

21731

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444

Stow Away Storage, LLC, MSC MPT LLC Respondents

vs.

George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc., Defendants

Of whom George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, and Sweetgrass Hardware, Inc., are the Appellants.

RECORD ON APPEAL
VOLUME III

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Attorneys for the Appellants
George W. Sisson, 4.0, LLC,
The Sisson Foundation Limited
Partnership, and Sweetgrass
Hardware, Inc.

G. Dana Sinkler
Gibbs & Holmes, PC
171 Church Street, Suite 110
Charleston, SC 29464

Attorneys for the Respondent
Stow Away Storage, LLC

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THOMAS & HUTTON ENGINEERING CO.

935 HOUSTON NORTHCUTT BOULEVARD • SUITE 100

POST OFFICE BOX 1522

MOUNT PLEASANT, SOUTH CAROLINA 29465-1522

TELEPHONE (843) 849-0200

FAX (843) 849-0203

Letter Of Transmittal

TO: Joey Harris
SCDOT-Charleston

FROM: Dan Farley

DATE: August 5, 1999

RE: Encroachment Permit, US HWY 17
Stow Away Boat Storage

JOB #: J-12497

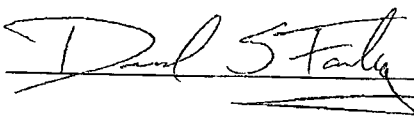
We are sending you ☒ Attached ☐ Under Separate Cover Via _____ the following items:

<u>Copies</u>	<u>Date</u>	<u>Description</u>
1		Encroachment Permit

☒ For Approval ☐ For Your Use ☐ As Requested ☐ For Review and Comment

Remarks: Attached is an Encroachment Permit Application for Stow Away Boat Storage, located at the west side of US HWY 17 and Porcher Bluff Road. Please call if there are any questions.

Signed: _____

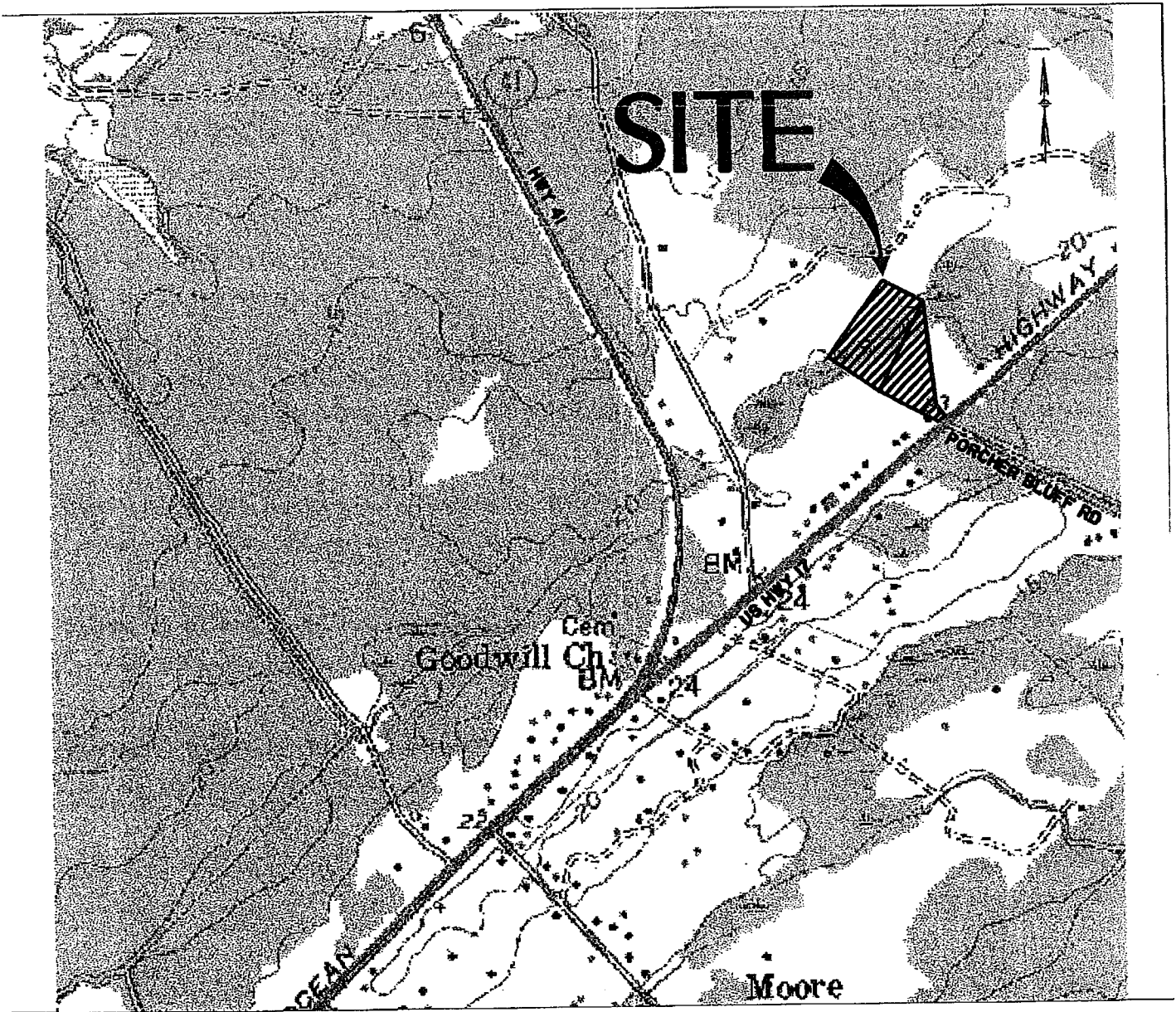


APPLICATION FOR ENCROACHMENT PERMIT

SCDOT

Name of Applicant:
Stow Away Storage, LLC
One Surrey Court
Columbia, South Carolina 29212
Telephone Number: (803) 772-2629

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: U.S. Hwy. 17



LOCATION MAP

SCALE: 1"=1000'



FT MOULTRIE, S.C.



PROJECT:
STOW AWAY STORAGE

DATE: AUGUST 2, 1999

SHEET 1 OF 4

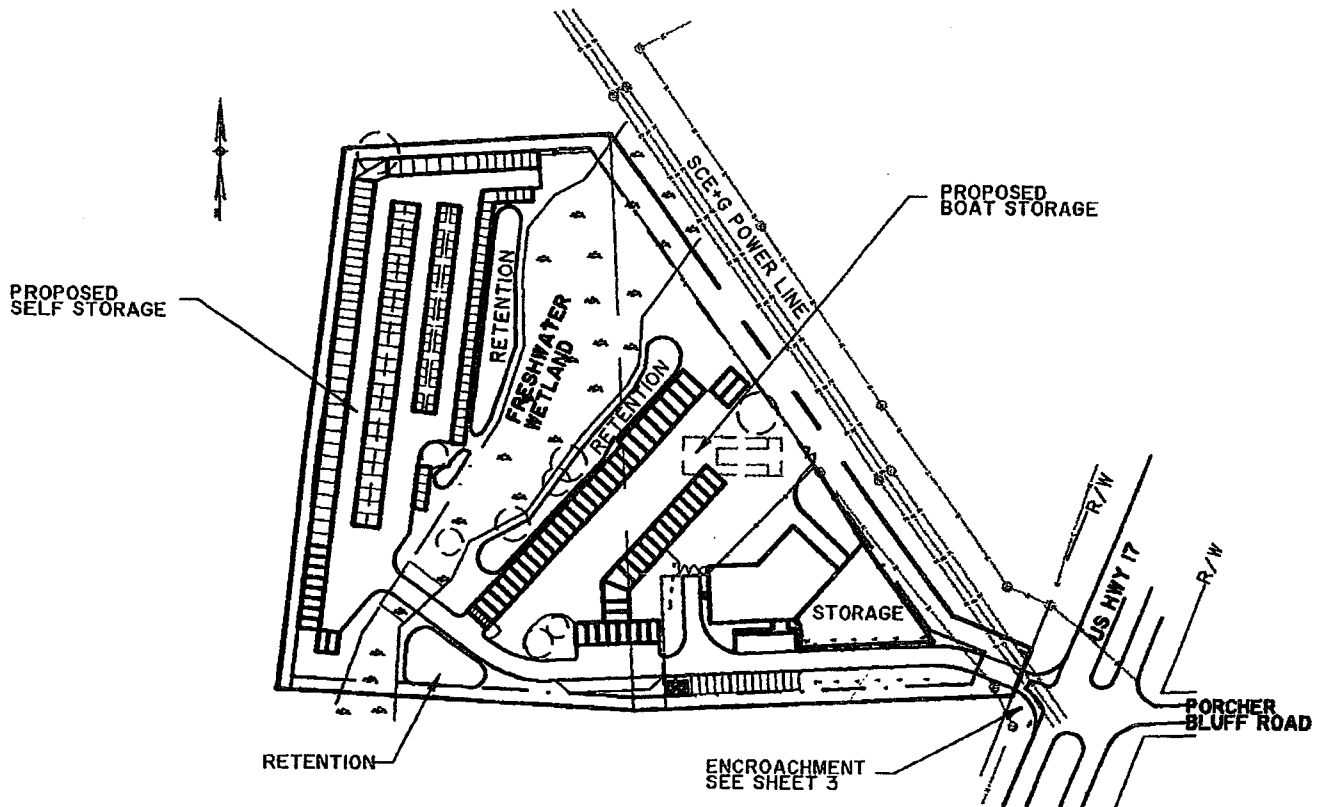
ROA 0709

APPLICATION FOR ENCROACHMENT PERMIT

SCDOT

Name of Applicant:
Stow Away Storage, LLC
One Surrey Court
Columbia, South Carolina 29212
Telephone Number: (803) 772-2629

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: U.S. Hwy. 17



SITE PLAN

SCALE: 1" = 200'



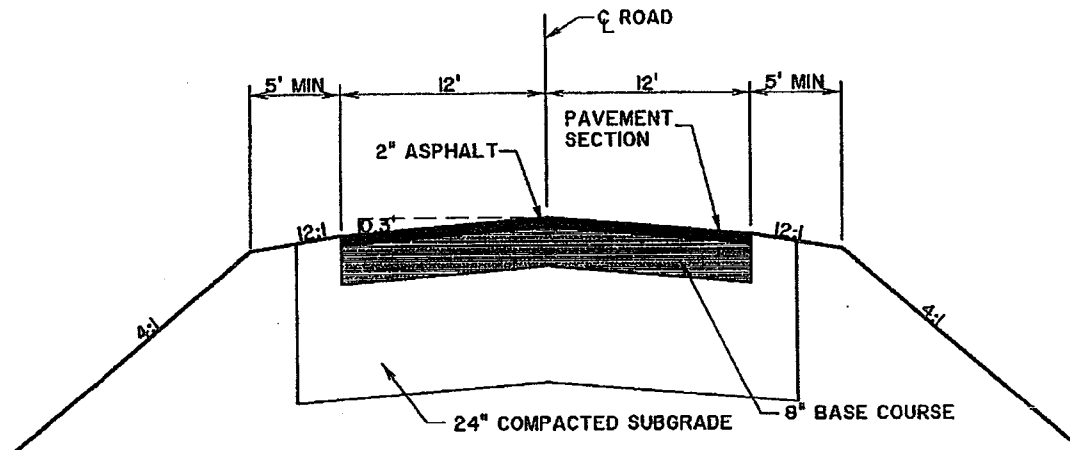
ROA 0710

APPLICATION FOR ENCROACHMENT PERMIT

SCDOT

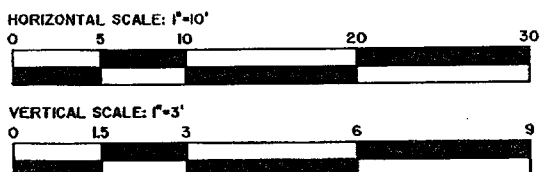
Name of Applicant:
Stow Away Storage, LLC
One Surrey Court
Columbia, South Carolina 29212
Telephone Number: (803) 772-2629

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: U.S. Hwy. 17



TYPICAL ROAD SECTION

HORIZONTAL SCALE: 1" = 10'
VERTICAL SCALE: 1" = 3'



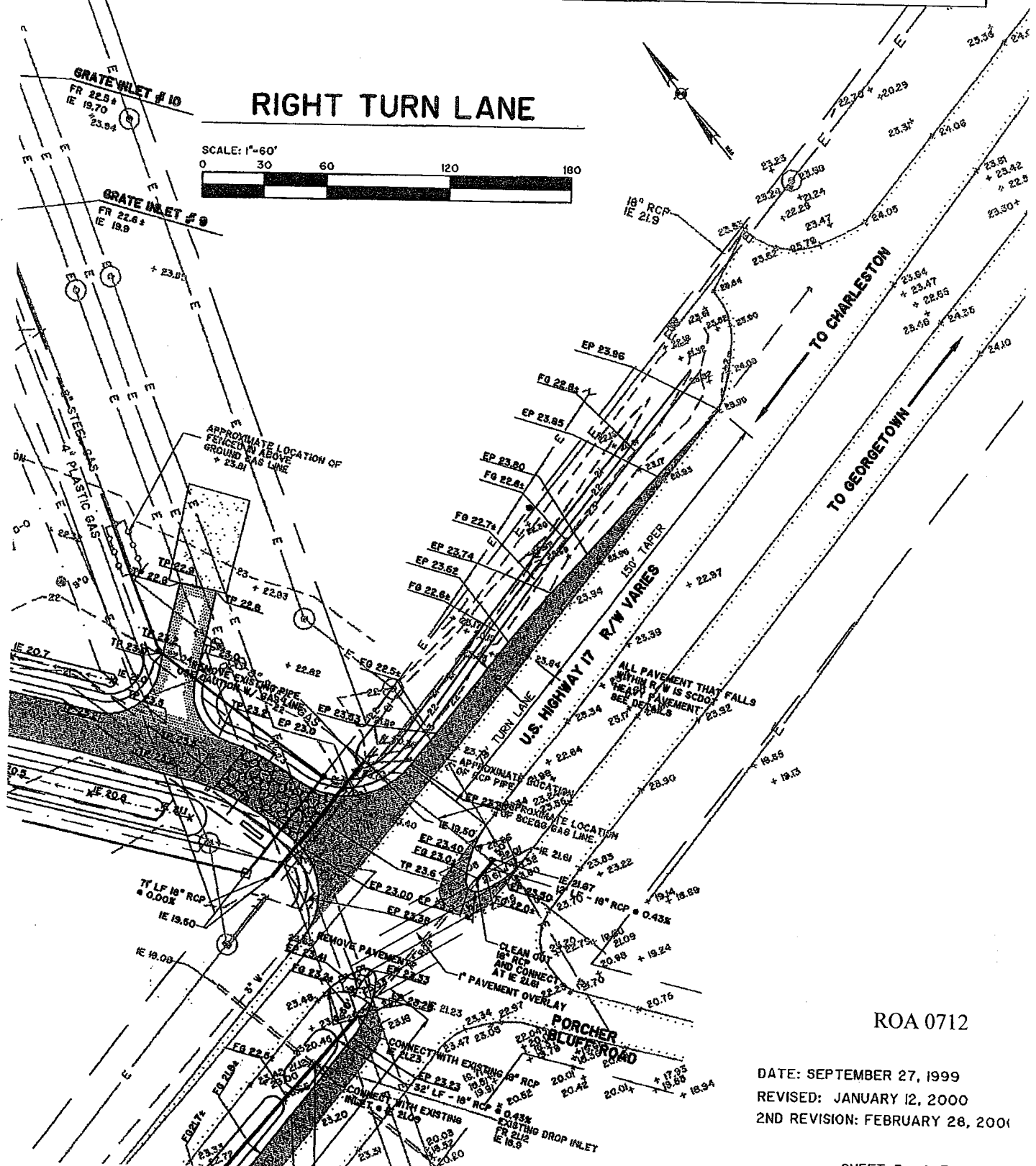
ROA 0711

APPLICATION FOR ENCROACHMENT PERMIT

SCDOT

Name of Applicant:
Stowaway Storage, LLC
One Surrey Court
Columbia, South Carolina 29212
Telephone Number: (803) 772-2629

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: OCEAN HIGHWAY



ROA 0712

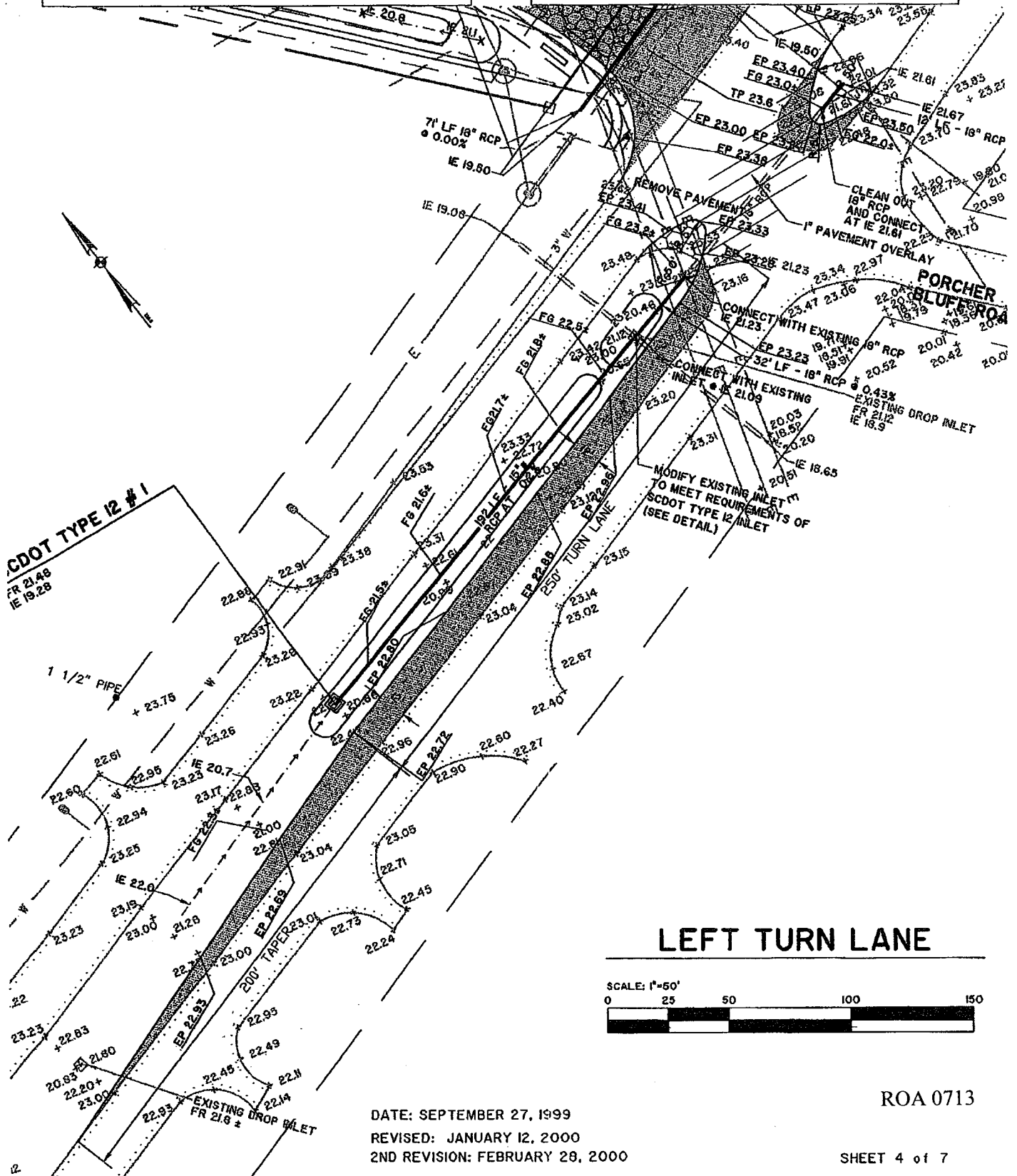
DATE: SEPTEMBER 27, 1999
REVISED: JANUARY 12, 2000
2ND REVISION: FEBRUARY 28, 2001

APPLICATION FOR ENCROACHMENT PERMIT

SCDOT

Name of Applicant:
Stowaway Storage, LLC
One Surrey Court
Columbia, South Carolina 29212
Telephone Number: (803) 772-2629

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: OCEAN HIGHWAY



LEFT TURN LANE



ROA 0713

DATE: SEPTEMBER 27, 1999
REVISED: JANUARY 12, 2000
2ND REVISION: FEBRUARY 28, 2000

SHEET 4 of 7

STOW AWAY STORAGE, LLC
One Surrey Court
Columbia, South Carolina 29212

March 21, 2000

Mr. George Sissons
Charleston, South Carolina

RE: Access Easement

Dear Mr. Sissons:

As we discussed I enclose a form of Easement Agreement to be given by Stow Away Storage, LLC. The easement would give you a perpetual right to utilize Stow Away's driveway, at no cost and expense, to access U.S. Highway 17. The preliminary plans for our driveway and the location of the drive easement for you are attached to the easement. As these plans are finalized a complete definitive description of the easement will be attached to the easement and it will be recorded.

