reference when the road was -- whenever it was paved, various people contributed toward that.
Q. Okay. Well, before the road was paved -- it was paved in 2010, approximately, correct?
A. Yeah.
Q. Does that sound right?
A. Yeah. Well, it was paved before that. That's when it was repaved.
Q. Was it tar and gravel before it was actually paved in 2010?
A. I'm not sure.
Q. The road required some maintenance from time to time, did it not?
A. I would think so.
Q. And are you aware of the fact that various of the adjoining property owners and their families fixed pot holes and raked gravel and such things as that to help with the road?
MR. SOWELL: I object to the form of the question.

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THE WITNESS: I am not aware of any specific action by any of the property owners as far as repairs.
BY MR. POPE:
Q. Are you in position to admit or deny that the adjacent property owners did do maintenance on the Lion's Club Road in its entire length from time to time?
A. I am not because I don't -- I'm not really aware of any of that. I'm not aware that it didn't take place. I'm not aware that it did.
Q. I got you. On Exhibit 2, the arrow points to the fringe land and that's, of course, the tip of the peninsula?
A. I don't have -- oh, this one? Yeah, yeah.
Q. That's a flat area of maybe, what, two or three acres? Two acres at least?
A. I would have to estimate.
Q. Just give us --
A. Possibly, yeah.
Q. It's a nice area that's conducive to -- is it conducive to recreational use such as picnics, parties?
A. Yes. It was at one time and it could be again. Yeah.

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Q. Now, Mr. Amick's house is right at State Park -- right near State Park -- on a tract that's right by State Park Road; is that correct?
A. That's correct.
Q. And it's designated on Exhibit 3 as 652-20?
A. Yeah, more or less.
Q. Okay. The house inside that block would be his house?
A. That's correct.
Q. And that would be approximately what distance to the fringe land down the road, Lion's Club Road?
A. I really -- it would be a wild guess for me to say how they measured it. It just takes a few minutes to drive it.
Q. Would a half mile be more or less accurate?
A. I would think close to that, yeah.
Q. Okay. To your knowledge, has he ever lived anywhere -- including up to the present moment, anywhere other than 652-20?
A. To my knowledge, no.
Q. Have you ever been to the fringe land when the adjoining property owners had 4th of July --

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A. No.
Q. -- parties?
A. I haven't.
Q. You mentioned you took your son or children maybe to the fringe land?
A. I had a -- at one time we had a boat right after we moved to Newberry, and I think I took my youngest son who was -- he was seven when we moved. I think he and I might have gone down there once.
Q. Okay. So it's fair to say you did not use the fringe land or the beach or fish or boat on the weekends --
A. I did not.
Q. -- during the time you were --
A. No.
Q. -- a member of the club; is that right?
A. Right. I always understood I could do that.
Q. Oh, sure, sure. You just chose -- you had other things to do?
A. Right.
Q. And the deeds the went out to the Schumperts and various adjoining property owners, those went out before you were a member?
A. Most of them, yeah. There might have been

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one or two that were later.
Q. Okay. So is it fair to say that the Lion's Club property started with about ten acres in the late 1930s?
A. That's true.
Q. And that over the course of years, starting in the '50s and '60s, out parcels were deeded to Lion's Club members?
A. That's true.
Q. Okay. So all the original out conveyances to the adjoining property owners were to Lion's Club members?
A. That's true.
Q. And currently most of those are families or decedents of those members; is that right?
A. Well, I think the Robinson property, I don't think he was a member of the a club when that was sent out.
Q. All right. Other than the Robinson tract on Exhibit 2?
A. I don't know for fact on any of the others.
Q. But you know the families of all the adjacent property owners on Exhibit 2 or at least some members of those families?

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MS. RICE

(INDEX AT REAR OF TRANSCRIPT)

LADSON HEATH SIMPSON,
being first duly sworn, testified as follows:
EXAMINATION
BY MR. POPE:

Q. Give us your full name and address, please.

A. Ladson Heath "Pete" Simpson, 1724 Main Street, Newberry, South Carolina, 29108.

Q. I don't think this will take too long, Mr. Simpson. It sort of depends on the length of your answers and whatnot. I'm going to show you Exhibit 1A. It's the subpoena we sent to the Lion's Club with Attachment A. Do you have a copy of that or did it only go to Mr. Crocker? Is this the first time --

A. Okay. I have seen -- I mean, I did have a copy of this too. Right.

Q. Did you -- as I understand, Mr. Crocker was sort of spearheading getting the documents together?

A. That's correct.

Q. But he consulted with and worked with you to do that?

A. That's correct.

Q. That's correct. You and he made, of

course, a diligent search to find out if there were any records about permission being required for adjoining land owners to use Lion's Club Road to go down to the fringe land; is that right?

A. Correct.

Q. And after your diligent search, Exhibit 1 -- Plaintiff's Exhibit 1 shows that you found seven pages of sort of random records?

A. Correct.

Q. None of those documents -- excuse me. Tell us to what extent any of those documents referred to permission being required to land owners -- adjacent land owners to use Lion's Club Road to get to the fringe land.

A. One specific -- I mean, I don't know that there was any specific.

Q. Okay. You've been affiliated with Newberry Lion's Club since when?

A. Probably about ten years, I would think. Ten or 11 years.

Q. You've been a member since then?

A. Right.

Q. So that's like 2007, 2008, something like that?

A. Correct.

Q. And during that time have you ever seen a document that referred to the fact that permission was required from the Lion's Club for people to use Lion's Club Road to go down to the fringe land?

A. I've never seen any kind of document.

Q. The third question is: Have you ever heard any member or any person at a Lion's Club meeting or elsewhere say that permission of the Lion's Club was required for an adjacent property owner to use Lion's Club Road to get down to the fringe land?

A. Not that I can recall.

Q. You understand that -- were you a member of the club when the Schumperts built their permanent home down at the lake?

A. Yes, sir.

Q. It's a very nice home, isn't it?

A. Right.

Q. Is there any way for them to get their boat trailer down to the fringe land without using Lion's Club Road through the fringe land?

A. I really don't know. I've never -- I mean, I don't really -- I haven't been over on their side, so I don't know.

Q. Are you aware of any road -- I'll show you

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Plaintiff's Exhibit 2. Are you aware of any road which they could use to trailer a boat down to the fringe land except Lion's Club Road going by the clubhouse?

MR. SOWELL: I object to the form of the question.

THE WITNESS: I mean, like I say, I don't know whether there's another route or not.

BY MR. POPE:

Q. As far as you know, there's not one or is one?

A. I mean, I don't know.

Q. How many times have you been down to the Lion's Club property?

A. Well, a good many. But, I mean, like I said, there's a road that goes down past the Lion's Club, but I don't know what's over at his house.

Q. Well, do you see it on the plat, Exhibit 2?

A. See what?

Q. See any road that goes down to the fringe land?

A. Like I say, I mean, you're referring to over here.

Q. I'm referring to Lion's Club Road that

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goes onto the fringe land past the clubhouse.

A. Right.

MR. SOWELL: No, no, no, no. I object to the form of the question.

BY MR. POPE:

Q. He can object, but you have the right to answer.

A. I mean, there's a road there. But, like I say, I mean, it takes you to the fringe land.

Q. And it's been there the whole time you've been a member?

A. There's been access --

MR. SOWELL: I object to the form of the question.

THE WITNESS: There's been access beside the clubhouse down to the fringe land.

BY MR. POPE:

Q. And as far as you know, can you tell us whether you have ever seen that road blocked until Mr. Amick blocked it in 2018?

A. Well, there was a gate up above our clubhouse. I mean, that may still be there.

Q. That's 200 yards up the road, right?

A. Right.

Q. It's been open as long as you have been a

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member?

A. The gate?

Q. The gate.

A. Right. As far as I remember. Right.

Q. So it's not been used as a gate the whole time you've been a member, correct?

A. I don't think so.

Q. So have you -- have you ever known that the road -- Lion's Club Road was blocked so that people could not get access to the fringe land by vehicle or pedestrian?

A. The gate was up there. That's all that I know about.

Q. I'm talking about down here toward the fringe land.

A. Right. That's what I say, the only -- only -- only obstruction that I know was the gate that was up here.

Q. And it's never been obstructed the whole time you've been a member?

A. Not that I -- I mean, it could have, maybe, at some point, but not that I recall.

Q. But you don't remember it?

A. Not that I recall.

Q. Based on your recollection, it's never

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been -- it's never been closed, that gate, based on your recollection?

A. On my time in the club, I don't recall it. No.

Q. We're not talking about the gate. We're talking about the road as it gets right close to the fringe land. Has it ever been blocked --

MR. SOWELL: I object to the form.

BY MR. POPE:

Q. -- before Mr. Amick blocked it in 2018?

A. I mean, I don't know of any gate or any obstruction that was there.

Q. Do you remember it ever coming up after he got the property why is he blocking the road?

A. At that point it's his property. So we didn't have anything to do with it.

Q. Did anybody say anything about it, like, why did he do it? This is not right? This is okay? This is bad? This is good? Anything?

A. I mean, as a Lion's Club member, I haven't heard anything because, like I say, it wasn't our property anymore.

Q. Has there been any conversations that you have been present where a Lion's Club member made a comment along the lines of Mr. Amick did a good

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thing, a bad thing, or --
A. No.
Q. -- questioned it?
You haven't. You went to the closing, right?
A. Correct.
Q. Was there any word mentioned at that closing that Mr. Amick had the right to request -- demand access from the adjacent property owners before they could use Lion's Club Road?
A. No.
Q. Never came up?
A. No, never came up.
Q. Here is Exhibit 6. Have you ever seen that before or any of those documents?
A. No. I mean, I don't think I've seen this anywhere.
Q. Does it not appear that this is a document showing that in 2010, approximately $40,000, plus or minus, was paid by the adjoining property owners and a couple of others to fix and pave Lion's Club Road?
A. I don't see a date on there. But, I mean, it looks like --
Q. Look at the date of the checks attached to it.

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A. Right, right, right.
Q. May 2010, June 2010, May 2010, et cetera, right?
A. Right.
Q. Does that refresh your recollection that the road was paved at the expense of the people that Mr. Amick is blocking?
A. Well, it was paved. The best I recollect, it was paved down to where clubhouse is, but I don't know of it going any further than the clubhouse.
Q. Well, who paid for it based on those documents?
A. Well, those listed there paid for it. It was paved down to the clubhouse.
Q. Would you think that Missy and Claude Schumpert and the Rices and Murray Gray would have expected that after they paid this amount of money, they would be blocked out of using the Lion's Club Road?
A. I'm not real certain where they're blocked out from. So I don't know how to answer that.
Q. Have you been down there to see where Mr. Amick blocked the road?
A. I have not.
Q. So other than seeing a photograph or

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hearing about it, you haven't seen it?
A. I haven't seen it.
Q. When was the last time you went down to the property -- the subject -- the Lion's Club property or former Lion's Club property?
A. Gosh, whenever we had our last meeting down there which has been several years -- three or four years, I guess.
Q. Have you had occasion to see people use Lion's Club Road to trailer boats down to the boat ramp and launch them?
A. No, I have not.
Q. You ever go down there on the weekend?
A. No.
Q. Never?
A. No.
Q. So in your years of membership, you've never been down to the Lion's Club property fringe lands, rather --
A. Correct.
Q. -- in the summertime?
A. The only purpose I was down there was for meetings at the clubhouse by the time I joined.
Q. Are you aware of any person, including adjacent land owners, who has ever requested

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permission from the Lion's Club to use Lion's Club Road to go to the fringe land?
A. I don't know of any -- none that have asked me.
Q. And have you heard that they have ever asked anybody else, the president or another member or anybody at the Lion's Club, has requested permission to use that road?
A. I don't know of any. I mean, not that I've heard.
Q. That's during your time as a member?
A. That's correct.
Q. Are you aware -- through talking to club members or otherwise, are you aware of anybody ever requesting permission from the club to use that road before you were a member?
A. I mean, I haven't -- I mean, I don't know exactly how to answer that. I haven't heard of anybody, like I say, asking or whether they did. I mean, I don't really know.
Q. Have you been down to -- I gather you haven't been there much, but I'm just going to ask to be clear. Have you seen vehicular traffic down Lion's Club Road onto the fringe land over the years you've been there?

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A. I do have them.
Q. Yeah, do you have a file related to the title to the property?
A. I can't say what -- there are so many files and folders that his mother left, I can't say what's in them and what's not in them. I have not personally gone through them.
Q. Okay. Well, same request to you --
A. Uh-huh.
Q. -- per Mr. Pope. If you'd look.
A. Uh-huh.
Q. I'd like to be able to look at the deeds that started with the Lion's Club conveyance to his father --
A. Uh-huh.
Q. -- and then on down to the two of you.
A. Uh-huh.
Q. Yes?
A. Certainly.
Q. Yes?
A. Yes.
Q. Thank you. Dr. Schumpert and I had a discussion about the gate. Was the Lion's Club gate being used when you moved there in 2011?
A. By the time we moved there in 2011, the

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gate was still in place, but it -- I believe by that time it was being left open permanently.
Q. Do you know from your use before that that it had been locked from time to time?
A. I am aware that it had been locked.
Q. And it required a key to open it?
A. I am aware that it did require a key.
Q. And your family had a key?
A. We did.
Q. Still have it?
A. Perhaps.
Q. Okay. Now, there's a reference in your Affidavit to a plat. Would you look at that?
A. Sure. Look at the plat?
Q. Plat.
A. Okay. (Witness complies.)
Q. You see where the road is highlighted?
A. I presume this (indicating)?
Q. That gray looking stuff.
A. That grayed area.
Q. I think that was performed by Mr. Pope.
MR. POPE: Here's a yellow one.
THE WITNESS: Yes.
BY MR. SOWELL:
Q. At one time?

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A. I do.
Q. Do you see where it crosses through tax map number -- what is that, 6.57-3-10, it looks like, I believe, yes.
A. I believe I see what you're referring to.
Q. And that is Cheryl LittleJohn's property?
A. Okay.
Q. Is it?
A. I assume so. You say so.
Q. Well, I mean, I'm just looking at the plat.
A. It will logically, based on where the -- where this plat shows the clubhouse.
Q. Uh-huh.
A. Her property would be adjacent to that. So that would lead me to conclude that this is her property, but I don't know her tax map number by heart.
Q. Okay. I gotcha. But she does live right above the cabin?
A. She does.
Q. Okay. When's the last time that you recall -- well, let me ask you this. This might be a good way to benchmark this question. When you moved there in 2011, was there a beach or a gazebo on the

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point?
A. Yes.
Q. All right. Both?
A. Yes.
Q. And when were they dissipated, fell down, whatever?
A. Well, I don't recall the specific date of when the storm damaged the gazebo resulting in its removal. And the beach area continues to exist, although in recent years it has not been restored as it had in prior years, historically. Largely, in part, to the very matter that is before us.
Q. Well, that would have been 2018. We're talking about two years. I'm talking about before that. When is the last time that that beach was really a beach and not just a --
A. Well, I know --
Q. -- piece of sand?
A. I know that our daughters and their friends were still going down there as recently as 2016. And then they, of course, were both away either working and living elsewhere or at college. And so they frequented it less, but they still did go there. And, you know, others would go there from time to time, although I didn't make it my business

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to sit on my porch and --
Q. Watch them?
A. -- track it.
Q. Gotcha. Do you have any e-mail communications with Joe Rice, Lisa Rice or anybody else related to the easement --
A. No.
Q. -- question?
A. I don't think I've ever e-mailed Joe Rice. And if I -- if I e-mailed Lisa, it would have been so long ago, I can't even recall.
Q. You have a boat dock?
A. We do.
Q. And the Rices have a boat dock?
A. They do.
Q. And the McCrackins have a boat dock?
A. They do.
Q. And Murray Gray has a boat dock?
A. He does.
Q. Does virtually everybody on that point have a boat dock?
MR. POPE: Object to form.
THE WITNESS: You know, I can't speak to Ms. Littlejohn's property, what all she may or may not have done, because I don't have occasion to go

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over there. And I don't know the status of Mr. Byers.
BY MR. SOWELL:
Q. Where's his lot?
A. His is on the other side of the McSwains, in the very back of the cove.
Q. Okay. Is there a house there?
A. Yes.
Q. Do you agree with your husband, since you're a plaintiff, that if the easement is granted, as you seek the easement, that it would be for the benefit of you, your husband, Murray Gray, Joe and Lisa Rice, since they claim one, too, or what?
A. I believe it would be for the benefit for the landowners beyond the gate with water frontage who have historically had use of the boat ramp and the point beach area. I -- our -- my intent would be to maintain the status quo with respect to the usage and those who have historically used it.
Q. That would be not to open it up to the general public?
A. Correct.
MR. SOWELL: Thank you.
THE WITNESS: You're welcome.
MR. POPE: I do have a couple things.

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THE WITNESS: Sure.
EXAMINATION
BY MR. POPE:
Q. You said if the easement is granted permanently, the beach would identify -- you identified all the land owners with frontage beyond the gate?
A. Correct.
Q. And that would include -- would that not also include guests and family members of those people?
A. Yes. And historically that has been the case. Those landowners and their family and invited guests.
Q. Now, would you tell us the route of Lion's Club Road, whether the paved portion, tar and gravel portion or gravel portion, where it starts and where it ends?
A. Well, it starts at the intersection of State Park Road and you -- it goes through what Mr. Sowell was referring to as the repaved portion, onto a tar and gravel portion, onto a gravel portion, all the way across the fringe lands onto the area where the boat ramp is located, and the beach or the point, as we refer to it is located.

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Q. And is there anything wrong -- and you mentioned -- it's been mentioned earlier that when it was repaved in 2010, it went down Lion's Club Road and then it turned onto Lion's Club Circle, right, the paving continued?
A. Correct.
Q. The straight portion of Lion's Club Road that you just identified as tar and gravel. Is there anything wrong with that surface now?
A. No. Not for it -- not for the purpose that it's used to access the fringe land.
Q. Is there anything wrong with the surface of the gravel portion, gravel and dirt portion of the road that goes down to the boat ramp and to the point?
A. No. Works just fine.
Q. Have you seen anybody have any difficulties launching a boat or getting to the beach because of the road being inadequate?
A. I have not.
Q. Now, the document in front of you which is your Affidavit, Exhibit 11 --
A. Yes.
Q. -- he asked you to read it again. And is it true in all respects, as you sit here today?

owners there. Do you know Ms. Littlejohn?
A I do not.
Q All right. Except with her -- with the exception of her, do you know all the other property owners?
A I do.
Q And are all those the same people that enjoyed the property with you over the last 60 years?
A Yeah. It's the children of most -- of a lot of them, but yes. The McCrackins' house used to belong to the Wares. The Rices' house, they used to have two houses sitting on it. The Schumperts, that's actually three lots.
Q Uh-huh.
A And then there were the Hutchinsons, were there -- there also. And the Byars had switched. They're the third person that I know that's been in there.
Q And --
A But, yes, it's accurate.
Q Let's talk about the boat ramp part. Did you personally use that boat ramp on a regular basis for the last five decades?
A Yes.

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A Including mine.
Q Yeah. Now, when you talk about the Point, it's marked on Exhibit 1 there. Correct?
A Yes. That's what you would call the beach. We called it the Point.
Q Did -- was there sand on that beach?
A There was.
Q Who put it there? What group of people? Was it the Lions Club?
A Well, the people down there put it down there, I would imagine. I don't know. I don't think the Lions Club paid to put that beach down there. I think that the -- and I don't know this -- but my -- I would say probably Ferd Summer and Bobby Schumpert were the instigators for that.
Q And when the -- when the beach would be used, how many people sometimes would be there in the summer months?
A On the 4th of July, you're looking in the twenties -- or the thirties to fifties of people. 'Cause everybody had their friends down there too. But, other than that, you know, a couple of families or a family, you know. It was -- the '70s were the heydays.
Q Uh-huh.

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A And there was quite a few people that used it regularly.
Q And was -- at the beach area or the Point, what structures, if you call them structures, what were there? What was there besides the grass and the beach and the water?
A Right. The beach actually had -- there was an outline in like telephone poles --
Q Uh-huh.
A -- to frame it, the sand. There was a gazebo that was made out of -- it had wood with an L -- metal-L framing and a tin roof. There was a -- there was a line, that went around a swimming area used, with Clorox bottles. I remember the Clorox bottles floating out there. And they used cement blocks to hold those into place. And then inside that, there was a floating dock with a ladder that you could, you know, jump off of, swim off of, rest on, if you wanted, play King of the Dock, is what we did. There was a trash barrel down there for trash, a picnic table. That's about it, that I remember.
Q And that was all put there by the folks that lived down there on the Point?
A As a child, I can only assume that's what

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-- where it came from.

Q Now, up until 2018, had Lion Club Road ever been blocked by anyone to prevent passage onto the fringe land?

A Not to prevent, no.

Q Now, are you aware of a single instance where anyone said that you had to get -- "you" being any landowner down at the Lions Club Point -- had to get permission before you could take a vehicle or walk on Lions Club Road to get to the fringe land?

A Never.

(Plaintiffs' Exhibit Number 2, which was marked for identification in a previous deposition, was shown to the witness.)

BY MR. POPE:

Q Now, is this a plan I showed you a while ago? I marked this Exhibit 2 to the Spicer deposition.

A Yes.

Q All right. And you see the Lions Club cabin is just above where it has the exhibit sticker right there.

A Uh-huh.

Q I'm sorry. You have to say yes or no.

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A Yes.
Q Okay.
A I'm sorry.
Q Now, what is in yellow all the way through the picture?
A That would be Lions Club Road.
Q Now, where, based on your observation, does Lions Club Road end?
A Well, it ends in the water.
Q The water of Lake Murray?
A Uh-huh.
Q Okay. How important is the use -- the use of the fringe land with free access to the fringe land important to you as a property owner at Lions Club Point?
A Well, I think if I ever wanted to sell my property, that would be a selling point, to have a boat ramp, a beach area, common -- I call it common use area.
Q Uh-huh.
A Yeah. I think that would be a -- that's very important. I think we'd lose a lot. We don't have a very big lot there, and I think that enhances our lot. You know, we don't have the Claude Schumpert, three-, you know, million-dollar

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ROY DOGGETT WHITAKER, JR.,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. POPE:

Q. Give us your full name and address.

A. Roy Doggett Whitaker, Jr., 1941 Harrington Street, Newberry, South Carolina. You want the ZIP code?

Q. No. You've been member of the Lion's Club for since when?

A. I don't have a clue.

Q. '70s, '80s?

A. Early '70s. It was before '74.

Q. Did you know we sent a subpoena to the Lion's Club for records?

A. (Witness shakes head.)

Q. We sent a subpoena to the Lion's Club that was sent via Sam Price, their lawyer. This is a copy of it. It's already been marked. This is the documents that we requested that the Lion's Club produced listed on the Attachment A, 13 of them.

A. Is this a different number? Are these different than the first ones?

Q. Yeah. These are -- these are focused on the issue of what documents the Lion's Club has about

Q. Are you aware that Lion's Club Road goes down to the fringe land?

A. I didn't know where it went until I saw that first map. So, I mean, this is the first time I've seen the map of the property. Not the first time when we were -- when we were discussing the issues with it, that's what I -- that's what I saw the first time.

Q. Are you aware that people use Lion's Club Road to take boats onto the fringe land to launch them at the boat ramp?

MR. SOWELL: I object to the form of the question.

BY MR. POPE:

Q. Are you or are you not familiar that people use Lion's Club Road to take boats and trailers down to the ramp to be launched?

A. The members -- the members did when I was involved with it. Here again, the only time I was only there after my kids go out of high school was -- I didn't go down there anymore. So whether they did or whether they didn't --

Q. So that's more than 25 years ago?

A. (Witness nods head.)

Q. Given the fact that your youngest child is

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about 39 or something?
A. Forty-two.
Q. Forty-two. All right.
A. Or 40.
Q. All right. Then that's 25 years plus that you haven't been down there to see, correct?
A. That's right.
Q. Would you agree that adjacent property owners -- is there any way to get -- excuse me. Change the question.

Are you aware of any way for an adjacent property owner or anyone else to get to the fringe land by vehicle other than Lion's Club Road?
A. Not to my knowledge. I'm not familiar with the land on around to the side over there. So...
Q. Okay. Are you familiar with the fact that the adjacent land owners and Mr. Amick pulled their money to pave or repave Lion's Club Road in about 2010?
A. Repeat that question again.
Q. I'll show you Exhibit 6. Exhibit 6 is a spreadsheet with copies of checks attached showing that in 2010, Lion's Club Road was repaved or paved and it shows who paved what. It shows that the Rices

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A. And I can remember when we bought that place, my father had it surveyed and we thought the survey went right down the line here. (Indicating.)
Q. Uh-huh.
A. Because we -- I remember he put bricks. We found some of the bricks, but they say not.
Q. Just a -- just a mistake, huh?
A. A mistake, yeah.
Q. All right. Have you -- have you talked to Mr. Amick about your deposition today?
A. No.
Q. Okay. Have you talked to Mr. Sowell about it?
A. No.
Q. When did you first start going down to the Lions Club Pointe, going back as far as you can remember?
A. When we bought the property --
Q. Oh --
A. -- back in '72, yeah.
Q. You say --
A. Or, I'm sorry, '78.
Q. All right. '78 is when you bought it from Bubba Ware?

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A. Yes.
Q. Okay.
A. Like I say, it was family back then.
Q. But you hadn't been down there before 1978?
A. I don't think so, no.
Q. Okay. Now, all the neighbors down there at Lions Club Pointe were very friendly and harmonious; isn't that right?
A. Oh, yes.
Q. All right.
A. Definitely.
Q. And the families were close?
A. Exactly.
Q. And did -- is it true or not true that everybody down there, all the property owners, their guests and their families used the fringe lands?
A. Yes, and even Lions Clubs members.
Q. Yeah -- yeah, of course.
A. Yes, sir.
Q. And in using the fringe land, were there picnics down there on a regular basis, parties of that type?
A. Yes.

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Q. Barbecues or whatever, fish fries?
A. Yes.
Q. Okay.
A. Back in -- back in -- back in the early days, yes.
Q. Okay. And then fishing of course?
A. Yes.
Q. And there -- was there -- is it correct or not that there was a beach on the absolute end of the pointe?
A. That -- you're correct, there was a beach there.
Q. And did you -- you and your family, of course, used it just like they did, correct?
A. Oh, yes.
Q. All right. Now, boating, did you have a boat in 1978? I say you or either your parents or you or your brother or sister or whatever?
A. Yes, we did.
Q. Did you frequently use the boat ramp on the fringe land?
A. Yes, everybody did.
Q. And that would be everybody that I just named who had families down there?
A. Yes, plus Lions Club members.

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Q. Correct. And in using the ramp, who maintained the -- the condition of the ramp as -- as you -- as your boat gets into the water, what was -- what [sic] would put that on?
A. Gravel, it was -- it was a gravel landing in there --
Q. Okay.
A. -- a gravel ramp.
Q. And did all the property owners down there help in that?
A. I don't know.
Q. Okay.
A. As far as I know, the Lions Club kept it up.
Q. Okay. Well, if somebody said that rather than the Lions Club it was the owners, you wouldn't dispute that, would you?
A. No.
Q. Okay. Now, were cars frequently parked on the fringe land while people were having their picnics or fishing or going to the beach?
A. Yes.
Q. Uh-huh.
A. But the fringe -- fringe land took up just about three-quarters of it down there.

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Q. Yeah.
A. I got a plat that I can show you where it is.
Q. And your -- your land slices into that sort of like at a point, like an arrow point so --
A. Slices in like that, 45-degree angle --
Q. Right.
A. -- at the end. (Gesturing.)
Q. Right. Yeah. But would -- would it be fair to say that there is about two acres give or take of fringe land that's useable by everybody down there?
A. Yes.
Q. Okay. Now, do you recall special occasions down there on the fringe line -- the fringe lands where everybody that owned property down there and their guests, families, et cetera, joined in? Anything specific you remember, specific occasions like the 4th of July?
A. Mostly on the 4th of July.
Q. Okay. And when the 4th of July festivities occurred, was there also a parade?
A. Yes.
Q. Was that an annual thing during --
A. That was an annual thing, yes, it was.

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Q. And how often did you go down to the Lions Club say from 1978 when you -- when you first bought it from Bubba Ware up 'til 1988, ten years?
A. Probably -- probably every 4th of July.
Q. Okay. And that's all you mean? I mean -- I mean --
A. Oh.
Q. -- how many times did you personally or your family go down there during that ten-year period?
A. That's hard to say. I -- it was -- it was really spasmodic living in Beaufort.
Q. Okay.
A. Whenever we took [sic] the urge to -- to go up there, we'd go up there. It was mainly during the summertime.
Q. Right.
A. That old cabin didn't have any heat or electricity. We hadn't done -- any -- any heat or anything in it.
Q. Yeah.
A. All we had was one of those little window unit air conditioners.
Q. All right. Well, the -- so for you it was spasmodic, that's understandable, you got to

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drive three and a half hours or whatever it is --
A. Uh-huh.
Q. -- isn't that right?
A. Yes.
Q. All right. What about from 1988 to 1998, that'd be the next ten years, about the same?
A. About the same, yeah.
Q. All right. What about the next ten years, 1998 --
A. Probably about the same.
Q. All right. So spasmodic would be twice a year, five times a year, once a year?
A. Probably -- we'd spend probably two weeks at the 4th of July and probably -- probably about a month out of the -- out of the...
Q. You'd be down there two whole weeks?
A. Yeah, generally -- generally we came up 4th of July, we'd either spend a week or two weeks there --
Q. Okay.
A. -- and then it was a weekend here, a weekend there, maybe a week here and a week there.
Q. Okay. So --
A. And that was from about May 'til about September.

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Q. Right. So the primary usage of the fringe land for boating and whatnot would be during the warmer months?
A. Oh, yes.
Q. Yeah. You -- you don't -- do you -- do you recall ever seeing any of the other families of the landowners down there like Johnny Summer, you know Johnny, John Summer?
A. Oh, yeah, John.
Q. Ferd's son?
A. Yeah.
Q. Do you recall him putting gravel down on the boat landing?
A. No, I don't.
Q. Okay. Do -- what about -- what is the only access to get onto the fringe lands for all these property owners down there?
A. Say again?
Q. What is the only access for them to drive a car with a boat trailer on it to get into the fringe land?
MR. SOWELL: I object to the form of the question.
BY MR. POPE:
Q. Go ahead.

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MR. SOWELL: You can go ahead, I'm just doing it for the record.
THE WITNESS: You got there -- well, to be truthful with you, the -- the landowners all around the front of it has got access to it when they run around, then you got the road going down there.
BY MR. POPE:
Q. Okay. Lions Club Road?
A. The Lions Club Road, yeah.
Q. Okay.
A. But, like I say, the landowners that border up can go around the fringe land to get to the boat landing, they don't have to go down to the road.
Q. Yeah. But they don't have a way to get a car without -- there's no road for them to use to get onto the fringe land with a car and a trailer and a boat on it; is that right?
A. They can -- yeah, it can be done.
Q. Well, there's no road though --
A. That's no road, no.
Q. -- except Lions Club Road?
A. Yeah, there's no road except for Lions Club Road.

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Q. Yeah. And --
A. And, like I say, the fringe -- the fringe land, you can go around the fringe land to get there.
Q. Now, would it be correct that you observed in the summertime or in the spring or fall or whatever the warm weather months, you would see sometimes several boat trailers on the fringe land for people that already launched their boats?
A. Yes.
Q. And that was the case from 1978 to '88?
A. Yes.
Q. And from 1988 to '98?
A. Yes.
Q. And from 1998 to 2008?
A. Yes.
Q. And from 2008 to 2018?
A. Well, in the later years it was less and less and less --
Q. Uh-huh.
A. -- than -- than it was in the earlier years. Everything cut out -- everything kind of went to a standstill in about the -- I guess the mid '80s, mid to later '80s and it was used less and less and less.

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Q. Uh-huh. Well, the children of the owners had grown up, correct?
A. Yeah. Yeah.
Q. And moved off and stuff like that?
A. Yeah.
Q. Okay. But it was still used -- it was less and less, but it was still used --
A. It was still used, yes -- it was still used, yes.
Q. -- as we described it, with boats launching and leaving trailers on the fringe land --
A. Yes.
Q. -- throughout that 40-year period, correct?
A. Yes.
Q. Sir?
A. Yes.
Q. Okay. Now, do you recall one time for some period of time there was a gazebo that was built down there near the beach? I call it -- what do you call -- you might call it a shed, I don't know.
A. I don't remember that.
Q. All right.

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A. I remember a picnic table being down in there --
Q. Okay.
A. -- and that's about it. I think the picnic table is still there by the far end, but I do not --
Q. Yeah.
A. -- remember a gazebo there.
Q. Okay. That's all right. It's not there now for sure. The picnic table's been there for, what, several decades?
A. Oh, yes.
Q. Uh-huh. Do you remember when there was a swimming dock, floating dock that was -- that was constructed by the property owners off the tip of the pointe?
A. No, I don't.
Q. Okay. Do you ever remember that there was a -- a swimming area designated by using milk bottles with the top --
A. Yes, I do.
Q. Okay. And that was so the children wouldn't go out too deep and that sort of thing?
A. Yes, I do.
Q. Okay. When was that? Was that in

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the '70s?
A. That was in the '70s, yes.
Q. Also in the '80s and '90s?
A. I'll say probably about the mid '80s.
Q. Uh-huh. Now, did anybody ever prohibit any of the adjacent landowners including you from -- from going onto the fringe land and doing as you would?
A. No.
Q. All right. Did anyone ever tell you you had to get anybody's permission to use the fringe land -- to use Lions Club Road to get on the fringe land?
A. Is that while -- is that when the Lions Club owned it?
Q. Yeah, I'm talking up to the time in 2018 when Mr. Amick got the deed.
A. Oh, no. No, they didn't.
Q. All right. Now, do you recall -- Lions Club Road was -- was tar and gravel up to a point, correct?
A. Yes, it was.
Q. All right. For many years?
A. (Gesturing.)
Q. For many years?

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A. For many years -- it's still -- still that way, yes.
Q. Okay.
A. It was paved from the street end and then it turned on Lions Club Circle, but the old Lions Club Road is still the old tar and gravel that's been there for --
Q. Uh-huh.
A. -- many, many, many years.
Q. Right. And it's tar and gravel from where Lions Club Circle turns left and goes all the way down?
A. It goes about a third of the way down.
Q. Okay. Here's -- here's -- this is an exhibit that shows the paving that was done and -- I'll get the date, 2010.
A. Okay.
Q. We will mark that as -- let me have her mark that, if you don't mind.
MR. POPE: Exhibit 1 for the deposition.
Thank you.
(PLF. EXHIBIT 1, Document entitled Lions Club Road Paving and copies of checks, was marked for identification.)

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BY MR. POPE:
Q. There you go. (Indicating.) Do you recall when the road was paved in 2010?
A. Yes.
Q. And if you have to look at that -- that exhibit because that's what I'm asking you about, Number 1. And when -- when it was paved, the property owners down at the Lions Club Pointe paid for it, right?
A. Yes.
Q. And it shows no payment from the Lions Club; is that accurate?
A. That's accurate, yes.
Q. All right. Excuse me, let me see it for a second.
A. Like I said, it was -- it was paved up -- up -- it was paved to the Lions Club Circle.
Q. Uh-huh.
A. As far as on down, it was not paved.
Q. All right. But the -- the landowners here paid like $43,000 for that paving including your family?
A. Yes.
Q. At that time, was your dad alive?
A. No, he wasn't.

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Q. That was your momma Ruth?
A. Yes.
Q. Okay.
A. Right.
Q. All right. Did anybody ever --
A. And Jim -- if I remember right, Jim Parr called me up --
Q. Uh-huh.
A. -- and on that -- and we had -- that year we had gotten hit bad with taxes, it was right about -- right about tax time so I referred him to my mother.
Q. Right. And she paid, what, two thousand what?
A. Like $1,000 a year. I was thinking it was 2,000, but it's not, it was just 1,000.
Q. Okay. I'm going to show you Exhibit 2. Exhibit 2 is a GIS county tax area photograph and it's labeled -- does this show Lions Club Pointe and the various landowners that are on it?
(PLF. EXHIBIT 2, Newberry County GIS photograph, was marked for identification.)
THE WITNESS: Yes, it does.
BY MR. POPE:
Q. Does it -- does it appear accurate to

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A. 2000 -- I'll look -- I'll look back over that one and see.
Q. Uh-huh. I thought those checks were 2010.
A. '10, correct. That would have been '10. That was actually above on the -- okay. Yes, '10.
Q. So other than the putting the gravel down for the boat ramp, there's not been any?
A. And pothole repair.
Q. And potholes. There's not been any maintenance on that road down to the Lion's Club point in the last 20 years that you know of?
A. Besides pothole repair, that would be it, yes.
Q. Okay. What about -- you know, I asked Murray Gray about the gate.
A. Uh-huh.
Q. Were you -- I suppose you used this property some when your father owned it?
A. Yes.
Q. And so how long have you been going there?
A. Since I was -- well, technically, since I was born --
Q. Uh-huh.
A. -- in '64.
Q. Okay.

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A. That's when they actually added onto the original house.
Q. Now, are you aware of a period of time that the Lion's Club -- Newberry Lion's Club posted a no trespassing sign on that gate and locked the gate?
A. The gate was locked. I can't decide what the Lion's Club did, because I wasn't a member. But the gate has been locked.
Q. Okay. And how did you get it unlocked for access?
A. With a key.
Q. And who had the key?
A. I had a key that was for our family.
Q. Right.
A. So I just know as a property owner down there, we had a key.
Q. Approximately what period of time was that?
A. The gate was even locked when we were building our house, and we had to have it unlocked. So someone locked it while our house was being built.
Q. All right.
A. It was still being locked. That would have been 2010 and '11.
Q. All right. And you used the key you had,

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the family key to unlock it, when you needed to?
A. Yes.
Q. Okay. Do you own your fringe land?
A. Yes. We purchased our fringe land. That would have been this part of this plat.
Q. Okay. Which is exhibit --
A. This actually shows the fringe lands, Exhibits 3.
Q. Yes.
A. That shows the fringe lands that we purchased.
Q. All right. Now, can you -- can you walk from your fringe lands to what is now Ray Amick's fringe lands?
MR. POPE: Object to the form.
THE WITNESS: Can I walk to the -- from the fringe lands?
BY MR. SOWELL:
Q. Your fringe lands to what is now -- through the Rice's fringe lands to Ray Amick's fringe lands?
MR. POPE: Object to form.
THE WITNESS: I would have to cross multiple fringe lands, but I can walk there, yes.
BY MR. SOWELL:

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Q. Well, multiple would be Joe Rice, would it not?
A. McCrackin --
Q. I guess Thad McCrackin?
MR. POPE: Let him finish, please.
THE WITNESS: McCrackin would be the other one, so yes.
BY MR. SOWELL:
Q. Okay. Good. And they can do the same, Joe Rice could cross McCrackin and McCrackin can just walk next door?
A. If you were walking, you can walk it.
Q. Could you pull a trailer through there?
A. No.
Q. Have you ever obtained an estimate to put a boat ramp on your property?
A. I've been declined to put a boat ramp on my property.
Q. By who?
A. SC&G.
Q. When was that?
A. When we were actually looking at doing this piece of property, so that would have been 2010. I met with Tom Boozer. And as I say and he said, we were not allowed to do that.

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A. No, I did not.
Q. That's good. Okay. Let me see that back, please.
A. Yes, sir.
Q. How did you and Mr. and Mrs. -- Dr. and Mrs. Schumpert conclude to bring this lawsuit over the -- I'll call it the alleged easement?
A. Well, I just -- we just considered -- I had talked to Claude and Missy. And he's like me, we grew up down there. And it was kind of like, we grew up as a family down there.
Q. Uh-huh.
A. And that was part of our -- when we found out -- when I found out that we weren't going to be able to have the 4th of July, it was a big thing. His family enjoyed that. We'd go down there and it was -- it got to be very -- it was very dear to us, period. And I just thought that we ought to be able to have the rights to go down the fringe lands, because I'm under the impression that South Carolina Electric & Gas or Dominion owns it, not Mr. Amick.
Q. Okay.
A. So I just thought there wouldn't be any -- I didn't see any problem with us going down there, using the boat ramp, and going down to the point and

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just enjoying it. We would keep it clean. And I didn't -- I just felt like we ought to be able to do that.
Q. Do you know if Dominion has a protocol for using the fringe land?
A. I do not.
Q. Now, your house is just above Littlejohns, right?
A. Correct.
Q. Okay. And you have a boat dock?
A. Yes, sir, I do.
Q. And you have a boat?
A. I do.
Q. What is your boat?
A. Pontoon.
Q. Okay. Have you ever gotten an estimate or considered putting a boat ramp on your lot?
A. No, sir.
Q. Could you do it?
A. I don't think so.
Q. Why not?
A. I think it's too -- it's too steep.
Q. All right.
A. The slope is too steep.
Q. But you never asked anybody whether it

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could be done?
A. No, sir, I have not. I have always just taken advantage of the boat dock -- I mean, the landing that we had that everyone used at the Lion's Club, so I had no need to.
Q. How far is your house from Billy Dreher Billy Dreher Island boat --
A. By boat?
Q. -- ramp? No, no, no. By car.
A. By car.
Q. By car to get to the boat ramp at Billy Dreher Island?
A. Two-and-a-half miles.
Q. Okay. Now, when you -- when you brought this lawsuit, when you talked to Dr. and Mrs. Schumpert, had you talked to anybody else about it?
A. No, sir.
Q. Okay.
A. Well, Mr. Pope.
Q. I understand. I understand. I'm not going to ask you what you talked to him about.
A. Okay.
Q. Who's paying him?
A. I have no earthly idea.

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Q. Okay. You're not?
A. No, sir.
Q. Okay. Let's see here. Do you own your fringe lands?
A. No, sir.
Q. So, Dominion owns your fringe lands?
A. Correct.
Q. When's the last time there was a July the 4th celebration down on the point?
A. I haven't been to one in three years.
Q. Uh-huh. Okay.
A. I got an e-mail, what is it, two years ago that threatened to sue us for trespassing, if we had it two years ago. And last year I was out of town. I didn't -- I wasn't down there last July the 4th.
Q. Are you talking about my e-mail to Tom Pope?
A. (Nods head.) Well, it was forwarded to us.
Q. Yes.
A. And so --
Q. Yes. I remember that e-mail.
A. I felt like that we were not welcome to walk down there, so...
Q. I was sitting by the pool in New Mexico, when I sent that to Tom.

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A. Okay.
Q. What's the name of that town? Santa Fe. Santa Fe, New Mexico.
Okay. But no other e-mail?
A. No.
Q. That's the one you're alluding to --
A. Yes.
Q. -- is the one that I sent to Tom and he sent it to you?
A. Correct.
Q. Do you know when was the last July 4th celebration down on the point?
A. The last one we had on the point --
Q. Yes.
A. Or the last one we had --
Q. No, the last one you had on the point.
A. I do not know. The last one that I've seen any record of is in -- is '92 on the video.
Q. Okay.
A. But I cannot remember the year that we went to the point. Like I said earlier, we had decided to stop at the clubhouse because a lot of the parents and older folks couldn't make the walk all the way down to the point. So we decided to just stop it there.

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Q. I gotcha.
A. But I did that three years ago.
Q. Okay. Stopped going down to the point?
A. No, sir. Yeah. Well, no, I -- the last one I went to, we stopped --
Q. I see.
A. -- at the clubhouse.
Q. I see. So you didn't go to the point three years ago?
A. No, sir.
Q. Last one you remember at the point was that video in 1992?
A. That's the last one that I seen that I saw a date on.
Q. Right.
A. I don't remember the date of the last one that I went down there to.
Q. But it has been a while?
A. It has been a while, yes.
Q. All right. Now, when you -- when you took your -- I think you said you went down to the boat ramp a couple weeks ago, did I get that right?
A. Yes, sir.
Q. How did you do that?
A. Drove down there.

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Q. Just drove down the road?
A. Yes, sir.
Q. Okay. And you launched a boat there?
A. I took a boat out.
Q. I gotcha. Has anybody else launched or taken a boat out recently, other than you that you know of?
A. I haven't seen it. I've heard -- I've heard that there has been. I think that Young Schumpert has taken one out recently.
Q. Uh-huh.
A. And I don't -- I know that Ms. Littlejohn has had some family and they had a ski boat this past summer, and I've watched them. They park the ski boat in their yard, and then they take it back and forth.
Q. Uh-huh.
A. I think she's taken her pontoon boat out. I offered for her to put a pontoon boat on my dock when the water came out last year, because it was sitting on the ground. But she said she had other problems in that house that she -- this was the last -- the least of her worries.
Q. I gotcha. Are you a member of the Newberry Lion's Club?

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A. Not any more. No, sir.
Q. When were you last?
A. I was trying to think about it the other night. I joined, I think, in '86 and I think I got out in '92 when I became a board member at the Newberry Country Club. Because we had meetings on the same night and it got to be where I couldn't make both.
Q. Now, are you aware that Ms. Littlejohn owns about 30 feet or some approximate portion of that road in front of her house?
A. I am on -- I saw it on the plat, yes, sir.
Q. Yeah. So you know that now?
A. Yes, sir.
Q. Did you know that when you brought this suit?
A. Yes, sir.
Q. Okay. Why was she not included?
MR. POPE: Object to the form.
THE WITNESS: She wasn't --
BY MR. SOWELL:
Q. If you know.
A. The only reason that I wouldn't include her is because she was very nice to me and she told me any time I needed to park right there in front of

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her place, I was more than welcome to. So I just felt like that she was going to be cordial and not have a problem with it.

Q. Okay. Do you know if -- who provided the sand that was down there in 1992, whether it was some private person or the Lion's Club or Lion's Club members or whatever?

A. Mr. Ferd Sommer (ph) probably but put that down there.

Q. That's your belief?

A. That is what I've always been told.

Q. Okay.

A. I was down there when they put sand down there at some point in time. And Ferd was down there with a tractor and we were spreading it out. Now, I never saw the bill, I never saw the truck, I just know I saw a shovel.

Q. Yeah. And, of course, he was a member of Lion's Club, at that time, was he not?

A. Oh, yeah.

Q. So he could have been doing it for the Lion's Club?

MR. POPE: Object to form.

THE WITNESS: I don't -- I don't --

BY MR. SOWELL:

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Q. You don't know?

A. I don't know.

Q. Could have been, could not have been?

A. Correct.

Q. All right. Who constructed the boat ramp?

A. It was there when I -- before I -- before my time, so I do not know.

Q. Now, do you remember when the Lion's -- you know where the Lion's Club gate is?

A. Yes, sir.

Q. And there's an allusion to it, I think, in that document we're looking at, where I put the green part?

A. Right. Yes, sir.

Q. There it is right there (indicating).

A. Okay.

Q. I got it.

A. Okay. Yes, sir.

Q. That gate is still there, is it not?

A. Yes, sir.

Q. Okay. Is it ever closed now?

A. No, sir.

Q. Has it ever been closed since you've been living there?

A. Since I've owned the property or since

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I -- we've been going down there? My father bought the house in 1966. He died in 1986. And I've been down there all my life. And it has -- I can tell you that I have not seen it closed since 1987, when I bought my house.

Q. Okay. What about during that period, '66 to '86, was it closed and locked for a period of time?

A. It -- they normally -- Mr. Ferd would close and lock it at the end of the summer, when everybody would leave.

Q. Okay.

A. Because back then they had just built Billy Dreher Island. And I think there was a fear that people didn't know exactly how to get to Billy Dreher Island, so they turn down that road.

Q. Yeah.

A. Well, they see the point down there, all of a sudden they are wanting to put the boats in and things over there at the Lion's Club. So I think he closed the gate, I was told. But everybody -- I still got a key to the gate.

Q. Okay.

A. I'm sure there's no lock on it anymore, but I don't know that because I haven't looked. But

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I still got a key.

Q. Yeah. So back during that time frame, and we're talking about '66 to '86, generally, when it was not the summer time, you would use a key to open that gate and get through there?

MR. POPE: Object to form.

THE WITNESS: If it was locked, yes, sir.

BY MR. SOWELL:

Q. If it was locked, yes.

A. Normally, it got to the point where it got to be such a pain, they just quit locking it.

Q. All right. But it was locked for a period of time and required a key to open it?

MR. POPE: Object to form.

THE WITNESS: I never -- I never used a key to open the gate, if that's what you're asking. I never had to, because it never was locked. But I have -- I have seen it locked, but I -- when we leave out, but I never have opened it. No, sir.

Q. Well, other people would have had to have used a key, would they not?

MR. POPE: Object to form.

THE WITNESS: I guess so, if it was locked.

BY MR. SOWELL:

ELECTRONICALLY FILED - 2019 Aug 14 5:36 PM - NEWBERRY COMMON PLEAS - CASE# 2019CP3600245

STATE OF SOUTH CAROLINA PLEAS	)	IN THE COURT OF COMMON
COUNTY OF NEWBERRY 00245	)	CIVIL ACTION NO.: 2019-CP-36-
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,	)	
Plaintiffs,	)	
v.	)	**AFFIDAVIT OF**
C. Ray Amick,	)	**CLAUDE SCHUMPERT**
	)	**IN SUPPORT OF MOTION FOR**
Defendant.	)	**TEMPORARY INJUNCTION**

PERSONALLY appeared before me Claude H. Schumpert who being duly sworn, deposes and states as follows:

1. I am the plaintiff in this case, and my wife and I have a permanent home at 131 Lions Club Circle, Prosperity, SC. My parents, Bob and Peggy Schumpert, are deceased.

2. My father was a practicing attorney in Newberry for many years and President of the Newberry Lions Club. My mother was Probate Judge of Newberry County for a number of years. I am aware growing up in our family that none of us ever discussed that any permission was necessary for us to use Lions Club Road to take our boat down to be launched or to go to the beach. Since my dad was president of the Lions Club, if there had ever been such a requirement, I am sure that I would have known.

3. I spent every summer of my entire childhood and, since veterinary school, the majority of every summer of my adult life at Lions Club point until 2011 when my family and I became permanent residents at 131 Lions Club Circle. I am currently 55 years old. Lions Club Road runs from State Park Road to the fringe land at Lake Murray. I do not have any vehicular access to the fringe lands of Lions Club point except by use of Lions Club Road. The only landowners at Lions Club point who have walking access to the fringe lands without using Lions Club Road are the McCrackins and the Littlejohns whose property is adjacent to the Lions Club property Mr. Amick purports to have purchased. All other landowners in the surrounding area do not have even walking access to the fringe lands at the point without the use of Lions Club Road, unless they trespass on another neighbor's property to access it.

4. The fringe land at the point of the peninsula of Lions Club point is roughly two to three acres in size and has served as a recreational meeting place for the entire neighborhood at Lions Club point, members of the Lions Club and their guests for my entire life and for at least 20 years prior to that. The attached photographs in Exhibit 1 capture the spirit of comradery and enjoyment many have derived for decades from the use of Lions Club point.

5. The surrounding property owners at Lions Club point paid to have the portion of Lions Club Road from State Park Road to within 300 feet of the fringe land paved. Lions Club Road extended beyond the paved portion to the fringe lands in the form of a tar and gravel and dirt road. Among those who paid to have Lions Club Road paved are the following families: the Schumperts, the Rices, the McSwains, the Grays, the Byars, and the McCrackins, as well as families living on Neptune Lane which is also accessed by Lions Club Road. These same families, including mine, have maintained the dirt portion of Lions Club Road where it enters the fringe lands for decades.

Further, these families, including mine, maintained the beach and the boat ramp on Lions Club point for more than 50 years. This maintenance typically included purchasing and spreading gravel, as necessary, on the road and boat ramp, and sand on the beach area to create a suitable area for enjoying swimming and the lakeshore. I personally assisted with the maintenance work on Lions Club Road (both paved and dirt portions), the boat ramp and the beach area from my mid-teenage years in the mid-1970's through my graduation from veterinary school in May 1990.

6. It is important for the Court to understand that in 2010 we, the property owners at Lions Club point (and Neptune Court adjacent to Lions Club Road) voluntarily and collectively paid from our own pockets over $39,000 to Bird Paving Company to pave Lions Club Road. The residents did so in order to keep access throughout the entire length of Lions Club Road all the way down to the fringe lands. Each family contributed no less than $750 for road work to the paving contractor. Mr. Amick contributed his share for this work, and Mr. Gray paid $1,500 as shown on the copy of his check. Other families, including mine contributed more. I have attached as Exhibit 2 a spreadsheet that my wife and I prepared in 2010, together with copies of our check, that evidence our having paid over $10,000 towards this project. The other individual portions paid are also shown on this spreadsheet.

When Lions Club Road was paved, the contractor was asked to install two speed bumps in front of Mr. Amick's home to ensure that drivers maintained a safe driving speed. This was done to accommodate Mr. Amick's request. In early 2012, Mr. Amick threatened to add additional speed bumps to the road, which would have created unnecessarily onerous conditions for anyone driving beyond Mr. Amick's home. There were also many instances in which Mr. Amick verbally accosted drivers on Lions Club Road. This often included guests of the homeowners who used this road.

7. Many of the permanent residents who live on Neptune Lane and use Lions Club Road for access to their homes, as well as my wife and I, co-authored a letter to Mr. Amick, attached as Exhibit 3. This letter shows the problems going back many years that we have had with Mr. Amick. This letter also shows that Mr. Amick has known full well for many years that my wife and I, and the other landowners at Lions Club point, invested substantial sums of money to insure their access to the fringe lands. Mr. Amick never objected.

8. For more than 50 years prior to having the road paved in 2010, members of these same families also maintained the road in other ways such as repairing potholes, raking gravel, clearing debris from the edges of the road, etc. Lions Club Road is our access to the Lions Club point fringe lands and we have never asked for or received permission to use it to go to the boat ramp or to the beach.

9. My family and I are very concerned about the damage and harm we will suffer if the Court does not grant a temporary injunction against Ray Amick preventing him from blocking Lions Club Road.

10. Access by Lions Club Road to the Lions Club point boat ramp is essential to launch our pontoon and sailboat into the lake and to remove them from the lake for regular maintenance and repair. Before Mr. Amick blocked Lions Club road, because the proximity of the Lions Club point boat ramp to our home is within walking distance, I could remove or launch our boats without the assistance or involvement of anyone else. When it is necessary to use a public boat ramp to launch or remove our boats, due to the inaccessibility of the boat ramp caused by Mr. Amick, two people must be involved in the process: one to drive the vehicle towing the boat and trailer from our home to the public boat ramp and back, and another person to drive the boat. This is a significantly limiting factor as not everyone can competently drive a boat and/or pull a trailer used to haul a boat. This can halt our enjoyment of our boats until assistance can be arranged. Furthermore, when the boat repair shop we use to service and repair our boats dispatches someone to our home to transport our boat from our home to the repair shop for servicing, we incur increased labor costs as the shop has to send two employees instead of one if the boat ramp within walking distance of our home (Lions Club point) is not accessible. We do not have a boat ramp on our property, nor did we attempt to negotiate the necessary approvals for one when we purchased our property, as we assumed we would have continued access to the Lions

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Club point boat ramp permanently.

11. A recent example of the problem of not having access to the Lions Club point boat ramp occurred on May 3rd when I agreed to assist my friend in launching his boat, which he had temporarily stored at my home. For the first time in my recollection, I was forced to launch a boat at Dreher Island State Park, the closest boat ramp to my home. Despite our best planning, after driving to the boat landing and lowering the boat into the water from the trailer we were unsuccessful in cranking the boat. This required a trip back to my home to retrieve another battery and additional tools then returning to the public ramp before successfully launching the boat. Considerable time was avoidably wasted by the inaccessibility of the Lions Club point boat ramp, only a short walk from my home.

