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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

Case No. 2010-CP-40-8943R
Appellate Case No. 2013-001067

Columbia Venture, LLC,

Appellant,

v.

Richland County,

Respondent.

**REVISED RECORD ON APPEAL
VOLUME 5 OF 13
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1 flood information, levee cross sections and
2 elevations, and soils analysis.

3 Did I read that correctly?

4 A. Yes.

5 Q. All right. Now, for the 100-year flood
6 information, you could get that off the FEMA Flood
7 Insurance Rate Map; couldn't you?

8 A. Yes.

9 Q. So that information would have come
10 straight off the document provided by FEMA. Is
11 that right?

12 A. Yes, but keep in mind now, at this
13 point, we were looking for 500-year flood
14 information.

15 Q. I understand.

16 But the FEMA Flood Insurance Rate Maps
17 with 100-year flood information were available at
18 this time in your office --

19 A. Yes.

20 Q. -- is that correct?

21 A. Yes.

22 Q. Okay. Now, was it normal practice
23 during this time to -- if a developer or landowner
24 submitted a land-disturbance permit application and
25 you lacked certain information, would the normal

1 objection. I anticipate him asking whether or not
2 he recalled them taking any action or recalled
3 receiving the document.

4 MR. BECKER: That is the next question,
5 Your Honor.

6 MR. JOHNSON: Your Honor, I will object
7 to that question.

8 THE COURT: Yes, sir. I will overrule
9 the objection.

10 BY MR. BECKER:

11 Q. And my question for you is,
12 Mr. Pearson, do you recall whether Lockwood Greene
13 resubmitted the application that we were referring
14 to in Plaintiff's Exhibit 118?

15 A. I'm pretty certain in telling you that
16 we never received the complete comprehensive set of
17 plans for the levee upgrade that we talked about
18 earlier.

19 Q. Okay. Well, is it possible that they
20 did resubmit the application, and you just don't
21 remember?

22 MR. JOHNSON: Your Honor, I object to
23 possibilities.

24 THE COURT: I will overrule the
25 objection.

1 Go ahead, sir.

2 Repeat the question for him.

3 BY MR. BECKER:

4 Q. All right. Do you recall whether
5 Lockwood Greene resubmitted this application?

6 A. Do I recall whether or not --

7 Q. Yeah, do you know -- do you know
8 whether or not they did or did not resubmit the
9 application?

10 A. I'm pretty certain that they did not.

11 Q. All right. I would like to ask you to
12 look, please, at your --

13 THE COURT: I'm sorry, sir,
14 Mr. Pearson, did you say -- your answer was you
15 were certain that they did not or you're uncertain
16 that they didn't?

17 THE WITNESS: I'm pretty certain they
18 didn't. I'm pretty sure I would remember that.

19 BY MR. BECKER:

20 Q. All right. I'm going to ask you to
21 look on Page 78 of your deposition, Mr. Pearson,
22 beginning on Line 10 -- oh, you've got it, okay.

23 A. Yes.

24 Q. Beginning on Line 10 of Page 78, the
25 question to you was:

1 "Subsequently, these maps, plans, and
2 specifications were submitted by Lockwood Greene to
3 Richland County for performing its work. Richland
4 County denied approval of the permit application
5 for this work. This has since been requested
6 again, with no approval as of 6/30/99.

7 "That's the reason I asked. You don't
8 recall that they resubmitted this application?"

9 And then what was your answer down on
10 Line 22?

11 A. "No, I don't remember. What they're
12 talking about here is the subsequent submittal."

13 Q. The next question: "All right. Is it
14 possible that they did resubmit the application,
15 and you just don't remember?"

16 And what was your answer?

17 A. "Well, it's possible, yeah. I don't
18 recall."

19 Q. Okay. Now, I believe earlier in your
20 testimony you said that you don't remember if they
21 ever submitted a complete set of plans for the
22 levee upgrade; is that right?

23 A. That's correct.

24 Q. Now, what do you consider a complete
25 set of plans for the levee upgrade, all 20 miles of

1 Q. Well, I'm talking about during this
2 time frame, and I'm simply -- you denied -- your
3 office denied one set of plans involving 67 acres
4 of land. Do you recall that?

5 A. Yes.

6 Q. And my question for you is, in order
7 for the application to be approved, would you have
8 required a complete set of plans and specifications
9 for the entirety of Levee Section I before you
10 would consider it -- consider the permit
11 application?

12 A. Well, yes. We would have to have a
13 complete comprehensive set of plans before we would
14 issue approval for a phase of the levee project.

15 Q. Okay.

16 A. I mean, it would have to be
17 self-sufficient where it could act for protection
18 of the development on its own.

19 (PLF. EXH. 126, a document from Survey
20 & Mapping Services of South Carolina, was presented
21 but not admitted into evidence.)

22 BY MR. BECKER:

23 Q. All right. All right. Mr. Pearson, I
24 would like for you to please look at Plaintiff's
25 Exhibit 126.

1 July, of 1999, that Mr. McSwain told you not to
2 issue any permits for the improvement of this
3 levee?

4 A. No.

5 Q. Did anybody else tell you not to issue
6 any permits for improvement of the levee until FEMA
7 had completed the flood-mapping process?

8 A. I don't recall, no.

9 Q. But was that the position of the county
10 engineer's office?

11 A. Our position was that if somebody
12 submitted us a set of plans, we would review it to
13 the best of our ability.

14 Q. Let me ask you this again.

15 Was it the position in this time frame
16 of the county engineer's office that you weren't
17 going to issue any permits until the Letter of
18 Final Determination from FEMA for the flood maps?

19 A. At some point, we came to that
20 conclusion, but I don't recall ever having been
21 instructed.

22 Q. All right. So you are admitting now,
23 that --

24 MR. JOHNSON: Your Honor, leading.

25 MR. BECKER: I'm just clarifying what

1 his answer was.

2 THE COURT: Yeah, I will allow that.

3 Go ahead.

4 BY MR. BECKER:

5 Q. You are admitting that during this time
6 period, in May, June, July of '99, that it was the
7 position of the county engineer's office that you
8 weren't going to issue any permits for improvement
9 of the levees on the Columbia Venture property
10 until the Letter of Final Determination was issued
11 by FEMA for the flood-mapping process of the
12 Congaree River basin?

13 MR. JOHNSON: Your Honor, I object.
14 That isn't even close to what the witness testified
15 to.

16 THE COURT: I will overrule the
17 objection.

18 THE WITNESS: Well, at some point, we
19 reached the conclusion that somebody was going to
20 have to tell us which floodway determination we
21 were going to have to apply. Otherwise, there's no
22 way we can review the plans.

23 BY MR. BECKER:

24 Q. All right. And who would that somebody
25 be who would tell you otherwise -- tell you what

1 maps to use?

2 A. In 1999, it would had to have been the
3 county administrator.

4 Q. Would that be Mr. McSwain?

5 A. Yes.

6 MR. BECKER: Your Honor, I've got a
7 good bit more ways to go with Mr. Pearson, and it's
8 5:35. Would you like to stop now, or would you
9 like for me to keep going for a little while?

10 THE COURT: You can stop. I thought if
11 you were close to finishing, we would go that far
12 and then break. But if you say you have a good bit
13 more, we'll go ahead and break.

14 MR. BECKER: I think I'm about halfway
15 through.

16 THE COURT: All right. We've been
17 forewarned.

18 All right, then, we'll go ahead and
19 recess at this time, and we will start back in the
20 morning at ten o'clock.

21 Thank you, Mr. Pearson. You may step
22 down.

23 MR. GRIER: Your Honor, just one
24 housekeeping detail. I would like to introduce the
25 various Lexington County flood maps and Flood

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4
5 Columbia Venture, LLC,
6 Plaintiff,
7 vs. CASE NO. 2010-CV-40-8943R
8 Richland County,
9 Defendants.

10 PROCEEDINGS: TRIAL - VOLUME VIII
11 (Pages 1363 through 1590)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: September 18, 2012
14 TIME: 10:02 a.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
17 Columbia, SC
18 REPORTED BY: Susan M. Valsecchi, CRR
19 Registered Professional Reporter
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 objection.

2 Mr. Greene was under his supervision
3 and, of course, it is written on Mr. Pearson's
4 letterhead.

5 BY MR. BECKER:

6 Q. Did you discuss the -- you did discuss
7 the letter with Mr. Greene; is that correct?

8 A. Yes.

9 Q. And the permit application, too,
10 correct?

11 A. Yes.

12 Q. So do you recall one way or the other,
13 was the fact that the levee wasn't designed to the
14 500-year level one reason the permit application
15 was denied?

16 A. Well, we never saw a design that showed
17 it designed for a 100- or a 500-year.

18 Q. All right. Then let me show you what's
19 been marked as Plaintiff's Exhibit 528.

20 A. 528?

21 Q. Yes, sir.

22 This was admitted into evidence
23 yesterday through Mr. John Lessley, who is an
24 engineer with S&ME.

25 Do you know Mr. Lessley?

1 A. Somewhat, yes.

2 Q. Do you know of S&ME?

3 A. Yes.

4 Q. They're a local engineering firm?

5 A. Uh, yes.

6 Q. Okay. Have you previously approved
7 permit applications based on work submitted by
8 S&ME?

9 A. Yes.

10 Q. Had you done that during your
11 employment as Richland County engineer?

12 A. Well, I say that. S&ME is a
13 geotechnical firm.

14 Q. Yes.

15 A. So they would only represent a part of
16 a design that would have been submitted to us.
17 They would only do the geotechnical work.

18 Q. All right. Well, look through this
19 report dated May 21st, 1999, and can you tell me if
20 this -- look on page -- well, look at the table of
21 contents.

22 A. Okay.

23 Q. Beginning on the third page. That
24 indicates -- Chapter 5 talks about a laboratory
25 testing program for the soils and includes the

1 measurement of soil grain size and plasticity, the
2 estimation of soil compactness, and the measurement
3 of in-place shear strength, does it not?

4 A. Uh-huh.

5 MR. JOHNSON: Your Honor, I object to
6 any questioning of this witness for opinions
7 regarding this document, unless they can show that
8 he has some personal firsthand knowledge of it.
9 He's not an expert either. He's not listed -- he's
10 a fact witness.

11 THE COURT: Well, I'm sure he has seen
12 a lot of different permits in regard to soils, and
13 I'm not sure exactly what the question is going to
14 be.

15 Go ahead and ask your question.

16 BY MR. BECKER:

17 Q. And do you see the section called,
18 Selection of Critical Sections, discussing
19 geometric considerations of the levee, including
20 crown elevation and witch, and then the subsurface
21 conditions?

22 Do you see that?

23 A. Yes.

24 Q. And turning on the next page of the
25 table of contents, there are -- there's Engineering

1 Analysis of Critical Sections and then Recommended
2 Final Cross Sections.

3 Do you see that?

4 A. Yes.

5 Q. And do you see that there are a whole
6 host of appendices and tables that are attached to
7 this report?

8 A. Yes.

9 Q. Do you see that?

10 A. Yes, I do.

11 Q. Now, let me show you, beginning -- look
12 at Figure 24 attached to the exhibit.

13 A. Figure 24?

14 Q. Yes, sir. Do you see that?

15 A. Not yet.

16 Q. Let me just show you. If you don't
17 mind, I will just show you what I'm referring to.
18 It's right here, sir. This is Figure 24.

19 MR. JOHNSON: Counsel, could you show
20 me, too?

21 MR. BECKER: Okay, sure, right here.

22 BY MR. BECKER:

23 Q. You're looking at Figure 24, as part of
24 the exhibit?

25 A. No, I'm looking at 23. It doesn't seem

1 to go any farther.

2 MR. BECKER: Beth --

3 BY MR. BECKER:

4 Q. Well, just look at this one, just so
5 we're all looking at the same page. It jumps from
6 14 to 24 in the order, but in any event, it's on
7 the screen there.

8 Do you see it there?

9 A. Yeah.

10 Q. Okay. What is this? Can you identify
11 that? Is that a levee cross section?

12 A. It's a cross section of levees. It
13 shows the existing one, and it shows a proposed
14 cross section and it shows a boring, a
15 representation of a boring at that point.

16 Q. Okay. And would you point out for the
17 Court what you're referring to, using this laser
18 pointer?

19 A. Is it on?

20 Q. Press the little thing right here.

21 A. The dotted line appears to be the cross
22 section of the existing levee. The solid line
23 would be what they would be proposing as the new
24 cross section, and that's the boring that they
25 took.

1 Q. All right, sir. So -- and this -- this
2 appears to be designed to the 100-year flood; is
3 that correct?

4 A. It appears to be, yes.

5 Q. Could you point that out to Judge Smith
6 on the --

7 A. Right there is where it is.

8 Q. -- where it says 100-year flood on the
9 document. Okay.

10 So my question to you is that -- if you
11 had this document on or about May 21st, 1999, would
12 you have the levee cross sections and elevations
13 and soils analysis that were mentioned in
14 Mr. Greene's letter to Mr. Hester as missing from
15 the application?

16 MR. JOHNSON: Your Honor, I want to
17 object, first of all, on the grounds of relevance,
18 unless there's some showing he had -- there's
19 speculation about what he would have done if he had
20 had it, and it would be irrelevant.

21 Secondly, I object to the witness being
22 handed an exhibit on the stand. He has not seen it
23 before and not had, you know, the normal
24 opportunity that he would do at his office to
25 determine whether the information is sufficient or

1 what the information is, or review it at all.

2 I mean, they have handed him a document
3 that's multipaged.

4 So I object on relevance. And any
5 opinion he would give would be speculative, and
6 he's not been listed as an expert.

7 THE COURT: I will overrule the
8 objection.

9 BY MR. BECKER:

10 Q. So my question for you is, Mr. Pearson,
11 if on or about May 21, 1999, you had the
12 documentation listed here in Plaintiff's Exhibit
13 528, which is a report from S&ME to Lockwood
14 Greene, would you indeed have the things that
15 Mr. Greene said were lacking from the permit
16 application submitted by Lockwood Greene on May
17 6th, 1999, for example, 100-year flood information,
18 levee cross sections and elevations, and soils
19 analysis?

20 A. No. This is nothing more than a
21 geotechnical report, which would be an integral
22 part of what the engineer would need to prepare a
23 complete set of construction plans, which is what
24 we were looking for, and the specifications.

25 Q. All right. You would be looking for a

1 final set of construction plans, right?

2 A. Yeah, yeah, for a project of this sort
3 and magnitude, it would be a massive set of plans
4 and calculations and specifications.

5 Q. All right. You don't consider this a
6 massive set of plans and specifications?

7 A. No, no, that's just a geotechnical
8 report.

9 MR. JOHNSON: Your Honor, I object.
10 He's cross-examining his own witness.

11 THE COURT: I sustain it.

12 BY MR. BECKER:

13 Q. I understand you say it's just a
14 geotechnical report, but does it not include the
15 100-year flood information?

16 MR. JOHNSON: Same objection. He's
17 cross-examining.

18 THE COURT: I don't think it's quite
19 reached that point yet. Still probing for
20 information.

21 BY MR. BECKER:

22 Q. Does --

23 A. He shows on there what the 100-year
24 flood elevation is at that cross section.

25 Q. All right. Does he include levee cross

1 sections and elevations?

2 A. He includes levee cross sections and
3 some elevations, yes.

4 Q. And does he also include soils
5 analysis?

6 A. Yes.

7 Q. Thank you.

8 Now, Mr. Pearson, just to recap, I
9 believe we confirmed yesterday that during this
10 time period -- May, June, July of 1999 -- it became
11 the position of the county engineer's office that
12 your office would not approve any permit
13 application to upgrade the Manning levees until the
14 FEMA floodplain mapping process that was underway
15 had been completed. Is that correct?

16 MR. JOHNSON: Your Honor, I object.
17 He's leading. He's stating the facts. He's not
18 asking him his knowledge of the facts.

19 THE COURT: My notes reflect, though,
20 that he had asked that same question yesterday,
21 unless I'm wrong.

22 MR. JOHNSON: If it's already been
23 asked, then it's repetitive and we don't need it
24 again.

25 THE COURT: I will overrule your

1 objection.

2 Go ahead.

3 BY MR. BECKER:

4 Q. Go ahead. Is that what you testified
5 to yesterday?

6 A. I can't tell you that that's the date
7 we reached that conclusion, no.

8 Q. But at some point it became the
9 position of the county engineer's office that you
10 would not issue a permit to maintain the Manning
11 levees, to improve the Manning levees to FEMA
12 standards or any other standard until after the
13 FEMA floodplain mapping process had been completed.
14 Is that correct?

15 MR. JOHNSON: Your Honor, leading and
16 cross-examination.

17 THE COURT: I overrule the objection.

18 THE WITNESS: Well, I think it's
19 probably more accurate to say that our position was
20 that, we either had to have a final determination
21 by FEMA or somebody above me would have to say that
22 we're going to use some other determination.

23 BY MR. BECKER:

24 Q. All right. Mr. Pearson, let's turn to
25 Page 80 of your deposition.

1 MR. JOHNSON: Your Honor, how do you
2 impeach your own witness, if it's not
3 cross-examination, which is what is fixing to be
4 proposed to happen?

5 THE COURT: Well, he is your witness at
6 this point, and he hasn't been declared a hostile
7 witness.

8 MR. BECKER: Well, Your Honor, then, I
9 request permission to treat the witness as adverse.

10 THE COURT: All right, sir.
11 What's your position on that?

12 MR. JOHNSON: Your Honor, the witness
13 has been totally responsive to what he's asking.
14 There's been no sign or showing that he's got any
15 hostility whatsoever or hasn't answered to the best
16 of his recollection, and I don't see how you can
17 take a witness that's responsive, direct, and
18 giving complete answers, just because you don't
19 like them and call him hostile, if you don't like
20 the answers.

21 THE COURT: Well, I can't lose sight of
22 the fact that Mr. Pearson, of course, was employed
23 by the County for years as their chief engineer,
24 and I will grant your motion to have him declared
25 to be an adverse witness.

1 MR. BECKER: Thank you, Your Honor.

2 BY MR. BECKER:

3 Q. Mr. Pearson, beginning on Line 5 on
4 Page 80, do you see that?

5 A. Yes, sir.

6 Q. I'm going to read the questions, and I
7 would like you to give the answer that you gave at
8 your deposition on May 3rd of 2011. So beginning
9 at Page 5.

10 "QUESTION: Well, was it the
11 position -- let me make sure I understand you now.
12 Was it your position of the county engineer's
13 office --

14 "And you were the office that would
15 issue the permit, correct?"

16 Give the answer.

17 A. "Yes."

18 Q. "-- that you weren't going to issue a
19 permit until FEMA had issued a letter of final
20 determination. Is that correct?"

21 A. "Or somebody told us otherwise."

22 Q. "And who would be the somebody that
23 would tell you otherwise?"

24 A. "The administrator."

25 Q. "Mr. McSwain?"

1 A. "Yes."

2 Q. Thank you.

3 Now I want to show you, Mr. Pearson,
4 Plaintiff's Trial Exhibit 004.

5 I want to point, first of all -- okay,
6 do you see the top there, the title at the top?

7 A. Yes, I see it.

8 Q. It says: Confidential.

9 Attorney/Client Privilege, chronology of Green
10 Diamond project.

11 Does it not?

12 A. Yes.

13 Q. Now, look down at the little footer on
14 the bottom, at the bottom of that first page. Do
15 you see that?

16 A. What am I looking for?

17 Q. The little footer at the bottom of the
18 page.

19 A. The little sticker?

20 Q. This.

21 A. Okay.

22 Q. It says: Confidential document
23 compiled by Mullen Taylor.

24 Does it not?

25 A. Yes.

1 Q. Now, the entry for May 1999 says the
2 following:

3 Burroughs & Chapin asks the County for
4 permit to make minor improvements to levees.
5 County initially denies permit for levee
6 improvements because of FEMA's request that most
7 recent preliminary flood be used for
8 decision-making purposes.

9 The recent map places the levees in the
10 floodway, which requires greater restrictions on
11 construction. But county administrator makes
12 decision to base county floodplain decisions on the
13 '94 flood map -- 1994 flood map -- which is the
14 last map to be finalized by FEMA. This map does
15 not include levees in floodway.

16 Later, the administrator postpones
17 permit approvals until after the flood maps are
18 finalized.

19 Did I read that correctly?

20 A. Yes.

21 Q. Did Ms. Taylor come and discuss this
22 with you before she prepared this confidential
23 attorney/client privilege chronology of the Green
24 Diamond project?

25 A. I have no idea.

1 Q. And so on or about -- let me just
2 confirm it. Ms. Taylor is saying that as of May
3 1999, it was the county administrator's position
4 that it was okay for Columbia
5 Venture -- Burroughs & Chapin, Columbia
6 Venture -- to maintain the levees, but they
7 couldn't improve them, they couldn't make them
8 bigger, they couldn't make them taller, they
9 couldn't make them wider. Is that correct?

10 A. I assume so.

11 MR. JOHNSON: Your Honor, I object. I
12 mean, he's asking this witness to comment on what
13 somebody else thought.

14 THE COURT: I will overrule the
15 objection.

16 BY MR. BECKER:

17 Q. Is that correct?

18 A. Are you asking me if that's what's in
19 here?

20 Q. Let me read my question, Mr. Pearson.

21 A. Okay.

22 Q. And so, at this point in time, May 1999
23 or shortly thereafter, it is okay for
24 Burroughs & Chapin, Columbia Venture, to maintain
25 the levees, but not to improve them, not to make

1 them bigger, not to make them taller, not to make
2 them wider?

3 A. Okay. Are you reading that from this?

4 Q. No, sir. I'm asking you a question.

5 As of May 1999, according to the
6 county, Richland County, or shortly thereafter, it
7 was okay for Burroughs & Chapin/Columbia Venture to
8 maintain the levees, but not to improve them, not
9 to make them bigger, not to make them taller, not
10 to make them wider?

11 A. That was the position of our office,
12 yes.

13 Q. Now, I would like you to look at
14 Plaintiff's Exhibit 122.

15 Now, this is a newspaper article from
16 The State Newspaper, and the date of the article is
17 Friday, August 20th, 1999.

18 Do you see that up at the top, under,
19 FEMA Clears Way for River Project?

20 A. I see a date of August 20th, 1999,
21 yeah.

22 Q. All right, sir. Now, if you go down
23 about the fifth paragraph up from the top, there is
24 a statement that says:

25 In my opinion, you can improve the

1 levees, Richland County public works director Ralph
2 Pearson said. I think we can demonstrate no-rise.
3 But I'm going to let the attorneys make that call.

4 Did you make that statement?

5 A. I have no idea.

6 Q. You testified earlier that at some
7 point, Mr. Larry Smith, the county attorney, had
8 told you not to interpret the no-impepe language in
9 the county's 1994 stormwater ordinance, according
10 to the FEMA no-rise standard; did you not?

11 A. Yes.

12 Q. So it must have been earlier than
13 August 20th, 1999 that Mr. Smith made that
14 statement to you. Is that correct?

15 A. My recollection is that it was
16 subsequent to that, farther along in the process,
17 that issue came up.

18 Q. But you don't deny, do you, that on
19 August 20th, 1999, The State newspaper published
20 the morning newspaper and quoted you as saying
21 what's set forth in this article; do you?

22 A. No, I can't deny that.

23 Q. Why would you let the attorneys make
24 the call on whether or not you got an engineering
25 no-rise condition in a permit application?

1 A. I don't understand.

2 Q. Why would you -- why would you
3 say -- why -- when Mr. Smith came to you and told
4 you that you couldn't interpret the standard, the
5 no-impece language, according to a no-rise
6 standard, why would you let the attorneys make that
7 call on what you consider to be an engineering
8 standard?

9 A. Well, I would have to say that that
10 particular issue, it comes down to an
11 interpretation of the law, and he's the attorney.

12 Q. You were just following orders from the
13 county attorney; is that right?

14 A. I felt like he was the guy that would
15 make that decision.

16 Q. And the county administrator?

17 A. Yes.

18 Q. And so until either the county
19 administrator or the county attorney told you you
20 could issue a permit to improve the Manning levees,
21 you weren't going to do it; were you?

22 A. I'm not sure how to answer that.

23 Q. Well, you can -- it's either yes or no.

24 MR. JOHNSON: Let him answer it.

25 THE WITNESS: Ask it again.

1 been an issue all through is how the County
2 interpreted what is impeding of free flow of water.
3 This witness was previously asked about that
4 situation, about the county attorney writing a
5 letter to him. So I think they have established
6 sufficient relevance, so I would admit 115 and also
7 112.

8 MR. BECKER: And I would just add, for
9 the record, Your Honor, the County had agreed to
10 the authenticity of these documents prior to trial.

11 THE COURT: All right.

12 BY MR. BECKER:

13 Q. And, again, Mr. -- just moving along,
14 Mr. Pearson, I want to just note, for the Court's
15 benefit, the times on which the proposed ordinance
16 was submitted to the County development and
17 services committee, or the full council, and was
18 deferred.

19 That occurred on July 19, 2000,
20 September 26th, 2000, October 24, 2000, November
21 28, 2000, December 12, 2000, and January 23rd,
22 2000.

23 Do you see those entries?

24 A. Yes.

25 Q. Do you recall or do you know what the

1 reason for all of that deferral of action on this
2 proposed Stormwater Management Ordinance was?

3 A. As I recall, it seems like it was all
4 related to the issue of what impeded -- impede the
5 free flow of water and what that would allow you to
6 build in a floodway.

7 Q. Okay. Was it also occasioned as a
8 result of opposition by environmental groups?

9 A. Well, our submittal of the proposed
10 ordinance revision wasn't --

11 Q. You don't recall that?

12 A. I remember there was some, but I can't
13 tell you that that's why it was deferred and such.

14 Q. That's fine. I understand.

15 Let's turn to the next page of the
16 document. It has a Bates number ending in 2175 up
17 at the top.

18 A. Okay.

19 Q. Now, under Recommendation, do you see
20 that Mr. Archer was recommending to the council
21 that it approve amending the ordinance as
22 presented, dated 12/7/2000, with the deletion of
23 Section 8-25 regarding variances?

24 Do you see that?

25 A. Yes, I do.

1 Q. Now, he also says: Approval of this
2 request will amend the County's Drainage, Sediment,
3 and Erosion Control Ordinance to bring the County's
4 stormwater ordinance into compliance with the
5 Federal Clean Water Act.

6 Do you see that?

7 A. Yes.

8 Q. All right. Now, look on page -- the
9 next page -- up at the top, he says:

10 Major changes to the ordinance as
11 required by the EPA are:

12 And then down -- he says,
13 section -- down -- one, two, three, four, five
14 items down -- he says: Section 8-25, Addition of
15 Variances and Explanations. This allows the county
16 engineer to grant variances from the ordinance.

17 Did I read that correctly?

18 A. Yes.

19 Q. All right, sir.

20 Now, do you know whether or not the
21 changes required by the EPA included having a
22 variance or explanation provision in the County's
23 Stormwater Management Ordinance or not?

24 MR. JOHNSON: Object, relevance, Your
25 Honor. Now we've got the EPA. There's no issue

1 about it.

2 THE COURT: Well, he's been asked
3 whether he was aware of it. I will allow him to
4 answer that.

5 Go ahead, sir.

6 THE WITNESS: I don't recall that being
7 an issue, no.

8 BY MR. BECKER:

9 Q. Okay. Well, if it did and Mr. Archer
10 would be asking the County to do something that the
11 EPA requires, according to his memorandum -- is
12 that right -- he would be asking the County to
13 delete something from their ordinance that the EPA
14 actually required be in the ordinance? Is that
15 correct?

16 MR. JOHNSON: Your Honor, the document
17 speaks for itself.

18 THE COURT: Yes, I'll sustain the
19 objection.

20 BY MR. BECKER:

21 Q. All right. Well, the other question
22 is, if the EPA's regulations did not require a
23 variance provision, then deleting it would not be
24 necessary, as he says, to bring the county
25 stormwater ordinance into compliance with the

1 Federal Clean Water Act, would it?

2 MR. JOHNSON: Same objection.

3 THE COURT: I sustain that. I think
4 these are more in the order of legal questions than
5 engineering questions.

6 MR. BECKER: All right, sir. I will
7 move along.

8 BY MR. BECKER:

9 Q. All right, sir, please look at
10 Plaintiff's Exhibit 51. We have looked at this one
11 before. We can move through it.

12 Mr. Pearson, we've looked at this
13 before. I'm concerned with the Council Report
14 regarding Encroachments in a Floodway that begins
15 on Page 3 of this document.

16 A. Okay.

17 Q. This will be the one that has
18 the -- it's the last page, Page 6. It has
19 recommendations.

20 Do you see that?

21 A. Not yet.

22 Okay, I've got it.

23 Q. Now, just to clarify, this had to do
24 with -- the purpose of the report, as it states in
25 the first paragraph, was to provide more

1 information to council regarding Section 8-27(h) of
2 the county's Stormwater Management Ordinance, which
3 addresses encroachments in a floodway in order to
4 determine whether the language contained in this
5 section needs to be changed.

6 And we're getting to the -- we're at
7 the end of it where there's a recommendation.

8 It says: Ideally, the administrator's
9 office recommends Option 1, which is to wait until
10 the County has a draft floodplain management
11 ordinance and decide on the floodway issue at that
12 time.

13 This option will allow council to
14 consider a comprehensive approach to floodplain
15 management instead of a piecemeal fashion. On the
16 other hand, if counsel feels compelled to act now,
17 the county engineer, in concurrence with the
18 administrator's office, recommends Option 3, which
19 is to use the FEMA standard.

20 This standard, while considered to be
21 the minimum allowed by FEMA, is still restrictive
22 and serves to protect the public's safety.

23 Did I read that correctly?

24 A. Yes.

25 Q. And so at this time, was it the

1 recommendation of the county engineer's office that
2 the Stormwater Management Ordinance be amended to
3 specifically adopt the no-rise -- the FEMA no-rise
4 standard as part of the county Stormwater
5 Management Ordinance?

6 A. That was my preference, yes.

7 Q. And that had been your preference all
8 along. Is that right?

9 A. Yes.

10 Q. And when the county council finally
11 adopted an amended Stormwater Management Ordinance
12 on April 17th, 2001, they did not adopt a no-rise
13 standard; did they?

14 A. I believe that's correct.

15 Q. The no-rise standard applied to
16 Heathwood Hall and the City's wastewater treatment
17 plant. Is that right?

18 A. They made a special provision for them,
19 yes.

20 Q. But not for the balance of Columbia
21 Venture's land, correct?

22 A. Yes.

23 Q. Are you aware that FEMA Regulation 44
24 CFR 60.1 Subsection B states that the regulations
25 must be legally enforceable, applied uniformly

1 throughout the community to all privately and
2 publicly owned land within flood-prone, mudslide,
3 or flood-related erosion areas, and the community
4 must provide that the regulations take precedence
5 over any less-restrictive conflicting local laws,
6 ordinances, or codes?

7 A. I don't know that I ever saw that
8 language.

9 Q. Well, if that was the language, would
10 you agree with me that --

11 THE COURT: I sustain the objection to
12 that.

13 (PLF. EXH. 117, Pearson Memo to Taylor,
14 Re: Floodway Regulations, was presented.)

15 BY MR. BECKER:

16 Q. All right, sir, let me ask you to look
17 at Plaintiff's Exhibit 117.

18 Let me just give you a second to read
19 this, Mr. Pearson.

20 A. Okay.

21 Q. All right, sir, this is a memorandum
22 from you to Mullen Taylor; is that correct?

23 A. Yes.

24 Q. And it's dated March 29th, 2001; is
25 that right --

1 A. Yes.

2 Q. -- regarding floodway regulations?

3 A. Yes.

4 Q. Who is Tony McDonald, who was copied on
5 the memo?

6 A. He was the assistant county
7 administrator.

8 Q. All right, sir. Now, you say:

9 In reference to your e-mail regarding
10 those activities that would be permitted in a
11 floodway under the ordinance amendments proposed at
12 the council meeting on March 20th, 2001, please be
13 advised that, as I understand the amendment...

14 And you have set forth what you believe
15 to go into the regulatory floodway under your
16 understanding of the amendment; is that correct?

17 A. Yes.

18 Q. All right. Now, under 1, you say that
19 this differs somewhat from the position that you
20 stated at the council meeting on March 20th. Any
21 confusion this may have caused is sincerely
22 regretted.

23 Do you recall what position you stated
24 at the council meeting and how it differed from
25 this memo?

1 A. I think maybe I had said something to
2 the effect that if the no-impepe standard were
3 applied, that basically nothing could be built in
4 the floodway.

5 Q. Number 2, you say that: Maintenance to
6 levees in a floodway would be permitted if it did
7 not alter the configuration or cross section of the
8 levee. This would apply to maintenance activities
9 such as: Grading the road along the crest,
10 removing trees or vegetation from the slopes,
11 mowing the slopes, filling washout or gullies in
12 the slopes.

13 And you go on to say: Increasing the
14 height or width of the levee would not be
15 permitted.

16 Is that right?

17 A. Yes.

18 Q. And that had been your position for
19 quite some time. Is that right?

20 A. Yes.

21 Q. All right, sir. Let's move on to
22 Plaintiff's Exhibit 3.

23 Do you have that, Mr. Pearson?

24 Now, Mr. Pearson, do you see this
25 document, Exhibit 3?

1 A. Yes.

2 Q. And on the front it says it's revised
3 July 17, 1995. Do you see that?

4 A. Yes.

5 Q. Okay, sir. Now, if you could look at
6 Table 4, which is on Page 67. These documents are
7 not -- the pages aren't numbered, but if you can
8 flip through them.

9 A. I'm looking.

10 Q. Table 4.

11 A. Number 4, okay.

12 Q. Do you have Table 4?

13 A. Yes.

14 Q. Okay, sir.

15 MR. BECKER: Now, do you have Table 4,
16 Your Honor?

17 THE COURT: Yes, I do.

18 BY MR. BECKER:

19 Q. Okay. We have a table here and it
20 says: Community Map History.

21 Do you see that?

22 A. Yes.

23 Q. And go down to the last one. It
24 says -- the last one there: Unincorporated areas.

25 Do you see that?

1 A. Yes, I do.

2 Q. It says: Initial identification, July
3 29th, 1977.

4 A. Okay.

5 Q. And it has a boundary map revision
6 dated May 12th, 1978.

7 A. I see it.

8 Q. Okay. And it says: FIRM effective
9 date, November 4th, 1981.

10 A. Okay.

11 Q. And it says: FIRM revision date.
12 Do you see that?

13 A. Yes.

14 Q. And it's got January 3rd, 1985, April
15 17th, 1987, December 5th, 1989, and January 19th,
16 '94.

17 Do you see that?

18 A. Yes.

19 Q. And then this revision would have been
20 as of the effective date on the first page, which
21 is July 17, 1997 -- '95, excuse me. Correct?

22 A. You lost me.

23 Q. Well, we're in that column for FIRM
24 revisions date.

25 A. Right.

1 Q. And so the one that would come after
2 January 19th, 1994 would be this one we're looking
3 at, which, on the first page, said January -- July
4 17, 1995.

5 A. Okay.

6 Q. Correct?

7 A. I assume so.

8 Q. Okay. And my question to you is, in
9 all of these prior FIRM revisions that we just went
10 over in that last column on Table 4, none of them
11 had the Manning levees in the regulatory floodway,
12 did they?

13 A. I think that's correct.

14 Q. So each of those Flood Insurance Rate
15 Maps recognize the Manning levees as providing
16 protection from the base flood.

17 MR. JOHNSON: Your Honor, I object.

18 BY MR. BECKER:

19 Q. Would you agree with that?

20 THE COURT: I sustain that objection,
21 unless he's familiar with it.

22 BY MR. BECKER:

23 Q. Well, I think you've testified earlier,
24 did you not, that these studies are available to
25 the public in your office. Is that correct?

1 A. Yes.

2 MR. JOHNSON: Your Honor, can I have
3 one moment to step out into the hallway? I left
4 something out here.

5 THE COURT: Yes, sir.

6 BY MR. BECKER:

7 Q. So let me just make sure that we're
8 clear on this.

9 None of those prior Flood Insurance
10 Rate Maps -- January 19th, '94 and before -- none
11 of them had the Manning levees in the regulatory
12 floodway, did they?

13 MR. JOHNSON: Your Honor, I object,
14 unless he's studied it or showed some foundation.

15 THE COURT: Well, he had earlier asked
16 him whether he had these copies in his office. He
17 said he did. And then he asked him, Did any of
18 them have a floodway on the Manning property, and
19 he said no.

20 I overrule the objection.

21 MR. BECKER: Yes.

22 BY MR. BECKER:

23 Q. But the area behind the Manning levees
24 was in a floodplain on the FEMA maps?

25 A. Yes.

1 Q. Okay, sir. It was a floodplain behind
2 the levees, not a floodway. Is that right?

3 A. Correct.

4 Q. Now, have you ever been out and looked
5 at these levees, Mr. Pearson?

6 A. I have been on the levees, yes.

7 Q. Have you ever walked on them?

8 A. I walked and drove.

9 Q. Now, while you were still employed with
10 Richland County as county engineer --

11 And you retired, I believe, at the end
12 of 2005?

13 A. Correct.

14 Q. -- did Mr. McSwain, as county
15 administrator, ever tell you that it was okay for
16 the county engineer's office to issue a permit to
17 Columbia Venture to upgrade the Manning levees on
18 Columbia Venture's property?

19 A. I don't recall that, no.

20 Q. While you were still employed with
21 Richland County as county engineer, did Mr. Larry
22 Smith, the county attorney, ever tell you that it
23 was okay to issue a permit to upgrade the Manning
24 levees on Columbia Venture's property?

25 A. I don't believe so, no.

1 Q. Did he ever come back to you and tell
2 you that you could interpret the no-impede language
3 in accordance with the FEMA no-rise standard?

4 A. No, he told me the opposite.

5 Q. Yes, sir.

6 And he never changed that instruction,
7 did he?

8 A. No.

9 Q. All right, sir. I would like to submit
10 to you Plaintiff's Exhibits 56 and 57.

11 We're almost through.

12 Mr. Pearson, you have not seen these
13 documents before. They weren't in your deposition.
14 You may have seen them before, but I believe that
15 the county has agreed to the authenticity of both
16 of these documents, and I'm going to move that they
17 be admitted into evidence.

18 MR. BECKER: Your Honor, I don't need
19 Mr. Pearson to review them. I can just tell you
20 that they are correspondence back and forth between
21 FEMA and the County regarding the effectiveness of
22 the January -- of the revised Flood Insurance Rate
23 Map of August --

24 Ms. Black, would you tell Judge Smith
25 what these letters do.

1 already in evidence.

2 THE COURT: All right, sir.

3 (PLF. EXH. 56, a letter dated January
4 10, 2002 to Susan Wilson from Harry Reed, was
5 presented.)

6 (PLF. EXH. 57, a letter dated January
7 23, 2002, to Harry L. Reed from Brad G. Loar, was
8 presented.)

9 BY MR. BECKER:

10 Q. Mr. Pearson, I have just one last thing
11 for you.

12 I would like you to look at several
13 photographs of structures at Heathwood Hall. I
14 will just bring my copy over here to you. And
15 Ms. Black will put a few of these up on the board,
16 on the projector. They're Plaintiff's Exhibits
17 108, 109, 110, 516, 517, and 518.

18 Mr. Pearson, do you recognize these
19 photographs as buildings built at Heathwood Hall
20 Episcopal School? I can represent to you --

21 A. If you had given me the pictures and
22 hadn't told me, I couldn't have said that's
23 Heathwood Hall.

24 Q. Okay. How about this one, Plaintiff's
25 518?

1 A. That says Heathwood Hall on the sign.

2 Q. I can represent to you that they

3 already have been identified as photographs of

4 buildings at Heathwood Hall in Richland County.

5 And I just want to reiterate, of course -- and we

6 have established this -- at one point, prior to

7 1999, or when Mr. Smith told you take a different

8 view of it -- Larry Smith told you to take a

9 different view of it -- you interpreted the county

10 stormwater ordinance as having a no-rise standard,

11 correct?

12 A. Correct.

13 Q. And then later that was changed to a

14 no-impece standard, right, the dictionary

15 definition?

16 A. Yeah, correct.

17 Q. Now, would these buildings at Heathwood

18 Hall, with this type of construction, would they be

19 allowed within a regulatory floodway under a

20 no-impece standard?

21 A. Not if it were in a floodway, no.

22 MR. BECKER: That's all I have for you.

23 I will just collect those photographs. Thank you,

24 Mr. Pearson.

25 THE WITNESS: Is that it?

1 Further, I certify to the best of my
2 knowledge and belief that the design is consistent
3 with the requirements of Title 48 Chapter 14 of the
4 Code of Laws of South Carolina, 1976 as amended,
5 and pursuant to Regulation 72-300.

6 What's the question again?

7 Q. The question was, does the application
8 itself call for the -- require the submission of
9 five sets of plans and specifications for the work
10 to be performed?

11 A. Well, it says that's what he's doing.

12 Q. All right. And does your
13 department -- did your department at the time
14 expect the applicant's engineer to be familiar with
15 the ordinances and regulations of Richland County
16 and submit the plans and specs with an application
17 like this that were necessary for the project?

18 A. Yes.

19 Q. If your department received an
20 application that was complete and the work was
21 approved by Richland County, how was that confirmed
22 back to the applicant?

23 A. By letter.

24 Q. Would you send back a set of plans
25 stamped approved?

1 A. Not necessarily, no.

2 Q. But you would confirm it in writing?

3 A. Yes.

4 Q. If the application for the project that
5 was under consideration was incomplete, a project
6 of this nature like Green Diamond, would a letter
7 be written to the applicant, as occurred here,
8 advising them that the application was incomplete?

9 A. Yes.

10 Q. And if an application was complete, but
11 your department decided to deny the permit for any
12 reason, how would your department let the applicant
13 know that the application had been denied?

14 A. By letter.

15 Q. So under any of the three scenarios or
16 situations, would there be a paper trail outlining
17 and identifying the action and decisions by your
18 department?

19 A. Yes.

20 Q. Now, would you have expected the
21 applicant's engineer to keep and maintain a copy of
22 the plans and specs that would have been submitted
23 with an application of this nature?

24 A. Well, yes.

25 Q. And were you shown by Plaintiff's

1 decision by the County to disapprove the permit
2 application because it was incomplete?

3 A. I don't recall any such conversation,
4 no.

5 Q. Now, you were asked whether there was a
6 follow-up application, and you were shown
7 some -- something from a Lockwood Greene status
8 report --

9 Do you remember that?

10 A. Yes.

11 Q. -- and asked whether there was a
12 follow-up submission and a denial by the County --

13 A. Correct.

14 Q. -- or action by the County.

15 Do you recall any communication
16 whatsoever, with any engineer, lawyer, employee of
17 Columbia Venture, addressing an alleged submission
18 of a further application?

19 A. No.

20 Q. Do you recall any discussion,
21 communication, e-mail, challenge, from any
22 engineer, lawyer, or employee of Columbia Venture
23 regarding an alleged denial of the permit?

24 A. No.

25 Q. Did Columbia Venture appeal the

1 Q. Now, were you aware that whatever your
2 interpretation of the no-impe, no-rise issue was,
3 whenever you formed it, that Mr. Harry Reed, who
4 was in charge of the zoning department, interpreted
5 the issue differently?

6 A. I'm not sure about that.

7 Q. I'm going to show you a document, and I
8 will represent to you that it comes from Columbia
9 Venture. It's dated -- this is a draft dated May
10 20th, 1998, and it's called Congaree Property
11 Development Scenario.

12 MR. BECKER: Objection, Your Honor, I
13 don't believe this document is in evidence, and
14 unless Mr. Reed can identify it -- Mr. Pearson can
15 identify it -- but let's see.

16 BY MR. JOHNSON:

17 Q. I want you to look at the page that is
18 Bates-stamped CV013346 [sic]. And I'm going to
19 read to you -- let's see:

20 Currently, the property is designated
21 as a floodway. It's not possible to build in a
22 floodway, according to Mr. Harry Reed of Richland
23 County. They will not issue building permits for
24 projects within the floodway.

25 First of all, did I read that

1 accurately?

2 A. Yes.

3 Q. Does that refresh your recollection as
4 to whether Mr. Harry Reed took a different
5 interpretation -- he was in charge of zoning -- on
6 that issue than you did?

7 A. Well, I don't know that what he said
8 there really says what his position is on the -- on
9 the impede question.

10 Q. Well, your position was that if it
11 was no-rise, no-impede, would mean that if you can
12 show there was no rise in the flood elevation, you
13 could build in the floodway?

14 A. Yes, that was my position.

15 Q. And he's saying here, it's not possible
16 to build in a floodway under the -- with Richland
17 County?

18 A. Yeah. He just makes a blanket
19 statement, that you can't build in the floodway.

20 MR. JOHNSON: Now, Your Honor, we would
21 offer this document into evidence.

22 MR. BECKER: Your Honor, there's no
23 foundation of who wrote it or --

24 THE COURT: Yes, I sustain the
25 objection. You brought out that a member of county

1 administration had taken a different position than
2 he did, and that's in the record.

3 I don't know -- as far as the document
4 from Columbia Venture itself, he's not the right
5 person to have authenticated this.

6 Does any of this sound familiar?

7 MR. JOHNSON: Sir?

8 THE COURT: Does any of what I'm saying
9 sound familiar to you?

10 MR. JOHNSON: Only in reverse, Your
11 Honor. Your Honor, I want to put it in. I don't
12 think there's any dispute over the authenticity. I
13 heard that a lot, and I wanted to show that it came
14 from the Columbia Venture files to show that they
15 knew that there was a different interpretation by
16 another -- another department of the County.

17 And so under the same rule that things
18 were authenticated -- and there was no question it
19 came from the County -- that came in, even though
20 the witness may not have familiarity with it, I
21 would like to offer it into evidence.

22 THE COURT: Sir, what about that?

23 MR. BECKER: We did agree that it came
24 from our files, but we don't know who wrote it. We
25 have no idea. We have not attempted to offer it

1 into evidence because none of our witnesses could
2 identify it and indicate where it came from. We
3 don't know who wrote it.

4 THE COURT: Well, the fact that you
5 don't know who wrote it, I don't think that's
6 determinative. The point is that there's no doubt
7 that it came from Columbia Venture's file. It's a
8 Columbia Venture's document. And what it's being
9 offered for is for knowledge by Columbia Venture in
10 regard to the -- at least one person in
11 administration's position. So I would admit the
12 document.

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: I granted your motion.

15 (DFT. EXH. 17, Congaree Property
16 Development Scenario, was presented.)

17 BY MR. JOHNSON:

18 Q. I need to correct something,
19 Mr. Pearson. Harry Reed was not the zoning
20 administrator, he was the flood management --

21 A. Floodplain coordinator, I think was his
22 title.

23 (Off-the-record discussion.)

24 BY MR. JOHNSON:

25 Q. Now, did Columbia Venture, between 1994

1 decision.

2 During the time you worked for the
3 County, had you ever approved a land-disturbance
4 permit or a development plan without first
5 receiving and studying the necessary plans and
6 specifications?

7 A. No.

8 Q. During your employment with the County,
9 had you ever given any assurances to a developer
10 that a development could, in fact, be approved and
11 go forward prior to getting and reviewing the plans
12 and specifications?

13 A. No.

14 Q. Have you ever given verbal assurances
15 that a project could go forward and be built and
16 permits could be issued without having in hand and
17 the opportunity to study exactly what was going to
18 be done by looking at the plans and specs?

19 A. No.

20 Q. Did you ever give any verbal assurances
21 or written assurances to Burroughs & Chapin or
22 Columbia Venture that the project would be approved
23 and could be developed?

24 A. No.

25 Q. Did you ever make any back-room,

1 Q. Now, was it -- was Mr. Reed the person
2 who would issue a building permit for construction
3 in a regulatory floodway, or was it you?

4 A. I don't issue building permits. I
5 issue an approval letter that would say that the
6 drainage system and the levees and the road systems
7 meet our requirements.

8 Q. All right. Did Mr. Reed issue building
9 permits?

10 A. No.

11 MR. BECKER: Thank you. That's all I
12 have, Mr. Pearson. Thank you.

13 MR. JOHNSON: No other questions, Your
14 Honor.

15 THE COURT: All right, then,
16 Mr. Pearson, you are free.

17 THE WITNESS: Thank you.

18 THE COURT: Step down. You're excused.

19 All right, then, anything further
20 before we break for lunch?

21 MR. LYDON: Your Honor, Mr. Johnson,
22 he's got another hearing across the hall. He asked
23 if we could come back at 2:30.

24 THE COURT: Yes, that would be fine.
25 Pursuant to Mr. Johnson's request, we will resume

1 Do you swear the testimony you will
2 give in this matter will be the truth and nothing
3 but the truth, so help you God?

4 THE WITNESS: I do, sir.

5 THE COURT: Please have a seat and then
6 please state your full name for the court reporter.

7 THE WITNESS: Thomas F. Wingard.

8 THOMAS F. WINGARD

9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BECKER:

12 Q. Good afternoon, Mr. Wingard.

13 A. Good afternoon.

14 Q. Where do you live, Mr. Wingard?

15 A. I live at 3913 West Buchanan Drive,
16 Columbia, South Carolina.

17 Q. All right. And how long have you lived
18 in Columbia?

19 A. All my life, except for the time I
20 spent in the Air Force.

21 Q. Okay. Where were you educated?

22 A. Columbia city schools and the
23 University of South Carolina.

24 Q. Okay. You graduated from high school
25 here in Columbia?

1 A. I did, Columbia High School.

2 Q. All right. And you attended college at
3 the University of South Carolina?

4 A. Yes.

5 Q. What year did you graduate?

6 A. 1973.

7 Q. And what is your degree in?

8 A. Public administration.

9 (PLF. EXH. 535, Curriculum Vitae of
10 Thomas Wingard, was presented.)

11 BY MR. BECKER:

12 Q. All right, sir. I would like to
13 ask -- provide you a copy of what's been marked as
14 Plaintiff's 535, which is a copy of your current CV
15 or resumé, or at least that -- is that what this
16 is?

17 A. It is.

18 Q. All right, sir. Is this current as of
19 today?

20 A. Yes.

21 Q. All right, sir. So I understand, then,
22 that you are currently employed with
23 Wingard & Associates, Inc.

24 Is that correct?

25 A. That's correct.

1 Q. What business is Wingard & Associates,
2 Inc.?

3 A. Real estate appraisers and consulting.

4 Q. How long have you been in the real
5 estate appraisal business?

6 A. 38 years.

7 Q. All right, sir. Do you have any
8 professional licenses?

9 A. I have an appraiser's license, a
10 certified general license from the State of South
11 Carolina and non-resident
12 licenses -- license -- from North Carolina.

13 Q. All right. Do you have any other
14 licenses? Are you a licensed real estate broker?

15 A. No.

16 Q. Okay, sir. Do you have any -- I notice
17 on your resumé there, you list association -- let
18 me just point this out to you, Mr. Wingard.

19 We've discovered that there's a little
20 short in the microphone, and it comes from that
21 little -- do you see where that goes into the floor
22 right there?

23 A. Yeah.

24 Q. If your foot hits that, it will cause
25 that sound.

1 On your resumé, the first page there,
2 you list several association memberships. Could
3 you explain what those are and what they mean.

4 A. Well, there's four listed, but now
5 there's only two effective, due to the merger of
6 the two predecessor organizations.

7 The Premier Appraisal organization is
8 the Appraisal Institute, which resulted from the
9 merger of the American Institute of Real Estate
10 Appraisers and the Society of Real Estate
11 Appraisers in 1991. I presently hold the MAI
12 designation and the SRA designation from the
13 Appraisal Institute.

14 Q. Okay. And you've had those
15 designations since 1988 and 1981, respectively. Is
16 that right?

17 A. That's correct.

18 Q. Okay. It appears that you've also
19 served as a member of the national board of
20 directors of the Appraisal Institute?

21 A. That's correct.

22 Q. And that was from 1994 to '97?

23 A. Yes, sir.

24 Q. You list, also, your
25 continuing -- recent continuing education on your

1 resumé. Is that right?

2 A. Yes, sir.

3 Q. Other recent education on the second
4 page.

5 Have you served as an instructor in
6 appraisal -- in the appraisal profession?

7 A. Yes, sir.

8 Q. Describe some of the instructor -- what
9 you have done as an instructor in the appraisal
10 profession.

11 A. Well, I guess the primary instruction
12 was seminar instructions and pre-licensing
13 instruction for appraisers seeking to get a license
14 from the State of South Carolina.

15 Q. All right, sir. Now, you also list
16 your work experience on the next-to-the-last page
17 of Exhibit 535?

18 A. Yes, sir.

19 Q. Is that accurate through the present
20 time?

21 A. Yes, sir.

22 Q. And, finally, on the last page, you
23 listed the different types of properties that you
24 have appraised in your 38 years of appraisal
25 experience?

1 A. Yes.

2 Q. You list some expert witness
3 assignments. Have you testified in previous court
4 proceedings as an expert on real estate appraisal
5 and valuation?

6 A. Yes, sir.

7 Q. Approximately how many times?

8 A. Over 38 years, I would estimate
9 probably 35, 40 times.

10 Q. All right. Have you been qualified to
11 testify as an expert witness in real estate
12 appraisal and valuation on each of those occasions?

13 A. Yes, sir.

14 Q. Have you previously been qualified to
15 testify as an expert witness in real estate
16 appraisal and valuations in the courts of South
17 Carolina?

18 A. Yes.

19 Q. Has any court in which you have
20 appeared to give expert witness testimony in real
21 estate appraisal and valuation ever refused to
22 qualify you as an expert witness on these subjects?

23 A. No, sir.

24 MR. BECKER: Your Honor, we would offer
25 Mr. Wingard as an expert witness on real estate

1 valuation and appraisal.

2 THE COURT: All right. Any examination
3 at this time?

4 MR. JOHNSON: Your Honor, I don't have
5 any challenge to his basic qualifications as being
6 a real estate appraiser. I will at some point
7 challenge his qualifications to do what it is he
8 did in this case.

9 THE COURT: Sure. Then I will find him
10 to be qualified as an expert.

11 BY MR. BECKER:

12 Q. Mr. Wingard, you were engaged by my law
13 firm to serve as an expert witness on behalf of the
14 Plaintiff prior to April 2010. Is that your
15 recollection?

16 A. Yes, sir.

17 Q. Okay. Now, I would like to go over the
18 assumptions you were asked to make in proceeding
19 with your -- the duties of your engagement as an
20 expert witness in this case, and I just want to
21 confirm with you and for the Court's benefit, those
22 assumptions.

23 Were you asked to assume that as of an
24 effective date of February 20th, 2002, Richland
25 County ordinances prohibited improvement of the

1 Manning levees on Columbia Venture's property to
2 FEMA standards for certification and limited 70
3 percent of the subject property to agricultural and
4 minor recreational uses?