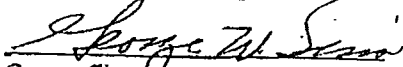
In connection with our granting the drive easement, you will be abandoning and terminating your drive cut on Highway 17. The easement has appropriate language for this purpose in it, as well.

If you are agreeable to terminating and abandoning your drive cut in exchange for the easement to be granted by us as described in the easement document, please acknowledge the same by signing a copy of this letter where indicated below and returning it to me at your earliest convenience. Should you have any questions, please do not hesitate to contact me.

Best regards,

E. L. Pooser, III

Acknowledged and Agreed:



George Sissons

Dated: 3-27-00



South Carolina
Department of Transportation

2401 Maintenance Way
North Charleston, SC 29406

Dear Permittee:

The attached permit has been approved with the following stipulations:

1. The South Carolina Department of Transportation (SCDOT) shall be given the opportunity to attend any pre-construction conferences.
2. SCDOT shall be notified of the date and time permitted work will begin. Notification of at least 48 hours must be given to the Department during the hours of 8:00 am to 5:00 p.m. Monday through Friday. Written notification is required before work can begin. A fax-back notification form has been attached to assist with this requirement.

Also, please note all provisions attached to or written on the approved permit, as well as the requirements outlined on the back of the permit. *Failure to comply with any of these provisions may result in stoppage of work, the permit being revoked, and removal of all materials placed within the right-of-way at full expense of the permittee.* I ask for your full cooperation in this matter so that we may avoid costly corrections and maintain the integrity of our transportation infrastructure.

Sincerely,

Tom Tilden

Tom Tilden
Resident Maintenance Engineer
Charleston County

2401 Maintenance Way
N. Charleston, SC 29406

Permit Notice to Proceed Fax-Back

Fax To: SCDOT Charleston Maintenance Office
(843) 740-1548

The fax is to inform the Department of the following permittee work:

PERMIT NUMBER: _____

ROAD NAME AND NUMBER: _____

NAME OF PERMITTEE: _____

SITE WORK CONTRACT NAME: _____

CONTACT PHONE NUMBER: _____

START DATE: _____

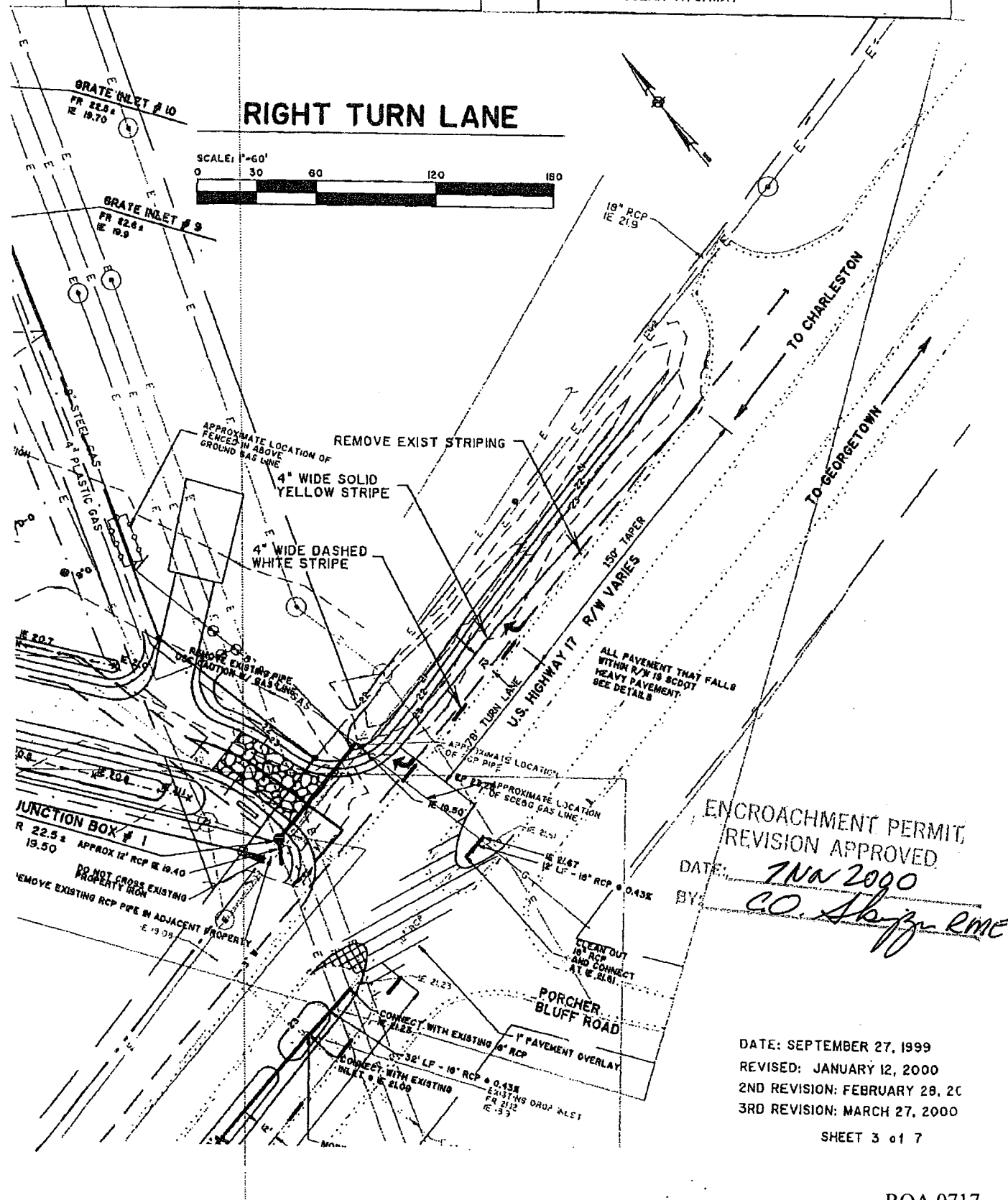
ESTIMATED COMPLETION DATE: _____

NOTES:

NOTE: Copy of this notification to be placed in permit file.

SCUD 1

County - CHARLESTON
Route
Road: U.S. Hwy. 17
Road
Name: OCEAN HIGHWAY



BK U358PG109

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)

ACCESS EASEMENT
AND
ABANDONMENT OF
ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between **STOW AWAY STORAGE, LLC**, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons* (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

CERTIFIED TRUE COPY
CHARLIE LYBRAND
REGISTER MESNE CONVEYANCE
CHARLESTON COUNTY, SC
DATE: Aug 7, 2013
BY: Charlie Lybrand
NP

NPCOL1:429569.1-EA-(JAS) 025294-00000

ROA 0718

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

BK U358PG111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

Thiele J. Pauland
WITNESS NO. 1

By: E.L. Pooser, III
Name: E.L. Pooser, III
Title: Member

Aloria G. Davis
WITNESS NO. 2

GRANTEE:

Cristi L. Orr
WITNESS NO. 1

George W. Sissons
George Sissons
*aka George W. Sissons

Arayah Raker
WITNESS NO. 2

NPCOL1:429569.1-EA-(JAS) 025294-00000

ROA 0720

BK U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)
)
PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by E.L. Pooser, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Heidi J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October 2000

Tammy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-6-2009

NPCOL1:429569.1-EA-(JAS) 026284-00000

ROA 0721

BK U358PG113

STATE OF SOUTH CAROLINA

COUNTY OF _____

)
)
)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sissons,* sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Cristi L. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Angela Rakys Jenkins (LS)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

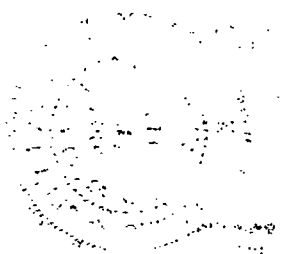


EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION:

Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

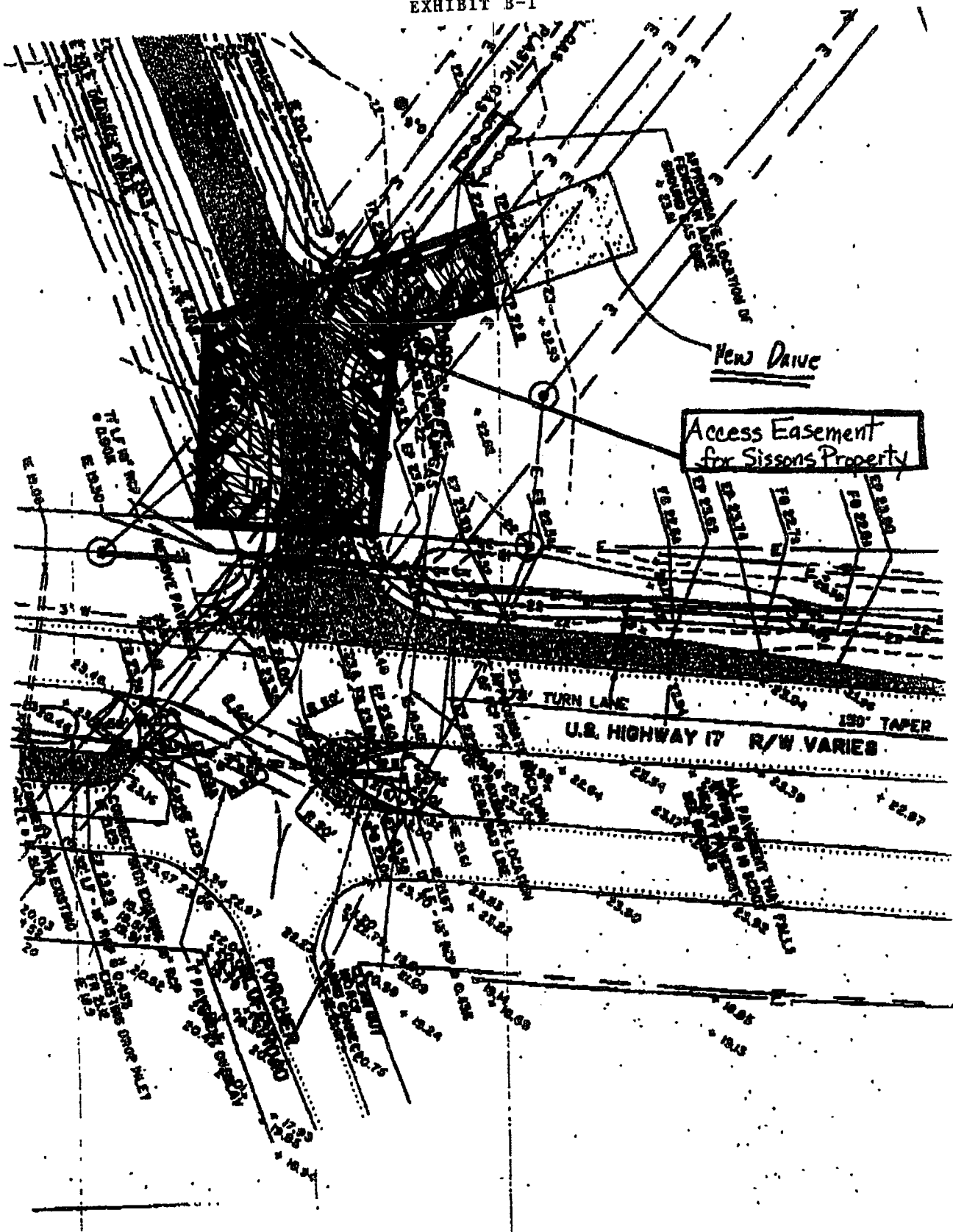
BK U358PG115

EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for Sissons Property" and further depicted by hashmarks on the attached sketch labeled Exhibit B-1.

NPCOL1:429569.1-EA-(JAS) 025294-00000

EXHIBIT B-1



Naxsen Pruet Jacobs
→ Pollard

P. O. Drawer 2426

Cole, SC 29202-9732

15
2

(8)

EX-117 U358PG117

FILED

U 358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.00 B



South Carolina
Department of Transportation

June 20, 2008

Mr. E.L. Pooser, Jr.
Stow Away Storage, LLC
One Surrey Court
Columbia, SC 29212

RE: Deficiency Notice #1

Dear Mr. Pooser:

Upon a recent site visit to your area, it was noted that a gate had been constructed on a driveway that was agreed to be a shared access during the SCDOT encroachment permitting process. This action has lead to the paving of an unapproved driveway access at the intersection of US-17. The location of this access point is dangerous to the travelling public given its close proximity to US-17 and its location within a signalized intersection. One of the special provisions on your approved permit, March 29, 2000, required you to remove the unpaved drive during construction of the new access point into the property. This permit package also included an agreement letter dated March 21, 2000 stating that the unpaved drive would be removed and the new access would serve as shared access point for you and Mr. George Sisson's businesses.

The SCDOT is requiring that you reopen the agreed upon access point. Further action by the Department will be taken if this is not completed within 15 days of this notice and all associated expenses will be the responsibility of the property owner(s).

If you have any more questions or need additional information, please do not hesitate to call me at (843) 740 - 1655 ext. 501.

Respectfully,

Richard L. Turner, P.E.
Resident Maintenance Engineer

cc: Mr. George Sisson
Robert Clark, SCDOT District 6 Engineering Administrator
Mike Black, SCDOT District 6 Maintenance Engineer
Mark Nesbit, SCDOT District 6 Traffic Engineer

Chas. Maintenance. File



Charleston Maintenance
2401 Maintenance Way
North Charleston, South Carolina 29406

Phone: (843) 740-1655
Fax: (843) 740-1548

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

ROA 0727

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1254

CHARLESTON, S.C. 29402

(843) 577-0660

LAW@WARREN-SINKLER.COM

Writer's Email: dsinkler@warren-sinkler.com

FACSIMILE
(843) 577-6843G. DANA SINKLER
JOHN H. WARREN, III
SCOTT Y. BARNES (SC & DC)
MARK S. SHARPE
ASHLEY DANTZLER WRIGHT
ALYSON C. CAMPBELL

August 20, 2008

Mr. Frank Fletcher
Sweetgrass Hardware, Inc.
3008 N. Highway 17
Mt. Pleasant, SC 29466

Dear Mr. Fletcher:

I have been retained by Mr. E.L. Pooser, Jr., Managing Member of Stow Away Storage, LLC ("Stow Away") to represent Stow Away in connection with Sweetgrass Hardware, Inc.'s ("Sweetgrass") use of the permitted access granted by the South Carolina Department of Transportation ("SCDOT") on the west side of U.S. Highway 17 opposite the Porcher Bluff Road intersection with Hwy. 17.

On July 13, 1999, Mr. Pooser executed and forwarded to the SCDOT an Application for Encroachment Permit seeking its approval of a 24' drive with a 30' radius on the south side and a 40' radius on the north side providing access for ingress to and egress from a tract of land purchased by Stow Away from Buffalo Creek Land Company, LLC by deed dated June 22, 1998 and recorded in the RMC office for Charleston County in Book 2328 at page 662. The Application was approved by the SCDOT on March 29, 2000 on condition that the Dirt Driveway on the north side adjacent to Stow Away's property shall be removed.

At the time, and now, the "Dirt Driveway" was and is owned by George W. Sissons who owned a parcel of land north of the intersection which was accessed by the Driveway. As a condition of the Encroachment Permit granted Stow Away, Stow Away was required by SCDOT to enter into an Access Easement and Abandonment of Encroachment Permit granting Mr. Sissons access to his property. In exchange, Mr. Sissons, as Grantee, agreed to "abandon and terminate any rights Grantee may have to access U.S. Highway by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement."

In April of this year, someone caused the "Dirt Driveway" to be paved and it is presently being used to accommodate customers of Sweetgrass by providing them ingress and egress to the hardware store in violation of Mr. Sissons' agreement with Stow Away.

WARREN & SINKLER, L.L.P.

Mr. Frank Fletcher
August 20, 2008
Page 2

By letter dated July 21, 2008, Richard L. Turner, P.E., Resident Maintenance Engineer with the SCDOT, sent Mr. John Royall a letter advising that the location of the unpermitted paved access that your business is presently using is dangerous to the traveling public and will be removed. The letter also advised Mr. Royall that Stow Away, which has the only permitted access point at this signalized intersection, will not allow access from its driveway, and he was asked to discontinue the use of the unpermitted driveway.

This letter is to advise you that unless you immediately discontinue the use of the unpermitted driveway and close your access to it, Stow Away will institute an action against Sweetgrass for injunctive relief and all costs and expenses associated therewith.

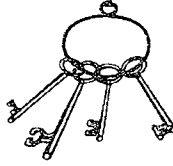
Yours very truly,

WARREN & SINKLER, LLP



G. Dana Sinkler

GDS/jd



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

November 10, 2008

GRAY B. TAYLOR
ATTORNEY AT LAW
gray.taylor@buistbyars.com

Via facsimile and U.S. Mail

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
171 Church Street, Suite 340
Charleston, South Carolina 29401

Re: Stow Away Storage, LLC
Client File No : 2008100189

Dear Mr. Sinkler,

I represent Sweetgrass Hardware, Inc., and am responding to your letter of August 20, 2008. I have visited the site, and reviewed the recorded easement by and between Stow Away Storage, LLC and George Sissons, which was recorded in the Charleston County RMC Office in Book U358, page 109, on November 16, 2000 (the "Easement").

Under the express terms of the Easement, your client granted George Sissons, and his successors and assigns, rights in the real property depicted in Exhibit B-1 of the Easement. Moreover, the Easement states that the "assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or the Grantee". Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons, and therefore entitled to the full benefit of the Easement.

On several recent occasions representatives of the Charleston County Sheriff's Department have visited my client and demanded that the gate between their parking lot and the access easement be closed. When pressed as to the reason, my client was informed that every time he opened the gate, the manager of Stow Away Storage called the Sheriff's Department and complained, taking them away from other police business. Therefore, the officer's deducted that opening the gate constituted a "public nuisance", as it resulted in phone calls to their office. I find this logic somewhat creative, but nonetheless flawed, and will take this issue up separately with the Sheriff's Department.

In response to your letter, our position is that Sweetgrass Hardware, Inc. and its patrons have a legal right to utilize the area subject to the Easement, and intend to do so. Any further

{00121273 DOC 2}

652 Coleman Blvd., Suite 200 • Mount Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

ROA 0730

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

attempts by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business.

