

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Published Opinion No. 5366
(S.C.Ct. App. filed December 9, 2015)

RECEIVED
MAR 22 2016
SC SUPREME COURT

David R. Gooldy Petitioner

vs.

The Storage Center – Platt Springs, LLC Respondent

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

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SC Court of Appeals

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MAR 21 2016

SC SUPREME COURT

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-32-0460

ORIGINAL

David R. Gooldy
PLAINTIFF(S)

Storage Center Platt Springs, LLC
DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

This matter is before the court on the plaintiff's motion for an injunction. This motion is denied. Plaintiff failed to make a sufficient showing of irreparable harm. The plaintiff has access to his property.

By consent of both parties, this case is referred to the Master in Equity.

Dated at Lexington, South Carolina, this 23rd day of April, 2010.

William P. Stepp
PRESIDING JUDGE

This judgment was entered on the N/A day of N/A, 20 —, and a copy mailed first class this 27th day of April 2010 to attorneys of record or to parties (when appearing pro se) as follows:

James Randall Davis, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Stepp, Esquire
Tyler Winton, Esquire

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

FILED
2010 APR 26 P 3:03
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

SCRPC FORM 4 (Revised 5/00)

ORIGINAL

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

David R. Gooldy

CASE NO. 10 - CP-32-0460

The Storage Center

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

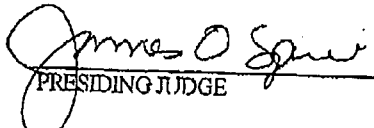
DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC ☐ Rule 41(a), SCRPC (Vol.)
Nonsuit: ☐ Rule 43(k), ☐ SCRPC (Settled); ☐ Other —

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other —

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:
Both Plaintiff's and Defendant's Motions for Summary Judgment are denied because of law and fact with both causation theories.

Dated at Lexington, South Carolina, this 4th day of March, 2011


PRESIDING JUDGE

This judgment was entered on the ___ day of ___, 20___, and a copy mailed first class this ___ day of ___, 20___ to attorneys of record or to parties (when appearing pro se) as follows:

James Randall Davis, Esquire
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Stepp, Esquire
ATTORNEY(S) FOR THE DEFENDANT(S)

LCP 583 (11/00)

SCRPC APP-24

CLERK OF COURT

SCRPC FORM 4 (Revised 5/10/09)

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
David R. Gooldy,)
Plaintiff,)
-vs-)
The Storage Center - Platt Springs, LLC,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 10-CP-32-0460

ORDER

2013 AUG -1 PM 4:24
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

FILED

This easement dispute case was tried October 25, 2012 pursuant to April 23, 2010 Order of Reference signed by The Honorable William P. Keesley. James Randall Davis, Esquire represented Plaintiff. Robert E. Stepp, Esquire and Bess R. DuRant, Esquire represented Defendant. Plaintiff filed the action February 1, 2010 as a non-jury case seeking a declaratory judgment and injunction regarding certain easement rights of the Plaintiff in property owned by the Defendant and damages for negligence and/or intentional acts denying certain property rights of the Plaintiff. (Defendant purchased its property subsequent to the purchase by the Plaintiff of his property. Both Defendant's and Plaintiff's property came from a common grantor) Defendant's Answer and Counterclaim contained a general denial and certain defenses including laches, unclean hands, waiver, estoppel, contributory negligence, punitive damages limitation and counterclaim for encroaching and trespassing on the property of the Defendant.

An Order denying Plaintiff's Preliminary Injunction to stop Defendant from barricading the access was filed April 23, 2010. This trial occurred after discovery and mediation pursuant to Scheduling Order.

The various witnesses testified and exhibits were introduced into evidence. The court denied both Plaintiff's and Defendant's Motions for Non-suit and Directed Verdict. The court

1133

makes the following findings of fact and conclusions of law based upon all the evidence, the credibility of the witnesses, and the applicable burden(s) of proof.

FACTS

January 24, 2002 Plaintiff purchased the subject property, with improvements thereon, located on S.C. Highway 6 in Lexington County. Plaintiff has used the property for his chiropractic practice. (Trial Tr. (Gooldy) 19:5-6, 10-13). The legal description for the Plaintiff's property read as follows (Trial Tr. (Gooldy) 21:1-2 and Exhibit 1):

All those certain piece, parcel of lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6. approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

A copy of the plat referenced in said deed is attached hereto as Exhibit "A".

The deed to the Plaintiff's property referenced a plat which showed a fifty (50') foot road abutting Plaintiff's property on the southern side and on the east by S.C. Highway 6. (Trial Tr. (Gooldy) 25:14-15). The seller's representative told Plaintiff at the time of purchase that this fifty (50') foot road was the access from S.C. Highway 6 to the purchaser's property. (Trial Tr. (Gooldy) 30:1-10). Plaintiff used this road as his only access to his property until the barricading of the access by the Defendant in July 2009. (Trial Tr. (Gooldy) 30:19-20). Plaintiff described the fifty (50') foot road area as having an asphalt apron coming off S.C. Highway 6 covering a culvert, followed by a gravel area on the fifty (50') foot road area, which was flat and had been maintained and went to the back of the Plaintiff's property. (Trial Tr. (Gooldy) 23:22-25; 24:1-

3) There was a small hedge of trees lying between the fifty (50') foot road area and an adjoining subdivision by the name of Westchester Estates. Trial Tr. (Gooldy) 27:14-18).

On September 27, 2007, Defendant purchased the abutting property (7.35 acres) to the Plaintiff's property (Defendant's property bordered the Plaintiff's property on the northern, western and southern sides. Both properties bordered S.C. Highway 6. Defendant's property wrapped like a horseshoe around three sides of the Plaintiff's property.). (Trial Exhibit Plat and Deed Exhibit).

Plaintiff's and Defendant's properties both have a common grantor, Congaree Associates, a South Carolina Limited Partnership (hereinafter referred to as "Congaree"). (Trial Exhibit Plaintiff's 11). Plaintiff's property was subdivided from a larger tract owned by Congaree. (Trial Tr. (Trial Exhibit 1 (See Derivation))). Congaree first conveyed the Plaintiff's property to James T. Loflin by deed dated September 15, 1986, and recorded in the Register of Deeds Office for Lexington County on September 23, 1986 in Book 837 at Page 36. (Trial Exhibit Defendant's Exhibit D) The legal description in the Loflin deed contains the identical description as the Plaintiff's deed's legal description, as does each deed in the chain-of-title to the Plaintiff's property -- all of the deeds in the chain-of-title reference the same plat referenced in Plaintiff's deed. (Trial Exhibit 11).

The Plaintiff's deed is in the chain-of-title of the Defendant's property. (Trial Exhibit Plaintiff's 11) After Defendant purchased the 7.35 acres tract, Defendant's representatives notified the Plaintiff of their belief that the Plaintiff did not have the right to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Plaintiff's deed, which the Plaintiff disputed. (Trial Tr. (Gooldy) 33:11-25).

After an attempted resolution of the access issue by the parties, Defendant installed two metal posts in the fifty (50') foot road connected by a wire cable with "No Trespassing" signs attached to the wire cable blocking Plaintiff's access over the fifty (50') foot road from S.C. Highway 6. (Trial Tr. (Gooldy) 41:1-12). After Defendant blocked his access, Plaintiff created a "makeshift" entrance on the northern side of his property, buying material and equipment, and doing the work himself to establish the alternate access for his patients. (Trial Tr. (Gooldy) 41:23-25; 49:1-19). Thereafter, this litigation ensued.

Easement Dispute

It is important to understand the time line or title chain of both properties. Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years. (Trial Tr. (Gooldy) 120:16-18). Congaree had been formed by the McGee organization in the early 1980's. Congaree purchased the 500 acre tract of land that contained the Plaintiff and Defendant's properties and fifty (50') foot road in dispute. (Trial Tr. (Gooldy) 121:13-16; 122:1-12)

August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. This property is immediately adjacent to the fifty (50') foot road which borders the Plaintiff's property on the southern side. (Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat. (Trial Exhibit Defendant's Exhibit J).

January 27, 1984, Westchester Phase II, prepared for Congaree, which is a second portion of Westchester Subdivision and borders Phase I, shows the disputed fifty (50') foot road on the plat for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval. (Trial Exhibit

Defendant's Exhibit GG) The fifty (50') foot road abuts both Lot 13 of Westchester Phase I and what later becomes Plaintiff/predecessor's property. (Trial Exhibit Defendant's Exhibit J)

July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood. The letter contained the standard county requirements for private road subdivisions. (Trial Exhibit Defendant's Exhibit KK).

December 10, 1985, Collingwood prepared a plat for conveyance to James T. Loflin (Plaintiff's predecessor-in-title), who was a McGee employee/agent, for the purpose of living on the corner lot, (Plaintiff's property) next to the fifty (50') foot road entrance to proposed subdivision in a model log cabin home. (Trial Exhibit Plaintiff's Exhibit 2).

April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field. (Trial Exhibit Plaintiff's Exhibit 2).

August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot. (Trial Exhibit Plaintiff's Exhibit 2).

September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the lot to Loflin, his employee agent, by deed prepared by the surveyor Collingwood. (Trial Exhibit Plaintiff's Exhibit 11).

McGee testifies he never discussed the road with Loflin or anyone else. (Trial Tr. (McGee) 125:14-18). McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much. (Trial Tr. (McGee) 125:14-18). McGee also testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Mr. Loflin. (Trial Tr. (McGee) 152:21-25) McGee admits that Collingwood who prepared the plat for Westchester Phase II would have

known when he prepared the plat for the Plaintiff's predecessor-in-title (Loflin) about the fifty (50') foot road area on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat. (Trial Tr. (McGee) 152:1-11). McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat. (Trial Tr. (McGee) 152:1-11).

McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree. (Trial Tr. (McGee) 152:21-25). McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Plaintiff to not use that area that he had been using since the purchase of the property for his access. (Trial Tr. (McGee) 157:13-15).

Defendant's expert witness surveyors testified that there were surveys done by Surveyor Collingwood in the same area as the existing property which did not show the road in question. (Trial Tr. (Meeler) 166 -167). The same expert witness surveyors found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. (Trial Tr. (Meeler) 165:13-22).

Defendant's representative Puckett testified that the Defendant company had unfettered control over the property in question and that it barricaded the road for liability and legal reasons. (Trial Tr. (Puckett) 257:10-14; 260:20-25).

Damage Claim

Plaintiff seeks reimbursement for monies spent on constructing the "makeshift" entrance, as well as lost profits from patients not using his practice because of the barricading of his access road. Plaintiff testified he had a \$90,000.00 loss profit caused by the barricading of

the fifty (50') foot access by the Defendant. (Trial Tr. (Gooldy) 55:1-4). The Plaintiff estimated his net loss to be fifty (50%) percent of said loss profit when he calculated his normal overhead for his professional practice. (Trial Tr. (Gooldy) 107:16-20). Plaintiff based his calculations on the number of patient days that he lost multiplied by Eighty-five and no/100 (\$85.00) Dollars per visit for the average figure he received from a patient's visit for the period of time from July 2009 through May 2011. (Trial Exhibit Plaintiff's Exhibit 8). No patients testified on behalf of the Plaintiff about no longer using the Plaintiff's services after the barricading of the road by the Defendant. No expert testimony or market study was presented by the Plaintiff on the issue of the loss profits.

Plaintiff also seeks punitive damages.

LEGAL ANALYSIS

There are two legal issues in this matter: (1) Does Plaintiff have easement rights in the fifty (50') foot road, which abuts the southern side of his property and (2) Is the Plaintiff entitled to actual and/or punitive damages allegedly suffered because Defendant intentionally barricaded Plaintiff's access?

EASEMENT ANALYSIS

Plaintiff argues that Subdivision Law/Plat, Deed and Public Record Law dictate that he has an easement since the plat showing the easement was incorporated into the deed executed by the parties' common grantor, Congaree. Defendant counters that the Subdivision Law as to this plat does not apply to this situation, argues the easement is too indefinite/vague, claims the grantor Congaree never intended to convey the easement, and finally, that the deed/plat was a mistake by the surveyor who placed the fifty (50') foot road designation on the plat that was referenced in the Plaintiff's deed.

Basic deed law states that if a deed describes land by referencing a plat, the plat becomes part of the deed. When streets, alleyways, parks or other open areas are displayed on plats in conjunction with sale of property, an easement is created in favor of the grantee. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). Therefore, if an easement is recorded in a deed through a plat, it becomes part of the deed and is part of the chain-of-title. This rule was recognized and applied in *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950), as well as numerous other decisions of the Supreme Court and the Court and the Court of Appeals¹. These cases hold that such an easement inures to the benefit of the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intended otherwise. See also 28 C.J.S. *Easements* §§ 39 and 40 (1941).

The Court also notes that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

As described in this Order, the Plaintiff's legal description unambiguously and clearly described the conveyed property by referencing a plat which shows the property bordered on the southern side by a fifty (50') foot road. Plaintiff's deed conforms to the requirements of this rule of law cited here above.

While the Court finds that Plaintiff has an easement for access for ingress and egress over the fifty (50') foot road which borders on the southern side of Plaintiff's lot, Plaintiff must still establish that he has a good title for the easement. The way to determine good title is to establish

¹ *Immanuel Baptist Church v. Barnes*, 274 S.C. 125, 264 S.E.2d 142 (1980); *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Briarcliffe Acres v. Briarcliffe Realty Co.*, 262 S.V. 599, 206 S.E.2d 886 (1974); *Epps v. Freeman*, 261 S.C. 375, 200 S.E.2d 235 (1973); *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965); *Corbin v. Cherokee Realty Co.*, 229 S.C. 16, 91 S.E.2d 542 (1956); *Newton v. Batson*, 223 S.C. 545, 77 S.E.2d 212 (1953); *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952); *Billings v. McDaniel*, 217 S.C. 261, 60 S.E.2d 592 (1950); *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 (Ct. App. 1987).

the chain-of-title for Plaintiff's and Defendant's properties. One way to establish chain-of-title is to track the title back to a common source. *Haithcock v. Haithcock*, 123 S.C. 61, 115 S.E. 727, 729 (1923).

If one party has shown good title through a proper chain-of-title, the burden is on the other party to disprove good title. *Lynch v. Lynch*, 236 S.C. 612, 619, 115 S.E.2d 301, 304 (1960).

The Court finds that Plaintiff's title change is superior to Defendant's title since Plaintiff's predecessor-in-title, Loflin, was conveyed the subject property in 1986 with his legal description referencing the plat showing the fifty (50') foot road, prior in time to Defendant's 2007 deed. Since the Loflin conveyance was in 1986, the easement created at that time would take priority over any subsequent conveyance of the same property to the Defendant.

Congaree was the common grantor of both Plaintiff and Defendant. The legal description is consistent in the chain of title. As shown by Plaintiff's Exhibit "11", each deed in the Plaintiff's chain-of-title utilized the same legal description referencing the same plat, including the deed into the Plaintiff. Defendant's source of title was in common with the Plaintiff's since it received its deed to the property in 2006 conveying 7.35 acres from the same grantor, Congaree. Since both parties had the same chain-of-title, obviously, Plaintiff's title would be superior to Defendant's in regards to the easement since Defendant should have discovered the deed from Congaree to Loflin. "Property owners are charged with constructive notice of instruments recorded in their chain of title," *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). Not only was the Defendant on constructive notice of the deed and plat of the Plaintiff and his predecessors-in-title which referenced the plat showing the fifty (50') foot road, but Defendant, prior to purchase,

obtained a survey which referenced on the face of its survey, the book and page number of the deed which would have referenced the plat. Based on the above facts, the Court finds that the Plaintiff has superior title to the easement area and the Defendant was on actual and constructive notice of the Plaintiff's easement.

Defendant's reliance upon *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209, to support that the fifty (50') foot road shown on the Plaintiff's plat was not in the chain-of-title of the Defendant's property is not persuasive since it is not the same legal principle argued. *Lancaster* holds that the easement shown on plat incorporated in a deed has no effect in the limited situation where a claimant is bringing an action for breach of a covenant of general warranty.

Defendant also argues that local county subdivision definitions, in effect, trump South Carolina case law. Defendants contend that standard subdivision plat incorporation law only applies to typical "big" subdivisions of properties where they have created many lots with restrictive covenants. Defendant improperly narrows the definition of "subdivision" in the line of cases dealing with Plaintiff's legal principle. A "subdivision" includes dividing a tract of land such as Congaree's 500 acres into two or more pieces, with the Loflin/Plaintiff's property being the second piece of the smaller subdivision. Black's Law Dictionary defines subdivision as "dividing a tract of land into smaller parcels". In this matter, Congaree subdivided its large tract and created a second smaller parcel. This is a subdivision. As part of that subdivision, a road area was described on the plat into Loflin (now Plaintiff's property) as a road. Furthermore, the case law is clear that Plaintiff's relied upon principle includes cases wherein the grantor conveys land abutting a street (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is stopped from denying the street's

existence. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990); *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950).

Defendant further argues that the fifty (50') foot road area referred to on Plaintiff's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system. In the case of *Murrells Inlet Corporation v. Ward*, 378 S.C. 225, 662 S.E.2d 452, the Court states the grantee receives a private easement at the time of conveyance in any streets referenced in the plat. *Carolina Land*, 265 S.C. at 105-106, 217 S.E.2d at 19; *Blue Ridge*, 247 S.C. at 119, 145 S.E.2d at 925; *Giles*, 304 S.C. at 73, 403 S.E.2d at 132.; see *Newington Plantation*, 318 S.C. at 365, 458 S.E.2d at 38 ("While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a private easement exists."). " '[W]here lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.' " *Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 478, 556 S.E.2d 693, 697 (Ct.App.2001) (quoting *Outlaw*, 222 S.C. at 31, 71 S.E.2d at 512). "Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use." *Newington Plantation*, 318 S.C. at 365, 458 S.E.2d at 38.

The fact that the road has not been dedicated, expressly or impliedly, to a governmental entity is irrelevant as to whether a private easement exists in the subject road which is what the Plaintiff is claiming in his action. The Court notes that the case of *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528, where case indicates that as between an owner who conveyed a lot,

according to a plat, and the grantee, dedication is complete upon conveyance even though the street is not accepted by public authorities. The rights in the road after the conveyance of the grantee were created even though the street had never been used as a road and had been listed as an unopened road area.

Defendant also argues that the road is not a road because its description is too vague or undefined. This argument is not persuasive. First, it is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given definite dimensions of the easement. 28 A C.J.S. *Easements* § 54 (1996). Second, Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

Finally, the court notes that a proper examination of the public records reveals that the road is defined to a great degree of certainty. The common grantor, Congaree, had already recorded the Westchester Phase I plat. The fifty (50') foot road shown on the Loflin/Plaintiff plat is located to the north of Phase I, Lot 13 of Westchester Subdivision. This lot of two hundred fifty (250') feet (the identical boundary footage length), of the Plaintiff's property on the southern side. The same surveyor, Collingwood, placed the pins in the ground along the road in question for both lots (Lot 13 of Phase I of Westchester Subdivision and the Loflin/Plaintiff's lot) so that the fifty (50') foot road is bounded by both lots. The eastern side of the fifty (50') foot road in question is bounded by S.C. Highway 6. The Loflin/Plaintiff's plat indicates a dotted line running west which gives indication that the road in question is to continue. These facts give the Court sufficient definiteness to establish the boundaries of the road in question; and therefore, does not find the road description vague or undefined.

The evidence does not support defendant's argument that Congaree had no intention to convey an easement to Plaintiff's predecessor-in-title Loflin. The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement. 25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62; also *Murrells Inlet Corporation v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

However, on the issue of intent of the parties in creating an easement, the Courts have, over time, developed certain presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets. This Court has recognized this presumption includes conveyance of properties referencing a road bordering the conveyed parcel. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990).

The recording of the plat expresses an intent to dedicate the road area for the use by the grantee in said conveyance. The Defendant must overcome this presumption. Furthermore, the *Murrells Inlet* case indicates the deed and the recorded plat can be controlling, notwithstanding an "intent analysis". This Court finds that the deed in question is clear as to the grantor's intent and contains no specific objective evidence of expressing any intent except referencing the plat described in the deed which shows the property bounded by the fifty (50') foot road on the southern side and creating an easement.

Even looking beyond the four corners of the deed as to intent, this intent is to dedicate the road in question for use by the grantee is based on the evidence that: (a) the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance, (b) reviewed the deed in question prior to the execution, (c) the surveyor who prepared the plat was the surveyor

who had done previous work for Congaree, knew the history on the road, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II, (d) that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history, (e) that Congaree was deeding the Loflin/Plaintiff lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question (f), that it was clear as of the date of the Chris letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road, (g) and there is no specific objective evidence that Congaree intended to terminate the easement area after the Chris letter.

Although McGee testified that since the road for Westchester Phase II would be too costly, he never intended for there to be an easement, he never testified when he came to this conclusion or whom he told. McGee testified that he never talked to anyone-not Collingwood or Loflin-- about the easement. Loflin did not testify. Collingwood did not testify.

The Court has reconsidered its ruling regarding Defendant's proffer of a later recorded plat to indicate intent and has considered it as admitted into evidence, but gives little weight to this evidence due to the time between the disputed deed and the latter recorded plat. (See Transcript Pages 136-140).

There is no evidence of any letter to the County that Phase II was terminated, no corporate minutes indicating as decision was made to stop the subdivision process, no testimony or correspondence informing Collingwood.

This Court concludes that when a grantor conveys, by an unambiguous deed referencing a plat, and the deed contains no specific evidence of any intent except to create the easement, the deed creates an easement that can be relied upon by subsequent purchasers acquiring the right to

use the easement. It would be unfair to deny the subsequent purchasers, such as the Plaintiff, who purchased sixteen (16) years after the original conveyance, the right to the full use and enjoyment of the easement as indicated by the plat, regardless of what the common grantor now argues what its intentions were at the time the deed and plat were recorded. *Murrells Inlet Corporation, v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

This Court finds that further support of Plaintiff's position as to the legitimacy of his easement is that if there were any ambiguity in the deed (which the Court does not find) conveying the Loflin/Plaintiff's property the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the contract is not responsible for the ambiguity, and any ambiguity in a contract doubt, or uncertainty as to its meaning, should be resolved against the party who prepared the contract or is responsible for the verbiage. Congaree was the grantor; Collingwood was Congaree's surveyor, and the grantee was a Congaree employee/agent.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. ~~Myrtle Beach Lumber Company v. W. H. Houghton, 216 F.2d 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423.~~ The above rule of law that an ambiguity created by a drafter of the document supports Plaintiff's easement grant.

Mistake

Defendant's expert witnesses/surveyors testified they thought the easement on the plat was a mistake.

The Court does not believe that there has been proof of a mutual mistake as to the easement on the plat. Ordinarily, "[b]efore equity will reform an instrument, it must be shown by clear and convincing evidence not simply that there was a mistake on the part of one of the parties, but that there was a mutual mistake. A mutual mistake is one whereby both parties intended a certain thing but because of a mistake in drafting did not get what they intended." *Timms v. Timms*, 290 S.C. 133, 137, 348 S.E.2d 386, 390 (Ct. App. 1986) (internal citation omitted). Such mutual mistake must be proven by clear and convincing evidence for reformation to be available. See *id.* At 136; accord *Sims v. Tyler*, 276 S.C. 640, 642, 281 S.E.2d 229, 230 (1981); *Belin v. Stikleather*, 232 S.C. 116, 122, 101 S.E.2d 185, 188 (1957); *So. Realty and Const. Co., Inc. v. Bryan*, 290 S.C. 302, 307, 350 S.E.2d 194, 197 (Ct. App. 1986).

The Court finds mutual mistake is not an option. It is difficult to conclude there was a mutual mistake in the absence of (a) Surveyor Collingwood's testimony; (b) Grantee Loflin testimony; (c) Grantor McGee's repeated testimony that he never talked to anyone about the road.

The elements of a unilateral mistake are (1) claiming party was induced by fraud, deceit, misrepresentation, concealment or (2) sever and extraordinary circumstances that make it wrong for the court to enforce (or allow in this case), the easement. One is bound by the deed who fails to read it when capable of doing so and when accompanied to the closing by persons who read the deed to them. *Hellams v. Hanist*, 248 S.C. 256, 325 S.E.2d 569 (Ct. App. 1985).

A unilateral mistake will not rescind an agreement if the party seeking it is negligent. *Truck v. Patel*, 528 S.E.2d 424 (2000). A party cannot seek to rescind an instrument if the party seeking rescission is negligent.

There is simply no evidence supporting fraud, deceit, inequitable conduct, which would justify granting reformation by unilateral mistake.

DAMAGES/ACTUAL

Plaintiff seeks compensation for the costs of constructing the alternate driveway to his property after the fifty (50') foot road was barricaded, claiming entitlement to costs of equipment and materials, as well as lost income from Plaintiff personal constructing the alternate road. Plaintiff also sought compensation for lost profits in losing patients and punitive damages for Defendant's alleged willful act of barricading the access road.

Plaintiff's testimony about equipment and material purchases, including chainsaw, renting of trailer, purchasing gravel, etc. was not supported by any material evidence of records, receipts, or tax deductions. There is not persuasive evidence to support the Five Thousand and no/100 (\$5,000.00) Dollar request.

However, Plaintiff testified that he spent forty (40) hours in one week constructing the alternate road and lost income from patients for that week on an average of Eighty-five and no/100 (\$85.00) per patient for a total loss of Five Thousand and no/100 (\$5,000.00) Dollars. The Court finds the sum of Two Thousand Five Hundred and no/100 (\$2,500.00) Dollars would be appropriate for reimbursement to the Plaintiff for his lost income since one half (1/2) of the per patient visit amount is related to actual costs.

Plaintiff is entitled to this reimbursement since Defendant deliberately blocked the road after negotiations failed. The Court finds Defendant's argument that the road was blocked for security/insurance reasons without merit. Defendant blocked the road after negotiations failed.

DAMAGES/LOST PROFITS

While a plaintiff may recover lost profits resulting from tortious conduct when he/she can prove that it is reasonably certain that such profits would have been realized except for the tort, such lost profits need be ascertained and measured from the evidence produced with reasonable certainty. *Vortex Sports & Entertainment, Inc. v. Ware* 662 S.E.2d 444, 450 (S.C. Ct. App. 2008) (citing *Petty v. Weyerhaeuser Co.*, 342 S.E.2d 611, 615 (S.C. Ct. App. 1986). By certainty it is meant that the damages may not be left to mere speculation or conjecture. *Id.* "The law does not require absolute certainty of data upon which lost profits are to be *estimated*, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy." *South Carolina Finance Corp. of Anderson v. West Side Finance Company*, 113 S.E.2d 329, 336 (S.C. 1960).

The Plaintiff's lost profit testimony was based on Plaintiff's calculation of claimed lost patient days running from July 2009 until May 2011, as well as a reduction in his gross income in 2010 as compared to 2009. Although there was no contradiction of this evidence of a change in income, the evidence did not prove that these losses were caused by the Defendant's action of blocking the fifty (50') foot road access. There was no testimony by any of Plaintiff's patients confirming the patient loss days were triggered by patient not continuing with Plaintiff's services because of the road barricade. No expert witnesses were presented nor market analysis to prove the lost profit. Too many variables were presented on cross examination, such as fluctuations on the gross figures on the Plaintiff's tax returns, the recession of the economy, and Plaintiff's issues with filing claims for reimbursement of chiropractic services. Plaintiff testified that his

income had in fact increased after he changed marketing plans. The Plaintiff's unverified loss expectations do not meet the proof requirements to allow compensation for said loss profit.

DAMAGES/PUNITIVE

Viewing the totality of circumstances, the conduct of the parties, and action during this dispute, the Court awards Seven Thousand Five Hundred and no/100 (\$7,500.00) Dollars in punitive damages. Case law allows for an award of punitive damages for the willful obstruction of a right-of-way or easement. *Poole v. Edwards*, 15 S.E.2d 349, 352 (S.C. 1941). The case reveals that Defendant objected to Plaintiff using the road through his yard for which there was a prescriptive easement (right-of-way). *Id.* He "forbade" her tenant from using the road, and thus prevented the gathering of the crop planted on the Plaintiff's property. *Id.* The road had been plowed up and made incapable of traveling, and the court concluded it was a fair inference that it was done by, or at the direction of Defendant, and was "actuated by willful and wanton motives" which would sustain a verdict for punitive damages. *Id.*

This award is based on the following *Gamble, et al* case law factors: (a) Plaintiff owned his lot, with the easement, prior to Defendant purchasing its lot, (b) Defendant's representative testified that the Defendant company owned multiple properties (c) was experienced in this area of development, (d) Defendant was on constructive and actual notice of the easement prior to purchase, and (e) after negotiations failed between the parties in regards to resolving their access issues, Defendant barricaded the road to the Plaintiff's existing business.

THEREFORE, this Court FINDS, CONCLUDES AND ORDERS that the Plaintiff has access for ingress and egress over the road that borders the Plaintiff's property on the southern side which would be fifty (50') feet in width on eastern and western sides and two hundred and fifty (250') feet in length on the northern side and southern side with the boundary on the

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southern side of the road being the northern boundary of Lot 13, Phase I of Westchester Subdivision and the northern boundary being the southern boundary of the 0.68 acre lot (Plaintiff's lot).

I FURTHER FIND, CONCLUDE AND ORDER that Plaintiff have a judgment against the Defendant in the sum of Two Thousand Five Hundred and no/100 (\$2,500.00) Dollars for lost income while constructing the alternate road.

I FURTHER FIND, CONCLUDE and ORDER that Plaintiff have a judgment against the Defendant in the sum of Seven Thousand Five Hundred and no/100 (\$7,500.00) Dollars punitive damages for barricading the Plaintiff's fifty (50') foot access road.

IT IS SO ORDERED.


James O. Spence
Lexington County Master-in-Equity

July 29, 2013

ORIGINAL

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FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
DAVID R. GOOLDY, PLAINTIFF)
VERUS)
THE STORAGE CENTER-PLAT)
SPRINGS ROAD, DEFENDANT)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE # 2010-CP-32-0460
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORDER

The Court filed an Order in this easement dispute case on August 1, 2013. Thereafter, Defendant filed and argued its Rule 59 motion claiming that the court erred in finding that (1) an easement exists and (2) that the award of actual and punitive damages was improper.

EASEMENT ISSUE

In essence, Defendant argues that South Carolina law states that a road shown on a plat incorporated into a deed conveys only the physical dimensions of the conveyed lot and not an easement to the road unless the lot is a standard subdivision lot. Bennett v Investor Titles Inc. 635 S.E 2d 649 (Ct. App. 2006) and 635 S.E. 2d 660 (Ct. App. 2006).

Defendant further claims that the grantor, McGee, never intended to convey an easement, and the easement was vague and appeared by mistake.

Defendant's argument is unpersuasive for the following reasons:

- (1) Bennett held that the grantor does not warrant or covenant the width of an existing highway right of way easement by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. (Other holdings /discussion regarding habendum clause etc not addressed because not necessary for this decision).
- (2) Bennett did not hold that the right of way did not exist. The Right of way was a SCDOT right of way in the prior chain of title. Bennett did not hold that there was no easement as shown on the plat rather that the width as portrayed on the incorporated plat was wrong.

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(3) Defendant incorrectly argues that Bennett stands for the proposition the plat incorporated by a deed only conveys that portion of the physical outline of the property conveyed.

(4) As opposed to the pre-existing SCDOT easement in the Bennett case, here the plat in question in this case incorporated the easement that was created by the grantor as he deeded the property to the grantee.

INTENT PROOF

The Bennett cases do, as both Defendant and Plaintiff agree and argue, hold that the controlling South Carolina easement law regards the grantor's intention at the date of conveyance as crucial. The following chronology illustrates how the trial evidence reveals McGee's intent at the requisite time. The persuasive and critical evidence of McGee's intent can be gleaned from what he did from when his company purchased the subject property, his development activities, the actions his surveyor took, and the deed he reviewed and signed.

McGee's later recollections of what his intent was is not compelling, nor are plats of the same property prepared after he conveyed the subject property persuasive proof of his intent at the critical moment—when he reviewed and executed the deed conveying the property to Loflin.

The basic facts drawn from the testimonial and documentary evidence, together with the inferred facts follow:

- (1) Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years.
- (2) In 1974, Congaree purchased the 500 acre tract of land that contained the Plaintiff and Defendant's properties and fifty (50') foot road in dispute.
- (3) August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. Lot 13 is immediately adjacent to the fifty (50') foot road which borders the Plaintiff's property on the southern side. Collingwood signed as

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surveyor and indicated that "Iron pins placed on all corner." The survey also noted the distance from the Northern boundary of Lot 13 to Platt Springs Road.

(4) This plat shows the subject road located to the north of Lot 13, not as a road at that time but is shown as "N/F Congaree Assoc." This designation is clear evidence that Collingwood understood at that time, there was no indication, either on the ground or on a pre-existing plat or from the grantor that would indicate a road was intended there. A surveyor has to reflect any indication of a road. "Observable evidence of private roads shall be indicated. Streets abutting the premises, which have been described in Record documents; but not physically opened, shall be shown and so noted." Rosser W. Baxter, Jr. in South Carolina Survey Issues: Recognition and Remediation (page 47) NBI, Inc. 05M2002 (1995). The Court notes that the Defendant's surveyor followed this principle when his surveyor noted the Plaintiff's plat recorded 212G at PG 204 and showed the subject road as a Parking and Gravel Driveway Encroachment on the October 15, 2008 survey prepared for The Storage Center-Platt Springs LLC.

- (5) Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat.
- (6) January 27, 1984, Congaree does preliminary plat work for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval.
- (7) The subject area, previously described as "N/F Congaree Assoc." is now shown as an access road leading from Highway #6 to proposed Westchester Phase II. The only logical inference for Collingwood to have changed the designation of this area is that McGee now intended for this area to be a road or had created a road on the ground.
- (8) The subject road is located between Lot 13 of Westchester Phase I and what later becomes Plaintiff/predecessor's property.
- (9) July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood.

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- (10) The letter contained the standard county requirements for private road subdivisions.
- (11) December 10, 1985, James T. Loflin (Plaintiff's predecessor-in-title), who was a McGee employee/agent, has a plat prepared for the purpose of living on the corner lot (Plaintiff's property) next to the fifty (50') foot road entrance to proposed Phase II in a model log cabin home. (Consistent with designation in (5) above.)
- (12) Collingwood has now changed the designation from (i) August 18, 1983 "N/F Congaree Assoc." on Phase I Plat to (ii) January 27, 1984 an access road shown on the proposed Plat for Phase II which also contains distance to Platt Springs Road to (iii) December 10, 1985 50' Road on Loflin Plat.
- (13) Collingwood was the surveyor of the Loflin plat and the surveys notes "I.N." at each corner which reference new iron pins at each corner.
- (14) April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field.
- (15) August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot.
- (16) September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the 0.68 acre lot to Loflin, his employee agent, by deed incorporating survey prepared by Collingwood. This plat shows area as 50 foot road.
- (17) At trial, McGee testifies he never discussed the road with Loflin or Collingwood, his surveyor. McGee never testified about WHEN or WHY or HOW or to WHOM he communicated his purported change of mind about the road. He simply stated that after he realized project was too costly, then Phase II was never developed.
- (18) McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much.

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(19) McGee testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Loflin.

(20) McGee admits that Collingwood who prepared the plat for Westchester Phase II would have known when he prepared the plat for the Plaintiff's predecessor-in-title (Loflin) about the fifty (50') foot road on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat.

(21) McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat.

(22) McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree.

(23) McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Plaintiff to not use that area that he had been using since the purchase of the property for his access.

(24) Defendant's expert witness surveyors testified that there were later surveys prepared by Collingwood in the same area as the existing property which did not show the road in question.

(25) Defendant's surveyor/ witness found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. Such evidence only reveals that the road has not been accepted into the State or County road system, not that a road does not exist.

(26) Defendant's representative Puckett testified that the Defendant Company had unfettered control over the property in question and that it barricaded the road for liability and legal reasons.

(27) The trial evidence revealed that (1) McGee never talked to anyone about the road (2) No Loflin/grantee testimony or evidence offered at trial. (3) Defendant surveyors state belief that Loflin survey was a mistake. If a mistake, whose mistake? A mistake has to be mutual or unilateral. As discussed in trial order, no persuasive

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evidence to indicate any conclusion other than if it was a mistake, it was a unilateral mistake by grantor McGee, who is/was an experience real estate developer charged with obligation to read and understand a document before he signs and executes it.

(28) ~~The Defendant argues that certain survey acts taken on or~~ behalf of McGee after he had conveyed the property to Loflin should be construed as proof of his intent at the time of the Loflin conveyance that McGee never intended for a road to exist. While in certain contexts, later actions can be proof of a prior intent, in this case, with this chronology of events, actions, and documents, such an argument fails scrutiny. Such an argument is based on the incorrect argument that since McGee at a later point in time did not indicate the area was a road, then it must be concluded that he must have never (or at least at the time of the conveyance to Loflin) intended for it to be a road.

SUBDIVISION /EASEMENT LAW

Plaintiff argues that the body of standard subdivision plat law is applicable since the grantor subdivided the property when he conveyed the 0.68 acre tract to Loflin. Defendant argues that deeding a single tract in this does not constitute a subdivision and as such this line of cases is inapplicable.

The Court does not believe a legal determination of what exactly a subdivision is, is required, but will for purposes of explanation, address the issue.

Clearly the land was subdivided when it was conveyed to Loflin. But does that make it a subdivision?

Black's states that subdivision is "Division into smaller parts of the same thing or subject matter. The division of a lot, tract of land into two or more lots, tracts, parcels or other divisions of land for sale or development."

The court takes notes that county governments have various ordinances relating to plat approval, road maintenance regarding subdivisions, private road subdivisions, and what divisions of land are exempt from county subdivision regulations. It does not seem logical then that the county designation should

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control since counties can have different regulations and the law should not vary due to a county's regulations.

More issues arise if the classic Blackacre questions are asked. What if owner of Blackacre has a 68 acre tract fronting on a state highway and

- (1) Owner sells a .68 acre tract. Is this a subdivision?
- (2) What if owner calls it Lot 1?
- (3) What if owner attaches restrictions to it?
- (4) What if owner doesn't?
- (5) Does it become a subdivision if he conveys a second 0.68 acre tract?
- (6) What about a third one?
- (7) What if there is a road bisecting the tract that leads to owner's house and he sells lot on other side of road. Do lots on other side of road have easement in road?

These questions illustrate the multitude of questions that arise when analyzing the issue as argued by Plaintiff and Defendant.

The court does not believe it is necessary to make a determination of when subdividing land equals a subdivision since prior South Carolina easement law provides the answer to the question in this case. Landowners conveyed lots or tracts of land long before formal subdivisions with unit plats, restrictions; HOA's, common areas etc became common.

Basic deed law states that if a deed describes land by referencing a plat, the plat becomes part of the deed. When streets, alleyways, parks or other open areas are displayed on plats in conjunction with sale of property, an easement is created in favor of the grantee. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). Therefore, if an easement is recorded in a deed through a plat, it becomes part of the deed and is part of the chain-of-title. This rule was recognized and applied in *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950), as well as numerous other decisions of the Supreme Court and the Court and the Court of Appeals¹. These cases hold that such an easement inures to the benefit of

¹ *Immanuel Baptist Church v. Barnes*, 274 S.C. 125, 264 S.E.2d 142 (1980); *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Briarcliffe Acres v. Briarcliffe Realty Co.*, 262 S.V. 599, 206 S.E.2d 886 (1974); *Epps v. Freeman*, 261 S.C. 375, 200 S.E.2d 235 (1973); *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965); *Corbin v. Cherokee Realty Co.*, 229 S.C. 16, 91 S.E.2d 542 (1956); *Newton v. Batsón*, 223 S.C. 545, 77

the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intended otherwise. See also 28 C.J.S. *Easements* §§ 39 and 40 (1941).

The Court also notes that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

These cases illustrate the common sense logic of road and easement law. If the easement is shown on the plat incorporated into the deed, then there is a presumption that there is an easement in the property, or ownership to the center of the road, unless there is contrary evidence on deed or plat.

VAGUENESS ARGUMENT

Defendant argues that the 50' road shown on the Loflin plat is too vague.

This argument does not withstand scrutiny.

A title search is like putting a puzzle together. An abstractor or attorney doing the title search would have reviewed the deed and plat establishing ownership by Congaree against all conveyances or plats out of Congaree.

This search would have revealed the Phase I plat. The Phase I plat, in conjunction with the Loflin plat, both containing corner pins, and measurements to the intersection of Plat Springs road etc, would have revealed the fact that the 50 foot road is located between Lot 13 of Phase 1 and the 0.68 acre Loflin tract.

The road and both lots are bounded on the east by SC HWY #6. The 50 foot road is bounded on the south by the 250 northern side of Lot 13 and the 250 foot southern side of Loflin's 0.68 acre tract.

S.E.2d 212 (1953); *Outlaw v. Molse*, 222 S.C. 24, 71 S.E.2d 509 (1952); *Billings v. McDaniel*, 217 S.C. 261, 60 S.E.2d 592 (1950); *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 (Cl. App. 1987).

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DAMAGES:

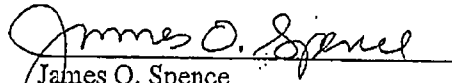
- (1) Actual damages were based on defendant's testimony that he did not treat patients during the 40 hour week spent constructing the alternate road. The lost net income was \$2,500.00 (See August 1, 2014 Order page 17).
- (2) Both South Carolina and United States Supreme Court cases state purpose of punitive damages is to deter and punish.
- (3) All Gamble v Stevenson factors were considered. The Order stated most obvious since case law states that court is not required to make a finding on each factor. Welch v Epstein, 536 S.E.2d 408 (Ct. App. 2000)
- (4) Case law does not require a finding that the defendant has the ability to pay. Frazier v Badger, 603 S.E. 2d 587 (S.C. 2004)
- (5) Defendant argues that the court should focus on the three factor test of BMW of North America v Gore as adopted/explained by South Carolina in the Mitchell v Fortis Ins. Co., 686 S.E. 2d 176 (2009)
- (6) Here both Courts focus on (a) degree of reprehensibility of the defendants' conduct. The defendant barricaded a road after failing to arrive at a negotiated agreement. The Defendant was not barricading a road against an unknown trespasser; rather Defendant choice this tactic, physically erecting a barricade across an platted road, rather than taking (i) no steps---what purpose did barricading the road serve? It did nothing for the Defendant. It did physically prevent patients from entering the defendant's property at that point.(ii) filing a legal action such as a declaratory judgment or a statutory road closing action, designed to close open or unopened roads, now longer in use (b) Obstructing the road was a physical act that impacted the Plaintiff's land every single day since it stopped traffic every single day. It was not an isolated physical event whose damage or effect was limited to the act of erecting the gate or to the single day erected. This obstruction was more in the nature of a continuing nuisance. It was a physical act that was repeated every single day. This physical act's effect did not stop the day it was erected, but continued to act as a barricade every single day it remained standing.

Poole v Edwards, 15 S.E. 2d 349 (SC 1941) allows for an award of punitive damages for a willful obstruction of a right of way or easement. Defendant's action (1) impeding access was a physical harm to the land that was (2) repeated each day the obstruction remained and was the (3) result of intentional malice, rather than a mere accident or directed against an unknown trespasser.

- (7) The ratio of damages was 3 to 1. The court will not cite the numerous cases with larger ratios that have been upheld. See 11 S.C. Jur. Damages Sec 43 (Dec. 2013)
- (8) The conduct (barricading the road) led to a week's lost work, the \$2500 award, which the court believes, falls within similar ratio of reported decisions.

MOTION DENIED.

Lexington, South Carolina
March 13, 2014


James O. Spence
Lexington Master-in-Equity

NOTE: A Cloned copy of this Order scanned and emailed to both Attorneys this 13th day of March, 2014. The Court takes full responsibility for the unorthodox formatting of this Order due to our inability to decipher WORD.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3200460

David R Gooldy

Storage Center Platt
Springs LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

3/18/2014
Date

CPFORM4Cin
SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 18th of March 2014, and a copy mailed first class or placed in the appropriate attorney's box on 18th of March 2014, to attorneys of record or to parties (when appearing pro se) as follows:

James Randall Davis
PO Box 489 Lexington, SC 29071

Storage Center Platt Springs LLC
Robert E. Stepp PO Box 11449 Columbia, SC 29211
Bess Jones DuRant PO Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 200 FEB -1 P 1:42

David R. Gooldy,

Plaintiff,

-vs-

The Storage Center - Platt Springs, LLC,

Defendant.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SUMMONS

2010CP3200460

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 140 East Main Street, Lexington, South Carolina, WITHIN THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

NICHOLSON, DAVIS, FRAWLEY,
ANDERSON AND AYER, LLC
140 East Main Street, P. O. Box 489
Lexington, South Carolina 29071
Phone No.: (803) 359-2512

Lexington, South Carolina

Feb. 1, 2010

BY:

James Randall Davis
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 200 FEB -1 P 142

David R. Gooldy,

Plaintiff,

-vs-

The Storage Center - Platt Springs, LLC,

Defendant.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

COMPLAINT

(Declaratory Judgment / Injunctive
Relief / Declaration of Easement)
(Non-Jury)

2010CP3200460

The Plaintiff, complaining of the Defendant above named, alleges as follows:

1. Plaintiff David R. Gooldy is a citizen and resident of Lexington County, South Carolina.
2. Defendant, upon information and belief, is a South Carolina Limited Liability Company doing business in the State of South Carolina and the County of Lexington.
3. Plaintiff is the owner of the following described real property located in Lexington County, South Carolina by deed recorded in Deed Book 6952, Page 175:

All those certain piece, parcel of lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 2120 at page 204. The within described property contains 0.68 acre more or less.

4. The Defendant is the owner of the following described real property located in Lexington County South Carolina by deed recorded in Deed Book 12365, Page 277:

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All that certain piece, parcel or tract of land, with any improvements therein, situate, lying and being in the County of CARRIGG Lexington, State of South Carolina, being shown and delineated by Parcel "A" containing 7.35 acres, on a plat prepared for Frank Strashburger by Civil Engineering of Columbia, dated October 27, 2006 in Record Book 11491 at Page 126 (Slide 918, Page 2), Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as shown on the plat described herein, which is specifically incorporated by reference.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)
(Easement by Implication or Estoppel)

5. The allegations contained in Paragraphs 1 through 4 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this First Cause of Action.

6. Plaintiff's deed for its property which is the subject of this action, references a plat which shows a fifty (50') foot road which Plaintiff alleges is a road that the Plaintiff or its predecessors-in-title have been using as an easement for ingress and egress to the Plaintiff's property.

7. Plaintiff's and Defendant's source of title for their respective tracts come from the same source and each plat in the Plaintiff's chain of title references Plaintiff's plat referred to above which shows the road.

8. Plaintiff alleges that by the Plaintiff's and Defendant's predecessor-in-title to the Plaintiff's property having a plat prepared which shows a road abutting Plaintiff's property, Plaintiff has an easement for ingress and egress over said road shown on Plaintiff's plat.

9. Plaintiff is informed and believes that because of this action by Plaintiff's predecessor-in-title that Plaintiff has an easement by implication or estoppel.

FOR A SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT)
(Easement by Prescription)

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

10. The allegations contained in Paragraphs 1 through 9 are reasserted and reneged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second Cause of Action.

11. The use of the road by the Plaintiff and his predecessor-in-title has been in an open and notorious manner without any attempt at concealment.

12. The use of the road by the Plaintiff and his predecessor-in-title has been adverse and under a claim of right.

13. The use of the road by the Plaintiff and his predecessor-in-title has been continuous and uninterrupted for at least 20 years, until such time as the Defendant took actions to block the right of way as described herein, which was the impetus for this lawsuit.

14. Therefore the Plaintiff seeks, and is entitled to, a declaratory judgment from this Court establishing his right to use the road for ingress and egress to the Plaintiff's property, shown as the 50 foot right of way that crosses the Defendant's property, and that said prescriptive easement is appurtenant to the Plaintiff's property with said benefits to run with the lands now owned by the Plaintiff.

15. Furthermore, the Plaintiff seeks, and is entitled to, a declaration that the Defendant has no right to take any actions to block, or disturb in any fashion, the Plaintiff's rights of access across the prescriptive easement by vehicle or on foot to gain access the Plaintiff's property.

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FOR A THIRD CAUSE OF ACTION D
(Estoppel - Temporary and Permanent Injunctive Relief)

16. The allegations contained in Paragraphs 1 through 12 and recited and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with the Third Cause of Action.

CLERK OF COURT
WASHINGTON SC

17. The Plaintiff is informed and believe that the Defendant should be stopped from taking any actions to block, or disturb in any fashion, the Plaintiff's right of access across the road by vehicle or on foot to gain access the Plaintiff's property until the Court has determined the merits of this case.

18. The Plaintiff will suffer irreparable harm if the Defendant is allowed to continue with its actions of blocking and disturbing the road, making the road impassable to the Plaintiff while this case is pending.

19. The likelihood of harm to the Defendant of allowing the Plaintiff unfettered ingress and egress use of the road is small.

20. The likelihood that the Plaintiff will succeed on the merits is great in light of the overwhelming evidence of public record establishing the easement of record, the fact that the easement is clearly indicated on the Defendant's survey, the fact of the easement being in use for ingress and egress to the Plaintiff's property for more than twenty (20) years.

21. Furthermore, based on the above facts and the allegations stated herein, the Plaintiff seeks, and is entitled to a permanent injunction against the Defendant instructing the Defendant not to take any actions to block, or disturb in any fashion, the Plaintiff's rights of access across the easement by vehicle or on foot for the purpose of ingress and egress to the Plaintiff's property.

FOR A FOURTH CAUSE OF ACTION ED
(Negligence / Gross Negligence / Intentional Act)
(Denial of Property Rights)

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22. The allegations contained in Paragraphs 1 through 21 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with the Fourth Cause of Action.
BETH A. CARRIGG
LEXINGTON SC

23. The Defendant owes the Plaintiff a duty based on the servient nature of the property it purchased, and it had actual knowledge of Plaintiff's easement, not to take any actions or authorize any actions that would in any way block, or disturb in any fashion, the Plaintiff's rights of access across the road by vehicle or on foot to gain access the Plaintiff's property.

24. The Defendant owes the Plaintiff a duty based on the survey prepared for it, giving it notice of the right-of-way along the side of and crossing its property, and upon information and belief, it had actual knowledge that the Plaintiff used this road to access his property.

25. The Defendant breached its duties by negligently, gross negligently and/or intentionally taking or authorizing the following actions:

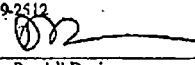
- a. In failing and refusing to allow the Plaintiff quiet enjoyment of his property rights by denying him access to his easement rights and real property;

26. Said actions by the Defendant were negligent, reckless, willful, wanton, intentional and in blatant disregard of the rights of the Plaintiff, and therefore the Plaintiff seeks a judgment against the Defendant for actual and punitive damages proximately caused therefrom as well as attorneys' fees and costs of this action.

WHEREFORE, the Plaintiff prays for the following:

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ETNA CARRIGG
CLERK OF COURT
LEXINGTON SC
- a.) An Order of this Court declaring that the Plaintiff, his heirs, successors and assigns have the right by implication and/or prescription to use the 50 foot road along the southern and eastern boundaries of the Defendant's property for the purposes of ingress and egress to Plaintiff's property, that said right is appurtenant to the Plaintiff's property and said rights run with the land for the benefit of the Plaintiff, his heirs, successors and assigns.
 - b.) An Order from this Court requiring the Defendants cease and desist from all actions interfering with the Plaintiff's rights to use the 50 foot road along the southern and eastern boundaries of the Defendant's property for the purpose of ingress and egress to Plaintiff's property.
 - c.) An Order from this Court requiring the Defendant to immediately clear and keep clear the 50 foot road long the southern and eastern boundaries of the Defendant's property.
 - d.) Judgment against the Defendant for a sum sufficient to adequately compensate the Plaintiff for actual damages, punitive damages, attorneys' fees and costs of this action.
 - e.) For such other and further relief as the Court may deem just and proper.

NICHOLSON, DAVIS, FRAWLEY,
ANDERSON & AYER, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY: 

James Randall Davis

ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina
Feb. 1, 2018

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COPY

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

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David R. Gooldy,

Plaintiffs,

vs.

The Storage Center – Platt Springs, LLC,

Defendants.

Civil Action No. 10-CP-32-0460

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

PPB

ANSWER OF THE STORAGE
CENTER – PLATT SPRINGS, LLC

Defendant the Storage Center – Platt Springs, LLC ("The Storage Center") hereby denies each and every allegations of the Complaint not hereinafter specifically admitted, qualified, or explained, and further alleges in response thereto as follows:

FOR A FIRST DEFENSE

1. The Storage Center admits the allegations of paragraph one of the Complaint.
2. The Storage Center admits the allegations of paragraph two of the Complaint.
3. The Storage Center admits the allegations of paragraph three of the Complaint.
4. The Storage Center admits the allegations of paragraph four of the Complaint.
5. The Storage Center incorporates the allegations of paragraphs one through four above in response to the allegations of paragraph five of the Complaint.
6. Responding to the allegations of paragraph six of the Complaint, The Storage Center admits that Plaintiffs' deed references a plat, but denies that the plat is plat of the property owned by the Storage Center; further denies that the plat is a plat of a subdivision with lots that have been platted or sold; further denies that the plat shows any road with completeness or clarity as to its length, location or dimensions; further denies that the road was used for ingress or

egress to Plaintiff's property or that it is or ever was necessary for such ingress or egress; and further denies that any such road actually exists.

7. The Storage Center lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph seven of the Complaint and therefore denies them.

8. The Storage Center denies the allegations of paragraph eight of the Complaint.

9. The Storage Center denies the allegations of paragraph nine of the Complaint.

10. The Storage Center incorporates the allegations of paragraphs one through nine above in response to the allegations of paragraph ten of the Complaint.

11. The Storage Center denies the allegations of paragraph eleven of the Complaint.

12. The Storage Center denies the allegations of paragraph twelve of the Complaint.

13. The Storage Center denies the allegations of paragraph thirteen of the Complaint.

14. The Storage Center denies the allegations of paragraph fourteen of the Complaint.

15. The Storage Center denies the allegations of paragraph fifteen of the Complaint.

16. The Storage Center incorporates the allegations of paragraphs one through fifteen above in response to the allegations of paragraph sixteen of the Complaint.

17. The Storage Center denies the allegations of paragraph seventeen of the Complaint.

18. The Storage Center denies the allegations of paragraph eighteen of the Complaint.

19. The Storage Center denies the allegations of paragraph nineteen of the Complaint.

20. The Storage Center denies the allegations of paragraph twenty of the Complaint.

21. The Storage Center denies the allegations of paragraph twenty-one of the Complaint.

22. The Storage Center incorporates the allegations of paragraphs one through twenty-one above in response to the allegations of paragraph twenty-two of the Complaint.

23. The Storage Center denies the allegations of paragraph twenty-three of the Complaint.

24. The Storage Center denies the allegations of paragraph twenty-four of the Complaint.

25. The Storage Center denies the allegations of paragraph twenty-five of the Complaint.

26. The Storage Center denies the allegations of paragraph twenty-six of the Complaint.

FOR A SECOND DEFENSE

27. The Complaint fails to state facts sufficient to constitute a cause of action for equitable, legal, or injunctive relief, and also fails to state facts sufficient to constitute a cause of action for punitive damages, attorneys' fees or costs.

FOR A THIRD DEFENSE

28. Plaintiff's equitable claims are barred by the doctrines of laches.

FOR A FOURTH DEFENSE

29. Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

30. Plaintiff's claims are barred by the doctrines of waiver and estoppel.

FOR A SIXTH DEFENSE

31. The Storage Center alleges that such injuries and damages as the plaintiff sustained, if any, at the time and place as alleged in the Complaint, were due to and caused and

occasioned by the negligence, recklessness, willfulness and wantonness of the plaintiff, which negligence, recklessness, willfulness and wantonness, as aforesaid, combining and concurring with that of this defendant, if any, and the same is denied, contributed to the plaintiff's alleged injuries and damages as a proximate cause thereof. Such negligence, recklessness, willfulness and wantonness of the plaintiff was greater in proportion to the negligence of the defendant, if any, and the same is denied, and, therefore, this defendant expressly pleads the comparative negligence, recklessness, willfulness and wantonness of the plaintiff as a complete bar to any recovery against this defendant in this action; in the alternative, the defendant The Storage Center is entitled to a reduction of damages based upon the percentage of the negligence, recklessness, willfulness and wantonness of the plaintiff.

FOR A SEVENTH DEFENSE

32. The Storage Center alleges that an award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

- f. The plaintiffs' claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

The plaintiffs' claim for punitive damages therefore violates the Federal Doctrine of Separation of Powers and Article I, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

33. Plaintiff or his predecessor in title has constructed a gravel driveway that encroaches and trespasses upon the property owned by The Storage Center.

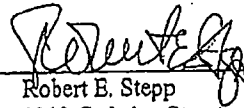
34. Plaintiff did not receive permission from the Storage Center or from any predecessor in title to The Storage Center to encroach or trespass upon this property.

35. The Storage Center is therefore informed and believes that it is entitled to an order requiring Plaintiff to cease and desist from all such encroaching or trespassing upon property owned by the Storage Center.

Wherefore, having fully answered Plaintiff's complaint, The Storage Center prays that it be dismissed with prejudice and that The Storage Center be granted the relief it has prayed for above and such other relief as may be just and proper under the circumstances.

(Signature block on following page)

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Robert E. Stepp
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel No.: (803) 231-7836
Fax No.: (803) 231-7886

*Attorneys for the Defendant The Storage Center -
Platt Springs, LLC*

Columbia, South Carolina
April 20th, 2010

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

IN THE ELEVENTH JUDICIAL CIRCUIT

COPY

David R. Gooldy,

Plaintiffs,

vs.

The Storage Center – Platt Springs, LLC,

Defendants.

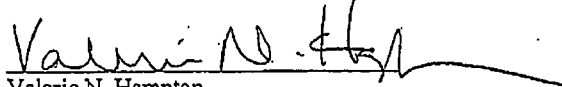
Civil Action No. 10-CP-32-0460

CERTIFICATE OF SERVICE

I, Valerie N. Hampton, Legal Assistant, to the law offices of Sowell Gray Stepp & Laffitte, LLC do hereby certify that I have caused the foregoing Answer of The Storage Center – Platt Springs, LLC to be served upon the following parties at the following addresses:

James Randall Davis, Esquire
Nicholson, Davis, Frawley, Anderson and Ayer, LL
140 East Main Street
Post Office Box 486
Lexington, SC 29071

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APR 21 A 11:25
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC


Valerie N. Hampton

Columbia, South Carolina

This 20th Day of April, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-32-00460

David R. Gooldy,

Plaintiff,

-vs-

The Storage Center - Platt Springs, LLC,

Defendant.

2010 FEB 25 A 9 16
**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
INJUNCTION**

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, will move before the Presiding Judge of the Eleventh Judicial Circuit, on the tenth day after service hereof or as soon thereafter as counsel may be heard, at the Lexington County Courthouse, Lexington, South Carolina, for an Order restraining and enjoining the Defendant from in any way, shape or manner interfering with the Plaintiff's rights to access for ingress/egress the 50' road way which is located on the Defendant's property, shown on Exhibit A, attached to this Motion.

This Motion is based on the pleadings in this matter, Affidavits, statutes, case law, Rules of Court, and such other and further authority as the Court may deem appropriate.

Davis, Frawley, Anderson McCauley,
Ayer, Fisher & Smith LLC
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512

Lexington, South Carolina
Feb. 24, 2010

BY: 
James Randall Davis
ATTORNEYS FOR PLAINTIFF

Pg 204

Plot Book 212-C

FILED

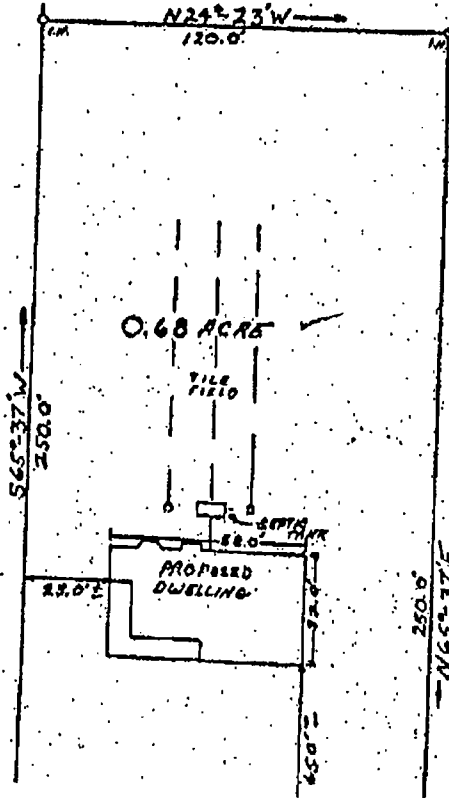
1986 SEP 11 PM 3:15

JOANNE B. TRIBBLE
RMC
LEXINGTON COUNTY, S.C.

2ND FEB 25 A. 9. 16

N/F CONGAREE ASSOC.

50' ROAD



My Name



LEXINGTON COUNTY
PLANNING COMMISSION
SEP 11 1986

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
☐ FAMILY COURT

David R. Gouldy,

CASE NO. 2010-CP-32-00460

☒ Plaintiff,
v.

**MOTION INFORMATION FORM b
AND COVER SHEET**

The Storage Center - Platt Springs, LLC,
☐ Defendant,

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
telephone: fax:
e-mail: other:

name, S.C. Bar no. and address of defendant's attorney

telephone: fax:
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Preliminary Injunction

Estimated Time Needed:

Court Reporter Needed: YES / NO

SECTION II: Motion Type

- ☒ Written motion attached
☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff

2-24-2010

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child Support or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
COURT:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

2/25/10

- ☒ MOTION FEE COLLECTED: 25.00
☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-32-00460

David R. Gooldy,)
Plaintiff,)

-vs-

The Storage Center – Platt Springs, LLC,)
Defendant.)

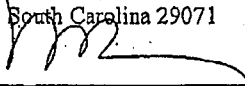
NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

TO: ROBERT E. STEPP, ESQUIRE and BESS J. DURANT, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT:

NOTICE IS HEREBY GIVEN that the Plaintiff above named will move before the Lexington County Master-in-Equity, ten (10) days from the date hereof, or as soon thereafter as same can be heard, for an Order for Summary Judgment in the captioned matter. Such Motion will be made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure upon the basis that there is no material issue of fact that the Plaintiff has an easement by implication or estoppel and/or an easement by prescription in the fifty (50') foot road which is adjacent to the Plaintiff's property which is referenced in Plaintiff's Complaint.

Said Motion shall be based upon the pleadings in this matter, discovery, the statute and case law of the State of South Carolina, and the South Carolina Rules of Civil Procedure.

DAVIS, FRAWLEY, ANDERSON, MCCAULEY,
AYER, FISHER & SMITH, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071

By: 

James Randall Davis

Feb 1, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-32-00460

David R. Gooldy,

Plaintiff,

-vs-

The Storage Center - Platt Springs, LLC,

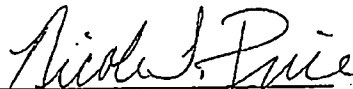
Defendant.

CERTIFICATE OF SERVICE BY MAIL

I, Nicole T. Price, a paralegal with the law firm of NICHOLSON, DAVIS, FRAWLEY,
& AYER, LLC, do hereby certify that I have served the following with the foregoing NOTICE
OF MOTION AND MOTION FOR SUMMARY JUDGMENT, by mailing a copy of same,
postage prepaid and return address clearly indicated on said envelope, to them at the following
address:

Robert E. Stepp, Esquire
Bess J. DuRant, Esquire
Post Office Box 11449
Columbia, South Carolina 29211

on this 1st day of February, 2011 all in accordance with Rule 5 (b)(1) of the South Carolina Rules
of Civil Procedure.


Nicole T. Price
NICHOLSON, DAVIS, FRAWLEY,
ANDERSON & AYER, LLC
140 East Main Street
Lexington, South Carolina 29071

ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
David R. Gooldy

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT
Civil Action No. 10-CP-32046

COPY

FILED

vs.

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

The Storage Center - Platt Springs, LLC

2011 JAN 31 P 4:05
[X] Defendants
A. CARRIG
CLERK OF COURT
LEXINGTON SC

name, SC Bar no. and address of plaintiff's attorney James Randall Davis, Esquire Nicholson, Davis, Frawley, Anderson and Ayer, LLC 140 East Main Street Post Office Box 489 Lexington, SC 29071 P 359-2512 F 359-7478		name, SC Bar no. and address of defendant's attorney Robert E. Stepp, Esquire - SC Bar #5335 Bess J. DuRant, Esquire - SC Bar #77920 Sowell Gray Stepp & Laffitte, LLC 1310 Gadsden Street (29201) Post Office Box 11449 Columbia, South Carolina 29211 Telephone: (803) 929-1400 Facsimile: (803) 929-0336 Email: rstepp@sowellgray.com bdurant@sowellgray.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Estimated Time Needed: 1 Hour Court Reporter Needed: YES [X:] NO []			
SECTION II: Motion Type ☐ Written motion attached ☐ Form Motion: I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for [] Plaintiff [] Defendant Date Submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: [] Rule to Show Cause in Child or Spousal Support [] Domestic Abuse of Abuse and Neglect (check reason) [] Indigent Status [] State Agency v. Indigent Party [] Sexually Violent Predator Act [] Post Conviction Relief [] Motion for Stay in Bankruptcy [] Motion for Publication [] Motion for Execution (Rule 69, SCRPC) [] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ [] Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ DATE FILED			

SCCA/233 (1/2003)

COPY

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2011 JAN 31 P 416 IN THE ELEVENTH JUDICIAL CIRCUIT
David R. Gooldy, Civil Action No. 10-CP-32-0460

BETH A. CARRIGG
CLERK OF COURT
PLATTSPRINGS, SC

vs.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

The Storage Center – Platt Springs, LLC,
Defendant.

Defendant The Storage Center – Platt Springs, LLC hereby moves pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure for an order granting summary judgment in its favor on the ground that there are no genuine issues as to any material facts and this defendant is entitled to judgment as a matter of law because Plaintiff has no right, express or implied, to the property that is the subject of this action.

The first cause of action, styled Declaratory Judgment – Easement by Implication or Estoppel, fails for the following reasons:

1. There is no easement by implication because no prior use existed at the time of unity of title. *Boyd v. BellSouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006) ("The party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (2) [sic] the prior use was in existence at the time of unity of title; (3) [sic] the prior use was not merely temporary or casual; (4) [sic] the prior use was apparent or known to the parties; (5) [sic] the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) [sic] the common grantor indicated an intent to continue the prior use after severance of title.").

2. There is no easement by implication because any alleged prior use was never

necessary given that Plaintiff and his predecessors in title always had other reasonable modes to access his property other than the strip of land that is the subject of this lawsuit. *Id.* at 421, 633 S.E.2d at 141 ("For an easement implied by prior use, necessity means 'there could be no other reasonable mode of enjoying the dominant tenement without this easement . . .'" (quoting *Crosland v. Rogers*, 32 S.C. 130, 133, 10 S.E. 874, 875 (1890))).

3. There is no easement by implication because the common grantor, Congaree Associates, never intended for any prior use to continue after it severed its title. Aff. of Carroll McGee, ¶¶ 5-7, attached hereto as Exhibit A; *see also Boyd*, 369 S.C. at 416, 633 S.E.2d at 139. ("Whatever easements are created by implication must be determined as of the time of the severance of the ownerships of the tracts involved.")

4. There is no easement by implication because the plat referencing a fifty foot road was prepared for the benefit of Plaintiff's predecessor, not Defendant's. Aff. of James T. Loflin ¶ 4, attached hereto as Exhibit B. An erroneous reference in a plat does not provide any basis for an easement implication.

Therefore, Plaintiff's claim for an easement by implication must fail.

The second cause of action, styled Declaratory Judgment – Easement by Prescription, fails because there has been no continued use of the alleged easement for twenty years and because the use was not made under a claim of right. For a party to establish an easement by prescription, "the party asserting the right must show: (1) continued use for 20 years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or under a claim of right." *Boyd*, 369 S.C. at 416, 633 S.E.2d at 139. Plaintiff and his predecessors have not had continued and uninterrupted use of the strip of land that is the subject of this lawsuit for a period of twenty years. Aff. of James T. Loflin ¶¶ 5-11. Moreover, Plaintiff's or his predecessor's use of the strip

of land was not under a claim of right. Aff. of James T. Loflin ¶¶ 5-11. Therefore, Plaintiff's claim for an easement by prescription must fail.

The fourth cause of action,¹ styled Negligence/Gross Negligence/Intentional Act – Denial of Property Rights, fails because as a matter of law Defendant has no duty to Plaintiff and because Plaintiff has no underlying property rights that have been infringed. A duty does not arise based on the alleged servient nature of Defendant's land or based on the fact that a survey was prepared for Defendant. Cf. *Hayes v. Tompkins*, 287 S.C. 289, 294, 337 S.E.2d 888, 891 (Ct. App. 1985) (holding owners of servient tenement are under no duty to maintain or repair easement for the benefit of the dominant tenement). Second, Plaintiff cannot maintain a negligence or intentional act claim against Defendant because Plaintiff has no easement rights as a matter of law. Consequently, there can be no breach of quiet enjoyment or intentional interference by Defendant regarding the subject property. Moreover, Defendant is not denying Plaintiff access to his real property as he has alternate access to his property. Plaintiff's Fourth Cause of Action therefore fails.

Defendant is therefore entitled to an order granting summary judgment in its favor.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: BESS J. DURANT
Robert E. Stepp
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-140

Columbia, South Carolina
This 28th Day of January, 2011

Attorneys for Defendant The Storage Center – Platt
Springs, LLC

¹ The third cause of action seeks injunctive relief but does not offer any independent ground for relief so it is not addressed in this Motion.

EXHIBIT A

EXHIBIT

A

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

David R. Gooldy,

Civil Action No. 10-CP-32-0460

Plaintiffs,

vs.

The Storage Center - Platt Springs, LLC,

Defendants.

AFFIDAVIT OF CARROLL E. MCGEE

FILED
#21 A 11:25
J. A. CARRIG
CLERK OF COURT
LEXINGTON, SC

Personally appeared before me Carroll E. McGee, who first being duly sworn, deposes and says follows:

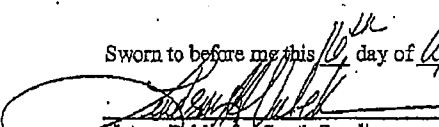
1. I am Carroll E. McGee. I am over the age of 18 years, and I make the statements herein on my personal knowledge.
2. I am a member of Congaree Associates, a South Carolina limited partnership. Congaree Associates is the former owner of the property upon which Plaintiff alleges that an easement exists. Congaree Associates acquired the property in 1974 and owned it continuously until it was conveyed to The Storage Center - Platt Springs, LLC in September 2007.
4. At no time during Congaree Associates' ownership of the property did Congaree Associates cause any plat to be made or recorded that showed a 50 foot road across the property.
5. Congaree Associates did not have the plat that is recorded at Plat book 212G at Page 204 prepared or recorded, nor have its own property surveyed by Collingwood and Associates.
5. At no time did Congaree Associates ever subdivide the property and sell lots with reference to a plat that showed such a road.

6. No such road was ever constructed or used during the time that Congaree Associates owned the property.

7. Congaree Associates did not give David Gooldy permission to encroach upon the land owned by Congaree Associates.

FURTHER AFFLIANT SAYETH NOT


Carroll E. McGee

Sworn to before me this 16th day of April, 2010

Notary Public for South Carolina
My Commission Expires: 6/27/2017

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)
) IN THE ELEVENTH JUDICIAL CIRCUIT

David R. Gcoldy,

Civil Action No. 09-CP-12-0166

Plaintiffs,

vs.

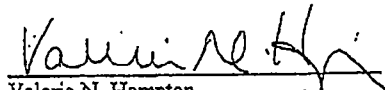
The Storage Center - Platt Springs, LLC,

Defendants.

COPY

CERTIFICATE OF SERVICE

I, Valerie N. Hampton, Legal Assistant, to the law offices of Sowell Gray Stepp & Laffitte, LLC do hereby certify that I have caused the foregoing Affidavit of Carroll McGee to be served upon the following parties at the following addresses:


Valerie N. Hampton

Columbia, South Carolina

This 20th Day of April, 2010

PPB

BEITH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2010 APR 21 A 11:25

FILED

EXHIBIT B

EXHIBIT

B

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

David R. Gooldy,

Plaintiff,

vs.

The Storage Center - Platt Springs, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

IN THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 10-CP-32-0460

AFFIDAVIT OF JAMES T. LOFLIN

Personally appeared before me James T. Loflin, who first being duly sworn, deposes and says follows:

1. I am James T. Loflin. I am over the age of 18 years, and I make the statements herein on my personal knowledge.

2. On September 15, 1986, I acquired the property presently owned by David Gooldy from Congaree Associates. A copy of the deed transferring title from Congaree Associates to me, dated September 15, 1986, filed in the Office of the Register of Mesne Conveyances for Lexington County in Book 837 at Page 36 on September 23, 1986 is attached hereto as Exhibit A.

3. Beginning after I acquired the property, I used the property that abutted the southern side of my property as a driveway. Facing the property from Highway 6, this is the area of land that is to the left of the log cabin on the property.

4. A plat was prepared on my behalf because I was acquiring the property from Congaree Associates. The plat referenced a "50' Road" adjacent to the property. This plat was filed in the Office of the Register of Mesne Conveyances for Lexington County on September 11, 1986 in Book 212G at Page 204. A copy of this plat is attached hereto as Exhibit B.

5. This "50' Road" shown on the plat did not exist and is not part of the property I owned. The "50' Road" was not referenced for my benefit to use. I had no agreement with my neighbor, Congaree Associates, that a road would be built there. The "50' Road" reference in the plat was not intended to create an easement.

6. At all times, the strip of land I used to access my property was the property of Congaree Associates.

7. I never believed that I owned the southern strip of land referenced as the "50' Road" or acquired an easement to use it. I never used it with the intent of dispossessing Congaree Associates of its property. No express or implied easement was ever given to me, and I did not give one to anyone else.

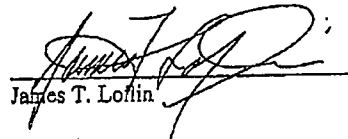
8. On January 8, 1990, I conveyed the property to my wife Annette Loflin. A copy of the deed transferring title from me to Annette, dated January 8, 1990, filed in the Office of the Register of Mesne Conveyances for Lexington County in Book 1576 at Page 104 on May 2, 1990 is attached hereto as Exhibit C.

9. I never had an easement regarding the property, and I never gave an easement regarding the property.

10. On August 27, 1998, Annette conveyed the property to Mark A. Balser by virtue of a deed recorded in the Office of the Register of Mesne Conveyances for Lexington County in Book 4909 at Page 136 on October 16, 1998.

11. Annette never had an easement regarding the property, and she never gave an easement regarding the property to Mr. Balser.