5 MR. JOHNSON: Your Honor, I object to
6 the leading. Shouldn't the witness tell us what he
7 assumed, rather than counsel tell us?

8 THE COURT: I will overrule the
9 objection.

10 Go ahead, sir.

11 BY MR. BECKER:

12 Q. Did we ask you to make that assumption?

13 A. Yes, sir.

14 Q. Now, are you familiar with the details
15 of those ordinances?

16 A. I read the letters relative to the
17 transactions of what happened.

18 Q. But you have been asked in this case to
19 assume that those ordinances do what I've just
20 described. Is that correct?

21 A. That's correct.

22 Q. Were you also asked to assume that as a
23 result of the passage of those ordinances and the
24 fact that they became effective as to Columbia
25 Venture's property on February 20th, 2002, that a

1 regulatory taking of Columbia Venture's property
2 had occurred as of that date?

3 MR. JOHNSON: Same objection.

4 THE COURT: Overruled.

5 THE WITNESS: Yes, sir.

6 BY MR. BECKER:

7 Q. Now, were you also asked to utilize
8 some prior appraisal work product that you had
9 developed relating to the subject property?

10 A. Yes, sir.

11 Q. All right, sir. Let me show you what's
12 been marked as Plaintiff's Exhibit
13 344 -- 394 -- excuse me. This is already in
14 evidence.

15 Okay. Do you have a copy of
16 Plaintiff's Exhibit 394 in front of you,
17 Mr. Wingard?

18 A. Yes, sir.

19 Q. All right. Mr. Wingard, this is
20 entitled a complete self-contained -- and I'm
21 looking at what is actually, I believe, the second
22 page after the cover -- or the first page after the
23 cover -- the cover page with the picture of the
24 property:

25 A complete self-contained appraisal

1 report, 4,410.916, unimproved acres located on the
2 southwest side of Bluff Road, SC Highway 48,
3 northeast side of the Congaree River, Columbia,
4 Richland County, South Carolina.

5 Are you familiar with this report?

6 A. Yes, sir.

7 Q. What is this document?

8 A. It's an appraisal for conservation
9 easement purposes.

10 Q. All right. Who prepared it?

11 A. Myself and Martin H. Van Sant.

12 Q. Who is Mr. Martin H. Van Sant?

13 A. He is another real estate appraiser in
14 Columbia.

15 Q. What are his qualifications as a real
16 estate appraiser?

17 A. He has been in the real estate
18 profession about 37 years. He has the SRA
19 designation from the Appraisal Institute, and he
20 and I have worked on numerous conservation easement
21 appraisals over the years.

22 Q. Approximately how many other
23 conservation easement appraisals have you worked on
24 with Mr. Van Sant prior to this one?

25 A. I would say over the years, probably 50

1 or 60.

2 Q. Okay. Now, who was this prepared for?

3 A. Columbia Venture.

4 Q. All right. Was it your understanding
5 that some of the members of Columbia Venture
6 included Burroughs & Chapin, Carolina First Bank
7 and Lockwood Greene?

8 A. Yes, sir.

9 Q. Were you aware that at the time you
10 prepared this appraisal, they were principal
11 members of Columbia Venture, LLC?

12 A. Yes, sir, I was.

13 Q. Take a look on Page 15.

14 If you could, Mr. Wingard, just
15 describe for Judge Smith why this was prepared or
16 what was the objective or purpose of this
17 appraisal.

18 A. Well, the purpose was to prepare a
19 conservation easement appraisal which differs from
20 some other types of real estate valuations.

21 A conservation easement really is like
22 an inverse condemnation, where a donor actually
23 puts restrictions on property usage in perpetuity.
24 So that's really the basic difference.

25 But what this conservation easement

1 appraisal represented was, Columbia Venture's
2 distinct investment-backed expectations for
3 purchasing the subject property subject to the
4 implementation of the E.D. Stone & Associates land
5 plan and the establishment of a multicounty
6 business park.

7 Q. Okay. Approximately how long did it
8 take you and Mr. Van Sant to complete this
9 appraisal?

10 A. Probably longer than it should have.
11 It took probably about five months.

12 Q. Describe generally for Judge Smith,
13 please, the work process you undertook to complete
14 this appraisal.

15 A. Well, because it was for conservation
16 easement purposes -- which, as you know, you place
17 restrictions on the subsequent use of the property
18 in perpetuity, and it's irrevocable -- you want to
19 make sure that you consider every aspect of the
20 investment-backed expectation by the donor or
21 potential purchaser of the property.

22 So we went through, in concert, with
23 the E.D. Stone & Associates' extensive land plan to
24 provide valuations on each of the parcels within
25 each of the levee sections within the Columbia

1 Venture property.

2 And we valued each of those parcels,
3 and then subjected them to a disposition time
4 frame, whereby the individual parcels within each
5 of the proposed developments within each levee
6 section would be disposed, and we measured the net
7 present value of the sale of those lots over a time
8 frame, to come up with the net present value of
9 each of the parcels within each levee section for a
10 total property value.

11 Q. All right, sir. Now -- and we'll get
12 to this more specifically in a moment. But you
13 mentioned that E.D. Stone & Associates land
14 development plan for the property. Is that
15 correct?

16 A. That's correct.

17 Q. Do you recognize the board on the back
18 of the courtroom here, or the drawing on the back
19 of the courtroom?

20 A. Yes, sir.

21 Q. And what is that?

22 A. That is the E.D. Stone & Associates
23 land plan for the Columbia Venture property.

24 Q. And you utilized that during the
25 appraisal process?

1 A. Yeah, it hung in my office for about a
2 year, during the five months that we worked on it,
3 that we relied on that, in concert with the
4 individual parcel designations that were provided,
5 the 8-and-a-half-by-11 sheets. We were able to see
6 where each of these parcels were located, because
7 we wanted to make sure that we didn't have one
8 parcel competing against another parcel for the
9 same property type over the expected time frame for
10 disposition of all of the parcels.

11 Q. Okay, sir. Now, the appraisal report
12 itself is rather voluminous.

13 How large was your appraisal file after
14 you completed the research for the appraisal?

15 A. About two banker's boxes.

16 Q. All right, sir. And how much did you
17 charge Columbia Venture for the completed
18 appraisal?

19 A. We charged \$200,000.

20 Q. And did they pay that amount?

21 A. Yes, sir.

22 Q. You have explained what a conservation
23 easement appraisal is.

24 How often have you prepared
25 conservation easement appraisals in the past?

1 A. In the past year?

2 Q. Well, just -- how many have you done?

3 A. In the past year, we have done ten.

4 Q. All right, sir. How many in your
5 entire career?

6 A. I would say probably another 50,
7 probably 60.

8 Q. What are some of the unique challenges
9 or competing tensions in preparing conservation
10 easement appraisals?

11 A. Well, first and foremost, they have to
12 be in compliance with the U.S. Treasury
13 regulations. And you have to write them to attempt
14 to withstand the scrutiny of the Internal Revenue
15 Service. So that's why it's as voluminous as it
16 is, that -- you want to make sure that you dot
17 every I and cross every T in that preparation.

18 Q. Well, because you are preparing the
19 conservation easement appraisal to withstand
20 scrutiny by the IRS, what effect would that have on
21 your valuation estimates, if any?

22 A. It would -- because, like I said
23 earlier, it is in perpetuity and it is irrevocable.
24 Even though the property has not been developed to
25 its highest and best use does not mean that we

1 can't value the property according to its highest
2 and best use.

3 And in our opinion, the EDSA land plan
4 represented the highest and best use for the
5 Columbia Venture property, so we incorporated that
6 into that valuation.

7 Q. Well, does the fact that you are
8 attempting to withstand the scrutiny of the IRS,
9 does that -- what effect does that have on
10 your -- the conservativeness or the liberalness of
11 your valuation approach, if it does?

12 MR. JOHNSON: Your Honor, he's just
13 asked a question, he's not satisfied with the
14 answer, and he's restating it. I mean, I object.

15 THE COURT: Yes, sir. Well --

16 MR. JOHNSON: He is leading.

17 THE COURT: He is leading.

18 BY MR. BECKER:

19 Q. I'll rephrase it.

20 Are there any other challenges or
21 competing tensions in preparing conservation
22 easement appraisals?

23 A. Well, it has to be defensible.
24 Obviously it has to be reasonable and it has to
25 meet the test of highest and best use, obviously.

1 Q. What attributes about a particular
2 property is a conservation easement designed to
3 measure?

4 A. It's designed just to measure the
5 optimum value, basically that the property would
6 reflect. As you don't get a second chance, you
7 know, because it's irrevocable and it's in
8 perpetuity after a year, you can't go back and say,
9 I would like to revise this valuation. Once it's
10 completed and the easement is placed, then it's in
11 perpetuity.

12 Q. All right. And is the value that it
13 attempts to measure the value as developed?

14 A. Yes. The potential of development,
15 meaning all of the tests of highest and best use
16 and the reasonable expectation that development can
17 occur, primarily and subsequently, will occur.

18 Q. Now, I would like to turn you to the
19 executive summary, which is Pages 1 and 2.

20 The date of this property -- of course,
21 the property appraised is the Columbia Venture
22 property pictured in the appraisal, correct?

23 A. That's correct.

24 Q. And the date of the report is November
25 6th. The effective date of value is the 15th,

1 October 15th of 2002. Is that right?

2 A. That's correct.

3 Q. And if you could just read the purpose
4 and use of the appraisal set forth there.

5 MR. JOHNSON: Your Honor, I object to
6 any testimony regarding this report on the grounds
7 of relevancy. It was done for the purpose of a
8 conservation easement, unrelated to the issues
9 we're dealing with, that you have to decide in this
10 case. I object to it.

11 THE COURT: I will overrule the
12 objection.

13 MR. JOHNSON: Your Honor, furthermore,
14 I would object. The date of taking of this
15 property -- or the date of this appraisal is
16 October the 15th of 2002, which is not our date of
17 taking.

18 THE COURT: Yes. Well, that particular
19 aspect, you did ask him if he was asked to do an
20 appraisal as of February 20th, '02, and this does
21 have a different date, so you will need to address
22 that.

23 MR. BECKER: I'm leading up to that,
24 Your Honor.

25 THE COURT: All right.

1 MR. BECKER: I'm leading up to that.

2 BY MR. BECKER:

3 Q. So if you would go over the Purpose of
4 the appraisal.

5 A. Do you wish me to read it?

6 Q. Yes, just read it.

7 A. To estimate, for federal income tax
8 purposes, the market value of the 4,410.916
9 unimproved acres on October 15th, 2002, subsequent
10 to donation of a proposed conservation easement on
11 all 4,410.916 unimproved acres and estimate the
12 market value of the unimproved 4,410.916 acres
13 after donation of a proposed conservation easement.

14 Q. All right, sir. And down under zoning
15 on Page 1, you assumed a proposed change from the
16 existing zoning classifications of the property to
17 a planned development district. Is that correct?

18 A. That's correct.

19 Q. And then you included a highest and
20 best use before the conservation easement and one
21 after the placement of a conservation easement on
22 Page 2 of the executive summary. Is that correct?

23 A. Yes, sir.

24 Q. What was the highest and best use
25 before the conservation easement?

1 MR. JOHNSON: Your Honor, I thought we
2 were going to hear about the date.

3 MR. BECKER: I'm leading up to that.

4 MR. JOHNSON: I object. Well, you're
5 putting everything in the report before we even get
6 to the question that relates to admissibility. I
7 object. It seems like we need to address that.

8 THE COURT: All right, sir. Ask him
9 about -- what's the date?

10 BY MR. BECKER:

11 Q. Mr. Wingard, does the fact that this
12 report has a date of November 6th and an effective
13 date of value of October 15th, 2002, does
14 that -- are you able to use this for
15 estimating -- in your opinion, is this appraisal an
16 appropriate proxy for measuring Columbia Venture's
17 investment-backed expectations in purchasing the
18 property before the assumed governmental taking of
19 the property?

1 many different types of property, and the sellout
2 was, I think, extended to as long as 15 years,
3 then, yes, it would be a representation of that
4 same amount.

5 Q. All right, sir. So the --

6 MR. JOHNSON: Your Honor, I object.
7 Unless the witness has done an appraisal as of the
8 date of the taking, it's got to be irrelevant to
9 the date of taking. You can't just say, Well, I
10 think it would be.

11 I mean, appraisers have rules they've
12 got to follow, and they've got to appraise as to a
13 particular date. And unless he says he has done
14 that and looked at comparables related to the date
15 of taking, et cetera, then I object to it on the
16 grounds of relevancy.

17 THE COURT: I overrule it. There's
18 only eight or nine months' difference between this
19 date and the date of the taking.

20 He's testified that that would not be a
21 sufficient period of time to have an effect on his
22 opinion.

23 I will overrule the objection.

24 MR. BECKER: Thank you, Your Honor.

25 BY MR. BECKER:

1 Q. So, just, again, the highest and best
2 use that you utilized for valuing Columbia
3 Venture's investment-backed expectations in
4 purchasing the property before the taking or the
5 conservation easement, what were those? What was
6 that?

7 A. Well, obviously, the certification of
8 the levees, so that this development could come to
9 fruition, and Richland County, being the support
10 mechanism, the responsible mechanism for those, the
11 implementation of the EDSA land use plans, and the
12 establishment of the multicounty business park to
13 help in taxes and financing for the district.

14 Q. Okay. And the highest and best use
15 after the conservation easement?

16 A. Well, as I stated earlier, a
17 conservation easement is like an inverse
18 condemnation where you restrict use of your
19 property after the easement is placed; so all
20 development would be prohibited and the only use
21 that would be allowable in the donation would be
22 some agricultural and passive recreational use,
23 which is typical of a conservation use of property.

24 Q. Now, I would like to go over a few of
25 the assumptions and limiting conditions that begin

1 on Page 3.

2 What is the role of assumptions and
3 limiting conditions in an appraisal?

4 A. Well, an extraordinary assumption in an
5 appraisal relates to a specific assignment as of a
6 specific date; and if considered to exist and found
7 to be false, then it could affect the valuation.
8 But it really is in reference to the legal, the
9 physical, and the economic situations affecting the
10 property as of that effective date.

11 Q. In your work as an appraiser -- and
12 certainly in this appraisal report that you and
13 Mr. Van Sant prepared -- would you include any
14 assumptions that you did not consider to be
15 reasonable?

16 A. No.

17 Q. What would be an example of an
18 unreasonable assumption?

19 A. An unreasonable assumption would be
20 that the property would be adapted to a 100-story
21 building, because it's not going to be feasible or
22 economically or maximally productive for that to
23 happen. So that would be unreasonable.

24 Q. And could you give me an example of a
25 reasonable assumption?

1 A. A zoning change from the existing
2 zoning on the property, which was M-1 -- it was a
3 collection of zonings, R -- I think R-3, M-1, and
4 D-1.

5 D-1 is almost like an interim zoning.
6 It's there until the land uses are really
7 established. It's kind of like a holding-type
8 zoning.

9 And the assumption was that the zoning
10 would be changed to a planned development district,
11 which would allow full implementation of the E.D.
12 Stone & Associates land use plan, allow
13 multifamily -- high-density, multifamily, and
14 single-family of varying sizes, commercial, retail,
15 institutional, golf courses, and other property
16 types.

17 Q. All right, sir. Thank you.

18 Now, we'll consider some of these
19 assumptions that are listed here when we get to the
20 highest-and-best-use analysis in this appraisal,
21 but for now I want to go over just a few of these.

22 On Number 3, the appraisers are not
23 required to -- I'm sorry -- Review Number 1:

24 Appraisers assume no responsibility for
25 matters of a legal nature affecting the property

1 appraised or the title hereto, nor do the
2 appraisers render any opinion as to the title which
3 is assumed to be good and marketable. The property
4 is appraised as though under responsible ownership.

5 Is that right?

6 A. Yes, sir.

7 Q. Number 6: Information, estimates and
8 opinions furnished to the appraisers and contained
9 in the report, were obtained from sources
10 considered reliable and believed to be true and
11 correct. However, no responsibility for accuracy
12 of such items furnished the appraisers can be
13 assumed by the appraisers.

14 Is that an assumption you made?

15 A. Yes, sir.

16 Q. Number 9 on the next page, that the
17 appraisal conclusions are contingent upon
18 completion of the proposed improvements in a
19 workmanlike manner.

20 Was that an assumption?

21 A. Yes, sir.

22 Q. Number 13: A probable zoning change
23 was an assumption included. And you have talked
24 about that, correct?

25 A. Yes.

1 Q. I believe you have also discussed two
2 other assumptions you made in the appraisal report
3 that aren't listed here. One of those would be the
4 multicounty business park financing vehicle?

5 A. Yes.

6 Q. What do you understand about a
7 multicounty business park? Describe that, if you
8 would, your understanding of it.

9 A. It's my understanding that they are
10 established to provide a mechanism whereby a taxing
11 district can be created to where the taxes are
12 really utilized or shared by one or two counties to
13 fund development, so that development can occur
14 which will create jobs, create opportunities, and
15 increase the tax base.

16 Q. And is it correct, also, that you also
17 assumed -- let's move to Page 50.

18 There, under, FIRM and Determination of
19 Floodway, is it accurate that you assumed, either
20 through a change in the floodway maps, or
21 improvement of the levees to FEMA certification
22 standards, that the property could be developed
23 without floodway or floodplain restrictions?

24 A. Yes, it would have to, or that plan
25 could never be fully implemented.

1 Q. Now, what is an extraordinary
2 assumption in professional appraisal practice?

3 A. Well, it's an assumption relative to a
4 specific appraisal assignment as of an effective
5 date, and if found to be false, could alter the
6 appraiser's valuations or conclusions for the
7 valuation.

8 Q. All right. Did this appraisal include
9 any extraordinary assumptions?

10 A. Well, all of the extraordinary
11 assumptions would be the change in zoning, the
12 certification of the levees according to FEMA
13 standards, and the implementation of the EDSA land
14 plan for the property.

15 Q. All right, sir.

16 MR. BECKER: Now, let's take a look at
17 the photograph on page -- of this appraisal,
18 Ms. Black -- that's after Page 1. You can put it
19 up on the -- I think it's also the same photograph
20 we used earlier, the big aerial photograph of the
21 property.

22 BY MR. BECKER:

23 Q. All right, sir. Do you see the outline
24 of the property there, Mr. Wingard?

25 A. Yes, sir.

1 Q. What -- what were some of the unique
2 attributes about this property?

3 A. Well, first of all, the expanse of the
4 property, the size, allowed it to have multiple
5 property uses.

6 Secondly, the -- obviously, the
7 location proximate to the City of Columbia. It's
8 very unique and unusual to have this large of a
9 land mass proximate to a city the size of Columbia.

10 Obviously, proximity to the University
11 of South Carolina and state and federal government,
12 and it has expansive frontage along the Congaree
13 River, and it has good linkage, meaning frontage on
14 the interstate, proximity to other parts of
15 Metropolitan Columbia via these linkages, all of
16 which would have an effect on the implementation of
17 the E.D. Stone & Associates land plan.

18 Q. Mr. Wingard, are you familiar with some
19 other subdivisions in the Richland County area, for
20 example, Wildewood and Woodcreek?

21 A. Yes. You know, ideally, you would like
22 to -- you know, we use those other subdivisions in
23 an attempt to determine the disposition time frame
24 for each of the developments within the Columbia
25 Venture property.

1 Ideally, you would like to have another
2 property this size that had a history of disposing
3 of different land uses or different property types,
4 but that's what makes this property so unique,
5 there are no others. So you have to rely on much
6 smaller developments, such as what's available in
7 the market, Woodcreek, Wildwood, the Summit, and
8 other smaller developments like that.

9 Q. Now, those other subdivisions you have
10 mentioned, have they been successful?

11 A. Yes.

12 Q. Are they located closer to the City
13 Center of Columbia or further from the City Center
14 of Columbia, than the Columbia Venture property?

15 A. They're suburban locations, 15, 20
16 miles, maybe, for some of them.

17 Q. Does the fact that those subdivisions
18 in more remote locations have been successful
19 affect your opinion of the value of the unique
20 attributes of this site?

21 A. Well, obviously that gives you an
22 indication of what an absorption may be on a
23 development, but I guess the primary thing would be
24 the conversations we had with the developers and
25 the salespeople that were responsible for disposing

1 of those homesites or what they call vertical
2 properties, meaning homesites and improved houses,
3 multifamily townhomes, or whatever the development
4 called for, in disposing of those properties over a
5 finite time frame.

6 Q. Did this site have rail access?

7 A. I think it had rail access proximate to
8 Bluff Road, if I'm not mistaken.

9 Q. And did it have utilities available at
10 the site?

11 A. Utilities were in the area. Obviously,
12 you didn't have utilities running through the
13 property. That would be completed -- that would be
14 part of the infrastructure costs that would be
15 funded by the multicounty business park, and
16 obviously each development would have water and
17 sewer provided to it from that initial
18 infrastructure development.

19 Q. Did the EDSA land development plan, as
20 you ultimately reviewed it -- how did it compare
21 with what was known as Richland County's
22 Town & Country's land use plan?

23 A. Because it had multiple use --

24 MR. JOHNSON: Your Honor, I'm going to
25 object. I'm sorry, Your Honor, I withdraw that.

1 THE COURT: All right, sir.

2 THE WITNESS: We interviewed Patrick
3 Dunbar, who was on the zoning board at the time,
4 and he was also a builder, and also, we had worked
5 with, at South Carolina Federal, when we were
6 appraisers and he was a loan officer. So we've all
7 been --

8 BY MR. BECKER:

9 Q. Was this while preparing this
10 conservation easement?

11 A. Right, preparing this.

12 So we all intertwine in the business
13 community, relative to appraising, financing,
14 sales, and building. And we asked him about this
15 and showed him the EDSA plan and the highest- and
16 best-use analysis and asked him how that related to
17 the plan they were desiring to implement, and he
18 said it matched perfectly.

19 MR. JOHNSON: Objection, hearsay.

20 THE COURT: I overrule that. He's an
21 expert, and he has the right to rely upon opinions
22 of others in terms of gathering information.
23 Certainly a person in that capacity would be
24 someone he could reasonably be expected to rely
25 upon.

1 MR. JOHNSON: Your Honor, it would not
2 come in for the truth of the matter asserted,
3 clearly.

4 THE COURT: Well, that's what the
5 expert is saying it is. They can rely upon those.
6 They don't come in for the truth of the matter
7 asserted, but the expert can rely upon them in
8 formulating his own opinion.

9 BY MR. BECKER:

10 Q. Mr. Wingard, who is Patrick Dunbar?

11 A. Well, he's a builder now. He evolved
12 from working for a financial institution to
13 building. He's a private builder and still is
14 doing private building in the Columbia market. But
15 what we wanted was someone that would ultimately be
16 responsible or partly responsible in changing the
17 zoning -- or potentially changing the zoning.

18 Q. On the subject property?

19 A. On the subject property. How
20 reasonable is this to assume? If he said this has
21 no way of happening, then that could affect our
22 assumptions that we made.

23 Q. Okay. What is the Richland County
24 Town & Country -- well, what -- at the time you
25 spoke with them, was Mr. Dunbar involved in zoning

1 for Richland County in some way?

2 A. I believe that he was, yes.

3 Q. What was his --

4 A. I think he was just on the zoning
5 board.

6 Q. Okay. What is Richland County's
7 Town & Country land use plan?

8 A. Well, I mean, I can't recite it from
9 memory, but it --

10 Q. Obviously. Just describe it in
11 general.

12 A. It's just something where you don't
13 have a lot of urban sprawl; you have complementary
14 property uses like this. You would -- the design
15 of this would be residential, initially. Any time
16 you create residential, you create demand for
17 commercial, and that usually follows, you know.

18 Commercial follows rooftops, as they
19 say. And what would follow after that would be
20 recreational needs, the golf courses. That's why
21 they had all of these different sites designated
22 for those property uses, institutional uses. You
23 would need banks, you would need retail, you would
24 need pharmacies.

25 Ultimately, you would need schools.

1 That's why we had a separate school section in
2 here. So all of those complement each other.

3 Q. So the Richland County Town & Country
4 plan was sort of a comprehensive land use plan for
5 undeveloped land in Richland County?

6 A. That's my understanding.

7 MR. JOHNSON: Object to the leading.

8 THE COURT: Overruled.

9 BY MR. BECKER:

10 Q. Had it been adopted at the time that
11 you spoke to Mr. Dunbar about it?

12 A. I don't recall.

13 Q. Or was it in place?

14 A. I don't recall.

15 Q. Okay. But there was a plan called a
16 Town & Country plan that you asked Mr. Dunbar
17 about. Is that correct?

18 A. Well, I think he brought it up.

19 Q. Okay.

20 A. I think he looked at what we were
21 proposing and what we had relative to the EDSA
22 plan. And I think he mentioned that it favors the
23 Town & Country plan to be -- I don't know whether
24 it was to be implemented or whether that plan was
25 conceptual by Richland County, but he did mention

1 that it would be what they pretty much had in mind
2 with that Town & Country plan.

3 Q. Mr. Wingard, have you ever appraised
4 any other properties like this one?

5 A. Yes.

6 Q. Where are they located?

7 A. We have done several in Graniteville,
8 South Carolina, done some in Roland, Arkansas. Did
9 some in Lake Gaston, which was Roanoke Rapids,
10 North Carolina. It's on the North
11 Carolina/Virginia property border.

12 Q. Any in the Augusta, Georgia area?

13 A. No, not to my knowledge. Graniteville
14 is very close to Augusta. The City of Aiken.

15 Q. Okay.

16 A. Aiken market area.

17 Q. What project was that?

18 A. It would be Sage Valley.

19 Q. What is Sage Valley?

20 A. Sage Valley is a golf club, exclusive
21 golf club located in Graniteville, South Carolina.
22 The owner has established -- or not established,
23 but has collected an expansive acreage. They
24 bought expansive acreage. He's got about 6,000
25 acres over there. And what he has done is parceled

1 out those into conservation easements.

2 But because he owns it, and according
3 to federal guidelines, U.S. Treasury guidelines, if
4 he owns more than 50 percent of some contiguous
5 parcels, then the subject property becomes not only
6 what he is conserving, but everything else that is
7 contiguous that he has more than a 50 percent
8 ownership.

9 So really, even though he's conserving
10 100 acres, the subject property is 6,000 acres. So
11 we had to find other similar 6,000-acre properties,
12 which around here, you don't have that. You just
13 don't have that expanse of acreage.

14 Q. And so you prepared conservation
15 easement appraisals on that 6,000-acre tract?

16 A. Not only 6,000 acres. That was the
17 subject. It was 6,000 acres in the before and
18 6,000 acres in the after, with a part of that being
19 encumbered by conservation easement.

20 Q. I see. All right.

21 Let's turn to the EDSA land development
22 plan, and I would like you to please look at
23 Exhibit 314.

24 MR. BECKER: Your Honor, I don't
25 believe 314 is in evidence, but I would like to

1 offer it into evidence, and 319 and 320-R.

2 (PLF. EXH. 314, Columbia Venture Master
3 Plan Workbook, was presented.)

4 (PLF. EXH. 320-R, document, was
5 presented.)

6 BY MR. BECKER:

7 Q. Mr. Wingard, take a look at Exhibit
8 314. It's entitled, Columbia Venture Master Plan
9 Workbook.

10 Do you have 314 in front of you,
11 Mr. Wingard?

12 A. Yes, sir.

13 Q. It's entitled, Columbia Venture Master
14 Plan Workbook. Is that right?

15 A. Yes, sir.

16 Q. If you look on the last page, it
17 indicates it was prepared by EDSA, Edward D. Stone
18 Jr. & Associates, planners, landscape architects,
19 and graphic designers, Orlando, Florida.

20 Do you see that?

21 A. Yes, sir.

22 Q. Is this a part of the EDSA land plan
23 development work product that you utilized in
24 preparing your conservation easement appraisal?

25 A. Yes, sir, that in conjunction with the

1 large laminated preliminary master plan behind you.

2 Q. Behind me on the wall there?

3 A. Yes.

4 Q. Okay. That is also in evidence in
5 various forms, particularly Exhibits 319 and 320.

6 Do you see those?

7 A. Yes.

8 Q. All right, sir.

9 Now, we know, from prior testimony of
10 Mr. George Gregory. That there were two
11 alternatives, an Alternative A and an Alternative
12 B.

13 Do you see the Alternative A that is
14 Plaintiff's Exhibit 320?

15 A. Yes.

16 Q. And you notice that the large outparcel
17 that was in red on the aerial photograph is not
18 included as part of the land of outparcel in the
19 middle.

20 Do you see that?

21 A. That's correct.

22 Q. All right. Is that -- is that the
23 alternative that you appraised in your conservation
24 easement appraisal?

25 A. Yes, sir. We prepared that in our

1 photographs, so we knew that that was not included.

2 Q. So you and Mr. Van Sant, for purposes
3 of preparing the conservation easement appraisal,
4 utilized Alternative A, which is represented in
5 Plaintiff's Exhibit 320. Is that correct?

6 A. That's correct.

7 Q. Is that correct, Mr. Wingard?

8 A. Yes, sir.

9 Q. Now, what do you know about Edward D.
10 Stone & Associates? What is their reputation and
11 experience?

12 MR. JOHNSON: Objection, Your Honor.
13 Reputation is not admissible.

14 THE COURT: I find it to be relevant in
15 regards to the reasonableness of his reliance.

16 You can testify.

17 THE WITNESS: I am familiar with them
18 by projects in Florida that they worked on. I
19 think they're headquartered in Orlando, Florida,
20 and I visited their website.

21 And from what they are identifying on
22 their website, they have worked all throughout the
23 United States, and more importantly, in nine
24 countries. So they have projects presently going
25 on right now in Spain, Indonesia, Mexico, and some

1 other countries.

2 BY MR. BECKER:

3 Q. Now, did you undertake an investigation
4 of their experience prior to utilizing the EDSA
5 land development plan as part of the conservation
6 easement appraisal?

7 A. No, I did not investigate their
8 reputation, or if they could do a plan like this.
9 I mean, the fact that I looked at some of the stuff
10 that they have done, some of the other projects in
11 the country and internationally, and I felt
12 reasonably assured they could implement a plan for
13 4,000 acres in Columbia, South Carolina.

14 Q. Okay. All right. Now, I would like to
15 turn to Page 6 of your appraisal, wherein you
16 described the major elements of the EDSA land
17 development plan, and ask you to just review the
18 three bullet points that follow, beginning on Page
19 6 where it describes the master plan for Green
20 Diamond dynamically embraces the following major
21 elements.

22 Just read through that and then
23 describe for Judge Smith your assessment of those
24 elements of the land plan.

25 A. Well, as I cited earlier, the overall

1 land plan was going to be complementary property
2 uses, meaning initially single-family, multifamily,
3 residential, and then that creates the need for
4 commercial, whether it be retail, institutional
5 use.

6 And then recreational use, you would
7 have golf courses, hotels, conference centers,
8 stuff like that. Other commercial uses would be
9 offices, business incubators, research facilities,
10 R&D facilities, any type property use that would be
11 permitted under the PDD zoning, and that would be
12 complementary to that land use.

13 This was envisioned, but a lot of it
14 would subsequently be predicated on demand. The
15 market would ultimately demand that use. But this
16 was the proposed use for the property.

17 Q. Now, you noted near the top of Page 7
18 the paragraph that begins: The predominance of the
19 subject property has been cleared and has been used
20 for agricultural purposes for a significant time
21 frame. Existing within the property are several
22 streams, lakes, and drainageways, along with some
23 wooded areas.

24 And conclude by saying: With the
25 generally level or flat topography, subsequent

1 developmental usage is extremely conducive to site
2 preparation for any such subsequent development
3 would be considered minimal.

4 Is that -- is that a factor that
5 influenced your thinking about the project?

6 A. Yes, sir. If you refer back to that
7 aerial photograph -- can we look back at
8 that -- you will see the expanse of open areas.
9 You've been using it agricultural for row crops.
10 So there would be a minimal amount of site
11 preparation that would have to be completed for any
12 type of development.

13 It's not like it's undulating
14 topography or has challenging topography or large
15 rocky areas or rocky subsoil or what have you.
16 It's relatively open.

17 Q. You also note that the property had
18 been thoroughly studied from an environmental
19 standpoint and from available environmental
20 studies, there were no unique environmental issues
21 which permit [sic] the property from being properly
22 and sensitively developed as planned.

23 Maybe you meant prevent the property
24 from being properly and sensitively developed as
25 planned.

1 A. We were not provided any identification
2 of any endangered species, such as a spotted owl or
3 a scrub jay or anything like that that would be
4 sensitive and might be a prohibition against
5 development.

6 Q. Okay. In your next sentence, you noted
7 there were some jurisdictional wetlands, but there
8 were no threatened or endangered species or no
9 sensitive areas, such as ancient burial grounds,
10 which would impede the subsequent developmental
11 usage. Is that correct?

12 A. That's correct.

13 Q. Now, the last full paragraph on that
14 page, you note: The authors of Richland County's
15 Town & Country plan (Killinger and Alberto) also
16 confirm the initial plans met and exceeded their
17 expectations. They pointed out the project's
18 location represented an infield situation and would
19 assist in slowing what some have described as
20 sprawl of Richland County's and Columbia's
21 northeast side.

22 Would you comment on that?

23 A. Well, honestly, we didn't confirm
24 through Killinger and Alberto. This came via Pat
25 Dunbar with the zoning board, representing the

1 authors. Or he told us who the authors were and
2 really what the concept for the plan was.

3 Q. All right.

4 MR. JOHNSON: Your Honor, I move to
5 strike his testimony on this and strike it in
6 consideration of that's hearsay on top of hearsay.

7 THE COURT: Well, I think it's -- I
8 think these are matters for cross-examination, but
9 not to be excluded.

10 THE WITNESS: Do you want me to
11 continue with my answer?

12 MR. BECKER: Yes, please.

13 THE WITNESS: And what they were trying
14 to do was to prevent what was already existing over
15 there, a concentration of industrial and
16 manufacturing, small manufacturing facilities, and
17 make it more complementary with single-family,
18 multifamily, institutional, commercial, and other
19 property uses.

20 BY MR. BECKER:

21 Q. Okay. Now, next you describe: The
22 primary benefit of the proposed Green Diamond
23 project would be to upgrade services and
24 infrastructure, as well as job creation, for
25 adjacent communities and their residents. And you

1 make particular mention of a surrounding minority
2 community that's been ignored for an extensive
3 time, and Green Diamond's plan includes an
4 investment in these communities.

5 Describe what you mean there and how
6 that would have occurred.

7 A. Well, the investment would be
8 landscaping along Bluff Road and other access or
9 entrance areas into the development, obviously the
10 creation of schools, schools being proximate within
11 Green Diamond. Those kids would attend those
12 schools. Items such as that.

13 Q. All right. Would it create jobs in
14 that area?

15 A. Absolutely.

16 Q. Both in construction and later?

17 A. Obviously, with any kind of retail
18 development, there would be jobs creation for that,
19 offices created, institutional creation, hospitals,
20 hotels, golf courses. All of those would create a
21 need for employment.

22 Q. All right, sir. Next at the top of
23 Page 8 you talk about the Green Diamond plan as
24 being decidedly a big plan and involving
25 collaborative efforts between the University of

1 South Carolina, Clemson, the Medical University of
2 South Carolina, local governments.

3 And you also talk in the next paragraph
4 about some research undertaken in order to
5 formulate the overall development plan, and in
6 particular, the experience in the Research Triangle
7 area up in Raleigh-Durham, North Carolina, another
8 research park in Huntsville, Alabama, and other
9 places.

10 What was your impression of the
11 likelihood or the possibility for that kind of
12 research and type use for this property?

13 MR. JOHNSON: Your Honor, I object. If
14 he investigated this and has knowledge about what
15 could or is planned to come, I don't have an
16 objection to it. But we're not getting there.
17 He's going to say, Well, my impression was it could
18 all be done.

19 You know, without a foundation that he
20 actually made an inquiry, got an answer, it would
21 be nothing but irrelevant testimony.

22 THE COURT: I overrule the objection.

23 Go ahead, sir.

24 BY MR. BECKER:

25 Q. So the question is, describe, if you

1 will, what you understood to be the plans for a
2 research component of the EDSA land development
3 plan in association with local governments, the
4 University of South Carolina, Clemson, and the
5 Medical University.

6 A. Well, I obviously can't guarantee that
7 those things would come to fruition, but it would
8 be similar to what the university ultimately did on
9 their campus with Innovista. Innovista could -- I
10 think that was the design, was to have that at
11 Green Diamond.

12 Also, the collaborative efforts of the
13 universities would be maybe moving the medical
14 school or creating another law school. That would
15 be for all of the universities. All of those
16 things were just planned. That was the design by
17 any master plan, if not for the immediate use,
18 but -- you know, remember, we went 15 years in
19 duration for disposition of these parcels. So that
20 could possibly happen over 15 years. It's not
21 guaranteed, it's just that it presents the
22 opportunity for it to happen.

23 Without the development, there is no
24 opportunity for that to happen.

25 Q. In your opinion, was it a reasonable

1 assumption to make, that those land use plans would
2 be appropriate for the land plan of EDSA?

3 A. Well, that's what a plan is. I think
4 the plan is reasonable. Remember what I said
5 earlier, what ultimately dictates what is going to
6 happen on that property is by the market. The
7 demand changes over time. The demand could
8 formulate something else.

9 I think initially they had even flirted
10 with the idea of having the Colonial Life Arena
11 located in this area, with other things, other
12 complementary land uses around it, because of the
13 expansive parking and also the interest by the
14 university.

15 Q. So you didn't consider those proposed
16 uses unreasonable. Is that right?

17 MR. JOHNSON: Object to the leading.

18 THE WITNESS: No, I surely did not.

19 MR. BECKER: Plaintiff's Exhibit 24,
20 Your Honor, already in evidence.

21 BY MR. BECKER:

22 Q. Mr. Wingard, have you seen this letter
23 before?

24 A. Yes, sir.

25 Q. Now, earlier we talked about

1 multicounty business parks and what role that would
2 play in your -- in the proposed financing plan for
3 this project and your understanding of multicounty
4 business parks.

5 Do you know if Richland County has
6 employed multicounty business parks?

7 A. I'm not sure.

8 Q. Okay. Do you know if other counties in
9 South Carolina --

10 A. Yes, I think so.

11 Q. So other counties in South Carolina
12 have employed multicounty business parks?

13 A. Yeah, I just read one the other day
14 where Williamsburg County has just completed one.
15 I know they have in Horry County.

16 Q. Now, take a look at this letter dated
17 February 19th, 1999 from Mr. Cary McSwain to
18 Mr. George Gregory at Burroughs & Chapin.

19 I can represent to you that Mr. Gregory
20 testified that he received this.

21 MR. JOHNSON: Objection, Your Honor,
22 form of the question.

23 BY MR. BECKER:

24 Q. Assume, Mr. Wingard, that Mr. Gregory,
25 representing Burroughs & Chapin, received this from

1 Mr. McSwain prior to going forward with the closing
2 of the purchase and sale of the property. Will you
3 do that for me?

4 A. I'm sorry, I was reading.

5 Q. I just want you to assume --

6 A. Yes, okay.

7 Q. -- that Mr. Gregory received this
8 letter from Mr. McSwain, the county administrator
9 for Richland County, before proceeding to close on
10 the purchase and sale of the property from
11 Mr. Manning to Columbia Venture.

12 And look at the next-to-the-last
13 paragraph. It says:

14 The County is aware of and agrees to
15 work with the development group on issues that are
16 critical to the proposed development, such as
17 zoning, tax-incentive vehicles, and a multicounty
18 business park.

19 Did I read that correctly?

20 A. Yes.

21 Q. Right.

22 Now, based on your understanding of
23 multicounty business parks and this letter from
24 Mr. McSwain, the county administrator of Richland
25 County, did you consider it reasonable under the

1 circumstances to include a multicounty business
2 park, financing vehicle, in the assumptions for
3 your conservation easement appraisal?

4 MR. JOHNSON: Objection, Your Honor.

5 THE COURT: Yes, sir.

6 MR. JOHNSON: He would have to first
7 lay a foundation that he considered this in
8 connection with his appraisal. And there's no
9 evidence that he considered this letter at all in
10 connection with the appraisal.

11 Presumably, it would have him comment
12 on what the letter means, and the letter speaks for
13 itself. And there's nothing to show that he's got
14 expertise in multicounty business development parks
15 or, what is involved in establishing one, to
16 determine whether it's reasonable to consider or
17 not to consider, unless he tells -- I mean, I have
18 deposed him, and I also heard what he said.

19 I believe he's got very limited
20 knowledge and no expertise on what is involved in a
21 multicounty business development park, what has to
22 be done to create one, or anything of that nature.

23 There's no foundation laid for the
24 questions, and I would ask -- and I don't think
25 it's a matter of cross-examination. I think it's a

1 matter of does he have the knowledge and the
2 expertise to offer opinions on this point, and is
3 it -- what is -- is the foundation reasonable to
4 allow him to offer the opinion?

5 THE COURT: Well, you're certainly
6 right that part of what he has to do -- what the
7 Plaintiff has to establish with the witness in
8 regard to giving values -- is whether or not these
9 proposals as to different uses of the
10 property -- property being put to particular
11 uses -- whether or not those assumptions are
12 reasonable.

13 If they aren't reasonable, then they
14 don't -- they can't be considered by the fact
15 finder in regard to determining the values.

16 This letter that's just been shown to
17 him, apparently he was unaware of that prior to,
18 and that particular letter didn't have anything to
19 do with the formation of his opinions. However,
20 there isn't anything that would prevent Mr. Becker
21 now from asking him about this letter in order to
22 bolster his opinion relative to the multicounty
23 usage.

24 MR. JOHNSON: Your Honor, aren't they
25 limited by what they put in their expert report and

1 what they tell us on deposition?

2 We're not -- I mean, that's the whole
3 idea of getting that information, not to open the
4 gates wide open and bring out fresh information.

5 THE COURT: Well, I think in this
6 particular instance, this is something that's in
7 the record. It's a letter. It's a letter from
8 your county administrator. I think it's
9 admissible.

10 Certainly it can reach a point, if a
11 lot of extraneous documents of which you aren't
12 aware are sought to be introduced.

13 But I overrule your objection as to
14 this.

15 MR. BECKER: Your Honor, it's almost
16 ten to 4. Could we possibly take the afternoon
17 break right now?

18 THE COURT: Yes. We'll take a break,
19 then, until -- well, for 15 minutes.

20 (A brief recess was held.)

21 THE COURT: All right, then, Mr. Becker
22 you may proceed.

23 MR. BECKER: Thank you, Your Honor.

24 BY MR. BECKER:

25 Q. Mr. Wingard, continuing on, we

1 were -- had just moved off the subject of the
2 multicounty business park.

3 I wanted to begin at the bottom of Page
4 8 of your report, discuss the zoning issues. You
5 note at the beginning there:

6 At the present time, the 23 parcels
7 comprising the Green Diamond project are zoned by
8 Richland County as four separate zoning
9 designations, to include: D-1, development
10 district; M-1, light industrial/manufacturing; RU,
11 rural district; and R3-3; single-family residential
12 district.

13 And you talk about, with the planned
14 mixed-unit development, the owners are cognizant
15 that rezoning of the development property is
16 necessary for the development to occur.

17 I would like to show you Plaintiff's
18 Exhibit 499, which is already in evidence, which is
19 a summary of the acreages and the various
20 classifications that you described in your report.

21 All right. Now, Mr. Wingard, this
22 shows that 3,120.762 of the property was zoned D-1,
23 and I believe you testified previously about what
24 the D-1 zoning designation is. Is that correct?

25 A. That's correct.

1 Q. Okay. And then 1,277.48 of it was in
2 the RU, or rural district, zoning classification.
3 Is that correct --

4 A. Yes, sir.

5 Q. -- based on Exhibit 499?

6 A. Yes, sir.

7 Q. And I think we've already established,
8 too, that in completing this appraisal, you did
9 assume a change in the zoning classification, did
10 you not?

11 A. Yes, sir.

12 Q. All right. We talked about your
13 conversation with Mr. Dunbar, and I would note,
14 also, on Exhibit 24 -- and this is the letter from
15 Mr. McSwain to George Gregory on February 19th.

16 Do you see in the next-to-final
17 paragraph that he says that Richland County will
18 work with the development group on issues such as
19 zoning?

20 A. Yes.

21 Q. Okay. All right. That's all I have on
22 that.

23 Now, given the current zoning
24 classifications of the property that we just
25 reviewed and the amount of acreages in those, and

1 the letter from Mr. McSwain of February 1999,
2 Plaintiff's Exhibit 24, did you consider it
3 reasonable under the circumstances to include a
4 change in zoning as a reasonable assumption in your
5 conservation easement appraisal?

6 MR. JOHNSON: Your Honor, I object to
7 it. The witness earlier testified he was given
8 that as an assumption, and he's not qualified to
9 testify about the reasonableness of an assumption
10 that he's putting in his report. He's just putting
11 them in there. He's got no special skill to say
12 that that is likely to happen or unlikely to
13 happen.

14 And it is an issue out there, and he
15 can assume it happens or assume it doesn't happen,
16 but unless he shows some specialized training that
17 he's looked at what zoning requests do and how many
18 of them are granted and done a statistical study to
19 say if the County approves of it, 80 percent are
20 granted. I mean, it is just outside his area.

21 THE COURT: Well, sir, I think in order
22 for his testimony to carry any weight or be
23 accepted, he has to testify that what he is
24 proposing in his appraisal in regard to highest and
25 best use of the land is feasible or realistic, and

1 therefore, what Mr. Becker is doing is laying that
2 groundwork based upon whether or not it's feasible
3 that the County would go along with such zoning.

4 And I would say, it's subject to
5 cross-examination where you can probe into that
6 particular area. But I think that the examination
7 on this is certainly relevant, and I think it's
8 appropriate for how much he knows about what they
9 would or would not do or whether that's a
10 reasonable situation. I think it's a matter for
11 cross-examination.

12 MR. JOHNSON: Your Honor, I won't go
13 any further. You have ruled.

14 THE COURT: All right, sir.

15 BY MR. BECKER:

16 Q. So my question for you, Mr. Wingard,
17 is, under the circumstances as we've just reviewed,
18 did you consider the change in zoning to be a
19 reasonable assumption for purposes of your
20 conservation easement appraisal?

21 A. We did primarily. If you look at this
22 exhibit, about 75 percent of the property is
23 presently zoned with the D-1 zoning, where really,
24 the character of the area had not yet been
25 established yet. And the County even identified in

1 their ordinance that they're aware that there will
2 be subsequent amendments for zoning changes for
3 this, whenever the demand dictates that.

4 So one would think that with the
5 implementation of this EDSA plan, that a zoning
6 change would be almost imminent.

7 Q. All right, sir. I also note that on
8 Page 9 up at the top of your report, you cite to
9 Section 6-29-740 of the South Carolina Code of
10 Laws, which you say allows and encourages a local
11 government to provide for the establishment of a
12 planned development district as an amendment to its
13 zoning ordinance and official zoning map in order
14 to allow flexibility in development. Is that true?

15 A. Well, yes, sir. Not so much
16 flexibility -- well, obviously flexibility -- but
17 complementary land uses, so that -- remember what I
18 said earlier about the intent of that
19 Town & Country plan was not to create urban sprawl,
20 to have -- that was complementary land uses. So
21 that's exactly what that's saying.

22 Q. Finally, we have reviewed the
23 multicounty business park that you discuss on Page
24 9 of your report.

25 I want to ask about the first full

1 paragraph on Page 10. It's just one sentence:

2 With the upgrading of the levees to
3 allow for development, the current annual property
4 taxes being generated will be increased
5 substantially to approximately 120 million dollars
6 per annum at buildout.

7 Is that correct?

8 A. Yes. That was just an estimate, based
9 on what our value would be at sellout. And using
10 the present millage rate at 6 percent, assessment
11 ratio, which is what predominantly would be in that
12 area -- other than the owner-occupied residential
13 property, which would be 4 percent -- and just to
14 give an idea of what the taxes could possibly be,
15 the impact.

16 Obviously, we won't know without the
17 increases or decreases in millage rates. The
18 millage rates could decrease as a result of the
19 additional taxes being provided from the
20 development of this property, but you just don't
21 know.

22 Q. But this estimate was based on total
23 buildout of an EDSA plan applying millage rates
24 applicable at the time of the report?

25 A. Yes. And what's even more important

1 was, during that buildout, the County is also
2 receiving additional taxes from rollbacks.
3 Meaning, with the change in property uses, those
4 properties that had agricultural use values would
5 be -- you go back five years, and it would be
6 additional taxes for that change in property use.

7 So that's additional revenue as well.
8 That's not even in this calculation, but it's just
9 an incentive for the County to implement -- you
10 know, have this plan implemented for this
11 development.

12 Q. Okay. Do you know the approximate
13 annual tax revenue to the County for the property
14 in its current use and zoning?

15 A. I think I had it in my report what the
16 total tax bill would be based on the property uses
17 and --

18 Q. Okay. Where is that? I just don't
19 recall.

20 A. That would be in the assessment and
21 taxes section.

22 Q. Where is that?

23 A. Let's see. Page 39.

24 Q. All right.

25 A. I think it was \$12,636.14, based on the

1 valuations and the assessment ratios and the
2 present millage rate for the tax district in 2002.

3 MR. JOHNSON: What page are you on?

4 THE WITNESS: Page 42 is where the
5 table is. The assessment and taxes section starts
6 on 39.

7 BY MR. BECKER:

8 Q. Well, walk us through that just a
9 minute. Walk us through this section on estimated
10 taxes -- assessment and taxes -- beginning on Page
11 39 of your report.

12 A. Well, the Page 39 just identified the
13 number of -- it's a large number of parcels. It
14 was difficult matching up the tax parcels with the
15 property. It was -- we did the best we could,
16 based on how the property was identified by
17 Richland County.

18 But with those tax map numbers and the
19 acreage sizes, on Page 40, there is a table and it
20 would give each of the tax map numbers for each of
21 the parcels that would comprise the Columbia
22 Venture property and the size, as reported by the
23 County, and the indicated market value and whether
24 it had agricultural use value or not, and then the
25 value, if it was appraised for market value, and

1 then the value if it was appraised for agricultural
2 use value.

3 Agricultural use value is determined by
4 the U.S. Department of Agriculture, and it's
5 sometimes \$100 to \$200 an acre. And, again, you
6 can keep that until the use of the property
7 changes.

8 So whenever each of those parcels are
9 developed in that Columbia Venture property, then
10 there's a five-year rollback where the property
11 owner, which could be Columbia Venture, and the
12 developer, would have to pay the difference between
13 the agricultural use value and the market value for
14 those five years.

15 Q. Okay.

16 A. That's a substantial amount of revenue.
17 As you can see, most of the properties had ag
18 use -- agricultural use.

19 Q. Yeah. So on Page 42, what have you
20 included there? What is that table?

21 A. That table gives each of the tax
22 districts -- well, there's only one tax district,
23 as you see -- the assessor's value, the assessment
24 ratio, and the millage rate and the estimated tax
25 liability. It's really very similar to the table

1 on 40, but we just give the values, where here, we
2 extend what the tax liability would be for each
3 parcel.

4 Q. All right. And so currently or in the
5 use at the time, the tax revenue to Richland County
6 is approximately \$12,636 a year?

7 A. As recorded by -- according to the
8 County records at that time.

9 Q. Okay. But with the completion or the
10 buildout of the EDSA land plan, you estimated it
11 would be 120 million dollars?

12 A. Yes, sir. I think the present zoning
13 of 292.3 mills would be, I think, the millage rate
14 that we use. I would have to go back in my files
15 to see what that calculation consisted of, or
16 even -- we might have inflated the millage to
17 reflect potential increases based on historical
18 increases.

19 Q. Okay, sir.

20 A. But in the developments that we did, we
21 also deducted those roll-back taxes, as well as
22 taxes during the time that the lots were being
23 disposed.

24 Q. I would like to show you Exhibits 299
25 and 301, which are also already in evidence.

1 Exhibit 299, do you recognize this
2 document?

3 A. Yes, a market research report that was
4 prepared by Haddow & Company.

5 Q. Describe generally -- let me ask you
6 this: Did you rely upon it in preparing the
7 conservation easement appraisal?

8 A. I read through it, but my reliance was
9 primarily based on the EDSA plan because that
10 identified each of the parcels in each levee
11 section and how many units, where this was just a
12 generalization as to their determined demand for
13 different property types.

14 Q. Okay. But you did review that in
15 advance of preparing and moving forward with your
16 conservation easement appraisal?

17 A. Yes. I mean, this report, obviously,
18 again, determines what the -- what their
19 determination of a demand would be for a certain
20 property type, like hotels, motels, conference
21 centers, what have you.

22 But almost as importantly, it gives
23 strengths and weaknesses of the property, how it
24 relates to potential future subsequent development
25 relative to these property uses.

1 Q. Was a copy of this given to you by
2 Mr. George Gregory at the time you were engaged to
3 do the conservation easement appraisal?

4 A. Yes, sir.

5 (PLF. EXH. 299, Market Research
6 Congaree Property Columbia, South Carolina by
7 Haddow and Company, was presented.)

8 (PLF. EXH. 301, Highest and Best Use
9 Analysis 4410.9 Acres Columbia, South Carolina by
10 Haddow and Company, was presented.)

11 BY MR. BECKER:

12 Q. Okay. Take a look at Exhibit 301 as
13 well.

14 Just for the record, Exhibit 299 was
15 the Haddow & Company Market Research, Congaree
16 property, dated July 1999.

17 And now if you could, tell us what this
18 next document, Exhibit 301, is, Mr. Wingard.

19 A. It's the highest-and best-use analysis,
20 identifying 4,410.9 acres, which would be the
21 Columbia Venture property.

22 Q. And who prepared it?

23 A. Haddow & Company.

24 Q. Did Mr. Gregory also provide you with a
25 copy of this document at the time you were engaged

1 to prepare the conservation easement appraisal?

2 A. Yes.

3 Q. And did you review it in advance of
4 preparing your conservation easement appraisal?

5 A. Yes, sir.

6 Q. Did you rely on it in any way?

7 A. Yes, we did. They had extensive
8 vacancy rates, specifically for multifamily
9 properties, and we kind of relied on that in our
10 disposition of our multifamily units, primarily.

11 Q. Do you know whether or not these two
12 Haddow & Company research reports were utilized by
13 EDSA in their preparation of the ultimate land
14 development plan for the property?

15 A. I do not.

16 Q. I would like to direct you to Page 54
17 of your appraisal, in which you analyze the
18 highest-and-best-use of the property prior to the
19 conservation easement or the assumed taking.

20 And it's my understanding that in
21 performing this analysis, you answer four
22 questions, and that is, whether the proposed use is
23 legally permissible, physically possible,
24 financially feasible, and maximally productive.