Please feel free to contact me with any further questions or comments as to this matter.
With kindest regards, I remain

Yours very truly,

A handwritten signature in black ink, appearing to be "G. Taylor", enclosed within a large, loopy circular flourish.

Gray B. Taylor

Enclosure
cc: Mr. Frank Fletcher (via email)

STATE OF SOUTH CAROLINA	)	
	)	ACCESS EASEMENT
COUNTY OF CHARLESTON	)	AND
	)	ABANDONMENT OF
	)	ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons* (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

NPCOL1429569 1-EA-(JAS) 025294-00000

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

BK U358PG111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

Nicole J. Pauland
WITNESS NO. 1
Maria Q. Davis
WITNESS NO. 2

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: E.L. Pooser, III
Name: E.L. Pooser, III
Title: Member

GRANTEE:

Chris L. On
WITNESS NO. 1
George W. Sissons
WITNESS NO. 2

George W. Sissons
George Sissons
*aka George W. Sissons

NPCOL1429559.1 EA-(JAS) 025294-00000

ROA 0734

BK U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)
)
PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by E L Pooser, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Michelle J. Rowland
WITNESS NO 1

SWORN TO BEFORE ME THIS
17 day of October 2000

Terrell J. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2009

NPC01.1:429580.1-BA-(JAS) 025284-00000

ROA 0735

BK U358PG113

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sissons*, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Cristi M. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Angela Rakop Jenkins (LS)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

NPCOL1429508 1-EA-(JAS)025294-00000

ROA 0736

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUYING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibti, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666 29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629 08 feet, more or less.

IMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662

NPCOL: 420559 1-EA-(JAS) 025294-00000

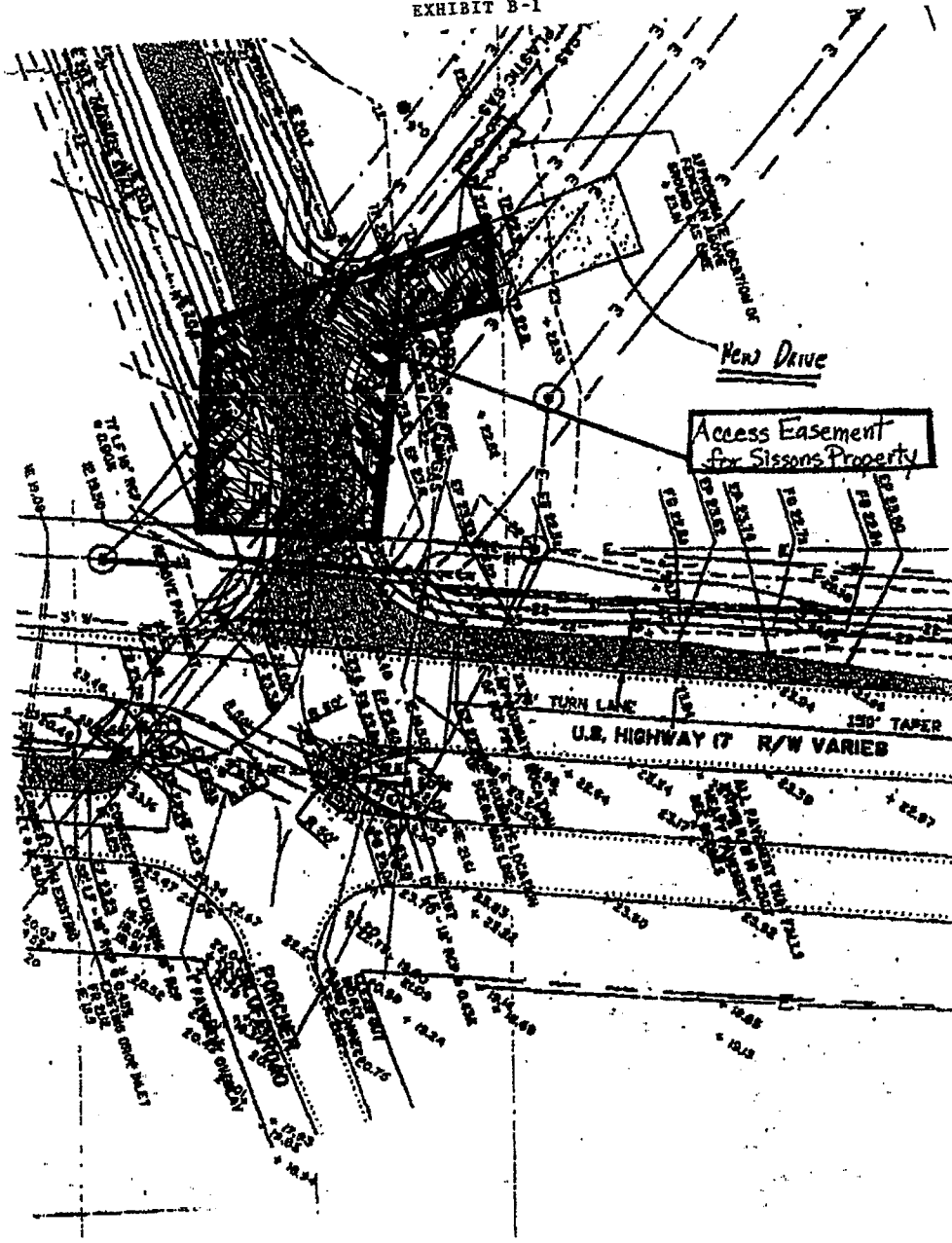
BK U358PG115

EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for Sissons Property" and further depicted by hashmarks on the attached sketch labeled Exhibit B-1.

NPCCL1:428569 1-EA-(JAS) 025294-00000

EXHIBIT B-1



Nelson Pruet Jacobs
- Pollard

P. O. Drawer 2426

Cole, SC 29202-9752

✓
2

(es)

EX-117 U358PG117

FILED

LL 358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.00 B

After recording please return to:

Gray B. Taylor, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property"), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensors. Licensee acknowledges that Licensors may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensors are under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4.

Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensors shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensors upon the motion of the Licensors for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensors  (initial here)

Licensee  (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensors and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensors shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensors under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi I. Orr

CRISTI I ORR

Dana Lynn Fletcher

Dana Lynn Fletcher

4.0 LLC

George W. Sissons

BY: George W. Sissons

Its: Member

SWEETGRASS HARDWARE, INC.

Frank R. Fletcher

By: Frank R. Fletcher

Its: PRESIDENT



EXHIBIT A
(Licensee's Property)

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027



South Carolina
Department of Transportation

March 10, 2009

Mr. E.L. Pooser, Jr.
Stow Away Storage, LLC
One Surrey Court
Columbia, SC 29212

Mr. George Sisson
Sisson Scale
3018 Highway 17 N.
Mount Pleasant, SC 29466

RE: US-17 @ Porchers Bluff Road

Dear Sirs:

In late November 2008, South Carolina Department of Transportation (SCDOT) engineers reviewed the signalized intersection of US-17 and Porchers Bluff Road. SCDOT noted that motorists were utilizing an unpaved opening that is within the signalized intersection to enter and exit Royall Hardware and Sisson Scale due to a locked gate on the premises. SCDOT will erect a Type III barricade blocking access to the unpaved driveway within the signalized intersection to maintain the safety of the motoring public.

The public can now use the single permitted access at US-17 to access Stow Away Storage, Sisson Scale, and Royall Hardware. SCDOT engineers had conversations with all three business owners and/or owner representatives and were reminded of the challenge among the three parties concerning access permissions for a permitted driveway at the signalized intersection of US-17.

SCDOT's goal is to maintain a safe access for the travelling public, and for safety assurance, it is necessary that the gates remain unlocked for all parties to utilize access until an agreement is made between Stow Away Storage, Sisson Scale, and Royall Hardware

If you have any questions or concerns, please contact me at (843) 740-1655.

Respectfully,

Richard L. Turner, P.E.
Resident Maintenance Engineer

cc: Mr. John Royall
Ms. Natalie Moore (SCDOT Legal)

PF /Chas. Maintenance



Charleston Maintenance
2401 Maintenance Way
North Charleston, South Carolina 29406

Phone: (843) 740-1655
Fax: (843) 740-1548

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

ROA 0745



June 19, 2009

Mr. E.L. Pooser, Jr.
Stow Away Storage, LLC
One Surrey Court
Columbia, SC 29212

Mr. George Sisson
Sisson Scale
3018 Highway 17 N.
Mount Pleasant, SC 29466

RE: US-17 @ Porcher's Bluff Road

Dear Sirs:

This is to advise that the unpermitted drive entrance onto US Route 17 at the intersection of Porcher's Bluff Road, which illegally encroaches on the right of way of the South Carolina Department of Transportation (SCDOT), is scheduled to be eliminated on or before July 3, 2009. In accordance with a permit issued March 29, 2000, allowing the existing drive entrance onto Porcher's Bluff Road, it was agreed by the Applicant E. L. Pooser, Jr. that the unpermitted drive onto US-17 would be removed, which was never done. Further, written statements of George W. Sisson, dated February 9, 2000 and March 21, 2000, acknowledge and agree that the unpermitted drive cut would be abandoned in exchange for the right to use the aforementioned permitted drive.

Since that time, additional access problems were created by the locking of a gate that was installed on the permitted drive that serves as the sole legal entrance to the Stow Away Storage and Sisson Scale facilities located on the premises, which would seem to contravene the conditions under which the encroachment permit was issued. SCDOT is advised that this gate will no longer be locked, thereby allowing access to be maintained to the businesses at this location. It is essential that access to this drive entrance remains unimpeded.

The blocking of the unpermitted drive by SCDOT will be accomplished by the installation of a Type III barricade on the right of way for US Route 17. If you have any questions or concerns about this matter, please contact me at (843) 740-1655.

Respectfully,

Richard L. Turner, P.E.
Resident Maintenance Engineer

PF/Chas. Maintenance



Charleston Maintenance
2401 Maintenance Way
North Charleston, South Carolina 29406

Phone: (843) 740-1655
Fax: (843) 740-1548

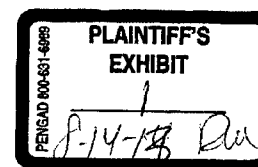
AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

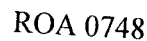
ROA 0746



ROA 0747

2/27/07







Stowaway Storage
 2988 Hwy 17 North
 Mount Pleasant, SC 29466

Video Surveillance - Camera 11 (Entrance at Hwy 17)

Cars per hour turning into Ace Hardware through Stowaway Storage property

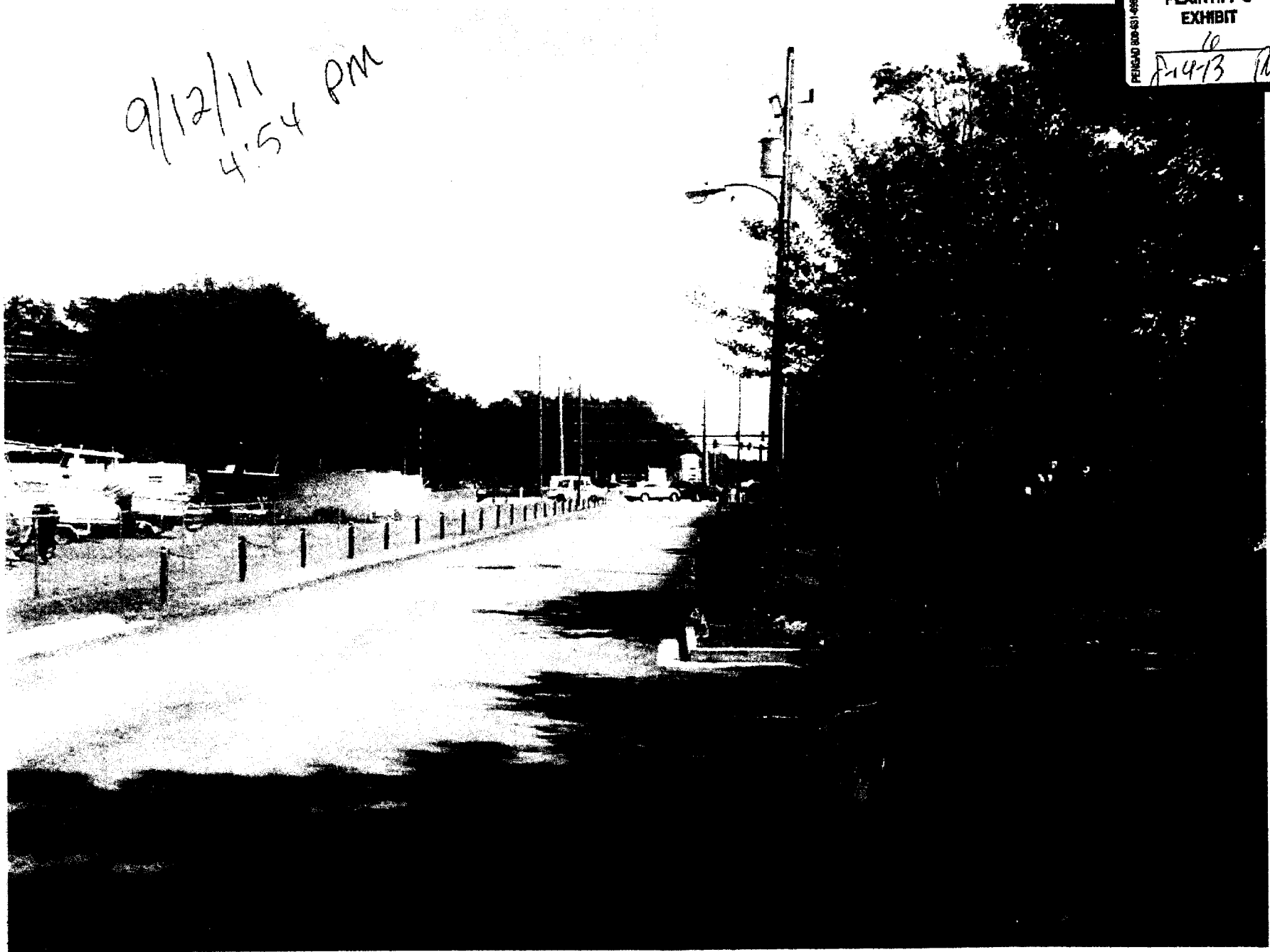
(Does not include Highway 17 lost/turnaround traffic or Stowaway Storage traffic,
 or Sisson Scale (lettered) vehicles.)

	Wed. 4/20/13	Saturday 7/13/13 (Sisson Scale not open)
7 - 8 AM	5	10
8 - 9 AM	24	43
9 - 10 AM	49	60
10 - 11 AM	73	57
11 AM - 12 PM	97	94
12 PM - 1 PM	98	96
1 - 2 PM	89	68
2 - 3 PM	95	105
3 - 4 PM	92	58
4 - 5 PM	64	60
5 - 6 PM	31	22
6 - 7 PM	15	3
12 Hour Total	732	676

11-11-11

9/12/11
4:54 PM

PLAINTIFF'S
EXHIBIT
10
P-4-13 PM



9/13/12 9:00 AM





ONLY



ROA 0760

2-1-61



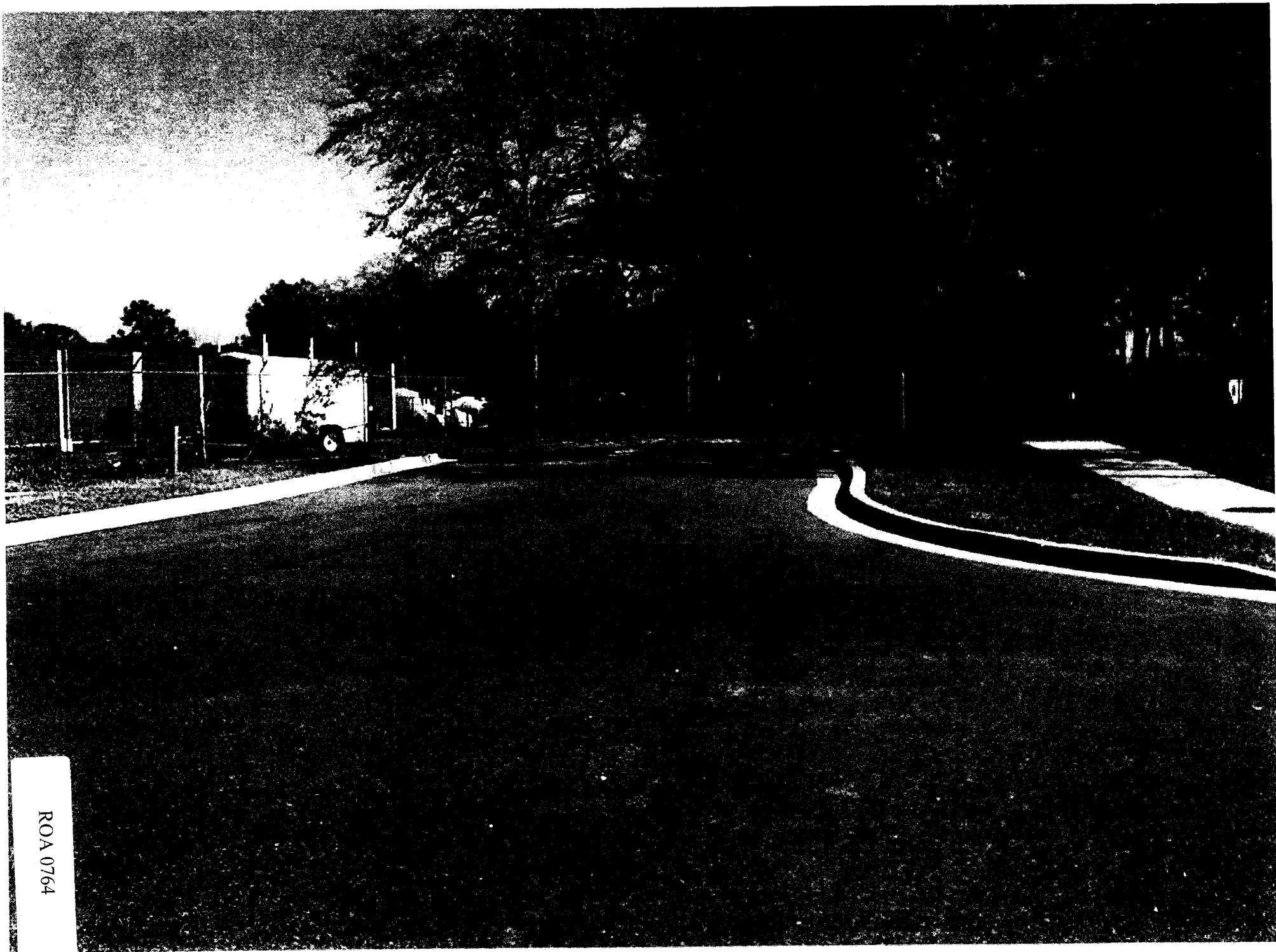
ROA 0761



ROA 0762



ROA 0763



ROA 0764



ORIGINAL

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

STOW AWAY STORAGE, LLC)

vs.)

GEORGE W. SISSON, ET AL.)

2011-CP-10-02444

August 14, 2013
Charleston, South Carolina

B E F O R E:

HONORABLE J. C. NICHOLSON, JR.

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

G. DANA SINKLER, ESQUIRE
GUY DABBS, ESQUIRE
Attorneys for Plaintiff

G. HAMLIN O'KELLEY, III, ESQUIRE
MARIA KIEHLING BREES, ESQUIRE
Attorneys for Defendants

Ruth L. Mott, RPR, CRR
Circuit Court Reporter

1 I N D E X

2

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E X H I B I T S

16

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23

24

25

1 (Defendant's Exhibits 1-2 premarked for identification.)

