

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in -Equity

Case Nos. 2002-CP-10-4880
2005-CP-10-4101

The Milton P. Demetre Family Limited Partnership, Plaintiff,

v.

Harry Beckmann, III, Patricia P. Beckmann,
Annie Ruth Hilton Crowley, Raymond Moody Crowley,
Donald William Crowley, Harris L. Crowley, Jr., and
Annie Ruth Crowley Atkinson, Defendants.

The Milton P. Demetre Family Limited
Partnership, Plaintiff,

v.

City of Folly Beach, Defendant,

and Emily S. Brown, Annie Ruth Hilton Crowley,
Harry Beckmann, III, and Patricia P. Beckmann, Intervenors,

Of Whom The Milton P. Demetre Family
Limited Partnership is the Appellant,

and City of Folly Beach, Emily S. Brown,
Annie Ruth Hilton Crowley, Harry Beckmann, III,
and Patricia P. Beckmann are the Respondents.

RECORD ON APPEAL
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

THE MILTON P. DEMETRE FAMILY) Civil Action No. 02-CP-10-4880
LIMITED PARTNERSHIP,)

PLAINTIFF,)

VS.)

CITY OF FOLLY BEACH,)

DEFENDANT,)

AND)

EMILY S. BROWN,)

INTERVENOR.)

ORDER

BY

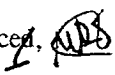
JULIE A. ARISTRONG
CLERK OF COURT

2005 DEC 14 AM 10:20

FILED

THIS MATTER came on to be heard before me on Monday, November 28, 2005, for a status conference, pursuant to Rule 16, SCRCP, and pursuant to a Motion for Leave to Join and/or Intervene, pursuant to Rule 24, SCRCP, by Harry Beckmann, III, Patricia P. Beckmann, and Annie Ruth Hilton Crowley ("Movants/Intervenors"). Present at the conference and hearing were Newman Jackson Smith, Esquire and Wade H. Logan, III, Esquire, of Nelson Mullins Riley & Scarborough, Attorneys for Plaintiff; O. Benjamin Peeples, Jr., Esquire, Attorney for Defendant, City of Folly Beach, who was also representing Joseph S. Mendelsohn, Attorney for Intervenor, Emily S. Brown; and C. C. Harness, III, the Attorney for Movants/Intervenors, and Defendants in Civil Action No. 05-CP-10-4101 filed by Plaintiff in the within action.



It appears from the record that the within action is one to quiet title to a portion of Indian Avenue East in the City of Folly Beach, which is undeveloped and unpaved, and which borders on Lots 201-205, Indian Avenue East, which belong to Plaintiff. By Order dated April 9, 2003, Emily S. Brown, the owner of Lot 204, Huron Avenue East, was allowed to intervene in the within action. By Order dated April 22, 2005, pursuant to a Consent Order of referenced,  the within action was referred to me with finality.

It appears, generally, that the rear of the lots on Huron Avenue East abuts Indian Avenue East. The attorneys for Plaintiff and the attorneys for Intervenor, Brown have advised the Court that they do not oppose the Motion by the Movants/Intervenors. The attorney for Defendant has consented to said Motion.

It further appears that while the within action involves only that portion of Indian Avenue East which abuts Lots 201-205, Indian Avenue East, that Plaintiff and Movants/Intervenors are involved in the other recently-filed action, Civil Action No. 05-CP-10-4101. Both that action and the within action involve, among the other issues, the issue of Plaintiff's title to Indian Avenue East. Thus, it appears that the other action, in which Movants/Intervenors are Parties Defendant, as well as the within action, have a question of law and/or fact in common, so that Movants/Intervenors should be permitted to intervene in the within action, pursuant to Rule 24(b) SCRCP.

It further appears to the Court that since Civil Action No. 05-CP-10-4101 has just recently been filed, the interests of justice require that said parties and their counsel should be afforded an adequate opportunity to engage in discovery and otherwise prepare for the trial of relatively complicated factual and legal issues. Now, therefore, it is



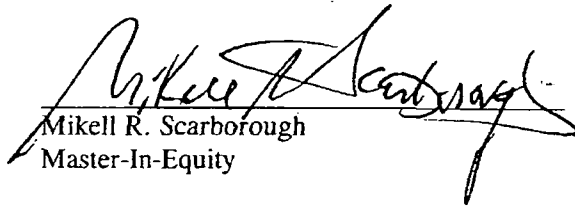
ORDERED, that the Motion of Movants/Intervenors for Leave to Intervene in the within action should be, and it is hereby granted; and it is

FURTHER ORDERED, that all parties hereto shall have until April 30, 2006 to complete discovery and to file any and all dispositive motions, any such discovery to apply in both actions; and it is

FURTHER ORDERED, that the within action should be, and it is hereby continued, for good cause shown, over any and all terms of court prior to July 1, 2006, after which time the case shall be subject to trial; and it is

FURTHER ORDERED, that the within action should be and it is hereby referred back to the Non-Jury Docket of the Court of Common Pleas for Charleston County, with the proviso that the case shall be subject to the deadline set forth herein, and with the further proviso that the Court should look favorably upon any subsequent matter to re-refer the case to the Master-In-Equity for trial, and look favorably upon any motion to consolidate the within action and Civil Action No. 05-CP-10-4101.

AND IT IS SO ORDERED!


Mikell R. Scarborough
Master-In-Equity

CHARLESTON, SC

December 13, 2005

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
The Milton P. Demetre Family)
Limited Partnership,)
)
Plaintiff,)

vs.)

Harry Beckmann, III and Patricia P.)
Beckmann and Annie Ruth Hilton)
Crowley, Raymond Moody Crowley,)
Donald William Crowley, Harris L.)
Crowley, Jr. and Annie Ruth)
Crowley Atkinson,)
)
Defendants.)

The Milton P. Demetre Family)
Limited Partnership,)
)
Plaintiff,)

vs.)

City of Folly Beach)
)
Defendant.)

and)

Emily S. Brown , Annie Ruth Hilton)
Crowley, Harry Beckmann, III, and)
Patricia P. Beckmann,)
)
Intervenors,)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2005-CP-10-4101

**ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY**

Civil Action No. 2002-CP-10-4880

**ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY**

FILED
2006 MAY 25 AM 9:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

It appearing that, pursuant to Rules 16 and 53 of the South Carolina Rules of Civil Procedure, the parties are in agreement that these matters are one of equity, and the issues in these actions may be referred to a Master in Equity in the above-listed county; now, on motion of the undersigned attorneys for the Plaintiff, Defendants and Intervenors;

IT IS HEREBY ORDERED that this action is referred to the Honorable Mikell Scarborough as Master in Equity, to take testimony and to direct entry of final judgment in this action under Rule 53(b), South Carolina Rules of Civil Procedure. Any appeal from the final judgment entered by the Master in Equity shall be directly to the South Carolina Court of Appeals pursuant to Rule 53(e) SCRCP and Rule 203(d) of the SCACR, effective June 1, 1999.

5/10 S. Jefferson
PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
5/23, 2006

I SO MOVE:

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PAID
DATE 5-22-06
AMOUNT 50.00
MIKELL B. SCARBOROUGH
MASTER IN EQUITY
BY: [Signature]

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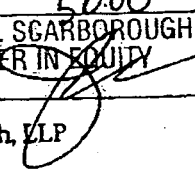
p.3

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PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT

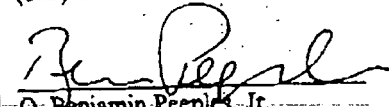
Charleston, South Carolina
_____, 2006

ISO MOVE:

PAID
5-22-06
DATE
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Milton P. Demetre Family Limited Partnership

☒ Plaintiff

v.

Harry Beckmann, III Et Al (4101)

City Of Folly Beach, Et Al (4880)

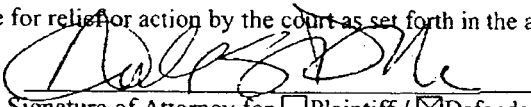
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2005-CP-10-4101 / 2002-CP-10-4880

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: See Attached, Bar No. Address: phone: fax: e-mail: other:		Defendant's Attorney: See Attached, Bar No. Address: phone: fax: e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: CONSENT/JOINT Motion for Reference to the Master-In-Equity Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant May 19, 2006 Date submitted			
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

**The Milton P. Demetre Family
Family Limited Partnership,**)

Plaintiff,)

vs.)

**Harry Beckmann, III,
Patricia P. Beckmann,
Annie Ruth Hilton Crowley,
Raymond Moody Crowley,
Harris L. Crowley, Jr., and
Annie Ruth Crowley Atkinson,**)

Defendants.)

**The Milton P. Demetre Family
Limited Partnership,**)

Plaintiff,)

vs.)

City of Folly Beach,)

Defendant,)

and)

**Emily S. Brown,
Annie Ruth Hilton Crowley,
Harry Beckmann, III,
Patricia P. Beckmann,**)

Intervenors.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2005-CP-10-4181

FILED
2007 MAR -7 AM 10:39
JULIE J. ARMSTRONG
CLERK OF COURT

CASE NO. 2002-CP-10-4880

FINAL ORDER



This case came before the Court for a non-jury trial on December 12, 2006. Attorneys Joseph Mendelsohn and Ben Peebles appeared on behalf of the Defendants Emily S. Brown and the City of Folly Beach, respectively. The Plaintiff was represented by Attorneys John Hughes Cooper, III and Cain S. Denny. Having reviewed the exhibits submitted by the parties and considering the testimony of witnesses and arguments of counsel, the Court concludes that judgment should be entered in favor of the Defendants Brown and the City of Folly Beach.

FACTUAL BACKGROUND

The Plaintiff brought this action to quiet title in the street located at the two hundred block of East Indian Avenue (hereinafter designated the "Street"), which borders other property it owns. The Defendant City of Folly Beach asserts ownership to the Street. The Defendant Emily S. Brown lives on the Street and has used it to access the back of her property since January 30, 1986.

The Island of Folly Beach was subdivided by the Jefferson Construction Company in 1920. This plat is indexed at Plat Book C at Pages 158 and 159 in the RMC Office for Charleston County, South Carolina. By 1965, the 1920 plat was suffering some significant wear and deterioration. There was a 1965 re-draw, and then a 1968 tracing. It appears that the 1965 re-draw actually added several parcels to the 1920 plat; however the 1968 plat is identical to the 1920 plat. All three plats share the exact same book and page number. For purposes of this case, the 1920 plat referred to will be the 1920 original plat.

Mr. Edward Seabrook (elder) had purchased most of Folly Island at a Master's sale. His Master's Deed was dated and recorded January 5, 1943 in Book R041 at Page 227 in the RMC Office for Charleston County, South Carolina. He devised the property to his wife and son, Mr. Edward Seabrook (son).

The Plaintiff purchased a quit-claim deed to the Street from Edward M. Seabrook, dated May 30, 2002 and recorded May 31, 2002 in Book V407 at Page 067 in the RMC Office for Charleston County, South Carolina.

DISCUSSION

The City of Folly Beach relies on two theories to support their ownership of the Street. These are: (i) dedication by deed; and (ii) dedication by plat with acceptance by use.

(I) DEDICATION BY DEED

The City of Folly Beach asserts that the Folly Beach Improvement Company sold all the streets, avenues and/or lanes in and upon Folly Island to the Board of Township Commission of Folly Beach by deed dated and recorded May 24, 1937 in Book S037 at Page 124 in the RMC Office for Charleston County, South Carolina, which references the 1920 plat.

The deed was accepted. Recording of the deed constitutes a positive act of acceptance by the City of Folly Beach. 23 Am.Jur.2d Section 175, at 197. The deed has no limiting language and the Grantor's successors cannot attack this deed sixty-nine years after it was granted.



The Island of Folly was mortgaged by the Jefferson Construction Company by mortgage dated January 22, 1926, which preceded this deed. This mortgage was later foreclosed and Edward Seabrook (elder) purchased the Island of Folly Beach, excepting property already sold, at the foreclosure sale. The Township Commission was not named as a defendant in the lawsuit or in the foreclosure order. The Master's Deed specifically exempts the property described as:

"... such lots and portions of land as have from time to time been conveyed to sundry parties by Folly Beach Corporation and Folly Beach Improvement Company by deed recorded in Charleston County, S.C."

Plaintiff's witness Ms. Sullivan, an attorney and title expert, testified that when Mr. Seabrook (elder) bought the property, he did not get the lots or other portions of land that had already been conveyed. The streets on the 1920 plat had already been conveyed. (Tr. p. 57, l. 3-6).

The City's deed preceded the Master's Deed. To hold that the deed was subject to the foreclosure action, with no evidence to support this, would mean that the estate of Edward Seabrook owns all of the streets on the entire Island of Folly Beach. This is simply not supported by fact or law.

(II) DEDICATION BY PLAT WITH ACCEPTANCE BY USE

"The determination of whether a road has been dedicated to public use is an action in equity." Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995).

South Carolina Law recognizes two types of implied dedication. "One, where the question of implied dedication arises from the sale of land with reference to maps or plats; the other, when the dedication arises ... from an abandonment to or an acquiescence in the public use." Shia v. Pendergrass, 222 S.C. 342, 348, 72 S.E.2d 699, 701 (1952).

No formal acceptance by the public of an offer of dedication is necessary. An acceptance of the offer may be implied by the public's or public authority's continuously utilizing or maintaining the property in some fashion. Tupper, 326 S.C. at 326, 487 S.E.2d at 191-192.

Most of the roads on Folly Beach are maintained by the State of South Carolina or County of Charleston, but Folly Beach does some minimum maintenance on the roads that have not been incorporated into the State or County system. The City of Folly Beach asserts that it has maintained the second block of East Indian Avenue. The Street was paved at one time. Defendant's Exhibits 1, 2, 3 and 4 show asphalt visible at the edges of the potholes. Witnesses Benson and Brown testified that the Street had been paved.

The Street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into a wooded area.

A recorded plat may be sufficient to disclose a landowner's intent to dedicate property to public use. McAllister v. Smiley, 301 S.C. 10, 15, 389 S.E.2d 857, 861 (1990).

"If a landowner subdivides and plats an area of land into lots and streets and then sells lots with reference to the plat, the owner manifests intent to dedicate those common areas to be used by both the purchasers and the public, absent evidence of a contrary intent." Corbin v. Cherokee Realty, 229 S.C. 16, 91 S.E.2d 542 (1956). There was no evidence of any contrary intent on the 1920 plat.

The Street is shown on the original 1920 plat as well as the 1965 re-draw and the 1968 tracing. It is undisputed that Edward Seabrook, both elder and son, sold property from this plat. (Sullivan's Testimony, Tr. p. 81, l. 6-10).

"Acceptance of dedication may be shown by use by a comparatively small number of persons, as ~~the~~ ⁱⁿ case of a short street to the seashore." 23 Am.Jur.2d *Dedication* Section 54, at 48.

The Defendant Brown and her husband relied on this plat when they purchased their property. They have used the Street to access their property almost continuously from January 30, 1986. Peter Milton Demetre (son of Plaintiff) testified that he witnessed the Browns use the Street at least once a day each since 2002. (Tr. p. 176, l. 3-5).

While there appears to be no written acceptance of an official dedication, the testimony is un-contradicted that Folly Beach maintained the Street at some time, although admittedly intermittently, and cleared trees and brush from it after Hugo. The Street has been paved almost to the Brown property, (Tr. p. 200, l. 4) and maintained by the City of Folly Beach. (Tr. p. 202, l. 5, 10). It is also admitted that members of the public use the Street for parking. The public parks on the Street, walks their dogs there, and joggers use it.

The county mosquito control authority also drives down the Street to spray there. The Street has been used and maintained in some fashion over the years. (Brown Testimony, Tr. p. 196, l. 6-20).

Wallace Benson, in his testimony, stated that the pavement extended all the way down the Street. He further testified that Folly Beach filled in potholes in the Street when he

MLS and Creditable on the Issue.

was public safety director from 1976 to 1981. The City also put dirt in where the pavement had deteriorated. (Tr. p. 223, l. 5-19). *I find Mr. Benson especially knowledgeable*

The property was not carried on the tax rolls and did not have a tax map number. The City did not tax the property, evidencing further acceptance by the City of the dedication. Seabrooks, elder and son, sold property referencing the 1920 plat for over seventy years. There exists no evidence in the record that Mr. Edward Seabrook, elder or son, or any of their predecessors in title, objected to the City's improvement of the Street. There is no evidence that either of the Seabrooks objected to use by the public until the Plaintiff brought this action.

Here, the evidence is sufficient to show an offer by the owner to dedicate the Street and it was accepted. The City or some governmental entity paved the Street, maintains it, and removed trees after Hugo. It is used by the public for both parking and walking. Additionally, at least two members of the public have used it continuously to access their property with their automobiles, trucks and vans on a daily basis for over twenty-one years.

CONCLUSION

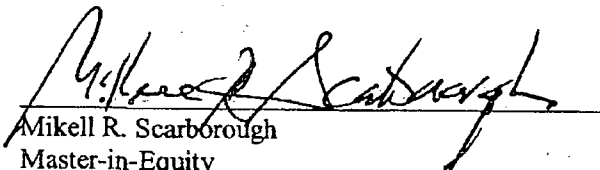
I find the Street was deeded to the Board of Township Commission of Folly Beach by deed dated and recorded May 24, 1937 in Book S037 at Page 124 in the RMC Office for Charleston County, South Carolina; and, furthermore dedicated by plat and accepted by use.

NOW THEREFORE, based on the above Findings of Fact and Conclusions of Law,

IT IS, HEREBY ORDERED, ADJUDGED AND DECREED that the City of Folly Beach is the owner of the Street.

MLS

AND IT IS SO ORDERED!


Mikell R. Scarborough
Master-in-Equity

March 2, 2007.
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

v.)

Harry Beckmann, III, Patricia P.)
Beckmann, Annie Ruth Hilton)
Crowley, Raymond Moody)
Crowley, Donald William Crowley,)
Harris L. Crowley, Jr. and)
Annie Ruth Crowley Atkinson,)

Defendants.)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

v.)

City of Folly Beach,)

Defendant,)

And)

Emily S. Brown, Annie Ruth)
Hilton Crowley, Harry Beckmann,)
III and Patricia P. Beckmann,)

Intervenors)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION No. 2005-CP-10-4101

FINAL DECISION AND ORDER

CIVIL ACTION No. 2002-CP-10-4880

FINAL DECISION AND ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2007 MAR 26 PM 12:51

FILED

APPEARANCES:

John Hughes Cooper and Cain Denny for the Plaintiff

Amber S. Deutsch and Jefferson D. Griffith, III for Defendants/Intervenors Beckmann and
Crowley

Joseph S. Mendelsohn for Intervenor Emily Brown

O. Benjamin Peeples for Defendant City of Folly Beach

STATEMENT OF THE CASE

This matter is before the Court by way of Civil Action No. 2005-CP-10-4101, which was filed in the Court of Common Pleas on October 7, 2005. This complaint sought a Declaratory Judgment on the ownership of the subject property and the validity of the dock permits, as well a Decree to Quiet Title, and an injunction and damages for trespass and nuisance. A separate action, 2002-CP-10-4880 was filed against the City of Folly Beach. These two matters were consolidated and referred by consent to the Master-in-Equity on August 21, 2006.

Plaintiff Milton P. Demetre Family Limited Trust is a South Carolina limited partnership organized under the laws of the State of South Carolina; the City of Folly Beach is a South Carolina municipality and is the location of the subject property; the remainder of the Defendants/Intervenors are property owners and residents of Folly Beach, South Carolina. The causes of action for damages have been stricken; as such, the court of equity is the property venue for this matter to be heard. Based on these facts, jurisdiction and venue are proper in this Court.

BACKGROUND

The Defendants are owners of real property on Folly Beach. Mr. and Mrs. Harris L. Crowley acquired Lot 210 East Huron Avenue on September 2, 1964, and Mr. and Mrs. Harry Beckmann acquired Lot 209, East Huron Avenue on April 27, 1972. (Tr. pp. 269, 327; see Chains of Title in Plaintiff's Ex. Q & R) The Beckmann lot has been occupied continuously as a primary residence since the time of purchase, and the Crowley home was built subsequent to the purchase. (Tr. 269-70, 328).



Deposition and live testimony have established that Defendants Beckmann and Crowley have considered as their own, all property behind their own homes, down to the marsh. (Tr. pp. 272, 285-87, 294-95). They hold the belief that all marshland is owned by the state, but that everything between their homes and the State's marshlands, is theirs. (Tr. p. 310). They have used such property for its available use, and with all intent to exclude others and the world as a whole, since the time of their purchase. (Tr. pp. 286-87, 294-95). They have occupied all of the highland, have collected driftwood from the marsh and high land, and have maintained and cleaned such areas as are impacted by debris and litter, throughout the year. (*Id.*, Tr. p. 328).

In November and December of 1987, the parties sought from the (then) South Carolina Coastal Council, a permit to build a dock. (Tr. pp. 276, 329). Materially, both applicants submitted the same application, with the only changes being the names on the applications. (Plaintiff's Ex. 22,23) A permit was issued to the Beckmanns to build a dock from Lot 209, East Huron Avenue and to the Crowleys to build a dock from Lot 210, East Huron Avenue. These docks were built immediately after these permits were issued. (Tr. pp. 283-84)

In September 1989, Hurricane Hugo destroyed the subject docks. When the Beckmanns and Crowleys sought a permit to reconstruct their docks, Coastal Council denied their request. (Tr. p. 288). The parties appealed this denial, resulting in litigation. Ultimately, Coastal Council was ordered by the Court to issue a permit for construction in 1990. The docks on the subject property were immediately rebuilt.



Milton P. Demetre on behalf of the Milton P. Demetre Family Limited Partnership purchased property in this area of Folly Beach, beginning in 2002. (Tr. p. 120). Lot 209 and 210 of East Indian Avenue were purchased in January of 2004. (Tr. p. 120, Plaintiff's Ex. D) This suit was filed on October 7, 2005, more than 41 years after the Crowley purchase and more than 33 years after the Beckmann purchase.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following Findings of Fact by a preponderance of the evidence:

1. Mr. and Mrs. Harris L. Crowley acquired Lot 210 East Huron Avenue on September 2, 1964. The home was built subsequent to the purchase, and has been continuously occupied since the completion of the home. Mr. Crowley (now deceased) and Mrs. Annie Crowley considered the entire property from the edge of Huron Avenue to the marsh of the Folly River, to be theirs alone.
2. Mr. and Mrs. Harry Beckmann acquired Lot 209, East Huron Avenue on April 27, 1972. The Beckmann lot has been occupied continuously as a primary residence since the time of purchase. Mr. and Mrs. Beckmann have considered the entire property from the edge of Huron Avenue to the marsh of the Folly River, to be theirs alone.
3. Both parties hold the belief that if they do not own the marshland, it is owned by the State, but that everything in between their homes and the State's marshlands, is theirs.
4. Both parties have used such property for its available use, and with all intent to exclude others and the world as a whole, since the time of their purchase. This was demonstrated throughout their ownership by occupation of the highland, collection of driftwood from the

marsh and high land, and maintenance and cleaning such areas as are impacted by debris and litter, throughout the year.

5. In November and December of 1987, the parties sought from the (then) South Carolina Coastal Council, a permit to build a dock. Materially, both applicants submitted the same application, with the only changes being the names on the applications. A permit was issued to the Beckmanns to build a dock from Lot 209, East Huron Avenue and to the Crowleys to build a dock from Lot 210, East Huron Avenue. These docks were built immediately after these permits were issued.

6. In September 1989, Hurricane Hugo destroyed the subject docks. When the Beckmanns and Crowleys sought a permit to reconstruct their docks, Coastal Council denied their request. The parties appealed this denial, resulting in litigation regarding a public oyster bank. This litigation did not concern ownership of property, notice to adjacent property owners, or the merits of the permit applications. See Harris Crowley v. S.C.C.C., CC-87-337 and Harry Beckmann v. S.C.C.C., CC-87-368.

7. Coastal Council was ordered by the Court to issue a permit for construction in 1990. The docks on the subject property were immediately rebuilt.

8. Milton P. Demetre on behalf of the Milton P. Demetre Family Limited Partnership. ("Demetre L.P.") purchased property in this area of Folly Beach, beginning in 2002. (Tr. p. 120) Lot 209 and 210 of East Indian Avenue were purchased in January of 2004. (Tr. p. 120, Plaintiff's Ex. D)

9. This suit was filed on October 7, 2005, more than 41 years after the Crowley purchase and more than 33 years after the Beckmann purchase.



10. Demetre LP purchased the property with full knowledge of and notice of the presence of the Crowley and Beckmann docks having been in place for more than 15 years.

CONCLUSIONS OF LAW

As to ownership of the Property

I address this issue first, as it has ramifications for each of the remainder of the causes of action and defenses. This issue is knowledge of ownership. When the Beckmanns and the Crowleys purchased their property, the property description in their Deed referred to a plat drawn in 1920 and recorded in Plat Book C, page 158. This plat showed no lots between the Huron Avenue lots and the marsh abutting the Ashley River. When the dock applications were being submitted, Mr. Beckmann sought adjacent property ownership information from the City of Folly Beach, and was shown the same 1920 plat which was hung on the wall of City Hall.

Subsequent to these purchases, there were two re-draws of the 1920 plat, both of which were recorded. These re-draws created lots on Indian Avenue, those lots now owned by the Plaintiff. This may have given the Defendants notice that the property could be claimed by a future owner, which the Demetre L.P. became in 2004. However, neither the Beckmanns nor Mrs. Crowley would have had reason or justification for checking for amended plats until such time as the property began to be used or they received notice of the alleged trespass. At this point, all time limits for action had run. Thus, the Court find that the Beckmanns and Crowleys were not aware of the Indian Avenue lots, nor would they have been expected to be until such time as the Demetre L.P. gave notice of such.



As to Trespass

The Plaintiff Family Partnership charges that the Defendant Property Owners have committed trespass to its property. Such allegations contemplate an invasion onto the subject property by constructing a dock on it. Trespass is defined as a voluntary entry by the defendant on to property in the legal possession of the plaintiff without permission. Ravan v. Greenville County, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct.App.1993); see also West v. Newberry Elec. Co-op., 357 S.C. 537, 544, 593 S.E.2d 500, 503 (Ct.App.2004) (quoting Hedgepath v. Am. Telephone and Telegraph Co., 348 S.C. 340, 559 S.E.2d 327 (Ct.App.2001)); accord Silvester v. Spring Valley Country Club, 344 S.C. 280, 286, 543 S.E.2d 563, 566 (Ct.App.2001). That allegation is not supported by the facts in evidence.

There was a voluntary entry by the Defendants onto property they considered to be their own. As it was their own property, no permission from an outside source was needed. The Defendants had been treating the property as their own, using the property on their own, believed it to be own and represented it to outsiders as their own. The intent to enter onto the property of another is not present herein. As such, no trespass is proven by the facts.

As to Nuisance

The Plaintiff Demetre L.P. charges that the Defendant Property owners have created a nuisance by construction of their docks, which has interfered with the Plaintiff's use and enjoyment of the subject property. A nuisance is anything that works hurt, inconvenience or damage; an unlawful use of property causing material annoyance, discomfort or harm to another person. 58 Am.Jur.2d *Nuisances* § 1 (2002); see also Overcash v. SCE&G, 356 S.C. 165, 588 S.E.2d 116 (2003). More directly, it is the unreasonable interference with the use and enjoyment

of property, the Defendant's actions being the proximate causation of the interference. "The distinction between trespass and nuisance is that trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property, whereas nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property. Silvester, *supra*, 344 S.C. at 286, 543 S.E.2d at 566; *see also* F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 427 (2d ed. 1997) ("The requirement of a physical entry distinguishes trespass from nuisance, which protects the right to enjoyment of land rather than the right of possession.").

The elements of this cause of action are not met. The Plaintiff could make no use of the marshlands, so there is no unreasonable interference. The highland claimed to be owned by the Demetre Family Limited Partnership, is not sufficiently sizable or compliant with zoning regulations, to allow any other use of the land but passive. (Tr. p. 19). No house could be built on the land, no commercial use could be made of the property; and no dock could be built on it under current OCRM regulations, according to the testimony of Surveyor Larry Kennerty. (Tr. p. 19). Finally, the Defendant's actions are not the proximate cause of the interference – Demetre L.P.'s decision to purchase property on which there were known docks built was the cause of the interference with his use and enjoyment, was what brought itself to the injury rather than an injury being brought to it. To be plain, the docks were there first, the Plaintiff came to purchase the property with knowledge of the docks; he brought himself to the interference. For these reasons, and the lack of interference in any actual use or enjoyment, the requirements for nuisance are not met.



It is crucial at this juncture to reiterate that any property that falls below Mean High Water ("MHW") does not belong to the Plaintiff, but rather belongs to the state unless and until a declaratory judgment action is filed in Circuit Court pursuant to S.C. Code Section 448-39-220 and a sufficient Sovereign Grant is confirmed by Order. No such action has been filed in this matter, as this Court took Judicial Notice at the end of the hearing. (Tr. p. 345) As such, any claim to marshland or small marsh islands below mean high water fails.

a. Statute of Limitations for Nuisance

"... In South Carolina, nuisances may be classified as either continuing or permanent. The traditional concept of a nuisance requires a landowner to demonstrate that the defendant unreasonably interfered with his ownership or possession of the land. See Ravan v. Greenville County, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct.App.1993). The distinction between trespass and nuisance is that trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property, whereas nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property. *Id.* A nuisance may be classified as permanent or continuing in nature. A continuing nuisance is defined as a nuisance that is intermittent or periodical and is described as one which occurs so often that it is said to be continuing although it is not necessarily constant or unceasing. 58 Am.Jur.2d *Nuisances* § 28 (1989). A permanent nuisance may be expected to continue but is presumed to continue permanently, with no possibility of abatement. *Id.* § 27. As to a permanent nuisance, such as a building or a railroad encroaching on a party's land, the injury is fixed and goes to the whole value of the land. *Id.*

When the statute of limitations begins to run hinges on whether a nuisance is classified as permanent or continuing. *Id.* § 26; see *Glenn*, 294 S.C. at 535-36, 366 S.E.2d at 50-51. When the

nuisance is permanent in nature and only one cause of action may be brought for damages, the applicable statute of limitations bars the action if not brought within the statutory period after the first actionable injury. 58 Am.Jur.2d *Nuisances* § 307 (1989). ...” Thomas J. and Carolyn Silvester v. Spring Valley Country Club, *supra*.

A nuisance may be classified as permanent or continuing in nature. A continuing nuisance is defined as a nuisance that is intermittent or periodical and is described as one which occurs so often that it is said to be continuing although it is not necessarily constant or unceasing. 58 Am.Jur.2d *Nuisances* § 28 (1989). A permanent nuisance may be expected to continue but is presumed to continue permanently, with no possibility of abatement. *Id.* § 27. As to a permanent nuisance, such as a building or a railroad encroaching on a party's land, the injury is fixed and goes to the whole value of the land. *Id.*

The dock in issue, like a railroad track on property, would be a permanent nuisance. For that reason, the statute of limitations begins to run at the initial injury. Assuming for the sake of argument that the construction of the dock was on land owned by the Plaintiff, that injury is far enough in the past that the statute of limitations on that injury expired many years ago, and this cause of action should properly be dismissed.

b. Statute of Limitations for Trespass

Plaintiff Demetre L.P. was aware that the docks were on the property when it purchased the property, and Mr. Demetre testified that he associated these docks with the houses on the “second row” of lots. (Tr. p. 133). It is clear from testimony that Plaintiff Demetre L.P. did sufficient research prior to purchasing the property to obtain the records of the Office of

Coastal Resource Management and knew from those records that they docks had originally been permitted in 1987. The docks are permanent in nature and the Plaintiff or his predecessor in title should have brought suit within the three year statutory time period for damages to real estate established in South Carolina Code Annotated, Section 15-3-530(3). Plaintiff must act within the time period when he knew or should have known that the trespass was taking place. The Court of Appeals in Thurston Glenn v. School District No. Five Of Anderson County, et al.; 294 S.C. 530; 366 S.E.2d 47 (1988) stated the following:

“(w)e now address Glenn's argument the trial court erred in concluding his suit was barred by the statute of limitations because it is inferable from the facts that modifications to the drainage system occurred during the six year period immediately preceding the institution of this action.(fn3) He also argues that his damages are ongoing and abatable and thus he may file suit at any time. Further, he contends the respondents created a continuing nuisance for which suit may be brought for injury to his property after each successive rain which occurred within the limitations period. In ruling on these points, the trial court cited language from *Webb v. Greenwood County*, 229 S. C. 267, 92 S. E. (2d) 688 (1956) as follows:

‘If the injury complained of is of such a permanent character, then it follows that the plaintiff has a single cause of action which cannot be split.... A single action only may be maintained for all damages present and prospective caused by a permanent structure, properly built, properly maintained, and not abatable.’ 229 S. C. at 277, 92 S. E. (2d) at 692.”
(emphasis added)

It thus follows that since the docks are permanent in nature that the three-year statute of limitations has passed and this cause of action should be dismissed.

These two causes of action (trespass and nuisance) are dismissed, and thus the remainder of the Plaintiff's argument is not reached. The causes of action allege that the Defendants have trespassed or created a permanent nuisance on the Plaintiff's property. The alleged trespass or nuisance is such that since the statute of limitations has long passed they are not now required to

remove them, nor pay rental for them, nor any other damage to the Plaintiff, either permanent or prospective. Thus even if Plaintiff is the owner of the underlying realty, the Defendants are allowed to keep their docks for so long as they are willing to maintain them and continue to keep the permits in good order.

As to Estoppel

The basic principal of estoppel is that one is prevented by his own acts from claiming a right to the detriment of another party who was entitled to rely on such conduct and has acted accordingly. Black's Law Dictionary, Sixth Ed., page 551. See also Gibbs v. Kimbrell, 311 S.C. 261, 268, 428 S.E.2d 725, 729 (Ct.App.1993). In this case, there are three valid applications of the estoppel doctrine.

It is a well-established principle in South Carolina that estoppel by silence arises when one party observes another dealing with his property in a manner inconsistent with his rights and makes no objection while the other party changes his position based on the party's silence.

Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 356 S.E.2d 411

(Ct.App.1987). When the Beckmanns and Crowleys applied for a dock permit, no objection to the dock or its location was made by any adjacent property owner or member of the public who received notice by newspaper. (Tr. p. 279). The permit was issued by the Coastal Council, and the dock was built.

The dock construction was obvious and notorious, due to the fact that it was large, visible, and viewable from the nearby bridge. (Tr. pp. 283-84). At minimum, this gave inquiry notice to all those who saw the dock and may have objected. Beach Co. v. SC-DHEC, 04-ALJ-07-0199-CC; Straker v. Lexington Co. Rec. Comm., 332 S.C. 54, 504 S.E.2d 11 (1998). At the

time of the permit application and at the time of the construction of the dock, no one asserted trespass or nuisance, or contested ownership of the property upon which the docks were built. (Tr. p. 276). The Beckmanns and Crowleys were entitled to rely on the assumption that no one objected to the dock or its site, and they expended funds to construct the dock.

In 1989, Hurricane Hugo destroyed the Beckmann and Crowley docks. The Beckmanns and Crowleys applied for a permit from the Coastal Council to rebuild the dock. The request was denied based upon oyster bank issues, and the denial was appealed. Ultimately, the Beckmanns and Crowleys succeeded in the appeal, and were granted the right to rebuild their docks. The permit denial and appeal had no issue of property ownership, trespass or nuisance – it was merely about issues of application of the regulations regarding the right to rebuild depending on how damaged the dock was. (Tr. p. 288). When the Beckmanns and Crowleys were granted the right to rebuild, they did so. No objection came at this time either, regarding property ownership, trespass or nuisance. Again, the Beckmanns and Crowleys relied to their detriment on this lack of objection or assertion of right, by expending the time, effort and money to litigate the appeal, as well as the time, effort and money to rebuild the dock.

The final representation to the Beckmanns and Crowleys came at the resale of the property. The Milton P. Demetre Family Limited Partnership purchased the property in question in 2004. At no time prior to the purchase did the Partnership pursue the issue of ownership of the property crossed by the docks, no contingency was put in place regarding removal of the docks, and no representative from the Partnership nor its Agents spoke to the Beckmanns or Mrs. Crowley prior to closing on the land. Milton Demetre testified that he was aware of the presence of the docks when he inspected and purchased the property. (Tr. p. 133) He brought himself to the known damage. The predecessor in title to the property, Mr. Seabrook, failed to object to the

docks when he owned the property, and is bound by his silence. Mr. Demetre was aware of the issue prior to his purchase, and is thus bound by Mr. Seabrook's silence as well. The Defendants relied on the silence several times, to their detriment of funds and time. As such, Mr. Demetre and his trust are now estopped from claiming harm or damage.

As to the Defense of Laches

Negligent failure to act in a timely manner, or within a reasonable period of time, justifies the defense of laches. Siau v. Hagley Estates Property Owners Association, 2006 WL 1814309 (Ct. App. 2006). The nearly 20 year delay after the initial building of the docks before bringing an action for trespass and nuisance, and the 40 year delay after the families begun using the upland property as their own, is unreasonable and has worked injury, prejudice and disadvantage. The injury is multi-fold: had an objection come within the first few years, the Defendants would not have the expense and time spent to be permitted for, and to rebuild the original dock after Hugo; they would not have had to bear the costs and burden of caring for the land, including maintenance and pollution and debris removal. There is prejudice against the Defendants as a result of the extreme delay. Finally, all those persons who would have relevant information regarding the status of the docks, ownership, etc. (such as Mr. Harris Crowley and Mr. E.M. Seabrook) are now deceased and can no longer give evidence that would have been necessary for the litigation of these issues.

Since the Defendants' docks have been present for a period of nearly 20 years, readily visible to anyone who traverses the Folly River onto Folly Beach, I find that Plaintiff and its predecessor in title had actual or inquiry notice of the existence of the docks. Cook v. Knight, 106 SC 310, 91 SE 312 (1917). Had Mr. Seabrook sought to preserve his claim of ownership to the land, he could have fought the Defendants' placement of the docks into the River. To require

the Defendants to remove the docks now based upon Plaintiff's claim to superior title to the land, after such a passage of time, would be unfair and inequitable.

As to the Defense of Staleness of Demand

The Defendants are at a disadvantage as a result of the delay for several reasons: they are now much older and living on fixed incomes, without the funds they may have had available to them, to fight this action, that they had when they were younger property owners; Mr. Crowley has died so there is no way to ascertain his knowledge or intent with the property; Mr. Seabrook has died so there is no way to determine his position on the issues; and the staff that was employed by the City and the Coastal Council at the time of the permit issuances are now employed elsewhere, have lost recall of the circumstances, or have retired.

"The instant case certainly comes within the following definition of "stale demand" found in 21 C.J., page 211, and quoted with approval in *Bell, Probate Judge v. Mackey*, 191 S. C. 105, 3 S. E. (2d) 816, 824: "One that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied." See also 30 C.J.S., Equity, § 112. *Presbyterian Church of James Island v. Pendarvis*, 227 S. C. 50, 86 S. E. (2d) 740 (1955).

While the delay in the James Island case was a lengthy one, the same principle was applied in the case of Ruben L. Gray and Ernest A. Finney, Jr., formerly d/b/a Finney & Gray, Attorneys, v. S.C. PSA, *supra* at 397, 325 S.E.2d 547 (1985) a delay of 35 years and 10 years respectively was found to create a stale demand.

Based on these facts and arguments, considering the specific circumstances of this individual matter, it is clear that the delay between the initial purchase of the lots and use of the highland allegedly behind the lots, the time that the docks were built and rebuilt, and the time

this action was filed, there has simply been too much delay and prejudice to allow these causes of action to stand in a Court of Equity.

As to the Defense of Unclean Hands

The doctrine of unclean hands will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the plaintiff. First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568-69, 511 S.E.2d 372, 379 (Ct. App. 1998). The Defendants allege that that Plaintiff has unclean hands in the following particulars: The docks in question were built originally in 1987. They were again built in 1989, after Hurricane Hugo. The Defendants have paid the cost for a dock twice, including the cost of permitting, construction and, before the 1989 rebuild, litigation against the Agency which resulted in the Agency being ordered to allow for the post-Hugo rebuild of the dock. Mr. Demetre testified at deposition that he was aware of the docks being in place prior to his purchase of the marsh lots.

Q: Did you ask Mr. Seabrook about these docks at all?

A: Yes, I did.

Q: And what did he tell you?

A: He said that he had never sold the two lots and had never given any permission to build any docks on them.

Mr. Demetre, who considers himself a "sophisticated purchaser" (Demetre deposition, p. 19; ll. 1-5), had full notice of and knowledge about the existence of these structures on the property, and he still chose to purchase. He did not make removal of the docks a condition of his purchase offer, and he did not ensure that he got title in such a way that there were any warranties from his predecessor in title. Finally, he never spoke to the owners of the docks prior to his purchase.

Mr. Demetre testified in his deposition that he bought by quitclaim deed, because that is all that Mr. Seabrook would give. Mr. Demetre was not forced or legally obligated to purchase

these properties – he could have chosen not to purchase based upon what he knew was on those lots. Yet with full knowledge he bought these properties, with no warranties. His intentions herein are questionable given the knowledge he had, the experience he has and the low price of the waterfront lots. His lack of action, as listed above culminated in the Plaintiff's unclean hands in this action. Unclean hands will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the plaintiff, and so it is in this case.

As to Adverse Possession and the 20-year Presumption of Grant

The Defendants claim to have been in possession of the property beyond their original boundaries as shown on either version of the plat of their property. Based upon testimony of use, Defendants are claiming title to property in excess of the boundaries shown on their plats. They have used the property between their property lines and the mean high water mark of the Folly River ever since they purchased their property. They have done so without interference until the filing of this Complaint by the Plaintiff.

The Defendants argue that they own and have exercised dominion over the property extending beyond their property line to the Folly River for a period of time in excess of 20 years and that the State of South Carolina has perfected title in the Defendants by action of the Common Law presumption of grant. Alternatively, they claim adverse possession of the land in excess of ten(10) years or twenty (20) years by way of tacking. See Knox v. Knox, 322 S.C. 64, 472 S.E.2d 43 (1996).

While this argument may be valid as between the Plaintiff and these Defendants, I have ruled in case No. 2002-CP-10-4880 which was tried along with this case, in an order filed March 7, 2007, that title to the roadway is vested in the Defendant City of Folly Beach. Because of this

ruling, I find that the parties' claim to the disputed land which includes the roadway fails because I find and conclude that title to the roadway is held by the City for the benefit of the public.

As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland. Therefore, I conclude any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina to challenge its presumptive title to the marsh which can only be overcome by evidence which is clear and convincing. Coburg v Lesser (I), 309 SC 252, 422 SE2d 96 (1992).

As to Ripeness (Declaratory Judgment on the Permits)

The issuance of the permits to the Beckmanns and Crowleys is not an issue ripe for adjudication, but rather is moot. There is no subject matter jurisdiction within the Court to allow for a declaratory judgment on the validity of the permits. The Plaintiff has not followed the statutorily required appeal procedures. The Plaintiff has also not named the State or its divisions in this suit, and the Court cannot bind a non-party with an Order. There are specific appeal procedures listed in 23 A S.C. Code Regs. Ann. 30-1 et seq., the operational regulations promulgated for the Office of Ocean and Coastal Resource Management, to appeal a permit issuance. The appeal period on the permits ran decades ago. The alternative is for the Court to Order the Agency to revoke the permits pursuant to S.C. Code § 48-39-50(H). The Agency has declined, as it has the discretion to, to revoke the permit. This is an issue for the administrative courts – or would have been seventeen years ago when the docks were built for the second time.

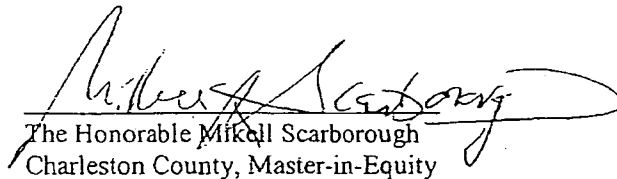
I further find that this issue was abandoned by plaintiff at the outset of the trial. Tr.4, L1.

CONCLUSION

Based upon the above, having taken into account all evidence and testimony, I make the following Order:

1. That all Claims of the Plaintiff are dismissed for failure to pursue such causes of action in a timely manner.
2. That title to the road is confirmed in the Defendant City of Folly Beach.
3. That this court does not have the proper parties before it to determine the title to marshlands.
4. That Plaintiff's challenge to the dock permits held by the Defendants is moot.

AND IT IS SO ORDERED!


The Honorable Mikell Scarborough
Charleston County, Master-in-Equity

March 23, 2007
Charleston County, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

The Milton P. Demetre Family
Limited Partnership,

Plaintiff,

v.

Harry Beckmann, III, Patricia P.
Beckmann, Annie Ruth Hilton
Crowley, Raymond Moody
Crowley, Donald William Crowley,
Harris L. Crowley, Jr. and
Annie Ruth Crowley Atkinson,

Defendants.

CIVIL ACTION No. 2005-CP-10-4101

ORDER DENYING PLAINTIFF'S
RULE 59e MOTION FOR RELIEF

FILED
2007 MAY 22 AM 11:41
JULIE L. ARMSTRONG
CLERK OF COURT

The Milton P. Demetre Family
Limited Partnership,

Plaintiff,

v.

City of Folly Beach,

Defendant,

And

Emily S. Brown, Annie Ruth
Hilton Crowley, Harry Beckmann,
III and Patricia P. Beckmann,

Intervenors

CIVIL ACTION No. 2002-CP-10-4880

ORDER DENYING PLAINTIFF'S
RULE 59e MOTION FOR RELIEF

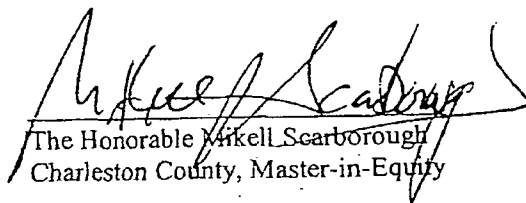
Plaintiff, through its able and competent counsel, filed its motion on March 23, 2007 for relief under Rule 59(e), SCRCP to alter or amend the court's order issued herein on March 7, 2007. Plaintiff has requested this court to rule on all issues of law and fact raised in its proposed order previously submitted to the court.



Having previously reviewed the Plaintiff's proposed order of 92 pages in length submitted herein and again as Exhibit A to its motion, the court declines to alter or amend its ruling herein. To the extent the order fails to rule on Plaintiff's equitable estoppel argument against the city and the individual defendants, I find that Plaintiff has not met its burden of proof to show equitable estoppel. See Southern Coatings and Chemical Co. v. Belcher, 274 S.C. 76, 261 S.E. 2d 162 (1979) and cases cited therein. See also Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E. 2d 229 (2001); "estoppel does not ordinarily run against the government." I find no basis for estoppel under these facts.

As to any and all other issues raised in its motion, to the extent not specifically ruled upon herein, all issues raised by Plaintiff in its motion are hereby denied.

AND IT IS SO ORDERED!


The Honorable Mikell Scarborough
Charleston County, Master-in-Equity

May 17, 2007
Charleston, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

v.)

Harry Beckmann, III, Patricia P.)
Beckmann, Annie Ruth Hilton)
Crowley, Raymond Moody)
Crowley, Donald William Crowley,)
Harris L. Crowley, Jr. and)
Annie Ruth Crowley Atkinson,)

Defendants.)

The Milton P. Demetre Family)
Limited Partnership,)

Plaintiff,)

v.)

City of Folly Beach,)

Defendant,)

And)

Emily S. Brown, Annie Ruth)
Hilton Crowley, Harry Beckmann,)
III and Patricia P. Beckmann,)

Intervenors)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION No. 2005-CP-10-4101

Rec'd
7/2/07

FILED
2007 JUN 25 AM 11:07
JULIE J. ARISTONG
CLERK OF COURT
BY

ORDER DENYING PLAINTIFF'S
RULE 59e MOTION FOR RELIEF

CIVIL ACTION No. 2002-CP-10-4880

ORDER DENYING PLAINTIFF'S
RULE 59e MOTION FOR RELIEF

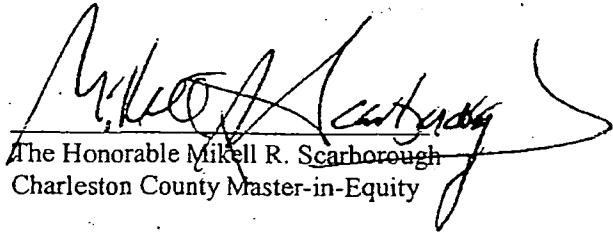
Plaintiff filed its motion on April 19, 2007 for relief under Rule 59(e), SCRPC to alter or amend the court's order issued herein on March 26, 2007. Plaintiff has requested this court to rule on all issues of law and fact raised in its proposed order previously submitted to the court.



Upon review of the Plaintiff's motion and proposed order submitted herein as Exhibit A to its motion, the court declines to alter or amend its ruling herein.

As to any and all other issues raised in its motion, to the extent not specifically ruled upon herein, all issues raised by Plaintiff in its motion are hereby denied.

AND IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

June 20, 2007
Charleston, S.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

The Milton P. Demetre Family Limited) Civil Action No.
Partnership,)

Plaintiff,)

vs.)

City of Folly Beach,)

Defendant.)

COMPLAINT
(QUIET TITLE)

The plaintiff Milton P. Demetre Family Limited Partnership complains of the defendant and alleges as follows:

INTRODUCTION

1. The plaintiff brings this action pursuant to the provisions of the South Carolina Uniform Declaratory Judgment Act, §15-53-10, *et seq.*, Code of Laws of South Carolina, 1976, as amended, for the purpose of obtaining a decree adjudging that the plaintiff is seized in fee simple of a good and marketable title to the real estate hereinbelow described and that defendant has no interest or estate in or lien upon the said real estate.

2. The property that is the subject mater of this action is situated in the City of Folly Beach, County of Charleston, State of South Carolina, and is described as follows, to wit:

All that portion of land shown as Indian Avenue East on a plat by Jefferson Construction Company date February 1920 and recorded in the RMC Office for Charleston County in Plat Book C, page 158, and being that portion of Indian Avenue that is undeveloped and unpaved, extending from and being adjacent and

bordering on Lots 201 to 205, Indian Avenue, East, beginning at the unpaved portion adjacent to Lot 201 Indian Avenue, East, and ending at the southeastern corner of 205 Indian Avenue, East with such abandoned and undedicated roadway being fifty (50) feet in width and the length as described aforesaid.

Being the same property conveyed to Edward M. Seabrook by deed of Citizens and Southern Bank of Savannah, as Trustee dated January 5, 1943 and recorded in Book R-41 at page 227 in the RMC Office for Charleston County and conveyed to the Plaintiff herein by deed of Edward W. Seabrook, Jr. dated May 30, 2002 and recorded at Book V-407, Page 67, said RMC Office.

FACTUAL ALLEGATIONS

3. On or about May 24, 1937, the subject property was deeded by the Folly Beach Improvement Company to the Board of Township Commission of Folly Island, for public dedication as a roadway.
4. Neither The Board of Township Commission of Folly Island nor the City of Folly Beach have accepted of the dedication of the subject property.
5. That, at the time of the attempted conveyance and dedication to the Board of Township Commission of Folly Island, the roadways in question were subject to that certain mortgage from Folly Beach Improvement Company to the Citizen Southern National Bank of South Carolina as Trustee dated January 1, 1926 and recorded at Book W-31, Page 511, Charleston County RMC Office. The above-described mortgage was subsequently foreclosed and all interest of said Mortgagee in and to the property described in paragraph 2 was conveyed to Edward M. Seabrook by the above-described deed recorded at Book R-41, Page 227.

FOR A FIRST CAUSE OF ACTION

6. On or about May 30, 2002, Edward M. Seabrook conveyed the subject property to plaintiff via quit-claim deed for the sum of Ten Thousand Dollars (\$10,000.00). A copy of the quit-claim deed is attached hereto as Exhibit "A."

7. Plaintiff has had communications with the City of Folly Beach to the effect that it makes or will make a claim that asserts an alleged right in, title to, or interest in the subject property.

8. All such claims which defendant may have had upon the premises above-described are wholly extinguished, cut off, and barred by South Carolina law. The plaintiff is seized and possessed of the said premises free of and wholly discharged from any and every such claim, interest or lien, if ever such lien or interest there was.

9. The plaintiff is informed and believes that because of the allegations contained in this Complaint, the Court should quiet any defects in the title to the property as may be due to the claim of the defendant, declare the plaintiff to be the sole owner of a fee simple title to said property, and forever bar any claim of the defendant to any right, title, interest in or lien upon the real property described in this Complaint.

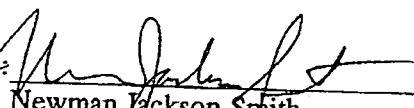
WHEREFORE, the plaintiff prays judgment as follows:

10. That this Court determine that the plaintiff is the sole holder of the fee simple title to the property described in this Complaint;

11. That the named defendant City of Folly Beach has no right, title, interest in or lien upon the real property described in this Complaint, is barred from any claim thereto, and any cloud upon the title to the said premises is hereby removed therefrom; and

12. For any such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 
Newman Jackson Smith
E-Mail Address: NJS@NMRS.COM
SC Bar No. 005245
Liberty Building, Suite 600
151 Meeting Street
Post Office Box 1806 (29402)
Charleston, SC 29401
(843) 853-5200

Attorneys for Milton P. Demetre Family Limited Partnership

Charleston, South Carolina
December 6, 2002

STATE OF SOUTH CAROLINA

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, I, Edward M. Seabrook, SEND GREETING:

NOW, KNOW ALL MEN BY THESE PRESENTS, That I the said Edward M. Seabrook, for and in consideration of the premises and also in consideration of the sum of Ten Thousand and No/100 (\$10,000.00) dollars to me in hand paid at and before the sealing and delivery of these presents by Milton P. Demetre Family Limited Partnership (the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said Milton P. Demetre Family Limited Partnership, its successors, heirs and assigns:

ALL that portion of land shown as a roadway on a plat by Jefferson Construction Company dated February 1920 and recorded in the RMC Office for Charleston County in Plat Book C, page 158, and being that portion of the roadway that is undeveloped and unpaved, extending from and being adjacent and bordering on Lot 201, Lot 202 and Lots 203 to 205, Indian Avenue, East, beginning at the unpaved portion adjacent to Lot 201 Indian Avenue, East, and ending at the southeastern corner of Lot 205 Indian Avenue, East with such abandoned and undedicated roadway being fifty (50) feet in width and the length as described aforesaid.

BEING the same property conveyed to Edward M. Seabrook by deed of Citizens and Southern Bank of Savannah, as Trustee dated January 5, 1943 and recorded in Book R-41 at page 227 in the RMC Office for Charleston County.

TMS:

Grantee's address: 253 King St. Chas, SC 29401

TOGETHER with all and singular the rights, members, hereditaments and appurtenance to the said premises belonging or in anywise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Milton P. Demetre Family Limited Partnership, its successors, heirs and assigns, forever -- so that neither I the said Edward M. Seabrook nor my heirs, nor any other person or persons, claiming under me or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

Witness my hand and seal this 30th day of May, in the year of our Lord two thousand and two and in the two hundred and twenty-sixth year of the Sovereignty and Independence of the

United States of America.

Signed, Sealed and Delivered
in the presence of:

Gretchen Steingol
Robinson

Edward M. Seabrook
Edward M. Seabrook

THE STATE OF SOUTH CAROLINA)
COUNTY OF)

PERSONALLY appeared before me Gretchen Steingol Robinson
oath that (s)he saw the within named Edward M. Seabrook sign, seal
and as his/her act and deed, deliver the within written Deed; and
that (s)he with Edward M. Seabrook witnessed the execution
thereof.

SWORN to before me this
30th day of May, 2002

Robinson
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 7/7/10

Gretchen Steingol Robinson

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

OK V407PG069
Date of Transfer of Title
Closing Date May 30, 20

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Edward M. Seabrook
TO Milton P. Demetre Family Limited Partnership ON May 30, 2002

3. Check one of the following: The DEED is
(A) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in Money or money's worth.
(B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(C) ☒ EXEMPT from the deed recording fee because: (Exemption # 12)
(Explanation if required) Spouse's Claim Deed
(If Exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3 (a) or item 3(b) above has been checked.
(A) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 10,000.00
(B) ☐ The fee is computed on the fair market value of the realty which is \$ _____
(C) ☐ The fee is computed on the fair market value of the realty as established for property Tax purposes which is \$ _____

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____

6. The DEED Recording Fee is computed as follows:
(A) 10,000.00 the amount listed in item 4 above.
(B) ☐ the amount listed in item 4 above. (do amount place zero)
(C) 10,000.00 subtract line 6(b) from line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney

8. Check if Property other than Real Property is being transferred on this Deed.
(A) ☐ Mobile Home
(B) ☐ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of
deceased CASE NUMBER _____ Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn this 30 Day of May 20 02
Notary Public for South Carolina
My Commission Expires 11/15/09

Signed Patrick F. Stringer
Grantor, Grantee, or Attorney that prepared this form
Patrick F. Stringer
Type or Print Name here

RECORDER'S PAGE

This page Must remain with
the original document.

Patrick STRINGER



BK V407PG070

Recording

Fee 10.00

State

Fee 26.00

County

Fee 11.00

Postage

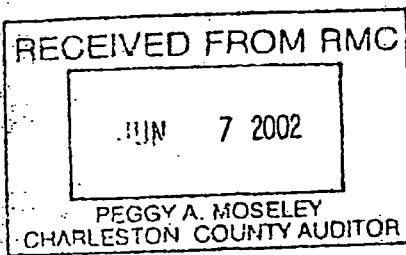
TOTAL 47.00

FILED

V 407-067

2002 MAY 31 PM 4:49

REGISTER
CHARLESTON COUNTY SC



**PID VERIFIED
BY ASSESSOR**

REP _____

DATE ____ / ____ / ____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2002-CP-10-4880

**The Milton P. Demetre Family
Limited Partnership,**

Plaintiffs,

-vs-

City of Folly Beach,

Defendant.

ANSWER

2003 JAN -3 PM 3:57
CLERK OF COURT

Reserving all rights to amend this answer within thirty (30) days pursuant to Rule 159a0 of the South Carolina Rules of Civil Procedure and reserving all rights to include in any amended Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, City of Folly Beach, denying all allegations not specifically admitted herein, answers the Complaint of the Plaintiff as follows:

FIRST: Your Defendant denies each and every allegation of Plaintiffs Complaint except that which is specifically hereinafter admitted.

SECOND: Your Defendant admits the allegations of in that portion of Paragraph One which alleges the action was brought under Section 15-53-10 of the South Carolina Code of

Laws, 1976, as amended, and that the Plaintiff desires fee simple title in the real estate described below, and Defendant denies the remaining allegations of Paragraph One and demands strict proof thereof.

THIRD: Your Defendant admits the allegations of Paragraph Two, excepting and denying that portion of Paragraph Two which alleges that the portion of Indian Avenue is undeveloped and demands strict proof thereof.

FOURTH: Your Defendant admits the allegations of Paragraph Three.

FIFTH: Your Defendant denies the allegations of Paragraph Four and demands strict proof thereof.

SIXTH: Your Defendant is without sufficient information to have a belief regarding the allegations of Paragraph Five and therefore denies same, demanding strict proof thereof.

SEVENTH: Your Defendant denies the allegations of Paragraph Six.

EIGHTH: Your Defendant admits the allegations of Paragraph Seven.

NINTH: Your Defendant denies the allegations of Paragraphs Eight, Nine, Ten and Eleven, and demands strict proof thereof.

WHEREFORE, your Defendant prays that the Complaint be dismissed and that title of the street be confirmed in the City of Folly Beach, South Carolina; for costs; and for such other and further relief as the Court may deem just and proper.


Ben Peeples
Attorney for the City of Folly Beach
105 Wappoo Creek Drive, Suite 1A
Charleston, SC 29412
(843) 762-2200

CHARLESTON, SC

January 3, 2003.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2002-CP-10-4880

The Milton P. Demetre Family
Limited Partnership,

Plaintiffs,

-vs-

City of Folly Beach,

Defendant.

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2003 SEP 16 PM 1:52

FILED

AMENDED ANSWER

Reserving all rights to amend this answer within thirty (30) days pursuant to Rule 159a0 of the South Carolina Rules of Civil Procedure and reserving all rights to include in any amended Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant, City of Folly Beach, denying all allegations not specifically admitted herein, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

FIRST: Your Defendant denies each and every allegation of Plaintiff's Complaint except that which is specifically hereinafter admitted.

SECOND: Your Defendant admits the allegations of in that portion of Paragraph One which alleges the action was brought under Section 15-53-10 of the South Carolina Code of Laws, 1976, as amended, and that the Plaintiff desires fee simple title in the real estate

described below, and Defendant denies the remaining allegations of Paragraph One and demands strict proof thereof.

THIRD: Your Defendant admits the allegations of Paragraph Two, excepting and denying that portion of Paragraph Two which alleges that the portion of Indian Avenue is undeveloped and demands strict proof thereof.

FOURTH: Your Defendant admits the allegations of Paragraph Three.

FIFTH: Your Defendant denies the allegations of Paragraph Four and demands strict proof thereof.

SIXTH: Your Defendant is without sufficient information to have a belief regarding the allegations of Paragraph Five and therefore denies same, demanding strict proof thereof.

SEVENTH: Your Defendant denies the allegations of Paragraph Six.

EIGHTH: Your Defendant admits the allegations of Paragraph Seven.

NINTH: Your Defendant denies the allegations of Paragraphs Eight, Nine, Ten and Eleven, and demands strict proof thereof.

FOR A SECOND DEFENSE

TENTH: That the Plaintiff is seeking to obtain fee simple title to a public street which has been shown on a plat of the City of Folly Beach dated approximately 1920. Defendant

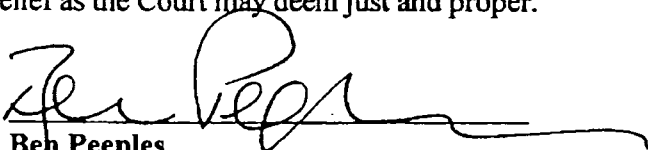
is informed and believes that a number of people have purchased property adjacent to this street based on a plat which shows the street provides them access to their property.

ELEVENTH: If the Plaintiff is successful, these private individuals will lose access to the back portion of their property.

TWELFTH: That the Plaintiff has not named these necessary parties in this lawsuit wherein he seeks to have the Court confirm his title in this street.

WHEREFORE, your Defendant prays:

- 1) That this action be dismissed for failure of the Plaintiff to name necessary parties;
- 2) That title of the street be confirmed in the City of Folly Beach, South Carolina;
- 3) For costs; and
- 4) For such other and further relief as the Court may deem just and proper.



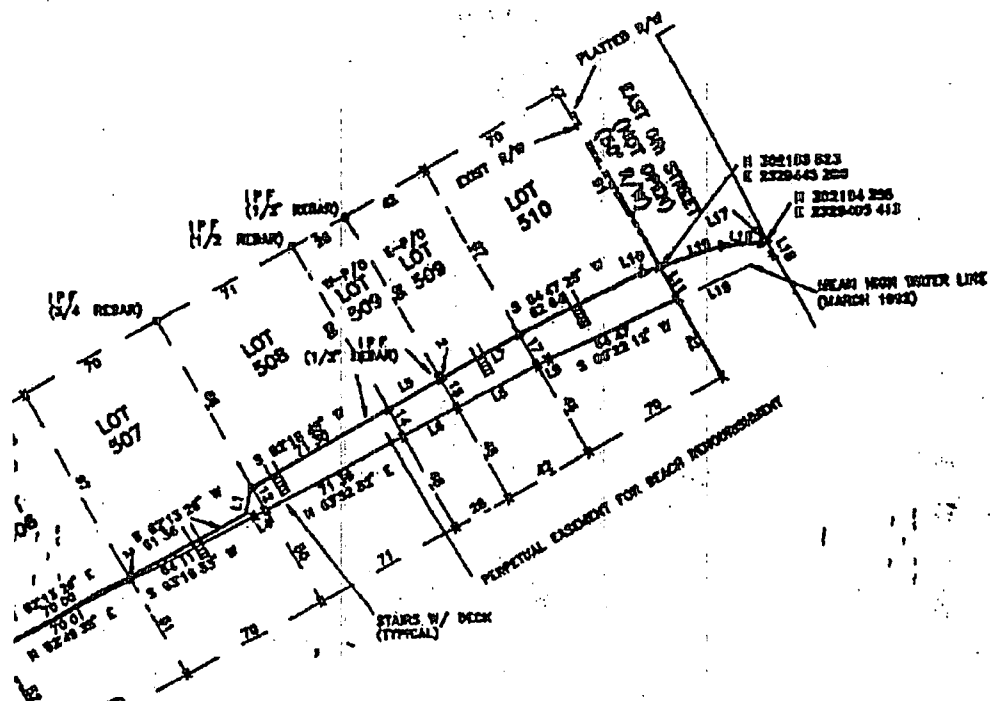
Ben Peeples
Attorney for the City of Folly Beach
105 Wappoo Creek Drive
Suite 1A
Charleston, SC 29412
(843) 762-2200

CHARLESTON, SC

September 9, 2003

Office of Registrar, Meern College
 Flat recorded this 23 day of June, 1992 at
3:30 o'clock in Flat Book SM Page 109 and tracing cloth
 copy filed in File 5 Drawer 52 Folder 52 Drawing
 No 39 Original plat (and instrument) delivered
 to Asst. Surveyor
Redick

Robert M. King
Foster Means Conveyance



ATLAN.

ATLANTIC OCEAN

LOT NUMBER	TMS NUMBER	OWNER	AREA WITHIN EASEMENT	AREA BELDW HWY	REVEITEMENT CLASSIFICATION
LOT 501 (E ATLANTIC)	328-15-00-021	ALMA L. RICHARDSON		3 444 SQ FT +/-	3 (SEE SHEET 1)
LOT 502 (E ATLANTIC)	328-15-00-022	ESTELLE BURKE ORLANDY		3 324 SQ FT +/-	3
LOT 503 (E ATLANTIC)	328-15-00-023	ELIZABETH D & JAMES W WALKER JR		3 385 SQ FT +/-	3
LOT 504 (E ATLANTIC)	328-15-00-024	KARL W. WAPPES ET AL		3 646 SQ FT +/-	3
LOT 505 (E ATLANTIC)	328-15-00-025	LOIS M TAYLOR		3 614 SQ FT +/-	3
LOT 506 (E ATLANTIC)	328-15-00-026	CAROLYN K KOWE	25 SQ FT +/-	3 824 SQ FT +/-	3
LOT 507 (E ATLANTIC)	328-15-00-027	MARGEN E HODGINS	146 SQ FT +/-	3 836 SQ FT +/-	3
LOT 508 (E ATLANTIC)	328-15-00-028	WILLIAM G MOSELEY ET AL	833 SQ FT +/-	3 505 SQ FT +/-	3
W P/O LOT 508 (E ATLANTIC)	328-15-00-029	H D & MARY R CARTER	408 SQ FT +/-	1 324 SQ FT +/-	3
E P/O LOT 508 (E ATLANTIC)	328-15-00-030	ANDREW M & MARY L J MUMSTER	883 SQ FT +/-	1 971 SQ FT +/-	3
LOT 510 (E ATLANTIC)	328-15-00-031	MARGAN C RUNT & FREDRICK C HARMON	1 210 SQ FT +/-	5 084 SQ FT +/-	3

NOTE: / INDICATES AREA BEYOND OF CONSTRUCTION LINE

PLAT APPROVED

CITY OF FOLLY BEACH S C

BY [Signature]
CITY ADMINISTRATOR

DATE 6-22-92

F FOLLY BEACH
G PERPETUAL EASEMENT
CH RENOURISHMENT
STON COUNTY, SOUTH CAROLINA

SCALE 1" = 50'

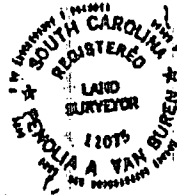


ARC SURVEYING COMPANY, INC

P O BOX 1654 MT PLEASANT SOUTH CAROLINA 29465
OFFICE LOCATION 782 HWY 17 BYPASS SUITE AA 29464

PHONE (803) 881-48
FACSIMILE (803) 848-61

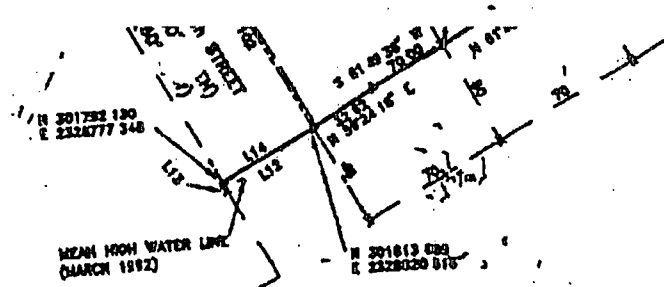
SHEET 13 OF :



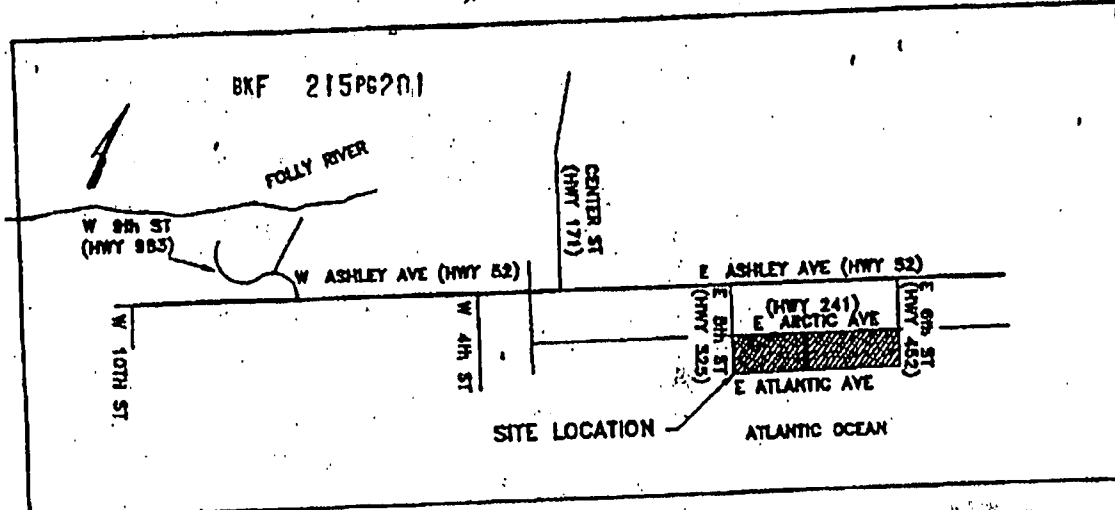
NOTE: THIS PLAT DOES NOT REPRESENT A FIELD STUDY TO SHOW ACCURATE
LINES OF OWNERSHIP OR BOUNDARY SURVEYS FOR THE INDIVIDUAL TRACTS
SHOWN HEREON

I, PENOLA A. VAN BUREN, A REGISTERED LAND SURVEYOR OF THE STATE
OF SOUTH CAROLINA, DO HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE
INFORMATION AND BELIEF THAT THE EASEMENT SURVEY SHOWN HEREON WAS
MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE SOUTH CAROLINA
MEASURE STANDARDS MANUAL, PER ARTICLE 4, REGULATION 420-F THAT USE
PLAT IS INTENDED ONLY TO SHOW THE LOCATION OF A PERPETUAL EASEMENT
FOR EACH REQUIREMENT THAT EASEMENT, THE LINES SHOWN ARE BASED
ON ACTUAL FIELD SURVEY EVIDENCE WHICH MEETS OR EXCEEDS THE
REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN

Penola A. Van Buren
PENOLA A. VAN BUREN R.L.S.
S.C. REG. NO. 11073



PLAT
F



LOCATION MAP
NOT TO SCALE

REFERENCE NOTES
REF PLAT REC IN
PB C PAGE 158

LINE CHART

L1	N	1237	18	E	13	10
L2	N	8213	25	E	10	18
L3	N	2844	88	W	0	51
L4	N	8332	82	W	8	82
L5	N	8148	04	E	27	88
L6	N	8302	82	E	27	91
L7	N	8148	04	E	41	88
L8	N	8382	82	E	43	84
L9	N	8382	82	E	57	8
L10	N	7303	82	W	7	83
L11	N	2844	88	E	17	27
...	...	...	...	...	...	...

EAST ARCTIC AVE (50'
(S C HWY 241)

11' 1/2 ON

75

75

75

LOT 804

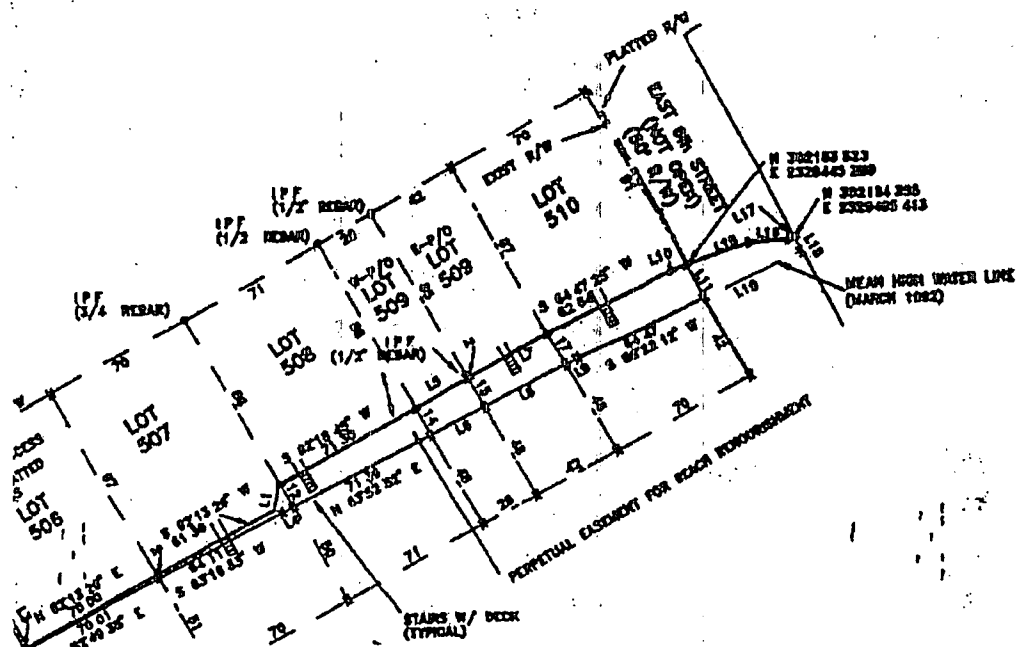
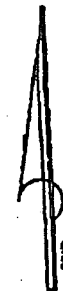
75

75

Charleston, South Carolina
Office of Register Mason Conveyance

Plat recorded this 23 day of June 1892 at
2:56 o'clock in Plat Book C. 2, Page 109 and tracing cloth
copy filed in Feb. 5, Drawer 57, Folder 57 Drawing
No. 30 Original plat (and tracing cloth) delivered
to Wm. W. W. W.

Robert N. King
Register Mason Conveyance



ATLANTIC OCEAN

LOT NUMBER	TMS NUMBER	OWNER	AREA WITHIN EASEMENT	AREA BELOW HWY	REVELMENT CLASSIFICATION
LOT 501 (E ATLANTIC)	325-15-00-021	ALMA L. RICHARDSON		3 444 SQ FT +/-	3 (SEE SHEET 1)
LOT 502 (E ATLANTIC)	325-15-00-022	ESTELLE BURNS ORLANDY		3 234 SQ FT +/-	3
LOT 503 (E ATLANTIC)	325-15-00-023	ELIZABETH D. & JAMES W. WALKER JR		3 205 SQ FT +/-	3
LOT 504 (E ATLANTIC)	325-15-00-024	KARL W. WAPPUS ET AL		3 846 SQ FT +/-	3
LOT 505 (E ATLANTIC)	325-15-00-025	LOIS M. TAYLOR		3 614 SQ FT +/-	3
LOT 506 (E ATLANTIC)	325-15-00-026	CAROLYN K. KING	25 SQ FT +/-	3 624 SQ FT +/-	3
LOT 507 (E ATLANTIC)	325-15-00-027	MARION B. HUGHES	140 SQ FT +/-	3 520 SQ FT +/-	3
LOT 508 (E ATLANTIC)	325-15-00-028	WILLIAM O. WATKINS ET AL	935 SQ FT +/-	3 508 SQ FT +/-	3
W 7/0 LOT 509 (E ATLANTIC)	325-15-00-029	H. D. & MARY R. CARTER	428 SQ FT +/-	1 334 SQ FT +/-	3
E 7/0 LOT 509 (E ATLANTIC)	325-15-00-030	ANDREW M. & MARY L. J. MURPHY	885 SQ FT +/-	1 871 SQ FT +/-	3
LOT 510 (E ATLANTIC)	325-15-00-031	MARION C. HUNT & FREDERICK C. HARMON	1 218 SQ FT +/-	3 684 SQ FT +/-	3

NOTE: INDICATES AREA BEYOND OF CONSTRUCTION LINE

PLAT APPROVED

CITY OF FOLLY BEACH S.C.