25 A. That's correct.

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. I would like you to go through each of
4 these in a little bit of detail, starting with the
5 legally permissible question.

6 Now, before I get to that -- of course,
7 you're not a lawyer, are you?

8 A. No, sir.

9 Q. And were you engaged to give any legal
10 opinions in this case?

11 A. No, sir. I had an assumption and
12 limited conditions stating that we do not give
13 legal opinions.

14 Q. You don't consider yourself qualified
15 to give a legal opinion?

16 A. I do not.

17 Q. All right. If you would, then,
18 describe for us what you went through, the analysis
19 you undertook to determine the highest-and-best-use
20 of the property before the conservation easement or
21 the assumed taking in this report.

22 A. If you look on Page 54, there's four
23 tests, four criteria. They're in chronology,
24 extending from A through D. There's a reason they
25 go in that order, with the first one being legally

1 permissible.

2 Obviously, if the use is not
3 permissible, legally then, you don't have to worry
4 about it being physically possible, financially
5 feasible, or maximally productive. The highest and
6 best use pretty much ends with that first criteria.

7 If you read through there, we
8 identified what the actual zoning is, but there was
9 an extraordinary assumption that the zoning be
10 changed to a PDD to allow for those uses as
11 specified and delineated in that EDSA preliminary
12 master plan that we relied upon.

13 Secondly, physically possible,
14 obviously, with 4,410.96 acres -- and it was
15 decided into three levee sections -- then there was
16 an expanse of land that would accommodate multiple
17 property uses. And we agreed with those particular
18 property uses, specifically with the numbers and
19 the sizes.

20 They had varying sizes. Not all of the
21 single-family lots were the same size. Some were
22 60 feet, some were 80 feet, some were 100 feet, so
23 you would know that you could have a 60-foot-wide
24 development online at the same time as a
25 development with 700-foot-wide lots, because you

1 have different markets and different potential set
2 of purchasers. So our intent was to make sure they
3 didn't compete with one another.

4 But the physical possibility would
5 also -- it was contingent that the levees -- where
6 the levees were improved to certify to FEMA
7 standards and the property was fully developable.

8 We've already identified that the
9 topography was generally level and relatively clear
10 as you saw on the aerial photographs. So that was
11 conducive to subsequent development or usage.

12 Some of it, I think, remained in an
13 area that was subject -- if I remember
14 correctly -- to flooding, but that space could be
15 incorporated into green space.

16 There's a certain amount of green space
17 that is required for all development, so all of
18 that could be incorporated as such.

19 Financially feasible. It becomes
20 financially feasible with our assumption that a
21 multicounty business park would have been
22 established, because that allows that tax-incentive
23 financing district to pay for the spine roads and
24 some of the major infrastructure for the
25 development to come to fruition.

1 And then, obviously, with the expanse
2 of developments that you have and the different
3 property uses, you know, it would obviously be
4 maximally productive to have all of those uses,
5 because it would be much more intensive than for a
6 use under the present zoning.

7 So that pretty much identifies, the
8 determination of the highest-and-best use would be
9 for the implementation of this EDSA plan with the
10 establishment of the multicounty business park, the
11 levees being certified to FEMA's standards, and
12 everything would be on the go for that development
13 to occur --

14 Q. Okay.

15 A. -- excuse me -- those developments to
16 occur.

17 Q. All right, sir. Now, did you note on
18 Page 56 that all utilities were available within
19 the area to provide the services for the
20 implementation of the land use plan, and there were
21 no shortages of the utilities in the area?

22 A. We identified where the sewer mains
23 were in the site description section, if you refer
24 to that. I don't have it committed to memory, but
25 obviously they don't traverse the property, because

1 there's no reason for them to.

2 That would be some of the initial costs
3 incurred with the multicounty business park, would
4 be the -- probably be the trunk lines being
5 installed, running with the spine roads. And then
6 all of the subsequent sewer lines and water lines
7 would be extended to the development when those
8 individual developments would occur.

9 Q. Okay. Now, you also noted under the
10 financially feasible discussion the assumption
11 regarding the multicounty business park financing
12 vehicle for the infrastructure. And I may be
13 jumping ahead just a little bit on this topic, but
14 while I'm thinking about it, let me ask you:

15 Did the multicounty business park
16 financing vehicle provide financing for all of the
17 infrastructure in the proposed project, or just
18 some portion of it?

19 A. Just some portion of it. The
20 initial -- in most developments, you have what they
21 call a spine road, and you will see, in that
22 development, they have the main thoroughfares, the
23 entrance areas, and the spine roads that extend
24 through the development.

25 So, subsequently, the smaller -- you

1 know, if you look at the levee sections where all
2 of the single-family developments are and the
3 multifamily developments are, those developments
4 would have to have water and sewer extended to
5 them. But the major trunk lines would have already
6 been done with the establishment of that park, with
7 the funding of that tax-incentive financing
8 district paying for that, and obviously the bonds
9 subsequently paying off those costs involved with
10 the development.

11 Q. Well, perhaps, if you would, come down
12 here and just show us on this -- what do we call
13 this map?

14 A. Preliminary master plan.

15 Q. Preliminary master plan. What are the
16 kinds of things that would be funded through the
17 multicounty business park financing vehicle, and
18 what are the kinds of things that would not be?

19 A. All right. These major roads here, we
20 call spine roads, just like the spine going up your
21 back and everything coming off of that. Major, you
22 know, turnaround here, just like a traffic circle
23 that you see in some resort developments, all of
24 these would be done.

25 MR. JOHNSON: Your Honor, could I ask

1 for some foundation as to what he's using to base
2 this on? I mean, is this outlined in the land use
3 plan, or is it confirmed anywhere as to what would
4 be part of the multicounty business park, or is he
5 just talking about areas generally that could be?

6 THE COURT: Well, as I recall, he
7 testified earlier on, in regard to Stone, who had
8 done it, his attention was called to this map, and
9 he said he thought that was an appropriate land use
10 plan.

11 MR. JOHNSON: Your Honor, what is in
12 evidence so far is the Master Plan Workbook, which
13 does not -- it was prepared by this group out of
14 Florida that doesn't, I believe, say anything about
15 the conceptual land use plan of Columbia Venture
16 prepared by this group and these drawings. There's
17 nothing to show what the designer said would be
18 covered, so far, if I'm reading these correctly.

19 And in the absence of some evidentiary
20 foundation as to what is envisioned here, I object
21 to it. Wouldn't we have to have that first before
22 he can testify?

23 THE COURT: I wouldn't think so. It
24 seems to me that the plan is almost
25 self-explanatory in regard to what the various uses

1 are.

2 MR. JOHNSON: Your Honor, I don't
3 believe the plan up here -- the master
4 plan -- identifies what's covered by the
5 multipark -- multicounty business park.

6 MR. BECKER: Your Honor, may I respond?

7 THE COURT: Yes, sir.

8 MR. BECKER: And, Mr. Wingard, I would
9 ask you to correct me if I'm wrong, but my
10 understanding of the question that I asked
11 Mr. Wingard and the question that he is answering
12 is for purposes of the appraisal that he conducted,
13 the conservation easement appraisal, what
14 development infrastructure did he assume would be
15 paid for by the multicounty business park financing
16 vehicle and what development infrastructure would
17 not be paid for by that financing vehicle.

18 And so it's my understanding that he is
19 now telling us and pointing out on the map those
20 roads and other aspects of the development
21 infrastructure that would be paid for by the
22 assumption of the multicounty business park
23 financing vehicle in this appraisal.

24 MR. BECKER: Is that correct,
25 Mr. Wingard?

1 THE WITNESS: Yes.

2 THE COURT: All right, sir. So first
3 he should explain what is a multicounty
4 development.

5 MR. JOHNSON: Business development
6 park.

7 MR. BECKER: Okay. I believe he has
8 done that, but let's do it again.

9 THE WITNESS: It's a mechanism for
10 developers to have an establishment of a park to
11 help them with development costs, to support this
12 development by having this tax-incentive financing
13 district, where the money goes to pay for this, and
14 then the bonds are sold and the bonds would pay off
15 whatever those costs of development are. So the
16 costs are not actually incurred by the developer.

17 It promotes the development to occur
18 and it ensures that the development operates, I
19 guess, for lack of a better word.

20 THE COURT: Actually, I'm glad you've
21 clarified that, because I was under the impression
22 you were talking about just that portion that would
23 be, not the residential part and so on, but would
24 be more what I would call industrial development or
25 commercial development. But it expands beyond

1 that?

2 THE WITNESS: That confused me as well.
3 That's a little misleading. It's called
4 multicounty business park because it's usually
5 multiple counties that do this in concert with one
6 another, you know, and share this financing
7 district.

8 This property here, the development
9 costs, initially -- anytime you see a new
10 development being either proposed or under
11 construction, you will see a nice entrance, nice
12 landscaped entrance, main roads going in.

13 The individual roads to the
14 100-foot-wide lots or the 60-foot-wide lots,
15 they're not there yet. They will be done whenever
16 that development comes online, whenever the market
17 creates the demand that that development occurs,
18 not all 60-foot lots will be done at one time,
19 because it's not fair for them to compete with one
20 another.

21 I said earlier, and we try to do this
22 in our disposition of the properties, would be that
23 you may have a section with 60-foot wide lots or
24 one with 80-foot-wide lots.

25 You may have a multifamily, where you

1 have four properties per acre, or six properties
2 per acre, or ten per acre, those would come on at
3 different times.

4 The associated costs of doing the
5 development, extending the water, extending the
6 sewer to each of those parcels, would be paid by
7 the developers at that time. But the main road and
8 the main trunk lines going into the development,
9 are paid for with the multicounty business park
10 tax-incentive financing.

11 THE COURT: All right. So, for
12 example, when you're talking about what you
13 referred to as a spine road, that would be part of
14 the multicounty?

15 THE WITNESS: Yes, sir.

16 Now, I don't know -- I don't have an
17 estimate. And, usually, you know why you don't
18 have an estimate is because whenever the property
19 is being designed and ultimately under
20 construction, it won't all be done at the same
21 time. That would be ludicrous to think that would
22 happen.

23 The market will -- and it could change
24 the design some. You know, some of these
25 properties, they may find out that the 60-foot lots

1 sell better than the 100-foot lots, so guess what,
2 they'll build more 60-foot lots, because the market
3 has created that demand and has told them that
4 that's what they need to do.

5 So the plan -- that's why they call it
6 preliminary, because it is subject to change,
7 according to market conditions and market
8 reactions, what actually sells.

9 Like a condominium project, people
10 build condominium projects with one, two, and three
11 bedrooms, and somebody says, Why are you building
12 them with three bedrooms? They all should be two
13 bedrooms, and then they go do the development and
14 three bedrooms sell first. So the next phase,
15 guess what, they have more three bedrooms. You
16 react to the market, if you want to be successful.
17 So I don't know what the cost would be for that.

18 BY MR. BECKER:

19 Q. Okay. Well, let me just --

20 MR. JOHNSON: I think we had an
21 objection on the floor. I urge, either, the Court
22 question the witness, or allow him to be questioned
23 about his -- or require him to be questioned about
24 his personal knowledge, background, and experience
25 with multicounty business parks, to his experience,

1 when they're formed, how many are formed and -- you
2 know, it requires cooperation among governmental
3 entities and private industry, and what percentage
4 actually happened before he gives opinions about
5 any kind of reasonableness of assuming that you
6 could put together at some point that kind of big
7 park and this development.

8 THE COURT: Well, I think it's -- I
9 don't think that the objection is to admissibility
10 of that type testimony. I think that goes to the
11 weight, and I think that's why it's a matter for
12 cross-examination, rather than a matter of
13 admissibility.

14 He's been qualified as an expert with
15 regard to developments. He's testifying in regard
16 to those developments, and I think it's a matter of
17 cross-examination going to the weight, not to the
18 admissibility of the testimony.

19 MR. JOHNSON: Your Honor, I would urge
20 you to consider that it goes to the reliability and
21 call on you for your gatekeeper role.

22 Suppose he gives all of these opinions
23 about these parks, and on cross-examination he
24 says, Well, I've never even actually seen one put
25 together, never had any experience with it, et

1 cetera, et cetera.

2 His opinions would be totally
3 unreliable. It's a reliability issue first, and,
4 then, if you decide that it's got those four
5 factors we look at on reliability, and you're
6 satisfied that it rises to the level of being
7 reliable, then we cross.

8 But it just seems to me, the Court -- I
9 think the case teaches that the first function is,
10 Is he an expert and is it reliable, and I would
11 ask that we --

12 THE COURT: Well, sir, my
13 interpretation of that is that once he's qualified
14 him as an expert in regard to this development area
15 relative to his appraisals of the highest-and-best
16 use, then the witness can testify and then the,
17 quote, reliability -- which is really the same
18 thing as the weight to be afforded the evidence by
19 the fact finder -- is a matter to be challenged on
20 cross-examination, or simply through listening to
21 the witness.

22 So I overrule your objection.
23 Go ahead, sir.

24 MR. BECKER: Thank you.

25 BY MR. BECKER:

1 Q. Now, Mr. Wingard, I just want to
2 summarize, go back through a few things just to
3 make sure we're all clear.

4 Now, when we're talking about a
5 multicounty business park, there was no multicounty
6 business park that was part of this EDSA land use
7 plan, was there?

8 A. No, sir.

9 Q. Okay. The multicounty business park
10 that we're talking about would be established
11 otherwise, and it would provide a financing vehicle
12 for infrastructure in this project. Is that
13 correct?

14 MR. JOHNSON: Object to the leading.

15 THE WITNESS: Yes, that's exactly what
16 it does.

17 BY MR. BECKER:

18 Q. Okay. And your valuation opinion of
19 the property provided -- accounted for that
20 financing vehicle for the spine roads shown on the
21 property that you have pointed to earlier.

22 MR. JOHNSON: Object to the leading.

23 BY MR. BECKER:

24 Q. Is that right?

25 A. Yes.

1 THE COURT: Well, I think right now
2 he's just repeating what the witness has already
3 testified to.

4 Go ahead, sir.

5 MR. BECKER: I'm just trying to make
6 sure everybody is on the same page.

7 THE COURT: Go ahead, sir.

8 BY MR. BECKER:

9 Q. And that other infrastructures, such as
10 roads and utility lines that would lead into these
11 parcels, for example, in orange on the land plan
12 and into some of the green areas, those roads and
13 utility lines, those secondary roads and utility
14 lines, in your valuation assumptions, who would pay
15 for those roads and utility lines, the secondary
16 ones?

17 A. They're paid by the developer. And as
18 a result, that's a deduction as development costs
19 in those cash flows from the sale of the units, or
20 homesites. So that's a deduction from the sale of
21 each of the properties within each of the parcels.

22 Q. All right. That's what I wanted to
23 know. Thank you.

24 A. Had there been no assumption that a
25 multicounty business park would be established,

1 then all of that infrastructure cost, we would have
2 to know what that is, because that would be
3 deducted from the development.

4 It would be part of -- it would be
5 factored into all of the parcels with additional
6 costs of development.

7 Q. All right. Now, again, talking back
8 about the financially-feasible analysis of the
9 highest-and-best use, if the multicounty business
10 park financing vehicle did not come to fruition,
11 did you assume and did you believe that the members
12 of Columbia Venture, LLC, had the financial
13 capability to proceed with the development in the
14 absence of that multicounty business park financing
15 vehicle?

16 A. Yes, I did.

17 Q. And what was the basis for that belief?

18 A. Well, you had Burroughs & Chapin,
19 Lockwood Greene, and Carolina First.

20 At that point, Carolina First was the
21 largest state-headquartered bank in South Carolina.

22 Burroughs & Chapin has had expertise in
23 doing large developments. I'm not so sure they
24 have done one on 4,500 acres. They've done large
25 developments in Horry County and been relatively

1 successful in doing those.

2 So with those three, I guess, entities
3 being part of Columbia Venture, I was -- you know,
4 I felt relatively comfortable that the development
5 could proceed, even without the multicounty
6 business park.

7 Q. Okay. Now, as far as the maximally
8 productive portion of the highest-and-best-use
9 analysis on Page 57, you conclude:

10 In terms of the maximum productive use
11 of the site and contribution of the site in terms
12 of return on investment is considered. Due to the
13 subject property's strategic location and proximity
14 to the University of South Carolina, City of
15 Columbia and major interstates and thoroughfares,
16 as well as airports, the maximum productive use
17 would reflect the subsequent developmental usage in
18 accordance with the submitted EDSA land use plan.

19 The large expanse of acreage provided
20 by the subject is rather unique in most urban
21 areas, and especially in the City of Columbia,
22 relative to allowing for such developmental usage
23 to occur in an orderly and patterned fashion.

24 Did I read that correctly?

25 A. Yes, sir.

1 Q. Now, in your opinion, would there be
2 any more maximally productive use for the subject
3 property than a land use similar to, if not
4 identical to, the Preliminary Master Plan for the
5 property that was prepared by EDSA?

6 A. Not to my knowledge, no.

7 Q. All right. Now, I want to move next to
8 the appraisal methodology that you employed for the
9 valuation before the placement of a conservation
10 easement or the assumed regulatory taking. And
11 that begins on Page 58.

12 And I would like you to please -- I
13 know appraisers typically use three approaches to
14 estimate the value of real estate. Describe those
15 briefly and then tell us about the approach you
16 used in this appraisal assignment.

17 A. Well, we employ two approaches, and
18 they work in concert with one another.

19 The primary methodology would be the
20 income approach, whereby the individual parcels are
21 valued based on the number of units contained
22 within each parcel and how much we thought the
23 individual homesites would cost or be worth or what
24 the value would be, and then we provide a sellout
25 of these over a finite time frame. And then those

1 cash flows from the sell of those units are what
2 they call discounted to a net present value.

3 And that's like -- it's a developmental
4 approach, basically, and that's how you get to the
5 value of each of those parcels or tracts and
6 related developed parcels within each one.

7 If you read the report, they're
8 identified as like Parcel 23, Parcel 24, and each
9 of those parcels have multiple sites within them,
10 multiple lots, or multiple properties. So you have
11 different disposition times for each of those.

12 However, the sales comparison approach
13 is related to this income approach, in that, in
14 order to determine what the value would be, you had
15 to compare it to other sites in the area to see
16 what the ultimate value would be. You just didn't
17 arbitrarily say 100-foot lot would be worth
18 \$60,000. We looked at other sold properties or
19 other sold homesites in the area and did a
20 comparison procedure. So those two properties are
21 related.

22 Now, you have to remember, we're doing
23 the conservation easement valuation. So even
24 though the property has not been put to its
25 highest-and-best use does not mean that we can't

1 value it accordingly. And that's what we did.

2 Q. All right, sir. I would like to ask
3 you to just read that paragraph, the second full
4 paragraph up at the top of Page 59. Would you just
5 read that.

6 A. The second paragraph on Page 59?

7 Q. Yes, sir.

8 A. In the valuation of the subject
9 property before the conservation easement, the
10 applicable approach to value will consist primarily
11 of a developmental approach for the numerous
12 parcels contained within the specified property
13 uses to be developed within the Green Diamond
14 project.

15 Before the developmental approach is
16 implemented, a sales comparison approach is
17 typically completed in order to determine
18 applicable unit/lot prices to coincide with the
19 conceptual plan for development.

20 The developmental approach will consist
21 of a determined absorption time for the planned
22 number of units or lots.

23 The associated costs to dispose of the
24 units or lots over a determined absorption time
25 frame will be deducted as well as the cost of the

1 development, administrative costs, real property
2 taxes, and marketing and sales commissions.

3 Entrepreneurial profit will also be
4 deducted and the underlying net present value of
5 the cash flows will reflect the estimated market
6 value of the subject property relative to this
7 conceptual developmental design.

8 Q. All right, sir. Now, is this what you
9 refer to here as the developmental approach also
10 sometimes called, in the appraisal profession,
11 subdivision valuation approach?

12 A. Well, that's how you do a subdivision.
13 I'm not sure they call it a subdivision approach,
14 but that is the methodology that you would employ
15 in valuing a subdivision, because it's really the
16 same thing. You're taking the sale of the lots
17 over a finite time frame and discounting the cash
18 flows from those sales to a net present value.

19 Q. Okay.

20 A. It's the right to receive cash, in the
21 future, discounted back to the present. Very
22 simple.

23 Q. All right, sir. Have you used this
24 same methodology in other appraisal assignments?

25 A. Yes. We used it extensively before

1 1986 where we did a lot of condo projects.

2 Q. Okay.

3 A. And that would be how you would value
4 the condo projects.

5 Q. All right. About how many times have
6 you used this approach in valuing property over the
7 years?

8 A. Over 38 years, probably 200, 250 times.

9 Q. All right. So this is not a -- is this
10 an accepted approach within the appraisal industry?

11 A. Yes, sir.

12 Q. All right. And is it -- is it condoned
13 by reputable standards and guidelines within the
14 appraisal industry?

15 A. It is. And the banks would be looking
16 for a similar appraisal methodology, if they were
17 loaning money on a proposed subdivision.

18 Q. And now, how about -- I know you had
19 prior experience utilizing this appraisal approach
20 in past work.

21 Had Mr. Van Sant also had previous
22 experience prior to the time of this conservation
23 easement appraisal in utilizing this approach to
24 value properties?

25 A. Yes, sir.

1 Q. I would just like to have you show, by
2 reference to the appraisal, how you utilize this
3 methodology in valuing a particular proposed use
4 within the EDSA land development plan.

5 And let's start with the -- a
6 single-family residential use. And if you could,
7 explain to Judge Smith how you may have utilized
8 that discounted cash-flow analysis for a particular
9 parcel as an example.

10 I believe the
11 single-family -- valuation of the single-family
12 residential lots begin on Page 61, so if you could
13 just please walk Judge Smith through kind of how
14 you might go about that on a typical single-family
15 residential area within the EDSA land plan.

16 Q. Okay. If you look on Page 61, we have
17 identified what the master land plan has proposed
18 for the number of single-family residential
19 developments, and the majority were in Levee
20 Section Number 1.

21 The first thing we did was determine a
22 lot or unit valuation. I don't want to have to
23 read through this whole thing; but in a synopsis,
24 we are comparing our determination of an individual
25 lot value or unit to other properties in Columbia,

1 and we've cited several developments --
2 subdivisions, if you want to call them, but I like
3 to call them developments -- that have lots that
4 sold during this time frame.

5 It's Very unusual for a subdivision to
6 come online and all of the lots are sold. As you
7 will see, some lots are being built on, while
8 others remain vacant. That's because they haven't
9 been disposed of or absorbed yet.

10 So what we did was, first of all,
11 determined what the lots would be worth, if they
12 all were developed today.

13 And these first couple pages will
14 identify the properties or the other developments
15 in Columbia that we compared to the single-family
16 developments in Green Diamond.

17 And if you look on Page 67, you will
18 see a table with all of these developments, and
19 they will give a typical lot size, or a lot size
20 range. They will give you the vertical product,
21 which is the house prices.

22 Sometimes you can get a vertical
23 product and determine the lot value based on what
24 is considered to be standard land-to-building value
25 ratios.

1 A typical single-family
2 land-to-building ratio is 4 to 1, meaning, a 4-to-1
3 or 3-to-1, depending on the demand for the lots,
4 meaning that the lot value could be worth anywhere
5 from 20 percent to 25 percent.

6 Or if you were on the coast or you're
7 on the beach, then you would know that the lot
8 value has a higher ratio to the total property
9 value because of the demand for those type of
10 properties. So that's what that table represents,
11 is how we determine what the value of the
12 individual lots were.

13 And, also, almost as important, would
14 be the absorption, how long did it take to sell
15 these lots.

16 So all of the rest of the pages will
17 identify each of those developments and whether
18 they had patio homes or the individual sizes of the
19 lots.

20 Now, on Page 81, these are the
21 individuals that we talked to and spoke with in
22 order to determine development costs, what would be
23 a reasonable development cost for each of the type
24 inventory that we had. They're all developers.

25 So after we had reasonably felt

1 comfortable that we had what would be the
2 absorption for the majority of these units -- or
3 homesites, or lots, whatever you want to call
4 them -- how much they would sell for per unit type,
5 then we applied the developmental approach, and
6 that's what you see on the next page, page -- it's
7 not numbered, but it should be -- it's not
8 numbered, because in 2002, we didn't have a scanner
9 to scan all of this stuff, so we just inserted it.
10 But that's what they call a discounted cash flow,
11 and it's right across from Page -- right after Page
12 85.

13 And this would be a single-family
14 development. Parcel 8-A would be the first one,
15 and we say it's one of nine proposed residential
16 developments located in the Green Diamond project,
17 and the total acreage size for this project is
18 18.69 acres. We identify where it's located.

19 This one was located in proximity to
20 the proposed golf course, so you would think that
21 lots would probably be worth more with the
22 same -- if they were the same size as another lot,
23 not located proximate to a golf course. And the
24 lots range from 9,000 square feet to 9,500 square
25 feet.

1 We determined these lots to be worth
2 \$60,000 each because of the lots that were located
3 near the golf course or on the golf course, and we
4 identified how we came up with that from other golf
5 course-type lots in the Columbia market.

6 The discounted cash-flow analysis, you
7 will see a series of the 75 total lots in this
8 development. Because this was the first
9 development, we were a little aggressive in the
10 disposition time. It's like anything that's new,
11 there's a tendency for those lots to sell
12 relatively quickly, in addition to it being located
13 on or near the golf course.

14 So the series of cash flow is telling
15 you in what years, how many units would sell, and
16 how much. And we thought that, because of this
17 being a new project, that we could expect
18 appreciation of about 2.5 percent, because that's
19 what the other lots in the Columbia market were
20 experiencing during their particular sellout.

21 And then you see on the other lines in
22 the cost of sales, there's deductions from what
23 it's going to take to sell these units. You've got
24 marketing and sales commissions, development costs.
25 That's what I alluded to earlier, what it costs to

1 bring in the sewer, and the water from the main
2 trunk lines that were installed as a result of the
3 funds from the multicounty business park
4 establishment.

5 Q. Could I interrupt you. Would that also
6 include the secondary roads?

7 A. That would include the secondary roads,
8 what we call the subdivision roads. The road,
9 curbs, subdivision roads, what have you.

10 And we got those development costs from
11 the developers. We're not developers. I have
12 never developed a subdivision. But we relied on
13 those numerous developers, that that's what they do
14 every day.

15 Q. So in this particular 75-lot
16 development, you included \$990,000 worth of
17 development costs for roads, water, and sewer
18 lines, utility lines?

19 A. Right. And that's going to occur
20 initially. Now, you're going to put those in there
21 for -- and then you have your lots ready to sell.

22 I mean, you can't sell a lot if
23 somebody is happening to ride down an unpaved road.
24 So the roads are in, the lots are platted, you're
25 in business to sell lots. So that's that concept.

1 Q. And then you get down here and you've
2 got a total cost of sales for each of those years,
3 and we said that it would take about two-and-a-half
4 years to sell out those 75 lots. At that time,
5 that was reasonable.

6 Probably now it wouldn't be, but in
7 2002 we felt -- based on what the other
8 developments in the Columbia market were
9 demonstrating, we felt comfortable that was
10 reasonable.

11 Then you have the net income from each
12 of those sales and then you take out the profit.
13 Profit is delineated as a separate line item here.
14 A lot of people will include the profit in the
15 discount rate.

16 If you do that, then your discount rate
17 is 23 percent, instead of a 10-percent discount
18 rate in a separate profit delineation. Either way,
19 it's easier for me to explain it that the discount
20 rate would be what the rate of return was, 10
21 percent. 10 percent in 2002 was very reasonable
22 for this type development.

23 It wouldn't be now, just because of the
24 tightening of credit markets and other -- and
25 market conditions have not been good over the last

1 several years.

2 Q. Is that the discount rate that you
3 utilized throughout this appraisal?

4 A. It is. That's what we used to convert
5 those future income streams to a net present value.

6 Q. All right, sir.

7 A. And from that net present value, you
8 deduct the profit. And then that gives you the
9 value of that 18.69 acres. If you wanted to buy
10 that 18.69 acres, that's what you would pay for it
11 in order to sell those 75 lots over 2-and-a-half
12 years and get a 10-percent return and get a profit
13 of 13 percent. That's what that concept relates
14 to.

15 Q. All right. Well, who would get the
16 profit on that line?

17 A. The developers, Columbia Venture.

18 Q. So in other words, then, you're saying
19 the developer would develop this little 75-lot
20 subdivision and take out a total of \$312,000 in
21 profit. Is that right?

22 A. Right.

23 Q. And then there would be cash flow left
24 over after that profit --

25 A. Well, he would get \$312,000 the first

1 year from the sale of those lots. You've got a
2 partial year where you sell 40 units the first
3 year, 20 the next, and then 15.

4 Remember what I said, initially,
5 there's a higher sales activity when something is
6 newly exposed to the market.

7 Q. All right.

8 A. It curtails at the end of the
9 development.

10 Q. So are you saying -- and correct me if
11 I'm wrong, but I just --

12 MR. JOHNSON: Your Honor, this is going
13 to be a leading question, I know it. I have heard
14 them all day.

15 THE COURT: I'm going to allow him to
16 go ahead and ask it.

17 BY MR. BECKER:

18 Q. Are you saying that in this analysis,
19 the developer would have received a profit of
20 approximately \$600,000 for developing this 75-lot
21 subdivision?

22 A. Yes, sir.

23 Q. And then there would have been other
24 cash flows left over after that, that you
25 discounted to present value?

1 A. Yeah, throughout the whole development.

2 Q. Okay.

3 A. Now, you have to remember, we're doing
4 this for the entirety of the development to total
5 disposition, because this is representative of the
6 Columbia Venture's distinct investment-backed
7 expectations for this property.

8 They were not in a conservation
9 easement. You don't value it as if they're going
10 to hold it for two years and then flip it over and
11 try to make a profit. This is what they had spent
12 the money on to implement and realize those
13 investment-backed expectations.

14 Q. So would the present value of those
15 proceeds of \$2,264,000 -- that would be cash flow
16 from the development activity that would be in
17 addition to the approximately \$600,000 of profit
18 that would have gone to the developer.

19 A. That's actually the value of the land.
20 That's the value of the land. That's what you
21 would expect to pay for that site to do this
22 development, sell those lots for that amount and
23 get a 10-percent return, 13-percent entrepreneurial
24 profit, take out your development costs, and that's
25 what you expect to pay for that.

1 Q. Okay. All right.

2 A. That values the land. It's a series of
3 partial valuations, and the summation of that is
4 how you got that 142 million dollars.

5 But, remember, you're taking out
6 through the duration of that plan, and we went as
7 far as 15 years in disposition because of the
8 number of homesites that are available and proposed
9 by this development.

10 Q. So just so I'm clear, the
11 entrepreneurial profit --

12 A. Goes to the developer.

13 Q. -- goes to the developer before the
14 cash flows that come after that are discounted to
15 present value?

16 A. Yes.

17 Q. So, then, did you perform this same
18 analysis then, a similar analysis, for all of the
19 other single-family residential development areas
20 in the EDSA land development plan that are set
21 forth on Page 61?

22 A. Yes, sir.

23 Q. So you would have repeated this same
24 analysis --

25 A. (Nodding.)

1 Q. -- for each of those --

2 A. It should be nine.

3 Q. -- nine?

4 A. Yeah.

5 Q. Okay.

6 A. And that was what we did with all of
7 the projects. Other than a school
8 site -- obviously, there would be no discounted
9 cash flow for a school site. They would sell later
10 on whenever it was time for a school to be built
11 with the development of the single-family homes.

12 THE COURT: May I interrupt one second.
13 I'm trying to keep up here. What did you say the
14 PV factor was?

15 THE WITNESS: Present value.

16 THE COURT: Present value.

17 THE WITNESS: That's the right to
18 receive money in the future, what's it worth today.
19 If you're going to receive \$6 two years from now,
20 it's not worth \$6 today. It's going to be worth
21 something less than that.

22 THE COURT: And, of course, under cost
23 of sales, the reason you had the 990 is that when
24 you're developing the lots, you do all of the
25 lots --

1 THE WITNESS: Yeah.

2 THE COURT: -- at the same time.

3 THE WITNESS: That's why it comes out
4 that first year. Remember what I said, is,
5 whenever you -- they're selling these 75 lots.
6 It's like a subdivision.

7 THE COURT: Yeah.

8 THE WITNESS: The concept of a
9 subdivision is that all of the lots have been
10 developed. If somebody has got a sign saying for
11 sale by owner where you buy the subdivision -- but
12 we know subdivisions don't sell like that
13 typically; subdivisions sell based -- or worth --
14 based on this same concept here.

15 If you were buying a subdivision, you
16 want to know how long it's going to take you to
17 sell those lots, or how much, what it's going to
18 cost to sell them, before you offered to pay any
19 money for that land. And that's what this concept
20 represents.

21 BY MR. BECKER:

22 Q. Mr. Wingard, if you look at the page
23 of -- that graph -- the discounted cash-flow
24 analysis we've just been going over that follows
25 Page 85 in the conservation easement appraisal, the

1 very next page is a drawing called the Parcel 8
2 master plan.

3 Is that actually the sort of graphical
4 representation of the subdivision development that
5 you just valued?

6 A. That's exactly what it is. If you look
7 at that document -- I don't think that's Parcel
8 9-A.

9 Q. It says Parcel 8.

10 A. Okay. If you put -- well, it's the
11 same thing.

12 You will see the spine roads that have
13 already been extended through there. Those other
14 roads coming off, that would be included in those
15 development costs for those individual homesites.

16 Q. Okay. Well, let's point this out for
17 Judge Smith's benefit, using that laser pointer.

18 Show what would be a spine road and
19 what would be a secondary road.

20 A. There's your spine road. Traffic
21 circle, probably. These would be your other roads
22 taking you to your development. And you may even
23 have ponds or lagoons in there. With this type
24 development, it's not really that specific in order
25 for you to determine exactly what the exact cost of

1 that lagoon would be, but that just comes with that
2 preliminary plan.

3 But you know that this -- for Parcel
4 9-A, they had it designed for 75 lots, and most of
5 it is on the golf course.

6 Q. I think that's Parcel 8.

7 A. I know, but I'm saying -- can you put
8 up Parcel 9-A? There we go.

9 All of those 75 lots would be centered
10 around these interior roads here on the golf
11 course. That's why they're \$60,000.

12 MR. BECKER: Your Honor, we're at a
13 little after 5:15. This may be as good a place as
14 any to stop for the day, unless you would like for
15 me to keep going.

16 THE COURT: Are you going to be through
17 in about ten minutes?

18 MR. BECKER: No. I've still got a ways
19 to go with him.

20 THE COURT: All right. We will go
21 ahead and recess and begin again in the morning at
22 ten o'clock. Or would you prefer to begin earlier?

23 MR. JOHNSON: That works for me, Your
24 Honor.

25 THE COURT: All right. Then we'll be

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND
3
4 Columbia Venture, LLC,
5
6 Plaintiff,
7 vs. CASE NO. 2010-CV-40-8943R
8 Richland County,
9 Defendants.

10 PROCEEDINGS: TRIAL - VOLUME IX
11 (Pages 1591 through 1804)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: September 19, 2012
14 TIME: 10:02 a.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
17 Columbia, SC
18 REPORTED BY: Susan M. Valsecchi, CRR
19 Registered Professional Reporter
20

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1 THE COURT: All right. Anything before
2 we get underway here this morning.

3 All right. If not, then, Mr. Becker,
4 you may proceed.

5 Sir, Mr. Wingard, resume the stand.
6 Obviously, you're still under oath.

7 THOMAS F. WINGARD
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION (CONTINUED)

10 BY MR. BECKER:

11 Q. Good morning, Mr. Wingard.

12 A. Good morning.

13 Q. We left off yesterday and we had been
14 discussing Plaintiff's 394, which is the complete
15 self-contained appraisal report dated November 6th
16 with an effective date of October 15, 2002.

17 It is what we have been referring to
18 and will continue to refer to as the conservation
19 easement appraisal.

20 We were on page -- the table that
21 follows Page 85, and I would like to pick up back
22 there and ask you a few more questions about that,
23 about that table, because -- it's my understanding
24 that you used, essentially, the same analysis to
25 value all the other parcels that were contained

1 within the EDSA Land Development Plan.

2 Is that correct?

3 A. Not necessarily. All of the parcels
4 that had distinct planned units are homesites.
5 There were some acreage parcels that were going to
6 be left as acreage parcels, and we valued those,
7 but we did discount those as a determination as to
8 when we could reasonably expect those acreage
9 parcels to be sold.

10 Q. Okay.

11 A. You know, obviously, if you had ten
12 acreage parcels, they won't all be sold on the same
13 day, so we staggered those sales period for those
14 and discounted those at the same rate.

15 Q. All right. And I want to just make
16 sure we completely understand what you were doing
17 here.

18 As you say up in the table, up at the
19 top, you -- you subtracted a developer's profit of
20 13 percent from the net proceeds after deducting
21 cost of sales; is that correct?

22 A. Yes, sir.

23 Q. And so that left net sales proceeds
24 after deducting the developer's profit?

25 A. Yes.

1 Q. And that profit would go to a
2 developer; is that right?

3 A. Yes, absolutely.

4 Q. It could have been Burroughs & Chapin
5 or -- in this case, it would have been -- it would
6 have been Columbia Venture, right?

7 A. It would have been Columbia Venture. I
8 testified yesterday that in some analyses like
9 this, you will see the entrepreneurial profit
10 included in the discount rate, and it would not be
11 a separate line item that would be deducted from
12 the cash flows.

13 In the event that you did that, then
14 your discount rate would be significantly higher to
15 incorporate that developmental profit in there.

16 For instance, if we wanted to take out
17 the profit here and include it as a discount rate,
18 then we would probably be discounting it to 23
19 percent, which would be the summation of the profit
20 and the discount rate. But you would get a value
21 conclusion that would be eerily similar.

22 Q. Have you got your calculator with you?

23 A. I've got one in my briefcase.

24 Q. Could I hand it to you?

25 A. Sure.

1 Q. Because I would like you to, just for
2 illustrative purposes, add a few numbers for us
3 that aren't added on those schedules.

4 Add up the three years of
5 entrepreneurial profit that would have gone to
6 Columbia Venture for this particular parcel.

7 A. \$594,823.

8 Q. Okay. And that's the profit earned
9 during the years of 2002, 2003, and 2004; is that
10 right?

11 A. Correct.

12 Q. All right. And so after that's
13 deducted, you have a line called net sales
14 proceeds. Is that right?

15 A. Correct.

16 Q. And that would be the cash flow going
17 to --

18 A. The development.

19 Q. -- the developer?

20 A. The development and subsequently to the
21 developer.

22 Q. To the landowner?

23 A. Yes.

24 Q. Okay.

25 A. Whomever is doing the development,

1 that's his cash flow.

2 Q. Okay. Add up those three numbers, net
3 sales proceeds, for years 2002, 2003, 2004.

4 A. \$2,713,923.

5 Q. Okay. So those would be the gross cash
6 flows that would go to the landowner over that time
7 period?

8 A. Yeah, the future cash flows. It would
9 be present and future cash flows for the first
10 year, second year, and third year.

11 Q. All right. And so then the number of
12 2 million 264 is the -- what is it?

13 A. It's the present value of the net
14 proceeds. Meaning, it's the discounted value for
15 each year of those cash flows.

16 Q. All right.

17 A. If you notice on the present value
18 factor, that's just the discounting factor annually
19 at 10 percent. So, obviously, as you would expect,
20 the present value factor declines every subsequent
21 year into the future in order to reduce the value
22 to bring the monies received in the future to a
23 present value.

24 Q. Okay.

25 A. It's just a time value, a money

1 timestamp.

2 Q. Okay. So the future cash flow -- the
3 sum total of all of the future cash flows for this
4 parcel was how much again?

5 A. 2 million 264.

6 Q. No, no.

7 A. Oh, \$2,713,923.

8 Q. Okay. Subtract 2 million 264 from
9 that.

10 A. Roughly \$460,000.

11 Q. Okay. So all the future cash flows
12 from developing these 75 lots, the cash
13 flows -- future cash flows after subtracting
14 entrepreneurial profits, that would go to the
15 developer -- are how much more than the present
16 value of those cash flows?

17 A. About \$460,000.

18 Q. Okay. So if I were an investor in land
19 and real estate development and I was there in 2002
20 and I was willing to invest in real estate
21 development and get a 10-percent return on my
22 money, what would I be willing to pay to own the
23 land that Columbia Venture would develop in Parcel
24 8, represented right here?

25 A. It would be \$2,264,000.

1 Q. Okay.

2 A. That's the value of the land for that
3 parcel, assuming that you go three full years for
4 disposition of those 75 lots and the lot values are
5 at \$60,000 and they increase every year at 2.5
6 percent. We had that at a reasonable appreciation
7 rate for the lots, and the cost of sales are what
8 we say they are and the profit at 13 percent,
9 that's what that land would be worth to do that
10 development under that scenario.

11 Q. All right. So assuming all of the
12 assumptions you have made in the appraisal, and
13 assuming all of your other assumptions were
14 reasonable and your market absorption period was
15 reasonable and your lot sales prices were
16 reasonable and accurate -- an accurate prediction
17 of what would happen in the future -- then as an
18 investor, a purchaser of Parcel 8-A, with 75
19 lots -- and I'm willing to get a 10-percent return
20 on my money -- theoretically, I would be willing to
21 pay \$2,264,000 for those 75 lots?

22 A. Yes, for that area that would contain
23 75 lots, absolutely.

24 Q. Okay. Now, let's say I wanted -- I
25 wasn't satisfied with the 10-percent return and I

1 wanted to earn 12 percent on my money, what would
2 happen? What would I be willing to pay?

3 A. You would pay less.

4 Q. Okay. I would pay less than 2 million
5 264?

6 A. Yes. And, conversely, if you wanted to
7 earn more -- I mean, if you wanted to earn more,
8 you would pay less for it because the discounting
9 would be higher. The present value factor is
10 higher, so it would reduce that present value. It
11 would reduce the future value to a lower number, so
12 you would expect to pay less.

13 Q. Let's say I had a high degree of
14 confidence in the predictions assumed in this
15 appraisal, and I was willing to accept an 8-percent
16 return on my money.

17 How would that affect the price I would
18 be willing to pay?

19 A. You would be willing to pay more.

20 Q. More than \$2,264,000?

21 A. Yes.

22 Q. All right, sir. So I think I
23 understand how you did it on the single-family
24 residential.

25 Did you follow the similar -- did you

1 follow the same methodology for all of the other
2 single-family residential parcels in the EDSA Land
3 Development Plan?

4 A. Yes.

5 Q. Did you use the same discount rate?

6 A. Yes.

7 Q. Did you use the same entrepreneurial
8 profit rate of 13 percent?

9 A. Yes.

10 Q. I would like you to show us -- if you
11 would, let's move to page -- what is Page 95 in the
12 appraisal and describe the process you went through
13 for all of the multifamily residential developments
14 in the Green Diamond project.

15 A. Well, we utilize the same methodology
16 and same procedure as we did in the single-family
17 development parcels, same discounting, same
18 determination. Obviously, we have different sales
19 that we use because we have multifamily sales, as
20 opposed to single-family lot sales.

21 Q. Let me ask this question: With these
22 multifamily tracts, parcels, who is the buyer for
23 those? Is it John Q. Homeowner, or is it somebody
24 else?

25 A. Well, if the developer or owner -- if

1 Columbia Venture decided to sell some of these
2 parcels, it would be an apartment builder, an
3 apartment developer, a townhome developer, somebody
4 of that -- that does that type property, that real
5 property type.

6 Q. Okay. So there were, what, is
7 that -- how many -- how many multifamily
8 residential parcels were contained in the EDSA Land
9 Development Plan?

10 A. Seven.

11 Q. Okay. And they totaled 269 acres --

12 A. Right.

13 Q. -- and were planned for a density of
14 2,741 living units?

15 A. That's correct.

16 Q. It looks like four of them were in
17 Levee Section I, and three of them were in Levee
18 Section II?

19 A. Right. The number of acres and the
20 number of units would reflect a density of about
21 ten units per acre, which is reasonably classified
22 as a minimum-type density.

23 A lot of the density in Richland County
24 is 16.4 units per acre, so you can see that the
25 plan incorporates not really a high density area

1 but about a medium density.

2 Q. Right.

3 Walk us through just briefly, if you
4 would, those comparables that you used to calculate
5 the sales prices and absorption rates.

6 A. Okay. These, I think, the --

7 Q. Does that begin on Page 98?

8 A. It does. There were nine sales of
9 parcels or tracts for multifamily developmental
10 usage.

11 They ranged in size. As you can see,
12 the sizes varied because we had varying sizes for
13 the parcels designated within Columbia Venture. We
14 had a small one for 1.13 acres, and then I think it
15 went up to 47 acres. Yes.

16 Q. For your comparable sales?

17 A. Right, yes.

18 Q. Okay. And then on Page 108, it looks
19 like you discussed the absorption period. Just
20 walk us through those tables on 108 and 109.

21 A. Well, you like to get an idea of what
22 the market can annually absorb in terms of new
23 inventory. So if you had where they were not
24 absorbing any units, then Columbia Venture would
25 not build multifamily developments on the onset,

1 until supply and demand got more in balance where
2 there was a demand for the multifamily units and
3 there was not a supply, so they could provide the
4 supply.

5 So looking at the units that were
6 absorbed, that's how we determined our absorption
7 on Page 109.

8 Q. All right, sir.

9 A. As you can see, it's staggered
10 throughout -- through 2010, ten years of that
11 development, to completely absorb all of those
12 units within the, I think, seven parcels that was
13 designated for multifamily developmental usage.

14 Q. Okay. And in that chart on Page 109,
15 it looks like you assumed that two of those
16 multifamily parcels would be sold in bulk to some
17 other developer. Is that right?

18 A. Yes.

19 Q. The other parcels would have been
20 developed by Columbia Venture?

21 A. As you would notice also, you will see
22 that the frequency of the absorption is a little
23 bit higher on the front end, as is the situation
24 with any new development. You know, any new
25 restaurant, any new bar, when it's first

1 introduced, there's a high intensity of sales, as
2 opposed to the back end.

3 And, also, you have less desirable
4 sites usually on the back end, as well, so it may
5 take longer to dispose of those.

6 Q. I see, thank you.

7 Okay. And then it looks like on Page
8 113, you, again, list the local contractors,
9 developers, et cetera, for whom you consulted
10 regarding the development costs for the multifamily
11 parcels.

12 A. Yes.

13 Q. Then take this -- let's just look at
14 the first -- at your discounted cash-flow analysis
15 that follows Page 116.

16 It looks like there you were valuing
17 Parcel 2. It says on Page 116:

18 Parcel 2 is one of seven proposed
19 multifamily residential developments located in the
20 Green Diamond project.

21 This one is located in the northern
22 portion of Levee Section I. Is that right?

23 A. Yes.

24 Q. It contained 30.33 acres and designated
25 for a density of 12 developable units per acre or

1 359 planned units.

2 A. Right.

3 Q. Is that right? Okay.

4 So let's look at the schedule or table
5 that follows that page.

6 A. Mr. Becker, let me clarify something.

7 Q. Yes.

8 A. On developments like this when you
9 identify multifamily, you're not always identifying
10 apartment projects, as we know, for rental. This
11 would be townhomes. What it's saying is that
12 there's a higher density of the units on a tract,
13 as opposed to a single-family house on a 100-by-200
14 lot.

15 Q. I see.

16 A. Okay. So that's why on the unit price
17 of \$15,500, obviously an apartment wouldn't sell
18 for that if you would sell the apartment; that
19 would be for rental. And that's not what this
20 development is about. There might be some that
21 would be subject to rental after somebody bought
22 them.

23 Q. All right.

24 A. That would be dependent upon the
25 homeowners association for each of these

1 apartments.

2 Q. So would these be something like maybe
3 patio homes or zero-lot-line homes?

4 A. Yes, that's exactly what it is.

5 Q. Well, uh -- and, obviously, we don't
6 need to go through this in quite the same detail as
7 we did in the previous one, but just walk us
8 through a little bit, again, what you did here.

9 A. Well, it's the same premises as on the
10 single-family. It's identical, except that your
11 price points are different, your absorption may be
12 a little bit different, and that's it. I mean,
13 it's just -- the same concept.

14 Q. All right. So in your analysis of the
15 development and sale of this Parcel 2 for
16 multifamily higher-density development, you were
17 assuming build-out from -- and development and
18 sales beginning in 2002 and extending through the
19 end of 2006; is that right?

20 A. Yes. The last 23 units would have been
21 sold in 2006.

22 Q. Okay.

23 A. We have a table in this report that
24 shows the absorption, the number of units that
25 would be absorbed during any year of the analysis,

1 so that would correspond.

2 If you looked at any year, say, 2005,
3 and you total what was sold in 2005 to each of the
4 parcels, it should correlate to what was on that
5 table --

6 Q. All right.

7 A. -- as to our estimation, or forecast,
8 of what we thought would be absorbed during that
9 particular year.

10 MR. JOHNSON: Your Honor, could the
11 witness identify that table?

12 MR. BECKER: It's the table that
13 follows Page 116.

14 THE WITNESS: It's on Page 109.

15 (Off-the-record discussion.)

16 BY MR. BECKER:

17 Q. Show us the table, if you could, that
18 includes the absorption for the whole development
19 that you just mentioned.

20 Where is that found?

21 A. I'm not sure there is a table that
22 shows the whole development. I think it's -- I
23 think tables are identified by each of the specific
24 property types.

25 Q. I think -- were you referring to the

1 table we've talked about a little while ago that is
2 on Page 109?

3 A. Well, yeah, that would be for the
4 multifamily.

5 Q. Yeah.

6 A. That's the same table that you have on
7 Page 77 that identifies the absorption for the
8 single-family --

9 Q. Okay, all right.

10 A. -- with the given years and the total
11 number of absorption.

12 Q. I've got you, okay.

13 So back on the table following Page
14 116, as before, you utilized a developer's profit
15 of 13 percent and a discount rate of 10 percent; is
16 that right?

17 A. That's correct.

18 Q. Tell us what the -- just -- and you can
19 sort of estimate this or use your calculator, if
20 you want.

21 What would be the total profit over
22 those five years to the -- to the developer?

23 A. \$754,012.

24 Q. Okay. And approximately what would be
25 the sum of all of the cash flows to the landowner?

1 A. You mean the net proceeds?

2 Q. The net sales proceeds.

3 A. The net sales proceeds, okay.

4 \$3,463,389.

5 Q. Okay. And so that compares to a
6 present value using a discount rate for those cash
7 flows of 2 million 541?

8 A. Correct.

9 Q. Okay.

10 A. You had a negative cash flow the first
11 year because you had all of your development costs
12 for that, and you didn't have sufficient sales
13 during the first year.

14 Q. I've got you.

15 So the landowner would be funding those
16 development costs. Is that right?

17 A. Yes.

18 Q. And those would be for the secondary
19 roads, the utility lines, to the individual
20 dwelling units?

21 A. Correct. Landscaping, signage, that
22 type of stuff.

23 Q. Okay, thank you. Let's move on, then.

24 And, again, you did this same analysis
25 for all of the multifamily residential parcels in

1 the EDSA Land Development Plan?

2 A. Correct.

3 Q. Let's move on.

4 Just tell us how you handled the golf
5 course land. That's the valuation of the golf
6 course land that begins on Page 125.

7 If you would, please, Mr. Wingard, just
8 turn to Page 125 and just walk us through a little
9 bit what methodology you would have used to value
10 that golf course.

11 A. We just utilized a comparative
12 procedure. We had four sites that were sold for
13 golf courses.

14 Golf course sales are typically hard to
15 obtain because a lot of times, when you do a
16 development, the developer may donate the golf
17 course land in order to get the golf course built,
18 because if -- by doing that, it enhances the sites
19 around the golf course, so it's to his benefit to
20 donate that land in order to have those lot prices
21 being substantially higher as a result of being
22 located on the golf course.

23 So as a result, you don't have a large
24 frequency of golf course-type property sales to
25 compare it to. That's why we only had four here.

1 And then on Page 130, we did a
2 comparative analysis where we compared those four
3 sales to the parcel designated for the golf course
4 and came up with the indicated value per acre.

5 Q. And were proceeds from those sales
6 included in your overall value calculation?

7 A. Well, that would just be part of the
8 summation. That was the present value because we
9 thought that would be done initially, you know, to
10 spur the single-family development.

11 Q. And so on Page 131, you included
12 a -- is it accurate to say you included a net
13 present value of \$2,426,000 for the sales of the
14 golf course parcels?

15 A. Yeah, it was \$8,500 an acre for the
16 golf course. If you look on Page 130, you will see
17 that that falls within that range of \$7,580 to a
18 high of \$11,320.

19 Q. All right, sir.

20 A. That would be within the measures of
21 central tendency for that property.

22 Q. Tell us, if you would, in general, how
23 you approached the commercial developments
24 contained within the EDSA plan for the Green
25 Diamond project. That begins on Page 123.

1 A. There were 24 areas designed for
2 potential commercial development, and that could be
3 commercial, to include retail, institutional,
4 office institutional, hotel, motel, you know,
5 obviously retail stuff like that. So it kind of
6 runs the gamut of commercial development.

7 You know, general commercial identifies
8 a lot of permitted uses, so you can't say, Well,
9 this tract is going to be used for a veterinarian
10 office. It might just be used for an office, or
11 medical office, or there might be areas designed
12 for certain practical uses in order to augment the
13 single-family.

14 The single-family development
15 ultimately determines the commercial developments.
16 The rooftops that are created determines the demand
17 for those commercial developments.

18 And the 666.29 acres that are
19 designated for commercial developmental usage and
20 some of the parcels are subparcels, meaning -- for
21 instance, Parcel Number 1 has 42 acres, but there's
22 five subparcels of varying acreage sizes, where
23 they may sell a parcel to a dentist or to a general
24 practitioner, or an inventory surgery center may
25 buy one, something like that.

1 Q. Maybe a lawyer?

2 A. Maybe a lawyer.

3 Q. Or a real estate appraiser?

4 A. No, we can't afford stuff like that.

5 You just don't know what the ultimate
6 disposition will be and to whom, just that you know
7 that it's designated for commercial uses.

8 Again, it's that complementary land use
9 within that planning that creates the need for
10 these parcels.

11 If you turn over, on 135, we just
12 described what we did, and I think there's 24 sales
13 that we reviewed and looked at and utilized
14 throughout the valuation for these commercial
15 parcels.

16 And there's a table after Page 159, and
17 it does the same thing as those other two tables
18 for single-family and multifamily, whereby we
19 forecast when we think, based on our projections
20 for absorption, that these commercial parcels and
21 subparcels will be disposed.

22 Q. All right. And so, then, you proceeded
23 to do the same discounted cash-flow analysis for
24 each of those commercial parcels. Is that right?