2 THE COURT: Let me see, Mr. Sinkler.

3 MR. SINKLER: Yes, sir.

4 THE COURT: I've been reading your complaint, and I
5 didn't want to tear your complaint apart because it's
6 stapled. These two plats that you've got, do you have copies
7 of those, or do you want me to pull the complaint apart and
8 take these out? It's hard to see them because they're folded
9 up.

10 MR. SINKLER: I have copies of them back at the office,
11 and I can certainly bring them.

12 THE COURT: Can you share those with me? I'll have to
13 tear this complaint up and re-staple it.

14 Mr. O'Kelley, have you got copies of them?

15 MR. O'KELLEY: Your Honor, I've got copies of big plats
16 if that --

17 MR. SINKLER: That's a plat of the property.

18 THE COURT: I assume this is the same thing you're
19 looking at, Mr. O'Kelley.

20 MR. O'KELLEY: Let me look, Your Honor, but I've got a
21 copy of the plat showing the abandonment of the lines and
22 showing where the easement is, but let me make sure it's the
23 same one attached to the complaint, Your Honor.

24 THE COURT: I'll tell you what, I'll take it apart and
25 just staple it back together.

1 MR. O'KELLEY: Your Honor, this is plat book CD page 139
2 that I think will help show the area right in here.

3 THE COURT: This is the same thing that's attached to
4 the complaint?

5 MR. O'KELLEY: I think so, Your Honor.

6 MR. SINKLER: I have EA-742, which also shows the
7 property if I may offer that, Your Honor. That may be
8 attached also.

9 THE COURT: Let me just ask you all a couple questions
10 before we get started. Looking at the complaint, it appears
11 that the issue is whether they can expand the easement
12 granted by Stow Away granted to Sisson, and when I say
13 Sisson, I'm talking about Timarand and the foundation and
14 George Sisson, whether that can be expanded to be to the use
15 of Sweetgrass as the leaseholder. Is that basically the
16 issue?

17 MR. SINKLER: Yes, sir.

18 MR. O'KELLEY: And, Your Honor, whether or not, I think,
19 there can be an assignment.

20 THE COURT: It will be assigned, right.

21 MR. O'KELLEY: Yes, sir.

22 THE COURT: Now, depending upon that legal issue, then
23 plaintiff may be -- if the plaintiff is correct, then he may
24 be entitled to some damages, looking at his cause of action.
25 I believe they were -- let me see, are you moving forward on

1 all three?

2 MR. SINKLER: Yes.

3 THE COURT: And then, Mr. O'Kelley, you've got basically
4 the same thing, asking for monetary damages. We've got to
5 address that legally, give my opinion, before we even get to
6 the damage issue, so what I would propose is sort of doing a
7 little bifurcation of this issue, address the legal issue,
8 get a decision made, and then we can proceed with the damages
9 with the respective parties if there are damages.

10 MR. SINKLER: That makes all the sense in the world,
11 Your Honor.

12 THE COURT: Now, reading your action and reading your
13 complaint, apparently there's no dispute as to what happens
14 in interpretation of the lease itself -- I mean, excuse me,
15 not the lease, the easement, and what you all have been
16 referring to I believe as the -- Mr. O'Kelley, you referred
17 to it as --

18 MR. O'KELLEY: There's a license agreement.

19 THE COURT: -- the license agreement, right, the
20 interpretation on those two documents, is that correct?

21 MR. O'KELLEY: I think we don't even need to get to the
22 license agreement, Your Honor. I think the legal question is
23 just about the easement itself.

24 THE COURT: Mr. Sinkler, do you agree?

25 MR. SINKLER: Yes, sir. The easement is granted to

1 Timarand, which is not part of the dominant estate.

2 THE COURT: Let me ask you this: I'm a little bit
3 confused in reading the complaints and the attachments, Mr.
4 Sinkler, your position is the expansion is by allowing
5 Sweetgrass customers to use that easement, is that correct,
6 it did not geographically expand it; is that correct?

7 MR. O'KELLEY: That's correct.

8 THE COURT: It's a use expansion; is that correct?

9 MR. SINKLER: Yes, sir.

10 THE COURT: They're not taking more land than what was
11 originally given to them in the easement; is that correct?

12 MR. SINKLER: Well, Timarand is not part of the dominant
13 estate. We gave an easement to Mr. Sisson just for his
14 property.

15 THE COURT: But that was his property going back into, I
16 guess, the portion of Oakland Plantation, is that what you're
17 telling me?

18 MR. SINKLER: Yes, sir.

19 THE COURT: And this easement runs through the middle of
20 it, correct?

21 MR. SINKLER: The easement runs through the middle of a
22 100-foot South Carolina Electric & Gas lease.

23 THE COURT: What I'm confused about is the language in
24 the complaint and the answer about the city redesigning that
25 intersection, people having trouble getting in and out and

1 where this gate was. I couldn't figure out geographically
2 where all that was located.

3 MR. O'KELLEY: Your Honor, by way of background, most of
4 the facts, Your Honor, we agree on. And, especially, since
5 this is really truly a legal issue for Your Honor about
6 whether the easement allows the assignment or not, but where
7 the easement is, Your Honor, Porcher's Bluff Road, where it
8 is on 17, if it were to go straight across Highway 17, this
9 easement would look like an extension of Porcher's Bluff
10 Road.

11 THE COURT: Extension of what?

12 MR. O'KELLEY: Porcher's Bluff Road, Your Honor.

13 THE COURT: That's the road that comes out from the
14 circle back on Rifle Range --

15 MR. O'KELLEY: Correct, Your Honor. At the bottom of
16 plat book CD --

17 THE COURT: -- on the left-hand side, and straight
18 across the road is what we're talking about.

19 MR. O'KELLEY: Yes, sir, exactly, and Stow Away's
20 facility is there straight back. Sweetgrass Hardware, Your
21 Honor, is sort of at 11:00.

22 THE COURT: So the easement we're talking about is the
23 only way to get in and out of Sweetgrass Hardware, is that
24 correct, off of 17?

25 MR. SINKLER: No, sir. Sweetgrass Hardware has an

1 access at another point.

2 THE COURT: That's what I wasn't clear on. Show me on
3 this plat where the access is, additional access with
4 Sweetgrass might be.

5 MR. SINKLER: I have a photo that might help, Your
6 Honor, that shows it. It's an aerial that might show.

7 THE COURT: Where's Sweetgrass?

8 MR. SINKLER: Right here.

9 THE COURT: Here's Sweetgrass right here.

10 MR. SINKLER: And then it has access there.

11 THE COURT: Looking at this plat here, this is the
12 easement we're talking about. Is Sweetgrass on the Timarand
13 tract or on the Sisson tract?

14 MR. O'KELLEY: Correct.

15 MR. SINKLER: I know it's on the Timarand tract.

16 MR. O'KELLEY: It's Timarand and Sisson. It's on both.

17 THE COURT: Where's the other access point --

18 MR. O'KELLEY: The other access point, Your Honor --

19 THE COURT: -- on this map. I know that's not
20 necessarily your legal question, but I was just confused on
21 that.

22 MR. O'KELLEY: Correct, it's right, not to be too
23 precise, but kind of in here, Your Honor.

24 THE COURT: This area.

25 MR. O'KELLEY: Yes, sir, a little further up 17, right

1 about here.

2 THE COURT: So if this is the intersection, it's further
3 up this way.

4 MR. O'KELLEY: Correct. You can almost see it right
5 here, Your Honor.

6 THE COURT: And where is the hardware store?

7 MR. O'KELLEY: Right here.

8 THE COURT: Right here?

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: So there's an access here?

11 MR. O'KELLEY: There's an access here, and there's Stow
12 Away, and then they come through here too.

13 THE COURT: So they can come in this way or they can go
14 in that way.

15 MR. O'KELLEY: Correct.

16 THE COURT: But if you're coming north on 17, you can't
17 make a left in there because of the buffer --

18 MR. O'KELLEY: That's correct.

19 THE COURT: -- cement, whatever you want to call it,
20 that they put in when they widened the road.

21 MR. O'KELLEY: The median or whatever, yes, sir.

22 THE COURT: That's the problem all up and down 17 since
23 they widened it.

24 MR. O'KELLEY: Yes, sir.

25 THE COURT: That clears it up. I just didn't understand

1 that. As far as the legal issues are concerned --

2 MR. O'KELLEY: And, Your Honor, one more thing on
3 background. Mr. Sinkler filed a motion for summary judgment
4 that was heard in February and denied. I just filed a new
5 one because of the legal issue, and so I don't --

6 THE COURT: I'm not going to do it by summary judgment.
7 I'm going to do it by bifurcating the trial. I'm going to
8 deal with the legal issue first and then deal with the
9 damages on whoever is correct in the legal issue.

10 MR. O'KELLEY: Yes, sir.

11 THE COURT: If you want me to just summarily deny your
12 summary judgment motion for the record, I will.

13 MR. O'KELLEY: I don't think we need it, Your Honor.
14 That makes sense. I just wanted to clarify that for my
15 purposes. Thank you.

16 THE COURT: How do you all want to address the legal
17 issues to the Court? Do you all want to offer some
18 stipulation of facts or -- in other words, I need some
19 factual basis on the record to back up the legal decision.
20 How do you all want to present that, by testimony, or do you
21 want to agree to the facts and put certain documents into
22 evidence and based on both those documents and your legal
23 arguments I'll make a decision?

24 MR. SINKLER: I think we can agree to the facts.

25 THE COURT: I mean, really it's just -- it's really an

1 issue of interpreting the lease if you all put the lease into
2 evidence.

3 MR. SINKLER: Not the lease.

4 MR. O'KELLEY: The easement.

5 THE COURT: I'm sorry. I keep saying lease. Easement,
6 excuse me, I'm sorry.

7 MR. O'KELLEY: And, Your Honor, there's no dispute as to
8 almost 150 percent of these facts. I've never seen it that
9 everyone goes, this is what happened, everyone agrees.

10 THE COURT: Can you all stipulate to some facts and then
11 let's put the easement into evidence and I'll listen to your
12 legal arguments on whether it can be expanded or assigned.

13 MR. O'KELLEY: Your Honor, what I would be willing to
14 do, if this is okay with Mr. Sinkler, we could take the facts
15 in the complaint.

16 THE COURT: You basically agreed with everything in your
17 answer except the conclusion. You said it could be assigned.

18 MR. O'KELLEY: That's correct, Your Honor.

19 THE COURT: You really didn't dispute any of the facts.

20 MR. O'KELLEY: That's correct. So I would either say we
21 take -- I'm just trying to figure out which paragraphs we
22 need to go through. Really I would say paragraphs 1
23 through --

24 MR. SINKLER: You're on the complaint now?

25 MR. O'KELLEY: Yes, sir. 1 through 28 of the complaint

1 we would all agree are the facts. 29 has kind of got some
2 assertions in it that I don't all agree with. 30 is a
3 conclusion of law that I think -- I think is a conclusion of
4 law, and 31 is one of their allegations about that we caused
5 them expenses and damages, so if it's fine with Mr. Sinkler,
6 I'd say the facts are paragraphs 1 through 28 of the
7 complaint.

8 THE COURT: Mr. Sinkler, are those sufficient facts the
9 Court can make a decision on in the interpretation of the
10 easement?

11 MR. SINKLER: I never thought of it that way. May I
12 look?

13 THE COURT: Yes, sir. I'm not meaning to come in here
14 and throw you all a curve. I just think this is a logical
15 way to proceed.

16 MR. SINKLER: I think it's a very logical way to do it.
17 He says he'll agree to 1 through 28?

18 THE COURT: Yes, sir.

19 MR. O'KELLEY: As the facts.

20 THE COURT: As the facts.

21 MR. O'KELLEY: For His Honor to rule on. And
22 additionally, Your Honor --

23 THE COURT: Mr. O'Kelley, you represent all the
24 defendants including Sweetgrass, correct?

25 MR. O'KELLEY: Yes, sir.

1 MR. SINKLER: And I meant to say, Sweetgrass was in
2 default --

3 MR. O'KELLEY: Timarand was in default, Your Honor.

4 MR. SINKLER: Timarand, excuse me, I'm sorry.
5 Sweetgrass is not in default. Timarand is in default and
6 been adjudged not to have any rights to the --

7 MR. O'KELLEY: And we agree to that, Your Honor.
8 Timarand is not a party to the easement.

9 THE COURT: Is there any reason they're not a party?
10 Sweetgrass is not located on any of the Timarand property
11 or --

12 MR. SINKLER: It is. It's just that Mr. Askins is in
13 default, Your Honor, and has been adjudged in default by not
14 answering or responding.

15 MR. O'KELLEY: They're included because the lease for
16 Sweetgrass is on Timarand's property.

17 THE COURT: Okay.

18 MR. O'KELLEY: If that makes sense.

19 THE COURT: All right. Mr. Sinkler, look and see if the
20 facts in paragraphs 1 through 28 of your complaint is
21 sufficient for the Court to make a legal decision on
22 interpretation of the lease, whether assignment of that lease
23 is proper or the use or expansion of the use of the lease is
24 proper.

25 MR. SINKLER: He's already admitted 29 too in his

1 answers, so it should go through 29.

2 MR. O'KELLEY: We only admit it in part, Your Honor.

3 THE COURT: Well, I mean, my question is is 29 necessary
4 for me to make a decision? That's all I need.

5 MR. O'KELLEY: We can go through 29, Your Honor, that's
6 fine.

7 THE COURT: I'm not trying to short-circuit any issue
8 you all have on damages.

9 MR. O'KELLEY: No, sir, but 29 I think relates to the
10 license agreement, and I think we're just really going to
11 have to look at the four corners of the easement.

12 THE COURT: If the license agreement is valid, the
13 easement, you can assign it, if it's not, the license
14 agreement's null and void.

15 MR. O'KELLEY: There you go.

16 THE COURT: I mean, it's a moot issue.

17 MR. O'KELLEY: Yes, sir. And, Your Honor, just to make
18 your life also a little bit easier, I've already premarked
19 the easement, which we all agree to, and the license
20 agreement, if that's okay to have those in.

21 THE COURT: You've marked those what?

22 MR. O'KELLEY: Defendant's 1 and 2.

23 MR. SINKLER: I have pictures if it would help the
24 Court, more aerial photos. I don't know whether they'll help
25 you or not.

1 THE COURT: You've pretty well shown me here on this
2 aerial photo. Is this the building here? Do you want to
3 mark that as Plaintiff's Exhibit 1?

4 MR. SINKLER: Yes, sir, that would be fine.

5 THE COURT: -- this aerial photo? I'll mark anything
6 you want, Mr. Sinkler, I'm not trying to short-circuit that.

7 MR. SINKLER: That would be fine.

8 THE COURT: And I'll mark these two plats Plaintiff's 2
9 and 3, okay, Mr. Sinkler?

10 MR. SINKLER: I assume, if he admits 1 through 29, that
11 would include the exhibits referred to in those paragraphs.

12 THE COURT: Well, I'm going to admit these two plats
13 that were attached to your complaint as Plaintiff's 2 and 3.

14 MR. SINKLER: That's fine.

15 THE COURT: Plaintiff's 2 and 3, which were attached to
16 your complaint.

17 (Plaintiff's Exhibits 1-3 marked for identification.)

18 MR. O'KELLEY: And, Your Honor, I have no problem -- we
19 have no problems with the exhibits to the complaint if they
20 want to put those in.

21 THE COURT: What other exhibits do you want to attach?

22 MR. SINKLER: In 1 through 29 there are exhibits
23 attached.

24 THE COURT: Most of your exhibits I was looking at go
25 towards the damage issues. We can get to those later. I'm

1 not trying to exclude them. I just -- I don't know how all
2 of the exhibits are necessary to the decision I've got to
3 make in front of me now. I'm not going to say you can't
4 admit them.

5 MR. SINKLER: No, I just want them to be included so I
6 don't have to introduce them again later on.

7 THE COURT: Well, I don't think they're necessary for
8 the decision I've got to make concerning interpretation of
9 the lease, and then if we get into the damage issue, you can
10 introduce them at an appropriate time unless you think
11 they're necessary.

12 MR. SINKLER: I don't think they're necessary. I
13 think --

14 THE COURT: How do you want to proceed? Do you all have
15 any cases that substantiate, either one of you, your
16 position, or am I going to have my law clerk do some
17 research?

18 MR. O'KELLEY: Your Honor, I'd be happy to hand them up
19 if Your Honor would like.

20 THE COURT: I would love to see the cases if you have
21 them, and I'll listen to your arguments. Do you all need
22 some time to sort of refocus where you're going? I'll be
23 happy to give you 10 or 15 minutes to sort of refocus because
24 I came in here and dropped this on you.

25 MR. SINKLER: I have a memorandum in support of my

1 motion for summary judgment which completely states our case.

2 THE COURT: Okay. I didn't read your memorandum, but
3 I'll pull it out of the file.

4 MR. SINKLER: Well, until December of this past year
5 there was no case in South Carolina on this issue, and at
6 that time the Court of Appeals came down with a decision
7 which I think is dispositive of the question.

8 THE COURT: Do you have a copy of that case?

9 MR. SINKLER: It's attached to my memorandum, sir. I
10 can give you another one.

11 THE COURT: Here's the memorandum in support of
12 plaintiff's motion for temporary injunction, is that what
13 you're talking about?

14 MR. SINKLER: Yes.

15 MR. O'KELLEY: Your Honor, he's talking about the Rhett
16 case --

17 MR. SINKLER: Rhett versus Gray. I'll give you a copy
18 of it.

19 MR. O'KELLEY: -- which we think is highly
20 distinguishable because in that case --

21 THE COURT: Just hand up your cases. I'll let you all
22 make your arguments. I don't know the answer. You all are
23 going to have to educate me.

24 MR. O'KELLEY: I've got two, Your Honor, Plott versus
25 Justin Enterprises, which just for the record is 649 S.E. 2d

1 92, and then Hill versus Carolina Power and Light, which is a
2 1943 case, which is still good, 28 S.E. 2d 545.

3 THE COURT: The Rhett versus Gray case is Court of
4 Appeals, 736 Southeast 2d 873. What were those other cases?

5 MR. SINKLER: I've got copies. I know that one. I just
6 wanted to get the other two citations.

7 THE COURT: Oh, the other two? We've got Hill versus
8 Carolina Power and Light, that is Southeast 2nd, 28 Southeast
9 2d 545. That's a 1943 case. And we've got Plott versus
10 Justin Enterprises, which is an '07 case, and that is 649
11 Southeast 2d 92. What I'm going to do is take a short break
12 and let you all get your legal oral arguments together, and
13 I'll come back and listen to you. I'll be back after I get
14 through reading these three cases, okay, and that will give
15 you all time to sort of refocus on where we're going.

16 MR. SINKLER: Thank you.

17 THE COURT: Mr. O'Kelley, have you submitted any memos?

18 MR. O'KELLEY: No, sir, Your Honor, just our motion, but
19 I've got a copy if you'd like it, but it's got the easement
20 and affidavits from my clients.

21 THE COURT: That's okay. Thank you.

22 MR. O'KELLEY: Yes, sir.

23 (Recess held.)

24 THE COURT: Is the plaintiff ready to proceed?

25 MR. SINKLER: Yes.

1 THE COURT: Defense ready?

2 MR. O'KELLEY: Yes, Your Honor.

3 THE COURT: Okay. Who wants to go first?

4 MR. SINKLER: I guess the plaintiff will go first, Your
5 Honor.

6 THE COURT: Let me see, Defendant's Exhibit No. 1 is the
7 easement itself, right?

8 MR. O'KELLEY: That's correct, Your Honor, and 2 is the
9 license agreement.

10 THE COURT: I didn't read the easement. What language
11 do you allege is the right to assign?

12 MR. O'KELLEY: Your Honor, on the front of the easement
13 at the very beginning where there's the underlying grant of
14 access easement.