BY W. H. H. H.
CITY ADMINISTRATOR

DATE 6-22-92

OF FOLLY BEACH
ING PERPETUAL EASEMENT
ACH RENOURISHMENT
ESTON COUNTY, SOUTH CAROLINA

SCALE 1" = 50'

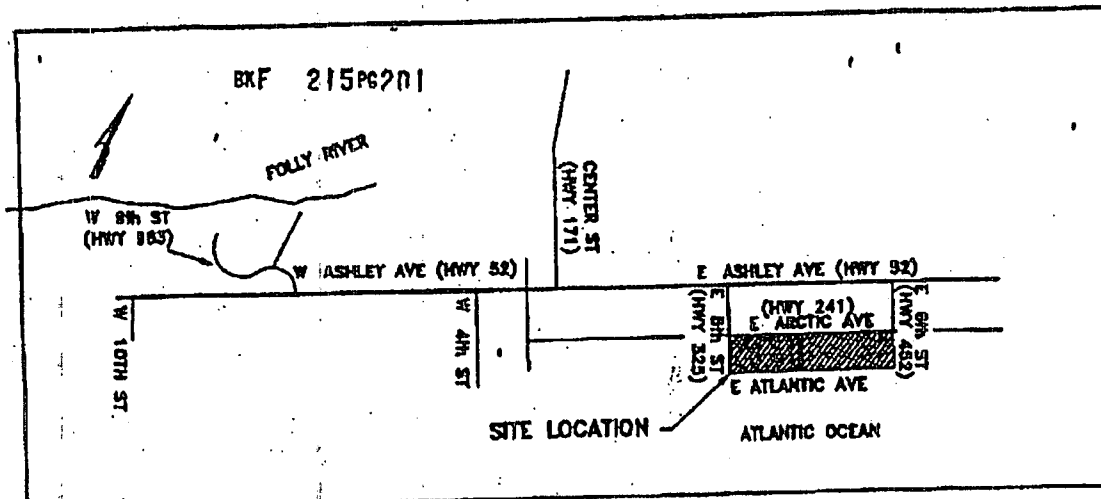


ARC SURVEYING COMPANY, INC.

P.O. BOX 1054 MT PLEASANT SOUTH CAROLINA 29525
OFFICE LOCATION 782 HWY 17 BYPASS SUITE AA 29424

PHONE (803) 881-
FACSIMILE (803) 848-

SHEET 13 OF



LOCATION MAP

NOT TO SCALE

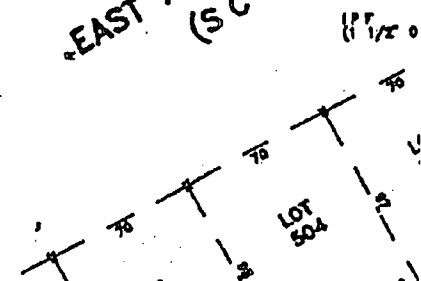
REFERENCE NOTES

REF PLAT REC IN
PB C PAGE 158

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L3	N	2844	08	W	0.01
L4	S	8382	08	W	9.02
L5	N	9144	04	E	27.08
L6	N	0392	08	E	27.01
L7	N	8148	04	E	41.00
L8	N	8882	03	E	43.04
L9	N	8382	02	E	8.70
L10	S	7308	23	W	7.03
L11	S	2844	08	E	17.31
L12	S	8024	21	E	40.31
L13	S	2737	43	E	3.40
L14	N	6327	56	E	40.25

EAST ARCTIC AVE (SC HWY 241)

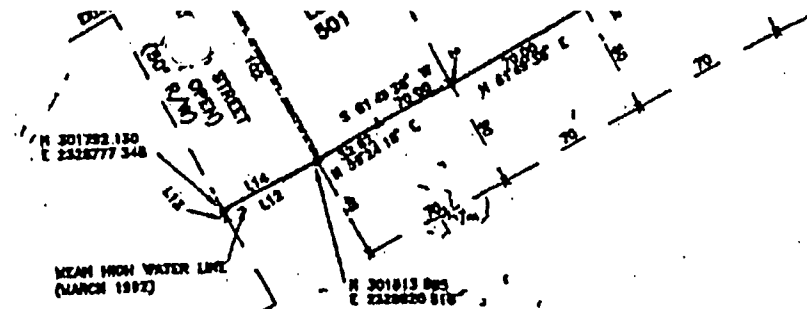




NOTE: THIS PLAT DOES NOT REPRESENT A FIELD STUDY TO SHOW ACCURATE LINES OF OWNERSHIP OR BOUNDARY SURVEYS FOR THE INDIVIDUAL TRACTS SHOWN HEREON.

I, PENOLA A. VAN BUREN, A REGISTERED LAND SURVEYOR OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THAT THE EASEMENTS SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE SOUTH CAROLINA MINIMUM STANDARDS MANUAL, PER ARTICLE 4, REGULATION 430-7 THAT THIS PLAT IS INTENDED ONLY TO SHOW THE LOCATION OF A PERPETUAL EASEMENT FOR BEACH RENOVATIONMENT THAT EASEMENT LINES SHOWN ARE BASED ON ACTUAL FIELD SURVEY EVIDENCE WHICH MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

Penola A. Van Buren
 PENOLA A. VAN BUREN R.L.S.
 S.C. REG. NO. 11075



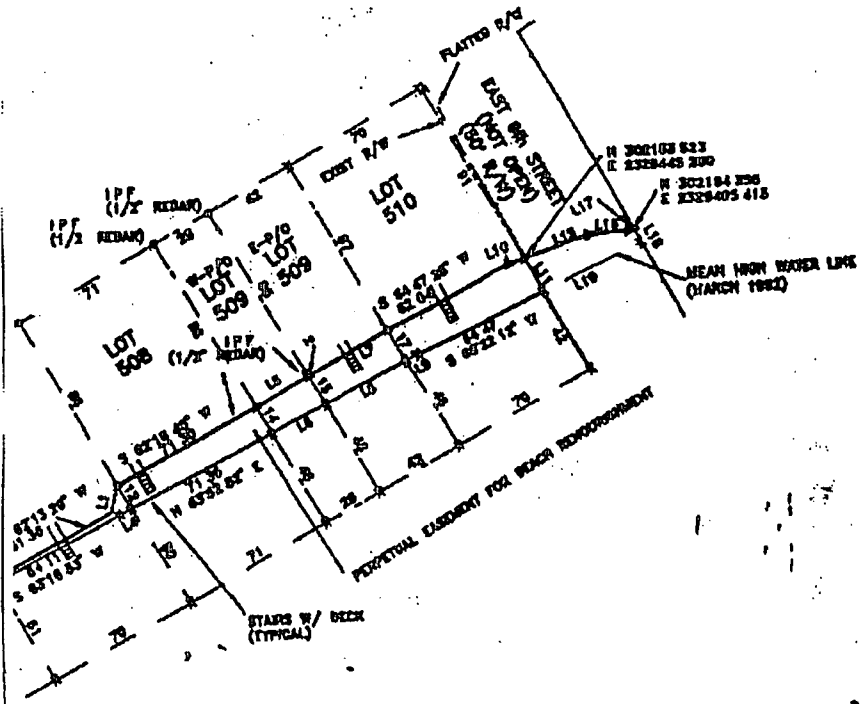
C.
 PLAT S
 FC

JUL

Charleston, South Carolina
Office of Registrar Mesma Conveyance

Plot recorded this 23 day of June 18 92 at
2 34 o'clock in Plot Book 64 page 102 and tracing cloth
copy filed in File 5 Drawer 2 Folder 57 Drawing
No. 39 Original plot (as submitted) delivered
by Doc. Saunders

Robert N. King
Registrar Mesma Conveyance



ATLANTIC

LOT NUMBER	TMS NUMBER	OWNER	AREA WITHIN EASEMENT	AREA BELOW HWY	REVEGETATION CLASSIFICATION
LOT 801 (E ATLANTIC)	328-18-00-021	ALMA L. RICHARDSON		3 444 SQ FT +/-	3 (SEE SHEET 1)
LOT 802 (E ATLANTIC)	328-18-00-022	ESTELLE BURNS ORLANDY		3 524 SQ FT +/-	3
LOT 803 (E ATLANTIC)	328-18-00-023	ELIZABETH D & JAMES W WALKER JR		3 093 SQ FT +/-	3
LOT 804 (E ATLANTIC)	328-18-00-024	RONALD W. WAPPUS ET AL		3 648 SQ FT +/-	3
LOT 805 (E ATLANTIC)	328-18-00-025	LARS W TAYLOR		3 614 SQ FT +/-	3
LOT 806 (E ATLANTIC)	328-18-00-026	CAROLYN K. KING	28 SQ FT +/-	3 824 SQ FT +/-	3
LOT 807 (E ATLANTIC)	328-18-00-027	BARBARA R. HUGHES	140 SQ FT +/-	3 838 SQ FT +/-	3
LOT 808 (E ATLANTIC)	328-18-00-028	WILLIAM G. SWICER ET AL	830 SQ FT +/-	3 803 SQ FT +/-	3
W P/O LOT 809 (E ATLANTIC)	328-18-00-029	H D & MART R. CARTER	408 SQ FT +/-	1 334 SQ FT +/-	3
E P/O LOT 808 (E ATLANTIC)	328-18-00-030	ANDREW M & MART L J. MURPHY	843 SQ FT +/-	1 971 SQ FT +/-	3
LOT 810 (E ATLANTIC)	328-18-00-031	MARION C. HUNT & FREDRIC C. HARRISON	1 218 SQ FT +/-	3 084 SQ FT +/-	3

NOTE: INDICATES AREA BEYOND OF CONSTRUCTION LINE

FOLLY BEACH

PERPETUAL EASEMENT

RENOURISHMENT

TON COUNTY, SOUTH CAROLINA

SCALE 1" = 50'



PLAT APPROVED

CITY OF FOLLY BEACH S.C.

BY [Signature]
CITY ADMINISTRATOR

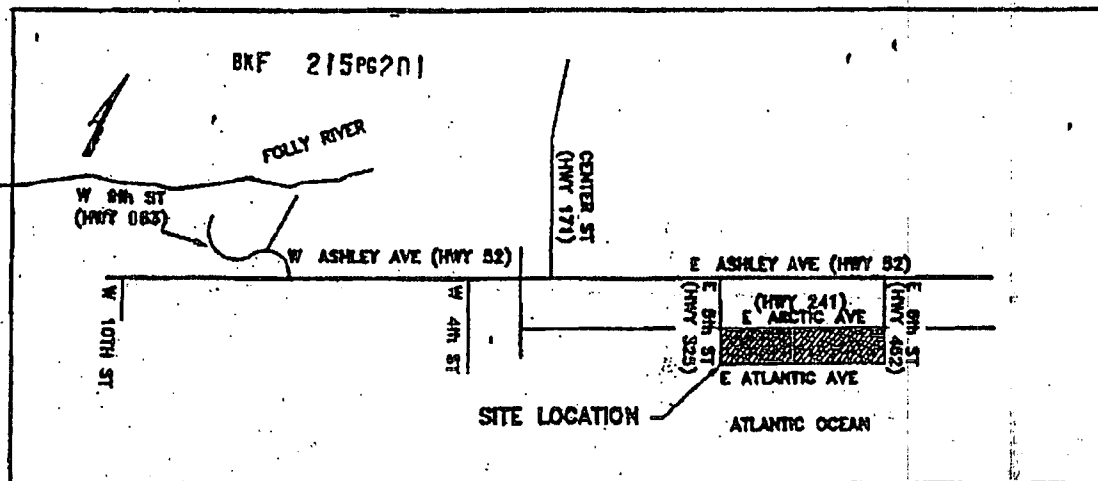
DATE 6-22-92

ARC SURVEYING COMPANY, INC

P.O. BOX 1054 MT PLEASANT SOUTH CAROLINA 29568
OFFICE LOCATION 782 HWY 17 SWAMP SUITE AA 29584

PHONE (803) 881-0913
FACSIMILE (803) 848-6120

SHEET 13 OF 30



LOCATION MAP

NOT TO SCALE

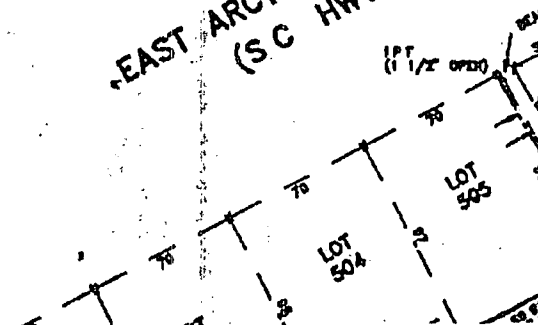
REFERENCE NOTES

REF PLAT REC IN
PB C PAGE 138

LINE CHART

L1	N	1227	18	E	19.10
L2	N	0513	25	E	10.10
L3	N	2844	05	W	8.81
L4	S	0302	05	W	5.82
L5	N	0148	04	E	27.60
L6	N	0302	05	E	27.91
L7	N	0148	04	E	41.80
L8	N	0302	05	E	43.84
L9	N	0302	05	E	5.70
L10	S	7703	27	W	7.63
L11	S	2844	05	E	17.31
L12	N	0074	01	E	40.51
L13	S	2737	45	E	3.40
L14	N	0077	06	E	48.20
L15	N	7703	27	E	31.00
L16	N	0713	10	E	18.20

EAST ARCTIC AVE (50' R/
(S.C. HWY 241)



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

The Milton P. Demetre Family Limited
Partnership,

Civil Action No.

Plaintiff,

vs.

Harry Beckmann, III and Patricia P.
Beckmann and Annie Ruth Hilton
Crowley, Raymond Moody Crowley,
Donald William Crowley, Harris L.
Crowley, Jr. and Annie Ruth Crowley
Atkinson,

Defendants.

COMPLAINT

2005 OCT -7 PM 4:34
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The plaintiff Milton P. Demetre Family Limited Partnership (hereinafter "Plaintiff") complaining of Defendants Harry Beckmann, III and Patricia P. Beckmann (referred to collectively hereinafter as the "Beckmann Defendants") and Defendants Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson (referred to collectively hereinafter as the "Crowley Defendants") alleges and would show unto this Honorable Court:

I. BACKGROUND

A. Property History

1. The Beckmann Defendants own property located at 209 East Huron Avenue (hereinafter referred to as "Lot 209 East Huron Avenue"), as described in Exhibits A and B, and have constructed a private dock that extends from the north boundary of this property to the Folly River.

2. The Crowley Defendants own property located at 210 East Huron Avenue (hereinafter described as "Lot 210 East Huron Avenue"), as described in Exhibits C and D, and have constructed a private dock, which, like the Beckmann's dock, extends northward to the Folly River.

3. Neither the Beckman Defendants nor the Crowley Defendants, however, own the upland property located between these two lots and the Folly River. (See deeds at Exhibits B and D).

4. Plaintiff, instead, owns, in fee simple, the upland property situated between the mean high water mark and these two parcels (Exhibits E, F).

5. Accordingly, the docks constructed by each of the Defendants extend, without Plaintiff's consent, across property owned by Plaintiff, thereby interfering with Plaintiff's property rights and its use and enjoyment of the land.

6. Plaintiff, therefore, seeks to have this court 1) issue a decree clarifying that Plaintiff owns the property situated between these two lots and the mean high water mark and forever barring any claim of the Defendants to any right, title interest in, or lien upon this property; 2) enjoin the Defendants from their continued trespass and nuisance upon Plaintiff's property; and 3) issue a decree declaring that the permits governing each of these docks were issued based on false information, and that the permits do not grant Crowley Defendants or Beckmann Defendant's any property rights in Plaintiff's property and therefore are null and void.

PARTIES AND JURISDICTION

7. Plaintiff is a South Carolina limited partnership that is organized under the laws of the State of South Carolina for the purpose of holding real property.

8. Upon information and belief, Defendant Harry Beckmann, III is a citizen and resident of Charleston County, South Carolina and owns real property in Charleston County, South Carolina.
9. Upon information and belief, Patricia P. Beckmann is a citizen and resident of Charleston County, South Carolina and owns real property in Charleston County, South Carolina.
10. Upon information and belief, Annie Ruth Hilton Crowley is a citizen and resident of Charleston County, South Carolina and owns real property in Charleston County, South Carolina.
11. Upon information and belief, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr., and Annie Ruth Crowley Atkinson inherited a property interest in Lot 210 East Huron Avenue with the death of Harris L. Crowley.
12. Therefore, upon information and belief, Raymond Moody Crowley owns real property in Charleston County, South Carolina.
13. Upon information and belief, Donald William Crowley owns real property in Charleston County, South Carolina.
14. Upon information and belief, Harris L. Crowley, Jr. owns real property in Charleston County, South Carolina.
15. Upon information and belief, Annie Ruth Crowley Atkinson owns real property in Charleston County, South Carolina.
16. This action concerns real property located in the City of Folly Beach, County of Charleston, State of South Carolina.

17. A legal description of Plaintiff's property is provided in Exhibits E and F.

FACTUAL ALLEGATIONS

18. In 1918, the State of South Carolina, in an effort to develop Folly Island, created the Folly Island Company.
19. In 1919, the Folly Island Company, which was authorized to buy, own, and sell real estate and other property, conveyed the property to the Folly Beach Corporation, another company created by the State to buy, own, and sell real estate and other property.
20. In 1925, the Folly Beach Corporation conveyed the property to the Folly Beach Improvement Company.
21. The father of the property owner from whom Plaintiff acquired portions of Folly Island, acquired the property (save those parcels already sold to private individuals) in 1943 in a foreclosure action brought by Citizens and Southern Bank of Savannah Georgia against the Folly Beach Improvement Company.
22. Edward M. Seabrook and Fannie Lee Seabrook conveyed Folly Island to Edward M. Seabrook, Jr. through the will of Edward M. Seabrook, who died in 1956, and Fannie Lee Seabrook, who died in 1960. Edward M. Seabrook, Jr. has paid Charleston County property taxes on the property conveyed by the will.
23. Upon information and belief, since obtaining the property, a significant portion of Edward M. Seabrook, Jr.'s livelihood has come from selling lots on Folly Island.
24. Plaintiff acquired from Edward M. Seabrook, Jr. and others the entire area consisting of 1) Lots 201 through 210 on East Indian Avenue, 2) the land north of those

lots to the mean low water mark of the Folly River, 3) the undeveloped East Indian Avenue, which is an undeveloped fifty foot wide road, from the southwest corner of Lot 201 to the southeast corner of Lot 210, 4) the ten foot strip of land located between Lot 205 and Lot 206, and 5) an undeveloped fifty foot wide Third Street, from the northeast corner of Lot 210 on East Huron Avenue to the northeastern corner of Lot 210 on East Indian Avenue (Exhibit G).

25. Plaintiff owns the property identified in Exhibit G in fee simple.

26. Exhibit G fully demonstrates Plaintiff's ownership of this property and is, thus, incorporated herein by reference.

27. Plaintiff hired Kennerty Surveying, Inc. who prepared the attached elevation survey of Lots 201 through 210 (Exhibit H)¹. The attached survey delineates the relevant lots, mean high water mark, and critical area.

28. As Exhibit H demonstrates the lots and right-of-ways that account for a large portion of the above property (Paragraph 24), as well as additional property north of the lots, are above the mean high water mark.

29. A significant portion of Plaintiff's property, including portions of Lots 209 and 210 on East Indian Avenue, is located within the critical area and therefore would require a permit for utilization from the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (which originally functioned independently as the South Carolina Coastal Council). See S.C. Code

¹ For the Court's convenience, Plaintiff has attached as Exhibit I a copy of just the portion of the Kennerty survey delineating Lots 209 and 210 on East Indian Avenue and Lots 209 and 210 on East Huron Avenue.

Ann. § 48-39-130. This designation, however, does not revoke or reduce Plaintiffs' exclusive right to ownership and possession of this property.

30. Plaintiff obtained the portion of this total area that is of interest in this matter from Edward M. Seabrook, Jr. by deed dated January 23, 2004 (Exhibit F). Specifically, Plaintiff acquired, and owns in fee simple, Lots 209 and 210 on East Indian Avenue, the undeveloped fifty foot strip of land designated as East Indian Avenue, including that portion from the southwestern corner of Lot 209 to the southeastern corner of Lot 210, and the land north of the two lots to the mean low water mark of the Folly River². Lots 209 and 210 on East Indian Avenue are part of the parcel identified on the Charleston County tax map as parcel number 328-10-00-244. Plaintiff is currently paying annual property taxes on this property. (See Exhibit E for a legal description of this property and Exhibit I for a diagram of this property).

31. As is noted above and is shown on Exhibits H and I, neither the property owned by the Beckman Defendants nor the property owned by the Crowley Defendants extends to the Folly River or even the mean high water mark. The Plaintiff's property described in Paragraph 30, instead, physically separates the properties of all Defendants from the property below mean high water adjacent to the Folly River.

32. The Beckmann Defendants own the property located at Lot 209 East Huron Avenue, City of Folly Beach, County of Charleston ("Beckmann Property"), which is designated on Exhibits H and I as "Lot 209 East Huron." This property is identified on

² The fifty foot wide strip of land north of 3rd Street, east to the mean low water mark of the Folly River, and the undeveloped fifty foot wide Third Street, from the northeastern corner of Lot 201 East Huron Avenue to the northeastern corner of Lot 210 East Indian Avenue were also a part of this acquisition.

the Charleston County tax map as parcel number 328-10-00-029. Exhibit A provides a description of this property.

33. The Crowley Defendants own the property located at Lot 210 East Huron Avenue, City of Folly Beach, County of Charleston ("Crowley Property"), which is designated on Exhibits H and I as "Lot 210 East Huron." This property is identified on the Charleston County tax map as parcel number 328-10-00-028. Exhibit B provides a description of this property.

B. Dock Permits

34. Exhibit J is the original 1920 Plat, showing the plan to develop Folly Island by the Folly Beach Corporation. Each of the above mentioned relevant lots and roadways are delineated on this plat.

35. This Plat (Exhibit J) is referenced in all of the deeds to property in this area because it is the subdivision Plat for Folly Island. (See, for example, Exhibits B, D, and F). The 1920 Plat, which shows Lots 209 and 210 on East Huron Avenue, as well as East Indian Avenue and Lots 209 and 210 on East Indian Avenue, became a material and essential part of the various deed conveyances and had (and continues to have) the same force and effect as if the plat had been copied in the deeds. Therefore, the 1920 Plat gave each of the Defendants actual knowledge that they did not own the road of East Indian Avenue or Lots 209 and 210 on East Indian Avenue, all of which were depicted on the 1920 Plat as being directly north of Defendants' lots, between Defendants' lots and the Folly River. Based upon the 1920 Plat, it was apparent that Defendants would have to cross over and construct upon the road of East Indian Avenue and Lots 209 and 210 on East Indian Avenue to access the Folly River with their respective docks.

36. Accordingly, prior to applying for dock permits from the South Carolina Coastal Council, Mr. and Mrs. Beckmann and Mr. and Mrs. Crowley (Mr. Crowley has since passed away) had access to information showing the existence of additional upland, and information was publicly available, prior to this time, as to who they would need to contact to seek permission to construct a dock.

37. Upon information and belief, Defendants could have purchased this property prior to Plaintiff's purchase of the property, but did not do so.

38. Upon information and belief, others in similar situations to that encountered by the Beckmanns and the Crowleys did in fact purchase the property separating them from the Folly River before seeking to construct a dock.

39. Further, upon information and belief, the Beckmanns and the Crowleys, in seeking dock permits from the South Carolina Coastal Council, failed to inform the Council that the Beckmanns and the Crowleys did not own the property over which each dock would be located and failed to provide an accurate property description delineating the land now owned by the Plaintiff separating their property from the Folly River.

40. Upon information and belief, the Beckmanns and the Crowleys, instead, obtained each dock permit by providing false, incomplete, and inaccurate information to the South Carolina Coastal Council.

41. The Permit Application Plan Views, required components of the application, fail to show the property now owned by the Plaintiff and, at the time, owned by Edward M. Seabrook, Jr. (Found at page 5 of 6 to Exhibit K and page 5 of 7 to Exhibit L).

42. Based upon such incomplete and false information, the South Carolina Coastal Council issued permit number CC-87-337 to Harris Crowley on December 10, 1987

to allow for the construction of a private dock located at Lot 210 East Huron Avenue, Folly Beach, South Carolina (Exhibit K).

43. Upon information and belief, had the Crowleys accurately represented the presence of what is now the Plaintiff's property, the South Carolina Coastal Council would have required that they notify and get the permission of the owner at the time, Edward M. Seabrook, Jr.

44. Based upon such incomplete and false information, the South Carolina Coastal Council issued permit number CC-87-368 to Harry Beckmann, III on January 21, 1988 to allow for the construction of a private dock located at Lot 209 East Huron Avenue, Folly Beach, South Carolina (Exhibit L).

45. Upon information and belief, had the Beckmanns accurately represented the presence of what is now the Plaintiff's property, the South Carolina Coastal Council would have required that they notify and get the permission of the owner at the time, Edward M. Seabrook, Jr.

46. Upon information and belief, the Beckmanns and Crowleys consulted in their efforts, as the Beckmanns used the Crowleys' Plan View in their application. (Compare page 5 of 6 to Exhibit K with page 5 of 7 to Exhibit L).

47. Defendant Crowley constructed a dock pursuant to permit number CC-87-337 extending across Plaintiff's property to the Folly River; upon information and belief, construction on Defendant Crowley's dock was completed by June 3, 1988.

48. Defendant Beckmann constructed a dock pursuant to permit number CC-87-368 extending across Plaintiff's property to the Folly River; upon information and belief, construction on Defendant Beckmann's dock was completed prior to September 21, 1989.

C. Permit Terms

49. Dock permits issued by the South Carolina Coastal Council do not create property rights. Instead, the permit simply constitutes a revocable license authorizing construction and use of a dock pursuant to the terms of the permit (Condition 10 of Exhibits K and L).

50. In general terms, a dock permit authorizes persons owning land adjacent to State-owned lands to construct a dock across the State-owned lands to access State waters. A dock permit also authorizes persons owning property (or having the owner's permission) delineated as critical areas to construct portions of the dock across such land.

51. Further, under the terms of the permits issued to the Crowleys and to the Beckmanns, each party's right to maintain a dock is revocable and limited to the terms and conditions of the permit (Exhibits K and L).

52. Important to this case, General Condition No. 5 of each of these permits states "[t]hat extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of private property or rights in property." (Exhibits K and L).

53. In part, General Condition No. 8 states "[t]hat this permit does not convey, expressly, or impliedly any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person." (Exhibits K and L).

54. General Condition No. 18 states, in part, "[t]hat in issuing this permit, the Coastal Council has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such

information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part." (Exhibits K and L).

55. Upon information and belief, both the Crowley Defendants and Beckmann Defendants are fully aware that each dock is constructed under the permission of the State through the South Carolina Coastal Council (now OCRM), that each permit constitutes only a limited license to construct a dock, that each permit is revocable, and that neither permit bestows in Defendants an interest in the property over which each dock is constructed.

56. In fact, both the Crowley Defendants and the Beckman Defendants had their dock permit revoked in 1989, after being damaged by Hurricane Hugo, due to the South Carolina Coastal Council's determination that the two docks negatively impacted public oyster grounds. Changing the revocation to a sixty day suspension to provide the Crowleys and Beckmanns an opportunity to appeal the decision, the South Carolina Coastal Council eventually granted the two parties permission to reconstruct/repair the damaged docks.

D. Efforts to Reach a Solution

57. With Plaintiff's acquisition, in 2004, of the property over which Defendants' docks are constructed, Plaintiff notified the Crowley Defendants and the Beckmann Defendants that their docks were situated on the Plaintiff's property.

58. Although Plaintiff would prefer removal of the docks in question, Plaintiff, in an effort to reach an amicable resolution, offered both the Crowley Defendants and the Beckmann Defendants the opportunity to enter into a lease agreement with the

Plaintiff, which would allow both to continue to use the docks pursuant to the terms of such agreement.

59. The Crowley Defendants, however, have refused to enter into the proposed lease agreement, have not removed the dock from the Plaintiff's property and, upon information and belief, have continued to make use of the dock.

60. Similarly, the Beckmann Defendants have refused to enter into the proposed lease agreement, have not removed the dock from the Plaintiff's property and, upon information and belief, have continued to make use of the dock.

61. Such refusal on the part of both parties to cooperate with Plaintiff has led to the litigation at hand to protect and defend Plaintiff's property rights.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

62. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

63. The Beckmann Defendants have ignored the Plaintiff's property rights and the boundaries of their respective properties by failing to accurately and truthfully provide information to the Coastal Council to obtain a permit and by constructing the dock, refusing to enter into the proposed lease agreement, failing to remove the dock, and continuing to make use of the dock.

64. Thus, there exists an actual justiciable controversy between the Plaintiff and the Beckmann Defendants involving their rights, liabilities and legal relations relative to the subject properties, and the Plaintiff is entitled under Sections 15-53-10 through 15-53-

140 of the South Carolina Code to a judgment of this Court declaring the various rights, liabilities and relations of the parties hereto.

65. Specifically, the Plaintiff is entitled to a judgment declaring that the Beckmann Defendants' dock has been wrongfully constructed on the Plaintiff's property and that Plaintiff owns the property described in Exhibits E and F in fee simple.

66. The Crowley Defendants have ignored the Plaintiff's property rights and the boundaries of their respective properties by failing to accurately and truthfully provide information to the Coastal Council to obtain a permit and by constructing the dock, refusing to enter into the proposed lease agreement, failing to remove the dock, and continuing to make use of the dock.

67. Thus, there exists an actual justiciable controversy between the Plaintiff and the Crowley Defendants involving their rights, liabilities and legal relations relative to the subject properties, and the Plaintiff is entitled under Sections 15-53-10 through 15-53-140 of the South Carolina Code to a judgment of this Court declaring the various rights, liabilities and relations of the parties hereto.

68. Specifically, the Plaintiff is entitled to a judgment declaring that the Crowley Defendants' dock has been wrongfully constructed on the Plaintiff's property and that Plaintiff owns the property described in Exhibits E and F in fee simple.

FOR A SECOND CAUSE OF ACTION
(Quiet Title)

69. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

70. The Beckmann Defendants' dock is located in part on property owned in fee simple by the Plaintiff.

71. The Crowley Defendants' dock is located in part on property owned in fee simple by the Plaintiff.

72. Plaintiff owns in fee simple and has been in possession of the property in question since Plaintiff obtained title from Edward M. Seabrook, Jr. on January 23, 2004. (See Exhibits E and F for a legal description).

73. Neither the Beckmann Defendants nor the Crowley Defendants have Plaintiff's permission to enter Plaintiff's property, and are infringing upon and clouding Plaintiff's title to its property, and its use and enjoyment of the property.

74. Pursuant to Sections 15-67-10 through 15-67-100 of the South Carolina Code, Plaintiff is informed and believes that because of the allegations contained in this Complaint, the Court should quiet any defects in the title to the property as may be due to the actions of the Defendants, declare the Plaintiff to be the sole owner of a fee simple title to said property, and forever bar any claim of the Defendants to any right, title, interest in or lien upon the real property described in Exhibits E and F.

FOR A THIRD CAUSE OF ACTION
(Trespass)

75. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

76. The Beckmann Defendants have intentionally undertaken actions that invaded the Plaintiff's property and interfered with, and continues to interfere with, the

Plaintiff's right of peaceable and exclusive possession, by constructing a dock on the Plaintiff's property.

77. As a result of the Beckmann Defendants' trespass, the Plaintiff has sustained damages.

78. Because the dock constructed by the Beckmann Defendants impairs Plaintiff's right of peaceable and exclusive possession, and because the dock constitutes a trespass, Plaintiff is entitled to injunctive relief against the Beckmann Defendants.

79. Plaintiff is thus entitled to a mandatory injunction against the Beckmann Defendants requiring the Beckmann Defendants to remove the dock from Plaintiff's property and a permanent injunction enjoining the Beckmann Defendants from trespassing on Plaintiff's property.

80. The Crowley Defendants have intentionally undertaken actions that invaded the Plaintiff's property and interfered with, and continues to interfere with, the Plaintiff's right of peaceable and exclusive possession, by constructing a dock on the Plaintiff's property.

81. As a result of the Crowley Defendants' trespass, the Plaintiff has sustained damages.

82. Because the dock constructed by the Crowley Defendants impairs Plaintiff's right of peaceable and exclusive possession, and because the dock constitutes a trespass, Plaintiff is entitled to injunctive relief against the Crowley Defendants.

83. Plaintiff is thus entitled to a mandatory injunction against the Crowley Defendants requiring the Crowley Defendants to remove the dock from Plaintiff's property

and a permanent injunction enjoining the Crowley Defendants from trespassing on Plaintiff's property.

FOR A FOURTH CAUSE OF ACTION
(Nuisance)

84. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

85. Plaintiff's use and enjoyment of his land is substantially and unreasonably impaired by the Beckmann Defendants' construction and maintenance of a dock on Plaintiff's property.

86. Plaintiff's use and enjoyment of his land is substantially and unreasonably impaired by the Crowley Defendants' construction and maintenance of a dock on Plaintiff's property.

87. Neither the Beckmann Defendants nor the Crowley Defendants have Plaintiff's permission to enter into Plaintiff's land nor was any such permission granted by Plaintiff's predecessor on to the land.

88. As the docks constructed by the Beckmann Defendants and Crowley Defendants impair Plaintiff's use and enjoyment of his property, Plaintiff is entitled to injunctive relief against Defendants.

89. As a result, Plaintiff is entitled to a mandatory injunction against the Beckmann Defendants and the Crowley Defendants requiring removal of the docks from the Plaintiff's property and a permanent injunction enjoining the Beckmann Defendants and Crowley Defendants from trespassing on the Plaintiff's property.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief)

90. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

91. Plaintiff is entitled to injunctive relief against Defendants because the harm to the Plaintiff involves real property. Real property is unique; as such, an award of monetary damages would be insufficient to redress the harm (including the on-going trespass and nuisance) that Plaintiff suffers at the hands of the Crowley Defendants and Beckmann Defendants.

92. Plaintiff alleges that injunctive relief is appropriate because irreparable harm is done to Plaintiff by Defendants' actions and because Plaintiff's damages are incapable of adequate measurement or adequate remedy at law.

93. Injunctive relief is appropriate because the harm done by Defendant's actions to the Plaintiff is such that if not remedied through injunctive relief is of permanent character that occasions constantly recurring harm that cannot be otherwise prevented or remedied.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment - Permit)

94. Plaintiff repeats and reiterates the foregoing allegations as if set forth verbatim herein.

95. No provision in the South Carolina Coastal Tideland and Wetlands Act ("Act") (S.C. Code Ann. § 48-39-10 et seq.) allows for the construction of docks or other such structures on or across private property owned by someone other than permittee without permission.

96. Instead, pursuant to Section 48-39-140(B) of the South Carolina Code, "[e]ach applicant for a permit shall be filed with the department and shall include . . . (4) A copy of the deed, lease or other instrument under which the applicant claims title, possession, or permission from the owner of the property, to carry out the proposal."

97. Plaintiff also incorporates here as if set forth verbatim, Paragraphs 47 through 54 above, addressing the permit conditions contained in both Permit CC-87-337 and Permit CC-87-368 that concern "title, possession, or permission from the owner of the property" (S.C. Code Ann. § 48-39-140(B)), as well as the authority of the agency to revoke a permit if subsequent to its being issued it is determined that information and data upon which permit was issued is determined to be false.

98. If Defendants are allowed to maintain their docks over Plaintiff's property under the terms of the permits, those permits also amount to a taking of private property in violation of both the South Carolina Constitution and the United States Constitution. These provisions of the Act do not provide for any effect of my permit on private property rights if the agency does not revoke a permit.

99. As has been explained in Paragraph 61 through 66 and is demonstrated in Paragraphs 95 through 98, there exists an actual justiciable controversy between Plaintiff and the Beckmann Defendants and between Plaintiff and the Crowley Defendants involving rights, liabilities, and legal relations relative to the subject properties and the permits associated with each dock.

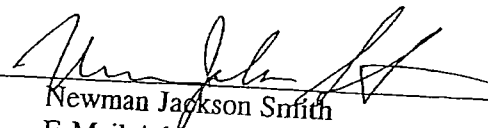
100. Plaintiff, therefore, asks this Court, pursuant to Sections 15-53-10 through 15-53-140 of the South Carolina Code for a judgment of this Court declaring the

two permits held by Defendants to be null and void as to their apparent license or authorization to construct and monitor the docks on Plaintiff's property.

WHEREFORE, Plaintiff prays for judgment against the Beckmann Defendants and Crowley Defendants and that this Court award it the following:

- (A) A decree quieting title or otherwise declaring that Plaintiff owns, in fee simple, the upland property located between Defendants' properties and the mean high water mark, consisting generally of East Indian Avenue and Lots 209 and 210 on East Indian Avenue.
- (B) A mandatory injunction against the Beckmann Defendants and Crowley Defendants requiring removal of the docks from the Plaintiff's property;
- (C) A permanent injunction enjoining the Beckmann Defendants and Crowley Defendants from trespassing on and/or maintaining a continuing nuisance on the Plaintiff's property;
- (D) A decree declaring Permits CC-87-337 and CC-87-368 null and void as to any construction or maintenance of a dock on Plaintiff's property;
- (E) Attorney's fees and court costs; and
- (F) Such other and further relief as this Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Newman Jackson Smith

E-Mail Address: jack.smith@nelsonmullins.com

SC Bar No. 005245

Stacy K. Taylor

SC Bar No. 68466

E-Mail Address: stacy.taylor@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for The Milton P. Demetre Family Partnership

Charleston, South Carolina

October 7, 2005

EXHIBIT A

Exhibit A

The following is a description of Defendant Beckmann's property, which is also known as Lot 209 East Huron Avenue, Folly Beach, South Carolina:

All that certain lot of land, with the buildings thereon, situate, lying and being, on Folly Island, in the County of Charleston, State of South Carolina, and known and designated on a plat made by Jefferson Construction Company, dated February, 1920, and recorded in Plat Book C, page 158, in the R.M.C. Office for Charleston County, as Lot No. 209, East Huron Avenue, measuring on said East Huron Avenue, 70 feet by 150 feet in depth, and having such location, shape, and bounds as are shown on said plat.

Being the same premises as conveyed to Frances A. Harley by deed of Joseph M. Rudick, dated October 16, 1961, and recorded in Book S74, page 87, in the R.M.C. Office for Charleston County, on October 16, 1961.

EXHIBIT B

COUNTY OF CHARLESTON

REC'D 10-1-61

Encl(3)

CERTIFIED A TRUE COPY,

William B. Stungo Roberson
NOTARY PUBLIC, SC

My c/c: 7/22/91

KNOW ALL MEN BY THESE PRESENTS, THAT

I, Frances A. Harley

in the State aforesaid _____ for and _____ in consideration of the sum of
-Seven Thousand and 00/100---- (\$7,000.00) ----- DOLLARS,

to me _____ in hand paid at and before the sealing of these presents by Harry Beckman III, and
Patricia P. Beckmann

in the State aforesaid _____ the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and

release unto the said Harry Beckman III, and Patricia P. Beckmann, their heirs and
assigns:

All that certain lot of land, with the buildings thereon, situate, lying and being, on Folly Island, in the County of Charleston, State aforesaid, and known and designated on a plat made by Jefferson Construction Company, dated February, 1920, and recorded in Plat Book C, page 158, in the R.M.C. Office for Charleston County, as Lot No. 209, East Huron Avenue, measuring on said East Huron Avenue, 70 feet by 150 feet in depth, and having such location, shape, and bounds as are shown on said plat.

Being the same premises as conveyed to Frances A. Harley by deed of Joseph M. Rudick, dated October 16, 1961, and recorded in Book S74, page 87, in the R.M.C. Office for Charleston County, on October 16, 1961.

Address of Grantees: 209 East Huron Drive, Folly Beach, South Carolina.

BOOK 99 PAGE 315

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

Harry Beckman, III, and Patricia P. Beckman, their Heirs and Assigns forever.

NOTED
SOUTH CAROLINA COUNTY DOCUMENTARY TAX

Executors and Administrators, to warrant and forever defend all and singular the said Parties unto the said

Harry Beckman III, and Patricia P. Beckman, their

Heirs and Assigns, against me and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 27th day of April

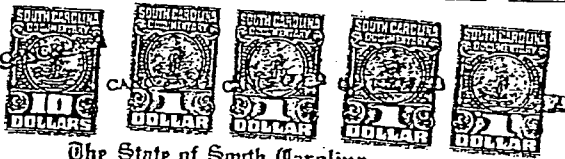
in the year of our Lord one thousand nine hundred and seventy-two and in the one hundred and ninety-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

James H. Foster

Frances A. Harley (L. S.)

(L. S.)



The State of South Carolina,

Charleston County.

PERSONALLY appeared before me Maria E. Foster

and made oath that she saw the within named Frances A. Harley

sign, seal, and as her act and deed, deliver the within written Deed,

and that she with James H. Foster

witnessed the execution thereof.

SWORN to before me, this 27th

day of April A.D. 1972

Notary Public of South Carolina

My Commission Expires: March 11, 1974

The State of South Carolina,

Charleston County.

I, Maria E. Foster, a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that Mrs. Frances A. Harley

the wife of the within named Harry Beckman III

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named Harry Beckman III

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this 27th day of April Anno Domini 1972

(SEAL)

Notary Public of South Carolina
My Commission Expires:

157

1972

May 4 1972 9:40

Book 299 Page 315

Arthur H. Rountree

Register Marine Conveyances
Charleston County, S. C.

State of South Carolina,

TO

TITLE TO REAL ESTATE

Titled _____ day _____

of _____ A.D. 19 _____

at _____ o'clock _____ M.

and recorded in Book _____

Page _____, Fee, \$ _____

R. M. C. or Clerk Court C.P. & G. S.

County, S.C.

Recorded this _____ day _____

of _____ 1972

in Book _____ Page 62

Fee, \$ _____

Pauline H. Rogers

And her _____ County, S. C.

EXHIBIT C

Exhibit C

The following is a description of Defendant Crowley's property, which is also known as Lot 210 East Huron Avenue, Folly Beach, South Carolina:

All that certain lot of land, situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, bounding on Huron Avenue East and measuring thereon seventy (70) feet, by one hundred and fifty (150) feet in depth, and known and designated as 210 Huron Avenue East on a plat made by Jefferson Construction Company dated February 1920 and recorded in the R.M.C. Office for Charleston County in Plat Book C page 158 and having such metes and bounds as are shown thereon.

Being the same premises conveyed to Harris L. Crowley and Annie Crowley by Deed of Isabel S. King, Executrix of the Will of Ernest W. King and Individually, by deed dated September 1, 1964, and recorded September 2, 1964, in Book D81, Page 63, Charleston County RMC.

TMS No. 328-10-00-028

EXHIBIT D

EX A 27346610

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHARLESTON

IN THE MATTER OF HARRIS LAVAUN CROWLEY

CASE NUMBER 95ES10-00700

DEED OF DISTRIBUTION

WHEREAS, the decedent died on April 26, 1995; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Charleston County, South Carolina in File # 95ES10-00700; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representatives are appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representatives have bargained, sold and released, and by these Presents do grant, bargain, sell and release a life estate into ANNIE RUTH HILTON CROWLEY, and a fifty percent (50%) remainder interest into RAYMOND MOODY CROWLEY, DONALD WILLIAM CROWLEY, HARRIS L. CROWLEY, JR., and ANNIE RUTH CROWLEY, n/k/a ANNIE RUTH CROWLEY ATKINSON, the following described property:

SEE ATTACHED EXHIBIT 'A'

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said ANNIE RUTH HILTON CROWLEY, RAYMOND MOODY CROWLEY, DONALD WILLIAM CROWLEY, HARRIS L. CROWLEY, JR., and ANNIE RUTH CROWLEY, n/k/a ANNIE RUTH CROWLEY ATKINSON their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 15th day of May, 1995.

Form #4007C (1/89)
62-3-907, 62-3-908

PAGE 1 OF 3

EXHIBIT 'A'

273PG612

All that certain lot of land, situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, bounding on Huron Avenue East and measuring thereon seventy (70) feet, by one hundred and fifty (150) feet in depth, and known and designated as 210 Huron Avenue East on a plat made by Jefferson Construction Company dated February 1928 and recorded in the R.M.C. Office for Charleston County in Plat Book C page 138 and having such metes and bounds as are shown thereon.

Being the same premises conveyed to Harris L. Crowley and Annie Crowley by Deed of Isabel S. King, Executrix of the Will of Ernest W. King and individually, by deed dated September 1, 1964, and recorded September 2, 1964, in Book D81, Page 63, Charleston County R.M.C.

TMS No. 328-10-00-028

AND

ALL of those two (2) lots of land in St. Andrews Parish, Charleston County, State of South Carolina, and fully described and designated as Lots Forty (40) and Forty-two (42), Section C on a plat of a portion of the subdivision of ARDMORE known as Section C which plat was made by Gaillard and Gaillard, Surveyors, from a Survey made August 3, 1949 and recorded R.M.C. Office for Charleston County, S.C. in Plat Book H page 69, May 31, 1951, reference to which Plat is craved for a full description of the metes and bounds of said lots.

Being the same lots conveyed to Annie Ruth Crowley and Harris L. Crowley by deed of Henry M. Lilienthal, dated April 30, 1955, and recorded April 30, 1955, in Book F 60 Page 529, Charleston County R.M.C.

TMS No. 350-02-00-042 (Lot 40)
350-02-00-044 (Lot 42)

AND

ALL that lot, piece or parcel of land situate, lying and being in St. Andrews Parish, Charleston County, State of South Carolina and shown and known as Lot Thirty-one (31), Section A on a Plat of the Subdivision known as ARDMORE, made by Gaillard and Gaillard, Surveyors from a Survey made May 10, 1948, which is duly recorded in the R.M.C. Office for Charleston County, State of South Carolina in Plat Book G, at page 55 and having such location, metes and bounds as will more fully appear by reference to said plat.

Being the same premises conveyed to Harris Lavonia Crowley and Annie Ruth Hilton Crowley by deed of Harris L. Crowley, Jr., dated January 4, 1969, and recorded January 19, 1969, in Book F181 page 567, Charleston County R.M.C. Office.

TMS No. 350-07-00-170

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

即

27-38112-1

Atty. Gen. Khalif

Richard L. Crowley
RICHARD L. CROWLEY, District
Representative of the House of Representatives,
Crowley

Wm. C. Buckner

CAROLINA

PROBABLY

[illegible]

1972-73, 1973-74, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24, 2024-25, 2025-26, 2026-27, 2027-28, 2028-29, 2029-30, 2030-31, 2031-32, 2032-33, 2033-34, 2034-35, 2035-36, 2036-37, 2037-38, 2038-39, 2039-40, 2040-41, 2041-42, 2042-43, 2043-44, 2044-45, 2045-46, 2046-47, 2047-48, 2048-49, 2049-50, 2050-51, 2051-52, 2052-53, 2053-54, 2054-55, 2055-56, 2056-57, 2057-58, 2058-59, 2059-60, 2060-61, 2061-62, 2062-63, 2063-64, 2064-65, 2065-66, 2066-67, 2067-68, 2068-69, 2069-70, 2070-71, 2071-72, 2072-73, 2073-74, 2074-75, 2075-76, 2076-77, 2077-78, 2078-79, 2079-80, 2080-81, 2081-82, 2082-83, 2083-84, 2084-85, 2085-86, 2086-87, 2087-88, 2088-89, 2089-90, 2090-91, 2091-92, 2092-93, 2093-94, 2094-95, 2095-96, 2096-97, 2097-98, 2098-99, 2099-00, 2100-01, 2101-02, 2102-03, 2103-04, 2104-05, 2105-06, 2106-07, 2107-08, 2108-09, 2109-10, 2110-11, 2111-12, 2112-13, 2113-14, 2114-15, 2115-16, 2116-17, 2117-18, 2118-19, 2119-20, 2120-21, 2121-22, 2122-23, 2123-24, 2124-25, 2125-26, 2126-27, 2127-28, 2128-29, 2129-30, 2130-31, 2131-32, 2132-33, 2133-34, 2134-35, 2135-36, 2136-37, 2137-38, 2138-39, 2139-40, 2140-41, 2141-42, 2142-43, 2143-44, 2144-45, 2145-46, 2146-47, 2147-48, 2148-49, 2149-50, 2150-51, 2151-52, 2152-53, 2153-54, 2154-55, 2155-56, 2156-57, 2157-58, 2158-59, 2159-60, 2160-61, 2161-62, 2162-63, 2163-64, 2164-65, 2165-66, 2166-67, 2167-68, 2168-69, 2169-70, 2170-71, 2171-72, 2172-73, 2173-74, 2174-75, 2175-76, 2176-77, 2177-78, 2178-79, 2179-80, 2180-81, 2181-82, 2182-83, 2183-84, 2184-85, 2185-86, 2186-87, 2187-88, 2188-89, 2189-90, 2190-91, 2191-92, 2192-93, 2193-94, 2194-95, 2195-96, 2196-97, 2197-98, 2198-99, 2199-00, 2200-01, 2201-02, 2202-03, 2203-04, 2204-05, 2205-06, 2206-07, 2207-08, 2208-09, 2209-10, 2210-11, 2211-12, 2212-13, 2213-14, 2214-15, 2215-16, 2216-17, 2217-18, 2218-19, 2219-20, 2220-21, 2221-22, 2222-23, 2223-24, 2224-25, 2225-26, 2226-27, 2227-28, 2228-29, 2229-30, 2230-31, 2231-32, 2232-33, 2233-34, 2234-35, 2235-36, 2236-37, 2237-38, 2238-39, 2239-40, 2240-41, 2241-42, 2242-43, 2243-44, 2244-45, 2245-46, 2246-47, 2247-48, 2248-49, 2249-50, 2250-51, 2251-52, 2252-53, 2253-54, 2254-55, 2255-56, 2256-57, 2257-58, 2258-59, 2259-60, 2260-61, 2261-62, 2262-63, 2263-64, 2264-65, 2265-66, 2266-67, 2267-68, 2268-69, 2269-70, 2270-71, 2271-72, 2272-73, 2273-74, 2274-75, 2275-76, 2276-77, 2277-78, 2278-79, 2279-80, 2280-81, 2281-82, 2282-83, 2283-84, 2284-85, 2285-86, 2286-87, 2287-88, 2288-89, 2289-90, 2290-91, 2291-92, 2292-93, 2293-94, 2294-95, 2295-96, 2296-97, 2297-98, 2298-99, 2299-00, 2300-01, 2301-02, 2302-03, 2303-04, 2304-05, 2305-06, 2306-07, 2307-08, 2308-09, 2309-10, 2310-11, 2311-12, 2312-13, 2313-14, 2314-15, 2315-16, 2316-17, 2317-18, 2318-19, 2319-20, 2320-21, 2321-22, 2322-23, 2323-24, 2324-25, 2325-26, 2326-27, 2327-28, 2328-29, 2329-30, 2330-31, 2331-32, 2332-33, 2333-34, 2334-35, 2335-36, 2336-37, 2337-38, 2338-39, 2339-40, 2340-41, 2341-42, 2342-43, 2343-44, 2344-45, 2345-46, 2346-47, 2347-48, 2348-49, 2349-50, 2350-51, 2351-52, 2352-53, 2353-54, 2354-55, 2355-56, 2356-57, 2357-58, 2358-59, 2359-60, 2360-61, 2361-62, 2362-63, 2363-64, 2364-65, 2365-66, 2366-67, 2367-68, 2368-69, 2369-70, 2370-71, 2371-72, 2372-73, 2373-74, 2374-75, 2375-76, 2376-77, 2377-78, 2378-79, 2379-80, 2380-81, 2381-82, 2382-83, 2383-84, 2384-85, 2385-86, 2386-87, 2387-88, 2388-89, 2389-90, 2390-91, 2391-92, 2392-93, 2393-94, 2394-95, 2395-96, 2396-97, 2397-98, 2398-99, 2399-00, 2400-01, 2401-02, 2402-03, 2403-04, 2404-05, 2405-06, 2406-07, 2407-08, 2408-09, 2409-10, 2410-11, 2411-12, 2412-13, 2413-14, 2414-15, 2415-16, 2416-17, 2417-18, 2418-19, 2419-20, 2420-21, 2421-22, 2422-23, 2423-24, 2424-25, 2425-26, 2426-27,

Winn-Dixie Supermarket

1944-1945

[Signature]
 [Signature]
 [Signature]
 [Signature]

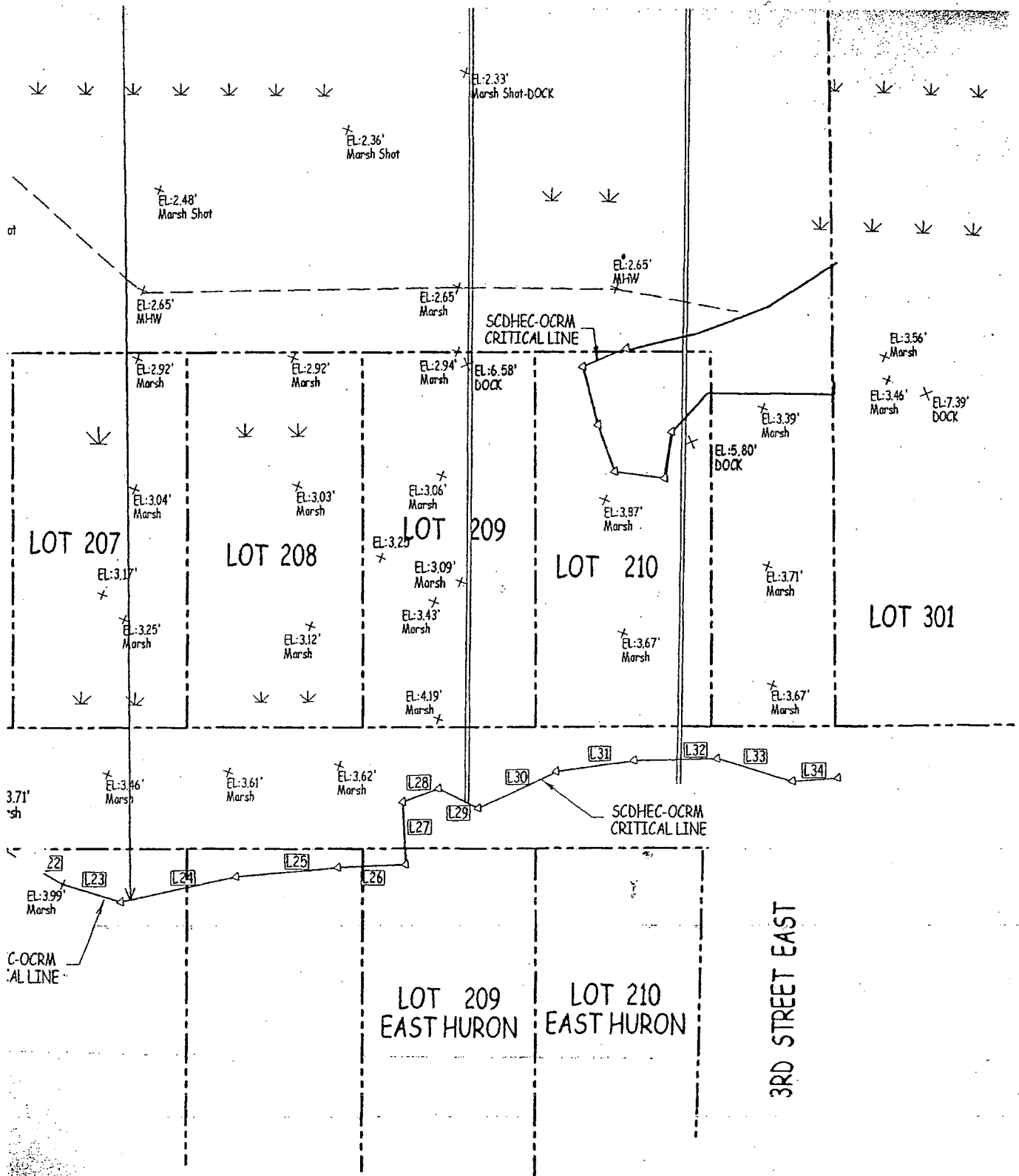
SEND TAX BILL TO:

ROBERT CROWLEY

[illegible]

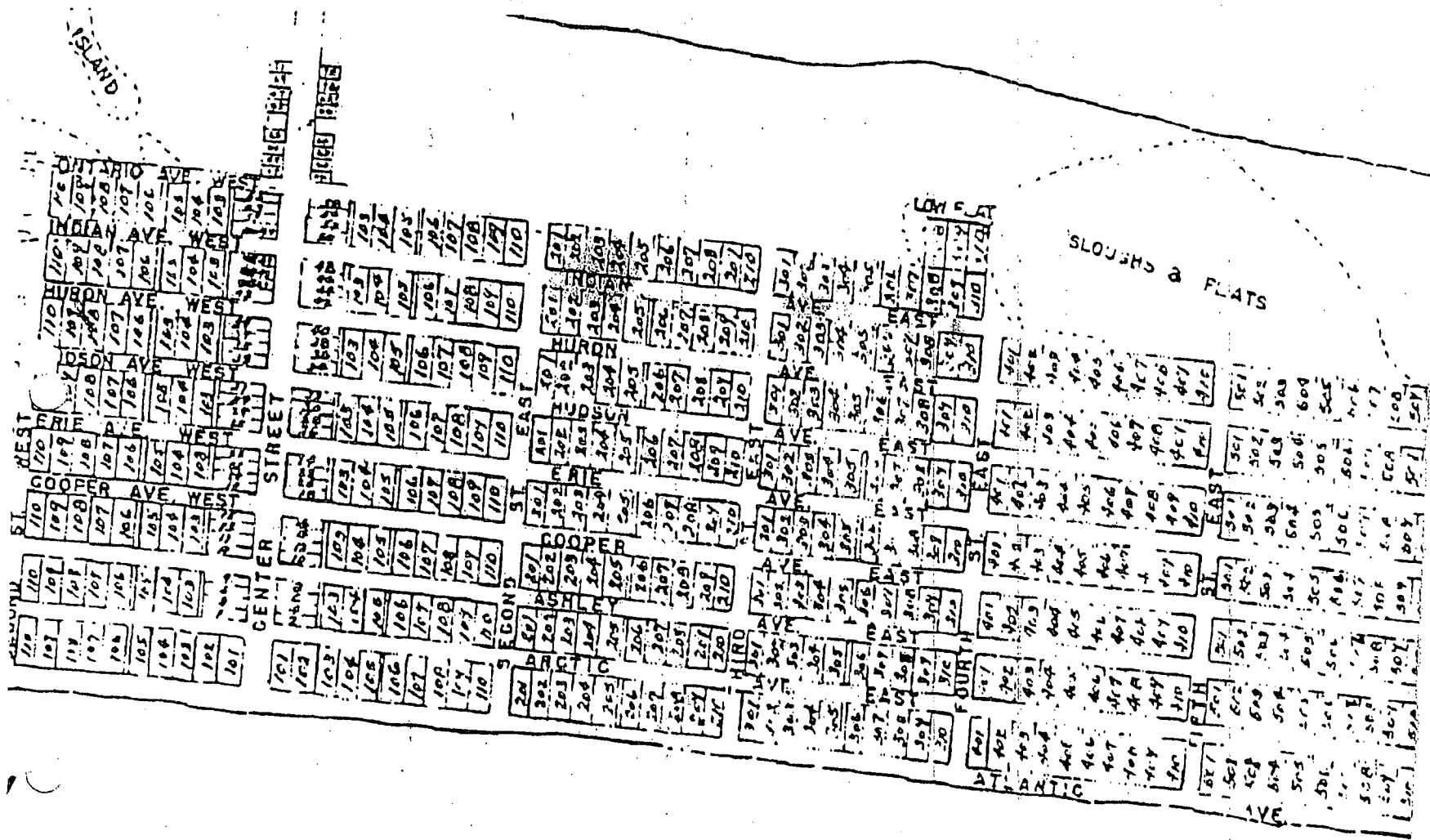
PAGE 2 OF 8

EXHIBIT I



BEACH
CAROLINA

EXHIBIT J



I CERTIFY THAT THIS IS A REDUCED COPY
 OF THE ORIGINAL PLAT RECORDED IN
 PLAT BOOK "C" PAGES 157 & 158

J. B. Weston
 CHAS. CO. PUB. WKS. DEPT.

EXHIBIT K

SOUTH CAROLINA COASTAL COUNCIL PERMIT

PERMIT NUMBER: CC-87-337

PUBLIC NOTICE NUMBER: CC-87-337

NAME OF APPLICANT: Harris Crowley

DATE OF ISSUANCE: December 10, 1987

EXPIRATION DATE: December 10, 1990

SEE SPECIAL
CONDITIONS
ON PAGE 4

This permit is issued under the provisions of Act 123 of the 1977 South Carolina General Assembly and the Final Rules and Regulations of the South Carolina Coastal Council. Furthermore, this permit authorizes the above named applicant, hereafter called the Permittee, to perform works shown on the sketch hereof and made a part hereof, more particularly described as follows:

COUNTY: Charleston

LOCATION: at 210 East Huron Avenue, Folly Beach

NEAREST BODY OF WATER: Folly River

DESCRIPTION OF PROJECT: Private dock; as amended

GENERAL CONDITIONS:

The permittee agrees to the following general conditions:

1. That if the activity authorized herein is not completed on or before the 10th day of December, 1990 (three years from the date of issuance of permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
2. That the structure or work authorized herein shall be maintained in good condition and in accordance with the plans and drawings attached hereto. Failure to maintain the structure in this condition shall be grounds for revocation of the permit.
3. That every reasonable effort will be made to conduct the work authorized herein in a manner which minimizes, to the fullest extent possible, any adverse impact on fish, wildlife and water quality.

4. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
5. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of private property or rights in property.
6. That this permit is granted subject to the rights of the State of South Carolina in navigable water and shall be subject, further, to the rights for which purposes the waters and submerged land thereunder are held by the State. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or other applicable federal agency nor from necessity of compliance with all applicable local laws, ordinances, and zoning or other regulations.
7. That this permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Coastal Council and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
9. That the permittee shall permit the Council or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions of this permit.
10. That authorization for activities or structures herein shall constitute a revocable license. The Coastal Council may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Council that such activity or structure is in violation of the public health, safety, and welfare. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and providing the permittee with opportunity to respond in writing.
11. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition 12 hereof, he/she must restore the area to a condition satisfactory to the Coastal Council.
12. That this permit may not be transferred to a third party without prior written notice to the Coastal Council, either by the transferree's written agreement to comply with all terms and conditions of this permit or by the transferree subscribing to this permit and thereby agreeing to comply with all terms and conditions of this permit.

13. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

14. That the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work. Display of a placard is not necessary if a permit for the work has been issued by the U. S. Army Corps of Engineers and a Corps placard is posted in a conspicuous place at the site.

15. That before revocation, suspension, or modification of this permit, the Coastal Council shall provide written notification to the permittee of intention to revoke, suspend, or modify the permit, and the permittee shall be given an opportunity to present a written explanation to the Coastal Council.

16. That the permittee, upon receipt from the Coastal Council of written notification of intent to revoke, suspend or modify the permit, shall cease all work under this permit. Furthermore, work shall not be resumed under this permit until final disposition of the proceeding has occurred.

17. That the permittee, upon receipt of a notice or revocation of this permit upon its expiration before completion of the authorized structure or work, shall without expense to the Coastal Council and in such time and manner as the Coastal Council or its authorized representative may direct, restore the area to its former condition. If the permittee fails to comply with the direction of the Coastal Council or its authorized representative, the Coastal Council or its designee may restore the affected area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

18. That in issuing this permit, the Coastal Council has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Coastal Council, may, in addition, institute appropriate legal proceedings.

19. That any modification, suspension or revocation of this permit shall not be the basis for any claim for damages against the Coastal Council or the State of South Carolina or any employee, agent, or representative of the Coastal Council or the State of South Carolina.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS SIX (6) AND EIGHT (8): BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN (ATTACHMENT 1) AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS, AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AT THE COASTAL COUNCIL MAY CONSIDER APPROPRIATE.

CAUTION: Section 15(D) of Act 123 of 1977 allows any person adversely affected by the issuance of a Coastal Council permit to appeal the decision to the full Council by filing a written Notice of Intent to Appeal within 15 days after notification of the permit's issuance. In the event of an appeal of the decision to issue this permit, the Coastal Council reserves the right to order a stay of any use or activity authorized herein pending a final decision by the full Council when, in its judgment, the interests of the public would be best served.

Accepted this 14TH day of

DEC, 1987

Harris F. Howler
Permittee

Issued this 10th day of
December, 1987.

State of South Carolina
Coastal Council

John C. Hayes, III, Chairman

By:

Steve Moore

Permit Administrator

ATTACHMENT 1:

The plans submitted by you, attached hereto, show the work to consist of constructing a private dock. The structure will have a 4' by 700' walkway leading to a 12' by 24' fixed pierhead. The purpose of the structure is for the applicant's private, recreational use. These plans are approved as submitted, subject to the following special conditions.

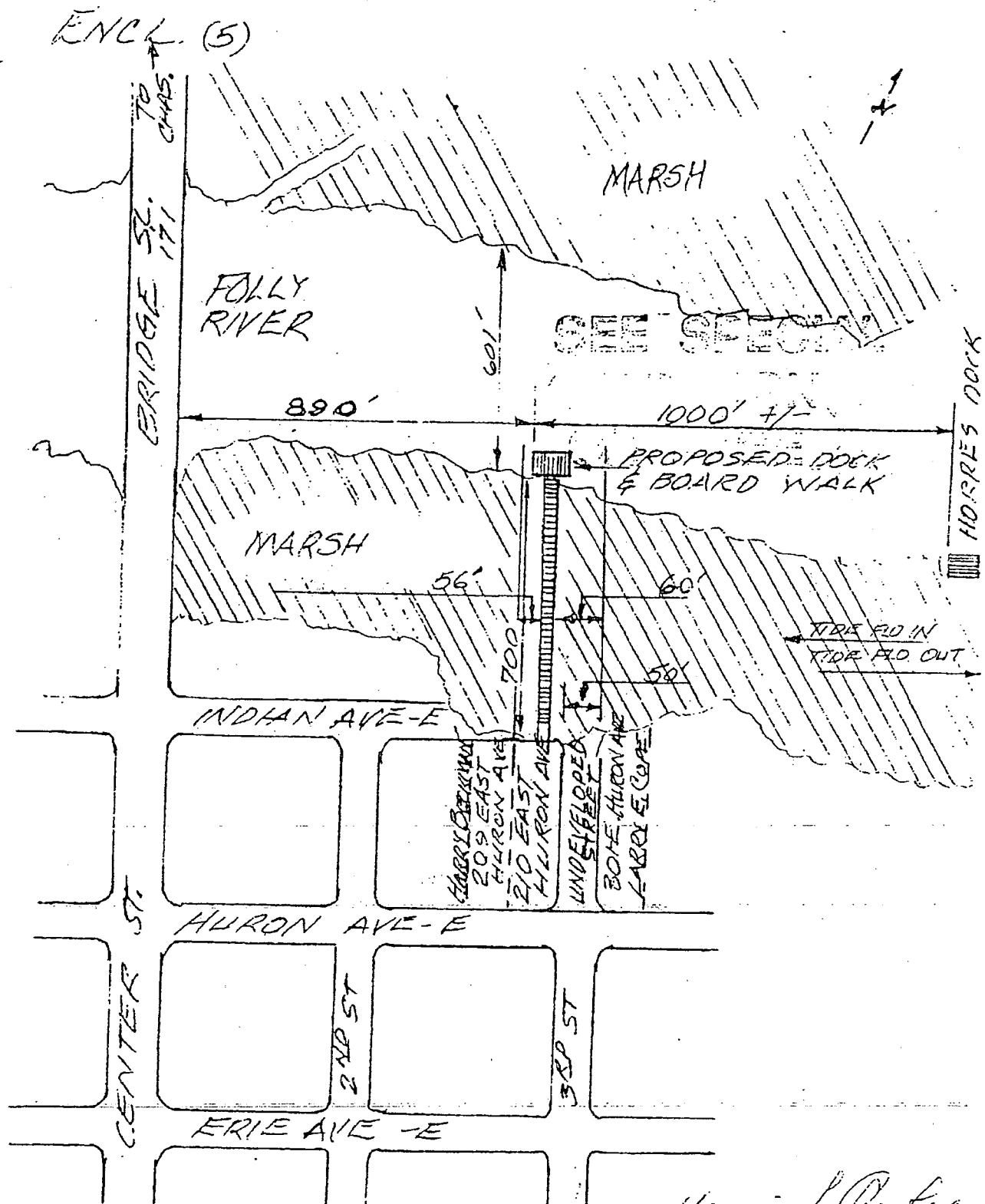
SPECIAL CONDITIONS:

MEAN HIGH WATER DEC 12-17-87

1. Provided that the structure is 3' above

THE PERMITTEE HAS READ THE SPECIAL CONDITIONS AND AGREES TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THESE SPECIAL CONDITIONS.

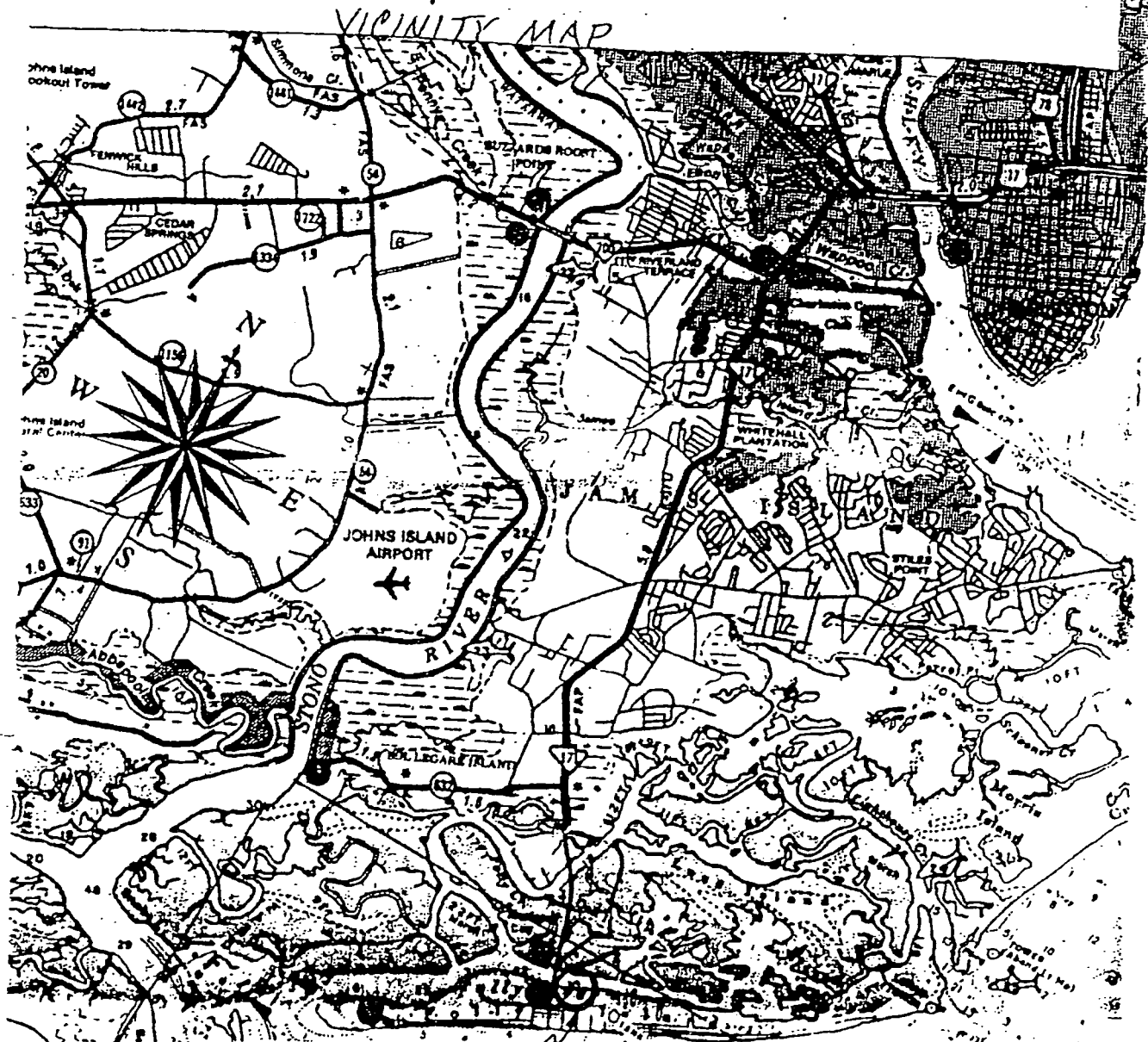
Harris F. Howler
Permittee



PLAN VIEW
5 of 6

Harris & Poulley
210 EAST HURON AVE
FOLLY BEACH, SC.

FLYCL (4)



SITE OF PROPOSED
BOAT-CRABING DOCK
AND ACCESS BOARD-
WALK

Harold S. Crowley
SEA & LAND ARCHT

6 of 6

EXHIBIT L

SOUTH CAROLINA COASTAL COUNCIL PERMIT

Hand Delivered
in
1/27/88/03

PERMIT NUMBER: CC-87-368

PUBLIC NOTICE NUMBER: CC-87-368

NAME OF APPLICANT: Harry Beckmann, III

DATE OF ISSUANCE: January 21, 1988

EXPIRATION DATE: January 21, 1991

**SEE SPECIAL
CONDITIONS
ON PAGE 4**

This permit is issued under the provisions of Act 123 of the 1977 South Carolina General Assembly and the Final Rules and Regulations of the South Carolina Coastal Council. Furthermore, this permit authorizes the above named applicant, hereafter called the Permittee, to perform works shown on the sketch hereof and made a part hereof, more particularly described as follows:

COUNTY: Charleston

LOCATION: at 209 East Huron Avenue, Folly Beach

NEAREST BODY OF WATER: Folly River

DESCRIPTION OF PROJECT: Private dock; as amended

GENERAL CONDITIONS:

The permittee agrees to the following general conditions:

1. That if the activity authorized herein is not completed on or before the 21st day of January, 1991 (three years from the date of issuance of permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
2. That the structure or work authorized herein shall be maintained in good condition and in accordance with the plans and drawings attached hereto. Failure to maintain the structure in this condition shall be grounds for revocation of the permit.
3. That every reasonable effort will be made to conduct the work authorized herein in a manner which minimizes, to the fullest extent possible, any adverse impact on fish, wildlife and water quality.

4. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
5. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of private property or rights in property.
6. That this permit is granted subject to the rights of the State of South Carolina in navigable water and shall be subject, further, to the rights for which purposes the waters and submerged land thereunder are held by the State. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or other applicable federal agency nor from necessity of compliance with all applicable local laws, ordinances, and zoning or other regulations.
7. That this permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Coastal Council and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
9. That the permittee shall permit the Council or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions of this permit.
10. That authorization for activities or structures herein shall constitute a revocable license. The Coastal Council may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Council that such activity or structure is in violation of the public health, safety, and welfare. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and providing the permittee with opportunity to respond in writing.
11. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition 12 hereof, he/she must restore the area to a condition satisfactory to the Coastal Council.
12. That this permit may not be transferred to a third party without prior written notice to the Coastal Council, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply with all terms and conditions of this permit.

13. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
14. That the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work. Display of a placard is not necessary if a permit for the work has been issued by the U. S. Army Corps of Engineers and a Corps placard is posted in a conspicuous place at the site.
15. That before revocation, suspension, or modification of this permit, the Coastal Council shall provide written notification to the permittee of intention to revoke, suspend, or modify the permit, and the permittee shall be given an opportunity to present a written explanation to the Coastal Council.
16. That the permittee, upon receipt from the Coastal Council of written notification of intent to revoke, suspend or modify the permit, shall cease all work under this permit. Furthermore, work shall not be resumed under this permit until final disposition of the proceeding has occurred.
17. That the permittee, upon receipt of a notice or revocation of this permit upon its expiration before completion of the authorized structure or work, shall without expense to the Coastal Council and in such time and manner as the Coastal Council or its authorized representative may direct, restore the area to its former condition. If the permittee fails to comply with the direction of the Coastal Council or its authorized representative, the Coastal Council or its designee may restore the affected area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
18. That in issuing this permit, the Coastal Council has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Coastal Council, may, in addition, institute appropriate legal proceedings.
19. That any modification, suspension or revocation of this permit shall not be the basis for any claim for damages against the Coastal Council or the State of South Carolina or any employee, agent, or representative of the Coastal Council or the State of South Carolina.
- PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS SIX (6) AND EIGHT (8). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN (ATTACHMENT 1) AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS, AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AT THE COASTAL COUNCIL MAY CONSIDER APPROPRIATE.

CAUTION: Section 15(D) of Act 123 of 1977 allows any person adversely affected by the issuance of a Coastal Council permit to appeal the decision to the full Council by filing a written Notice of Intent to Appeal within 15 days after notification of the permit's issuance. In the event of an appeal of the decision to issue this permit, the Coastal Council reserves the right to order a stay of any use or activity authorized herein pending a final decision by the full Council when, in its judgment, the interests of the public would be best served.

Accepted this 27 day of

Jan, 1988

Harry Beckman
Permittee

Issued this 21st day of
January, 1988.

State of South Carolina
Coastal Council

John C. Hayes, III, Chairman

By:

Steve Moore
Permit Administrator

ATTACHMENT 1:

The plans submitted by you, attached hereto, show the work to consist of constructing a private dock. The structure will have a 4' by 700' walkway with one handrail leading to a 12' by 24' fixed pierhead. The purpose of the structure is for the applicant's private, recreational use. These plans are approved as submitted, subject to the following special conditions.