25 A. Right. There won't be a matrix

1 for -- it was discounted, but it's not a discounted
2 cash flow because they're not cash flows; they're
3 just individual partial sales, but they won't all
4 occur on the same day. They will be staggered, as
5 was identified on that table following Page 159.

6 So if you had two parcels that sell in
7 2008, then they would be discounted back to 2002 by
8 the appropriate discount factor to show what the
9 present value would be whenever it does sell in
10 2008.

11 Q. Okay. So in the discounted cash-flow
12 analysis that follows Page 167, is that -- oh,
13 that's Parcels 1 through 5?

14 A. Right. That's when you have a
15 commercial parcel that has subparcels.

16 Q. Okay, I see.

17 A. That would necessitate the cash-flow
18 analysis. But on the individual parcels designed
19 for commercial where there's no subparcels, then
20 obviously there would be no cash flow analysis.

21 Q. I see, okay.

22 And in all of those cash
23 flow -- discounted cash-flow analysis, did you,
24 again, use the developer's profit of 13 percent and
25 a discount rate of 10 percent?

1 A. We did.

2 Q. All right. Well, let's move forward to
3 the potential school sites. That starts on Page
4 221.

5 Walk us through how you went about
6 valuing those potential school sites in the plan.

7 A. Well, obviously with the number of
8 single-family and residential -- and multifamily
9 residential units, there would be a substantial
10 amount of new households created, so there would be
11 a need for schools.

12 A typical elementary school only
13 accommodates about 600, 700 students. So if you've
14 got 2,000 units, then, you know, you're going to
15 need schools.

16 The EDSA plan allocated certain sites
17 for schools, and we utilized -- I think there were
18 six sales of properties that were sold in the
19 market that were used for the development of
20 schools, whether they be elementary or high schools
21 or middle schools.

22 Obviously we don't have the expertise
23 to know what would be the procedure undertaken to
24 build a high school first or the elementary
25 schools, but logic would suggest that there would

1 be a need for schools within that development.

2 So I think there was five sites that
3 totaled 176 acres that were allocated for schools.

4 Q. I'm looking on Page 229. I
5 count -- oh, excuse me, there are five sites there,
6 you're right. Okay.

7 A. And you see the sizes vary from 23.34
8 acres to 176.01 acres.

9 Q. So then what -- and those parcels
10 within the land plan that were designated for
11 school use are each included in the pages that
12 follow?

13 A. Yes. I think there was a total of
14 \$2,282,000 value allocated for six school sites.

15 Q. Okay.

16 A. Based on the sales of the other six
17 school sites.

18 Q. Okay. Now, what page is that on?

19 A. 230.

20 Q. Okay. Yeah, I see that. All right.

21 A. And, you know, obviously, the values
22 vary for the parcels within the development itself,
23 being closer to -- if you have some on the
24 outskirts, maybe some between Levee II and Levee
25 III would not be as desirable as a school site

1 within Levee Section I, because you have more
2 single-family and multifamily development in those
3 areas.

4 Q. All right. Now, the next category of
5 land that you valued in the conservation easement \
6 appraisal is called agricultural land valuation.

7 Describe what that is for us. It
8 begins on Page 236.

9 A. All right. The land plan identified
10 Parcels 45 through 65 in Levee Section 3 as
11 agricultural land, 693 acres.

12 So like everything else, you try to
13 find sales that match the property that you are
14 valuing. So we identified four large parcel sales,
15 as large as we could find at that time, that was
16 zoned rural, and would probably be used, you know,
17 agriculturally to value these properties.

18 Q. All right. Would those tracts continue
19 to be used for agriculture in the future, or would
20 there be some other kind of possible use?

21 A. Well, for this analysis, the 1,639
22 acres was valued as agricultural. You know, it's
23 conceivable -- I don't know if it's probable, but
24 it could change, depending on how the development
25 turned out during the 15 years that we projected

1 that it would take to absorb everything and
2 complete the development.

3 But see, that's a present value,
4 because all of the sales were current sales. So
5 there was no need to discount those.

6 Q. What was the total of the value
7 represented by the agricultural land? Is that on
8 Page 242?

9 A. Yeah. I think the 693 acres was valued
10 at \$1,200 per acre, for a total of \$2,032,000.

11 Q. All right, sir, and now there is a very
12 brief section on the valuation of contributory
13 acreage. Could you explain that for us. That
14 begins on Page 244.

15 A. Well, the plan calls for about 300 to
16 400 acres that would be strategically located
17 within the park for, obviously, roads, buffer
18 areas, parks, and other natural areas, that would
19 augment the planned developmental usage of Green
20 Diamond.

21 Q. And you included a value calculation
22 for all of that acreage as well?

23 A. Right. Around \$7,500 per acre.

24 Q. And what was the total for that? Is
25 that shown on Page 245?

1 A. \$3,674,000.

2 Q. All right. Okay. Well, let's turn
3 back to the Executive Summary on Page 2.

4 Now, there you list a value of the
5 subject property before the conservation easement
6 of 142 million dollars. Is that correct?

7 A. Yes.

8 Q. Based on all the work conducted in this
9 appraisal, what does that measure -- what does that
10 number measure or represent?

11 A. For this conservation easement
12 appraisal, it represented Columbia Venture's
13 distinct investment-backed expectation for
14 purchasing this property, implementing the EDSA
15 land plan, and having a multicounty business park
16 established in order to augment the development
17 costs for some of the project.

18 Q. All right. In your opinion, would it
19 also represent the value of the land prior to the
20 conservation easement or the assumed regulatory
21 taking?

22 MR. JOHNSON: Your Honor, I haven't
23 been objecting to leading. I've been sitting here
24 quietly. This is leading. I object.

25 MR. BECKER: Well, let me rephrase.

1 BY MR. BECKER:

2 Q. Based on all of the work that you have
3 done in this appraisal, what is your opinion of the
4 value of the land before the placement of the
5 conservation easement or the assumed regulatory
6 taking?

7 A. Based on all of the assumptions
8 contained within this report and the analyses in
9 the report relative to the sale of the units at the
10 price points that we forecasted at that time, the
11 discount rate of 10 percent, entrepreneurial profit
12 at 13 percent, then with those assumptions that
13 this development would come to fruition, the
14 establishment of the multicounty business park, it
15 would be 142 million dollars. That would be
16 Columbia Venture's distinct investment-backed
17 expectation for this property.

18 Q. All right. Now, in your -- are you
19 aware, Mr. Wingard, of a more precise method in the
20 appraisal profession for measuring the distinct
21 investment-backed expectations of Columbia Venture
22 in this instance, other than the approach and the
23 methodology you employed in this appraisal?

24 A. No, I don't, because this considered
25 the entire 15 years of behavior of this property

1 for Columbia Venture, not just one year, not just
2 two years, the entire 15 years that we thought that
3 reasonably, it could be disposed, based on the
4 projections that we had, based on current
5 absorption of -- from other projects.

6 Q. All right, sir. And, again, is this
7 valuation of the property before the conservation
8 easement an appropriate substitute for an appraisal
9 of the property before the assumed regulatory
10 taking in this case?

11 A. Based on those assumptions, yes.

12 Q. Again, I would just like to go over,
13 just so we fully understand, under what
14 circumstances would a willing buyer pay Columbia
15 Venture 142 million dollars for the property?

16 A. Definitely not -- you wouldn't put a
17 for-sale sign and expect somebody to pay that. It
18 would be a long-term investor, maybe a pension
19 fund, somebody that wants to invest in real estate
20 and get a higher return than they can on bonds or
21 some other instrument that really has more
22 liquidity than real estate.

23 Real estate lacks liquidity. It lacks
24 liquidity. It requires management. It's got more
25 risk than some of the other investment instruments.

1 So it would have to be somebody long-term.

2 They would probably look at, maybe, our
3 report. I would hope they would look at the report
4 and see that the development would take, you know,
5 a good amount of time.

6 So in order to get that 10 percent
7 return, they wouldn't get that in one year; it
8 would be for the entirety of that sell-out or
9 disposition of all of those units, because it's an
10 immense project.

11 Q. If, hypothetically, you had a big
12 pension fund-type investor who wanted to diversify
13 and invest in some real estate, would they
14 pay -- and they were willing to get a 10-percent
15 return on their money, you're saying they would pay
16 142 million dollars in exchange for all of those
17 future cash flows to come from the development and
18 sale of the land?

19 A. I'm not saying that they would. I'm
20 saying that, based on that analysis, that would be
21 their return --

22 Q. Okay.

23 A. -- if paying that.

24 Q. All right. And, of course, would any
25 of this happen if the levees were not improved and

1 certified to FEMA standards?

2 A. No.

3 Q. Okay. Would that value conclusion hold
4 if the multicounty business park financing vehicle
5 were not in place?

6 A. No.

7 Q. Would that value estimate hold if the
8 change in zoning from the current zoning to a
9 planned unit development zoning plan had not
10 occurred?

11 A. No.

12 Q. Would that value conclusion hold if you
13 didn't have something like the EDSA master plan?

14 A. No.

15 Q. All right, sir. Now, I would like to
16 turn to the valuation of the property after the
17 assumed taking.

18 Now, we have got two pieces of
19 appraisal work product here with us that you were
20 involved in preparing, and we'll turn to an
21 appraisal that you later did for Carolina First
22 Bank in just a minute.

23 But right now, I would like to ask you,
24 as part of the conservation easement appraisal, did
25 you do a valuation of the subject property on an

1 as-is basis that would be different from the fully
2 entitled property that you assumed for purposes of
3 the valuation, before the taking?

4 A. Yes. Standards require, whenever you
5 have a hypothetical condition or extraordinary
6 assumptions, then you're required to provide a
7 valuation as of the effective date under the
8 present zoning and present physical conditions on
9 the property. So we completed a value as-is.

10 Q. All right. Tell us, just by reference
11 to the table of contents of this appraisal,
12 where -- where would we find that?

13 A. Page 269.

14 Q. Okay. Well, let's turn to that.

15 Please describe for us here what you
16 did with this valuation and how you went about it,
17 the method you employed, and the value you
18 concluded.

19 A. Well, obviously there was no change in
20 zoning and no developmental potential, no land
21 plan, so what we used, we thought it would be
22 agricultural use. Recreational use, basically. So
23 we used other similar -- utilized property sales
24 that occurred during that time frame and did a
25 comparative procedure for the subject property

1 as-is.

2 Q. All right, sir. That section begins on
3 Page 268. I take it, it assumes no improved
4 levees?

5 A. Right, sir.

6 Q. No change in zoning from the present
7 classification?

8 A. Correct.

9 Q. No multicounty business park financing
10 vehicle?

11 A. Correct.

12 Q. And there would be no EDSA or other
13 land development plan?

14 A. That's correct. It is as-is.

15 Q. As-is --

16 A. That means as-is.

17 Q. Which is limited to agricultural and
18 minor recreational uses?

19 A. Yes. It would have, obviously, limited
20 subsequent development capability.

21 Q. All right, sir. It looks like,
22 beginning on Page 270, you had, what, five --

23 A. Six sales.

24 Q. -- six comparable land sales?

25 A. Yes.

1 Q. Okay. Would you just go through those
2 and tell us anything notable about it. You have
3 listed the information regarding those comparable
4 land sales. But just summarize for Judge Smith
5 kind of what those were and why you believe they
6 were comparable for this purpose.

7 A. Ideally, any time you do a comparative
8 procedure like for the subject property, you would
9 like to have other similar-size properties. You
10 know, sales of 4,000-, 5,000-, 6,000-acre parcels
11 really do not happen with any frequency. You've
12 got a limited number of buyers that can afford to
13 buy 4,000 acres, just because of the price points
14 associated with such a large tract of land.

15 If you look at our sales here, we
16 exhausted the market, and the largest sale that we
17 could find was right at about 1,800 or 1,900 acres.
18 Most of them were around 400 and 500 acres.

19 So you see, there is a big size
20 disparity, which kind of makes this property unique
21 because of its immense size and where it is
22 relative to the City of Columbia, then it has such
23 immense developmental capability.

24 There's no assemblage. You don't have
25 to pay money for a lot of assemblage in order to

1 put a large parcel together. It's existing as it
2 is right there to do whatever you want to with it,
3 if you want to utilize that plan, which I think
4 that they probably should, then it's got a lot of
5 potential uses, complementary uses.

6 So if you notice on the adjustment
7 chart, the largest --

8 Q. Is that on Page 276?

9 A. 276, yes.

10 -- the largest adjustment -- any time
11 you have a large number of adjustments -- meaning a
12 number of adjustments and the adjustments are
13 large -- you really question the comparability of
14 the sales. But they're the best that you have. So
15 without going out of the market, that's what we
16 used. So that's why that adjustment on size is so
17 large, because the subject is so large, as compared
18 to the sales.

19 Q. Is that what appraisers typically do in
20 sort of comparing their comparable sales to the
21 subject property, they go through that adjustment
22 process?

23 A. Yes.

24 Q. Describe that, if you will, on Page
25 276, that table.

1 A. In this table, you will see there's an
2 initial adjustment. It's called transaction
3 adjustment. It's about property rights, conditions
4 of sales, financing, and changes in market
5 conditions. Those are done initially in order to
6 either bring the property into the same cash
7 equivalency as the subject and all the sales as
8 well.

9 And from that, you have other elements
10 of comparison for the physical characteristics of
11 the property, which would include the location, the
12 size, the topography, shape would be included in
13 that, location in a floodplain, floodway,
14 availability of utilities, zoning, and whether some
15 of the site had been cleared or not.

16 So those were what we determined would
17 be the applicable elements of comparison we would
18 utilize in comparing these six sales to the subject
19 property.

20 Q. All right, sir.

21 A. And then you just get a net adjustment
22 and either add or subtract from the sales price or
23 value of the sale to come up with the indicated
24 value per acre for the subject property and then
25 just extend that by the number of acres.

1 Q. Okay. And so those indicated values
2 per acre ranged from -- and I'm looking at the
3 bottom of Page 276 -- about 1,450 per acre to a
4 high of 3,339 per acre, prior to the adjustments?

5 A. Prior to the adjustments, yes. After
6 adjustments, you would expect the range to
7 tighten --

8 Q. Okay.

9 A. -- if you're doing the adjustments
10 correctly.

11 Q. And so I'm looking there
12 down -- looking at the bottom of Page 277, it says:

13 After completion of all adjustments,
14 the indicated value on a per-acre basis for the
15 subject property, as-is condition, extending from a
16 low of \$1,724 per acre to a high of \$3,260 per
17 acre.

18 Is that right?

19 A. That's correct.

20 Q. And it looks like you used \$2,500 per
21 acre for the subject property --

22 A. Yes.

23 Q. -- to support your value?

24 A. Yes.

25 Q. And what was the total?

1 A. 11 million dollars.

2 Q. Okay. Now, this may be academic, but
3 let me ask you, why does the -- if you look on the
4 next page for the conservation easement appraisal,
5 you used 142 million dollars before the
6 conservation easement, but the value after the
7 conservation easement is all the way down at
8 \$3,750,000.

9 Why the difference between the 11
10 million as-is value that we just went over, versus
11 \$3,750,000 after a conservation easement?

12 A. Well, in the conservation easement,
13 typically, almost always, there will be
14 restrictions on any subsequent developmental usage
15 of the property, meaning, none of the property
16 could ever be developed for anything. It would
17 only be utilized for recreational use -- or that
18 would be the restrictions that would be acceptable
19 by the donee.

20 So in perpetuity, nothing would ever be
21 placed on that property, never could be developed.

22 Q. Okay.

23 A. And those easements are irrevocable,
24 so...

25 Q. All right.

1 MR. BECKER: Your Honor, it's 11. This
2 is as good a stopping place as any. I've probably
3 got about maybe 30 more minutes with Mr. Wingard on
4 direct.

5 Would this be a suitable time to just
6 take the morning break?

7 THE COURT: All right, sir, we can do
8 that. We'll take a 15-minute break.

9 (A brief recess was held.)

10 THE COURT: You may proceed.

11 BY MR. BECKER:

12 Q. Mr. Wingard, before we go further, I
13 want to jump back and ask you one thing that I
14 forgot to cover previously.

15 Talking back about the
16 142-million-dollar present value number, that's the
17 sum of all of the net present value calculations
18 that you computed for all of the seven parcels in
19 the conservation easement appraisal. Is that
20 right?

21 A. That's correct. That would be all of
22 the designated parcels, the buffer areas, the
23 school sites, the agricultural sites, all of that,
24 it is a compilation of all of those parcels that
25 comprise the Columbia Venture property and the EDSA

1 master plan.

2 Q. Would the sum of all of the future cash
3 flows that were discounted to present value, would
4 they be larger -- would they be larger than 142
5 million dollars?

6 A. Absolutely. That would be the retail
7 value of the property.

8 Q. All right. Do you know how much
9 those -- how would they compare to the present
10 value?

11 A. It would be substantially larger,
12 because from that total retail value, you take out
13 the cost of development, the cost of the sales,
14 things like deed preparation -- let's see what else
15 we took out -- real estate taxes on all of the
16 unsold units.

17 And taxes increased every year because
18 the millage rates went up every year. And also you
19 have roll-back taxes in there because the use
20 changes.

21 So, really, your real estate taxes are
22 a combination of two things. So that deducts from
23 that retail sales amount and the cost of
24 development for that individual parcel. And all of
25 those would be deducted from those retail sales

1 before you started deducting the entrepreneurial
2 profit..

3 Q. Okay. And so the gross sales proceeds
4 would be even higher than all of those net
5 future --

6 A. Yes.

7 Q. -- cash flows?

8 A. Yes.

9 Q. But you didn't sum those numbers in
10 your appraisal report?

11 A. No, because that really -- that
12 wouldn't tell you anything other than the retail
13 value of the property.

14 You know, you can -- if you're doing a
15 subdivision and you have a retail value and you'll
16 have a value of the subdivision, you'll notice that
17 there's some relationship.

18 If you have a longer discount period,
19 obviously, then, the net present value is going to
20 be a much smaller percentage of those retail values
21 than it would be if you had a very quick
22 disposition time, because you're not discounting it
23 but for a very short period.

24 The longer that you discount, the
25 bigger effect that it has. If you look at -- if

1 you put in your calculator and solve for the
2 present value, when you get to about year 9 or 10,
3 you're about 60 percent of the value.

4 So discounting the future really does
5 have a tremendous effect on those retail values.

6 Q. Okay, thank you.

7 All right, sir. Let's move to -- let's
8 move to Plaintiff's 425. I have distributed a
9 copy.

10 Have you got it there, Mr. Wingard?

11 A. I do.

12 Q. What is this document?

13 A. This is an appraisal I completed for
14 Carolina First Bank.

15 Q. Now, was Carolina First Bank a member
16 of Columbia Venture?

17 A. Yes.

18 Q. Did it hold mortgages on the property?

19 A. I'm not sure.

20 Q. Why was this appraisal prepared?

21 A. Well, it was for loan purposes,
22 according to Page 10.

23 Q. Okay.

24 A. I didn't know whether it was an
25 existing loan or a new loan being placed on the

1 property. Since it came from a bank and the
2 individual ordering the appraisal told me it was
3 for a federally-related loan transaction, that's
4 all I needed to know.

5 MR. JOHNSON: Your Honor, could I be
6 heard on this document, whether it's subject to
7 examination or admissibility?

8 THE COURT: Yes, sir, go ahead.

9 MR. JOHNSON: This was an appraisal
10 done on March 1st, 2005. It's not an appraisal as
11 of the date of the take. It's three years, plus
12 after that. There's no -- in fact, if I read it
13 correctly, the comparables that are used for the
14 appraisal are all after the date of take. Would
15 not have existed as of the date of take. And I
16 object to this coming in.

17 I would say further, I understand
18 USPAP, which is their governing body, has rules
19 about an appraiser offering opinions of value
20 without having gone through the appraisal process
21 required by the USPAP regulations, so I object to
22 it on the grounds of relevance.

23 THE COURT: All right. What about
24 that, sir, that this was done in 2005?

25 MR. BECKER: Well, and I was just going

1 to get to those questions. You know, we've
2 got -- obviously, we've got a valuation and
3 conservation easement of the appraisal as-is of 11
4 million dollars. This one is 14. On that basis,
5 I'm surprised Mr. Johnson objected to it.

6 THE COURT: I wondered about that as
7 well.

8 MR. BECKER: Nevertheless, let me just
9 complete the circle here, Mr. Wingard.

10 BY MR. BECKER:

11 Q. It was conducted on March 1st, 2005?

12 A. That's correct.

13 Q. How would it correlate to the valuation
14 of the subject property as-is in the conservation
15 easement appraisal that was done as of October
16 15th, 2002, if it does?

17 A. Well, the correlation is -- obviously,
18 it's the same property, you know, to begin with.
19 It's three years later, but it has the same similar
20 highest-and-best use. No levee certification and
21 improvement, so no development. So it's pretty
22 much the same as the as-is in the conservation
23 easement appraisal, but it occurred three years
24 later.

25 So you would -- from 2002 to 2005,

1 during that time frame, one would expect some
2 property appreciation.

3 Q. All right, sir. Do you consider
4 it -- in your opinion, is it a reasonable proxy, or
5 is it useful in informing what the value of the
6 subject property would be after the assumed
7 regulatory taking?

8 A. Yes, I would.

9 Q. Or is the fact that it was prepared on
10 March 14th, 2005, does that in some way, in your
11 view, mean that it is not appropriate for use in
12 estimating the value of the subject property after
13 the assumed regulatory taking?

14 A. I think it would be appropriate.

15 Q. All right.

16 MR. JOHNSON: Your Honor, may I
17 question the witness?

18 THE COURT: Yes, sir, you can --

19 VOIR-DIRE EXAMINATION

20 BY MR. JOHNSON:

21 Q. Have you done an appraisal of the
22 property in this report, according to the
23 requirements of USPAP, using an appraisal date of
24 February 20th, 2002?

25 A. Have I -- will you repeat that.

1 Q. In this report, have you followed any
2 USPAP regulations and its requirements regarding
3 preparation of an appraisal as of February 20th,
4 2002?

5 A. I did not do an appraisal as of
6 February 20th, 2002.

7 Q. USPAP has a variety of requirements
8 that have to be met before an appraiser can give an
9 opinion of value; don't they?

10 A. I think the question that Mr. Becker
11 asked me, if the value conclusion would be
12 reasonable from this report in 2005 for a value
13 after the taking of 2002, and I said yes, because
14 of the short time frame.

15 Q. Mr. Wingard, USPAP has requirements
16 that an appraiser, a licensed appraiser, has to
17 follow and has to go through before giving an
18 opinion of value as of a particular date?

19 A. Yes, sir. USPAP also says you can
20 provide an oral report as well.

21 Q. And have you done -- is it correct that
22 all of the comparables in this report are after
23 February 20th, 2002?

24 A. Yes, 2003. And two in 2004, and six in
25 2003.

1 Q. And, Mr. Wingard, although USPAP allows
2 an appraiser to give an oral opinion of value, the
3 appraiser still has to go through the process of
4 the appraisal to give the oral opinion of value,
5 doesn't he?

6 A. Well, I'm sure USPAP says information
7 must be contained in your file memoranda relative
8 to the reasonableness of that value conclusion.

9 Q. And do you have any such file data for
10 an appraisal based upon a date of February 20th,
11 2002?

12 A. Well, if you look at the date of the
13 sales here, USPAP also says you can use sales after
14 a certain date, if market conditions are similar
15 within that time frame.

16 So let's look at the date of these
17 sales and see if there's a similarity between
18 market conditions for those sales and the date of
19 the take.

20 Okay. We've got December 16th, 2004,
21 which is the most recent sale.

22 MR. BECKER: What page are you on,
23 Mr. Wingard?

24 THE WITNESS: On Page 95.

25 Sale Number 2 was April 2004. Sale 3

1 was December 2003. Sale 4 was December 2003. Sale
2 5 was June 2003. Sale 6 was May 2003. Sale 7 was
3 February 2003 and sale 8 was January 2003.

4 So we have sales probably a year, year
5 and a half after that date of take.

6 BY MR. JOHNSON:

7 Q. Did you pull those figures together and
8 put them in a file as required by USPAP as a basis
9 for an opinion of value as of a date of February
10 20th, 2002?

11 A. I do not have a written document as of
12 2002. I would have data in my file that would
13 suggest that that was a reasonable value
14 conclusion, but not one that succinctly states 2002
15 valuation date.

16 Q. Show me in the USPAP language that says
17 you can utilize subsequent sales to come up with a
18 value as of the prior date.

19 Mr. Wingard, that's all right.

20 A. Well, it's in here; it's going to take
21 a while to find it.

22 Q. It's always hard for me to find
23 something when someone is watching me.

24 A. I was trying to look at the index.

25 Q. Let me cut you a little slack on that.

1 You believe it to be in there, but you
2 couldn't find it in short order. Is that fair?

3 A. It's in there. I don't believe it's in
4 there; it's in there. It might be under a
5 Frequently Asked Question and not really in the
6 standard.

7 Q. Actually, USPAP has a provision or a
8 guideline about what an appraiser is supposed to do
9 if a client asks them to change an appraisal date,
10 correct?

11 A. You're reading from it. You read to
12 me.

13 Q. Well, I'm asking you, do you know that?

14 A. I may have read it. I don't have it
15 committed to memory.

16 Q. And the appraiser is supposed to go
17 through a process -- not supposed to just throw out
18 a number or agree to change it; he's supposed to go
19 through an evaluation process as part and parcel of
20 changing the date of an appraisal, correct?

21 A. Correct.

22 Q. And have you done any of that valuation
23 or analysis to change the date of appraisal on this
24 document, the appraisal of March 1st, 2005, to make
25 it an -- change the date of appraisal to February

1 20th, 2002 in compliance with the requirements of
2 USPAP?

3 A. I have not.

4 Q. Thank you.

5 MR. JOHNSON: Move to exclude, Your
6 Honor.

7 THE COURT: All right, sir. The
8 witness has testified that, in his opinion, that
9 the date used in the comparables in 425 upon which
10 that appraisal was based in approximately March of
11 2005, some of the comparables are 2004, one of them
12 is 2003, but he said that the market condition had
13 not substantially changed in that time period.

14 Whether or not he followed the -- what
15 a particular organization sets forth as the
16 standard does not determine whether or not it's
17 legally admissible or not.

18 He's testified -- as a qualified expert
19 to testify to a reasonable degree of
20 certainty -- that they are comparables because of
21 lack of any significant market value change in that
22 time period.

23 MR. JOHNSON: Your Honor -- I'm sorry.

24 THE COURT: Therefore, I would allow
25 him to utilize this Plaintiff's Exhibit 425.

1 MR. JOHNSON: Your Honor, if you will
2 just allow me one moment. You may not realize, but
3 the USPAP regulations are adopted by the State of
4 South Carolina and apply to real estate appraisers.
5 They were adopted and designed to prevent and to
6 put structure into what real estate appraisers
7 could do and to prevent the idea of a real estate
8 appraiser offering an opinion of value in the
9 absence of complying with what the standards are.

10 So it's not an advisory or a
11 professional organization or anything of that
12 nature. It is the requirements of the State of
13 South Carolina that an appraiser cannot
14 give -- just give an opinion of value without going
15 through the process. That's designed to ensure
16 integrity of the system and a basis for the
17 opinion.

18 And I would respectfully request -- I
19 mean, in other words, he couldn't go to a bank, be
20 hired as a bank appraiser and take a 2005 appraisal
21 and give them an opinion of value as of 2002,
22 because an oral opinion of value, without going
23 through the process, because it would violate the
24 USPAP regulations and would subject him to
25 penalties from the licensing agency, state

1 licensing agency.

2 So I don't know if you were aware of
3 how the USPAP requirements apply. I think it's not
4 what you had thought it was, and I would ask you to
5 at least consider that in your ruling.

6 THE COURT: All right, sir. I find
7 that he can utilize Exhibit 425.

8 DIRECT EXAMINATION (CONTINUED)
9 BY MR. BECKER:

10 Q. Now, Mr. Wingard, in performing that
11 evaluation that is required by USPAP standards
12 about whether or not you can use an appraisal for
13 another purpose, would you do anything
14 significantly different in reviewing the dates of
15 the comparables like you just went through and
16 comparing them to the time frame that you would
17 express the value opinion for? Would there be a
18 whole lot more involved than just doing that?

19 A. No. It would be the exact same
20 methodology as utilized in this 2005 valuation.

21 Q. And do you sometimes -- when appraisers
22 select comparable sales, do you make adjustments in
23 the sale price to account for distance in time of
24 the comparable sale to the present date?

25 A. Yes.

1 Q. So you might adjust the value of the
2 comparable based upon the distance in time from the
3 date of the comparable sale to the date of the
4 appraisal.

5 A. Yes. One thing about a sale date on a
6 comparable sale, almost all appraisers will use a
7 sale date as the recorded date on the deed. But on
8 large properties like this, that sale price prior
9 to recordation might have been consummated seven or
10 eight months -- might have been on the market for
11 that sales price for seven or eight months prior to
12 recording. So there might be some time lapse
13 between the actual consummation of the sale and the
14 subsequent recording.

15 So that's why a lot of appraisers don't
16 necessarily make a per-month adjustment for time,
17 because they realize there might be some lapse in
18 those actual sales -- actual sale consummation and
19 the recordation date.

20 Q. And by the same token, if you have got
21 a sale, comparable sale date that has occurred
22 after the date of the proposed appraisal, can you
23 make similar adjustments to account for the fact
24 that that comparable sale has occurred after the
25 date of the appraisal?

1 A. Well, the USPAP does state this, and I
2 will find it, that you can use sales after that
3 date if market conditions are the same or similar
4 as of that effective date that you are -- the date
5 of the take -- if you're talking about
6 condemnation -- as of that date of take.

7 Q. And, now, let's just review for His
8 Honor's sake, you did include in the conservation
9 easement appraisal a value after the proposed
10 conservation easement of 11 million dollars?

11 A. That's an as-is value.

12 Q. That's an as-is value. But that was
13 limited to agricultural and minor recreational use?

14 A. Correct.

15 Q. And that was as of the October 15th,
16 2002 effective date. Is that right?

17 A. Yes.

18 Q. And in your opinion, is that appraisal
19 valuation an appropriate proxy for the value of the
20 property after the assumed regulatory taking?

21 A. Well, you would like to see if there
22 were any sales that occurred between
23 October -- well, that would be after the take. So,
24 yeah, that would be very -- you know, market
25 conditions would not have changed that much in six

1 months, seven months.

2 Q. So, in effect, is it an even perhaps
3 more accurate proxy for the value after the assumed
4 regulatory taking than would be this March 16, 2005
5 appraisal?

6 A. Well, it would, because it's obviously
7 closer to the date of the taking.

8 Q. But it's a lower price --

9 A. It is.

10 Q. -- than the value in Exhibit 425?

11 A. It is.

12 Q. 3 million dollars lower, right?

13 A. Correct.

14 Q. Now, in this appraisal, March -- the
15 14 -- March 14, 2005 appraisal for Carolina First
16 Bank -- I'm going to call this -- if we might, just
17 for convenience sake -- the bank appraisal. Is
18 that okay?

19 A. Yes, sir.

20 Q. All right. In this bank appraisal,
21 were you appraising the exact same subject property
22 that you appraised for the November 6th, 2002 with
23 an effective date of October 15, 2002 conservation
24 easement appraisal that you prepared for Columbia
25 Venture?

1 A. Yes.

2 Q. And, you know, while I'm thinking about
3 this, let me just ask you, what -- why were you
4 asked to prepare the conservation easement
5 appraisal for Columbia Venture?

6 Were they considering doing that for
7 some reason?

8 A. Yes.

9 Q. Was it -- did you have any further
10 discussion with Mr. Gregory about why they wanted
11 to consider a conservation easement?

12 A. Well, I think they were looking at
13 maybe some exit strategy for the property,
14 basically. But, you know, whenever they asked us
15 to consider a -- or to do a valuation for
16 conservation easement purposes, that's what we did.

17 Q. All right. So it was part of their
18 exit strategy for the property?

19 A. I'm not saying it was. I mean, that
20 would -- I mean, he didn't really say that's what
21 it is. But in our conversations, I think one could
22 conclude that may be what they were looking at.

23 Q. At the time you spoke with Mr. Gregory,
24 had Columbia Venture given up on developing the
25 property as they had originally proposed?

1 A. No.

2 MR. JOHNSON: Object, Your Honor. That
3 would be hearsay, and it's not relevant.

4 THE COURT: I will sustain it.

5 BY MR. BECKER:

6 Q. All right. Now, on Page 5 of this
7 appraisal you note that -- at the last sentence of
8 the second full paragraph on Page 5, you note:

9 However, at the present time and as of
10 the effective date of this appraisal, the existing
11 FEMA maps indicate a substantial portion,
12 approximately 70 percent of the subject property,
13 in a designated floodway with a substantial portion
14 of the remaining acreage within a floodplain.

15 Did I read that correctly?

16 A. Yes, sir.

17 Q. All right. Now, based on your
18 understanding of the applicable Richland County
19 ordinances at the time, could anything be placed in
20 the floodway that would impede the free flow of
21 water?

22 A. No.

23 MR. JOHNSON: Your Honor, I object,
24 unless he's got some foundation. Is he going to
25 give a legal opinion about what an ordinance means?

1 Unless he's talked to somebody at Richland County
2 or has had some discussion --

3 THE COURT: Well, he asked him if he
4 was aware of it, if he knew it, and how that may
5 have affected his evaluation, so I overrule the
6 objection.

7 Go ahead.

8 MR. BECKER: All right, sir.

9 BY MR. BECKER:

10 Q. Given that, your understanding of what
11 the ordinances required, what could be built in the
12 area, 70 percent of the property that was
13 designated as floodway?

14 A. According to my understanding, nothing.

15 Q. Okay. And how about what could be
16 built in the area, the remaining acreage, that was
17 designated in floodplain?

18 A. Within a floodplain, you can build, but
19 you have to meet certain requirements about the
20 structure being above a certain level above the
21 floodwaters, potential floodwaters.

22 So, with that, you incur significantly
23 more development costs, et cetera --

24 Q. Okay.

25 A. -- either in fill or in elevating

1 structures within that floodplain area to meet your
2 requirements.

3 Q. So given those requirements for
4 building in a floodplain, what impact would that
5 have on the value, market value of the subject
6 property?

7 A. It would compress the value some.

8 Q. It would depress the value?

9 A. Compress, meaning it would lower the
10 value, because of those limitations on development.

11 Q. All right. Now, in this valuation,
12 what did you consider to be the highest-and-best
13 use?

14 A. What it was being used for presently,
15 agricultural and passive recreational use, hunting.

16 Q. Okay. And that would be the same
17 highest-and-best use that you determined for the
18 after-value in the conservation easement appraisal.
19 Is that right?

20 A. Correct.

21 Q. What type of valuation approach did you
22 use in this appraisal?

23 A. Used a sales comparison approach, a
24 comparative procedure of unimproved sales to the
25 subject property.

1 Q. All right, sir. And you -- you were
2 pointing previously to a summary of the comparable
3 sales in this appraisal.

4 Where is that contained? Do you recall
5 that, what page that was on?

6 A. I don't think there's a summary.
7 There's a delineation of the subject sales and then
8 there's an adjustment -- a series of adjustment
9 tables that identifies each of the sales and how
10 they compare to the subject property.

11 Q. There you go. That's what I wanted,
12 the chart.

13 A. It's not on one table.

14 Q. Okay.

15 A. It's a series of tables. I think it
16 extends from Page 95 through 98.

17 Q. Okay, sir. So that's where you
18 list -- you had -- what was it -- eight comparable
19 sales?

20 A. I did.

21 Q. And this, again, is the table where you
22 calculated the different adjustments that you would
23 make to compare them to the subject property?

24 A. Yes, sir.

25 Q. All right, sir. Now, and on Page 99,

1 you conclude that the -- under Summary, you include
2 the range of -- you analyze the comparable values
3 as extending from a low of 256,000 per
4 acre -- excuse me -- \$2,567 per acre to \$3,596 per
5 acre; is that right?

6 A. That's correct.

7 Q. And you settle on a value per acre at
8 \$3,200 per acre --

9 A. That's correct.

10 Q. -- for a total value rounded to
11 \$14,115,000. Is that correct?

12 A. That's correct.

13 Q. Now, again, how would this appraisal
14 correlate to your appraisal assignment in this case
15 for providing the value after the assumed
16 regulatory taking?

17 A. It honestly would extend after that
18 date. Again, I didn't do a value after for the
19 subject property. But, you know, if you did an
20 appraisal after, the sales, you know, would -- you
21 would hope the sales would be right around that
22 2002 date, either preceding or shortly thereafter,
23 if you concluded the market conditions were
24 similar --

25 Q. Okay.

1 A. -- for the short time period after.

2 Q. In your opinion and based on the
3 analysis that we've heard here today, is this
4 appraisal an appropriate proxy for a condemnation
5 or inverse condemnation appraisal of the property
6 after the assumed governmental taking of the
7 property?

8 A. I think it could be, yes.

9 Q. Now, clearly there would be some
10 differential in value, would there not be, between
11 the property that lies in the floodway where it's
12 your assumption you can't really build anything, to
13 the value of the property in the floodplain where
14 you could build something if you built up or put
15 fill?

16 A. Yes.

17 Q. How would you account for that
18 differential?

19 A. Well, if you did a development, you
20 would have a certain amount of space allocated for
21 a green space and stuff. But I really would
22 not -- it wouldn't be purchased based on increments
23 like that. It would be bought as an aggregate, and
24 they would consider what the contribution of those
25 two elements were.

1 They wouldn't say, I'm going to pay you
2 a certain amount for 70 percent and a certain
3 amount for 30 percent and add them together.

4 They would look at it all together and
5 say, well, 30 percent is in the floodway and
6 only -- 70 percent is in the floodway and 30
7 percent is out, so I'm going to pay you X amount of
8 dollars for that, \$3,200 an acre.

9 Q. All right, sir. So your approach is
10 more along an aggregate basis for the entire
11 \$4,400?

12 A. It is. You know, the largest sale that
13 I used was set on almost 8,000 acres. It sold in
14 Aiken County in Graniteville. And they had some
15 acreage in floodways, because they had a series of
16 ponds. And the purchaser did not say, you know,
17 Out of that 8,000 acres, a thousand acres is in a
18 floodway, so I'm paying X amount of dollars. That
19 price per unit is an aggregate price. I mean, it's
20 a price for the aggregate parcels. It was 23
21 parcels, I think.

22 Q. So, Mr. Wingard, based on the
23 appraisals that you have done and we reviewed, the
24 conservation easement and the bank appraisal, you
25 have concluded a value of the property before the

1 assumed regulatory taking and given all of the
2 other assumptions we've reviewed of 142 million
3 dollars. Is that right?

4 A. Yes.

5 Q. And a valuation of the property after
6 the assumed regulatory taking of -- would it be
7 fair to say -- between 11 million and 14 million
8 dollars?

9 A. More accurately, my as-is value would
10 be 11 million dollars. So it would be my
11 inclination to go with 11 million dollars.

12 Q. All right. So what's the difference
13 between 142 and 11?

14 A. 131 million dollars.

15 Q. All right, sir. Now, Mr. Wingard, I
16 want to hand you a series of exhibits that have
17 been entered into evidence in this case, and I know
18 you have reviewed them previously in your
19 appraisal -- in your assignment for your engagement
20 in this case.

21 But let me just state for the record
22 what I'm going to give you, and I'm going to just
23 hand you a copy so you don't have to look through
24 the notebooks.

25 But the first one is Plaintiff's

1 Exhibit 166, which is the January 20th, 1999
2 recommendations of the development and services
3 committee of Richland County to the full county
4 council that they authorize the council chairman or
5 his designee to begin the first steps of acceptance
6 of responsibility and maintenance of the Manning
7 levees on Columbia Venture's property, contingent
8 upon engineering certification, certification by
9 the Corps of Engineers, and approval and acceptance
10 by FEMA.

11 Have you seen that document before?

12 A. Yes.

13 MR. JOHNSON: What's the date of that?

14 MR. BECKER: It's Plaintiff's Exhibit
15 166. It's dated January 20th, 1999.

16 BY MR. BECKER:

17 Q. The next one is Plaintiff's Trial
18 Exhibit 247. It's a letter from Lockwood Greene,
19 Mr. Wilson Tillotson to George Gregory. It's dated
20 January 21st, 1999.

21 And it includes an estimate for
22 upgrading the levee system of the Manning levees on
23 the Columbia Venture's property with an average
24 estimated cost of approximately 12 million dollars.

25 Have you seen this document before?

1 A. Yes, sir.

2 Q. The next one is Plaintiff's Exhibit
3 246, which is a letter from Lockwood
4 Greene -- again, Mr. Wilson Tillotson -- to
5 Ms. Lisa Holland, who is the state coordinator of
6 the National Flood Insurance Program for South
7 Carolina, advising her that the property owners of
8 the Columbia Venture land intended to upgrade the
9 levee system, seek agreement with Richland County
10 that they would accept responsibility for
11 maintenance of the levees if they were improved,
12 and asking for confirmation from FEMA.

13 If they did that, FEMA would certify
14 the levees and rezone the property behind the
15 levees as Zone X, that being out of a floodway and
16 out of a floodplain.

17 Have you seen that document before?

18 A. Yes.

19 Q. The next one is Plaintiff's Exhibit 18,
20 which is a letter dated January 26th from
21 Mr. Matthew Miller of FEMA to Ms. Holland,
22 responding to her letter and indicating that under
23 the conditions stated in the letter, FEMA would
24 revise the flood maps, if the levees were
25 certified, to take the land out of the floodplain

1 and floodway.

2 Have you seen that document before?

3 A. Yes, sir.

4 Q. The next exhibit is Plaintiff's Exhibit
5 147, which are the minutes of a meeting of the
6 regular session of the Richland County Council held
7 at 6 p.m. on February 2nd, 1999, in which the
8 Richland County Council received the report of the
9 development services committee and unanimously
10 passed a resolution regarding acceptance and
11 maintenance responsibility of the Manning levees on
12 Columbia Venture's property under certain
13 conditions.

14 Have you seen that document before?

15 A. Yes, sir.

16 Q. The next one is Plaintiff's Exhibit 22,
17 which is a letter dated February 17 from Mr. Paul
18 Livingston, the chairman of the Richland County
19 Council, to Mr. Michael Buckley of FEMA, confirming
20 for FEMA what Richland County had done with the
21 unanimously passed resolution on February 2nd,
22 1999.

23 Have you seen that document before?

24 A. Yes, sir.

25 Q. The next document is Plaintiff's

1 Exhibit 24. It is a letter from Mr. Cary McSwain,
2 the county administrator of Richland County. It's
3 dated February 19th, 1999, and it's to Mr. George
4 Gregory. It's called a Non-Binding Memorandum of
5 Understanding, and it details Mr. McSwain's
6 position relative to the proposed purchase and
7 development project for the property.

8 Have you seen that document before?

9 A. Yes, sir.

10 Q. And finally, I hand you Plaintiff's
11 Exhibit 208, which is a letter dated February 17,
12 1999, from Mr. Wilson Tillotson of Lockwood Greene
13 to Mr. George Gregory of Burroughs & Chapin,
14 noting, among other things, regarding the Lockwood
15 Greene estimated cost range and completion date for
16 upgrade of the levees, that, other than the
17 uncertainties noted above, we have discovered no
18 barriers that would prevent us from removing the
19 property within the existing levees from the
20 special flood hazard area, or the floodway.

21 Have you seen this document before?

22 A. Yes, sir.

23 Q. All right, sir.

24 Now, my question for you is, in your
25 appraisal practice, do you sometimes provide advice

1 to potential purchasers who are considering buying
2 and investing in property or in developing
3 property?

4 A. Yes, sir.

5 Q. Do you counsel them on whether it would
6 be advisable to purchase the property and what the
7 approximate return on that investment might be?

8 A. Yes, sir.

9 Q. And do you sometimes suggest what a
10 fair price might be for the property?

11 A. Yes, sir.

12 Q. In providing that kind of professional
13 advice, do you make certain assumptions -- based on
14 your knowledge of the real estate industry and your
15 background and experience as a real estate
16 appraiser -- about whether or not certain events
17 that might affect the property are reasonably
18 likely, such as zoning changes or permit approvals?

19 A. Yes.

20 Q. I would like you to assume
21 hypothetically that you had been consulted by
22 Burroughs & Chapin and Columbia Venture in February
23 of 1999 to assess the development potential of the
24 subject property and to provide advice about the
25 reasonableness of purchasing the property.

1 If you had been presented all of those
2 documents that I just went through, would you rely
3 on them in assuming, for the purposes of your
4 advice to Burroughs & Chapin and Columbia Venture,
5 that Richland County would ultimately grant a
6 building permit to Columbia Venture to improve the
7 levees to FEMA standards?

8 Q. Yes.

9 MR. JOHNSON: Your Honor, I object.

10 THE COURT: I sustain that.

11 BY MR. BECKER:

12 Q. Well, would you base your estimate of
13 value, of an appropriate price to pay for the
14 property, on that the levees would ultimately be
15 improved?

16 MR. JOHNSON: Your Honor, I object.
17 He's testified about what he did for his appraisal.
18 He assumed that they would be approved. His
19 opinion --

20 THE COURT: Yes, he has already set
21 that forth, that that was a condition of his
22 appraisal.

23 MR. BECKER: Okay.

24 BY MR. BECKER:

25 Q. Well, then, was it reasonable, in your

1 opinion, for Columbia Venture -- given what you
2 have seen and reviewed, was it reasonable for them
3 to purchase the property?

4 MR. JOHNSON: Same objection.

5 THE COURT: I sustain the objection.

6 MR. BECKER: All right. Your Honor, I
7 have no further questions at this time.

8 THE COURT: All right, sir.

9 Mr. Johnson.

10 CROSS-EXAMINATION

11 BY MR. JOHNSON:

12 Q. Mr. Wingard, let me get this out of the
13 way first.

14 Have you done any appraisal of the
15 property, according to the requirements of USPAP,
16 as of February the 20th, 2002?

17 A. I have not.

18 Q. Is it correct that as a licensed
19 appraiser you're required to comply with the
20 requirements of USPAP before offering opinions of
21 value?

22 A. I think USPAP states that you can
23 provide an oral report if you have sufficient
24 information in your file memorandum to support that
25 oral valuation.

1 Q. Do you have any file memorandum
2 assigning an appraisal date of February 20th, 2002
3 with the accompanying data that would be necessary
4 to give an oral opinion?

5 A. I have sufficient data in my file
6 memoranda that I can give an oral valuation as of
7 2002.

8 Q. That wasn't my question.

9 Do you have a file memoranda, a file
10 set up with the required data, that is required by
11 USPAP, in order to give an opinion of value as of
12 February 20th, 2002?

13 A. I do not have a separate file that
14 states a valuation, This is a valuation for this
15 property as of February 2002.

16 Q. Now, Mr. Wingard, yesterday Mr. Becker
17 began by asking you about being retained by the
18 Haynsworth firm to do work?

19 A. Yes, sir.

20 Q. And he asked you to accept that -- you
21 were asked by them to accept certain assumptions as
22 being true in connection with the work you would
23 do.

24 Do you recall that?

25 A. Yes, sir.

1 Q. Tell me, what were the assumptions that
2 the Haynsworth firm asked you to accept as being
3 true in connection with your work?

4 A. I'm not so sure I can recite exactly
5 everything they asked me. If I remember correctly,
6 everything that they identified is practically
7 everything that we -- Marty and I -- had identified
8 in our conservation easement value about the --

9 Q. Can -- I'm sorry. Did you finish?

10 A. -- about the certification of the
11 levees, the establishment of a multicounty business
12 park, and the change in zoning, and, obviously,
13 Richland County being the municipal entity that
14 would monitor the levees and the maintenance of the
15 levees.

16 Q. So that's what the Haynsworth firm
17 asked you to accept as being true for purposes of
18 your appraisal?

19 A. That's what I remember, yes, sir.

20 Q. And did they give you a date for the
21 appraisal, a date that you were asked to appraise
22 as of this date?

23 A. I didn't do an appraisal. The only
24 appraisals that I have completed are the ones that
25 are submitted as exhibits.

1 Q. Did they pick the date of appraisals,
2 any of them?

3 A. No, sir.

4 Q. Who picked those?

5 A. Well, the conservation easement was
6 identified by Columbia Venture, because the
7 appraisal has to be within a certain date,
8 valuation of submission of the easement.

9 Q. So Columbia Venture told you to
10 appraise it as of -- I'm sorry -- as of October the
11 15th of 2002?

12 A. Well, no, they didn't -- they didn't
13 provide that date. That date is a date that will
14 coincide with the recording of the conservation
15 easement. The appraisal can't be prepared 60 days
16 before the conservation easement is recorded.

17 Q. So you came up with that date?

18 A. Well, it was a -- I think a mutually
19 agreeable date that would meet the requirements of
20 the IRS, yes.

21 Q. I'm just trying to find out, did they
22 say, Let's use this date, or did you say, You've
23 got to do it within 60 days and this is the date?

24 A. I said we mutually agreed upon that
25 date in order to meet all of the requirements as

1 stipulated by the Internal Revenue Service.

2 Q. And then the appraisal you did for the
3 bank of March 1st, 2005, who picked that date?

4 A. That was as of my inspection date.

5 Q. So you picked it?

6 A. Well, yeah, that was as of -- you
7 inspect the property, you know, that's
8 really -- pretty much identifies the effective
9 date.

10 Q. Let me show you a document and ask you
11 if you can identify it.

12 Can you identify that document as being
13 a document prepared by your office and a letter
14 dated October the 6th, 2001?

15 A. It is. It's a proposal.

16 Q. Now, is this a proposal -- was this
17 proposal accepted?

18 A. Yes.

19 Q. And was this proposal -- was there an
20 appraisal prepared pursuant to this proposal?

21 A. Yes.

22 Q. And what appraisal was prepared
23 pursuant to this proposal?

24 A. The conservation easement.

25 Q. The appraisal dated October the 15th,

1 2002?

2 A. Yes, sir.

3 Q. And this proposal outlines -- well, it
4 actually states: Phase 2 will begin when the
5 clients select a date of value.

6 Correct?

7 A. Right. Yeah, the date of value,
8 technically from the IRS standards, is the
9 date -- the effective date of value for a
10 conservation easement is the date the easement is
11 recorded.

12 Q. And it sets forth on the third page the
13 conditions and assumptions?

14 A. Yes.

15 Q. And there was to be a restrictive
16 letter delivered on November the 1st, 2001?

17 A. Yes, sir.

18 Q. And that was for \$20,000?

19 A. Well, yes.

20 MR. JOHNSON: Your Honor, we would
21 offer this document into evidence.

22 (DFT. EXH. 18, a letter dated April 19,
23 2002 to Frank W. Cureton from Van Sant and Thomas
24 F. Wingard, was presented.)

25 THE COURT: All right, sir. It's

1 admitted.

2 BY MR. JOHNSON:

3 Q. Is the restricted letter part of your
4 October 15th, 2002 appraisal?

5 A. No, sir.

6 Q. Subsequently, let me show you this
7 document.

8 I want to show you a document dated
9 April 19th, 2002. Do you recognize that?

10 Do you recognize that document?

11 A. I do.

12 Q. And was this proposal accepted?

13 A. Yes, sir.

14 Q. And so what did you get paid for Phase
15 1?

16 A. Apparently, from this proposal,
17 \$20,000.

18 Q. And what did you charge for this second
19 proposal?

20 A. According to this proposal, \$227,000.

21 Q. And is this the proposal that led to
22 the appraisal dated October 15th, 2002?

23 A. Yes, sir.

24 MR. JOHNSON: Your Honor, we would
25 offer this into evidence.

1 THE COURT: All right, sir. It's
2 admitted.

3 BY MR. JOHNSON:

4 Q. So doing the work on this appraisal
5 from October 15th, 2002, your firm got paid
6 \$227,000, plus \$20,000 for Phase 1?

7 A. Yes.

8 Q. Mr. Wingard, I heard a new term from
9 you yesterday and today, and that term was distinct
10 investment-backed expectations.

11 You used that yesterday, didn't you?

12 A. Yes, sir.

13 Q. You used it today, didn't you?

14 A. Yes, sir.

15 Q. Can you show me where that term or
16 phrase shows up anywhere in your October 15th, 2002
17 appraisal?

18 A. I don't think it's in there.

19 Q. Can you show me where it shows up
20 anywhere in the March 1st, 2005 appraisal?

21 A. Well, there wouldn't be any
22 investment-backed expectations on that property
23 as-is in 2005, so you certainly wouldn't see it in
24 there.

25 Q. You issued an expert's report in this

1 case, didn't you?

2 A. Yes, sir.

3 Q. That term doesn't show up there,
4 either; does it?

5 A. No, sir.

6 Q. Now, let me ask you, had you -- who
7 introduced you to that term?

8 A. I think I got introduced by that term,
9 in terms of trying to find out who would be a
10 likely subsequent purchaser of the property for the
11 142 million dollars.

12 Q. When did you get introduced to that
13 term?

14 A. I think I read it in correspondence
15 with pension funds and things like that, what they
16 base their purchase of real estate based on,
17 investment-backed expectations.

18 Q. When did you decide to change your
19 appraisal report from the appraisal of a
20 conservation easement to some analysis of distinct
21 reasonable backed investments?

22 A. I think after you asked me in my
23 deposition who would buy this.

24 Q. And so you decided at that time you
25 would start using that term?

1 A. I think that pretty much summarizes who
2 a likely subsequent purchaser would be for this
3 property. You asked me, if you put a for-sale sign
4 on the property, who would be a likely subsequent
5 purchaser.

6 Q. And so a likely subsequent purchaser,
7 how does that relate to the term distinct
8 investment-backed expectations?

9 A. That's what they're buying.

10 Q. So you just pull this term out of
11 your -- something you read or something you were
12 told?

13 A. Something that I read and something
14 that I found in reading about who would be a likely
15 subsequent purchaser for these -- this property,
16 based on the conservation easement appraisal that
17 we did.

18 Q. Did you have any discussion with
19 anybody about using that term in connection with
20 your testimony here today?

21 A. No, sir, I don't ask anybody about what
22 terms I use.

23 Q. You haven't discussed that at all with
24 anyone?

25 A. Well, they have heard me use that term.

1 Q. Who is they?

2 A. Counsel.

3 Q. Now, you were asked by Columbia Venture
4 to do an appraisal for purposes of a conservation
5 easement, correct?

6 A. Correct, sir.

7 Q. And in a nutshell, how a conservation
8 easement works is this:

9 You have a landowner who has
10 undeveloped property, usually timberland or
11 farmland or something of that nature, correct?

12 A. Yes, sir.

13 Q. And the landowner goes to an appraiser
14 and either has an idea for some higher or better
15 use, or gets advice from the appraiser on a higher
16 or better use, and assuming they come to some
17 agreement on that, the appraiser appraises it based
18 upon some use other than what it's being used for?