FURTHER AFFIANT SAYETH NOT


James T. Loflin

Sworn to before me this 27 day
of December, 2010

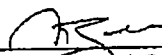

Notary Public for South Carolina
My Commission Expires: 12-15-15

EXHIBIT A

YULE IS AT THE MOUNTAIN

W. C. Gentry by _____

WITNESSES BY THESE PRESENTS, the Congress, Associates, & House of Carolina,

to be paid in full for and to the order of the undersigned, the sum of \$7800.00 (Seventy Eight Hundred and 00/100 Dollars)

It is paid by SPENCE V. LOVELL, the receipt of which is hereby acknowledged,
in the State of MASSACHUSETTS, this 10th day of SEPTEMBER, 1911, at NEW BEDFORD, in said State, all and singular the said

JAMES F. LOYD, HIS HEIRS AND ASSIGNS:

[illegible]

being a portion of the property conveyed to Congame Associates by deed of 1974, as shown recorded on November 6, 1974 in the said

[illegible]

ED

1944

grantee address: 520 Madison St.
San Francisco, Calif 94102

...and sometimes in the mid stream before...

To HAVE and TO HOLD all and singular the premises where mentioned unto the said

John and Arthur Weaver

And granted the survey was taken in an unbroken
wilderness, to which and water depend all and shape the old frames into the old
J. H. G. Loflin, told

Under and Article, respectively, and the successors & assigns
of the undersigned hereby claim, or by their heirs, assigns, executors,
and administrators, all right and title in and to the said invention, as hereinafter described.

Witness my hand and seal this 1st day of September, 1907.

WITNESS his hand, and seal the 11th day of the month of August 1881.

CONGARD ASSOCIATES, A SOUTH CAROLIA
LIMITED PARTNERSHIP, (FSA)

BY PAUL V. ENESE (1044)

1001 88 PAGE: 88

EXHIBIT B

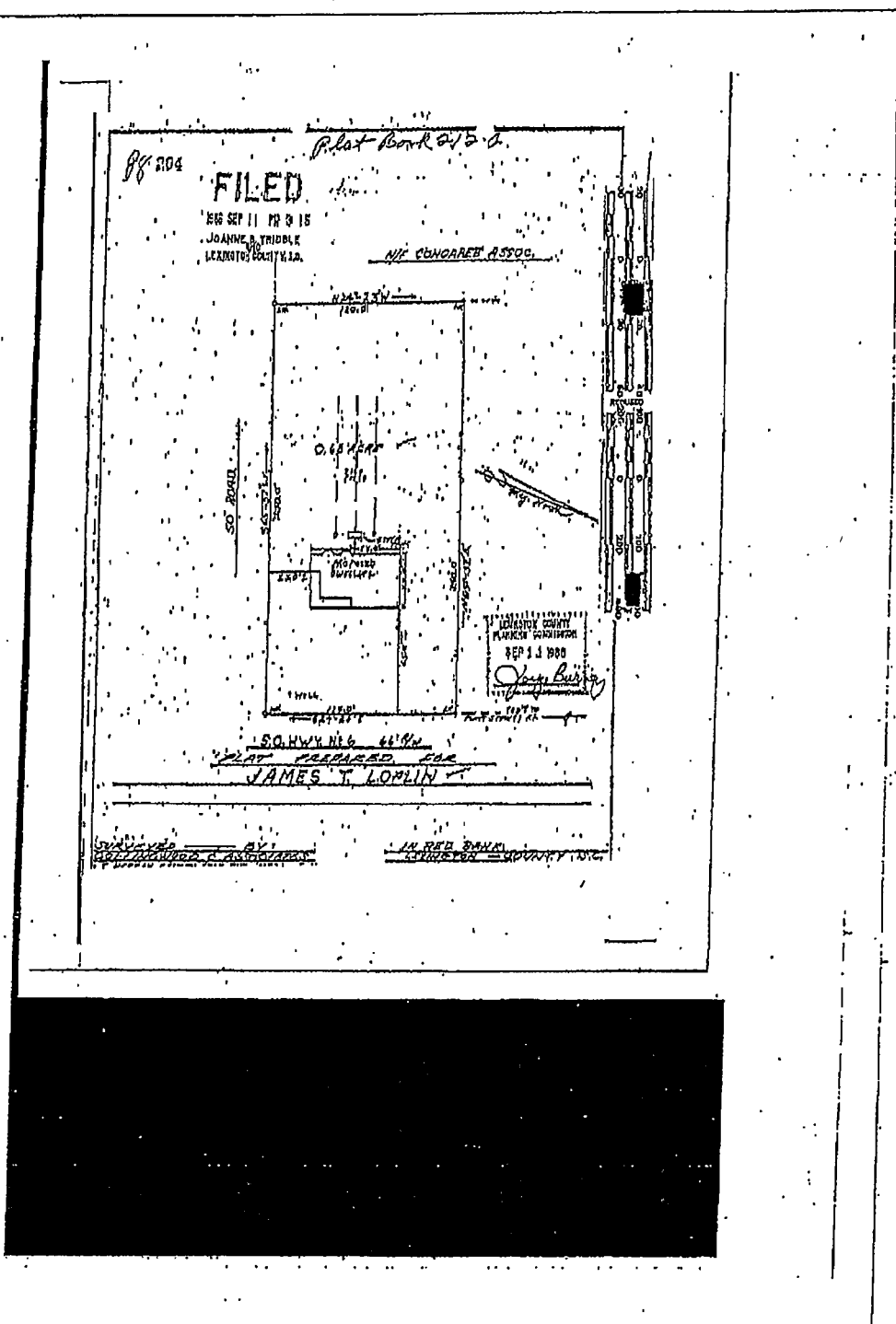


EXHIBIT C

0072

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT
David R. Gooldy, 2011 JAN 31 2 4:06 Civil Action No. 10-CP-32-0460

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

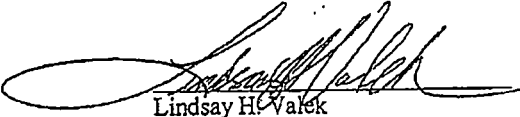
vs.

The Storage Center - Platt Springs, LLC,
Defendant.

CERTIFICATE OF SERVICE

I, Lindsay H. Valek, Paralegal to the law offices of Sowell Gray Stepp & Laffitte, LLC,
do hereby certify that I have caused the foregoing Defendant's Motion for Summary
Judgment to be served upon the following parties at the following addresses via United States
Postal Service, Postage Pre-Paid:

James Randall Davis, Esquire
Nicholson, Davis, Frawley, Anderson and Ayer, LLC
Post Office Box 489
Lexington, SC 29071


Lindsay H. Valek

This 18 Day of January, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
David R. Gooldy

Plaintiff,

vs.

The Storage Center - Platt Springs, LLC,

[X] Defendants.

Check box above indicating submitting party

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT
Civil Action No. 10-CP-32-0460

COPY

**MOTION AND OTHER INFORMATION FORM
AND COVER SHEET**

<u>name, SC Bar no. and address of plaintiff's attorney</u> James Randall Davis, Esquire Nicholson, Davis, Frawley, Anderson and Ayer, LLC 140 East Main Street Post Office Box 489 Lexington, SC 29071 P 359-2512 F 359-7478		<u>name, SC Bar no. and address of defendant's attorney</u> Robert E. Stepp, Esquire - SC Bar #5335 Bess J. DuRant, Esquire - SC BAR #77920 Sowell Gray Stepp & Laffitte, LLC 1310 Gadsden Street (29201) Post Office Box 11449 Columbia, South Carolina 29211 Telephone: (803) 929-1400 Facsimile: (803) 929-0336 Email: rstepp@sowellgray.com bdurant@sowellgray.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Defendant's Motion Pursuant to Rule 59(e), SCRPC Estimated Time Needed: 1 Hour Court Reporter Needed: YES ☒ NO ☐			
SECTION II: Motion Type ☐ Written motion attached ☐ Form Motion: I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff ☐ Defendant Date Submitted _____			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 (check reason) ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____ DATE FILED _____			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	IN THE ELEVENTH JUDICIAL CIRCUIT
David R. Gooldy,	)	Civil Action No. 10-CP-32-0460
	)	
Plaintiff,	)	
	)	DEFENDANT'S MOTION PURSUANT
vs.	)	TO RULE 59(e), SCRPC
	)	
The Storage Center – Platt Springs, LLC,	)	
	)	
Defendant.	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant The Storage Center – Platt Springs, LLC ("The Storage Center") hereby moves for an Order altering and amending the Court's Order, dated July 29, 2013 and filed August 1, 2013. Defendant received written notice of the entry of this Court's Order via an email from the Court on August 2, 2013. The grounds for this Motion are as follows:¹

1. The Court erred in finding that the "deed to the Plaintiff's property referenced a plat which showed a fifty (50') foot road abutting Plaintiff's property on the southern side and on the east by S.C. Highway 6." (Order 2.) The plat did not show a road. Rather, it contained a notation outside of the boundary of the surveyed property that said "50' road," but did not contain any survey of the road or indicate its boundaries or its beginning point or ending point. The Order should be amended and altered to reflect that the plat did not show a road.

¹ This motion only addresses issues that were raised by Defendant, but which appear not to have been addressed in the Court's Order. *Elam v. S.C. Dep't of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 780 (2004) (holding that "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review" (emphasis in original)). Defendant does not waive its right to seek appellate review with respect to other issues that Defendant believes are erroneously decided in the Order.

2. To the extent the Order implies that Gooldy's only access to his property was the property at issue, this Order should be amended and altered to reflect that Gooldy had other means to access his property. (See Order 2.)

3. The Court erred in finding and concluding that "Plaintiff's property was subdivided from a larger tract owned by Congaree." (Order 3.) Plaintiff's property was not subdivided from a larger tract. It was conveyed out of a larger tract, but the conveyance did not create a subdivision with lots, streets or roads. The Order should be altered and amended to remove any findings or conclusions that Plaintiff's parcel was part of a subdivision.

4. The Court erred in finding and concluding that "Plaintiff's deed is in the chain-of-title of the Defendant's property. (Trial Exhibit Plaintiff's 11)" and that Defendant is charged with constructive notice of the deed (Order 3, 9.) While the deed to Plaintiff constitutes a conveyance out of Defendant's grantor, the property conveyed is not part of what Defendants acquired and the deed is not therefore part of the chain of title of the land currently owned by Defendant.

5. The Court erred in relying on the preliminary, unrecorded plat of Westchester Phase II. (Order 4-5.) The submission of the proposed plat to the Lexington County Planning Commission is of no legal significance with respect to the proposed but unbuilt development, and did not create any rights in any party to any portion of the property that was the subject of the proposed development. The submission and preliminary approval of the plat did no obligate Congaree Associates in any way to build a road or recognize any rights that might have existed had the plat ever been recorded and the subdivision built.

6. The Court erred in finding and concluding that Robert Collingwood, a surveyor, prepared the deed from Congaree Associates to James Loflin. (Order 5.) There is no evidence establishing that he did, and the uncontroverted evidence is that attorney Gerald D. Jowers was the closing attorney for Loflin. (See Pl.'s Ex. 11.) The Order should be altered and amended to reflect that Collingwood did not prepare the deed.

7. The Order implies that Charles Meeler was qualified as an expert witness for Defendant. Specifically the Order provides as follows:

Defendant's expert witness surveyors testified that there were surveys done by Surveyor Collingwood in the same area as the existing property which did not show the road in question. (Trial Tr. (Meeler) 166-167). The same expert witness surveyors found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. (Trial Tr. (Meeler) 165:13-22).

(Order 6.) Defendant, however, only had one expert witness – Rosser Baxter. Defendant did not offer Meeler as an expert witness, and therefore, he was never qualified. The Order should be altered and amended to reflect that Meeler was not an expert witness for Defendant.

8. The Court erred in stating one of the legal issues to be decided in this case as "Does Plaintiff have easement rights in the fifty (50') foot road which abuts the southern side of his property" (Order 7.) No such road has ever existed, and the Order should be altered and amended to reflect as such.

9. The Court erred in relying on *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975) and similar cases (See Order 8.) Unlike the present matter, these cases involve subdivisions. Moreover, one of the basic tenets of this principle of subdivision law is that an easement over platted and developed roads are created *only* when the developer intend to create the easement. In other words, the law

regarding subdivision deeds referencing plats is only a presumption, which can be overcome when the developers did not intend to create such easements. *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 93, 659 S.E.2d 151, 154-55 (2008) (holding that mere reference to plat in deed was insufficient to create presumption that grantors intended to convey easement over nearby road). In *Inlet Harbour*, the Court expressly noted that "the rule applied in *Blue Ridge* is nothing more than a presumption" that can be overcome by the developer's intent. *Id.* Here, Congaree Associates never intended to create an easement, and therefore, this Court should alter and amend its Order to conclude that there is no easement.

10. This Court erred in relying on *Rushing v. Sellers*, 81 S.E.2d 281 (1954) stating that it provides "that when a road is called for a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road on the face of the deed or plat." (Order 8.) There is no evidence that Congaree Associates intended to convey an additional 25 feet of property to Loflin and the plat prepared for Loflin clearly shows the boundaries of the property being conveyed, which does not include any portion of the land that is alleged to be a road. Moreover, Plaintiff has never made a claim to title to that property.

11. This Court erred in concluding that "the Plaintiff's legal description unambiguously and clearly described the conveyed property by referencing a plat which shows the property bordered on the southern side by a fifty (50') road." (Order 8.) No such road exists, and therefore, this Order should be altered and amended to reflect that no road has ever existed.

12. The Court erred by failing to find and conclude that the plat referenced in the deeds in Plaintiff's chain of title ("Loflin Plat") only conveyed the property within the boundary lines of the surveyed property. The Court is bound by *Lancaster v. Smithco, Inc.*, 246 S.C 464, 144 S.E.2d 209 (1965) which provides that a deed that references a plat for the purpose of describing the property being conveyed only incorporates the plat to show the boundaries, metes, courses, and distances of the property being conveyed. Under *Lancaster*, easements within or outside of the boundary lines are not incorporated into the deed, unless the grantor intended to convey such easements.

13. The Court erred in concluding that the conveyance of an individual lot out of a larger tract constitutes a subdivision. The Loflin Plat is not a subdivision plat. Black's Law Dictionary defines subdivision map as "[a] map that shows how a parcel of land is to be divided into smaller lots, and generally showing the layout and utilities." *Black's Law Dictionary* 1192 (8th ed. 2005) The Loflin Plat is a plat of *only one lot*. It is not a survey of any other lots or parcels. Because the Loflin Plat is an individual lot plat and not a subdivision plat, the Order should be altered and amended.

14. The Court erred in finding and concluding that Congaree Associates intended to create and grant an easement that ran with the land when the uncontroverted evidence is to the contrary, including, but not limited to (1) the uncontroverted testimony of Carol McGee, who was the principal of Congaree Associates who testified without contradiction from any source that Congaree Associates did not intend to create and grant such an easement by referencing the Loflin plat; (2) subsequent recorded plats of the

subject property prepared for Congaree Associates that do not show any road, and (3) the fact that no road was ever built and or has ever existed.

15. The Court erred in holding that *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965) does not bind this Court because the present case does not involve a claim for breach of the general warranty in a deed. *Lancaster* is not limited to such claims on its face. Moreover, in *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006), the Court of Appeals relied on *Lancaster* to hold that the parties to a deed did not intend to incorporate a right of way depicted on a plat that was incorporated into the deed. *Bennett*, 370 S.C. at 593-95, 635 S.E.2d at 657-58. *Bennett* is therefore on all fours with the present case, and its holding shows that *Lancaster* is controlling law. In *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211, the Court noted that "[t]he only reference in the deed in th[e] case to the plat was in connection with the description of the lot," and then held that the reference to the recorded plat made it a part of the deed only for the purpose of showing the boundaries, metes, courses and distances of the property conveyed, and not for the purpose of establishing a right of way. In the present case, the only reference in the deed to the Loflin Plat was in connection with the description of the lot. Therefore, the Loflin Plat became part of the deed solely for the purpose of showing the boundaries, metes, courses, and distances of the parcel presently owned by Gooldy. Therefore, the 50' Road notation on the Loflin Plat did not become part of the deed as a matter of law.

16. The Court erred in finding and concluding that Defendant did not rebut any presumption of an implied easement. Even if this Court could ignore *Lancaster* and look to encumbrances outside the boundary lines on a plat as evidence of intent to create

an easement, the 50' Road notation, at best, only creates a rebuttable presumption of intent. *See, e.g., Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 93, 659 S.E.2d 151, 154-55 (2008) (holding that mere reference to plat in deed was insufficient to create presumption that grantors intended to convey easement over nearby road); *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965). This presumption was completely overcome by Carroll McGee's uncontradicted testimony, the subsequent plats that showed no road, and the fact that no road has ever existed.

17. The Order erroneously provides that "the court denied both Plaintiff's and Defendant's Motions for Non-suit and Directed Verdict." (Order 1.) This Court, however, granted Defendant's Motion for Directed Verdict with respect to Gooldy's claim for easement by prescription because Gooldy failed to establish that use was adverse or under a claim of right for twenty years. (Trial Tr. 109:3 - 119:19.) The Order should be altered and amended to reflect this Court's granting of Defendant's Motion.

18. To the extent the Order implies that was actually built, Westchester Phase II began, it should be altered and amended to reflect that it did not. Specifically, the Order provides as follows:

Even looking beyond the four corners of the deed as to intent, the intent to dedicate the road in question for use by the grantee is based on the evidence that: . . . (c) the surveyor who prepared the plat was the surveyor who had done previous work for Congaree, knew the history on [sic] the road, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II

.....
(Order 13-14 (emphasis added)) The uncontroverted evidence is that Congaree Associates never recorded any plat creating Westchester II, and never constructed any part of Westchester Phase II because of its cost. The Order should be altered and

amended to the extent that "creation" of Westchester Phase II implies that Congaree Associates developed the subdivision.

19. The Court erred in finding and concluding the following: "The same surveyor, Collingwood, placed the pins in the ground along the road in question for both lots (Lot 13 of Phase I of Westchester Subdivision and the Loflin/Plaintiff's lot) so that the fifty (50') foot road is bounded by both lots. The eastern side of the fifty (50') foot road in question is bounded by S.C. Highway 6. The Loflin/Plaintiff's plat indicates a dotted line running west which gives indication that the road in question is to continue." (Order 12) There are no facts in the record to support the factual findings regarding the staking of the road, and no evidence from which the surveyor's intent in referencing the road can be inferred.

20. The Court erred in finding and concluding (or implying) that Congaree was under an obligation to develop and construct a road because it submitted a proposed plat to Lexington County Planning Commission. The submission of a preliminary plat to the Planning Commission creates no such obligation as matter of law. Similarly, there is no legal obligation to submit a letter to the Commission informing it that Congaree Associates would not construct the subdivision, and it was error for the Court to cite Congaree's failure to do so as evidence of an intention to create a road.

21. The Court erred in awarding punitive damages because there was no evidence that permitted to the Court to consider the necessary and appropriate factors in setting the amount of such an award.

22. The Court erred in awarding actual damages for lost income when the evidence does not support the calculation of that award.

For the above reasons, Defendant respectfully requests that this Court reconsider
and/or alter and amend its Order dated July 29, 2013 and filed August 1, 2013.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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Columbia, South Carolina
August 12, 2013

FILED

2013 AUG 12 3 4 03

CLERK OF COURT
JUDICIAL BRANCH
COLUMBIA, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	IN THE ELEVENTH JUDICIAL CIRCUIT
David R. Gooldy,	)	Civil Action No. 10-CP-32-0460
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
The Storage Center – Platt Springs, LLC,	)	
	)	
Defendant.	)	

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant The Storage Center – Platt Springs, LLC, do hereby certify that I have served the foregoing documents in this action upon the following by courier to the following addresses:

Pleadings: Defendant's Motion Pursuant to Rule 59(e), SCRCF

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August 12, 2013
Columbia, South Carolina

Valerie N. Hampton
Valerie N. Hampton
FILED
2013 AUG 12 2 46 03
CLERK OF COURT
JUDICIAL CIRCUIT
ELEVENTH

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

DAVID R. GOOLDY,

Plaintiff,

vs. CIVIL ACTION NO.: 10-CP-32-0460

THE STORAGE CENTER - PLATT
SPRINGS, LLC,

Defendant.

HEARING BEFORE THE HONORABLE JAMES O. SPENCE

DATE: October 25, 2012

TIME: 9:00 A.M.

LOCATION: Lexington County Master-In-Equity
205 East Main Street, Suite 204
Lexington, SC

REPORTED BY: WANDA K. CECIL
Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We're here on Gooldy versus
2 The Storage Center. It's Case 2010-CP-32-00460
3 pursuant to an order of record by Judge Keesley
4 dated 4/26/2012. Attorney for plaintiff is Mr.
5 Randy Davis. Attorneys for defendant are Mr. Stepp
6 and Ms. DuRant. I believe we're here on a disputed
7 easement case and I would like each counsel to give
8 a very brief opening.

9 Mr. Davis.

10 MR. DAVIS: Your Honor, may it please
11 the Court, Randy Davis for the plaintiff. This is
12 the plaintiff, Mr. Gooldy; Nicole Price, who is my
13 paralegal. This suit was filed in Circuit Court of
14 Lexington County in February of 2010. It is an
15 easement dispute. Dr. Gooldy bought a property on
16 Highway Number 6 in Lexington County in 2002. The
17 deed into him conveyed him a .68-acre piece of
18 property with a structure on it, which was going to
19 be used as his chiropractic office. He is a
20 chiropractor by profession. Again, he's been
21 there since 2002.

22 That deed into him in 2002 referenced a
23 plat, which will be introduced into evidence, along
24 with his deed and, obviously, the survey of the
25 plat. The plat was referenced in the deed and, in

1 our opinion, was incorporated into the legal
2 description. And on that plat, there is a reference
3 to the property fronting Highway Number 6; but also,
4 on the southern side of the property, there was
5 referenced a 50-foot road. The chain of title to
6 that piece of property goes back to Congaree
7 Associates, which was a limited partnership. And
8 the complete chain of title for 20 years has the
9 same legal description and references the same plat.
10 Again, the plat referenced and incorporated into the
11 deed shows, on the southern side, a 50-foot road.

12 It is our position based on case law
13 that by that deed being conveyed by that grantor
14 obviously incorporated what was on that plat into
15 his conveyance. And when the grantor executed the
16 deed referencing that plat, that showed an intent to
17 dedicate that property where the 50-foot road area
18 is. That by incorporating that plat into the deed
19 that showed intent to dedicate that as a private
20 easement. And recording of that plat, which was
21 done, showed that that was the intent to dedicate.
22 So we believe that the plaintiff received the
23 benefits of having a private easement on that road
24 which abuts on the southern side.

25 Secondly, we believe by the theory of

1 easement by -- and we believe that is easement by.
2 implication is what it is. Also, by the theory of
3 easement by estoppel, we believe that the subsequent
4 grantee, meaning Dr. Gooldy, has the protection of
5 the public records in that the chain of title to
6 that property shows that there was in each deed that
7 same plat referencing that same road. And that
8 subsequent grantee has the protection of the
9 recording statute, that he bought it with that
10 easement right because the chain of title
11 established that.

12 And it would unfair and the defendant
13 should be estopped, because his chain of title comes
14 out of the same source, should be estopped at this
15 point trying to change what the grantor did when he
16 did it. The grantor being the same grantor for both

17 plaintiff and defendant, trying to change what was
18 done which was to create an access road for the
19 plaintiff. This is his access to the property.
20 This is what he has legally and was there when he
21 bought the property in 2002 and what has been used.
22 And the defendant has obstructed and closed off that
23 access where he can't use it and it's been that way
24 since the Summer or Spring of 2009.

25 We're seeking an order having the Court

1 recognize this easement by implication or estoppel.
 2 Number 2, prevent the defendant from obstructing
 3 this non-exclusive easement. Number 3, actual
 4 damages and punitive damages for the -- actual being
 5 the costs of having to put a replacement road in and
 6 the loss of profit in his chiropractic business, as
 7 well as damages for certain behaviors of the
 8 defendant in this matter. That basically is a
 9 summary of where we are.

10 THE COURT: Thank you.

11 MR. STEPP: May it please the Court?

12 THE COURT: Mr. Stepp.

13 MR. STEPP: Good morning, Your Honor.

14 I'm Bobby Stepp and this is Beth DuRant from my
 15 office and we represent the defendant, Storage
 16 Center, LLC. And right behind me is Chris Puckett.
 17 He's one of the principals of The Storage Center.
 18 He's with us today. And we appreciate the
 19 opportunity to be here to tell the Court our side of
 20 this story.

21 As Mr. Davis says, this is a dispute
 22 about whether the plaintiff, Dr. Gooldy, has
 23 acquired any right to use a portion of the property
 24 owned by The Storage Center for ingress, egress,
 25 parking, or for any other purposes. Now, there's

1 absolutely no dispute in this case about title to
2 the property. And if I can show the Court. This
3 is -- put this over here so you can see it for
4 reference. This is the property we're talking
5 about. This center piece here is Dr. Gooldy's
6 property and these two, what I'll call legs on
7 either side, are a portion of this property that's
8 owned by The Storage Center. And there's no
9 question about title to this piece of property, but
10 the contention of Dr. Gooldy is that he has acquired
11 the right to use this portion of The Storage Center
12 property for ingress, egress and, as you can see
13 from this photograph, there's actually cars parked
14 there. All right. And that's the issue that is
15 presented to the Court.

16 The history is, of course, very much as
17 Mr. Davis points out that all this property was
18 previously owned by Congaree Associates. The piece
19 that's Dr. Gooldy's now was conveyed out of a larger
20 piece by Congaree Associates in 1986 to a fellow
21 named James Loflin. And we're going to call him as
22 a witness and the Court will hear what he has to say
23 about that. And there was, as a part of that
24 conveyance, this plat that Mr. Davis referred to.
25 And you're going to see this a lot. This was the

1 plat that was prepared for Mr. Loflin in 1986 by Mr.
2 Collingwood that shows the property that was being
3 conveyed to Mr. Loflin, which has now come down to
4 Dr. Gooldy. And here's this magical designation,
5 50-foot road on the side of that. Not a survey of a
6 road, but just the language, 50-foot road.

7 Now, we're going to present testimony
8 about how that language came to be on that plat; but
9 the evidence is going to show Your Honor that there
10 is no 50-foot road. There never has been a 50-foot
11 road. There was never any permission given by
12 Congaree Associates to Mr. Loflin or to anybody else
13 to use that portion of the leg for ingress or
14 egress. And most importantly, there's going to be
15 testimony from Mr. McGee, one of the partners of
16 Congaree Associates, that there was never any
17 intention by Congaree Associates to create any
18 easement rights in Mr. Loflin or in any subsequent
19 title holder to the property.

20 We're going to show you, and this may
21 depend a little bit upon Mr. Collingwood's
22 availability; but we'll show you how this 50-foot
23 road language came to be on the plat. Essentially,
24 our view is it was a mistake. Once upon a time,
25 Congaree Associates intended to develop this

1 property over here to the south of Dr. Gooldy's
2 property as a residential subdivision and
3 contemplated putting a 50-foot access road for that
4 subdivision, constructing it; but they never
5 recorded a plat that showed the road. They never
6 built the subdivision. They did submit some
7 conceptual plans to Lexington County. Lexington
8 said, in order to get the plat approval, you've got
9 to do X, Y and Z. They didn't do X, Y and Z. And
10 they subsequently reconfigured the property and did
11 something completely different.

12 But Mr. Collingwood had done the
13 conceptual design for the subdivision and so he had
14 it in his head that there was going to be a 50-foot
15 road; but in reality, there never was a road built.
16 There never was a plat recorded that shows a 50-foot
17 road. There is no survey recorded anywhere that
18 shows the beginning, ending, width, dimensions, and
19 locations of any 50-foot road. So the issue is
20 whether Dr. Gooldy has acquired the right to use any
21 of that under any of the theories that he puts
22 forward in this case and we'll talk about them a
23 little bit.

24 First is easement by implication or
25 estoppel. And as Mr. Davis points out, this is

1 derived in part on the fact that this language
2 appears on this plat. And, Your Honor, we were here
3 on summary judgment some time ago and you and I
4 talked about that and we're all aware that there is
5 some law. We all walk around thinking, well, gosh,
6 you know, if you convey property by reference to a
7 plat and a plat shows a road, then the purchaser of
8 the property acquires rights to use the road.
9 That's kind of one of those rules of law you learn
10 somewhere in your three years in law school.

11 But when you look harder at that and
12 what we will show you at the end of the day, that
13 rule is a lot narrower than you might believe it to
14 be. And in fact, the law is that that rule only
15 applies where there has been a subdivision of
16 property and multiple lots are shown within the
17 boundary of the survey and are then conveyed based
18 upon the survey itself. And that's not the case
19 here. This is not a subdivision plat. This is
20 simply a plat of a single piece of property. And
21 the fact that it shows a road outside the dimensions
22 of the property does not create a road.

23 We're going to call an expert survey
24 witness, who is going to comment on that as well and
25 talk to Your Honor about what the rules of the road

1 are for surveyors with respect to what they show
2 outside of the boundaries of the property. So the
3 mere fact that there is some language on this plat
4 that shows a road is not sufficient to create a road
5 or create any access rights with respect to the
6 property that Dr. Gooldy now owns.

7 In fact, the law ultimately we will show
8 you -- and, by the way, I've got a trial brief for
9 you. I've sent it to Mr. Davis earlier
10 electronically, but I know he wants an autographed
11 copy. And here's the original.

12 THE COURT: Thank you.

13 MR. STEPP: We cited law in here that
14 we'll come back to later; but for purposes of this
15 brief opening, I just want to remind the Court that
16 the creation of an easement is a question of intent.
17 And at best, at best, the designation of a road on a
18 plat simply creates a rebuttable presumption. And I
19 don't even think, in this instance, this plat is
20 sufficient to create that because it's not really a
21 plat of a road, which we'll come back to. But at
22 best, it's a rebuttable presumption. And we're
23 going to call Mr. McGee as a witness and he's going
24 to testify, we believe, that there never was any
25 intention to create the road. No intention to

1 create an easement and no intention to vest any
2 rights in the owner of this other parcel.

3 With respect to an easement by
4 implication or by estoppel. The estoppel question,
5 I think is answered. Mr. Davis argues that Dr.
6 Gooldy has the benefit of the public record. Well,
7 the public record, we'll show you, does not contain
8 any survey of this road. And, in fact, it contains
9 multiple surveys of this property that do not show
10 any road. So we'll address that factually.

11 With respect to a possible easement by
12 prescription. Of course, Your Honor knows that in
13 order to obtain an easement by prescription, the
14 claimant has to show for a period of 20 years either
15 a claim under -- possession under a claim of right
16 or possession that's adverse and hostile to the
17 owner. And we are going to present evidence that
18 any use prior to the use of Dr. Gooldy, in other
19 words, from Mr. Loflin and his successors, was not
20 hostile and was not under a claim of right. And
21 because Dr. Gooldy's use, even if that's deemed to
22 be hostile or under a claim, hasn't proceeded for 20
23 years. There's not enough time for an easement by
24 prescription to have arisen. So we're going to
25 present evidence that we think will compel the

1 conclusion that no easement by prescription is
2 possible.

3 So essentially that's where we're headed
4 on our side of the case, Your Honor. We don't
5 think, when you've heard the testimony, you've got a
6 full record, you're going to be able to conclude
7 that any right was intended to be created and that
8 there's been no use from the Loflin side,
9 Loflin/Gooldy side of the transaction, there's been
10 no use that would create an easement by implication,
11 prescription or estoppel. So thank you.

12 THE COURT: Thank you.

13 MR. DAVIS: Your Honor, would it be
14 appropriate if I could just briefly respond to
15 several things that Mr. Stepp said and he can
16 respond to what I'm about to say? I think it would
17 help the Court in regards to -- when he takes the
18 testimony here, I think it would help the Court see
19 what's going on here as to this easement.

20 THE COURT: All right. Just very, very
21 briefly.

22 MR. DAVIS: Okay. We will present to
23 you that there is law where you don't have to have a
24 subdivision for the law that I'm talking about to
25 apply. And I will hand those -- I will hand the

1 cases up. It's Billings versus McDaniel and I'll
2 hand that one up. And there's a second case, which
3 I'll give the Court at the appropriate time, where
4 you do not have to have the subdivision requirement
5 in regards to incorporating the road into a deed,
6 Number 1.

7 Number 2, on the question of the intent
8 of the parties. In this circumstance, when Congaree
9 Associates conveyed the property to Mr. Loflin,
10 which is our chain of title, his intent is expressed
11 by his deed. His deed, which he signed, gave title
12 to Mr. Loflin, who is our prior owner, and he
13 expressed his specific intent to incorporate that
14 road. And there was a road approved by the County.
15 And there was a road approved by the County in the
16 spot where this road is that we're talking about.
17 And this was back in 1985-1986 when the deed was
18 done by Mr. McGee. He can't vary his intent now
19 based on what he did in 1985-1986.

20 The chain of title to my client's
21 property and the chain of title to the defendant's
22 property would have my client's deed and all the
23 deeds in my chain of title to the defendant's
24 property. If they had looked, they would have seen
25 that our deed, which was a deed out, would have

1 shown this particular road in question.

2 THE COURT: All right. Thank you.

3 MR. STEPP: Just briefly, Your Honor.

4 On this point about adoption, let me -- and we've
5 cited these cases in our trial brief. But the law
6 is very clear that the incorporation of a plat into
7 a deed is only for the purpose of showing the
8 description of the property conveyed. And we've
9 cited two cases from South Carolina that explicitly
10 so hold. Lancaster versus Smith Co. and Bellamy
11 versus Bellamy.

12 The Bellamy decision reads, at this
13 time, we observed that where a deed describes land
14 as if it is shown on a plat, the plat becomes part
15 of the deed for the purposes of showing the
16 boundary, metes, courses, and distances of the
17 property conveyed; but that's all it is. And Smith
18 versus Lancaster is even more explicit where it says
19 that a deed is not an index of encumbrances and a
20 plat for the descriptive purposes does not
21 incorporate a notation thereon as to an easement
22 held by a third party so as to exclude such easement
23 from the covenant against encumbrances. So this
24 notion about incorporation into the deed is only for
25 the purpose of what was being conveyed and not for

1 the purposes outside of what was being conveyed.
2 And the law is very clear in South Carolina, so we
3 can -- we'll deal with that later.

4 The second thing I just wanted to say is
5 that there is no easement by necessity here.
6 There's access to Dr. Gooldy's property directly
7 from Highway 6. So it is not necessary for him to
8 use either side -- access from either side of the
9 property in order to obtain access.

10 THE COURT: I don't know that that's
11 been pled.

12 MR. DAVIS: It has not.

13 THE COURT: I don't think --

14 MR. DAVIS: It has not.

15 THE COURT: -- easement by necessity has
16 been pled.

17 MR. STEPP: I'm sorry. What's not been
18 pled?

19 THE COURT: I don't think easement by
20 necessity has been --

21 MR. DAVIS: Has not.

22 THE COURT: -- pled or argued.

23 MR. DAVIS: That's fine. Mr. Davis
24 mentioned it. I just wanted to say something

25 THE COURT: Okay. All right. Thank

1 you.

2 MR. STEPP: Great.

3 THE COURT: All right. Mr. Davis, your
4 witness.

5 MR. DAVIS: Call Mr. David Gooldy.

6 THE COURT: Come forward and be sworn.

7 DAVID GOOLDY,
8 being first duly sworn, testified as follows:

9 THE BAILIFF: State your name and sit
10 down right there.

11 THE WITNESS: My name is David Richard
12 Gooldy.

13 EXAMINATION

14 BY MR. DAVIS:

15 Q. Dr. Gooldy, your full name again is
16 David --

17 A. Richard Gooldy.

18 Q. -- Gooldy? And your present home
19 address is what?

20 A. It's 808 Seabrook Court, Lexington,
21 South Carolina.

22 Q. All right. And how long have you lived
23 at that address?

24 A. Thirteen years.

25 Q. All right. And what is your profession?

1 A. I'm a chiropractor.

2 Q. And how long have you been a
3 chiropractor?

4 A. Sixteen years.

5 Q. And your undergraduate was where?

6 A. University of South Carolina.

7 Q. And you finished there when?

8 A. 1991.

9 Q. And your chiropractic training was
10 where?

11 A. Sherman College.

12 Q. Where is that located?

13 A. Spartanburg, South Carolina.

14 Q. So you would have started as a
15 chiropractor in what year?

16 A. 1995.

17 Q. And where has your practice been
18 located?

19 A. In Lexington County.

20 Q. Are you originally from Lexington
21 County?

22 A. Not originally, no.

23 Q. But you've been here a while?

24 A. Yes.

25 Q. Okay. The first place where your

1 chiropractic business was located was where?

2 A. It's in West Columbia, off of Platt
3 Springs Road. Actually rented a small space from
4 Dr. Young.

5 Q. Okay. And you eventually moved to the
6 property in question, which is on Highway Number 6;
7 is that correct?

8 A. That's correct.

9 Q. Okay. And when did you buy this
10 property?

11 A. January, February 2002.

12 Q. Two? Okay. And this property is
13 located on what major road?

14 A. Highway Number 6, South Lake Drive.

15 Q. And going from the courthouse, you would
16 go out Number 6, this direction, south of Lexington,
17 out past I-20?

18 A. Correct.

19 Q. And it's a short distance past I-20; is
20 that correct?

21 A. Approximately four miles, yes.

22 Q. Okay. And why did you buy that
23 particular piece of property?

24 A. The reason I needed to relocate was
25 because South Carolina Department of Transportation

1 was widening Platt Springs Road and it interfered
2 with my office down in West Columbia, took away the
3 parking and decreased the accessibility. So we were
4 looking for a place that was within the area that
5 would handle, you know, the in flow and out flow of
6 patients with relative ease. And the location was a
7 great spot.

8 Q. Okay. And how did you come about
9 finding that piece of property?

10 A. Just out, out about driving.

11 Q. Okay. And was there a for sale sign on
12 the property?

13 A. There was.

14 Q. Okay. Are there any structures on the
15 property?

16 A. There is. It's a log home.

17 Q. Okay. Do you know what the property was
18 being used for at the time that you were looking to
19 buy it?

20 A. When I was looking, it was vacant at the
21 time.

22 Q. Okay. Do you know what it was used for
23 previously?

24 A. It had been a plant nursery.

25 MR. DAVIS: Okay. Mark that as

1 Plaintiff's 1.

2 (PLF. EXH. 1, Deed to Real Estate, was
3 marked for identification.)

4 BY MR. DAVIS:

5 Q. Dr. Gooldy, let me show you what's been
6 marked as Plaintiff's 1 and ask you to look at that.
7 And is that the deed into you for the property?

8 A. Yes, it is.

9 Q. Okay. And you said that was in 2002; is
10 that correct?

11 A. Yes.

12 Q. Okay. That is a recorded deed, is it
13 not?

14 A. It is.

15 Q. Okay. And would you look on the second
16 page and just confirm that the transaction date was
17 in 2002? Should be a --

18 A. Yes.

19 Q. Okay.

20 A. January 24th.

21 Q. All right. And looking back at the
22 front page, on what I'll call the legal description,
23 does it say what size piece of property it is in
24 that deed? Do you know it to be .68 acres?

25 A. Yes, I do.

1 Q. Okay. Is there a reference to a plat in
2 the legal description, where it says reference to a
3 plat? It would be in the legal description there.

4 A. I'm sorry. The copy is not that great,
5 so. . .

6 Q. (Indicating.)

7 A. Okay. Yes, it does.

8 Q. And it does reference a specific plat,
9 does it not?

10 A. It does.

11 Q. Okay. Before you --

12 Let me introduce that as Plaintiff's
13 Number 1.

14 MR. STEPP: No objection.

15 THE COURT: Without objection.

16 (PLF. EXH. 1 in evidence.)

17 THE COURT: I believe that's Record Book
18 6952 at Page 175, I think.

19 MR. DAVIS: Yes.

20 THE COURT: Thank you.

21 BY MR. DAVIS:

22 Q. Prior to purchasing the property, this
23 property, did you have the benefit of this plat
24 that's reference in Plaintiff's Number 1?

25 A. I did.

1 MR. DAVIS: Okay. Two.

2 (PLF.. EXH. 2, Plat Prepared for James T.
3 Loflin, was marked for identification.)

4 BY MR. DAVIS:

5 Q. Referring again to Plaintiff's Number 2,
6 being the plat that's referenced in your deed, you
7 had the benefit of that plat; is that correct?

8 A. That is.

9 Q. How did you get that plat?

10 A. George Lander, who was the realtor.

11 Q. For the seller?

12 A. For the seller. Yes.

13 Q. Okay. And he gave you a copy of that
14 plat?

15 A. He did.

16 Q. Okay. You obviously looked at the plat
17 before you bought the property?

18 A. I did.

19 Q. Okay. The property fronts on Highway
20 Number 6; is that correct?

21 A. Yes.

22 Q. What was the -- what was the -- when you
23 looked at the property for the purchase of the
24 property, what was the access? How did you get to
25 the property?

1 A. There was an asphalt apron coming off of
2 Number 6 on the south side of the property into a
3 gravel area in which we accessed the property.

4 Q. Okay. Let me -- just to help the Court
5 a little bit, we've drawn --

6 Nicole, would you put that up there so
7 we can see that if we need to mark on it? It's our
8 drawing. I'm not going to introduce it.

9 MR. STEPP: You can probably use that
10 easel if you can clip it up there.

11 MS. PRICE: Thank you.

12 MR. DAVIS: We don't have a piece of
13 tape, do we?

14 MS. PRICE: It should stay.

15 MR. DAVIS: I'm going to tape it down
16 here.

17 Q. Dr. Gooldy, please step up here.

18 A. (Complying.)

19 Q. And stand off to one side or the other
20 so people can see what's going on here.

21 MR. STEPP: That's fine. If I may, I'll
22 just walk around.

23 MR. DAVIS: Yeah.

24 THE COURT: Absolutely.

25 BY MR. DAVIS:

1 Q. Okay. This is a rough drawing. This is
2 a drawing of your property that you bought; is that
3 correct?

4 A. It is.

5 Q. Okay. And it fronts on Highway Number
6 6?

7 A. Yes.

8 Q. Okay. The dwelling being the actual
9 structure when you bought the property?

10 A. Yes.

11 Q. Okay. The north side is on the
12 right-hand side?

13 A. Uh-huh.

14 Q. Okay. And the plat referenced the
15 50-foot road on the left-hand side?

16 A. Uh-huh.

17 Q. Okay. When you were testifying a moment
18 ago as to how you got to your property, when you --
19 when you went to buy it, what did you physically see
20 as the access to your property?

21 A. There was an asphalt that's -- area that
22 come off Number 6, through here. That had a
23 culvert, there's a ditch through here.

24 (Indicating.) And then it was gravel clear to the
25 back of the property.

1 Q. Okay. First thing is you said there was
2 a culvert and asphalt. Now, the culvert would be
3 what?

4 A. A concrete pipe.

5 Q. Right.

6 A. And --

7 Q. And where was it located?

8 A. Right there under the --

9 Q. Draw it on there.

10 A. It's actually right here. That's the
11 pipe there. Had rip-rap rock through here.

12 (Indicating.)

13 Q. Okay.

14 A. Of course along that ditch.

15 Q. And the pipe would be between the two
16 areas you've drawn; is that correct?

17 A. Yes.

18 Q. Paralleling Highway Number 6?

19 A. Paralleling with 6.

20 Q. Okay. And what was on top of the
21 culvert or the pipe?

22 A. It was asphalt.

23 Q. Okay. And where did it reach? From
24 where to where?

25 A. The exact footage, I'm not certain.

1 Q. Okay.

2 A. But it was what you would customarily
3 see if -- as, you know, coming off the road.

4 Q. Did it protrude into the 50-foot road
5 area?

6 A. It did.

7 Q. Okay. And after you crossed over the
8 asphalt area, what did you see then physically?

9 A. It was gravel all through here.
10 (Indicating.) There was a -- what I would call
11 hedge row. A stand, a small stand of trees between
12 this and the property next door. It was cleared all
13 the way back to the back.

14 Q. All right. On the property next door,
15 which would be to the left, what was over there?

16 A. There was a house.

17 Q. Okay.

18 A. It's Westchester Estates.

19 Q. Okay. And as you proceed over the
20 asphalt again, you said there was a gravel area?

21 A. Yes.

22 Q. Would you draw on there where the gravel
23 area was on this property when you looked to buy it?

24 A. Okay. The gravel came around the --

25 Q. Draw it from beginning to the end.

1 A. Okay. So it came around and around
2 behind the building and actually came back up to the
3 other side. So kind of like so. (Drawing.) Well,
4 sorry about that.

5 Q. Okay.

6 A. So all that was gravel through here.

7 Q. It was a gravel area? All right. And
8 on the north side of the property, right side it,
9 came back on to Highway 6?

10 A. Yes.

11 Q. Okay. Do you know the approximate width
12 as to that gravel -- the graveled area? If you
13 know.

14 A. Coming off Number 6?

15 Q. Starting on the left-hand side, the
16 south side and proceeding. Did it vary or was it
17 the same?

18 A. Yes, it did vary.

19 Q. Okay.

20 A. So --

21 Q. But it was gravel?

22 A. Yes.

23 Q. All right. Did the gravel --

24 MR. STEPP: Did you say it did vary or
25 did not vary?

1 THE WITNESS: It did vary.

2 MR. STEPP: It did vary? I'm sorry.

3 Thank you.

4 BY MR. DAVIS:

5 Q. Okay. On the south side, the left-hand
6 side, was the gravel area within what's been marked
7 as the 50-foot road area?

8 A. Yes.

9 Q. Okay. How would you describe, when you
10 say the 50 foot -- what's marked as a 50-foot road
11 area on that rough sketch?

12 A. Describe it?

13 Q. Yeah. How was it?

14 A. It just came -- it was -- it was flat.
15 I mean, it was -- it had been maintained and it went
16 to the far back of the property.

17 Q. Was it open? Was it open or was it --

18 A. It was open.

19 Q. Okay. And to the left of the open area,
20 was what again?

21 A. A small stand of trees and a house.

22 Q. Okay. Do you know the name of that
23 subdivision?

24 A. Westchester or Chester, something like
25 that.

1 Q. Okay. When you asked -- did you ask the
2 realtor as to access?

3 A. I did. I specifically --

4 Q. Don't tell me what he said, but what was
5 shown -- what was shown to you as access?

6 A. This area here. (Indicating.)

7 Q. Okay. And what could you do with that
8 area?

9 A. That I could enter in and out the
10 property through the area.

11 Q. Okay. Where was the parking on the
12 property at the time of purchase?

13 A. It was immediately to the right once you
14 came off of Number 6, over in this area through
15 here. (Indicating.)

16 Q. Okay. Any other parking area?

17 A. Also, there was some other over on this
18 side of the building. (Indicating.)

19 Q. Okay. And were there any other accesses
20 to the property besides that?

21 A. No.

22 Q. Okay. Were there any accesses that came
23 on the property within the 120 feet that the
24 property fronts on Number 6?

25 A. No, there wasn't.

1 Q. Okay. Step down.

2 A. Okay.

3 Q. When you bought the property, at closing
4 when you bought the property, what was your belief
5 as to what rights, if any, you had in that 50-foot
6 road area?

7 A. My belief at the time of purchase was
8 that was a -- was an access road, that I had
9 easement through there to my property back and forth
10 and that it went full the length of the -- of my
11 property.

12 Q. It went where?

13 A. The full length of my property.

14 Q. Okay. You did buy the property?

15 A. I did buy the property.

16 Q. And you established your chiropractic
17 practice there?

18 A. I did.

19 Q. Okay. From the time that you bought the
20 property in 2002 until you started having
21 difficulties with the defendant as to access over
22 the 50-foot road area, had anyone come to you and
23 questioned your right to use that access?

24 A. No.

25 Q. Did anybody from Congaree Associates

1 contact you about that access?

2 A. No.

3 Q. Did any surveyors --

4 A. No.

5 Q. -- contact you?

6 A. (Shaking head no.)

7 Q. Lawyers, realtors?

8 A. No.

9 Q. No one?

10 A. No one.

11 Q. So your first difficulty with access was
12 at some point when the defendant bought the abutting
13 property?

14 A. That's correct.

15 Q. Okay. And would it be fair to say that
16 the defendant's property he bought is kind of like a
17 horseshoe around your property, U shaped? He's on
18 both sides of you, in the back?

19 A. He does.

20 Q. Okay. So he's on the left where the
21 50-foot road is, he's on the right and, on both
22 sides, he'd have access to Number 6, and then he
23 owns the property behind you?

24 A. Yes.

25 Q. Okay. Now, what was your initial

1 contact from the defendant or any of his
2 representatives as to your use of that access area?

3 A. They had an attorney call my office one
4 afternoon asking me what right did I claim over the
5 area where the 50-foot road was. I expressed to him
6 that I claimed no ownership, but I reserved the
7 right of access and easement through there.

8 Q. Okay. Any further contact from the
9 lawyer or the law firm?

10 A. No.

11 Q. Okay. How about next as to. . .

12 A. I had two gentlemen from NAI/Avant.

13 Q. You said NAI/Avant?

14 A. Yeah. They came to my office one
15 afternoon and expressed to me that I had no right
16 access to my property and that they were looking to
17 do a shared access on the northern side of my
18 property with The Storage Center and that it would
19 so behoove me to come to an agreement with them so
20 that way this project could happen.

21 Q. These were realtors telling you that you
22 didn't have access?

23 A. Exactly.

24 Q. Okay. And who did they represent?

25 A. Storage Center.

1 Q. Okay. Did you hear any more from them?

2 A. On a few different occasions, they'd
3 come back with a different plat, different proposal,
4 that sort of thing, so there was -- there was some
5 history of communications with them.

6 Q. At that point, did anybody block your
7 access?

8 A. No.

9 Q. Meaning your access that was there when
10 you bought the property?

11 A. No.

12 Q. Okay. After the realtors talked to you,
13 who came next?

14 A. I actually spoke with Mr. Puckett on the
15 initial visit by them and he was --

16 Q. Initial visit by whom?

17 A. Robert Lapin and I'm thinking Mr. Kelly.
18 And I spoke with him on their cell phone and he was
19 expressing that -- the interest in what the project
20 that he were doing in the back and he gave me
21 somewhat of a 24-hour deadline to get back to him,
22 which I did.

23 Q. All right. Now, what do you mean by 24
24 hour -- now, who is this now?

25 A. That would be Mr. Puckett.

1 Q. Okay. The either owner or partial owner
2 of this business?

3 A. That's my belief. Yes.

4 Q. Okay. And what was the 24-hour
5 deadline?

6 A. Gave me 24 hours to pretty much think
7 about it and get back to him.

8 Q. As to what?

9 A. Doing a shared access with them.

10 Q. And the shared access would cause you
11 what problem, if any?

12 A. Would be parking issues, accessibility.

13 Q. Meaning the parking that you had on the
14 property?

15 A. Already established.

16 Q. And where was your property on --
17 parking on the property?

18 A. We were parking up front. Just the same
19 places where. . .

20 Q. It had been before?

21 A. Had been before.

22 Q. Okay. And how did your patients feel
23 about that parking?

24 MR. STEPP: Objection, Your Honor. That
25 would be hearsay.

1 THE COURT: Okay.

2 MR. DAVIS: Okay. Well, let me
3 rephrase.

4 THE COURT: That's sustained. That's
5 speculation.

6 MR. DAVIS: Let me rephrase that.

7 Q. Your parking was on the front?

8 A. It is.

9 Q. Where did your patients park?

10 A. They parked in those spaces. Well, not
11 designated spaces; but in those open areas, flat
12 areas in the front of the building.

13 Q. Okay. And how did they get into your
14 building from that parking area?

15 A. Via the sidewalks and the ramp in front.

16 Q. And the front door on your property?

17 A. Front door.

18 Q. Obviously, the front door was --

19 A. Eastern side. Right there.

20 (Indicating.)

21 Q. They weren't parking in the back?

22 A. No.

23 Q. Okay. And the 24-hour deadline, what
24 did he say was going to happen if you didn't meet
25 the 24-hour deadline?

1 A. He just kind of left it at that, said
2 they would have to proceed.

3 Q. Proceed with what?

4 A. Whatever they were going to do.

5 Q. I see. And what happened after that?

6 A. I didn't hear -- well, actually there
7 was some speculation about the accessibility from
8 that side. There was a -- someone, not exactly
9 sure, when I came to work Monday morning, someone
10 had taken orange tape and posted sticks and went
11 around the whole area of my property just on the
12 left side, didn't go across the front, kind of
13 almost in the crime scene-isk look.

14 Q. Now, on the sketch here, the orange tape
15 would have been where?

16 A. Just along the southern, western and
17 eastern boundaries.

18 Q. Show the Court where that tape would
19 have been?

20 A. Step in front here. Went all the way,
21 corners. (Drawing.) Just like so.

22 Q. Okay. So that really would be the
23 northern, the southern and the western boundaries?

24 A. Yes.

25 Q. Okay. Did anybody call you and tell you

1 they were going to tape around your property?

2 A. No, they did not.

3 Q. Okay. Was the tape actually on your
4 property or the adjoining property or where was it?

5 A. It was on the property line.

6 Q. Property line? And did anybody ever
7 admit to you that they put it up?

8 A. I don't believe, but I had mentioned it
9 to them. There was no denial that they had done it.

10 Q. You mentioned it to whom?

11 A. I believe The Storage Center.

12 Q. Okay. And did they ever respond whether
13 they did or did not?

14 A. There was no denial to it.

15 Q. But they didn't say, yes, I did it or,
16 no, I didn't?

17 A. Just kind of referenced where a fence
18 might go.

19 Q. Was any construction going on at the
20 property at that time --

21 A. No.

22 Q. -- that the orange tape went up?

23 A. No.

24 Q. Had any surveyors been out there that
25 you know about?

1 A. No.

2 Q. Or engineers that would have called your
3 office to confirm your neighbor using this -- doing
4 something to this property?

5 A. No.

6 Q. Okay. Did the orange tape stay up?

7 A. No. It came down.

8 Q. Okay. Anything else happen as to -- did
9 anything else happen after the orange tape incident?

10 A. I'm not exactly sure how much longer --
11 later after that, a gentleman entered my office and
12 he and his crew were going to put up a silt fence
13 along the property line and he wanted to give me
14 fair warning because it would block my patients'
15 ability and mine to get in and out.

16 Q. Okay. Let me go -- before we hit the
17 silt fence. On the orange tape, you said it was
18 here on the southern side; is that correct?

19 A. Yes.

20 Q. And the back and the northern side?

21 A. (Nodding head.)

22 Q. Would the orange tape, while it was up,
23 have blocked your patients to get to their parking?

24 A. Yes.

25 Q. Okay. On the silt fence, where was

1 the -- where was the silt fence going?

2 A. It was going to go along the same
3 parameters.

4 Q. That the orange tape was?

5 A. Yes.

6 Q. And there was a gentleman that came to
7 you on that one and asked you -- and said that
8 something was going to be done?

9 A. Yes.

10 Q. Okay. Did he say who he was
11 representing or he did not?

12 A. I can't -- I don't recall whether he
13 told he exactly who it was, but I called. I made a
14 phone call to --

15 Q. To who?

16 A. -- Mr. Lapin, with who I had had
17 contact, and I expressed to him that, if a silt
18 fence went up that afternoon, that I would not have
19 any further discussion with him or The Storage
20 Center concerning any possible negotiation.

21 Q. And did the silt fence go up?

22 A. It did not.

23 Q. Okay. Then Mr. Lapin was with?

24 A. NIA/Avant.

25 Q. Okay. It's your testimony you think

1 they were the realtors for Storage Center?

2 A. Yes.

3 Q. What happened next as to any potential
4 interference with your property?

5 A. The barricades went up in July of '09.

6 Q. '09? And when you say the barricades,
7 specifically what do you mean?

8 A. There were stainless steel posts put
9 into the ground with a cable blocking the entrance,
10 entrances which we were using for my property.

11 Q. Step up and show the Court where those
12 barriers were.

13 A. (Complying.) They were -- sorry. There
14 was a set that was put over here. (Indicating.)
15 They had no trespassing signs hanging down there,
16 also here. (Indicating.) No trespassing signs.

17 Q. Okay. Have a seat.

18 A. (Complying.)

19 Q. What did that do to your patient flow?

20 A. It disrupted it.

21 Q. How did your patients get to your
22 property?

23 A. We had to do a makeshift access across
24 my grass, so that way they could get to the back and
25 park.

1 MR. DAVIS: Mark that.

2 (PLF. EXH. 3, Photograph, was marked for
3 identification.)

4 THE COURT REPORTER: Number 3.

5 BY MR. DAVIS:

6 Q. Let me show you Plaintiff's Number 3.
7 It's a photograph. Is this -- what is that?

8 A. That's a picture of the barriers that
9 they put up.

10 Q. Now, would that be the barrier -- that's
11 what you just immediately testified to; correct?

12 A. Yes.

13 Q. Okay. And looking at the sketch, is
14 that on the left-hand side or the right-hand side?

15 A. This picture is on the left-hand side.

16 Q. I'm sorry?

17 A. This is of the left-hand side.

18 Q. And so does Plaintiff Number 3 show the
19 50-foot road area on it?

20 A. Yes.

21 Q. And where is it?

22 A. That's the area that's being blocked
23 off.

24 Q. All right. But where is that 50-foot
25 area on the photograph on Number 3?

1 A. Oh, it's behind it.

2 Q. Behind what?

3 A. Behind the barrier.

4 Q. And to the left of that 50-foot area is
5 a house?

6 A. Yes.

7 Q. And is that the subdivision you're
8 talking about?

9 A. Yes.

10 Q. Okay. Is your property still blocked
11 this way today?

12 A. Yes, it is.

13 MR. DAVIS: Okay. Your Honor, I move to
14 introduce that as Plaintiff Number 3.

15 MR. STEPP: No objection.

16 THE COURT: Without objection.

17 (PLF. EXH. 3 in evidence.)

18 (PLF. EXH. 4, Photograph, was marked for
19 identification.)

20 THE COURT REPORTER: Plaintiff's 4.

21 BY MR. DAVIS:

22 Q. Going to show you Plaintiff's Number 4
23 and ask you to tell me what that is.

24 A. It's a picture of the barrier on the
25 right-hand side of the property.

1 Q. On the north side?

2 A. Yes.

3 Q. Okay. Is that barrier still there
4 today?

5 A. Yes.

6 Q. Did that obstruct or block the access to
7 your property from that side?

8 A. It did.

9 Q. Okay.

10 THE COURT: This would be Number 5?

11 THE COURT REPORTER: Yes, sir.

12 (PLF. EXH. 5, Letter to Christopher S.
13 Puckett from James Randall Davis, Dated
14 July 2, 2009, was marked for
15 identification.)

16 THE COURT: Is there any objection to
17 four?

18 MR. STEPP: No objection, Your Honor.

19 THE COURT: No objection to Number 4.
20 Plaintiff's Number 5.

21 (PLF. EXH. 4 in evidence.)

22 BY MR. DAVIS:

23 Q. Let me show you Plaintiff's Number 5.

24 That's a letter by your lawyers to Mr. Puckett; is
25 that correct?

1 A. It is.

2 Q. And what's the date of that letter?

3 A. July 2, 2009.

4 Q. And you requested I send this letter to
5 Mr. Puckett?

6 A. I did.

7 Q. And ask for removal of the --

8 A. The barriers.

9 Q. -- obstructions?

10 A. Yes.

11 MR. DAVIS: All right. Your Honor, we
12 move to introduce that as Number 5.

13 MR. STEPP: Your Honor, I'm not sure --
14 I don't know what the relevance of this is, but I
15 guess I won't object to it since we're in a non-jury
16 proceeding. I'm sure that it is authentic and I'm
17 sure it was written, so I don't object; but I don't
18 know what it establishes, other than Mr. Davis is a
19 loyal lawyer for his clients.

20 THE COURT: All right. I'll let him
21 make argument about the relevance later. Without
22 objection, Number 5.

23 (PLF. EXH. 5 in evidence.)

24 BY MR. DAVIS:

25 Q. Okay. This was your request

1 diplomatically for the defendant to remove the
2 obstructions?

3 A. It was.

4 (PLF. EXH. 6, Photograph, was marked for
5 identification.)

6 THE COURT REPORTER: Plaintiff's 6.

7 BY MR. DAVIS:

8 Q. Mr. Gooldy, let me -- Dr. Gooldy, let me
9 show you Plaintiff's Number 6 and ask you to
10 identify that one.

11 A. It's part of the makeshift entrance that
12 we put up across the -- across the yard so that way
13 patients could access my property.

14 Q. Okay. And on the sketch up here, which
15 side of the property is that happening on?

16 A. It is on the northern side.

17 Q. The right side?

18 A. The right side.

19 Q. Okay. Who actually constructed that?

20 A. I did.

21 Q. Okay. And this was done when?

22 A. Following the placement of the barriers.

23 MR. DAVIS: Okay. I move to introduce
24 Number --

25 THE COURT: Six.

1 MR. DAVIS. -- 6.

2 MR. STEPP: No objection.

3 THE COURT: Without objection.

4 (PLF. EXH. 6 in evidence.)

5 (PLF. EXH. 7, Photograph, was marked for
6 identification.)

7 THE COURT REPORTER: Plaintiff's 7.

8 BY MR. DAVIS:

9 Q. Dr. Gooldy, look at Plaintiff's Number
10 7. What is that?

11 A. It's a continuation of the makeshift
12 drive on to my property.

13 Q. And where is that portion of the
14 makeshift driveway?

15 A. It's also on the right-hand, the
16 northern side of my property.

17 Q. And where is it going?

18 A. Into the back behind my property.

19 MR. DAVIS: Okay. Move to introduce
20 that as Number 7.

21 MR. STEPP: No objection.

22 THE COURT: Without objection.

23 (PLF. EXH. 7 in evidence.)

24 BY MR. DAVIS:

25 Q. Who did it? Who created this?

1 A. I did.

2 Q. Okay. And is it still. . .

3 A. Still in use.

4 Q. The way the makeshift road is shown on
5 in Plaintiff's Exhibit 6 and 7, is it still there
6 today?

7 A. It is.

8 Q. Is this reasonably the way it looks
9 today?

10 A. Yes.

11 Q. Okay. And this entrance, this new
12 entrance comes off what road?

13 A. Comes off Number 6.

14 Q. And where does it cross your property in
15 the front?

16 A. To the right side of the building.

17 Q. What affect, if any, does it have on
18 your parking?

19 A. Well, it goes across to where you
20 formerly parked and puts all the parking into the
21 rear.

22 Q. Of the property?

23 A. To the rear of the property, yes.

24 Q. The parking for your patients today is
25 still in the rear?

1 A. Most of it is, yes.

2 Q. Okay. What did you spend time wise or
3 money wise on the construction of the alternate
4 driveway?

5 A. Approximately \$10,000.

6 Q. And just describe to the Court what
7 makes up the material portion of that or purchased
8 portion as compared to your time? Initially,
9 material portion of it.

10 A. Had to purchase chainsaws. Had to rent
11 a tractor with implements. Had to rent a trailer so
12 we could haul off the debris after the trees that
13 were taken out. Process gravel to level things up
14 and make it so it wouldn't erode.

15 Q. Okay. And what debris removal did you
16 have to -- what debris removal had to be done?

17 A. We had to take trees out, remove the
18 trees that were dropped, also stump grinding and
19 that sort of thing.

20 Q. Okay. And who did that?

21 A. I did.

22 Q. Okay. And of the \$10,000, how much
23 of -- what value did you place on your time?

24 A. Only half of that.

25 Q. Which was 5,000?

1 A. Yes.

2 Q. After the construction of the
3 barriers -- did the defendant place the barriers
4 there?

5 A. I believe so.

6 Q. Okay. After the placing of the barriers
7 there, what was the general appearance of your
8 property at that time you thought?

9 A. It looked as if my office had been shut
10 down, had been closed.

11 Q. And what caused you to think that?

12 A. Well, because my patient numbers went
13 down. I actually had people remark about it in
14 passing.

15 Q. Don't say --

16 MR. STEPP: Objection, Your Honor.

17 BY MR. DAVIS:

18 Q. -- what they would have said. But as to
19 the general appearance of the property, what was
20 your thought as to that?

21 A. It made my property look unobtainable
22 and that I was going out of business and that's --
23 that's just -- just the whole appearance going by
24 because parking was in the back. Doesn't look like
25 there was any patients ever was there again, so. . .

1 Q. Now, did the no trespassing signs stay
2 up?

3 A. Until they weathered down.

4 Q. Do you believe that the obstruction of
5 the easement area by the defendant had affect upon
6 your -- any loss of profit in your chiropractic
7 practice?

8 A. Yes, I do.

9 Q. Okay. And what is your belief as to
10 that, what you've lost, and how --

11 MR. STEPP: Go ahead. I'm sorry.
12 Finish the question.

13 BY MR. DAVIS:

14 Q. What is your belief as to what that loss
15 is and how -- first of all, how did you calculate
16 that and then tell the Court what you think your
17 loss was?

18 MR. STEPP: And I note an objection,
19 Your Honor, at this point. In order for any of this
20 to be recoverable, of course, there's going to have
21 to be proof of some causal relationship between the
22 change in the access and any effect on his patient
23 numbers or profits or anything else. And I don't
24 think he's going -- I mean, his belief is not going
25 to be sufficient in that regard. For him to say,

1 well, my patients went down and I believe it was
2 because of the parking, I think is just inadequate
3 as a matter of law and so I would object to it. If
4 any of this lost profit evidence is going to come
5 in, it's got to be -- the proof will have to be that
6 it was proximately caused by something that the
7 defendants did or didn't do and not evidence of --
8 what Dr. Gooldy believes is the connection would not
9 be sufficient, so I object on that basis.

10 THE COURT: All right. I'm going to
11 allow -- I'm going to overrule the objection. He's
12 testified that the road has been barricaded, didn't
13 look like the business was open because people were
14 in the back. He's not yet been asked about what his
15 dollars were, dollars were afterwards. So I think
16 your points are valid, but they go to the weight of
17 the evidence, rather than the exclusion of the
18 evidence.

19 MR. STEPP: Can I just have that as a
20 continuing objection to this line, Your Honor?

21 THE COURT: Absolutely.

22 MR. STEPP: Thank you.

23 (PLF. EXH. 8, Three Fountains
24 Chiropractic Statistics, was marked for
25 identification.)

1 (Off-the-record conference.)

2 THE COURT: Have I got --

3 MR. DAVIS: Sir?

4 THE COURT: Have I got the right
5 exhibit?

6 MR. DAVIS: I got it.

7 THE COURT: Do I?

8 MR. DAVIS: You have a copy. I gave him
9 the original. He was nice enough to give it back to
10 me.

11 THE COURT: All right.

12 MR. STEPP: I had the cheat sheet.

13 THE COURT: All right. This is Number
14 8?

15 THE COURT REPORTER: Number 8.

16 THE COURT: Plaintiff's 8.

17 BY MR. DAVIS:

18 Q. Going to show you Number 8. Are these
19 calculations you've done for certain years for
20 patient flow at your chiropractic practice?

21 A. It is.

22 Q. Okay. And this is a compilation that
23 you worked up?

24 A. It is.

25 Q. Okay. And for the year -- the testimony

1 is that the barrier went up in Spring or Summer of
2 2009?

3 A. Yes.

4 Q. Did you have for -- did you have a
5 patient loss from the previous year, 2008, in 2009?

6 A. I did.

7 Q. How much was that?

8 A. It was 203.

9 Q. Okay. And for the Year 2010, did you
10 have a patient loss?

11 A. Yes. 862.

12 Q. Okay. And the chart that you have there
13 shows that?

14 A. Yes.

15 Q. Okay. And you have it for a portion of
16 2011, is my understanding?

17 A. I do.

18 Q. Up through what time?

19 A. May.

20 Q. Okay. What do you calculate that
21 patient loss coming from?

22 A. Construction of the barriers on access
23 to the property.

24 Q. Okay.

25 A. The appearance that it put on my -- on

1 my business.

2 Q. And what monetary figure did you place
3 on that patient loss?

4 A. \$90,525.

5 Q. And how was that determined?

6 A. That was based on the patient loss,
7 approximated at the average visit of \$85.

8 Q. Okay. And you're asking for
9 reimbursement for that figure?

10 A. I am.

11 Q. Did you make any extra efforts in 2010
12 and '11 to increase your patient flow?

13 A. I did.

14 Q. How did you do that?

15 A. I did a lot more interaction with groups
16 and marketing and actually took on another
17 consultant firm.

18 Q. Okay. At the same time, the obstruction
19 was still there?

20 A. It was.

21 MR. DAVIS: Your Honor, I move to
22 introduce Number. . .

23 MR. STEPP: Subject to my previous
24 objection.

25 THE COURT: So noted.

1 MR. DAVIS: Number 8.

2 THE COURT: Number 8 is entered into
3 evidence subject to the objection.

4 (PLF. EXH. 8 in evidence.)

5 BY MR. DAVIS:

6 Q. Dr. Gooldy, did you have an income loss
7 in 2010?

8 A. I did.

9 Q. And do you know what it was?

10 A. Not exactly.

11 Q. Let me show you.

12 (PLF. EXH. 9, 2010 U.S. Income Tax
13 Return for an S Corporation, was marked
14 for identification.)

15 THE COURT REPORTER: Plaintiff's 9.

16 BY MR. DAVIS:

17 Q. Okay. Let me show you Plaintiff's
18 Number 9 and this is -- what is that?

19 A. My 2010 tax return.

20 Q. And for your chiropractic practice?

21 A. It is.

22 Q. Okay. And what does that show as your
23 gross income?

24 A. 280,000 --

25 Q. Your gross income? Is that 280,000?

1 A. Yes.

2 Q. Okay. Very good.

3 Your Honor, we move to introduce that.

4 MR. STEPP: Your Honor, this isn't a
5 signed copy; but assuming that Dr. Gooldy says that
6 this is as filed, I wouldn't object to it.

7 BY MR. DAVIS:

8 Q. This is what you filed?

9 A. This is what I filed.

10 MR. DAVIS: Okay.

11 THE COURT: Without objection.

12 MR. DAVIS: All right.

13 THE COURT: Number 9.

14 (PLF. EXH. 9 in evidence.)

15 (PLF. EXH. 10, 2009 U.S. Income Tax
16 Return for an S Corporation, was marked
17 for identification.)

18 THE COURT REPORTER: Plaintiff's 10.

19 BY MR. DAVIS:

20 Q. Let me show you Plaintiff's Number 10
21 and ask you to identify that.

22 A. My 2009 tax return.

23 Q. Okay. For the chiropractic practice?

24 A. For the office. Yes.

25 Q. And what does it show as your income

1 that year?

2 A. 347,000.

3 Q. And so there is a reduction from --
4 there's a reduction in 2010 as compared to 2009?

5 A. There is.

6 Q. Obviously, the figures would show the
7 difference?

8 A. Yes.

9 Q. Okay. That was what you filed?

10 A. It was.

11 MR. DAVIS: Okay. Move to introduce
12 this.

13 MR. STEPP: Your Honor, I just want to
14 reiterate my prior objection. To the extent these
15 are being offered to show loss of income factually
16 caused by the parking or obstruction, I object
17 because I don't think a proper foundation for that
18 has been laid. Don't object to authenticity.

19 THE COURT: All right. I'm going to
20 allow that in. Again, your objections are to the
21 weight of the evidence, not to the argument.

22 MR. DAVIS: Move to introduce that as
23 Plaintiff's 10 without objection.

24 MR. STEPP: With it -- over my
25 objection.

1 MR. DAVIS: Over your objection. Yes.

2 (PLF. EXH. 10 in evidence.)

3 BY MR. DAVIS:

4 Q. What is your opinion as to the reason
5 for that income loss?

6 MR. STEPP: Objection as to opinion on
7 that basis, Your Honor, again. I guess I'm covered.
8 I just want to make sure. His opinion of why his
9 income went down would not be probative of actual
10 causation.

11 MR. DAVIS: I'm asking him why he thinks
12 it went down.

13 THE COURT: I'm going to allow that
14 question.

15 MR. DAVIS: Okay.

16 THE WITNESS: I believe my income went
17 down because of the placement of the barriers and
18 the appearance that they made my office and my
19 property to look like that.

20 BY MR. DAVIS:

21 Q. Okay. And you're asking for, again, the
22 reimbursement for that \$90,000?

23 A. I am.

24 Q. Okay. Are you asking for any
25 compensation for the defendant's activities

1 involving your property?

2 A. I am.

3 Q. And what activities are you talking
4 about there?

5 A. I believe that I should be compensated
6 for the actions of the defendant in the placement of
7 the orange tape, the threatening of the placement of
8 the silt fence, the placement of the barriers,
9 the -- and the signage that was put up around my
10 property.

11 Q. What are you asking? What relief are
12 you asking the Court to give to you?

13 A. I'm asking that I be given the -- that
14 my deed be -- that the 50-foot road, the
15 accessibility stated there that I have unobstructed
16 use of that 50-foot road for ingress and egress.
17 That there be no -- any further obstruction by the
18 defendant and that the damages that were actual and
19 that were based on his actions far as my property be
20 paid.

21 Q. All right. And that would be the
22 monetary losses that you talked about?

23 A. That's correct.

24 Q. And compensating for the defendant's
25 activity that you testified to?

1 A. Yes.

2 Q. Okay. And the barriers that you talked
3 about are on the defendant's property, is that
4 correct, that he had bought at some point?

5 A. Yes.

6 MR. DAVIS: Okay. Your Honor, may I
7 have one second?

8 THE COURT: Yes, sir. No longer?

9 MR. DAVIS: Maybe two minutes.

10 THE COURT: All right.

11 MR. STEPP: That's fine.

12 THE COURT: We'll take a brief break
13 until 10:15. It's 10:10. Is five minutes good?

14 MR. DAVIS: Okay. Yes, sir.

15 THE COURT: Be back at 10:15.

16 MR. DAVIS: Okay.

17 MR. STEPP: Thank you.

18 THE COURT: I'll remind the witness,
19 you're under oath. Don't talk to anybody about your
20 testimony.

21 THE WITNESS: Yes, Your Honor.

22 (A recess transpired.)

23 THE COURT: Back on the record.

24 Everybody be seated. Yes, sir.

25 MR. DAVIS: Dr. Gooldy, answer any

1 questions the Court may have or the defendant.

2 THE COURT: Cross.

3 MR. STEPP: Thank you, Your Honor.

4 THE COURT: Mr. Stepp.

5 EXAMINATION

6 BY MR. STEPP:

7 Q. Good morning, Dr. Gooldy.

8 A. Morning.

9 Q. You bought this property and I want to
10 put this up somehow if I can.

11 MR. DAVIS: Let me move the rough --

12 MR. STEPP: Well, I might use that, too.
13 I tell you what, let me put this over -- can you see
14 that? And, Judge, you can't see it. I guess I'll
15 hold it.

16 MS. WOODWORTH: What about me holding
17 it?

18 MR. STEPP: She's can be the holder.

19 THE COURT: All right. If you want to
20 move that.

21 MR. STEPP: All right. Prop it up on
22 that.

23 MS. WOODWORTH: Yes.

24 MR. STEPP: Yes. Here it is. I'm
25 sorry.

1 THE COURT: You can do that or if you
2 want to move it around.

3 MR. STEPP: Just move it right there.

4 MS. WOODWORTH: That'll work.

5 MR. STEPP: That's great. All right. I
6 think everybody can see that.

7 Q. Dr. Gooldy, you see this aerial
8 photograph that I've got up there?

9 A. Yes.

10 Q. You recognize that as your property here
11 in the center and the property of The Storage Center
12 behind it, on either side?