15 THE COURT: Grant of access.

16 MR. O'KELLEY: Yes, sir, it says grantor does hereby
17 grant and convey unto the grantee, his successors and assigns
18 forever, so that's one place that we are going not just to
19 Mr. Sisson but to his successors and assigns. And then more
20 importantly, Your Honor, and this gets to the crux of our
21 client's argument, if you turn to the second page which was
22 filed in both U-358 at page 110.

23 THE COURT: I'm sorry, where now?

24 MR. O'KELLEY: The second page, Your Honor.

25 THE COURT: Okay.

1 MR. O'KELLEY: There's a large paragraph that begins, it
2 is intended, it's the first -- it's the second paragraph on
3 that page.

4 THE COURT: Right.

5 MR. O'KELLEY: The second sentence begins, and this is
6 what gives us the right, Your Honor, it is further
7 intended --

8 THE COURT: Let me find it. Hold on.

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: It's further intended, I'm with you.

11 MR. O'KELLEY: -- that the easements and rights herein
12 granted and agreed to herein are, whether determined to be
13 appurtenant or in gross, perpetual, assignable and divisible
14 and that the division of the granted property by ownership
15 release or the assignment of grantee's rights under this
16 agreement shall entitle all parties to enjoy the benefits
17 hereby granted and shall not be deemed to be an unlawful
18 increase or burden upon the grantor's property or the grantee
19 as applicable. And, Your Honor, relying on the Plott case
20 and the Carolina case, and even the Rhett versus Gray case
21 that Mr. Sinkler cites, the general rule of course is that
22 the character in the expressed easement is determined by the
23 nature of the right and the intention of the parties creating
24 it, and this was always intended to be a perpetual easement,
25 contemplates assignment on the first page stating it's the

1 grantees, successors and assigns. It also contemplates
2 assignment in that there is a four-line sentence that states,
3 if it is assigned it won't be a burden --

4 THE COURT: Okay. Let me listen to Mr. Sinkler, and
5 then I'll listen to you, okay?

6 MR. O'KELLEY: Yes, sir.

7 THE COURT: Mr. Sinkler?

8 MR. SINKLER: Your Honor, the language that is used in
9 this easement is typical language to create an easement
10 appurtenant to the property, but whether it's an easement
11 appurtenant, easement in gross, easement in gross of a
12 commercial nature --

13 THE COURT: Do you think it's an easement appurtenant or
14 do you think it's an easement --

15 MR. SINKLER: I think it's an easement appurtenant.

16 THE COURT: I don't think there's any question about
17 that. I don't think it's an easement in gross, just looking
18 at the plat.

19 MR. SINKLER: That's my feeling.

20 THE COURT: The defense agrees with that.

21 MR. O'KELLEY: Correct, Your Honor.

22 MR. SINKLER: So that's done. So what you have then is
23 a servient estate, that would be Mr. Pooser, granting the
24 easement to a dominant estate, and you determine the dominant
25 estate by looking at the easement and seeing that what it

1 does is grants access to Mr. Sisson's property, and I've got
2 even a bigger plat here. I think you have this plat.

3 THE COURT: We've got it, yes, sir.

4 MR. SINKLER: So it gives from his property to Highway
5 17, so that's the dominant estate. It doesn't say anything
6 about Mr. Askins' property, which is Timarand. It has
7 nothing whatsoever in this easement that indicates that they
8 contemplated extending the easement beyond the dominant
9 estate, and Timarand didn't even -- the hardware store wasn't
10 even created until seven years after this easement was
11 created. This easement was done in around 2000 or 2002, I
12 think. The easement was in 2000. It was signed by both
13 parties October 17th, 2000. Timarand finished, I think, or
14 Sweetgrass finished --

15 THE COURT: Who owned the property -- who owned the
16 Timarand property at the time the easements were granted?

17 MR. SINKLER: Mr. Askins, or Timarand, Inc. I think they
18 called it.

19 THE COURT: Okay.

20 MR. SINKLER: It had nothing to do with Mr. Sisson.

21 THE COURT: Okay.

22 MR. SINKLER: And so Mr. Sisson had property identified
23 in EA-742. Timarand, you'll see, is a tract that's located
24 on there as Timarand, Inc. X-209/316, and there's nothing in
25 this easement that would --

1 THE COURT: So your position is, by allowing access off
2 of 17 onto the easement and then going to the Timarand
3 property, across the Timarand property, creates the burden
4 on, I guess, the servient estate, expanding to another piece
5 of property, is that your position?

6 MR. SINKLER: That's precisely it, and we have an auto
7 count done in April and July which indicate that in a 12-hour
8 total it was 732 passes by automobiles on this property,
9 676 --

10 THE COURT: I'm sorry, what now, how many?

11 MR. SINKLER: 732 vehicles on one day.

12 THE COURT: When was this?

13 MR. SINKLER: Wednesday, April 20th, '13.

14 THE COURT: The 20th of this year?

15 MR. SINKLER: Yes. And then on July 13th of '13 there
16 was 676 passes of vehicles across this.

17 THE COURT: Do you have that in an affidavit form, or do
18 you have to offer that by testimony, or will you stipulate to
19 that count?

20 MR. O'KELLEY: No, sir, because I don't know who did it.
21 All I got was a summary sheet.

22 THE COURT: We may get some testimony on that in a
23 minute. I think that's important to the issue on whether it
24 materially overburdens the servient estate.

25 MR. SINKLER: Your Honor, when I started with this case,

1 the cases, the Gray case or the Rhett versus Gray had not
2 been decided, but I researched, and my memorandum will show
3 other authorities, the memo in support of our motion for
4 summary judgment, and I can find no cases that permit an
5 extension to a stranger, which is what this is. I think
6 Rhett versus Gray establishes that even if it were Mr.
7 Sisson's property, it could not -- you could not extend to it
8 unless it's just a small piece, as they say, did not increase
9 the burden, but we've got a dramatic increase of the burden
10 here and have had it for over three years. And I can find no
11 authorities in any jurisdiction that differ from the holding
12 in Rhett versus Gray, and I predict that its allowance of the
13 extension of the easement talked about there is going to be
14 reversed by the Supreme Court because I don't think they will
15 hold that. It's not right now -- right now the property --

16 THE COURT: You think what case is going to be reversed
17 by the Supreme Court? I'm sorry.

18 MR. SINKLER: The portion of the Rhett versus Gray that
19 was being -- they asked for reconsideration on that which was
20 denied by the Court of Appeals.

21 THE COURT: Which portion were they challenging now on
22 the motion?

23 MR. SINKLER: Extension of the easement to a contiguous
24 tract, to the one point something acre tract. There was
25 another four point something acres.

1 THE COURT: Right. They affirmed the master on that.

2 MR. SINKLER: They did that because they said they
3 didn't see any extension or any increase in burden. Now it
4 turns out, I talked to the lawyer yesterday, it's a Harold
5 Boney down in Beaufort --

6 THE COURT: Well, you know, for now I've got to go with
7 what Court of Appeals says. If the Supreme Court reverses
8 it, they'll just have to reverse it. I don't know. Right
9 now, as far as I'm concerned, that's an appellate case for
10 this Court to follow.

11 MR. SINKLER: That's absolutely true, and there are no
12 cases that will allow it to a stranger. If Mr. Sisson were
13 to buy it, he wouldn't have a right to extend it,
14 particularly given, you know, the increase in burden, so
15 either way I think they have no right to do it.

16 THE COURT: Well, let me just ask you, what do you think
17 the character of the easement was?

18 MR. SINKLER: I think it's an easement appurtenant.

19 THE COURT: But what do you think the character -- what
20 was the intention of the parties as far as the nature of the
21 easement, the use of the easement?

22 MR. SINKLER: Oh, to make it divisible in the dominant
23 estate. A portion of the dominant estate could be divided
24 and sold, and you wouldn't even have to say the easement goes
25 with it, it would go with it.

1 THE COURT: So you think --

2 MR. SINKLER: That's the nature of it.

3 THE COURT: -- what's before the Court concerns the
4 easement riding with the land upon sale.

5 MR. SINKLER: Mr. Sisson could convey a portion of his
6 property, and the person buying that portion of his
7 property --

8 THE COURT: It would go with that deed --

9 MR. SINKLER: -- the dominant estate, and the person
10 buying that would automatically have a right to it. That's
11 the nature of an easement appurtenant.

12 THE COURT: Right.

13 MR. SINKLER: It follows the conveyance of the dominant
14 estate or a piece of the dominant estate, but it doesn't go
15 beyond the confines of the dominant estate because the
16 dominant estate and the activity going on there establishes
17 what the burden is, and the authorities won't allow it to go
18 beyond that because they assumed that that would increase the
19 burden.

20 THE COURT: Okay.

21 MR. SINKLER: That's what most of the cases hold.

22 THE COURT: Why do you think -- what was the intention
23 of the parties in granting the easement from your
24 perspective?

25 MR. SINKLER: To let Mr. Sisson -- for Mr. Sisson to

1 have access and for, if he conveyed a portion of his property
2 or all of his property, for the person buying it to acquire
3 the same easement, which he would as a matter of law.

4 THE COURT: So you're saying -- make sure I understand
5 what you're saying, you're saying, referring to I guess, what
6 is this, Plaintiff's Exhibit No. 3, pretty well maps out the
7 area. No. 3 you're saying is access to this 154.13 acres?

8 MR. SINKLER: No, no, he didn't own that.

9 THE COURT: Okay.

10 MR. SINKLER: It's access to this.

11 THE COURT: Referring to Plaintiff's Exhibit No. 2, it's
12 access to where now?

13 MR. SINKLER: Right here, that's Timarand.

14 THE COURT: Okay.

15 MR. SINKLER: The access is from here, this way, over
16 here.

17 THE COURT: To give access to this property behind
18 Timarand.

19 MR. O'KELLEY: That's correct.

20 THE COURT: Behind George Sisson.

21 MR. SINKLER: Right.

22 THE COURT: I guess, looking at the map, to the north of
23 Timarand, to give access to Sisson north of Timarand.

24 MR. SINKLER: Yes.

25 THE COURT: You think that was the intention of the

1 parties.

2 MR. SINKLER: Yes, sir. I don't think there's a
3 question about that.

4 THE COURT: Okay. Looking at the agreement itself the
5 cases, Mr. Sinkler, what do you think is the nature of the
6 easement? What's the purpose of the easement? Is it just a
7 personal use, commercial or what do you think? In other
8 words, why do they need access to that northern portion of
9 land when -- do you have access off of 17? You had frontage
10 on 17.

11 MR. SINKLER: Mr. Sisson?

12 THE COURT: Yes.

13 MR. SINKLER: It's to provide him access to any portion
14 of his property that he chose to go to, and if he sold any
15 portion of his property, he could go to that, but it was not
16 to go to property that Sisson did not own or he owned
17 elsewhere that's not part of the dominant estate. The
18 dominant estate determines the extent of the easement.

19 THE COURT: Okay. Anything else you want to tell me?

20 MR. SINKLER: No, sir.

21 THE COURT: Okay. Mr. O'Kelley?

22 MR. O'KELLEY: Thank you, Your Honor, may it please the
23 Court. If I may, Your Honor, you asked about an intent, and
24 by way of background, and this is agreed to in the facts in
25 the case that we've all stipulated to, the South Carolina

1 Department of Transportation required the abandonment of an
2 encroachment permit, which is why this easement is called
3 access easement and abandonment of encroachment permit, so
4 the intent, Your Honor, was to comply with DOT's requirement
5 that there was an old encroachment permit that Mr. Sisson
6 had, and when Stow Away developed its property, they applied
7 to DOT to get access and DOT said, fine, we'll have access
8 for you, but you have to give Mr. Sisson this easement. So
9 this was required by folks in Columbia, so that was the
10 intent of this easement, Your Honor.

11 THE COURT: Give me a little factual background on how
12 that occurred.

13 MR. O'KELLEY: Yes, sir, and if you look -- it's
14 outlined in the complaint, Your Honor. In 1999 Stow Away
15 filed with the then highway department an application for an
16 encroachment requesting access to drive to his parcel. The
17 access was through Highway 17 right across from Porcher's
18 Bluff Road, which is where the easement is today. In the
19 negotiations with the highway department, they changed their
20 name to DOT, and in response DOT agreed to the permit and
21 requested and required that Mr. Sisson be given an easement
22 because he had to abandon an old access that he had for
23 getting from his property to 17, so DOT's thinking was, well,
24 we'll give Mr. Pooser's crowd access to 17, they can connect
25 in at 17 where they are, but Mr. Sisson had an old way to get

1 to 17, so you all have to protect Mr. Sisson and give him an
2 easement.

3 THE COURT: Does the old way show on this map?

4 MR. O'KELLEY: One second.

5 (Brief pause.)

6 MR. O'KELLEY: Your Honor, according to Mr. Sisson where
7 he accessed it was parallel to where the road is today.

8 THE COURT: It's parallel.

9 MR. O'KELLEY: Yes, sir, it's not the same because when
10 they developed it, they put in the new road.

11 THE COURT: So it was parallel to that.

12 MR. O'KELLEY: And ran along the side --

13 THE COURT: DOT was saying Mr. Sisson was encroaching on
14 their right of way.

15 MR. O'KELLEY: Mr. Sisson had an old encroachment permit
16 from DOT, and DOT said, we'll give you one, Stow Away
17 Storage, but you've got to give Mr. Sisson an easement so he
18 can still get to and from his property, so that was the
19 intent.

20 THE COURT: Okay.

21 MR. O'KELLEY: And, Your Honor, again, I have to go back
22 to the Plott versus Justin Enterprises case, and I think,
23 Your Honor, we're stuck with the language that is in the
24 easement itself.

25 THE COURT: Well, I agree with you as far as determining

1 intents of the parties and the nature of the easement, but at
2 the same time, let me just ask you this, do you agree that if
3 the Court says the assignment is -- the easement is
4 assignable, doesn't the Court still have to look as to
5 whether that assignment changes the nature of the easement?

6 MR. O'KELLEY: Normally, yes, Your Honor, but there's an
7 out to that, and that's in the language of the easement
8 itself.

9 THE COURT: Tell me where that language would be that
10 would prevent change of the nature. In other words, South
11 Carolina says a material change. Other states say
12 substantial change. South Carolina says material changes,
13 and generally that's an issue for the fact finder.

14 MR. O'KELLEY: Yes, sir, and I had a case --

15 THE COURT: And they all say that, so if you're making a
16 material change, even by the assignment, then I think that
17 material change can be prevented, even if it was assignable.

18 MR. O'KELLEY: I think you're correct, Your Honor,
19 except for the language that is in this easement itself.

20 THE COURT: Tell me what language you're referring to.

21 MR. O'KELLEY: Yes, sir, it's the language I cited to
22 you earlier, on page 2, the large paragraph, the second
23 sentence that begins, it is further intended, and if you go
24 through that, and you will see, Your Honor, that an
25 assignment -- about half way through it says, assignment of

1 grantee's rights under this agreement shall, not is, shall
2 entitle all parties to enjoy the benefits hereby granted and
3 shall not be deemed to be an unlawful increase or burden upon
4 the grantor's property or grantee as applicable. And, Your
5 Honor, that's the key because we can't materially increase
6 the burden on the servient estate. That has been the law
7 forever. The 1973 Clemson case. We know that. But when the
8 parties actually contract together and come together and say,
9 if you assign it, we'll agree in October of 2000 that that
10 will not be an increase, a burden, and they use the term,
11 Your Honor, an unlawful increase or burden upon the grantor's
12 property or grantee as applicable. And without any
13 restriction in the grant of an easement, and this is that
14 Hill case I presented to you, then the easement is
15 assignable, and it won't be an additional burden.

16 They contemplated it in 2000, Your Honor, when this was
17 drafted. Nexsen Pruet drafted this easement, as you can see
18 from the last page of it. It was done in Columbia. Mr.
19 Pooser lives in Columbia. His lawyers drafted this, and they
20 specifically made an exception for the argument that
21 Mr. Sinkler's making today that an assignment would
22 materially unlawfully burden the servient estate. They
23 contemplated it, they thought about it, they contracted for
24 it, and then eight years later they say, wait a minute, we
25 want a do-over, and then they sue over it in 2011. So, Your

1 Honor, to answer your question, you're absolutely correct,
2 you can't --

3 THE COURT: If you go back, I mean, it says assignment
4 of grantee's rights, so let's go back and talk about, what
5 rights does a grantee have under the lease.

6 MR. O'KELLEY: The easement, Your Honor.

7 THE COURT: So what rights did the assignee have under
8 this lease? Did he have the right to take a private access
9 and turn it into commercial because that's what he's done.

10 MR. O'KELLEY: It was always commercial, Your Honor.

11 THE COURT: Was it always commercial?

12 MR. O'KELLEY: Yes, sir, because Mr. Sisson has always
13 had his truck scale business located there prior to Stow Away
14 Storage.

15 THE COURT: How many trucks were coming and going?
16 Maybe 25, 30, 50, versus 700-something a day.

17 MR. O'KELLEY: Those are cars, Your Honor.

18 THE COURT: I understand, but I'm just talking about
19 increasing the burden. What was the grantee's right?

20 MR. O'KELLEY: Yes, sir, it was not exclusive, and this
21 is the first page of the easement, Your Honor, where that
22 line says grant of access easement, it's nonexclusive, it's
23 perpetual, it goes to the successors and assigns, and then
24 this is the key, for purposes of access, ingress and egress
25 by any and all pedestrian and passenger and delivery

1 vehicular means.

2 THE COURT: Where are you reading at?

3 MR. O'KELLEY: Yes, sir, I'll show it to you. On the
4 first page, Your Honor, where it says grant of easement, and
5 then the last sentence of that paragraph.

6 THE COURT: Okay. For purposes of access, ingress and
7 egress by any and all pedestrian, passenger, delivery
8 vehicles made between grantee's property and US Highway 17.
9 It says grantee's property, between grantee's property, not
10 between 17 and someone else's property.

11 MR. O'KELLEY: Right, Your Honor, but we're going
12 between the grantee's property -- this is different from the
13 Rhett case. We're not expanding it. This is from the
14 grantee's property to 17. That's what we're talking about.
15 So this is exactly what was contemplated.

16 THE COURT: I thought we were coming off of the
17 easement, turning into -- across Timarand's property into
18 where the building's located.

19 MR. O'KELLEY: Timarand's got access right there on 17,
20 Your Honor.

21 THE COURT: Right.

22 MR. O'KELLEY: And they connect right there through the
23 easement onto Timarand.

24 THE COURT: How's the traffic getting into that
25 direction, how are they getting into the hardware store? Are

1 they going across Timarand's property, or are they going
2 across the north side of the Sisson property?

3 MR. O'KELLEY: They come across both, Your Honor, but
4 they come across the Sisson property where the easement goes.

5 THE COURT: Initially, up at the north end, right?

6 MR. O'KELLEY: Yes, sir.

7 THE COURT: So you're coming in that easement and
8 passing the Timarand property, going to I guess the north
9 side and turning into the hardware store in that direction;
10 is that correct?

11 MR. O'KELLEY: Yes, sir.

12 THE COURT: What's on the Timarand property, anything?

13 MR. O'KELLEY: The hardware store is leased Timarand
14 property.

15 THE COURT: All right.

16 MR. O'KELLEY: It says any and all pedestrian,
17 passenger --

18 THE COURT: I mean, how is that the grantee? It says
19 grantee's use, and the grantee could use pedestrians, trucks,
20 etc. How can he expand it to adjoining property owners,
21 i.e., the hardware store.