12. My wife and I own a 25-foot sailboat with a 5-foot keel. We purchased this boat in a *private sale from another family who did not own a trailer for the boat. Therefore,* when work must be performed on this boat the repair shop must bring a trailer to our home and remove the boat from the lake. When the boat ramp at Lions Club point is inaccessible for use, it is significantly more time involved and expensive to have the boat removed from the lake as it must first be sailed, or powered with the 4 horsepower engine installed on the back of it, to the nearest boat ramp to remove it from the lake and trailer it to the repair shop. In the fall of 2018, SCE&G abruptly lowered the water level in Lake Murray. I did not have access to the Lions Club point boat ramp to remove the sailboat from the lake easily. To sail a sailboat to Dreher Island boat ramp to trailer it is a much more involved exercise than driving a boat powered by a large motor. As a result, our sailboat sustained damage and needs to be removed and evaluated by the boat repair shop to determine if it is seaworthy without taking on water. As soon as the lake level rose enough to lower my pontoon from the lift into the water, I elevated the sailboat onto the lift. I am not comfortable putting the sailboat in the water to sail a long distance until it is properly evaluated by the repair shop. Consequently, it remains unavailable for use.

13. For the last five years before Mr. Amick blocked the road, I estimate that dozens of people during each weekend of the months May through September have used and enjoyed the fringe lands at Lions Club point to fish, launch their boats, swim, have picnics and barbeques, and enjoy the beach area. Since Mr. Amick blocked access to the fringe lands, the beach, and the boat ramp, the portion of Lions Club Road that extends from the pavement to the boat ramp and beach have not been properly maintained due to lack of access. All of these areas have become overgrown.

14. For the last five years before Mr. Amick blocked access, several boats were launched every week at the boat ramp by nearby landowners and their guests, and by Lions Club members and their guests, on the fringe lands, particularly for the summer months each year. My brother, Young Schumpert, who is an avid fisherman, stores his boat at my Lions Club Circle home and used to launch his boat using the boat ramp at Lions Club point almost every Friday to fish. At the end of the day when his fishing outing was complete, he again used the boat ramp to remove his boat and park it at our home until its next use. His use of the ramp often extended beyond the summer months. Since the boat ramp became inaccessible, he uses his boat far less frequently.

15. Mr. Amick's personal residence is a half-mile away from the Lions Cub point fringe lands. It is located near the intersection of where Lions Club Road comes off State Park Road. His home is not on Lions Club point.

SWORN to before me this 14)
day of June, 2019)
)
)
Deetra W Ashley)
Notary Public for South Carolina
My commission expires: March 28, 2026

Claude H. Schumpert

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A. I do have them.
Q. Yeah, do you have a file related to the title to the property?
A. I can't say what -- there are so many files and folders that his mother left, I can't say what's in them and what's not in them. I have not personally gone through them.
Q. Okay. Well, same request to you --
A. Uh-huh.
Q. -- per Mr. Pope. If you'd look.
A. Uh-huh.
Q. I'd like to be able to look at the deeds that started with the Lion's Club conveyance to his father --
A. Uh-huh.
Q. -- and then on down to the two of you.
A. Uh-huh.
Q. Yes?
A. Certainly.
Q. Yes?
A. Yes.
Q. Thank you. Dr. Schumpert and I had a discussion about the gate. Was the Lion's Club gate being used when you moved there in 2011?
A. By the time we moved there in 2011, the

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gate was still in place, but it -- I believe by that time it was being left open permanently.
Q. Do you know from your use before that that it had been locked from time to time?
A. I am aware that it had been locked.
Q. And it required a key to open it?
A. I am aware that it did require a key.
Q. And your family had a key?
A. We did.
Q. Still have it?
A. Perhaps.
Q. Okay. Now, there's a reference in your Affidavit to a plat. Would you look at that?
A. Sure. Look at the plat?
Q. Plat.
A. Okay. (Witness complies.)
Q. You see where the road is highlighted?
A. I presume this (indicating)?
Q. That gray looking stuff.
A. That grayed area.
Q. I think that was performed by Mr. Pope.
MR. POPE: Here's a yellow one.
THE WITNESS: Yes.
BY MR. SOWELL:
Q. At one time?

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A. I do.
Q. Do you see where it crosses through tax map number -- what is that, 6.57-3-10, it looks like, I believe, yes.
A. I believe I see what you're referring to.
Q. And that is Cheryl LittleJohn's property?
A. Okay.
Q. Is it?
A. I assume so. You say so.
Q. Well, I mean, I'm just looking at the plat.
A. It will logically, based on where the -- where this plat shows the clubhouse.
Q. Uh-huh.
A. Her property would be adjacent to that. So that would lead me to conclude that this is her property, but I don't know her tax map number by heart.
Q. Okay. I gotcha. But she does live right above the cabin?
A. She does.
Q. Okay. When's the last time that you recall -- well, let me ask you this. This might be a good way to benchmark this question. When you moved there in 2011, was there a beach or a gazebo on the

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point?
A. Yes.
Q. All right. Both?
A. Yes.
Q. And when were they dissipated, fell down, whatever?
A. Well, I don't recall the specific date of when the storm damaged the gazebo resulting in its removal. And the beach area continues to exist, although in recent years it has not been restored as it had in prior years, historically. Largely, in part, to the very matter that is before us.
Q. Well, that would have been 2018. We're talking about two years. I'm talking about before that. When is the last time that that beach was really a beach and not just a --
A. Well, I know --
Q. -- piece of sand?
A. I know that our daughters and their friends were still going down there as recently as 2016. And then they, of course, were both away either working and living elsewhere or at college. And so they frequented it less, but they still did go there. And, you know, others would go there from time to time, although I didn't make it my business

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A. Okay.
Q. So it looks like it stops in front of the McCrackin house on this particular exhibit?
A. Right.
Q. All right. All right. If you go back up Lions Club Road, back toward Billy Dreher Island Road, so you'd be going to the west, you see where it says here on Lions Club Circle: Old abandoned gate?
A. Yes.
Q. Do you remember that gate?
A. Yes.
Q. All right. Now, I'm going to show you Exhibit 3. You can hand that to the reporter.
A. Oh, that gate? That's the one you're talking about?
Q. Yeah.
A. Okay. He's talking about the gate that went across Lions Club Road, not the one that went across Lions Club Circle.
Q. Okay. No. You need to hand that to her. She's going to mark that. She's going to mark that as Exhibit 3 --
A. Thank you.
Q. -- Defendant's Exhibit 3, and she'll

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give it back to you.
(DFT. EXHIBIT 3, Color photograph, was marked for identification.)
BY MR. SOWELL:
Q. Now, you see that this Newberry County GIS denotes the old abandoned gate right here?
A. Is that the gate -- is this the gate that they're referring to?
Q. I believe so.
A. 'Cause there's two.
Q. Yeah. We'll talk about that.
A. Okay.
Q. Where is the other one? You can see this one goes straight down the road. Now, I don't know. I guess it could be Lions Club Circle, but I don't think it is.
A. No, no.
Q. I think it is --
A. That's Lions Club Road.
Q. Okay. So do you remember this gate?
A. Yes.
Q. And it says Lions Club property on it?
A. Yes.
Q. And is it still there?
A. The gate? Yes.

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Q. Yes, the gate.
A. The sign, no.
Q. Okay. But the gate is?
A. Yes.
Q. All right. Now, was that gate locked for a period of years?
A. Not that I'm aware of.
Q. All right. Do you know --
A. Not in my lifetime.
Q. You never observed that gate as a locked gate such that somebody would have to use a key to get through there?
A. I did.
Q. When was that?
A. The -- a couple of times that -- at least two times that I went with my -- when I was a little girl with my father and the gate was locked. There was a new padlock on it, and my father looked into it and found out that Mr. Amick had put the lock on the gate.
Q. Are you aware or not aware that the Lions Club, the Newberry Lions Club, constructed this gate and locked it for a period of several years?
A. If you say so.

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Q. But I'm asking you. I mean, if there was a lock -- there was a lock on it twice when you went there.
A. Right.
Q. Right?
A. Right.
Q. And how did your father unlock it?
A. He didn't.
Q. Did he ever get a key?
A. My recollection is that we had to go the other way. We couldn't go that way, and we had to go the other way and -- I was a kid. I really don't remember other than finally, you know, Daddy saying that, oh, Mr. Amick locked it.
Q. When, approximately, was that? I mean, how many years ago? I mean, it's not been recently.
A. I'm 66, and that would have been --
Q. You're a young thing.
A. I mean -- yeah. And I would have been -- I mean, that had to be -- my brother was living at the time. I had to be under ten years old.
Q. Okay.
A. So that was at least 66 -- I mean 56

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Q. Have you seen the affidavits?
A. Yes, I have.
Q. Okay. Do you recognize this Exhibit 2 as being an accurate depiction of the adjoining property owners at Lion's Club Point?
A. I do. Historically I haven't been that familiar with who owns what property. But as I understand it, this is correct. It makes reference in the old abandoned gate.
Q. Right.
A. When I joined the club, that gate was always locked.
Q. In 1986?
A. And the members of the club -- and for many years after. The members of the club each had a key to the gate.
Q. So it was locked in -- it was locked at the place where it's indicated on Exhibit 2?
A. That's correct. That's correct.
Q. Just as you enter the Lion's Club property, so to speak?
A. Correct. And as far as I know, if Lion'sLion Club Circle existed at that time, it was not locked.
Q. But every land owner had a key to that

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gate?
A. I would assume.
Q. How long did the gate stay locked?
A. For a number of years. I will say it's been quite a large number of years that it has not been locked.
Q. Well, would it be fair to say --
A. I still have my key. The lock is probably long gone.
Q. It would at least be 30 years it hadn't been locked, right?
MR. SOWELL: Object to the form of the question.
THE WITNESS: I really don't know.
BY MR. POPE:
Q. Well, I just -- if you do 30, that's 1979.
A. I don't know.
Q. Does it sound like --
A. I'm 78 years old.
Q. Well, the gate has not been locked in many years?
A. That's correct.
Q. Okay. But when it was locked, all the -- all the adjacent property owners shown on Exhibit 2 or otherwise would have had a key to it?

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A. I assume.
Q. You assume that. Okay. Are you aware of any discussion ever coming up at a board meeting since you've been a member where there was any discussion about permission being required for an adjacent land owner to use Lion's Club Road to get to the fringe land?
A. No.
Q. Have you spoken to Doggett Whitaker about that issue at all?
A. I don't know that I -- I've talked to Doggett a lot of things through the years.
Q. Sure, sure.
A. He's the oldest member of the club we have. But I can't say that I have or have not, to be honest.
Q. Well, did you -- when was the last time the Lion's Club met at the board -- the board of the Lion's Club met at the Lion's Club cabin?
A. I don't recall ever having a board meeting at the Lion's Club cabin.
Q. Well, before you were a member, do you have any idea when the last meeting at the clubhouse was?
A. No, I don't.

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Q. You did go down to the Lion's Club property from time to time?
A. Oh, we had meetings there as a club.
Q. That's what I --
A. You said board.
Q. Oh, okay. So you would have club meetings at the -- at the clubhouse, but not --
A. Yes.
Q. -- board meetings?
A. Not the board meetings.
Q. When was the last time the club met at the clubhouse?
A. I don't reckon you can help me with that?
MR. SOWELL: Can Ray help him or not?
MR. POPE: I'm sorry?
MR. SOWELL: That's up to Tom. He asked if Ray could help him with that.
THE WITNESS: It was about two and a half years.
MR. SOWELL: I'm deferring to you as the deposition taker.
BY MR. POPE:
Q. You're not supposed to ask someone. So if you're making an estimate, that's understandable.
A. About two and a half years.

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Plaintiff's Exhibit 2. Are you aware of any road which they could use to trailer a boat down to the fringe land except Lion's Club Road going by the clubhouse?

MR. SOWELL: I object to the form of the question.

THE WITNESS: I mean, like I say, I don't know whether there's another route or not.

BY MR. POPE:

Q. As far as you know, there's not one or is one?

A. I mean, I don't know.

Q. How many times have you been down to the Lion's Club property?

A. Well, a good many. But, I mean, like I said, there's a road that goes down past the Lion's Club, but I don't know what's over at his house.

Q. Well, do you see it on the plat, Exhibit 2?

A. See what?

Q. See any road that goes down to the fringe land?

A. Like I say, I mean, you're referring to over here.

Q. I'm referring to Lion's Club Road that

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goes onto the fringe land past the clubhouse.

A. Right.

MR. SOWELL: No, no, no, no. I object to the form of the question.

BY MR. POPE:

Q. He can object, but you have the right to answer.

A. I mean, there's a road there. But, like I say, I mean, it takes you to the fringe land.

Q. And it's been there the whole time you've been a member?

A. There's been access --

MR. SOWELL: I object to the form of the question.

THE WITNESS: There's been access beside the clubhouse down to the fringe land.

BY MR. POPE:

Q. And as far as you know, can you tell us whether you have ever seen that road blocked until Mr. Amick blocked it in 2018?

A. Well, there was a gate up above our clubhouse. I mean, that may still be there.

Q. That's 200 yards up the road, right?

A. Right.

Q. It's been open as long as you have been a

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member?

A. The gate?

Q. The gate.

A. Right. As far as I remember. Right.

Q. So it's not been used as a gate the whole time you've been a member, correct?

A. I don't think so.

Q. So have you -- have you ever known that the road -- Lion's Club Road was blocked so that people could not get access to the fringe land by vehicle or pedestrian?

A. The gate was up there. That's all that I know about.

Q. I'm talking about down here toward the fringe land.

A. Right. That's what I say, the only -- only -- only obstruction that I know was the gate that was up here.

Q. And it's never been obstructed the whole time you've been a member?

A. Not that I -- I mean, it could have, maybe, at some point, but not that I recall.

Q. But you don't remember it?

A. Not that I recall.

Q. Based on your recollection, it's never

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been -- it's never been closed, that gate, based on your recollection?

A. On my time in the club, I don't recall it. No.

Q. We're not talking about the gate. We're talking about the road as it gets right close to the fringe land. Has it ever been blocked --

MR. SOWELL: I object to the form.

BY MR. POPE:

Q. -- before Mr. Amick blocked it in 2018?

A. I mean, I don't know of any gate or any obstruction that was there.

Q. Do you remember it ever coming up after he got the property why is he blocking the road?

A. At that point it's his property. So we didn't have anything to do with it.

Q. Did anybody say anything about it, like, why did he do it? This is not right? This is okay? This is bad? This is good? Anything?

A. I mean, as a Lion's Club member, I haven't heard anything because, like I say, it wasn't our property anymore.

Q. Has there been any conversations that you have been present where a Lion's Club member made a comment along the lines of Mr. Amick did a good

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her place, I was more than welcome to. So I just felt like that she was going to be cordial and not have a problem with it.
Q. Okay. Do you know if -- who provided the sand that was down there in 1992, whether it was some private person or the Lion's Club or Lion's Club members or whatever?
A. Mr. Ferd Sommer (ph) probably but put that down there.
Q. That's your belief?
A. That is what I've always been told.
Q. Okay.
A. I was down there when they put sand down there at some point in time. And Ferd was down there with a tractor and we were spreading it out. Now, I never saw the bill, I never saw the truck, I just know I saw a shovel.
Q. Yeah. And, of course, he was a member of Lion's Club, at that time, was he not?
A. Oh, yeah.
Q. So he could have been doing it for the Lion's Club?
MR. POPE: Object to form.
THE WITNESS: I don't -- I don't --
BY MR. SOWELL:

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Q. You don't know?
A. I don't know.
Q. Could have been, could not have been?
A. Correct.
Q. All right. Who constructed the boat ramp?
A. It was there when I -- before I -- before my time, so I do not know.
Q. Now, do you remember when the Lion's -- you know where the Lion's Club gate is?
A. Yes, sir.
Q. And there's an allusion to it, I think, in that document we're looking at, where I put the green part?
A. Right. Yes, sir.
Q. There it is right there (indicating).
A. Okay.
Q. I got it.
A. Okay. Yes, sir.
Q. That gate is still there, is it not?
A. Yes, sir.
Q. Okay. Is it ever closed now?
A. No, sir.
Q. Has it ever been closed since you've been living there?
A. Since I've owned the property or since

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I -- we've been going down there? My father bought the house in 1966. He died in 1986. And I've been down there all my life. And it has -- I can tell you that I have not seen it closed since 1987, when I bought my house.
Q. Okay. What about during that period, '66 to '86, was it closed and locked for a period of time?
A. It -- they normally -- Mr. Ferd would close and lock it at the end of the summer, when everybody would leave.
Q. Okay.
A. Because back then they had just built Billy Dreher Island. And I think there was a fear that people didn't know exactly how to get to Billy Dreher Island, so they turn down that road.
Q. Yeah.
A. Well, they see the point down there, all of a sudden they are wanting to put the boats in and things over there at the Lion's Club. So I think he closed the gate, I was told. But everybody -- I still got a key to the gate.
Q. Okay.
A. I'm sure there's no lock on it anymore, but I don't know that because I haven't looked. But

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I still got a key.
Q. Yeah. So back during that time frame, and we're talking about '66 to '86, generally, when it was not the summer time, you would use a key to open that gate and get through there?
MR. POPE: Object to form.
THE WITNESS: If it was locked, yes, sir.
BY MR. SOWELL:
Q. If it was locked, yes.
A. Normally, it got to the point where it got to be such a pain, they just quit locking it.
Q. All right. But it was locked for a period of time and required a key to open it?
MR. POPE: Object to form.
THE WITNESS: I never -- I never used a key to open the gate, if that's what you're asking. I never had to, because it never was locked. But I have -- I have seen it locked, but I -- when we leave out, but I never have opened it. No, sir.
Q. Well, other people would have had to have used a key, would they not?
MR. POPE: Object to form.
THE WITNESS: I guess so, if it was locked.
BY MR. SOWELL:

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some memories from the late '60s, but main -- my main memories are probably, you know, in the '70s. That's when I was ten years old and -- 'cause I turned 10 in '73.

Q So you were born in '63?

A '63, correct.

Q And what year did you finish the Citadel?

A 1985.

MR. SOWELL: And I'm going to ask the reporter to mark this as Defendant's Exhibit 1.

(Defendant's Exhibit Number 1 was marked for purposes of identification.)

BY MR. SOWELL:

Q Do you recognize that gate in the picture?

A I do.

Q And is -- how long was that gate maintained there?

A That gate's been there, or a gate like it, since, you know, as long as I can remember.

Q Was it ever locked?

A I have seen it locked.

Q All right. And how did you get through it?

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A With a key --
Q All right.
A -- and a lock.
Q Who had the key?
A I think just about everybody that lived down there probably had one at one time. You know, especially during the -- I'll -- go ahead.
Q All right. So the adjoining landowners down there?
A Uh-huh.
Q You have to say yes.
A Yes. I'm sorry.
Q That's all right.
A I apologize.
Q No problem.
A This is my first one of these.
Q I understand.
A I tend to stay away from lawyers when I can.
Q I don't blame you. Is it correct that you understand that the adjoining landowners who had, for the most part, if not all of them, have been former Lions Club members, had a key to that gate?
A I could tell you we had one.

Q Okay. And did you understand that it came from the Lions Club?
A I think we got it from my grandfather.
Q Okay.
A That's the truth.
Q I understand. Now, you -- but do you think -- and I don't know if you know -- but do you think that your grandfather got it from the Lions Club?
A I would think he did.
Q All right. Now, he was a member of the Lions Club, was he not?
A He was.
Q All right. And I want you to look at --
MR. SOWELL: Let's mark this as Exhibit 2, defense Exhibit 2.
(Defendant's Exhibit Number 2 was marked for purposes of identification.)
BY MR. SOWELL:
Q Do you know that that property was originally in Lexington County?
A We have a history book at the lake, and I did read that -- in it that there's a -- it "vees" down into Billy Dreher Island. And I think when the -- when the lake was put in there, it split

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MS. RICE

(INDEX AT REAR OF TRANSCRIPT)

ROY DOGGETT WHITAKER, JR.,
being first duly sworn, testified as follows:
EXAMINATION
BY MR. POPE:

Q. Give us your full name and address.

A. Roy Doggett Whitaker, Jr., 1941 Harrington Street, Newberry, South Carolina. You want the ZIP code?

Q. No. You've been member of the Lion's Club for since when?

A. I don't have a clue.

Q. '70s, '80s?

A. Early '70s. It was before '74.

Q. Did you know we sent a subpoena to the Lion's Club for records?

A. (Witness shakes head.)

Q. We sent a subpoena to the Lion's Club that was sent via Sam Price, their lawyer. This is a copy of it. It's already been marked. This is the documents that we requested that the Lion's Club produced listed on the Attachment A, 13 of them.

A. Is this a different number? Are these different than the first ones?

Q. Yeah. These are -- these are focused on the issue of what documents the Lion's Club has about whether or not there's any writing to show that the Lion's Club had the right and Mr. Amick, after getting a deed, had the right to restrict access to Lion's Club Road to get to the fringe lands.

A. (Witness shrugs shoulders.)

Q. Do you know of any documents -- these are the documents, excuse me, that Mr. Crocker -- he did a search that appears to be a diligent search for all records. Exhibit 1 identifies a letter from him and identifies that he looked at all the records he thought were available. He talked to Mr. Simpson, he talked to others, and the only thing he produced were those seven pages attached.

A. This was -- these aren't dated, though. I'm not on the board of any of those.

Q. You weren't?

A. I was not on the board.

Q. You don't know -- do you know of any documents -- I'm sure that Mr. Crocker has done a thorough job, but do you know of your own knowledge of any document at a board meeting, minutes or letter, e-mail or anything, where there was any reference to the permission to use the Lion's Club Road to get to the fringe land was subject to the Lion's Club granting permission or --

A. I don't know of any letter or written document.

Q. Do you know of any rule, regulation, or the like relating to that issue of permission being required to use the road to get to --

A. When I was -- when I was given -- when I joined the Lion's Club, I was given a key to unlock the gate before you got to the Lion's Club property. That's the only thing. And when I went down there with my children, it was usually locked.

Q. And in the last 20 years, the gate has been opened and not locked?

A. I don't know. Only time I go was to meetings. I didn't take my children down there anymore. So after my kids got out of high school, I didn't go down there except for meetings.

Q. During the time you went for meetings, the gate was open in the last two or three decades?

A. It was always open when we went to meetings from the get-go. It was never locked when it was a meeting date.

Q. Did it ever come up at a Lion's Club meeting that you attended that the Lion's Club has a right to grant or deny permission for the adjacent land owners or their guests to use Lion's Club Road

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to get to the fringe land?
A. Not to my knowledge. I don't remember that.
Q. Did it ever come up in the context of Mr. Amick or anyone else getting ready to buy the property in 2017 that if they bought it, they could control, restrict, or require permission for anyone else to use Lion's Club Road to get to the fringe land?
A. Not to my memory, it wasn't.
Q. Now, on the second page of this Exhibit 1, Mr. Crocker found the rules -- this document -- this page which says, "Rules governing the use of the Newberry Lion's Club lake property and clubhouse." Now, that's not dated. Do you have any idea when the reference --
A. I don't.
Q. Okay. I don't think we know, but --
A. Looks like it was done on --
Q. Well, we've got Mr. McSwain was chairman. That might give you some idea. He's been dead a while.
A. Yeah, but he -- he didn't -- I mean, he didn't live here. He lived in Spartanburg, but he had a place down there or his mother had a place down

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there. I believe -- I believe Heath and Agnes had the place and then he started using it, but that's speculation on my part. This looks like a typewriter, not a computer print.
Q. Right. That tells you something, doesn't it?
But, anyway, don't you think a document like this one where it says, "Rules governing the use of the Lion's Club lake property and clubhouse," if there was going to be a requirement or a mandate that the club had the right to give permission to use or not use Lion's Club Road to get the fringe land for the adjacent property owners, that it would have been put in here?
A. I don't know.
Q. But there is no such document?
A. Not to my knowledge. I don't know. They had a lake committee that did all this stuff and they just reported to us what was --
Q. But you don't remember any committee or person reporting that information to the board or to the club?
A. No, but I -- that goes a long way. My memory is not that good.
Q. I understand. Mine isn't either. We're

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on the same wavelength age-wise.
A. Whether it was or whether it wasn't, I don't know. I mean, it wasn't relative to me. I didn't own any property down there. So...
Q. Did it ever come up in a meeting when it was decided or before it was decided that Mr. Amick was going to buy the land, that he had the right to shut off access to use of that road to the adjacent property owners and their guests to use --
A. Not to my --
Q. Wait a minute. To use Lion's Club Road to get to the fringe land?
A. Not to my knowledge.
Q. All right. Did you understand -- you understood -- this map, Exhibit 2, has been marked and identified by Mr. Crocker and others, but it shows the layout of the Lion's Club property, the adjacent land owners who were former Lion's Club members, correct?
A. They were supposed to be.
Q. And the fact that Lion's Club Road goes down to the fringe land?
MR. SOWELL: I object to the form of the question.
BY MR. POPE:

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Q. Are you aware that Lion's Club Road goes down to the fringe land?
A. I didn't know where it went until I saw that first map. So, I mean, this is the first time I've seen the map of the property. Not the first time when we were -- when we were discussing the issues with it, that's what I -- that's what I saw the first time.
Q. Are you aware that people use Lion's Club Road to take boats onto the fringe land to launch them at the boat ramp?
MR. SOWELL: I object to the form of the question.
BY MR. POPE:
Q. Are you or are you not familiar that people use Lion's Club Road to take boats and trailers down to the ramp to be launched?
A. The members -- the members did when I was involved with it. Here again, the only time I was only there after my kids go out of high school was -- I didn't go down there anymore. So whether they did or whether they didn't --
Q. So that's more than 25 years ago?
A. (Witness nods head.)
Q. Given the fact that your youngest child is

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about 39 or something?
A. Forty-two.
Q. Forty-two. All right.
A. Or 40.
Q. All right. Then that's 25 years plus that you haven't been down there to see, correct?
A. That's right.
Q. Would you agree that adjacent property owners -- is there any way to get -- excuse me. Change the question.
Are you aware of any way for an adjacent property owner or anyone else to get to the fringe land by vehicle other than Lion's Club Road?
A. Not to my knowledge. I'm not familiar with the land on around to the side over there. So...
Q. Okay. Are you familiar with the fact that the adjacent land owners and Mr. Amick pulled their money to pave or repave Lion's Club Road in about 2010?
A. Repeat that question again.
Q. I'll show you Exhibit 6. Exhibit 6 is a spreadsheet with copies of checks attached showing that in 2010, Lion's Club Road was repaved or paved and it shows who paved what. It shows that the Rices

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paid about $9,800 and the Schumperts paid about $10,500, and Mr. Amick paid $1,000 and different amounts. Are you aware that those adjacent land owners did that to improve the quality of Lion's Club Road?
A. I was not because 2006, I was not very active in the club. So I don't know. I was involved in a national organization that kept me away a lot.
Q. Kept you busy.
A. But, I mean, obviously from that document, that's the first time I've seen that.
Q. This is the first time you've heard that the Schumperts and the Rices and Murray Gray and everybody contributed --
A. I just knew it had gotten paved.
Q. -- large amounts of money to fix the road?
A. I just knew it got paved. I mean, I didn't -- if it was, I didn't --
Q. You just heard it in the context at a meeting, somebody said, well, the road got paved?
A. I just -- well, I rode on it, for one thing. It was obvious to me that it had been paved.
Q. That was a clue, right?
A. I'm slow, but I picked up on that one right quick.

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Q. Did you ask somebody who paved it?
A. I might have. I don't know. And they might have told me.
Q. Are you aware of any person that ever asked the Lion's Club for permission to use Lion's Club Road to go down to the fringe land?
A. Repeat that again now.
Q. Can you give us the name of any person or persons who asked the Lion's Club, including the adjacent property owners, for permission to go down Lion's Club Road to get to the fringe land?
A. No.
Q. Are you aware of any person who was denied permission to use Lion's Club Road to go down to the fringe land?
A. No. But, see, anybody that had a key could open the gate. So if they would ask a Lion's Club member, how would I know who asked what?
Q. Well, the gate has been open without a lock, as I understand it, for 20-plus years; is that correct?
A. I don't know. Like I said, when I go down there, we have meetings. So it would have been open anyway.
Q. Right. Well, if it's true that the gate

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had been open and unlocked for over 20 or 30 years, are you aware of anyone who had been denied permission during that time period to use Lion's Club Road to get to the fringe land?
A. I'm not aware of anybody that was denied.
Q. I'm going to show you an affidavit. It's two pages. We'll mark that.
(PLF. EXHIBIT 1, Affidavit of Roy Doggett Whitaker, Jr., was marked for identification.)
BY MR. POPE:
Q. This is marked No. 1. And I didn't bring a copy. I don't have one for myself either.
A. You're talking about that statement right there?
Q. Number four, read that -- what's the date of the affidavit, first, on the second page?
A. 10/30 -- no, that's the commission on it.
Q. 10th of June 2019?
A. June 10, 2019. Yeah.
Q. Read paragraph four aloud, please.
A. "The referenced property was never opened to general public, but was used by the Lion's Club members and their guests -- by adjoining property owners and their guests with permission of the Lion's

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Club."
Q. But can you -- can you tell us what permission was ever asked for, granted, or denied?
A. No, I can't.
Q. Number five, would you read that out loud?
A. "Use of former Lion's Club property, including roads, the graveled area, people use to launch the boat and the beach was always required permission from the Lion's Club which was liberally given. Therefore, any use of the Lion's Club property."
Q. Read that last sentence.
A. "Therefore any use of the Lion's Club property, Parcel A, Lion's Club Road, Prosperity, South Carolina, 29127, was used by permission."
Q. But you said that no one ever asked for, was granted, or denied permission to use --
A. I -- I -- I can't say anyone. I never did.
Q. All I'm -- I know -- I'm not asking if you granted permission or requested permission. I'm saying has anyone, to your knowledge -- all you can talk about is your knowledge.
A. That's right.
Q. To your knowledge, has anyone ever

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requested permission to use Lion's Club Road to get on the fringe land for the boat ramp, the beach, or any other purpose?
A. No.
Q. And have you ever heard it mentioned in the meeting that someone had asked for such permission?
A. No.
Q. And that goes back five years of your membership, correct?
A. (Witness nods head.)
Q. You have to say yes or no.
A. Yes. The only thing I knew is you had to have a key to get through that first gate.
Q. But you don't know when the key stopped being used and the gate was open?
A. I do not. And I probably still got my key somewhere.
MS. RICE: Me too.
THE WITNESS: But I don't know where.
BY MR. POPE:
Q. You don't have any legal knowledge that you plan to render in this case, do you?
A. Do what now.
Q. Legal -- legal opinions or knowledge?

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A. Do I have any legal opinions?
Q. Yeah.
A. No, not that I'm aware of. But I'm not a lawyer, so I don't know what...
Q. Did you go to the closing when Mr. Amick got the deed; do you remember?
A. I don't remember. I went to several meetings.
Q. Did you ever go to Lisa Smith's office?
A. I did.
Q. Was it ever brought up that Mr. Amick would or would not have the right to grant or deny or control access or permission to that road?
A. No, not that I remember.
Q. This is Plaintiff's Exhibit 4A and it shows the plat that was given -- prepared for the deed to Mr. Amick. And do you see where -- is this perpendicular two lines? Is that Lion's Club Road going down towards the fringe land?
A. Well, I've got to see it. Yes.
Q. And the road is paved down to that point?
A. Somewhere -- somewhere in that area.
Q. Right. And then it refers to it as a gravel road going down here onto the fringe land; is that right?

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MR. SOWELL: I object to the form of the question.
BY MR. POPE:
Q. Does it? You can answer.
A. It goes to -- the gravel heads in that direction. Now, how far it went, I don't know because it was --
Q. Does it show --
MR. SOWELL: Wait, wait, wait, wait.
MR. POPE: Sorry. Go ahead. If you want to say something, go ahead.
MR. SOWELL: Yeah. I mean --
MR. POPE: Go ahead and finish.
MR. SOWELL: You were saying something. What were you --
THE WITNESS: I said it was gravel going the direction of the fringe land.
BY MR. POPE:
Q. Is it the fringe land when you cross that borderline there or no?
A. I don't know. I don't know. I'm not a surveyor. So I can't answer that question.
Q. Is this the road that people use to go to the boat ramp the last time you heard?
A. Last time I went down there, that's the

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A. Yes.
Q. Okay. Well, I'm going to ask you about that. I'm going to show you a picture first.
MR. SOWELL: I'm going to ask the reporter to mark this as Defendant's Exhibit 4 I guess. Is that right?
THE COURT REPORTER: Yes.
(DFT. EXHIBIT D4, Photograph, was marked for identification.)
BY MR. SOWELL:
Q. You keep that one. (Indicating.)
A. Got it.
Q. Do you recognize that gate?
A. Yes, I do.
Q. And how long has that gate been there?
A. Ever since I can remember -- I can remember.
Q. Was it ever locked?
A. Yes, it was locked.
Q. All right. And approximately when was it locked?
A. When -- well, it used to be locked when nobody was down there.
Q. Uh-huh. All the time when nobody was down there?

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A. No, not all the time.
Q. Uh-huh. Well, how did you get in there if you wanted to?
A. All the landowners had a key.
Q. Okay. And who gave them the key?
A. Lions Club.
Q. Okay. Do you know the --
A. It was labeled -- it -- the key was labeled Lions Club on it to be truthful with you.
Q. Okay. So when -- when approximately was the last time you can recall, if you can, that this gate was locked? I mean, has that been like last week?
A. No.
Q. Last year?
A. No.
Q. When, approximately?
A. Probably early '90s.
Q. Okay. Now, I'm going to show you Plaintiffs' Exhibit -- no, Defendant's Exhibit, I'm sorry, 5.
(DFT. EXHIBIT D5, Photograph, was marked for identification.)
BY MR. SOWELL:
Q. And I'll represent to you that

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Defendant's Exhibit 5 is an aerial photograph taken by a drone --
A. Okay.
Q. -- you know, less than a year ago. Sometime in the summertime I believe -- yeah, in the summertime of 2019. Now, do you recognize your dock to the left?
A. Yes, I do.
Q. All right. Can you see the boat landing?
A. No, you can't.
Q. Can you see a beach?
A. No, you can't.
Q. Can you see a road?
A. No, you can't.
Q. All right. You can just put that one down or -- unless you want to talk about it.
MR. SOWELL: Let's mark this one as Number 6.
Tom, I've got another copy of that one, let me find it.
(DFT. EXHIBIT D6, Photograph, was marked for identification.)
MR. POPE: This is -- (Indicating.)
MR. SOWELL: Well, that's not it. I'm

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sorry. There it is right there, it's marked in some other deposition, but...
BY MR. SOWELL:
Q. Defendant's Exhibit 6, now is that where -- is that a picture of where the -- the paving ends and the paving turns left onto Lions Club Circle?
A. Yes, it is.
Q. All right. Now, we were looking at -- and if you could find this exhibit, it's down in there somewhere, it's these payments.
A. I got it, it's somewhere in here.
Q. There they are, right there.
A. There they are, yep.
Q. All right. So this is Exhibit 1. Now, do you see where it's -- it's -- I'll call it bifurcated, split up? (Indicating.)
A. (Nodding head up and down.)
Q. So it's got payments from the road to the gate. Do you believe that would be State Park Road or Billy Dreher Island Road?
MR. POPE: Object to the form.
THE WITNESS: Say that again.
BY MR. SOWELL:
Q. Do you believe from the road to the

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,	)	
Plaintiffs,	)	
v.	)	**AFFIDAVIT OF YOUNG SCHUMPERT IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**
C. Ray Amick,	)	
Defendant.	)	

PERSONALLY appeared before me Young Schumpert who being duly sworn, deposes and states as follows:

1. I am currently 59 years old and I reside in Newberry County where I have lived my entire life (except for my college years at the University of South Carolina).

2. My grandfather originally owned property on Lions Club Circle. My parents, Bob & Peggy Schumpert, now deceased, got a deed to the property on Lions Club Circle and built a house on the lot back in the 1950's. This property (plus some adjacent lots) is owned by my brother, Claude Schumpert, currently. There is no road access to the waters of the lake from this property other than using Lions Club Road.

3. From my infancy until 2018, I have spent a lot of time at the Lions Club Point at the property owned by my parents and now by my brother and his wife. When I was younger, our family spent virtually the entire summer at the lake where we enjoyed the use of the fringe lands at the end of the point for a beach and a boat ramp/landing where everybody who lives on the point would launch their boats. We also swam at the beach. In addition, the fringe lands were used by property owners at Lions Club Point for family gatherings, annual 4th of July parades, birthdays, anniversaries, etc.

4. After my childhood, I continued to visit the lake on a frequent basis. I do not visit it as frequently now for the last several years, but I have never observed a time when the property owners at Lions Club Point were not able to access Lions Club Road to get to the fringe lands, boat ramp, etc. until 2018. At some time in 2018, Ray Amick blocked Lions Club Road with a rope, parked cards, and debris. He effectively has denied access to all of the property owners even though we enjoyed using Lions Club Road without limitation, restriction, or permission from anybody for many decades before that.

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5. The only limitation of access that has ever existed on Lions Club Road is 40 years ago when the property owners (not Mr. Amick) put up a gate for their use. The gate was installed by the property owners at Lions Club Road approximately 600 feet from the club house. Each property owner had a key to the gate and its purpose was to keep out trespassers and persons who were not guests of the property owners. Approximately 30 or 40 years ago, the gate was used intermittently, primarily in the winter time when there were not many people at Lions Club Point. In the last 20 years, the gate has been continuously wide open and never locked. During the intermittent period when the gate was used, all property owners of Lions Club Point had a key to the gate and the presence of the gate, which was installed by the property owners, did not impair, restrict, or limit their access to Lions Club Road. It stopped being used because all of the property owners determined that it was "more trouble than it was worth." Mr. Amick had nothing to do with the installation or discontinuance of the use of that gate. His home was on Lions Club Road before the gate.

6. Mr. Amick, by blocking Lions Club Road, has restricted and eliminated access to the property owners at Lions Club Point who want to enjoy the fringe land, which is a substantial portion of real estate consisting of approximately three acres or more where the ramp and the beach are located.

7. I have read the Complaint of Murray Gray and Claude and Missy Schumpert against Ray Amick to open up this road, and I agree with all of the contents in that Complaint as being accurate and true.

SWORN to before me this 4th)
day of June, 2019)
)

Mina Elizabeth Brooks Alexander)
Notary Public for South Carolina
My commission expires: 1/29/2025

Young Schumpert

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A. 2000 -- I'll look -- I'll look back over that one and see.
Q. Uh-huh. I thought those checks were 2010.
A. '10, correct. That would have been '10. That was actually above on the -- okay. Yes, '10.
Q. So other than the putting the gravel down for the boat ramp, there's not been any?
A. And pothole repair.
Q. And potholes. There's not been any maintenance on that road down to the Lion's Club point in the last 20 years that you know of?
A. Besides pothole repair, that would be it, yes.
Q. Okay. What about -- you know, I asked Murray Gray about the gate.
A. Uh-huh.
Q. Were you -- I suppose you used this property some when your father owned it?
A. Yes.
Q. And so how long have you been going there?
A. Since I was -- well, technically, since I was born --
Q. Uh-huh.
A. -- in '64.
Q. Okay.

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A. That's when they actually added onto the original house.
Q. Now, are you aware of a period of time that the Lion's Club -- Newberry Lion's Club posted a no trespassing sign on that gate and locked the gate?
A. The gate was locked. I can't decide what the Lion's Club did, because I wasn't a member. But the gate has been locked.
Q. Okay. And how did you get it unlocked for access?
A. With a key.
Q. And who had the key?
A. I had a key that was for our family.
Q. Right.
A. So I just know as a property owner down there, we had a key.
Q. Approximately what period of time was that?
A. The gate was even locked when we were building our house, and we had to have it unlocked. So someone locked it while our house was being built.
Q. All right.
A. It was still being locked. That would have been 2010 and '11.
Q. All right. And you used the key you had, the family key to unlock it, when you needed to?
A. Yes.
Q. Okay. Do you own your fringe land?
A. Yes. We purchased our fringe land. That would have been this part of this plat.
Q. Okay. Which is exhibit --
A. This actually shows the fringe lands, Exhibits 3.
Q. Yes.
A. That shows the fringe lands that we purchased.
Q. All right. Now, can you -- can you walk from your fringe lands to what is now Ray Amick's fringe lands?
MR. POPE: Object to the form.
THE WITNESS: Can I walk to the -- from the fringe lands?
BY MR. SOWELL:
Q. Your fringe lands to what is now -- through the Rice's fringe lands to Ray Amick's fringe lands?
MR. POPE: Object to form.
THE WITNESS: I would have to cross multiple fringe lands, but I can walk there, yes.
BY MR. SOWELL:

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Q. Well, multiple would be Joe Rice, would it not?
A. McCrackin --
Q. I guess Thad McCrackin?
MR. POPE: Let him finish, please.
THE WITNESS: McCrackin would be the other one, so yes.
BY MR. SOWELL:
Q. Okay. Good. And they can do the same, Joe Rice could cross McCrackin and McCrackin can just walk next door?
A. If you were walking, you can walk it.
Q. Could you pull a trailer through there?
A. No.
Q. Have you ever obtained an estimate to put a boat ramp on your property?
A. I've been declined to put a boat ramp on my property.
Q. By who?
A. SC&G.
Q. When was that?
A. When we were actually looking at doing this piece of property, so that would have been 2010. I met with Tom Boozer. And as I say and he said, we were not allowed to do that.

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her place, I was more than welcome to. So I just felt like that she was going to be cordial and not have a problem with it.
Q. Okay. Do you know if -- who provided the sand that was down there in 1992, whether it was some private person or the Lion's Club or Lion's Club members or whatever?
A. Mr. Ferd Sommer (ph) probably but put that down there.
Q. That's your belief?
A. That is what I've always been told.
Q. Okay.
A. I was down there when they put sand down there at some point in time. And Ferd was down there with a tractor and we were spreading it out. Now, I never saw the bill, I never saw the truck, I just know I saw a shovel.
Q. Yeah. And, of course, he was a member of Lion's Club, at that time, was he not?
A. Oh, yeah.
Q. So he could have been doing it for the Lion's Club?
MR. POPE: Object to form.
THE WITNESS: I don't -- I don't --
BY MR. SOWELL:

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Q. You don't know?
A. I don't know.
Q. Could have been, could not have been?
A. Correct.
Q. All right. Who constructed the boat ramp?
A. It was there when I -- before I -- before my time, so I do not know.
Q. Now, do you remember when the Lion's -- you know where the Lion's Club gate is?
A. Yes, sir.
Q. And there's an allusion to it, I think, in that document we're looking at, where I put the green part?
A. Right. Yes, sir.
Q. There it is right there (indicating).
A. Okay.
Q. I got it.
A. Okay. Yes, sir.
Q. That gate is still there, is it not?
A. Yes, sir.
Q. Okay. Is it ever closed now?
A. No, sir.
Q. Has it ever been closed since you've been living there?
A. Since I've owned the property or since

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I -- we've been going down there? My father bought the house in 1966. He died in 1986. And I've been down there all my life. And it has -- I can tell you that I have not seen it closed since 1987, when I bought my house.
Q. Okay. What about during that period, '66 to '86, was it closed and locked for a period of time?
A. It -- they normally -- Mr. Ferd would close and lock it at the end of the summer, when everybody would leave.
Q. Okay.
A. Because back then they had just built Billy Dreher Island. And I think there was a fear that people didn't know exactly how to get to Billy Dreher Island, so they turn down that road.
Q. Yeah.
A. Well, they see the point down there, all of a sudden they are wanting to put the boats in and things over there at the Lion's Club. So I think he closed the gate, I was told. But everybody -- I still got a key to the gate.
Q. Okay.
A. I'm sure there's no lock on it anymore, but I don't know that because I haven't looked. But

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I still got a key.
Q. Yeah. So back during that time frame, and we're talking about '66 to '86, generally, when it was not the summer time, you would use a key to open that gate and get through there?
MR. POPE: Object to form.
THE WITNESS: If it was locked, yes, sir.
BY MR. SOWELL:
Q. If it was locked, yes.
A. Normally, it got to the point where it got to be such a pain, they just quit locking it.
Q. All right. But it was locked for a period of time and required a key to open it?
MR. POPE: Object to form.
THE WITNESS: I never -- I never used a key to open the gate, if that's what you're asking. I never had to, because it never was locked. But I have -- I have seen it locked, but I -- when we leave out, but I never have opened it. No, sir.
Q. Well, other people would have had to have used a key, would they not?
MR. POPE: Object to form.
THE WITNESS: I guess so, if it was locked.
BY MR. SOWELL:

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Q. I'm just asking you.
A. I guess so.
Q. You said you have seen it locked?
A. I've seen it closed. I have seen it closed, I have never seen it locked.
Q. All right. Let's -- let's assume for a minute -- I'll go slow on this --
A. Okay.
Q. -- because I want you to think about it. I want you to think about it. Let's assume that the Court established the easement that you and the Schumperts and Joe Rice seek down all the way to the fringe lands, just for purposes of this conversation. I do not concede that and Tom Pope does not concede otherwise, and neither do you. Let's assume that happened.

That easement, who would it be in favor of? In other words, who do you believe, under these circumstances, would be allowed to traverse what you claim is an easement that extends off of Lion's Club Road?

MR. POPE: Object to the form.

THE WITNESS: So, the question that you're asking me is, who do I think is going to benefit from this the most?

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BY MR. SOWELL:
Q. No. This is my question. I'll sort of parse it out a little bit and make it clearer. Are you claiming -- you, and Dr. and Mrs. Schumpert -- of course, I will ask them, too. They are here. They are listening, so they can be thinking about their answer. But since you're number one, you get to answer first.
A. Okay.
Q. Are you seeking an easement in favor of the general public or just the Lion's Club property owners down there, just above the point?
A. Right now, I'm -- I would like to see it for my family, his family, and friends of his family, friends of my family that come. Because we have a good bit of -- my daughter has gotten married, so she has a large family she married into. And they -- I'd like to have them -- I'd like for them to have access, because they could put the boat in, and we could use it, and we could have family functions down there. My house is not big enough to house all of that. So it would be nice to be able to have something on the point for anybody that came down there that was my family and anybody that's down there family, in my opinion. That's what I want to see happen.
Q. Understood. That's what I was asking you about.
A. That's what I'm --
Q. And I presume -- and I'm not trying to talk you into this, so you think about it -- but I presume that means you don't want the general public coming down there to use it, as if it were Murray Gray island and boat ramp?
A. Well, I don't -- I wouldn't object to people coming down there. I would have to be cautious, because there are some people in the world that are not very good people that I don't want down there. But I don't know -- I don't know how you would limit it, if you did that. I mean, that would be something that I would think that Dominion or South Carolina Electric & Gas would have to control, would they not?
Q. I don't know. I don't really know what the deal is from Dominion.
A. I don't either. I don't either.
Q. I've been wondering about that.
A. I just know that we -- as long as I've always been led to believe is that road went all the way to the point. They never had any problem with us

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using it. I never -- we never -- when we put -- when they put the sand down there, we put the gazebo, there's a light pole down there on their property. I've never been told that they had any issue with it. I know that the Boy Scouts used to have -- they used to camp out down there and have tents. And there is a pole, power pole, but it does not have a meter on it anymore down there. They were going to put it where you could come down there and camp, if you wanted to. But I don't know that it ever got put in or whether they took the power pole back out. The power pole is still there, but there's no meter there. So I --
Q. When you say they, you mean the Lion's Club? The previous owner?

MR. POPE: Object to the form.

THE WITNESS: I do not know who put it there.

BY MR. SOWELL:
Q. No, I'm talking about when you -- you've given some testimony just now. And I was listening to it.
A. Yes, sir.
Q. And you -- repeatedly, I'm not accusing you, I'm just stating a fact.

EXHIBIT E

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF NEWBERRY)
CASE NO: 2018-CP-36-00089
LISA SUMMER RICE AND)
JOSEPH F. RICE,)
)
PLAINTIFFS,) DEPOSITION OF:
) LISA RICE
-VS-)
)
NEWBERRY LIONS CLUB AND)
C. RAY AMICK,)
)
DEFENDANTS.)

Given before Crystal Knappenberger, Court Reporter and Notary Public, at the law offices of Pope, Parker, and Jenkins, located at 1508 College Street in Newberry, South Carolina, on Thursday, December 13, 2018, commencing at 1:32 p.m.

Job No. CS3155533

A P P E A R A N C E S

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EXHIBITS RETAINED IN PREVIOUS EXHIBIT

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(LISA RICE, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. KOUTRAKOS:

Q: Mrs. Rice, as you know, my name is Jim Koutrakos. I have seen you a couple times in this room for other depositions. I represent Mr. Amick in a lawsuit that with you and your husband filed against Mr. Amick and the Newberry Lions Club. You have heard all these instructions before in these other depositions, including your husband's deposition a few moments ago, but do I need to go through them all or do you understand them?

A: I understand them.

Q: Okay, fair enough. Give me your full name, please.

A: Lisa Ann Summer Rice.

Q: And how old are you, Mrs. Rice?

A: 63.

Q: What's your date of birth?

A: 9/3/55.

Q: Where were you born?

A: Newberry.

Q: Where did you go to high school?

A: Newberry High School.

Q: What year did you finish up?

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A: ’74.
Q: Where did you go to college?
A: USC.
Q: What year did you finish up?
A: ’77.
Q: Three years?
A: No, maybe my math is incorrect. ’73 to ’77.
Q: Okay. So, you graduated high school in ’73?
A: I thought it was ’74 but it could be ’73.
Q: That’s okay. Any education after college?
A: Yes, I did do some further study down at Salkehatchie, USC Salkehatchie and got my teaching degree.
Q: Okay. Have you ever taught?
A: I have, I taught high school at Blackville-Hilda High School for a number of years.
Q: Okay. What did you teach?
A: Psychology, sociology, economics, world history, and one math class.
Q: Okay. You are married to Mr. Joe Rice, right?
A: Correct.
Q: And when were y'all married?
A: 1979.
Q: Your father is deceased, right?
A: Correct.

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Q: What was your father's name?
A: Ferdinand Jacob Summer.
Q: And when did he pass away?
A: 2003.
Q: What did he do for a living?
A: He was plant manager for Kaywood Corporation in Joanna, South Carolina.
Q: Okay. He retired from that company?
A: He did.
Q: And was he there for a long time?
A: Yes.
Q: Okay. He lived --
A: He lived in Newberry.
Q: In Newberry. When you say ''in Newberry,'' Newberry County or in --
A: Newberry City.
Q: Newberry City, okay. And he owned property near the property that is the subject of this case?
A: Correct.
Q: Where exactly was it?
A: 175 Lions Club Circle.
Q: Is the property where you guys own today?
A: Yes.
Q: Okay. That has been in the family for how long?
A: I'm 63, 60 years.

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Q: 60 years. Do you know how or do you know if your family history how your father came to acquire this property?
A: Yes, he purchased it from a man, his name was Toons Louis (ph).
Q: Back then, was it called Lions Club Road as well?
A: Lions Club Road and Lions Club Circle.
Q: Okay.
A: But probably back then the Circle part was not dedicated, I guess you would say.
Q: Okay. And your mom’s name?
A: Joann, one word, Martin Summer.
Q: Is she --
A: She is also deceased.
Q: Okay. What year did she pass away?
A: 1997.
Q: Your father was a member of the Lions Club?
A: Correct.
Q: Was he a member when he died, was he still a member?
A: Well, he was ill so I'm not sure he was an active member at the time for the last few years of his life, but yes, he was an active member.
Q: Okay. When you were growing up, was he a member of the Lions --

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A: He was a very active member.
Q: So, he was a Lions Club member throughout most of your memory --
A: All of my memory.
Q: Okay. The property is 175 Lions Club Road?
A: Circle.
Q: Circle, okay. So, actually the address is Circle, okay. As your husband testified, you have -- it has its own access to a dock, it has its own -- you have access to the lake, correct?
A: Correct.
Q: The property that’s involved in this case and I'm going to try to refer to it as the Lions Club property.
A: That’s fine.
Q: You have been on the Lions Club property, correct?
A: Yes.
Q: And let me back up. When you were growing up, did you all go like I live in Columbia, we go to the lake and we have a place to go to the lake. Is that what y'all did? Y'all went to the lake on the weekend or --
A: We went to the lake every weekend, we spent summers there, we would move down. Mom and Dad

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spent falls there; by the time we were in college, that's where we would go home to.

Q: Okay. Did they eventually move out to the lake?

A: They spent most, probably 90 percent of their time there.

Q: Okay. And during, at least as far back as you remember, did the Lions Club property, did the Lions Club actually own it?

A: Which property are you talking about?

Q: I'm talking about the property that's the subject of this case.

A: Yes, the Lions Club owned it.

Q: Okay. And tell me what occurred on the property? I mean did people, did Lions Club members go?

A: Yes.

Q: Okay.

A: Any member of the Lions Club, any property owner down in that area could use the beach, could use the ramp, anybody if there were guests, family members, you didn't have to be a property member or a property owner to use the Lions Club. The clubhouse was used primarily by the Lions Club members for their meetings, but you could ask permission to use it for special events.

Q: Okay.

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A: We used it July fourth for the parade, all of us homeowners there.
Q: Okay. But your family was not only a homeowner, your dad was a member, he was a Lions Club member?
A: That's correct.
Q: So, y'all could use the property as any other member could?
A: Yes.
Q: Okay. And you made a distinction between the members of the Lions Club and some of the other landowners.
A: In the beginning, to own land you had to be a Lions Club member.
Q: That’s what I heard.
A: But I don't know when that changed, but you know, as you know, as the club declined, they changed that and I don't remember what timeframe that was.
Q: Okay.
A: But it’s all pretty much been handed down family-wise anyway.
Q: All right. But all the, at least the people from your childhood and growing up, maybe throughout your college years -- and you can correct me if

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I'm wrong, I'm just speculating here quite frankly -- the folks that use the Lions Club property, the property that's subject of this case, would be Lions Club member whether they lived near the property or not, correct?

A: Correct.

Q: It wasn't open to the public, I couldn't go, I'm not a Lions Club member, I couldn't go and use it or anything like that. Right?

A: No.

Q: Was there a gate to the property?

A: There was a gate; it was rarely closed.

Q: Okay. No one would be checking? Everyone would be recognize each other, ig people showed up, no one is checking your ID for proof or anything like that?

A: No.

Q: Okay. Did there come a point in time where use of the Lions Club property would be more open than just to members?

A: Not that I know of.

Q: Okay. It was used exclusively as far as you know by the members of the Lions Club or their immediate families?

A: Yes, at some point I think they rented it out for

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special events but that was when I was young. I don't remember them doing it later, I don't.

Q: Okay. You've been married one time?

A: Correct.

Q: We're going to use the same exhibits, by the way, and I don't think anybody would mind?

MR. POPE: That's fine.

Q: Exhibit Number One is this letter from the Lions Club addressed actually to both you and your husband. Tell me when you first recall seeing Exhibit Number One.

A: Joe showed it to me.

Q: Okay. Do you recall when that was?

A: Well, I mean, he told me that Claude called him like he said. We got the letter shortly thereafter.

Q: Okay. Do you recall what your husband told you about his call from Mr. Schumpert?

A: He just said that Pete had called him and -- no, Claude called Joe and said, ''did you get your letter?'' We said, ''what letter?''

Q: Okay.

A: And that's when Joe called Pete.

Q: Okay. What was your reaction when you first reviewed Exhibit Number One?