13 A. Yes.

14 Q. And is that -- do you have any way to
15 know when this photograph was taken?

16 A. Just says when it was printed. I
17 couldn't tell you when it was taken.

18 Q. Well, this shows this new driveway that
19 you put in; correct?

20 A. Yes.

21 Q. So that's sometime after 2009 or in 2009
22 or later?

23 A. Yes.

24 Q. Okay. And is this pretty much the way
25 your property and access to your property works at

1 the present?

2 A. Yes.

3 Q. Okay. And this area in front of your
4 property is grass --

5 A. It is.

6 Q. -- is that right? And your new driveway
7 comes in on the right and goes all the way to the
8 back; is that correct?

9 A. Yes.

10 Q. Okay. And the parking area that you're
11 presently using for your patients is in the back;
12 correct?

13 A. Yes.

14 Q. And as of today, you testified that the
15 fencing across the area to the south of your
16 property and across the area to the north of your
17 property is still in place --

18 A. Yes.

19 Q. -- is that correct? So all of your
20 patients today when they come in, they come in on
21 this new driveway that you put in and they park in
22 the back; is that correct?

23 A. Most of them do, yes.

24 Q. Okay. Now, when you bought this
25 property in 2002, did you speak to anybody from

1 Congaree Associates?

2 A. No.

3 Q. Did you even know who Congaree

4 Associates was?

5 A. No.

6 Q. So you didn't talk to Mr. McGee?

7 A. No.

8 Q. What about James Loflin? Do you know

9 James Loflin?

10 A. No.

11 Q. Did you have any conversations with him

12 at all?

13 A. No.

14 Q. Or his wife? Ever met his wife?

15 A. No.

16 Q. Mr. Balser?

17 A. I believe I met him at a transaction

18 when he was running the nursery. That's the only

19 one.

20 Q. Did you have any conversation with Mr.

21 Balser about the use of these strips of property on

22 either side?

23 A. That was prior to my purchasing.

24 Q. Right. And I believe you testified in

25 your deposition that your got your deed from Mr.

1 Canaday; is that correct?

2 A. That is correct.

3 Q. And you met him at closing; is that
4 right?

5 A. Yes.

6 Q. Now, you said that his realtor, Mr.
7 Lander -- I want to make sure we got that right.
8 George Lander was the realtor with the listing for
9 Mr. Canaday; correct?

10 A. Correct.

11 Q. And Mr. Lander told you that the 50-foot
12 strip on the south side of your property was an
13 access road; correct?

14 A. Yes.

15 Q. And did he tell you it was an access
16 road for your property?

17 A. Yes, he did.

18 Q. And did he tell you it was a parking lot
19 for your property?

20 A. No. No talking about the parking lot
21 ever came up.

22 Q. Okay. But you had the understanding
23 from Mr. Lander, the realtor for Mr. Canaday, that
24 you could use this area to access your property;
25 correct?

1 A. Yes.

2 Q. And I think we can still see here this
3 gravel area. (Indicating.) That's the gravel area
4 that was in existence when you bought the property;
5 is that correct?

6 A. Yes.

7 Q. And it sort of makes a horseshoe around
8 behind your building?

9 A. Yes.

10 Q. And you didn't put that in; correct?

11 A. That's correct.

12 Q. You don't know who put it in, do you?

13 A. I do not.

14 Q. Okay. You don't know what use was made
15 of that prior to the time that you acquired the
16 property; correct?

17 A. When I did frequent the nursery, it was
18 being used as a driveway. That's how I initially
19 got on to the property when I first -- prior to my
20 buying the property.

21 Q. Okay. And do you know what
22 arrangements, if any -- Mr. Balser is the guy that
23 had the nursery?

24 A. I have no knowledge of that.

25 Q. You don't know what arrangements he had

1 or didn't have with Congaree Associates or anybody
2 else about using that driveway?

3 A. Correct.

4 Q. And so this was -- this horseshoe was
5 where the gravel was; correct?

6 A. Yes.

7 Q. Now, this photograph shows trees in the
8 50-foot strip prior to the back of your property;
9 correct?

10 A. Shows the top of trees.

11 Q. Yeah. So there are trees in there;
12 right?

13 A. From that vantage point, yes.

14 Q. Well, if you were standing on the
15 ground, there'd still be trees there, wouldn't
16 there?

17 A. You have -- when trees go up, they
18 blossom out.

19 Q. Okay.

20 A. So the ground could be obscured from an
21 aerial view.

22 Q. All right. Well, you would agree with
23 me, at least on this photograph, there are trees
24 that go from approximately the back of your building
25 back to the back of your property line on the

1 50-foot strip?

2 A. The tree tops, yes.

3 Q. Okay.

4 A. On your picture here, that yellow line
5 that's going across those cars --

6 Q. Yeah.

7 A. -- that's incorrect as a property line.
8 The property line is actually at the end of that
9 concrete.

10 Q. Okay.

11 A. So that's misleading.

12 Q. All right. So your testimony is that
13 the -- that this -- that's a concrete pad for
14 parking; correct?

15 A. That was there before I got there.

16 Q. And that's entirely on your property?

17 A. It is.

18 Q. Okay. That's fine.

19 With that revision, Your Honor, we'd
20 offer this into evidence.

21 MR. DAVIS: No objection.

22 THE COURT: Without objection.

23 MR. STEPP: All right. We've got our --

24 THE COURT: That's Defendant's Number 1?

25 MR. STEPP: Well, Your Honor, if I may,

1 we pre-marked some stuff and we've got letters on
2 them.

3 THE COURT: Okay.

4 MR. STEPP: Can I give it a letter?

5 THE COURT: Absolutely. Just let us
6 know.

7 MR. STEPP: I'll be Exhibit N.

8 THE COURT: N?

9 MR. STEPP: N. And I've got a small
10 copy.

11 THE COURT: Thank you.

12 MR. STEPP: I'll put it right there.

13 (DFT. EXH. N in evidence.)

14 BY MR. STEPP:

15 Q. Now, I want to, now, Dr. Gooldy put
16 up --

17 THE COURT: Can I have a copy?

18 MR. STEPP: Oh, I'm sorry. No, you're
19 not allowed. Is this all of them?

20 Your Honor, here's a whole notebook.

21 THE COURT: I just want to just -- I
22 don't want to take it if y'all need it.

23 MR. STEPP: No, no, no. We intended to
24 give it to you. We made it for you and I neglected
25 to give it to you. So that's Number N.

1 THE COURT: All right.

2 MR. STEPP: Now, we're probably not
3 going to mark all those. I'll tell you that right
4 now.

5 THE COURT: That's great.

6 MR. STEPP: But there it is.

7 THE COURT: All right. Thank you.

8 MR. STEPP: Here's one for you.

9 Q. Okay. Well, before I get to the plat,
10 let me go back to this sketch that Mr. Davis used
11 and I want to put on -- on the sketch that you drew
12 on for Mr. Davis, you've got this semi-circle going
13 around behind the building. And is that the same
14 semi-circle that we just looked at on Defendant's
15 Exhibit N?

16 A. Yes.

17 Q. Okay. And so this sketch that you
18 worked on is intended to represent what we see on
19 Defendant's Exhibit N; correct?

20 A. Yes.

21 Q. Okay. Now, when you bought the
22 property, you attended the closing? Did you attend
23 the closing?

24 A. Yes.

25 Q. Okay. And your attorney was George

1 Nicholson, I think; is that right?

2 A. Yes.

3 Q. And did you have any conversations at
4 closing with Mr. Nicholson about any title issues or
5 access issues?

6 A. No.

7 Q. All right. Did Mr. Nicholson tell you
8 anything about your right to access your property by
9 means of this area to the south?

10 A. It was not discussed.

11 Q. I'm sorry. I didn't hear you.

12 A. It was not discussed.

13 Q. Okay.

14 A. No discussion.

15 Q. All right. Now, when you bought the
16 property, you said you had seen this plat prior to
17 the closing; is that correct?

18 A. Yes.

19 Q. And Mr. Lander, the realtor, gave you
20 the plat --

21 A. Yes.

22 Q. -- is that correct? Now, did you
23 understand at the closing that what you were buying
24 was the property within these -- this rectangle of
25 property as shown on the plat?

1 A. Yes.

2 Q. And you didn't have any belief you were
3 buying anything either to the north or the south of
4 those lines, did you?

5 A. Correct.

6 Q. Okay. And you understood you were
7 buying .68 acres and no more; correct?

8 A. (Nodding head.)

9 Q. And that this -- in this plat, there's a
10 configuration of a proposed dwelling. You see that?

11 A. (Nodding head.)

12 Q. But that building was actually
13 constructed when you bought the property; correct?

14 A. Yes.

15 Q. Is this an accurate depiction of it?

16 A. Yes.

17 Q. Okay. So you understood where the
18 building was with respect to the rest of the
19 property at the time you bought it; correct?

20 A. Correct.

21 Q. Okay. And there was the opportunity to
22 enter the property directly in front of the building
23 directly from Highway 6; correct?

24 A. No.

25 Q. Well, it wasn't set up that way; but you

1 could have done it that way?

2 A. No. There were trees in the way.

3 Q. Well, you could have taken the trees
4 down, could you not, Dr. Gooldy?

5 A. Well, that wasn't an issue there because
6 the driveway was already established.

7 Q. Well, I understand that. But all I'm
8 asking you is, if you wanted to create a parking
9 area for your patients in front of your building,
10 you could have done it?

11 A. I assume it's possible.

12 Q. Okay. Now, did you understand, when you
13 saw this plat, that it was done in 1986?

14 A. That's the date on it, I believe. Yes.

15 Q. All right. And you closed in 2002;
16 correct?

17 A. Correct.

18 Q. Sixteen years later? Is my math right
19 on that? You're the doctor, so I defer to you.

20 A. I'm not a mathematician, just a doctor.

21 Q. Okay. Did you undertake to have any new
22 survey done at all to see whether that was still
23 accurate or still properly depicted the conditions
24 on the ground 16 years later?

25 A. No. It was the plat that was provided

1 by -- at the time of sale.

2 Q. Okay. Well, there's nothing that would
3 have prohibited you from having your own survey had
4 you elected to do that?

5 A. That's true.

6 Q. Now, did you look at any other surveys
7 of the property that either -- that anybody gave
8 you?

9 A. Prior to that?

10 Q. Yeah. That's kind of a bad question.
11 Let me ask it again. Did you ever see any other
12 surveys of the property prior to your closing?

13 A. No.

14 Q. That's the only one?

15 A. That's the only one.

16 Q. And that's the one that Mr. Lander gave
17 you. Okay.

18 THE COURT: If I can just interject,
19 we're talking about Plaintiff's 2 survey?

20 MR. STEPP: Yes, sir.

21 THE COURT: Okay.

22 MR. STEPP: Correct. Thank you. This
23 is Plaintiff's Exhibit 2. Correct.

24 THE COURT: Thank you.

25 BY MR. STEPP:

1 Q. Now, when you got this, Plaintiff's
2 Exhibit 2, the plat, did you ask anybody any
3 questions about it? Did you ask Lander any
4 questions?

5 A. I believe that was the plat on record at
6 the courthouse and everything had been established
7 prior to closing, that that was the 50-foot road
8 through there and that was the access and easement
9 used for that property.

10 Q. Well, what existed when you bought the
11 property was this semi-circular driveway, correct,
12 that was gravel?

13 A. Yes.

14 Q. There wasn't a constructed 50-foot road
15 that went from Highway 6 all the way to the back of
16 your property or even further, was there?

17 A. Not a constructed road, but there was an
18 opening, clearing to the back of the property.

19 Q. Well, there was an area that didn't have
20 any trees; but there wasn't a constructed 50-foot
21 road?

22 A. No. Partial gravel.

23 Q. I mean, there was gravel and the gravel
24 went around behind your building and that was there;
25 but there was no 50-foot road that went all the way

1 to the back?

2 A. Not a constructed road.

3 Q. There was an open area on the property
4 that, at that point, was owned by Congaree
5 Associates; is that correct?

6 A. That's what you said.

7 Q. I'm sorry. You have to answer.

8 A. I didn't -- it sounded like a statement
9 to me.

10 Q. Well, I meant it to be a question.

11 A. Okay.

12 Q. So I beg your pardon. And what you said
13 was, I think, that with respect to this cleared
14 area, it sort of went off into the trees on the
15 south side; is that right?

16 A. It was cleared back to the trees. Yes.

17 Q. But at some phone, you went back there
18 and there were trees that came across what would
19 have been the 50-foot strip back in here?

20 (Indicating.)

21 A. Correct.

22 Q. You don't know -- do you know who
23 installed the gravel driveway?

24 A. I do not.

25 Q. Do you know when it was installed?

1 A. I do not.

2 Q. Now, was this parking area there when
3 you bought the property?

4 A. It was.

5 Q. And do you know who put that in?

6 A. I do not.

7 Q. And if this parking area is completely
8 on your property, it could be accessed from the
9 front; correct?

10 A. Yes, I guess it's possible.

11 Q. So do I understand that your
12 understanding of your right to use the area to the
13 south of your property for ingress and egress for
14 the full width of 50 feet all the way to the back of
15 your property -- that was your understanding?

16 A. It is.

17 Q. And that was based entirely upon what
18 George Lander, the realtor, told you; is that
19 correct?

20 A. Based on the plat that was shown to me.

21 Q. Okay. And that's it?

22 A. Yes.

23 Q. No other conversations, no other
24 information, no other plats or surveys; correct?

25 A. Correct.

1 Q. All right. Now, you testified that
2 sometime after Storage -- you remember when Storage
3 Center bought the property? Were you aware that the
4 property had been sold, the adjacent property?

5 A. No, I wasn't.

6 Q. Do you know when that transaction took
7 place?

8 A. I wasn't aware of it.

9 Q. Okay. There came a time and I think you
10 testified with Mr. Davis that an effort was made to
11 work out with you some sort of shared access
12 agreement that would have given you rights in the
13 land owned by The Storage Center subject to certain
14 conditions; correct?

15 A. That part of the --

16 MR. DAVIS: Your Honor, I'm going to
17 interpose an objection here as to relevance. The
18 issue in this case is does Dr. Gooldy have an
19 easement. There's no issue as to some shared
20 access. In other words, what is the relevance of a
21 shared access on the question whether there's an
22 easement here? So that's my objection. He's
23 getting into testimony or soliciting testimony from
24 Dr. Gooldy as to some proposed understanding with
25 Dr. Gooldy and the defendant as to a shared access

1 that affected the defendant's property as well as
2 the plaintiff's property. I don't see the relevance
3 of that.

4 MR. STEPP: Well, Your Honor, the
5 relevance is I thought Mr. Davis went into it and I
6 thought part of his claim was that, you know, we
7 sort of suddenly and without warning closed down,
8 you know, to Dr. Gooldy what he thought was his
9 access. And what he testified was that there were
10 conversations and negotiations and I think that's
11 relevant.

12 THE COURT: I'm going to allow that in
13 because y'all did go into it on your side and it
14 would relate to the question of punitive damages and
15 all of that, so it's relevant. And, again, I'll
16 give it the weight, but I believe that's already
17 been gone into.

18 MR. STEPP: Okay.

19 Q. So, Dr. Gooldy, over a period of time,
20 you were in conversations with Storage Center about
21 a shared access agreement; correct?

22 A. Yes, I was.

23 Q. And did Storage Center express to you in
24 the course of those discussions that they believed
25 they had the absolute, unfettered right to control

1 the property on both sides of yours; but that they
2 were willing to work out some sort of shared access
3 agreement if terms could be reached?

4 A. If terms could be reached.

5 Q. Okay. And didn't they propose a shared
6 access agreement that would have given you \$10,000
7 to construct an alternate driveway for your property
8 and \$5,000 for landscaping?

9 A. There was.

10 Q. Was that yes?

11 A. Yes.

12 Q. I'm sorry. And you didn't feel that
13 that would fit your needs, so you turned that down?

14 A. I did.

15 Q. And it was thereafter that what you call
16 the barricade, but it was really a chain fence, was
17 put across the strips on both sides of the property;
18 correct?

19 A. It was not a chain fence.

20 Q. Well, let's look at the photograph.

21 MS. DuRANT: It's three and four, Bobby.

22 BY MR. STEPP:

23 Q. All right. I'm looking at Plaintiff's
24 Exhibit Number 4. Show you that. Is that a picture
25 of what you call the barricade on the northern side

1 of the property?

2 A. It is.

3 Q. And is that two wooden posts with a
4 single link of wire across them?

5 A. No. Those are metal posts.

6 Q. Metal posts with a single link of wire
7 across the front?

8 A. Uh-huh.

9 Q. That's what you described as a
10 barricade?

11 A. Uh-huh.

12 Q. All right. And on the -- let's look at
13 Plaintiff's Number 3. That's a similar photograph
14 of the south side. Again, two metal posts, a single
15 piece of wire and no trespassing signs? I guess
16 that's what it is.

17 A. No. It's actually multiples included
18 there because it went along that length.

19 Q. But there's wire between those poles;
20 correct?

21 A. Yes.

22 Q. And this went up after you had had the
23 conversations with Storage Center about the shared
24 access --

25 A. Yes.

1 Q. -- correct?

2 A. Yes.

3 Q. Now, in discussing your claims with
4 Chris Puckett of The Storage Center -- did you ever
5 talk to anybody besides Mr. Puckett of The Storage
6 Center?

7 A. I spoke with Robert Lapin maybe.

8 Q. The realtors and Mr. Puckett, that's who
9 you talked to?

10 A. Yes.

11 Q. Did you express to them that you didn't
12 claim any rights with respect to the property on the
13 north side or the south side of your land?

14 A. I don't understand the question.

15 Q. Sure. Let me ask it better. Didn't you
16 tell them that you didn't claim the right to use
17 property on either side of your property, but that
18 you had been doing it?

19 A. I never claimed ownership. I did claim
20 the right of the accessibility because it was a road
21 and it was my access.

22 Q. Okay. Had you been using property on
23 the north side?

24 A. Yes.

25 Q. Okay. All right. And in this case

1 today, are you making any claim for rights on the
2 north side of the property or is your claim just on
3 the south side of the property?

4 A. It's mainly on the south side.

5 Q. Mainly on the south side?

6 A. It is only on the side.

7 Q. Only? I'm sorry.

8 A. Obviously that's the designated 50-foot
9 road.

10 Q. Okay. So we don't need -- for purposes
11 of this case, you're not claiming any rights on the
12 north side, you're claiming rights on the south side
13 based upon this Plaintiff's Exhibit Number 2 that
14 has this language on it, 50-foot road?

15 A. Yes.

16 Q. Okay. All right. So you used -- so the
17 record will be clear. You used the property on the
18 south side believing that you had the right to do so
19 for ingress and egress from the time you acquired
20 the property in 2002 until the fence was put up in
21 2009; is that correct?

22 A. That is correct.

23 Q. Now, you talked about the flags that
24 were put up. The flags that were put up, if I
25 understood your testimony, were on the property

1 line; correct?

2 A. They were not flags.

3 Q. Orange tape. I'm sorry.

4 A. It was continuous orange tape.

5 Q. All right. And so that orange tape

6 delineated on three sides of your property the

7 property owned by The Storage Center; correct?

8 A. It was the property line. Correct.

9 Q. Right. And on the other side of the
10 property lines -- your property on the near side and
11 The Storage Center property on the far side;
12 correct?

13 A. Correct.

14 Q. They didn't come on to your property and
15 put any orange tape on your property, did they?

16 A. I did not see them install the tape.

17 Q. Well, there wasn't any tape on your
18 property? The tape was on the boundary; correct?

19 A. Well, when the wind knocked it down, it
20 did blow on our property; but it was -- technically
21 speaking, it was just draped along the length of the
22 property.

23 Q. Right. And it properly showed the
24 boundary between the parcels owned by Storage Center
25 and the parcel -- or the parcel owned by Storage

1 Center and the parcel owned by you; correct?

2 A. Yes.

3 Q. You talked about the conversation
4 involving a silt fence. The silt fence was never
5 erected; correct?

6 A. No, it was not.

7 Q. All right. I want to talk a little bit
8 about some of your damages claims. If I've got it
9 right, you are claiming \$10,000 for constructing --
10 and I'm putting Defendant's Exhibit N back up here,
11 for constructing this alternate driveway here on the
12 north side of your building and for putting in the
13 signs that say parking?

14 A. Clearing out the access to do so. Yes.

15 Q. Okay. And that's something that could
16 have been done by you at any time, but was done only
17 after The Storage Center blocked off the abutting
18 pieces; correct?

19 A. Yes.

20 Q. All right. And how much time did you
21 spend doing that?

22 A. Approximately five days.

23 Q. Forty hours?

24 A. Yeah. Well, no. I couldn't tell you
25 exactly how many hours because it was pretty much

1 start of the day until late at night, so. . .

2 Q. Well, you spent one week doing it and
3 your labor, you believe, is worth \$5,000; is that
4 right?

5 A. That and the help that I did use. Yes.

6 Q. Did you keep any time records or --

7 A. No, I did not.

8 Q. -- anything of how much time you spent
9 working on it?

10 A. I did not.

11 Q. Did you have any receipts for the amount
12 that you spent for materials or to rent equipment to
13 construct the driveway?

14 A. Not in my possession, no.

15 Q. Now, Plaintiff's Exhibit Number 7 has
16 got some -- I'm sorry -- has got some sort of
17 railway tie borders. You put those in?

18 A. Yes.

19 Q. And that's part of what you're claiming
20 damages for?

21 A. Well, part of the work that I had
22 installed.

23 Q. Okay. And Plaintiff's Exhibit Number 6
24 shows these signs that say park in rear?

25 A. Yes.

1 Q. This is on the front of your property
2 with arrows directing people to park in the rear; is
3 that correct?

4 A. Yes.

5 Q. And are those still up, those signs
6 still up?

7 A. No, they're not.

8 Q. Well, how do you direct people now to
9 the parking?

10 A. Because after this was done, an apron
11 was installed. If you notice on your picture, in
12 the northern portion, there was an apron that was
13 installed by the Department of Transportation
14 showing an access through there and then, of
15 course. . .

16 Q. Right here? (Indicating.)

17 A. Right through there. Yes, sir.

18 Q. Okay. But when you put this alternate
19 driveway in, you -- it ran all the way out to
20 Highway 6; right?

21 A. It just came off the road.

22 Q. Right. But I mean, you could turn off
23 of Highway 6 into your alternate driveway?

24 A. Yes.

25 Q. And you can still do that today?

1 A. Yes.

2 Q. Okay. Let's talk about. . .

3 MS. DuRANT: Is that what you want?

4 MR. STEPP: Huh-uh. We have a marker?

5 Ah.

6 Let's talk about your claims for lost
7 income.

8 And this would be subject to my
9 objection, Your Honor, my cross examination on this.

10 THE COURT: (Nodding head.)

11 BY MR. STEPP:

12 Q. You gave us documents that reflected
13 patient counts for several years; correct? That's
14 Plaintiff's Exhibit Number 8.

15 MS. DuRANT: Probably need to use the
16 piece, not the. . .

17 MR. STEPP: Oh. Maybe that'll stay up
18 there.

19 Q. You got Exhibit 8 in front of you?

20 A. That's it right there.

21 Q. Correct?

22 A. Uh-huh.

23 Q. All right. So in 2008, you had 3,325
24 patients?

25 A. Patient visits.

1 Q. Visits?

2 A. Patient visits.

3 Q. Which could be multiple visits by the
4 same person?

5 A. Obviously, yes.

6 Q. But for purposes of this, we're going to
7 say -- can I just say 3,225 patients?

8 A. (Nodding head.)

9 Q. And then in 2009, you had 3,122; is that
10 correct?

11 A. Correct.

12 Q. And is it your testimony to this Court
13 that this difference of whatever it is -- 203, is
14 that it? All right. Is because of parking and
15 access issues?

16 A. Yes, sir.

17 Q. Well, isn't it true, Dr. Gooldy, that
18 your patient count varied from year to year
19 regardless of parking or access issues; isn't that
20 right? You never had the same number every year?

21 A. Things do vary.

22 Q. Sometimes it would go up and sometimes
23 it would go down; correct?

24 A. Yes, sir.

25 Q. In 2010, you had 2,260 patients;

1 correct?

2 A. Correct.

3 Q. And you attribute that drop from 2009
4 again to parking and access issues?

5 A. Yes.

6 Q. And that is based entirely on your
7 belief; is that correct?

8 A. Based on my statistics, yes.

9 Q. Okay. Now, in 2011, you gave us some
10 partial year numbers and it looks like in January to
11 May -- follow me and make sure I've got this right.
12 January to May of 2011 -- I don't know why I bother
13 to do this, I can't even read it myself. January to
14 May in 2011, I calculate from your Exhibit 8 that
15 you had 1,541 patients; is that correct? Based on
16 these monthly totals?

17 A. I'll trust your math on that one.

18 Q. All right. And that would -- that's
19 only a partial year. That's five months; correct?

20 A. Uh-huh.

21 Q. But if you average that, it would be 308
22 per month; correct? Trust me again?

23 A. I'll trust you on that.

24 Q. And if you multiply that by 12 for 12
25 months, that would 3,698, subject to my math being

1 right?

2 A. Subject, yes.

3 Q. So even though your patient count went
4 down a little bit from '08 to '09 and down some more
5 from '09 to '10, it looks like it went up from 2010
6 to 2011 by more than 1400 patients; correct?

7 A. Theoretically speaking because those
8 aren't the actual -- those are the actual from the
9 actual months that actually had transpired.

10 Q. Well, I understand; but this is all that
11 you have provided and so this is all I've got to
12 work with; correct?

13 A. That's true.

14 Q. And so if that's true and your parking
15 situation was the same in 2011 as it was in 2010,
16 this increase, does that have anything to do with
17 access or parking?

18 A. No.

19 Q. It's because you did better marketing;
20 right?

21 A. Because I had the makeshift and created
22 different appearances.

23 Q. And that's consistent with your gross
24 revenues as reflected on your tax returns? And I
25 think Mr. -- I think we introduced 2010 and 2009.

1 Exhibit 9 is 2010 and Exhibit 10 is 2009. That
2 shows -- that shows actually a decrease from 2009 to
3 2010 in your gross income; correct? But we have
4 since --

5 Where's 2011? Let me show you what we
6 marked as Defendant's Exhibit II.

7 (DFT. EXH. 11, 2011 U.S. Income Tax
8 Return for an S Corporation, was marked
9 for identification.)

10 BY MR. STEPP:

11 Q. And ask you if that's a copy of your
12 2011 tax return?

13 A. It is.

14 MS. DuRANT: He's got a notebook.

15 MR. STEPP: Oh, okay.

16 THE WITNESS: It is.

17 BY MR. STEPP:

18 Q. It is? And this shows gross income for
19 2011 of \$412,174; correct?

20 A. Yes.

21 Q. So if we chart all of that, it looks
22 like your gross income went from 347 down in '09,
23 down to 280 in '10, but then up to 412 in 2011; is
24 that correct?

25 A. That's correct.

1 Q. And based upon -- you provided us tax
2 returns for Three Rivers Chiropractic for the period
3 2005 through 2011; correct?

4 A. No.

5 MR. STEPP: Well, then let me put these
6 in evidence.

7 MR. DAVIS: Your Honor, we'll stipulate
8 we did provide, through discovery, 2005 through
9 2011.

10 MR. STEPP: Great. Let me just put
11 these in --

12 Q. Well, let me ask you this and I'm happy
13 for you to look at these, Dr. Gooldy, if you want
14 to; but is it not correct that gross income in 2011
15 of \$412,000 is the highest gross income reported
16 during this period of time by your chiropractic
17 business?

18 A. Yes.

19 Q. Yes? Thank you.

20 A. If I could reflect upon that time that
21 took place as well.

22 Q. Well, you can answer any questions that
23 Mr. Davis might ask you in that regard.

24 A. Okay.

25 Q. Now, with respect to this \$90,000 in

1 lost income that you're claiming, you base that, if
2 I understand it, on an average of \$85 per visit --

3 A. Correct.

4 Q. -- is that correct? So you multiply the
5 patient count times 85 and you get the \$90,000; is
6 that basically it?

7 A. (Nodding head.)

8 Q. But that would be gross revenue, not net
9 income; correct?

10 A. Correct.

11 Q. So if you look at your actual net during
12 the period of time -- and maybe I better put all
13 these in evidence. I'm sorry.

14 Let me show you your '05 return, which
15 is Defendant's Exhibit Z. Your '06 return, which is
16 Defendant's Exhibit AA. Your '07 return, which is
17 Defendant's Exhibit BB. Your '08 return is
18 Defendant's Exhibit CC. And I think '09 is already
19 in as Plaintiff's Number 10. And 2010 is in as
20 Plaintiff's Number 9. And 2011, we just marked it
21 II.

22 So you've got all of this now before you
23 in the record. And each of these tax returns
24 reflects an amount of gross income, which is the
25 total amount of revenue you generated from patient

1 visits; correct?

2 A. Correct.

3 Q. And then an amount of actual ordinary
4 business income that you earned and pay taxes on
5 that was net of expenses; correct?

6 A. Correct.

7 Q. And in 2005 -- feel free to look at
8 those -- your total -- your gross revenues were
9 \$126,964, but your deductions were \$192,000, so your
10 ordinary business income for that year was actually
11 negative; correct?

12 A. Yes.

13 Q. Negative \$65,000? All right. In 2006,
14 your gross revenues were 274 versus deductions of
15 236. And would you trust me that your deductions at
16 that point were 86 percent of your gross?

17 A. Uh-huh.

18 Q. And in 2007, it's 216 gross and 203 on
19 the expense side and your expenses at that point
20 were .93. Does that look right?

21 A. '07?

22 Q. Yes, sir. Gross income 216,927,
23 expenses 203?

24 A. I don't see the depreciation. Is that
25 this?

1 Q. Well, what you reported to the Internal
2 Revenue Service was that you had expenses, including
3 depreciation and anything else that you could
4 properly deduct, that accounted for 93 percent of
5 your gross revenues?

6 A. Uh-huh.

7 Q. That's what you told the IRS; right?

8 A. Uh-huh.

9 Q. And that's correct; right?

10 A. Uh-huh.

11 Q. And the same thing is true in '08. You
12 got \$334,000 in gross and 283 in deductions and that
13 about .84 percent. You agree with that?

14 A. Yes.

15 Q. My point is, Dr. Gooldy, you would agree
16 with me, I don't think we need to keep doing this,
17 that \$85 per patient visit would have been your
18 gross revenue, not you lost profit; is that correct?

19 A. The \$85 was a medium number as opposed
20 to -- because things would have varied from time to
21 time. That's not the average. That was just based
22 on a mean number.

23 Q. But you would certainly concede that, if
24 we looked at what profit you actually lost, it would
25 be something less than the average gross revenue

1 associated with a patient visit; correct?

2 A. Yes.

3 Q. Now, you had some trouble with BlueCross
4 BlueShield about billing practices, did you not?

5 A. I did.

6 MR. DAVIS: Objection as to relevance,
7 Your Honor.

8 MR. STEPP: Well, if you want to hear it
9 from me. We intend to show that Dr. Gooldy was --
10 ultimately pled guilty to submitting -- that his
11 practice submitted fraudulent billing claims to
12 BlueCross BlueShield and maybe somebody else. He
13 got -- was under an order of discipline from LLR and
14 ultimately pled guilty. And the ultimate sanction
15 from LLR was put in place in 2010.

16 And my position would be that those
17 events could have had an effect upon gross income
18 and his number of patient visits. So to the extent
19 the plaintiff is going to contend that he has lost
20 business income as a result of the access issue, I
21 think I'm entitled to show there were other events
22 that could have contributed to the number of people
23 that came to see him as a physician based upon the
24 publicity that was associated with those events.

25 THE COURT: All right. Mr. Davis.

1 MR. DAVIS: I still say that my
2 objection is based on relevance to this particular
3 matter.

4 THE COURT: All right. Mr. Stepp, was
5 this -- was this a --- was he sentenced to
6 imprisonment?

7 MR. STEPP: Yes, Your Honor.

8 MR. DAVIS: No, Your Honor. It's a
9 probation matter.

10 MR. STEPP: Well, yeah, he was
11 sentenced; but I mean, he didn't go to jail. I'm
12 not saying that.

13 THE COURT: I mean, was it over -- what
14 was the -- was it a felony?

15 MR. DAVIS: No, Your Honor.

16 MR. STEPP: Well, the charge was
17 presenting false claims for payment over \$1,000.

18 THE COURT: All right. Was that a
19 felony?

20 MR. STEPP: I'm not sure, Your Honor.
21 I'll be happy to look that up, but I'm not offering
22 it for impeachment. I'm offering it to show that
23 there were other events that could have affected his
24 business.

25 THE COURT: All right. You're not

1 offering it for impeachment. You're not offering it
2 for credibility. You're offering it solely as a
3 mitigating business factor?

4 MR. STEPP: Yes, sir. That's correct.

5 THE COURT: All right. I'll let it in
6 for those purposes only.

7 MR. STEPP: All right, sir. That's
8 fine.

9 MR. DAVIS: Thank you, Your Honor.

10 THE COURT: We don't have a jury.

11 MR. STEPP: I'm not going --

12 THE COURT: I understand. I'm the jury,
13 too. I'm the judge and jury, so we don't have to go
14 into analysis from the attorneys about the probative
15 out weighing the prejudice because you get to argue
16 to me how you're prejudiced. And we're not arguing
17 about this has anything to do with his honesty or
18 his credibility, you're just saying it is a business
19 element?

20 MR. STEPP: Correct.

21 THE COURT: All right.

22 MR. STEPP: That's correct.

23 THE COURT: I'll take in just for that.

24 MR. STEPP: All right. And then we
25 would proffer on that basis Defendant's Exhibits U,

1 V, W, X, and Y. Submitted over your objection.

2 MR. DAVIS: Yes.

3 THE COURT: All right. And the specific
4 rule, I take it, would be under Rule 404, which says
5 it's not admissible to prove character, but to prove
6 other things such as motive, opportunity, plan, and
7 I'm including another thing as economic element.

8 MR. STEPP: Yes, sir. Thank you.

9 That's clear.

10 (DFT. EXH. U in evidence.)

11 (DFT. EXH. V in evidence.)

12 (DFT. EXH. W in evidence.)

13 (DFT. EXH. X in evidence.)

14 (DFT. EXH. Y in evidence.)

15 MR. STEPP: Can I have a minute, Your
16 Honor? I think I might be done.

17 THE COURT: Yes, sir.

18 (Off-the-record conference.)

19 BY MR. STEPP:

20 Q. Dr. Gooldy, if I understood your
21 testimony correctly, you said -- I'm looking now
22 back at Plaintiff's Exhibit Number 2. You used
23 the -- you used the area to the south of your land
24 based upon the designation on Exhibit 2, this
25 50-foot road; correct? That was why you thought you

1 had the right to use the land on the south?

2 A. Yes.

3 MR. DAVIS: Object, Your Honor. He
4 testified that physically the road was there and he
5 had a right to use it, plus the plat was referenced
6 in the deed is what he testified to.

7 THE COURT: All right.

8 MR. STEPP: That's fine.

9 THE COURT: Subject to that objection.

10 MR. STEPP: That's fine.

11 Q. Well, what about on the north side?
12 What was your basis for thinking that you had the
13 right to use the property on the north side?

14 A. It was established.

15 Q. It was established because the driveway
16 was there?

17 A. It had never been -- I'd never been told
18 not to use it.

19 MR. STEPP: I think that's all I have,
20 Your Honor.

21 THE COURT: Redirect, Mr. Davis?

22 MR. DAVIS: Yes, sir.

23 EXAMINATION

24 BY MR. DAVIS:

25 Q. Dr. Gooldy, during the -- after you

1 bought the property --

2 Where is it? There it is. If I can get
3 this. Nicole, help me.

4 MS. PRICE: I'm just going to hold it.

5 MR. DAVIS: Where is that paperclip?

6 MS. PRICE: I've got it. I can do it.

7 MR. DAVIS: It wouldn't take but just a
8 second.

9 MS. PRICE: I'm fine.

10 THE COURT: Okay.

11 BY MR. DAVIS:

12 Q. On the access area that you saw before
13 you bought the property. After you bought it, did
14 you make any improvements to the access area?

15 A. I just kept it level where it had
16 weathered and from erosion.

17 Q. Any additional gravel placed?

18 A. Yeah. Did put some gravel back in
19 there.

20 Q. And that would have been on what side of
21 the property?

22 A. It was throughout the. . .

23 Q. Okay. All right. Had any other permits
24 been issued to you by DOT for access to this
25 property? At the time you brought it, were any

1 permits issued, anything of that nature?

2 A. No.

3 Q. Meaning to cross on the property --

4 A. No.

5 Q. -- on the 120 feet?

6 A. No.

7 MR. DAVIS: Okay. Nicole, hold that a
8 second. Hold this just a second.

9 MS. PRICE: (Complying.)

10 BY MR. DAVIS:

11 Q. Mr. Stepp asked you about this plat
12 being 1986, September '86. 1986. The road area on
13 this plat, on the left-hand side, this would still
14 depict the way it is, as it was 20 years ago?

15 A. It is.

16 Q. Based on what's on this plat?

17 A. Yes.

18 Q. Mr. Stepp asked you about the
19 defendant's representative attempted to enter into a
20 shared access with you; correct?

21 A. Yes.

22 Q. Okay. And he told you they offered you
23 money?

24 A. They did.

25 Q. Did they want to take some of your land

1 for the shared access?

2 A. They did.

3 Q. And where was that land?

4 A. It was on the northern -- on the
5 right-hand side of the property.

6 Q. And that would have been your parking
7 area?

8 A. Yes.

9 Q. And he wanted that because he had
10 difficulty getting access himself?

11 A. That's correct.

12 Q. Okay. The orange tape, did the -- was
13 any orange -- looking at this.

14 Is this thing into evidence?

15 MR. STEPP: It's your Exhibit Number 2.

16 THE COURT: It's Exhibit 2.

17 BY MR. DAVIS:

18 Q. Two. Looking at Plaintiff's Number 2,
19 was any orange tape placed on the far north side of
20 the defendant's property?

21 A. No, there was not.

22 Q. How about on the far south side of the
23 defendant's property?

24 A. No.

25 Q. Anything behind -- behind your property,

1 was any orange tape placed there?

2 A. No.

3 Q. It was just on the boundaries of your
4 property?

5 A. That's correct.

6 Q. Your income loss -- the blockage by
7 defendant was in 2009?

8 A. Yes.

9 Q. Okay. And your major income loss was
10 2010?

11 A. Yes.

12 Q. Okay. And what did you do or try to do
13 in '10 and 2011 to increase your income?

14 A. Took on another marketing firm so that
15 way I could attract more patients, which cost me
16 more money, and I also took down signs that were
17 bordering my -- that were on the side of my property
18 that had been -- after consulting with Lexington
19 County, that had -- the timing had expired.

20 Q. What kind of signs?

21 A. The realtors' signs.

22 Q. And where were they located?

23 A. The abutting side -- on the property in
24 the front pictures here. (Indicating.)

25 Q. On the left and the right?

1 A. On the left and the right.

2 Q. These were --- what kind of signs were
3 they?

4 A. Roughly four by eights.

5 Q. But I mean, what was on the sign?

6 A. Available.

7 Q. For what?

8 A. The fine printed title was commercial
9 lots off of Brevard Parkway.

10 Q. For sale or what?

11 A. It doesn't really say for sale. It just
12 says available.

13 Q. It's available? Okay. Those signs came
14 down; correct?

15 A. Yes.

16 Q. On the \$85 figure, some portion of that
17 is office costs?

18 A. Yes.

19 Q. What percentage do you think is true
20 expense?

21 A. Probably 50 percent, 55 percent.

22 MR. DAVIS: Okay. That's all I have.

23 THE COURT: Recross?

24 MR. STEPP: Nothing further.

25 THE COURT: All right. You can step

1 down. Next witness, Mr. Davis.

2 MR. DAVIS: Your Honor, we -- I think
3 this is by stipulation. We're going to put into
4 evidence the chain of title on the plaintiff's
5 property as well as the defendant's property.

6 MR. STEPP: No objection.

7 THE WITNESS: All right.

8 MR. STEPP: I guess I need to look at
9 it.

10 MR. DAVIS: Yes, you better do that.

11 MR. STEPP: Is that the same thing?

12 MR. DAVIS: Yes.

13 MR. STEPP: Yeah. No objection.

14 THE COURT: All right. That would be --
15 let's mark that then as one exhibit.

16 THE COURT REPORTER: Plaintiff's 11.

17 THE COURT: Plaintiff's 11. The chain
18 of title will be Plaintiff's Number 11.

19 (PLF. EXH. 11, Chain of Title, was
20 marked for identification.)

21 (PLF. EXH. 11 in evidence.)

22 MR. DAVIS: Did I give you one? No, I
23 did not.

24 Your Honor, that concludes the
25 plaintiff's case.

1 THE COURT: All right. The plaintiff's
2 rested.

3 MR. STEPP: Your Honor, at this point,
4 we would move for a directed verdict. I know it's a
5 non-jury case. I just want to protect my record on
6 that. If I could just -- I don't think they've made
7 out the elements of an easement under any of the
8 applicable therapies upon which they've pled. They
9 have not shown an intentional dedication. They have
10 not shown any deliberate act by Congaree Associates
11 at the time title was severed to create an easement.
12 They've only got this reference on this plat to the
13 50-foot road. As I mentioned in opening, where
14 we'll turn now, the incorporation of a plat into a
15 deed as a matter of law, we believe, only relates to
16 the property description and not to conditions that
17 are outside the description of the property being
18 conveyed. So I think that fails as a matter of law.

19 Also, from Dr. Gooldy's testimony, the
20 plaintiff has not established hostile use or adverse
21 use for 20 years to create an easement by
22 prescription. Dr. Gooldy's testimony is necessarily
23 limited to his use, which was only for a period of
24 seven years at the time access was cut off, so
25 that's insufficient. And without any evidence of

1 how the property was used by predecessors in the
2 title, then you can't get to the requisite 20-year
3 period of time.

4 Finally, there is no -- the elements of
5 easement by implication are not present because
6 there's no necessity. And as we addressed in our
7 trial brief, one of the several elements of an
8 easement by implication, if you're not basing it on
9 a plat, is that there has to be some necessity for
10 the easement to exist. And as I think the record
11 now establishes, there is no necessity to use
12 property on either side of Dr. Gooldy's property for
13 access. In fact, he's accessing it now without
14 using that and that could have been the case all
15 along.

16 So with respect to each of the claims
17 for easement, we think the proof fails to establish
18 the required elements. With respect to the damages
19 claims, of course, no damages would be recoverable
20 unless some right of Dr. Gooldy's was precluded by
21 something that the defendant did. So if he never
22 had the right to begin with, then he's not entitled
23 to recover damages.

24 So at this point, let me just limit my
25 remarks by saying that I don't think any of the --

1 the proof doesn't satisfy any of the requirements
2 for any of the elements of established -- to
3 establish an easement as pleaded by the defendant
4 and -- by the plaintiff and there's no basis for
5 award of damages, so we move for a directed verdict
6 on that basis.

7 THE COURT: Thank you. Mr. Davis.

8 MR. DAVIS: Your Honor, may it please
9 the Court.

10 On the cause of action for estoppel --
11 easement by implication and then I will discuss
12 estoppel. The two cases that I cite to the Court,
13 I'll give to the Court, which is Billings versus
14 McDaniel and McCallister versus Smiley, clearly
15 indicate that easement by implication apply to this
16 situation. And these are cases, even if you were
17 not involving a subdivision, just a conveyance of a
18 piece of property. Conveyance of a piece of
19 property which references a road, those cases
20 indicate that you have an easement by implication.
21 And that's exactly what we have here.

22 The evidence so far is that Dr. Gooldy
23 got a deed which referenced a plat, which showed a
24 road. My belief is that that plat was incorporated
25 in that deed and that property owner has a right to

1 rely upon what's in his chain of title. And in this
2 case, that same legal description was used for 20
3 years, the identical legal description, every
4 grantee back to the original grantor.

5 Secondly, that reference on that plat of
6 the 50-foot road -- I'm going to hand you a case
7 that indicates you don't have to have a metes and
8 bounds description for an easement. The case
9 clearly says that. You've just got to be able to
10 look at that and identify what that is. And what
11 that is is a 50-foot road. The testimony is to the
12 left of that area was a subdivision. There is a
13 certain area there and it says 50-foot road.
14 There's no ambiguity there. It's a road that's
15 50-feet wide. That's what it says. And there's not
16 any requirement for easement of that nature, ease of
17 implication being by metes and bounds.

18 Furthermore, the plaintiff has set forth
19 an easement by estoppel in that it is not fair for
20 previous owners to attempt to change what they did
21 20 years ago, otherwise we'd have a mess. We would
22 have a mess as to ownership. And in this case, the
23 common grantor for the plaintiff and the defendant
24 by law, when he referenced that plat and signed that
25 deed, he created a presumption of the intent to

1 dedicate that as a road. And when that plat is
2 being recorded, it got dedicated because it's of
3 record. And subsequent grantees have a right to
4 rely upon the record that each one of them got.

5 The grantor could have, if he wanted to,
6 the original grantor, he could have filed something
7 and terminated it. We'll see if there's any
8 evidence on that fact, but that didn't happen. This
9 man has a right to rely upon what was given to him
10 based on that chain of title. So we believe we have
11 easement by implications and by estoppel and the
12 plat is clear and the deed as to what was given to
13 Dr. Gooldy.

14 THE COURT: All right. Thank you.
15 Y'all better have a seat. I'm going -- I'm going to
16 review something and tell you what my thought is
17 where we are in this case. Plaintiff has pled in
18 essence, I have a right to use this road because it
19 was in my chain of title. It was in the grant and
20 it went back. As I understand -- as I understand,
21 the defendant's argument is that the -- that is a
22 failed argument because it only says 50-foot road,
23 doesn't show widths and boundaries or anything like
24 that.

25 First of all, Mr. Davis', I believe,

1 position is right on that. There are a number of
2 cases that deal with a report locating an easement
3 when somebody says you've got a right-of-way. So
4 I'm going to let y'all argue that when the case is
5 over, the fine points between that.

6 You do not have to grant an easement.
7 You do not have to show with specificity. There's
8 hundreds -- there's lot of cases that say that
9 that's why Courts do easement location. How wide?
10 Is it 10 foot? Is it 20 feet? Is it 50 feet?
11 Courts regularly establish width and location.

12 I do not -- I don't think the law is
13 that you can only have incorporation by plat if it
14 is a subdivision if you mean subdivision being
15 Falcon Ranches. Because theoretically any time
16 somebody takes a piece of their property and sells
17 you part of that, that's a subdivision. All right.
18 That's subdivision.

19 I am going to be -- well, I'll say that
20 at the end. Easement by prescription is 20 years.
21 Now, I'm going to ask Mr. Davis on that. Is there
22 testimony -- I want to finish. Is there testimony
23 about 20 years on easement by prescription? Because
24 easement by prescription requires 20 years. On
25 y'all's stated tagging, you stated the identity.

1 Mr. Stepp argued that the use was not adverse.

2 Well, it can also be under a claim of
3 right. So he's clearly using it under a claim of
4 right. Claim of right has been defined by multiple
5 cases. The road was there. I thought I had a right
6 to use it. So clearly out of the three prongs, he's
7 established the identify of the thing enjoyed, the
8 road. No question about what was used. He's
9 established it under a claim of right. I want to
10 hear more from y'all on prescriptive easement as if
11 there's evidence in front of me right now for 20
12 years. All right?

13 Yes, sir.

14 MR. STEPP: Did you want me to address
15 that now or did you want to hear --

16 THE COURT: No. I want to hear it.

17 MR. STEPP: Well, there's no evidence
18 about anything other than Dr. Gooldy's use, Your
19 Honor, and that's only seven years. So I think the
20 record does not contain any evidence of 20-years
21 use.

22 THE COURT: All right.

23 MR. DAVIS: Your Honor, the testimony is
24 that Dr. Gooldy has testified to his use. He also
25 testified that the -- his immediate predecessor in

1 title, that it was on the ground and the access was
2 there when it was sold it him and that the
3 nurseryman, whichever one that was, I think Mr.
4 Balser had a nursery there and the access was there.
5 The fact that the plat, the same plat is in the
6 chain of title for the 20-year period. And that by
7 the plat being referenced in the deed, that that
8 shows that there was a road there that each party
9 had a right to use, which I think at least is a
10 presumption of the right to use. That is -- that is
11 what I have at this point on the prescriptive
12 easement.

13 THE COURT: All right. In the exhibit
14 that sets out the chain of title that y'all have
15 stipulated to -- all right. The lawsuit was filed
16 in 20 --

17 MR. DAVIS: February 2010.

18 THE COURT: In 2010. So any time before
19 there. So when Mr. Loflin bought the property. Has
20 there been any testimony about Loflin's use?

21 MR. DAVIS: No, sir.

22 THE COURT: Or the Wickler use?

23 MR. DAVIS: No, sir.

24 THE COURT: All right. Canaday or
25 Belser? Belser? No. Canaday? Canaday, I believe

1 the testimony was that he was the one who had the
2 plants. No. Did I say THAT right?

3 MR. DAVIS: Your Honor, that would have
4 been Balser on the plant -- on the nursery.

5 THE COURT: Besler?

6 MR. DAVIS: Balser, B-a-l-s-e-r, which
7 was prior to Canaday.

8 THE COURT: All right. So he was in
9 '98; is that correct? He got it in 1998. Am I
10 looking at this right?

11 MR. STEPP: Yes, sir.

12 THE COURT: On your Plaintiff's Exhibit
13 11?

14 MR. STEPP: That's right.

15 MR. DAVIS: Yes, sir.

16 THE COURT: Right. So we've got
17 testimony of use from '98 forward and that's not 20
18 years, from '98 to 20 --

19 MR. DAVIS: That'd be 22.

20 THE COURT: '98 to --

21 MR. DAVIS: No, I'm sorry. Twelve
22 years. Sorry.

23 THE COURT: Twelve years. But your
24 argument is the fact that it's on the plat --

25 MR. DAVIS: As a road.

1 THE COURT: All right. All right.

2 MR. STEPP: Your Honor, there's no --
3 there's no testimony that Mr. Loflin, his wife or
4 Mr. Balser used the property. I mean, there's no
5 testimony Mr. Loflin used it at all. There is some
6 testimony that Balser was using this driveway, but
7 there's no testimony that he used it adverse to the
8 interests of Congaree Associates or under a claim of
9 right, either one. That's what you've got to have.

10 The plat for purposes of easement by
11 prescription, it seems to me is irrelevant. We're
12 now talking about whether there's been continuous
13 use, either under a claim of right or in a way that
14 was adverse to the rights of the true owner for 20
15 years.

16 THE COURT: Well, I understand that what
17 he's arguing though is the plat creates the claim of
18 right.

19 MR. STEPP: No, sir.

20 THE COURT: What you're saying is that
21 there's no actual testimony?

22 MR. STEPP: Well, that's right. I mean,
23 these people would have to testify that they used it
24 under a claim of right. There's no --

25 THE COURT: So it would take two things.

1 MR. STEPP: That's right.

2 THE COURT: It would take the plat plus
3 actual testimony.

4 MR. STEPP: Well, it would at least take
5 the testimony. I don't know that the -- I would
6 argue the plat is not relevant to that issue, but I
7 understand -- I understand that inference that he
8 wants you to draw. But even given that, it's not
9 enough because you don't know what Mr. Loflin and
10 his wife or Mr. Balser's state of mind was.

11 THE COURT: All right, sir. I'm
12 granting it just to prescriptive because it does not
13 fit --

14 MR. STEPP: All right, Your Honor.

15 THE COURT: -- the 20 years on that.
16 But I don't think -- I think you have to have plat
17 and testimony, so I'm going to grant it as to
18 prescription; but all the other causes of action
19 remain. All right.

20 It's 11:30. Ready to go with your next
21 witness?

22 MR. STEPP: Yes, sir. We're ready.

23 THE COURT: Call your witness.

24 MS. DuRANT: Your Honor, we'd like to
25 call Mr. Carroll McGee.

1 CARROLL MCGEE,
2 being first duly sworn, testified as follows:

3 THE BAILIFF: Sit down other there and
4 state your name, sir.

5 THE WITNESS: Carroll McGee.

6 EXAMINATION

7 BY MS. DURANT:

8 Q. Good morning, Mr. McGee. How are you
9 doing this morning?

10 A. Good morning.

11 Q. What's your profession?

12 A. I got several.

13 Q. Why don't you just tell me your main
14 one?

15 A. I'm a real estate broker.

16 Q. How long have you been involved in real
17 estate?

18 A. Fifty-one years.

19 Q. Have you been involved in both
20 commercial and residential real estate?

21 A. I have.

22 Q. How long have you been involved in
23 commercial real estate?

24 A. Fifty-one years.

25 Q. How about residential real estate?

1 A. Fifty-one years.

2 Q. What business are you associated with?

3 A. What business? Like Congaree

4 Associates?

5 Q. Yes, sir. Are you associated with

6 Congaree Associates?

7 A. I am.

8 Q. Is that a partnership?

9 A. It's a limited partnership.

10 Q. Are you a partner in Congaree

11 Associates?

12 A. I am.

13 Q. How long have you been with Congaree

14 Associates?

15 A. I think it was formed 28 to 30 years

16 ago.

17 Q. Are you familiar with the two parcels
18 that are at issue today?

19 A. I am.

20 Q. Is it your -- excuse me just a second.

21 Is your understanding that -- I'll reference, I

22 believe this is Plaintiff's Exhibit 2.

23 MR. STEPP: Bess, stand on this side so
24 the Judge can see.

25 BY MS. DuRANT:

1 Q. Is it your understanding that Dr.
2 Gooldy, the plaintiff, now owns this 0.68 acres and
3 that The Storage Center owns the surrounding
4 property --

5 A. I am.

6 Q. -- is that correct? Was Congaree
7 Associates the owner of both parcels at one time?

8 A. It was.

9 Q. Do you remember when Congaree Associates
10 acquired these parcels?

11 A. Well, we bought 500 acres.

12 Q. Did you remember when you would have
13 acquired those two parcels?

14 A. It would have been at least 28, 30 years
15 ago. I don't have the. . .

16 Q. Okay. Did you ever develop a
17 subdivision beyond Mr. Gooldy's property -- Dr.
18 Gooldy's property? Excuse me.

19 A. You talking about behind this property?

20 Q. Yes, sir.

21 A. No.

22 Q. Did you ever create a road that ran
23 along side the Loflin/Gooldy parcel up to this
24 proposed subdivision?

25 MR. DAVIS: Objection, Your Honor. The

1 answer to that question would attempt to vary the
2 grant given to Dr. Gooldy by the deed from Congaree
3 Associates. Meaning that that grant by conveyance,
4 that deed conveyed that lot and gave a reference to
5 a plat which showed a road and so that speaks for
6 itself. If they're trying to vary what was granted
7 by that deed, I think that would be inadmissible
8 evidence.

9 THE COURT: All right. Are you asking
10 him for a legal conclusion or are you asking him did
11 they ever physically put something on the ground?

12 MS. DuRANT: Did they ever physically
13 put something on the ground.

14 THE COURT: Okay. So you can answer the
15 question if they physically put something on the
16 ground.

17 MS. DuRANT: And also what his intent
18 was related --

19 THE COURT: All right. You can -- you
20 can ask him two things, but ask him -- break it up.

21 MS. DuRANT: Sure.

22 THE COURT: Ask him about what they
23 physically did and intent's fair game for cross
24 examination about what the deed said.

25 MR. DAVIS: If I may, Your Honor. If

1 you're making a ruling there on the question of
 2 intent, I would object to that because the intent --
 3 the intent has already been expressed by the deed.
 4 Under the laws of this State, the case law is, when
 5 he signed that deed as a partner of that
 6 partnership --

7 THE COURT: You can cross examine him on
 8 that with that because that's like asking somebody
 9 didn't you sign this and did you mean to do it. You
 10 can say did you sign it? You can argue it later,
 11 but she's got a right to ask him.

12 MR. DAVIS: If I may or if I need to
 13 shut up, I'll shut up on this. But my point there
 14 is this, his -- if you ask him intent and he's
 15 trying to vary the intent, which has already been
 16 established.

17 THE COURT: You can -- you can cross him
 18 about that. You can ask him if he executed the
 19 deed.

20 MR. DAVIS: Yes, sir.

21 THE COURT: Okay. All right. And then
 22 you both can argue legally what that means. All
 23 right.

24 BY MS. DuRANT:

25 Q. Mr. McGee, back to my question. Did you

1 ever have a 50-foot road installed that went back to
2 the proposed subdivision?

3 A. I did not.

4 Q. Okay. Why not?

5 A. At one time, we had anticipated putting
6 a subdivision back there that would go all the way
7 out to Brevard Parkway --

8 MR. DAVIS: Your Honor, I want to make
9 sure my objection is still running, so I make sure
10 I'm clear there.

11 THE COURT: Your objection is noted.

12 MR. DAVIS: Okay.

13 THE WITNESS: -- and after we had the
14 County respond to the plans, the cost was too
15 exorbitant for it to work, so we scrapped the whole
16 idea. And I will say this, I never remember
17 discussing that 50 foot with anybody, Mr. Loflin or
18 anybody else in that chain of title.

19 BY MS. DuRANT:

20 Q. Did you ever put any road in at -- did
21 you ever put any road at all that was any length?

22 A. No.

23 Q. Did you ever install any road
24 whatsoever?

25 A. I didn't.

1 Q. All right. Mr. McGee, at some time, you
2 decided to convey or Congaree Associates decided to
3 convey this .68 acres; correct?

4 A. Correct.

5 Q. Who did you convey it to?

6 A. James Loflin.

7 Q. I'm handing you Exhibit D, which is a
8 certified copy of a deed from Congaree Associates to
9 James Loflin. Do you recognize that deed?

10 A. Yeah. I've signed thousands of them,
11 but it looks like it.

12 Q. Is that your signature at the bottom of
13 the first page of the deed?

14 A. It is.

15 Q. When did Congaree Associates convey this
16 parcel to James Loflin?

17 A. Let me look and make sure. September
18 15, 1986.

19 MS. DuRANT: And I believe this has
20 already been admitted as part of Mr. Davis' chain of
21 title, but can we go ahead and admit it as a
22 separate -- I ask that it be admitted as a separate
23 exhibit, Your Honor, Defendant's Exhibit D.

24 THE COURT: I mean, if you'd like to.
25 It's Record Book 837 and I believe at Page 36. It

1 is also contained within plaintiff's chain of title,
2 Number 11.

3 MS. DuRANT: Thank you, Your Honor.

4 (DFT. EXH. D in evidence.)

5 BY MS. DuRANT:

6 Q. Mr. McGee, who is James Loflin?

7 A. James worked for the McGee Company as an
8 agent.

9 Q. Uh-huh.

10 A. And he built this house as a model house
11 and sold log houses from this house.

12 Q. Okay. And he is the individual that
13 Congaree Associates conveyed the property to;
14 correct?

15 A. Correct.

16 Q. Okay. You have Exhibit I, Plaintiff's
17 or -- I think it's Plaintiff's Exhibit 2 in front of
18 you, but this is just a larger version of the plat
19 for you. But this is the plat that was prepared for
20 James Loflin before you conveyed the property;
21 correct?

22 A. That's what it shows there. Yes.

23 Q. You've got a copy right in front of you
24 if you can't see this far. Actually, it's
25 Plaintiff's Exhibit 2.

1 MR. STEPP: Hand it to him.

2 BY MS. DuRANT:

3 Q. Here it is.

4 A. Oh, okay.

5 Q. And it shows the corners, metes and
6 bounds of Mr. Loflin's property; correct?

7 A. Correct.

8 Q. Does it show the corners, metes and
9 bounds of Congaree Associates' property?

10 A. No.

11 Q. All right. So this is -- in other
12 words, this is a plat of James Loflin's property,
13 not Congaree Associates' property; right?

14 A. Right.

15 Q. Did Congaree Associates ever convey an
16 easement over this 50-foot road, alleged 50-foot
17 road?

18 MR. DAVIS: Objection, Your Honor. That
19 requires a legal conclusion.

20 THE COURT: Sustained.

21 BY MS. DuRANT:

22 Q. Did Congaree Associates ever build this
23 road?

24 A. No.

25 Q. All right.

1 Exhibit GG. A copy of the original.

2 It's just a smaller version of the plat.

3 MR. DAVIS: Sure.

4 MS. DuRANT: Your Honor, this is, for
5 your record, Defendant's Exhibit GG.

6 Q. Mr. Loflin (sic), I want to hand you a
7 copy of this. Do you recognize this Defendant's
8 Exhibit GG?

9 A. Do I recognize this?

10 Q. Yes, sir.

11 A. Frankly, I will tell you I haven't given
12 thought to this in -- I guess in about 24 years.

13 Q. I understand.

14 A. I really didn't remember doing it until
15 I checked over the record, but we -- the cost of
16 doing this was too great and we rejected it.

17 Q. Okay. So this plat was never finalized?

18 A. That's correct.

19 Q. It was never approved by the Lexington
20 Planning Commission?

21 A. In fact, they wrote down many things as
22 to why it wasn't suitable.

23 Q. Right. And why did you choose not --
24 well, let me step back. What does that plat show?

25 A. It shows a proposed Phase II. Phase I

1 was approved and done.

2 Q. Uh-huh.

3 A. And it shows a Phase II proposed --

4 Q. Uh-huh.

5 A. -- but never got developed.

6 MS. DuRANT: Okay. Your Honor, I'd ask
7 this be admitted, Defendant's Exhibit GG be admitted
8 into evidence.

9 MR. DAVIS: Subject to my objection as
10 to what I've stated before.

11 THE COURT: All right.

12 (DFT. EXH. GG in evidence.)

13 BY MS. DuRANT:

14 Q. So Mr. McGee, can you tell us when that
15 plat was prepared?

16 A. It was -- let me see. It's on here.
17 January 1984.

18 Q. Was it ever recorded with the Lexington
19 Country Register of Main Conveyances?

20 A. If it was, I don't recall it.

21 Q. Was it ever finally approved by the
22 Lexington Planning Commission?

23 A. It was not.

24 Q. Okay. Was the division ever built?

25 A. No.

1 Q. Yesterday, Mr. Davis provided us with a
2 copy of a letter and we don't have this marked, Your
3 Honor.

4 Could I have this marked, please, ma'am?

5 THE COURT REPORTER: As what?

6 MS. DuRANT: Defendant's KK if you don't
7 mind.

8 (DFT. EXH. KK, Letter to Congaree
9 Associates from Michael P. Criss, Dated
10 July 15, 1985, was marked for
11 identification.)

12 BY MS. DuRANT:

13 Q. Mr. McGee, I'm going to hand you a copy
14 of what's been marked as Defendant's Exhibit KK.
15 And again, I'll tell you, Mr. Davis produced this to
16 us yesterday. Do you recognize that letter?

17 A. I wouldn't have until I saw the letter,
18 but it's got my name on it and Michael Criss signed
19 it.

20 Q. Have you had a chance to review it since
21 you've received a copy?

22 A. I've looked at it. And the requirements
23 to run a private road subdivision -- this letter is
24 why we didn't continue with it.

25 Q. Is that letter related to Defendant's

1 Exhibit GG?

2 A. Yes.

3 Q. Okay. Did Congaree Associates ever
4 submit the revised documents as requested by the
5 Planning Commission?

6 A. We did not.

7 Q. Why not?

8 A. We calculated and the cost of developing
9 it, we wouldn't have broken even if we had done it,
10 so. . .

11 Q. So again, there's no final plat of
12 Exhibit GG or there's no final plat of any
13 subdivision of Westchester Phase II Subdivision?

14 A. Correct.

15 Q. So Phase II was never subdivided, was
16 it?

17 A. Correct.

18 Q. Was there ever a road that was 50-foot
19 long and 650 -- I'm sorry. Strike that question.

20 Was there ever a road 50-feet wide and
21 650-feet long ever installed?

22 A. No.

23 Q. Was there ever -- did you ever have the
24 land graded to install the road?

25 A. No.

1 Q. Did you ever have ditches installed?

2 A. Did not.

3 Q. Did you ever put surface down for the
4 alleged road?

5 A. Did not.

6 Q. Was the culs-de-sac as reflected on your
7 exhibit, Defendant's Exhibit GG, ever installed?

8 A. No.

9 Q. So besides the preliminary preparation
10 of Defendant's Exhibit GG and the first submission
11 of that plat to the County, did Congaree Associates
12 take any other steps regarding this Phase II
13 subdivision?

14 A. Did not.

15 Q. Okay. Let's go through some other --
16 who prepared Plat GG? I'm sorry. Who prepared the
17 exhibit, the plat labeled as Exhibit GG? Can you
18 tell me, Mr. McGee, who prepared it?

19 A. Oh, who prepared it?

20 Q. Yes, sir.

21 A. Yeah. Robert Collingwood.

22 Q. Okay. Let's talk about some other plats
23 that Robert Collingwood prepared, if you don't mind.

24 A. Okay.

25 MS. DuRANT: This is Exhibit A in your

1 book.

2 MR. DAVIS: Your Honor, in reference to
3 the introduction of Exhibit K, I question the
4 relevance of those documents in regards to this
5 particular transaction.

6 THE COURT: I'm not sure I see -- I see
7 a Collingwood plat, that's K. I don't know what
8 it's of or what it's being offered for.

9 MS. DuRANT: It's a plat of the -- well,
10 can I just lead or ask Mr. McGee some questions and
11 establish the foundation about it?

12 THE COURT: Sure.

13 BY MS. DuRANT:

14 Q. Mr. McGee, I'm going to hand you what's
15 already been marked as Defendant's Exhibit K.
16 Unfortunately, it's kind of cut up a bit. This is a
17 plat that's been prepared for Congaree Associates by
18 Mr. Collingwood. Can you orient yourself and locate
19 the parcels that we're discussing?

20 A. Let me see. Yeah.

21 Q. Great. Great. And for the record,
22 you're pointing to, let's see, the left side of --
23 the far left side of the --

24 THE COURT: Hold on. K's got three
25 pages. Which? Show me.

1 MS. DuRANT: Yes, Your Honor.

2 THE COURT: And show Mr. Davis.

3 MS. DuRANT: Here you go. Let's look
4 right under this. Well, let me give you a sticky --

5 THE WITNESS: I see it down here.

6 MS. DuRANT: But I need to show the
7 Court.

8 Q. Can you point the sticky where you
9 located it?

10 A. (Complying.) Okay.

11 MS. DuRANT: I'll show the Judge.

12 THE COURT: All right. This is Exhibit
13 K.

14 MS. DuRANT: Yes, Your Honor. And he
15 has located the parcel right here. (Indicating.)
16 Let's see.

17 THE COURT: It's right there?
18 (Indicating.)

19 MS. DuRANT: Yes, Your Honor.

20 MR. DAVIS: The parcel is where?

21 MS. DuRANT: Right here. (Indicating.)
22 And that's Highway 6.

23 THE COURT: All right. Now, I want to
24 review his objection. Now, when was this plat
25 prepared?

1 MS. DuRANT: It was prepared in '98.

2 THE COURT: So it was prepared 12 years
3 after they deeded out this lot --

4 MS. DuRANT: Correct.

5 THE COURT: -- that's in dispute?

6 MS. DuRANT: Correct.

7 THE COURT: So what's the relevance of
8 that as to the intention at the time in 1986 when
9 the deed was done?

10 MS. DuRANT: The intention, Your Honor,
11 shows the -- the intent shows that there was no
12 intent for a road to be built because this plat does
13 not reflect the road.

14 THE COURT: It's something that was done
15 12 years later than when the deed was put in the
16 chain of title?

17 MS. DuRANT: I think it shows there was
18 never an extent for Mr. Loflin to acquire a 50-foot
19 road.

20 THE COURT: I'm going to sustain that
21 objection because the clear -- the clear law in the
22 State is is your intent -- for a grantor's intent is
23 at the time of execution. And you're trying to put
24 in something that's 12 years later that -- reasons
25 and lots of things can change economically in 12

1 years, but you're bound by what you did when you put
2 it in. So I don't -- I'm not going to allow this.
3 I'm going to sustain that objection to this plat
4 because I don't think 12 years later is close enough
5 to when it was done because that's the time that
6 counted, when it was done. I think twelve years is
7 too different. It's a different economic time.
8 It's a different county, so I'll sustain the
9 objection.

10 MR. STEPP: But Your Honor, if I may, I
11 think the point would be, if they intended to create
12 a road 12 years earlier, it would still be there and
13 they would still be showing it.

14 THE COURT: Well --

15 MR. STEPP: The fact that -- the fact
16 that it's not shown later is indicative of what was
17 intended at the time.

18 THE COURT: No. That's a false premise.
19 The premise is is that since I bought a house in
20 Edmond in 2012, I meant to live there in 2010
21 because I did another act. There's no link between
22 those two.

23 MR. STEPP: We would -- I understand.

24 THE COURT: For example. For example.
25 His testimony has been, the reason we didn't do it

1 was because we couldn't make money. If they could
2 have made money, then we would have done it. That's
3 the flip side.

4 MR. STEPP: Yes, sir.

5 THE COURT: So I'm going to sustain that
6 objection.

7 MR. STEPP: Can we mark that as a Court
8 exhibit, Your Honor, to make sure that our record is
9 protected, please?

10 THE COURT: Sure.

11 MS. DuRANT: Just leave this marked?

12 MR. STEPP: Let's make it Court Exhibit
13 Number 1 or whatever.

14 (COURT EXH. 1, Plat Prepared for
15 Congaree Associates and Crestview
16 Limited Partnership, was marked for
17 identification.)

18 MS. DuRANT: Your Honor, we've got a
19 similar plat that was also drafted by Mr.
20 Collingwood in 2002 that does not reflect the road.
21 Can we just mark it as well as a court exhibit?

22 THE COURT: Sure. Same --

23 MR. DAVIS: Same objection.

24 THE COURT: Same objection.

25 MS. DuRANT: This will be Court's

1 Exhibit Number 2.

2 (COURT EXH. 2, Plat Prepared for
3 Congaree Associates, was marked for
4 identification.)

5 BY MS. DuRANT:

6 Q. Mr. McGee, the other side has made --
7 well, let me ask you this. Going back to when you
8 conveyed this parcel to Mr. Loflin. Did Congaree
9 Associates intend to create any easement rights when
10 it conveyed the property to Loflin?

11 MR. DAVIS: Same objection, Your Honor.
12 The deed, executed and recorded deed expresses the
13 intent and there's been no testimony as to any
14 ambiguity of that document to allow other testimony
15 to come in to establish something besides what it
16 is, which is a 50-foot road.

17 THE COURT: All right.

18 MS. DuRANT: Your Honor, I think it goes
19 back to the point. The deed -- Mr. McGee's own
20 testimony reflects that he did not intend to convey
21 the easement.

22 MR. DAVIS: Your Honor, I haven't heard
23 that one.

24 MR. STEPP: Well, that's the question
25 that got objected to. Of course, you hadn't heard

1 it.

2 THE COURT: All right. I'm going to
3 allow the testimony. I'm going to allow it. I'm
4 going to allow you to cross him on it.

5 BY MS. DuRANT:

6 Q. I'll ask you again the same question,
7 Mr. McGee. Going back to when Congaree Associates
8 conveyed this .68 acres to Mr. Loflin, did Congaree
9 Associates intend to create any easement rights when
10 it conveyed the property to Loftin -- Loflin?

11 Excuse me.

12 A. I'm going to say no. Let me make this
13 clear. I never discussed that road with Mr. Loflin
14 or the successors to him. It never came up. Nobody
15 ever asked me.

16 Q. Similarly, did Congaree Associates
17 intend to convey any easement rights to Loflin?

18 A. The question never came up.

19 Q. Okay.

20 A. Had no reason to.

21 Q. Did Congaree Associates convey any
22 easement rights to Loflin?

23 A. No.

24 Q. By reference --

25 MR. DAVIS: Objection, Your Honor, as to

1 the legal --

2 THE COURT: That's sustained. That
3 calls for a legal conclusion.

4 BY MS. DuRANT:

5 Q. By referencing the Loflin plat and the
6 deed's legal description, did Congaree -- what did
7 Congaree Associates intend to convey?

8 MR. DAVIS: Same objection, Your Honor.
9 It's drawing a legal conclusion.

10 THE COURT: I'm going to sustain that,
11 too. Because if he -- if he signed a deed, if he
12 went to a closing and he signed a deed and there was
13 a deed and there was a plat, he can't come in and
14 argue legally what that means. That means something
15 legally.

16 MR. STEPP: Your Honor, may I address
17 that? That's simply not right. The whole issue
18 here is the question of the grantor's intent. And
19 in fact we've cited these cases in our property, but
20 I mentioned them in opening. The fact that there's
21 an incorporation of the plat is not dispositive. If
22 that were true, then you can just grant a judgment
23 for the plaintiff right now because we got nothing
24 else to say; but that's not what the law is. The
25 law is that you have to discern the intention of the

1 grantor at the time of the conveyance. And one
 2 piece of evidence that helps reveal that intent that
 3 plaintiff's like is the fact that this plat is
 4 mentioned in the deed; but it's not dispositive and
 5 we've cited those cases. It is at best a rebuttal
 6 presumption. And the real question is what was the
 7 actual intent. Now, we've also cited cases that
 8 say, where the reference on the plat is outside of
 9 the boundary of what's being conveyed, it doesn't
 10 count at all.

11 THE COURT: All right. Now, that's the
 12 second point I'm going to ask y'all to brief.

13 MR. STEPP: Well, it's in our property.
 14 Be happy to do it.

15 THE COURT: I understand. But
 16 there's --

17 MR. STEPP: Yes, sir. But we got to get
 18 the evidence in. That's all I'm saying.

19 THE COURT: I understand.

20 MR. STEPP: Yes, sir.

21 THE COURT: All right. You can ask him
 22 what he intended to do, but you cannot ask him what
 23 he legally did.

24 MR. STEPP: That's right.

25 MS. DuRANT: Yes, sir.

1 MR. DAVIS: I don't know -- I have to
2 note my objection again, but I would like to say
3 this. I believe the law to be that you have to look
4 at the four corners of that deed to determine what
5 was done. And nobody has proven to the present --
6 no one has satisfied this Court that there's any
7 ambiguity as to what's on that deed and plat. And,
8 now, we're letting in extrinsic evidence to try to
9 prove what the law says happened here. Congaree
10 recorded the deed.

11 THE COURT: Right. I understand and
12 y'all are kind of saying the same thing. If the
13 deed -- if the deed is unambiguous, you construe it
14 for --

15 MR. DAVIS: That's right.

16 THE COURT: That's the law. If there's
17 a question about what he did or didn't do, then I
18 think the Court would find that, then you get into
19 other areas. What they're trying to argue to the
20 question is is this ambiguous. And I'm not going to
21 make a ruling on that at this point when they're
22 still having the questions. I haven't ruled if it's
23 ambiguous or not. You need to ask your questions.

24 MS. DuRANT: Thank you, Your Honor.

25 Q. So again, by referencing this plat, this

1 Loflin plat, what did Congaree Associates intend to
2 convey to Mr. Loflin?

3 A. The property as shown where that house
4 is on it and that's it.

5 Q. So this property within the boundary
6 lines?

7 A. Correct.

8 Q. By referencing the Loflin plat and the
9 deed's legal description, did Congaree intend to
10 convey any property outside of the boundary lines to
11 Mr. Loflin?