22 MR. O'KELLEY: He hasn't, Your Honor. He's assigned his
23 use of it to Mr. Fletcher's company.

24 THE COURT: I understand, but why isn't that materially
25 increasing the use of that easement?

1 MR. O'KELLEY: It's not, Your Honor, it's not materially
2 increasing it because in the grant of easement they say you
3 can assign it and an assignment won't increase it.

4 THE COURT: Well, said the assignment won't increase it.

5 MR. O'KELLEY: Yes, sir. That's what the four corners
6 of the easement state.

7 THE COURT: Right.

8 MR. O'KELLEY: And I think we're stuck with that, and
9 that's the key under all our case law. It's a contract. We
10 determined the intent. We looked at it the way contracts are
11 looked at, and we looked at it the way our Supreme Court
12 tells us we have to look at it. The general rule is we've
13 got to determine the nature and the rights and the intention
14 of the parties when they created it, and the intent was that
15 it be assignable -- the intent was that any and all
16 pedestrian -- and that's the key, any and all. They didn't
17 limit it to saying just trucks going to your business, but
18 any and all pedestrian and passenger delivery means between
19 Mr. Sisson's property and US 17, and that's what's being used
20 here, Your Honor.

21 And, Your Honor, just to give you a little bit of a
22 background, the folks at Stow Away put up a gate, and they've
23 tried to close that gate many times, and the Town of Mount
24 Pleasant and South Carolina DOT told them, you've got to
25 leave that gate open for the access to Mr. Sisson's property.

1 And so if we've got two other governmental entities that say
2 you've got to leave it open, I think it's clear that everyone
3 intended that it be assignable and that it be open and that
4 everyone be able to get to the property through Mr. Sisson's
5 property. And we've got a way to resolve it today, Your
6 Honor. If Mr. Sisson becomes an owner of Sweetgrass
7 Hardware, then that's another way to get around this
8 property. We haven't done that because we've always
9 contended it's assignable, but if he becomes a part owner of
10 Sweetgrass, then there's another way to bootstrap it and get
11 us there.

12 But, Your Honor, again, it's clear under the terms of
13 the easement they're not expanding it to additional property.
14 They're using it to the Sisson property, and that's why we
15 think it's distinguishable from the Rhett versus Gray case
16 Mr. Sinkler has just cited, especially when in that case they
17 transferred -- tried to transfer a non-appurtenant easement
18 that wasn't meant to run with the land, which we've got the
19 appurtenant easement here which makes it different and makes
20 the cases distinguishable.

21 And just for the record, Your Honor, the easement that
22 was being transferred was from one Nancy O'Kelley, who's my
23 mother, who used to own the property that the Rhett's were
24 complaining about. I read that case when it came out because
25 my mother's name was in it, and I thought about it, whether

1 or not it applied to this case. And again, Your Honor, I
2 think it is distinguishable because it's not an appurtenant
3 easement, property's far apart, and that's what the Rhett's
4 were trying to say they should be able to expand their issue
5 to, and Judge Dukes disagreed with that, and Court of Appeals
6 agreed with Judge Dukes.

7 So that's our argument, Your Honor, about the easement,
8 especially when you have to look at the grant of the easement
9 and the way it's done. And, again, I go back to the fact
10 that they contemplated assignment, they contemplated that an
11 assignment, no matter what happened, would not be deemed an
12 unlawful increase of burden upon the grantor's property, and
13 that's the key, Your Honor.

14 THE COURT: Okay. Mr. Sinkler?

15 MR. SINKLER: Your Honor, in my memorandum in support of
16 my motion for summary judgment, page 7, I quote some of the
17 language that's in the --

18 THE COURT: Page 7 of your memo?

19 MR. SINKLER: Page 7 of my memo.

20 THE COURT: Okay.

21 MR. SINKLER: It says, a fundamental principal is that
22 an easement for the benefit of a particular piece of land
23 cannot be enlarged -- this is the Tennessee case cited with
24 approval by the Court -- and extended to other parcels of
25 land, whether adjoining or distinct tracts, to which the

1 right is not attached. In other words, an easement
2 appurtenant to a dominant tenant can be used only for the
3 purpose of that tenant. It is not a personal right and
4 cannot be used even by the dominant owner for any purposes
5 unconnected with the enjoyment of his estate. The purpose of
6 this rule is to prevent an increase of the burden upon the
7 servient estate, and it applies whether the easement is
8 created by grant, preservation, prescription or implication,
9 so that -- and you'll find that to be the general rule. What
10 you have to do is determine what was the dominant estate.
11 The dominant estate was the land owned by Mr. Sisson. What
12 was the servient estate? It was the portion of the property
13 owned by Mr. Pooser. They're the only parties. We're not
14 talking about parties being Timarand. I suggest to you that
15 if Mr. Sisson bought Timarand, under the law of the state he
16 could not -- he could not extend the easement to that because
17 what all he's got is -- his estate doesn't include Timarand's
18 property so -- and I guess if you've dealt in these easements
19 as long as I have, I know it's difficult, but I think if you
20 track the language out of that decision, they've got every
21 case that establishes --

22 THE COURT: Well, I mean, some of the old cases
23 basically say, it's what I had asked earlier, to determine
24 the character of the easements determined by the intention of
25 the parties and the nature of the easement. You've got to

1 look at the four corners to determine the intention of the
2 parties. You don't think the intention of the parties was to
3 allow assignment under the language that Mr. O'Kelley's
4 referred the Court to? I'm not trying to pass judgment. I'm
5 just asking, do you think the language where it says, is
6 further intended that the easement rights herein granted
7 agreed to determined by -- let me find the other page, let me
8 see, first page, it says for purposes of egress/ingress by
9 all pedestrians, but it very clearly says they have the right
10 to assign it and that shall not be deemed to be an unlawful
11 increase or burden upon the grantor's property. That's the
12 language in the easement.

13 MR. SINKLER: Exactly.

14 THE COURT: Doesn't the Court first have to make an
15 interpretation of what that language means as far as the
16 intent of the parties?

17 MR. SINKLER: No, because --

18 THE COURT: That's what those other cases say.

19 MR. SINKLER: -- the first thing you do in dealing with
20 an easement appurtenant is determine --

21 THE COURT: The Rhett case even says you've got to
22 determine the intent of the parties.

23 MR. SINKLER: I know, with reference to the dominant
24 estate. You can't go beyond the dominant estate. That's
25 what these cases hold. Everything relates -- and you don't

1 have to say that, you don't have to put that in writing.

2 THE COURT: I think you're probably right, but you don't
3 think you can contract that away in the language of your
4 easement?

5 MR. SINKLER: You'd have to do it very specifically if
6 you did. There's no way that it certainly -- there's nothing
7 to indicate that it goes beyond the dominant estate. It says
8 from the property owned by Mr. Sisson to 17, that's what it
9 says. It doesn't say from Timarand to 17. It doesn't say
10 anything that would indicate that it meant from Timarand to
11 17.

12 THE COURT: Okay. Anything else?

13 MR. SINKLER: I just, I think I would ask that you read
14 the memorandum, and it contains all the authority that now
15 exists in South Carolina. There is no other authority. It's
16 true Mr. Sisson can divide the dominant estate, and that's
17 why that language is in there. He can divide the dominant
18 estate, and the person to whom he divides and sells part of
19 the dominant estate could have a right to that easement, but
20 he cannot -- he cannot himself go beyond the confines of the
21 dominant estate, nor can anybody else.

22 THE COURT: Well, I know you all are a lot more familiar
23 with this than I am, but I guess Mr. Sisson's property --
24 does the hardware store sit on the Timarand property or the
25 Sisson property and the Timarand property or just the

1 Timarand property?

2 MR. O'KELLEY: Just on the Timarand, Your Honor.

3 THE COURT: Just the Timarand, doesn't encroach on the
4 Sisson property.

5 MR. O'KELLEY: That's correct.

6 THE COURT: So it's only Timarand property.

7 MR. O'KELLEY: That's correct, and the easement runs of
8 course along the one side of the Timarand property and to get
9 to the back, what I call the back, where it shows the US Army
10 Corps wetlands.

11 THE COURT: So, Mr. O'Kelley, your position then is that
12 even the assignment, and it can't be an increase, gives them
13 the right to increase the dominant estate is what you're
14 saying; basically increase the dominant estate if you give an
15 access to Timarand property.

16 MR. O'KELLEY: Timarand has access all along that side
17 of the easement, Your Honor, by virtue of the fact it's right
18 there along the easement. Anyone can turn off of that
19 property into --

20 THE COURT: But they've got to go across the easement to
21 get there.

22 MR. O'KELLEY: Correct, Your Honor.

23 THE COURT: There's no way you can sit there -- I don't
24 think you can sit there and argue whether that increases the
25 dominant estate. Whether the parties intended that, that's a

1 different story.

2 MR. O'KELLEY: Again, Your Honor, I don't know that it
3 does increase the dominant estate.

4 THE COURT: Well, if you turn off of 17 into the
5 easement, that's on the plaintiff's property, right?

6 MR. O'KELLEY: Correct.

7 THE COURT: So you've got to turn into that easement and
8 get on the plaintiff's property before you get into Timarand
9 property, right?

10 MR. O'KELLEY: Unless you go right off directly off 17,
11 but yes, you're correct, Your Honor.

12 THE COURT: So, I mean, how is that not increasing the
13 dominant estate by allowing the Timarand property owners to
14 share that easement, i.e., for the customers or the
15 employees?

16 MR. O'KELLEY: Because that easement would always be
17 there, Your Honor. People would always be able to go to the
18 Sisson property.

19 THE COURT: But the easement's not there for the
20 Timarand property. It's there for the Sisson property.

21 MR. O'KELLEY: That is correct, Your Honor, and the
22 parties contemplated the fact that if --

23 THE COURT: That's what I just asked you, did you think
24 the parties contemplated increasing the dominant estate,
25 that's what I asked you, and you said it hadn't been

1 increased.

2 MR. O'KELLEY: The answer to your question is, yes, sir,
3 and they did contemplate it in the plain language of the four
4 corners of the easement that we just went over.

5 THE COURT: Okay. All right.

6 MR. O'KELLEY: And that's the key, Your Honor. And Your
7 Honor asked the question that the old cases that were cited
8 in the Rhett case do say we have to look at the intent of the
9 parties and the language of the easement.

10 THE COURT: It says that.

11 MR. O'KELLEY: Yes, sir, and I just wanted to verify --

12 THE COURT: There again, I still think, even if you say
13 the intent of the parties was to increase the dominant
14 estate, then I still think you have to look at factually does
15 that change the nature of the easement, does that assignment
16 change the nature of the easement. I think that's a factual
17 finding that the fact finder has to determine. Now, your
18 position is it hasn't changed the nature, right?

19 MR. O'KELLEY: That's correct, Your Honor.

20 THE COURT: Mr. Sinkler's position is it has by the
21 increase in the vehicular traffic, and when he told me that,
22 I don't have that before the Court by affidavit or sworn
23 testimony, so I'm going to let Mr. Sinkler call a witness so
24 that evidence is sworn to, and you can cross-examine
25 concerning that count. Mr. Sinkler, can you do that, please,

1 sir?

2 MR. SINKLER: I will do that. May I just --

3 THE COURT: Do you want to reply to him?

4 MR. SINKLER: Yes, just one --

5 THE COURT: Yes, sir, please do. I wasn't trying to cut
6 you off.

7 MR. SINKLER: Just another provision in the easement
8 itself. At the bottom of the first page of the easement --

9 THE COURT: Bottom of the first page?

10 MR. SINKLER: Yes. It says the access easement and all
11 rights granted in favor of the grantee herein are limited in
12 nature and scope, and the use of the access easement by the
13 grantee shall not materially adversely affect the use,
14 enjoyment, operation of the grantor's property. So you've
15 got that in there as well.

16 THE COURT: Well, I don't know if it has materially
17 affected the use of his property. I can't address that. I'm
18 going to let you call a witness and address that issue.

19 MR. SINKLER: All right.

20 THE COURT: Whoever did the vehicular count.

21 MR. SINKLER: Allison Walshe.

22 THE COURT: Okay. Want to come around and be sworn,
23 please, ma'am.

24 Mr. O'Kelley, if you want to offer witnesses in rebuttal
25 to this, please feel free to do that.

1 MR. O'KELLEY: Yes, Your Honor.

2 ALLISON WALSH,

3 having been first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION BY MR. SINKLER:

6 Q. Ms. Walshe, what is your position at Stow Away Storage?

7 A. I'm the general manager.

8 Q. And how long have you held that position?

9 A. Nine and a half years.

10 Q. And what is your job with them?

11 A. Everything. I rent storage units, boat parking spots,
12 maintenance, just anything it takes to run the business.

13 Q. Are you familiar with the amount of burden on the
14 estate --

15 A. Yes, sir.

16 Q. -- when you first conveyed the easement to Mr. Sisson as
17 opposed to after the hardware store was created?

18 A. Yes, sir.

19 Q. Tell us what the burden was in terms of the vehicular
20 traffic that used the easement during that period of time.

21 A. Do you want --

22 Q. Before the hardware store back there.

23 A. When I first started at Stow Away it was -- basically
24 there was no traffic light there, and it was a dirt road and
25 our driveway that kind of came to a V to 17, and the DOT had

1 not barricaded that dirt road off yet. There was no traffic
2 light there that was continuing to be used, but there was a
3 treeline going down the opposite side of the dirt road which
4 is Mr. Sisson's easement. I didn't know that at the time. I
5 wasn't very familiar with the easement agreement or any of
6 that, you know, language, but there was a treeline and there
7 was a small landscaping type business that occupied the
8 building that was there before the hardware store was there,
9 and then there was an auto repair shop behind that, and Mr.
10 Sisson's property was on the other side. At that time I
11 didn't know really that Mr. Sisson owned the dirt road that
12 goes along the utility line.

13 Q. Tell us what the traffic was like that came along before
14 the hardware store began.

15 A. I would see Mr. Sisson's big trucks that have his logo
16 on them pull in off of 17 and take the dirt road around to
17 the back side to access his business, and I think the owners
18 of the little landscaping business used it to park their cars
19 in the back of the business they were running.

20 Q. Was it a problem for your business?

21 A. No, sir.

22 Q. When was your business created, and tell the Court what
23 your business is.

24 A. It's a self-storage facility. They opened in January of
25 2001, and I started there in January of 2004, so I wasn't

1 there for the first three years.

2 Q. All right. Now, when did you first begin having any
3 trouble with the hardware store?

4 A. When they opened, the first traffic started before they
5 put their second access on Mr. Sisson's dirt road. Before
6 they put that up it didn't take long for, I guess, the
7 general public to realize that if they turned in the newly
8 acquired traffic light where Stow Away's driveway meets the
9 road, that if they went down the dirt road, they could have a
10 traffic light to come through to go down that way around the
11 back side of the hardware store to get to it to, in my
12 opinion, to avoid having to do a U-turn at Ivy Hall and come
13 back around.

14 MR. O'KELLEY: Your Honor, I'm going to object to her
15 opinion.

16 THE COURT: It's obvious there's a concrete median
17 there, you have to make a U-turn. Objection overruled.

18 MR. O'KELLEY: Thank you, Your Honor.

19 Q. Now, was the area they were using at that time, was that
20 part of the easement that was supposed to be abandoned by Mr.
21 Sisson?

22 A. Yes.

23 Q. So they were continuing to use that even after the
24 access was available?

25 A. Yes. It was a five-point intersection and a four-way

1 traffic light, basically.

2 Q. And how long were they able to continue doing that?

3 A. Until the DOT barricaded it. I'm not sure of the
4 timeline of that. A year or so.

5 Q. I think that's in the -- probably in the stipulation,
6 given the allegations of the complaint.

7 All right. After the DOT barricaded that, what did the
8 customers do?

9 A. They just started using our driveway, Stow Away's
10 driveway.

11 Q. Was it your easement?

12 A. Pardon me?

13 Q. Was it the easement that you had granted to Mr. Sisson?

14 A. They would cross through -- crossing the Stow Away's
15 driveway, take a right, cross over Mr. Sisson's dirt road and
16 go through the second gate that was ultimately opened on the
17 dirt road.

18 Q. When was that gate opened?

19 A. I honestly don't know the date. It wasn't too terribly
20 long after the business opened, after the hardware store
21 opened.

22 Q. Did the traffic increase at that time?

23 A. It did.

24 Q. To what extent?

25 A. Well, it's been building up over time. I couldn't tell

1 you what it was in the beginning, but it was immediate, and I
2 expressed my concerns about it to Mr. Pooser, my employer,
3 and my concern was that one of our customers or myself or my
4 part-time employee were going to be in a car wreck because of
5 the traffic increase coming out of the hardware store,
6 crossing through the driveway and blocking the driveway. You
7 know, I was concerned for safety of our customers, of the
8 general public, of myself and my employee, and it's just been
9 increasing ever since.

10 Q. How did it affect your customers?

11 A. Well, a lot of our customers trailer things in is one.
12 Sometimes they come in two or three behind each other, that's
13 another. But if traffic is extending out from the -- from
14 Mr. Sisson's road across Stow Away's property up to the
15 light, it blocks access to Stow Away's property, and I've
16 seen some of our customers that were trailering a boat, for
17 example, the boat is sticking out on Highway 17, their
18 vehicle is inside the driveway, and they can't go any further
19 into the driveway because it's blocked by traffic from the
20 hardware store.

21 Q. Did you make an attempt to stop the customers of the
22 hardware store from using the access easement over your
23 property?

24 A. I did.

25 Q. And what did you do?

1 A. Well, I filed a letter with a woman at DOT. It went
2 unanswered. I believe she did respond ultimately to Mr.
3 Pooser. And then I installed a swing gate, a farm gate, I
4 call it a swing gate, but it connects in the middle, and we
5 put a lock on it, and we sent Mr. Sisson keys so that he
6 would have access to that gate.

7 Q. And did that, gating that access, then create more
8 traffic?

9 A. No. Their customers that had become accustomed to
10 coming in that way would, you know, come in and turn around
11 in the driveway and leave and go back down 17 and go in on
12 their, I guess, permitted access on 17.

13 Q. Did that change at some point?

14 A. Yes. The DOT required us to open the gate back up.

15 Q. Why did they do that?

16 A. I can only speculate on that. I'm not real sure.

17 Q. Was traffic backing up into the highway?

18 A. Not to my knowledge.

19 Q. Did you ever do a traffic count on the vehicle access
20 for the Stow Away's property?

21 A. Yes.

22 Q. How did you do that? What sort of equipment do you
23 have?

24 A. We used our surveillance cameras and video. It's
25 standard equipment for every storage facility. They all have

1 them. And we have a camera dedicated to the entrance at
2 Highway 17, and I took video footage off of that and burned
3 it to a disc and used the necessary software to view it and
4 went through each day and counted cars.

5 Q. Did you give me a copy of that disc to give to counsel
6 for the defendant and to give to the Court?

7 A. Yes, sir, I hand delivered it to you.

8 Q. Is this a copy of that disc?

9 A. Yes, sir, it is.

10 MR. SINKLER: I'm going to offer that in evidence, Your
11 Honor, in case the Court wants to view it.

12 THE COURT: I don't particularly want to view it. Do
13 you have an objection to marking it?

14 MR. O'KELLEY: No, sir.

15 (Plaintiff's Exhibit No. 4 marked for identification.)

16 Q. And then did you prepare this? I'm not sure what you
17 call it. It's a document that indicates what the pictures
18 show, is that what it is?

19 A. Yes. It's an hourly count of the vehicle traffic from
20 what I think is open to close of the hardware store hours, 7
21 a.m. to 7 p.m.