19 A. Not necessarily.

20 Q. Well, that's what you did in this case,
21 isn't it?

22 A. Yeah. That's what we did in this case.

23 Q. You took a developed use that you said
24 or reported as being a highest-and-best use and you
25 put a value on it based upon that use, correct?

1 A. Well, that highest-and-best use was
2 predicated on a certain set of extraordinary
3 assumptions.

4 Q. The higher that number is, the better
5 it is for the client, isn't it?

6 A. Yeah, it definitely benefits the
7 client.

8 Q. And then once you do that, you then do
9 an appraisal of the property, assuming it's
10 restricted by the conservation easement, and you
11 can't do that highest-and-best use, and you take
12 the difference between those numbers, the landowner
13 does, and he can submit that to the IRS and seek
14 a -- and claim a deduction against his income,
15 correct?

16 A. Yes, sir.

17 Q. If you have a landowner who has a lot
18 of income and needs a deduction, the landowner can
19 claim it himself; can't he?

20 A. I wouldn't know, I'm not an accountant.
21 I don't know how that works relative to the
22 deduction process for the donor.

23 Q. The landowner can sell it, too, can't
24 he?

25 A. I don't get involved in the

1 monitorization of these conservation easements.

2 Q. But you know that a landowner can
3 transfer that deduction, sell it to some other
4 person or entity, who can then claim the deduction?

5 A. It's my understanding that some of them
6 have been sold.

7 Q. And in this case, you came up with an
8 appraisal that said it was worth 140 million
9 dollars before the easement. It was only worth
10 \$33,750,000 [sic] after the easement, which,
11 according to your appraisal, would yield a
12 deduction of 138 million dollars, correct?

13 A. Well, it was 142 million in the before.
14 And in the after, it was 3 -- I think 3 million.
15 You said 33 million. It was 3 million 750, I
16 think.

17 Q. Let me just show you.

18 A. You said 33 million, and that's not the
19 case.

20 Q. I'm sorry. 3 million 750.

21 A. Right.

22 Q. Leaving a deduction, arguably, of 138
23 million dollars?

24 A. Rounded, yes.

25 Q. Rounded.

1 Now, of course, if the landowner or the
2 person who would purchase it submits it to the
3 government and claims the deduction, that doesn't
4 necessarily mean that the IRS will accept it, does
5 it?

6 A. That's correct.

7 Q. There is a procedure, is there not, to
8 get preliminary approval of an appraisal for
9 conservation purposes that a landowner can use?

10 A. Get it from whom?

11 Q. From the IRS.

12 A. It's my understanding that that can be
13 done, yes.

14 Q. To your knowledge, did Columbia Venture
15 ever submit your appraisal to the IRS to try and
16 get it preliminarily approved?

17 A. No.

18 Q. Now, the risk to the landowner or the
19 owner -- if he sells it -- in claiming a
20 deduction -- is that if the IRS challenges it and
21 denies it, the taxpayer is subject to having to pay
22 the taxes, penalties, and interest on top of it,
23 correct?

24 A. I'm not an accountant, I don't know.

25 Q. You don't have any -- you don't know

1 that?

2 A. I do not.

3 Q. Based on your knowledge of dealing with
4 conservation appraisals, that if they're set aside
5 or rejected by the government, there are penalties
6 attached to that?

7 A. Well, yeah, I would assume there would
8 be penalties if you are dealing with the IRS,
9 because I know they can penalize us, as well, for
10 overstatement of value.

11 Q. And so, to your knowledge, did Columbia
12 Venture ever submit your appraisal to the IRS and
13 claim a deduction?

14 A. Not to my knowledge.

15 Q. To your knowledge, did Columbia Venture
16 ever find any purchaser who would pay a penny for
17 the appraisal, and the deduction your appraisal
18 said would be relevant would be applicable, in
19 order to sell it to some third party?

20 A. No.

21 Q. So they spent \$247,000 to generate this
22 appraisal report you did, and to your knowledge,
23 it's never been used for the purpose for which it
24 was obtained?

25 A. That's correct.

1 Q. Now, do you know why that would be the
2 case?

3 A. No, I do not.

4 Q. Could it be that they thought the
5 appraisal report wouldn't stand up to and meet the
6 standards?

7 A. I have no idea what they thought.

8 Q. If the IRS were to determine that your
9 appraisal report was baseless -- bogus, false,
10 overstated, misstated -- they could deny the
11 deduction and seek penalties, taxes, and interest
12 from the taxpayer, correct?

13 A. Correct.

14 Q. Now, let's turn to the question of
15 validity or invalidity of your appraisal. And so
16 you'll know what I'm talking about, I'm talking
17 about the appraisal dated effective October the
18 15th, 2002.

19 Do you have that?

20 A. I do.

21 Q. Plaintiff's Exhibit 394. Do you have
22 the Court's copy, or do you have some other copy?

23 A. I have the Court's copy, I think.

24 Q. Does it have an exhibit sticker on it?

25 A. Well...

1 Q. I'm going to hand you the Court's
2 exhibit, which is 394.

3 I'm going to walk you through the
4 appraisal report you did and ask you a few
5 questions about various parts of it.

6 A. Okay.

7 Q. At the first of the report it begins,
8 with Pages 3 to 5, Assumptions and Limiting
9 Conditions. Correct?

10 A. Yes, sir.

11 Q. And you're required by USPAP to put
12 your assumptions and limiting conditions in?

13 A. Yes, sir.

14 Q. It's important for anybody who reads
15 your report to know what the assumptions are upon
16 which your report is based, correct?

17 A. Yes, sir.

18 Q. That's the idea behind it?

19 A. Yes, sir.

20 Q. I would like for you to take my pen and
21 the Court's copy of the exhibit here, and I want
22 you to write a big letter A next to every bullet
23 point that you say is an assumption and tell me
24 what it is as you mark it.

25 A. All right. Number 1 would be an

1 assumption.

2 Number 2 would be considered an

3 assumption.

4 Number 5 would be an assumption.

5 Q. Are you marking it?

6 A. Yes, sir.

7 Q. Thank you.

8 A. Number 6 may be considered an

9 assumption.

10 Number 9 would be an assumption.

11 Number 10 would be an assumption.

12 Number 12 really didn't have any
13 improvements, but that would still be considered an
14 assumption, if you had an improved property.

15 Number 13.

16 That should do it.

17 Q. I want to ask you about Paragraph 13.

18 In there it says:

19 A probable zoning change is not
20 necessarily an extraordinary assumption but is
21 considered hypothetical in nature.

22 Do you see where I am talking about?

23 A. Yes, sir.

24 Q. It can be considered an extraordinary
25 assumption; can it not?

1 A. It can be, yeah.

2 Q. And let me ask you this: You said
3 you've talked to Pat Dunbar --

4 A. Yes, sir.

5 Q. -- to get some idea about zoning
6 changes.

7 Do you remember that?

8 A. Yes, sir.

9 Q. What did you tell us he was -- what
10 role did you think he had with the County?

11 A. When we -- well, when I say we, meaning
12 Van Sant and Wingard -- talked to him, Marty
13 actually had the interview with Pat Dunbar, not me.

14 Q. You didn't talk to him?

15 A. I didn't talk to him, but I was
16 privileged to the information from the
17 conversation.

18 Q. Your partner talked to him.

19 A. Yeah.

20 Q. What role did you say Dunbar had with
21 the County?

22 A. If Marty told me correctly, he was
23 either on the zoning board or an advisory to the
24 zoning board.

25 Q. You're not aware that he was on the

1 planning committee?

2 A. No, sir, I was not aware of that.

3 Q. And regardless of whether he's on the
4 zoning board or the planning committee, do those
5 bodies consist of a number of people?

6 A. Oh, yeah, absolutely.

7 Q. You weren't suggesting that just
8 because one member says, I think it looks good,
9 that that would indicate what the board as a whole
10 would do?

11 A. Relative to the zoning?

12 Q. Yeah.

13 A. Well, you know, Richland County had
14 indicated a zoning change, as well, in order to do
15 the development.

16 So with Richland County suggesting a
17 zoning change and Dunbar said, Yeah, the plan
18 really, really looks good and parallels the vision
19 we have for the Comprehensive Land Use Plan for
20 Richland County, yeah, I considered that very
21 reasonable.

22 Q. Mr. Wingard, let's get back to my
23 question.

24 If one member of the board says, It
25 looks good, you aren't suggesting that that somehow

1 controls what the board itself as a whole is going
2 to do?

3 A. I didn't suggest that. We didn't say
4 we talked to the board. We said that Marty talked
5 to Pat Dunbar.

6 Q. And do you have any special expertise
7 in determining whether a zoning board will make a
8 change or approve a change or not approve a change?

9 A. I do not. But in preparing
10 conservation easements sometimes, when we do the
11 investment-backed expectations that I have alluded
12 to, a zoning change must occur.

13 A zoning change won't occur until all
14 of the plans and everything are submitted. The
15 developer, for a conservation easement, they won't
16 go through and submit all of those plans. They
17 will get -- they will talk to the zoning board and
18 ask them about a probable zoning change. And if
19 they say it's favorable -- if the plans are
20 favorable -- then I conclude that to be a
21 reasonable test that there could be a probable
22 zoning change.

23 It's coming from the entity that will
24 eventually change the zoning for that particular
25 specified use.

1 Who else would I ask?

2 Well, I'm not asking the questions.

3 Q. What I'm trying to find out --

4 A. That's a rhetorical question.

5 Q. I believe it was.

6 But what I'm trying to find out is, in
7 your report, you offer the opinions repeatedly
8 about a probable zoning change.

9 A. Yes, sir. We have to, or that plan
10 would never come to fruition.

11 Q. My question for you, sir, is, do you
12 have any special expertise, training, background,
13 study, analysis of zoning changes that qualifies
14 you as an expert to offer an opinion as to what a
15 zoning board would do or not do in a particular
16 situation?

17 A. I do not. I have never presented
18 myself as an expert on zoning changes.

19 Q. Thank you.

20 Now, after page -- I want to go to Page
21 6 through 11.

22 And this part of your report is an
23 introduction to the complete self-contained
24 appraisal report, correct?

25 A. Yes, sir.

1 Q. Page 6?

2 A. Yes, sir.

3 Q. And in the third full paragraph, it
4 talks about a vision.

5 Did you get that straight from the
6 literature of Columbia Venture?

7 A. I got -- that was provided to me by
8 George Gregory.

9 Q. So that's not you, you just put it in
10 there?

11 A. That's me paraphrasing, or sometimes
12 getting permission to use the exact wordage.

13 Q. Then it talks about: The master plan
14 for Green Diamond dynamically embraces the
15 following major elements.

16 What master plan are you referring to?

17 A. That one right there.

18 Q. And this is the EDSA drawings, the
19 preliminary master plan?

20 A. Yes, sir.

21 Q. And then in your testimony yesterday,
22 there were several other documents -- I will just
23 show them to you -- Plaintiff's Exhibit 320 and
24 Plaintiff's Exhibit 314, which were by this EDSA?

25 A. Yes, sir.

1 Q. Did you have anything else from EDSA
2 other than these two exhibits, 314, 320, and the
3 preliminary master plan in doing your appraisal?

4 A. We had a big brochure -- not a
5 brochure -- but a looseleaf binder that had a bunch
6 of the elements that we alluded to here. I can't
7 say that EDSA prepared that or they prepared it in
8 conjunction with Burroughs & Chapin. I don't know,
9 but we had that.

10 Q. Can you tell me any
11 other -- specifically any other ESDA document that
12 you had and relied upon and used for your report,
13 other than these three -- these two exhibits and
14 that preliminary plan?

15 A. No, sir.

16 Q. Now, the document says "dynamically
17 embraces".

18 What does that mean?

19 A. Anytime you embrace something, you put
20 your arms around it.

21 Q. No, no. Dynamically. I understand
22 embrace, hug.

23 A. With a firm hug.

24 Q. A firm hug.

25 A. Embracing it with a firm hug.

1 Q. Did that come from Columbia Venture?

2 A. It did, absolutely. Again, we got
3 permission to use that exact wording.

4 Q. Then look at Page 7. You talk about
5 site development and the fact that the property is
6 flat, correct?

7 A. Where are you on Page 7?

8 Q. Page 7, the third bullet point.

9 A. Well, because this was -- because this
10 was copied after it had been unbound, I've got
11 about eight bullet points on here.

12 Q. I'll tell you, you may want to use this
13 one.

14 A. For the same thing.

15 Q. Oh, I will help you. What page are you
16 on?

17 A. 7.

18 Q. Do you see that?

19 A. Yes, sir.

20 Q. You talk about it being flat?

21 A. Uh, I said generally level or flat.

22 Q. Generally level.

23 A. Not absolutely flat.

24 Q. Then you go on to say that site
25 preparation would be considered minimal?

1 A. Yes.

2 Q. Did you get any prices or any
3 information about site preparation?

4 A. I did not.

5 Q. Do you know anything about the soils?

6 A. Yes, sir. We identified what soils
7 were on the site.

8 Q. I'm talking about the quality of the
9 soils for building purposes, not the soils.

10 A. Well, there had been other properties
11 built on that property with no deleterious effects
12 from inadequate soil composition, so, yes.

13 Q. Did you get any data as to soil
14 composition and its suitability for construction?

15 A. What kind of data would you be
16 referring to?

17 Q. Any.

18 A. I mean, for instance?

19 Q. You will have to tell me, you either
20 did it, or you didn't.

21 A. Well, I don't know -- I may have it,
22 but unless you tell me what I need to be looking
23 for, I can't really answer your question.

24 Q. Did you get any geotechnical data from
25 any -- from S&ME or anyone else that would have

1 told you what the composition of the soil was and
2 its suitability for construction?

3 A. No, sir. We did speak with Harry Walsh
4 with civil engineering, who does a lot of
5 engineering work in the Columbia area, and
6 consulted him about the probability of subsequent
7 development of this property.

8 He didn't indicate any kind of
9 inadequate soil composition.

10 Q. No, sir --

11 A. And the existing soils on there are
12 suitable for development and construction, and
13 they're identified in the site description,
14 so -- and visual orientation to the site will show
15 that it's relatively flat.

16 And the fact that Heathwood was
17 building new additions on their property, and I
18 think the wastewater treatment plant had just
19 expanded, we felt reasonably comfortable that the
20 soil composition was suitable for development.

21 Q. Mr. Wingard, do you know whether the
22 soil composition on the Heathwood property is the
23 same as on the Manning property?

24 A. No, sir.

25 Q. Do you know what Heathwood had to do in

1 terms of getting a firm foundation for their
2 structures to build on their property?

3 A. I do not.

4 Q. Mr. Wingard, you used, as part
5 of -- we'll talk about it in a minute -- some
6 comparable -- some sales from some -- from other
7 developments in connection with your appraisal
8 process; didn't you?

9 A. What kind of sales?

10 Q. Well, you talked about lot sales.

11 A. Yes, sir.

12 Q. Did any of those developments that were
13 lot sales involve developments that were flat,
14 property that was flat, open, and treeless farmland
15 before development?

16 A. I wouldn't know; no, sir.

17 Q. Did you get any comparables from any
18 subdivisions where the subdivisions were built out
19 in open, flat, treeless, farmland?

20 A. Well, whenever the sales were obtained,
21 they were already developed for disposition. So I
22 wouldn't know -- I don't recall the
23 property -- well, yeah, Longtown Road property that
24 Mungo built, that was open property with some
25 trees. Not as open as this.

1 Q. Was it flat, treeless, open farmland?

2 A. Well, not total. There was some
3 areas -- there was some undulation on the site, but
4 not identical to this, absolutely not.

5 Q. Mr. Wingard, on Page 7 you reference in
6 the next paragraph:

7 The property's been thoroughly studied
8 from an environmental standpoint.

9 A. Where are you --

10 Q. The next paragraph.

11 A. Page 7?

12 Q. Yeah.

13 A. Which paragraph?

14 Q. The paragraph that begins: The
15 property has been thoroughly studied from an
16 environmental standpoint and from available
17 environmental studies, there are no unique issues
18 which permit the property from being properly and
19 sensitively developed as planned.

20 Did I read that correctly?

21 A. Yeah. I think George Gregory -- I
22 think he did a -- he told me they had a Phase 1
23 environmental report on the property.

24 Q. Did you, as part of the work you were
25 doing, read any environmental study prior to

1 issuing your report?

2 A. Just the fact -- I remember reading the
3 Phase 1 report.

4 Q. And who authored that?

5 A. I can't remember. George had it with
6 him. He had a bunch of information relative to the
7 Columbia Venture property.

8 Q. Would that be in your file on this
9 project?

10 A. I would -- I can't say for sure if I
11 kept that or if I just read it. But usually on the
12 Phase 1, the Phase 1 will suggest if there's a need
13 for a Phase 2.

14 Since they didn't do a Phase 1, that
15 led us to believe there were no endangered species
16 or any need for subsequent environmental analyses.

17 Q. Mr. Wingard, in your expert report, you
18 listed the documents that you reviewed and
19 considered as a basis for your opinions, did you
20 not?

21 A. I did.

22 Q. That report -- that Phase 1
23 report -- is not included, is it?

24 A. That's correct.

25 Q. So let me ask you again, sir, did you

1 actually read an environmental study prior to
2 issuing your report?

3 A. Not an environmental study, no, sir.

4 MR. JOHNSON: Your Honor, it may be an
5 appropriate time to break. 12:45?

6 THE COURT: Yes, we can go ahead and
7 break now.

8 (The lunch recess was held.)

9 THE COURT: Mr. Johnson, you may
10 proceed.

11 MR. JOHNSON: Thank you, Your Honor.

12 BY MR. JOHNSON:

13 Q. Mr. Wingard, let me go back and get
14 this in the record.

15 There was a savings and loan crisis in
16 the mid 1980s and after that, congress enacted
17 certain legislation, didn't they?

18 A. Yes.

19 Q. And that was the Financial Institution
20 Recovery, Reform, and Enforcement Act, correct?

21 A. Yes.

22 Q. Prior to that act, a lot of states
23 didn't regulate or license appraisers?

24 A. To my knowledge, no states did.

25 Q. And that act required that there was

1 going to be a federally regulated -- financial
2 institutions could only use licensed or certified
3 appraisers?

4 A. That's correct.

5 Q. And so, then, an organization called
6 The Appraisal Foundation was created; wasn't it?

7 A. Yes, sir, by congress.

8 Q. And that was a non-profit organization?

9 A. Correct.

10 Q. And it consisted of three different
11 boards, correct?

12 A. I know the appraisal subcommittee is
13 one. I'm not familiar with the other two.

14 Q. The Appraiser Qualifications Board?

15 A. Okay, yes.

16 Q. And the Appraiser Qualifications Board
17 issues standards for state licensing and
18 certification?

19 A. Yes.

20 Q. And they also promulgate USPAP?

21 A. Right.

22 Q. And what does USPAP -- USPAP -- stand
23 for?

24 A. Uniform Standards of Professional
25 Appraisal Practice.

1 Q. And those standards are intended to
2 promote and maintain a high level of public trust
3 in the appraisal practice?

4 A. Yes, sir.

5 Q. Many states have adopted USPAP as being
6 applicable to the licensing of real estate
7 appraisers?

8 A. All states have.

9 Q. South Carolina has, have they not?

10 A. Yes, sir.

11 Q. And non-compliance with USPAP by an
12 appraiser in South Carolina can lead to penalties
13 ranging from reprimands, fines, revocation of
14 licensure?

15 A. Yes, sir.

16 Q. Now, when we took the break, we were on
17 Page 7 of your report, Exhibit 394 -- have you got
18 that?

19 A. Yes, sir.

20 Q. And down at the bottom of the page, the
21 second-to-last paragraph, Page 7, your report talks
22 about communications with authors of Richland
23 County Town & Country plan, correct?

24 A. Yes, sir.

25 Q. And I think you have told us, you

1 didn't speak to them directly. What is contained
2 in here is what Mr. Dunbar told you?

3 A. Yes, sir.

4 Q. Then it goes on to -- in the last
5 paragraph -- and it talks about job creation and
6 investment in the surrounding minority communities,
7 correct?

8 A. Yes, sir.

9 Q. Now, specifically what jobs did you
10 consider would be created by this project? What
11 information did you have about that?

12 A. Well, logical information. I mean,
13 whenever the development occurred, you've got
14 people -- you've got framers, you've got plumbers,
15 you've got an electrician, you've got paving
16 people, you've got landscapers, all of those would
17 be jobs created by this development.

18 Q. You just went through a mental
19 exercise, and those are the jobs you're talking
20 about?

21 A. Those are the jobs I see occurring
22 whenever I do other properties that are under
23 development.

24 Q. And then what investment was going to
25 be made in minority neighborhoods?

1 A. I think they would have better schools,
2 newer schools, more proximate schools, than what
3 they have now.

4 Q. Is that what you meant by that in your
5 report?

6 A. Absolutely. I didn't put the bullet
7 points to delineate what those were, because I
8 didn't think we would actually know until the
9 development becomes evident it's going to occur and
10 when it starts.

11 Q. And, of course, you don't know whether
12 the schools would actually be built on the Green
13 Diamond project or outside of the project, do you?

14 A. Well, there were sites allocated for
15 the construction of schools within the project.

16 Q. I understand.

17 A. Well, of course, I wouldn't know,
18 because it hasn't been built yet.

19 Q. But you don't know whether they have
20 built them down on Bluff Road somewhere or whether
21 they would have gone on Green Diamond, do you?

22 A. Would I -- would I not know that now?
23 Of course I wouldn't know it now.

24 Q. So the mere fact that they had sites
25 assigned, or that they were calling school sites,

1 doesn't mean or indicate that the schools would
2 ever be built there, does it?

3 A. It's not guaranteed, absolutely not.

4 Q. Now, tell me this. Would you agree
5 with me, whether the project would create a hundred
6 jobs or a thousand jobs, or whether there would be
7 investment in minority neighbors, doesn't have
8 anything to do with calculating the value of the
9 project?

10 A. Correct.

11 Q. All that in the report is about -- is
12 it just eyewash to make it read better, appear
13 nicer?

14 A. No, I think it was the benefits that
15 would be created by the Columbia Venture plan
16 becoming a reality. That's what that is.

17 The plan would have, you know,
18 complementary uses within the property. But I
19 think the surrounding uses would be benefitted by
20 having something like this, rather than just
21 agricultural fields.

22 Q. Did you come up with this language and
23 these concepts about jobs and minority
24 neighborhoods, or is this something Columbia
25 Venture gave you and you stuck in your report?

1 A. Well, I stuck it in my report, but I
2 think they donated one site outside the project for
3 a park between two existing older residential
4 developments on Bluff Road.

5 Q. So it came from Columbia Venture?

6 A. Yes, absolutely.

7 Q. Now, Green Diamond project, as you have
8 outlined in your report, is a huge undertaking,
9 right?

10 A. Yes, sir.

11 Q. It's got a build-out time of -- what
12 did you say -- 15 years?

13 A. Yes, sir.

14 Q. So your assumptions are that, if the
15 project started at a particular date, it would be
16 15 years before it would be completed?

17 A. Yes, sir, or before the last sites
18 would be disposed. It might be completed before
19 that and just the sites have not sold yet.

20 Q. Mr. Wingard, have you, as an appraiser,
21 ever done a developmental appraisal on a project of
22 this magnitude?

23 A. No, sir.

24 Q. Had you, as an appraiser, ever done a
25 developmental appraisal with a build-out of 15

1 years?

2 A. No, sir.

3 Q. The developmental appraisals you had
4 done were on much smaller tracts of land, correct?

5 A. Yes, sir.

6 Q. They were much shorter time periods
7 where you were estimating the build-out?

8 A. Yes.

9 Q. Did you discover any project in the
10 whole United States that was comparable to the
11 envisioned Green Diamond project that had actually
12 been built, to guide you or help you figure out and
13 predict accurately the build-out time?

14 A. Well, the build-out time for that
15 project somewhere else may not have any relevance
16 to the Green Diamond project.

17 Q. Would you --

18 A. We --

19 Q. Excuse me. You weren't finished.

20 A. We use local absorption, augmented not
21 only from the existing properties, but absorption
22 provided by data from Central Midlands Regional
23 Planning on multifamily absorption. So it was just
24 not something that we guessed at.

25 I think there was, you know, as

1 reasonably possible as we could get, some ideas
2 when these units would be absorbed.

3 Q. It wasn't something you just guessed
4 at?

5 A. No, sir.

6 Q. Well, let me ask you this: Did you
7 find another project to use as guidance for what,
8 you know, took another project of this magnitude to
9 be done?

10 A. No, because usually if you have another
11 project like this, we wouldn't have access to all
12 of the plans and information in order to determine
13 what the sell-out was.

14 Q. Well, if it was completed, you could
15 look to see when they got their first agreement and
16 development done, and when they finished, to
17 determine whether projects of this nature, this
18 size, take 10 years, 20 years, 30 years. You would
19 at least have some comparable to compare it to, if
20 you had found that kind of development, wouldn't
21 you?

22 A. In an ideal situation, yes. In a book
23 situation or a seminar or a course, yes, you would
24 have other 4,500-plus-or-minus-acres and had the
25 same development where you could pinpoint exactly

1 what the absorption was.

2 Q. Now, the developments that you compared
3 it to, they didn't involve 15-year
4 absorptions -- an absorption of 15 years. You were
5 looking at absorption rates of one, two, three,
6 four years, five years, correct?

7 A. Yes, sir, because that's what the
8 project allowed.

9 Q. And isn't it the truth that the longest
10 absorption rate you had ever dealt with before in
11 your career was a six-year absorption rate?

12 A. If that's what I testified in my
13 deposition, yes. I don't remember exactly. That
14 sounds reasonable.

15 Q. Now, in terms of the ones you had
16 looked at -- you told us that you had been involved
17 in some other developmental appraisals, correct --

18 A. Yes, sir.

19 Q. -- on these smaller tracts?

20 A. Yes, sir.

21 Q. Did you ever go back after doing your
22 appraisal and do a detailed study as to whether
23 your predictions that you had for the development
24 were right or wrong?

25 A. No.

1 Q. You have looked generally at some of
2 these projects, correct?

3 A. Well, I didn't really have to go back
4 to see if my forecasts were correct, or right,
5 because I would have what actually occurred in
6 those properties. It didn't matter what I had
7 projected; it matters what had actually occurred
8 with those absorptions.

9 Q. My question is, again, when you do a
10 development approach appraisal, you predict the
11 future, this is what in Thomas Wingard's opinion is
12 going to happen?

13 A. Well, I prefer to say I forecast based
14 on applicable and available market data.

15 Q. Prediction is a bad word?

16 A. It could be construed as a bad word.

17 Q. Okay. So you like to use what? I'm
18 sorry.

19 A. Forecast.

20 Q. Forecast. You forecast, sort of like a
21 the weatherman, what's going to happen with this
22 development over a two to four to six-year period
23 of time, correct?

24 A. That is correct, because I like to
25 think we're a little bit more accurate than the

1 weatherman.

2 Q. Well, have you ever gone back after you
3 have done it and checked the accuracy of your
4 prediction, where you took your development
5 approach, four, five, six years later, laid it next
6 to the facts of the development, and say, Boy, I
7 was dead on the money, or I missed it, or I missed
8 it big time?

9 A. No, sir, I have not. And as I said
10 just prior to this next question, it really doesn't
11 have any relevance as to whether I was right or
12 wrong, because I have now the actual absorption
13 time of the property, by record, because the sales
14 have occurred.

15 Q. Mr. Wingard, it may have relevance in
16 judging the credibility of your opinions. That's
17 all I'm asking you.

18 Didn't you tell me -- or haven't you
19 told me -- that you know generally that, on some of
20 the developmental approaches you did, you got it
21 pretty close to right?

22 A. Yes.

23 Q. Some of them, you missed it?

24 A. Well, I like to say the market
25 conditions play -- you know, a lot of times now, if

1 the development does not, I guess, sell at a
2 forecasted rate, it's not always the fault of the
3 appraiser and his forecast; it could the marketing
4 could have been skewed. They might have picked the
5 wrong marketing agent to sell the lots.

6 Q. I'm not --

7 A. I'm just telling you how the
8 predictions can vary -- excuse me -- how the
9 forecasts can vary.

10 Q. I'm not asking or being critical of you
11 on whether you did it hopefully right and something
12 else is influencing it.

13 I'm asking you, isn't it true that you
14 know that on some of them when you looked at it
15 after the fact, you missed it, in terms of what you
16 predicted?

17 A. Missed it in what regard? I was -- it
18 sold out before I said they would, or after?

19 Q. Either way.

20 A. I don't know, because I don't go back
21 and check. I would guess that -- there's -- one
22 development comes to mind, and it's right across
23 the river and it's right next to another
24 development that sold out very quickly. But the
25 one I did didn't sell as rapidly, but it's almost

1 identical. And the reason --

2 Q. Did you miss that one?

3 A. I missed that one because I based it on
4 the one next door, and the reason was the sales and
5 marketing. I mean, they picked the wrong firm to
6 market the property.

7 Q. There's no way for us to -- you don't
8 have studies or data that would enable us to go
9 back and check your reliability as a forecaster, do
10 you?

11 A. Well, you could go back and check my
12 appraisals and then go run all of the sales on
13 those developments and see if it was accurate or
14 not. That would be the only way I know to
15 determine whether I was accurate or inaccurate.

16 Q. Mr. Wingard, I'm correct that, if
17 you're wrong on your forecast or predictions that
18 the build-out is 15 years, and, in fact, it's 20
19 years, that would change completely the numbers you
20 have given, correct?

21 A. Yes, sir.

22 Q. No question?

23 A. And on the converse, if it sold out
24 quicker than that, that would have the reverse
25 effect on it. It would make it more valuable.

1 Q. Tell me how you arrived -- what data
2 you used to come up with the figure of 15 years.

3 A. It's in the report.

4 Q. Okay. I'm going to hand you your
5 report.

6 A. Okay.

7 Q. Tell me what you looked at, for
8 Mr. Thomas Wingard to say it's 15 years.

9 A. All right. Now, as you are aware,
10 there were several components comprising this
11 property -- this appraisal and the property that's
12 contained in the appraisal. Not all of the
13 properties will sell at the same rate. There's
14 different absorption times for single-family. That
15 was based on other single-family absorption times.

16 There were absorption times for
17 multifamily. Those could be different than single
18 family, and there were different times for the big
19 parcels and subparcels that would be either used
20 for schools, agricultural, or for commercial or
21 industrial use.

22 So we use what was available in terms
23 of the competing -- not competing -- well, they
24 would be competing neighborhoods, just not on the
25 same scale or size as Green Diamond. But you look

1 at what had sold in those other developments.

2 That's all you can rely on.

3 And you look at what the absorption was
4 for multifamily units from Central Midlands, as
5 well as talking with the individuals involved in
6 the market, in sales, and development and provide a
7 reasonable forecast. That's the only way we knew
8 how to do it.

9 Q. Mr. Wingard, do you recall the
10 question?

11 A. You said, how do we get 15 years?

12 Q. I said, Show me -- you said it was in
13 your report. I said, Show me what you relied upon
14 in your report to come up with the magic number of
15 15 years.

16 A. I just told you what I relied on.

17 Q. Could you point me to whatever it is in
18 your report that supports 15 years as the
19 build-out?

20 A. Well, let me show you this -- what I'm
21 relying on is what is competing with each other,
22 the total number of units in the project, and the
23 time frame. I don't have a magical table or scale
24 that says exactly when they would sell. It was a
25 forecast, as I have already testified.

1 Q. Can you point me to a specific thing?

2 A. You mean to the table?

3 Q. Whatever you say that caused you to
4 conclude 15-year build-out.

5 A. All right. Let's look on Page 77.

6 Q. Okay. Let me get mine.

7 A. You've got your tabs on there.

8 Q. I'll look here with you.

9 A. Again, I don't have a matrix that shows
10 all of it together. This would be the
11 single-family residential absorption. If you look
12 over here, we tell you what the average absorption
13 is per month.

14 And then on each of these
15 properties -- and we say here that they average
16 about three -- let me see what the final thing was.

17 All right. It says here: Lake
18 Carolina and the Summit provide the best
19 indications of potential lot absorption. Lake
20 Carolina represented 13.09 lots per month, but the
21 Summit was higher at 19.28. The higher absorption
22 of lots on a per-month basis may be attributable to
23 the lesser price associated with these lots.

24 We had different price points, so
25 automatically that's going to affect the

1 absorption.

2 So down here, we come with an average
3 per-month over eight years of 20.4 units.

4 Q. Can you flip back.

5 A. Okay.

6 Q. Did you have data from Lake Carolina
7 for 15 years?

8 A. It couldn't extend for 15 years because
9 they didn't have enough units.

10 Q. Did you have data from the Summit for
11 15 years?

12 A. It's not large enough to have that many
13 units to extend for 15 years. Had --

14 Q. Isn't what happened, was, you looked at
15 some shorter time periods, and, Mr. Wingard, you
16 just extrapolated and said, I'm going to pick 15
17 years, that sounds good to me?

18 A. No, sir. I didn't look at shorter time
19 periods. I looked at what was available in the
20 market, what this property would compete with.
21 That was all available. Those were the largest
22 developments in Richland County. So that's all you
23 can go to to find out what an absorption rate would
24 be.

25 If we had had another project like

1 Green Diamond -- you wondered if Green Diamond
2 would be viable because -- if the market could
3 absorb all of that.

4 Q. Mr. Wingard, you talked about housing,
5 you talked about moving the law school to Green
6 Diamond, you talked about moving the medical school
7 to Green Diamond, you talked about a research
8 triangle.

9 A. No, sir, I didn't talk about a research
10 triangle. I didn't talk about moving the medical
11 school.

12 Q. I thought it was in your report?

13 A. I talked about the collaboration
14 between the universities for other institutional
15 uses.

16 Q. Was there any -- were you ever given
17 any document that showed any commitment from any
18 developer or homebuilder to buy and build lots in
19 Green Diamond?

20 A. No, it was too early. That kind of
21 information wasn't available to put it out to
22 builders to take down a certain number of lots.

23 Q. Were you provided any such commitment
24 from any hotel or motel that was going to build in
25 Green Diamond?

1 A. No, because, again, it's too early to
2 have those sites available for a hotel or motel to
3 select where the site would be and how big it would
4 be and how much it would cost.

5 Q. Any commitments to move the law school
6 or the medical university or build a research
7 triangle out there from any university?

8 A. Well, I didn't say they would move the
9 law school. I said they contemplated rebuilding
10 the law school -- or I think I might have said
11 moving the law school. I didn't say the medical
12 school. That's it.

13 Q. You did, I believe you did.

14 A. I didn't say the medical school.

15 Q. You didn't say the medical school?

16 A. No, I said the universities might have
17 a collaboration where they would create another
18 medical school, a joint Clemson Medical University
19 and the University of South Carolina.

20 Q. Clemson and Carolina agree on
21 something?

22 A. Yes. Again, it's a forecast.

23 Well, you know you've got The Citadel,
24 College of Charleston, you've got other
25 universities that may -- centralized location, it

1 seemed viable.

2 Again, you don't have site specifics
3 for these hotels. Hampton Inn can't say, I want 5
4 acres, because it's not available yet. They
5 couldn't tell them where the 5 acres would be, or
6 what it would cost, because it's a conceptual plan.

7 Q. No commitments from anybody or any
8 entity to do anything in Green Diamond?

9 A. That is correct.

10 Q. Now, did you do any study or survey of
11 developments that are built behind levees --

12 A. No.

13 Q. -- to determine what appetite the
14 public might have in terms of buying and building
15 on property that's protected by a levee?

16 A. No.

17 Q. Did you do any market study or analysis
18 as to whether the land behind the levee was worth
19 more, less, or the same than land that's not
20 involved with a levee?

21 A. No, sir. Seeing we had no other levees
22 in Richland County, I didn't have any comparison.

23 Q. You knew about the flooding in
24 Mississippi in 1993?

25 A. On the Pearl River?

1 Q. Yeah.

2 A. In Jackson?

3 Q. You knew about that?

4 A. Yeah, I knew about that.

5 Q. You knew about the flooding we have had
6 in New Orleans, twice now?

7 A. Yes, sir.

8 Q. Do you think building property behind
9 the levees affect the values by the fact that
10 they're behind levees and subject to flooding,
11 regardless of what the standard is?

12 A. I really wouldn't have an opinion on
13 that, because I don't know.

14 New Orleans is a decent-sized city that
15 was built behind levees. Jackson is the capital of
16 Mississippi, very comparable in size to Columbia,
17 and what you're talking about being on the Pearl
18 River, so I imagine there's some development behind
19 those levees. So these are areas that are not void
20 of development or existing development.

21 Q. Do you think the flooding helps the
22 land values?

23 A. Flooding, I would say no.

24 Q. Thank you.

25 Now, you also say on Page 6 of your

1 report -- you talk about -- I'm sorry, not Page
2 6 -- on Page 8 a significant amount of research was
3 undertaken in order to formulate the overall
4 development plan.

5 Did I read that?

6 A. Yes, sir.

7 Q. And is that the master plan, that sheet
8 up on the wall, these two documents that were put
9 into evidence?

10 A. Yes, sir.

11 Q. Then on Page 9 of your report, there's
12 a discussion regarding multicounty business parks.
13 Do you see that?

14 A. Yes, sir.

15 Q. Is that something you drew up, or did
16 Columbia Venture give you that information for you
17 to stick in your report?

18 A. I found that information.

19 Q. You developed it, wrote it yourself?

20 A. I wrote everything in the report
21 myself, with the exception of the Green -- use of
22 the Green Diamond -- identification of the Green
23 Diamond project.

24 Q. You wrote what is in here?

25 A. Yes, sir.

1 Q. Let me ask you about multicounty
2 development business parks.

3 Have you ever had any experience where
4 you were a participant in the development of a
5 multicounty business park?

6 A. No, sir.

7 Q. Have you ever read the documents that
8 apply to a multicounty business park?

9 A. No, sir.

10 Q. Have you ever been involved in any way,
11 shape or form in putting together a multicounty
12 business park?

13 A. No, sir.

14 Q. Do you hold yourself out as having any
15 expertise whatsoever in multicounty business parks?

16 A. No, sir.

17 Q. Mr. Wingard, have you ever read the
18 statute that creates multicounty business parks?

19 A. No, sir.

20 Q. And do you know where it's even found,
21 this number?

22 A. No, sir.

23 Q. Do you know who has to agree and what
24 they have to agree upon to establish a multicounty
25 business park?

1 A. No, sir.

2 Q. Do you have any experience or knowledge
3 as to how long it takes to put one together,
4 assuming no public opposition?

5 A. I do not.

6 Q. Do you know how long it takes to put
7 one together, assuming public opposition?

8 A. I do not.

9 Q. Did you factor into your start
10 date -- what was your start date for the project?

11 A. Well, as of the effective date -- you
12 had different start dates in terms of the -- it
13 would be the effective date -- you say start for
14 the project?

15 Q. Yeah.

16 A. The project date, it would take -- I
17 didn't have a start date. I had when the lots
18 would start selling, and those were different
19 dates, according to the parcels. But the effective
20 date, everything was discounted back to the
21 effective date.

22 Q. But we would have to know the start
23 date to know when the 15 years was up; wouldn't we?

24 A. Well, you would think that the -- 2002
25 would be the start date.

1 Q. My question is, did you have a start
2 date you utilized --

3 A. That --

4 Q. -- to assume was the start date for
5 purposes of determining whether it would be
6 completed in 2016 or 2020?

7 A. 2002.

8 Q. 2002.

9 Did you factor in any delay in the
10 start date or make any assumptions about delay of
11 the start date for the development of a multicounty
12 business park?

13 A. No, sir.

14 Q. Do you have an understanding of how a
15 multicounty business park even operates?

16 A. I don't know how it operates. I know
17 what it does.

18 Q. Do you understand that what happens,
19 is, the developer who would have the obligation to
20 pay for infrastructure, makes an agreement with the
21 County and the County issues bonds to pay for the
22 infrastructure cost, and the bonds are paid back by
23 property taxes assessed against people within the
24 park?

25 A. Correct.

1 Q. So what the developer does with these
2 kinds of parks is he shifts -- the developer shifts
3 his obligation to pay for the infrastructure, at
4 that time, funded at the start of the project, and
5 he shifts the cost of it over to the people who buy
6 the lots.

7 A. That's how it works, yes.

8 Q. Now, the cost of the infrastructure
9 that you looked at, sir, was what?

10 A. Infrastructure for what?

11 Q. The infrastructure that you assumed was
12 going to be passed on to the property owners and
13 avoided by the developer, how much was the
14 developer avoiding, in terms of infrastructure
15 costs by saying we're going to have this kind of
16 park?

17 A. I have no idea.

18 Q. Just a minute. I'm going to help you
19 here.

20 A. Okay.

21 Q. Didn't you have a document --

22 I want to show you a document and see
23 if you recall looking at it at your deposition.

24 A. Yes, sir, I do remember that now.

25 Q. Actually you had -- this came from your

1 records, didn't it? You had it?

2 A. Okay. I don't remember.

3 Q. But seeing it, it refreshes your -- you
4 know you have seen it?

5 A. Yes, sir.

6 Q. And this document outlines the costs
7 for the infrastructure that would be paid for by
8 bonds, assuming the right parties got together and
9 formed a multicounty business park, correct?

10 A. Correct.

11 MR. JOHNSON: Your Honor, we would
12 offer this into evidence.

13 THE COURT: All right, sir, it's
14 admitted.

15 (DFT. EXH. 19, Green Diamond Bond
16 Proceeds for Infrastructure, was presented.)

17 BY MR. JOHNSON:

18 Q. Mr. Wingard, looking at Plaintiff's
19 Exhibit 19, does it show that over a total of 16
20 years, bond -- proceeds raised by selling bonds
21 would total \$80,100,000?

22 A. That's what it says.

23 Q. And does it show the levee, the
24 expenses that would be paid Years 1 to 6, totaling
25 \$32,650,000?

1 A. Well, it has Year 1, Year 4, and Year
2 7, so I can't tell you about 6.

3 Q. I was talking about that.

4 A. Year 1 through 6?

5 Q. Yeah.

6 A. \$32,650,000.

7 Q. So the project that you envisioned and
8 came up with this figure of 142 million dollars
9 assumed that the developer would shift this cost
10 over to the park?

11 A. Yes, yes.

12 Q. And if the park -- if the officials who
13 could form a park, whoever they may be, decided,
14 Boy, it's a bad idea and went out and formed one,
15 the developer would have to pay these
16 infrastructure costs out of his own pocket, right?

17 A. Right.

18 Q. And so you would have to deduct from
19 the 142 million dollars, 80 million dollars?

20 A. If those costs are accurate, that would
21 be correct.

22 Q. Well, that's what they're raising from
23 the sale of bonds to pay costs.

24 So if you took 80 million dollars from
25 142 million dollars, what do you end up with?

1 A. I'm sorry. Say that again, please.

2 Q. Yes, sir. 142 million less 80 million.

3 A. 42 million -- excuse me -- 62 million.

4 There's no contingencies on here, so there's
5 probably some contingencies in here that would
6 reduce that number.

7 Q. Getting that park is a big nut, isn't
8 it?

9 A. It is. Obviously, the assumption was
10 that all the park was a done deal and would happen.
11 That's why they create these parks, to share --

12 Q. But there's no way for you to
13 know -- really know or understand it --

14 A. Absolutely.

15 Q. -- or predict with any certainty that
16 that would occur?

17 A. I think that's why we had extraordinary
18 assumption in here, because we couldn't predict it
19 was a certainty.

20 Q. Did you put that as an extraordinary
21 assumption?

22 A. Yes, sir, it's in the scope of work.

23 Q. Could you show me?

24 A. Yes, sir. It might be in
25 highest-and-best use.

1 Q. Mr. Wingard, we'll just move on.

2 A. Okay, I'll find it.

3 Q. If it's in there, it's in there.

4 A. It's in here somewhere. I will find it
5 for you.

6 Q. Okay. We know it's not on your
7 assumptions and limited conditions.

8 A. No. It's probably on the site
9 description or highest-and-best use. We put it in
10 there because a lot of times people don't read the
11 assumptions, but they read the body of the report.
12 So, you know, but --

13 Q. Mr. Wingard, on Page 10, that's where
14 you do this calculation of the property taxes that
15 the County, you say, would get per annum at
16 build-out, 120 million?

17 A. Yes. I think at that time, what we
18 did -- we took all of the sites and determined what
19 the value per site would be and an applicable
20 millage rate and an assessment ratio of 6 percent
21 and determined what the total taxes were going to
22 be.

23 Q. You would agree with me that was a
24 pretty rough calculation?

25 A. Oh, absolutely. Obviously.

1 Q. And, of course, that calculation has
2 got nothing to do with valuing the project?

3 A. No, sir.

4 Q. And that calculation -- you didn't
5 calculate what the County was going to have to
6 spend to get the 120 million; did you?

7 A. No, sir, I was not provided with what
8 the County would spend.

9 Q. If the County was putting 80 million
10 dollars into infrastructure, that would be offset
11 by the tax revenue, right?

12 A. I don't think the 80 million dollars
13 was coming from the County. I think it was coming
14 from the sale of bonds, correct?

15 Q. Well --

16 A. I mean, the County wasn't --

17 Q. -- the County was guaranteeing bonds?

18 A. Okay. But the County wasn't writing a
19 check for 80 million dollars.

20 Q. Did you make any calculation what the
21 County was going to spend to build schools,
22 assuming the schools were actually in the project?

23 A. No, sir.

24 Q. Did you calculate any cost to the
25 City -- excuse me -- the County -- that they would

1 have in connection with this park --

2 A. Well, you know --

3 Q. -- I mean, project?

4 A. Will you repeat that again. I was
5 going to make a comment about the schools. Really,
6 I couldn't -- I don't think the County could
7 provide what they were going to spend because you
8 really don't know when the schools would be created
9 and how many schools would be created.

10 We were allocated sites for schools,
11 but the schools hadn't been designed. So how could
12 you give a cost of what the schools would be?

13 Q. Well, you valued it in the report.

14 A. No, sir. I valued the sites for the
15 school, not the schools.

16 Q. Assuming they were going to have
17 schools on them.

18 A. Yes, sir, because that was what was
19 allocated. We had to have some idea of the
20 parcels, what their intended use was, so we could
21 find sales that would parallel that use.

22 Q. Speaking of schools, are you aware that
23 the school districts take a position on the
24 establishment of multicounty business parks?

25 A. No, sir, I do not.

1 Q. You're not aware of the fact that
2 because -- the establishment reduces the flow of
3 tax dollars that goes to the general funds and are
4 available for education, and that the schools often
5 oppose the formation of multicounty business parks?

6 A. Where would that have happened? In
7 this County?

8 Q. Are you --

9 A. No, sir, I'm not aware of that.

10 Q. I can tell you where it's happening.
11 It's happening in Horry County with
12 Burroughs & Chapin.

13 A. Okay, I'm not aware of it.

14 Q. But the question is, are you aware of
15 it?

16 A. No, sir, I'm not.

17 Q. Were you aware that Richland County has
18 never authorized bonds for a multicounty business
19 park?

20 A. No, sir.

21 Q. I assume, if you knew that, that it
22 might influence what you put in your report?

23 A. Again, the report was contingent that
24 one was established. In the event that it was not,
25 then, obviously, the value conclusion is invalid.

1 Q. Thank you.

2 Mr. Wingard, on Page 10 -- let's
3 see -- oh, the Determination of a Floodway on Page
4 10 of your report --

5 A. Yes, sir.

6 Q. -- is this something you pulled
7 together, or is this something Columbia Venture
8 gave you?

9 A. This is something Columbia Venture gave
10 me.

11 Q. So you don't know whether it's right or
12 wrong?

13 A. Well, I mean, I was familiar with what
14 happened, absolutely.

15 Q. Do you know whether the information you
16 put there is right or wrong? Do you have the
17 technical knowledge or the background?

18 A. Well, again, if you go through those
19 assumptions and limited conditions, there's an
20 assumption that the information provided is assumed
21 to be true.

22 So, yes, I do think it's true, for the
23 purpose of this report.

24 Q. I'm not asking what you think. Do you
25 know? Did you check it against the data?

1 A. No, sir, I did not check it against the
2 data.

3 Q. Okay. Let's go to the last two
4 paragraphs under Determination of a Floodway,
5 beginning with, More specifically...

6 Read me those last two sentences.

7 A. Of which paragraph?

8 Q. Under Determination of Floodway, on
9 Page 10 right here. Right here until the end.

10 A. More specifically, the funding for the
11 infrastructure for the certification and
12 improvement of the present levee system would
13 remove large portions of the subject property from
14 a designated floodway.

15 The cost of the levee upgrade and
16 subsequent certification does represent compliance
17 with the 100-year floodway, as opposed to the
18 minimum requirement of the 500-year flood.

19 Q. What does it mean when it says,
20 Represents compliance with the minimum 100-year
21 floodway, as opposed to the minimum requirement of
22 the 500-year flood? Do you know?

23 A. Well, no, but it would -- we construed
24 that to mean it would allow developmental use of
25 the property.

1 Q. But you don't know what --

2 A. No, sir. I'm not a FEMA guy, I'm not a
3 hydrologist, so I would not know.

4 Q. And then you go on down the bottom of
5 the page, and you say:

6 With the determination of the subject
7 property outside the floodway a likely
8 occurrence...

9 You don't have the expertise to know
10 whether that would be a likely or unlikely
11 occurrence, do you?

12 A. No, that's no absolute.

13 Q. You just assumed that it would occur?

14 A. Semantically, that's correct, yes.

15 Q. Okay. I just want to be sure.

16 Now, did you factor in your build-out
17 date any time for any decisions or delays in
18 decisions by FEMA?

19 A. No, sir.

20 Q. Did you factor into your start and
21 finish date, any deadlines, delays in those dates,
22 as a result of public opposition or environmental
23 opposition to the project?

24 A. No, sir.

25 Q. Did you factor into your calculation of

1 the start date and finish date, any delays
2 resulting from the litigation over the project?

3 A. No, sir.

4 Q. You know there was a lot of public
5 opposition to the project, don't you?

6 A. I know there was a lot of media
7 attention to the project.

8 Q. And a lot of that media attention
9 involved the people who were environmentalists and
10 the people who were opposing the project?

11 A. Yeah. That was the reason for the
12 media attention.

13 Q. And when you've got that kind of public
14 opposition, it often leads to delays in when you
15 start a project or get a project finished?

16 A. Potentially, yes.

17 Q. And you didn't factor any of that in
18 whatsoever?

19 A. No, sir.

20 Q. Now, I want you to look on Page 50, 51.

21 A. 51?

22 Q. 50 -- I think 50 and 51. And I'm going
23 to make this easy on you.

24 On these pages you will see more
25 information about FIRM, Flood Insurance Rate Map,

1 determination of floodway.

2 Do you see that on Page 50?

3 A. Yes, sir, I do.

4 Q. It goes over to Page 51.

5 A. Yes, sir.

6 Q. Is that information that was given to
7 you by Columbia Venture and you just stuck it in
8 the report, or is that something you developed
9 yourself?

10 A. Well, I think the majority of it was
11 provided by Columbia Venture, but there was a
12 university -- a retired university professor that
13 was involved with this, too, Dr. Humphries, that
14 met with us on several occasions and gave us some
15 information relative to this.

16 Q. Okay. Have you reviewed the
17 information in your report against the actual
18 record to determine whether what you've said is
19 accurate or inaccurate?

20 A. I have not.

21 Q. Mr. Wingard, on Page 12 of your
22 report -- if you will turn there, please.

23 A. Yes, sir.

24 Q. -- you state in the middle of the
25 second paragraph -- I will show you on my document,

1 to help zero you in -- It is anticipated a zoning
2 change is imminent as a result of the creation of a
3 planned development district for the subject
4 property, which will incorporate multi-land uses,
5 indigenous to Richland County's Town & Country
6 concept.

7 Correct?

8 A. Yes.

9 Q. We talked earlier about, you don't have
10 the expertise to predict what happens there, do
11 you?

12 A. I'm sorry. You were walking away, I
13 couldn't hear you.

14 Q. You don't have the expertise to predict
15 when zoning changes occur?

16 A. I do not.

17 Q. And, actually, you're aware that
18 there's not been any zoning change since you wrote
19 your report?

20 A. Well, approximately 75 percent of the
21 property is zoned D-1, and if you read why Richland
22 County identifies it as D-1, is that the use of
23 that property hadn't been defined yet. But
24 whenever the use is defined, then a zoning change
25 is likely, as stated by the County.

1 Obviously, if you've got development
2 coming in, one would suggest a zoning change may be
3 likely or imminent.

4 Q. Mr. Wingard, we're ten years out. No
5 zoning change, correct?

6 A. Why would there be one?

7 Q. I'm just asking you, has there been
8 one?

9 A. No. There would not be a zoning
10 change, because there's no reason for a zoning
11 change to have occurred.

12 Q. Now, on Page 15 and 16 of your report,
13 here's the objective or purpose of the appraisal?

14 A. Yes, sir.

15 Q. And as I gather from what you have told
16 us, you assumed that the property could be rezoned
17 and the proposed envisioned development could be
18 entitled so it could be built?

19 A. Yes, sir.

20 Q. And then you came up -- you looked at
21 the market value and now you're talking about fair
22 market value, what a willing buyer will pay a
23 willing seller after exposure of property to the
24 market for a reasonable time period?

25 A. Yes, sir.

1 Q. And you concluded the market value of
2 142 million dollars?

3 A. For conservation easement purposes.

4 Q. Right.

5 A. Yes, sir.

6 Q. It's got another 3-and-something value
7 for the remainder?

8 A. Yes.

9 Q. So your opinion is that some buyer is
10 going to walk in off the street out there, and he
11 would pay Columbia Venture 142 million dollars to
12 do this project that's envisioned?

13 A. No, sir, I didn't say that. And that's
14 not what that value infers.

15 Q. Well, isn't that what your
16 determination of market value is, willing buyer,
17 willing seller?

18 A. That's the market value definition by
19 the U.S. Treasury Department.

20 Q. That's the one you used to come up with
21 a value, isn't it?

22 A. Well, I had to, because it was done for
23 submission to the IRS.

24 Q. Right.

25 So is there some person out there who

1 would walk in, under your theory, and pay 142
2 million dollars to develop this project, envisioned
3 project that would take 15 years, under your view,
4 to develop?

5 A. Well, first of all, you said somebody
6 walk in off the street. That would not happen --

7 Q. Well --

8 A. -- for this price point.

9 Q. -- that was a little overstatement, I
10 apologize.

11 A. Somebody would come in -- and I think I
12 have already identified one or two likely
13 subsequent purchasers -- would come in and would
14 pay this for the property, based on the levees
15 being certified and maintained by Richland
16 County -- or monitored by Richland County,
17 maintained by the property owner -- the creation of
18 a multicounty business park, the change in the
19 zoning to allow for this fully implemented EDSA
20 plan, with a rate of return at 10 percent, profit
21 at 13 percent, yes, that's what I'm saying.