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A: Joe, I want this property.
Q: Okay. Is that something you guys thought about before wanting to own the property, the Lions Club property? Again, when I'm talking about Lions Club property, from now on unless I'm referring to your property, I'm referring to the property that’s the subject of this case, okay?
A: Right. No, because I never really thought they would sell it but to keep my heritage and our love of this piece of property and where I grew up, it’s about all I have left of my parents.
Q: And so, you told your husband you want this piece of property?
A: I would like to try to buy this, yes.
Q: Okay, you would like to try to buy it, okay. Did you and your husband discuss a price?
A: No, not really. I kind of left that up to him.
Q: Okay. Just to clear something up, have you ever had any conversations with my client regarding the Lions Club property?
A: No.
Q: Have you had any discussions with members of the Lions Club --
A: No.
Q: -- Regarding this piece of property or this

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subject matter of this litigation?
A: I never had a conversation.
Q: Okay. With respect to this property and buying your property, you talked to your husband, correct?
A: Correct.
Q: Did you have any conversations with any other third party?
A: No.
Q: Okay. When you say Exhibit Number One like your husband testified, there are some conditions in Exhibit Number One, correct?
MR. POPE: Object to the form. Go ahead.
A: Encroachments.
Q: Okay. Did you understand or at least at that time understand the two -- the two items in this letter that I want to focus on is the last sentence of paragraph two, ‘‘we have also decided to make the property available first to those individuals whose property adjourns the Lions Club property’’ and the second, the last sentence of the third paragraph: ‘‘first consideration will be given to current members of the Newberry Lions Club.’’ Do you recall reading those in this letter?

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A: Yes.
Q: Do you recall realizing the significance of those supervisions, at least those two sentences?
A: Well, the second paragraph, to make the property available first to those individuals whose property adjourns lake club property.
Q: And that would be you?
A: Yes.
Q: Right, okay. Were you concerned about the last sentence of the third paragraph, ‘‘first consideration will be given to current members of the Newberry Lions Club?’’
A: I didn’t have any problem with that.
Q: Okay. You told your husband that you wanted to buy the property, he made an offer through his attorney, y'all’s attorney, to buy the property. Correct? Is that a ‘‘yes’’?
A: Yes, I'm sorry.
Q: During your husband’s deposition, he had indicated he had given Mr. Boone a power of attorney to act on his behalf. And actually, after his deposition he was kind enough to get a copy of it and I'm looking at it right here where Joseph F. Rice gives J. Sidney Boone, Junior a power of attorney to do various things. I haven't

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read the whole thing but to act on his behalf with regard to real property. The question for you is have you ever given Sid Boone a power of attorney?

A: No.

Q: Have you ever talked to Sid Boone about the Newberry Lions Club property, the Lions Club property?

A: No.

Q: When your husband made the offer, when your husband wrote the letter, which is Exhibit Number Two that’s right in front of you, to your husband’s lawyer, Mr. Boone -- let me back up. Your lawyer and your husband’s lawyer, Mr. Boone, wrote exhibit Number Two with the $325,000 figure. That is a number that your husband came to that figure without any input from you. Is that right?

A: I don't remember us specifically discussing a price but it was offered in this letter at 300 and I said can we up that?

Q: Okay. So, you discussed upping it form 300?

A: Yes.

Q: Okay. And why would you want to up it?

A: So we would get the property.

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Q: Okay. Did you discuss this specific figure with your husband?
A: No.
Q: The 325 figure is something that he independently arrived at and I assume instructed his attorney to put in that letter Exhibit Number Two?
A: Yes.
Q: Okay. At that point in time, did either Mr. Boone or your husband give you a copy of Exhibit Number Two?
A: I don't remember seeing this copy, no, until these proceedings. But I don't remember seeing -- well, not necessarily this day but in these other proceedings.
Q: Yes, okay. Here is a simple question for you. You were here and you were paying attention like you have been all the other depositions to what was going on today, and there was a bunch of exhibits, not too many, in front of you. I know because you just testified to it that other than because of this litigation, you had independently seen Exhibit Number One, correct?
A: Uh-huh.
Q: You had seen that before, right?
A: Yes, I had seen that, number one.

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Q: Okay. And the other documents, Exhibit Number Two, you had not reviewed until this litigation came up, correct?
A: I don't remember ever seeing this letter before this.
Q: Okay. And let’s just see if we can save everybody a little bit of time. So, number two was something you saw for the first time --
A: Yes, Joe just said --
Q: -- After this litigation arose? You understand what I'm saying?
A: Yes.
Q: Okay.
A: To the best of my recollection, that’s the only time.
Q: And that’s all I want is to the best of your recollection. Number two, number three is -- so, to be clear, we are using the same exhibits from Mr. Joseph F. Rice’s deposition. Exhibit Number Three is an email you were -- the first time you saw this email was during this litigation?
A: Joe probably talked to me about it, but I have not seen it.
Q: Okay. You think he would have talked to him? Okay. You have not seen it, okay. Exhibit Number

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Four, the first time you saw that was during the course of this litigation?

A: I believe so.

Q: Okay. Exhibit Number Five is an email exchange Mr. Schumpert --

A: I'm not usually privy to the emails.

Q: Okay. Do you use email?

A: I do.

Q: Okay. Did your husband, do you think your husband would have forwarded you that email, Exhibit Number Five?

A: He possibly could have.

Q: Okay. Exhibit Number Six obviously that’s the kind of, let’s see. Exhibit Number Seven and Eight are Schumpert emails.

A: I mean I could have possibly seen some of these but I don't know.

Q: Okay. Exhibit Number Nine is the November 21, 2017 letter. Do you recall seeing it for the first -- did you see this prior to this litigation as part as an institution in this litigation?

A: Probably heard about it but I'm not sure I’ve read the actual letter before this.

Q: Do you know if you ever received a copy of it?

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A: I don't think I did.
Q: Okay. Let me back up because I kind of skipping through this and this is probably my fault like the way I did the first time. But if you look at the reason why this thing was, I think we talked about Exhibit Number Four to Exhibit Number Six because it’s actually Exhibit Number Four to the Second Amended Complaint is Mr. Verner’s June 5, 2017 letter. Did you recall receiving a copy of that letter around that time?
A: I saw this letter. Joe showed me this letter but I didn’t -- or he told me about it.
Q: During that time period?
A: I can't remember if I actually saw the letter or Joe just told me about it.
Q: Okay. Fair enough. So, is it fair to say that besides Exhibit Number One, and let me see Exhibit Number 10. I'm sorry, Exhibit Number 10 is an email and Exhibit Number 11 is an email. Other than Exhibit Number One, you didn’t see any of the rest of the exhibits until after the institution of this litigation?
A: Probably discussed what was going on in this --
Q: Fair enough.
A: Fair enough.

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Q: Fair enough, yes. But having seen or being sent a copy, the only one that you recall is Exhibit Number One?
A: I think so.
Q: Okay. So, your husband makes an offer, your husband, your lawyer, Mr. Boone sends a letter to the Newberry Lions Club. You and your husband previously had a discussion about buying the property, you kind of signaled or told your husband that we need to offer a little bit more, that took place. Tell me what happened next to your recollection. From your recollection.
A: We waited and we waited, didn’t hear anything. I asked Joe, you know, have you heard anything, no. Then May I think came around and those -- what's in the document, that’s what happened.
Q: Okay. May came around and then you --
A: We were told I think Claude said I think they are going to sell, then they moved on and said Verner sent the letter, no, they are taking it off the market. You know, and we realized we were the highest bidder at some point, and then Joe said let’s move on, let’s do something.
Q: When you say, ‘‘let’s do something,’’ y'all decided to file a litigation?

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A: Yes, find out what was going on, figure out what to do.
Q: Okay. And when was the first time that the Lions Club had agreed to sale the property to somebody else?
A: Well, we sort of I don't know if it was in June or after that, November? After they took it back off the market supposedly. I'm not good with dates.
Q: Yes. Exhibit Number Eight is an email from Mr. Schumpert to Joe Rice that states that the Lions Club had agreed to sell the property to Mr. Amick for $300,000.
A: Is that in November?
Q: That’s November 16, 2017. Do you think that was around the -- did your husband relay that information to you?
A: Uh-huh.
Q: Is that a ‘‘yes’’?
A: Yes, sorry.
Q: Okay. The reason why I do that --
A: I know.
Q: -- Because she is actually writing ‘‘uh-huh’’ --
A: I know.
Q: -- Down, okay.

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A: Yes.
Q: Spent a lot of time asking your husband a lot of questions; your husband was taking the lead role in both you and your husband’s attempts to purchase the Lions Club property. Correct?
A: Yes, obviously.
Q: He communicated with Mr. Boone and or Mr. Scardato, correct?
A: Correct.
Q: You did not?
A: I did not. I was probably informed of what they were talking about. They kept me in the loop so to speak. Does that answer your question?
Q: Yes, it does. I just want to figure out how much time I need to spend asking you questions, because I know you're a plaintiff and I know you sued my client. But really, all the factual information with respect to what communications were made between the Rices and the Lions Club and the Rices and Mr. Schumpert are all better answered by Mr. Joe Rice instead of you. Is that correct?
A: That would be a correct assumption.
Q: And when we go to trial, you're not going to come and tell me a whole other story of stuff that I

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haven’t heard about before?
A: No.
Q: Okay, fair enough. When the decision was made to file a lawsuit, were you involved in that decision?
A: No, only to the extent that Joe said we were going to file a lawsuit and I said okay. I'm not a legal mind, so, I'm --
Q: Right, but I mean your husband is not from Newberry, right?
A: No.
Q: You're from Newberry?
A: I am.
Q: Your family has been in Newberry a very, very long time. Right?
A: Correct.
Q: And you're suing people, you're suing a club that your dad was a member of for a real long time, right?
A: Uh-huh.
Q: That’s a ‘‘yes,’’ right?
A: That’s a ‘‘yes.’’
Q: And did either Mr. Rice or anybody else say hey, Lisa, is this okay with you since it could be a little bit touchy? Did any conversation like that

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take place?
A: Of course.
Q: Okay. And in that conversation you had with your husband?
A: Yes.
Q: Okay. And did he seek your approval first before filing a lawsuit?
A: We agreed.
Q: Okay. Did you have any hesitancy about filing this lawsuit?
A: No.
Q: Are you concerned about future use of the property?
A: I wanted it to be preserved.
Q: Are you concerned about use, in other words, developmental use of the property?
A: Of course.
Q: Okay. Is that your primary reason for wanting to buy the property?
A: No.
Q: Well, the reason why you want to buy the property or you wanted to buy the property in the first place was to trying to preserve your memories, right?
A: Yes, preserve memories, to preserve the way of

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life that's always been there for years.

Q: And in order to --

MR. POPE: Wait a minute, she didn't finish.

Q: I'm sorry, I didn't mean to cut you off. I'm sorry.

A: To preserve the way of life for the families that I grew up with and their decedents and to keep it as is.

Q: Right, and by doing that and to achieve that goal you would actually have to control the use of the property, right?

A: That makes sense.

Q: Right. Have you been contacted independently by any members of the Newberry Lions Club about this litigation or this property?

A: No.

Q: The damages that you are seeking in this lawsuit, your husband indicated attorneys' fees. Do you have any knowledge of the attorneys' fee that have been paid in this lawsuit?

A: Other than what he stated today.

Q: Okay. You don't pay the bills or anything like that? I mean you don't pay that bill?

A: No.

Q: Okay. Your husband mentioned a bunch of

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properties that he owns. Are you a co-owner with him on some of the properties that he listed?

A: They are in LLCs mostly or no.

Q: The most --

A: Some are, some are, I am.

Q: Okay. With respect to the property that you own in your name, you clearly own this, not this, the property on Lions Club Circle, that is in your name?

A: The property is.

Q: Okay. Is there any other property that you own? Do you own any other property that’s solely in your name?

A: Real estate property?

Q: Yes. Real estate, yes, that’s what I'm talking about.

A: I don't think so.

Q: Okay. And your home that’s in Charleston, is that owned --

A: Joint.

Q: You own that with you and your husband?

A: Uh-huh.

Q: You told me about the property you own just by yourself. Can you give me a list or read the descriptions of the properties that you

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individually own along with your husband? And if it's a lot of those, I don't want to go over the same list again, but is it --

A: There is nothing in addition to that than what my husband said today.

Q: Okay.

A: And half of them are in trusts, half of them are in whatever, so I would have to really go back and think about that.

Q: Okay, fair enough. There was some mention about the encroachments, some encroachments.

A: Correct.

Q: Were you familiar with those encroachments prior to even the property being offered for sale?

A: Absolutely.

Q: How were you or how did you become aware of those encroachments?

A: Historically, we have always known that.

Q: Okay.

A: ''We'' being my brothers, we -- everyone knew that the road was encroached upon; we all knew that Dad's house was right down the middle of a property line. It was just common knowledge.

Q: Okay. How long has Mr. McCracken's house been there?

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A: Well, it was owned by Bubba Ware previously, so that's got to be over 60, 70 years.
Q: So, it's been there for a very long time?
A: Very long time.
Q: And it's been encroaching for a very long time?
A: It's been encroaching for a very long time.
Q: Over the years, has Mr. Schumpert expressed a concerned as to the use of the Lions Club property?
A: What do you mean by ''concern''?
Q: Has he ever expressed an interest in the future use of the Lions Club property to you?
A: Well, it was Lions Club property.
Q: Okay. So, it would have to be at the point in time after everybody learned that the Lions Club wanted to sell it. Has he ever --
A: He has never spoken to me personally.
Q: He's never spoken to you personally about the Lions Club property?
A: No.
Q: Okay. Have you been involved in litigation yourself?
A: Other than the construction litigation with this log cabin that was spoken of earlier.
Q: Okay. Have you been deposed before --

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A: In that litigation, yes.
Q: Other than that?
A: Never.
Q: Who represented the plaintiff in that litigation, do you remember?
A: I do not remember.
Q: Okay. Have you ever had to testify in court before?
A: In a friend’s divorce.
Q: Okay. Any other time?
A: No.
Q: Are you currently employed?
A: I am not.
Q: When was the last time you had a job?
A: When I was a teacher.
Q: A teacher at Blackville-Hilda High School?
A: Uh-huh.
Q: And what year was that?
A: Geez, we moved in ’86. ’77, no. No, later than that, up until about ’86.
Q: Okay.
A: Now, I am a business owner but I am not employed by that business.
Q: That’s fine.
A: I do not get any compensation.

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Q: Okay. What business do you own?
A: I own a bridal shop and a bridesmaid's store.
Q: Where?
A: In Charleston.
Q: In Charleston, what is it called?
A: Southern Protocol Bridal and Bella Bridesmaids. My daughter and I own it.
Q: Okay. Do you own any other business besides that?
A: No.
Q: Okay. Let me take a minute break.
(Deposition went off the record for a brief period of time)

CROSS EXAMINATION BY MR. PRICE:

Q: Lisa, I'm going to hand to you an aerial photograph that is listed as Plaintiff's Exhibit One that I pulled out of my box up here.
A: Okay.
Q: And I don't need to have this listed as an exhibit, but it looks like this thing was an aerial done about 2013, not that that is significant. Let me hand that back to you. And it looks like the subject property is as you go to the top of that photograph, it looks like it's wooded with maybe pines and then as you get to the bottom of the area, it looks like it's a lot

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thinner and there are no leaves on the trees. But having said that, when you were --

A: Are you speaking up here in here?

Q: Yes.

MR. POPE: I think mine -- if you're looking at it like that, is that north/south supposedly?

MR. PRICE: Yes.

Q: Like you can see the wooded area is green and the un-wooded is a little thin trees.

A: Yes.

Q: Okay. Now, I want you to project back to maybe your high school years, that area back in there which is the subject property, was it used for anything like ball fields or that sort of thing or was it just --

A: In what fields?

Q: Ball fields.

A: Ball?

Q: Yes, like --

A: No.

Q: -- Baseball fields, that sort of thing?

A: No.

Q: So, it was really just separated you from the water or you from your house, from your parents' house? It was just --

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A: It didn’t separate us from the water, no. It’s behind the lake.
Q: Right.
A: And it was just a wooded area.
Q: Just a barrier?
A: Yes.
Q: Okay.
A: I mean, we play in the woods growing up.
MR. KOUTRAKOS: Are you asking about this right here?
MR. POPE: Yes.
MR. KOUTRAKOS: Okay. I’ve actually copies of tax -- if you want to use that.
MR. POPE: I'm good.
Q: Okay. That’s all I am going to ask you.

RE-EXAMINATION BY MR. KOUTRAKOS:

Q: Just a couple of questions. Information regarding, you received information or your husband received information about what was going on from Mr. Schumpert. I mean we went through --
A: Right.
Q: -- We talked about it during his deposition by looking at those emails. Do you have any knowledge of your husband acquiring information about what was going on at the Lions Club with

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respect to the Lions Club property? Do you recall, do you have any knowledge of him receiving any information from other people, other Lions Club members?

A: Other Lions Club members?

Q: Yes.

A: I mean he spoke about when he called Pete Simpson.

Q: Right, that one time.

A: Yes.

Q: Right.

A: Yes, and he said he tried to recollect a conversation with Gene Crocker. That’s all I know.

Q: Okay. Did he ever mention talking to Docket Whitaker or any of the other folks that were deposed on that day when you were here?

A: No, I haven't talked to Docket Whitaker.

Q: Okay. Somebody disclosed to your husband that Mr. -- that the Lions Club had agreed to sell the property to Mr. Amick for $300,000. Do you know who that was?

A: I don’t.

Q: I mean I think there is an email from Mr. Schumpert but I think there is some prior

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information that’s out -- anyway. You have no --
A: I don't know how he got that information.
Q: Okay. You have knowledge of any other source of information regarding what was going on at the Lions Club other than Mr. Schumpert?
A: Yes.
Q: Okay. We’re good to go, thank you so much.
MR. PRICE: No questions, thank you.
(Deposition concluded at 2:07 p.m.)

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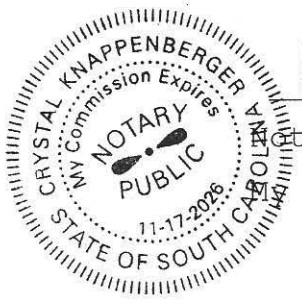
STATE OF SOUTH CAROLINA)
)
C-E-R-T-I-F-I-C-A-T-E
)
COUNTY OF KERSHAW)

I, Crystal Knappenberger, Court Reporter and Notary Public, certify that I did have **Lisa Rice** to appear before me at 1:32 p.m. on Thursday, December 13th, 2018 at the law offices of Pope, Parker, and Jenkins, located at 1508 College Street in Newberry, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 18th day of December, 2018.



Notary Public for South Carolina
My Commission Expires: November 17th, 2026

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF NEWBERRY)
CASE NO: 2018-CP-36-00089
LISA SUMMER RICE AND)
JOSEPH F. RICE,)
)
PLAINTIFFS,) DEPOSITION OF:
) JOSEPH RICE
-VS-)
)
NEWBERRY LIONS CLUB AND)
C. RAY AMICK,)
)
DEFENDANTS.)

Given before Crystal Knappenberger, Court Reporter and Notary Public, at the law offices of Pope, Parker, and Jenkins, located at 1508 College Street in Newberry, South Carolina, on Thursday, December 13th, 2018, commencing at 10:07 a.m.

Job No. CS3155533

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(JOSEPH RICE, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. KOUTRAKOS:

Q: Mr. Rice, my name is Jim Koutrakos; I represent Ray Amick in a lawsuit that you filed against him. I'm going to ask you a series of questions, if for any reason you don’t understand the question, please ask me to rephrase it or re-ask it. Do you understand that?

A: Yes, sir.

Q: And if you answer a question, I'm therefore going to assume you understood the question. Is that fair?

A: That’s fair.

Q: You're a lawyer, right?

A: I am.

Q: You have taken depositions before?

A: A few.

Q: You know all the rules about giving verbal as opposed to nonverbal responses, correct?

A: I do.

Q: I talk fast. If for any reason I am talking too fast, just tell me to slow down or throw something at me and I will slow down, okay?

A: She will be the one to slow you down.

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Q: Okay! Are you on any medication or suffering from a physical or mental condition that affects your memory or ability to tell the truth?
A: No, sir.
Q: You are capable of giving truthful testimony today?
A: Yes, sir.
Q: I don’t know how long we’ll be today but if you need a break, just let me know and we will take a break at the appropriate time. Under the South Carolina Rules of Civil Procedure, I'm required to instruct you that if you need any explanations, clarifications, or definitions of anything I ask you that you are to ask me instead of your lawyer. I'm also required to tell you in the Rules of Civil Procedure that if we take any breaks or anything like that, that you probably shouldn’t discuss the content, you know, your deposition because I'm allowed to ask you about your conversation, even if it’s with your attorney. Do you understand that?
A: I do.
Q: Can you give me your full name, sir?
A: Joseph F. Rice.
Q: And what does the ‘‘F’’ stand for?

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A: Fred.
Q: And how old are you, Mr. Rice?
A: I'm 64.
Q: And what's your date of birth?
A: 3/25/54.
Q: And where were you born?
A: Columbia, South Carolina.
Q: Where did you go to high school?
A: Ashbrook High School in Gastonia, North Carolina.
Q: Where did you go to college?
A: The University of South Carolina undergraduate and law school.
Q: What year did you finish undergraduate?
A: '76.
Q: What year did you finish law school?
A: '79.
Q: Okay. In your own words, can you take me through your legal career? I assume you started practicing law immediately after law school?
A: I did.
Q: Did you clerk for a judge or anything like that?
A: I did not.
Q: Okay. Can you just tell me in your own words your legal career?
A: Yes.

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Q: And I know a lot of it is available online but --
A: Right, I finished law school in May of ’79 and I spent the summer working or studying for the Bar. In August of ’79, I went to work for the Blatt and Fales Law Firm in Barnwell, South Carolina. I remained with Blatt and Fales until Mr. Blatt passed away, and then about a year after that, which was ’86, I think, we, the firm, had relocated -- well, the firm had an office in Charleston, a small office in Charleston. And it had become the dominant office. So, Lisa and I decided to move to Charleston, South Carolina. So, we moved to Charleston. The firm went through some transitions from Blatt and Fales to Ness Motley Loadholt Richardson and Poole to Ness Motley. Then in 2002 there was a -- after the tobacco litigation, there was a major split in the firm and Ron and I formed Motley Rice. And Ron Motley and I were the founders of Motley Rice, I believe it was February of 2002. And I have remained with Motley Rice throughout that time. Ron passed away about five years ago, four years ago. So, I am the founder and the owner of Motley Rice.
Q: How many lawyers are at Motley Rice?

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A: Currently?
Q: Yes.
A: If you include contract lawyers, approximately 200.
Q: Okay. How many offices?
A: Charleston; New Orleans; Charleston, West Virginia; Morgantown, West Virginia; Kansas City; Providence, Rhode Island; New York City; Hartford, Connecticut. I think that’s all of them.
Q: And what's your role in the firm today?
A: I am the managing member and I still fully actively litigate.
Q: Okay. What do you do nowadays in a very general sense?
A: I handle complex litigation; right now, I am lead negotiator for the Fiat-Chrysler diesel defeat litigation that’s headquartered in San Francisco. And I am national co-league counsel in the National Opioid Litigation headquartered in Cleveland, Ohio in front of Judge Polster where we have about 1700 cities and counties have sued 27 various defendants, all related to the opioid epidemic in our country.
Q: Okay. And before that, did you do something with

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what was it, lead paint?

A: My firm did the Rhode Island Public Nuisance lead case as well as the California -- the most recent one you're probably referring to is the California lead paint case on behalf of the cities and counties of California or some of the cities and counties of California.

Q: All right.

A: I did the BP oil spill. I was the lead negotiator for the plaintiffs in the BP oil spill. I was the lead negotiator for the plaintiffs in the Volkswagen diesel defeat class action settlement two years ago. And before that, I've done extensive litigation in the asbestos and pharmaceutical area. And was lead negotiator for the attorney generals in the national tobacco settlement.

Q: Okay. In your current practice, from my understanding you're lead negotiator in a lot of things. When was the last time you have taken a deposition like I'm doing today?

A: In the General Motors litigation about two years ago, I took a series of depositions.

Q: All right.

A: I don't think I've taken a deposition in the last

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two years.
Q: Okay. Do you miss it?
A: I sort of do. I miss the courtroom.
Q: You are married to Lisa?
A: I am.
Q: First marriage?
A: Yes.
Q: How many children do y'all have?
A: One.
Q: Okay. Where do you currently reside?
A: Mount Pleasant, South Carolina.
Q: Have you lived in Mount Pleasant ever since you moved from Barnwell?
A: We moved from Barnwell to Mount Pleasant. We have lived in Mount Pleasant, not in the same home, but we lived n Mount Pleasant consistently through that time.
Q: I understand. How many pieces of property do you own? And when I ask you that question, it means not only individually, or property that may be titled in your wife’s name only, or in some kind of LLC.
A: A number.
Q: A number? Dozens?
A: Yes.

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Q: Okay. How many pieces do either you or wife own in Newberry County?
A: Two.
Q: And what are the addresses?
A: The house at the Lions Club on Lions Club Drive, and I don't remember the street number.
Q: The 175?
A: That sounds right.
Q: Okay.
A: And then I own the territories, which are located up on the Saluda River, right near the Saluda River dam, and half of it is in Newberry County and the other half of it is in Greenwood County right there below the dam where the old railroad trestle runs.
Q: Is that just land?
A: The Newberry side is a -- is in a conservation easement for recreational use. The Greenwood side is an active housing development. It has I think about 90 lots in it. It might be 60 lots, it is something like that.
Q: Okay. The Lions Club Road is something that you and your wife use personally. Is that right?
A: Correct.
Q: The other piece of property that you refer to as

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a territory, that’s kind of an investment type property, correct?

A: It is an investment type property on the Greenwood side. I do have myself and friends and family do use the Newberry side for recreational purposes.

Q: Hunting?

A: Hunting or shooting, horseback riding, four-wheels.

Q: All right. How many other pieces of property do you and your wife own for personal use?

A: Several.

Q: I mean there's your house in Mount Pleasant.

A: Right.

Q: Okay. Do you have any vacation homes? Or let me back up, is the Lions Club property, the property at 175 Lions Club Road, that’s for personal use, right?

A: It is.

Q: Okay.

A: And family.

Q: Is it a vacation home?

A: It’s a getaway home. I don’t know why I call it a vacation necessarily because we like go to football games sometimes we’ll stay there. We’ll

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go to a Carolina football game.
Q: Right.
A: But Lisa has got two brothers and they use it some.
Q: Okay. And is it a lot --
A: It’s a log cabin.
Q: A log cabin, I was struggling to think of the word, okay.
A: It’s a log cabin. There were two small structures that when Lisa’s mother and father passed away and she inherited it. And she wanted to rebuild, so we tried to look at salvaging the two structures that were there but the economics just didn’t make sense. So, we put a log cabin up.
Q: How long ago was that?
A: I don't know, maybe five or six years ago.
Q: Okay. So, the Lions Club property, you have the Mount Pleasant property, your home, and what other pieces of property would you consider to be for your personal use as opposed to investment? For example, a vacation home.
A: I consider most of the properties that I have as investments but I use a lot of them as well.
Q: Okay.
A: So, start with what we call Rice Quarters, which

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is on Limehouse Road in Awendaw, South Carolina. It's a house that we built 20 years ago that sits on the intracoastal waterway. There's about 200 acres in them, I have some horses out there and a fishing pond for freshwater fish. The house next door to that, we bought it about a year ago and it's being redone for rental property. I have a house cabin in Jamestown, which I refer to as Oceda O-C-E-D-A, which is a cattle farm. It's an active cattle farm. I use it for recreational purposes and I have horses and four-wheelers and shooting ranges. You're asking about real property, right?

Q: Yes.

A: There is -- I have a house on Seewee Road that's got a 50-stall barn that has an apartment in it that then has another house on the property. The houses are rented. I use the barn for recreational purposes.

Q: Which road?

A: On Seewee Road, S-E-E-W-E-E.

Q: And where is that?

A: It's right off of on Highway 17 right there in Awendaw.

Q: Okay.

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A: Awendaw is a little town if you're leaving Charleston heading toward Georgetown.
Q: Okay.
A: It’s about 15 miles from the foot of the bridge in Charleston.
Q: Okay.
A: You want to talk residential stuff, right?
Q: I would like to know all of it but I don’t want to be here for six days, either.
A: Okay. I have Bulls Bay Golf Course.
Q: Okay.
A: Which sits between right on the skirts of Awendaw but it’s in Mount Pleasant.
Q: Okay.
A: And there are three cabins on it that are rental property for the golf course. I have a house in Telluride, Colorado. It’s actually Mountain Village, Colorado, excuse me. We have a house in -- on Great Guana Cay in The Abacos in the Bahamas. It’s a townhouse. I have a house at Wellington, Florida at the horse park that my daughter and her trainers rents and use for the horse shows. Since she uses it some, that’s why I'm putting it in there but it’s basically an investment property.

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Q: Okay.
A: I think that's it.
Q: Okay. At least with respect to these, and I assume throughout the course of your lifetime there is other properties that you bought and sold that you might not no longer own anymore, right?
A: I don’t -- I haven’t sold very many.
Q: Okay. So, you have bought and you’ve held on for the most part?
A: Yes.
Q: Okay. Who in South Carolina has generally represented you in buying property?
A: As far as an attorney?
Q: Yes.
A: Sid Boone.
Q: Okay.
A: The McNair Law Firm out of Charleston.
Q: Is it fair to say that he was involved or did he assist you in purchasing most of these properties, if not all, at least the ones in South Carolina?
A: I don't remember; some of them that I’ve had for a long time but I'm pretty sure Sid has done everything in the last 10 or 12 years, I'm sure.

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Q: Okay. Have you ever in your practice done any work in real estate?
A: Yes, well, not since I was licensed to practice, no.
Q: Okay.
A: When I was in law school, I clerked for an attorney in North Myrtle Beach, South Carolina. And I did some real estate transaction work, title checks, prepared the documents for closing, sat in on the closings.
Q: Who is that attorney?
A: John Clark.
Q: Okay. So, you have been down and done the dirty work and checked how it’s done and stuff like that? I'm sure you don’t miss that, do you?
A: I don’t.
Q: Okay.
A: But I know the importance of it.
Q: All right. And when Mr. Boone or somebody at McNair or at McNair Law Firm generally represented you in purchasing property, I assume as part of that, McNair would either prepare or review a real estate sales contract. Is that right?
A: Or I would use the form contract. It depends on

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what the transaction is.
Q: Okay. Would you still have a lawyer review it before you sign it?
A: I review my own.
Q: Okay. Have you ever purchased real estate without a written contract?
A: Yes.
Q: Okay. Tell me when.
A: I purchased a cottage, one of the cottages at the golf course last year. I have agreed to purchase property that subsequently for one reason or another we did a contract but it was after the fact. I just do not remember all the transactions.
Q: So, out of all the properties that we have discussed, there is one cottage that you purchased without a contract?
A: One that I can remember sitting here today.
Q: Okay. Is it fair to say that on most of the rest, if not all of the rest, that you believe a written contract was done?
A: A written contract is the norm.
Q: Okay. It’s not only the norm in general, but it’s the norm with the transactions that you're involved with?

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A: That's right. Completely written contract with the details or at least the writing with the details whether it’s the form contract or just a writing.
Q: All right. And as being a lawyer, you understand the importance of a written contract when you buy real estate, correct?
A: I understand that.
Q: What did you do to prepare for today’s deposition?
A: Specifically, I read Mr. Crocker’s deposition last night or yesterday.
Q: Okay.
A: I breezed through Mr. Whitaker’s; there were I think four Lions Club depositions that were taken then.
Q: Okay.
A: -- I breezed -- I read Mr. Crocker’s, I sort of breezed through the others.
Q: Okay.
A: I read Mr. Amick’s deposition, I read Mrs. Amick’s deposition, I reviewed the Second Amended Complaint and the relevant exhibits to that, I looked at some plats and some other documents that had been marked as exhibits for which I have

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mostly seen before. And the Sunday after the South Carolina-Clemson football game this year, I went down to the lake and walked the property lines.

Q: Okay. And when you say you walked the property lines, you walked the property lines of the property at issue in this case?

A: I walked the property lines, everything that I could find marked using a GPS system I have on my phone that I can track from Claude Schumpert's house over to what used to be the Jay's.

Q: Okay. So, is it fair to say you would have walked the lines of the property that my client owns today?

A: I would walk the waterfront lines. I didn't go to the back part of it.

Q: Okay. And why did you do that?

A: Just to familiarize myself again with the lines because I knew that SCE&G had been down there, and I knew that there had been some surveys done and I had been told that there was some marks up. So, I just wanted to see where people thought the corners were and how it matched up with the LandGlide APS GPS system.

Q: All right. With respect to the property that I

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believe your wife owns, 175, I think the 175 Lions Club Road, how many times have you been there? I mean how many times on a yearly basis do you go there?

A: In the current cabin?

Q: Yes, the cabin that's there now, yes.

A: You know, the first few years we were there 10 or 12 times. And it depends now on football season and on what my work schedule is. This year we probably didn't -- I don't think we got there during football season because I ended up having to -- I flew in late on Friday nights and we normally would drive up and spend Friday and then leave. But here this year because of the opioid litigation I frankly was flying in Friday nights and leaving again Sunday.

Q: Okay.

A: So, we didn't get a chance to get up there.

Q: I don't think I asked you this question, but how long has that, the Lions Club, how long have you or your wife owned it? I think your wife owns it but how long has she owned that Lions Club property?

A: Since the death of her father.

Q: And how long ago was that?

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A: I don't remember the exact date but I'm going to say about 10 years.
Q: Okay. What as your father’s-in-law name?
A: Ferd Summer.
Q: When we were talking about property, you made the distinction between real and other. You asked me if my questions were solely limited to real. Why did you ask that question? Do you have some other non-real property that was in your -- that ran across your mind?
A: I have nonresidential properties. I have commercial investment properties.
Q: Okay. You have nonresidential properties. Are those the properties we discussed?
A: No.
Q: When you say ‘‘nonresidential,’’ you are talking about properties -- help me out here. What do you mean --
A: Office buildings.
Q: Office buildings. You say you have nine other office buildings?
A: I have some other, not nine, the number nine.
Q: Okay, I'm sorry.
A: I have several commercial business, commercial buildings that I consider investment properties.

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Q: Okay. And would these include office buildings?
A: Yes.
Q: Apartment complexes?
A: No.
Q: Okay. Tell me about these, and you say there's about a total of nine properties?
A: I don't remember. I have the office building where my office is.
Q: Okay.
A: I have an office building at 960 Marson. I have a building on, oh, I just realized I left something out. I have a building on -- I have three buildings on Kings Street, one is a restaurant that is being used as a restaurant with a law office above it. One is a bar that is rented and there is an office above it. One is a, I correct myself, one is an apartment. I have a building on Warren Street that is rented out to these college kids' dormitory. And I forgot earlier that we have a townhouse downtown that we use for personal use that's off of Warren Street. I have an old home that's on Vanderhorse that is upstairs-downstairs condo. The upstairs is rented for residential purposes, the downstairs has a commercial insurance tenant in it. On the Market,

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I'm a member of an LLC that was Ron Motley's family that we have several buildings on Market Street that are in an LLC that are rented out for various purposes. I have raw land that is in the process of being developed up on Highway 26 -- Interstate 26 up near Nexton. And we have a -- we have a boat.

Q: What kind of boat?

A: A Westport.

Q: Can you be a little bit more descriptive because I don't know much about boats?

A: It's a 130-foot Westport motor yacht.

Q: Okay. And where is that based at? Out of Charleston, I assume?

A: No, it's based out of I think it's Bimini.

Q: Okay. Is there --

A: I also forgot we have a one-bedroom townhouse in Harbor Island in the Bahamas. It's rental property.

Q: Is there somebody that you employ that manages all those properties?

A: There are several people I employ that manage different pieces of these properties.

Q: Okay. So, you have certain individuals manage certain properties and other individuals manage

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other properties?
A: I own Ravenel in real estate; Ravenel Real Estate is comprised of Ravenel Property Management, Ravenel Commercial Real Estate, and Ravenel Residential. I have persons within that organization that manage some of my properties.
Q: Okay.
A: My agricultural properties are overseen by Jamie Marchant, who lives in one of the houses on Seewee Road. He handles pretty much the cattle operation and the horse operation. I have RC Utnick, who is my boat captain, and he works and helps oversee the residential properties along with Lloyd Daniels, who has worked with Lisa and I for 30 years. And he helps oversee residential and the Charleston based properties and RC and Lloyd oversee the lake house.
Q: The lake house meaning?
A: 175 Lions Club.
Q: All right.
A: And my son-in-law oversees some of the commercial real estate properties.
Q: What's your son’s-in-law name?
A: Tucker Ervin, E-R-V-I-N.
Q: Does he live in Florida?

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A: No, he lives in Charleston.
Q: Charleston?
A: He actually lives in Mount Pleasant.
Q: Okay. Have you personally been involved in litigation?
A: Yes. You meant as a party to litigation --
Q: As a party, that's what I meant, yes, sir.
A: Yes.
Q: Have you been sued by unhappy clients before?
A: No.
Q: Okay. Have you been sued for reasons -- have you been involved in any real estate litigation?
A: I've been involved in one real estate case that I can think of right now.
Q: Okay. Can you tell me about that?
A: It was involving the Lions Club log cabin. There was a -- we filed a suit against the contractor and the -- I don't remember who all the defendants were, some sub-defendants.
Q: Construction litigation?
A: Construction litigation, basically, leaks and insect infestation.
Q: Okay. Have you been involved in any litigation involving title to real estate? Like a title action, people claiming an easement over your

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property, or something like we have here, a specific performance type lawsuit?

A: Not that I can think of.

Q: Okay. Have you been deposed before?

A: I have.

Q: How many times?

A: I don't remember.

Q: Is it more than a dozen?

A: No, I don't think so.

Q: Okay.

A: It’s mainly arising out of class action settlements, bankruptcy negotiations, and asbestos trust. A tobacco litigation where I was asked by the state of Mississippi or the state of Florida to testify regarding loss of enforcement actions they had against the tobacco companies. Those kinds of things.

Q: Okay. Have you been deposed in a lawsuit where you were personally involved or an LLC that you are a member of was involved in?

A: I honestly don’t remember if I was deposed in the litigation on the construction on Lancaster or not. I don't remember.

Q: Okay.

A: And I cannot think of any other situations.

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Q: Did the construction litigation involving the Lions Club property, did that go to trial?
A: No.
Q: It settled? Is that a ‘‘yes’’?
A: Yes.
Q: Okay. Who is Claude Schumpert?
A: Claude Schumpert is a, I refer to him as a friend, he is the youngest son of Peggy and Bob Schumpert. One of five kids in the Schumpert family that lived next door to the Summers at the lake that I met when I was in college and have known and kept up with through the years.
Q: Okay.
A: He is a vet in the Chapin area.
Q: So, you have known him since you were in law school?
A: Since I was in college.
Q: In college. And he’s friends with your wife’s family and he was friends with your wife’s family before you even met?
A: Right, and I knew his daddy and his momma very well.
Q: Okay. And his house is right next door to the 175 Lions Club property?
A: That's correct. And he has a second house that I

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frankly, his mother lived in that's next door to that, but I don't know if it is his now or not.

Q: It's like two houses on one lot, almost?

A: I couldn't tell you about the lots; I never paid any attention to it.

Q: Let me ask this --

A: There's two houses.

Q: Okay. There's a Lions Club Circle and there's an Lions Club Road. Do you know the distinction between the two?

A: I can surmise the distinction. I have never made a distinction.

Q: Okay.

A: But the road, the Lions Club Road comes off of Villager Island and goes to the waterfront. The Lions Club Circle is probably when you turn left to go to our house, goes to the Schumperts', it goes to the -- or what I last knew was the McSwains', it goes to what used to by Tommy Sam or Tommy and Joyce Setzler, and then it comes back out to join the Lions Club Road. So, I'm assuming that would be called the Circle.

Q: Okay. So, if you are leaving from here and going to your property on Lions Club Road or Lions Club Circle, whatever the address is, would you go

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straight? And besides leaving here but when you're approaching the property, how do you drive to the actual house?

A: There’s multiple ways to get to Villager Island Road. But once you get to Villager island Road --

Q: Exactly.

A: -- There’s a turn that down what I refer to as Lions Club Road.

Q: Okay.

A: There is a monument that’s got a Lions Club monument and Mr. Amick’s house sits on one of the corners.

Q: Okay. The property that’s subject to the litigation, is it straight ahead?

A: Straight ahead toward the water.

Q: And so, correct me if I'm wrong, but the way you would normally access your house is you would go down Lions Club Road and then you would make a left before you reach what would be the Lions Club building or clubhouse?

A: Yes.

Q: Is that how you normally would access or get to the house?

A: If I were going straight to my house.

Q: If you were going straight to your house, okay.

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A: If I were pulling my boat or going to put my boat in, I would go straight down Lions Club Road to the boat landing.
Q: Okay. The 175 Lions Club Road property, it has access to a dock, correct?
A: It has a dock.
Q: It is your dock?
A: It is.
Q: It is you and your wife’s dock. You have direct access to the lake, correct?
A: I have direct access to the lake from my property, yes. And I have access to the lake over the SCE&G property all the way around to I guess theoretically all the way around to the canal.
Q: Okay. Are you talking about the water or are you talking about the fringe line?
A: By land, there's a significant amount of non-deeded property between the landlines of the resident or the clubhouse --
Q: Right, and the water.
A: -- And the water, depending on the -- how high the lake is or how low the lake is. That for 30, 40 years since I was, since ’77 or so, we have used consistently. We used to, the Rat Pack in principle because they lived down at the lake,

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used to maintain what we call the ‘‘Beach on the Point,’’ which was they put fresh sand down every year and all the kids and little kids and new kids would go down there. And they would pull pontoon boats up to the corner and picnic down there, have parades down there. So, we have used all that land for 40 plus years.

Q: And so have others?

A: Absolutely.

Q: All right. In your own words, can you explain to me the claims? Why have you sued my client?

A: I sued the Lions Club and Mr. Amick for breach of contract, the specific performance on the contract, in general terms.

Q: The breach of contract case or claim against the Lions Club and I guess the specific performance claim, can you describe the contract that you're suing over?

A: Yes, sir.

Q: Can you go ahead and do that?

A: Sure. I received a letter offer from the Lions Club that in plain English said it was an offer to sell the land. It had several conditions in it. I met or exceeded every condition in writing and they acknowledged receipt. One of the

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conditions was being the highest bidder. To the best of my knowledge, I was the highest bidder. And they failed to close the deal. They made an offer, I accepted. That’s a contract.

Q: Okay. I will go ahead and mark my exhibits here. I’m showing you what’s been marked as exhibit one. You referenced a letter; this is the letter that you referenced?

(Defendant's Exhibit Number 1 marked for identification)

A: It’s the letter, the offer letter from the Lions Club, yes, sir.

Q: Okay. It’s addressed to, it’s a typed-out address to your wife but it’s also handwritten addressed to you as well. Is that correct?

A: That's correct.

Q: When you received this letter, did you have any conversations with anybody at the Lions Club?

A: I had conversations that resulted in my receiving this letter.

Q: Okay. Tell me about those conversations.

A: I got a phone call from Claude Schumpert asking me what I was going to do in response to the offer from the Lions Club to sell the property. I said, ‘‘Claude, I don't know what you're talking

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about.'' He said, ''well, they sent a letter to everybody down here that owns a property offering to sell the property.'' And I said I didn't get it, so I asked him to send me a copy and I don't remember if this was a weekday or not, but subsequently I got a copy of this letter that Claude sent to me.

Q: Okay.

A: Then, when I got it, I reached out to Pete Simpson and asked him why we didn't get the letter. He was very cordial and explained that we should have gotten the letter but that it was probably sent to the Lions Club Road address, which we don't have a mailbox there and we don't get mail there.

Q: Okay.

A: And he explained to me that what the letter -- I had the letter at the time, so we talked about the letter. And he said that they decided to sell the property and this was -- they were offering it to the adjacent property owners that met their conditions, and the conditions were set forth in the letter.

Q: Did he say anything else?

A: He just said that the intent was to sell the

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property to the highest bidder that would accept the property in the condition it was in and they had to do it by June first. And they were, you know, basically the Lions Club was closing down for a lack of a better term, I don't know if going out business is the right word.

Q: Pete Simpson referred you to the letter for whatever conditions were stated in there. Is that right?

A: He verbally told me the conditions. And then -- it was a nice conversation -- and then I told him that we would be very interested and that he should anticipate receiving something from us.

Q: All right. And you already had a copy of the letter; I'm assuming Mr. Schumpert provided a copy of his letter to you? Is that a ‘‘yes’’?

A: Yes.

Q: And then eventually, Pete Simpson, maybe readdressed the letter and you go the letter which is exhibit one?

A: Yes, and I believe that’s why the handwriting at the top says ‘‘Joe Rice’’ because I think this is the version that Pete sent me after he and I talked. That he -- I don't know for sure if that’s his handwriting, but I'm going to surmise

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that it is.
Q: Okay. And so, after you had that conversation with Mr. Simpson and after you received your copy of the letter, what did you do next?
A: I talked to my wife and I talked, I think I talked to Claude again to see what he was going to do. And then we had -- we decided that we were going to accept their offer and we agreed to pay more than they were asking in order to to the best of our ability ensure that we were the highest bidder.
Q: Okay. Your conversation with, tell me about it, this would have been your second conversation with Mr. Schumpert at the time? The first one was hey, did you get the letter, and the second one was --
A: I don't remember the -- I don't remember how many conversations because it wouldn’t have been that unusual to talk to Claude.
Q: Okay.
A: But after I got it, I'm pretty sure I talked to Claude again to just see sort of what he had in mind, what he was going to do.
Q: Did he tell you what he was going to do?
A: At some point in time, I don't know whether it

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was that conversation or not, but it was clear to me that Claude was going to put in a bid, but it was also clear to me that Claude had a specific interest in the portion of the property that's sort of back behind both of his houses. And we did not talk about economics, but because I was fairly sure Claude was going to put a bid in, I put a bid in at 325, which was $25,000 more than they said that they were prepared to accept.

Q: Did Mr. Schumpert tell you how much he was going to --

A: He did not.

Q: -- Offer?

A: He did to and I did not ask.

Q: And you didn't tell him how much you were going to offer?

A: I did not.

Q: Anything else you --

A: Not at that time.

Q: Okay. Anything else you recall about your conversations with Mr. Schumpert, which I would have been assume in January or early February 2017?

A: I believe that to be correct. For those conversations, I don't recall anything else.

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Q: Okay. And your conversation with your wife, were they solely about discussing whether to make an offer or not?
A: She very much wanted the property. This was property that she had basically grown up on with people she had grown up with, and she had lost both her mom and dad, and this is what kept her to that link.
Q: Okay.
A: And she definitely wanted the property.
Q: And you showed her a copy of the letter, Exhibit Number One, correct?
A: Yes, I'm sure.
Q: All right. And If you look at it, you said there were many conditions in the letter, correct?
A: I said there were some conditions.
Q: There were some conditions, okay. Tell me what conditions you believe are in the letter.
A: Well, let’s look at the letter. On the first paragraph, I was quite familiar with the enthusiastic membership and had known many of the members, and had witnessed their charitable activities. And then from my own dad’s membership in Lions Club in Gastonia, what the Lions Club did, so I -- there was a piece of my thought

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process that had charitable concept to it because I knew that the Lions Club did good stuff. So, the first, the second paragraph says, ‘‘we have reluctantly decided to offer the property for sale,’’ so clearly, they were offering it for sale, that was condition one. They had decided to make the property available first to those individuals whose property adjoined the Lions Club, that told me that it was limited in part to the people that I'm familiar with. They had sent a plat and I didn’t see anything on the plat that surprised me based on my historical knowledge of the way things worked out at the Lions Club. The second or the third point or condition was ‘‘the club members have decided to ask $300,000 if we can make the sale without involving a realtor,’’ so I couldn’t involve a realtor and I had to offer to meet their $300,000 or more. And it said that first consideration will be given to the current members of the Lions Club, so I understood that the members of the Lions Club may have an interest but they would have to be the highest bidder but they were included in the pool in addition to the adjacent property owners. And I had to accept it with the encroachments.

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Q: I think that would be condition number five, if you're counting?
A: I'm not counting.
Q: Okay.
A: And then I had to act before June one.
Q: Okay. So, I count a total of six, and correct me if I'm wrong, number one is that we reluctantly decided to offer the sale, property for sale; number two is first of those individuals whose property adjourns the Lions Club. Is that correct, one and two? Would that be one and two?
A: We can go back when I read earlier.
Q: Okay. Well, I counted six. You testified that, first of all, do you see the word ‘‘bidder’’ or ‘‘bid’’ in Exhibit Number One?
A: Do you want to point out to me where you're reading?
Q: I'm saying it’s not there, so I mean --
A: I see the word ‘‘offer.’’
Q: Okay. But there is no mention of ‘‘bid’’ or ‘‘bidder,’’ there’s no use of the term ‘‘bid’’ or ‘‘bidder’’ in Exhibit Number One, is there?
A: No.
Q: All right. You testified that it would go to the highest bidder. Is there any mention in Exhibit

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Number One that it would go to the highest bidder?

A: It would go to the -- they decided to ask $300,000 if we can make the sale without involving a realtor.

Q: Okay. The question is is there any language in Exhibit Number One that purports to say that the property would be sold to the highest bidder?

A: What the language in the document says is they decided to ask $300,000 if we can make the sale without involving a realtor. I interpreted that that they were going to sell the property to the highest person that was going to pay the most money for it, because they were going to use the money for charity.

Q: That’s your interpretation?

A: That was my interpretation.

Q: But the letter does not expressly say it was going to go to the highest bidder, does it?

A: I think the common reading of the letter does.

Q: Okay.

A: I agree with you that the letter does not use the word ‘‘bid’’ or ‘‘bidder.’’

Q: And it doesn’t say anything about highest bidder either?

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A: It says we're offering it for sale to this limited group of people and our price is $300,000 and I read into that that the person who offered the most money would receive the property.
Q: You think it's implied that it's the highest bidder, correct?
A: I'm not sure it's implied, I think it's common reading of the document.
Q: Okay. What was your understanding about the condition first consideration will be given to current members of the Lions Club?
A: That if there was a tie, the tie would go to the Lions Club member.
Q: Okay. That was your interpretation?
A: That was my interpretation.
Q: All right. You think others consideration would be if it was close-call they would give it to the Newberry Lions Club member?
A: No, sir.
Q: Okay.
A: I don't think you can do that in an offer.
Q: Okay. The letter says, ''if you have an interest in the property, please let us know right away.'' Do you see that?
A: Yes, I do.

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Q: Did you construe that language to mean that they were trying to find out if people were interested?
A: I think I had already conveyed to Mr. Simpson by the time I got this letter from him that I was interested.
Q: Okay. There are terms that have been used by your attorney, perhaps in your pleadings and maybe you today, about something called the bidding process. Do you see anything in Exhibit Number One that sets forth any type of bidding process?
A: I don't know what you mean by ‘‘bidding process.’’
Q: I don't know either.
A: Well then, I'm not going to answer the question that you don’t know what you mean.
Q: I mean your lawyer is using it, I mean your lawyer is using it --
A: He’s not -- you're not asking him, you're asking me.
Q: You're right, you are right. But do you see any kind of procedure for bids in Exhibit Number One?
A: I see what I referred to you earlier as ‘‘we have decided to ask for $300,000 if we can make the sale without involving a realtor,’’ I interpreted that and read it in the common sense way that

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they were going to sale the property for whoever offered the most over $300,000. And I accepted their offer and I offered them $325,000 and agreed to all of their conditions.

Q: Okay. Did you show this letter to your attorney, Mr. Boone?

A: I'm sure I did at some point in time, I can't tell you when.

Q: Okay. Did you receive any legal advice as to -- I'm not asking of the contents of legal advice -- but did you receive any legal advice as to in January or February of 2017 as to Exhibit Number One?

A: I don't have a specific recollection. I have a general recollection that I talked to Sid and maybe Michael Scardato. And I told him that --

MR. POPE: You don't have to go into the --

Q: Yes, I was simply asking you if --

MR. POPE: -- Attorney-client privilege between you and Scardato.

Q: Let me backup. Prior to, and there's a letter that your lawyer has responded to and we will get to that in a second, responded to Exhibit Number One, did you receive any legal advice, I'm not asking about the content of the legal advice, did

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you receive any legal advice regarding Exhibit Number One?

A: I don't have a specific recollection but based on my historical dealings with Mr. Gumb, who was my financial advisor, and Mr. Boone, we would have discussed what we wanted to do and Sid would have directed me to do it the way that it needed to be done. So, if you want to call that legal advice, then I guess I got legal advice.

(Defendant's Exhibit Number 2 marked for identification)

Q: Okay. I'm showing you what's been marked as exhibit two. Is this a letter from Mr. Boone, your lawyer? Is this the letter that -- is this your response to Exhibit Number One?

A: It is.

Q: Okay. When you talk about a contract, is it your contention and claim that to the extent that there exists a contract between Newberry Lions Club and you and your wife, it would be -- it would consist of exhibits one and two?

A: And attachments thereto.

Q: Yes, there might have been some attachments that were, I think there was a plat. Yes, let me back up. Yes, the attachments there too, correct.

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Let’s hold on a second. Exhibit Number One has an attachment, and that’s the plat, correct?

A: Correct.

Q: Exhibit Number Two doesn’t have an attachment or an enclosure, correct?

A: Not to the best of my knowledge.

Q: So, these, exhibit one and exhibit two are a total of three pages. Is it your contention that that constitutes that you claim that to be a contract between you and your wife and the Newberry Lions Club?

A: That's correct. And I will point out one other thing, this refreshes my recollection that either I or Mr. Boone must have had another conversation with somebody from the Lions Club because this letter reflects that we were told quote ‘‘we understand that bids are to be opened at the th meeting on February 28 .’’ That piece of information is not contained in Exhibit Number One and the only people that would have that knowledge would have had to have been a representative from the Lions Club. So, the only way that Mr. Boone would have been in position to include that in our response would be if we had been told by somebody from the Lions Club that

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they were going to open the bids at the meeting th on January -- on February 28 . So, I have to understand that the concept of the bids arose from the Lions Club when they conveyed this piece of information.

Q: It would have been by some kind of conversation, telephone conversation?

A: I have not seen a document that was generated between the January 17 timeframe to -- Exhibit Number One is not dated but my memory is it came out in mid-part of January of 2017. And the th February 14 acceptance has piece of information that would be only known to the Lions Club.

Q: Okay.

A: So, they, the only source of ‘‘we understand that bids are to be opened at the meeting on February th 28 ’’ had to originate from the Lions Club. And I would say that would either be Mr. Simpson or Mr. Croker because they are the only two that I have any recollection of being involved.

Q: To be clear, your contention of a contract, the writing consist of Exhibit Number One and Exhibit Number Two, correct?

A: The written documents.