12 A. No.

13 Q. By referencing the plat and the deed's
14 legal description, did Congaree Associates intend to
15 convey any rights in this nebulous 50-foot road
16 reference?

17 A. ~~The question was never raised.~~ It was
18 never done.

19 Q. So is that a no, that Congaree
20 Associates did not intend to convey any rights --

21 A. Did not.

22 Q. -- in the road? By executing the deed
23 on behalf of Congaree Associates, did you on behalf
24 of Congaree Associates intend to convey any rights
25 in the alleged 50-foot road?

1 A. No.

2 Q. By consenting to the deed being
3 recorded, did Congaree Associates intend to convey
4 any rights in the alleged 50-foot road to Mr.
5 Loflin?

6 A. No.

7 Q. So Mr. McGee, you referenced the plat in
8 your deed, you signed it and you recorded it, so
9 what did you think referencing the plat in your
10 legal description accomplished?

11 A. I considered all we were doing was
12 selling the lot with the house there that was
13 surveyed out. Nothing else.

14 Q. Did you review this plat before you
15 conveyed the property to Mr. Loflin?

16 A. I assume I did.

17 Q. At the time you conveyed the parcel to
18 Loflin, if you understood that someone would later
19 claim rights to an easement under the plat, would
20 you have incorporated it in the deed to Mr. Loflin?

21 A. No.

22 Q. Did you ever give Mr. Loflin permission
23 to use a strip of land abutting this other side of
24 the parcel, of Mr. Loflin's parcel?

25 A. It was never discussed.

1 (Off-the-record conference.)

2 MS. DuRANT: This is the deed from
3 Congaree Associates to The Storage Center.

4 MR. DAVIS: Okay.

5 MS. DuRANT: Your Honor, this is --

6 MR. DAVIS: No objection to the
7 introduction of that deed.

8 MS. DuRANT: -- Exhibit C, Defendant's
9 Exhibit C.

10 THE COURT: All right. Without
11 objection.

12 (DFT. EXH. C in evidence.)

13 BY MS. DuRANT:

14 Q. Mr. McGee, I'm going to hand you a copy
15 of Defendant's Exhibit C. Do you recognize
16 Defendant's Exhibit C?

17 A. Yes.

18 Q. Does this deed convey the property
19 surrounding what we'll call the Loflin/Gooldy
20 parcel? Does Exhibit C convey the property
21 surrounding the Loflin/Gooldy parcel?

22 A. It does.

23 Q. Okay. When Congaree Associates was
24 preparing to convey the property to The Storage
25 Center, did it cause a plat to be prepared?

1 A. I think -- it looks like Civil
2 Engineering did that plat according to this.

3 MS. DuRANT: Randy, this is Exhibit J.
4 This is that plat that y'all attached to Mr.
5 Gooldy's affidavit.

6 MR. DAVIS: Okay. No objection.

7 MS. DuRANT: Your Honor, this is Exhibit
8 J, Defendant's Exhibit J.

9 THE COURT: No objection to J.

10 (DFT. EXH. J in evidence.)

11 BY MS. DuRANT:

12 Q. Mr. McGee, I want to hand you a
13 certified copy of Exhibit J. And I'm going to put a
14 larger version Exhibit J on the easel, if I can get
15 it to stay. Do you recognize Exhibit J?

16 A. Let me see your big one together.

17 Q. (Complying.) Do you want me to bring it
18 closer? Can you see it?

19 A. No. I can see it --

20 Q. Okay.

21 A. -- from there. Yeah.

22 Q. Was this plat prepared for Frank
23 Strasburger?

24 A. Frank is an agent with McGee Real Estate
25 and he had it prepared.

1 Q. So essentially, this is a plat prepared
2 for Congaree Associates?

3 A. Yes.

4 Q. Okay. Does it accurately depict the
5 parcel of land that was conveyed to The Storage
6 Center?

7 A. It does.

8 Q. What is the date of this plat?

9 A. October 27, 2006.

10 Q. Does it show a 50-foot road abutting the
11 southern side of Dr. Gooldy's property?

12 A. No.

13 Q. Why?

14 A. Well, when -- I'm sure when they did the
15 title work, they were buying everything left in that
16 area that was part of it.

17 Q. But did a road exist in 2006, a 50-foot
18 road?

19 A. Not to my knowledge.

20 MS. DuRANT: That's all we have, Your
21 Honor.

22 THE COURT: Cross, Mr. Davis.

23 MR. DAVIS: Thank you, Your Honor.

24 EXAMINATION

25 BY MR. DAVIS:

1 Q. Mr. McGee, we've known each other a long
2 time?

3 A. Forty years.

4 Q. Yes, sir. Let's see here if I can find
5 what I need. Looking at Defendant's Exhibit KK --

6 A. Uh-huh.

7 Q. -- which is the letter from the County
8 to Congaree Associates. That's dated July the 15th
9 of 1985 and it was directed to Congaree Associates?

10 A. Yes.

11 Q. And the general partner -- Congaree
12 Associates was a limited partnership?

13 A. Correct.

14 Q. And the general partner of Congaree
15 Associates was?

16 A. It was originally McGee Real Estate and,
17 in time, I was substituted as the general partner.

18 Q. I take it with authority to sign --

19 A. Correct.

20 Q. -- for the limited partnership? What
21 that letter indicates is that the -- as I read it
22 and you correct me. It says that the County has
23 approved the subdivision, has approved the
24 subdivision for Westchester Phase II. Now, what --
25 and then it says that what needs to be done to

1 finalize that is for the plat for that Phase II to
2 show the storm drainage basin and for the drainage
3 ditches on the side of the road to be placed on the
4 plat, as I read it. Am I correct?

5 A. Now, they approved Phase I.

6 Q. Okay.

7 A. Let me see.

8 Q. On the second line, while you're
9 looking, it says they have approved the private road
10 subdivision for Westchester Phase II --

11 A. Ah. . .

12 Q. -- subject to two items to be
13 accomplished by the surveyor as to what the survey
14 was to show.

15 A. Okay.

16 Q. Is that right?

17 A. Well, yeah. If we did certain things,
18 they would --

19 Q. Yes.

20 A. -- approve it.

21 Q. Okay. And so in July '85, the
22 Westchester Phase II was approved by the County
23 subject to those things as you just indicated. Now,
24 the road, the 50-foot road area that's on
25 Plaintiff's Number 2, which is on the left-hand side

1 of Dr. Gooldy's lot, it shows 50-foot road. That
2 road area, 50 feet, is the same access road that was
3 going to be used for Westchester Phase II, is it
4 not?

5 A. That is correct.

6 Q. Okay. So this would have been -- this
7 area when this plat was done by Bob Collingwood in
8 19 -- December 10th of '85, which is -- this letter
9 is July '85 and this plat is December '85, he's
10 showing that 50-foot road, which again is part of
11 the Westchester Phase II access road; correct?

12 A. If we had developed it, it would have
13 been.

14 Q. But it was developed to the point of the
15 County approving it per the request of Congaree
16 Associates subject to some plat corrections, July
17 '85?

18 A. And certain utilities.

19 Q. Okay. So there's no question or is
20 there any question about where the defined area is
21 of the 50-foot road that is shown on Plaintiff's
22 Exhibit Number 2 because it would match up with the
23 Westchester Subdivision plat?

24 A. If we had developed the Westchester,
25 there would have been a road there.

1 Q. All right. Mr. Collingwood was the
2 engineer/surveyor for Westchester Phase II?

3 A. Yes.

4 Q. Okay. And he did this plat for either
5 y'all or the buyer, I'm not sure yet, but did that
6 plat. So he would have had obviously knowledge of
7 the access road for Westchester Phase II?

8 A. He would have.

9 Q. So when that was drawn, he had something
10 to go about ~~is~~ the road area?

11 A. Yes.

12 Q. Okay. Now, the deed from Congaree
13 Associates. This is Defendant's D, the deed from
14 Congaree Associates to James D. Loflin, this is in
15 September 15, 1986. Executed September 15, '86,
16 which is a little over a year beyond the letter from
17 the County. County is July '85. This execution is
18 September 15, '86. So that is your signature for
19 the limited partnership on Exhibit D?

20 A. Correct.

21 Q. All right. And you indicated that you
22 saw the plat that I'm -- the plat we're referring to
23 is Defendant's Exhibit 2. You saw the plat and the
24 deed was signed; is that correct?

25 A. Correct.

1 Q. Okay. And is it -- looking at Exhibit
2 2, is it correct -- could you tell me what the
3 recording information is on that plat? Looks like
4 plat book and page number.

5 A. Plat Book 212-G.

6 Q. Okay. At what page?

7 A. 204.

8 Q. All right. Is that the same information
9 that's reflected on the deed, on Defendant's Exhibit
10 D, in the body of the legal description?

11 A. Yeah, I see it.

12 Q. Okay.

13 A. It's the same.

14 Q. It is the same? All right. And it
15 looks like, obviously, the deed was recorded?

16 A. True.

17 Q. Okay. And I take it Congaree Associates
18 was paid the consideration, which was \$7500. Let me
19 show you Defendant's Exhibit D and ask you -- the
20 preamble of the deed reflects the fact that \$7500
21 was the purchase price for the property?

22 A. Yeah. For the lot.

23 Q. And as far as you remember, Congaree
24 received the money?

25 A. I'm sure they did.

1 Q. Okay. Otherwise they wouldn't have
2 gotten the deed?

3 A. That's right.

4 Q. Okay. All right. Now, Mr. Loflin.
5 When this deed was done, was he employed by McGee
6 Realty?

7 A. I think so.

8 Q. Okay. And do you know what his intent
9 was for use of the property?

10 MS. DuRANT: Object. That's hearsay.

11 THE COURT: All right. That calls for
12 speculation. That's sustained.

13 BY MR. DAVIS:

14 Q. Let's see if I can fix that. You said
15 he did work for McGee?

16 A. He did.

17 Q. Okay. And who owns McGee Realty?

18 A. My --

19 Q. At that time.

20 A. My brother and Ted and -- my brother Ted
21 and myself.

22 Q. So he was your employee?

23 A. Yes.

24 Q. Okay. And you've seen this piece of
25 property?

1 A. I have.

2 Q. There's a log cabin on it?

3 A. There is.

4 Q. Do you know what the property was used
5 for? By viewing the property, do you know what it
6 was used for by Mr. Loflin?

7 A. A model house.

8 Q. Okay. And was he doing that as an agent
9 of your company?

10 A. He was.

11 Q. Okay. And do you know what he used as
12 access to the property? If you know.

13 A. I don't remember.

14 Q. Okay. All right. On Defendant's
15 Exhibit. . .

16 MR. STEPP: I think that's Exhibit J.

17 BY MR. DAVIS:

18 Q. J? You testified that this would show
19 the defendant's property and Dr. Gooldy's property?

20 A. Yes.

21 Q. Okay. Do you see -- and let's see.
22 This would have been done, looks like, October 27th
23 of 2006. And did you see on here where it says,
24 this being on the defendant's property, says parking
25 and gravel drive encroachment?

1 A. Do I have a copy of that here?

2 Q. I'm referring to -- it says -- am I
3 correct it says, parking and gravel drive
4 encroachment?

5 A. Yeah, I see that.

6 Q. Okay.

7 A. That's on both sides.

8 Q. Okay. Between the time that y'all sold
9 the property to Mr. Loflin, did Congaree Associates
10 ever tell Dr. Gooldy after he bought the property
11 that he couldn't be there?

12 A. No.

13 Q. So at the time he bought it, Dr. Gooldy,
14 it'd be fair to say he had a deed that referenced a
15 plat where it said there was a 50-foot road, which
16 had been administratively approved by the County,
17 was part of a road system that was administratively
18 approved by the County?

19 MS. DuRANT: Objection. There's a few
20 questions in that question.

21 THE COURT: All right. Will you break
22 it down into single questions?

23 BY MR. DAVIS:

24 Q. Is it fair to say that, at the time Dr.
25 Gooldy bought the property, obviously the deed into

1 Mr. Loflin had been recorded?

2 A. Yes.

3 Q. Because it was in '86 and the plat was
4 recorded as you testified to. And anybody checking
5 his title would see that deed and that plat, if you
6 know?

7 A. Well, I would assume so.

8 Q. Okay. And that road that's on that
9 plat, which is Defendant's 2, again is the same --
10 in the same road area as the access road in
11 Westchester Phase II?

12 A. Same area.

13 Q. Right. And there was no affirmative
14 action by anyone on behalf at Congaree Associates to
15 or nobody on the part of Congaree Associates gave
16 any information to Dr. Gooldy not to use that, up
17 until the time he was --

18 A. Well, I never had at any time such
19 contact.

20 MR. DAVIS: Thank you. That's it.

21 THE COURT: Redirect?

22 MS. DuRANT: Quickly, Your Honor, just
23 to clarify something I think might have been a
24 little over brushed.

25

EXAMINATION

1

2 BY MS. DuRANT:

3 Q. Mr. McGee, on Defendant's Exhibit GG,
4 you see there's a Phase I and there's a Phase II;
5 correct?

6 A. Correct.

7 Q. The road was only intended for Phase II;
8 right?

9 A. Correct.

10 Q. So the road had nothing to do with Phase
11 I?

12 A. It did not.

13 Q. Because Phase I had plenty of access off
14 Highway 6; correct?

15 A. Correct.

16 MS. DuRANT: No further questions, Your
17 Honor.

18 MR. DAVIS: Just one follow up, Your
19 Honor.

EXAMINATION

20

21 BY MR. DAVIS:

22 Q. If what counsel just asked you is
23 correct, why was the plat incorporated into the deed
24 that was sold to Loflin showing the road was? Why
25 was that done?

1 A. I don't recall that at all.

2 MR. DAVIS: Okay. Thank you, sir.

3 THE COURT: You can step down.

4 THE WITNESS: Do I get my pay now?

5 THE COURT: All right. Can I see both
6 counsel for just a minute?

7 MR. STEPP: Sure.

8 (Off-the-record conference.)

9 THE COURT: We're going to break until
10 1:45.

11 (Off-the-record conference.)

12 (A luncheon recess transpired.)

13 THE COURT: Everyone please be seated.
14 We're back on the record. Call your next witness.

15 MS. DuRANT: Your Honor, we're like to
16 call Charles Meeler.

17 THE COURT: All right. Mr. Meeler, if
18 you'll come and be sworn, please.

19 CHARLES MEELER,
20 being first duly sworn, testified as follows:

21 THE BAILIFF: Have a seat and state your
22 full name, sir.

23 THE WITNESS: Charles David Meeler.

24 EXAMINATION

25 BY MS. DuRANT:

1 Q. Good afternoon, Mr. Meeler. How are you
2 doing?

3 A. Fine.

4 Q. Good. What do you do for your
5 profession?

6 A. Professional land surveyor.

7 Q. How long have you been in the surveying
8 field?

9 A. I first started surveying in the early
10 '70s. So that would be about 40 years.

11 Q. So you've been in the surveying field
12 for 40 years, is that what you just said?

13 A. Uh-huh.

14 Q. Great. Are you a South Carolina
15 registered surveyor?

16 A. I am.

17 Q. When did you become registered?

18 A. I got registered in 1988.

19 Q. So that would be 24 years; correct?

20 A. Uh-huh.

21 Q. Okay. Who do you work for presently?

22 A. Civil Engineering of Columbia.

23 Q. And what is your job with Civil
24 Engineering of Columbia?

25 A. I'm survey manager/surveyor.

1 Q. So you -- do you monitor surveyors'
2 work?

3 A. I do.

4 Q. And you also perform surveying work?

5 A. I do.

6 Q. You shoot the lines and you also draw up
7 the plats; is that correct?

8 A. That's correct.

9 Q. Are you familiar with the surveying
10 requirements as required by South Carolina Law?

11 A. I am.

12 Q. I'm going to show you what's already
13 been introduced as evidence. It's Exhibit J.
14 Defendant's Exhibit J, excuse me. It's cut up into
15 pieces. I apologize. And here's a bigger version
16 of it up here, if you'd rather refer to it up here.

17 A. Okay.

18 Q. Did you prepare this plat?

19 A. I did.

20 Q. Why did you prepare the plat?

21 A. We prepared this plat under the request
22 of Frank Strasburger.

23 Q. Do you know when you prepared the plat?

24 A. Let's see. It was October of '06,
25 October 27, '06.

1 Q. Does the plat contain your surveyor's
2 seal?

3 A. It does.

4 Q. Was it approved by the Lexington
5 Planning Commission?

6 A. It was.

7 Q. When?

8 A. Let's see.

9 Q. Might be more helpful if I bring you the
10 full version.

11 A. I don't know if I can read this.

12 Q. Does that help you?

13 A. No. I can't see it. I forgot and left
14 my glasses in the car. I can't see far away, but
15 let's see. It was -- so this was the recording
16 information. It was recorded 10/27/06. It had to
17 be approved.

18 Q. Does this stamp help you out right here?
19 (Indicating.)

20 A. Yeah. That's Jack Turner's approval
21 stamp, October 27, '06.

22 Q. Thank you, sir. Referring to the parcel
23 labeled now or formerly David R. Gooldy. Is there a
24 road abutting the southern side of the parcel?

25 A. Not to my knowledge.

1 Q. But if there was a road there, would you
2 have included that on your plat?

3 A. I would have.

4 Q. If there was an easement there, would
5 you have included it on your plat?

6 MR. DAVIS: Objection as to the
7 qualifications of this witness as to saying there
8 was an easement on the property.

9 THE COURT: All right. Will you specify
10 if we're talking about an easement that's existing
11 on the road, that's found in the courthouse or if
12 you're asking him to make a legal conclusion? That
13 could be three things. That could be on the ground,
14 recorded in the courthouse or that he's got a legal
15 conclusion.

16 MS. DuRANT: Sure.

17 Q. Mr. Meeler, if you're aware of written
18 easements, would you have included that in your
19 plat?

20 A. I would have if I have been aware of it.

21 Q. If you were aware of any implied
22 easements, would you have included them in your
23 plat?

24 A. I would have.

25 Q. Why did you include the horseshoe shaped

1 part labeled parking and gravel drive encroachment
2 that cuts through Parcel A and then through David R.
3 Gooldy's parcel?

4 A. I felt like it -- that the Gooldy parcel
5 was using that driveway; but I felt like it wasn't
6 on their property, all of it. I felt like either
7 end of it was on, you know, our client's property.

8 Q. And your client is Frank Strasburger?

9 A. Uh-huh.

10 Q. Who owns the legs of the encroachment?

11 A. My client, Frank Strasburger owned that.

12 Q. Okay. When you were drafting this plat,
13 did you look at all available sources and refer to
14 any prior plats?

15 A. I did.

16 Q. I see in this, the parcel labeled David
17 R. Gooldy, you have a reference to a plat book page;
18 is that correct?

19 A. Uh-huh.

20 Q. What book and page do you refer to on
21 the Gooldy parcel?

22 A. Plat Book 2126, Page 2004.

23 Q. Could that be 212-G?

24 A. Oh, 212-G. I'm sorry. Yeah. Could be.
25 Pardon my eyesight.

1 Q. Sure. Sure. This has already been
2 admitted. I believe it's Plaintiff's Exhibit 2. Is
3 this plat, 212-G, recorded at Page 204?

4 A. Yeah.

5 Q. Okay. I believe you have a copy of it
6 here, too. Let's see.

7 A. I can see that.

8 Q. Here you go.

9 A. That's it.

10 Q. Okay. After reviewing this plat which
11 is Plaintiff's Exhibit 2, why didn't it cause you to
12 put a 50-foot road on your plat?

13 A. I didn't feel like there was a road
14 there. In my professional opinion, there was no
15 road. Lexington County required road names. I
16 couldn't find a -- I couldn't find a name for that
17 alleged road, so, you know, to my knowledge and all
18 the research work that I did, there was no road
19 existed there. South Carolina DOT had no record of
20 a road there. Lexington County had no record of a
21 road there. So I just felt like that was a part of
22 my client's property.

23 Q. Yes, sir. Referring back to the plat
24 you drafted, which has been marked as Defendant's
25 Exhibit J, what else did you rely on when you were

1 drafting this plat? Did you refer to any other
2 plats or maps?

3 A. Yeah. There was -- there was two other
4 plats that Bob Collingwood had done. And best I
5 remember, one of them was -- one of them, he had
6 done before this or they might have both been after
7 this plat. I don't remember for certain, but there
8 was two other plats that he had done of the parcel I
9 was surveying or parts of that parcel and there was
10 no road shown on those plats.

11 MS. DuRANT: Your Honor, at this point,
12 what -- we would like to proffer testimony, but what
13 he's referring to are the two plats that have
14 already been excluded. I can either proffer the
15 testimony through Mr. Meeler or I can proffer it
16 myself, but he relied on the two plats that have
17 already been -- or one of these two plats that have
18 already been excluded.

19 THE COURT: Well, the plats were
20 excluded before because they were being offered as
21 evidence of Mr. McGee's intent. What are they being
22 offered for now?

23 MS. DuRANT: They are being offered to
24 show what Mr. Meeler saw and what informed Mr.
25 Meeler. What information Mr. Meeler had preparing

1 this plat, which is Exhibit J.

2 THE COURT: All right. Mr. Davis.

3 MR. DAVIS: I'm not sure I understand
4 the -- I didn't understand the reasoning, what it's
5 being offered for.

6 MS. DuRANT: It's being --

7 THE COURT: Let me see if I can rephrase
8 this because. . .

9 MR. DAVIS: Sure.

10 THE COURT: All right. The survey was
11 originally offered and excluded because it was
12 supposed to be evidence of intent for Mr. McGee.
13 And I excluded it because it was a 2006 plat and
14 we're talking about 1986.

15 MS. DuRANT: Correct.

16 THE COURT: All right. So I excluded
17 it. What I understand you're offering it for now is
18 not for intent, but it's something that your
19 surveyor relied on to do this survey.

20 MS. DuRANT: Yes, Your Honor. Exactly.

21 THE COURT: All right. Mr. Davis.

22 MR. DAVIS: All right. And the plat we
23 are referring to that Mr. Meeler relied on for doing
24 his plat is which plat?

25 MS. DuRANT: It is -- it's exhibit -- I

1 don't know in your book; but it's this, Court's
2 Exhibit 2.

3 MR. DAVIS: I object on the basis
4 it's -- from what I can tell, it's not on the chain
5 of title to defendant's property.

6 THE COURT: All right. On that -- on
7 that basis, I'm going to allow it in because he's an
8 expert. He's a surveyor who says I relied on it.
9 You can cross him as to the relevance of what he
10 relied on.

11 MS. DuRANT: Thank you, Your Honor.
12 It's already pre-marked.

13 Q. Mr. Meeler, I'm going to hand you an
14 exhibit, what's already been marked as Defendant's
15 Exhibit M. Is this a true and accurate copy of the
16 plat that you relied on to draft your plat which is
17 labeled Defendant's Exhibit F?

18 A. Yeah. This was -- this was one of them.

19 MS. DuRANT: Your Honor, I submit this
20 be admitted into evidence for the purposes of Mr.
21 Meeler's testimony.

22 THE COURT: All right.

23 MR. DAVIS: Same objection.

24 THE COURT: Same objection. Overruled.

25 (DFT. EXH. M in evidence.)

1 BY MS. DuRANT:

2 Q. I believe you just answered this, but
3 who drafted this plat, Mr. Meeler?

4 A. Who drafted this one?

5 Q. Yes, sir.

6 A. Robert Collingwood.

7 Q. When was it drafted?

8 A. July 25, 2002.

9 Q. Do you see if it was revised?

10 A. Was revised on March 3rd.

11 Q. Does it say why it was revised?

12 A. To show easements.

13 Q. Can you locate the Gooldy parcel on that
14 plat, please, sir?

15 A. (Indicating.)

16 Q. Okay. So you're pointing to the parcel
17 labeled now or formerly Annette Van Wickler on
18 Defendant's Exhibit M; is that correct?

19 A. Uh-huh.

20 Q. Is there a road abutting the Gooldy
21 parcel?

22 A. No.

23 Q. Does the plat provide that there are any
24 easements attached or near the Gooldy parcel?

25 A. No.

1 Q. Does the plat show a subdivision to the
2 west of Gooldy's parcel?

3 A. No.

4 Q. Does the plat show a proposed
5 subdivision to the west of Gooldy's parcel?

6 A. No.

7 Q. Now, Mr. Meeler, you said you also
8 relied on another plat; is that true? You relied on
9 another plat when you were drafting your plat; is
10 that true?

11 A. Yeah.

12 Q. Do you remember what that plat was or
13 what that map was?

14 A. It was another plat by Robert
15 Collingwood and I don't remember the date on it;
16 but, you know, we use as much research information
17 as is readily available and that was available, so I
18 relied on it. There's another plat showing this
19 same property.

20 MS. DuRANT: Your Honor, this is the
21 other plat that you have already excluded; but I'll
22 show it to. . .

23 THE COURT: What did I exclude that one
24 for?

25 MS. DuRANT: For the same -- the same

1 reason. That it went to intent versus --

2 THE COURT: All right. Same?

3 MR. DAVIS: Yes, sir.

4 THE COURT: Same ruling, same objection
5 noted.

6 MS. DuRANT: Randy, this is Exhibit K,
7 Defendant's K.

8 MR. DAVIS: Exhibit what?

9 MS. DuRANT: K.

10 MR. DAVIS: K.

11 BY MS. DuRANT:

12 Q. Sorry. It's cut up into pieces, but do
13 you recognize Defendant's Exhibit K? Let me put it
14 together.

15 A. I do.

16 Q. Is this a truthful and accurate copy of
17 the plat that you referred to when you were drafting
18 your plat which is Plaintiff's or Defendant's
19 Exhibit J, I believe?

20 A. It is.

21 MS. DuRANT: Your Honor, we ask that
22 this be admitted into evidence for the purposes of
23 Mr. Meeler's testimony.

24 MR. DAVIS: Same objection.

25 THE COURT: Same objection. It's in

1 with the same objection.

2 (DFT. EXH. K in evidence.)

3 BY MS. DuRANT:

4 Q. Okay. Mr. Meeler, does that show a
5 50-foot road abutting the Loflin/Gooldy parcel?

6 A. No.

7 Q. When was that plat drafted?

8 A. This one was drafted in -- find the date
9 on it. If I can find the date on it. January of
10 1998.

11 Q. Was it approved by the Lexington
12 Planning Commission?

13 A. Yes.

14 Q. When was it approved?

15 A. January of 1998.

16 Q. And just for the record, that's a
17 certified and true copy, isn't it?

18 A. It is.

19 Q. Okay. And, again, there's no road
20 abutting the Gooldy parcel, is there?

21 A. No.

22 Q. Mr. Meeler, did you refer to anything
23 else when you were drafting your plat?

24 A. We always look at the Lexington County
25 tax maps. They certainly don't hold nearly as much

1 weight as a plat, as a recorded plat; but they're
2 generally pretty accurate.

3 Q. Yes, sir.

4 A. We kind of depend on them to show us how
5 a property should look.

6 Q. Yes, sir.

7 Randy, this is Defendant's Exhibit L,
8 it's the TMS map.

9 MR. DAVIS: What purpose?

10 MS. DuRANT: The same purpose. This is
11 the map or one of the maps that Mr. Meeler relied on
12 to draft his plat.

13 MR. DAVIS: Okay. No objection.

14 MS. DuRANT: Your Honor, this is
15 Defendant's Exhibit L, ask that it be moved into
16 evidence.

17 THE COURT: Without objection.

18 (DFT. EXH. L in evidence.)

19 BY MS. DuRANT:

20 Q. Mr. Meeler, is that a true and accurate
21 copy of the TMS map that you referred to while
22 drafting your plat?

23 A. It is.

24 Q. Can you locate the Gooldy parcel?

25 A. I can.

1 Q. Is there a road abutting the southern
2 side of the Gooldy parcel?

3 A. No.

4 MS. DuRANT: No further questions, Your
5 Honor.

6 THE COURT: Cross.

7 MR. DAVIS: Yes, Your Honor.

8 EXAMINATION

9 BY MR. DAVIS:

10 Q. Mr. Meeler, on your -- on this plat.
11 This is yours, is it not?

12 A. Yes, sir.

13 MR. DAVIS: Y'all know what exhibit that
14 is?

15 MR. STEPP: It's J, I think.
16 Defendant's J.

17 BY MR. DAVIS:

18 Q. Okay. You've been a surveyor, you said,
19 for 40 years?

20 A. Yes, sir.

21 Q. Okay. And one job of a surveyor is to
22 show on your plat what's on the ground --

23 A. Yes, sir.

24 Q. -- is it not?

25 A. Yes, sir.

1 Q. And when you did the plat on Exhibit J,
2 what did you find on the ground on both sides of the
3 Gooldy property at the time you did the survey?

4 A. A driveway.

5 Q. A driveway?

6 A. Yes, sir.

7 Q. Okay. And how did you -- on that
8 Exhibit J, how did you describe it?

9 A. I think it's parking and -- parking and
10 gravel drive.

11 Q. And it was on the south and northern
12 side of the property?

13 A. Yes, sir.

14 Q. And the plat that's referenced in Dr.
15 Gooldy's deed, if I know what I'm talking about,
16 Exhibit 2.

17 A. Right.

18 Q. The name on the plat is Loflin. Did you
19 use that as a reference plat in your reference on
20 your plat?

21 A. I don't think I put it in my references.
22 I didn't reference it on this plat.

23 Q. You --

24 A. I might have --

25 Q. I'm sorry. Go ahead. Excuse me.

1 A. I might have referenced -- I referenced
2 another plat we did of this property in Reference
3 Number 2. And that plat reference may be on that
4 plat, so I would include it because it was
5 referenced or titled on another plat.

6 Q. You really did better though because you
7 referenced it on Dr. Gooldy's property, didn't you?
8 You put it right on his property, didn't you, the
9 plat book and page number?

10 A. Yeah.

11 Q. Okay. Why did you do that?

12 A. Well, we customarily do that, put plat
13 books and -- plat book and page numbers where the
14 plats are readily available.

15 Q. So you put the specific plat that's
16 referenced in Dr. Gooldy -- in the deed that Dr.
17 Gooldy got, you put it inside his property?

18 A. I did.

19 Q. And that plat, as we've heard all day
20 long, shows on the plat a 50-foot road, does it not?

21 A. On the plat, it shows one.

22 Q. It does?

23 A. Uh-huh.

24 Q. So somebody thought there was a road
25 there and that somebody was Congaree Associates at

1 the time they did the deed, if you were here today,
2 the deed to Mr. Loflin?

3 MS. DuRANT: Objection. Speculation,
4 Your Honor.

5 MR. DAVIS: That wouldn't be
6 speculation. It's. . .

7 THE COURT: Mr. McGee's already
8 testified to that, that he used the plat, didn't he?

9 MS. DuRANT: I'm sorry. I thought Mr.
10 Davis' question was asking Mr. Meeler if Congaree
11 Associates intended for a road to be there.

12 MR. DAVIS: I asked if the -- I asked,
13 Congaree Associates, when they did the deed, they
14 had a plat that showed a road is what -- and I'm
15 asking him to confirm that.

16 THE WITNESS: I think Mr. Collingwood
17 put that on there because he was aware of a proposed
18 road there that was never finalized.

19 BY MR. DAVIS:

20 Q. In fact, it was more than proposed. It
21 was approved by the County of Lexington except --

22 A. Lexington Commission --

23 Q. It was approved by the County of
24 Lexington in 1985, a year before the deed from
25 Congaree Associates and the only thing that held

1 up -- had to be done was to put the retention basin
2 on the plat and also the drainage ditches?

3 MS. DuRANT: Objection, Your Honor. He
4 has -- Mr. Meeler has no knowledge whether it's. . .

5 THE COURT: Well, he needs to tell us
6 that.

7 THE WITNESS: Well, I don't think the
8 road --

9 THE COURT: Hold on. Hold on. If Mr.
10 Meeler doesn't have any knowledge, he needs to tell
11 us that.

12 MR. DAVIS: Yes.

13 THE COURT: The attorney doesn't need to
14 tell us what a --

15 MS. DuRANT: Sure.

16 BY MR. DAVIS:

17 Q. True?

18 A. I don't -- I don't believe -- the road
19 was never finalized. There was never a road there.
20 There was a proposed road.

21 Q. Right. Which was approved by the
22 Planning Commission of Lexington County --

23 A. Well, approval --

24 Q. -- subject to --

25 A. Approval and finalization is two

1 different things. We send in preliminary plats
2 frequently for approval. They approve the
3 preliminary plat, which really doesn't mean anything
4 if it was not ever finalized.

5 Q. The record in this case, Mr. Meeler,
6 unless I've been deaf, was that that plat was
7 approved, period. There wasn't any evidence it was
8 unapproved. It was approved except for two items.
9 Nobody --

10 A. But it wasn't finalized.

11 Q. That's your words.

12 A. Right.

13 Q. Okay. All right. Now --

14 A. See, I didn't have any knowledge of that
15 at the time of the survey anyway; but it wasn't
16 finalized. If it had been finalized, then there
17 would have been records of it.

18 Q. Well, what you would have had -- you
19 would have had knowledge of and you did have
20 knowledge of is my client's deed showing the plat
21 and there were four other deeds with the same plat
22 in the chain of title for 20 years; is that not
23 correct? Twenty years.

24 A. I'm not sure. I don't do a title
25 search. I just go back and. . .

1 Q. Well, let me ask you this.

2 MR. STEPP: Let him finish, Your Honor.

3 I mean, he's not finished.

4 MR. DAVIS: I apologize. I'm sorry.

5 Q. Well, you put on that plat, your plat,
6 Dr. Gooldy's plat, and it said road and you also
7 found on the ground, which surveyors always do, I
8 believe, what you found. So we had a plat that said
9 road, 50-foot road and we had on the ground gravel
10 driveway, as you said?

11 A. Right.

12 Q. You didn't check further to see what the
13 other deeds in the chain of title said? I mean,
14 your plat references certain things and I don't see
15 a reference to any of those other deeds.

16 A. I looked at the two plats that Mr.
17 Collingwood had done after that one where he labeled
18 it road and he didn't label anything road, so. . .

19 Q. I'm looking at -- I'm asking you, the
20 deeds in the chain of title to my client's property
21 that he relied upon have those other deeds and plats
22 in it and the same plat for 20 years, is it not?

23 A. I don't know. I didn't go back through
24 all the deeds.

25 Q. Okay. All right. You said that. Now,

1 you know what an easement by implication is?

2 MS. DuRANT: Objection. That's a legal
3 conclusion, Your Honor.

4 THE COURT: Sustained.

5 MR. DAVIS: Okay.

6 THE WITNESS: No.

7 MS. DuRANT: Don't --

8 MR. STEPP: Don't answer. We're good.

9 THE COURT: I've sustained the
10 objection, so you don't have to answer that
11 question.

12 THE WITNESS: Okay.

13 BY MR. DAVIS:

14 Q. Okay. So what you did on your plat was
15 put what you found and you put the reference to Dr.
16 Gooldy's plat; is that correct?

17 A. What I put on my plat was what I found
18 in the records.

19 Q. Okay. Okay. And did you -- who was
20 your client?

21 A. Frank Strasburger.

22 Q. Okay. He owned it at what period of
23 time?

24 A. I'm not sure if he owned it at all. He
25 was our client. He was the one that requested the

1 survey, so we did the survey for him.

2 Q. Okay. The other plats that you had
3 here -- well, let me ask you this. Strike that.

4 The tax map.

5 A. Right.

6 Q. What that is is the County's working up,
7 showing or depicting property and they assign a tax
8 map number to it. That's not an official land
9 survey?

10 A. No. And I stated that.

11 Q. Okay. Just want to make sure we're
12 clear on that.

13 A. Didn't hold near as much weight as a
14 recorded plat.

15 Q. Sure. As something like you would have
16 done?

17 A. Right.

18 Q. Okay. Let me borrow these for a second.
19 Don't want to tear things up. The survey -- this
20 survey, which is Exhibit M. Exhibit M. You found
21 this plat?

22 A. Yes, sir.

23 Q. Okay.

24 A. Yes, sir.

25 Q. You found this plat when you did the

1 Strasburger plat?

2 A. Uh-huh.

3 Q. What's the date of this plat, M?

4 A. 2002 July.

5 Q. Okay. Do you know if this plat is

6 recorded in the chain of title to --

7 A. I don't know.

8 Q. You just don't know?

9 A. I know we've got it in our office.

10 Q. All right. But you don't know whether
11 it's recorded in the chain of title?

12 A. Huh-uh.

13 Q. Okay. There was another plat you had
14 here. Is this it? That you testified to. K?

15 A. Yeah.

16 Q. K?

17 A. Uh-huh.

18 Q. And this was done by Mr. Collingwood?

19 A. Uh-huh.

20 Q. And when was this plat done? This is K.

21 A. In 1998.

22 Q. Okay. Do you know if that's in the
23 chain of title to the Gooldy property?

24 A. In the chain of title?

25 Q. To Dr. Gooldy's property.

1 A. I'm not sure I understand the question.

2 Q. Okay. You don't understand the
3 question?

4 A. No, sir.

5 Q. Okay. All right. You testified that on
6 your plat which is exhibit -- this one, which is
7 Exhibit J?

8 A. J.

9 THE COURT: J. Is that the one?

10 MS. DuRANT: I'm sorry. Which? I'm
11 sorry.

12 MR. DAVIS: This one right here.
13 (Indicating.)

14 MS. DuRANT: I think that's J.

15 THE COURT: That is J on my notes. I
16 just wanted to make sure.

17 MS. DuRANT: I think so.

18 THE COURT: I know we had three of them.

19 MS. DuRANT: Floating around.

20 THE COURT: Yes.

21 BY MR. DAVIS:

22 Q. Why did you put the words gravel drive?

23 A. Because it was a driveway serving that
24 lot.

25 Q. Okay. And why did you put the word

1 encroachment?

2 A. Because I -- in my opinion, it was on my
3 client's property.

4 Q. Okay. Physically on the property?

5 A. Right.

6 Q. So you had to show it?

7 A. Right.

8 MR. DAVIS: All right. I think that's
9 all I have, Your Honor.

10 THE COURT: Redirect?

11 MS. DuRANT: Really quickly, Your Honor.

12 EXAMINATION

13 BY MS. DuRANT:

14 Q. Mr. Meeler, I'm going to hand you a copy
15 of what's already been introduced as Defendant's
16 Exhibit KK?

17 MR. DAVIS: What was that exhibit?

18 MS. DuRANT: KK.

19 MR. DAVIS: KK.

20 BY MS. DuRANT:

21 Q. Will you please review that, Mr. Meeler.

22 THE COURT: That's the County of
23 Lexington letter?

24 MS. DuRANT: Yes, Your Honor. Yes, Your
25 Honor.

1 Q. Will you please review it?

2 A. I'm sorry. Read it?

3 Q. Yes, sir.

4 THE COURT: Hold on a minute. Do y'all
5 know what exhibit that is?

6 MR. DAVIS: I'm not sure.

7 MS. DuRANT: Oh, I'm sorry.

8 THE COURT: This is Mr. Criss' letter,
9 Defendant's JJ.

10 MR. DAVIS: Yes, yes. Thanks.

11 THE COURT: Yes, ma'am.

12 THE WITNESS: This is from (sic)
13 Congaree Associates, care of Carroll McGee.

14 BY MS. DuRANT:

15 Q. You can read it to yourself.

16 A. Oh, okay. (Complying.)

17 Q. Earlier with Mr. Davis, you and Mr.
18 Davis were having a conversation about the
19 difference between an approved and a final plat.
20 And I believe you said there is a difference, that
21 there is a difference between an approved and a
22 final plat. Does that letter change your mind about
23 what you and Mr. Davis were discussing earlier?

24 A. No.

25 Q. Okay. Why not?

1 A. Because this refers to a preliminary
2 plat approval and that -- that's all.

3 Q. Does it suggest that there needs to be
4 subsequent steps before anything is final?

5 A. Yeah. Actually, there needs to be
6 subsequent steps before the preliminary plat
7 approval; but still, to me, doesn't mean a whole
8 lot.

9 Q. One other quick question for you. Well,
10 I don't even think you need to look. Again,
11 previously you and Mr. Davis were talking about the
12 quality of the TMS maps. If there were a road on a
13 TMS map, would it usually show up?

14 A. In most cases, the Lexington County tax
15 maps show roads, unless it's something very new and
16 they hadn't had a chance to revise their map.

17 Q. Do you know when that TMS map, the
18 latest revision was when you reviewed it?

19 A. I'm not sure. Seems like it was '03 on
20 it. I don't know.

21 Q. Drowning you with paper, I'm afraid.

22 A. Well, I'm not sure that this was the
23 revision date. Well, it was copyrighted in '03.

24 Q. So it'd be safe to say that that plat
25 was at least revised after 2000?

1 A. I don't think so.

2 MS. DuRANT: No further questions, Your
3 Honor.

4 THE COURT: Recross.

5 EXAMINATION

6 BY MR. DAVIS:

7 Q. Mr. Meeler, on the letter that you read
8 that counsel showed you, which is this letter, KK.

9 A. Yes, sir.

10 Q. All right. And that was a preliminary
11 approval for Westchester Subdivision Phase II, was
12 in not?

13 A. Uh-huh.

14 Q. And that -- have you looked at that plat
15 for that Phase II of Westchester?

16 A. No, I've never seen this.

17 Q. All you know is what's on that piece of
18 paper there?

19 A. What I saw.

20 Q. And what it says is the preliminary plat
21 approval is being given to, in effect, to file
22 subject to the drainage basin being placed on the
23 property -- on the plat, as well as the ditch area
24 along side the road; isn't that what it says?

25 MS. DuRANT: Objection. Mr. Davis is

1 just reinterpreting the letter and testifying as to
2 the letter's import.

3 MR. DAVIS: I'm asking --

4 THE COURT: Hold on. He's on cross. He
5 can ask leading questions. He's got the document in
6 front of him. He can say whether he agrees or
7 disagrees as to what he thinks the letter means.
8 He's being asked what he thinks it means.

9 MS. DuRANT: Yes, sir. I'd just say the
10 letter speaks for itself. That's all I would say.

11 BY MR. DAVIS:

12 Q. Is that what it says?

13 A. Run that by me again.

14 Q. Yes, sir.

15 A. It's been a little while.

16 THE COURT: Can we go off the record a
17 moment?

18 (Off-the-record conference.)

19 THE COURT: Back on the record.

20 BY MR. DAVIS:

21 Q. The Exhibit KK, the County is saying
22 they approved the preliminary plat for that
23 Westchester Phase II subject to the surveyor putting
24 the drainage basin on the plat and also the ditches
25 along side the road?

1 A. Yeah, that's what it says.

2 Q. Okay. All right. On the tax map that
3 you have testified to, if a -- if a person had a
4 written easement or right-of-way on a piece of
5 property, would it show up on the tax map, you
6 think?

7 A. Sometimes they do, sometimes they don't.

8 Q. Okay. So if somebody had an easement
9 that was not in writing, would that show up on the
10 tax map?

11 A. No.

12 MR. DAVIS: Okay. All right. I think
13 that's all I have, Your Honor.

14 THE COURT: All right. You can step
15 down.

16 MR. STEPP: Defendant calls Rosser
17 Baxter, Your Honor.

18 THE COURT: Mr. Baxter, please come
19 forward and be sworn.

20 MR. BAXTER: I'm as blind as you are,
21 too, by the way, just to let you know.

22 ROSSER BAXTER,
23 being first duly sworn, testified as follows:

24 THE BAILIFF: Have a seat and state your
25 full name.

1 THE WITNESS: My name is Rosser W.
2 Baxter, Jr.

3 EXAMINATION

4 BY MR. STEPP:

5 Q. Thank you, Mr. Baxter. How old are you?

6 A. Sixty-one, almost 62.

7 Q. What do you do for a living?

8 A. I'm a land surveyor.

9 Q. How long have you been a surveyor?

10 A. Since 1965.

11 Q. Okay. Who did you first work for when
12 you were involved in the surveying field?

13 A. Mr. I. B. Cox.

14 Q. All right. And it was at a company
15 called I. B. Cox & Sons?

16 A. Yes, it was. Yes.

17 Q. Does that company still exist today?

18 A. As the firm Cox & Dinkins.

19 Q. Okay. What kind of work did you do for
20 I. B. Cox & Sons in '65 when you started working for
21 them?

22 A. Well, I wasn't under any major
23 responsibility; but I was out with people doing
24 what -- learning. Okay? Whatever nobody else
25 wanted to do, I did.

1 Q. How old were you in 1965?

2 A. Fifteen.

3 Q. Okay. And did you continue to work --
4 you were working part time, I assume?

5 A. Yes. Yes.

6 Q. And did you -- you graduated from high
7 school in Columbia?

8 A. Dreher High School.

9 Q. My alma mater, Dreher High School?

10 A. Yes, sir.

11 Q. Go Blue Devils.

12 A. Go Blue Devils.

13 Q. And then after high school, did you go
14 to college?

15 A. I did.

16 Q. Again, you followed in my footsteps to
17 the University of South Carolina?

18 A. Yes. Yes, I did.

19 Q. And what year did you graduate from USC?

20 A. January of '74.

21 Q. All right. And did you -- what kind of
22 degree did you obtain?

23 A. I had a marketing degree.

24 Q. Okay. Now, from the time you started
25 working for I. B. Cox & Sons in '65 to the time you

1 graduated from USC in '74, did you continue to work
2 for I. B. Cox & Sons?

3 A. I did.

4 Q. All right. And after you graduated, did
5 you go to work for them full time?

6 A. I did.

7 Q. Now, at that point, tell me what kind of
8 work you were doing.

9 A. Now, when I graduated?

10 Q. Yeah.

11 A. Okay. When I went to work full time for
12 them?

13 Q. Yes, sir.

14 A. Oh, I was in charge of just too much to
15 even go through. We did everything. Runways,
16 subdivisions, just Palmetto Center. Well, they had
17 all the support beams for the Palmetto Center. I
18 mean, it's just -- just too many. Every column,
19 every sidewalk, everything up there, I laid out.

20 Q. Well, I gather from that answer that
21 part of what you did was field work --

22 A. Field work.

23 Q. -- is that right?

24 A. Field work. Yes. I did a lot of field
25 work at the very beginning.

1 Q. And did you have your own crew for the
2 purpose of doing that field work?

3 A. Yes, I did.

4 Q. Were you a crew chief?

5 A. I would be what they would call a crew
6 chief.

7 Q. And describe briefly for the Court,
8 please, what the responsibilities of a crew chief
9 would be.

10 A. You are head of the field crew that is
11 out doing the work and they take -- you give them
12 all directions as to what to do and they follow you
13 and they do exactly what you tell them to do or try
14 to anyway.

15 Q. Okay. Now, as a crew chief in the
16 field, did that also involve any responsibilities
17 back at the office in terms of drawing the plats
18 based on the field work?

19 A. Most of the time, at least the way Cox &
20 Dinkins worked was we -- whoever was the crew chief
21 had to come back in and do the mathematical
22 calculations and do, at the time, what they called a
23 plot-o, because didn't have CAD systems back then,
24 so you just hand drew them. And we gave them the
25 plots and somebody else did it or sometimes I did

1 it. It just varied from job to job, day to day; but
2 I did a lot of drafting.

3 Q. Okay. So from the time you went to work
4 for -- was it still I. B. Cox & Sons in '74 or was
5 it Cox & Dinkins?

6 A. Yes. Yes. Yes.

7 Q. From the time you went to work for them
8 after you graduated from college, full time up
9 through 1979, did you do both field work and the
10 preparation of plats --

11 A. Yes.

12 Q. -- while you were an employee?

13 A. Yes.

14 Q. Now, are you a registered surveyor in
15 South Carolina?

16 A. Yes.

17 Q. When did you obtain your registration or
18 what would you say? Is it license or registration?
19 What's the right --

20 A. License.

21 Q. -- way to say it?

22 A. They're probably synonymous.

23 Q. Okay.

24 A. They're the same.

25 Q. Well, when do you obtain your license?

1 A. June '79.

2 Q. Okay. So have you been -- you still
3 hold your license today?

4 A. Still got a license today.

5 Q. And we're a little math challenged over
6 here, but I think that's 33 years --

7 A. That's 33 years.

8 Q. -- is that right?

9 A. Something like that. Yes.

10 Q. Not quite -- you're catching up with --

11 A. I'm a --

12 Q. -- Mr. Meeler?

13 A. -- little behind Charlie, I know that.

14 Q. Okay. Now, in 1997 when you became a
15 registered surveyor, what were the requirements for
16 being registered?

17 A. You had to have -- if you had an
18 engineering degree from an accredited school, you
19 had to have two years experience under a registered
20 land surveyor, who would sign for you and say that
21 you did this, this, this, to meet the qualifications
22 to take the test. But since I had a marketing
23 degree, I was required to have way more field
24 experience before I could stand to take the test.

25 Q. All right. Well, one requirement was

1 you had to have a college degree of one flavor or
 2 another --

3 A. Right.

4 Q. -- correct?

5 A. Right. No, you did not. You do now.
 6 You did not at that point, you did not.

7 Q. Okay.

8 A. But I did.

9 Q. All right. So because you didn't have
 10 an engineering degree --

11 A. Engineering degree. Correct.

12 Q. -- you had to have ten years of field
 13 experience?

14 A. Or just ten years of experience.

15 Q. Oh, okay.

16 A. Broad experience. Yes.

17 Q. And if you had -- if you had ten years
 18 of experience and a college degree, what did that
 19 qualify you to do?

20 A. Sit and take the first part of the test.
 21 That's what's called the national part of the
 22 surveyor's test.

23 Q. And was that a day long, eight-hour --

24 A. Eight-hour exam.

25 Q. -- test?

1 A. Yeah.

2 Q. And then if you passed the national part
3 of the test and you had the ten years, what did that
4 qualify you for?

5 A. Six months later, you could take the
6 state part of the test, which was another, and still
7 is today, all day, eight-hour exam.

8 Q. Okay.

9 A. Every bit of it.

10 Q. So it's ten years of experience and two
11 full days of testing; is that right?

12 A. Correct.

13 Q. All right. And you went through that
14 process and passed; correct?

15 A. Yes.

16 Q. Now, the ten years of experience that
17 you had in '79, did that go all the way back to when
18 you started in 1965?

19 A. I'm going to say it probably started in
20 '68. I mean, I listed everything I did; but I doubt
21 seriously the board looked at too much that I did
22 when I was a sophomore in high school.

23 Q. You didn't actually --

24 A. When I was a senior, I was actually
25 running a field crew, doing small stuff, not doing

1 anything big. Small stuff.

2 Q. In 1979, you'd actually been working in
3 the surveying business for 14 years or so?

4 A. Fourteen years. Yes.

5 Q. Okay. Now, how long did you stay with
6 I. B. Cox or Cox & Dinkins?

7 A. Up until 1985.

8 Q. All right. And what did you do in 1985?

9 A. I started my own business.

10 Q. Okay. And that's Baxter Land Surveying
11 Company, Inc.?

12 A. It is.

13 Q. Okay. Did you prepare a resume at my
14 request?

15 A. I did.

16 Q. Let me show you what we've marked as
17 Exhibit JJ.

18 A. About to get buried.

19 Q. About to get buried?

20 A. That's okay.

21 Q. That's JJ. Is that an accurate copy of
22 your resume you prepared for purposes of your
23 testimony in this case?

24 A. Yes, it is.

25 Q. And is it accurate as of today?

1 A. It is.

2 Q. Let me ask you a little bit more about
3 your experience. This says you're a member of the
4 Midlands Chapter of Professional Land Surveyors; is
5 that right?

6 A. Yes, I am.

7 Q. Tell me a little bit about what that
8 organization is.

9 A. We promote surveying and just -- just
10 surveyors that are in Richland, Lexington,
11 Fairfield, and Kershaw Counties. The State is
12 divided up into regions and each region has its own
13 chapter which falls under the South Carolina Society
14 of Surveyors.

15 Q. Okay. Have you held any offices or
16 positions of responsibility with the Midlands
17 Chapter of --

18 A. Every --

19 Q. -- of Professional Land Surveyors?

20 A. -- office there is, I have been.

21 Q. Okay. Including the president and vice
22 president?

23 A. President, vice president, secretary,
24 treasurer, member of the board.

25 Q. All right.

1 A. Everything.

2 Q. Have you received any awards or
3 recognition for your work in surveying?

4 A. I was surveyor of the year. I'll have
5 to look back and see, in 1986.

6 Q. Okay. And have you been involved in
7 education for surveyors --

8 A. I have.

9 Q. -- or other people regarding surveying?

10 A. (Nodding head.)

11 Q. Tell the Court a little bit about --

12 A. I guess --

13 Q. -- what you've done.

14 A. -- ten years ago for a five-year period,
15 I put on seminars that attorneys and surveyors and
16 paralegals and anybody that wanted to come to could
17 show up and play their money and listen to it. My
18 part of the seminar was probably anywhere from an
19 hour to two hours.

20 Q. How many times have you done that?

21 A. I'm going to guess five or six.

22 Q. Okay. Are you familiar -- as a result
23 of your education and experience, are you familiar
24 with the requirements for surveyors imposed by South
25 Carolina Law?

1 A. Yes.

2 Q. And the requirements for surveys and
3 plats?

4 A. Yes.

5 Q. And in South Carolina, do those vary by
6 county to county and municipality to municipality?

7 A. Well, the State sets up minimum
8 guidelines and then municipalities can make them
9 stricter if they want to.

10 Q. Okay.

11 A. But the State sets up the minimums that
12 you have to abide by.

13 Q. All right. Have you ever served
14 previously as an expert witness in a case?

15 A. Twice.

16 Q. Okay. And tell me what generally that
17 involved.

18 A. One was an easement and another was a
19 property line.

20 Q. Okay. And did you actually testify --

21 A. Yes.

22 Q. -- at trial --

23 A. Yes.

24 Q. -- both of those times?

25 A. Yes, I did.

1 Q. And you were qualified as an expert --

2 A. Yes.

3 Q. -- surveyor by the trial judge --

4 A. Yes.

5 Q. -- in each of those cases?

6 A. Yes, sir.

7 Q. All right. Now, in this case, what

8 issues have you been asked to take a look at?

9 A. I've been asked to take a look at all of
10 these plats and drawings that's here in front of me
11 and depositions and pleadings and motions.

12 Q. Okay. Are you pretty familiar with the
13 issues and the facts in this case?

14 A. Yes.

15 Q. And how have you gone about making
16 yourself familiar with the issues and the facts?

17 A. Well, I made a visual inspection of the
18 premises just by simply riding by and slowing down a
19 little bit, looking at it and actually turning
20 around and drive by it on the other side of the
21 road, look at it. And I've examined most of these.
22 I may not have ever seen this right here.

23 (Indicating.) But I've this. Most of these
24 drawings up here, I've seen. I saw them drawings.
25 They're really plats. But I've seen most of them

1 and read all the pleadings and all the deeds,
2 motions, depositions of Bob Collingwood. And
3 everything that was given to me to read, I read.

4 Q. Okay. Have you read affidavits of --

5 A. Yes.

6 Q. -- various witnesses or parties?

7 A. Yes.

8 Q. All right. On the basis of the factual
9 information that you learned as a result of
10 reviewing that material and your experience and
11 education as a registered surveyor, do you think
12 you're qualified to comment to the Court on the
13 issues that you've been asked to address?

14 A. Yes.

15 MR. STEPP: Okay. Your Honor, at this
16 point, we would proffer Mr. Baxter pursuant to Rule
17 702 as someone qualified by reason of his special
18 knowledge, skill, experience, training, and
19 education as an expert in the field of surveying.

20 THE COURT: Mr. Davis, you want to voir
21 dire?

22 MR. DAVIS: I have no objection as to
23 his general background. I don't know what the
24 specific questions are that are going to be asked of
25 this gentleman, but I reserve the right to object to

1 those particular questions. But as to his general
2 background, he's qualified.

3 THE COURT: Qualified per the
4 recitation.

5 MR. STEPP: Yes, sir.

6 Q. Mr. Baxter, have you formed some
7 opinions on the issues in this case?

8 A. I have. Yes.

9 Q. Okay. Well, let's walk through what
10 those opinions are.

11 A. Okay.

12 Q. Have you formed any opinion about the
13 appearance on this plat I've got up on the easel?

14 A. Uh-huh.

15 Q. That's Plaintiff's Exhibit Number 2.

16 A. Nice and big. I can see that one.

17 Q. All right. Have you formed any opinions
18 about the designation on a portion of this plat of a
19 50-foot road and what the implications or
20 significance of that is?

21 A. I don't think it --

22 Q. Well, first, just tell me whether you've
23 formed any opinions about it.

24 A. Okay. Yes.

25 Q. Okay. And those opinions are a question

1 of surveying issues; right?

2 A. Yes. I would think it would be.

3 MR. DAVIS: I'm just listening. I'm
4 waiting for your next question.

5 MR. STEPP: You're anticipating.

6 THE WITNESS: I was sitting here, too,
7 waiting.

8 MR. DAVIS: Waiting for the next
9 question.

10 BY MR. STEPP:

11 Q. All right. Well, then let me ask you.
12 Do you have an opinion whether this designation on
13 Exhibit 2 of a 50-foot road, is that in fact a
14 survey of a 50-foot road?

15 MR. DAVIS: Objection, Your Honor, as to
16 the ultimate conclusion in this case. It would be
17 for the Court's decision and not for this particular
18 witness.

19 MR. STEPP: Well, the fact is the
20 ultimate question doesn't preclude expert testimony.
21 Obviously, the decision is yours ultimately. I
22 understand that.

23 THE COURT: I understand that. Are you
24 asking him if he thinks as a surveyor it's
25 legally -- it's legally a road or what --

1 MR. STEPP: No, Your Honor.

2 THE COURT: -- his opinion as a surveyor
3 is?

4 MR. STEPP: I'm asking him strictly his
5 opinion as a surveyor. I'm not trying to ask him
6 any legal conclusions whatsoever, although I
7 think --

8 THE COURT: He can --

9 MR. STEPP: -- his opinions may bear on
10 those also.

11 THE COURT: He can testify as a
12 surveyor, his conclusions after looking at it.

13 BY MR. STEPP:

14 Q. All right. Mr. Baxter, does this plat,
15 Plaintiff's Exhibit 2, is it a plat of a 50-foot
16 road?

17 A. It's not a plat of a 50-foot road. No.

18 Q. Does the designation on this plat,
19 Plaintiff's Exhibit 2, 50-foot road does it depict
20 or create a road as a matter of surveying
21 principles?

22 A. I would say that designation did not
23 create a road.

24 Q. Okay. Does the designation of 50-foot
25 road on this plat mean that, as a matter of

1 surveying principles, that a 50-foot road actually
2 exists on that part of the property?

3 A. I would say no on that also.

4 Q. Okay. Is it -- you've looked at this
5 plat previously; is that correct?

6 A. Yes.

7 Q. It was done in 1986?

8 A. Yes.

9 Q. As a matter of surveying principles, is
10 it reasonable for someone to rely in 2002 on a
11 survey that was done in 1986 with respect to
12 conditions outside of the property --

13 MR. DAVIS: Objection, Your Honor, as to
14 that would require a legal conclusion and not a
15 survey conclusion.

16 THE COURT: I'll sustain that because
17 that is legal and it requires speculation. I'm not
18 aware of any surveying law or anything that talks
19 about how long somebody can rely on a plat.

20 MR. STEPP: Let me try to lay a
21 foundation for you, if I may?

22 THE COURT: Please do.

23 BY MR. STEPP:

24 Q. Mr. Baxter, first let me ask you this.
25 Exhibit 2, what is this a survey of?

1 A. 0.68 acres on Highway 6.

2 Q. And that's the property within this
3 rectangle --

4 A. Within --

5 Q. -- right?

6 A. -- that rectangle. Correct.

7 Q. Is this a survey of anything outside of
8 that rectangle?

9 A. No, sir. Of anything outside that
10 rectangle.

11 Q. Is there any -- as a matter of surveying
12 practice, is there any obligation with respect to
13 the surveyor preparing this plat to show conditions
14 that exist outside of that rectangle?

15 A. Only if it were projections or
16 encroachments on to or off those boundaries.

17 Q. Okay. So might there be structures on
18 some of this property that are not shown on --

19 A. Oh, certainly. Definitely. Could be.

20 Q. If there were things shown on this plat
21 that existed in 1986, might they be -- might they
22 change sometime after this plat was done?

23 A. It could change the next day.

24 Q. Is a plat a representation with respect
25 to future conditions of a piece of property or does

1 it only depict the property at the time it's done?

2 A. Only at the time it's done.

3 Q. And I think I asked you this, but is
4 this a depiction of anything outside of the
5 rectangle that's the .68 acres?

6 A. No. It does not appear to be.

7 Q. Now, while we're on this plat -- we can
8 get a copy right in front of you. I know you can
9 see, but let's find a different version.

10 A. There you go.

11 Q. There's one. It's Plaintiff's Exhibit
12 Number 2. We together?

13 A. We're together.

14 Q. All right. Now, who was this plat
15 prepared for?

16 A. James T. Loflin.

17 Q. Okay. And it was prepared in 1986.
18 We've established that; correct?

19 A. Yeah. Yeah.

20 Q. And this is a plat of this 0.68 acres;
21 correct?

22 A. Yeah. Yes. It looks exactly like it.

23 Q. And the 0.68 acres is contained within
24 the boundary lines of this rectangle --

25 A. That's correct.

1 Q. -- is that correct?

2 A. That's correct.

3 Q. Now, is this a plat or survey -- well,

4 I'm sorry. Right up here it says N/F Congaree

5 Associates? You see that?

6 A. Uh-huh.

7 Q. What does that mean?

8 A. That's now or formerly and this Congaree

9 Associates is the owner.

10 Q. And that means that, at the time this

11 plat was done, that the surrounding property was

12 then or had formerly been owned by Congaree

13 Associates?

14 A. That's what you would read.

15 Q. Is this plat a survey of Congaree

16 Associates' property?

17 A. No.

18 Q. Does it show the dimensions of Congaree

19 Associates' property?

20 A. No.

21 Q. Does it show the total acreage or volume

22 of Congaree Associates' property?

23 A. No.

24 Q. Can you tell anything about the

25 dimensions, metes, bounds, or area of the Congaree

1 Associates' property by reference to this?

2 A. Not by reference to that plat.

3 Q. Can you tell whether there are any
4 improvements on it?

5 A. The surrounding property?

6 Q. Yes.

7 A. No, cannot tell.

8 Q. Now, is this a subdivision plat?

9 A. I would not call it a subdivision plat,
10 no.

11 Q. Well, what would you call it?

12 A. I would call it just an individual lot
13 plat.

14 Q. Okay.

15 A. But that's semantics.

16 Q. And it shows only this one lot?

17 A. That shows only one lot. Correct.

18 Q. Does it show any roads or streets within
19 that lot?

20 A. None.

21 Q. Now, this designation, 50-foot road, is
22 that a survey of a road?

23 A. It is not a survey of a road.

24 Q. Can you tell from that designation, if
25 there is a road, where it begins?

1 A. Can't even tell that on there.

2 Q. Can you tell where it ends?

3 A. You certainly can't tell where it ends.

4 Q. Can you tell whether the 50 feet means

5 it's 50-feet long or 50-feet wide?

6 A. You can't tell that either.

7 Q. This line that appears here, is that the

8 center line or is that the edge?

9 A. I would assume the edge, but that would

10 just be a basic assumption.

11 Q. But just from looking at this --

12 A. You --

13 Q. -- plat --

14 A. You couldn't tell. No.

15 Q. So you don't know whether this is the

16 middle of 50 feet this way or this way or --

17 A. That's correct.

18 Q. -- the edge of 50 feet this way or this

19 way? (Indicating.)

20 A. That's correct.

21 Q. Is that correct?

22 A. That would be correct.

23 Q. Does the plat indicate whether this is a

24 public road or a private road?

25 A. It does not.

1 Q. Does it matter?

2 A. Yes.

3 Q. Why?

4 A. Well, if it was a public road, then all
5 people have access to it. If it's a private road,
6 then only the people that own the private road that
7 they've given permission to go have access to it.

8 Q. Okay. Is there anything from this plat
9 itself that suggests that, if there were a road here
10 from the plat, not as a matter of law or whatever
11 conclusions the judge might reach, but from the
12 plat, does this show any access from this .68 acres
13 to the 50-foot road?

14 A. No, it would not.

15 Q. So just by looking at this plat, even if
16 there were a 50-foot road, could you conclude that
17 the owner of the .68 acres has a right to use it?

18 A. You couldn't do that from that plat.

19 Q. What is this? (Indicating.) See this
20 at the top left corner of the .68 acres? There's
21 kind of what I call a dash line up there. What does
22 that indicate?

23 A. I'd say he was attempting to maybe draw
24 a boundary, an adjacent boundary line.

25 Q. So --

1 A. That would be my guess.

2 Q. I'm sorry. So would this suggest to you
3 that the boundary of Congaree Associates' property
4 is up here, consistent with that dash line?

5 A. That would be what you would assume.
6 Yes.

7 Q. And that would be an assumption based
8 upon applicable surveying standards?

9 A. Just by the way this plat is drawn.
10 Correct.

11 Q. Well, if that's true then, can you tell
12 who even owns this property over here on the left?

13 A. Can't tell who owns that property there.

14 Q. Okay. Is there any reason to conclude,
15 based upon the way this is presented, that this
16 property is owned by Congaree Associates?

17 A. You could not look at that plat and tell
18 that.

19 Q. And in fact, because of this line, you
20 might conclude to the contrary; correct?

21 A. You very well may. Yes.

22 Q. Now, as a matter of surveying practice,
23 if you're hired to survey a parcel, what is your
24 obligational responsibility with respect to the
25 property that is outside of what you're hired to

1 survey?

2 A. As to?

3 Q. I mean -- let me put that another way.

4 As a matter of surveying practice, appropriate
5 surveying practice, would a plat of this .68 acres
6 also indicate conditions on property that was not
7 the subject of the survey?

8 A. No.

9 Q. Okay. If I hired you to survey my
10 house, can you give me a 50-foot easement across my
11 neighbor's lot by drawing it on the plat?

12 A. No.

13 Q. That would be improper?

14 A. That would be improper.

15 MR. DAVIS: Objection, Your Honor. If
16 he's testifying as to survey requirements, I'm okay.
17 If he's testifying otherwise, I object.

18 MR. STEPP: That's the intent. I don't
19 think it would be okay as matter of a law either.

20 THE COURT: Well, I can give you about
21 three scenarios where it might be; but we won't go
22 into that right now.

23 MR. STEPP: All right. That's fine. It
24 was only intended as a matter of surveying practice.

25 THE COURT: I understand.

1 MR. STEPP: All right.

2 Q. Now, as a matter of surveying standards,
3 would it be appropriate to make any indication about
4 a 50-foot road if in fact there were no 50-foot road
5 in existence?

6 A. Now repeat that for me.

7 Q. Yes, sir. As a matter of surveying
8 standards, would it be appropriate for a surveyor
9 drawing a plat of the .68 acres to make any
10 indication about a 50-foot road?

11 A. If there wasn't one there?

12 Q. If there wasn't a road there.

13 A. No, shouldn't do that.

14 Q. And if there was a road there and you
15 were going to mark it, would you show the dimensions
16 of it?

17 A. I would.

18 Q. Okay. So based on that, do you have an
19 opinion about whether it was appropriate for Mr.
20 Collingwood to put some indication on this plat
21 regarding a 50-foot road over on this side of the
22 property?

23 MR. DAVIS: For survey purposes?

24 MR. STEPP: Yeah. Well, for any
25 purpose.

1 MR. DAVIS: Object as to any purpose.

2 MR. STEPP: All right. I mean, Mr.
3 Collingwood is a surveyor.

4 THE COURT: I understand his question,
5 as a surveyor, do you believe this was a proper
6 survey.

7 MR. STEPP: That's fine.

8 THE COURT: Conducting a survey.

9 MR. STEPP: Okay.

10 THE WITNESS: Do I believe -- from a
11 surveying standpoint, do I believe 50-foot road is a
12 proper boundary to put there?

13 THE COURT: That's somewhat --

14 MR. STEPP: Let's start over.

15 THE WITNESS: I mean, are you asking me
16 is that a good survey of .68 acres? Probably so,
17 yes.

18 BY MR. STEPP:

19 Q. Is it a good survey of the 50-foot road?

20 A. It is not a good survey of the 50-foot
21 road.

22 Q. And as a matter of surveying practice
23 and standards, was it appropriate to make any
24 notation about a road that's not part of the .68
25 acres?

1 A. I would say it was not good standard
2 practice.

3 Q. Now, let's see if we can -- let me show
4 you Defendant's Exhibit KK. You take a minute and
5 look at that, please.

6 A. (Complying.) Okay.

7 Q. You've seen that letter before?

8 A. I have.

9 Q. Have you ever seen a letter similar to
10 that in the course of your work as a surveyor?

11 A. Similar to them, yes.

12 Q. Okay.

13 A. Yes.

14 Q. And does the -- how would you
15 characterize what that letter does?

16 A. Well, it simply says that they've turned
17 in some kind of proposed drawing to Lexington County
18 and the Planning Commission said that overall this
19 looks right and then they got into a lot of
20 engineering issues, which Bob Collingwood couldn't
21 have done. So that's all it says, that you turned
22 something in to us and it looks fine to us.

23 Q. Okay.

24 A. If you want to proceed, this is what you
25 have to do. This is our procedure and this is what

Handwritten notes:
Bayer
M.V.W.
Collingwood
Trib. sig
Plan
date 9/1
no written evidence
of WFLC

1 we're going to require you to do at a minimum.
2 There's probably going to be a lot more required
3 than what they wrote in that letter.

4 MR. DAVIS: Objection, Your Honor. No
5 evidence of that fact.

6 THE COURT: Motion is sustained.

7 BY MR. STEPP:

8 Q. All right. Well, the letter itself
9 contains some conditions; is that right?

10 A. It contains a lot of conditions. Yes,
11 it does.

12 Q. And the letter itself provides, in fact,
13 if I remember correctly -- let me see it just a
14 moment. You may submit revised documents to our
15 office for review in order to obtain a grading
16 permit and preliminary plat approval; correct?

17 A. Correct.

18 Q. So is this preliminary plat approval?

19 A. No. No.

20 Q. Does that change if that -- if that
21 letter refers to a 50-foot road in this area, does
22 that change the status of that road at all as a
23 matter of whether it is on the ground or should be
24 surveyed?

25 A. Now repeat that question.

1 Q. Yeah. If that -- let's just assume --

2 A. Okay. Just assume? Yes. Okay. Right.

3 Okay.

4 Q. Refers to a plat that shows this 50-foot
5 road, not this plat, but another plat.

6 A. Another plat. Correct. Okay.

7 Q. And it says what it says. Does that
8 letter alter the effect of this road? Does it make
9 it come into existence?

10 A. No.

11 Q. Does it require the developer to
12 construct it?

13 A. It does not require the construction.

14 Q. Okay. Now, at my request, did you do
15 some work to investigate the status of this piece of
16 property today, the one where it shows the 50-foot
17 road?

18 A. Yes.

19 Q. Tell us -- tell the Court what all you
20 did and what you looked at, please.

21 A. Well, I looked at this plat done by Mr.
22 Meeler and saw this plat and --

23 Q. Well, wait. We're going to have to be a
24 little more specific.

25 A. Okay. All right. You tell me.

1 Q. All right. Well, let's start right
2 here.

3 A. Okay.

4 Q. This was Defendant's Exhibit J, I'm
5 holding that up.

6 A. Okay.

7 Q. You looked at that?

8 A. I looked at that. Yes, I did.

9 Q. Okay. And unfold the one you've got.

10 A. This is K.

11 Q. All right. Defendant's Exhibit K. Did
12 you look at that?

13 A. I looked at Defendant's Exhibit K.

14 Q. Okay. Let's put that over here.

15 A. Okay.

16 Q. Let's look at Defendant's Exhibit M.

17 A. I looked at that.

18 Q. You looked at that? And did you look
19 at --

20 A. I think this is the same as that.

21 Q. That's the one that's got a sticker?

22 A. Yeah. One's got a sticker on it. Yeah.

23 Q. Did you look at Defendant's Exhibit L,
24 the tax map?

25 A. Yes.

1 Q. All right. What else did you look at?

2 You said you went by and inspected the property?

3 A. I went by and did just a visual

4 inspection. Yes.

5 Q. Okay. What else did you look at?

6 A. Just some deeds. I read all the deeds.

7 Q. Okay.

8 A. And. . .

9 Q. Did you look at the public records to --

10 A. Looked at public records. Yes. Yes.

11 Q. -- to determine whether there's been any

12 dedication or --

13 A. Yes.

14 Q. -- acceptance or a road or street in

15 that area?

16 A. Yes. I checked with Lexington County
17 and SC DOT and no public, private, no type of road
18 has ever come into existence.

19 Q. Mr. Baxter --

20 MR. DAVIS: Objection, Your Honor, as to
21 this witness' ability to testify as to whether a
22 private road has existed on this property.

23 MR. STEPP: I'm asking about what the
24 public record shows, Your Honor.

25 THE COURT: I'm going to allow that --

1 well, let me take that back. If the question is
2 supposed to mean something that a government entity
3 has accepted on public record and he reviewed for
4 that, that's proper. If the question is his opinion
5 of every plat and every deed and the legal effect,
6 it's not proper. I think I understood the question
7 to be, has a government entity accepted a road in,
8 so that's proper. Anything else is not.

9 MR. STEPP: That's part. Yes. The
10 other part -- let me ask him this question.

11 THE COURT: All right.

12 BY MR. STEPP:

13 Q. Have you found, Mr. Baxter, any
14 indication in the public record from any sources,
15 whether by plat or by deed, by anything recorded, by
16 anything at DOT, anything at Lexington County,
17 anything publically available --

18 A. Right.

19 Q. -- that indicates the existence of this
20 road other than this plat, Plaintiff's Exhibit 2?

21 A. Other than that? That's the only one
22 that even I could find.

23 Q. Okay. Now, if you were asked today to
24 do a survey of the .68 parcel, would you look at all
25 the plats you could get your hands on?

1 A. Yes.

2 Q. And what reliance would you place on
3 other plats?

4 A. I would except -- well, put a lot -- 100
5 percent --

6 MR. DAVIS: Objection. I have an
7 objection, Your Honor, and it's this. He is asking
8 for what Mr. Baxter would do today in 2012, which is
9 not relevant.

10 MR. STEPP: Your Honor, the question
11 today is whether there's an easement or not.

12 MR. DAVIS: No. We have --

13 THE COURT: Wait a minute. Wait a
14 minute. Wait a minute. That is a -- that is a --
15 that's the question. That's one of the key
16 questions in this entire case because the
17 plaintiff's arguing rights were established, as I
18 understand it --

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: -- on September 15, 1986 --

21 MR. DAVIS: That's correct.

22 THE COURT: -- when a deed and a plat
23 went in record, when this deed got put in the chain
24 of title. I understand that's what the plaintiff is
25 arguing. I understand what you're arguing is is

1 what exists now and that intent can change from '86
2 to 2012. Is that what you're asking this witness?

3 MR. STEPP: Well, I'm asking two things.
4 I'm asking first, how would you go about today
5 determining whether there was a road or an easement
6 on that property today?

7 THE COURT: All right. Fair. That's a
8 fair question. He can say I did -- if I was asked
9 to do a survey, this is what I would do today.