22 Q. Did you identify any actual potential
23 buyer?

24 A. I didn't have to in here.

25 Q. Did you?

1 A. No, sir, I did not.

2 Q. Let me ask you this: Any buyer who had
3 142 million dollars on their hip to buy this
4 project to do the envisioned development would be
5 able to figure out how much money Columbia Venture
6 had in the project, wouldn't they?

7 A. I would assume so, yes.

8 Q. They could go to the Richland County
9 courthouse, look at the deeds or the affidavits of
10 true consideration and figure out the consideration
11 to buy the property was 18 million dollars, right?

12 A. Right.

13 Q. And Columbia Venture had probably spent
14 a little money with EDSA developing that and some
15 of these other people, so they could estimate what
16 Columbia Venture had in the project that way?

17 A. Right. For an as-is value, absolutely.

18 Q. And so they could figure, could they
19 not -- any buyer could figure -- that Columbia
20 Venture had 30 million -- 35, 25 million
21 dollars -- in the project, that they were trying to
22 sell and shift the risk of the development onto
23 someone else for 142 million dollars?

24 A. Well, I think somebody buying into
25 Columbia Venture wouldn't buy the whole thing.

1 They would buy a part. It might be a consortium of
2 people that would total 142 million dollars. What
3 that represents, again, are those investment-backed
4 expectations. They're getting 10-percent return.

5 What kind of return are they getting on
6 that property, if they go down and pay the
7 courthouse price? They're not getting a 10-percent
8 return.

9 Q. Why would any sophisticated buyer ever
10 pay Columbia Venture 142 million, if they know all
11 they've got in the project is 25 or 30 --

12 A. Because --

13 Q. -- to take on the risk of the project?

14 A. Because they would get a 10-percent
15 return over that time frame.

16 Q. Now, you would agree with me, that if
17 you found this willing buyer with 142 million
18 dollars, and he was going to pay for this project,
19 even though they only have about 25 or 30 in it,
20 and he was going to do it, the buyer would be
21 taking on some sizable risk, wouldn't they?

22 A. Yes.

23 Q. Any time you develop real estate, there
24 are risks involved?

25 A. Absolutely.

1 Q. Ideally, for the real estate developer,
2 it's quick in and quick out, isn't it?

3 A. Not necessarily.

4 Q. Generally?

5 A. Well, on speculators, I would say yes.

6 Q. The longer they're in a project, more
7 things can go wrong, correct?

8 A. That's definitely true, yes.

9 Q. And so anybody who -- if you could find
10 this willing buyer, he would be taking on
11 substantial risks, and things could occur over the
12 15-year period that could prove your forecast or
13 prediction was wrong?

14 A. Or it could be right.

15 Q. It could be right.

16 A. That 10-percent return is what's going
17 to be favorable for them because they can't get
18 that on another instrument where the risk is less.

19 Q. Actually, we have the benefit of
20 hindsight now, don't we?

21 A. Yes, we do.

22 Q. And we have talked about this?

23 A. Yes, we have.

24 Q. We know that you didn't predict the
25 recession?

1 A. No, I didn't.

2 Q. You didn't predict it in 2002?

3 A. No, sir.

4 Q. And the recession has -- I don't say
5 has killed completely the real estate market, but
6 it's dealt it a terrible blow since 2008?

7 A. Yes, sir.

8 Q. And it has affected land values,
9 correct?

10 A. Yes, sir.

11 Q. It's affected absorption rates?

12 MR. BECKER: Your Honor, may I object.

13 I thought Mr. Johnson was very desirous that we not
14 consider any evidence after 2002.

15 THE COURT: I believe that's when you
16 were questioning the witness.

17 MR. JOHNSON: That's the way it works,
18 isn't it?

19 MR. BECKER: He's talking about a
20 recession that began in 2007, so I --

21 THE COURT: Yes, I sustain the
22 objection. I think he's just pointing out that
23 uncertainties can occur.

24 MR. JOHNSON: I'm sorry, you sustained
25 it?

1 THE COURT: I did sustain the
2 objection, but I said I believe you were bringing
3 that out just to show that uncertainties can -- can
4 be of certainty.

5 MR. JOHNSON: Yes. And, Your Honor, I
6 won't ask him any questions on that.

7 BY MR. JOHNSON:

8 Q. Isn't it correct that because of what
9 has occurred in the market means that the numbers
10 you predicted were not correct?

11 A. Yes, sir, that would be correct.

12 Q. And they would have to be refigured in
13 hindsight and reworked, wouldn't they?

14 A. Yes.

15 Q. And you haven't done that, have you?

16 A. No, sir, I have not.

17 Q. And isn't it correct that -- well, let
18 me ask you this:

19 We talked about your appraisal being
20 dated October the 15th, valued as of October the
21 15th, 2002 --

22 A. Yes, sir.

23 Q. -- not February the 20th, 2002?

24 A. Yes, sir.

25 Q. That is a difference of about ten

1 months, isn't it?

2 A. Yes, sir.

3 Q. And if you -- and your numbers were
4 based upon running out projected expenses and
5 revenues and bringing them down to current
6 value -- present value --

7 A. Yes, sir.

8 Q. -- bringing them back to present value?

9 A. Or just converting future income
10 streams to present value.

11 Q. Present value.

12 A. Yes, sir.

13 Q. Now, have you done a calculation that
14 changes the dates by ten months to determine what
15 the present value of your numbers are?

16 A. Well, because I discounted annually, it
17 would have a really minimal effect, just using an
18 annual discount factor. And you're talking about
19 ten months, so it might increase it one year.

20 Q. That's what I'm talking about. Have
21 you run the numbers to be precise?

22 A. No, I haven't done that.

23 Q. So we don't have the precise numbers of
24 present value?

25 A. No, sir. And for the record, I was not

1 alone in not predicting that recession.

2 Q. Sir?

3 A. I said, I was not alone in not
4 predicting that recession.

5 (Off-the-record discussion.)

6 BY MR. JOHNSON:

7 Q. As part of your work, did Columbia
8 Venture and Burroughs & Chapin provide you with
9 Plaintiff's Exhibit 255, which is an appraisal by
10 Jerry Adkins?

11 A. Yes, sir.

12 Q. So you had that when you did your work?

13 A. Yes, sir.

14 Q. Mr. Adkins appraised the property on
15 two occasions, didn't he?

16 A. I'm sorry?

17 Q. He appraised it on two different
18 occasions, didn't he?

19 A. I don't remember if he did two
20 appraisals. I think he did one and did an update,
21 if I'm not mistaken.

22 Q. Well, yeah, that's what I meant.

23 A. Okay.

24 Q. The first one he did, he did for a
25 bank.

1 Do you know whether it was in
2 connection with the bank loaning money?

3 A. I would have no idea.

4 Q. Does his report say that? Tell us in
5 Exhibit 255 what the date of the -- this is the
6 bank appraisal --

7 A. All right. What do you want me to look
8 at?

9 Q. The date. It's on the prior page.

10 A. March 26th, 1998.

11 Q. All right. And then he did an update
12 on -- in 1999.

13 A. February 7th, 1999.

14 Q. Now, in both of those reports, he made
15 the same assumptions you made regarding the
16 property being entitled for it to be developed?

17 A. Correct.

18 Q. And he assumed the same things you
19 assumed that it could -- the levees could be
20 upgraded, the zoning could be changed, and
21 agreement could be reached, yada, yada, yada?

22 A. Yes.

23 Q. And he put a value -- in his first
24 appraisal, in his opinion, the property had a
25 market value, what a willing buyer and willing

1 seller would pay above -- how much?

2 A. You're asking about the initial
3 appraisal?

4 Q. Yes, sir.

5 A. 30 million dollars.

6 Q. And then when he updated it in February
7 of 1999, right before Burroughs & Chapin bought the
8 property, he came up with the same value, didn't
9 he?

10 A. Yes, sir. It doesn't appear he has a
11 land plan or anything for the development of the
12 property.

13 Q. But he was saying that it could be
14 developed. Well, let me ask you this:

15 That's a far cry from your 142 million
16 dollars, isn't it?

17 A. Yeah, but I think he was doing it
18 as-is, and I was doing it for conservation
19 easement.

20 Q. Did you ever talk with him to find out
21 why he came up with 30 million dollars and you came
22 up with 142 million dollars?

23 A. No, sir.

24 Q. Were you provided a report from a CPA,
25 Hendrix?

1 A. I would have to look at it. I don't
2 know.

3 Q. Well, let me ask you this: You talked
4 about ultimately 70 percent of the property was in
5 the floodway and 30 percent was in the floodplain?

6 A. Uh-huh, yes.

7 Q. Is that a yes?

8 A. Yes, sir, excuse me.

9 Q. And you said that, in the floodway, you
10 can't develop that?

11 A. Uh-huh, yes, sir.

12 Q. And in the floodplain, you can develop
13 that but you've got to do some special things in
14 terms of building off the ground or --

15 A. Building above the main flood level,
16 yes, sir.

17 Q. Okay. Now, did you ever -- would you
18 agree with me that if we're talking about 30
19 percent of 4,400 acres, that's a large piece of
20 property?

21 A. That's 1,200 acres, plus or minus.

22 Q. That's a big piece of property for
23 development?

24 A. It is, yes.

25 Q. That's the kind of property that

1 developers can develop, isn't it? It's got plenty
2 of size, et cetera, et cetera?

3 A. Yes, sir.

4 Q. Would you agree with me that the
5 highest-and-best use of that property, that portion
6 of that property, would be as developed property?

7 A. Not really, because it's all in the
8 floodplain. There might be other 1,200-acre
9 parcels that you could purchase that were not in
10 the floodplain.

11 Q. No, no. I'm talking about this
12 property, as its highest-and-best use, would it be
13 worth more than farmland, in your opinion?

14 A. Marginally more, yes.

15 Q. Marginally?

16 A. Well, I think it would scare a lot of
17 developers off, because they weren't sure. You
18 were asking me early about the soils and if you can
19 build on them.

20 Now they know they're going to have to
21 build above that mean flood level, so they've got
22 an extra level of activity they're going to have to
23 engage in before they buy it.

24 So there might be some uncertainty or
25 reluctance to buy that property because that 30

1 percent is in the floodplain.

2 Q. Let me ask you this: Before you give
3 opinions of value, you are supposed to do your
4 USPAP requirements, aren't you?

5 A. Yes, sir.

6 Q. Did you do any appraisal of the 30
7 percent under the USPAP standards to determine what
8 that 30 percent would be worth?

9 A. I don't think USPAP -- no, sir, I
10 didn't do that. USPAP doesn't say you have to
11 segregate the property into components to value it.
12 The property was valued as an aggregate in my
13 appraisal, the 2005 appraisal.

14 Q. And you put how much on the whole
15 property?

16 A. I think \$3,200.

17 Q. And that represented what?

18 A. The value of the -- the per-acre value
19 for the entirety of the property, 4,410.916 acres.

20 Q. Mr. Wingard, aren't your comparables
21 that you used for that purpose farmland?

22 A. Yes, sir.

23 Q. Agricultural land?

24 A. All right.

25 Q. You didn't use any comparables to value

1 the 30 percent that would be developed in some
2 format, did you?

3 A. No, I didn't use a separate 1,200-acre
4 parcel to value it.

5 Q. You came up with a farm value and
6 applied it to the whole 4,400 acres?

7 A. As-is, with those limitations, yes,
8 sir.

9 Q. And you did nothing to look for
10 comparables or to go through the USPAP revisions to
11 determine whether this 30 percent that could be
12 developed has a higher value?

13 A. Well, if I remember correctly, none of
14 the other -- I think most of my other sales were in
15 the floodplain as well. That's why they were being
16 used agriculturally.

17 Q. But they were all agricultural and not
18 developed property that people were building on?

19 A. Not everybody is building on floodplain
20 land.

21 Q. I asked you earlier about the report
22 from the CPA. Did you get a report or records from
23 the CPA?

24 A. You asked me about a Hendrix, and I
25 would have to look at the document to see.

1 Q. Sure. I'm going to show you
2 Defendant's Exhibit 12.

3 MR. BECKER: Is this already in
4 evidence?

5 MR. JOHNSON: Yeah, 12.

6 THE WITNESS: No, I have not seen this.
7 BY MR. JOHNSON:

8 Q. Take a moment and read it. I want to
9 ask you a couple of questions about it.

10 A. All right. Did you check the math on
11 these?

12 Q. I checked it personally? No, I didn't.
13 It's from a CPA.

14 A. That's why I asked you if you checked
15 it.

16 Q. Mr. Wingard, am I correct that what
17 that is, is an analysis by a CPA of a plan to
18 develop the high land that is in the floodway and
19 market that land off, and he comes up with numbers
20 and proposals and ends up by showing that you would
21 end up with a profit of some 42 million dollars?

22 MR. BECKER: Would you please point out
23 where --

24 MR. JOHNSON: Yeah, I will find it.
25 I'm going to help the witness.

1 THE COURT: Which exhibit are you on?

2 MR. JOHNSON: We're on Defendant's 12,

3 Your Honor.

4 BY MR. JOHNSON:

5 Q. End up with cumulative cash flow of
6 47 -- Jamie, this is on Page 1 of 2. Let me show
7 it to you.

8 Cumulative cash flow of 47
9 million -- 47-million-plus dollars?

10 A. Well, he mentions here the projected
11 land sales. Where did the land values come from?

12 Q. I think you would have to -- well, let
13 me ask you this:

14 Did you get this report?

15 A. No, sir, I did not.

16 Q. Did Columbia Venture show you this or
17 ask you to review this at all?

18 A. No, sir.

19 Q. Did you talk with Mr. Hendrix?

20 A. No, sir.

21 Q. So you didn't have the benefit of
22 whatever he knew about this 30 percent --

23 A. No, sir.

24 Q. -- in the floodplain?

25 And you did no separate appraisal of

1 that property?

2 A. No, sir.

3 Q. I guess, had you -- you could have done
4 that?

5 A. If I was instructed to, yes, I probably
6 would have taken a look at it, and that way still
7 integrated it. The Internal Revenue Service, now,
8 they have changed. We couldn't do this same report
9 now for the Internal Revenue Service because they
10 don't want any summation of any number of parcels.
11 They want just an aggregate value, so we would have
12 to give them an aggregate value for all 4,410
13 acres.

14 Q. But you could have done that -- you
15 could have appraised that separately, and it would
16 have increased the lower number that you subtract
17 from the 142?

18 A. It might have increased the lower
19 number and decreased the property that was not
20 developable.

21 Q. Let me make sure I'm correct. You told
22 me earlier that the higher you make the top number,
23 the better it is for your client?

24 A. I don't think I said that. I think
25 that they prefer the number to be as high as

1 possible for a conservation easement, because they
2 get no other chance to value the property.

3 Q. And the lower you make the lower
4 number, the better it is for your client --

5 A. No.

6 Q. -- and that means he gets a bigger
7 deduction?

8 A. I think you said it was that. You said
9 the lower the number, means the lower the easement.
10 And I agreed with you. You said that's better for
11 your client, and I think I agreed.

12 Q. Now, Mr. Adkins' appraisal was
13 submitted to a bank, correct?

14 A. I'm not sure whether it was. I was
15 just provided a copy.

16 Q. Well, it indicates it does.

17 A. Well, that identifies the client or the
18 intended user, which was First Republic Mortgage.

19 Q. Have you provided, at any time, your
20 appraisal to a bank?

21 A. No, sir.

22 Q. Would you provide your appraisal report
23 dated as of October the 15th, 2002 to a bank to
24 support an application for a loan of 142 million
25 dollars?

1 A. No, sir.

2 Q. It wouldn't be right to submit it to
3 them, would it?

4 A. No, sir.

5 Q. If you wanted to do an appraisal of the
6 30 percent that's not in the floodway, tell me the
7 procedures you would have to follow under USPAP to
8 give them an appraisal or an opinion of value.

9 A. Well, you would follow the same
10 procedures. You would find comparable sales, make
11 adjustments for those physical characteristics, the
12 similarities of those comparable sales to the
13 subject.

14 Ideally, you would like to find other
15 sales the same size that have a similar ratio of
16 floodplain land, floodway land, and then you would
17 have to make the adjustment.

18 Q. You didn't segregate out that 30
19 percent in your 2002 appraisal --

20 A. No, sir.

21 Q. -- or your 2005 appraisal?

22 A. No, sir. The bank didn't subsequently
23 ask me to segregate it, as well.

24 Q. I believe, in your opinions, you have
25 assumed that the developer would bear the cost of

1 maintenance of the levees?

2 A. Yes, sir.

3 Q. And so the developer, either Columbia
4 Venture or if they found a willing buyer who bought
5 it for 142 million dollars, would have in
6 perpetuity the maintenance cost of the -- the
7 annual maintenance cost of the levees?

8 A. Yes, sir.

9 Q. And have you calculated what that -- or
10 do you know what that cost would be?

11 A. No, sir. I saw where the County had an
12 estimated cost of \$174,000, I think.

13 Q. Was that current cost in 2002 or was
14 that projected for the life of the -- for -- in
15 perpetuity?

16 A. I'm not sure.

17 Q. Wouldn't you have to know or wouldn't a
18 willing buyer have to know what the cost of
19 maintaining those levees ad infinitum in order to
20 make a determination as to what his profit would
21 be, even using your numbers?

22 A. I would think he would want to know for
23 at least 15 years.

24 Q. Why wouldn't he want to know --

25 A. Because that's the holding period for

1 disposition of everything.

2 Q. -- from now until kingdom come, because
3 they have got to be maintained, don't they?

4 A. After 15 years, I would imagine it
5 would be the responsibility of the homeowners and
6 the property owners within the development. That's
7 why you have homeowners associations.

8 Q. So at the end of 15 years, you'd figure
9 a way to stick that on the homeowners?

10 A. Well, they should, because he's out of
11 it. He doesn't have any ownership in it.

12 Q. Is that in the documents that you have
13 in your report? Do you describe that people would
14 buy into that project with the understanding that
15 after 15 years, they're going to take on, forever,
16 the lifetime cost of the levees?

17 A. No, sir, because I didn't have a
18 section in my report that indicated who a
19 subsequent buyer would be and how they would view
20 the purchase of the property, what they would ask
21 for or seek if they made a purchase of it.

22 Q. Let me ask you this: If the obligation
23 of the homeowner was to maintain ad infinitum the
24 cost of the levees, and the cost is undefined, do
25 you think that would affect the public's appetite

1 to buy in that project?

2 A. I don't know. If it's shared with a
3 number of homeowners, it might not be that much.
4 Just like they share all of the common amenities,
5 they would have to share that. That's the reason
6 that they're there, is because those levees are
7 certified, and allow them to buy in that project.

8 If they weren't bearing that expense,
9 they couldn't buy the property in there. They
10 wouldn't be there.

11 Q. Do you know there are 20 miles' worth
12 of levees?

13 A. Yes.

14 Q. And you don't have a clue about the
15 cost of maintaining them?

16 A. Absolutely not.

17 Q. You didn't run a projection, until the
18 end of the world, and bring it down to present
19 value, so that we could see whether the cost
20 was -- what it was?

21 A. Well, I didn't have any indication what
22 the cost would be, so I couldn't run a calculation.

23 Q. But if you ran the calculation, it
24 would be a number that you could factor into your
25 other figures, wouldn't it?

1 A. Well, yeah, absolutely. It would
2 probably be -- what the costs would be, would be
3 shared upon the development costs for each of those
4 initial parcels, and then additional costs for the
5 homeowners association to pay that until all of the
6 lots are disposed.

7 Q. Mr. Wingard, you used -- in coming up
8 with this forecast or projection -- a blended
9 method using the three methods for appraisals,
10 didn't you?

11 A. For which appraisal?

12 Q. For the appraisal you did as of 2002.
13 October 15th, 2002, you used a blended approach?

14 A. I did two appraisals. I did -- I
15 didn't do a separate sales comparison above the
16 4,500 acres to compare to the subject.

17 Q. You blended the two together, did you
18 not?

19 A. Yeah, I did the developmental approach,
20 where you have to use some sales comparison in
21 order to determine the price points for your
22 parcels and for your units, before you discount
23 those cash flows.

24 Q. Does USPAP provide for a blended use of
25 those two methods of appraisal?

1 A. I don't think USPAP identifies it as a
2 blended method. They would identify it as the
3 method that a subsequent purchaser most likely
4 would utilize.

5 Q. Did you follow any generally accepted
6 methods appraisal to come up with your absorption
7 rate and time for completing the project?

8 A. Yes, sir.

9 Q. What generally accepted method did you
10 use in terms of whether you could predict a 15-year
11 completion date?

12 A. Well, the only method that you can use
13 would be compared to what's in the market. I have
14 already given you the absorption for each of the
15 property types. And after that, all you can do is
16 forecast. That is the methodology employed.

17 Q. Mr. Wingard, you talked about the
18 qualifications of Burroughs & Chapin, Carolina
19 First, and Lockwood Greene to complete the project
20 if financing wasn't available?

21 A. Yes, sir.

22 Q. Have you looked at the financial
23 statements or records of Burroughs & Chapin?

24 A. No, sir.

25 Q. Do you know anything about whether they

1 got a lot of money, a little bit of money, or no
2 money at all?

3 A. No, sir.

4 Q. How about Carolina First, do
5 you -- isn't it correct that Carolina First went
6 bust, in part, by their financing of real estate
7 deals?

8 A. I would have to ask Mack Whittle about
9 that, since he was president at the time. But I
10 don't know. I know they got bought by TD Bank.

11 Q. The value of that stock dropped to the
12 bottom, and they got bought up right before they
13 were put in receivership, correct?

14 A. If you say so. I'm not aware.

15 Q. Well, you know they got bought out and
16 they were in terrible financial trouble when they
17 got bought out?

18 A. I know TD Bank bought them.

19 Q. Do you know that they bought them when
20 they were in financial trouble?

21 MR. BECKER: Your Honor, I just wonder
22 what the relevance is of this.

23 THE COURT: That's quite some time
24 after the time frame that we're talking about, so I
25 will sustain the objection.

1 BY MR. JOHNSON:

2 Q. Do you know anything about Lockwood
3 Greene?

4 A. I know they're a large engineering
5 firm.

6 Q. Do you know whether they went into
7 receivership?

8 MR. BECKER: Objection, Your Honor --

9 THE WITNESS: Well, they weren't in
10 2002; they were a viable engineering firm.

11 BY MR. JOHNSON:

12 Q. Do you know what ability or background
13 they had in development?

14 A. No, sir, not in development.

15 Q. Do you know any of the details about
16 their financial wherewithal in 2002?

17 A. No, sir.

18 MR. BECKER: I will concede the
19 relevance of that question.

20 MR. JOHNSON: He conceded? Did I hear
21 that, those happy words?

22 THE COURT: I think once you said 2002.

23 MR. BECKER: I will concede the
24 relevance of that question.

25 THE COURT: Don't encourage him.

1 MR. JOHNSON: I will take what I can
2 get.

3 BY MR. JOHNSON:

4 Q. Oh, you talked about the fact that this
5 was going to have golf courses?

6 A. Yes, sir.

7 Q. How many golf courses?

8 A. Two.

9 Q. Two. 18 holes each?

10 A. I would think so, yes, according to the
11 plan, yes.

12 Q. What is -- what has happened to golf
13 courses in the Columbia area from 2000 -- during
14 this time period?

15 A. In 2002 they were fine. Golf courses
16 are like most all other real property types,
17 they've been drastically affected by the national
18 recession and the tightening of the credit markets.

19 Q. Did you factor that possibility or
20 prospect in, in your analysis?

21 A. Now, as you remember, I was not
22 privileged to forecasting that recession in 2002.

23 Q. No, no, you didn't forecast it, but you
24 could have.

25 In other words, you could have very

1 easily looked and said, One of the risks of doing a
2 project that's 15 years long is, you can have
3 downturns in the economy?

4 A. Right.

5 Q. And downturns in the economy would
6 affect and drag the project out even further?

7 A. You are correct. I did not forecast
8 the recession, and I did not forecast the downturn
9 in the economy to the extent that we've experienced
10 in that forecast for 15 years.

11 Q. And did you consider that golf
12 courses -- what's occurred with them?

13 A. Well, the golf course probably wouldn't
14 be operated as a money maker. It would be operated
15 to augment single-family lot sales.

16 Q. How many golf courses have failed and
17 been bought up in the Columbia area?

18 A. I haven't done analysis on the golf
19 courses in Columbia.

20 Q. They have been, though, you know that?

21 A. Yeah, I understand there's been some.
22 And at the beach. Specifically, Myrtle Beach.

23 Q. But you didn't factor that possibility
24 or that risk into your analysis?

25 A. Well, again, the premise for the golf

1 course is not for the owner-operator to make money.
2 It's to augment land sales and land values. So
3 even if I had knowledge of that, I wouldn't have
4 been as concerned if that was a golf course that
5 makes somebody some money.

6 Q. Mr. Wingard, conservation
7 easements -- or appraisals supporting conservation
8 easements have been subjected to much, much closer
9 scrutiny over the last number of years, have they
10 not?

11 A. Yes, sir.

12 Q. You have had -- the government has
13 taken an active role because there have been
14 abuses --

15 A. Yes, sir.

16 Q. -- people putting in reports or
17 appraisals that are false or baseless. And the
18 government has gotten actively involved in
19 investigating them; haven't they?

20 A. Yes, sir. It's my understanding most
21 of them are being reviewed, substantially reviewed.

22 Q. And out of the 30 you've done, two have
23 been reviewed; have they not?

24 A. I think it was 60; I reported 60.

25 Q. Okay. You said 60.

1 A. Yeah, two out of --

2 Q. Okay. So two out of the 60 thusfar
3 have been reviewed?

4 A. Yes.

5 Q. One is in the tax court, correct?

6 A. It's out of tax court now.

7 Q. And one involved -- not you
8 personally -- but involved criminal investigation,
9 did it not?

10 A. Right. Ironically enough, neither one
11 of those properties that were under investigation
12 by the tax courts has anything to do with the
13 appraisal. They had to do with the ownership and
14 how tax credits were sold.

15 Q. Mr. Wingard, just to sum up and close
16 the circle, you told us, no USPAP appraisal as of
17 the date of the February 20th of 2002?

18 A. Yes, sir.

19 Q. You've told us no willing buyer ever
20 identified to buy this project at 142 million
21 dollars?

22 A. That's correct.

23 Q. You've told us that based upon
24 information you know now, your forecast was wrong?

25 A. Well, hindsight can do that to you,

1 yes, sir.

2 Q. Of course.

3 And you have told us that you don't
4 know or have a basis for predicting whether this
5 70-, 80-million-dollar multicounty business park
6 would ever have been approved or not?

7 A. No, sir.

8 MR. JOHNSON: Thank you.

9 THE COURT: May I ask you a question?

10 THE WITNESS: Yes, sir.

11 THE COURT: You know when you've
12 reached the point where you don't worry about
13 whether your questions seem bright or not? That's
14 where I am. And I'll just ask it:

15 As I understand it, in regard to the
16 142-million-dollar value for this property, you are
17 assuming that an investor would pay 142 million
18 dollars for the property. And after doing that,
19 then the investor would raise the money to make
20 the -- you have assumptions, first.

21 First there would be a multicounty put
22 in place. FEMA would be assured they're going to
23 develop it. Proper zoning would be done. All of
24 those steps would be in place.

25 THE WITNESS: Yes, sir.

1 THE COURT: But then they would borrow
2 the funds or come up with the funds to do the
3 development work necessary in order to carry out
4 this plan?

5 THE WITNESS: Yes, sir.

6 THE COURT: And then they would make
7 sufficient funds to pay off those borrowed funds
8 that they put into the project, make enough to get
9 back, on top of that, the 142 million dollars they
10 had paid --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- and then realize the
13 10-percent return?

14 THE WITNESS: Yes, sir. And also
15 there's profit to be realized at 13 percent during
16 that whole 15 years.

17 THE COURT: Right. And you explained
18 that to me, too.

19 THE WITNESS: So that's what that
20 premise represents.

21 THE COURT: All right, sir. In
22 that -- and this is just my thought -- but in the
23 12 million dollars -- there was testimony that it
24 would take 12 million dollars to restore the
25 levees --

1 THE WITNESS: Yes, sir.

2 THE COURT: -- the Lockwood Greene
3 figure. And that would be -- are you assuming that
4 that would be a price that would be -- that that
5 would already be in place, or that would be
6 something that the purchaser would have to -- would
7 be another outlay?

8 THE WITNESS: That would be a cost that
9 would be incurred by the developer, but it would be
10 paid by those funds created by the creation of the
11 multicounty business park.

12 Remember, I said there would be some
13 things like signage and spine roads and trunk
14 lines, and those 12 million dollars for the levee
15 improvements would be included in that.

16 THE COURT: All right, sir. And as you
17 say, this is based upon the highest-and-best use of
18 the property?

19 THE WITNESS: For conservation easement
20 purposes, you know, the law states that, even
21 though the property has not been put to its
22 highest-and-best use, does not mean it cannot be
23 appraised accordingly. Meaning, just because the
24 appraiser, the donor, has land that's vacant,
25 doesn't mean that there can't be an improvement --

1 a plan like this utilized for that property
2 conceptually.

3 Because, once again, you don't get a
4 second chance to revalue the property. You can't
5 go three years later and say, Oh, market conditions
6 have changed dramatically, let's revalue this
7 property. It's irrevocable and it's in perpetuity.

8 So that's why the Treasury regulations
9 allow you to do that.

10 THE COURT: And I also understand the
11 condemnation case, of course. I, of course, have
12 recognized the same method that you're utilizing,
13 which is sometimes called the subdivision
14 development?

15 THE WITNESS: Yes, sir.

16 THE COURT: I know that's one of the
17 lesser preferred ones by the MAI, but that has, of
18 course, been recognized.

19 THE WITNESS: Well, it's one of the
20 lesser ones by the IRS as well, but recent tax
21 cases have ruled that it's admissible and
22 permissible to value that way, because when you
23 have a development like this, that's the only
24 valuation methodology you can utilize.

25 THE COURT: And the other would be the,

1 quote, before and after, without considering that,
2 where you take the 18 million paid and then whether
3 we allow costs that were spent on the property or
4 not, 18 million dollars paid and you had talked
5 about two figures, 11 and 14 after. And you prefer
6 the 11 million dollar value?

7 THE WITNESS: Well, that's because I
8 had actually done the valuation as-is --

9 THE COURT: Right.

10 THE WITNESS: -- in that 2002
11 appraisal.

12 THE COURT: Got you.

13 THE WITNESS: In my 2005 appraisal, it
14 was not for conservation easement purposes; it was
15 just land that was -- that was -- could not be
16 developed, you know, and was utilized for
17 agricultural or passive recreational purposes.

18 THE COURT: All right. Thank you for
19 answering my questions.

20 You can have your redirect in a moment.

21 It's been over an hour and a half, so
22 we'll take a short recess. We'll take 15 minutes.

23 (A brief recess was held.)

24 REDIRECT EXAMINATION

25 BY MR. BECKER:

1 Q. Mr. Wingard, do you recall Mr. Johnson
2 asked you about whether or not you had analyzed
3 market acceptance of land that would be sold behind
4 certified levees.

5 Do you recall that topic?

6 A. Yes.

7 (PLF. EXH. 369, a report prepared by
8 the assistant to the county administrator of
9 Richland County in April 10th, 2001, assessing
10 levee failures across the country, was presented.)

11 BY MR. BECKER:

12 Q. I want to show you what we've marked as
13 Plaintiff's Exhibit 369.

14 This is a report prepared by the
15 assistant to the county administrator of Richland
16 County back in April 10th, 2001, assessing levee
17 failures across the country. And I want to point
18 out just a couple of passages to you.

19 You see the purpose of the report was
20 during an April 2nd special-called development and
21 services committee meeting.

22 One of the council members, Ms. Joan
23 Brady, requested information on the number of
24 levees that failed during the midwest flood, and to
25 answer this question, the author of the report had

1 defined some -- defined some terms and summarized
2 the finding of their research.

3 And if you look over on the second page
4 under, Levee failure, or Overtopping During the
5 Midwest Flood of 1993, the author of the report
6 cites to a U.S. General Accounting Office study
7 that was commissioned as a result of a
8 congressional inquiry in 1993 and notes the number
9 of levee failures or overtoppings that were derived
10 from U.S. Corps of Engineers standards.

11 I'll take you down to the last
12 paragraph above the heading, For non-federal
13 levees. It says:

14 Of the four levees that failed, only
15 one was at a 100-year flood design standard, and
16 the remaining three were designed for a 50-year
17 flood event. The 100-year levee was breached due
18 to a railroad opening in the flood wall not being
19 closed in time.

20 And then over on the last page of the
21 report, in the next-to-the-last paragraph it says:

22 In another report by the Corps of
23 Engineers, it was stated that all of the levees or
24 flood walls built to urban design standards
25 (200-year flood event or higher) withstood the

1 flooding. No urban levee was overtopped.

2 Now, was it your understanding that the
3 levees that Columbia Venture proposed to build
4 would be built to FEMA 100-year-or-greater
5 certified standards -- 100-year flood standards?

6 A. That was my understanding; yes, sir.

7 Q. In light of that, do you believe it
8 was -- it necessary, in light of what you just
9 learned about the record of certified levees based
10 on that information, do you believe it was
11 necessary to adjust for market concern about the
12 potential failure of a certified levee?

13 MR. JOHNSON: Your Honor, unless
14 there's evidence he considered this at the time, it
15 couldn't be a factor that would have influenced his
16 opinions one way or the other.

17 THE COURT: I overrule the objection.
18 You asked him about it, so I'm going to allow him
19 to redirect on it.

20 THE WITNESS: Well, if I had known at
21 the time, obviously, I didn't -- I thought that the
22 FEMA certification would render the property
23 perfectly acceptable for development without any
24 kind of potential harm to the inhabitants, or they
25 wouldn't certify it.

1 BY MR. BECKER:

2 Q. Thank you.

3 So in your view, the fact that it was a
4 U.S. Army Corps of Engineers and FEMA certification
5 standard, that was all you needed. Is that right?

6 A. Yes, sir. It really didn't deter
7 Heathwood Hall or the City of Columbia from doing
8 improvements in that area prior to the
9 certifications.

10 Q. Are you aware of any extensive
11 development behind certified levees in the City of
12 Augusta, Georgia?

13 A. No, sir.

14 Q. How about in Houston, Texas?

15 A. I know Houston is way -- is below sea
16 level, most of it, because it was actually a swamp
17 at one time, and then drained and built on. But
18 that's all I know about Houston.

19 Q. All right, sir. Now, Mr. Johnson also
20 asked you about Defendant's Exhibit 19 [sic], which
21 was the report from the CPA, Mr. Hendrix.

22 Do you recall reviewing that?

23 Excuse me. No, I'm sorry. I'm on the
24 wrong thing.

25 He questioned you about Defendant's

1 Exhibit 19, which is entitled, Green Diamond Bond
2 Proceeds for Infrastructure.

3 A. Yes, sir.

4 Q. Now, do you know who drafted this
5 document?

6 A. No, sir.

7 Q. Do you know when it was prepared?

8 A. No, sir.

9 Q. Do you know if prior versions or later
10 versions of this cost or revenue estimate were
11 prepared?

12 A. No, sir.

13 Q. Do you know if Columbia Venture ever
14 accepted this analysis as being one they would rely
15 upon?

16 A. No, sir.

17 Q. The title of the document is, Green
18 Diamond Bond Proceeds for Infrastructure. Up there
19 at the top where it lists Year 1, 4, 7, 10, 13, and
20 16, and then has those numbers out to the right
21 that total 80 million dollars, is that the bond
22 proceeds or the infrastructure costs?

23 A. I wouldn't know.

24 Q. All right. Then under where it says,
25 Costs for infrastructure, it has, Levee,

1 engineering and design, roadway, bridges,
2 intersections, signage and lighting. And those
3 numbers total up to \$26,350,000.

4 Are those the levee
5 infrastructure -- are those the Green Diamond
6 project infrastructure costs?

7 A. Well, I don't think there's enough
8 information to really conclude that that is or is
9 not.

10 Q. All right. Do you know what those
11 community improvement projects are?

12 A. No, sir.

13 Q. Okay. So you're not able to say
14 whether this is an estimate of the infrastructure
15 costs that would be included in the proposed
16 multicounty business park or not, are you?

17 A. Not from the delineation on this
18 document, no, sir.

19 Q. Okay. Now, in your appraisal,
20 Mr. Johnson asked you, Where was it mentioned, and
21 you were looking for it. Let me point you to Page
22 9.

23 Is that where you discussed the
24 assumption of a multicounty business park in your
25 conservation easement appraisal?

1 A. Yes, sir.

2 Q. And does that discussion continue over
3 onto Page 10?

4 A. Yes, sir.

5 Q. All right. And do you also refer to it
6 at the top of Page 11?

7 A. Yes, sir.

8 Q. Okay. Now, Mr. Johnson asked you about
9 whether it was reasonable to assume that a zoning
10 change would occur.

11 Let me show you what's been marked as
12 Plaintiff's Exhibit 24.

13 Do you see that?

14 A. Yes, sir.

15 Q. This is a letter from Mr. Cary McSwain,
16 the county administrator, regarding the -- to
17 Mr. George Gregory of Burroughs & Chapin, dated
18 February 19th, 1999. Mr. Gregory states in the
19 letter:

20 The County is aware of and agrees to
21 work with the development group on issues that are
22 critical to the proposed development, such as
23 zoning, tax-incentive vehicles, and a multicounty
24 business park.

25 Now, in light of that representation

1 from the county administrator, the CEO of the
2 county government, do you believe it was reasonable
3 to expect that a purchaser of the property could
4 anticipate that they could have a multicounty
5 business park and have appropriate zoning changes?

6 MR. JOHNSON: Same objection we had
7 previous to this, Your Honor.

8 THE COURT: Yes, sir. I overrule the
9 objection.

10 THE WITNESS: Yes, sir.

11 THE COURT: I overruled it in the
12 manner in which he asked this question in regard to
13 the multicounty business park, not whether the
14 County was going to do it, but whether or not it
15 could reasonably be considered.

16 MR. JOHNSON: Your Honor, he was
17 actually talking about the zoning; weren't you?

18 MR. BECKER: Well, I mean, the letter
19 mentions both.

20 MR. JOHNSON: But if he's got no
21 expertise in predicting those things, isn't that an
22 opinion by a lay witness, Your Honor?

23 THE COURT: Well, I understand you went
24 through his lack of expertise in dealing with the
25 multicounty business parks. He knows what they

1 are.

2 He's got this letter here -- a
3 non-binding letter, but it is a letter -- from the
4 county administrator saying that they would work
5 with the development on such issues as...

6 And they include the multicounty
7 business park.

8 MR. JOHNSON: I thought the witness
9 admitted that he had no expertise, training, or
10 experience in predicting when and whether they
11 would go forward.

12 THE COURT: I know, but at least he has
13 this, that says, the County doesn't oppose, on the
14 face of it, the concept, but it's not binding on
15 it.

16 MR. JOHNSON: Yes, sir.

17 BY MR. BECKER:

18 Q. And my question, really, Mr. Wingard,
19 is, if a potential purchaser had such a letter,
20 would it be reasonable for them to rely on such a
21 letter and anticipate --

22 THE COURT: I will sustain the
23 objection as to that.

24 MR. BECKER: All right.

25 BY MR. BECKER:

1 Q. Anyway, we'll go with the answer you
2 gave, thank you.

3 Now, Mr. Johnson also asked you in
4 relation to the value conclusion you have of 142
5 million dollars, if a -- whether a purchaser could
6 go research, in the land records of Richland
7 County, and find out what Burwell Manning sold the
8 property for, does that have any real relevance to
9 the market value of the property at a later time?

10 A. It showed there was a conveyance that
11 occurred with the property being conveyed to
12 grantor/grantee on that recorded date for that
13 consideration, but it would not consider what we
14 considered in the conservation easement appraisal
15 to come up with that value conclusion.

16 Q. All right. Let me give you an
17 example -- two examples.

18 Let's say that I had been fortunate
19 enough to buy Apple stock about 12 months ago for
20 what it was selling for then, which is 85 percent
21 less than what it's worth now.

22 Does that mean that the fact that I
23 paid 85 percent less than what it's worth now mean
24 that I couldn't sell it tomorrow for \$700 a share?

25 MR. JOHNSON: Objection, relevance.

1 THE WITNESS: No, sir, it does not.

2 BY MR. BECKER:

3 Q. Is the same sort of concept relevant to
4 real estate sales?

5 A. Yes, sir. You know, standards require
6 that you insert the recorded history of the
7 property for that very reason, so -- and,
8 hopefully, a reader of the report would draw the
9 same conclusions that, if the property sold for X
10 amount, but the valuation is different than that,
11 there must be a reason for that.

12 And if you read the report, then the
13 assumptions that you make, whether they be
14 extraordinary assumptions or hypothetical
15 conditions, will lead the reader to draw those same
16 conclusions as to why there may be a variance in
17 that recorded sales price and the value of the
18 property.

19 Q. The reason I had used the Apple stock
20 example is because I read an article in the
21 newspaper this morning that it had increased in
22 value --

23 MR. JOHNSON: Objection.

24 MR. BECKER: Well, I'm going to tie it
25 in.

1 THE COURT: Let's see where he's going
2 to wind up with it.

3 Go ahead.

4 BY MR. BECKER:

5 Q. -- that it had increased in value 85
6 percent over the last ten months.

7 A. Yes, sir.

8 Q. Assume for a minute that I had been
9 lucky enough to buy some land out on I-77, and ten
10 months later Wal-Mart comes along and buys the
11 property right next to mine.

12 Would what I paid for the property be
13 relevant to what it was worth after Wal-Mart had
14 bought the property next door and planned to build
15 a shopping center there?

16 A. Probably not, because if you ever see a
17 Wal-Mart development, Wal-Mart may pay 5 to \$6 for
18 the site, but they create value for off-site
19 development pad sites, for restaurants, and those
20 sell for 15, \$20 a square foot. So they create
21 value.

22 Q. All right. So the price a prior owner
23 paid for the property is not necessarily indicative
24 of its value at some later time?

25 A. It may or may not be. Absolutely.

1 Q. Now, Mr. Johnson also asked you about
2 Defendant's Exhibit 12. Do you have that? This is
3 the March 27th, 2003 report from Ron Hendrix, the
4 CPA, to Dr. Wade Nichols, who was one of the
5 members of Columbia Venture, LLC.

6 Do you recall going over that?

7 A. Yes, sir. I don't have it in front of
8 me right now, though.

9 MR. BECKER: All right. Let's get that
10 for him.

11 BY MR. BECKER:

12 Q. All right, sir. Now, I want you to
13 look at this page that has the Bates Number
14 CV009910.

15 That's the one where Mr. Johnson
16 pointed out that the cumulative cash flows set
17 forth on that exhibit total 47 million dollars
18 after 12 years.

19 Do you see that?

20 A. I do.

21 Q. Okay. Now, let me ask you, first of
22 all, if there was -- and Mr. Hendrix is talking
23 about a proposed development of the property.

24 Do you know if whether Columbia Venture
25 has had any success in moving forward with this

1 proposal?

2 A. You mean this proposal here?

3 Q. This development proposal.

4 A. I would have no knowledge, because this
5 is the first time I have seen this.

6 Q. All right. Now, let me ask you: The
7 cash flows that are set forth on that line called
8 cash flow, down near the bottom, is there any
9 indication there that those are discounted to
10 present value?

11 A. I don't see any indication that they
12 are.

13 Q. All right. And do you see that the
14 single largest cash flow, in fact, 30 to 40 percent
15 of the total cumulative cash flow occur in Year 11?

16 A. Actually 12, 47 million.

17 Q. Well, yeah, the two single largest cash
18 flows in that whole stream of future cash flows
19 occur in Years 11 and 12. Do you see that?

20 A. Yes, sir.

21 Q. There's 18 million in Year 11 and 8.6
22 million in Year 12. Do you see that?

23 A. Yes, sir.

24 Q. What effect would that have on the
25 present value of that stream of future cash flows?

1 A. It would reduce them by discounting
2 them.

3 Q. All right. You did discount them?

4 A. I said -- no, I didn't. I said it
5 would reduce those numbers by discounting them.

6 Q. Okay. So would the net present value
7 of those cash flows be significantly less than the
8 cumulative cash flow of 47 million 479?

9 A. Yes, you would think so.

10 Q. And, of course, the higher the discount
11 rate you used, the lower it would be, right?

12 A. Yes, right.

13 Q. Now, Mr. Johnson asked you about the
14 costs of levee maintenance and whether or not that
15 had factored into your conservation easement
16 analysis.

17 Let me ask you to assume that the costs
18 of levee maintenance had been estimated in 1999 at
19 \$174,000 annually, on average.

20 A. Right.

21 Q. How would that number compare to the
22 property values and tax revenues and homeowner and
23 property association dues that would result from
24 the fully developed EDSA land plan?

25 A. Well, it would be reduced, because like

1 I told Mr. Johnson, the homeowners association
2 would be paying for that. Because in Year 15, the
3 developer is out, so the homeowners, that's their
4 responsibility now.

5 Q. Well, I'm just asking an even simpler
6 question than that.

7 How would that number of \$174,000
8 compare -- for example, to the -- didn't you
9 estimate that the tax revenues from this project on
10 a fully-developed basis would be 120 million
11 dollars annually?

12 A. Yes, that was a rough estimate.

13 Q. All right. Mr. Johnson asked you about
14 the risk of future downturns in the economy, the
15 recession, and things like that.

16 Aren't some of those risks assumed in
17 the discount rate that you select to discount the
18 future cash flows?

19 A. The discount rate is a blended rate.
20 It assumes deflation, inflation, property
21 appreciation, depreciation, and it really can't
22 actually be measured until the property has been
23 purchased, held, and then subsequently sold.

24 So, yes, that's what that discount rate
25 does, it measures risk.

1 Remember, we talked about, in the
2 event, if you want a higher return, then you would
3 pay less for the property. If you want a lower
4 return, then you're going to pay more for the
5 property, because the risks are different.

6 Q. Right.

7 So if I have selected a low discount
8 rate of around 3 or 4 percent, then I'm assuming a
9 stable future, and I'm not accounting for much
10 uncertainty in the future.

11 A. And that would be classified as a safe
12 rate, which is a safe investment instrument rate.

13 Q. Okay.

14 A. It's not subject to the fluctuations of
15 real property markets and inflation and
16 deflation -- well, inflation, but deflation and
17 recessionary pressures and tightening of credit
18 markets.

19 Q. All right. The rate of the return on
20 U.S. Treasury is considered a safe rate, is it not,
21 a stable rate?

22 A. Right, because it's liquid and it's not
23 a lot of management. It's not a lot of risk.

24 Q. So if I select a -- for my analysis, if
25 I select a much higher rate, then I have assumed

1 considerable uncertainty for the future, have I
2 not?

3 MR. JOHNSON: Object to the form.

4 THE COURT: You can answer.

5 THE WITNESS: Yes, that's what the
6 discount rate does. Obviously, we're not good
7 enough in order to -- in each of those years -- to
8 determine exactly what the market is going to be.
9 But it does measure that risk. It does incorporate
10 some risk.

11 That's why discount rates associated
12 with real estate are going to be different than a
13 rate for a bond or some other instrument where it's
14 more liquid. Real estate lacks liquidity. It
15 requires management. All of those are additional
16 risks that's blended into that discount rate.

17 BY MR. BECKER:

18 Q. Okay. Finally, one last topic.

19 Judge Smith asked you about the
20 subdivision valuation method of that approach, that
21 appraisal approach.

22 Is that in regular use today by
23 appraisers when they value proposed subdivisions?

24 A. Well, if there were any built right now
25 or being developed, it would be. That's exactly

1 what they would look at.

2 Q. But if I were a developer and I wanted
3 to get a loan from a bank to finance the
4 development that I -- let's say I owned 300 acres
5 in Richland County. Let's say I owned a thousand,
6 and I wanted to get a loan from a bank to develop a
7 subdivision. What appraisal methodology would you
8 use to value that land to support a loan from the
9 bank for me to develop the subdivision?

10 A. You would use that developmental
11 approach.

12 Q. Is it accepted -- is it an accepted
13 appraisal approach by lending institutions today?

14 A. It's required. You know, they're going
15 to -- I mean, there's no other mechanism to value
16 when the lots would sell, or sell for what, and
17 discount it back. I mean, there's no other
18 mechanisms you can utilize to show what the present
19 value of those cash flows over a finite time frame.

20 It's got to be some kind of special
21 subdivision to have 100 lots for sale and everybody
22 buys them on the same day and you close them within
23 a week. I mean, that doesn't happen. There would
24 be no discounting on that.

25 Q. So the bank underwriting standards and

1 perhaps other standards would actually require that
2 that appraisal approach be utilized to support my
3 request, as a developer, for a loan to a bank to
4 get a loan to develop that subdivision?

5 A. Yes, sir.

6 MR. BECKER: I have nothing further.

7 MR. JOHNSON: Just a few in follow up,
8 Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. Mr. Wingard, there's a way to check
12 whether prices of land behind levees are affected
13 by virtue of the fact that they're behind levees,
14 isn't there?

15 There's a way to check to see whether
16 there's an impact on land value, whether levees and
17 building behind levees have an impact on the land?

18 A. Yes, sir.

19 Q. And the way you do that is, you go
20 somewhere where there are levees and you gather the
21 data about land sales, make comparisons to places
22 in the same area that aren't behind levees,
23 correct?

24 A. Yes, sir. It's called comparative
25 sales analysis.

1 Q. Okay. You didn't do that, did you?

2 A. No, sir.

3 Q. You could have, but you didn't do it.

4 You could have, but you didn't do it?

5 A. Is that a question or statement?

6 Q. That was a question. You could have
7 done it, but you didn't?

8 A. I could have, yes.

9 Q. Now, I want to show you a document and
10 ask you if you recognize that as a document that
11 was in your file, furnished to you as part of your
12 work in this case.

13 A. I don't think the document was. The
14 verbiage at the top, I think, was in the large
15 binder promoting the development of Green Diamond.
16 I don't recall seeing this entire document -- or
17 having this entire document, just the verbiage at
18 the top.

19 Q. Do you have your file with you?

20 A. I don't have the whole file with me,
21 no, sir.

22 Q. Did you produce your file pursuant to a
23 subpoena?

24 A. I'm pretty sure I did, yes.

25 Q. And your testimony is that this

1 document was not in the file you produced? That's
2 your sworn testimony?

3 A. Not to my knowledge. I mean, that file
4 is rather voluminous. I can't remember every
5 document that was contained in it. You asked me if
6 I remembered this document, and I said I did not.

7 Q. All right. You don't deny that it was
8 produced in response to a subpoena?

9 A. I can't deny it, because I'm not sure.

10 Q. Well, let's look at it and see if
11 looking at it refreshes your recollection about it.

12 The first page you recall seeing?

13 A. I recall this verbiage, because we used
14 the same verbiage in our analysis.

15 Q. Do you recall it being part of a page
16 that included the rest of it?

17 A. I don't recall.

18 Q.. Well, under the bullet points here,
19 does it state with reference to the multicounty
20 business park, that a total of \$79,757,753 is
21 requested for infrastructure?

22 A. 79 million --

23 Q. 79 million.

24 A. -- 757,753.

25 Q. And this other document that we looked

1 at that you were asked about by me and counsel
2 showed 80 million dollars, didn't it?

3 A. It did.

4 Q. The numbers are fairly close, aren't
5 they?

6 A. They are.

7 Q. Read the paragraph to yourself and see
8 if it now prompts your recollection that you would
9 have seen those numbers before.

10 A. I don't recall seeing these numbers
11 before. I don't even have to read it. I don't
12 recall having -- seeing this document. It could be
13 in our work file, but I don't recall seeing it.

14 Q. Well, if it was in your work file, it
15 would have been available for you to review and
16 consider regarding multicounty business parks,
17 correct?

18 A. Well, if I had had that and read it,
19 then I would have been more cognizant of the
20 multicounty business park, whenever you asked me
21 questions about it.

22 Q. You don't deny that what was requested
23 was about 80 million dollars for infrastructure, do
24 you?

25 A. Based on this document, no.

1 Q. Now, you were asked about the discount
2 rate, the discount rate you selected?

3 A. Yes, sir.

4 Q. The discount rate you selected didn't
5 take into consideration the recession that we have
6 actually suffered?

7 A. Well, no, because I didn't forecast it.
8 I didn't have knowledge of it.

9 Q. Now, are you able -- do you have your
10 calculator?

11 A. Not with me. I have got one in my
12 briefcase.

13 Q. Do you want me to get it?

14 A. I prefer mine, if I'm doing a discount.

15 Q. Can you discount the 47-million-dollar
16 figure here to present value --

17 A. 47,479 --

18 Q. Yep.

19 A. -- 463.

20 Q. Discount it to 2002.

21 A. From what?

22 Q. From 2010, eight years.

23 A. Eight years?

24 Q. Yes. I'm going to watch and see.

25 A. \$22,149,520. Is that what you got?

1 Q. Yeah, that's what I came up with, too.

2 So if we discount these numbers, this
3 is the 30 percent that was not in the floodway that
4 was subject to development. Here is showing that
5 it's brought down to present value, there would be
6 22 million dollars?

7 A. Based on those numbers, yes. But on
8 that report, what concerned me was that in the
9 first two pages, the guy said it may not represent
10 highest-and-best use.

11 Q. So there could have been a higher and
12 better use?

13 A. Or lower. And also there was no basis.

14 Q. You weren't provided this to analyze it
15 in conjunction with your work?

16 A. No, sir.

17 MR. BECKER: What discount rate did you
18 use just then? What discount rate did you use?

19 THE WITNESS: 10 percent.

20 BY MR. JOHNSON:

21 Q. The same one you had used before?

22 A. Right.

23 Q. That was good of you.

24 Now, actually what it says: The
25 revenue assumptions are based on information using

1 the land use assumptions prepared by EDSA land
2 planners, as restricted by the proposed FEMA map.

3 Correct?

4 A. Correct.

5 Q. And the purpose of the projections was
6 to provide an overview of the project's potential.
7 Overview is based upon assumptions related to
8 future events, therefore, actual results of
9 development may vary, and those variations may be
10 material?

11 A. It's got prices increasing at 6.5
12 percent, about twice what we had. So he didn't
13 forecast the recession either in that analysis.

14 Q. Now, you were asked about a willing
15 buyer paying 142 million dollars for the right to
16 do this development?

17 A. Yes, sir.

18 Q. Would you agree with me that if there
19 was such a person, he would be an absolute sucker
20 to pay 142 million dollars to take on the risk of
21 the development, based upon an appraisal report and
22 a valuation by an appraiser who had never appraised
23 a project of this magnitude or this length?