Q: Anything else besides Exhibit Number One or

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Exhibit Number Two?
A: The conversation that led to the additional understanding that bids are to be opened at the th meeting of February 28 gave us additional information of what the Lions Club was doing.
Q: Okay. So, your claim as to a contract concerns not only written documents, Exhibit Number One and Exhibit Number Two, but it also includes oral representations made by the Newberry Lions Club. Is that correct?
A: I think Exhibit Number One and Exhibit Number Two form the contract.
Q: Okay.
A: I think as a part of the questions you've asked me today about my interpretation of it being a bid is further enhanced by the language that we got from the Lions Club that said, ''we understand that bids are to be opened at the meeting on th February 28 ,'' that came to us from the Lions Club.
Q: All right. Understood, but when we go to court and you testify and I guess we're before the judge in this case, and you are going to testify here is my contract, are you going to point to Exhibit Number One and Exhibit Number Two,

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correct?
A: I'm going to point to Exhibit Number One and number two --
Q: And no other documents that you are aware of?
A: Not that I'm aware of sitting here today.
Q: Did --
A: There might -- let me back from that, sir. There might be, I know there have been production of minutes for the Lions Club. There may be something in those minutes that address the February 28th issue but I don't recall when I am sitting here.
Q: Okay. What authority did Mr. Boone have to enter contracts in your behalf?
A: He's got a power of attorney.
Q: He does have a power of attorney?
A: He keeps a power of attorney.
Q: He can sign your name?
A: Because I travel extensively, so when I do transactions, I always use Sid, so he keeps a power of attorney so if he has to record something or sign something, he's got it ready.
Q: And how old is that power of attorney? How long has it been around?
A: It's probably been --

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Q: It predates this?
A: Yes.
Q: Okay. And it would include him signing contracts, correct?
A: It would be --
Q: Deeds, mortgages?
A: Yes.
Q: Okay. And is that power of attorney, is that recorded anywhere?
A: I don't know the answer to that.
Q: Okay. Can you get a copy of that power of attorney to your attorney to give that to me? I think we have requested it, I may be wrong. But I mean --
A: I don't know if you've requested it or not but I don't have a problem giving you one of the powers of attorney.
MR. POPE: We'll produce anything but at the end of the deposition, you'll need to write me a note.
MR. KOUTRAKOS: Me too or else I will forget. I've been there, done that, yes. Maybe the Court Reporter can write it down for us?
MR. POPE: See if we get it done that way.
Q: Okay. If you look at Exhibit Number Two, he

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wasn’t signing your name, he was signing his name.

A: Right, I had given him authority to accept this offer.

Q: Okay.

A: And he makes it clear he is representing us and he is accepting on our behalf.

Q: Okay. He was your agent. Is that right?

A: He was my attorney.

Q: Okay. He was your attorney in fact. I mean I know he was your attorney, but you understand what I'm saying? He’s your legal counsel but he was also your attorney in fact?

A: It has been a long time since I have looked up the --

Q: The word attorney in fact?

A: -- Concept of attorney in fact, so, let me say he was my attorney in the common sense use of the word and I'm not going to disagree with you necessarily but if it has any legal implications to say in fact, I need to go in research it before I agree with that.

Q: All right. Did you or your attorney ever submit a formal contract to the Newberry Lions Club?

A: You mean a standard form real estate contract?

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Q: A standard form.
A: I believe this is a contract, exhibit one and two.
Q: Okay.
A: It's in writing, it's an offer and it's an acceptance. It states the consideration, it states the conditions.
Q: Okay. Neither you nor your submitted a formal contract to Newberry Lions Club, correct?
A: We did submit a document labeled contract.
Q: All right. Neither you nor your attorney submitted any kind of earnest money deposit, correct?
A: There was none requested in the offer and we did not.
Q: Okay. Did either you or your attorney set a closing date?
A: We said we would close within 30 days.
Q: All right. When was the first time you told the Newberry Lions Club that you were ready, willing, and able to close?
A: We would need 30 days from notice that the bid was accepted in which to conduct the title research and close, so that would be the first time in February of 2017. There has been, there

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is subsequent letters that were written throughout 2017 at different times that followed up.

Q: Did you ever, do you know if your wife had any conversations with anybody at Newberry Lions Club about this?

A: I do --

Q: This matter?

A: I am not aware if she had a separate conversation than I did or not.

Q: If you go back to Exhibit Number One, the condition that’s out there that says, ‘‘first consideration will be given to current members of the Newberry Lions Club,’’ did you have a discussion with your wife about that condition?

A: We discussed the letter, I don't remember the specifics.

Q: Okay. You don't remember discussing that? You don't remember any specifics of the discussion?

A: The memory I have of this letter and my discussions is buy this property.

Q: All right. So, you knew that it would have been your father-in-law was a member of the Lions Club a long time ago, correct?

A: He was, until he passed away.

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Q: All right. You read one of the conditions to be that it goes to the highest bidder, right?
A: I did.
Q: All right. And you're aware when, I assume you reviewed, you have this multibillion dollar settlement throughout the country, and some maybe millions, there are settlement agreements, releases, class action settlements, and documents like that, correct? You review those types of documents, correct?
A: I do.
Q: And so you understand that importance of each provision should be given some type of weight, there’s reason why there’s language in the document, correct?
A: In most situations.
Q: In most situations. In this particular situation, you set forth, we’ve been through this when we talked about Exhibit Number One, about the conditions in the letter. And you said the highest bidder gets the property, correct?
A: That’s the way I read it.
Q: Right, and there were two other conditions: you had to be close by; you had to own adjourning property, correct?

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A: Right.
Q: And the other condition was where it says, ‘‘first consideration will be given to a current member of the Newberry Lions Club,’’ do you see that?
A: I do.
Q: And you see there's a distinction between being an adjourning property owner and being a Newberry Lions Club member; one could be a adjourning property owner and not be a Lions Club member, one could be an adjourning property owner and a Lions Club member at the same time. Correct?
A: And one could be a Lions Club member and have no adjourning property.
Q: Exactly. And so, if the property was going to go to the highest bidder no matter what, why would there be a distinction between being an adjourning property owner? Why would there be two different conditions in Exhibit Number One?
A: You will have to ask the Lions Club what they meant. I can tell you what I thought it meant.
Q: Okay. What do you think was meant by the term when you reviewed this ‘‘first consideration will be given to current members of the Newberry Lions Club’’?
A: That when the bids were open, that they were

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going to allow a member of the Lions Club if they were the highest bidder to take it, assuming they met all of the conditions.

Q: All right. So, two considerations were here, right? One was to the adjourning property owners, correct?

A: What do you mean by ‘‘considerations’’?

Q: Well, two conditions, I'm using your language. One condition was that they have to own property, they made the property available first to those individuals whose property adjourns the Lions Club property. Right?

A: There were two. The way I read the offer, there were two classes of persons that could participate in this process.

Q: Right.

A: One was an adjacent property owner, you could qualify from that pool, or you could qualify as being a current member of the Lions Club. So, that was the second pool.

Q: Right.

A: So, there was a closed class of potential buyers assuming that the minimum, assuming the $300,000 and accepting the encroachments was also met. Those conditions were consistent for everyone.

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Q: All right. Do you give any credence to the term ‘‘first consideration’’? doesn’t that ‘‘first consideration of the Newberry Lions Club,’’ doesn’t the letter appear to say that preference would be given to Lions Club members over folks who just own adjourning property?

A: I don’t read it that way. I read it that the first consideration meant that they were going to let the Lions Club members know what the bids were so that they could participate.

Q: All right.

A: We’re not talking about a large number of people as I understood it at the time, too. From the letter, it was clear that the Lions Club was consisting at that point in time of a very few individuals. And I think when I talked to Claude, we talked about it, it just wasn’t what it used to be.

Q: Okay. You are not a member of the Lions Club, correct?

A: I am not.

Q: And your wife is not a member of the Lions Club, correct?

A: She is not.

Q: Was your position as being the contract Exhibits

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Number One and Exhibit Number Two, it doesn't say who the closing attorney would be, correct?

A: It does not.

Q: It doesn't say where the closing would be, correct?

A: It does not.

Q: Exhibits one and two doesn't say where the property was going to be conveyed by limited warranty deeds, special warranty deed, or another type of deed. Correct?

A: It said you had to accept the encroachments and I don't believe you can accept the encroachments and have a -- and I'm not going to debate titles, but by accepting it with encroachments, it limits the deed.

Q: Okay. But it didn't specifically set forth in contracts you received, especially in commercial contracts I'm sure a lot of the stuff you deal with would say limited warranty deed or special warranty deed if you're buying your own house, a contract probably says general warranty deed. There's no distinction in exhibits one and two as to what type of deed?

A: Those words are not used.

Q: Okay. There is a structure from your

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understanding on the Lions Club property, correct? Not the property at issue in this case, there's a clubhouse, correct?

A: Yes.

Q: There was no language in the contract saying that the structure would be sold as is or anything like that, was there?

A: There was a plat that was attached that showed the structure.

Q: Right, but there was no language saying hey, you're buying this property as is, you can inspect all you want or anything like that? There's no language like that?

A: The conditions were set forth in the document.

Q: And did not include any conditions or representation of the feasibility, suitability of the property, correct?

A: That's correct. It said there was a septic tank and water, which I had -- it didn't matter to me but I would question whether there's an actual septic tank on that property.

Q: All right.

A: And I say that because I know what I had to go through to get a septic tank when I built my house or our house.

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Q: Okay.
MR. POPE: You want to take a break?
(Whereupon there was a break)
Q: So, February 14, 2017 your lawyer submits an offer, which is an exhibit, submits a response to the Exhibit Number One. What happened next to your recollection?
A: I think that there was a follow up shortly thereafter, I don't know, 30 days or 60 days.
Q: Okay.
A: And I don't remember exactly. I know there's documents that -- to establish that but sitting here from my memory, I don't remember the dates.
(Defendant's Exhibit Number 3 marked for identification)
Q: Okay. The next thing I have, at least from document-wise, is Exhibit Number Three which is an email from Claude Schumpert to you on April 8, 2017. Do you see that?
A: I do.
Q: Does this refresh your recollection? In your mind or at least in your recollection, does this appear to be the next thing that happened after the February 14, 2017 letter?
A: Sitting here today, I don't remember anything

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before here and without looking through all the documents, I'm assuming you're telling me there's not any documents in which --

Q: Okay. You know, I'm pretty sure. I mean I may have missed something but I don't recall seeing anything.

A: I recall --

Q: Now, there may have been some meeting minutes of the Lions Club but you wouldn’t be privy to those anyway.

A: That's correct, I was not. But I do recall Claude contacting me, yes.

Q: Okay. And so --

A: Whether we had had a phone call between then and these dates, I don't remember.

Q: Okay. And if you look at this letter or this email from you, he’s saying that Ray ‘‘matched the high bid offer from non member Lions. He has until June 1 to close on the offer,’’ and it says, ‘‘Lions have been assured by legal counsel that their rights to preserve preferential treatment for Ray were preserved in the letter submitted.’’ Do you see that?

A: I do.

Q: Now, at that time, did you know who Ray Amick

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was?
A: I did.
Q: Okay. And how did you know him?
A: Just from being around the Lions Club and being around the folks down there over 30 years.
Q: Okay. Did you have any thoughts about him, what kind of person he was, or anything like that?
A: I didn’t know Mr. Amick well. I have one recollection that -- and this is somewhat of an assumption, I believe Mr. Amick used to have a classic car.
Q: Okay.
A: And I remember being down at the lake down around what I call the beach or the point, and he was down there and I had a buddy of mine with me and we struck up a conversation and we were impressed with his car. But that’s --
Q: Okay.
A: -- I don't think I’ve had any other dealings and I can’t swear to you that that was Mr. Amick but I believe it was.
Q: Okay. And so, first of all, why is Claude Schumpert giving you this update?
A: Claude and I stayed in touch. That’s why I say there were probably some conversations in the

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February-March timeframe. I probably reached out to Claude in March after I was expecting the bids to be open based on what they told us on February th 28 to see if he had heard anything. And I imagine he and I were both waiting and he heard something, so he reached out to me.

Q: Okay. Is Claude a Lions Club member?

A: I do not know.

Q: Okay. I don’t believe he is, but --

A: His dad was.

Q: Okay. Claude owns a piece of property right next to the Lions Club property, correct, the property that’s the subject of this case?

A: He owns a piece of adjacent property, yes.

Q: Right next door to your property, correct?

A: Correct.

Q: All right. Is it fair to say that both you, your wife, and Mr. Schumpert were worried about the future of the Lions Club property?

A: Yes.

Q: And let me, it’s a little bit confusing. When I say ‘‘Lions Club property,’’ I'm referring to the property that is the subject of this case, not property, the other property you own on Lions Club Road. So, Lions Club property is the only

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other property that is the bottom of this case. Fair enough?

A: Fair enough. The clubhouse and the land that goes with the clubhouse.

Q: Right. And so, is it fair to say that both you and your wife and Mr. Schumpert were worried about the future of that property and what might be place there in the future. Is that correct?

A: I think that -- I can’t speak for Mr. Schumpert totally, okay?

Q: Okay.

A: But we, my wife, wanted to preserve the lifestyle. She wanted to preserve what she grew up with. And to the extent that included being worried about the property changing in use or whatever we done to it, sure, that would be a concern.

Q: Okay. Did you have conversations with Mr. Schumpert about that?

A: I don't have specific recollection of that conversation but again, knowing what Claude and I were talking about, knowing what we had talked about for years, I'm sure we talked about preserving the tranquility, preserving the state of mind and what we knew as the lake house.

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Q: Okay. If you look at the email, it says the information comes from a conversation Mr. Schumpert had with Gene Crocker, do you see that?
A: It does say that.
Q: And the preserving preferential treatment for Ray, that language in there, was that, do you believe that was referring to the condition we previously discussed in Exhibit Number One that says, ‘‘first consideration will be given to current members of the Newberry Lions Club’’?
A: I think the content of Claude’s email to me is consistent with the offer that Lions Club made because it had the conditions, he matched the high bid. And if he matched the high bid and he was a Lions Club member, as I said earlier, I think they did reserve the right to do that, but only if he met all the other conditions and was the high bidder.
Q: All right. You own a lot of pieces of property, right?
A: What?
Q: We talked about all the pieces of property that you own. Have you ever sold parts of your property? That might be a confusing question, but you own acreage and you sell off a part of it and

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retain part of the original acreage. Have you ever done anything like that? It sounds like you mostly buy and don’t -- it sounds like you mostly buy and you don’t sell. But have you ever done that?

A: I have sold individual lots in a residential development but I don’t think I ever subdivided a piece of property outside of my own ownership, vis-à-vis potentially from an individual -- for me, individually to an LLC or to a trust or something like that.

Q: Okay.

A: When I said that, I was talking about I did have a piece of property over Woodland Road that was a house and some acreage that I sold 20 years ago, but it was a dedicated tract of land. I don't recall having a hundred acre tract that I have I have subdivided out and sold pieces to.

Q: Okay. In response, I mean is it fair to say that if you had a situation in which you were subdividing part of your property and you were retaining the rest or retaining what you didn’t -- retain part of it, tat you would like that you might have, you would be concerned or you might be picky about who you're selling your property

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to?
A: I think it’s clear and fair to say that I am picky about who I sell my property to.
Q: Okay. And you have all the right, you have the legal right to be that way within some limits, I assume, right? You know what I'm talking about, right?
A: There -- it’s --
Q: Within the legal limits, you have the right to be preferential?
A: There are -- when you own property, you have rights as to what you do with it.
Q: Okay. It says here, ‘‘okay, I will see what counsel says.’’
A: Right.
Q: Did you receive legal advice at that point in time?
A: I did.
Q: Okay.
MR. KOUTRAKOS: I just want to be sure; you're not going to be calling Mr. Boone as a witness or anything at trial, are you?
MR. POPE: I don't know. I mean if we do, you have the right to depose him but we have --
MR. KOUTRAKOS: Right, but there’s no --

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MR. POPE: -- Decided that.
MR. KOUTRAKOS: Okay. But the decision has not been made as of today?
MR. POPE: Right.
MR. KOUTRAKOS: To the extent that it has been made --
MR. POPE: No, it hadn't been made at all.
MR. KOUTRAKOS: But I mean to the extent it is made in the future.
MR. POPE: Then you will be notified and given the right to depose him.
MR. KOUTRAKOS: And re-depose him?
MR. POPE: On that point, yes.
MR. KOUTRAKOS: On that point, okay. That's fair enough.
(Defendant's Exhibit Number 4 marked for identification)

Q: I'm showing you what has been marked as Exhibit Number Four. Is it fair to say that whatever advice you received, the products of that advice you received from counsel would be reflected in Exhibit Number Three, or at least the next step would have been -- excuse me, Exhibit Number Four?

A: Exhibit Number Four is --

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Q: Yes.
A: -- A May 15, 2017 letter from McNair Law Firm letterhead.
Q: Right.
A: And that is from Sid Boone to Gene Crocker.
Q: Right. What I'm asking you here is you get an email from Joe Schumpert, from Mr. Schumpert, you say hey, let me check out what counsel says, and the next thing I see in the timeline of the documents I have is your -- is Mr. Boone's May 15, 2017 letter. Is that something, I don't want to get into privileged areas, but that's the next thing you decided to do in this, of this matter?
A: I doubt that is correct.
Q: Okay. Tell me why.
th
A: Because the May 15 letter states information that I clearly didn't have as of April the eighth.
Q: Okay.
A: Because as of April the eighth, the only thing I was told by Claude is that Mr. Crocker had conveyed that Mr. Amick had matched the highest bid and they were going to sell the land to him, which if he complied with the offer, I would have said that is their right to do.

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Q: Right.
A: If he accepted the encroachments, he closed by June first, did everything, met all the conditions, he was -- if he were the highest bidder, he was a Lions Club member, they th preserved that. But the letter of May 15 contains a lot more information.
Q: Including that your bid was the higher?
A: Yes.
Q: Okay.
A: So, there was conversation with somebody.
Q: There was information acquired by somebody that would force this to be --
A: And I'm sure that Mr. Boone and I had conversations around that and I imagine that when, well, I know, that when I was notified by Mr. Boone, I assume it was Mr. Boone, I don't remember specifically but it was clear that my offer of, my bid of 325 to their offer was in fact the highest, then as far as I was concerned, I had a contract to buy the property.
Q: Okay.
A: And I can say that it was somewhat, I don't know if the right word is disturbing, disappointing, but the fact that the Lions Club even that Mr.

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Simpson knew that we were interested in the property, knew we had talked to him, he was very apologetic about it, very, you know, sincere about us not getting the original offer. No one ever picked up the phone and called us and told us what was going on. The only thing I was getting was from Claude. So, it was sort of you know, disappointing, I will use that word.

Q: You're upset?

A: I was disappointed.

Q: Okay. And in this letter you're talking about bidders and undisclosed bid procedures. And it sounds like, or at least Mr. Boone thinks it’s kind of like an auction where people bid and it goes to the highest bidder, what caused him to believe that?

A: I don't know.

Q: Have you ever purchased property at an auction?

A: I have.

Q: And it goes to the highest bidder, right?

A: The highest bidder that puts up the --

Q: Of course, who can --

A: -- That fulfills the conditions, we will say right.

Q: Right, right. I mean there’s no question at

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auction it’s going to the highest bidder. They are not going to give it the second-highest bidder, correct?

A: Generally speaking, that's correct. I have been at auctions when they sold something and then they agreed to sell a second of the same thing to the second-highest bidder.

Q: Understood, I understand.

A: And somewhere in here, I learned that they actually went back to Claude and asked him if he wanted to raise his bid. And nobody ever gave me the chance to do that.

Q: All right. And where, you said you read that somewhere?

A: I’ve seen it somewhere.

Q: Is it something you saw in preparation for today?

A: I don't remember if that’s the first time but I have seen it recently, yes. It may have been something Claude had told me and something about he just wasn’t in a financial position to go any higher. But it was again, disappointing that if they were -- if that was their mindset or if they thought that is what they could do why they didn’t contact me when I had made the highest bid to start with.

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Q: Did you receive any response to your May 15 letter that you recall?
A: I don't recall any from the Lions Club.
Q: Okay. In this letter, Exhibit Number --
A: Well, until the -- I got a letter from Mr. Verner in June.
Q: Yes, that’s right. We will get to that, you're right. In this letter, there is this threat of litigation in the last paragraph on the first page, right?
A: There is.
Q: Okay.
A: But only to the extent to enforce the contract.
Q: Okay. So, the next thing I want to discuss with you is Exhibit Number Five.
(Defendant's Exhibit Number 5 marked for identification)
A: I'm trying to help you.
Q: Yes, thank you, sir. Exhibit Number Five, Claude is emailing you again it looks like on June 2, 2017?
A: Yes, sir.
Q: It tells you there is a problem with the sale of the property and it looks like Mr. Schumpert is telling you about a letter you should be

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receiving from Jay Verner. Do you see that?

A: I see the exhibit five, it is an email from Mr. Schumpert that says he is going to give me an update, tells me that somebody has informed him that the sale of the Lions Club property has been put on hold. It says they have got to work out the issued with McCracken's house and the road that is on the Jay's and Gray's property before selling. I didn't understand that because I had accepted those encroachments. Those encroachments had been known for decades. Then he told me I should be receiving a letter from Jay Verner, I wasn't sure what he was going to tell me. And then it says ''it sounds like when the property -- when they reopen to sell, it will be a closed bid process with the property going to the highest bidder.'' I again didn't understand why they were thinking they could do that because I was already the highest bidder and I had accepted the encroachments, so there was no problem working out the McCracken dispute, and I'm not even sure I would call it a dispute, or Jay's or Mr. Gray's. And then he wanted to discuss what my plans were with the property.

Q: Did you have a discussion with him about your

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plans with the property?
A: I'm sure I did.
Q: Okay. And it also discusses the plans that he would have for it. Did he discuss plans that he would have for it?
A: At some point in time, Claude told me that if I had got the property, he would be interested in the portion of it that was behind his houses.
Q: Buying a portion of it?
A: Or whatever, yes.
Q: All right.
A: And I told him that, you know, I had no intention of developing the property but I would probably do some type of conversation easement program. And I don't know when I saw Claude's letter that he was talking about doing something, trying to redo the clubhouse. Obviously, the clubhouse needed a lot of work either by way of redoing it or rebuilding it.
Q: Okay. This is kind of a terrible way of doing this, but this is Mr. Verner sent you the letter and he also sent Mr. Amick a letter, I got Mr. Amick's letter, I have your letter somewhere in the file somewhere. But it is also attached to your second amended complaint. So, Exhibit Number

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Six is going to be the Second Amended Complaint.
A: You want just the letter?
Q: No, we'll just I will ask the questions on the Second Amended Complaint anyway, so let's go ahead and do that.
A: Okay.
(Defendant's Exhibit Number 6 marked for identification)
Q: So, if you go to one of the exhibits in the Second Amended Complaint, I believe it is Exhibit Number Four, exhibit number, so basically it's Exhibit Number Four to Exhibit Number Six.
A: Previously marked as Exhibit Number Four in a previous deposition?
Q: Exactly, yes, there you go. That is the letter you received in June of 2017 from Mr. Verner, correct?
A: That is.
Q: Did you know who Mr. Verner was?
A: I did not.
Q: Okay. He is basically telling you hey, the Lions Club canceled the property at this time because they can't get or can't convey a good fee simple marketable title because of the encroachments. Right?

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A: That's the words that are on the paper.
Q: Okay.
A: I don't agree with it but that's the words on the paper.
Q: All right. At this point in time, you get that letter, you don't agree with it, right?
A: No, you can sell a piece of property with accepted encroachments.
Q: At that point in time, you think you have a contract, right?
A: I do.
Q: Excuse me for a second.
A: No problem.
Q: All right. You get this letter, you disagree with it, you get exhibit number, you get the June 5, 2017 letter, right?
A: Right.
Q: At that point in time, you don't agree with it. Right?
A: Correct.
Q: You think you have a valid contract, you and your wife have a valid contract with Newberry Lions Club, correct?
A: Right.
Q: All right. You have threatened to file a lawsuit

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in May of 2017, correct?
A: Correct.
Q: Why didn’t you file a lawsuit upon receipt of this letter?
A: It didn’t bother me if they decided they wanted to work something out with McCracken with Thad. I would have done the same thing. I would have probably given it to him, I probably wouldn’t have sold it to him because the corner of his house has been where it is every since I have been going down there and it didn’t bother me if they wanted to do something with the Jay family or with Murray.
Q: I don’t understand what you mean by the Jay family or with Murray.
A: The property behind the clubhouse was owned by Mr. Jay.
Q: You're talking about encroachments?
A: I don't know, whatever they were talking about earlier about McCracken and Jay and Gray. McCracken is the lot or the property next to Lisa and I. Then behind the Lions Club away from the point, the Jay family owned that piece of property, and then the Gray family owned the piece next to that.

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Q: Okay.
A: If they wanted to clear up and swap out those property lines so that somebody felt that there weren't any further encroachments, I don't -- it didn't bother me that they were going to do that, I would give them time to do that. It didn't affect the fact that I had a contract to buy the property that was enforceable but I wasn't going to interfere with what Thad wanted to do and I wasn't going to interfere what Mr. Jay and his sister were going to do.
Q: At this point, they are telling you that they voted not to sell the property at all, so, under your theory of the case --
A: I don't read it that way.
Q: It says, ''voted not to sell the property.''
MR. POPE: Wait a minute, you need to let him answer.
Q: Go ahead.
A: What it says, ''voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title hereto because of encroachments.'' If they wanted to clear the encroachments, it was their condition that I

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accept the encroachments. I agreed to accept the encroachments. I had no -- I didn't have a problem if they wanted to clear them but it was not something that I was concerned about; I had already accepted the property with the encroachments.

Q: Okay. Was there any concern that once it cleared up the encroachments that they could sell the property to whomever they wanted?

A: No.

Q: You were not concerned about that?

A: No, because I had an enforceable contract in my mind and I stayed in touch with enough to know what they were trying to do.

Q: Okay. Did you have any conversations with the Lions Club, any representatives of the Lions Club in May or June of 2017?

A: I do not have a specific recollection.

Q: Okay.

A: I think in Mr. Crocker's testimony, he mentioned that he might have called me and I am not disputing that whatsoever. I just do not recall it.

(Defendant's Exhibit Number 7 marked for identification)

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Q: I'm showing you what has been marked as Exhibit Number Seven. And this is an email it looks like from Sid Boone secretary to it looks like to you, Barry Gumb. Who is Barry Gumb?
A: My financial advisor.
Q: Okay. And then it looks like you forwarded it to Mr. Schumpert. Is that right?
A: That’s weird.
Q: So, Anne Palmer, McNair forwards it to you --
A: Right.
Q: -- And Barry --
A: I see that. And I see Mr. Schumpert’s responding but where do you see that I forwarded it? See this? I don’t see where I emailed it to Mr. Schumpert but I am fairly certain I did.
Q: Yes, and I think it says On June blah, blah, blah, Joe Rice wrote --
A: But it doesn’t say to whom.
Q: Yes, it depends on some people’s email system. I have no idea.
A: Okay. But clearly, I remember getting back this and I remember this.
Q: Sure.
A: I am just curious as to why it shows up like that way.

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Q: I don't know either. I think it is depending on if you do it by phonem it might work that way. I have no idea.
A: Okay.
Q: Okay. There is a blacked out section under ‘‘Gentleman.’’ Do you know what that means, do you know what is said there?
A: I am making the assumption as an attorney that my attorney has claimed it as being privileged.
Q: Okay. Do you believe that it, I mean I don't know what it says, but why would you think that’s privileged?
A: I don't know what it says so I can’t give you an answer.
Q: Right, but this email is forward to Mr. Schumpert. Do you see that?
A: Right.
Q: And so, Mr. Schumpert is not --
A: I see this copy you have given me shows that.
Q: Okay, right.
A: I don't know that the originals are in the same piece of paper. As you say when you print it out sometimes it goes -- prints out a chain or a string. I can't tell you that the bottom half of this email from Anne Palmer was attached to what

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went to Mr. Schumpert. I couldn’t tell you either way because I don’t have the original.

Q: All right.

MR. KOUTRAKOS: Let me ask you, Mr. Pope, I sent you a letter about this about a month and a half ago, maybe two months ago about the redaction to this. Do you still claim that whatever that language is in there, which is probably ‘‘here is,’’ it’s probably meaningless --

MR. POPE: Right.

MR. KOUTRAKOS: -- But that is privileged?

MR. POPE: I haven't read it either, so I got it from McNair and they deleted very little, redacted all of nothing of the stuff that they sent.

MR. KOUTRAKOS: Right.

MR. POPE: But that was redacted, so they have seen it and say it’s attorney-client privilege. I will be glad to revisit it with them. But I don’t -- I assume that it is attorney-client privilege.

MR. KOUTRAKOS: Well it’s not, I mean you're the lawyer in this case, McNair, well, I guess McNair is the lawyer, they are counsel of record. Maybe I need to speak to Mr. Scardato about that, but I mean I just don’t see how an email, and I'm sure

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it's meaningless, it's harmless, but I think I have an obligation to my client to figure out what it says. That an email that is forwarded to a third party, who is -- would clearly break the privilege. Mr. Schumpert is not represented by McNair as far as I know. But that should not be a redaction there and I previously wrote about it and I will move to compel because I don't know why -- perhaps I should have thought about it, but I thought you know and complained about it a week ago, but that is -- that's an improper redaction.

MR. POPE: I don't know what it says, you're just guessing. There's no indication this went -- the way I read it, that it went to Claude. If it went to Claude, you are entitled to see it. That's for sure. But I don't see it or read it that way.

MR. KOUTRAKOS: This is an email from Claude Schumpert --

MR. POPE: Can I just say --

MR. KOUTRAKOS: It's probably meaningless, do you understand what I'm saying? It's probably --

MR. POPE: We can save you a lot of time. We will look at it again; I will ask my counsel to

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look at it again.

MR. KOUTRAKOS: Okay. But you understand how that if it is in fact the way it appears to be, that's not privilege and it probably says ''here is the letter,'' it's probably meaningless.

MR. POPE: I don't have to agree or disagree with you. I agree that we will look at it again.

MR. KOUTRAKOS: Okay. Fair enough, all right.

Q: So, in this email, he says, ''I guess we will wait to see what is next.'' Do you recall having any discussions with Mr. Schumpert regarding any of this in June?

A: Again, I was having discussions with Mr. Schumpert off and on. I can't recall specific. But he had told me that I was going to be getting something from Mr. Verner. I got something from Mr. Verner, so I will have to assume based on this that I had a conversation with Claude.

Q: And you don't recall what the conversation would have been about or what you all were discussing in that conversation?

A: No.

Q: The next thing I have is a November --

A: Are we finished with the complaint?

Q: We are going to come back to it later on, but

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yes.
A: Okay.
Q: We may go back after a while. You never know.
A: All right, you never know.
(Defendant's Exhibit Number 8 marked for identification)
Q: Exhibit Number Eight. And by the way, who is Gwendolyn Worthington?
A: She is one of my assistants.
Q: Okay. So, she would have printed this email. I don't know, it just says Gwendolyn Worthington on top, that’s typically the person who prints the email. But anyway, I was just curious. All right. So, it looks like from what I can tell from the documents that have been produced, there is really not much that took place from June of 2017 until November of 2017. Do you recall anything that would have taken place during that time period regarding this matter?
A: Not specifically, no, sir.
Q: In this letter, by the time this email is sent to you in November of 2017, you have no information as to whether, and correct me if I'm wrong, you have no information as to whether the encroachments have been cured?

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A: I don't know, I have talked to Thad. I don't remember when I called Thad --
Q: Okay. Thad McCracken?
A: Yes, Thad McCracken. My recollection is I can't remember if it was all in one conversation or if there was more than one but I think it was before he had things -- he worked things out because he said he was working it out. And then I think I talked, asked him again at some point in time if he had closed but I don't remember the dates. I just conceptually remember the conversations, generally. I remember talking to Thad. And I might have asked Thad if he was going to rebuild the house or just fix what he’s got.
Q: Okay. Do you know if you --
A: And I talked to Chris Jay.
Q: Chris Jay, okay. The neighbor, one of the neighbors?
A: Right. And Chris told me, we talked about the road and that his understanding that it was on their property but he told me he was getting ready to, that his sister wanted to sell the property. So, he wasn’t dealing with it.
(Defendant's Exhibit Number 9 marked for identification)

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Q: I'm showing you what's been marked as Exhibit Number Nine. This is a letter from Mr. Scardato to Gene Crocker and Mr. Verner, correct? Dated November 21, 2017.
A: Correct.
Q: This letter is written by Mr. Scardato and I believe all the other letters were written by Mr. Boone. Is that right?
A: The ones you've shown me.
Q: Any reason why Mr. Scardato's involved instead of Mr. Boone for this juncture?
A: No, but it's sort of like Jack and Jill, I mean, they work together.
Q: Okay. Is Scardato --
A: Mr. Scardato is the, now I'm going to show my ignorance of real estate practice, what's the -- he's the officer of the court that deals with property but he is not judge.
Q: Special Referee?
A: I can't remember that. There is -- he handles foreclosures for the county, he does the auctions. I don't know what the -- there's a title to it but I don't know what it is.
Q: Okay.
A: So, he does a lot of real estate work.

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Q: Okay. Is he a litigator?
A: Yes, he had -- Mr. Scardato had represented us in the lawsuit over the bug infestation on the house, so he was quite familiar with the property.
Q: Okay. What --
A: Which probably explains why he wrote this letter.
Q: Okay. What I want you to explain is we go from Mr. Verner sending the letter in June and now we're in November of 2017 and, I'm sorry. Exhibit Number Eight, you are informed that they have agreed to sell the property to Ray Amick for $300,000 in Exhibit Number Eight, the email.
A: Right, for the first time.
Q: For the first time, right. And then, that's the first time you heard Mr. Amick was -- you've known that Mr. Amick, you knew that they had agreed previously to sell the property to Mr. Amick, correct?
A: The previous email that I had gotten said that they were going to sale the property, excuse me, they were going to sell the property to Mr. Amick because he was matching the high bid.
Q: Okay.
A: Which was perfectly acceptable for them to do.

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Q: Okay.
A: But this was the first time, and assuming that he accepted all the other terms we have said several times, this is the first time that I got information which didn't come from the Lions Club again that they were going to blatantly breach the contract.
Q: All right. And so, this is why your lawyers sent Exhibit Number Nine?
A: Again, we let him know that we had the contract and not going away.
Q: Okay. Did you receive any response to this letter?
A: No, sir. No to the best of my knowledge.
Q: Okay. Have you ever talked to Mr. Verner, have you?
A: No, not that I --
Q: Has Mr. Scardato or Mr. Boone ever talk to Mr. Verner?
A: You would have to ask Mr. Verner or those gentleman, I don't know.
Q: Okay. I'm just wondering why at this point, you know this is almost, it's 11 months after you first received the first letter, Exhibit Number One, the undated later that was probably sent in

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January 2017. It's 11 months after that and immediately, I mean early on, you thought you had a valid contract. Why didn't you follow a lawsuit by then?

A: No one had breached the agreement then. They had said they were going to clear encroachments that I had agreed to accept. That's fine.

Q: All right.

A: They said they -- in order to do that, I knew they had to get a survey. So, they were going to have a fresh survey done; that was okay with me too. That takes time. I was staying in touch with Claude, you know. Nothing was happening, my guys had been up there. Nothing was happening. It wasn't until Claude told me that in fact they were going to sell to Mr. Amcik for less than my bid, which is shown on exhibit eight that I knew that the gentlemen of the Lions Club were not going to honor the agreement or apparently did not want to honor the agreement. I was still hopeful they would honor the agreement.

Q: All right. You didn't mention anything about Mr. Amick or your lawyers did mention anything about Mr. Amick in Exhibit Number Nine, correct?

A: No, sir. We just -- it speaks for itself.

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(Defendant's Exhibit Number 10 marked for identification)

Q: All right. I'm showing you what's been marked as an exhibit, exhibit 10. It’s an email from you to Mr. Schumpert. The email is dated at February 15, 2018. And the email says what it says, but what caused you to send this email on that day?

A: Well, I started focusing more on this after I found out that the Lions Club was attempting to breach the contract. I told you I had been disappointed about the way I had been not -- not gotten any responses to anything we had sent to the Lions Club, no one had been forthcoming with what was going on. The only thing I was getting was through the backdoor. And it’s a charitable organization; I didn’t know if it was 501(c)(3) or a 501(c)(4), but I knew Lions Club was a charitable organization. And it was my belief that whatever came of this transaction, the money would be used for charity. So, I couldn’t understand why officers and directors of a charitable organization that sit there with a fiduciary responsibility were not fulfilling that responsibility and if I were a member of the Lions Club, I would have said I want the most

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money I can get for this because our charge is to, you know, use our work for charity. I know from my own observations of what the Lions Club members, Newberry Lions Club members that I had contact with in the seventies and eighties, you know, what they were doing. And I knew they did charitable stuff. So, it upset me that they were going to do this, and I said, you know, is there a Lions Club member that will say to their board why are you doing this? Why are you not fulfilling our charter? Why are you not fulfilling your duty to maximize the charitable ability of this organization? I don't know if Jay was still a member, I didn’t know if Murray was still a member. Claude had told me he wasn’t. I wasn’t sure who the members were, I didn’t know if there were some younger members. So, I reached out to see if there was a member that I could talk to see why they were going to let this happen.

Q: Okay. It looks like, and a fortune of deposing a lawyer and I have deposed numerous lawyers before, but at least we sort of speak the same language, and so it looks like you're shopping for somebody with standing. Your exhibit Number

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10?
A: I was clearly looking for someone that would ask questions as to why was this being allowed to take place.
Q: But there was more to ask questions --
A: If need be, file a lawsuit, yes.
Q: It says it right here, it says ‘‘they are selling for less money so a current member could sue to stop sale as a [breach] of duty by board.’’ Those are your words, right?
A: Those are -- that’s absolutely right.
Q: And then, so you were looking for somebody, a board, a member of the Lions Club to sue the Lions Club for breach of con -- fiduciary duty or breach of duties of the board member. Correct?
A: To potentially sue them, potentially, yes.
Q: Okay. And not only that, you were willing to fund the litigation --
A: I was.
Q: -- According to your email that is exhibit --
A: Because I didn’t think it was the right thing to do.
Q: Okay. Let me ask you: why are you telling Mr. Schumpert hey, I got a contract, why don’t I sue under my contract that’s one way to stop the

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sale?
A: You're assuming I wasn’t doing more than one thing.
Q: Okay. So, I don't know why I did it this way, but it is what it is. Exhibit Number 11 --
A: Hold on one second.
Q: Sure.
(Deposition went off the record for a brief period of time)
(Defendant's Exhibit Number 11 marked for identification)
Q: If you look at Exhibit Number 11, this is an email from Claude Schumpert to you dated February 15, 2018. This is the same day; I could have used the same exhibit, I don't know why I did or I didn’t. But he is responding to your request to look for members who might have a standing to sue, correct?
A: He is.
Q: And that’s February 15, 2018. It looks like from my client purchased the property about the sale of the closing took place, it looks like about six days later, and around that same time, you filed a lis pendens in summons of the complaint. How did you get from exchanging emails with

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Claude Schumpert about looking for somebody with standing to filing a lawsuit yourself six days later?

A: Because they’re not related.

Q: Okay. Explain.

A: When I got the November information, I knew I was going to file a lawsuit.

Q: Okay. You got the November information --

A: I did.

Q: -- From Mr. Amick was the bidder -- let me --

A: That the Lions Club was not going to honor my contract.

Q: Okay.

A: I knew that I was going to sue, I gave them the chance in the November letter we wrote. I frankly hoped that someone would call and we could figure out a way around a lawsuit. No one ever contacted me. So, I knew that I was going to seek to enforcement my contract. I did file my suit and I did file a lis pendens before the transaction -- before Mr. Amick got title to the property recorded.

Q: I don't think this is a privileged question, but your lawyer could say. And I don’t mean to get into privilege at all, but is this -- I think it

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could be wrong -- when did you instruct your lawyers to prepare to file litigation?

MR. KOUTRAKOS: Is that --

MR. POPE: I don’t care.

MR. KOUTRAKOS: Okay. I figured.

A: And I don’t have a specific recollection but the fact that Mr. Scardato wrote the last note, letter in November tells me that I went from Sid, who is the property --

Q: Sid doesn’t do any litigation, does he?

A: If he does, he’s never done any litigation for me.

Q: Okay.

A: He’s basically the real estate guy. Michael has done the litigation.

Q: All right.

A: I am fairly confident that Michael and I had a conversation related to bringing action to enforce this if they don’t respond. We gave them another chance to respond; we didn’t do anything over the holidays, and then Michael filed the suit. When he got it ready, when he found local counsel, et cetera, all the things you have to do to file a suit; and we filed our first complaint. I don't remember the date but it was prior to the

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transaction with Mr. Amick and we filed a lis pendens at that time as well of record.

Q: Are you seeking any damages in this case from my client?

A: I am.

Q: What kind of damages are you seeking from my client?

A: Economic recovery.

Q: And what does that mean?

A: Money.

Q: Okay. Can you explain what type, what money you are seeking from my client and a breakdown of how you arrived at that figure?

A: Well, the figure is not established.

Q: Okay.

A: It would be attorneys' fees and costs of the action on the enforcement.

Q: Okay.

A: And it would be the value of the conservation easement that I would lose -- that I have lost on the transaction. And in order to determine the value of the conservation easement, I will have to have the developmental plan done and the tax calculations done.

Q: And remember, my client is Ray Amick, it's not

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the Newberry Lions Club.

A: I understand.

Q: Okay. So you are claiming that somebody with whom you have no contractual privity, you would agree you have no contractual privity with Mr. Amick?

A: I don’t know that I do agree with that.

Q: Okay. Do you think that you have a contractual relationship with my client?

A: I think he is a member of the Lions Club and I have a contractual relationship with the Lions Club.

Q: Other than through some representative capacity as being a --

A: I'm not sure what's representative capacity if he was active, could be direct.

Q: All right. Other than that, do you have a contractual relationship with Mr. Amick?

A: Other than through the Lions Club contract, I do not.

Q: Okay. And you are referring to Exhibit Number One and Exhibit Number Two, your contention of a contract, Exhibit Number One and Exhibit Number Two to this deposition?

A: Correct.

Q: Any other type of damages you are seeking from my

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client?
A: Not at this time but when, you know, obviously discovery is still going and I am sure that we will review the facts after discovery and we will see where we are.
Q: Okay. What have been your attorney fees and costs to date?
A: I'm guessing about $45,000.
Q: Would that include payments to your attorneys prior to litigation? In other words, dating back to February 2017 or just litigation?
A: I think it’s just litigation.
Q: Okay. Do you recall having any conversations with anybody at the Lions Club that we have not already talked about? I know we mentioned early on I think it was a Mr. Simpson you had a conversation with saying that you didn’t get the letter?
A: I don't think there is -- I don't recall any of the conversations with any of the members of the Lions Club that I haven't talked about including what Mr. Crocker, my recollection is his testimony that he talked to me, but I don’t have a specific recollection of that.
Q: All right. And your wife, as far as you know,

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hasn’t talked to anybody at the Lions Club?
A: As far as I know.
Q: And neither of you have talked to Mr. Amick about anything involving this?
A: That's correct.
Q: You got to take a call?
A: I’ve got a conference call with the court --
Q: All right, that’s fine. Let’s do this --
A: At 12:30.
Q: I might have, I'm close to being done. Sam may have questions for you, so how long do you think your call is going to be?
A: I don't think it shouldn’t be that long.
Q: Okay.
MR. POPE: We’d like to finish, we won’t object to Sam picking up and you coming after him if you want to.
MR. KOUTRAKOS: What? Yes.
MR. POPE: I said we’d finish before we eat lunch.
MR. KOUTRAKOS: Sure.
MR. POPE: So, if you want Sam to start and then you can pick up --
MR. KOUTRAKOS: That’s fine if you want to start right now but he’s got to take a call in the next

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couple of minutes anyway. So, I don't know --
A: I made the assumption when the court asked me when I could be available today I could do it at 12:30 assuming that we would take a lunch break. Actually, I made the assumption --
Q: I'm happy to --
A: -- I wouldn't still be here.
Q: I am happy to accommodate, so.
MR. POPE: Whenever he has his call, we'll stop for whenever.
MR. KOUTRAKOS: That's fine.
A: I appreciate it.
Q: When was the last time you talked to Mr. Schumpert about anything concerning this property?
A: I don't know.
Q: Okay. How about Mr. McCracken?
A: It's been awhile.
Q: Okay. I think I would normally take about a five-minute break to figure out if I'm missing anything but I can pass the baton.

CROSS EXAMINATION BY MR. PRICE:

Q: Mr. Rice, you had mentioned that you're also seeking money damages.
A: I did or did not?

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Q: That you were, so yes.
A: Yes, I answered his question, yes.
Q: Yes, right. Tell me about this loss of the conservation easement benefit. Tell us how that works.
A: Under both state and federal law if you take a piece of property that is -- there are some definitions it has to meet, but it’s basically for the good of the public or the good of the environment. It usually deals with density reduction or use reduction or wetland reduction process. You can have that property; you can do a developmental plan for that property to determine what its highest and best use is. If you then determine through the credited appraisal process, the highest and best use and you can establish the timeframe for which that use would take you to get there, there is a formula that accountants would use to say at the end of this process you would make X dollars. If you then put that property into a conservation easement of public easement to not allow that development to occur, so you limit it to agricultural purposes or you limit it to recreational purposes, you limit it to one, you know, building or whatever. The

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difference of what it is valued the way you decide to use it and what it would be valued at its highest and best use is a tax deduction. So, you can deduct it from your state and federal tax returns.

Q: And typically, what does the development plan cost?

A: It’s going to be based on the size of the acreage and what kind of developmental plan it would be.

Q: All right. 5.3 acres what would you guess?

A: $10,000.

Q: Okay. And in your contemplation, if the bulk of this property went into this conservation easement, would this be in perpetuity?

A: Yes.

Q: Forever?

A: Yes.

Q: Okay.

A: You have, excuse me, you have to have a trust willing to accept the property. The Nature Conservatism, Audubon Society, Ducks Unlimited, something like that.

Q: But you can’t create your own trust, it’s got to be preexisting recognized trust?

A: Right.

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Q: Okay. That's all I have right now. During lunch, I may discuss with my clients if they have anything else.

(Whereupon there was a break)

RE-EXAMINATION BY MR. KOUTRAKOS:

Q: I have few more questions, not many at all. If you refer to Exhibit Number Two.

A: Two?

Q: Exhibit Number Two. This is, this would be the second document that you testified constitutes the contract you claim to have with the Newberry Lions Club. Would you agree with me that you kind of set some conditions of your own in Exhibit Number Two? For example, you, after the purchase price, you say, ''subject only to the property having good and marketable title.'' Do you see that?

A: I do.

Q: All right. The good and marketable title is not referenced in the Lions Club letter, Exhibit Number One. Was it?

A: They said they were in the position to sell the property, that means you got good marketable title, you can't sell what you don't have.

Q: Okay.

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A: So, I just wanted to say they didn’t have it and it turns out that they had to get their trustees involved. They didn’t have trustees, so that kind of stuff.
Q: All right.
A: That’s just a process.
Q: But you had added something in the equation that was not in there before. You used the terms quote ‘‘subject only to the property having good and marketable title,’’ close quote.
A: I don't think that’s adding anything but those words are there, yes.
Q: Okay. And then you say something about a title search being done, correct?
A: I was going to do.
Q: Right. There was no indication of or any mention of a title search in the Exhibit Number One?
A: There is mention of them having the right to sale the property. All that does is means I'm going to verify they have the right to sell the property.
Q: By having marketable title?
A: By having --
Q: Not title, marketable title.
A: Subject to my accepting the encroachments. I don't know what you mean by ‘‘marketable title.’’

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Q: In Exhibit Number Two, you specifically say you bring to the equation marketable title. Do you see that?
A: Having good and marketable title due and payable at closing. We further understand that any encroachments as shown on the survey will have to be cleared after the property is sold.
Q: All right.
A: So, I was accepting their terms of clearing the encroachments so when you say marketable title, I don’t want you to imply that the encroachments are --
Q: I'm not talking about that, I'm talking about things other than encroachments that could affect marketability.
A: All they had to do was have the legal right to sell the property.
Q: Do you know the difference between marketable title and insurable title?
A: I probably don’t have it at the tip of my tongue, no.
Q: Do you think Mr. Boone would know the difference? He does real estate closings, right?
A: He does.
Q: He writes title insurance policies, I'm sure, and

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things of that nature?
A: Right.
Q: He may know the difference between insurable and marketable title. Correct?
A: Right.
Q: Was marketable title a word that you asked him to use or is that a word that he chose to use?
A: He chose to use it.
Q: Okay. A couple of questions. You have not been arrested before, have you?
A: No.
Q: All right. The only other real estate litigation you've had involves construction defects, not anything involving title, correct? To your recollection?
A: I told you about the Oceda property. I had a dispute with an adjourning landowner that was also a member of the LLC and I don't recall whether it actually went to litigation or not. It was resolved, but I don't recall whether it went to litigation.
Q: All right. Have you filed any other lawsuits alleging specific performance of a contract?
A: No.
Q: You said that your offer has some charitable

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purchase to it, correct?
A: My offer?
Q: Yes.
A: It was going a charity.
Q: Okay. Is what you're doing now, would you, is it charitable? Filing this litigation, do you believe it to be for a charitable purpose?
A: I believe for it to be a public charitable purpose because I intend to put the property into encroachment -- into a conservation and preserve its integrity and its use.
Q: For which you would get a tax break. You will get a tax --
A: I'll get a tax deduction.
Q: Right.
A: It won't be the value of the property, but I will get a tax reduction.
Q: Right. That's all the questions I have, thank you.
MR. PRICE: I don't have any further questions.
(Deposition concluded at 12:50 p.m.)

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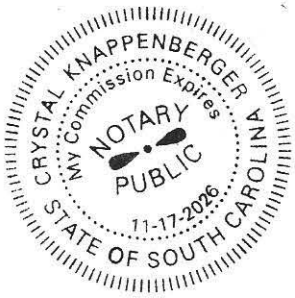
STATE OF SOUTH CAROLINA)
)
) C-E-R-T-I-F-I-C-A-T-E
COUNTY OF KERSHAW)

I, Crystal Knappenberger, Court Reporter and Notary Public, certify that I did have **Joseph Rice** to appear before me at 10:00 a.m. on Thursday, December 13th, 2018 at the law offices of Pope, Parker, and Jenkins, located at 1508 College Street in Newberry, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 18th day of December, 2018.



Notary Public for South Carolina
My Commission Expires: November 17th, 2026

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS
800-567-8658
ASSIGNMENT NO. CS3155533
CASE NAME: Lisa Summer Rice And Joseph F. Rice v. Newberry Lions Club And C. Ray Amick
DATE OF DEPOSITION: 12/13/2018
WITNESS' NAME: Joseph F Rice

PAGE/LINE(S)/	CHANGE	REASON
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_____
Joseph F Rice

(Notary not required in California)
SUBSCRIBED AND SWORN TO
BEFORE ME THIS_____DAY
OF_____, 2019.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES_____

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Veritext Legal Solutions
290 W. Mt. Pleasant Ave. - Suite 3200
Livingston, New Jersey 07039
Toll Free: 800-227-8440 Fax: 973-629-1287

_____, 2019

To: Thomas H. Pope, III, Esq.

Case Name: Lisa Summer Rice And Joseph F. Rice v.
Newberry Lions Club And C. Ray Amick

Veritext Reference Number: 3155533

Witness: Joseph F Rice Deposition Date: 12/13/2018

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized except in California where they are signing under penalty of perjury and forward the errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

Encl.

cc: Demetri K. Koutrakos, Esq.
Samuel M. Price. Jr., Esq.

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Requested By: CCC 07/02/2020

EXHIBIT H

201900051340
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
10-15-2019 At 02:02 pm.
DEED 15.00
SC 182.00
NEWBERRY 77.00
OR Book 2157 Page 96 - 98

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

DEED OF REAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS, that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Seventy Thousand ($70,000) Dollars, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to any easements, restrictions, reservations and conditions set forth below, unto **C. Ray Amick** (hereinafter referred to as the "Grantee"), the following real property, to-wit:

All those certain pieces, parcels, lots or tracts of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, and being shown and delineated as Parcel "R", containing 0.595 Acres, more or less, and Parcel "AA", containing 0.018 Acres, more or less, on that plat prepared for Dominion Energy South Carolina Inc. by Associated E & S, Inc., dated February 17, 2000, last revised September 28, 2009, and recorded on 11/6/09 in the Office of the Clerk of Court for Newberry County, SC in Book C227, at Page 9; said parcels having such boundaries and measurements as shown on said plat.

DERIVATION: This being a portion of that property acquired by Lexington Water Power Company (corporate predecessor to the Grantor herein), by Deed of W.N. Amick (Option 129), recorded on 1/21/28 in the Office of the Register of Deeds for Lexington County, SC in Record Book 4-I, at Page 270.

TMS #: **Adjacent to, and to be combined with, 652-3-21.**

GRANTEE'S ADDRESS: **62 Lions Club Rd.**
Prosperity, SC 29127

The portions of the property conveyed herein which are within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project") are conveyed herein subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the property, and reserving to the Grantor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate utility purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and the Grantee, by acceptance of this Deed, for the Grantee and his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said property as aforesaid.

ELECTRONICALLY FILED - 2020 Aug 13 5:46 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Requested By: CCC 07/02/2020

ELECTRONICALLY FILED - 2020 Aug 13 5:46 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

As further consideration for this Deed, the use of the property conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the Grantee, his heirs and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project. Title to the property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. The Grantee, his heirs and assigns, agrees to abide by and comply with such FERC orders and the Plan to the extent the same affect the property conveyed herein, and to fully indemnify the Grantor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

The Grantee acknowledges the Grantor, its successors and assigns, is and shall remain the fee simple owner of the area below the 360 foot contour elevation of Project 516 and within the 75 foot Vegetative Buffer Zone.

These covenants and restrictions shall run with and be binding on the property hereinabove conveyed. These covenants are for the sole benefit of the Grantor, its successors and assigns, recognizing the ecological integrity of the lake and immediate boundary, and shall not be enforceable by anyone other than Grantor, its successors and assigns.

This conveyance is also made subject to any and all existing reservations, easements, encroachments, restrictions, covenants, zoning, governmental regulations, land use regulations, rights-of-way, and other matters of record which may affect the property, or which may be evident upon visible inspection of the property and/or as shown on the plat referred to herein or on other plats of record.

The Grantee, in accepting the Deed to the property, agrees to comply with all of the above as affect or restrict the use of the property. The Grantee agrees to fully indemnify the Grantor, its successors and assigns, for all costs reasonably incurred by the Grantor, including any attorney and court fees to enforce these provisions.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular said property unto the Grantee, his heirs and assigns forever.

Requested By: CCC 07/02/2020

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Instrument 201900051340 OR Book 2157 Page 98

AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the Grantee, his heirs and assigns, against itself and its successors and against every person whomsoever lawfully owning, holding, or claiming by, through, or under the Grantor, which claims are based upon matters occurring subsequent to the Grantor's acquisition of the said premises, or any part thereof, except as to the following: Any servitudes, easements, conditions, restrictions or other similar instruments of public record, including plats which may affect the property, and matters which may be revealed by an inspection of the property, including but not limited to licenses, rights-of-way, easements, public or private roads, railroad tracks, guy wires and utility lines; and, except as to all exceptions and reservations specified herein.

IN WITNESS WHEREOF the Grantor has caused this Deed to be executed on the date set forth below.

Signed, sealed and delivered
in the presence of:

Wendy Quinn

Dominion Energy South Carolina, Inc.

By: P. Rodney Blevins

Its: President & CEO

Date: 10/8/19

REVIEWED BY LEGAL 10/7/19 JB

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation, by P. Rodney Blevins, its President & CEO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 8th day of October, 2019.

Wendy Quinn (L.S.)
Notary Public for the State of South Carolina
My Commission Expires: 10/26/26

WENDY A. QUINN NOTARY PUBLIC SOUTH CAROLINA My Commission Expires October 26, 2026

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

v.

Newberry Lions Club, C. Ray Amick, and Cheryl Littlejohn,

Defendants.

PLAINTIFFS' MOTION PER RULE 34 FOR ORDER ALLOWING ENTRY ON PROPERTY FOR SURVEYOR

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,

Plaintiffs,

v.

C. Ray Amick, and Cheryl Littlejohn,

Defendants.