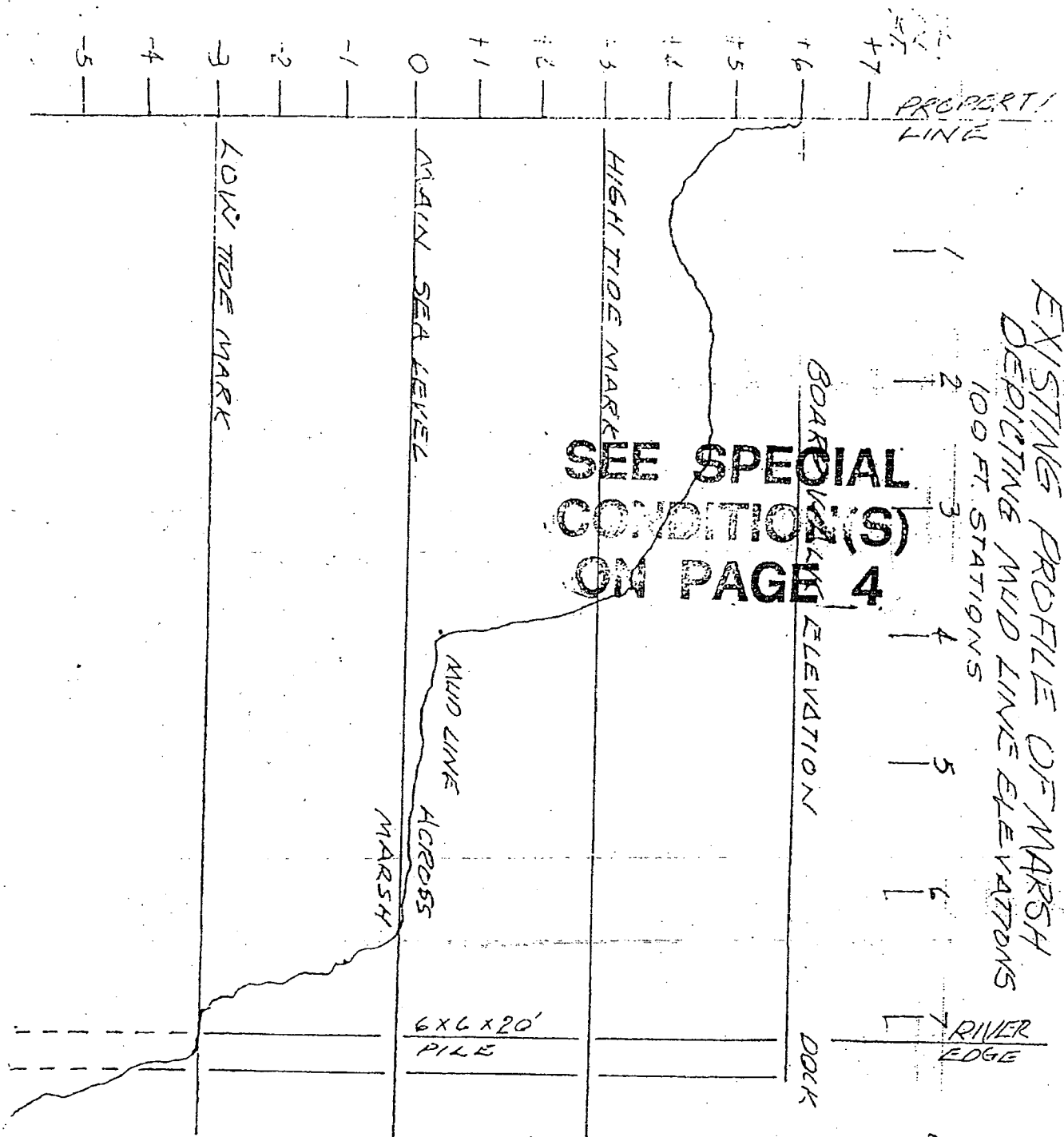
SPECIAL CONDITIONS:

1. Provided that the structure extends no further channelward than adjacent, existing structures.
2. Provided that the structure is built a minimum of 3' above mean high water.

THE PERMITTEE HAS READ THE SPECIAL CONDITIONS AND AGREES TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THESE SPECIAL CONDITIONS.

Harry Beckman
Permittee



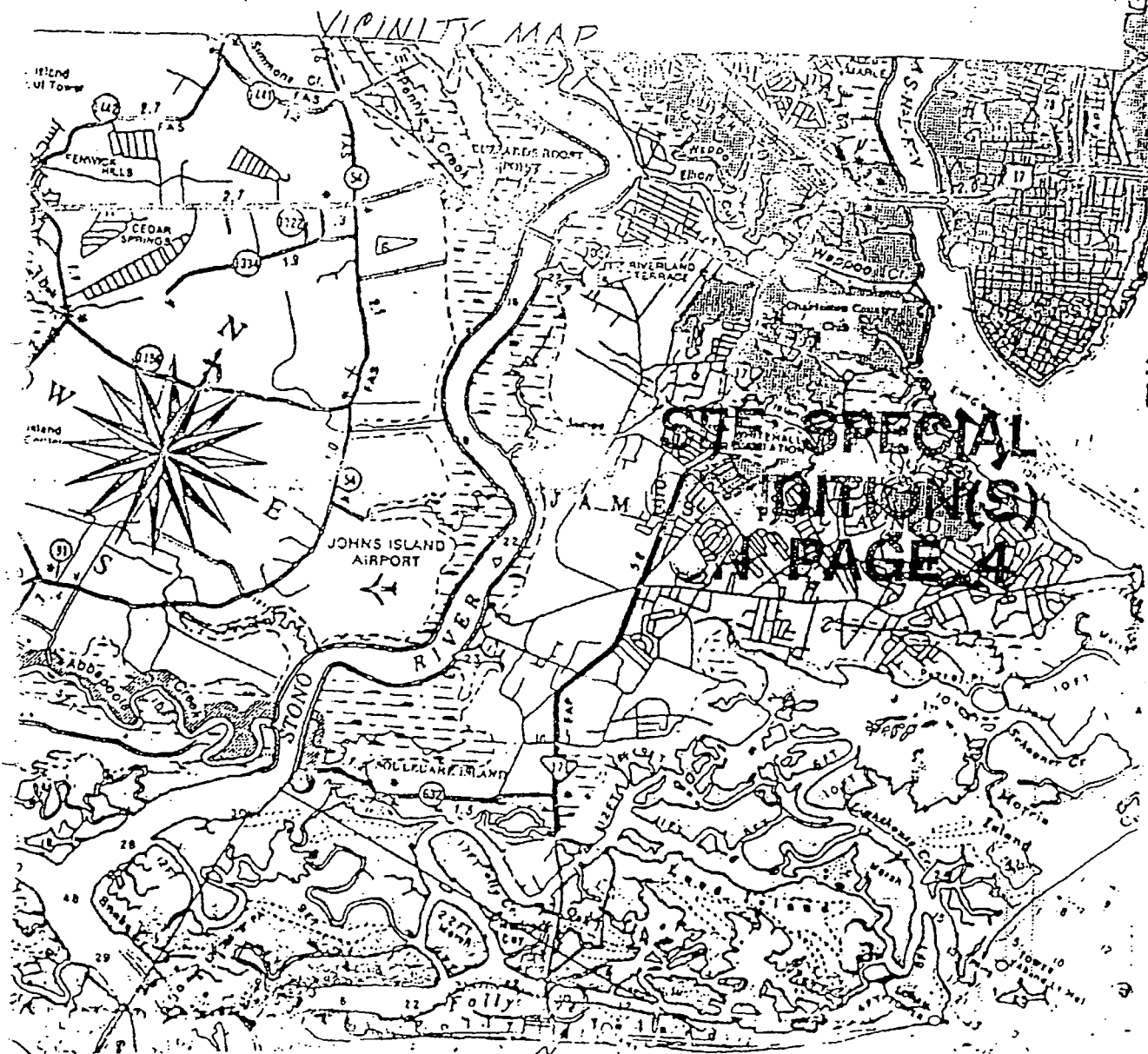


BOTTOM DROPS
TO MINUS 10 FT.
SEE GEODETIC SURVEY
SOUNDINGS ON VICINITY MAP

Harry B. Bismore
209. HUTTON AVE. E.
FOLLY BEACH, S.C.

6 of 7

EXCL. (4)



SITE OF PROPOSED
BOAT-CRAISING DOCK
AND ACCESS BOARD-
WALK

7 of 7

Harry Beckmann
209 E. Huron Ave.
Folly Beach, SC 29434

EXHIBIT E

Exhibit E

Lots 209 and 210 East Indian Avenue and Land North of Lots 209 and 210 to Mean Low Water Mark of Folly River and Undeveloped Roadway (between 208 and 210 East Indian Avenue) and Undeveloped Roadway (Third Street between 210 and 301 East Indian Avenue including intersection) to the Mean Low Water Mark of the Folly River

The following is a description of the relevant portions of Plaintiff's property, specifically Lots 209 and 210 East Indian Avenue and certain surrounding property, located in Folly Beach, South Carolina:

All those lots of land situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, known as Lot Numbers 209 and 210 Indian Avenue, East on a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company dated February 1920 and recorded in the RMC Office for Charleston County in Plat Book C at page 158.

Each of the said lots measuring and containing on the North and South lines seventy (70) feet and on the East and West lines One Hundred and Fifty (150) feet which will appear by reference to said plat.

Butting and bounding to the North on marshland of Edward M. Seabrook; Lot Number 210 to the East on Third Street East and to the West on Lot Number 209 Indian Avenue, East; Lot Number 209 to the East on Lot Number 210 Indian Avenue, East and to the West on Lot Number 208 Indian Avenue, East; and each said lot to the South on Indian Avenue, East.

A portion of TMS #: 328-10-00-132, now a portion of TMS #: 328-10-00-244.

Also

All that Lot of Land described as a one hundred and ninety (190) foot wide strip of land, more or less, that begins at and between the Northwestern corner point of Lot Number 209 Indian Avenue, East and the Northwestern corner point of Lot Number 301 Indian Avenue, East extending to and ending on the mean low water mark of the Folly River.

Butting and bounding to the North on the Mean Low Water mark of the Folly River; to the East on the Western Lot line of Lot Number 301 Indian Avenue, East extended to and on the mean low water mark of the Folly River; to the West on the Western lot line of Lot Number 209 Indian Avenue, East extended to and on the mean low water mark of the Folly River; and, to the South on Lot Number 209 and Lot Number 210 Indian Avenue, East and on Third Street, East.

Also

All that lot of land that is a portion of a roadway named Third Street, East, extending from and being adjacent and bordering on Indian Avenue, East and on Lot Number 210, Indian Avenue, East and beginning at the Northeastern corner point to Lot Number 210 Huron Avenue East

and ending at the Northeastern corner point of Lot 210 Indian Avenue, East. Said roadway measures fifty (50) feet wide and two hundred (200) feet long, more or less.

Also

All that lot of land that is a portion of a roadway named Indian Avenue, East extending from and being adjacent and bordering on Lot Number 209 and Lot Number 210 Indian Avenue, East and beginning at the Southeaster corner point of Lot Number 208 Indian Avenue, East, and ending at the Southeastern corner point of Lot Number 210 Indian Avenue East. Said roadway measures fifty (50) feet wide and one hundred forty (140) feet long, more or less.

EXHIBIT F

STATE OF SOUTH CAROLINA

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, I, **Edward M. Seabrook**,

SEND GREETING:

NOW, KNOW ALL MEN BY THESE PRESENTS, That I the said **Edward M. Seabrook**, for and in consideration of the premises and also in consideration of the sum of Twenty Three Thousand and Seven Hundred Dollars (\$23,700.00) to me in hand paid at and before the sealing and delivery of these presents by **Milton P. Demetre Family Limited Partnership** (the receipt whereof is hereby acknowledged) have remised, released, and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said **Milton P. Demetre Family Limited Partnership**, its successors, heirs and assigns:

All those lots of land situate, lying and being on Folly Island, in the County of Charleston, State of South Carolina, known as Lot Numbers 209 and 210 Indian Avenue, East on a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company dated February 1920 and recorded in the RMC Office for Charleston County in Plat Book C at page 158.

Each of the said lots measuring and containing on the North and South lines seventy (70) feet and on the East and West lines One Hundred and Fifty (150) feet which will appear by reference to said plat.

Butting and bounding to the North on marshland of Edward M. Seabrook; Lot Number 210 to the East on Third Street East and to the West on Lot Number 209 Indian Avenue, East; Lot Number 209 to the East on Lot Number 210 Indian Avenue, East and to the West on Lot Number 208 Indian Avenue, East; and each said lot to the South on Indian Avenue, East.

A portion of TMS#: 328-10-00-132

ALSO

All that Lot of Land described as a one hundred and ninety (190) foot wide strip of land, more or less, that begins at and between the Northwestern corner point of Lot Number 209 Indian Avenue, East and the Northwestern corner point of Lot Number 301 Indian Avenue, East extending to and ending on the mean low water mark of the Folly River.

Butting and bounding to the North on the Mean Low Water mark of the Folly River; to the East on the Western Lot line of Lot Number 301 Indian Avenue, East extended to and on the mean low

MH 4826213

water mark of the Folly River; to the West on the Western lot line of Lot Number 209 Indian Avenue, East extended to and on the mean low water mark of the Folly River; and, to the South on Lot Number 209 and Lot Number 210 Indian Avenue, East and on Third Street, East.

Also

All that lot of land that is a portion of a roadway named Third Street, East, extending from and being adjacent and bordering on Indian Avenue, East and on Lot Number 210, Indian Avenue, East and beginning at the Northeastern corner point of Lot Number 210 Huron Avenue, East and ending at the Northeastern corner point of Lot 210 Indian Avenue, East. Said roadway measures fifty (50) feet wide and two hundred (200) feet long, more or less.

Also

All that lot of land that is a portion of a roadway named Indian Avenue, East extending from and being adjacent and bordering on Lot Number 209 and Lot Number 210 Indian Avenue, East and beginning at the Southeastern corner point of Lot Number 208 Indian Avenue, East, and ending at the Southeastern corner point of Lot Number 210 Indian Avenue, East. Said roadway measures fifty (50) feet wide and one hundred forty (140) feet long, more or less.

The above described portions of the roadways named Indian Avenue, East and Third Street, East conveyed by this deed are unimproved, undeveloped, unpaved, undedicated, and abandoned; and, now becomes part of a private fifty (50) foot wide roadway owned by Milton P. Demetre Family Limited Partnership named Indian Avenue, East and Third Street, East as shown on the above referenced Plat that is adjacent to and borders on Lot Numbers 201, 202, 203, 204, 205, 206, 207, 208, 209, and 210 Indian Avenue, East as described in and conveyed by this deed and deeds by Edward M. Seabrook recorded in the RMC Office for Charleston County in Deed Book V 407, Page 067 through 070 and Deed Book G 421, Page 318 through 323 on May 30 and September 12, 2002, respectively.

Being a portion of the property devised to Edward M. Seabrook, Jr. under the Will of his father, Edward M. Seabrook, filed under Roll #864-161 in the Probate Court of Charleston County and under the Will of his mother, Fannie Lee Seabrook, filed under Roll #876-129 in the Probate Court for Charleston County.

Grantee's address: 253 King Street, Charleston, SC 29401

BH 482PG214

Together with all and singular the rights, members, hereditaments, and appurtenance to the said premises belonging or in anywise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said **Milton P. Demetre Family Limited Partnership**, its successors, heirs and assigns, forever -- so that neither I the said Edward M. Seabrook nor my heirs, nor any other person or persons, claiming under me or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

Witness my hand and seal this 23rd day of January, in the year of our Lord two thousand and four and in the two hundred and twenty-eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered in the presence of:

Edward M. Seabrook (L.S.)
Edward M. Seabrook
Arthur F. Strimling

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me Gretchen Strimling Robinson and made oath that (s) he saw the within named Edward M. Seabrook sign, seal, and as his act and deed, deliver the within written Deed; and that (s) he with Arthur F. Strimling witnessed the execution thereof.

Sworn to before me this 23rd day of January, 2004

Arthur F. Strimling
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 7/7/10

BH 482PG215

STATE OF SOUTH CAROLINA) AFFIDAVIT
COUNTY OF BERKELEY)

Date of Transfer of Title
Closing Date: January __, 2004

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information
2. The property is being transferred by Edward M. Seabrook to Milton P. Demetre Family Limited Partnership on January __, 2004.
3. Check one of the following: The DEED is:
(A) X subject to the deed recording fee as a transfer for consideration paid or to be paid in Money or money's worth.
(B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(C) _____ EXEMPT from the deed recording fee because: (Exemption _____)
(Explanation if required) _____
(If Exempt, please skip items 4-6, and go to item 7 of this affidavit).
4. Check one of the following if either item 3 (a) or item 3 (b) above has been checked.
(A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$23,700.00.
(B) _____ The fee is computed on the fair market value of the realty which is \$ _____.
(C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(A) \$23,700.00 The amount listed in item 4 above.
(B) 0 The amount listed in item 5 above (no amount place zero)
(C) \$23,700.00 Subtract line 6(b) from line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney:
8. Check if Property other than Real Property is being transferred on this Deed.
(A) _____ Mobile Home
(B) _____ Other
9. _____ DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)h has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn this 23 Day of Jan, 2004.

Butch O. Lee
Notary Public for South Carolina
My Commission Expires: 11-15-09

Signed: [Signature]
Creator, Grantor, or Attorney that prepared this form.
Patrick E. Sycamore
Type or Print Name here

RECORDER'S PAGE

This page Must remain with
the original document.



■H 482PG216

Recording

Fee 10.00
State 62.40
County 26.40
Fee 26.40

Postage

TOTAL 98.80

A

Stringer & Stringer
NBZ
sl

RECORDED FROM REC

FEB 12 2004

PEGGY A MOSELEY
CHARLESTON COUNTY AUDITOR

FILED

H482-212

2004 JAN 26 PM 2:50

CHARLES LY BRAND
REGISTER
CHARLESTON COUNTY SC

**PID VERIFIED
BY ASSESSOR**

REP LMG

DATE 2/12/04

(843) 958-4800 2 Courthouse Square Charleston, SC 29401

EXHIBIT G

Exhibit G

A. History

1. The State of South Carolina created the Folly Island Company, by charter dated November 5, 1918. The company was duly incorporated and was authorized to buy, hold, and sell real estate and other property.
2. Arthur R. Young, trustee, conveyed Folly Island to the Folly Island Company by deed dated November 8, 1918.
3. The State of South Carolina created the Folly Beach Corporation, dated July 3, 1919. The corporation was authorized to buy, own, and sell real estate and other property.
4. The Folly Island Company conveyed Folly Island to the Folly Beach Corporation, by deed dated October 6, 1919.
5. As a question had arisen as to whether Robert C. Alexander's interest in Folly Island had passed to Annie C. Alexander under his Last Will and Testament, George Alexander, Maude Foote, Lucy G. Alexander, John A. Alexander and William Alexander conveyed by quitclaim deed the interest of Robert C. Alexander in Folly Island to the Folly Beach Corporation dated October 20, 1920.
6. As a question had arisen as to whether Robert C. Alexander's interest in Folly Island had passed to Annie C. Alexander under his Last Will and Testament, Delphine T. Alexander, Maltilda T. Alexander Woodward, and Margaret Jean Alexander Orndorff conveyed by quitclaim deed the interest of Robert C. Alexander in Folly Island to the Folly Beach Corporation, dated January 10, 1921.

7. The Folly Beach Corporation conveyed Folly Island to the Folly Beach Improvement Company, by deed dated December 16, 1925.

8. William McGee Morrison, Master, County of Charleston, conveyed by deed dated January 5, 1943, Folly Island, saving parcels already sold to private individuals, to Edward M. Seabrook. This conveyance was a foreclosure action by Citizens and Southern Bank of Savannah Georgia on the Folly Beach Improvement Company whereby the highest bidder for Folly Island was Edward M. Seabrook. The property which Edward Seabrook received was the same property (minus those parcels already sold) which the Folly Beach Corporation had transferred to the Folly Beach Improvement Company.

9. Edward M. Seabrook and Fannie Lee Seabrook conveyed Folly Island to Edward M. Seabrook, Jr. through the will of Edward M. Seabrook and Fannie Lee Seabrook.

B. Lots 209 and 210 East Indian Avenue

10. Edward M. Seabrook, Jr. conveyed Lots 209 and 210 East Indian Avenue and land north of Lots 209 and 210 East Indian Avenue to the mean low water mark of the Folly River, a fifty foot wide strip of land north of 3rd Street, east to the mean low water mark of the Folly River, an undeveloped fifty foot wide East Indian Avenue road from the southeastern corner of Lot 208 to the southeastern corner of Lot 210 East Indian Avenue, and an undeveloped fifty foot wide 3rd Street, east road from the northeastern corner of Lot 210 East Huron Avenue to the northeastern corner of Lot 210 East Indian Avenue. This conveyance was to the Milton P. Demetre Family Limited Partnership by quitclaim deed dated January 23, 2004.

C. Other Properties Owned by Plaintiff

(Lot 201 East Indian Avenue)

11. Edward M. Seabrook conveyed Lot 201 East Indian Avenue to William C. and Harriett S. Dawson dated December 16, 1948.

12. William C. Dawson, father of Elizabeth D. Muller and Alma Dawson McGinnis, died on August 25, 1966, seized in an undivided one-half interest in Lots 201 and 202 East Indian Avenue, which interest passed to Elizabeth and Alma. Elizabeth D. Muller and Alma Dawson McGinnis conveyed to their mother, Harriett S. Dawson, a one-half interest in Lots 201 and 202 East Indian Avenue on January 10, 1969.

13. Harriett S. Dawson conveyed Lot 201 East Indian Avenue to Elizabeth D. Muller by will dated June 19, 1969.

14. Elizabeth D. Muller conveyed Lot 201 East Indian Avenue to Paul G. Wright and Margaret B. Wright by deed dated August 25, 1975.

15. Paul G. Wright and Margaret B. Wright conveyed Lot 201 East Indian Avenue to Adelbert M. Ketcham by deed dated June 1, 1976.

16. Adelbert M. Ketcham conveyed one-half interest in Lot 201 East Indian Avenue to Josephine E. Ketcham, by deed dated February 28, 1977.

17. Josephine E. Ketcham and Adelbert M. Ketcham conveyed Lot 201 East Indian Avenue to Dorothy J. Baldwin and Ernest G. Baldwin, by deed dated June 18, 1984.

18. Dorothy J. Baldwin and Ernest G. Baldwin conveyed Lot 201 East Indian Avenue to William B. Hooffstetter and Caroline E. Hooffstetter, by deed dated March 20, 1987.

19. William B. Hooffstetter conveyed Lot 201 East Indian Avenue to Carolyn E. Hoofstetter by Deed of Distribution in the Matter of William B. Hoofstetter, dated June 18, 1991.
20. Carolyn E. Hoofstetter conveyed Lot 201 East Indian Avenue to Myron K. Blackmer and Paulette W. Blackmer, by deed dated October 20, 1999.
21. Myron K. Blackmer and Paulette W. Blackmer conveyed Lot 201 East Indian Avenue to the Milton P. Demetre Family Limited Partnership, by deed dated January 25, 2002.
22. Myron K. Blackmer and Paulette W. Blackmer conveyed any and all interest in marshland or highland north of 201 East Indian Avenue to the Milton P. Demetre Family Limited Partnership by quitclaim deed dated January 25, 2002.
(Lots 202, 203, 204, and 205 East Indian Avenue and Land North of Lots 201, 202, 203, 204 and 205 to the Mean Low Water Mark of the Folly River)
23. Edward M. Seabrook conveyed to William C. and Harriett S. Dawson Lot 202 East Indian Avenue dated June 2, 1949.
24. William C. Dawson, father of Elizabeth D. Muller and Alma Dawson McGinnis, died on August 25, 1966, seized in an undivided one-half interest in Lots 201 and 202 East Indian Avenue, which interest passed to Elizabeth and Alma. Elizabeth D. Muller and Alma Dawson McGinnis conveyed to their mother, Harriett S. Dawson, a one-half interest in Lots 201 and 202 East Indian Avenue on January 10, 1969.
25. Harriet S. Dawson conveyed Lot 202 East Indian Avenue to Elizabeth D. Muller by will dated June 19, 1969.
26. Edward M. Seabrook conveyed Lots 203, 204, 205 East Indian Avenue to Elizabeth D. Muller by deed dated May 9, 1950.

27. Edward M. Seabrook, Jr. conveyed all land north of Lots 201, 202, 203, 204, 205 East Indian Avenue to the Folly River to Elizabeth D. Muller, dated February 20, 1973.

28. Elizabeth D. Muller conveys Lots 202, 203, 204, 205 East Indian Avenue and all land north of lands 201, 202, 203, 204, and 205 to the Folly River to G & C Properties, LLC, by deed dated November 20, 1997.

29. G & C Properties, LLC conveyed Lots 202, 203, 204, 205 East Indian Avenue and all land north of lands 201, 202, 203, 204, and 205 to the Folly River to James R. Rocco, by deed dated November 20, 1997.

30. James R. Rocco conveyed Lots 202, 203, 204, 205 East Indian Avenue and all land north of lands 201, 202, 203, 204, 205 to the Folly River to the Milton P. Demetre Family Limited Partnership by deed dated February 20, 2002.

(Undeveloped Roadway (between 201 and 205 East Indian Avenue))

31. Edward M. Seabrook, Jr. conveyed an undeveloped East Indian Avenue fifty foot wide road from the unpaved portion of Lot 201 to the southeastern corner of Lot 205 East Indian Avenue to the Milton P. Demetre Family Limited Partnership by quitclaim deed dated May 30, 2002.

(Lots 206, 207, and 208 East Indian Ave. and 10-foot Strip of Land to Mean Low Water Mark of the Folly River and Undeveloped Roadway (between 205 and 208 East Indian Avenue))

32. Edward M. Seabrook, Jr. conveyed Lots 206, 207, and 208 and a ten foot strip of land between lots 205 and 206 East Indian Avenue, land north of Lots 206, 207, 208 and ten foot strip of land to the mean low water mark of the Folly River. In addition he conveyed an undeveloped fifty foot wide East Indian Avenue road from the southeastern corner of Lot 205 to the southeastern corner of Lot 208 East Indian Avenue. This conveyance was to

the Milton P. Demetre Family Limited Partnership by quitclaim deed dated September 12, 2002.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
The Milton P Demetre Family)
Limited Partnership,)
Plaintiff,)
vs.)
City of Folly Beach)
Defendants)
and)
Emily S Brown, Annie Ruth)
Hilton Crowley, Harry)
Beckmann, III and Patricia P)
Beckmann,)
Intervenors)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No 2002-CP-10-4880

ANSWER

BY 
JULIE J. ARMSTRONG
CLERK OF COURT
2005 DEC 28 PM 3:17

FILED

TO: N. JACKSON SMITH, ESQ. AND WADE H. LOGAN, III, ESQ.,
attorneys for Plaintiff Demetre Family Limited Partnership:

The Intervenor hereby Answer Plaintiff's Complaint as follows

FOR A FIRST DEFENSE

1 Defendant Intervenors admit so much of Paragraph 1 as alleges Plaintiff's purpose and that the action is brought pursuant to Declaratory Judgement Act, §15-53-10, *et seq* Intervenor denies factual allegations of Paragraph 1 and demands strict proof thereof

2 The Defendant Intervenors admit the allegations of Paragraph 2 but crave reference to the specific description of the property as set forth in the records of the Charleston County RMC Office

3 The Defendant Intervenors deny the allegations of Paragraphs 4, 8 and 9 and demand strict proof thereof

4. The Defendant Intervenor lack sufficient information to admit the allegations of Paragraphs 3, 5, 6 and 7, therefor deny the same and demand strict proof thereof

5 The Defendant Intervenor further answer the Complaint and would allege:

a) They are citizens and residences of the City of Folly Beach, Charleston County, South Carolina,

b) They are owners of certain real property which abuts Indian Avenue,

c) They or their predecessors in interest to the real estate purchased their property in reliance on the plat referred to in Plaintiff's Complaint

✓ **FOR A SECOND DEFENSE**

UNCLEAN HANDS

6 The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

7. Plaintiff purchased the property which it claims separates the Defendant Intervenor from the Folly River and prohibits any use of the land allegedly belonging to the Plaintiff by way of quitclaim deed for a purchase price, on information and belief, substantially less than the market value of similarly situated property on Folly Beach.

8 Plaintiff, with minimal diligence prior to its purchase of the property in question could have known that the Defendant Intervenor were using, and they and their predecessors in title had used, as their own, the property which the Plaintiff now claims

9 Defendant Intervenor are informed and believe that the Plaintiff knew, prior to purchasing the property that the Defendant Intervenor were using it and claiming it as their own

10 Defendant Intervenor are informed and believe that the Plaintiff has acted unfairly in a matter that is the subject matter of this litigation, to their prejudice

✓ **FOR A THIRD DEFENSE**

STATUTE OF LIMITATIONS

11 The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

12 Defendant Intervenor have used the property claimed by the Plaintiff, as their own, ever since they purchased their respective lots, for periods in excess of thirty (30) years, respectively

13 Defendant Intervenor have had docks on the property claimed by the Plaintiff since 1988, when dock permits were issued by the South Carolina Coastal Council, a period in excess of seventeen (17) years

14 Plaintiff or Plaintiff's predecessor in interest to the real property that Plaintiff claims were aware, or should have been aware of these activities taking place on the claimed property

15 Defendant Intervenor are informed and believe that the Plaintiff's cause of action is time barred, by operation of the law

FOR A FOURTH DEFENSE

FORTY (40) YEAR STATUTORY PRESUMPTION OF A GRANT

16 The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

17 On information and belief, Defendant Intervenor and their predecessors in interest have used the property claimed by the Plaintiff for a period of time in excess of forty (40) years continuously, hostilely, openly, adversely, notoriously and exclusively.

18 On information and belief, neither Plaintiff, nor its predecessors in interest have been in possession of the property claimed by virtue of its written instrument for forty (40) years prior to the commencement of this action

19 Defendant Intervenor and their predecessors in interest have used and occupied the property claimed by the Plaintiffs in a way that is consistent with the use to which such land may be put

20 Defendant Intervenor are informed and believe that such use by them and their predecessors in interest has created the presumption of a grant in the Defendant Intervenor for the property which they have used has caused title to be vested in them by operation of law

FOR A FIFTH DEFENSE

TWENTY (20) YEAR COMMON LAW PRESUMPTION OF A GRANT

21 The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

22 On information and belief, Defendant Intervenor and their predecessors in interest have used the property claimed by the Plaintiff for a period of time in excess of twenty (20) years continuously hostilely, openly, adversely, notoriously and exclusively

23 On information and belief, neither Plaintiff, nor its predecessors in interest have been in possession of the property claimed by virtue of its written instrument for twenty (20) years prior to the commencement of this action

24 Defendant Intervenor and their predecessors in interest have used and occupied the property claimed by the Plaintiffs in a way that is consistent with the use to which such land may be put

25 Defendant Intervenor are informed and believe that such use by them and their predecessors in interest has created the presumption of a grant in the Defendant Intervenor for the property which they have used has caused title to be vested in them by operation of law

FOR A SIXTH DEFENSE

ADVERSE POSSESSION

26 The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

27 On information and belief, Defendant Intervenor have used the property claimed by the Plaintiff for a period of time in excess of ten (10) years continuously, hostilely, openly, adversely, notoriously and exclusively On information and belief, neither Plaintiff, nor its predecessors in interest have been in possession of the property claimed by virtue of its written instrument for ten (10) years prior to the commencement of this action

28 Defendant Intervenor in interest have used and occupied the property claimed by the Plaintiffs in a way that is consistent with the use to which such land may be put.

29. Defendant Intervenor are informed and believe that such use by them has caused the property to be adversely possessed by them and has caused title to be vested in them by operation of law.

FOR A SEVENTH DEFENSE

LACHES

30. The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

31. Plaintiff and its predecessors in title knew, or with the exercise of due diligence could have known, that the Defendant Intervenor were using, as their own, property that it now claims by virtue of a quit claim deed

32. Plaintiff and its predecessors in title have failed to assert a claimed right, which it knew or could have known existed for an unreasonable and unexplained period of time

33. Defendant Intervenor, and their predecessors in interest, have used the property as their own for as long as the property has been deeded to individuals in their chain of title from the Folly Beach Company and have established docks from their property to the Folly River

34. A determination that Plaintiff may now bring an action to determine use and ownership would work an extreme prejudice on the Defendant Intervenor and they are informed and believe that the claim is time barred by operation of law

FOR A EIGHTH DEFENSE

DEDICATION OF STREETS BY PLAT

35. The Defendant Intervenor reallege each and every allegation of the previous paragraphs as if set forth more fully herein

36. Defendant Intervenor and their predecessors in title brought their lots based on a plat which was made a part and parcel of their property description.

37. Defendant Intervenor are informed and believe that they have acquired every easement, right, privilege and advantage shown on the plat and they are further informed and believe that the dedication of these rights were complete when the conveyance was made to their predecessors in title.

38. Defendant Intervenor is informed and do believe that they have the right to use the streets described on the plat for their general purposes and Plaintiff may not bar their use

WHEREFORE, having fully Answered the Complaint of the Plaintiff, Defendant Intervenor request that this Honorable Court inquire into the matters set forth herein and grant the following relief, to wit

- 1 Dismiss all allegations of the Complaint with costs to the Plaintiff,
- 2 Quiet title in the Defendant Intervenor for the real estate in question based on the Defenses asserted by the Defendant Intervenor, and,
- 3 For such other and further relief as the Court deem just and proper

Law Offices of C.C. Harness, III



By C C Harness, III

325 Coleman Blvd

Mount Pleasant, SC 29464

(843) 856-2627

Attorneys for the Defendant
Intervenor

Mount Pleasant, South Carolina
December 21, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
The Milton P Demetre Family)
Limited Partnership,)
Plaintiff,)
vs)
City of Folly Beach)
Defendants)
and)
Emily S Brown, Annie Ruth)
Hilton Crowley, Harry)
Beckmann, III and Patricia P)
Beckmann,)
Intervenors)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No 2002-CP-10-4880

CERTIFICATE OF SERVICE

JULIE J. ALMS-STRONG
CLERK OF COURT

2005 DEC 28 PM 3:17

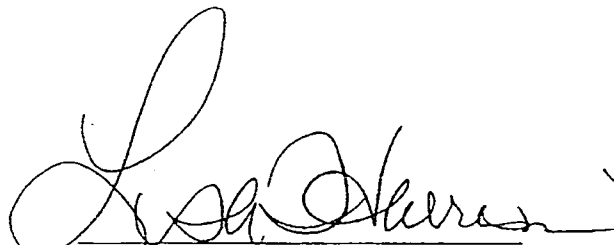
FILED

I, Lisa Harrison, of the Law Offices of C C Harness, III, hereby certify that on this
21 day of December, 2005 served a copy of the forgoing **Answer** in the above-captioned
case on the following person(s) by depositing the same in the United States Mail, postage paid,
and addressed as follows

Newman Jack Smith, Esq
Wade H Logan, III, Esq
Nelson Mullins Riley & Scarborough, L.L.P
151 Meeting Street
Suite 600
Charleston, SC 29401

Joseph S Mendelsohn, Esq
104 Broad Street
Charleston, SC 29401

Otis Benjamin Peebles, Jr., Esq
105 Wappoo Creek Drive
Suite 1-A
Charleston, SC 29412


Lisa Harrison

STIPULATIONS OF ALL PARTIES

1 And then I saw Ms. Lesley Riley out there. And
2 let me just ask my first question, which I've got. And
3 that is why is DHEC, OCRM, not a party? I need to make
4 a record about that.

5 Mr. Cooper, Mr. Denny, you all want to tell me
6 about that?

7 MR. DENNY: Your Honor, we have an action in
8 the Complaint to attempt to void the permits. But
9 they're not a party, and we don't think that we can go
10 forward on that action. The rest of it is just a
11 property dispute.

12 COURT: Okay. All right.

13 So the way I interpret that is that you are not
14 fighting over ownership of the marshlands, or any of
15 the property below the mean high water, is that
16 correct?

17 MR. DENNY: That's right, your Honor. We're
18 not--the case is exclusively about the property above
19 the mean high water mark.

20 COURT: Okay. All right.

21 MR. COOPER: Your Honor, John Hughes Cooper for
22 the Plaintiff. Before we get started, I discussed
23 briefly with Ms. Deutsch and Mr. Griffith and Mr.
24 Peebles. I haven't had a chance to talk to Mr.
25 Mendelsohn, because he just walked in.

1 But we think that it might save a lot of time
2 if we can have a brief conference with the Court before
3 we get started.

4 COURT: All right. I'm always willing to do
5 that.

6 Do you want to do that here? You want to do
7 that in chambers?

8 MR. COOPER: In chambers.

9 COURT: Okay. I'd be glad to do that.

10 MR. MENDELSON: I walked in because he told me
11 10 o'clock.

12 MR. COOPER: I did, your Honor. That was
13 several days ago. I was under the impression it was 10
14 o'clock. And I apologize to the Court.

15 COURT: And for the record, I'm reading my
16 Order of August 21. It says this case is set for trial
17 December 12, 13, 14, 2006, at 9:30 a.m.

18 So anyway, I don't always walk out here at
19 9:30, but I did today. I'll be happy to do it. I'll
20 try and do it everyday this week. How about that?

21 (Court, counsel retire to Judge's chambers)

22 (Hearing convenes)

23 COURT: Mr. Cooper...

24 MR. COOPER: Yes, your Honor. John Hughes
25 Cooper for the Plaintiff.

1 Again, we just want to put a stipulation on the
2 record consistent with our discussions with the Court in
3 chambers.

4 It is stipulated by and between attorneys for
5 the parties that record title for Milton P. Demetre
6 Family Limited Partnership has been stipulated to.

7 The chain of title of Emily S. Brown to Lot 204
8 Huron Avenue East has been stipulated to.

9 The chain of title for Lot 210 Huron Avenue
10 East into the Crowleys has been stipulated to.

11 And the chain of title to the Beckmanns to Lot
12 209 Huron Avenue East has been stipulated to.

13 All of those have been agreed by counsel that
14 they are stipulated to, as far as record title. And the
15 documents are in evidence as Plaintiff's Exhibits.

16 I will pass up for the Court a copy of that as
17 well.

18 (Documents handed up to the Court)

19 In addition to that, your Honor, the
20 Plaintiff's A through Z are in evidence, without
21 objection.

22 And Plaintiff's book of photographs--the
23 photographs themselves are in evidence. But the
24 writings on the photographs, it has been stipulated by
25 and between the attorneys, is of no evidentiary

1 consideration whatsoever. It's just an accomodation to
2 the attorneys not to have to erase all of the writings
3 on the photographs.

4 COURT: All right.

5 So the photographs, but not the writing on the
6 photos, would be evidence?

7 MR. COOPER: Correct.

8 I think that's it.

9 There's also a revised Kennerty Surveying plat.
10 It has been revised several times. The latest revision
11 is in Plaintiff's trial exhibits as Exhibit--

12 COURT: N as in Nancy?

13 MR. COOPER: N as in Nancy.

14 And the one that we're putting into evidence
15 I've written down on it N - Plaintiff's Exhibit N
16 (amended).

17 COURT: Okay.

18 MR. COOPER: And so there are some other
19 versions floating around.

20 That's the stipulation, as I understand it,
21 your Honor.

22 COURT: Any response by the Defendants?
23 Everybody is in agreement with that?

24 MR. PEEPLES: Yes, your Honor.

25 MS. DEUTSCH: Yes, your Honor.

1 COURT: Very good. Okay.

2 All right. The stipulations are in.

3 I stated to the attorneys in chambers, and I
4 think I would just state this for the record. And for
5 those of you who are here, as I see this case, the
6 issue, and I raised that issue with Ms. Riley earlier
7 on, she is with South Carolina DHEC/OCRM, is a question
8 of title to the high land to which the Plaintiffs claim
9 is between the Defendants lots and the marsh.

10 And the question is quieting title to that high
11 land, and significantly not the marsh - not the low
12 land, probably below the mean high water mark and the
13 existence of the docks, which are the Defendants docks,
14 which exist over that.

15 So that is what we are here to determine, is
16 who has got title to that high land between what's
17 marked as Plaintiff lots, and that which exist in the
18 marsh between there and the marsh. That's as I see it.
19 Okay.

20 With that question, then, Mr. Cooper you may
21 start your case.

22 MR. COOPER: Yes, your Honor.

23 The Plaintiff calls Larry Kennerty to the
24 stand.

25 COURT: All right. Mr. Kennerty...

LAWRENCE J. KENNERTY, JR.- DIRECT EXAMINATION BY MR. COOPER

1 be. This is a much more accurate way to determine mean
2 high water mark.

3 Q And is determining the mean high water mark
4 something surveyors do in their normal course of their
5 business?

6 A Yes, sir.

7 Q And you do that on a regular basis?

8 A No. We do--when we're doing surveys like this.
9 But normally what we are doing is boundary-type surveys.
10 And I think in the past years, surveyors hadn't done a
11 lot of mean high water mark. Whereas today a lot of
12 surveys are going to the critical line, and not mean
13 high water mark. But while the older surveys were all
14 based on mean high water marks.

15 Q Okay. And is this survey; Plaintiff's Exhibit N,
16 as amended, does it locate the mean high water mark
17 accurately?

18 A Yes, sir.

19 Q And does it also locate the critical line?

20 A Yes, sir.

21 Q Okay. I ask you now to look on Plaintiff's
22 Exhibit N, as amended, is there anything on there that
23 you know of, that's inaccurate or needs to be corrected?

24 A No, sir. I think everything on here is accurate,
25 to the best of my knowledge.

11

Master in Equity, Chas Cty Jud Ctr, Chas SC 29407 843.958.5071

1 Q And is the mean high water mark as denoted by this
2 dark--
3 A Dark heavy line.
4 Q --dotted, heavy line?
5 A Yes.
6 Q Isn't there an old mean high water mark that you
7 previously found?
8 A Yes, that was a previous one that I calculated,
9 that I feel like, due to further information from the
10 Geological Survey, that one is incorrect.
11 Q Okay. Let me ask you, if you would, to look at
12 what's in evidence as Plaintiff's Exhibit C, which was
13 in this notebook here. It should be under tab C. And
14 this is a larger copy of the same thing. Does that
15 appear to be an indication of where Lots 209 and 210
16 East Huron, and 209, 210 East Indian are on Folly Beach?
17 A Yes, sir.
18 Q And is that the same area that's covered by
19 Plaintiff's Exhibit N, as amended?
20 A Yes, sir.
21 Q And the lots that are closest to the Folly River
22 the lots that have an Indian Avenue East address?
23 A Yes, sir.
24 Q And they are much further back--
25 A 2nd Street would be Huron--

1 Q Huron. Is that correct?

2 A Yes, sir.

3 Q The road right-of-way of East Indian Avenue, which

4 is the subject of all the cases that have been

5 consolidated here, are actively shown on your plat here,

6 Plaintiff's Exhibit N, as amended?

7 A Yes, sir.

8 Q Have you indicated on the road right-of-way where

9 the pavement ends?

10 A Yes, "end of

11 pavement" r an.

12 Q Lot 2 L.J. Kennedy -

13 A Lot 2

14 Q You'r Cross by Alendelohn asphalt at all

15 down further

16 A No, t ll dirt from

17 that point

18 Q From tly dirt?

19 A Yes.

20 Q There are rocks--

21 A Oh, yes, there's rocks. But there's no pavement

22 down there.

23 Q Not what you would consider a normal paved road?

24 A No, sir.

25 Q No further questions. Please answer any that

1 | these attorneys may have for you.

2 | CROSS-EXAMINATION BY MR. MENDELSON:

3 | Q I'm going to show you Defendant Folly Beach and

4 | Defendant Brown's Exhibits 1, 2, 3 & 4, and let you get

5 | oriented.

6 | A Okay.

7 | Q Do you recognize what that is?

8 | A That's the East Indian Avenue right down this

9 | section right here.

10 | Q Now, you show on Plaintiff's Exhibit N, as

11 | amended, some lines that indicate--you've got them

12 | marked "end of pavement." Are you familiar with that?

13 | A Yes, uh-huh.

14 | Q What is the measurement there? Do you know?

15 | A The width of that pavement?

16 | Q No, just how deep it is?

17 | A It probably goes, probably from the right-of-way

18 | of 2nd Street, it probably goes in there about 55 - 60

19 | feet, somewhere in there.

20 | Q In?

21 | A In.

22 | Q Now, in response to the question asked you by Mr.

23 | Cooper, you said there weren't any further pavement?

24 | A No, there's no pavement.

25 | Q No signs of it at all?

1- A I didn't see any signs of it. I mean not what I
2 would typically call pavement.
3 Q Take a look at those pictures, and tell me what
4 you think that is.
5 A That's more dirt and rock. I mean there's no
6 asphalt pavement. It's dirt and rock.
7 Q You walked all the way down to where those cars
8 are parked?
9 A Yeah.
10 Q All right.
11 A I mean there could be some broken asphalt,
12 boulders, or something down there. But it's no earth
13 pavement, I mean asphalt pavement, slab, or anything
14 like that.
15 Q Well, did it appear to you to be paved at all, at
16 one point?
17 A Only what's indicated on my plat.
18 Q That's it?
19 A That's it.
20 Q So the asphalt that you saw further down, how do
21 you figure it got there?
22 A It looks like just some broken asphalt that may
23 have been thrown there. It wasn't any asphalt, paved
24 street in there.
25 Q Okay. Thank you very much.

LYNDA J. SULLIVAN - DIRECT EXAMINATION BY MR. COOPER

1 WITNESS: Yes. It was set in 1929.

2 There are two vertical datum. One was done in '88
3 and one was done in '29. But '29 is more commonly used
4 for this, since all of the flood maps are based on '29.
5 So that's usually what everybody goes by.

6 COURT: Okay. All right. That helps me a little
7 bit.

8 Any other questions of Mr. Kennerty before we let
9 him lose?

10 (No response from counsel)

11 All right, Mr. Kennerty. Thank you, sir. Thank
12 you for coming today.

13 WITNESS: Thank you.

14 (Witness is excused and leaves the courtroom)

15 MR. COOPER: The Plaintiff calls Lynda Sullivan to
16 the stand.

17 MS. LYNDA J. SULLIVAN, having been
18 duly sworn testifies as follows:

19 COURT: Mr. Cooper...

20 MR. COOPER: Thank you, your Honor.

21 DIRECT-EXAMINATION BY MR. COOPER:

22 Q State your full name please?

23 A Lynda Sullivan.

24 Q And what is your occupation?

25 A I am an attorney.

1 Q Okay. And where are you employed?
2 A I'm self-employed. I have a law practice in North
3 Charleston.
4 Q And have you done any work in the area of real
5 property?
6 A Yes. I've been working in the area of real
7 property since I was 18. I'll be 40 in February, so...
8 Q Is it fair to say that that's your main area of
9 concentration?
10 A Yes.
11 Q And have you done any title work?
12 A Yes.
13 Q And did you do the title work which is reflected
14 in Plaintiff's Exhibit D, which is the chain of title
15 for the Milton P. Demetre Family Limited Partnership?
16 A Yes.
17 Q And is that chain of title accurate in that
18 exhibit?
19 A It is. I had some other deeds I'd like to add, if
20 it's all right.
21 Q Okay. What additions would you like to make?
22 A Can I get them?
23 Q Yes.
24 (Witness gets additional deeds and returns to
25 witness stand)

1 Just generally, do you see an index in front of
2 the chain of title exhibit?

3 A Yes.

4 Q Okay. And as far as what's indicated on there, is
5 it accurate?

6 A The information there is accurate. I just wanted
7 to add a few deeds.

8 Q And so the general nature of what you want to add,
9 if you would explain to the Court what the general
10 nature of that is.

11 A It's just to complete - just to add some other
12 deeds that were in the chain, just to complete it.

13 Q All right. And explain to the Judge what the
14 other deeds are that would add to that summary.

15 A Do you want me to just give them to you, or do you
16 want to explain--

17 Q Just explain, generally, what they show.

18 A It generally shows back in the chain of title,
19 Folly Beach Investment Company owned the property in
20 1926, or owned the island in 1926.

21 And there are some portions in the chain of title
22 that relate to Folly Beach Investment Company's
23 ownership, at that time. And there were some
24 one-quarter interest deeds that were not reflected in
25 the summary, and I could give those to you now.

1 Q Okay. So generally speaking, though, everything
2 that you would add would be additional deeds into Folly
3 Beach--
4 A Investment Company, right. Just additional deeds
5 into Folly Beach Investment Company.
6 Q Back in 1926 or thereabout?
7 A Between about 1921 to 1925 roughly, yes.
8 Q And so the significance of these other deeds is
9 that the summary there only shows one deed to them, and
10 ~~there were actually several?~~
11 A Right. One of the deeds was like a quitclaim
12 deed. Well, there were several - some deeds that--to
13 clear up, if there was a question on the title or
14 something, back in the chain. But I have the vesting
15 deeds.
16 Q Okay. And would you like to read those off, and
17 then we'll offer them into evidence, if they show the
18 title.
19 A Okay. This is a deed from E. H. Jennings to Folly
20 Beach Improvement Company. It's in Book Z, as in zebra,
21 at page 160. And it was recorded on December 16, 1925,
22 and it was for one-quarter interest in the island.
23 Q Okay.
24 A Of the island minus lots previously conveyed.
25 Q All right.

1 A The next deed is a one-quarter interest deed from
2 W.C. McMurphy to Folly Beach Investment Company. It was
3 recorded in Book Z-33 at page 163, on the 16th of
4 December 1925. And it was again for a one-quarter
5 interest in Folly Island, minus previous lots conveyed.
6 Q All right.
7 A The next deed is a deed from E. W. Durant. It's
8 recorded in Book Z-33 at page 161. It was recorded the
9 16th of December 1925. It's for a one-quarter interest
10 in folly Island minus lots previously conveyed.
11 Q All right.
12 A This is a deed from Citizens and Southern Company
13 to Folly Beach Improvement Company. It's recorded the
14 20th of January, 1926. It's for a one-quarter interest
15 in Folly Island minus lots previously conveyed.
16 Q Okay. Are all the deeds that you're talking about
17 now conveying interest into Folly Beach Investment
18 Corporation?
19 A Well, we can stop, I guess. Let me see--I gave
20 you--the last one I gave you C&S-- Yep, that's it.
21 Q Okay. And are those the only additional deeds
22 that need to be added in the chain?
23 A Let me look at my notes here.
24 I would like to add one note that--
25 Q Okay.

1 A About the Estate of Seabrook, there's an
2 instrument recorded in File 864 at 161 in the Probate
3 Court, wherein there's an Order from both estates of
4 Fannie Lee Seabrook and Edward M. Seabrook, that are in
5 the chain of title. Although the history indicates
6 Edward and M. Seabrook, the elder. Where it indicates
7 that, it should also indicate and Fannie Lee Seabrook.
8 Q Are there any other corrections or additions you'd
9 like to add?
10 A Regarding Lot 202, Indian Avenue, I'd like to add
11 a deed. The deed that's reflected in Item 9 about Lot
12 201, recorded in Book A-92 at 248 is also a part of the
13 chain of title for Lot 202. That's about it.
14 Q Ms. Sullivan, are there any other additions or
15 changes to the summary in the front of that exhibit,
16 that you'd like to make?
17 A On page 4 I would like to add that to the legal
18 description on the far right, at the top. It includes
19 property north of 50 foot 3rd Street, in that deed. I
20 think that's about it.
21 Q Are there any other changes or additions that
22 you'd like to make?
23 A This is regarding just Mr. Demetre's title?
24 Q Correct.
25 A Nope. Nope.

1 Q Okay. So it would be fair to say that with the
2 additions and the corrections that you've just mentioned
3 to the Court, that the summary in that exhibit is a
4 correct summary of the chain of title of Mr. Demetre?

5 A Yes.

6 Q Okay. Have you had occasion to examine the chain
7 of title for Lot 210 Huron Avenue, which is now in the
8 Crowleys, is that right?

9 A Yes.

10 Q And is the summary you've got in that book
11 accurate as to the chain of title for Lot 210, East
12 Huron, Folly Beach?

13 A I have my notes--I don't think there's anything,
14 but can I look?

15 Q Sure. Check it out.

16 A I have several deeds. The first deed is recorded
17 in Book F-278, at page 609. It is Annie Ruth Crowley
18 now known as Annie Ruth Crowley Atkinson to Annie Ruth
19 Crowley. And it was recorded the 30th of December,
20 1996. And it's for Lot 210 Huron and some other
21 properties.

22 The next deed is recorded in Book R-275 at page
23 809. It's a deed from Harris L. Crowley, Jr to Annie
24 Ruth Crowley for Lot 210, and some other properties.

25 Q And that's Lot 210 East Huron?

1 A Yes. Recorded the 23rd of October, 1996. Should
2 I be handing you these?
3 Q No. Just make a stack of them, if you would.
4 A Okay.
5 The next deed is recorded in Book R-275 at page
6 815. It's from Raymond Moody Crowley to Annie Ruth
7 Crowley for Lot 210 Huron Avenue East, and other
8 properties. Recorded the 23rd of October 1996.
9 Q Are there--
10 A I have another one.
11 The next deed is recorded in Book K-276 at page
12 83. It is from Donald William Crowley to Annie Ruth
13 Crowley for Lot 210 Huron Avenue East, and other
14 properties. And it's recorded the 8th of November 1996.
15 Q Okay. And with those additions of those deeds, is
16 the summary accurate?
17 A Yes, it is.
18 Q How about with regard to the chains of title as
19 shown for the Beckmanns, Lot 209 Huron Avenue East; did
20 you have any additional deeds for those?
21 A Okay, you've given me Beckmann--
22 Q Summarize, if you would, any changes in the
23 Beckmann's chain.
24 A I was going to add two deeds: U-48 at 572 and
25 U-42 at 574.

1 Q All right. And how about the chain of title for
2 Emily S. Brown, Lot 204 Huron Avenue, any changes or
3 additions to that one?
4 A I'd just add 672 at 13, a Probate Court file that
5 supports the deed X-36 at 63...
6 Q With those changes and those additions, all these
7 chains of title appear to be accurate, as reflected in
8 the summaries?
9 A Yes. Was that all of them? Yes.
10 Q With those additions and changes, then those
11 summaries would be accurate?
12 A Yes.
13 MR. COOPER: And, your Honor, we ask to offer
14 these exhibits now to supplement the previous exhibit.
15 Any objection?
16 MR. GRIFFITH: I don't have any objections. I
17 have a few questions on one of them.
18 COURT: On one of them?
19 MR. GRIFFITH: On the summary, yes.
20 COURT: All right, without objection.
21 (Additions and changes to Summary added without
22 objection)
23 Q Ms. Sullivan, going now to the Brown chain of
24 title, can you tell me whether or not Lot 204 East Huron
25 is subject to any restrictions?

1 A Yes. And I'm looking for the deed.
2 Book U-32 at page 620 has restrictions.
3 Q Okay. And is that Exhibit K?
4 A You're talking about the Jack Meyer's deed?
5 Q Yes.
6 A Yes.
7 Q Are the restrictions that were made a part of the
8 deed to Jack Meyers, do they also restrict this lot, 204
9 East Huron?
10 A Right. It's in Book U-32 at 618, and also it's
11 repeated U-32 at 620.
12 Q Okay. And in those restrictions does the grantor
13 reserve unto itself all the roads?
14 A Yes.
15 Q The language as shown in Plaintiff's Exhibit L,
16 and that's in Sub-A? It says: "Nothing herein contained
17 shall be construed as to constitute a dedication of any
18 road, avenue, street, lane?"
19 A That's correct.
20 Q And those restrictions do encumber Lot 204?
21 A That is correct.
22 Q 204 East Huron?
23 A That's correct.
24 Q Does your chain of title, with regard to the
25 Demetre property, show that there was one or more

1 mortgages that were ultimately foreclosed by the
2 Citizens and Southern National Bank of Savannah?
3 A Right. There was a mortgage in Book W-31 at page
4 511.
5 Q And do the mortgages in that book and page--and
6 does your chain of title for the Demetre property also
7 indicate that there was a foreclosure of that mortgage?
8 A Yes, there was. There's an Order recorded in Book
9 L-42 at page 58.
10 Q Okay. And does the mortgage--when the mortgage
11 was foreclosed, who ended up with the property?
12 A Seabrook.
13 Q That's when Mr. Seabrook bought it?
14 A Right.
15 Q And the property was conveyed to him by an Order
16 of the Master?
17 A Right.
18 Q Okay. And as reflected in the chain of title that
19 you have there?
20 A Right. The page is--
21 Q It's in the summary, correct?
22 A That's correct.
23 Q Okay. And now, were the roads and streets on
24 Folly Beach transferred by that Master's Deed?
25 A They were encumbered by the mortgage and were

1 foreclosed.

2 Q And that was the property--

3 A That was a part of the foreclosure, that's right.

4 Q --that Seabrook bought?

5 A Right.

6 Q From the Master?

7 A That's correct.

8 Q So it would be your opinion then that the roads

9 were transferred to Mr. Seabrook?

10 A There's not a release filed.

11 Q Okay. There's no release filed before or after

12 excepting the roads from the mortgage?

13 A That's correct.

14 Q And there's no question that the roads and streets

15 on Folly Beach were encumbered by the mortgage?

16 A That is correct.

17 Q And all of the property that was foreclosed was

18 sold to Mr. Seabrook?

19 A That's correct.

20 Q Looking at the chain of title before you, Ms.

21 Sullivan, can you tell the Court when the property

22 including the roads and streets on Folly Beach were

23 encumbered by the mortgage?

24 A The mortgage was done on January 20, 1926.

25 Q Okay. So from 1926, from that date in 1926 onward

1 the roads and streets on Folly Beach were encumbered by
2 a mortgage?

3 A Right..

4 Q And that mortgage, I understand that the bank,
5 apparently some assignments or some consolidations,
6 because the names of the banks were not exactly the
7 same. But that mortgage was the same mortgage that was
8 ultimately foreclosed by the Citizens and Southern
9 National Bank of Savannah?

10 A That's correct.

11 Q Okay. And that's what resulted in the action in
12 1942 that resulted in the sale to Seabrook in 1943?

13 A That's correct.

14 Q I have no further questions. Thank you.

15 Please answer any questions any of these gentlemen
16 may have.

17 Your Honor, I would move those additional deeds
18 that Ms. Sullivan has testified to, into evidence. I
19 would suggest that we just do that as a break, as
20 opposed to right this minute.

21 COURT: All right. That will be fine.

22 Any objection to that?

23 (No objection raised)

24 Without objection.

25 CROSS-EXAMINATION BY MR. PEEPLES:

1 Q MS. Sullivan, my name is Ben Peebles. I'm
2 attorney for the City of Folly Beach. I've got here the
3 chain of title for the Demetre Partnership and the
4 summary. I've marked at that summary-- Would you just
5 read that little comment there.

6 A "Folly Island except for lots already conveyed."

7 Q Okay. And it's referring to Deed 441 at page 227?

8 A That's correct.

9 MR. PEEPLES: Would you mark that as Plaintiff's
10 5, please. I'm sorry as Defendant's 5.

11 (Document marked as Defendant's Exhibit 5)

12 Q I would ask you to look at a copy of that deed.
13 And on the second page of the deed, the first full
14 paragraph, would you read that language, please? It
15 starts out "Saving and excepting..."

16 A "Saving and excepting therefrom such lots and
17 portions of land as have from time to time been conveyed
18 to sundry parties by Folly Beach Corporation and Folly
19 Beach Improvement Company by deeds recorded in the RMC
20 Office for Charleston County, South Carolina."

21 Q Right. So this deed conveyed from the Master to
22 Mr. Seabrook for \$5,500 Folly Beach, saving any deeds
23 deeding out any other lots, correct?

24 A (No response)

25 Q "Or portions of land," correct?

55

Master in Equity, Chas Cty Jud Ctr, Chas SC 29407 843.958.5071

1 A That's what it says.
2 Q Okay. Well, so the summary doesn't--with that
3 tiny little exception, it just says "excepting for lots
4 already conveyed." That is not strictly correct, is it?
5 A We could add the language.
6 Q That was not my question. The question is: That
7 the summary where it says the only thing it accepts in
8 the lots already conveyed, is not correct? A yes or no
9 will work.
10 A It does have as much information, that's correct.
11 Q That Mr. Seabrook actually bought less than the
12 lots that had already conveyed. He also did not get any
13 portions of land already conveyed, from the Master.
14 A I was just going by what was in the mortgage and--
15 Q I know. But I'm just going by what's in the deed.
16 A Right.
17 Q The mortgage wasn't assigned to Mr. Seabrook. He
18 got a deed from the Master. Am I correct, he didn't get
19 any lots already sold, and he didn't get any portions of
20 land already deeded out by the Folly Beach Improvement
21 Company, is that correct?
22 A Could you state that question one more time?
23 Q That when Mr. Seabrook for \$5,500 bought Folly
24 Beach, he did not get any lots already deeded by the
25 Folly Beach Improvement Company?

1 A Lots that were previously conveyed.
2 Q Correct.
3 But he also didn't get any other portions of land
4 that had already been conveyed, isn't that the reading
5 from that deed?
6 A That's what the deed says.
7 Q Okay. Well, he didn't get it, right? It would be
8 your conclusion, as a real estate lawyer, that he got a
9 deed excepting this, means you don't get it?
10 A (No response)
11 Q Correct? He didn't get the lots already deeded,
12 and he didn't get portions of land already deeded.
13 A That's what it says.
14 Q Now, on Folly Beach. You're familiar with Folly
15 Beach; you've done titles there?
16 A Yes, sir.
17 Q You've looked at the plats? You've looked at the
18 Jefferson Construction Company plat, C-158 and C-159?
19 A Yes.
20 Q There's nothing there but streets and lots, right?
21 A Streets and lots, right.
22 Q I hand you--
23 A It's got marsh on there. I mean we can look at
24 the plat.
25 Q Yes, marsh lots.

1 I hand you Defendant's 6 where it has got 000075.
2 If you'd look at the recording information on it. And
3 it's hard to read, and I apologize. Can you look and
4 tell me the date of this deed - this document?
5 A It's recorded May 24, 1937. The date is the 24th
6 of May, 1937.
7 Q It predates the Master's Deed, correct?
8 A Yes.
9 Q And can you read the part where I've got the
10 little stars and underlined? It is hard to read.
11 A "All the right, title, and interest in the Estate
12 of the said Folly Beach Improvement Company...
13 Q "Streets, avenues, or lanes...
14 A Okay. "Into all streets, avenues, or lanes in and
15 upon Folly Island."
16 Q Thank you. I don't have any other questions.
17 I would move Defendant's 5 and 6 into evidence.
18 COURT: Any objection?
19 (No objections stated)
20 (Defendant's Exhibit 5 and 6 are entered into
21 evidence)
22 CROSS-EXAMINATION BY MR. MENDELSON:
23 Q Ms. Sullivan, I'm Joe Mendlesohn. I represent
24 Emily Brown. How are you?
25 A Well.

1 Q Let me ask you a couple of questions. And the
2 first one certainly is not to be insulting. Have you
3 been doing titles since you were 18 or for 18, because
4 there would be a difference of how long you've been
5 doing that.

6 A I worked for Robert Johnson in Aiken South
7 Carolina in 1986.

8 Q So how long have you been checking titles,
9 totally?

10 A Since '86. I had that written down.

11 Q How long have you been a lawyer? When were you
12 licensed?

13 A In 1993.

14 In January of '87 is when I started checking
15 titles for Mr. Johnson.

16 Q Okay. So you've been doing it since 1986.

17 A It's a long time back. I'd have to look it up.

18 Q Don't worry about that.

19 And you run a real estate practice now? That's
20 all you do, basically?

21 A Yes.

22 Q And you do your own title work?

23 A Some I do.

24 Q Do you review your paralegals, obviously?

25 A I'm too afraid not to.

1 Q I agree with you.
2 Have you ever testified before?
3 A Yes.
4 Q Have you been qualified as an expert in real
5 estate law?
6 A In court? Yes.
7 Q You have?
8 A Yes.
9 Q Are you testifying here today as an expert?
10 A Yes.
11 Q Tell me, what is the difference between a warranty
12 deed and a quitclaim deed.
13 A Quitclaim has no warranty.
14 Q What does that mean, for the record?
15 A A quitclaim deed means that the grantor is giving
16 up any right, title, or interest, they may have in favor
17 of the grantee.
18 A warranty deed, the grantor warrants that he has
19 good, clear, marketable title.
20 Q And under a quitclaim deed, there would be no
21 responsibility to defend? When you get a quitclaim
22 deed, you're basically saying here's what I've got; I'm
23 not defending it. Is that basically what it is?
24 A A quitclaim deed does not have a warranty clause.
25 So there's no warranty of title in the deed.

1 Q There's no agreement to defend the title in a
2 quitclaim deed?
3 A Not contained in the deed. The deed has no
4 warranty.
5 Q A warranty deed, you agree to defend the title?
6 A That's correct.
7 Q Okay. Good.
8 Now, I am looking for the exhibits--Mr. Seabrook's
9 deed into Mr. Demetre, or to the Demetre Partnership,
10 you are familiar with that deed?
11 A Yes.
12 Q That's a quitclaim deed?
13 A You're referring to Lot 204? Which lot are you
14 referring to?
15 Q I don't know where the deed is.
16 Judge, for the record, I am looking at Plaintiff's
17 Exhibit T, which is contained in the chain of title of
18 the deed into the partnership.
19 That's the deed I'm speaking to, No. 21.
20 A Okay.
21 Q Is that a quitclaim deed?
22 A Yes, it is.
23 Q Okay. There's no warranty of title in that, is
24 it?
25 A That's correct.

1 Q In fact, Mr. Seabrook specifically says he's not
2 going to defend the title, is that correct? Isn't that
3 what this deed says?

4 A It is a quitclaim deed.

5 Q Okay. What does that mean to you as an expert in
6 real estate, as to Mr. Seabrook's feelings as to his
7 legal position in regards to the title to this piece of
8 real estate?

9 A I'd rather not give any opinions on Mr. Seabrook's
10 feelings. I did a title search and I'm appearing here
11 today testifying that I examined the records at the
12 courthouse, and that I brought them with me. And that's
13 all I am prepared to testify to today.

14 Q That would be real nice, if that's what it is.
15 But I'm asking you specifically, if you qualify yourself
16 as an expert in title disputes, and I'm asking you to
17 define a quitclaim deed. And I'm asking you, as an
18 expert in real estate, in your judgment, what does a
19 quitclaim deed say about Mr. Seabrook's feelings as to
20 his ownership of title to this particular piece of
21 property?

22 A I can't testify to his feelings. I can tell you
23 what it says. It says that he is giving up any interest
24 in favor of Mr. Demetre, that he has in the property.

25 Q And why would he not give a warranty deed?

1- A I didn't talk to him about that; I'm sorry.
2 Q And you would agree that a quitclaim deed is not
3 as secure, or as high a quality of a deed, if you will,
4 as a warranty deed?
5 A Quality of title is based on the record. I'm not
6 sure...
7 Q In your practice, do you allow your clients to
8 accept quitclaim deeds?
9 A If they made a contract to get a warranty deed,
10 then they get a warranty. If they made a contract to
11 get a quitclaim or, if they made an agreement to get a
12 quitclaim, then that's what they get.
13 Q Why do people give quitclaim deeds as opposed to
14 warranty deeds, in your experience?
15 A Different reasons. I mean I don't--different
16 reasons. I don't know what Mr. Seabrook had in his mind
17 or anything.
18 Q As a general concept, why would somebody give a
19 quitclaim deed as opposed to a general warranty deed?
20 A I'm just not prepared to testify about Mr.
21 Seabrook's feelings.
22 Q I'm not asking you about Mr. Seabrook. I'm asking
23 you about in the general course of your expertise in the
24 real estate business, why does that happen, in your
25 judgment?

1 A It's usually something that's agreed to between
2 the parties.

3 Q Have you ever been involved in any of those kinds
4 of negotiations in your practice?

5 A I mean I've written contract before, if that's
6 what you are asking me.

7 Q All right. Let's move to another area.

8 You said in the deed, that Emily Brown in her
9 chain, there were restrictions. And those restrictions
10 would be on that piece of property. Is it your position
11 that restrictions, once they are applied to the records,
12 continue on to run with the land forever?

13 A That's what they say.

14 Q I know that's what they say.

15 A That's what the record says.

16 Q As an operation of law, do you think that's--

17 A I'm reporting the record here today, Mr.
18 Mendelsohn.

19 Q I understand.

20 Did you read those restrictions?

21 A I have them right here.

22 Q Did you read them?

23 A Yes, I did.

24 I'd like to look at them, if you're going to ask me a
25 question, though.

1 Q Absolutely.

2 Do you think that the fact that this property was
3 foreclosed and bought in by somebody else, and then
4 deeded back out to another person, and then that person
5 started to convey property, do you think that the
6 particular restriction you speak of on that property is
7 still in effect?

8 A I did not see any instrument recorded that would
9 remove the restrictions.

10 Q Okay. Would they be removed by operation of law?

11 A I didn't see anything on the record.

12 Q And if, in fact, the property in question is
13 actually a public right-of-way, could it be restricted
14 by these restrictions?

15 A Say your question again, please.

16 Q Could these restrictions impact a public
17 right-of-way?

18 A The way the restrictions happened on this lot, is
19 they were just incorporated by reference. So I'm just
20 speaking as to Lot 204.

21 Q In the chain that you did of all three - four
22 people, the Crowleys, the Beckmanns, the Browns, the
23 Demetres, were there any quitclaim deeds in any of the
24 other titles, other than Mr. Demetre's?

25 A I'd have to go through each deed one by one and

1 look at it. If you'd...

2 Q I'm not going to do that. These people would kill
3 me.

4 The other thing, do you remember whether or not in
5 the course of reading whether the restrictions that you
6 referred to on my client's property, were they ever
7 mentioned again in any of the deeds?

8 A Were the restrictions mentioned where?

9 Q The original restrictions that you said applied to
10 my client's property, which are general restrictions for
11 Folly Beach, were they ever mentioned again in any deeds
12 that you ever saw, in the course of your investigation?

13 A The way it was generally done is the lot was sold,
14 and they would reference these restrictions, and
15 incorporate by reference to conveyances.

16 Q Is that done in the titles that you do?

17 A It's on Lot 204, Mrs. Brown's lot.

18 Q I'm not asking you if they apply to--I'm asking
19 you whether during the course of your title examination,
20 are they ever mentioned, specifically?

21 A Are they referenced in her chain of title?

22 Q Yes.

23 A Yes.

24 Q What deed?

25 A Okay. Let me get her chain out. I'd have to look

1 at each deed.

2 Q I withdraw the question, Ms. Sullivan. The Judge
3 is ultimately going to read all of this stuff, I guess,
4 and he will figure it out.

5 Let me ask you one last question--

6 COURT: Let me ask you this before you leave that

7 The restrictions are contained in which tab?

8 Which tab are we referring to?

9 WITNESS: Okay. Mrs. Brown's book--

10 MR. MENDELSON: It's in everybody's book.

11 WITNESS: Okay. It's in No. 9, which is Book F-25
12 at 692 is where the restrictions are recorded--

13 COURT: F-25--

14 WITNESS: F-25 at 692, which is No. 9.

15 And then in Mrs. Brown's deed it is incorporated
16 by reference in No. 8, the first deed where the
17 restrictions were incorporated. That's Book E-32 at
18 618.

19 COURT: Thank you.

20 Q Ms. Sullivan, you said the restrictions were
21 incorporated by reference in Mrs. Brown's deed. I'm
22 looking at Mrs. Brown's deed which is in all of these
23 records at Book N-151, page 505. And I don't see any
24 reference. I see a reference to a plat, but I don't see
25 any reference to any restrictions. So what--

1 A It's in her chain of title. The restrictions are
2 in her chain of title.

3 Q So it's in the chain of title. But they weren't
4 specifically referenced in her title. For that matter,
5 anybody, most recently...

6 A There's not a specific reference.

7 Q Last question, promise. If Mr. Demetre presented
8 to you today title to the street that we speak of,
9 you're familiar with the street, the backside...

10 A Yes.

11 Q Would you write owner's title insurance to cover
12 that piece of property?

13 A Sure.

14 Q You would?

15 A But I'm just testifying on the chain of title, not
16 title insurance.

17 Q I'm asking you, would you write that insurance?

18 A Sure.

19 Q Aren't you an agent?

20 A Yes.

21 Q If what you knew about all of the property, you
22 would write the title policy, an owner's policy?

23 A Sure.

24 Q What company do you work for?

25 A Fidelity...

1 Q Good. Thank you. I appreciate it.

2 CROSS-EXAMINATION BY MR. GRIFFITH:

3 Q Ma'am, my name is Jeff Griffith. I represent the
4 Crowleys and the Beckmanns, along with Ms. Deutsch. And
5 I have just a couple of questions for you.

6 I want to refer you to Plaintiff's Exhibit N,
7 which is a plat prepared by Mr. Kennerty.

8 A All right.

9 Q I want to call your specific attention to Lots 209
10 and 210 East Indian Avenue. And according to that plat,
11 Exhibit N, those lots are riverward of Lots 209 and 210
12 East Huron, which are owned by Harriet and Patricia
13 Beckmann, and Annie Ruth Crowley, respectively?

14 A Right.

15 Q Now, I want to refer you to your Plaintiff's
16 Exhibit D, which is the chain of title for the Milton P.
17 Demetre Family Limited Partnership under your tab 23.

18 Are you there?

19 A Uh-huh.

20 Q And that's a deed from Mr. Seabrook to the Milton
21 P. Demetre Family Limited Partnership. And that is a
22 quitclaim deed, as well?

23 A Right.

24 Q That's the same sort of quitclaim deed we have
25 been discussing here for the last 30 or 45 minutes?

1 A Right.

2 Q And this quitclaim deed is the deed to what,
3 please?

4 A You are asking me what legal--what properties are
5 included in this deed?

6 Q Correct.

7 A I'll just read them off.
8 It's got Lots 209 and 210 Indian Avenue East.
9 Do you want me to just read it or...

10 Q Two lots and what else?

11 A There's also a strip that's included.

12 Q Okay.

13 A Beginning at the northwest corner of Lot 209
14 Indian and the northwestern corner of Lot 301 Indian
15 Avenue extending--

16 Q Well, let me ask you this way. Is it just
17 generally those two lots in that portion of East Indian
18 Avenue?

19 A I'm just going to go by what the deed says.

20 Q All right.

21 A I'm sorry. Did you ask me a question?

22 Q I thought you were continuing to answer the
23 question. It is those two lots, a street--

24 A I'm sorry. Okay. So it's got the 190 foot
25 strip--

1 Q Right. And two roadways, right, on East Indian
2 Avenue?
3 A Right. The road of Indian Avenue bordering those
4 two lots.
5 Q All right. And what was the consideration for all
6 of that land?
7 A \$23,700.
8 Q Thank you. Nothing further.
9 COURT: Are you finished, Mr. Griffith?
10 MR. GRIFFITH: Yes, sir.
11 COURT: All right, Mr. Cooper. I'm sorry.
12 REDIRECT-EXAMINATION BY MR. COOPER:
13 Q Ms. Sullivan, let me refer you to Plaintiff's
14 Exhibits M and N, and let me see if I can help you find
15 that.
16 I'd like to refer you first to Plaintiff's
17 Exhibit K. Does that appear to be a copy of the
18 original 1920 plat, Jefferson Construction Company?
19 A Yes.
20 Q Okay. And that is recorded in the RMC Office at
21 C-158?
22 A Right.
23 Q Let me refer you--this is the original plat. But
24 I'd also like to refer you to the next exhibit which is
25 Plaintiff's Exhibit--well, I think it is part of K as

1 well. And it's a larger certified copy of a redraw; do
2 you see that?

3 A Yes.

4 Q Now, in conducting your title search, you have
5 seen that 6 is actually a separate map that's 1 of 6.
6 And that appears to be number 3 in the set 6, 3 of 6, I
7 think it says at the bottom here?

8 A That's correct.

9 Q Okay. And that's a certified copy you have before
10 you?

11 A Yes.

12 Q And I want to direct your attention to Indian
13 Avenue East, right up in this area up here. Do you see
14 2nd Street East?

15 A Yes.

16 Q And the title work that you've been doing involves
17 property, does it not, along Indian Avenue East in this
18 200 block?

19 A Right.

20 Q And does this plat here, which is copied from the
21 1920, does it show a dotted line up here on Est Indian
22 Avenue?

23 A Yes.

24 Q Okay. And does it show any lots up in that area?

25 A On that plat it shows some land, but it's not--

1 Q It's not divided into lots?
2 A No.
3 Q Is it fair to say that there appears to be a
4 contour lin. And then everything toward the river from
5 the contour line is dotted?
6 A That's what it appears to be, yes.
7 Q So that Indian Avenue East appears to come from
8 Center Street down to 2nd Street East, and then slightly
9 beyond that, in a solid line?
10 A Right.
11 Q And then beyond that, starting at about Lot 203 or
12 204, continues on in a dotted line, is that fair?
13 A That's correct.
14 Q And have you ever seen dotted lines like that on
15 plats before?
16 A Yes.
17 Q And what would you say, is that a road, or a
18 street, if it's dotted?
19 A No.
20 Q Does the dotted versus the solid line mean
21 something?
22 A It's usually not part of the surveyed property.
23 The dotted line is not.
24 Q And then this exhibit that you are looking at
25 here, the certified copy of K, that does show that East

1 Indian Avenue in the 200 block is part of it. But it's
2 just a dotted line as opposed to a solid line?

3 A That's correct.

4 Q Did you have occasion to look in the chain of
5 title of the Demetre--and I'm switching gears now. Did
6 you have occasion to see the road dedication? What Mr.
7 Peebles showed you?

8 A Yes.

9 Q Is there a written acceptance of that dedication?

10 A No.

11 Q That you were able to find?

12 A No.

13 There was also one more thing to point out. Where
14 are they...

15 Q That would have a bearing on the...

16 A I think it's worth mentioning, yes.

17 The restrictions that were in the Jack Meyers
18 deeds, that was often incorporated by reference to deeds
19 out from the developer, indicate that any assignment of
20 any rights in the road, Item J, in the Jack Meyer's
21 deed.

22 Q Sub-J of the restrictions provided that any such
23 assignment or transfer shall be made by appropriate
24 instrument, in writing, in which the assignee or
25 transferee, shall join with the purpose of evidencing

1 its consent to the acceptance of such rights and powers.
2 And such assignment or transferee shall thereupon have
3 the same rights and powers.

4 A Right. And there was nothing like that in the
5 record. Nothing, no joining in the purported--

6 Q The purported dedication of the road?

7 A Right. Right. I didn't see anything anywhere
8 else either.

9 Q So what we have of record is a purported
10 dedication of the roads in 1937?

11 A Right.

12 Q But we don't have any acceptance in the record?

13 A Right.

14 Q And what you are saying is the restrictions
15 require an acceptance to be in writing?

16 A Right. And the recorded instrument it says "shall
17 joint." I thought that was kind of--they weren't on the
18 purported conveyance either. They didn't sign it. And
19 they didn't sign anything else.

20 Q Let me ask you this, Ms. Sullivan, a final set of
21 questions, I hope.

22 Having to do with the Emily Brown's lot, 204 East
23 Huron, you've previously testified that that lot was
24 subject to these restrictions in the Jack Meyer's
25 Exhibit A, is that right?