24 A. No, I wouldn't agree with you.

25 Q. Everything you say would have to line

1 up perfectly, all of the dots would have to be
2 connected, just as you say they were for it to work
3 out anything like what you predict?

4 A. That's true with any analysis where
5 there's a discounting for a definitive time frame.

6 Q. And many a slip between the cup and the
7 lip, aren't there?

8 A. I don't know what that means.

9 Q. Mr. Wingard, don't you know that all it
10 takes is a little something to throw your numbers
11 completely out of kilter?

12 A. That's true.

13 Q. Push back the closing date, throws it
14 out. Starting date, push back the finish date,
15 throws your numbers out of kilter.

16 A. Yes, sir.

17 Q. Recession, downturn in the economy,
18 throws your numbers out of kilter, correct?

19 A. Yes, sir.

20 Q. Multi-business park development not
21 approved, throws your projections completely off?

22 A. I said that in the report, that those
23 assumptions would have to be met for that value
24 conclusion to be valid.

25 On the contrary, you could have quicker

1 absorption on the lots which would have higher cash
2 flows in the beginning of the discounting period,
3 where you would have higher net present value. So
4 it could work either way.

5 Q. Can you tell me when this guy who would
6 pay 142 million dollars for this project -- and
7 would take the risk of development -- when he would
8 start making a profit?

9 A. I cannot, no.

10 Q. Would it be the first year?

11 A. Well, it's not designed to give a
12 year-by-year profit. There would be development
13 profit every year, every time something is sold.
14 Every time a lot is sold, you get profit.

15 Q. When would he make a profit he could
16 put in his pocket? Would it be the first year?

17 A. Conceivably, yeah. I don't know
18 how --

19 Q. Did you project --

20 A. Well, you're asking me to provide you
21 with some indication as to how they would set up a
22 partnership or ownership where it would be
23 disbursed. I can't provide that to you.

24 Q. I'm asking you to assume, you've got
25 the one guy with the 142 million dollars on his hip

1 and he buys it. Can you tell me, did you project
2 when that guy would first turn a profit?

3 A. No, sir; I did not.

4 Q. So it might be two years out? Five
5 years out?

6 A. Yes, sir.

7 Q. Seven?

8 A. Could be.

9 Q. Long time between drinks, right?

10 A. Well, remember, I said, it was not
11 a -- somebody who would do it would be somebody
12 that's got the money to put in it for the long
13 term. So if they're looking for a one-year
14 turnaround, this would not be attractive to them.

15 MR. JOHNSON: Thank you, Your Honor.

16 MR. BECKER: May I just have one
17 question, Your Honor?

18 REDIRECT EXAMINATION

19 BY MR. BECKER:

20 Q. About Defendant's Exhibit 12,
21 Mr. Wingard -- and I'm asking, because I didn't
22 hear you -- but did you say that in this analysis,
23 Mr. Hendrix used an inflation factor that was a lot
24 higher than the one you did -- you used in the
25 conservation easement appraisal?

1 A. It was not an inflation. It was just
2 property increases. The delta for property
3 increases, I think, he was at 6.5 percent, which is
4 much more aggressive. I think we were at
5 2-and-a-half percent, so that had a big effect on
6 it, obviously.

7 Q. And obviously this analysis doesn't
8 include the 13-percent development profit that you
9 subtracted in your conservation easement appraisal
10 before calculating the net cash flows to the owner,
11 does it?

12 A. No, I can't see where there was any
13 profit deducted anywhere in here.

14 Q. All right. So if that 13 percent was
15 deducted, what effect would that have on the 22
16 million present value number?

17 A. Obviously, it was lower.

18 Q. All right. And if you used a
19 less-aggressive increase in the land values over
20 the 12-year period, what effect would that have on
21 the 22-million-dollar present value number that
22 Mr. Johnson asked you to calculate?

23 A. It would obviously increase it. You
24 know, obviously, if he's saying it increases at 6.5
25 percent sales, or the lot prices or land values,

1 and you say 2.5 percent, that's pretty substantial.

2 MR. BECKER: That's all I have. Thank
3 you.

4 THE COURT: You may step down when you
5 can.

6 MR. BECKER: Your Honor, it's five
7 minutes to 5. I'm just wondering what we ought to
8 plan to do. Our next witness is Mr. Hartnett. I
9 know he has -- he has a meeting tomorrow.

10 (Off-the-record discussion.)

11 (Court was adjourned at 4:52 p.m.)

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4
5 Columbia Venture, LLC,
6 Plaintiff,
7 vs. CASE NO. 2010-CV-40-8943R
8 Richland County,
9 Defendants.

10 PROCEEDINGS: TRIAL - VOLUME X
11 (Pages 1805 through 1967)
12 BEFORE: THE HONORABLE JOHN HAMILTON SMITH
13 DATE: September 20, 2012
14 TIME: 1:32 p.m.
15 LOCATION: Richland County Judicial Center
16 1701 Main Street
17 Columbia, SC
18 REPORTED BY: Susan M. Valsecchi, CRR
19 Registered Professional Reporter
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376
24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 THE COURT: All right, then, if we're
2 ready to proceed.

3 If you would come around, please, and
4 walk over to the witness box next to the court
5 reporter. Put your left hand on the Bible for me,
6 please, and then raise your right hand.

7 Do you swear the testimony you will
8 give in this matter will be the truth and nothing
9 but the truth, so help you God?

10 THE WITNESS: I do, sir.

11 THE COURT: Please have a seat and then
12 please state your full name for the record.

13 THE WITNESS: My name is Thomas Forbes
14 Hartnett, H-a-r-t-n-e-t-t.

15 THOMAS FORBES HARTNETT

16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BECKER:

19 Q. Good afternoon, Mr. Hartnett.

20 Where do you live?

21 A. I live now at Number 5829 Back Bay
22 Drive, the Isle of Palms.

23 Q. Near Charleston, South Carolina?

24 A. Yes.

25 Q. How long have you lived in South

1 Carolina?

2 A. I have lived in South Carolina my
3 entire life, so far.

4 Q. Okay. Could you give us a brief
5 educational background, please, sir.

6 A. Yes, sir, I attended the Catholic
7 primary and secondary schools in the City of
8 Charleston. And after that, I enrolled at the
9 College of Charleston, along with His Honor.

10 I was not quite as studious as His
11 Honor was. I only had about two semesters at the
12 College of Charleston, and he went on and learned
13 things. I do not have a degree from any college.

14 I have gone back and taken evening
15 courses and night courses, but I do not possess a
16 college degree. But I did attend the College of
17 Charleston for a year and a half.

18 Q. What is your current occupation?

19 A. I am a real estate broker and counselor
20 and a property appraiser.

21 Q. All right. And how long have you been
22 employed in this business?

23 A. Well, after leaving the College of
24 Charleston in 1961 or '62, I joined my mother and
25 father in the business which they had started in

1 1947, and I have really worked at that same place
2 all along with some brief -- I spent some time in
3 Washington, and I couldn't work full time then, but
4 all but six years of that since 1962, I have been
5 employed or I have worked at the Hartnett Realty
6 Company.

7 Q. All right. Briefly, what were those
8 six years in Washington spent doing?

9 A. I was the representative from the First
10 Congressional District of South Carolina as a
11 member of congress.

12 Q. A member of the U.S. House of
13 Representatives?

14 A. Yes, sir.

15 Q. For six years?

16 A. Yes, sir.

17 Q. All right. Now, the business that
18 you've been engaged in for these many years, is it
19 in the real estate business?

20 A. Yes, sir, it is.

21 Q. And describe, please, if you would,
22 the -- what that business is, what activities and
23 services you provide in that business.

24 A. There are six of us who are employed or
25 who work at the business. Five of us are certified

1 general real estate appraisers, one of us is an
2 MAI. The sixth person is a sales manager and
3 property manager.

4 We are a general services real estate
5 company. We handle sales of all types of real
6 estate, residential, commercial, industrial,
7 agricultural, and we engage in the business of real
8 estate appraisals.

9 Real estate appraisals comprise the
10 bulk of our business, and we appraise everything
11 from gentleman's shops to synagogues and churches.

12 We do a lot of specialty work in
13 appraising conservation easements and have
14 appraised about 35 of the plantations in the Low
15 Country from the North Carolina line to the Georgia
16 line, along with other rural properties that are
17 not plantations, but just acreage.

18 We also do facade easement appraisals,
19 and all of these are prepared for tax purposes, so
20 they have to meet IRS standards. Other than that,
21 we are in the general appraisal business.

22 I do -- probably, of my work, 50
23 percent would be in the field of condemnation,
24 working for condemnors and for condemnees.

25 I have done work for utility companies,

1 for the Department of Transportation, for the
2 railroads, and for just about anybody who has the
3 power of eminent domain. And so the bulk of my
4 work is in that field, but my company is in the
5 general real estate and appraisal business.

6 Q. All right, sir. Are you a licensed
7 real estate appraiser?

8 A. I am a certified general real estate
9 appraiser, yes.

10 Q. Are you a licensed real estate broker?

11 A. I am the broker in charge of the
12 Hartnett Realty Company.

13 (PLF. EXH. 536, Thomas F. Hartnett
14 curriculum vitae, was presented.)

15 BY MR. BECKER:

16 Q. All right, sir. It appears from your
17 CV -- and let me, if I could, distribute a copy of
18 this. It's been marked as Plaintiff's Exhibit 536.

19 It appears you have two professional
20 designations that appear after your name on your
21 CV. Those are GAA and CRB.

22 What do those stand for, please?

23 A. The GAA stands for general accredited
24 appraiser and it is issued by the National
25 Association of Realtors.

1 Prior to 19 -- I think -- '92, as you
2 heard Mr. Wingard testify yesterday, the American
3 Institute of Real Estate Appraisers was an arm of
4 the National Association of Realtors.

5 They decided to withdraw from the
6 National Association of Realtors and combine with
7 the Society of Real Estate Appraisers to form the
8 Appraisal Institute. The National Association of
9 Realtors, to replace the loss of that arm, created
10 the appraisal section, and so what is now a GAA was
11 the equivalent of an MAI. But when they left, they
12 took the MAI. I guess it was copyrighted, or
13 whatever, with them, so it stands for general
14 accredited appraisal.

15 The CRB stands for Certified Real
16 Estate Brokerage Manager. And as you know,
17 Mr. Becker, these things are courses, or whatever,
18 sponsored by the respective organizations.

19 There are not any degrees, they're not
20 even -- they're just speciality courses that you
21 take for weeks at a time to get these designations,
22 which is supposed to make it more impressive when
23 you go out looking for clients. I don't know that
24 it does.

25 Q. Thank you.

1 Now, you also note a number of business
2 and professional affiliations there in the middle
3 on that first page of your CV that's been marked as
4 Plaintiff's Exhibit 536.

5 Are those current as of this time?

6 A. Yes, sir, they are.

7 Q. All right, sir. Take a brief minute.
8 Is this a relatively current CV or resumé for you?
9 You might just look over the next few pages. I
10 believe this is the one that accompanied your
11 expert report in this case.

12 A. It is. The list of the expert
13 testimony given at trial or deposition was updated
14 in January of 2010. I think you engaged me
15 sometime early in 2010 and asked that I forward
16 this to you, and that's the last one that I
17 forwarded to you. Maybe to that list of trial
18 and/or deposition there would be another five or
19 six cases, certainly no more than ten, added to
20 that.

21 But other than that, the rest of it is
22 about as current as it would be.

23 Q. Thank you.

24 Now, have you testified -- speaking of
25 prior testimony -- have you testified in previous

1 court proceedings as an expert on real estate
2 appraisal and valuation?

3 A. Yes, sir, I have.

4 Q. Approximately how many times have you
5 testified in that matter?

6 A. I think Mr. Johnson asked me that in my
7 deposition, and I'm generally asked that at every
8 deposition. I kind of calculated -- I've been
9 doing this for almost 50 years, and if it averaged
10 eight to ten times a year, that would -- well, that
11 wouldn't be as many times as I testified. I
12 probably have testified upward of 200 times, I
13 would guess.

14 Q. And have you testified in the courts of
15 South Carolina?

16 A. Yes, sir, I have.

17 Q. State and federal courts?

18 A. Yes, sir, I have.

19 Q. Have you been qualified to testify as
20 an expert witness in real estate appraisal and
21 valuation on each of those occasions?

22 A. Yes, sir, I have.

23 Q. Has any court in which you have
24 appeared to give expert witness testimony in real
25 estate appraisal and valuation ever refused to

1 qualify you as an expert witness on that subject?

2 A. No, sir.

3 MR. BECKER: Your Honor, we would offer
4 Mr. Hartnett as an expert witness on the subject of
5 real estate valuation and appraisal.

6 THE COURT: All right, sir.

7 MR. JOHNSON: I don't have any
8 questions.

9 THE COURT: Then I find him to be so
10 qualified.

11 BY MR. BECKER:

12 Q. Mr. Hartnett, were you engaged to
13 provide expert witness opinions and services in
14 this matter for the Plaintiff, Columbia Venture,
15 LLC, sometime prior to April 14th, 2010?

16 A. Yes, sir. I mentioned to you that in
17 the update that I sent you on my curriculum vitae,
18 it was as of January the 4th, so it was sometime
19 between January and April, the first of April, of
20 2010.

21 Q. All right. Now, were you given -- by
22 our law firm which engaged you, were you given
23 certain assumptions that we asked you to assume as
24 part of your assignment and engagement in this
25 case?

1 A. Yes, sir.

2 Q. All right. Were you asked to assume
3 that as of an effective date of February 20th,
4 2002, Richland County ordinances prohibited
5 improvement of the -- what are known as the Manning
6 levees -- improving those to FEMA standards for
7 certification as a flood protection device, thus
8 limited 70 percent of the subject property to
9 agricultural and minor recreational uses?

10 A. Yes, sir, I was asked to assume that.

11 Q. All right. Were you also asked to
12 assume that a regulatory taking of the property had
13 occurred as a result of those ordinances, those
14 Richland County ordinances, as applied to Columbia
15 Venture's property as of that effective date of
16 February 20th, 2002?

17 A. Yes, sir, I was.

18 Q. Now, were you asked to review and
19 provide opinions on other appraisals that were to
20 be -- that had been prepared and would be offered
21 in this case?

22 A. Yes, sir, I was.

23 Q. Were these the two appraisals of
24 Mr. Wingard that have been previously offered into
25 evidence in this case?

1 A. Yes, sir. And I think one also by
2 Mr. Knight.

3 Q. Yes, that was my next question.

4 And were you also asked to review the
5 appraisal prepared by Richland County's real estate
6 valuation and appraisal expert, Mr. Jake Knight?

7 A. Correct.

8 Q. And were you asked to prepare
9 calculations regarding value based on Mr. -- the
10 comparables used in Mr. Knight's appraisal?

11 A. Yes, sir, I was.

12 Q. All right. Now, I would like to ask
13 you to comment on the attributes of the subject
14 property, the 4,410 acres owned by Columbia Venture
15 that are -- which is the property that's the
16 subject of this case.

17 Would you consider this to be a unique
18 tract of land, and if so, what makes it that way?

19 MR. JOHNSON: Your Honor --

20 THE COURT: Yes, sir, you are leading
21 the witness.

22 BY MR. BECKER:

23 Q. What are the attributes of the subject
24 property that you consider noteworthy?

25 A. Well, it is a large undeveloped tract,

1 very close to an urban area. It has good access to
2 major highways and other transportation routes,
3 such as airports.

4 It is inside -- a portion of it is
5 inside -- I think what they call the Columbia
6 beltway, I-77.

7 It has -- well, it's close to -- I can
8 only equate it to a Daniel Island in Charleston
9 County. Daniel Island was once a huge undeveloped
10 island, which has been developed very carefully
11 through a PUD, planned unit development, and I have
12 seen the success of Daniel Island. And this piece
13 of property would be very similar to that.

14 There's nothing that I know of in South
15 Carolina of this size close to any of our major
16 cities, which would be Columbia, Greenville,
17 Spartanburg, Charleston, and now North Charleston.

18 So it is unique in its location. It's
19 unique in its size, and what it is close to, in the
20 way of major university and employment. It's just
21 unique in that -- its location is unique, its
22 size -- its undeveloped size is unique. It has
23 water frontage. It has a school there now. I
24 understand it's a private school, but there is a
25 school now.

1 A lot of things I think would make it a
2 very, very desirable piece of property to develop.

3 Q. All right, sir. Have you personally
4 visited the subject property?

5 A. Yes, sir, I have, I think, on two
6 occasions.

7 Q. All right. Have you driven on and
8 walked on the subject property?

9 A. I have, yes, sir.

10 Q. Have you visited all three of the
11 different levee sections?

12 A. I think so. It was kind of confusing
13 to me, but I know I visited the levees and walked
14 on the levees.

15 Q. Well, that was my next question.
16 Have you driven on and walked on the
17 levees?

18 A. Yes, sir, I have.

19 Q. Both down at the base and up at the
20 top?

21 A. Yes. Someone else drove, but I did
22 drive with them and I did walk along the top, yes,
23 sir.

24 Q. Okay. Have you ever been -- have you
25 ever appraised or been involved in appraising any

1 other properties that are somewhat similar to the
2 subject property?

3 A. No, sir, I can't say that I have. It's
4 pretty unique in its location and its size and
5 being undeveloped.

6 Q. Now, there's been a lot of
7 discussion -- now, let me first ask, were you
8 present in the courtroom during the entirety of
9 Mr. Thomas Wingard's testimony as an expert witness
10 on behalf of Columbia Venture?

11 A. I believe so, yes.

12 Q. Are you familiar with what's known as
13 the EDSA Land Development Plan?

14 A. I'm familiar with that -- the proposed
15 development plan, I guess, is what is reflected on
16 that map back there.

17 Q. Now, with respect to that plan, I was
18 going to ask you -- and you may have already
19 answered this question -- are you aware of any
20 other reasonably similar properties and planned
21 mixed-use developments to the EDSA Land Development
22 Plan?

23 A. Not at the time. Palmetto Bluff down
24 in Beaufort County was very comparable to that. It
25 had already begun its development, and, of course,

1 the economy has slowed that down. But that was
2 also a pretty large tract. It might have been as
3 many as 5,000 acres, that I know of. But I was not
4 involved in that at all.

5 Q. Tell us a little bit more specifically
6 how the Daniel Island development -- because I know
7 His Honor may have some familiarity with that
8 development down in the Charleston area.

9 How do you consider specifically that
10 it would compare to the proposed EDSA Land
11 Development Plan?

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: Objection, unless there's
14 some evidence that the witness used it as part of
15 an appraisal. And I have seen his report, and I
16 have deposed him and there's none, so I object on
17 the grounds of relevance. There hasn't
18 been -- unless it's been used in some way to come
19 up with an opinion of value.

20 THE COURT: Yes, sir. He testified
21 that, in his testimony, it was a unique piece of
22 property, much like Daniel Island in Charleston.
23 But unless he actually used it as a comparable, I
24 would sustain Mr. Johnson's objection, unless
25 you're proposing this for some other reason.

1 MR. BECKER: Well, the reason I would
2 be proposing it is, of course, the land development
3 plan is what was proposed for the subject property.
4 And to the extent that it is comparable in some way
5 to the Daniel Island development, I simply thought,
6 as background, it would be helpful to assess the
7 feasibility of the plan and the reasonableness of
8 it.

9 THE COURT: Well, I would have to
10 sustain the objection. I think his opinions would
11 have to be limited to this tract.

12 BY MR. BECKER:

13 Q. Were you present in the courtroom,
14 Mr. Hartnett, to hear Mr. Wingard testify regarding
15 the EDSA Land Development Plan and the role that it
16 played in his conservation easement appraisal?

17 A. Yes, sir, I was.

18 Q. Based on that testimony and any other
19 analysis you have undertaken regarding the EDSA
20 Land Development Plan, did you consider it
21 reasonable for Mr. Hartnett -- Mr. Wingard -- to
22 utilize the EDSA Land Development Plan in his
23 conservation easement appraisal?

24 MR. JOHNSON: Your Honor, one witness
25 doesn't get to comment on the testimony of another

1 witness, and I object to him --

2 What you're going to hear -- I will
3 just forecast and predict it -- is he's going to
4 offer opinions as to his view that Mr. Wingard did
5 it right, or did this right, or did that right.

6 And that isn't the role of -- first of
7 all, he's not an expert on when a witness is right
8 or wrong. That's an issue for the finder of fact,
9 and he can't comment -- he can testify he did an
10 appraisal. He can talk about his appraisal. But
11 he can't comment on whether what somebody says was
12 right or wrong, and I object to it.

13 THE COURT: I overrule the objection.

14 BY MR. BECKER:

15 Q. So based on the testimony that you
16 heard from Mr. Wingard regarding his assessment of
17 the EDSA Land Development Plan, do you believe that
18 it was reasonable for him to utilize that
19 development plan in his conservation easement
20 appraisal?

21 A. Yes, I do. After determining the
22 highest and best use of the property, which was not
23 only determined by Mr. Wingard and by others that I
24 have seen in documents that have been provided to
25 me, it's certainly the highest-and-best use was for

1 a multi-mixed-use development. And for the purpose
2 of the appraisal, which I understand was prepared
3 for the possibility of granting of conservations,
4 that it was the correct way to do it.

5 The judge referred to the subdivision
6 development, development plan. Banks loan money on
7 property like this every day.

8 I heard yesterday Mr. Johnson said
9 something about, yes, but if one little thing went
10 wrong in that plan, it could throw the entire
11 conclusion of Mr. Wingard off, and he's correct.

12 But banks -- and I say every
13 day -- every day up until about 2008 -- loan money
14 on development of subdivisions with the exact same
15 analysis and appraisal methodology used to
16 determine their value.

17 So, truly, it is the only way to
18 appraise a piece of property, unless you were asked
19 to just appraise the raw acreage. But that
20 wouldn't be the highest-and-best use.

21 So, again, he had a lot of assumptions,
22 assuming that the levees were going to be repaired
23 and maintained, assuming that the zoning changes
24 would take place and would be granted by Richland
25 County, assuming that the EDSA development plan was

1 approved and accepted by Richland County, then
2 certainly the methodology which he used to appraise
3 that property was the correct methodology.

4 Q. All right, sir. Now, are you also
5 familiar with the concept of a multicounty business
6 park under South Carolina law as a financing
7 vehicle for land development infrastructure?

8 A. I am familiar with the concept. I
9 would say that in the Low Country -- Charleston,
10 Berkeley, Dorchester County -- which, as you know,
11 do a lot of things -- we call ourselves a
12 Tri-County area -- we do a lot of things
13 together -- and it's been my findings that TIFDs
14 projects we use more than -- I do not know
15 personally of a multicounty business park among our
16 three counties. But I do know of several TIFD
17 designations that have accomplished about the same
18 thing.

19 Q. All right. Based on your understanding
20 of a multicounty business park being a similar
21 financing vehicle for development infrastructure as
22 a TIFD --

23 MR. JOHNSON: Your Honor, I object,
24 unless the witness has some expertise -- I thought
25 I heard him say he didn't really know about the

1 multicounty business park. Unless he shows some
2 expertise in whatever TIFDs are, as part of a
3 multicounty business park, his opinions would not
4 be admissible. I mean, he's got to have expertise
5 and knowledge.

6 THE COURT: What was the question
7 again?

8 MR. BECKER: I was just asking if, in
9 his understanding, a multicounty business park is
10 similar to a TIFD, as a financing vehicle for
11 development infrastructure.

12 THE COURT: Yes, yes. I will overrule
13 the objection.

14 THE WITNESS: I think to answer, I said
15 that I was familiar with the concept of a
16 multicounty business park, but I did not know of
17 any in the Charleston, Berkeley, Dorchester County
18 area.

19 But they are very similar, wherein
20 bonds are issued, the property area is designated
21 by a governmental entity, or a multigovernmental
22 entity, what the purpose of it would be, and they
23 issue bonds for the infrastructure; and the bonds
24 are amortized by taxes that are generated by the
25 properties that are constructed and built and

1 developed within the TIFD, or within the
2 multicounty business park.

3 So they're very similar, and I am
4 familiar with the concept, although I am not
5 personally familiar with a multicounty business
6 park that I could point to and say, yes, this is
7 one here or there.

8 BY MR. BECKER:

9 Q. All right, sir. Now, have you seen
10 Plaintiff's Exhibit 24, which was a February 19th,
11 1999 letter from Mr. Cary McSwain to George Gregory
12 at Burroughs & Chapin regarding zoning and
13 multicounty business parks?

14 A. Are you referring to the letter -- if
15 you are referring to the letter --

16 Q. We're going to hand it to you right
17 now. It's Plaintiff's Exhibit 24.

18 A. If this was the letter that said, Yeah,
19 we will work with you, basically, on your
20 development and whatever you would like to do with
21 the property, I have read it several times. If I
22 could read it again. But essentially what it
23 implied, if not stated --

24 MR. JOHNSON: Objection, Your Honor. I
25 object to him commenting on what the letter means.

1 The letter says what it says. It's for the finder
2 of fact to determine. His opinion about what it
3 means is of no concern.

4 THE COURT: He can publish the part of
5 the letter.

6 BY MR. BECKER:

7 Q. Just read the next-to-the-last
8 paragraph.

9 A. The letter is dated February 19th,
10 1999. It's addressed to Mr. George Gregory, whom I
11 understand was like the assistant to the CEO of
12 Burroughs & Chapin. It's a non-binding memorandum,
13 is what it's in reference to. And he says, to
14 Mr. Gregory:

15 It's the understanding of the County
16 that the proposed development group represented by
17 your company, which would be Burroughs & Chapin, is
18 desirous of entering into a development agreement
19 for the anticipated development of the Manning
20 property on the Congaree River, which is the
21 property in dispute.

22 The next paragraph says: The County is
23 contemplating its visioning process as part of a
24 Comprehensive Land Use Plan and which incorporates
25 what citizens of the county want to have in the

1 coming years.

2 Additionally, it is the understanding
3 of the County that the development group -- his
4 group -- is prepared to work with the County within
5 this vision plan where any parts of the plan are
6 feasible with the development plans and the
7 blending of elements of the development plan with
8 the County's Comprehensive Land Use Plan, which is
9 scheduled to be released in the near future.

10 The County is aware of and agrees to
11 work with the development group --
12 Burroughs & Chapin -- on issues that are critical
13 to the proposed development, such as zoning,
14 tax-incentive vehicles, and a multicounty business
15 park.

16 This agreement is intended to be
17 non-binding -- non-binding on either of the
18 parties.

19 And it is signed by Mr. T. Cary
20 McSwain, county administrator of Richland County.

21 Q. All right, sir. Now, given that letter
22 and the other analyses that you have made of
23 Mr. Wingard's conservation easement appraisal, did
24 you consider it reasonable under the circumstances
25 for Mr. Wingard to include the assumption of a

1 multicounty business park financing vehicle in his
2 conservation easement appraisal?

3 MR. JOHNSON: Your Honor, he didn't put
4 it in there -- he was directed -- it was as an
5 assumption. It wasn't something he selected. The
6 witness testified clearly on that yesterday.
7 Object to the form of the question.

8 THE COURT: Yes, sir. Well, as I
9 understand it, he's not asking the witness, Do you
10 think that's a reasonable letter for a developer to
11 rely upon in order to go forward with the project.

12 He's just saying, based on that, was it
13 his opinion that Mr. Wingard was reasonable in his
14 including it in regard to this appraisal.

15 And, for that purpose, I would overrule
16 your objection.

17 BY MR. BECKER:

18 Q. Let me also ask you to look at Exhibit
19 499, Mr. Hartnett. Since you both have the same
20 first name and go by Tommy, I sometimes have -- get
21 mixed up.

22 A. We have the same middle initials, too,
23 so...

24 Q. I know.

25 I have shown you what's been marked as

1 Plaintiffs 499, which is a summary exhibit of the
2 current zoning on the property at the time of
3 purchase.

4 Do you recall hearing Mr. Wingard
5 testify in regard to that exhibit?

6 A. I did, yes.

7 Q. All right. And would the
8 implementation of the proposed EDSA Land
9 Development Plan have required a change in zoning?

10 A. Yes, sir, it would have.

11 Q. All right. Now, given the -- what is
12 the zoning designation for the majority of the
13 property as shown on that exhibit?

14 A. From my understanding, it's D-1, which
15 is a development district.

16 Q. Yes.

17 A. But it has -- several smaller portions
18 of it have other higher designations, perhaps.

19 Q. Well, what is your understanding of the
20 D-1 zoning classification?

21 A. Well, it's sort of a -- what I would
22 call a catch-all temporary. It's a zoning that
23 exists to be changed. It's sort of like a piñata,
24 you can break it with a stick, and other little
25 zoning things will fall out of it.

1 So I considered it to be sort of a
2 temporary holding zoning designation, anticipating
3 future requests for zoning changes that would apply
4 to whatever property has that designation.

5 Q. Okay. And Mr. McSwain's letter of
6 February 19th, 1999, Plaintiff's Exhibit 24, also
7 addresses the County's attitude toward zoning
8 changes on the property; does it not?

9 A. Well, the last paragraph -- I've read
10 it, but if you want, I will read it again -- it
11 says that the County is aware of and agrees to work
12 with the development group on issues that are
13 critical to the proposed development, such as
14 zoning, tax-incentive vehicles...

15 So it does reference zoning; yes, sir.

16 Q. All right. Given the current zoning of
17 the majority of the property, being that D-1
18 classification, and given the letter from
19 Mr. McSwain, Plaintiff's Exhibit 24, under those
20 circumstances, did you consider it reasonable for
21 Mr. Wingard to assume any necessary change in
22 zoning that would be required to implement the EDSA
23 Land Development Plan? Did you consider it
24 reasonable to assume that for purposes of his
25 conservation easement appraisal?

1 A. It was reasonable and necessary.

2 MR. JOHNSON: Your Honor, can I have a
3 running objection to these reasonable questions?

4 THE COURT: Yes, sir.

5 BY MR. BECKER:

6 Q. All right. Okay. I may have jumped
7 ahead, too.

8 Given the -- let me go back to the
9 issue of the multicounty business park.

10 Given your understanding of multicounty
11 business park as a financing vehicle for
12 development infrastructure, and given the February
13 19th, 1999 letter from Mr. McSwain to Mr. Gregory,
14 Plaintiff's 24, did you consider it reasonable
15 under these circumstances for Mr. Wingard to
16 include the assumption of a multicounty business
17 park in his conservation easement appraisal?

18 A. Yes, sir, I did.

19 Q. I may have already asked you that
20 question, but I just couldn't remember.

21 A. Yes, sir.

22 Q. If I did, I apologize for repeating it.

23 All right, sir. Now I would like to
24 ask you about the valuation of the conservation
25 easement appraisal before the conservation easement

1 or the assumed regulatory taking.

2 Do you believe the effective date of
3 Mr. Wingard's conservation easement
4 appraisal -- and, again, we're speaking about
5 Plaintiff's Exhibit 394 -- that's the conservation
6 easement appraisal prepared by Van Sant and
7 Wingard, with an effective date of October 15th,
8 2002 -- and a value opinion of the property before
9 the taking of 142 million dollars.

10 You were present in the courtroom to
11 hear Mr. Wingard's testimony regarding this
12 appraisal. Is that right?

13 A. I was, yes.

14 Q. And you've previously reviewed that
15 conservation easement appraisal?

16 A. That is pretty much essentially what
17 you hired me to do -- or engaged me or retained me
18 to do. I hate the word hired. It sounds like I'm
19 cutting your grass. But, anyway, engaged me to
20 review the appraisals of Mr. Van Sant and
21 Mr. Wingard and Mr. Knight.

22 I did review the appraisal, and I
23 thought the reasonableness of it --

24 MR. JOHNSON: Your Honor, I object on
25 him commenting on now the reasonableness of the

1 Wingard appraisal.

2 Your Honor, respectfully, I've always
3 understood that a witness can't comment on the
4 credibility of another witness.

5 It's the finder of fact's job to judge
6 the witnesses as they come before, not have
7 somebody say you should believe that witness, and
8 here is why I think you should believe that
9 witness. That is really what is going on here.

10 He's saying, I'm Tommy Hartnett, I'm an
11 appraiser, and I think Mr. Wingard's appraisal was
12 reasonable and great and wonderful, and, Judge, you
13 ought to believe Wingard because I'm saying it and
14 I'm under oath, as opposed to Your Honor judging
15 Wingard on his own merits.

16 Do we now get to call in an appraiser
17 and say Mr. Hartnett has violated USPAP, and
18 Mr. Hartnett has done the wrong thing and we get
19 into the question of having witnesses offering
20 opinions about what others have done?

21 But I'm just concerned that it leads to
22 judging one witness, based upon what another
23 witness has said about his credibility.

24 Anyway, I appreciate you letting
25 me -- I object, and I would ask you to reconsider

1 your ruling. But I appreciate you letting me put
2 it on the record.

3 THE COURT: I overrule the objection.
4 Go ahead.

5 BY MR. BECKER:

6 Q. You have made your own independent
7 review and analysis of Mr. Wingard's conservation
8 easement appraisal, Plaintiff's Exhibit 394, in
9 this case. Is that correct?

10 A. That's one of the things that I was
11 hired to do, yes.

12 Q. And you made that independent review
13 and analysis prior to hearing him testify about it
14 here in court?

15 A. Prior to even meeting him; yes, sir.

16 Q. Okay. Then asking you further
17 questions about that conservation easement
18 appraisal, do you believe the effective date of the
19 conservation easement appraisal, October 15th,
20 2002, is sufficiently close to the date of the
21 assumed taking in this case of February 20th, 2002,
22 to allow the conservation easement appraisal to
23 substitute for a valuation of the property before
24 the assumed regulatory taking in this case?

25 A. I would like to answer and then explain

1 my answer.

2 Q. Please.

3 A. Yes. For this reason: That the sales,
4 one of which I have seen in the report and read for
5 myself, are dated 2003, 2004, 2005.

6 There is a section in USPAP, and I
7 heard this extensively discussed yesterday, which
8 clearly allows that and permits that. I can refer
9 to it, if you want me to. I will save you that
10 trouble for now. It was close enough in time.

11 The subject property itself had not
12 changed -- not a spade of dirt had been turned, not
13 another road had been put in, no infrastructure.
14 The property was exactly like it was on February
15 19th, 1999. So it was certainly proper for him to
16 consider that.

17 He could have gone out and searched for
18 other comparable sales that may have been prior to
19 or closer to the date. I have to assume, because
20 he has been qualified as an expert and has a good
21 reputation as a real estate appraiser, that he
22 found what he thought were the best comparable
23 sales.

24 MR. JOHNSON: Move to strike the
25 comment about his good reputation.

1 THE COURT: I overrule the objection.

2 Go ahead, sir.

3 THE WITNESS: And to make my answer
4 shorter, yes, sir, I thought the appraisal itself
5 was close enough in time. Even the adjustments
6 that he made to his sales -- and he did make some
7 positive adjustments -- were as little as 2
8 percent.

9 So the adjustments -- time
10 adjustments -- excuse me -- were as small as 2
11 percent, clearly telling you that, even if the
12 market had changed, it only changed 2 percent. So
13 I do think that it was properly used, the sales
14 that he used in his appraisal report of a proposed
15 conservation easement.

16 BY MR. BECKER:

17 Q. All right, sir. Now, in your opinion,
18 is this appraisal and the value conclusion for the
19 property before the conservation easement, an
20 appropriate proxy for a condemnation or inverse
21 condemnation appraisal of the property before the
22 assumed governmental taking of the property?

23 MR. JOHNSON: Object to the form. I
24 guess he's now asking him a legal question. We're
25 not trying an inverse condemnation or condemnation

1 case. He's asking, is it the same that you would
2 use for an inverse condemnation and a condemnation
3 case.

4 THE COURT: I think in his capacity as
5 an expert in regard to appraisals and in regard to
6 appraisals and condemnation cases, I think he's
7 qualified -- he's qualified to testify.

8 Go ahead, sir.

9 MR. BECKER: Your Honor, it's really
10 hard to keep track of where I'm going with an
11 objection every single question.

12 THE COURT: I think you'll do all
13 right.

14 BY MR. BECKER:

15 Q. Mr. Hartnett --

16 A. I think I can remember your question.

17 Q. Well, I want to repeat it again,
18 because I do not intend to let Mr. Johnson throw me
19 off in the way that he apparently is trying to do.

20 In your opinion, is the conservation
21 easement appraisal and the value conclusion
22 contained therein for the property, before the
23 conservation easement, an appropriate proxy for a
24 condemnation or inverse condemnation appraisal of
25 the property before the assumed governmental taking

1 of the property?

2 A. I would like to answer and then
3 explain, please.

4 Q. Yes, please.

5 A. My answer is yes, simply because,
6 although it is a common conception among a lot of
7 people that the most important thing in the
8 valuation of real estate is its location, that's
9 not correct.

10 The most important in the valuation of
11 a piece of real estate is its highest-and-best use.
12 Obviously, when you're appraising property, either
13 for condemnation or for mortgage loans, you
14 appraise it to its highest-and-best use, and that
15 is what Mr. Wingard did in his appraisal report.

16 So, yes, it would be proper to use
17 that, and it would be the same method that would be
18 used in condemnation or in a proposed conservation
19 easement.

20 Q. Thank you.

21 Generally, what is your
22 opinion -- you've reviewed the conservation
23 easement appraisal, you have heard Mr. Wingard
24 testify about it. Generally, what is your opinion
25 on how the appraisal was prepared?

1 MR. JOHNSON: Same objection, Your
2 Honor.

3 THE COURT: Overruled.
4 Go ahead, sir.

5 THE WITNESS: Mr. Becker, I'm going to
6 read from the letter that I sent to you, which
7 addressed that same question, because that was the
8 issue that you asked me to opine about.

9 And in my letter to you -- and I
10 promised you I would avoid this shuffle -- but it
11 doesn't look like I have.

12 BY MR. BECKER:

13 Q. I have a copy.

14 A. I have it here. I have several copies
15 of it, if I can just put my hand on it. I have it,
16 thank you. Because this is important. This answer
17 is important to what I know will come in my
18 cross-examination.

19 I was asked to review that appraisal.
20 The definition of an appraisal review,
21 as is held in what has been referred to as the
22 bible of South Carolina real estate
23 appraisers -- an appraisal review --

24 Q. Is that USPAP?

25 A. USPAP.

1 It is defined as the act or process of
2 developing and communicating an opinion about the
3 quality of another appraiser's work that was
4 performed as part of an appraisal, appraisal
5 review, or an appraisal consulting assignment.

6 That's what you engaged me to do.

7 And I was careful that I didn't form my
8 own opinion, because then I would be exceeding what
9 you hired me to do, and that was to review it.

10 So I carefully told you, if you will
11 refer to Page 2 of my letter of April the 12th
12 addressed to you, the fifth paragraph down, I say:

13 It's my opinion that based on the data
14 employed in their report and their analysis of that
15 data, that the discounted present value of the
16 property, assuming a highest-and-best use of
17 planned mixed development, was as shown in their
18 report, 142 million dollars.

19 All I'm saying is, based on the method
20 that they used, the data that they used, and their
21 treatment of that data, that they arrived at a
22 well-supportable and logical conclusion of 142
23 million dollars, which I concurred. So, yes, sir,
24 my answer is yes.

25 Q. Okay. And, in your opinion, does the

1 conservation easement appraisal utilize the
2 highest-and-best use for the property?

3 A. Yes, sir, it does.

4 Q. In your opinion, does the conservation
5 easement appraisal utilize the appropriate
6 appraisal methodology that is the development or
7 subdivision valuation approach?

8 A. I think you've asked me that, and my
9 answer would be the same. Yes, sir.

10 Q. In your opinion, was that appraisal
11 approach properly applied in this instance?

12 A. Yes, sir, and that's what I say in my
13 letter to you of April the 12th, 2010.

14 Q. All right. Do you have any criticisms
15 of the manner in which the conservation easement
16 appraisal was prepared?

17 A. No, sir; I don't.

18 Q. And do you agree with the value
19 conclusion of 142 million dollars for the property,
20 before the assumed regulatory taking and assuming
21 the existence of the multicounty business park
22 financing vehicle, the implementation of the EDSA
23 Land Development Plan, the improvement of the
24 levees, and any zoning changes necessary to
25 accommodate the EDSA land development plan?

1 A. Again, I want to very carefully answer
2 that. I do, based upon the methodology that they
3 use in their report, the data -- that would include
4 sales and assumptions -- and the treatment of that
5 data, that they arrived at a well-supportable
6 conclusion of 142 million dollars. So, yes, I do.

7 Had they used other data in their
8 appraisal, had they used another methodology, which
9 would not have been correct, perhaps I would not.

10 I have not done an independent
11 investigation. I read their reports, I read the
12 comparable sales that they used, how they treated
13 those comparable sales. And based on their
14 handling of the data that they employed in their
15 appraisal report, it was well done, well supported,
16 and a reasonable and logical conclusion of 142
17 million dollars.

18 Q. Thank you.

19 Mr. Hartnett, now I would like to ask
20 you about the valuation after the assumed
21 regulatory taking.

22 And for that value conclusion,
23 Mr. Wingard offered two different -- effectively
24 two different value conclusions.

25 Do you recall the one that he included

1 in his conservation easement appraisal?

2 A. Yes, I think it was around 11 million
3 dollars, 10 or 11 million dollars.

4 Q. And have you reviewed that value
5 conclusion as stated in the appraisal?

6 A. Yes, sir, I have.

7 Q. We also presented Plaintiff's Exhibit
8 425, which was a March 14th, 2005 appraisal of the
9 subject property for which he had prepared for
10 Carolina First Bank.

11 Have you reviewed that appraisal?

12 A. I have reviewed; yes, sir.

13 Q. Did you review it prior to hearing
14 Mr. Wingard testify about it in court in this case?

15 A. I reviewed it prior to even having met
16 Mr. Wingard, yes.

17 Q. And, of course, were you present in the
18 courtroom to hear Mr. Wingard testify about
19 Plaintiff's Exhibit 425, the March 14th, 2005
20 appraisal for Carolina First Bank?

21 A. Yes, sir, I was.

22 Q. Do you believe the effective date of
23 this appraisal, of March 14th, 2005, is
24 sufficiently close to the date of the assumed
25 regulatory taking in this case, the February 20th,

1 2002, to allow that bank appraisal and the
2 11-million-dollar value in the conservation
3 easement appraisal to substitute for a valuation of
4 the property after the assumed regulatory taking in
5 this case?

6 A. Your Honor, I'm going to have
7 to -- yes, I do, but I answered a question a few
8 minutes ago, and I thought that was the appraisal
9 that you were asking me about, when I referenced
10 the comparable sales that was subsequent to the
11 date of the assumed regulatory take.

12 So the same thing would apply there,
13 that the sales that he used were close enough in
14 time and his treatment of those sales, so I think,
15 to make them applicable to that date in time, also.

16 There may have been other sales out
17 there. I don't know that. But he treated them by
18 making adjustments, minor adjustments, in that. So
19 I think it was close -- my opinion would be that
20 it's close enough in time that it could have been
21 used for that purpose.

22 Q. All right, sir. In your opinion, is
23 the bank appraisal and the value conclusion for the
24 property contained in the bank appraisal an
25 appropriate proxy for a condemnation or inverse

1 condemnation appraisal of the property after the
2 assumed governmental taking of the property?

3 MR. JOHNSON: Your Honor, I have a
4 running objection to this.

5 THE COURT: Yes, it would be the same
6 objection, and I would overrule it for the same
7 reason.

8 THE WITNESS: Yes.

9 BY MR. BECKER:

10 Q. In general, what is your opinion of how
11 the -- what I'm calling the bank appraisal that's
12 Plaintiff's Exhibit 425 -- what is your opinion of
13 how that appraisal was prepared?

14 A. Well, he appraised the raw land, which
15 is what it was and what it is. The levees have not
16 been replaced or repaired or brought to FEMA
17 standards. No changes have been made. No
18 infrastructure. No shovel-load of dirt has been
19 turned. So he appraised it as raw acreage, with
20 the present facility, of the highest-and-best use
21 of recreational land and/or agricultural.

22 So I think it was a correct and a
23 proper assumption -- I mean proper
24 conclusion -- there also.

25 Q. In your opinion, does that bank

1 appraisal utilize the highest-and-best use for the
2 property after the assumed regulatory taking?

3 A. Under the current zoning it does, yes.

4 Q. In your opinion, does the bank
5 appraisal utilize the appropriate appraisal
6 methodology; that is, the sales comparison
7 approach?

8 A. That's the only approach that would
9 have been applicable for the property at that time,
10 because, as we discussed earlier, the reason he
11 used the other methodology in development of a
12 subdivision, is because he assumed zoning changes,
13 infrastructure, multicounty business park, levees
14 being replaced, County assuming responsibility for
15 maintaining.

16 So, yes, that would be the only
17 methodology he could have used, because it was raw
18 land, it didn't produce any income, and it had no
19 structures on it to use the cost approach. So the
20 sales comparison approach was the proper
21 methodology to use in that report.

22 Q. In your opinion, was the sales
23 comparison approach properly applied by Mr. Wingard
24 in the bank appraisal?

25 A. Once again, based on the data that he

1 had contained in his report, the methodology which
2 he used and the treatment of the data which he had
3 in his report, I believe that he reached a proper
4 conclusion that was well supported and reasonable
5 in his appraisal of the property for the bank.

6 Q. Do you have any criticisms of
7 Mr. Wingard's bank appraisal?

8 A. No, sir; I don't.

9 Q. Do you agree with the value conclusion
10 of \$14,115,000 for the subject property as limited
11 to agriculture and minor recreational uses?

12 A. Again, number one -- I don't want to
13 sound like a broken record, but based upon the
14 methodology that he used and the data contained in
15 his report, sales comparisons and other data, and
16 the treatment of that data, I believe that he
17 reached a logical, reasonable conclusion that it
18 was 14 million -- whatever it is -- 150 dollars.

19 Q. Okay. Now, do you agree that the
20 impact upon Columbia Venture's distinct and
21 reasonable investment-backed expectations,
22 therefore, equals the difference between the
23 142-million-dollar value conclusion before the
24 taking and the 14 .115 million value after the
25 assumed taking?

1 MR. JOHNSON: Objection, Your Honor.

2 What difference does it make whether he agrees or
3 doesn't agree? He's an appraiser, not the fact
4 finder.

5 THE COURT: Yes, sir, he's testified as
6 to his opinion. Now I think you're asking him to
7 draw a legal conclusion.

8 MR. BECKER: All right, sir.

9 BY MR. BECKER:

10 Q. Now, Mr. Hartnett, did you also prepare
11 an alternative value calculation for the property
12 before the assumed taking, assuming only the
13 improvement of the levees to FEMA standards?

14 A. I want to answer that very carefully,
15 also, Mr. Becker, to avoid my saying to you that
16 I've arrived at an independently-concluded
17 valuation.

18 I was not asked to do an appraisal,
19 contrary to what some may think. I have not done
20 an appraisal. But I have merely done mathematical
21 calculations to determine what I think is just
22 compensation, or difference in value. It was very
23 clear.

24 I relied upon --

25 MR. JOHNSON: Your Honor, I object.

1 He's offered as an expert in real estate appraisal.
2 If he's not done an appraisal, he's not here as a
3 mathematician. That's for the Court.

4 He can offer opinions about -- you're
5 going to let him offer opinions about appraisals,
6 but he's not the person to come up with an
7 alternative value calculation for the loss of value
8 from the taking.

9 THE COURT: Well, I think, first, I
10 would need to hear the explanation of what he is
11 proposing, before he gives a figure, and then I
12 will make a determination.

13 BY MR. BECKER:

14 Q. Did you review and analyze the
15 appraisal report that was prepared for this
16 litigation by the County's expert, Mr. Jake Knight?

17 A. I did.

18 Q. Did you perform the same kind of review
19 and analysis of that appraisal that you did of
20 Mr. Wingard's two appraisals that have been offered
21 in this case?

22 A. I did.

23 Q. Based upon your review and analysis of
24 Mr. Knight's appraisal work product in this case,
25 did you come to any -- did you make any sort of

1 alternative calculation of the value of the
2 property, assuming that the Manning levees had been
3 improved to FEMA standards?

4 A. I didn't, and I'm going to explain my
5 answer.

6 And, Your Honor, this goes to the heart
7 of what I'm here for.

8 MR. JOHNSON: Your Honor, I understand
9 we're going let him go into it some, and then you
10 will consider --

11 THE COURT: That's correct. I need to
12 first understand what his methodology was, but
13 before you give a valuation or actual opinion on
14 it, I will need to make a ruling on it.

15 THE WITNESS: I was asked -- I was
16 hired to review the two appraisals by
17 Mr. Wingard -- well, Mr. Wingard, and Van Sant did
18 one. Mr. Wingard did one by himself. Mr. Knight
19 also did one. I reviewed those three reports.

20 Mr. Knight, based upon, again, the data
21 employed in his report, the treatment of the data
22 in his report, and the methodology which he used,
23 arrived at a well-supportable conclusion.

24 One of the conclusions that he reached
25 in his report was applying comparable sales, which

1 was a proper methodology, was that high land,
2 within the area in dispute, the 4,400 acres, that
3 did exist -- and there is some high land -- or was
4 some high land in there -- had a value of \$15,000
5 an acre.

6 In my review, I determined -- he
7 concluded, high land, with part of this tract,
8 within this tract, that was usable or buildable,
9 had a value of \$15,000 an acre. And I thought that
10 was well supported and reasonable, based on its
11 location, his treatment of that data and what other
12 data he had contained in his report.

13 On the other hand, Mr. Wingard, in his
14 appraisal report, which I said I reviewed, that was
15 prepared for Carolina First Bank, subsequent to the
16 proposed or assumed regulatory take. He appraised
17 the property as it sits today and as it sat then,
18 no levees, no change in zoning, no infrastructure,
19 no work having been done.

20 He concluded that the blended value or
21 the value of the whole tract was -- I think it was
22 \$14,150,000.

23 In reviewing both of those reports, I
24 thought that the conclusion of Mr. Knight as to the
25 value of the high land within the area that's being

1 contested here today had a value of \$15,000. It's
2 4,400 acres. If you multiply it times that, you
3 come up with 66 million dollars.

4 Now, to get that 66-million-dollar
5 value, to make all of the land high, Columbia
6 Venture would had to have spent 12 million dollars
7 to improve the levees to FEMA standards. So you
8 would have to subtract the 12 million dollars from
9 the 66 million dollars to come up with whatever the
10 number is. I've got it written here somewhere.
11 You would come up with a value of \$51,900,000.

12 Then you'd have to subtract from that
13 what I will call the before value.

14 Mr. Wingard's --

15 BY MR. BECKER:

16 Q. I'm sorry. Did you mean to say the
17 after value?

18 A. No. The after value is Mr. Wingard's.
19 The before value would be -- if you did all of
20 the -- if you -- if Columbia Venture repaired all
21 of the levees, Your Honor, ostensibly, all of the
22 land would then be usable. It would equal the land
23 that's within that leveed area now that is high.

24 You would have the equivalent of usable
25 or high land. It would have theoretically raised

1 the elevation of that land, or the use of it, but
2 it would have cost them 12 million dollars to do
3 that.

4 So you take that away from the value of
5 66 and you come up with 51.9 -- 66 thousand
6 dollars -- you take away the after value at 14
7 million, you come up with 51.9, then take away the
8 12 million and it leaves a value -- or a difference
9 in value of \$40,000 [sic].

10 Based on the data contained in
11 Mr. Knight's appraisal report, which I reviewed and
12 which I think is well supportable and reasonable,
13 high land in that area would be worth \$15,000 an
14 acre.

15 Assuming Columbia Venture spent 12
16 million dollars repairing the levee and FEMA issued
17 new maps to that extent, it would be worth
18 66 million dollars.

19 If you take away the difference in what
20 Mr. Wingard said the value was without the levees,
21 without any zoning change, without anything at all,
22 it's 14 million. And the difference in those two
23 values is \$40,000 [sic], which I believe is a
24 difference in the --

25 Q. You said \$40,000?

1 A. 40 million, excuse me, Your Honor. 40
2 million dollars.

3 And I believe that's the difference in
4 value, if, in fact, there was a regulatory take.

5 Q. All right, sir.

6 A. That's -- I went and said a number,
7 Your Honor, I'm sorry.

8 THE COURT: All right. And I
9 understand what his methodology is now.

10 Now address your objection,
11 Mr. Johnson.

12 MR. JOHNSON: Your Honor, that has
13 nothing to do with real estate appraisal. He
14 hasn't appraised anything. He hasn't put a value
15 on anything. All he has done is come up with an
16 arithmetic calculation. And he says, In my
17 opinion, that represents the value. Well, he's not
18 an expert on that.

19 When he comes to testify in a
20 condemnation case, or any case, he gets to give his
21 opinion of value, but he doesn't get to give his
22 opinion of just compensation.

23 What he's trying to do now is give an
24 opinion of just compensation by doing some math,
25 using a method that, I guess, only Mr. Hartnett has

1 come up with, to come up and tell you what just
2 compensation is. I mean, he's not an expert in
3 that regard.

4 THE COURT: Well, sir, he, of course,
5 testified in regard to Mr. Wingard's deposition to
6 do what he was employed to do, and he cited the
7 applicable appraisal standards that you utilize
8 when you're reviewing an appraisal.

9 As I understand it, what he's doing
10 with the County's expert is he's utilized that same
11 standard and he found that the -- taken the data,
12 the method used, and how it was treated by the
13 County's expert, he found -- finds -- that that was
14 a supportable conclusion, that the value of the
15 high land was 15,000 acres -- \$15,000 an acre.

16 And then what he says, if you simply
17 take the -- accepting that, take the value of the
18 acreage, multiply it times the value put on it by
19 the County's expert, it's X dollars.

20 And he also agreed with -- he took the
21 14-million-dollar value as an after value. I think
22 those are all within the appraisal standards.

23 I think the only thing that would go to
24 a, quote, conclusion that would be for the fact
25 finder may be the subtraction of the amount that it

1 took to do the levee.

2 But what he's done, he's done with your
3 appraiser, what he says he did with Wingard, and
4 that is to determine whether or not that was a
5 reasonable appraisal.

6 And he used that as a before value as
7 an alternative method to utilizing the -- what we
8 call the subdivision development method.

9 So I would overrule your objection. I
10 think that's allowable testimony.

11 MR. JOHNSON: Your Honor, could I make
12 just one other point?

13 THE COURT: Certainly.

14 MR. JOHNSON: Two other points.

15 I don't think if there were a jury here
16 you would allow a witness to tell the jury how to
17 calculate just compensation.

18 And I don't think you would allow that,
19 because you would be obligated to instruct. And
20 his opinion, based upon what other experts have
21 said, is simply an opinion. What he's talking
22 about underlying his opinion is not admissible.

23 We've got Mr. Wingard who has given his
24 opinions of value, and we've got our guy who is
25 going to -- Mr. Jake Knight, who is going to give

1 opinions of value, and the trier of fact
2 necessarily has to make a decision based upon that
3 sworn testimony.