10 MR. STEPP: That's the question.

11 MR. DAVIS: And the objection and the
12 relevance is what is the relevance of how he would
13 do this survey in 2012 if --

14 THE COURT: Well, if --

15 MR. DAVIS: I'm sorry. Go ahead. I
16 apologize.

17 THE COURT: I'm going to let him answer
18 that and I'm going to let you cross him on that.
19 They've asked him what he's done, what he's looked
20 at and why he assumes things and why he doesn't
21 because that's valid. All right?

22 MR. STEPP: All right.

23 Q. So let's get back to the question.

24 A. Okay.

25 Q. If you were asked to determine today

1 whether there's any road or easement that services
2 this .68 acre parcel, Mr. Baxter, what would you do?

3 A. You would have to search the titles to
4 both Loflin's property, which I know it changed
5 hands a bunch of times, and the surrounding property
6 to see if any type of easement had ever been
7 mentioned in any deed.

8 Q. Okay. Would you look at plats currently
9 available?

10 A. Currently available, yes.

11 Q. Why would you look at plats that are
12 currently available?

13 A. Just in our normal research, we not only
14 get current plats, we get older plats, too.

15 Q. Okay. And what do -- what do you use
16 them for?

17 A. We use them as a basis for our survey.

18 Q. Okay. And if you do not find any
19 indication of a road or an easement on those plats,
20 what does that tell you?

21 A. That one -- at least a written one may
22 not -- written is not the right word there. That we
23 could not find in our search anything to indicate
24 that a road was there.

25 Q. Okay. Would you suppose that you're

1 looking at all of these plats and you find
2 Plaintiff's Exhibit 2 that's got this one indication
3 on it? Okay? And that's a plat of .68 acres and
4 then you look at all these other plats, four of them
5 I think --

6 A. Uh-huh.

7 Q. -- that don't show a road or indicate a
8 road or indicate an easement or anything other than
9 a gravel drive encroachment, what do you conclude
10 from that as a surveyor?

11 A. That there was never a road there.

12 Q. Would you conclude that this is probably
13 a mistake?

14 A. Opinion on that, I would say that that
15 was written in error.

16 Q. And I think I asked you this, but let me
17 be clear. Out of all the materials that you have
18 looked at, all the written depictions, the tax map
19 and all these plats, is there any one recorded
20 document that actually shows the metes and bounds of
21 a 50-foot road there?

22 A. Not that I could find.

23 Q. Now, look at Exhibit J, I think. I
24 think you have it right down here, not too buried.

25 A. Not too buried.

1 Q. Well. . .

2 A. Here it is, right here. Exhibit J.
3 That Charlie's plat.

4 Q. This is what we call the Strasburger
5 plat.

6 A. Right.

7 Q. See, there's the property right up here?
8 (Indicating.)

9 A. Correct.

10 Q. All right. And it shows -- as Mr.
11 Meeler testified, it shows parking and gravel drive
12 encroachments. Do you see that?

13 A. I see it.

14 Q. All right. What would you conclude, if
15 you're looking -- as a surveyor, you're looking at
16 this survey that shows this parking and gravel drive
17 encroachment, what do you conclude from that?

18 A. That this earlier plat thought that
19 that -- since it went all the way around the
20 existing property, that that was actually
21 encroaching on to lots he was surveying.

22 Q. Okay. And does the designation of that
23 as an encroachment, would that be the same thing as
24 saying it was an easement?

25 A. No.

1 Q. Okay. What's the difference?

2 A. Well, an easement is a right to use
3 something and an encroachment is a physical --
4 something physical that's actually encroaching or
5 projecting across the property.

6 Q. Okay. Mr. Baxter, on the basis of all
7 the work you've done and your experience, education,
8 skill, and training as a surveyor, is it your
9 professional opinion that this plat, Plaintiff's
10 Exhibit 2, is sufficient to create rights in the
11 owner of the .68 parcel in a 50-foot road abutting
12 that parcel?

13 A. It's my opinion, I would say, since his
14 deed did not give him any right to it, he would have
15 no right --

16 MR. DAVIS: Objection, Your Honor, as to
17 legal conclusion.

18 MR. STEPP: I'm trying to ask him as a
19 matter of a surveyor. That's all I'm trying to do.

20 MR. DAVIS: Okay.

21 BY MR. STEPP:

22 Q. Let me try it again. As a surveyor.

23 A. Okay.

24 Q. Not asking you to be the judge or a
25 lawyer.

1 A. Okay.

2 Q. As a surveyor, my question to you is
3 whether this simple notation of a 50-foot road on
4 this plat as a matter of surveying principles is
5 sufficient to create, in your view, rights of access
6 in the owner of the .68-acre parcel in this?

7 A. I wouldn't think it did.

8 MR. STEPP: Can I have a just a minute,
9 Your Honor?

10 THE COURT: Just a moment.

11 MR. DAVIS: That's your last question?

12 MR. STEPP: I asked for a minute.

13 MR. DAVIS: Oh, okay.

14 BY MR. STEPP:

15 Q. Let me ask you this. Suppose there was
16 a road here. Okay? Suppose there was a private
17 road and it went back or suppose it was a driveway.
18 Let's do that. Let's suppose it was a driveway and
19 it went back and there was a house back here.

20 (Indicating.) If this were shown -- if that were
21 shown, if that were in fact in existence. Okay?

22 A. Okay.

23 Q. And it was there and it was 50-feet wide
24 and gravel and had ditches on both sides, but it was
25 entirely on the adjacent property, would that -- how

1 would you show that on a plat without giving this
2 parcel owner the right to use it?

3 MR. DAVIS: Objection, Your Honor, as to
4 the relevance. A hypothetical that is not based on
5 the facts in this case and there could be a myriad
6 of answers to that depending on ownership of the
7 property around this particular lot.

8 MR. STEPP: My point exactly. Their
9 whole argument is that, simply because this says a
10 road, this guy gets the right to use it.

11 MR. DAVIS: There --

12 THE COURT: Hold on now. Unless -- I'm
13 going to sustain that and let's let that be argued.
14 All right?

15 MR. STEPP: Can I make a proffer of the
16 answer, Your Honor?

17 THE COURT: You can make a proffer of
18 the answer.

19 MR. STEPP: All right.

20 Q. This is just -- we're going to go back
21 and answer the question. It doesn't count.

22 A. Okay.

23 THE COURT: It may.

24 BY MR. STEPP:

25 Q. If there were a road here, but there was

1 no -- there was no intention to let people on this
2 property use it, how would you show it on a survey?

3 A. I would just -- probably just show it as
4 a driveway.

5 Q. Okay. And so if this had said 50-foot
6 driveway, would that change things?

7 A. I don't know if I'm qualified to answer
8 that.

9 MR. STEPP: Okay. We'll leave it at
10 that.

11 THE WITNESS: Yeah.

12 MR. STEPP: That's all I have. Thank
13 you.

14 THE COURT: Hold on one minute. I want
15 to type something down before I lose my place on
16 this.

17 All right. Yes, sir.

18 EXAMINATION

19 BY MR. DAVIS:

20 Q. Mr. Baxter?

21 A. Yes, sir.

22 Q. You're on Devine Street?

23 A. I am.

24 Q. All right. You testified that, as a
25 surveyor, as a qualified surveyor, you thought the

1 50-foot road area was not depicted properly for
2 survey purposes. Yes or no?

3 A. That's correct.

4 Q. Okay. And what's your problem with it,
5 the 50-foot road area?

6 A. Oh, the 50-foot road area?

7 Q. Yes. Yes.

8 A. You mean what's wrong with it?

9 Q. Yes, sir. Survey wise, that's what
10 you're --

11 A. What's wrong with it survey wise? That
12 is not a proper boundary.

13 Q. And what boundary is required in your
14 opinion as a surveyor for this road area?

15 A. What's -- the owner of the property.

16 Q. No. My question to you is this. You
17 said that this was not described properly --

18 A. Right.

19 Q. -- for survey purposes?

20 A. Right.

21 Q. And then you said boundaries.

22 A. Okay.

23 Q. If I heard you right, you said it didn't
24 show boundaries.

25 A. Right.

1 Q. Is that right? Is that ~~that~~ ~~the~~ ~~problem~~

2 ~~the~~

3 A. Yes.

4 Q. Yes or no?

5 A. Wait a minute. You might be confusing

6 me a little.

7 Q. My question is -- you said that it

8 didn't show the boundaries, the 50-foot road did not

9 show the boundaries. And my question is, is that

10 the survey issue? Is that the survey defect?

11 A. Is that the survey defect?

12 Q. ~~Are you saying that, because they didn't~~

13 have the boundaries for the road, is that ~~the~~ ~~survey~~

14 defect?

15 A. No.

16 Q. No?

17 A. No.

18 Q. What is it?

19 A. That is just an improper ~~boundary~~.

20 Q. I know. But what is the defect? What

21 causes it to be improper?

22 A. 50-foot road?

23 Q. Yes, sir. What causes this verbiage to

24 be improper for survey purposes?

25 A. Oh, for survey purposes?

1 ~~Q. Yes, sir.~~

2 A. Oh, excuse me. I probably misunderstood
3 the question. As far as locating that property
4 line?

5 Q. No, sir. No, sir. You said that that
6 50-foot road, designating that as a 50-foot road was
7 a survey -- that that did not -- that did not, for
8 survey purposes, properly establish that road. I
9 took that to mean a survey defect of some nature.
10 And I'm asking is that -- are you saying it's a
11 survey defect?

12 A. No, I'm not saying that's necessarily a
13 survey defect. No.

14 Q. What is it?

15 A. Okay.

16 Q. What is the problem with that
17 designation on that plat to show it as a 50-foot
18 road?

19 A. It ~~has no name~~.

20 Q. No name?

21 A. Huh-uh.

22 Q. Meaning that it doesn't have a person's
23 name, like Davis Road?

24 A. That would be one thing. Yes.

25 Q. Okay. What else?

1 A. You can't -- you can't -- that would
2 probably be the main thing.

3 Q. Okay.

4 A. It had no name to it.

5 Q. Well, what you're saying the defect is,
6 because it doesn't show a name, it's a survey
7 defect, that 50-foot designation there; is that
8 correct?

9 A. I don't know if I'm qualified to answer
10 that.

11 Q. Okay. Let me ask you this.

12 A. Okay.

13 Q. Why did Mr. Collingwood put right there
14 Highway 6? (Indicating.)

15 A. Because that's the highway number.

16 Q. Okay. But why did he put that there?
17 Why did he put on that plat SC Highway 6?

18 A. Because that's the boundary in the
19 front.

20 Q. What is the boundary?

21 A. SC Highway 6.

22 Q. Okay. So why do you think he put
23 50-foot road here?

24 A. Because you have --

25 Q. Do you think he was just -- why do you

1 think he put 50-foot road there? Because there was
2 a road there, isn't it?

3 MR. STEPP: Your Honor, he's got to let
4 him answer the answer. I know it's cross, but this
5 is pure argument. He's entitled to answer the
6 question.

7 THE COURT: Okay.

8 BY MR. DAVIS:

9 Q. My apologies.

10 A. Okay.

11 Q. Why did he put 50-foot road there?

12 A. I wouldn't -- I couldn't answer Bob
13 Collingwood's question.

14 Q. How about this?

15 A. Okay.

16 Q. Look at Exhibit --

17 A. Right.

18 Q. -- KK.

19 A. Okay.

20 Q. I don't know whether you were here or
21 not earlier --

22 A. Okay.

23 Q. -- but that letter refers to this plat,

24 GG.

25 A. Okay.

1 Q. And that plat shows a road on it?

2 A. Correct.

3 Q. And that road is the road that's

4 referenced in KK?

5 A. Okay.

6 Q. You agree?

7 A. Well, let's just see. Well, I guess

8 because it says Westchester Phase II.

9 Q. Yes, sir.

10 A. Okay.

11 Q. So GG shows a --

12 A. We won't argue that point.

13 Q. -- shows a road?

14 A. Correct.

15 Q. And KK is referencing Westchester Phase

16 II?

17 A. Correct.

18 Q. Okay. Do you know who did that plat?

19 A. This plat?

20 Q. Yes, sir.

21 A. Robert E. Collingwood.

22 Q. Okay. And do you know who did that

23 plat --

24 A. Robert E. Collingwood.

25 Q. -- which is Exhibit 2?

1 A. Robert E. Collingwood.

2 Q. So do you think he had something on his
3 brain that maybe there was a road there when you
4 think about Exhibit 2 --

5 A. Okay.

6 Q. -- and Exhibit GG?

7 A. Well, this right here is merely a
8 proposed alignment. Okay? The way things might end
9 up going. It's no guarantee it's going to end up
10 going like this.

11 Q. Okay.

12 A. Okay? The fact that they went through
13 the approval process means -- I have them in my
14 office, too. We've gotten a lot further along than
15 this and nothing's gone on, so. . .

16 Q. Okay.

17 A. So that proposed thing, you can do with
18 that what you want.

19 Q. But my question to you was Mr.
20 Collingwood did that plat, did he not?

21 A. Yeah. Correct.

22 Q. And that plat is showing a -- that plat
23 is showing a road?

24 A. Correct.

25 Q. And is it not true that a part of that

1 road on GG is that road right there? (Indicating.)

2 A. You could not look at this plat and
3 figure that out. I can't.

4 Q. Do you know that?

5 A. I said I can't look at --

6 Q. So you don't --

7 A. I can't look at this plat and tell you
8 that this road on this plat is the same 50-foot road
9 that's designated on that drawing.

10 Q. Okay.

11 A. You could not look on this plat and --

12 Q. Assuming it's in evidence that it is.

13 Let's assume in evidence that it is.

14 A. Okay.

15 Q. Would that be a reason by Mr.

16 Collingwood put 50-foot road there?

17 A. It could be.

18 Q. In fact, as a ~~surveyor~~ as we've talked
19 about today, ~~it's your obligation to put down on the~~
20 ~~property and adjacent to the property what may be~~
21 ~~there.~~

22 A. What may be there?

23 Q. What may be there.

24 A. Right.

25 Q. And here, what may be there is Highway 6

1 and the 50-foot road, so --

2 A. No. Wait a minute. You put words in my
3 mouth there. Okay. Our obligation is to put what's
4 there, not what may be there.

5 Q. Okay. Well, assuming in the evidence is
6 the fact that I just told you, that that GG --

7 A. Okay.

8 Q. -- road is that road.

9 A. Okay.

10 Q. Again, I think you indicated it'd be
11 fair to say that's why Mr. Collingwood put it there?

12 A. That would -- that would be a fair
13 assumption. Yes.

14 Q. So that would not necessarily be a
15 mistake on his part, would it --

16 A. Well --

17 Q. -- as you testified to?

18 A. Well, this is a proposed plat, so I --
19 personally, myself, I try not to do a whole lot with
20 proposed stuff. People bring them in all the time
21 and I tell them, that's just proposed. Got to have
22 something real. That's not real.

23 Q. Okay.

24 A. That's made up. There's no dimensions
25 on here. There's nothing on it. No variance, no

1 distances, no nothing, so. . .

2 Q. Okay. Let's take Exhibit D --

3 A. Okay.

4 Q. -- which is the deed from Congaree

5 Associates --

6 A. Okay.

7 Q. -- to Mr. Loflin.

8 A. Okay.

9 Q. Okay. And this deed references this

10 plat --

11 A. Yes.

12 Q. -- Exhibit 2?

13 A. Yes, sir.

14 Q. Is that true?

15 A. That is true. Yes.

16 Q. And you know what I mean when I say

17 reference?

18 A. Yes.

19 Q. Okay.

20 A. Yes. We won't argue semantics on that.

21 Q. So we've got a deed in 1986 --

22 A. Correct.

23 Q. -- from Congaree Associates to James T.

24 Loflin --

25 A. Uh-huh.

1 Q. -- for that piece of property?

2 A. This piece of property.

3 Q. This is September of '86.

4 A. For that piece of property?

5 Q. Right.

6 A. Right.

7 Q. And we have Exhibit GG showing

8 Westchester Phase II.

9 A. Uh-huh.

10 Q. And we have Exhibit KK --

11 A. Uh-huh.

12 Q. -- saying that preliminarily --

13 A. Uh-huh.

14 Q. -- Westchester Phase II is approved --

15 A. Okay.

16 Q. -- for a road.

17 A. Okay.

18 Q. So wouldn't it be fair to say or would
19 you say, knowing those facts, that you have a -- let
20 me add one more factor to it. Do you know this
21 letter -- this letter is directed to what company?

22 A. That's Congaree Associates.

23 Q. Okay. And knowing the facts, I'll say
24 it again so it's clear, that there's a letter to
25 Congaree Associates saying Westchester Phase II is

1 approved, approved subject to those conditions,
 2 showing that road and you got a deed a year later
 3 from Congaree Associates on a plat that was done by
 4 Mr. Collingwood, would you still think it would be a
 5 mistake for Mr. Collingwood to put that on that
 6 plat?

7 A. Once again, you're basing something on
 8 something that is proposed and I think I've
 9 testified before that I personally, myself -- I
 10 mean, are you asking me --

11 Q. Yes, sir.

12 A. -- to conjecture on Bob Collingwood?
 13 I'm not -- I can't -- I can't answer Bob
 14 Collingwood.

15 Q. Okay.

16 A. Okay? Would I put something on there
 17 that was proposed? No. Okay?

18 Q. Okay. All right.

19 A. All right. I mean, that -- really,
 20 that's supposed to the owner of the property.

21 Q. Okay. Is it unusual for a surveyor to
 22 describe what abuts the property on a survey?

23 A. It is. Is it unusual --

24 Q. Yes.

25 A. -- to describe?

1 Q. What does specifically abut up to the
2 piece of property that's being conveyed, the .68
3 acres. I mean, it is unusual for them to put here
4 now formerly Congaree Associates?

5 A. No. No. That obviously --

6 Q. Okay.

7 A. I was going to say, if you're asking
8 about the boundaries the property, no, that's --
9 that's --

10 Q. Okay.

11 A. -- standard.

12 Q. And it's not unusual for them to put
13 Highway 6 in the center?

14 A. No. Because it's physically there.

15 Q. And --

16 A. Right. It's physically there.

17 Q. And knowing what Mr. Collingwood knew,
18 would it be unusual for him put over there 50-foot
19 road?

20 A. Once again something -- you're asking me
21 my opinion and once again I'll reiterate again,
22 we're going on things that are proposed. There's no
23 guarantee that that would have ever been built.

24 Q. And if you're in Dr. Gooldy's position
25 as a buyer and you see -- somebody gives you a

1 plat --

2 A. Uh-huh.

3 Q. -- when you buy it. It says 50-foot
4 road. What do you think that means to that buyer?

5 A. Well, that plat was done in 1986 and he
6 bought the property in 2000 --

7 Q. 2002.

8 A. -- 2002. Right.

9 Q. Assuming that every deed in that chain
10 of title --

11 MR. STEPP: Your Honor, I don't know
12 that he finished his answer to the last question --

13 MR. DAVIS: I apologize.

14 MR. STEPP: -- before the next one was
15 inserted.

16 MR. DAVIS: I apologize.

17 MR. STEPP: You go ahead.

18 THE WITNESS: Okay. You were asking?

19 BY MR. DAVIS:

20 Q. What I asked --

21 A. Okay. He has his plat and it's been the
22 only plat ever done, so of course nothing's changed
23 on the plat. Okay?

24 Q. True.

25 A. But over time, owners change. When he

1 bought the property, this is just -- Congaree
2 Associates may not have owned it.

3 Q. Okay.

4 A. I mean, you know, anybody else. They
5 could have sold it to anybody.

6 Q. All right. You testified that you
7 looked at the chain of title on this piece of
8 property, Dr. Gooldy's property; is that correct?

9 A. Yes.

10 Q. Okay.

11 A. Provided by Mr. Stepp.

12 Q. And you know that every deed in that
13 chain of title from the time Congaree Associates
14 conveyed it out references this same --

15 A. That same plat.

16 Q. -- plat?

17 A. That's correct.

18 Q. There's no others?

19 A. No other plat. That's absolutely
20 correct.

21 Q. No others?

22 A. Right.

23 Q. This is what people looked at when they
24 checked the title --

25 A. Right.

1 Q. -- to this property?

2 A. Right.

3 Q. And it shows that?

4 A. That's right.

5 Q. Okay.

6 A. Can't deny it.

7 MR. DAVIS: Very good. Thank you, sir.

8 THE COURT: Redirect?

9 MR. STEPP: Don't believe so. Thank
10 you.

11 THE COURT: All right. You may be
12 excused.

13 THE WITNESS: Okay. Thank you very
14 much.

15 MR. STEPP: Can we have a brief break?

16 I think we've just got one more witness.

17 THE COURT: Yes, sir. How long you
18 need?

19 MR. STEPP: Ten minutes.

20 THE COURT: All right. We'll come back
21 at 3:30.

22 (A recess transpired.)

23 THE COURT: Everybody be seated, please.

24 MR. STEPP: May it please the Court,
25 defendant calls Chris Puckett, Your Honor.

1 THE COURT: Yes, sir. Please come
2 forward and be sworn, please.

3 CHRIS PUCKETT,
4 being first duly sworn, testified as follows:

5 THE BAILIFF: Have a seat and state your
6 full name.

7 THE WITNESS: Christopher Scott Puckett.

8 EXAMINATION

9 BY MR. STEPP:

10 Q. Mr. Puckett, are you a member of Storage
11 Center of Platt Springs, LLC?

12 A. I am.

13 Q. And are you one of the founding members
14 of that enterprise?

15 A. I am.

16 Q. Are there others?

17 A. There are.

18 Q. Okay. Are you somebody that dealt on
19 behalf of The Storage Center of Platt Springs, LLC
20 with the property that we've been talking about
21 today?

22 A. Yes, I am.

23 Q. Okay. You bought that property, as I
24 understand it, in 2007; is that correct?

25 A. Correct.

1 Q. And at the time you bought it, did you
2 have any understanding that there was any contention
3 that there was a 50-foot road over part of the
4 property you were buying?

5 A. No, I did not.

6 Q. Did anybody ever tell you that?

7 A. No.

8 Q. Did you ever see, prior to closing, this
9 plat of what's now Dr. Gooldy's property, .68 acres,
10 that's Plaintiff's Exhibit Number 2?

11 A. No.

12 Q. Did anybody show you that?

13 A. No.

14 Q. Of course, you weren't buying this .68
15 parcel, were you?

16 A. No, I was not.

17 Q. Okay. After you bought the property,
18 how did it come to your attention that Dr. Gooldy
19 made some claim for a right to use part of the
20 property?

21 A. I think -- as far as in a legal sense?

22 Q. Well, no. How did that come to your
23 attention? Did Dr. Gooldy tell you or did the
24 realtor tell you? Who told you that there was an
25 issue about your right with respect to this part of

1 the property?

2 A. As far as rights? Not for the survey?
3 I couldn't remember the time frame. It wasn't
4 immediately, not in the slightest.

5 Q. All right. Let me back up.

6 A. Sure.

7 Q. Maybe I'm not making myself clear. It's
8 getting late in the day. When you bought the
9 property, you didn't have any understanding that
10 there was any contention about a road or a right of
11 access over your property?

12 A. No.

13 Q. When did you learn to the contrary?

14 A. After we started our development work.

15 Q. Okay. Now, what was the purpose for
16 which Storage Center bought the property?

17 A. We were going to put a self-storage
18 center on this property.

19 Q. Okay. And what was your plan for using
20 these two legs, if I can call them that, that came
21 down to Highway 6?

22 A. For ingress and egress to the larger
23 portion, where the actual center would be located.

24 Q. And did you intend to use both sides of
25 the property for that purpose?

1 A. Both sides.

2 Q. Okay. And when you started doing the
3 development work, how did it come to your attention
4 that there might be some issue with that?

5 A. When we started working on the curb cut
6 issue with the Department of Transportation.

7 Q. Okay. Did you subsequently have one or
8 more meetings with Dr. Gooldy in which you talked
9 with him in an effort to resolve the issues about
10 access?

11 A. I did. We had an initial meeting or
12 discussion almost directly at closing, in which we
13 just kind of, as a good neighborhood, notified
14 that -- I'm sorry. I think it was probably, as our
15 representative, I just notified him that we would
16 give ample warning before we started any
17 development, so that he could transition his usage
18 of our property directly on to his property.

19 Q. And that would have been sometime in
20 2007?

21 A. 2007, I believe.

22 Q. Okay. And did you personally ever meet
23 with Dr. Gooldy?

24 A. I did, as we kind of went through this
25 process of not only the development process, when we

1 had to deal with the issue of the curb cut, that was
2 something that the SC DOT wanted us to work in
3 concert together, to eliminate the number of curb
4 cuts down Highway 6 and so we had a couple of
5 meetings to see how we could work together.

6 Q. Okay. Now, at any time when you were
7 meeting with Dr. Gooldy, did he ever tell you that
8 there was a 50-foot road on this side of his
9 property and that he had the right to use it?

10 A. No.

11 Q. Did he ever tell you that he had any
12 right to use your property that wasn't subject to
13 your consent?

14 A. No.

15 Q. When you suggested shared access or
16 trying to work something out, what was Dr. Gooldy's
17 attitude about that?

18 A. Dr. Gooldy's push back was how it would
19 affect his property. And so we attempted a number
20 of different suggestions so that there would be no
21 adverse impact.

22 Q. And was a proposed shared access
23 agreement one of the things you talked with Dr.
24 Gooldy about?

25 A. One of them.

1 Q. And the concept of that would have been
2 what? Just describe it for the Court.

3 A. It took a couple of different variations
4 and we kept altering the actual layout of our
5 buildings. We were actually going to do buildings
6 down the -- what I call the left-hand side, but I
7 guess it's the south side. We altered that as well.
8 And there were so many different variations that we
9 drew up on this; but, basically, there would be a
10 shared access on the northern boundary that would
11 allow for the security gate into The Storage Center
12 to be moved back behind Dr. Gooldy's current
13 building. It would then allow for dual access. One
14 curb cut that would span a little bit of his
15 property and even the entirety of our property on
16 the north end side.

17 Q. You're talking about this area on
18 Exhibit 2 right in here? (Indicating.)

19 A. Yes.

20 Q. Is that right? So under that plan, both
21 Storage Center customers and Dr. Gooldy and his
22 patients would have come in on the north side of the
23 property?

24 A. Exactly.

25 Q. Across Storage Center property; right?

1 A. Exactly.

2 Q. And you were willing to agree to that?

3 A. Without a doubt.

4 Q. And did that access include a small
5 amount of Dr. Gooldy's property?

6 A. There was a small amount and there was
7 an easement that we had suggested. We -- because
8 just to mitigate that easement, we agreed to cover
9 all the costs associated with construction,
10 maintenance and upkeep of that, as well as some
11 re-landscaping.

12 Q. Okay. So you agreed to pay Dr. Gooldy
13 some money or offered to pay Dr. Gooldy some money?

14 A. We did.

15 Q. In order to facilitate this construction
16 of reconfiguring his property to meet the shared
17 access?

18 A. Reconfiguring. We would actually handle
19 all the construction and construction costs.

20 Q. And to reconfigure his landscaping?

21 A. Yes.

22 Q. Okay. But y'all never were able to work
23 anything out; is that right?

24 A. We were not.

25 Q. Now, you bought the property in 2007 and

1 you put the -- you put the wire up across the
2 entrance in 2009. Did you have continual
3 conversations with Dr. Gooldy over that entire
4 period of time trying to work things out?

5 A. We did.

6 Q. Okay. Did you just walk in under cover
7 of night and wire up this property one night or did
8 he know that was coming?

9 A. No. He knew that was coming.

10 Q. All right. Had you told him, if you
11 couldn't work something out, you were going to have
12 to secure your own property?

13 A. We did and it was for the security of
14 the property, as well as the liability issue.

15 Q. Now, when you first started talking to
16 Dr. Gooldy about your development of your property,
17 what was it that you told him you were going to do?

18 A. I told him that we were going to be
19 building a storage facility and -- sorry.

20 Q. That's fine. And did you tell him you
21 were going to give him plenty of notice before you
22 started development?

23 A. Yes.

24 Q. Did he have any objection to that or
25 protest that?

1 A. No.

2 Q. In the course of that conversation, did
3 he say, well, don't mess with my 50-foot road?

4 A. No.

5 Q. Did he talk about the gravel driveway at
6 all?

7 A. No more than we told him that, as we
8 were going to use the entirety of both sides, it
9 would be going away.

10 Q. Okay. And when you told him that, did
11 he say, well now, wait a minute, I've got the right
12 to use that?

13 A. No.

14 Q. Was he generally amenable to shared
15 access, except y'all just never could work out the
16 details?

17 A. I think there was a -- there was a
18 financial component to it that was not to his liking
19 and I think that it's the negotiation back and
20 forth. In the end, we met -- we actually had a
21 joint meeting with the DOT. They, I guess in a
22 quasi way, wanted to make every effort to mediate
23 the two sides and help us get towards a common goal.
24 In the end, they wrote us a letter. After
25 subsequent conversations where we realized that --

1 MR. DAVIS: Objection as to hearsay,
2 Your Honor.

3 THE COURT: Sustained.

4 BY MR. STEPP:

5 Q. As a result of those mediations, what
6 did you next do?

7 A. And I'm saying mediations. It's not a
8 formal --

9 Q. Discussions?

10 A. Discussions. We kept going in with
11 various offers, various back and forths, counter
12 offers from Dr. Gooldy, as well. In the end, it
13 became obvious that a shared access would not be
14 feasible and still allow us to actually use the
15 property for our intended purpose, so we were given
16 a letter approving our own curb cut.

17 MR. DAVIS: Objection as to hearsay.

18 BY MR. STEPP:

19 Q. Have you developed the property?

20 A. No.

21 Q. Is it still in the same condition it was
22 when you bought it?

23 A. Yes.

24 Q. Have you changed the configuration of
25 the property in anyway?

1 A. No.

2 Q. Why not? Have you been able to develop
3 it in light of this dispute?

4 A. No.

5 Q. Why not?

6 A. With this dispute, the property becomes
7 worthless to us.

8 Q. And had you known at the time you bought
9 the property that there was going to be some
10 contention that there was a 50-foot road or that you
11 didn't have unfettered rights with respect to this
12 part of the property, would you have bought it?

13 A. No.

14 Q. Why not?

15 A. Because without the ability to use that
16 side of the property, there's not enough space to
17 get an adequate curb cut for the radius requirements
18 that a facility such as ours -- not just ours
19 specific, but industry wide would need.

20 Q. If this -- if Storage Center is unable
21 to have unfettered control over the property on the
22 south side of Dr. Gooldy's property, in your view,
23 does it render the rest of the property
24 undevelopable?

25 A. Yes.

1 MR. STEPP: Thank you. Please answer
2 any questions.

3 THE COURT: Cross.

4 EXAMINATION

5 BY MR. DAVIS:

6 Q. Mr. Puckett, Mr. Stepp asked you about
7 your knowledge of any access rights that Dr. Gooldy
8 had prior to your purchase of the property.

9 A. Uh-huh.

10 Q. As part of your due diligence, did you
11 have a survey done of the property that Storage
12 Center eventually bought?

13 A. We did.

14 Q. Okay. And did you review that survey
15 prior to the purchase?

16 A. We did.

17 Q. And that's the survey that --

18 Let's see. Which exhibit is that?

19 MR. STEPP: K.

20 MR. DAVIS: K?

21 MR. STEPP: I'm sorry. J.

22 MR. DAVIS: J?

23 Q. Exhibit J. Is this -- would you take a
24 gander and is the actual plat, a part of it? Here's
25 the rest of it.

1 A. Yes.

2 Q. Okay. Let's put this thing together.
3 That's reversed. And so you did have a survey done
4 and you said you reviewed it prior to the actual
5 purchase?

6 A. Yes.

7 Q. And did you not notice that the survey
8 did -- the surveyor had placed on the survey the
9 driveway. He had said, I think, the driveway,
10 parking encroachment and also referenced in the plat
11 that we've been talking about all day here; is that
12 correct?

13 A. I noticed the driveway encroachment.

14 Q. All right. And then the company -- in
15 spite of that, the company went ahead and bought the
16 property; is that correct?

17 A. Yes.

18 Q. And did the company do any due diligence
19 as to its access rights on to Highway Number 6 prior
20 to purchase?

21 A. Yes.

22 Q. Okay. And did you satisfy yourself as
23 to that prior to purchase?

24 A. Our due diligence showed that he did not
25 have legal rights to use of our property.

1 Q. All right. Thank you. Did you do due
2 diligence in regards to checking governmental rights
3 or permission to access this property from Highway
4 Number 6 prior to purchase?

5 A. Governmental rights?

6 Q. DOT, Lexington County, State of South
7 Carolina.

8 A. We did prior.

9 Q. Did prior?

10 A. Yes.

11 Q. And you satisfied yourself that you
12 could obtain access off Highway 6 on to your
13 property?

14 A. Yes.

15 Q. Okay. Then Mr. Stepp asked you about a
16 series of questions about working with Dr. Gooldy as
17 to a joint access or shared access or reciprocal
18 access or whatever over a period of time. Why was
19 it that you needed anything from him if you had
20 approval from DOT to access it?

21 A. We did not have -- I guess this is
22 getting back to what we've kind of been discussing
23 here about preliminary versus actual. So we did not
24 have actual, we did not have the final approval for
25 the curb cut.

1 Q. Okay. So it'd be fair to say, before
2 you actually passed money, you didn't have a stamped
3 DOT --

4 A. Did not have --

5 Q. -- you got it --

6 A. -- it stamped.

7 Q. Okay. All right. On the shared access
8 agreements that you were dealing with Dr. Gooldy on,
9 they did require him to give up some of his property
10 on the front for use by you, your company for
11 obtaining what you needed from DOT for access?

12 A. What's your term? What do you consider
13 front? Because it took many different shapes and
14 forms.

15 Q. Front in reference to the front of his
16 property fronting Highway 6.

17 A. I think, at one point, we had -- one of
18 the proposals was a sliver, no more than 10-feet
19 wide of the frontage of Highway 6, that would be
20 considered an easement, not giving up legal right.

21 Q. Okay. Did each of the plans that you
22 attempted to get from Dr. Gooldy require some sort
23 of concession by him as to the use of his property
24 for your company to have access?

25 A. Inside the boundaries of the .68 acres,

1 there was an attempt to I guess -- don't get me
2 wrong here and let me be clear, I'm not sure about
3 the legal terms.

4 Q. Sure.

5 A. As you know, I'm from Louisiana. It's
6 very different there, so. . .

7 Q. That's part of America.

8 A. Yeah. Barely. I can make that joke,
9 but --

10 Q. Different law.

11 A. There you go. So it's Napoleonic code.
12 So I guess what I'm getting at is we, at one point,
13 I think the initial -- and there were numerous
14 drawings and numerous attempts based on these
15 drawings. There was a small sliver of maybe ten
16 feet on his northern boundary that would be an
17 easement, still owned by him.

18 Q. Did it proceed into his existing parking
19 area?

20 A. The majority of his parking that we knew
21 of, because everything was just gravel, was on the
22 left-hand side, so the southern side.

23 Q. All right. Obviously, based on what you
24 testified to, those negotiations broke down at some
25 point?

1 A. Yes.

2 Q. And was any consideration given --
3 strike that.

4 Instead of putting up the barrier on the
5 front, left and right --

6 A. North and south. Yes.

7 Q. -- north and south, was any
8 consideration given to filing a declaratory action
9 to have the Court decide access issues?

10 A. I think you'd have to ask my legal
11 representatives on that.

12 Q. Was there any initiation by you as to
13 that, not your lawyer? I'm not interested in what
14 he told you.

15 A. Again, I think I would give you the same
16 answer.

17 Q. Okay. Your company did put or you had
18 somebody put up the barriers?

19 A. Yes.

20 Q. Do you consider them attractive?

21 A. Well, that's probably subjective.

22 Q. How about the no trespassing signs on
23 it? Is that attractive?

24 A. Again subjective.

25 Q. Can you see that it could have some

1 affect upon his traffic there, his patients?

2 A. I could see that if -- I represented
3 that was my property.

4 Q. I understand. And he represented that
5 he had access rights there?

6 A. No.

7 Q. Did not?

8 A. (Shaking head.)

9 Q. Did not ever?

10 A. Not until we got to this lawsuit.

11 Q. Okay. What was the -- what was the
12 purpose of the orange taping of his property?

13 A. You know what, I must admit that I'm not
14 exactly sure. I think it was probably just for
15 survey purposes.

16 Q. Okay. The survey at that time would
17 have been -- well, you already had a survey at that
18 time, a very good survey. What would be the purpose
19 of additional surveying at that time which would
20 establish this orange tape being --

21 A. It could be a number of different
22 things. It could be saying, don't clear the trees
23 on the inside -- on the inside of this tape.

24 Q. Okay.

25 A. Last thing we want to do is cut down the

1 neighbor's trees.

2 Q. What notice or what attempt was made to,
3 if any, to give Dr. Gooldy some information about
4 what was transpiring there?

5 A. I think we, as I mentioned earlier, when
6 we initially closed on the property, Dr. Gooldy was
7 just notified that, hey, we're going be moving
8 forward with development. We'll give you plenty of
9 notice ahead of time before we do anything that
10 would, you know, cause any issues. Basically,
11 noise, et cetera. Be a good neighbor. As far as
12 the putting orange tape up, I'm not sure how that
13 would negatively impact.

14 Q. Okay. But can you -- and your company
15 deals with property or is this the first piece that
16 you had?

17 A. No. This is not the first piece.

18 Q. Your company owns property?

19 A. Yes.

20 Q. Can you think of a legitimate reason why
21 the orange tape would actually go up around the
22 circumference of his --

23 A. Yes, I understand why. I mean, for
24 instance, if we were going to start cutting trees
25 down in order to develop the property, we wouldn't

1 want to cut down the trees of a neighbor. You hire
2 a subcontractor. The subcontractor gets a hold of,
3 let's say a bulldozer for lack of a better term, and
4 all of a sudden they're not exactly sure where the
5 property line is.

6 Q. Okay. You have any specific knowledge
7 of that fact and that reason actually occurring for
8 the orange tape?

9 A. No.

10 Q. Okay. All right. How about the silt
11 fence? What's the purpose of that? Why was that
12 being done?

13 A. I think we were getting to the point
14 with the issue of using our property. That we were
15 beginning to be concerned about liability, et
16 cetera, et cetera.

17 Q. Okay. So the silt fence would not have
18 been dealing with protection from erosion or
19 something of that nature, but just general
20 protection of your property?

21 A. Well, it would be done for erosion.

22 Q. All right. But I mean, at that time,
23 when the plan -- the silt fence was planned, what
24 I'm hearing you saying, it was not done for what it
25 normally goes up for? Not playing engineer, but

1 normally it's erosion control and things of that
2 nature?

3 A. Normally it is.

4 Q. Okay.

5 A. But I believe we were trying to maximize
6 efficiencies and so why do things multiple times.

7 Q. All right. Did your company receive a
8 request from my law firm to remove the barrier that
9 was put into evidence? Have you seen that?

10 A. I think that's already been stipulated.

11 Q. Okay. And the company made the decision
12 to, I take it, it was -- the barrier was not
13 removed?

14 A. It was not.

15 MR. DAVIS: Okay. I believe that's all,
16 I have, Your Honor.

17 THE COURT: Any redirect?

18 MR. STEPP: A couple, Your Honor.

19 EXAMINATION

20 BY MR. STEPP:

21 Q. Mr. Puckett, on the shared access
22 agreement, you talked about a 10-foot sliver of Dr.
23 Gooldy's property?

24 A. I did.

25 Q. That would have been on this side over

1 here? (Indicating.)

2 A. Yes.

3 Q. The north side?

4 A. Yes.

5 Q. And that would have -- your

6 understanding was Storage Center and its assigns

7 would have an easement over that ten feet?

8 A. It was be part of what would be needed

9 in order to create the radius in the curb cut.

10 Q. And in exchange for that, Dr. Gooldy and

11 his assigns would have an easement over the Storage

12 Center property to the north?

13 A. The entirety of it.

14 Q. The entirety of it? So that was the

15 plan; right?

16 A. (Nodding head.)

17 Q. The fence or chain went up in July of

18 2009; is that correct?

19 A. It did.

20 Q. You bought the property in September of

21 2007?

22 A. Yes.

23 Q. During that entire time, were you

24 engaged in efforts to resolve these issues with Dr.

25 Gooldy?

1 A. We were.

2 Q. Did you ever at any time take any
3 action -- by you, I mean Storage Center, take any
4 action with the intention of injuring Dr. Gooldy or
5 interfering with his business or interfering with
6 his property rights in any way?

7 A. None whatsoever.

8 Q. Have you always had the good faith and
9 continue to have the good faith belief that you had
10 the unfettered right to control all of the property
11 owned by The Storage Center?

12 A. Yes.

13 Q. And Dr. Gooldy disagrees with that; is
14 that correct?

15 A. True.

16 Q. He has one opinion, you have another
17 one; is that right?

18 A. True.

19 Q. And that's why we're here today?

20 A. That's why we're here today.

21 MR. STEPP: That's all I have.

22 THE COURT: Mr. Davis, anything further?

23 MR. DAVIS: Nothing.

24 THE COURT: Okay. Anything further?

25 MR. STEPP: Nothing for this witness.

1 He may step down.

2 Your Honor, the last part of our case,
3 and I just want to call the Court's attention to the
4 order in this case of Judge Keesley entered on April
5 23, 2010. That was as a result of a TR&O or a
6 preliminary injunction motion filed by the plaintiff
7 to remove the barriers on the property. And that
8 motion was denied. It's part of the file in this
9 case. I'll be glad to hand up a copy. But Mr.
10 Davis had asked whether they responded to -- Storage
11 Center responded to his letter asking they be
12 removed. And, of course, as a result of this order,
13 there was no legal obligation to.

14 THE COURT: Okay.

15 MR. STEPP: So I'm just calling that to
16 your attention.

17 Anything else we got to put in?

18 MS. DuRANT: Huh-uh.

19 MR. STEPP: Defense rests, Your Honor.

20 THE COURT: Okay. All right. I'm going
21 to talk about a bunch of stuff that I want in your
22 memos.

23 MR. STEP: Okay.

24 THE COURT: A lot of this --

25 MR. STEPP: Can we just -- can I just

1 have a renewal of my motions to protect my record?

2 THE COURT: Sure. Absolutely. All
3 right. Once Madam Court Reporter has prepared the
4 transcript and she mails a copy out to everyone, I
5 would like for her to send me a copy of that letter
6 and that will start your four-week time period to do
7 your briefs. If you need additional time, y'all
8 talk and let me know; but I want a memo that's going
9 to address the following things.

10 This is a non-jury. You have to do your
11 brief according to Rule 52, which means you have to
12 have specific findings of fact, which means I want
13 cite to the transcript book and page. Now, here are
14 a bunch of issues. I wrote down several questions
15 before the trial started, written down several more.
16 You're free to add any other questions or issues you
17 think that I missed. All right? But I'd like you
18 to address the following things.

19 MR. DAVIS: Your Honor, may I say? I
20 apologize for interrupting you, but I would have one
21 thought if I could to protect myself on something as
22 to -- Mr. Stepp had made his motions. My mind has
23 gone blank; but in reference to the plaintiff, I
24 would have a corresponding motion to grant --

25 THE COURT: All right.

1 MR. DAVIS: -- on the theory of estoppel
2 implication.

3 THE COURT: Right.

4 MR. DAVIS: Very good. I apologize.

5 THE COURT: And that motion is denied.

6 MR. DAVIS: That was quick. Just wanted
7 to make sure.

8 MR. STEPP: Want to ask for anything
9 else?

10 MR. DAVIS: No. I apologize.

11 THE COURT: No offense meant, none
12 taken.

13 MR. DAVIS: That's right.

14 THE COURT: All right. Okay. One
15 overriding issue in this case is about when we take
16 our snapshot. All right? As I understand the
17 plaintiff's argument, plaintiff is arguing that the
18 time that counted was in September of 1968 when
19 Congaree put this deed out there as we've talked
20 about. There's been a lot of discussion from
21 surveyors about what should or should not be on
22 surveys.

23 So the first thing I want to know is is
24 what time are we looking at? Are we looking at
25 intent and actions and survey rules as they were

1 back in 1985 or are we talking about now? And so
2 one of the things I want to know is a little bit of
3 research into what survey requirements were back in
4 1984, 1985 and 1986 as opposed to right now.

5 There are a host of wonderful books from
6 back then. Madison on South Carolina Real Property
7 Law has all the survey stuff in it. That was 1984.
8 South Carolina Boundary Law Compendium that's been
9 updated by Carter. And there are a host of CLEs
10 that were done by NBI, National Business Institute.
11 There are others, one that started with a B that.
12 I've got back in my office. Then we had surveyors
13 come in and talk about things.

14 So I want to know, first of all, when
15 are we looking? Are we looking at the intent in
16 1986 or are we looking at the intent in '87, '88,
17 '89, '90, 2001, 2002? All right. So that's the
18 first question.

19 Second thing is about survey rules.
20 There's some law about what you do about new
21 surveyors following old surveyors and when you can
22 deviate from a survey on the record and what you
23 find. Like you to examine what that was in '84 and
24 what that is now. I'd also like you to distinguish
25 the legal difference between a highway that has been

1 dedicated to a municipality, a road and right-of-way
2 because they're three legally different -- they can
3 be three legally different things.

4 A question related back to the snapshot
5 in time is this. I want y'all to answer this
6 question. On September 24, 1986, that would have
7 been the day after the Loflin deed was recorded,
8 could Congaree Association have come out and blocked
9 that road, that right-of-way? Did they have the
10 legal right to go in the day after they delivered
11 the deed and could they have put a fence or blocked
12 it off? That again relates back to the timing
13 matter.

14 Now, another issue that -- I don't know
15 that there is any South Carolina Law directly on
16 point is this issue. Both plaintiff and defendant
17 are citing correct lines of case that conflict with
18 each other. This is the conflict. Plaintiff is
19 citing law that says -- hang on just one moment --
20 that grantor's intent, all the law about you do the
21 four corners of it, surveys are incorporated, all of
22 that right. All right? Defendant's citing law, a
23 line of case that says, but if the deed is
24 ambiguous, we get to talk about intent.

25 So if you're going to talk about it --

1 if you get to that point, two questions I need
2 answered. One is how do you get around the rule,
3 the other rule that says, if grantor drafted the
4 deed and hired the surveyor, how do you not construe
5 the deed against him? So how do you get to intent
6 if the grantor drafted it? And there's case law,
7 like he says, it's construed against the grantor
8 because you drafted it. So that's another issue and
9 I don't know that we have any specific law in South
10 Carolina on that.

11 Now, the next issue is the issue of what
12 is physically on that plat. I think there are some
13 survey rules that say you're supposed to name what
14 is next -- what the adjoining property says. So I
15 want to know what y'all believe the legal affect of
16 the road recitation is there and cite law. And is
17 there law that says, if my property is next to a
18 road, I got right-of-way in the road? Is there law
19 that says, if it's done on a plat, but it's never
20 dedicated, I don't get my right to it? Is there law
21 that says, if I put it in a stream of commerce and I
22 show it, I'm stuck by it? All right?

23 Because I don't believe -- I understand
24 the defendant's argument about the subdivision law.
25 All of those first cases are subdivision law.

1 They're nice little -- you know, they always have a
2 subdivision from somebody. Same principle applies
3 to regular people selling property. If you deed
4 some part of your land to somebody else and you put
5 an easement there, you may be bound. Now, the
6 question though is this easement doesn't show where
7 the road starts, where it ends. It doesn't show it
8 going through the property. It doesn't have
9 language in it that says ingress to and from. It
10 just says 50-foot right-of-way.

11 Now, if I bought a piece of property in
12 a new subdivision -- you know, Lexington County will
13 let you do private subdivisions. And a common
14 practice is that you get on a road and you put --
15 you do -- the developer does the first road for the
16 thing and then does a hatchet line. Right? Side of
17 the hatchet goes up there. (Indicating.) What if
18 they never sell the back -- the top part of the
19 hatchet? Does the guys who got the first lot, even
20 though he's up on the road, he's got a right to use
21 the bottom part, the handle of the hatchet? I want
22 to make sure y'all understand. Y'all have seen
23 Lexington County hatchet lot subdivisions.

24 I am not entirely sure and I would like
25 clarification on the specific theory plaintiff is

1 arguing relating to implied easement. There are a
2 number of old cases that say you can imply an
3 easement by there's a plat or there's this or
4 there's that. When the Boyd case came around, they
5 said there's something called easement by
6 implication and they set out unity of title,
7 severances of, prior uses and existence, prior use
8 is not temporary, and it goes on. There's seven or
9 eight factors. It's not the same thing as the old
10 case language which says you can imply an easement.
11 I want to know specifically what we're arguing here
12 because there is a number of factors and you got to
13 get them all. I understand the easement by estoppel
14 argument. Prescriptive easement is out because we
15 didn't have 20 years.

16 Now, the next issue we have are damages.
17 Plaintiff has argued I'm entitled to damages and, as
18 it was pled, my notes indicate it was pled as
19 negligence or gross negligence or denial of property
20 rights. And the damages as I understand it have two
21 components. One was the claim for I should be
22 reimbursed for my labor, my sweat equity in the new
23 road, the things I had to hire to do that, and then
24 the other claim was for lost profits. You got to
25 obviously argue how you're entitled to that, but

1 also I want to see what the law is on lost profits
2 because there's some case law on that, what you got
3 to prove and what you got to show. And I want y'all
4 to argue that standard matched up with what we saw
5 in evidence today.

6 All right. What have I left out? I'll
7 start with y'all first. And if there's anything
8 else that you think of, wait a minute, we need to
9 talk about this, too, feel free. Send me an e-mail,
10 copy the other side, say, we think we need to also
11 address these issues.

12 MR. STEPP: Judge, I would just say, if
13 you think of something else, just e-mail us and
14 we'll be glad to address that as well; but I
15 appreciate, you know, understanding exactly what you
16 want us to talk about. Glad to do it.

17 THE COURT: All right. Does that sound
18 like I understand what y'all are arguing about and
19 what the issues are?

20 MR. STEPP: I think you've gone --

21 MR. DAVIS: Yes, sir

22 MR. STEPP: -- from the beginning to the
23 end --

24 THE COURT: Okay.

25 MR. STEPP: -- logically.

1 THE COURT: Well, you know, sometimes
2 you don't -- you think you're hearing it and you're
3 not. So this is the time to say, you know, need to
4 think about this issue, too. All right. I
5 appreciate everybody's zealous representation of
6 your clients and your professionalism today.
7 Boundary line disputes are nothing more than
8 domestic cases on land instead of people. I
9 understand that, because that's what I did as an
10 attorney. So I understand it. Appreciate
11 everybody's professionalism.

12 While everybody is packing up, what I'd
13 like to do at this point is I'd like counsel to make
14 sure all the exhibits are properly marked. And,
15 Madam Court Reporter, what we want is we want all
16 the exhibits with the original transcript. And if
17 they're going to want a transcript with a copy of
18 the exhibits and I am, too. You can get me a
19 condensed version, but I'm going to want a copy of
20 the exhibits. And I think I've got my copies of the
21 exhibits, so I have mine and everybody ought to have
22 theirs. Let's just make sure she has hers.

23 When y'all are finished with that, if I
24 might see you back here directly for just a minute
25 or two.

1 MR. DAVIS: Your Honor, one thing.

2 THE COURT: Yes, sir.

3 MR. DAVIS: On the time period, the four
4 weeks on briefing this thing.

5 THE COURT: Right.

6 MR. DAVIS: The next two to three weeks
7 for me are very difficult as to trials. Would it be
8 possible that we extend four weeks to six weeks?

9 THE COURT: It'll be four weeks after
10 she gets you the transcript.

11 MR. DAVIS: Wonderful. Okay.

12 THE COURT: That is not four weeks from
13 today.

14 MR. DAVIS: Great.

15 THE COURT: That's four weeks after you
16 get the transcript. Okay?

17 MR. DAVIS: Okay.

18 THE COURT: You might get the transcript
19 tomorrow, but I doubt it.

20 THE COURT REPORTER: (Shaking head.)

21 MR. DAVIS: Okay.

22 THE COURT: But it's four weeks after,
23 because she's going to send me a letter when she
24 says the transcript is available, come get it.

25 MR. DAVIS: Very good.

1 THE COURT: Then that's going to tag my
2 file to talk to y'all if I hadn't got the proposed
3 memo at that point.

4 MR. DAVIS: I'm sorry. I didn't listen
5 to that.

6 THE COURT: All right. If y'all will
7 check the exhibits and then if I can just see you
8 back here for just a second.

9 MR. STEPP: Sure.

10 (The above was concluded at 4:11 p.m.)

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1 CERTIFICATE OF REPORTER

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I, Wanda K. Cecil, Certified Court
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify that the
foregoing transcript, pages 1 through 284, is a
true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto affixed
my official seal this 18th day of November, 2012, at
Columbia, Richland County, South Carolina.

Wanda K. Cecil
Certified Court Reporter
Notary Public
My Commission expires
December 28, 2016

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 Lexington County Rd Dept H. Cantor
 Rec Date: 6/23/175

DOED TO REAL ESTATE

Any references in this instrument to the singular shall include the plural, and vice versa.

This document is to state



Instrument: 2002004072

Book/Page: R 0182 : 179

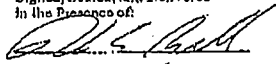
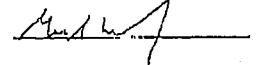
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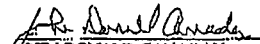
Continuation of

Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the parties.

WITNESS my Hand and Seal this 24th day of January, in the year of our Lord, two thousand two, and in the two hundredth and twenty sixth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered
in the Presence of

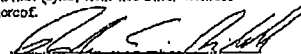



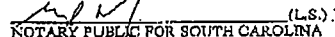

JOHN DONALD CANADAY

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON }

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named JOHN DONALD CANADAY, sign, seal and as his act and deed, deliver this Deed for the uses and purposes therein mentioned, and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

SWORN to before me this
24 day of January, 2002


Witness

 (L.S.):
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-11-07

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Pg 204

Plot Book 212-C

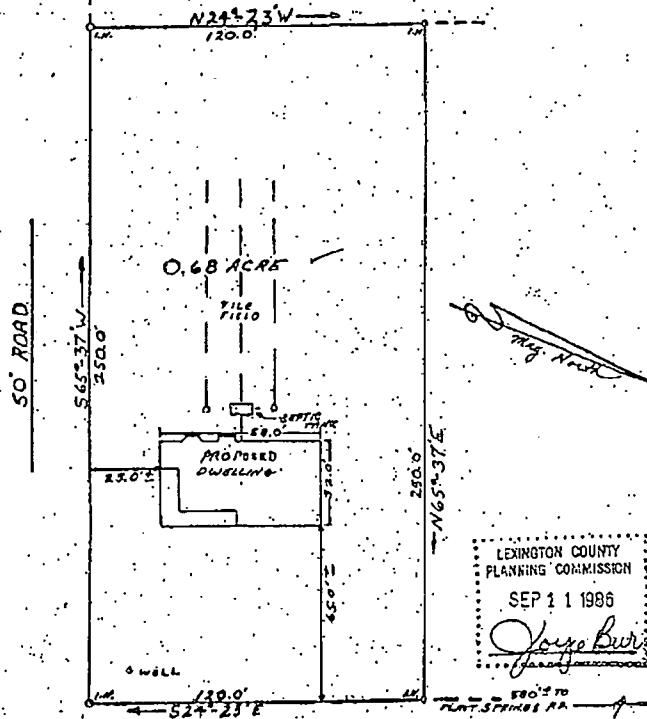
FILED

1986 SEP 11 PM 3:15

JOANNE B. TRIBBLE
RMC
LEXINGTON COUNTY, S.C.



N/F CONGAREE ASSOC.



LEXINGTON COUNTY
PLANNING COMMISSION
SEP 11 1986

James T. Loflin

S.C. HWY. NO. 6 66' W

PLAT PREPARED FOR
JAMES T. LOFLIN

SURVEYED BY
COLLINGSWOOD & ASSOCIATES

IN RED BANK

LEXINGTON COUNTY, S.C.

I HEREBY CERTIFY THAT THE MEASUREMENTS ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

*NOTE: REVISED TO SHOW PROPOSED DWELLING, WELL, SEPTIC TANK & TILE FIELD APRIL 9, 1986

REVISED TO SHOW 20' STRIP ALONG THE NORTHERN PROPERTY LINE AUGUST 12, 1986

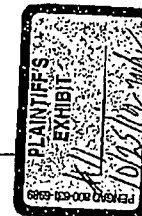
THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL BUREAU OF INVESTIGATION FLOOD HAZARD SOUND MAP, AND FOUND THAT THE ABOVE DESCRIBED IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.

DATE: 10/10/85
ENG: JLT
JOB: 9266
SCALE: 1" = 40'
DECEMBER 10, 1985



Robert E. Collinswood
REGISTERED SURVEYOR NO. 12312
P.O. BOX 3053, CAPE S.C. 29171

377



THE STORAGE CENTER - PLATT SPRINGS, LLC'S CHAIN OF TITLE					DAVID R. GOOLDY'S CHAIN OF TITLE				
GRANTOR	GRANTEE	DATE OF EXE	DATE OF RCRD	PLAT REF	GRANTOR	GRANTEE	DATE OF EXE	DATE OF RCRD	PLAT REF
Congaree Associates Deed Reference 42/154	The Storage Center - Platt Springs	09/27/07	09/28/07	11491/126	Congaree Associates Deed Reference 42/154	James T. Loflin	09/15/86	09/23/86	212-G/204
					James T. Loflin	Annette Van Wickler	01/08/90	05/02/90	212-G/204
					Annette Loflin f/k/a Annette Van Wickler	Mark A. Belser	09/27/98	10/16/98	212-G/204
					Mark A. Belser	John Donald Canaday	10/30/00	10/30/00	212-G/204
					John Donald Canaday	David R. Gooldy	01/24/02	01/25/02	212-G/204

379

0379

2007056416 FILED, RECORDED, INDEXED
2007-09-28 11:48:53:810
REC FEE: \$10.00 ST FEE: \$1739.40
CO FEE: \$735.90 Pages: 2
Lexington County R.O.D. Debra M. Gunter
DEED Bk:Pg 12365:277

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Congaree Associates, a South Carolina limited partnership (hereinafter called "Grantor") in the State aforesaid, for and in consideration of the sum of Six Hundred Sixty Eight Thousand Eight Hundred Fifty and 00/100 Dollars (\$668,850.00) paid by The Storage Center - Platt Springs, LLC, a South Carolina limited liability company (hereinafter called "Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged), subject to all easements and restrictions of record, has granted, bargained, sold and released, and by these Presents does grant, bargain sell and release, unto the said Grantee, the following property:

All that certain piece, parcel, lot or tract of land, with any improvements therein, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Parcel "A" containing 7.35 acres, on a plat prepared for Frank Strasburger by Civil Engineering of Columbia, dated October 27, 2006, recorded October 27, 2006 in Record Book 11491 at Page 126 (Slide 918, Page 2), Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as shown on the plat described herein, which is specifically incorporated by reference.

This being the same property conveyed to Congaree Associates by deed of Otis A. Jeffcoat, dated October 28, 1974 and recorded November 6, 1974 in Deed Book 42 at Page 154, Office of the Register of Deeds for Lexington County.

TMS# 007600-03-001 (PT)

Grantees' Address: 835 Esplanade Avenue
New Orleans, LA 70116

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee forever.

And the said Grantor does hereby bind the Grantor and the Grantor's Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the Grantor's Hand(s) and Seal(s) this 27 day of September, in the year of our Lord Two Thousand Seven.

WITNESSETH:

Congaree Associates

[Signature]

By:

Carroll E. McGee

Carroll E. McGee

[Signature]

Its:

General Partner

STATE OF SOUTH CAROLINA)

ACKNOWLEDGEMENT

COUNTY OF RICHLAND)

I, Suzanne R. Reeder, do hereby certify that Congaree Associates, by Carroll E. McGee, its General Partner, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal September 27, 2007.

[Signature]

Notary Public for South Carolina

My Commission expires: 4-9-17

BOOK 837 PAGE 36 16.50 23788

TITLE TO REAL ESTATE FROM 1-6
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S.C.

State of South Carolina,

COUNTY OF LEXINGTON

KNOW ALL MEN BY THESE PRESENTS, That Congaree Associates, a South Carolina Limited Partnership,

In the State aforesaid, for and In consideration of the sum of Seventy five hundred and 00/100 (\$7500.00) Dollars to it paid by JAMES T. LOFLIN In the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

JAMES T. LOFLIN, HIS HEIRS AND ASSIGNS;

All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S. C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S. C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in the Lexington County RMC office in Plat Book 2126 at Page 204. The within described property contains 0.68 acre.

Being a portion of the property conveyed to Congaree Associates by deed of Otis A. Jeffcoat recorded on November 6, 1974, in the said RMC office in Deed Book 42 at Page 154.

FILED
SEP 23 3 40 PM '86
JACOBIE B. TERRELL
REC
LEXINGTON COUNTY

LEXINGTON COUNTY
DOCUMENTARY TAX
PAID \$ 8.25
MARJORIE H. SHARPE
Treasurer

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY TAX
PAID \$ 8.25
FEB 1986

TMS: 7600-03-001

Grantee address: 560 Meeting St.
West Columbia, S.C.

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

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

James T. Loflin, his

Heirs and Assigns forever.

And grantor do hereby bind itself & its successors & assigns Richard E. Moore to warrant and forever defend all and singular the said premises unto the said:

James T. Loflin, his

Heirs and Assigns, against it and its successors & assigns Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS its Hand and Seal this 15th day of September

In the year of our Lord one thousand nine hundred and eighty six
and in the two hundred and tenth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF

[Signature]

CONGAREE ASSOCIATES, A SOUTH CAROLINA
LIMITED PARTNERSHIP (SEAL)

By *[Signature]* (SEAL)

BOOK 837 PAGE 36

STATE OF SOUTH CAROLINA,

Richland COUNTY.

PERSONALLY appeared before me

Gerald D. Jones

and made oath that he saw the within-named Congress Associates, a South Carolina Limited Partnership by Carroll McGee its General Partner sign, seal and, as its act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he, with Ray L. Derrick witnessed the execution thereof.

SWORN to before me this 15 day of Sept 1986.

[Signature] (L.S.)
Notary Public of S. C.
Commission expires 9-4-91

STATE OF SOUTH CAROLINA,

_____ COUNTY.



RENUNCIATION OF DOWER

do hereby certify

unto all whom it may concern, that Mrs.

the wife of the within-named

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

being

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

Given under my Hand and Seal, this _____ day of _____, 19____

(L.S.)
Notary Public of S. C.

GERALD D. JONES
ATTORNEY AT LAW
1413 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
State of South Carolina

County of _____

Congress Associates, a South
Carolina Limited
Partnership

TO

James T. Loflin

TITLE OF REAL ESTATE

I hereby certify that the within Deed was filed for
record in my office at 3:40 P. M. o'clock on
the 23rd day of Sept.
1986, and was immediately entered upon the proper
indexes and duly recorded in Book
of Deeds, page 36

Ray L. Derrick
Notary Public for
Richland County, S. C.

BOOK 837 PAGE 37

I hereby certify that the within Deed has been
day of _____, A. D. 19____

Recorded
of Deeds, page _____

In Book _____

Auditor _____
County _____

WITNESSED BY ME, CLERK OF COURTS, IN PRESENCE OF

BK1576P6104

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Grantee(s) Mailing Address: 1926 South Lake Dr.
Lexington, SC 29072

KNOW ALL MEN BY THESE PRESENTS, that I, James T. Loflin

in consideration of TEN and 00/100 Dollars,
And the assumption of a mortgage,
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

Annette Van Wickler, Her Heirs and assigns:

All that certain piece, parcel, or lot of land, with improvements thereon, situate, lying and being on the western side of S. C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S. C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in Lexington County RMC office in Plat Book 212G at Page 204. The within described property contains 0.68 acre.

Being a portion of the property conveyed to Congree Associates by deed of Otis A. Jeffcoat recorded on November 6, 1974, in the said RMC office in Deed Book 42 at Page 154.

DERIVATION: Deed Book 837, Page 36

TMS: 7600-01-001

Mortgagee: FIRST GUARANTY MORTGAGE CORP.
PO Box 631
Hattiesburg, MS 39403-0631

Amount of Mortgage is \$66,300.00 - recorded in Record Book 1165 pg 246.

FILED
JAN 7 12 15 PM '90
LEXINGTON COUNTY

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs, successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs, successors and assigns against the grantor(s) and the grantor's(s') heirs, successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 8th day of January 1990

SIGNED, sealed and delivered in the presence of:

James T. Loflin
James T. Loflin

James T. Loflin (SEAL)
JAMES T. LOFLIN (SEAL)
(SEAL)
(SEAL)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named (grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within deed and that (s)he, with other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th day of January 1990

James T. Loflin (SEAL)
Notary Public for South Carolina
My commission expires 4-91

12409

FILED RECORDS (INDEXED)
10/11/1998 01:01:16 PM
Prs Fee 10.00 St Fee 403.00
Ct Fee 120.50 Page 2
CLERK OF DISTRICT COURT
CLERK

TITLE TO REAL ESTATE

Tax/Map No. 007600-03-111

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0050066 BK: 4909 Pg: 0137

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever.

AND THE GRANTOR does hereby bind Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 27th day of August, in the year of our Lord One Thousand Nine Hundred and Ninety Eight (1998).

Signed, Sealed and Delivered
in the Presence of:

[Signature]
Witness

[Signature]
Annette Loflin Eke
Annette Van Nickler

[Signature]
Witness

Montana
STATE OF SOUTH CAROLINA
COUNTY OF TAYLOR
Fergus

Personally appeared before me the undersigned and made oath that the undersigned saw the within-named Grantor sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that the undersigned with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 27th
day of August, 1998

[Signature]
Witness

[Signature]
Notary Public for the State of Montana
My Commission Expires: 7-21-2002

99RB3300

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Instrument: 2000250771

Book/Page: R 6036 : 237

Date/Time: 10/30/2000 14:13:19.890

Document: 01

2000250771 FILED, RECORDED, INDEXED
10/30/2000 14:13:19.890
Roc Fee: \$18.88 St Fee: \$102.70
Co Fee: \$43.45 Pages: 2
Lexington County ROD Debra H. Guntor
DEED BK19: 68361237

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that MARK A. BALSER, (hereinafter referred to as "Grantor"), for and in consideration of the sum of Thirty Nine Thousand Three Hundred Twenty Two and 73/100 (\$39,322.73) Dollars to the Grantor in hand paid at and before the sealing of these presents, and the Assumption of that Mortgage in favor of SouthTrust Bank recorded in Book 4909, at Page 138, in the current amount of \$120,677.27, by JOHN DONALD CANADAY, (hereinafter referred to as "Grantee") in the State and County aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these Presents does grant, bargain, sell and release unto the Grantee, his Heirs, Successors and Assigns:

All those certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being on the western side of S. C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S. C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

DERIVATION: This being the property conveyed to the Grantor by Deed of Annette Loflin & Annette Van Wickler, recorded in the Office of the ROD for Lexington County in Deed Book 4909, at Page 136 on October 16, 1998.

TMS#: 007600-03-111

Grantee Address: 960 Riverview Drive, West Columbia, SC 29169

This conveyance is made subject to encumbrances and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, his Heirs, Successors and Assigns against themselves and their successors and assigns and against every person whomsoever

Debra H. Guntor

Lexington County Register of Deeds

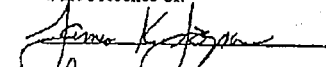
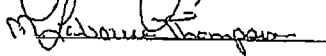
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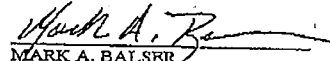
lawfully claiming or to claim the same, or any part thereof.

Any references in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the parties.

WITNESS my Hand and Seal this 30th day of October, in the year of our Lord, two thousand, and in the two hundredth and twenty fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered
in the Presence of:

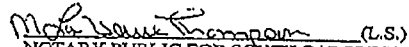



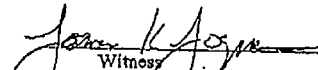

MARK A. BALSER

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named MARK A. BALSER, sign, seal and as his act and deed, deliver this Deed for the uses and purposes therein mentioned, and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

SWORN to before me this
30th day of October, 2000

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9.23.08


Witness

Debra M. Genter

Lexington County Register of Deeds

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RECORDAL 2002CD-072

Doc/Part: R 82041-176

Date/Time: 01/23/2002 14:15:05.13

Document: 81

200201/23/2002 FILED, RECORDED, INDEXED
 01/23/2002 14:15:05.13
 Doc/Part: 10.00 82-Part: 1507.C0
 Co/Part: 14.00 Part: 14
 Lexington County 200201/23/2002 H. Dwyer
 753 0619/ 61961175

STATE OF SOUTH CAROLINA }
 COUNTY OF LEXINGTON }

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that JOHN DONALD CANADAY, (hereinafter referred to as "Grantor"), for and in consideration of the sum of One Hundred Ninety Five Thousand and NO/100 (\$195,000.00) Dollars to the Grantor in hand paid at and before the selling of these presents, by DAVID R. GOOLDY, (hereinafter referred to as "Grantee") in the State and County aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto the Grantee, his Heirs, Successors and Assigns:

All those certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being on the western side of S. C. Highway No. 6, approximately 580 feet south of the intersection of Flat Springs Road and S. C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Luffin by Robert B. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212C at page 204. The within described property contains 0.68 acre more or less.

DERIVATION: This being the property conveyed to the Grantor by Deed of Mark A. Bolser, recorded in the Office of the ROD for Lexington County in Deed Book 6036, at Page 237 on October 30, 2000.

TMS#: 007600-03-111

Grantee Address: 1916 South Lake Drive, Lexington, SC 29073

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, his Heirs, Successors and Assigns against themselves and their successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

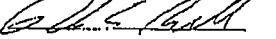
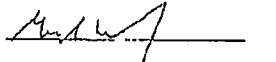
Any references in this instrument to the singular shall include the plural, and vice versa.

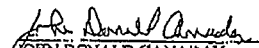
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Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the parties.

WITNESS my Hand and Seal this 24th day of January, in the year of our Lord, two thousand two, and in the two hundredth and twenty sixth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered
in the Presence of:

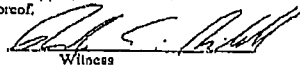



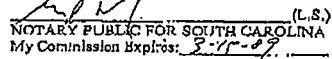

JOHN DONALD CANADAY

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON }

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named JOHN DONALD CANADAY, sign, seal and as his act and deed, deliver this Deed for the uses and purposes therein mentioned, and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

SWORN to before me this
24 day of January, 2002


Witness

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8-15-07

Pg 204

Plot Book 215-C

FILED

1986 SEP 11 PM 3:15

JOANNE B. TRIBBLE
RMC
LEXINGTON COUNTY, S.C.

N/F CONGAREE ASSOC.

* Note; REVISED TO SHOW PROPOSED DWELLING, WELL, SEPTIC TANK & TILE FIELD APRIL 9, 1986
REVISED TO SHOW 20' STRIP ALONG THE NORTHERN PROPERTY LINE AUGUST 12, 1986

THIS IS TO CERTIFY THAT I HAVE CONSULTED THE FEDERAL INSURANCE ADMINISTRATION
FLOOD HAZARD BOUNDARY MAP, AND FOUND THAT THE ABOVE DESCRIBED IS NOT LOCATED
IN A SPECIAL FLOOD HAZARD AREA.

10' 0' 10' 40' 80'

DRN: J. W. H. SCALE: 1" = 40'
CRD: J. W. H.
JOB: 9268 DECEMBER 10 1985



Robert E. Dolan
REGISTERED SURVEYOR NO. 2318
P.O. BOX 3053, CAYLE, S.C. 29171

Instrument: 2007060419

Book/Page: R 12365 : 277

Date/Time: 09/28/2007 11:48:53:810

Document: 02

2007056416 FILED, RECORDED, INDEXED
 2007-05-28 11:40:53:810
 REC FEE: \$10.00 ST FEE: \$1739.40
 CO FEE: \$735.98 Pages: 2
 Lexington County R.O.D. Debra M. Gunter
 DEED Bk:Pg 12365:277

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Congaree Associates, a South Carolina limited partnership (hereinafter called "Grantor") in the State aforesaid, for and in consideration of the sum of Six Hundred Sixty Eight Thousand Eight Hundred Fifty and 00/100 Dollars (\$668,850.00) paid by The Storage Center - Platt Springs, LLC, a South Carolina limited liability company (hereinafter called "Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged), subject to all easements and restrictions of record, has granted, bargained, sold and released, and by these Presents does grant, bargain sell and release, unto the said Grantee, the following property:

All that certain piece, parcel, lot or tract of land, with any improvements therein, situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as Parcel "A" containing 7.35 acres, on a plat prepared for Frank Strasburger by Civil Engineering of Columbia, dated October 27, 2006, recorded October 27, 2006 in Record Book 11491 at Page 126 (Slide 918, Page 2), Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as shown on the plat described herein, which is specifically incorporated by reference.

This being the same property conveyed to Congaree Associates by deed of Otis A. Jeffcoat, dated October 28, 1974 and recorded November 6, 1974 in Deed Book 42 at Page 154, Office of the Register of Deeds for Lexington County.

TMS# 007600-03-001 (PT)

Grantees' Address: 835 Esplanade Avenue
 New Orleans, LA 70116

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

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee forever.

And the said Grantor does hereby bind the Grantor and the Grantor's Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Successors and Assigns, against the Grantor and the Grantor's Successors and Assigns, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.



10-23-2012
A TRUE COPY
 REGISTER OF DEEDS, LEXINGTON CO.
 Debra M. Gunter

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WITNESS the Grantor's Hand(s) and Seal(s) this 27 day of September, in the year of our Lord Two Thousand Seven.

WITNESSETH:

Congaree Associates

[Signature]
[Signature]

By: [Signature]
Carroll E. McGee
Is: General Partner .

STATE OF SOUTH CAROLINA)

ACKNOWLEDGEMENT

COUNTY OF RICHLAND)

I, Suzanne R. Reeder, do hereby certify that Congaree Associates, by Carroll E. McGee, its General Partner, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal September 27, 2007.

[Signature]
Notary Public for South Carolina
My Commission expires: 4-9-17

Leahington County Register of Deeds

Dora McGee

This document not to scale

BOOK 837 PAGE 36 16.50 23788

TITLE TO REAL ESTATE FORM 1-B
COLUMBIA OFFICE SUPPLY CO., COLUMBIA, S.C.

State of South Carolina,

COUNTY OF LEXINGTON

KNOW ALL MEN BY THESE PRESENTS, That Congaree Associates, a South Carolina Limited Partnership,

In the State aforesaid, for and in consideration of the sum of Seventy five hundred and 00/100 (\$7500.00) Dollars to it paid by JAMES T. LOFLIN In the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

JAMES T. LOFLIN, HIS HEIRS AND ASSIGNS:

All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S. C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S. C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in the Lexington County RMC office in Plat Book 242 at Page 204. The within described property contains 0.68 acres.

Being a portion of the property conveyed to Congaree Associates by deed of Otis A. Jeffcoat recorded on November 6, 1974, in the said RMC office in Deed Book 42 at Page 154.