1 A Right. It's in her chain of title.
2 Q It was in her chain of title. And that lot was
3 not--didn't go through the foreclosure where Mr.
4 Seabrook bought the property, is that correct?
5 A That's right.
6 Q Okay. Because that Lot 204 was deeded out before?
7 A Right.
8 Q No further questions. Thank you.
9 Do you have something else you want to add?
10 A Just...the only thing that I found, as far as a
11 release from the mortgage in the record, the Order of
12 Foreclosure indicated that what was being released were
13 the lots. That was it. It didn't say anything about
14 roads or other parcels.
15 So the Foreclosure Order, not the deed that we
16 were speaking about earlier to Seabrook from C&S when
17 they foreclosed, the Order on the record indicates that
18 it was the lots that were accepted - just lots, previous
19 conveyances.
20 Q And that was the Master's Order?
21 A Right. That was the Order. That's what I was
22 going by.
23 Q Okay. Thank you.
24 MR. PEEPLES: Just a few questions.
25 RECROSS-EXAMINATION BY MR. PEEPLES:

1 Q I guess starting out with the deed, are you saying
2 that all of the streets on Folly Beach are privately
3 owned by Ed Seabrook, or his successors-in-title?

4 A No, that's not within the scope of my
5 investigation.

6 Q But you said you haven't found anything--you found
7 a deed from the body into the township deeding all the
8 streets and land to Folly Beach. And then you found
9 there's a Master's Deed selling everything to Mr.
10 Seabrook excepting "lots and portions of land."

11 A That's not what the release said or the Order that
12 I--

13 Q I'm not talking about a release--

14 A Okay.

15 Q I'm saying the deed--

16 A Right. Right. Right. Excuse me.

17 Q I'm saying the deed said that.

18 A Right. Excuse me. I'm sorry.

19 Q And then you are saying the restrictions say, hey,
20 you can't deed it out, unless you join in on the deed.

21 That's what you are saying. You're saying that it would
22 seem that in your searching the title, you're saying
23 that all of the streets on Folly Beach are either owned
24 by Ed Seabrook, or this bank down in Savannah.

25 A No, the record said - the restriction said that

1 they shall join. I didn't say that. That's what the--
2 Q But your opinion is that the streets on Folly
3 Beach are owned by Ed Seabrook?
4 A My opinion is limited to the property that's the
5 subject of this lawsuit.
6 Q Well how is that street different from any of the
7 other streets on Folly Beach?
8 A I didn't investigate the other streets on Folly
9 Beach.
10 Q You don't know if it's different or not.
11 Where was that plat that we were just looking at?
12 A This one?
13 Q No, the certified true copy of the...
14 And this is a certified true copy, and it's
15 stamped. This is the one you were testifying about
16 earlier. And it shows a dotted line on one side of
17 Indian. And am I correct that it shows a solid line on
18 the landward boundary of East Indian all the way into
19 the corner of Lot 205?
20 A That is a solid line.
21 Q And the solid line running along the boundary of
22 East Indian and Lots 201, 203, 204, 205 Huron, I guess.
23 But we're showing a solid line of a street that reaches
24 all the way into the boundary of 205. Is that what that
25 says?

1 A Are you asking me is there a solid line from the
2 northwest corner of Lot 201 Huron to the northwest
3 corner of Lot 205 Huron?
4 Q Yes.
5 A Yes.
6 Q So this is showing East Indian Avenue extending at
7 least in part, all the way to 205--
8 A I'm sorry. There's a solid line for the lot. And
9 then the other line, I would not say that that extends
10 the lots. I don't really understand what your question
11 is.
12 Q Well, listen carefully.
13 This plat shows East Indian Avenue extending from
14 201, at least a portion of it, all the way to 205?
15 A Possibly, yes--
16 Q Possibly?
17 A Yes. It doesn't stop. It keeps--the dotted line
18 starts...
19 Q But it shows a portion of East Indian Avenue
20 extending all the way to 205, does it not?
21 A To the northwest corner, the contour line cuts it
22 off about at the northwest corner of Lot 205 of Huron.
23 Q So the answer to my question is, yes?
24 A I don't know if it was--it's shown on the plat.
25 Yes, it is. Yes, the plat shows that, yes.

1 Q And this was recorded, do you recall when?
2 A The recording date...
3 Q We'll take it, sometime in the 1920s.
4 A Okay.
5 Q To your knowledge, Folly Beach Improvement
6 Company, Ed Seabrook, the elder, and Ed Seabrook, the
7 junior, deeded many, many, many, many deeds with
8 reference to this very plat, correct?
9 A C-158--
10 Q C-159.
11 A Right.
12 Q And that plat is in 1920?
13 A Yes.
14 Q Have you ever seen any recorded document where it
15 disavowed the accuracy of this plat, or the accuracy of
16 the 1965 redraw?
17 A Have I seen--say that again.
18 Q Have you ever seen any recorded document where the
19 Folly Beach Improvement Company, Ed Seabrook, the elder,
20 or Ed Seabrook, the son, ever disavowed the accuracy of
21 this plat, the one we've been talking about, or the 1965
22 redraw?
23 A This--
24 Q I'll take a yes or no. All you've got to do is
25 say yes or no, real simple.

1 A I didn't see anything on the record.
2 Q So the answer is, no?
3 A I searched the chain and I don't see--I mean I
4 searched the subject property and I don't see anything
5 that's relevant for the question you are asking me.
6 Q So Ed Seabrook, the Folly Beach Improvement
7 Company, dad and son, sold their million. But they
8 owned thousands and thousands of property, and many,
9 many lots, all referring to these two plats?
10 A They did.
11 Q Okay. I don't have any other questions.
12 MR. MENDELSON: I have no questions.
13 COURT: Anything further?
14 MR. GRIFFITH: Nothing further, your Honor.
15 COURT: Before I let you go, I've got to ask you
16 some questions.
17 I think my question first--
18 Mr. Denny, can you find that blowup of the
19 original 1920 plat? I want to make sure we're talking
20 about apples and oranges - or apples and apples.
21 (Plat tendered to the Court)
22 MR. DENNY: The 1968 retrace is basically the
23 exact same thing as this.
24 COURT: Well, that's what I want to explore.
25 You had one highlighted up there somewhere.

1 MR. DENNY: Right. And that's the 1965 redraw,
2 which is different from the 1920 plat.

3 COURT: Okay. Let's pull those two out.

4 MR. COOPER: Your Honor, the original C-158 and
5 the redraw of that are both at tab-K. It should be in
6 your book.

7 COURT: Yeah. I think I've got those.

8 Ms. Sullivan, let me ask you some quick questions
9 about this to make sure we're on track.

10 As far as I know, all of these plats, all of these
11 deeds make reference to the 1920 plat, do they not?

12 WITNESS: They do.

13 COURT: And so in that 1920 plat we're concerned
14 with Lots 204, 209 and 210 East Huron. That's the
15 Defendants lots.

16 And then Mr. Demetre Family Trust has now got
17 title to Lots 201 through 210, which is the East Indian
18 address that's behind that, right?

19 WITNESS: Right. Plus...

20 COURT: Plus what, 3rd Avenue--

21 WITNESS: 3rd Avenue.

22 COURT: And then you've got Mr. Kennerty's plat,
23 right?

24 WITNESS: Oh, I'm sorry--

25 COURT: I just want to make sure. It's kind of

1 hard to see that 1920 plat. But can you locate on that
2 1920 plat, you can get down, if you'd like, these lots
3 that we're referencing?

4 WITNESS: (Goes to chalkboard)

5 COURT: Let me just ask you first, if you could
6 locate East Indian Avenue?

7 WITNESS: Right here (pointing on plat)

8 COURT: Okay. And so take me to Center Street on
9 East Indian, and then go east.

10 WITNESS: You can see a little bit better on this
11 one.

12 COURT: Okay. You want to bring that up here and
13 show me...

14 WITNESS: (Witness complies)

15 COURT: I guess, that's my question. Are there
16 any lots in the 200 block of East Indian, on that plat?

17 WITNESS: This (pointing on plat)

18 COURT: You've got an orange highlighter on this
19 particular copy.

20 On the original plat, there's no lot depicted
21 there, is that right?

22 WITNESS: Correct.

23 COURT: And then to the lots that are depicted on
24 the plat, they are going to be in the 200 block of East
25 Huron? It shows those lots.

1 WITNESS: Yes, sir.
2 COURT: Okay. And this is 1st Street, 2nd Street,
3 3rd Street?
4 WITNESS: Right.
5 COURT: So there is no--on this 1920 plat, there
6 is no 209 and 210 East Huron?
7 WITNESS: The lots weren't there, at that time.
8 COURT: That's my question to you. There's no Lot
9 209, Lot 210 East Indian?
10 WITNESS: That's correct. In fact the redraw--
11 MR. COOPER: All of those properties would be on
12 the 1965 redraw.
13 COURT: I'm going to get there. But it didn't
14 exist in 1920, that's my question.
15 MR. COOPER: Exactly.
16 COURT: So these lots don't exist in 1920.
17 That's my next question. I'm going to take you to
18 1965--
19 MR. DENNY: Your Honor, that's actually a trace of
20 the 1920 plat. The 1965 plat has additional lots on it.
21 It's confusing. The '68 retrace was done after the '65
22 redraw. But the '68 is actually a trace of the 1920.
23 MR. COOPER: '68 is identical in all respects, as
24 we can tell, to 1920. The '65 redraw adds the
25 additional lots there for Mr. Demetre.

1 COURT: All right.
2 So all the deeds--that answers my first question.
3 All deeds referenced the 1920 plat.
4 WITNESS: Right, the plat we were just looking at.
5 COURT: Right, the one we were just looking at.
6 So there was a 1965 redraw, is what this Cummings
7 and McCrady diagram is?
8 MR DENNY: That's a retrace of the 1920 plat.
9 There's a separate redraw in 1965 that adds lots.
10 COURT: I want to make sure we're talking about
11 the right document.
12 WITNESS: The first redraw that shows lots--
13 COURT: I'm looking at Sheet 3 of 6, which I think
14 is what you were testifying from. And what Mr. Peebles
15 was asking you about, that Sheet 3 of 6 showed a dashed
16 line starting at Lot 205 Huron.
17 I think this is the right one. But you'd have to
18 tell me if this is the right one.
19 WITNESS: That's--
20 COURT: That's the Cummings and McCrady I just
21 handed you.
22 WITNESS: Cummings and McCrady is the second--
23 COURT: Cummings and McCrady is the second redraw.
24 And so...
25 WITNESS: The first redraw is this.

1 COURT: And does that show a block of lots - the
2 200 block of East Indian?
3 WITNESS: Yes.
4 COURT: It does.
5 Okay, show me that.
6 WITNESS: (Points to area on plat)
7 COURT: Okay. And this is certified. And it's a
8 reduced copy of the original plat.
9 WITNESS: Yes, your Honor.
10 COURT: And those lots don't appear on the first
11 one.
12 WITNESS: No.
13 COURT: The one we're looking at, the one we're
14 showing now with lots in that 200 block is the McCrady
15 redraw of '65?
16 MR. DENNY: No, no, the Weston redraw. I'm sorry.
17 WITNESS: Of the 1920. This is the Weston redraw.
18 COURT: Okay.
19 WITNESS: And there was a third one...
20 MR. DENNY: The Cummings McCrady is the same as
21 the 1920 version. In 1965 there was a redraw from
22 Weston that added some lots.
23 COURT: And Jefferson Construction was who the
24 first one was done for?
25 WITNESS: It looks like...

1 COURT: Okay. Okay. I'm with you there.
2 And then this one that's down here, it does have
3 highlights on it. That's a highlight of the Weston
4 plat. And on that highlight there are some orange lots,
5 209 and 210 Indian. And they look to be yellow. Is
6 that right?
7 WITNESS: That's right. This is Indian, and this
8 is Huron.
9 COURT: Okay.
10 And then we can look to Mr. Kennerty's plat, which
11 he has now prepared. And he shows all of those 200
12 block lots of East Indian, as well as the 200 block lots
13 of East Huron, is that right?
14 WITNESS: Right. He's got 201 through 210, plus a
15 10-foot strip on East Indian, plus 3rd Street, this on
16 the east side of Lot 210, what was conveyed to Mr.
17 Demetre. And then Lots 201 to 210 East Huron, and a
18 10-foot strip in the middle, between Lot 205 and 206.
19 COURT: Right.
20 WITNESS: And East Indian Avenue between the East
21 Indian Avenue and the Huron lots.
22 COURT: The first time the 200 block lots of East
23 Indian appear is in the Weston plat, is that right?
24 WITNESS: That's when they are platted, yes.
25 COURT: That's the first time they are ever

1 platted, and that's 1965?

2 MR. PEEPLES: Sir, they were platted in 1920.
3 They're on the '20 plat.

4 COURT: Well, that's what I'm looking--

5 MR. PEEPLES: Oh, 200 East Indian, no, I'm sorry.
6 You're correct. You're correct.

7 COURT: Your city lots are prior to the 1920?

8 MR. PEEPLES: Right.

9 COURT: But these lots--

10 MR. PEEPLES: You are correct. That's the first
11 time they appeared.

12 MR. DENNY: That certification is pretty
13 questionable, your Honor.

14 COURT: He was trying to redraw it, right, Mr.
15 Weston?

16 WITNESS: Right.

17 COURT: But he didn't just redraw it? Would you
18 agree with that?

19 WITNESS: I agree with that.

20 COURT: And, in fact, I don't think--is there a
21 road there in 1920? I can't recall that.

22 WITNESS: Which one...

23 COURT: Let's go back to the 1920 plat. Is there
24 an Indian Avenue East on that plat?

25 MR. DENNY: Yes--

1 MR. PEEPLES: Yes.

2 WITNESS: Yes.

3 COURT: Okay. And it extends the entire length?

4 WITNESS: It's shown right here where there's the

5 contour line, then the dotted line, it is back up here.

6 COURT: And so it's platted, but it's a dashed

7 like starting again at about Lot 204?

8 WITNESS: Right at the end of Lot 204 - above Lot

9 203, part of it is dotted when you get up to Lot 205.

10 COURT: Okay. Okay.

11 So if I go back to Sheet 3 of 6, which is the

12 McCrady plat, it seems to mirror the 1920 plat, is that

13 right?

14 WITNESS: Right. Right.

15 COURT: Okay. Okay.

16 Is there anything that you found in the record to

17 explain why there was a redraw by Cummings and McCrady

18 three years after Mr. Weston did his in 1965?

19 WITNESS: There's nothing in the record. I can

20 make some guesses. Nothing in the record. I can go

21 over there and check in the index. But we looked at

22 that. We looked for that, too, and we couldn't find it.

23 COURT: Okay. Okay.

24 MR. DENNY: Your Honor, obviously, this is in

25 evidence. But my understanding is that the 1920 redraw

1 was getting torn up, and they were trying to--

2 WITNESS: Oh, you were asking me why the first
3 plat was redone? I thought you asked me why the second
4 plat was redone.

5 COURT: I was trying to figure out why there was a
6 '65 and then three years later a '68 redraw. If there's
7 anything in the record about that?

8 WITNESS: The McCradys is more like this first
9 plat.

10 COURT: From this analysis, the McCrady plat
11 appears to be similar to the 1920 plat, and the Weston
12 plat does not?

13 WITNESS: Right.

14 COURT: Okay. Okay.

15 And again, I think in response to Mr. Peeple's
16 question, you didn't find any acceptance of any roads in
17 writing? I don't know if you looked for that, but you
18 didn't find any acceptance of at least this road, East
19 Indian Road?

20 WITNESS: I looked for the acceptance of this
21 road. There was nothing in the record, no, sir.

22 COURT: Did you find a dedication of the road?

23 WITNESS: There is a deed recorded in Book S-39 at
24 124 that's from Folly Beach Improvement Company to the
25 Board of Commissioners and the Township of Folly Island.

1 COURT: And that says what? Does that convey all
2 the roads on the island?

3 WITNESS: It conveys, it says: "All the streets,
4 avenues," I think it says "and/or lanes in and upon
5 Folly Island, Charleston County, now owned by Folly
6 Beach Improvement Company, as set forth in the plat."

7 COURT: And what would be the date of that?

8 WITNESS: The date of this conveyance is May 24,
9 1937.

10 COURT: So it can only reference the 1920 plat?

11 WITNESS: C at 138.

12 COURT: Okay. That's all of the questions I have.
13 Any questions in response?

14 MR. COOPER: Nothing from the Plaintiff, your
15 Honor.

16 COURT: Thank you, Ms. Sullivan.
17 May she be excused?

18 MR. COOPER: We would ask that she be excused,
19 your Honor.

20 (Witness is excused and leaves the courtroom)

21 COURT: Mr. Cooper, it's one o'clock. Do you have
22 any more live witnesses?

23 MR. COOPER: We do. And they are in the
24 courtroom. I'm not sure whether your Honor wants to
25 hear them now, or right after lunch.

1 COURT: Let's go to lunch. Let's go ahead and
2 take lunch now and come back. Let's say at 2 o'clock.
3 Come back at 2 and we'd get started.

4 (Court breaks for lunch)

5 (Hearing convenes)

6 COURT: Okay, Mr. Cooper...

7 MR. COOPER: Yes, your Honor..

8 First of all, I'd just like to put on the record
9 that we did subpoena to trial the road maintenance
10 records from Folly Beach. And Mr. Peeples informs me
11 that they don't have any of those maintenance records.
12 So he didn't bring them.

13 MR. PEEPLES: Your Honor, I told him the only
14 street we maintained is the 200 block of East Indian.
15 And that was easy enough. We don't need records.

16 COURT: That will be consistent with what else
17 goes on down there.

18 MR. COOPER: Yes, your Honor.

19 COURT: Mr. Winthrop, come on up.

20 GRANVILLE WINTHROP, having been
21 duly sworn testifies as follows:

22 DIRECT-EXAMINATION BY MR. COOPER:

23 Q Mr. Winthrop, would you state your full name,
24 please.

25 A Granville Winthrop.

1 Q And where do you live, Mr. Winthrop?
2 A I live at 124 East Indian on Folly Beach.
3 Q Okay. And is that in close proximity to Mr.
4 Demetre's house at 201 East Indian?
5 A We're neighbors, yeah.
6 Q Oh, you're neighbors. Okay.
7 And is it only the right-of-way of 2nd Street East
8 that divides your two lots?
9 A That's right.
10 Q So if you look at Plaintiff's Exhibit A, Mr.
11 Demetre's Lot 201, you're right on the other side of the
12 right-of-way, is that correct?
13 A That's correct.
14 Q And how long have you lived at that address?
15 A I bought the house in spring of 2002. And I have
16 been living there full time since 2003, thereabouts.
17 Q Okay. And have you--when you were living there,
18 have you ever seen anybody use East Indian Avenue down
19 past the intersection of 2nd Street East, as a public
20 road?
21 A I see two vehicles, maybe three that I see
22 regularly backing down there, about every day.
23 Q Do you know whether those are owned by Mrs. Brown
24 and her husband?
25 A I assume so. But I've never spoken to them. But

1 like I say, I see the same two vehicles pretty much
2 every day.

3 Q Okay. And then you say there's possibly a third
4 one?

5 A Possibly a third, yeah.

6 Q Okay. And the ones that you've seen, have you
7 ever seen them going in frontwards, or are they always
8 backing in?

9 A Always backing up, yeah.

10 Q And do you see these almost every day?

11 A Pretty much, depending on what time I get home. I
12 don't really keep track of it. It's so irregular. But
13 I'd say every day, or every other day or so.

14 Q Okay. And do you know whether there's any garbage
15 pickup down East Indian Avenue?

16 A Where I am? Certainly at--

17 Q On past, I'm talking about down by Mr. Demetre's
18 lot, and on down toward Mrs. Brown's lot?

19 A I don't think I have ever seen a garbage truck go
20 down past where Mr. Demetre's trash is, and where mine
21 is, for sure, no. I think it stops right there at the
22 corner.

23 Q Mr. Demetre's trash can is sort of in between
24 you'lls two lots. But it's in the right-of-way for 2nd
25 Street East; is that right?

KEITH MCCANN - DIRECT EXAMINATION BY MR. COOPER

1 COURT: He is across 2nd Street.
2 And does your lot back up to marsh?
3 WITNESS: It does.
4 COURT: Very good. Thank you.
5 I came to the conclusion that your lot wasn't on
6 that one, when they were showing it to you. But
7 that's-- I'm confident that you'd be able to find your
8 way home.
9 Thank you, Mr. Winthrop.
10 (Witness is excused and leaves the courtroom)
11 MR. COOPER: Your Honor, the Plaintiff calls Keith
12 McCann to the stand.
13 COURT: Mr. McCann, come on forward.
14 MR. KEITH MCCANN, having been duly
15 sworn testifies as follows:
16 DIRECT-EXAMINATION BY MR. COOPER:
17 Q State your full name, please.
18 A Raymond Keith McCann.
19 Q Okay. And where are you employed?
20 A Dunes Properties of Charleston on Folly Beach.
21 Q Okay. And are you a licensed realtor?
22 A Yes, I am.
23 Q And how long have you been a licensed real estate
24 agent or broker?
25 A About ten and one-half years.

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Master in Equity, Chas Cty Jud Ctr, Chas SC 29407 843.958.5071

1 Q And has most of your business been out in the
2 Folly Beach area?
3 A Yes, since 1998.
4 Q Okay. And after 1998, did you have occasion to
5 talk with Mr. Milton Demetre about the road-way at East
6 Indian Avenue in the 200 block?
7 A Yes, I did.
8 Q And tell the Court what those discussions were.
9 A Well, Mr. Demetre was concerned about the--you're
10 talking about the roadway that fronts 203, 204 and 205
11 Ease Indian?
12 A Correct.
13 Q Yes. Mr. Demetre and I both were concerned about
14 that roadway. There was a lot of debris on the roadway,
15 a lot of trash. It was unkempt. You know, several
16 dips, trees over hanging along the roadway. And it was
17 unsightly.
18 And there was a couple of older cars that seemed
19 to be parked there, that I don't know if they ran or
20 not. But it was unsightly, and he was purchasing the
21 property that fronted it. And he had a concern about
22 it, so he asked me to investigate who basically had
23 jurisdiction over that road?
24 Q And what did you find out?
25 A Well, at the time, the only person I knew to talk

1 to was Tom Hall, who was the City building official on
2 Folly Beach. And I had a conversation with Tom, and he
3 came down and looked at the road with me. And he said
4 he--

5 MR. MENDELSON: That is hearsay, your Honor. The
6 lawyers and I are having a little discussion. The
7 conversation was hearsay with Mr. Demetre. I let that
8 one ride. This is hearsay.

9 Q In response to his conversations, what did you do?

10 A In response to my conversation with him?

11 Q Yes.

12 A What I ultimately did was I contacted City Hall to
13 put together a landscaping easement plan to beautify
14 that area. Because, in fact, it was my assumption that
15 the City of Folly Beach had jurisdiction over that
16 property. Even though they weren't maintaining it, they
17 still had jurisdiction over it. And so--

18 Q Let me show you a document that is in evidence.
19 It's marked PLT 265. And it's in a folder in Tab K of
20 Plaintiff's Exhibit A.

21 A Okay. This is a landscaping plan prepared, I
22 believe, by a landscape architect. The last name is
23 Puckhaber - Marge Puckhaber.

24 Q Okay. And did Mr. Demetre have anything to do
25 with the preparation of that landscape plan?

1 A Yes, he did.

2 Q And how did he fit into it?

3 A He contracted Marge to prepare this plan, because
4 he and I were both under the assumption that if we
5 presented this plan to the City of Folly Beach, that
6 they would, in fact, be on board with it. And he could
7 beautify that area, at his expense.

8 Q Okay. And after you and Mr. Demetre had the
9 landscape expert prepare this plan, did you submit that
10 to Folly Beach?

11 A What I did was put Mr. Demetre on the City of
12 Folly Beach town council agenda for March 12, 2002, I
13 believe the date is.

14 Q All right.

15 A And had him on the agenda for that meeting in
16 order to discuss this easement and ask for approval.

17 Q And what happened? Did this plan get discussed at
18 the council meeting?

19 A No, it did not.

20 Q And why not?

21 A The day before on the 11th - March 11, 2002, I
22 went in with the--there's an actual form, an easement
23 form that needed to be filled out and brought to the
24 meeting.

25 Q Let me show you the second page of Plaintiff's

1 Exhibit J. And that's the second page of the exhibit.
2 Is that the form that you are talking about?
3 A Yes. It's an easement for use of publicly owned
4 right-of-way.
5 Q Okay.
6 A And I had the blank copy, which I had received
7 from Tony Connor, the City administrator, and she
8 basically oversees this City council meetings.
9 Q Okay.
10 A And I came in to her on the day before to find out
11 if they wanted this landscaping plan that Marge
12 Puckhaber prepared, either delivered the day before -
13 did they need it the day before for each council member.
14 And how this easement form, was it to be filled out and
15 presented the day before. Or was it fine to bring it
16 the day of the meeting.
17 Q Okay.
18 A And to find out where we were on the agenda - to
19 get the meeting agenda.
20 Q Right. And what did the people at town council
21 tell you about that?
22 A When I went in on the 11th, I was told that I was
23 going to be--
24 MR. MENDELSON: Objection--
25 COURT: Don't tell me what you were told. Just

1 tell me what you did.

2 WITNESS: Okay.

3 MR. COOPER: Your Honor, just let me say that Mr.

4 Mendelsohn is objecting on hearsay, not subject to any

5 exception. I understand that. But there is Exhibit J

6 which details all of these conversations. And all the

7 parties to the conversation have testified. And that's

8 already in evidence. And it just seems to me that the

9 substance of the conversation is already in evidence.

10 And although, technically, maybe he is right, it seems

11 little harm to proceed on.

12 COURT: All right. Let me ask him about that.

13 He is basically testifying about the substance of

14 the letter?

15 MR. COOPER: Of the letter.

16 COURT: Marked Exhibit J?

17 MR. COOPER: That's right.

18 And let's give Mr. Mendelsohn a minute to read it.

19 But...

20 MR. MENDELSON: I'll withdraw, it's self serving.

21 I don't care.

22 COURT: All right. Good.

23 Q Tell us, if you would, what happened when you went

24 down to City Hall.

25 A I was told that there was a conversation between

1 the Mayor, Tom Hall, and the City Administrator, Toni.
2 And that they felt after reviewing it, since the road
3 hadn't been maintained, that Mr. Seabrook owned the
4 property. And that if Mr. Demetre wanted an easement,
5 that he needed to talk to Mr. Seabrook about the
6 easement. Because they didn't feel, since that road had
7 not been maintained or paved, they didn't feel that it
8 was owned by the City of Folly Beach. And that Mr.
9 Seabrook did, in fact, own that property.

10 Q Okay. Look, if you would, at Exhibit J in that
11 notebook there, which is the letter. Is that the copy
12 of a letter that you wrote?

13 A Yes.

14 Q Do you remember writing that letter?

15 A Yes, I do.

16 Q You sent that to Mr. Demetre?

17 A Yes, I did.

18 Q And does that set forth the substance of your
19 conversations with the officials at Folly Beach?

20 A Yes, it does.

21 Q Is there anything that's inaccurate about that
22 letter, or you think needs to be changed or pointed out?

23 A No.

24 Q That was written at or about the time that all of
25 this happened?

1 A Fairly close. It was a little bit later, but I
2 just wanted to document everything that had happened.
3 Q Okay. Now, once you sent that letter to Mr.
4 Demetre, did Mr. Demetre give you any instructions about
5 contacting Mr. Seabrook?
6 A Yes, he did.
7 Q And what was done?
8 A I did some investigating as far as how to get
9 ahold of Mr. Seabrook. And within about a week, I was
10 able to talk to him. And he said that he would not be
11 interested in giving a landscaping easement. But if Mr.
12 Demetre wanted to purchase the property from him, that
13 he would be fine with that.
14 Q Okay. And was that purchase arranged?
15 A I believe that it was. At that point in time, I
16 think it was basically handled, I could be wrong about
17 this, but I think it was handled by an attorney by the
18 name of Rick Stringer. He prepared the deed - the
19 quitclaim, or whatever type of deed it ended up being,
20 for Mr. Seabrook and Mr. Demetre.
21 Q No further questions. Please answer any that
22 these attorneys may have for you.
23 CROSS-EXAMINATION BY MR. MENDELSON:
24 Q Mr. McCann, I'm Joe Mendelsohn, and I represent
25 Emily Brown.

1 What was your interest in all of this?

2 A My interest was trying to do the best of my

3 ability to represent my client, Mr. Demetre.

4 Q When you say he is your client, now was he buying

5 real estate through you?

6 A Yes.

7 Q On Folly beach or elsewhere?

8 A Yes. On Folly Beach.

9 Q Did he buy the area that he lives in now from you

10 - through you?

11 A Yes.

12 Q Had that transaction been concluded?

13 A By the time that I went to City Hall, yes.

14 Q At some point, you went to City Hall because you

15 concluded that the town owned that piece of property.

16 Is that what you said?

17 A That's what I was told by the building inspector.

18 Q But at some point, somebody in the government of

19 Folly Beach thought they owned it? Or that they could

20 take control of it?

21 A Yes.

22 Q And the mayor of Folly Beach told you, as you

23 recited in your letter, that that was incorrect; that

24 they didn't have anything to do with it?

25 A I did not have a conversation directly with the

1 mayor. My conversations were with Tom Hall and Tony
2 Connor Brooks.

3 Q And do you have any independent knowledge of what
4 the town's position has been since 1920 to 1998 when you
5 came on the island and started selling? Do you know
6 what the town has done with that particular piece of
7 property?

8 A No, I do not.

9 Q Do you know whether there has ever been a garbage
10 truck, or a fire truck, or anything back there?

11 A Not to my knowledge.

12 Q Did you walk that piece of property?

13 A Many times.

14 Q And did you see any concrete, I mean any asphalt?

15 A I didn't see any asphalt.

16 Q Did you go all the way through to the marsh?

17 A Yes.

18 Q Did you look on the ground?

19 A Yes.

20 Q And you didn't see any asphalt at all?

21 A Maybe pieces of--there was more garbage than
22 anything else. You know, there might have been pieces
23 of rock and things like that, but not asphalt.

24 Q Okay. Did you negotiate with Mr. Seabrook?

25 A No, I basically connected him with Mr. Demetre.

1 Q Okay. And that was the only dealing you've ever
2 had with Mr. Seabrook, that one time?
3 A I may have had a couple of conversations with him.
4 But, yes.
5 Q Thank you, sir.
6 CROSS-EXAMINATION BY MR. GRIFFITH:
7 Q Mr. McCann, I'm Joe Griffith, and I represent the
8 Crowleys and the Beckmanns.
9 If I may approach, your Honor.
10 COURT: Yes, sir.
11 Q I hand you a plat which has been marked Exhibit--
12 there is a plat that has been marked Exhibit N. I don't
13 have the original exhibit, but this is a copy of it.
14 MR. COOPER: That's right here.
15 Q Now when you said you walked down East Indian, you
16 walked the length of East Indian all the way down to
17 3rd?
18 A I don't think I made it down to 3rd. I would say
19 I probably made it down to maybe to--
20 Q Where the marsh starts?
21 A Beyond that a little ways. Probably 205, 206.
22 206 probably - to the end of 206, right in here.
23 Q So did you see the docks that are on Lots 209 and
24 210?
25 A I'm sure that I did, but I can't remember. But we

1 | were there, and I probably did. I don't recall though.
2 | Q Thank you. No further questions.
3 | MR. COOPER: No further questions, your Honor.
4 | COURT: Thank you, sir. Thank you, Mr. McCann.
5 | (Witness is excused and leaves the courtroom)
6 | MR. COOPER: Your Honor, the Plaintiff calls
7 | Milton Demetre to the stand.
8 | COURT: All right.
9 | Mr. Demetre, come on up.
10 | MR. MILTON P. DEMETRE, having been
11 | duly sworn, testifies as follows:
12 | DIRECT-EXAMINATION BY MR. COOPER:
13 | Q State your full name for the record, please.
14 | A Milton Peter Demetre.
15 | Q Okay. And where do you live?
16 | A 18 Meeting Street, Downtown Charleston.
17 | Q Okay. And do you own some property on Folly
18 | Beach?
19 | A Yes, I do.
20 | Q Which is the subject of this action?
21 | A That's correct.
22 | Q Mr. Demetre, let me show you something that's in
23 | Defendants aerial photographs. It's the first one, and
24 | they are about all the same. I'm going to take my pen
25 | and in this margin, I'm just going to put a No. 3 down

MILTON P. DEMETRE - DIRECT EXAMINATION BY MR. COOPER

1 Just keep it limited to what he owns and what he
2 knows.

3 A Well, I've looked at the OCRM permits, and the
4 permits indicate that the marsh was purchased.

5 Q Did you purchase the lots 201 through 210 from Mr.
6 Seabrook?

7 A No. I purchased Lot 201 from Mr. Blackmer and his
8 wife. I purchased 2, 3, 4, and 5 from Mr. Rocco.

9 Q All right.

10 A And then I purchased 6, 7, 8, 9 and 10 from Mr.
11 Seabrook.

12 Q Okay. And did Mr. Rocco, as far as you know,
13 purchase the lots that he sold to you, did he get them
14 from Mr. Seabrook?

15 A Yes. It was in his chain of title. He originally
16 sold those five lots, the marshland north of the Indian
17 Avenue lot to the mean water, to Folly River in 1973 to
18 Mrs. Muller.

19 Q And Mrs. Muller, did she get her property from Mr.
20 Seabrook?

21 A Yes, she bought it in 1973.

22 Q Okay. Are you familiar with the tax maps that
23 were in existence for that property at the time the
24 Beckmanns and the Crowleys applied for their dock
25 permits?

1 A Yes, I am.

2 Q Let me show you Plaintiff's D. Have you seen this
3 map before?

4 A Yes, I have.

5 Q And what is that?

6 A That's the Charleston County tax map.

7 Q For?

8 A Showing in particular the first block and the
9 second block of East Indian.

10 Q And does it also show the marsh between those
11 parts of the streets and down to the Folly River?

12 A Yes, it does.

13 Q Okay. And what does it show there, in terms of
14 who owns that land out there?

15 A It's noted as TMS 132, which Edward N. Seabrook
16 was the record owner paying the taxes on it.

17 Q Let me direct your attention to Plaintiff's
18 Exhibit J, which is an exhibit we've heard testimony
19 about. Did you receive that letter from Mr. McCann?

20 A Yes, I did.

21 Q And when you received that letter, what did you
22 do?

23 A I received it in 2003. My lawsuit was in
24 progress, at that time. And I noted its contents. That
25 was after the occurrence of the events which occurred in

1 2002. And this is a recitation of what actually
2 happened when I bought the property.

3 Q Yeah. Okay. What did you do--what was the
4 position of Folly Beach with regard to who owned the
5 right-of-way of East Indian Avenue?

6 A Okay. I started looking at the property in the
7 late part of 2001, around November or so. And I was
8 very concerned about buying the property with the road
9 in that condition. And Keith McCann was my agent, my
10 real estate agent. I asked him to investigate it to see
11 what could be done about it. Who owned it. Whether it
12 could be landscaped.

13 We assumed, at that time, it had belonged to the
14 City. He had, I believe, Mr. Hall come down there. He
15 had conversations with Mr. Hall, the building inspector
16 with the City.

17 I believe Mr. Hall told him that--I think he felt
18 the City owned it, but he wanted to check. He went back
19 to check, and I think maybe another followup visit.

20 And Mr. Hall told Keith McCann that the City did
21 own the road. The best way to resolve the problem with
22 the road was to have a landscape easement plan drawn,
23 and presented to city council--

24 Q Let me show you now Plaintiff's Exhibit J, this
25 map right here. Do you recognize that map?

1 A Right. That's the landscape plan that I had Ms.
2 Puckhaber draw up for me to present to the city council,
3 to try to get a resolution on that road. It was so
4 unsightly. I just felt that it would probably get
5 approved, because it was just a terrible looking piece
6 of property on that road going down there.

7 Q Did you hire a landscape expert to design the
8 plan?

9 A Ms. Puckhaber.

10 Q Yeah. And did you pay her?

11 A \$300.

12 Q Okay. And all of this in planning to take this to
13 the town council?

14 A That's right.

15 Q Okay. And did you ever talk to anyone, either Mr.
16 McCann or anyone else, about this form - easement form?

17 A No. He was my agent. And I had already bought
18 the property in February of 2002.

19 Q You bought which property?

20 A Lots 202 through 205. And I was hopeful. And
21 then after he talked with Mr. Hall that that would be a
22 resolution. And so I went ahead and bought the
23 property, at that time.

24 Q Okay. So by the time--

25 A And then after I bought the property is when I had

1 the landscape plan made.

2 Q All right. And after you got the landscape plan
3 drawn up, were you able to go to council with it?

4 A Well, my agent called me on March 11, like he
5 testified, and said, you won't believe this. But the
6 City says they don't own the road. And that you should
7 go to Mr. Seabrook and get a landscape plan from him.
8 And so I told him, you know, let's do that. I've got to
9 have a resolution on that road. It's just so beat up.
10 It's a devaluation of my property. And so...

11 Q And did you purchase property from Mr. Seabrook,
12 the road property?

13 A Yes, I did. He agreed to--he wouldn't give an
14 easement, but he agreed to sell it. He thought he owned
15 it. And I offered him \$10,000 and he accepted it.

16 Q Okay. And did you, at that time, at the time you
17 were buying the road from Mr. Seabrook, did you have any
18 thought that the City of Folly Beach still had a claim
19 to it?

20 A No. I took the City at its word. I mean if the
21 mayor and the city administrator tells you something,
22 you should be able to rely on your city government. And
23 they said they didn't own it. Go talk to Mr. Seabrook.
24 And, you know, they took it off the agenda and wouldn't
25 hear my landscape plan.

1 Q Okay. And you did exactly what they said to do?

2 A Right. I sure did.

3 Q Thank you. No further questions.

4 CROSS-EXAMINATION BY MR. PEEPLES:

5 Q Mr. Demetre, I believe you testified in your
6 deposition that you weren't really familiar with East
7 Indian until you bought the property at 210, is that
8 correct? I can show you that, if you want me to.

9 A Until I bought Lot 210?

10 Q Yeah. I asked you when were you first familiar
11 with East Indian. And you said when you bought the lot
12 at 210 East Indian.

13 A Well, that's a misunderstanding or a
14 misrepresentation. I knew about East Indian at the time
15 I bought it from Mr. Seabrook. And I knew who said they
16 owned it. And I knew who told me they didn't own it.

17 Q And when was that?

18 A I bought Lot 209 and 210 in 2004.

19 Q Right. So, my point is that you can't testify to
20 what Folly Beach did or didn't do on that property
21 before you bought it from Mr. Seabrook?

22 A No, because I wasn't there.

23 Q In your--several times this has been mentioned,
24 and one time I asked you in the deposition exactly what
25 portion of the extension of East Indian you were

1 claiming, or the second block. And you said you were
2 claiming the paved part.

3 And your lawyers on page 16 of their Memorandum in
4 Support of Summary Judgment say that you are not
5 claiming the part that is paved?

6 A That's correct.

7 Q That's still correct. So if, in fact, the Judge
8 would grant my motion and drive out there tomorrow, and
9 look down that road and see if he agrees with me,
10 because nobody else seems to, that Exhibit 2 is a
11 pothole in the pavement, you aren't claiming that part
12 of the road. Is that correct?

13 A I'm not claiming the solid paved asphalt roadway
14 that's identical to East Indian Avenue first block that
15 stops at my first lot. That's all I'm saying that the
16 City owns.

17 Q Right.

18 A I claim from there on down to 3rd Street, through
19 my deeds.

20 Q And it's irrelevant to you if the City paved on
21 down all the way down to behind Mrs. Brown?

22 A The City never paved that road. Please show me
23 your records. I'm an engineer, and I can determine - I
24 have a pretty good knowledge of what's been filled and
25 what hasn't been filled.

MILTON P. DEMETRE - CROSS EXAMINATION BY MR. MENDELSON

1 Q You're kind of a bah humbug sort of a guy?

2 A That's right.

3 Q Me too. I did go to the Christmas parade.

4 A You didn't invite me.

5 CROSS-EXAMINATION BY MR. MENDELSON

6 Q Mr. Demetre...

7 A How are you, Mr. Mendelsohn?

8 Q We've known each other, and you know I represent
9 Mrs. Brown.

10 A Right.

11 Q Your witness, the real estate guy, Mr. McCann,
12 wrote that letter to you to memorialize, I guess you'd
13 say, what went on. Are you familiar with the position
14 of Folly Beach prior to your acquisition of this piece
15 of property in regards to this road? Do you know
16 anything--

17 A I only know what they told me.

18 Q So they told you--

19 A They first told me they owned it. Then they said
20 they didn't own it. And go and buy it from Mr.
21 Seabrook. And that's what I did.

22 Q Okay. And you also relied on these various plats
23 of Folly Beach, too, didn't you, when you bought the
24 properties?

25 A Yes.

1 Q Okay. And you've bought and sold a lot of real
2 estate, in your time. And you are a sophisticated real
3 estate developer?
4 A I have bought and sold some.
5 Q You agree that you are a pretty sophisticated real
6 estate developer?
7 A I wouldn't say that?
8 Q You wouldn't?
9 A No.
10 Q Okay.
11 A But I know good property when I see it.
12 Q If Mrs. Brown relied on the town when she bought
13 the property, or on the public record, she had a right
14 to do that also, as well as you?
15 A Mrs. Brown?
16 Q Yes.
17 A Well the City told me they didn't own the road,
18 and I went and bought it. So at that point, Mrs. Brown
19 didn't have a right to the road, because the City didn't
20 claim the road any longer. And she is relying on the
21 City's ownership.
22 Furthermore, Mrs. Brown's deed is restricted by
23 the subdivision restrictions. And I'm sure you are
24 familiar with those.
25 Q And that's not the question I asked you. I asked

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1 you whether or not she had as much right to rely on the
2 town and whatever they told her, as you did?

3 A They told--

4 Q Don't tell me what they told her, because you
5 don't know. I'm asking you does she have as much
6 reliability factor with the Town of Folly Beach as you
7 do?

8 A I can't speak to that.

9 Q So what's good for you is not good for anybody
10 else?

11 A I only know what they told me.

12 Q Okay. It's not a question, Mr. Demetre, of what
13 they told you, or what they didn't tell you. The
14 question is the reliability of the town when it said
15 whatever it said. That's what I'm asking you.

16 A At this point, I don't think the City of Folly
17 Beach is very reliable when they tell me they don't own
18 something. And I go spend \$10,000, and then they change
19 their mind and say, yes, we do own it.

20 Q Why didn't you ask Mr. Seabrook for a warranty
21 deed?

22 A He didn't offer one.

23 Q So it's a risk factor, isn't it?

24 A Everything is a risk factor. You know that.

25 Q Thank you, sir.

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1 A You're welcome.

2 CROSS-EXAMINATION BY MR. GRIFFITH:

3 Q Mr. Demetre, I'm Jeff Griffith. And I with Ms.
4 Deutsch represent the Crowleys and the Beckmanns in this
5 case.

6 And let's locate their lots in relation to what
7 you are claiming to the riverward side of them. Look at
8 Exhibit N--

9 A Where's that?

10 (Document tendered)

11 Okay.

12 Q And this plat, Exhibits N, shows the Crowleys and
13 the Beckmanns as owning Lots 209 and 210 Huron.

14 A That's correct.

15 Q And then they show you with Lots 2, 9, and 210
16 East Indian.

17 A That's correct.

18 Q Now, this plat is relatively new, today?

19 A That's correct.

20 Q And so you didn't buy your lots relying on that
21 plat, did you?

22 A No.

23 Q The lots you are claiming on that plat lie to the
24 riverward side of the Beckmanns and the Crowleys, is
25 that correct?

1 A That's correct.

2 Q And on that plat there is shown two docks, is that
3 correct?

4 A That's correct.

5 Q And the docks originate in what's shown on East
6 Indian Avenue, and then go out to the Folly River?

7 A That's correct.

8 Q And they cross the property that you are claiming
9 in 209 and 210 East Indian?

10 A That's right.

11 Q Now, when did you purchase 209 and 210 East Indian
12 from Mr. Seabrook?

13 A In January of 2004.

14 Q January of 2004?

15 A That's right.

16 Q And were those docks there in January of 2004?

17 A Yes, they were.

18 Q And you were aware of them?

19 A Yes, I was.

20 Q And you knew that the Beckmanns and the Crowleys
21 were using those docks?

22 A I didn't know the Beckmanns and the Crowleys. But
23 I assumed that somebody was using the docks.

24 Q Somebody was using those docks, and they were
25 associated with the property - the houses?

1 A That's right.

2 Q And yet you bought the property to the riverward
3 side of those two lots?

4 A That's right.

5 Q And you bought it by quitclaim deed?

6 A That's right.

7 Q So that if there was ever any problem with that,
8 then you couldn't go back on Mr. Seabrook?

9 A Let me stop right there. Mr. Seabrook only sold
10 his marshland--

11 Q I didn't ask you that. Could you go back against
12 Mr. Seabrook?

13 A No.

14 Q No.

15 And how much did you pay for those two river lots?

16 A I paid a lot.

17 Q \$27,000?

18 A \$23,000.

19 Q \$23,000. And why would you consider that a lot
20 for two lots on the river?

21 A Because I knew those lots - those docks were on
22 there. And I knew they were trespassing. Mr. Seabrook
23 told me that he owned that property--

24 Q Don't tell me what Mr. Seabrook told you. I
25 didn't ask you that.

1 A Well, that's where I got the deeds.
2 Q Do not tell me what Mr. Seabrook told you. I have
3 not asked you to tell me that. And you may not testify
4 to that; it's hearsay.
5 A What's your question?
6 Q My question is you only paid \$23,000 for that?
7 A That's what I paid?
8 Q Yes, sir.
9 A He could have sold it for \$5 and a deed. I don't
10 know. That's what he agreed to, and I offered it.
11 Do you want me to tell you why I offered him that?
12 Q No.
13 A He said make him an offer, and that's what I did.
14 Q Not what he said. I know what you paid him. I
15 said you paid him that amount, right?
16 A That's right.
17 Q For two lots that fronted on the river?
18 A Right.
19 Q Your deed from Mr. Seabrook.
20 Your deed from Mr. Seabrook, Mr. Demetre, I'm
21 going to refer you to Plaintiff's Exhibit V--
22 MR. COOPER: This isn't it.
23 MR. DENNY: That's K. It looks like a V...
24 MR COOPER: It probably is K.
25 Q Are you oriented to it?

1 A Yes.

2 Q I'm going to read from your deed.

3 "Along those lots of land situate lying being

4 Folly Island, County of Charleston, State of South

5 Carolina, known as Lots 209 and 210 Indian Avenue East

6 on a plat of lands of Folly Beach Corporation made by

7 Jefferson Construction Company dated February 1920 and

8 recorded in the RMC Office for Charleston County in Plat

9 Book C at Page 158."

10 Can you find those two lots on that plat?

11 A C-158, the redraw is what they used--

12 Q On that plat.

13 A Let me just tell you. C-158 the redraw is what

14 they used to deed my lots. This plat doesn't show a

15 subdivision at all. It doesn't show a road. It doesn't

16 show a subdivision. There's no lots shown by this plat.

17 Q Those are not lots?

18 A Those are lots, but the second block had not been

19 platted or subdivided, at that time. It was not until

20 the '65 redraw.

21 Q So according to--let me make sure I've got your

22 answer right. On the plat that we're looking at that

23 refers you to your deed, your lots don't exist?

24 A Not on this plat.

25 Q Okay. Now, I'll hand you a copy of a deed from

1 Frances A. Harley to Harry Beckmann, III and Patricia P.
2 Beckmann that's marked on my copy with PLT-00164, 165,
3 166...

4 And may I approach, your Honor?

5 COURT: You may.

6 Q ...I'm going to read this to you, as well:

7 "All that certain lot of land with buildings
8 thereon, situate lying and being on Folly Island in the
9 County of Charleston, State aforesaid. And noted and
10 designated on a plat made by Jefferson Construction
11 Company, February 1920, and recorded in Plat Book C-158,
12 RMC Office of Charleston County, as Lot 209 East Huron
13 Avenue measuring on said East Huron Avenue 70 by 150
14 feet in depth, and having such location shape and bounds
15 as are shown on said plat."

16 Is that correct?

17 A That's what the deed says.

18 Q And then I want to show you a deed from the
19 Executrix of the Will of Ernest King and Isabel King,
20 individually, to Harris L. Crowley and Annie Crowley.
21 And that's marked PLT-00178, 179 and 180. And I'm going
22 to read that description to you, as well, if you'll
23 follow along with me.

24 "All that certain lot of land lying situate being
25 on Folly Island in the County of Charleston, State of

1 South Carolina, bounding on Huron Avenue East, and
2 measuring thereon 70 feet by 150 feet in depth, and
3 known and designated as 210 Huron Avenue East on a plat
4 made by Jefferson Construction Company dated February
5 1920. And recorded in the RMC Office for Charleston
6 County in Plat Book C-158, having such metes and bounds
7 as shown thereon."

8 Is that correct?

9 A That's what the deed says.

10 Q You've still got this plat in front of you?

11 A Yes.

12 Q Exhibit K. Can you find those two lots on there?

13 A I don't know what your point is. These two lots
14 were deeded before the 1965 redraw. And they're shown
15 on this plat. My East Indian Avenue lots are not shown
16 on that plat. It's shown on the '65 redraw. And that
17 is what the attorney used to sell those lots. I don't
18 know what your point is.

19 Q I know what the deed says, Mr. Demetre--

20 A I know what they say, too.

21 Q And the deed refers to that plat, does it not?

22 A You see--

23 Q This plat, Exhibit K?

24 A The redraw is C-158--

25 Q Yes, or no--

1 COURT: Just one second, Gentlemen. Just one
2 second both of you.

3 All right. Mr. Griffith is entitled to ask the
4 questions.

5 Mr. Demetre, you need to answer the question in a
6 yes or no. You can answer it yes, or no, and then I'm
7 going to give you the opportunity to explain your
8 answer. I will give you that opportunity.

9 WITNESS: Okay. Thank you.

10 COURT: So let's just start over again with that
11 line of questioning.

12 Q Your deed, Mr. Demetre, refers to the plat on
13 Exhibit K?

14 A That's correct.

15 Q Your lots do not exist on the plat on Exhibit K?

16 A Not in 1920.

17 Q And that's the only one that's referred to in your
18 deed?

19 A Well, you've got to qualify that, now. You're
20 trying to take something out of context.

21 Q It either is or is not on your deed.

22 A My deed says C-158. And it's the redraw.

23 Q Mr. Demetre, prior to your purchasing this
24 marshland from Mr. Seabrook, had you ever been on this
25 property?

1 A Prior to purchasing it?
2 Q Yes, sir.
3 A The marshland?
4 Q Yes, sir.
5 A I walked it at the time I was getting ready to
6 purchase it.
7 Q Prior to that?
8 A No.
9 Q And prior to that time, you had no idea what went
10 on, on that property, prior to your purchasing it?
11 A No.
12 Q You have no idea what the Crowleys or the
13 Beckmanns did with that property, prior to your
14 purchasing it, other than the open and obvious dock?
15 A No, I have knowledge of what the OCRM permits--
16 Q No. That's not what I asked you. What did they
17 do?
18 A No, I don't know that.
19 Q Okay. That's all.
20 REDIRECT EXAMINATION BY MR. COOPER:
21 Q Mr. Demetre, your deed to Lots 209 and 210 East
22 Indian Avenue refer to Plat recorded at C-158?
23 A That's right.
24 Q And have you been down to the RMC Office?
25 A Yes.

1 Q And have you seen the various plats that are
2 recorded at C-158?

3 A There're two plats 1920 and 1965.

4 Q And your lots are shown, are they not, on
5 Plaintiff's Exhibit C, which is now referred to as the
6 redraw?

7 A That's correct.

8 Q They're not shown on the prior--

9 A No. There's no subdivision in the second block.
10 When you don't have a subdivision, you hardly need a
11 road to service marshland.

12 Q No further questions. Thank you.

13 COURT: Further followup?

14 (No response)

15 COURT: Mr. Demetre, let me ask you a couple of
16 questions.

17 Clearly, to followup some of that. Clearly, the
18 lot didn't exist in 1920. It was the 1965 redraw that
19 created--

20 WITNESS: That's right.

21 COURT: This particular lot, right?

22 WITNESS: Your Honor, if I can go back just a
23 little bit past that.

24 COURT: Okay.

25 WITNESS: In 1948 to 1950, Mr. Seabrook started

MILTON P. DEMETRE - RECROSS EXAMINATION BY MR. MENDELSON

1 WITNESS: That's right.

2 COURT: Okay.

3 WITNESS: I did make a mistake on the price. It
4 was \$23,700, not \$23,300.

5 COURT: Okay.

6 And so today, I guess in 2005, the new action was
7 brought. And in that action you've named the City. And
8 that's to clear up any question about the road. Is that
9 right?

10 WITNESS: In 2002 I brought the action on the
11 roads. I think in 2005 I brought the action on the
12 docks trespassing on my mean high water property.

13 COURT: Okay. All right.

14 I think that's all I've got. You all can follow
15 up with what you've got.

16 MR. MENDELSON: Your Honor, I just have one
17 question I'll do it from right here.

18 COURT: All right.

19 RECROSS-EXAMINATION BY MR. MENDELSON:

20 Q Mr. Demetre, you said, if I understood you
21 correctly, that since 1968, that all the lawyers were
22 using the revised plat--

23 A '65.

24 Q '65, revised '68, that all the lawyers were doing
25 that.

1 A That was what was told to me down at the RMC
2 Office.
3 Q Well, I would ask you, if you would, sir, to look
4 at the history of the title of your title, that your
5 lawyers have presented. And I think if you look at the
6 deed, in virtually every case, they all refer to C-158.
7 And I want to know if you want to change your position
8 on that?
9 A As far as my lots are concerned, you are talking
10 about my lots?
11 Q I'm talking about this history of all of your
12 property. They all refer to C-158, most of them, if not
13 all of them. I just looked at them.
14 A If they are lots 201 through 210, they are
15 referring to the 1965 revised C-158, because that's the
16 only plat that shows those lots.
17 Q That may be true for those. But for the others,
18 all the lawyers are not doing all the things that we are
19 talking about.
20 A They were conveyed, I believe, before 1965. So it
21 would have been truthful by using the old actual 1920
22 plat.
23 Q So when Mrs. Brown bought her property, the plat
24 was C-158.
25 A That was in 1923. That's three years after the

1 original plat. And she bought it per that plat. The
2 second block of East Indian Avenue was not part of that
3 subdivision plat, at that time. There were no
4 subdivided lots on the second block.

5 Q Let me make sure we're talking about the same
6 thing.

7 This is the C-158.

8 A Yes. That's the original 1920 C-158. It says
9 that on the right-hand side.

10 Q I'm talking about my client's lot.

11 A Yes. Her deed was in 1923, three years after that
12 was drawn. And her's deeded per that plat right there.

13 Q So I misunderstood you to say there were no
14 lots--you're talking about on your side?

15 A On my side, East Indian Avenue, second block,
16 there are no ten lots.

17 Q I had to see if I had spend two years talking
18 about the wrong plat. Thank you.

19 A No, we are together.

20 Q But she bought off of that plat?

21 A She bought off of that plat.

22 Q And that plat has got a street on it, is that
23 correct, East Indian?

24 A Huron Avenue is on there.

25 Q East Indian is on there, too.

1 A Well, I don't believe that was a street. You
2 don't have a street unless you have lots to service the
3 subdivision.
4 You'll notice on the first block there's no street
5 behind the first block, because there's no lots behind
6 there to build another street.
7 And that was going to be a future development with
8 those dotted lines. That means something was going to
9 happen in the future.
10 Q May I ask you to step down please, sir.
11 A I can see it from here.
12 Q This is 2nd Avenue (pointing to plat on
13 chalkboard), and this is extending, is that correct?
14 A I better step down.
15 Q This is where you are right on here.
16 A This is 2nd Street. That's 102 and that is now
17 Lot 201.
18 Q Is this not a street? Is that not what this says?
19 A The tide goes to marsh land. All of this is marsh
20 land.
21 Q I'm asking you if this is a street right here?
22 What does it say?
23 A I don't believe it's a street.
24 Q So that's how it's done?
25 A This line here you are referring to?

1 Q Yes.

2 A That's the boundary of these lots.

3 Q Right. And then on the other side of that is a
4 street, right?

5 A Down here.

6 Q What does it say right here?

7 A The first lot it says Indian Avenue.

8 Q Thank you.

9 RE-REDIRECT-EXAMINATION BY MR. COOPER:

10 Q Mr. Cooper, just to clear up the record, you are
11 familiar with your title to Lots 201 through 205 East
12 Indian Avenue?

13 A Yes, I am.

14 Q And tell the Court how Mr. Seabrook in the deeds
15 described Lots 201 through 205, when they didn't have
16 yet the new plat--

17 A He said when they are platted and subdivided, they
18 would be known as Lot 201, 2, 3, 4 and 5.

19 Q So the deeds themselves indicate that they hadn't
20 been platted yet?

21 A At some future time they would be platted.

22 Q So he just described them by metes and bounds?

23 A He gave them the numbers 201 through 205.

24 Q Okay. Secondly, with regard to this deed, No, 23
25 that's in tab No. 23 that you were looking at there...

1 A Right.

2 Q The Judge asked you about a strip of land, 190

3 feet wide?

4 A 190 feet long.

5 Q Is that--

6 A That's the width of the two lots, each lot is. 70

7 and 70 is 140, and the 50-foot roadway is 190.

8 Q Okay. So what it is, is Lot 209, 210 East Indian

9 Avenue--

10 A And the 50 feet--

11 Q The 50-foot right-of-way of 3rd Avenue.

12 A Is 190 straight out to the low water.

13 Q Nothing further. I thank you.

14 RECROSS-EXAMINATION BY MR. PEEPLES:

15 Q When you were talking to your lawyer earlier about

16 the Charleston County tax map...

17 A Yes. It's here somewhere.

18 Q At any rate, what are all of these little circles

19 on all of these lots?

20 A Tax numbers.

21 Q What is the tax number of East Indian Avenue, the

22 second block?

23 A It doesn't have a tax number.

24 Q So for you to prevail, is it your opinion that

25 property was privately owned since 1942 and 1943?

1 A That's correct. And the City said they didn't own
2 it, and tell me to buy it.

3 Q And nobody has paid taxes on it. And Charleston
4 County has never noticed that it was privately owned?

5 A That doesn't rise to a level of ownership.

6 Q Thank you. I have no other questions.

7 COURT: Mr. Griffith...

8 MR. GRIFFITH: I'm going to be very short.

9 RECROSS-EXAMINATION BY MR. GRIFFITH:

10 Q Mr. Demetre, when the Crowleys purchased their
11 property--and I'll bring you this deed. They purchased
12 their property in 1964. They would not have had the
13 benefit of that 1965 redraw, would they?

14 A That's true.

15 Q And so just so we're clear. On PLT-00178, 179,
16 and 180, there's a deed from King to Crowley. And if
17 you'll look at 180 and tell me when that was notarized,
18 please, sir.

19 A In '64.

20 Can I speak to that?

21 Q Well, let me ask you another question, and then--
22 go ahead.

23 A Well, those lots were bought back in the '30s -
24 40s. And that was the plat in existence, and that's why
25 it references that plat. Okay.

1 So I don't know what the point is. But the point
2 is when I bought my lots, we bought them by C-158, the
3 revised redraw. I don't know what...
4 Q But the Beckmanns, they bought their property from
5 Frances Harley. And Mrs. Harley bought hers, according
6 to the derivation clause in this deed. And this is at
7 PLT-00164. According to the derivation clause, Mr. &
8 Mrs. Harley bought their property, or their lot from
9 Joseph Ruddick in 1961, is that correct?
10 A Yes.
11 Q Okay. And I thought your comment, and I want to
12 make sure I heard it right, on this 1920 plat. When you
13 were describing East Indian Avenue, according to this
14 plat, what did you say was at the north of East Indian
15 Avenue, according to this plat?
16 A Marshland.
17 Q Thank you.
18 A And marshland can be privately owned to the high
19 water mark.
20 Q That's all.
21 FURTHER DIRECT-EXAMINATION BY MR. COOPER:
22 Q Mr. Demetre, Mr. Peeples was asking you some
23 questions, I think, about paying tax on the road
24 right-of-way.
25 A Right.

1 Q Did you ever try to pay taxes on East Indian
2 Avenue, the second block?
3 A Right. I'm glad you ask me that question. When
4 bought 209 and 210 and the roadway, I went down to the
5 tax map division of the Assessor's Office--
6 MR. PEEPLES: I think I feel hearsay coming.
7 Q Did you ever try to pay the taxes?
8 A I told them that I had bought those roads, and
9 they should change their tax map. And they said until I
10 get a--
11 MR. PEEPLES: I object, your Honor. Hearsay.
12 COURT: I'll sustain. He can tell me what
13 happened there.
14 A I told them I had a lawsuit to quiet my title.
15 And they said once you quiet your title, then come back
16 to us, and we'll revise the map.
17 Q They wouldn't take your money?
18 A No, no. They needed some authority to change the
19 map.
20 Q You were able to pay the property tax on your
21 lots?
22 A I pay the property tax on the TMS 132, I think it
23 is 244 now.
24 Q And so you pay property tax on the lots that you
25 own?

1 A Yes, I do.

2 Q And you pay the property tax, do you not, on the

3 marsh out to the Folly River?

4 A Yes, I do. And Mr. Seabrook paid the taxes on it.

5 Q Now, when Mr. Beckmann and Mr. Crowley applied for

6 permits and built their docks across what is now Lot 209

7 and Lot 210, when they did that, the redraw of the 1965

8 redraw was in existence then, was it not?

9 A Yes.

10 Q It was in existence since 1965?

11 A Since 1965.

12 Q And it was probably 1980 when they tried to get

13 their second permits '89 or '90?

14 A They got their permits in 1987 and 1988. In '88.

15 Q Then Hugo required some rebuilding, and they got

16 some more permits, is that right?

17 A Yes, and some amendments to it.

18 Q Anyway, all the permits that they got, that you

19 know about, were after 1965?

20 A That's right.

21 Q And this C-158, which is the redraw, was in

22 existence showing your lots?

23 A That's my understanding.

24 Q And again, Plaintiff's Exhibit B was the tax map

25 and the page you testified to. And that was in

1 existence at the time that they built the docks?
2 A Yes. When they applied for their permits, that
3 TMS 132, if they would have bothered to have checked the
4 tax map it would have showed that there was an owner in
5 front of their property. And also there was a
6 subdivision out there noted on the C-158 subdivision
7 plat.
8 Q Nothing further. Thank you.
9 COURT: All right.
10 Thank you, Mr. Demetre.
11 (Witness is excused from the witness stand)
12 MR. COOPER: The Plaintiff calls Peter Demetre to
13 the stand.
14 MR. PETER MILTON DEMETRE, having been
15 duly sworn, testifies as follows:
16 DIRECT-EXAMINATION BY MR. COOPER:
17 Q State your full name.
18 A Peter Milton Demetre.
19 Q Are you related to Mr. Demetre who just testified,
20 Milton Demetre?
21 A I'm his son.
22 Q Where do you live?
23 A 221 Marsh Oaks Drive, in West Ashley, Charleston,
24 South Carolina.
25 Q And have you had n occasion to ever live out at

1 201 East Indian Avenue?

2 A Yes, sir. I lived there from February of '02 when
3 he first bought the house to November of '04.

4 Approximately two - a little over two years.

5 Q Let me show you now a book of photographs. Start
6 with P-1 and go to the end and just tell the Court what
7 those--did you take those photographs?

8 A Most of them, not all.

9 Q Have you seen the scenes depicted therein?

10 A Yes, sir.

11 Q Okay. And do they accurately depict what could be
12 seen at that time?

13 A Absolutely.

14 Q Okay. Tell the Court what they are. Plaintiff's
15 P-1.

16 A P-1 to the left it shows what was my driveway, at
17 the time, going into our house at 201.

18 And then it shows right pass my driveway where the
19 paved part of East Indian, the first block ends.

20 Then it starts a dirt lane that's about 9 or 10
21 feet wide. The actual platted road goes over about 50
22 feet, I believe. And that's all covered in trees and is
23 wooded.

24 Then at the end that looks like Mrs. Brown's
25 husband's truck and a bike that he sometimes stores

1 there.

2 Q Okay. And have you ever looked at what you call

3 the end of the pavement?

4 A Yes.

5 Q And does it appear, as it does in those

6 photograph, stopping approximately at the bottom of that

7 arrow?

8 A Absolutely--

9 Q Not the point of the arrow, the bottom of the

10 arrow.

11 A There is actually a better picture in here that I

12 will show you.

13 Q All right. Which one?

14 A If you look at P-4, it is a little covered up

15 because of the mud. The Browns are dragging through the

16 pothole. But you can see it's a straight line where the

17 asphalt ends. It looks like they stopped paving the

18 asphalt and it's just a straight line. Then it starts,

19 a dirt road full of potholes, grass, some rocks thrown

20 about, some bricks, things like that.

21 Q Okay. And have you been down that road all the

22 way to where Mrs. Brown's lot is?

23 A Sure.

24 Q How many times? Lot of times?

25 A Ah, yes, countless times.

1 Q Okay. And is that a dirt road or is it a paved
2 road?

3 A It's absolutely a dirt road.

4 Q Okay. A few feet after your driveway it becomes
5 dirt?

6 A Yes, sir. It is a clearly defined end of the
7 pavement. There're a few little pieces that are broken
8 off from the Browns, you know, hitting the edge of the
9 pavement coming out. But it's pretty straight across.

10 And then it starts a dirt road. There's a bit of
11 gravel. It looks like one of the potholes they threw
12 some gravel up there, and then grass growing out of it.
13 And there's actually a pine tree growing out of the road
14 that's maybe 50 years old. And it's dirt all the way to
15 where the Browns park. And then it ends and it becomes
16 marsh.

17 Q Okay. And during the time that you lived at 201
18 East Indian Avenue, did you have occasion to see any
19 vehicles go down that road?

20 A Yes, sir.

21 Q And what vehicles did you see go down the road?

22 A Mrs. Brown and her husband have--she had, I guess
23 a minivan, would be the best description. He had a
24 truck, and then he also had a work truck that they would
25 use.

PETER M. DEMETRE - DIRECT EXAMINATION BY MR. COOPER

1 Q The contractor would go to the left of that
2 magnolia tree?

3 A He would. Our records show that he made less
4 than--well, the Browns use the road at least once a day
5 each. And since 2002, that would be over 6,000 times
6 they've gone down the road. Our contractor made less
7 than 300 trips into that property. And he only used the
8 road several times - very little.

9 Q Okay. Let me show you now--

10 A Those 2002 photos are the potholes that predate
11 that by several years, or a couple years.

12 Q So the 2002 photographs predates all of that.

13 A All of the work and us creating the access.

14 Q Let me show you Plaintiff's Exhibit X. Have you
15 ever seen that before?

16 A Yes, sir.

17 Q And does that indicate where the paved roads go on
18 Folly Beach, in the area we are talking about?

19 A Yes, sir.

20 Q There's a legend on there. What does it say?
21 Streets/roads?

22 A It's little dotted marks. And then the dotted
23 marks go down the first block of West Indian. And like
24 I told you about the street signs, it tells you to turn
25 away from the dirt road and go down 2nd Street. And

EMILY S. BROWN - DIRECT EXAMINATION BY MR. MENDELSON

1 MRS. EMILY BROWN, having been
2 duly sworn testifies as follows:
3 DIRECT-EXAMINATION BY MR. MENDELSON:
4 Q Emily, please tell us your name.
5 A Emily Shaver Brown.
6 Q And where were you born?
7 A In Darlington, South Carolina.
8 Q And tell us your educational background.
9 A I have an MBA.
10 Q From where?
11 A From the University of South Carolina.
12 Q And an undergraduate degree?
13 A Business from the University of South Carolina.
14 Q All right. And during the course of your life
15 have you worked in your field?
16 A Yes. I retired from Santee Cooper as the
17 executive vice president and chief financial officer.
18 Q And how long had you worked for them?
19 A About 22 years.
20 Q Married?
21 A Yes.
22 Q And Andy still is your husband?
23 A That's correct.
24 Q Okay. And he is the one holding the notes?
25 A Right.

1 Q How many children?
2 A Two.
3 Q How old are they?
4 A 14 and 10.
5 Q 14 is a girl?
6 A That's right. A red head.
7 Q When did you first get interested in Folly Beach?
8 A Well, I've always loved Folly. You know, it has
9 just always been a place--when we moved to Charleston we
10 came out to Folly a lot. And then when I started--we
11 started looking for a permanent place. We looked on
12 Johns Island, and James Island, and Folly Beach. And we
13 found a lot--
14 Q You used the word "we." Who are you speaking of?
15 A My husband.
16 Q Andy?
17 A Andy.
18 Q But Folly Beach was something you were interested
19 in before Andy?
20 A Oh, yeah, yeah.
21 Q Tell us a little bit about how you came about
22 buying the property on Huron.
23 A Well, we just looked at a lot of places. And when
24 we got this place, we came in and looked, and it was
25 just beautiful. And we decided this was the spot for

1 us.

2 Q On the backside of the property on East Indian,
3 what did you see there?

4 A Well, we were interested in having access, or at
5 least a view of the water. And so as part of our
6 process of looking at the property and deciding whether
7 we would want to stay there, we looked at whether
8 anybody could build in front of us, or obstruct our
9 view. What protections we might have from the beauty of
10 the lot being destroyed.

11 And one of those things was that, oh--back then, I
12 had my brother come down. He's an engineer, Mr.
13 Demetre. And we walked around and talked about various
14 aspects of the property. One being that the critical
15 coastline wrapped pretty close, wrapped around the
16 property that Mr. Demetre has now bought. And the fact
17 that the road was there, and so that nobody really could
18 build there.

19 Another thing was we had--it's a duplex that we
20 have. And we had a renter--there was a renter in it
21 when we bought the house. He accessed the house from
22 the front, from the Huron side. And Mr. Thomas, it was
23 my understanding that Mr. Thomas before me accessed the
24 top duplex from the back. And that's what I did.

25 Q Mr. Thomas is who you bought the house from?

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Master in Equity, Chas Cty Jud Ctr, Chas SC 29407 843.958.5071

1 A Right.

2 Q And he accessed it the same way you do?

3 A It's my understanding.

4 MR. COOPER: Objection.

5 A Now, I don't know him--

6 COURT: Just a minute, Mrs. Brown.

7 MR. COOPER: This is hearsay not subject to any

8 exception.

9 MR. MENDELSON: I don't necessarily agree with

10 that. She hasn't said anything anybody said.

11 MR. COOPER: She is testifying to her

12 understanding. She doesn't have any personal knowledge.

13 COURT: I tend to agree with that. I'm not so

14 sure it's material, or offered for the truth of the

15 matter asserted. But just her understanding of how

16 people used the house.

17 Your house is a duplex, as I understand it?

18 WITNESS: It is a duplex.

19 COURT: Upstairs, downstairs.

20 WITNESS: Right. We have no renters at the

21 moment. But at the time, it was pretty important to

22 have separate access, because that allowed privacy.

23 COURT: Okay.

24 WITNESS: And in the future, if we had someone

25 there, a mother, a sister, or somebody that we would

1 have maybe living downstairs, it would be nice to have a
2 private entrance for both parties.

3 Q Have you consistently used the East Indian Avenue
4 access to your property, since you bought it?

5 A Yes. Since February of '86.

6 Q And if you multiply that twice a day, how many
7 times--

8 A I guess. I didn't do the math.

9 Q But you could do the math?

10 A I could do the math.

11 Q And do you use the front of the property?

12 A We use it on occasion, not via car, but if say
13 we're out--we do take our trash out that way. It's
14 where the trash pickup is. And if we're using--if we
15 are in the yard, we may go out, if we're going to walk
16 or whatever, go out that way.

17 Q Are you, or were you at the time--

18 A We don't have a driveway in that way. It's a
19 grass yard.

20 Q At the start of the initial investigation, or
21 whenever you visited the site and decided to buy the
22 house, did you look at any plats, or any maps of any
23 kind?

24 A I looked at maps. I can't tell you exactly what
25 map, in light of all of these different maps. But every

1 map we looked at showed the road there. I never have
2 seen a map that did not show a road, East Indian going
3 beyond my house - my lot.

4 Q Everyone did show that?

5 A Everyone did. I have not seen one that didn't.

6 Q What, if any part, did that play in your decision
7 to buy that particular lot?

8 A It was very important. Because of having the
9 access back that way, which is beautiful back there. I
10 disagree that it's horrible and ugly and all that. But
11 also the fact that since it was publicly owned, nobody
12 would be building on the road.

13 Q Until Mr. Demetre bought this property, did you
14 have any problems with access, at all?

15 A No.

16 Q Why do you back in? It seems to be a...

17 A Well, I actually started backing in when Mr.
18 Demetre expressed interest in the road, and whether I
19 was blocking the road. So we started backing in so that
20 we could get as far over to the side, as we could, in
21 case he wanted to use it in some way.

22 We back in so we can get all three cars as far off
23 of the road as possible. That's the main reason.

24 Q That's the main reason?

25 A Uh-huh. And also it makes--the cars are not so

1 visible from--Mr. Demetre does have to look at the ratty
2 truck, because he didn't like that. So we tried to get
3 it out of his eyesight, just to be good Folly Beach
4 neighbors.

5 Q Have you rented that apartment?

6 A The downstairs department was rented when--

7 Q When you first bought it. Have you rented it
8 since then?

9 A I rented it to Andy, before we got married. But
10 since then not at all.

11 Q And you've been there since 1986?

12 A Correct.

13 Q The plats that you've seen here, are you familiar
14 with them? Have you seen them?

15 A I've seen just today the three different versions.
16 I'm not sure which maps. I'd have to go back and look.
17 I looked at a map - a plat that showed a road behind my
18 house.

19 Q All right. During the course of the time that you
20 have been there, have you seen any City activity back
21 there at all?

22 A I have seen some. After a storm, I particularly
23 remember Hugo, the folks coming back there to assess the
24 damage, and what they would need to do to move the major
25 stuff out.

1 I think there may have been some with some of the
2 other storms, but I can't really say which ones. I
3 can't say that.

4 Q Have they come back and actually moved trees?

5 A Yes. Yes. After Hugo.

6 Occasionally, when we have - when Folly Beach has
7 a festival, or it's in the middle of the summer, 4th of
8 July weekend, those kinds of high traffic areas, there
9 would be people who park back down that road. So it's
10 not every day, but when there is a lot of parking needs.

11 We have people who walk back there - walk their
12 dogs back there. Occasionally, folks, joggers stop
13 there to rest or whatever.

14 Back when they used to spray the roads, spray for
15 mosquitoes, although there hadn't been a truck back
16 there in a long time, they used to use that road.

17 Q So while it's not the most maintained, it has been
18 maintained in some fashion over the years?

19 A Yes. Yes. And used.

20 Q And used.

21 Is the rustic nature of that whole section, does
22 that have some affect on your pressure with the town to
23 do something or not do something?

24 A Ah...

25 Q Do you want them to pave the road? Do you want

1 | them to trim the trees?

2 | A No. I don't.

3 | Q So you don't call?

4 | A No. 'I love it. I think it's beautiful. I don't
5 | think it's ratty at all.

6 | Now the road has deteriorated some. And I don't
7 | have pictures. I haven't gotten pictures out. My
8 | recollection is that there was a pothole there during
9 | the time when I was going to work every day. But not a
10 | big one.

11 | And after the Demetres moved in, and did all of
12 | the work they've done--they had lots of trucks come in
13 | with dirt, big dump trucks, lots of loads. And they
14 | also built a cement bridge over to the island. And they
15 | had people coming in with trucks there.

16 | So, you know, there just was a lot of traffic with
17 | heavy trucks. And you know that's going to--we didn't
18 | complain about that, because it's a public road, you
19 | know.

20 | So that's why the road is in such bad shape,
21 | especially that big pothole that's so deep. And it is
22 | deep now.

23 | Q Do you drive the car and park the car all the way
24 | at the end of the opening, against where the trees are?

25 | A Yes. We drive to the end and over. Now we're

1 doing it three in a row, because we were trying to get
2 over as far as we could.

3 Q What, if any, signs of asphalt, pavement, are at
4 that end of the road?

5 A The road has been paved. There's no doubt in my
6 mind that it's been paved. You know, I haven't seen any
7 records of that. But it looks to me as though it has
8 been paved, I would say.

9 Q Have you determined that?

10 A Yes.

11 Q Is that under the dirt?

12 A Yes.

13 Q Have you looked under there?

14 A Yes. And my neighbor said it had been paved.

15 Q Let me ask you a question about the neighbor.
16 Your property is the third lot in?

17 A The fourth.

18 Q The fourth lot on your side of the road?

19 A Right.

20 Q Who owns the first three?

21 A A Mr. Sealy, he owns three lots. He has an empty
22 lot. Then his house is on a lot. And then there's
23 another lot.

24 Q So to the best of your knowledge, Mr. Sealy is not
25 a part of this lawsuit?

1 A To the best of my knowledge, no.
2 Q How old is Mr. Sealy?
3 A He's in his 80s.
4 Q Do you know where he is?
5 A He is in a nursing home, although we don't like to
6 tell people that, in Georgia. I could get his address.
7 Q Is he accessible if somebody asked?
8 A I assume so. I don't know what--he's been gone
9 for about a year, maybe two. Things go so fast. So I'm
10 not sure what his mental condition is now. When he left
11 he would talk to you for hours about everything that's
12 ever happened on the island.
13 Q But if somebody wanted to find him, to make him
14 involved in this lawsuit, that wouldn't be very
15 difficult?
16 A No.
17 Q Thank you. Answer any questions these lawyers may
18 have for you.
19 CROSS-EXAMINATION BY MR. PEEPLES:
20 Q Mrs. Brown, Ben Peeples, attorney for the City of
21 Folly Beach.
22 Defendant's Exhibit 3 has a very good looking
23 motorcycle parked beside some cars.
24 A Right.
25 Q Can you see any asphalt around that pothole?