TO: BIFF SOWELL, ESQUIRE, ATTORNEY FOR DEFENDANT RAY AMICK, AND MARY CASKEY, ESQUIRE, ATTORNEY FOR DEFENDANT CHERYL LITTLEJOHN:

The Plaintiffs in the above cases, by and through their undersigned counsel, move, pursuant to Rule 34 SCRCP, for an order of this Court allowing the surveyor retained by Plaintiffs to enter upon the lands at Lions Club Point which are in question in the above case for the purpose of identifying existing surveyor pins and performing a survey of Lions Club Road as it extends through lands recently acquired by Defendant Amick from Dominion Energy South Carolina (during the pendency of these

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cases and after the entry of the temporary injunction by the Honorable Donald B. Hocker dated August 5, 2019) and over other lands of Dominion Energy South Carolina to the boat ramp referenced in the complaint. Counsel for Plaintiffs contacted counsel for both Defendants last week to inform them that Plaintiffs' surveyor, Tad Abraham of Abraham Land Surveying, was planning to go to the Lions Club Point on Monday, September 28, 2020, to identify existing surveying pins and to do a survey so that the exact location of Lions Club Road all the way to the boat ramp could be identified. Defendant Littlejohn consented to this, but Defendant Amick objected. Plaintiffs' surveyor needs to have entry along Lions Club Road, which entry could include possible entry on lands of the Defendants for the purpose of performing such survey work all of which is within the scope of Rule 26(b) SCRCP. Because consent from both Defendants was not obtained, Plaintiffs are informed and believe that they are entitled to an order of this Court directing that Plaintiffs' surveyor may enter upon the lands in question in this lawsuit for the purpose of inspecting, measuring, and surveying the boundaries thereon and the route of Lions Club Road to the boat ramp.

This motion is based on the Affidavit of Counsel to be filed, the SCRCP, the pleadings, the developments in the case since the entry of the Order Granting Temporary Injunction in August 2019, and any materials to be filed prior to a hearing on this matter. Per Rule 11, SCRCP the undersigned has consulted with opposing counsel to no avail.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III
Thomas H. Pope, III
Kyle B. Parker
1508 College Street
P.O. Box 190
Newberry, South Carolina 29108
Tel: (803) 276-2532 – Fax: (803) 276-8684
tom@ppjlaw.com
kyle@ppjlaw.com

September 30, 2020

Attorneys for Plaintiffs

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

v.

Newberry Lions Club, C. Ray Amick, and Cheryl Littlejohn,

Defendants.

PLAINTIFFS' MOTION TO AMEND COMPLAINT

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,

Plaintiffs,

v.

C. Ray Amick and Cheryl Littlejohn,

Defendants.

Plaintiffs, by and through their undersigned counsel, do hereby move pursuant to Rule 15 SCRCP, for an Order of this Court granting leave to Plaintiffs in these consolidated cases to amend their Complaints based upon recently discovered evidence. The amendments are to conform to the evidence developed in discovery and particularly based on a deed to Defendant Amick from Dominion Energy and a recent survey by the Plaintiffs' surveyor resulting in a plat dated January

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29, 2021, which fully identifies and depicts the route of the easement which is the subject of this combined action.

Attached herewith are proposed Amended Complaints as follows: Exhibit A: Proposed Third Amended Complaint in *Gray, et. al v. Amick, et. al* and Exhibit B, proposed Fifth Amended Complaint in *Rice, et. al v. Amick, et. al*.

This motion is based upon the information developed in discovery, the pleadings, the plat of surveyor, Tad Abraham, dated January 29, 2021, the applicable law, and any documents or affidavits submitted prior to a hearing in this matter. The undersigned affirm that they communicated in writing with opposing counsel to attempt in good faith to resolve the motion, pursuant to Rule 11, SCRCP.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope III
s/Kyle B. Parker
Thomas H. Pope III
Kyle B. Parker
1508 College Street
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Newberry, South Carolina 29108
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Attorneys for Plaintiffs

April 8, 2021

ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	**CASE NO.: 2018-CP-36-00089**
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	**AMENDED SUMMONS**
Plaintiffs,	)	**(NON-JURY)**
	)	
v.	)	
	)	
NEWBERRY LIONS CLUB and C. RAY AMICK,	)	
	)	
Defendants.	)	
	)	

TO: NEWBERRY LIONS CLUB AND DEFENDANT C. RAY AMICK:

YOU ARE HEREBY SUMMONED and required to answer the Fifth Amended Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer or a motion under Rule 12 of the *South Carolina Rules of Civil Procedure* in response to said Complaint on the Plaintiffs' attorneys, Pope Parker Jenkins, at their office located at 1508 College Street, Newberry, South Carolina, 29108, within thirty (30) days after service thereof exclusive of the day of such service. If you fail to answer or move in response to the Complaint within the time period stated above, the Plaintiffs in this action will apply to the court for default judgment and the relief demanded in the Complaint and a judgment by default will be rendered against you. You also must file your answer or motion with the court.

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III
s/Kyle B. Parker
Thomas H. Pope, III
Kyle B. Parker
1508 College Street
P.O. Box 190
Newberry, South Carolina 29108
(803) 276-2532

Attorneys for Plaintiffs

Newberry, South Carolina
April 8, 2021

ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	**CASE NO.: 2018-CP-36-00089**
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	**FIFTH**
Plaintiffs,	)	**AMENDED COMPLAINT**
	)	**(NON-JURY)**
v.	)	
	)	
NEWBERRY LIONS CLUB, C. RAY AMICK, AND CHERYL LITTLEJOHN,	)	
	)	
Defendants.	)	

The Plaintiffs complaining of the Defendants would show and allege as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice ("Rices") are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and upon information and belief, was a member of Defendant Newberry Lions Club at all times relevant to this proceeding.

4. Defendant Cheryl A. Littlejohn ("Littlejohn"), upon information and belief, is a citizen and resident of Newberry County and is the owner of property at 454 Lions Club Road, in

Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

5. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and, at all times relevant to this proceeding, retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

6. The Newberry Lions Club published and offered to sell the 5.5 acre tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

7. At a meeting of the Board of Directors of the Lions Club on January 14, 2017, the board was presented with a proposed letter drafted by the President of Defendant Lions Club offering the property for sale to all adjacent property owners of the subject property. Defendant Ray Amick, although not a member of the board of the Lions Club, was in attendance at that meeting. Before a vote was taken by the board at the meeting on January 14, 2017, Defendant Amick insisted that he needed until June 1, 2017, to buy the property. In response to his demand, by unanimous vote of the board of directors, the Lions Club acquiesced in Amick's demand.

8. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1. This letter was approved by the board of the Lions Club after being amended at Amick's insistence to include a deadline of June 1, 2017, after which the Lions Club's offer would no longer be valid.

9. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other adjoining landowners.

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10. The offer stated in part, "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

11. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of $369,000.00 for the property. The club members have decided to ask $300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property, please let us now right away . . ." Exhibit 1 attached hereto.

12. The offer provided that any prospective purchaser would take title subject to encroachments where it stated, "[a]ny encroachments will have to be settled after the property is sold."

13. The offer further stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." Exhibit 1.

14. The above-referenced offer was sent to the Rices and, upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

15. As a result of the offer and accepting the conditions set forth therein, the Rices, through their attorney, sent a bid of $325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

16. The Newberry Lions Club, upon information and belief, received other offers including one for $300,000 from Claude Schumpert.

17. Upon information and belief, the Rices' bid was the highest received and therefore, was the offer which was accepted by the Newberry Lions Club.

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18. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club's offer.

19. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club (Exhibit 3), which indicated that they understood that they were the successful bidders and again, reiterated their bid of $325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of $325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

20. Defendant Lions Club did not respond to either letter (Exhibit 2 or Exhibit 3) and never contested that Plaintiffs were the high bidder for the subject property or that the bid response of the Plaintiffs was anything other than acceptance of the offer of the Lions Club.

21. At the meeting of the Board of Directors of the Lions Club on May 23, 2017, Defendant Amick, a non-board member, was present. He spoke at the meeting and said that he would not accept the encroachments on the subject property referenced in the Lions Club offer of late-January 2017. By unanimous vote of the Lions Club board, it voted to withdraw its offer set forth in Exhibit 1 and instead opted to clear up "encroachments." The board voted at that meeting for its attorney to write the landowners who had submitted bids (Plaintiffs and Claude Schumpert) to inform them that the Lions Club offer on Exhibit 1 was withdrawn.

22. Amick's actions at the meeting on May 23, 2017, constituted a withdrawal of any offer he may contend he made.

23. The effect of the vote of the board at this board meeting on May 23, 2017, was an attempt to negate the bids of Plaintiffs (and Schumpert) and rescind its prior offer before the June

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1 deadline. However, Defendant Lions Club did not reserve the right to do so in its offer (Exhibit 1), nor did it inform Plaintiffs (or Schumpert) before the June 1 deadline of its attempt to withdraw its offer of sale.

24. On June 1, 2017 (which was the deadline imposed by the Lions Club in late February 2017; Exhibit 1), there were only two bids pending: Plaintiffs' bid of $325,000 and Schumpert's bid of $300,000. Plaintiffs were high bidders.

25. Defendant Lions Club has refused to acknowledge that Plaintiffs were the high bidders and it has ignored Plaintiffs original bid as well as the follow-up letters from Plaintiffs' counsel on May 15, 2017.

26. After the letter of May 15, 2017 (Exhibit 3), the attorney for the Newberry Lions Club sent a letter dated June 5, 2017 (Exhibit 4), indicating that at its meeting on May 23, 2017, the Lions Club board had voted not to sell the property located at Lake Murray at that time because they were not able to convey a good fee simple marketable title hereto "because of encroachments."

27. At the time of this letter (Exhibit 4), the Lions Club deadline of June 1 had passed and the Rices had already accepted Defendant Newberry Lions Club's offer as highest bidder and thereby agreed to accept title subject to the encroachments.

28. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold to them as highest bidders. The letter dated November 21, 2017, is attached hereto and made part hereof as Exhibit 5.

29. Even though not a member of the Lions Club's board, Defendant Amick attended every board meeting in 2017 except April. His purpose in being present at these meetings was to try to insure that he obtain title to the subject property by insisting on terms favorable to him,

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which were not in the public interest and about which no adjoining property owners had knowledge.

30. From at least November 2017, Amick had knowledge that the Rice's bid response was the highest and that Plaintiffs had accepted the Lions Club offer. Despite that knowledge, and in full assumption of any risk, Amick and Lions Club proceeded to attempt to close for a sale price ($300,000) that was less than Plaintiffs'.

31. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32 pm. A lis pendens properly describing the property which is the subject of this action was filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

32. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property which resolved an encroachment issue with an adjoining landowners, Joseph T. McCrackin, III and Gena B. McCrackin, by deed recorded in the Office of the Clerk of Court in Deed Book 2017 page 110. This transaction resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified as TMS 652-3-22.

33. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

34. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are ready, willing and able to pay the agreed upon price of $325,000 for the property in question even as it is presently configured.

35. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs' claims to the property in favor of one of their own members conveying the property at

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a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55 pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was $300,000 and "other consideration". The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee's fiduciary duties.

36. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder.

37. Furthermore, as a result of the failure of Defendant Newberry Lions Club to follow through with their offer, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance, together with prejudgment interest.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

38. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

39. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

40. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

41. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from "day

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and hour" when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

42. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

43. Because the said deed was recorded more than twenty-eight hours after Plaintiffs' lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

44. The Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be conveyed to them for the consideration of $325,000.00.

45. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

46. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

47. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and if the Court determines that the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to

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those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property in similar fashion.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

48. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

49. For the reasons set forth above, including Defendant Lions Club's breach of contract with Plaintiffs, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

50. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

51. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

52. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

53. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

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54. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

55. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices' successful bid.

56. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

57. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or who had by his conduct repudiated and/or withdrew (on May 23, 2017) any prior acceptance of the offer outlined in the letter attached hereto as Exhibit 1.

58. The Plaintiffs suffered damages as a result of the promises made and not kept.

59. The Plaintiffs are entitled to obtain the property and/or actual damages under the doctrine of promissory estoppel.

FOR A FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

60. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

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61. From June 1, 2017 through February 2018, Defendant Amick was not a member of the board of directors of the Defendant Lions Club ("the "board"); nevertheless, he insinuated himself into the decisions of the board by attending every board meeting in which the subject of the sale of the Lions Club property was discussed during this time period (all minutes of board meetings January 2017 through February 2018).

62. In attending these board meetings, Amick was pursuing his own personal agenda to buy the subject property on terms favorable to him without regard to Plaintiffs' rights as highest bidder.

63. At said board meetings during 2017, Defendant Amick made demands to the board as follows:

a. He insisted the board extend the offer period to June 1, 2017 (see Minutes of January 24, 2017).

b. He insisted at the May 23, 2017, meeting that the board clear up the encroachments so that he could purchase the property with "clear title."

Defendant Lions Club acquiesced in all of Defendant Amick's demands.

64. Based on his personal agenda, Defendant Amick did not want to, or was not able to, purchase the subject property by the June 1, 2017, deadline in the Lions Club's offer, and he coerced the Lions Club to try to change the bid conditions in May 2017 without notice to Plaintiffs so that encroachments would be cleared up by the Lions Club at his insistence, that the offer deadline of June 1 would be ignored, that the Plaintiffs' bid response/acceptance would be ignored and that he would be able to purchase the property in February 2018 – all with his knowledge of Plaintiffs' highest bid.

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65. Amick's actions were wrongful and interference with Plaintiffs' contract with the Lions Club in each of the following particulars:

a. As set forth herein, Plaintiffs had a contract with Defendant Lions Club to purchase the subject property for $325,000 (plus their agreement to accept the encroachments as stipulated by the offer of the Lions Club);

b. Defendant Amick had actual and/or constructive knowledge of Plaintiffs' contract;

c. Defendant Amick intended to interfere with Plaintiffs' contract;

d. Defendant Amick's interference with Plaintiffs' contract was without justification because he exerted pressures and maneuvers to get Defendant Lions Club to accept his bid by circumventing the Plaintiffs' highest bid and/or by changing the terms and conditions of the sale to circumvent Plaintiffs' high bid as set forth herein; and,

e. By virtue of Defendant Amick's conduct, Plaintiffs have been damaged by the fact that they are not able to place the property in a conservation easement to protect it from development.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

66. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

67. Defendant Lions Club knew or should have known that, in offering for sale the subject property, its handling of said sale included an implied covenant of good faith and fair dealing.

68. Defendant Lions Club, after offering said property for sale in January 2017 (Exhibit 1), knew or should have known that all bids received were entitled to be treated in good faith and dealt with fairly.

69. Plaintiffs' bid-response to the offer of the Lions Club constituted the highest bid and was an acceptance by Plaintiffs of the offer of the Lions Club.

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70. Defendant Lions Club, in failing to honor Plaintiffs' bid, was in breach of the contract/agreement with Plaintiffs.

71. Based on the circumstances surrounding the breach, Defendant Lions Club had fraudulent intent and its unfair dealings and fraudulent intentions were manifested as follows:

a. Lions Club allowed Amick (an "insider") to have input in the decision of the Lions Club even though Amick was not a board member;

b. Lions Club fielded and acquiesced to Amick's demands relating to the terms and conditions of the sale as set forth above;

c. Lions Club, knowing that Amick withdrew his bid on May 23, 2017, refused to honor Plaintiffs highest bid as of the June 1, 2017, deadline;

d. Lions Club, after the June 1 deadline, without notice to Plaintiffs, let Amick in effect purchase the property on <u>his</u> terms in a single-bid process in January 2018, and for a price lower than Plaintiffs; and,

e. Lions Club ignored all written communications from Plaintiffs' attorneys in February, May, and November 2017 demanding that Lions Club acknowledge Plaintiffs' highest bid and consummate the sale to Plaintiffs.

72. Lions Club's breach of contract was accompanied by a fraudulent act and unfair dealing as set forth herein.

73. These actions by the Lions Club constitute breach of contract accompanied by fraudulent act which have damaged Plaintiffs as set forth above, and Plaintiffs are entitled to all damages therefrom.

<u>FOR A SIXTH CAUSE OF ACTION</u>
(Declaratory Judgment – Easement – Injunction As To Amick and Littlejohn)
(IN THE ALTERNATIVE)

74. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein. This cause of action is set forth alternatively.

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75. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through "Lions Club Point" over, through and beyond the Lions Club property and that of Defendant Littlejohn to the boat ramp and beach area on the shores of Lake Murray. These lands where the boat ramp and beach area are located at the edges of the peninsula of the Lions Club Point have been used for more than eight decades as a recreational spot for the Lions Club, the grantees of its out conveyances (the predecessors in interest of the Plaintiffs), and their guests..

76. Defendant Amick further claims title to a parcel of land over which Lions Club Road runs which was conveyed to him by Dominion Energy Corporation by deed dated October 15, 2019, (referred to in this complaint as Amick's "fringeland parcel"). A copy of this deed is attached as Exhibit 6 hereto; this conveyance is for .6 acres, more or less. When Amick took title to this property, he had actual knowledge of the Order Granting Temporary Injunction filed on August 6, 2019, in a case in which Amick was a party-Defendant.

77. The area comprising "Lions Club Road", as such term is used herein, traverses over, through and beyond both Lions Club Point and Amick fringeland parcels to the said boat ramp and beach area as is shown and depicted on the plat of survey of Thomas D. Abraham, surveyor, prepared for Joe Rice and Claude Shumpert, dated February 25, 2021, attached hereto as Exhibit 7.

78. Within a short time after obtaining a deed from the Lions Club to the subject property in February 2018 (referenced in Paragraph 35 above), Defendant Amick installed "no trespassing" signage and placed a barricade across Lions Club Road, which barricade blocked access to the boat ramp and the beach area.

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79. Plaintiffs and all property owners adjoining the subject property have used Lions Club Road for over 60 years to access the boat ramp and the beach area on the Point. The usage of this road by the neighborhood of at least 15 adjoining property owners has been without permission, restriction, or limitation, and at no time during this 60-year period has the road been blocked.

80. Defendant Amick's actions in blocking the use of Lions Club Road for such access is unlawful and in contravention of the rights of the Plaintiffs and all other property owners to use said road for access to boating and recreational use of the Point as has been the case for over five decades.

81. Littlejohn acquired title to the above referenced property on Lions Club Road by deed of Stewart Jay Layman and Christopher Jay (the "Jays") dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

82. At the time Littlejohn acquired such title, she had record notice of the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, which depicts Lions Club Road traversing over, through, and beyond the Littlejohn property to the fringelands beyond the eastern boundary of the Lions Club property. Said plat is recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

83. Upon information and belief, Littlejohn had actual notice of the location of Lions Club Road and the use made of it by the Plaintiffs and the other adjoining land owners for access to the fringeland on a continuous basis for over 60 years.

84. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the Lions Club properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

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85. Littlejohn uses the portion of Lions Club Road traversing over the Lions Club property for access to her own property. She and the Jays before her have exclusively used Lions Club Road for access to such property since its subdivision from the Lions Club property decades ago.

86. Littlejohn, by virtue of the facts herein, is estopped from denying the existence of the easements asserted herein.

87. For over 60 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to and onto the fringe lands, including in May and June 2010 when they spent over $42,000. The amounts paid by these Plaintiffs and others are shown on Exhibit 9, attached hereto. No one complained about these improvements, and the landowners spent this money relying on their right to use the road for the purpose which heretofore remained unquestioned.

88. The Plaintiffs and the Lions Club Point property owners, all of whom acquired their titles from the Newberry Lions Club, also have maintained those portions of Lions Club Road which are gravel, being that portion running along beside the old Lions Club clubhouse and for several hundred feet on the shores of Lake Murray as shown on Exhibit 7. The Plaintiffs and their neighbors have purchased gravel, spread gravel, and performed other maintenance of the gravel portion in these areas of Lions Club Road (including the boat ramp) for more than 60 years.

89. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to Lions Club Point over which Lions Club Road traverses for over 60 years. Amick has acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 60 years.

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90. The Lions Club Road is the only road access for the Plaintiffs and the Lions Club Point landowners to use for vehicles to launch boats or to drive onto and access the beach area.

91. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

92. Defendant Amick's actions in May 2019 (emails attached as Exhibit 8) reveal his intention to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

93. This matter is of some urgency in the absence of an injunction because Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the area and the beach on Lions Club Point.

94. Based on the facts set forth herein (supported by the affidavits of 15 witnesses), the Honorable Donald J. Hocker, Circuit Judge, issued an Order Granting Temporary Injunction filed in a companion case under civil action no. 2019-CP-36-00245 on August 6, 2019.

95. Defendant Amick filed a Notice of Appeal with regard to this Order, but withdrew his appeal on October 22, 2019.

96. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

97. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area as depicted on Exhibit 7 under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (and thus never received) permission for such use.

98. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evinced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

99. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club and Amick.

100. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road (both paved and gravel), the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

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101. Plaintiffs constructed a large home on their lot expecting and believing that they had and would have use of said Road. Without the use of the Road, there would be no way for them to take a vehicle and boat trailer to the lake to launch and use said boat. Amick had full knowledge of Plaintiffs' use of the road yet remained silent regarding the same prior to obtaining his deed. Amick is estopped by his conduct from denying Plaintiffs' easement for use of Lions Club Road to access their properties, the boat ramp and beach area.

102. Plaintiffs have an easement implied by prior use because they have unity of title with Defendants Amick and Littlejohn; there has been severance of title; the prior use was not temporary; it was known or apparent to the parties; and, there is a necessity for the easement.

103. Plaintiffs are entitled to an Order of this Court declaring that they (and the neighbors) have one or more of the following with respect to Lions Club Road as depicted on Exhibit 7:

(a) an easement by prescription
(b) an easement by estoppel; and
(c) an easement by prior use.

104. Plaintiffs believe this is a genuine controversy that should be determined by the Court in a declaratory judgment.

105. As a result, the Court should issue its Order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

106. Given that the Plaintiffs and their predecessor in title used the road for many decades prior to Defendant's erection of the obstructions without complaint from anyone, including Defendant, their continued use (to trailer fishing and pleasure boats for launch at the

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boat ramp and access the beach area) cannot and does not prejudice Defendant and the entry of injunctive relief will merely return the parties to the *status quo ante*.

107. When Amick obtained his purported title to the property (which is disputed), he obtained a title insurance policy; however, such policy did not insure him against claims for:

> (7) "…rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle…all of which traverse or encroach upon the …premises without a recorded road maintenance agreement;..." (Exhibit 10 attached)

108. Furthermore, Plaintiffs have no adequate remedy at law and have demonstrated a likelihood of success on the merits. Therefore, equity demands that this Court issue its Order requiring Amick to remove the obstructions insomuch as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' use to and over Lions Club Road for purposes of accessing the boat ramp and beach area and otherwise enjoying use of the shores of Lake Murray.

WHEREFORE, the Plaintiffs pray for the issuance of an Order as follows:

a. setting the aforesaid conveyance to Defendant C. Ray Amick aside;

b. requiring Defendant to specifically perform under the terms of the agreement by conveying said subject property to Plaintiffs;

c. awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;

d. enjoining the Defendants from transferring the property to any other person or entity;

e. in the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;

f. in the alternative, declaring that Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as it has been historically, per one or more easements set forth above (easement implied by prior use, a prescriptive easement, or an easement by estoppel);

g. declaring for the public record that the road shown on Exhibit 7 all the way from State Park Road along Lions Club Road to the shores of Lake Murray is for the benefit of Plaintiffs, their families and guests, and the adjacent landowners;

h. enjoining temporarily and permanently the Defendants from blocking, fencing, or any act which attempts to restrict the use of Lions Club Road and directing Amick to remove the ropes, parked cars, debris, and any other obstructions which exist as of the time of a Court Order; and,

i. awarding such other and further relief as this Court may deem just and proper.

Dated: April 8, 2020

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III

Thomas H. Pope, III (SC004508)
E-mail: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
E-mail: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276.8684

Attorneys for Plaintiffs

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EXHIBIT 1

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NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice

Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of $369,000.00 for the property. The club members have decided to ask $300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

1

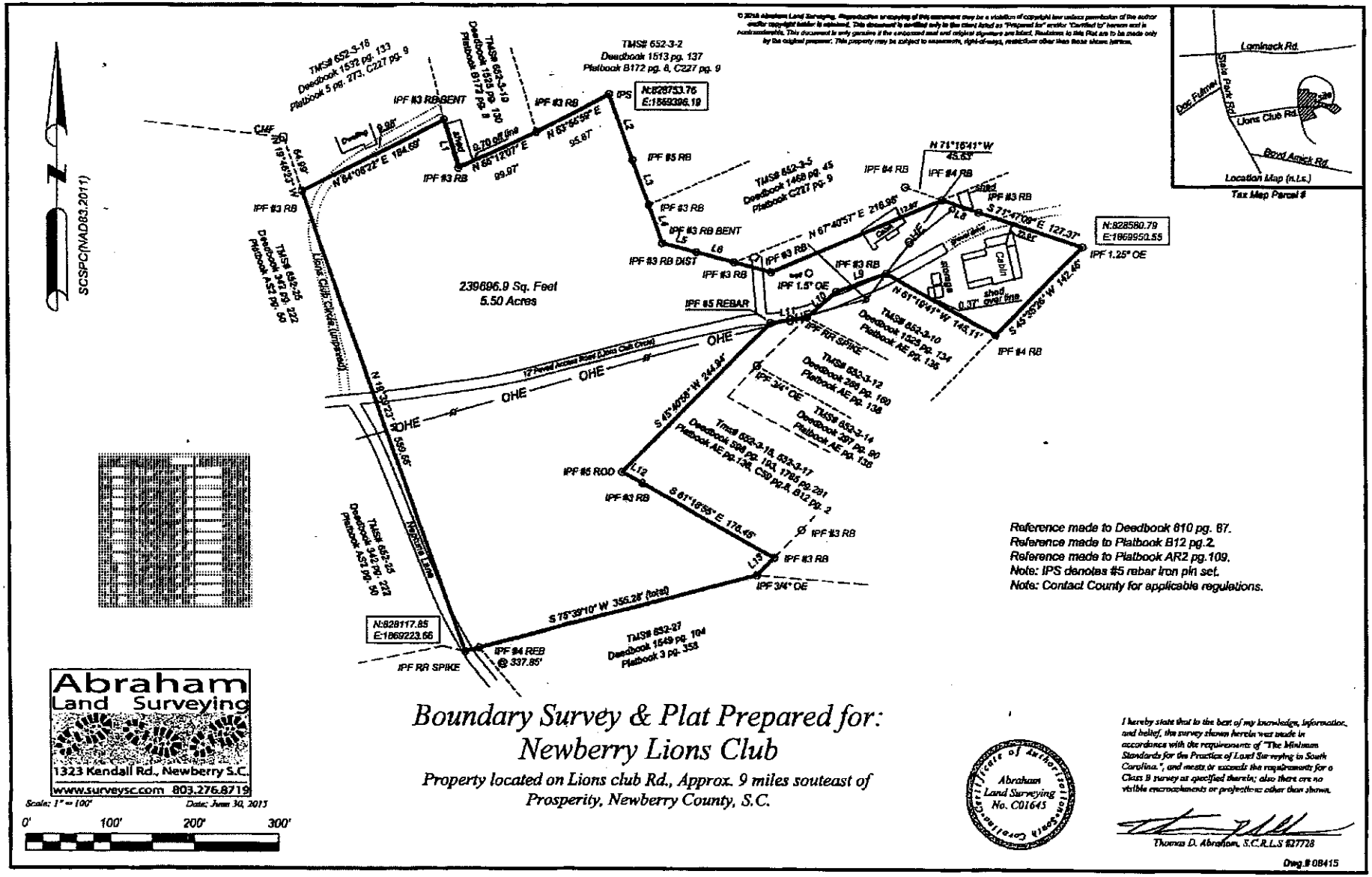

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EXHIBIT 2

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000089

February 14, 2017

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of $325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.

J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com*)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
2

EXHIBIT 3

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MCNAIR
ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723 7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of $325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
3

McNAIR ATTORNEYS

Sincerely,

McNAIR LAW FIRM, P.A.

J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com)*

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EXHIBIT 4

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HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER
CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,

James S. Verner

JSV/als

EXHIBIT
4

EXHIBIT 5

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COPY

MCNAIR
ATTORNEYS

Michael A. Scardato
mscardato@mcnair.net
T 843.723.7831
F 843.722.3227

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November 21, 2017

Via FedEx
Via E-mail: *lawyers@sc.rr.com*

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of $325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 40
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
5

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.

Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. *(via E-mail: jrice@motleyrice.com)*

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Exhibit 6

Requested By: CCC 07/02/2020

EXHIBIT L

201900051340
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
10-15-2019 At 02:02 pm.
DEED 15.00
SC 182.00
NEWBERRY 77.00
OR Book 2157 Page 96 - 98

STATE OF SOUTH CAROLINA)
) DEED OF REAL PROPERTY
COUNTY OF NEWBERRY)

KNOW ALL MEN BY THESE PRESENTS, that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Seventy Thousand ($70,000) Dollars, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to any easements, restrictions, reservations and conditions set forth below, unto **C. Ray Amick** (hereinafter referred to as the "Grantee"), the following real property, to-wit:

All those certain pieces, parcels, lots or tracts of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, and being shown and delineated as Parcel "R", containing 0.595 Acres, more or less, and Parcel "AA", containing 0.018 Acres, more or less, on that plat prepared for Dominion Energy South Carolina Inc. by Associated E & S, Inc., dated February 17, 2000, last revised September 28, 2009, and recorded on 11/6/09 in the Office of the Clerk of Court for Newberry County, SC in Book C227, at Page 9; said parcels having such boundaries and measurements as shown on said plat.

DERIVATION: This being a portion of that property acquired by Lexington Water Power Company (corporate predecessor to the Grantor herein), by Deed of W.N. Amick (Option 129), recorded on 1/21/28 in the Office of the Register of Deeds for Lexington County, SC in Record Book 4-I, at Page 270.

TMS #: **Adjacent to, and to be combined with, 652-3-21.**

GRANTEE'S ADDRESS: **62 Lions Club Rd.**
Prosperity, SC 29127

The portions of the property conveyed herein which are within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project") are conveyed herein subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the property, and reserving to the Grantor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate utility purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and the Grantee, by acceptance of this Deed, for the Grantee and his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said property as aforesaid.

ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245
ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Requested By: CCC 07/02/2020

ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Instrument 201900051340 OR Book 2157 Page 97

As further consideration for this Deed, the use of the property conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the Grantee, his heirs and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project. Title to the property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. The Grantee, his heirs and assigns, agrees to abide by and comply with such FERC orders and the Plan to the extent the same affect the property conveyed herein, and to fully indemnify the Grantor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

The Grantee acknowledges the Grantor, its successors and assigns, is and shall remain the fee simple owner of the area below the 360 foot contour elevation of Project 516 and within the 75 foot Vegetative Buffer Zone.

These covenants and restrictions shall run with and be binding on the property hereinabove conveyed. These covenants are for the sole benefit of the Grantor, its successors and assigns, recognizing the ecological integrity of the lake and immediate boundary, and shall not be enforceable by anyone other than Grantor, its successors and assigns.

This conveyance is also made subject to any and all existing reservations, easements, encroachments, restrictions, covenants, zoning, governmental regulations, land use regulations, rights-of-way, and other matters of record which may affect the property, or which may be evident upon visible inspection of the property and/or as shown on the plat referred to herein or on other plats of record.

The Grantee, in accepting the Deed to the property, agrees to comply with all of the above as affect or restrict the use of the property. The Grantee agrees to fully indemnify the Grantor, its successors and assigns, for all costs reasonably incurred by the Grantor, including any attorney and court fees to enforce these provisions.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular said property unto the Grantee, his heirs and assigns forever.

Requested By: CCC 07/02/2020

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ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Instrument 20190005134O OR | Book 2157 | Page 98

AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the Grantee, his heirs and assigns, against itself and its successors and against every person whomsoever lawfully owning, holding, or claiming by, through, or under the Grantor, which claims are based upon matters occurring subsequent to the Grantor's acquisition of the said premises, or any part thereof, except as to the following: Any servitudes, easements, conditions, restrictions or other similar instruments of public record, including plats which may affect the property, and matters which may be revealed by an inspection of the property, including but not limited to licenses, rights-of-way, easements, public or private roads, railroad tracks, guy wires and utility lines; and, except as to all exceptions and reservations specified herein.

IN WITNESS WHEREOF the Grantor has caused this Deed to be executed on the date set forth below.

Signed, sealed and delivered in the presence of:

Wendy Quinn

Dominion Energy South Carolina, Inc.

By: P. Rodney Blevins

Its: President & CEO

Date: 10/8/19

REVIEWED BY LEGAL 10/7/19 JB

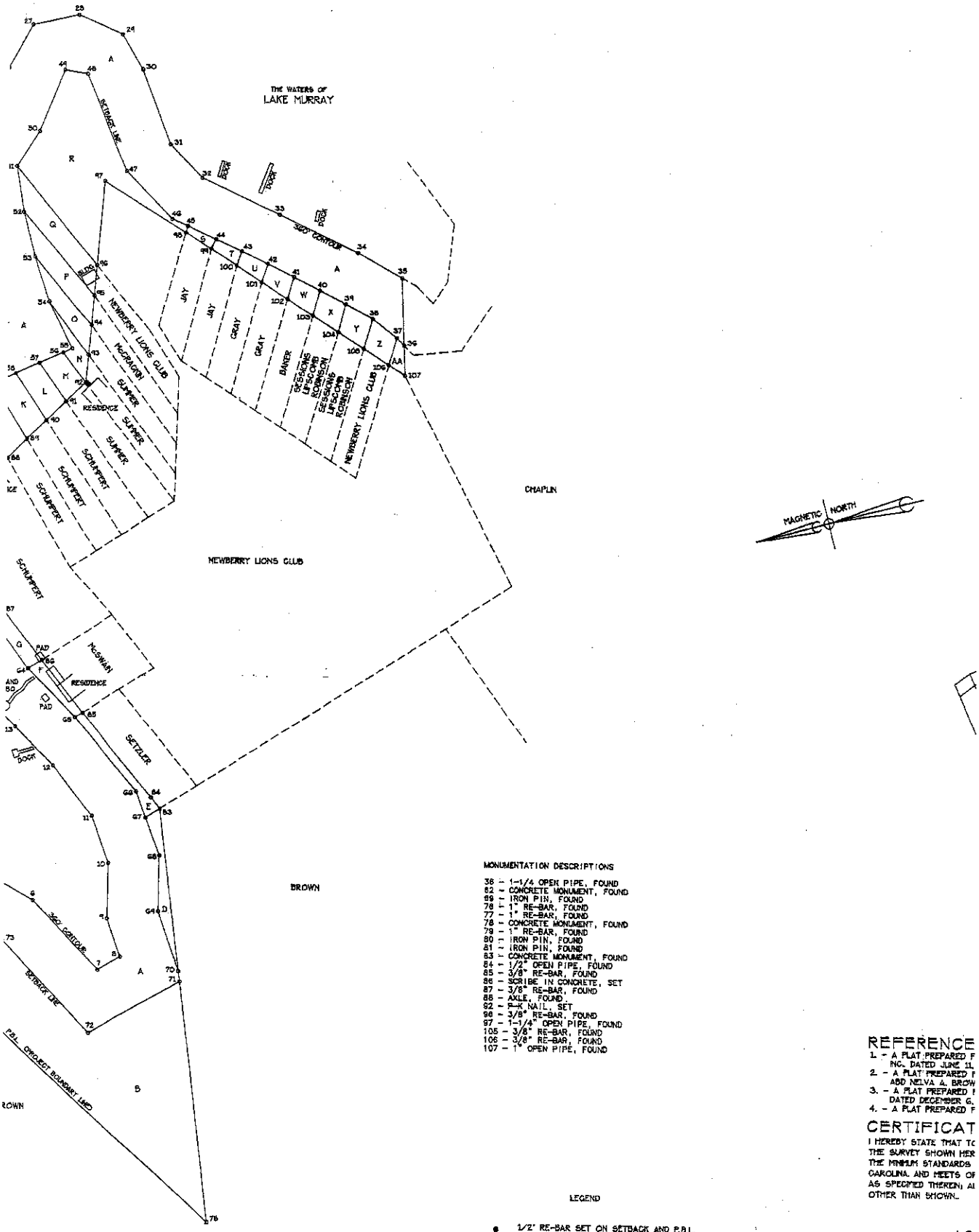
STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF LEXINGTON)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation, by P. Rodney Blevins, its President & CEO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 8th day of October, 2019.

Wendy Quinn (L.S.)
Notary Public for the State of South Carolina
My Commission Expires: 10/26/26

WENDY A. QUINN NOTARY PUBLIC SOUTH CAROLINA My Commission Expires October 26, 2026



MONUMENTATION DESCRIPTIONS

36 – 1-1/4 OPEN PIPE, FOUND
82 – CONCRETE MONUMENT, FOUND
83 – IRON PIN, FOUND
76 – 1" RE-BAR, FOUND
77 – 1" RE-BAR, FOUND
78 – CONCRETE MONUMENT, FOUND
79 – 1" RE-BAR, FOUND
80 – IRON PIN, FOUND
81 – IRON PIN, FOUND
83 – CONCRETE MONUMENT, FOUND
84 – 1/2" OPEN PIPE, FOUND
85 – 3/8" RE-BAR, FOUND
86 – SCRIBE IN CONCRETE, SET
87 – 3/8" RE-BAR, FOUND
88 – AXLE, FOUND
92 – P-K NAIL, SET
94 – 3/8" RE-BAR, FOUND
97 – 1-1/4" OPEN PIPE, FOUND
105 – 3/8" RE-BAR, FOUND
106 – 3/8" RE-BAR, FOUND
107 – 1" OPEN PIPE, FOUND

LEGEND

- 1/2" RE-BAR SET ON SETBACK AND P.B.L. EXCEPT WHERE OTHERWISE NOTED
- ALL POINTS ON 360 CONTOUR ARE IRON PINS. FOUND. OF VARIOUS SIZES

REVISED: AUG. 21, 2009 TO ADD VEGETATIVE BUFFER ZONE STATEMENT. NO FIELD SURVEY PERFORMED AT THIS TIME.

REVISED SEPTEMBER 28, 2009 TO CHANGE DASHED LINE BETWEEN SCHUMPERT AND McSWAIN AS PER SCE&G

GRAPHIC SCALE IN FEET

REFERENCE
1. – A PLAT PREPARED F
NC., DATED JUNE 11,
2. – A PLAT PREPARED F
ABD NELVA A. BROW
3. – A PLAT PREPARED
DATED DECEMBER 6,
4. – A PLAT PREPARED F

CERTIFICAT
I HEREBY STATE THAT TO
THE SURVEY SHOWN HER
THE MINIMUM STANDARDS
CAROLINA, AND MEETS OF
AS SPECIFIED THEREIN; AI
OTHER THAN SHOWN.

AS
800 VIOLET STRE

SOUTH CAROLINA JOINT VENTURE
ASSOCIATED E & S, INC.
No.000010
CERTIFICATE OF AUTHORIZATION

0621

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ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Exhibit 7

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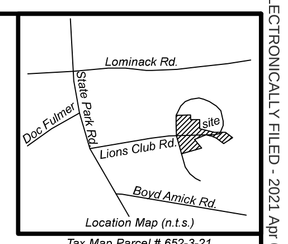

Tax Map Parcel # 652-3-21

Reference made to Deedbook 610, page 87.
Reference made to Deedbook 2028, page 194.
Reference made to Deedbook 2039, page 58.
Reference made to Deedbook 2157, page 96.
Reference made to Platbook AR2, page 109.
Reference made to Platbook B12, page 2.
Reference made to Platbook C227, page 9.
Reference made to Platbook D99, page 6.
Note: IPS denotes #5 rebar iron pin set.
Note: CP denotes calculated point.
Note: × denotes edge of gravel location as located in the field.
Note: No new property lines created at this time.
Note: Contact County for applicable regulations.

Dominion Energy (Lake Murray)

PP — OHE — OHE — OHE — OHE — OHE — OHE — OHE — OHE — PP

IPF 4RB — N 85°47'51" W 69.39' — IPF 4RB

PP — OHE — OHE — OHE — OHE — OHE — OHE — OHE — OHE — PP W/ Meter

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

N 63°40'28" E 191.74'

S 43°49'36" E 62.67'

IPF 4RB

Gravel Dive

S 53°49'58" E 98.31'

Dominion Energy (Lake Murray)

Light Pole

TMS# 652-3-5
Deedbook 1468 pg. 45
Platbook C227 pg. 9
Platbook AE pg. 136

IPF #3 RB

S 71°47'09" E 127.37'

22.94'

PP W/ Meter

Parcel "R" (Amick)
0.60 Acres 25931 Sq. Ft.
Deedbook 2157, page 96.
Platbook C227, page 9.

N:828580.79
E:1869950.55

IPF 1.25" OE

IPF 5RB

S 22°51'18" W 34.21'

IPF 4RB

BEACH AREA

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

N 67°27'20" E 211.04'

OHE — OHE — OHE — OHE — OHE

gravel drive

Cabin

S 75°33'10" E 44.99'

IPF #3 RB

well

S 75°33'10" E 49.97'

IPS

IPF 1.5" OE

S 70°45'38" W 62.48'

IPF #3 RB

storage

Existing Old Asphalt

S 49°29'43" W 44.59'

shed
0.37' over line

N 61°19'41" W 145.11'

S 45°35'26" W 142.46'

IPF 4RB

S 80°44'09" W 154.63'

IPF 4RB

S 59°30'26" W 98.52'

Dominion Energy (Lake Murray)

IPF #5 REBAR

S 81°26'48" W 43.74'

IPF RR SPIKE

TMS# 652-3-10
Deedbook 2039 pg. 58
Platbook C227 pg. 9
Platbook AE pg. 136

IPF #4 RB

45.66'
N 45°31'48" E

IPF 4RB

S 37°54'57" W 25.16'

N 61°28'42" W 10.39'

N 51°47'26" W 16.37'

IPF 4RB

47.61'
N 45°29'03" E

S 37°50'23" W 47.03'

Parcel "S" (Littlejohn)
0.01 Acres 612 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

IPF 4RB

S 38°30'58" W 43.47'

IPF 3/4" OE

TMS# 652-3-12
Deedbook 266 pg. 160
Platbook AE pg. 136

IPF 4RB

CP

N 61°24'48" W 22.48'

Parcel "T" (Littlejohn)
0.02 Acres 868 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

TMS# 652-3-14
Deedbook 397 pg. 90
Platbook AE pg. 136

Dominion Energy (Lake Murray)

SCSPC(NAD83:2011)

N

Abraham
Land Surveying
1323 Kendall Rd., Newberry S.C.
www.surveysc.com 803.276.8719

0623

Boundary Survey & Plat Prepared for:
Joe Rice & Claude Schumpert

Property located on Lions Club Rd., Approx. 9 miles southeast of Prosperity, Newberry County, S.C., Newberry County TMS# 652-3-21

Abraham Land Surveying No. C01645

Scale: 1" = 20' Date: February 23, 2021

0 20 40 60

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina.", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Thomas D. Abraham, S.C.R.L.S #27728

Dwg.# 07520

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Exhibit 8

ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

From: **Jim Koutrakos** JimKoutrakos@callisontighe.com
Subject: RE: RICE/LIONS CLUB and Amick
Date: May 8, 2019 at 12:12 PM
To: Tom Pope tom@ppjlaw.com
Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com) bdurant@sowelldurant.com

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope <tom@ppjlaw.com>
Sent: Wednesday, May 08, 2019 11:59 AM
To: Jim Koutrakos <JimKoutrakos@callisontighe.com>
Cc: Biff Sowell <bsowell@sowelldurant.com>; sam price <rshealy517@hotmail.com>; Kyle Parker <kyle@ppjlaw.com>; Betsy Alexander <betsy@ppjlaw.com>
Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon"

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.
We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.
We need your client to follow through with his promise. Please give us your response today.

Tom Pope
Pope Parker Jenkins, P.A.
(formerly Pope & Hudgens PA)
1508 College Street - P.O. Box 190
Newberry, SC 29108
803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

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Exhibit 9

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total	
Amick, Ray	$ 1,000	$ 1,000		$ 1,000	
Byars, Wick	$ 1,500	$ 1,500		$ 1,500	
Gray, Murray	$ 1,500	$ 1,125.00	$ 375.00	$ 1,500	
Jay, Nelda	$ 500	$ 375.00	$ 125.00	$ 500	
McCrackin, Ruth	$ 1,000	$ 750.00	$ 250.00	$ 1,000	
McSwain, Bill & Julia	$ 2,000	$ 2,000		$ 2,000	
Parr, Jim	$ 5,050	$ 5,050		$ 5,050	
Rice, Joe & Lisa	$ 9,800	5050	$ 4,750	$ 9,800	
Schumpert, Claude & Missy	$ 10,550	5050	$ 5,500	$ 10,550	(pd $11950: $1,400 to be reimbursed by Sharicks)
Sharick, Merle & Cheryl	$ 5,050	$ 5,050		$ 5,050	(pd $3,650: $1,400 to be reimbursed to Schumperts)
Stewart, Dave & Susan	$ 5,050	$ 5,050		$ 5,050	
	$ 43,000	$ 32,000	$ 11,000	$ 43,000	

Total Cost from Rd. to Gate	32000	
Miscellaneous Contributions	-6750	(Amick, Byars, Gray, Jay, McCrackin, McSwain)
Balance to be Shared Equally	25250	(Parr, Rice, Schumpert, Sharick, Stewart)
Divide by 5	5050	each

Total Cost Beyond Gate	11000	
Miscellaneous Contributions	-750	(Gray, Jay, McCrackin)
Balance to be Shared Equally	10250	(Rice, Schumpert)
Divide by 2	5125	

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Bank of America Advantage

MERLE D SHARICK 08-01
CHERYL J SHARICK
[redacted]

2650

67-448/539 SC
708

5/14/10
Date

Pay to the order of Jim Parr
Three thousand six hundred fifty + no/100
$ 3,650.00
Dollars

Bank of America

ACH R/T 053904483

Memo Road paving

Merle D. Sharick

[redacted]

SUSAN F STEWART
DAVID F STEWART
[redacted]

3865

64-22/610
BRANCH 77271

June 5, 2010
Date

Pay to the Order of Bird Paving
Five thousand & fifty + no/100
$ 5,050.00
Dollars

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

For [redacted]

Susan F. Stewart

Bank of America Advantage

NELDA E. JAY 07-69
[redacted]

6781

67-448/539 SC
402

May 14, 2010
Date

Pay to the order of Bird Paving Company
five hundred & no/100
$ 500.00
Dollars

Bank of America

ACH R/T 053904483

Memo Lions Club Road paving

Nelda Jay

[redacted]

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JOHN J McSWAIN
JULIA B McSWAIN
[redacted]

3105
67-776/532
BRANCH 77454

5/11/10
Date

Pay to the Order of Bird Paving $2,000.00

Two thousand and no/100 Dollars

WACHOVIA
Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For Road paving Julia B McSwain

[redacted]

JAMES N PARR JR
[redacted]

111
67-604/539
BRANCH 142

6/3/10
Date

Pay to the order of Bird Paving $ 5250.00

Five thousand fifty Dollars

First Citizens
First Citizens Bank & Trust Company, Inc.

For James N Parr

[redacted]

THE MURRAY CO. OF NEWBERRY INC.
[redacted]

005520

67-448/539 SC
402

Date 5-27-10

Pay To The Order Of Bird Construction $1500.00

One thousand five hundred & 00/100 Dollars

Bank of America

For

[redacted]

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Joseph F. or Lisa S. Rice
[redacted]

1ST CITIZENS BANK & TRUST COMPANY, INC.
CHARLESTON, SC 29401
67-148/532

10943

5/12/2010

Pay to the Order of Bird Paving $**9,800.00

Nine Thousand Eight Hundred and 00/100********** Dollars

Bird Paving
[redacted]

memo

Lisa S. Rice

[redacted]

© 2005 INTUIT INC. # 145 1-800-468-8810

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CLAUDE H OR MELISSA B SCHUMPERT
[redacted]

BB&T
BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE ORDER OF Bird Paving $**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100********** DOLLARS

Details on Back.

Security Features Included

Bird Paving
[redacted]

MEMO
Paving Lions Club Road

Melissa B Schumpert
AUTHORIZED SIGNATURE

[redacted]

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Exhibit 10

ELECTRONICALLY FILED - 2021 Apr 08 9:17 AM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

SCHEDULE B
EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK) **Policy No.: 813064040-213470248**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
5.

5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.

6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267 .
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
   a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before acessing the eastern portion of the property;

   b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;

   c. Overhead electrice lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and

   d. Shed in the eastern area of the property prijects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10. located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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AMERICAN LAND TITLE ASSOCIATION

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CASE NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,	)	
Plaintiffs,	)	
v.	)	**THIRD AMENDED COMPLAINT (NON-JURY)**
C. Ray Amick and Cheryl Littlejohn,	)	
Defendants.	)	

The above-named plaintiffs, complaining of Defendants C. Ray Amick and Cheryl Littlejohn, would show and allege as follows:

BACKGROUND

1. Plaintiffs A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert are residents and citizens of the State of South Carolina, County of Newberry, and own property on Lions Club Road and Lions Club Circle in Newberry County, South Carolina access to which is by way of Lions Club Road.

2. Defendant C. Ray Amick ("Amick" or "Defendant") is a resident and citizen of the State of South Carolina, County of Newberry County, and owns property at 62 Lions Club Road, in Newberry County Carolina. Amick further claims title to lands over which both Lions Club Road and Lions Club Circle traverses and has in mid-2018 and May 2019 erected certain obstructions to the remaining parties' access to a boat ramp and beach area on lands now or formerly of SCE&G lying east of the property Amick claims.

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3. Amick also claims title to a parcel of land over which the road runs which was conveyed to him by Dominion Energy Corporation by deed dated October 15, 2019, (referred to in this complaint as Amick's "fringeland parcel"). A copy of this deed is attached as Exhibit A hereto.

4. As is more fully discussed below, Plaintiffs have claimed an easement over both the Lions Club Property (hereinafter defined in paragraph 9) and the fringeland parcel since the commencement of this action.

5. This parcel was conveyed to Amick after Circuit Court Judge Donald Hocker issued his Order Granting Temporary Injunction filed on August 6, 2019 (Exhibit B hereto). Amick had full knowledge (both actual and constructive) of the Order and the Plaintiffs claims to and the extent of the easement described herein before he acquired the fringeland parcel from Dominion.

6. Defendant Cheryl Littlejohn ("Littlejohn") is a resident and citizen of Newberry County and owns property at 454 Lions Club Road, Prosperity, in Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

7. The Lions Club Point ("LC Point"), as described herein, is the area/peninsula on the shores of Lake Murray in Newberry County lying east of State Park Road approximately 1.75 miles from Dreher Island State Park. The LC Point property originally consisted of approximately ten (10) acres conveyed to the Newberry Lions Club ("Lions Club") by deed recorded on February 18, 1933 in the Office of the Clerk of Court for Lexington County in Deed

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Book 4Q at Page 603[1]. Thereafter, the Lions Club subdivided the LC Point and conveyed certain lots to various Lions Club members.

8. Plaintiffs are the successors in interest of the grantees of certain of these out conveyances.

9. Following all of these Lions Club out conveyances, the remainder of the property of the Lions Club consisted of approximately 5.0 acres ("the Lions Club Property"). The Lions Club Property has been shown and depicted on a plat by Thomas D. Abraham recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6. Lions Club Road is shown and depicted on said plat as a 12' paved road and gravel drive traversing into, over and extending beyond the Lions Club Property to the said lands of SCE&G to the east. A copy of said plat is attached hereto as Exhibit C. (Lions Club Road is highlighted in yellow.)

10. This is an action which seeks, in part, the removal of any obstructions to the access to the Plaintiffs' property, the boat ramp and beach areas at the shores of Lake Murray and a temporary and permanent injunction enjoining the erection of any such further obstructions and further efforts on the part of Amick to interfere or otherwise unlawfully impede the Plaintiffs' access to their said property, boat ramp and beach area. This action further seeks a declaration that the Plaintiffs had and have an appurtenant, non-exclusive easement for ingress and egress over Lions Club Road to their respective properties, the said boat ramp and beach area located on lands east of the Lions Club Property.

11. Lions Club Road has been used and enjoyed by the Plaintiffs and their predecessors in interest (and their guests) for the full, unfettered, unquestioned and unrestricted

[1] Due to a subsequent change in the boundary of Lexington and Newberry County, LC Point is now in Newberry County.

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access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach areas for many decades.

12. Defendant Amick claims ownership of the Lions Club Property by virtue of a deed of the Lions Club dated February 18. His right to title to this property is being disputed based on circumstances described in another action, Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018-CP-36-0089. A lis pendens describing the Lions Club Property in that case was filed prior to the recordation of the purported deed to Amick; thus, any title he claims is subject to the final order rendered therein.

13. When Amick obtained his purported title to the property (disputed in Case No. 2018-CP-36-0089), he obtained a title insurance policy; however, such policy did not insure him against claims for:

> (7) "…rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle…all of which traverse or encroach upon the …premises without a recorded road maintenance agreement;..." (Exhibit D attached)

14. Littlejohn acquired title to the above referenced property on LC Road by deed of Stewart Jay Layman and Christopher Jay (the "Jays") dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

15. At the time Littlejohn acquired such title, the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, depicting LC Road traversing over the LC and Littlejohn property to the fringelands beyond the eastern boundary of the LC property had been recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

16. Upon information and belief, Littlejohn had actual notice of the location of LC Road

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and the use made of it by the Plaintiff and the other adjoining land owners for access to the fringeland on a continuous basis for over 70 years.

17. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the LC properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

18. Littlejohn uses the portion of LC Road traversing over the LC property for access to her own property. She and the Jays before her have exclusively used LC Road for access to such property since its subdivision from the LC property decades ago.

19. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through "Lions Club Point" and through the current and former fringelands owned by SCE&G and/or Dominion Energy to the boat ramp and beach area at the shores of Lake Murray. These fringe lands consist of approximately three acres at the tip of the peninsula of the Lions Club Point and have been used for more than eight decades as a recreational spot for the Lions Club and the grantees of its out conveyances (the predecessors in interest of the Plaintiffs).

20. The plaintiffs, their predecessors in interest, their guests, and the adjoining property owners, have used and enjoyed Lions Club Road for many decades for vehicular and pedestrian access to the aforesaid boat ramp and the beach area on the point for family gatherings, picnics, boat launching, and swimming.

21. This usage by the plaintiffs and their predecessors in interest has been without permission, restriction or limitation, and the Lions Club Road at no time during this period has been blocked from usage by the Plaintiffs, Lions Club members and the adjacent property owners on Lions Club Point and their guests.

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22. For over 50 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to the fringe lands, including in May and June 2010 when they spent over $42,000. No one complained about these improvements. Defendant Littlejohn's predecessor in title also contributed to this fund.

23. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to LC Point over which Lions Club Road traverses for over 50 years. In a deposition taken in Case No. 2018-CP-36-0089, Amick acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 50 years.

24. In the spring or summer of 2018, Defendant Amick blocked the eastern portion of Lions Club Road, installed "No Trespassing" signs, a rope, trash piles, parked cars, and other obstructions which prohibited Plaintiffs and other adjoining land owners from having access to the boat ramp, beach and fringe lands.

25. Even though she obtained her deed less than two years ago, Defendant Littlejohn has at no time ever voiced to Plaintiffs or other Lions Club Point property owners any complaint about the legitimacy of Plaintiffs' assertions in this Complaint.

26. Plaintiffs have learned in discovery that Defendant Littlejohn may have aided and abetted Amick in either placing a private property sign or in blocking Lions Club Road in mid-2018.

27. Defendant Amick's action in blocking the Lions Club Road is in violation of the rights of the plaintiffs and other adjoining owners to use the road, which rights have existed without restriction for over 50 years.

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28. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

29. Defendant Amick's recent actions (see attached Exhibit E which are emails of the second week of May 2019) taken before the original Complaint was filed indicate that he intends to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

30. Plaintiffs are informed and believe that Defendant Amick's actions are an unreasonable restriction of the parties right to use Lions Club Road without legal or equitable excuse.