4 You can't allow another witness to come
5 up here and say, I've got a little different math
6 calculation, I really think this makes sense, and
7 let me show you, and this is just compensation.
8 And that's what we're getting.

9 It is -- I respectfully request that
10 the Court exclude it.

11 THE COURT: All right, sir. Well, I
12 understand your objection, but I adhere to my
13 ruling and I rule that it would be admissible.

14 MR. JOHNSON: Could I ask what 40
15 million represents, what he's going to say it
16 represents?

17 THE COURT: You can do that on
18 cross-exam.

19 Go ahead, sir.

20 MR. BECKER: Your Honor, I would like
21 to offer Plaintiff's -- first of all, let me hand
22 this to Mr. Hartnett.

23 BY MR. BECKER:

24 Q. Is this the calculation that you
25 referred to, Mr. Hartnett, that you made?

1 A. Yes, sir, it is.

2 Q. And it goes through -- I mean, this
3 just simply is a writing of the calculation you've
4 just testified to. Is that correct?

5 A. Yes, sir. And I refer to it as a loss
6 in value, result of taking, not as just
7 compensation as being 40 million dollars.

8 Q. You're not trying to tell Judge Smith
9 what he should find as just compensation in this
10 case; are you?

11 MR. JOHNSON: Object to the leading.

12 THE WITNESS: Just compensation could
13 include a lot more than just the difference in
14 value.

15 In some cases it can -- and this, to
16 me, is my opinion of the difference in value.

17 BY MR. BECKER:

18 Q. All right. Now, how did you -- when
19 you were asked by our law firm to perform this
20 analysis, this review and analysis, how did you
21 communicate this information to me that's contained
22 on Exhibit 4?

23 A. Orally.

24 Q. You never mailed this to me or sent
25 this to me?

1 A. No, sir. This was in my file. Rather
2 than handwrite it, for my own edification, so I can
3 read it, like I had a little trouble doing with the
4 judge here a minute ago, I typed it.

5 And when Mr. Johnson was going through
6 my file, which he properly should have, at my
7 deposition, he discovered this in there and said,
8 What is this? And I explained to him what it was.

9 So this was not a report that I issued
10 to you. It was no communication that was mailed to
11 you. I told you, orally, what I thought the
12 difference in value would be, based on what I have
13 just explained to the Court, and wrote this for my
14 own record, of my own edification.

15 Q. And so Mr. Johnson took this out of
16 your file and made it an exhibit to your
17 deposition?

18 A. I don't want to say he took it. He was
19 reviewing my file, as he properly should, and has
20 every right to do, and discovered it in my file.
21 And would look at it -- obviously had to take it
22 out to look at it. But it wasn't like he just took
23 it out of my file.

24 Q. I didn't mean to imply anything
25 untoward.

1 A. I'm sure you didn't.

2 Q. I simply meant that, after finding it
3 in your file at your deposition, he made it an
4 exhibit to your deposition?

5 A. Correct. He asked that it be marked as
6 an exhibit, yes.

7 (PLF. EXH. 216, Hartnett Expert
8 Calculations, was presented.)

9 MR. BECKER: Your Honor, if I could
10 just note for the record, it includes a couple of
11 pages that aren't properly part of it. You can
12 just take the last page off and don't worry about
13 what would be on the second page.

14 Your Honor, we'll plan to have an
15 appropriate copy of this made and substitute it for
16 the exhibit in this case.

17 THE WITNESS: If you give me that one,
18 and I can give the judge this one. It's marked as
19 Exhibit 4, so I will have one in my file.

20 MR. BECKER: We've got it. We'll have
21 it copied properly.

22 Thank you, Mr. Hartnett. I have no
23 further questions for you at this time.

24 THE WITNESS: Thank you, sir.

25 THE COURT: All right, Mr. Johnson.

1 MR. JOHNSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Mr. Hartnett, tell me everything you
5 know about multicounty business parks.

6 A. Everything I know about them?

7 Q. Yes, everything you know.

8 A. Well, multicounty business parks is
9 what you asked me to tell you about. They are
10 large tracts of acreage, which have been developed
11 with an infrastructure and subdivided and platted
12 and used as an inducement to get businesses and
13 industry to locate within this business park,
14 wherein businesses have sort of things in common.

15 So a multicounty business park is a
16 piece of land which has been platted, and the plat
17 approved by the governmental agency, assuming it's
18 a county, and the lots are subdivided for sale, the
19 county -- and that's what a park is.

20 Now, if you want to know how they're
21 created, they're created through the County,
22 issuing bonds -- not general obligation bonds, but
23 they're special revenue bonds. The revenue is
24 created by the taxes that are generated by the lots
25 that are sold within what I have just described to

1 you as a large tract of acreage that's been
2 developed into a park.

3 So the concept of them and how they're
4 created is, the County -- multicounties are
5 involved, they issue bonds -- the revenue is -- I'm
6 not sure whether it goes back to the counties. I
7 know it goes back proportionally. I'm not sure
8 what the proportion is, whether it's the population
9 of the county, the amount of the bonds issued by
10 the County.

11 Because some counties don't have the
12 same bonding authority as other counties, because
13 of their tax base and because of their size, so the
14 largest counties obviously have to issue more bonds
15 so they reap more taxes from it. So that's the
16 concept of it.

17 But the park itself is a piece of land
18 that's designated a zone, industrial or light
19 industrial, by the multicounties, and it's used to
20 sell tracts of land to people who develop them with
21 businesses and light industries and offices.

22 Q. Do you know anything else about it?

23 A. Well, other than they've been
24 successful in inducing businesses to locate within
25 those counties, and so to some degree, it's been

1 successful in increasing the tax bases of other
2 counties.

3 And I don't know what else there is to
4 know about it, Mr. Johnson.

5 Q. What does TIFD stand for?

6 A. A tax incremental district. It's the
7 same thing where the County -- in fact, in
8 Charleston County right now, we have the Beach
9 Company is trying to get Charleston County to
10 create a TIFD on Johns Island, so they can turn the
11 old Rosebank Plantation into a residential
12 development, you know, golf courses and things.

13 They want the County to put in the
14 infrastructure and pass the bonds, so there's quite
15 a dispute going on now. But it's a participation
16 of the County in the development of a piece of
17 property.

18 Q. And what are the specific differences
19 between the multicounty business park and the
20 TIFDs?

21 A. I don't have the slightest idea,
22 Mr. Johnson. I know they both accomplish the same
23 end, but I don't know the difference at all.

24 Q. Who has to agree for a multicounty
25 business park to be developed?

1 A. I assume that the --

2 Q. No, I don't want you to assume.

3 A. Then I have to tell you I don't know.

4 Q. Who has to agree for a TIFD to be
5 formed?

6 A. Well, in Charleston County, Charleston
7 County Council has to, because the pressure has
8 been on the county council. So I would say it's
9 the county council in each of the respective
10 counties, where there is more than one county in a
11 multicounty district.

12 Q. So when there is a controversial issue,
13 public opinion starts to influence or has a role in
14 what decision is made?

15 A. Yes, sir, it does.

16 Q. And did I understand you to tell me
17 that the TIFD program or plan from the Beach
18 Company is being hotly argued in Charleston County
19 as we speak?

20 A. Yes, sir. The people on Johns Island
21 don't want to change the rural character of the
22 island and there's some opposition to it on Johns
23 Island. But that's what it is and that's what
24 they're created for.

25 Q. Mr. Hartnett, do you have your expert's

1 report up there before you?

2 A. Yes, sir, I do.

3 Q. In your expert's report, you expressed
4 the opinion and said, It was my opinion, based upon
5 the data employed in their report and their
6 analysis data, that the discounted present value of
7 the property, assuming the highest-and-best use of
8 plan mixed development as of October the 15th,
9 2002, was as shown in their report, 142 million
10 dollars, correct?

11 A. That's correct. That's what I read to
12 Mr. Becker.

13 Q. You expressed an opinion of the value
14 based upon their data?

15 A. No, sir. I said I think it's my
16 opinion that their opinion of value is correct.

17 Q. Let's read what you said. I would like
18 for you to read it, if you would.

19 A. Mr. Johnson, you just read it and I
20 read it. But what it says is:

21 It's my opinion that, based on the data
22 employed in their report and their analysis of the
23 data, that the discounted present value of the
24 property, assuming a highest-and-best use of
25 planned mixed development as of October 15th, was

1 as shown.

2 I have not changed their value. I
3 concurred in their value. I have not issued a
4 separate value. I concurred in their value, based
5 on the terminology of that paragraph, that they
6 reached the right conclusion.

7 Q. And then on the second page, you said:
8 It is my opinion, based upon the data employed in
9 his report and his analysis of the data, assuming
10 the highest-and-best use of recreational and
11 agricultural uses as of October the 15th, 2002, was
12 as shown in his report, \$14,115,000.

13 Correct?

14 A. Correct.

15 Q. Then you went on to say: It is
16 therefore my conclusion that based upon the
17 appraisals of the property that were made by
18 reputable and eminently qualified real estate
19 appraisers, the reduction in market value of the
20 subject property, as of the result of actions taken
21 by the Richland County Council, as of October the
22 15th, 2005, was \$127,885,000?

23 A. Correct.

24 Q. That's what you said?

25 A. Correct.

1 Q. Now, you did no appraisal of anything
2 yourself, did you?

3 A. No, sir, I did not.

4 Q. And you didn't give an appraisal as of
5 any of the dates -- appraise anything yourself as
6 of any of the dates involved in this case?

7 A. No, sir, I did not.

8 Q. Now, Mr. Hartnett, that was your report
9 from April the 12th, 2010 until we got to the time
10 of your deposition, correct?

11 A. Correct.

12 Q. And then at the time of your
13 deposition, I asked you about your prior report and
14 whether you abandon it or not, your opinions
15 expressed in your prior report, and you told me
16 under oath that you abandon those earlier opinions,
17 didn't you?

18 A. I did.

19 Q. You didn't tell the judge today that
20 you issued those opinions and later abandoned them,
21 did you?

22 A. I was not asked that question.

23 Q. In fact, you testified that those
24 numbers were too high and that it was -- in your
25 opinion, you would never find a willing buyer who

1 would pay 142 million dollars to do this project?

2 A. And that's still my opinion today,
3 Mr. Johnson.

4 Q. And you came up with your alternative
5 value calculation that we've talked about, right?

6 A. Correct, sir.

7 Q. And you call it loss in value as a
8 result of the taking. And you round it to 40
9 million dollars, correct?

10 A. Yes, sir, I did.

11 Q. And in doing that, that doesn't have
12 anything to do with appraising property yourself,
13 does it?

14 A. No, sir, it does not.

15 Q. It is simply an arithmetic calculation
16 of Tommy Hartnett's opinion as to how you should
17 calculate the loss in value as a result of the
18 taking?

19 A. I would like to answer that question
20 and explain my answer, but the answer to that
21 question is yes. But it was arrived at, through
22 what I was hired to do, a review of the appraisals
23 that were performed by qualified appraisers. And
24 it was my opinion, after reviewing their data in
25 their reports, they had arrived at a proper

1 conclusion, a well-supported conclusion.

2 And it was a before value -- if it's a
3 regulatory take, that's the same as a physical
4 take. You have a full value and you have an after
5 value. I thought the value of \$15,000 an acre
6 contained in Mr. Knight's appraisal report for high
7 land within the 4,400 acres of \$15,000 an acre was
8 reasonable, well supported, and a good conclusion.

9 I thought that the data contained in
10 Mr. Wingard's report -- I'm just explaining my
11 answer, you said you would let me do that.

12 Q. I'm not going to cut you off. I want
13 to hear.

14 A. -- was reasonably supported -- was well
15 supported and was reasonably concluded of 14
16 million. And the difference in those two values
17 was 40 million dollars. And that's what I
18 essentially said when I referenced my report of
19 April the 10th to Mr. Becker, which you have said I
20 have now abandoned, if that was the word. Yes.

21 Q. Well, that was your word. You admitted
22 that you abandoned --

23 A. No, I think that was your word. And I
24 said, Yes, sir.

25 Q. Actually, you said, I abandon it.

1 Correct?

2 A. Well, I stand corrected -- obviously,
3 it's in the deposition, if that's what I said.

4 But in any regard, I don't agree with
5 it, but I didn't say I necessarily -- it was my
6 opinion then they concluded properly -- for the
7 methodology and for the purpose of that
8 appraisal -- correctly, it was done, the before and
9 the after value. And the difference was correctly
10 done.

11 However, that was done for a different
12 purpose, which was perfectly suitable for the
13 reasonable -- it was certainly suitable for a
14 regulatory take, if that existed. I answered that
15 question to Mr. Becker. But I don't think, as I
16 just told you, you're going to find somebody with
17 142 million dollars on their hip that will buy that
18 property. No, sir, I don't think so.

19 Q. Well, we agree about one thing.

20 A. I'm sorry?

21 Q. Let's go to the other thing. Since you
22 say what you did didn't involve any placement of
23 values on the property yourself --

24 A. Correct.

25 Q. -- let's work our way through what I

1 call the Hartnett arithmetic.

2 A. Thank you, sir.

3 Q. All right. You said Mr. Knight put a
4 value of \$15,000 per acre on the high land,
5 correct?

6 A. That's correct, sir.

7 Q. And show me in Mr. Knight's appraisal
8 where he did that, sir.

9 A. Sure. It's on Page -- I think I have
10 it marked here, the front of his report -- Page 69.

11 Q. Can I look with you, Mr. Hartnett?

12 A. The last paragraph of Page 69. I'll
13 read it for Your Honor.

14 After adjustments are made, the sales
15 indicate a high price for the usable acreage,
16 \$20,000 --

17 Q. Good.

18 A. -- a low price, \$9,000; a median price,
19 \$13,872; a mean price of \$14,468.

20 Q. All right.

21 A. For the 1,200 acres outside of the
22 floodway, I have reconciled on a value of \$15,000
23 per acre.

24 Q. So what he did was, he got
25 comparables --

1 A. Yes, sir.

2 Q. -- and he valued a thousand -- how many
3 acres?

4 A. 1,225.

5 Q. He went through the USPAP process by
6 getting comparables or comparable in size to a
7 1,225-acre tract --

8 A. Correct.

9 Q. -- and he made adjustments to the
10 comparables, and he said, I believe that the 1,225
11 acres would have a per-acre value of \$15,000 per
12 acre.

13 A. Correct.

14 Q. Okay. Now, as to the other portion of
15 the property, the remaining 3,175 acres, show me in
16 Mr. Knight's report where he valued that.

17 A. If you refer to Page 89 of his report,
18 he shows acreage outside 1,225 at \$15,000 an acre;
19 acreage inside, \$3,100 an acre.

20 Q. No, sir. What I'm asking you is,
21 that's farmland price.

22 Where did he value it -- get
23 comparables and put a value on the remaining
24 portion of the tract as high land?

25 A. Well, that's all it ever has been or

1 ever will be, is farmland.

2 Q. High land.

3 A. Right here, 1,225 acres.

4 Q. No, no. You treated all of this
5 \$15,000 an acre, don't you, the entire 4,400 acres
6 in your math calculation?

7 A. Can I answer that question and then
8 explain it?

9 Yes, I did. And the reason I did, Your
10 Honor, is because, theoretically, if the levees
11 were brought to FEMA standards and Richland County
12 agreed to maintain those levees after they were
13 brought, that FEMA had agreed -- or was
14 required -- to change their designation, so that it
15 all became usable land.

16 So the theory that I used was, if
17 usable land in there now is worth \$15,000 and it is
18 all made usable, it would all be worth \$15,000 an
19 acre. And, to me, that's pretty reasonable. So
20 that's what I did.

21 Q. I'm not asking you what you did.

22 A. I thought that's what you asked me.

23 Q. I'm asking you, did you find in
24 Mr. Knight's appraisal where he ever took the
25 3175 -- 3,175 acres -- and appraised them as high

1 land?

2 A. That's not what he was asked to do,
3 Mr. Johnson.

4 Q. I'm asking you, is it in there?

5 A. No, sir, it's not. Of course it's not.

6 Q. He never assembled appraisals of that
7 large tract and said, If I were to treat it as high
8 land, it would have this value or that value?

9 A. No, sir. And when I was explaining it
10 to the Court, I didn't say that he did. I said
11 that he said the usable acreage within the 4,400
12 acres had a value of \$15,000 an acre, and that's
13 what it says in his report.

14 Q. So you extrapolate from that that all
15 of the property would be worth \$15,000 an acre?

16 A. I do.

17 Q. So you actually are giving an opinion
18 of value of 3,175 acres, without having appraised
19 it yourself.

20 A. I have not done any appraisals at all;
21 no, sir.

22 Q. Now, let me ask you this, Mr. Hartnett:
23 There's a way to find out what the 3,175 acres is
24 worth if it's high land; isn't it?

25 A. Yes, sir; it is.

1 Q. You can go through the appraisal
2 process, gather the data, weigh the data, and come
3 up with a figure?

4 A. Yes, sir, you can.

5 Q. Mr. Knight didn't do it?

6 A. No, sir.

7 Q. You haven't done it?

8 A. I was not asked to do that.

9 Q. But you have thrown that figure into
10 your math calculation?

11 A. Yes, I have; yes, sir.

12 Q. And, Mr. Hartnett, isn't it correct,
13 sir, that a larger tract usually sells for less
14 than a smaller tract?

15 A. The key word there is usually.

16 Q. That's why I asked it that way.

17 A. The reason why it's not always is
18 because a lot of other things enter into that
19 equation, such as location, size, access,
20 visibility, location on water, on a river. All of
21 those things can make it -- sometimes -- more
22 valuable than less, because you have more options
23 as to what you can do with it.

24 For example -- I'm explaining my
25 answer. For example, with this larger tract, not

1 only can you do a residential development, you can
2 do golf courses, you can do multicounty industrial
3 parks, you can do hospitals, you can do -- so it
4 makes it -- hotels -- you can make it even more
5 valuable.

6 So in this instance, the size
7 adjustment, I don't think would be applicable,
8 because with a larger tract, you have far more
9 options than you would with a smaller tract, so,
10 therefore, no size adjustment would be indicated.

11 Now -- if that answers your
12 question -- but usually you do. But in this case,
13 you wouldn't.

14 Q. Now, Mr. Hartnett, with a size
15 adjustment, it could mean that it's worth more.
16 It's got all of these advantages you're talking
17 about?

18 A. Correct.

19 Q. Could mean it's worth less?

20 A. Correct.

21 Q. It could mean it's worth the same?

22 A. Correct.

23 Q. But the only way you find out is to
24 appraise it, don't you?

25 A. Correct.

1 Q. Hadn't been appraised?

2 A. Correct.

3 Q. You don't have an appraised number to
4 stick in for that 3,175 acres as high land, do you?

5 A. No, sir, I don't.

6 Q. Now, in your math calculation, you
7 talked about Mr. Wingard putting a price per acre
8 of \$3,200 per acre on the 4,000 acres?

9 A. Correct.

10 Q. Show me in Mr. Wingard's report where
11 he valued the acreage, the whole acreage, at \$3,200
12 per acre.

13 A. I left it back there on my seat.

14 Q. Do you want me to get it?

15 A. Tommy can hand it to me.

16 MR. BECKER: I've got it. It's 425,
17 Plaintiff's 425.

18 THE WITNESS: Yes.

19 MR. BECKER: The bank appraisal?

20 THE WITNESS: Yes.

21 Mr. Johnson, on Page 100 of
22 Mr. Wingard's report that is dated March 14th,
23 2005, the last paragraph:

24 With a correlated and reconciled value
25 per acre for the subject determined at \$3,200 per

1 acre, the indicated market value of the 4,000 acres
2 is \$14,115,000.

3 BY MR. JOHNSON:

4 Q. Good. Turn back. I've got another
5 question.

6 A. All right, sir.

7 Q. Now, you said you read his report and
8 you talked about how it's so reasonable. Tell me
9 the comparables that Mr. Wingard used to come up
10 with that value in his report. Describe them.

11 A. They're all right in here.

12 Q. Sir?

13 A. They're all in the report.

14 Q. I want to -- I know. I want to ask you
15 a question about them.

16 A. Okay.

17 Q. Look at them, and if you would, just
18 tell me what they are.

19 A. Let me go to the first one, because
20 there's eight of them, I think, in here.

21 All right. Comparable Sale Number 1.
22 I see Number 2. Let me get to Number 1. Your
23 Honor, I'm sorry for this shuffling.

24 Q. Take your time.

25 MR. BECKER: Page 67.

1 THE WITNESS: I've got it. Comparable
2 Sale Number 1 was north side and south side of
3 Interstate Highway 20 at Bettis Academy Road in
4 Graniteville, Aiken County.

5 BY MR. JOHNSON:

6 Q. What kind of land?

7 A. Sir?

8 Q. What kind of land? What was the use?

9 A. The seller was PruTimber Fund and the
10 Prudential Life Insurance and Sage Mill
11 Development. It sold for 17 million dollars. It
12 was on December the 16th, 2004--

13 Q. Raw land?

14 A. -- seven thousand seven hundred -- yes,
15 sir.

16 Q. Raw land?

17 A. Mr. Johnson, you asked me to -- you
18 asked me what the comparable sales were. I'm
19 reading it right now. If you would just let me
20 finish reading it, then it will turn up if it's raw
21 land.

22 Q. Be glad to.

23 A. 7,785 acres, sold for \$2,301 an acre.
24 Cash to seller, no concessions. It had water and
25 sewer available to a portion of the property.

1 Grantee was personal inspection.

2 All 15 acreage parcels purchased under
3 one contract, although conveyed under two deeds as
4 a result of the ownership.

5 The purchaser is a related entity to
6 the owner of Sage Valley Golf Club, an exclusive
7 private golf facility.

8 Properties purchased for golf course
9 buffering, as well as future development,
10 specifically on those tracts located on the north
11 side of Highway 20. Topography varies, although no
12 severe slopes on any of the tracts. The plats will
13 delineate in size, shape, and frontage on any
14 thoroughfares.

15 Q. Was it developed or was it developable?

16 A. I'm sorry, sir?

17 Q. Was it developed property?

18 A. I assume it was, that they bought it at
19 some -- because it's related to a -- a golf course
20 entity bought it, but it was a timber company,
21 apparently, that sold it to them.

22 Q. Was it developed land or not, or do you
23 know?

24 A. Was it developable?

25 Q. Was it developed property, or do you

1 know?

2 A. This was not developed property.

3 Q. But it was developable?

4 A. I assume so. It said that -- although
5 the owners that -- things vary -- I think he
6 says he -- I think I read the topography varies,
7 although no severe slopes on any of the tracts. So
8 I assume it was developable.

9 Q. Let me ask you this: Did Mr. Wingard,
10 in his appraisal, assume that 4,400 acres were
11 undevelopable -- were not subject to development in
12 this appraisal?

13 A. Well, he put the \$3,200 per acre on all
14 4,400 acres. I would have to go back and see
15 whether he assumed that, but I think he just did a
16 blended value, as I told you --

17 Q. Excuse me --

18 A. You have to let me finish, Mr. Johnson.
19 Your mind works so quick, you're so good, you've
20 got to let me finish. I can't keep up with you.

21 If I wanted to sell a tract of land on
22 Johns Island and it was \$30,000, and it was 10
23 acres, that would be \$3,000 an acre. I don't say,
24 yeah, but it's \$2,000 an acre for this land because
25 it's a little bit lower. It's \$1,500 for this

1 acre. The blended price is \$3,000 an acre. That's
2 what Mr. Wingard did in his report. He put a
3 blended value of \$3,200 per acre on the whole tract
4 as it sits today.

5 Q. All right. Mr. Hartnett, are you
6 finished?

7 A. Do you want to go to sale 2 now?

8 Q. No, I want to go to the question I was
9 trying to ask you.

10 Would you look and tell me, if, in that
11 appraisal, Mr. Wingard assumed that the property
12 was not subject to being developed.

13 A. I don't know whether he did or not, to
14 be honest with you, sir.

15 Q. Could you look and see and refresh your
16 recollection?

17 A. Well, he says that the highest-and-best
18 use afterwards is for what it is today, recreation
19 and agriculture, so I assume that it's not
20 developable because it's --

21 Q. Not developable.

22 A. Correct.

23 Q. All right. And so show me in the
24 report he did where he put a value on the 1,225
25 acres of high land, which, in fact, was subject to

1 being developed.

2 A. He did not.

3 Q. He didn't put any value on it.

4 A. He put a blended value, on the 4,400,
5 acres of \$3,200 an acre.

6 Q. No. He assumed that none of it could
7 be developed and did not appraise any of it as
8 being developable; did he?

9 A. I don't think he did; no, sir.

10 Q. Okay. So he didn't put any appraised
11 value on this 1,225 acres that was subject to
12 development?

13 A. Correct.

14 Q. But when you did your math, you did it
15 as if it was all undevelopable land, correct?

16 A. Correct. And at my deposition, you
17 asked me to do it otherwise. Don't you remember?

18 Q. Well, I'm going to ask you to do it
19 otherwise now.

20 A. All right.

21 Q. Okay. Using the appraisals you have --

22 A. Yes, sir.

23 Q. -- the Wingard and the Knight
24 appraisal -- I have done a little chart with your
25 arithmetic.

1 A. Yes, sir.

2 Q. And I would like to get you to take my
3 pen -- have you got a pen there?

4 A. I do. I brought one today, yes.

5 Q. And we've got the Knight appraisal
6 first of the 1,225 acres at \$15,000 an acre,
7 correct?

8 A. Yes, sir.

9 Q. And that comes to 18 million
10 dollars -- \$18,375,000?

11 A. That's correct.

12 Q. All right. Now, I want you to -- since
13 you have told us that there is no Knight appraisal
14 of the 3,175 acres that remain -- he didn't
15 appraise that; did he?

16 A. Correct.

17 Q. I want you to -- over on the chart I am
18 giving you -- to write in "none" here.

19 A. Well, now we did this -- I did this at
20 my deposition for you, remember? I've got it right
21 here.

22 Q. Mr. Hartnett, would you please
23 cooperate with me.

24 A. I'd be happy to, but I just don't
25 understand what you want me -- what number do you

1 want me to put in there?

2 Q. I want you to put that you don't have a
3 value. Put a zero there.

4 A. Okay.

5 Q. All right. We have now gone through
6 and we have learned that Mr. Knight and Mr. Wingard
7 appraised the 4,400 acres all as being
8 undevelopable, and he did not put -- and there's
9 been no appraisal of the 1,225 acres that, in fact,
10 are developable by him, correct?

11 A. Mr. Johnson, I really don't understand
12 your question, but I think he did put a value on
13 the 3,100 acres.

14 Q. No. He put a value on 4,400 acres
15 based upon the assumption that it was not subject
16 to being developed, correct?

17 A. Well, he has a value for the 3,175
18 acres of \$3,100 an acre, and you want me to put
19 zero there.

20 Q. No, sir. I want you to put -- you're
21 looking at whose report?

22 A. This is Mr. Knight's report.

23 Q. I'm asking you about Mr. Wingard now.

24 A. Now, you just said -- you've got Knight
25 written right here. You've got 1,200.

1 Q. Please, please, read here. It says
2 Wingard.

3 A. No, no, it doesn't. It says Knight.

4 Q. Sir, right here is where I'm talking
5 about.

6 A. You just pointed and asked me to put a
7 zero by the 3,100 acres, which Mr. Knight clearly
8 says it's worth \$3,200 an acre, but you want me to
9 put zero. If you multiply 1,200 acres by \$15,000,
10 you don't get that number, I don't believe.

11 Q. Let's do this.

12 A. It's a good thing you're not a real
13 estate appraiser.

14 Q. I agree with that.

15 A. All right. 18,375.

16 Q. Hey, I did the math.

17 A. I bet somebody at the table taught
18 you --

19 Q. I did it myself.

20 A. But you want me to put 3,100 acres --

21 Q. No, sir, I don't want you to do that.
22 If you would just let me ask you the question
23 please, Mr. Hartnett.

24 A. Okay.

25 Q. All right. We're now moving down the

1 page --

2 A. Okay, move down to Wingard.

3 Q. We're down to Wingard.

4 A. Uh-huh.

5 Q. And we know that Wingard did not do an
6 appraisal of the 1,225 acres, treating it as
7 developable property.

8 A. Correct.

9 Q. So you don't have an appraisal for
10 that; do you?

11 A. I don't have an appraisal for the
12 entire tract with a blended value from Mr. Wingard.

13 Q. You don't have an appraisal from
14 Mr. Wingard of 1,225 acres, based upon it being
15 developable, do you?

16 A. No, sir; I don't.

17 Q. Put a zero there.

18 A. A zero here?

19 Q. Yeah.

20 A. Mr. Johnson -- okay.

21 Q. Cutting the numbers down.

22 A. All right.

23 Q. And then, actually, if you don't have
24 those numbers from an actual appraisal, you can't
25 come down here and do your math down to the bottom,

1 can you? Because you will not have an appraised
2 value as a basis for the Tommy Hartnett method of
3 calculating loss in value as a result of taking,
4 correct?

5 A. I don't agree with that; no, sir, I
6 don't.

7 Q. Don't you have to have every piece
8 appraised in order to -- consistently
9 appraised -- to come to any kind of calculation,
10 even assuming Tommy Hartnett's method is right,
11 which you know I don't concede.

12 A. And I don't concede this. I never did
13 an appraisal. I made that clear to the Court and
14 to you and to my client. I was not hired to do an
15 appraisal. I extracted -- as I explained to the
16 judge -- from qualified appraisals that I was paid
17 to review, these numbers.

18 You can work numbers any way you want
19 to, Mr. Johnson. That was what I thought the
20 difference in value was, reasonably supported by
21 qualified appraisers.

22 That's what I did. You can ask me to
23 do it another way. I did it for you in my
24 deposition, and the number came to \$21,500,000. So
25 now you want me to do it another way. If you will

1 give me --

2 Q. Well, I have had more time to think
3 about it since giving the deposition.

4 MR. JOHNSON: Your Honor, we would
5 offer this into evidence.

6 (DFT. EXH. 21, Hartnett Arithmetic, was
7 presented.)

8 THE COURT: All right. It's admitted.

9 MR. JOHNSON: Your Honor, could we take
10 our break?

11 THE COURT: It's time.

12 (Off-the-record discussion.)

13 THE COURT: Okay. Mr. Johnson, you may
14 proceed.

15 MR. JOHNSON: Thank you, Your Honor,
16 just a little bit more.

17 BY MR. JOHNSON:

18 Q. You talked about your review provision
19 in USPAP?

20 A. Did I talk about the review provision?

21 Q. Yeah, about an appraiser reviewing an
22 appraisal.

23 A. I did, yes, sir.

24 Q. Do you have your USPAP book up there?

25 A. Yes, sir, I do.

1 Q. Tell me what provision you're looking
2 at.

3 A. Well, Mr. Johnson, it's on Page U1,
4 which is -- they have little initials at the bottom
5 of the page.

6 Okay. It defines appraisal, it defines
7 appraisal practice, it defines appraisal
8 consulting, and I was hired as a reviewer and as a
9 consultant to the Haynsworth, Sinkler, Boyd firm.

10 Q. Would you read what it says about
11 appraisal review.

12 A. Yes, sir. The act or process for
13 developing and communicating an opinion about the
14 quality of another appraiser's work that was
15 performed as part of an appraisal or as a part of
16 an appraisal review or as an appraisal consulting
17 assignment.

18 Q. And it has a comment.

19 A. Yes, sir.

20 Q. Read that.

21 A. The subject and appraisal review may be
22 all or a part of a report, work file, or a
23 combination of these. So, see, I did a part of one
24 of these appraisal reports, and that's what it said
25 I could do.

1 Q. I appreciate it.

2 Mr. Hartnett, does the USPAP have
3 instructions on how an appraiser is supposed to
4 review an appraisal?

5 A. It does, and I think that's on Page
6 143, I think. I've got it written down here, too,
7 so I can get to it more quickly.

8 It's right here, right here, on Page
9 U42. I bet you're going right to that.

10 Q. Well, I missed it. Close, though.
11 Hold on. Hold on. Okay.

12 A. Standard Rule 5.1: Each written or
13 oral property appraisal consulting report must,
14 (A), clearly and accurately set forth the appraisal
15 consulting assignment that results in a manner that
16 will not be misleading.

17 (B) contain sufficient information to
18 enable the intended users of the appraisal
19 consulting assignment to understand the report
20 properly.

21 And, (C), to clearly and accurately
22 disclose all assumptions, extraordinary
23 assumptions, hypothetical conditions, and limited
24 conditions used in the assignment -- which there
25 were none, so I didn't -- didn't have to do that.

1 And review is in here, too. That's
2 under 143 or -- something 143. But, anyway, that's
3 what you're asking me.

4 Q. That's what it says. And that's what
5 you were employed to do.

6 A. Correct, sir.

7 Q. And that led to your issuing your
8 report on April the 12th, 2010 that we discussed --

9 A. Correct.

10 Q. -- where you -- well, we went through
11 the numbers of 142 million less -- whatever it
12 was -- to give out a value, and you gave those
13 opinions, correct?

14 A. I did, yes.

15 Q. And so there's no mystery or question
16 about it. That is a report that you have since
17 abandoned --

18 A. That's correct.

19 Q. -- and concluded that it was not
20 correct?

21 A. No, no. No, no. No, sir. No, sir. I
22 abandoned that from a value standpoint when I was
23 showing it, but from a difference-in-value
24 standpoint, when I was showing what I extracted
25 from one -- for the purpose of that appraisal, that

1 it was performed, it was performed perfectly
2 correctly. I think that appraisal does measure the
3 expected returns that they would have been looking
4 for had they bought.

5 But I abandoned it from the standpoint
6 that somebody is going to come along and write a
7 check for 142 million dollars, but I don't think
8 that's going to happen.

9 Q. Did you anticipate I was going to ask
10 you to have a deposition to look at it?

11 A. I brought mine with me.

12 Q. You brought yours with you.

13 That was very good. Let's go to Page
14 33.

15 A. 33 of the report?

16 Q. Deposition.

17 A. Of the -- you know, I've got four to a
18 page. You mean 33 of the actual --

19 Q. Do you want to look at the original?

20 A. No, I will go to 33 of the original
21 report itself. I think I've got four to a page on
22 this one.

23 Q. No, I'm talking about the deposition.
24 Page 33 of the deposition, sir.

25 A. I've got it.

1 Q. On Line 15, I'll ask the question, you
2 read the answer.

3 A. All right. Now, read it -- ask me the
4 way it's written there, now.

5 Q. And you answer it the way it's written,
6 and we'll have an agreement.

7 A. Go ahead.

8 Q. And if I miss it, you correct me, and
9 I'll do the same.

10 A. Okay.

11 Q. "QUESTION: Mr. Wingard -- I mean,
12 Mr. Hartnett -- in your report, Exhibit 1, you
13 report that your conclusion is that the reduction
14 in market value of the subject property as a result
15 of the actions taken by Richland County was
16 \$127,000,885 [sic].

17 A. Okay.

18 Q. Answer?

19 A. Well, in between there, I put "well,"
20 and then --

21 Q. "And you're abandoning that?"

22 A. See, I told you, you were the one who
23 used that word first. And you said, no, I did.
24 You did.

25 Then you asked me: "Are you abandoning

1 that?"

2 My answer is, "Let me -- I'm going to
3 answer no, and then I'm going to explain it to
4 you."

5 Q. "Well --"

6 A. "Okay. But I can -- I can explain my
7 answer."

8 Q. "Okay."

9 A. "I think I can. And let me read all of
10 that."

11 Q. "Sure."

12 A. "Because you have to read the whole
13 thing. What I can -- I will just try to read the
14 last part. I think it says in the last paragraph,
15 2, it is therefore my conclusion that based upon
16 appraisals of the property that were made by
17 reputable and eminently qualified real estate
18 appraisers, the reduction in the market value as a
19 result of the actions taken by Richland County is
20 127 million dollars.

21 "Based upon this appraisal and the data
22 that was contained in the appraisal, he treated it
23 correctly. He used a proper approach. All that's
24 stated in here. I outlined for you what I relied
25 on, but I don't think the property is worth 147

1 million dollars.

2 "And I told you that in the last -- and
3 I told you that in the last two weeks. I arrived
4 at what I think is a whole -- is the whole
5 situation. It's a taking. So I don't think that
6 it's correct any longer; no, sir..."

7 Because that purpose --

8 Q. Whoa, whoa. Keep reading.

9 A. All right. Okay.

10 "So to say I abandoned it, yeah, I will
11 abandon it, but I don't think -- I don't think it's
12 worth 147 million dollars."

13 Q. Mr. Hartnett, isn't it correct that you
14 have only used the developmental approach yourself
15 30 to 35 times?

16 A. What number did you say?

17 Q. 30 to 35 times.

18 A. Probably at the most.

19 Q. And you have never gone back and
20 checked whether the assumptions you made in a
21 developmental approach were right or wrong?

22 A. No, sir; I have not.

23 Q. And isn't it correct that you testified
24 that when you were using the Wingard report and the
25 Knight report for the Hartnett arithmetic exercise,

1 that you didn't -- you weren't saying one was right
2 or one was wrong; you were just doing a
3 mathematical calculation based on the numbers they
4 provided?

5 A. I think I said they were both right and
6 that I concurred in their conclusions based on the
7 data contained in their appraisal -- respective
8 appraisal reports -- how they treated that data,
9 and I thought -- so I thought they were right in
10 their conclusions, both of them were.

11 Q. Mr. Hartnett, didn't you say that you
12 didn't know whether -- I'll tell you what. Let's
13 go to Page 152 of your deposition.

14 A. Of my deposition?

15 Q. Uh-huh.

16 A. That's the last page.

17 MR. BECKER: What page are we on?

18 MR. JOHNSON: We're on 152, Jamie.

19 BY MR. JOHNSON:

20 Q. And the first question on that --

21 MR. BECKER: I meant, have you asked
22 him -- objection, Your Honor, this is improper
23 impeachment. I mean, he hasn't --

24 MR. JOHNSON: I did ask him a question.
25 I asked him whether he was giving an opinion as to

1 whether one was right or wrong on the appraisals.

2 He said no. I'm fixing to impeach him.

3 THE WITNESS: Did you ask a question?

4 BY MR. JOHNSON:

5 Q. Yes, sir.

6 Would you turn to Page 152, Line 1.

7 The question is:

8 "So you're doing the math?"

9 A. "That's right. That's all I'm doing."

10 Q. "You're doing the math?"

11 A. "That's right. That's all I'm doing."

12 Q. "That's all? "

13 A. "That's all. "

14 Q. "You're not giving an opinion that one
15 number is right or the other number is wrong?"

16 A. And I answered that.

17 Q. Please answer as you answered -- please
18 read it, Mr. Hartnett.

19 A. "That's exactly right, no, sir."

20 Q. Mr. Hartnett, when you made the
21 assumption that the 3,175 acres that Jake Knight
22 did not appraise would have the -- when you
23 extrapolate and say it would have the same value as
24 the 1,225 that he did value at \$15,000 per acre,
25 are you not expressing an opinion of value as to

1 that 3,175 acres?

2 A. No, sir, I still don't think I am. I
3 think what I'm saying is, that it's reasonable to
4 say that it's \$15,000 an acre, and that happens to
5 be --

6 Q. Is that an expression of an opinion?

7 A. Now, let me finish, Mr. Johnson. I let
8 you finish asking the questions, and you won't let
9 me complete my answer.

10 What I'm saying and what I said in that
11 thing that you took -- that you took from my file,
12 was that if all 4,400 acres were usable land, that
13 it would be reasonable that they would be worth
14 what the high land that's there now is worth, which
15 is \$15,000 an acre. That's what I did.

16 Q. So you're not expressing any opinion as
17 to what the 3,175 acres would be worth if it was
18 developable? You're not expressing that opinion,
19 because it would be improper for you to do so,
20 because you haven't appraised it?

21 A. That's correct, I haven't. But I think
22 the judge understands what I did and I think you
23 understand what I did. I used the math and I told
24 you that when you asked me, So you're not giving an
25 opinion what number -- I don't know what numbers

1 you're talking about, when you asked me that on
2 Page 152 of my deposition.

3 I don't know what numbers you were
4 talking about. You read a very small part of my
5 deposition there, and I'm not sure what numbers
6 you're referring to.

7 Why don't you go back to 143 or 151 or
8 150 and read the question, because you took that
9 answer from a long question that I had several
10 answers to.

11 THE COURT: I'm sure Mr. Johnson
12 appreciates your suggestions.

13 MR. JOHNSON: I think I'm through, Your
14 Honor.

15 MR. BECKER: Your Honor, just give me a
16 second to look through 142 and 153.

17 THE WITNESS: 151.

18 MR. BECKER: 151.

19 THE WITNESS: 150.

20 REDIRECT EXAMINATION

21 BY MR. BECKER:

22 Q. Let me say this, Mr. Hartnett. I can
23 follow your math and your arithmetic on Plaintiff's
24 Trial Exhibit 216 --

25 A. Yes, sir.

1 Q. -- but can you follow the math on
2 Defendant's Exhibit 21?

3 A. No. And I tried to tell Mr. Johnson
4 that, but he wanted me to do it anyway. I don't
5 know what he wanted me to do.

6 Q. So that's not Tommy Hartnett's
7 arithmetic, is it?

8 A. No, sir, this is Mr. Johnson's.

9 Q. Yeah.

10 Now, Mr. Johnson asked you about
11 whether you would abandon a previous opinion in the
12 case. Do you recall that?

13 A. Correct.

14 Q. Was that a result of his fierce and
15 withering cross-examination during your deposition?

16 A. Well --

17 MR. JOHNSON: Your Honor --

18 THE COURT: You shouldn't object to
19 that. That's quite complimentary.

20 MR. JOHNSON: Mr. Hartnett and I got
21 along great.

22 THE WITNESS: To answer your question,
23 I would like to think that I have withstood some
24 terrific bombarding, but I have to take my hat off
25 to Mr. Johnson. After four and a half, five hours,

1 I'm getting kind of tired.

2 BY MR. BECKER:

3 Q. So you were under duress at the time.

4 Is that right?

5 A. Yes, sir. And I will say this, he's
6 very thorough and persistent in his deposition
7 questioning.

8 Q. But with respect to that 142 million
9 dollars, do you believe that it is a reasonable
10 measurement of Columbia Venture's investment-backed
11 expectations in purchasing the property?

12 MR. JOHNSON: Objection.

13 THE COURT: Yes, you're leading the
14 witness there.

15 BY MR. BECKER:

16 Q. Well, what would it measure, if you --

17 A. I --

18 Q. Tell me what you believe 142 million
19 dollars would measure.

20 A. When Mr. Johnson asked me if I would
21 abandon it, I said yes, for this purpose. But for
22 the purpose of measuring their investment-backed
23 expectations, I thought it was properly done. I
24 answered that question under questioning from him
25 early in the deposition. And I think it does.

1 It represents the developmental
2 approach of the value of that property. I don't
3 think it represents -- the market value of the
4 sales price -- or the likely sales price -- I said
5 that in my deposition and I know that probably
6 didn't make you happy, but I just don't think it's
7 worth 142 million dollars. But I think it's a very
8 valuable piece of property. But to the extent that
9 what I was doing, I had to abandon that.

10 But what Mr. Wingard did was certainly
11 proper in what he did to measure the
12 investment-backed expectations and the
13 developmental approach to appraise that property.

14 Q. Do you disagree that a large
15 institutional investor, like a pension fund or some
16 other institutional real estate investor, might be
17 willing to invest in the development of the project
18 based on a 142-million-dollar number?

19 A. Mr. Johnson asked me that same
20 question, and I told him that I thought that was a
21 likelihood, a possibility. And I even mentioned
22 the Stratford Land Company, that I represent. They
23 represent the University of Texas, Baylor, Harvard,
24 Yale. It's a huge fund that represents all of
25 these endowments, and they buy property. They

1 bought some property in Myrtle Beach and Hilton
2 Head.

3 People like that look for deals like
4 this, but it's not ordinary -- that's not your
5 usual buyer. But there are people out there who
6 would -- expecting long-term investments, in it for
7 the long run and not for the short haul, you could
8 find somebody who would buy a piece of it or maybe
9 the whole thing.

10 Q. So you would agree that if the property
11 were fully entitled, with all of the assumptions
12 made in Mr. Wingard's conservation easement
13 appraisal and someone was willing to get a
14 10-percent return on their money, they might invest
15 at that 142-million-dollar level?

16 MR. JOHNSON: Object to relevance of
17 his opinion.

18 THE COURT: You are leading.

19 MR. BECKER: All right. I will
20 withdraw the question.

21 You have answered it.

22 BY MR. BECKER:

23 Q. Now, Mr. Hartnett, your
24 alternative -- or your calculation as represented
25 in Plaintiff's Exhibit 216 -- does this assume

1 improvement of the Manning levees to FEMA
2 standards?

3 A. Correct. As a matter of fact, that's
4 why I subtracted the 12 million dollars from that.
5 They would have to do that in order for that land
6 to be worth \$15,000 an acre.

7 Q. Okay. Does this value calculation
8 include the assumption of a multicounty business
9 park as a financing vehicle for the development
10 infrastructure?

11 A. No, sir, it does not.

12 Q. Does this value calculation include the
13 assumption of a zoning change to a planned unit
14 development for the subject property?

15 A. No, sir, it does not.

16 Q. Does this value calculation include the
17 assumption that the EDSA Land Development Plan
18 would be fulfilled?

19 A. No, sir, it does not.

20 Q. Did this value calculation assume that
21 any land development would occur or that the
22 property would simply be sold in bulk acreage
23 tracts?

24 A. It assumes that the owners, at
25 that -- now, Columbia Venture -- spent 12 million

1 dollars improving the levees and had Richland
2 County agree to maintain the levees, and that is
3 the only change. It would be a raw acreage before,
4 raw acreage afterward.

5 The only changes would be the
6 improvement of the levees, FEMA's acceptance of
7 that -- and I understand they're required to do
8 that, if you improve the levees -- and the
9 agreement of a governmental agency or some
10 responsible party, such as Richland County, to
11 maintain those levees.

12 MR. BECKER: Thank you.

13 MR. JOHNSON: I don't have anything,
14 Your Honor.

15 THE COURT: All right, fine.

16 Mr. Hartnett, you may go back to
17 Charleston.

18 THE WITNESS: Your Honor, I want to
19 thank the Court and everybody here for being so
20 very accommodating to me, and I apologize for that.

21 THE COURT: No, you don't need to
22 apologize. I'm familiar with how important that
23 meeting was.

24 MR. BECKER: Your Honor, if we could,
25 just a few housekeeping measures. Of course, I

1 Q. Now, is Plaintiff's 195 a copy of the
2 appraisal report that you submitted?

3 A. Hold on. I'm just getting 195.

4 MR. BECKER: It's the same thing.

5 THE WITNESS: Yeah, this looks
6 like -- yeah, this is my report.

7 BY MR. JOHNSON:

8 Q. All right. Now, before we talk about
9 your report, could you give us a brief thumbnail
10 sketch of your educational and professional
11 qualifications.

12 A. Yes, sir. I grew up in Columbia and
13 went to the University of South Carolina after high
14 school. I've got my BS in real estate and finance.
15 I finished in 1987.

16 When I initially got out of school, I
17 got into the brokerage business. Did not stay in
18 the brokerage business but a little over a year.

19 After a brief time in sales, a friend
20 of mine introduced me to the appraisal business in
21 '91, and I got into the appraisal business. I have
22 been in the appraisal business since 1991.

23 Q. And as part of your report, did you
24 include your qualifications on Page 111?

25 A. Yes, sir. That has a complete outline

1 of my qualifications after entering the appraisal
2 business, a general overview of my core classes.
3 Current seminars are in there. It also covers my
4 designations and my licenses.

5 Q. Now, this was back in 2010. Have there
6 been a couple other dates that --

7 A. There have been a couple. During my
8 time in taking my classes, I got my MAI designation
9 from the Appraisal Institute. I got that in 2003.
10 In addition to the --

11 Q. Let me ask you this: Did you tell me
12 that you testified and had been qualified as an
13 expert in courts before?

14 A. Yes, sir. I've been qualified in North
15 Carolina, South Carolina, and just recently in
16 Georgia, in superior court in Georgia.

17 MR. JOHNSON: Okay. Your Honor, we
18 would offer this witness as an expert in the field
19 of real estate appraisal.

20 MR. BECKER: No objection.

21 THE COURT: I find him to be qualified.

22 THE WITNESS: Thank you.

23 BY MR. JOHNSON:

24 Q. Now, let me ask you this: Did your
25 appraisal report follow the format that you

1 normally would utilize for an appraisal?

2 A. Yes, sir, it did. Trying to estimate
3 the value of the property in the current state was
4 the main challenge. It wasn't a fully developed
5 property.

6 Q. Did you begin your report with a
7 history or -- first of all, definitions as to words
8 used in the report?

9 A. Yes, sir. I set out -- the report sets
10 out the general summary of facts, what I found on
11 the property, which is covered on Page 2, in the
12 general elements of the assignment, stating the
13 client, and gets into the elements of assignment,
14 ownership history, and the scope of work that was
15 followed. And it does cover some general
16 assumptions and some definitions.

17 Q. And then it moves on to neighborhood
18 data and just general information?

19 A. General information, yes, sir, and then
20 it moves into the description of the actual
21 property. And there's a detailed description of
22 the site, on easements, zoning in place, tax
23 assessment data.

24 Q. And did it include your assumptions and
25 limitations?

1 A. Yes, sir. I believe those are on
2 page --

3 Q. And then we come to your actual
4 appraisal, correct?

5 A. Valuations, yes.

6 Q. And that begins on page where?

7 A. Well, after the site description, we
8 cover the highest-and-best use of the property, and
9 then we get into the valuation on Page 30 of the
10 value of the property, before the taking.

11 Q. Before we talk about the valuation of
12 the property, before the taking -- alleged taking,
13 I want to go over your analysis of highest-and-best
14 use. And that's on Page 28 and 29 of your report,
15 correct?

16 A. Yes, sir.

17 Q. And what -- how is highest-and-best use
18 defined?

19 A. It's defined as the reasonable,
20 probable, and legal use of vacant land or an
21 improved property, which is physically possible,
22 appropriately supported, financially feasible, and
23 that results in the highest value.

24 Q. And, then, is the first criteria you
25 apply -- what, four or five criteria you can look

1 at to assess highest-and-best use?

2 A. Four, yes, sir.

3 Q. Four.

4 The first one is legal permissibility.

5 A. Legal permissibility.

6 Q. And would you read into the record what
7 you reported on legal permissibility.

8 A. On Page 28 under, Legal permissibility?

9 Q. Yes.

10 A. As indicated, the property has multiple
11 zonings as of the effective date of the appraisal.
12 No entitlements have been granted and a zoning
13 change has not been granted. It is clear from the
14 development plans that have been formulated and
15 discussions the developers had with Richland
16 County, that the likelihood of some type of
17 development plan being approved is probable.

18 The issues with the approval of the
19 development plan include multiple regulatory
20 issues, including the floodplain issue. However,
21 additional issues must be considered which include
22 the adaption of the proposed plan to include the
23 property in a multicounty business park and
24 subsequent authorization for issuance of special
25 source revenue bonds for the infrastructure on the

1 property.

2 As of the date of the appraisal, none
3 of these factors have been approved or are certain
4 to occur. Therefore, the legal permissibility of
5 the property as of the date of appraisal is for
6 some type of development.

7 However, the final development cannot
8 be determined until all regulatory approvals have
9 been obtained to move forward with a final
10 development plan.

11 Q. Now, let me just see if I can -- at the
12 time you were doing this and looking at legal
13 permissibility, was some part of the Manning
14 property in the floodway, some 70 percent of it?

15 A. Correct.

16 Q. And at that time, you couldn't develop
17 in the floodway, could you?

18 A. That is correct.

19 Q. Was 30 percent of the Manning property,
20 or about 1,225 acres, in the floodplain?

21 A. Correct, it was outside of the
22 floodway.

23 Q. And was it subject to being -- that
24 portion -- subject to some type of development?

25 A. It could be developed under the

1 restrictions of the floodplain.

2 Q. All right. Now -- and is that why you
3 end your paragraph by saying, However, the final
4 development cannot be determined until all
5 regulatory approvals have been obtained to move
6 forward with a final development plan?

7 A. Correct.

8 Q. Now, down in -- and do you conclude
9 under, Physical Possibility, that it is a
10 physically possible use of the property for an
11 institution of some type of development plan with a
12 mixed-use development?

13 A. It's physically adaptable to some type
14 of plan, yes.

15 Q. Now, I want to talk to you about
16 financial feasibility.

17 Would you read the first, second,
18 third, and fourth sentence in that paragraph.

19 A. Under Financial Feasibility: Again, as
20 outlined in the documents provided by Columbia
21 Venture, the financial feasibility of a multicounty
22 business park plan has not been tested. Extensive
23 highest-and-best use studies have been done and
24 have been reviewed by outside consultants.

25 Columbia Venture also prepared a tax

1 analysis of the property assuming a multicounty
2 business park designation is granted.

3 Infrastructure bonds are put in place and a
4 mixed-use development is completed.

5 Q. The next sentence?

6 A. You want me to continue?

7 The tax analysis indicated a 30-year
8 sell-out of the property.

9 Q. Whose tax analysis?

10 A. I believe that was Columbia Venture's
11 analysis.

12 Q. And what -- the tax analysis indicated
13 what for the project?

14 A. A 30-year sell-out.

15 Q. Did it indicate a 30-year sell-out or a
16 15-year sell-out?

17 A. 30 years.

18 Q. And when you say a 30-year sell-out,
19 does that mean a 30-year absorption rate?

20 A. Correct.

21 Q. And is that what Columbia Venture was
22 using for its analysis?

23 A. That was included in all of the
24 documents I was looking at.

25 Q. Now, let's turn to your appraisal under

1 your first assignment. Tell the judge what it is
2 you were assuming the state of facts to be for
3 purposes of your before-the-alleged-taking
4 valuation.

5 A. Okay. What I was trying to figure out
6 was, they had bought this property to develop it
7 and they had started spending money on a plan, and
8 I was trying to estimate the value at that point in
9 time. I did look at a text on subdivision
10 valuation, which I reference on Page 30.

11 And in that book, it talks about, you
12 can certainly do a development approach, you can
13 also do a cost approach to figure out where you are
14 in the process, and I was looking at it -- the text
15 actually talks about looking at a property during
16 the permitting phase, construction phase, or the
17 absorption phase.

18 We were somewhere in the permitting
19 phase at this point, so I don't -- in my daily
20 business, I don't typically get asked to value a
21 property that's in the middle of permitting.

22 Usually when you do a subdivision, the
23 permits are in place, the zoning is in place. And
24 they didn't have that, so it was a little bit
25 different. This was not a -- I wouldn't call it a