22 Q. Over what period of time did you do that?

23 A. I picked two random days, Wednesday, April 20th and
24 Saturday, July 13th.

25 Q. And what did you conclude?

1 A. On Wednesday, April 20th I counted 732 cars turning into
2 the hardware store, and on Saturday, July 13th, I counted 676
3 cars turning in and out of the hardware store. Let me
4 correct the first one too, it's turning in and out.

5 Q. What do you call that document you're reading from?

6 A. A traffic study.

7 MR. SINKLER: Okay. I'd like to offer that in evidence,
8 Your Honor.

9 (Plaintiff's Exhibit 5 marked for identification.)

10 Q. Was the traffic you observed on those two days any
11 different than the traffic you had observed for a long period
12 of time?

13 A. No, it is not, other than the fact that it just
14 continues to increase as people become aware of the shortcut.

15 Q. What is the nature of the business that's operated by
16 the Timarand property?

17 A. It's a retail hardware store.

18 Q. And does it have any other business associated with it?

19 A. They have a satellite post office inside it.

20 Q. A post office?

21 A. Mm-hmm.

22 Q. When was that brought in?

23 A. I'm not sure.

24 Q. Did that increase the traffic?

25 A. Yes.

1 Q. To what extent?

2 A. Exponentially.

3 Q. Meaning?

4 A. I could not give you a finite number. Specific times of
5 day it's really, really bad.

6 MR. SINKLER: Okay.

7 THE COURT: Any objection?

8 MR. O'KELLEY: Yes, Your Honor, I do object. Ms.
9 Walshe -- there's no foundation for this. She's not a
10 traffic engineer. She hasn't said where the cars are going
11 to or from.

12 THE COURT: I think she said they were cars turning into
13 the hardware.

14 MR. O'KELLEY: But if you look at the actual video, all
15 you see are cars turning on. You don't know whether they're
16 going to Stow Away Storage, you don't know whether they're
17 going to turn around, you don't know if they're lost.
18 There's no way to tell from that count where those cars are
19 going or from the video.

20 THE COURT: I understand. That goes to the weight.
21 What's your legal objection? I understand your argument goes
22 to the weight and sufficiency of the evidence, but what's
23 your legal objection? She's identified it. She said she
24 counted them. She took two random days off of the disc and
25 counted the cars. What's your legal objection to the

1 admissibility of Plaintiff's Exhibit No. 5?

2 MR. O'KELLEY: It's hearsay, Your Honor. It's an out of
3 court statement offered to prove the truth of the matter
4 asserted therein.

5 THE COURT: She just testified to it.

6 MR. O'KELLEY: She testified to it, but it's still
7 hearsay, Your Honor.

8 THE COURT: Okay. Overruled. I'm going to admit
9 Plaintiff's Exhibit No. 5 with objection. Okay. Go ahead.

10 Q. Did you yourself determine the number of cars?

11 A. Yes.

12 Q. And you did that from the disc that I've just given the
13 Court?

14 A. Yes.

15 Q. But only on two days. How long does the disc continue,
16 for what period of time? Was it just for two days that you
17 did?

18 A. I just did the two days. It's a very large data file,
19 so I just did the two days.

20 Q. And how could you tell whether the vehicles were going
21 to the hardware store or coming from the hardware store?

22 A. Because the video, the way the camera's positioned, it
23 actually shows the straightaway that comes into -- up to my
24 office, and it also shows the right, the hard right that the
25 driveway takes across the dirt road, shows a portion of that

1 curve, and it shows the cars clearly turning right and not
2 coming forward at Stow Away's driveway. And I do see
3 turnaround traffic sometimes, but you'll see the same car
4 immediately, zip, zip, they're in, they're out. The ones
5 that I counted, as it says at the top of the document I
6 created, did not include turnaround traffic or Mr. Sisson's
7 vehicles, his lettered vehicles.

8 MR. SINKLER: Would you answer any questions that the
9 defendants have, please.

10 THE WITNESS: Sure.

11 CROSS-EXAMINATION BY MR. O'KELLEY:

12 Q. Ms. Walshe, you weren't around for the actual drafting
13 or the creation of the easement we're here about today, were
14 you?

15 A. No, I was not.

16 Q. And that was done in 2000, and your testimony is you
17 started working in '04; is that correct?

18 A. I don't know when the easement was drafted, but I
19 started working in January of 2004.

20 Q. I'll show you a copy of it, and the date is 17 October
21 2000.

22 A. Okay.

23 Q. You weren't a party to any of the negotiations with the
24 South Carolina Department of Transportation, were you?

25 A. Pardon me?

1 Q. Were you a party to any of the negotiations between the
2 South Carolina Department of Transportation, Stow Away
3 Storage and George Sisson?

4 A. In the drafting of the easement?

5 Q. Correct.

6 A. No.

7 Q. I didn't think so. You have attempted to close the gate
8 on Mr. Sisson's easement several times, correct?

9 A. Yes.

10 Q. And every time you close that gate, the Department of
11 Transportation or the Town of Mount Pleasant tell you to open
12 that gate; isn't that correct?

13 A. The Department of Transportation, never the Town of
14 Mount Pleasant.

15 Q. You've called the police on various people using the
16 easement, haven't you, ma'am?

17 A. Yes.

18 Q. And when you call the police, they issue police reports;
19 isn't that correct?

20 A. They've never given me one.

21 Q. All right. I've got a copy of police reports we got
22 from the Town of Mount Pleasant that state that you claim
23 someone hit and -- did a hit and run on you on the property
24 one day. Do you remember that incident?

25 A. That is correct.

1 Q. And that someone, an unknown man told you to calm down
2 and basically back away and leave the easement alone. Do you
3 remember that?

4 A. I do not.

5 Q. I'll be happy to show you a copy of the police report.

6 A. An unknown man?

7 Q. It says the unknown male stated he could not open the
8 gate, only the owner could approve that, and a lady named Ms.
9 Stair asked if the complainant Walshe was the owner, and the
10 unknown male stated no and that you were the business
11 manager.

12 You've actively tried to shut down this easement
13 yourself, haven't you, Ms. Walshe?

14 A. I've not tried to shut down the easement. I've tried to
15 stop the traffic chaos to the hardware store and out.

16 Q. Do you have any traffic counts that were done prior to
17 Sweetgrass opening up?

18 A. I do not.

19 Q. Why not?

20 A. I couldn't have foreseen this coming.

21 Q. How can you say that the traffic has increased
22 exponentially if you don't have a baseline?

23 A. I may not have done a traffic count, but I am a
24 firsthand witness, and I am testifying that it was a handful
25 of vehicles a day.

1 Q. Do you remember testifying a few minutes ago the traffic
2 has increased exponentially?

3 A. Mm-hmm.

4 Q. Is that a yes?

5 A. Yes.

6 Q. We need a yes or no for the court reporter.

7 A. Yes.

8 Q. But yet you have no baseline and you have four or five
9 days of traffic counts; is that correct?

10 A. I have two days.

11 MR. O'KELLEY: Two days. I'm sorry.

12 Your Honor, may I borrow this for just a minute?

13 THE COURT: Yes, sir.

14 MR. O'KELLEY: Thank you.

15 Q. You've got two days, and you've got various times,
16 correct?

17 A. It's by hour because that's the way our video records.

18 Q. When you've closed the gates, have you seen people
19 trying to back out into Highway 17?

20 A. Have I seen people back out into Highway 17?

21 Q. I'll ask it another way. When the gate's been closed,
22 has that created problems with people trying to get back onto
23 Highway 17?

24 A. Not to my knowledge.

25 Q. You mentioned a little while ago that South Carolina

1 Department of Transportation has told you all to open the
2 gate, correct?

3 A. Yes.

4 Q. Are you aware of correspondence from June of 2009 to Mr.
5 Pooser and Mr. Sisson from DOT advising that the gate had to
6 stay open?

7 A. Yes.

8 Q. And yet you're still in this Court today, even though
9 DOT requires it, saying that easement should be shut down.

10 A. Excuse me?

11 Q. You all are here in this Court today seeking what,
12 ma'am?

13 A. You'll have to ask that of the owner.

14 Q. All right. But you're testifying as to the traffic
15 counts, that they've increased exponentially.

16 A. Yes.

17 Q. That it's created a problem for you all and your
18 business; is that correct?

19 A. It has created a traffic problem for Stow Away Storage.

20 Q. Has anyone said to you, ma'am, we can't get to our
21 storage unit because of this easement?

22 A. I have had customers tell me that they can't get in the
23 driveway because of the blocked up traffic coming from the
24 hardware store, yes.

25 Q. So people have said, I can't get to my unit because of

1 this easement?

2 A. I can't get to Stow Away Storage because of the traffic.

3 Q. And how many customers has that been, ma'am?

4 A. I haven't done that study.

5 MR. O'KELLEY: That's all I have.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION BY MR. SINKLER:

8 Q. Let me just hand you two photographs and see if you can
9 identify those.

10 A. Yes, sir.

11 Q. Let's start with one -- let me ask you, are those
12 photographs that you're familiar with?

13 A. Yes, sir. I took them with my cell phone. One is dated
14 9/12 of 2011, the other is dated 9/13 of 2012.

15 MR. SINKLER: All right. Let me get them identified
16 first. I'm going to offer those in evidence.

17 (Plaintiff's Exhibits 6 and 7 marked for
18 identification.)

19 Q. First I'll hand you the one dated September 12th, '11
20 Plaintiff's Exhibit 6, and tell us what that shows.

21 A. It's from 4:54 p.m., and it's a photograph from the view
22 of from my office looking towards Highway 17, and it shows
23 the traffic backed up to include a mail truck completely
24 blocking Stow Away Storage's driveway for anyone who wanted
25 to enter Stowaway Storage.

1 Q. Let me show you Exhibit 7. Tell us what that shows.

2 A. It shows a line of vehicles, again, the same view, a
3 little more zoned in, of the traffic draped across the
4 driveway leaving the hardware store and a car entering
5 towards the hardware store at 9:00 a.m.

6 THE COURT: Any objection?

7 MR. O'KELLEY: I just would like to see them.

8 THE COURT: I'll let you see if you have any objection.

9 MR. O'KELLEY: No, sir.

10 THE COURT: That's Plaintiff's 6 and 7 admitted without
11 objection, is that correct, Mr. O'Kelley?

12 MR. O'KELLEY: Yes, Your Honor.

13 MR. SINKLER: I have nothing further, Your Honor.

14 RECROSS-EXAMINATION BY MR. O'KELLEY:

15 Q. Ms. Walshe, when was the traffic light put in by DOT?

16 A. In July of the year that the hardware store opened. The
17 hardware store opened in September, I believe. I'm not sure
18 what year.

19 Q. But my client didn't put the traffic light in and you
20 didn't put the traffic light in?

21 A. No, he did not and no, we did not.

22 Q. DOT put that traffic light in, correct?

23 A. I'm not sure if it's DOT, the town, the county. I'm not
24 sure.

25 Q. In other words, it you wasn't you all and it wasn't my

1 client.

2 A. That is correct.

3 Q. Thank you.

4 A. Your client being Mr. Sisson?

5 Q. Mr. Sisson, and I also represent Sweetgrass Hardware and
6 some other folks. But, in other words, you have no control
7 over the traffic light, correct?

8 A. That is correct.

9 MR. O'KELLEY: Thank you, ma'am.

10 EXAMINATION BY THE COURT:

11 Q. Ms. Walshe, so I'll understand, looking at Plaintiff's
12 Exhibit -- this picture, that's looking back from your
13 property?

14 A. Yes, sir. My office is right where that car is and
15 that's our parking lot, that's our parking lot where the car
16 is.

17 Q. And this is the road that goes back, talking about the
18 easement, this is the road of the easement?

19 A. No, sir. That's our driveway. Where you see the cars
20 going towards the left, that crosses over Mr. Sisson's dirt
21 road.

22 Q. It goes into the Timarand property or the hardware
23 store?

24 A. It goes to Mr. Sisson's dirt road, and then on the
25 opposite side of the dirt road, which the dirt road -- I call

1 it the dirt road -- the dirt road is Mr. Sisson's property.

2 On the opposite side of the dirt is the hardware store.

3 Q. Then this is just another shot of the cars going in and
4 out of the entrance to the hardware store?

5 A. Correct.

6 Q. There was some testimony about a fence. Is that the
7 fence in this picture, referring to Plaintiff's Exhibit No.
8 7?

9 A. Fence?

10 Q. The gate I mean.

11 A. May I look at it again?

12 Q. Yes, ma'am. Is that the gate that you had shut or
13 installed?

14 A. You can barely see it at the end. It's completely open
15 and it's tied off so that it won't swing shut at that point
16 in both of those pictures.

17 Q. That gate stops the traffic going from the driveway into
18 the hardware store?

19 A. It would if we closed it.

20 THE COURT: I just wanted to make sure I understood what
21 the pictures were showing. Anybody have any questions
22 pursuant to the questions I had? I just didn't understand
23 the geographics of the pictures.

24 MR. O'KELLEY: Just briefly.

25 FURTHER EXAMINATION BY MR. O'KELLEY:

1 Q. That's the gate that it's your understanding the DOT has
2 required you all to keep open, correct?

3 A. Correct.

4 THE COURT: Is this gate on whose property?

5 MR. O'KELLEY: Your Honor, it's my understanding that it
6 is on the property of the servient estate, on Stow Away's
7 property.

8 THE COURT: It's not on DOT right of way.

9 MR. O'KELLEY: It might be part of the larger
10 encroachment permit, Your Honor.

11 THE WITNESS: It is on Stow Away's property.

12 MR. O'KELLEY: It's Stow Away's property but I think
13 DOT --

14 THE COURT: So it's on Stow Away's property.

15 MR. O'KELLEY: Correct, Your Honor.

16 THE COURT: It's on the easement, I guess, for lack of a
17 better --

18 MR. O'KELLEY: That's my understanding, Your Honor.

19 THE COURT: So on the servient property.

20 MR. O'KELLEY: Servient estate, yes.

21 THE COURT: Okay. Mr. Sinkler, any questions you would
22 like to ask based on the questions the Court asked?

23 MR. SINKLER: No, Your Honor.

24 THE COURT: Okay. You may step down. Thank you so very
25 much.

1 Do you have any other witnesses you would like to call
2 concerning the, I guess the nature of the easement, the
3 change in that nature if there was any change?

4 MR. SINKLER: Is this just to talk about the increased
5 burden or --

6 THE COURT: Yes, sir. I mean, the way I read the case
7 is I think the Court has to first of all find out the intent
8 of the parties, does the easement allow the assignment, and
9 even if assignment's allowed, I think the Court has to make a
10 factual finding whether the nature of this easement has been
11 changed.

12 MR. SINKLER: Mr. Pooser was involved in the
13 negotiations. I'll have him come up.

14 THE COURT: The negotiation on what?

15 MR. SINKLER: Of the easement.

16 THE COURT: That's fine. I'm going to give you whatever
17 opportunity you want to offer testimony in rebuttal, okay?
18 I'm not trying to close you out.

19 MR. O'KELLEY: No, Your Honor, but I don't know that we
20 need testimony about the negotiations since we all agree the
21 easement states what it states.

22 THE COURT: I tend to agree. I think the document
23 speaks for itself.

24 MR. O'KELLEY: Okay. That's fine.

25 THE COURT: The document's pretty clear. If you want to

1 offer some testimony about how it's affected his estate, I'll
2 be happy to hear that.

3 MR. SINKLER: Mr. Pooser lives in Columbia, so he's not
4 there as often as Ms. Walshe. She knows much more about it
5 than he does.

6 THE COURT: Okay. Do you have any other witnesses
7 concerning that particular issue?

8 MR. SINKLER: No, sir.

9 THE COURT: Mr. O'Kelley, do you want to offer witnesses
10 on that issue?

11 MR. O'KELLEY: I would like to, Your Honor. First I
12 would call Mr. George Sisson to the stand.

13 THE COURT: Okay.

14 GEORGE SISSON,
15 having been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION BY MR. O'KELLEY:

18 Q. Mr. Sisson, you've been in the courtroom with us today,
19 have you not?

20 A. Yes, I have.

21 Q. Okay. And you own this easement that we're here about
22 today, correct? In other words, you have the right to go
23 across the Stow Away property.

24 A. Correct.

25 Q. All right. Tell the Judge about what you observed about

1 your trucks going to and from your property once you had the
2 easement and other people, the landscaping company you've
3 heard about today and other folks going to and from 17 to
4 your property.

5 A. We have not anticipated any problem, any changes. This
6 has not been a conflict to us. We have good in and good out.
7 We bought this for easement property for just what it is. We
8 had to get approval from South Carolina Electric & Gas. It's
9 strictly easement property. It's for utility work.

10 THE COURT: What's South Carolina Electric & Gas have to
11 do with it?

12 THE WITNESS: They've got their power lines through
13 there and they've got their gas lines through there.

14 THE COURT: They have an easement too?

15 THE WITNESS: Yes, sir.

16 MR. O'KELLEY: Yes, sir, Your Honor.

17 THE COURT: Alongside of the road?

18 MR. O'KELLEY: Along the road, yes.

19 THE WITNESS: I had to get permission from South
20 Carolina Electric & Gas to buy this property.

21 Q. And Mr. Sisson, we're also here today because you
22 assigned your easement rights. Tell the Court about that,
23 how that came to be.

24 MR. O'KELLEY: And, Your Honor, may I have Exhibit 2,
25 Defendant's 2, which is the license agreement?

1 Q. Mr. Sisson, specifically, I want to ask you how you came
2 to enter this license agreement.

3 A. Mr. Pooser came to me and asked me about an easement,
4 that he wanted to put a storage place there.

5 THE COURT: I don't want to go into his intention on the
6 easement.

7 MR. O'KELLEY: No, sir, and I think Mr. Sisson isn't --
8 we're speaking the same language but not understanding each
9 other.

10 THE COURT: Right. Please get him straight.

11 Q. Mr. Sisson, you assigned your easement rights to the
12 hardware store, to Mr. Fletcher's crowd?

13 A. Yes, sir.

14 Q. You did that according to this agreement in November of
15 2008, correct?

16 A. Yes.

17 Q. Tell the Court about the traffic that you've observed,
18 you've seen, going to and from that property since that
19 license agreement.

20 A. Well, there's been more increase in traffic.

21 Q. And has there been more increase in traffic on Highway
22 17 as well?

23 A. Going into Highway 17, yes.

24 Q. In fact, you've owned that property, your property, for
25 a long time, correct?

1 A. Correct.

2 Q. And you've seen traffic explode exponentially all over
3 Mount Pleasant, correct?

4 A. Correct.

5 Q. When you transferred your easement rights to Stow
6 Away's, you understood that was allowed, correct?

7 A. Correct.

8 MR. SINKLER: Your Honor, he's leading the witness.

9 THE COURT: I'll let him lead, okay? You can put up
10 your witness and lead too, okay? We don't have a jury here.
11 I know what's leading and what's not, okay?

12 MR. O'KELLEY: Thank you, Your Honor.

13 Q. It's my understanding the traffic has increased. That's
14 your understanding, correct?

15 A. Yes.

16 Q. Is that because of anything you've done, Mr. Sisson?

17 A. I don't think so.

18 MR. O'KELLEY: Thank you. Please answer any
19 questions --

20 THE COURT: Cross-examination. Do you have any
21 questions, Mr. Sinkler?

22 CROSS-EXAMINATION BY MR. SINKLER:

23 Q. You don't doubt that there's been an increase of
24 automobile traffic since you gave an easement to them to use
25 Mr. Pooser's easement?

1 A. No, I said there had been an increase.

2 Q. Okay.

3 A. But it has not caused a problem for me.

4 Q. For you.

5 A. I have seen no problem. I have seen no more problem
6 than any other intersection.

7 Q. But the traffic has increased.

8 A. By all means, yes.

9 MR. SINKLER: I don't have anything further.

10 THE COURT: Okay. Any redirect?

11 MR. O'KELLEY: That's all, Your Honor.

12 THE COURT: Mr. Sisson, you may step down. Thank you
13 very much.

14 MR. O'KELLEY: Your Honor at this time we call Frank
15 Fletcher to the stand. By way of background, he is the
16 hardware store owner.