31. This matter is of some urgency because Amick's actions, if the injunction is not made permanent, have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the beach on Lions Club Point.

32. Based on the facts set forth herein (supported by the affidavits of 15 witnesses), the Honorable Donald J. Hocker, Circuit Judge, granted Plaintiffs' motion and issued and Order Granting Temporary Injunction filed on August 6, 2019.

33. Defendant Amick filed a Notice of Appeal with regard to this Order, but withdrew his appeal on October 22, 2019.

34. As set forth more fully hereinbelow, plaintiffs believe that Amick should be enjoined both temporarily and permanently from blocking the road.

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FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

35. The Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

36. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

37. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (and thus never received) permission for such use.

38. The area comprising Lions Club Road and the area wherein Plaintiffs, their families and guests, and the other adjoining landowners, have their easement for ingress and egress to their respective properties, the boat ramp and beach on the shores of Lake Murray is more accurately described and depicted on the plat of survey of Thomas D. Abraham, surveyor, prepared for Joe Rice and Claude Shumpert, dated February 25, 2021 attached hereto as Exhibit F.

39. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evidenced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

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40. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club.

41. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road, the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club and Amick; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

42. As a result, the Court should issue its order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

FOR A SECOND CAUSE OF ACTION
(Temporary and Permanent Injunction)

37. Plaintiffs restate and re-allege each and every allegation contained in the foregoing Paragraphs above and incorporate the same as if fully set forth verbatim herein.

38. Plaintiffs have the undeniable right to access their property, the said boat ramp and beach area as set forth herein.

39. Plaintiffs have no adequate remedy at law to redress the denial of such access, which is further evidenced by the repeated nature of Amick's actions and threats to continue such actions.

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40. The denial of access has and will continue to cause Plaintiffs to suffer irreparable harm as set forth in the affidavits of witnesses filed in this matter.

41. Given that the Plaintiffs used the road for some time prior to the erection of the obstructions, their continued use thereof cannot and does not prejudice Amick or Littlejohn and merely returns the parties to the status quo ante.

42. Therefore, equity demands that this court issue its order requiring Amick to remove the obstructions in so much as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access to and over Lions Club Road, as well as the access of the adjacent landowners, Plaintiffs' family members, and guests.

FOR A THIRD CAUSE OF ACTION
(Trespass/Nuisance)

43. Plaintiffs restate and re-allege each and every allegation contained in Paragraphs 1-33 above and incorporate the same as if fully set forth verbatim herein.

44. Amick has intentionally infringed on the the Plaintiffs' right to use of Lions Club Road, a right that he has acknowledged in deposition testimony, by erecting the aforementioned obstructions.

45. Such actions constitute an interference with the Plaintiffs' right to use and enjoy their property and all rights associated therewith.

46. As a direct and proximate result thereof, the Plaintiffs have suffered and will continue to suffer damages as proscribed by law in an amount to be determined upon the trial of this case.

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47. As described above, Amick's actions were done with reckless disregard of the Plaintiffs' rights, and, therefore, the Plaintiffs are entitled to an award of actual and punitive damages in an amount to be determined the upon the trial of this case.

WHEREFORE, the Plaintiffs pray the Court inquire into the matter and issue its Order as follows:

a. requiring Amick to remove the obstructions in so much as the same blocks the Plaintiffs' access to their property, the said boat ramp and beach area by way of Lions Club Road; and,

b. enjoining Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' access, both vehicular and pedestrian, to their property, the said boat ramp and beach area by way of Lions Club Road; and,

c. declaring that the Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as an easement implied by prior use, a prescriptive easement, or an easement by estoppel, per the above-referenced plat of Tad Abraham dated February 25, 2021;

d. awarding the Plaintiffs actual and punitive damages in an amount to be determined upon the trial of this case; and,

e. taxing the costs of this action, including Plaintiffs' attorneys fees, against Amick; and,

f. awarding such other and further relief as the court deems necessary and appropriate.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

s/Thomas H. Pope, III
s/Kyle B. Parker
Thomas H. Pope, III (S.C. Bar No. 4508)
Kyle B. Parker (S.C. Bar No. 71764)
1508 College Street – P.O. Box 190
Newberry, South Carolina 29108
Tel: (803) 276-2532
Fax: (803) 276-8684
tom@ppjlaw.com
kyle@ppjlaw.com

Attorneys for Plaintiffs

April 8, 2021

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EXHIBIT A

ELECTRONICALLY FILED - 2021 Aug 31 4:05 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Requested By: CCC 07/02/2020

EXHIBIT L

201900051340
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
10-15-2019 At 02:02 pm.
DEED 15.00
SC 182.00
NEWBERRY 77.00
OR Book 2157 Page 96 - 98

STATE OF SOUTH CAROLINA)
) DEED OF REAL PROPERTY
COUNTY OF NEWBERRY)

KNOW ALL MEN BY THESE PRESENTS, that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Seventy Thousand ($70,000) Dollars, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to any easements, restrictions, reservations and conditions set forth below, unto **C. Ray Amick** (hereinafter referred to as the "Grantee"), the following real property, to-wit:

All those certain pieces, parcels, lots or tracts of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, and being shown and delineated as Parcel "R", containing 0.595 Acres, more or less, and Parcel "AA", containing 0.018 Acres, more or less, on that plat prepared for Dominion Energy South Carolina Inc. by Associated E & S, Inc., dated February 17, 2000, last revised September 28, 2009, and recorded on 11/6/09 in the Office of the Clerk of Court for Newberry County, SC in Book C227, at Page 9; said parcels having such boundaries and measurements as shown on said plat.

DERIVATION: This being a portion of that property acquired by Lexington Water Power Company (corporate predecessor to the Grantor herein), by Deed of W.N. Amick (Option 129), recorded on 1/21/28 in the Office of the Register of Deeds for Lexington County, SC in Record Book 4-I, at Page 270.

TMS #: **Adjacent to, and to be combined with, 652-3-21.**

GRANTEE'S ADDRESS: **62 Lions Club Rd.**
Prosperity, SC 29127

The portions of the property conveyed herein which are within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project") are conveyed herein subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the property, and reserving to the Grantor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate utility purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and the Grantee, by acceptance of this Deed, for the Grantee and his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said property as aforesaid.

ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

ELECTRONICALLY FILED - 2021 Aug 31 4:05 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Requested By: CCC 07/02/2020

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ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Instrument 201900051340 OR Book 2157 Page 97

As further consideration for this Deed, the use of the property conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the Grantee, his heirs and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project. Title to the property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. The Grantee, his heirs and assigns, agrees to abide by and comply with such FERC orders and the Plan to the extent the same affect the property conveyed herein, and to fully indemnify the Grantor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

The Grantee acknowledges the Grantor, its successors and assigns, is and shall remain the fee simple owner of the area below the 360 foot contour elevation of Project 516 and within the 75 foot Vegetative Buffer Zone.

These covenants and restrictions shall run with and be binding on the property hereinabove conveyed. These covenants are for the sole benefit of the Grantor, its successors and assigns, recognizing the ecological integrity of the lake and immediate boundary, and shall not be enforceable by anyone other than Grantor, its successors and assigns.

This conveyance is also made subject to any and all existing reservations, easements, encroachments, restrictions, covenants, zoning, governmental regulations, land use regulations, rights-of-way, and other matters of record which may affect the property, or which may be evident upon visible inspection of the property and/or as shown on the plat referred to herein or on other plats of record.

The Grantee, in accepting the Deed to the property, agrees to comply with all of the above as affect or restrict the use of the property. The Grantee agrees to fully indemnify the Grantor, its successors and assigns, for all costs reasonably incurred by the Grantor, including any attorney and court fees to enforce these provisions.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular said property unto the Grantee, his heirs and assigns forever.

Requested By: CCC 07/02/2020

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ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

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AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the Grantee, his heirs and assigns, against itself and its successors and against every person whomsoever lawfully owning, holding, or claiming by, through, or under the Grantor, which claims are based upon matters occurring subsequent to the Grantor's acquisition of the said premises, or any part thereof, except as to the following: Any servitudes, easements, conditions, restrictions or other similar instruments of public record, including plats which may affect the property, and matters which may be revealed by an inspection of the property, including but not limited to licenses, rights-of-way, easements, public or private roads, railroad tracks, guy wires and utility lines; and, except as to all exceptions and reservations specified herein.

IN WITNESS WHEREOF the Grantor has caused this Deed to be executed on the date set forth below.

Signed, sealed and delivered
in the presence of:

Wendy Quinn

Dominion Energy South Carolina, Inc.

By: P. Rodney Blevins

Its: President & CEO

Date: 10/8/19

REVIEWED BY LEGAL 10/7/19 JB

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation, by P. Rodney Blevins, its President & CEO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 8th day of October, 2019.

Wendy Quinn (L.S.)
Notary Public for the State of South Carolina
My Commission Expires: 10/26/26

WENDY A. QUINN NOTARY PUBLIC SOUTH CAROLINA My Commission Expires October 26, 2026

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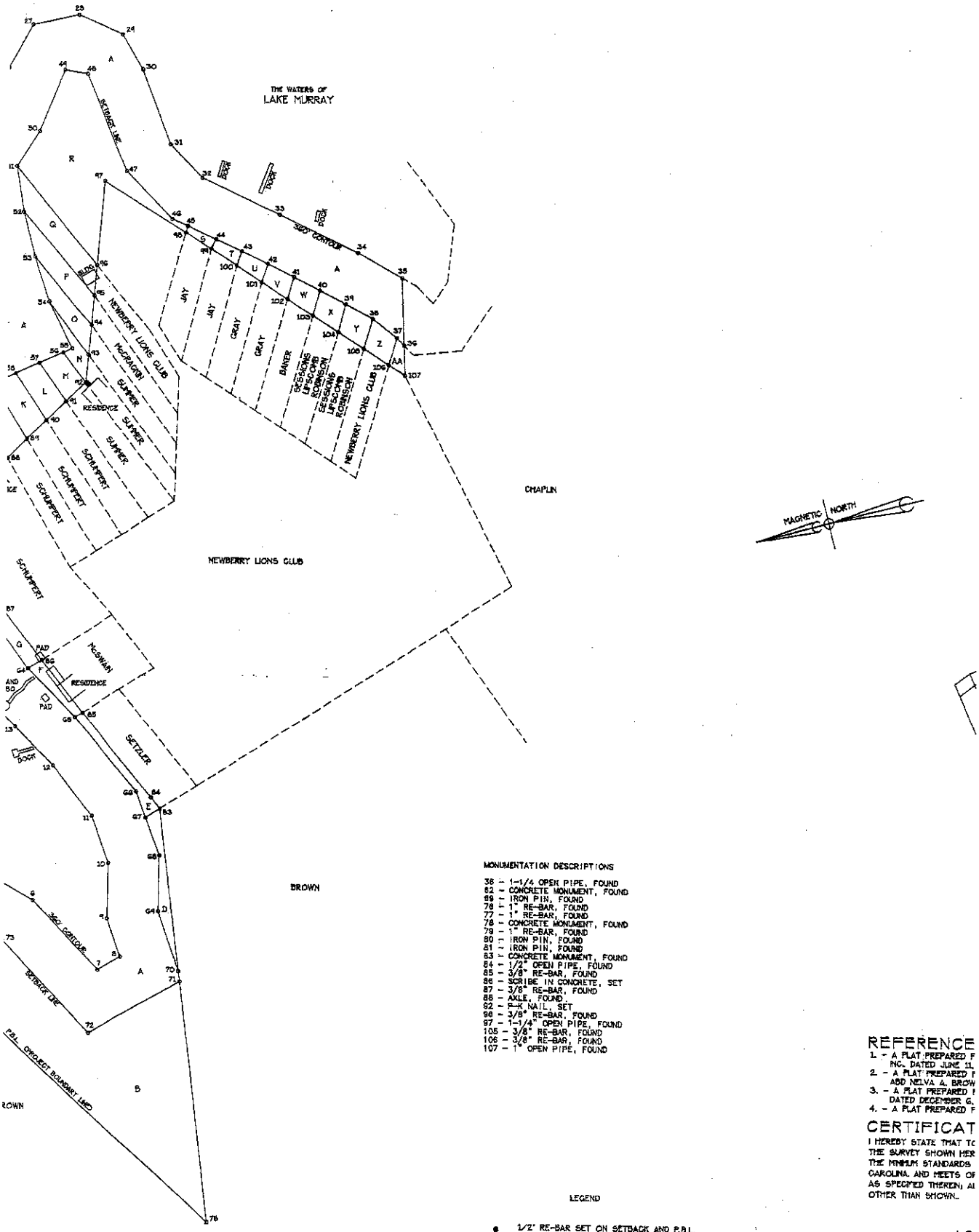

MONUMENTATION DESCRIPTIONS

36 – 1-1/4 OPEN PIPE, FOUND
62 – CONCRETE MONUMENT, FOUND
69 – IRON PIN, FOUND
76 – 1" RE-BAR, FOUND
77 – 1" RE-BAR, FOUND
78 – CONCRETE MONUMENT, FOUND
79 – 1" RE-BAR, FOUND
80 – IRON PIN, FOUND
81 – IRON PIN, FOUND
83 – CONCRETE MONUMENT, FOUND
84 – 1/2" OPEN PIPE, FOUND
85 – 3/8" RE-BAR, FOUND
86 – SCRIBE IN CONCRETE, SET
87 – 3/8" RE-BAR, FOUND
88 – AXLE, FOUND
92 – P-K NAIL, SET
94 – 3/8" RE-BAR, FOUND
97 – 1-1/4" OPEN PIPE, FOUND
105 – 3/8" RE-BAR, FOUND
106 – 3/8" RE-BAR, FOUND
107 – 1" OPEN PIPE, FOUND

LEGEND

- 1/2" RE-BAR SET ON SETBACK AND P.B.L. EXCEPT WHERE OTHERWISE NOTED
- ALL POINTS ON 360 CONTOUR ARE IRON PINS. FOUND. OF VARIOUS SIZES

REVISED: AUG. 21, 2009 TO ADD VEGETATIVE BUFFER ZONE STATEMENT. NO FIELD SURVEY PERFORMED AT THIS TIME.

REVISED SEPTEMBER 28, 2009 TO CHANGE DASHED LINE BETWEEN SCHUMPERT AND McSWAIN AS PER SCE&G

GRAPHIC SCALE IN FEET

REFERENCE

1. – A PLAT PREPARED F
INC., DATED JUNE 11,
2. – A PLAT PREPARED F
ABD NELVA A. BROW
3. – A PLAT PREPARED
DATED DECEMBER 6,
4. – A PLAT PREPARED F

CERTIFICAT

I HEREBY STATE THAT TO
THE SURVEY SHOWN HER
THE MINIMUM STANDARDS
CAROLINA, AND MEETS OR
AS SPECIFIED THEREIN; AI
OTHER THAN SHOWN.

AS

800 VIOLET STRE

SOUTH CAROLINA JOINT VENTURE
ASSOCIATED E & S, INC.
No.000010
CERTIFICATE OF AUTHORIZATION

0650

EXHIBIT B

ELECTRONICALLY FILED - 2021 Aug 31 4:05 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

ELECTRONICALLY FILED - 2019 Aug 06 12:13 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245
ELECTRONICALLY FILED - 2021 Aug 31 4:05 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,	)	
Plaintiffs,	)	**ORDER GRANTING TEMPORARY INJUNCTION**
v.	)	
C. Ray Amick,	)	
Defendant.	)	

This matter came before the Court for a hearing on Plaintiffs' Motion for Temporary Injunction. This Court convened a hearing on this motion on June 19, 2019. Present at the hearing were the parties and their counsel. In considering this motion, the Court reviewed and duly considered the following: the pleadings, the affidavits submitted at or after the hearing by Plaintiffs (affidavits of Murray Gray, Lucia Schumpert Renwick, Young Schumpert, John Summer, Chris Jay, Ferd Summer, Jr., Julia B. McSwain, Julia Rebecca McSwain, Neel McSwain, Chuck Meadows, Claude Schumpert, Joe Rice, Barry Koon, Melissa B. Schumpert, and Plaintiffs' counsel, Thomas H. Pope III), the affidavits submitted by the defendant (affidavits of Doggett Whitaker, Cheryl A. Littlejohn, Ray Amick, and the supplemental affidavit of Ray Amick), the depositions of Ray Amick and Betty Amick, the testimony of Ray Amick, the Plaintiffs' memorandum in support of their motion, the defendant's response in opposition to the motion, and the Plaintiffs' reply memorandum in support of the motion. This Court also considered the arguments of counsel presented at the hearing.

Based on all of the matters considered by this Court, including the longstanding usage of Lions Club Road which runs to and onto the fringelands of Lions Club Point, this Court grants Plaintiffs' Motion for Temporary Injunction.

#1

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The verified complaint in this matter asserts that Lions Club Road has been used and enjoyed by the Plaintiffs, their guests, and their predecessors in interest for over 60 years. Lions Club Road runs from State Park Road and onto the fringelands of Lions Club Point, which fringelands are owned by SCE&G (now Dominion). As depicted on a plat recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at page 6, Lions Club Road is 12 feet wide and mostly paved, but there is a gravel portion of this road that runs to the fringelands and onto the fringelands for several hundred feet. Over the years, this fringeland has been used by the property owners at Lions Club Point to enjoy the lake, including community events, picnics, launching boats at the boat ramp on the fringelands, using the beach area at the tip of Lions Club Point, and other recreational uses such as fishing, go-carts, and swimming. The portion of Lions Club Point over which Lions Club Road traverses is the only means by which these property owners have historically used to access the fringelands, and its use over these past many decades has been both vehicular and pedestrian. The fringelands have been basically utilized as "community recreational property" by the Plaintiffs and other landowners at Lions Club Point. There is nothing in the record to indicate that any complaint was ever made about the Plaintiffs' (or any other property owner at Lions Club Point) use of Lions Club Road to drive or walk onto the fringelands at any time during these many decades. Given the shape and boundaries of the property, there is no way for a vehicle to enter the fringelands except by use of Lions Club Road.

In 1933, the Lions Club of Newberry purchased approximately 10 acres at Lions Club Point. Over the years since, the Lions Club sold lake front lots to its members leaving only approximately 5 acres which comprises Lions Club Point which bottlenecks to the point at which Lions Club Road enters the fringelands. Mr. Amick obtained a deed to the remaining Lions Club

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property in February 2018.[1] Within a short time after obtaining that deed, Mr. Amick placed a rope across Lions Club Road at a point approximately 100 feet before the road runs to the border of the fringeland. He also installed no trespassing signs. Mr. Amick's position is that he obtained title to a portion of Lions Club Road because part of the purchase he had from the Lions Club included the old Lions Club cabin beside Lions Club Road which is adjacent to the fringelands. Mr. Amick contends that because he owns the property underlying the road anyone wishing to use it has to obtain his permission[2]. Mr. Amick contends that when he obtained his deed from the Newberry Lions Club to the property he acquired the rights which the Lions Club allegedly had and presented an affidavit of a Lions Club member (Affidavit of Doggett Whitaker) which asserts that the use of Lions Club Road was by permission. No evidence was presented as to the Lions Club ever being asked permission nor was any evidence presented indicating that permission was ever granted or denied during the last many decades. Almost all of the affidavits submitted by Plaintiffs, including those of two former Lions Club members and one from a former Lions Club resident (John Summer), state that no permission was ever sought, granted, or denied for the adjacent property owners and their guests to use Lions Club road in the last six decades.

I. STANDARD OF REVIEW

The singular purpose of a temporary injunction is to preserve the *status quo ante* and avoid irreparable injury to a plaintiff pending final adjudication of a case. Compton v. SCDOC, 392 S.C. 361, 709 S.E.2d 639 (2011); Helsel v. City of North Myrtle Beach, 307 S.C. 29, 413 S.E.2d 824 (1992). When a court is requested to issue a temporary injunction, it may consider

[1] Mr. Amick's deed is contested in the case of Lisa Summer Rice and Joseph F. Rice v. Newberry Lions Club and C. Ray Amick, Case No. 2018 CP 36-0089.

[2] The record shows that Amick has sought to make this "permission" subject to his whim (Exs. 1-5, Affidavit of Thomas H. Pope, III).

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the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Helsel, *supra*. A temporary injunction is entered without prejudice to the rights of parties pending a hearing on the merits, and where other issues are brought to trial, they are determined without reference to the temporary injunction. Id.

An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. Compton, *supra*. As a result, in order to obtain an injunction, a party must demonstrate (1) irreparable harm; (2) likelihood of success on the merits; and, (3) absence of an adequate remedy at law. Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005). In analyzing the element of "likelihood of success on the merits," the plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, rather the plaintiff must present only a reasonable question as to the existence of such a right. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). Moreover, the question of whether a wrong is irreparable, such that equity should intervene, and whether there is an adequate remedy at law, are questions that are not decided with reference to narrow and artificial rules. Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005). Instead, the court must balance the benefit of an injunction to the plaintiff against the prejudice to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances. Foster Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950). And, once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted. Peek, *supra*.

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II. PLAINTIFFS' RIGHT TO RELIEF

The Plaintiffs claim an easement for the use of Lions Club Road as a prescriptive easement, an easement by estoppel, or an easement implied by prior use. The verified Complaint, together with the affidavits filed in support of the instant motion, presents a *prima facie* showing which clearly justifies the issuance temporary injunctive relief.

A. Prescriptive Easement

Our Supreme Court recently clarified the elements for a prescriptive easement in the case of Simmons v. Berkeley Electric Cooperative, Inc., 419 S.C. 223, 797 S.E.2d 387 (2016). There, the Court held that an easement is a right given to a person to use the land of another for a specific purpose, and a prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner. Id. To establish a prescriptive easement, it must be shown that (1) the Plaintiff had the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use was adverse under claim of right. Id. When it appears that the Plaintiff has enjoyed such an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse. Id., *citing* Williams v. Abbott, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

With reference to the first two elements, the lot owners, including the Plaintiffs, have clearly presented sufficient evidence for purposes of temporary injunctive relief that they have had use of Lions Club Road for access to the boat ramp and beach area in the fringe lands (which constitutes the "thing enjoyed") continuously and uninterrupted for much more than 20 years.[3]

[3] A party may 'tack' the period of use of prior owners in order to satisfy the 20–year requirement. Morrow v. Dyches, 328 S.C. at 527, 492 S.E.2d at 423 (Ct. App. 1997). Thus, the use of the Plaintiffs' predecessors in title is properly referenced in this proceeding.

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The significance of the Simmons decision is its clarification of the third element of a prescriptive easement under the Williams test. The Simmons Court stated, "we believe the test for a prescriptive easement can be simplified as follows: [i]n order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years." Id. at 392. Thus, as the other requirements are encapsulated in the first two elements, in order to show their use was adverse under the Williams test, the Plaintiffs must show the use was "open" and "notorious".

For a use to be "open", it must not be "secret or stealthily" but must be "visible or apparent" Id. at 392. Here, the Plaintiffs have submitted affidavits showing that the use of the Lions Club Road for access to the fringelands was made often for the purpose of neighborhood and family gatherings. Use was further routinely made to launch and trailer boats and for swimming at the beach area in the summer months. All of these uses made in broad daylight would have been visible and apparent. It certainly was not in secret. Indeed, a former President of the Lions Club, John Summer, states in his affidavit that the lot owners routinely performed maintenance on the road over the years. Therefore, the Plaintiffs have made the requisite showing that the use was "open" within the meaning of the Williams test.

Finally, the Simmons court explained that for a use to be "notorious", it must be "known to the owner" or "widely known in the neighborhood." Id. at 392. Again, the verified complaint and each of the Plaintiffs' affidavits provide that all of the lot owners used Lions Club Road to access the fringe lands. In other words, the use was not specific to merely the Plaintiffs. It was common to all property owners on Lions Club Point. Even the defendant, who did not own (or have a claim to own) any property there until 2018, acknowledged the use for decades of the lot

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owners to access the fringe lands. Accordingly, the use was "widely known in the neighborhood". Moreover, the use of the lot owners was "acknowledged by all" Lions Club members. (Affidavit of John M. Summer, ¶16). Consequently, the Plaintiffs have likewise shown the use was "known to the owner". Therefore, the Plaintiffs have shown sufficiently for purposes of a temporary injunction that the lot owners use of Lions Club road for these purposes was "notorious" under the Williams test, and in so doing, the Plaintiffs have made a prima facie case for a prescriptive easement.

It should be noted as well that the obtaining of an easement by prescription can arise from the acquiescence of the owner. 8 S.C. Jur., Adverse Possession § 14; *e.g.*, Shia v. Pendergrass, 222 S.C. 342, 72 S.E.2d 699 (1952); see also, Blume v. Southern Ry. Co., 85 S.E. 440, 67 S.E. 546 (1910). There is a sufficient record showing acquiescence for purposes of the instant motion.

B. Easement by Estoppel

The party claiming an easement by estoppel must show the following elements as to the party sought to be estopped: "(1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts." Paine Gayle Properties, LLC v. CSX Trasp., Inc., 400 S.C. 568, 735 S.E.2d 528 (2012). All of the foregoing elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other party's prejudicial change in position. Id., *citing*, O'Cain v. O'Cain, 322 S.C. 551, 557–59, 473 S.E.2d 460, 464–65 (Ct.App.1996) (holding that a landowner was equitably estopped from denying the use of a driveway on his property by an adjoining landowner when the first landowner remained

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silent during the second landowner's construction of the driveway and improvements to land to which the driveway led). Lastly, the following elements must be shown as to the party claiming estoppel: "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance on the conduct of the party sought to be estopped; and (3) a prejudicial change in position." Id.

The Plaintiffs presented a *prima facie* showing of an easement by estoppel. In O'Cain, *supra*, the Court of Appeals affirmed the declaration of an easement by estoppel. There, Lever O'Cain knew of and watched as Harold O'Cain used his property to construct a driveway; yet, Lever O'Cain did not voice any objection to this use or construction until after it was completed. Moreover, Lever O'Cain remained silent as the appellant improvements to lands beyond which the driveway led. The O'Cain court held that Harold O'Cain's use and improvements to the land coupled with Lever O'Cain's silence satisfied all of the estoppel requirements with regard to the respondents. Id. at 558. With regard to the estoppel requirements as to Harold O'Cain, the court found the fact that he believed he had the right to use the land for a driveway meant that he did not have knowledge of the truth, i.e., that he did not have such a right. Id. at 558. Given the improvements made by Harold O'Cain both to the driveway and beyond, the Court found that he had a prejudicial change of position. Id. at 558.

Generally, the O'Cain opinion stands for the proposition that one cannot sit idly by, watch as another uses his property and makes improvements both to his own property - in the form of a way - and to the property to which the way leads, and only voice an objection after the other has been prejudiced.

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Here, the Plaintiffs have presented the Schumpert, Rice and Koon affidavits which all clarify that no one with the Lions Club voiced any objection to the lot owners use of Lions Club Road for sixty years, all the while the lot owners were spending their money and providing labor in making improvements to the road and constructing and maintaining the boat ramp and beach area. What is more, John Summer states in his affidavit that the lot owners right to use the road was "acknowledged by all". Plaintiffs presented documentary evidence that they and other Lions Club Point property owners paid $40,000 to pave the subject road in 2012, that they had maintained the gravel road prior to 2012[4], and that after 2012 they had maintained the gravel portion of the road at and onto the fringeland. Thus, the lot owners consequently believed they had a right to do so. The verified complaint and each of the Plaintiffs' affidavits make that fact plain.

The Defendant and Lions Club, his alleged predecessor "in title," were aware of Plaintiffs' use of the easement for decades without complaint. They had actual and constructive knowledge that the Rice family was building a $300,000 home in reliance on access, both vehicle and pedestrian, to the fringeland (Affidavit of Rice, ¶16). Mr. Amick and the Lions Club also had notice of the fact that Plaintiff Schumpert had spent over $800,000 building his permanent residence at 131 Lions Club Circle and that he was relying on the use of Lions Club Road for launching his boat and accessing the beach as he would otherwise have no vehicular access to launch a boat without using Lions Club Road. (Ex. 2, Affidavit of Murray Gray).

Therefore, just as Lever O'Cain was found to be estopped to deny Harold O'Cain's easement, the Plaintiffs have, again, at a minimum, presented a prima facie showing that the

[4] Amick only paid $1,000 of this total. The Lions Club paid nothing.

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defendant is estopped to prevent the Plaintiffs and the lot owners from using Lions Club Road to access the fringe lands.

C. Easement by Prior Use

In South Carolina, a party asserting the right to an easement implied by prior use must establish the following: "(1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title." Boyd v. Bellsouth telephone Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006). While the "necessity" required of an easement by necessity must be "actual, real, and reasonable as distinguished from convenient", the "necessity" required for an easement implied by prior use "may be less than required for an easement by necessity." Id. at 141. "This lesser showing of necessity may stem in part from an often unspoken realization on the part of the fact finder that a prior use [itself] indicates a need for a particular easement." Id. at 142. Ultimately, the purpose of an implied easement is to give effect to the intentions of the parties to a transaction. Pendarvis v. Cook, 391 S.C. 528, 706 S.E.2d 520 (Ct. App. 2011).

The case at bar also presents a prima facie showing of an easement by prior use. As laid out in the verified Complaint and discussed above, all of the parties to this proceeding trace their claim to title to the Lions Club. The evidence presented by Plaintiffs show that Lions Club Road, the boat ramp and beach area were constructed for the express purpose of providing access to fringe lands to enjoy the same. The use of it for this purpose was, therefore, intended by the Lions Club.

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The Lions Club subdivided portions of the original 10 acres to provide lots to all of the lot owners, including the Plaintiffs' predecessors. The use of Lions Club Road to access the fringe lands was and is the only means of accessing the boat ramp and beach area. As discussed above, this use has been continual and uninterrupted for over sixty years and known by all parties, including the defendant. Accordingly, the use of the road was not casual or temporary, and the evidence shows that the Lions Club clearly intended the continued use after subdividing the lots, as the use, in fact, continued for decades thereafter.

Lastly, the question of the "necessity" can be answered with one rhetorical question: what good would building a boat ramp and beach area on the shores of Lake Murray be if one could not get to it? Given that there is no other means of accessing the fringe lands, the use is necessary as defined by the Boyd court. Therefore, the Plaintiffs have also presented a *prima facie* case for an easement implied by prior use.

III. THE ELEMENTS OF TEMPORARY INJUNCTIVE RELIEF HAVE BEEN ESTABLISHED

1. Irreparable Harm

The Plaintiffs have demonstrated that Defendant's blocking the road has kept them and the entire neighborhood from accessing the fringeland to boat, fish, and swim as they did for over 60 years before 2018. This harm is especially critical during the summer and warm weather months when boating and lake usage is at its peak and access to the fringe land is essential for Plaintiffs and the neighborhood to have full enjoyment of their property. Mr. Amick lives one-half mile from where he blocked the road. His actions have upset the *status quo ante*.

The purpose of the three-acre fringelands owned by SCE&G/Dominion is for the recreational use of the property owners at Lions Club Point. Because Plaintiffs have established a *prima facie* showing that they have a legal or equitable right to use the road and that without such use

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there is no vehicular access to the fringeland for launching boats, driving to the beach, or walking onto the fringeland, this Court finds that Defendant's blocking the road which prevents the Plaintiffs and the other property owners from exercising their right to the use of it has caused, and will cause, irreparable damage in the absence of a temporary injunction. After all, if the Plaintiffs have made a prima facie showing establishing their right to use the road, Mr. Amick's actions which, in effect, prohibits such use without lawful process constitute irreparable harm.

2. Likelihood of Success

As set forth above, Plaintiffs have made a *prima facie* showing of (a) Prescriptive Easement; (b) Easement by Estoppel; and/or, (c) Easement by Prior Use.

This Court has fully considered the Defendant's position in opposition to the motion of Plaintiffs for a temporary injunction wherein he asserts that the Plaintiffs cannot prevail on their claim of a prescriptive easement. The affidavit of Lions Club member Doggett Whitaker asserted that the use of the road prior to the Lions Club deed to Amick was "by permission" from the Lions Club. This is refuted by the affidavits of former Lions Club President John Summer, Lions Club Plaintiff Murray Gray and Chuck Meadows, and by the affidavits of property owners or former property owners, Plaintiff Claude Schumpert, Neel McSwain, Becki McSwain, Young Schumpert, Ferd Summer, Jr., and Chris Jay. Whitaker's affidavit is not specific as to permissions being granted, requested, or denied. It references no dates, documents, or details of any permission. It is but a bald assertion.

There exists in the record before me, at a minimum, "a reasonable question" as to the Plaintiffs and the other property owners right to use of Lions Club Road to access the fringelands. Therefore, Plaintiffs have made a sufficient showing for purposes of a temporary injunction of a likelihood of success on the merits. AJG Holdings, LLC v. Dunn, *supra.*

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3. No Adequate Remedy at Law

Defendant argues that Plaintiffs have a cause of action for trespass which constitutes an adequate remedy at law if the temporary injunction were to be denied. This is incorrect. The Plaintiff's position is that Amick's trespass commenced in 2018 when he blocked the road. Such an interference with the Plaintiffs and the other property owners right to use of the road continues each day they are denied use of it because these obstructions remain in place. Our Supreme Court has long recognized that "an injunction is a proper remedy for a continuous trespass to land." McClellan v. Taylor, 54 S.C. 430, 32 S.E. 527 (1899). If this were not the case, Plaintiffs would have to sue Mr. Amick for each day's trespass.

In Mack v. Edens, 306 S.C. 433, 412 S.E.2d 431 (1992); reh. denied January 15, 1992, certiorari denied May 6, 1992, the Court of Appeals reversed the denial of an injunction to a downstream landowner. Writing the opinion was Judge Randy Bell, who stated:

> "Because of the permanent and recurring nature of the injury, which cannot otherwise be prevented, **the courts should enjoin the continuous trespasser** to protect the landowner's rights from hurt or destruction, Carter v. Lake City Baseball Club, 218 S.C. 255, 62 S.E.2d 470 (1950); Shelley v. Hucks, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984)." Id. at 434. (emphasis added)

Judge Bell's reasoning follows a long held tenet of South Carolina jurisprudence. See McClellan v. Taylor, 54 S.C. 430, 325 S.E. 527 (1899) (an injunction is a proper remedy for a continuous trespass to land.)

Amick's filings cited to this Court the case of Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) for the proposition that a trespass claim is an adequate remedy at law. However, Nutt was not a trespass action, but a breach of contract action for which the plaintiff obtained damages in excess of $34,000 for its breach. This Court finds

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and concludes that in this case where it is alleged that Amick's actions constitute a continuous, ongoing trespass, Plaintiffs do not have an adequate remedy at law.

Amick has argued that Plaintiffs have not met the requirements for a temporary injunction, citing Flanagan South Carolina Civil Procedure. This authority references the three elements referenced above, which have been discussed. In Flanagan, Civil Procedure (2nd Ed., p.343), there is a discussion that in ruling on a temporary injunction, "the interests of the parties must be balanced." Id. at 344. In point of fact, there is no "separate requirement that a judge perform such a balancing before deciding to issue a preliminary injunction." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). Instead, a preliminary injunction should issue "if necessary to preserve the status quo ante". Id at 17. The status quo ante as of February 2018 is that plaintiffs and all adjoining property owners at Lions Club Point, and their guests, enjoyed full use of Lions Club Road for access to an onto the fringelands.

Even still, if the equities here are balanced, this Court finds, they favor the Plaintiffs. Defendant Amick lives a half mile from where he blocked the road. He has testified that he knew that Plaintiffs and other neighbors (and their guests) had used and maintained the road to drive and walk onto the fringelands for over 60 years, and never complained. While Amick's desire to exercise control over the fringelands may be temporarily thwarted by a temporary injunction, he appears at this time to be hard pressed to make a rational claim of prejudice.

While Defendant Amick has not asserted how he would be harmed by a temporary injunction, Rule 65(c), SCRCP, provides that the court will direct where such an injunction is issued that a Plaintiff post security (surety bond) to protect defendant's interest if a defendant prevails on the merits and is otherwise able to establish proof of damages after the merits of the case have been ruled upon. Rule 65(c) SCRCP provides that the Court shall set security "...in such sum as the Court

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deems proper for the payment of such costs and damages as may be incurred by any party who is found to have been wrongfully enjoined or restrained." Accordingly, this Court sets a bond/security of $50,000 which Plaintiffs shall post or file evidence of a surety in such amount with the Clerk of Court The injunction herein granted shall be in effect immediately upon such posting or filing.

The findings and conclusions herein are not a determination of the merits of this action and are without prejudice to the parties in this proceeding. Helsel, *supra*.

THEREFORE, IT IS ORDERED that Plaintiffs' Motion for Temporary Injunction is GRANTED, and

IT IS FURTHER ORDERED that:

(a) Defendant Amick shall remove from Lions Club Road all obstructions to vehicular and/or pedestrian travel for a width of 12 feet, including ropes, chains, barricades, parked cars, debris, and the like;

(b) Defendant Amick is enjoined from blocking Lions Club Road for its full length and width with any obstacles, including ropes, chains, barricades, parked cars, debris, and the like until there is a final determination of the merits of this action (including any appeals) and further Order of the Court;

(c) Pending a final determination of the merits, Lions Club Road will remain open for the use of the Plaintiffs and the adjacent property owners (and their guests) for access to the fringelands until further Order of the Court.

(d) The Plaintiffs shall post an injunction bond in the principal amount of $50,000.00 with the Clerk of Court of Newberry County; and,

(e) This temporary injunction will go into effect immediately upon the filing of the injunction bond with the Office of the Clerk of Court for Newberry County.

AND IT IS SO ORDERED.

Donald B. Hocker
Judge, Eighth Judicial Circuit

Laurens, S.C.
8-5, 2019

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EXHIBIT C

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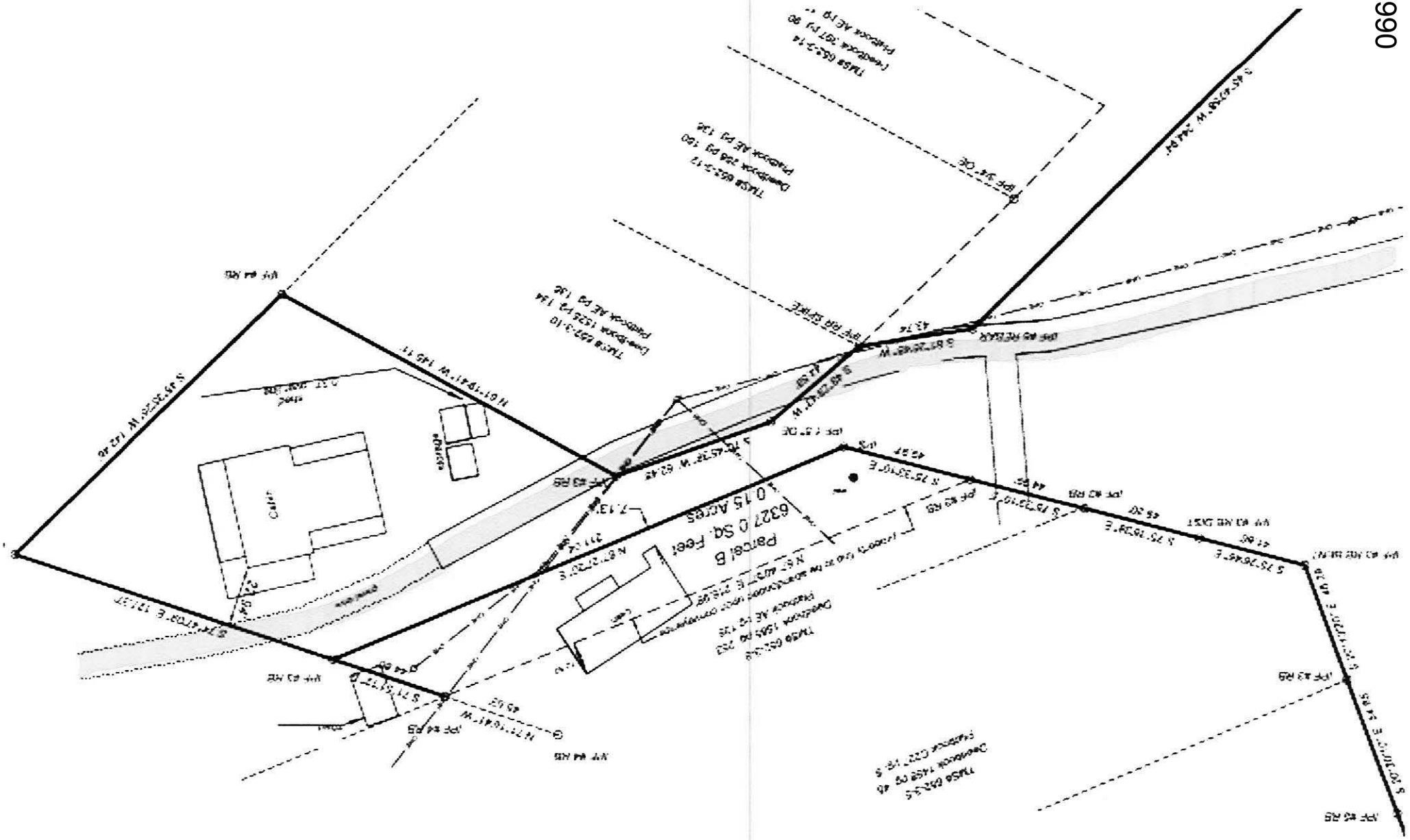

EXHIBIT D

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SCHEDULE B
EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK) **Policy No.: 813064040-213470248**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
5.

5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.

6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267 .
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
   a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before acessing the eastern portion of the property;

   b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;

   c. Overhead electrice lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and

   d. Shed in the eastern area of the property prijects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10. located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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AMERICAN LAND TITLE ASSOCIATION

EXHIBIT E

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From: **Jim Koutrakos** JimKoutrakos@callisontighe.com
Subject: RE: RICE/LIONS CLUB and Amick
Date: May 8, 2019 at 12:12 PM
To: Tom Pope tom@ppjlaw.com
Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com) bdurant@sowelldurant.com

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope <tom@ppjlaw.com>
Sent: Wednesday, May 08, 2019 11:59 AM
To: Jim Koutrakos <JimKoutrakos@callisontighe.com>
Cc: Biff Sowell <bsowell@sowelldurant.com>; sam price <rshealy517@hotmail.com>; Kyle Parker <kyle@ppjlaw.com>; Betsy Alexander <betsy@ppjlaw.com>
Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon"

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.
We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.
We need your client to follow through with his promise. Please give us your response today.

Tom Pope
Pope Parker Jenkins, P.A.
(formerly Pope & Hudgens PA)
1508 College Street - P.O. Box 190
Newberry, SC 29108
803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

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EXHIBIT F

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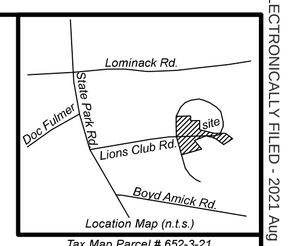

Tax Map Parcel # 652-3-21

Reference made to Deedbook 610, page 87.
Reference made to Deedbook 2028, page 194.
Reference made to Deedbook 2039, page 58.
Reference made to Deedbook 2157, page 96.
Reference made to Platbook AR2, page 109.
Reference made to Platbook B12, page 2.
Reference made to Platbook C227, page 9.
Reference made to Platbook D99, page 6.
Note: IPS denotes #5 rebar iron pin set.
Note: CP denotes calculated point.
Note: × denotes edge of gravel location as located in the field.
Note: No new property lines created at this time.
Note: Contact County for applicable regulations.

Dominion Energy (Lake Murray)

PP — OHE — PP — PP W/ Meter

IPF 4RB — N 85°47'51" W — 69.39' — IPF 4RB

S 43°49'36" E 62.67'

IPF 4RB

S 53°49'58" E 98.31'

IPF 5RB

Light Pole

Dominion Energy (Lake Murray)

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

N 63°40'28" E 191.74'

Gravel Dive

TMS# 652-3-5
Deedbook 1468 pg. 45
Platbook C227 pg. 9
Platbook AE pg. 136

IPF #3 RB

S 71°47'09" E 127.37'

22.94'

PP W/ Meter

N:828580.79
E:1869950.55

IPF 1.25" OE

Parcel "R" (Amick)
0.60 Acres 25931 Sq. Ft.
Deedbook 2157, page 96.
Platbook C227, page 9.

S 22°51'18" W 34.21'

IPF 4RB

BEACH AREA

N 67°27'20" E 211.04'

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

gravel drive

Cabin

S 75°33'10" E 44.99'

IPF #3 RB

well

S 75°33'10" E 49.97'

IPS

IPF 1.5" OE

S 70°45'38" W 62.48'

IPF #3 RB

storage

S 45°35'26" W 142.46'

IPF 4RB

S 80°44'09" W 154.63'

S 49°29'43" W 44.59'

Existing Old Asphalt

shed
0.37' over line

N 61°19'41" W 145.11'

S 59°30'26" W 98.52'

Dominion Energy (Lake Murray)

IPF #5 REBAR

S 81°26'48" W 43.74'

IPF RR SPIKE

TMS# 652-3-10
Deedbook 2039 pg. 58
Platbook C227 pg. 9
Platbook AE pg. 136

IPF 4RB

S 37°54'57" W 25.16'

IPF #4 RB

45.66'
N 45°31'48" E

IPF 4RB

N 61°28'42" W 10.39'

N 51°47'26" W 16.37'

IPF 4RB

Parcel "S" (Littlejohn)
0.01 Acres 612 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

S 37°50'23" W 47.03'

47.61'
N 45°29'03" E

IPF 4RB

IPF 3/4" OE

TMS# 652-3-12
Deedbook 266 pg. 160
Platbook AE pg. 136

IPF 4RB

S 38°30'58" W 43.47'

Parcel "T" (Littlejohn)
0.02 Acres 868 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

N 61°24'48" W 22.48'

CP

TMS# 652-3-14
Deedbook 397 pg. 90
Platbook AE pg. 136

Dominion Energy (Lake Murray)

SCSPC(NAD83 2011)

Abraham
Land Surveying
1323 Kendall Rd., Newberry S.C.
www.surveysc.com 803.276.8719

0675

Boundary Survey & Plat Prepared for:
Joe Rice & Claude Schumpert

Property located on Lions Club Rd., Approx. 9 miles southeast of Prosperity, Newberry County, S.C., Newberry County TMS# 652-3-21

Certificate of Authorization
Abraham
Land Surveying
No. C01645

Scale: 1" = 20' Date: February 23, 2021

0 20 40 60

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina.", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Thomas D. Abraham, S.C.R.L.S #27728

Dwg.# 07520

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	**CASE NO.: 2018-CP-36-00089**
	)	
LISA SUMMER RICE AND JOSEPH F. RICE,	)	
	)	**FIFTH**
Plaintiffs,	)	**AMENDED COMPLAINT**
	)	**(NON-JURY)**
v.	)	
	)	
NEWBERRY LIONS CLUB, C. RAY AMICK, AND CHERYL LITTLEJOHN,	)	
	)	
Defendants.	)	

The Plaintiffs complaining of the Defendants would show and allege as follows:

BACKGROUND

1. The Plaintiffs, Lisa Summer Rice and Joseph F. Rice ("Rices") are married, residents of South Carolina and own property in Newberry County, specifically 175 Lions Club Circle, Prosperity, SC.

2. Defendant Newberry Lions Club is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County and also owns property in Newberry County, which is located adjacent to Lake Murray.

3. Defendant C. Ray Amick is a citizen and resident of Newberry County, and upon information and belief, was a member of Defendant Newberry Lions Club at all times relevant to this proceeding.

4. Defendant Cheryl A. Littlejohn ("Littlejohn"), upon information and belief, is a citizen and resident of Newberry County and is the owner of property at 454 Lions Club Road, in

Newberry County (TMS No. 652-3-10). She acquired title to this lot by deed of Stewart Jay Layman and Christopher Jay dated April 6, 2018.

5. Defendant Newberry Lions Club had owned property adjacent to Lake Murray and had sold off certain parcels to third-parties and, at all times relevant to this proceeding, retained ownership of one 5.5 acres tract which included the Newberry Lions Club/club house, TMS 652-3-21.

6. The Newberry Lions Club published and offered to sell the 5.5 acre tract to adjoining landowners as set forth in the letter attached hereto and made part hereof as Exhibit 1, which was sent to the Rices, who are adjoining landowners to this property being offered for sale.

7. At a meeting of the Board of Directors of the Lions Club on January 14, 2017, the board was presented with a proposed letter drafted by the President of Defendant Lions Club offering the property for sale to all adjacent property owners of the subject property. Defendant Ray Amick, although not a member of the board of the Lions Club, was in attendance at that meeting. Before a vote was taken by the board at the meeting on January 14, 2017, Defendant Amick insisted that he needed until June 1, 2017, to buy the property. In response to his demand, by unanimous vote of the board of directors, the Lions Club acquiesced in Amick's demand.

8. The Newberry Lions Club's offer of sale is set forth in the letter attached hereto and made part hereof as Exhibit 1. This letter was approved by the board of the Lions Club after being amended at Amick's insistence to include a deadline of June 1, 2017, after which the Lions Club's offer would no longer be valid.

9. The letter, upon information and belief, was sent to Lisa Summer Rice and Joe Rice as indicated in the copy attached hereto as Exhibit 1 as well as to other adjoining landowners.

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10. The offer stated in part, "We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property."

11. As part of this offer of sale, the offer further stated: "A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of $369,000.00 for the property. The club members have decided to ask $300,000.00 if we can make the sale without involving a realtor. If you have any interest in the property, please let us now right away . . ." Exhibit 1 attached hereto.

12. The offer provided that any prospective purchaser would take title subject to encroachments where it stated, "[a]ny encroachments will have to be settled after the property is sold."

13. The offer further stated, "This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public." Exhibit 1.

14. The above-referenced offer was sent to the Rices and, upon information and belief, other adjoining landowners to the Lions Club property prior to February 14, 2017.

15. As a result of the offer and accepting the conditions set forth therein, the Rices, through their attorney, sent a bid of $325,000.00 for the property as set forth in Exhibit 2, which is attached hereto and made part hereof.

16. The Newberry Lions Club, upon information and belief, received other offers including one for $300,000 from Claude Schumpert.

17. Upon information and belief, the Rices' bid was the highest received and therefore, was the offer which was accepted by the Newberry Lions Club.

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18. Upon information and belief, the Rices had fully complied with the bid requirements and therefore their offer was made and accepted by the terms of Defendant Newberry Lions Club's offer.

19. The Rices sent an additional letter on May 15, 2017 via Federal Express to representatives of the Lions Club (Exhibit 3), which indicated that they understood that they were the successful bidders and again, reiterated their bid of $325,000.00 for the property and requested that the acceptance of the Newberry Lions Club bid be closed and the property conveyed to the Rices pursuant to the original bid offer of $325,000.00, which was made in response to the earlier offer by the Newberry Lions Club.

20. Defendant Lions Club did not respond to either letter (Exhibit 2 or Exhibit 3) and never contested that Plaintiffs were the high bidder for the subject property or that the bid response of the Plaintiffs was anything other than acceptance of the offer of the Lions Club.

21. At the meeting of the Board of Directors of the Lions Club on May 23, 2017, Defendant Amick, a non-board member, was present. He spoke at the meeting and said that he would not accept the encroachments on the subject property referenced in the Lions Club offer of late-January 2017. By unanimous vote of the Lions Club board, it voted to withdraw its offer set forth in Exhibit 1 and instead opted to clear up "encroachments." The board voted at that meeting for its attorney to write the landowners who had submitted bids (Plaintiffs and Claude Schumpert) to inform them that the Lions Club offer on Exhibit 1 was withdrawn.

22. Amick's actions at the meeting on May 23, 2017, constituted a withdrawal of any offer he may contend he made.

23. The effect of the vote of the board at this board meeting on May 23, 2017, was an attempt to negate the bids of Plaintiffs (and Schumpert) and rescind its prior offer before the June

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1 deadline. However, Defendant Lions Club did not reserve the right to do so in its offer (Exhibit 1), nor did it inform Plaintiffs (or Schumpert) before the June 1 deadline of its attempt to withdraw its offer of sale.

24. On June 1, 2017 (which was the deadline imposed by the Lions Club in late February 2017; Exhibit 1), there were only two bids pending: Plaintiffs' bid of $325,000 and Schumpert's bid of $300,000. Plaintiffs were high bidders.

25. Defendant Lions Club has refused to acknowledge that Plaintiffs were the high bidders and it has ignored Plaintiffs original bid as well as the follow-up letters from Plaintiffs' counsel on May 15, 2017.

26. After the letter of May 15, 2017 (Exhibit 3), the attorney for the Newberry Lions Club sent a letter dated June 5, 2017 (Exhibit 4), indicating that at its meeting on May 23, 2017, the Lions Club board had voted not to sell the property located at Lake Murray at that time because they were not able to convey a good fee simple marketable title hereto "because of encroachments."

27. At the time of this letter (Exhibit 4), the Lions Club deadline of June 1 had passed and the Rices had already accepted Defendant Newberry Lions Club's offer as highest bidder and thereby agreed to accept title subject to the encroachments.

28. On November 21, 2017, the Rices through their counsel, sent an additional letter again requesting that the property be sold to them as highest bidders. The letter dated November 21, 2017, is attached hereto and made part hereof as Exhibit 5.

29. Even though not a member of the Lions Club's board, Defendant Amick attended every board meeting in 2017 except April. His purpose in being present at these meetings was to try to insure that he obtain title to the subject property by insisting on terms favorable to him,

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which were not in the public interest and about which no adjoining property owners had knowledge.

30. From at least November 2017, Amick had knowledge that the Rice's bid response was the highest and that Plaintiffs had accepted the Lions Club offer. Despite that knowledge, and in full assumption of any risk, Amick and Lions Club proceeded to attempt to close for a sale price ($300,000) that was less than Plaintiffs'.

31. The original summons and complaint in this matter was filed on February 20, 2018, at 4:32 pm. A lis pendens properly describing the property which is the subject of this action was filed by the Rices, through counsel, on February 21, 2018, at 1:48pm. A copy of both documents was served on Defendant Newberry Lions Club on February 22, 2018 at 1:28pm.

32. Upon information and belief, Defendant Newberry Lions Club has conveyed certain property which resolved an encroachment issue with an adjoining landowners, Joseph T. McCrackin, III and Gena B. McCrackin, by deed recorded in the Office of the Clerk of Court in Deed Book 2017 page 110. This transaction resulted in a payment from McCrackin to the Lions Club for conveyance of a portion of the 5.5 acres property which is identified as TMS 652-3-22.

33. The settlement of the encroachment issue was always intended to be part of the transaction and was contemplated to be done after the closing in question with the Rices or whomever the successful bidder was under the offer of the letter attached hereto as Exhibit 1.

34. The property in question is unique and therefore damages are not sufficient to provide a recovery for the Rices and they are ready, willing and able to pay the agreed upon price of $325,000 for the property in question even as it is presently configured.

35. Despite the foregoing, Defendant Newberry Lions Club took action meant to defeat Plaintiffs' claims to the property in favor of one of their own members conveying the property at

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a discounted price to Defendant C. Ray Amick by deed recorded on February 22, 2018 at 3:55 pm in the Office of the Clerk of Court for Newberry County in Book 2028 at Page 198. The consideration recited in said deed from Defendant C. Ray Amick to Defendant Newberry Lions Club was $300,000 and "other consideration". The act of authorizing and carrying out the conveyance of the property in breach of the agreement with the Rices at a discounted price constitutes, upon information and belief, a breach of board member/trustee's fiduciary duties.