1 A It looks that way to me, yêś.
2 Q And in front of the car, Defendant's Exhibit 4,
3 does this look like pavement to you?
4 A It looks like pavement to me. And I don't want to
5 eat any of it.
6 Q I wasn't going to offer it.
7 And in front of your car, or one of your cars, it
8 appears--do you agree it appears the road is paved on
9 back--
10 A Yes. Yes.
11 Q And you'll notice the wheels of the motorcycle.
12 Does this look like pavement to you, that's broken up?
13 A Yes.
14 Q I don't have any other questions. Thank you.
15 MS. DEUTSCH: We have no questions, your Honor.
16 COURT: Ms. Deutsch, thank you.
17 Mr. Cooper...
18 CROSS-EXAMINATION BY MR. COOPER:
19 Q Mrs. Brown, John Hughes Cooper. We met at your
20 deposition.
21 Now when you bought this lot and house, you bought
22 it from a Mr. Thomas?
23 A Yes.
24 Q Okay. And at that time, Mr. Thomas was not living
25 on the property?

1 A I do not think he was.
2 Q And he had a renter there?
3 A Yes.
4 Q The renter lived downstairs in this duplex?
5 A Right.
6 Q And the renter accessed the roadways on Folly
7 Beach out front from Huron, is that fair?
8 A Correct.
9 Q And after you bought this property, you started
10 using East Indian Avenue, as your place to park your
11 vehicles?
12 A Yes.
13 Q And at that time the renter stayed?
14 A Yes.
15 Q The same renter that Mr. Thomas had?
16 A Correct.
17 Q And he continued to use Huron?
18 A Correct.
19 Q Okay. And how many vehicles did you park when you
20 first bought the property? How many did you park on
21 East Indian Avenue?
22 A I just had one vehicle. So that would be one,
23 when I first went there. But it was not long after
24 that, that we had two to three vehicles.
25 Q Okay. And how many do you have now?

1 A We have three.

2 Q Okay. And you don't remember any maintenance of

3 the road there on East Indian Avenue since Hurricane

4 Hugo, do you?

5 A I believe there was some with another storm. But

6 I don't--I can't testify to that, because I'm not sure.

7 The only one I'm really sure where I saw the people

8 there, the trucks and the whole City, was after Hugo.

9 Q And that would have been in approximately 1989?

10 A Correct.

11 Q So after September 21, 1989?

12 A Right.

13 Now I can't say there hadn't been some mowing and

14 stuff. I believe there has been. I think Peter was

15 talking about some mowing being done around his.

16 Q Right. Up around what he calls the paved area,

17 right up at the top there--

18 Let me show you what's been marked Plaintiff's

19 Exhibit N, as amended. And this indicates, does it not,

20 your lot No. 204? This is your lot, and this is East

21 Indian Avenue?

22 A Uh-huh.

23 Q Do you see where the surveyor, Mr. Kennerty, has

24 indicated "end of pavement?"

25 A Yes.

1 Q Do you agree with that?
2 A No.
3 Q And how far do you say that the pavement goes?
4 A I don't know exactly. But on down into this area
5 where it narrows, before right in there. I don't know
6 exactly.
7 Q When you park your vehicles, you park at the, for
8 lack of a better term, end of the place where you can go
9 to park?
10 A I park as far down as I can.
11 Q Okay. And from there--you can't drive your cars
12 actually onto your lot from there, can you?
13 A No.
14 Q You access your lot by parking your vehicles, and
15 then walking through a little path on the road
16 right-of-way?
17 A Correct.
18 Q And going through a walk gate at the back of your
19 property, is that fair?
20 A Right.
21 That gate was put up by Mr. Thomas. So that's
22 another--
23 Q It was there when you bought it?
24 A Correct.
25 Q You never did see Mr. Thomas when he lived there?

203

Master in Equity, Chas Cty Jud Ctr, Chas SC 29407 843.958.5071

1 A I saw him one time when we bought the house.
2 Q But he wasn't living there at that time?
3 A Not that I'm aware of.
4 Q Okay. And you didn't see him put up the gate?
5 A No. But I didn't put up the gate.
6 Q Right. It was there when you bought it?
7 A Correct.
8 Q But you really don't know who put it up?
9 A No.
10 Q It could have been Mr. Thomas or somebody else?
11 A I know--well, my neighbor told me that--
12 Q Well, I don't want to know--
13 A They shared some calls.
14 Q I just want to know what you know.
15 A It was there when I got there, the back gate.
16 MR. MENDELSON: Judge.
17 COURT: Yes, sir.
18 MR. MENDELSON: He opened the door. She's got a
19 right to answer the question. He opened the door. I
20 think she's got a right to answer a complete question,
21 or question completely.
22 COURT: All right. I'm going to let it lie.
23 Let's just move on.
24 Q Now, Mrs. Brown, has anybody given you permission
25 to use the roadway to park?

1 A No. You mean like a written permission or
2 whatever? I feel like I'm--
3 Q Well, let's talk about that first, a written
4 permission, has anybody given you written permission?
5 A No. I'm a member of the public, and it's a public
6 road. That's the way I saw my right to use the road.
7 Q Okay. And so it's not your position that you
8 actually own the road right-of-way itself?
9 A No, it is not.
10 Q It's your position, if I understand you correctly,
11 that you feel that this is a public road?
12 A Correct.
13 Q And, as you said, the best you know, it's owned by
14 the City of Folly Beach, or the State, or the County?
15 A It's a public road.
16 Q Some public entity, is that right?
17 A Right.
18 Q Okay. And that's really the basis on which you
19 feel that you have permission to use it?
20 A Yes. And I will say, too, that Folly Beach told
21 me during some of these processes, that it was a public
22 road. And that I didn't need to worry about Mr.
23 Demetre; that it was a public road. I just, you know, I
24 was told that.
25 Q No further questions. Thank you, Mrs. Brown.

1 COURT: Anything further?
2 MR. PEEPLES: Nothing further, your Honor.
3 COURT: Mrs. Brown, let me get you to look at
4 Exhibit N, which is Mr. Kennerty's plat, that we started
5 the day with. I want you to identify some things for
6 me.
7 As we look at these lots, Lot 204 East Huron
8 Avenue, Emily S. Brown. That's you, correct?
9 WITNESS: Uh-huh. Yes, sir.
10 COURT: And I've seen a fence, and sort of a gate
11 in some of these photographs. It appears to me that the
12 fence runs virtually the entire length of your lot, and
13 it runs all the way out to 2nd Street East, is that
14 right?
15 WITNESS: Yes.
16 COURT: And so the gate that's in the photographs,
17 that's somewhere on your lot?
18 WITNESS: Correct.
19 COURT: Is it between where the notation "one inch
20 aluminum pipe" is, and the 70-foot, it's somewhere in
21 that area?
22 WITNESS: Yeah, kind of in the middle there.
23 COURT: So that's how you get into your lot, is
24 through that gate?
25 WITNESS: Correct.

1 COURT: And tell me where on this you park your
2 cars? Is it in front of your lot, or is it--
3 WITNESS: It's not--it's at the end of 203. Right
4 where it starts narrowing...
5 COURT: Right.
6 WITNESS: I'm not sure what this line is right
7 here. But it starts narrowing, so you can't drive a
8 car. So we park at the end, and then walk to our gate.
9 COURT: So the road essentially ends. I mean
10 there is no road bed shortly after where you park your
11 cars. It looks like it goes to all marsh to me, is what
12 it looks like.
13 WITNESS: There is some high ground, but then
14 there's some marsh, too. The tide comes in.
15 COURT: Okay. Okay.
16 And since you've lived there, which is 1986?
17 WITNESS: Yes.
18 COURT: You've testified to some of the
19 maintenance there. You've not seen anyone pave the
20 road? Have you seen anyone come and dump anything on
21 the road?
22 WITNESS: No.
23 COURT: Cinder block? Asphalt? Anything to cover
24 up those potholes?
25 WITNESS: I don't think there has been anything on

1 the road.

2 The marsh that borders that property, Mr.
3 Demetre's lots, there are some things in the marsh. But
4 it's mostly--I mean there's a washing machine. And it
5 was there when I got there. So I mean it has been there
6 forever.

7 But on the road itself is clean. I mean it has
8 always been clear. I'm not sure what debris - any
9 debris would have been on those lots. And I know those
10 lots had some debris, because my little girl and her
11 friend went and cleaned them a couple of times, just for
12 their Girl Scout projects. That was before Mr. Demetre
13 moved.

14 COURT: Okay.

15 WITNESS: But nothing has ever been dumped, to my
16 knowledge, on the road.

17 COURT: Okay. So whatever that asphalt is, it has
18 been there a long time, is that right?

19 WITNESS: Well, it was there when I got there.

20 COURT: Those are all of the questions I have.

21 MR. COOPER: Nothing further for the Plaintiff.

22 COURT: Thank you, Mrs. Brown. You may step down.

23 (Witness leaves the witness stand)

24 MR. MENDELSON: Judge, as to Emily Brown, that is
25 our case. Obviously, the case is going to continue

EXCERPT FROM DEPOSITION OF STEVEN ROBINSON - READ BY MR. COOPER

1 Over on page 11 at line 11.

2 QUESTION: "In fact, that appears to be a dirt
3 road, or part of dirt road -- dirt. It is not paved all
4 the way down here, is it?"

5 ANSWER: "I don't know how far it is paved. I
6 know there is pavement there broken and in disrepair."

7 QUESTION: "Okay. You don't know how far it goes
8 down, is that a fair statement?"

9 ANSWER: "I'm pretty certain it goes the length
10 of that first lot, which would be about 75 feet."

11 QUESTION: "Okay."

12 ANSWER: "At a minimum."

13 QUESTION: "Okay. So there's a paved access to
14 Lot 201?"

15 ANSWER: "To my knowledge there is."

16 QUESTION: "Do you have any knowledge that Lot
17 202 is serviced by pavement?"

18 ANSWER: "No."

19 Over on page 14, line 8.

20 QUESTION: "All right. Just checking. Do you
21 know whether or not there is, other than for garbage and
22 trash pickup for Lot 201, is there any other garbage
23 pickup or trash pickup down East Indian Avenue on that
24 side of 2nd Street?"

25 ANSWER: "No. No other solid waste collection

EXCERPT FROM DEPOSITION OF CLIFTON W. BENSON, JR. - READ BY MR. COOPER

1 a reason to have some maintenance occurring in it, so
2 the drainage structures could be maintained."

3 QUESTION: "You're talking about a long 2nd
4 Street East?"

5 ANSWER: "That's correct."

6 COURT: And that was Mr. Robinson, right?

7 MR. COOPER: Correct.

8 Your Honor, there are a few excerpts from Mr.
9 Benson's--Clifton Wallace Benson, Jr's deposition. And
10 he has had various connections with the Town of Folly
11 Beach. He has been council member, and let's see what
12 else he says. Dispatcher, Director of Public Safety,
13 and everything in between. He has been captain of the
14 rescue squad, and so forth and so on--

15 COURT: And he's still on council?

16 MR. PEEPLES: Yes, sir.

17 COURT: Okay.

18 MR. COOPER: In his deposition, page 6 beginning
19 at line 8.

20 EXCERPTS FROM CLIFFORD BENSON DEPOSITION:

21 QUESTION: "When you are answering questions
22 today, you are answering officially for the Town of
23 Folly Beach."

24 ANSWER: "I understand."

25 Then at line 17.

1 QUESTION: "Do you know whether or not the Town
2 has a copy of a written dedication of the roads on Folly
3 Beach?"

4 ANSWER: "I've seen an outline of it, okay.
5 Basically a plat, I guess you might describe it as
6 that."

7 QUESTION: "And is the plat the 1920 survey by
8 Johnson Construction?"

9 I think that should have been Jefferson, but...

10 ANSWER: "I have no idea what year it was made."

11 QUESTION: "There is a plat as far as you know?"

12 ANSWER: "Yes."

13 QUESTION: "Is there any other document that you
14 are aware of that would be in the nature of a dedication
15 of the road?"

16 ANSWER: "No."

17 QUESTION: "Do you know if there is any written
18 acceptance of the road dedication?"

19 ANSWER: "No."

20 And over on page 8 beginning at line 4.

21 QUESTION: "Are you familiar with East Indian
22 Avenue, the 200 block?"

23 ANSWER: "Yes, I am."

24 QUESTION: "And do you know how far the pavement
25 extends beyond the intersection with 2nd Street East?"

1 ANSWER: "Right along in here, around 203 - 202
2 and 203, right along in there."

3 QUESTION: "And it's true, isn't it, that the
4 pavement stops really in front of Lot 201?"

5 ANSWER: "Okay. If you say the pavement, no.
6 Actually, if you go down there, you'll find parts of the
7 old pavement. Folly Beach has filled that in. Even
8 when I was the Director of Public Safety, we somewhat
9 maintained it, when I was Director of Public
10 Safety."

11 QUESTION: "And when was that?"

12 ANSWER: "I was Director of Public Safety from
13 1976 to 1981."

14 QUESTION: "1986 did you say?"

15 ANSWER: "'76 through '81."

16 QUESTION: "Through '81, okay. And what
17 maintenance did you do on the 200 block of East Indian
18 Avenue?"

19 ANSWER: "We basically then just dumped dirt in
20 the potholes that kept popping up down there, where
21 people were driving on it when it rained. Because the
22 pavement started deteriorating."

23 Down at line 1.

24 QUESTION: "Do you have any personal knowledge of
25 maintenance on that part of the road since 1981?"

EXCERPT FROM DEPOSITION OF CLIFTON W. BENSON, JR. - READ BY MR. PEEPLES

1 Beach.

2 EXCERPTS FROM WALLACE BENSON'S DEPOSITION:

3 QUESTION: "Do you know who owns the road on
4 Folly Beach?"

5 ANSWER: "Folly Beach."

6 QUESTION: "Do you know who owns the 200 block of
7 East Indian Avenue?"

8 ANSWER: "Folly Beach."

9 QUESTION: "And how did they get it?"

10 Page 13 line 1.

11 ANSWER: "It came from a plat when Folly Beach
12 was first laid out."

13 And then there was some talk about the plat was
14 wrong, which Mr. Cooper went into. I came back to that
15 page 18, line 1.

16 QUESTION: "All right, Wallace, when John showed
17 you the Plaintiff's 335," that was the exhibit at that
18 time, "the blowup of the original 158, 1920 subdivision
19 plat, and you said it was wrong, were you referring to
20 what is, I assume, the line that runs to the first block
21 from the lots of East Indian?"

22 That's where Wallace actually lives. So we're
23 talking about his backyard. Line 9.

24 ANSWER: "Yes. This line we don't know what it
25 is. It would seem--"

EXCERPT FROM DEPOSITION OF STEVEN MOORE - READ BY MR. COOPER

1 MR. COOPER: I did. Yes, your Honor.

2 COURT: You are back to commence reading again?

3 MR. COOPER: Yes, your Honor. I'd like to read
4 in certain excerpts from the deposition of Steven P.
5 Moore.

6 COURT: Steven Moore? M-o-o-r-e?

7 MR. COOPER: Yes, your Honor.

8 COURT: All right.

9 EXCERPTS FROM STEVEN MOORE'S DEPOSITION:

10 MR. COOPER: And that would start beginning on
11 page 5 at the top, line 1.

12 QUESTION: "Did you at one time work for OCRM?"

13 ANSWER: "I did."

14 QUESTION: "That's the office of Coastal Resource
15 Management?"

16 ANSWER: "Yes."

17 QUESTION: "And that's part of DHEC?"

18 ANSWER: "Part of DHEC."

19 QUESTION: "How long had you worked for OCRM?"

20 ANSWER: "From July 1979 until, I think it was
21 March 1st, I believe, 2006."

22 QUESTION: "Did that agency change names? Was it
23 once--was it at one time part of the Coastal Council?"

24 ANSWER: "South Carolina Coastal Council until it
25 was restructured in, I want to say '93 - '94."

1 Over on page 6 starting on line 21.

2 QUESTION: "But after 1984 when you became permit
3 administrator, you were in charge of the entire critical
4 area dock permitting?"

5 ANSWER: "Yes."

6 QUESTION: "With OCRM, is that right?"

7 ANSWER: "Yes, that's correct."

8 Page 9 beginning at line 14.

9 "If somebody applied for a permit to cross high
10 ground that they didn't own, they would have to show
11 permission of the property owner?"

12 QUESTION: "How would OCRM confirm that they
13 actually had that permission?"

14 ANSWER: "They'd have to show something on an
15 affidavit, a letter possibly, or something showing that
16 they had that permission. Something we could rely on
17 that said that you had permission. OCRM did not get,
18 and I think, still do not get involved in property
19 disputes. A lot of times there are disputes about who
20 owns the property, whatever.

21 "So generally, if somebody submitted an affidavit
22 of ownership," over on page 10, "and said I owned this
23 property. Then that is fine, unless somebody brought
24 some other information to our attention. And then
25 sometimes it would get complicated. But if you knew.

1 they were crossing somebody else's property, you would
2 require some sort of proof that you had permission of
3 that property owner."

4 QUESTION: "If OCRM knew that high ground owned by
5 another party was being crossed by a proposed dock, is
6 it fair to say that OCRM's position would be that you
7 would have to get permission of the other property
8 owner, or buy the property, or somehow take care of
9 those property rights, before we're going to issue the
10 permit?"

11 ANSWER: "Yes."

12 QUESTION: "So it was a requirement that you
13 either own all the high ground property you were going
14 to cross, or had permission to go across it before the
15 permit would be issued?"

16 ANSWER: "Sure. OCRM couldn't issue a permit
17 across somebody's property, especially high ground
18 property."

19 QUESTION: "And are you familiar with the
20 doctrine some people call the Doctrine of Riparian
21 Rights, where a high ground owner would feel like he
22 would have the right to wharf out, to build a dock
23 across marsh land to get to navigable waters?"

24 ANSWER: "Somewhat, yes."

25 QUESTION: "And did that particular doctrine

1 enter into OCRM's policy with regard to building a dock
2 across marshland?"

3 ANSWER: "Yes."

4 QUESTION: "Was the permission requirement
5 different if a dock owner wanted to cross someone else's
6 high ground, as opposed to someone else's marshland?"

7 ANSWER: "Yes."

8 QUESTION: "And what were the differences?"

9 ANSWER: "The difference back then, and this
10 permit process was, I think, in the '80s, is that
11 right?"

12 QUESTION: "Yes."

13 ANSWER: "If you were crossing high ground, you
14 absolutely had to show permission, some sort of proof of
15 permission, that you had the property owner's permission
16 to do that. And if you were crossing marsh, it was more
17 problematic."

18 On page 12 beginning at line 8.

19 COURT: Let me stop you right there.

20 Read that last answer again.

21 MR. COOPER: Okay.

22 COURT: Crossing high ground what?

23 ANSWER: "If you were crossing high ground, you
24 absolutely had to show permission, some sort of proof of
25 permission, that you had the property owner's permission

1 to do that. If you were crossing marsh, it was more
2 problematic."

3 COURT: It was more problematic he said?

4 MR. COOPER: It was more problematic. The answer
5 goes on and on. I'm not sure--I mean I can continue
6 reading, but that's what he said.

7 COURT: Unless he explains that any more.

8 MR. COOPER: Well, next sentence.

9 "As you know, marsh ownership is not always that
10 clear. I don't remember exactly how we used to handle
11 it, because it's handled differently now. Because if
12 somebody said they owned the marsh, and frankly it went
13 back and forth on how we were supposed to handle it.
14 But eventually, we just started issuing the permits.
15 And assuming it was a property dispute between the two
16 people, and they would have to work it out.

17 As you know, this Atkins case that you reminded
18 me of, changed that."

19 COURT: Okay.

20 QUESTION: "And the Atkins case is a case that's
21 referenced in an article that I showed you previously
22 marked Plaintiff's Exhibit 235?"

23 ANSWER: "Yes."

24 Some comments I made to Ms. Deutsch.

25 QUESTION: "Mr. Moore, when we are talking about

1 high ground, what was your understanding as a permit
2 administrator, of what high ground was, and what was
3 marshland?"

4 ANSWER: "Well, actually, we discussed high
5 ground can actually be marshland. But as far as the
6 definition of ownership, it was mean high water mark.
7 From the mean high water mark up is high ground, and can
8 be privately owned. And if you own marsh front
9 property, you probably own out to the mean high water
10 mark.

11 Below mean high water mark is generally presumed
12 to be State ownership, unless somebody has a previous
13 grant, or a State grant that says otherwise."

14 QUESTION: "In terms of our job as permit
15 administrator, and in terms of what OCRM's position was
16 on the ownership with regard to dock permits, the
17 definition that you would use would be that high ground
18 would be all that land above mean high water?"

19 ANSWER: "For ownership purposes, yes."

20 QUESTION: "And for ownership purposes, marshland
21 would be below mean high water?"

22 ANSWER: "That's correct."

23 And then on page 18, your Honor, beginning at
24 line 8.

25 QUESTION: "If a permit application had been

1 submitted, that on the face of it indicated they were
2 relying on, that the ownership to the property was
3 disputed, what would OCRM's policy say that would be
4 done with that permit application?"

5 ANSWER: "Rephrase your question.

6 If we had an application, and we could tell from
7 the application ourselves, without being noticed, that
8 there was some question who owned high ground property?"

9 QUESTION: "Yes."

10 ANSWER: "We'd probably contact the applicant and
11 say: Do you, in fact, own all of this property? And if
12 not, do you have permission from whomever does own it,
13 to cross it?"

14 QUESTION: "Would a permit ever be given on a
15 permit application where the applicant clearly said the
16 ownership was disputed?"

17 ANSWER: "Probably not. I think we'd want to get
18 that cleared up."

19 QUESTION: "We're on high ground property still?"

20 ANSWER: "Yes. We'd want to make sure that we
21 weren't permitting someone to build a structure crossing
22 somebody else's private high ground property."

23 QUESTION: "So if that had been disclosed, and
24 particularly if litigation had been disclosed, you would
25 typically wait until the litigation is over?"

1 ANSWER: "I would think so."

2 Page 20 at line 18.

3 QUESTION: "Let me show you now what's been
4 previously marked and provided to counsel as Plaintiff's
5 154 through 166. Does that appear also to be a permit
6 application?"

7 ANSWER: "Yes, it does."

8 QUESTION: "That's for Mr. Harry Beckmann, III?"

9 ANSWER: "Yes, it is."

10 QUESTION: "Does Mr. Beckmann disclose Mr.
11 Seabrook's ownership of, or claim to ownership of
12 adjacent property?"

13 ANSWER: "Apparently not. He actually attaches a
14 deed. And he copies the writing from the first
15 paragraph on the affidavit of ownership. I haven't
16 gotten far enough to see, but I assume it's talking
17 about his high land lot there."

18 QUESTION: "His deed talks about Lot 209 East
19 Huron Avenue?"

20 ANSWER: "I haven't seen that on here yet. Yeah,
21 here it is. Yes, Lot 209 East Huron Avenue."

22 QUESTION: "70 feet by 150 feet?"

23 ANSWER: "Right."

24 QUESTION: "It doesn't talk about owning any high
25 ground toward the river front of that?"

HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

1 funeral at 2:00.

2 MS. DEUTSCH: Would you like him to clean up the
3 rest of theirs, or would you like us to go ahead...

4 MR. GRIFFITH: We've got a one-minute video. I
5 think--

6 COURT: Let's take your clients. We'll come back
7 to that. Let's just do it that way. I was going to
8 start with that. Let's go ahead and get started. Ask
9 them to be here, the Beckmanns and the Crowleys, whoever
10 you've got coming.

11 MS. DEUTSCH: Your Honor, at this time, I'd like
12 to call Mr. Harry Beckmann.

13 COURT: Mr. Beckmann, come on around, sir.

14 MR. HARRY BECKMANN, having been duly
15 sworn testifies as follows:

16 COURT: Mr. Beckmann, please be seated and give
17 me your full name and address. I'd appreciate that.

18 WITNESS: Harry Beckmann, III. 218 East Huron,
19 Folly Beach.

20 Your Honor, there's a difference between--the
21 case is 209. The County of Charleston changed the
22 number, so that they could put more information. So
23 0029, you get 218. So if you're going to come see me,
24 come to 218 East Huron.

25 COURT: That's your street address.

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HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

- 1 A Currently, we are at 209 East Huron Avenue on
2 Folly Beach.
- 3 Q And have you--how long have you lived there?
- 4 A We bought the property in 1972 or 1973.
- 5 Q And you've been there since that time?
- 6 A We have.
- 7 Q And did you work when you first bought that
8 property?
- 9 A I did.
- 10 Q What did you for a living?
- 11 A I worked for BellSouth.
- 12 Q And what did you do for BellSouth?
- 13 A I was a cable splicer, and a cable repairman.
- 14 Q And do you still do that?
- 15 A I retired four years ago this last July 5th.
- 16 Q And that's what you're doing presently?
- 17 A It's the most wonderful job I've ever had.
- 18 Q Now, are you married?
- 19 A I am.
- 20 Q And what is your wife's name?
- 21 A My wife's name is Patricia Annette.
- 22 Q And what does she go by?
- 23 A She goes by Annette. As far as I am concerned,
24 she goes by Annette.
- 25 Q Or, yes, ma'am?

HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

1 | now as an adult, has there ever been anything, any
2 | structure, or any kind of building, or home, vehicle,
3 | anything that has been on the property between your
4 | house and the public road?

5 | A No, impossible for somebody to put something
6 | there. A car, definitely not.

7 | Q You said that you purchased this property in about
8 | 1972, is that right?

9 | A That's correct.

10 | Q Okay. And do you recall going to a real estate
11 | closing?

12 | A Vaguely. It's not something that I do all the
13 | time, so...

14 | Q Are you aware of whether or not you received a
15 | deed when you bought the property?

16 | A I'm sure we did.

17 | Q Have you looked at the deed at that time or any
18 | time since?

19 | A I looked at a copy of the deed when Mr. Cooper
20 | took my deposition.

21 | Q Let me show you what's been marked as Plaintiff's
22 | Exhibit Q, subsection 2. I'd like you to take a look at
23 | that and tell me what you think that is.

24 | A I would assume that this would be the deed to the
25 | property, the sale from Mrs. Harley to us.

1 Q Does that appear to be the deed that you received
2 that day, sir?

3 A Honestly, I don't remember. But I would assume
4 that this is a copy of it.

5 Q I would ask you to read the property description
6 to yourself. And when you get to a point where it makes
7 reference to a plat, I'd like you to read that out loud.

8 A It says in here, recorded in Plat Book C-158 in
9 the RMC Office of Charleston County as Lot 209 East
10 Huron Avenue.

11 Q Thank you very much. That C-158 in the title,
12 that says the 1920 plat, does it not?

13 A Yes, it does.

14 Q Okay. Or would it be fair to assume that it is
15 referring to Plaintiff's Exhibit K, which appears to be
16 a 1920 plat from C-158?

17 A I believe we have established that over the past
18 day.

19 Q Sir, if you wouldn't mind standing up, and could
20 you find your lot on this plat?

21 COURT: Perhaps you should switch places.

22 A I believe we're looking at us here.

23 Q Okay. And...

24 A I believe.

25 MS. DEUTSCH: I'd like to have the exhibit marked.

1 Would you prefer for us to do it on the large one or the
2 small one?

3 COURT: I think the small one would be easier,
4 don't you think?

5 MS. DEUTSCH: I think so.

6 Q Mr. Beckmann, you may have a seat.

7 I'm going to circle with the highlighter what you
8 believe to be your dock. And I want you to put your
9 initials right next to it.

10 Is that all right?

11 A Give me that instruction one more time. You want
12 me to highlight what?

13 Q I'd like you to find your lot on there, and I'd
14 like you to put a little highlight mark on it.

15 A On the lot?

16 Q On the lot.

17 A (Witness complies)

18 Q And then I'd like you to write your initials with
19 that highlighter right next to your lot.

20 A (Witness complies)

21 Q Okay. Thank you very much.

22 What does that plat show between your property and
23 the Folly River?

24 A The plat shows marsh land.

25 Q Okay. Did you have any indication that there is

1 anything between you and the Folly River, based on that
2 plat?
3 A Based on this plat, no.
4 Q Okay. How about your deed, did your deed give you
5 any indication that there was anything between your
6 property--any property that could be owned between your
7 property and the Folly River?
8 A No, it does not.
9 Q You said there is a house there. Have you
10 continued to live in that house, or have you built your
11 own?
12 A We remodeled what was there.
13 Q And is there anything on that property that you
14 did build?
15 A We did construct a dock on that property in 1988
16 through 1989. It took a while.
17 Q I'd like to talk about that dock for a little
18 while. Why did you feel like a dock was something you
19 wanted to build?
20 A Well, it gave us access to the water, to shrimp,
21 fish, ski. I could ski back then.
22 Q Did you use your dock very regularly once you got
23 it?
24 A Very regularly, until Hugo damaged it in '89.
25 Q We're going to talk about that in just a minute.

1 But initially, taking a step back, did you have to go to
2 any State agencies, or any councils, to get a permit to
3 be able to build your dock?

4 A Yes, we did. We were required to go to what was
5 then Coastal Council. We also went to the City of Folly
6 Beach.

7 Q So you got a permit issued by the Coastal Council
8 to build your dock?

9 A We did.

10 Q And you got a permit issued by the City of Folly
11 Beach to build your dock?

12 A We did.

13 Q And during the processes that you were going
14 through, permitting this dock, did any objections come
15 about? Did you hear about anybody objecting to the
16 Coastal Council?

17 A No one has ever objected to it.

18 Q How about to the City of Folly Beach?

19 A The City of Folly Beach gave us permission to
20 build it, wished us well, and they have not contacted us
21 since.

22 Q Who located your dock for you? Who chose where
23 you were going to build it?

24 A Well my wife and I talked it over, along with Mr.
25 Crowley, our neighbor. And we decided that directly

HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

1 Q Is there any way that he could have known about
2 your application?

3 A We made a public notice as we are required to in
4 the newspaper.

5 Q Tell me about that public notice. Did it
6 specifically say who was seeking to build the dock?

7 A I haven't read it in a while. I believe it did.
8 I'm sure it gave the location and who.

9 Q Location, the address?

10 A Yes.

11 Q It probably had your name on it?

12 A It probably did.

13 Q Okay.

14 A I don't remember the exact wording, but I'm
15 sure--well, I'm sure all of my information would have
16 been in the document, and also the location of it.

17 Q Okay. And are you aware of whether or not that
18 was actually published in the newspaper?

19 A We have a copy of it.

20 Q Okay. And what newspaper did you publish it in?

21 A It would have been the--I'm not sure--there were
22 two names. It was the News & Courier, Charleston
23 Evening Post, at that time. I don't remember if it was
24 all under one name or...

25 Your Honor, if you are so inclined, I'd requested

HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

1 Q Did you hire somebody to build the dock, or did
2 you build it yourself?

3 A I built it myself.

4 Q And tell me about how you built it. How did you
5 get the materials out there?

6 A I carried ever board, every piling, except for the
7 pilings at the pier head itself. They were a little bit
8 too large for my body. But I carried the rest of the
9 pilings, stringers, and support, myself. And with
10 Annette's help.

11 Q Okay. Did you walk them through the marsh?

12 A We did walk them through the marsh. We dug holes
13 and jettied the pilings into the ground.

14 Q Okay. And was there enough water out there to
15 float your materials out to the pier head?

16 A When it came time to build the pier head, I did
17 hire someone to build a pier head for me. I provided
18 the materials on site. They were delivered in my yard,
19 and I floated them from my backyard to the river.

20 Q How long did it take to build your dock? It
21 wasn't done overnight, was it?

22 A Definitely not overnight. We started that dock,
23 as I said, in March. And I think we enjoyed it by May.
24 We weren't completely finished with it, but we were far
25 enough into the water that we could enjoy it by May, I

1 believe it was.

2 Q Would it be safe to say that was pretty
3 conspicuous to build? You weren't doing it in the
4 middle of the night?

5 A It was very conspicuous. It did not grow
6 immediately. It was done over a period of time. Anyone
7 coming over--it was the only dock. The Crowley dock and
8 our dock were the first two docks. There were no other
9 docks along that area from where we are to the Folly
10 River bridge. And it was very conspicuous from the
11 river as well as from the highway.

12 Q During that period when you were building, did
13 anybody come up to you and say, hey, what's that?

14 A No one.

15 Q Did anybody ask you any questions about your
16 permits?

17 A No one.

18 Q Did anybody tell you, you were building across
19 somebody else's land?

20 A No one.

21 Q I want to talk about what happened after Hurricane
22 Hugo. But before I get to that, I want to talk a little
23 bit more about your property. Tell me about your
24 backyard. What does it look like?

25 A We have grass. We have Centipede--I beg your

1 | pardon, we have St. Augustine grass growing in the
2 | backyard. We have oak trees. We have a cedar tree.
3 | The cedar tree is just off growing in the marsh area.
4 | The yard tapers down into the marsh.
5 | Q Have you sodded any of that area back there, back
6 | where it drops off?
7 | A Sodding takes a lot of work. The grass sort of
8 | did it on its own. So I have been maintaining the grass
9 | since we bought the property.
10 | Q Do you cut the grass all the way back to where it
11 | drops off?
12 | A We do. I do.
13 | Q How about if litter end up in that area--
14 | A How about what, litter?
15 | Q How about if litter lands in that area, would you
16 | pick it up?
17 | A Yes. If litter comes in the dock area, or in the
18 | backyard, we as a practice do pick it up. We've picked
19 | up timber. We've picked up bumpers, gas cans, beer
20 | cans, bottles, floating wood, life preservers.
21 | Q How about tree trimming? Do you do any tree
22 | trimming back there?
23 | A Not really, no.
24 | Q Tree maintenance?
25 | A After Hugo we did have an oak tree that split on

1 the back of our property. And I did my best to get the
2 tree back righted, and secure it together, so it would
3 live.

4 Q Did anybody else show up and say that's my tree.
5 Let me give you a hand with that?

6 A I wish someone had given me a hand. An oak tree
7 is--

8 Q Did you ever get a check?

9 A I never got a check.

10 Q If somebody were walking around near, say within a
11 foot of the beginning of your walkway, what would you
12 do?

13 A I would ask them to get off of my property, and
14 find out why they are there.

15 Q All right. What if somebody was standing on your
16 dock walkway?

17 A I would definitely ask them to get off of it.

18 Q What if somebody was walking through the marsh 500
19 feet to your left?

20 A 500 feet to my left?

21 Q Uh-huh.

22 A Well, I would know they were there. But I figure
23 500 feet to the left of my dock, they have every right
24 in the world to walk that far.

25 Q And what if you came out tomorrow morning and

1 | somebody had parked their car in your backyard with one
2 | tire on your walkway, what would you do?
3 | A They would be required to move it.
4 | Q How come?
5 | A Because it's mine. I've maintained it. It
6 | belongs to me.
7 | Q All right. About that dock, you said something
8 | about after Hurricane Hugo. What happened when that
9 | hurricane came through?
10 | A The hurricane damaged our dock extensively. We
11 | lost about half of it to the storm. The pier head was
12 | damaged, but not removed. The hurricane tried to remove
13 | it. It did remove the floating section of it. It was
14 | found by one of the State game wardens between Morris
15 | Island and the harbor. And he did pull it back down
16 | Folly River, and we did find it later on.
17 | He did not bring it to us, he brought it to a
18 | canal that's on Cooper Street on Folly. And we happened
19 | to spy it on Easter Sunday. And we told Martin North
20 | that it was ours. And he said, well, then, by all means
21 | come and take your floating dock back.
22 | Q It was luck?
23 | A Yes, it was. Yes it was. The floating dock was
24 | an assembly process that happened in the backyard also.
25 | We also had floated that out to the dock.

1 But we were still under a legal permit from
2 Coastal Council. And we had to go through about a
3 year's dispute with them.

4 Q So you didn't run out and start rebuilding the
5 dock right away?

6 A I think there was a blanket letter put out in the
7 newspaper that said not to do that.

8 Q Okay. So what did you do? Did you go back to
9 Coastal Council?

10 A We did eventually.

11 Q And what did you ask them? You asked them to
12 rebuild the dock?

13 A We asked them if we could rebuild the dock.

14 Q And did they say, sure, go ahead?

15 A Actually, they did not. Along Folly River, from
16 Folly River bridge to beyond where Mr. Larry Cope's dock
17 is, the third dock down from ours, because it is a
18 public oyster bank, and it was seeded by the Department
19 of Natural Resources.

20 And they had told us that it had been an
21 oversight. And that we were going to have to resolve
22 the issue of the public oyster bank before we could
23 rebuild the docks. And that's ultimately what we did.

24 We went to Coastal Council and said, you know, we
25 have current permits, working permits that have been

1 issued by you. And over the course of the time that it
2 was discussed, the entire council, I think it was about
3 a 12-member council, at the time, they all voted in the
4 Crowleys, and the Copes - in our favor, that, yes, we
5 did have permits, and we could build the docks back.
6 Q So they reissued your permit?
7 A I guess you could say that. They validated them.
8 They didn't reissue them, because we had the permits.
9 Q Okay. Were you given the right to rebuild your
10 docks?
11 A Yes, we were.
12 Q And did you do so?
13 A Yes, we did.
14 Q How long did that take?
15 A Well, it was about half as long as it took the
16 first time, because we had about a half of a dock to put
17 back.
18 Q When did you rebuild that dock, or repair that
19 dock?
20 A When?
21 Q Yes, sir.
22 A After 1990. Because of the problem with Coastal
23 Council, at the time, it took about a year to the day, I
24 think--I believe it was a year to the day to iron out
25 the problem. And so we started after that time.

1 Q And did you rebuild it the same as you had built
2 it the first time?
3 A We did.
4 Q As far as configuration?
5 A Yeah, we did.
6 Q Okay. And did you do the work yourself again?
7 A Annette and I did. We did.
8 Q And presumably, you didn't do that at night or
9 overnight either?
10 A We did not.
11 Q Did anybody come to you during your year long
12 process with Coastal Council and mention that you were
13 trying to build a dock on somebody else's property?
14 A Never heard a word.
15 Q Did you ever get a call, or a letter, from Mr.
16 Seabrook?
17 A We did not.
18 Q Did you get anything from somebody on behalf of
19 Mr. Seabrook?
20 A We did not.
21 Q Did Coastal Council ever talk to you about Mr.
22 Seabrook's property?
23 A Coastal Council did not.
24 Q Let's take a look at some photographs.
25 These have not been marked as exhibits yet. But

HARRY BECKMANN - DIRECT EXAMINATION BY MS. DEUTSCH

1 up does the water come on an average high tide? And on
2 a spring tide?

3 A (Complies)

4 MS. DEUTSCH: Your Honor, I would offer these...

5 COURT: You are moving these into evidence then?

6 MS. DEUTSCH: Yes, I will move at this time to
7 include all of these photographs into evidence.

8 MR. COOPER: No objections, your Honor.

9 COURT: Without objection. Okay.

10 (Photographs are entered into evidence as
11 Beckmann and Crowley 1-A through 1-P)

12 And you have those marked?

13 MS. DEUTSCH: Yes, your Honor. But I do not have
14 stickers on them. I can certainly do that during the
15 next break.

16 COURT: Okay. Let's do that.

17 Q (By Ms. Deutsch) So you rebuilt your dock after
18 Hugo. And you said that was in 1990 or so?

19 A Right.

20 Q During the time prior to building your dock, and
21 up through this time, had you been using your property
22 continuously the same way?

23 A Yes, we have.

24 Q And you've been using all of the area that you
25 considered your property the same way?

1 A My daughter explored the marsh up to the river on
2 occasion. But young growing up, they had wanted to show
3 what was happening, that sort of thing. And, yes, we
4 took care of the yard all the way down to the marsh. We
5 played beyond the grassy area of our yard.

6 Q If anybody had asked you, that in the back of your
7 backyard right where your dock launch is, is that yours,
8 what would you have said?

9 A I would have said, yes. We take care of it. No
10 one has ever complained that it belonged to them, so it
11 must belong to us.

12 Q Okay. Has all of this continued through to today?

13 A I'm sorry, what...

14 Q Has all of that behavior on your part continued
15 consistently through today?

16 A Yes, it has.

17 Q Have you ever had any contact with Mr. Seabrook?

18 A I have never met the man.

19 Q Did he ever call you and say, get off of my
20 property?

21 A I've never talked to the man.

22 Q Has anybody else ever called you and say, get off
23 of this property?

24 A No, they did not.

25 Q Anybody ever gave you any indication that you

1 might be on his property?
2 A No one ever did.
3 Q So you believe it was your property?
4 A I do.. I did and do.
5 Q And if you were to walk 80 feet out onto your dock
6 walkway, and hop off of it at high tide, would your feet
7 get wet?
8 A More than my feet.
9 Q How much?
10 A Above my ankles would be wet.
11 Q Okay. How about the first foot of your walkway at
12 high tide, if you hopped off, would your feet get wet?
13 A Depending on the tide. It would definitely be
14 muddy.
15 Q Okay. At high tide?
16 A At high tide. They would definitely be muddy. I
17 would not want to wear good shoes or good clothes and
18 step off the back of my property.
19 Q Okay. How did you find out Mr. Demetre had bought
20 Mr. Seabrook's property?
21 A I received a letter - a document in the mail.
22 Q Okay. What was that document?
23 A The document said you owe us. It said you can
24 stay on the property for X amount of dollars a year to
25 increase every year thereafter, that it would be

1 required to have insurance on the dock. It was a
2 document that was, oh, quite a few pages thick.
3 Q Okay. Was that a surprise to you?
4 A Very much so. I didn't know Mr. Demetre. I
5 didn't meet Mr. Demetre until my deposition. I had no
6 idea who he was.
7 Q Okay. When did you get this letter,
8 approximately?
9 A I'm sorry, I don't remember the date. It's been
10 several years ago - a couple years ago, now.
11 Q Prior to that time, did Peter Demetre, Mr.
12 Demetre's son, ever come by and say you are on their
13 property?
14 A I didn't know Mr. Peter Demetre until I saw him in
15 court yesterday.
16 Q Okay. And how about Mr. Milton Demetre?
17 A I have never seen Mr. Milton Demetre until my
18 deposition back in November.
19 Q Have you since learned that he bought his
20 property, bought that property behind you some years
21 ago?
22 A I had learned it then.
23 Q In the interim, from the time that he bought the
24 property to the time that you got a letter with a lease,
25 did you ever hear from anybody?

HARRY BECKMANN - CROSS EXAMINATION BY MR. COOPER

1 permit application?

2 A 29 December, 1987.

3 Q And in 1987, do you know whether or not at C-158
4 down in the RMC Office whether or not there was on file
5 a plat that has been referred to as the redraw, the 1965
6 redraw?

7 A Well, from what we established yesterday, it
8 probably was.

9 Q And so do you believe if you had gone to the RMC
10 Office looking to see if anybody owned any lots, or
11 other pieces of property out in front of you, you could
12 have determined that these lots had been platted out in
13 front of you?

14 A Well, I would agree that was on file in 1987.

15 Q And in 1987 the tax map to East Indian Avenue, Lot
16 201, 202, and 3, 4, and 5 were all together. This is on
17 Indian Avenue, your lot being here. This was owned by
18 Mr. Edward Seabrook?

19 A It shows that.

20 Q Okay. And that is the state of the tax map, at
21 the time that you submitted your dock application?

22 A I did not see it then. But if you say that was
23 there then, I think we have determined that it was there
24 then.

25 Q You didn't look at any tax maps?

1 A Only the one that the City of Folly Beach had
2 posted.
3 Q And what tax map did they have posted?
4 A I believe it was--we've discovered now that it was
5 the one drawn in 1920, where there was nothing--
6 Q That's a plat.
7 A A plat. I beg your pardon.
8 Q The 1920 plat.
9 A A plat, I beg your pardon.
10 Q And that was posted by Folly Beach?
11 A Correct.
12 Q But you are not disputing that these documents
13 were available, that information was available when you
14 submitted your permit application?
15 A I will not dispute that.
16 Q Now, if you would, let me refer you to the
17 permit--to permit application page that's labeled
18 PLT-156. Is this a planned view of the marsh, and your
19 dock - a proposed dock and so forth?
20 A It is.
21 Q Does it also show a proposed dock for Mr. Crowley?
22 A It does.
23 Q And does it show Indian Avenue coming down as far
24 as the docks were being constructed?
25 A It does.

HARRY BECKMANN - CROSS EXAMINATION BY MR. COOPER

1 A Yes, sir.

2 Q "Okay. And just to be clear about it, it was your
3 understanding when you submitted this permit
4 application, that you owned the lot 209 East Huron, and
5 the State of South Carolina owned from your property
6 line out to the Folly River?"

7 And your answer is: "That's correct."

8 And the question is: "Okay. And that's still
9 your understanding?"

10 And your answer was: "It is."

11 Did I read that correctly?

12 A Yes, you did.

13 Q And then on the next page, if you would, turn over
14 to page 18. And beginning at line 8, I'm going to read
15 some of this, and then I'll ask you a question on this.

16 "And I'll show you now, page 6 of 7 of your permit
17 application, which is also labeled as Plaintiff's 161.
18 And it is titled existing profile of marsh?"

19 ANSWER: "It is."

20 QUESTION: "And I think it is signed down here at
21 the bottom. Is that your signature?"

22 ANSWER: "That is my signature."

23 QUESTION: "So this is a sketch of the marks
24 profile that you provided with your dock application?"

25 ANSWER: "That's true."

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HARRY BECKMANN - CROSS EXAMINATION BY MR. COOPER

1 ANSWER: "Would be below."

2 QUESTION: "The mean high tide mark?"

3 ANSWER: "Correct."

4 QUESTION: "And this is how the elevation of the
5 land was when you submitted the permit, as bes you could
6 tell?"

7 ANSWER: "That is the one I submitted."

8 QUESTION: "And this is accurate, as far as you
9 knew at the time?"

10 On page 20.

11 ANSWER: "As far as I know."

12 And the final question:

13 "And as far as you know now, it is still
14 accurate?"

15 ANSWER: "I do."

16 Do you still believe it's accurate, or have you
17 changed your...

18 A It is probably still accurate.

19 Q And so if it is still accurate, would it be
20 correct to say that above the high tide mark is
21 approximately 400 feet remaining, at the end of your
22 property line and the Folly River?

23 A Right.

24 Q Now, Mr. Beckmann, other than what you have
25 already said, which is your assumption that everything

1 from your property line out to the Folly River was owned
2 by the State of South Carolina, do you have any
3 information that this property above the mean high is
4 owned by anybody different than the State of South
5 Carolina?

6 A Not up until the time that I received the paper
7 work from Mr. Demetre claiming ownership. Is that what
8 you just asked me?

9 Q Yes.

10 And so up until you got some paperwork from Mr.
11 Demetre, you assumed everything from your property line
12 on out toward the Folly River was belonging to the State
13 of South Carolina?

14 A I had maintained the property.

15 Q But you assumed that it was owned by the State of
16 South Carolina, and that you had a dock permit?

17 A That is what I said in my deposition.

18 Q Okay. And when you submitted your application to
19 the South Carolina Coastal Council, and you certified
20 what property that you owned or controlled, you gave a
21 legal description. And the only thing you claimed to
22 own on the property was within the bounds of your lot
23 209?

24 A That's correct. That's true.

25 Q Now, Mr. Beckmann, do you know what high water

HARRY BECKMANN - REDIRECT EXAMINATION BY MS. DEUTSCH

1 REDIRECT EXAMINATION BY MS. DEUTSCH:

2 Q Mr. Beckmann, you said in response to the question
3 about whether you had looked at any tax maps, you said
4 that you went and looked at the plat at the City of
5 Folly Beach, right?

6 A That's correct.

7 Q You actually went to City Hall to somebody's
8 office to look at this plat?

9 A My wife and I did.

10 Q And you took the information that was given to you
11 by the City about whether there was any ownership of
12 property between you and the river?

13 A I depended on the City.

14 Q Okay. And that Coastal Council application that
15 you were talking about right here with Plaintiff's
16 exhibit, the Affidavit of Ownership or Control, you
17 certified that you are the record owner, right?

18 A That's correct.

19 Q So you must have believed that you owned the
20 property on which you built the dock, right?

21 A That's true.

22 Q And when you submitted the profile that's blown up
23 right there with your application, were you seeking to
24 try and assert anything about technical terms like "mean
25 high water, tidal cycles, anything along those lines?

ANNIE CROWLEY - DIRECT EXAMINATION BY MS. DEUTSCH

1 permit, Plaintiff's Exhibit AA into evidence.
2 MS. DEUTSCH: No objection.
3 COURT: Very good. Thank you.
4 (Plaintiff's Exhibit AA entered into evidence)
5 And Ms. Deutsch, do you want to have these marked
6 as well?
7 MS. DEUTSCH: Yes, thank you, your Honor.
8 COURT: Mrs. Green, they are actually premarked.
9 I'll just hand them to you, and you can label them
10 later. They are A through P, and they are not in order.
11 We'll do that later.
12 All right, Mr. Griffith...
13 MS. DEUTSCH: Your Honor, at this time, I'd call
14 Mrs Annie Crowley to the stand.
15 COURT: Mrs. Crowley, come on up.
16 Ms. Deutsch, I'm sorry. I saw Mr. Griffith there
17 standing up, like he was ready to bring somebody in.
18 MR. GRIFFITH: I'm just holding the door.
19 MRS. ANNIE CROWLEY, having been
20 duly sworn testifies as follows:
21 COURT: Mrs. Crowley, have a seat.
22 Ms. Deutsch...
23 DIRECT-EXAMINATION BY MS. DEUTSCH:
24 Q Mrs. Crowley, would you tell me your full name,
25 please?

1 A Annie Ruth Crowley.
2 Q And is there an Atkinson in there somewhere?
3 A That's my daughter.
4 Q Okay. So you don't have the last name Atkinson?
5 A No.
6 Q And just out of curiosity, I've heard it
7 pronounced so many different ways in the past several
8 months. Is it Crow-ley? Craw-ley?
9 A It's Crowley - C-r-o-w-l-e-y.
10 Q Like the bird?
11 A Right.
12 Q And what property do you own?
13 A I own, well it was 210 at one time. But it is 220
14 now, East Huron.
15 Q Is that the street number that you are saying or
16 the lot number?
17 A Absolutely.
18 Q The street number?
19 A The street number.
20 Q Okay. Do you know if your lot number is still
21 identified as 210?
22 A I think it is 210.
23 Q Okay. And tell me about how you found your
24 property?
25 A Well, a Mrs. Isabel King had called my husband and

ANNIE CROWLEY - DIRECT EXAMINATION BY MS. DEUTSCH

1 Q Tell me about what you did when you cleaned that
2 property up?

3 A Well, we cleaned the brush off. We cleaned it,
4 and we made it presentable for us to build. And he
5 decided that he would build this home for me, because I
6 like the water, and I like to fish, and our children,
7 our family. He put a lot of tender, loving care in it,
8 and this is how we got it. And he build it himself, all
9 electrical work, everything himself.

10 Q All by himself?

11 A Yeah, all by himself.

12 Q And when was this?

13 A Ah, let's see, I think this was--I'm not quite
14 sure what the date is. But I think it should be in some
15 of the records somewhere.

16 Q If I told you it was in the early '60s, would that
17 sound right to you?

18 A I would say--well, we bought this property from
19 Mrs. King in '64.

20 Q And you started working on it right away?

21 A And we kept it up clean until we decided to build.
22 I think it was around '81, something like that, we
23 decided we'd build. Now, I'm not quite sure, but I'm...

24 Q That's fine. So you lived out there ever since,
25 is that right?

1 A Right. Absolutely.

2 Q And before your husband passed away, did he make

3 any efforts to maintain the property?

4 A Well, after Hugo, you know, we got permission to

5 rebuild it back.

6 Q And how about the marsh area, did you clean that

7 up?

8 A Yes, we did. We cleaned it before.

9 Q Tell me about what you do when you go and clean

10 that area up?

11 A Well, we take beer cans. We take--God, you won't

12 believe what's out there. Chairs, you know, the tide

13 brings in. And we kept it pretty clean.

14 Q Did you hire people to do that?

15 A No, we did it ourselves.

16 Q I remember you told me a story one time about

17 sitting out there, that experience. Can you tell me

18 about that, again?

19 A You'd like to hear that again?

20 Q Yes, ma'am, I would.

21 A Well, it was dust dark. And we always try to keep

22 it clean. And it was about dust dark, and we had a

23 fire, because we were cleaning trash up--

24 Q What kind of trash? Just stuff from the marsh?

25 A Yes. Weeds, and brush, just stuff.

ANNIE CROWLEY - DIRECT EXAMINATION BY MS. DEUTSCH

1 right?

2 A Right.

3 Q Prior to the time that Hugo came through, did
4 anybody ever come to you and say you are sitting on my
5 property?

6 A No.

7 Q Did you consider your entire backyard down to the
8 marsh your property?

9 A Yes, I did.

10 Q Why?

11 A Because I had taken care of it for so many years,
12 you know?

13 Q Uh-huh.

14 A And I thought that was part of my property,
15 because nobody helped me.

16 Q So you thought it was yours?

17 A Yeah. I claimed it.

18 Q When the permit application was submitted to
19 Coastal Council, did you have anything to do with that,
20 or was that all your husband?

21 A All my husband. He would have taken care of all
22 of that.

23 Q Do you have any personal knowledge about anything
24 having to do with these applications?

25 A No, I don't. The only thing that I had with this.

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1 and my helping him, I was more or less the go-for girl.
2 You know, go for this. Go for that.
3 Q I know exactly what you mean.
4 When Hugo came through and damaged your dock, you
5 remember going through all of that, and trying to
6 rebuild it? Did anybody ever come to you and say that
7 there was a question about where your dock was located,
8 and whether it was on somebody else's property?
9 A No.
10 Q Did the City of Folly Beach ever say that you were
11 intruding on anything of theirs?
12 A No.
13 Q All right. And did you ever get contacted by Mr.
14 Seabrook?
15 A No. I have never met Mr. Seabrook.
16 Q Okay. And are you aware of the fact that he has
17 now passed away?
18 A No. I'm sure he has.
19 Q When Mr. Demetre bought his property, did you know
20 about that?
21 A No. We get this letter, you know, in the mail.
22 Q Was that a while after he had bought the property?
23 A Yes.
24 Q Between you getting that letter--excuse me. What
25 did that letter say?

ANNIE CROWLEY - CROSS EXAMINATION BY MR. COOPER

- 1 A No.
- 2 Q Other than the State of South Carolina?
- 3 A There wasn't anything at all back there.
- 4 Q Okay. Nobody owned anything?
- 5 A No. And I never ever seen anybody back there.
- 6 Q Okay. And do you know whether you or Mr. -- well,
- 7 let me do it this way. You never, before the permit
- 8 application was submitted, I see you did sign the
- 9 affidavit of ownership?
- 10 A Right.
- 11 Q You did never go anywhere and look to see if there
- 12 were any records that showed somebody owning property
- 13 out there?
- 14 A No, sir.
- 15 Q And do you know if Mr. Crowley did that?
- 16 A No, he didn't.
- 17 Q Mrs. Crowley, I'm going to show you a document
- 18 that's two pages that's Plaintiff's Exhibit H, which is
- 19 in evidence in this case. And I'm going to ask you to
- 20 take a look at that. There are two pages. And if you
- 21 would just take a quick look at that and see if it
- 22 appears to be a copy of your husband's will? And you
- 23 can look at the signatures that are there too.
- 24 A That's right.
- 25 Q Does that appear to be a copy of Mr. Crowley's

JUDICIAL NOTICE TAKEN BY THE COURT

1 A Yes, I believe if he signed it, yes.

2 COURT: Now I know how you stayed married for 40
3 odd years.

4 WITNESS: You know who was the boss.

5 And you know, Judge, with all due respect, you are
6 right.

7 COURT: May Mrs. Crowley step down?

8 MS. DEUTSCH: Yes, sir.

9 (Witness leaves the witness stand.)

10 Your Honor, we would ask the Court to take
11 judicial notice of the Center to the South Carolina
12 Coastal and Management Act, Section 48-39-10, that
13 states that the State allows public access across its
14 property, meaning that the State allows the public to go
15 across walkways across their property.

16 COURT: Okay.

17 MS. DEUTSCH: And I'd also ask you to take
18 judicial notice of the fact that Plaintiff has not filed
19 a Section 48-39-220 action seeking you to quiet title to
20 anything below, or anything that the State presumably
21 has title in. It has not filed a Declaratory Judgment
22 Action seeking title to those properties.

23 And your Honor, with that, we rest our case.

24 COURT: All right. Okay.

25 So the Defendants have rested.

DEPOSITION OF EMILY S. BROWN - DIRECT EXAMINATION BY MR. COOPER

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1 Q I'll show you another photo, July of 2002, and it
2 doesn't seem to have a number, but it has been provided.

3 Are those your vehicles?

4 A Yes, they are.

e. 5 Q And they are parked down there where you normally
r 6 park them?

y. 7 A Well, we usually park on the side. Sometimes if
8 we come in and have to unload or run back up to get
9 something we may just drive straight in. But usually we try
10 to back in. So that would tell me that we were probably
11 running up. That might not be where we were parked except
12 just temporary when we were upstairs. I can't say we never
13 park there.

14 Q Just the fact that the vehicle is in front first
15 indicates to you that's just a temporary situation?

id 16 A Yeah. And like I say, that doesn't mean we've
17 never parked that way, you know, overnight because I'm sure
18 we have. But what our normal way of doing is to back in and
y 19 be on the side of the road.

20 Q So that's the normal situation?

21 A Yeah.

22 Q Do you have any specific, personal knowledge of
23 anyone else using this road other than you, your husband and
24 Mr. Demetre?

25 A Occasionally people walk their dogs back there or

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Transcript of Emily Brown

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1 walk back there just on a walking -- you know, walk back
2 there and you get the view back there. The mosquito truck
3 used to use it to spray back there. They haven't done that
4 in a while.

5 Q When was that?

6 A I don't remember. It's been a while.

7 Q Awhile? You mean this past summer or years ago?

8 A No, a number of years ago. You know, that would
9 be -- I guess that would be about it unless somebody was
10 looking for an address or something and come back there
11 trying to find something.

12 Occasionally the Folly Beach vehicles have been
13 back there. They were back there during Hugo cleaning up,
14 but they don't come all the time. But they have done
15 maintenance back there.

16 Q Back after Hurricane Hugo?

17 A Uh-huh.

18 Q That's a yes?

19 A Yes.

20 Q Do you remember seeing the Folly Beach vehicles
21 back here since Hurricane Hugo?

22 A I don't know. I don't know.

23 Q You don't remember?

24 A I don't remember.

25 MR. COOPER: Give us a minute. We'll just take a

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Transcript of Emily Brown

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1 A I would think the law would allow us to park,
2 yes, to use the road.

3 Q Okay.

4 A Yes.

5 MR. COOPER: I have no further questions. Thank
6 you for coming. Please answer any questions these gentleman
7 have.

8 CROSS-EXAMINATION

9 BY MR. PEEPLES:

10 Q I'm Ben Peeples. I represent the City of Folly
11 Beach. More often a curse than a blessing.

12 Have you ever observed the City of Folly Beach
13 doing maintenance work back there on that road?

14 A I know they were there after Hugo. That's the
15 only time I really remember. We used to work all day, so
16 they could have been back there.

 Q But you saw them after Hugo?

 A We did.

 Q Am I correct that the road is paved, or has been
 paved, that there's pavement running to almost where you
 park your cars?

22 A Yes.

23 Q Have other people used that road for any purpose?

24 A Mostly just on foot, like walking dogs, riding
25 bicycles, walking back there to enjoy the view.

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1 Q These are members of the general public?

2 A Yes.

3 Q This photograph, Plaintiff's Exhibit 00702, shows
4 some big, ugly holes. Have those holes always been there?

5 A No. There used to be a small hole in the
6 pavement there, but it got much worse because there's been a
7 lot of heavy equipment in there. Mr. Demetre has had lots
8 of loads of dirt, I mean a lot of dirt hauled in on this
9 property, lots of big dump trucks, and it made that worse.

10 And my neighbor, Mr. Sealey, talked to the town
11 about when they were going to do something about it and they
12 said that they were going to do it. I don't know whether
13 they did or not, but they told him they were going to pave
14 it. But they haven't. But it was not -- it was fine before
15 then.

16 MR. PEEPLES: I don't have any other questions.

17 MR. MENDELSON: I don't have any.

18 MR. COOPER: I don't have any further questions.

19

20

21 (The deposition concluded at 11:42 a.m.)

22

23

24

25

DEPOSITION OF MILTON P. DEMETRE - DIRECT EXAMINATION BY MR. COOPER

Page 6

1 S-I-L-V-A.

2 Q. How long have you owned property on Folly

3 Beach?

4 A. Well, I inherited a house from my parents,

5 my mother, and then in the 1970s I sold that. I

6 bought two oceanfront villas in about 1997, '98,

7 whenever they built Charleston Oceanfront Villas.

8 And then I owned the ten lots on East Indian Avenue

9 on Folly River.

10 Q. Do you own a house on East Indian also?

11 A. Lot 201 has a house.

12 Q. It's not a full-time residence, is it?

13 A. We live there on the weekends.

14 Q. How long have you been familiar with East

15 Indian Avenue beyond 201?

16 A. When I bought it.

17 Q. Now, it's not clear to me exactly what

18 you're claiming concerning that street because

19 there's some points you mention -- in some of the

20 documents it's mentioned the unpaved portion, but

21 some of it is -- it seems like you're claiming the

22 entire second block.

23 A. I am except -- all except for the 50 feet or

24 so that's paved coming into Lot 201 to the

25 driveway. Then the pavement stops and it becomes a

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1 Q. Why did you just get a quitclaim deed from
2 Ed Seabrook? Why not a warranty deed?

3 A. He only gave quitclaim deeds.

4 Q. Why was that?

5 A. I don't know. He would sell it with a
6 quitclaim deed.

7 Q. You didn't ask why?

8 A. Well, he had -- he had title to Folly Island
9 as a successor in interest, and what had not ever
10 been sold or dedicated, he owned it as successor in
11 interest to the Folly Beach Corporation.

12 Q. He cites --

13 A. So he didn't have to give me a, you know, a
14 general warranty. I was satisfied that he had good
15 title.

16 Q. Were you satisfied that he had good title
17 down to the low watermark at Folly River?

18 A. I claimed that.

19 Q. What is the basis for that claim?

20 A. An unbroken chain of title to a sovereign
21 grant.

22 Q. And you have that? You have a King's Grant?

23 A. Yes, I do.

24 MR. PEEPLES: Has that been provided to
25 us?

1 Street at the intersection.

2 Q. I want to get -- just clear up one point
3 specifically, and that is that the language in your
4 deeds that say -- I've got it right here
5 somewhere -- I'm looking at deed recorded in Book
6 482, Page 212, it says, the above-described
7 portions of the roadways named Indian Avenue East
8 and Third Street da, da, da, are unimproved,
9 undeveloped, unpaved, undedicated and abandoned.
10 You're saying that that's not your -- you didn't
11 type that language?

12 A. That's a fact. And it originated -- the
13 language originated from the first deed on the
14 roadway from Lot 201 to 205.

15 Q. Do you have any idea what -- you probably
16 wouldn't, but -- what the underlying facts are? I
17 mean that's a conclusive -- that is a statement
18 that states a conclusion. The sentence states a
19 conclusion. What would be the underlying facts on
20 that?

21 A. On that description?

22 Q. Yeah.

23 A. It's on marshland, it's undeveloped, it's
24 not paved. It's -- no public acts have been
25 performed on it. It's a -- it's undedicated.

1 Q. So based on the volume of what you own, I
2 would say that it's safe to say you're a pretty
3 sophisticated purchaser. Would you agree with
4 that?

5 A. I would hope I am.

6 Q. Do you have a realtor that you use?

7 A. Not necessarily.

8 Q. Did you have a realtor that you used in
9 purchasing the 200 block lots on Folly Beach?

10 A. Yes.

11 Q. Who was that realtor?

12 A. Keith McCann, Dunes Properties.

13 Q. And how did you first hear about the
14 property that you purchased, meaning the 200 block
15 of Indian Avenue?

16 A. I became interested in buying some more
17 property on Folly Beach, and I was walking along
18 the roadway one day, and I saw a sign on Lot 201,
19 and I inquired about it, and that's how it started.

20 Q. Were these sold as waterfront lots?

21 A. Yes.

22 Q. What was your understanding about the
23 relative elevation of the lots; meaning how much of
24 it was highland, how much of it was marsh?

25 A. Well, at the time I bought Lot 201 with the

DEPOSITION OF VERNON KNOX - DIRECT EXAMINATION BY MR. COOPER

Page 6

1 Q All right. Have you had a chance to read
2 that?

3 A Yes.

4 Q Have you ever seen that letter before?

5 A No.

6 Q Going to the --

7 A To the best of my knowledge, I have not.

8 Q You don't remember ever seeing that?

9 A No.

10 Q And that is not unusual because the letter
11 is not written by you and it is not written to you?

12 A Correct.

13 Q But it does mention you so I want to ask
14 you what you remember about the subject of the
15 letter. I will refer you to the last sentence of
16 the first paragraph. It says: After speaking with
17 the city administrator, Toni Connor, and the mayor,
18 Vernon Knox, Mr. Hall confirmed that the city did
19 own the road and that the landscaping easement was
20 the best way to resolve this issue.

21 Do you remember any of those discussions?

22 A No, not at all.

23 Q Are you saying that the discussions didn't
24 happen like that or you just had no memory?

25 A I don't remember ever discussing it with

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1 Mr. McCann, to my knowledge. Had I done so I would
2 suggest that he go in front of council.

3 Q Okay.

4 A As far as the rest of the letter is
5 concerned, I have never been aware that the easement
6 was owned, that the -- any easement was owned by
7 Mr. Seabrook. I have always gone by the information
8 available through the RMC office and the GIS
9 HeartofCharlestonCounty.org, and everything I have
10 ever found there has always shown that easement as
11 of East Indian Avenue going all the way to East 6th
12 Street, even though it cuts through the marsh and
13 God only knows whatever, whatever was originally
14 drawn in the '20s, that is how it was drawn.

15 I have never been able to find anything
16 recorded that said other than that was city
17 property. I would never have considered it
18 Mr. Seabrook's property.

19 Q Have you ever asked for a legal opinion on
20 the ownership of that area?

21 A Not to my knowledge.

22 Q Okay. Now, do you remember having a
23 discussion with Mr. McCann about any of this?

24 A No, I really don't.

25 Q Do you remember having any discussions

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1 with Toni Connor about that, or Mr. Hall about that?

2 A I remember that there would have been
3 discussions back and forth about Mr. Demetre
4 claiming ownership of the property or wanting to do
5 something with the property, and if that ever
6 happened, I would have said bring it in front of
7 council and let's see what we can do.

8 Of course being a dedicated right-of-way,
9 being there were properties abutted on the other
10 side of the road that would have access to it and
11 those people are using it, and they were entitled to
12 use it.

13 Q Let me ask you this. With regard to --
14 before we leave this, with regard to this letter, is
15 there anything in here that you say is not correct?

16 A I don't recall ever saying, again -- I
17 don't recall ever being put in the position where I
18 decided or agreed that Mr. Seabrook owned the
19 property. I can't recall any such conversation.

20 Q Okay.

21 A Whether it is correct or incorrect, I
22 don't know.

23 Q Do you have any personal knowledge as
24 to -- you have told us what you assumed and what
25 your understanding was. Do you have any personal

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1 part of that is marsh in between. You can go a
2 little bit past the 100 block; to be honest with you
3 I have never gone past the 2nd Street entrance
4 there. I do know there were people accessing it,
5 don't know who.

6 Like I said, everything I saw was
7 dedicated on the maps and, you know, I was very well
8 aware that there was marsh between the two.

9 Q Okay. Let me show you a map here out of
10 the county map book. I have marked it as
11 Plaintiff's Exhibit P to your deposition.

12 (Exhibit No. P was marked for
13 identification.)

14 Q This map doesn't show East Indian
15 continuing through the 200 and 300 block, does it?

16 A No, it doesn't. But what I believe this
17 map is showing is the state maintained portion of
18 the right-of-ways. This map is not showing
19 necessarily what we dedicated to the city or was
20 drawn in the original plat for Folly Beach. This is
21 the secondary route for the state maintained portion
22 of the right-of-way. That's all this map is.

23 (Exhibit No. Q was marked for
24 identification.)

25 Q Likewise, Plaintiff's Exhibit Q --

1 A That looks like the same map without the
2 numbers on it. These appear to be secondary road
3 numbers.

4 Q Right.. But neither of these show East
5 Indian Avenue continuing past -- between the 100
6 block over to the 400 block, is that correct?

7 A Yeah. I think it is showing the paved
8 roads.

9 Q So it is not showing that part of East
10 Indian Avenue that is continuing through, is it?

11 A No, it does not.

12 Q Okay. Let me show you as well what has
13 been previously marked as Plaintiff's Exhibit 247
14 which is part of the Charleston County tax map
15 system. This shows, does it not, that -- well,
16 let's see here.

17 This says West Indian, but I think it is
18 East Indian and that is East 2nd, East Huron, so
19 that must be East Indian, I think that is
20 mislabeled, but it does show that in terms of these
21 dotted lines here, it doesn't show that you can go
22 on through East Indian Avenue from the 100 down to
23 the 400 block, does it, on this map?

24 A No. Yeah, you are correct.

25 Q We are referring to Plaintiff's

Page 12

1 Exhibit 247?

2 A If that piece of property were anything
3 other than public right-of-way it would not have a
4 tax map number associated with it?

5 Q If I were the deponent I would answer your
6 question.

7 And on the legend here it does have a
8 little thing that shows the streets and roads being
9 designated by this little single line, does it not?

10 A Yes.

11 Q And applying that to this, it would
12 indicate that East Indian Avenue, the road, street,
13 part of it stops at about the intersection of East
14 2nd Avenue? East --

15 A The paved portion of it definitely does
16 but there are people that have accessed that --
17 anybody that owns any of these parcels, and I
18 imagine all of these are marsh, but anybody that
19 owns any of these parcels, if it was high ground
20 would be able to access that right-of-way. We have
21 several right-of-ways on Folly Beach that are being
22 used that are not paved, may not necessarily show up
23 as being paved.

24 Q You would agree with me that a good part
25 of East Indian Avenue which is beyond the

Transcript of Vernon Knox

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1 point where the 50-foot right-of-way extends down
2 here on 2nd Street, I did have them go in there and
3 insist that they clean that up at one point because
4 one of the property owners was elderly and
5 complaining about stuff overgrowing into her yard.

6 Q Okay.

7 A That would be --

8 Q That is the 2nd East Street right-of-way?

9 A That is the only right-of-way that I can
10 recall that I ever had them specifically do anything
11 in that particular area.

12 Q All right. Are you -- let me show you
13 Plaintiff's Exhibit 265 which is a landscape plan
14 for this part of East Indian Avenue. Have you ever
15 seen this document before today?

16 A No.

17 Q Okay. Are you aware that the
18 consideration of this landscape plan was at one time
19 on the agenda for the March 12, 2002, council
20 meeting?

21 A No, I don't remember it.

22 Q This goes back to the letter that I showed
23 you.

24 A Yeah.

25 Q You don't remember that that was put on

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1 enforced by the Department of Public Safety. I am
2 not aware of any enforcement or lack thereof. I
3 imagine if somebody got a ticket on the second block
4 of East Indian Avenue for illegal parking I would
5 have probably heard about it, so, no, I don't
6 believe.

7 Q They are not enforcing that down there?
8 All right. Give us just a minute, if you would.

9 (Off-the-record.)

10 Q Back on the record. You previously
11 testified that your understanding was that the 200
12 block of East Indian Avenue was dedicated to Folly
13 Beach based on a plat. Were you referring to the
14 1920 plat?

15 A 1920 plat and the 1965 revision. When I
16 go on to -- I do, you know, somebody has a question
17 about a piece of property, I have done it as mayor,
18 I have done it as a realtor, I will just go straight
19 to -- first I will go to the GIS site, I will find
20 the MLS number -- not the MLS number, the tax map
21 number, then if you look up, just like any property
22 on Folly Beach, and you go in to where the plat is
23 for that property, I believe it is C158, which is
24 the 1920 --

25 Q 1920 plat.

1 A -- 1920 revision and then a 1965 revision,
2 that is what I have to go by is what -- I am not
3 going to walk my little tail down to the RMC office
4 every time there is a question for \$7,200 a month,
5 thank you very much.

6 Q So those are the maps that you are relying
7 on?

8 A That is exactly what I rely on. And if it
9 says it is a city property, I assume it is a city
10 property until somebody comes and tells me
11 differently.

12 (Off-the-record.)

13 MR. COOPER: We have no further questions.

14 Thank you.

15 (The deposition concluded at 2:35

16 P.M.)

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DEPOSITION OF STEVEN ROBINSON - DIRECT EXAMINATION BY MR. COOPER

Page 15

1 between East Huron and East Indian?

2 A Not in that block. There is in the fourth
3 block.

4 Q In the fourth block but not in this block
5 we are talking about?

6 A (Witness shakes head.)

7 Q Is it fair to say that lots 201 through
8 210 East Huron Avenue get their water service from
9 the East Huron Avenue side?

10 A That's correct.

11 Q And likewise, they get their electrical
12 service from that side?

13 A Different utility. I wouldn't know.

14 Q Okay. Has your department ever been
15 tasked with clearing this right-of-way on down --
16 this block here where these docks are?

17 A No.

18 Q Are you aware that there are docks that
19 are built across parts of the East Indian Avenue
20 right-of-way?

21 A I have seen the aerial photograph.

22 Q You haven't ever walked down there
23 yourself?

24 A No.

25 Q Okay.

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Transcript of Steven Robinson

Page 16

1 A We have cleaned -- if I can back up -- 3rd
2 Street East, we have cleaned 3rd Street East, and
3 typically it was off of East Huron, but it is quite
4 possible we were in this intersection of East Indian
5 and 3rd Street with the same Bush Hog and tractor.

6 Q Okay. Do you know you got that far or is
7 it just possible?

8 A It is quite possible.

9 Q Okay.

10 A We are required to clear the whole fence
11 line for this lot 210 because of poison ivy and
12 stuff going on.

13 Q Okay. So in connection with the clearing
14 of 3rd Street East at a time in the past, you may
15 have been in the right-of-way for -- the
16 intersection, let's say, for East Indian and 3rd
17 Street East?

18 A Yes, yes, correct.

19 Q Other -- how many times would you say that
20 the Bush Hog has been sent down to East Indian
21 Avenue to clear that area?

22 A I couldn't be certain. Between 12 and 20
23 times.

24 Q Since you have been there?

25 A Um-hum.

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1 Q That is a yes?

2 A Correct, you know, somewhere in that
3 vicinity in 25 years.

4 Q So approximately once every couple of
5 years the Bush Hog would be sent down there?

6 A That would be a good approximation.

7 Q Do you know whether or not Folly Beach has
8 ever graded this part of the road?

9 A Not to my knowledge.

10 Q Do you know whether or not either DOT or
11 Charleston County has ever graded this part of the
12 road?

13 A No, sir.

14 Q Are you aware that there are some fairly
15 large potholes in the road, in the dirt part of the
16 road?

17 A No.

18 Q Do you know -- is it your understanding --
19 well, let me ask it this way.

20 Whose responsibility would it be to repair
21 the roadway if it does have large potholes in it?

22 A My department would make a request of
23 Charleston County first for them to come in and do
24 it as part of their community service.

25 Q Okay. When they do -- how many roads on

DEPOSITION OF TOMMY HALL - DIRECT EXAMINATION BY MR. COOPER

Page 13

1 tell you more about that than I can.

2 I know he is the guy that calls if we need
3 a sign change or something like that. Steve can
4 tell you more about that than I can.

5 Q Steve Robinson, what is his title?

6 A Director of Public Works.

7 Q Okay. For Folly Beach?

8 A Yes, sir.

9 Q All right. From your perspective, he is
10 the person with overall responsibility for the roads
11 and streets?

12 A Well, bear in mind, sir, we don't have any
13 road maintenance equipment, we don't have a road
14 maintenance department. When we need something we
15 call the county or either the Department of
16 Transportation. But Steve is that person. He is
17 that liaison from the city to the people that
18 maintain those roads.

19 Q As far as the town of Folly Beach is
20 concerned, he is the person that deals with the
21 streets and roads, even though the maintenance may
22 be done by either the county or the state, is that
23 fair?

24 A He gets the call that says, there is a
25 nasty pothole in the middle of the street. He gets

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1 for the street to street lots.

2 Q Okay.

3 A Some come in the back and front, some come
4 in only --

5 Q So it would be true to say that you have
6 never seen this letter marked Plaintiff's
7 Exhibit 320 --

8 A No, I have never seen this.

9 Q -- before today?

10 A Not before today.

11 Q And you don't remember any of the
12 discussions mentioned in the first paragraph?

13 A No. But I mean, to me the letter makes
14 sense because it goes on down to Toni giving him an
15 easement form and he wouldn't have gotten to her if
16 I hadn't told him to go there. Like I said, I think
17 that is what is happening. But I cannot say for
18 positive, but I can say for positive I have never
19 seen that letter.

20 Q Okay. As far as you know, are the
21 statements in this letter correct?

22 A The statement that Mr. Hall felt very
23 confident that the easement would be granted, I tell
24 everybody that. And then it says, Mr. Hall had a
25 question as to whether the property owned by the

Transcript of Tommy Elliott Hall

Page 28

1 City of Folly Beach or Mr. Seabrook. After speaking
2 to city administrator Toni Connor and Mayor Vernon
3 Knox, Mr. Hall confirmed that the city did not own
4 the road, that the landscaping easement was the best
5 way to resolve the issue.

6 I don't have any recollection of making
7 that statement. I would not have the authority to
8 make that statement. It is beyond my authority --

9 Q Okay.

10 A -- to make that statement.

11 Q Okay. So it is your testimony that you
12 think that that part of the letter would be
13 incorrect?

14 A I think I was correct in trying to get
15 Keith to the proper people to address the question
16 and he asked, seems like he asked my opinion on a
17 couple of things.