FILED
SEP 23 3 40 PM '86
JOHN B. TERRELL
REC
LEXINGTON COUNTY

LEXINGTON COUNTY
VOLUNTARY TAX
PAID \$ 8.25
MARJORIE H. SHARVE
Treasurer

STATE OF SOUTH CAROLINA
SOUTH CAROLINA LAND COMMISSION
VOLUNTARY
TAX
PAID \$ 8.25
PER UNIT

10-23-2012
A TRUE COPY

TMS: 7600-03-001

Grantee address: 560 Meeting St.
West Columbia, S.C.

REGISTER OF DEEDS, LEXINGTON CO.
Debra M. Gutter

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

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said

James T. Loflin, his

Heirs and Assigns forever.

And grantor do hereby bind itself & its successors & assigns and its heirs, to warrant and forever defend all and singular the said premises unto the said

James T. Loflin, his

Heirs and Assigns, against it and its successors & assigns Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS its Hand and Seal this 15th day of September

In the year of our Lord one thousand nine hundred and eighty six
and in the two hundred and tenth year of the Sovereignty
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF


CONGAREE ASSOCIATES, A SOUTH CAROLINA
LIMITED PARTNERSHIP. (SEAL)

By  (SEAL)

BOOK 837 PAGE 36



STATE OF SOUTH CAROLINA,
Richland COUNTY.

PERSONALLY appeared before me Gerald D. Jones
and made oath that h.c. saw the within-named Congress Associates, a South Carolina Limited Partnership
by Carroll McGee its General Partner
sign, seal and, as its act and deed, deliver the within-written Deed for the uses and purposes therein
mentioned, and that he, with Ray L. Decker witnessed the
execution thereof.

SWORN to before me this 15 day of Sept 1986.
Ray L. Decker (L.S.)
Notary Public of S. C.
Commission expires 9-9-91

STATE OF SOUTH CAROLINA,
COUNTY.



RENUNCIATION OF DOWER
I, _____, do hereby certify

unto all whom it may concern, that Mrs.
the wife of the within-named
did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release
and forever relinquish unto the within-named

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

Given under my Hand and Seal, this _____ day of _____, 19____

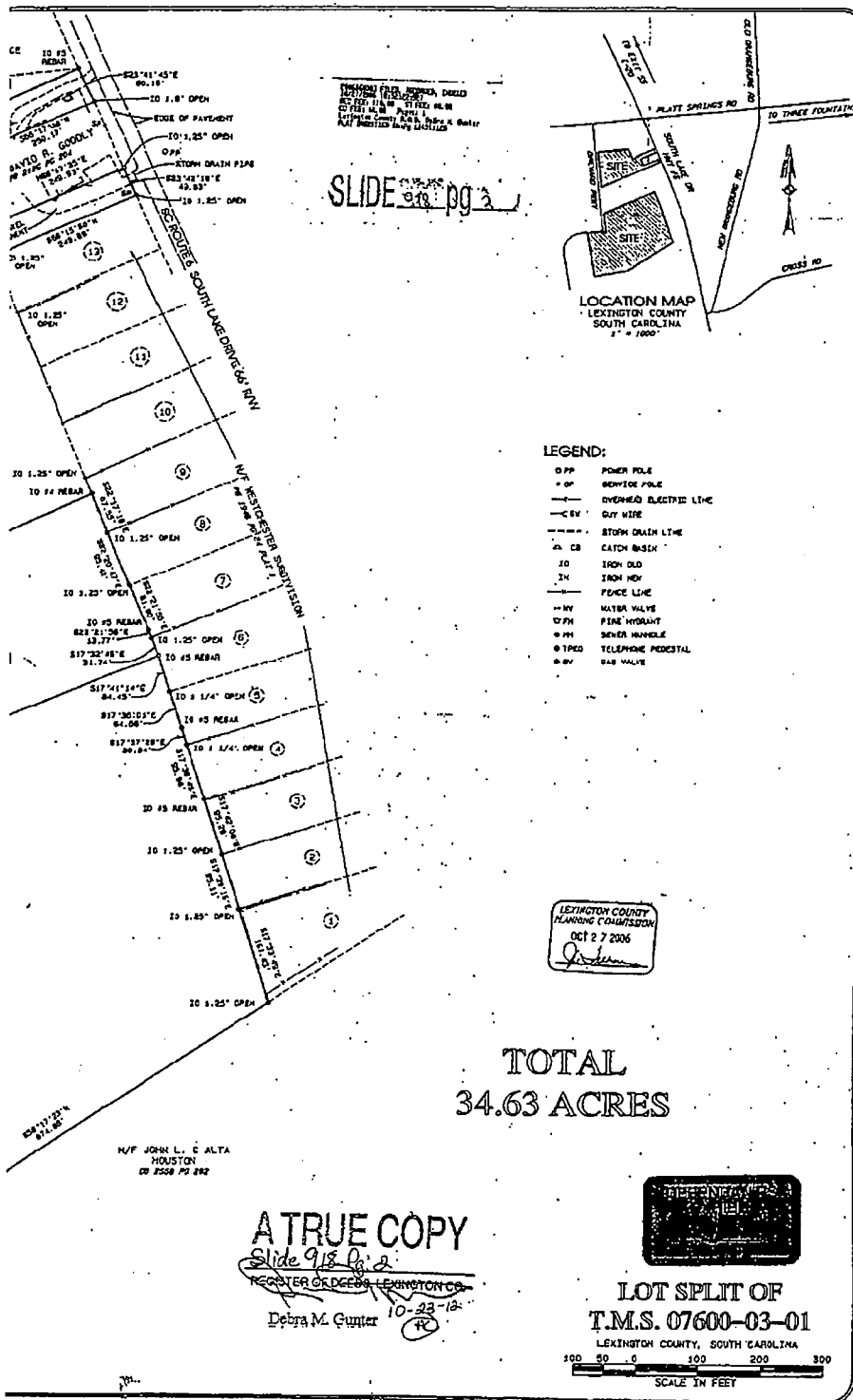
Notary Public of S. C.

GERALD D. JONES
ATTORNEY AT LAW
1413 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
State of South Carolina
County of _____
CONTRACT
Congress Associates, a South
Carolina Limited
Partnership
TO
James T. Loflin

TITLE OF REAL ESTATE

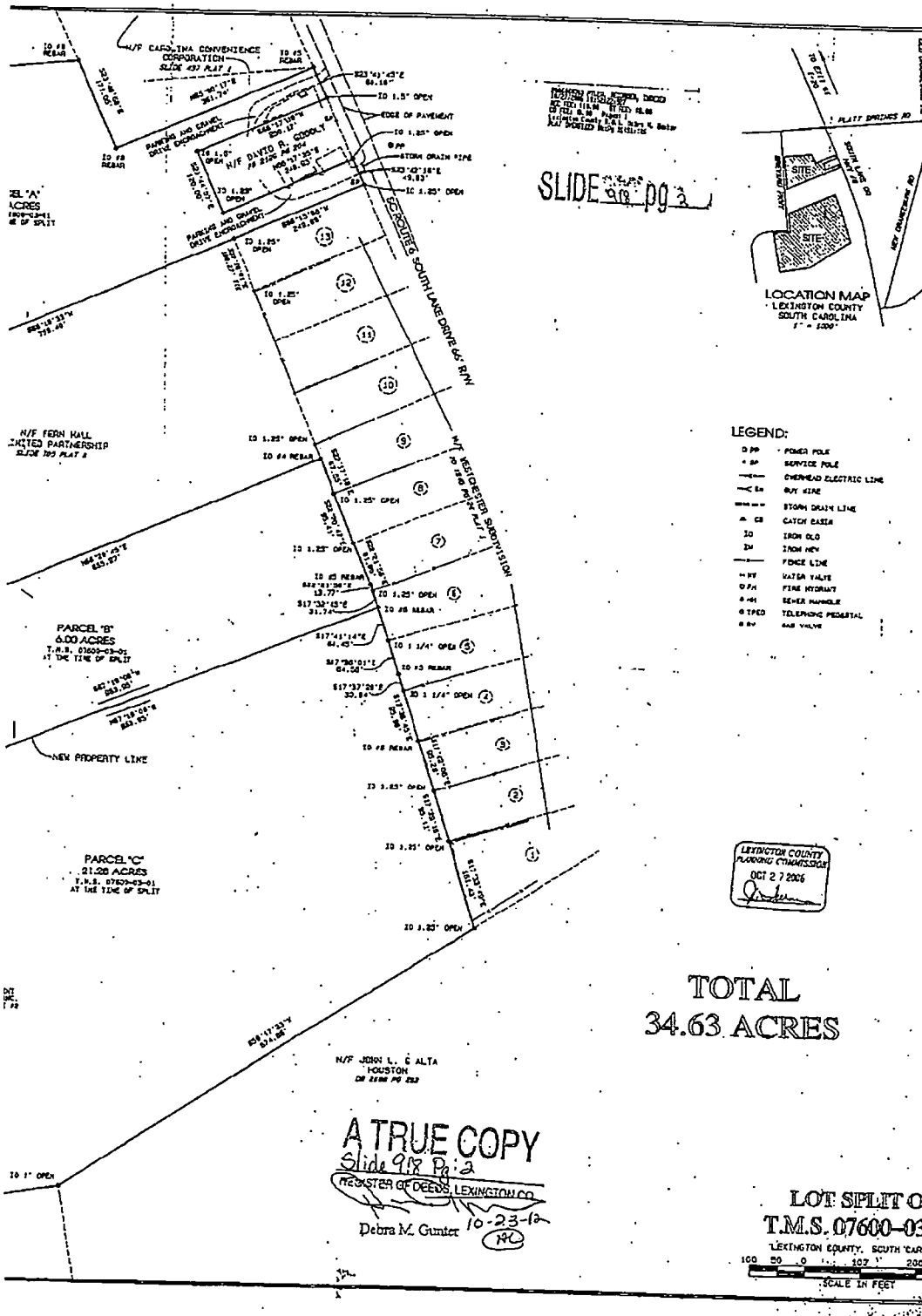
I hereby certify that the within Deed was filed for
record in my office at 9:40 P.M. o'clock on
the 23rd day of Sept
1986, and was immediately entered upon the proper
indices and duly recorded in Book 837
of Death, page 76

Ray L. Decker
for Ray L. Decker
Notary, S. C.
I hereby certify that the within Deed has been
day of _____, A.D. 19____
Recorded
in Book _____ of Death, page _____
And/or
County _____
PAGE 37



A TRUE COPY
Slide 918 pg 2
REGISTERED OFFICE LEXINGTON CO
Debra M. Gunter 10-23-13

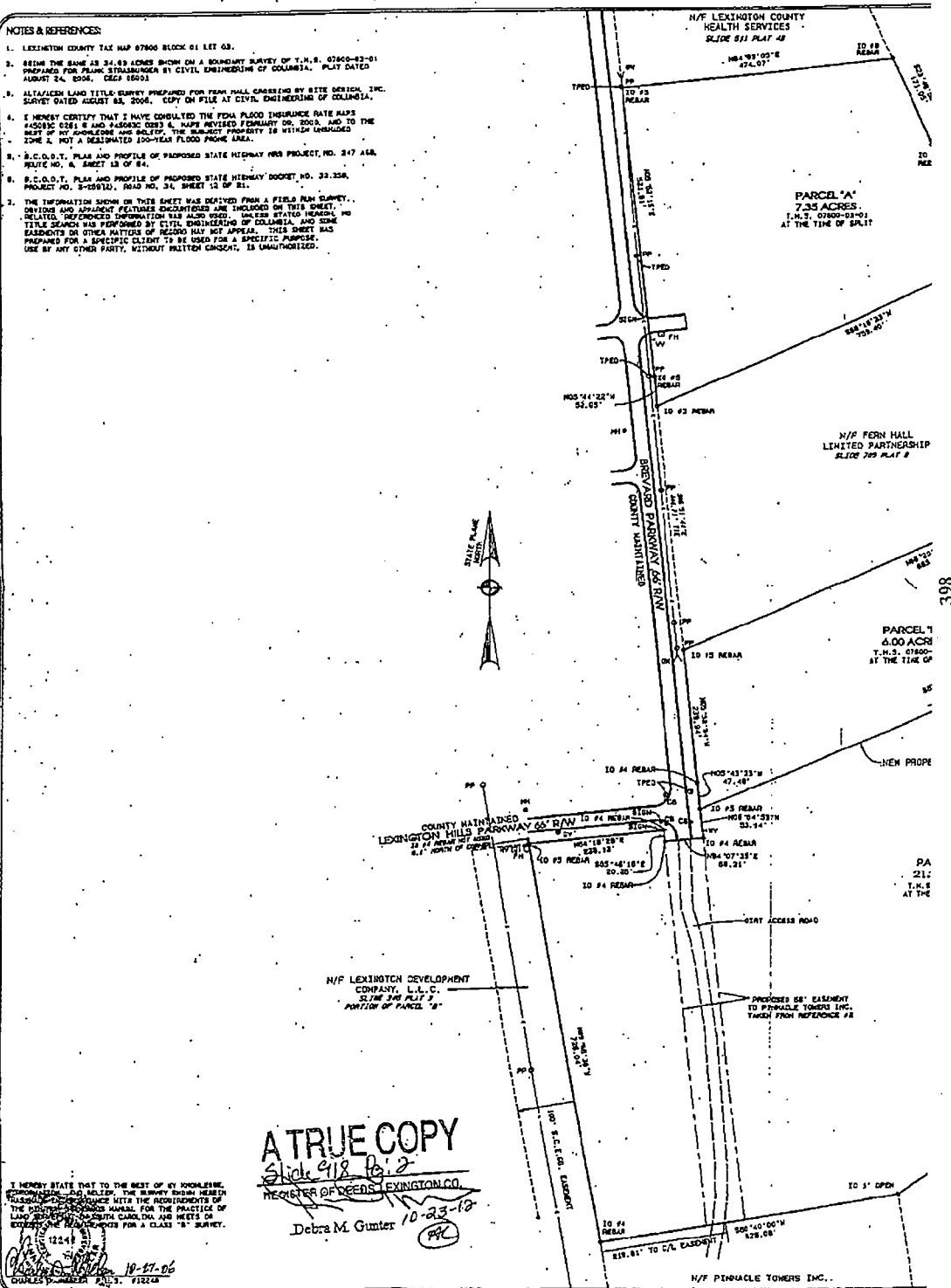
CIVIL ENGINEERING OF COLUMBIA CONSULTING ENGINEERING, SURVEYING AND PLANNING 3409 BENAHARRA ROAD, COLUMBIA, SOUTH CAROLINA 29210 TELEPHONE (803) 756-3030 FAX (803) 756-3034	
LOT SPLIT PREPARED FOR FRANK STRASSBURGER COLUMBIA, SOUTH CAROLINA	CHECKED BY [Signature] DATE OCT 27, 2005
SCALE 1" = 100' DATE OCT. 27, 2005 DRAWN BY DEBACH DESIGNED N/A DRAWING NUMBER 1 OF 1	PROJECT NO. 04001



397

NOTES & REFERENCES:

1. LEXINGTON COUNTY TAX MAP 87800 BLOCK 01 LOT 03.
2. BEING THE SAME AS 34.83 ACRES SHOWN ON A BOUNDARY SURVEY OF T.H.S. 07800-03-01 PREPARED FOR PLANNING STRATEGIES BY CIVIL ENGINEERING OF COLUMBIA, PLAT DATED AUGUST 24, 2006. (DECA 16003)
3. ALTA/ACEN LAND TITLE SURVEY PREPARED FOR FERN HALL, CARRIED BY SITE DESIGN, INC. SURVEY DATED AUGUST 25, 2006. COPY ON FILE AT CIVIL ENGINEERING OF COLUMBIA.
4. I HEREBY CERTIFY THAT I HAVE CONSULTED THE FEMA FLOOD INSURANCE RATE MAPS 45000C 001 E AND 45000C 003 E, HAVE REVISED FEBRUARY 01, 2003, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE SUBJECT PROPERTY IS WITHIN UNDESIGNED ZONE X, NOT A DESIGNATED 100-YEAR FLOOD PRONE AREA.
5. S.C.D.O.T. PLAN AND PROFILE OF PROPOSED STATE HIGHWAY 985 PROJECT, NO. 247 A&B, RELIC NO. 8, SHEET 13 OF 84.
6. S.C.D.O.T. PLAN AND PROFILE OF PROPOSED STATE HIGHWAY DOCKET NO. 32-358, PROJECT NO. 3-25912, ROAD NO. 34, SHEET 13 OF 81.
7. THE INFORMATION SHOWN ON THIS SHEET WAS DERIVED FROM A FIELD RUN SURVEY. DEVIATIONS AND ADJUSTMENTS ENCOUNTERED ARE INCLUDED ON THIS SHEET. UNLESS STATED OTHERWISE, NO RELATED INFORMATION HAS BEEN USED. UNLESS STATED OTHERWISE, NO ELEMENTS OR OTHER MATTERS OF RECORD MAY NOT APPEAR. THIS SHEET WAS PREPARED FOR A SPECIFIC CLIENT TO BE USED FOR A SPECIFIC PURPOSE. USE BY ANY OTHER PARTY, WITHOUT WRITTEN CONSENT, IS UNAUTHORIZED.



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NEAR LEXINGTON, KY
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399

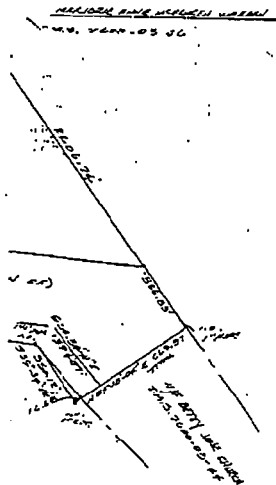


EXHIBIT
 Court #1
 1/13/1995

LEXINGTON COUNTY
 PLANNING COMMISSION
 JAN 13 1995

PLAT PREPARED FOR
CONGAREE ASSOCIATED AND CRESTVIEW LIMITED PARTNERSHIP

REFERENCE MAPS: PLAT 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200.

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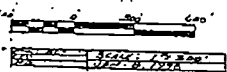
DEBRA M. GUNTER

01516

SUBMITTED BY:
 COLLEENWOOD SURVEYING, INC.

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MASSACHUSETTS REGISTRATION OF LANDS ACT, AND THAT THE SURVEY IS A TRUE AND CORRECT REPRESENTATION OF THE ACTUAL SURVEY.

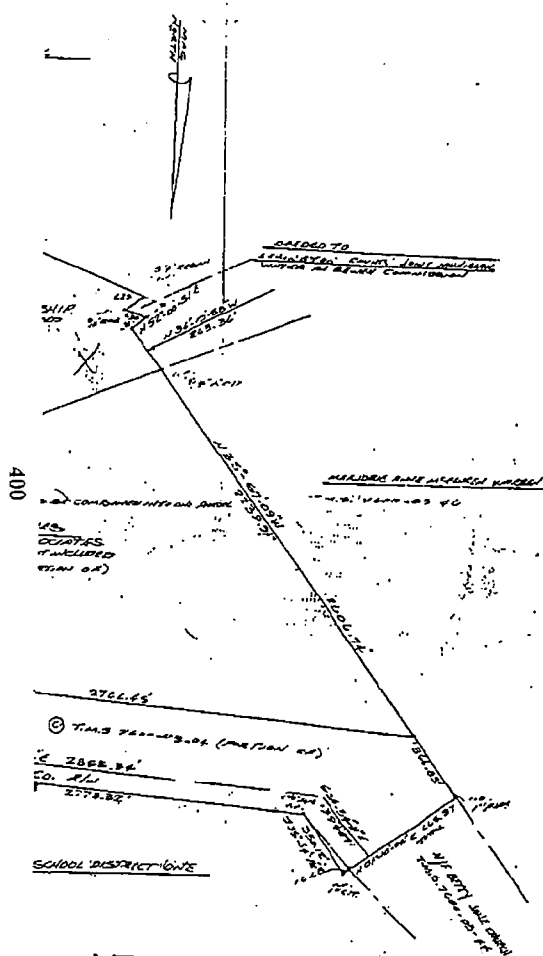
NEAR LEXINGTON, KY
 LEXINGTON COUNTY



DEBRA M. GUNTER
 1/13/1995

DEFENDANT'S
 EXHIBIT

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A TRUE COPY
Slide 346 Pg. 3
REGISTER OF DEEDS, LEANINGTON CO.

Leora M. Gunter

01516

Slide 346 Plat 3

PLAT PREPARED FOR

[illegible]

SURVEYED BY:

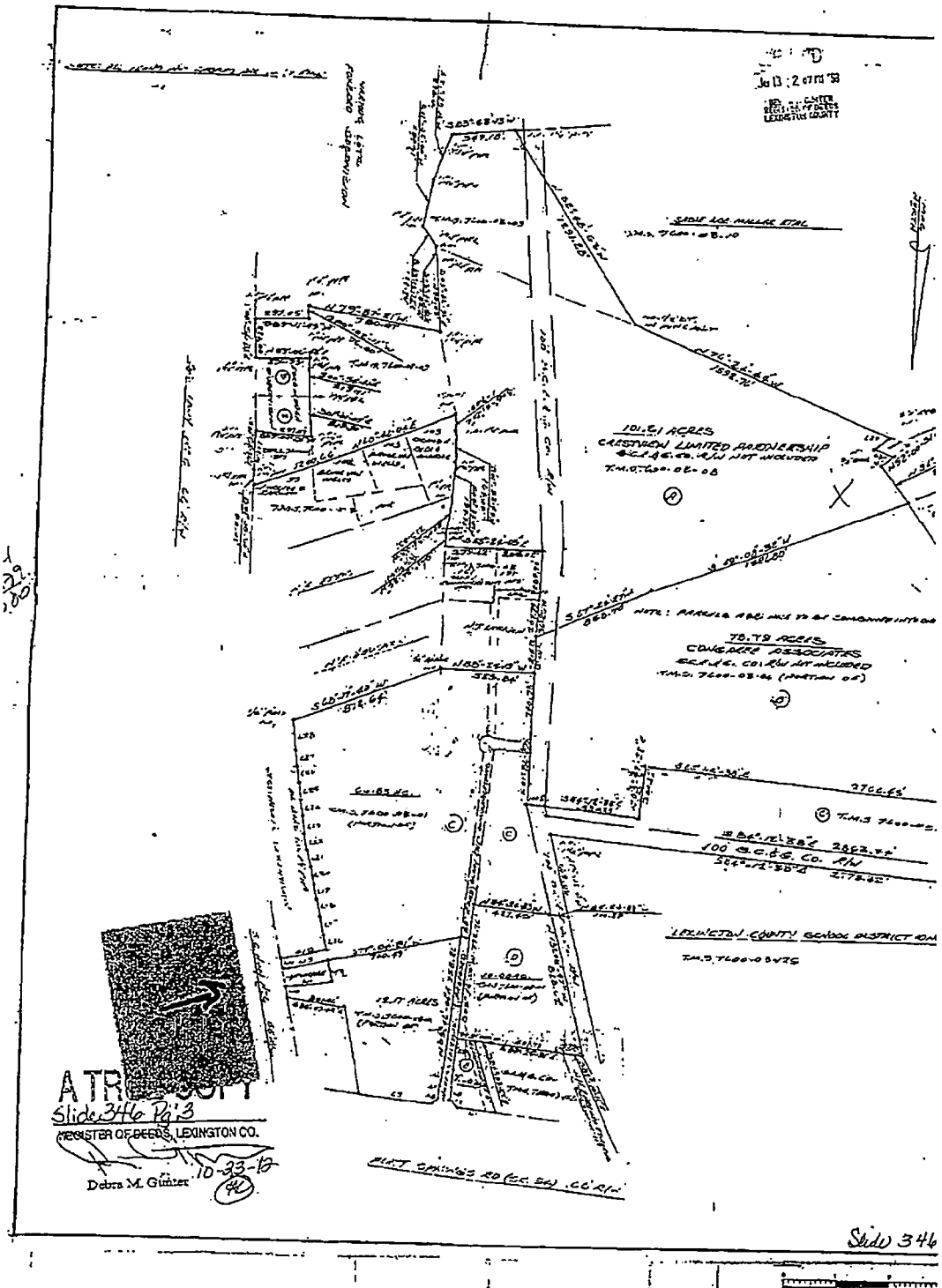
LOCKENWOODS ELLERBYNGE
I AM THE FIRST OF THE LINE

"I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, I WAS IN POSSESSION OF THE INFORMATION AT THE AFORESAID STANDARDS TRAINING COURSE IN SOUTH CAROLINA, AND A COPY OF EACH OF THE REQUIREMENTS FOR A SPECIFIED THEREIN, ALSO KNEW AND HAD VISIBLE DOCUMENTS OF ADEQUATELY



Reid E
S. C. REGIST.
C.E. 1001 22
ENCL: (103)

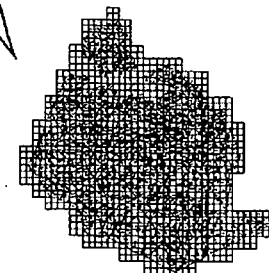
401



0402



LEXINGTON COUNTY SC PROPERTY MAP 9735.03



9725.02	9735.01	9735.02
9725.04	9735.03	9735.04
9724.02	9734.01	9734.02

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THIS MAP IS PREPARED FOR THE INVENTORY OF REAL PROPERTY FOUND WITHIN THIS JURISDICTION, AND IS COMPILED FROM RECORDED DEEDS, PLATS AND OTHER RECORDS AND DATA. USERS OF THIS MAP ARE HEREBY NOTIFIED THAT THE AFORESAIDED PUBLIC PRIMARY INFORMATION SOURCES BE CONSULTED FOR VERIFICATION OF THE INFORMATION CONTAINED ON THIS MAP. THE COUNTY AND MAPPING COMPANY ASSUME NO LEGAL RESPONSIBILITY FOR THE INFORMATION CONTAINED ON THIS MAP.

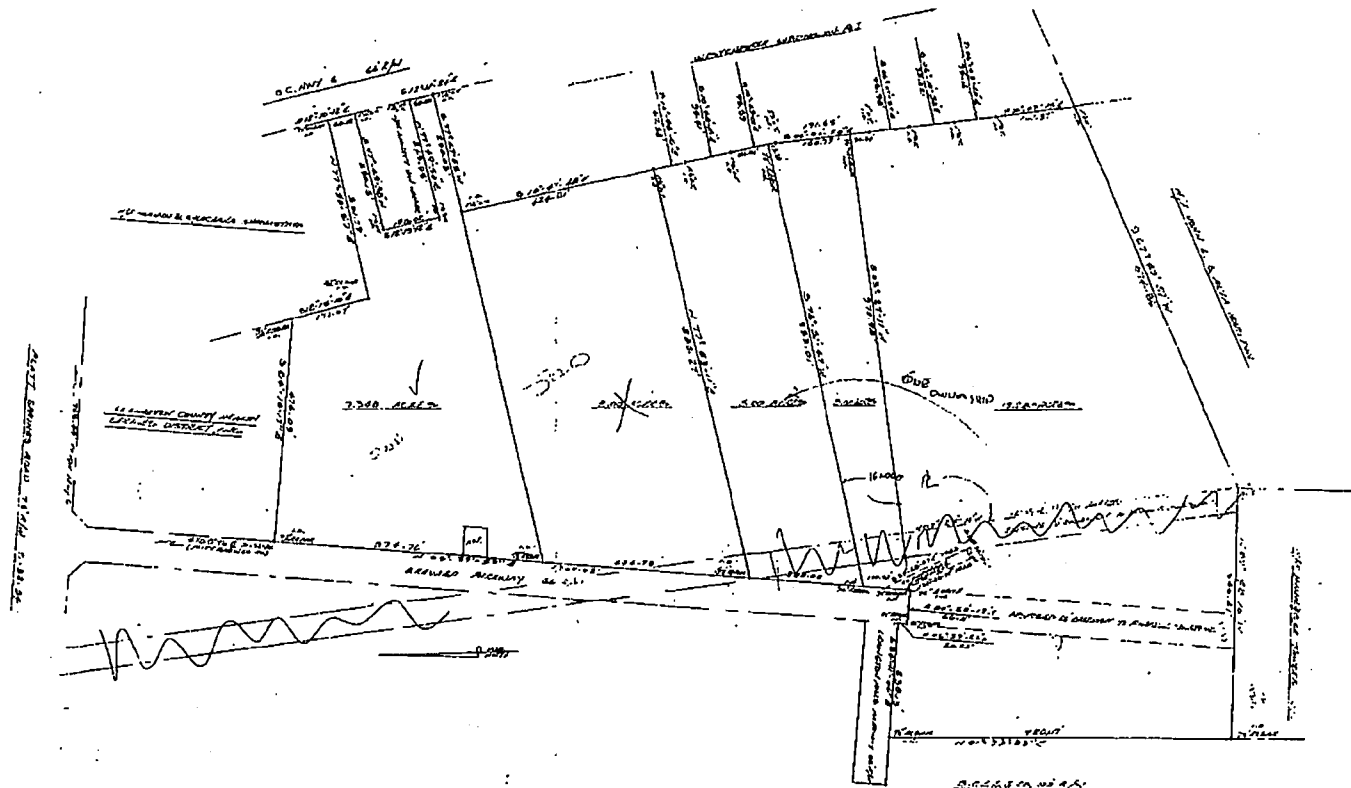
GRID IS BASED ON THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983 NORTH AMERICAN DATUM.

COPYRIGHT 2003

06001



A hand-drawn sketch of a building, possibly a house or a small structure. The drawing is done in black ink on a white background. The building has a rectangular main body with a smaller rectangular section attached to the top left. A line extends from the top right corner of the main body, labeled "new shed to be built". Another line extends from the bottom left corner of the main body, labeled "new concrete walkway". The building is labeled "A. 100.3".



I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS, IF THE MINIMUM STANDARD MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS, FOR A CLASS TO SURVEY AS SHOWN THEREIN, AND THERE ARE NO OTHER REQUIREMENTS OR MODIFICATIONS OTHER THAN SHOWN.

REASONABLE D.D. - NO NEW INFORMATION.

TRAINING ON
PAGE 15 IS
DOWNSIDE

DATE: 2/11/02	SC 252: 1" 51RD
TIME: 10:00	JULY 24, 2002

CONFIDENTIAL

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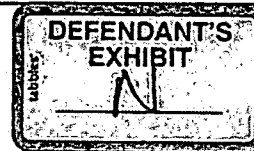
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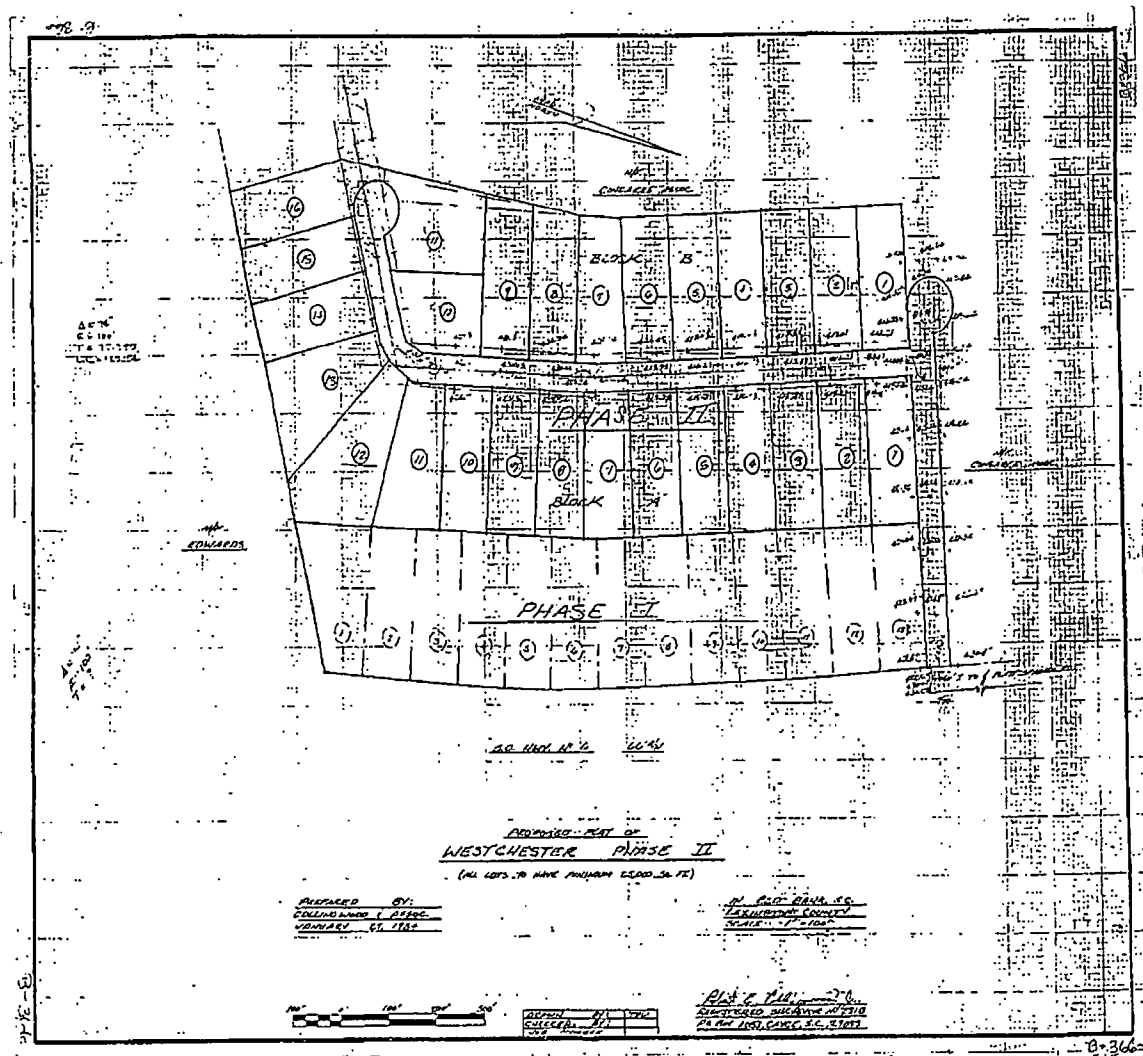
Lexington County This is My Map

Printed: Oct 09, 2012



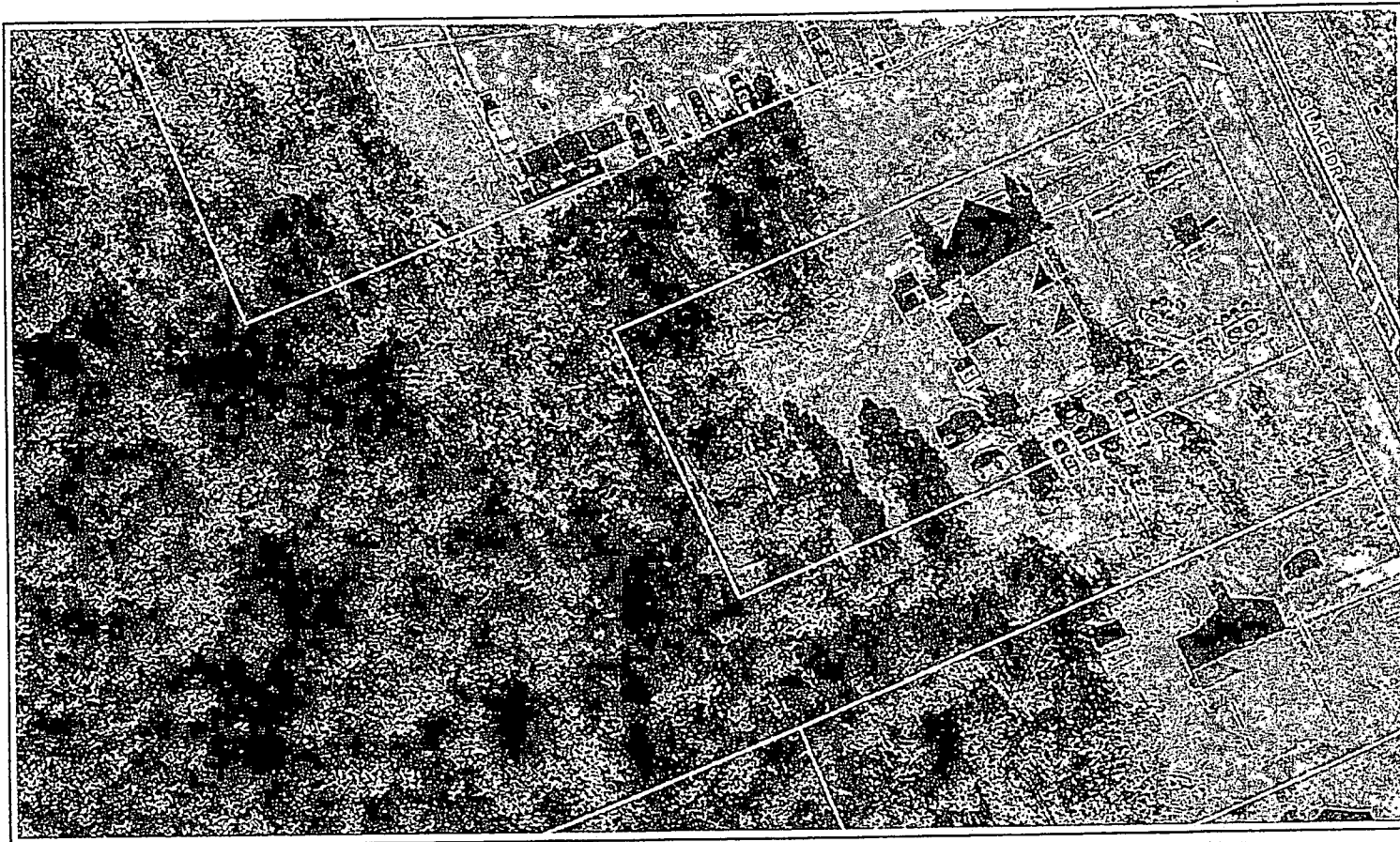
The information on this web site is provided and hosted by Lexington County, South Carolina. Lexington County makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. The reader should not rely on the data provided herein for any reason. Lexington County explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.





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Lexington County

This is My Map

Printed: Oct 09, 2012



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Lexington County

*Good Friends
Great Communities*



COUNTY OF LEXINGTON, SOUTH CAROLINA
COUNTY ADMINISTRATION BUILDING • LEXINGTON, SOUTH CAROLINA 29072 • 352-8000

Department of Planning and Development

July 15, 1985

Congaree Associates
c/o Carroll McGee
560 Meeting Street
W. Columbia, SC 29169

RE: Planning Commission Review of Westchester, Phase II

Dear Mr. McGee:

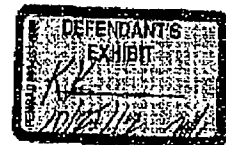
As you know, the Lexington County Planning Commission, at its meeting on July 9, 1985, approved Westchester, Phase II as a Private Road subdivision pending certain revisions to the construction documents and road access agreement. The Planning Commission requires that the retention pond serving the project be shown on the subdivision plat and included in the road access agreement for maintenance in common by the lot owners. The construction plans must be revised to show the roadside drainage ditches contained within the road rights-of-way, and to show two ditch widths instead of four throughout the project to simplify maintenance.

You may submit the revised documents to our office for review in order to obtain a Grading Permit and Preliminary Plat approval.

Sincerely,

Michael P. Criss, AICP
Development Coordinator

cc: Private Road File



State of South Carolina

In the Court Of Common Pleas

County of Lexington

DAVID R. GOOLDY,

Plaintiff,

vs.

THE STORAGE CENTER-PLATT SPRINGS,
LLC,

Defendant.

NO. 2010-CP-32-00460

MASTER-IN-EQUITY HEARING

BEFORE THE HONORABLE JAMES O. SPENCE

DATE: November 15, 2013

TIME: 9:00 a.m. - 10:10 a.m.

LOCATION: Lexington County Courthouse
205 E. Main Street

Lexington, South Carolina

REPORTED BY: KATHRYN J. LINDLER

COMPUSCRIPTS, INC.
A FULL-SERVICE COURT REPORTING AGENCY
POST OFFICE BOX 7172
COLUMBIA, SOUTH CAROLINA 29202
803-988-0086
1-888-988-0086
www.compuscriptsinc.com

11/15/2013

APPEARANCES:

Attorneys for the Plaintiff:

Davis Frawley
140 East Main Street
Lexington, South Carolina 29072

By: James Randall Davis, Esquire,

Attorneys for the Defendant:

Sowell, Gray, Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201

By: Robert E. Stepp, Esquire, and
Bess J. DuRant, Esquire.

11/15/2013

3

1 THE COURT: We are here on Gooldy versus The
2 Storage Center. It's case 2010-CP-32-0460. We're here on
3 Defendant's motion to reconsider. Let's do this. There's
4 a number of things that you raised in the motion to
5 reconsider. Rather than going through all them and having
6 a response, let's go item response, item response, item
7 response.

8 MR. STEPP: That will be fine, Your Honor. I
9 appreciate the opportunity to be heard on this. I know
10 Your Honor gave careful consideration to the case and, of
11 course, I don't need to tell you that the main reason we
12 have to file this motion is to preserve the issues for
13 appeal.

14 THE COURT: Certainly.

15 MR. STEPP: Our Court of Appeals, bless their
16 hearts, have gotten everybody in the trial bar completely
17 paranoid that if you don't argue something three or four
18 times you may not have preserved it. So we're all running
19 around filing Rule 59 motions on things that 10 years ago
20 would never have occurred to me wouldn't be preserved. So
21 anyway, I appreciate your patience with that and I
22 appreciate that you have considered in seeing the written
23 motion which is a complete statement of the grounds that we
24 heard in support of our motion to alter or amend the
25 judgment. I wasn't planning to discuss all of those,

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11/15/2013

4

1 because I think some of those are self contained. There
2 were just two or three that I wanted to take a few minutes
3 and talk with Your Honor about today. If that suits you,
4 I'm happy to have Mr. Davis respond one by one or whatever
5 you want to do.

6 THE COURT: Certainly. Your motion.

7 MR. STEPP: The first issue, and I think with all
8 due respect, the point at which my view of the case and the
9 Court's view of the case depart is the significance of the
10 reference in the deed out of Congaree Associates to
11 Mr. Loflin, the plat that's got the notation on it 50-foot
12 road. I think the existence of that plat is one of the
13 center pieces obviously of the Court's decision that an
14 easement was created and ran with the land and now runs in
15 favor of Dr. Gooldy, but I want to just back up on that a
16 minute and consider what the law is on that and we've
17 argued this before, but I'm just going to take one more
18 shot at it if I may.

19 We think that issue is controlled as a matter of law
20 and we think the controlling case is Lancaster versus
21 Smith Co. We cited that in our proposed order. We cited
22 it in our motion and I know Your Honor has read it so I'm
23 not going to drag all that back up. But when I reread it,
24 when we were getting the motion together and I reread it
25 to make sure I understood the facts, because I wanted to

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0412

11/15/2013

5

1 not just pull some statement of the law out of it and say
2 oh that's the law, I want to make sure I understood how
3 the Court came to make the pronouncement that it did make.
4 So those facts are interesting and Your Honor probably
5 knows them. But that's a case and the claim was for
6 breach of warranty of a deed and I'll talk about that
7 again in a minute, but the Plaintiff in the case was the
8 purchaser of a piece of property, a house I gather. House
9 and lot. And after the closing the purchaser discovers
10 that there's some sort of power line or natural gas
11 easement that cuts across the front yard and that easement
12 was of record and it was shown on the plat by which the
13 property was described in the deed to the seller. So the
14 seller buys the house and lot and it says all that certain
15 piece of parcel lot and land as shown on plat so and so
16 page such and such. If you went and looked at that, you
17 would see the boundaries of the lot and the house and
18 right across the front yard you see some big utility
19 easement marked on the plat and existing within the
20 boundaries of the property being conveyed.

21 And the purchaser contended that he was unaware of
22 the existence of the easement and that no exception was
23 taken, no notice was given to the easement and therefore
24 there was a breach of the warranty of title in the
25 conveyance of the property. The seller understandably,

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11/15/2013

6

1 certainly would have been my position, took the position
2 now wait a minute you did know about the easement because
3 it's absolutely shown on the plat by which your property
4 is described. My deed to you incorporates this plat that
5 shows the easement. So you can't say that the deed was
6 not subject to the easement, because the easement is a
7 part of the deed. That was the seller's argument. Very
8 understandably. And the trial court agreed and held for
9 the seller, denied the claim for breach of warranty of
10 title. It went up on appeal and when the Supreme Court
11 got it, though, the Supreme Court reversed and the Supreme
12 Court held that the reference to the deed in the property
13 description only served to incorporate the meets, bounds,
14 courses and distances of the property being conveyed and
15 did not incorporate into the deed references on the plat
16 to easements or other matters that were not simply the
17 description of the property being conveyed.

18 THE COURT: Stop right there, and I'm going to,
19 and I'll do this to both of you all.

20 MR. STEPP: Certainly.

21 THE COURT: By that logic then, just that logic
22 alone, if you look at virtually every single recorded
23 subdivision plat, it says lot 3 .23 acres, there's a pin,
24 there's a pin, there's a pin, there's a pin, there's a
25 road. They ain't conveyed anything but .68. You're not

11/15/2013

7

1 saying that case means that all of those people have no
2 rights in that road?

3 MR. STEPP: No, Your Honor, I'm not. One of the
4 other things I want to talk about is whether this is a
5 subdivision plat and whether those rules apply. But I
6 think we got two things that sit side by side on the law.
7 You got subdivision plats and the rights that are created
8 by subdivision plats and then you got this principle where
9 you got a plat that only shows one piece of property.

10 THE COURT: Hold on. Let me get you to address
11 something too. Subdivisions are largely a creation of, I
12 guess, I don't know, the 1910s, the 1920s when you first
13 started having restrictions and things.

14 MR. STEPP: Right.

15 THE COURT: There were plats recorded before then
16 that showed roads. There is an entire other line of cases
17 that says if you show a piece of property with an easement
18 or road by it, you got a right to easement. There's even
19 some that say you own to the center of the road and they
20 don't show dotted lines into the road. They show this. So
21 address those nuances also.

22 MR. STEPP: Sure, I'll tell you the difference,
23 at least what I think the difference is. I think if I own
24 a piece of property, big old square.

25 THE COURT: Like number 1 right there?

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1 MR. STEPP: Yes, sir. Like this right here, and
2 if I have it surveyed and within my property I put a road
3 in there and I record that plat, that's a road, and if I
4 subsequently sell this piece of property over here that's
5 to the right of the road.

6 THE COURT: Number 2.

7 MR. STEPP: Yeah. If this were a subset of that,
8 the rights of the road go with it. I don't have any
9 argument with that.

10 THE COURT: All right.

11 MR. STEPP: But in our case I don't think that's
12 what happened, because the plat, what I will call the
13 Loflin plat you will remember.

14 THE COURT: Right.

15 MR. STEPP: Didn't contain -- the road is not on
16 the property that was surveyed. It's outside the property
17 line, and I think that's a distinction that has significant
18 difference.

19 THE COURT: Wait a minute. Let's go here.
20 Because what I think I heard you just say was under these
21 scenarios and what the old law means is that unless the
22 lot -- let's draw it here. And we're going to print this
23 and make this an attachment to the record. Let's say this
24 is alternate number 2 and 3. Is what you're arguing then
25 is that in order for them to have rights to it, let's say

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1 there's the house, here's the lot, and here's the road.
2 What you're saying is that if the road like, hand me
3 Loflin's plat right here, if the plat -- if the road is not
4 shown physically going in there running across the thing --

5 MR. STEPP: That's not what I'm trying to say.
6 Let me try again.

7 THE COURT: Or are you saying that there is --
8 what the correct statement of law is is that there is a
9 presumption that's there, that there is a presumption that
10 can be rebutted.

11 MR. STEPP: I'm saying that too separately.
12 That's the third thing I want to talk about, Your Honor.
13 Anticipate exactly what the central issues are. What I'm
14 saying in the first place is that if I own this property
15 and I have all of this property surveyed and within the
16 boundaries of my property that I have had surveyed I show a
17 road and then I subsequently sell a portion of that
18 property. By reference to the plat that shows the road,
19 I'm stuck with that road.

20 THE COURT: So if theoretically --

21 MR. STEPP: Provided, I'm sorry. Let me just
22 add. Provided that it was my intention to do so.

23 THE COURT: I don't think anybody argues that you
24 have the intention aspect of it. I think Mr. Davis in his
25 thing cited the same law that says presumption is is that

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1 if you own it, you plat it out, there's a road, you're
2 presumed to have given an easement. It can be rebutted,
3 right?

4 MR. STEPP: Yes, I agree with that.

5 THE COURT: I think we're all on the same page.

6 MR. STEPP: That's fine. All I'm saying is that
7 Lancaster versus Smith Co., though, stands for the
8 proposition that incorporating the plat into the deed
9 doesn't incorporate easements or anything else. I think
10 Your Honor's order in part is based upon the reference by
11 Congaree to the plat that shows a road as being a
12 dedication or something by Congaree of rights in that road
13 and my only argument for this little segment is that road
14 is not even part of the deed, it's not even part of it.

15 THE COURT: I understand your argument that it's
16 not part of the deed. Are you saying it's not part of the
17 deed because it was not a road or it wasn't intended to be
18 a road or there's --

19 MR. STEPP: I'm saying because it's not part of
20 the boundaries of the property being conveyed under
21 Lancaster.

22 THE COURT: How then do you square that with the
23 hundreds of years of case law that shows easements or roads
24 next to property that aren't shown within the acreage?

25 MR. STEPP: I don't know that there is hundreds

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1 of years of case law that does that. What we would have --
2 what I'm saying is this, and here's our plat. I hope this
3 is not something that needed to be preserved.

4 THE COURT: It is, because we're printing it.
5 It's some questions that have been asked.

6 MR. STEPP: It was up here to begin with. I
7 didn't want to overwrite somebody else's work product.

8 THE COURT: No, no, don't overwrite any of that,
9 because those are...

10 MR. STEPP: If the plat, if the Loflin plat said
11 here's the property and it did not say, it did not say
12 50-foot right of way.

13 THE COURT: Wait a minute. Let's do another
14 hypothetical. Let's look at, let's look at, this is
15 Collingwood exhibit something, it's the proposed plat of
16 Westchester phase 2. Look at this.

17 MR. STEPP: Yes, sir.

18 THE COURT: Let's say that Westchester phase was
19 developed.

20 MR. STEPP: And that plat was recorded.

21 THE COURT: This was recorded. This is phase 2.
22 This is the proposed thing.

23 MR. STEPP: Right, that was not recorded. That's
24 correct.

25 THE COURT: That was recorded. Now if you'll

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1 notice on the recorded plat, they show lot 13. What do
2 they call the land right next to it? How does the surveyor
3 label that?

4 MR. STEPP: It just says now formerly Congaree
5 Associates.

6 THE COURT: Which means that would be Congaree
7 Associates dirt, right?

8 MR. STEPP: Correct.

9 THE COURT: This plat was done in August 18,
10 1983, by Collingwood. Now the next plat that was done was
11 a January 27, 1984 plat that would be right here.

12 MR. STEPP: But this plat was never recorded.

13 THE COURT: I understand. Hang on with me. I'm
14 going to ask you some hypotheticals. Assume just for
15 hypothetical if this plat had been recorded, does anybody
16 have rights in that because it's not shown in the meets and
17 bounds of any of these lots?

18 MR. STEPP: No, sir, you -- the answer is yes,
19 everybody who bought by reference to this plat for these
20 lots would have rights in the road.

21 THE COURT: Because of the subdivision law.

22 MR. STEPP: Because it's part of a property.
23 It's part of a property being conveyed, being subdivided.

24 THE COURT: How about this then? When he
25 recorded this plat, when the grantor recorded this plat

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1 done by the surveyor, what did he then call this area that
2 he had formerly called now we're formerly of that, what did
3 he label that as?

4 MR. STEPP: Well, the surveyor put a notation
5 50-foot road on it. There's no question about that.

6 THE COURT: The same surveyor that a year before
7 had put his dirt, put a notation that there's a 50-foot
8 road there.

9 MR. STEPP: That's right.

10 THE COURT: Adjacent to this.

11 MR. STEPP: That's right. I don't have any
12 argument with that. My argument under Lancaster is,
13 though, this notation is not part of the deed out.

14 THE COURT: Let's go back to this discussion
15 then. If I own, if on your analogy, and I don't have this
16 plat, you all may have it, they may not. When -- who's the
17 grantor, McGee, I'll just say McGee.

18 MR. STEPP: Congaree Associates.

19 THE COURT: Congaree Associates. When Congaree
20 Associates bought all this property, how much acreage was
21 it?

22 MR. STEPP: I don't know, Your Honor.

23 MR. DAVIS: 500 acres.

24 THE COURT: 500 acres. Let's change this then.
25 Let's change this example. Let's say 500 acres.

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1 500 acres. If he bought about 500 acres and he sold or
2 there's a house back here and there's a road and he sells
3 1 acre off, this is first conveyance, and there's a 1 acre
4 here and there's Highway 302 and there's a road that goes
5 by it, could the person who owns the 1 acre, does he have
6 rights to that road?

7 MR. STEPP: Is it shown on this plat?

8 THE COURT: Yes, it's shown. It's exactly, it is
9 exactly this plat. It's shown just like that.

10 MR. STEPP: Then the answer to that is no.

11 THE COURT: He doesn't have a right to it. If
12 this person sells him something and it says 1 acre and it
13 labels it as road --

14 MR. STEPP: The difference -- where we part
15 company, I hear you, but this is just not part of this
16 plat. It isn't -- let me ask you a hypothetical. Suppose
17 we had that and it didn't say 50-foot road. Would there be
18 any basis to look at this plat and conclude that the
19 conveyance of this property carried with it some easement
20 rights on the adjoining property regardless of whether it
21 was a road or whether it was just some sort of easement, I
22 think the answer to that would be no.

23 THE COURT: Hold on. If he came to court, if he
24 came to court and he had this plat and Collingwood had
25 labeled it as, like he did the first time or like he

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1 labeled it the east north part, because he certainly knew
2 how to do that, he knew how to do that.

3 MR. STEPP: Understood.

4 THE COURT: If he had labeled it that and
5 Mr. Davis had come in and said I got a right to the road
6 there and I would've looked at the plat and said what road.

7 MR. STEPP: Exactly.

8 THE COURT: Right?

9 MR. STEPP: Exactly.

10 THE COURT: Because's there's no indication on
11 the plat.

12 MR. STEPP: I agree.

13 THE COURT: This has an indication it's a road.

14 MR. STEPP: But under Lancaster that doesn't
15 become part of the conveyance. It's as if it doesn't
16 exist. That's my argument. I understand you don't agree
17 with it, but that's my argument.

18 THE COURT: I understand, because there's lots of
19 law out that says if you convey a piece of property out and
20 there's an easement by it or a road, you got a right to use
21 the road. Doesn't have to be a subdivision.

22 MR. STEPP: I disagree. I think all those -- to
23 the extent there are cases, there are subdivisions and what
24 they hold, when you read them, and Carolina Land is the one
25 that's in your order, if you read that case, what it

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1 specifically talks about is that the roads and streets were
2 surveyed as a part of the survey and so it's all part of
3 what was created by the grantor and there are specific
4 meets and bounds and descriptions of the roads and the
5 streets or whatever that were pertinent to the lots and I
6 think this is just completely --

7 THE COURT: Hold on. I'm not, I'm not, I'm not
8 arguing that they have a right to use the road because
9 they're part of a subdivision. We're going to talk shortly
10 about your theory of what subdivision means versus
11 subdivide and things like that, but I'm not arguing that
12 this lot is a part of any subdivision, because it clearly
13 is not.

14 MR. STEPP: All right.

15 THE COURT: Let's let you sit and let Mr. Davis
16 chat a little bit on this issue.

17 MR. DAVIS: Your Honor, may it please the Court.
18 In reference to the easement argument as to subdivision
19 easements and individual easements and individual lots, the
20 order cites both cases, the Bland case as well as McAlister
21 and Cason. The Bland case is the one that deals with
22 subdivisions. Here McAlister and the other case apply to
23 this situation and that is the general law that you're
24 talking about in regards to when you create a deed that
25 references the plat that shows a road on it and this one

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1 did say road, then it creates a private easement in that
2 road area and it has nothing to do with the subdivision.
3 In this case I'm not arguing there's a not subdivision
4 involved and sets up subdividing property, because there
5 was a subdividing of the property by Congaree by creating a
6 second lot, the lot in question, but also the McAlister
7 case applies, because if you just take, it's an individual
8 lot, that plat that Congaree referenced in that deed showed
9 a road and we have a right in it and it doesn't make any
10 difference, it does not make any difference if it just said
11 50-foot road. We know this in this case. The man that did
12 that plat knew there was a road there in the sense that the
13 county had approved a road at the time, they had approved
14 the road for county purposes at the time the deed was done,
15 Congaree over to the purchaser. It had been approved the
16 year before and the deed was done in '86, we know that. So
17 there was a road there, and you don't have to describe a
18 road by meets and bounds, but my point is this, that the
19 McAlister line of cases shows that you have access. Now in
20 reference to the Lancaster --

21 THE COURT: Let me ask you the same question I
22 asked Mr. Stepp earlier. Let's assume, let's assume that
23 Westchester phase 2 gets recorded. That this survey gets
24 recorded showing that road. That road under his theory,
25 all it has to do with is the subdivision, is that correct?

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1 MR. STEPP: Yes, sir.

2 THE COURT: So then when he sells a year later or
3 a year and a half later to your client who shows a road to
4 the very same road, his argument is that he ain't got a
5 right to drive down that road.

6 MR. DAVIS: I have four arguments on that.

7 THE COURT: Because that's what you're saying,
8 isn't it?

9 MR. STEPP: Yes, sir. Not based on the plat that
10 was in the conveyance.

11 THE COURT: Well, what you're saying is they
12 platted it, they've shown it as a road, all that goes is to
13 the subdivision.

14 MR. STEPP: Your Honor, to be honest I don't
15 know, but because that plat was never recorded, it really
16 doesn't matter.

17 THE COURT: It matters to the idea of intention
18 and the presumption which we are going to come up and argue
19 in a minute.

20 MR. STEPP: I'll be happy to talk.

21 THE COURT: We'll get to that in a minute.

22 MR. DAVIS: In reference -- you were asking about
23 had it been recorded, my theory is, four theories. Number
24 1, looking at the four corners of the deed, there's no
25 evidence that, there was no evidence that the intent here

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1 was was to convey and convey an easement. That was the
2 intent when you look, because the face of the deed that
3 references that plat is unambiguous. That's number 1.
4 Number 2, if they had recorded that plat under the theory
5 that you mentioned of there's a presumption once you record
6 that deed and that plat, that is a presumption that you
7 intended and the Inlet case, Murrells Inlet case, I think
8 even goes further. It says notwithstanding the intent
9 argument, 'once you record that deed with that plat
10 reference, then that controls this situation and that's
11 what the case says and then goes on and says this. It will
12 be unfair to the purchaser and the subsequent purchasers to
13 take it back now after it's been recorded, because they're
14 relying on that and it will screw up our chain of title
15 system and the property law. The last thing is if he had
16 recorded that plat, and when you look at the intent
17 analysis --

18 THE COURT: Hold on. We're going to do intent as
19 a whole separate topic.

20 MR. DAVIS: Let me go to the Lancaster thing on
21 that. If you look at that case, all of this is on the same
22 page of that case, and it makes the -- the paragraphs are
23 altogether. And the first paragraph says what Mr. Stepp
24 says is you look at the deed and the plat, when you look at
25 the plat, the bounds and boundaries are incorporated.

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1 That's number 1. That's clear law. Number 2, the case
2 clearly says that this case does not override the basic law
3 that when the party records that deed and has a plat
4 reference, you get an easement. It says it in the next
5 paragraph. Then the third paragraph deals with the subject
6 they're interested in. This easement, the easement that
7 we're talking about is to a party to the transaction, the
8 grantor and grantee. The easement that's talked about in
9 the Lancaster case is a party to a third-party and because
10 it was an easement to a third-party, not somebody a part of
11 this transaction, they said it was not brought in to defeat
12 the breach of warranty. That's the distinction in my
13 opinion in those cases.

14 THE COURT: I understand that. I understand both
15 of your arguments on that case. Mr. Stepp, I don't want to
16 get you off your line of argument so go next or talk to me
17 about that, all right, Mr. Davis, I don't think anybody
18 will argue that if the deed had said .6 acres and conveyed
19 herewith right of way to the 50-foot road. We got no
20 questions then, right? But because you got it labeled as a
21 road, then would you all both agree that we're at the
22 intent issue, right?

23 MR. STEPP: Yes, sir, I agree.

24 THE COURT: The intent is it's a road, but the
25 intent can be rebutted.

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1 MR. DAVIS: Yes, I do say that except I would
2 bring the Court's attention to the case, Murrells Inlet
3 case on page --

4 THE COURT: I understand you are reserving that
5 argument, but there is a body of law, there is a body of
6 law that says if it's there, the presumption is, the
7 presumption is and the presumption can be rebutted. So,
8 Mr. Stepp, if that's the position, show me why on the
9 evidence and the testimony that was at trial I should find
10 the presumption was rebutted.

11 MR. STEPP: Because the uncontroverted evidence
12 in the record is that there was no such intention. We
13 called the grantor to the stand who said I did not intend
14 to create a road, I did not intend to create easement
15 rights, I never discussed a road, never built Westchester
16 phase 2 and absolutely he completely disclaimed any intent
17 and that's uncontroverted evidence in the record.

18 THE COURT: Stop there. Have a seat. You can
19 have a seat, because I'm going to ask some specific
20 questions. That's your basis for saying there was no
21 intent, that's it, is what the grantor said?

22 MR. STEPP: Well, I also, just to be clear, I
23 don't think the plat goes so far as to even create a
24 presumption, but if it does, then it's rebutted by
25 Mr. Laffitte, (phonetic), yes, sir.

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1 THE COURT: Let's go back through the facts of
2 the case then. Let's go back through the facts, because
3 it's uncontested that the grantor said I never talked with
4 anybody about the road, he said that or something similar
5 multiple times.

6 MR. STEPP: Yes, sir.

7 THE COURT: The grantor was here. The grantee
8 was not. So we have no testimony from the grantee.

9 MR. STEPP: Correct.

10 THE COURT: The only testimony we have is from
11 the grantor. The surveyor was not. Right? I don't have
12 any surveyor testimony.

13 MR. STEPP: That's right.

14 THE COURT: I don't have any deposition from
15 surveyor. Nothing.

16 MR. STEPP: That's right.

17 THE COURT: But we do have other evidence of
18 intent. Tell me this. It was not disputed because he sat
19 there and testified that he planned to do this subdivision.
20 Right?

21 MR. STEPP: Well, yeah, he planned at one time,
22 but never executed.

23 THE COURT: I understand. Not arguing that. He
24 planned that. And evidence of that was a couple of things.
25 The evidence was that he had this plat prepared for him in

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1 January 27, 1984, which showed the road in dispute as a
2 road. Now there was also in the evidence after January 27,
3 1984, that he sent it to Lexington County Planning
4 Commission. Clearly at that point if it had been approved
5 he was intending to do, there was some intent to do a road.
6 I mean you can't deny that. He sent a plat in. Wait a
7 minute. He sent a plat in, said I'm going to do the road
8 as shown on this plat, correct?

9 MR. STEPP: At that point, but not at the point
10 of this conveyance.

11 THE COURT: I understand. I'm getting there.
12 I'm going chronologically, because it gets worse. So he
13 does this January 27, 1984. He says then I want this. The
14 next bit of testimony in evidence was the Planning
15 Commission sends back a letter and says you have to, you
16 have to do all this improvement, it's going to be cost
17 prohibitive and we know the date of that letter. It's in
18 the order, it's in the memo. So at that point, testimony
19 from your witness was he says it's cost prohibitive, I
20 ain't doing it. Fair assumption.

21 MR. STEPP: Yes, sir.

22 THE COURT: He then says, he then says I never
23 talked to anybody about the road. Didn't talk to the
24 grantee about the road. Didn't talk to him about it.
25 However, between January 27, 1984 and August 12, 1986, when

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1 this plat was done and used in the deed, the inference is
2 he changed his mind, right?

3 MR. STEPP: I strongly disagree, Your Honor.
4 There's no basis for that inference. The record is
5 uncontro -- he disclaimed it expressly. So how could you
6 draw an implication contrary to his expressed --

7 THE COURT: No, I'm not. You said exactly the
8 opposite about what I said. What I'm saying is in 1984
9 there was some evidence of intention, he intended to do a
10 road, right?

11 MR. STEPP: I disagree, but I understand what
12 you're saying.

13 THE COURT: You mean when he submitted this plat,
14 he had no intention of building a road if it had been
15 approved on this site?

16 MR. STEPP: If it had been approved, but it
17 wasn't.

18 THE COURT: I understand.

19 MR. STEPP: I think that's a huge distinction.

20 THE COURT: It is, but --

21 MR. STEPP: It's an idea. Did he have an idea
22 building a road, yes.

23 THE COURT: Yes, he did.

24 MR. STEPP: Yes, sir.

25 THE COURT: He did have an idea to build a road.

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1 Now if you'll do me the courtesy, let me finish.

2 MR. STEPP: Yes, sir. Sorry.

3 THE COURT: Let me get through the chronology of
4 it. So he has intent. He then has a surveyor when they
5 get to do the transaction to the grantee two years later
6 who shows the road. He never, there's not one single bit
7 of evidence to show a contrary intent that a road was not
8 presumed to be here. He sat there on the witness stand, he
9 never said I told the grantee there was no road, I told the
10 County Planning Commission it was dead, there was no
11 evidence. In fact, he said I never talked, I never talked,
12 I never talked, I never talked, I never talked, I never
13 talked, I never talked. So what we have then is we're
14 looped around to the future to the closing date. And then
15 the other evidence was on your behalf was the surveyors
16 came in and somehow said it has to have been a mistake.
17 All right. Whose mistake was it? Whose mistake was it to
18 put the road on this plat?

19 MR. STEPP: The surveyor's.

20 THE COURT: The surveyor's mistake. How do we
21 know that? When did McGee tell the surveyor that's not
22 supposed to be a road? After -- he told him there was
23 supposed to be a road there. When was there evidence that
24 McGee told the surveyor that ain't supposed to be a road?

25 MR. STEPP: I don't know that there is any such

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1 evidence, but the evidence that is in the record that I
2 don't see how it can be overcome by these sorts of strange
3 inferences is that he didn't intend to create it and in
4 fact the evidence is no road exists. It didn't exist then
5 and it doesn't exist now.

6 THE COURT: There was evidence that there was not
7 a dedicated road. There was evidence that there was not a
8 named road. There was not evidence that the portion had
9 not been used as a road or a right of way. There was
10 plenty of evidence in the record that people drove up and
11 down it.

12 MR. STEPP: I disagree with that, Your Honor.
13 Sorry. Dr. Gooldy used it, but I don't know there's
14 evidence that anybody else. He used it to park.

15 THE COURT: The record says what it says about
16 the parking and everything.

17 MR. STEPP: It does. Correct.

18 THE COURT: Mr. Davis, and address intent.

19 MR. DAVIS: The way I see that is, at the time
20 the deed was executed by Congaree Associates to Loflin, if
21 you're looking at intent, the parties involved in that
22 transaction, Mr. McGee for Congaree, Mr. Collingwood, the
23 surveyor on that particular lot as well as Westchester 1
24 and 2, and Mr. Loflin who was an employee of Congaree,
25 those were the parties who best knew whether there was a

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1 road there or not, a road on the south side. And this
2 issue as to intent ended on that day, because with all
3 those parties knowing there's a road over there showing on
4 that Westchester 2 plat and that surveyor puts it on that
5 deed and it's recorded, I think intent ends because that
6 shows the intent under various theories of law.

7 THE COURT: What is the legal significance of
8 Collingwood showing it as the same piece of property as
9 labeling it as Congaree Associates and then a year later,
10 year and a half later, showing it as a road?

11 MR. DAVIS: The inference there is it's still a
12 road and there had been no action taken of record in this
13 file withdrawing that intent.

14 THE COURT: If it's a mistake, was it
15 Collingwood's mistake? Was it the grantor who signed the
16 deed at closing's mistake or was it both of their mistake
17 if it was a mistake?

18 MR. DAVIS: If it was some mistake, you either
19 got mutual mistake or unilateral mistake, but that document
20 was signed by -- the seller signs the deed and if there's
21 some mistake in it, that ambiguity if there's some mistake
22 goes against him because he's the one that signed that
23 document so it doesn't apply.

24 THE COURT: We don't know what the grantee said,
25 because he wasn't here. All the grantor said was I was

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1 there, I signed lots of stuff, I signed it. If he signed
2 it and that's incorporated in it and he didn't mean to sign
3 it, it was a mistake, then are we not at unilateral mistake
4 analysis or mutual mistake?

5 MR. DAVIS: Right.

6 THE COURT: Are we also not in the case line that
7 says if you go to a deed and you sign something at closing,
8 you sign something, you don't read and you're capable of
9 reading, you're stuck with what you signed.

10 MR. DAVIS: Yes, sir, I agree.

11 THE COURT: Move on to the next argument behind
12 intent, after intent.

13 MR. STEPP: The next one I was going to address,
14 Your Honor, was just this subdivision plat law. I think we
15 really should talk about that. I don't know that I have
16 anything else to say about that. I understand Your Honor
17 has clarified for me that it's not -- you're not ruling
18 that this was a subdivision plat.

19 THE COURT: No. Absolutely not.

20 MR. STEPP: The fact that the road is shown.

21 THE COURT: Right.

22 MR. STEPP: I don't think I have anything more to
23 offer on that. There are two other things I wanted to
24 mention briefly. They're a little bit off point, off of
25 the points that we've been talking about. I understand

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1 where Your Honor is coming. In the order on pages 9 and 10
2 you find that the Storage Center had actual knowledge of
3 the existence of the road. And that was based on -- when
4 the Storage Center was contracted to buy the property
5 before they closed, they had their property surveyed and on
6 that survey, which is, I don't know, exhibit something or
7 other, I don't know. It's in the record. On that survey,
8 Storage Center survey, there was a reference to the Loflin
9 deed, book and page number which if you went then and
10 looked would have taken you to the plat which has a
11 notation 50-foot road on it, and on that basis your order
12 concludes that the Storage Center had both constructive and
13 actual knowledge of the existence of the road. And I would
14 simply take issue with the actual knowledge portion of
15 that. The law in South Carolina --

16 THE COURT: Hold on. Let me hear from Mr. Davis
17 on that.

18 MR. DAVIS: Your Honor, the order indicates that
19 the Defendant had constructive and actual notice and the
20 constructive was based on the chain of title argument that
21 they -- Loflin deed which referenced the plat, it's in the
22 chain of title so that would be the constructive notice and
23 the Defendant would be on an obligation of inquiry notice
24 to check out any documents that are referred to in the deed
25 which would be the plat. On the actual notice argument

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1 before the Defendant bought the property, his own surveyor
2 showed, what that survey showed is an encroachment and also
3 referenced the deed into Gooldy. So before they bought
4 they had actual notice that there's something there.

5 THE COURT: Hold on. Is your argument, because,
6 and I may be mistaken, I'll have to go back and look at
7 this. The Storage Center guy who came to testify as I
8 recall, and I may be mistaken, basically said we've done
9 this before. This ain't the first time we've done this.
10 We ride around, we look at stuff, we see it, we look at
11 property and if it fits our criteria, we buy it. So I
12 thought that there was testimony to that effect that they
13 had done that and then your argument that once a surveyor
14 says here, there's a certain -- not something that's on
15 record, that's been recorded, but here's your plat I'm
16 showing you before your record it that was the basis of
17 your actual knowledge.

18 MR. DAVIS: Yes, sir.

19 THE COURT: Your surveyor has said there's a road
20 running across your property.

21 MR. STEPP: That's not quite right. The survey
22 done by the Storage Center doesn't show any road. It just
23 shows the 50-foot piece of property.

24 THE COURT: It references the deed.

25 MR. STEPP: It references the deed to Loflin on

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1 the face of the survey. So the chain of events would be
2 you look at the Storage Center survey, you see a reference
3 on the adjoining piece of property to the deed to that
4 piece of property, the book and page for the deed. You go
5 look at the deed and in the description you see reference
6 to the survey and you go to the survey and you see the
7 notation of the road.

8 THE COURT: You all come up here, because I may
9 be looking at the wrong thing.

10 MR. STEPP: I don't think we have that plat.

11 MR. DAVIS: I think that's it right there.

12 THE COURT: Is this the plat your guy bought the
13 property by? Is that it?

14 MR. STEPP: I'm not... That's it. We're looking
15 at the same thing. You're right.

16 THE COURT: Then the question I have is this, and
17 this was an inference I made. I'm assuming that when
18 somebody who has the sophistication that they testified
19 they did, when they go out and they look at it and they
20 have a surveyor prepare a survey for them before it's
21 recorded at some point they look at the survey.

22 MR. STEPP: Sure.

23 THE COURT: This survey shows a parking and
24 gravel driving encroachment and a dotted line. So would
25 that not be -- you're saying that's not actual notice that

1 there is the existence of something there?

2 MR. STEPP: It's not actual notice of a road.
3 That's what I'm saying, and I read your order perhaps
4 mistakenly to say that there was actual notice that the
5 road existed not by virtue of what is shown on this plat,
6 but by virtue of the reference on this plat to page 2126.

7 THE COURT: That's constructive. What I was
8 taking the actual to was that if he drives out and looks at
9 the property and sees something driving through and he
10 looks at this ahead of time which I'm assuming he did,
11 maybe that was the wrong inference to take, but --

12 MR. STEPP: I don't remember what he said, but
13 that's not an unreasonable assumption.

14 THE COURT: If that needs to be reworded to
15 clarify that, that can.

16 MR. STEPP: It may be. Here's your order. It
17 says not only was the Defendant on constructive notice of
18 the deed and plat of the Plaintiff that his predecessors in
19 title was referenced on plat a 50-foot road, but Defendant
20 prior to purchase obtained a survey which referenced on the
21 face of the survey the book and page number of the deed
22 which would have referenced the plat. Based on the above
23 facts the Court finds that the Plaintiff had superior title
24 and Defendant was on actual and constructive notice of
25 Plaintiff's...

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1 THE COURT: Then that would need to be clarified
2 to bring the fact that my assumption was this was it, it
3 showed an encroachment, he knew the existence of a road.
4 That was actual knowledge.

5 MR. STEPP: Thank you. Your Honor, the final
6 thing that I wanted to bring up was in paragraph 19 of your
7 order. I'm sorry, it's ground 19, Your Honor, in our
8 motion. Your order includes a reference to Collingwood
9 having staked the Loflin property and then the lot 13
10 property.

11 THE COURT: Yes.

12 MR. STEPP: I read your order to hold that
13 staking the two sides of the 50-foot strip was tantamount
14 to indicating that the road existed between those stakes.

15 THE COURT: No, no, no. All that had to do with
16 was one of the arguments that was made by the surveyor was
17 it's vague. One of the reasons why we think there's a lack
18 of intent is that it was vague, it's not bounded. Not to
19 say that the fact putting the pins down meant there was a
20 road, and I'll just explain this on the record. When the
21 big 500 -- when you do a title search and you all know, I'm
22 assuming, have done title searches, I did hundreds before I
23 got into real estate litigation. To me it's like a puzzle.
24 So what I would do is I'd print the big 500 tract and then
25 I'd cut out surveys like this and start lining them up. I

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1 also know from a lot of litigation of surveyors that there
2 are guidelines that surveyors have to do before they do a
3 survey. They have to either put a pin or find a pin. If
4 they're establishing the survey the first time, they're
5 supposed to put a marker in or an iron and the surveys that
6 were in evidence, we have this property, because the road
7 in issue for the vagueness issue has four sides. One side
8 there can't be any confusion to because it's Highway 6.
9 You all would agree with that.