36. The Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder.

37. Furthermore, as a result of the failure of Defendant Newberry Lions Club to follow through with their offer, the Plaintiffs have suffered special damages including attorney's fees and costs which should be paid in addition to ordering specific performance, together with prejudgment interest.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

38. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

39. In every contract under South Carolina law, there is an implied covenant of good faith and fair dealing.

40. Plaintiffs properly filed the aforementioned lis pendens more than a day prior to the recording of the said deed from Defendant Newberry Lions Club to Defendant C. Ray Amick.

41. Upon information and belief, S.C. § 30-7-10 provides that the recording of the said deed to Defendant C. Ray Amick only operates as to affect the rights of all creditors from "day

and hour" when it was recorded, and the priority of the competing claims to the said property is determined by the time of the filing of record.

42. Upon information and belief, Defendant C. Ray Amick had actual and constructive knowledge of the Plaintiffs claims prior to the recordation of the aforesaid deed, and, therefore is not a bona fide purchaser for value without notice.

43. Because the said deed was recorded more than twenty-eight hours after Plaintiffs' lis pendens was filed, the conveyance to Defendant C. Ray Amick was made subject to the judgment of this Court within this proceeding.

44. The Plaintiffs were the successful bidder and accepted the offer to purchase the property from Defendant Newberry Lions Club. The Plaintiffs preformed under the terms of the agreement as outlined in Exhibit 1 and they accepted the terms and requested that the property be conveyed to them for the consideration of $325,000.00.

45. The Plaintiffs remain ready, willing and able to perform under the terms of the agreement.

46. The actions by Defendant Newberry Lions Club, in failing to perform and further entering into the conveyance to its member, Defendant C. Ray Amick, for less consideration than agreed with Plaintiffs, breached the agreement as well as the implied covenant of good faith and fair dealings under the agreement. As a result of the foregoing, the Plaintiffs request that the Court determine the rights of the respective parties under the agreement as set forth in the communications from the Newberry Lions Club and/or its representatives.

47. In the meantime, the Plaintiffs request that the Defendants be enjoined and restrained from conveying the property to any other person or entity and if the Court determines that the bid procedure outlined in Exhibit 1 was somehow altered or amended without notice to

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those who were relying on the original bid procedures, then Defendant Newberry Lions Club should be required to reoffer the property to the Rices under any such undisclosed bid procedure and reoffer the property in similar fashion.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

48. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

49. For the reasons set forth above, including Defendant Lions Club's breach of contract with Plaintiffs, the Court should set aside the conveyance to Defendant C. Ray Amick and require Defendant Newberry Lions Club to specifically perform the agreement in which the Plaintiffs were the successful bidder and further require it to pay such attorney's fees, costs and expenses that are associated with the necessity of bringing this action.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

50. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

51. Defendant made promises to the Plaintiffs and others in unambiguous terms as set forth in Exhibit 1.

52. It was foreseeable to Defendant that Plaintiffs would rely on the promises made by Defendant Newberry Lions Club.

53. In reliance on the proposal as set forth in Exhibit 1, the Rices responded and accepted the offers and were, upon information and belief, the highest bidder for the property which was being sold by Defendant Newberry Lions Club.

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54. In reliance on the proposal and with the Rices being the highest bidder, the Rices communicated their readiness, willingness and ability to purchase the property which was the subject of the offer in Exhibit 1 and communicated the same to Defendant Newberry Lions Club several times.

55. Even though the Plaintiffs were the highest and successful bidder under the provisions of the offer, attached hereto as Exhibit 1, Defendant C. Ray Amick was conveyed the property in spite of the Rices' successful bid.

56. Although the Rices had performed and complied with the offer in Exhibit 1, Defendant Newberry Lions Club claimed that it would not sale the property at that time and contradicted the terms of its offer outlined in Exhibit 1.

57. As a result of Defendant Newberry Lions Club's failure to consummate the transaction and perform its agreement to transfer the property to the Rices, Defendant Newberry Lions Club conveyed the property to Defendant C. Ray Amick, who did not comply with the original bid requirements as set forth in Exhibit 1 and/or who had by his conduct repudiated and/or withdrew (on May 23, 2017) any prior acceptance of the offer outlined in the letter attached hereto as Exhibit 1.

58. The Plaintiffs suffered damages as a result of the promises made and not kept.

59. The Plaintiffs are entitled to obtain the property and/or actual damages under the doctrine of promissory estoppel.

FOR A FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

60. Plaintiffs reiterate and reallege all of the foregoing allegations as if repeated verbatim herein.

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61. From June 1, 2017 through February 2018, Defendant Amick was not a member of the board of directors of the Defendant Lions Club ("the "board"); nevertheless, he insinuated himself into the decisions of the board by attending every board meeting in which the subject of the sale of the Lions Club property was discussed during this time period (all minutes of board meetings January 2017 through February 2018).

62. In attending these board meetings, Amick was pursuing his own personal agenda to buy the subject property on terms favorable to him without regard to Plaintiffs' rights as highest bidder.

63. At said board meetings during 2017, Defendant Amick made demands to the board as follows:

a. He insisted the board extend the offer period to June 1, 2017 (see Minutes of January 24, 2017).

b. He insisted at the May 23, 2017, meeting that the board clear up the encroachments so that he could purchase the property with "clear title."

Defendant Lions Club acquiesced in all of Defendant Amick's demands.

64. Based on his personal agenda, Defendant Amick did not want to, or was not able to, purchase the subject property by the June 1, 2017, deadline in the Lions Club's offer, and he coerced the Lions Club to try to change the bid conditions in May 2017 without notice to Plaintiffs so that encroachments would be cleared up by the Lions Club at his insistence, that the offer deadline of June 1 would be ignored, that the Plaintiffs' bid response/acceptance would be ignored and that he would be able to purchase the property in February 2018 – all with his knowledge of Plaintiffs' highest bid.

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65. Amick's actions were wrongful and interference with Plaintiffs' contract with the Lions Club in each of the following particulars:

a. As set forth herein, Plaintiffs had a contract with Defendant Lions Club to purchase the subject property for $325,000 (plus their agreement to accept the encroachments as stipulated by the offer of the Lions Club);

b. Defendant Amick had actual and/or constructive knowledge of Plaintiffs' contract;

c. Defendant Amick intended to interfere with Plaintiffs' contract;

d. Defendant Amick's interference with Plaintiffs' contract was without justification because he exerted pressures and maneuvers to get Defendant Lions Club to accept his bid by circumventing the Plaintiffs' highest bid and/or by changing the terms and conditions of the sale to circumvent Plaintiffs' high bid as set forth herein; and,

e. By virtue of Defendant Amick's conduct, Plaintiffs have been damaged by the fact that they are not able to place the property in a conservation easement to protect it from development.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

66. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein.

67. Defendant Lions Club knew or should have known that, in offering for sale the subject property, its handling of said sale included an implied covenant of good faith and fair dealing.

68. Defendant Lions Club, after offering said property for sale in January 2017 (Exhibit 1), knew or should have known that all bids received were entitled to be treated in good faith and dealt with fairly.

69. Plaintiffs' bid-response to the offer of the Lions Club constituted the highest bid and was an acceptance by Plaintiffs of the offer of the Lions Club.

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70. Defendant Lions Club, in failing to honor Plaintiffs' bid, was in breach of the contract/agreement with Plaintiffs.

71. Based on the circumstances surrounding the breach, Defendant Lions Club had fraudulent intent and its unfair dealings and fraudulent intentions were manifested as follows:

a. Lions Club allowed Amick (an "insider") to have input in the decision of the Lions Club even though Amick was not a board member;

b. Lions Club fielded and acquiesced to Amick's demands relating to the terms and conditions of the sale as set forth above;

c. Lions Club, knowing that Amick withdrew his bid on May 23, 2017, refused to honor Plaintiffs highest bid as of the June 1, 2017, deadline;

d. Lions Club, after the June 1 deadline, without notice to Plaintiffs, let Amick in effect purchase the property on his terms in a single-bid process in January 2018, and for a price lower than Plaintiffs; and,

e. Lions Club ignored all written communications from Plaintiffs' attorneys in February, May, and November 2017 demanding that Lions Club acknowledge Plaintiffs' highest bid and consummate the sale to Plaintiffs.

72. Lions Club's breach of contract was accompanied by a fraudulent act and unfair dealing as set forth herein.

73. These actions by the Lions Club constitute breach of contract accompanied by fraudulent act which have damaged Plaintiffs as set forth above, and Plaintiffs are entitled to all damages therefrom.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment – Easement – Injunction As To Amick and Littlejohn)
(IN THE ALTERNATIVE)

74. Plaintiffs reallege all of the foregoing allegations as if repeated and realleged verbatim herein. This cause of action is set forth alternatively.

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75. For more than 85 years, Lions Club Road (which is both paved and gravel) has traversed from State Park Road through "Lions Club Point" over, through and beyond the Lions Club property and that of Defendant Littlejohn to the boat ramp and beach area on the shores of Lake Murray. These lands where the boat ramp and beach area are located at the edges of the peninsula of the Lions Club Point have been used for more than eight decades as a recreational spot for the Lions Club, the grantees of its out conveyances (the predecessors in interest of the Plaintiffs), and their guests..

76. Defendant Amick further claims title to a parcel of land over which Lions Club Road runs which was conveyed to him by Dominion Energy Corporation by deed dated October 15, 2019, (referred to in this complaint as Amick's "fringeland parcel"). A copy of this deed is attached as Exhibit 6 hereto; this conveyance is for .6 acres, more or less. When Amick took title to this property, he had actual knowledge of the Order Granting Temporary Injunction filed on August 6, 2019, in a case in which Amick was a party-Defendant.

77. The area comprising "Lions Club Road", as such term is used herein, traverses over, through and beyond both Lions Club Point and Amick fringeland parcels to the said boat ramp and beach area as is shown and depicted on the plat of survey of Thomas D. Abraham, surveyor, prepared for Joe Rice and Claude Shumpert, dated February 25, 2021, attached hereto as Exhibit 7.

78. Within a short time after obtaining a deed from the Lions Club to the subject property in February 2018 (referenced in Paragraph 35 above), Defendant Amick installed "no trespassing" signage and placed a barricade across Lions Club Road, which barricade blocked access to the boat ramp and the beach area.

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79. Plaintiffs and all property owners adjoining the subject property have used Lions Club Road for over 60 years to access the boat ramp and the beach area on the Point. The usage of this road by the neighborhood of at least 15 adjoining property owners has been without permission, restriction, or limitation, and at no time during this 60-year period has the road been blocked.

80. Defendant Amick's actions in blocking the use of Lions Club Road for such access is unlawful and in contravention of the rights of the Plaintiffs and all other property owners to use said road for access to boating and recreational use of the Point as has been the case for over five decades.

81. Littlejohn acquired title to the above referenced property on Lions Club Road by deed of Stewart Jay Layman and Christopher Jay (the "Jays") dated April 6, 2018, and recorded in the Office of the Clerk of Court in Book 2039 at Page 58.

82. At the time Littlejohn acquired such title, she had record notice of the plat of survey by Abraham Surveying for Newberry Lions Club dated November 9, 2017, which depicts Lions Club Road traversing over, through, and beyond the Littlejohn property to the fringelands beyond the eastern boundary of the Lions Club property. Said plat is recorded in the Office of the Clerk of Court for Newberry County in Plat Slide D99 at Page 6.

83. Upon information and belief, Littlejohn had actual notice of the location of Lions Club Road and the use made of it by the Plaintiffs and the other adjoining land owners for access to the fringeland on a continuous basis for over 60 years.

84. At a minimum, Littlejohn had constructive notice of the location of said road in relation to her and the Lions Club properties and the use thereof by others by virtue of the recordation of the aforesaid plat at the time she acquired her property.

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85. Littlejohn uses the portion of Lions Club Road traversing over the Lions Club property for access to her own property. She and the Jays before her have exclusively used Lions Club Road for access to such property since its subdivision from the Lions Club property decades ago.

86. Littlejohn, by virtue of the facts herein, is estopped from denying the existence of the easements asserted herein.

87. For over 60 years, Plaintiffs and other adjacent landowners at Lions Club Point have spent tens of thousands of dollars in materials and labor to repair and maintain Lions Club Road from State Park Road to and onto the fringe lands, including in May and June 2010 when they spent over $42,000. The amounts paid by these Plaintiffs and others are shown on Exhibit 9, attached hereto. No one complained about these improvements, and the landowners spent this money relying on their right to use the road for the purpose which heretofore remained unquestioned.

88. The Plaintiffs and the Lions Club Point property owners, all of whom acquired their titles from the Newberry Lions Club, also have maintained those portions of Lions Club Road which are gravel, being that portion running along beside the old Lions Club clubhouse and for several hundred feet on the shores of Lake Murray as shown on Exhibit 7. The Plaintiffs and their neighbors have purchased gravel, spread gravel, and performed other maintenance of the gravel portion in these areas of Lions Club Road (including the boat ramp) for more than 60 years.

89. Amick lives a half-mile from Lions Club Point and has otherwise owned the property adjacent to Lions Club Point over which Lions Club Road traverses for over 60 years. Amick has acknowledged in testimony that all adjoining property owners of LC Point and their guests have had unrestricted use of the road for such access for over 60 years.

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90. The Lions Club Road is the only road access for the Plaintiffs and the Lions Club Point landowners to use for vehicles to launch boats or to drive onto and access the beach area.

91. During the week of May 6, 2019, Amick put in place two additional "No Trespassing" signs and a rope which further obstructs use of Lions Club Road. Amick now asserts that he "owns" the road and that he has a right to prohibit and/or restrict access to Plaintiffs and anyone else he chooses.

92. Defendant Amick's actions in May 2019 (emails attached as Exhibit 8) reveal his intention to block the road to prohibit lake access to the Plaintiffs and adjoining landowners permanently.

93. This matter is of some urgency in the absence of an injunction because Amick's actions have the effect of denying the adjoining property owners, their families and guests, from enjoying what they have always enjoyed: the waters of Lake Murray, boating on the lake, and enjoyment of the area and the beach on Lions Club Point.

94. Based on the facts set forth herein (supported by the affidavits of 15 witnesses), the Honorable Donald J. Hocker, Circuit Judge, issued an Order Granting Temporary Injunction filed in a companion case under civil action no. 2019-CP-36-00245 on August 6, 2019.

95. Defendant Amick filed a Notice of Appeal with regard to this Order, but withdrew his appeal on October 22, 2019.

96. All of the parties' property, including Amick's claim to the Lions Club Property, were subdivided from a parent tract owned by the Lions Club prior to its subdivision as described above.

97. The Plaintiffs and their predecessors in title have openly, notoriously, continuously, without interruption used Lions Club Road for the full, unfettered, unquestioned and unrestricted access along Lions Club Road (from State Park Road) to their respective properties, the said boat ramp and beach area as depicted on Exhibit 7 under a claim of right adverse to the Lions Club beyond any applicable time period required by law. Neither the Plaintiffs, the other adjoining lot owners, nor their predecessors in title ever sought (and thus never received) permission for such use.

98. The use described herein existed prior to the out conveyances to the parties' predecessors in title, the use is necessary to the enjoyment of their respective properties, and the Lions Club evinced an intent to the continued use of Lions Club Road following the subdivision, which is apparent given that the routine use, in fact, continued for decades thereafter.

99. The only interruption of use of Lions Club Road by the parties and their predecessors in title was as a result of the erection and placement of the obstructions by Amick described above. The actions of Plaintiffs and the other adjoining lot owners in using the Lions Club Road and in building, improving, and maintaining Lions Club Road for more than 60 years were with the full knowledge of the Lions Club and Amick.

100. Since the 1960's, the Plaintiffs, together with the other adjoining lot owners and their predecessors in title, have, at their own expense and to their prejudice, built, maintained and improved the relevant portion of Lions Club Road (both paved and gravel), the boat ramp, and beach area manifesting a claim of right to the use thereof with the full knowledge of the Lions Club; yet, the Lions Club remained silent to the extent it ever claimed the parties' use of the road to access the fringe lands was unlawful in any way.

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101. Plaintiffs constructed a large home on their lot expecting and believing that they had and would have use of said Road. Without the use of the Road, there would be no way for them to take a vehicle and boat trailer to the lake to launch and use said boat. Amick had full knowledge of Plaintiffs' use of the road yet remained silent regarding the same prior to obtaining his deed. Amick is estopped by his conduct from denying Plaintiffs' easement for use of Lions Club Road to access their properties, the boat ramp and beach area.

102. Plaintiffs have an easement implied by prior use because they have unity of title with Defendants Amick and Littlejohn; there has been severance of title; the prior use was not temporary; it was known or apparent to the parties; and, there is a necessity for the easement.

103. Plaintiffs are entitled to an Order of this Court declaring that they (and the neighbors) have one or more of the following with respect to Lions Club Road as depicted on Exhibit 7:

(a) an easement by prescription
(b) an easement by estoppel; and
(c) an easement by prior use.

104. Plaintiffs believe this is a genuine controversy that should be determined by the Court in a declaratory judgment.

105. As a result, the Court should issue its Order declaring Plaintiffs' right to use of Lions Club Road as a permanent easement implied by prior use, a prescriptive easement, or an easement by estoppel.

106. Given that the Plaintiffs and their predecessor in title used the road for many decades prior to Defendant's erection of the obstructions without complaint from anyone, including Defendant, their continued use (to trailer fishing and pleasure boats for launch at the

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boat ramp and access the beach area) cannot and does not prejudice Defendant and the entry of injunctive relief will merely return the parties to the *status quo ante*.

107. When Amick obtained his purported title to the property (which is disputed), he obtained a title insurance policy; however, such policy did not insure him against claims for:

> (7) "…rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle…all of which traverse or encroach upon the …premises without a recorded road maintenance agreement;..." (Exhibit 10 attached)

108. Furthermore, Plaintiffs have no adequate remedy at law and have demonstrated a likelihood of success on the merits. Therefore, equity demands that this Court issue its Order requiring Amick to remove the obstructions insomuch as they block the parties' access to their property, the said boat ramp and beach area, and further enjoining the Defendants, temporarily and permanently, from erecting or placing any such obstructions or making any further efforts to unlawfully interfere or otherwise impede the Plaintiffs' use to and over Lions Club Road for purposes of accessing the boat ramp and beach area and otherwise enjoying use of the shores of Lake Murray.

WHEREFORE, the Plaintiffs pray for the issuance of an Order as follows:

a. setting the aforesaid conveyance to Defendant C. Ray Amick aside;

b. requiring Defendant to specifically perform under the terms of the agreement by conveying said subject property to Plaintiffs;

c. awarding Plaintiffs all special damages, including attorney's fees and costs of pursuing this action and prejudgment interest;

d. enjoining the Defendants from transferring the property to any other person or entity;

e. in the alternative, awarding such damages as may be allowed under the promissory estoppel cause of action for damages resulting from the promises made by Defendant Newberry Lions Club and thereafter breached, as well as the damages flowing therefrom;

f. in the alternative, declaring that Plaintiffs, the adjoining landowners, and their guests have a right to use Lions Club Road as it has been historically, per one or more easements set forth above (easement implied by prior use, a prescriptive easement, or an easement by estoppel);

g. declaring for the public record that the road shown on Exhibit 7 all the way from State Park Road along Lions Club Road to the shores of Lake Murray is for the benefit of Plaintiffs, their families and guests, and the adjacent landowners;

h. enjoining temporarily and permanently the Defendants from blocking, fencing, or any act which attempts to restrict the use of Lions Club Road and directing Amick to remove the ropes, parked cars, debris, and any other obstructions which exist as of the time of a Court Order; and,

i. awarding such other and further relief as this Court may deem just and proper.

Dated: August 31, 2021

POPE PARKER JENKINS, P.A.

By: s/Thomas H. Pope, III
Thomas H. Pope, III (SC004508)
E-mail: tom@ppjlaw.com

s/Kyle B. Parker
Kyle B. Parker (SC071764)
E-mail: kyle@ppjlaw.com
Post Office Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803.276.2532
Fax: 803.276.8684

Attorneys for Plaintiffs

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EXHIBIT 1

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NEWBERRY LIONS CLUB

1724 Main Street
Newberry, SC 29108
803-381-1952

Joe Rice

Dear Ms. Lisa Summer Rice:

The Newberry Lions Club was chartered in 1928 and has a rich history of serving Lions International and a large number of charitable causes in Newberry County and the state of South Carolina. From the beginning we had a large and enthusiastic membership, and many years ago arrangements were made to purchase property on Lake Murray for a club house. In subsequent years some of that property was sold to individuals for lake front homes.

At the present time, the Lions Club owns 5.5 acres including the club house. As with many civic clubs, the membership in the Newberry Lions Club has fallen in recent years. We no longer are able to use the club house as we once used it, and the maintenance of the property has become a burden on the current members. We have reluctantly decided to offer the property for sale. We have also decided to make the property available first to those individuals whose property adjoins the Lions Club property.

A recent plat was prepared, which we are including with this letter. Also, a recent appraisal determined a current value of $369,000.00 for the property. The club members have decided to ask $300,000.00 if we can make the sale without involving a realtor. If you have an interest in the property please let us know right away. We will be happy to answer any questions you might have. First consideration will be given to current members of the Newberry Lions Club.

As an additional note, the presence of a septic tank and well adds value to the property. Any encroachments will have to be settled after the property is sold.

This offer is valid until June 1, 2017, at which time the property will be advertised for sale to the public.

Yours truly,

Pete

Pete Simpson,
Secretary, Newberry Lions Club

EXHIBIT

1

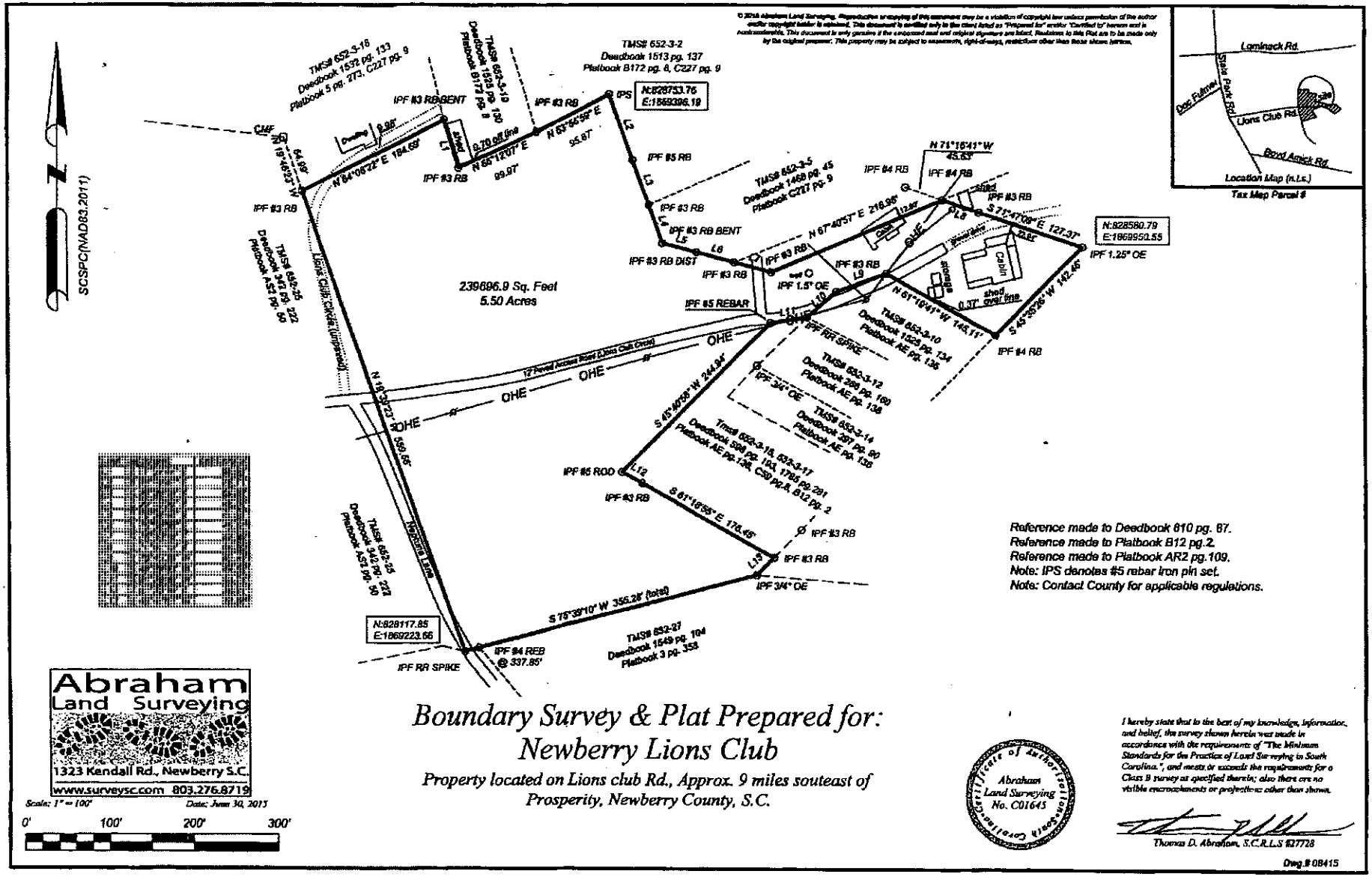

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EXHIBIT 2

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00089

J. Sidney Boone,

sboone@mcnair
T 843.723.7
F 843.722.3

February 14, 2017

Pete Simpson, President
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County

Dear Mr. Simpson:

We represent Lisa Summer Rice and her husband, Joe Rice, regarding the above-referenced property. Pursuant to your recent letter to them, they have authorized me to make a bid of $325,000.00, subject only to the property having good and marketable title, due and payable at closing. We understand that bids are to be opened at the meeting on February 28th. We further understand that any encroachments, as shown on the survey provided, will have to be cleared after the property is sold. We would need 30 days from notice that the bid was accepted in which to conduct the title search and close.

Sincerely,

McNAIR LAW FIRM, P.A.

J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com*)

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
2

EXHIBIT 3

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MCNAIR
ATTORNEYS

J. Sidney Boone, Jr.

sboone@mcnair.net
T 843.723 7831
F 843.722.3227

May 15, 2017

Via FedEx

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

Re: Lions Club Property – 5.50 acres – Newberry County
Request for Bid Prior to Advertising Property for Sale

Gentlemen:

We understand that our clients, Lisa Summer Rice and her husband, Joe Rice, were the successful bidders based upon your original Request for Bid and we request that they be deeded the property pursuant to their bid. Please find enclosed a copy of their bid offer of $325,000.00 in response to your Request for Bid.

It is our further understanding that, without notice to my clients, another bidder was given the right to submit a subsequent bid after disclosure of the Rices' bid offer. This is notice of our objection to any person being given more than one bid and/or being allowed to give a bid after knowing the Rices' actual bid offer.

If there were undisclosed bid procedures, please provide us with: (1) Full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed it was disclosed and authorized, to the Rices, since the original Request for Bid stated that the offer to purchase would remain open until June 1, 2017.

Based on the terms of the disclosed bid procedure, please do not make any conveyance to any parties except the Rices. Otherwise, we will be forced to bring a declaratory judgment action to establish the Rices as the successful bidders for the property pursuant to their original bid offer.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
3

Sincerely,

McNAIR LAW FIRM, P.A.

J. Sidney Boone, Jr.

JSB:ap

cc: Joseph F. Rice Esq. (*via E-mail jrice@motleyrice.com)*

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EXHIBIT 4

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HARLEY & VERNER LLP
ATTORNEYS AT LAW
1219 BOYCE STREET
P.O. BOX 484
NEWBERRY, SOUTH CAROLINA 29108
(803) 276-0812

R. AUBREY HARLEY (1908-1974)

JAMES S. VERNER
CHARLES VERNER

FACSIMILE
276-7834

LAWYER@SC.RR.COM

June 5, 2017

Mr. J. Sidney Boone, Jr.
McNair Law Firm
PO Box 1431
Charleston, SC 29402

Dear Sirs:

The Newberry Lions Club Board of Directors met on May 23rd, 2017, and voted not to sell the property located at Lake Murray at this time because they are not able to convey a good fee simple marketable title thereto because of encroachments.

With kindest regards, I am

Truly yours,

James S. Verner

JSV/als

EXHIBIT
4

EXHIBIT 5

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COPY

MCNAIR
ATTORNEYS

Michael A. Scardato

mscardato@mcnair.net
T 843.723.7831
F 843.722.3227

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November 21, 2017

Via FedEx
Via E-mail: *lawyers@sc.rr.com*

Eugene Crocker, President
Pete Simpson, Secretary
Newberry Lions Club
1724 Main Street
Newberry, SC 29108

James S. Verner, Esq.
Harley & Verner, LLP
1219 Boyce Street
PO Box 484
Newberry, SC 29108

Re: Lions Club Property - 5.50 acres - Newberry County
Request for Bid Prior to Advertising Property of Sale

Gentlemen:

We represent Lisa Summer Rice and her husband, Joe Rice, who had submitted the successful bid offer of $325,000 in response to the original request for the purchase of the above-referenced property.

We are again asking for the status of any sale of this property or any proposed sale since we have not been notified of any further bidding or requests for bids for this property.

If there were any undisclosed bid procedures subsequent to our request made on May 15, 2017, please provide us with: (1) full notice of any such rebidding process; (2) the name of any bidder given such a right, together with their bid amount; and (3) the ability to provide such a bid, if indeed, it was disclosed and authorized, to the Rices, since the original request for bids resulted in the highest bid from the Rices but a subsequent letter from Mr. Verner on June 5, 2017, indicated that the property would not be sold because of the inability to provide marketable title due to encroachments.

The Rices are ready, willing and able to follow through with their successful bid and/or participate in any further bid procedure that is properly noticed for the sale of this property.

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 40
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

EXHIBIT
5

Please provide us with this information as soon as possible.

With best regards, I am,

Sincerely,

McNAIR LAW FIRM, P.A.

Michael A. Scardato

MAS/sla

cc: Joseph F. Rice, Esq. *(via E-mail: jrice@motleyrice.com)*

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ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

Exhibit 6

Requested By: CCC 07/02/2020

EXHIBIT L

201900051340
Filed for Record in
NEWBERRY COUNTY, SC
ELIZABETH P FOLK, CLERK OF COURT
10-15-2019 At 02:02 pm.
DEED 15.00
SC 182.00
NEWBERRY 77.00
OR Book 2157 Page 96 - 98

STATE OF SOUTH CAROLINA)
) DEED OF REAL PROPERTY
COUNTY OF NEWBERRY)

KNOW ALL MEN BY THESE PRESENTS, that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation (hereinafter referred to as the "Grantor"), for and in consideration of the sum of Seventy Thousand ($70,000) Dollars, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to any easements, restrictions, reservations and conditions set forth below, unto **C. Ray Amick** (hereinafter referred to as the "Grantee"), the following real property, to-wit:

All those certain pieces, parcels, lots or tracts of land, with any improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, and being shown and delineated as Parcel "R", containing 0.595 Acres, more or less, and Parcel "AA", containing 0.018 Acres, more or less, on that plat prepared for Dominion Energy South Carolina Inc. by Associated E & S, Inc., dated February 17, 2000, last revised September 28, 2009, and recorded on 11/6/09 in the Office of the Clerk of Court for Newberry County, SC in Book C227, at Page 9; said parcels having such boundaries and measurements as shown on said plat.

DERIVATION: This being a portion of that property acquired by Lexington Water Power Company (corporate predecessor to the Grantor herein), by Deed of W.N. Amick (Option 129), recorded on 1/21/28 in the Office of the Register of Deeds for Lexington County, SC in Record Book 4-I, at Page 270.

TMS #: **Adjacent to, and to be combined with, 652-3-21.**

GRANTEE'S ADDRESS: **62 Lions Club Rd.**
Prosperity, SC 29127

The portions of the property conveyed herein which are within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project") are conveyed herein subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the property, and reserving to the Grantor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate utility purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by the Grantor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and the Grantee, by acceptance of this Deed, for the Grantee and his heirs and assigns, hereby expressly releases the Grantor, its successors and assigns, from any and all liability for any and all damages that may be caused to said property as aforesaid.

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ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Requested By: CCC 07/02/2020

ELECTRONICALLY FILED - 2021 Aug 31 3:47 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Instrument 201900051340 OR Book 2157 Page 97

As further consideration for this Deed, the use of the property conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and the Grantee, his heirs and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the property will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project. Title to the property shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. The Grantee, his heirs and assigns, agrees to abide by and comply with such FERC orders and the Plan to the extent the same affect the property conveyed herein, and to fully indemnify the Grantor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

The Grantee acknowledges the Grantor, its successors and assigns, is and shall remain the fee simple owner of the area below the 360 foot contour elevation of Project 516 and within the 75 foot Vegetative Buffer Zone.

These covenants and restrictions shall run with and be binding on the property hereinabove conveyed. These covenants are for the sole benefit of the Grantor, its successors and assigns, recognizing the ecological integrity of the lake and immediate boundary, and shall not be enforceable by anyone other than Grantor, its successors and assigns.

This conveyance is also made subject to any and all existing reservations, easements, encroachments, restrictions, covenants, zoning, governmental regulations, land use regulations, rights-of-way, and other matters of record which may affect the property, or which may be evident upon visible inspection of the property and/or as shown on the plat referred to herein or on other plats of record.

The Grantee, in accepting the Deed to the property, agrees to comply with all of the above as affect or restrict the use of the property. The Grantee agrees to fully indemnify the Grantor, its successors and assigns, for all costs reasonably incurred by the Grantor, including any attorney and court fees to enforce these provisions.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular said property unto the Grantee, his heirs and assigns forever.

Requested By: CCC 07/02/2020

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ELECTRONICALLY FILED - 2020 Aug 14 10:41 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

Instrument 20190005134O OR | Book 2157 | Page 98

AND the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the Grantee, his heirs and assigns, against itself and its successors and against every person whomsoever lawfully owning, holding, or claiming by, through, or under the Grantor, which claims are based upon matters occurring subsequent to the Grantor's acquisition of the said premises, or any part thereof, except as to the following: Any servitudes, easements, conditions, restrictions or other similar instruments of public record, including plats which may affect the property, and matters which may be revealed by an inspection of the property, including but not limited to licenses, rights-of-way, easements, public or private roads, railroad tracks, guy wires and utility lines; and, except as to all exceptions and reservations specified herein.

IN WITNESS WHEREOF the Grantor has caused this Deed to be executed on the date set forth below.

Signed, sealed and delivered in the presence of:

Wendy Quinn

Dominion Energy South Carolina, Inc.

By: P. Rodney Blevins

Its: President & CEO

Date: 10/8/19

REVIEWED BY LEGAL 10/7/19 JB

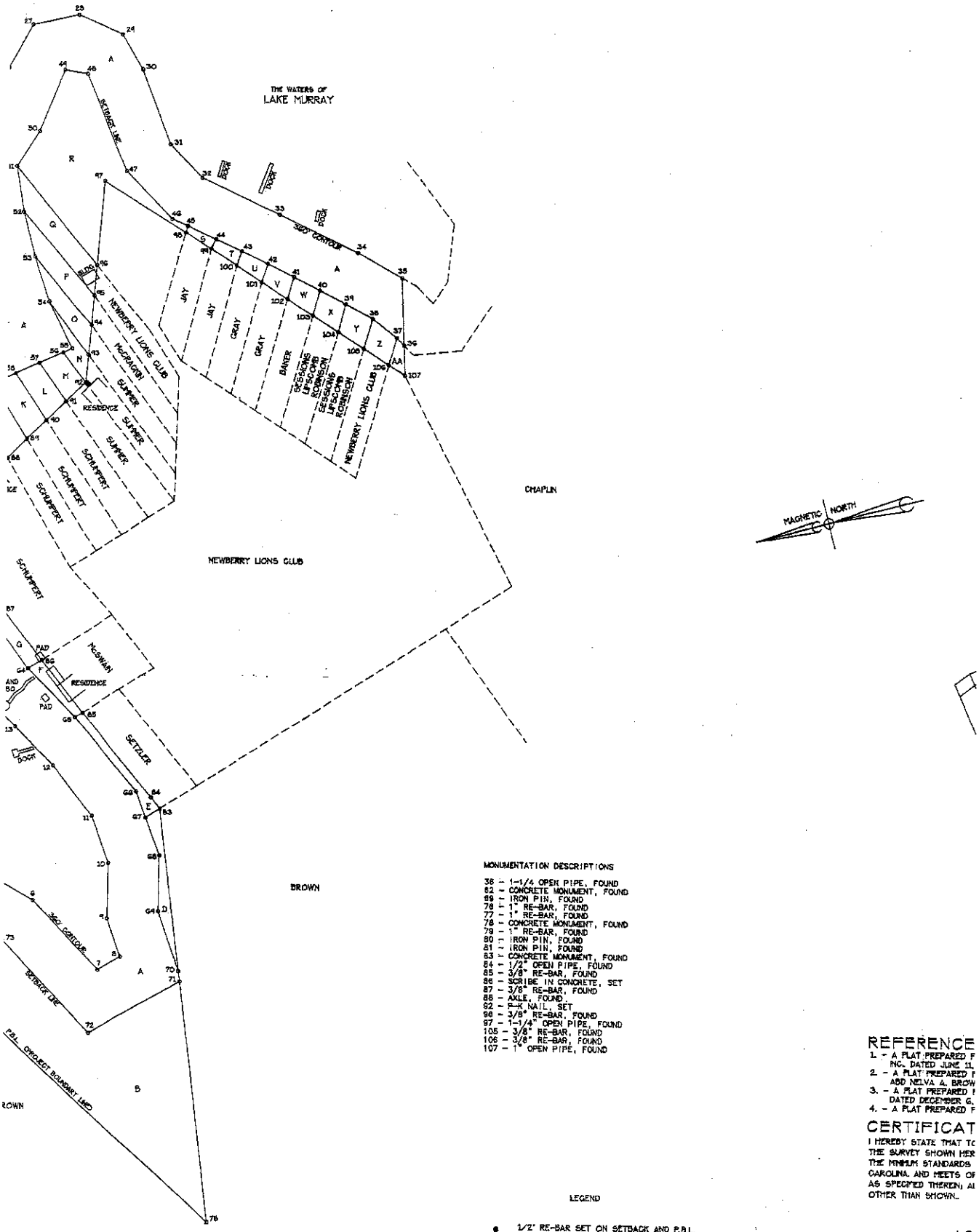
STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF LEXINGTON)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that **Dominion Energy South Carolina, Inc.**, a South Carolina corporation, by P. Rodney Blevins, its President & CEO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 8th day of October, 2019.

Wendy Quinn (L.S.)
Notary Public for the State of South Carolina
My Commission Expires: 10/26/26

WENDY A. QUINN NOTARY PUBLIC SOUTH CAROLINA My Commission Expires October 26, 2026



MONUMENTATION DESCRIPTIONS

36 – 1-1/4 OPEN PIPE, FOUND
82 – CONCRETE MONUMENT, FOUND
83 – IRON PIN, FOUND
76 – 1" RE-BAR, FOUND
77 – 1" RE-BAR, FOUND
78 – CONCRETE MONUMENT, FOUND
79 – 1" RE-BAR, FOUND
80 – IRON PIN, FOUND
81 – IRON PIN, FOUND
83 – CONCRETE MONUMENT, FOUND
84 – 1/2" OPEN PIPE, FOUND
85 – 3/8" RE-BAR, FOUND
86 – SCRIBE IN CONCRETE, SET
87 – 3/8" RE-BAR, FOUND
88 – AXLE, FOUND
92 – P-K NAIL, SET
94 – 3/8" RE-BAR, FOUND
97 – 1-1/4" OPEN PIPE, FOUND
105 – 3/8" RE-BAR, FOUND
106 – 3/8" RE-BAR, FOUND
107 – 1" OPEN PIPE, FOUND

LEGEND

- 1/2" RE-BAR SET ON SETBACK AND P.B.L. EXCEPT WHERE OTHERWISE NOTED
- ALL POINTS ON 360 CONTOUR ARE IRON PINS. FOUND. OF VARIOUS SIZES

REVISED: AUG. 21, 2009 TO ADD VEGETATIVE BUFFER ZONE STATEMENT. NO FIELD SURVEY PERFORMED AT THIS TIME.

REVISED SEPTEMBER 28, 2009 TO CHANGE DASHED LINE BETWEEN SCHUMPERT AND McSWAIN AS PER SCE&G

0 50 100 200
GRAPHIC SCALE IN FEET

REFERENCE
1. – A PLAT PREPARED F
NC., DATED JUNE 11,
2. – A PLAT PREPARED F
ABD NELVA A. BROW
3. – A PLAT PREPARED
DATED DECEMBER 6,
4. – A PLAT PREPARED F

CERTIFICAT
I HEREBY STATE THAT TO
THE SURVEY SHOWN HER
THE MINIMUM STANDARDS
CAROLINA, AND MEETS OR
AS SPECIFIED THEREIN; AI
OTHER THAN SHOWN.

AS
800 VIOLET STRE

SOUTH CAROLINA JOINT VENTURE
ASSOCIATED E & S, INC. No.000010
CERTIFICATE OF AUTHORIZATION

0 1 2 3 4 5 6

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Exhibit 7

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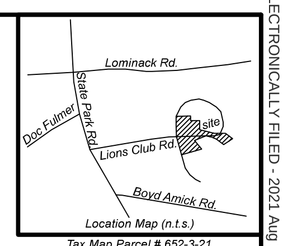

Tax Map Parcel # 652-3-21

Reference made to Deedbook 610, page 87.
Reference made to Deedbook 2028, page 194.
Reference made to Deedbook 2039, page 58.
Reference made to Deedbook 2157, page 96.
Reference made to Platbook AR2, page 109.
Reference made to Platbook B12, page 2.
Reference made to Platbook C227, page 9.
Reference made to Platbook D99, page 6.
Note: IPS denotes #5 rebar iron pin set.
Note: CP denotes calculated point.
Note: × denotes edge of gravel location as located in the field.
Note: No new property lines created at this time.
Note: Contact County for applicable regulations.

Dominion Energy (Lake Murray)

PP — OHE — PP — PP W/ Meter

IPF 4RB — N 85°47'51" W — 69.39' — IPF 4RB

S 43°49'36" E 62.67'

IPF 4RB

S 53°49'58" E 98.31'

Light Pole

IPF 5RB

S 22°51'18" W 34.21'

IPF 4RB

S 80°44'09" W 154.63'

IPF 4RB

S 45°35'26" W 142.46'

IPF 4RB

S 59°30'26" W 98.52'

Dominion Energy (Lake Murray)

IPF 4RB

S 37°54'57" W 25.16'

IPF 4RB

N 61°28'42" W 10.39'

IPF 4RB

S 37°50'23" W 47.03'

IPF 4RB

S 38°30'58" W 43.47'

CP

N 61°24'48" W 22.48'

Dominion Energy (Lake Murray)

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

N 63°40'28" E 191.74'

IPF #3 RB

S 71°47'09" E 127.37'

IPF 1.25" OE

N:828580.79
E:1869950.55

PP W/ Meter

Parcel "R" (Amick)
0.60 Acres 25931 Sq. Ft.
Deedbook 2157, page 96.
Platbook C227, page 9.

Gravel Dive

gravel drive

22.94'

Cabin

storage

shed
0.37' over line

N 61°19'41" W 145.11'

IPF #3 RB

S 70°45'38" W 62.48'

IPS

IPF 1.5" OE

S 49°29'43" W 44.59'

Existing Old Asphalt

IPF #5 REBAR

S 81°26'48" W 43.74'

IPF RR SPIKE

IPF 3/4" OE

N 67°27'20" E 211.04'

S 75°33'10" E 44.99'

IPF #3 RB

S 75°33'10" E 49.97'

well

TMS# 652-3-5
Deedbook 1468 pg. 45
Platbook C227 pg. 9
Platbook AE pg. 136

TMS# 652-3-8
Deedbook 2073 pg. 243
Platbook D99 pg. 6
Platbook D125 pg. 3

TMS# 652-3-10
Deedbook 2039 pg. 58
Platbook C227 pg. 9
Platbook AE pg. 136

TMS# 652-3-12
Deedbook 266 pg. 160
Platbook AE pg. 136

TMS# 652-3-14
Deedbook 397 pg. 90
Platbook AE pg. 136

N 51°47'26" W 16.37'

IPF #4 RB

45.66' N 45°31'48" E

47.61' N 45°29'03" E

Parcel "S" (Littlejohn)
0.01 Acres 612 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

Parcel "T" (Littlejohn)
0.02 Acres 868 Sq. Ft.
Deedbook 2039, page 58.
Platbook C227, page 9.

BEACH AREA

SCSPC(NAD83 2011)

Abraham
Land Surveying
1323 Kendall Rd., Newberry S.C.
www.surveysc.com 803.276.8719

07'16

Boundary Survey & Plat Prepared for:
Joe Rice & Claude Schumpert

Property located on Lions Club Rd., Approx. 9 miles southeast of Prosperity, Newberry County, S.C., Newberry County TMS# 652-3-21

Certificate of Authorization
Abraham
Land Surveying
No. C01645

Scale: 1" = 20' Date: February 23, 2021

0 20 40 60

I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of "The Minimum Standards for the Practice of Land Surveying in South Carolina.", and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown.

Thomas D. Abraham, S.C.R.L.S #27728

Dwg.# 07520

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Exhibit 8

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From: **Jim Koutrakos** JimKoutrakos@callisontighe.com
Subject: RE: RICE/LIONS CLUB and Amick
Date: May 8, 2019 at 12:12 PM
To: Tom Pope tom@ppjlaw.com
Cc: Biff Sowell bsowell@sowelldurant.com, sam price rshealy517@hotmail.com, Kyle Parker kyle@ppjlaw.com, Betsy Alexander betsy@ppjlaw.com, Harry A. Dixon HarryDixon@callisontighe.com, Bess DuRant (bdurant@sowelldurant.com) bdurant@sowelldurant.com

Tom- Your e-mail indicated he was coming this past weekend ("we expect that the LC Road will be open (no rope) this weekend . . ."). No one came. The ropes were down over the weekend. After no one came, Mr. Amick put the ropes back up on Monday. If you give me a specific time, I am sure Mr. Amick can, consistent with the permission he gave on Friday, accommodate Mr. Summer when he takes the pontoon boat out and accommodate Mr. Summer when he returns the pontoon boat, assuming there is sufficient advance notice. I see no reason for the ropes to be down during the whole duration of this process.

I am happy to discuss.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Tom Pope <tom@ppjlaw.com>
Sent: Wednesday, May 08, 2019 11:59 AM
To: Jim Koutrakos <JimKoutrakos@callisontighe.com>
Cc: Biff Sowell <bsowell@sowelldurant.com>; sam price <rshealy517@hotmail.com>; Kyle Parker <kyle@ppjlaw.com>; Betsy Alexander <betsy@ppjlaw.com>
Subject: RICE/LIONS CLUB and Amick

Jim

Your client has created a serious problem. It was just reported to us this morning from Mrs Rice that her brother :

"John Summer went down to the lake this morning to get the pontoon out ... He was met with No Trespassing signs now posted in front of Murray Gray's house, ropes across the road and cars parked in the road as well as the trash piles

... He was of course unable to move the pontoon"

Mr Amick ,through you, last week agreed to allow the Rices to have open access to use the Lions Club Rd to get their pontoon boat, remove it for repairs,and return it (using the LC Road) to the Rices property /dock (as they have done for decades). He has flagrantly disregarded his promise.
We ask that you intervene and direct him to open the road for these purposes for the next 10 days, as he promised.
We need your client to follow through with his promise. Please give us your response today.

Tom Pope
Pope Parker Jenkins, P.A.
(formerly Pope & Hudgens PA)
1508 College Street - P.O. Box 190
Newberry, SC 29108
803.276.2532 F: 803.276.8684
tom@ppjlaw.com
www.ppjlaw.com

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Exhibit 9

Lions Club Road Paving

Contributor	Amount	From Rd. to Gate	Beyond Gate	Total	
Amick, Ray	$ 1,000	$ 1,000		$ 1,000	
Byars, Wick	$ 1,500	$ 1,500		$ 1,500	
Gray, Murray	$ 1,500	$ 1,125.00	$ 375.00	$ 1,500	
Jay, Nelda	$ 500	$ 375.00	$ 125.00	$ 500	
McCrackin, Ruth	$ 1,000	$ 750.00	$ 250.00	$ 1,000	
McSwain, Bill & Julia	$ 2,000	$ 2,000		$ 2,000	
Parr, Jim	$ 5,050	$ 5,050		$ 5,050	
Rice, Joe & Lisa	$ 9,800	5050	$ 4,750	$ 9,800	
Schumpert, Claude & Missy	$ 10,550	5050	$ 5,500	$ 10,550	(pd $11950: $1,400 to be reimbursed by Sharicks)
Sharick, Merle & Cheryl	$ 5,050	$ 5,050		$ 5,050	(pd $3,650: $1,400 to be reimbursed to Schumperts)
Stewart, Dave & Susan	$ 5,050	$ 5,050		$ 5,050	
	$ 43,000	$ 32,000	$ 11,000	$ 43,000	

Total Cost from Rd. to Gate	32000	
Miscellaneous Contributions	-6750	(Amick, Byars, Gray, Jay, McCrackin, McSwain)
Balance to be Shared Equally	25250	(Parr, Rice, Schumpert, Sharick, Stewart)
Divide by 5	5050	each

Total Cost Beyond Gate	11000	
Miscellaneous Contributions	-750	(Gray, Jay, McCrackin)
Balance to be Shared Equally	10250	(Rice, Schumpert)
Divide by 2	5125	

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Bank of America Advantage

MERLE D SHARICK
CHERYL J SHARICK
[redacted]

08-01

2650

67-448/539 SC
708

5/14/10
Date

Pay to the order of Jim Parr

$ 3,650.00

Three thousand six hundred fifty + no/100 Dollars

Security Features Details on Back

Harland Clarke

Bank of America

ACH R/T 053904483

Memo Road paving

Merle D. Sharick MP

[redacted]

SUSAN F STEWART
DAVID E STEWART
[redacted]

3865

64-22/610
BRANCH 77271

June 5, 2010
Date

Pay to the Order of Bird Paving

$ 5,000.00

Five thousand & fifty + no/100 Dollars

Security Features Details on Back

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

For [redacted]

Susan F. Stewart MP

Bank of America Advantage

NELDA E. JAY 07-69
[redacted]

6781

67-448/539 SC
402

May 14, 2010
Date

Pay to the order of Bird Paving Company

$ 500.00

Five hundred & no/100 Dollars

Security Features Details on Back

Harland Clarke

Bank of America

ACH R/T 053904483

Memo Lions Club Road paving

Nelda Jay MP

[redacted]

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JOHN J McSWAIN
JULIA B McSWAIN
[redacted]

3105
67-776/532
BRANCH 77454

5/11/10
Date

Pay to the Order of Bird Paving $2,000.00

Two thousand and no/100 Dollars

WACHOVIA
Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010

For Road paving Julia B McSwain

[redacted]

JAMES N PARR JR
[redacted]

111
67-604/539
BRANCH 142

5/3/10
Date

Pay to the order of Bird Paving $ 5250.00

Five thousand fifty Dollars

First Citizens
First Citizens Bank & Trust Company, Inc.

For James N Parr

[redacted]

THE MURRAY CO. OF NEWBERRY INC.
[redacted]

005520

67-448/539 SC
402

Date 5-27-10

Pay To The Order Of Bird Construction $1500.00

One thousand five hundred & 00/100 Dollars

Bank of America

For

[redacted]

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Joseph F. or Lisa S. Rice
[redacted]

1ST CITIZENS BANK & TRUST COMPANY, INC.
CHARLESTON, SC 29401
67-148/532

10943

5/12/2010

Pay to the Order of Bird Paving $**9,800.00

Nine Thousand Eight Hundred and 00/100********** Dollars

Bird Paving
[redacted]

memo

Lisa S. Rice

[redacted]

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CLAUDE H OR MELISSA B SCHUMPERT
[redacted]

BB&T
BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com
67-160/532

1450

6/8/2010

PAY TO THE ORDER OF Bird Paving $**11,950.00

Eleven Thousand Nine Hundred Fifty and 00/100********** DOLLARS

Bird Paving
[redacted]

MEMO Paving Lions Club Road

Melissa B Schumpert
AUTHORIZED SIGNATURE

[redacted]

Details on Back. Security Features Included

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Exhibit 10

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SCHEDULE B
EXCEPTIONS FROM COVERAGE

File No: 17-0534-01 (AMICK) **Policy No.: 813064040-213470248**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Rights of parties in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Any lien, or right to a lien, for labor, services, or material heretofore or hereafter furnished.
4. Taxes for the year 2018 and subsequent years, a lien not yet due and payable.
5.

5. Easement(s) to State Rural Electrification Authority or it's successor in interest recorded in Book 45 at Page 277.

6. Easement right-of-way for ingress and egress and regress to James N. Parr, Jr. and Jeffrey W. Chaplin, their heirs and assigns, recorded in Book 316 at Page 267 .
7. Rights of others to use and/or maintain the private roads designated as Lions Club Road, Lions Club Circle and Neptune Lane, all of which abut, traverse or encroach upon the insured premises without a recorded road maintenance agreement.
8. Plat of survey by Thomas D. Abraham SCRLS, dated September 13, 2017 and recorded in the Newberry County ROD in Plat Slide D99 at Page 6 shows:
   a. 12' Paved Access Road (Lions Club Circle) projects onto the adjacent lot bearing TMS#652-3-10 before acessing the eastern portion of the property;

   b. Lions Club Circle and Neptune Lane traverse or encroach upon the insurance premises;

   c. Overhead electrice lines encroach upon and traverse the property from east to west and extending to parcels north of the insured premises; and

   d. Shed in the eastern area of the property prijects .37' over the propertyline onto the adjacent lot bearing TMS#652-3-10. located on insured premises.
9. Rights reserved by South Carolina Electric and Gas Company, its predecessors, successors and assigns, to any area of the property located along the waters of Lake Murray formerly a part of the original hydroelectric project designated as Project 516,
10. Subject to the rights of the public and the State of South Carolina, if any, to (1) lands lying below the mean high water mark, (2) lands that have been created by artificial means, (3) riparian rights; and subject also to the rights of the federal government's control over navigable waters, and public rights of access to any navigable waters.

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AMERICAN LAND TITLE ASSOCIATION

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick and Cheryl Littlejohn,

Defendants.

DEFENDANT C. RAY AMICK'S ANSWER AND CROSS-CLAIM TO FIFTH AMENDED COMPLAINT
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick") answers the allegations of the Fifth Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Amick denies all allegations of the Fifth Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Fifth Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Fifth Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Fifth Amended Complaint upon information and belief.

5. Amick admits the allegations of paragraph 5 of the Fifth Amended Complaint upon information and belief.

6. As to the allegations of paragraph 6 of the Fifth Amended Complaint, Amick craves reference to the document attached to the Fifth Amended Complaint as Exhibit 1 and, to

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the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same.

7. As to the allegations of paragraph 7 of the Fifth Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to the minutes of that board meeting. To the extent the allegations of paragraph 6 are inconsistent with the minutes of the board meeting, Amick denies the same.

8. As to the allegations of the first sentence of paragraph 8 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 8.

9. Amick admits the allegations of paragraph 9 of the Fifth Amended Complaint upon information and belief.

10. As to the allegations of paragraph 10 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth

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Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.

13. As to the allegations of paragraph 13 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 13 are inconsistent with said letter, Amick denies the same.

14. As to the allegations of paragraph 14 of the Fifth Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

15. As to the allegations of paragraph 15 of the Fifth Amended Complaint, Amick admits the Rices through their attorney sent an offer of $325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 15 inconsistent with the foregoing.

16. Amick admits the allegations of paragraph 16 of the Fifth Amended Complaint.

17. As to the allegations of paragraph 17 of the Fifth Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 17. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

18. As to the allegations of paragraph 18 of the Fifth Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 18.

19. As to the allegations of paragraph 19 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 19 are inconsistent with said letter, Amick denies the same.