18 Q Okay. As far as you know, has there ever
19 been a roadway allowing vehicular traffic to go down
20 East Indian Avenue from the 100 block on through to
21 the 400 block?

22 A Not to my knowledge.

23 Q As far as you know, has there ever been a
24 foot path to allow pedestrians or bicycle traffic
25 through there?

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DEPOSITION OF CLIFTON W. BENSON, JR. - DIRECT EXAMINATION BY MR. COOPER

Page 4

1 CLIFTON WALLACE BENSON, JR., having been
2 first duly sworn, testified as hereinafter set
3 forth.

4 EXAMINATION

5 BY MR. COOPER:

6 Q. State your full name for the record,
7 please.

8 A. Clifton Wallace Benson, Jr.

9 Q. C-l-i-f-f-t-o-n?

10 A. Yes. Actually, one "f".

11 Q. Oh, one "f". Clifton Wallace Benson,
12 Jr., is that right?

13 A. That's correct.

14 Q. And where do you live?

15 A. 116 East Indian, Folly Beach, South
16 Carolina.

17 Q. And how long have you lived there?

18 A. Eleven years.

19 Q. Where did you live before that?

20 A. 320 East Arctic, Folly Beach.

21 Q. How long did you live there?

22 A. Twenty plus years. I will interject in
23 here that I have gone overseas and worked in
24 between, but that has always been my permanent
25 address.

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1 Q. What is your connection with the Town of
2 Folly Beach at this time?

3 A. City Council member.

4 Q. And how long have you served as a City
5 Council member?

6 A. Eighteen years.

7 Q. And have you ever had any other official
8 capacity with the Town of Folly Beach?

9 A. Yes, I have.

10 Q. And what is that?

11 A. I have been everything from a dispatcher
12 to the director of public safety and everything in
13 between. I have been the captain of the rescue
14 squad. I have been -- I don't know.

15 Q. A lot of stuff?

16 A. A lot of stuff.

17 Q. And was that during the 18 years you
18 served on City Council, or is that a different
19 time period?

20 A. Different time period. I have been
21 formally associated with Folly Beach in some
22 capacity basically since 1970.

23 MR. DENNY: Do you have another copy of
24 that? Or maybe we can -- I just wanted to have a
25 copy that -- you are writing on that one. I just

Page 8

1 live on the 100 block, I will call it, of East
2 Indian Avenue, is that correct?

3 A. That's correct.

4 Q. Are you familiar with East Indian
5 Avenue, the 200 block?

6 A. Yes, I am.

7 Q. And do you know how far the pavement
8 extends beyond the intersection with Second Street
9 East?

10 A. Right along in here, around 203, 202 and
11 203, right along in there.

12 Q. And it's true, isn't it, that the
13 pavement stops really in front of Lot 201?

14 A. Okay. If you say the pavement -- no.
15 Actually, if you go down there you will find parts
16 of the old pavement. Folly Beach has filled that
17 in. Even when I was the director of public
18 safety, we somewhat maintained it when I was
19 director of public safety.

20 Q. And when was that?

21 A. I was director of public safety from
22 1976 to 1981.

23 Q. 1986, did you say?

24 A. '76 through '81.

25 Q. Through '81, okay. And what maintenance

1 did you do on the 200 block of East Indian Avenue?

2 A. We basically, then, just dumped dirt in
3 the potholes that kept popping up down there,
4 where people were driving on it when it rained,
5 because the pavement started deteriorating.

6 Q. And when is the last time that you were
7 down in the 200 block of East Indian Avenue?

8 A. In this area here that you pointed out,
9 201, 202, 203?

10 Q. Yes, just anywhere in the 200 block.

11 A. About two weeks ago.

12 Q. And what were you doing down there at
13 that time?

14 A. Looking for my missing dog.

15 Q. Did you find him?

16 A. Yes.

17 Q. Good. And are you aware -- do you have
18 any personal knowledge of maintenance on that part
19 of the road since 1981?

20 A. No.

21 Q. Did you keep any records of the
22 maintenance that was done on that 200 block of
23 East Indian Avenue?

24 A. No.

25 Q. Do you have any personal knowledge of

Transcript of Clifton Wallace Benson, Jr

Page 12

1 also have a grass cutter, I guess you would call
2 it.

3 Q. What kind of tractor is it, if you know?

4 A. It's a tractor with a front-end bucket
5 on it.

6 Q. And it also has a bushhog on the back of
7 it?

8 A. It's got a -- yes, which can be attached
9 to it.

10 Q. Which can be attached to it. Okay.
11 You-all don't have any motor graders?

12 A. No.

13 Q. Any dump trucks?

14 A. No.

15 Q. Do you know if Folly Beach has a copy of
16 any release from the CNS Bank mortgage that used
17 to cover the property?

18 A. No.

19 Q. Do you know who owns the roads on Folly
20 Beach?

21 A. Folly Beach.

22 Q. Do you know who owns the 200 block of
23 East Indian Avenue?

24 A. Folly Beach.

25 Q. And how did they get that?

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1 A. It came from the plat when Folly Beach
2 was first laid out.

3 Q. Mr. Benson, let me show you now what has
4 been previously marked as Plaintiffs' 335, which I
5 will represent to you is a photocopy of part of
6 the original C-158 plat done in 1920 by I think
7 it's Johnson Construction Company.

8 MR. DENNY: Jefferson.

9 Q. Jefferson. I'm sorry. Here is Center
10 Street, just to orient you. This is East --

11 A. Indian. That is incorrect. That is
12 incorrect. It shows these lots here -- that's
13 much shorter than they are. Let me make sure I'm
14 right. Yeah. That is much, much shorter than
15 what it is.

16 MR. DEMETRE: That is C-158.

17 MR. COOPER: Let's just let Mr. Benson
18 testify.

19 Q. Now, this is Center Street and --

20 A. That is East Indian.

21 Q. -- this is East Indian Avenue. Are you
22 saying that this plat is incorrect?

23 A. Yes, I am.

24 MR. COOPER: I have no further
25 questions.

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EXAMINATION

2 BY MR. PEEPLES:

3 Q. Wallace, when John showed you
4 Plaintiffs' 335, the blowup of the original 158
5 1920 subdivision plat and you said it was wrong,
6 were you referring to what is, I assume, the line
7 that runs through the first block of the lots on
8 East Indian?

9 A. Yes

10 Q. This Clifton Wallace it -- it
11 would seem -- line
12 represents? Benson - Direct

13 A. Cr Exam by Mr. ark or
14 marsh, what Peoples

15 Q. S it was
16 wrong, were you referencing just where that line
17 crosses --

18 A. Absolutely.

19 Q. -- that is depicted on the map?

20 A. Absolutely. I mean, if you take out one
21 of those other maps, look how much land it cuts
22 off here versus where this one does, even though
23 there is two different --

24 Q. Got it.

25 A. -- there. And there happens to be, here

1 at 107, where it shows this, this is an Oak tree
2 right here that has got to be 100 years old. It
3 happens to be sitting over my house. ,That tree is
4 far bigger around than this table.

5 Q. How far back in the marsh would that
6 tree be depicted on this lot?

7 A. It actually would be -- because the land
8 here where I live is deeper than 150 feet. So
9 that line there is supposed to be 150 feet, so it
10 actually would be even this far out.

11 Q. It would be more than 150 from the
12 street?

13 A. Right. And this shows there's only
14 about 75 feet of land there.

15 MR. PEEPLES: Okay. No further
16 questions.

17 (The deposition was concluded at 11:15
18 a.m.)

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1 you remember?

2 A '68.

3 Q All right. And what -- give me a summary,
4 if you would, of your employment history?

5 A Mostly the City of Fairbanks, Alaska. How
6 far do you want to go back?

7 Q Well, after you graduated from NC State, I
8 am assuming you went and sought employment?

9 A Yeah. But off and on. I managed some law
10 firms in Fairbanks for about four years, then I went
11 to work as the assistant city manager, and from
12 there went as the special assistant when they
13 changed the type of government to the mayor, and
14 then came to Folly Beach in 1996 and was hired to be
15 city administrator.

16 Q So you have been city administrator of
17 Folly Beach since 1996?

18 A Yes.

19 Q Then before that you had -- most of your
20 experience was with the City of Fairbanks, Alaska?

21 A Yes, it was, as far as government, yes.

22 Q All right. You are currently employed as
23 city administrator?

24 A That's correct.

25 Q What are your job duties generally as city

Page 6

1 administrator?

2 A Everything from drafting ordinances,
3 day-to-day operations of city government, personnel,
4 overseeing, of course, the department, working
5 directly for the mayor and city council, anything
6 that I am directed to do. Doing the budget every
7 year, doing midyear budget, doing budgets and
8 utilities and overseeing utilities as well.

9 Q Okay. And do you -- is the mayor your
10 direct superior?

11 A Yes.

12 Q Do you have -- do you answer to the city
13 council as well?

14 A Well, it is sort of a mixed bag. I mean,
15 actually by state law I am directed by the mayor,
16 but we are a small town. If I am directed to do
17 something by city council then do I it, from
18 drafting up an ordinance they want on the agenda to
19 research of various things. That is done with the
20 okay of the mayor.

21 Q So if I understand correctly, you are
22 directly answerable to the mayor, but at his
23 direction you also respond to city council if they
24 were asking for something, is that fair?

25 A That is fair.

1 A He has been with the City of Folly Beach,
2 I am going to say, 25 or 30 years, so I can't give
3 you an exact date, but a long time.

4 Q Let me show you now what has been
5 previously marked as Plaintiff's Exhibit 320 and I
6 know that this is -- you may not have seen this
7 before so I just --

8 MR. COOPER: Let's go off the record and
9 give her a few minutes to read that.

10 (Off-the-record.)

11 Q We are back on the record. Looking at
12 Plaintiff's Exhibit 320, is that a document that you
13 have ever seen before today?

14 A No, it isn't.

15 Q It does mention, I believe, your name in
16 here, Toni Connor, is that right?

17 A Yes, that's right.

18 Q You have been married since that time?

19 A Yes.

20 Q Let me just ask you. Do you remember
21 having any conversations with either Mr. Hall or
22 with Mr. McCann about the issues discussed in the
23 letter?

24 A I'm sorry, I don't. That is not saying it
25 didn't happen. I'm sorry, I don't remember.

Transcript of Toni Connor-Rooks

Page 14

1 Q Okay. Do you remember having any
2 discussions with Mayor Knox at that time about the
3 issues discussed in the letter?

4 A No, I don't.

5 Q It would be fair to say you don't have any
6 memory of any of the things mentioned in the letter?

7 A I don't, I'm sorry.

8 Q Just to be clear, you are not saying that
9 didn't happen, you just don't remember it?

10 A That's right. I talk to quite a few
11 people every day, so.

12 Q That is your job?

13 A That is my job.

14 MR. PEEPLES: She talks to too many people
15 every day.

16 THE WITNESS: That is true.

17 Q Let me show you -- the letter discusses a
18 landscape plan and let me show you now what has been
19 marked Plaintiff's Exhibit 265 and ask if you have
20 ever seen this landscape plan before or remember
21 seeing it before today.

22 A No, I don't.

23 Q Do you recognize this as being a landscape
24 plan for East Indian Avenue past the intersection
25 with 2nd Street or --

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Page 24

1 Usually, we don't own them. I think there
2 is a few that we, you know, that if the county
3 doesn't maintain them, when they are doing a
4 subdivision or something, that may come under us if
5 they don't take them over, but I couldn't tell you
6 which ones and if there are any now. Steve, again,
7 Steve Robinson will be able to tell you that.

8 Q Do you have any knowledge that the town of
9 Folly Beach owns East Indian Avenue and what I call
10 the 200 block that we have been talking about today?

11 A I have no knowledge.

12 Q Okay. I am showing you again what has
13 been marked as Plaintiff's Exhibit 320. This is the
14 letter that I showed you earlier.

15 A Yes, okay.

16 Q In the second paragraph of this letter it
17 starts mentioning your name and so I just want to be
18 sure, I think you have testified that you don't
19 remember any of these discussions?

20 A No, I don't.

21 Q I just want to clarify, do you remember
22 anything about a landscaping easement or landscaping
23 plan such as shown on Plaintiff's Exhibit 265 that
24 was put on the agenda for March 12, 2002?

25 A I do not.

1 Q Is that -- who would put things like that
2 on the agenda?

3 A I would.

4 Q Okay. Are you saying that this was never
5 put on the agenda or just that you don't remember
6 it?

7 A I don't remember it, because as I told you
8 earlier, we put things on the agenda every week, two
9 meetings a month, sometimes more, mostly two a
10 month. So you have got a lot of things that go on
11 an agenda in that period of time. I just really
12 don't remember.

13 Q Is there any record of what would have
14 gone on an agenda for --

15 A You would only have the final product.
16 You wouldn't have something that was supposed to go
17 on because if it had gone on and then was removed,
18 like this stated it was, then there would be nothing
19 there that shows you the original because it would
20 have been a product in work because the final agenda
21 would have gone out the Friday before the council
22 meeting on Tuesday.

23 Ordinarily, you have to have something
24 into city hall by Thursday, and if it is not or if
25 you are going to take it on or off, then it would

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1 come on or off at that time, especially if we have
2 knowledge ahead of time.

3 Q Okay. So if this landscaping plan were
4 put on the agenda but then were taken off -- on the
5 agenda for March 12 and were taken off by March 11,
6 there would be no record of it now, is that right?

7 A This was for which -- the March 12? No,
8 it would have been on there on March -- if it was
9 going on March 12, because the agenda would have
10 closed -- the final agenda would have been finished
11 the Friday prior to that meeting on Tuesday, the
12 final product.

13 Q All right. So if someone goes on the
14 agenda and then is taken off --

15 A -- it would have been taken off prior to
16 that Friday morning.

17 Q It would not be on the agenda that
18 actually was used during the meeting?

19 A That's right, that's right.

20 Q Is there any other record other than that
21 agenda that would show what had gone on and then
22 been taken off?

23 A No, it would not.

24 MR. PEEPLES: They don't keep a rough
25 draft.

1 Q It is your testimony that you don't
2 remember Plaintiff's 265 which was the landscape
3 plan?

4 A I don't remember it.

5 Q Do you remember any discussions with
6 either Mr. Hall or Mr. McCann about the landscape
7 plan?

8 A No, sir, I don't.

9 Q Do you remember any discussions about how
10 to fill out the easement form with Mr. McCann?

11 A No. That is something we give -- I don't
12 know if I would say a regular basis, but we give it
13 out enough, like for drain fills, that type
14 easement, so it is something that we do on a, you
15 know, not an every week, but we do it quite often
16 where people want to put their drain fields in an
17 easement so they ask for one, so for me to tell
18 somebody how to fill out an easement form, that
19 would be a matter of something I do often enough
20 that I wouldn't remember a specific one.

21 Q Okay. Do you remember a discussion with
22 Mayor Knox that it was decided that the City of
23 Folly Beach did not own East Indian Avenue in the
24 area we are talking about?

25 A No, I don't. Mayor Knox may, though.

Page 28

1 Q Do you remember ever stating that
2 Mr. Seabrook was the owner?

3 A No, I do not.

4 Q Finally, do you remember telling
5 Mr. McCann that Mr. Demetre's landscape plan would
6 be removed from the March 12 city council meeting
7 agenda?

8 A No, sir, I don't. But again, like I said,
9 that is not saying it didn't happen. I am just
10 telling you I don't remember it.

11 Q Do you remember, for the record, telling
12 Mr. McCann that you suggest that he contact
13 Mr. Seabrook for an easement?

14 A No.

15 MR. COOPER: I have no further questions.
16 Please answer any Mr. Peeples may have for you.

17 (The deposition concluded at 11:45 A.M.)

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 02-CP-10-4880

THE MILTON P. DEMETRE)
FAMILY LIMITED PARTNERSHIP,)

PLAINTIFF,)

-VERSUS-)

CITY OF FOLLY BEACH,)

DEFENDANT.)

NOTICE OF MOTION
AND
MOTION TO INTERVENE

MOTION
FEE
PAID

2003 JAN 15 PM 4:09
CLERK OF COURT
JULIA A. BROWN

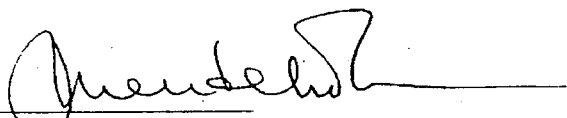
TO: THE PLAINTIFF ABOVE-NAMED AND/OR
ITS ATTORNEY, NEWMAN JACKSON SMITH

PLEASE TAKE NOTICE that ten (10) days hence, or as soon thereafter as counsel may be heard, the undersigned attorney, appearing on behalf of Emily S. Brown, will move before the Presiding Judge, The Court of Common Pleas for the Ninth Judicial Circuit for an Order of Intervention for the purpose of allowing her to join in this action as a party Defendant so as to protect her right of access to her property through the streets of the town of Folly Beach.

THIS MOTION is based upon Rule 24 (a) and (b) of the South Carolina Rules of Civil Procedure and oral arguments to be presented at the time of the hearing.

2003-0721 \$25.00

PLEASE BE PRESENT TO DEFEND SAID MOTION IF SO MINDED.


JOSEPH S. MENDELSON
ATTORNEY FOR EMILY S. BROWN
104 BROAD STREET
P. O. BOX 250
CHARLESTON, S. C. 29402
(843) 577-7210

BY _____
JULIE S. HARRIS
CLERK OF COURT
2003 JAN 15 PM 4:09

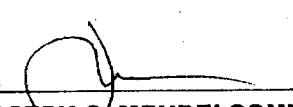
January 14, 2003

Charleston, South Carolina

CERTIFICATION

This is to certify that the undersigned attorney did this date serve the within Notice of Motion and Motion to Intervene upon the attorney below listed by mailing a copy of the same, with postage prepaid, this 15th day of January, 2003, to his office:

Newman Jackson Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
P. O. Box 1806
Charleston, S. C. 29401


JOSEPH S. MENDELSON
ATTORNEY FOR EMILY S. BROWN

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Milton P. Demetre
Family Limited Partnership,

Plaintiff,

vs.

Harry Beckmann, III,
Patricia P. Beckmann,
Annie Ruth Hilton Crowley,
Raymond Moody Crowley,
Donald William Crowley,
Harris L. Crowley, Jr., and
Annie Ruth Crowley Atkinson,

Defendants.

The Milton P. Demetre
Family Limited Partnership,

Plaintiff,

vs.

City of Folly Beach,

Defendant,

and

Emily S. Brown,
Annie Ruth Hilton Crowley,
Harry Beckmann, III, and
Patricia P. Beckmann,

Intervenors.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRUIT
Civil Action No. 2002-CP-10-4880

PLAINTIFF'S RULE 59(e)
MOTION TO ALTER OR AMEND

BY

JULIE A. SMITH
CITY OF FOLLY BEACH

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COMES NOW Plaintiff Milton P. Demetre Family Limited Partnership and moves to alter or amend the Final Order filed March 7, 2003. Plaintiff, through its counsel, received written notice of the Final Order in this case by mail on March 20, 2007.¹ Plaintiff moves to alter or amend on the following bases:

¹ Plaintiff's former counsel, Jackson Newman Smith, Esquire, of Nelson Mullins Riley & Scarborough, LLC, received the Final Order by mail on March 19, 2007.

Plaintiff Requests Rulings on All
Issues of Law and Fact Raised in Plaintiff's Proposed Order

- 1) Plaintiff's Proposed Order is attached as Exhibit A and incorporated herein by reference. It was served on the Court and counsel for all parties by mail on February 20, 2007 (Exhibit B) and by e-mail on the same date (Exhibit C). Plaintiff requests rulings on all issues of fact and law raised in Plaintiff's Proposed Order with findings of fact and conclusions of law as set forth in Plaintiff's Proposed Order.

Plaintiff's Equitable Estoppel Cause of Action Against the City

- 2) The Final Order does not address Plaintiff's Equitable Estoppel cause of action against the City of Folly Beach ("City").

- a) Plaintiff's Complaint was amended at trial to include this cause of action:

[COURT]: And then it comes back the other way. Because I think Mr. Demetre is going to argue that there was estoppel, at least relative to the City, about the existence of - their ownership of the road.
(Tr. p. 351, line 25 - p. 352, line 3).

* * * *

MR. DENNY: Your Honor, I guess we just want to make it clear that estoppel would be one of our arguments.

COURT: Okay. All right.

To the extent that the Pleadings need to be amended to include that, I'll make sure that gets covered, okay? And that's one of the reasons why I don't hold everybody to these Motions for Summary Judgment and Directed Verdict, that type of thing.

MR. PEEPLES: And, your Honor, I would move that the Pleadings be amended to conform to the testimony and proof.

COURT: Very good.

MR. PEEPLES: And we consent to their Motion.

(Tr. p. 353, line 16 - p. 354, line 5).

- b) Plaintiff's Proposed Order briefs the Equitable Estoppel cause of action against the City at pages 46 - 51.
- c) The Final Order should conclude that the City of Folly Beach is estopped from claiming acceptance of the subject portion of the roadway because it induced Plaintiff to purchase the roadway from Edward Seabrook.

The Dock Case

- 3) The Final Order does not address Plaintiff's causes of action against Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr. or Annie Ruth Crowley Atkinson ("Dock Defendants") or Plaintiff's arguments against their defenses, briefed at pages 8 - 45 of Plaintiff's Proposed Order. The Court should grant relief to Plaintiff on all of Plaintiff's causes of action against the Dock Defendants:
- i) Declaratory Judgment Action to declare that the Plaintiff owns the highland marsh property in fee simple and that the docks were wrongly constructed on Plaintiff's property;
 - ii) Action to Quiet Title;
 - iii) Trespass;
 - iv) Nuisance; and
 - v) Injunctive Relief against the Dock Defendants.
- 4) There is no ruling in the Final Order regarding the Plaintiff's arguments against the Dock Defendants' defenses. The Final Order should rule that the Dock Defendants' defenses fail for the following reasons:
- i) Adverse Possession (including Forty Year Statutory Presumption of Grant, Twenty Year Common Law Presumption of Grant, and Adverse Possession)
 - (a) The Dock Defendants lack the essential element of hostility. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). (Briefed at pp. 8 - 13).
 - (b) Harris Crowley's devise interrupted possession. *Catawba Indian Tribe of South Carolina*, 978 F.2d 1334 (4th Cir. 1992). (Briefed at pp. 13 - 15);
 - (c) Seabrook and Plaintiff paid the property taxes on the subject highland marsh. (Briefed at p. 15); and
 - (d) The rule in *Lowcountry Open Land Trust v. State and Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) required express consent of the owner. (Briefed at pp. 15 - 17).

ii) Equitable Estoppel

- (a) Properly recorded title precludes equitable estoppel. *Brown v. Clemens*, 287 S.C. 328, 338 S.E.2d 338 (1985). (Briefed at pp. 18 - 20);
- (b) Lack of belief in ownership precludes title by equitable estoppel. See *Southern Railway-Carolina Div. v. Horne Inv. Co.*, 233 S.C. 440, 105 S.E.2d 527 (1958). (Briefed at p. 20);
- (c) The highland was shown on the dock applications. (Briefed at pp. 20 - 23);
- (d) The dock defendants lacked reasonable diligence. *S. Dev. Land & Golf v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993). (Briefed at pp. 25 - 28);
- (e) There was no reasonable reliance on lack of objection because express consent was required from Seabrook. S.C. Code Ann. § 48-39-140(B); (Briefed at pp. 28 - 30);
- (f) Public notice was insufficient. See *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) (Briefed at pp. 31 - 33);
- (g) Actual notice was required instead of constructive notice. *DurRant v. S.C. Dep't of Health & Env't. Control*, 361 S.C. 416, 423, 604 S.E.2d 704, 708 (Ct. App. 2004). (Briefed at pp. 33 - 34);
- (h) The requirements of service by publication were not met. S.C. Code Ann. § 15-9-720 (2006) (Briefed at pp. 35 - 36);
- (i) There was no evidence that Seabrook knew the docks were being built. See *Southern R.R. Co. v. Day*, 140 S.C. 388, 138 S.E.2d 870 (1926). (Briefed at pp. 36 - 41); and
- (j) There is no evidence of intent or gross negligence inducing reliance. See *Southern R.R. Co. v. Day*, 140 S.C. 388, 138 S.E.2d 870 (1926). (Briefed at p. 41).

iii) Equitable Compensation / Betterment claim

- (a) These claims fail for lack of belief in ownership. *Shealy v. South Carolina Electric & Gas Co.*, 278 S.C. 132, 293 S.E.2d 306 (1982). (Briefed at p. 41);

- iv) Waiver / Laches / Staleness
 - (a) There is no prejudice to the Dock Defendants. See *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). (Briefed at p. 42); and
 - (b) Laches and other equitable claims do not apply in an adverse possession case. See *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956). (Briefed at p. 43).
- v) Prescriptive Easement
 - (a) There is insufficient length of use to establish a prescriptive easement. (Briefed at p. 43).
- vi) Unclean Hands
 - (a) An unclean-hands defense is not applicable under the facts of this case. (Briefed at pp. 44 - 45).

The Road Case

- 5) The Final Order should contain findings/conclusions regarding the road case that:
- a) The City of Folly Beach is estopped to claim acceptance of the subject roadway because it induced Plaintiff to purchase the roadway from Edward Seabrook. See *Landing Dev. Corp. v. Myrtle Beach*, 285 S.C. 216, 329 S.E.2d 423 (1985). (Briefed at pp. 46 - 51);
 - b) There was no written acceptance of dedication. (Tr. p. 222, lines 17 - 19). (Briefed at pp. 53 - 55);
 - c) The deed restrictions required written acceptance and joinder by the City. See *Corpus Juris Secundum Dedication*, § 31 at p. 318 (Briefed at p. 55);
 - d) A plat alone is not evidence determinative of implied dedication where there is evidence of the grantor's intent to the contrary. *Vick v. S.C. DOT*, 347 S.C. 470, 556 S.E.2d 470 (2001).
 - e) The 1920 plat was subject to the deed restrictions in the deed of Jack H. Meyers. (Briefed at pp. 79 - 82).
 - f) The recording of the 1937 deed was not an acceptance, because acceptance requires acts of public officials. See 23 Am.Jur.2d *Dedication*, Section 25 (2003). (Briefed at p. 56);

- g) There was a lack of strict, cogent, and convincing evidence of acceptance by public acts. *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997).
 - h) The overwhelming evidence is that the road was never paved. (Briefed at p. 58 - 65);
 - i) If the road was paved, then:
 - i) The City failed to prove who paved the road. (Briefed at p. 58);
 - ii) The City failed to prove where the road was paved. (Briefed at p. 59).
 - iii) The City failed to prove that the road was paved after the 1965 plat.
 - iv) The City failed to prove that the road was paved within a reasonable time of an offer of dedication.
 - j) Plaintiff has proven by a preponderance of the evidence that there were no acts of acceptance on the roadway sufficient for dedication. (Briefed at pp. 58 - 71).
- 6) The Final Order does not state what standard is used to evaluate the evidence. The City's claim of completed dedication is not supported by strict, cogent, and convincing evidence. *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997);
- 7) There is no indication in the Final Order that proof of dedication cannot be implied from sporadic use of the property. *Mack v. Edens*, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995); *Vick v. South Carolina Department of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001);
- 8) With regard to the claims of Emily Brown, the court did not rule on the following. The Final Order should find that:
- a) Emily Brown's use of the road is inconsistent with use as a public road. (Briefed at p. 69);
 - b) There was a lack of signage on the disputed part of the roadway. (Briefed at p. 69);
 - c) The City's failure to levy property taxes does not constitute acceptance. (Briefed at p. 70);
 - d) The subject roadway was encumbered and foreclosed. (Briefed at pp. 70 - 72);
 - e) There was no acceptance by acts. (Briefed at p. 73);

- f) The Director of Public Works gave testimony inconsistent with acceptance. (Briefed at pp. 74 - 77);
 - g) The Director of Public Safety gave testimony inconsistent with acceptance. (Briefed at pp. (Briefed at p. 75).
 - h) Emily Brown does not have an implied easement by plat. (Briefed at p. 78);
 - i) Neither *Blue Ridge Realty Co.* nor *Carolina Land Co.* assist Ms. Brown or the City of Folly Beach. (Briefed at pp. 78 - 82).
 - j) Ms. Brown had convenient access to her lot from Huron Avenue. (Briefed at p. 82).
 - k) Ms. Brown lacks the necessary 20 years of continuous use for a prescriptive easement. (Briefed at pp. 83 - 84).
- 9) The Final Order does not clarify what portion of the road is found to have been dedicated. The unqualified ruling conflicts with certain facts stated in the Final Order. The ruling states, "IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the City of Folly Beach is the owner of the Street." This conflicts with the following fact stated in p. 5 of the Final Order:
- The Street is open for approximately two hundred and eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears into the marsh and partly into a wooded area. (Final Order p. 5).
- a) In turn, the above fact conflicts with facts stated at Page 7 of the Final Order:
- The City also put dirt in where the pavement deteriorated. (Tr. p. 223, l. 5 -19). I find Mr. Benson especially knowledgeable and credible on this issue.
- i) Mr. Benson did not testify that the pavement extends all the way down the street:
- Q. And do you know how far the pavement extends beyond the intersection with Second Street East?
- A. Right along in here, around 203, 202 and 203, right along in there. (Emphasis added).
- (Tr. p. 222, line 24 - p. 223 line 2).
- b) Independently of the lack of factual support, the City of Folly Beach is estopped to claim that it is the "owner of the Street."

- c) The finding that the City of Folly Beach is the "owner of the Street" is in error and should not appear in the Final Order.

Errors of Law and Fact

- 10) The Final Order contains the following errors of law or fact, each of which is briefed in Plaintiff's Proposed Order:

a) "Recording the deed constitutes a positive act of acceptance by the City of Folly Beach." (Final Order, p. 3).

- i) First, the City is estopped to assert that it accepted the deed, because it induced Plaintiff to purchase the roadway based on its representation that Edward Seabrook owned the roadway. (Briefed in Plaintiff's Proposed Order at pages 46 - 51).
- ii) Second, there is no evidence in the record of who recorded the deed. Proof of acceptance requires strict, cogent, and convincing evidence. *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997). (Briefed in Plaintiff's Proposed Order at p. 57).
- iii) Moreover, while it is correct that recording an ordinary deed is evidence of acceptance, this is not true for a deed of dedication. 23 Am.Jur.2d *Dedication*, Section 25 (2003). Although Plaintiff is not able to locate the authority cited in the Final Order as cited, it appears to pertain to an ordinary deed, not a deed of dedication.
- iv) Formal action is necessary where a dedication renders a governmental subdivision responsible for maintenance and repairs and liable for injuries resulting from the neglect. Am.Jur.2d *Dedication* § 47 at p. 41.
- v) Formal acceptance consists of the following: (Briefed in Plaintiff's Proposed Order at p. 56).
 - (1) a formal ratification by the proper official board of the municipality;
 - (2) the adoption of a municipal ordinance;
 - (3) the vote of a town council;
 - (4) the signing of a written instrument by the proper authorities;
 - (5) the execution of an official map by a city showing the street offered to be dedicated as such; or
 - (6) an act of the legislature incorporating a town, or adopting a map showing its limits.

23 Am.Jur.2d *Dedication*, Section 25 (2003).

- vi) The Final Order should reflect that there was no formal acceptance as required to complete the dedication.
- b) *"The deed has no limiting language." (Final Order, p. 3).*
- i) This is incorrect. The deed requires written acceptance and joining of the grantee: (Briefed in Plaintiff's Proposed Order at p. 55). The deed states:
- Any such assignment or transfer shall be made by appropriate instrument in writing, in which the assignee or transferee shall join for the purpose of evidencing its consent to the acceptance of such rights and powers . . . and be subject to the same obligations and duties as are herein given and assumed by the grantor, and upon any such assignment the obligations of the grantor hereunder shall cease and end.
- ii) *"In dedicating land to the public the dedicator may impose such reasonable conditions, restrictions, and limitations as the dedicator may see fit. While the public has the right to refuse to accept what is thus offered, in order to vest the easement in the dedicatee, the terms of the dedication must be strictly complied with." (Emphasis added). Corpus Juris Secundum Dedication, § 31 at p. 318.*
- c) *"The streets in the 1920 plat had already been conveyed." (Final Order, p. 4).*
- i) First, per Plaintiff's Equitable Estoppel cause of action, the City is estopped to assert that it accepted the roadway. (Briefed in Plaintiff's Proposed Order at pp. 46 - 51).
- ii) Second, the streets had not already been conveyed, because dedication requires both an offer of dedication and an acceptance. There is no evidence of acceptance prior to the foreclosure. Recording a deed of dedication does not constitute acceptance. See 23 Am.Jur.2d Dedication, Section 25 (2003). The authority cited in the Final Order is improperly cited and appears to pertain to an ordinary deed, not a deed of dedication.
- iii) Ms. Sullivan testified that the subject portion of the roadway had not already been conveyed. The Master's Deed conveyed all property foreclosed. At the time of foreclosure, the roadway was

still encumbered with the mortgage, ultimately foreclosed in 1942, and transferred to Seabrook the elder in 1943. There was never a release of the mortgage. (Briefed at pp. 71 - 73) (Tr. p. 52, one 25 - p. 53, line 7).

d) "To hold that the deed was subject to the foreclosure action, with no evidence to support this, would mean that the estate of Edward Seabrook owns all of the streets on the entire Island of Folly Beach." (Final Order p. 4).

i) There is no evidence in the record regarding any street other than the subject portion of the roadway. This conclusion is not supported by any evidence. This conclusion should not appear in the Final Order.

ii) There is no evidence that the City of Folly Beach is estopped with regard to any other street.

e) "Acceptance of dedication may be shown by use of a comparatively small number of persons, as the case of a short street to the seashore.

The Defendant Brown and her husband relied on the plat when they purchased their property. They have used the Street to access their property almost continuously from January 30, 1986. Peter Demetre (son of Plaintiff) testified that he witnessed the Browns use the Street at least once a day since 2002. (Tr. p. 176, l. 3-5)." (Final Order p. 6).

i) "The use of land by an abutting landowner is insufficient to show public use." *Pitts v. Guinard*, 562 P.2d 231 (Utah 1977); *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952) ("No public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication evidenced either by general public use or by the acts of the public authorities"); *Walker v. Guinard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987) (finding no public dedication despite use by abutting landowner). (Briefed in Plaintiff's Proposed Order at p. 69).

ii) In the factually similar case of *De Nefe v. Agency City*, 143 Iowa 237, 121 N.W. 1049 (1909), the Supreme Court of Iowa stated:

The plaintiffs have been the owners of the abutting lands for more than twenty years, and it is proven that during said time there has been no public use of the strip in question, nor any necessity therefore, nor is there now any occasion for opening it as a street. There is but one house on the entire tract in

question, and that is owned by the plaintiff De Nefe . . . This does not show a grant to the public of the street in question and is insufficient to show a dedication thereof for public use.

- f) "While there appears to be no written acceptance of an official dedication, the testimony is un-contradicted that Folly Beach maintained the Street at some time, although admittedly intermittently, and cleared trees and brush from it after Hugo." (Emphasis added) (Final Order p. 6).
- i) Use must be continuous. Intermittent use is insufficient for acceptance. "Acceptance of an offer may be implied by the public authority's continuously utilizing or maintaining the property in some fashion" (emphasis added). *Vick v. South Carolina Department of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001). (Briefed in Plaintiff's Proposed Order at p. 66). The finding that the use was intermittent negates acceptance of dedication.
- ii) 23 Am.Jur.2d *Dedication* § 30 (2006) states:
To establish a dedication from use of the land by the public: . . . 4. the use must be continuous and substantial, not casual or intermittent . . . (Emphasis added).
- g) "It is also admitted that members of the public use the Street for parking." (Final Order p. 6).
- i) There is no evidence in the record of an admission by Plaintiff that the subject portion of the roadway is used for public parking. Nothing in the record supports this finding.
- ii) The only evidence of continuous use of the street for parking is by abutting landowners. The use of land by an abutting landowner is insufficient to show public use. *Pitts v. Roberts*, 562 P.2d 231 (Utah 1977); *Walker v. Guinard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987) (finding no public dedication despite use by an abutting landowner); *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952) ("No public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication evidenced either by general public use or by the acts of the public authorities").
- iii) The evidence at trial was that the subject portion of the roadway was dirt, narrow, and a single lane with extensive vegetation and the appearance of a private drive. The road's width was insufficient for turning around if any cars were parked, which

required the Browns to back into the road. Peter Demetre testified:

There's only room for one car. There's no way to turn around. There's no turn around. So she either has to - either coming in or going, one way you've got to back out. You can't turn around. So you either have to back out going in, or back out going out.

(Tr. p. 162).

h) *"The public parks on the street, walks their dogs, and joggers use it."* (Final Order p. 6).

i) The parking issue is addressed above. Recreational use is insufficient for acceptance of dedication. *Mack v. Evans*, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995). (Briefed in Plaintiff's Proposed Order at pp. 67 - 68). *Mack* indicates that recreational use is neither sufficient for an offer of dedication or acceptance of dedication:

At trial, several witnesses testified that the dirt road has historically been used by the public for various purposes, including: to deliver mail; to travel to the saw mill and flour mill; to swim, fish, and attend baptismal services and school parties at a pond near Mack's; to erect and maintain public utilities; and, to have emergency access to Mack's property. The court determined the public's use of the roadway was basically recreational and religious, and concluded Mack had failed to establish an implied public dedication . . . Considering these principles, the trial judge correctly held the evidence insufficient to prove an implied dedication of the road. The record supports his conclusion that historical use of the road by the public was basically recreational and religious. Additionally, the evidence of public acceptance of the road is insufficient.

i) *"Wallace Benson, in his testimony, stated that the pavement extended all the way down the street."* (Final Order p. 6).

(1) There is overwhelming evidence that the street was never paved. (Briefed in Plaintiff's Proposed Order at pp. 60 - 65). (Tr. p. 13, lines 3 - 11, 16 - 17, 21 - 24; p. 14, lines 17 - 19; p. 14, line 22 - p. 15, line 6; p. 15, , lines 11 - 24; p. 20, line 11 - p. 21, line 3; p. 21, lines 9 - 13; p. 21, line 16 - p. 22, line

7; p. 22, line 16 - 22; p. 97, line 25 - p. 99, line 4; p. 115, line 12 - 23; p. 126, line 20 - p. 127, line 23; p. 185, line 23 - p. 187, line 22).

(2) Mr. Benson did not testify that the pavement extends all the way down the street. (Briefed in Plaintiff's Proposed Order at p. 58):

(a) Mr. Benson testified:

Q. And do you know how far the pavement extends beyond the intersection with Second Street East?

A. Right along in here, around 203, 202 and 203, right along in there. (Emphasis added).

(Tr. p. 222, line 24 - p. 223 line 2).

(b) Likewise, Ms. Brown did not know how far she claimed the pavement went. (Briefed in Plaintiff's Proposed Order at p. 58). She testified:

Q And how far do you say the pavement goes?

A I don't know exactly. But on down into this area where it narrows, before right here. I don't know exactly (emphasis added).

(Tr. p. 203, lines 3 - 6).

(c) Proof of dedication requires strict, cogent, and convincing evidence. *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997). Mr. Benson's testimony is uncertain as to whether he alleges that the "parts of old pavement" extend to lot 203 or just lot 202. There is no evidence that Mr. Benson testified that the pavement "extends all the way down the street."

(3) Mr. Benson did not testify that the subject part of the roadway was paved by the City of Folly Beach. If the street was paved, there is no evidence in the record that the City of Folly Beach or any public authority paved the street.

(a) First, Mr. Benson did not testify that Folly Beach paved the road, only that it filled potholes with dirt: (Briefed in Plaintiff's Proposed Order at p. 58):

ANSWER: "We basically then just dumped dirt in the potholes that kept popping up down there, where people were driving on it when it rained. (Emphasis added). Because the

pavement started deteriorating. (Tr. p. 223, lines 19 - 22).

* * * *

QUESTION: "Do you have any personal knowledge of what improvements for that part of the roadway were made by Mr. Seabrook?"

ANSWER: No.

(Tr. p. 224, lines 6 - 9).

(b) There is no evidence in the record that Folly Beach paved the subject portion of the roadway.

j) *"He further testified that Folly Beach filled the potholes in the Street when he was public safety director from 1976 to 1981. The City also put dirt in where the pavement had deteriorated. I find Mr. Benson especially knowledgeable and credible on this issue." (Final Order pp. 6 - 7).*

- i) Mr. Benson did not testify that potholes were filled on the disputed portion of the roadway. Proof of acceptance of dedication requires clear, cogent, convincing evidence. *Tupper v. Dorchester County*, 326 S.C. 318 , 498 S.E.2d 1987 (1997). Sporadic maintenance is insufficient for acceptance. Moreover, due to equitable estoppel, the City is estopped to assert acceptance. (Briefed in Plaintiff's Proposed Order at p. 46 - 51).
- ii) There is no acceptance by isolated acts of repairs to a street. *CJS Dedication*, § 45 at p. 338 (2003).
- iii) In the present case, the Plaintiff subpoenaed the City's road maintenance records, and the City did not have any. (Tr. p. 92, lines 8 - 12).

k) *"There is no evidence in the record that Mr. Edward Seabrook, elder or son, or any of their predecessors in title, objected to the City's improvement of the Street." (Final Order p. 7).*

- i) First, there is no evidence that the City paved the street.
- ii) There is overwhelming evidence that the street was not paved. If the street was paved, there is no evidence in the record of who paved the street. Evidence of acceptance by acts must be clear, cogent, and convincing. *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997). (Briefed in Plaintiff's Proposed

- Order at p. 58); (Tr. p. 198, lines 5 - 8; p. 223, lines 19 - 22; p. 224, lines 6 - 9).
- iii) There is no evidence that Seabrook, the elder or the son, knew about any improvements to the street.
- l) "The City or some governmental entity paved the Street, maintained it, and removed trees after Hugo." (Final Order, p. 7).
 - i) If the street was paved, there is no evidence of who paved it.
 - ii) There is no evidence that the City ever continuously maintained the street.
 - iii) The isolated act of removal of trees after Hugo was insufficient. See *Vick v. South Carolina Department of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001).
 - iv) Likewise, the sporadic acts of occasional mosquito spraying and filling potholes with dirt are insufficient. There must be continuous utilization. See *Vick v. South Carolina Department of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001). See Also *Tupper v. Dorchester County*, 326 S.C. 318, 498 S.E.2d 1987 (1997); *Mack v. Evans*, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995).
- m) "It is used by the public both for parking and walking." (Final Order p. 7).
 - i) Use by abutting property owners is not evidence of public use. "The use of land by an abutting landowner is insufficient to show public use." *Pitts v. Guinard*, 562 P.2d 231 (Utah 1977); *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952) ("No public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication evidenced either by general public use or by the acts of the public authorities"); See also *Walker v. Guinard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987) (no public use found despite use by abutting landowner). (Briefed in Plaintiff's Proposed Order at p. 69).
 - ii) Walking is a recreational activity. Recreational activities are not sufficient to show acceptance of dedication. *Mack v. Evans*, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995). (Briefed in Plaintiff's Proposed Order at pp. 67 - 68).

- n) "Additionally, at least two members of the public have used it continuously to access their property with their automobiles, trucks, and vans on a daily basis for over twenty-one years." (Final Order p. 7).
 - i) Use by adjoining landowners is not evidence of public use. *Pitts v. Roberts*, 562 P.2d 231 (Utah 1977); See also *Walker v. Guinard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987) (finding no public dedication despite use by an abutting landowner). (Briefed in Plaintiff's Proposed Order at p. 69).
 - ii) The nature of the abutting landowner's use is inconsistent with public use, because they back in and park in the street. (Briefed at p.

- o) "I find that the Street was deeded to the Board of Township Commission of Folly Beach by deed dated and recorded May 24, 1937 in Book S037 at Page 124 in the RMC Office for Charleston County; and furthermore dedicated by plat and accepted by use." (Final Order p. 7).
 - i) There was never any acceptance of the 1937 dedication.
 - ii) First, the City is estopped to assert acceptance because it induced Plaintiff to purchase the roadway from Edward Seabrook. (Briefed in Plaintiff's Proposed Order at pages 46 - 51).
 - iii) Second, merely recording a deed of dedication does not constitute acceptance. See 23 Am.Jur.2d *Dedication*, Section 25 (2003).
 - iv) Third, the grantor's limitations and restrictions were not met because there was no written acceptance in which the City joined. *Corpus Juris Secundum Dedication*, § 31 at p. 318.
 - v) Fourth, there is no evidence that potholes were filled in the disputed portion of the roadway.
 - vi) Fifth, intermittent use is not acceptance.
 - vii) Sixth, there is overwhelming evidence that the subject portion of the road was not paved.
 - viii) Seventh, there is no evidence that any public authority paved the roadway.

- 11) There is no finding in the Final Order and one should be made consistent with the stipulation of the parties that the Plaintiff is record title holder of the disputed property. (Briefed in Plaintiff's Proposed Order at p. 5). (Tr. p. 6, lines 4 - 6).

- 12) A finding should be made in the Final Order that all exhibits were admitted without objection. (Briefed in Plaintiff's Proposed Order at p. 7).
- 13) A finding should be made in the Final Order that Plaintiff is the owner of the highland marsh to the mean high water mark. (Briefed in Plaintiff's Proposed Order at p. 23 - 24).
- 14) A conclusion should be made in the Final Order that the Dock Defendants' claim that that East Indian Avenue is a public road fails based on their admissions. (Briefed at p. 52).
- 15) A finding should be made in the Final Order that Plaintiff has record title based on the chains of title in the record and the testimony of Lynda J. Sullivan, Esquire. (Briefed at pp. 84 - 88).
- 16) A finding should be made in the Final Order that there are restrictions in Brown's chain of title reserving the subject roadway to the grantor. (Briefed at pp. 89 - 90).
- 17) A finding should be made in the Final Order regarding the chains of title to the Beckmann Lot 209 and the Crowley Lot 210, including that the dimensions of each of those two lots is 150 feet by 70 feet. (Briefed at pp. 90 - 91).
- 18) The case caption should be corrected. The two cases were consolidated under Civil Action No. 2002-CP-10-4880.

Plaintiff Requests Rulings on Each Issue of Fact and Law Raised in
Plaintiff's Proposed Order with Findings and Conclusions as Set Forth Therein

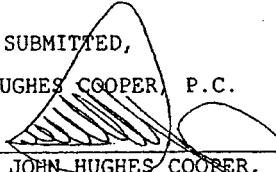
- 19) The Final Order's failure to rule on Plaintiff's Equitable Estoppel cause of action against the City of Folly Beach and the Plaintiff's causes of action against the Dock Defendants denies Plaintiff due process and equal protection under the South Carolina Constitution and the United States Constitution.
- 20) Plaintiff incorporates herein by reference and requests rulings on all issues of law and fact raised in Plaintiff's Proposed Order (Exhibit A) with findings and conclusions made as set forth in Plaintiff's Proposed Order.

WHEREFORE, Plaintiff respectfully moves to alter or amend the judgment consistent with Plaintiff's Proposed Order (Exhibit A).

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:


JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

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ATTORNEYS FOR PLAINTIFF,
THE MILTON P. DEMETRE FAMILY
LIMITED PARTNERSHIP

Sullivan's Island, South Carolina

March 23, 2007

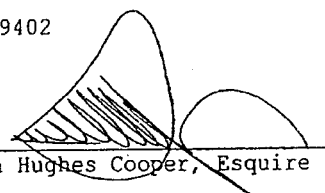
C E R T I F I C A T E O F S E R V I C E

I hereby certify that on March 23, 2007, I served the foregoing Plaintiffs' Rule 59(e) Motion to Alter or Amend the Judgment via first class U.S. mail with sufficient postage affixed to counsel for all appearing defendants:

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Law Offices of C.C. Harness, III, P.C.
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Charleston, SC 29402


John Hughes Cooper, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRUIT
Civil Action No. 2002-CP-10-4880

The Milton P. Demetre)
Family Limited Partnership,)
Plaintiff,)

vs.)

Civil Action No. 2005-CP-10-4101

Harry Beckmann, III,)
Patricia P. Beckmann,)
Annie Ruth Hilton Crowley,)
Raymond Moody Crowley,)
Donald William Crowley,)
Harris L. Crowley, Jr., and)
Annie Ruth Crowley Atkinson,)
Defendants.)

PLAINTIFF'S RULE 59(e)
MOTION TO ALTER OR AMEND
THE FINAL DECISION AND ORDER
FILED MARCH 26, 2007

The Milton P. Demetre)
Family Limited Partnership,)
Plaintiff,)

vs.)

Civil Action No. 2002-CP-10-4880

City of Folly Beach,)
Defendant,)

and)

Emily S. Brown,)
Annie Ruth Hilton Crowley,)
Harry Beckmann, III, and)
Patricia P. Beckmann,)
Intervenors.)

FILED
2007 APR 19 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW Plaintiff Milton P. Demetre Family Limited Partnership and moves to alter or amend the Final Order in this case filed March 26, 2006. Plaintiff's counsel received written notice of the Order on April 9, 2007, when the office of Plaintiff's former counsel, Newman Jackson Smith of Nelson Mullins Riley & Scarborough, LLC, faxed Notice of Entry of that Order to Plaintiff's below-signed counsel.¹

¹ A consent order for substitution of Plaintiff's below-signed counsel for Plaintiff's former counsel, Newman Jackson Smith, Esquire, was issued on October 27, 2006, and filed November 1, 2006.

Plaintiff Requests Rulings on All
Issues of Law and Fact Raised in Plaintiff's Proposed Order

- 1) Plaintiff's Proposed Order is attached as Exhibit A and incorporated herein by reference. It was served on the Court and counsel for all parties by mail on February 20, 2007 (Exhibit B) and by e-mail on the same date (Exhibit C). Plaintiff requests rulings on all issues of fact and law raised in Plaintiff's Proposed Order with findings of fact and conclusions of law as set forth in Plaintiff's Proposed Order.
- 2) Plaintiff's Motion to Alter or Amend the Final Order filed March 7, 2007, which Plaintiff filed with the court on March 23, 2007, is also incorporated herein by reference. To the extent that the Final Decision and Order Filed March 26, 2007 references and relies on the Final Order filed March 7, 2007, Plaintiff requests rulings on all issues of law and fact raised in Plaintiff's Motion to Alter or Amend the Final Order filed March 7, 2007, and in Plaintiff's Proposed Order (Exhibit A) with findings of fact and conclusion of law as set forth in Plaintiff's Proposed Order (Exhibit A).
- 3) Plaintiff' Motion for Summary Judgment filed December 1, 2006, is also incorporated herein by reference.
- 4) The term "Dock Defendants" herein refers to Harry Beckmann, III, Patricia P. Beckmann, Annie Ruth Hilton Crowley, Raymond Moody Crowley, Donald William Crowley, Harris L. Crowley, Jr. and Annie Ruth Crowley Atkinson. When discussing the time period involving the dock permit applications, the term "Dock Defendants" refers to Harry Beckmann, III, Patricia P. Beckmann, Harris L. Crowley, and Annie Ruth Hilton Crowley.

The Conclusions in the
Final Order Filed March 26, 2007

In this Motion, the conclusions of the Final Order filed March 26, 2007 ("Final Order") are addressed in the following sequence: the third conclusion (jurisdiction), the first conclusion (timeliness), the second conclusion (title to the roadway), and the fourth conclusion (dock permits).

Final Order's Third Conclusion

The Final Order's third conclusion states:

3. *That this court does not have the proper parties before it to determine title to the marshlands. (Order p. 19).*

1) The Final Order should conclude that the proper parties are before the court to determine that the Dock Defendants' docks cross highland marsh owned by the Plaintiff which is between the Dock Defendants' respective property lines and the lowland marsh. The court need not decide the exact boundary of the lowland marsh and highland marsh to determine that the Dock Defendants' docks cross highland marsh.

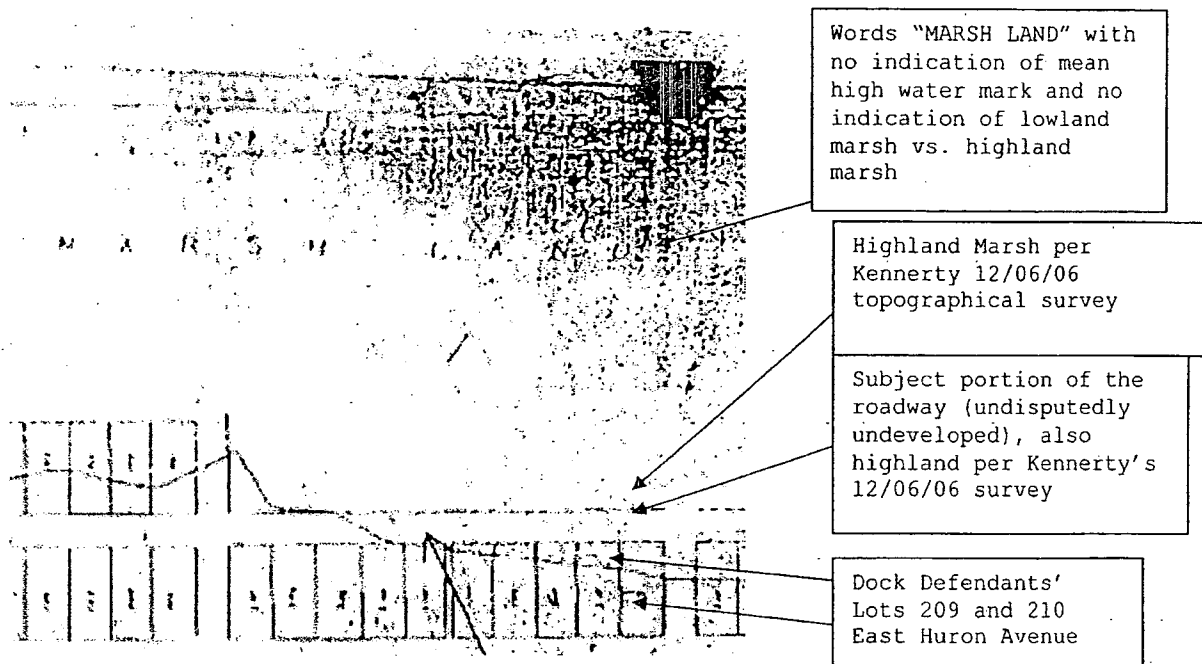
2) The court's conclusion that it lacks jurisdiction relies exclusively on the 1920 plat:

As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland. Therefore, I conclude that any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina to challenge its presumptive title to the marsh which can only be overcome by evidence which is clear and convincing. Coburg v. Lesser (I), 309 SC 252, 422 S.E.2d 96 (1992). (Final Order, p. 18).

3) *Coburg* concerned lowland marsh, not highland marsh. *Coburg II* specifies:

1. Land lying between the usual high water mark and the usual low water mark on a tidal navigable watercourse enjoys a unique status since it is held by the State in trust for public purposes. *Coburg Dairy, Inc. v. Lesser*, 318 S.C. 510, 458 S.E.2d 547 (1995).

4) The 1920 plat does not indicate what portion is lowland marsh versus highland marsh. This is a close-up of the words "MARSH LAND" on the 1920 Plat (Trial Exhibit K) in relation to the 200 block of East Indian Avenue:



- 5) The 1920 plat does not indicate the mean high water mark. It does not show any of the subject property in this action as below the mean high water mark. There is no evidence in the record that the mean high water mark encompasses the property in dispute in this case.
- 6) The court acknowledged on the record at the beginning of trial that this case was just about highland marsh:

COURT: On behalf of the Beckmanns and the Crowleys. All right.
And I saw Ms. Lesley Riley out there. And let me just ask my first question, which I've got. And that is why is DHEC, OCRM, not a party? I need to make a record about that.

Mr. Cooper, Mr. Denny, you all want to tell me about that?

MR. DENNY: Your Honor, we have an action in the Complaint to attempt to void the permits. But they're not a party, and we don't think that we can go forward on that action. The rest of it is just a property dispute.

COURT: Okay. All right.

So the way I interpret that is that you are not fighting over the ownership of the marshlands, or any of the property below the mean high water mark, is that correct?

MR. DENNY: That's right, your Honor. We're no - the case is exclusively about the property above the mean high water mark.

COURT: Okay. All right.

(Tr. p. 3, line 24 - p. 4, line 20) (emphasis added).

COURT: Very good. Okay.
All right. The Stipulations are in.

I stated to the attorneys in chambers, and I think I would just state this for the record. And for those of you who are here, as I see the case, the issue, and I raised that issue with Ms. Riley earlier on, she is with the South Carolina DHEC/OCRM, is a question of title to high land to which the Plaintiffs claim is between the Defendants lots and the marsh.

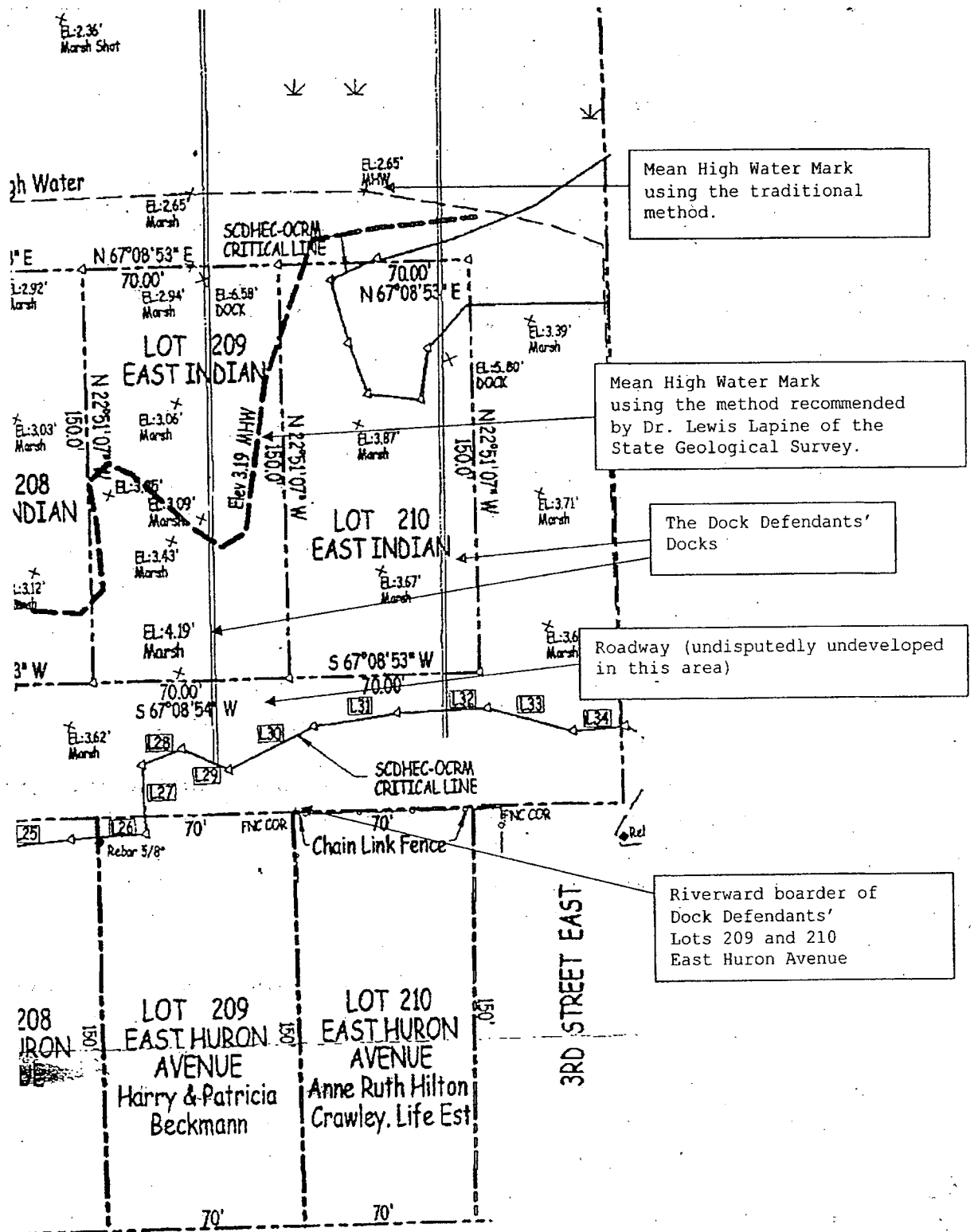
And the question is quieting title to that high land, and significantly not to the marsh - not the low land, probably below the mean high water mark and the existence of the docks, which are the Defendants docks, which exist over that.

So that is what we are here to determine, is who has got title to that high land between what's marked as Plaintiff's lots, and that which exist in the marsh between there and the marsh. That's as I see it. Okay.

With that question, then, Mr. Cooper you may start your case.

(Tr. p. 8, lines 1 - 24). (Emphasis added).

- 7) Rule 19, SCRCivP, required the court to order that the State be joined if the court deemed that joining the State was necessary to accord relief to the parties to this action or to protect the State's interests. *Coburg v. Lesser*, 309 S.C. 252, 422 S.E.2d 96 (1992). The fact that the court did not order that the State be joined at any point in the trial is inconsistent with a finding now that the State must be joined to determine this action.
- 8) Prior to trial, all parties stipulated that Plaintiff was the record title holder of the subject disputed property. (Tr. p. 6, lines 4 - 6).
- 9) Plaintiff entered its chain of title to the subject highland property into the record without objection. (Plaintiff's Exhibit D).
- 10) Lynda J. Sullivan, Esquire, testified to abstracting Plaintiff's chain of title and testified that Plaintiff had record title. (Tr. p. 42, line 17 - p. 91, line 19).
- 11) Surveyor Larry Kennerty was qualified as an expert witness in surveying and testified to the location of the mean high water mark. He first calculated the mean high water mark using a traditional method. He then calculated it using a method recommended by Dr. Lewis Lapine of the State Geological Survey. Regardless of the method used, there is highland between the Dock Defendants' property and the lowland marsh. (Tr. p. 8, line 23 - p. 42, line 14).
- 12) On the following page is a close-up from Trial Exhibit N, Mr. Kennerty's topographic survey of the subject property, which is in evidence without objection:



- 13) The top of this view of Mr. Kennedy's survey is toward the Folly River. The upper two lots with the heavy dotted line running through them are Lots 209 and 210 East Indian Avenue. The heavy dotted line is the mean high water mark determined using the method suggested by Dr. Lewis Lapine of the State Geological Survey. It runs through the middle of Lot 209 East Indian and through the corner and then above Lot 210 East Indian.
- 14) Even further riverward is a light dotted-line showing the mean high water mark determined by the traditional method of calculation. This line runs almost horizontally above Lots 209 and 210 East Indian Avenue.
- 15) Substantially below both of these mean high water mark lines are the northernmost boundaries of the Dock Defendant's lots, 209 and 210 East Huron Avenue.
- 16) Between Lots 209 and 210 East Indian and Lots 209 and 210 East Huron is the subject roadway, which is undisputedly undeveloped in this area.²
- 17) Regardless of which method of calculation is used, the mean high water mark is substantially riverward of the Dock Defendant's lots, Lots 209 and 210 East Huron Avenue. (Trial Exhibit K). The docks cross highland and then highland marsh between 209 and 210 East Huron and the Folly River. (Trial Exhibit K).
- 18) There is no evidence in the record to support a finding that the designation "marsh land" on the 1920 plat equates to "lowland marsh" with regard to the property in dispute in this matter. While there is certainly lowland marsh on portions of the 1920 plat, there is nothing on that plat to indicate that there is lowland marsh in the area at issue in this case.

² The Final Order filed March 7, 2007, states in part: The street is open for approximately two hundred eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into wooded area.

19) There is no evidence in the record contradicting Mr. Kennerty's testimony regarding the location of the mean high water mark. Mr. Kennerty testified:

- Q Mr. Kennerty, looking at Plaintiff's Exhibit N which you have before you, it does show the mean high water line with a small dotted line, which you calculated, originally, is that correct?
- A Yes, sir.
- Q And it also shows what you consider to be a more accurate mean high water calculation, shown by the heavy dotted line, is that right?
- A Yes, sir.
- Q And regardless of which calculation you use, there is, is there not, high marshland between Lots 209 and 210 East Huron, and the mean high water mark?
- A That's correct.
- Q And so regardless of which way you calculate this, there is still high ground out there?
- A Yes, sir.
- Q And the docks put out there by the Beckmanns and Crowleys do cross that high land area?
- A Yes, sir.

(Tr. p. 38, line 11 - p. 39, line 4).

20) Additionally, the dock permit applications submitted by the Dock Defendants showed almost 400 feet of highland beyond their property lines toward the Folly River. This is the applicable portion of Trial Exhibit E (Briefed in Plaintiff's Proposed Order at pp. 20 - 23).

23) Because the 1920 plat does not show the location of the mean high water mark, the conclusion that the State has presumptive title equates to an error of law that the State holds presumptive title to marshland both *below and above* the mean high water mark. This conclusion is against well settled South Carolina law. *McQueen v. S.C. Coastal Council*, 354 S.C. 142, 580 S.E.2d 142 (2003); *State v. Hardee*, 259 S.C. 535, 193 S.E.2d 497 (1972); *State v. Pacific Guano Co.*, 22 S.C. 50 (1884).

Court's First Conclusion

The Court's first conclusion states:

1. That all Claims of the Plaintiff are dismissed for failure to pursue such causes of action in a timely manner. (Order p. 19).

- 1) This conclusion is an error of law. The Final Order should conclude that Plaintiff's causes of action are timely and that Plaintiff is entitled to relief on each of its causes of action, which are the following (Briefed in Plaintiff's Proposed Order at pp. 8 - 44):
 - a) Declaratory Judgment Action to declare that the Plaintiff owns the highland marsh property in fee simple and that the docks were wrongly constructed on Plaintiff's property;
 - b) Action to Quiet Title;
 - c) Trespass;
 - d) Nuisance; and
 - e) Injunctive Relief against the Dock Defendants.

Nuisance, Trespass, Injunctive Relief

- 1) The court found that the statute of limitations has run for Plaintiff's causes of action for Nuisance and Trespass. The statute of limitations for these causes of action applies only to actions for monetary damages. Here, Plaintiff did not seek monetary damages, only injunctive relief. There is no statute of limitations for Nuisance and Trespass with regard to actions for injunctive relief. Statutes of limitations do not bar the equitable relief of injunction. *Richland County v. Keiser*, 351 S.C. 89, 95, 567 S.E.2d 260, 263 (Ct. App. 2002). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13).
- 2) Even where a statute of limitations bars a nuisance action for damages, it is not a defense in an action based upon nuisance for injunctive relief since such statutes do not bar the equitable relief of injunction. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001). Continuous trespass will be

enjoined by a court of equity. *Gunter's Island Hunting Club v. Hucks*, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13).

Declaratory Judgment Action, Action to Quiet Title .

- 1) The court ruled that all of Plaintiff's causes of action are dismissed for failure to pursue such causes of action in a timely manner. However, the court did not rule on the Dock Defendant's adverse possession claim. Adverse possession is essentially a statute of limitations for an action to quiet title. Since the court did not find that the Dock Defendants have adverse possession, the Plaintiff's action to quiet title cannot be time-barred by the statute of limitations.
- 2) The adverse possession clock starts only when all elements of adverse possession are met. There should be a conclusion in the Final Order that the Dock Defendants lacked the requisite element of hostility. (Briefed in Plaintiff's Proposed Order at pages 8 - 15). To invoke adverse possession, the possession must be adverse and not permissive. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). Possession without hostility affords no basis for title by adverse possession however long continued, or exclusive in character. 2 C.J.S. Adverse Possession § 64. Thus, as in the present case, a possession is not adverse where it is under license or permission of the owner, or where it is in recognition of the title of another. *Id.*
- 3) To be hostile the possession must be with intent to claim and hold the land against the true owner and the whole world. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961); 2 C.J.S. Adverse Possession § 64. Here, the Dock Defendants believed that the State of South Carolina owned the subject highland marsh and, prior to this lawsuit, never claimed it. Mr. Beckman testified in his deposition, which is in the trial record:

Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?

A. That's correct.

Q. And that's still your understanding?

A. It is.

(Beckman Depo. p. 17, lines 10 - 17).

- 4) As a matter of law, the fact that the trial court did not make findings regarding the elements of adverse possession precludes a conclusion that the Plaintiff's Quiet Title action is time-barred.

Laches

- 1) Laches does not apply because the Dock Defendants suffered no prejudice by having use of the docks. Delay alone in the assertion of a right, without injury to the adversary, does not constitute laches. *Grossman v. Grassman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). The Final Order should contain a finding that the Dock Defendants' laches argument fails for lack of prejudice. (Briefed in Plaintiff's Proposed Order at p. 42).
- 2) Laches also does not apply because equitable defenses do not apply in a case where the only claim to title can be by adverse possession, because the adverse possession statute controls. The equitable defense of laches cannot be invoked in an action by the holders of legal title to recover land to which other claimants can base their claim only upon adverse possession. The rights of the parties are determinable under the time limitations prescribed by the statute. *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956). (Briefed in Plaintiff's Proposed Order at p. 43). The Final Order should contain a finding that the Dock Defendants may not gain title to real property where they could not do so by showing the required elements under the adverse possession statute.

Court's Second Conclusion

The Final Order's Second conclusion states:

2. That title to the road is confirmed in the Defendant City of Folly Beach. (Order p. 19).

Plaintiff's Motion to Alter or Amend The Final Order Filed March 7, 2007

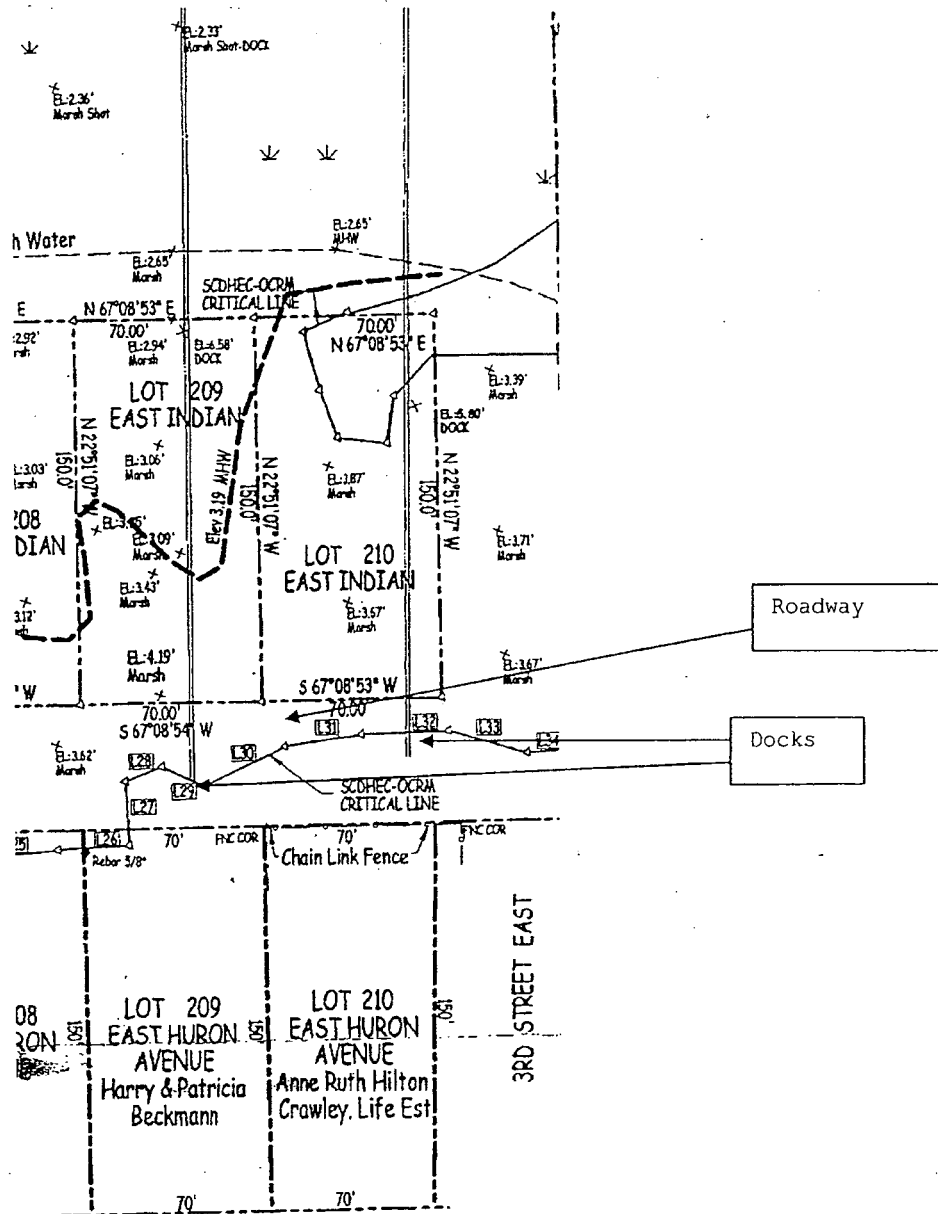
- 1) This is an error for the reasons set forth in Plaintiff's Motion to Alter or Amend the Final Order filed March 7, 2007, which is incorporated herein by reference, and for the reasons set forth in Plaintiff's Proposed Order (Exhibit A), which is also incorporated herein by reference. (Briefed in Plaintiff's Proposed Order at pp. 44 - 84).

The Subject Portion of the Roadway was Never Developed

- 1) Second, the evidence is undisputed that the portion of the roadway bordering Lots 209 and 210 East Indian Avenue was never developed.
- 2) There is no evidence of acceptance of dedication by the City of Folly Beach ("City") for this portion of the roadway.

Docks Cross the Roadway

- 1) Third, the Dock Defendants' docks cross the roadway, as shown on this portion of trial Exhibit N, which is in evidence without objection:



2) The Dock Defendants admitted that the subject roadway does not extend as far as their lots. Mr. Beckmann testified in his deposition:

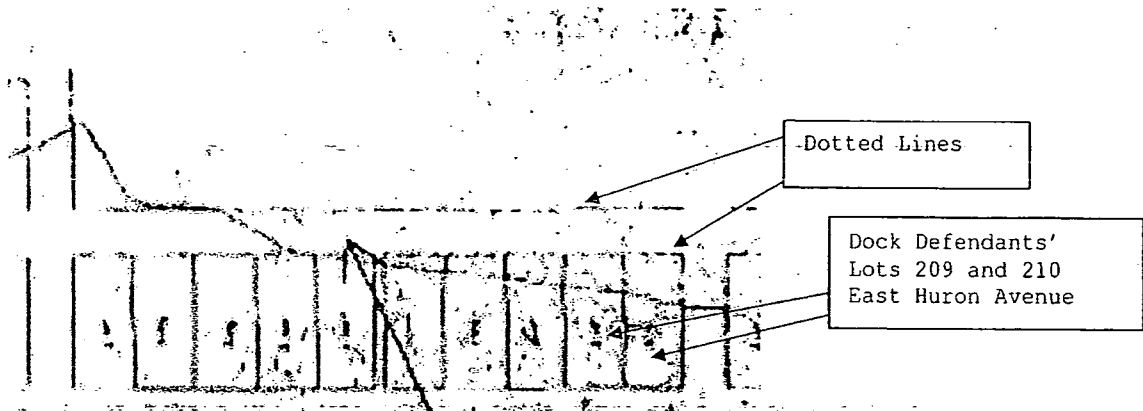
Q. Okay. And East Indian Avenue doesn't come down as far as your dock?

A. East Indian Avenue does not come down as far as my dock.

(Beckmann Depo. p. 22, lines 11 - 14).

3) There is no evidence in the record that the roadway was ever developed as far as lots 209 and 210 East Indian Avenue.

- 4) The roadway is not shown on the 1920 plat adjacent to the Dock Defendants' lots. Rather, there is only a dotted line in that area. This is a close-up view of the 200 Block of East Indian Avenue on Trial Exhibit K:



- 5) The City of Folly Beach admitted in its Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Trial Memorandum, p. 2:

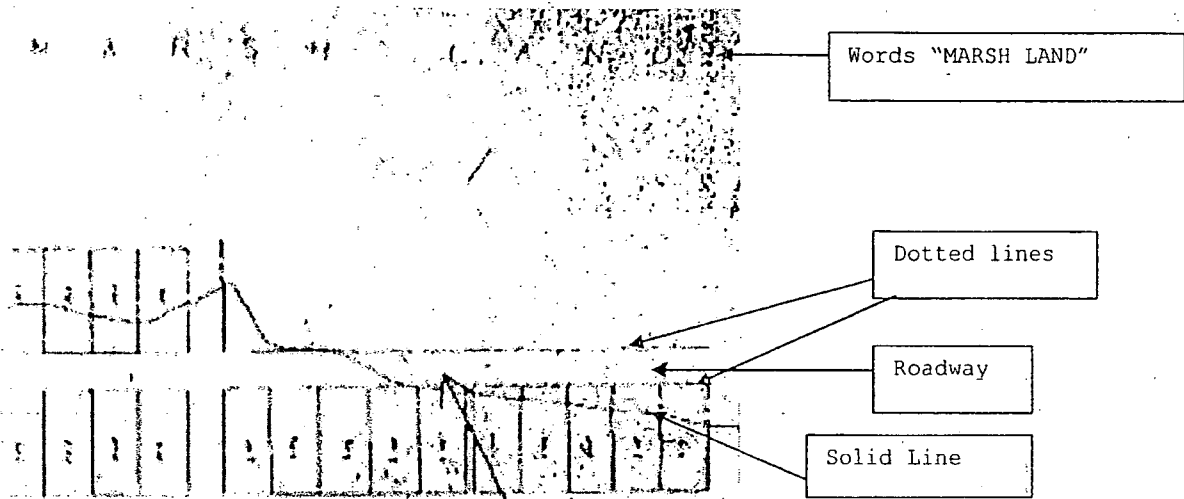
. . . Approximately two hundred and eighty feet (280') of the street in question from Second Street, proceeding east toward Third Street, is shown on the original plat.