10 MR. STEPP: Right.

11 THE COURT: Collingwood did --

12 MR. STEPP: I take that back. I don't agree with
13 that. I hear you, but I just don't consider...

14 THE COURT: This is for vagueness.

15 MR. STEPP: I understand.

16 THE COURT: This is not the existence of the
17 road, this is just their argument it's vague because
18 Collingwood didn't draw another dotted line to the south
19 side where he put 50-foot road. That was an argument. He
20 didn't put a dotted line there. If you're doing a title
21 search and you're trying to say where is this, this survey
22 is already on record. Collingwood was the surveyor.

23 MR. STEPP: That's Westchester Phase 1.

24 THE COURT: Westchester phase 1. He did the
25 pins. On the Loflin plat if you will notice in the

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1 southwest and southeast, all four of them, there's a
2 notation called IN which means Iron New as opposed to IO
3 which would be Iron Old meaning if you do a survey and you
4 find a pin, you register it as an Iron Old. So he had set
5 the two pins here for this lot. He had set the two pins
6 here for this lot. When you're putting the puzzle together
7 and this says 50 feet and he set this pin and he set this
8 pin, it matches just like that. So you have three sides of
9 it bounded in if it's a road. For the vagueness issue, you
10 have Highway 6 here, you got that pin, that pin, that pin,
11 that pin. I'll also note that the distance of each lot is
12 250 feet. So it is exactly a rectangular shape that is
13 250 feet long, 50 feet wide. So that's all it was for
14 the vagueness. It was not going to say the fact that he
15 did pins meant a road. It was just to address the
16 vagueness issue.

17 MR. STEPP: Thank you, Your Honor. I appreciate
18 you clarifying that. Now I understand that the findings
19 about the pins was based upon your review of these two
20 plats we've just been talking about. I think he would've
21 had to put the pins in in order to do that.

22 THE COURT: Right. And what it shows on the
23 surveys.

24 MR. STEPP: Just because this is a good
25 clarification, can I just say the Westwood phase 1 was

1 Exhibit 2, Collingwood and the Loflin, and the other plat
2 you were referring to was the Loflin plat which was
3 ambiguous. Thank you, Your Honor, that clarifies that and
4 I appreciate it. Your Honor, we of course reserve all the
5 other issues that we've raised in the motion, but those are
6 the ones that I wanted to really discuss with you today.
7 I'll be happy to answer any other questions.

8 THE COURT: What about punitive issues? Are you
9 all appealing the award of punitive damage?

10 MR. STEPP: Yes.

11 THE COURT: Then I have some punitive questions I
12 want to ask. Mr. Davis has argued in his punitive analysis
13 in which, it's an old case and it basically says, if you
14 know there's a road there, there's a question there, you
15 put a gate across it that's willful, bam, you get punitive.
16 That's what he's arguing. Old case. Don't think there's
17 any dispute. That's what it says. Factually Mr. Davis'
18 argument, same thing here. They knew it was there. It was
19 being back and forth, back and forth, if negotiations don't
20 go the right way, bam, they put a fence. They explained
21 their rationale for doing it. I didn't find that overly
22 persuasive given the time frame of negotiations and what
23 had just occurred.

24 As we all know, punitive got way out of hand back in
25 the '80s and the court then started giving us guidance on

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1 how to award punitive damages. We got all the federal law
2 and we got state Gamble case and all the progeny of that,
3 the tweak factors. Mr. Davis I think is arguing old case
4 controls because this is a specific punitive, and stop me
5 if I'm wrong.

6 MR. DAVIS: That's correct.

7 THE COURT: This is a specific punitive case on
8 this kind of case. I'm not entirely certain that's right,
9 because I think there can be a distinction. I think that
10 case might go just as to a finding of punitive, not the
11 calculation of punitive damages. So if we say and my
12 reasoning was all the old case does is it says if there are
13 facts that indicate you know there's a road, you put a gate
14 across it, that satisfies the willful, you give punitive
15 damages. But then we come to the Gamble factors. The
16 Gamble factors and a case or two after talk about a number
17 of -- there's five or seven factors or things that you're
18 supposed to talk about in assessing. It's more towards or
19 part of them are to the dollar amount as opposed to the
20 culpability. In our testimony at that point at the trial,
21 the testimony we had was is we are out of somewhere, we do
22 this, this is our business, we know how to do it, we're
23 sophisticated business, we do all this stuff, we do this.
24 There was no testimony about their net worth that said
25 we're worth a million dollars, we're worth \$200 or \$300.

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1 Now as I read Gamble and the other cases, it says here's,
2 here's the factors, you don't necessarily have to have an
3 ironclad finding on all of them. That's my first question.
4 Do you have to have a specific finding of net worth before
5 you can issue punitive damages?

6 MR. STEPP: I'm not sure. My argument here
7 simply is that there's really no consideration of any of
8 the Gamble factors in the record and that would have been
9 the Plaintiff's burden to introduce that evidence. My
10 argument is the Court didn't have sufficient information to
11 determine.

12 THE COURT: Mr. Davis, your argument is the old
13 case, I'm assuming, don't let me put words.

14 MR. DAVIS: It is.

15 THE COURT: Old case assumes. All right. Let's
16 go back then, because I want to do this by analogy. I was
17 a real estate litigator as an attorney. Occasionally I had
18 a punitive case, but when we had those, and we always had
19 two hearings, because you had to find liability before you
20 could find punitive, right? Is that how you do it? Is
21 that now it's normally done now?

22 MR. STEPP: The defendant has a right for
23 bifurcated proceeding or not. It's really up to the
24 defendant whether he wants to separate it out or not, but
25 sometimes there are multiple hearings, yes, sir.

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1 THE COURT: Could the trial judge say two
2 hearings? I'm going to find liability and then I'm going
3 to find -- and if I find for it, we're going to have
4 punitive damages hearing. Could I have ruled that back
5 when I did my original order?

6 MR. STEPP: I don't believe so. The short answer
7 is I'm not sure, but it would seem to me that that would
8 have to be resolved before you -- before like the plaintiff
9 rested or before you entered an order at all. You would
10 have to say I'm going to enter an order only as to
11 liability and if I find liability, then I'm going to call
12 everybody back for punitive damages hearing and put
13 everybody on notice of that before you decide. I think
14 that would have been okay, but I'm not 100 percent sure.

15 THE COURT:: We're here on Rule 59 where you said
16 you were punitive wrong.

17 MR. STEPP: Yes, sir.

18 THE COURT: Could I say I agree, you're
19 absolutely right and set a punitive damages hearing?

20 MR. STEPP: No, sir, because the plaintiff rested
21 and the plaintiff is now foreclosed from introducing any
22 further evidence. You can amend your order, but you can't
23 open the record.

24 THE COURT: Unless I said something, is that it?
25 I would had to have -- I would've had to have stated --

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1 your position is I would've had to have said that in court
2 before he rested?

3 MR. STEPP: Yes, sir, I believe that's right.

4 THE COURT: There is a case from Charleston where
5 Judge Scarborough, and this is not a punitive case, but it
6 involves attorney fees. Attorney fees go to prevailing
7 party. You're in trial, you don't know who the prevailing
8 party is, right? The judge hasn't ruled.

9 MR. STEPP: Right.

10 THE COURT: I believe what happened in the case
11 was Judge Scarborough said I'm going to take additional
12 affidavit testimony after trial you all can submit and I'll
13 make my decision on attorney fees. You're going to do an
14 affidavit and the parties said no you can't do that, you
15 got to do it at trial and you can't do it by affidavit. I
16 believe they said yeah you can. So this is the issue I
17 want you all to research. It's sort of, almost like Star
18 Trek, that chess they played on three-pegs.

19 MR. STEPP: Three-dimensional chess.

20 THE COURT: There's three ways this can come out.
21 If his argument is old law is good law and blocking
22 easements or road are a case all to themselves for
23 punitives and we ain't got to mess with all this new
24 fangled stuff, that could be one outcome. Second outcome
25 could be Gamble says five or seven factors that talk about

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1 what they did, what they knew, culpability, sophistication,
2 net worth, all this stuff, and I believe the law says you
3 ain't got to have findings specifically on the law. This
4 is what I'm asking you all to read. Is it, is it fatal
5 that there was no question asked about how much you all
6 have specific dollar wise, because there was testimony that
7 we own other property, we do this business, this is the
8 business we're in, we own other property. Is it fatal for
9 an award of punitive damages that no specific dollar amount
10 of net worth is elicited before person seeking punitive
11 rested.

12 I also want to know what you all think my authority
13 is. At trial could I have said after everybody rested I
14 don't know if you're entitled to punitives or not. I
15 haven't even decided if you've won the case. Could I have
16 said at that point I'll find liability and then if I find
17 you're entitled to punitives we'll do a second hearing and
18 if I could have done that then, why can I not now under
19 Rule 59 say you're right, that's what I should have done.
20 We're going to go back and we're going to have a separate
21 hearing on punitives in which we'll ask all of these
22 questions, you can ask whatever you all want to, present
23 whatever evidence, and then I can award up or down based
24 on what the evidence is.

25 MR. STEPP: I understand.

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1 THE COURT: Does that kind of make sense?

2 MR. DAVIS: I understand.

3 MR. STEPP: Yes, sir.

4 THE COURT: What the questions are?

5 MR. STEPP: Yes, sir.

6 THE COURT: Because I'm not sure on that issue.

7 I know what Gamble says. I know you don't have to do
8 all -- have a dollar amount, normally you bifurcate it or
9 you do it separate, so anyway. Anything further?

10 MR. STEPP: Nothing for the Defendant, Your
11 Honor.

12 MR. DAVIS: I have just two brief things. In the
13 Defendant's motion there was a paragraph that dealt with
14 whether Mr. Meeler was an expert witness or not and they
15 were indicating that he was not an expert witness. He's
16 one of the two surveyors. On page 168 of the deposition
17 the question at that time on the testimony of Mr. Meeler
18 dealt with the admissibility of plats done by
19 Mr. Collingwood, other plats did not show a road and at
20 that time the Court said we're going to allow that
21 testimony because he is an expert and so my position is in
22 fact he was. The Court had declared him an expert on that
23 particular question. So that's my response to that
24 particular item. Second deals with the argument that the
25 Defendant has in regard to the plat just showing 50-foot

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1 road area, and that's a problem because it just does that.
2 As the order indicates that you don't have to have meets
3 and bounds to describe a road. The court has equity power
4 to determine a road that's evidenced in this file,
5 substantial evidence, that you can determine what the width
6 of the road was. The case of Walker versus Guinyard
7 indicates that for a road to be there it doesn't have to
8 be -- it could be classified as unopened. It doesn't even
9 have to ever been used. So there's clear facts in the case
10 and case law indicating just because it says a road does
11 not mean it's not, it does not give the grantee access over
12 that particular area. I think that's all I have, Your
13 Honor.

14 THE COURT: The plats says 50-foot road. It
15 doesn't say 50-foot dirt or 50 feet of his property. It
16 says 50-foot road. I want to follow up on one last
17 argument. Assume it was a mistake. Is mistake a defense?
18 Tell me how a mistake is a defense.

19 MR. STEPP: I don't regard the issue as being one
20 of mistake. It's an issue of intent. We're all familiar
21 with contract cases where you got unilateral or mutual and
22 was it induced and all this sort of stuff and you get to a
23 result that tells you whether a part of contract is
24 enforceable or not enforceable, but here the fact that it
25 was a mistake, I would argue simply negates any intention

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1 by the grantor to create easement rights. That's my
2 argument.

3 THE COURT: Because I think the surveyor or two
4 of yours said it probably was just a mistake. So the
5 mistake then had to be, by process of elimination,
6 Collingwood's and/or McGee's, right? Because Collingwood
7 wrote it, he's the one that put it on the survey and McGee
8 is the one who signed the deed incorporating and looking at
9 it. Anything further?

10 MR. DAVIS: No, Your Honor.

11 MR. STEPP: Are you going to -- I know you
12 carefully clarified a couple of things on the record. If
13 you want these briefs, when do you want the briefs done?

14 THE COURT: I was just getting ready to talk
15 about that. If Madame Court Reporter will do the normal
16 drill, if you will send me the original transcript for
17 filing, when you send it to me, copy, do you all want
18 one --

19 MR. STEPP: We just need one copy.

20 THE COURT: Then send a notice to Mr. Stepp and
21 send notice to Mr. Davis, copying them that you said Judge
22 here's the original thing. That starts your 45-day period,
23 because that's how they've set it up in the new state
24 computer system to order a transcript and send me a memo.

25 MR. DAVIS: From the date we receive the

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1 transcript?

2 THE COURT: No, no, no. Your 45 days from when
3 you get the notice that the original is done, because you
4 can't wait four weeks and ask for a transcript and then say
5 my 45 days is right now. 45 days starts running when she
6 sends it in.

7 MR. DAVIS: As long as I have notice.

8 THE COURT: That's what I'm saying. She's going
9 to send you the courtesy copy that it's coming to me. Now
10 as always if there's an issue, if Madame Court Reporter
11 gets hyper, industrious and sends you all out a letter
12 Monday which makes the order due like Christmas Eve and you
13 all want to get together and say please don't make us do
14 the order by Christmas Eve, whatever it is, just send me an
15 e-mail. All we want to do is just keep a target date on
16 it, that it's just not out there, okay.

17 MR. STEPP: I'm sorry, I think I got confused.
18 We're going to get notice that the transcript is ready and
19 then within 45 days what is it that you want?

20 THE COURT: You're supposed to send a memo
21 addressing these couple of questions.

22 MR. STEPP: That's good. Thank you.

23 MR. DAVIS: Your Honor, in other words, really
24 during that 45-day period there would be a revision to the
25 order in regards to the actual notice language and number 2

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1 the brief on the question of punitive that you raised?

2 THE COURT: Yes. I think it would probably be
3 good in your memos to say at the hearing this is what I
4 understood you to clarify on actual notice, on that, and on
5 the surveyor if you want to raise that issue, and then on
6 these other issues as to punitives or anything else that we
7 talked about, I'll be glad to look at it. Anything
8 further?

9 MR. DAVIS: No, Your Honor.

10 MR. STEPP: Thank you, Your Honor.

11

12 (WHEREUPON, Court Exhibit No. 1
13 was marked for identification
14 only.)

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18 At this time, the hearing is concluded.

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CERTIFICATE OF REPORTER

I, Kathryn J. Lindler, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing testimony was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the witness was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the witness and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of November, 2013, at Columbia, Richland County, South Carolina.


Kathryn J. Lindler
Notary Public for South Carolina
My commission expires June 4, 2018



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master In Equity

Case No. 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy,

Respondent,

vs.

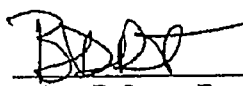
The Storage Center – Platt Springs, LLC,

Appellant.

CERTIFICATE OF COUNSEL

As required by Rule 210 SCACR, the undersigned certifies that this Record on Appeal contains all material relevant to the question before this Court and not any other material.

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SC Court of Appeals

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The Storage Center – Platt Springs, LLC,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THE EXISTENCE OF AN IMPLIED EASEMENT BASED ON A DEED THAT DESCRIBED THE PROPERTY BY REFERENCE TO A PLAT WITH A "50' ROAD" NOTATION OUTSIDE OF THE BOUNDARY LINES OF THE PROPERTY CONVEYED AND SURVEYED?
2. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THE EXISTENCE OF AN IMPLIED EASEMENT WHEN THE COMMON GRANTOR'S REPRESENTATIVE TESTIFIED THAT THERE WAS NO INTENT TO CREATE AN EASEMENT OR ROAD, WHEN NO ROAD WAS EVER CREATED, AND WHEN SUBSEQUENT PLATS NEVER SHOWED A ROAD?
3. DID THE MASTER-IN-EQUITY ERR IN AWARDING ACTUAL DAMAGES WHEN NO EASEMENT RIGHTS OF RESPONDENT HAVE BEEN VIOLATED AND PUNITIVE DAMAGES WHEN THERE IS NO EVIDENCE OF REPREHENSIBILITY OR EVIDENCE SUPPORTING THE RATIO BETWEEN ACTUAL AND PUNITIVE DAMAGES, AND WHEN THERE ARE NO COMPARABLE CASES WITH COMPARABLE PUNITIVE DAMAGE AWARDS?

STATEMENT OF THE CASE

This dispute is about the existence of an implied easement. Respondent David R. Gooldy ("Gooldy" or "Respondent") and Appellant The Storage Center – Platt Springs, LLC ("The Storage Center" or "Appellant") are owners of adjacent property located on South Lake Drive in Lexington County, South Carolina. Prior to the filing of this lawsuit, Gooldy was using The Storage Center's land that abuts the southern side of Gooldy's Parcel as a driveway. On February 1, 2010, Gooldy filed a lawsuit against The Storage Center after The Storage Center closed off its property, thereby preventing Gooldy from using it as a driveway. (R. pp. 35 - 41.) In his lawsuit, Gooldy asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by Prescription, (3) Estoppel – Temporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. (*Id.*) Gooldy argues that he is entitled to an easement over The Storage Center's property because his deed, along with the deeds of his predecessors-in-title, references a plat that contains a notation that says "50' road" outside of his boundary lines of the property surveyed on the plat. (R. pp. 37-38, ¶¶ 6-9.)

On February 25, 2010, Gooldy filed a motion for preliminary injunction, seeking an order preventing The Storage Center from interfering with his access to the driveway. (R. pp. 49 – 51.) In opposition to Gooldy's motion, The Storage Center filed the affidavit of Carroll McGee, who is a partner of Congaree Associates that was the common grantor of both parties' parcels of land. (R. pp. 59 - 61.) In his affidavit, McGee stated that Congaree Associates did not cause the at-issue plat to be prepared or that Congaree Associates ever subdivided its property and sold lots by reference to a plat showing a

road. (R.p. 59, ¶¶ 2-5.) Most importantly, McGee swore that Congaree Associates never built a road on the property and never gave Gooldy or any prior owner permission to encroach on its land. (R. p. 60, ¶¶ 6, 7.) On April 23, 2010, the circuit court denied Gooldy's motion on the grounds that he "failed to make a sufficient showing of irreparable harm" and that he "has access to his property." (R. p. 1.) The circuit court also referred this matter to the master-in-equity ("Master"), upon the consent of both parties. (*Id.*)

In response to Gooldy's complaint, The Storage Center filed an answer, in which it asserted several affirmative defenses and pled a counterclaim against Gooldy for encroaching and trespassing on The Storage Center's property. (R. pp. 42 - 48.) Specifically, The Storage Center denied that any road ever existed and also denied that Gooldy had any easement rights over property owned by The Storage Center. (R. pp. 42 - 44, ¶¶ 6-27.)

After the parties engaged in discovery, both parties filed motions for summary judgment. (R. pp. 52 - 53; R. pp. 54 - 73.) To support its motion for summary judgment, The Storage Center relied on the previously filed Affidavit of Carroll E. McGee and the Affidavit of James T. Loflin (R. pp. 59 - 72.) James Loflin acquired title to the property from Congaree Associates in 1986 and was a predecessor-in-title to Gooldy. (R. p. 63, ¶ 2.) In his affidavit, Loflin states that he used the property that abutted the southern side of the parcel presently owned by Gooldy, but that "[a]t all times, the strip of land I used to access my property was the property of Congaree Associates." (R. pp. 63 - 64, ¶¶ 3, 6.) Moreover, he testified that he never owned the strip of land at issue and that he never acquired an easement to it. (R. p. 64, ¶ 7.) He further testified that when he conveyed the

parcel to his wife, he did not convey any easement rights with respect to the strip of land. (R. p 64, ¶¶ 7-9.) Finally, he testified that when his wife conveyed the parcel, she did not convey any easement rights because she never had any to convey. (R. p 64, ¶¶ 10-11.)

The Master denied the cross motions for summary judgment. (R. p. 2.)

On October 25, 2012, the case was tried before the Master. The Master granted a directed verdict to The Storage Center with respect to Gooldy's claim for easement by prescription because Gooldy failed to establish use that was adverse or under a claim of right for twenty years. (R. pp. 193:3 – R. pp. 203:19.) On July 29, 2013, the Master issued his order, in which he found and concluded (1) that Gooldy has access over the "road that borders the Plaintiff's property on the southern side"; (2) that Gooldy is entitled to \$2,500 for lost income when he had to construct an alternate makeshift entrance; and (3) that Gooldy is entitled to \$7,500 in punitive damages because The Storage Center prevented Gooldy access to the strip of land. (R. pp. 3 - 22.)

The Storage Center timely filed its motion to alter or amend the judgment on August 12, 2013. (R. pp. 74 - 84.) In its motion, The Storage Center set out numerous grounds as to why the Master should reconsider the Trial Order. (*Id.*) On November 15, 2013, the Master heard The Storage Center's motion. (R. pp. 407 - 454.) On March 13, 2014, the Master issued its Order denying The Storage Center's motion to reconsider. (R. pp. 23 – 32.)

The Storage Center is appealing both the Trial Order filed on August 1, 2013, and the Order filed on March 13, 2014. On April 9, 2014, The Storage Center timely filed and served its notice of appeal.

STATEMENT OF THE FACTS

I. The Acquisition of Parcels by Gooldy and The Storage Center

Gooldy's property consists of approximately 0.68 acres, ("Gooldy Parcel") and was acquired by him on or about January 24, 2002 (R. pp. 375 - 376.). Gooldy operates his chiropractic practice from this location. (R. pp. 115:16-18.). The Storage Center owns property that surrounds Gooldy's Parcel on three sides ("Adjoining Property"). The deed conveying the property to Gooldy describes the property being conveyed by reference to a plat entitled "Plat Prepared for James Loflin" ("Loflin Plat"). (R. pp. 375-376.) The Loflin Plat was prepared on December 10, 1985 and was recorded in the Office of the Register of Mesne Conveyances for Lexington County on September 11, 1986 in Plat Book 212-G at Page 204.¹ (R. p. 377.) The Loflin Plat contains the notation "50' ROAD" on a portion of the Adjoining Property.² (*Id.*) The purported "road" is not surveyed and its beginning, end, boundaries and other dimensions are not shown on the Loflin Plat. (*Id.*) At the time the Loflin Plat was recorded, the Adjoining Property was owned by Congaree Associates, which was also the grantor of the property to Loflin that is now the Gooldy Parcel. (*See id.*; R. pp. 394 - 395.) The Adjoining Property is now owned by The Storage Center. (R. pp. 392 - 393.) The Loflin Plat was only a survey of the property being conveyed to Loflin, *i.e.* the Gooldy Parcel, and was not a survey of the surrounding property. (R. p. 212:8-14; R. p. 295:15-17.) Every deed

¹ The Loflin Plat was revised twice before the parcel was recorded on September 11, 1986. (R. p. 377.) First, it was revised on April 4, 1986 to show the "proposed dwelling, well, septic tank & tile field." (*Id.*) Second, it was revised on August 12, 1986 to show "20' strip along the northern property line." (*Id.*)

² The Loflin Plat does not depict all of the Adjoining Property or any of its boundaries except those shared with the Gooldy parcel.

in Gooldy's chain of title describes the property by reference to the Loflin Plat. (R. pp. 379 - 391.)

In 2007, Congaree Associates sold the Adjoining Property to The Storage Center. (R. pp. 392 - 393.) Prior to the sale, Frank Strasburger of Congaree Associates had the Adjoining Property surveyed and a plat prepared. The result was the "Strasburger Plat," which was drawn by Charles Meeler on October 26, 2006 and recorded in the Office of the Register of Deeds for Lexington County on October 27, 2006 on Slide 918 at Page 2. (R. pp. 396-398.) The Strasburger Plat does not show any road adjacent to the Gooldy Parcel or anywhere else on the Adjoining Property, and does not contain any references to an easement across the Adjoining Property in favor of Gooldy or anyone else. (*Id.*) When conveyed by Congaree Associates to The Storage Center, the Adjoining Land was described by reference to the Strasburger Plat, which was incorporated for descriptive purposes into the deed from Congaree Associates to The Storage Center. (R. pp. 392 - 393.)

II. Dispute Arises Between Gooldy and The Storage Center

Prior to the filing of this lawsuit, Gooldy was using The Storage Center's land that abuts the southern side of Gooldy's Parcel as a driveway. The present dispute arose when The Storage Center informed Gooldy that he could not use The Storage Center's property to access his parcel. The Storage Center attempted to settle the property dispute with Gooldy through a shared access agreement and a cash payment. (R. pp. 338:6 - 340:21.) These efforts to settle continued for approximately two years; however, Gooldy never agreed to any of The Storage Center's offers. (R. pp. 340:22 - 341:5.)

After its several attempts to resolve the matter, The Storage Center informed Gooldy in July 2009 that he did not have permission to use its land as a driveway and installed a wire fence to prevent entry. (R. p. 125:3-5; R. p. 166:3-11; R. p. 341:6-14.) At all times, The Storage Center was acting under its good faith belief that it had the unfettered right to control all of the property it owned. (R. p. 356: 8-12.) Moreover, The Storage Center did not prevent Gooldy from accessing his property, as was recognized by the circuit court when it denied Gooldy's motion for preliminary injunction. (R. p. 1.) Gooldy always has had the ability to access his property from its northern side, as well as directly from Highway 6. (R. pp. 172:22 – 173:1.)

III. Evidence Relating to the Alleged 50' Road and Easement

There is no fifty foot wide road adjoining the Gooldy Parcel. (R. p. 404; R. p. 378; R. pp. 160:14- 161:2) Likewise, there was no intent by Congaree Associates to grant Loflin or his successors in title any right to use any portion of the Adjoining Property for ingress, egress, or any other purpose. (R. p. 224:16-20.) It is undisputed that Congaree Associates did not intend the reference to the Loflin Plat in the deed to James Loflin, to create an easement. (*Id.*) The deed from Congaree Associates to Loflin referred to the Loflin Plat only for the purpose of describing the property being conveyed to Loflin, and only conveyed the property within the boundary lines shown on the Loflin Plat, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:13; R. pp. 394 – 395.) The subject of the "road" or any easement rights was never even mentioned or discussed. McGee testified: "Let me make this clear. I never discussed that road with Mr. Loflin or the successors to him. It never came up. Nobody ever asked me." (R. p. 224:12-15.) McGee's testimony is unequivocal that by delivering the deed Loflin to be recorded, Congaree Associates did

not intend to create an easement. (R. pp. 228:13 – 229:13.) Additionally, Congaree Associates would not have incorporated the Loflin Plat in the legal description of the deed to Loflin if it knew that one of Loflin's successors would claim rights to any easement in connection with the Gooldy Parcel. (R. p. 229:17-21.)

In addition to McGee's testimony, plats of the Adjoining Property made subsequent to the conveyance to Loflin also establish that there was never an intent to create or convey any easement rights in favor of Loflin and his successors. Robert Collingwood, the same surveyor who prepared the Loflin Plat, drew plats of the Adjoining Property for Congaree Associates in 1998 and 2002. (R. pp. 399-405; R. p. 403.) Those plats, which reflect surveys of the property of Congaree Associates itself, do not show any road, and do not contain any reference to any easements, rights of way, or any other rights favoring the owner of the Gooldy Parcel. (*Id.*) In fact, the 2002 plat was revised on March 3, 2003 (nearly one year after Gooldy purchased his land) to show easements. (R. p. 403.) Again, Collingwood did not make any references to the alleged road or easement on the revised 2002 plat. (*Id.*) Additionally, both the Strasburger Plat and the Lexington County TMS map show no references to the alleged 50' road. (R. pp. 396-398; R. p. 402.)

The 1998 and 2002 plats prepared for Congaree Associates were recorded in the Lexington County records. On the other hand, the only recorded plat containing any reference to the alleged road is the Loflin Plat. Unlike the 1998 and 2002 plats, the Loflin Plat was not a survey of Congaree Associates' property, was not a survey of the road, and was not prepared for the benefit of Congaree Associates. Collingwood also prepared a proposed plat drafted before the Loflin Plat. (R. p. 405.) But unlike the 1998

and 2002 plats, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a contemplated project that Congaree Associates did not pursue or construct. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat. (R. p. 206:16-21; R. p. 214:24-25.) In sum, Congaree Associates never caused a plat to be prepared and recorded that contained any reference to a 50' road.

The absence of any intention by Congaree Associates to create a road is most starkly evidenced by the fact that no road has ever existed. Neither Congaree Associates, nor any subsequent owner ever caused a road to be built. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) Consequently, no road existed at the time Gooldy purchased his parcel. (R. pp. 160:14-161:2.) None of these recorded plats shows a survey of a road. Charles Meeler, who drew the Strasburger Plat and has been a registered surveyor for twenty-four years (R. p. 244:17-20), testified as follows:

I didn't feel like there was a road there. In my professional opinion, there was no road. Lexington County required road names. I couldn't find a — I couldn't find a name for that alleged road, so, you know, to my knowledge and all the research work I did, there was no road existed there. South Carolina DOT had no record of a road there. Lexington County had no record of a road there. So I just felt like that was a part of [Congaree Associates'] property.

(R. p. 249:13-22.) Meeler's manifestly correct conclusion that no road existed was based on his review of the Loflin Plat, the 1998 and 2002 plats drawn by Collingwood, and Lexington County's TMS map that showed no road. (R. p. 265: 14-18; R. p. 271: 9-16.)

The lack of intent to create or convey any easement rights is evidenced by (1) the uncontroverted testimony of Carroll McGee of Congaree Associates that no easement was intended and none was ever even discussed, (2) the subsequent plats drawn by

Collingwood (the preparer of the Loflin Plat), Meeler, and Lexington County, and (3) the fact that no road ever existed.

IV. Expert Testimony of Rosser W. Baxter Jr.

Rosser W. Baxter Jr. is The Storage Center's well qualified expert. Baxter has been a surveyor for forty-seven years and a registered surveyor for thirty-three years. (R. p. 275:9-10; R. p. 280:2-9). In preparation for his testimony in the case, Baxter reviewed all of the relevant plats,³ deeds,⁴ and documents. Baxter also visually inspected the property (R. pp. 287:12 – 288:14; R. pp. 305:14- 307:18). Based upon this extensive body of information, as well as his forty-seven years of experience as a surveyor, Mr. Baxter testified as follows:

1. The notation of the "50' Road" on the Loflin Plat is not a survey of a road (R. p. 291:14-17; R. p. 296:21-23; R. p. 302:19-21), in part, because it fails to show any dimensions of the road (R. p. 301:14-17).
2. The "50' Road" notation on the Loflin Plat did not create a road (R. p. 291:18-23), and it was an error for the Loflin Plat to have included a reference to the alleged 50' Road when such a road never existed (R. p. 301:7-13; R. p. 312:12-15).
3. The Loflin Plat fails to meet surveying practices and standards by including the "50' Road" notation when it is not part of the Gooldy Parcel and such a road did not exist (R. pp. 302:19 – 303:2).

³ R. p. 377 & R. p. 396-398, R. p. 399-401, R. p. 403 & R. p. 404.

⁴ R. p. 379 - 391 & R. p. 392 – 393.

4. The "50' Road" notation on the Loflin Plat does not mean that, as a matter of surveying principles that a 50' road actually exists on the property (R. pp. 291:24 – 292:3).
5. The Loflin Plat is only a survey of the 0.68 acres conveyed to Loflin from Congaree Associates and not a survey of anything outside the 0.68 acres (R. pp. 292:24 – 293:10; R. p. 294:3-6).
6. The Loflin Plat is an individual lot plat, not a subdivision plat (R. p. 296:8-13).
7. The Loflin Plat does not indicate whether the alleged road is public or private (R. p. 297:23-25).
8. The Loflin Plat does not show any access from the Gooldy Parcel to the alleged 50' road (R. p. 298:8-14) and creates no rights of access in the owner of the Gooldy Parcel (R. p. 315:2-7) and that even if the alleged road existed, the Loflin Plat does not establish that the owner of the Gooldy Parcel had the right to use the road (R. p. 298:15-18).
9. The Loflin Plat is the only public record he viewed that made any reference to an alleged 50' road (R. p. 308:13-22).

Regarding further insufficiencies contained in the Loflin Plat, Baxter testified that the Loflin Plat does not identify Congaree Associates as the owner of the Adjoining Property. (R. pp. 298:19 – 299:21.) Baxter further testified that it is improper for a surveyor to reflect conditions on property that adjoins the property being surveyed. (R. p. 300:3-14.) Gooldy offered no testimony – expert or otherwise – to dispute Baxter's expert opinion testimony.

V. Testimony Regarding Damages

Gooldy sought the following as damages: (1) reimbursement for his labor and costs in creating a “makeshift road” (R. pp. 133:2 – 134:1); (2) compensation for his lost income allegedly due to the barricading of access to the driveway (R. p. 139:2 – 10); and (3) punitive damages (R. pp. 35 - 41.). The only testimony regarding damages was proffered by Gooldy, himself. Regarding the reimbursement costs, he offered no calculation as to how his labor spent creating the “makeshift road” totals \$5,000 and offered no time records or receipts to substantiate the claim. (R. p. 171:6-14.) He also asserted that the “[c]onstruction of the barrier on access to the property” caused him to lose income from his chiropractic practice. (R. p. 138:20-23.) After the trial, the Master awarded Gooldy actual damages of \$2,500 for lost income due to his construction of the “makeshift” road. (R. p. 22.) Additionally, the Master granted a punitive damages award of \$7,500. (*Id.*)

STANDARDS OF REVIEW

I. Standard of Review for Existence of an Easement

“The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury.” *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 482 (2005). However, an appellate court must correct any error of law and factual finding when “there is no evidence that reasonably supports those findings.” *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010) (quoting *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997)).

When applying this standard to the present case, it is clear that the Master committed an error of law by failing to apply *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965), which is controlling precedent as to whether reference to a plat in a deed incorporates or conveys anything other than the metes and bounds description of the property. Additionally, there is no evidence that reasonably supports the finding that the parties intended to create an easement. Therefore, this Court should reverse the Master's Orders.

II. Standard of Review for Punitive Damages Award

"[A]ppellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009) (citing *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001)); see also *Hale v. Finn*, 388 S.C. 79, 88, 694 S.E.2d 51, 56 (Ct. App. 2010).

When applying this standard to the present case, it is clear that the Master erred in awarding punitive damages. The record does not contain any evidence regarding the reprehensibility of The Storage Center's conduct. Moreover, the record does not support the ratio of actual to punitive damages as awarded by the Master. Finally, there are no comparative penalties that exist with respect to this matter. For these reasons, this Court should reverse the Master's award of punitive damages.

ARGUMENT

The Master erred in finding and concluding that an implied easement was created by the Loflin Plat because the deed incorporated the plat solely for the purposes of describing the boundaries of the property. South Carolina law is clear that easements

shown on a plat do not become part of the deed when the plat is incorporated for the purpose of describing the property conveyed. *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965). In addition to failing to apply this principle of law, the Master ignored the uncontradicted testimony of Carroll McGee, the other plats that showed no road, and the fact that no road has ever existed. For these reasons, this Court should reverse the Master.

I. The Master-in-Equity Committed an Error of Law in Finding the Existence of an Implied Easement Based on the Loflin Plat.

Incorporation of a plat into a deed in order to describe the property does not serve to convey or incorporate easements or other encumbrances on the plat. To the contrary, “[w]hen a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.” *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006). Thus, while the deed incorporates the plat for the purpose of showing the boundaries of the property, it does *not* incorporate the plat for any other purpose.

The South Carolina Supreme Court addressed precisely this issue in *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965). In *Lancaster*, a deed referenced a plat that depicted a publicly recorded gas pipeline easement that ran across the owner’s property. *Id.* at 466-67, 144 S.E.2d at 210. The issue was whether the depiction of the easement on the plat that was incorporated into the deed was sufficient to give notice to the purchaser of the existence of the easement. *Id.* at 466, 144 S.E.2d at 210. The supreme court held that while “the reference to the recorded plat made it a part of deed *for the purpose of showing the boundaries, metes, courses, and distances of the*

property conveyed,” id. at 469, 144 S.E.2d at 211 (emphasis added), it did not make the easement shown on the plat part of the deed. In other words, the plat did not become part of the deed to reflect the easement even when the easement existed within the boundary lines on the plat. *Id.* This is true even though (1) the easement was properly recorded in the public records, (2) ran across the owner’s property, and (3) was depicted on a recorded subdivision plat which was incorporated into the deed’s legal description.⁵ *Id.*

The supreme court concluded, as follows:

A plat . . . is not an index to encumbrances, and the mere reference in a deed . . . to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of the clear intention that it so operates.

Id. Consequently, a plat that is referenced in a deed for descriptive purposes becomes a part of the deed *only* to provide the boundaries of the property conveyed, and therefore, references to easements on the plat do not become part of the deed, as a matter of law.

When this principle is applied to the present case, it is clear that the reference on the Loflin Plat to the “road” did not convey any rights regarding the “road” to Loflin or to any subsequent purchaser. Like the deed in *Lancaster*, the deed to Loflin (and the deed to Gooldy) incorporates the plat solely for descriptive purposes. Thus, Congaree Associates cannot as a matter of law be deemed to have created a right in a non-existent road because it signed a deed that incorporated a plat that showed a “road” that was not part of the description of the property being conveyed. The incorporation of the Loflin

⁵ In contrast, Gooldy’s alleged easement is implied, and therefore, not recorded in the Lexington County records. His alleged easement does not run across or burden his property. Rather, it runs outside of the boundary lines of his property as depicted on the Loflin Plat. Finally, Gooldy’s alleged easement was depicted on an individual lot plat, not a recorded subdivision plat.

Plat only serves to show that the parties intended to convey the 0.68 acres within the boundary lines on the plat. As a matter of law, the deed incorporates the Loflin Plat only to the extent of incorporating the 0.68 acres within the boundary lines. The Master could not therefore look outside of the boundary lines on the Loflin Plat to infer the existence of a road or an easement to use it. Therefore, the 50' road notation did not become part of the deed to Loflin. As a result, no basis exists to conclude that Gooldy received any rights in the alleged 50' road by means of the plat.⁶ Gooldy's claim for an implied easement fails as a matter of law, and the Master committed an error of law by holding that Gooldy has an implied easement.

II. The Master-in-Equity Erred in Finding and Concluding an Implied Easement When the Common Grantor Testified that There Was No Intent to Create an Easement or Road and When No Road Was Ever Created.

The Master not only disregarded the *Lancaster* rule, but also disregarded uncontroverted testimony that there was no intent to create an easement at the time of severance. The intent at the time the deed was executed is of paramount importance when determining whether an implied easement exists. Here, the uncontroverted evidence establishes that the common grantor did not intend to create an easement. Therefore, the Master erred in finding to the contrary.

⁶ Because Congaree Associates only conveyed the 0.68 acres within the boundary lines on the Loflin Plat, Loflin and his successors had no rights with respect to the property surrounding the 0.68 acres. Therefore, Congaree Associates had every right to deny access and block any alleged rights of way at any time it owned the surrounding parcel, including the day after it executed the deed to Loflin.

A. The Creation of an Easement is a Question of Intent.

Easements by implication "must be determined as of the time of the severance of the ownerships of the tracts involved." *Boyd v. BellSouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006). Courts examine the intentions of the parties to the conveyance to determine whether an implied easement exists. See *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 235, 662 S.E.2d 452, 456-57 (Ct. App. 2008) (providing "the intentions of the parties to the transaction are the overriding focus when examining implied easements."). Courts must strictly construe implied easements because they are not favored "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." *Inlet Harbour v. S.C. Dep't of Parks, Recreation, & Tourism*, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008).

When analyzing whether an implied easement exists, courts may look to the deed, in addition to other evidence of intent. *Inlet Harbor*, 377 S.C. at 91-92, 659 S.E.2d at 154. (rejecting argument that court should only look to plat reference in deed to determine whether parties intended to create an implied easement). When examining a deed, the court must focus on the intention of the parties. See *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391 (1987). "One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 570, 635 S.E.2d 660, 665 (Ct. App. 2006) (internal quotation marks omitted). Consequently, courts must construe the deed "as a whole, and effect given to every part thereof, if such can be done consistently with the law." *Id.* at 571, 635 S.E.2d at 665.

“The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.” *Id.* at 574, 635 S.E.2d at 667 (quoting *Lancaster*, 246 S.C at 468, 144 S.E.2d at 211 (emphasis added)). Therefore, a court is not limited to the deed to determine intent. It can look to “the circumstances surrounding its execution.” Additionally, it can look to evidence after the execution of the deed because the subsequent evidence may show that prior intent to create an easement never existed.

B. The Record is Devoid of Any Evidence of an Intent to Create an Easement.

There is no evidence in the record that reasonably supports a finding that the common grantor had an intent to create an easement. To the contrary, the uncontroverted evidence establishes that there was never any such intent. First, the incorporation of the Loflin Plat into the deed does not evidence any intent. Second, the principal of the common grantor testified that there was no intent to create an easement at the time of severance. This testimony is only bolstered by the fact that no road was ever built, as reflected in plats drafted by the same surveyor who drafted the Loflin Plat. The record contains no evidence that there was any intent to create an easement.

1. The Deed Reveals the Lack of Intent to Convey an Easement.

As previously discussed, the *Lancaster* rule provides that easements on a plat do not become part of the deed, as a matter of law, when the plat is incorporated for descriptive purposes. *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211. The reference to the Loflin Plat in the deed to Loflin is therefore not evidence of intent to create an

easement. Congaree Associates' failure to do more than simply incorporating the plat for descriptive purposes evidences its lack of intent to create an easement. The Master erred in concluding the plat's incorporation created easement rights.

2. The Uncontroverted Testimony of the Common Grantor's Principal Underscores the Lack of Intent to Create an Easement.

Carroll McGee, the principal of Congaree Associates, unequivocally testified that there was never any intent to establish any easement rights when Congaree Associates conveyed the Gooldy Parcel to Loflin.⁷ It did not intend to create or convey any rights in the alleged 50' road to Loflin. (R. pp. 228:13 – 229:6.) By referencing the Loflin Plat, Congaree Associates only intended to convey the property within the boundary lines, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:12.) By allowing the deed that referenced the Loflin Plat to be recorded, Congaree Associates did not intend to create an easement. (R. pp. 228:13 – 229:13.) There is no evidence to the contrary. Therefore, no easement existed at the time Congaree Associates severed its parcel and sold the Gooldy Parcel to Loflin, and therefore, no easement exists today. The Master erred in finding otherwise.

⁷ The Master should have considered the testimony of Carroll McGee with respect to the intent surrounding the alleged easement. As discussed above, because (1) an implied easement "goes against the general rule that a written instrument speaks for itself []" *Inlet Harbour*, 377 S.C. at 91-92, 659 S.E.2d at 154, and (2) the intention of the parties referencing a plat in a deed must be "determined from the whole instrument and the circumstances surrounding its execution[.]" *Bennett*, 370 S.C. at 574, 635 S.E.2d at 667, the Court cannot limit itself to the deed to determine the parties' intent. *See also Inlet Harbor*, 377 S.C. at 93, 659 S.E.2d at 155 ("Thus, to the extent the [claimant of the easement] urges this Court to ignore everything except the deed's reference to a residential subdivision plat, this argument fails to remain true to the principles underlying implied easements.") The Court must consider any evidence that sheds light on the parties' intent.

3. No Road Has Ever Existed.

The lack of intent is most plainly evidenced by the fact that no road was ever constructed. Neither Congaree Associates nor any of its predecessors or successors in title ever caused a road to be built. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) No road existed at the time Gooldy purchased his parcel. (R. pp. 160:14-161:2.) None of the recorded plats shows a survey of a road. (R. pp. 396 - 398 & R. p. 399-401.) The Lexington County's TMS map shows no road. (R. p. 403.) The most recent surveyor of the subject property testified that no road existed (R. p. 249:10-22.), as did The Storage Center's expert (R. p. 301:7-13; R. p. 312:12-15). The Master erred in finding a road existed when there is no evidence in the record to support such a finding.

4. Subsequent Plats Show No Road.

Because no road has ever existed, it is not surprising that plats drawn after the Loflin Plat do not show any road or easement. Given that these plats were prepared for the owner of the property that supposedly contained the "road," they are strong evidence that Congaree Associates never intended to create any such road. Robert Collingwood, the surveyor who drew the Loflin Plat, subsequently drew two other plats of the subject parcels in 1998 and 2002 that did not contain any references to the alleged 50' road or any associated easements. (R. pp. 399-401 and R. p. 403.) In fact, the 2002 plat, which was drafted *after* Gooldy purchased his parcel in January of 2002, was revised in 2003 "to show easements," yet the revised plat shows no reference to the alleged 50' road or any associated easement. (R. p. 403.) Additionally, the Strasburger Plat drafted by Charles Meeler in 2006 did not include any references to the alleged 50' road or any

associated easement. (R. pp. 396-398.) Finally, Lexington County's TMS map, which was drafted in the 2000s, shows no road abutting the southern side of the Gooldy Parcel. (R. p. 402.) In sum, the deed's execution and subsequent actions support McGee's clear testimony that Congaree Associates never intended to create or convey in easements in favor of Loflin and his successors.

C. Any Presumption of Intent Was Rebutted by the Testimony of the Common Grantor's Principal.

To the extent that the reference to the Loflin Plat is evidence of intent, it at best creates only a *rebuttable presumption* of intent. Any such presumption was completely overcome by Carroll McGee's uncontradicted testimony that Congaree Associates did not intend to create or convey any easement rights to Loflin and his successors.

The Master erred in attempting to find evidence of intent by relying on cases that involve the creation of subdivisions. Deeds that reference plats that depict streets may convey to purchasers an implied easement over said streets. *See Bennett*, 370 S.C. at 594-95, 635 S.E.2d at 657-58. These easements arise in the context of subdivisions when developers divide their land, plat it into lots and streets, and then sell the lots with reference to the plat depicting the streets, thereby giving the purchasers an implied easement regarding those streets. *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965); *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008). However, these easements are created *only* when the developer *intends* to create these easements. *See Bennett*, 370 S.C. at 594-95, 635 S.E.2d at 657-58 (holding intentions of parties in incorporating plat in deed was to show the boundaries, metes, courses, and distances of conveyed property, not to represent or warrant the width of a right-of-way); 25 Am. Jur. 2d *Easements and Licenses*

§ 21 ("An easement will be implied from a map or plat *only if it was intended by the parties . . .*" (Emphasis added)).

Thus, even a subdivision plat that shows roads as part of the property being surveyed creates only a *presumption* that an easement is intended, which can be overcome by evidence that the developer did not intend to create such an easement. *Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 154-55 (holding that mere reference to plat in deed was insufficient to create presumption that grantors intended to convey easement over nearby road). After all, "the rule applied in *Blue Ridge* is nothing more than a presumption" that can be overcome by the developer's intent. *Id.*

In the present case, even if the Master could properly conclude that the Loflin Plat created a subdivision, only a presumption that an implied easement in favor of Loflin and his successors would arise. This presumption was clearly rebutted by the testimony of Carroll McGee when he testified that Congaree Associates had no intent to create or convey an easement to Loflin. (R. pp. 228:13 – 229:13.) Moreover, McGee testified that Congaree Associates would have not executed the deed that incorporated the Loflin Plat if it had understood that by doing so Loflin or any of his successors would claim that they had any easement rights because of the 50' road notation in the Loflin Plat, (R. p. 229:17-21.).

At best, Gooldy has offered evidence creating only a rebuttable presumption of an easement. This presumption is clearly overcome by the uncontroverted testimony of McGee and the other evidence discussed above. Consequently, the Master erred in finding an implied easement because the presumption was overcome as a matter of law.

D. The Master's Reliance on an Unrecorded Proposed Plat That Shows a Road Is Misguided.

The Master places great emphasis on an unrecorded proposed plat (R. p. 405) that shows a road to support his conclusion that Congaree Associates intended to create an easement. (R. pp. 6-7, 15-16; R. pp. 24-28.) However, this proposed plat (a) never received final approval from Lexington County, (b) was never recorded, and (c) reflects a project that Congaree Associates elected not to pursue. Congaree Associates never subdivided its land or sold lots referencing a recorded subdivision plat that contained any reference to a 50' road. (R. p. 206:16-21; R. p. 214:24-25.) The inclusion of a road on a *proposed plat* does not necessarily reflect any intent to create a road. Rather, it shows to the contrary because it demonstrates that while Congaree Associates considered creating a road, it elected not to do so. The absence of action by Congaree Associates to record the plat or to build the road should be inclusive as to its actual intent. Thinking about installing a road and intending to install a road are two very different concepts. The direct testimonial evidence from Carroll McGee is that Congaree Associates never built a road (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19), and it never intended to convey any easement rights to Loflin (R. p. 224:16-20). Any inference of an intent to the contrary gleaned from the proposed plat is wholly rebutted by the testimony of McGee.

III. The Master Erred in Awarding Actual Damages Because No Easement Rights of Respondent Have Been Violated and Punitive Damages Because the Record Lacks Evidence of Reprehensibility, Evidence Supporting the Ratio Between Actual and Punitive Damages, and Reliance on Comparable Cases with Comparable Punitive Damage Awards.

Because it was error to find the existence of an easement in favor of Gooldy, it was likewise error to award any damages to Gooldy. In the absence of a basis to award actual damages, it was error to award punitive damages. The award of both actual and punitive damages should be reversed on this ground.

Moreover, the punitive damages award does not pass constitutional muster. The test to ensure that a punitive damage award satisfies due process is three-fold, as announced by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and adopted by the South Carolina Supreme Court in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009).

First, the trial court must "consider the degree of reprehensibility of the defendant's conduct." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). "Second, the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award." *Id.* at 587-88, 686 S.E.2d at 185. In other words, the court must consider the ratio between compensatory damages and punitive damages. *Id.* at 588, 686 S.E.2d at 185. Finally, the trial court must "consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Id.* at 588-59, 686 S.E.2d at 185-86.

A. No Evidence Exists to Establish That Defendant's Conduct Was Reprehensible.

When considering reprehensibility, a court must analyze whether:

1. the harm caused was physical as opposed to economic;
2. the tortious conduct evidenced an indifference to or a reckless disregard for the health or safety of others;
3. the target of the conduct had financial vulnerability;
4. the conduct involved repeated actions or was an isolated incident; and
5. the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Mitchell, 385 S.C. at 587, 686 S.E.2d at 185. To the extent that there is any evidence in the record regarding these factors, it does not support an award of punitive damages. First, any alleged harm suffered by Gooldy was purely economic. Second, there is no evidence of any indifference to or a reckless disregard for the health and safety of others as the purported damage was purely economic. Third, there is no evidence that Gooldy was financially vulnerable. To the contrary, the evidence reveals that both Gooldy's income and patient counts increased from 2010 to 2011, and his income in 2011 was the highest gross income he had since 2005. (R. p. 176:3-13; R. p. 177:21-25; R. p. 178:12-18.). Fourth, there is no evidence that that conduct involved repeated actions.

The Master tries to avoid the last factor by stating that the barricading of access was akin to a "continuing nuisance" and that it "impacted the Plaintiff's land every single day since it stopped traffic every single day." (R. p. 31.) However, there is no evidence in the record that denying access "stopped traffic every single day." To the contrary, Gooldy built a "makeshift road" to avoid any such issue. The Master based his actual damages award on this "makeshift road" and granted Gooldy \$2,500 for the purported

loss income he experienced while building the road. (R. p. 19; R. pp. 31-32.) Moreover, the circuit court denied Gooldy's motion for preliminary injunction on the ground that "plaintiff has access to his property." (R. p. 1.) The record is replete with evidence that Gooldy and his patients had access to the property. It is devoid of evidence that traffic issues plagued Gooldy on a daily basis.

Finally, there is no evidence to support the Master's finding that the harm was the result of intentional malice, trickery, or deceit. "Malice is defined as the deliberate[,] intentional doing of an act without just cause or excuse." *Pallares v. Seinar*, 407 S.C. 359, ___, 756 S.E.2d 128, 131 (2014) (quoting *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 437, 629 S.E.2d 642, 649 (2006)). There is no evidence that Appellant acted without just cause given the uncertainty regarding the existence of an easement. The Storage Center blocked off access to its property to protect itself from liability. (R. p. 341: 10-14.) Blocking access was also necessary to prevent an easement by prescription from arising after the passage of time. Moreover, The Storage Center was acting, at all times, under its good faith belief that it had the unfettered right to control all of the property it owned. (R. p. 356:8-12.) It did not prevent Gooldy from accessing his property. (R. p. 1.) The Storage Center's action does not rise to the level to support a conclusion that it was acting with intentional malice. See *Jenkins v. Few*, 391 S.C. 209, 222, 705 S.E.2d 457, 464 (Ct. App. 2010) (finding defendant acted with "intentional malice" when he twice sabotaged plaintiff's fertilizer trucks and "express[ed] his desire to put [plaintiff] out of business")

In sum, the record does not support any finding that The Storage Center's conduct was reprehensible, and therefore, this Master erred in ordering a punitive damages award.

B. The Record Does Not Support The Ratio of Actual or Potential Harm to the Punitive Damage Award.

In considering the ratio of actual to punitive damages, the trial court may consider the following:

1. the likelihood that the award will deter the defendant from like conduct;
2. whether the award is reasonably related to the harm likely to result from such conduct; and
3. the defendant's ability to pay.

Mitchell, 385 S.C. at 588, 686 S.E.2d at 185. There is no evidence that The Storage Center owns or develops property elsewhere in South Carolina so that this award will deter it from like conduct in South Carolina.⁸ Second, the award is not reasonably related to the harm as this Court ruled that the only harm suffered by Gooldy was \$2,500. The \$7,500 punitive damage award results in a 3 to 1 ratio, which is not supported by the record. Finally, there is no evidence of The Storage Center's ability to pay. Consequently, the record does not substantiate the punitive damage award, and the Master erred in ordering it.

C. No Comparative Penalties Exist in This Matter.

Because Gooldy has offered no comparative jury or civil penalties to the present matter, this Court should vacate the punitive damage award. The Master relies on *Poole*

⁸ South Carolina courts must look solely to conduct occurring within South Carolina to determine if a punitive damage award passes constitutional muster. As stated by the *Mitchell* court, "[i]n *Campbell*, the Supreme Court held that punitive damages awards may not be based on out-of-state conduct and must be related to the plaintiff's injury or damage." *Mitchell*, 385 S.C. at 586, 686 S.E.2d at 184. Continuing the *Mitchell* court continued with "[n]or, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction." *Id.* (quoting *State Farm v. Campbell*, 538 U.S. 408, 421-22 (2003)).

v. *Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941) to support a punitive damage award. (R. p. 32.) In *Poole*, the plaintiff sought damages in the amount of \$1500, but was awarded \$450, which constituted both actual and punitive damages. *Id.* at ___, 15 S.E.2d at 350-52. Gooldy has offered no other support, and therefore, this Master erred in granting a punitive damages award.

CONCLUSION

For the reasons stated above, this Court should reverse the findings and conclusions of the Master relating to the implied easement and actual and punitive damages, hold that an implied easement in favor of Gooldy does not exist as a matter of law, and enter judgment for Appellant.

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December 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master In Equity

Case No. 2010-CP-32-0460
Appellate Case No.: 2014-000741

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DEC 10 2014

SC Court of Appeals

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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APPEAL FROM LEXINGTON COUNTY
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James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
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David R. Gooldy.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THAT AN IMPLIED EASEMENT WAS CREATED IN THE RESPONDENT WHEN HE WAS CONVEYED A PARCEL OF LAND BY A GRANTOR WHICH REFERENCED A PLAT THAT SHOWED THAT A 50' ROAD WAS CONTIGUOUS TO THE GRANTED PROPERTY ON THE SOUTHERN SIDE?
- II. DID THE MASTER-IN-EQUITY ERR IN FINDING AND CONCLUDING THAT PREDECESSOR-IN-TITLE INTENDED TO CONVEY THE RESPONDENT A 50' ROAD EASEMENT WHEN THE PREDECESSOR-IN-TITLE (CONGAREE ASSOCIATES) REFERENCED A PLAT SHOWING A 50' ROAD AREA CONTIGUOUS TO THE SUBJECT PROPERTY?
- II. DID THE MASTER-IN-EQUITY ERR IN AWARDING ACTUAL DAMAGES AND PUNITIVE DAMAGES BASED ON THE FACTORS SET FORTH IN *GAMBLE V. STEVENSON*, 305 S.C. 104, 406 S.E.2D 350; *BMW OF NORTH AMERICA V. GORE*, 517 U.S. 559 (1996), AND *MITCHELL, JR. V. FORTIS INS. CO.*, 385 S.C. 570, 686 S.E.2D 176 (2009)?

STATEMENT OF THE CASE

Respondent David R. Goodly (or "Respondent") and Appellant The Storage Center – Platt Springs, LLC ("The Storage Center" or "Appellant") are owners of adjacent property located on South Lake Drive also known as SC Highway No., 6 (hereinafter referred to as "South Lake Drive") in Lexington County, South Carolina..

On January 24, 2002 Respondent purchased his Property with improvements thereon. R. p. 103, lines 10-16. The deed to the Respondent's property referenced a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side. *Id.*, p. 25, lines 14-15.

On September 27, 2007, Appellant purchased the abutting property (7.35 acres) to the Respondent's property. Appellant's property bordered the Respondent's property on the northern, western and southern sides. Defendants Exhibits C & J, R. pp. 392, 396.

After Appellant purchased the 7.35 acres tract, a dispute arose between Respondent and Appellant as to the right of the Respondent to have access for ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Respondent's deed. After an attempted resolution of the access issue by the parties, Appellant installed a metal post – wire cable barricade blocking Respondent's access over the fifty (50') foot road. R. p. 350, Lines 17-19.

On February 1, 2010, Respondent filed a lawsuit against The Storage Center. (Compl.) In his lawsuit, Respondent asserted four causes of action: (1) Declaratory Judgment, Easement by Implication or Estoppel, (2) Declaratory Judgment, Easement by

Prescription, (3) Estoppel – Temporary and Permanent Injunctive Relief, and (4) Negligence/Gross Negligence/Intentional Act, Denial of Property Rights. Respondent argues that he is entitled to an easement over The Storage Center's property because his deed, along with the deeds of his predecessor-in-title, reference a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side. Complaint R. pp. 37-38.

On February 25, 2010, Respondent filed a motion for preliminary injunction, seeking an order preventing The Storage Center from interfering with his access to the driveway. R. p. 49. On April 23, 2010, the circuit court denied Respondent's request. *Id.*, p. 1. The circuit court also referred this matter to the master-in-equity ("Master"), upon the consent of both parties.

In response to Respondent's complaint, The Storage Center filed an answer, in which it asserted several affirmative defenses and pled a counterclaim against Respondent for encroaching and trespassing on The Storage Center's property. *Id.*, p. 42. Specifically, The Storage Center denied that any road ever existed and also denied that Respondent had any easement rights over property owned by The Storage Center. *Id.*

Respondent and Appellant both filed motions for summary judgment. *See id.*, pp. 51-52. Notice of Mot. & Motion for Summ. J. of Plaintiff, dated February 1, 2011; *id.* pp. 54-57, Notice of Mot. & Motion for Summ. J. of Appellant dated January 31, 2011. The Master denied the cross motions for summary judgment because there were material issues of fact. *Id.*, p. 2.

On October 25, 2012, the case was tried before the Master. The Master granted a directed verdict to The Storage Center with respect to Respondent's claim for easement by prescription because Respondent failed to establish use that was adverse or under a claim of right for twenty years. *Id.*, p. 193, line 3 to p. 203, line 19. On July 29, 2013, the Master issued his order, in which he found and concluded (1) that Respondent has access over the "road that borders the Respondent's property on the southern side"; (2) that Respondent is entitled to \$2,500 for lost income when he had to construct an alternate makeshift entrance; and (3) that Respondent is entitled to \$7,500 in punitive damages because The Storage Center prevented Respondent access to the strip of land. *Id.*, pp. 3-22.

The Storage Center timely filed its motion to alter or amend the judgment on August 12, 2013. *Id.*, pp. 74-83. In its motion, The Storage Center set out numerous grounds as to why the Master should reconsider the Trial Order. On November 15, 2013, the Master heard The Storage Center's motion. *Id.*, pp. 407-452. On March 13, 2014, the Master issued its Order denying The Storage Center's motion to reconsider. *Id.*, pp. 23-32.

STATEMENT OF FACTS
(Facts Prior to Litigation)

January 24, 2002 Respondent purchased the subject property, with improvements thereon, located on South Lake Drive (also known as S.C. Highway 6) in Lexington County. Respondent has used the property for his chiropractic practice. R. p. 103, lines 5-

11. The legal description for the Respondent's property read as follows:

All those certain piece, parcel of lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6. approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, and recorded in the Office of the RMC for Lexington County in Plat Book 212G at page 204. The within described property contains 0.68 acre more or less.

R. p. 375, Plaintiff's Exhibit 1.

The deed to the Respondent's property referenced a plat which showed a fifty (50') foot road abutting Respondent's property on the southern side and on the east by S.C. Highway 6. *Id.*, p. 109, lines 14-16; *id.*, p. 377, Plaintiff's Exhibit 2. The seller's representative told Respondent at the time of purchase that this fifty (50') foot road was the access from S.C. Highway 6 to the purchaser's property. *Id.*, p. 114, lines 1-10. Respondent used this access as his only access to his property until the barricading of the access by the Appellant in July 2009. *Id.*, p. 114, lines 19-21. Respondent described the fifty (50') foot road area as having an asphalt apron coming off S.C. Highway 6 covering a culvert, followed by a gravel area on the fifty (50') foot road area, which was flat and had been maintained and went to the back of the Respondent's property. *Id.*, p. 107, line 22 to

p. 108, line 3. There was a small hedge of trees lying between the fifty (50') foot road area and an adjoining subdivision by the name of Westchester Estates. *Id.*, p. 111, lines 10-18.

On September 27, 2007, Appellant purchased the abutting property (7.35 acres) to the Respondent's property (Appellant's property bordered the Respondent's property on the northern, western and southern sides. Both properties bordered S.C. Highway 6. Appellant's property wrapped like a horseshoe around three sides of the Respondent's property.). *Id.*, pp. 392-393, 396-398, Defendant's Exhibits C & J.

Respondent's and Appellant's properties both have a common grantor, Congaree Associates, a South Carolina Limited Partnership (hereinafter referred to as "Congaree"). *Id.*, pp. 379-391, Plaintiff's Exhibit 11. Respondent's property was subdivided from a larger tract owned by Congaree. R. p. 375, Plaintiff's Exhibit 1 (See Derivation). Congaree first conveyed the Respondent's property to James T. Loflin by deed dated September 15, 1986, and recorded in the Register of Deeds Office for Lexington County on September 23, 1986 in Book 837 at Page 36. *Id.*, p. 394, Defendant's Exhibit D. The legal description in the Loflin deed contains the identical description as the Respondent's deed's legal description, as does each deed in the chain-of-title to the Respondent's property - - all of the deeds in the chain-of-title reference the same plat referenced in Respondent's deed. *Id.*, pp. 379-391, Plaintiff's Exhibit 11.

The Respondent's deed is in the chain-of-title of the Appellant's property. *Id.* After Appellant purchased the 7.35 acres tract, Appellant's representatives notified the Respondent of their belief that the Respondent did not have the right to have access for

ingress/egress over the fifty (50') foot road as shown on the plat referenced in the Respondent's deed, which the Respondent disputed. *Id.*, p. 117, lines 11-25.

After an attempted resolution of the access issue by the parties, Appellant installed two metal posts in the fifty (50') foot road connected by a wire cable with "No Trespassing" signs attached to the wire cable, blocking Respondent's access over the fifty (50') foot road from S.C. Highway 6. *Id.*, p. 124, line 25 to p. 125, line 16. After Appellant blocked his access, Respondent created a "makeshift" entrance on the northern side of his property, buying material and equipment, and doing the work himself to establish the alternate access for his patients. *Id.*, p. 125, line 23-25; p. 133, lines 1-19.

Thereafter, this litigation ensued.

**Evidence as to Intent of Congaree Associates Deed to
James Loflin, Predecessor-in-Title to Respondent**

Carroll McGee, general partner of Congaree Associates, a South Carolina Limited Partnership, testified that he was an experienced real estate broker for a period of 50 years. *Id.*, p. 204, lines 16-18. Congaree had been formed by the McGee organization in the early 1980's. Congaree purchased the 500 acre tract of land that contained the Respondent and Appellant's properties and fifty (50') foot road in dispute. *Id.*, p. 205, lines 13-16; p. 206, lines 1-15.

In August 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing 13 lots, which borders S.C. Highway 6. This property is immediately adjacent to the fifty (50') foot road which borders the Respondent's property on the southern side. (Robert E. Collingwood (hereinafter referred to as "Collingwood") was the surveyor for this plat. *Id.*, pp. 396-398, Defendant's Exhibit J.

On January 27, 1984, Westchester Phase II, prepared for Congaree, which is a second portion of Westchester Subdivision and borders Phase I, shows the disputed fifty (50') foot road on the plat for Westchester Phase II. Collingwood also prepared this plat for Congaree, which was submitted to the Lexington County Planning Commission for approval. *Id.*, p. 405, Defendant's Exhibit GG. The fifty (50') foot road abuts both Lot 13 of Westchester Phase I and what later becomes Respondent/predecessor's property. *Id.*, pp. 396-398, Defendant's Exhibit J.

On July 15, 1985, Mike Chris, Lexington County Planning Commission, sends a letter giving provisional County approval for the proposed platted Phase II of Westchester Subdivision prepared by Collingwood. The letter contained the standard county requirements for private road subdivisions. *Id.*, p. 406, Defendant's Exhibit KK.

On December 10, 1985, James T. Loflin (Respondent's predecessor-in-title), who was a McGee employee/agent, has a plat prepared for the purpose of living on the corner lot (Respondent's property) next to the fifty (50') foot road entrance to proposed subdivision in a model log cabin home. Collingwood was the surveyor of the subject property. *Id.*, p. 377, Plaintiff's Exhibit 2.

On April 4, 1986, Collingwood revised the plat to show the proposed dwelling, well, septic tank and field. *Id.* Thereafter, on August 12, 1986, Collingwood again revises said plat to indicate a twenty (20') foot strip along the northern boundary of the lot. *Id.*

On September 11, 1986, Congaree, by Carroll McGee as its general partner, conveys the lot to Loflin, his employee agent, by deed incorporating the plat showing the

fifty (50') foot road with plat prepared by the surveyor Collingwood. *Id.*, 379-391, Plaintiff's Exhibit 11.

McGee testified he never discussed the road with Loflin or Collingwood or anyone else. *Id.*, p. 209, lines 14-18. McGee testified he never intended to build Phase II road shown on proposed plat given conditional approval by the Planning Commission because it costs too much. *Id.* McGee also testified that he assumed he did review the plat that was used in the Loflin deed prior to the conveyance to Mr. Loflin. *Id.*, p. 236, lines 21-25. McGee admits that Collingwood who prepared the plat for Westchester Phase II would have known when he prepared the plat for the Respondent's predecessor-in-title (Loflin) about the fifty (50') foot road area on the Loflin plat was the same as the fifty (50') foot road on the Westchester Phase II plat. *Id.*, p. 236, lines 1-11. McGee admits Collingwood had something to go by to show the road area on the Loflin plat, that being the proposed, conditionally approved, road on the Westchester Phase II plat. *Id.*

McGee testified he did see the plat and the deed for Loflin and it was executed by him for Congaree. *Id.*, p. 236, lines 21-25. McGee confirms there was no affirmative action by anyone on behalf of Congaree that gave any information to the Respondent to not use that area that he had been using since the purchase of the property for his access. *Id.*, p. 241, lines 13-19.

Testimony by Surveyors

Appellant's witness surveyor Meeler testified that there were surveys done by Surveyor Collingwood in the same area as the existing property which did not show the road in question; however, Meeler testified that he was not certain but his final opinion was that these plats were prepared after the 1986 Loflin plat. R. pp. 250-251. The same witness surveyor found no road name for the road in question and no evidence it had been dedicated to the County of Lexington or the State of South Carolina. *Id.*, p. 249, lines 13-22. Expert Witness surveyor Baxter testified that his main factor for indicating the road in questions was not a "road" was because it did not have a name. *Id.*, p. 320, lines 16 to p. 321, line 2.

Testimony as to Respondent's Damages

Respondent spent forty (40) hours in one week constructing the alternate road and lost income from patients for that week on an average of Eighty-five and no/100 (\$85.00) per patient for a total loss of Five Thousand and no/100 (\$5,000.00) Dollars. *Id.*, p. 170, lines 2-6.

Appellant had a survey prepared of his property as part of his due diligence and the principle of the Appellant knew that his survey showed Respondent's driveway and parking encroachment on his property and also referenced the plat which was incorporated into Respondent's deed showing the area purchased by the Appellant as a road area. *Id.*, pp. 345-346.

Initially, agent of Appellant gave Respondent a 24 hour deadline to get back with him as to the shared access. *Id.*, p. 118, lines 17-22. Appellant put up stainless steel pipe

with wire between it with "No Trespassing" signs on it and what he had to do was create a makeshift access from Highway 6 across his grass in the front of his property for people to have access to his property. *Id.*, p. 125, lines 8-17. Appellant admitted that they had received a letter from Respondent's law firm asking for the barrier wire to be taken down but they refused to do so. *Id.*, p. 354, lines 1-8.

Appellant admits putting up barrier wire across the fifty (50') foot right of way of Respondent and put up "No Trespassing" signs. *Id.*, p. 350, lines 20-22. The wire barrier made his property look like it was unobtainable and like he was "going out of business." *Id.*, p. 134, lines 21-22.

Appellant knew that the Respondent believed interference with his right of way would adversely affect his property. *Id.*, p. 338, lines 18-20. Appellant purchased the property in 2007 and put the barrier wire up in 2009 so they had sufficient time to bring a declaratory judgment if they wanted to instead of taking the action they did. *Id.*, p. 355, lines 17-21. Appellant admits he did not bring a declaratory judgment action as an alternative to barricading Respondent's right of way. *Id.*, p. 350, lines 7-11. Appellant admitted that he could see putting the barrier up would affect Respondent's regular traffic pattern for his patients. *Id.*, p. 350, line 24 to p. 351, line 3.

STANDARDS OF REVIEW

I. Standard of Review for Existence of an Easement

"The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury." *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 482 (2005). However, an appellate court must correct any error of law factual finding when "there is no evidence that reasonably supports those findings." *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010) (quoting *Robertis v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997)).

When applying the above standard, it is clear that the Master did not commit an error of law. There is a long line of cases which are cited in this Brief that supports the Master's Order confirming an easement in the 50' road adjacent to the Respondent's property. Furthermore, there is overwhelming evidence supporting the finding that the parties intended to create an easement.

II. Standard of Review for Punitive Damages Award

"[A]ppellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C, 570, 583, 686 S.E.2d 176, 183 (2009) (citing *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001)); see also *Hale v. Finn*, 388 S.C. 79, 88, 694 S.E.2d 51, 56 (Ct. App. 2010).

When applying the above standard, the reprehensible nature of The Storage Center's conduct is established by the evidence of The Storage Center barricading and preventing a party exercising his property rights. Furthermore, the punitive damage is well within the ratio requirements of Supreme Court cases.

ARGUMENT I
DEED REFERENCING A PLAT SHOWING A
ROAD CREATES AN EASEMENT IN THE GRANTEE

Appellant argues that South Carolina law states that a road shown on a plat incorporated into a deed conveys only the physical dimensions of the conveyed lot and not any easement to the road unless the lot is a standard subdivision lot. *Bennett v. Investors Title Ins. Co., Inc.*, 635 S.E.2d 649 (Ct. App. 2006) and 635 S.E.2d 660 (Ct. App. 2006); *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

Appellant incorrectly argues that *Bennett* stands for the proposition the plat incorporated by deed only conveys that portion of the physical outline of the property conveyed. Respondent would contend that the *Bennett* case held that the Grantor in a deed does not warrant or covenant the width of an existing highway right of way easement (easement given to a third party) by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. *Bennett* did hold that the right of way did exist. As our Supreme Court edified in the above referenced cases: A plat, however is not an index to encumbrances, and the mere reference in a deed, as in this case, to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that is to operate. *Bennett v. Investors Title Ins. Co., Inc.*, 635 S.E.2d 649 (Ct. App. 2006) and 635 S.E.2d 660 (Ct. App. 2006); *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

As opposed to the pre-existing SCDOT easement in the *Bennett* case which is an easement to a third party, here the plat in question in this case incorporated an easement

not to a third party but to the grantee in the deed and that easement was created by the grantor as he deeded the property to the grantee. As our State courts have indicated, basic deed law states that if a deed describes land by referencing a plat, the plat becomes part of the deed. When streets, alleyways, parks or other open areas are displayed on plats in conjunction with sale of property, an easement is created in favor of the grantee. *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975). Therefore, if an easement is recorded in a deed through a plat, it becomes part of the deed and is part of the chain-of-title. This rule was recognized and applied in *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950), as well as numerous other decisions of the Supreme Court and the Court and the Court of Appeals. These cases hold that such an easement inures to the benefit of the grantee and his successors in title. The existence of the easement will be implied by law, unless it appears that the grantor specifically intended otherwise. See also 28 C.J.S. *Easements* §§ 39 and 40 (1941).

Furthermore, the case law is clear that Respondent's relied upon principle includes cases wherein the grantor conveys land abutting a street (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is estopped from denying the street's existence. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990); *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950).

The Court also notes that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road on the face of the deed or plat. *Rushing v. Sellers*, 81 S.E.2d 281 (1954).

ARGUMENT II

EVIDENCE SUPPORTS CONGAREE ASSOCIATES INTENDING TO CREATE AN EASEMENT

The evidence does not support Appellant's argument that Congaree had no intention to convey an easement to Respondent's predecessor-in-title Loflin. The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement. 25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62; also *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

However, on the issue of intent of the parties in creating an easement, the Courts have, over time, developed certain presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets. This Court has recognized this presumption includes conveyance of properties referencing a road bordering the conveyed parcel. *McAllister v. Smiley*, 301 S.C. 10. 389 S.E.2d 857 (1990).

The recording of the plat expresses an intent to dedicate the road area for the use by the grantee in said conveyance. It would be the burden of the Appellant to overcome this presumption. Furthermore, the *Murrells Inlet* case indicates the deed and the recorded plat can be controlling, notwithstanding an "intent analysis". The lower court found that the deed in question was clear as to the grantor's intent and contains no specific objective evidence of expressing any intent except referencing the plat described in the deed which

shows the property bounded by the fifty (50') foot road on the southern side and creating an easement.

Even looking beyond the four corners of the deed as to intent, this intent is to dedicate the road in question for use by the grantee is based on the evidence that: (a) the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance R. p. 210, lines 1-4, (b) reviewed the deed in question prior to the execution *Id.*, p.210, lines 7-14, (c) the surveyor who prepared the plat was the surveyor who had done previous work for Congaree, knew the history on the road, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II *Id.*, p. 236, lines 1-4, (d) that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history, (e) that Congaree was deeding the Loflin/Respondent lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question *id.*, p. 211, lines 7-15, (f), that it was clear as of the date of the Criss letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road *id.*, p. 215, lines 13-24, (g) and there is no specific objective evidence that Congaree intended to terminate the easement area after the Criss letter .