20. As to the allegations of paragraph 20 of the Fifth Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter

attached as Exhibit 2 and Exhibit 3 to the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 20.

21. As to the allegations of paragraph 21 of the Fifth Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 21 are inconsistent with said minutes, Amick denies the same.

22. Paragraph 22 of the Fifth Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

23. Amick denies the allegations of paragraphs 23 and 24 of the Fifth Amended Complaint.

24. Amick admits the allegations of paragraph 25 of the Fifth Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

25. As to the allegations of paragraph 26 of the Fifth Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Fifth Amended Complaint. To the extent the allegations of paragraph 26 are inconsistent with said letters, Amick denies the same.

26. Amick denies the allegations of paragraph 27 of the Fifth Amended Complaint.

27. As to the allegations of paragraph 28 of the Fifth Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Fifth Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 28 are inconsistent with said letter, Amick denies the same.

28. Amick admits the allegations of the first sentence of paragraph 29 of the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 29.

29. Amick denies the allegations of paragraph 30 of the Fifth Amended Complaint.

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30. As to the allegations of paragraph 31 of the Fifth Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to the public court docket and, to the extent the allegations of paragraph 31 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. As to the allegations of paragraph 32 of the Fifth Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 32 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 and, therefore, denies the same.

32. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Fifth Amended Complaint and, therefore, denies the same.

33. Amick denies the allegations of paragraph 34 of the Fifth Amended Complaint.

34. As to the allegations of paragraph 35 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was $300,000 and "other consideration." Amick denies the remaining allegations of paragraph 35.

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35. Amick denies the allegations of paragraphs 36 and 37 of the Fifth Amended Complaint.

36. As to the reiterated allegations of paragraph 38 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

37. Paragraph 39 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

38. As to the allegations of paragraph 40 of the Fifth Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 40 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

39. Paragraph 41 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

40. Amick denies the allegations of paragraphs 42, 43, and 44 of the Fifth Amended Complaint.

41. As to the allegations of paragraph 45 of the Fifth Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 45.

42. Amick denies the allegations of paragraphs 46 and 47 of the Fifth Amended Complaint.

43. As to the reiterated allegations of paragraph 48 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

44. Amick denies the allegations of paragraph 49 of the Fifth Amended Complaint.

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45. As to the reiterated allegations of paragraph 50 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

46. Amick denies the allegations of paragraphs 51, 52, 53, and 54 of the Fifth Amended Complaint.

47. As to the allegations of paragraph 55 of the Fifth Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Fifth Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 56.

49. As to the allegations of paragraph 57 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 57.

50. Amick denies the allegations of paragraphs 58 and 59 of the Fifth Amended Complaint.

51. As to the reiterated allegations of paragraph 60 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

52. Amick denies the allegations of paragraphs 61, 62, 63, 64, and 65 of the Fifth Amended Complaint.

53. As to the reiterated allegations of paragraph 66 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

54. The allegations of paragraphs 67, 68, 69, 70, 71, 72, and 73 of the Fifth Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a

response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

55. As to the reiterated allegations of paragraph 74 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

56. Amick denies the allegations of paragraph 75 of the Fifth Amended Complaint.

57. Amick admits the allegations of paragraph 76 of the Fifth Amended Complaint.

58. Amick denies the allegations of paragraphs 77, 78, 79, and 80 of the Fifth Amended Complaint.

59. Amick admits the allegations of paragraph 81 of the Fifth Amended Complaint upon information and belief.

60. Amick denies the allegations of paragraphs 82, 83 and 84 of the Fifth Amended Complaint.

61. Amick admits the allegations of paragraph 85 of the Fifth Amended Complaint upon information and belief.

62. Amick denies the allegations of paragraph 86 of the Fifth Amended Complaint.

63. Amick denies the allegations of paragraphs 87, 88, 89, and 90 of the Fifth Amended Complaint.

64. As to the allegations of paragraph 91 of the Fifth Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 91.

65. Amick denies the allegations of paragraphs 92 and 93 of the Fifth Amended Complaint.

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66. Amick admits the allegations of paragraphs 94 and 95 of the Fifth Amended Complaint.

67. Amick admits the allegations of paragraph 96 of the Fifth Amended Complaint upon information and belief.

68. Amick denies the allegations of paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Fifth Amended Complaint.

69. Amick admits the allegations of paragraph 104 of the Fifth Amended Complaint on information and belief.

70. Amick denies the allegations of 105, 106, 107, and 108 of the Fifth Amended Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

71. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

72. Plaintiff's Fifth Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

73. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

74. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

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75. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

76. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(No Contract)

77. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

78. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

FOR A SIXTH DEFENSE
(Bona Fide Purchaser for Value)

79. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

80. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

FOR A SEVENTH DEFENSE AND
BY WAY OF CROSS-CLAIM
(Indemnity/Breach of Deed Warranty)

81. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

82. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

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83. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

84. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

85. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Fifth Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

86. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

> And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

87. In Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

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88. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

89. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

90. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

91. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

92. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' r Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

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WHEREFORE, having fully answered Plaintiffs' Fifth Amended Complaint and having set forth his Counterclaim and Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

A. Dismissing Plaintiffs' Fifth Amended Complaint;

B. Awarding Amick the relief requested in his Cross-Claim;

C. Awarding Amick attorney fees and the costs of this action (to the extent allowable); and

D. Awarding any such further relief as the Court deems just and proper.

s/Thornwell F. Sowell, III

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ATTORNEYS FOR DEFENDANT C. RAY AMICK

September 15, 2021

ELECTRONICALLY FILED - 2021 Sep 15 4:55 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-36-00245

A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert,

Plaintiffs,

vs.

C. Ray Amick and Cheryl Littlejohn,

Defendant.

ANSWER OF CHERYL LITTLEJOHN TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Defendant Cheryl Littlejohn ("Littlejohn") answers the Third Amended Complaint (the "Complaint") of Plaintiffs A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert (collectively the "Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Littlejohn denies any allegation of the Complaint not hereafter expressly admitted.

Background

2. Littlejohn admits the allegations of paragraph 1.

3. Answering the allegations of paragraph 2, Littlejohn admits that C. Ray Amick ("Amick") resides at 62 Lions Club Road, Newberry, SC, and claims title over certain property but denies that the Plaintiffs have any rights to any of Amick's property or to access the boat ramp and beach area.

4. Littlejohn admits the allegations of paragraph 3.

5. Answering the allegations of paragraph 4, Littlejohn admits that Plaintiffs purport to claim an easement over both the Lions Club Property and the fringeland parcel, but denies that

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Plaintiffs properly pleaded an easement over any property that was owned by Dominion Energy Corporation because Dominion Energy Corporation was never a party to this Action.

6. Answering the allegations of paragraph 5, Littlejohn admits the allegations to the extent they are consistent with the documents recorded in the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 5, and therefore denies them.

7. Plaintiff admits the allegations of paragraph 6.

8. Answering the allegations of paragraph 7, Littleton admits the allegations to the extent they are consistent with the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 7, and therefore denies them.

9. Answering the allegations of paragraph 8, Littleton admits the allegations to the extent they are consistent with the public records of Newberry County. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 8, and therefore denies them.

10. Answering the allegations of paragraph 9, Littlejohn denies that Lions Club Road extends over and beyond the Lions Club Property to the sale lands of SCE&G to the east. Littlejohn admits the remaining allegations of paragraph 9 to the extent they are consistent with the public records of Newberry County.

11. Answering the allegations of paragraph 10, Littlejohn denies that Plaintiffs are entitled to the relief requested in the Complaint as to her property. The remaining allegations of paragraph 10 seek relief from persons other than Littlejohn and do not require a response from

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Littlejohn. To the extent a response is required, Littlejohn denies the remaining allegations of paragraph 10.

12. Littlejohn denies the allegations of paragraph 11.

13. Answering the allegations of paragraph 12, Littlejohn admits that Amick's title is being disputed in the lawsuit described in paragraph 12 and that a lis pendens has been filed on the Lions Club Property. The remaining allegations concerning the impact of the other lawsuit and the lis pendens call for legal conclusions and no response is required. To the extent a response is required, Littlejohn denies the allegations.

14. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies them.

15. Littlejohn admits the allegations of paragraphs 14.

16. Answering the allegations of paragraph 15, Littlejohn admits that the plat described therein was recorded in the Office of the Clerk of court for Newberry County as stated but denies that the plat gives rise to any notice to her of any claims by Plaintiffs, or grants an easement over her property in favor of the Plaintiffs. Further answering, Littlejohn states that the road depicted in the plat is not present in the areas set forth on the plat.

17. Littlejohn denies the allegations of paragraphs 16 through 17.

18. Littlejohn admits the allegations of paragraph 18.

19. Littlejohn denies the allegations of paragraphs 19 through 22.

20. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 23, and therefore denies them.

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21. Answering the allegations of paragraph 24, Littlejohn admits that at some point in 2018, Amick blocked the eastern portion of Lions Club Road with a rope and installed a no trespassing sign.

22. Answering the allegations of paragraph 25, Littlejohn denies that she had knowledge of Plaintiffs' assertions in the complaint before the lawsuit was filed and therefore could not have raised any concerns or objections. As set forth herein, Littlejohn denies that Plaintiffs have any rights to her property.

23. Answering the allegations of paragraph 26, Littlejohn denies she has "aided and abetted" any actionable conduct, and is without information or knowledge as to what conclusions Plaintiffs have drawn from discovery conducted in this case.

24. Littlejohn denies the allegations of paragraph 27.

25. Answering the allegations of paragraph 28, Littlejohn admits that she is aware of certain trespassing signs placed by Amick, but she does not know the specific date or circumstances around the sign. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 28, and therefore denies them.

26. Littlejohn is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 29, and therefore denies them.

27. Littlejohn denies the allegations of paragraphs 30 and 31.

28. Answering the allegations of paragraph 32, Littlejohn admits that Judge Hocker entered an order as stated, but denies that the order is permanent or final or that it applies to Littlejohn as she was not a party to the case at the time the order was entered.

29. Littlejohn admits the allegations of paragraph 33.

30. Littlejohn deny the allegations of paragraph 34.

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For a First Cause of Action
Declaratory Judgment

31. Answering the allegations of paragraph 35, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

32. On information and belief, Littlejohn admits the allegations of paragraph 36.

33. Littlejohn denies the allegations of paragraphs 37 through 42.

For a Second Cause of Action
(Temporary and Permanent Injunction)

34. Answering the allegations of paragraph 37,[1] Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

35. Answering the allegations of paragraph 38, Littlejohn denies that Plaintiffs have the right to interfere with or use her property, and denies that Plaintiffs are entitled to any relief or recovery from Littlejohn.

36. Littlejohn denies the allegations of paragraphs 39 through 42.

For a Third Cause of Action
(Trespass/Nuisance)

37. Answering the allegations of paragraph 43, Littlejohn reiterates her answer to the previous paragraphs as fully as if restated herein.

38. The allegations of paragraphs 44 through 47 do not state any claim or include any allegations against Littlejohn and therefore do not require a response. To the extent a response is required, Littlejohn denies them.

39. Littlejohn denies that Plaintiffs are entitled to the relief requested in their prayer for relief.

[1] The remaining paragraphs of the Third Amended Complaint are mis-numbered. For the purposes of ease, Littlejohn is responding to them as numbered, under their respective headings.

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FOR A SECOND DEFENSE

40. The Complaint fails to state facts sufficient to constitute any cause of action as to Littlejohn, and should be dismissed with prejudice pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

41. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.

FOR A FOURTH DEFENSE

42. The Plaintiffs claims are barred in whole or in part by all equitable doctrines available to Littlejohn, including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

FOR A FIFTH DEFENSE

43. Plaintiffs' claims are barred by any applicable statute of limitations.

FOR A SIXTH DEFENSE

44. The Plaintiffs' damages, if any, directly and proximately result, in whole or in part, from the intervening and superseding acts of third parties over whom Littlejohn had no control and are not responsible.

FOR AN EIGHTH DEFENSE

45. Littlejohn is a bona fide purchaser for value of the subject property. Therefore, Plaintiffs have no claim against Littlejohn and no right, title, or interest in the property that she owns.

WHEREFORE, Littlejohn, having fully answered the Complaint of the Plaintiffs, pray that the Complaint be dismissed with prejudice and that the Court order such other and further relief as this Court may deem just and proper.

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HAYNSWORTH SINKLER BOYD, P.A.

s/ Mary M. Caskey

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September 15, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick and Cheryl Littlejohn,

Defendants.

DEFENDANT C. RAY AMICK'S AMENDED ANSWER AND CROSS-CLAIM TO FIFTH AMENDED COMPLAINT
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick"), reserving any prior motions, answers the allegations of the Fifth Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Amick denies all allegations of the Fifth Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Fifth Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Fifth Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Fifth Amended Complaint upon information and belief.

5. Amick admits the allegations of paragraph 5 of the Fifth Amended Complaint upon information and belief.

6. As to the allegations of paragraph 6 of the Fifth Amended Complaint, Amick craves reference to the document attached to the Fifth Amended Complaint as Exhibit 1 and, to

the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same.

7. As to the allegations of paragraph 7 of the Fifth Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to the minutes of that board meeting. To the extent the allegations of paragraph 6 are inconsistent with the minutes of the board meeting, Amick denies the same.

8. As to the allegations of the first sentence of paragraph 8 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 8.

9. Amick admits the allegations of paragraph 9 of the Fifth Amended Complaint upon information and belief.

10. As to the allegations of paragraph 10 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth

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Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.

13. As to the allegations of paragraph 13 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 13 are inconsistent with said letter, Amick denies the same.

14. As to the allegations of paragraph 14 of the Fifth Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

15. As to the allegations of paragraph 15 of the Fifth Amended Complaint, Amick admits the Rices through their attorney sent an offer of $325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 15 inconsistent with the foregoing.

16. Amick admits the allegations of paragraph 16 of the Fifth Amended Complaint.

17. As to the allegations of paragraph 17 of the Fifth Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 17. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

18. As to the allegations of paragraph 18 of the Fifth Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 18.

19. As to the allegations of paragraph 19 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 19 are inconsistent with said letter, Amick denies the same.

20. As to the allegations of paragraph 20 of the Fifth Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter

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attached as Exhibit 2 and Exhibit 3 to the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 20.

21. As to the allegations of paragraph 21 of the Fifth Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 21 are inconsistent with said minutes, Amick denies the same.

22. Paragraph 22 of the Fifth Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

23. Amick denies the allegations of paragraphs 23 and 24 of the Fifth Amended Complaint.

24. Amick admits the allegations of paragraph 25 of the Fifth Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

25. As to the allegations of paragraph 26 of the Fifth Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Fifth Amended Complaint. To the extent the allegations of paragraph 26 are inconsistent with said letters, Amick denies the same.

26. Amick denies the allegations of paragraph 27 of the Fifth Amended Complaint.

27. As to the allegations of paragraph 28 of the Fifth Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Fifth Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 28 are inconsistent with said letter, Amick denies the same.

28. Amick admits the allegations of the first sentence of paragraph 29 of the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 29.

29. Amick denies the allegations of paragraph 30 of the Fifth Amended Complaint.

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30. As to the allegations of paragraph 31 of the Fifth Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to the public court docket and, to the extent the allegations of paragraph 31 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. As to the allegations of paragraph 32 of the Fifth Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 32 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 and, therefore, denies the same.

32. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Fifth Amended Complaint and, therefore, denies the same.

33. Amick denies the allegations of paragraph 34 of the Fifth Amended Complaint.

34. As to the allegations of paragraph 35 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was $300,000 and "other consideration." Amick denies the remaining allegations of paragraph 35.

35. Amick denies the allegations of paragraphs 36 and 37 of the Fifth Amended Complaint.

36. As to the reiterated allegations of paragraph 38 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

37. Paragraph 39 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

38. As to the allegations of paragraph 40 of the Fifth Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 40 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

39. Paragraph 41 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

40. Amick denies the allegations of paragraphs 42, 43, and 44 of the Fifth Amended Complaint.

41. As to the allegations of paragraph 45 of the Fifth Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 45.

42. Amick denies the allegations of paragraphs 46 and 47 of the Fifth Amended Complaint.

43. As to the reiterated allegations of paragraph 48 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

44. Amick denies the allegations of paragraph 49 of the Fifth Amended Complaint.

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45. As to the reiterated allegations of paragraph 50 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

46. Amick denies the allegations of paragraphs 51, 52, 53, and 54 of the Fifth Amended Complaint.

47. As to the allegations of paragraph 55 of the Fifth Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Fifth Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 56.

49. As to the allegations of paragraph 57 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 57.

50. Amick denies the allegations of paragraphs 58 and 59 of the Fifth Amended Complaint.

51. As to the reiterated allegations of paragraph 60 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

52. Amick denies the allegations of paragraphs 61, 62, 63, 64, and 65 of the Fifth Amended Complaint.

53. As to the reiterated allegations of paragraph 66 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

54. The allegations of paragraphs 67, 68, 69, 70, 71, 72, and 73 of the Fifth Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a

response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

55. As to the reiterated allegations of paragraph 74 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

56. Amick denies the allegations of paragraph 75 of the Fifth Amended Complaint.

57. Amick admits the allegations of paragraph 76 of the Fifth Amended Complaint.

58. Amick denies the allegations of paragraphs 77, 78, 79, and 80 of the Fifth Amended Complaint.

59. Amick admits the allegations of paragraph 81 of the Fifth Amended Complaint upon information and belief.

60. Amick denies the allegations of paragraphs 82, 83 and 84 of the Fifth Amended Complaint.

61. Amick admits the allegations of paragraph 85 of the Fifth Amended Complaint upon information and belief.

62. Amick denies the allegations of paragraph 86 of the Fifth Amended Complaint.

63. Amick denies the allegations of paragraphs 87, 88, 89, and 90 of the Fifth Amended Complaint.

64. As to the allegations of paragraph 91 of the Fifth Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 91.

65. Amick denies the allegations of paragraphs 92 and 93 of the Fifth Amended Complaint.

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66. Amick admits the allegations of paragraphs 94 and 95 of the Fifth Amended Complaint.

67. Amick admits the allegations of paragraph 96 of the Fifth Amended Complaint upon information and belief.

68. Amick denies the allegations of paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Fifth Amended Complaint.

69. Amick admits the allegations of paragraph 104 of the Fifth Amended Complaint on information and belief.

70. Amick denies the allegations of 105, 106, 107, and 108 of the Fifth Amended Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

71. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

72. Plaintiff's Fifth Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

73. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

74. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

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75. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

76. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(No Contract)

77. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

78. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

FOR A SIXTH DEFENSE
(Bona Fide Purchaser for Value)

79. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

80. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

FOR AN SEVENTH DEFENSE

81. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.

FOR AN EIGHTH DEFENSE

82. The Plaintiffs' claims are barred in whole or in part by all equitable doctrines available to Amick including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

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FOR A NINTH DEFENSE AND
BY WAY OF CROSS-CLAIM
(Indemnity/Breach of Deed Warranty)

83. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

84. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

85. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

86. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

87. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Fifth Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

88. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

> And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and

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the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

89. In Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

90. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

91. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

92. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

93. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

94. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs,

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(3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

WHEREFORE, having fully answered Plaintiffs' Fifth Amended Complaint and having set forth his Counterclaim and Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

A. Dismissing Plaintiffs' Fifth Amended Complaint;

B. Awarding Amick the relief requested in his Cross-Claim;

C. Awarding Amick attorney fees and the costs of this action; and

D. Awarding any such further relief as the Court deems just and proper.

s/ Thornwell F. Sowell, III.
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ATTORNEYS FOR DEFENDANT

C. RAY AMICK

October 14, 2021

JURY TRIAL DEMANDED

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ELECTRONICALLY FILED - 2021 Oct 14 2:50 PM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No. 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert	)	
Plaintiffs	)	**AMENDED ANSWER TO THIRD AMENDED COMPLAINT (Jury Trial Demanded)**
v.	)	
C. Ray Amick and Cheryl Littlejohn	)	
Defendants	)	

Without waiving his Motion to Dismiss, Defendant C. Ray Amick ("Defendant Amick") responds to the Third Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant Amick admits the allegations of paragraph 1 of the Third Amended Complaint.

2. Defendant Amick denies the allegations of paragraph 2 of the Third Amended Complaint.

3. Defendant Amick admits the allegations of paragraph 3 of the Third Amended Complaint.

4. Defendant Amick denies the allegations in paragraph 4 of the Third Amended Complaint.

5. Defendant Amick denies the allegations in paragraph 5 of the Third Amended Complaint.

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6. Defendant Amick admits the allegations of paragraph 6 of the Third Amended Complaint.

7. Defendant Amick admits the allegations of paragraph 7 of the Third Amended Complaint.

8. Upon information and belief, Defendant Amick admits the allegations of paragraph 8 of the Third Amended Complaint.

9. Defendant Amick denies the allegations of paragraph 9 of the Third Amended Complaint.

10. Upon information and belief, Defendant Amick admits the allegations of paragraph 10 of the Third Amended Complaint.

11. Defendant Amick denies the allegations of paragraphs 11, 12, and 13 of the Third Amended Complaint.

12. Defendant Amick admits the allegations of paragraphs 14 and 15 of the Third Amended Complaint.

13. Defendant Amick denies the allegations of paragraphs 16 and 17 of the Third Amended Complaint.

14. Upon information and belief, Defendant Amick admits the allegations of paragraph 18 of the Third Amended Complaint.

15. Defendant Amick denies the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Third Amended Complaint.

16. Defendant Amick admits the allegations of paragraph 28 of the Third Amended Complaint.

17. Defendant Amick denies the allegations of paragraphs 29, 30, 31, and 34 of the Third Amended Complaint.

18. Defendant Amick admits the allegations of paragraphs 32 and 33 of the Third Amended Complaint.

19. Responding to paragraph 35 of the Third Amended Complaint, Defendant Amick restates responses hereinabove.

20. Defendant Amick admits the allegations of paragraph 36 of the Third Amended Complaint.

21. Defendant Amick denies the allegations of paragraphs 37, 38, 39, 40, 41, and 42 of the Third Amended Complaint.

22. Responding to paragraph 43 of the Third Amended Complaint, Defendant Amick restates responses hereinabove.

23. Defendant Amick denies the allegations of paragraphs 44, 45, 46, 47 and 48 of the Third Amended Complaint.

24. Responding to paragraph 49 of the Third Amended Complaint, Defendant Amick restates responses hereinabove.

25. Defendant Amick denies the allegations of paragraphs 50, 51, 52 and 53 of the Third Amended Complaint.

26. Except as admitted specifically, all claims are denied.

FOR A SECOND DEFENSE

27. The Third Amended Complaint fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

28. All claims are barred by the applicable statute of frauds.

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FOR A FOURTH DEFENSE

29. All claims are barred by the doctrines of waiver and estoppel.

FOR A FIFTH DEFENSE

30. Plaintiffs have an adequate remedy at law.

FOR A SIXTH DEFENSE

31. All claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE

32. All claims are barred by the doctrines of laches and unclean hands.

FOR AN EIGHTH DEFENSE

33. Defendant Amick asserts that there are no easements in favor of Plaintiffs that burden any of his properties.

FOR A NINTH DEFENSE

34. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.

FOR A TENTH DEFENSE

35. The Plaintiffs' claims are barred in whole or in part by all equitable doctrines available to Amick, including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

FOR AN ELEVENTH DEFENSE

36. Amick is a bona fide purchaser for value of the subject property. Therefore, Plaintiffs have no claim against Amick and no right, title, or interest in the property that he owns.

WHEREFORE, having fully answered the Third Amended Complaint, C. Ray Amick prays that this matter be dismissed, with costs, and for such other and further relief as is just and proper.

SOWELL & DuRANT, LLC

By: s/ Thornwell F. Sowell, III
Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
1325 Park Street, Suite 100
Columbia, South Carolina 29201
(803) 722-1100

Attorneys for Defendant C. Ray Amick

Columbia, South Carolina
October 14, 2021

JURY TRIAL DEMANDED

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ELECTRONICALLY FILED - 2022 May 24 4:53 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club, C. Ray Amick and Cheryl Littlejohn,

Defendants.

DEFENDANT C. RAY AMICK'S SECOND AMENDED ANSWER AND CROSS-CLAIM TO FIFTH AMENDED COMPLAINT
(Jury Trial Demanded)

Defendant C. Ray Amick ("Amick"), reserving any prior motions, answers the allegations of the Fifth Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Amick denies all allegations of the Fifth Amended Complaint unless otherwise admitted, qualified, or explained.

2. Amick admits the allegations of paragraphs 1 and 2 of the Fifth Amended Complaint upon information and belief.

3. Amick admits the allegations of paragraph 3 of the Fifth Amended Complaint.

4. Amick admits the allegations of paragraph 4 of the Fifth Amended Complaint upon information and belief.

5. Amick admits the allegations of paragraph 5 of the Fifth Amended Complaint upon information and belief.

6. As to the allegations of paragraph 6 of the Fifth Amended Complaint, Amick craves reference to the document attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 6 are inconsistent with said document, Amick denies the same.

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7. As to the allegations of paragraph 7 of the Fifth Amended Complaint, Amick admits he attended the January 14, 2017 board meeting and, further, Amick craves reference to the minutes of that board meeting. To the extent the allegations of paragraph 6 are inconsistent with the minutes of the board meeting, Amick denies the same.

8. As to the allegations of the first sentence of paragraph 8 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1, and denies the letter is an offer. Amick denies the remaining allegations of paragraph 8.

9. Amick admits the allegations of paragraph 9 of the Fifth Amended Complaint upon information and belief.

10. As to the allegations of paragraph 10 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 10 are inconsistent with said letter, Amick denies the same.

11. As to the allegations of paragraph 11 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 11 are inconsistent with said letter, Amick denies the same.

12. As to the allegations of paragraph 12 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 12 are inconsistent with said letter, Amick denies the same.

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13. As to the allegations of paragraph 13 of the Fifth Amended Complaint, Amick denies the letter is an offer. Further, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 1 and, to the extent the allegations of paragraph 13 are inconsistent with said letter, Amick denies the same.

14. As to the allegations of paragraph 14 of the Fifth Amended Complaint, Amick denies the letter was an offer, but admits upon information and belief the letter was sent.

15. As to the allegations of paragraph 15 of the Fifth Amended Complaint, Amick admits the Rices through their attorney sent an offer of $325,000 as set forth in Exhibit 2. Amick denies the remaining allegations of paragraph 15 inconsistent with the foregoing.

16. Amick admits the allegations of paragraph 16 of the Fifth Amended Complaint.

17. As to the allegations of paragraph 17 of the Fifth Amended Complaint, Amick denies there was a bidding process and denies the allegations of paragraph 17. Further, Amick denies any contractual relationship was formed between the Newberry Lions Club and the Rices.

18. As to the allegations of paragraph 18 of the Fifth Amended Complaint, Amick admits the Rices' letter was an offer. Amick denies the remaining allegations of paragraph 18.

19. As to the allegations of paragraph 19 of the Fifth Amended Complaint, Amick craves reference to the letter attached to the Fifth Amended Complaint as Exhibit 3. To the extent the allegations of paragraph 19 are inconsistent with said letter, Amick denies the same.

20. As to the allegations of paragraph 20 of the Fifth Amended Complaint, Amick admits upon information and belief that Defendant Lions Club did not respond to either letter attached as Exhibit 2 and Exhibit 3 to the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 20.

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21. As to the allegations of paragraph 21 of the Fifth Amended Complaint, Amick craves reference to the minutes of the May 23, 2017 board meeting and, to the extent the allegations of paragraph 21 are inconsistent with said minutes, Amick denies the same.

22. Paragraph 22 of the Fifth Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Amick denies the same.

23. Amick denies the allegations of paragraphs 23 and 24 of the Fifth Amended Complaint.

24. Amick admits the allegations of paragraph 25 of the Fifth Amended Complaint as there was no bidding process and the Newberry Lions Club had no duty to respond.

25. As to the allegations of paragraph 26 of the Fifth Amended Complaint, Amick craves reference to the letters attached as Exhibit 3 and Exhibit 4 to the Fifth Amended Complaint. To the extent the allegations of paragraph 26 are inconsistent with said letters, Amick denies the same.

26. Amick denies the allegations of paragraph 27 of the Fifth Amended Complaint.

27. As to the allegations of paragraph 28 of the Fifth Amended Complaint, Amick admits the letter was sent and is attached as Exhibit 5 to the Fifth Amended Complaint and craves reference to said letter. To the extent the allegations of paragraph 28 are inconsistent with said letter, Amick denies the same.

28. Amick admits the allegations of the first sentence of paragraph 29 of the Fifth Amended Complaint. Amick denies the remaining allegations of paragraph 29.

29. Amick denies the allegations of paragraph 30 of the Fifth Amended Complaint.

30. As to the allegations of paragraph 31 of the Fifth Amended Complaint concerning the filing of the original summons and complaint and the lis pendens, Amick craves reference to

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the public court docket and, to the extent the allegations of paragraph 31 are inconsistent with the docket, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 and, therefore, denies the same.

31. As to the allegations of paragraph 32 of the Fifth Amended Complaint regarding a deed from the Newberry Lions Club to Joseph T. McCrackin, III and Gent B McCrackin, Amick craves reference to said deed and, to the extent the allegations of paragraph 32 are inconsistent with said deed, Amick denies the same. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 and, therefore, denies the same.

32. Amick is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 33 of the Fifth Amended Complaint and, therefore, denies the same.

33. Amick denies the allegations of paragraph 34 of the Fifth Amended Complaint.

34. As to the allegations of paragraph 35 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him by deed recorded on February 22, 2018 at 3:55 p.m. in the Office of the clerk of Court for Newberry County in Book 2028 at Page 198 and that the consideration recited in said deed from Defendant Newberry Lions Club to him was $300,000 and "other consideration." Amick denies the remaining allegations of paragraph 35.

35. Amick denies the allegations of paragraphs 36 and 37 of the Fifth Amended Complaint.

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36. As to the reiterated allegations of paragraph 38 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

37. Paragraph 39 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

38. As to the allegations of paragraph 40 of the Fifth Amended Complaint regarding the filing of the lis pendens and the deed from the Newberry Lions Club to Amick, Amick craves reference to these public records and, to the extent the allegations of paragraph 40 are inconsistent with these public records, Amick denies the same. Further, Amick avers that the filing of the lis pendens was not proper.

39. Paragraph 41 of the Fifth Amended Complaint contains legal conclusions to which no response is required.

40. Amick denies the allegations of paragraphs 42, 43, and 44 of the Fifth Amended Complaint.

41. As to the allegations of paragraph 45 of the Fifth Amended Complaint, Amick denies that there is any agreement between the Rices and Newberry Lions Club. Amick denies the remaining allegations of paragraph 45.

42. Amick denies the allegations of paragraphs 46 and 47 of the Fifth Amended Complaint.

43. As to the reiterated allegations of paragraph 48 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

44. Amick denies the allegations of paragraph 49 of the Fifth Amended Complaint.

45. As to the reiterated allegations of paragraph 50 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

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46. Amick denies the allegations of paragraphs 51, 52, 53, and 54 of the Fifth Amended Complaint.

47. As to the allegations of paragraph 55 of the Fifth Amended Complaint, Amick admits he was conveyed the property. Amick denies the remaining allegations of paragraph 55.

48. As to the allegations of paragraph 56 of the Fifth Amended Complaint, Amick admits upon information and belief that the Newberry Lions Club would not sell the property at issue to Plaintiffs. Amick denies the remaining allegations of paragraph 56.

49. As to the allegations of paragraph 57 of the Fifth Amended Complaint, Amick admits Defendant Newberry Lions Club conveyed the property to him. Amick denies the remaining allegations of paragraph 57.

50. Amick denies the allegations of paragraphs 58 and 59 of the Fifth Amended Complaint.

51. As to the reiterated allegations of paragraph 60 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein,

52. Amick denies the allegations of paragraphs 61, 62, 63, 64, and 65 of the Fifth Amended Complaint.

53. As to the reiterated allegations of paragraph 66 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

54. The allegations of paragraphs 67, 68, 69, 70, 71, 72, and 73 of the Fifth Amended Complaint are not asserted against Amick and, therefore, no response is required. To the extent a response is required, Amick is without knowledge and information sufficient to form a belief as to those allegations and, therefore, denies those allegations.

55. As to the reiterated allegations of paragraph 74 of the Fifth Amended Complaint, Amick repeats and re-alleges each of the preceding paragraphs as if set forth verbatim herein.

56. Amick denies the allegations of paragraph 75 of the Fifth Amended Complaint.

57. Amick admits the allegations of paragraph 76 of the Fifth Amended Complaint.

58. Amick denies the allegations of paragraphs 77, 78, 79, and 80 of the Fifth Amended Complaint.

59. Amick admits the allegations of paragraph 81 of the Fifth Amended Complaint upon information and belief.

60. Amick denies the allegations of paragraphs 82, 83 and 84 of the Fifth Amended Complaint.

61. Amick admits the allegations of paragraph 85 of the Fifth Amended Complaint upon information and belief.

62. Amick denies the allegations of paragraph 86 of the Fifth Amended Complaint.

63. Amick denies the allegations of paragraphs 87, 88, 89, and 90 of the Fifth Amended Complaint.

64. As to the allegations of paragraph 91 of the Fifth Amended Complaint, Amick admits he owns the road and has a right to prohibit or restrict access to Plaintiffs and anyone else he chooses. Amick denies the remaining allegations of paragraph 91.

65. Amick denies the allegations of paragraphs 92 and 93 of the Fifth Amended Complaint.

66. Amick admits the allegations of paragraphs 94 and 95 of the Fifth Amended Complaint.

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67. Amick admits the allegations of paragraph 96 of the Fifth Amended Complaint upon information and belief.

68. Amick denies the allegations of paragraphs 97, 98, 99, 100, 101, 102, and 103 of the Fifth Amended Complaint.

69. Amick admits the allegations of paragraph 104 of the Fifth Amended Complaint on information and belief.

70. Amick denies the allegations of 105, 106, 107, and 108 of the Fifth Amended Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

71. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

72. Plaintiffs' Fifth Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

73. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

74. Some or all of Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

75. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

76. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel.

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FOR A FIFTH DEFENSE
(No Contract)

77. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

78. Some or all of Plaintiffs' claims are barred as there was never a contract between Plaintiffs and Defendant Newberry Lions Club.

FOR A SIXTH DEFENSE
(Statute of Frauds)

79. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

80. Some or all of Plaintiffs' claims are barred by the Statute of Frauds, which is codified at S.C. Code Ann. § 32-3-10.

FOR A SEVENTH DEFENSE
(Bona Fide Purchaser for Value)

81. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

82. Amick is a bona fide purchaser for value without notice of Plaintiffs' claims; therefore, he owns the subject property free and clear of any right, title, claim, or interest of Plaintiffs.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate Damages)

83. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

84. The Plaintiffs' claims are barred in whole or in part by their failure to mitigate their damages.

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FOR A NINTH DEFENSE
(Various Equitable Doctrines)

85. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

86. The Plaintiffs' claims are barred in whole or in part by all equitable doctrines available to Amick including but not limited to, laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

FOR A TENTH DEFENSE AND
BY WAY OF CROSS-CLAIM
(Indemnity/Breach of Deed Warranty)

87. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

88. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds Plaintiffs are entitled to specific performance or that Plaintiffs possess an easement over the subject property.

89. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

90. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

91. Amick denies Plaintiffs have an interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Fifth Amended Complaint, the loss of title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could

only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club.

92. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

> And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

93. In the Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

94. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

95. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

96. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

97. If the allegations of the Plaintiffs' Fifth Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club breached the deed warranties that run in favor of Amick as Defendant Newberry Lions Club would not have had clear legal title to the subject property when it conveyed the subject property to Amick pursuant to the Lions Club Deed.

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98. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Defendant Newberry Lions Club (A) finding Defendant Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Defendant Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Defendant Newberry Lions Club, including pre-judgment interest.

WHEREFORE, having fully answered Plaintiffs' Fifth Amended Complaint and having set forth his Cross-Claim, Defendant C. Ray Amick requests the Court issue an Order:

A. Dismissing Plaintiffs' Fifth Amended Complaint;

B. Awarding Amick the relief requested in his Cross-Claim;

C. Awarding Amick attorney fees and the costs of this action; and

D. Awarding any such further relief as the Court deems just and proper.

[Signatures on Following Page]

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ATTORNEYS FOR DEFENDANT C. RAY AMICK

May 24, 2022

JURY TRIAL DEMANDED

ELECTRONICALLY FILED - 2022 May 26 3:55 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	2018-CP-36-00089
Lisa Summer Rice and Joseph F. Rice, Plaintiffs,	)	
	)	
vs.	)	ANSWER OF NEWBERRY LIONS CLUB TO FOURTH AND FIFTH AMENDED COMPLAINTS
Newberry Lions Club and C. Ray Amick, and Cheryl Littlejohn, Defendants.	)	

Defendant Newberry Lions Club would respectfully answer the Fourth and Fifth Amended Complaints of plaintiffs as follows:

1. That defendant Newberry Lions Club would deny each and every allegation of the Fourth and Fifth Amended Complaints unless expressly admitted herein and such paragraphs that are denied, defendant Newberry Lions Club would demand strict proof thereof.

2. That defendant Newberry Lions Club would admit allegations of paragraphs one (1), two (2), three (3) of the Amended Complaints.

3. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph four (4) of the Amended Complaints and would demand strict proof thereof.

4. That defendant Newberry Lions Club would deny the allegations contained in paragraphs five (5), seven (7), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen

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(14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), and twenty-eight (28) of the Amended Complaints.

5. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph twenty-nine (29) of the Amended Complaints and would demand strict proof thereof.

6. That defendant Newberry Lions Club would admit the allegations contained in paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), and thirty-four (34) of the Amended Complaints.

7. That defendant Newberry Lions Club can neither affirm nor deny the allegations contained in paragraph thirty-five (35) of the Amended Complaints and would demand strict proof thereof.

8. That defendant Newberry Lions Club would deny the allegations contained in paragraphs thirty-six (36) and thirty-seven (37) of the Amended Complaints.

IN ANSWER TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment/Injunction)

9. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

10. That defendant Newberry Lions Club would deny every allegation of the First Cause of Action of the Fourth and Fifth Amended Complaints unless expressly admitted herein.

11. That defendant Newberry Lions Club would deny the allegations contained in paragraphs thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-

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three (43), forty-four (44), forty-five (45), forty-six (46), and forty-seven (47) of the First Cause of Action of the Fourth and Fifth Amended Complaints.

IN ANSWER TO THE SECOND CAUSE OF ACTION
(Specific Performance)

12. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

13. That defendant Newberry Lions Club would deny every allegation of the Second Cause of Action of the Fourth and Fifth Amended Complaints unless expressly admitted herein.

14. That defendant Newberry Lions Club would deny the allegations contained in paragraphs forty-eight (48) and forty-nine (49) of the Second Cause of Action of the Fourth and Fifth Amended Complaints.

IN ANSWER OF THE THIRD CAUSE OF ACTION
(Promissory Estoppel)

15. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

16. That defendant Newberry Lions Club would deny every allegation of the Third Cause of Action of the Fourth and Fifth Amended Complaints.

IN ANSWER TO THE FOURTH CAUSE OF ACTION
(Intentional Interference with Contractual Rights as to Defendant Amick)

17. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

18. That defendant Newberry Lions Club would deny every allegation of the Fourth Cause of Action of the Fourth and Fifth Amended Complaints.

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IN ANSWER TO THE FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Defendant Lions Club)

19. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

20. That defendant Newberry Lions Club would deny every allegation of the Fifth Cause of Action of the Fourth and Fifth Amended Complaints.

IN ANSWER TO THE SIXTH CAUSE OF ACTION
(Declaratory Judgment – Easement – Injunction as to Amick)
(IN THE ALTERNATIVE)

21. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

22. That defendant Newberry Lions Club would deny every allegation of the Sixth Cause of Action of the Fourth and Fifth Amended Complaints.

IN ANSWER TO SEVENTH DEFENSE
(Attorneys' Fees)

23. That defendant Newberry Lions Club would reallege and reaffirm each and every allegation stated above as if set forth herein verbatim.

24. That defendant Newberry Lions Club would deny each and every allegation of contained in the Fourth and Fifth Amended Complaints.

25. That defendant Newberry Lions Club would seek attorneys' fees for bringing this action without merit.

WHEREFORE, having set forth its Answer to Fourth and Fifth Amended Complaints in full, defendant Newberry Lions Club would respectfully request of this Honorable Court:

(a) For an Order of this Court dismissing plaintiffs' action.

(b) For an Order of this Court finding that the sale of the Lake Murray property by the Newberry Lions Club to C. Ray Amick was proper, lawful and correct and the sale should be confirmed by this Court.

(c) For an Order of this Court awarding defendant Newberry Lions Club's legal costs and attorneys' fees to be paid by plaintiffs.

(d) For such other and further relief as the Court deems necessary and proper.

/s/ Samuel M. Price, Jr.

Samuel M. Price, Jr. (SC Bar #04566)
Jennifer Dowd Nichols (SC Bar #75916)
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Newberry, South Carolina
May 26, 2022

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ELECTRONICALLY FILED - 2022 Jun 01 10:22 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT Case No. 2019-CP-36-00245
A. Murray Gray, Claude H. Schumpert, and Melissa B. Schumpert, Plaintiffs, v. C. Ray Amick and Cheryl Littlejohn, Defendants.	)	**THIRD-PARTY COMPLAINT**
C. Ray Amick, Third-Party Plaintiff, v. Newberry Lions Club, Third-Party Defendant.	)	

This Third-Party Complaint is hereby asserted by Defendant and Third-Party Plaintiff C. Ray Amick against Third-Party Defendant Newberry Lions Club, pursuant to Rule 14, S.C.R. Civ. P., and C. Ray Amick alleges as follows:

1. This cause of action for indemnity and for breach of deed warranty is asserted against Defendant Newberry Lions Club to the extent the Court finds that Plaintiffs possess an easement over the subject property or otherwise are entitled to any relief from their Third Amended Complaint.

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2. Defendant Newberry Lions Club conveyed the subject property to Amick by Title to Real Estate dated February 21, 2018, and recorded February 22, 2018, with the Newberry County Clerk of Court in Deed Book 2028 at Page 194 ("Lions Club Deed").

3. In the Lions Club Deed, Defendant Newberry Lions Club warranted title to the subject property.

4. Amick denies Plaintiffs have any interest or claim in and to the subject property and denies Plaintiffs have an easement over the subject property. However, if the Court finds Plaintiffs have an interest, claim, or easement in and to the subject property or liability is imposed upon Amick because of matters alleged in the Third Amended Complaint, the loss of clear title to the subject property or encumbrance that may result therefrom and any liability imposed upon Amick could only be derivative from and caused by the breach of deed warranty by Defendant Newberry Lions Club. Therefore, Newberry Lions Club is a person who may be liable to Amick for all or part of Plaintiffs' claim against him.

5. In the Lions Club Deed, Defendant Newberry Lions Club, as grantor, made the following covenants and warranties in favor of Amick:

> And the Grantor does hereby bind itself, its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs, Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

6. In the Lions Club Deed, Defendant Newberry Lions Club covenanted and warranted it had good and proper legal title to the subject property and that it was conveying good and proper title to the subject property, free and clear of any claims of third parties and free and clear of any easements.

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7. If the allegations of the Plaintiffs' Third Amended Complaint are true, which Amick denies, then Defendant Newberry Lions Club did not have good and proper legal title to convey to Amick.

8. In the Lions Club Deed, Defendant Newberry Lions Club warranted to Amick that it would defend title to the subject property.

9. Defendant Newberry Lions Club has a duty to defend and indemnify Amick from the claims of Plaintiffs.

10. As a result of the foregoing, Amick is entitled to an order and judgment in his favor and against Third-Party Defendant Newberry Lions Club (A) finding Newberry Lions Club must defend Amick from the claims of Plaintiffs; (B) finding Amick is entitled to be indemnified by Newberry Lions Club of and from (1) the claims of Plaintiffs, (2) any relief that may be awarded by the Court against Amick and in favor of Plaintiffs, (3) any loss or damage to be suffered by Amick arising out of Plaintiffs' Third Amended Complaint, and (4) the costs and attorney's fees Amick will incur in defending the claims of Plaintiffs; and (C) awarding Amick an appropriate monetary judgment against Newberry Lions Club, including pre-judgment interest.

WHEREFORE, having fully answered Plaintiffs' Third Amended Complaint and having set forth his Third- Party Complaint, Defendant and Third-Party Plaintiff C. Ray Amick requests the Court issue an Order:

A. Dismissing Plaintiffs' Third Amended Complaint;

B. Awarding Amick the relief requested in his Third-Party Complaint;

C. Awarding Amick attorney fees and the costs of this action; and

D. Awarding any such further relief as the Court deems just and proper.

SOWELL & DuRANT, LLC

By: s/Thornwell F. Sowell, III

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Attorneys for C. Ray Amick

Columbia, South Carolina
June 1, 2022

ELECTRONICALLY FILED - 2022 Jun 01 10:22 AM - NEWBERRY - COMMON PLEAS - CASE#2019CP3600245

ELECTRONICALLY FILED - 2023 Sep 05 3:18 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	) IN THE COURT OF COMMON PLEAS)) CASE NO.: 2018-CP-36-00089	
LISA SUMMER RICE and JOSEPH F. RICE, Plaintiffs, v. NEWBERRY LIONS CLUB and C. RAY AMICK, Defendants.	)	**PLAINTIFFS' JOINT MOTION FOR SUMMARY JUDGMENT** **(Easement/Injunction)**

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-36-00245
A. MURRAY GRAY, CLAUDE H. SCHUMPERT, and MELISSA B. SCHUMPERT, Plaintiffs, v. C. RAY AMICK and CHERYL LITTLEJOHN, Defendants.	

TO: DEFENDANTS NEWBERRY LIONS CLUB AND C. RAY AMICK AND THEIR ATTORNEYS JIM KOUTRAKOS, ESQUIRE, BIFF SOWELL, ESQUIRE, SAM PRICE, ESQUIRE, AND MARY CASKEY, ESQUIRE:

The Plaintiffs named above (Lisa Summer Rice, Joseph F. Rice, Murray Gray, and Claude Schumpert), by and through their undersigned counsel, do hereby move pursuant to the provisions of Rule 56 of the South Carolina Rules for Civil Procedure for Summary Judgment on the easement

and injunction claims asserted in these cases by Plaintiffs. As to these claims, there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law.

The motion is based upon the entire record in the cases, including, but not limited to, the pleadings, the depositions of the various parties and witnesses, and affidavits of witnesses, as well as the Order Granting Temporary Injunction in Case No. 2019-CP-36-0245 dated August 5, 2019.

Based on the documents in the record, including any memorandum of law or affidavits with additional documents that shall be supplied prior to a hearing on these motions, Plaintiffs have established their right to declaratory judgment that Plaintiffs have an easement and injunctive relief against the parties as described in the Complaint.

Dated: September 5, 2023

POPE PARKER JENKINS, P.A.

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Attorneys for Plaintiffs

ELECTRONICALLY FILED - 2023 Sep 05 3:18 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

ELECTRONICALLY FILED - 2023 Nov 29 4:37 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-36-00089

Lisa Summer Rice and Joseph F. Rice,

Plaintiffs,

vs.

Newberry Lions Club and C. Ray Amick,

Defendants.

DEFENDANT C. RAY AMICK'S NOTICE OF MOTION AND AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE EASEMENT ISSUE

Defendant C. Ray Amick ("Amick"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby files this renewed motion for summary judgment on the Sixth Cause of Action easement claim by Plaintiffs which asserts the right to an easement, whether implied, by estoppel, by prescription, by prior use, or otherwise, over the property owned by and belonging to Amick, referenced in the Fifth Amended Complaint as Lions Club Road and the fringeland parcel.[1] This renewed motion is made on the ground that there is no genuine issue of MATERIAL fact, and Amick is entitled to judgment as a matter of law. The grounds for this motion are as follows:

There is no proof herein that plaintiffs' use of Lions Club Road or the fringeland parcel heretofore was open and adverse to the rights of the prior owners, the Lions Club and SCE&G,

[1] Although Plaintiffs repeatedly reference "the boat ramp and the beach area" located on the fringeland parcel belonging to Amick in the allegations for their Sixth Cause of Action, Amick notes that nowhere in the Fifth Amended Complaint do Plaintiffs actually request, or provide any factual allegations to support the existence of, an easement over the fringeland parcel and Amick denies the existence of any such easement over that property. Nevertheless, to the extent Plaintiff's Sixth Cause of Action can be read to seek an easement over the fringeland parcel, Amick is likewise entitled to summary judgment as a matter of law on the easement issue with respect to that property for the reasons set forth herein.

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respectively. Rather, any such uses were permissive as set forth in the Fifth Amended Complaint and the depositions and affidavits herein.

For a prescriptive easement, plaintiffs must plead and prove by clear and convincing evidence that their use of the property was adverse or under a claim of right. *See Simmons v. Berkeley Elec. Coop, Inc.*, 797 SE 2d 387, 390 (2016). Evidence of permissive use defeats the establishment of a prescriptive easement. Further, a prescriptive easement requires continued adverse use for the full period of 20 years. There is no sufficient allegation or proof that the Lions Club or SCE&G ever expressed an intent by deed or otherwise that Lions Club Road or the boat ramp and beach on the fringeland parcel could be continually used by Plaintiffs after they purchased property from the Lions Club. *See Boyd v. BellSouth*, 633 SE 2d 136, 142 (2006).

An implied easement by prior use requires pleading and proof that the alleged easement is essential to the beneficial enjoyment of the dominant estate. Plaintiffs have not produced any evidence that they do not have other means of enjoying their properties, the dominant tenements. Further, the land that the Plaintiffs seek to enjoy by using the alleged easement is not their property; it is the fringeland parcel which has undisputedly always been owned by a third party—originally SCE&G and now Amick.

Regarding an easement by estoppel, Plaintiffs cannot enforce against Amick promises, if any, made by the Lions Club or SCE&G because the lack of an easement is of public record. There is no easement in any deed of public record, which Plaintiffs and their predecessors in title had knowledge or the means to obtain knowledge that there was no legal right. *See Boyd*, 369 S.C. at 423, 633 S.E.2d at 142. Further, Plaintiffs have failed to plead or prove with any particularity any promise by the Lions Club or SCE&G related to any easement contradictory to the public records.

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For the reasons stated, and based upon any further arguments to be made at a hearing of this matter, the Sixth Cause of Action in the Fifth Amended Complaint should be dismissed, and summary judgment granted to Defendant C. Ray Amick.

This motion is based upon the pleadings, affidavits and discovery herein, and Amick incorporates herein by reference the motion for summary judgment and memorandum in support filed by defendant Cheryl Littlejohn.

s/Thornwell F. Sowell, III

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ATTORNEYS FOR DEFENDANT C. RAY AMICK

Columbia, South Carolina
November 29, 2023

ELECTRONICALLY FILED - 2023 Nov 30 2:34 PM - NEWBERRY - COMMON PLEAS - CASE#2018CP3600089

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY LISA SUMMER RICE and JOSEPH F. RICE, Plaintiffs, v. NEWBERRY LIONS CLUB and C. RAY AMICK, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2018-CP-36-00089 **PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** **(Easement/Injunction)**

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY A. MURRAY GRAY, CLAUDE H. SCHUMPERT, AND MELISSA B. SCHUMPERT, Plaintiffs, v. C. Ray Amick and Cheryl Littlejohn, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2019-CP-36-00245

Plaintiffs submit this Memorandum in Support of their Motion for Summary Judgment and in Opposition to Defendants Amick and Littlejohn's Motions for Summary Judgment as to the Plaintiffs' right to a permanent injunction and declaration of an easement.

INTRODUCTION

As shown in the record in this case, Plaintiffs assert their rights to a permanent easement along Lions Club Road and its extension as a gravel road all the way to the boat ramp and beach area at what is referred to as "Lions Club Point." Plaintiffs claim, and have established, that there has been unfettered and continuous use of "Lions Club Road" by the landowners from

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State Park Road all the way to the boat landing, beach, and recreation area at the tip of Lions Club Point.

Circuit Judge Hocker held a hearing on June 19, 2019, to consider Plaintiffs' Motion for Temporary Injunction. After hearing arguments and reviewing 15 affidavits (many with exhibits attached), Judge Hocker found as a fact that the evidence showed "longstanding usage" of Lions Club Road to access the Lions Club Point fringe land by the property owners at Lions Club Point.

The Order of Judge Hocker also found that after Amick obtained a deed from the Lions Club in February 2018, he installed a rope barricade and no trespassing signs across Lions Club Road. Amick contended that because he owned the Lions Club property, he could control access and usage of the Lions Club Road at this whim. Judge Hocker found as fact and concluded as a matter of law that Plaintiffs had established the following:

a. Their right to a prescriptive easement, as the evidence showed that Plaintiffs had enjoyed the continuous and uninterrupted use or enjoyment of that right for more than 20 years;

b. Their right to an easement by estoppel because the Defendants did not object to the Plaintiffs spending money to improve the road and to maintain the boat ramp, nor was there a challenge Plaintiffs' right to do so; and,

c. Their right to an easement by prior use, as all parties to this suit trace their claims to the Lions Club having title and that the evidence showed that the Lions Club Road was constructed (as well as the boat ramp) for the express purpose of providing access to the boat ramp and beach area for the adjacent property owners.

Defendants Amick and Littlejohn filed Motions for Summary Judgment in these cases on August 13, 2020. The Plaintiffs filed their Motion for Summary Judgment on September 5, 2023. Plaintiffs filed their Memorandum in Opposition to the Amick and Littlejohn Motions for Summary Judgment and attached Exhibits A-AA (e-filed on August 21, 2020). This memorandum incorporates the previous memorandum of Plaintiffs (with all exhibits) and all

depositions and documents that have been filed since The Honorable Donald Hocker's Order Granting Temporary Injunction was filed on August 6, 2019.

Since that date, additional discovery has been exchanged between the parties and the following depositions are submitted by Plaintiffs in Support of their Motion for Summary Judgment and in Opposition to Defendants' Motions for Summary Judgment. They are attached as follows:

- Exhibit 1: Deposition of Clyde Eugene ("Gene") Crocker dated October 2, 2019;
- Exhibit 2: Deposition of Ladson Heath ("Pete") Simpson taken October 2, 2019;
- Exhibit 3: Deposition of Doggett Whitaker taken October 2, 2019;
- Exhibit 4: Deposition of Thomas D. "(Tad") Abraham taken January 28, 2020;
- Exhibit 5: Deposition of Nan Spicer taken January 28, 2020;
- Exhibit 6: Deposition of Julia Rebecca ("Becki") McSwain taken January 30, 2020;
- Exhibit 7: Deposition of Neel McSwain taken February 3, 2020;
- Exhibit 8: Deposition of Joseph Thaddeus ("Thadd") McCrackin taken February 6, 2020;
- Exhibit 9: Deposition of Murray Gray taken February 27, 2020;
- Exhibit 10: Deposition of Claude Schumpert taken February 27, 2020;
- Exhibit 11: Deposition of Melissa ("Missy") Schumpert taken February 27, 2020;
- Exhibit 12: Deposition of Thomas D. "(Tad") Abraham taken August 20, 2021;
- Exhibit 13: Deposition of Ray Amick taken September 2, 2021; and,
- Exhibit 14: Deposition of Cheryl Littlejohn taken September 2, 2021.

The testimony of these deponents, together with all materials and affidavits submitted to Judge Hocker by Plaintiffs in 2019, have corroborated and strengthened Plaintiffs' claims as set forth above.

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Prior to the hearing set by this Court on December 6, 2023, Plaintiffs will supply to the Court a supplemental legal memorandum supporting the denial of Defendants' Motion for Summary Judgment and the granting of Plaintiffs' Motion for Summary Judgment.

Respectfully submitted,

POPE PARKER JENKINS, P.A.

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November 30, 2023

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