- 6) The Order Filed March 7, 2007 states that the roadway disappears two hundred and eighty feet from the intersection of Second Street East and East Indian Avenue:

The Street is open for approximately two hundred and eighty feet from the intersection of Second Street East and East Indian Avenue. At that point, the Street disappears partly into the marsh and partly into the wooded area.
(Order Filed March 7, 2007, p. 5).

The Order Violates Plaintiff's Right to Equal Protection:
The Roadway is in the Same Area on the 1920 Plat

- 1) On the one hand, despite there being no evidence that the subject property is in lowland marsh, and erroneously equating highland marsh with lowland marsh, the Final Order concludes that the court does not have jurisdiction to determine title in the property Plaintiff claims because the subject property is in "marshland" based on the 1920 plat.
- 2) On the other hand, the court concludes that the City of Folly Beach has ownership of the roadway, which is in the same area on the 1920 plat:



- 3) In other words, the Final Order finds jurisdiction with regard to one party, the City, but not other parties, the Plaintiff and the Dock Defendants. This is error and violates the Plaintiff's right to equal protection under the South Carolina Constitution and the United States Constitution.

Violation of Equal Protection:
The Court Cannot have
Jurisdiction to Rule against Plaintiff but
Lack Jurisdiction to Rule for Plaintiff

- 1) Additionally, on one hand, the court concludes that it lacks jurisdiction to consider the claims of the Plaintiff, but, on the other hand, concludes that those claims are time barred. Thus, the court is saying it lacks jurisdiction to rule for the Plaintiff but has jurisdiction to rule against the Plaintiff. Aside from being logically inconsistent, this unequal treatment of the parties violates Plaintiff's right to equal protection under the South Carolina Constitution and the United States Constitution.

The Fourth Conclusion

The Final Order's Fourth Conclusion states:

4. The Plaintiff's challenge to the dock permits held by the Defendant is moot. (Order p. 19).

- 1) Plaintiff abandoned its challenge to the dock permits at the beginning of trial because the Office of Coastal Resource Management was not a party to this action and was a necessary party. Plaintiff is pursuing a challenge to the dock permits

as void in a federal action in the District Court for the District of South Carolina, Civil Action 02:06-3209-CWH. OCRM is a party to that action.

- 2) It is correct that the Plaintiff is not seeking to challenge the dock permits in this action, but it is error to state that the "challenge is moot."

Lack of Rulings Against Defendant's Defenses

There should be rulings in the Final Order for the Plaintiff on Plaintiff's arguments against the Dock Defendants' defenses, briefed at pages 8 - 45 of Plaintiff's Proposed Order. The Final Order should rule that the Dock Defendants' defenses fail for the following reasons:

- Adverse Possession (including Forty Year Statutory Presumption of Grant, Twenty Year Common Law Presumption of Grant, and Adverse Possession)
 - o The Dock Defendants lack the essential element of hostility. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). (Briefed at pp. 8 - 13).
 - o Harris Crowley's devise interrupted possession. *Catawba Indian Tribe of South Carolina*, 978 F.2d 1334 (4th Cir. 1992). (Briefed at pp. 13 - 15);
 - o Seabrook and Plaintiff paid the property taxes on the subject highland marsh. (Briefed at p. 15); and
 - o The rule in *Lowcountry Open Land Trust v. State and Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) required express consent of the owner. (Briefed at pp. 15 - 17).
- Equitable Estoppel
 - o Properly recorded title precludes equitable estoppel. *Brown v. Clemens*, 287 S.C. 328, 338 S.E.2d 338 (1985). (Briefed at pp. 18 - 20);
 - o Lack of belief in ownership precludes title by equitable estoppel. See *Southern Railway-Carolina Div. v. Horne Inv. Co.*, 233 S.C. 440, 105 S.E.2d 527 (1958). (Briefed at p. 20);
 - o The highland was shown on the dock applications. (Briefed at pp. 20 - 23);
 - o The dock defendants lacked reasonable diligence. *S. Dev. Land & Golf v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993). (Briefed at pp. 25 - 28);

- o There was no reasonable reliance on lack of objection because express consent was required from Seabrook. S.C. Code Ann. § 48-39-140(B). (Briefed at pp. 28 - 30);
- o Public notice was insufficient. See *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001) (Briefed at pp. 31 - 33);
- o Actual notice was required instead of constructive notice. *DurRant v. S.C. Dep't of Health & Env't. Control*, 361 S.C. 416, 423, 604 S.E.2d 704, 708 (Ct. App. 2004). (Briefed at pp. 33 - 34);
- o The requirements of service by publication were not met. S.C. Code Ann. § 15-9-720 (2006) (Briefed at pp. 35 - 36);
- o There was no evidence that Seabrook knew the docks were being built. See *Southern R.R. Co. v. Day*, 140 S.C. 388, 138 S.E.2d 870 (1926). (Briefed at pp. 36 - 41); and
- o There is no evidence of intent or gross negligence inducing reliance. See *Southern R.R. Co. v. Day*, 140 S.C. 388, 138 S.E.2d 870 (1926). (Briefed at p. 41).
- Equitable Compensation / Betterment claim
 - o These claims fail for lack of belief in ownership. *Shealy v. South Carolina Electric & Gas Co.*, 278 S.C. 132, 293 S.E.2d 306 (1982). (Briefed at p. 41);
- Waiver / Laches / Staleness
 - o There is no prejudice to the Dock Defendants. See *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). (Briefed at p. 42); and
 - o Laches and other equitable claims do not apply in an adverse possession case. See *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956). (Briefed at p. 43).
- Prescriptive Easement
 - o There is insufficient length of use to establish a prescriptive easement. (Briefed at p. 43).
- Unclean Hands
 - o An unclean hands defense is not applicable as a defense against the Plaintiff's causes of action under the facts of this case. (Briefed at pp. 44 - 45).

Further Errors

The following statements in the Final Order issued March 26, 2007, ("03/26/07 Final Order") are in error:

"Background"

* * * *

Deposition and live testimony have established that Defendants Beckmann and Crowley have considered as their own, all property behind their homes, down to the marsh. (Tr. pp. 272, 285-87, 294 - 95). (Order, p. 3).

- 1) First, these statements are clearly erroneous based on the Dock Defendants' own sworn testimony at trial and in deposition and the affidavits of ownership they submitted with their dock permit applications. (Briefed at pp. 8 - 21 of Plaintiff's Proposed Order).

Harry Beckmann's Trial Testimony

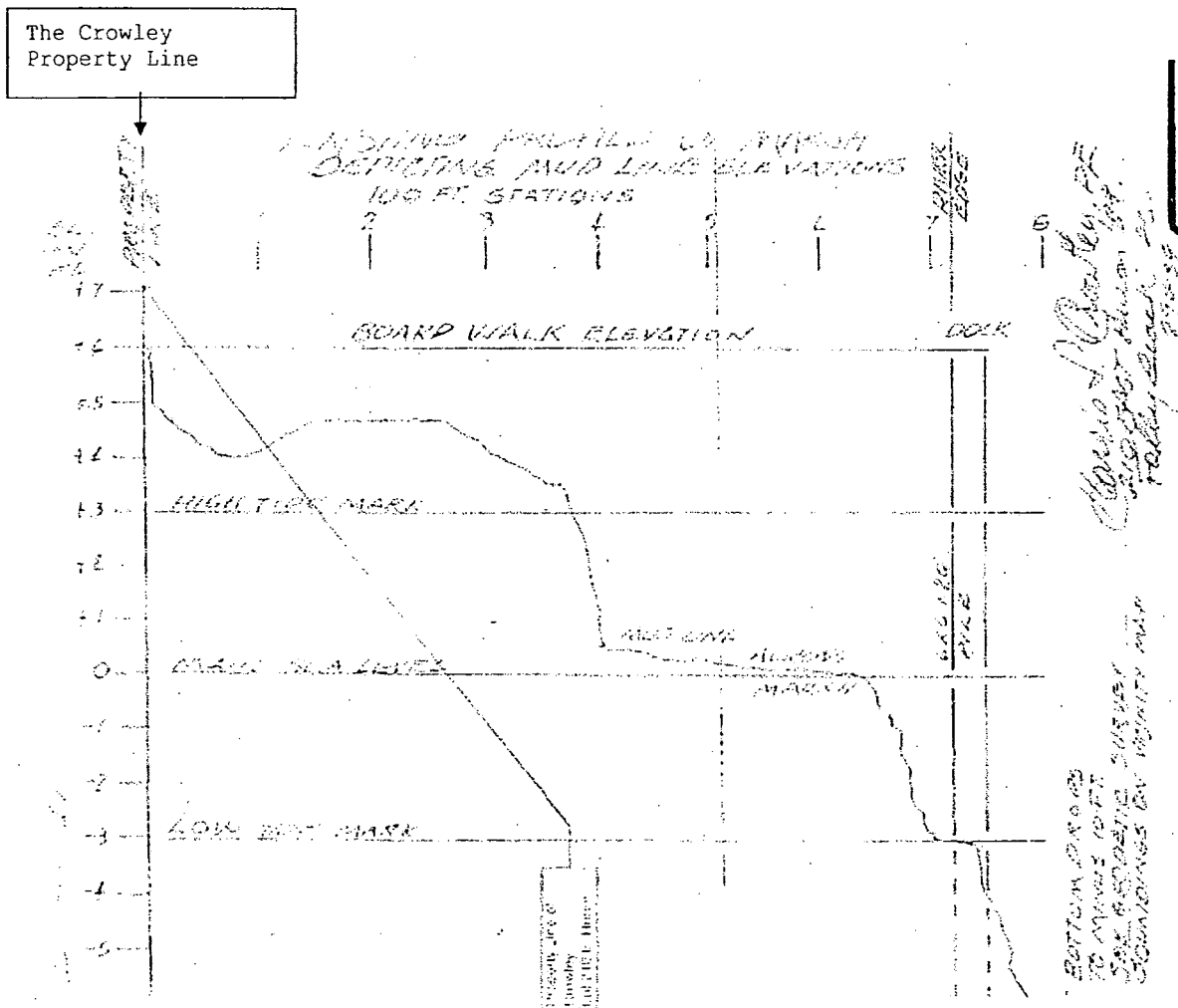
- Q Now, Mr. Beckmann, other than what you have already said, which is your assumption that everything from your property line out to the Folly River was owned by the State of South Carolina, do you have any information that this property above the mean high is owned by anybody different than the State of South Carolina?
- A Not up until the time that I received the paper work from Mr. Demetre claiming ownership. Is that what you just asked me?
- Q Yes.
- And so up until you got some paperwork from Mr. Demetre, you assumed everything from your property line on out toward the Folly River was belonging to the State of South Carolina?
- A I had maintained the property.
- Q But you assumed that it was owned by the State of South Carolina, and that you had a dock permit?
- A That is what I said in my deposition.
- Q Okay. And when you submitted your application to the South Carolina Coastal Council, and you certified what property that you owned or controlled, you gave a legal description. And the only thing you claimed to own on the property was within the bounds of your lot 209?
- A That's correct. That's true.

(Tr. p. 312, line 24 to p. 313, line 24) (Emphasis added).

Harry Beckmann's Deposition Testimony

- Q. Okay. And just to be clear about it, it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?
- A. That's correct.
- Q. And that's still your understanding?
- A. It is.

2) Third, the affidavits of ownership and control submitted by the Dock Defendants (which are almost identical) show exactly where they claim their property lines end:



3) Fourth, these findings negate adverse possession. The possession of land by an encroaching land owner beyond the true boundary under a mistaken belief regarding the location of the boundary is not hostile. *Lusk v. Callaham*, 287 S.C. 459, 339 S.E.2d 156 (Ct. App. 1986). Plaintiff is entitled to a ruling that the essential element of hostility is lacking in the Dock Defendants' adverse possession claim.

- 4) Fifth, the use of the property must be adverse and not permissive. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). Here, the use was clearly permissive, because the Dock Defendants obtained dock permits specifying that they owned only 150 feet from Huron Avenue East towards the Folly River. The Dock Defendants signed these documents. (Briefed at pp. 20 - 23). The Dock Defendants are estopped to assert that they claimed ownership of the subject highland marsh.
- 5) Sixth, there is no indication in the Final Order that a clear and convincing standard was applied to the Dock Defendants' adverse possession claims. Adverse possession must be shown by clear and convincing evidence. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). (Briefed at pp. 8 - 21 of Plaintiff's Proposed Order).
- 6) There should be a finding in the Final Order that the Dock Defendants' adverse possession claims fail for lack of the essential element of hostility. (Briefed at pp. 8 - 21).

. . . They hold the belief that all marshland is owned by the state, but that everything between their homes and the State's marshlands, is theirs." (Tr. p. 310). (Order p. 3).

- 1) First, this statement is clearly erroneous based on the page of the trial transcript cited by it (Page 310):

Q Okay. And just to be clear about it, it was your understanding when you submitted this permit application, that you owned the lot 209 East Huron, and the State of South Carolina owned from your property line out to the Folly River?

And the answer is: "That's correct."
(Tr. p. 310, lines 2 - 7). (Emphasis added).

- 2) Second, this finding negates adverse possession. The possession of land by an encroaching land owner beyond the true boundary under a mistaken belief regarding the location of the boundary is not hostile. *Lusk v. Callahan*, 287 S.C. 459, 339 S.E.2d 156 (Ct. App. 1986). Plaintiff is entitled to a conclusion that the Dock Defendants' adverse possession claim fails for lack of hostility.

Findings of Fact

1. . . . Mrs. Annie Crowley considered the entire property from the edge of Huron Avenue to the marsh of the Folly River, to be theirs alone.
2. . . . Mr. and Mrs. Beckmann have considered the entire property from the edge of Huron Avenue to the marsh of the Folly River, to be theirs alone.

3. *Both parties hold the belief that if they do not own the marshland, it is owned by the State, but that everything in between their homes and the State's marshland, is theirs.*

(Order p. 4).

- 1) These findings are clearly erroneous based on the admissions in sworn testimony of Annie Crowley and Harry Beckmann as well as the sworn statements in their dock permit applications. (Briefed in Plaintiff's Proposed Order at pp. 8 - 16).
- 2) There is no evidentiary support in the record for these findings.
- 3) These findings negate adverse possession. The possession of land by an encroaching land owner beyond the true boundary under a mistaken belief regarding the location of the boundary is not hostile. *Lusk v. Callaham*, 287 S.C. 459, 339 S.E.2d 156 (Ct. App. 1986). Plaintiff is entitled to a ruling that the Dock Defendants cannot show adverse possession because they lack hostility.
- 4) Either the parties believe that they own the marshland or they do not. They cannot both believe that the State owns the property and that they own the property. Adverse possession takes property from the true owner. Each element of adverse possession requires proof by clear and convincing evidence. There should be a conclusion in the Final Order that the Dock Defendants' adverse possession claim fails for lack of the essential element of hostility.

4. *Both parties have used such property for its available use, and with all intent to exclude other and the world as a whole, since the time of their purchase. This was demonstrated throughout their ownership by their occupation of the highland, collection of driftwood from the marsh and the high land, and maintenance and cleaning such areas as are impaired by debris and litter, throughout the year.*

(Order p. 4 - 5).

- 1) This finding is clear error. The Dock Defendants did not use the property with the intent to exclude the whole world, because, as demonstrated by their sworn testimony and clearly shown in their dock permit applications, they claimed only the property to their respective property lines 150 feet from Huron Avenue East toward the Folly River. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 1 - 10). (Trial Exhibit F).

- 2) Collection of driftwood is not an open, visible, or notorious use to prove adverse possession. Since this use is occasional and driftwood washes ashore only sporadically, the true owner would have no way to know that driftwood had been collected. The court's consideration of the Dock Defendants' collection of driftwood to prove adverse possession is an error of law.
- 3) Maintenance and cleaning of debris and litter is not an open, visible, notorious, or continuous use for adverse possession. Since this use is occasional and debris is sporadic and random, the true owner would have no notice that debris had been collected. The court's consideration of this evidence is with regard to the Dock Defendants' adverse possession claim is an error of law.
- 4) Intent to exclude is insufficient to meet the exclusion element of adverse possession. Exclusion is required. There is no evidence of exclusion in the record.
- 5) Possession is presumed to follow legal title to the land. The Dock Defendants stipulated that Plaintiff has legal title to the disputed property. (Tr. p. 6, lines 4 - 6).

5. . . . These docks were built immediately after these permits were built. (Order p. 5).

- 1) Finding of Fact 5 shows that the initial building period for the docks was immediate.
- 2) The Final Order should contain a finding that the only periods relevant to the Dock Defendants' estoppel by silence argument are the periods when the docks were being built. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 3) Once the docks were completed, there was no further basis for an estoppel by silence argument, because there was no action in reliance on silence. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 4) The Final Order should contain a finding that there is no evidence in the record that Plaintiff's predecessor in interest knew about the docks before they were completed. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).

5) The only evidence in the record regarding the length of time to build the docks is that one of the docks was built in approximately three months. Mr. Beckmann testified that he started his dock in March and finished enough of it by May to use it. (Tr. p. 283, line 22 - p. 284, line 1). (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).

6) As a matter of adverse possession law, three months, even for an open, continuous, and notorious use, is insufficient to give constructive notice to the true owner. Ten years is required. Here, there is no evidence that Plaintiff's predecessor had actual notice before the docks were completed. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).

6. . . . This litigation did not concern ownership of property, notice to adjacent property owners, or the merits of the permit application. See Harris Crowley v. S.C.C.C. CC-87-337 and Harry Beckmann v. S.C.C.C. CC-87-368. (Order, p. 5).

1) This is clear error of law and fact. The Dock Defendants were required to notice Seabrook as the property owner and as an adjacent landowner regarding the litigation. (Briefed in Plaintiff's Proposed Order at pp. 25 - 36). Failure to give Seabrook notice and an opportunity to be heard deprived the Coastal Council of jurisdiction and rendered the proceedings void.

7. Coastal Council was ordered by the Court to issue a permit for construction in 1990. The docks on the subject property were immediately rebuilt. (Order p. 5).

1) Finding of Fact 7 shows that the rebuilding period for the docks following the post Hurricane Hugo permits was immediate.

2) As discussed under Finding of Fact 5 above, the Final Order should contain a finding that the only periods relevant to the Dock Defendants' estoppel by silence arguments are the periods when the docks were being built.

3) Once the docks were completed, an estoppel by silence argument could no longer apply, because there could be no action in reliance on silence. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).

- 4) The Final Order should contain a finding that there is no evidence that the Plaintiff's predecessor in interest knew prior to the completion of the docks that they were being rebuilt. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).

8. *Milton P. Demetre on behalf of the Milton P. Demetre Family Limited Partnership ("Demetre L.P.") purchased property in this area of Folly Beach, beginning in 2002. (Tr. p. 120) Lot 209 and Lot 210 of East Indian Avenue were purchased in January 2004. (Tr. p. 120, Plaintiff's Exhibit D). (Order p. 5).*

- 1) The Dock Defendants stipulated that Plaintiff is the record title holder of the subject property. (Tr. p. 6, lines 4 - 6).
- 2) Plaintiff entered a complete chain of title into the record in conjunction with the testimony regarding title abstracting by Lynda Sullivan, Esquire.
- 3) There should be a conclusion in the Final Order that Plaintiff is the record title holder of the subject property.

9. *This suit was filed on October 7, 2005, more than 41 years after the Crowley purchase and more than 33 years after the Beckmann purchase. (Order p. 5).*

- 1) Considering these periods of time is clear error. The only relevant period with regard to adverse possession is the period in which all elements of adverse possession are met. The adverse possession clock never started in this case because the Dock Defendants never had the element of hostility. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).
- 2) The Dock Defendants' permissive use of the subject property from the State also precludes adverse possession. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).
- 3) The only relevant periods with regard to estoppel by silence are the periods in which the docks were being built. These were very short periods. The only evidence in record regarding how long it took to build the docks was that one of the docks was built in approximately three months. (Tr. p. 283, line 22 - p. 284, line 1). (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 4) These time periods do not support laches, because the Dock Defendants have suffered no prejudice by use of the docks. (Briefed in Plaintiff's Proposed Order at p. 42).

Land Trust v. Atkins, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). (Briefed in Plaintiff's Proposed Order at pp. 25 - 28).

- 2) The dock permit conditions to which the Dock Defendants agreed required that they not invade any property rights. (Plaintiff's Exhibits AA and BB) (Briefed in Plaintiff's Proposed Order at pp. 26 - 28).
- 3) The Dock Defendants built docks across Seabrook's property.
- 4) The duty was not Seabrook's to inform the Dock Defendants that they were building on his property. Rather, the duty was the Dock Defendants' not to build on Seabrook's property.
- 5) As a matter of law, the Dock Defendants were on constructive notice of Seabrook's properly recorded plat showing Indian Avenue lots 209 and 210. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006). (Briefed in Plaintiff's Proposed Order at p. 18).
- 6) As a matter of law, the Dock Defendants had constructive notice of these legally recorded lots and further had a duty to discover those lots before building. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006); S.C. Code Ann. § 48-39-140(B); S.C. Code Reg. Ann. R. 30-2; See *Lowcountry Open Land Trust v. Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). (Briefed in Plaintiff's Proposed Order at pp. 25 - 28). Excusing parties from doing a title search before building on highland unless there has been prior use of that land would be an unworkable system and is not the law.

Conclusions Regarding Trespass

Trespass is defined as voluntary entry by the defendant on to property in the legal possession of the plaintiff without permission. (Citations omitted). That allegation is not supported by the facts in evidence.

There was a voluntary entry by the Defendants onto property they considered to be their own. As it was their own property, no permission from an outside source was needed. (Order, p. 7).

- 1) While trespass is an action at law, Plaintiff did not seek damages and sought only injunctive relief. The character of an action as legal or equitable depends on the relief sought. *Ceder Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 628 S.E.2d

284 (Ct. App. 2006). Here, the relief sought is equitable and the trespass action sounds in equity. The Final Order should conclude that the character of Plaintiff's trespass action is equitable.

- 2) First, the Dock Defendants admitted that they believed the state owned this property. It is clear error to find that they believed they owned it themselves. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 1 - 10).
- 3) Second, assuming for the sake of argument that the Dock Defendants believed they owned the property, that would not preclude an action in trespass for injunctive relief to eject them. In a trespass action, intent pertains to whether the action of entry onto the land was done willingly, not whether one intended to trespass on the land of another. Neither deliberation, purpose, motive, nor malice are necessary elements of intent for trespass. *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2006). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13).

The Defendants had been treating the property as their own, using the property on their own, believed it to be [their] own and represented it to outsiders as their own. (Order, p. 7).

- 1) This is clearly erroneous based on the affidavits of ownership submitted by the Dock Defendants in applying for their docks permits and the sworn testimony of the Dock Defendants. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). Neither deliberation, purpose, motive, nor malice are necessary elements of intent for trespass. *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2006).
- 2) The Dock Defendants stipulated at trial that Plaintiff was the record title holder. (Tr. p. 6, lines 7 - 8).
- 3) The trespassers did not represent the property to outsiders as their own, as evidenced by their dock permit applications showing that their property lines ended 150 feet from Huron Avenue East. (Exhibits AA and BB). (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).

The intent to enter onto the property of another is not present herein. As such, no trespass is proven by the facts. (Order, p. 7).

- 1) This analysis is legally erroneous. In a trespass action, intent pertains to whether the action of entry onto the land was done willingly, not whether one intended to trespass on the land of another. Neither deliberation, purpose, motive, nor malice are necessary elements of intent for trespass. *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (Ct. App. 2006).

Conclusions Regarding Nuisance

The elements of this cause of action [nuisance] are not met. The Plaintiff could make no use of the marshlands, so there is no unreasonable interference.

The highland claimed to be owned by Demetre Family Limited Partnership, is not sufficiently sizeable or compliant with zoning regulations, to allow any other use of the land but passive. (Tr. p. 19). No house could be built on the land, no commercial use could be made of the property; and no dock could be built on it under current OCRM regulations, according to the testimony of surveyor Larry Kennerty (Tr. p. 19). (Order p. 8).

- 1) A nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his property. It is anything which hurts, inconveniences, or damages; anything which essentially interferes with the enjoyment of life or property. *O'Cain v. O'Cain*, 322 S.C. 551, 473 S.E.2d 551 (Ct. App. 1996). The subject docks unreasonably interfere with Plaintiff's rights of use, exclusion, and enjoyment of his property. It is clear error to find that the docks do not interfere with Plaintiff's property rights.

... Finally, the Defendant's actions are not the cause of the interference- Demetre L.P.'s decision to purchase property on which there were known docks built was the cause of the interference with his use and enjoyment, was what brought itself to the injury rather than an injury being brought to it. To be plain, the docks were there first, the Plaintiff came to purchase the property with knowledge of the docks; he brought himself to the interference. For these reasons, the lack of interference in any actual use or enjoyment, the requirements for nuisance are not met. (Order p. 8).

- 1) Plaintiff purchased the property the docks were on. Plaintiff has a right to have the docks removed from his property.

- 2) Under the doctrine that one is barred by coming to a nuisance, one may not be able to complain about moving next to a nuisance, but that is not the issue here. If one purchases a property on which another is interfering or trespassing, he may obtain an injunction from further interference or trespass.
- 3) Additionally, in South Carolina, the fact that a person voluntarily comes to a nuisance by purchasing property after the nuisance is created does not bar him from recovering damages for injuries sustained therefrom or deprive him of the right to enjoin its maintenance. *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property*, 315 S.C. 474, 445 S.E.2d 630 (1994).

Conclusions Regarding Statute of Limitations for Nuisance

The dock in issue, like a railroad track on property, would be a permanent nuisance. For that reason, the statute of limitations begins to run at the initial injury. Assuming for the sake of argument that the construction of the dock was on land owned by the Plaintiff, that injury is far enough in the past that the statute of limitations on that injury expired many years ago, and this cause of action should be dismissed (emphasis added). (Order, p. 10).

- 1) Plaintiff did not seek monetary damages for nuisance, only injunctive relief. The statute of limitations does not bar Plaintiff's nuisance claim for injunctive relief. (Briefed in Plaintiff's Motion for Summary Judgment at p. 13).

Conclusions Regarding Statute of Limitations for Trespass

It thus follows that since the docks are permanent in nature that the three-year statute of limitations has passed and this cause of action [for trespass] should be dismissed. These two causes of action (trespass and nuisance) are dismissed, and thus the remainder of Plaintiff's argument is not reached. (Order, p. 11).

- 1) The statute of limitations does not apply to injunctive relief. Plaintiff seeks only injunctive relief. Statutes of limitations do not bar the equitable relief of injunction. *Richland County v. Keiser*, 351 S.C. 89, 95, 567 S.E.2d 260, 263 (Ct. App. 2002). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13). It is clear error to dismiss Plaintiff's trespass and nuisance claims for injunctive relief based on the statute of limitations.

The alleged trespass or nuisance is such that since the statute of limitations has long passed they are not now required to remove them, nor pay rental for them, nor any other damage to the Plaintiff, either permanent or prospective. (Order pp. 11 - 12).

- 1) The statute of limitations does not apply to an action for trespass or nuisance for injunctive relief only. Plaintiff did not seek monetary damages. Statutes of limitations do not bar the equitable relief of injunction. *Richland County v. Keiser*, 351 S.C. 89, 95, 567 S.E.2d 260, 263 (Ct. App. 2002). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13).
- 2) The Final Order filed March 26, 2007 states, "The causes of action for damages have been stricken; as such, the court of equity is the proper venue for this matter to be heard." (Order, p. 2).
- 3) The above conclusion that the trespass and nuisance statute of limitations have passed makes the legal error of confusing removal of the docks with damages barred by the statute of limitations.

Thus, even if Plaintiff is the owner of the underlying realty, the Defendants are allowed to keep their docks for so long as they are willing to maintain them and continue to keep the permits in good order. (Order p. 12).

- 1) This conclusion is against fundamental concepts in property rights. One of Plaintiff's fundamental property rights is exclusion. Taking Plaintiff's right of exclusion to property owned by Plaintiff violates its rights to due process and equal protection under the South Carolina Constitution and the United States Constitution.
- 2) The Dock Defendants have not had twenty years uninterrupted use of the docks required for a prescriptive easement.

Conclusions Regarding Estoppel

. . . When the Beckmanns and Crowleys applied for a dock permit, no objection to the dock or its location was made by any adjacent property owner or member of the public who received notice by newspaper. (Tr. p. 279). (Order p. 12).

- 1) This finding is based on the legal error that the Dock Defendants had no duty to notify Seabrook, the record property owner when submitting their applications. The Dock Defendants had statutory, regulatory, and common law duties to notify Seabrook. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006); S.C. Code Ann. § 48-39-140(B); S.C. Code Reg. Ann. R. 30-2; See *Lowcountry Open Land Trust v. Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). (Briefed in Plaintiff's Proposed Order at pp. 25 - 28).

- 2) Additionally, the Dock Defendants agreed not to interfere with the property rights of others when they accepted the dock permit conditions. (Plaintiff's Exhibits AA and BB). (Briefed in Plaintiff's Proposed Order at pp. 26 - 28).

The dock construction was obvious and notorious, due to the fact that it was large, visible, and viewable from the nearby bridge. (Tr. pp. 283-84). (Order p. 12).

- 1) Regarding the Dock Defendants' estoppel by silence argument, there is no evidence that Seabrook actually knew about the docks when they were being built, and the dock construction was not obvious and notorious for the requisite ten year period required to give constructive notice to the true owner. The only evidence in the record regarding how long it took to build the docks is that one of the docks was built in approximately three months. Mr. Beckmann testified that he started his dock in March and finished enough of it by May to use it. (Tr. p. 283, line 22 - p. 284, line 1). Thus, the two docks were built in approximately three months. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 2) After Hugo, there were repairs to the docks. It is not clear in the record whether these repairs would have been open and obvious.
- 3) Regarding the Dock Defendants' adverse possession argument, the Plaintiff does not dispute that the docks construction was obvious and notorious; rather, Plaintiff disputes the element of hostility. The Dock Defendants built the docks with the permission of the State. By definition, a dock permit is a permissive use.

Permission destroys adverse possession. To invoke adverse possession, the possession must be adverse and not permissive. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). Possession without hostility affords no basis for title by adverse possession however long continued, or exclusive in character. 2 C.J.S. Adverse Possession § 64. Thus, as in the present case, a possession is not adverse where it is under license or permission of the owner, or where it is in recognition of the title of another. *Id.*

- 4) Additionally, prior to this lawsuit, according to their own sworn testimony and affidavits, the Dock Defendants never claimed ownership of the subject highland marsh. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 3 - 10).
- 5) Further, even if the Dock Defendants mistakenly believed they owned the subject portion of the marsh, that negates adverse possession, because a mistaken belief of ownership will not support adverse possession in a boundary dispute case. The possession of land by an encroaching land owner beyond the true boundary under a mistaken belief regarding the location of the boundary is not hostile. *Lusk v. Callaham*, 287 S.C. 459, 339 S.E.2d 156 (Ct. App. 1986). Plaintiff is entitled to a ruling that the essential element of hostility is lacking in the Dock Defendants' adverse possession claim.

At a minimum, this gave inquiry notice to all those
who saw the dock and may have objected. *Beach Co. v. SC-*
DHEC, 04-ALJ-07-0199-CC; *Straker v. Lexington Co. Rec.*
Comm., 322 S.C. 54, 504 S.E.2d 11 (1998). (Order p. 12).

- 1) There should be a finding in the Final Order that there is no evidence in the record that Seabrook had actual notice of the docks. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 2) There should be a conclusion in the Final Order that the approximately three-month period during which each of the docks was built is an insufficient time as a matter of law to have given Seabrook constructive notice of the docks before they were completed. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 3) There should be a conclusion in the final order that the Dock Defendants' claim of adverse possession fails for lack of the essential element of hostility. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 1 - 10).

. . . At time of the permit application and at the time of the construction of the dock, no one asserted trespass or nuisance, or contested ownership of the property upon which the docks were built. (Tr. p. 276). The Beckmanns and Crowleys were entitled to rely on the assumption that no one objected to the dock or its site, and they expended funds to construct the dock.

- 1) There should be findings and conclusions in the Final Order that the Dock Defendants breached their statutory, regulatory, and common law duties to discover that Seabrook was the record property owner and to give actual notice to Seabrook of their dock permit applications. S.C. Code Ann. § 48-39-140(B); S.C. Code Reg. Ann. R. 30-2; *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006); *See Lowcountry Open Land Trust v. Atkins*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). (Briefed in Plaintiff's Proposed Order at pp. 8 - 20).
- 2) There should be a finding that reliance on lack of objection was not reasonable because the Dock Defendants failed to give Seabrook the required actual notice. (Briefed in Plaintiff's Proposed Order, pp. 28 - 41).
- 3) There should be a finding that the Dock Defendants' claim of estoppel fails for lack of the essential elements of diligence and reasonable reliance. (Briefed in Plaintiff's Proposed Order at pp. 17 - 41).
- 4) There should be a finding that at the time of the Dock Defendants' dock applications, Seabrook had properly recorded title to the highland marsh. (Briefed in Plaintiff's Proposed Order at pp. 18 - 20).
- 5) There should be a conclusion that the Dock Defendants' assertion of estoppel by silence is precluded by Seabrook's properly recorded title. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006). (Briefed in Plaintiff's Proposed Order at pp. 18 - 20).

In 1989, Hurricane Hugo destroyed the Beckmanns and Crowleys docks. The Beckmanns and Crowleys applied for a permit from the Coastal Council to rebuild the docks . . . The permit denial and appeal had no issue of property ownership, trespass or nuisance - it was merely about issues of application of the regulations regarding the right to rebuild depending on how damaged the dock was. (Tr. p. 288). (Order p. 13).

- 1) This statement is erroneous. The Dock Defendants were required to obtain new permits and again had statutory, regulatory, and common law duties to notify Seabrook that they intended to build docks across his property. (Briefed in Plaintiff's Proposed Order at pp. 25 - 28).
- 2) It is misleading to state that the permit denial and appeal had no issue of property ownership. The only reason property ownership did not prevent issuance of the permits is because the Dock Defendants failed to disclose that Seabrook was the property owner. Had the Dock Defendants disclosed Seabrook, the permits would have been denied on that basis. The permit administrator at the time of the Dock Defendants' permit applications gave the following deposition testimony, which was read at trial:

QUESTION: "If OCRM knew that high ground owned by another party was being crossed by a proposed dock, is it fair to say that OCRM's position would be that you would have to get permission of the other property owner, or buy the property, or somehow take care of those property rights, before we're going to issue the permit?"

ANSWER: "Yes."

QUESTION: "So it was a requirement that you either own all the high ground property you were going to cross, or had permission to go across it before the permit would be issued?"

ANSWER: "Sure. OCRM couldn't issue a permit across somebody's property, especially high ground property."

(Tr. p. 242, lines 4 - 18).

When the Beckmanns and Crowleys were granted the right to rebuild, they did so. No objection came at this time either, regarding property ownership, trespass or nuisance. Again, the Beckmanns and Crowleys relied to their detriment on this lack of objection or assertion of right, by expending time, effort and money to litigate the appeal, as well as the time, effort and money to rebuild the dock. (Order p. 13).

- 1) This statement is based on faulty legal and factual premises. No objection came because the Dock Defendants breached their statutory, regulatory, and common law duties to give Seabrook actual notice of their applications for permits to build docks across his property. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36).

- 2) There should be a conclusion in the Final Order that the Dock Defendants' estoppel claim fails for the essential elements of diligence, reasonable reliance, and belief in ownership of the subject highland marsh. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36).
- 3) There should be a conclusion that Seabrook's properly recorded title precludes the Dock Defendants' title by estoppel claim. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006). (Briefed in Plaintiff's Proposed Order at pp. 17 - 20).

The final representation to the Beckmanns and Crowleys came at the resale of the property. The Milton P. Demetre Family Limited Partnership purchased the property in question in 2004. At no time prior to the purchase did the Partnership pursue the issue of ownership of the property crossed by the docks, no contingency was put in place regarding the removal of the docks, and representative from the Partnership nor its Agents spoke to the Beckmanns or Mrs. Crowley prior to closing on the land. (Order p. 13).

- 1) This conclusion is erroneous. There is no evidence that Plaintiff made any representation to the Dock Defendants before purchasing the highland property. The Plaintiff consulted with its attorney, who advised the Plaintiff that it had no duty to communicate with the Dock Defendants.
- 2) There should be a conclusion that the Plaintiff had no duty to consult with the Dock Defendants, who were trespassers, before purchasing the property. Plaintiff consulted with the record title holder, which was the appropriate action. (Briefed in Plaintiff's Proposed Order at pp. 44 - 45). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 10 - 11).
- 3) There should be a finding that the Plaintiff had no relationship with the Dock Defendants giving rise to a duty to make any representations to them.
- 4) There should be a finding that there was no estoppel by silence because there was no reasonable reliance on silence. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36).

Milton Demetre testified that he was aware of the presence of the docks when he inspected and purchased the property. (Tr. p. 133). He brought himself to the known damage. (Order p. 13).

- 1) The doctrine of "coming to a nuisance" applies to neighboring property, not one's own property. Plaintiff can have trespassers ejected from his own property. Applying the "coming to a nuisance" doctrine to one's own property is against well settled property law.

The predecessor in title to the property, Mr. Seabrook, failed to object to the docks when he owned the property, and is bound by his silence.

Mr. Demetre was aware of the issue prior to his purchase, and is thus bound by Mr. Seabrook's silence as well. The Defendants relied on the silence several times, to their detriment of funds and time. As such, Mr. Demetre and his trust are now estopped from claiming harm or damage (Order pp. 13 - 14).

- 1) This is error. Seabrook had no duty to object because the Dock Defendants failed to give him actual notice as required by statute, regulation, and common law. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36).
- 2) There should be a finding that there is no evidence in the record that Seabrook had actual notice of the docks before they were completed. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 3) There should be a conclusion that the approximately three-month period to build each of the docks was insufficient to give Seabrook constructive notice while they were being built. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 4) There should be a conclusion that whether Seabrook had constructive notice of the docks after they were built is not relevant to an estoppel by silence claim, because there could be no detrimental reliance once the docks were built. (Briefed in Plaintiff's Proposed Order at pp. 36 - 41).
- 5) There should be a conclusion that constructive notice of the docks after they were built is insufficient for a claim of adverse possession because the Dock Defendants lacked the requisite element of hostility. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).

Conclusions Regarding Laches

The nearly 20 year delay after the initial building of the docks before bringing an action for trespass and nuisance, and the 40 year delay after the families begun using the upland property as their own, is unreasonable and has worked injury, prejudice, and disadvantage. This injury is multi-fold: had an objection come within the first few years, the Defendants would not have the expense and time spent to be permitted for, and to rebuild the original dock after Hugo; they would not have to bear the costs and burden of caring for the land, including maintenance and pollution and debris removal. There is prejudice against the Defendants as a result of extreme delay. (Order p. 14).

- 1) There should be a conclusion that the Dock Defendants' laches claim fails for lack of prejudice. Delay alone in the assertion of a right, without injury to the adversary, does not constitute laches. *Grossman v. Grassman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). The Dock Defendants were not prejudiced by having use of the docks. (Briefed in Plaintiff's Proposed Order at pp. 42 - 43).
- 2) The laches defense is reserved for those rare cases where a protracted acquiescence by plaintiff induces defendant to undertake substantial activity in reliance upon the acquiescence. 30A C.J.S. Equity § 136.
- 3) Acquiescence cannot be imputed to one without actual or constructive knowledge of his claim and the infringement of it, and an ample opportunity to establish it in a proper forum. 30A C.J.S. Equity § 136. By the time Seabrook had constructive notice of the docks, after they had been in existence for ten years, they were already built. Thereafter, the Dock Defendants undertook no substantial activity in reliance on Seabrook's lack of action. Mere delay in taking action is not acquiescence. 30A C.J.S. Equity § 136.
- 4) Prejudice is an essential element of the assertion of laches. 30A C.J.S. Equity § 137. *Grossman v. Grassman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993). (Briefed in Plaintiff's Proposed Order at pp. 42 - 43).
- 5) Seabrook did not cause the Dock Defendants to expend sums on building and repairing the docks. The Dock Defendants expended these sums because they built docks on

Seabrooks property. They failed to check who owned the highland shown on their own dock permit applications.

- 6) Any burden of maintenance or debris removal has been greatly offset by the Dock Defendants' benefit in using the docks. Laches does not bar relief where rents received by the adverse possession claimant exceed the expenditures made by him, or were temporary in character or of little value. 30A C.J.S. Equity § 139.
- 7) The order speaks of a "nearly twenty year delay." The relevant period for the Beckmann dock was from when the dock was build until this lawsuit was filed, which was not a twenty year period.
- 8) For the Crowleys, the two relevant periods are first, the time from when the dock was built to when Mr. Crowley died and, second, the date of distribution of Mr. Crowley's property until this lawsuit was filed. Neither of these periods exceeded 9.5 years. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).
- 9) The families never used the upland property as their own. They admitted they believed that the State owned that property. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).

Finally, all those persons who would have relevant information regarding the status of the docks, ownership, etc. (such as Mr. Harris Crowley and Mr. E.M. Seabrook) are now deceased and can no longer give evidence that would have been necessary for litigation in this case. (Order p. 14).

- 1) Harris Crowley's sworn statement of ownership is in the record. It shows his claim of ownership at the time he applied for the dock permit. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Exhibit E).
- 2) Edward Seabrook's position on these issues is in the record, and, in fact, is quoted in the Final Order. He never sold the two lots to the Defendants and never gave the Dock Defendants permission to build the docks on his property:

Q. Did you ask Mr. Seabrook about these docks at all?
A. Yes, I did.
Q. And what did he tell you?
A. He said that he had never sold the two lots and had never given any permission to build any docks on them.
(Final Order, p. 16).

Since the Defendants' docks have been present for a period of 20 years, readily visible to anyone who traverses the Folly River onto Folly Beach, I find that Plaintiff and its predecessor in title had actual or inquiry notice of the existence of the docks. Cook v. Knight, 106 SC 310, 91 SE2d 312 (1917). (Order p. 14).

- 1) There is no twenty year period of continuous use in this case. The Beckmann use of the docks was interrupted by this lawsuit in less than twenty years. The Beckmanns never had adverse possession for any period of time because they lacked the essential element of hostility. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).
- 2) Plaintiff does not dispute that it and its predecessor in interest had constructive notice of the docks after ten years. But that is not relevant to the Dock Defendants' estoppel-by-silence claim, because the only relevant periods for that claim are the approximately three months it took to build each of the docks. (Briefed in Plaintiff's Proposed Order at pp. 17 - 41).
- 3) Constructive notice of the docks is insufficient for the Dock Defendants' adverse possession claim because they lacked the essential element of hostility. The clock never started for adverse possession because the Dock Defendants never met all of the requisite elements. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17).

. . . Had Mr. Seabrook sought to preserve his claim of ownership to the land, he could have fought the Defendants' placement of the docks into the River. To require the Defendants to remove the docks now based upon Plaintiff's claim to superior title to the land after such passage of time, would be unfair and inequitable. (Order pp. 15 - 16).

- 1) This statement is based on factual and legal errors. The Dock Defendants had a duty to give Seabrook actual notice of their dock permit applications and failed to do so. (Briefed in Plaintiffs' Proposed Order at pp. 17 - 41).
- 2) Under adverse possession law, Seabrook did not have constructive notice of the docks until they had been in existence for ten years. By the time Seabrook was deemed to have constructive notice of the docks, there was no further estoppel by silence argument, because the Dock Defendants did nothing in reliance on Seabrook's silence after the docks were built. (Briefed in Plaintiff's Proposed Order at pp. 17 - 41).

- 3) The Dock Defendants' adverse possession claim never started against Seabrook because they never had the essential element of hostility. (Briefed at pp. 8 - 17).
- 4) The Dock Defendants had no laches argument against Seabrook because they are not prejudiced by having use of the docks. (Briefed in Plaintiff's Proposed Order at pp. 42 - 43).
- 5) The Dock Defendants never obtained a prescriptive easement because they did not have twenty years use of the docks before their use was interrupted by this lawsuit. (Briefed in Plaintiff's Proposed Order at p. 43).
- 6) This conclusion states that it would be "unfair and inequitable" to require the Dock Defendants to remove the docks now based on Plaintiff's claim to superior title to the land after such a passage of time; however, no one should be able to profit or take advantage of his own wrong. 30A C.J.S. Equity § 103. The doctrine of unclean hands has never been intended to act as a shield for wrongdoing, as where its application would permit the wrongdoer an unconscionable gain at the plaintiff's expense. *Id.* Here, the Dock Defendants seek to take Plaintiff's land despite their Dock unclean hands in the following particulars:
 - a) The Dock Defendants built their docks across Seabrook's property.
 - b) The Dock Defendants breached their statutory, regulatory, and common law duties to give Seabrook notice of their dock permit applications. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36).
 - c) The Dock Defendants breached the conditions of acceptance of their permits by interfering with Seabrook's property rights. (Briefed in Plaintiff's Proposed Order at pp. 25 - 28).
 - d) The Dock Defendants submitted false, misleading, and inaccurate information on their dock permit applications as follows:
 - 1) They failed to list Seabrook as the property owner over whose land their docks would cross.
 - 2) They failed to list Seabrook as an adjacent property owner.
 - 3) They failed to disclose that Seabrook owned property shown on the tax map at TMS-132, information readily available to them at the time.
 - 4) The Dock Defendants failed to disclose the lots owned by Seabrook shown on the 1965 plat between their property lines and the Folly River.

- 5) The Dock Defendants failed to disclose the undeveloped and undedicated roadway between the Dock Defendant's property lines and the Folly River. While the Dock Defendants have admitted that the roadway does not extend to their properties, they claim use of this roadway in the present action.
- 6) The Crowleys failed to show certain highland marsh on their dock permit plan view, which, according to the testimony of the director of permit applications, Steve Moore, would have precluded issuance of dock permits.
- 7) The Dock Defendants changed their testimony at the trial of this case by testifying that they claimed ownership of the subject highland when they testified in their depositions that they claimed ownership only over the property within their property lines 150 feet from Huron Avenue East toward the Folly River. Compare this testimony:

Harry Beckmann's Deposition Testimony

Q. Okay. And just to be clear about it; it was your understanding when you submitted this permit application that you owned lot 209 East Huron and the State of South Carolina owned from your property line out to the Folly River?

A. That's correct.

Q. And that's still your understanding?

A. It is.

(Beckmann Depo., p. 17, lines 10 - 17).

Harry Beckmann's Trial Testimony

Q If anybody had asked you, that in the back of your backyard right where your dock launch is, is that yours, what would you have said?

A I would have said, yes. We take care of it. No one has ever complained that it belonged to them, so it must belong to us.

(Tr. p. 295, lines 6 - 11).

- 7) The Final Order rewards the Dock Defendants for changing their testimony at trial. Application of the doctrine of unclean hands to allow the Dock Defendants to take Plaintiff's property would offend good conscience and reflect unfavorably on the integrity of the court.
- 8) The Dock Defendants invited the conduct of which they complain by building docks on Seabrook's property. They cannot now complain that Seabrook's successor in interest wishes to eject them.
- 9) Moreover, equitable defenses are not applicable where the only claim to title is by adverse possession. *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956). The Dock Defendants cannot obtain title by equity where they cannot meet the elements of the adverse possession statute. (Briefed in Plaintiff's Proposed Order at pp. 43). (Briefed in Plaintiff's Motion for Summary Judgment at p. 13). Equity follows the law. 30A C.J.S. Equity § 118. Where no countervailing equity requires different treatment, a court of equity in dealing with legal rights and interests

will follow the rules of law in respect thereto. The maxim is strictly applied whenever the rights of the parties are clearly defined and established by law, especially when defined and established by constitutional or statutory provisions. 30A C.J.S. Equity § 119.

Conclusions Regarding Staleness of Demand

The Defendants are disadvantaged as a result of the delay for several reasons: they are now much older and living on fixed incomes, without the funds they may have had available to them, to fight this action, that they had when they were younger property owners; . . . (Order p. 15).

- 1) Consideration of this factor with regard to prejudice is an error of law. First, Plaintiff did not cause this lawsuit. The Defendants caused this lawsuit by building docks across Seabrook's land. Defendants stipulated that Plaintiff is the record title holder. Plaintiff is merely exercising his property rights. Exercising property rights is not illegal, fraudulent, or wrong.
- 2) Second, Plaintiff did not cause the Dock Defendants to be less financially able to defend this lawsuit than when they were younger. Plaintiff is only held accountable for that degree or amount of prejudice which flows from and can be directly traced to Plaintiff's own actions. 30A C.J.S. Equity § 138.

. . . Mr. Crowley has died so there is no way to ascertain his knowledge or intent with regard to the property . . . (Order p. 15).

- 1) This finding is error. Mr. Crowley's knowledge and intent is in evidence. It is known exactly what property he claimed. That claim is set forth in his dock permit application. (Exhibit E, Exhibit AA).

. . . Mr. Seabrook has died so there is no way to determine his position on the issues . . . (Order p. 15).

- 1) This finding is in error. Seabrook's position on the issues is in the record. It is in evidence without objection. It is quoted in the Dock Defendants' proposed order and is quoted in the Final Order. Seabrook did not sell the lots to the Dock Defendants and did not give them permission to build the docks:

Mr. Demetre testified at deposition that he was aware of the docks being in place prior to his purchase of the marsh lots.

Q. Did you ask Mr. Seabrook about these docks at all?

A. Yes, I did.
Q. And what did he tell you?
A. He said that he had never sold the two lots and had never given any permission to build any docks on them.
(Order p. 16).

. . . and the staff that was employed by the City of and the Coastal Council at the time of the permit issuance are now employed elsewhere, have lost recall of the circumstances, or have retired. (Order p. 15).

- 1) Testimony from staff employed by the City of Folly Beach is irrelevant. The Dock Defendants had a duty to determine who owned the highland they showed on their dock permit applications. They should have checked the title at the Charleston County R.M.C. Office. They could have easily discovered this information on the tax map. Going to Folly Beach City Hall and looking on a 1920 plat on the wall was insufficient.
- 2) It is false that the staff employed by Coastal Council are not available to testify. Steve Moore was the permit administrator during the time of the Dock Defendant's permit applications. Steve Moore's deposition testimony is in evidence. Portions of his deposition testimony were read into the record at trial. (Tr. p. 240 - 264). Mr. Moore testified in part as follows:

QUESTION: "If OCRM knew that high ground owned by another party was being crossed by a proposed dock, is it fair to say that OCRM's position would be that you would have to get permission of the other property owner, or buy the property, or somehow take care of those property rights, before we're going to issue the permit?"

ANSWER: "Yes."

QUESTION: "So it was a requirement that you either own all the high ground property you were going to cross, or had permission to go across it before the permit would be issued?"

ANSWER: "Sure. OCRM couldn't issue a permit across somebody's property, especially high ground property."

(Tr. p. 242, lines 4 - 18).

Based on these facts and arguments, considering the specific circumstances of this individual matter, it is clear that the delay between the initial purchase of the lots and the use of highland allegedly behind the lots, the time that the docks were built and rebuilt, and the time this action was filed, there has simply been too much delay and prejudice to allow these causes of action to stand in a Court of Equity. (Order pp. 15 - 16).

- 1) This statement is an error of law and fact. There should be a finding that the Dock Defendants suffered no prejudice by having use of the docks. (Briefed in Plaintiff's Proposed Order at p. 42).
- 2) There should be a finding that Seabrook had no actual or constructive notice of the docks before they were built, and that after the docks were built there was no reliance by the Dock Defendants on Seabrook's silence or Plaintiff's silence. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36 - 42).
- 3) Mere lapse of time is not the only element considered. A more important consideration is whether the delay has worked such prejudice to the parties adversely affected that enforcement of the rights asserted is rendered inequitable. 30A C.J.S. Equity § 115.

Conclusions Regarding the Dock Defendants' Defense of Unclean Hands

The Defendants allege that the Plaintiff has unclean hands in the following particulars: The docks in question were built originally in 1987. They were again built in 1989, after Hurricane Hugo. The Defendants have paid the cost of the dock twice, including the cost of permitting, construction and, before the 1989 rebuild, litigation against the Agency which resulted in the Agency being ordered to allow for the post-Hugo rebuild of the dock. (Order p. 16).

- 1) These conclusions are legal error. None of the Dock Defendants' actions specified show that the Plaintiff has unclean hands. (Briefed in Plaintiff's Proposed Order at pp. 44 - 45). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 10 - 11).
- 2) The Dock Defendants built docks then repaired them after Hurricane Hugo without giving the required actual notice to Seabrook and without exercising diligence in determining who owned the highland they showed on their dock applications. (Briefed in Plaintiff's Proposed Order at pp. 17 - 36). There is no evidence that Seabrook had actual knowledge of the docks before they were constructed, and three months is insufficient as a matter of law to have given Seabrook constructive notice. (Briefed in Plaintiff's Proposed Order at pp. 36 - 42).

- 3) The Dock Defendants' expenditure of money was not in reasonable reliance on anything that Seabrook or Plaintiff did or did not do. (Briefed in Plaintiff's Proposed Order at pp. 17 - 42).
- 4) Hands do not become unclean while exercising lawful authority and power. 30A C.J.S. Equity § 104.

Mr. Demetre testified at deposition that he was aware of the docks being in place prior to his purchase of the marsh lots.

Q. Did you ask Mr. Seabrook about these docks at all?

A. Yes, I did.

Q. And what did he tell you?

A. He said that he had never sold the two lots and had never given any permission to build any docks on them.

Mr. Demetre, who considers himself a "sophisticated purchaser" (Demetre deposition, p. 19, ll. 1 - 5), had full knowledge about the existence of these structures on the property, and he still chose to purchase. He did not make removal of the docks a condition of his purchase offer, and he did not ensure that he got title in such a way that there were any warranties from his predecessor in title. Finally, he never spoke the owners of the docks prior to his purchase.

Mr. Demetre testified in his deposition that he bought a quitclaim deed, because that is all that Mr. Seabrook would give. Mr. Demetre was not forced or legally obligated to purchase these properties - he could have chosen not to purchase based upon what he knew was on those lots. Yet with full knowledge he bought these properties, with no warranties. His intentions herein are questionable given the knowledge he had, the experience he has and the low price of the waterfront lots. His lack of action, as listed above culminated in Plaintiff's unclean hands in this action. Unclean hands will preclude a litigant from recovering in equity if that litigant acted unfairly to the detriment of the plaintiff, and so it is in this case.

(Order pp. 16 - 17).

- 1) It is error to evaluate any potential claims by Plaintiff against Seabrook. Plaintiff makes no claims against Seabrook, and there are no such causes of action in this case.
- 2) Plaintiff bought the property knowing that he would have to eject the Dock Defendants. That was contemplated in the price of the property. The fact that

Plaintiff would have to eject the Dock Defendants has no relevance to whether Seabrook conveyed title to Plaintiff. The Dock Defendants stipulated in this case that Plaintiff is the record title holder of the subject property. (Tr. p. 6, lines 4 - 6).

- 3) Buying property which requires that legal action be taken to eject trespassers does not constitute unclean hands. This conclusion would make any property on which others are trespassing unmarketable. This is not the law.

Conclusions Regarding Adverse Possession and 20-year Presumption of Grant

. . . They have used the property between their property lines and the mean high water mark of the Folly River ever since they purchased their property. They have done so without interference until the filing of this Complaint by the Plaintiff. (Order p. 17).

- 1) This conclusion is not supported by the record. The Dock Defendants believed that the State owned the highland between their lots and the Folly River. Mere use is insufficient for adverse possession. Permissive use negates hostility. Equating use with hostility is legal error. (Briefed in Plaintiff's Proposed Order at pp. 8 - 17). (Briefed in Plaintiff's Motion for Summary Judgment at pp. 1 - 10).

The Defendants argue that they own and have exercised dominion over the property extending beyond their property line to the Folly River for a period of time in excess of 20 years and that the State of South Carolina has perfected title in the Defendants by action of Common Law presumption of grant. Alternatively, they claim adverse possession of the land in excess of ten (10) years or twenty (20) years by way of tacking. See Knox v. Knox, 322 S.C. 64, 472 S.E.2d 43 (1996).

While this [adverse possession/presumption of grant] argument may be valid as between the Plaintiff and these Defendants, I have rules in case No. 2002-CP-10-4880 which was tried along with this case, in an order filed March 7, 2007, that title to the roadway is vested in the Defendant City of Folly Beach. Because of this ruling, I find that the parties' claim to the disputed land which includes the roadway fails because I find and conclude that title to the roadway is held by the City for the benefit of the public. (Order pp. 17 - 18).

- 1) This conclusion is in error as discussed in Plaintiff's Motion to Alter or Amend the Final Order Filed March 7, 2007, as briefed in Plaintiff's Proposed Order, which is attached hereto and incorporated herein by reference, briefed at pp. 46 -

85. The adverse possession issue is briefed in Plaintiff's Proposed Order at pp. 8 - 17).

As to the remaining lands extending to the Folly River, this court's review of the 1920 plat by which the lots on Folly Island were created indicates this property as marshland. Therefore, I conclude that any challenge to ownership of this marshland must be pursued in an action against the State of South Carolina to challenge its presumptive title to the marsh which can only be overcome by evidence which is clear and convincing. Coburg v. Lesser (I), 309 SC 252, 422 SE2d 96 (1992). (Order p. 18).

- 1) This conclusion is in error as discussed above under the headings "The Final Order's Third Conclusion" and "The Final Order's Second Conclusion."

Conclusions Regarding Ripeness (Declaratory Judgment on the Permits)

The issuance of the permits to the Beckmanns and Crowleys is not an issue ripe for adjudication, but rather is moot. There is no subject matter jurisdiction within the Court to allow for a declaratory judgment on the validity of the permits. The Plaintiff has not followed the statutorily required appeal procedures. The Plaintiff has also not named the State or its divisions in this suit, and the Court cannot bind a non-party with an Order. There are specific appeal procedures listed in 23 A S.C. Code Regs. Ann. 30-1 et seq., the operational regulations promulgated for the Office of Ocean and Coastal Resource Management, to appeal a permit issuance. The appeal period on the permits ran decades ago. The alternative is for the Court to Order the Agency to revoke the permits pursuant to S.C. Code § 48-39-50(H). The Agency has declined, as it has the discretion to, to revoke the permit. This is an issue for the administrative courts - or would have been seventeen years ago when the docks were built for the second time.

I further find that this issue was abandoned by plaintiff at the outset of the trial. Tr. 4, L1. (Order p. 18).

- 1) This is legal error as discussed above under the heading "The Final Order's Fourth Conclusion."

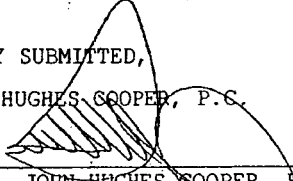
Plaintiff is Record Title Holder

There is no finding in the Final Order filed March 26, 2007, and one should be made, consistent with the stipulation of the parties that the Plaintiff is record title holder of the disputed property. (Briefed in Plaintiff's Proposed Order at p. 5). (Tr. p. 6, lines 4 - 6).

WHEREFORE, Plaintiff respectfully moves to alter or amend the judgment consistent with Plaintiff's Proposed Order (Exhibit A).

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

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LIMITED PARTNERSHIP

Sullivan's Island, South Carolina

April 19, 2007

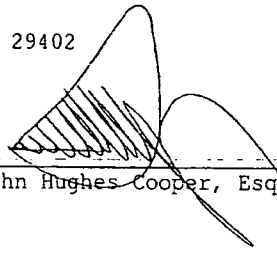
C E R T I F I C A T E O F S E R V I C E

I hereby certify that on April 19, 2007, I served the foregoing Plaintiffs' Rule 59(e) Motion to Alter or Amend the Final Order in this case filed March 26, 2007 via first class U.S. mail with sufficient postage affixed to counsel for all appearing defendants:

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Charleston, SC 29402



John Hughes Cooper, Esquire

2007 APR 19 PM 1:47
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

RECEIVED
12-29-87
DAC

SOUTH CAROLINA COASTAL COUNCIL

(Permit Application)

Enclosure(1)

Date 29 December 1987

1. Application number (to be assigned by the Council) _____
2. Name and address of applicant: HARRY BECKMANN III
209 East Huron Avenue
PO Box 391
Folly Beach, S.C. 29439
Telephone (during business hours) (803) 588-9425
3. Name, address and title of authorized agent: NONE

Telephone (during business hours) 588-9425

4. Describe the dimensions and specifications of the proposed activity, its purpose and intended use: Crabbing and boat dock 12'x24' with 700' access pier 4' wide. One hand rail with intermediate rail. Marine treated pile and timbers - typical, all bolts, nuts, washers and hardware to be hot dipped galvanized including nails.

5. Names and addresses of adjoining property owners:
HARRIS L. CROWLEY | Paul Wright
210 East Huron Ave. | 207 East Huron Avenue
POB 472 | POB 114
Folly Beach, S.C. 29439 | Folly Beach, S.C. 29439
6. Location of proposed activity: Street, road or other descriptive location: From
209 East Huron Avenue to Folly River
Folly Beach S.C. 29439
County Charleston Nearest town City of Folly Beach
Waterway or wetland Folly River, South branch, east of bridge
Latitude and longitude (if known) _____
7. Date construction to commence Upon issuance of permit
Date construction is to be completed _____
8. Additional remarks:

12-30-87

9. I certify that the information contained in this application is true, complete and accurate to the best of my knowledge and belief.



PAID
Permit #1956
JAN 12-24-88

Harry Beckmann
Signature of Applicant
12-29-87
Date

PLT 00154

SOUTH CAROLINA COASTAL COUNCIL
PERMIT APPLICATION PUBLIC NOTICE

December 31, 1987

CC-87-368

The South Carolina Coastal Council has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: Harry Beckmann, III
209 East Huron Avenue
P. O. Box 391
Folly Beach, South Carolina 29439

LOCATION: On and adjacent to the Folly River at 209 East Huron Avenue, Folly Beach, Charleston County, South Carolina.

WORK: The work, as proposed and shown on the attached plans, will consist of constructing a private dock. The structure will have a 4' by 700' walkway with one handrail leading to a 12' by 24' fixed pierhead. The purpose of the project is for the applicant's private, recreational use.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by the Coastal Council can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program.

To assure review by the Council, comments regarding this application must be received by the Coastal Council on or before January 15, 1988.

PLEASE REPLY TO:

South Carolina Coastal Council
Ashley Corporate Center
4280 Executive Place North, Suite 300
Charleston, South Carolina 29405

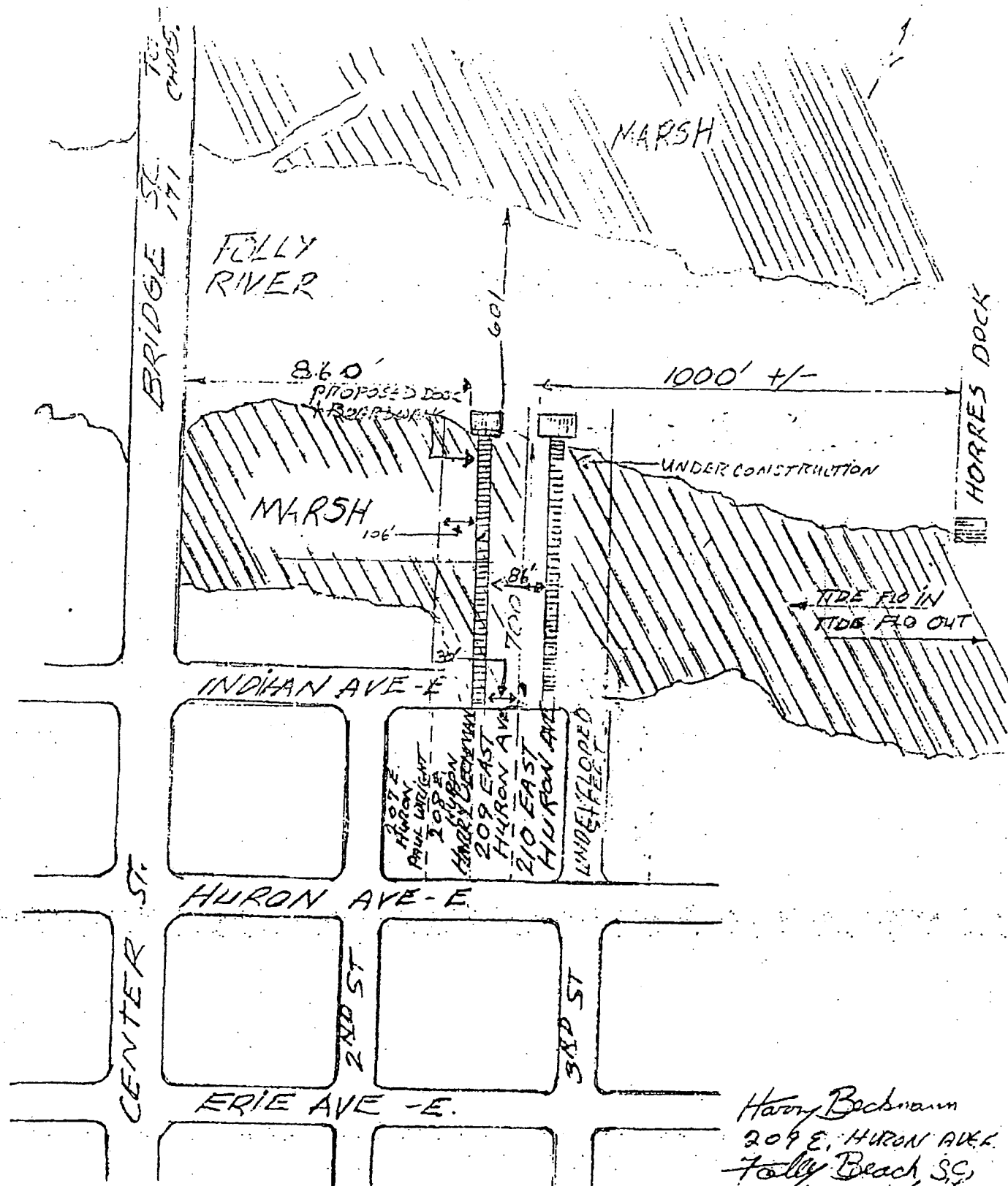
Please refer to P/N CC-87-368

The proposed project will not be located within the boundaries of any property included in the National Register or adjacent to any National Register property. If archaeological materials are encountered prior to or during construction, we request that our office be notified.

Richard A. Chennin
Steve Moore, Permit Administrator

Nancy Brock 1/6/88
Nancy Brock, Environmental Review Specialist
SC Dept. of Archives and History

PLT 00155

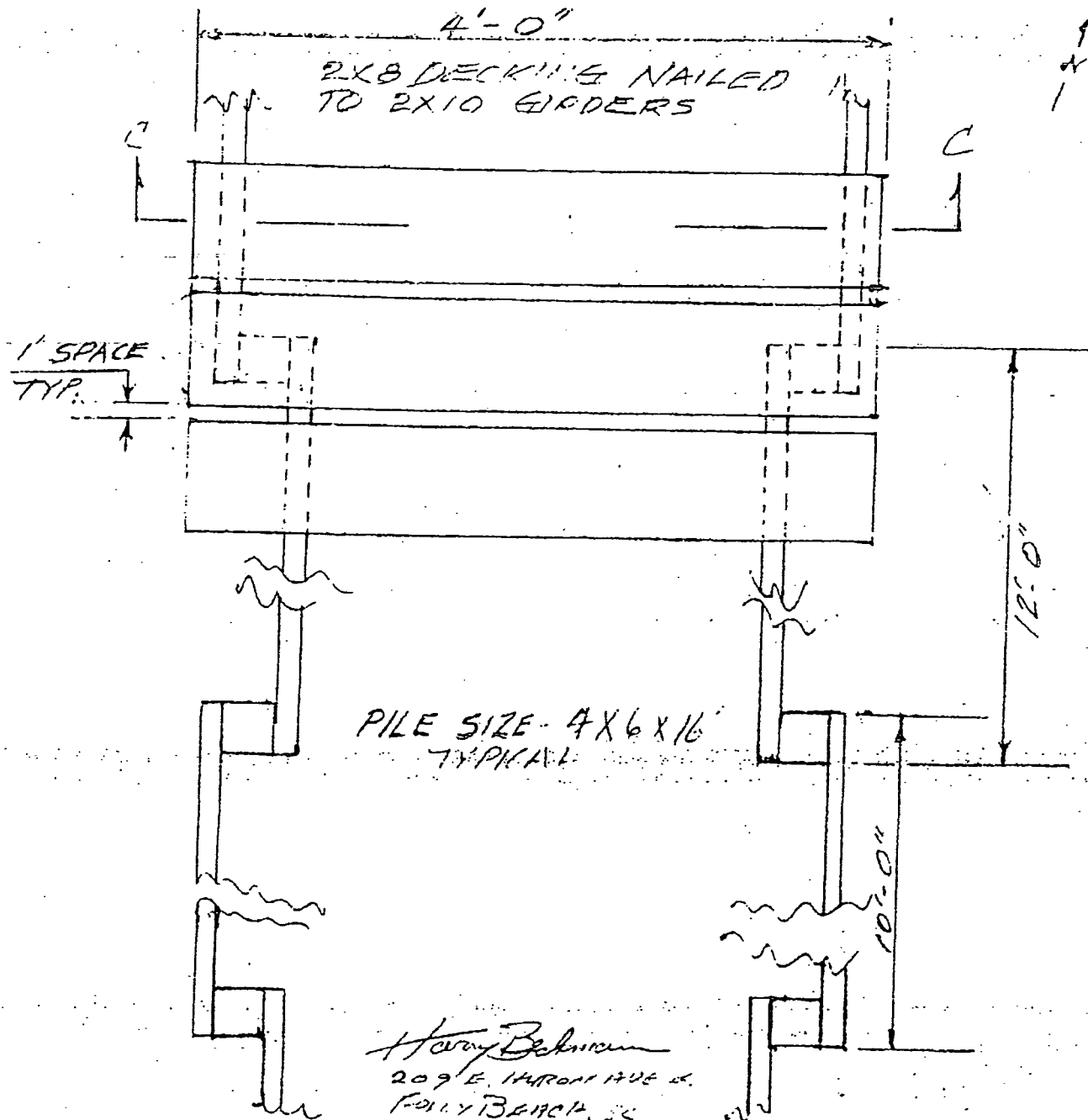


Harry Beckmann
 209 E. HURON AVE.
 Folly Beach, S.C.

PLT 00156

ENCL. (6)

BOARDWALK FRAMING PLAN



PLT 00157

ENCLOSURE

BOARDWALK
SECTION (P. 3)

4'-0"

2X4 HAND RL.

1X4 INTER MED.
RAIL

3'-1"

4'-0"

GIRDERS
2X10'X10'
(TYPICAL)

2X4 (TYP.)

CROSS

BRACING

4X6X16 2.5' AT MAX

PLT 00158

MUD LEVEL

3'-6" (TYPICAL)

HOLE EXCAVATION
TO UNDERLAY
SHELLED BY
HOLE DIGGER

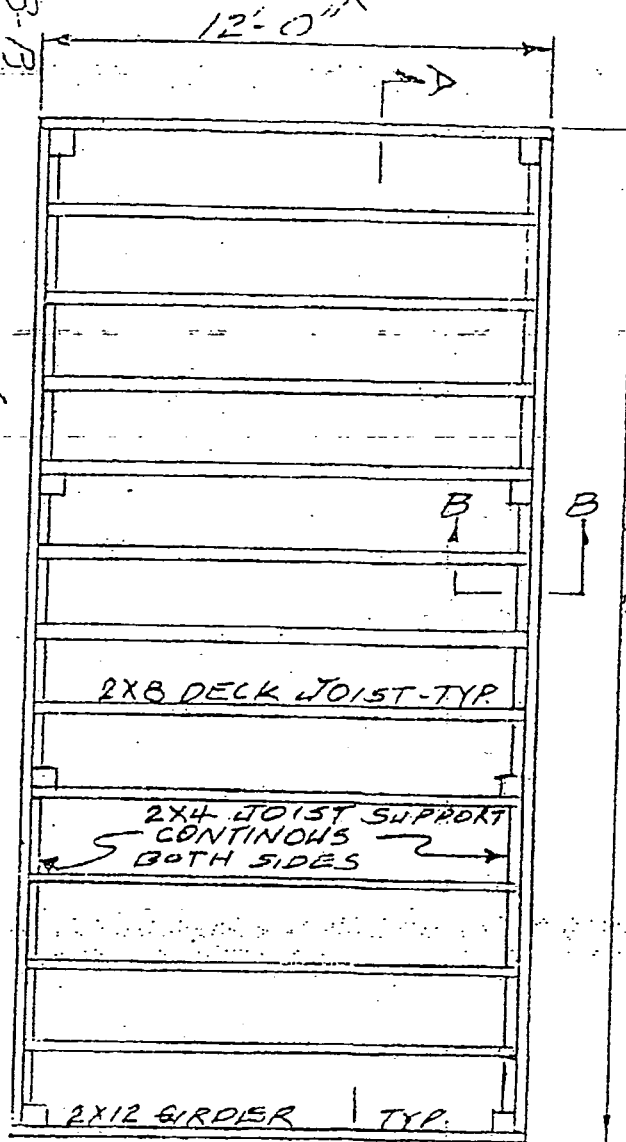
MUD CAP REPLACED
TO ENHANCE PILE
STABILIZATION.
DRY SAND SHALL
BE UTILIZED TO
WITH-IN TOP SIX

Harry B. ...
109 HURON AVE. E.
1117 BEACH, SC.