Although McGee testified that since the road for Westchester Phase II would be too costly *id.*, p. 216, lines 3-10, he never intended for there to be an easement, he never testified when he came to this conclusion or whom he told. McGee testified that he never talked to anyone-not Collingwood or Loflin-- about the easement. Loflin did not testify. Collingwood did not testify. *Id.*, p. 148, lines 6-13.

There is no evidence of any letter to the County that Phase II was terminated, no corporate minutes indicating as decision was made to stop the subdivision process, no testimony or correspondence informing surveyor Collingwood.

Other Collingwood Plats

Appellant has argued that other plats prepared by Collingwood (two most probably after the 1986 plat prepared by Collingwood for Loflin) shows intent not to convey an easement to Loflin, Respondents Predecessor-in-Title. The lower court gave little weight to this evidence due to the time between the disputed deed and the latter recorded plat. R. pp. 220-224. The time period in determining the issue of intent, would be the date of the execution of the Loflin deed and it must be determined by the four corners of the deed as cited in the *Murrells Inlet* case.

Right of Reliance by Subsequent Grantees

Also when a grantor conveys, by an unambiguous deed referencing a plat and the deed contains no specific evidence of any intent except to create the easement, creates an easement that can be relied upon by subsequent purchasers acquiring the right to use the easement. It would be unfair to deny the subsequent purchasers, such as the Respondent, who purchased sixteen (16) years after the original conveyance the right to the full use and enjoyment of the easement as indicated by the plat, regardless of what the common grantor now argues what its intentions were at the time the deed and plat were recorded. *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452.

No Ambiguity in Deed

The validity of Respondent's position as to the easement is further supported in the principle that if there is any ambiguity in the deed (which the Court does not find) conveying the Loflin/Respondent's property the ambiguity should be construed liberally and most strongly in favor of the person who did not write or prepare the contract is not responsible for the ambiguity and any ambiguity in a contract doubt, or uncertainty as to its meaning, should be resolved against the party who prepared the contract or is responsible for the verbiage. Congaree was the grantor; Collingwood was Congaree's surveyor, and the grantee was a Congaree employee/agent.

The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes and meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and, thus, primarily responsible for its inaccuracies should justly and suffer for its shortcomings, if any. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423. The above rule of law that an ambiguity created by a drafter of the document supports Respondent's easement grant.

Validity of Westchester Phase II Plat

Appellant contends that a plat R. p. 405, Defendant's Exhibit GG was only a proposed plat and provides no evidence to support that Congaree intended to convey an easement to Respondent's Predecessor-in-Title Loflin. Citing the following reasons: (a) never received final approval from Lexington County; (b) was never recorded; and (c) reflects a project Congaree intended not to pursue. Respondent would respond by

indicating that the plat was approved by the Planning Office in Lexington County, subject to minor clarifications R. p. 256, lines 11-13. Secondly, the importance of the plat shows that Congaree intended and had taken the governmental steps to have a road approved and that road included an area which is reflected as the road area on the Loflin plat. The surveyor for Congaree, Bob Collingwood, prepared the Westchester Phase II plat and it was prepared prior to the Loflin plat and he is the same surveyor that prepared the Loflin plat that showed on the Loflin plat this same road area *Id.*, p. 236, lines 1-8. The record is void of any evidence that Congaree intended to terminate the approval process for this road area prior to the conveyance from Congaree to Loflin. As the lower court held, in its Order, at trial McGee testified he never discussed the road with Loflin or Collingwood, his surveyor. McGee never testified about WHEN or WHY or HOW or to WHOM he communicated his purported change of mind about the road. He simply stated that after he realized the project was too costly, then Phase II was never developed.

ARGUMENT III

ROAD DESIGNATION ON PLAT NOT NAMED

Appellant further argues that the fifty (50') foot road area referred to on Respondent's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system. In the case of *Murrells Inlet Corporation. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, the Court states the grantee receives a private easement at the time of conveyance in any streets referenced in the plat. *Carolina Land*, 265 S.C. 105-106, 217 S.E.2d 19; *Blue Ridge*, 247 S.C. 119, 145 S.E.2d 925; *Giles*, 304 S.C. 73, 403 S.E.2d 132.; see *Newington Plantation*, 318 S.C. 365,

458 S.E.2d 38 ("While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a private easement exists."). "[W]here lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance." *Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 478, 556 S.E.2d 693, 697 (Cl.App.2001) (quoting *Outlaw*, 222 S.C. 31, 71 S.E.2d 512). "Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use." *Newington Plantation*, 318 S.C. 365, 458 S.E.2d 38.

The fact that the road has not been dedicated, expressly or impliedly, to a governmental entity is irrelevant as to whether a private easement exists in the subject road which is what the Respondent is claiming in his action. The case of *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528, indicates that as between an owner who conveyed a lot, according to a plat, and the grantee, dedication is complete upon conveyance even though the street is not accepted by public authorities. The rights in the road after the conveyance of the grantee were created even though the street had never been used as a road and had been listed as an unopened road area.

It is clear from the above law that even though you do not have a state or county road, the law creates a private easement to the abutting property owner even though the road is not public.

Appellant also argues that the road is not a road because its description is too vague or undefined. This argument is not persuasive. First, it is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given definite dimensions of the easement. 28 A.C.J.S. *Easements* § 54 (1996). Second, Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable. *Plott v. Justin Enterprises*, 374 S.C. 504, 649 S.E.2d 95 (1987).

Road Defined to a Great Degree of Certainty

The proper examination of the public records reveals that the road is defined to a great degree of certainty. The common grantor, Congaree, had already recorded the Westchester Phase I plat. The fifty (50') foot road shown on the Loflin/Respondent plat is located to the north of Phase I, Lot 13 of Westchester Subdivision. This lot of two hundred fifty (250') feet (the identical boundary footage length), of the Respondent's property on the southern side. As the survey shows, the same surveyor, Collingwood, placed the pins in the ground along the road in question for both lots (Lot 13 of Phase I of Westchester Subdivision and the Loflin/Respondent's lot) so that the fifty (50') foot road is bounded by both lots. The eastern side of the fifty (50') foot road in question is bounded by S.C. Highway 6. The Loflin/Respondent's plat indicates a dotted line running west which gives indication that the road in question is to continue.

Furthermore, Respondent testified that at the time he purchased the property, the area in question had been used as a road area. There was an asphalt entrance from South Lake Drive onto the fifty (50') foot road area, a gravel road driveway in the fifty (50') foot

area which extended in a semicircle from one side of the Respondent's property to the other side. This road area was an open area. This road area appeared on the Appellant's plat at the time of purchase. The lower court made a specific finding and conclusion that the easement that the Respondent had was access for ingress and egress over the road that borders the Respondent's property on the southern side which would be fifty (50') feet in width on eastern and western sides and two hundred and fifty (250') feet in length on the northern side and southern side with the boundary on the southern side of the road being the northern boundary of Lot 13, Phase I of Westchester Subdivision and the northern boundary being the southern boundary of the 0.68 acre lot (Respondent's lot).

ARGUMENT IV

EVIDENCE SUPPORTS IMPOSING PUNITIVE DAMAGES

The actual damages awarded to the Respondent were based on Respondent's testimony that he did not treat patients during the 40 hour week spent constructing an alternate road for access for his patients. The loss of net income was \$2,500.00. *Cf.*, R. p. 19 (p. 17 of August 1, 2014 Order). The lower court awarded Seven Thousand Five Hundred and no/100 (\$7,500.00) Dollars in punitive damages.

The practice of awarding punitive damages originated in principles of common law "to deter the wrongdoer and others from committing like offenses in the future. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964). Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition. *BMW of North America v. Gore*, 517 U.S. 559, 116 S.C. 1589, 134 L.ed.2d 809 (1996). The state's interest in awarding punitive damages

must remain consistent with the principle of penal theory that "the punishment should fit the crime. *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004). *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009).

The trial court considered the *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) factors as to those factors supporting the factors in *BMW of North America v. Gore*, as adopted/explained by South Carolina in *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). The lower court also recognized South Carolina law which allows for an award of punitive damages for willful obstruction of a right of way or easement. Citing *Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941). The lower court further focused on the three factor test of *BMW of North America v. Gore*, as adopted/explained by South Carolina in *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176 (2009). The three factors are: (a) the degree of reprehensibility of the Appellant's conduct; (b) whether the conduct was a physical act or only an economic effect; and (c) the ratio of damages between the actual damages and the punitive damages.

As to the degree of reprehensibility, the Appellant, barricaded a road area which was platted prior to the Appellant's purchase of its property and which Appellant had record notice of and knew who had the benefit of that easement. Appellant testified that it did barricade the existing access of the Respondent for his patients and acknowledged, in trial testimony, that it could have an adverse impact on the Respondent. R. p. 350, lines 17-19. The barricade had no legitimate purpose for the benefit of the Appellant and Appellant never chose the court system to determine the validity of Respondent's claim even though it had time to do so. *Id.*, p. 350, lines 7-16.

Obstructing the road was a physical act that impacted the Respondent's land every single day since it stopped traffic every single day. It was not an isolated physical event. As the lower court stated, it was in the nature of a continuing nuisance. As indicated above, in *Poole*, willful obstruction of a right of way is a basis for punitive damages. The end results of the obstruction of the right of way was a physical harm to the Respondent's land. Said obstruction was repeated daily which resulted in a continuing nuisance on a daily basis and the obstruction was not of a mere accident nature but intended malice of irrefutable harm directed against a known individual.

The ratio of damages between the actual and punitive damages was 3 to 1. Much larger ratios have been upheld.¹¹ *S.C. Jur. Damages* §43 (December 2013). The conduct (barricading the road) led to a week's lost work, the \$2,500.00 award.

CONCLUSION

Respondent was created an easement by law when the conveyance was made from Congaree Associates to James Loflin, predecessor-in-title to the Respondent. Every deed in the Respondent's chain of title from his common grantor utilized the same legal description referencing the same plat. A long line of property cases in this State have recognized the creation of this type easement as was cited in the lower court's initial Order, the Rule 59 Order and Respondent's Brief. The *Smithco* and *Bennett* do not overrule this long line of cases. The plat reference by the common grantor in the deeds in the Respondent's chain of title create Respondent's easement. Furthermore, utilizing the intent analysis for creating an easement, there is overwhelming evidence that the original common grantor of the parties intended to create the easement and is estopped from now claiming it does not exist. This is based on the evidence of the common grantor executing a deed which referenced the plat which plat was prepared by a surveyor who had assisted the common grantor in preparing other plats in the same vicinity showing the 50' road in question as a road area, common grantor not taking any steps to terminate the easement which it had created, and once the easement is created, the subsequent grantees have a right to rely upon their right to the same easement when there is no specific evidence of any other intent except to create the easement.

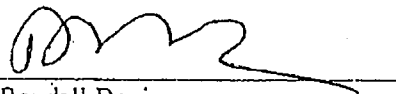
Even though the road is not a public road, basic law of this State created a private easement in the Respondent and a deed does not have to have a description by metes and bounds; although, in this case, the evidence is it was actually used as a road area, was noted on Appellant's plat prior to purchase of its property and there are plat exhibits as evidence which specified the easement area which allowed the court to specifically define the easement access provided to the Respondent.

Respondent's granted punitive damages are consistent with the requirements in the *Gamble*, *Smithco*, and *Mitchell* cases. Appellant instituted action that did physical harm to Respondent which affected him on a daily basis as to the access of himself and his patients to his property. Appellant did not seek judicial declaratory action of Respondent's rights when Appellant had record notice knowledge of the property rights of Respondent. The 3

to 1 ratio of actual to punitive damages falls within the legal parameters of court allowed amounts.

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Lexington, South Carolina
January 23, 2015

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460

Appellate Case No.: 2014-000741

David R. Respondent.....Respondent,

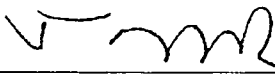
vs.

The Storage Center – Platt Springs, LLC.....Appellant.

CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Respondent complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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DEC 10 2014

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Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

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OVERVIEW OF RESPONDENT'S ARGUMENT

Respondent David R. Gooldy ("Respondent" or "Gooldy") argues that the plat at issue ("Loflin Plat") created an easement and that by incorporating the plat into the deed's legal description, the common grantor conveyed an easement to Gooldy's predecessor-in-title, James Loflin. (Initial Br. of Resp't 13-14.) This premise is incorrect for two reasons. First, the Loflin Plat does not create an easement. It merely contains a notation of "50' ROAD" that has no dimensions. Second, the incorporation of the Loflin Plat into the legal description served solely to convey the 0.68 acres within the boundary lines under *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 144 S.E.2d 209 (1965).

Second, Gooldy argues that the deed from the common grantor Congaree Associates establishes Congaree Associates' intent to create an easement and that Appellant The Storage Center – Platt Springs, LLC ("Appellant" or "The Storage Center") did not rebut any presumption to the contrary. (*Id.* 15-18.) This argument is flawed because the deed itself reflects the intent of Congaree Associates not to convey any easement rights under *Lancaster*. Moreover, the uncontroverted testimony of Carroll McGee of Congaree Associates, along the fact that no road ever existed and that no subsequent plats show any road, underscores Congaree Associates' lack of intent to create any easement rights in Loflin.

Third, Gooldy contends that it is irrelevant to the easement analysis whether the purported road (1) had a name, (2) was part of the Lexington County road system, or (3) was vague and undefined on the Loflin Plat. (*Id.* 19-22.) While Gooldy's position might be persuasive if a road existed; it is unconvincing since, *no road has ever existed*. That

fact, along with other uncontradicted evidence, reflects the common grantor's lack of intent to create an easement. Gooldy's argument therefore fails.

Finally, Gooldy states that the Master-in-Equity ("Master") adequately considered the punitive damage factors. (*Id.* 22-24.) However, punitive damages must be based on the existence of an actual damages award. Here, actual damages should not have been awarded because no easement arose as a matter of law. Even if actual damages were proper, the punitive damages factors were not satisfied because The Storage Center's conduct was not reprehensible and it could have had only an economic effect on Gooldy. Both actual and punitive damage awards were improper and should be reversed by this Court.

ARGUMENT

I. Only 0.68 Acres Was Conveyed as a Matter of Law.

The deed from Congaree Associates to Loflin reflects Congaree Associates' intent to convey only the 0.68 acres within the boundary lines on the Loflin Plat. South Carolina's established jurisprudence provides that "[w]hen a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006). Accordingly, references to easements on a plat do not create easement rights in the grantee as a matter of law when the plat is incorporated for descriptive purposes. *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211.

Here, the plat was incorporated for descriptive purposes, and therefore, no easements (whether sufficiently identified or not) were conveyed. Moreover, the legal

description, itself, confirms that the common grantor did not intend to create any easement rights in favor of the grantee. The legal description in the deed from Congaree Associates to Loflin states as follows:

All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in the Lexington County RMC office in Plat Book 212G at Page 204. *The within described property contains 0.68 acre.*

(R. pp. 394-395 (emphasis added).) The legal description specifically states that the property conveyed "contains 0.68 acre," which is the land within the boundary lines on the Loflin Plat. It says nothing about easements, other encumbrances, or access to a 50' road¹ because there was no intent to create any rights regarding same. The final sentence of the legal description reiterates Congaree Associates' intent of granting solely the 0.68 acre – nothing more and nothing less. The strict construction of implied easements requires a finding that no easement ever arose in favor of Gooldy or his predecessors.²

¹ Similarly, the legal description does not identify the purported 50' road as a boundary. Gooldy argues "that when a road is called for as a boundary, the tract extends to the center of the road, unless there is evidence of an intent to exclude the road of the face of the deed or plat." (Initial Br. of Resp't 14.) Implicit in this argument is that Gooldy's tract extends to the center of the purported 50' road. However, "the road" is not used as a boundary. Moreover, "the road" does not become part of the deed under *Lancaster* and the legal description does not reference or incorporate "the road." The deed and the Loflin Plat reflect the common grantor's intent to exclude "the road."

² Gooldy argues that the Court should strictly construe the deed against The Storage Center because the common grantor was the drafter of the deed. (Initial Br. of Resp't 18.) However, the strict construction at play is with respect to the implied easement, not the deed. As a matter of law, the purported easement never became part of the deed. Even if the deed were ambiguous, it should not be strictly construed against The Storage Center because it had nothing to do with the drafting of the deed.

See *Inlet Harbour v. S.C. Dep't of Parks, Recreation, and Tourism*, 377 S.C. 86, 91-92, 659 S.E.2d 151, 154 (2008) (stating "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored.")

A. *Bennett Is Not Limited to Cases Involving Breach of Warranty Claims.*

Gooldy attempts to limit the holding of *Bennett* by arguing that the "case held that the Grantor in a deed does not warrant or covenant the width of an existing highway right of way easement (easement given to a third party) by incorporating a plat that incorrectly states the width of a preexisting SCDOT easement. *Bennett* did hold that the right of way did exist." (Initial Br. of Resp't 13.) Undeniably, the *Bennett* Court held that the easement existed, but it did so *because it was an expressed easement shown on a recorded document* unlike the claimed implied easement in the present matter. *Bennett*, 370 S.C. at 585, 635 S.E.2d at 652 (stating the right of way easement was recorded at South Carolina Department of Transportation). The *Bennett* Court cited numerous cases for the proposition that the incorporation of a plat becomes part of the deed to show "the boundaries, metes, courses, and distances of the property conveyed." *Id.* at 594, 635 S.E.2d at 657. It then used this universal principle to conclude that the parties incorporated the plat to show the boundary lines of the property conveyed, not to warrant the width of the right of way. *Id.* at 594-95, 635 S.E.2d at 657-58. There is nothing in the opinion (or in the *Lancaster* opinion) to suggest that this general principle may only be applied in cases involving the warranty of an easement's width.

Bennett

B. McAllister and Cason Are Distinguishable and Inapplicable.

Gooldy's reliance on *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990) and *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950) is misguided. Gooldy states these cases espouse the principle "wherein the grantor conveys land *abutting a street* (not necessarily a subdivision), and the grantee is entitled to the use of the street which borders its property and the grantor of the deed is estopped from denying the street's existence." (Initial Br. of Resp't 14 (emphasis added).) First and foremost, no road has ever existed, thwarting the underpinning of Gooldy's "argument." Moreover, *Cason* and *McAllister* are distinguishable because in both cases (1) the deeds referred to the lots being bounded by the roads in question; (2) the roads had width (and length, in *McAllister*) dimensions in the plat; (3) the plats were prepared for the common grantors; and (4) the plats were of more than one parcel. *Cason*, 217 S.C. at 502-03, 61 S.E.2d at 59; *McAllister*, 217 S.C. at 10-12, 389 S.E.2d at 858-59. Here, the deed to Loflin does not refer to the "50' road," much less the lot being bounded by the "50' road." The road never existed, and therefore, the road had no width or length dimensions in the Loflin Plat. The Loflin Plat was prepared for Loflin, not Congaree Associates, and the Loflin Plat was only a plat of one parcel. (R. p. 377.) Any claim for estoppel fails.

II. There Is No Evidence of Any Intent to Create an Easement

The deed, Carroll McGee's testimony, subsequent plats,³ and the fact that no road has ever existed establish that there was no intent to create an easement over the alleged

³ Contrary to Gooldy's position, the subsequent plats are ample evidence of Congaree Associates' intent not to convey any easement rights. (See Initial Br. of Resp't 17.) They were properly before the court as the determination of the existence of an implied

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"50' road" to Loflin and his successors. To the extent that the reference to the Loflin Plat could be considered evidence of intent to create an easement, it was rebutted by McGee's uncontroverted testimony, subsequent plats, and lack of road.

Gooldy contends that the recording of the Loflin Plat exhibits Congaree Associates' intent to create an easement in favor of Loflin. (Initial Br. of Resp't 15.) However, the plat was not prepared for Congaree Associates. It was prepared for Loflin. There is no evidence that Congaree Associates recorded the Loflin Plat. Moreover, the incorporation of the plat into the deed to Loflin does not reflect any intent to create any easement rights as a matter of law under *Lancaster*.

The other purported indicia of intent to create an easement are rebutted as follows:

- (a) "the grantor of the deed, Congaree, owned the road area in question at the time of the conveyance (*id.* 16);

REBUTTAL: There was no road at the time of conveyance, and there has never been a road. Moreover, the reference to "50' road" on the Loflin Plat did not become part of the deed, as a matter of law.

- (b) "[Congaree Associates] reviewed the deed in question prior to the execution" (*id.* 16);

REBUTTAL: This is true; however, Congaree Associates did not intend to convey any easement rights by virtue of the deed. (R. p. 228:8 – 229:13.)

easement "generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 234; 662 S.E.2d 452, 456 (Ct. App. 2008) (quoting *Inlet Harbour*, 377 S.C. at 92, 659 S.E.2d at 154.) The *Murrells Inlet* Court did not hold that the existence of an implied easement is controlled solely by the four corners of the deed. To the contrary, the court explicitly stated "[t]he existence of an easement is **NOT** an issue in this case. Only, the extent and scope of the easement is contested." *Id.* at 235, 662 S.E.2d at 457 (emphasis in original).

- (c) "the surveyor who prepared the plat was the surveyor who had done previous work for Congaree knew the history *on [sic] the road*, including the creation of Westchester Phase I and Phase II which was using the same road area as part of its access for Westchester Phase II" (Initial Br. of Resp't 16 (emphasis added));

REBUTTAL: Again, no road was ever constructed so it is faulty logic to state that the surveyor "knew the history of the road." Westchester Phase I had nothing to do with the purported road. (R. p. 242:3-15.) Moreover, Westchester Phase II was never constructed (R. pp. 216:11 – 217:14) so it is also false to state that the surveyor had any knowledge regarding the "creation" of Westchester Phase II. Finally, there was no testimony from the surveyor so there is no support for what the surveyor knew or did not know.

- (d) "that surveying standards required Collingwood to show the road on the plat when he had specific knowledge of the road history" (Initial Br. of Resp't 16);

REBUTTAL: No road has ever existed so there could be no requirement for Collingwood to show a road. A surveyor cannot show what does not exist. Again, there was no testimony from Collingwood so there is no support that he had "specific knowledge" of anything.

- (e) "that Congaree was deeding the Loflin/Respondent lot to an employee/agent who was building a log cabin model home adjacent to the fifty (50') foot road in question" (*id.*);

REBUTTAL: There was never a road, and the fact that Loflin may have been an agent of Congaree Associates is of no legal moment. There was no evidence that the sale of the lot was not an arm's length transaction, and Loflin's acts cannot bind Congaree Associates with respect to the sale.

- (f) "that it was clear as of the date of the Criss letter from the County of Lexington in 1985 showed that the proposed road area was still a viable road" (*id.*); and,

REBUTTAL: It was never a road. Congaree Associates was simply thinking about developing a subdivision. However, it never happened because after Congaree Associates received the "Criss letter," it realized the project was too costly. (R. p. 216:3-17.) Moreover, the lot was not conveyed to Loflin until September 1986 – over a year after the "Criss letter." (R. pp. 394-395; R. p. 406). The intent analysis must be focused at the time of severance so it is of no moment what Congaree Associates thought it might have done in 1985 when McGee testified that at the time of severance in September of 1986, Congaree Associates had no intent to convey any easement rights.

- (g) "there is no specific objective evidence that Congaree intended to terminate the easement area after the Criss letter." (Initial Br. of Resp't 16.)

REBUTTAL: There was no easement at the time of the Criss letter in 1985 because the only time that an easement could have arisen would have been at the time of severance in September of 1986. Therefore, there was no easement to terminate before the property was conveyed to Loflin. Thinking about developing a subdivision does not bestow future purchasers with any easement rights, *especially when no subdivision was ever developed*. It defies all logic for McGee or Congaree Associates to have an affirmative duty to disavow actions that Congaree Associates never took.

This purported evidence fails to show that Congaree Associates had any intent to create any easement rights in favor of Loflin and his successors. Most of it is based on the faulty premise that the road actually existed. On the other hand, the record is filled with evidence of Congaree Associates' lack of intent to create an easement. McGee stated Congaree Associates never had any intent to create any easement rights. (R. pp. 227:25 – 229:13.) No easement ever arose, and therefore, the Master erred in finding one.

III. The Absence of a Road Establishes the Lack of Intent to Create Any Easement Rights with Respect to the "Road."

No evidence reasonably supports the Master's finding of an easement, especially in light of the fact that no road has ever existed. Gooldy mischaracterizes The Storage Center's argument when he states that "Appellant further argues that the fifty (50') foot road area referred to on Respondent's plat was an error because it was not named nor was it part of the State of South Carolina, County of Lexington road system." (Initial Br. of Resp't 19.) The Storage Center's argument is that no road has ever existed. The surveyor should not have included the "50' road" notation on the Loflin Plat, but even

though he did, it has no legal import, considering the notation did not become part of the deed as a matter of law.

Contrary to Gooldy's position, the Loflin Plat is not a subdivision plat, and it does not depict a surveyed road.⁴ This case is not a case where "the owner of land has it subdivided and platted into lots and streets and sells and conveys the lots with reference to the plat, [and] thereby dedicates said streets to the use of such lot owners, their successors in title, and the use of such lot owners, their successors in title, and the public." *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 924-25 (1965). But even if it were, The Storage Center has rebutted any presumption that Congaree Associates intended to create any easement rights. *See Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 154 (stating "[t]he rule applied in *Blue Ridge* is nothing more than a presumption . . ."). The Master committed an error when he found an easement in favor of Gooldy.

IV. The Record Does Not Support an Actual or Punitive Damages Award Because There is No Easement as a Matter of Law.

The Master erred in finding and concluding that an easement existed, and likewise, erred in awarding damages to Gooldy. Without a basis to award actual damages, the Master also lacked a basis to award punitive damages. This Court should reverse both the actual damages and punitive damages awards.

⁴ The Storage Center does not dispute Gooldy's argument that a road does not need to be dedicated for a person to have easement rights with respect to the road. (*See* Initial Br. of Resp't 20.) However, a road must exist, and the common grantor must have intended to create easement rights. Additionally, The Storage Center does not dispute the argument that a master in equity can locate the width and length of an easement. (*Id.* 21.) But again, there must be an intent to create an easement and a modicum of substance with respect to the proposed easement and its dimensions. Here, there is nothing more than a "50' ROAD" notation next to an approximately two inch line. This vague and undefined reference is further evidence of the uncertainty with respect to the purported road.

Even if a basis for an actual damages award existed, the Master did not properly consider three-factor test adopted in *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) – (1) the degree of reprehensibility of the wrongdoer's conduct, (2) the ratio of actual to punitive damages, and (3) comparative jury or civil penalties to the present matter. With respect to reprehensibility, any harm was purely economic. Contrary to Gooldy's position, the barricading of access was not akin to a continuing nuisance. There is no evidence in the record that the barricade interfered with Gooldy's and his patients' access on a daily basis. In fact, the only evidence regarding this issue is that Gooldy and his patients had access to the property. With respect to the ratio of damages, larger ratios may have been awarded, but there is no evidence to support the reprehensibility factor. Finally, the Master cited no cases that reflect comparable penalties. This Court should reverse the Master's award of both actual and punitive damages.

CONCLUSION

For the reasons stated above, this Court should reverse the findings and conclusions of the Master relating to the implied easement and actual and punitive damages, hold that an implied easement in favor of Gooldy does not exist as a matter of law, and enter judgment for Appellant.

[signature page follows]

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*Attorneys for Appellant The Storage Center
- Platt Springs, LLC*

Columbia, South Carolina

December 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

James O. Spence, Master In Equity

Case No. 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

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The South Carolina Court of Appeals

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December 09, 2015

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Re: David Gooldy v. The Storage Center
Appellate Case No. 2014-000741

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: The Honorable James O. Spence

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

David R. Gooldy, Respondent,

v.

The Storage Center – Platt Springs, LLC, Appellant.

Appellate Case No. 2014-000741

Appeal From Lexington County
James O. Spence, Master-in-Equity

Opinion No. 5366
Heard November 4, 2015 – Filed December 9, 2015

REVERSED

Robert E. Stepp and Bess Jones DuRant, both of Sowell
Gray Stepp & Laffitte, LLC, of Columbia, for Appellant.

James Randall Davis, of Davis Frawley Anderson
McCauley Ayer Fisher & Smith, LLC, of Lexington, for
Respondent.

THOMAS, J.: The Storage Center – Platt Springs, LLC (Storage Center) appeals the master-in-equity's order finding David R. Gooldy had easement rights over Storage Center's property and awarding Gooldy actual and punitive damages. On appeal, Storage Center argues the master erred in (1) finding the existence of an implied easement based on a deed that described the property by referencing a plat depicting a "50' Road" notation outside the boundary lines of the property conveyed, (2) finding the existence of an implied easement when the common

grantor's representative testified there was no intent to create an easement or road, and (3) awarding actual and punitive damages. We reverse.

FACTS AND PROCEDURAL HISTORY

Gooldy and Storage Center own adjacent properties in Lexington County. Gooldy's tract consists of .68 acres (the .68 acre tract) and Storage Center's tract consists of 7.35 acres (the 7.35 acre tract). Storage Center's property surrounds Gooldy's property like a horseshoe: it abuts Gooldy's property on the southern, western, and northern borders. Both properties border S.C. Highway 6 on their eastern boundaries. Gooldy claims to have an easement over an alleged road on Storage Center's property.

1. Background Information

In 1974, Congaree Associates¹ purchased a 500-acre tract of land containing the properties at issue. In 1983, Congaree recorded a subdivision plat for Westchester Phase I, containing thirteen lots bordering Highway 6 to the east and what would later become the .68 acre tract to the north. Robert Collingwood was the surveyor for the Westchester Phase I plat. Subsequently, Congaree commissioned Collingwood to prepare a preliminary plat for a proposed subdivision called Westchester Phase II. This plat depicts a 50-foot road abutting the southern border of what would later become the .68 acre tract. The Westchester Phase II plat was never recorded and the subdivision was never developed.

In 1985, James Loflin, Congaree's agent and employee, hired Collingwood to prepare a plat (the Loflin plat) of the .68 acre tract. The Loflin plat depicts only the .68 acre tract; neither Westchester Phase I nor the 7.35 acre tract is depicted. The plat includes the notation, "50' road" outside the southern boundary of the .68 acre tract, on what would later become the 7.35 acre tract. The 50-foot road notation is not listed as an easement and the length of the road is not discernible from the face of the plat. In 1986, Congaree, by its general partner Carroll McGee, conveyed the .68 acre tract to Loflin by a deed that referenced the Loflin plat. Every deed in the chain of title for the .68 acre tract incorporates the Loflin plat.

Gooldy purchased the .68 acre tract on January 24, 2002, and used the area depicted as a 50-foot road on the Loflin plat to access his property. In describing the .68 acre tract, Gooldy's deed reads as follows:

¹ Congaree is the common grantor of the .68 acre and 7.35 acre tracts.

All those certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on [the Loflin plat]. The within described property contains .68 acre more or less.

Storage Center purchased the 7.35 acre tract on September 27, 2007. The deed to Storage Center's property does not reference the Loflin plat; instead, it references a plat (the Strasburger plat) that does not depict a 50-foot road on Storage Center's property. The Strasburger plat classifies the alleged road as a "parking and gravel drive encroachment." After purchasing the 7.35 acre tract, a Storage Center representative and Gooldy unsuccessfully attempted to negotiate a "shared access agreement" for the strip of land Gooldy used as a driveway. As a result, in 2009, Storage Center barricaded the driveway.

2. Procedural History

On February 1, 2010, Gooldy filed a complaint against Storage Center, seeking a declaratory judgment, injunctive relief, and damages. With the parties' consent, the circuit court referred the case to the master. Thereafter, both parties filed motions for summary judgment. In support of its motion, Storage Center filed an affidavit from Loflin, who attested the 50-foot road shown on the Loflin plat did not exist, was not part of the property he owned, and was not intended to create an easement. Loflin stated he never received an easement over the 7.35 acre tract.

The master denied the cross motions for summary judgment and the case proceeded to trial. At trial, Gooldy testified that after speaking with the seller's realtor and reviewing the Loflin plat, he believed he had an easement over the 7.35 acre tract for a driveway, and he relied on that belief in purchasing the property. Gooldy explained that as a result of Storage Center's barricade, he had to close his business for one week to build a new driveway. He claimed it cost \$10,000 to construct the new driveway and attributed half that cost to lost income.

McGee testified Congaree never installed the road in question. He acknowledged Congaree commissioned a plat for Westchester Phase II; however, he noted the plat was never recorded because the project was too costly. McGee testified

Congaree did not intend to create any easement rights in conveying the .68 acre tract to Loflin. More specifically, McGee stated Congaree did not intend to convey any property outside the boundaries of the .68 acre tract depicted in the Loflin plat. McGee admitted he reviewed the Loflin plat before conveying the property to Loflin but stated he never gave Loflin permission to use the alleged 50-foot road. Additionally, McGee noted the Strasburger plat did not depict a road on the 7.35 acre tract because the road did not exist.

Charles Meeler, the surveyor who prepared the Strasburger plat, testified there was no road abutting the .68 acre parcel. Meeler explained he included the "parking and gravel drive encroachment" notation on the plat because he believed Gooldy was using Congaree's property as a driveway. Meeler did not include a 50-foot road on the Strasburger plat because after reviewing the Loflin plat and other county and state records, in his professional opinion, no road existed.

Rosser Baxter, an expert surveyor, opined the 50-foot road notation on the Loflin plat is not a plat of a road, does not create a road, and does not mean a road actually exists. Baxter testified the Loflin plat is a survey only of the .68 acre tract and nothing outside the boundaries of the tract was included in the survey. He stated the Loflin plat was "an individual lot plat," not a "subdivision plat." Baxter concluded, after reviewing the Loflin plat and public records, the 50-foot road designation was erroneously included on the Loflin plat.

The master concluded Gooldy was entitled to an easement because his deed referenced a plat showing the .68 acre tract bordered by a 50-foot road. The master also concluded evidence surrounding the initial conveyance of the .68 acre tract demonstrated Congaree and Loflin intended to create an easement over the road. Additionally, the master awarded Gooldy \$2,500 for lost income and \$7,500 in punitive damages. This appeal followed.

STANDARD OF REVIEW

"The determination of the existence of an easement is a question of fact in a law action, and this [c]ourt reviews factual issues relating to the existence of an easement under a highly deferential standard." *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 153 (2008) (citation omitted). "In an action at law tried without a jury, the judge's findings of fact will not be disturbed on appeal unless there is no evidentiary support for the judge's findings." *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008).

LAW/ANALYSIS

Storage Center argues the master erred in finding (1) the existence of an easement based on the deed's reference to the Loflin plat and (2) that Congaree and Loflin intended to create an easement in favor of the .68 acre tract. We agree.

"An easement is a right given to a person to use the land of another for a specific purpose." *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015).

"Easements can arise by both express creation and by implication." *Inlet Harbour*, 377 S.C. at 91, 659 S.E.2d at 154. "A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands." *Ward v. Evans*, 387 S.C. 401, 409, 693 S.E.2d 7, 11 (Ct. App. 2010). "[W]here a deed describes land as is shown as a certain plat, such becomes a part of the deed." *Murrells Inlet*, 378 S.C. at 232, 662 S.E.2d at 455 (alteration in original).

"Although the incorporation by reference in a deed to a plat or map may create an easement by express grant, an easement by reference to a map or pla[t] is not an express easement but rather an easement by implication." 28A C.J.S. *Easements* § 96 (2008) (footnote omitted). "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." *Inlet Harbour*, 377 S.C. at 92, 659 S.E.2d at 154. "The purpose of an implied easement is to give effect to the intentions of the parties to a transaction, and because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored." *Id.* at 91-92, 659 S.E.2d at 154.

"[T]he intentions of the parties to the transaction are the overriding focus when examining implied easements." *Id.* at 92, 659 S.E.2d at 154. However, our courts have "developed various presumptions regarding the creation of implied easements in certain circumstances." *Id.* "One such presumption arises when an owner subdivides his land and has the land platted into lots and streets." *Id.* We have "recognized the general rule that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat." *Id.* Thus; "[o]nce an easement is referenced in a plat, the easement is dedicated to the use of the owners of the lots, their successors in title, and to the public in general." *Ward*, 387 S.C. at 409, 693 S.E.2d at 11. "As to the grantor, who conveyed the property with reference to the plat, and the

grantee and his successors, the dedication of the easement is complete at the time the conveyance is made." *Murrells Inlet*, 378 S.C. at 233, 662 S.E.2d at 456.

Although a grantee is entitled to a presumption that a grantor intended to create an easement over a road appearing in a plat referenced in a deed, the presumption is not a rigid one. See *Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 155 (discussing "problems that might occur if [appellate courts] were to apply a rigid presumption based solely upon particular geography or land division"). The presumption may be rebutted by evidence demonstrating the parties did not intend to create an easement. See *id.* ("[T]o the extent the [appellant] urges this [c]ourt to ignore everything except the deed's reference to a residential subdivision plat, this argument fails to remain true to the principles underlying implied easements."); *Murrells Inlet*, 378 S.C. at 234, 662 S.E.2d at 456 ("Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use." (emphasis added)).

Furthermore, a plat "is not an index to encumbrances." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 575, 635 S.E.2d 660, 668 (Ct. App. 2006) (emphasis omitted) (quoting *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965)). A deed that references a plat merely "for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that it so operate." *Id.* (emphasis omitted) (quoting *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211). Thus, in determining the existence of an easement, "[o]ur guidepost must be what the parties intended, and the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." *Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 155.

1. Presumption of an Easement

We find the master erred in determining Gooldy was entitled to the presumption of an easement based on the deed's reference to the Loflin plat. We are mindful of the general rule "that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat." *Id.* at 92, 659 S.E.2d at 154. Nonetheless, our courts disfavor implied easements "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." *Id.* at 91-92, 659 S.E.2d at 154.

Both *Lancaster* and *Bennett* make clear that a plat "is not an index to encumbrances," and a deed that references a plat "for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that it so operate." *Lancaster*, 246 S.C. at 469, 144 S.E.2d at 211; *Bennett*, 370 S.C. at 575, 635 S.E.2d at 668. In the instant case, Gooldy's deed references the Loflin plat in a paragraph describing the .68 acre tract. The paragraph does not provide the metes and bounds of the property. However, the sentence following the reference to the Loflin plat states, "The within *described* property contains .68 acre more or less." (emphasis added). We find this sentence refers to the property *described* in the Loflin plat. In our view, the deed references the Loflin plat for descriptive purposes—to show the metes and bounds of the .68 acre tract—not for the purpose of granting an easement in favor of the .68 acre tract over an alleged road depicted outside the boundaries of the property. Accordingly, we hold the record does not support the master's finding that Gooldy was entitled to the presumption of an easement because his deed referenced the Loflin plat. See *Inlet Harbour*, 377 S.C. at 91, 659 S.E.2d at 153 ("The determination of the existence of an easement is a question of fact in a law action, and this [c]ourt reviews factual issues relating to the existence of an easement under a highly deferential standard." (citation omitted)).

2. Intent Analysis

We find the master also erred in determining the evidence surrounding the initial conveyance of the .68 acre tract demonstrated the parties' intent to create an easement. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." *Id.* at 92, 659 S.E.2d at 154. In evaluating the parties' intent, we note "the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." *Id.* at 93, 659 S.E.2d at 155.

First, uncontroverted evidence demonstrates the parties to the initial conveyance did not intend to create an easement. McGee testified Congaree did not intend to create any easement rights when it conveyed the .68 acre tract to Loflin. He stated Congaree did not intend to convey any property outside the boundary lines of the .68 acre tract depicted on the Loflin plat. He also claimed Congaree never gave Loflin permission to use the strip of land depicted as a 50-foot road. Similarly, Loflin attested the 50-foot road shown on the Loflin plat did not exist, was not part

of the property he owned, and was not intended to create an easement. Loflin stated he never received an express or implied easement over the 7.35 acre tract. Accordingly, the testimony of the parties to the initial conveyance demonstrates neither party intended to create an easement.

Second, the deed itself does not manifest the parties' intent to create an easement. We recognize "[r]ecordation of a plat containing an easement *may* be sufficient to show that the owner intended to dedicate that easement." *Murrells Inlet*, 378 S.C. at 234, 662 S.E.2d at 456 (emphasis added). However, recordation of the Loflin plat is not dispositive of the parties' intent in this case. *See Inlet Harbour*, 377 S.C. at 93, 659 S.E.2d at 155 ("[T]o the extent the [appellant] urges this [c]ourt to ignore everything except the deed's reference to a residential subdivision plat, this argument fails to remain true to the principles underlying implied easements."). As previously discussed, Gooldy's deed incorporates the Loflin plat only to describe the metes and bounds of the property, not to create an easement in an alleged road depicted outside those boundaries.

Third, although the master noted the unrecorded Westchester Phase II plat depicted a road in the same location as the Loflin plat, Congaree never developed Westchester Phase II, and McGee testified Congaree never installed the road depicted in the Westchester Phase II plat. Indeed, no recorded plat—other than the Loflin plat—depicts the road Gooldy was using as a driveway. Moreover, Meeler and Baxter—both surveyors who reviewed the properties, Loflin plat, and other public records—testified no road existed in the area Gooldy claimed an easement.

Based on our analysis of the facts and circumstances surrounding the conveyance, the property, the parties, and other characteristics, we find there is no evidence to support the master's conclusion that Congaree and Loflin intended to create an easement. Accordingly, we reverse the master's order finding Gooldy had easement rights over Storage Center's property.

3. Damages

Based on our conclusion that the master erred in determining Gooldy had easement rights over Storage Center's property, we find the master also erred in awarding damages arising from Storage Center's conduct. As a result, the master's damages awards are reversed.

CONCLUSION

We hold the master erred in finding Gooldy had easement rights over a road on Storage Center's property and awarding Gooldy damages. The master's order is therefore

REVERSED.

HUFF, and WILLIAMS, JJ., concur.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-in-Equity

James O. Spence, Master-in-Equity

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JAN 11 2016

SC Court of Appeals

Appellate Case No.: 2014-000741

David R. Gooldy Respondent,

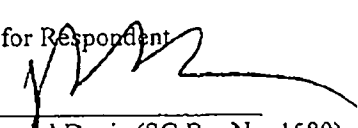
v.

The Storage Center – Platt Springs, LLC Appellant,

PETITION FOR REHEARING

YOU WILL PLEASE TAKE NOTICE that the Respondent David R. Gooldy, by and through his undersigned attorneys, hereby Petition for Rehearing before the South Carolina Court of Appeals pursuant to Rule 240 of the South Carolina Rules of Civil Procedure.

Counsel for Respondent


James Randal Davis (SC Bar No. 1580)
Davis | Frawley, LLC
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ATTORNEYS FOR RESPONDENT

Lexington, South Carolina
January 11, 2016

I.

The Master was correct in determining that Respondent was entitled to the presumption of an easement based on the deed's reference to the Loflin plat. The Court of Appeals initially relied on the prior decisions of *Lancaster* and *Bennett* to indicate there was not a presumption. See *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 468, 144 S.E.2d 209, 211 (S.C. 1965); *Bennett v. Investors Title Insurance Co.*, 370 S.C. 578, 635 S.E.2d 649 (S.C. App. 2006). Those cases held that "a plat 'is not an index to encumbrances,' and a deed that references a plat 'for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to excluded such easement from the covenant against encumbrances in the absence of a clear intention that it so operate.'" *Lancaster*, at 469. The Court of Appeal's reliance on *Lancaster* is misplaced.

The Gooldy implied easement is not an encumbrance, and is not an easement to a third party. The fact situation in *Lancaster* and *Bennett* are not analogous to our set of facts. Our easement creates by law an additional benefit to the Gooldy property (access over a road); in contrast, the Department of Transportation right-of-way and the gas line easements considered in *Bennett* and *Lancaster* are burdens on the subject property. *Id.* Also, the easement owners in those cases are third parties, and not a grantee, as is the Respondent.

The Court in *Lancaster*, in no uncertain terms, identified the issue it sought to address as "whether the mere reference in the description of the property to the recorded plat, upon with the easement was shown, constitutes *an exclusion of the easement from the covenant against encumbrances*." *Lancaster*, at 211. The reasoning of the Court in *Lancaster* which discounts a plat as an index of encumbrances, does so under the context that the incorporation of that plat and its easement notation ran contrary to covenant against encumbrances also at issue in

understanding the rights of the parties. *Id.* The utilization of that reasoning was specific to the circumstances where one document incorporated an encumbrance against the *express* intention to the contrary set forth by separate document. The Court of Appeals fails to read this reasoning in the context for which it was intended.

Here, there is not separate document demonstrating any intent other than a provision of an easement for purposes of a private roadway for the property. This intent was accounted for in the developer's efforts in 1984 (See Appellant's Exhibit GG), confirmed in the 1985 Loflin Plat (See paragraph 14 and 15 of Intent Proof section of Order of Reconsideration, pg. 76), and reiterated to every subsequent grantee for the past 30 years. The only evidence of intent to the contrary comes from Appellant's testimony years after the fact.

The Court of Appeals further argues that the ".68 acre" language on the face of the incorporated Plat in the Gooldy case confirms that the plat incorporation in the Gooldy deed, "references the Loflin Plat only for descriptive purposes – to show metes and bounds of the .68 acre tract – not for the purpose of granting an easement in favor of the .68 acre tract over an alleged road depicted outside the boundaries of the property." This determination is inconsistent with the holding in *McAllister*. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (S.C. 1989). The deed description in *McAllister* is identical to our deed description. The Gooldy deed describes the property as a .68 acre parcel on the face of the Gooldy Plat, and the McAllister Plat references the conveyed parcel as "Tract 2" on the face of the plat. Both deeds reference the plat in question. In *McAllister*, The Supreme Court case held the following:

"Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map." *Id.* at 857 (Emphasis added).

Respondent argues that *McAllister* stands for the proposition that even though the property in *McAllister* showed the property being conveyed as Tract 2 (as was the .68 entry in the Gooldy Plat) that designation does not defeat the creation of the implied easement in the matter before this Court. *McAllister* says the implied easement is created even though the conveyance says nothing else about the creation of an easement or a dedication to public use.

The *McAllister* case then cites numerous cases in Footnote 2 for the following proposition: "that such an easement inures to the benefit of the grantee and his successors in title. The Existence of the easement will be implied by law, unless it appears that the *grantor specifically intended otherwise*." 28 C.J.S Easements, §§ 39 and 40 (1941) (emphasis added). As stated in the *McAllister* case, there is no evidence whatsoever that the grantor intended to negate the creation of the easement claimed by the grantee (even though the property is described as "Tract 2").

II.

The Court of Appeals found that there was no evidence to support the Master's conclusion that Congaree and Loflin intended to create an easement for the benefit of the Respondent. Respondent respectfully argues that there is evidence supporting the Master's conclusion.

McAllister v. Smiley negates the contention that the ".68 acre" notation on the Loflin Plat incorporates the plat only for descriptive purposes, and therefore there is a presumption of the creation of an implied easement favoring Respondent.

The language in the *McAllister* that indicates that implied easement is created even though the conveyance says nothing about a creation of an easement, and the easement will be

implied unless it appears that the Grantor *specifically intended otherwise*, creates at least an ambiguity as to the intent of the phrase ".68 acres". The ambiguity should be construed liberally, and most strongly in favor of Respondent, as subsequent grantee of Loflin. *Myrtle Beach Lumber Company v. Willoughby*, 276 S.C. 3, 274 S.E. 2d 423.

The surveyor who prepared the plat in this case was privy to the development efforts of Appellant and Congaree, and the plans presented to Lexington County for approval included a road identical in location to the road set forth in the Loflin plat. A surveyor is obligated to indicate a private road when there is physical evidence or recorded documents suggesting the existence of a road. (Paragraph 4 of Order to Appellant's Motion for Reconsideration). This surveyor was in the best position to know whether a notation of a road was necessary. He demonstrates his knowledge of the road by creation of the January 1984 Plat included in the county approval process, in the Loflin Plat created December 10, 1985, in the revised version of the Loflin Plat dated August 12, 1986, and the recorded Loflin Plat dated September 11, 1986. It bears mentioning that the spokesperson in this article cited by the Master was the expert survey witness for the Defendant in the case. The reasonable inference here, as is supported by evidence at trial, is that the surveyor showed the road because the surveyor knew the road to be part of the included plans of the developer and added it based on his efforts for the documents submitted to the county for approval just six months earlier. The consequences of McGee's failure to correct this inclusion, if in fact his intent was not to grant the easement, should fall upon Congaree and Appellate, not the Respondent.

The Congaree representative testifies that he never discussed the road with Loflin or Collingwood, his surveyor. As the Master noted, Congaree never testified about "when or why

or how or to whom he communicated his purported change of mind about the road.” (Paragraph 17 of Intent Proof Section of Order on Reconsideration, page 26 of Appeal Transcript.)

McGee, as the Congaree representative, testified that he did see the Plat, and the deed for Loflin, and it was executed by him on behalf of Congaree (*Id.*, at Paragraph 22, page 27.) “The general rule is that if a person signs a document, he or she is bound under the law to know the contents of the document.” *Banks v. Evans*, 347 Ark. 383, 64 S.W.3d 746 (2002). “Further, one who signs a contract, after an opportunity to examine it, cannot be heard to say that he or she did not know what it contained.” *Dobson v. Abercrombie*, 212 Ark. 918, 208 S.W.2d 433 (1948).

As to the existence of the road itself, Respondent would denote the following: “It is not essential to the validity of a grant of an easement that it be described by metes and bounds or by figures given indefinite dimensions of the easement.” 28 A C.J.S. *Easements* S 54 (1996). “Equity Courts have the ability to locate width and location of a road and the determination of the extent of an easement is equitable.” *Plott v. Justin Enterprises*, 376 S.C. 504, 649 S.E.2d 95 (1987). “[G]rantees and any subsequent purchasers acquired the right to use [their] easement *to the full extent that it is indicated in the plat.*” *Murrells Inlet Cop v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457 (S.C.App., 2008) (emphasis added). The Supreme Court of South Carolina has also held that even if an easement for a road goes unused or opened as such, the easement endures an argument of abandonment. See *Walker v. Guignard*, 293 S.C. 247, 359 S.E. 2d 528 (S.C. App. 1987). Here, the road in question was set forth in the Plat and used accordingly for thirty years. It, too, should certainly endure.

“The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some of characteristic demonstrate that the objective intention of the parties was to create an easement.” *Inlet Harbour*, at 92. “In

evaluating the parties' intent, we note, 'the best evidence of the parties' intention are the facts and circumstances surrounding the conveyance.' *Id.*, at 93. The objective intention of the parties should be looked at, at the time of conveyance, not in present tense retrospection. Using this standard as cited by the Court of Appeals, the numbered arguments above would establish there is significant evidence supporting the decision of the Master as to the intent issue.

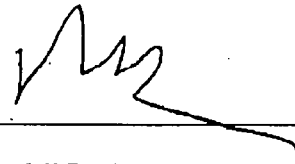
III.

The equitable principle of estoppel prevents Appellant's argument denying that an easement was created by implication. There is a history of the actual use of the 50 foot road denoted on the Loflin Plat. The affidavit of James T. Loflin, the original grantee, indicates in general substance that he did not think he had an easement on the 50 foot road area. Nevertheless, he stated in paragraph 3 of his affidavit "[B]eginning after I acquired the property, *I used the property that abutted the southern side of my property as a driveway.* (emphasis added). Therein, while he supposedly asserts a legal conclusion that he did not possess an easement, Loflin immediately and at all times afterwards used the road area as access to his property, consistent with the plat description. Appellant's plat of its property, Appellant's Exhibit J, again shows parking and gravel drive encroachment on the southern side of Appellant's property; Plat dated October 27, 2006. Respondent relied on "50 foot Road" area as access, and used it as his access until the barricading began in July, 2009. (Transcript, pg. 4). Respondent's Exhibit 3, shows road area as a open flat area. (Transcript, pg. 378). Respondent's Exhibit 11 shows chain of title to subject property with same legal description used in each deed. (Transcript, pg. 379)

Subsequent grantees of the Loflin conveyance are entitled to rely on the actions of the grantor on the creation of the easement. As cited in *Murrells Inlet* and Footnote 2 of the *McAllister* case, the initial grantee, and any subsequent purchasers acquired the right to use this

easement to the full extent that is indicated in the plat. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457 (S.C. App. 2008); *McAllister*, at 863. An issue of unfairness develops in denying Respondent the right to full use and enjoyment of the easement. The subsequent grantees have a right to rely upon the public record as to the chain of title to the property and to the easements.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

Lexington, South Carolina
January 11, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-in-Equity

James O. Spence, Master-in-Equity

Appellate Case No.: 2014-000741

David R. Gooldy Respondent,

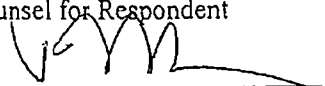
v.

The Storage Center – Platt Springs, LLC Appellant,

PROOF OF SERVICE

I hereby certify that I have served the Respondent's Petition for Rehearing on the Appellant, by depositing a copy in the United States Mail, postage prepaid, on the 11th day of January, 2016, addressed to its attorneys, Robert E. Stepp and Bess J. DuRant, Post Office Box 11499, Columbia, SC 29211.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

RECEIVED
JAN 22 2016
SC Court of Appeals

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

RETURN TO PETITION FOR REHEARING

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*Attorneys for Appellant, The Storage Center –
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Appellant The Storage Center – Platt Springs, LLC (“Appellant” or “The Storage Center”) hereby responds to the Petition for Rehearing (“Petition”) filed by Respondent David R. Gooldy (“Respondent” or “Gooldy”). This Court applied well-established principles of law to this implied easement dispute, and no material fact was overlooked or disregarded. As detailed in the reasons below, the Petition should be denied.

I. NO EASEMENT (OR PRESUMPTION OF EASEMENT) EXISTS AS A MATTER OF LAW.

Because the Loflin Plat¹ was incorporated solely for descriptive purposes, only the 0.68 acres contained within the boundary lines were conveyed to Loflin, as a matter of law. “When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed.” *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635 S.E.2d 660, 667 (Ct. App. 2006); *see also Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965) (holding “the reference to the recorded plat made it a part of deed for the purpose of showing the boundaries, metes, courses, and distances of the property conveyed”). Therefore, while the deed incorporates the plat for the purpose of showing the boundaries of the property, it does *not* incorporate the plat for any other purpose such as conveying rights in the area outside of the property boundaries.

A. Bennett and Lancaster Squarely Control This Matter.

Gooldy tries to avoid this principle of law by claiming that *Bennett* and *Lancaster* are not analogous because an implied easement is not an encumbrance. That assertion is incorrect, however, because an implied easement is an encumbrance. *See Marlin v. Floyd*, 282 S.C. 47, 51,

¹ The “Loflin Plat” is the plat at issue. (R. p. 391.) It was incorporated for descriptive purposes into the deed from the common grantor, Congaree Associates, to Gooldy’s predecessor in title, James Loflin. (R. pp. 394-95.)

317 S.E.2d 133, 136 (Ct. App. 1984) ("The covenant of freedom from encumbrances simply refers to freedom from various liens, easements and other claims."); *Black's Law Dictionary* 449 (8th ed. 2005) (Encumbrance is "[a] claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest."). If the purported easement existed, it would be a burden that would be attached to The Storage Center's property that would lessen the value. It would therefore be an encumbrance.

Gooldy also tries to draw factual distinctions between the present matter and *Lancaster*, but the factual distinctions further highlight the flaws in Gooldy's argument. In *Lancaster*, a deed referenced a plat that depicted a publicly recorded gas pipeline easement that ran across the owner's property. *Id.* at 466-67, 144 S.E.2d at 210. The issue was whether the depiction of the easement on the plat that was incorporated into the deed was sufficient to give notice to the purchaser of the existence of the easement. *Id.* at 466, 144 S.E.2d at 210. The supreme court held that while "the reference to the recorded plat made it a part of deed *for the purpose of showing the boundaries, metes, courses, and distances of the property conveyed*," *id.* at 469, 144 S.E.2d at 211 (emphasis added), it did not make the easement shown on the plat part of the deed. Stated differently, the plat did not become part of the deed to reflect the easement even when the easement existed within the boundary lines on the plat. *Id.* This is true even though (1) the easement was properly recorded in the public records, (2) ran across the owner's property, and (3) was depicted on a recorded subdivision plat which was incorporated into the deed's legal description. *Id.*

In contrast, Gooldy's alleged easement is implied, and therefore, not recorded in the Lexington County records. His alleged easement does not run across or burden his property. Rather, it runs outside of the boundary lines of his property as depicted on the Loflin Plat and burdens The Storage Center's property. Finally, Gooldy's alleged easement was depicted on an

individual lot plat, not a recorded subdivision plat. These factual differences underscore the fact that if an implied easement was not found in *Lancaster*, it surely does not exist in the present matter.

The reference on the Loflin Plat to the "road" did not convey any rights regarding the "road" to Loflin or to any subsequent purchaser. Like the deed in *Lancaster*, the deed to Loflin (and the deed to Gooldy) incorporates the plat solely for descriptive purposes. Thus, Congaree Associates cannot as a matter of law be deemed to have created a right in a non-existent road because it signed a deed that incorporated a plat that showed a "road" that was not part of the description of the property being conveyed. The incorporation of the Loflin Plat only serves to show that the parties intended to convey the 0.68 acres within the boundary lines on the plat. This Court correctly concluded that no easement exists.

B. Bennett and Lancaster Are Not Limited to Breach of Warranty Matters.

Gooldy tries to differentiate the present case from *Bennett* and *Lancaster* by claiming those cases are limited solely to breach of warranty matters. However, there is nothing in the *Lancaster* or *Bennett* opinions to suggest that their holdings are limited in such a manner. *Lancaster* and *Bennett* did involve warranty issues, but the law applied in these cases is more universal than breach of warranty claims. For example, the *Bennett* Court cites numerous cases for support of the principle that referencing a plat for descriptive purposes only incorporates the property within the boundary lines. Specifically, *Bennett* states as follows:

'The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.' *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. *Hobonny Club, Inc. v. McEachern*, 272 S.C. 392, 397, 252 S.E.2d 133, 136 (1979); *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); see

also *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) (“As a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land. . . .”) (citation omitted).

Bennett, 370 S.C. at 594, 635 S.E.2d at 657. The principle of law espoused by *Bennett* and *Lancaster* are not limited to cases involving breach of warranty claims, and nothing in their opinions suggest otherwise.²

C. *McAllister* Does Not Change the Analysis that Only 0.68 Acres Was Conveyed.

Gooldy argues that *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990) prevents this Court from holding that only 0.68 acres was conveyed to Gooldy’s predecessor in title. Specifically, he argues that “*McAllister* says the implied easement is created even though the conveyance says nothing else about the creation of an easement or a dedication to public use.” (Pet. for Reh’g 4.) This analysis of *McAllister* is superficial and fails to address two of the most salient facts in this case – there is no road; and, the Loflin Plat is not a subdivision plat.

McAllister has no application in the present matter because the deed in that case refers to the tracts (plural) that are bounded by the road in question. *Id.* at 12, 389 S.E.2d at 860. Second, the road had width and length dimensions in the *McAllister* plat. *Id.* Third, the plat was prepared for the common grantor. *Id.* at 10-12, 389 S.E.2d at 858-59. Fourth, the plats were of more than one parcel. Here, the deed to Loflin does not refer to the “50’ road,” much less the lot being bounded by the “50’ road.” The road never existed, and therefore, the road had no width or length dimensions in the Loflin Plat. The Loflin Plat was prepared for Loflin, not Congaree Associates,

² Similarly nothing in the *Lancaster* opinion suggests that its holding is limited to “circumstances where one document incorporated an encumbrance against the *express* intention to the contrary set forth by separate document.” (Pet. for Reh’g 3 (emphasis in original).) Gooldy’s reading of *Lancaster* is unclear and unsupported, and does not undermine the Court’s application of *Lancaster* to the facts of this case.

and the Loflin Plat was only a plat of one parcel. (R. p. 377.) *McAllister* does not provide that the alleged implied easement was conveyed to Loflin (and Gooldy). Rather, the legal description of the deed confirms that only 0.68 acres was conveyed.

II. NO EVIDENCE EXISTS THAT THE COMMON GRANTOR CREATED AN EASEMENT.

The record is devoid of any evidence that Congaree Associates, the common grantor, intended to create an easement. To the contrary, the uncontroverted evidence is that Congaree Associates *did not* intend to create an easement. That unchallenged evidence is (1) the deed itself, which incorporates only the 0.68 acres, as a matter of law; (2) the uncontroverted testimony of Congaree Associates' principal that the common grantor had no intent to create an easement; (3) the fact that no road existed; and (4) the fact that subsequent plats show no road or easement. Moreover, even if the Court could glean a glimmer of intent, the presumption of an easement was robustly rebutted by the clear, uncontradicted testimony of Congaree Associates' principal.

“The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.” *Bennett*, 370 S.C. at 574, 635 S.E.2d at 667 (quoting *Lancaster*, 246 S.C at 468, 144 S.E.2d at 211). A review of the evidence *in toto* reveals that there was never an intent to create an easement. First, the *Lancaster* rule provides that because the parties referenced the Loflin Plat solely for descriptive purposes, the parties intended to convey solely the property within the boundary lines and not the alleged “road.”³ Second, Carroll McGee,

³ Gooldy argues that McGee, on behalf of Congaree Associates, was obliged to know the contents of a document he signed. (Pet. for Reh'g 6.) The Storage Center does not disagree. The deed signed by McGee shows that Congaree Associates had no intent to convey any easement rights because the Loflin Plat was incorporated solely for descriptive purposes under the *Lancaster* rule.

the principal of Congaree Associates, unequivocally testified that there was never any intent to establish any easement rights when Congaree Associates conveyed the Gooldy Parcel to Loflin. It did not intend to create or convey any rights in the alleged 50' road to Loflin. (R. pp. 228:13 – 229:6.) By referencing the Loflin Plat, Congaree Associates only intended to convey the property within the boundary lines, *i.e.* the Gooldy Parcel. (R. pp. 228:8 – 229:12.) By allowing the deed that referenced the Loflin Plat to be recorded, Congaree Associates did not intend to create an easement. (R. pp. 228:13 – 229:13.) There is no evidence to the contrary.

Third, the lack of intent is most starkly evidenced by the fact that no road has ever existed. (R. pp. 208:25-209:3; R. p. 209:20-25; R. p. 232:17-19; *see also* R. p. 404.) Finally, subsequent plats do not show a road. Robert Collingwood, who drafted the Loflin Plat, drafted subsequent plats that show no road.⁴ (R. pp. 399-401, 403.) The plat relied upon by The Storage Center includes no reference to the alleged 50' road or any associated easement. (R. pp. 396-398.) Similarly, Lexington County's TMS map, which was drafted in the 2000s, shows no road abutting the southern side of the Gooldy Parcel. (R. p. 402.) In sum, the deed's execution and subsequent actions support McGee's clear testimony that Congaree Associates never intended to create or convey any easements in favor of Loflin and his successors.

Similarly, Gooldy argues that a court can locate the width and location of a road. (Pet. for Reh'g 6.) Again, The Storage Center does not necessarily disagree. However, the parties must have an intent to create an implied easement over a road. *See Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 235, 662 S.E.2d 452, 456-57 (Ct. App. 2008) (providing "the intentions of the parties to the transaction are the overriding focus when examining implied easements."). Here, the overwhelming weight of the evidence shows that there was never an intent to create an implied easement.

⁴ Gooldy contends that "[Collingwood] was in the best position to know whether a notation of a road was necessary." (Pet. for Reh'g 5.) Yet, Collingwood's own subsequent plats show no road. (R. pp. 399-401, 403.)

To the extent that the reference to the Loflin Plat is evidence of intent, it at best creates only a *rebuttable presumption* of intent, which can be overcome by evidence that the developer did not intend to create such an easement. *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 118, 145 S.E.2d 922, 925 (1965); *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 233, 662 S.E.2d 452, 455-56 (Ct. App. 2008). Any such presumption was easily overcome by Carroll McGee's uncontradicted testimony that Congaree Associates did not intend to create or convey any easement rights to Loflin and his successors. This Court correctly concluded that there is no evidence to support a conclusion that Congaree Associates and Loflin intended to create an implied easement.

III. ESTOPPEL CANNOT CREATE AN EASEMENT IN FAVOR OF GOOLDY.

Gooldy argues that The Storage Center should be estopped from denying Gooldy access over The Storage Center's property because (1) Loflin, his predecessor in title, used the abutting property and because (2) Gooldy believed that he could use it because it was a flat area and the chain of title used the same legal description.⁵ First, Loflin states that he may have used the property, but he continues with the following:

⁵ Gooldy also cites to the fact that a plat relied on by The Storage Center contains a driveway encroachment. (Pet. for Reh'g 7.) But this plat shows no easement or road. (R. pp 396-98.) In fact, Charles Meeler, a registered surveyor who drafted this plat, testified as follows:

I didn't feel like there was a road there. In my professional opinion, there was no road. Lexington County required road names. I couldn't find a – I couldn't find a name for that alleged road, so, you know, to my knowledge and all the research work I did, there was no road existed there. South Carolina DOT had no record of a road there. Lexington County had no record of a road there. So I just felt like that was a part of [Congaree Associates'] property.

(R. p. 249:13-22.) Moreover, Gooldy cannot rely on this plat to establish a claim for estoppel as the plat was drafted in 2006 – four years after Gooldy acquired his lot in 2002. (See R. pp 375-76.)

5. This "50' Road" shown on the plat did not exist and is not part of the property I owned. The "50' Road" was not referenced for my benefit to use. I had no agreement with my neighbor, Congaree Associates, that a road would be built there. The "50' Road" reference in the plat was not intended to create an easement.

6. At all times, the strip of land I used to access my property was the property of Congaree Associates.

7. I never believed that I owned the southern strip of land referenced as the "50' Road" or acquired an easement to use it. I never used it with the intent of dispossessing Congaree Associates of its property. No express or implied easement was ever given to me, and I did not give one to anyone else.

(R. 64, ¶¶ 5-7.) Loflin's testimony unequivocally establishes that he did not intend to acquire an easement from Congaree Associates. Similarly, McGee's testimony unambiguously provides that Congaree Associates never intended to convey an easement. (R. pp. 228:13 – 229:6.) No easement ever arose.

Also, Gooldy's position that an open area exists next to his property and that his chain of title included the same legal description, incorporating the Loflin Plat, is of no moment. First, a picture of an open area is just that – a picture of an open area. Because Gooldy erroneously thought he could use an open area as a driveway does not provide him with any legal or equitable basis to claim ownership over the area. Second, his own chain of title should have caused him to discover that he had no claim over The Storage Center's property. The legal description in the deed from Congaree Associates to Loflin provides as follows:

All that certain piece, parcel, or lot of land, with improvements thereon, if any, situate, lying and being on the western side of S.C. Highway No. 6, approximately 580 feet south of the intersection of Platt Springs Road and S.C. Highway No. 6, near the Town of Lexington, in the County of Lexington, State of South Carolina, and being shown and designated on a plat prepared for James T. Loflin by Robert E. Collingwood, Jr., Reg. Surveyor, dated December 10, 1985, revised August 12, 1986, and recorded in the Lexington County RMC office in Plat Book 212G at Page 204. *The within described property contains 0.68 acre.*

(R. pp. 394-395 (emphasis added).) The legal description specifically states that the property conveyed "contains 0.68 acre," which is the land within the boundary lines on the Loflin Plat. It says nothing about easements, other encumbrances, or access to a 50' road because there was no intent to create any rights regarding same. The final sentence explicitly states and reinforces that Congaree Associates only intended to convey (and Loflin only intended to receive) the 0.68 acres. Gooldy's chain of title should have informed him that he only has 0.68 acres, not 0.68 acres plus an implied easement.

CONCLUSION

For the reasons set forth above, The Storage Center respectfully requests this Court deny Gooldy's Petition for a Rehearing.

SOWELL GRAY STEPP & LAFFITTE LLC

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January 22, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master in Equity

Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

RECEIVED

JAN 22 2016

SC Court of Appeals

David R. Gooldy,

Respondent,

vs.

The Storage Center – Platt Springs, LLC,

Appellant.

PROOF OF SERVICE

I certify that I have caused the service of the Return to Petition for Rehearing on Respondent David R. Gooldy by hand delivery on January 22, 2016, to his attorney of record, James Randall Davis, Esquire, Nicholson, Davis, Frawley, Anderson and Ayer, LLC, 140 East Main Street, P.O. Box 489, Lexington, South Carolina 29701.



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January 22, 2016

RECEIVED

JAN 22 2016

SC Court of Appeals

BY HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: David R. Gooldy v. The Storage Center -- Platt Springs, LLC
SC Court of Appeals Case No.: 2014-000741
Civil Action No.: 10-CP-32-0460
SGS&L File No.: 6252/1501

Dear Ms. Kitchings:

Enclosed herewith please find the original and six (6) copies of Appellant's Return to Petition for Rehearing in the above referenced matter. Kindly file the original and return the clocked-in copy to our office via our courier.

Thank you for your assistance in this matter and please contact me if you have any questions.

Sincerely,

Bess J. DuRant

Enclosures

cc: James Randall Davis, Esquire

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

REPLY TO RETURN TO PETITION FOR REHEARING

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JAN 29 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Trial Court Case No.: 2010-CP-32-0460
Appellate Case No.: 2014-000741

David R. Gooldy.....Respondent,

vs.

The Storage Center – Platt Springs, LLC.....Appellant.

REPLY TO RETURN TO PETITION FOR REHEARING

Respondent David R. Gooldy hereby responds, by this Reply, to the Return by the Appellant to Respondent's petition for Rehearing. For the reasons stated herein, Respondent asks this Court to grant its Petition for Rehearing.

I.

Bennett v. Investors Title Insurance Company and *Lancaster v. Smithco, Inc.* establishes one principle of law and *McAllister v. Smiley* establishes a second principle of law.

The first principle of law indicates "When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 574, 635

S.E.2d 660, 667 (Ct. App. 2006); see also *Lancaster v. Smithco, Inc.*, 246 S.C. 464, 469, 144 S.E.2d 209, 211 (1965).

McAllister v. Smiley, 301 S.C. 10, 389 S.E.2d 857 (S.C. 1989) establishes a second principle of law. It indicates that "Where a conveyance of land describes the parcel as bounded by a street designated in the conveyance, or refers to a map on which spaces for streets, parks, or other common uses are shown, but the conveyance says nothing about the creation of an easement or a dedication to public use, the conveyee of the land acquires an easement with respect to the street or the areas shown on the map" *Id.* At 857. *Emphasis added.*

The principles of law in the Bennett, Lancaster and Smiley cases are not inconsistent. A plat referenced in a deed, such as the Loflin deed (Exhibit 3), is obviously for descriptive purposes to show acreage, metes and bounds, etc. but that holding does not preclude this Court from recognizing in this case the separate principle of law that a road referred to as boundary in the deed or at least referenced on the plat creates an implied easement; even though nothing is denoted on the plat about the creation of the implied easement, that implied easement was intended. Furthermore, *McAllister v. Smiley* indicates that there needs to be evidence that the easement was specifically not intended. It is the Respondent's contention that the entry of the 0.68 acres on the Loflin plat is not a specific indication that an implied easement was not to be created by this conveyance. The entry of the 0.68 acres on the face of the plat is for the sole purpose of defining the amount of acreage being conveyed, not to abrogate the rule in the *McAllister v. Smiley* case. A proposed buyer would expect that entry to be on its plat to help them determine issue of sufficient acreage and price.

Appellant's argument distinguishing *Bennett* and *Lancaster* from *McAllister v. Smiley* are superficial. Why would the Supreme Court of South Carolina hold that there was an implied

easement in *McAllister* when the plat in the *McAllister* case denoted Tract A as tract conveyed when the identical notation appears on the Loflin plat (0.68 acres)? The only reasonable conclusion is consistent with the *Bennett* and *Lancaster* cases in that both notations were for the purpose of defining the property inside the boundaries of the property but not to exclude an implied easement created by the principle law set forth in *McAllister v. Smiley*.

Appellant attempts to further distinguish *McAllister* from *Bennett* and *Lancaster* by contending that there was no road located adjacent to the Loflin property and that the Loflin plat was not a subdivision plat. The fact that the *McAllister* plat refers to two tracts bounded by the road in question makes no difference. The question in the *McAllister* case was "Was the abutting road an implied easement for the *McAllister* parcel only?" Secondly, the road on the Loflin plat had a width and length which was established by the Master-in-Equity and not disproved by the Appellant. Thirdly, the Loflin plat was prepared for Mr. Loflin and adopted in the developer's general warranty deed conveying warranty title to Mr. Loflin. Fourthly, *McAllister v. Smiley* indicates that implied easement exists either by referencing the road as a boundary in the deed or referencing the plat in the deed showing the road. Finally, whether you call it a driveway or a road, this land on the southern side of the Loflin plat was used from its inception as an access area, as testified to by the Respondent and Mr. Loflin the original grantee. *Walker v. Guignard*, 293 S.C. 247, 359 S.E.2d 528 recognizes even if the road is unopened and never used, it is still an easement.

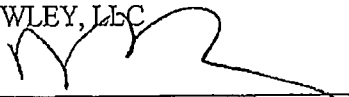
This Loflin plat is a subdivision plat. The original grantor to Loflin was conveying this parcel out of a much larger parcel thereby subdividing the original parcel. *McAllister v. Smiley* was a similar subdivision; a subdividing of one parcel into two.

II.

Estoppel theory applies to this implied easement.

How would a subsequent grantee, such as the Respondent, know that there was no implied easement on the southern side of the Loflin property when he took conveyance of the property. Respondent's photo exhibit of the access area gives the impression of a road area as compared to any other suggested purpose of this area and it had been used as a driveway and/or road area. Any attorney checking the title for a subsequent grantee would have seen the same legal description showing the same road area since 2001. The deed description never changed. There is not any evidence that the original grantor took any steps to legally terminate the road area subsequent to his initial conveyance. Is it fair to the Respondent to not allow him to rely upon the chain-of-title record as to the existence of the road especially when the original grantor could have ended this issue at the time of execution and recording of the deed to Mr. Loflin? We have the traditional elements of estoppels where there was a representation, whether intended or not, by recording a deed showing a road which has been relied upon by the subsequent grantees, to their prejudice if the easement does not exist. *Murrells Inlet Corp v. Ward*, 378 S.C. 225, 662 S.E.2d 452, 457.

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Lexington, South Carolina
January 27, 2016

The South Carolina Court of Appeals

David R. Gooldy, Respondent,

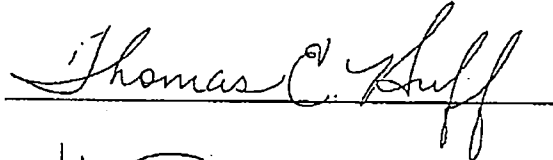
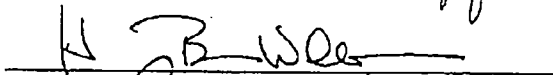
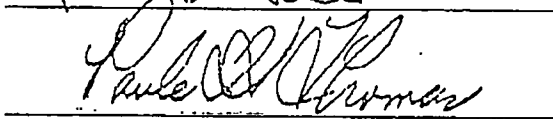
v.

The Storage Center-Platt Springs, LLC, Appellant.

Appellate Case No. 2014-000741

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

James Randall Davis, Esquire
Robert E. Stepp, Esquire
Bess Jones DuRant, Esquire
The Honorable James O. Spence

FILED

February 19, 2016