17 FRANK FLETCHER,
18 having been first duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION BY MR. O'KELLEY:

21 Q. Mr. Fletcher, you own Sweetgrass Hardware, do you not?

22 A. Yes, I do.

23 Q. And you got a license agreement to use the easement
24 we're here about today, correct?

25 A. Yes.

1 Q. Tell the Court -- and you got that agreement in 2008 but
2 the store opened in 2006?

3 A. 2007.

4 Q. 2007. And tell the Court what you've seen about traffic
5 going to and from your property, excuse me, to and from the
6 hardware store since you opened. Has that traffic increased?

7 A. It has increased just based on the maturity of the
8 business in terms of shopping patterns of customers getting
9 familiar with our location.

10 Q. And there's another way to get to your property,
11 correct, a little bit further north on 17?

12 A. Right, correct. There is a primary entrance that runs
13 along the property line between the Timarand property, which
14 we lease, and Mr. Sisson's property. There is a general
15 access off of 17 to us, would be on the north side of our
16 property.

17 Q. And do you recall when the traffic light was put in that
18 looks basically like an extension of Porcher's Bluff Road?

19 A. The traffic light's actually been reworked a couple
20 times. When we opened the hardware store, there was a
21 traffic light there without a protected turn lane or turn
22 signal into the subject easement. I believe in 2008 or early
23 2009 DOT reworked the intersection in advance of the widening
24 of Highway 17 and put a protected turn lane in with a
25 protected turn signal.

1 Q. And you've been there when the folks from Stow Away have
2 tried to close the gate, correct?

3 A. Yes, I have.

4 Q. And is it your understanding that DOT has told them that
5 the gate has to remain open?

6 A. Yes, that's my understanding.

7 Q. Have you or your customers been approached by anyone
8 from Stow Away regarding the easement?

9 THE COURT: Let me ask you a question, what does DOT
10 have to do with it? This is on private property.

11 MR. O'KELLEY: I think it has everything to do with it,
12 Your Honor because DOT --

13 THE COURT: They're not a party to this.

14 MR. O'KELLEY: Correct, Your Honor.

15 THE COURT: That's why I asked the question was that
16 gate on DOT's right of way. If it's not on their right of
17 way, what do they have to do with this?

18 MR. O'KELLEY: They required the overall easement, Your
19 Honor. They required the easement in the first place. They
20 required it because Mr. Sisson had an old encroachment
21 permit.

22 THE COURT: But what's that have to do with what we're
23 here for today because unless you're going to make them a
24 party and interplead them, I don't think they have anything
25 to do with this.

1 MR. O'KELLEY: I think they do, Your Honor, because DOT
2 has told these folks several times you can't close the gate
3 because they're the one that required the easement.

4 THE COURT: That's fine and if I decide that they can
5 close the gate, I'll order that and order DOT to acknowledge
6 it, unless you want to bring them into this because you think
7 they have a vested interest in this, because the intersection
8 changed, that's my concern.

9 MR. O'KELLEY: Correct.

10 THE COURT: And I'm not saying that's what I'm going to
11 do. My difficulty, if I go along with the plaintiff's
12 position, how are we going to stop the traffic from coming in
13 there, and the only way I know to do that is to close the
14 gate.

15 MR. O'KELLEY: And then DOT may revoke the encroachment
16 permit that Stow Away has, so I didn't think about them being
17 a party in this case.

18 THE COURT: The problem I have is we may have to bring
19 them into this to see what their position is.

20 MR. O'KELLEY: We very well may, Your Honor, based on
21 some of the things we've heard today.

22 THE COURT: I'm not saying I'm going to rule that way,
23 but I see that as a potential problem because even if I say
24 it's an expansion of the dominant estate, you can't do that
25 under the agreement. Now I've got the problem, how are we

1 going to stop the traffic from going onto the easement into
2 the hardware store.

3 MR. O'KELLEY: Correct, Your Honor.

4 THE COURT: Only thing I can do is tell them to put up a
5 fence or close the gate. If you think DOT's got a problem
6 with that, then we need to get them involved in this lawsuit.

7 MR. O'KELLEY: We may, Your Honor, because DOT was the
8 one who said we've got to do it this way to begin with.

9 THE COURT: Well, see, at this point I really don't care
10 what DOT wants. Do you understand? Now, if that's your
11 position, that DOT's going to enforce this and take away the
12 encroachment, because I'm not sure they can legally do that,
13 we need to bring them in, somebody needs to interplead them.

14 MR. O'KELLEY: We might, Your Honor, need to third-party
15 them at this point because they do have an interest. They've
16 told Mr. Pooser and Mr. Sisson consistently, you've got to
17 leave this access open.

18 THE COURT: I understand that because it was interfering
19 apparently -- did they put a left turn lane going north on 17
20 to turn into that right of way?

21 MR. O'KELLEY: Correct.

22 THE COURT: They actually put in a dedicated turn lane?

23 MR. O'KELLEY: There's a dedicated turn out lane, I'm
24 sorry, not turn in but turn out. There's a left-hand signal,
25 but there's not like a dedicated cut over.

1 THE COURT: There's a dedicated turnover going north to
2 turn into the plaintiff property?

3 THE WITNESS: Yes, sir, and an advanced light.

4 MR. O'KELLEY: Yes, sir, there is, and an advanced
5 light.

6 THE COURT: And what now?

7 BY MR. O'KELLEY:

8 Q. Mr. Fletcher, tell the Court about where the lane is.

9 A. Coming north on Highway 17 at the Porcher's Bluff
10 intersection there is a protected left turn with a protected
11 left turn arrow into the easement driveway.

12 Q. And Mr. Fletcher, let me show you what I think we'll
13 mark as 3 and 4.

14 (Defendant's Exhibits 3 and 4 marked for
15 identification.)

16 Q. Mr. Fletcher, I've just marked some exhibits 3 and 4.
17 The bottom one is 3 and the top one is 4. What does 3 show,
18 sir?

19 A. 3 is a photograph from the primary entrance going into
20 Sisson Scale and Sweetgrass Hardware down south Highway 17
21 showing the right turn line going into the requested
22 easement.

23 Q. And there are two copies of that, correct, Mr. Fletcher,
24 or three?

25 A. Three copies.

1 Q. Three copies of that. And then there's another set of
2 photographs behind that Exhibit 4. What does that show?

3 A. That is a photo on the back side of the Stow Away
4 Storage property showing the termination of the proposed
5 Porcher's Bluff extension that will connect to the
6 intersection according to the published Town of Mount
7 Pleasant highway plans.

8 Q. And that's your understanding that the town is going to
9 try and continue Porcher's Bluff Road across the highway,
10 correct?

11 A. Correct.

12 MR. SINKLER: Your Honor, I move to strike that. That's
13 pure hearsay.

14 THE COURT: I'll sustain the objection.

15 MR. O'KELLEY: Thank you, Your Honor.

16 Q. Mr. Fletcher, did you take these pictures?

17 A. Yes, I did.

18 Q. Do they fairly and accurately represent the conditions
19 on the day you took them?

20 A. Yes, sir.

21 MR. O'KELLEY: I'd like to move those in, Your Honor.

22 THE COURT: Any objection?

23 MR. SINKLER: No objection, Your Honor.

24 THE COURT: That's Defendant's what now?

25 MR. O'KELLEY: I think it's 3 and 4, Your Honor.

1 THE COURT: They're pictures?

2 MR. O'KELLEY: Yes, Your Honor, and inadvertently it's
3 the same picture more than once, but I just have extra
4 copies.

5 Q. Mr. Fletcher, folks from Stow Away Storage --

6 THE COURT: It's a dedicated lane turning right into
7 that easement, correct, not left?

8 MR. O'KELLEY: Correct, Your Honor.

9 THE COURT: What is this -- it was hard to listen to
10 without seeing what he was testifying to. What is this?

11 MR. O'KELLEY: Mr. Fletcher said that that was, what his
12 understanding was, the back of the Stow Away's property where
13 he thinks there's going to be an extension of Porcher's Bluff
14 Road.

15 THE COURT: Extension of what now?

16 MR. O'KELLEY: Porcher's Bluff Road.

17 THE COURT: Somebody will have to have a little
18 condemnation before we get to that point.

19 MR. O'KELLEY: I think so, Your Honor.

20 Q. Mr. Fletcher, just so the Court understands, there are
21 dedicated turn lanes in both directions, are there not?

22 A. Correct. Northbound has a protected arrowed light.

23 Q. It's an arrowed light that you can turn left into the
24 easement, correct?

25 A. Correct.

1 Q. And that light was put up by DOT to the best of your
2 knowledge, correct?

3 A. To my knowledge.

4 MR. O'KELLEY: Thank you, Mr. Fletcher. That's all I've
5 got.

6 THE COURT: All right. Let's have cross-examination.

7 MR. SINKLER: Is the license in evidence?

8 MR. O'KELLEY: It is, Your Honor.

9 THE COURT: It's exhibit number --

10 MR. O'KELLEY: Defendant's 2.

11 CROSS-EXAMINATION BY MR. SINKLER:

12 Q. Mr. Fletcher, is this a copy of the license agreement
13 that you obtained from Stow Away?

14 A. Yes, sir.

15 Q. Excuse me, I'm sorry, the license that you obtained from
16 Mr. Sisson.

17 A. Yes, sir.

18 Q. I'm sorry. Mr. Sisson's, LLC, I think it was at that
19 point.

20 A. Correct.

21 Q. Would you look at the third page, Item 10, it says,
22 assignment, this license is personal to licensee -- the
23 licensee is your company, right?

24 A. Correct.

25 Q. And what is your company?

1 A. Sweetgrass Ace Hardware.

2 Q. -- (continuing) and may not be sold, transferred,
3 assigned or given to any third party. The sale or assignment
4 of a majority interest in the licensee entities shall
5 constitute an assignment for the purpose of this provision
6 and shall constitute a violation of the license. Is that the
7 language?

8 A. Yes, sir.

9 Q. Now, what in that assignment gives you the right to give
10 your customers the right to use the road, use the easement?

11 A. I don't think -- it's just saying that I can't assign
12 it, I can't sell or transfer the license.

13 Q. To any third party, correct?

14 A. Sold, transferred, assigned to a third party.

15 Q. The rights under the license.

16 A. That's what it states.

17 MR. SINKLER: Okay. I think that's all I have of this
18 witness. I'd like to put Mr. Pooser up in response.

19 THE COURT: I'm not sure Mr. O'Kelley's through. Is
20 this your last witness?

21 MR. O'KELLEY: That's it, Your Honor. We're finished
22 with Mr. Fletcher.

23 THE COURT: You may step down. Thank you.

24 Are you going to put up rebuttal testimony?

25 MR. SINKLER: Yes, sir, Mr. Pooser, on the issue of

1 these photographs.

2 THE COURT: That's fine. You may call him.

3 BERT POOSER,

4 having been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION BY MR. SINKLER:

7 Q. Bert, what is your position with Stow Away's?

8 A. I'm one of the partners in it and own it.

9 Q. Who is the other partner?

10 A. My father, E. L. Pooser, Jr.

11 Q. So the two of you are the sole partners of the LLC that
12 operates as Stow Away?

13 A. Yes.

14 Q. Now, the pictures that have been introduced by Mr.
15 Fletcher, I guess I'll hand you a copy, tell the Court what
16 Defendant's Exhibit No. 4 represents. There are two pictures
17 there.

18 A. No. 4 is a driveway in a private development behind us
19 of an apartment complex and, you know, it was a termination
20 of a road or a drive that they put in there when they were
21 trying to subdivide and do some other development in there.
22 That's what that is. That's a private development.

23 Q. Have you received any sort of condemnation notice?

24 A. I've received nothing, no letters, nothing from any
25 town, county or anything regarding the road.

1 Q. Now, Exhibit 3, there are three of those. Tell us what
2 that shows.

3 A. That's showing the, I'm going to call it the decel lane,
4 showing the decel lane heading southbound on 17 from when the
5 road was widened, you know, the Mount Pleasant widening
6 project with 17. But when I built the facility, in order for
7 me to get my encroachment permit, I had to construct a north
8 and southbound decel lane, which in fact helped Mr. Sisson
9 with his trucks on 17 as part of that encroachment permit
10 because we would make a northbound turn into the existing
11 dirt road that he had, his trucks would have to stop on 17
12 and be half on 17, half in the island to cross over. When I
13 constructed this, and we both met and talked about the
14 encroachment permit by us, this was one thing that DOT
15 requested, and they requested it for our facility as well
16 because we had boats with trailers and landscape businesses
17 all that projected for our business. So we did install the
18 north and southbound lanes before 17 was widened. And this
19 picture in fact shows where our lanes were then reconstructed
20 by the DOT when they widened it and had to push them out
21 further, but that's what this picture is.

22 Q. But you constructed the decel lanes at your expense?

23 A. Yes, at our expense, north and southbound.

24 Q. You had that constructed by a private company?

25 A. Yes, by a private company.

1 Q. What did that cost you?

2 A. I think it's anywhere from 175 to \$200,000.

3 Q. That was a condition --

4 A. Because it had to be up to DOT standards.

5 THE COURT: I'm sorry, you said what now?

6 THE WITNESS: It was about \$175,000 to construct those
7 decel lanes when I built the project, and they had to be
8 built and constructed to DOT regulations. But this
9 particular picture is the widening of the road. They
10 actually -- mine was removed and they widened the road and
11 added them back.

12 Q. About when was that, do you remember?

13 A. The widening of the road?

14 Q. Yes.

15 A. It's still going on out there right now, but as far as
16 being opened up, it was I'd say the last three years or so.
17 I think they put the final curb and sidewalk in in the last
18 year. But, you know, it's still going on.

19 MR. SINKLER: I don't have anything further, Your Honor.

20 THE COURT: Okay. Cross-examination?

21 MR. O'KELLEY: Just briefly, Your Honor.

22 THE COURT: Let me give you these extra pictures.

23 MR. O'KELLEY: Yes, sir.

24 THE COURT: I'm just going to keep the two you marked.

25 CROSS-EXAMINATION BY MR. O'KELLEY:

1 Q. Mr. Pooser, your day-to-day operations are in Columbia,
2 correct?

3 A. Yes.

4 Q. You're not on site at Stow Away Storage, that's Ms.
5 Walshe, correct?

6 A. I'm in Charleston on average three times a month.

7 Q. Three times a month. Okay. Do you recall receiving
8 correspondence and letters from DOT telling you all not to
9 gate the property, not to gate the easement?
10 A. To open it, yes, and I received the same notices to the
11 hardware store telling them to close their gate within days
12 of each letter from the DOT.

13 Q. You testified a few minutes ago that there are some
14 apartments back behind your property; is that right?

15 A. Yes, there's some apartments off of --

16 Q. Gregorie Ferry Road I think it is?

17 A. Yes, behind us.

18 Q. Gregorie Ferry runs behind, towards Highway 41, correct?

19 A. Yes, those apartments down off Highway 17.

20 Q. Do people try and get to those apartments on your
21 property, do you know?

22 A. Oh, absolutely not. They have a main -- they have a
23 massive sign out and everything and a place to turn in and
24 out of.

25 Q. But you've seen people turn around on your property and

1 go back out to 17, correct?

2 A. I mean, if they pull down the driveway and turn in by
3 mistake going somewhere, yes, naturally somebody's going to
4 turn around and leave if they went in the wrong place.

5 Q. Just briefly, was it you, Mr. Pooser, or E. L. Pooser,
6 Jr., who was in negotiations with Mr. Sisson over the
7 easement or both?

8 A. It was me.

9 MR. O'KELLEY: Okay. Thank you. That's all I have,
10 Your Honor.

11 THE COURT: Any redirect?

12 MR. SINKLER: Just one question in response to that.

13 REDIRECT EXAMINATION BY MR. SINKLER:

14 Q. Mr. Pooser, you gave an affidavit in support of our
15 motion for summary judgment in this case; is that correct?

16 A. Yes.

17 MR. SINKLER: That document, Your Honor, is attached to
18 our memorandum in support of the motion for summary judgment.

19 Q. Attached to your letter was a letter dated April 24th,
20 2009 from E. L. Bert Pooser, Jr. to Mr. Sisson. Let me show
21 you that letter.

22 A. Yes, I was present, I remember that.

23 THE COURT: Is that the May 6th letter you're referring
24 to?

25 MR. SINKLER: I'm referring to an April 24th --

1 THE COURT: April 24th.

2 MR. SINKLER: -- 2009 letter that's attached to his --

3 THE COURT: April 24th, okay. All right.

4 Q. And who is that that sent that letter to Mr. Sisson?

5 A. That's my father.

6 Q. Your father?

7 A. Mm-hmm.

8 Q. Okay. And what does that say?

9 A. This letter here?

10 Q. Yes, what was the intent of that letter?

11 A. The intent of the letter is to -- for us not to be in
12 the courtroom but to settle it but it was -- we had come to
13 an impasse because we couldn't -- you know, he didn't tell
14 them to shut their gate to keep them from crossing over the
15 property.

16 Q. But you didn't write that letter?

17 A. No. I was present, but my father wrote the letter.

18 MR. SINKLER: Okay. That's all I have, Your Honor.

19 THE COURT: Any cross-examination?

20 MR. O'KELLEY: No, sir.

21 THE COURT: You may step down. Thank you, very much.

22 Is there anything else from either party?

23 MR. SINKLER: No, thank you.

24 MR. O'KELLEY: I think you've heard it all, Your Honor.

25 THE COURT: All right. Let me go off the record for

1 just a second.

2 (Discussion off the record.)

3 (Matter concluded at 12:35 p.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

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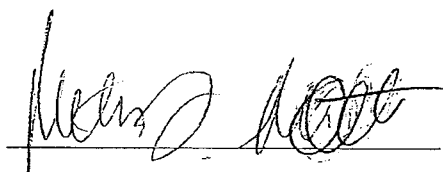
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1 I, the undersigned Ruth L. Mott, Official Court Reporter
2 for the Ninth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the Circuit Court for
7 Charleston County, South Carolina, on the 14th of
8 August, 2013.

9 I further certify that I am neither related to nor
10 counsel for any party to the cause pending or interested in
11 the events thereof.

12 February 20, 2014

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14
15 

16 Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444

RECEIVED

DEC 03 2014

SC Court of Appeals

Stow Away Storage, LLC and MSC MTP, LLC, ...Respondents,

v.

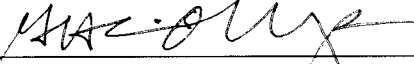
George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership,
Sweetgrass Hardware, Inc. and Timarand, Inc., Defendants,

Of whom George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership,
and Sweetgrass Hardware, Inc. are the.....Appellants.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all materials proposed to be included in the
Record on Appeal by the parties and not any other material.

December 1, 2014



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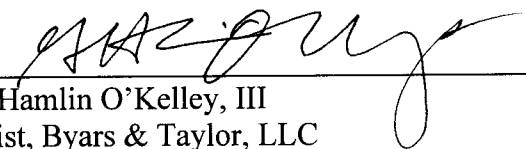
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Sweetgrass Hardware, Inc. and Timarand, Inc., Defendants,

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PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Volumes I, II, and III of the Record on Appeal were served upon the G. Dana Sinkler, Esq., counsel for the Respondent at Gibbs & Holmes, PC, 171 Church Street, Suite 110, Charleston, South Carolina, 29402, by United States Mail, first class, postage prepaid on the 24th Day of August, 2014.


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SC Court of Appeals