DOCK FRAMING PLAN

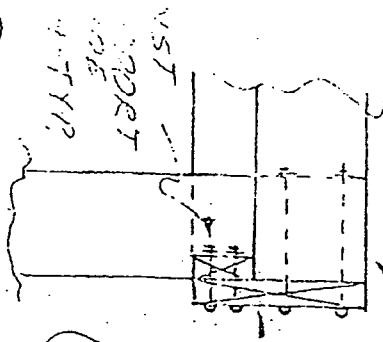
SCALE 1/4" = 1'-0"

DOCK GUARD-RAILS TO BE AS DESIGNED FOR BOARDWALK



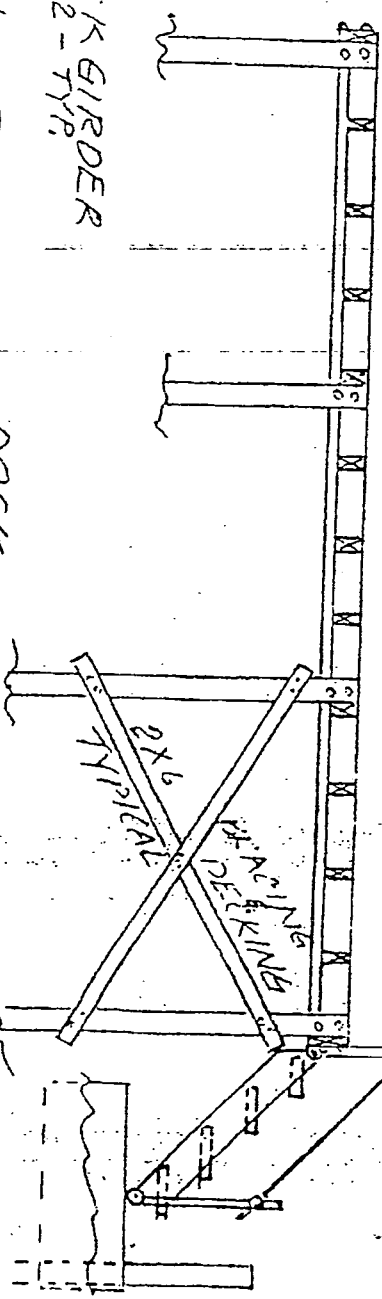
SECTION B-B

DOCKING JOIST 2x8-TYP



SECTION A-A

DOCKING (NOT SHOWN) 2x6 @ 3/4" SPACING



SCALE 1" = 1'

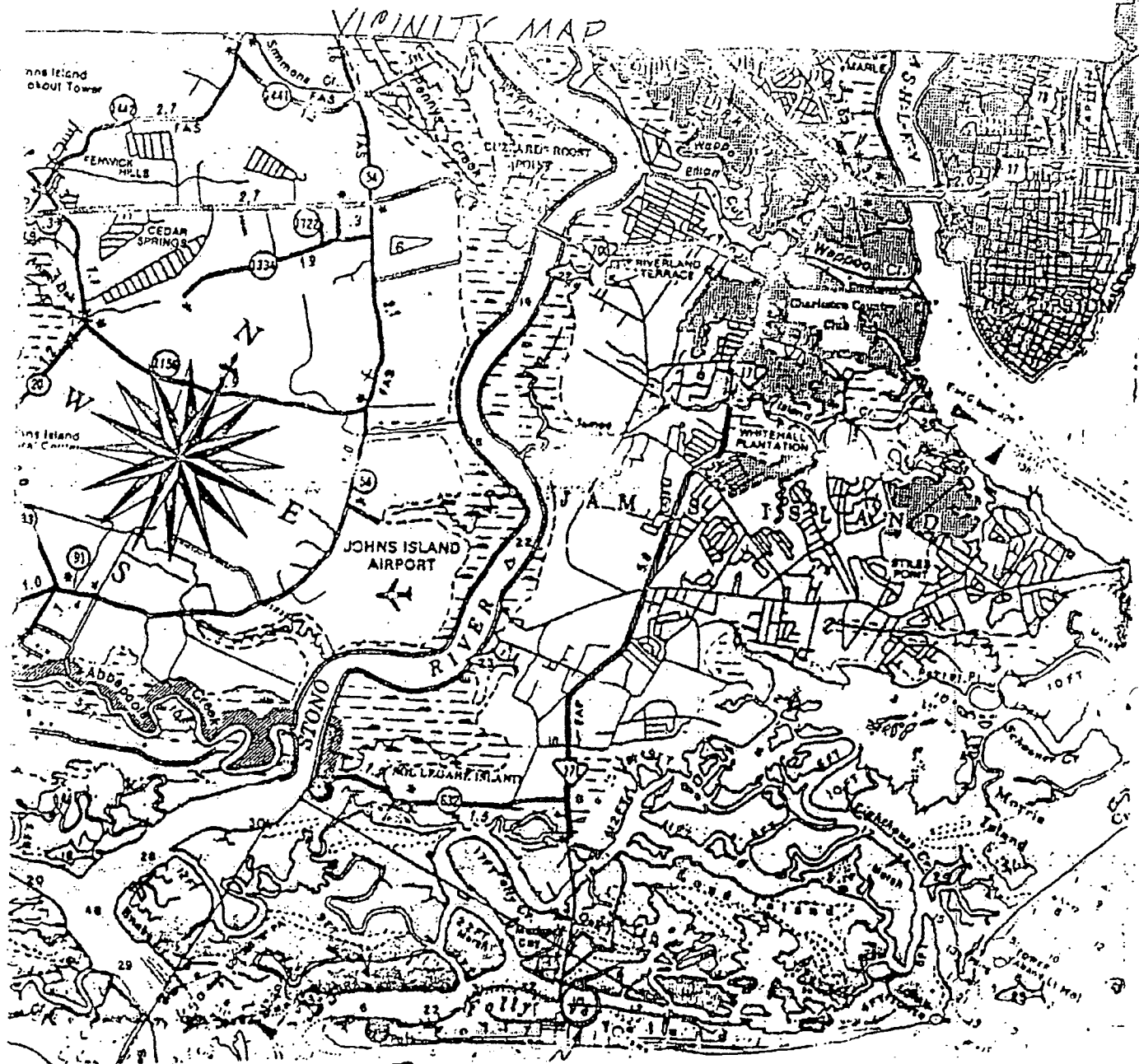
DOCK PILES 6x6 X 20' TYP. MARINE TMT. 2.5# RET. PILES SHALL BE JETTED CUT OFF ELEVATION

DOCK PILES 6x6 X 20' TYP. MARINE TMT. 2.5# RET. PILES SHALL BE JETTED CUT OFF ELEVATION

6'x6'x2' FLOATING PLATFORM

PLT 00159

FLYCL (4)



SITE OF PROPOSED
BOAT-CRAFTING DOCK
AND ACCESS BOARD-
WALK

PLT 00160

7 of 7

Harry Beckerman
209 E. Huron Ave.
Took 12.1.12

PROPOSED
LINE

EXISTING PROFILE OF MARSH
DEPICTING MID LINE ELEVATIONS
100 FT. STATIONS

1
2
3
4
5
6

7 RIVER
EDGE

BOARD WALK ELEVATION

DOCK

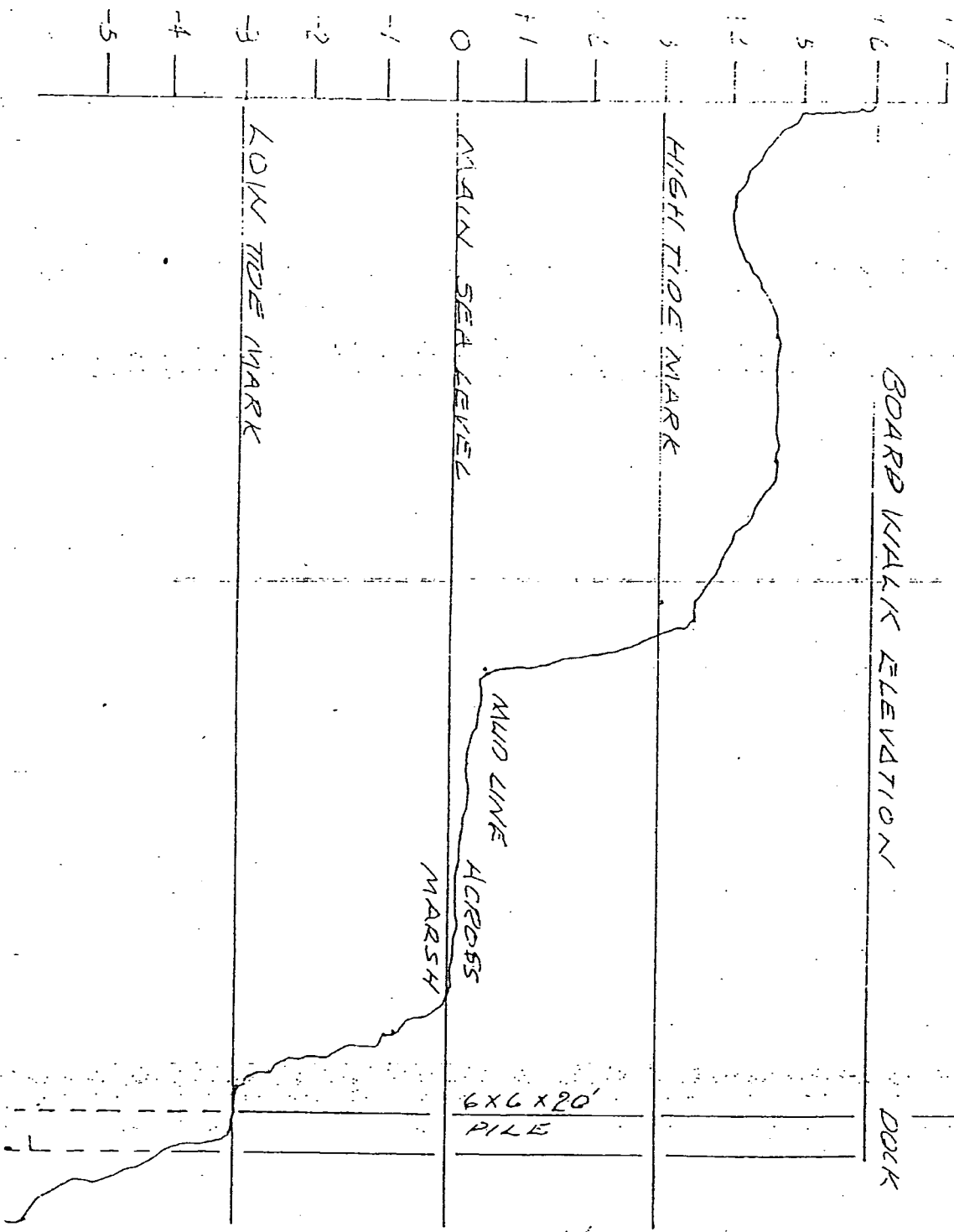
HIGH TIDE MARK

MAIN SEA LEVEL

LOW TIDE MARK

MID LINE
ACROSS
MARSH

6x6x20'
PILE



* BOTTOM DROPS
TO MINUS 10 FT.
SEE GEODETIC SURVEY
SOUNDINGS ON VICINITY MAP

Harry B. Johnson
209. HYPERION AVE.
FOLLY BEACH, SC.

AFFIDAVIT OF OWNERSHIP OR CONTROL

RECEIVED

JAN - 5 1988

COASTAL COUNCIL

Enclosure (2)

TO THE SOUTH CAROLINA COASTAL COUNCIL:

I hereby certify that I am the (check one):

record owner ☒
 lessee ☐
 record easement holder ☐
 applicant to record owner for easement ☐

of the below described property situated in Charleston County, South Carolina; and that said property is all of the property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application. This affidavit applies only to high land and does not apply to wetlands or any area below mean high water, regardless of the description provided below.

LEGAL DESCRIPTION

That certain lot of land, situated, lying and being on Folly Island, in the County of Charleston, State of South Carolina, bounding on Huron Avenue, East and Folly River North and known and designated one plot made by Jefferson Construction Company dated February, 1960, and recorded in Plot Book C, page 158, in the R. M. C. Office for Charleston County as lot No. 209, East Huron Avenue, measuring on said East Huron Avenue, 70 feet by 150 feet in depth, and having such location, shape and bounds as are shown thereon.

Patricia P. Beckmann

Sworn to and subscribed before me at Charleston, SC,

Charleston County, SC, this 29th day

of December, 1987.

Gutchen B. Stringer-Roberson
 Notary Public

My commission expires: 7/22/91

PLT 00162

149

Chas. J. Jones and Recorder

Page 4 19 72 9:40

Book 699 Page 315

Stephen H. Rector

Register Merue Conveyances
Charleston County, S. C.

State of South Carolina,

TO

TITLE TO REAL ESTATE

Filed _____ day _____

of _____ A.D. 19 _____

at _____ o'clock _____ M.

and recorded in book _____

Page _____ fee, \$ _____

R. M. Co. or Clerk Court C.P. & C. S.

County, S.C.

Recorded this _____ 1976 day _____

of _____ 1972

in book _____ Page 62

fee, \$ _____

Pauline H. Hays

And/or _____ County, S. C.

Small Print

PLT 00163

COUNTY OF CHARLESTON

CERTIFIED A TRUE COPY:

Frederick B. Stringer Robinson
NOTARY PUBLIC, S.C.

My c/c: 7/22/91

KNOW ALL MEN BY THESE PRESENTS, THAT

I, Frances A. Harley

in the State aforesaid _____ for and _____ in consideration of the sum of
-Seven Thousand and 00/100---- (\$7,000.00) -----DOLLARS,

to _____ me _____ in hand paid at and before the sealing of these presents by Harry Beckmann III, and
Patricia P. Beckmann,

in the State aforesaid _____ the receipt whereof is hereby

acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and

release unto the said Harry Beckmann III, and Patricia P. Beckmann, their heirs and
assigns:

All that certain lot of land, with the buildings thereon, situate, lying and being, on Folly Island, in the County of Charleston, State aforesaid, and known and designated on a plat made by Jefferson Construction Company, dated February, 1920, and recorded in Plat Book C, page 158, in the R.M.C. Office for Charleston County, as Lot No. 209, East Huron Avenue, measuring on said East Huron Avenue, 70 feet by 150 feet in depth, and having such location, shape, and bounds as are shown on said plat.

Being the same premises as conveyed to Frances A. Harley by deed of Joseph M. Rudick, dated October 16, 1961, and recorded in Book S74, page 87, in the R.M.C. Office for Charleston County, on October 16, 1961.

Address of Grantees: 209 East Huron Drive, Folly Beach, South Carolina.

PLT 00164

Executors and Administrators, to warrant and forever defend all and singular, the said Parties unto the said

Harry Beckman III, and Patricia E. Beckman, their

Heirs and Assigns, against me and my Heirs, and all persons whomsoever, lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 27th day of April

in the year of our Lord one thousand nine hundred and seventy-two and in the one hundred and

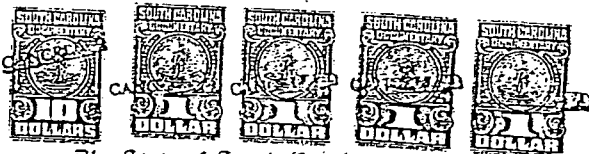
ninety-sixth

year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Samuel F. Foster
William H. Foster

Frances A. Harley (L. S.)
Frances A. Harley (L. S.)



The State of South Carolina,

Charleston County.

PERSONALLY appeared before me Maria E. Foster

and made oath that she saw the within named Frances A. Harley

sign, seal, and as her act and deed, deliver the within written Deed,

and that she with Samuel F. Foster

witnessed the execution thereof.

SWORN to before me, this 27th

day of April A.D. 19 72

Samuel F. Foster (SEAL)
Notary Public of South Carolina

My Commission Expires: March 11, 1974

Maria E. Foster
RENUNCIATION OF DOWER

The State of South Carolina,

Charleston County.

I, Samuel F. Foster, a Notary Public for South Carolina

do hereby certify unto all whom it may concern, that Mrs. Maria E. Foster

the wife of the within named Frances A. Harley

did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, re-
lease and forever relinquish unto the within named Frances A. Harley

Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular
the premises within mentioned, and released.

Given under my Hand and Seal, this 27th day of April Anno Domini 19 72

(SEAL)

Notary Public of South Carolina
My Commission Expires:

PLT 00166

SUMMARY OF REVIEW

Commenting Agencies

DEBC - 401 NOBG

SCWMD NOBG

Others:

SPD - NABJ

SCAN - NABJ

Adjacent Property Owners

Crowley

Wright - NOBG

Agent

588-9425

See list of interested persons on reverse

COMPLETE

Ownership Received 1-5-88

1st Ad Received 1-12-88

Date Published 1-5-88

Where Published NEC

2nd Ad Received _____

Date Published _____

Where Published _____

Letters to Applicant

1. 1-6-88

2. _____

3. _____

4. _____

ACTION

☒ Permit Administrator

Type of permit: Private dock

Permitting Committee

Issue (no provisions) _____

Date _____

Issue with provisions ☒

Date 1-20-88

Deny _____

Date _____

Provisions

① Provided + 6 structure extends no further channel than adjacent existing structure

② Provided + 6 structure is built a MINIMUM of 3' from H/W

BOOK 99 PAGE 315

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise Incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said
Harry Beckman, III, and Patricia P. Beckman, their Heirs and Assigns forever.

SOUTH CAROLINA COUNTY DOCUMENTARY

SOUTH CAROLINA COASTAL COUNCIL PERMIT

Hand Delivered
in
1/27/88/03

PERMIT NUMBER: CC-87-368

PUBLIC NOTICE NUMBER: CC-87-368

NAME OF APPLICANT: Harry Beckmann, III

DATE OF ISSUANCE: January 21, 1988

EXPIRATION DATE: January 21, 1991

**SEE SPECIAL
CONDITIONS
ON PAGE 4**

This permit is issued under the provisions of Act 123 of the 1977 South Carolina General Assembly and the Final Rules and Regulations of the South Carolina Coastal Council. Furthermore, this permit authorizes the above named applicant, hereafter called the Permittee, to perform works shown on the sketch hereof and made a part hereof, more particularly described as follows:

COUNTY: Charleston

LOCATION: at 209 East Huron Avenue, Folly Beach

NEAREST BODY OF WATER: Folly River

DESCRIPTION OF PROJECT: Private dock; as amended

GENERAL CONDITIONS:

The permittee agrees to the following general conditions:

1. That if the activity authorized herein is not completed on or before the 21st day of January, 1991 (three years from the date of issuance of permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
2. That the structure or work authorized herein shall be maintained in good condition and in accordance with the plans and drawings attached hereto. Failure to maintain the structure in this condition shall be grounds for revocation of the permit.
3. That every reasonable effort will be made to conduct the work authorized herein in a manner which minimizes, to the fullest extent possible, any adverse impact on fish, wildlife and water quality.

4. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
5. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of private property or rights in property.
6. That this permit is granted subject to the rights of the State of South Carolina in navigable water and shall be subject, further, to the rights for which purposes the waters and submerged land thereunder are held by the State. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or other applicable federal agency nor from necessity of compliance with all applicable local laws, ordinances, and zoning or other regulations.
7. That this permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Coastal Council and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
9. That the permittee shall permit the Council or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions of this permit.
10. That authorization for activities or structures herein shall constitute a revocable license. The Coastal Council may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Council that such activity or structure is in violation of the public health, safety, and welfare. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and providing the permittee with opportunity to respond in writing.
11. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition 12 hereof, he/she must restore the area to a condition satisfactory to the Coastal Council.
12. That this permit may not be transferred to a third party without prior written notice to the Coastal Council, either by the transferree's written agreement to comply with all terms and conditions of this permit or by the transferree subscribing to this permit and thereby agreeing to comply with all terms and conditions of this permit.

13. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

14. That the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work. Display of a placard is not necessary if a permit for the work has been issued by the U. S. Army Corps of Engineers and a Corps placard is posted in a conspicuous place at the site.

15. That before revocation, suspension, or modification of this permit, the Coastal Council shall provide written notification to the permittee of intention to revoke, suspend, or modify the permit, and the permittee shall be given an opportunity to present a written explanation to the Coastal Council.

16. That the permittee, upon receipt from the Coastal Council of written notification of intent to revoke, suspend or modify the permit, shall cease all work under this permit. Furthermore, work shall not be resumed under this permit until final disposition of the proceeding has occurred.

17. That the permittee, upon receipt of a notice or revocation of this permit upon its expiration before completion of the authorized structure or work, shall without expense to the Coastal Council and in such time and manner as the Coastal Council or its authorized representative may direct, restore the area to its former condition. If the permittee fails to comply with the direction of the Coastal Council or its authorized representative, the Coastal Council or its designee may restore the affected area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

18. That in issuing this permit, the Coastal Council has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Coastal Council, may, in addition, institute appropriate legal proceedings.

19. That any modification, suspension or revocation of this permit shall not be the basis for any claim for damages against the Coastal Council or the State of South Carolina or any employee, agent, or representative of the Coastal Council or the State of South Carolina.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS SIX (6) AND EIGHT (8). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN (ATTACHMENT 1) AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS, AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AT THE COASTAL COUNCIL MAY CONSIDER APPROPRIATE.

CAUTION: Section 15(D) of Act 123 of 1977 allows any person adversely affected by the issuance of a Coastal Council permit to appeal the decision to the full Council by filing a written Notice of Intent to Appeal within 15 days after notification of the permit's issuance. In the event of an appeal of the decision to issue this permit, the Coastal Council reserves the right to order a stay of any use or activity authorized herein pending a final decision by the full Council when, in its judgment, the interests of the public would be best served.

Accepted this 27 day of

Jan, 1988

Harry Belman
Permittee

Issued this 21st day of
January, 1988.

State of South Carolina

Coastal Council

John C. Hayes, III, Chairman

By: Steve Moore

Steve Moore
Permit Administrator

ATTACHMENT 1:

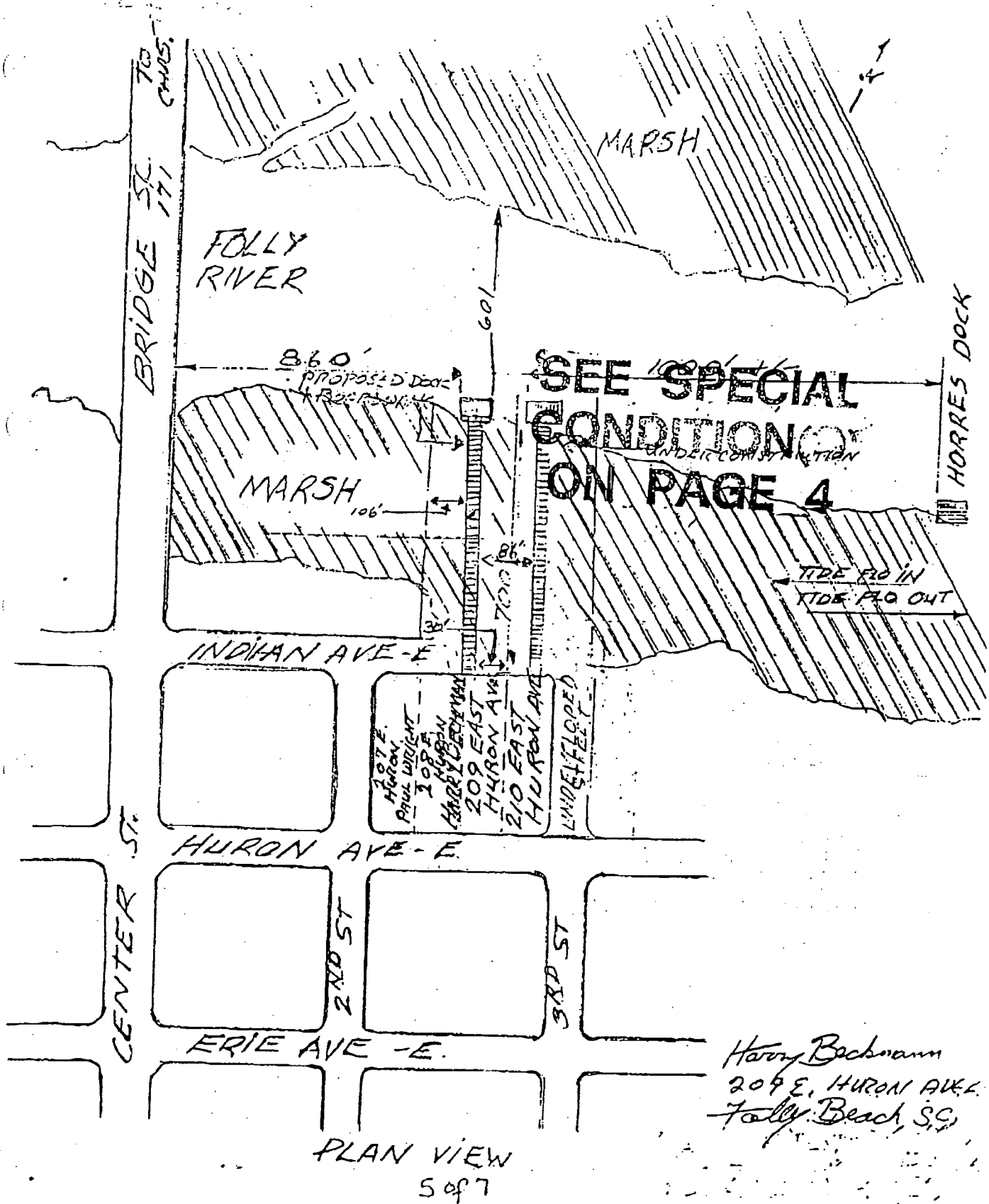
The plans submitted by you, attached hereto, show the work to consist of constructing a private dock. The structure will have a 4' by 700' walkway with one handrail leading to a 12' by 24' fixed pierhead. The purpose of the structure is for the applicant's private, recreational use. These plans are approved as submitted, subject to the following special conditions.

SPECIAL CONDITIONS:

1. Provided that the structure extends no further channelward than adjacent, existing structures.
2. Provided that the structure is built a minimum of 3' above mean high water.

THE PERMITTEE HAS READ THE SPECIAL CONDITIONS AND AGREES TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THESE SPECIAL CONDITIONS.

Harry Belman
Permittee



PROPERTY LINE

EXISTING PROFILE OF MARSH
DEPICTING MUD LINE ELEVATIONS
100 FT. STATIONS

BOARDWALK ELEVATION

DOCK

RIVER EDGE

SEE SPECIAL
CONDITION(S)
ON PAGE 4

+7
+6
+5
+4
+3
+2
+1
0
-1
-2
-3
-4
-5

LOW TIDE MARK

MAIN SEA LEVEL

HIGH TIDE MARK

MUD LINE

ACROSS MARSH

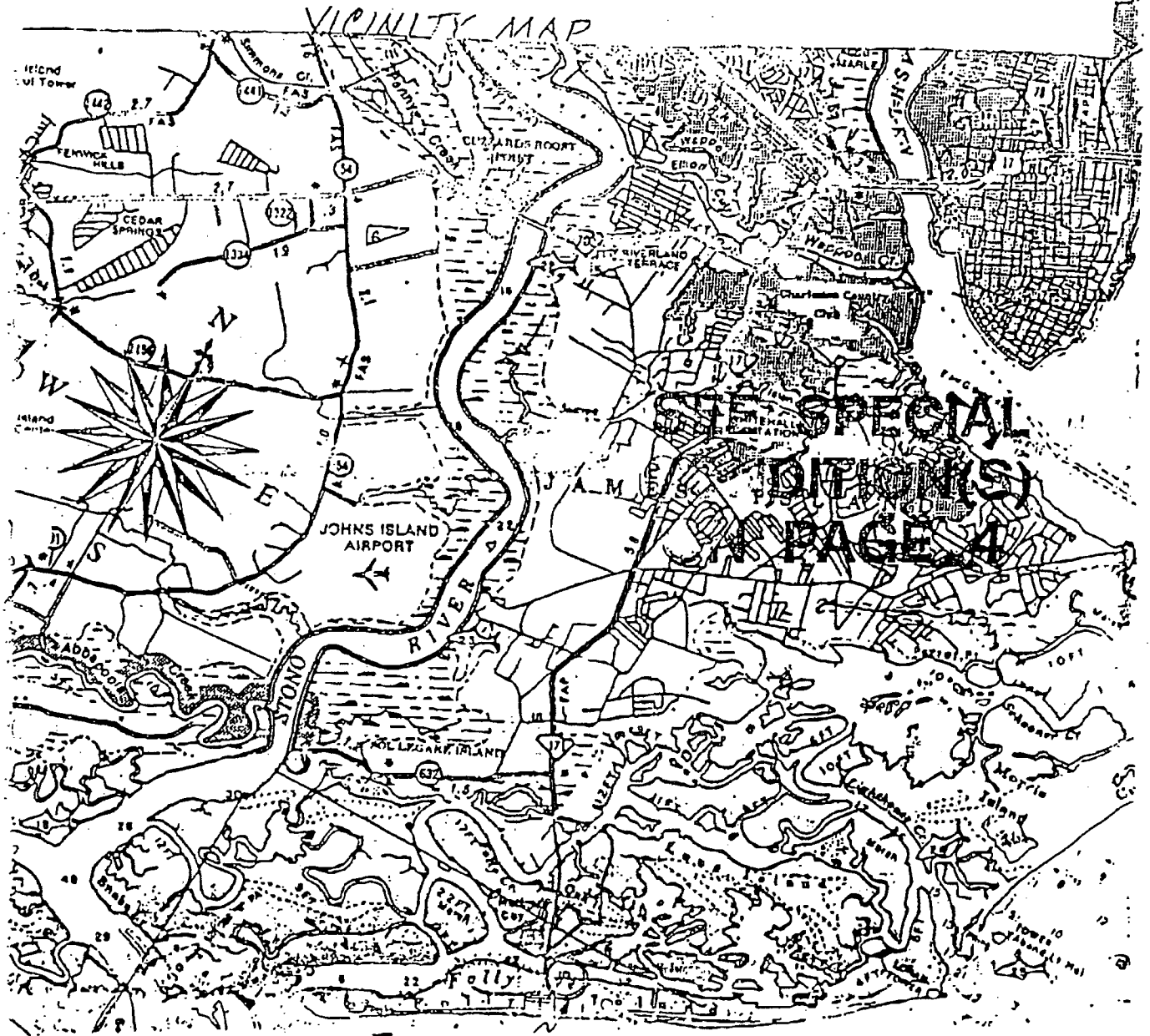
6X6X20' PILE

BOTTOM DROPS
TO MINUS 10 FT.
SEE GEODETIC SURVEY
SOUNDINGS ON VICINITY MAP

Harry Beckmann
209. HYTON AVE. E.
FOLLY BEACH, S.C.

6 of 7

EXCL (4)



SITE OF PROPOSED
BOAT-CRAFTING DOCK
AND ACCESS BOARD-
WALK

M of 7

Henry Beckmann
209 E Huron Ave
Falls Beach, SC 29439

8-20-87-SP-NN
SOUTH CAROLINA COASTAL COUNCIL

Rec'd 11/24/87

PERMIT APPLICATION PUBLIC NOTICE

November 19, 1987

CC-87-337

The South Carolina Coastal Council has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: Harris Crowley
210 East Huron Avenue
P. O. Box 472
Folly Beach, South Carolina 29439

LOCATION: On and adjacent to the Folly River at 210 East Huron Avenue at Folly Beach, Charleston County, South Carolina.

WORK: The work, as proposed and shown on the attached plans, will consist of constructing a private dock. The structure will have a 4' by 700' walkway leading to a 12' by 24' fixed pierhead. The purpose of the structure is for the applicant's private, recreational use.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by the Coastal Council can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program.

To assure review by the Council, comments regarding this application must be received by the Coastal Council on or before December 4, 1987.

PLEASE REPLY TO:

South Carolina Coastal Council
Ashley Corporate Center
4280 Executive Place North, Suite 300
Charleston, South Carolina 29405

Please refer to P/N CC-87-337

The proposed project will not be located within the boundaries of any property included in the National Register or adjacent to any National Register property. If archaeological materials are encountered prior to or during construction, we request that our office be notified.

Nancy Brock 12/2/87
Nancy Brock, Environmental Review Specialist

Steve Moore
Steve Moore, Permit Administrator

SC Dept. of Archives and History

PLAINTIFF'S
EXHIBIT

BB

PLT 00167

SOUTH CAROLINA COASTAL COUNCIL

(Permit Application)

ENCL. (1)

Date 11-11-87

1. Application number (to be assigned by the Council) _____
2. Name and address of applicant: HARRIS L. CROWLEY
210 EAST HURON AVE.
P.O. BOX 472
FOLLY BEACH, S.C. 29439
- Telephone (during business hours) (803) 766-7198
3. Name, address and title of authorized agent: NONE

Telephone (during business hours) 766-7198 OR 585-9444

4. Describe the dimensions and specifications of the proposed activity, its purpose and intended use: CRABBIN'G & BOAT DOCK 12'X24'
W/ 700' ACCESS PIER 4' WIDE. ONE HAND RAIL
W/ INTERMEDIATE RAIL. MARINE TREATED
PILE & TIMBERS - TYPICAL, ALL BOLTS, NUTS,
WASHERS & HARDWARE TO BE HOT DIPPED
GALVERNIZE INCLUDING NAILS.

5. Names and addresses of adjoining property owners:

<u>HARRY BECKMAN, III</u>	<u>LARRY E. COPE</u>
<u>P.O. BOX 391</u>	<u>220 WINDSOR PT. ROAD</u>
<u>FOLLY BEACH, S.C.</u>	<u>COLUMBIA S.C. 29223</u>
<u>29439</u>	

6. Location of proposed activity: Street, road or other descriptive location: FM
210 EAST HURON AVE. TO FOLLEY RIVER
FOLLY BEACH, S.C.
County CHAS. Nearest town CITY OF FOLLY BEACH
Waterway or wetland FOLLY RIVER SOUTH BANK EAST OF BRIDGE
Latitude and longitude (if known) LATITUDE 32° 41' LONGITUDE 79° 55'

7. Date construction to commence 1-4-1988
Date construction is to be completed 6-1-1988

8. Additional remarks:

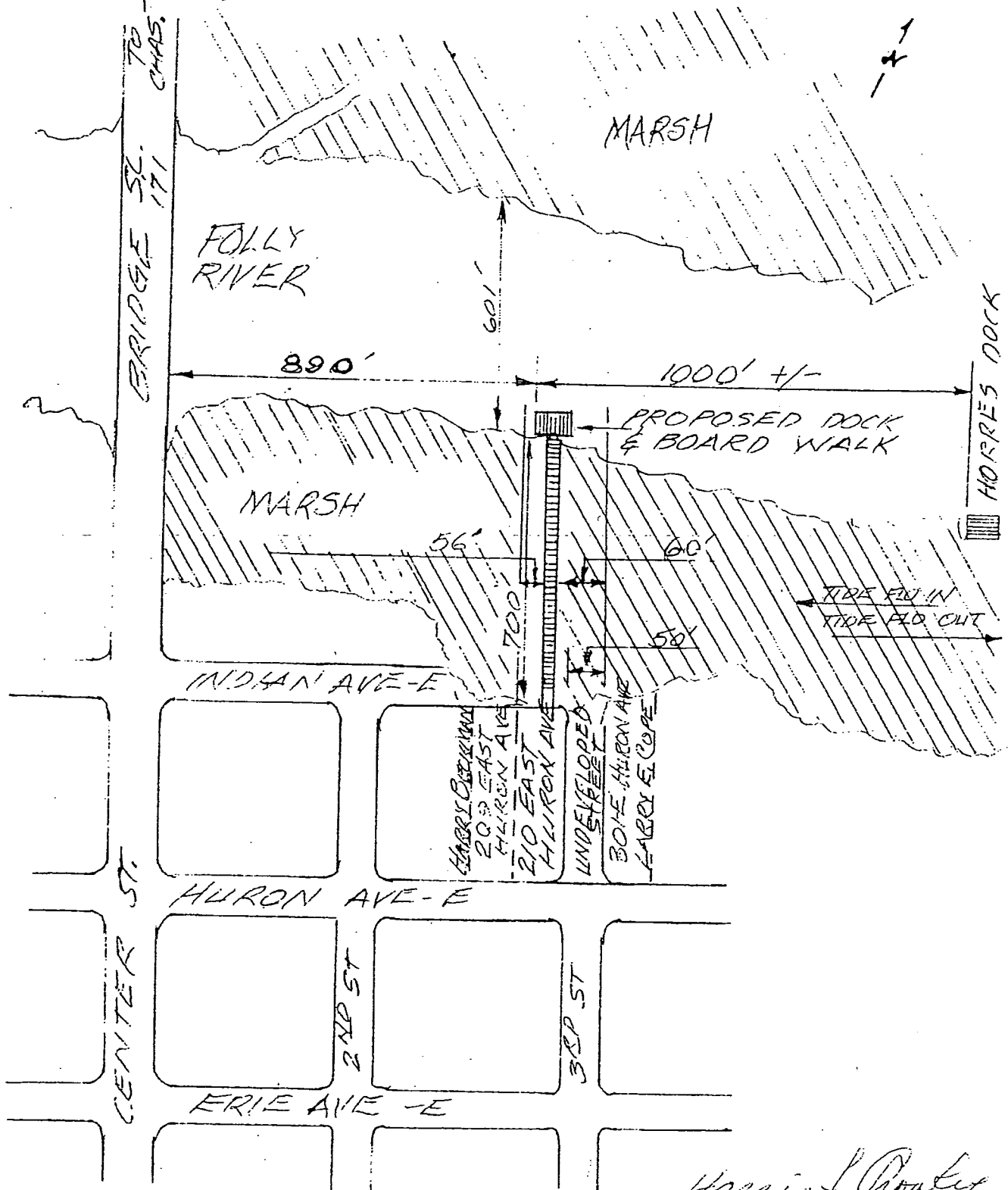
9. I certify that the information contained in this application is true, complete and accurate to the best of my knowledge and belief.

Signature of Applicant

Date 11-11-87

PLT 00168

ENCL (5)



PLAN VIEW

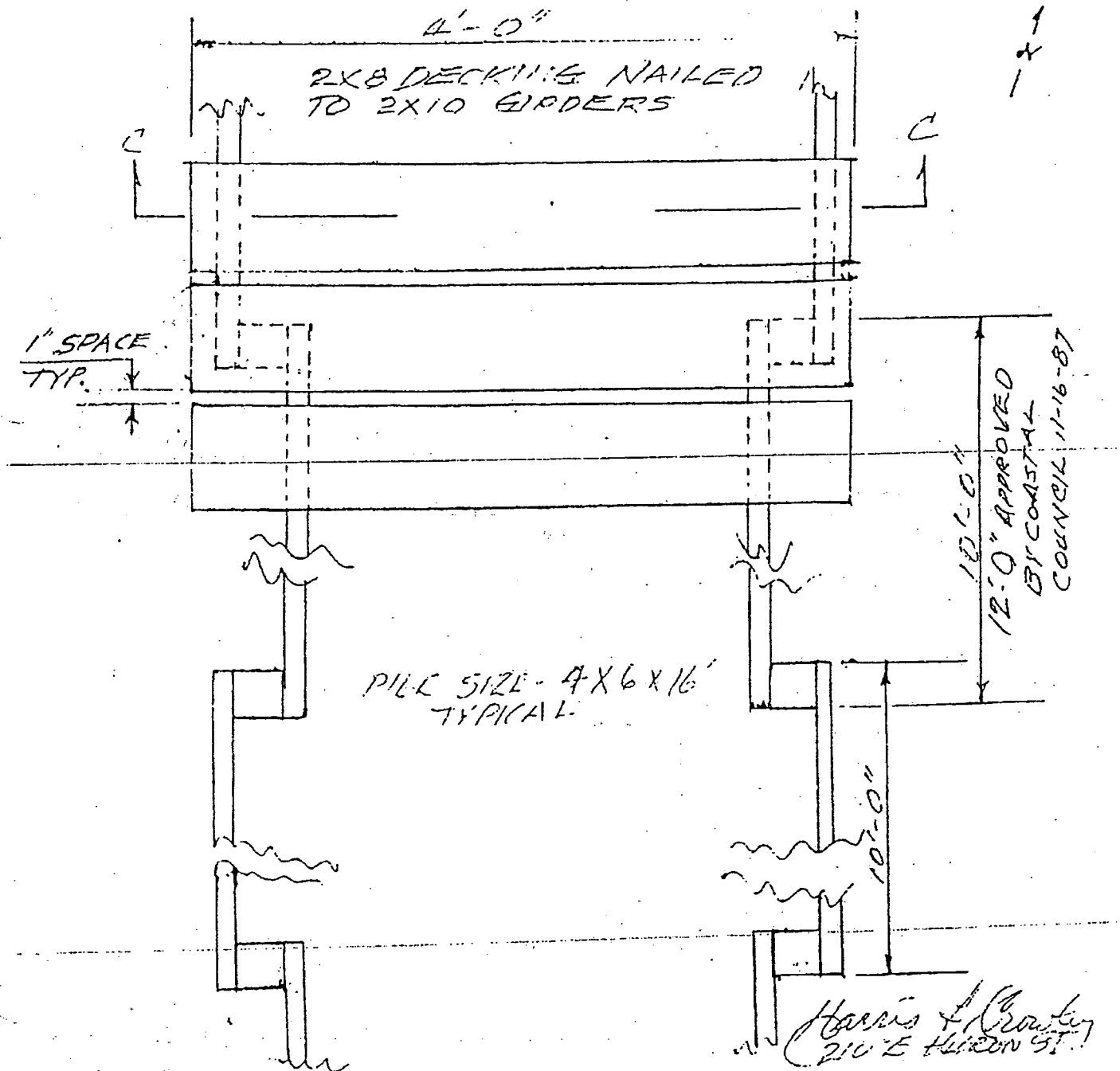
5 of 6

Harris L. Chouly
210 EAST HURON AVE
FOLLY BEACH, SC.

PLT 00169

ENCL. (6)

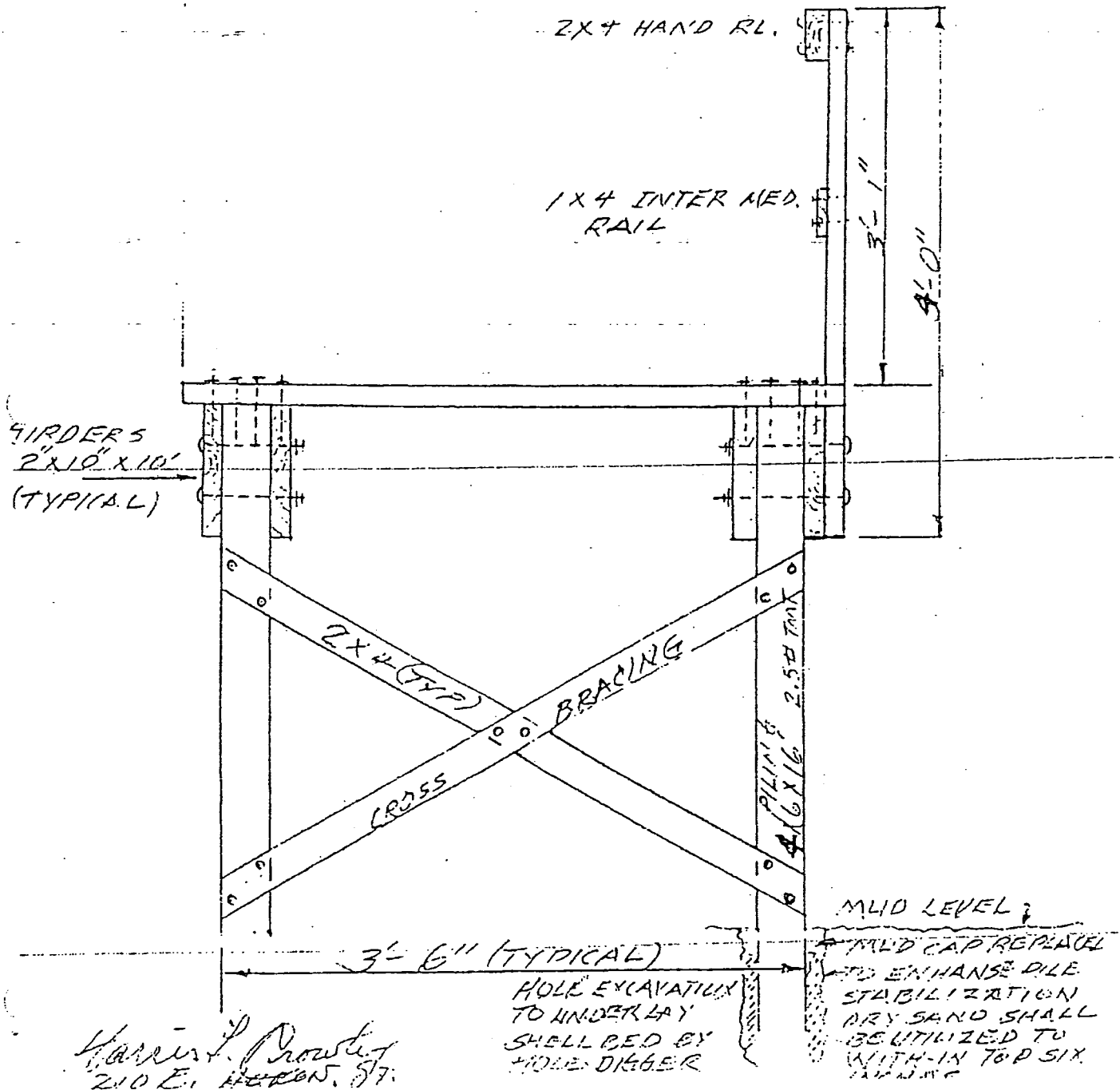
BOARDWALK FRAMING PLAN



PLT 00170

ENCL (7)

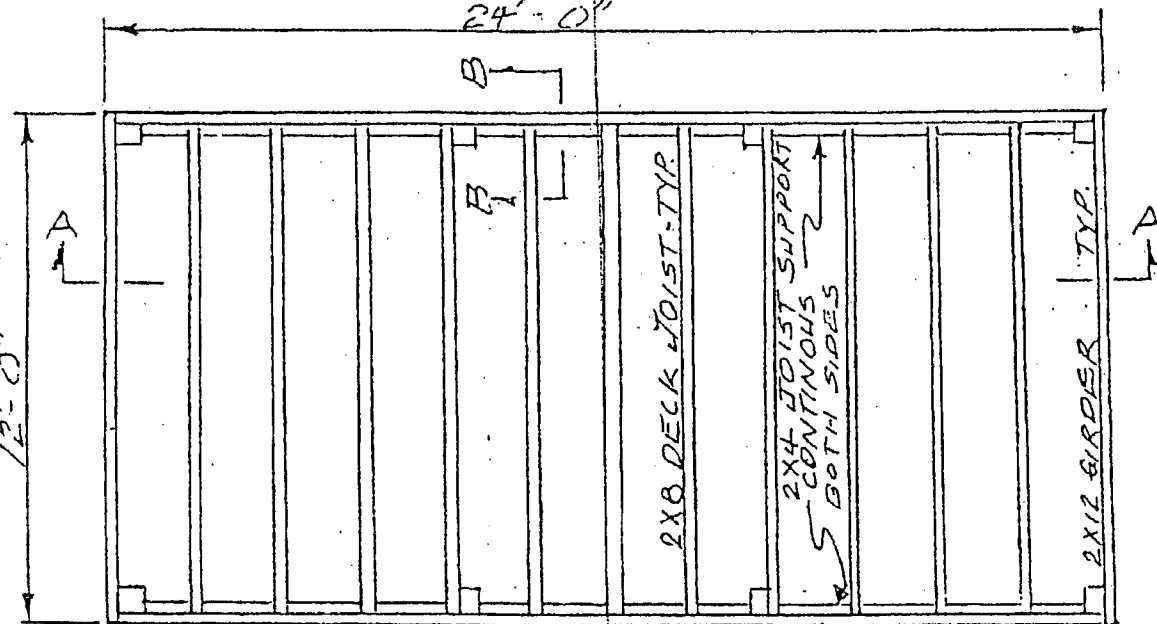
BOARDWALK
SECTION C-C
4'-0"



PLT 00171

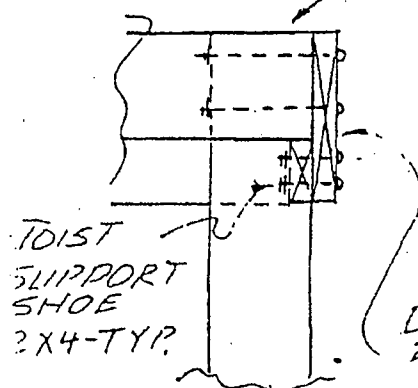
DOCK FRAMING PLAN SCALE 1/4" = 1'-0"

DOCK GUARD-
RAILS TO BE
AS DESIGNED
FOR BOARDWALK



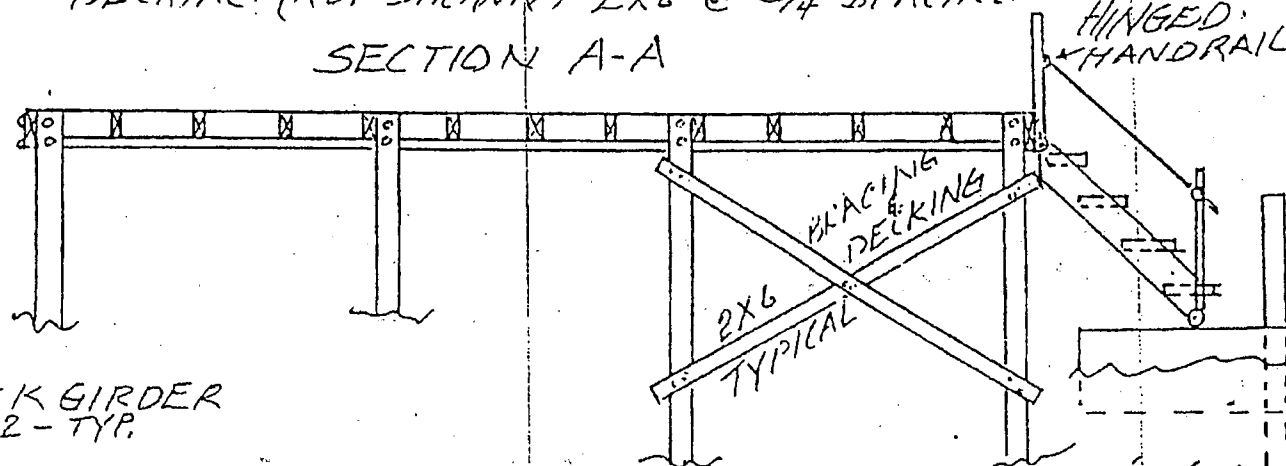
SECTION B-B
DECKING JOIST
2X8-TYP.

DECKING (NOT SHOWN) 2X6 @ 3/4" SPACING
SECTION A-A



DOCK GIRDER
2X12-TYP.

SCALE 1" = 1'



DOCK
PILES 6X6 X 20' TYP.
MARINE TMT. 2.5# RET.
PILES SHALL BE JETTED
CUT-OFF ELEVATION

6'X6'X2'
FLOATING
PLATFORM

PLT 00172

ENCLOSURE

Christ. Crowley, P.E.

Encl. (2)

AFFIDAVIT OF OWNERSHIP OR CONTROL

RECEIVED
1987

TO THE SOUTH CAROLINA COASTAL COUNCIL:

I hereby certify that I am the (check one):

COASTAL COUNCIL

record owner ☒
lessee ☐
record easement holder ☐
applicant to record owner for easement ☐

of the below described property situated in CHARLESTON County, South Carolina; and that said property is all of the property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application. This affidavit applies only to high land and does not apply to wetlands or any area below mean high water, regardless of the description provided below.

LEGAL DESCRIPTION

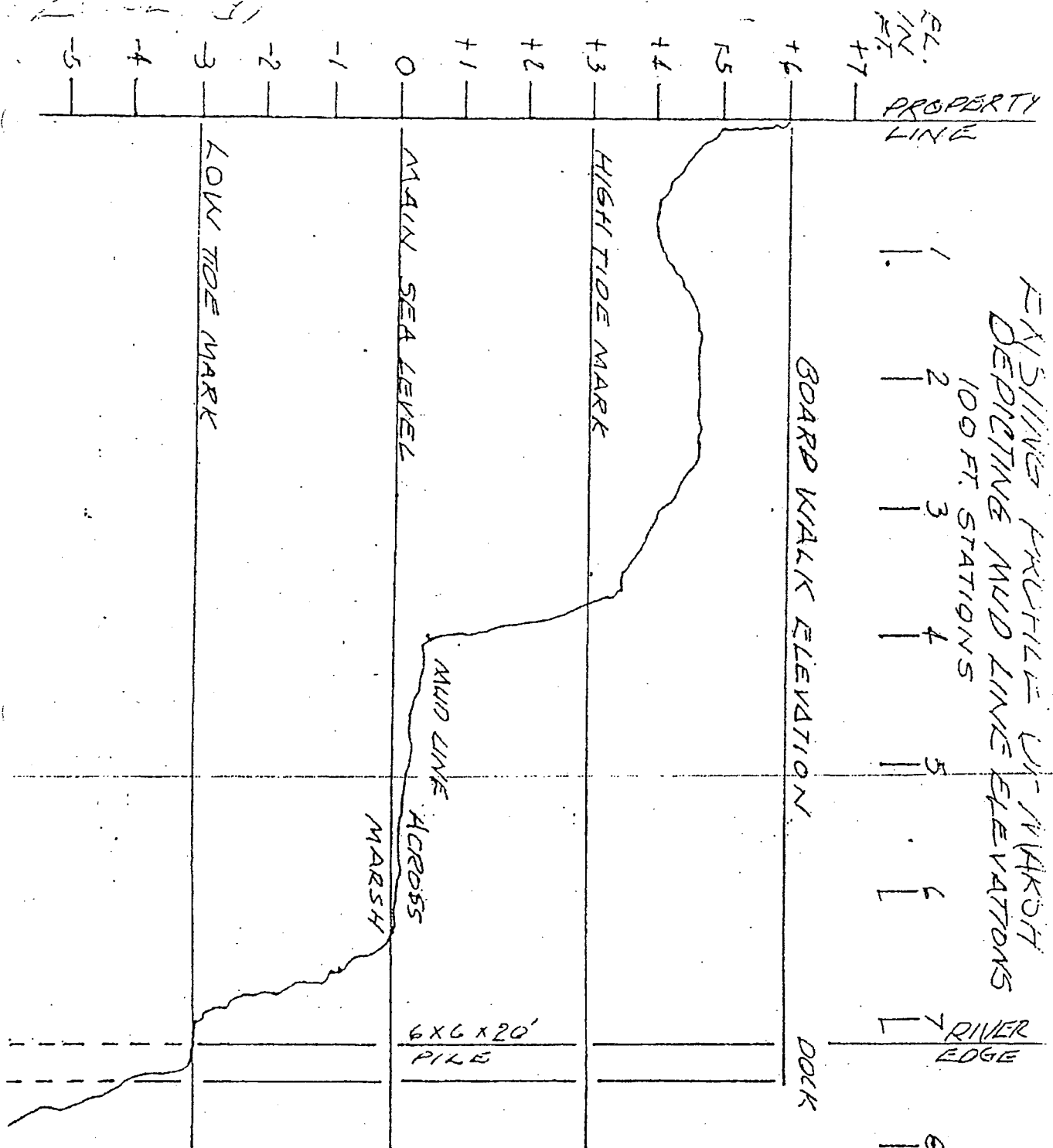
THAT CERTAIN LOT OF LAND, SITUATED, LYING AND BEING ON FOLLY ISLAND, IN CHARLESTON CO. STATE OF SC. BOUNDING ON HURON AVE. EAST, & THE FOLLY RIVER NORTH MEASURING THEREON SEVENTY (70) FEET BY ONE HUNDRED AND FIFTY (150) FEET IN DEPTH AND KNOWN AND DESIGNATED AS 210 EAST HURON AVENUE ON A PLAT MADE BY JEFFERSON CONSTRUCTION CO. DATED FEB. 1920 AND RECORDED IN THE REC. OFFICE FOR CHARLESTON CO. IN PLAT BOOK C, PAGE 158, AND HAVING SUCH METES AND BOUNDS AS ARE SHOWN THERE ON.

Harrie L. Crowley
Bruce C. Crowley

Sworn to and subscribed before me at Charleston S.C.
CHAS. County, Charleston this 13th day
of NOV. 1987:
Stephen Stoney
Notary Public

My commission expires: 2/97

PLT 00173



Harris J. Crowley, P.E.
 210 EAST Huron St.
 Folly Beach, SC.
 29439

PLT 00174

PERMIT APPLICATION
TABLE OF CONTENT

ENCL.

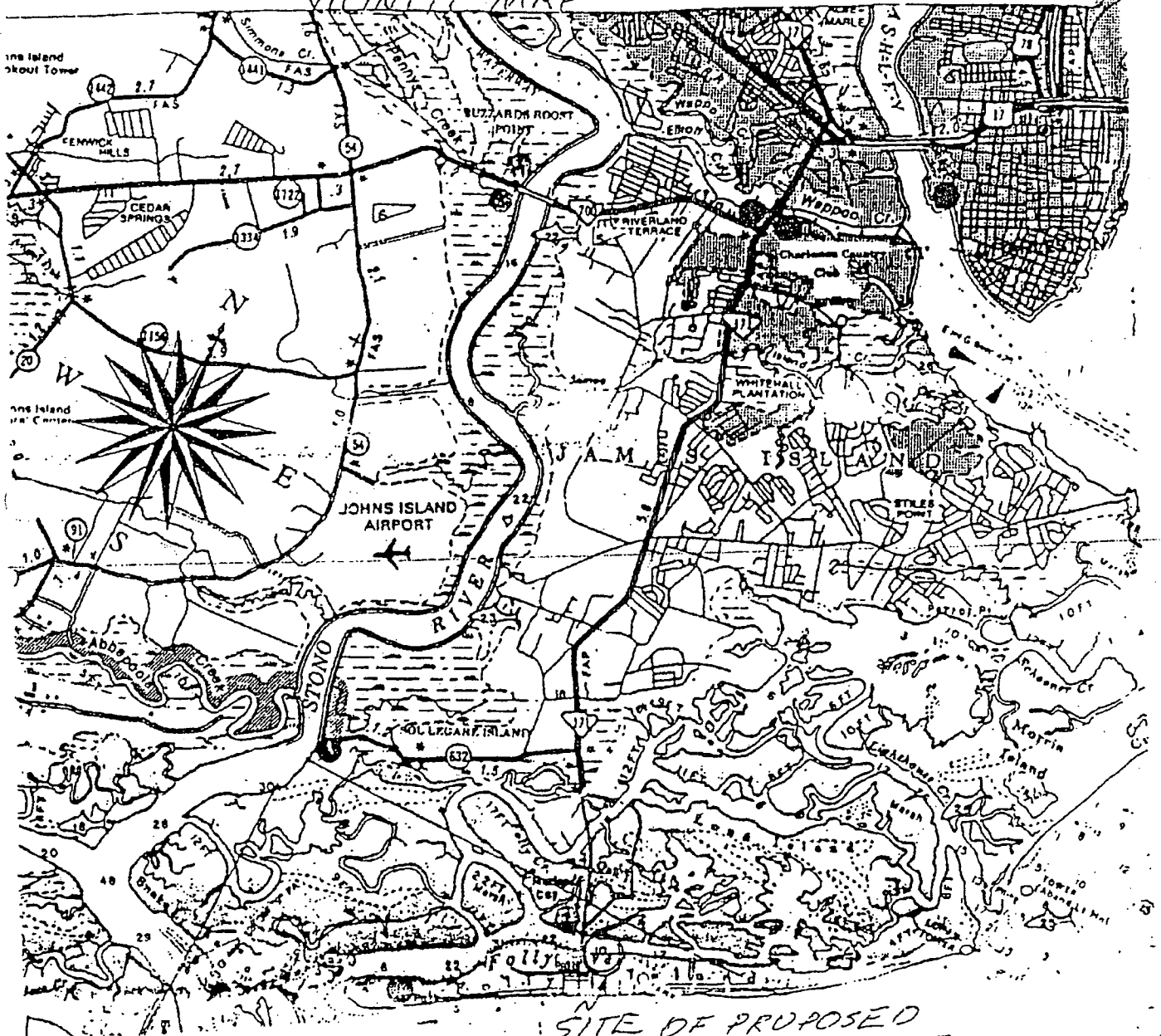
- (1) COMPLETED PERMIT APPLICATION OF 11-11-87
- (2) AFFIDAVIT OF OWNERSHIP.
- (3) DEED & TITLE TO REAL ESTATE (CERTIFIED COPY)
- (4) VICINITY MAP
- (5) PLAN VIEW
- (6) BOARD WALK FRAMING PLAN.
- (7) CROSS SECTION OF BOARDWALK
- (8) DOCK FRAMING PLAN & CROSS SECTION
- (9) PROFILE OF MUD LINE ACROSS MARSH
- (10) AFFIDAVIT BY NEWS & COURIER OF
POSTING OF PUBLIC NOTICE ON 11-14-87

Harris L. Rowley, P.E.
210 E. HURON, AVE
FOLLY BEACH SC.
PO BOX 472,

PLT 00175

FLYCL (4)

VICINITY MAP



SITE OF PROPOSED
BOAT-CRAFTING DOCK
AND ACCESS BOARD-
WALK

Harvey S. Crowder
5-10 E. HURON ST.

PLT 00176

1614 Record, S.C.

✓
R

3.00
1.65

6.40
.10

Recorded this 2nd day of September 1964
In Book 721 Page 199 Fee 1.25

Bertrude Hunter
Auditor Charleston County

Filed, Indexed and Recorded
Sept 2 1964 11:10
DATE TIME
Book 281 Page 63

Charleston County, S. C.

State of South Carolina,

ISABEL S. KING, as Executrix
of the Will of Ernest W. King
and Individually

TO

HARRIS L. CROWLEY and
ANNIE CROWLEY

Title to Real Estate

PLT 00177

COUNTY OF CHARLESTON

Bill to Real Estate

WHEREAS, Ernest W. King, died seized of the property hereinafter described leaving of force his Last Will and Testament proved in the Probate Court for Charleston County, S. C. on the 20th day of July 1948 wherein he devised his Estate to his wife, Isabel S. King and appointed her Executrix thereof with full powers of sale.

THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT ^I~~WER~~
ISABEL S. KING as Executrix of the Will of ERNEST W. KING and INDIVIDUALLY,
~~by virtue of the powers of sale in said will and any and all powers, me~~
~~thereunto enabling~~
in the State aforesaid, for and in consideration of the sum of Fifteen hundred and no/100
(\$1,500.00)-----

-----Dollars,
to me in hand paid at and before the sealing of these presents by HARRIS L. CROWLEY AND
ANNIE CROWLEY-----

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and re-
lease, and by these Presents do grant, bargain, sell and release unto the said HARRIS L. CROWLEY
and ANNIE CROWLEY, their heirs and assigns:

ALL that certain lot of land, situate, lying and being on Folly Island,
in the County of Charleston, State of South Carolina, bounding on Huron
Avenue East and measuring thereon seventy (70) feet, by one hundred and
fifty (150) feet in depth, and known and designated as 210 Huron Avenue
East on a plat made by Jefferson Construction Company dated February
1920 and recorded in the R.M.C. Office for Charleston County in Plat
Book C page 158 and having such metes and bounds as are shown thereon.

This being the same premises which were conveyed to Ernest W. King

PLT 00178

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said
HARRIS L. CROWLEY and ANNIE CROWLEY, their

Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs
Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the
said HARRIS L. CROWLEY and ANNIE CROWLEY, their

Heirs and Assigns, against me

PLT 00179

PERSONALLY appeared before me

and made oath that Isabel S. King saw the within named ISABEL S. KING, as Executrix of the Will of Ernest W. King and Individually

sign, seal, and as her act and deed, deliver the within written Deed; and that Isabel S. King with

E. D. K. Pritchard witnessed the execution thereof.

SWORN to before me this 1st

day of September A. D. 1964

E. D. K. Pritchard
NOTARY PUBLIC FOR SOUTH CAROLINA



THE STATE OF SOUTH CAROLINA,

RENUNCIATION OF DOWER
UNNECESSARY -

County.

I, _____ a Notary Public for South Carolina,

do hereby certify unto all whom it may concern, that Mrs. _____ the wife

of the within named _____ did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within

named _____ Heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned

and released.

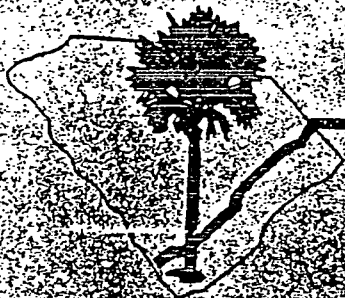
Given under my Hand and Seal, this _____ day of _____

Anno Domini 19_____

NOTARY PUBLIC FOR SOUTH CAROLINA



PLT 00180



South Carolina Coastal Council

NOTICE OF AUTHORIZATION

PERMIT NUMBER: CC-87-337

DATE EXPIRES: December 10, 1990

DATE ISSUED: December 10, 1987

PERMITTEE: Harris L. Crowley

ADDRESS OF PERMITTEE: 10 East Huron Ave. P.O. Box 472 Folly Beach, SC 29439

AUTHORIZED WORK: Private dock has amended

WATERWAY: Folly River

CITY: Folly Beach

COUNTY: Charleston

PERMIT ADMINISTRATOR

DATE: December 15, 1987

THIS NOTICE MUST BE CONSPICUOUSLY DISPLAYED AT THE SITE OF WORK

PLT 00673

SOUTH CAROLINA COASTAL COUNCIL PERMIT

PERMIT NUMBER: CC-87-337

PUBLIC NOTICE NUMBER: CC-87-337

NAME OF APPLICANT: Harris Crowley

DATE OF ISSUANCE: December 10, 1987

EXPIRATION DATE: December 10, 1990

SEE SPECIAL
CONDITIONS
ON PAGE 4

This permit is issued under the provisions of Act 123 of the 1977 South Carolina General Assembly and the Final Rules and Regulations of the South Carolina Coastal Council. Furthermore, this permit authorizes the above named applicant, hereafter called the Permittee, to perform works shown on the sketch hereof and made a part hereof, more particularly described as follows:

COUNTY: Charleston

LOCATION: at 210 East Huron Avenue, Folly Beach

NEAREST BODY OF WATER: Folly River

DESCRIPTION OF PROJECT: Private dock; as amended

GENERAL CONDITIONS:

The permittee agrees to the following general conditions:

1. That if the activity authorized herein is not completed on or before the 10th day of December, 1990 (three years from the date of issuance of permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
2. That the structure or work authorized herein shall be maintained in good condition and in accordance with the plans and drawings attached hereto. Failure to maintain the structure in this condition shall be grounds for revocation of the permit.
3. That every reasonable effort will be made to conduct the work authorized herein in a manner which minimizes, to the fullest extent possible, any adverse impact on fish, wildlife and water quality.

4. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
5. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of private property or rights in property.
6. That this permit is granted subject to the rights of the State of South Carolina in navigable water and shall be subject, further, to the rights for which purposes the waters and submerged land thereunder are held by the State. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or other applicable federal agency nor from necessity of compliance with all applicable local laws, ordinances, and zoning or other regulations.
7. That this permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Coastal Council and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
8. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
9. That the permittee shall permit the Council or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to assure that the activity being performed is in accordance with the terms and conditions of this permit.
10. That authorization for activities or structures herein shall constitute a revocable license. The Coastal Council may require the permittee to modify or remove activities or structures authorized herein if it is determined by the Council that such activity or structure is in violation of the public health, safety, and welfare. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and providing the permittee with opportunity to respond in writing.
11. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition 12 hereof, he/she must restore the area to a condition satisfactory to the Coastal Council.
12. That this permit may not be transferred to a third party without prior written notice to the Coastal Council, either by the transferree's written agreement to comply with all terms and conditions of this permit or by the transferree subscribing to this permit and thereby agreeing to comply with all terms and conditions of this permit.

13. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

14. That the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work. Display of a placard is not necessary if a permit for the work has been issued by the U. S. Army Corps of Engineers and a Corps placard is posted in a conspicuous place at the site.

15. That before revocation, suspension, or modification of this permit, the Coastal Council shall provide written notification to the permittee of intention to revoke, suspend, or modify the permit, and the permittee shall be given an opportunity to present a written explanation to the Coastal Council.

16. That the permittee, upon receipt from the Coastal Council of written notification of intent to revoke, suspend or modify the permit, shall cease all work under this permit. Furthermore, work shall not be resumed under this permit until final disposition of the proceeding has occurred.

17. That the permittee, upon receipt of a notice or revocation of this permit upon its expiration before completion of the authorized structure or work, shall without expense to the Coastal Council and in such time and manner as the Coastal Council or its authorized representative may direct, restore the area to its former condition. If the permittee fails to comply with the direction of the Coastal Council or its authorized representative, the Coastal Council or its designee may restore the affected area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

18. That in issuing this permit, the Coastal Council has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and the Coastal Council, may, in addition, institute appropriate legal proceedings.

19. That any modification, suspension or revocation of this permit shall not be the basis for any claim for damages against the Coastal Council or the State of South Carolina or any employee, agent, or representative of the Coastal Council or the State of South Carolina.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS SIX (6) AND EIGHT (8). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN (ATTACHMENT 1) AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS, AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AT THE COASTAL COUNCIL MAY CONSIDER APPROPRIATE.

CAUTION: Section 15(D) of Act 123 of 1977 allows any person adversely affected by the issuance of a Coastal Council permit to appeal the decision to the full Council by filing a written Notice of Intent to Appeal within 15 days after notification of the permit's issuance. In the event of an appeal of the decision to issue this permit, the Coastal Council reserves the right to order a stay of any use or activity authorized herein pending a final decision by the full Council when, in its judgment, the interests of the public would be best served.

Accepted this 14TH day of

DEC., 1987

Harris F. Bowler
Permittee

Issued this 10th day of
December, 1987.

State of South Carolina
Coastal Council

John C. Hayes, III, Chairman

By: Steve Moore

Steve Moore
Permit Administrator

ATTACHMENT 1:

The plans submitted by you, attached hereto, show the work to consist of constructing a private dock. The structure will have a 4' by 700' walkway leading to a 12' by 24' fixed pierhead. The purpose of the structure is for the applicant's private, recreational use. These plans are approved as submitted, subject to the following special conditions.

SPECIAL CONDITIONS:

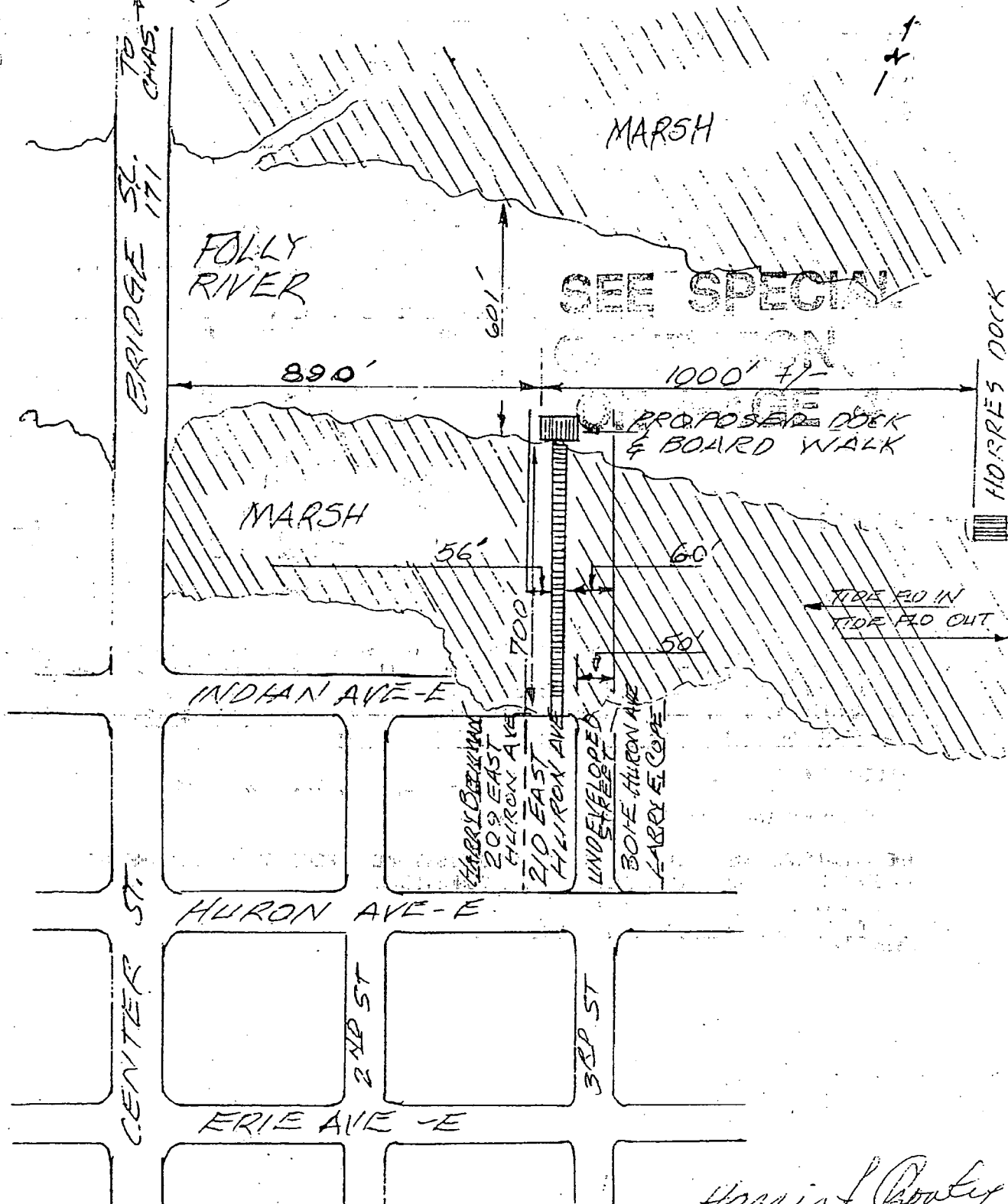
MEAN HIGH WATER RAC 12-1-87

1. Provided that the structure is 3' above

THE PERMITTEE HAS READ THE SPECIAL CONDITIONS AND AGREES TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THESE SPECIAL CONDITIONS.

Harris F. Bowler
Permittee

ENCL. (5)



PLAN VIEW

5 of 6

Harris & Chouty
210 EAST HURON AVE
FOLLY BEACH, SC.

PLT 00678

THE STATE OF SOUTH CAROLINA,
CHARLESTON _____ County.

BOOK D 61 63

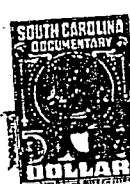
PERSONALLY appeared before me _____
and made oath that _____ saw the within named ISABEL S. KING, as Executrix of
the Will of Ernest W. King and Individually _____

sign, seal, and as her _____ act and deed, deliver the within written Deed; and that _____ with
_____ witnessed the execution thereof.

SWORN to before me this _____

day of September _____ A. D. 1964.

Edward K. Pritchard, Jr.
NOTARY PUBLIC FOR SOUTH CAROLINA



THE STATE OF SOUTH CAROLINA,

_____ County.

RENUNCIATION OF DOWER
UNNECESSARY -

I, _____ a Notary Public for South Carolina,
do hereby certify unto all whom it may concern, that Mrs. _____ the wife
of the within named _____ did this day appear before me, and upon being privately
and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion,
dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within
named _____ Heirs and assigns, all her interest and
estate, and also all her right and claim of dower, of, in or to all and singular the premises within mentioned
and released.

Given under my Hand and Seal, this _____ day of _____

Anno Domini 19____.

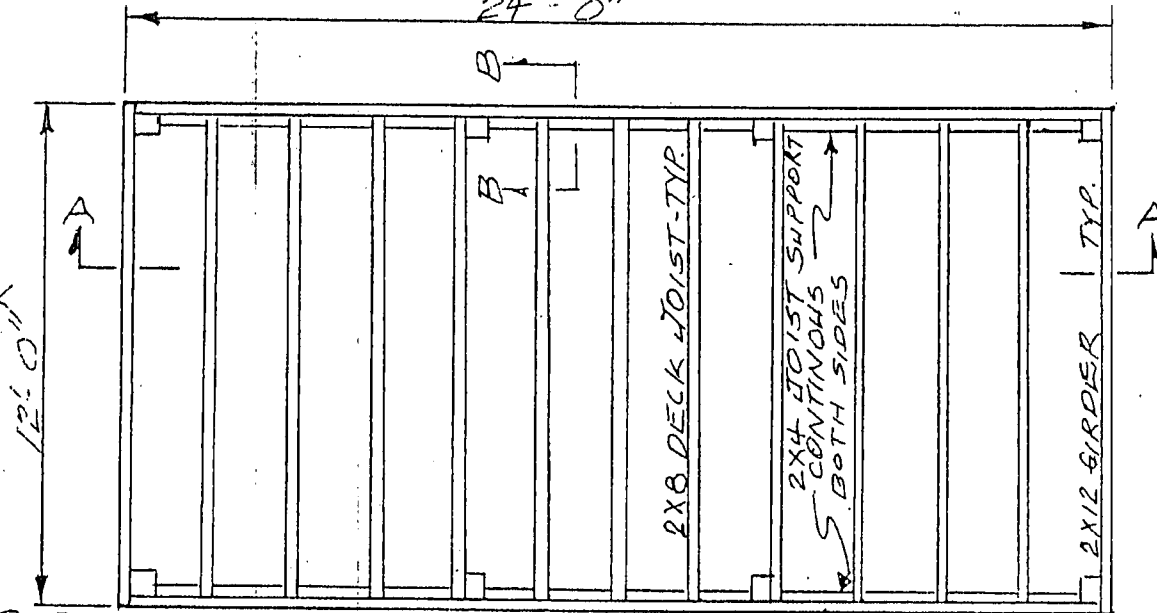
NOTARY PUBLIC FOR SOUTH CAROLINA



PLT 00680

DOCK FRAMING PLAN SCALE 1/4" = 1'-0"

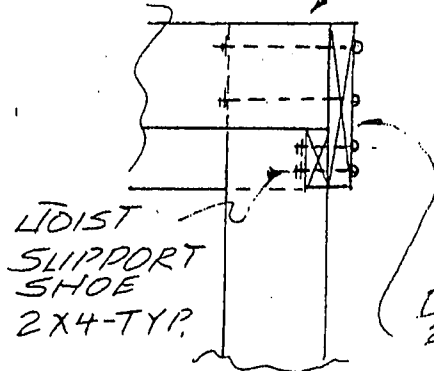
DOCK GUARD-
RAILS TO BE
AS DESIGNED
FOR BOARDWALK



PLT 00681

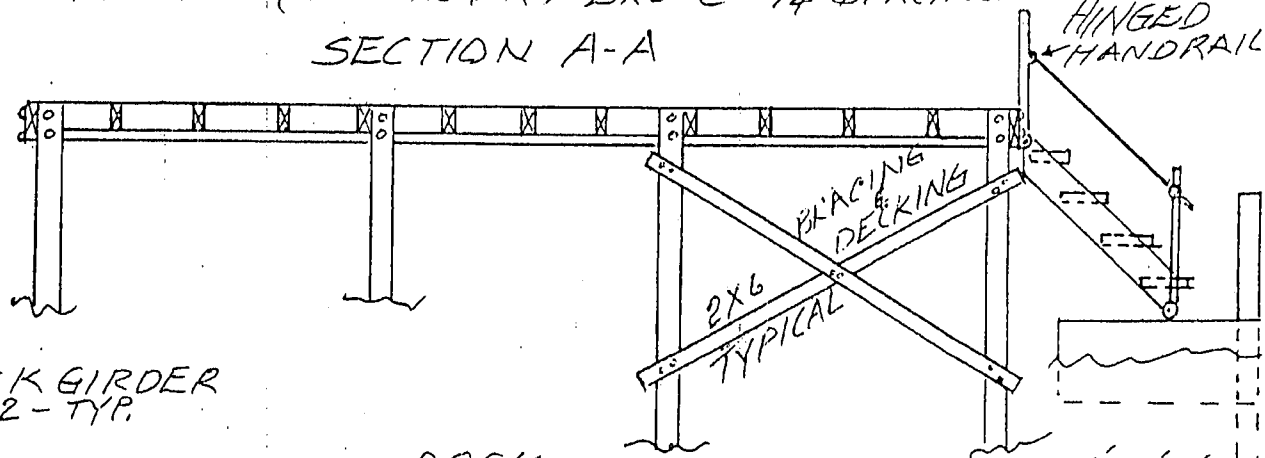
SECTION B-B
DECKING JOIST
2X8-TYP.

DECKING (NOT SHOWN) 2X6 @ 3/4" SPACING
SECTION A-A



DOCK GIRDER
2X12-TYP.

SCALE 1" = 1'



DOCK
PILES 6X6 X 20' TYP.
MARINE TMT. 2.5 # RET.
PILES SHALL BE JETTED
TO CUT-OFF ELEVATION

6X6X2
FLOATING
PLATFORM

ENCLOSURE

Harris F. Crowley, P.E.



SOUTH CAROLINA COASTAL COUNCIL

Ashley Corporate Center
4280 Executive Place North
Suite 300
Charleston, S.C. 29405
(803) 744-5838

James M. Waddell, Jr.
Chairman

H. Wayne Beam, Ph.D.
Executive Director

TO ALL INTERESTED PARTIES

Notification of Public Notice

Enclosed are public notices issued by the South Carolina Coastal Council. All interested parties are allowed 30 days for major developments and 15 days for minor developments after receipt of the public notices to file written comments to the Council pertaining to the applications. Only those comments received within this period must be reviewed by the Council in processing the permit application. Any person wishing notification of the initial Council decision on any specific public notice must make written request within the designated review period for that public notice.

<u>APPLICANT</u>	<u>PUBLIC NOTICE NUMBER</u>	<u>SUSPENSE DATE</u>
Muth & Ocean Cove Condo	CC-87-335	December 4, 1987
CPW	CC-87-336	December 19, 1987
Harris Crowley	CC-87-337	December 4, 1987
Ken Seamon	CC-87-338	December 4, 1987
Joe Williams	CC-87-339	December 4, 1987
D. A. Jackson	CC-87-340	December 4, 1987
Robert Ward	CC-87-593GP	December 4, 1987
Sara Juel	CC-87-594GP	December 4, 1987
George Aitken	CC-87-904GP	December 4, 1987
Garry Kerr	CC-87-905GP	December 4, 1987

November 19, 1987

PLT 00682

ISLAND

SEABROOK

SEABROOK

Folly River

SLoughs & FLATS

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SLOUGHS & FLATS

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